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# THE NIGERIAN LAW REFORM COMMISSION ACT 2022: OLD WINE IN A NEW BOTTLE?

By

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**Abstract**

*As societies are in a constant state of flux, laws must be constantly refined or updated to catch up with and make provision for such changes, and in some cases, even contemplate future changes, dynamics and challenges. This requires that laws must be regularly reformed to keep them current and relevant. As a systematic process for updating and simplifying laws, law reform across jurisdictions is carried out mainly by special institutions or bodies created or mandated for that purpose. In Nigeria, the Nigerian Law Reform Commission is charged with the responsibility of reforming laws in the country, as empowered by its constitutive Act. While the Commission's 2004 Act was essentially a relic of military rule and was largely censured for its inadequacy, impotence and inability to foster effective law reforms, its 2022 Act is perceived as a game changer. A cursory review of the 2022 Act however reveals copious and indeed striking similarities with the 2004 Act, thus questioning the novelty and distinction of the 2022 Act, particularly with respect to its ability to transform the Commission and enable it achieve its statutory objectives seamlessly. Against this background and relying on the doctrinal research methodology, this paper appraises the 2022 Nigerian Law Reform Commission Act with a view to ascertaining its ingenuity, potency and ability to transform the law reform process in Nigeria.*

*Keywords*: **Law; Reform; Nigeria; Act; Commission.**

## 1.0 INTRODUCTION

Laws are essentially commands requiring compliance.[1] As strategic tools for social engineering, change, and the regulation of social conduct, laws do not exist in *vacuo* but are indeed part and parcel of societies; they are made for societies and thus exist in them. This view aligns with the sociological school of jurisprudence which posits in the main, that law and society are interlinked, interdependent and influence

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[1] Bonnievolo E Ecoma, 'Commanding the Impossible: A Subtle Review of the Supreme Court Judgment in Jegede & Anor v. INEC & Ors' in Oghenemaro Festus Emiri and Chidi Lloyd (eds) *Judges and Judging in Nigeria: Essays in Honour of Hon. Justice Kate Abiri* (Malthouse Law Books, 2023) 446.

each other's development.[2] As societies evolve, such evolution or change requires that law as the regulator of society must take cognizance of and superintend such evolution or change. To do this properly and to stay relevant, law must regularly undergo introspection, reassessment and self-cleansing (reforms) in order to keep up with advancements and challenges in the society; "laws must be constantly improved upon both as systems and catalysts of progress and positive change in the society."[3] As noted by Hon. Justice Dahiru Musdapher, "the process by which law can maintain its growth as well as relevance in society is through 'self-cleansing' mechanisms that will meet the ever-changing yearnings and aspirations of all, and this is achieved through law reforms, which reforms must not only be clinically diagnosed, but holistically implemented to achieve the desired results."[4]
Law reform is identified as a fundamental aspect of and process in legal systems around the world, without which extant laws would remain mundane, dormant and out of tune with social, technological, scientific, legal and other advancements and realities. It is an indispensable part of legal systems that keeps laws current and relevant so as to enable them achieve their statutory and other broader objectives, all of which are aimed at effective regulation of the society. This all-important process is best undertaken by committees, institutions or bodies that are specially constituted or created for the specific purpose of law reform. Such committees, institutions or bodies (generally referred to as law reform bodies) are generally charged with the responsibility of simplifying and updating existing laws, so as to bring them into conformity with prevailing social norms. In Nigeria, the law reform body at the national level is the Nigerian Law Reform Commission (NLRC) which is a body corporate with perpetual succession and a common seal, statutorily established and empowered to generally take and keep under review, all federal statutory and procedural laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of the Nigerian society.
Originally a creation of the military during one of the episodes of military rule in Nigeria,[5] the NLRC has passed through several military and democratic phases since its establishment. By virtue of the return to democratic rule and the constitutional conversion of military Decrees and Edicts to "existing laws," the Decree that established the NLRC was redesignated an Act and subsequently known as the Nigerian Law Reform Commission Act CAP N118, Laws of the Federation of Nigeria, 2004 (the "2004 Act").[6] Since the return to democratic rule,

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[2] Gyaneshwor Parajuli and Bimal P Lamicchane, 'Social Function of Law from Jurisprudential Outlook.' *Nepal Law Review* [2019] (28) (1-2) 140.

[3] Funso Adaramola, *Jurisprudence* (4th edn, LexisNexis Butterworths, 2008) 253.

[4] Dahiru Musdapher, 'Law Reform in Nigeria: Challenges and Opportunities' (Lecture delivered at Federal University Dutse, Jigawa State, Nigeria, 20th May 2014) 4.

[5] The NLRC came into existence by virtue of the Nigerian Law Reform Commission Decree 1979, Decree No. 7, made in Lagos on 23rd February 1979 and signed by Lt. General Olusegun Obasanjo, then Head of the Federal Military Government and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.

[6] By virtue of section 315 of the Constitution of the Federal Republic of Nigeria (the "Nigerian Constitution"), an existing law means "any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before 29th May 1999, or which having been passed or made before that date, comes into force after that date." The same section provides that existing laws shall have effect with such modifications as may be necessary to bring them into conformity with the provisions of the

the NLRC appears to have received insufficient attention from the Federal Government especially in terms of funding and this, coupled with such issues as defects in the constitutive Act of the NLRC, has largely accounted for the essentially dormant state of the NLRC, a situation that has forestalled its ability to effectively deliver on its statutory mandate. As part of possible solutions, there was profound advocacy by scholars, practitioners and stakeholders for the amendment of the 2004 Act or a repeal of same so as to make way for the entrance of new provisions or a new Act that would transform the law reform process in Nigeria and enable the NLRC to achieve its statutory objectives and mandate. The advocacy culminated in the enactment of the Nigerian Law Reform Commission Act 2022 (the "2022 Act") which repealed the 2004 Act. While it was envisaged that the 2022 Act would significantly transform the law reform process in Nigeria by virtue of its being a product of the scrutiny and consideration of the facets of the advocacy, a cursory review of the Act indicates that its provisions are substantially the same with those of the repealed 2004 Act, thus raising questions as to its novelty and ability to improve on the law reform process in Nigeria in contemporary times. After analysing the concept of law reform and examining the 2004 Act as well as the advocacy for its change, the paper unveils the 2022 Act. Through an analysis of the provisions of the 2022 Act and a juxtaposition of same with those of the 2004 Act, we argue that there has been no profoundly significant improvement in the statutory framework for law reform in Nigeria.

## 2.0 LAW REFORM: CONCEPTUAL ANALYSIS

The term 'law reform' has been defined variously by scholars, practitioners and stakeholders but in all the definitions, there is a golden thread common to all– the improvement of law. Law reform or legal reform is the process of reviewing and examining existing laws, and advocating and implementing changes on laws, usually with the objective of efficiency, enhancing justice, or bringing the law up to speed with new developments.[7] The term has also been defined as "the modernisation of the law by bringing it into accord with current conditions; the elimination of defects in the law; the simplification of the law; and the adoption of new or more effective methods for the administration of the law and the dispensation of justice."[8] Again, law reform is defined as "the process by which the law is modified and

Constitution and shall be deemed *inter alia*, to be Acts of the National Assembly to the extent that they are laws with respect to any matter on which the National Assembly is empowered to make law. Similarly, section 316(1) of the Nigerian Constitution provides *inter alia* that offices that were established and statutorily charged with functions before 29th May 1999 shall be deemed to have been duly established and shall continue to be charged with such function as if the office was established and charged with the function by virtue of the Constitution or laws made pursuant to it. See *Shekete* v *N.A.F.* [2007] 14 NWLR (Pt. 1053) 159.

[7] SDG Accountability Handbook, 'Pursuing Law Reforms, Strategic Litigation and Legal Empowerment.' *SDG Accountability* (New York, n.d.) <https://www.sdgaccountability.org/working-with-formal-processes/pursuing-law-reforms-strategic-litigation-and-legal-empowerment/> accessed 1 February 2024.

