



Government of Samoa

FIRST ANNUAL REPORT

OF THE



SAMOA LAW REFORM COMMISSION

For the period of November 01, 2008

To November 30, 2009



GOVERNMENT OF SAMOA

The Honourable Speaker
The Legislative Assembly of Samoa.

In compliance with Section 9 (2) of the Law Reform Commission Act, 2008, I have the honour to lay before you copies of the first Annual Report for the Samoa Law Reform Commission for the period of November 1st, 2008 to November 30, 2009, for tabling before the Legislative Assembly of Samoa. This report documents activities implemented by the Commission within this period, in accordance with the above Act.

Hon Tuilaepa Lupesoliai Sailele Malielegaoi

**PRIME MINISTER AND MINISTER OF THE OFFICE OF THE
ATTORNEY GENERAL**



GOVERNMENT OF SAMOA

Honourable Tuilaepa Lupesoliai Sailele Malielegaoi

**PRIME MINISTER AND MINISTER FOR THE ATTORNEY
GENERAL'S OFFICE**

In compliance with Section 9 (2) of the Law Reform Commission Act, 2008, I have the honour to lay before you copies of the first Annual Report for the Samoa law Reform Commission for the period of November, 2008 to November 30, 2009, for tabling before the Legislative Assembly of Samoa. This report documents activities implemented by the Commission within this period, in accordance with the above Act.

(Ming C Leung Wai)

ATTORNEY GENERAL

TABLE OF CONTENTS

Introduction

1. SECTION 1: LAW REFORM COMMISSION	7
▪ Mandate	
▪ Vision	
▪ Mission Statement	
▪ Objective	
▪ Functions	
2. SECTION 2: ACHIEVEMENTS	8
3. SECTION 3: ORGANISATIONAL STRUCTURE	10
4. SECTION 4: STAFF DEVELOPMENT	13
5. SECTION 5: CONSTRAINTS	14
6. SECTION 6: BUDGET APPROPRIATION 08/09.....	15
7. SECTION 7: HIGHLIGHTS OF 2008-09	16

Acknowledgment

INTRODUCTION

In 2008, Samoa passed the Law Reform Commission Act. The Act establishes the Samoa Law Reform Commission for the review, reform and development of the laws of Samoa, in order to promote Samoan custom and traditions, enhance the social, cultural, economic and commercial development of Samoa, and ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.

The Law Reform Commission was established in October 2008 with the appointment of its Executive Director, Ms Leilani Tuala-Warren. The Law Reform is a Division of the Office of the Attorney General. The establishment of the Law Reform Commission is important because of the need for new laws to be drafted for Samoa which take into account the circumstances and needs applying to Samoa, without direct transplanting of Laws in other countries. Laws must be carefully drafted and should arise from a process of wide consultation and have the endorsement of all major stakeholders.

The Public Administration Sector Plan for Samoa 2007-2011 has identified the need for a legislative reform programme which includes updating all outstanding legislation and outsourcing the legal drafting function.

The Law Reform Commission recommends to the Attorney General, the Prime Minister and Cabinet, laws that needs to be reviewed. The workplan of the Commission approved by Cabinet for this year is as follows;

Major Law Reforms

- Prisons Act 1967
- Crimes Ordinance 1961.
- Criminal Procedure Act 1972.
- Evidence Act 1962.
- Sentencing Act.
- Commissions of Inquiry Act 1964.
- Protection of Traditional Knowledge.
- Review of Judicial related legislation-Judicature Ordinance, District Court Act, Supreme Court and District Court Rules.
- Law Practitioners Act 1976.

Preliminary scoping

- Care and Protection Legislation (to protect children, including CRC & CEDAW)
- Daylight Savings Legislation
- Coronial Legislation
- Compliance with Environmental obligations
- Review of Ministry Acts

Section 1: LAW REFORM COMMISSION

Mandate

Law Reform Commission Act 2008.

Vision

To ensure that the Laws of Samoa are in line with current conditions and ensure that it meets current needs, removes defects in the law and simplifies the Law by adopting new and improved methods for administering the law and dispensing justice.

