

NATIONAL HUMAN RIGHTS COMMISSION (AMENDMENT) ACT 2010

EXPLANATORY MEMORANDUM

This Act amends the National Human Rights Act cap. 61. N46 Laws of the Federation of Nigeria 2004 to provide, among other things for –

- (a) Independence in the conduct of the affairs of the Commission;
- (b) the funds of the Commission to be a direct charge on the Consolidated Revenue Fund of the Federation;
- (c) the establishment of the Human Rights Fund; and
- (d) the recognition and enforcement of the awards and recommendations of the Commission as decisions of the High Court.

ARRANGEMENT OF SECTIONS

1. Amendment of Cap. N46 LFN 2004
2. Amendment of Preamble
3. Substitution for section 2
4. Amendment of section 3
5. Amendment of section 4
6. Amendment of section 5
7. Substitution for section 6
8. Amendment of section 7
9. Substitution for section 10
10. Substitution for section 12
11. Substitution for section 14

12. Insertion of a new Section 15
13. Amendment of Section 16
14. Substitution for section 17
15. Insertion of a new section 18
16. Insertion of a new section 19
17. Insertion of a new section 20
18. Insertion of a new section 21
19. Insertion of a new section 22
20. Substitution for the existing section 18 of the Principal Act
21. Amendment of Schedule
22. Citation

NATIONAL HUMAN RIGHTS COMMISSION (AMENDMENT ACT)

An Act to amend the National Human Rights Commission Act Cap. N46 Laws of the Federation of Nigeria, 2004, to provide for, among other things, the independence in the conduct of the affairs of the Commission, the funds of the Commission to be a direct charge on the Consolidated Revenue Fund of the Federation; establishment of the Human Rights Fund and recognition of and enforcement of the awards and recommendations of the Commission as decisions of the High Court; and for related matters.

ENACTED by the National Assembly of the Federal Republic of Nigeria –

1. The National Human Rights Commission Act Cap. N46 Laws of the Federation of Nigeria, 2004 (in this Act referred to as “the Principal Act”) is amended as set out in this Act.
2. The Preamble to the Principal Act is substituted for a new “Preamble”.

“Whereas considering that the United Nations Charter and the provisions of the Constitution of the Federal Republic of Nigeria 1999 are based on the principles of the dignity and equality of all human beings and seek, among other basic objectives, the promotion and

respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion;

AND WHEREAS to facilitate Nigeria's implementation of its various treaty obligations, including but not limited to the Universal Declaration on Human Rights, the International Convention for Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Racial Discrimination and the African Charter on Human and Peoples' Rights;

AND WHEREAS the Federal Government of Nigeria is desirous of creating an enabling environment for extra-judicial recognition, promotion and enforcement of all rights recognized and enshrined in the Constitution of the Federal Republic of Nigeria 1999, the international and regional instruments and under any other existing legislation;

AND WHEREAS in furtherance of the above objectives and its determination to provide a forum for public enlightenment and dialogue on and to limit controversy and configuration over allegations of human rights violations by individuals, corporate bodies, public officers and agencies and to reaffirm the sacred and inviolable nature of human and other fundamental rights."

3. Section 2 of the Principal Act is substituted for a new section "2".

"2 (1) – There shall be for the Commission a Governing Council (in this Act referred to as "the Council" which shall be responsible for the discharge of the functions of the Commission.

(2) The Council shall consist of –

- (a) a Chairperson who shall be a retired Justice of the Supreme Court, or Court of Appeal, or a retired Judge of the Federal High Court or High Court of a State or a legal practitioner with 20 years post qualification experience and requisite experience in human rights.
- (b) a representative each of the Federal Ministry of:
 - (i) Justice, who shall not be below the rank of a Director;
 - (ii) Foreign Affairs, who shall not be below the rank of a Director;
 - (iii) Internal Affairs, who shall not be below the rank of a Deputy Controller of Prisons;
- (c) 3 representatives of registered human rights organizations in Nigeria;
- (d) 2 legal practitioners who shall not have less than 10 years post qualification experience to be appointed on the recommendation of the National Executive Committee of the Nigerian Bar Association;

