



## **LAW REFORM MANUAL**

**March, 2011**

## **PREFATORY NOTE**

The Law Reform Manual is a standard guide to law reform officers, as programme officers serving special Law Commissions, in the quest to deliver Law Commission Reports of excellent quality.

Law reform is a deliberative and highly consultative process as such it involves the consideration of matters beyond law. A number of methods of data collection are used in the law reform process. In this regard, the Manual serves as a tool to standardize the law reform work carried out by the Commission. It is envisaged that, in this way, the Commission shall deliver on its Mission Statement; namely, the provision of a dynamic service to the people of Malawi through the systematic development and reform of the laws of Malawi.



Gertrude Lynn Hiwa  
**LAW COMMISSIONER**

## **INTRODUCTION**

The Law Commission is a public institution established under section 132 of the Constitution. Its core mandate is to review and make recommendations relating to the repeal and amendment of laws for conformity with the Constitution and applicable international law. The Commission has an enabling statute, the Law Commission Act (Cap. 3:09), which became law in 1998. The Act provides for matters relating to the functional operation of the Commission. These relate to: the need to review and make recommendations regarding any matter pertaining to the laws of Malawi and their conformity with the Constitution and applicable international law; and the need to review and make recommendations regarding any matter pertaining to the Constitution. In this regard, the Commission is mandated to receive or invite submissions from any person or body regarding the laws of Malawi or the Constitution; and to report its findings and recommendations to the Minister of Justice who shall then publish and lay the Commission's report before Parliament.

The review of the laws of Malawi presupposes a systematic development and reform of the law with a view to the modernization of the law; the eliminating from the laws of any defects, whether of a procedural, substantive or policy nature; and its simplification. The Commission's recommendations must provide for more effective methods and procedures for the administration of the law, the fusion or harmonization of customary law with other laws of Malawi; and also for the codification of any branch of law, including customary law. The Commission is also required to promote public awareness of the laws of Malawi and the Constitution.

The Commission is headed by the Law Commissioner who is appointed by the President in consultation with the Judicial Service Commission under section 133(a) of the Constitution. At the beginning of each calendar year, the Commission announces its programme of work on the laws that will be reviewed in that year. Each law reform assignment under the programme of work necessitates the empanelment of a special Law Commission which is serviced by a programme officer or officers. A special Law Commission comprises individuals appointed by the Law Commissioner in consultation with the Judicial Service Commission to serve as special Law Commissioners on the basis of their expert knowledge of a matter of law under review, or their expert knowledge of other matter related to the legal issue under review. Special Law Commissioners are appointed under section 133(b) of the Constitution. A programme officer provides legal expertise to the special Law Commission; and coordinates administrative and other incidental matters for the smooth conduct of the business of the special Law Commission.

This Manual serves as a guide to the programme officers as they serve special Law Commissions during the various stages of law reform from the inception to the completion of a law reform assignment.

## A NOTE ON RESEARCH METHODOLOGY

There are two research paradigms: qualitative and quantitative. Quantitative research involves ‘large scale and representative sets of data’ and is supposedly predominantly numeric.<sup>1</sup> Qualitative research involves collecting and analyzing chiefly non-numeric information in order to ‘achieve “depth” rather than “breadth”’ (Blaxter *et al.*, 2006:64).

There has been a long standing debate in the academy on the objectivity of research methodology paradigms. Indeed, scholars have observed that the novice researcher sets out to establish the ‘truth’; to discover the ‘facts’; to ‘prove’ (or ‘disprove’); and he or she also believes in his or her ‘objectivity’ in conducting his or her research (Blaxter *et al.*, 2006:14). The ‘idealism’ of the so-called novice researcher is not in itself misplaced, but, perhaps the ‘harsh’ reality has been succinctly captured by Blaxter *et al.* (2006:14) as follows:

[R]esearch is a social activity that can be powerfully affected by the researcher’s own motivations and values. It also takes place within a broader social context, within which politics and power relations influence what research is undertaken, how it is carried out and whether and how it is reported and acted upon.

They continue to state:

The quantitative and qualitative paradigms offer a basic framework for dividing knowledge camps. Yet, within these broad camps there are debates about how social research should proceed, and about which forms of knowledge are perceived to be valid or invalid. The difficulty for all of us is that these debates are complex and often involve the use of very inaccessible language.

The reality however is that a research project is never predominantly qualitative or quantitative. What is key under a research project is to identify and fully explain research issues or questions; to clearly outline the method of data collection and analysis; and to observe the applicable code of access and ethics.

