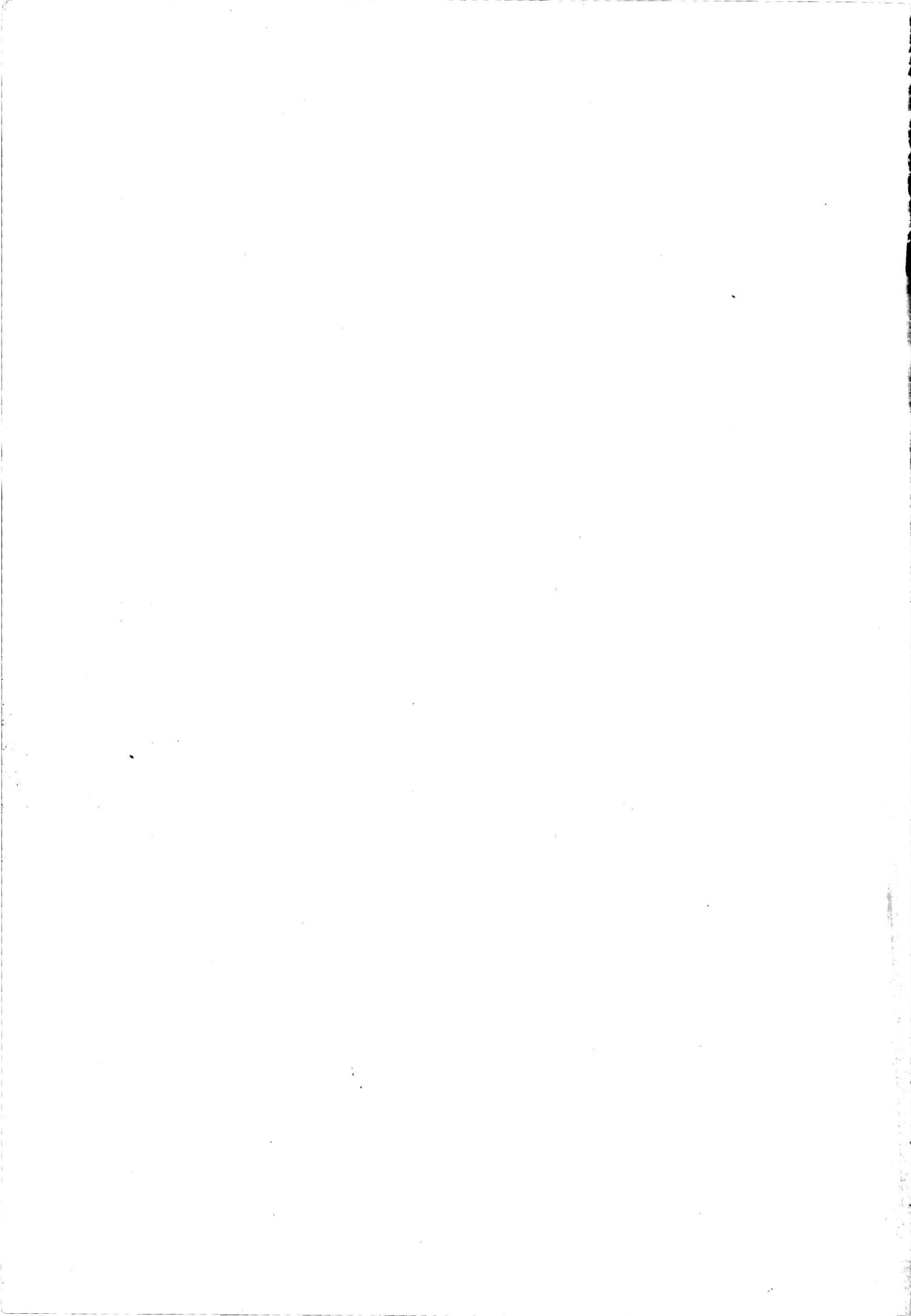


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Final Report
of the
Task Force
on
Judicial Reforms



