

# Case Study – National Council for Law Reporting (Kenya)

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As part of the *Free Access to Law – Is it Here to Stay?* Project

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# Introduction

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The present Study into the Free Access to LAW (FAL) activities of the National Council for Law Reporting (NCLR) is part of a greater Project examining the relationship between the sustainability and the success of FAL projects in (1) Southern and Eastern Africa, (2) Western Africa (3) Asia and the Pacific and (4) Canada and Australia.<sup>1</sup> This section contextualizes this Study on the NCLR within the larger “Free Access to Law – Is it Here To Stay?” Project,<sup>2</sup> and borrows extensively from the first section of the Methodology Guide.<sup>3</sup>

The FAL project tests the general hypothesis that success leads to sustainability - if the Free Access to Law project is successful, it will have greater chances of securing funds and enduring sustainability.<sup>4</sup> The envisioned end result of the Project is the development of a Best Practices Handbook for FAL projects.<sup>5</sup>

In order to fully achieve its goals and specific objectives, the Project will produce the following outputs:<sup>6</sup>

- Collection of Free Access to Law Case Studies
- Free Access to Law Best Practices Handbook
- Free Access to Law Online Library

The methodology employed in this case study is that described in the Local Researchers’ Methodology Guide<sup>7</sup>. The researcher interviewed representatives of the National Council for Law Reporting including the Project Manager, as well as users of the Kenya Law Reports website in addition to conducting a review of NCLR’s internal documentation.

NCLR’s particularity, in the case of the *Free Access to Law – Is it Here to Stay?* project, is that it served as the case studies’ pilot project. The research methodology and project methods were adapted according to this pilot project’s findings.

This paper will first provide a brief presentation environmental factors with real or potential impact on NCLR’s sustainability. Next, the paper will discuss NCLR’s organizational structure and internal and external practices to conclude with the project’s outputs and outcomes.

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<sup>1</sup> *Free Access to Law, Is it Here to Stay* Research Team, Research Methodology Guide (2010)

<sup>2</sup> (*Emphasis added*). The word ‘Project’ or ‘larger Project’ refers to the greater “Free Access to Law – Is it Here To Stay?” Project while the word ‘Study’ is narrowed down to refer to the present inquiry into the NCLR’s FAL activities.

<sup>3</sup> *Free Access to Law, Is it Here to Stay* Research Team, Research Methodology Guide (2010)

<sup>4</sup> *Ibid* p. 3.

<sup>5</sup> *Ibid*.

<sup>6</sup> *Ibid*.

<sup>7</sup> LexUM, SAFLII and CIS (2010) *Local Researchers’ Methodology Guide*, 2010, available online: [http://web.idrc.ca/uploads/user-S/12754256481Methodology\\_Guide.pdf](http://web.idrc.ca/uploads/user-S/12754256481Methodology_Guide.pdf) [June 28, 2011]

# Contextual considerations

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## 1. Background information on Kenya

Kenya lies across the equator on the East Coast of Africa. Kenya is bordered by Somalia to the northeast, Ethiopia to the north, Sudan to the northwest, Uganda to the west and Tanzania to the south. The country's population in 2009 stood at 38.6, out of this 24.5 million were young people below the age of 25 years. This compares to 28 million Kenyans according to the census conducted a decade earlier. In 2009, about 9.4 million pupils were enrolled in primary schools, 1.7 million in secondary schools while only 198,119 students were in universities. 67 per cent of the population live in rural areas.<sup>8</sup>

Kenya's economy is driven mainly by the agriculture and tourism sectors. Agriculture contributed to 26 per cent of the country's GDP while the service sector dominated by tourism contributes 63 per cent to the GDP. In 2008, the government chartered a long term development plan – the Kenya Vision 2030 – covering the period 2008-2030. Anchored on three pillars - the economic, social and political – the Plan aims to make Kenya a globally competitive and prosperous nation with a high quality of life by registering an annual growth of 10 per cent and sustaining it to the year 2030.<sup>9</sup>

It is projected that five factors are creating a positive momentum for robust economic growth in 2011 these are the new constitution, EAC integration, ICT innovations, strong macroeconomic management, and recent investments in infrastructure.<sup>10</sup> However Kenya ranked 128 out of 169 countries with comparable data in the 2010 United Nations Development Human Development Index <sup>11</sup>. More than half of the country's 38.4 million people are poor, and 7.5 million of the poor live in extreme poverty.<sup>12</sup>

For nearly twenty years Kenya was engaged on a quest to achieve comprehensive reform of its Constitution. Kenya's agitation against a dictatorial and self-perpetuating regime throughout the 1990s, was reflective of the wind of change that was sweeping across Africa during this period. The restoration of multi-party democracy in 1992 and the establishment of various legal and political processes of constitutional reform between 1992-2001 mark the notable milestones that culminated in the promulgation of the new Constitution August 2010 following a plebiscite.

## 2. Structure of Kenya's legal system

The Kenyan Constitution is the supreme law of the land, and any other law that is inconsistent with the Constitution, shall, to the extent of the inconsistency, be void.

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<sup>8</sup>Housing and Population Census Report 2009 Kenya National Bureau of Statistics

<sup>9</sup>See Kenya Vision 2030 [www.kv2030.org](http://www.kv2030.org)

<sup>10</sup> Kenya Economic Update, December 2010 [www.worldbank.org/kenya/kenya](http://www.worldbank.org/kenya/kenya)

<sup>11</sup> <http://hdrstats.undp.org/en/countries/profiles/KEN.html>

<sup>12</sup> <http://www.ruralpovertyportal.org/web/guest/country/home/tags/kenya>

The independence Constitution was enacted on the 12th of December 1963. Over the years this Constitution was amended to introduce provisions favourable to the executive such as making Kenya a de facto one party state. This culminated in the Constitution Review Process leading to the promulgation of the new Constitution on August 27, 2010.