Mission Statement

The Commission's mission is to assist in keeping the Law up to date and relevant to the needs of society.

Objective

The Act establishes the Samoa Law Reform Commission for the review, reform and development of the laws of Samoa, in order to promote Samoan custom and traditions, enhance the social, cultural, economic and commercial development of Samoa, and ensure that the laws of Samoa are kept in a modern state which meets the needs of Government and the community.

Functions

Pursuant to section 6 of the Law Reform Commission Act 2008, the Commission will recommend to the Attorney General suggested programs for the reform of the laws of Samoa, it will research and analyze areas of law referred to it by the Prime Minister, Cabinet or the Attorney General and report its recommendations for reform to the Prime Minister and the Attorney General, it will advise Government Ministries and agencies on the manner or content of reviews of the law conducted by those Ministries and agencies, and it will consult with and advise the public (and any specific sectors of the community) about its work.

Section 2: ACHIEVEMENTS

Issues Paper

The Law Reform Commission finalized 5 Issues Paper which were submitted to the Prime Minister and Cabinet for approval for public dissemination. These required intensive research as well as input by Working Groups which were formed from relevant stakeholders for their professional expertise in their area. The Issues Papers are:

- Crimes Ordinance 1961 (IP01/09)
- Coroners Ordinance 1959 (IP02/09)
- Care and Protection Legislation to protect Children (IP03/09)
- Law Practitioners Act 1976 (IP04/09)
- Commissions of Inquiry Act 1964 (IP05/09)

Daylight Savings Bill

The Law Reform Commission drafted (with the assistance of the Drafting Team of the Attorney General's Office) The Daylight Savings Bill which has now been passed by Parliament and will commence in 2010.

Ministries Acts

The Law Reform Commission has completed 4 reports of the Ministry of Works, Transport and Infrastructure. They are:

- Ministry of Works Act.
- Ministry of Transport Act.
- Shipping Act.
- Civil Aviation Act.

Other Bills

The Commission has commented on Bills submitted by other Government Ministries as well as Government Corporations. They are:

- Samoa Tourism Authority.
- Electric Power Corporation.
- Ministry of Women, Community and Social Development.

