



# LAW COMMISSION

Annual Report  
**2010**



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2010

# Contents

<b>FOREWORD.....</b>	<b>3</b>
<b>PART 1: OVERVIEW OF THE LAW COMMISSION.....</b>	<b>6</b>
1.1. Establishment.....	6
1.2. Goal.....	7
1.3. Objectives.....	7
1.4. Vision.....	7
1.5. Mission Statement.....	7
1.6. Values.....	7
1.7. Structural Set Up.....	7
<b>PART 2: OVERVIEW OF LAW REFORM PROCESS.....</b>	<b>8</b>
2.1. Annual Work Programme.....	8
2.2. Law Reform Process.....	8
<b>PART 3: OVERVIEW OF LAW REFORM PROGRAMMES.....</b>	<b>12</b>
3.1. Review of the Adoption of Children Act.....	12
3.2. Review of the Chiefs Act .....	13
3.3. Review of the Firearms Act .....	13
3.4. Review of the Legal Education and Legal Practitioners Act .....	15
3.5. Review of the Prevention of Domestic Violence Act .....	16
3.6. Review of the Sheriffs Act .....	16
3.7. Review of the Trade Marks Act .....	17
3.8. Review of the Witchcraft Act .....	19
<b>PART 4: PUBLIC AWARENESS AND NETWORKING.....</b>	<b>21</b>
4.1. Civic Education.....	21
4.2. Publications.....	22
4.3. Stakeholder Collaboration.....	22
4.4. Press Briefings.....	23
4.5. Status of Law Reform Updates.....	23
4.6. International Cooperation and Networking.....	23
<b>PART 5: FINANCE, ADMINISTRATION AND HUMAN RESOURCE MANAGEMENT.....</b>	<b>25</b>
5.1. Finance .....	25
5.2. Administration .....	26
5.3. Human Resource Development and Management.....	27
<b>PART 6: CONCLUSION .....</b>	<b>29</b>
Appendix 1: Law Commission's Organogram as at 31 <sup>st</sup> December 2010	
Appendix 2: Members of Special Law Commissions.	
Appendix 3: List and Status of Completed Law Reform Programmes	

# Acronyms

<b>AIDS:</b>	Acquired Immunodeficiency Syndrome
<b>ALRAESA:</b>	Association of Law Reform Agencies of Eastern and Southern Africa
<b>BA:</b>	Bachelor of Arts
<b>BSc:</b>	Bachelor of Science
<b>Cap.:</b>	Chapter
<b>Commission:</b>	Law Commission
<b>ESAMI:</b>	Eastern and Southern Africa Management Institute
<b>EU:</b>	European Union
<b>GoM:</b>	Government of Malawi
<b>IEC:</b>	Information, Education and Communication
<b>LLB:</b>	Legum Baccalaureus (Bachelor of Laws)
<b>PDVA:</b>	Prevention of Domestic Violence Act
<b>RoL:</b>	Rule of Law
<b>SC:</b>	Senior Counsel
<b>TRIPS:</b>	Trade Related Aspects of Intellectual Property Rights
<b>UNICEF:</b>	United Nations Children's Fund
<b>UNFPA:</b>	United Nations Population Fund

# Foreword



Mrs. Gertrude Lynn Hiwa, Law Commissioner

I am very pleased to present the 2010 Law Commission Annual Report. The Commission's mandate under the Constitution of the Republic of Malawi and the Law Commission Act, Cap. 3:09 of the Laws of Malawi is to review laws of Malawi and to make recommendations for the systematic development and reform of the law. In achieving this broad mandate, the Commission is committed to ensuring that the law is developed in a manner and process that is participatory, open, and user friendly in terms of simplicity, clarity, availability and accessibility. It is in this light that the

Commission cherishes the interaction it has with diverse stakeholders, including members of the public, without whose input, the ever dynamic aspirations of the Government and the people of Malawi would have been difficult to meet.

The Commission's main goal in the 2010 Work Program was the finalization of the review process and publication of the Commission's Reports in five specific areas: Trademarks Act, Cap. 49:01; Witchcraft Act, Cap. 7:02; Firearms Act, Cap. 14:08; Prevention of Domestic Violence Act, Act No. 5 of

2006; and the Adoption of Children Act, Cap. 26:01. Other goals included the publication of Issues Paper and Discussion Paper on the review of the Patents Act, Cap. 49:02; Sheriffs Act, Cap. 3:05; Chiefs Act, Cap. 22:03; and the Public Health Act, Cap. 34:01.

I am happy to report that the review of the Firearms Act and the Trademarks Act has since been finalized and the Commission's findings and recommendations are on the verge of publication. Other programmes that were carried forward from the previous year are the Review of the Education Act whose report has been published as Law Commission Report No. 21; the Development of Trafficking in Persons Act; the Review of the Legal Education and Legal Practitioners Act and the Development of Gender Equality Legislation whose reports are with Government Printer for publication. The Report on the Review of the Land Related Laws which was also carried forward from the previous years has finally been published as Law Commission Report No. 15 of March, 2010.

The review of Chiefs Act and the Witchcraft Act stalled in the year due to inadequate funding. It is worth noting,

however, that an Issues Paper was developed and published on the review of the Chiefs Act. The review of the Adoption of Children Act shall be finalized during the first half of 2011 and the Commission is committed to ensuring that the Report is published by the end of 2011. Other programs that will be carried forward from 2010 are the Review of the Sheriffs Act where preliminary consultations have commenced; the Review of the Public Health Act and the Review of the Patents Act.

The Commission is convinced that law reform is successful when thorough and informed consultations are undertaken with relevant stakeholders within Malawi, including Government, relevant and related institutions in comparable foreign jurisdictions, and members of the public. This broad approach to law reform enables the Commission to appreciate and understand the views and perspectives of various segments of our society and beyond. The information acquired through the consultation process forms the basis of recommendations that are relevant and in touch with the dynamics of the Malawi society. For this reason, the Commission acknowledges, and is grateful for, the tremendous support

received from various stakeholders and officers in our sister institutions during comparative study visits. The research, collaboration and consultations enable the various special Law Commissions to critically analyze the recommendations on the laws under review against regional and international practice thus providing an informed basis for law reform and development.

During the year, qualified and dedicated Commissioners were appointed and participated in various special Law Commissions. The consultative workshops that the Commissioners facilitated provided a platform for debate and informed the development of the laws under review. The Commission also engaged a number of stakeholders at different levels of society in its activities, including civic education initiatives, thus increasing its outreach.

The Commission finds it imperative to bring its core functions to the people of Malawi. As part of informing our stakeholders and the general public on what the Commission does, we came up with a new publication, *“The Law Reformer”*, a magazine aimed at shedding more light on law reform processes in an informal and user-friendly manner. We hope that the magazine creates a forum

where law reform is explained and fairly understood by the Commission's stakeholders and partners, thereby acquiring added value in law reform process.

Law reform and development requires substantial financial resources. It is therefore important and fitting that I should express profound gratitude and appreciation to the partners who fund our programmes. These partners include the Government of the Republic of Malawi, the European Union through the Promotion of Rule of Law Program and Civic Education in Malawi, United Nations Children's Fund, United Nations Population Fund and National AIDS Commission.

I feel privileged to lead a Commission endowed with staff of outstanding ability. I also cherish the support from Government, development partners and sister institutions towards the delivery of the Commissions mandate.