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Dear Sirs,

LETTER OF TRANSMITTAL

The Task Force on Judicial Reforms was appointed by the Government on 29th May 2009 with the following terms of reference:

1. To consider and recommend the expansion, functions and independence of the Judicial Service Commission.
2. To consider and advise on a competitive process for the recruitment of Judges.
3. To consider and advise on the short and long term measures for addressing the backlog of cases.
4. To consider and advise on the financial autonomy and accountability of the Judiciary.
5. To consider the nature and necessity or otherwise of Regulations under section 68 (3) of the Constitution of Kenya.
6. To review and finalize the Judicial Service Bill.
7. To consider and advise on ways of dealing with corruption or perceived corruption in the Judiciary.

8. To consider any other measures or proposals that are necessary to strengthen and enhance the performance of the Judiciary in the short and long term.
9. To consider and advise on how and when the proposed reforms should be carried out.

The Task Force submitted its initial Report on 10th August 2009. However, following a meeting of the Cabinet Committee on Finance, Administration and Planning held on 13th October 2009, it was resolved that the membership of the Task Force be enlarged. Consequently, the membership of the Task Force was expanded, with the mandate to:

1. Examine and consider the initial Report and its recommendations against the provisions and proposals in the Proposed Constitution of Kenya; and
2. Consider any other measures or proposals necessary to strengthen and enhance the performance of the Judiciary.

The Task Force has considered and made recommendations in respect of each area falling within its mandate. Further, the Task Force has proposed a framework to oversee the implementation of the recommendations in this Report.

We express our gratitude for the honour, privilege and trust bestowed upon us to serve in the Task Force, and for the guidance and advice received from you in the course of our work.

It is with great honour that we submit this Report.

The Hon. Mr. Justice William Ouko



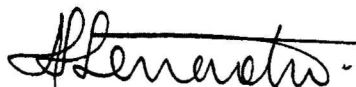
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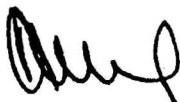
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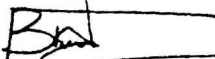
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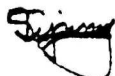
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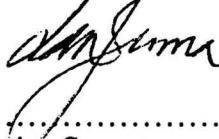
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Mr. Apollo Mboya