- (e) 33 representative of the print and electronic media, one to represent the public and two to represent the private sector;
 - (f) a representative of organized labour;
 - (g) 2 other persons who shall be women with sufficient experience in human rights issues; and
 - (h) the Executive Secretary of the Commission.
- (3) The Chairperson and members of the Council shall each be –
- (a) persons of proven integrity; and
 - (b) appointed by the President, subject to the confirmation by the Senate.
- (4) every member of the Council shall, before starting his duties, make and subscribe to an oath that he shall faithfully and impartially and to the best of his ability, discharge the duties devolving upon him under the Act; that he shall not divulge the proceedings, votes or opinions of the members of the Council or any other matter relevant to the functions of the Commission.
- (5) Such oath shall be in accordance with the Oaths Act and, in this Act, "Oath" includes affirmation and declaration.
- (6) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Council and other matters contained therein.
4. Section 3 (3) of the Principal Act is amended by substituting for a new section "3 (3)" –
- "3 (3) Members of the Council shall be paid such allowance as may be determined by the President, on the recommendation of the Revenue Mobilization, Allocation and Fiscal Commission".
5. Section 4 of the Principal Act is amended by –
- (a) substituting for subsection (1), a new subsection "(1) –
- "(1) A member of the Council shall be removed from office by the President, Commander-in-Chief of the Armed Forces subject to confirmation by simple majority of the Senate, if he –
- (a) Becomes of unsound mind;
 - (b) Becomes bankrupt or makes a compromise with his creditors;
 - (c) Is convicted of a felony or any other offence involving dishonesty; or
 - (d) Is guilty of serious misconduct in relation to his duties".
- (b) deleting subsection (2); and

- (c) renumbering the section appropriately.
- 6. Section 5 of the Principal Act is amended by –
 - (a) substituting for paragraphs (a), (d), (e), (g), and (h) with new paragraphs “(a)”, “(d)”, “(e)”, “(g)”, and “(h)” –
 - “(a) deal with all matters relating to the promotion and protection of human rights guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration on Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, the African Charter on Human and Peoples’ Rights and other international and regional instruments on human rights to which Nigeria is party;
 - (d) Undertake studies on all matters pertaining to human rights and assist the Federal, State and Local Government where it considers it appropriate to do so in the formulation of appropriate policies on the guarantee of human rights;
 - (e) publish and submit, from time to time, to the President, national Assembly, Judiciary, State and Local Governments, reports on the state of human rights promotion and protection in Nigeria;
 - (g) liaise and cooperate, in such manner as it considers appropriate, with local and international organizations on human rights with the purpose of advancing the promotion and protection of human rights.
 - (h) participate in such a manner as it considers appropriate in all international activities relating to the promotion and protection of human rights:.
 - (b) Inserting immediately after paragraph (i) new paragraphs “(j)”- “(r)” –
 - “(j) receive and investigate complaints concerning violations of human rights and make appropriate determination as may be deemed necessary in each circumstance;
 - (k) examine any existing legislation, administrative provisions and proposed bills or bye-laws for the purpose of ascertaining

whether such enactments or proposed bills or bye-laws are consistent with human rights;

- (l) prepare and publish, in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices with respect to the functions and powers of the Commission under this Act;
 - (m) promote an understanding of public discussion of human rights issues in Nigeria;
 - (n) undertake research and educational programmes and such other programmes for promoting and protecting human rights and co-ordinate any such programme on behalf of the Federal, State or Local Government on its own initiative when so requested by the Federal, State or Local Government and report concerning the enactment of legislations on matters relating to human rights;
 - (o) on its own initiative or when requested by the Federal, State or Local Government, report on actions that should be taken by the Federal, State or Local Government to comply with the provisions of any relevant international human rights instruments;
 - (p) refer any matter of human rights violation requiring prosecution to the Attorney General of the Federation or of a State, as the case may be;
 - (q) where it considers it appropriate to do so, act a conciliator between parties to a complaint;
 - (r) where it considers it appropriate, with the leave of the court hearing the proceedings and subject to any condition imposed by the court, intervene in any proceeding that involves human rights issue; and
 - (c) renumbering the existing paragraph (j) as paragraph (s).
7. Section 6 of the Principal Act is substituted for a new section "6":
- "6 (1) The Commission shall have power to –
- (a) Conduct its investigations and inquiries in such manner as it considers appropriate;
 - (b) Institute any civil action on any matter it deems fit in relation to the exercise of its functions under this Act;

