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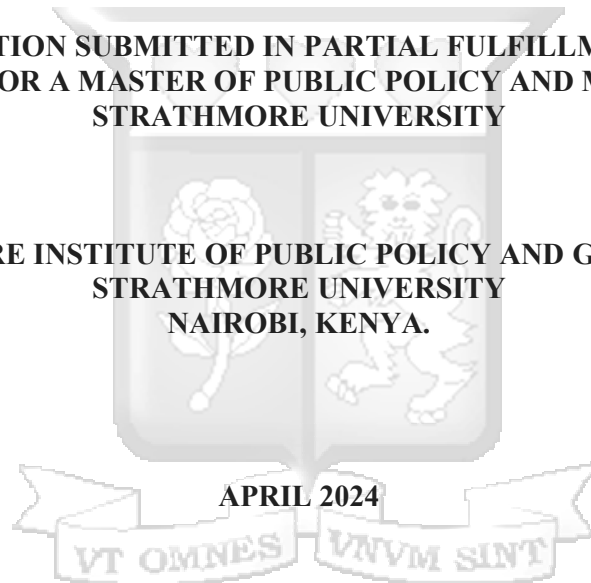
**AN APPRAISAL OF KENYA'S BUSINESS REGULATORY ENVIRONMENT:
SUCSESSES, CHALLENGES, AND POLICY OPTIONS**

OLGA AKINYI ANYANGO OYIER

MPPM/95245/2016

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENT FOR A MASTER OF PUBLIC POLICY AND MANAGEMENT AT
STRATHMORE UNIVERSITY**

**STRATHMORE INSTITUTE OF PUBLIC POLICY AND GOVERNANCE
STRATHMORE UNIVERSITY
NAIROBI, KENYA.**



DECLARATION

I declare that this work has not been previously submitted and approved for the award of a degree by this or any other University. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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ABSTRACT

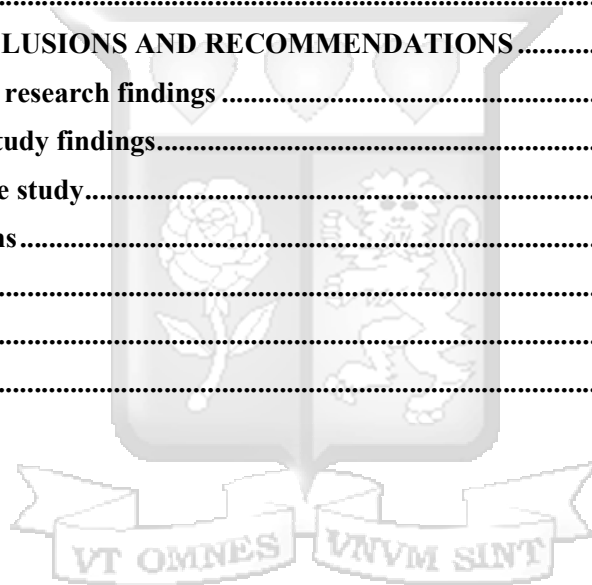
This study set out to appraise Kenya's business regulatory environment using the Ease of Doing Business index performance between 2008 to 2020, examining both its successes and challenges while also identifying potential policy options. The specific objectives of the study were: to critically review Kenya's business regulatory reforms to identify reforms that improved or worsened the business environment as measured by the Ease of Doing Business (EoDB) Index between 2008-2020; to identify the key successes and challenges associated with Kenya's business regulatory reform experience; and to draw lessons for business regulatory reforms from Kenya's experience and from global best practice. The theoretical anchorage of this study was drawn from transaction cost theory, institutional theory and stakeholder theory. These theories were reviewed alongside the public interest theory and enforcement theory. This study adopted the exploratory design and secondary data collection methods were deployed. Content analysis methods were used to identify themes and to develop key episodes informed by the performance in the EoDB index for the study. The purpose of the key episodes or phases was to identify key episodes that had contrasting performances and seek to explain the reasons for the different episodes based on performance and further map the episodes to specific reforms.



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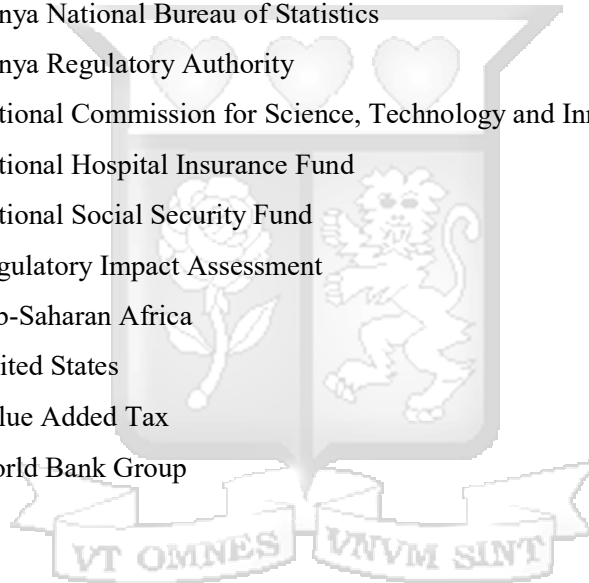
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LIST OF ABBREVIATIONS

BEE	Business Enabling Environment
COVID	Corona Virus Disease
EAC	East African Community
EODB	Ease of Doing Business
EU	European Union
GCI	Global Competitiveness Index
KEPSA	Kenya Private Sector Alliance
GOK	Government of Kenya
KES	Kenya Shillings
KNBS	Kenya National Bureau of Statistics
KRA	Kenya Regulatory Authority
NACOSTI	National Commission for Science, Technology and Innovation
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
RIA	Regulatory Impact Assessment
SSA	Sub-Saharan Africa
US	United States
VAT	Value Added Tax
WBG	World Bank Group



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DEDICATION

I dedicate this research study to my family, especially my husband and children for the overwhelming love, support, insights, and motivation I received from them throughout this program; more so my project and research work. Thank you for the encouragement to finish despite the long ailment period. This is for you.



CHAPTER ONE INTRODUCTION

1.1 Background

Regulation is a key instrument for economic governance; thus, economic regulation is grounded on the need to correct market failures to support market efficiency and ultimately economic growth (Kirkpatrick, 2014). Regulatory reform, therefore, refers to a set of measures with the common purpose of strengthening the regulatory environment. These measures include regulation policy, regulatory institutions, and regulatory processes (Kirkpatrick, 2014). Business regulatory reforms form an important component in creating an enabling environment for businesses to thrive. The private sector can better thrive in an environment that provides a level playing field for businesses with requisite investor and property protection (World Bank, 2007).

Globally, the issues of red tape and cumbersome procedures have deterred new investments and stifled existing businesses. An improved business regulatory environment is one where the procedures are simple and clear, the time taken to comply is minimal, and the transaction cost is reduced. Countries can improve their business environment through consistent and positive regulatory reforms aimed at increasing transparency, efficiency in service delivery, and reducing the cost of doing business (World Bank, 2007). The concept of the “business environment” is central to the neo-liberal political economy that perceives government regulations and taxation as imposed costs on businesses. This approach further associates low taxes and few regulations with a business-friendly environment (World Bank, 2007). However, the transaction costs theory challenged this perspective by arguing that well-designed regulations may underpin a firm’s coordination strategies, thereby promoting investment and growth (Hall and Gingerich, 2009).

Five theories provide critical insights in appraising the business regulatory environment. These are transaction cost theory, institutional theory, stakeholder theory, public interest theory, and enforcement theory. Further, these theories give credence to the World Bank Ease of Doing Business (EoDB) Index, through which Kenya’s business regulatory reforms have been measured over time against 189 other economies. Transaction cost theory posits that each transaction produces coordination costs of monitoring, controlling and managing transactions (Young, 2013). In this case, the transaction is between businesses and the regulatory institutions, and the compliance costs, number of procedures, and length of time taken to complete a transaction are measured by each of the indicators to determine how easy or burdensome it is to do business. Institutional theory on the

other hand provides a framework that explores the effect of institutions on policy processes and outcomes (Lahat, 2020). Additionally, administrative policymaking is a separate distinguishable process and not a stage in the legislative-making process; thus, the institutional setting for policymaking has a major influence on policy ideas, choices, and actions (Maynard-Moody, 1998). Compliance or increased compliance at a reduced cost is a measure of effective regulation whose success or failure is dependent on a set of stakeholders.

The stakeholder theory posits that if stakeholder engagement is intentionally crafted and fit-for-purpose, it can be a useful tool to navigate stakeholder interests and political economy around them. Public interest theory made a case for government intervention in the market on the basis that: (i). Unhindered markets fail due to monopolies or externalities; and (ii). that Governments are benign and capable of correcting these market failures through regulation. (Stigler, 1971; Pigou, 2017). Finally, enforcement theory, which is anchored on control, considers strategies that society can use to control the pursuit of the public good and balance the powers of the state vis-à-vis private individuals. The control strategies include market discipline, private litigation, public enforcement via regulation, and state ownership, ranked in the growing degree of public control, recognizing that optimal institutional design involves a choice between the four strategies. Further, in choosing any of the strategies, there is a basic trade-off between two social costs, i.e., disorder and dictatorship.

The Ease of Doing Business index was introduced by the World Bank as a global performance index aimed at shaping the global regulatory environment by providing packaged information to influence foreign investors and voters based on the friendliness of the business regulatory environment (Doshi, Kelley & Simmons, 2019). The overarching principle behind the functional areas of business regulatory reform is to reduce costs and risks for businesses caused by poor or changing policies, laws, and regulations. These functional areas include simplification of business registration and licensing, improvement of tax policies, development of appropriate quality standards, enhancement of public-private dialogue, improvement of land titling, and facilitation of improved access to finance. These functional areas provide a starting point for the design and implementation of business regulatory reforms geared toward an improved business environment (Business Environment Working Group, 2016). The identified functional areas of business regulatory reforms work with or without measurement by any index, therefore, remaining relevant despite the status of the indices (Business Environment Working Group, 2016). The impact of business regulations and rules has in the past been widely measured using business indices such as the Ease of Doing Business

index and the Global Competitiveness Index, commonly referred to as GCI 4.0.

The index is a component of the *Doing Business Project* launched by the World Bank in 2002, with a series of Doing Business (DB) reports published annually and globally covering 190 economies. It is worth noting that the Ease of Doing Business index has since been discontinued due to reported scoring irregularities, and the World Bank Group is in the process of developing an improved index to be launched in 2024. Despite the discontinuation of the ranking, the tool still provides vital information on the type of business regulatory reforms that help to improve the investment climate of a country.

Figure 1 aptly highlights the five key milestones in the life cycle of a business, i.e., starting a business, getting a location, accessing credit, dealing with day-to-day operations, and operating within a secure business environment. Within the five key milestones in the business life cycle, the Ease of Doing Business Indicators measured by the index are highlighted. The ten indicators are commonly used to rank countries' performance that is: Starting a business, registering property, dealing with construction permits, getting electricity, getting credit, paying taxes, enforcing contracts, trading across borders, protecting minority investors, and resolving insolvency.



Figure 1: Ease of Doing Business Parameters

(Source: Doing Business)

Europe, Central Asia, South Asia, and Sub-Saharan Africa (SSA) are some of the regions that have exhibited the highest share of reforming economies according to the DB reports attributed to good

regulatory practices (World Bank, 2017). Evidently, multi-agency and government collaboration has given positive results in the ‘Ease of Doing Business’ Index.

New Zealand, Singapore, Hong Kong, Denmark, and Korea maintained a top-five ranking globally, with a score of over 84 (World Bank, 2020). While there is a significant variation in the East African Community (EAC), the average regional ranking could be better due to the complexity and costs of regulatory processes, as well as the strength of legal institutions. The EAC comprises five member countries: Kenya, Burundi, Rwanda, Uganda, and Tanzania. Even though Kenya lagged behind ranking (fourth in EAC), it remains EAC’s industrial and financial hub with a strong private sector and an annual growth rate of over 5% in the past years (World Bank, 2016). Rwanda takes the lead because it has put in place a strong institutional framework supporting the implementation of business regulatory reforms. Consequently, Rwanda has streamlined procedures for starting a business, substantially improved access to credit, reduced the time to register property, simplified cross-border trade, and made courts more accessible for resolving commercial disputes, thus making it easier to do business (World Bank, 2013).

Notably, some key milestones that Kenya has made, as recorded in the Ease of Doing Business index over the years, include the enactment of the Companies Act 2015, the Insolvency Act 2015, and the Business Registration Services Act 2015. These laws radically transformed the business regulatory environment by reducing and in some cases merging procedures needed in the start-up, formal operation of businesses and winding down of business operations. Thus, between 2008 and 2014, the number of new limited liability firms formally registered in the country grew by over 2.5 times (Government of Kenya, 2007).

In Kenya, reform implementation challenges still exist in the areas of regulatory and institutional reforms, implementation of reforms already legislated, and insufficient stakeholder engagement to ensure the reform is relevant to the beneficiaries with a clear analysis of who bears the costs and who bears the benefits (Shleifer, 2005). Albeit, Kenya is one of the countries in the developing economies bracket that has, in the past decade, made significant efforts to improve the ease of doing business ranking by intensifying its business regulatory reform agenda. A good example is bundling licensing requirements into a single comprehensive process as well as technological advancements like establishing an all-encompassing electronic registry (e-citizen platform) that documents requirements and processes. In the global business environment, governments seek to achieve

stability, equity, progress and affluence through the tri-factors: spending, taxation, and regulation, advocating for a better business environment. Despite all the significant strides that have been made, this study seeks to bridge the gap and provide an appraisal of Kenya's business regulatory environment between 2008 and 2020, looking into the successes, challenges, and policy options leading to Kenya's mixed performance in the index.