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Joint Secretary

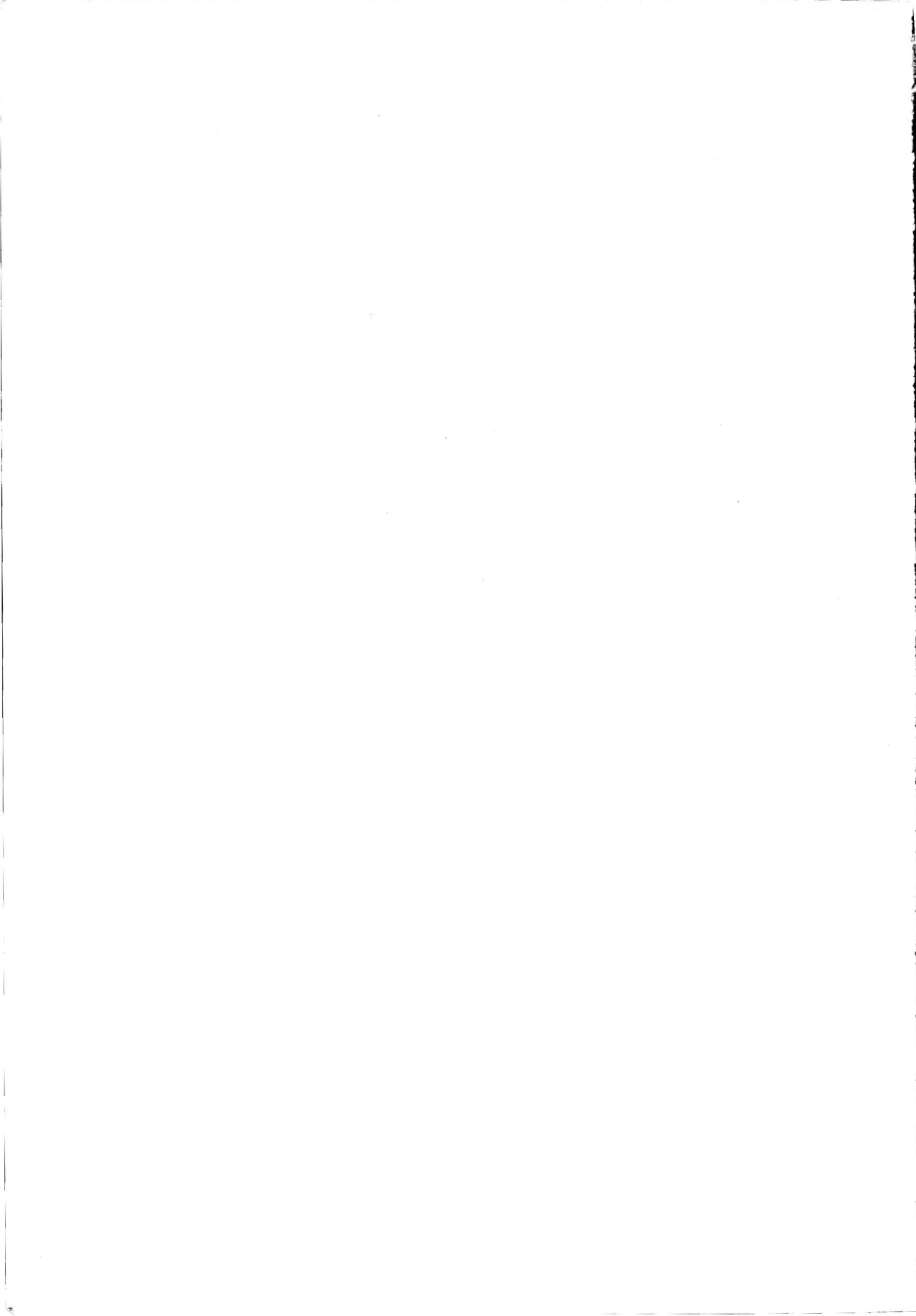


