

Road Map of the Legal and Justice Affairs Advisory Council

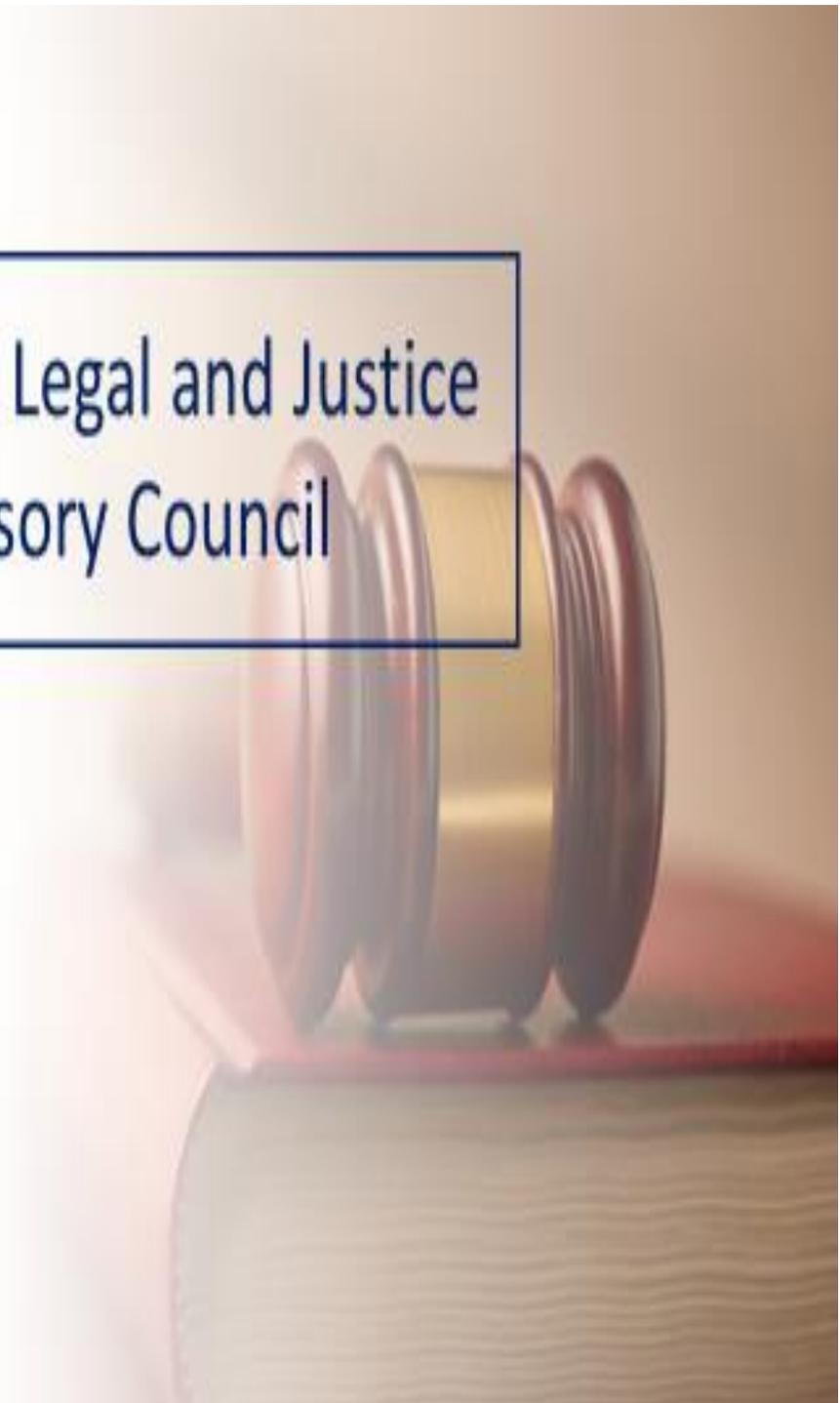


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Road Map of the Justice and Legal Affairs Advisory Council

1. Purpose and General Background

The Office of the FDRE Attorney General has recently established an advisory Council composed of 13 prominent legal professionals. The Council has been established with a mandate to advise the Office of the Attorney General in its effort to undertake a comprehensive reform of the legal and justice system. The purpose of this roadmap is to chart out the steps to be taken by the Council and its Secretariat in the first year of its three-year mandate. This roadmap is intended to guide the Council's activities in the year 2011 (Ethiopian calendar).