There is a vast library of works on research methodology. It is mandatory that each programme officer must familiarize himself or herself with the literature on research methodology for effective delivery of their role under a law reform assignment. Every programme officer should familiarize himself or herself with, at least, the following:

Blaxter, L., Hughes, C., and Tight, M. (2007) *How to Research*. Third Edition. Buckingham: Open University Press

Denzin, N.K. and Lincoln, Y., (eds.), (2011) *The Sage Handbook of Qualitative Research*. Fourth Edition. Sage Publications

In appropriate cases, the Commission shall provide training for programme officers in research methodology.

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<sup>1</sup> L Blaxter *et al.* (2006:64) have asserted that quantitative research is also falsely ‘presently or perceived as being about gathering of “facts”.’ 3

## **Method**

Method refers to the ‘tools’ of gathering information under a research project. The information – the data – may be found through oral sources (narratives by human beings) and through documents (hard and electronic/soft copies).

### *Data Collection*

There are a number of data collection tools as follows:

#### Desk research

This method involves library search, internet search and archival search of both primary and secondary sources. The archival search is appropriate for collection of unpublished literature.

#### Interviews

The interview method as opposed to, for instance the questionnaire, is flexible. It is possible to tailor an interview to a specific individual’s needs. It is important that an interviewer must set out very clear objectives and expectations from an interview; what is the issue? Who should be interviewed over the issue? How is the appointment for an interview with the identified person going to be scheduled? How is the interview going to be done? Who will do the interview? What is the scope of the background reading before the interview takes place? This last question is very important. A programme officer must not allow the holding of interviews under a law reform assignment without background preparation. If an interview takes place without prior preparation, it is a waste of time for the interviewer(s) and interviewee(s). It is also a glaring sign of unprofessionalism.

Suffice it to say that in the same way that the objectivity of research methodology paradigms has been questioned, scholars have challenged the orthodox view of the neutrality of the interview as ‘largely mythical’ and ‘[im]possible’ (Fontana and Frey, 2005:696). They have said:

[I]nterviewing is not merely the neutral exchange of asking questions and getting answers. Two (or more) people are involved in this process, and their exchanges lead to the creation of a collaborative effort called *the interview*. The key here is the “active” nature of the process [...] that leads to a contextually bound and mutually created story – the interview.

Finally, it is advisable to develop an ‘interview schedule’ that highlights the themes rather than outlines detailed questions. This allows the interview to be more conversational rather than a mechanical exchange of questions and answers.

#### Focus Group Discussions

Focus group discussions are appropriate when the data collection requires the interaction of a fairly large group. The focus group discussions may be conducted using open-ended discussion guides. The

workshops and conferences that the Commission has routinely held as part of a law reform assignment are forms of focus group discussions.

### *Data Management and Analysis*

Note-taking is the major tool for data collection during special Law Commissions' meetings in plenary, interviews and focus group discussions (including workshops and conferences). A programme officer must take accurate notes and keep an up-to-date notes' file under a law reform assignment. This is extremely important because poor note-taking will negatively affect the quality and accuracy of the final report of a special Law Commission.

Software such as NVIVO is now available for data analysis. What is important during data analysis is to ensure that there are clear objectives for embarking on a law reform assignment as these become the guiding 'trees' for analysis.

### *Access and Ethics*

The right to privacy is perhaps at the core of access and ethics considerations. In relation to access, Stake (2005:459) has stated as follows:

Funding, scholarly intent or Institutional Review Board authorization does not constitute licence to invade the privacy of others. The value of the best research is not likely to outweigh injury to a person exposed. Qualitative researchers are guests in the spaces of the world. Their manners should be good and their code of ethics strict.

Hence, codes of ethics in research provide for the rules on informed consent, deception, privacy and confidentiality, and accuracy. Informed consent relates to the right of 'subjects' to be informed of the nature of the research. The 'subjects' must agree voluntarily to participate in a research; and they must agree on the basis of full and open information. The rules on deception prohibit deliberate misrepresentation of research findings. Privacy and confidentiality has invariably entailed anonymity of the 'subjects'. Accuracy is premised on the fact that '[f]abrications, fraudulent materials, omissions, and contrivances are both unscientific and unethical' (Christians, 2005).

In practice, real challenges emerge under a research project: For example, full disclosure for purposes of obtaining informed consent may result in denial of access; use of 'pseudonyms and disguised locations' may be uncovered and the research 'subjects' may feel betrayed; the duty of confidentiality can also suppress important research findings where the 'subjects' are easily identifiable (Christians, 2005; and Ali and Kelly, 2004). A pragmatic approach is perhaps useful here whereby a code of ethics must serve as a guideline and not necessarily stifle full participation for the purposes of the research.

