LAW REFORM: LAW IN PROGRESS, NOT IN RETREAT

THE KENYAN PERSPECTIVE[1]

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[1] Paper presented by Mbage Ng'ang'a to the Commonwealth Law Conference in Livingstone, Zambia on 9th April 2019.

"To reform laws is to reform societies."[2]

In order to maintain relevance in a society that is ever changing, the legal system must respond to the social issues and challenges that arise as a result of this evolution. Law reform is the process by which the law is developed in response to society's evolving social values and competencies, and to address social ills.[3] The Kenya *Vision 2030* recognizes the necessity of new legislation and law reform for realizing our national vision, which aims to provide a high quality of life for all Kenyans[4] in line with the universal Sustainable Development Goals (SDGs) that envisage a world in which every country enjoys "sustained, inclusive and sustainable economic growth" that permits the full realization of human potential and contributes to shared prosperity.[5]

KENYA LAW REFORM COMMISSION

The Kenya Law Reform Commission (KLRC or Commission) was established in 1982 through the enactment of the *Law Reform Commission Act*, Cap. 3. KLRC has gone through three phases, the first one being the inception stage where it operated as a Department under the Attorney-General (AG)'s Office from 1982 to 2008. The second phase was ushered in as a result of the re-organization of government ministries and functions *vide* Presidential Circular No. 1 of 2008, wherein the law reform function and KLRC were administratively moved to the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) until 2013.

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[2]International Development Law Organization, "Legal Reform", online: <http://www.idlo.int/what-we-do/peace-and-democracy/legal-reform>.

[3]'Law Reform', online: <http://stage6.pbworks.com/f/Law+Reform.pdf> at 1.

[4] Government of Kenya, *Kenya Vision 2030: A Globally Competitive and Prosperous Kenya* (October 2007), online: <https://www.researchictafrica.net/countries/kenya/Kenya_Vision_2030_-_2007.pdf> [*Vision 2030*] at vii.

[5] UN GA, Res. 70/1 (25 September 2015), *Transforming Our World: The 2030 Agenda For Sustainable Development*, UN Doc. A/RES/70/1, online: <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> [SDGs] at paras. 8 and 9.

In 2007 Kenya went through a general election which results were contested, leading to post election violence. Through mediation by a Committee of Eminent Persons under the chairmanship of the late Mr. Kofi Anan, former Secretary General of the UN, a political settlement was reached that entailed amending the Kenya Constitution in order to accommodate the leading contestants in the electoral process in a Government of National Unity. The KLRC assisted in developing the legal and institutional framework for constitutional reforms to give effect to the political settlement, leading to the adoption of a new Constitution of Kenya which was approved in a referendum and promulgated on 27th August 2010.

The Constitution of Kenya, 2010 (COK 2010) granted to KLRC the constitutional mandate to work with the Commission for the Implementation of the Constitution (now defunct) and the Attorney-General in the preparation for tabling in Parliament of legislation required for implementation of the Constitution. Given the enhanced mandate granted by the Constitution, it thus became necessary for KLRC to be restructured as an autonomous Commission instead of being a Department in the Office of the Attorney-General[6] The *Kenya Law Reform Commission Act, 2013* was therefore enacted by Parliament and assented to by the President on 14thJanuary 2013.

The work of the Kenya Law Reform Commission in the first five-year period of constitutional implementation was determined by the Constitution. The Fifth Schedule to the Constitution specifies the areas of law and timelines within which the KLRC undertook reforms, prepared bills and submitted them to Parliament for enactment.

[6]CIC was established under the 6th schedule of the Constitution of Kenya, 2010 to monitor the implementation of the Constitution. It however became defunct in December 2015 upon the expiry of its 5-year mandate. KLRC was envisaged to take up its mandate going forward.

KLRC LINKAGES WITH OTHER STATE AND NON-STATE INSTITUTIONS

Section 6(f) of the *Kenya Law Reform Commission Act, 2013* provides that KLRC shall "consult and collaborate with state and non-state organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force".