### **3. The Government structure**

The 2010 Constitution of Kenya divides the powers of the Government into 3 functions: executive function, legislative function and the judicial function. After the next General Elections to be held in 2012, the Executive is to be constituted by the President, Deputy President and the Cabinet. Some provisions of the former Constitution and the National Accord and Reconciliation Act particularly the affecting the constitution of the Executive continue to operate until the first general elections are held under the current Constitution in 2012. Thus the Executive is currently composed of the President, Vice-President, Prime Minister, Deputy Prime Ministers and the Cabinet. This is in line with the terms of the Agreement signed by the President and Prime Minister under the Koffi-Annan led mediation following the 2007-2008 post-election violence that erupted in Kenya.<sup>13</sup>

The 2010 Constitution establishes a devolved government: the national and forty seven county governments. The shifting of power from the centre to regional levels is aimed at taking the government closer to the people. The decentralisation has four main administrative, political, fiscal and economic dimensions.<sup>14</sup> Under the 2010 Constitution Parliament shall consist of the National Assembly (upper house) and the Senate (lower house). In addition the new Constitution affirms the independence of the Judiciary. Further details on the Judiciary are discussed in detail below.<sup>15</sup>

### **4. The Structure and jurisdiction of the courts**

The 2010 Constitution of Kenya establishes three courts of record namely the Supreme Court, the Court of Appeal, the High Court including special courts that will hear and determine disputes relating employment and labour relations and the environment and the use and occupation of, and title to, land.<sup>16</sup>

The Supreme Court is established as the highest court comprising of the Chief Justice, the Deputy Chief Justice and five other judges. Until that court is set up, the Court of Appeal remains the highest Court in Kenya. The decisions of the Court of Appeal are binding on all other subordinate courts, including the High Court. The Court of appeal sits mainly in Nairobi, the capital of Kenya, but travels on circuit to other principal towns in Kenya to hear appeals.

The High Court has unlimited original jurisdiction in civil and criminal matters. It is the highest court of original jurisdiction Kenya. Appeals from various administrative bodies and subordinate

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<sup>13</sup> See Transitional Provisions of the Kenya's 2010 Constitution [www.kenyalaw.org](http://www.kenyalaw.org)

<sup>14</sup> Chapter 11 2010 Constitution of Kenya

<sup>15</sup> See Constitution of Kenya 2010

<sup>16</sup> Article 162 Constitution of Kenya 2010

courts are heard and determined by the High Court. It also has the jurisdiction to hear the question whether any law is inconsistent with or in contravention of this Constitution

The jurisdiction of the subordinate courts is presided over by magistrates and their jurisdiction is determined on a territorial and pecuniary basis. The magistrate's courts are in order of hierarchy, with the Chief Magistrate's court being the highest, followed by the Senior Principal Magistrate's Court, Principal Magistrate's Courts, Senior Resident Magistrate's Courts, Resident Magistrate's Courts and the District Magistrate's courts.

## **5. Legal education**

Kenya established its own institution for the legal education in 1963, shortly before independence - the Kenya School of Law. The school was originally responsible for pre-entry training to the legal profession. In, July 1970, The Faculty of Law, University of Nairobi was established and it became responsible for pre-entry training. A second law Faculty was opened at Moi University in July 1994.

### **a. Law schools in Kenya**

Currently, the following institutions are now chartered to offer law as a degree programme:

- The University of Nairobi;
- Moi University;
- Catholic University of Eastern Africa;
- Kenyatta University; and
- Jomo Kenyatta University of Agriculture and Technology

The law degree is offered as a four year undergraduate programme. Successful completion leads to the conferment of a Bachelor of Laws (LLB) degree.

The Council of Legal Education was established in 1995 by the **Council for Legal Education Act**<sup>17</sup>. It is mandated to exercise general supervision and control over legal education in Kenya and to advise the Government in relation to all aspects thereof. Pursuant to this mandate, the Council established the Kenya School of Law. All persons aspiring to be admitted to the Roll of Advocates have to go undergo instruction at the Kenya School of Law. For law graduates who studied in Kenya, this usually takes one and a half years: one year of theoretical instruction, and 6 months of 'pupilage'. As a pupil, one gets to work under the supervision of a qualified advocate in an environment that enables him/her to gain a practical appreciation of the law. Other than law firms government agencies such as the National Council for Law Reporting are accredited as institutions where pupils may undergo internship. On average the Council admits four to six pupils each year under this program. The pupils are attached to the legal publishing and law reporting departments for a period of six months and are supervised by the in-house advocates.

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<sup>17</sup>[www.kenyalaw.org/lawsokenya](http://www.kenyalaw.org/lawsokenya)

## 6. The Law Society of Kenya

The **Law Society of Kenya (LSK)** is Kenya's bar association constituted by the **Law Society of Kenya Act in 1962**<sup>18</sup>. It has a membership of about 8,000 advocates.

The rules governing the admission of Advocates of the High Court of Kenya are contained in the Advocates Act (Cap 16) and the Advocates (Admission) Regulations. To be duly qualified, as an Advocate in Kenya a person requires a University Degree in law that is approved by the Council for Legal Education.

After completion and or approval of the Council of Legal Education, the applicant then petitions the Chief Justice of Kenya for admission as an Advocate of the High Court of Kenya. Once admitted to the Roll of Advocates he or she becomes an officer of the High Court of Kenya.

The LSK's mandate includes:

- maintaining and improving the standards of conduct and learning of the legal profession in Kenya;
- facilitating the acquisition of legal knowledge by members of the legal profession and others;
- assisting the Government and the courts in all matters affecting legislation and the administration and practice of the law in Kenya; representing protect and assist members of the legal profession in Kenya in respect of conditions of practice and otherwise;
- and protecting and assisting the public in Kenya in all matters touching, ancillary or incidental to the law.

The Society and its members are also members of the East Africa Law Society (EASL), the African Bar Association, the Commonwealth Lawyers Association, the Criminal Bar Association and the International Bar Association. The East Africa Law Society is a dual membership organization, bringing together seven thousand-plus individual lawyer-members from the the six national Bar associations: Law Society of Kenya, Tanganyika Law Society, Uganda Law Society Zanzibar Law Society, Kigali Bar Association and Burundi Bar Association. The EASL runs various programmes such as professional development programs and is currently working towards the adoption of a common code of practice ethics for lawyers in the east African region. This will enable the adoption of Regional Best Practice and the absorption of enhanced knowledge and skills of East Africa's lawyers on litigation and application of community law.

## 7. ICT policy and legal framework

The Kenyan government recognises the critical role of ICT in the social and economic development of the country. This is evidenced by the formulation and implementation of several key documents that govern the broader the development and innovative use of ICT as an economic driver. These include:

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<sup>18</sup>*Ibid*

**a. The Constitution of Kenya 2010**

The 2010 Constitution for the first time guarantees the right to access information held by the state. The Constitution further enjoins the state to promote the diversity of Kenya's people and to promote the use of communication technologies suited for persons with disabilities. However the enabling legislation that will provide for real and proper realization of the right to access information is yet to be adopted.

**b. Kenya Vision 2030**

Kenya's Vision 2030 is the country's current long term economic blueprint. The vision is geared towards transforming Kenya into a newly industrializing middle income country, providing a high quality of life to its citizens by the year 2030. The first medium term plan calls for investment in six targeted sectors including tourism, agriculture, manufacturing, trade, information technology and financial services.

**c. National Information and Communications Technology Policy (2006)**

The National ICT Policy identifies the wider challenge of harnessing the potential of ICT for economic growth and poverty reduction. The policy recognises the challenges that faced the exploitation of technology, among them the lack of a comprehensive policy and regulatory framework, inadequate infrastructure, and insufficient skilled human resources.