### *Sampling and Selection*

The sampling and selection of participants for data collection under a law reform assignment must, in large measure, be influenced by the initial literature review conducted by a programme officer. At all

times, the selection of participants and indeed the sites of study must be based on their relevance to the issues under a law reform assignment.

## **ANNUAL WORK PROGRAMME**

Section 7 of the Law Commission Act provides, in part, as follows:

- (1) In pursuance of its powers and functions under the Constitution and this Act, the Commission –
  - (a) shall, from time to time, prepare programmes of its work for any specified period not exceeding a calendar year setting out, in an order of priority, matters for its consideration and shall publish a notice of any such programme in the *Gazette*;
  - (b) may invite the Attorney General, on behalf of the Government, or any Minister to refer to the Commission any matter for inclusion in its programme to be prepared and published under paragraph (a); [...]

Hence, a work programme must be prepared and published as a matter of statute. The practice is that the programme is published under the Law Commissioner's hand.

## **THE STAGES OF LAW REFORM**

Once a work programme for a particular year has been published in the *Gazette*, each area of law that has been identified under the programme to undergo a law reform process involves the following stages:

### **Stage I: Inception of a law reform assignment**

The inception of a law reform assignment is a two-tier process. The first tier relates to submissions and the second to the prioritization of the areas for law reform. Submissions can be received from private individuals or institutions, or from public offices or institutions. In relation to submissions from public offices or institutions, the Law Commission may invite the Attorney General, on behalf of Government, or any Minister to refer to the Commission any matter for inclusion in its programme of work for law reform in a particular calendar year.

The prioritization of areas for law reform is also a two-tiered exercise. First, the Law Commission can prioritize an area of law reform through its own initiative in order to ensure conformity with the Constitution; to harmonize the municipal law with international law; or to respond to trends in society. Second, and based on the submissions received from private or public persons, the Commission may prioritize an area of law reform based on the seriousness of the nature of inconsistency with the Constitution; Government's own priorities under its national policy framework; or the urgency of the social phenomenon that, at the time, commends itself to law reform. Third, the availability of resources is equally critical to the process of prioritization. Finally, consideration is given as to whether the area is suitable for a law reform process.

## **Stage II: Investigation: The Development of an Issues Paper and a Discussion Paper**

Once the Law Commission has received submissions and areas for law reform that shall comprise the work programme in a particular calendar year have been prioritized, each area of law reform is assigned to a programme officer or officers. Such areas then form a law reform assignment. The programme officers shall conduct comprehensive research on the law reform assignment in order to develop an Issues Paper and a Discussion Paper. The research must look at the Constitution; existing statutes, if any; international law; comparable foreign statutes and case law; international codes or guidelines, if any; and the national policy framework covering the matter under review.

### **A ISSUES PAPER**

This must be the first paper that is developed under a law reform assignment. An Issues Paper may be defined in terms of its purpose, content and structure.

The purpose of an Issues Paper is to announce the inception of the law reform assignment; to clarify the aim and scope of the matter under review; to guide the consultation with the general public, the private sector, development partners, and the public sector and the Government generally, in a systematic manner on the issues that will have been identified through the initial comprehensive research; and to enable the Law Commission to solicit further issues for consideration by the special Law Commission.

Such clearly defined purposes of an Issues Paper shall ensure that the consultees participate in a consultation process whilst aware of the delineated parameters of the assignment; the issues; and how these issues are affecting the current state of the law.

On the content of an Issues Paper: The Paper is not supposed to comprehensively cover the law and policy framework of the matter under review; nor the possible options for the law reform process. The Paper must simply highlight the issues that have emerged from the initial comprehensive research that will have been conducted by the programme officers. In this way, the Paper shall be easily accessible to the consultees. Hence, the Paper must be sent out to consultees with the anticipation that they shall provide informed responses to the issues and in the process the Commission may receive more substantive submissions for the law reform process.

Finally, the following is the structure of an Issues Paper:

- (i) A Cover Page; which shall bear the Law Commission's emblem; the title of the Paper; the number of the Paper in the series of Issues Papers; and the date of its publication;

[N.B.: A Cover Page must not bear the name(s) of the author(s). An Issues Paper is the property of the Law Commission as such, it is inappropriate that it must bear the name(s) of the author(s) on its Cover.]

- (ii) A Preface; which shall introduce the Paper [by setting out reason(s) for the development of the Paper, and where and how the information has been collected]; shall explain the structure of the



Paper; and shall acknowledge the author(s) of the Paper and their position in the Law Commission;

[N.B.: It is not necessary to indicate the academic qualifications of the author(s). In this respect, for consistency, all Issues Papers must omit the academic qualifications of the author(s).]

