

The Law Commission

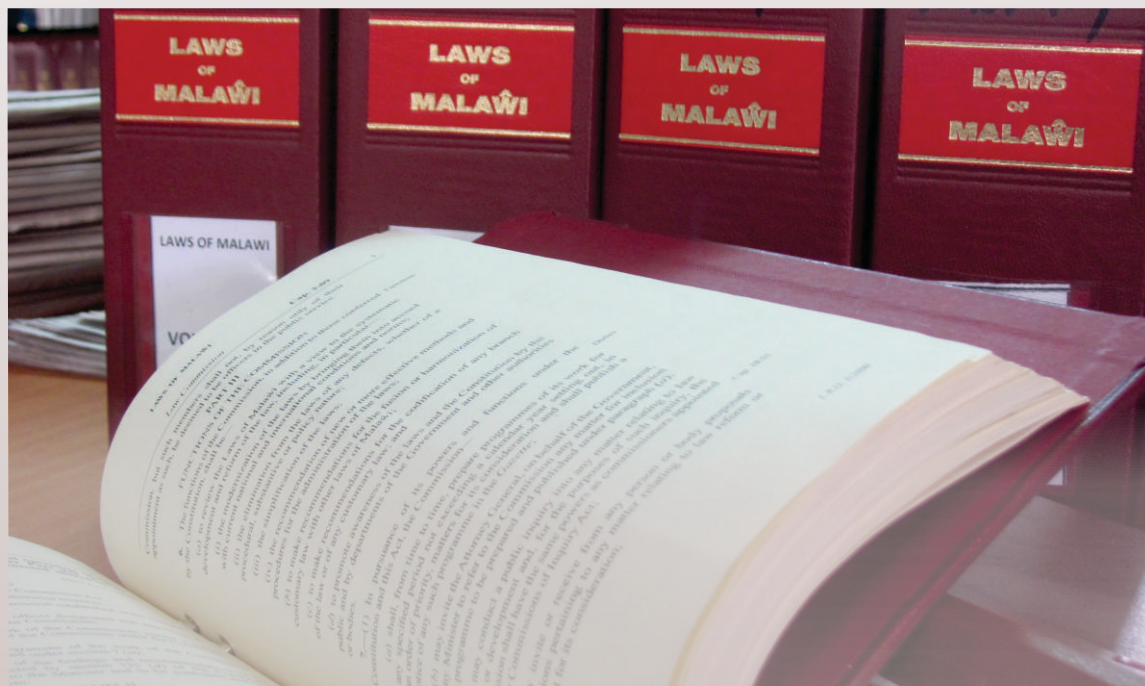
Annual Report 2012



**A Law Reform
Institution in
Malawi**



The Law Commission



Providing a Dynamic Service to the People of Malawi through Systematic Development and Reform of Laws



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AIDS:	Acquired Immunodeficiency Syndrome
ALRAESA:	Association of Law Reform Agencies for Eastern and Southern Africa
Cap.:	Chapter
CALRAs:	Common Wealth Law Reform Agencies
CBJ:	Capacity Building for Justice
Commission:	Law Commission
DGP:	Democratic Governance Programme
ESAMI:	Eastern and Southern Africa Management Institute
EU:	European Union
GoM:	Government of Malawi
HIV:	Human Immunodeficiency Virus
IEC:	Information, Education and Communication
JA:	Justice of Appeal
MCR:	Mzimba Community Radio
MGDS:	Malawi Growth Development Strategy
MoH:	Ministry of Health
OPC:	Office of the President and Cabinet
ORT:	Other Recurrent Transactions
PCT:	Patent Cooperation Treaty
PLT:	Patent Law Treaty
PDVA:	Prevention of Domestic Violence Act
PSIP:	Public Sector Investment Programme
RoL:	Rule of Law
SADC:	Southern African Development Community
SC:	Senior Counsel
SP:	Strategic Plan
TRIPS:	Trade Related Aspects of Intellectual Property Rights
UNICEF:	United Nations Children's Fund
UNFPA:	United Nations Population Fund
WHO:	World Health Organisation
WIPO:	World Intellectual Property Organization



Gertrude Lynn HIWA, SC
LAW COMMISSIONER

The year 2012 ended for the Law Commission with a sense of great accomplishment and commendable initiative. The twelve (12) months past have been full of activity as the Commission undertook various programmes on law reform and public awareness. 2012 came with it a myriad of duties and responsibilities as detailed in the Law Commission Annual Work Programme of 2012. The Law Commission carried on with four (4) law reform programmes and commenced eight (8). Law reform as a process of examining existing laws, implementing changes in a legal system with the aim of enhancing justice or efficiency, necessitated the Commission to be receptive to new submissions even though the subject areas to be considered for reform were not included in the Annual Work Programme of 2012.

Considering the numerous calls for legislative reform, in the implementation of its mandate, the Commission strives to foster for social, economic, legal and environmental changes that will positively impact the lives of Malawians and the operations of our country. The Commission further strives towards the enhancement of the rule of law through law reform for the common good. It is in this spirit that I present the 2012 Annual Report for the Law Commission which provides an official account of the Commission's activities for the year ended.

The four (4) programmes that have been carried on from 2011 are being undertaken in various areas of reform in order to protect vulnerable groups, uphold constitutional rights, increase access to justice and development as well as improve public health. With the need to also improve the private sector operations and the legal environment, there are laws that are being reviewed to enforce property rights but also encourage creativity and protect investment. These programmes include reviews of the Prevention of Domestic Violence Act (PDVA); the Sheriffs Act; the Chiefs Act; and the Public Health Act.

The eight (8) programmes that the Commission commenced will contribute to the upholding of intra-party democracy, advocate for the respect of the rights of individuals, improve on the electoral system, bring about certainty, uniformity and consistency in formal justice delivery, and regulate mining as well as the alignment of prisons (reformatory centers) with constitutional and international standards. These programmes are on the review of Laws Regulating Political Parties; review of Certain Aspects of the Penal Code; review of Certain

Aspects of the Constitution; development of Statutory Sentencing Guidelines; review of Laws Regulating the Extractive Industry; and the Review of the Prison Act.

The Commission continues to put its human and financial resources to the best use in order to finalize its programmes with the realization that completion of such will add value to democracy, governance and constitutionalism in Malawi. The special Law Commissions on the Review of Public Health Act; the Sheriffs Act; and the Chiefs Act respectively, proceeded with their work per their work plans and hopefully will finalize their work with the development of Reports including draft legislation. The review of the Patents Act, the Sheriffs Act, Certain Aspects of the Penal Code, the Prisons Act and the development of Statutory Sentencing Guidelines programmes are midway but at various stages towards completion. The new programmes are, at the conclusion of 2012, in their very initial stages.

Although the implementation of the programmes was largely smooth, there were still some setbacks. The Review of the Prevention of Domestic Violence Act (PDVA) programme has been adversely affected by intermittent funding. The Commission is yet to conclude the programme. Similarly, the programme on the Review of the Witchcraft continues to stall due to lack of funds.

The Commission's 2012 Annual Work Programme also tasked the Commission to continue promoting awareness of applicable laws to the public and Government's departments. The Commission made good progress in this regard in 2012. Specific

Government departments and institutions reached, include: the Malawi Police Service, the Defence Force, District Councils, the Department of Legal Aid, the Prisons Service, the Judiciary, the Immigration Department and the University of Malawi. Other institutions also reached by the Commission include the Malawi Law Society, the private sector, diplomatic corps, the media and civil society. The target audience was not only adequately made aware of the laws, but the Commission also used this as an opportunity to interact and get feedback regarding the laws.

In the same vein, the Commission also developed a range of publications and user friendly IEC materials which were later translated into local languages. In executing its mandate, the Commission takes into account the diversity of our society and the need to reach out to every citizen. The Commission also wishes to announce the launch, in 2012, of a radio programme styled "*Lamulo Langa*" – "My Law" in English which is airing on Malawi Broadcasting Corporation (MBC). The same programme is being aired in Tumbuka under the name "*Timanye Dango*" – "Know the Law" by Mzimba Community Radio (MCR) as well as in Yao "*Tupikanichisye Malamusi*" – "Lets Understand the Law" by Radio Maria. The Commission is of the view that employing a combined or a range of strategies will help it to reach out to more people taking into account diversity.