Gertrude Lynn Hiwa

**LAW COMMISSIONER**

# Overview of the Law Commission



## 1.1 ESTABLISHMENT

The Law Commission (the Commission) is established under section 133 of the Constitution. Its enabling statute, the Law Commission Act (Cap. 3:09) came into force in July, 1998.

### 1.1.1 FUNCTIONS

**The functions of the Commission are:**

#### 1.1.1.1 Under the Constitution

Section 135 of the Constitution provides that the Law Commission shall have powers to:

- (a) review and make recommendations regarding any matter pertaining to the laws of Malawi and their conformity with the Constitution and applicable international laws;
- (b) review and make recommendations regarding any matter pertaining to the Constitution;
- (c) review any submissions from any person or body regarding the laws of Malawi or the Constitution; and
- (d) report its findings and recommendations to Parliament through the Minister of Justice.

#### 1.1.1.2 Under the Law Commission Act

provides that the function of the Law Commission in addition to the Constitutional functions shall be:

- (a) to review the laws of Malawi with a view to the systematic development and reform of the law, including, in particular:
  - (i) the modernization of the laws by bringing them into accord with current national and international conditions and norms;
  - (ii) the elimination from the laws of any defects, whether of a procedural, substantive or policy nature;
  - (iii) the simplification of the laws;
  - (iv) the recommendation of new or more effective methods and procedures for the administration of the laws;
- (b) to make recommendations for the fusion or harmonization of customary law with other laws of Malawi;
- (c) to make recommendations for the codification of any branch of the law or of any customary law; and
- (d) to promote awareness of the laws and the Constitution by the public and by departments of the Government and other authorities or bodies.



## 1.2 GOAL

The Commission's Goal is:  
to contribute to the promotion of rule of law and good governance.

## 1.3 OBJECTIVES

The Commission's Objectives are:

- (a) to review and make effective recommendations regarding the Constitution and laws of Malawi; and
- (b) to promote public awareness of laws of Malawi and the Constitution.

## 1.4 VISION

The Commission's Vision is:  
to become an expert provider of advisory services on law development, reform and status of the law in Malawi and beyond.

## 1.5 MISSION STATEMENT

The Commission's Mission is:  
to provide expert advice to Government on law development and reform.

## 1.6 VALUES

The Commission's Values are:

**Independence:** in the performance or exercise of its functions, duties and powers.

**Professionalism:** in the conduct of its staff and the carrying out its mandate.

**Credibility:** with all organs of the State, development partners and the general public.

**Responsiveness:** acting promptly to the needs established by its stakeholders and the public for law reform and civic education.

**Accountability:** in the carrying out its mandate and use of resources.

## 1.7 STRUCTURAL SET UP

### Secretariat

The Secretariat comprises a permanent Law Commissioner who is the head of the institution and other professional, technical and administrative staff subordinate to the Law Commissioner. The Law Commissioner is appointed by the President on the recommendation of the Judicial Service Commission for a renewable term of five years.

Since its inception, the Commission has been served by three Law Commissioners. The first Law Commissioner was Justice Elton Mawina Singini, SC who served as Law Commissioner for ten years from June, 1996 to June, 2006. He was replaced by Mr. Anthony Kamanga, SC who served as Law Commissioner until July, 2007. On 23<sup>rd</sup> June, 2008, Mrs. Gertrude Lynn Hiwa was appointed Law Commissioner. All Law Commissioners have prior to their appointments served extensively at the Ministry of Justice and the last two were Chief Parliamentary Draftspersons immediately before their appointments.

The Commission has two main departments: the Law Reform Division and the Corporate Services Division. The core business of the institution is law reform which, under the Law Reform Division, involves legal research, law development, law review, legislative drafting and civic education. The Corporate Services Division provides support services in human resource management and logistics. See appendix 1 of the Law Commission's organogram as at 31<sup>st</sup> December, 2010.

# Overview of Law Reform Process



## 2.1 ANNUAL WORK PROGRAMME

The Law Commission Act provides that the Commission must, from time to time, prepare a list of programmes of its work for any specified period not exceeding a calendar year in which matters that require consideration are included in order of priority. Annually, the Commission therefore publishes its annual work programme of identified law reform areas.

## 2.2 LAW REFORM PROCESS

The law reform process undergoes the following phases:

### 2.2.1 Phase I: *Identification of Law Reform Area*

There are basically two methods through which a law reform area is identified. An area can be identified through submissions received from public or private individuals or bodies. An area may also be identified by the Commission, on its own initiative in trying to implement Government policies or in trying to implement or domesticate the country's obligations under international conventions or indeed in response to social changes. Further, the Attorney General on behalf of Government may request the

Commission to consider any matter of law that is considered to require reform or any area that is considered to require development of legislation.

### 2.2.2 Phase II: *Investigation*

Once the area of law reform is identified, the process takes the following phases:



- (a) Law Reform Officers are assigned to the programme as Programme Officers. The Programme Officers conduct preliminary research work on the subject under reform and on the status of the law; and
- (b) Programme Officers then carry out literature review and develop working papers. Working papers outline issues which may guide proposals for reform. These papers include Issues Paper, Discussion Paper, Consultation Paper and Research Paper.

### **(i) Issues Paper**

In order to guide the reform process, the

Commission, at an early stage, investigates what issues obtain in the area of law proposed for reform or development. It then publishes the issues in an Issues Paper. The Issues Paper also

serves to announce an investigation into a particular area of law under reform or development and to clarify the aim and scope of the process.

### **(ii) Discussion Paper**

When the issues have been identified, the Commission makes further inquiry into the practices elsewhere with a view to providing a range of proposals for reform. The result is published as a Discussion Paper. The Discussion Paper stimulates discussion of the issues under consideration by a special Law Commission, which is empanelled under each law reform programme.

### **(iii) Consultation Paper**

The Consultation Paper may precede or succeed the Issues Paper. It is normally a compilation of the views of the public on various issues arising from the area under reform. As such, a Consultation Paper may be developed based on issues outlined in the Issues Paper or it may raise issues which form the basis of an Issues Paper.

### **(iv) Research Paper**

A Research Paper is often published with a view to documenting desk or initial research related to a particular area under consideration. A Research Paper also determines authoritatively the existing legal position and identifies the shortcomings or deficiencies that need rectification. This Paper may contain empirical data on which the deliberations of the special Law Commission would be founded and justified.



A well stocked library ensures that Programme Officer carry out effective research

### 2.2.3 Phase III: *Appointment of Commissioners*

Persons with relevant expertise on the subject matter under consideration are appropriately identified and appointed by the Law Commissioner in consultation with the Judicial Service Commission. The persons appointed serve as Commissioners, on a particular law reform programme.

The work methodology for a programme is agreed upon by the Commissioners. The work is done through meetings in plenary where Commissioners meet and deliberate. This may include field visits and comparative study visits to other

and members of the public on the subject matter. These consultations may include sending out Working Papers for responses and comments. Invariably, workshops and focus group discussions are held to seek views prior to or on the recommendations of the special Law Commission.

### 2.2.5 Phase V: *Report and Draft Bill*

The special Law Commission then prepares a Report for publication. The Report sets out the problem areas, the status of the law in Malawi including international instruments and the special Law Commission's findings and recommendations for reform, taking into



Commissioners deliberating

jurisdictions. See Appendix 2 for a list of Commissioners serving on law reform programmes in 2010.

### 2.2.4 Phase IV: *Consultations*

Consultations are done with stakeholders

account its own research findings, submissions received from stakeholders, relevant Government policies, legislative trends in comparable foreign and regional jurisdictions. For all reports that have been produced by the Commission see Appendix 3.