1.2 Introduction to the World Bank Doing Business Reports

Over the past two decades, the annual 'World Bank Doing Business Reports' have documented and provided data on indicators for Kenya and 189 other economies in the global context. The index aims to motivate reforms through benchmarking, inform the design of reforms by highlighting what needs to be changed, enrich international initiatives on development effectiveness, and contribute to the body of knowledge by producing indicators to quantify aspects of regulation and development (Haidar, 2012). World Bank Doing Business (DB) reports provide indicators to quantify aspects of regulation and development (Haidar, 2012). The net impact of the comparison from this global knowledge repository enables a comparison of the EoDB in the Kenyan economy, aiding it in gauging itself with respect to the other regional and global economies. This annually published report was a flagship knowledge product of the World Bank Group in private sector development and is claimed to have motivated the design of several regulatory reforms, mostly in developing countries. Additionally, EoDB spotlights countries and leaders promoting reforms and is often adopted by the business community, academics, policymakers, the political sphere and economic growth experts.

Borrowing from global best practices has informed red-tape removal, reduction of administrative burdens, improved regulatory performance, better-informed policies, and objective business environment enhancement, as well as catalyzing the discourse around reform agendas. Bottomline, the EoDB index has greatly improved the business environment through reduced barriers to entry which has, in turn, boosted the informal sector, lower start-up costs have encouraged entrepreneurship greatly, while simpler start-up processes have translated to wider employment opportunities. According to Contractor, Dangol, Nuruzzaman and Raghunath (2020), comparisons also help in conducting ex-ante and ex-post evaluations regarding the effects of economic regulatory reforms. These comparisons further help to level the playing field across all 190 economies, as well as highlight gaps in the global business environment.

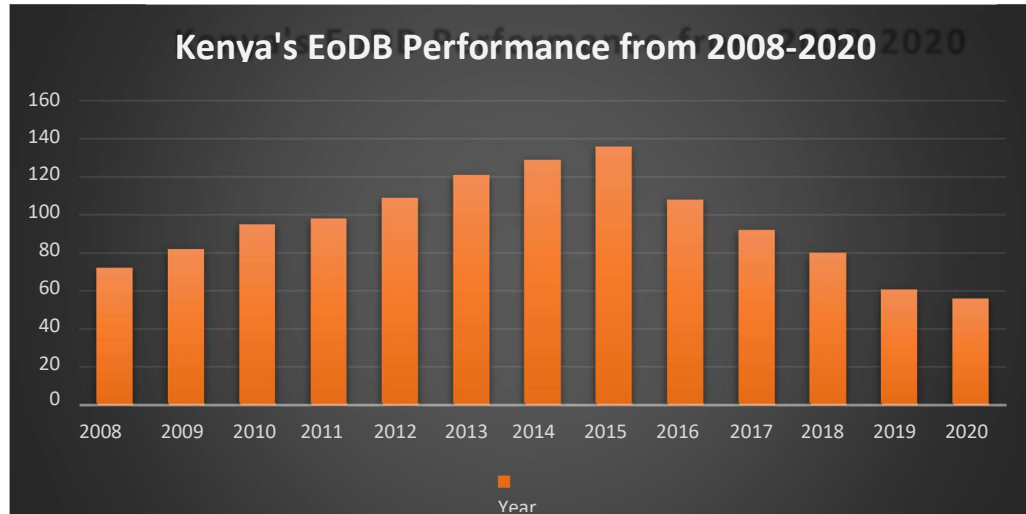


Figure 2: Kenya's EoDB Performance from 2008-2020

(Source: Author)

Figure 2 provides a visual of Kenya's performance in the EoDB overall ranking between 2008 and 2020. Kenya's mixed performance in the ranking over the years informs the basis upon which this study understands the reforms and enabling factors that led to good performance. Notably, Kenya's national development blueprint Vision 2030 aspired to have Kenya rank among the top 50 economies by 2030. By 2020, Kenya was ranked 56th, having implemented significant reforms. The study thus delves deeper into the successes, challenges, and policy options of the 2008-2020 period. Therefore, this study is timely as it provides an appraisal with room for future in-depth studies.

1.2 Problem Statement

Robust business environments reduce impediments to sustainable economic growth. These impediments include; bureaucracies, stiff competition, security threats, infrastructure limitations, high taxation, and counterfeits among others (Kirkpatrick, 2014). In the recent past, Kenya has undertaken a myriad of business regulatory reforms geared towards creating an enabling environment for businesses to thrive. However, Kenya's performance in the EoDB ranking for the period 2008 to 2020 is mixed despite recognition multiple times as a "Top Global Reformer" within the period.

The EoDB index has enabled Kenya to gauge itself with respect to other economies regionally and globally. However, comprehensive research on business regulatory reforms and their impact on doing business in Kenya is still limited. Moreover, most literature is geared toward quantitative aspects, which answer the "what" and "how" but leave out the "why." This study therefore seeks to

explain why Kenya experienced the mixed performance and identify the EoDB reforms that worked or did not work towards improving the business enabling environment in Kenya. This study further seeks to identify policy reforms that worked and suggest policy options for improving Kenya's business environment.

1.3 Research Objectives

1.3.1. General Objective

The general objective of this study is to appraise Kenya's business regulatory environment using the Ease of Doing Business index between 2008 and 2020, examining both its successes and challenges while also identifying potential policy options.

1.3.2. Specific Objectives

This study shall be guided by the following specific objectives:

- i. Critical review of the business regulatory reforms to identify reforms that improved or worsened the business climate as measured by the Ease of Doing Business (EoDB) Index between 2008-2020.
- ii. Identify the key successes and challenges associated with Kenya's business regulatory reform experience.
- iii. Draw lessons for business regulatory reforms from Kenya's experience and from global best practice.

1.4 Research Questions

The research questions that will be explored include:

- i. From Kenya's EoDB Performance, which reforms worked well, which ones did not, and why?
- ii. What were the key successes and challenges associated with Kenya's business regulatory reform experience?
- iii. What lessons for business regulatory reform can be drawn from Kenya's experience and global best practice?

1.5 Scope of the Study

Focusing on the variations in Kenya's performance in the EoDB reports published between 2008 and 2020, the scope of this study included a critical review of the DB reports covering the stated

period. This study adopted secondary data collection methods and used content analysis techniques to review, analyze and synthesize the data. Data was drawn from a wide range of secondary sources including periodic reports from government and non-governmental agencies, and the World Bank Doing Business Reports.

1.6 Significance of the Study

While Kenya works towards becoming a frontier economy and fostering a business-friendly environment, her performance in the Ease of Doing Business index would be an apt starting point. Therefore, it would be important to understand what worked and what did not work with respect to business regulatory reform. This information would bring to the fore deeper issues such as the causes of the fluctuations in performance in the EoDB ranking and open up opportunities for deeper academic studies in those areas. This study provides a good ground for academicians to examine the research gaps in this area as the findings of the study shall be evaluated considering its limitations. Policymakers, too, shall benefit from the insights gained from the study to inform future policy and regulatory reforms with a view to sustaining positive improvements in the Ease of Doing Business ranking and creating a business-friendly environment.

As one of the largest and most dynamic economies in Sub-Saharan Africa, it is notable that there exists a myriad of complexities in the reform process. This study, therefore, would provide lessons from a unique context of a large, developing economy as well as document the challenges, failures and successes. Further, the study will provide recommendations to ensure sustained improvement in the business environment in alignment with Kenya's Vision 2030 goal of being ranked in the top 50 in the Doing Business Index by the year 2030. To the practitioners, this study would shed more light on business regulatory reform implementation processes and suggest policy options based on the findings of this study.

Additionally, this study offers the business community information that would influence future business advocacy and investment priorities.

CHAPTER TWO

LITERATURE REVIEW

This section takes a deeper dive into the theories of regulation which include: transaction cost theory, institutional theory, stakeholder theory, public interest theory and enforcement theory. It is noteworthy that these five theories were not the only available theories; but their premises resonated most with the research objectives.

2.1 Theoretical Literature Review

The EoDB index is built upon transaction cost theory which considers the transaction the basic unit of measure focusing on the level of effort, resources or cost involved for two parties to complete an exchange (Williamson, 1986). Young (2013) posits every type of transaction produces coordination costs of monitoring, controlling and managing transactions. The transaction theory approach involves three conceptual elements: i. transactions; ii. transaction governance mechanisms; and iii. governance principles (Bryson and Ring, 1990). Narrowing down to the EoDB index, the transaction would herein be each interaction between the business and the regulator (government) focusing on elements of compliance costs, time and the number of procedures involved in completing a transaction. Transaction mechanisms are the regulatory institutions and the administration of the transaction; while the governance principles are the policies, laws, rules and guidelines provided to enable compliance (Bryson and Ring, 1990).

Transaction cost theory supports the premise of organisational theory that as a result of organisational rationality, organizations are efficiently designed mechanisms that sometimes operate more efficiently than markets (Young, 2013). On the contrary, transaction cost theory finds the rational choice theory premised on individual self-interest utility problematic under conditions of uncertainty and asset specificity. Young (2013) drew linkages between multiple theories and found that while agency theory - whose basic unit of measure is the contract between the principal and the agent - holds to the premise of rational choice theory that individuals are self-interest utility maximizers; the organizational theory premise that organizations function efficiently was problematic. This led to the conclusion that economic theories that try to link micro-level rational choice to meso-level organizational theory are unable to do so due to incompatibility of the premises upon which rational choice and organisational theory rest (Young, 2013). Closely linked to the rational choice theory, the agency theory focuses on the relationship in which one party (the principal) delegates work to another (the agent) who performs the work. The agency theory faces

criticisms due to the varying perspectives on the shared risk between the two parties; and the difficulty the principal faces in verifying appropriate behaviour and that the agent will make the rational choice.

The institutional theory on the other hand provides a theoretical framework that explores the effect of institutions on the policy making process and subsequent outcomes (Maynard-Moody, 1998). Further, administrative policy making is a separate distinguishable process and not a stage in the policy making process (Maynard-Moody, 1998). This emphasised that the institutional setting for policymaking has a major influence on the policy ideas, choices and actions. More recently, the evolution of the new institutionalism theory provides a lens to investigate the context and other factors that affect policies. This context includes the formal and informal rules; culture; norms; and ideas that create the conditions, incentives and limitations that affect people's preferences (Lahat, 2020). New institutionalism further explores how institutions and rules have repetitive patterns of actions and practices that affect the behaviours of individuals (Lahat, 2020).

Stakeholder theory's traditional perspective in regulatory affairs states that the regulatory authority's claim to legitimation rests in political insulation and expertise. The regulatory practices implemented, therefore, strengthen the expertise driven rationale while providing avenues for stakeholders to offer input as they provide their expertise (Black, 2003). Over time, stakeholder engagement has evolved to serve as a source of responsiveness; coalition building and reputation management; as a conduit to gain regulatory autonomy and authority in governance; or as regulatory intermediates at varying stages of the regulatory process (Arras and Braun, 2018; Busuioc and Rimkute, 2020; Moffitt, 2014). Overall, all these are used to gain regulatory authority that is both politically and socially embedded as opposed to the traditional underpinnings of political insulation and expertise (Busuioc and Rimkute, 2020). The caveat put forward is that stakeholder engagement has legitimacy and bias as two sides of the same coin. If not carefully and intentionally curated, the regulatory state may become too politicized to meet its goals; yet if done well, has the potential of engendering broad perspectives and sustaining regulatory legitimacy (Pagliari, 2020).

Public interest or helping hand theory made a case for government intervention in the market on the basis that: (i). Unhindered markets fail due to monopolies or externalities; and that (ii). Governments are benign and capable of correcting these market failures through regulation. (Stigler, 1971). Based on the said assumptions, governments therefore control prices to: ensure monopolies do not

overcharge; impose safety standards in the interest of the citizens; regulate jobs to protect employees from exploitative employers and regulate security issuance to protect investors (Lewis, 1949; Shleifer, 2005). Major critics of the public interest theory include Coase and scholars associated with the Chicago School of Law who argue that markets and courts can take care of themselves without government intervention (Meade, 1949; Coase, 1960). Further, where the markets don't work properly, private litigation can be used to address conflicts of the market participants. In the instance that markets and courts fail to resolve disputes; government remains incompetent, corrupt and captured therefore making matters worse (Coase, 1960). Here, incompetence arises from the assumption that the government does not have the technical expertise to resolve arising technical disputes; while capture refers to government officials being caught up by influential political or industry players making them biased to rule in their favor should any dispute arise (Ellickson, 1991). Corruption viewed through the regulation lens contributes towards regulatory unpredictability which directly impacts investments. Overall, judges and regulators are government agents subject to political pressures, incentives and constraints (Ellickson, 1991).

The enforcement theory as prescribed by Djankov, Glaeser, La Porta, Lopez-de-Silanes, Shleifer (2003) - on the other hand - is anchored on control and investigates strategies society can use to control pursuit of public good and balance powers of the state vis-à-vis private individuals. The control strategies include market discipline; private litigation; public enforcement via regulation and state ownership ranked in growing degree of public control. This theory recognizes that optimal institutional design involves a choice between the four strategies. Further, in choosing any of the strategies, there is a basic trade-off between two social costs i.e., disorder and dictatorship. Disorder in this case is defined as the ability of private agents to harm others by stealing, overcharging, imposing external costs or cheating; while dictatorship refers to the ability of government to impose such costs on private agents. As an economy moves from private orderings to private litigation to regulation to public ownership, the powers of government rise as those of private agents fall. Additionally, the social losses from disorder decline as those from dictatorship increase. The trade-off between disorder and dictatorship is described by Djankov et al (2003) as the "Institutional Possibility Frontier" as illustrated in Figure 3 below.