In the light of these statutory provisions the KLRC, unlike other law reform agencies in older democracies within the Commonwealth, cannot shy away from involvement in the formulation of government policy. Policy development or reform is usually the precursor to law reform especially in developing countries. The role of the KLRC is to translate policy into legislation and accordingly the Commission's technical officers participate in various Task Forces, Inter-ministerial Committees and similar undertakings to provide technical support during policy formulation and actual translation of policy into legislative proposals. The Commission also has a standing invitation from Parliament to participate in the pre-publication review and scrutiny of all bills including Private Members Bills.[7]

The Constitution of Kenya 2010 established a new structure of government comprised of a National Executive, a bi-cameral Legislature comprising of the Senate and the National Assembly, and an independent Judiciary. It also established 47 devolved county governments. The Fourth Schedule to the Constitution provides for the distribution of functions between the national government and the county governments. Part 1 specifies the functions of the national government while Part 2 specifies the functions of the county governments.

[7] Kenya Law Reform Commission, *A Guide to the Legislative Process in Kenya* (2015), online: <http://www.klrc.go.ke/index.php/reports-and-publications/562-a-guide-to-the-legislative-process-in-kenya> at 17.

Section 6(1)(c) of the KLRC Act requires the Commission to "provide technical assistance and information to the national and county governments with regard to law reform ..." Most of the county governments suffer from lack of technical capacity in the development of legislation required to carry out their constitutional functions. In this respect the KLRC in association with the Ministry of Devolution and Planning has developed fifty-one 'model laws' covering the functions of county governments under the Fourth Schedule, to serve as a reference point and guidance to counties in developing legislation. Further, the KLRC's legal officers are often assigned, and in some instances have been seconded, to the counties to provide technical assistance in drafting legislation.

Section 34 of the *Judicial Service Act* establishes the National Council on Administration of Justice. The Council is chaired by the Chief Justice and draws its membership from government departments and agencies involved in the administration of justice including the Judiciary, the Attorney-General, the Police, the Department of Correctional Services and the Law Society among others. Its objective includes the formulation of policies relating to administration of justice, monitoring and evaluation of strategies for the administration of justice and mobilizing resources for the purposes of administration of justice. The KLRC is a co-opted member of the NCAJ.

In view of the fact that most of the matters discussed by the NCAJ usually relate to law reform, the NCAJ establishes working groups to address law reform issues raised by judges in the course of the administration of justice. Law reform matters dealt with by the NCAJ have included development of sentencing guidelines, bail and bond policy and criminal justice reform. The KLRC is always included in these Working Committees.

CONSTITUTION OF KENYA, 2010

The Constitution of Kenya, 2010 is the supreme law of the land and it belongs to the people of Kenya. The people are entitled to expect and demand that the government and institutions that exercise power on their behalf do so in accordance with the national values and principles of governance set out in Article 10 that include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. Power must not only be exercised in line with the ideology of the government of the day but rather it is the duty of every government to take positive action in order to respect, protect, promote and fulfill the fundamental rights and freedoms guaranteed in the Constitution. Chapter Four of the Constitution contains a robust and justiciable Bill of Rights which guarantees access to justice, equality and protection of the marginalized. All of this has potential for social justice progress, which is the basis for progressive law reform.

PUBLIC PARTICIPATION IN LAW REFORM

One of the most important features of Kenya's constitutional framework is the requirement of public participation in governance and other administrative activities. Article 10 of the Constitution requires all persons including State organs and public officers to comply with the national values and principles of governance - including participation of the people, transparency and accountability - when enacting laws and making public policy decisions. The courts have stated that "public participation is a national value that is an expression of the sovereignty of the people as articulated under Article 1 of the Constitution. Article 10 makes public participation a national value as a form of expression of that sovereignty."[8] An

[8] *Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others*, [2015] eKLR at para. 88.

integral part therefore of the KLRC's mandate as a law reform agency is to ensure public participation in the law reform process.

Public participation can be any process that directly engages the public in decision-making and gives due consideration to public input in making that decision. Public participation is not a single event but rather a process consisting of a series of activities and actions over the lifespan of a project to both inform the public and obtain input from them. Public participation affords stakeholders - those that have an interest or stake in an issue, such as business, individuals, interest groups and communities - the opportunity to influence development initiatives, decisions and resources that affect their lives.

Stakeholder participation takes many different forms such as Parliamentary committee hearings, meetings with the Cabinet Secretary or departmental heads, workshops, seminars or retreats, using the media to outline the issues by publishing extracts in newspaper articles or other online platforms, soliciting written opinions and memoranda, and holding public forums. Meaningful public participation requires much more than simply holding public meetings or hearings or collecting public comment however. In fact, conducting such events without a thorough grounding in the elements of meaningful public participation can have a negative effect, resulting in decreased public trust and eroding relationships between and among stakeholders.

