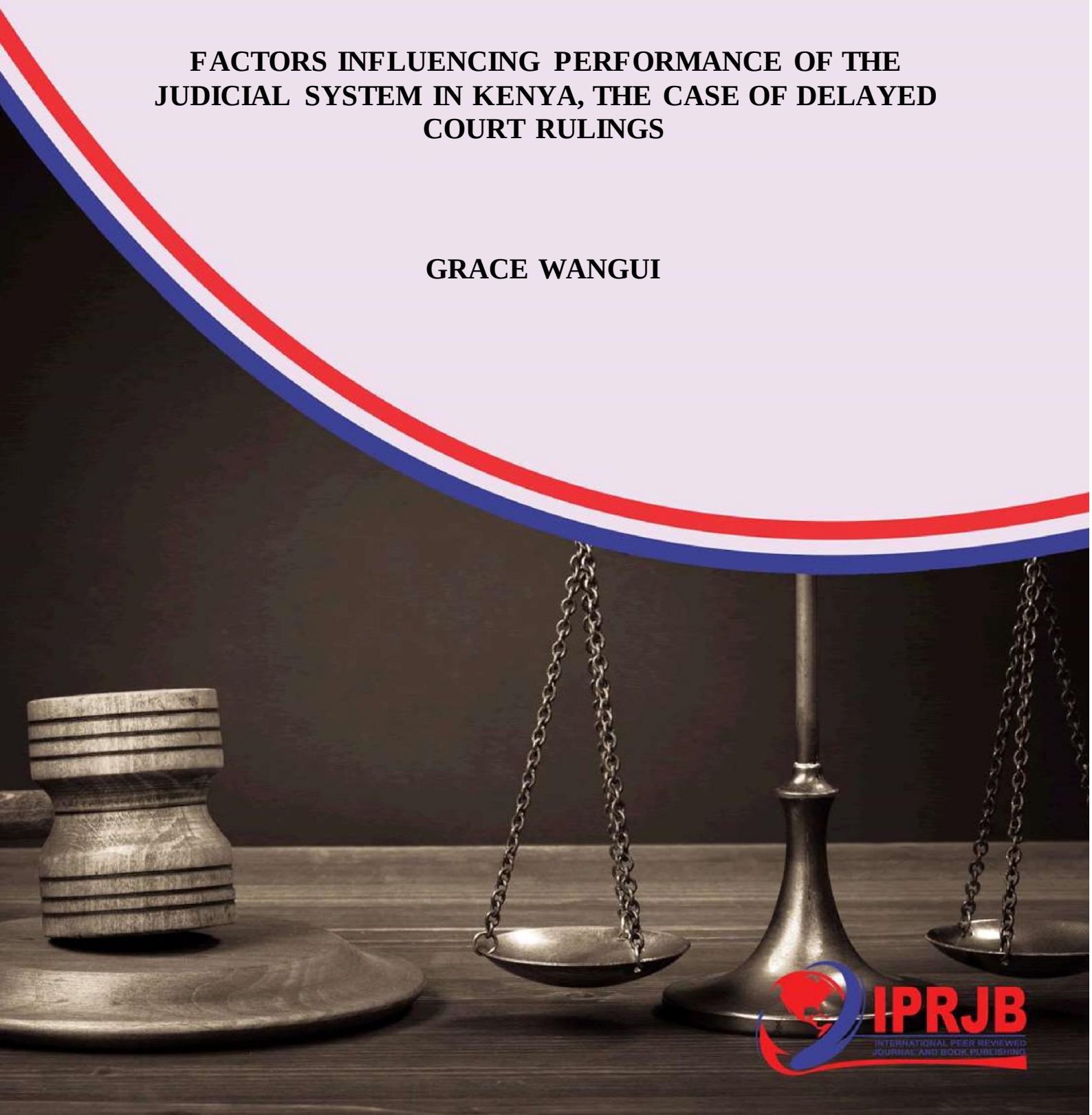


International Journal of Law and Policy (IJLP)

FACTORS INFLUENCING PERFORMANCE OF THE JUDICIAL SYSTEM IN KENYA, THE CASE OF DELAYED COURT RULINGS

GRACE WANGUI



FACTORS INFLUENCING PERFORMANCE OF THE JUDICIAL SYSTEM IN KENYA, THE CASE OF DELAYED COURT RULINGS

Grace Wangui (LLB)

Advocate of the High Court, Kenya

Partner, Nyiha Mukoma Advocates

Email: wangui@nyihamukoma.com

Abstract

Purpose: The purpose of the study was to establish factors influencing performance of the judicial system in Kenya, the case of delayed court rulings.