**d. E-government Strategy (2006)**

The e-Government Policy delineates the framework for modernization of Government as a means of enhancing transparency, accountability and good governance, and enabling citizens and businesses to access Government services and information as efficiently and effectively as possible through the use of the internet and other channels of communication. While the e-Government Strategy expounds specific objectives that the Government will pursue including improving collaboration, reducing duplication of effort, enhancing efficiency and reducing transaction costs for Government, businesses and the citizenry.

**e. The Judiciary ICT Policy & ICT Strategic Plan**

One of the major strategic objectives of the Judiciary's ICT Policy is to improve the delivery quality public services through the innovative use of ICT.

**f. Internet access**

The history of internet usage in Kenya can be traced to the early 1990s. The key challenges in the 1990s were the limited to the high cost of international Internet bandwidth, the high cost of both dial-up and domestic leased lines, the limited penetration of PCs, limited capacity and poor quality fixed infrastructure, lack of an Internet policy and regulatory environment and the lack of appropriate IT skills.<sup>19</sup>

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<sup>19</sup> Kenya's Efforts And Challenges In Developing Internet In Kenya – By Mr. Charles Njoroge, Director-General, Communications Commission Of Kenya (CCK) During The Workshop For African Policy Makers And Regulators On



The Communication Commission of Kenya estimates that as of July 2009 there were 1.82 million internet subscribers compared to 1.52 million users in March 2009<sup>20</sup>. At the same time the period under review reported 1.80 million mobile data/internet subscribers.<sup>21</sup> The landing of the East African Marine System submarine fiber optic cable in June 2009 is expected to reduce costs to \$500 per megabit from \$ 7000 per megabit<sup>22</sup> (this data costs placed Kenya the highest world). It is also expected that the prices will drop further once the other cables namely the SEACOM and EASSy are completed.

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Internet Governance Held In Mauritius On 17th – 19<sup>th</sup> March 2009 from

[http://www.icta.mu/mediaoffice/2009/atu/keynote-%20Charles\\_Njoroge.pdf](http://www.icta.mu/mediaoffice/2009/atu/keynote-%20Charles_Njoroge.pdf) accessed on 28<sup>th</sup> March 2010

<sup>20</sup> Source: CCK Database: Sector Statistics Report April-June 2008/09

<http://74.125.77.132/search?q=cache:lbSSQOYcKJgJ:www.cck.go.ke/UserFiles/File/SECTOR%2520STATISTICS%2520REPORT%25204th%2520Quarter.pdf+cck+internet+subscribers&cd=1&hl=en&ct=clnk&gl=ke&client=firefox-a> accessed on 26<sup>th</sup> March 2010

<sup>21</sup> Ibid

<sup>22</sup> Impact of submarine cable connectivity on the cost of Internet connectivity Wednesday, Nov 21, 2007 source: <http://www.itu.int/osg/spu/newslog/CategoryView.category.ICTs%20and%20Development.aspx> accessed on 26<sup>th</sup> March 2010

# Kenya Law Reports

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## 1. The mandate of the National Council for Law Reporting

As stated above the National Council for Law Reporting is a semi-autonomous government agency set up by Act of Parliament; the National Council for Law Reporting Act No. 5 of 1994. The NCLR draws its mandate from the NCLR Act which reads:

“The Council shall-

- (a) be responsible for the preparation and publication of the reports to be known as the Kenya Law Reports which shall contain judgments, rulings and opinions of the superior courts of record;
- (b) undertake such other publications as in the opinion of the Council are reasonably related to or connected with the preparation and publication of the Kenya Law Reports; and
- (c) perform any other functions conferred on the Council by or under the provisions of any other written law.”<sup>23</sup>

In 2009, the Council’s mandate was expanded through Legal Notice number 29 of 2009, when the Hon. Attorney General delegated his office’s statutory mandate for the revision and updating of the Laws of Kenya to the Council.

## 2. Organizational structure

### a. The membership of the Board of the Council

The Membership of the Board of the Council is prescribed the NCLR Act<sup>24</sup>. It is comprised of:

1. The Chief Justice (Chairman);
2. The Attorney General or his representative;
3. A Judge of the Court of Appeal nominated by the Chief Justice;
4. A Judge of the High Court nominated by the Chief Justice;
5. A public officer being an advocate nominated by the Attorney General;
6. Two advocates of not less than seven years’ standing nominated by the Law Society of Kenya.

Section 5 (5) of the gives room to the Board to co-opt any person to be an adviser at any meeting of the Council however such a co-opted members has no voting power. In the past the

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<sup>23</sup> Section 3 of the NCLR Act

<sup>24</sup> Section 4 of the NCLR Act

Council has co-opted advisers from the Directorate of Personnel Management<sup>25</sup> and the State Corporations & Advisory Committee<sup>26</sup> to advise it on human resources matters and management of state corporations.

**b. The Council's Secretariat**

The Editor is the Chief Executive Officer of the Council and is appointed by the Attorney General upon the recommendation of the Council. Subject to the general control of the Board of the Council on matters of policy, the Editor is responsible for the preparation and publication of the Kenya Law Reports and for such other publications as may be approved by the Council.<sup>27</sup>

The Secretary is responsible for the day to day running of the Council's operations while the Senior Assistant Editor is in charge of the legal publishing and law revision mandate of the Council.

The NCLR Strategic Plan 2009-2012 firmed up the NCLR organization structure to include the Council's Board, the Editor, the Senior Assistant Editor and the Secretary, the Assistant Editors and Line Managers and Departmental Staff. The head count of member of staff in March 2011 stood at 55. All the members of staff are stationed at the Council's Secretariat Office in Nairobi save for the Collection Agents who are stationed in the seventeen High Court stations spread across the country. The Collection Agents tasked with the duty of collecting judicial decisions from the courts and they also double up as Council's marketing representatives in the satellite towns.