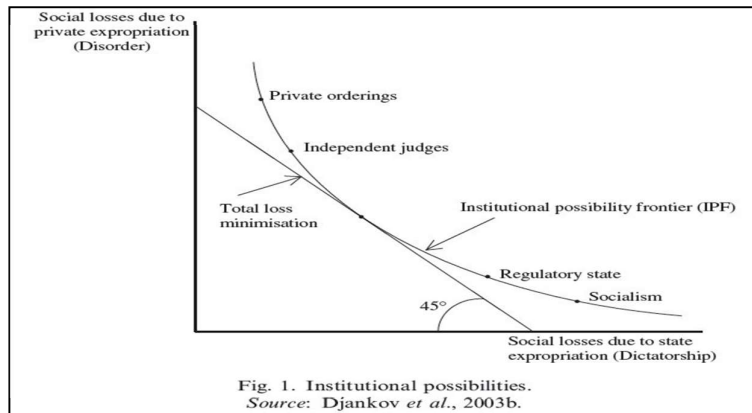


Figure 3: Institutional Possibilities

(Source: Djankov et al., 2003)

The enforcement theory implies that the default to regulation is critical when the level of disorder is too high for private orderings and courts to handle successfully (Djankov & Murrell, 2002). For instance, if monopolies cannot be restrained or public safety is at risk or quality cannot be assured except via state control; then the case for public ownership is clear. That said, public or state ownership faces the problems of dictatorship and public abuse given that the government may use its control to meet political ends (Megginson & Netter, 2001). Finally, the poor performance of public enterprises globally indicates that there are greater benefits to be derived from privatization (Shleifer, 2005). In regulatory practice, it is held that if an institution is doing the best it can with the institutional resources at hand then that does not mean that all transaction costs have been eliminated (Coase, 1960). In line with public choice theory, the idea that politicians - once in power - make economic policies and institutional choices to remain in power and become rich which results in inefficiency and dictatorship (Buchanan & Tullock, 1962). Second inefficiency of institutional choice is referred to as “colonial transplantation” which argues that the legal and regulatory regimes of countries are not indigenous; but were instead shaped by their colonial heritage.

Countries therefore, have systemic variations of property rights institutions that did not arise from need for efficiency or out of the domestic political choice; but, due to their colonial heritage. Additionally, colonial transplantation rather than local conditions greatly influences national modes of social controls of businesses including the extent of state ownership and regulation (Djankov et al., 2002, 2003a). Higher levels of regulation of business entry are associated with high informality and low quality of products. High levels of regulation of judicial procedures are associated with delays and higher costs in resolving simple disputes. Higher levels of labor regulation are associated

with high informality, higher unemployment and lower labor force involvement (Botero, Djankov, La Porta, Lopez-de-Silanes and Shleifer, 2004). Consequently, developing economies focus on deregulation in areas where competition and market discipline rather than courts can result in desirable outcomes and control disorder; while highly specialized courts are increasingly being adopted as an alternative to regulation in developed countries (Shleifer, 2005; Glaeser & Shleifer, 2002).

2.2 Empirical Literature Review

2.2.1 Review of business regulatory reforms empirical literature

Regulatory reform policy viewed within the context of transaction cost theory is categorized as follows: regulatory policy and governance in general, administrative simplification, ex ante and ex post analyses of regulations and regulatory institutions, consultation, transparency and accountability (Chambers and O'Riley, 2022). The evidence further suggests that an improvement in the quality of regulatory governance could likely result in economic growth where the regulatory burden is low (Kirkpatrick, 2014). The aggregate level evidence on regulatory reform and economic growth shows a statistically significant and positive relationship between the quality of the regulatory environment and economic growth (Kirkpatrick, 2014). Eifert (2009) also found a positive relationship between the overall measure of regulatory governance and economic growth thereby suggesting that well managed poor countries stand to gain from a broad push for streamlining regulations and procedures affecting businesses. However, using data from the Doing Business database, Djankov, Glaeser, La Porta, Lopez-de-Silanes, & Shleifer, (2003) found a statistically significant negative relationship between regulatory business burden and economic growth.

Evidence relating to regulation and investment in developing countries is consistent with the hypothesis that the quality of the regulatory environment matters (Kirkpatrick, 2014). A statistically significant and positive relationship between regulatory quality and private investment in infrastructure was found in a study to test the hypothesis that an effective regulatory environment provides regulatory credibility to the private sector thus encouraging private sector investment (Kirkpatrick, 2014). The empirical evidence of a positive relationship between the quality of the regulatory environment, macro-level investment and economic growth provides reassurance to policy makers and the development partners that improving the quality of regulatory governance can positively impact economic performance (Kirkpatrick, 2014).

Eifert (2009) examined the impact of regulatory reform in the areas of business registration, contract enforcement, labor laws, property registration and import/export on investment and economic growth; the regression results were insignificant. In developing countries, the reform of business registration and licensing procedures has been the key focus of regulatory reform on the basis that complex and time-consuming procedures in business registration that act as a barrier to growth of new business and formal sector development (Kirkpatrick, 2014). Reform interventions have included implementation of one-stop-shops, separation of business registration and licensing, fixed registration fees regardless of company size and streamlining procedures (Djankov et al., 2002).

Cicccone & Papaioannuou (2007) combined industry level data on employment growth and growth in number of establishments with data on the time taken to obtain legal status to operate a business. This study found empirical evidence that countries where businesses could be established quickly had a significantly higher growth in new firms (Cicccone & Papaioannuou, 2007). For instance, two studies on business registration reform in Mexico where time taken to register a business was reduced from 30 to 2 days found that there was a significant increase in the number of business registrations (Bruhn, 2011; Kaplan, Piedra & Siera, 2011). However, the impact of enterprise registration reform is more affected by broader regulatory conditions rather than registration cost reduction (Kirkpatrick, 2014). The importance of regulatory institutions in achieving economic outcomes is also confirmed through the empirical literature. Therefore, the independence of regulatory institutions is a significant determinant; thus, protecting them from political interference in regulatory decisions and regulatory capture. Additionally, institutional capacity is a key determinant of the effectiveness and sustainability of Regulatory Impact Assessment procedures.

2.2.2 Successes and Challenges of Business Regulation Reforms

Growth as a function of the existing regulatory framework, the EoDB Index has had a positive impact on economic growth by enabling inclusivity through the business climate and economic freedom (Chambers and O'Riley, 2019). Rose (2014) posits that business regulation generates market opportunities for small enterprises directly by allowing them to engage in certain activities. Market opportunities are also generated indirectly by mandating or encouraging customer purchases, product innovation or even competitor exit.

Additionally, regulation triggers multiple influences thus its effect on business performance is dependent on businesses and stakeholders behaving in a specific way in the given circumstance.

Hence, there is no guarantee that a business would exploit regulatory-enabled opportunities (Rose, 2014). The unpredictability of stakeholders' responses to business regulation therefore necessitates the development of robust stakeholder engagement frameworks to ensure effective public participation in the business regulatory reform process (Lahat, 2020).

This further provides a process by which stakeholders' interests are incorporated and stakeholder buy-in is secured (Hall and Gingerich, 2009). Regulatory capability in terms of trained staff within the institutions and sound laws to sustain regulatory commitment continues to pose a great challenge particularly in developing countries. Country-level case studies in the Philippines, India and Sri Lanka found evidence that national regulatory bodies function poorly due to insufficient skills, governance challenges and prevalence of political capture (Arun, 2004).

Poor performance in the EoDB index indicates two broad factors: (i). Regulation is subject to externalities like cultural and business practices of specific regions; and (ii). Competition amongst the countries, thus all economies that stop reforming get left behind (Lahat, 2020). Cultural diversity is a critical success factor, more so where international business is concerned. Culture influences the attractiveness of foreign markets as boundaries cut across cultural divides. Further, culture could also affect digital technology readiness, exploration, exploitation, and transformation through investments, research, and development, as well as patents and trademarks (Jafari-Sadeghi et.al, 2021). Cultural dimensions also influence attitudes toward borrowing, corruption, disclosure requirements, taxation. (Gangaris et. al, 2019).

Insufficient skills pose a great challenge particularly because regulation narrows down to specific specialties. Therefore, if the expertise lies within the industry and is absent in the regulatory institution, the regulation will fail to meet its objective. Governance challenges are underpinned by loopholes created either intentionally or unintentionally to provide opportunities for corruption due to regulatory unpredictability. Insufficient skills, governance challenges and prevalence of political capture have been attributed to the lack of adoption of Regulatory Impact Assessment (RIA) prior to regulation (Carino, 2004; Knight-John, 2004; and Arun, 2004). This provides a methodological framework for problem analysis, identification of regulation alternatives, and assessment of positive and negative impacts of adopting proposed regulations (Minogue, 2004). RIA further provides for scenario analysis to identify, address, and minimize potential opportunities for corruption (Minogue, 2004).

State interventions come at a social and economic cost that may deter business growth and investment. This assertion is underpinned on the bureaucratic discretion given to civil servants to alter the extent of the regulatory burden experienced by businesses (Pigou, 2017). It is important to note that civil servants' discretion vis-à-vis delegation are very different. When civil servants exercise discretion in applying rules and regulations, actual regulatory policies become less important in shaping the business environment (Barro and Gordon, 1983). Therefore, flexibility is important to maximize social good and provide incentives to adapt to the ever-changing environment (Hall and Gingerich, 2009).

Such flexibility also allows for alignment with political priorities of the day and enhance policy outcomes. This implies that while giving civil servants discretion is useful in giving lee-way to provide solutions to unique regulatory challenges within the confines of the law; the very same discretion could end up providing loopholes. These loopholes create regulatory burdens for businesses if checks and balances are not put in place. Additionally, regulatory unpredictability due to lack of institutional coordination leads to increase in transaction costs, rent-hiking opportunities and other uncertainties. The institutional approach to economic governance influences economic performance (Binderkrantz, Christiansen, & Pedersen, 2014). Since institutional performance is at the center of public policy and economic development, business regulations and reforms should therefore adopt a holistic approach. Thus, the need for checks and balances cannot be overemphasized, particularly because this undermines property rights, increases unpredictability and destabilizes the business environment (Campos, Lien & Pradhan, 1999).

The empirical work on transaction theory focuses on the efficient form or governance structure for a given economic relationship as a function of the underlying transaction properties. These properties include asset specificity, uncertainty, complexity and frequency (Bryson and Ring, 1990). Transaction cost empirical research runs into the challenge surrounding definitions of uncertainties leading to parameterization of variables. The primary conceptual problem found in the treatment of uncertainty as a factor that raises transaction cost and increases probability of integration (Bryson and Ring, 1990).

The policy making process is a nonlinear iterative process that leverages challenges and failures to provide avenues to draw lessons learned and inform future policy formulation. Therefore, this section is critical in understanding the successes ultimately leading to economic growth and job

creation; while taking stock of the challenges and synthesizing best practices across different economies.

2.2.3 Lessons learnt from Business Regulatory Reforms

Government involvement through regulation of markets is key to safeguard public interest (Pigou, 1938; Stigler, 1971). The assumption that governments are benign and act in the interest of the public provides a basis through which economies can bestow varying levels of power to the government through regulations. Regulations which increase transaction costs by increasing time taken and number of procedures required to comply with regulation result in increased default and overall non-compliance. A robust and mandatory Regulatory Impact Assessment (RIA) requirement provides a good framework within which the costs, benefits and responsiveness of the regulation to shocks are weighed before enactment (Minogue, 2004).

Regulations alone are insufficient if the enforcement of the same is weak. The unpredictability of stakeholders' responses to business regulation further necessitates robust stakeholder engagement frameworks to ensure effective public participation in the business regulatory reform process (Lahat, 2020). This further provides a process by which stakeholders' interests are incorporated and stakeholder buy-in secured (Hall and Gingerich, 2009).

As is typical with any political process, timing of new regulation plays an important role in determining its successful implementation when coupled with strong, sound leadership (Lahat, 2020; Arun, 2004). Externalities such as the cultural context and political economy influence the decisions and behaviours of stakeholders in the policy process (Lahat, 2020).

2.3 Summary of literature

Brexit aimed for regulatory sovereignty but in practice, the transition from the EU caused regulatory gaps in the management of new trade relationships, bureaucratic barriers as well as lack of oversight agencies and infrastructure leaving significant unfinished business (Amoroso and Martino, 2020). Both Europe and Kenya face challenges in the technological frontier as regards regulatory frameworks. Similarly, the US is seen to fall behind many other countries when it comes to emerging markets and disruptive tech innovations (Taeihagh, Ramesh and Howlett, 2021), with nifty practices and political interference breeding an undeserving business environment. Kenya suffers the same fate of evolving unclear trajectories towards efficiency, quality of life, and ease of doing business.

While the literature reviewed has provided nuances of how far regulatory reforms have come, it is evident that quite a lot of work has gone into regulatory work albeit not being sufficiently documented by KNBS, thus presenting a research gap. Despite this, it might not be fair comparing Kenya as a developing economy to the United States of America and Europe, both developed countries, rather, the insight from the EoDB Index acts as a benchmark for future regulatory reforms. Furthermore, most of the authors have not ventured into comparative studies for regulatory challenges in emerging disruptive innovations and global best practices. This research seeks to fill these gaps and more.