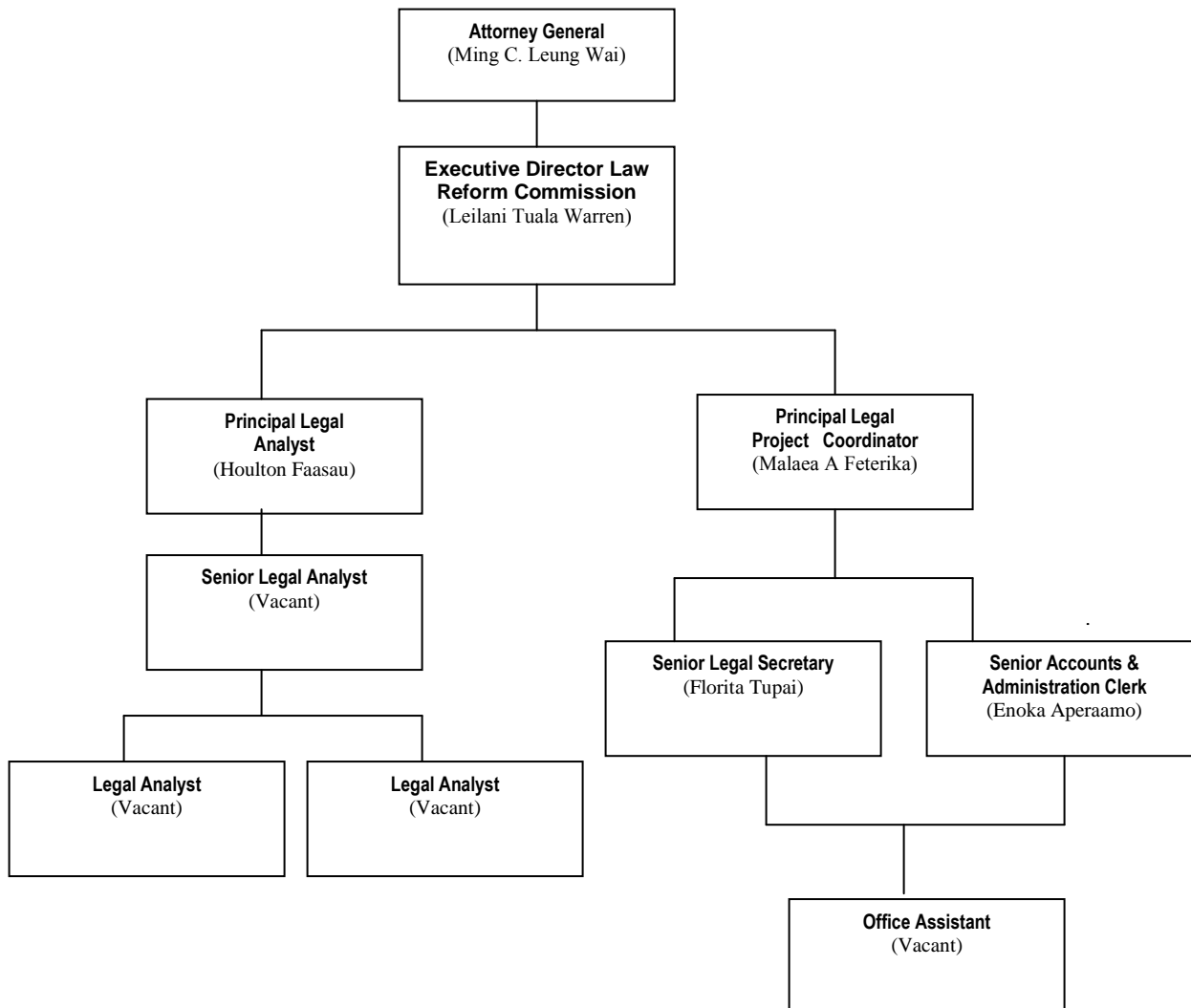
The Commission is also working closely with the United Nations Committee on the CEDAW (through MWCSO) towards the completion of their report. The Commission is constantly reminding the Line Ministries to liaise with the SLRC about any legislative review taking place within their Ministries or agencies as the Attorney General in issuing his Certificate will make inquiries into whether SLRC has had any involvement in the review or the reform of any legislation.

Public Consultations

The Commission engaged in two public consultations through the MWCSO (Pulenuu) monthly meetings in Upolu and Savaii. This was an achievement for the Commission in presenting the existence of the Commission to the General Public. These Public Consultations were important in lifting the profile of the Commission around the country. Despite limited budget allocation, the Commission still strives to engage the public as much as possible in its public consultations.

The Commission established a Database for stakeholders who have expressed an interest in having a say in the Laws of Samoa. Questionnaires have been widely distributed to these Pulenuu consultations as well as the general public. These questionnaires gather people's names and contacts for the Database. When the reviews are underway stakeholders will be contacted for their views.

Section 3: ORGANISATIONAL STRUCTURE



Staffing

The Act provides for the appointment of an Executive Director who is the administrative head of the Commission (Ms Leilani Tuala-Warren) and shall supervise and direct the work of the Commission. The Executive Director began work in the Office of the Law Reform Commission on 20 October 2008. The office now has five staff members, including Executive Director, Principal Legal Project Coordinator, Principal Legal Analyst, a Senior Accounts Administration Clerk and a Senior Legal Secretary. There is also a Senior State Solicitor, Mr Ulupale Fuimaono seconded from the Civil Division of the Attorney General's Office. The staff are faced with the challenge of implementing the ambitious workplan.