- (c) Appoint any person, whether or not such a person is in public service, to act as an interpreter in any matter brought before it and to translate any such book, paper or writing produced to it;
- (d) Visit persons, police cells and other places of detention in order to ascertain the conditions thereon and make recommendations to the appropriate authorities;
- (e) Make determination as to the damages or compensation payable in relation to any violation of human rights where it deems this necessary in the circumstances of the case;
- (f) Co-operate with and consult with other agencies and organizations, governmental and non-governmental as it may deem appropriate; and
- (g) Do such other things as are incidental, necessary, conducive or expedient for the performance of its functions under this Act."

"(2) Whenever it appears to the Chairman upon information and after such inquiry as he shall think necessary, that there is reasonable cause to suspect that in any place there is an evidence of the commission of any offence under this Act, he may by written order direct an officer of the Commission to obtain a court order to –

"(a) enter upon any land or premises or by any agent or agents duly authorized in writing for any purpose which, in the opinion of the Council is material to the functions of the Commission, and in particular, for the purpose of obtaining evidence or information or of inspecting or taking copies of any document required by, or which may be of assistance to the Commission and of safeguarding any such document or property which in the opinion of the Council ought to be safeguarded for any purpose of its investigations or proceedings.

"(b) summon and interrogate any person, body or authority to appear before it for the purpose of public inquiry aimed at the resolution of a complaint of human rights violation;

"(c) issue a warrant to compel the attendance of any person who. After having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the Commission;

"(d) compel any person, body or authority who, in its opinion, has any information relating to any matter under its investigation to furnish it with any information or produce any document or other

evidence which is in his or her custody and which relates to any matter being investigated; and

“(e) compel the attendance of witnesses to produce evidence before it.

“(3) In exercising its functions and powers under this Act, the Commission shall not be subject to the direction or control of any authority or person.

“(4) it is an offence for any person, body or authority to –

(a) refuse to provide evidence, including documentary evidence, to the Commission in response to a written request to do so:

(b) obstruct to do anything to prevent any member of the Council or an employee of the Commission from the lawful exercise of any of the functions conferred on the Commission by this Act;

(c) punish, intimidate, harass or discriminate against any person for co-operating with the Commission in the exercise of its functions under this Act; or

(d) refuse to comply with lawful directives, determination, decision or finding of the Commission.

“(5) A person who commits an offence under subsection (4) of this section is liable on conviction to imprisonment for a term of 6 months or to a fine of ₦100,000.00 or to both such punishment and fine.”

8. Section 7 (1) of the Principal Act is amended by substituting for a new section “7(1)” –

“7 (1) There shall be for the Commission an Executive Secretary who shall be -

(a) a legal practitioner with not less than 20 years post qualification experience and requisite experience in human right issues;

(b) a person of proven integrity and be the Chief Executive and Accounting Officer of the Commission;

(c) appointed by the President subject to confirmation by the Senate”

9. Section 10 of the Principal Act is substituted for a new section “10”

“10” The Council shall determine the conditions of service including salaries, pensions and gratuities as are appropriate for its employees”.

10. Section 12 of the Principal Act is amended by –

(a) inserting a new subsection “(12)”.

“2) The Fund of the Commission shall be a charge on the Consolidated Revenue Fund of the Federation”; and

(b) renumbering the subsection (2) as subsection (3).

11. Section 14 of the Principal Act is substituted for a new section “14” –

“14. (1) The Commission may borrow by way of loan or overdraft from any source such specific amount as may be required by the Commission for meeting its obligation and discharging its functions under this Act.

“2) The Commission may subject to this Act and the conditions of any trust created in respect of any property, invest all or any of its funds.

“3) The Commission may, from time to time, invest any surplus funds of the Commission in securities prescribed by the Trustees Investments Act or such other securities.

“4) Subject to the provisions of the Land Use Act, the Commission may acquire or lease any land required for its purpose under this Act.”