- (iii) An Introduction; which must cover the mandate and functions of the Law Commission under the Constitution and the Law Commission Act; highlight the consultative nature of the process of law reform through the special Law Commissions; and highlight the need for submissions on the highlighted issues;
- (iv) A concise overview of the existing law and policy framework of the matter under review;
- (v) A systematic presentation of the issues arising from the state of the law; the policy framework, or a lack of one or both factors; and the nature of their implementation; and
- (vi) Way forward and Conclusion.

All programme officers must keep in mind the following general observations: An Issues Paper must be written in simple, plain language. The presentation of the issues must be in the form of a problem statement and a situation analysis. This will ensure that the issues relate to the problems caused by the state of the existing law and policy framework.

## B DISCUSSION PAPER

A Discussion Paper is the main document for the work of a special Law Commission. The Paper forms the basis for discussion of a special Law Commission in plenary. Hence, a Discussion Paper is a comprehensive analysis of the law and policy framework on a matter under review. A Discussion Paper expands on the terrain covered in the Issues Paper on the same matter under review. A Discussion Paper must be akin to a monograph on the matter under review and the analysis must be persuasive, robust and solid; and must take into account the Constitution; existing statutes, if any; international law; comparable foreign statutes and case law; international codes or guidelines, if any; and the national policy framework.

A Discussion Paper must also make tentative recommendations on the direction of the law reform process. These tentative recommendations are meant to inform a special Law Commission in plenary and they must never be drafted in a manner that indicates that a view has already been formed. The tentative recommendations will ensure that the final decision on any point remains with a special Law Commission. In this way, a Discussion Paper equips a special Law Commission with adequate information on the possible direction of the law reform process; and whether or not the law reform process, at the time it is instituted, is necessary or desirable.

The structure of a Discussion Paper must be the same as that of an Issues Paper except for some subtle but very important differences:

- (i) A Cover Page; which shall bear the Law Commission's emblem; the title of the Paper; the number of the Paper in the series of Discussion Papers; and the date of its publication;

[N.B.: A Cover Page must not bear the name(s) of the author(s). A Discussion Paper is the property of the Law Commission as such, it is inappropriate that it must bear the name(s) of the author(s) on its Cover.]

(ii) A Preface; which shall introduce the Paper [by setting out reason(s) for the development of the Paper, and where and how the information has been collected]; shall explain the structure of the Paper; and shall acknowledge the author(s) of the Paper and their position in the Law Commission;

[N.B.: It is not necessary to indicate the academic qualifications of the author(s). In this respect, for consistency, all Discussion Papers must omit the academic qualifications of the author(s).]

(iii) An Introduction; which must cover the mandate and functions of the Law Commission under the Constitution and the Law Commission Act; highlight the consultative nature of the process of law reform through the special Law Commissions; provide a context of the law and the issues that have been received from the consultation process through the Issues Paper on the matter under review; outline the problem statement, that is, a clear rationale for the inception of the law reform process; and develop the situation analysis, that is, the socio-economic profile, history and context that is relevant to the understanding of the matter under review;

(iv) A comprehensive analysis of the current law and national policy framework on the matter under review: The analysis must be made in light of the Constitution; existing statutes, if any; international law; comparable foreign statutes and case law; and international codes or guidelines, if any. In carrying out the comprehensive analysis, it is important that whenever the Discussion Paper refers to the law, policy and practice in other jurisdictions it must clearly demonstrate the reasoning behind that law, policy or practice. In this way, tentative recommendations, if any, that may be made to a special Law Commission shall be based on a sound footing. This curtails a 'copy-and-paste' approach to research and indeed law reform;

(v) Tentative Recommendations; the recommendations in a Discussion Paper are tentative and merely serve as a guide to a special Law Commission on the options that may be available in relation to a matter under review. Hence, the recommendations serve to enrich the deliberations of a special Law Commission in plenary.

(vi) Bibliography; this is a complete list of all the work that has been cited in a Discussion Paper. It must be included as the end matter of the Paper. The format of a Bibliography must follow the guidelines set under Sandra Meredith and Timothy Endicott (eds.) *Oxford Standard for Citation of Legal Authorities* (Faculty of Law: University of Oxford, 2006) (hereafter 'OSCOLA, 2006 Guidelines'). A copy of the OSCOLA, 2006 Guidelines shall be available to every programme officer; and a separate copy shall be maintained in the Commission's library.

