



Nigerian Law Reform Commission: An Appraisal of the Statutory Powers of Principal Officers

Dr. Junaidu Bello Marshall

**Senior Lecturer,
Faculty of Law,
Usmanu Danfodiyo University, Sokoto, Sokoto State, Nigeria**

ABSTRACT

The purpose of this work is to appraise the statutory powers of the principal officers of the Nigerian Law Reform Commission (Commission) and the Attorney-General of the Federation under the enabling laws to ensure full compliance, which is an essential component in creating a legitimate administrative service. The Act established the Commission with specific mandate to reform laws in Nigeria in accordance with relevant provisions of the law. The Act empowered the Attorney-General of the Federation to supervise the activities of the Commission for effective administration of the Commission. In this regard, effective administration means each department, agency or authority exercises its powers in accordance with the purposes and standards defined by law in an economical and efficient way. The law specifies the powers conferred on each individual and authority and sets the parameters within which they should be used. The Act specifically created 4 members of the Commission who are appointed by the President subject to the confirmation of the Senate and designated one of them as the Chairman and the administrative head of the Commission. The Act equally created the office of the Secretary as the accounting officer of the Commission, with specific mandate to assist the Chairman in the running of affairs of the Commission. It is observed that there exists interference on the part of the Chairman on the statutory duties of the Secretary and other members which is clearly affecting the administration of the Commission. The work recommends that the Attorney-General should ensure that the provisions of the Act are strictly adhered to, as it is the only way compatible with a commitment to the rule of law.

Keywords: Nigerian Law Reform Commission, Chairman, Secretary

1. INTRODUCTION

The principal officers of Nigerian Law Reform Commission (Commission) and the Attorney General of the Federation exercises many functions in the administration of the Commission under the enabling Act with a view to ensuring adequate law reforms in Nigeria. Generally, scholars regarded law reform as the process of weeding out and replacing the obsolete laws within the legal system in order to attune the applicable laws to the prevailing realities and norms in the society. Therefore, the importance of law reform cannot be overemphasized because of its relevance to the socio-economic and political development of any nation. It is uniformly agreed that law as an instrument of social engineering always served as the instrumentality of meaningful reform in any civilized society. With this in mind, the Commission was established in Nigeria¹ with a view to keeping Nigerian laws in perpetual review.

To achieve the objectives of the Commission, the Act requires the appointment of four full time Commissioners by the President, one of whom shall be designated as the Chairman. The Act equally

¹ Through Decree No. 7 of 1979. The Decree is currently in force by virtue of Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) known as Nigerian Law Reform Commission Act (The Act).

empowered the President to appoint a Secretary for the Commission on the recommendation of the Attorney-General and Minister of Justice and the Secretary is the Chief Accounting Officer of the Commission. The Act mandated the Secretary to assist the Chairman in ensuring that all the rules and regulations relating to the management of the human, material and financial resources of the Commission are adhered to in accordance with the objectives of the Federal Government.

While the attainment of the above objectives through the principal officers of the Commission requires long-term planning and commitment, it should not be forgotten that such objectives must be achieved within the scope of the law. A fundamental principle of Administrative Law is that statutory powers shall be exercised within the framework of law. It is the law that each administrative authority ought to be subject to supervision by other authorities, to ensure that those charged with such powers conducted themselves within the terms of the law and according to established legal principles. It is glaring under the Act that the Commission is accountable to Attorney-General of the Federation, who himself is the Chief Law Officer of the Federation².

Scholars majorly discussed the functions and objectives of the Commission leaving out the discourse about the powers and relationships between the principal officers of the Commission and the role of the Attorney General of the Federation as the supervisory minister of the Commission. This left a gap in addressing the challenges facing the Commission in discharging its mandate under the enabling law.

The purpose of this paper therefore, is to appraise the statutory powers of the principal officers of the Commission and the Attorney-General of the Federation under the enabling laws to ensure full compliance, which is an essential component in creating a legitimate administrative service. Specifically, the paper argued that the powers of the Chairman, Commissioners and the Secretary of the Commission are well spelt out by the Act and the Attorney-General of the Federation is expected as always to ensure that they discharge their respective functions in accordance with the law.