Kenyan courts have held that meaningful public participation may be effected in various ways, but "what matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say."[9]

[9] *Ibid*. at para. 93.

The KLRC has participated in developing a Public Participation Bill which is currently making its way through the parliamentary process. The Bill sets out the following basic principles of public participation: a right to be consulted and involved in the decision-making process, and the requirement of effective mechanisms to realize this right; the right to access information needed to meaningfully participate; the right to have views taken into consideration; the need for appropriate feedback mechanisms relevant to the nature and importance of the decision being made, including its potential impact on the public; and the need for sustainable decisions that recognise the needs of all stakeholders including decision makers.

Public participation is a progressive step in law reform. While ensuring that there is meaningful public participation in the development of policy and legislative proposals makes the law reform agency task more onerous, the result is a legislative or policy proposal that has a sound and defensible basis that is more likely to pass parliamentary interrogation. In this respect, the Kenyan parliament refuses to consider legislative proposals that have not been subject to public participation. Kenyan courts have struck down legislation that has been found not to have undergone sufficient consultation.[10]

RIA: MEASURING POTENTIAL IMPACT OF LAW REFORM

Another progressive step in the process of law reform is ensuring evidence-based policy making by undertaking Regulatory Impact Analysis (RIA) as part of the research component of legislative and policy development. A significant barrier to substantive or effective law reform is actual implementation of a new legislative enactment or policy. RIA is a measure to gauge the feasibility of effective implementation. As noted above, the role of a law reform agency usually ends once a legislative proposal or draft policy is submitted to the sponsoring ministry. Implementation is always a matter for others, however a law reform agency can

[10]See, for example, *Simeon Kioko Kitheka & 18 others v County Government of Machakos & 2 others* [2018] eKLR.

take measures to ensure that the legislative or policy proposal that is supported by political will is not otherwise doomed to fail from a lack of 'testing of the theory'. In this respect, section 6(1) of the *Kenya Law Reform Commission Act, 2013* empowers the KRLC to "upon request or on its own motion, undertake research and comparative studies relating to law reform" and to "formulate and implement programmes, plans and actions for the effective reform of laws and administrative procedures."

Evidence-based decision making is driven by empirical analysis of policy problems, bringing a focus on solutions rather than just politics. RIA is a process of systematically identifying, monitoring and managing the intended and unintended consequences, both positive and negative, of laws, policies, programs, plans, and projects using a consistent and comparative analytical method.[11] Its purpose is to assist policy-makers to understand who may be affected by policy, and in what way(s) they may be affected, with a view to effective and efficient implementation of policy objectives.[12] While the concept of economic, environmental or social impact analysis is not new, taking a human rights approach to such analysis is an emerging best practice of managing the social aspects of sustainable development that includes identifying rights-holders and duty-bearers and assessing whether a program or intervention will improve or impede the realization of a particular human right.[13]

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[11]Organisation for Economic Co-operation and Development, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)* (October 2008), online: OECD <https://www.oecd.org/gov/regulatory-policy/44789472.pdf> [OECD RIA Handbook] at 3; Nora Götzmann, *Human Rights And Impact Assessment: Conceptual And Practical Considerations In The Private Sector Context* (2014), online: Danish Institute for Human Rights <https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox> [HRIA] at 7-8.

[12]OECD RIA Handbook, *ibid.*

[13]HRIA, *supra* note 11 at 8.

Steps in conducting RIA are to (i) define the problem and assess its magnitude; (ii) distinguish between causes of the problem and symptoms of the problem; (iii) define the policy objectives and inform how any potential regulatory solution(s) will be evaluated for effectiveness; (iv) identify the full range of feasible options including regulatory and non-regulatory options; and (v) analyze the costs, benefits and risks of each option. The analysis needs to show how each option would alter the status quo, which option is likely to be the most effective for solving the problem, and which option has the highest net-benefit.

An example of RIA that is in the process of being conducted by the KLRC is a research study undertaken in collaboration with New York University on potential ways to address concerns with access to justice in Kenya's magistrates' courts, which are significantly overburdened and under resourced. The project is testing two potential regulatory interventions aimed at reducing a significant case backlog by improving the pace at which proceedings are conducted, adherence to both procedural and substantive requirements, and the quality of judgments.