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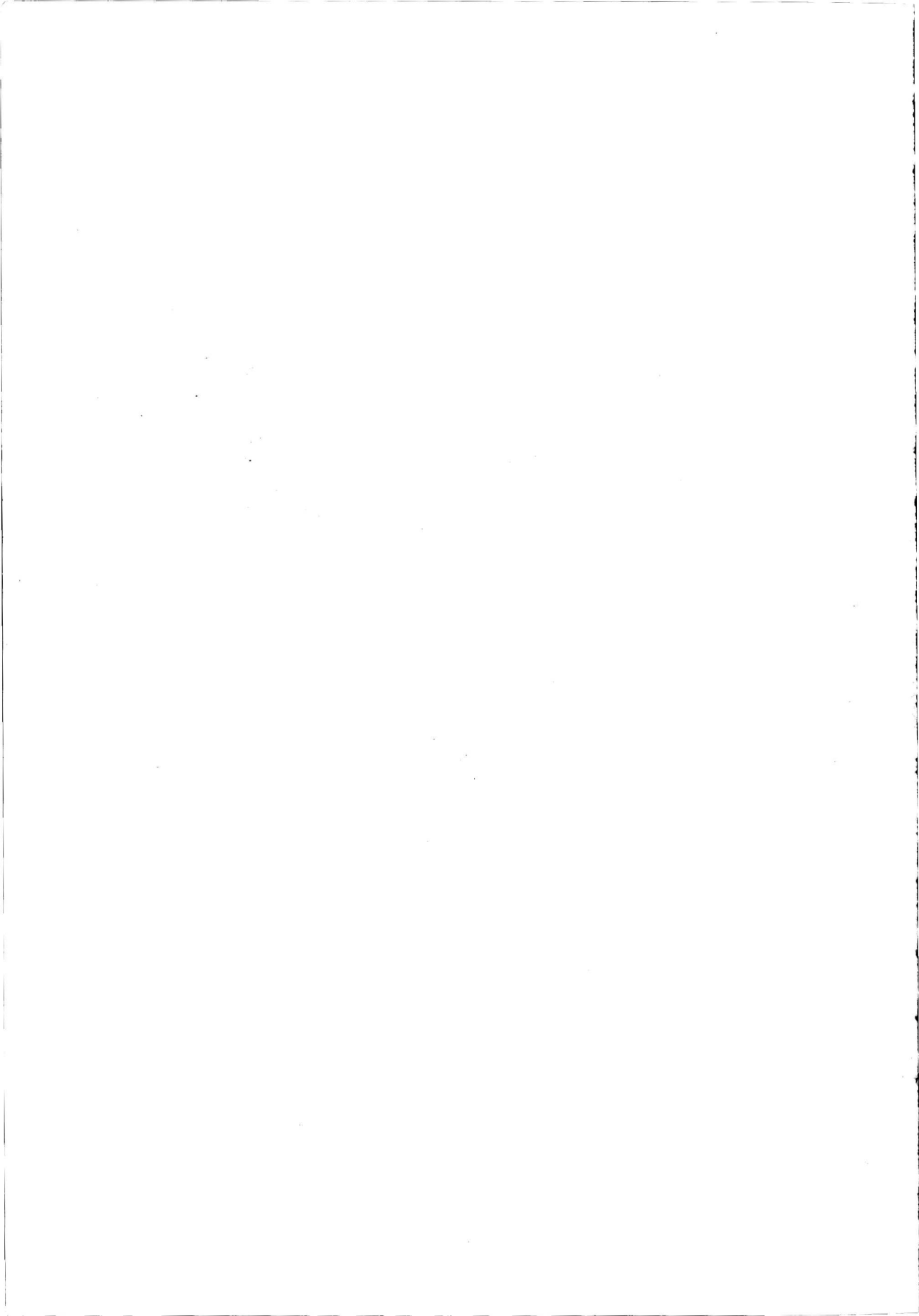