Methodology: The paper adopted a desk top research design. The design involves a review of existing studies relating to the research topic. In this case, the researcher collected information relating to the topic of the study.

Results: Based on existing literature the study concluded that information technology, court rules and procedures, and collaboration between government agencies have significant impact on performance of the judicial system.

Unique Contribution to Theory, Practice and Policy: Based on the study findings the study recommends that there is need to initiate full IT integration in the entire court system. The judicial Service Commission should put in place rules or formulate rules and procedures limiting the number of mentions and adjournments in cases and further cause amendment of Civil Procedure Rules and Criminal Procedure Code by introducing a provision specifying how long certain matters should take between filing and determination to ensure management of case backlog, as has been done in election petitions which have a limited period of hearing and determination of six months from the date of filing by Election Courts. Further, there is need to build stronger relationship and cooperation between the judiciary and other government agencies.

Keywords: *performance, the judicial system, delayed court rulings*

1.0 INTRODUCTION 1.1 Background of the Study

According to International Commission for Justice Kenya report (ICJ 2005), the existence of independent judiciary is at the heart of judicial system that guarantees human life in full conformity with international standards. The ICJ report on strengthening judicial reforms in Kenya further states that it is the obligation of every state to ensure that the judiciary is indeed an independent arm of the government. It continues to state that while a claim can therefore be made that the primary task of the justice sector is to deliver the rule of law, it should immediately be appreciated that various factors affect service delivery in our judicial systems. According to Kameri (2011), for the rule of law to be realized, there must be suitable 'application mechanisms', including an independent and professional judiciary, easy access to litigation and reliable enforcement agencies. Its realization also depends on access to power and economic resources, and this explains why the rich and the powerful tend to have better access to the rule of law (Kameri, 2011).

For effective service delivery in the judicial system, various factors need to be considered. Tudor (1992) observes that the Judiciary was such that the Office of the Chief Justice operated as a judicial monarch supported by the Registrar of the High Court. Power and authority were highly centralized. Accountability mechanisms were weak and reporting requirements absent. The Judiciary institution had: weak structures, inadequate resources, diminished confidence, deficient in integrity, weak public support and literally incapacitated to deliver justice. Most recently, the Task Force on Judicial Reforms, which was appointed pursuant to a stakeholders' meeting in May 2009 and reporting in July 2010, identified weak administrative structures, lack of operational autonomy and independence of the judiciary as factors that undermine the effective administration of courts (Mwanzia & Kanina, 2009).

Over the past few decades, judicial reform has become an integral part of the process of economic, political, and administrative development according to (Baar, 1999) In the United States and throughout the world, there is a growing recognition that economic and social progress cannot be achieved on a sustainable basis without respect for the rule of law (Dakolias, 1999). James (2000) observes that historical events create opportunities for governmental, including judicial, reform. The collapse of the Soviet Union resulted in a collection of independent states, each newly responsible for its own government. He further noted that Judges and court administrators in these socialist systems, previously unfamiliar with even the most basic concepts of the functioning of a judiciary in a democracy, were suddenly faced with the responsibility of creating new institutions.

The Kenyan Judiciary continues to perform below the expectation of the people and various demands have been made for comprehensive reforms and more specifically to resolve and/or deal with the ever increasing backlog of cases in the Judiciary. Case backlog in Kenya has negative effect on the Judiciary and has resulted to low public confidence leading to lack of access to and effective administration of justice especially among the poor, vulnerable and marginalized (GOK 2009). An efficient reliable and ascertainable legal system is key in ensuring thriving business enterprises and thus, a vibrant economy. Investors need to have confidence that an investment destination guarantees them the right to property, and in the event of any commercial dispute, expediency in the resolution of commercial dispute (World Economic Forum, (2011).

1.2 Problem Statement

In Kenyan Judiciary case backlog and delays in delivery of justice has been one of the main indictment against the judiciary. Cases have been piling up between the time of filing and the time of determination; as result of which billions of shillings continue to sink in case backlog and delays and as many people languish in prison as cases remain unheard in spite of having a well-established Judicial system and a democratic government that believes in the Rule of law and application of administrative justice system.