M&E: MEASURING ACTUAL IMPACT OF LAW REFORM

In exercising its mandate to keep all the laws under review and ensure reform, the KLRC is guided by section 6 of its constitutive Act to ensure that "the law systematically develops in compliance with the values and principles enshrined in the Constitution" and that laws are "consistent, harmonized, just, simple, accessible, modern and cost-effective in application." In addition to conducting Regulatory Impact Analysis to assess the potential efficacy of a law once implemented, another progressive law reform tool is undertaking monitoring and evaluation (M&E) of laws once enacted, to measure the actual impact and in turn determine whether further reforms are needed to ensure that the law complies with the Constitution in a manner that is just, modern and cost effective. In this respect the KLRC recommends mainstreaming the use of M&E mechanisms into law reform projects.

A promising process that is currently being undertaken in Kenya is development of a National Monitoring and Evaluation Policy and a draft Bill to implement the policy. This work is still in the early stages, however at this point the draft Policy outlines the existing framework for monitoring and evaluation of the country's economic recovery strategy and its *Vision 2030*. A National Integrated Monitoring and Evaluation System (NIMES) exists to provide the government with a mechanism to monitor and evaluate implementation of policies, programmes and projects in the public sector at both national and county levels. NIMES is operationalized through an institutional structure which comprises of National M&E Steering Committee, Technical Oversight Committee, Technical Advisory Groups, and Central Planning & Projects Monitoring Units, and is implemented through five key result areas: Research and Results Analysis; Project Monitoring and Evaluation; Dissemination, Advocacy and Sensitization; Indicator Development, Data Collection and Storage; and Capacity Development and Policy Coordination.

The Policy notes the implementation challenges of a national monitoring and evaluation system, including a weak M&E culture in the country, multiple and uncoordinated M&E reporting structures, inadequate institutional, managerial and technical capacities, low utilization of M&E data in decision making, and an inadequate policy and legal framework. The Policy is designed to address these challenges by entrenching results-based monitoring and evaluation in the public sector by guiding establishment of structures, capacity development and resource mobilization for monitoring and evaluation. The Policy is based on the principles of transparency, accountability, participation, partnerships and collaboration, mainstreaming M&E in all development programs across the country, and credibility and utilization of M&E processes and findings. The Policy is drafted from a human rights perspective by promoting the mainstreaming of the cross-cutting issues of gender, climate change and human rights principles in evaluation programming.

While development of a national M&E policy is a promising step in promoting progressive law reform, ironically it remains to be seen whether the Policy is implemented, since the unfortunate reality is that while Kenya has very progressive

laws and policies, effective implementation remains one of the most significant barriers to law reform.

CASE STUDY: VICTIM'S RIGHTS

As part of the its mandate to develop legislation to implement the Constitution, the KLRC participated as a member of a Ministerial Task Force appointed by the then Vice-President of Kenya who was responsible for correctional services, to develop a series of bills to implement the protections for justice system participants set out in the Bill of Rights. Accordingly this Task Force developed the *Witness Protection Act*, *Persons Deprived of Liberty Act* and the *Victim Protection Act*.

Article 50 of the Constitution sets out the required parameters to ensure a fair hearing. While the bulk of the Article is dedicated to the rights of an accused person in criminal proceedings, Article 50(9) requires Parliament to enact legislation providing for the protection, rights and welfare of victims of offences.

Parliament enacted the *Victim Protection Act* in 2014 which defines a victim as "any natural person who suffers injury, loss or damage as a consequence of an offence" and a vulnerable victim as "a victim who, due to age, gender, disability or other special characteristics as may be prescribed by regulations under this Act, may require the provision of special justice and support."

The objects of the Act are to promote co-operation between all agencies involved in working with victims with a view to giving effect to the rights of victims of crime while protecting their dignity. This includes provision of information, support services, reparations and compensation to victims, supporting reconciliation through a restorative justice approach where appropriate, and establishing programs to prevent both victimization and re-victimization.

The Act specifically grounds victim protection in the Constitution including the national values and principles of governance mentioned above, the guarantee of equality and non-discrimination in Article 27, and the rights to fair administrative action, fair hearing and access to justice. It emphasizes the rights of victims to

dignity and to be treated in a manner appropriate to age, intellectual development and cultural beliefs, the right to be given an opportunity to be heard before any action affecting the victim is taken, the right to be accorded legal and social services of the victim's choice, and the right to be protected from secondary victimization. The Act further provides for referral to the Witness Protection Agency if there is sufficient reason to believe that a victim is likely to suffer intimidation or retaliation.