By all measure, 2012 was a successful year for the Commission. And for this reason, I would like to

express my sincere and heartfelt gratitude to our
Government and cooperating partners who





Stakeholders from all sectors of society took part in a national consultation exercise on the Review of the Chiefs Act, a process that will enable the Commission to proceed with their work in finalizing the development of Reports including draft legislation.



Part 1

Overview of the Law Commission

1.1 ESTABLISHMENT

The Law Commission (the “Commission”) is established as an independent constitutional body funded by the Government with a view to improving and updating the laws of Malawi. Its main role is advisory to the Government on law reform, law review and law development. The Commission is committed to discharging its mandate in a transparent, independent and accountable manner.

1.2 FUNCTIONS

The functions of the Commission are:

1.2.1 Under the Constitution

Section 135 of the Constitution empowers the Law Commission 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.

1.2.2 Under the Law Commission Act

Section 6 requires the Law Commission, in addition to the constitutional functions to:

- (a) 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) make recommendations for the fusion or

harmonization of customary law with other laws of Malawi;

- (c) make recommendations for the codification of any branch of the law or of any customary law; and
- (d) promote awareness of the laws and the Constitution to the public and to departments of the Government and other authorities or bodies.

1.3 INSTITUTIONAL SET UP OF THE COMMISSION

The Commission is headed by the Law Commissioner who is appointed by the State President in that position for a renewable term of 5 years. The Presidential appointment is based on recommendation by the Judicial Services Commission. Other officers of the Commission are appointed by the Law Commissioner and are officers in the public service.

Mrs. Gertrude Lynn Hiwa, SC, the current Law Commissioner is the third Law Commissioner and was appointed in this capacity while serving as Chief Parliamentary Draftsperson in the Ministry of Justice and Constitutional Affairs.

The core business of the Commission is undertaken by the Law Reform Division whose mandate involves legal research, law review and development, legislative drafting and civic education. The Corporate Services Division provides support services to the Law Reform Division, in general, which includes administration, human resource management and accounting services, among others. The Commission's organogram, as at 31st December, 2012, is attached to this Report as Appendix I.

1.4 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 in carrying out its mandate;

Credibility: with all organs of the State, development partners and the public;

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

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

1.5 GOAL

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

1.6 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.

1.7 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.

1.8 MISSION STATEMENT

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

Officers of the Commission serve as officers in the public service. Mr. Liabunya (left) and Mr. Sitima (right)





Overview of the 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. As the year 2012 ends, the Commission has developed its 2013 Annual Work Programme. See appendix II for the 2013 Annual Work Programme.

2.2 LAW REFORM PROCESS

The law reform process undergoes the following phases:

2.2.1 Phase I: Identification of A Law Reform Area

There are basically three (3) methods through which a law reform area is identified. An area can be identified through submissions received from the 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 change. 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 an 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 develop working papers. Working papers outline issues which may guide the work of special Law Commissions. These papers include Research Papers, Consultation Papers, Issues Papers and Discussion Papers.

(i) Research Paper

A Research Paper is often published with a view to documenting 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 proposals for reform may be founded and justified.

(ii) 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 responses to issues outlined in the Issues Paper or it may raise issues which form the basis of an Issues Paper.

(iii) Issues Paper

In order to guide the reform process, the Commission, at an early stage, determines issues that arise in the area of a law proposed for reform or



development. It then publishes the issues in an Issues Paper. The Issues Paper is a consultation tool and serves to announce an investigation into a particular area of law reform or development and to clarify the aim and scope of the process.

(iv) Discussion Paper

When the issues have been identified, the Commission makes further inquiry into the subject matter under reform with a view to providing a range of proposals for reform. The result is published as a Discussion Paper. The Discussion Paper is a key working document for each special Law Commission empanelled under a law reform programme.

2.2.3 Phase III: Appointment of Commissioners

Persons with relevant expertise on the subject matter under consideration are 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 special Law Commissions is agreed upon by the Commissioners. Mostly the work of the Commission is done through meetings in plenary where Commissioners meet and deliberate. Special Law Commissions may also conduct field visits and comparative study visits to other jurisdictions. See Appendix III for a list of Commissioners who served on law reform programmes in 2012.

2.2.4 Phase IV: Consultations

Consultations are done with stakeholders and members of the public on the subject matter. These consultations may include sending working papers for responses and comments; workshops; focus group discussions; and field research. These consultations are aimed at seeking views of the stakeholders prior to or on the recommendations of the special Law Commissions.

2.2.5 Phase V: Report and Bill

The special Law Commission then develops a Report containing its findings and recommendations for reform. The Report including a proposed Bill is submitted to the Minister of Justice for laying in Parliament and for submission to the Cabinet. If Cabinet adopts the recommendations of the Commission, the proposed legislation is adopted as a Government Bill and presented before Parliament for enactment.

For a list of Reports that have been produced by the Commission, see Appendix IV.

Commissioners conducting consultations



Part 3

Law Reform Programmes



3.1 REVIEW OF THE CHIEFS ACT (Cap.22:03)

The Chiefs Act was enacted into law in December, 1967. It provides for the recognition, appointment and functions of Paramount Chiefs, Senior Chiefs, Chiefs, Sub-Chiefs, Councillors, Group Village Headmen and Village Headmen; and for certain aspects of District Administration. Being an Act promulgated over forty (40) years ago, most of the provisions are now considered archaic and not in tandem with the new democratic dispensation.

The special Law Commission on the Review of the Chiefs Act was empanelled in March, 2012. The mandate of the special Law Commission was to carry out a general review of the Chiefs Act with a view to developing a new legislative framework to regulate the office of chieftaincy that promotes democratic principles of transparency and accountability in accordance with the Constitution and international practice.

The special Law Commission comprises representatives of the Judiciary, Ministry of Local Government and Rural Development, Ministry of Justice and Constitutional Affairs, Malawi Law Society, Civil Society and Chiefs. The special Law Commission commenced its work in the month of April, 2012.

In 2012, the special Law Commission held six (6) Commission meetings during which it has substantially considered all the provisions in the Chiefs Act including its subsidiary legislation under Chiefs (Staff)(Emoluments, Terms and Conditions of Service) Rules.

The special Law Commission also conducted three (3) regional consultative workshops in the Central, Southern and Northern Regions of the country on 9th August, 2012, 27th September, 2012 and 25th October, 2012 respectively. The aim of the consultative workshops was to present the special Law Commission's findings and tentative recommendations to stakeholders in order to solicit

input and views on how best the tentative proposals could be improved on as well as additional proposals for remedying gaps and shortfalls that the Chiefs Act has.

The special Law Commission visited other jurisdictions within the SADC Region and other common law jurisdictions on chieftaincy and drew lessons from neighbouring or similar jurisdictions. To this end, the special Law Commission visited Namibia on 19th to 26th August, 2012 and Zambia on 25th August, 2012 to 2nd September, 2012. The Commission then met to consider Reports from the regional workshops and study visits. At the end of the year 2012, the Commission had developed a draft Report on its findings and tentative recommendations. The special Law Commission has dealt with the following issues in the review process:

- (a) **Appointment and removal of chiefs:** appointment of a chief; identity and the role of an appointing authority; the eligibility criteria for appointment; the period for filling vacancies in traditional leadership; whether appointments or elevation to Paramount Chief or Senior Chief be personal to holder or substantive; the authority to remove a chief from office; and grounds for removal of a chief;
- (b) **Powers, duties and functions of chiefs:** functions and responsibilities of chiefs in democratic Malawi; transparency and accountability of chiefs and in chieftaincy; the role of chiefs in land matters, in particular, in customary land management; powers or jurisdiction over land in municipalities, towns and cities; participation of chiefs in politics;
- (c) **Definition and creation of a village:** definition of a village; recognition of female and child headed households; creation, procedure and criteria for creation of a village and a group of villages;
- (d) **Remuneration of chiefs:** remuneration and



Justice Chipeta:
Chairperson on
the Review of
the Chiefs Act



terms and conditions of service for chiefs; other benefits to accrue to chiefs; and retirement from office for chiefs;

- (e) **Gender mainstreaming:** mainstreaming gender in traditional leadership;
- (f) **Disciplinary mechanisms for chiefs:** disciplinary authority and mechanisms for chiefs; offences and penalties for chiefs; and expirations of certain criminal convictions;
- (g) **The Council of Traditional Leaders:** creation of a Council of Traditional Leaders, including appointment to the Council; qualification for membership to the Council; functions of the Council; and financing of activities of the Council; and
- (h) **Status of block leaders:** recognition of block leaders.