Advisory Board

Pursuant to Section 12 of the Law Reform Commission Act 2008, the Commission shall be assisted by an Advisory Board which shall convene at least four times per year as directed by the Prime Minister or the Attorney General. The Board consists of;

1. Attorney General;
2. CEO of Ministry of the Prime Minister and Cabinet;
3. CEO of the Ministry of Finance;
4. CEO of the Ministry of Women, Community and Social Development;
5. Commissioner of Police and Prisons Services;
6. President of the Samoa Law Society or nominee;
7. President of the Samoa Chamber of Commerce and Industry or a nominee;
8. President of the National Council of Churches or nominee;
9. President of SUNGO or nominee;
10. President of the Medical Association;
11. Matai from Upolu; and
12. Matai from Savaii.

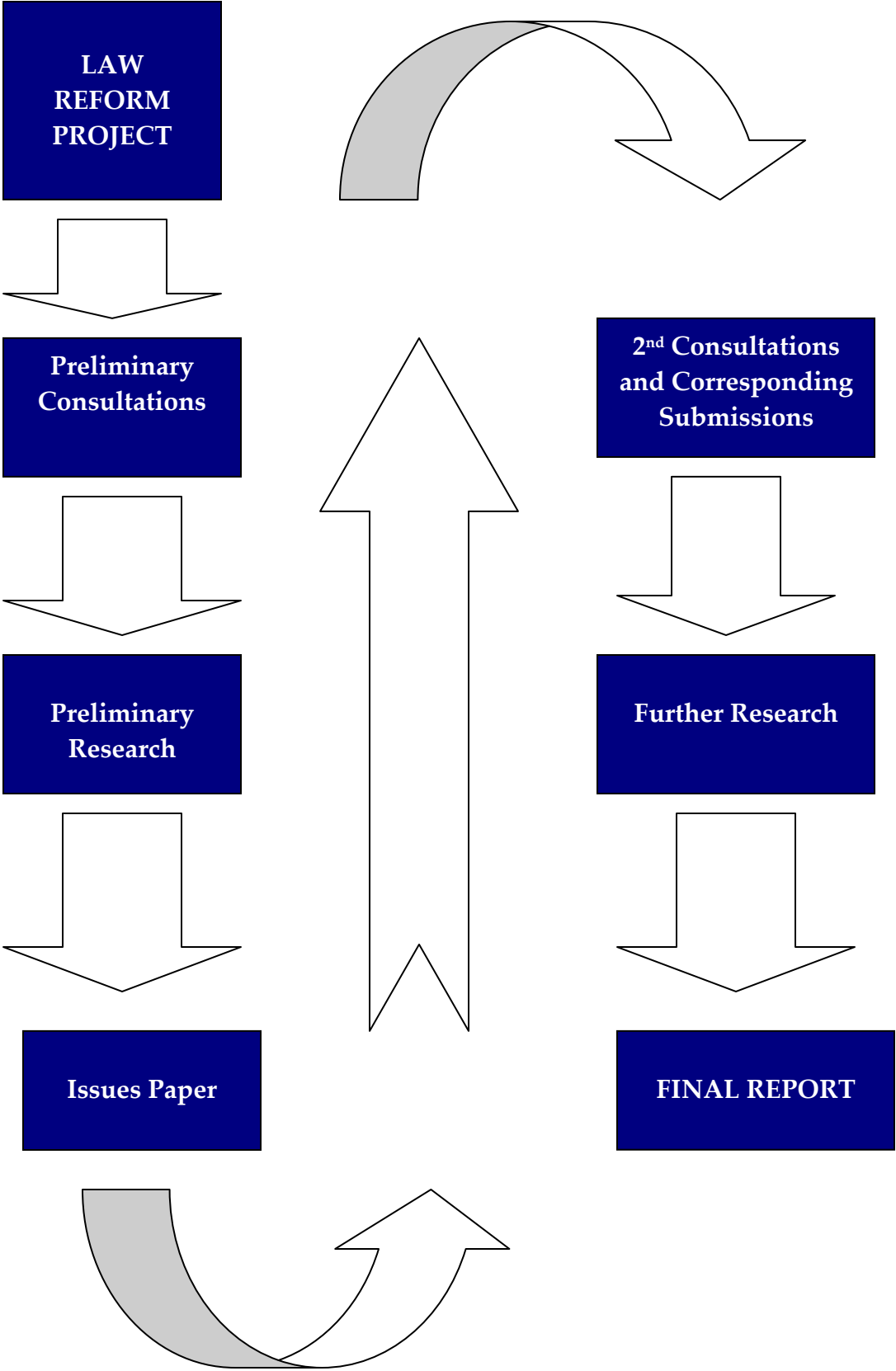
The Terms of Reference of the Advisory Board approved by Cabinet are as follows;