The Act proceeds to expand on specific rights of victims in regard to privacy and confidentiality, and participation in the trial process including presenting views and concerns at various stages of the proceedings, including plea bargaining, and to have these taken into consideration in a manner that does not prejudice the rights of the accused to a fair and impartial trial. Without limiting the right to present views, the Act specifically provides for Victim Impact Statements to consider victim protection and welfare in determining an appropriate sentence.

Further, the Act stipulates that the right to information is both in respect of receiving information necessary to exercise a victim's rights, including in regard to protection in the case of an offender who is released, and to providing information for consideration throughout the criminal decision making process, from arrest to charge through plea taking and trial, determination of sentence and eligibility for parole, and ultimately in respect of any exercise of mercy through commutation or pardon.

In terms of victim services, the Act provides for witness protection if necessary in the circumstances, and for a victim to have his or her property that is evidence returned promptly to avoid unnecessary inconvenience. With regard to redress, the Act states that a victim has the right to restitution or compensation from the offender for material loss, economic loss, injury and treatment thereof. In addition, a court may order additional or alternative compensation for loss or injury from a Victim Protection Trust Fund established by the Act and administered by a Board of Trustees for this purpose. Finally, the Act also establishes a Victim Protection Board to advise the executive on "activities aimed at protecting victims of crime and the

implementation of preventive, protective and rehabilitative programmes for victims of crime."

The Victim Protection Board has the mandate of formulating comprehensive policy for the protection of victims, taking necessary measures to enhance rehabilitation of the victims of crimes, liaising with government and non-governmental organizations in promoting the purpose of the Victim Protection Act, and disseminating information on issues and law relating to victim protection through concerned agencies and non-governmental organizations.

Section 32(2)(d) of the *Victim Protection Act, 2014* requires development of a Victim Rights Charter. To date only a draft has been developed in 2017 but has not been finalized or adopted. The preamble of the draft Charter states that it "is a commitment by the Government to implement measures aimed at continuous reform of the criminal justice system to protect and promote the rights of victims." Substantively, it provides for the same rights as the Act, but elaborates on realization of some of these rights such as the right to assistance and support including a requirement for a preliminary assessment of every victim of crime to determine any vulnerability or special needs, and to "health services, psychological and psycho-social support, transport facilitation, child-care, legal services provided under the Legal Aid Act and other logistical support throughout the entire criminal process." The draft Charter also provides for a complaints mechanism for victims to report if their rights have not been respected or protected.

Similarly, draft Victim Protection (General) Regulations were developed in 2017 but have not been passed. The draft regulations operationalize the victim assessment procedure mandated by the draft Victim Rights Charter, and further clarify that such assessment shall be conducted within thirty days of an offence being reported, and shall determine the need for victim support services such as the provision of urgent medical treatment, crisis intervention to the victim or the victim's family, short or long term medical treatment, psychosocial support, and access to and participation

in criminal justice system. Provisions relating to protection of the victim and victim's family's privacy and economic empowerment are also included.

THE CHALLENGE OF IMPLEMENTATION: COMPENSATION FOR VICTIMS OF HISTORICAL INJUSTICES

The need for compensation for victims of crime predated promulgation of the 2010 Constitution and subsequent enactment of the *Victim Protection Act 2014*. The Mediation Committee of Eminent Persons chaired by Mr. Kofi Anan to defuse the political crisis and the violence that erupted after the 2017 General Elections in Kenya identified historical injustices and the perceived marginalization of certain communities in Kenya since attaining independence in 1963 as the recurring cause of violence during every election cycle. The Committee recommended the formation of a Truth, Justice and Reconciliation Commission to investigate the root causes of violent events and recommend measures to be taken to address the resulting injustices.

Accordingly, the Truth, Justice and Reconciliation Commission (TJRC) was established with a mandate to investigate and report on gross violations of human rights and historical injustices that occurred in Kenya from 12 December 1963 when Kenya became independent, to 28 February 2008 when the 2007 Post Election Violence ended. The TJRC released its comprehensive report on 3 May 2013 and made many recommendations aimed at reconciliation so that the people of Kenya can close the chapter on a destructive and divided past, and look to the future with a sense of peace and unity. One of the recommendations was establishment of an independent implementation mechanism that is sufficiently resourced to provide redress to victims in the form of reparations for historical injustices.[14]

[14]Final Report of the Truth Justice and Reconciliation Commission of Kenya (2013) (Abridged Version) at page 7.

