



## LET'S TALK LAWS, AND LAW REFORM IN KENYA

High school was wrong, laws aren't made to be broken. They are made to regulate behaviour – yours and mine. We don't like that much. Most of us would be breaking one here and another there were we brave enough. Yet, according to Swiss philosopher Jean Rousseau, we are born free, then willingly,

give the government authority to keep our behaviour in check. Why the heck we'd do that? Mutual preservation, that's why. You see, laws create order, without which life wouldn't thrive. Imagine an airport where suddenly every pilot disregards the air traffic controllers. Exactly, utter pandemonium. In

essence, there's no society without laws. But as society is constantly changing with time, laws too have to remain as dynamic or they become irrelevant. This is where the *Kenya Law Reform Commission* comes in. Join us on this issue of *Quick InfoBytes* as we talk laws and law review in Kenya. *Karibu... The Editor*

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## Tell us about law reform...

This is the process of changing, adapting, harmonising and or developing the law to make it more relevant with current times, societal values, and or in order to conform it to the existing Constitution.



## Which is Kenya's primary law reform agency?

That is the Kenya Law Reform Commission (KLRC) with *Joash Dache* as the current Commission Secretary/CEO. The State agency was established in 2013 as the successor to the Law Reform Commission, previously established under the repealed Law Reform Commission Act, Cap 3 of the Laws of Kenya.



## Exactly who does KLRC serve?

A number of law reform stakeholders including both levels of government (National and County), the private sector, civil society organizations, media, academia and citizens of Kenya. KLRC also has the necessary autonomy to work with relevant stakeholders (national and international) for the effective discharge of its functions under the Constitution and in any other written law.





## A little about the Kenya Law Reform Commission Act 2013...

The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013) establishes the KLRC. The Act outlines the powers and functions of the Commission in Sections 5 and 6 respectively. This makes the Act, the core legal instrument where KLRC derives its mandate alongside the Constitution of Kenya 2010 and other laws of Kenya.

## Tell us about KLRC and law-reform at the county level...

Law making at county level is a function of County Assemblies under Article 185 of the Constitution. KLRC is obligated by the County Governments Act, 2012 (Section 5(3)) to provide technical assistance to counties in the development and or reform of legislation. This is achieved (upon request or on own motion) through review of draft bills, policy reviews, development and dissemination of guides/model laws for adaption, public consultations and capacity building with relevant county organs.

## And with the National government?

KLRC offers technical assistance to the national government MDAs largely by: review of draft bills and policies, conducting of legal research on proposed law reviews, training of officers, issuance of input during public consultations and offering general information where applicable. And like at the county level, this may be occasioned upon request or on own motion. In addition, KLRC has continued to review statute book (pre-2010) and emerging (post 2010) legislation to bring it into conformity with the Constitution.





# Why are these law reforms necessary?

Laws, like everything else, do become outdated with time. A continuous review is therefore necessary to ensure they remain consistent, harmonised, just, simple, accessible, modern and cost effective in application and responsive to the social, cultural and economic needs of the society.

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## What is the process of law reform in Kenya?

Law reform is a multi-faceted and iterative process. It usually involves research on emerging or proposed areas of the law reform. This may be achieved through: comparative analyses, review of existing legislation and making recommendations for their amendment, repeal or formulation of new legislation. The focal perspective is to ensure that all laws meet the societal needs and conform to the letter and spirit of the Constitution of Kenya 2010.

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## The key players in implementing law reform in Kenya?

The key players in law reforms in Kenya are the: (i) Judiciary –interpretation of the law), (ii) Executive at both levels of government –implementation and making reform proposals) and (iii) Legislative arms at both levels of government (Senate and National Assembly at national level and County Assemblies at the county level). The private sector also plays a role in making reform proposals and in advocacy.





## Should citizens care about law reform?

Yes. Since laws affect citizens directly, the public should be keen to participate to ensure the change (actual or proposed) or modification done over time serves to

better reflect the social values of the society and what it feels is important.



## How can Kenyans join the process?

Through public participation which is a constitutional requirement for law reform in Kenya. These public participation fora may be organised by KLRC, other agencies undertaking the law reform as well people-led initiatives. These fora should be preceded with sufficient information and adequate time and succeeded by genuine consultation and meaningful feedback.

## Does KLRC have offices in all 47 counties?

Currently the KLRC has offices in Nairobi City County (office headquarters) only. However, the KLRC's technical officers participate in various MDAs Task Forces, Inter-ministerial Committees to provide technical support during policy formulation and actual translation of the policy into legislative proposals. Interested groups can partner with KLRC for advanced consultative forums.



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