The principal programme officer for this Programme is Mrs. Eddah Chavula, Law Reform Officer and is assisted by Mr. Tony Lemucha, Assistant Law Reform Officer.

The Programme is funded by the European Union (EU) under the DGP.

LLB(Hons.) and LLM (Leicester University, England: UK)

Justice Chipeta, is a sitting Justice of the High Court. His remarkable career of over twenty nine (29) years dates back to 1980 where he served as a Resident Magistrate. In 1987 he was elevated to the High Court as a judge after serving as a Senior Resident Magistrate for four (4) years.

Justice Chipeta is a graduate from Chancellor College, University of Malawi where he earned a Bachelor of Laws (Honours) Degree in 1980. He also holds a Master of Laws (Civil Liberties and Human Rights) Degree, from the University of Leicester, UK which he obtained in 1996.

The Judge has further served in other capacities as secretary to the Commission of on Passenger Train Accident at Malabvi (1998-1999). He has also served as Chairman and Trustee of Christian Service Commission of the Council of Churches in Malawi (2004-2009). He has been elected as a member of the following Boards and Committees: Ministry of Tourism (1987), Paralegal Training Management Committee, the Malawi Council of Legal Education and, Examinations and Syllabus Sub-Committee (2000-to date as Chairperson).

Justice Chipeta is currently the Chairperson on the Review of the Chiefs Act having performed a similar task on the review of the Traditional Courts Act. He also served as a Commissioner on the Review of Legal Aid Act, Criminal Procedure and Evidence Code Act and the Bail Guidelines.

3.2 REVIEW OF THE PUBLIC HEALTH ACT (Cap. 34:01)

The Public Health Act came into force on 29th July, 1948, and was modeled on the Public Health Act of 1875 and Public Health Ordinance of 1932 of England and Wales. Some elements of the Act are over a hundred years old. The law and policy framework on public health has evolved considerably since 1948. At the international level, the World Health Organization (WHO), for example, has consistently developed standards to be followed by States in their health care programs; including public health. At the national level, the adoption of a new Constitution in 1994 necessitated the review of the Public Health Act to ensure its consistency with the supreme law and the policies on decentralization. The National Decentralization Policy calls for the review of the Act to properly restructure its powers. Government has also developed new policies on health which renders most of the provisions in the Public Health Act obsolete.

Indeed, public health law has moved from merely regulating the outbreak of epidemics in a country, to the development of quality health care frameworks within a value-system based on social justice. This demands a human rights-based approach to public health. In light of its mandate, the Law Commission received a submission from the Office of President and Cabinet (OPC) through the Ministry of Health (MoH) to review the Public Health Act.

In 2012, the special Law Commission conducted nine (9) meetings. The following are the thematic areas being considered in the review process:

- (a) **Scope:** the parameters of health and of public health;
- (b) **Regulatory framework and related issues:** regulation of health care services, which components must consist of or regulate training institutions and practice; establishment of Health Boards; powers of Local Government, Central Government and other stakeholders; and issues to be considered under health financing and health insurance;
- (c) **Right to health:** the nature of the right to

health under international law and policy and also the nature of the right to health under the Constitution of Malawi; mechanisms to be put in place to allow wide and easy access to health services; provision for establishment of access to or development of Essential Health Package; incorporation of health services infrastructure; regulation of quality of care; putting in place and maintaining level of care (primary, secondary and tertiary care provision) emergency care and special programs like safe motherhood, management of unsafe pregnancies, sexual and reproductive health rights, maternal and child rights; provision of rights and duties of health workers, users of health care facilities and health care institutions;

- (d) **Public health and ethics:** inclusion of issues of consent of, or on behalf of a person, and what must be put in place to regulate clinical trials and confidentiality;
- (e) **Control of use of “human tissue”:** analysis of the Anatomy Act (Cap. 34:03) in relation to the Public Health Act; control of use of blood and blood products as well as tissue and gametes in human beings; procedure to be followed in the donation of human bodies and tissue of deceased persons; conditions necessitating post-mortem examination of human bodies; the process for certification of death of a human being; process of preparation, preservation and burial of deceased persons; legislative proposals on human cloning;
- (f) **Disease prevention and notification:** conduct of disease surveillance or general epidemiological intelligence for containment; provision for bio-terrorism; incorporation of provisions on isolation and quarantine; the nature and purpose of notification of isolation and quarantine; the nature and requirement for listing of communicable diseases; listing of infectious

diseases; the duty to notify and to care in the context of notification; the duty to observe confidentiality and privacy considerations; issues of the responsibility, trans-border information sharing, and vaccination;

- (g) **Environment and waste:** regulation of sanitation and housing, building construction standards, construction and management of public sewers and drainage, disposal of waste (e-waste, medical waste and industrial waste, etc.) and other hazardous materials (lead, paint, asbestos, etc.) as well as noise pollution and other nuisance;
- (h) **Hospitality, utility and public gatherings:** water treatment, water supply and public health; food industry and public health; health and safety at public gatherings and public convenience facilities (banking halls, shopping malls, football stadia, etc.);
- (i) **Alcohol, tobacco and substance abuse:** control of the use of alcohol, tobacco and tobacco products, and other “prohibited or banned substances”; regulations in relation to smoking of tobacco in public places, advertisement or promotion of alcohol and tobacco, and tobacco products to the public;
- (j) **Enforcement and implementation:** powers of enforcement of the law - conformity and strict punitive measures; sector-specific measures (hospitality industry, health workers, commercial sex workers, sports etc.); the due process; sanctions (administrative penalties, compulsory examination and testing, fines, terms of imprisonment, etc.) applicable; and measures to ensure enforceability of orders; and
- (k) **Public health emergency:** terms for declaration of “public health emergency” vis-à-vis the Constitution of the Republic of Malawi; the reasons or situations to call for a public health emergency; length of a public health emergency; introduction of health emergency, disaster preparedness and management.

The principal programme officer for this programme is Mr. Chizaso Eric Nyirongo, Assistant Chief Law Reform Officer and is assisted by Mr. Francis Ekari Mmame, Assistant Law Reform Officer



Justice Madise:
Chairperson on
the Review of the
Public Health Act

Justice D. Madise

LLB(Hons.) and LLM (Queens University, Belfast: UK)

Justice Madise, is a sitting Judge of the High Court. The Judge practiced as an Attorney of the High Court. The Judge also worked as a Chief Resident Magistrate before his appointment as a High Court Judge.

In his career journey, the Judge chaired committees such as National Court Users Committee (2007-2008), Magistrates and Judges Association of Malawi (2001 -2003) among others. He has also been a member for Council for Legal Education (2006 -2008), Malawi National Committee on Community Service (2003 to present), Paralegal Advisory Service (2003 -2008).

Justice Madise graduated with a Bachelor of Laws (Honours) Degree from Chancellor College, University of Malawi in 1998. He also holds a Master of Laws Degree from the University of Queen's, Belfast UK, which he obtained in 2004.

Justice Madise is currently the Chairperson on the Review of the Public Health Act. He also served as a Commissioner on the Review of the Legal Aid Act.