[8] Encyclopaedic Australian Legal Dictionary, cited in Time Base, 'Law Reform in Australia.' *Time Base* (New South Wales, n.d.) <https://www.timebase.com.au/support/legalresources/Law-Reform-in-Australia.html> accessed 1 February 2024.

shaped over time to better reflect the social values that society feels are important," for as "the law cannot stand still, a major function of the legal system is to respond to changing values and concerns within society, resolve issues as they develop, overcome problems that occur in legal cases or events, promote equality and respond to scientific or technological developments."[9] The above definitions reveal certain fundamental details about law reform: (a) it is a process that is intentionally embarked upon; (b) law reform is not embarked upon simply for the fun of it– certain factors (such as social, technological or legal changes) prompt the idea and process of law reform; (c) there could be single or multiple aims of law reform; (d) at the core of reasons for embarking on law reform is the need to reflect the prevailing social values or norms; (e) law reform is carried out on existing and not potential laws, although it may also involve the introduction of new laws; (f) in all cases, the process of law reform involves a change in existing laws; and (g) at a minimum, enhancement of the body of laws, processes or institutions is a central aim.

The rationale or purpose for embarking on law reform is revealed in the nature of that which it seeks to enhance– law. As noted by Rodger, "change is one of the abiding characteristics of law."[10] While change is generally a constant, law changes due to its dynamic nature and also as a result of certain factors that precipitate such change. A central factor is society. As noted earlier, there is an inextricable relationship between law and society– law and society are interlinked, interdependent and influence each other's development. As such, a growing society will need a growing and dynamic system of laws to regulate its social intercourse and interactions, and this requires that at all times, law must be configured to meet the changing realities of societal needs.[11] Erwin holds the view that for a diverse and pluralistic society to survive and continue to function in the midst of technological and moral evolution and change, the laws that aspire to keep that society civil must also evolve and change, and this is primarily because the efficacy of a law lies in its applicability and practical relevance.[12] Thus, law reform: (a) involves a progressive improvement in existing law in order to meet the changing needs of a society; (b) requires the dynamic attunement of existing laws in line with societal growth and development; and (c) includes the introduction of entirely new legislations in a legal system as required by the technological and development trend of the society.[13]

In an era marked by profound global changes, advancements and continually evolving societal norms and values, law reform plays a crucial role in shaping society and ensuring the effective functioning of legal systems for as society evolves and faces new challenges, there

[9] PB Works, 'Law Reform.' *PBWorks* (California, n.d.) <https://stage6.pbworks.com/f/Law+Reform.pdf> accessed 2 February 2024.
[10] A Rodger, 'A Time for Everything Under the Law: Some Reflections on Retrospectivity.' *Law Quarterly Review* [2005] (121) (1) 78.
[11] Musdapher (n 4) 3, 4.
[12] Daniel Erwin, 'Law Reform Definition, History & Examples.' *Study.com* (California, 11 April 2023) <https://study.com/academy/lesson/law-reform-definition-examples.html> accessed 3 February 2024.
[13] Tonye C Jaja and Emmanuel O Anyaegbunam, 'Law Reform in Nigeria: A Historical Perspective' *Journal of Law and Legal Reform* [2020] (1) (3) 442.

arises a need for legal changes to address emerging issues, improve access to justice, protect individual rights, promote social justice, facilitate economic growth, and uphold the rule of law.[14] Law reform encompasses a comprehensive and systematic process of reassessment, review, and improvement of the legal framework within a society, and aims at addressing deficiencies and adapting to societal changes; enhancing the legal system's effectiveness, efficiency, and fairness; and ensuring that laws are clear, consistent and reflect societal values.[15] Its scope is broad and covers substantive laws, procedural norms, legal institutions, and legal enforcement mechanisms.[16] Through law reform, equality, inclusivity, and the well-being of individuals and communities are promoted, and economic growth is fostered by creating a transparent, predictable, and favourable legal environment that attracts investment, encourages entrepreneurship, and stimulates innovation.[17] On the flip side, legal changes may create challenges and have unforeseen consequences especially as a result of poorly designed reforms, inadequate implementation, and stakeholder resistance, all of which can disproportionately affect certain segments of the society or exacerbate existing inequalities.[18] While the implementation of law reforms requires a robust institutional capacity of legal and administrative bodies responsible for their implementation, the process of law reform is influenced by the complex interaction of political (political landscape, political will, governance structure, power dynamics and so forth), social (public sentiment, societal values and so forth), and economic (economic conditions, level of development, distribution of resources and so forth) factors.[19]

There are four main methods of reforming law, to wit: (a) repeal; (b) creation of new law; (c) consolidation; and (d) codification. While repeal is the "abrogation of an existing law by legislative act,"[20] the creation of new law essentially involves the activation of the law-making process of the legislature (presentation of a drafted bill before a legislative assembly and its progression through the statutory stages of reading, committee consideration, concurrence (where required), assent, and publication). As a fundamental requirement, the subject matter of the law to be created must be one that falls within the legislative competence of the legislative assembly. Consolidation is the "combination into a single statutory measure of various legislative provisions that have previously been scattered in different statutes"[21] while codification is "the process of compiling, arranging, and systematising the laws of a given jurisdiction, or of a discrete branch of the law, into an ordered code."[22] An ideal law reform exercise has

[14] Alina Pomaza-Ponomarenko, Nelli Leonenko, Viktoriia Cherniahivska, Iryna Lehan & Galyna Puzanova, 'Legal Reform and Change: Research on Legal Reform Processes and their Impact on Society. Analysis of Factors that Facilitate or Hinder Legal Change, including Political, Social, and Economic Factors.' *Journal of Law and Sustainable Development* [2023] (11) (10) 3.

[15] Ibid, 6.

[16] Ibid.

[17] OI Yushchyk, *Legal Reform: General Concept, Implementation Problems in Ukraine* (Legislation Institute of The Verkhovna Rada of Ukraine, 1997).

[18] Pomaza-Ponomarenko et al (n 14) 6.

[19] Chebotaryov (2012) cited in Pomaza-Ponomarenko et al, ibid, 7.

[20] Bryan A Garner, *Black's Law Dictionary* (9th edn, Thomson Reuters, 2009) 1413.

[21] Ibid, 351.

[22] Ibid, 294.

certain unique components that ensure its success and they include: independence (of the process and the body, institution or committee involved); impartiality and objectivity (in the process and of the body, institution or committee); high quality research; widespread consultation with relevant stakeholders; confidentiality (where necessary or applicable); responsiveness of the law reform recommendations to existing societal and other challenges; realistic and practicable recommendations; and effective implementation of the recommendations.

Two expressions that are associated with changes or improvements in law (law review and law revision) are strikingly similar in appearance to the term or expression "law reform". To avoid semantic confusion, it is pertinent to clarify those expressions. Of law revision, Marshall[23] posited:

The purpose of a statute law revision (in some countries described as a "reprint") is to prepare and provide for public use an up-to-date set of the statutes in force in a particular territory at a particular date, incorporating all amendments and adaptations made thereto since the previous Revision and eliminating therefrom all repealed, obsolete, spent and other unnecessary matters. This type of law revision must be distinguished from the process of law reform which involves the making of substantive legislative changes in the statute and other law of a territory with a view to its improvement and modernisation.

Law review on the other hand is a preliminary step in readiness for a law revision or law reform exercise that involves diligent comprehensive research and prudent analysis and assessment of existing laws with a view to identifying areas of the laws that require reform or revision; it entails a holistic review and analysis of books, articles, journals and other materials by learned scholars in a bid to expose problems and shortcomings in existing legislations and proffer possible lasting solutions.[24]

In principle, law reform ought to be carried out by the legislature since it is constitutionally and statutorily empowered to make laws for the good government of respective jurisdictions. However, given the busy schedule of legislators and their preoccupation with their core legislative functions, they are unable to make out quality time to extensively review and update laws or initiate and sustain law reforms in the context identified in this section, as frequently as required. Thus, it becomes necessary to constitute or create law reform bodies to discharge that special duty. As noted by Murphy,[25]

The establishment of law reform commissions stems from the realisation that it is virtually impossible for a legislative assembly alone to keep the law up to date. Furthermore, important public policy issues that are not on the government agenda may nevertheless require critical analysis and potential reform. These issues should be considered by institutions that are committed to improving the law but are relatively independent of government influence.