The current reform program which is supposed to be spearheaded by the Legal and Justice Affairs Advisory Council (herein after the AC) started off as a two-year study conducted by the Office of the Prime Minister, specifically the Justice Sector Delivery Unit (See Annexed a Report of the Study, Annex I). There was also a study focused on Regulatory Policy and Enforcement which was conducted by the same office in collaboration with the World Bank (see Annexed a report of the study, Annex II). After these reports were completed but before their recommendations were implemented, there was a change in the highest echelons of power within the Federal Government. The new administration has accepted the need for reforming the justice sector but decided that the reform should be implemented in a way that allows legal professionals and other stakeholders provide input in an institutionalized manner. Realizing the need to effectively utilize the wealth of experience and expertise in and

outside of Ethiopia in the reform process, the Attorney General's Office (herein after the AG), has established the AC with a mandate to provide advice to the Government on the following eight focus areas of the reform process;

- i. **Law Reform:** - These are laws that are widely perceived to be incompatible with the Constitution or as having had a detrimental effect on human rights and democracy. In particular, the laws that fall within these sub-program are the Anti-Terrorism Proclamation, the Charities and Societies Proclamation as well as various legislation having to do with the regulation of the press/media. The objective of this subprogram is to ensure that the norms and institutions established in these legislations are compatible with the Constitution and relevant international human rights standards. The revision to be undertaken in this sub-program will pave the way for a statutory regime conducive for the emergence of a vibrant and strong civil society and media.
- ii. **Law Making Process and Administrative Law:** - the objective of this subprogram is to ensure that the legislative process, including the way in which various pieces of laws are drafted and adopted will become more participatory and democratic. The reform in this subprogram will also be geared at creating mechanisms that enhance both the formal and substantive quality of our laws. The reform will also incorporate in the law making process mechanisms to ensure the compatibility of laws with the Constitution and Ethiopia's international obligations. The sub-program looks in to not only how proclamations are enacted but will also include the process through which administrative rules and laws are made. This subprogram will look into the way through which regulatory policy is implemented through rule making and adjudication by administrative agencies. One objective of this sub-program will be to enhance the capability of regulatory agencies and ordinary courts to discharge their obligation of administering justice in a predictable and efficient manner.

- iii. **Judicial Affairs:** - this subprogram focuses on the federal judiciary and its objective is to enhance the integrity and capability of the federal judiciary. The reform process will identify the factors that are detrimental to the credibility and effectiveness of the federal judiciary and propose ways in which these problems will be addressed. The sub-program will be implemented in such a way that the independence of the judiciary, the practical existence of which now a days leaves much to be desired, is bolstered and reinforced. The reform will come up with proposals to increase the confidence of the public in the judiciary and to enhance the capacity of the judiciary to be more assertive, independent, accountable, accessible and effective in protecting the rights of citizens. In so doing, relevant laws, regulations and work practices will be reviewed and, where appropriate, legislative reform or introduction of new laws will be recommended.
- iv. **The Criminal Justice System:** - this sub-program is intended to identify problems in the criminal justice system. In particular, the subprogram will identify aspects of the system that lead to abuse of rights and disproportionate punishment. The subprogram would propose administrative and legislative interventions designed to engender a coherent, rational, just and effective criminal justice system. The proposed solutions will also address institutional bottle necks and problems that hinder the effectiveness and fairness of the criminal justice system.
- v. **Civil and Commercial Law:** - the sub-program will also include a review of the current state of affairs in relation to the commercial code and major civil law matters to identify the salient issues both in the law and its implementation that call for legislative reform.