The Programme is funded by Unicef, Government and MoH

3.3 REVIEW OF PREVENTION OF DOMESTIC VIOLENCE ACT (Cap. 7:05)

The Prevention of Domestic Violence Act (PDVA) was enacted in April, 2006. It is an Act aimed at preventing and criminalizing violence within a domestic relationship. When the law was enacted, it was soon discovered that it had some operational challenges which prevented effective implementation. Within three (3) years of enactment, there was a proposal for the review process to commence in order to eliminate the challenges identified. The review process commenced in March, 2010 following submissions from the Ministry of Gender, Children and Community Development (as it was called then). The review of the PDVA is therefore of a technical nature and seeks to propose solutions to the problems which have been perceived to hamper the smooth implementation of the Act.

The special Law Commission on the review of the PDVA conducted two regional consultative workshops in the Northern and Southern Regions of Malawi. The remaining activities before completion of the programme are: to hold one regional consultative workshop for the Central Region; a National Consultative Workshop; three (3) meetings of the special Law Commission; a press briefing and printing and publication of the Report.

The special Law Commission on the PDVA has been meeting in plenary and has come up with a draft Report containing the recommendations for reform. The main issues considered include:

- (a) **Definition of a “court”**: the definition of court since there is concurrent jurisdiction between the High Court and Subordinate Courts;
- (b) **Definition of “Domestic Violence”**: the definition currently presupposes that any act of domestic violence should be criminal in nature; acts that constitute



Justice Kamanga:
Chairperson on
the Review of the
PDVA

Justice Ivy Kamanga
LLB(Hons.) and LLM(University of London [Institute of Advanced Legal Studies])

Justice Ivy Kamanga, is a sitting Justice of the High Court. Her career of over twenty one (21) years dates back to 1992 where she served as a Legal Aid Advocate. In 2004, the Judge was elevated to the High Court as a judge after serving as a Registrar of High Court and Supreme Court of Malawi for one (1) year.

Justice Kamanga has a Bachelor of Laws (Honours) Degree from the University of Malawi (1992) and a Masters of Laws Degree from University of London (2009).

The Judge has further served in other capacities as a member of a Task Force of the Malawi Judiciary responsible for drafting the Mediation Rules of Civil Procedure of the Malawi Judiciary in 2004. The Judge is also a board member of the Malawi Human Rights Resource Centre.

The Judge is currently the Chairperson on the Review of Prevention of Domestic Violence Act having performed a similar task on the Review of the Criminal Procedure and Evidence Code. The Judge also served as a Commissioner on the Review of Traditional Courts Act.

domestic violence but are not criminal in their own respect; undue restriction of important aspects of violence which are; not criminal offences but would amount to domestic violence;

- © **Section 17:** the effect of a tenancy order – clarity on responsibility to pay rent and consideration of the financial circumstances of the parties.

The officer responsible for this Programme is Mr. William Yakuwawa Msiska, Deputy Chief Law Reform Officer.

The Programme is funded by the UNFPA.

3.4 DEVELOPMENT OF STATUTORY SENTENCING GUIDELINES

From 1998, the Commission undertook major reforms to the criminal justice system in Malawi. The work was initiated pursuant to the findings and recommendations made by the Task Force on Legal and Judicial Reforms in its report published in 1996 which recommended a complete overhaul of the criminal justice system and identified a number of statutes in need of reform. The Penal Code, Cap.7:01 the Criminal Procedure and Evidence Code, Cap.8:01, Probation of Offenders Act, Cap.9:01 and statutes governing the administration of the courts, among others. The Commission has so far completed the review of three (3) statutes: the Penal Code, Cap.7:01 the Criminal Procedure and Evidence Code, Cap.8:01 and the Children and Young Persons Act, Cap.26:03.

The Commission also developed the Bail Guidelines Act, Cap.8:05, and the Fines (Conversion) Act under the same programme. It was in the course of reviewing the Criminal Procedure and Evidence Code that the Commission identified that sentencing is an area that needs to be separately addressed against the background that there is lack of consistency and uniformity of approach in

sentencing practices. In an effort to address the problems in sentencing, member institutions to the DGP, a successor to the EU Rule of Law Programme, resolved that the Law Commission carry out an investigation to establish whether indeed there are discrepancies in Malawi's sentencing approach that requires immediate address.

Pursuant thereto, the Commission carried out consultations with magistrates from all the four (4) Judicial Regions. Thereafter the Commission also held consultations with judges from all the four (4) Judicial Regions. The main objective of these consultations was to find out whether indeed there are discrepancies in sentencing, and if they are existent, how best to address the problem. The findings of the consultation exercise are contained in the Commission's "Development of Sentencing Guidelines: Consultation Report" which is ready for publication. Pursuant to the findings of the consultations, the Commission has decided to empanel a special Law Commission to develop the sentencing guidelines and the appointment of Commissioners is underway. The Commission has already developed a Research Paper on the Development of Sentencing Guidelines which is ready for publication and is in the process of developing the Issues Paper and the Discussion Paper.

The principal programme officer for this Programme is Mr. William Yakuwawa Msiska, Deputy Chief Law Reform Officer, who is being assisted by Mr. Chikumbutso Nicodemus Sitima, Assistant Law Reform Officer. Dr. Janet Banda, the then Chief Law Reform officer, was supervising the Programme.

This Programme is being funded by the EU Democratic Governance Programme.

3.5 REVIEW OF SHERIFFS ACT (Cap. 3:05)

The Sheriffs Act (Cap. 3:05) came into force on 1st February, 1968. Its main objective is to make provision for the appointment of Sheriffs and other officers, to set out their respective powers and duties and the manner of the exercise thereof. Generally, the Sheriffs Act governs the legal procedures that a person who has obtained judgement for the payment of money may use to enforce the payment of that judgement. The enforcement is effected through the execution of a warrant of execution issued by a court against the property of a judgment debtor.

So many changes have, however, occurred since 1968 which jointly and cumulatively continue to render the Sheriffs Act as unjust in certain circumstances and irrelevant to current society needs. Malawi has since adopted a new Constitution and constitutional framework. The concept of what constitutes property continues to change. For instance, the Constitution now recognizes married women as proper property holders and owners, individually or otherwise, worthy of State and legal protection. It is, therefore, for these reasons that the Commission received several submissions from the public requesting it to seriously consider the reform of the Sheriffs Act with the aim of developing a regulatory regime that is relevant, effective, and exhaustive. The Commission has since commenced the review of the Sheriffs Act.

The objectives of the review, among others, are to:

- (a) align the Sheriffs Act with the Constitution;
- (b) reconsider the scope of executable property in light of the various developments that have occurred in the field of property law in so far as the conceptualisation of 'what' constitutes property is concerned;
- (c) re-assess categories of protected property;

- (d) recognise, protect, and enforce married women's proprietary interests and rights;
- (e) establish a clear regulatory regime for Sheriffs and Bailiffs; and
- (f) develop a clear, user friendly, and context relevant regulatory regime.

In 2012, the special Law Commission on the Review of the Sheriffs Act held eight (8) Commission meetings; three (3) Regional Consultative Workshops; and a National Consultative Workshop. The special Law Commission has considered the following issues:

- (a) **Independence of the Sheriff:** the independence of the Sheriff Office from the Judiciary;
- (b) **Qualifications of the Sheriff:** the period and nature of qualification of a Sheriff;
- © **Accountability of sheriff officers:** the specific duties for sheriff officers to ensure accountability;
- (d) **Property:** the scope of executable property to cater for other forms of property which hitherto had been excluded from categories of executable property and exemption of categories of property exempt from execution;
- (e) **Procedure on seizure and sale:** the procedure on seizure and sale of property to ensure that it is effective and speedy; and development of safeguards to curb malpractices associated with seizure and sale of property;
- (f) **Interpleader proceedings:** the procedure on interpleader to ensure expediency;
- (g) **Execution against land:** the procedure on execution against land and safeguards to ensure that land is only sold as a last resort; and
- (h) **Offences:** offences that are sheriff specific.