The study sought to establish why the judicial system has not been effective enough at ensuring that the public enjoys swift judgments in Kenya. In particular the delays in determination of cases have resulted in a huge case backlog thereby confirming the famous Maxim “justice delayed is justice denied.” Mutunga (2011) pointed out that in 2011 there were 2,015 pending criminal cases some of which had not been heard for as long as 20 years. Mutunga (2012) acknowledge case backlog constitute the single most important source of public frustration with the Judiciary. Koome (2011) stated the greatest challenge facing Judiciary today is case backlog. Mutunga (2014) acknowledges backlog of cases upto 2014 were more than 650,000 cases in all courts. There is therefore a problem in that case backlog in Kenya are not reducing but increasing from year to year. This paper, therefore, sought to establish factors influencing performance of the judicial system in Kenya, the case of delayed court rulings.

1.3 Research Objectives

- i. The general objective of the study was to establish factors influencing performance of the judicial system in Kenya, the case of delayed court rulings.

1.3.1 Specific Objective

- i. To determine the influence of information technology use on delivery of court rulings in Kenya
- ii. To establish the influence of court rules and procedures on delivery of court rulings in Kenya
- iii. To assess the influence of collaboration between government agencies and judicial officers on delivery of court rulings in Kenya

1.3.2 Research Questions

- i. What is the influence of information technology use on delivery of court rulings in Kenya?
- ii. Do court rules and procedures affect the delivery of court rulings in Kenya?
- iii. How does collaboration between government agencies and judicial officers influence delivery of court rulings in Kenya?

2.0 LITERATURE REVIEW 2.1 Theoretical Framework

A theory is a set of interrelated concepts, definitions, and propositions that present a systematic view of events or situations by specifying relations among variables, in order to explain and predict the events or situations (Van Ryn & Heaney, 1992). Theories are formulated to explain, predict, and understand phenomena and, in many cases, to challenge and extend existing knowledge, within the limits of the critical bounding assumptions.

2.1.1 Theory of change

The theory of change model was developed by International Network on Strategic Philanthropy (2005). According to INSP, this tool was designed for use by organizations such as Foundations, Trustees, NGOs, and individuals such as donors, philanthropists or consultants to facilitate development. A theory of change is the articulation of the underlying beliefs and assumptions that guide a service delivery strategy and are believed to be critical for producing change and improvement. Theories of change represent beliefs about what is needed by the target population and what strategies will enable them to meet those needs. They establish a context for considering the connection between a system's mission, strategies and actual outcomes, while creating links between who is being served, the strategies or activities that are being implemented, and the desired outcomes."

A theory of change has two broad components. The first component of a theory of change involves conceptualizing and operationalizing the three core frames of the theory. These frames define: Populations: who you are serving, Strategies: what strategies you believe will accomplish desired outcomes, Outcomes: what you intend to accomplish. The second component of a theory of change involves building an understanding of the relationships among the three core elements and expressing those relationships clearly.

2.2 Conceptual Framework

According to Bogdan and Biklen (2003) a conceptual Framework is a basic structure that consists of certain abstract blocks which represent the observational, the experiential and the analytical/synthetically aspects of a process or system being conceived. It is a concise description of the phenomenon under study accompanied by a graphical or visual depiction of the major variables of the study (Mugenda, 2008). According to Young (2009), conceptual framework is a diagrammatical representation that shows the relationship between the dependent variable and independent variables. The purpose of a conceptual framework is to assist the reader to quickly see the proposed relationship and hence its use in this study.