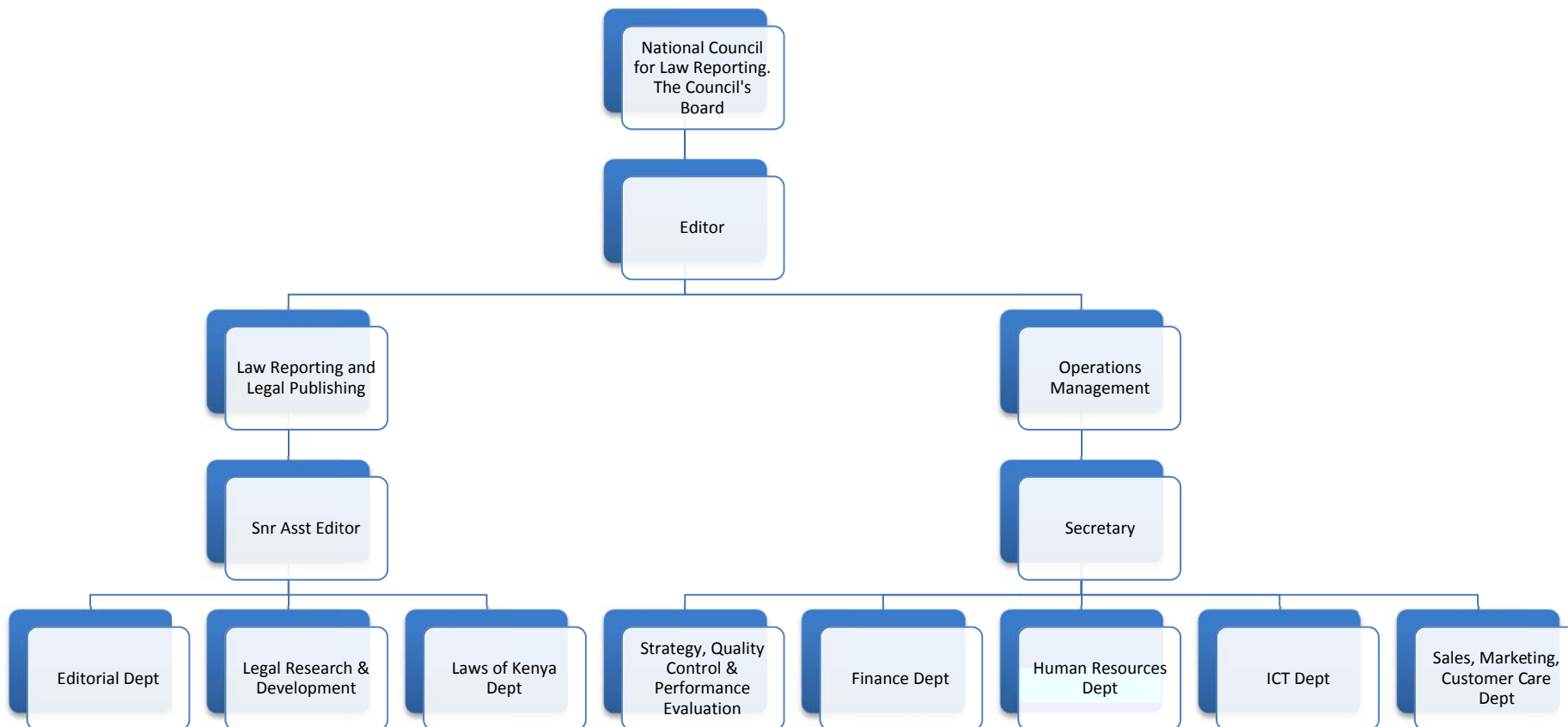
**c. NCLR Organogram (see next page)**

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<sup>2525</sup> The office Directorate of Personnel Management offers a wide range of services particularly formulating and reviewing Human Resources Management and Development policies and regulations for the public sector.

<sup>26</sup> The State Corporations & Advisory Committee is responsible for advising the government on best management practises in the running of state corporations and the viability of state corporations.

<sup>2727</sup> Section 7 of the NCLR Act



**NCLR Organogram 2011**



Over time the names and strategic objectives of some of Council's departments have been modified. A case in point is the Bench Research Hotline Department, which was set up in 2007 as research help desk with a team of four legal researchers and a fully equipped call-centre dedicated conducting legal research for Kenya's judicial officers. Due to shortage of human resources and in view of the plans by Kenya's Judiciary to engage research assistants as part of the judicial reforms being implemented in the country, the department's strategic objectives were re-orientated under the 2009 NCLR Strategic Plan. The department's objectives are now geared towards partnering with the Judiciary, the Law Society of Kenya and the Kenya School of Law in continuing legal education and awareness. Further the Department has plans to contribute to legal and administrative reform by tracking and reporting to law reform agencies judicial opinions containing pronouncements pertinent to legal and administrative.<sup>28</sup>

The adoption of the Strategic Plan in June 2010 by the Council's Board identifies the Council's departments and their corresponding objectives as follows:

Department	Strategic Objectives 2009-2012
Strategy, Quality Assurance and Performance Evaluation Department	<ul style="list-style-type: none"> <li>- Formulation of new strategic plan in co-ordination with other departments and members of staff</li> <li>- Align the activities of the Council's Departments with the best industry practices in organizational performance measurement and improvement system</li> <li>- Fully engage the Council with the government's performance contracting mechanism</li> </ul>
Editorial Department	<ul style="list-style-type: none"> <li>- Collect in electronic form a copy of every judicial opinion of the High Court and the Court of Appeal on the day that the opinion is delivered.</li> <li>- Provide timely access to accurate, relevant and updated case law information to judicial officers, the legal community and the public</li> <li>- Accelerate the publication of the backlog editions of the Kenya Law Reports in order to effectively close the gap in law reporting</li> <li>- Contribute to the financial resources of the Council by conceptualizing, designing and implementing sustainable business models for organizing and disseminating case law information</li> </ul>
Laws of Kenya Department	<ul style="list-style-type: none"> <li>- Establish a fully-fledged Laws of Kenya department with the capacity to undertake the comprehensive and continuous revision and updating of the Laws of Kenya;</li> <li>- Leverage on partnerships with other Government of Kenya departments, alternative funding sources and private-public-partnerships in revision, updating, publishing and dissemination of the Laws of Kenya</li> </ul>
Research and Development Department	<ul style="list-style-type: none"> <li>- Monitor and track frontier and emerging issues in Kenyan, regional and international jurisprudence</li> <li>- To aid in the evolution and development of Kenyan jurisprudence by the publication of a journal on interdisciplinary research on pertinent aspects of the law or the legal system.</li> </ul>

<sup>28</sup> Interview with the Team Leader, Research and Development Department.