The Report containing a proposed legislation is submitted to the Minister of Justice for its publication in the *Gazette* under the Minister's hand and the published Report is laid in Parliament by the Minister. The

Minister also submits the Report to Cabinet and if Cabinet adopts the recommendations of the Commission, the proposed legislation is adopted as a Government Bill and presented before Parliament for enactment.



The Ag. Chief Law Reform Officer presenting a final report

# Overview of Law Reform Programmes

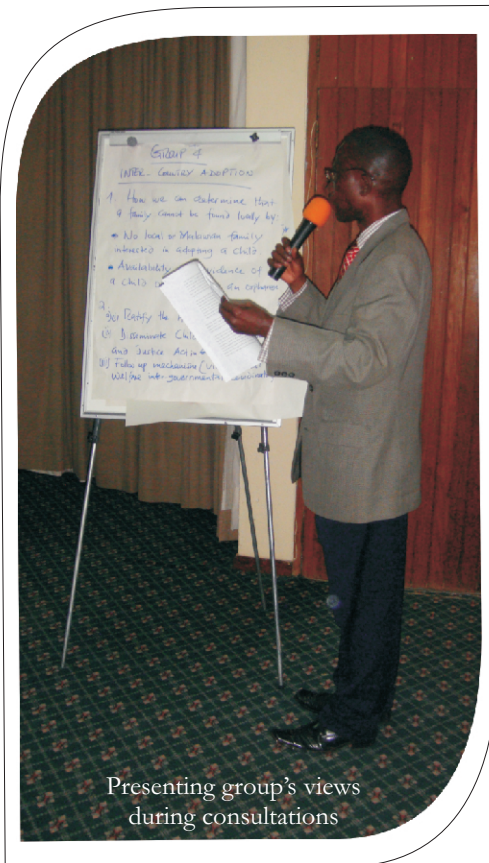
## 3.1 REVIEW OF ADOPTION OF CHILDREN ACT (CAP. 26:01, LAWS OF MALAWI)

The special Law Commission on the review of the Adoption of Children Act began its work in September, 2009 following submissions from the Ministry of Gender, Children and Community Development due to operational challenges experienced by Social Welfare Officers and Probation Officers in the Ministry. The review programme was also undertaken pursuant to submissions received from other institutions regarding the system and process of adoption of children in Malawi. The review Programme is being carried out with a view to clarifying the concept of adoption and to improving the provision of adoption services in Malawi in a manner that is consonant with the Constitution and the broad framework of the generally accepted international practice and international law obligations to which Malawi is a party.

The Commission has been meeting in plenary considering the provisions of the Act. It has also conducted one national consultative workshop and three regional consultative workshops as part of the review process. The

Commission also undertook a study visit to Namibia where it was hosted by the Namibia Law Reform Commission.

Currently, a draft report is in place and work on this Programme is expected to be concluded in the first half of 2011.



Presenting group's views during consultations

The officers responsible for this Programme are Mr. William Yakuwawa Msiska and Mrs. Eddah Chavula.

The Programme is being funded by United Nations Children's Fund (UNICEF).

### **3.2 REVIEW OF THE CHIEFS ACT (CAP. 22:03, LAWS OF MALAWI)**

The aim of this Programme is to review the Chiefs Act in light of the current constitutional order and other developments that have taken place in local government administration. The Chiefs Act was enacted on 29<sup>th</sup> December, 1967 and is generally perceived to be outmoded and not in line with the current constitutional, democratic and political order.

The Programme is being implemented in phases, the first being conducting field research and the development and publication of an Issues Paper. These activities were finalized and the Issues Paper has been published. The Commission is now looking for funds to commence the other phases of the Programme.

The officers responsible for this Programme are Mr. Mike Chinoko and Mrs. Eddah Chavula.

The first phase of the Programme was funded by the European Union (EU) through the Promotion of Rule of Law Program and Civic Education in Malawi.

### **3.3 REVIEW OF THE FIREARMS ACT (CAP. 14:07, LAWS OF MALAWI)**

The special Law Commission on the review of the Firearms Act began its work in July, 2009. The work of the Commission commenced based on submissions from the Ministry of Internal Affairs and Public Security to review the Firearms Act which was



Mr. Mike Chinoko Lead Programme Officer on the Review of the Chiefs Act



The special Law Commission being briefed during a study tour in South Africa

considered outdated and out of tune with 21<sup>st</sup> century security needs. The process has culminated in the development of a statute to govern all aspects of ownership, use and handling of firearms and ammunition.

The special Law Commission, in discharging its mandate, carried out consultations and held a national workshop. It also held specific meetings with special interest groups such as private firearm dealers, civil society organizations and public service. The Commission also conducted a comparative study visit to South Africa where it was hosted by the Central Firearms Registry of the South African Police Service.

The proposed legislation indicates a departure from the current framework as follows:

- (a) revision of the institutional framework the proposed law introduces new offices and officers and redefines roles of those involved in management of firearms and ammunition;
- (b) introduction of an accreditation process specifically targets institutions with respect to the roles that such institutions shall play

- under the proposed law;
- (c) introduction of competence certificates alongside firearm licences, competence certificates shall be issued upon receiving comprehensive training in handling and use of firearms and ammunition;
- (d) introduction of new administrative measures the word “permits” has been redefined and permits obtained in the process of applying for licences have been abolished;
- (e) revision of offences and penalties new offences and more severe penalties have been introduced;
- (f) introduction of regular amnesty schemes for people who illegally possess firearms and ammunition



Mr. Chizaso Eric Nyirongo  
Lead Programme Officer on the  
Review of the Witchcraft Act



and a separate scheme for voluntary

surrender of legally owned firearms;

- (g) prescription of the manner of destroying firearms; and
- (h) proposition that the Minister may declare, in the public interest, certain areas to be firearm free zones.

The special Law Commission has finalized its Report containing its findings and recommendations that led to the development of a proposed legislation. In November, 2010, the special Law Commission presented its findings and recommendations to the press at a briefing held at Capital Hotel in Lilongwe.

The Programme is funded by the European Union through the Promotion of Rule of Law Program and Civic Education in Malawi and the Malawi Government.

The officers responsible for this Programme are Mr. Chizaso Eric Nyirongo and Mrs. Eddah Chavula.

### **3.4 REVIEW OF THE LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT (CAP. 3:04, LAWS OF MALAWI)**

The Legal Education and Legal Practitioners Act Review Programme started in 2008 following submissions by the Malawi Law Society requesting a comprehensive review of the Act. In a Report published in the Malawi *Gazette* Supplement of 30<sup>th</sup> September, 2003, the special Law Commission on the review of the Legal Education and Legal

Practitioners Act mainly addressed issues of admission to practice profession of the law in Malawi. After the recommendations of that special Law Commission were enacted into law, the current and more comprehensive review of the Act commenced. The process has now been completed and the special Law Commission shall within the first half of the year hold a press briefing to announce its final findings and recommendations.

The main recommendations include introduction of an Institute of Legal Education which shall offer postgraduate legal education for those intending to practise the profession of law in Malawi. The Institute, which shall operate under the Council of Legal Education, shall also administer the Malawi Law Examinations. Malawians who have qualified and have been awarded a law degree from an accredited institution within Malawi or hold an approved foreign law qualification may enroll with the Institute in order to become eligible for admission to practice.