2.4 Conceptual Framework

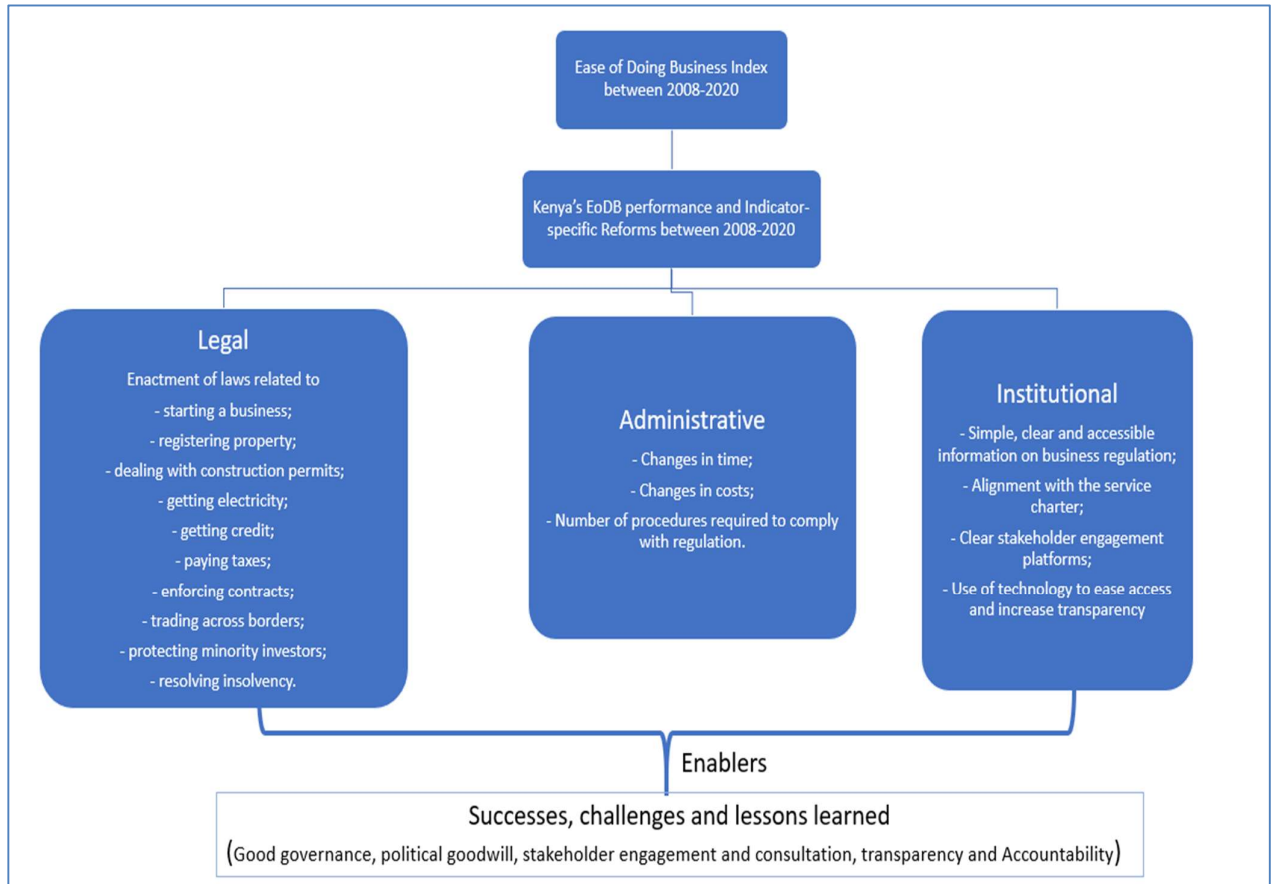


Figure 4: Conceptual Framework



2.5 Operationalization of variables

Table 1: Operationalization of variables

Variable	Indicators	Operationalization	Finding	Sources
Kenya's performance and indicator-specific reforms between 2008-2020	<ol style="list-style-type: none"> 1. Starting business 2. Dealing with construction permits 3. Getting electricity 4. Registering property 5. Getting credit 6. Protecting minority investors 7. Trading across borders 8. Paying taxes 9. Enforcing contracts 10. Resolving insolvency 	<ol style="list-style-type: none"> a. Presence of legal framework and regulatory institutions b. Number of days taken to comply with business regulatory requirements. c. Number of procedures required for business regulatory compliance. d. Total cost to comply with business regulatory requirements. 	<ol style="list-style-type: none"> i) Economic reforms are highly likely to cause a positive impact on growth. ii) Transaction costs are reduced when regulatory requirements are streamlined to ease compliance. iii) Economic reforms are highly likely to cause a positive impact on growth. iv) A statistically significant negative relationship between regulatory business burden and economic growth. v) Quality of regulatory environment matters 	Chambers and O'Riley (2019); Kirkpatrick, (2014); Djankov et. Al, (2006); Eifert (2009); Ciccone & Papaioannou u, (2007)
Enablers	1. Successes and Challenges of Business Regulation Reforms and lessons learned	<ol style="list-style-type: none"> a. Good governance b. Political goodwill c. Stakeholder engagement and Consultation d. Transparency e. Accountability 	<ol style="list-style-type: none"> i) Countries where businesses could be established quickly had a significantly higher growth in new firms ii) Cultural dimensions influence attitudes toward borrowing, corruption, disclosure requirements, taxation. iii) Hence there is no guarantee that a business would exploit regulatory-enabled opportunities iv) State interventions come at a social and economic cost that may deter business growth and investment. v) Flexibility is important to maximize social good. Regulatory predictability would reduce the gaps leading to corruption 	EoDB Index (2003) Chambers et. Al, 2018; Chambers and O'Riley, 2019; Bennet and Vedder, 2013, Hur, 2014 and Zaman et. Al, 2011) Jafari-Sadeghi et.al, (2021) Gangaris et. Al, (2019). Hall and Gingerich, 2009)

Table 1 operationalizes the conceptual framework by elucidating how the research objectives will be met. The reforms were broadly categorized into legal, administrative and institutional reforms which were influenced by enablers. This study seeks to explore the enablers which inform the successes, challenges and lessons learned.



CHAPTER THREE

RESEARCH METHODOLOGY

The purpose of this chapter is to outline the research methodology used in this exploratory research to appraise Kenya's business regulatory environment; examining both its successes and challenges, while also identifying potential policy options. It specifically addresses pertinent information regarding the research design, data collection methods, data analysis procedures as well as the ethical issues in research.

3.1 Research Philosophy

Due to the broad scope of the research objectives, this research adopted the pragmatism research philosophy due to its emphasis on practicality and utility. Pragmatic philosophy favored this study due to its premise that an ideology or proposition is true if it works satisfactorily and that meaning is to be found in the practical consequences of accepting it (Osifo, 2015). Pragmatism allowed flexibility, enabling the use of both trend analysis and content analysis to appraise Kenya's Ease of Doing Business performance between 2008 to 2020, as it values the consideration of context and bridges the gap between theory and practice (Osifo, 2015).

3.2 Research Design

This study adopted the exploratory research design to provide a framework to understand the subject matter which has not been explained before. The exploratory research design provided a—insights into what worked, what did not work, policy options, lessons learned and the global best practices. This design was adopted to provide the researcher with flexibility to adapt to changes that occurred as the study was undertaken (Edmonson and McManus, 2007). The exploratory design was also adopted as it provided a foundation upon which further research would be undertaken in future.

3.3 Population and Sampling

This was a country level analysis focusing on Kenya's overall performance in the EoDB index between 2008 and 2020. The study appraised years of mixed performance, characterized by peaks and troughs, to understand the reforms driving these fluctuations in performance.

3.4 Data Collection Methods

This study adopted secondary data collection methods to review, analyze and synthesize primary research compiled at a previous date. The secondary data was drawn from existing documents such as Ease of Doing Business reports and periodic reports from the Government of Kenya related to the Ease of Doing Business.

3.5 Data Analysis Procedures

Data analysis was conducted in two steps (i). Trend analysis to check for key phases noting peaks and slowdowns; and (ii). Content analysis to provide a detailed explanation of the phases mapped out through the trend analysis. The researcher categorized the reforms into four phases, each marked by a specific performance level in the EoDB index. Further, the researcher developed visual data representation of the same. Finally, recurring themes across reporting years on successes and challenges underwent content analysis to synthesize and inform the research findings.

3.6 Research Quality

To evaluate the quality of research, the concepts of reliability and validity were employed as prerequisites of proper functionality and integrity assurance (Nayak and Singh, 2021). Validity is synonymous to the accuracy of a measure while reliability is to its consistency.

3.6.1 Validity

In this study, the researcher eliminated uncertainties and discrepancies to enhance clarity and ensure accurate application and interpretation. Furthermore, the research supervisor and policy experts were consulted to ensure eventual validity of the discussions and conclusions drawn from the research.

3.6.2 Reliability

Reliability of the study was enhanced by aligning the data analysis procedure to the specific objectives of the study in efforts to avoid any ambiguity. As such, the researcher sought to establish relationships between different data sets for related results.

3.7 Ethical Issues in Research

To address ethical consideration, the study adhered to guidelines such as: (i). Acquiring ethical clearance from the academic institution; Strathmore University Ethical Review Committee Protocol ID SU-IERC0425/19 of 3rd May 2019. (ii). Acquiring a research permit from NACOSTI (National Commission for Science, Technology and Innovation) to allow research to be conducted. (iii). Seeking approval of the research topic from the supervisor to avoid violations of any rules. (iv). Acknowledgement of authors and accrediting their work through in-text citations and references to avoid plagiarism claims (Engwa and Ozofo, 2015). (v). Non-discriminatory sources. (vi). Uphold the principle of beneficence, which is the moral obligation to avoid causing harm thus holding the researcher to the highest standards of practice (Bernstein, 2017). (vii). Uphold the professional mandate of conducting effective and significant research for the good of the society.



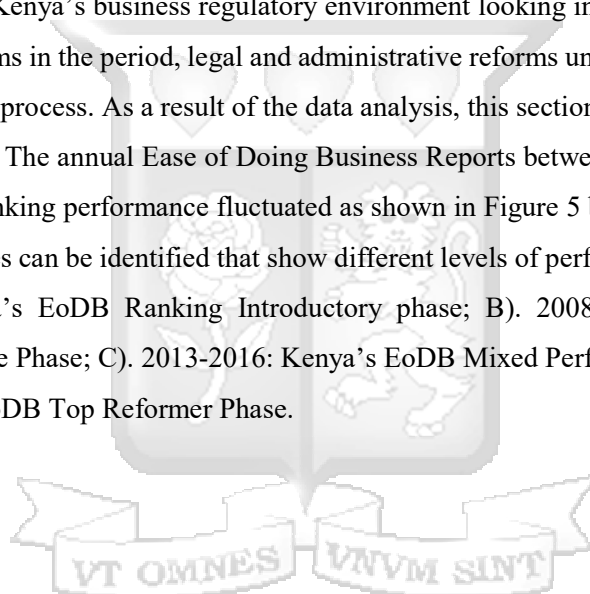
CHAPTER FOUR

PRESENTATION OF RESEARCH FINDINGS

Data was collected from secondary sources reviewing Kenya's performance in the study period 2008 to 2020. In the process of review, the reforms were mapped into four distinct periods which reflect different levels of performance in the EoDB index. This chapter delves into the findings of the analysis which will cover an appraisal of Kenya's business regulatory reforms and the EoDB performance; successes and challenges; and the lessons learned.

4.1 An appraisal of Kenya's business regulatory reforms and Ease of Doing Business Performance

This section appraises Kenya's business regulatory environment looking into the documented ease of doing business reforms in the period, legal and administrative reforms undertaken and the factors that enabled the reform process. As a result of the data analysis, this section will delve into the four distinct reform periods. The annual Ease of Doing Business Reports between 2008 and 2020 show that Kenya's overall ranking performance fluctuated as shown in Figure 5 below. According to the data, four distinct phases can be identified that show different levels of performance which include: A). 2005-2007: Kenya's EoDB Ranking Introductory phase; B). 2008-2012: Kenya's EoDB Downward Performance Phase; C). 2013-2016: Kenya's EoDB Mixed Performance Phase; and D). 2017-2020: Kenya's EoDB Top Reformer Phase.



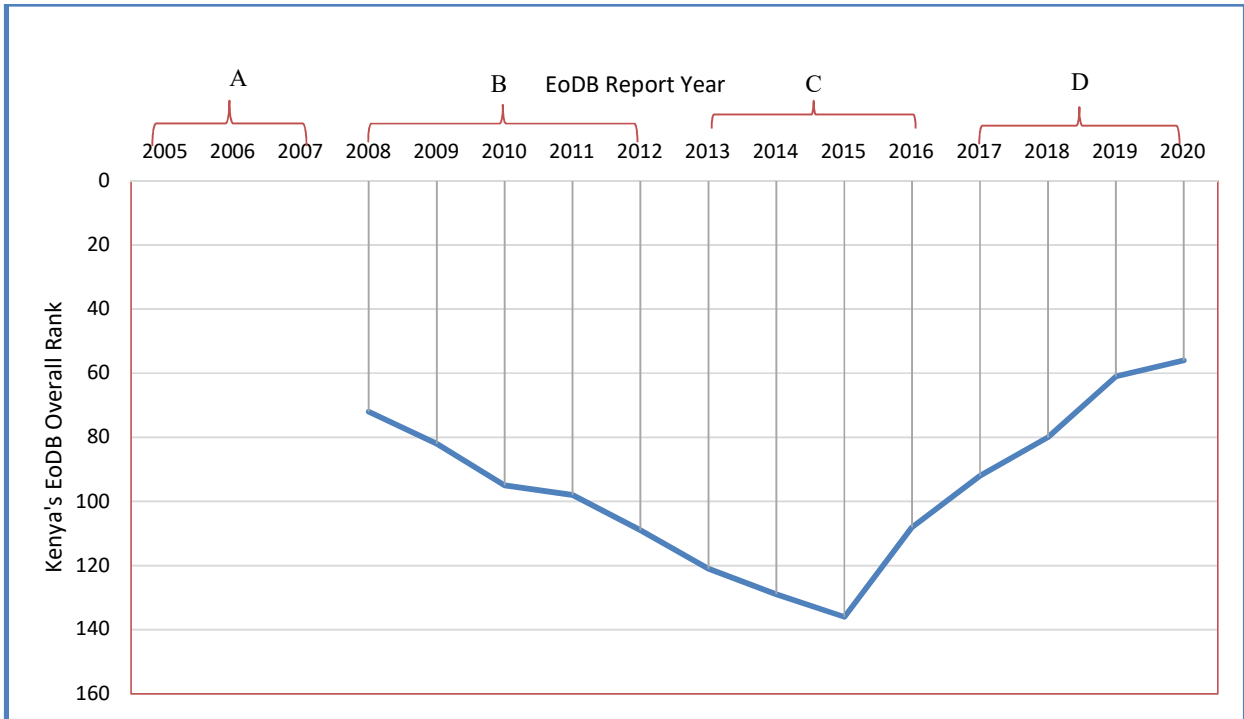


Figure 5: Kenya's Overall Performance in the EoDB Index between 2008-2020 and respective study phases

2005-2007: Kenya's EoDB Ranking Introductory Phase (A)

This phase, although not within the focal research period, is important to analyze as it laid the foundation for business regulatory reform in Kenya and led to the adoption of the Ease of Doing Business index as a measure. In 2005, the Government of Kenya launched a review and reform of business licenses and permits as a result of outcry from the private sector regarding the excessive, inaccessible and burdensome licensing practices that were in place.