2. Establishment and Functions of the Commission

The Commission is one of the Federal Government agencies established in 1979³ as a body corporate with perpetual succession and a common seal, and may hold, acquire or dispose of any property or interest in property, movable or immovable.⁴ It is a juristic personality with the capacity to sue and be sued in its corporate name.

The overall objectives for which the Commission is established are as contained in the long title of the Act. It provides that the objectives of the Act to set up the Commission for Nigeria are to undertake the progressive development and reform of substantive and procedural law applicable in Nigeria by way of codification, elimination of anomalous or obsolete laws and general simplification of the law in accordance with general directions issued by the Government from time to time and for matters connected therewith.

To achieve the above mentioned objectives, the Act states the functions of the Commission as follows:

- (1) Subject to the following provisions of this section, it shall be the duty of the Commission generally take and keep under review all Federal laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with changes in the machinery of the administration of justice and generally the simplification and modernization of the law⁵.**

² See Sections 5 and 6 of the Act.

³ Through Decree No. 7 of 1979, now Cap. 118 Laws of the Federation of Nigeria (LFN).

⁴ Section 1 of the Act.

⁵ Section 5 (1) of the Act.

The Act states that in the exercise of the above function by the Commission, the Attorney General has supervisory powers over the Commission in such a way that it shall receive and consider any proposals for the reform of the law which may made or referred to it by the Attorney General of the Federation or where the Commission initiate programmes from time to time for the purpose of reforms to any area of the law, it shall submit same to Attorney General for approval before embarking on the reform.⁶ The Act specifically provides that the Attorney General may modify the terms of reference and give directions to the Commission as to the order in which it is to deal with references⁷.

It is also the responsibility of the Attorney General to lay before the President any programmes prepared by the Commission and any proposals for reform formulated by the Commission pursuant to such programmes.⁸ The Attorney General may equally direct the Commission to furnish his office with interim report on its work under reference before the Commission makes its report final report.⁹ The law makers' intendment is to curtail abuse of power by the Commission in reforming laws in Nigeria, hence the supervisory powers of the Attorney General. On the other hand, the Act made the Commission independent in terms of its day to day activities without unnecessary interference by the Attorney General.¹⁰

3. Appointment and Tenure of Office of Members of the Commission

The Act created four (4) full-time Commissioners for the Commission and mandated the President to designate one of them as the Chairman¹¹. The Chairman is the administrative head of the Commission and bound to ensure that all the rules and regulations relating to management of the human, material and financial resources of the Commission are adhered to in accordance the objectives of the Federal Government, as assisted by the Secretary.¹²

Generally, the Chairman is responsible for the day to day activities of the Commission with a view to achieving the overall functions of the Commission.¹³ It's instructive to note that the Chairman is the head of the Commission and is empowered under the Act to ensure that all staff of the Commission functions within the purview of the Act. This established the governance structure of the Commission for the purpose of directing the affairs the Commission with the intent of creating and sustaining orderliness, peace and promoting the general wellbeing of the staff of the Commission. These powers are well spelt out by the Act and require no further interpretation.

The 4 commissioners of the Commission shall be appointed by the President on full time basis subject to confirmation by the National Assembly and one of whom shall be designated as the Chairman.¹⁴ The qualifications for appointment as a member of the Commission are well spelt out by the Act.¹⁵ The Act further provides a situation where a judicial officer will be appointed as member of the Commission without relinquishing judicial office, subject to certain restrictions. The tenure of the members is for five years and shall be eligible for reappointment for one further five years. The procedure for termination of appointment and remunerations of members such as salaries and allowances are well spelt out. The Chairman's salary and allowances shall not be less than such as are paid to a Justice of the Supreme Court of Nigeria¹⁶. This created a situation where the Chairman will have good working environment to spearhead the affairs of the Commission to achieve its mandate. Conversely, the salaries and allowances of judicial officers are currently subjected to criticism having regard to the present economic situation of the country and 10 times lower than that of the National Assembly members. Therefore, this work argues

⁶ Section 5 (2) (a-e) of the Act.