### **Stage III: Appointment of special Law Commissioners**

As noted above, a special Law Commission comprises individuals appointed by the Law Commissioner in consultation with the Judicial Service Commission to serve as special Law Commissioners on the basis of their expert knowledge of the matter of law under review, or on the basis of their expert knowledge of other matter relating to the matter of law under review. Special Law Commissioners are appointed under section 133(b) of the Constitution.

A programme officer, under the direction of the Law Commissioner, must ensure the strict adherence to the following guidelines on appointment of special Law Commissioners. This shall ensure that individuals with the relevant expertise are indeed appointed to serve as Commissioners of a special Law Commission:

- (i) Once a law reform assignment has been included under a work programme in a calendar year, the Law Commissioner shall invite the relevant private or public body to nominate a person who may serve as a special Law Commissioner based on their expertise on a matter under review under the assignment;
- (ii) Every nomination of a person to serve as a special Law Commissioner shall be accompanied by a detailed Curriculum Vitae of the nominee;
- (iii) A nominee does not qualify as an expert as envisaged under section 133(b) of the Constitution, if they do not hold a doctorate degree obtained on merit from a recognized institution, they have less than ten years experience in the field of their purported expertise;
- (iv) In addition to requirement (iii) above,
  - (a) a nominee who is in the civil or public service must be an officer at the P4 Grade or above;
  - (b) by reason of their office, a person who is a traditional authority or in a similar appointment recognized under the Chiefs Act, shall be deemed an expert on a matter that requires expertise on tradition or custom of any area in Malawi, or on a matter requiring experience in traditional administration and leadership in Malawi;
- (v) The Law Commissioner shall forward the names of nominees and their Curriculum Vitae to the Judicial Service Commission as part of the process of consultation for purposes of formal appointment of special Law Commissioners under a law reform assignment;
- (vi) In addition to the expertise specified under section 133(b) of the Constitution, the Law Commissioner on his or her own volition, or in consultation with the Judicial Service Commission, shall take into account gender equity, personal integrity, capability to work in a team and commitment to work, in the appointment of a special Law Commissioner;

- (vii) Notwithstanding requirements (v) and (vi) above, the legal authority to appoint a special Law Commissioner, remains with the Law Commissioner;
- (viii) The Law Commissioner shall issue formal letters of appointment to persons appointed as special Law Commissioners under a law reform assignment;
- (ix) The Law Commissioner has the discretion to determine the number of special Law Commissioners under a law reform assignment; and
- (x) A special Law Commission shall not begin to sit in plenary before the formal appointment of special Law Commissioners has been finalized and their names have been published in the *Gazette*, and in at least two national newspapers with a daily circulation.

#### **Stage IV: Press Release**

The Law Commissioner shall issue a Press Release announcing the inception of a law reform assignment; the announcement of the development of the Issues Paper and Discussion Paper respectively under the assignment; the names of the persons appointed as the special Law Commissioners; and call for submissions to enrich the work of the special Law Commission.

#### **Stage V: Consultations**

As observed under ‘A Note on Research Methodology’ in this Manual, the Commission’s work is largely based on qualitative research paradigm and uses a multi–method approach for data collection, management and analysis. The data itself may be qualitative and quantitative including both primary and secondary sources. These sources include the Constitution; comparable foreign constitutions; national or comparable foreign statutes; policy instruments commissioned by Government, and foreign governments and international institutions; national or comparable foreign case law; law reform reports and a variety of multidisciplinary literature. The Commission has generally used the following methods for data collection: desk research (through library, internet and archival searches); focus group discussions; key informant interviews; participant workshops and, in rare cases, observation. Finally, data analysis within the Commission is akin to an interpretive paradigm.

The participant workshops are the dominant method of data collection as a style of consultation. The sampling and selection of participants in the workshops is subject–driven and extremely targeted. This is the case because of the time and cost implication for deeper methods of consultation.

#### **Stage VI: Special Law Commission Meeting in Plenary**

The Law Commissioner shall convene the first meeting of a special Law Commission. In this regard, a programme officer shall:

- (i) consult the special Law Commissioners to confirm the suitability of the date of the first meeting;

- (ii) send to the special Law Commissioners, the formal letters of invitation to the first meeting of the special Law Commission; and
- (iii) arrange, in consultation with the Corporate Services Division, all logistics for the first meeting at least seven days before the date of the meeting.