The principal programme officer for this Programme is Mr. Mtamandeni Liabunya, Law Reform Officer and he is assisted by Mr.



Justice Nyirenda, SC:
Chairperson
on the Review
of Sheriffs Act

Justice A. Nyirenda, SC, JA
LLB(Hons.) and LLM(Hull University, England)

Justice Nyirenda, SC, is a sitting Justice of Appeal of the Malawi Supreme Court of Appeal. This makes him one of the eight (8) Judges who have made it to the Supreme Court which is the highest appellate court in Malawi.

Justice Nyirenda, SC, has a distinguished career with over thirty two (32) years of experience in the legal sector. The Judge began his career as a State Advocate in the Ministry of Justice. He then rose to Chief State Advocate before he was appointed Chief Public Prosecutor (Director of Public Prosecutions now) in 1992. He only worked in this position for two (2) years and in 1994, he was appointed Judge of the High Court. It was from there that he was elevated to Justice of Appeal and awarded the highest honour in the legal profession of Senior Counsel in 2008.

Justice Nyirenda graduated with a Bachelor of Laws (Honours) Degree from Chancellor College, University of Malawi in 1980. He also holds a Master of Laws Degree in International Law from The University of Hull, England, which he obtained in 1985.

Justice Nyirenda is not a stranger to law reform and the Law Commission. He has served in a number of special Law Commissions and has been a regular contributor to the work of the Law Commission including an article, "Law Reform & the Judiciary: An Interface," in the Law Reformer, a magazine of the Law Commission. He is currently the Chairperson on the Review of the Sheriffs Act.

Chikumbutso Sitima, Assistant Law Reform Officer.
This Programme is being funded by the EU under the DGP.

3.6 REVIEW OF THE PATENTS ACT (Cap. 49:02)

The review of the Patents Act is the second phase of the review of industrial property laws in Malawi. The review of the Act started in October, 2011.

A patent registration system is designed to foster innovation by granting protection to inventors of novel technologies. In return for disclosing the details of the technology through registration, a patent holder is granted an absolute monopoly over that technology for a limited time. Since the enactment of the Patents Act, however, there has been a growth in the number of international instruments relating to patent law, to which Malawi is a party. These instruments include the Patent Cooperation Treaty (PCT), the Harare Protocol, the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Patent Law Treaty (PLT). These international instruments have set up new international cooperation procedures and minimum standards which any national patent law should reflect. In addition to the changes brought about by international instruments, technological advancement has led to the emergence of new fields which require to be considered as part of a modern patent registration system; for example, software patents, patents of genetic material and plant varieties. The rationale for the review of the Patents Act

conformity with the Constitution, international instruments and technological advancement.

An in-house research, field research in the Southern Region and data collection for use by the special Law Commission has so far been conducted. The Programme has stalled due to lack of funds.

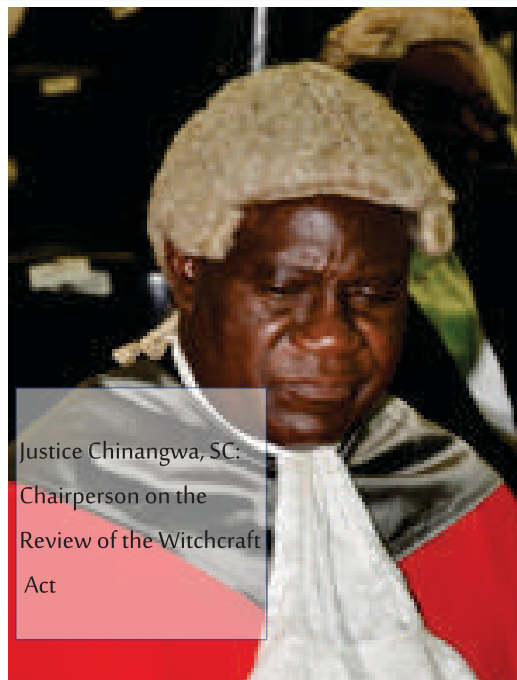
The principal programme officer for this Programme is Mr. Chizaso Eric Nyirongo, Assistant Chief Law Reform Officer. Mr. Gary Maclean of the Scottish Law Commission is providing technical support to the Programme. The Programme is funded by the Government of Malawi.

3.7 REVIEW OF THE WITCHCRAFT ACT (Cap. 7:02)

The Commission continues the process of reviewing the Witchcraft Act which commenced in 2009 following submissions from the public and various organizations. It was submitted that the Act, which was enacted on 12th May, 1911, is not in tandem with realities on the ground. The submissions varied in the points of interest. For instance, on the one hand, some members of society have argued that the law should be reviewed on the basis of their belief that witchcraft exists. On the other hand, others have made their submissions based on their belief that witchcraft does not exist. Based on the submissions, the following have emerged as issues for consideration, among others:

- (a) existence or non-existence of witchcraft and whether the law should recognize the two (2) contrasting beliefs;
- (b) protection of victims of witchcraft;
- © constitutionality of the Act, that is to say, whether by punishing persons who pretend to be practitioners of witchcraft, the Act infringes freedom of conscience as provided by section 33 of the Constitution; and
- (d) evidential and jurisdictional matters in case witchcraft is recognized by the law.

Extensive consultations were conducted within Malawi. Following these consultations, it became clear that consultations with relevant institutions in other countries



*Justice Robert R. Chinangwa, SC, JA
LLB Hons (University of Malawi, Chancellor College)*

Justice Chinangwa, SC, JA, is a sitting Justice of Appeal of the Malawi Supreme Court of Appeal. His career of over twenty seven (27) years dates back to 1985 where he served as a State Advocate. In 1997, Justice Chinangwa was elevated to the High Court as a judge where he served for fourteen (14) years. Before his appointment to the High Court, Justice Chinangwa served as a Chief Resident Magistrate for two (2) years. He was then appointed as Justice of the Appeal of the Supreme Court of Appeal in 2011. It was from there that he was conferred the highest honour in the legal professional of Senior Council.

Justice Chinangwa SC, is a graduate from Chancellor College, University of Malawi where he earned a Bachelor of Laws (Honours) Degree in 1984.

Justice Chinangwa further served in other capacities as a Chairman for Prison Service Commission for three (3) years since 2003. He also has served as a member of a task force on the setting up of the High Court (Commercial Division). From 1995 to 1997, the Justice of Appeal also served as a member of the Judicial Service Commission. He is also currently serving as a Chairman for Police Service Commission and Vice Chairperson for the Board of the Children of the Nation.

Justice Chinangwa is currently the Chairperson on the Review of the Witchcraft Act.



within the region were necessary to share practical experiences on matters relating to witchcraft and legislation. In this regard, the Commission visited Zambia on a three (3) day study visit. It is also anticipated that, funds permitting, another delegation shall visit Zimbabwe. The Commission commenced the substantive review of the Act.

The principal programme officer for this Programme is Mr. Allison Mbang'ombe, Deputy Chief Law Reform Officer, and is assisted by Mr. Chizaso Eric Nyirongo, Assistant Chief Law Reform Officer and Mr. Francis Ekari M'mame, Assistant Law Reform Officer, respectively.

The Programme is funded by Government of Malawi. UNFPA funded some aspects of the Programme. However, the Programme has stalled due to lack of funds.

3.8 NEW PROGRAMMES

The Commission also received submissions on new programmes most of which came after the Notice of Work Programme for 2012 was published. Some programmes have failed to commence due to lack of funds. The new programmes include the following:

- (a) **Review of Laws Regulating Political Parties:** the Programme aims at reviewing political party laws in order to, among other things, entrench intra-party democracy and minority representation thereby also contributing to the

upholding of intra-party democracy;

- (b) **Review of Certain Aspects of the Penal Code:** the Programme was initiated with a call from certain sectors in society who are advocating for the respect of the rights of individuals through amendment and review of certain aspects of the Penal Code;
- (c) **Review of Certain Aspects of the Constitution:** the Programme aims at examining the merits and de-merits of:
 - (i) the system of the President having a running mate at the time of elections; or
 - (ii) the President having power to appoint a Vice President after winning an election;
- (d) **Review of Laws Regulating the Extractive Industry:** the Programme aims at reviewing laws in the extractive industry with a view to making the extractive industry more transparent and accountable in the manner the proceeds of this industry are handled; and
- (e) **the Review of the Prison Act:** the Programme shall review the Prison Act, Cap. 9:02, so that it is in tandem with the new constitutional order and international standards.