- Receive Reports on law reform projects currently undertaken
- Receive Reports on law reform projects to be undertaken
- Recommend process and outcomes desired for each project
- Approve Commissioners
- Recommend areas of law to be reviewed and/ or reformed so that the SLRC can recommend to the Attorney General

The Advisory Board of the Samoa Law Reform Commission has met three times this year.

- AB09/01 - 4 March 2009
- AB09/02 - 12 June 2009
- AB09/03 – 24 September 2009

LAW REFORM PROCESS



**Advisory Board is involved in whole process*

Section 4: STAFF DEVELOPMENT

The Commission has been fortunate to be given the opportunity to be exposed to overseas Law Reform Commissions. The Executive Director attended 3 familiarization visits in 2009 in three different countries. In March 2009 she visited Canada where she attended Conference of the Federation of Law Reform Agencies of Canada (FOLRAC), and was attached to the British Columbia Law Institute (BCLI) as well as the Alberta Law Reform Institute (ALRI). In April 2009 she was fortunate to receive full funding from NZAID to visit the New Zealand Law Commission as well as the Maori Land Court and the Waitangi Tribunal. In May 2009 she visited the Australian Law Reform Commission with the assistance of AUSAID. The Executive Director visited the Law Reform Commission of Western Australia and the NSW Law Reform Commission while in Australia.

All these visits have contributed immensely as not only are these Law Reform agencies donating Legal resources for the Commission's library, but they are also assisting in addressing some of the challenges faced by the Commission during the early stages of its establishment. The main three challenges are;

1. Lack of knowledge, skills and know-how in the process of law reform ;
2. Inadequate resources for law reform work; and
3. The work plan of SLRC within the tight timeframe of 12 months.

The Commission is appreciative to the Government of Samoa for facilitating these visits.

Section 5: CONSTRAINTS

The enormity of the workplan faced by the Commission was a real challenge with only one legal officer. The Commission was fortunate that 2 Law Clerks from the Attorney Generals Office were seconded to work for 3 months. The Public Service Commission on 30th November 2009 approved the positions of 1 Senior Legal Analyst, 2 Legal Analysts and 1 Office Assistant. These positions will be advertised in 2010.

Given that this is a whole new experience for Samoa, this was a challenge given the inexperience of legal staff in Law Reform work. However, the Commission is grateful for the familiarization visits attended by the Executive Director that have paved the way with its processes and procedures for its work. It is optimistic that there will be more capacity building for its staff to ensure that they are exposed to other Law Reform agencies in the region for best practices in the area of Law maintenance.

The Commission is also faced with the challenge of securing the cooperation from the Line Ministries either as members on a working group or as the Ministry administering Acts that are being reviewed. The Commission is however aware that Ministries have their core functions, and is proactive in ensuring it secures the availability of the line Ministries for its working groups as well the Review of all the Ministries Acts.

Section 6: BUDGET APPROPRIATION 08/09

Government had in its budget for 2008/2009 appropriated the following sums to establish the Law Reform Commission, under the Attorney General's Budget appropriation for the year 2008/2009.

Personnel:	227,088
Operating:	152,136
<u>Capital:</u>	<u>36,712</u>
TOTAL BUDGET:	ST\$415,936.00
Total Actual Expenditure	<u>ST\$387,358.00</u>
	\$28,578.00

Given the Law Reform Commission is under the Attorney General's Office, the Audited Accounts will be available when Government audits the Accounts of the Attorney General's Office, in which the Budget of the Law Reform was included for 2008/2009.