[23] HH Marshall, 'Law Reform and Law Revision in the Commonwealth' in *Proceedings and Papers of the Sixth Commonwealth Law Conference* (Lagos, Nigeria, August 1980) 191.

[24] Jaja and Anyaegbunam (n 13) 441.

[25] Gavin Murphy, *Law Reform Agencies* (The International Cooperation Group, 2004) 3.

Murphy notes further that "a law reform commission must operate on a different level than legislators and judges, since it has to evaluate the repercussions of reforms objectively and without undue regard to short-term political considerations."[26] Whilst identifying the benefits of a law reform commission to include independence, expertise, focus and continuity, Murphy notes in respect of independence that law reform has far better prospects of general acceptance if it is produced independently of the government and of all particular interest groups, but that at the same time, the body carrying out the work must establish and maintain full confidence in its authority.[27] Concluding in this regard, the author asserts that "the establishment of law reform bodies distinct from the government apparatus is legitimately predicated on the assumption that good law reform must be the product of independent thinking, as there are many things that governments need to be told that they will not hear from public servants."[28]

## 3.0 THE 2004 NIGERIAN LAW REFORM COMMISSION ACT AND ADVOCACY FOR CHANGE

As noted earlier, the 2004 Act was originally a military Decree promulgated in 1979 by the then Federal Military Government. With its subsequent redesignation by constitutional provisions following the return to democratic rule, the Decree became an Act (with a commencement date of 3rd July 1979) and was preserved (in addition to the NLRC as an institution) by those constitutional provisions. The 2004 Act was subsequently repealed by the 2022 Act. For a proper understanding of the antecedents of, advocacy for and provisions of the 2022 Act, as well as an appreciation of the degree of novelty, ingenuity or otherwise of the 2022 Act, a brief review of the provisions of the repealed 2004 Act and an analysis of the advocacy for change is imperative.

### 3.1Review of the 2004 Act

With 15 sections, the main objective of the Act was to establish the NLRC to undertake "the progressive development and reform of substantive and procedural laws 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." While section 1 established the NLRC as a body corporate with perpetual succession, a common seal, and right to acquire movable and immovable properties, section 2 provided for the appointment and tenure of members of the NLRC. The membership of the NLRC was composed of four full-time Commissioners (one of whom was the Chairman) appointed by the President of Nigeria for an initial term of five years, with the possibility of re-appointment for one further term of five years. Generally, persons were deemed appointable following their satisfaction of such qualification requirements as holding a judicial office not below that of a High Court Judge; twelve years post-qualification experience as a legal practitioner; or being an eminent scholar in law, and the appointments of members were terminable on grounds of misbehaviour, inability (by reason of physical

[26] Ibid.
[27] Ibid.
[28] Ibid, 4.

or mental incapacity) to discharge official duties, and in respect of the Chairman, ceasing to be a High Court Judge. Salaries and allowances payable to members of the NLRC were based on the direction of the President, although that of the Chairman was not lower than that earned by a Justice of the Supreme Court of Nigeria.

By section 3, the NLRC was empowered to regulate its proceedings and make standing orders, and by section 4, it could, subject to its standing orders, appoint standing and *ad hoc* committees to consider and report on any matter with which the NLRC was concerned. As regards its functions, section 5 provided that the NLRC had the duty to 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 modernisation of the law.

To enable it to perform its functions effectively, the Act empowered the NLRC to: (a) receive and consider proposals for law reform made or referred to it by the Attorney-General of the Federation (AGF); (b) *suo motu* prepare and submit to the AGF, programmes for the examination of different branches of the law with a view to reform; (c) undertake, pursuant to recommendations approved by the AGF, the examination of particular branches of the law and the formulation, by means of draft legislation or otherwise, of proposals for reform; (d) prepare, at the request of the AGF, comprehensive programmes of consolidation and statute law revision, and undertake the preparation of draft legislation pursuant to programmes approved by the AGF; and (e) provide advice and information to Federal Government departments and other authorities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law.

In addition to the above, the Act empowered the AGF to modify the terms of a reference and give directions to the NLRC in respect of the order in which it was to deal with references. The NLRC was equally empowered to obtain relevant information on the legal systems of other countries, conduct seminars and hold public sittings, all of which were aimed at facilitating the performance of its functions. Programmes prepared and proposals for reform formulated by the NLRC were to be laid by the AGF before the President. This provision, in addition to the foregoing ones, firmly placed the operation and activities of the NLRC under the control of the AGF notwithstanding the fact that the Act provided for the autonomy of the NLRC in its operations. The Act also provided for: (a) the preparation of interim reports by the NLRC; (b) consideration of reform proposals from and putting forward such proposals to States regarding the reform of State laws; (c) the appointment of the Secretary (who was the accounting officer) of the NLRC by the President (on the recommendation of the AGF); (d) pensionable service; (e) accounts and audit; (f) annual reports; (g) power to make regulations for the purposes of carrying out or giving full effect to the provisions of the Act; (h) interpretation; and (i) a short title (sections 6, 7, 8, 9, 11, 12, 13, 14 and 15).

As well, the Act provided for the funding of the NLRC. Specifically, it provided for the establishment and maintenance of a fund by the NLRC, consisting of monies appropriated by the Federal Government for the NLRC, and from which the following sums were to be defrayed: (a) amounts payable to the Chairman and other members of the NLRC (including allowances); (b) costs of employment of staff of the NLRC; (c) amounts payable as pensions, gratuities and other retirement benefits; (d) costs of acquisition and upkeep of premises belonging to the NLRC and any other capital expenditure of the NLRC; and (e) any other payment for anything incidental to the foregoing. This provision was largely viewed as forestalling adequate funding of the NLRC by the government, and limiting revenue generating opportunities by the NLRC.

### 3.2 Advocacy for Change

While the 2004 Act appeared to be a good statutory framework for law reform in Nigeria, it was not without fault. Apart from its military origin, the Act donated large powers to the AGF to the detriment of the NLRC. The NLRC was thus under the firm control of the AGF in many respects, a situation that hampered its optimum performance and the achievement of its statutory objectives. This, coupled with the challenge of inadequate funding amongst other challenges, left the NLRC in a dormant state and unable to deliver on its mandate. This situation which lasted for decades stifled the functionality of the NLRC, questioned its continuous existence and relevance, and eventually gave rise to strong advocacy for a change in the legal or statutory framework for law reform in Nigeria, whether by way of amendment or repeal of the applicable Act. The advocacy for change by scholars, practitioners and stakeholders which culminated in the enactment of the 2022 Act and the repeal of the 2004 Act is briefly considered below.

In emphasising the imperatives of law reform and the law-making process, Joseph Daudu SAN asserted that a number of the provisions of the 2004 Act vest the AGF with awesome and overbearing powers over the activities of the NLRC, and that the domiciliation of law reform firmly in the AGF's purview within the context of the political arrangement set out for the nation by the Nigerian Constitution is counter-productive and in the long run inimical to the objectives of law reform.[29] The learned Silk noted that there are other provisions of the Act which specify other functions for the NLRC but recognise the AGF as the sole conduit through which any legislative reform can be undertaken; thus, "the NLRC is tied to the apron strings of the executive arm of Government."[30] Reflecting on the military origin of the 2004 Act, the learned Silk submitted that the Act evidently enables the AGF to determine which laws and areas of socio-economic life of Nigerians will be reformed through law, a situation that is anachronistic in relation to law reform.[31] To correct the observed anomalies, the Silk made the following recommendations: (a) there is an urgent need to review the existing statute on law reform so as to make or render the NLRC truly

[29] Joseph Bodunrin Daudu, 'The Imperatives of Law Reform and the Law Making Process' (Paper presented at the Maiden International Conference of the National Institute for Legislative Studies, Transcorp Hilton Abuja, Nigeria, 16th July 2012) 1.
[30] Ibid, 3.
[31] Ibid.

