

Duty of Care – Constitutional and law reform, in Malawi

During the economic and political turmoil which beset Malawi in 2011-12, the constitution and the rule of law were frequently invoked by protestors. In March 2012, the influential inter-faith Public Affairs Committee (PAC) issued a communiqué to President Mutharika which described Malawi's predicament as being the result of "having a constitution without constitutionalism".

In ***Duty of Care: Constitutional and law reform, in Malawi***, the latest publication in Africa Research Institute's *Policy Voices* series, Dr Janet Chikaya-Banda explains the crucial importance of systematic law reform. It brings the law into step with the aspirations and needs of the country and plays a role in upholding the credibility and effectiveness of the judiciary.

As chief law reform officer at the Malawi Law Commission, Dr Chikaya-Banda oversaw a two-year constitutional review programme in 2004-6. A report submitted to government in 2007 with draft bills contained a number of key recommendations which sought to strengthen oversight and accountability in the political system. Five years later, the draft bills remain buried.

In her timely account, Dr Chikaya-Banda highlights impediments to the pursuit of democratic ideals articulated in the Malawi Constitution, the consequences of weak institutional commitment to law reform, and the vulnerability of the law in the face of a very powerful presidency. In her foremost recommendation, she calls on the new government in Malawi to "move things on" by implementing – or at least debating openly – the recommendations of the constitutional review.

"If they do not, the considerable cost in time, effort and money involved in the constitutional review will have been wasted", Dr Chikaya-Banda said at the 15th November launch of her publication at Africa Research Institute in London. "More importantly, the views of all Malawians who participated in the nationwide consultation will have been ignored."

In May 2012, shortly after taking office following Mutharika's death, President Joyce Banda emphasised that a "strong commitment to constitutionalism continues to provide the basic framework for the growth of our democracy". Soon after becoming president, she repealed Malawi's controversial "anti-injunction law" and Section 46 of the Penal Code which empowered the Minister of Information to ban publications deemed "unsuitable for the public good". More recently, Attorney General and Justice Minister Ralph Kasambara committed to reviewing Malawi's anti-homosexuality legislation. The law and the constitution remain to the fore – and contested.

Notes to editors:

Africa Research Institute is a non-partisan think-tank based in London. Our mission is to draw attention to ideas that have worked in Africa, and to identify where new ideas are needed. ***Duty of Care: Constitutional and law reform, in Malawi*** can be downloaded from the Africa Research Institute website: <http://bit.ly/T6kcLb>

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