

[Chief Law Reform Officer Urges Government To Act On Report On 2004-6 Constitutional Review.](#) [Solicitor General Agrees To Revisit](#)

At the Lilongwe launch of her publication [Duty of Care: Constitutional and law reform, in Malawi](#), Dr Janet Chikaya-Banda urged the government to “fish out” the Law Commission’s report on the 2004-6 constitutional review and “move forward the recommendations”.

As chief law reform officer, Dr Chikaya-Banda was responsible for compiling the Law Commission’s report which was submitted to the Ministry of Justice in 2007. The draft bills accompanying the report have never been put before parliament. “They have been buried”, said Dr Chikaya-Banda. “We are still waiting for government to heed the views and express wishes of the people of Malawi who participated in the nationwide constitutional consultation”. She added that the inaction contravenes the duty of care imposed on the executive by the constitution and “cripples the effective functioning of parliament and the systematic development of the law”.

Solicitor General Anthony Kamanga SC responded that – as Law Commissioner in 2006-7 and a fellow member of the Constitutional Review Commission – he took Dr Chikaya-Banda’s plea seriously.

Mr Kamanga emphasised that the government “remains committed to supporting and taking forward the work of the Law Commission”. He also reminded the audience that there were “quite a few contentious recommendations” in the report on the review of the constitution, in particular those relating to Section 65, the recall provision, the clarification of presidential terms and the president’s right to appoint the vice-president. According to the Solicitor General, these issues largely explained “why things did not proceed” under the previous administration. “The challenge we’ve had should be obvious to most of you”, he told the audience. Although there will always be “instances where government holds a different view on individual law reform programmes and may refer recommendations back to the Law Commission”, the Solicitor General confirmed that the new government was “revisiting the report of the Law Commission on the revision of the constitution”.

A presentation from Justice Edward Twea SC focused on the role of the judiciary in law reform. He stressed the importance of systematic, continuous law reform and described the Law Commission as “an important independent voice”, especially given “the influence of the executive over the legislature” in Malawi. The inclusion of judicial officers in the Commission’s law reform programmes was described by Justice Twea as “invaluable to the process”. He also drew attention to complications that can arise when law reform flies in the face of traditions and traditional values which have popular support, and when there are contradictions between the constitution and other laws.

The event was organised by Africa Research Institute, the independent think-tank based in London which published [Duty of Care: Constitutional and law reform, in Malawi](#). It was held at the Sunbird Capital Lilongwe on 22nd November, and was attended by more than 100 guests including MPs, diplomats, representatives of international donors, and senior members of government departments, the judiciary and civil society organisations. The event was covered by a number of television and radio stations.

Summing up the presentations, Edward Paice, director of Africa Research Institute, agreed with Dr Chikaya-Banda's statement that constitutional reform is "a very emotive topic in Malawi". He pointed out that during the past 18 months the constitution and law reform have been to the fore in public debate, in the press and in pronouncements of the Public Affairs Committee. In this context, he hoped that the evening had been constructive and informative, and that the dialogue about constitutional reform would continue.

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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