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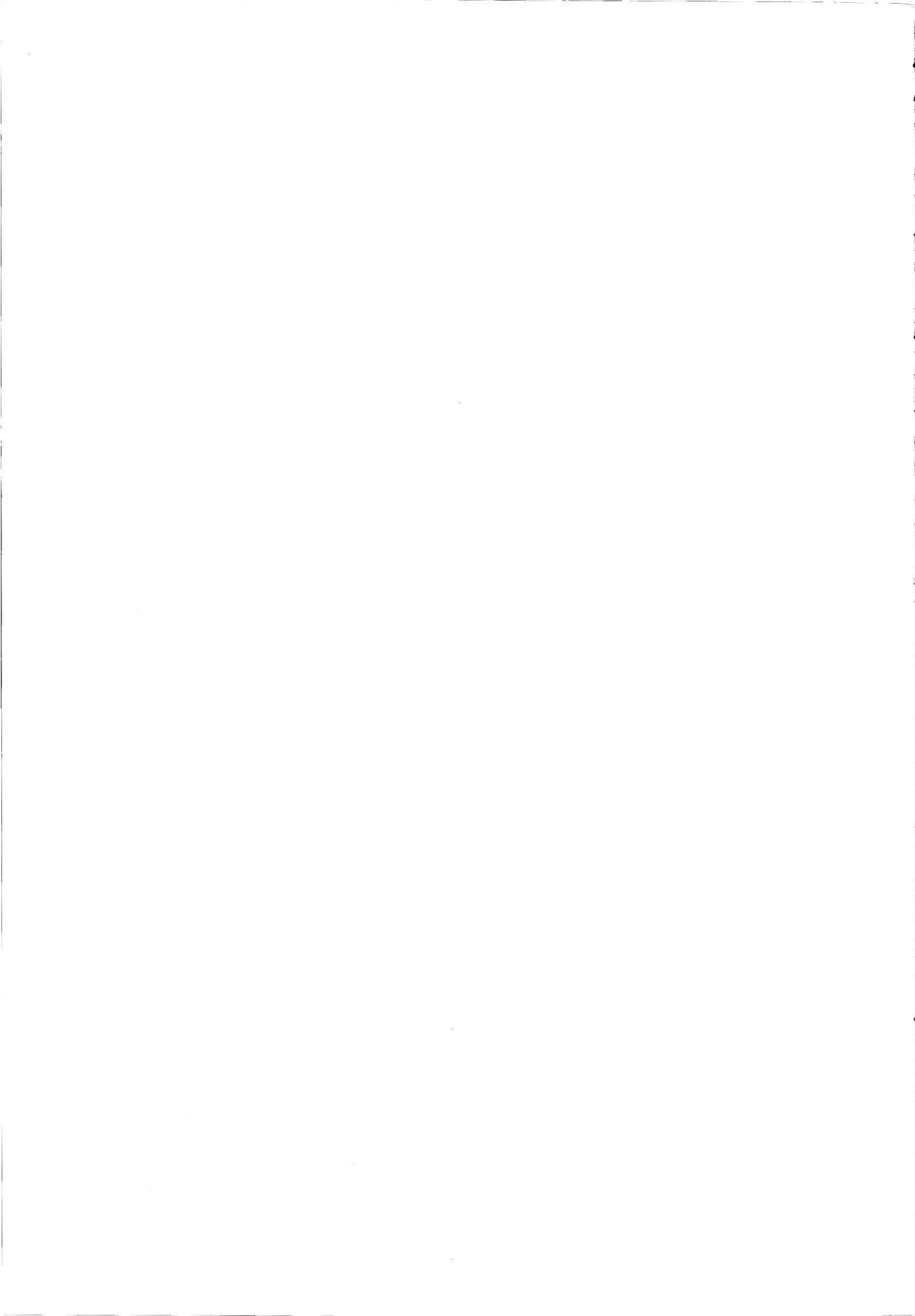