Subsequently, in his State of the Nation Address of 25th March 2015, the President of Kenya, Uhuru Kenyatta acknowledged the painful history of murders and torture, arbitrary detentions, violence linked to democratic actions, massive displacement and destruction of property, and offered an apology on behalf of the government for all past wrongs. While noting the barriers to successful prosecution that include insufficient evidence and challenges in identifying perpetrators, and recognizing that "it is impossible to fully compensate for the loss of life and the magnitude of suffering", the President stated his hope that establishment of a fund to provide a measure of relief to victims of past injustices will underscore the government's goodwill, bring closure to the past and be a first step towards uniting the nation in security and prosperity.

In September 2016 the Attorney General directed the Secretary of the Kenya National Commission on Human Rights to establish a technical committee to oversee establishment of a fund under the *Public Finance Management Act* to provide for registration, verification and payment of victims of historical injustices. Over the course of the following twelve months, a committee was established, victims' rights experts and a policy development and legislative drafting consultant were engaged, a significant amount of research was conducted, stakeholder consultations were undertaken, and a draft national policy and regulations were developed. The purpose of the proposed reparations program was "to restore the dignity of victims through acknowledging the wrongdoing, the harm suffered and the state responsibility to promote, protect and fulfill human rights. In that way reparations are a means to contribute to a rebalancing of society and a healing process."

For the purpose of the Policy, reparations were defined as a means of dignifying victims by measures that are aimed at promoting justice and reconciliation by redressing historical injustices through rehabilitation, compensation, restitution or collective reparations, in a degree that is proportionate to the gravity of the violation(s) and the harm suffered. The objective of the Policy was to guide implementation of the most comprehensive reparations program possible that provides adequate, effective and prompt reparation that is, to the greatest extent

possible, proportional to the gravity of the violation and the harm suffered, while integrating existing structures and programs to ensure efficient, transparent and accountable delivery of services to victims and the broader Kenyan public. To this end the proposed program focused on addressing violations of physical integrity through symbolic compensation and support in accessing education and rehabilitative services, aimed at enhancing the capacity of victims to transform their own lives.

Sadly, while the technical committee involved representatives of government agencies and civil society, including the Kenya Law Reform Commission, and the draft policy and regulations were reviewed by the KLRC and subjected to public participation and stakeholder validation before being forwarded to the Attorney General, acceptance of and action on the legislative and policy proposals for substantive compensation of victims appears to be a dream. In this respect, in his 4 April 2019 State of the Nation address the President reaffirmed the previous commitment to establishing a fund "to heal the wounds of historical grievance" but instead of using those funds to compensate and support victims directly, the President announced that the Fund will be applied "towards establishing symbols of hope across the country through the construction of heritage sites and community information centers." Unfortunately it seems that the existing legislative framework providing for compensation of victims of crime and the policy proposals to support victims directly through compensation and other socioeconomic support appear not to have been heeded.

The Kenyan experience with implementing effective reform to provide redress for victims of crime is but one stark example of the limitation of a law reform agency's ability to actually effect reform, despite substantial time and effort devoted to developing legislative and policy proposals that are just, simple, accessible, modern and cost-effective in compliance with the values and principles enshrined in the Constitution.

CONCLUSION

Kenya has a strong constitutional basis and legislative framework for law reform, including the mandate and functions of the KLRC which are quite progressive as compared to more traditional law reform institutions or agencies.

While there is some impetus to recognize and protect victim's rights both on an ongoing case-by-case basis through the *Victim Protection Act* and on a broader level vis-à-vis recognition and redress for historical violations, challenges remain. Some of these challenges are not unique to the Kenyan context, in terms of the scope of a law reform agency's mandate to effect reform, being limited to making recommendations for legislative and policy proposals that must be taken up by legislative bodies and then implemented by others. Other challenges are more tied to the Kenyan context such as corruption. A stark example is the establishment of a Reparations for Historical Injustices Fund that will not actually be used to compensate victims, despite policy recognition of the need for rehabilitation, compensation and restitution in a degree that is proportionate to the gravity of the violation and the harm suffered. Sadly, the lack of passing of the policy and legislation three years after the Presidential commitment, and allegations that the monies in the fund have been depleted for "administrative purposes", have stalled this progress. These challenges may at times feel like there is a retreat, but because of the constitutional imperative for social justice law reform, it is not a full retreat.