

# **Term of Reference for Member of the Working Groups Established by the Legal and Justice Affairs Advisory Council**

## **1. Purpose**

The FDRE Attorney General has established an Advisory Council composed of 13 legal professionals on June 29, 2018. This Council is expected to advise the government on the design and implementation of a comprehensive legal and justice sector reform. To discharge its mandate, the Advisory Council has already established several Working Groups composed of professionals with expertise on the thematic areas that fall within the purview of the Council. This document is supposed to serve as a guideline for members of Working Groups and facilitate their relationship with the Council.

## **2. Term of Service**

2.1 The term of service of members of working groups shall be conterminous with the term of service of members of the Council which is three years.

2.2 Membership in a working group could be terminated upon the decision of the Advisory Council for cause or by the resignation of a member of a working group.

2.3 Service in the working groups shall be on a *pro bono* basis and the Council will strive to ensure that such service is given due recognition and credit among others for the purpose of renewing advocacy licenses.

2.4 Members shall serve in working groups in their personal capacity and not as representatives of any organized entity. Exceptions, when necessary could be made by the Council.

## **3. Roles and Responsibilities**

### **3.1 Working Groups**

- i. Working Groups shall to the extent feasible and appropriate in relation to their thematic focus;

- adopt evaluative frameworks relevant to the sub-program they are working on<sup>1</sup>,
  - undertake diagnostic studies based on the evaluative framework they have adopted,
  - conduct consultation forums on the findings of the diagnostic studies,
  - come up with draft recommendations and laws to address the problems identified through diagnostic studies,
  - conduct public consultations alongside the preparation of draft recommendations and laws when necessary.
- ii. Working groups could depart from the above approach when there are specific studies or draft laws which they are asked to work on or when the urgency of a given assignment justifies such departure.
  - iii. Each working group shall draw up a flexible work plan outlining major milestones and activities in consultation with the Secretariat of the Council.
  - iv. If working groups recommend the adoption of a new law, draft laws should be accompanied by background documents prepared with the outline provided in **Annex I.**

### **3.2 Coordinators**

- i. Each working group shall have a coordinator or chairperson who is a member of the Working Group assigned by the Council.
- ii. Coordinators shall chair meetings of the working groups and liaise with the Council and Secretariat representing the working group.

### **3.3 Program Managers**

The Secretariat of the Council shall assign one Program Manager who shall;

- Provide operational support to working groups;
- Oversee and provide high-caliber professional support to working groups by providing expertise and research assistance to the working groups;

---

<sup>1</sup> The evaluative framework could be synthesis of relevant constitutional and international standards, pertinent policy objectives and best practices gleaned from comparative studies.

- Assume responsibility for the day to day operation of thematic areas they are assigned to work on;
- Take a leading role in the undertaking of diagnostic studies and the development of recommendations that are within the purview of the working group they are assigned to;
- Organize and proactively engage with pertinent government institutions, public and private stake-holders, non-governmental organizations and development partners in bilateral/national consultations, workshops and other dialogue forums which facilitate the work of working groups they are assigned to support.
- Supervise and lead program officer's/research assistants assigned to assist working groups.

### **3.4 Secretariat**

#### **The Secretariat shall provide;**

- The resources and logistical support needed for the Working Groups to accomplish their task to the extent possible.
- Assign Program managers and Officers/research assistants to support the Working Groups.
- Coordinate and facilitate the relationship of the Advisory Council and Working Groups.

### **3.5 Advisory Council**

- The Advisory Council shall provide overall supervision and direction to the Working Groups.
- The Advisory Council shall evaluate, provide feedback, adapt and deliberate upon the reports, findings, recommendations and draft laws prepared by the working groups with a view to discharge its own mandate.

#### 4. Meetings

- It is recommended that working groups meet once a week to the extent that this is feasible.

#### 5. Record keeping

- Working Groups, in cooperation with Program Managers should keep notes of their meeting and document their research activity. A copy of such records should be passed along to the Secretariat of the Council periodically.

#### 6. Code of Conduct

- Members of working groups shall work in a manner that confirms to the highest standards of professional ethics and strengthen the public's trust and confidence in the work of the Advisory Council.
- Members of working groups shall keep the confidentiality of information they come across in the course of their work.

## Annex I

### Recommended Outline of Background Documents

#### ***Background Document***

##### ***1. Analysis of the existing law***

The analysis of the legislative proposal begins with the analysis of the existing regulation of the topic by current laws as interpreted, implemented and supplemented by court decisions and academic opinion. The researcher should identify all existing laws including proclamation, regulation, directive, manual and working procedures within a given topic.

For the purpose of analysis all legislation must be considered as an amending law. This rule ensures that focus on the legal implications of the proposed legislation exercising acute alertness with regards to the analysis of existing law.

This analysis must reply to the following questions:

- What must be amended?
- What must be repealed? And how: express or implied repeals?
- What must be preserved?
- What must be added?

Comparative research can also be included at this point.

## **2. Evaluation of the constitutional context of the legislative solution**

The legislative solution must be in compliance with the Ethiopian constitution. It is the duty of the researcher/drafter to ensure that the legislative solution offered to policy makers complies with whichever national provisions are considered significant enough to be included in the constitution.

Where constitutional issues arise, the researcher must briefly outline proposals that are inconsistent with the constitution and find an alternative means whereby the proposals can be implemented.

## **3. Analysis of the necessity of legislation**

Legislation must be viewed as a solution of last resort. It is necessary for the researcher to assess whether the identified social need can be addressed by reference to self regulation or other innovative solutions.

## **4. Analysis of potential danger areas**

Analysis of potential danger areas can be used both to identify gaps in existing laws and for new proposals. Existing laws containing one of the potential danger areas listed below should be identified and must be proposed for amendment. As the same time, all necessary precautions must be taken for new proposals not to affect rights listed herein under.

- Proposals affecting personal rights (such as proposals affecting existing benefits, pensions, access of citizens to activity regulated by statute, access to justice, electoral rights, freedoms or non-discrimination)
- Proposals affecting private property rights (namely proposals granting powers of access to private property, search, seizure, detention or forfeiture of private property)
- Proposals to introduce powers to the government without necessary parliamentary authority (such as proposals to introduce taxation legislation, criminal provisions, without specific parliamentary authority)
- Proposals for retrospective legislation (criminal retrospective legislation must be viewed with extreme caution; civil retrospective legislation can be accepted if the law is certain and stable; it is general in character; and it is not subject to alteration in regard to specific individuals)

- Proposals for extra-territorial legislation (both within Ethiopian federal system and outside Ethiopia) (in principle, extraterritorial legislation is a shock to the legal system; however, it may be imposed in the case of transnational social needs, such as for the regulation of transnational legislation)
- Proposals which are not in compliance with international law (such as the expropriation of the property of foreign individuals without compensation)
- Proposals of doubtful territorial or constitutional competence
- Proposals which are unnecessarily bureaucratic (such as proposals introducing complicated licensing or permit systems)
- Proposals affecting interests of other government departments or public bodies

## **5. Research Findings**

- Research findings should contain sufficient background information to enable the government to see in perspective and in context the facts and problems which the new legislative proposal intended to meet.
- The principal objects of the new proposed legislation should be clearly and fully stated so that the government is in no doubt as to the spirit and intent of the proposed legislation.
- The means whereby the principal objects are to be achieved should be set out: how will the legislation work in practice? What is the machinery envisaged? What powers and duties are considered necessary?
- The research findings should refer to all known legal implications and difficulties