LIST OF ABBREVIATIONS

ABA	American Bar Association
ADR	Alternative Dispute Resolution
AG	Attorney-General
A-I-A	Appropriations- in- Aid
AIDS	Acquired Immune Deficiency Syndrome
CP&PMU	Central Planning and Project Management Unit
CIARB	Chartered Institute of Arbitrators
CCA	Chief Court Administrator
CJ	Chief Justice
CR	Chief Registrar of the Judiciary
CPR	Civil Procedure Rules
CCTV	Closed Circuit Television
CPC	Criminal Procedure Code
CPR	Civil Procedure Rules
CSO	Community Service Orders
CIC	Constitution Implementation Commission
CLE	Continuing Legal Education
DCJ	Deputy Chief Justice
DPP	Director of Public Prosecutions
EAC	East African Community
EDCC	Expeditious Disposal of Cases Committee
FIDA-K	Federation of Women Lawyers- Kenya
GJLOS	Governance Justice Law and Order Sector
GTZ	German Technical Cooperation
HIV	Human Immuno-deficiency Virus
ICJ-K	The Kenya Section of the International Commission of Jurists

ICT	Information and Communication Technology
ILAC	International Legal Assistance Consortium
ISO	International Organization for Standardisation
JPE	Judicial Performance Evaluation
JPIP	Judicial Performance Improvement Project
JRIC	Judicial Reforms Implementation Committee
JSC	Judicial Service Commission
JTI	Judicial Training Institute
KACC	Kenya Anti-Corruption Commission
KEPSA	Kenya Private Sector Alliance
KLRC	Kenya Law Reform Commission
KMJA	Kenya Magistrates and Judges Association
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KRA	Kenya Revenue Authority
KSL	Kenya School of Law
LSK	Law Society of Kenya
MOG	Ministry of Gender
MoIC	Ministry of Information and Communication
MoJNCCA	Ministry of Justice National Cohesion and Constitutional Affairs
MoPW	Ministry of Public Works
MTEF	Medium Term Expenditure Framework
MTP	Medium Term Plan
NCAJ	National Council on Administration of Justice
NCLR	National Council on Law Reporting
NGO	Non Governmental Organisation
NSIS	National Security Intelligence Service

OOP	Office of the President
O&M	Operations and Maintenance
PAF	Performance Appraisal Form
PSC	Public Service Commission
RHC	Registrar of the High Court
SG	Solicitor General
SMS	Short Message Service
SOG	Stood Over Generally
UK	United Kingdom
UN	United Nations
USA	United States of America



ACKNOWLEDGEMENTS

The Task Force acknowledges most sincerely the invaluable support and contributions made by various individuals, Government Agencies, Non-Governmental Organizations, Development Partners and all other institutions towards the preparation of this Report. The Task Force wishes to specifically record its most sincere gratitude to the Hon. Mr. Justice J.E. Gicheru, Chief Justice and Hon. Mutula Kilonzo, Minister for Justice, National Cohesion and Constitutional Affairs (MoJNCCA) for their invaluable support, encouragement and advice. Similarly, we are grateful to Hon. Amos Wako, Attorney-General for his moral support and useful suggestions to the Task Force. The Task Force further acknowledges the logistical and material support extended to it by the Judiciary, MOJNCCA and the United Nations Development Programme (Kenya).

The Task Force is also indebted to the Honourable Justices of the Court of Appeal, particularly the Hon. Mr. Justice R.S.C. Omolo, Hon. Mr. Justice E. Okubasu, Hon. Mr. Justice P. N. Waki, Hon. Mr. Justice P. K. Tunoi and Hon. Mr. Justice S.E.O. Bosire; the Honourable Justices of the High Court, Hon. Mr. Justice M. Msagha, Hon. Lady Justice J. Gacheche and Hon. Mr. Justice F. Ochieng; Chief Magistrates Mr. G. Mutembei, Mr. M. Muya, Mrs. C. Githua and Mr. S. Riechi; and Executive Officers Mr. J. Ngila, Mr. A. Mbiu and Ms. M. Njeru for their invaluable suggestions and contributions.

Finally, the Task Force wishes to record its appreciation to the following members of the Secretariat who worked tirelessly to ensure the successful completion of the work of the Task Force:

- | | |
|-------------------------|-------------------------|
| 1. Ms. Mugure Gituto | 9. Mr. John Kariuki |
| 2. Mr. Michael Murungi | 10. Cpl. Stephen Murage |
| 3. Ms. Christine Owuor | 11. Mr. Reuben Ingolo |
| 4. Ms. Elizabeth Gikuni | 12. Ms. Gladys Kanyaru |
| 5. Mr. Maurice Muema | 13. Mr. David Rapando |
| 6. Ms. Jane Nditika | 14. Mr. Jack Kamoni |
| 7. Ms. Catherine Kagwe | 15. Mrs. Grace Owuor |
| 8. Cpl. Bakari Msambiri | 16. Mr. Marck Inonda |



EXECUTIVE SUMMARY

I. Overview

The Task Force on Judicial Reforms was appointed by the Government of Kenya after a meeting of stakeholders held on 29th May 2009 in Nairobi. The Task Force was mandated to:

1. Consider and recommend the expansion, functions and independence of the Judicial Service Commission.
2. Consider and advise on a competitive process for the recruitment of Judges.
3. Consider and advise on short and long term measures for addressing the backlog of cases in the judicial system.
4. Consider and advise on the financial autonomy and accountability of the Judiciary.
5. Consider the nature and necessity or otherwise of Regulations under Section 68(3) of the current Constitution of Kenya.
6. Review and finalize the Judicial Service Bill.
7. Consider and advise on ways of dealing with corruption or perceived corruption in the Judiciary.
8. Consider any other measures or proposals that are necessary to strengthen and enhance the performance of the Judiciary in the short and long term.
9. Consider and advise on how and when the proposed reforms/initiatives should be carried out.