independent in terms of focus and policy; (b) the NLRC must be structured in such a way that it does not exclusively mirror the wishes of the executive, rather it should be structured in a way that every stakeholder in law reform (civil societies, the executive arm of Government, legislature and the judiciary) are accommodated in its structure; (c) a new legislation that will reflect the communality of the concept of law reform should be put in place by the National Assembly, one that will ensure that the NLRC is truly independent; (d) the word 'Reform' should be removed from the nomenclature of the statute; (e) the powers of the AGF must be whittled down considerably; (f) the funding of the NLRC ought to be a first line charge on the Consolidated Revenue Fund; and (g) the internal organisation of the NLRC must be such as to demonstrate vibrancy as exists in the Nigerian Institute of Advanced Legal Studies.[32]

Muhammad[33] had observed that the NLRC is poorly funded and underutilised to give its professional input into the drafting of Bills by Local Government Councils, State Houses of Assembly, and the National Assembly. He submitted that the limited number of serving Commissioners in the NLRC should be increased by way of reform of the 2004 Act to reflect "a reasonable number of jurists to cover different branches of law, Sharia and other social sciences," and to enable the NLRC "shoulder its enormous responsibilities creditably." Noting that the proposals of the NLRC have been mostly ignored by the executive branch, the author advocated for the development by the NLRC, of an "advocacy strategy aimed at increasing the prospects of its recommendations being adopted by the Federal Executive Council and passed into law by the National Assembly."[34] In conclusion, the author recommended the following: (a) amendment of section 2(1) of the 2004 Act to increase the number of serving Commissioners; (b) amendment of section 2(2)(c) of the 2004 Act to cover other areas of law; (c) amendment of sections 5(2)(a), 8(1), 11(1) and 12(1) of the 2004 Act to insert the words "and a Minister of the Government of the Federation" immediately after the words "Attorney-General of the Federation"; (d) amendment of section 7(1)(2)(4) of the 2004 Act to insert the words "and Commissioner for Justice of the Government of the State" immediately after the words "Attorney-General of a State"; and (e) taking cognizance of the provisions of the Nigerian Constitution when new Bills are drafted.[35]

On his part, Douglas Ogbankwa pointed out that one of the key objectives of a Law Reform Commission is to ensure periodic revision of a country's laws and statutes, incorporate all amendments and adaptations made to statutes, and eliminate all repealed, obsolete, spent and other unnecessary matters from existing legislations.[36] He remarked that there is the need for the NLRC to wake up to its

[32] Ibid, 5-6.
[33] Yahaya Abubakar Muhammad, 'The Statutory Role of the Nigerian Law Reform Commission in the Administration of Justice in Nigeria.' *Journal of Law, Policy and Globalization* [2016] (55) 217.
[34] Ibid, 218.
[35] Ibid, 221.
[36] Ameh Ochojila, 'Reforming the reformer: Challenges before Nigerian Law Reform Commission.' *The Guardian* (Lagos, 7 June 2022) <https://guardian.ng/features/law/reforming-the-reformer-challenges-before-nigerian-law-reform-commission/> accessed 5 February 2024.

obligations if the existing laws must meet the needs of the society, and that to ensure this, the NLRC needs to be reinvigorated, particularly, as regards its composition, powers, scope, and independence, as such would go a long way to enable the NLRC meet up with its mandate. In conclusion, Ogbankwa noted that the major problems confronting the NLRC are inefficiency, corruption, and lack of proper funding. Professor C. Okonkwo, SAN identified the following as areas requiring improvement in respect of the NLRC: funding, staff recruitment, and implementation of reform proposals.[37] In identifying issues in the 2004 Act, Anaekwe[38] observed as follows:

The Attorney-General is statutorily bound to submit Commission's Report to the appropriate legislative authority for enactment. But experience has shown that this is not always the case. Non-implementation of our Reports is one of the major challenges facing the Commission ... We recommend an amendment of the Act to compel the Attorney-General to lay the Commission's Report before the Federal Executive Council and the Legislative Assembly before the expiration of 30 days after receipt. This is similar to the Victorian Law Reform Commission Act 1984 which requires the Attorney General to lay the Commission's Report to the Executive Council and the Legislative Assembly before the expiration of 14 days after receipt.

On his part, Hon. Justice Dahiru Musdapher advocated that the NLRC should be strengthened financially to enable it discharge its functions effectively.[39] He stated that there was the need for the NLRC to send law reform proposals straight to the National Assembly rather than sending them through the AGF to the President, a process he envisioned would guarantee the autonomy of the NLRC for effective discharge of its duties. In conclusion, he submitted that it was necessary for there to be synergy between the NLRC, the Nigerian Institute of Advanced Legal Studies (NIALS), the National Judicial Institute (NJI), and other relevant institutions towards a comprehensive law reform programme. In 2018, the NLRC disclosed that Federal laws in Nigeria had not been revised in 15 years, contrary to international best practices which require that law revision exercises should be undertaken every 10 years.[40] The then Chairman of the NLRC (Kefas Magaji) had noted that the delay created a huge gap in the body of laws which adversely affected the smooth operation of government institutions and the effective administration of justice, particularly in terms of awareness, access, implementation, citation, referencing and use of extant laws.[41] Marshall observed that under the 2004 Act, the NLRC was accountable to the AGF, a situation (in addition to other constraints) that made the

[37] CO Okonkwo, 'The Imperatives of Law Reform in the Law Making Process' (Paper presented at the International Conference on Law Reform and the Law Making Process in Nigeria, organised by the National Institute for Legislative Studies at Abuja, Nigeria, 16th to 17th July 2012) 18-19.

[38] WO Anaekwe, 'Research Methodology and Law Reform Process' (Paper presented at a Training Course for Legal Officers of the Ondo State Law Commission in Abuja, Nigeria, 29th November to 2nd December 2004).

[39] Musdapher (n 4) 21.

[40] Gift Olivia Samuel, 'Federal Laws Last Revised 15 Years Ago, Against Int'l Best Practices- Nigerian Law Reform Commission.' *The Sight News* (Abuja, 13 June 2018) <https://thesightnews.com/2018/06/13/federal-laws-last-revised-15-years-ago-against-intl-best-practices-nigerian-law-reform-commission/> accessed 4 February 2024.

[41] Ibid.

Nigerian Senate Committee on Judiciary, Human Rights and Legal Matters to accuse the NLRC of "being largely responsible for the predominance of obsolete laws in the nation's Statute book" and further declare that the NLRC has neither been active nor visible, but has rather been dormant in view of the existence of obsolete penalty clauses in our law books begging for review, and the appalling record of the NLRC having made only seven attempts at law reform between 2017 and 2020.[42] To this complaint, the then Chairman-designate of the NLRC, Prof. Jummai Audi, who appeared before the said Senate Committee, remarked that the 2004 Act regulating the activities of the NLRC was its greatest encumbrance, and appealed to the National Assembly to ensure the passage of a bill seeking to reform the NLRC for better performance.[43]

Okeke noted that notwithstanding the establishment of the NLRC, the Nigerian legal system remained inundated with all manner of outdated, obsolete and anachronistic laws.[44] The author identified obstacles and challenges to the progressive reform of Nigerian laws to include the following: "(1) lack of autonomy and independence of the NLRC– the NLRC was not only structured to be totally dependent on the executive branch, but also to be controlled by the executive as evidenced by- (i) the unilateral appointment of some of the key officers of the NLRC by the President, (ii) treatment of the NLRC as a mere agency of the executive, and (iii) the actions and proposals of the NLRC being subject to the whims and caprices of the AGF and executive (which is counterproductive because the executive will certainly not approve any proposal that may undermine its overbearing and overwhelming influence in the power equation in Nigeria); (2) inadequate funding– notwithstanding the cost-intensive nature of law reform, only a paltry sum is allocated to the NLRC in yearly appropriation bills, a situation that is exacerbated by- (i) high cost of engaging experts external to the NLRC in the law reform process, (ii) statutory requirement of conducting seminars and holding public sittings, and (iii) non-empowerment of the NLRC, statutorily, to receive donations and take loans; and (3) poor remuneration of staff of the NLRC– while the functions and activities of the NLRC are essentially research-based, staff of the NLRC are not treated as research officers, rather they are treated as normal civil servants. Thus, they have no access to research grants which are ordinarily available to research officers, and this does not only affect the quality of research they carry out, but also affects the NLRC's ability to attract and retain quality researchers on its payroll."[45]

In conclusion, whilst the author noted that the NLRC has partially failed to live up to its mandate due to its lack of independence, the following

[42] Junaidu Bello Marshall, 'Nigerian Law Reform Commission: An Appraisal of the Statutory Powers of Principal Officers.' *International Journal of Innovative Legal & Political Studies* [2022] (10) (1) 55, 57. This point was earlier made by Onoge. See: Elohor Stephanie Onoge, 'Monitoring and Evaluating the Impact (Post-Legislative Scrutiny) of Emergency Regulation in Response to the COVID-19 Pandemic: A Case Study of Nigeria' *IALS Student Law Review* [2021] (8) 45.