Part 4

Public Awareness

The Law Commission Act mandates the Commission to promote awareness of the Laws of Malawi and the Constitution to the public, Government departments and other authorities or bodies. The Commission informs the public about its work, its functions, the law reform process, law reform issues, and the law generally. The Commission is also empowered to organize conferences, seminars, workshops and meetings on any matter under its consideration. Furthermore, the Commission may produce its own publications. In this regard, the Commission conducted a number of civic education activities, produced a number of publications, provided information on the law and enhanced its networking and collaboration with both local and international stakeholders.

4.1 CIVIC EDUCATION

The Commission conducted workshops on several laws in all the three regions of the country as part of its civic education and public awareness mandate.

4.1.1 Training Workshops

Bearing in mind that knowledgeable duty bearers and an informed citizenry entail effective application and execution of laws, the Commission conducted dissemination of information exercises with key target groups in the private and public sector responsible for dispensation of justice and national duties. The targeted groups included Social Welfare Officers, Police Officers, Immigration Officers, Malawi Defense Force



officers, the academia, the media, judicial officers, traditional and religious leaders, corporate world, civil society and the public in general. The information that was disseminated was on the proposed Firearms Act, the Local Courts Act, the Legal Aid Act, and proposed Legal Education and Legal Practitioners Act. After each dissemination exercise, IEC materials on the same providing information as reference material were distributed.

The initiative was funded by the EU under the DGP.

4.1.2 Dissemination of Information through Electronic Media

The Commission also airs radio programmes and jingles. This involves the development of story lines, scripting, production of the radio programmes and jingles, editing and re-editing of the same. To this effect, the Commission has recorded and is airing radio programmes and jingles with Mzimba Community Radio, Radio Maria, Malawi Broadcasting Corporation and Zodiak Broadcasting Station. The programmes are on the proposed legislation on Firearms and Ammunition (Control) Act, Local Courts Act, Legal Aid Act and the HIV and AIDS Bill. Radio communication has a far reaching impact than face to face communication.

The programmes also promote the visibility of the Commission since law reform is mainly consultative in nature and engages the public.

The exercise was jointly funded by the NAC and EU through the DGP.

4.1.3 Publications

The Commission published several documents in both English and two local languages (specifically Chichewa and Tumbuka) to provide information to the public on the work of the Commission and the status of the laws in Malawi including the legislation proposed by the Commission but which are not yet enacted by Parliament.

The following publications are intended to disseminate information to stakeholders, Government departments and the public:

- (a) the Law Commission 2011 Annual Report;
- (b) 2013 Calendars and Diaries; and
- (c) a range of IEC materials on Law Reform Reports.

4.1.4 Updates on Law Reform Programmes

In the year 2012, the Commission provided information to the public, through 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 IV indicates the status of completed law reform programmes.



The Law Commission
is grateful for
YOUR PARTICIPATION!

Filimoni House
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The Commission continued to partake activities to share its experiences and learn lessons from its sister institutions and law reform agencies including the Association of Law Reform Agencies for Eastern and Southern Africa (ALRAESA) and Commonwealth Association for Law Reform Agencies (CALRAs).

The Commission also received a delegation from Delhi, Punjab State, Tripura State, and W.B. State

India Mission on 5th November, 2012. The purpose of the visit was to learn from the Commission's experience on the Review of Legal Aid Act and adopt best practices for the India-UNDP access to justice project, which is in the process of being implemented by the Indian Justice Department.

Table 1 summarizes other International workshops, conferences and study visits that staff of the Commission attended in 2012.

Workshops, Conferences and Study Visits			
Conference or Programme	Place	Period	Name of Officer(s) or Commissioners
Meeting	South Africa	5 th to 9 th June, 2012	Mr. Chizaso Eric Nyirongo
Consultation	Namibia	20 th to 24 th August, 2012	Mrs. GetrudeLynnHiwā SC
Consultation	Namibia	20 th to 24 th August, 2012	Mrs. E. Chavula
Consultation	Zambia	27 th to 2 nd September, 2012	Dr. Janet LauraBanda
Consultation	Zambia	27 th to 2 nd September, 2012	Mr. T. Lemucha

The Civic Education and Public Relations Section of the Law Commission is responsible for dissemination of information on law reform and the laws of Malawi and also maintaining the Commission's stakeholder relations for easy networking and collaboration. Mr. Gills Msiska (left) and Mrs. Sophie Nyirongo (right) of Civic Education and Public Relations Section producing radio programmes with Mzimba Radio, a community radio station which is one of the Law Commission's stakeholder in the electronic media



The Commission requires adequate financial, logistical and man power support to fulfill its mandate. The Commission's financial resources are mainly 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 has been enhanced by its institutional capacity building and financial management systems.

6.1 FINANCE

2010/14 budget allocations for vote 560 are

	2010/11	2011/12	2012/13	2013/14
Personal Emoluments	132,001,331	126,520,337	140,741,223	156,560,536
Other Recurrent Transactions	88,919,799	88,194,268	95,690,781	103,824,497
Grand Total	220,921,130	214, 714, 605	236,432,004	260,385,034

6.2 ADMINISTRATION

The Administration Section provides administrative support to the work of the Commission.

6.3 HUMAN RESOURCE DEVELOPMENT AND MANAGEMENT

The Human Resource Management and Development Section facilitated recruitment and training programmes for the Commission staff to attain skills that will assist the Commission achieve its mandate.

6.3.1 Recruitment

The following officers were recruited to fill various vacant posts in the Commission:

- (a) Mr. Tony Lemucha joined the Legal Section as an Assistant Law Reform Officer on 2nd July, 2012;
- (b) Mrs. Beatrice Mbizi joined the Commission as a Shorthand Typist on 9th July, 2012;
- © Mr. Gills Msiska and Ms. Flora Katete joined the Civic Education and Public Relations Section as Civic Education Officers, on 13th July, 2012 and 30th July 2012 respectively; and
- (d) Ms. Ruth Kachale joined the Commission as a Stores Assistant on 19th July, 2012.

6.3.2 Promotions

The following officers were promoted to various positions as follows:

- (a) Mr. William Yakuwawa Msiska was promoted from Assistant Chief Law Reform Officer to Deputy Chief Law Reform Officer with effect from 28th June, 2012; and
- (b) Ms. Temwa Kalinga was promoted from Secretary to Personal Secretary to the Chief Law Reform officer with effect from 18th May, 2012.

6.3.3 Appointments

Dr. Janet Laura Banda was appointed on secondment as Solicitor General and Secretary to Justice effective 31st December, 2012. Dr. Janet Laura Banda has served the Commission since 2nd February, 1998 at the time of the appointment; she was the Chief Law Reform Officer.