The Task Force submitted its initial Report to the Government on 10th August 2009. However, following a meeting of the Cabinet Committee on Finance, Administration and Planning held on 13th October 2009, it was resolved that the membership of the Task Force be enlarged to include more stakeholders. Consequently, the membership of the Task Force was expanded, with the mandate to:

1. Examine and consider the initial Report and its recommendations against the provisions in the Proposed Constitution of Kenya; and

2. Consider any other measures or proposals necessary to strengthen and enhance the performance of the Judiciary.

The Task Force has considered and made recommendations in respect of each area falling within its mandate. In undertaking its work, the expanded Task Force met members of the Judiciary and other actors and stakeholders in the justice sector, all of whose views and submissions have been carefully examined and reflected in various parts of this Report. In addition, the Task Force also considered Kenya's development objectives contained in the Medium Term Plan of Vision 2030, Agenda Item 4 of the Kenya National Dialogue and Reconciliation, previous reports on judicial reforms and international standards and best practices in the administration of justice.

The Task Force notes that the judicial structure and principles in the Proposed Constitution of Kenya provide an important pathway to addressing the constitutional issues relating to the integrity, independence, accountability and performance of the Judiciary. In this regard, and in accordance with the mandate of the Task Force, the recommendations in this Report have been harmonized with the provisions of the Proposed Constitution of Kenya. In the course of its work, the Task Force also submitted its recommendations on the Proposed Constitution of Kenya to the Parliamentary Select Committee on Constitutional Review, appended to this Report as Annex VI. In sum, the Task Force considers that the provisions on the Judiciary in the Proposed Constitution, in particular the establishment of a Supreme Court and an expanded Judicial Service Commission with additional functions will reinforce the proposals in this Report and restore public confidence in the Judiciary.

II. Summary of Recommendations

(a) The Judicial Service Commission (JSC)

To enhance the independence, operational autonomy, efficiency and effectiveness in the governance and management of the Judiciary, it is recommended that:

1. The JSC be restructured and expanded to include additional representation from the Supreme Court, the statutory body responsible for the professional regulation of advocates, the association of Judges and magistrates and the public.
2. An independent Secretariat of the JSC headed by a Registrar be established to support the Commission's functions.
3. The functions of the JSC be expanded to include performance management and enhancement, discipline of judicial officers including Judges, receipt and review of complaints against judicial officers and advising the Government on ways of improving the administration of justice.
4. The Judiciary be accorded financial autonomy and its expenses be a direct charge on the Consolidated Fund.
5. The Judiciary's allocated funds be 'ring-fenced' under the Judicial Service Bill so that they are not subject to reduction by Treasury.
6. The annual budgetary allocation to the Judiciary be augmented to a minimum of 2.5% of the national budget, provided that this percentage may be increased in future to cater for the Judiciary's needs.
7. The Judicial Service Bill be enacted to provide the functions, structure and procedures of the JSC.
8. The JSC prepares and submits annual reports of its activities to the President and Parliament.