At the first meeting following its formal empanelment, a special Law Commission must:

- (i) receive a briefing from the Law Commissioner in which he or she shall outline the mandate and functions of the Law Commission generally, and in particular, the mandate of the special Law Commission; emphasize that the special Law Commissioners are the experts under the law reform assignment and must own the law reform process; emphasize that the programme officer is there to provide professional support and is not the alternate expert under the assignment; confirm that the Commission's meetings in plenary are conducted in the English language; emphasize on regular attendance and punctuality to Commission's meetings in plenary or other event requiring their presence under the law reform assignment; and that it is discourteous to other Commissioners for a Commissioner to attend to a mobile telephone call, short message service (SMS), multimedia messaging service (MMS) or other electronic communication gadget or service during the Commission's meeting in plenary;
- (ii) The programme officer shall make a presentation that focuses on the Issues Paper and the Discussion Paper;
- (iii) elect a Chairperson and Deputy Chairperson;
- (iv) agree on the work calendar; including the number of meetings, the terms of references, and the methods of data collection, management and analysis;
- (v) agree on the quorum for the Commission's meetings in plenary;
- (vi) agree on the acceptable rules of etiquette during the Commission's meetings in plenary;
- (vii) ensure that the each special Law Commissioner has received the relevant background documents; especially the Issues Paper and the Discussion Paper for the law reform assignment, and this Manual; and
- (viii) ascertain that each special Law Commissioner is aware of the administrative arrangements that have been put in place in relation to the work of the special Law Commission.

In the conduct of the business of the special Law Commission, the Chairperson, or in their absence, the Deputy Chairperson, shall lead the meeting in plenary.

The programme officer is responsible for note-taking and, as observed under 'A Note on Research Methodology', must ensure that an accurate record of the special Law Commission's meetings in plenary is on file.

In addition, a programme officer shall:

- (i) participate and facilitate the deliberations of a special Law Commission's meetings in plenary;
- (ii) present the Issues Paper and Discussion Paper and highlight the areas requiring further research;
- (iii) ensure that each special Law Commissioner has received the relevant documents under the law reform assignment;
- (v) research on any matter that arises during the deliberations of a special Law Commission's meetings in plenary;
- (vi) recognize that he or she is not an expert under the law reform assignment and must desist from imposing his or her views on, or in any way be argumentative in dealing with, special Law Commissioners;
- (vii) address special Law Commissioners in the English language;
- (viii) not attend to a mobile telephone call, short message service (SMS), multimedia messaging service (MMS) or other electronic communication gadget during the Commission's meeting in plenary;
- (ix) be courteous to the special Law Commissioners at all times;
- (x) attend special Law Commission's meeting in plenary on time; and
- (v) develop the draft Report and, if need be, the draft legislation.

#### **Stage VII: Report and Draft Bill**

The record of the special Law Commission in plenary must be accurate because it forms the basis of the Commission's Report. It is mandatory that a programme officer must start circulating to the special Law Commissioners rolling versions of the draft Report that accurately capture the deliberations of the special Law Commission in plenary, and the recommendations that are being made during the plenary. A programme officer must accurately incorporate into the draft Report the corrections that will have been pointed out to them by the special Law Commissioners. In the development of the Report, a programme officer shall be under the general direction and supervision of the Law Commissioner.

The nature of the Commission's work entails that a programme officer must have an excellent command of the English language (both spoken and written) and excellent legislative drafting skills. It is mandatory that every programme officer possesses these skills. In appropriate cases, the Law Commissioner shall ensure that relevant training is provided to an officer.

It is extremely unprofessional that a draft (or published) Report of the Commission should be replete with factual, grammatical or typographical errors. A programme officer must pay close attention to the text of the Report under a law reform assignment to eliminate all errors. It is also important that close attention is given to the findings and recommendations of the reports of other special Law Commission and, where appropriate, due cross-referencing must be made. Once a draft Report has been finalized, a programme officer must send it to the Chief Law Reform Officer for his or her scrutiny. The Chief Law Reform Officer shall, without undue delay, return the Report (with his or her comments) to the programme officer for further consideration.

Once a Report has been finalized and is ready for publication, a programme officer must:

- (i) develop an Executive Summary of the key findings of the special Law Commission. The Executive Summary shall form part of the Report;
- (ii) ensure that all special Law Commissioners have signed the Report.

#### **Stage VIII: Press Statement**

A programme officer shall arrange, with the support of the Corporate Services Division, a press briefing on the finalization of the law reform assignment where the Chairperson of the special Law Commission shall make a press statement. The programme officer shall prepare the press statement highlighting the key findings and recommendations contained in the report of the special Law Commission.

#### **Stage IX: Publication and Submission of Reports to Parliament**

Under section 135(d) of the Constitution, the Law Commission must report its findings and recommendations to the Minister of Justice who shall then publish and lay the Commission's Report before Parliament. Under section 9 of the Law Commission Act, the Minister of Justice, with the advice of the Law Commission, shall publish, in the *Gazette*, the Commission's Report within sixty days from the date of the Report. Section 7(h) of the Law Commission mandates the Law Commission to assist the Minister of Justice with the publication of its Reports. The practice has emerged that the Commission is responsible for all logistics around the publication of its Reports.