[43] Femi Osinusi, 'Nigerian Law Reform Commission responsible for obsolete laws in statute books, says Senate.' *Nigerian Tribune* (Ibadan, 20 May 2020) <https://tribuneonlineng.com/nigerian-law-reform-commission-responsible-for-obsolete-laws-in-statute-books-says-senate/> accessed 5 February 2024.

[44] CE Okeke, 'Law Reform Process and Practice in Nigeria: Issues and Challenges.' *International Review of Law and Jurisprudence* [2020] (2) (1) 58.

[45] Ibid, 60-62.

recommendations were made: (a) NLRC should be empowered to forward its proposals and recommendations directly to the National Assembly for necessary legislative actions (alternatively, the 2004 Act should be amended to impose an obligation on the AGF to lay before the National Assembly, within a year, any draft legislation and proposals for reform received from the NLRC); (b) adequate funds should be allocated to the NLRC in the yearly appropriation bill; (c) the NLRC should be empowered to receive grants or donations from donor organisations and the general public; (d) staff of the NLRC should be treated as research officers and not as normal civil servants in order to enable them to have access to research grants which are ordinarily available to research officers; (e) legislators should balance their oversight functions with their law-making functions in such a way that none will be sacrificed on the altar of the other; and (f) every section of the 2004 Act that unduly undermines the autonomy of the NLRC should be expunged from the Act.[46]

The foregoing views were similarly expressed by Ogbu,[47] Magaji,[48] and Imarha.[49] In sum, all of the above authors advocated for the amendment or repeal of the 2004 Act to properly reflect the predominant dynamics and norms of the Nigerian society, especially in view of the military origin and dated nature of the Act. The authors were particularly concerned about the inability of the Act to support contemporary law reform demands, and the way and manner in which law reform was being regarded in the country. A cursory review of the views of the authors reveals certain profound and generally common themes in their advocacy, to wit: (a) funding of the NLRC; (b) independence/autonomy of the NLRC from the AGF and the executive branch; (c) transmission of proposals by the NLRC directly to the National Assembly; (d) change in the composition of the NLRC; and (e) remuneration of staff of the NLRC. These issues were envisaged by the authors as being remediable by an amendment or repeal of the 2004 Act. As noted earlier, the 2004 Act was eventually repealed and replaced by the 2022 Act following the advocacy detailed above. It is thus imperative to review the 2022 Act with a view to ascertaining its novelty, ingenuity, and more importantly, whether or not it has addressed the above thematic issues raised in the advocacy for change.

## 4.0ANALYSIS OF THE 2022 NIGERIAN LAW REFORM COMMISSION ACT

With a commencement date of 6th April 2022, the 2022 Act was enacted to repeal the 2004 Act, enact a new Act, facilitate the effective implementation of the NLRC's law reform proposals, and enhance its operational performance. The Act has 17 sections which span across different aspects of regulation. While section 1 establishes the NLRC

[46] Ibid, 66.

[47] Debakeme Christopher Ogbu, 'Post Legislative Scrutiny as a Mechanism for Effective Legislation.' *International Journal of Legislative Drafting and Law Reform* [2021] (10) (1) 40.

[48] Innocent Anaba, 'Law reform will bring our law in tandem with current realities – Kefas Magaji.' *Vanguard* (Lagos, 5 April 2018) <https://www.vanguardngr.com/2018/04/law-reform-will-bring-law-tandem-current-realities-kefas-magaji/> accessed 9 February 2024.

[49] Reuben O Imarha, *An Appraisal of the Impact of the Nigerian Law Reform Commission in the Legislative Process*. (LL.M. Dissertation, University of Benin/National Institute for Legislative and Democratic Studies, 2022) 103-107.

as a body corporate with perpetual succession, a common seal, and the right to acquire and dispose of movable and immovable properties, section 2 provides for the appointment, qualifications and tenure of office of members of the NLRC. Per the section, the NLRC is composed of four full-time Commissioners, one of whom shall be Chairman, and all of whom shall be appointed by the President of Nigeria subject to the confirmation of the Nigerian Senate. Generally, persons to be appointed are those who appear to the Senate as being qualified by reason of: (a) their holding of a judicial office not below that of a Justice of the Court of Appeal; (b) fifteen years post-qualification experience as a legal practitioner; or (c) being an eminent scholar in law. The appointments are for an initial term of five years with a possibility of re-appointment for a further single term of five years. Members of the NLRC may only be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that the member(s) be so removed from office for inability to discharge the functions of the office whether arising from infirmity of mind or body or any other cause or for misconduct.[50]
Salaries and allowances payable to members of the NLRC are based on the direction of the President, although that of the Chairman is not to be lower than that earned by a Justice of the Supreme Court of Nigeria. Except in the case of a Chairman who is a Justice of the Court of Appeal, the Chairman and the Commissioners are prohibited from holding any other office of emolument (within and without the public service) while holding office as members of the NLRC. The Act empowers the NLRC to: regulate its proceedings; make standing orders; function irrespective of vacancies, absence, and defects in its membership; and appoint standing and *ad hoc* committees as it thinks fit to consider and report on matters with which the NLRC is concerned.[51] The central function of the NLRC as stipulated in the Act is to:
…generally research, 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 modernisation of the law.[52]

To properly discharge its functions, the NLRC is empowered by the Act to: (a) receive and consider proposals for law reform made or referred to it by the AGF or the National Assembly; (b) prepare on its own initiative and submit to the AGF and the National Assembly, programmes for the examination of different branches of law with a view to reform; (c) undertake, pursuant to any recommendation approved by the AGF or the National Assembly, the examination of

[50] Section 2(6).
[51] Sections 3 and 4.
[52] Section 5(1) of the Act. The expression "Federal laws" in the provision means "all laws within the legislative competence of the Government of the Federation and includes all received laws and rules of law in force in the Federation and having effect as if enacted by the Federal legislature and all procedural laws and all subsidiary instruments made under or pursuant to any such law." Section 5(10) refers.

particular branches of the law and the formulation, by means of draft legislation or otherwise, of proposals for reform; (d) prepare, at the request of the AGF or the National Assembly, comprehensive programmes of consolidation and statute law revision, and also undertake the preparation of draft legislation pursuant to any programme approved by the AGF or the National Assembly; (e) provide advice and information to Federal Government departments and other authorities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law; and (f) provide for a fee, training on law reform and other related matters.[53] By the provisions of the Act, the AGF or National Assembly may modify the terms of a reference and give directions to the NLRC as to the order in which it is to deal with references.