The Commission has also introduced comprehensive provisions to regulate the appointment of Notaries Public and conferment of the honour of Senior Counsel. The recommendations also touch on the establishment and management of legal practice and the discipline of legal practitioners. In that regard, the Commission has recommended the introduction of a Complaints Committee alongside the Disciplinary Committee. The latter, under the proposed law, shall have limited powers to punish errant legal practitioners.

Further, the Commission has also introduced provisions on the establishment of a Fidelity Fund and regulation of debt collection.

The Programme is funded by the European Union through the Promotion of Rule of Law Program and Civic Education in Malawi and the Malawi Government.

The officers responsible for this Programme are Mr. Chizaso Eric Nyirongo and Mrs. Eddah Chavula.



Mrs. Eddah Chavula one of the Programme Officer on the review of the Legal Education & Legal Practitioners Act

### **3.5 REVIEW OF THE PREVENTION OF DOMESTIC VIOLENCE ACT (ACT NO. 5 OF 2006)**

The special Law Commission on the review of the Prevention of Domestic Violence Act (PDVA) commenced its work in March, 2010 following submissions from the Ministry of Gender, Children and Community Development on the problems that were faced in implementing the current Act. This review Programme is to identify the problems that hamper the smooth implementation of the Act.

The Commission has been meeting in plenary and also carried out study visits to Mauritius and Namibia where it was hosted by the respective Law Reform



Commissions. The purpose of the study visits was to learn about best practices in the implementation of similar legislation on PDVA in the two jurisdictions. A report of the deliberations is being compiled alongside the meetings.

It is expected that the Programme shall be concluded in 2011.

The Programme is being funded by the United Nations Population Fund (UNFPA).

The officer responsible for this Programme is Mr. William Yakuwawa Msiska.

### **3.6 REVIEW OF THE SHERIFFS ACT (CAP. 3:05, LAWS OF MALAWI)**

The aim of this Programme is to review and reform the Sheriffs Act in light of the current constitutional order and other experiential developments that have taken place since the enactment of the Act.

The review process is scheduled to commence in the first half of 2011 and conclude in March, 2012. As a preliminary step, the Commission is

currently conducting consultations with various stakeholders and interested parties with the aim of gathering information to be used for the development of an Issues Paper. A special Law Commission is yet to be empanelled.

The preliminary activities of the Programme are being funded by Government.

The officers responsible for this Programme are Mr. Allison Mbang'ombe, Mr. Mtamandeni Liabunya and Mr. Francis Ekari M'mame.

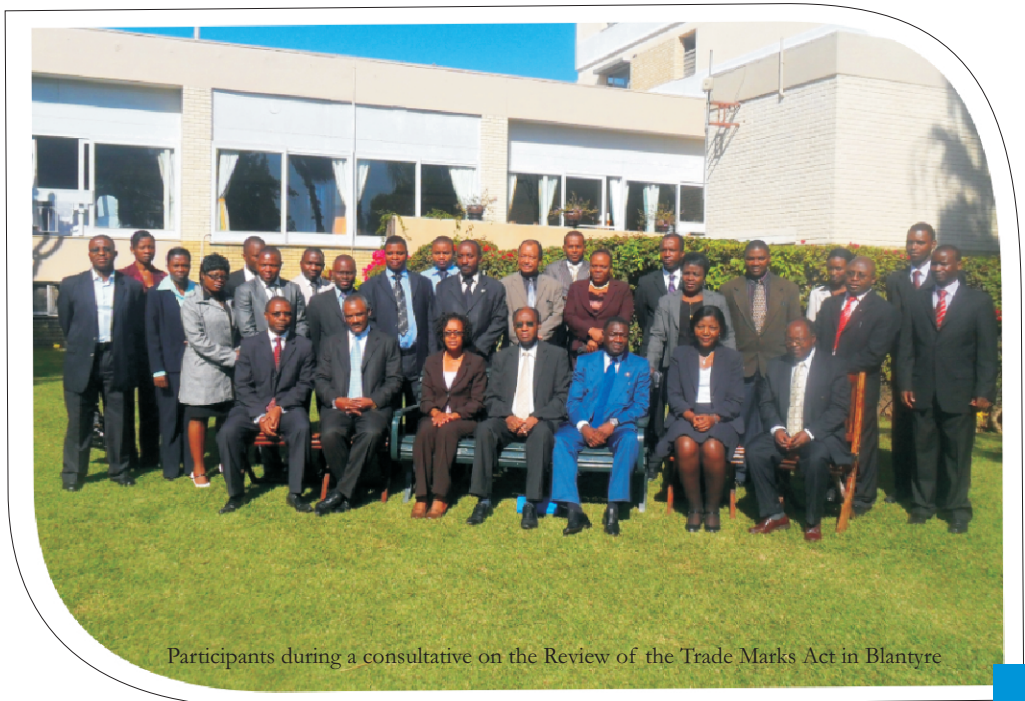


Mr. Francis Ekari M'mame one of the Programme Officer on the review of the sheriffs Act

### 3.7 REVIEW OF THE TRADE MARKS ACT (CAP. 49:01, LAWS OF MALAWI)

The special Law Commission for this Programme started its work in July, 2009. The review of the Trade Marks Act, Cap. 49:01 of the Laws of Malawi is the first phase of the review of intellectual property laws in Malawi. The main focus of the Commission is the review of laws that deal with trade marks, patents and registered designs. The review and modernization of the Trade Marks Act was prioritized as it was perceived to be the most widely utilized among the three statutes.

The rationale for the review of the Trade Marks Act is to bring the law in conformity with international instruments to which Malawi is a signatory such as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). These international instruments have set up



Participants during a consultative on the Review of the Trade Marks Act in Blantyre

new benchmarks and minimum standards that any Intellectual Property legislation is required to comply with. The review of the Trade Marks Act is also expected to implement in the law what has been proposed in the draft Intellectual Property Policy for Malawi which is expected to be adopted soon by Government. Just like any law reform programme, it is expected that this exercise will modernize the Trade Marks Act and bring it in conformity with the Constitution and applicable international law.

recommendations to the nation through a Press Briefing. The Secretariat is now working on the final Report for publication and onward submission to the Minister of Justice.

The Officers responsible for this Programme are Mr. Mike Chinoko and Mr. Allison M'bang'ombe.

The Programme is funded by the European Union through the Promotion of Rule of Law Program and Civic Education in Malawi.



The Commission conducted comparative study visits to Kenya and Zambia where it was hosted by the Kenya Industrial Property Institute and by the Zambia Companies and Intellectual Property Registration Office respectively. The special Law Commission concluded its deliberations on substantive matters and has also presented its findings and

### **3.8 REVIEW OF THE WITCHCRAFT ACT (CAP. 7:02, LAWS OF MALAWI)**

The Witchcraft Act came into force on 12<sup>th</sup> May, 1911. It is an Act that criminalizes trial by ordeal, witchcraft and the use of charms. The Law Commission received submissions from the public and various organizations to

review the Act, which, it is submitted, is not in tandem with realities on the ground in Malawi. In response to the submissions, the Law Commission initiated a research and produced an Issues Paper in November, 2009, for the purposes of soliciting views on the issue of witchcraft generally and the Act in particular. A special Law Commission was also empanelled in the same year 2009.

Following the production of the Issues Paper and the views received from the public, it became apparent that more consultations were necessary. The Law Commission therefore undertook consultations in the first quarter of 2010 in selected districts (13) in all the three regions of the country targeting traditional leaders, children, civil society

organizations, teachers, traditional healers, Police, elderly women and other relevant stakeholders.