	<ul style="list-style-type: none"> <li>- Contribute to legal and administrative reform by tracking and reporting to law reform agencies judicial opinions containing pronouncements pertinent to legal and administrative</li> <li>- Promote knowledge, information and education in frontier and emerging issues in the law among judicial officers, the legal community and the general public.</li> </ul>
Finance Department	<ul style="list-style-type: none"> <li>- To prepare and implement a financial manual for the Council</li> <li>- To prepare and implement the Council's annual Budget for the subsequent financial year.</li> <li>- To prepare and implement the Council's supplementary Budget and Procurement Plan for the current financial year.</li> <li>- To prepare and implement the Council's annual procurement plan for the subsequent financial year</li> <li>- To Implement a computer based system of collecting and managing the Council's financial information</li> </ul>
Sales, Marketing and Customer Care Department	<ul style="list-style-type: none"> <li>- Develop and implement a sales and marketing strategy for the Council</li> <li>- Develop and implement a customer care policy statement</li> <li>- Design and develop information and publicity materials for the Council</li> <li>- Implement a computer-based system of managing customer care functions</li> </ul>
ICT Department	<ul style="list-style-type: none"> <li>- Contribute to the financial strength and sustainability of the Council by building a sustainable business model for deploying the Council's public legal information using the web, internet and mobile communication devices</li> <li>- Support the Council's Departments by enabling them to manage and update their online content timeously, accurately, reliably and efficiently</li> <li>- Improve the accessibility of the Kenya Law Reports website by persons with disabilities by adopting internationally accepted standards and benchmarks in optimizing web resources for universal access.</li> <li>- Create a virtual organizational workspace for the Council by mapping all the functions and activities of each department into a secure, more efficient and interactive online workspace</li> <li>- Automate the collection of judicial opinions by designing and deploying a secure, reliable and efficient intranet module for Collection Agents</li> <li>- Ensure the security, reliability and efficiency of the Council's ICT infrastructure and equipment</li> <li>- Advise the Council on and assist it in the adoption of the latest and most appropriate ICT standards and technologies</li> <li>- Automate the helpdesk and Service desk functions for the council</li> </ul>
Human Resources Department	<ul style="list-style-type: none"> <li>- Develop and implement a Human Resources Manual for the Council.</li> <li>- Update the Council's Terms and Conditions of service and other Career guidelines in line with the laws governing employment</li> <li>- Recruitment and retention of competent, qualified and highly productive members of staff.</li> </ul>

	<ul style="list-style-type: none"> <li>- Training &amp; Development – In co-ordination with other departments, map and assess the training needs of the Council and prepare training</li> <li>- Establish a scheme of recognition and rewarding highly productive and innovative employees.</li> <li>- In liaison with the Strategy, Quality Control and Performance Department, continually monitor and measure the productivity and performance of the Council at both the individual level and departmental level.</li> <li>- Design and implement a Corporate Social Responsibility policy and frame work for the Council</li> </ul>
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### 3. Internal processes

#### a. Human resources

The Council's Human Resources Management Practices are guided by the general public sector policies and regulations. The regulations provide for competitiveness and transparent processes in appointment public officers. NCLR being a public institution adheres to these processes in recruitment its employees.<sup>29</sup> Vacant positions are advertised in the local dailies with wide circulation and on the Council's website, subsequently the short listed candidates are interviewed by a Human Resources Committee constituted by the Council's Board.

The employees are enjoined to follow the code of conduct as outlined Public Officers Code of Conduct and Regulations.

#### b. Financial management

*NCLR Annual budget*

Past, Current and Projected NCLR Resource Flows, 2006/07 to 2012/2013									
Source of Fundin g	200 6/07 Ksh s	200 7/08 Ksh s	2008/ 09 Kshs	2009 /10 Ksh s	2010/11 Kshs	2011/ 12	2012/2 013	Total Kshs	% of the Tota l
GoK	53M	51M	64M	82M	69.685 M	146.3 2045 8M	173.25 9027M	639.264 477M	87.5
Develop ment partners	3M	.3M	-	-				3.3	0.5
Sales of law	9.4 M	9.2 M	5.6M	15M	16M	16M	17M	88.2M	12

<sup>2929</sup> Interview with the Human Resources Officer



reports									
Other income	-	-	-	-				-	-
<b>TOTAL</b>								<b>730.764 477M</b>	<b>100</b>

*Total resource requirement for the financial year 2009/2010 to 2012/2013*

During the three-year strategic planning period (2009-2012) the Council will require financial resources amounting to Kshs 535.264477million to finance its operations, strengthen its capacity, upgrade office complex and equipment. Out of the total resource requirement, the Council expects the Government to contribute Kshs 471.264485 million.

During the Strategic Plan period, Kshs 201million will be expended on non-staff operating and management costs; Kshs307.760477million on staff recurrent costs; Kshs10.9 million on dissemination and staff capacity building costs; Kshs 4.8million on upgrade of equipment and additional office facility project; Kshs 10.2million for contractible services, and Kshs 604,000 on other costs.<sup>30</sup>

#### *Financial management practices*

Similarly the Council's financial management practices are aligned to the principles and framework for the management of public finances as spelt out in the Constitution and enabling statutes such as the Government Financial Management Act<sup>31</sup>, the Public Audit Act and the International Accounting Standards (IAS) and International Financial reporting standards (IFRS).. The preparation budgets and fiscal reporting mechanisms are clear and are strictly adhered to. In addition the Council follows the regulations the Public Procurement and Disposal Act and Regulations 2005<sup>32</sup> in procuring for goods and services.<sup>33</sup>

#### **c. Technology infrastructure available at the Council<sup>34</sup>**

##### *Physical infrastructure*

All the members of staff at the Council's members of staff have access to personal computer, networked and have access to internet connection of an average speed of 500Mbps.

<sup>30</sup> See NCLR Strategic Plan 2009-2012

<sup>31</sup> Cap ----Laws of Kenya

<sup>32</sup>

<sup>33</sup> Interview with the Finance Officer

<sup>34</sup> Interview with ICT Team Leader

*NCLR Document Management System: Web-based submission of court decisions and Causelists (Court Calendar)*

The Council collects judicial opinions and other information from 16 Court of Appeal and High Court stations spread out in the country. In 2010, the Council implemented a web-based Document Management System which introduces a more comprehensive and efficient method of tracking, collecting and forwarding judicial opinion country wide. The system has automated the collection of judicial opinions by providing a secure, reliable and efficient intranet module for Collection Agents. The duty of a collection Agent is to collect rulings, judgments, and court calendars from the various court stations as soon as practicable in both hard and soft copy and to forward them to the Publishing Officer at the Council's Secretariat. Prior to the launch of this web-based application the Collection Agents would send the judicial decisions in hard copy via courier or snail mail to the Secretariat where they would be re-typed or scanned. Subsequently Council entered into an informal agreement with the judiciary where decisions would be availed to the Collection Agents in soft copy via external memory devices of floppy disks and thereafter emailed to the Council from cyber cafes or delivered physically to the Secretariat.