While the Act empowers Federal Ministries, Departments and Agencies (MDAs) to notify and collaborate with the NLRC in its law reform exercises, it also empowers the NLRC to engage in research into any branch of law (or related subject), obtain relevant information on the legal systems of other countries, and conduct seminars and hold public sittings. Although the Act guarantees the autonomy of the NLRC in its day-to-day operations,[54] it provides that the AGF shall lay before the Federal Executive Council, any report prepared by the NLRC pursuant to programmes referred to the NLRC by the AGF, or those approved by him.[55] Three months after the submission of its report to the AGF, the NLRC is empowered to forward its report to the National Assembly. The NLRC is equally empowered to forward to any authority, body or person, any report of proposals for reform formulated by it pursuant to any programme referred to it by such authority, body or person.[56] Where the AGF or National Assembly refers a matter to the NLRC, the NLRC may at any time before making its report in pursuance of the reference, make an interim report on its work under such reference, and the AGF or National Assembly may direct the NLRC to make an interim report on its work under such reference (at any time before the NLRC makes its report in pursuance of the reference).[57]

The Secretary of the NLRC is appointed by the President on the recommendation of the AGF, and such secretary shall: (a) be a legal practitioner of not less than 15 years post call cognate experience and of proven integrity; (b) hold office subject to specified terms and conditions contained in the letter of appointment; (c) assist the Chairman in ensuring that the rules and regulations relating to the management of the resources of the NLRC are complied with in accordance with the objectives of the Federal Government; and (d) carry out other duties directed by the NLRC.[58] The remuneration of employees of the NLRC are to be determined by the NLRC after consultation with the National Salaries, Incomes and Wages Commission.[59]

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[53] Section 5(2).
[54] Section 5(9).
[55] Section 5(7).
[56] Section 5(8).
[57] Section 6. By section 7 of the Act, similar functions as performed by the NLRC under sections 5 and 6 may be performed in respect of State laws.
[58] Section 8(1).
[59] Section 8(3).

The Act empowers the NLRC to establish and maintain a Fund which shall be applied towards the discharge of its functions under the Act.[60] The following are to be paid and credited to the Fund: (a) such sums as may be provided by the Government of the Federation for the NLRC; (b) any fees or money charged for services rendered by the NLRC or for its publications; (c) donations from the Federal Capital Territory, States, Local Governments, Public Agencies, Companies and Individuals; and (d) all other sums accruing to the NLRC by way of gifts, testamentary depositions, endowments and contributions from philanthropic persons or organisations.[61] All the amounts payable under or in pursuance of the Act are to be defrayed from the Fund, being sums representing: (a) amounts payable to the Chairman and other members of the NLRC, including allowances; (b) costs of employment of staff of the NLRC; (c) amounts payable as pensions, gratuities and other retirement benefits under the Act or any other enactment; (d) costs of acquisition and upkeep of premises belonging to the NLRC and any other capital expenditure of the NLRC; and (e) any other payment for anything incidental to the provisions of the Act or in connection with any other function of the NLRC under the Act.[62] Additionally, the Act empowers the NLRC to accept gifts of land, money or other property on terms and conditions (if any) that may be specified by the donor, although it may reject those gifts if the conditions attached by the donor are inconsistent with its functions.[63] While the Act empowers the NLRC to make regulations generally for the purposes of carrying out or giving full effect to the provisions of the Act, it also provides for pensionable service, accounts and audit, annual report, repeal of the 2004 Act, interpretation and short title.[64]

## 5.0 OLD WINE IN A NEW BOTTLE?

At first glance, a subtle juxtaposition of the provisions of the 2004 and 2022 Acts reveals that the 2022 Act is essentially old wine in a new bottle. This deduction is primarily drawn from the fact that there are profoundly striking similarities in the provisions of both Acts. To go beyond the realm of preliminary deductions or conclusions, this section delves into intensive comparative analysis of the provisions of the 2004 and 2022 Acts, and also appraises the provisions of the 2022 Act against the backdrop of the thematic points generated from the advocacy for change in respect of the 2004 Act.

A cursory glance at the 2004 and 2022 Acts reveals that while the 2004 Act has 15 sections, the 2022 Act has 17 sections, indicating a slight increase in the number of sections. Section 1 of the 2022 Act is a verbatim reproduction of the same section in the 2004 Act which establishes the NLRC. Section 2(1) of the 2022 Act is essentially the same with that in the 2004 Act, except for the inclusion of a few words in respect of the appointment of members of the NLRC– “subject to confirmation of such appointment by the Senate.” The inclusion of these words has made for the participation of the Nigerian Senate in the appointment process of members of the NLRC. The implication is that

[60] Section 10(1).
[61] Section 10(2).
[62] Section 10(3).
[63] Section 11.
[64] Sections 9, 12, 13, 14, 15, 16 and 17.

the appointment of members of the NLRC would be incomplete where it is made by the President without more (unlike what obtained under the 2004 Act). It has been observed that the 2022 Act has a new subsection (2) in section 2, which subsection provides that the Chairman of the NLRC shall be the Chief Executive and Accounting Officer of the NLRC.

Section 2(3) in the 2022 Act is a subtle replica of section 2(2) in the 2004 Act. Changes in the provision in the 2022 Act are: (a) substitution of "National Assembly" (stated in the 2004 Act) for "Senate" in respect of the qualifications of members of the NLRC; and (b) as part of qualifications, the post qualification experience for legal practitioners is now 15 years (and no longer 12 years as was required under the 2004 Act). Section 2(4) in the 2022 Act is essentially a verbatim reproduction of section 2(3) in the 2004 Act, and this is the same position in respect of section 2(5) in the 2022 Act which is a verbatim reproduction of section 2(4) in the 2004 Act. The same is the case of section 2(6) in the 2022 Act when compared with section 2(5) in the 2004 Act, except that there is a slight change in the 2022 Act– members of the NLRC may only be removed by the President through the Senate (on an address by the Senate supported by two-thirds majority of the Senate praying for such removal on stated grounds), unlike the 2004 Act that provided for removal by the National Assembly (a more cumbersome process involving both chambers of the National Assembly). In the final parts of section 2 of the 2022 Act, there are still verbatim reproductions of provisions in section 2 in the 2004 Act– section 2(7) 2022 Act is a verbatim reproduction of section 2(6) 2004 Act, and section 2(8) 2022 Act is a verbatim reproduction of section 2(7) 2004 Act.[65]

Section 3 of the 2022 Act is a verbatim reproduction of section 3 of the 2004 Act, which provisions deal with proceedings of the NLRC.[66] Similarly, section 4 of the 2022 Act is a verbatim reproduction of section 4 of the 2004 Act. In both Acts, section 5 provides for the function of the NLRC and upon comparison of both sections, section 5 in the 2022 Act is almost a verbatim reproduction of section 5 of the 2004 Act. In respect of the 2022 Act, it is observed that there are subtle deletions and the insertion of "National Assembly" immediately after "Attorney-General of the Federation." The following have also been observed in respect of section 5 of the 2022 Act in comparison with section 5 of the 2004 Act: (i) a new paragraph (f) has been added in subsection (2) of the 2022 Act; (ii) subsection (3) of section 5 of the 2022 Act is almost a verbatim reproduction of section 5(3) of the 2004 Act, save for the slight insertion noted earlier; (iii) a new subsection (4) has been added in section 5 of the 2022 Act; (iv) subsection (5) of the said section 5 in the 2022 Act is a rephrased version of section 5(4) of the 2004 Act, although there are some fresh insertions; (v) subsection (6) of the said section 5 in the 2022 Act is essentially a verbatim reproduction of section 5(5) in the 2004 Act, although there is an insertion at the end of the 2022 subsection; (vi) subsection (7) of the said section 5 of the 2022 Act is a rephrased version of section 5(6) of the 2004 Act, although there are some new insertions; (vii) a new subsection (8) has been added to section 5 of the 2022 Act (which subsection deals with referral of proposals to the NLRC by

[65] See generally, section 2 in the 2004 and 2022 Acts.

[66] See section 3 in the 2004 and 2022 Acts.

persons/bodies); (viii) subsection (9) of section 5 of the 2022 Act is a verbatim reproduction of section 5(7) of the 2004 Act; and (ix) section 5(10) of the 2022 Act is a verbatim reproduction of section 5(8) of the 2004 Act.