- vi. Democratic Institutions:** - this sub-program focuses particularly on the institutional and legal problems that have undermined the performance and credibility of democratic institutions such as the National Electoral Board, the Ethiopian Human Rights Commission, and the Institution of the Ombudsman. The sub-program will also explore the mechanism for the interpretation and enforcement of the Federal Constitution. The sub-program will result in a set of recommendations that substantially improve the overall autonomy, credibility and effectiveness of these institutions. It also addresses revisions that could be necessary in the laws that these institutions are supposed to apply and come up with recommendations on how the mechanism for constitutional interpretation and enforcement in Ethiopia could be improved and strengthened.
- vii. Legal and related Services:** - this subprogram addresses the various services provided to the public by the legal profession. These include the provision of legal advice and representation as the well as arbitration, trusteeship, investigation and so on. The sub-program is intended to identify the major problems and shortcomings in the provision of legal and related services as well as the legislative and administrative measures that could enhance the level of professionalism, accessibility and ethical conduct among the providers of legal and related services. It also explores the alternative ways in which the providers of these services could be regulated and organized with a view to safeguard the interest of justice and the society.
- viii. Legal Training and Education:** - This subprogram investigate the problems in terms of the quality and relevance of legal education and training in contemporary Ethiopia. It also evaluates the results of the previous round of reforms in this sector and propose ways in which the provision of legal training and education in Ethiopia will produce professionals with a high degree of technical competence and ethical integrity.

These eight focus areas constitute sub-programs of the reform process which the AC is supposed to work on. Other areas deserving the attention of the Council will be identified as its work progresses. Currently, the Secretariat of the AC is working on the first sub-program with a view to finalize the review of laws that fall within that sub-program in the next three months. The Secretariat has taken the initiative and established interim working groups that have started the process of reviewing the Anti-Terrorism Proclamation, the Charities and Societies Proclamation and various legislations that form the Ethiopian media law regime. These reviews are underway according to schedules adopted by the interim working groups with the understanding that they need to be completed by October 2018 taking in to account the urgency occasioned by the pressing public demand to have these laws revised.

First Year: - This Roadmap is expected to guide the activities of the AC and its Secretariat discharge their mandate in relation to the remaining seven sub-programs of the reform package. Taking in to account the need for prioritization, the proposal in this road map is that in the first year of its mandate, i.e. in 2011 Ethiopian calendar, the AC will focus on primary legislations and institutional changes in the following five sub-programs;

- The Law Making Process
- The Judicial System
- The Criminal Justice System
- The Civil and Administrative Justice System
- Democratic Institutions.

A general timeline that will guide the activity of the AC is provided in the last section of this roadmap (i.e. Section 7).

Second and Third Year: - The above time line means that follow up and support in the implementation of the reform proposals of the AC as well as work on the Legal Education and *Training* sub-program and *Legal and Related Services* sub-program (with the exception of the review concerning the regulation of the legal profession regarding which a lot of work has already been done) will be the focus on the AC in the last two years of its mandate, i.e. 2012-2013 Ethiopian calendar. From the *Civil and Administrative Justice System*, the focus on the first year would also largely be on the Administrative, i.e. the regulatory policy and enforcement component of the sub-program. Follow up and support by the AC and its secretariat would include; tracking the extent to which its recommendations have been adopted and implemented, drafting secondary legislations and manuals needed to ensure the effective implementation of the AC's recommendations, evaluating and monitoring the impact of its recommendations, the provision of trainings intended to facilitate the effective implementation of the AC's recommendations. Generally speaking, as the first year of its mandate ends and the AC will partially shift its attention to providing institutionalized support to enhance the extent to which its recommendations are put into practice.

2. Review of Previous Reform Initiatives

While identifying the reform sub-programs that will be the focus of the reform initiative to be led by the AC, the background study conducted within the Office of the Prime Minister has tried to review and learn from previous reform initiatives. The most notable reform initiatives and measures in the justice sector in Ethiopia in the past two decades include;

- The attempt to staff the federal and state judiciary with personnel trained in law
- Law reform initiatives that resulted in the adoption of a new Criminal Code, Family Code, Labor Law and other new legislations.
- The establishment of several new law schools throughout the country
- The establishment of the Justice and Legal Research Institute
- The establishment of the Judges and Prosecutors Training Institute
- The Comprehensive Justice Reform Program
- Business Process Reengineering and Balanced Score Card
- The introduction of new technologies in courts such as digital database, voice recording and virtual court.
- The establishment of new benches

- A system of inspection of files
- Annual policy training
- Giving binding force to the interpretation of laws by the Cassation division of the Supreme Court and publishing these judgments
- Introduction of single judge benches