At the meantime, the special Law Commission has commenced the substantive review of the Act, taking into account views solicited through the Issues Paper and the district consultations.

The Programme is being funded by the Malawi Government.

The Officers responsible for this Programme are Mr. Allison Mbang'ombe, Mr. Chizaso Eric Nyirongo and Mr. Francis Ekari M'mame.



Programme Officers in a discussion

# Public Awareness and Networking

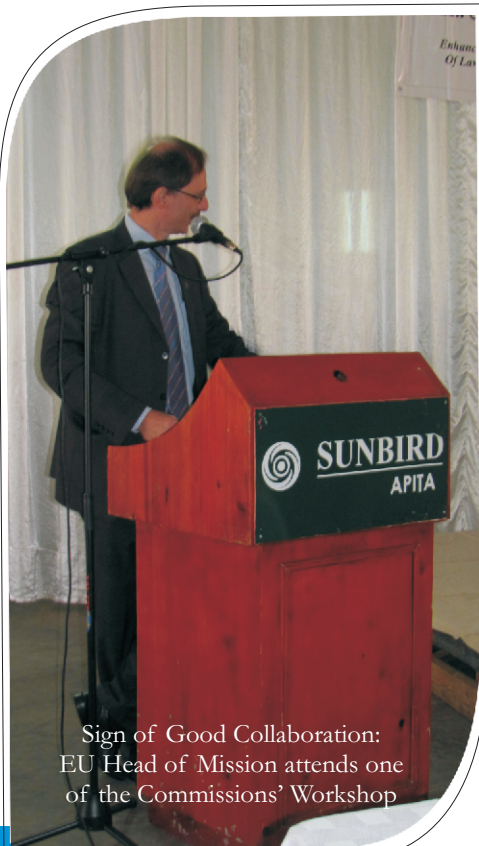


The Commission is mandated under the Law Commission Act to promote awareness of the laws of Malawi and the Constitution. The Commission is also empowered to sponsor, support or organize conferences, seminars, workshops and meetings on any matter under its consideration generally. Further

more, the Commission may produce its own publications. The need for a country-wide provision of information on the Constitution and Laws of Malawi and, on what laws have been reviewed and enacted is very important. These eventually enable an active participation of responsible citizens who respect the law and take an active part in law reform. The need for the public to know the process of law reform and the benefits of changing the law cannot be overemphasized. Understanding particular laws and the process of law reform is the beginning of successful advocacy efforts and compliance of the laws.

## 4.1 CIVIC EDUCATION

In order to improve the execution of the civic education and public awareness mandate, the Commission conducted workshops and a dissemination of information exercise on several laws in all the three regions of the country. A total of 24 districts were reached. The focus of the exercise was on the proposed legislation on gender equality, marriage, divorce and family relations, domestic violence, education and the recently enacted Child (Care, Protection and Justice) Act.



Sign of Good Collaboration:  
EU Head of Mission attends one  
of the Commissions' Workshop

The exercise was funded by UNFPA and EU through the Promotion of Rule of Law Program and Civic Education in Malawi.

## 4.2 PUBLICATIONS

The Commission developed publications that provided information on the work of the Commission and the status of the law in accessible multi lingual form and simplified content. The following publications were developed to disseminate information to Government departments and the public:



- (a) "The Law Reformer" magazine;
- (b) the Law Commission 2009 Annual Report;
- (c) calendars;
- (d) brochures;
- (e) factsheets; and
- (f) posters.

These publications were mainly funded by the Government of Malawi and partly by UNFPA and EU through the

Promotion of Rule of Law Program and Civic Education in Malawi.

## 4.3 STAKEHOLDER COLLABORATION

In order to develop and maintain good working relationships with stakeholders and the public, the Commission conducted a stakeholder forum in Blantyre from 24<sup>th</sup> to 26<sup>th</sup> March, 2010 for the Commission's partners. A cross section of participants were drawn from the academia, the media, traditional leadership, civil society, faith organizations, constitutional bodies,

local Government, the Police Service, the Prison Service, the legislature, the youth and Government ministries. Apart from discussing issues pertaining to law reform, participants contributed to the contents of the Commission's Strategic Plan for 2010 to 2015.

The Commission also participated in programmes organised by other stakeholders at local and national level.

#### 4.4 PRESS BRIEFINGS

The Commission organize Press Briefings to familiarize the media with its work so that they can in turn provide accurate information to the public. Press briefings also serve to announce the end of a law reform programme. The Commission's findings and recommendations are shared with the media at the end of every law reform programme.

The Commission conducted Press Briefings on two completed programmes, and these were:



- (a) the Review of Firearms Act on 12<sup>th</sup> November, 2010; and
- (b) the Review of Trade Marks Act on 16<sup>th</sup> November, 2010.

#### 4.5 STATUS OF LAW REFORM

The Commission also provided information to both the print and broadcasting media on various law reform programmes. The information was in relation to on going as well as completed law reform programmes. Appendix 3 is a list of completed law reform programmes and their status.

#### 4.6 INTERNATIONAL COOPERATION AND NETWORKING

The Commission promotes international cooperation and networking with other Law Reform agencies. In September, 2010, the Commission received from the Scottish Law Commission in the United Kingdom, Mr. Gary Mc Lean. Mr. Mc Lean has been seconded for six months at the Commission. He has, since his arrival, been assigned to the Intellectual Property Law Review Programme. He holds an LLB from University of Edinburgh in Scotland.

The Law Commission is also one of the founding members of Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA). ALRAESA was founded by the law reform agencies of Kenya, Lesotho, Malawi, Namibia, South Africa, Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe in 2000, following a seminar which was held in Dar es Salaam, Tanzania under the theme “*Best Practices in Law Reform*”.



At ALRAESA, members regularly hold conferences where they discuss and share best practices in law reform. In 2010, the ALRAESA Conference and



Annual General Meeting were held at Lesotho Sun Hotel in Maseru, Lesotho from the 11<sup>th</sup> to 14<sup>th</sup> day of October, 2010. The theme of the conference was “*Good Governance and Rule of Law*”. The Malawi delegation comprised Mr. Allison Mbang'ombe, who led the team, Mr. Chizaso Eric Nyirongo and Mr. Francis Ekari M'mame. On the sidelines of the conference, office bearers also held an Executive Committee meeting of the governing body of ALRAESA. At the 2010 Annual General Meeting, elections were held and the results were as follows:

(a) Chairperson : Namibia

- (b) First vice chairperson: Lesotho
- (c) Second vice chairperson: Uganda
- (d) Secretary General : Malawi
- (e) Treasurer: South Africa
- (f) Ordinary members: Kenya, Zimbabwe, Tanzania

The name submitted as the contact person for Malawi is Mr. Chizaso Eric Nyirongo. It was further agreed that Malawi will host the 2011 Annual General Meeting.