Section 7: HIGHLIGHTS 2008/09

October 2008

LRC Executive Director appointed.

November 2008

Daylight Savings Bill was referred to Commission and is now passed as a new Act.

December 2008

- Cabinet Appointed Advisory Board and approved Commission's Workplan 2008 - 2009
- Legal Secretary on board
- Formation of Working Group for the Crimes Ordinance Act 1961 and first Meeting of Group was conducted.



Distribution of Questionnaires at Savaii Pulenuu Consultation

January 2009

- Senior State Solicitor Civil Division of Attorney General seconded to work for the Commission
- Establishment of Stakeholders Database

February 2009

- Principal Legal Project Coordinator and Principal Legal Analyst on board.
- Commented on Samoa Tourism Development Bill 2009
- Commenced Prisons Act 1967 preliminary research

March 2009

- First Advisory Board Meeting
- Formation of Working Group to review Prisons Act 1967
- First Meeting of Working Group to Review MWTI Act
- Commented on Draft Electricity Bill and Regulations
- Executive Director's Familiarization visit to Canada



Upolu Pulenuu Consultation

April 2009

- First meeting with MNRE on Compliance with International Environmental Obligations
- Executive Director's Familiarization visit to Australian Law Reform Commission
- Commenced Law Practitioners Act 1976 preliminary consultations

May 2009

- Executive Director's Familiarization visit to NZ Law Commission
- Cabinet approved purchase of vehicle for the Commission
- Commented on Draft Family Safety Bill

June 2009

- Pulenuu Consultations in Savaii and Upolu
- Second Meeting of the Advisory Board
- Commenced Coroners Ordinance 1959 preliminary Consultations
- Commenced Commissions of Inquiry Act 1964 preliminary Consultations
- Commenced District Courts Act 1969 preliminary consultations
- Official handing over by New Zealand High Commissioner of legal Materials from NZ Law Commission for the library.



Savaii Pulenuu Consultations

July 2009

- First Meeting with MCIL on Review of their Ministry's Act
- Completed reports on MOT and MOW of the MWTI Acts and proceed with Civil Aviation Act 1998
- Law Clerks from Attorney General seconded to work for the Commission on a temporary basis.



Leilani T Warren, Executive Director Samoa Law Reform Commission, Attorney General, Aumua Ming Leung Wai, High Commissioner, Caroline Bilkey and Dr Helen Leslie, of the New Zealand High Commission Office Official handling over of Legal Material from NZLC

August 2009

- Commence Shipping Act 1998 Review
- Presentation of CEDAW Report to the public by the Project Coordinator, presented on "Women and the Law"
- Donations of books from British Columbia and Alberta (Canada) law reform agencies for the library.

September 2009

- Third Meeting of the Advisory Board
- Finalization of Division Capability Plan

October 2009

- Commenced first meeting for Audit Office Review
- Executive Director attended “Changing the Laws Successful Reform” in London

November 2009

- Commenced preliminary consultation for Carriage by Air Act, of the MWTT
- PSC Approved 3 additional Legal officers and 1 Support Officer for Law Reform
- Finalized Report for Shipping Act.
- Finalized 5 Issues Paper.

ACKNOWLEDGEMENT

The Law Reform Commission would like to acknowledge the great support and commitment of the Government and in particular the Honourable Prime Minister and the Minister for the Office of the Attorney General, as well as the guidance by the Attorney General. It also acknowledges the support by the Advisory Board in its work for this year.

Special acknowledgement to its partners from the other Law Reform agencies who have given their support in assistance sought by the Commission in their Issues Paper as well as other technical assistance.

The Commission also thanks in particular the assistance of all our donors and funding agencies as well as the Law and Justice Sector.

Last but not the least, the untiring efforts and hard work of the Staff of the Attorney General in all the assistance rendered through secondment of the Lawyers to assist with the workload of the Commission as well as its Staff for all the hard work this year. Your work is acknowledged with sincere gratitude and appreciation.