6.3.4 Training

Table 3 shows staff of the Commission who attended the following long and short term training to enhance their capacity:



NAME OF OFFICER	TRAINING ATTENDED	PLACE & INSTITUTION	PERIOD
LONG TERM			
Mr. Mike Chinoko Assistant Law Reform Officer	Masters in International Trade and Investment.	University of Pretoria	One Year programme from July, 2011
Mr. Stanfield Bota Human Resource Management Officer	Bachelor of Science (HRM)	Share World Open University, Malawi	Three years programme from September 2012 to June 2013
Mr. Geoffrey Masamba Computer Programmer	Bachelor of Computer Science	University of Malawi	Two years programme from January 2011
SHORT TERM			
Mr. Francis M'mame Assistant Law Reform Officer	Certificate in Legislative Drafting	University of Pretoria	14 th February 2012 to 12 th June, 2012
Mrs. Eddah Chavula Law Reform Officer	Sexual Minority Rights Course	South Africa	16 th to 20 th April, 2012
Mr. Mtamandeni Liabunya Law Reform Officer	Sexual Minority Rights Course	South Africa	16 th to 20 th April, 2012
Mr. Sitima Assistant Law Reform Officer	Sexual Minority Rights Course	South Africa	16 th to 20 th April, 2012
Mr. Elias Sanjama Systems Analyst	Server Administration	Techno Brain	August, 2012 to October, 2012
Mr. William Yakuwawa Msiska Deputy Chief Law Reform Officer	Advanced Course in Copyright and Related Rights in the Global Economy. First Phase	Sweden	27 th August, 2012 to 14 th September, 2012



6.3.5 Resignations

- (a) Dr. Chikosa Silungwe, Deputy Chief Law Reform Officer resigned from the Commission on 1st May, 2012; and
- (b) Mr. Alexander Thyangathyanga, Principal Systems Analyst resigned from the Commission on 6th May, 2012; and

6.3.6 Deaths

The year 2012 had been a sorrowful one on the part of the Commission for it lost two (2) members of staff as follows:

- (a) Ms. Stella Bridget Chilemba, Personal Secretary to the Chief Law Reform Officer

who passed away on 14th February, 2012. Ms. Chilemba joined the Commission as a Shorthand Typist on 2nd January, 2001. She was promoted to the position of Personal Secretary to the Chief Law Reform Officer on 22nd April, 2005 the position she held until her demise. May Her Soul Rest in Peace; and

- (b) Ms. Rhoda Kabanga, Civic Education Officer passed away on 27th May, 2012. Ms. Kabanga joined the Commission on 2nd June, 2008 as a Civic Education Officer the position she held until her demise. May Her Soul Rest in Peace.

Part 7

Conclusion

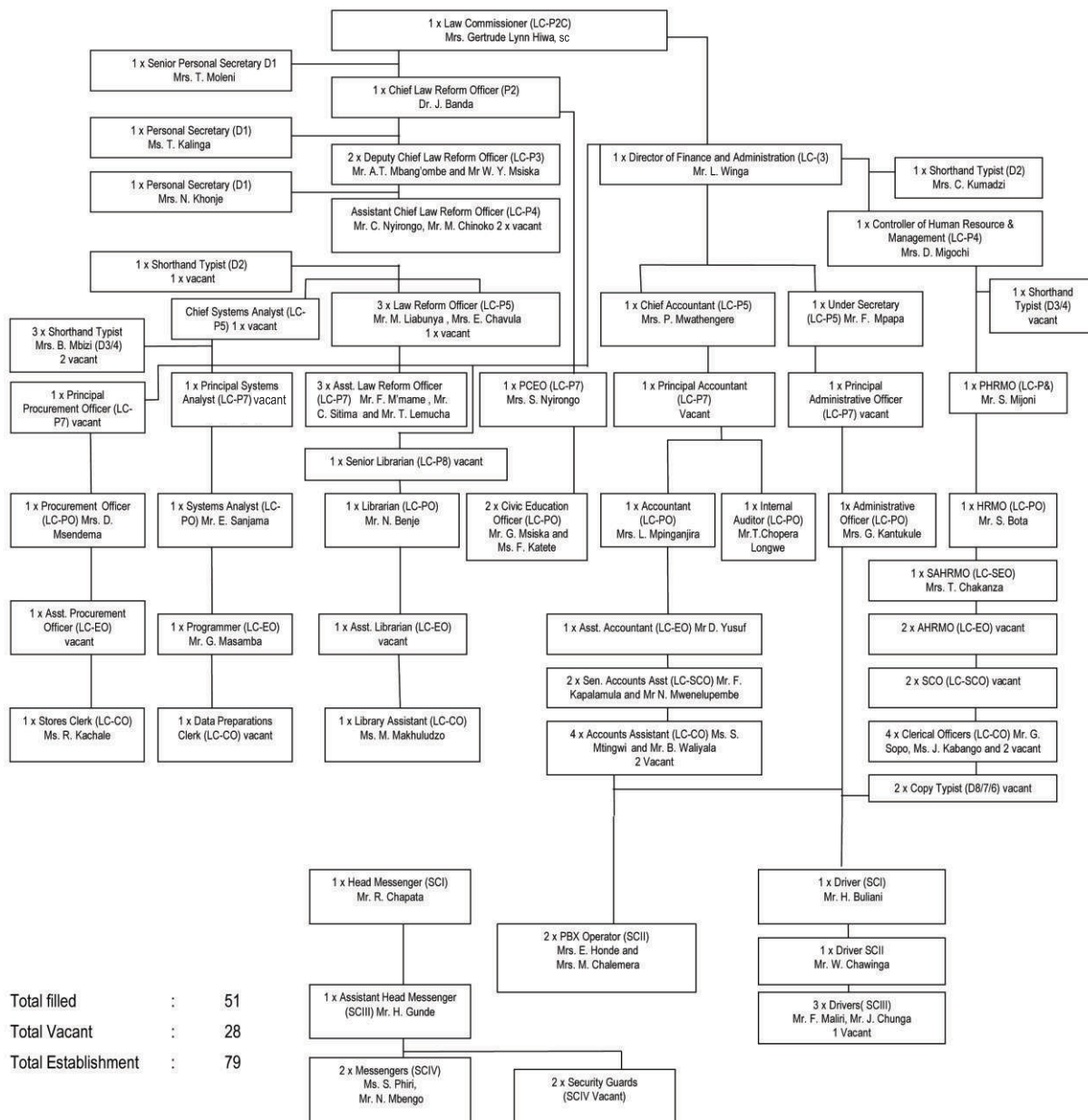


The Commission saw some significant development in the relationship between the Commission, Government and several development partners in the year, 2012. The Commission therefore looks ahead to enhancing its service delivery and make law reform process more consultative and even more user-friendly.

In 2013 and beyond, the Commission will continue adhering to the principles of impartiality, transparency, accountability and fairness in discharging its functions as mandated by the Constitution and the Law Commission Act.



LAW COMMISSION ORGANISATION CHART AS AT 31st DECEMBER, 2012



MALAWI LAW COMMISSION

GENERAL NOTICE

NOTICE OF WORK PROGRAMME FOR 2013

*Under section 7 (1) (a), Law Commission Act,
Cap. 3:09 of the Laws of Malawi.*

The Law Commission in accordance with section 7(1) (a) of the Law Commission Act, 1998 and in pursuance of its powers, duties and functions under the Constitution and the Law Commission Act, hereby publishes its programme of work for the year 2013.

1. LAW REFORM

1.1 *On-going Programmes*

(a) *Review of the Chiefs Act, Cap. 22:03, Laws of Malawi*

The special Law Commission on the review of the Chiefs Act shall finalize the review process and shall publish a Report of its findings and recommendations.

(b) *Review of the Sheriffs Act, Cap.3:05, Laws of Malawi*

The special Law Commission on the review of the Sheriffs Act shall finalize the review process and shall publish a Report of its findings and recommendations.

(c) *Review of the Public Health Act, Cap.34:01, Laws of Malawi*

The special Law Commission on the review of the Public Health Act shall finalize the review process and shall publish a Report of its findings and recommendations.

(d) *Development of Sentencing Guidelines*

The special Law Commission on the Development of Sentencing Guidelines shall finalize its work and shall publish a Report of its findings and recommendations.

1.2 *New Programmes*

(a) *Review of the Law on Abortion*



The Law Commissioner, in Consultation with the Judicial Service Commission, shall empanel a special Law Commission to review the law on abortion.

(b) *Review of the Prison Act, Cap. 9:02, Laws of Malawi*

The Law Commissioner, in Consultation with the Judicial Service Commission, shall empanelled a special Law Commission to review the Prison Act.