Table 1 shows other international workshops, conferences and study visits that staff of the Commission attended in 2010:

Table 1 shows other international workshops, conferences and study visits that staff of the Commission attended in 2010:

Workshops, Conferences and Study Visits			
Conference or Programme	Place	Period	Name of Officer(s) or Commissioners
Commonwealth Association of Legislative Counsel and Commonwealth Lawyers Association	Nigeria	7 <sup>th</sup> to 10 <sup>th</sup> April, 2010	Mrs. G. L. Hiwa Mr. C. E. Nyirongo
Third Meeting of the Special Commission on the Practical Operation of the Hague Convention 1993	Netherlands	17 <sup>th</sup> – 25 <sup>th</sup> June, 2010	Mr. W. Y. Msiska
Review of the Adoption Act	Namibia	12 <sup>th</sup> - 18 <sup>th</sup> July, 2010	Justice Chombo Mrs. G.L. Hiwa Mr. A. Chinula Mr. C. Nyirenda Mr. P. Kilembe Dr. A. Mvula Mr. W. Msiska
Review of the Firearms Act	South Africa	24 <sup>th</sup> – 28 <sup>th</sup> May, 2010	Mr. G. Kainja Mrs. G.L. Hiwa Mr. U. Mwakasungula Mr. J. Mkandawire Mr. C. Nyirongo
Review of the Prevention of Domestic Violence	Mauritius and Namibia	22 <sup>nd</sup> – 29 <sup>th</sup> August, 2010	Justice I. Kamanga Mrs. G. L. Hiwa Mrs. F. Kalemba Mr. W. Msiska
Review of the Trade Marks Act	Kenya	26 <sup>th</sup> – 31 <sup>st</sup> July, 2010	Justice I. Mtambo Mrs. G.L. Hiwa Mr. G. Mkandawire Mr. C. Phiri Mr. Chirwa Mr. M. Chinoko
Review of the Trade Marks Act	Zambia	26 <sup>th</sup> – 31 <sup>st</sup> July, 2010	Mr. M. Chirambo Mr. D. Makwerero Mr. A. Mbang'ombe

# Finance, Administration and Human Resource



The Commission requires an enabling adequate financial, logistical and man power support to fulfill its mandate. The Commission's financial resources are drawn from the Consolidated Fund of the Government of Malawi and from development partners. For the execution of its mandate, the Commission has a well established structure of finance, administration and human resource sections that provide logistical and man power support. Management of the

resources, human and financial has been enhanced by its institutional capacity building and financial management systems.

## 5.1 FINANCE

In 2010, the Commission had financial expenditures as per budgetary allocations in the financial years 2009/10 and 2010/11 in Malawi Kwacha as shown in the graph below:



Accounts Personnel strategising

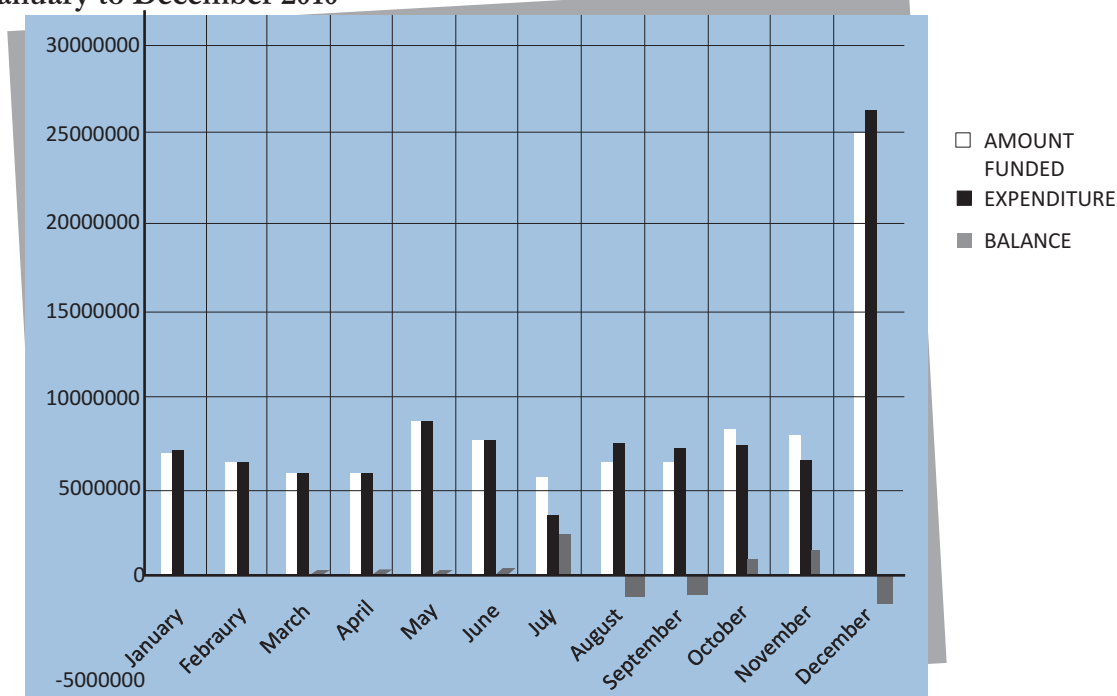
## 5.1 ADMINISTRATION

The Administration Section plays a central role to the operations of the Commission. It mobilizes resources, provides logistical and manpower support and has a well established structure of administration, library and information technology.

management tool for refocusing the future of the Commission, determining priorities within the limited resources, resolving challenges in a purposeful and coordinated manner and re-energizing the collective efforts to meet stakeholders' needs.

The development of this Strategic Plan

### Law Commission Funding and Expenditure Progressions from January to December 2010



### 5.2.1 Strategic Plan

The development of the third Strategic Plan has been completed. The third Strategic Plan covers the period 2010 to 2015. It will serve as an invaluable

has been supported by the European Union through the Promotion of Rule of Law Program and Civic Education in Malawi under Programme Estimates Number III through the Short Term Experts Facility.

### 5.2.2 Event Management Guidelines

Lack of skills and a comprehensive framework to guide staff on the best way to hold successful events made it extremely difficult to effectively regulate and enforce performance standards in event management. In the past, the Commission has organized a significant number of events based on a combination of simple individual experience and a partial understanding of the underlying principles and practices for effective event management. The Commission has now developed Event Management Guidelines that seek to assist staff in the management of events and improve the delivery of event related services.

## 5.2 HUMAN RESOURCE DEVELOPMENT AND MANAGEMENT

The Human Resource Development and Management facilitated a number of recruitments and trainings for its staff to attain skills that will assist the Commission achieve its mandate.

### 5.3.1 Recruitment

The Human Resource Section facilitated recruitment of officers filling various vacant posts as follows:

- (a) Mr. Derex Souza Civic Education Officer on 4<sup>th</sup> January, 2010;
- (b) Mr. Mtamandeni Liabunya Law Reform Officer on 6<sup>th</sup> April, 2010;
- (c) Mr. Francis Ekari M'mame-Assistant Law Reform Officer on 28<sup>th</sup> April, 2010;
- (d) Mr. Alexander Thyangathyanga Principal Systems Analyst on 3<sup>rd</sup> August, 2010; and
- (e) Mr. Chikumbutso Nichodemus Sitima Assistant Law Reform Officer on 8<sup>th</sup> November, 2010.

### 5.3.2 Resignations

The following officers resigned from the Commission:

- (a) Mr. Romen Hasha Dube - Principal Systems Analyst on 21<sup>st</sup> March, 2010; and
- (b) Mrs. Fiona Atupele Mwale Deputy Chief Law Reform



Human resource Personnel briefing staff

officer on 1<sup>st</sup> June, 2010.

### 5.3.3 Promotions

The following officers were promoted to various positions:

- (a) Mr. Mike Chinoko from Law Reform Officer to Assistant Chief Law Reform officer with effect from 17<sup>th</sup> June, 2010;
- (b) Mrs. Doreen Msendema from Assistant Procurement Officer to Procurement Officer with effect

from 26<sup>th</sup> August, 2010; and

- (c) Dr. Chikosa Mozesi Silungwe from Assistant Chief Law Reform officer to Deputy Chief Law Reform Officer with effect from 13<sup>th</sup> December, 2010.