Section 6 of the 2022 Act is a verbatim reproduction of section 6 of the 2004 Act, except for the addition of "National Assembly" in the 2022 Act. Section 7 of the 2022 Act is almost a verbatim reproduction of section 7 of the 2004 Act; there are subtle insertions such as "State House of Assembly," "Governor," and so forth. Section 8 of the 2022 Act is almost a verbatim reproduction of the same section in the 2004 Act, save for the inclusion of the qualifications of the Secretary of the NLRC (15 years post qualification experience), deletion of tenure in subsection (3), and the replacement of the Federal Civil Service Commission with the National Salaries, Incomes and Wages Commission in subsection (3). Section 9 of the 2022 Act is almost a verbatim reproduction of section 9 of the 2004 Act, save for slight insertions and deletions. This is equally the position in respect of section 10 of the 2022 Act which is essentially a verbatim reproduction of section 10 of the 2004 Act, save for the inclusion of a new subsection (2).[67] The 2022 Act has a new section 11 which empowers the NLRC to accept gifts, a provision that was visibly absent in the 2004 Act. Section 12 of the 2022 Act is essentially a verbatim reproduction of section 11 of the 2004 Act, save for subtle insertions such as switching from the Secretary of the NLRC to the NLRC itself in respect of keeping proper accounts and records of the NLRC, and forwarding of accounts to the National Assembly instead of through the AGF for approval as was the case under the 2004 Act.

Section 13 of the 2022 Act is essentially a verbatim reproduction of section 12 of the 2004 Act. There are however some subtle additions (such as the insertion of National Assembly), but in the final analysis, the provisions are essentially the same. Section 14 of the 2022 Act is a verbatim reproduction of section 13 of the 2004 Act. The 2022 Act has a new section 15 which repeals the 2004 Act, and also contains savings provisions. In the 2022 Act, section 16 is the interpretation provision, a provision that was contained in section 15 of the 2004 Act. A review of the interpretation provision indicates that there is no addition of any new term, word or expression to the interpretation section or provision in the 2022 Act; both Acts contain only four words, terms/expressions for interpretation (Chairman, Commission, High judicial office, and member). The meanings given to the terms/expressions in both Acts are exactly the same, except that of "High judicial office" which has been altered in the 2022 Act. While the term meant "any judicial office not below the office of a Judge of a High Court" in the 2004 Act, in the 2022 Act, it means "any judicial office not below the rank of Justice of the Court of Appeal." The citation/short title in the 2022 Act (section 17) is a verbatim reproduction of the citation/short title of the 2004 Act (section 15), save for the insertion, in the 2022 Act, of the year "2022."

The above analysis has shown that the 2022 Act made profound copious reproductions of the 2004 Act with just a few distinctions, thus indicating on the whole or overall, that the 2022 Act is essentially old wine in a new bottle. From the review, it appears that the National Assembly in enacting the 2022 Act made infinitesimal efforts in putting

[67] See sections 6 to 10 in the 2004 and 2022 Acts.

together a new and democratically-inclined Act that would significantly transform the law reform process in Nigeria, especially in view of the streams of advocacy for optimised law reform that emerged since the return to democratic rule. The inference drawn from the above analysis would however be slightly incomplete if the themes of the advocacy for change are not assessed against the background of the 2022 Act, with a view to ascertaining whether (and to what degree) or not the issues were addressed by the Act. The following paragraphs thus appraise the thematic issues against the background of the 2022 Act.

Earlier on in this paper, five themes were generated or identified from the advocacy for change in respect of the 2004 Act, which advocacy culminated in the repeal of the 2004 Act and the enactment of the 2022 Act. To refresh the memory, the identified themes were: (a) funding of the NLRC; (b) independence/autonomy of the NLRC from the AGF and the executive branch; (c) transmission of proposals by the NLRC directly to the National Assembly; (d) change in the composition of the NLRC; and (e) remuneration of staff of the NLRC. In respect of funding of the NLRC, the main argument was that the NLRC was poorly funded as paltry sums were allocated to it annually, which sums were incapable of enabling it to perform its functions optimally. There was thus advocacy for proper funding of the NLRC through such measures as: (i) making the funding of the NLRC a first line charge on the Consolidated Revenue Fund, and (ii) empowering the NLRC to receive grants or donations from donors and the general public.[68] In reviewing this theme against the background of the 2022 Act, it can be seen that little has been done through the 2022 Act to improve on the funding of the NLRC. One of the subtle things which the Act did was to provide (as a way of guaranteeing internally generated revenue for the NLRC) in section 5(2)(f) that the NLRC "may provide training on law reform and other related matters for a fee." In view of the fact that the NLRC has come under profound censure in recent times and its reputation essentially damaged, it is doubtful how, the NLRC, stifled by funding problems and credibility issues will adequately engage in providing trainings for a fee. Additionally, and in view of economic realities, the NLRC may be unable to generate sufficient income from such fees given the mostly general apathy for law reform in the country. Another is that the Act provides in section 13(1) that the NLRC may "publish general reports on its activities for sale to members of the public." It is doubtful how lucrative this will be in view of several realities. As a final push for more funding, the Act empowers the NLRC to accept gifts and donations in whatever form and upon any specified condition, provided that the condition is not inconsistent with the functions of the NLRC. It is thus clear that little has been done to significantly improve the funding of the NLRC. Analysing the issue of funding in practical terms however, it is plausible that there was only so much that could be done through the 2022 Act, being an Establishment Act. Imperatively, it behoves the National Assembly (through a profound appreciation of the imperative of law reform in democratic governance and statutory sustainability) to increase the annual budgetary allocation to the NLRC so as to enhance its funding significantly and enable it perform its statutory functions adequately and creditably.

[68] See Daudu (n 29) and Okeke (n 44).

In respect of the second theme (independence/autonomy of the NLRC from the AGF and executive branch), the main argument was that the 2004 Act vested the AGF with overbearing powers over the NLRC and structured the NLRC in such a way that it was totally dependent on and controlled by the executive branch, thus stripping it of its independence and autonomy (notwithstanding the presence of a provision that guaranteed its autonomy). This was evident in provisions that donated several powers to the AGF, as well as those that provided for the appointment of key officers of the NLRC by the President, all of which positioned the NLRC as a mere agency of government. There was thus advocacy for true independence of the NLRC in terms of focus and policy, and restructuring of the institution in a way that does not mirror the wishes of the executive branch.[69] In view of all these, a fundamental question is what did the 2022 Act do to address these issues. The resounding answer is little. A review of the theme against the background of the Act reveals that Commissioners of the NLRC (including the Chairman) are still appointed by the President, although such appointment is now subject to confirmation by the Nigerian Senate (as opposed to the former position under the 2004 Act which made for the involvement of both chambers of the Nigerian National Assembly). There is now some measure of security of tenure for members of the NLRC as they can only be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying for such removal on statutorily stated grounds. These subtle changes notwithstanding, the AGF still has profoundly significant roles to play in the NLRC as: (i) the NLRC still submits to the AGF, programmes for law reform (although submission is also made to the National Assembly); (ii) the NLRC still receives proposals for law reform made to it by the AGF (although it may also receive same from the National Assembly); (iii) the NLRC still acts on recommendations for law reform approved by the AGF (although it may also do so in respect of those approved by the National Assembly); (iv) the NLRC still prepares, at the request of the AGF, programmes of consolidation and law revision, and prepares upon approval of the AGF, draft legislation pursuant to such programmes approved by the AGF (this is also the case in respect of the National Assembly); and (v) the AGF may still modify terms of a reference or direct the NLRC on the order in which to deal with references (although the National Assembly may also do same).[70] Notwithstanding the inclusion of the National Assembly in the picture, the provisions do not bespeak autonomy or independence but rather bespeak subservience to the AGF (of the executive branch) and the National Assembly (of the legislative branch). This is still notwithstanding the presence of the cliché autonomy clause in the 2022 Act. Additionally, while other members of the NLRC are simply appointed by the President but subject to confirmation by the Senate, the 2022 Act provides in section 8(1) that the Secretary of the NLRC shall be appointed by the President on the recommendation of the AGF. This provision brings back the AGF as a person to be reckoned with in the regulation, staffing, operation and administration of the NLRC, thus further extending the domineering tentacles of the AGF and the executive branch, and stifling the independence and autonomy of the

[69] See Daudu (n 29), Ochojila (n 36), Musdapher (n 4), Marshall (n 42), and Okeke (n 44).
[70] See section 5 of the 2022 Act.