However, these measures and efforts have not succeeded in improving and strengthening the legal and justice system. In fact, in many respects the system is in a dismal condition and in need of a serious overhaul. Many in the country strongly believe that the heavy hand of the executive and the political structure in the business of the court system is a very serious problem to be seriously looked into if any meaningful judiciary worth of discharging its constitutional mandate is desired to flourish. To this end, not only the direct or otherwise intervention of those outside the judiciary but equally the behaviors of those within it require heavy scrutiny. The fact that the problems in the system persist and even get worse despite several reform programs and measures is something that needs to be looked in to before undertaking another round of reform. After reviewing the reform measures and programs listed above, the following are the most important lessons we can draw;

- **Starting from Complexity:** - the legal and justice system is a complex system with many sub-systems. Understanding the interdependence and relationship of the components of the system is essential for the success of any reform effort. A reform initiative focused only on an aspect of the system is likely to fail. For reform to be successful it should be comprehensive and address the most pressing problems in all the components of the system. Understanding the web of actors, interests and incentives power within the system is essential for designing a successful reform package. Reforming and improving in isolation

a single component of the system is not possible due to the inherent interdependence of the various institutions and legal regimes within the system.

- **Adaptive Learning:** - the process of reforming the legal and justice system should be able to customize solutions to the needs and context of the Ethiopian reality. Solutions should be tailored by taking in to account and learning from the lived experiences of citizens.
- **Inclusiveness and Stakeholder engagement:** - the reform process should provide an opportunity to all stakeholders to be heard. The success of previous reform efforts has been limited partially due to the fact that the reform process was designed and managed in a way that excluded professionals with relevant expertise and without meaningful engagement with various stakeholders. To avoid the same fate, the current reform initiative should be implemented with the participation of the broadest level of participation both from the citizenry at large and professionals with relevant expertise.
- **Path dependence:** - there is a need to be mindful of the fact that the present condition of our legal and justice system as well as the options we have going forward are constrained by the choices we have made in the past. The path taken so far, in a way, informs and shapes the direction we could take in the future. An understanding of this reality in relation to legal reform particularly requires that we be mindful of our legal history, tradition and the overall historical, political, social and economic context within which the reform has to be implemented.
- **Normative Framework:** - the reform process needs to be anchored by certain moral principles. Without an appropriate normative framework that guides the reform process, it will at best end up being an exercise that enhances merely the technical

efficiency of the system. There is a strong likelihood that such a reform process will not address the most fundamental problems within a legal system. As these problems persist the legal system will become morally bankrupt, unjust and illegitimate. Therefore, there is a need to situate any process of reforming the justice sector with in a robust and relevant normative framework.

- **Institutionalizing reforms:** - designing and implementing reform measures in an *ad hoc and* haphazard manner has been one of the reasons why previous reform efforts were not successful. To address this deficiency, the reform of the legal and justice system has to be undertaken systematically and in an institutionalized manner. That is why the establishment of the AC, having its own secretariat is important.

3. Current Context

The legal and justice system in Ethiopia seems to have reached its nadir. The system is deemed to be in need of an urgent and serious overhaul. This is due to several interrelated reasons. To begin with the justice and legal system has not proved to be up to the task when it comes to maintaining law and order in the country. The ability of the system to safeguard the peace and public order has increasingly been eroded. The system's effectiveness in terms of providing safety and security as a basic public good is increasingly diminishing. This is related with the overall lack of legitimacy that seems to plague the system which in turn is a problem that emanates from the perceived and real abusive and discriminatory way in which the legal system has been operating. Widespread abuses of fundamental rights, the weakness and ineffectual existence of institutions within the system, the increasing level of corruption have undermined trust in the system. The credibility

and legitimacy of various institutions and actors in the system has also been further eroded due to the politicization of the institutions, the decline in professional competence and integrity that is seen in the system.

As a result of the above mentioned factors, the legal and justice system was not the preferred route citizens resorted to when they had grievances. As has been seen in the past three years in particular, the institutions and procedures that form part of the legal and justice system in Ethiopia were of little or no use in providing a platform for addressing the grievances of citizens. In fact, frustration with a legal and justice system that is seen as being corrupt and an instrument of oppression has fueled unrest in many parts of the country. The change in the leadership of the federal government seems to have stemmed the tide of protests and unrests that were rocking the country for years. The new administration has reiterated its commitment to reform the legal and justice system since the assumption of power by the Prime Minister Abiy Ahmed. There is also a great deal of anticipation and expectation among the public at large as well as various stakeholders to see the realization of this promise. The National and State elections to be held in 2020 have also raised the stakes and made the need for reform even more acute.