### 5.3.4 Training

Table 2 shows staff of the Commission who attended various long and short term trainings to enhance their Capacity:

TRAININGS			
Long Term Trainings			
Course Attended	Place and Institution	Period	Name of Officer
Accounts Assistant Training	Malawi, Malawi College of Accountancy	Two year programme from July, 2010	Mr. F. Kapalamula, Accounts Assistant
Certificate in Library and Information Studies	Malawi, Malawi Library Association	Quart year programme from August to December, 2010	Ms. M. Makhuludzo, Library Assistant
Short Term Trainings			
Legislative Drafting for Africa Member States	Ghana, Ghana School of Law	26 <sup>th</sup> July, to 15 <sup>th</sup> October, 2010	Mr. M. Liabunya, Law Reform Officer and Mrs. E. Chavula, Law Reform Officer
29 <sup>th</sup> Annual Course on International Legal Information and the Law	Netherlands, Hague Academy of International Law	5 <sup>th</sup> to 9 <sup>th</sup> September, 2010	Mr. N. Benje, Librarian
Business Process Management in Government and State Owned Enterprises	South Africa, Intelligent Transfer Centre	14 <sup>th</sup> to 16 <sup>th</sup> September, 2010	Mr. L. D. Winga, Director of Administration and Finance
Child Rights, Classroom, and School Management	Sweden, Lund University	20 <sup>th</sup> September, to 14 <sup>th</sup> October, 2010	Mr. D. Souza, Civic Education Officer
Human Rights in Africa Course	South Africa, University of Pretoria	18 <sup>th</sup> to 22 <sup>nd</sup> October, 2010	Mr. M. Chinoko, Assistant Chief Law Reform Officer
Result Oriented Management	South Africa, ESAMI	6 <sup>th</sup> to 10 <sup>th</sup> December, 2010	Mrs. D. Migochi, Controller of Human Resource Management and Development and Mr. F. Mpapa, Under Secretary



# Conclusion

In 2010, the Commission saw some significant development in the relationship between the Commission, Government and several development partners. The Commission therefore looks ahead to enhancing its service delivery and make law reform process more consultative and even more user-friendly.

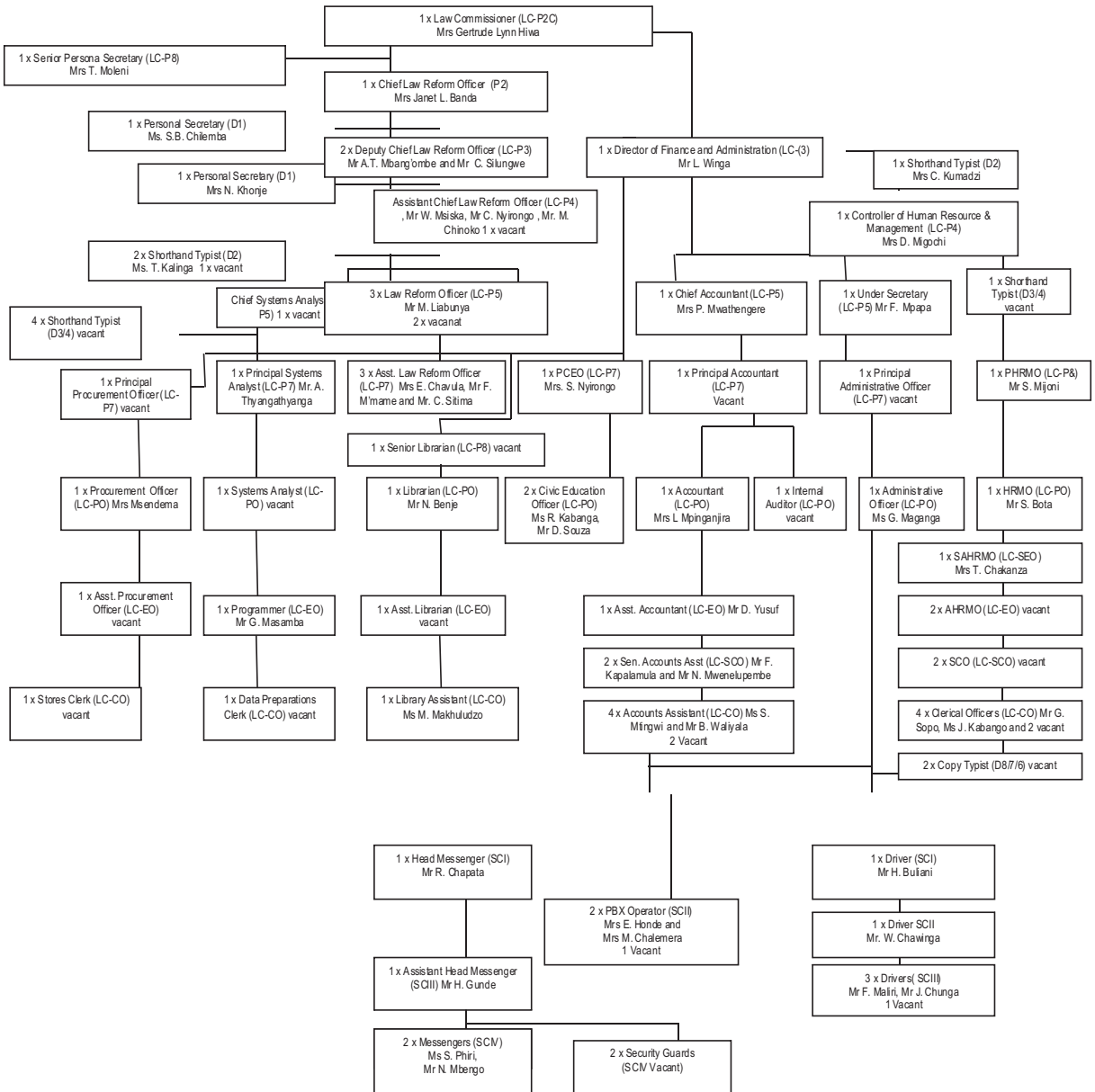
In the year 2011, the Commission will always be committed to adhering to the principles of impartiality, transparency, accountability and fairness in discharging its functions as mandated by the Constitution and the Law Commission Act.

