<u>LEAD DEBATE ON BILL FOR AN ACT TO AMEND THE LAW REFORM COMMISSION ACT CAP N118 LFN 2004</u>

The Senate President, Distinguished Colleagues, this bill was read for the first time in this chamber on the 6th of October 2015. It is my pleasure to lead the debate on the General Principles of this Bill that is meant to amend the Nigerian Law Reform Commission Act Cap N118 LFN 2004, with the sole aim of strengthening the Commission to effectively discharge its core functions of reforming and updating our Laws.

Law-making in any democratic setting is the primary responsibility of the Legislature. Law reform in the same vein becomes an indispensable part of good law-making process. The Constitution of the Federal Republic of Nigeria 1999 (as amended) upheld the above age long hallowed principle of democracy and Presidentialism when it copiously and expressly provided vide Section 4 (1)-(2) that:

(1) The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and House of Representatives.
(2) The National Assembly shall have powers to make laws for the peace, order and good governance of the Federation and any part thereof with respect to any matter included in the Exclusive Legislative list set out in Part 1 of the Second Schedule to this Constitution.

The hallmark of Presidential system of government lies in the doctrine of separation of powers and its twin concept of checks and balances as they constitute the cornerstone of our current constitutional democracy. Our Supreme Court lucidly highlighted this constitutional concept in the case of <u>Attorney-General of the Federation V. Attorney-General of Abia & 35 Ors</u> by pronouncing that:

> *"The principle behind the concept of separation of powers is that none of the three arms of government under the Constitution should encroach into the powers of the other. Each arm – the Executive, Legislative and Judiciary is separate, equal and co-ordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus, the powers and functions constitutionally entrusted to each arm cannot be encroached by the other. The doctrine is to promote efficiency*

in government by precluding the exercise of arbitrary power all and thus prevent friction"

President of the Senate and my Distinguished Colleagues, an unbiased critical appraisal of the entire provision of the Nigeria Law Reform Commission Act cap N118 LFN, 2004, especially sections 5, 6,7,11 and 12 of the Act proves that it is the very antithesis of the above cited constitutional provisions and concepts. It is an undeniable encroachment of the constitutional powers of the National Assembly as shown by the brazen overbearing powers of the Attorney-General under the current Act.

The genesis of this constitutional anomaly as characterized by the Nigeria Law Reform Act can be traced to our inherited dictatorial legacy under the military regime when our law reform journey started with Decree No. 7 of 1979, on July 3, 1979. The uncharacteristic fusion of executive and legislative powers as an abiding feature of military dictatorship heaped unimaginable and domineering influence over the Commission on the Attorney-General.

It is therefore tantamount to unforgivable abdication of the constitutionally ordained law making powers of the National Assembly that an enactment of such unconstitutional and dictatorial tendency should remain in existence eighteen years after the much-touted return to democratic rule in 1999. This unsavoury condition as revealed by the provisions and content of the principal Act portrays us as consenting victims of violation of the same Constitution we swore to protect, preserve and defend.

The preamble to the Nigerian Law Reform Commission Act sets the mission statement of the Commission as:

> *An Act to set up a Law Reform Commission for Nigeria to undertake the progressive development and reform of substantive and procedural law applicable to 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.*

The lofty thrust of the Commission has become an alien dream that is frustrated in hostile executive milieu. Thus, salient reports of the Commission has been neglected by the Office of the Attorney-General for many years while the Nigerian community yearn for a current and updated enactments that will meet the test of time.