Independent Variables

Dependent Variables

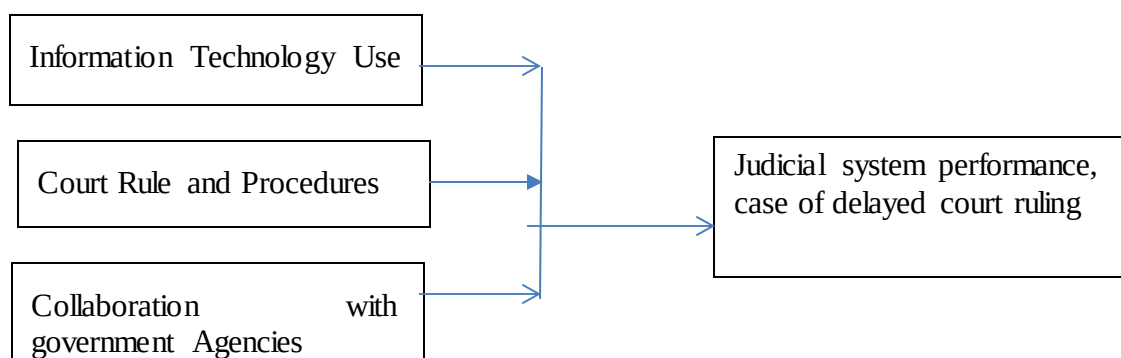


Figure 1: Conceptual Framework

2.3 Empirical Review

Makau (2014) study investigated the factors influencing management of case backlog in judiciary in Kenya: a case of courts within Meru and Tharaka Nithi Counties. The objectives of the study were to establish how availability of Judicial staff influence management of case backlog in Judiciary in Kenya, to establish how use of ICT influences management of case backlog in Judiciary in Kenya, to determine how availability of physical infrastructure influences management of case backlog in Judiciary in Kenya: to establish how judicial organizational structure influences management of case backlog in Judiciary in Kenya and to establish how court rules and procedures influences management of case backlog in Kenya. The study adopted descriptive design. The target population was all judicial officers and staff of courts within Meru and Tharaka Nithi Counties. The target population for this study was 200 respondents from seven courts within the two counties.

The findings of this study showed that the management of case backlog in the Judiciary in Kenya is affected by a number of elements varying from, availability of Judicial staff, use of ICT, availability of physical infrastructure, judicial organizational structure, court's rules and procedures and many others, including manual management of court records. The study recommended that the Judicial Service Commission needs to address the issue of shortage of Judicial Officers and other staff by ensuring adequate staff is employed in the Judiciary. The Judiciary should ensure continuous learning and training of judicial officers and other staff in the Judiciary. The Judicial Service Commission should ensure that each staff has an appointment letter specifying terms of employment.

Mutunga (2012) acknowledge case backlog constitute the single most important source of public frustration with Judiciary which opens a door for fugitives from justice to seek refuge in the courts by turning them into a playground for the rich and corrupt. This he noted was due to inefficiencies in judiciary's case management system and shortage of Judges and Magistrates. Mutunga (2011) acknowledges that it is not surprising that Judiciary would be swamped by close to one million case backlogs. The huge backlog cast doubt on the confidence and trust of the country's judicial system. Mutunga (2011) pointed out that at the High Court alone, there were 2015 pending criminal appeal cases, some of which had not been heard for as long as 20 years because the files were missing, or the records were incomplete. In his address of 31/5/2012 he stated that the backlog at Court of Appeal stood at 3800 cases with an average waiting period of 6 years.

The availability of technology is an independent variable that influences performance of the judicial system. The indicators on the availability of technology are ICT facilitates data processing, speed retrievals, archiving information, data storage, authentication and recording of proceedings (Coopers & hybrand, 2004). Records Management involves vital records preservation which is one of the key to prompt delivery of justice. By ignoring records management policies, employees and companies can potentially end up facing criminal penalties due to inappropriate shredding of records which are supposed to be self-retained. Coopers and hybrand (2004), established that forty to sixty percent of office workers' working time is spent handling paper, which translates to 20-45 percent of an organizations labour costs and 12-15 percent of organization's expenses. The adoption of digital systems of document

management reduces the operational costs substantially as compared to managing hardcopy documents.

Rules and procedures is an independent variable that influences performance of the judicial system. The indicators on rules and procedure variable are civil and criminal procedure, rules and guidelines, writing procedures, legal position, preparing records and filing records. The existence of good policies and regulatory framework is crucial for the provision of efficient legal services in the country. Set down rules and procedure in litigation gives certainty to what is expected of a litigant. Legal frameworks provide a very important foundation upon which the operations including the mandate of an organization are anchored (OECD, 2006).

The frameworks define the scope of mandate including functions, organization structure and composition among others. Legal and regulatory framework governs the relationship between parties, businesses, and organizations. It provides a general platform within which two or more parties can legally operate and transact. A rigid framework may not only constrain the operations of judiciary but can also expose them to unnecessary high levels of risks detrimental to functioning and long term service delivery. Problems facing most judiciaries in the developing countries are the lack of a well elaborate and functional regulatory framework. Legal uncertainties in the judiciary occasioned by poor legal framework are problematic for parties in developed countries as they are for the developing countries. Most of the developing countries are gradually enacting laws and judicial reforms to facilitate fast dispensation of justice however, legal impediments still remain in most countries like Kenya. Steps are being taken to remove such impediments (OECD, 2006).