A Working Committee on Business Licensing was formed in Kenya to take stock of all the business licenses, rationalize the licenses and recommend simplification, amalgamation or elimination. This was the first time the Government of Kenya conducted a comprehensive review of the number of business licenses, fees and user charges in Kenya. Out of 1,325 licenses, 375 were simplified, 379 were amalgamated, 294 were retained and 315 were eliminated following the enactment of the Licensing Laws (Repeals and Amendment) Bill of 2007. This bold licensing reform triggered the need for a comprehensive review of the business regulatory environment. The Business Regulatory Reform Unit was soon after established to lead in the identification of short-term measures to improve Kenya's ranking in the Ease of Doing Business and long-term initiatives to create a conducive investment climate.

The licensing reforms in this period were part of the broader agenda of the then administration on economic recovery for wealth and employment creation. With the private sector envisioned as the engine for economic growth, it was paramount that the business environment be improved to ease start up and operation. Therefore, the political good will to support the reform agenda, the legal reforms and creation of administrative units to oversee business regulatory reforms all anchored the success achieved in this period which culminated with the recognition as a global Top Reformer in 2008.

Kenya's priority in this phase was to implement the Economic Recovery Strategy for Wealth and Employment Creation (ERS). Overall, this strategy intended to enable existing businesses to thrive, boost entrepreneurship to create more businesses, create jobs and increase domestic and foreign direct investment. To implement these reforms, it became apparent that there was a need to measure these reforms using a standardized tool in order to boost investor confidence. It is noteworthy that the leadership of the licensing review committee and the then Ministry of Finance had goodwill and political backing to boldly carry out the licensing reform agenda in that period. At that point, the Ease of Doing Business index was then adopted for the subsequent period. As the 2007 elections were around the corner, the then administration was keen to see the outcome of the ranking. As the term for the ERS was coming to an end, the Government changed strategy to adopt longer-term planning and developed a comprehensive development blue-print dubbed Kenya Vision 2030. Within the blue-print, Kenya set an ambitious target to maintain a ranking above 50 in the Ease of Doing Business and Global Competitiveness Indices. Anchorage of business regulatory reforms in the national blue-print ensured that it remained a priority despite changes in the socio-political environment.

2008-2012: Kenya's EoDB Downward Performance Phase (B)

Kenya's EoDB Downward Performance Phase (2008-2012) marked a period when the government's priorities shifted from business environment reform to constitutional reform following a period of post-election violence. This period also saw the promulgation of the Constitution of Kenya, 2010 and the transition into a devolved system of governance. This shift in focus within the Kenyan context, saw Kenya's performance in the Ease of Doing Business ranking steadily decline from 72 in 2008, 82 in 2009, 95 in 2010, 98 in 2011 to 109 in 2012 as illustrated in Figure 6.

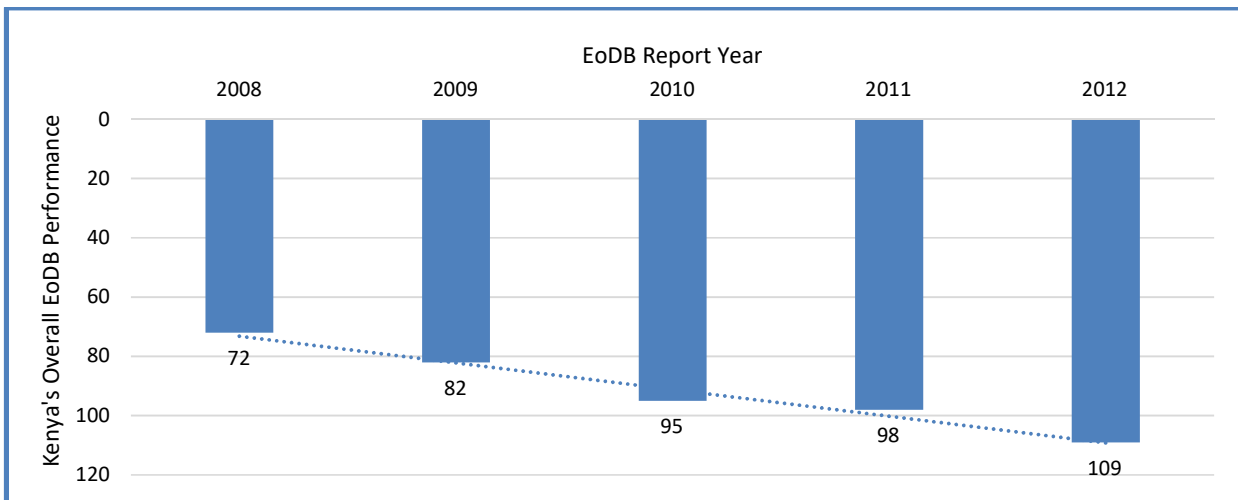


Figure 6: 2008-2012: Kenya's EoDB Downward Performance Phase (2008-2012)

Despite the decline in overall ranking and shift in political focus towards constitutional reform and longer-term economic development planning as adopted in the Kenya Vision 2030, key business regulatory reforms were undertaken to keep up with other economies globally that kept the reform momentum. The 2008 Ease of Doing Business report recorded positive reforms in three indicators: starting a business, dealing with construction permits and registering property. In the “starting a business indicator”, Kenya reduced the time and cost to register a company through enactment and implementation of the Licensing Laws that saw 110 business permit types eliminated. In the “dealing with construction permits” indicator, Kenya eased the process by simplifying procedures, improving efficiency in permit issuance and reducing the cost of obtaining a telephone connection. The “registering property” indicator saw Kenya speed up property registration by allowing private practitioners – in addition to government valuers – to carry out land valuations which reduced the time taken from a month to a week.

The 2009 Ease of Doing Business report recorded positive reforms only in two indicators in the index. In the “starting a business” indicator, Kenya reduced the time taken to start a business through improvements at the registry and better communication between relevant agencies. The “trading across borders” indicator saw improvements as Kenya increased the operating hours of customs and port authorities; reduced the number of inspection points between Nairobi and Mombasa; and introduced an electronic system for traders to submit documents online.

The 2010 Ease of Doing Business report recorded one positive reform and one negative reform. In the “getting credit” indicator, Kenya improved access to credit information by enacting a law to

provide a legal framework for credit information sharing. On the contrary, in the “dealing with construction permits” indicator, Kenya raised fees making it more costly.

The 2011 Ease of Doing Business report recorded two positive reforms and one negative reform. In the “starting a business” indicator, Kenya eased start up by reducing the time it takes to get the memorandum and articles of association stamped; merging the tax and value added tax registration procedures and digitizing records at the registrar. In “trading across borders” indicator, Kenya sped up trade by implementing an electronic cargo tracking system and linking the system with the Kenya Revenue Authority data interchange system for customs clearance. A negative reform was recorded in the “paying taxes” indicator whereby Kenya increased the administrative burden of paying taxes by requiring quarterly filing of payroll taxes.

The 2012 Ease of Doing Business report recorded positive reform. In enforcing contracts” indicator, Kenya introduced a case management system to increase efficiency and cost- effectiveness of commercial dispute resolution. This reform marked the end of the pre-devolution phase and the beginning of Kenya’s downward trajectory in the Ease of Doing Business index as the country held its first general election under the Constitution of Kenya 2010.

This phase kicked off with Kenya being recognized as a global top reformer in the Ease of Doing Business ranking. However, this was soon impacted by the major economic downturn following the effects of the post-election violence. The global financial crisis also peaked in this period resulting in further constraints at a macroeconomic level. This combination of major occurrences was compounded by the intensified focus on the Constitutional review process, promulgation of the Constitution of Kenya 2010 and preparations to transition into devolved governance marked significant contextual shift relegating business regulatory reforms to the bottom of the pile. The unanticipated confusion that arose as a result of varying levels of understanding of what devolution meant and how the government was meant to work led to a period of intergovernmental consultations to unbundle the devolved functions. The Business Regulatory Reform Unit also lost traction in this period when the proposed Business Regulation Bill and Business Regulation Strategy were shelved to allow for the devolution consultations. As a result, this phase can rightfully also be named the “downward turn” phase as Kenya’s performance on the index declined gradually entering the triple digits in 2012.

2013-2016: Kenya's EoDB Mixed Performance Phase (C)

Kenya's mixed performance phase marks the commencement of the implementation of the devolved system of governance. Notably, the friction between the national and county governments regarding functions and powers slowed down the reform agenda as consultative forums were held to unbundle the functions. Kenya's performance in the Ease of Doing Business ranking steadily continued to decline from 121 in 2013, 129 in 2014 to 136 in 2015. The 2016 report stands out in this phase following a positive improvement in the overall ranking by 28 positions to rank at 108.

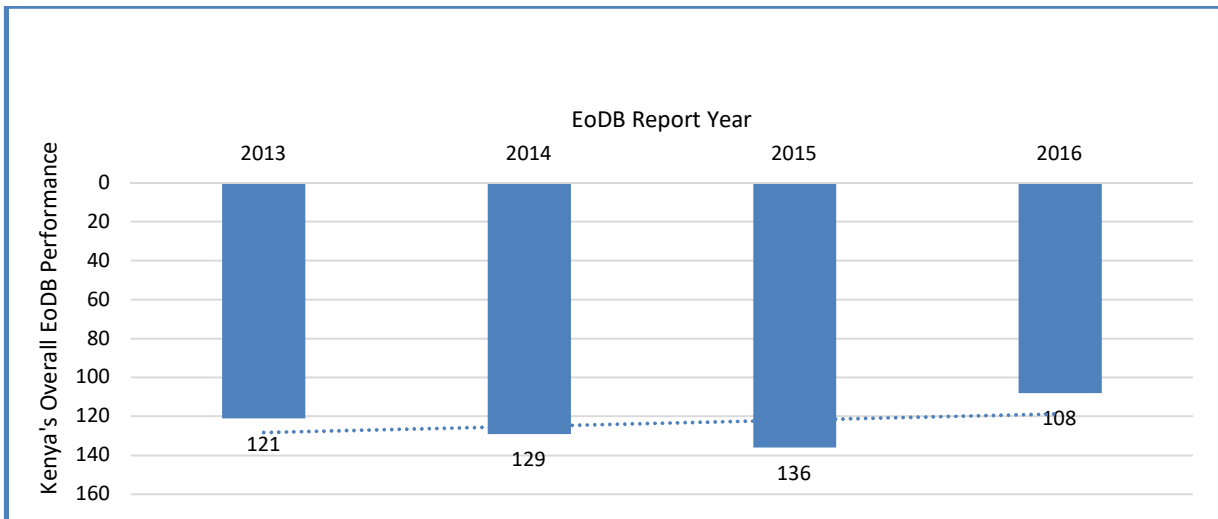


Figure 7: 2013-2016: Kenya's EoDB Mixed Performance during the mixed performance phase (2013-2016)

The 2013 Ease of Doing Business report recorded one positive reform in the “paying taxes” indicator as Kenya introduced an electronic filing system making it faster for companies to pay taxes. Considering the shifted focus on devolution during the report period, the reform efforts are commendable.

The 2014 Ease of Doing Business report did not record any reforms from Kenya. This is expected given the political and administrative focus was around settling into the devolved system of governance and distribution of powers and functions. The ranking therefore dropped by 8 positions as other countries continued to reform in the same period.

The 2015 Ease of Doing Business report recorded one positive reform and two negative reforms. The “getting credit” indicator got a positive reform as Kenya improved the credit information system by passing legislation that allowed for both positive and negative credit information sharing; and established a framework for handling historical data. On the negative front, in the “paying taxes” indicator Kenya made it more costly for companies to pay taxes by increasing the employers’ social

security contribution rate. In the “dealing with construction permits” indicator, Kenya made it more costly by increasing the building permit fees.