2. OTHER PUBLICATIONS

The Law Commission shall publish the following during the year 2013-

- (a) a Discussion Paper and an Issues Paper on the review of the Prison Act;
- (b) a Discussion Paper and an Issues Paper on the Review of the Law on Abortion; and
- (c) a Law Reform Magazine.

3. PUBLIC AWARENESS AND CIVIC EDUCATION

The Law commission shall continue its mandate of promoting awareness of applicable laws and the Constitution of Malawi to the public and departments of Government. In particular, the Law Commission shall carry out public awareness campaigns on the following -

- (a) the Gender Equality Act;
- (b) the Child (Care, Protection, and Justice) Act;
- (c) the proposed Sheriffs Legislation;
- (d) the proposed amendments to the Prevention of Domestic Violence Act ; and
- (e) the Police Act.

For:

A. M'bang'ombe
LAW COMMISSIONER



Appendix III

Members of Special Law Commissions in Various Law Reform Programmes

Programme	Members	Sector
Chiefs Act	The Honourable Justice of Appeal A.C. Chipeta	Judiciary
	Mrs. Gertrude Lynn Hiwa, SC	Law Commissioner
	Mr. Stuart Naison Medson Ligomeka	Ministry of Local Government and Rural Development
	Mr. Enock Chibwana	Law Society
	Mr. Rodrick Mateuma	Local Government
	Ms. Diana E. A. Ntodwa	Retired Civil Servant
	Mr. Richard Santhe	Ministry of Justice and Constitutional Affairs
	Senior Chief Makwangwala	Local Government
	Mr. Lawrence D. Makonokaya	Ministry of Local Government and Rural Development
	Senior Chief Mwabulambya	Local Government
	Chief Chikumbu	Local Government
Public Health Act	The Honourable Justice Dngiswayo Madise	Judiciary
	Mrs. Gertrude Lynn Hiwa, SC	Law Commissioner
	Dr. Ann Phoya	Ministry of Health and Population
	Mr. Titus Mvalo	Malawi Law Society
	Dr. Damison Kathyola	Ministry of Health and Population
	Mrs. Martha Kwataine	Civil Society
	Mr. Vitto Peter Mulula	Local Government
	Mrs. Fiona Kalembe	Ministry of Justice and Constitutional Affairs
	Ms. Sitingawawo Kachingwe	Nurses and Midwives Council of Malawi



Prevention of Domestic Violence Act (PDVA)	The Honourable Justice Ivy Kamanga	Judiciary
	Mrs. Getrude Lynn Hiwa SC	Law Commissioner
	Mr. Joseph Kazima	Ministry of Gender, Child Development and Social Welfare
	Mrs. Fiona Kalembe	Ministry of Justice and Constitutional Affairs
	Mrs. Tinyade Kachika	Civil Society
	Chrispine Sibande	Constitution Body
Sheriffs Act	The Honourable Justice of Appeal A.K.C. Nyirenda, SC	Judiciary
	Mrs. Gertrude Lynn Hiwa SC	Law Commissioner
	Mr. Bruno Kalembe	Ministry of Justice and Constitutional Affairs
	Mrs. Maureen Kachingwe	Law Society
	Mr. Ian Malera	Law Society
	Mr. Fredrick Kawalewale	Private Sector
	Mr. Paul Chimimba	Private Sector
	His Honour Mr. Mike Tembo	Judiciary
	Mr. Peter Mlauzi	Judiciary

Appendix IV

Status of Law Reform Programmes Report as at 31st December, 2012

Witchcraft Act	Justice Robert. R. Chinangwa	Judiciary
	Mrs. Clotilda Sawasawa	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	Law Society
	Mr. Sangster S. Nkhandwe	Faith Based Organization
	Dr. Pierson Ntata	Academia
	Dr. M.P.K.J. Theu	Herbalist Association of Malawi
	Senior Chief Malemia	Local Government

Status of Law Reform Programmes (1996-2012)

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	Before Parliament
			(2) Wills and Inheritance Act (Amendment) Bill	Enacted in 1998 as Act No. 22
			(3) Citizenship Act (Amendment) Bill	Before Parliament
			(4) Marriage Act (Amendment) Bill	Enacted in 1997 as Act No. 29
			(5) Affiliation Act (Amendment) Bill	Enacted in 1997 as Act No. 30
2.	Technical Review of the Constitution	November, 1998	Constitution (Amendment) Bill	Enacted between 2001 as Act No. 13 and 2010 as Act No. 8
3.	Criminal Justice Reform on Bail Guidelines	February, 2000	Bail Guidelines Bill	Enacted in 2000
4.	Review of the Penal Code	June, 2000	Penal Code (Amendment) Bill	Enacted in 2011 as Act No. 1
5.	Review of the Army Act	July, 2001	Defence Force 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.	Review of the 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	Enacted in 2011 as Act. No. 14
			2. Estate Duty (Amendment) Bill	Before Cabinet
13.	Review of the Legal Aid Act	July, 2005	Legal Aid Bill	Enacted in 2011 as Act No. 7
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 Land Related Laws	March, 2010	1. Land Bill	Before Cabinet
			2. Customary Land Bill	Before Cabinet
			3. Registered Land (Amendment) Bill	Before Cabinet
			4. Physical Planning Bill	Before Cabinet
			5. Forestry (Amendment) Bill	Before Cabinet
			6. Public Roads (Amendment) Bill	Before Cabinet
			7. Mines & Minerals (Amendment) Bill	Before Cabinet



			8. Land Survey Bill	Before Cabinet
			9. Land Acquisition (Amendment) Bill	Before Cabinet
			10. Local Government (Amendment) Bill	Before Cabinet
			11. Malawi Housing Corporation (Amendment) Bill	Before Cabinet
			12. Companies (Amendment) Bill	Before Cabinet
16.	Review of the Laws on Marriage and Divorce	June, 2006	1. Marriage, Divorce and Family Relations Bill	Resubmitted to Law Commission
			2. Penal Code (Amendment) Bill	Before Parliament
17.	Review of Traditional Courts Act	September, 2007	Local Courts Bill	Enacted in 2011 as Act No. 9
18.	Review of the Constitution	September, 2007	(1) Constitution (Amendment) Bill	Before Parliament
			(2) Constitution (Amendment) (No. 2) Bill	Before Parliament
			(3) Impeachment of President Bill	Before Parliament
			(4) Political Parties Registration and Regulation (Amendment) Bill	Before Parliament
			(5) Electoral Commission (Amendment) Bill	Before Parliament
			(6) Parliamentary and Presidential Elections (Amendment) bill	Before Parliament
			(7) Courts Act (Amendment) Bill	Before Parliament
			(8) Ombudsman (Amendment) Bill	Before Parliament



19.	Report on the Development of Legislation on Declaration of Assets, Liabilities and Business interests by Public and Elected Officers	August, 2008	(1) Public Officers Declaration of Assets, Liabilities and Business Interests Bill	Before Cabinet
			(2) Parliamentary and Presidential Elections (Amendment) Bill	Before Cabinet
			(3) Local Government Elections (Amendment) Bill	Before Cabinet
20.	Development of HIV & AIDS Legislation	December, 2008	(1) HIV and AIDS (Prevention & Management) Bill	Before Cabinet
			(2) Employment (Amendment) Bill	Before Cabinet
21.	Review of Education Act	March, 2010	Education Bill	Before Cabinet
22.	Development of Gender Equality Statute		Gender Equality Bill	Before Parliament
23.	Development of Human Trafficking Legislation	February, 2011	1. Trafficking in persons Bill 2. Tourism and Hotels(Amendment) Bill 3. Immigration (Amendment)Bill 4. Penal Code (Amendment) Bill 5. Extradition (Amendment) Bill 6. Child Care, Protection and Justice (Amendment)Bill	Before Cabinet Before Cabinet Before Cabinet Before Cabinet Before Cabinet Before Cabinet
24	Review of Legal Education and Legal Practitioners Act			Being published at Government Press
25	Review of Adoption of Children Act			Being published at Government Press
26	Review of Trade Marks Act			Being published at Government Press
27	Review of Firearms Act			Being published at Government Press