Given this history the development Document Management System by the Council's Information Technology Department is a milestone. The department successfully conducted training of all staff members between June to December 2010. The first training was aimed at imparting the Collection Agents with the skills and knowledge necessary to use a new computer-based Document Management System. This was followed by training of the Editorial team, Laws of Kenya, Research & Development, Finance and Procurement teams. The NCLR DMS framework is fully open source and has been successfully implemented worldwide. Some of the key applications include:

Fig: Collection Agent's Entry Screen

**Modify Content Properties**

**Properties**

- Name: High Court\_Eldoret\_Judgement\_CIVIL S
- Title: High Court Eldoret Judgement CIVIL SU
- Description: This is Civil Case CIVIL SUIT 140 of 2009 ; a Eldoret High Court Judgement. It was delivered on Wed Mar 31 2010 11:41:00
- Author: Esther Adero
- Content Type: Microsoft Word
- Court Rank: High Court
- Magistrate Court Rank: Not Applicable
- Court Station: Eldoret
- Case Type: Select One
- Case Sub-Type: Select One
- Case Number:
- Case Year: 2009
- System Case Number: CIVIL SUIT 140 of 2009
- Parties For: THE PRESBYTERIAN FOUNDATION, P.C.E.A AYUB KINYUA PARISH
- Parties Against: JOHN EKAI ACHIVIHA AND 10 OTHERS
- Case History (If Any):
- Case Action: Select One
- Delivery Date: None

The entry screen shows the Collection Agent's log in profile on the system. The Collection Agents logs in a secure user name and password and then proceeds to key in the descriptors/ metadata of the judicial opinions that they are about to submit, such as the case name, names of parties, court station date of delivery and the presiding judge or judges. After all the metadata has been entered, the Collection Agent attaches the file containing the judicial opinion and submits the document. Immediately the metadata and the case file will be in the system and available to the Data Entry unit at the Council's headquarters as part of a workflow process that culminates in the publication of the judicial opinions on the Council's website ([www.kenyalaw.org](http://www.kenyalaw.org)).

The NCLR ICT Team leader states that the web-based system of submitting judicial cases has realized a number of important advantages chief among them is that the system offers a faster and more efficient way of submitting the opinions and it has brought savings on the costs of

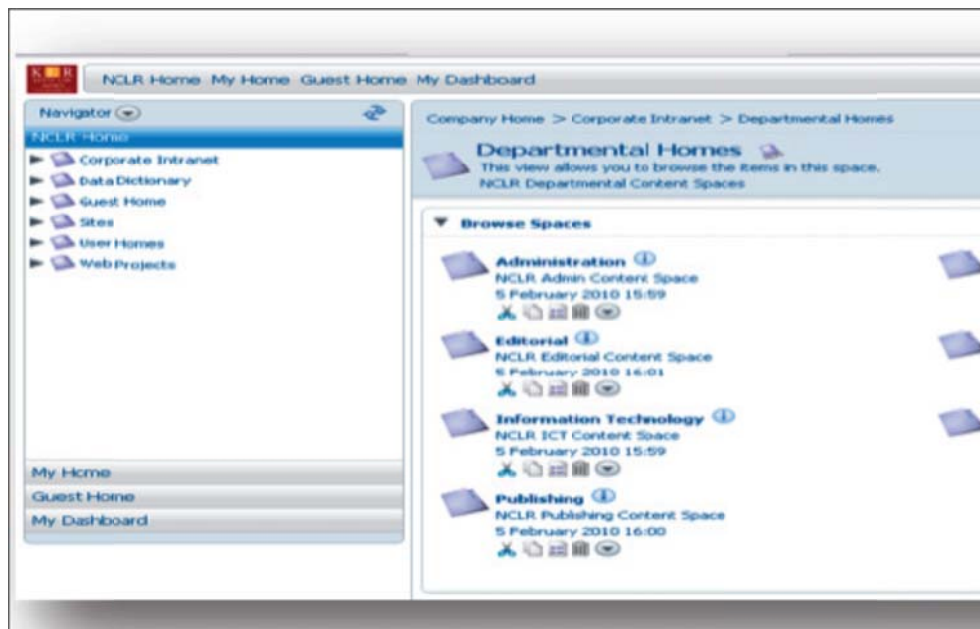
transportation, printing, photocopy and courier. He further observes that it acts both as a conduit and as a reservoir of content as the records of the submitted opinions can be traced back in the system and it provides a platform for Collection Agents to assess, track and evaluate their collection record while enhancing the computer skills and knowledge of collection agents. Because it can be integrated with the Council's website front end, he estimates that it will considerably reduce the lead time between the delivery of an opinion and its publication on the internet.

### *NCLR Virtual Work space*

The council has implemented a web-based enterprise document management system (NCLR DMS) which introduces a more comprehensive and efficient method of Document Management; Web Content Management; and Collaboration.

The system creates a virtual workplace for the Council's staff where they are able to interact in departmental and individual profiles/workspaces. Documents, ideas, communications and even virtual meetings are originated and concluded in the system. The system is highly secure and has a degree of scalability and customization that makes it ideal for both a small-sized organization as well as a large-scale enterprise with offices spread out across the globe.

The perfect paperless office: A screenshot of the Alfresco DMS showing the virtual workspaces for the Council's departments



The system provides a collaborative content management framework where users can interact in real time. It provides an enterprise library which can serve as a central document repository and resource for shared users. It has an architecture that can create functionally distinct team and organizational spaces with cross-collaborative features such as wikis, cross-spatial tasks, feeds, discussion forums and social networking platforms. The framework that is in use is fully

open source and has been successfully implemented in many private as well as government organizations all over the world.

### *NCLR Service Desk*

Additionally NCLR has deployed the world's leading open source service desk solution with more than 70,000 installations worldwide. The key features of the service desk include:

- Service request & incident recording

The system facilitates quick recording of incidents and service requests with a customer front-end, e-mail, telephone and other contact information and the creation, management and assignment of a service catalogue. It has quick ticket templates for fast responses to standardized customer request and able to link content from the knowledge base into recorded incidents.

- Workflow management

Automatic follow-ups to existing incident-IDs with integrative knowledge base access for quick workarounds enables satisfactory customer service response. The system provides the tools for linking, merging and splitting of separate incidents and providing automated feedback to recurring requests. Customer care personnel can activate pending reminder functionalities and conduct a full text search of the entire system. Busy customer service desks find great value in the system's time accounting and reporting with flexible mapping of service processes, workflows and approval process using Active Control Lists, queues, decisions fields with automatic routing of requests.

- Customer Self Service

The system enables the separation of customer web front-end to relieve the service desk from routine tasks and provides user-based recording and tracking of own requests. It provides transparency about request status and work progress with view-on-request functionality and access to public or pre-classified FAQ articles.