The 2016 Ease of Doing Business report highlighted Kenya as a top reformer following a leap in 28 positions from 136 to 108. This report recorded four positive reforms and one negative reform. In the “starting a business” indicator, Kenya eased the process of starting a business by reducing the time taken to assess and pay stamp duty. In “getting electricity” indicator, Kenya Power reduced delays for new connections by introducing service delivery timelines and hiring contractors for meter installation. In the “registering property” indicator, Kenya made property transfer faster by improving electronic document management at the land registry and introducing a unified form for registration. In “getting credit”, Kenya improved access to credit information by enacting a law that allowed sharing of positive credit information and provided for the expansion of borrower coverage. On the negative front, “dealing with construction permits” indicator saw Kenya make it difficult by requiring additional approval before issuance of the building permit and increasing costs for both water and sewerage connections.

This phase started off with the continued downward trend sinking deeper into the triple digits with the lowest ranking of 136. This trend sent alarms to investors as it was a signal that Kenya’s investment climate was not conducive. Major reforms were undertaken administratively to ensure closer oversight and stronger coordination between regulatory agencies to implement reforms. The Ease of Doing Business Secretariat was established within the Ministry of Trade chaired by the then Cabinet Secretary and drew membership from all business regulatory agencies with technical assistance from the International Finance Corporation of the World Bank Group in 2014. With strong leadership and the then administration’s agenda, Kenya was able to enact the Companies Act of 2015, the Business Registration Act of 2015 and the Insolvency Act of 2015 all of which provided a legal framework to support the structural and administrative changes. The three laws enacted catapulted Kenya’s performance in the index shifting 28 positions upwards to rank at 108 with the global top reformer recognition; this closing this phase with a positive trajectory.

2017-2020: Kenya’s EoDB Top Global Reformer Phase (D)

Hot on the heels of the 2016 success, Kenya continued to receive recognition as a global top reformer having recorded a minimum of five reforms annually in the 2017,2018, 2019 and 2020 Ease of Doing Business reports. This, therefore, informed the title of the phase as Kenya’s Ease of Doing Business Top Global Reformer Phase. An analysis of Kenya’s overall ranking trajectory during this

phase shows that the country was moving towards its Vision 2030 target of being ranked top 50 in the index. Kenya’s performance as recorded in the respective year reports improved progressively from 92 in 2017, 80 in 2018, 61 in 2019 to 56 in 2020.

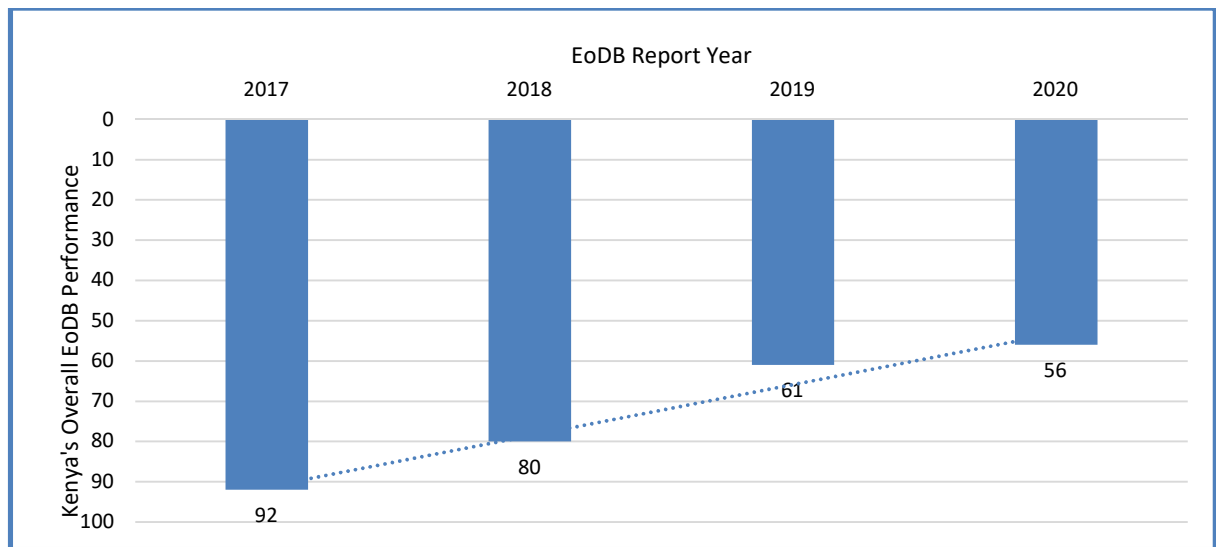


Figure 8: 2017-2020: Kenya’s EoDB Top Global Reformer Phase (2017-2020)

The 2017 Ease of Doing Business report recorded five positive reforms. In “starting a business” indicator, Kenya made it easier by removing stamp duty fees required for the nominal capital, memorandum and articles of association; eliminated requirements to sign compliance declarations before a commissioner of oath; but, made it more expensive through the introduction of a flat fee for company incorporation. In the “getting electricity” indicator, Kenya streamlined the process by introducing the use of a geographic information system that eliminated the need to conduct site visits thus reducing time and interactions to obtain electricity connection. “Registering property” was made easier by increasing transparency at its land registry and cadastre. The “resolving insolvency” indicator saw Kenya easing the process by introducing a reorganization procedure, facilitating continuation of the debtor’s business during insolvency proceedings and introducing regulations for insolvency practitioners. The “protecting minority investors” indicator, Kenya strengthened minority investor protections by clarifying ownership and control structures; introducing greater requirements for disclosure of related-party transactions to the board of directors; making it easier to sue directors in cases of prejudicial related-party transactions; and, by allowing rescission of related-party transactions that are shown to harm the company.

The 2018 Ease of Doing Business report marked a historic milestone with six notable reforms recorded. In the “starting a business” indicator, Kenya made it easier to start a business by merging

procedures required to start-up and formally operate a business. In “dealing with construction permits”, Kenya reduced the cost by eliminating fees for clearances from the National Environment Management Authority (NEMA) and the National Construction Authority (NCA). In “getting electricity”, Kenya improved reliability of electricity by investing in its distribution lines and transformers; and setting up a specialized squad to restore power when outages occur. In the “getting credit” indicator, Kenya improved access to credit by starting to distribute data from two utility companies. “Paying taxes” indicator saw Kenya ease the process by implementing an online platform – iTax – for filing and paying corporate income tax and standards levy. In the “trading across borders” indicator, Kenya reduced time taken for import documentary compliance by using the single window system which allowed for electronic submission of customs entries.

The 2019 Ease of Doing Business report recorded five positive reforms. In the “registering property” indicator, Kenya eased the process by introducing an online system to clear land rent rates; but reduced transparency by no longer making information on land ownership public. In “getting credit” indicator, Kenya strengthened access to credit by introducing new secured transactions law creating a unified secured transactions legal framework; and, establishing a new unified and notice-based collateral registry. “Protecting minority investors” indicator was strengthened in Kenya by increasing disclosure requirements; regulating approval of transactions with interested parties; and increasing available remedies if said transactions are prejudicial, increasing shareholders’ rights and role in major decisions and requiring greater corporate transparency. “Paying taxes” indicator saw Kenya ease the process by merging all permits into a single unified business permit; and by simplifying the value added tax schedule on the iTax platform. “Resolving insolvency” was eased by facilitating the continuation of the debtor’s business during insolvency proceedings; providing for equal treatment of creditors in reorganization proceedings; and, granting creditors greater participation in the insolvency proceedings.

The 2020 Ease of Doing Business report recorded Kenya’s best performance yet with six positive reforms and one negative reform. The overall rank of 56 is also significant as it is 6 positions below the target set in Vision 2030 to be above 50 by year 2030 meaning possible achievement of the target less than a decade in advance. “Dealing with construction permits” indicator saw Kenya increase transparency by making building permit requirements publicly available online and reducing fees. In the “getting electricity” indicator, Kenya improved reliability of electricity supply by modernizing its existing infrastructure and inaugurating a new substation in Nairobi. In the “getting credit” indicator, Kenya strengthened access to credit by introducing online registration, modification and

cancellation of security interests; and public online searches of its collateral registry. In the “protecting minority investors” indicator, Kenya strengthened minority investor protections by requiring shareholders to approve the election and dismissal of an external auditor. “Paying taxes” was eased in Kenya through the introduction of an online filing and payment system for social security contributions. “Resolving insolvency was made easier in Kenya by improving continuation of the debtor’s business during insolvency proceedings.

This phase was indeed marked by sustained recognition as a global top reformer following the commendable work of the Ease of Doing Business Secretariat. Strong leadership by the Cabinet Secretary with backing from the Presidency ensured that reform recommendations were implemented, and bottle necks unlocked by the highest office in the land. In the same period, the administration’s development agenda was dubbed “The Big Four” agenda. Within this agenda, ease of doing business reforms were marked as a key driver of reform at national and subnational level. The political good was observed to extend from the Executive to the Legislature and the Judiciary as well as the reforms recorded saw the enactment of laws, judicial reforms and administrative changes in the executive. In this period, budgetary allocation was also made to facilitate reform implementation and learning across the agencies. This period marked re-entry into the double digits with a climax rank of 56 in 2020. Although the ranking was discontinued¹ after 2020, the tool is still relevant in providing a lens through which they can start off their business regulatory reform journey.

4.2 Key successes and challenges in Kenya's business regulatory reform experience

Kenya achieved major milestones that triggered significant improvement in the EoDB ranking including the enactment of the Companies Act 2015, Insolvency Act 2015 and the Business Registration Services Act 2015. These legislations changed the business regulatory environment by reducing and in some cases merging procedures needed in the start-up, formal operation of businesses and winding down of business operations. The Government of Kenya additionally operationalized the Huduma Centres to serve as One-Stop-Shops for Government services while in parallel automating several government services related to starting a business. This initiative was aimed at reducing the cost of doing business, increasing transparency and access to government services; thus, increasing

¹ The World Bank Group discontinued the Ease of Doing Business ranking in 2020 citing complaints with the ranking but holding firm to the credibility of the availed data. The discontinuation of the ranking also paved the way for the World Bank to develop a new flagship report dubbed “Business Ready” (B-Ready) set to be launched in September 2024. The report will benchmark the business environment and investment climate in most economies worldwide.

the rate of compliance to the business regulatory requirements (World Bank, 2016). It is important to note that while considering which economy to invest in, investors seriously consider the business regulatory environment to assess whether it is enabling or opaque and cumbersome. Kenya Vision 2030 is the national development blueprint which positions the private sector as the engine through which the ultimate vision of growth, development and shared prosperity can be achieved (Government of Kenya, 2017). Anchored within structural reforms in the Kenya Vision 2030, the second Medium Term Plan of the Vision 2030, set targets to ensure that Kenya ranks top 50 in both the World Bank's Ease of Doing Business ranking and the World Economic Forum's Global Competitiveness Index. The overall goal of setting the ambitious targets was to make it easier for the private sector to set up and operate their businesses thus creating jobs and contributing towards the overall goal of improved standards of living (Government of Kenya, 2007). However, despite these efforts, Kenya still faces challenges in attracting foreign investments and much remains to be done in promoting local businesses.

Overall, literature on business regulation broadly highlights four main challenges associated with the ease of doing business. These include: bureaucratic discretion; institutional silos; unconstrained bureaucracies; and high levels of discretionary powers of regulatory agencies as discussed further in this section.

Bureaucratic discretion: Pigou (2002) asserts that state interventions come at a social and economic cost that may deter business growth and investment. Stakeholder theory further buttresses the need to intentionally craft the stakeholder engagements to ensure they are fit-for-purpose. If left unchecked, they can introduce biases and fail to meet the intended outcome. Kenya's business regulatory experience showed that when the government had bureaucratic discretion, businesses experienced increased regulatory burden reflected in the poor performance in the EoDB index due to increased transaction costs. The periods of improved performance equally saw intentional stakeholder engagement through intentionally curated and co-created public private dialogue forums anchored at the highest levels of the institutions. Additionally, the findings in Kenya aligned with the institutional theory that provided a lens to understand the contextual and other factors that affect policies.

Institutional silos: Institutional barriers such as silos arise from the specialized and sectoral nature of policy making institutions. Focus on overcoming the institutional silos barriers is therefore motivated by the need to increase coordination within regulatory agencies and ease doing business. The Government of Kenya created multi-agency technical working committees and institutions at different points in the study period to coordinate the business regulatory reform agenda. In the periods when

there was strong multi-agency coordination and robust stakeholder engagement mechanisms; Kenya's EoDB performance was good with reduced transaction costs and vice versa.

Regulatory unpredictability: The need for checks and balances cannot be overemphasized particularly because this undermines property rights, increases unpredictability, destabilizes the business environment and increases opportunities for corruption. Periods when Kenya implemented reforms to increase access to information, increased transparency and introduced automation reforms; the performance in the EoDB index was good, institutions were operating optimally, stakeholders were effectively consulted, and the transaction costs were low. In periods of unpredictability triggered by electoral cycles, changes in leadership, shift in political priorities among others, transaction costs would increase due to weakened institutions and reduced compliance.

4.3 Lessons learned from Kenya's business regulatory reform experience

Leadership is very key to the business regulatory reform process. More importantly, strong leadership anchored at the highest levels with the authority to instruct government ministries, departments and agencies to implement reform is vital. During the period Kenya's performance was on an upward trend, the leadership of the Ease of Doing Business Secretariat was at ministerial level with periodic reporting to the presidency. In the years the performance was on a downward trend, the leadership was anchored at director level with scope to propose reforms but no mandate to enforce implementation of the same.

A valuable lesson learned is the importance of strengthening the linkages between the reform agenda and performance management. Through the implementation of performance contracting in the Government of Kenya, coupled with setting Ease of Doing Business targets for officers within reform implementation agencies, it became evident that prioritizing the reform agenda became non-negotiable. This prioritization was not only mandated but also driven by the officers themselves, resulting in a more effective and focused approach to achieving reform goals.