Generally speaking, the current context within which this reform is supposed to be implemented is a time of significant change and uncertainty. The overall trend of political liberalization, the change in the leadership of key state institutions, the decision by the ruling party to implement a program of partial privatization of key state owned enterprises, the peace agreement with Eritrea, a greater degree of freedom of expression, assembly and demonstration, public admission by the government that there have been serious and widespread human rights abuses in the prisons, large scale pardon and amnesty, rapprochement between the government and political groups that were hitherto considered to be terrorist organizations by the state are just among the many changes we have witnessed in the past three

months. On the other spectrum, these changes have also been accompanied by mass eviction and communal conflicts in different parts of the country, causing grave humanitarian crises including the death of thousands and the displacement of millions.

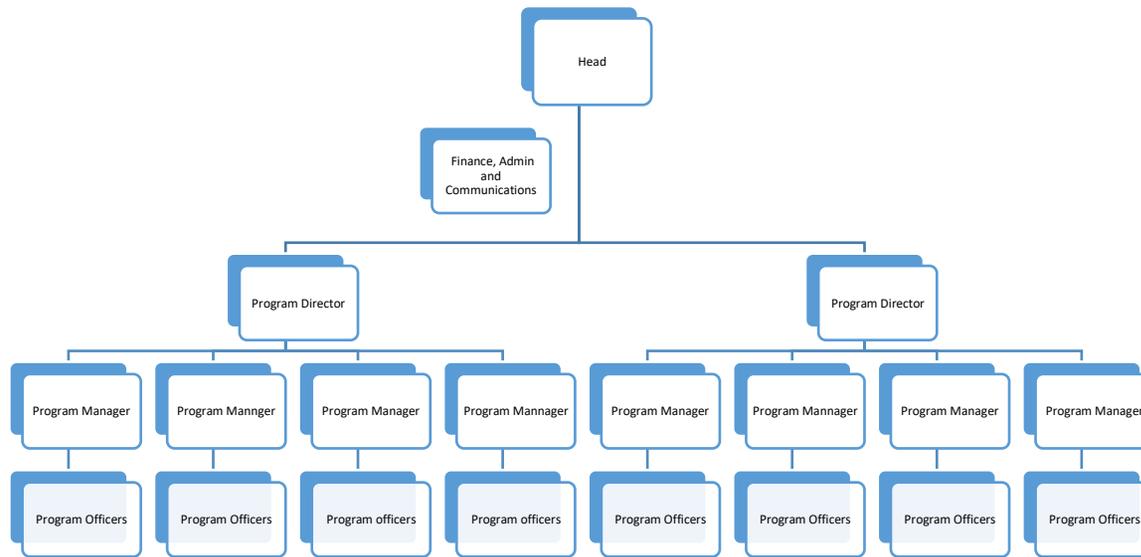
4. Objective

The objective of the AC is to effectively advise the government of Ethiopia in its effort to advance the cause of justice, uphold rule of law, protect human rights and build a genuinely democratic federal system of governance. In particular, in the first year of its mandate, the AC's objective is to provide the government with recommendations regarding legislative and institutional reforms that need to be put in place to bring about meaningful improvement in the performance of the law making process, the criminal, civil and administrative justice system; the independence, accountability, integrity and competence of the judiciary, the overall performance and credibility of democratic institutions.

5. Organization of Work Stream and Functional Structure

The composition, function and mandate of the AC as well as the responsibility of its Secretariat shall be in accordance with the relevant rules provided in the Directive establishing the AC (Annex III) and the rules of procedure adopted by the AC (Annex IV).

We propose that the Secretariat be setup according to the following organizational structure.



The Secretariat of the Council shall undertake technical work and research necessary for the AC to discharge its mandate. This will include adopting evaluative frameworks relevant to a sub-program, undertaking diagnostic studies, conducting consultation forums, coming up with draft recommendations and laws to address the problems identified through diagnostic studies. The AC will provide general guidelines or instructions how the Secretariat shall design and carry out the activities. The Secretariat shall also keep record of the AC and provide the necessary administrative and logistical assistance for the AC. To ensure that the Secretariat supports the AC effectively and assists the AC fulfil its mandate, the Head of the Secretariat will work in close collaboration with the Chair of the AC. In discharging her/his responsibilities the Head of the Secretariat will work in consultation and close collaboration with the Principals (i.e. the Chair of the Council and Attorney General).