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# Appendices

# Appendix 1

LAW COMMISSION ORGANISATION CHART AS AT 31<sup>ST</sup> DECEMBER, 2010,



Total filled	:	50
Total Vacant	:	34
Total Establishment	:	84



# Appendix 2

## Members of Special Law Commissions in Various Law Reform Programmes

Programme	Members	Institution Represented
Prevention of Domestic Violence Act	Justice Ivy Kamanga - Chairperson	Judiciary
	Mrs. Fiona Kalemba	Ministry of Justice and Constitutional Affairs
	Mrs. Gertrude Lynn Hiwa	Law Commissioner
	Mr. Chrispin Sibande	Malawi Human Rights Commission
	Ms. Tinyade Kachika	Civil Society
	Mr. Joseph Kazima	Ministry of Gender, Children and Community Development.
Adoption of Children	Honourable Justice Esme H. Chombo - Chairperson	Judiciary
	Ms. Hyacinth Kulemeka - Deputy Chairperson	Ministry of Gender, Children and Community Development
	Mrs. Gertrude Lynn Hiwa	Law Commissioner
	Mr. Anthony D Kamanga, SC	Ministry of Justice and Constitutional Affairs
	Dr. Aubrey H. Mvula	Malawi Human Rights Commission
	Mr. Bruno Kalemba	Department of Legal Aid
	Mr. Peniston Kilembe	Ministry of Persons with Disabilities and Elderly
	Mr. Willard Manjolo	Ministry of Gender, Children and Community Development
	Mr. Allan Chinula	Malawi Law Society
	Mr. Cuthbert Q. Nyirenda	Civil Society
Mrs. Esther Maseko Masika	Civil Society	
Legal Education and Legal Practitioners Act	Justice Duncan Tambala - Chairperson	Judiciary
	Mr. Necton Mhura - Deputy Chairperson	
	Mrs. Gertrude Lynn Hiwa	Law Commissioner
	Mr. Pempho Likongwe	Malawi Law Society
	Mrs. Rosemary Kanyuka	Ministry of Justice and Constitutional Affairs
	Mr. Matthews Chikankheni	Malawi Confederation of Chambers of Commerce and Industry
	Mr. Mavuto Bamusi	Civil Society
	Ms. Patricia Mwase	Private Sector
Firearms Act	Mr. George Kainja - Chairperson	Malawi Police Service
	Mr. Undule Mwakasungula - Deputy Chairperson	Civil Society

	Mrs. Gertrude Lynn Hiwa	Law Commissioner
	Mr. Pacharo Kayira	Ministry of Justice and Constitutional Affairs
	Mr. Joseph Mkandawire	Ministry of Internal Security and Public Affairs
Trade Marks Act	Justice Isaac Mtambo, SC - Chairperson	Judiciary
	Mr. Mzondi Chirambo	Malawi Law Society
	Mrs. Gertrude Lynn Hiwa	Law Commissioner
	Mr. Chapusa Phiri	Registrar General
	Ms. Dorica Phiri	University of Malawi, Faculty of Law
	Mr. Derby Makwelero	Ministry of Industry, Trade and Private Sector Development.
	Mrs. Eleanor Chirwa	Malawi Revenue Authority
	Mr. Wilford Mathiya	Pharmacy, Medicine and Poisons Board
	Mrs. Annabel Mtalimanja	Ministry of Justice and Constitutional Affairs
	Mr. Geoff Mkandawire	Private Sector
Witchcraft Act	Justice Robert. R. Chinangwa - Chairperson	Judiciary
	Mrs. Clotilda Sawasawa - Vice Chairperson	Ministry of Gender, Children and Community Development
	Mrs. Gertrude Lynn Hiwa	Law Commissioner
	Mr. Wezi Kayira	Ministry of Justice and Constitutional Affairs
	Mr. Rodrick C. Makono	Malawi Law Society
	Mr. Sangster S. Nkhandwe	Faith Based Organization
	Dr. Pierson Ntata	University of Malawi
	Dr. M.P.K.J. Theu	Herbalist Association of Malawi
	Senior Chief Malemia	Traditional Leader

# Appendix 3

## List and Status of Law Reform Programmes (1996-2010)

No.	Report Title	Year of Publication	Proposed Legislation	Status
1.	Review of certain laws on Defilement of young girls, Wills and Inheritance, Citizenship, Marriage and Affiliation	October, 1996	1. Penal Code, Defilement of young girls, (Amendment) Bill	Enacted in 1997 and 1998
			2. Wills and Inheritance Act (Amendment) Bill	Enacted in 1997 and 1998
			3. Citizenship Act (Amendment) Bill	
			4. Marriage Act (Amendment) Bill	
			5. Affiliation Act, (Amendment) Bill	
2.	Technical Review of the Constitution	November, 1998	Constitution (Amendment) Bill	Enacted between 2001 and 2010
3.	Criminal Justice reform on Bail Guidelines	February, 2000	Bail (Guidelines) Bill	Enacted in 2000 as Act No. 8
4.	Review of the Penal Code	June, 2000	Penal Code (Amendment) Bill	Enacted 2011
5.	Review of the Army Act	July, 2001	Defence Forces Bill	Enacted in 2004 as Act No. 11
6.	Review of Censorship and Control of Entertainment Act	August, 2001	Classification of Public Entertainment and Publications Bill	Before Cabinet
7.	Legal Education and Legal Practitioners Act	September, 2002	Legal Education and Legal Practitioners (Amendment) Bill	Enacted in 2004 as Act No. 9
8.	Review of the Corrupt Practices Act	November, 2002	Corrupt Practices (Amendment) Bill	Enacted in 2004 as Act No. 17
9.	Review of the Police Act	July, 2003	Police Bill	Enacted in 2010 as Act No. 12
10.	Review of the Criminal Procedure and Evidence Code	December, 2003	Criminal Procedure and Evidence Code (Amendment) Bill	Enacted in 2010 as Act No. 14
11.	Criminal Justice Reform on Conversion of Fines	December, 2003	Fines (Conversion) Bill	Enacted in 2005 as Act No. 10
12.	Review of the Wills and Inheritance Act	January, 2004	1. Deceased Estates, (Wills, Inheritance, and Protection) Bill	Before Parliament
			2. Estate Duty (Amendment) Bill	
13.	Review of the Legal Aid Act	July, 2005	Legal Aid Bill	Before Parliament

14.	Review of Children and Young Persons Act	October, 2005	Child (Care, Protection and Justice) Bill	Enacted in 2010 as Act No. 22
15.	Review of the Land Related Laws	March, 2010	1. Land Bill	Before Cabinet
			2. Customary Land Bill	
			3. Registered Land (Amendment) Bill	
			4. Physical Planning Bill	
			5. Forestry (Amendment) Bill	
			6. Public Road (Amendment) Bill	
			7. Mines and Minerals (Amendment) Bill	
			8. Land Survey Bill	
			9. Land Acquisition (Amendment) Bill	
			10. Local Government (Amendment) Bill	
			11. Malawi Housing Corporation (Amendment) Bill	
			12. Companies (Amendment) Bill	
16.	Review of the Laws on Marriage and Divorce	June, 2006	1. Marriage, Divorce and Family Relations Bill	Before Cabinet
			2. Penal Code (Amendment) Bill	
17.	Review of Traditional Courts Act	September, 2007	Local Courts Bill	Before Parliament
18.	Review of the Constitution	September, 2007	1. Constitution (Amendment) Bill	Before Cabinet
			2. Constitution (Amendment) (No. 2) Bill	
			3. Impeachment of President Bill	
			4. Political Parties Registration and Regulation (Amendment) Bill	
			5. Electoral Commission (Amendment) Bill	
			6. Parliamentary and Presidential Elections (Amendment) bill	
			7. Courts Act (Amendment) Bill	
			8. Ombudsman (Amendment) Bill	

19.	Report on the development of Legislation on Declaration of Assets, Liabilities and Business interests by Public and Elected Officers	August, 2008	1. Declaration of Assets, Liabilities and Business Interests Public and Elected Officers Bill	Before Cabinet
			2. Parliamentary and Presidential Elections (Amendment) Bill	
			3. Local Government Elections (Amendment) Bill	
20.	Report on Development of HIV & AIDS Legislation	December, 2008	1. HIV and AIDS (Prevention & Management) Bill	Before Cabinet
			2. Employment (Amendment) Bill	
21.	Review of Education Act	March, 2010	Education Bill	Before Cabinet
22.	Development of Gender Equality			Being published at Government Press
23.	Development of Human Trafficking			Being published at Government Press