Political goodwill to undertake business regulatory reforms cannot be understated. Regulatory reform is both a technical and political reform process that requires buy-in and goodwill at both levels in order to progress well. In Kenya, when there was goodwill, major business regulation legislation would be passed, and bold reforms would be undertaken. The opposite is also true.

Institutions are key in order to safeguard the momentum of business regulation reforms. In the periods when there was a Licensing Reform Working Committee, Business Regulatory Reform Unit

or Ease of Doing Business Secretariat; reform coordination and oversight was effective. When there was no clarity on where coordination would be anchored or the institutions were weakened, then there was resultant lack of coordination. So far, the approach has been through working committees, units and secretariats that are dependent on other departmental budgets rather than now establishing a substantive institution to focus on Ease of Doing Business reforms.

Anchorage of business regulatory reforms in the overarching national development agenda helps to ensure prioritization of the same regardless of the other competing priorities. The reform agenda should be economy-wide even though tools such as the Ease of Doing Business ranking look into a subset. This also supports in ensuring budgetary allocation for and longevity of the reform agenda.



CHAPTER FIVE

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

5.1 Interpretation of research findings

Kenya's performance in the Ease of Doing Business index has been mixed during the period of the research. This research, therefore, sought explain the mixed performance, identify reforms that worked and those that did not work in Kenya based on the index and further identify policy options to improve the business environment.

This research, in line with the first objective critically reviewed Kenya's performance in the Ease of Doing Business index between 2008-2020 and brought to the fore the key successes and challenges experienced in the regulatory reform process by highlighting the reforms that worked well and the ones that reversed the gains. Additionally, as part of the third objective, this research drew lessons from Kenya's experience and global best practice for business regulatory reforms. The core measurement parameters in the EoDB index of time, cost and number of procedures to complete a transaction between the business and the regulatory authority is anchored on transaction cost theory. The problems faced with the transaction cost theory in other business-related fields held true in the policy realm as evidenced by the nature of reforms that led to poor performance which increased the transaction and compliance costs; thus, making it harder to do business. The reverse also held true.

This research found that introduction of legal reforms triggered greater improvements in the index compared to years where only administrative reforms were introduced. This buttresses the "helping hand theory" that makes a case for government involvement in the market (Pigou, 1938; Stigler, 1971). The results contradict Coarse and scholars associated with the Chicago School of Law who argued that markets and courts can take care of themselves except where courts fail to resolve disputes; government remains incompetent, corrupt and captured (Coarse, 1960).

Further, this confirmed the premise of new institutionalism about contextual factors that affect the policy process (Lahat, 2020). In the years when the government had strong, empowered regulatory institutions with strong leadership, the reforms implemented led to positive improvements in the EoDB ranking. Additionally, the idea that the in administrative policy making is a separate and distinguishable process and not a stage in the policy making process held true in as the legal and administrative reforms were implemented simultaneously using separate frameworks (Maynard-

Moody, 1998).

This research further reinforces the enforcement theory that asserts that the default to regulation is critical when the level of disorder is too high for private orderings and courts to handle successfully (Djankov & Murrell, 2002). The years following introduction of legal reforms focused on implementation of administrative reforms anchored on political good will to further entrench the reforms. The need for the business regulatory reforms in Kenya indicate that there was a failure in private orderings that required government intervention to protect public interest.

The empirical literature shows that regulatory policy interventions can facilitate private sector development and ultimately economic growth. The major lesson that can be drawn, therefore, is that regulatory reform initiatives must be designed considering a country's regulatory and institutional capabilities. Countries are differently endowed, meaning that a "one-size-fits-all" approach is not likely to succeed (Kirkpatrick, 2014). Therefore, regulatory reform interventions must be tailor-made to the local context for purposes of stakeholder buy-in and sustainability. Additionally, Regulatory Impact Assessment (RIA) provides a robust and systematic framework to determine the necessity of regulation (Ravallion, 2009).

Often governments rush to regulate activities without conducting an assessment to determine if regulation would be the best alternative option to resolve a public problem. Hence, the systematic framework to identify the public problem, identify alternative policy options accompanied by their respective cost-benefit analysis and thereafter decide on a policy option with a clear monitoring and evaluation framework. The monitoring and evaluation framework provide room for continuous improvement bearing in mind that what gets measured gets done. In some cases, the preferred option has been to take no action after rigorous assessment. It is important to note that the application of RIA must be accompanied by institutional and human resource capacity to implement it (Ravallion, 2009). Ravallion (2009) argues that for regulatory institutions to effectively undertake their mandate, they must be sufficiently staffed with qualified personnel in the regulated field. Generally, the trade-off between imperfect regulation, imperfect markets and their relationships with market institutions such as regulatory institutions continue to provide lessons for the design and study of regulatory frameworks (Rose, 2014).

Rose (2014) argues that it is important to understand that some reforms such as price adjustments may take place in a short time. Such reforms with short turnaround times are often referred to as

quick-wins. However, structural reforms may take several years before full implementation and benefits thereof are evident due to the complexity of the reform process and likelihood of unintended consequences to be addressed. Therefore, commitment to the regulatory reform process is a critical component towards successful reform implementation (Rose, 2014). This is mainly attributed to the requirement for some structural reforms to include policy and legislative reforms to anchor them; which take time, include multiple stakeholders with varied and vested interests to be taken into consideration.

The tenets of stakeholder theory held true in this study. Driven by reputational concerns, regulators use stakeholder engagement in different ways to manage vulnerabilities and to forge, protect or further different aspects of their reputation (Rimkute, 2020). Haber and Heims document a cross-country and cross-sectoral rise in both citizen and stakeholder participation in regulatory policy-making, albeit subject to important variations. Participation is less common in countries in which stakeholder participation is organized via centralized corporatist institutions at the national level. Not only country-level but also sector-level variation is important to understand variation in participation. Stakeholder engagement – provided carefully-tailored and fit-for-purpose— can be a critical vessel as independent regulators negotiate the choppy, political waters that inevitably characterize the contested nature of regulatory policy.

Lessons learned from the regulatory reforms undertaken in Mexico include: political leadership must be publicly committed to regulatory reforms; critical elements of regulatory policy must be anchored in law; establish critical institutional framework i.e. the legal mandate and institutions mandated to oversee implementation; promote accountability by making information on the regulatory reform progress and achievements publicly available; business and citizen engagement through public-private dialogue is key in providing feedback mechanisms and evaluating reform implementation; deploy the “whole government approach” and assign a government body to lead coordination implementation of regulatory reforms; financing of regulatory reforms can be done through multiple government agencies and departments at all levels of government to spread the costs.

Predictability is a critical factor in enhancing success more so in regulated business environments as it ensures businesses are cushioned from shocks and thus necessary protections are institutionalized (Duvanova, 2012). Conducting ex-ante evaluations on economies and their ease of doing business provides futuristic projections and forecasts expected results. For an upward

trajectory, it is important that regulatory frameworks are construed with checks and balances to ensure sustainability and mitigation against regression. Jamison et. al. (2005) postulate that institutional instruments limit government opportunism and financial instruments to decrease fiscal risks while investment strategies cushion against risky tech innovations

5.2 Implications of study findings

Kenya's performance in the Ease of Doing Business index between 2008 and 2020 shows patterns of fluctuations in alignment with occurrences in the political, economic, social, technological and legal environments. Political good will backed by sound socio-economic blueprints, robust stakeholder engagement strategies and a clear regulatory reform framework such as the Ease of Doing Business index and other tools provide an enabling environment for successful regulatory reform to reduce the cost of doing business and attract investment.

This research study pursued two research questions and two specific objectives. The study established the need to encourage the assimilation of further regulations and reforms to directly influence the ease of doing business in Kenya, with each variable having notable successes, challenges, and lessons. By classifying reforms as short-term and long-term to enable the economy to implement the regulatory reforms. The Ease of Doing Business index further provides a systematic framework to reduce regulatory burdens by reviewing parameters such as cost, time and procedures among others. These parameters serve as a starting point after which economies advance into transforming value chains to increase production and improve trade.

Kenya is a leading African economy on digitization acts as a good foundation to digitize all government services for convenience, transparency, and ease. Through strengthened multi-agency collaboration within GOK, there was a dramatical improvement that eased starting a business when NSSF, NHIF, and KRA joined task forces to collaborate and amalgamate company registration requirements. Continued investment in infrastructure offers a strong foundation for improving EODB in the long run. Similarly, game-changing infrastructure like massively investing in the energy sector, last-mile connectivity to individual households, and the increased port capacity in Mombasa.

Due to the high associated costs, businesses complain that the red tape blocks fair competition while citizens complain of the unintended consequences that cause redundancy over time. Bottom line is, competitively attracting and retaining investment globally heightens continually, whereby countries

that are more flexible in adapting and implementing private sector changes emerge as winners of their economies.

Kenya can borrow a leaf on the global front from countries like Nigeria, Zimbabwe, and Finland which amplified their procedures, to save time during the business registration service. Similarly, Kenya can follow suit after Tunisia which incorporated a one-stop shop by merging various irrelevant services and fees, or Argentina which has embraced online platforms for service provision. Egypt considerably improved the reliability of its power supply by implementing automatic systems that monitor and restore services like power outages. Kenya is closely following suit by adding a substation in Nairobi to modernize the infrastructure for more efficient services. Kuwait on the other hand streamlined approvals by adopting a digital application process combining connection and meter installation as well as a GIS to review connection requests. On the other hand, regarding access to credit, Kenya has joined Djibouti and Jordan in adopting modern collateral, which is basically a unified registry for movable property whereas Cameroon, Chad, Gabon, and Congo have improved their regulatory framework for credit reporting. These efforts translate to easier access to credit thus more muscle to trade and invest. Regarding paying taxes, Armenia, Turkey, and Papua New Guinea have all improved the VAT refund process significantly to reduce tax schedules. On the same note, Hungary and Trinidad have also both improved their tax audit processes and correction of corporate income tax processes while Tunisia has automated a risk-based system to select companies for direct tax audits. In a nutshell, there is a wealth of ideas to gain inspiration from under the global lens, award-winning ideas that if well implemented will catapult Kenya to leader status.

5.3 Limitations of the study

The research findings were to some extent limited to the already available literature. Due to lack of data owing to the discontinuation of the index, the results cannot accurately confirm whether Kenya would attain its Vision 2030 aspirations to be top 50 in the index. It is beyond the scope of this study to conduct in-depth indicator-specific analysis or to measure impact of the Ease of Doing Business index.

5.4 Recommendations

Throughout the years, some important lessons were drawn, for instance; the government leading from the forefront with the president and his administration prioritizing efforts to strategically improve the ease of doing business contributed immensely to its appraisal. GOK successfully incorporated EODB reform goals into performance scorecards of cabinet secretaries to help increase accountability. Championing the results by cabinet secretaries also helped push the agenda forward. The president also chaired bi-annual round tables with stakeholders to escalate aggravating issues requiring prompt interventions.

Additionally, encouraging dialogue and engaging private sector players also contributed to the success of the EODB in Kenya. KEPSA fostered public-private engagements in ensuring that key reforms are continually being implemented thus acting as a sounding board for agencies tasked with the reform agenda. Additionally, KEPSA tracked individual progress for reforms and flagged off the late bloomers during the bi-annual presidential round tables with the aim of addressing bottlenecks. Furthermore, setting up dedicated, knowledgeable teams to implement reforms acts as a bureaucratic mindset to facilitate quick wins. Notably, there is still enough room to adopt progressive improvements in regulations and reforms.

Recommendations form the transformation agenda, stemming from future planned reforms while also borrowing from global best practices. Despite Kenya making huge strides toward improving the EODB, the bar is still set ambitiously high. Notably, most reforms stemmed from limited automation and for them to be sustainable in the long term, the study recommends the enhancement of institutional reforms to align with the 'doing business index' in Kenya and requires substantially high sustainable investments.

County-wide variations represent unequal development thus from this study, recommendations were made to streamline competitiveness and county-level service operations that will benefit locals and attract investors. There is also the need to address the burden of regulation as regards cost and business impact following cited challenges in the regulatory space for instance the foreign innovation space. To further address business needs, GOK could embrace a collaborative approach to review the landscape and ensure purposive regulations matching modern society are adopted. Employing better efforts toward multi-agency coordination will be instrumental in reviewing and improving processes.

Finally, this research study further recommends the need for more studies in specific economies. Doing a deep dive into specific variables will better highlight the extent of influence for regulatory reforms. Potential to study the effects of various engagement choices and their governance outcomes exist as this area has been under-explored yet stakeholder engagement mechanisms are not by default legitimizing.

This study research also encourages key industry players to think outside the box more-so with the ensuing economic downturn, owing to the COVID pandemic as a stark reminder. Further research is needed to establish the impact of doing business reforms on macroeconomic indicators such as economic growth and unemployment over time. Additional Ease of Doing Business indicator-specific studies can be done to test the methodology.

5.5 Conclusion

Regulations are crucial for the smooth running of effective economies because they fortify markets, safeguard the citizen's rights, and ensure the delivery of goods and services. In sum, it is worth noting that the foundation of the progress on reforms stems from legal instruments, efficient administration mechanisms and strengthened institutions, Making the 'doing business agenda' a pivot point in the government's agenda contributed substantially towards improvements in performance in the index. Being that starting a business is a competitive indicator, many countries are continually innovating around this. Over the past couple of years, Kenya has made tremendous laudable improvements regarding mandatory process flows for starting businesses. Business registration processes have evolved from a tedious manual process taking a minimum of 30 days in 10 steps to a convenient digital process taking less than 23 days in just 7 steps. Notable improvements are also seen in variables such as cost, duration, technology, number of steps, and even the number of procedures. It is noteworthy that the adoption of remote business registration through the e-citizen platform encouraged more foreign business registrations thus eliminating challenges such as human error, the physical inconvenience of people traffic, and tedious processes while improving revenue collection to up to five times more (from 200 million KES in 2014 to 1 billion KES in 2020).