2.4 Summary of Research Gaps

2.4.1 Conceptual Gap

Makau (2014) study investigated the factors influencing management of case backlog in judiciary in Kenya: a case of courts within Meru and Tharaka Nithi Counties. The objectives of the study were to establish how availability of Judicial staff influence management of case backlog in Judiciary in Kenya, to establish how use of ICT influences management of case backlog in Judiciary in Kenya, to determine how availability of physical infrastructure influences management of case backlog in Judiciary in Kenya: to establish how judicial organizational structure influences management of case backlog in Judiciary in Kenya and to establish how court rules and procedures influences management of case backlog in Kenya. The study presents a conceptual gap since it addressed different objectives from the ones being addressed in the current study.

2.4.2 Methodological Gap

Makau (2014) study investigated the factors influencing management of case backlog in judiciary in Kenya: a case of courts within Meru and Tharaka Nithi Counties. The study adopted descriptive design. The study presents a methodological gap since it employed a descriptive research design while the current study used desktop research design.

2.4.3 Scope Gap

Makau (2014) study investigated the factors influencing management of case backlog in judiciary in Kenya: a case of courts within Meru and Tharaka Nithi Counties. The study

presents a scope gap since it focused on two Counties only while the current study focused on Kenya as a whole.

3.0 METHODOLOGY

The paper adopted a desk top research design. The design involves a review of existing studies relating to the research topic. Desk top research is usually considered as a low cost technique compared to other research designs (Beal et al., 2012). In this case, the researcher collected information relating to the topic of the study. The purpose of the study was to establish the factors influencing performance of the judicial system in Kenya, the case of delayed court rulings.

4.0 CONCLUSION AND POLICY IMPLICATION FOR FURTHER STUDY 4.1

Conclusions

Based on the findings, the study concluded that information technology has not been applied sufficiently in the administration of justice; it is underutilized thus undermining the quality, speed and efficiency of court services.

Also, the study concluded that court rules and procedures influence performance of the judicial system in Kenya. The Kenyan judicial system is marred by inappropriate court rules and procedures.

Further, the study concluded that there is poor working relationship between government agencies such as police, prison and judiciary.

4.2 Recommendations

The study recommends that there is need to initiate full IT integration in the entire court system. The new staff with expertise to facilitate comprehensive and sustainable implementation of IT infrastructure in the judiciary should be considered.

The judicial Service Commission should put in place rules or formulate rules and procedures limiting the number of mentions and adjournments in cases and further cause amendment of Civil Procedure Rules and Criminal Procedure Code by introducing a provision specifying how long certain matters should take between filing and determination to ensure management of case backlog, as has been done in election petitions which have a limited period of hearing and determination of six months from the date of filing by Election Courts.

Further, there is need to build stronger relationship and cooperation between the judiciary and other government agencies. For example, there is need to initiate joint periodic seminars and workshops by these agencies to promote and enhance genuine dialogue, understanding and discussions on ways of improving service delivery in justice sector. High premium should be placed on educational qualification and professionalism to reduce the acute shortage of welltrained and qualified professionals in the judiciary and the related agencies.

4.3 Area for Future Studies

The study focused on performance of the judicial system in Kenya only, thus other studies should focus on other countries. This would facilitate comparison between different judicial systems.

REFERENCES

- Beal, C. D., Sharma, A., Gardner, T., & Chong, M. (2012). A desktop analysis of potable water savings from internally plumbed rainwater tanks in South-East Queensland, Australia. *Water resources management*, 26(6), 1577-1590.
- Coopers & Lybrand (2004). *Facts regarding document handling: Profitability Bulletin*. Ernst & Young publishers, PC Magazine
- Dakolias, M. (1999), "Court performance around the world," A comparative perspective: World Bank publication.
- GoK (2009). An Assessment of the Needs of the Justice System in the Republic of Kenya. The IBA-ILAC Report, Government printers.
- James D. (2000). "Comprehensive Development framework", mimeographed, World bank.
- Kameri, M (2011). "Kenya Justice sector and the rule of Law", open Society Initiative for Eastern Africa Johannesburg, South Africa.
- Makau, J. A. (2014). *Factors influencing management of case backlog in judiciary in Kenya: a case of courts within Meru and Tharaka Nithi counties* (Doctoral dissertation, University of Nairobi).
- Mutunga (2011). Progress reports on transformation of the Judiciary published by the National Council for Law Reporting, Kenya.
- Mutunga (2012). The launch of the Judiciary Transformation Framework published by the National Council for Law Reporting, Kenya.
- OECD (2006). CELE Organizing Framework on Evaluating Quality systems. Organization for Economic Co-operation and Development.