⁷ Section 5 (3) (a and b) of the Act.

⁸ Section 5 (3 -6) of the Act.

⁹ Section 6 of the Act.

¹⁰ Section 5 (7) of the Act.

¹¹Section 2 (1).

¹² See Section 8 (1) (c) of the Act.

¹³ As stated under Section 5 of the Act.

¹⁴ Section 2 (1) and (2) of the Act.

¹⁵ Section 2 (1(a-c) of the Act.

¹⁶ See Section 2 (3) – (6) of the Act.

that there is need to review and increase the salaries and allowances of the judicial officers in the country *vis a vis* the members of the Commission to reflect the current economic realities of the country. The Act¹⁷ empowered the Commission to regulate its proceedings and may make standing orders and subject to its standing orders, the Commission may appoint such number of standing and ad hoc committees as it thinks fit to consider and report on any matter with which the Commission is concerned. The law requires a member of the Commission to preside over any committee established by the Commission with other members of the committee coming from staff and non staff of the Commission as determined by the management¹⁸. Overall, the enabling Act provides an avenue for the members to achieve the objectives of the Commission. However, prior to the appointment of the current Chairman by the President Muhammadu Buhari, the Commission was left with only one member for almost three years, which contradicts the clear wordings of the enabling Act. Worst still, during this period, the Commission operated without a Secretary who by law is the accounting officer of the Commission. These affected the activities of the Commission in no small measure in terms of decision making at the management level for lack of quorum and also the running of day to day activities of the Commission. This may tempt one to ask, how the Commission operates within the period with only one member and what are the legal effect of decisions made within the period? Whatever opinion one may hold about the situations, it is obvious that it would never be in the best interest of the system. These situation made the Senate Committee on Judiciary, Human Rights and Legal Matters to accuse the Commission of being largely responsible for predominance of obsolete laws in the nation's Statute book and further declared that the Commission has not been active.¹⁹ Senator Nwaobushi noted that "this commission as the body constitutionally saddled with the responsibility of law reforms is ordinarily supposed to be visible but it is not visible at all." Senator Ajibola declared the Commission as dormant having regards to the existence of obsolete penalty clauses in our law books begging for review. He further notes that from the Commission's record, it has only made seven attempts at law reforms between 2017 and 2020²⁰.

4. Appointment and Tenure of the Secretary of the Commission

The Act²¹ created the office of the Secretary for the Commission who shall be appointed by the President, on the recommendation of the Attorney General. The Act specifically states that he shall be the "accounting officer of the Commission."²² The Act further states that the Secretary "shall assist the Chairman in ensuring that all the rules and regulations relating to the management of the human, material and financial resources of the Commission are adhered to in accordance with the objectives of the Federal Government²³". Like the members of the Commission, the tenure of the Secretary is for five years and may be reappointed for another five years. Conversely, the appointment of the Secretary is not subject to confirmation by the National Assembly, which is a clear departure from what is obtainable in the appointment of the members of the Commission. This work argues that the appointment of the Secretary should also be subjected to confirmation by the National Assembly having regards to duties of the office under the enabling Act.

In addition to the financial provisions above, the Act equally empowered the Secretary of the Commission to ensure proper account and audit of the Commission and also mandated the Secretary in each "financial year to prepare estimates of recurrent and capital expenditure and, when approved by the Commission, the estimate shall be forwarded through the Attorney-General for approval by the Government of the Federation.²⁴" The Act also mandates him "to keep proper accounts and proper records in relation

¹⁷ Sections 3 and 4.

¹⁸ Ibid.

¹⁹ NGO, Lygel Youths and Leadership Initiatives, Threatens Legal Action Over Usurpation, Breach of Power at Law Reforms Commission, June 30, 2021 available at www.blueprint.ng accessed on the 20th November, 2021.

²⁰ Ibid.

²¹ Section of 8 (1) of the Act.

²² Section 8 (1) (a).

²³ Section 8 (1) (c).

²⁴ Section 11 (1) of the Act.

thereto.²⁵ The Secretary is responsible for promotion, appointment and discipline of the staff of the Commission and all correspondences with the Commission are addressed to the Secretary, who reports to the Chairman. He is equally responsible for calling both board and management meetings at the instance of the Chairman.