NLRC. Again, although the NLRC is required by section 13(1) of the Act to submit an annual report of its activities to both the President and National Assembly, the provision compels the NLRC, in submitting its annual report to the President, to do so through the AGF. By all standards therefore, the NLRC has once again been statutorily placed under the influence and authority of the AGF, making it essentially a department, agency or parastatal under the Federal Ministry of Justice, the AGF's domain.

In respect of the third theme (transmission of proposals by the NLRC directly to the National Assembly), the main argument was that recommendations/proposals submitted by the NLRC to the AGF are either usually not attended to by the AGF, or in select cases, are laid before the Federal Executive Council (FEC) without more, a situation that acted as an albatross to the law reform process in Nigeria. There was thus advocacy that recommendations/proposals should be forwarded directly to the National Assembly and or that the AGF should lay before the FEC and the National Assembly, those recommendations/proposals before the expiration of 30 days after receipt.[71] In an attempt to address this theme, the Act provided in section 5(7) that:

Where the Attorney-General refers or approves a programme to the Commission, the Attorney-General shall lay before the Federal Executive Council any report prepared by the Commission pursuant to such programme, and after expiration of 3 months from the date of submission of the Commission's report to the Attorney-General, the Commission shall forward same to the National Assembly.

As nicely couched as this provision is, it merely gives the impression that the problem identified under the theme has been addressed without actually solving the problem. What the provision puts forward is that the AGF is required to lay before the FEC, any report prepared by the NLRC in pursuance of a programme, and that after the expiration of three months from the date of submission of the NLRC's report to the AGF, the NLRC is to forward the same report to the National Assembly. The provision does not solve the lingering problem of what happens to the report after submission. While it is mandatory for the AGF to lay the report before the FEC, and is equally mandatory for the NLRC to forward the report subsequently to the National Assembly, the Act does not impose a timeline within which the report should be acted on either by the executive branch or the legislature. Accordingly, both branches of government may well receive the NLRC's reports and decide not to act on them. Additionally, the first sentence in the provision re-installs the AGF as the sole conduit for law reform. For clarity, it states thus: "Where the Attorney-General refers or approves a programme to the Commission…" The implication of this is that all subsequent actions to be performed by the NLRC in terms of submitting its reports to the AGF and the National Assembly are dependent on the AGF's referral or approval of a programme; the AGF's referral or approval is a condition precedent to the NLRC's preparation and submission of reports on same. The provision not only re-installs the AGF as the sole conduit for law reform, but also strips the NLRC of its cliché autonomy.

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[71] See Okeke (n 44) and Musdapher (n 4).

In respect of the fourth theme (change in the composition of the NLRC), the argument was that the composition of the NLRC as provided by the 2004 Act limited the inclusion of or did not expressly take cognizance of experts in other areas of law apart from common law. There was thus advocacy for amendment of the Act to reflect a reasonable number of jurists in different branches of law.[72] To this query, the 2022 Act did nothing. The composition of the NLRC as provided by the 2004 Act remains the same under the 2022 Act, except for slight changes in respect of qualification and interpretation, and the express designation of the Chairman of the NLRC as the Chief Executive and Accounting Officer of the NLRC. With respect to changes in qualification and interpretation, the 2022 Act increased the legal post qualification experience of Commissioners of the NLRC from 12 years (as in the 2004 Act) to 15 years, while the meaning of "high judicial office" under the Act is "any judicial office not below the rank of Justice of the Court of Appeal." As such, nothing was done about the issue of expanding the composition of the NLRC.

In respect of the fifth theme (remuneration of staff of the NLRC), the main argument was that staff of the NLRC were poorly remunerated and were regarded as civil servants rather than research officers who were entitled to research grants. There was thus advocacy for improved salaries and allowances for staff of the NLRC, and proper regard of the staff as research officers so as to enable them earn on the same level as research officers in other institutions, and also be entitled to receive research grants.[73] In reviewing this theme against the background of the 2022 Act, it is found that the 2022 Act did almost nothing in this regard. This is so as salaries and allowances of NLRC Commissioners are still based on the direction of the President (as was the case under the 2004 Act). For other employees of the NLRC, their remuneration is to be determined by the NLRC after consultation with the National Salaries, Incomes and Wages Commission. There is thus no guarantee that there would be significant or any form of improvement in the earnings of staff of the NLRC. There is no provision in the 2022 Act that regards or refers to staff of the NLRC as research officers. Thus, the limitations that existed under the regime of the 2004 Act are essentially still present under the new regime of the 2022 Act.

The foregoing details have shown that the 2022 Act is old wine in a new bottle. This confirms the earlier inference drawn from the first analysis. While there were some additions and alterations, the Act did not statutorily make any profoundly significant change to the law reform process in Nigeria as the queries or themes of advocacy were not properly or adequately addressed. The 2022 Act (just like its predecessor, the 2004 Act) still subjects the administration of the NLRC to the direction of branches of government. The functions of the NLRC are now subject to the direction, authority and control of the AGF and the National Assembly instead of the institution being fully autonomous or independent. Essentially, the NLRC is back to the same position it was before the enactment of the 2022 Act. This reality has at least two potent implications. First, in its over forty-year existence, the NLRC itself, the central law reform institution in the country, has not undergone what may be properly described as reform as the Act that

[72] See Muhammad (n 33).

[73] See Okeke (n 44).

established and regulated the institution over 40 years ago (specifically, since 1979) is essentially the same Act that is currently regulating it. Second, the National Assembly essentially neglected its law-making duty by profoundly copying and pasting an Act that is over four decades old. The Decree that established the NLRC was promulgated in 1979, while the 2022 Act was assented to in 2022, a space of 43 years. With no innovative provisions, the National Assembly merely poured the 1979 Decree (the 2004 Act) into a new bottle to appear as new wine, while the taste essentially remained the same. This fundamentally questions the law-making function of the National Assembly in terms of proper scrutiny, consultation, innovation, drafting, and the championing of the law reform process by reforming the law that regulates the nation's Law Reform Commission.

## 6.0 CONCLUSION

Law reform is an indispensable tool for the continuing relevance and sustainability of laws around the world. Without the element of law reform in a legal system, laws would remain stale, stagnant and eventually become obsolete. To ensure that laws remain current and relevant, and that they continually respond to emerging developments, technologies, challenges and societal changes, law reform must be a regular exercise. To make for a coherent, organised or systematised process of law reform, the exercise is usually backed by statute that establishes or mandates a specialised body or agency for the primary purpose of keeping under review, statutory and procedural laws with a view to their systematic and progressive development and reform in line with prevailing norms in the society. In Nigeria, the Nigerian Law Reform Commission Act 2004, a military relic, regulated the Nigerian Law Reform Commission and process in the military and post-military eras, and was recently repealed by the Nigerian Law Reform Commission Act 2022 following intense advocacy for legislative intervention. This paper sought to ascertain whether the new Act is old wine in a new bottle; whether the Act brought any significant innovation or transformation to the law reform process in Nigeria. Through a review of the 2004 Act, the advocacy for change, the provisions of the 2022 Act, and an assessment of the 2022 Act against the background of the 2004 Act and the themes of advocacy for change, it was found that the 2022 Act did not make any profoundly significant improvement in the statutory framework for law reform in Nigeria. Rather, the new Act succeeded in making copious reproductions of the provisions of the 2004 Act, with very few additions. It was equally found that the new Act failed to properly address the challenges or defects found in the 2004 Act which precipitated the advocacy for change. In view of these findings, it is safe to submit that the 2022 Act is old wine in a new bottle. It is therefore strongly recommended that the National Assembly should urgently revisit the 2022 Act with the definite aim of addressing the themes or issues of advocacy for change of the 2004 Act and significantly improving the law reform process in Nigeria. It is certain that doing so will significantly transform the law reform process in Nigeria and reposition the NLRC for optimum performance of its functions and achievement of its statutory objectives.