### *Seamless back-to-front-end website integration*

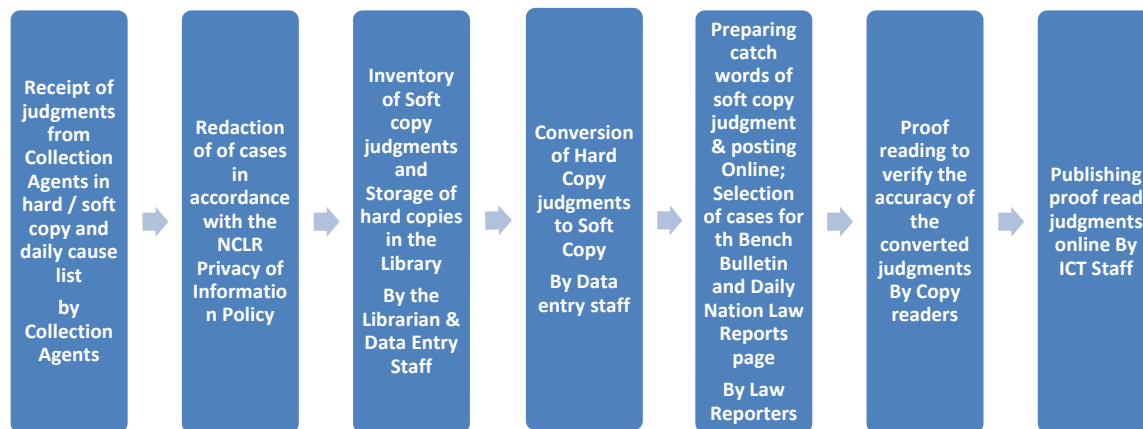
Using an open-source framework, the Council in January 2011 released a new version of its website that features more interactivity, easier and even more relevant searches, a friendlier and easier updates management interface, blogs, news management modules and forums.

The website features WEB 2.0 technology, and marks a shift to a new internet experience providing a level of user contribution, interactivity and collaboration that is unprecedented for a public legal information website.

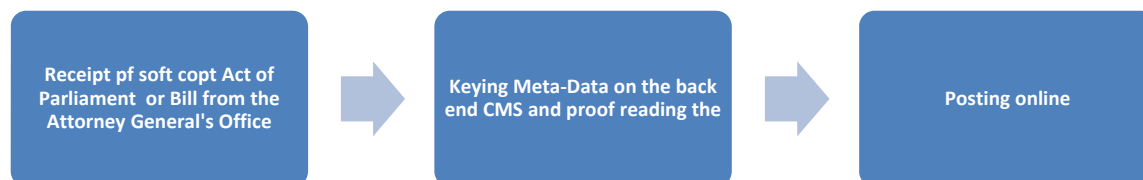
#### d. Work flow processes for the Editorial and Laws of Kenya Departments

The Editorial and Law of Kenya Departments are the principal departments that carry out the legal publishing and law revision mandate of the Council. The Editorial Department's workflow processes are twofold: managing processes for online and print publication. For the purpose of this case study the illustration below shows the online work flow process.

Workflow Process for publication of judicial decisions online



Workflow Processes for publication of Laws online



#### **e. Performance evaluation**

According to the NCLR Strategic Plan Performance Evaluation is conducted at three levels namely;

1. Departmental Monitoring and Evaluation – Alongside the departmental strategic plan, every department has established and documented its workflow processes, the standards and guidelines to be applied in the workflow, and a calendar of the department's outputs. This forms the monitoring and evaluation framework at the departmental level.
2. Organizational Monitoring and Evaluation – the Strategy, Quality Control and Performance Evaluation Department has the duty to continuously monitor and evaluate the implementation of the Council's strategic plan.
3. Governance Monitoring and Evaluation – The Board is the supreme governance organ of the Council. It provides policy leadership and directions on the affairs of the Council. The Board has entered into a performance contract with the Government of Kenya. The broad strategies and objectives of the Council are mapped into the performance contract translating them into objective, measurable results that will form the indices for a Monitoring and Evaluation Framework at the Board level.

#### **4. External practices**

The NCLR engages its customer through various modes such as email blasts, an online service desk through which customer may make enquiries or file complaints, participating in public events such as Legal Awareness Week (organized by the Law Society of Kenya) and the Public Service Week (organized by the Ministry of State for Public Service). In 2010 through the Research and Development NCLR commenced Continuous Legal Education program with the objective of updating the legal profession on new developments in jurisprudence but more so to gather feedback on the NCLR's products.<sup>35</sup>

#### **5. Implementation – Outputs**

##### **a. Online documents**

The website [www.kenyalaw.org](http://www.kenyalaw.org) launched in 2004 contains an assortment of public legal information. The website hosts 34578 judicial decisions<sup>36</sup> ; over 600 Acts of Parliament and accompanying Regulations; Bill of Parliament that have been published since 2007<sup>37</sup>. The website is also home to the current and legacy issues of the Kenya Gazette. The Kenya Gazette is an official government publication containing notices of new legislation, notices required to be published by law or policy as well as other announcements that are published for general public information. The archival records of the Kenya Gazette date back to 1906 and runs into 19,000 pages.<sup>38</sup> The Kenya Law Reports website publishes the Court Calendar for the Court of Appeal, High Court and Magistrates Courts. The Court Calendar commonly referred to as the 'Causelist'

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<sup>35</sup> Team Leader Customer Care, Sales and Marketing

<sup>36</sup> as of April 25 2011,

<sup>37</sup> see [www.kenyalaw.org/lawsofkenya](http://www.kenyalaw.org/lawsofkenya)

<sup>38</sup> see <http://kenyalaw.org/klr/index.php?id=666>

is published on a daily, weekly or bi-weekly basis depending on the schedule of the given court. The NCLR quarterly magazine – the Bench Bulletin and the Newsletter are value added publications freely accessible on the NCLR website. The Bench Bulletin targets judicial officers, law practitioners, managers and the business people. It is a quarterly digest of recent developments in law, particularly, case law, new legislation in the form of Acts of Parliament, rules and regulations, pending legislation contained in Bills tabled before Parliament and selected Legal Notices and Gazette Notices.<sup>39</sup> While the Newsletter features summaries of selected public interest court decisions and excerpts from the Kenya Gazette Notices.<sup>40</sup> Each week the Newsletter feature article is also published in the Monday edition of the Daily Nation, East Africa's largest newspaper.

At its formative stage the Kenya Law Reports website only carried the judicial decisions of the High Court and the Court of Appeal. Over time the project had added to its menu, other public legal information, notably the Laws of Kenya and the Kenya Gazette.

To get assess whether users are able to conduct research more effectively, thirty students from the University of Nairobi, Catholic University of Eastern Africa, Moi University, Kampala International University and United States International University (Kenya Branch) were interviewed<sup>41</sup>. Most of the students reported that they regularly visit the Kenya Law Reports website to search for case law and legislation. All students interviewed were aware of the existence of the Kenya Law Reports website and that its contents were accessible at no cost. A majority of students access the site from their institutions free of charge. The rest connect to the site at their own expense either in internet cafés, or via mobile phones. Only one student was aware of the free access to law movement. The usage of segments of the website varies between the part time and full time students. Interns working in law firms visit the following segments in order of priority - Case search, Cause List, Kenya Gazette Notices and Laws of Kenya.