The following steps must be followed once a Report has been finalized and is ready for publication at the Government Printer:

- (i) Before a Report is sent to the Government Printer, the Law Commissioner shall write a Memorandum to the Minister of Justice (including a *Gazette* Notice) informing that office that a Report is ready for publication and the Commission is proceeding to publish the Report;
- (ii) Once the Memorandum to the Minister has been acknowledged, the programme officer, under the direction of the Law Commissioner, must send the Report to the Government Printer for publication;

- (iii) During the publication by the Government Printer, the programme officer is responsible for ensuring the accuracy of the Report. In this regard, the officer must diligently check the Report for factual, grammatical or textual errors;
- (iv) The programme officer must then submit the Report to the Law Commissioner for further scrutiny;
- (v) Once the Law Commissioner has scrutinized the Report, programme officers must conduct a thorough copy editing of the Report; and
- (vi) Upon completion of the copy editing by the programme officers, the Law Commissioner, or in their absence, the programme officer, shall sign a standard form to verify that they have approved all changes to the Report before re-submitting it to the Government Printer for the publication of the Report in the *Gazette*.

Programme Officers must take the process of publication of reports very seriously. The copy editing stage is meant to eliminate all errors that may have remained in the Report. It is extremely unprofessional that a Report should be published replete with errors of all kinds. Besides eliminating typographical or other textual errors, a programme officer must guarantee the accuracy of the law, policy and other conceptual content in the Report.

The following shall be the structure of the Commission's Reports:

- (i) A Cover Page; which shall bear the Law Commission's emblem; the title of the Report; the number of the Report in the series of the Commission's Reports; and the date of its publication;
- [N.B.: A Cover Page must not bear the name(s) of the author(s). A Report is the property of the Law Commission as such, it is inappropriate that it must bear the name(s) of the author(s) on its Cover.]
- (ii) A standard *Gazette* Supplement Notice of the publication of the Report which specifies the date of its publication;
  - (iii) A standard Notice of Submission by the special Law Commissioners to the Minister of Justice. All Commissioners must sign the Notice, and it must be dated accordingly;
  - (iv) A Section on Programme Officers: This must indicate the programme officer(s) who served the special Law Commission and their academic qualifications. Where there is more than one programme officer who served a special Law Commission, it is misleading and inappropriate for one programme officer to highlight himself or herself as the officer who coordinated all aspects of the Commission's work, developed the Report, and prepared the draft legislation. This is misleading and inappropriate because programme officers must work as a team. No single officer must take a team's credit;
  - (v) Table of Contents;



- (vi) Executive Summary: This must contain a summary of the key findings and recommendations of the special Law Commission;
- (vii) Research Methodology;
- (viii) The terms of reference of the special Law Commission;
- (ix) An Introduction; which must cover the mandate and functions of the Law Commission under the Constitution and the Law Commission Act; and incorporate the positions in the Issues Paper and the Discussion Paper. In particular, this must put emphasis on the comprehensive analysis of the law and policy framework of the matter under review;
- (x) Specific Findings and Recommendations: This captures the positions taken by the special Law Commission in plenary. All recommendations for amendment to provisions under existing statutes or proposal for provisions under new law must be in bold;
- (xi) Draft Legislation: Where a special Law Commission recommends amendments to existing statutes or proposes new law, this necessitates the development of draft legislation. Draft legislation must be included in the Commission's Report as part of an annex; and
- (xii) An appendix containing a list of all persons and institutions that were consulted under the law reform assignment.

### **Stage X: Role of the Commission during Government's consideration of its Report**

Technically, a law reform assignment is completed once the Law Commission has submitted its report and recommendations to the Minister of Justice under section 135(d) of the Constitution. As noted above, practice has emerged that the Law Commission takes charge of the publication of its Reports. Indeed, the Law Commission also ensures that the correct number of copies of any Report is available for distribution to members of Parliament when the Minister of Justice is scheduled to lay the particular Report before Parliament. Further, the Law Commissioner and special Law Commissioners, or in their absence, programme officers, appear before parliamentary committees to present key findings and recommendations of a special Law Commission and respond to queries arising from a law reform assignment.