The Organizational structure above will entail the following division of labor and responsibilities;

- **The Head of the Secretariat:** - the Head of the Secretariat, appointed by the Attorney General functions as the Chief Executive Officer of the Secretariat. As such the Head of the Secretariat is in charge of managing the overall operation of the Secretariat, making major decisions regarding the operational of the Secretariat and s/he shall also serve as the main point of communication the Secretariat in its relationship with the AG, the Council or third parties when necessary.
- **Program Directors:** - there shall be at least **two** Program Directors tasked with overseeing the day to day operations of the Secretariat. The Program Directors shall serve as chief operating officers who will direct and oversee the various sub-programs that from part of the reform mandate of the Council. The Program Directors could also act as program Managers for specific reform sub-programs.
- **Program Managers:** - for each sub-program within the reform mandate of the Council there shall be one program manager responsible for coordinating and managing the activities of program officers and external consultants as well as volunteers taking part in the work of the Secretariat. This will mean that there will be **eight** program managers. Depending on the need and nature of the sub-program there will be *program officers* working under Program mangers as full time employees of the Secretariat, there could also be external consultants and volunteers organized in various working groups and teams.
- **Finance, Admin and Communications:** - there will also be a small support team that reports directly to the Head of the Secretariat and that will be responsible for finance, administration and public relations/communications related needs of the Secretariat.

6. Resources

6.1 The Office of the Attorney General has already provided the Secretariat with a furnished office and promised to provide the additional office supplies that might be necessary. The office space provided for the AC and its secretariat has a medium hall that could accommodate about 100-150 people and a board room that is ideal for the meetings of the Council. There are also working stations that could accommodate the staff of the Secretariat. It is also expected that the AG will be able to provide a few support staff that might be needed for the work of the AC and its Secretariat.

6.2 The resources/funds needed to program staff for the Secretariat as well as funding needed to cover expenses in relation to large scale consultation events are expected to be secured from external donors.

- The resource requirements of the Secretariat in terms of human resource are as follows;

Program	Number of Program Manager	Number of Program Officers		Work
<i>Administrative Affairs and Law Making</i>				A significant amount of work pertinent to this sub-program has already been done by the Prime

				Minister's Office in collaboration with the World Bank.
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Program	Number of Program Manager	Number of Program Officers		Work
<i>Judicial Affairs</i>				Work of this team will be done in collaboration with a team of volunteers who will be constituted in to a working group on the judicial system.

Program	Number of Program Manager	Number of Program Officers		Remarks
<p><i>Criminal Justice Affairs</i> <i>(Police, Prison Administration and Public Prosecutor)</i></p>				<p>Work of this team will be done in collaboration with a team of volunteers who will be constituted in to a working group on the criminal justice system.</p>
Programs	Number of Program Manager	Number of Program Officers		Remarks
<p>Commercial and Civil Affairs</p>				<ul style="list-style-type: none"> • The component of this sub-program concerning administrative law/justice has already been

				<p>exhaustively researched by the Prime Minister's Office in collaboration with the World Bank.</p> <ul style="list-style-type: none">• The Civil component of the sub-program will be tackled in the second year of the Council's mandate.
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Program	Number of Program Manager	Number of Program Officers		Work
<i>Democratic Institutions</i>				<p>Work of this team will be done in collaboration with a team of volunteers who will be constituted in to four working groups focusing on four key democratic institutions (i.e. the National Electoral Board, the House of Federation/CCI, the Institution of the Ombudsperson and the Human Rights Commission).</p>

The total human resource requirement of the Secretariat is expected to be **15**.

- The Secretariat estimates that for each of the six sub-programs on which the Council will focus in the first year of its mandate there will be on average 10 technical or smaller consultation forums and about 5 big public consultation forums. This would mean that there could be around **90 public consultation forums** of varying size. The smaller technical consultation forums could be held within the office of the Secretariat at relatively low cost but the bigger public consultations need to be held outside the office of the Secretariat and as a result would require significant budgetary allocation.

