



MALAWI LAW COMMISSION

PRESS RELEASE

Following the appointment of a special Law Commission on HIV & AIDS legislation as announced in January, the Law Commission is pleased to inform the nation that the special Law Commission has commenced its work and the members have elected a Chairperson and Vice Chairperson amongst themselves to provide leadership and guidance in the work of the special Commission.

Therefore the composition of the special Law Commission is as follows -

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| 1. | Rev. Fr. Joseph Mpinganjira | - | Chairperson |
| 2. | Dr. Mary Shawa | - | Vice Chairperson |
| 3. | Dr. Biziwick. Mwale | - | Member |
| 4. | Mrs. Andrina Mchiela | - | Member |
| 5. | Mrs. Fiona Kalembe | - | Member |
| 6. | Dr. Dorothy Namate | - | Member |
| 7. | Dr. Grace Malindi | - | Member |
| 8. | Dr. George Liomba | - | Member |
| 9. | Mrs. Achiwa Ntodwa | - | Member |

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| 10. | Mrs. Amanda Manjolo | - | Member |
| 11. | Ms Chipo Kanjo | - | Member |

Terms of Reference

The Terms of Reference for the special Law Commission are as follows -

The special Law Commission on the Review of HIV & AIDS legislation appointed pursuant to section 133(b) of the Constitution is hereby mandated to review laws of Malawi that have an impact on the HIV & AIDS pandemic and develop a law on HIV & AIDS, having regard to-

- (a) the provisions of the Constitution and any other written laws that have an impact on the HIV & AIDS pandemic;
- (b) the National Policy on HIV & AIDS and other national policy instruments such as, but not limited to, the Malawi Poverty Reduction Strategy Paper, the Malawi Growth and Development Strategy and the national and international Millennium Development Goals;
- (c) Malawi's obligation under international and regional conventions, treaties and protocols on HIV & AIDS.

In pursuance of the functions as outlined under section 6 of the Law Commission Act, the special Law Commission on the Review of HIV & AIDS legislation shall consider and make recommendations on-

- (a) the development of legislation on HIV & AIDS including effective implementation and enforcement mechanisms;
- (b) creation of an institutional legal framework for regulation and co-ordination of matters pertaining to HIV & AIDS;
- (c) any laws made by, or by the authority of Parliament;
- (d) any additional laws within the legislative power of the National Assembly to effect change to the unwritten laws of Malawi, including customary law;
- (e) any changes to be made to harmonise statutory and customary laws;
- (f) any non-legislative approach so as to remove any unjustifiable discriminatory effects of those laws on their application to all citizenry with a view to ensuring the mitigation of the impact of the HIV & AIDS pandemic before the law.

In performing its functions, the special Law Commission shall -

- (i) consult widely amongst the Malawian community and with relevant bodies;
- (ii) conduct comparative studies at national, regional and international levels, including, where necessary, study visits;
- (iii) examine international instruments, such as:
 - the Universal Declaration of Human Rights,
 - the International Covenant on Civil and Political Rights,
 - the International Covenant on Economic, Social and Cultural Rights,
 - the Convention on the Elimination of All Forms of Discrimination Against Women
 - the Convention on the Rights of the Child;
 - the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women,
 - the Southern Africa Development Community Declaration on HIV & AIDS,
 - the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases ,
 - the Tunis Declaration on HIV/AIDS and the Child in Africa,
 - the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS,in light of the HIV & AIDS pandemic;
- (iv) in recognition of work already undertaken, have regard to all relevant documents and reports, including;
 - the Constitution of the Republic of Malawi and other written laws;
 - the National HIV & AIDS Policy and other relevant policy documents
 - reports of the Law Commission including Reports on the Criminal Justice Law Reform and Reports on the Review of Gender-related Laws;

- (v) consider any relevant law of any other country, particularly, within the Southern Africa Development Community;
- (vi) consider any relevant customary laws and practices particularly those that have an impact on HIV & AIDS;
- (vii) consult stakeholders at regional and national workshops in order to solicit views on the findings and recommendations of the Commission; and
- (viii) make recommendations on any other matters relating to HIV & AIDS

At the end of the review process, the special Law Commission on the Review of HIV & AIDS legislation is required to make a report on its findings and recommendations; accompanied by draft legislation, for submission to Parliament and the Minister responsible for Justice for presentation to Cabinet and for laying in Parliament.