The enactment of the 'New Companies Act of 2015' illuminates targeted support for small and medium businesses through provisions such as; introducing sole membership for private companies and the elimination of procedural technicalities that pave the way for automation and digitization.

Over the last 5 years, Kenya has admirably bagged over 50 awards on the continental and global fronts for sustainable improvements on many faces as a result of government efforts towards the EODB. Based on the study objectives and research findings, the success of regulatory reforms presents process efficiency and improved global ranking. These are further dependent on various deliverables namely; fewer procedures, cost implications, and less time.

The study further concluded that some of the challenges were eliminated through multi-sectoral collaboration, leveraging of robust stakeholder engagement platforms, strengthening of regulatory institutions to be more responsive while acknowledging their fundamental weakness. In conclusion, a robust regulatory environment fosters sustainable growth.



REFERENCES

- Amoroso, S., & Martino, R. (2020). Regulations and technology gap in Europe: The role of firm dynamics. *European Economic Review*, 129, 103551.
- Arras, S., & Braun, C. (2018). Stakeholders wanted! Why and how European Union agencies involve non-state stakeholders. *Journal of European Public Policy*, 25(9), 1257–1275. <https://doi.org/10.1080/13501763.2017.1307438>
- Arun, T. G. (2004). 20. Regulation and competition: emerging issues from an Indian perspective (p. 403). Edward Elgar Publishing.
- Barro, R. J., & Gordon, D. B. (1983). Rules, discretion and reputation in a model of monetary policy. *Journal of Monetary Economics*, 12(1), 101–121. [https://doi.org/10.1016/0304-3932\(83\)90051-X](https://doi.org/10.1016/0304-3932(83)90051-X)
- Binderkrantz, A., Christiansen, P., & Pedersen, H. (2014). A Privileged Position? The Influence of Business Interests in Government Consultations. *Journal of Public Administration Research and Theory*, 24(4), 879–896.
- Black, J. (2003). Enrolling actors in regulatory systems: Examples from UK financial services regulation. *Public Law* (Spring), 63–91.
- Botero, J., Djankov, S., La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2004). The Regulation of Labour. *The Quarterly Journal of Economics*, 119(4), 1339–1382. <https://doi.org/10.1162/0033553042476215>
- Bruhn, M. (2011). License to Sell: The Effect of Business Registration Reform on Entrepreneurial Activity in Mexico [Policy Research Working Paper Series]. The World Bank Development Research Group Finance and Private Sector Team.
- Busuioc, M., & Rimkutė, D. (2020). The promise of bureaucratic reputation approaches for the EU regulatory state. *Journal of European Public Policy*, 27(8), 1256–1269. <https://doi.org/10.1080/13501763.2019.1679227>
- Bryson, J. M., & Ring, P. S. (1990). A Transaction-Based Approach to Policy Intervention. *Policy Sciences*, 23(3), 205–229. <http://www.jstor.org/stable/4532197>

- Buchanan, J., & Tullock, G. (1962). *The Calculus of Consent: Logical Foundations of Constitutional Democracy*. Ann Arbor MI: University of Michigan Press.
- Business Environment Working Group. (2016). *How to create an enabling environment for inclusive business? Learning from experience and debates in private sector development*. Donor Committee for Enterprise Development.
- Campos, J. E., Lien, D., & Pradhan, S. (1999). The Impact of Corruption on Investment: Predictability Matters. *World Development*, 27(6), 1059–1067. [https://doi.org/10.1016/S0305-750X\(99\)00040-6](https://doi.org/10.1016/S0305-750X(99)00040-6).
- Chambers, D. and O'Reilly, C., 2022. The economic theory of regulation and inequality. *Public Choice*, 193(1-2), pp.63-78.
- Ciccone, A., & Papaioannou, E. (2007). Red Tape and Delayed Entry. *Journal of the European Economic Association*, 5(2/3), 444–458. <https://www.jstor.org/stable/40005048>
- Coase, R. H. (1960). The Problem of Social Cost. *The Journal of Law and Economics*, 3, 1–44. <http://www.jstor.org/stable/724810>
- Contractor, F. J., Dangol, R., Nuruzzaman, N., & Raghunath, S. (2020). How do country regulations and business environment impact foreign direct investment (FDI) inflows? *International Business Review*, 29(2), 101640.
- Djankov, S., Glaeser, E., La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2003a). The New Comparative Economics. *Journal of Comparative Economics*, 31(4), 595–619.
- Djankov, S., La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2002). Regulation of Entry. *The Quarterly Journal of Economics*, 117(1), 1–37. <https://doi.org/10.1162/003355302753399436>
- Djankov, S., La Porta, R., Lopez-de-Silanes, F., & Shleifer, A. (2003b). Courts. *The Quarterly Journal of Economics*, 118(2), 453–517. <https://doi.org/10.1162/003355303321675437>
- Djankov, S., & Murrell, P. (2002). Enterprise Restructuring in Transition: A Quantitative Survey. *Journal of Economic Literature*, 40(3), 739–792. <https://www.jstor.org/stable/3217109>

- Doshi, R., Kelley, J., & Simmons, B. (2019). The Power of Ranking: The Ease of Doing Business Indicator and Global Regulatory Behavior. *International Organization*, 73(3), 611–643. <https://doi.org/10.1017/S0020818319000158>
- Edmondson A. C., McManus S. E. (2007). Methodological fit in management field research. *Academy of Management Review*, 32(4), 1155–1179.
- Eifert, B. P. (2009). Do Regulatory Reforms Stimulate Investment and Growth? Evidence from the Doing Business Data, 2003–07. CGD Working Paper, 159.
- Ellickson, R. (1994). Order without Law How Neighbors Settle Disputes.
- Gaganis, C., Pasiouras, F., & Voulgari, F. (2019). Culture, business environment and SMEs' profitability: Evidence from European Countries. *Economic Modelling*, 78, 275-292.
- Glaeser, E., & Shleifer, A. (2002). Legal Origins. *The Quarterly Journal of Economics*, 117(4), 1193–1221. <https://doi.org/10.1162/003355302320935016>
- Government of Kenya. (2007). Kenya Vision 2030. Government of the Republic of Kenya.
- Haber, H., & Heims, E. (2020) Regulating with the masses? Mapping the spread of participatory regulation. *Journal of European Public Policy*, 27(11), 1742–1762. <https://doi.org/10.1080/13501763.2020.1817128>
- Haidar, J. I. (2012). The impact of business regulatory reforms on economic growth. *Journal of The Japanese and International Economics*, 26, 285–307.
- Hall, P. A., & Gingerich, D. W. (2009). Varieties of Capitalism and Institutional Complementarities in the Political Economy. *British Journal of Political Science*, 39(3), 449–482. <https://doi.org/10.1017/S0007123409000672>
- Jafari-Sadeghi, V., Garcia-Perez, A., Candelo, E., & Couturier, J. (2021). Exploring the impact of digital transformation on technology entrepreneurship and technological market expansion: The role of technology readiness, exploration and exploitation. *Journal of Business Research*, 124, 100-111.
- Kaplan, David & Piedra, Eduardo & Seira, Enrique. (2007). Entry Regulation and Business Start-Ups: Evidence from Mexico. *Journal of Public Economics*. 95. 10.2139/ssrn.978863.

- Kirkpatrick, C. (2014). Assessing the Impact of Regulatory Reform in Developing Countries. *Public Administration and Development*, 34(3). <https://doi.org/10.1002/pad.1693>
- Lahat, L. (2020). New Institutionalism in Public Policy. In: Farazmand, A. (eds) *Global Encyclopedia of Public Administration, Public Policy, and Governance*. Springer, Cham. https://doi.org/10.1007/978-3-319-31816-5_3879-1
- Maynard-Moody, S. (1998). Exorcising the ghost of the politics-administration dichotomy: an institutional theory of administration policy making. *International Journal of Public Administration*, 21, 1031-1054.
- Minogue, M. (2004). "Public management and regulatory governance: problems of policy transfer to developing countries," Chapters, in: Paul Cook & Colin Kirkpatrick & Martin Minogue & David Parker (ed.), *Leading Issues in Competition, Regulation and Development*, chapter 8, Edward Elgar Publishing.
- Meade, J. E. (1949). Planning and the Price Mechanism: The Liberal-Socialist Solution. *International Affairs*, 25(1), 79. <https://doi.org/10.2307/3019078>
- Meggison, W. L., & Netter, J. M. (2001). From State to Market: A Survey of Empirical Studies on Privatization. *Journal of Economic Literature*, 39(2), 321–389.
- Moffitt, S. L. (2014). *Making policy public: Participatory bureaucracy in American Democracy*. Cambridge University Press.
- Osifo, C. 2015. Public Management Research and a Three Qualitative Research Strategy. *Review of Pub. Administration and Management* 3 (1): 149–156.
- Pagliari, S., & Young, K. L. (2020). Exploring information exchange among interest groups: A text-reuse approach. *Journal of European Public Policy*, 27(11), 1698–1717. <https://doi.org/10.1080/13501763.2020.1817132>
- Pigou, A. C., & Aslanbeigui, N. (2017). *The Economics of Welfare* (1st ed.). Routledge.
- Rose, N. L. (2014). Learning from the Past: Insights for the Regulation of Economic Activity. In *Economic Regulation and Its Reform: What Have We Learned?* Vol. National Bureau of

Economic Research. University of Chicago Press. <http://www.nber.org/books/rose05-1>

Shleifer, A. (2005). Understanding Regulation. *European Financial Management*, 11(4), 439–451.

Stigler, G. J. (1971). The Theory of Economic Regulation. *Bell Journal of Economics*, 2, 3–21.

Taeihagh, A., Ramesh, M., & Howlett, M. (2021). Assessing the regulatory challenges of emerging disruptive technologies. *Regulation & Governance*, 15(4), 1009-1019.

Williamson, O. (1986). Transaction-cost economics: The governance of contractual relations. In J. Barney & W. Ouchi (Eds.), *Organizational economics* (pp. 98–129). San Francisco: Jossey-Bass.

World Bank. (2007). *Doing Business 2008: Comparing Regulation in 178 Economies*. World Bank Group.

World Bank. (2008). *Doing Business 2009: Comparing Regulation in 181 Economies*. World Bank Group.

World Bank. (2009). *Doing Business 2010: Reforming Through Difficult Times*. World Bank Group.

World Bank. (2010). *Doing Business 2011: Making a Difference for Entrepreneurs*. World Bank Group.

World Bank. (2011). *Doing Business 2012: Doing business in a more transparent world*. World Bank Group.

World Bank. (2012). *Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises*. World Bank Group.

World Bank. (2013). *Doing Business 2014: Understanding Regulations for Small and Medium- Sized Enterprises*. World Bank Group.

World Bank. (2014). *Doing Business 2015: Going Beyond Efficiency*. World Bank Group.

World Bank. (2015). *Doing Business 2016: Measuring Regulatory Quality and Efficiency*. World Bank Group.

World Bank. (2016). *Doing Business 2017: Equal Opportunity for All*. World Bank Group.

World Bank. (2017). *Doing Business 2018: Reforming to Create Jobs*. World Bank Group.

World Bank. (2018). *Doing Business 2019: Training for Reform*. World Bank Group.

World Bank. (2019). *Doing Business 2020: Comparing Business Regulation in 190 Economies*. World Bank Group.

Young, S. (2013). Transaction Cost Economics. In: Idowu, S.O., Capaldi, N., Zu, L., Gupta, A.D. (eds) *Encyclopedia of Corporate Social Responsibility*. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-642-28036-8_221



APPENDICES

Appendix 1: Copy of Strathmore University Ethical Approval



3rd May 2019

Ms. Oyier, Olga Akinyi Anyango
olga.oyier@gmail.com

Dear Olga,

REF Protocol ID: SU-IERC0425/19

DEVELOPING POLICY TOOLS TO IMPROVE EASE OF DOING BUSINESS REFORM AGENDA IN KENYA

We acknowledge receipt of your application documents to the Strathmore University Institutional Ethics Review Committee (SU-IERC) which includes:

1. Study Protocol submitted on 26th April 2019
2. Cover letter listing all submitted documents 26th April 2019
3. Proposal declaration page signed by supervisors 26th April 2019

The committee has reviewed your application, and your study "*Developing policy tools to improve ease of doing business reform agenda in Kenya*" has been granted **approval**.

This approval is valid for one year beginning **3rd May 2019** until **3rd May 2020**

In case the study extends beyond one year, you are required to seek an extension of the Ethics approval prior to its expiry. You are required to submit any proposed changes to this proposal to SU-IERC for review and approval prior to implementation of any change.

SU-IERC should be notified when your study is complete.

Thank you

Sincerely,

Prof Florence Oloo


Secretary


Strathmore University Institution Ethics Review Committee




Appendix 2: Copy of NACOSTI Application Processing Fee Receipt

THIS IS TO CERTIFY THAT: Permit No.: **NACOSTI/P/19/48373/30417**
MS. OLGA AKINYI ANYANGO OYIER Date of Issue : **27th May,2019**
of STRATHMORE UNIVERSITY, Fee Received :**Ksh 1000**
10216-100 NAIROBI,has been permitted
to conduct research in Nairobi County
on the topic: DEVELOPING POLICY
TOOLS TO IMPROVE EASE OF DOING
BUSINESS REFORM AGENDA IN KENYA
for the period ending:
23rd May,2020



 Applicant's Signature

 Director General
**National Commission for Science,
Technology & Innovation**