Despite the clear wordings of the enabling law relating to powers of the members and Secretary of the Commission, there exists power tussle in the Commission. There are allegations against the Chairman exercising part of the statutory powers of the Secretary particularly in relation to accounting and auditing of the Commission. It was further alleged that the Secretary and other Commissioners had no knowledge and input in the 2020 and 2021 budgets proposed and approved by the National Assembly²⁶.

This work argues that it is glaring from the above discourse that the Act created the two offices for the purpose of achieving the objectives of the Commission. The Act is very explicit on the powers of the Chairman, members and the Secretary. The Chairman is the overall head of the commission, while the Secretary is the accounting officer of the Commission with specific mandate to assist the Chairman in ensuring that the overall objectives of the Commission are achieved. Therefore, the law is trite that were words of a statute are clear and unambiguous; the authority has a duty of according its grammatical meaning. In *Okoye v. COP (2015) 17 NWLR (Pt. 1488) 276 at 320 Paras F-H*, it was held thus: -

“Where the words used in a statute are clear and unambiguous, they must be given their natural and ordinary meanings unless to do so would lead to absurdity or inconsistency with the rest of the statute. The words of the statute alone, in such circumstance best declare the intention of the law maker”.

Also in the *Nobis- Elenchu v INEC (2015) 16 NWLR (Pt. 1485) 197 at P. 224 Paras E-F*, this court held as follows:-

“Court must interpret the law within the context of its Constitutive words and refrain from seeking the meaning of a statute outside the clear words employed by the legislators...”

The wordings of Sections 1, 8 and 11 of the Act in relation to the powers of the Chairman, Commissioner and Secretary are clear and unambiguous, which requires no further explanation. Therefore, if the intention of the legislature can be found in the ordinary and natural meaning of the words used, no difficulty arises. Moreover, the Act under Sections 1, 8 and 11 used the word ‘shall’ which in the ordinary arrangement of the Act donates mandatory. The attitude of our courts is that in its ordinary meaning, when word ‘shall’ is used it connotes a command, and which must be given a compulsory meaning. We are strengthened by the decision of *Acchineku v Ishagaba (1988) 4 NWLR (Pt.89) 411*. Therefore, as currently constituted, it will be an aberration and breach of the relevant provisions of the Act for the Chairman of the Commission to insist on acting as the accounting officer of the Commission. The 2018 amendment Bill presently before the National Assembly to enable the Chairman to be the accounting officer of Commission is not yet a law and cannot override the provisions of Sections 8 and 11 of the Act.

5. CONCLUSION AND RECOMMENDATIONS

The Act established the Commission with specific mandate to reform laws in Nigeria in accordance with relevant provisions of the law. The Act empowered the Attorney-General of the Federation to supervise the actives of the Commission for effective administration of the Commission. In this regard, effective administration means each department, agency or authority exercises its powers in accordance with the purposes and standards defined by law in an economical and efficient way. The law specifies the powers conferred on each individual and authority and sets the parameters within which they should be used.

²⁵ Section 11 (2) of the Act.

²⁶

The Act specifically created 4 members of the Commission who are appointed by the President subject to the confirmation of the Senate and designated one of them as the Chairman and the administrative head of the Commission. The Act equally created the office of the Secretary as the accounting officer of the Commission, with specific mandate to assist the Chairman in the running of affairs of the Commission. Conversely, there exists interference on the part of the Chairman on the statutory duties of the Secretary and other members which is clearly affecting the administration of the Commission.

This work, therefore, recommends that the Attorney-General should ensure that the provisions of the Act are strictly adhered to, as it is the only way compatible with a commitment to the rule of law. For the rule of law to be maintain as a matter of principle, all administrative authority should be grounded in and defined by law. This is line with the principle of legality, which is the foundation stone of administrative law. The principle means in its simplest that, all administrative and executive authorities are created by law and have only such powers and duties as are conferred on them by law; and in exercising their powers and duties such authorities should act within the law, and any act or decision which goes beyond the scope of legal authority or violates the law in a significant way should have no legal effect.