7. Tentative Timeline for Year One

7.1 Setting Up and Staffing Secretariat

The Head of the Secretariat has already been appointed and is already in place. The outstanding tasks in relation to staffing and setting up the secretariat are as follows;

	Task	Period Required for Implementation	Time Frame	Responsible for Implementation	Responsible for Follow Up	Remark
1	Recruiting Program Directors	One Week	July 30-August 3, 2018	Head(In consultation with the Chairperson and Deputy Chairperson of the AC)		
2	Recruiting Program Managers	One Week	August 6-10, 2018	Head (In consultation with the Chairperson and Deputy Chairperson of the AC).	Council Chair	
3	Recruiting Program Officers	Three Weeks	August 6-10, 2018	Program Directors & Program Managers	Head	
4	Compiling a Directory/ List of Experts on Various Program Areas	Three Weeks	August 6-10, 2018	Program Officers, Manages and	Head	

				Directors		
5	Securing Office Space, email account/s, website, record system, etc.	Two Weeks	July 30- August 10, 2018	Head	Council Chair	
6	Recruiting Support Staff	One Month		Head	Council Chair	

In the recruitment of staff for the Secretariat, two approaches could be used;

- Competitive open recruitment using widely publicized vacancy announcements
- Headhunting

The most appropriate modality of recruitment to fill a position will be determined through Consultation by the Head of the Secretariat in consultation with the principals. The consideration in this regard will be the need to balance the requirements of expediency and transparency as well as fair and equal opportunity to prospective applicants. For the position of Program Director and Managers, by taking in to account the need for expedient recruitment as well as the degree of specialization required to fill these posts, the Head of the Secretariat in consultation with the Principals could carry out recruitment through headhunting.

6.2 Program Roadmap for 2011 Ethiopian Calendar (September 12/2018- September 10, 2019)

Program	Resource Requirement	Activity	Expected Output	Timeline
<p>Making and Administrative Affairs</p>	<p>Program Manger Program Officers</p>	<p>Adopt an diagnostic Report Evaluation Framework and Conduct a Diagnostic Study(with public consultation)</p>	<p></p>	<p>months (September 12, 2018-December 12 2018)</p>
		<p>Generalized Recommendations and Draft Legislation(s) (with public consultation)</p>	<p>administrative recommendations and draft law(s)</p>	<p>Months (December 13, 2018-February 13, 2019)</p>

		Support and Tracking Implementation	g, manuals and guidelines	Months (February 14, 2019- April 15, 2019)
Affairs	1- Program Manger	an Evaluation Framework and	nostic Report and Policy Recommendations	months (September 12, 2018-
	2- Program Officers	Conduct a Diagnostic Study (including general recommendations)		December 12 2018)
		Consultation	d Policy recommendation/White Paper	Months (December 13, 2018- February 13, 2019)
		legislations	aws	Months (

				February 14, 2019- June, 15, 2019)
al Justice	ram Manger ram Officers	an Evaluation Framework and Conduct a Diagnostic Study (including general recommendations)	nostic Report and Policy Recommendations	months (September 12, 2018- December 12 2018)
		Consultation	d Policy recommendation/White Paper	Months (December 13, 2018- February 13, 2019)
		egislations	aws	Months (February 14,

				2019- June, 15, 2019)
Commercial and Civil Affairs	<p>1- Program Manger</p> <p>2- Program Officers</p>	<p>Adopt an diagnostic Report Evaluation Framework and Conduct a Diagnostic Study(with public consultation)</p>		<p>months (September 12, 2018- December 12 2018)</p>
		<p>Generalized Recommendations and Draft Legislation(s) (with public consultation)</p>	administrative recommendations and draft law(s)	<p>Months (December 13, 2018- February 13, 2019)</p>
		<p>Support and Tracking</p>	g, manuals and guidelines	<p>Months (February 14,</p>

		Implementation		2019- April 15, 2019)
Parliamentary Institutions	Program Manager 2-Program Officers	an Evaluation Framework and Conduct a Diagnostic Study (including general recommendations)	Diagnostic Report and Policy Recommendations	months (September 12, 2018-December 12 2018)
		Consultation	Policy recommendation/White Paper	Months (December 13, 2018-February 13, 2019)
		Legislations	Laws	Months (February 14, 2019- June,

				15, 2019)
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