Part time students who intern with civil society organisations often refer to the Laws of Kenya segment. Full time students mainly make reference use of Case Search and Laws of Kenya. For quick reference most students go to Google and Wikipedia. Some refer to <http://www.lawteacher.net/>; <http://www.ossrea.net/>; <http://scholar.google.com/>. A handful of the students interviewed have access to subscription online journals such as JSTOR and LexisNexis. Only the students who attend private universities have access to subscription online resources such as LexisNexis and JSTOR. The students who attend public universities and those who would like to access additional resources incur their own costs.

75% of the students interviewed were dissatisfied with certain features of the Case Search segment. They were of the view that that search results were too broad and that NCLR ought to improve case search engine. Some interviewees pointed out that a number of landmark decisions delivered in the 70s, 80's and early 90s were not available on the website. They also

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<sup>39</sup> <http://kenyalaw.org/klr/index.php?id=28>



suggested that select public interest decisions decided by Magistrate Courts should be published on the website.

The interviewees suggested that the all legacy Kenya Gazette Notices needed to be published online. It was also proposed that all The Laws of Kenya should be downloadable as a single PDF document. One student suggested that some features of the website should be altered to be universally accessible to persons with disabilities. Many advanced that the Wap technology should be incorporated recommended that the website should be Wap enabled to support mobile phone users.

Other suggestions were that Articles and commentaries section should that reflect contemporary issues also need to be included on the site; the accuracy of the cause list be bolstered and that it include Magistrates courts within Nairobi; that an active and informed customer care service established to address users' concerns.

All the academicians interviewed carry out research in their respective areas of specialty as well other general areas of law. They mostly conduct research on case law and articles written on their respective areas of specialty and cite this as an invaluable source of teaching material as well as an effective way to keep abreast with recent developments in the law.

All the academicians interviewed stated that the Kenya Law Reports Website has improved their capacity to deliver. This is because it is their resource for recent case law and developments in law and has improved the quality of the courses they teach which previously quoted outdated case law.

All of the academicians interviewed use the Case Search option on the website, two thirds of the interviewees use the Laws of Kenya and Articles segments and a third use the Cause List and Gazette sections.

Articles and Case Search were cited by the academicians as their most important research tools. The reasons mentioned for this were that through the case search option the academicians can look for decisions on any subject and keep abreast on the developments in the courts while articles link the academicians to the thoughts and research of other legal minds nationally, regionally and internationally.

25% of the interviewees did not think that the website needed improvement. 50% of the academicians interviewed proposed that more articles be sourced for the website including links to other websites with articles. In addition, they proposed that presentations made in the Law Society of Kenya Continuous Legal Education seminars be included in the articles segment. 15% of the interviewees proposed that Case Search include regional legal information such as the COMESA court, East African Court of Justice. 15% of the interviewees also noted that the content on the Land Law website was inadequate.

The Judges interviewed proposed that the Laws of Kenya be made available on CD and that they be alerted by Newsletter on developing legal issues since they do not have access to the internet.

The lawyers interviewed used, in order of priority, the Case Search, Laws of Kenya and Cause Lists segments of the site.

The lawyers interviewed cited Case Search, and Laws of Kenya as indispensable for conducting their research.

The lawyers interviewed suggested that the search engine in Case Search needs to be improved. The interviewees also stated that the Cause List section also needs improvement because the cause lists for stations out of Nairobi are not updated regularly; this adversely affects the preparation and planning of advocates. The interviewees also proposed that amendments affecting laws be uploaded without delay.

All the librarians stated that the website has increased their case law databases and the librarians in Judiciary libraries stated that the website has increased their efficiency in locating case law requested by the library users including judicial officers and advocates.

All the librarians interviewed utilize the Case Search and Laws of Kenya segments on the website.

The Case Search product on the website was cited by the interviewees as indispensable in conducting their work. This is because they use the product to update cases which are missing from the library's hard copies. The interviewees cited the Laws of Kenya and the Case Search segment as the sections that were required constant improvement for the reason that they were the most visited segments.

#### **b. Usage statistics**

According to the Kenyalawreports website statistics for the period December 20 2010– March 2 2011, there were 50,611 people who visited the website. Pages on the website were viewed 695,939 times with an average user spending seven minutes on the website. The content that was mostly viewed was the Homepage (190,678 pageviews) followed by the Casesearch (46,858 pageviews). Referring site sent 20,242 visits to the Kenyalaw website via 473 sources during the same period. The visitors who landed on the website directly were 13,239. The top referral website were Google (761 visitors); Mywebsearch (610 visitors); Facebook (555 visitors). Others were Saflii, Bailii, Kenya School of Law website, Kenya Judiciary website, Law Society of Kenya website and the Kenya Law Reform website. Mobile devices sent 5,222 visits to the website.

# Conclusions

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*The purpose of this study was to demonstrate that there are four possible foci for evaluating a Free Access to Law project. These are the start of a project, the processes, the implementation as measured by outputs and the implementation as measured by outcomes.*

The researcher has demonstrated how and why the National Council for Law Reporting was set up, the mechanisms that the National Council for Reporting has adopted to carry out its mandate and finally the outcomes of the project.

The running theme that emerged through the interview results was that the Kenyalaw website and by extension the National Council for Law Reporting had transformed the manner of accessing primary legal information in Kenya. This had in turn improved the manner of conducting legal research, teaching and developing jurisprudence. A sample of court decisions delivered between 2009 – 2011 reveal that the courts were increasingly citing the eKLR (the designated citation for the cases published on the Kenyalaw website).

Drawing from the document review and interviews that was conducted the following conclusions were arrived at:

1. The National Council for Law Reporting is a semi-autonomous government agency that was established through an Act of Parliament with a clear mandate, governance structure and financial support from the Exchequer. This enabled setting up of a fully-fledged secretariat that attracted qualified expertise in Law Reporting and ICT.
2. The NCLR has leveraged its position to partner and obtain primary legal information from other government institutions.
3. The National Council for Law Reporting has identified its stakeholders, primary and secondary users. It has developed a strategy for the future and formulated governance and auditing systems.
4. The organisation has diversified the type of primary legal information it publishes beyond the mandate set out in the NCLR Act that is to publish judicial decisions of the superior courts of record in Kenya'. It did so by seeking the amendment to the law so be able to publish Laws of Kenya. The NCLR also publishes information that compliments case law and national legislation namely the Kenya Gazette, Record of Kenya's Parliamentary Proceedings and the Court Calendar.
5. The mandate for the NCLR which is Law reporting and revision of national legislation is not a commercial activity through which state revenue may be acquired but a public service through which the

government fulfils its access-to-justice and public information obligations.