12. (1) insert, immediately after the existing section 14 of the Principal Act, a new section “15” –

“15 (1) There is established the Human Rights Fund (in this Act referred to as “the Fund”) which shall be applied by the Commission towards –

“a) the conduct of research on human rights issues; and

“b) the facilitation of human rights activities of the Commission in collaboration with other human rights non-governmental organizations, civil society organizations and other stakeholders.

“2) There shall be paid to and credited to the Fund established pursuant to subsection 1 of this section –

- “(a) such sums as may be provided by the Federal, State or Local Government for purposes of the Fund;
 - “(b) such contributions from national and multinational, public and private companies

 - “(3) Such contributions made of the Fund under subsection (2)(b) of this section shall be tax deductible.”
- (2) Renumber the existing section 15 of the Principal Act as new section 16.
13. Section 16 of the Principal Act as renumbered is amended by deleting the words “through the Attorney – General of the Federation “.
14. Section 17 of the Principal Act as renumbered is substituted for a new section “17”-
- “17. The Commission shall, not later than 6 months after the end of each year, submit to the President and the National Assembly, a report on the activities of the Commission and its administration during the immediate preceding year and shall include in the report the audited accounts of the Commission and the auditor’s comments thereon.
15. insert immediately after the new section 17 of the Principal Act
a new section “18”.
- “18. (1) Subject to the provisions of this act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instigated against any member of the Council, officer or employee of the Commission.
- “(2) No suit shall lie or be instituted in any court against any member of the Council, the Executive Secretary or any officer or employee of the Commission for any act done in pursuance or execution of this Act or any other law or enactment or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority unless –

- “(a) it is commenced within 3 months next after the act, neglect or default complained of; or in the case of a continuation of damage or or injury, within 6 months next after the ceasing thereof.
 - “(3) No suit shall be commenced against any member of the Council, the Executive Secretary, officer or employee of the Commission before the expiration of one month after written notice of intention to commence the suit shall have been served upon the Commission by the intending plaintiff or his agent.
 - “(4) The notice referred to in subsection (3) of this section shall clearly state
 - (a) the cause of action;
 - (b) the particulars of claim;
 - (c) the name and place of abode of the intending plaintiff; and
 - (d) the relief which he claims”.
16. Insert immediately after the new section 18 of the Principal Act a new section “19”
- “19. A notice, summons or other document required or authorized to be served upon the Commission under the provisions of this Act or any other law or enactment may be served by delivering it to the Executive Secretary or by sending it by registered post and addressed to the Executive Secretary at the principal office of the Commission.”
17. Insert immediately after the new section 19 of the Principal Act, a new section “20”.
- “20. Any sum of money which may by the judgment of any Court be awarded against the Commission shall be paid from the general reserve fund of the Commission subject to any direction given by the Court”
18. Insert immediately after the new section 20 of the Principal Act, a new section “21”
- “21. A member of the Council, the Executive Secretary, any officer or employee of the Commission shall be indemnified out of the assets of the Commission against any proceedings whether civil or criminal in which judgment is given in favour of another or in which he is acquitted, if any such proceeding is brought against

him in his capacity as a member of the Council, the Executive Secretary, officer or employee of the Commission provided that he acted in good faith".

19. Insert immediately after the new section 21 of the Principal Act, a new section "22" –

"22. (1) An award or recommendation made by the Commission shall be recognized as binding and subject to this section and this Act shall upon application in writing to the court, be enforced by the court.

"(2) In this section, "court" means the Federal High Court or the High Court of the Federal Capital Territory or the High Court of a State."

20. The existing section 18 of the Principal Act is substituted for a new section "23"

"The Commission may make such regulations as it deems necessary or expedient to give effect to the provisions of this Act."

21. The Schedule to the Principal Act is amended -

- (a) in paragraph 1(2) by substituting for a new paragraph "1(2)" –

"1(2) The quorum of the Council shall be 6 members, excluding the ex officio members but including the Chairman or in his absence, the person elected under paragraph 2(2) of this Schedule to preside and 5 other members and the quorum of any Committee of the Council shall be determined by the Council"; and

- (b) in paragraph 2(4) by substituting for a new paragraph "2(4)" –

6 "2(4) The quorum at any meeting of the Council shall be excluding the ex-officio members".

22. This Act may be cited as the National Human Rights Commission (Amendment) Act 2010