Work Plan

NO	ACTIVITY	ISSUES	TIME FRAME	RESPONSIBLE PERSONS
1.	First Meeting of Commissioners (Preparatory)	<ul style="list-style-type: none"> • Adoption of Terms of Reference • Presentation of Working documents • Election of Chairperson and Vice President • Adoption of Work Plan 	13 February, 2007	Commission
2.	Second Meeting of Commission	<p>Discussion on the Institutional Legal Framework</p> <ul style="list-style-type: none"> • Establishment of the National AIDS Commission (NAC) • Mandate of the NAC • Structure of the NAC • Appointment of the Head of the NAC 	6 – 8 March, 2007	Secretariat and Commission

3.	Third Meeting of Commission	<p>Discussion on HIV & AIDS and Human Rights</p> <ul style="list-style-type: none"> • Prohibition of cultural or other practices known to aggravate HIV transmission • Legal interventions to address economic powerlessness of women • Role of gender equality in combating HIV & AIDS • Criminalization of unlawful disclosure of an individual's positive sero-status and exceptional circumstances • Special protection of persons living with HIV & AIDS • Criminal liability and Civil remedies for discrimination 	21 – 23 March 2007	Secretariat and Commission
4.	Fourth Meeting of Commission	<p>Discussion on Information and HIV & AIDS</p> <ul style="list-style-type: none"> • Regulation of dissemination of information on HIV & AIDS • Designation of institutions and individuals responsible for dissemination of information on HIV & AIDS • Role of traditional leaders in combating HIV & AIDS • Notifiability of HIV & AIDS as a disease 	3 – 5 April, 2007	Secretariat and Commission

5.	Fifth Commission Meeting	<p>Discussion on HIV & AIDS and employment</p> <ul style="list-style-type: none"> • Visibility of HIV & AIDS as a ground on which discrimination is prohibited • Prohibition of pre-employment testing • Exceptions to prohibition 	24 – 26 April, 2007	Secretariat and Commission
6.	Sixth Commission Meeting	<p>Discussion on HIV & AIDS and education</p> <ul style="list-style-type: none"> • Regulation of school curricula in respect of HIV & AIDS • Educational institutions as a forum of discrimination 	8 – 10 May, 2007	Secretariat and Commission
7.	Seventh Commission Meeting	<p>Discussion on HIV & AIDS and Health</p> <ul style="list-style-type: none"> • Status of HIV & AIDS as an infectious or epidemic disease • Criminal liability for deliberate infection with HIV • Routine testing of individuals • Exceptions to routine testing • Protection of individuals undergoing VCT • Accessibility of VCT and age limits • Diagnostic testing of individuals 	22 – 24 May, 2007	Secretariat and Commission
8.	Comparative Studies	To be determined and agreed		Secretariat and Commission

9.	Eighth Meeting of the Commission	<ul style="list-style-type: none"> • Review of Draft Report and incorporation of study visit findings • Preparation for the Regional Consultative Workshops 	19 – 21 June, 2007	Secretariat and Commission
10.	Regional workshops – North, Centre and South	<ul style="list-style-type: none"> • Presentation of preliminary findings • Solicitation of further input on preliminary findings 	10 – 11 July, 2007]	Secretariat and Commission
11.	Ninth Meeting of Commission	<ul style="list-style-type: none"> • Incorporation of findings from regional workshops • Planning for the National Consultative Workshop 	24 – 26 July, 2007	Secretariat and Commission
12.	National Workshop	Presentation of Draft Report to Stakeholders	21 – 22 August, 2007	Secretariat and Commission
13.	Tenth Meeting of Commission	<p>Finalization of Report</p> <ul style="list-style-type: none"> • Incorporation of workshop findings • Review of Draft Report 	11 – 13 September, 2007	Secretariat and Commission
14.	Finalization of Report and Draft Bill	<ul style="list-style-type: none"> • Cleaning up of the Draft Report • Preparation of Draft Bill 	September – October, 2007	Secretariat
15.	Signing of Report and Press Briefing		October, 2007	Secretariat and Commission
16.	Presentation of Report to Minister of Justice for laying in Parliament		October, 2007	Secretariat

17.	Printing, Publishing and Gazetting of Report		October, 2007	Commission
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Call for submissions

The Law Commission is inviting oral or written submissions from the general public regarding any issue pertaining to HIV/AIDS.

The submissions should be sent to the Law Commission at the following address:

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Filimoni House
Private Bag 373
Lilongwe 3

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For the attention of:

- ◆ William Yakuwawa Msiska
- ◆ Chizaso Eric Nyirongo

Dated the 13th day of February, 2007.

For:

William Yakuwawa Msiska
Assistant Chief Law Reform Officer
LAW COMMISSIONER