Some of these agonizing efforts of the Commission that has fallen on uninterested executive table via the Attorney-General include:

a. Report on Consumer Protection Laws (2007)
b. Report on Family Law (2007)
c. Report on the Companies and Allied Matters Act, 1990 (2010)
d. Review of the Nigerian Investment Promotion Council Act, 2004 (2010)
e. Report on the Laws Relating to Rape and other Sexual Offences (2010)
f. Amendment of the Criminal Justice (Release from Custody) (Special Provisions) Act 2004 (2011)

The truth is; whenever the Commission is through with its work, it is enjoined by the Act to forward same to the Attorney-General, who in turn has to seek the Federal Executive Council's approval before forwarding to the National Assembly. This is why the foregoing reports are still pending. They are more or less kept in the Attorney General's drawer or at best in limbo within the Executive arm of Government. This is the mischief this amendment Bill seeks to correct. The essence is that henceforth by this amendment, the Nigerian Law Reform Commission will also forward a copy of its report directly to the National Assembly.

The uncensored and unfortunate truth Mr. President and my distinguished colleagues is that the Commission's mandate has been neglected and almost abandoned under the grip of the Attorney-General's Office. The above Reports are the ones I know, there seems to be a lot more. In my mind, the provision of Section 5 (7) of the Act to the effect that. *"Notwithstanding the foregoing provisions, the Commission shall be autonomous in its day to day operations"* is to say the least laughable and patronizing as the Commission has been reduced to a feeble inconsequential advisory Committee in the Attorney-General's Office.

This Commission is a public statutory body financed by tax payers fund on annual basis and as it stands cannot justify the same. Thus, for the year 2012, it gulped a budgetary sum of N360, 706, 679 (Personnel – N206, 642, 463; Overhead – N104, 064, 216; Capital Expenditure – N50, 000, 000). The Commission's 2013 budget increased by N10, 000, 000 (Ten Million Naira) making a total sum of N370, 509, 914 (Personnel – N208, 122, 027; Overhead – N82, 900, 000; Capital – N79, 487, 887) whilst the 2015 total budget of the commission is N426, 241, 609 and for 2017 their proposed budget is N447,751,897 (Personnel N293,836,821; Overhead N78,436,931; Capital N75, 479,145). We cannot keep appropriating for this Commission when the output is not commensurate to the expenditure. If we concede to this frightening degree of flagrant waste of public fund, then history will pass a damning verdict on us as a democratic representation of this country.

The constitutional and historical relevance of this subject matter demanded a painstaking research and comparative analysis of the Law Reform Commission Act of some other constitutional democracies. The incontrovertible global democratic practice as copiously established by the Australian Law Reform Commission Act, 1996, U.S Law Reform Commission Act, 1975, the Twentieth Law Commission of India, 2012-2015, the British Columbia, Canada Law Reform Commission Act, 1996 and South Africa Law Commission Act, 2002, is that law reform is a cardinal parliamentary subject matter. For instance the South African Act states in part that "the Commission shall prepare full report in regard to any matter investigated by it and shall submit such report together with draft legislation, if any, prepared by it to the Minister for consideration... and shall be laid upon the table in Parliament within 14 days after it was submitted to the Minister If the Parliament is then in session, or, if the Parliament is not then in session, within 14 days after the commencement of its next ensuing session".

The bleak reality is that South Africa even with her history of apartheid are well ahead of us in the sphere of law reforms as established above.

This reasoning found favour with Senator (Prof.) O.A. Osunbor when he submitted that:

> *"Law reform is an indispensable element in the legislative process. This process must involve some thought as to how a proposed legislation will serve the purpose for which it is intended, how it will impact on the economy, on the citizens, whether it is for their benefit, is in consonant with their culture, their expectations and aspirations, how it will co-exist with other legislation, will the new law require repeal, modification of any existing laws, does it accord with global trends, will derogate from existing treaty obligations etc.**

Mr. Senate President and my distinguished colleagues, crux and substance of this Bill is anchored on the supremacy of the Constitution as our grundnorm, which has saddled us with Lawmaking responsibility and law reform cannot be an exception. Therefore, this is a clarion call to all Distinguished Senator and an appeal that we further 'social contract' by supporting this Bill in unison in so as to lead us to the promised land of legislative independence as prescribed by the Constitution

***(A.O. Osunbor "Law Reform as Tool for Economic and Social Development", 2010, Nigeria Law Reform Journal 35).**