

# Developing a Guide to Administrative Law for Civil Servants: From the UK to Kenya

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What are the benefits of providing civil servants with a guide to administrative law, and how are they best achieved? The Bingham Centre for the Rule of Law has been examining these questions at the suggestion of the Katiba Institute, an independent institute based in Nairobi. As part of its work to promote constitutionalism, the Katiba Institute has launched an initiative to develop an administrative law guide for the Kenyan civil service.

The Bingham Centre undertook desk-based research and interviews in order to understand how the UK's well-known civil service guide to administrative law, 'The Judge Over Your Shoulder' (JOYS), was developed and how the civil service uses it in practice. The research also examined similar guides to administrative law which were subsequently adopted in New Zealand and Malawi. The Bingham Centre's report, 'The UK's The Judge Over Your Shoulder: A Model for Kenya?', draws on these experiences to ask how Kenya might develop an administrative law guide for its own civil servants.

The introduction of JOYS was a landmark for the raising of legal awareness within the UK civil service. It is written for civil servants, but recent editions have also been made publicly available. In concrete terms, JOYS is intended to inform public servants about the principles of administrative law and to guide their recourse to legal advice. The stated objectives for doing so are to promote good administration and at the same time to reduce the risk of decisions being challenged in court. In practice, JOYS has become part of a wider programme of legal awareness aimed at improving decision-making and interaction with government lawyers. Four editions of JOYS have been produced in the UK since 1987, with a fifth edition due to be published in 2016. They have expanded in length and legal detail, while adding practical information on the judicial review process. As highlighted in the Bingham Centre report, the 2016 edition will take its place within a nuanced set of strategies which aim to make full use of the wide range of possibilities offered by modern technology for making civil servants more familiar with administrative law.

The Bingham Centre report includes a set of questions posed for consideration by participants in the Kenyan initiative, including the rationale for introducing a Kenyan administrative law guide, how to decide on the content, format and approach of such a document in a developing country context, and how to make the most of the guide once it exists. Some of these questions were discussed during a high-level consultation convened by the Katiba Institute at the Kenya School of Government in Nairobi in March 2016, where the Bingham Centre presented an earlier draft of its report. The meeting brought together Kenyan public bodies and foreign experts to discuss how a civil service guide could be devised to help implement the right to fair administrative action in Article 47 of the 2010 Constitution of Kenya. It is now likely that the Katiba Institute will proceed to develop an administrative law guide, with the Bingham Centre's input, which is set to become part of the curriculum for Kenyan public servants in the near future.

The overall conclusion from this research, which was confirmed by the discussions in Nairobi, is that there are very good reasons for any civil service to develop and adopt a guide to administrative law. Such a guide offers the potential, best realised through appropriate training or legal awareness activities, to equip civil servants with a sound knowledge of this body of legal principles which is essential to ensuring decision-making that is lawful, procedurally fair and reasonable. The work of civil servants impacts on the daily lives of ordinary people and the delivery of public services, and any improvement in adherence to administrative law principles represents a real and practical gain for the rule of law.

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