In this regard, the Law Commissioner shall make it clear to special Law Commissioners that they may be required to appear before a public authority, the general public, development partners or other persons in order to present their key findings and recommendations. In the same way, programme officers must ensure that they fully understand the key findings and recommendations of a special Law Commission. In appropriate cases, programme officers shall supervise the Civic Education Section to curb any possibility of misrepresentation of the Commission's key findings and recommendations on a matter that was under review. This post-Report work may include engagement with the electronic and print media; through newspaper articles, and television and radio programmes of various formats; community-based focus group discussions; and presentations to targeted key stakeholders.

This proactive approach to the Commission’s work ensures the public’s awareness of the reasoning behind the Commission’s recommendations. All post–Report work outlined here is under the general direction and supervision of the Law Commissioner.

## **HOUSE STYLE OF THE LAW COMMISSION**

The following forms the Law Commission’s ‘house style’ for all Issues Papers, Discussion Papers and Reports of the Commission:

### **Font of the narrative**

Garamond, font size 12, single space, justified

### **Headings**

All Issues Papers, Discussion Papers and Reports of the Commission must follow the following style:

*Heading 1:* Garamond, font size 14, Capital Letters, bold, left indent; for example

### **‘REVIEW OF CHIEFS ACT’**

*Heading 2:* Garamond, font size 12, Capital Letters, bold, left indent; for example

### **‘INTRODUCTION’**

*Heading 3:* Garamond, font size 14, normal text, Arabic numeral, left indent; for example

#### **‘1. Overview of the Public Health Act’**

*Heading 4:* Garamond, font size 13, normal text, Alphabetical letter, left indent; for example

#### **‘A. The Human Rights–Based Approach’**

*Heading 5:* Garamond, font size 14, italics, left indent; for example

*‘Ghana’*

### **Spelling**

For spelling, use for example, the suffix ‘-ize’ rather than ‘-ise’.

### **Dates**

Present as follows: ‘11 February, 2011’.

## **Quotations**

Single quotes must be used for primary quotations, double for quotes within quotes. Punctuation must not be included unless it is logically part of the quotation. Quotations longer than three lines must be indented, single spaced in font size 10.

## **Citation**

All Issues Papers, Discussion Papers and Reports of the Commission must follow the OSCOLA, 2006 Guidelines.

## **Plagiarism**

Plagiarism is an extreme case of scholarly impropriety. Each programme officer must take extreme care to ensure that the language, thought, idea or argument of another author has been properly attributed to that author and is not being presented in the Commission's Papers or Reports as those of the Commission. Instances of heavy plagiarism can lead to copyright infringement. Copyright infringement may be a basis of civil litigation. The Law Commissioner shall treat cases of plagiarism as serious cases of professional misconduct and an alleged case of plagiarism shall be accorded the seriousness it deserves.

## **COPYRIGHT OF THE WORK DONE UNDER THE COMMISSION'S PROGRAMME OF WORK**

The copyright in all Papers and Reports produced by a programme officer while under a contract of employment with the Commission belongs to the Commission. A programme officer cannot take personal credit as the author of a Paper or Report; nor can they submit the Paper or Report or parts thereof for publication as their personal work whether they are employed or no longer employed with the Commission. Further, a programme officer cannot advertise himself or herself as the author of a Commission's Paper or Report in Curriculum Vitae, Résumé or other similar biographical description for purposes of employment, incentive or other reward. It is appropriate for a programme officer to highlight the fact that they served or were otherwise involved in a particular law reform assignment. This shall not constitute a breach of copyright as it is not claim to authorship.

Any breach of copyright as stated here constitutes a serious case of professional misconduct and the Law Commissioner shall deal with such case with the seriousness it deserves.

## **A NOTE ON PROJECT MANAGEMENT**

A Project is often a time-bound exercise. It has a start and end date; it has specific goals meant to add value to the status quo. The success of a project rests on the way it is managed. A law reform assignment is a project. It requires a very high sense of discipline regarding its planning, organization and operational management. Underlying the foregoing, however, is also the fact that the time, breadth and budget projected for the completion of a law reform assignment must be realistic for its successful completion. Given the importance of managing a law reform assignment, a programme officer must ensure that he

or she is up to date on all aspects of the law reform assignment he or she is responsible for. A programme officer must be in constant contact with the Corporate Services Division, especially the Accounts Section regarding the financing of activities under a law reform assignment; he or she must prepare periodic reports to the Law Commissioner, the Chief Law Reform Officer and the funder of the assignment on the progress of the review and monetary or other aspects of the assignment; and lead the preparation of the financial report to a funder of an assignment.

The Commission shall provide training in project management in appropriate cases.

## **CONCLUSION**

This Manual shall be reviewed periodically to ensure that it meets the changing needs of the people of Malawi. The periodic reviews shall ensure that the Commission effectively and efficiently delivers its mandate under the Constitution and the Law Commission Act.