(b) Appointment, Discipline and Removal of Judges, other Judicial Officers and Staff

To secure merit-based appointment of Judges, other judicial officers and staff and to promote high standards of conduct,

discipline and performance in the Judiciary, the Task Force recommends that:

1. Comprehensive criteria for the recruitment of Judges, other judicial officers and staff be developed and adopted by the JSC to ensure standardization in the recruitment process.
2. The Chief Justice, Deputy Chief Justice, Supreme Court and Court of Appeal Judges be appointed from among persons of high moral character, integrity, impartiality and intellectual competence as demonstrated by academic qualifications, and who possess a minimum of at least 15 years or an aggregate of 15 years experience as a superior court Judge, distinguished academic, judicial officer or other relevant legal practice in the public, private or any other relevant legal sector.
3. The Chief Justice and the Deputy Chief Justice be appointed by the President in accordance with the recommendation of the Judicial Service Commission, and subject to the approval of the National Assembly.
4. The Judges of the High Court be appointed from among persons of high moral character, integrity, impartiality and intellectual competence as demonstrated by academic qualifications, and who possess a minimum of at least 10 years or an aggregate of 10 years experience as a distinguished academic, judicial officer or other relevant legal practice in the public, private or any other relevant legal sector.
5. Judges be appointed on the basis of a competitive process in which vacancies are advertised, interviews conducted, and effective vetting undertaken by the JSC before names are presented to the President for appointment.
6. A person should not be qualified for appointment as a magistrate or Kadhi unless such person is of high moral character, diligence, integrity and impartiality, and possesses the requisite professional and academic qualifications provided under the Judicial Service Schemes of Service.

7. Permanent procedures and regulations for receiving and processing complaints and enforcing disciplinary action against Judges, other judicial officers and staff be enacted under the Judicial Service Bill.
8. A Complaints Sub commission of the JSC be established to receive and deal with complaints against Judges, other judicial officers and staff on a continuous basis.
9. Feedback mechanisms be established to ensure that complainants and the public are informed of disciplinary action against judicial officers and staff.
10. The JSC be empowered to deal with disciplinary cases against Judges where the misconduct or misbehavior in question does not warrant removal.
11. The JSC be mandated to consider and advise the President on the question of removal of Judges on the grounds of breach of the Judges' Code of Conduct and Ethics, incompetence, mental or physical incapacity, bankruptcy, gross misconduct and misbehaviour.
12. Judicial officers facing serious criminal charges be suspended from duty pending the determination of cases against them.
13. The JSC ensures gender parity in appointments and promotions in the Judiciary.

(c) Case Backlog and Management

To address the backlog and delay of cases, it is recommended that:

1. The Judiciary undertakes an assessment and evaluation of its human resource needs with a view to ascertaining and recruiting adequate and qualified personnel for the institution.
2. In future, the number of Judges and other judicial officers be regularly reviewed to ensure that the ratio of population to Judges and other judicial officers is retained at an efficient level.

3. All vacant positions for Judges, magistrates, Kadhis and judicial staff be filled without further delay through a competitive process.
4. The jurisdiction of magistrates be reviewed as appropriate to enhance speedy access to justice in cases relating to succession, sexual offences, children, and corruption among others.
5. Case monitoring and tracking techniques be introduced and the outputs of individual Judges and judicial officers monitored, reviewed and published as appropriate.
6. As a temporary measure, Commissioners of Assize be appointed through a competitive and transparent process that includes advertisement, interviews and vetting, to deal with cases older than 5 years.
7. The Judicature Act (Cap 8 Laws of Kenya) be amended to increase the number of Court of Appeal Judges to at least 30 and High Court Judges to at least 120.
8. Additional resources be provided to the Judiciary to enable it finalise all the on-going court construction projects and to lease premises in order to create physical space for the additional Judges and magistrates proposed for appointment.
9. Enabling legislation for mediation and other ADR disciplines such as mediation-arbitration, negotiation, conciliation and adjudication be enacted.
10. A complaints mechanism be established and appropriate Codes of Conduct developed for arbitrators, mediators and other ADR disciplines.
11. Small claims courts be established through the enactment of the Small Claims Court Bill 2010.
12. A Courts of Petty Sessions Bill be enacted to establish courts to deal with petty or minor criminal cases.
13. The JTI and LSK sensitise judicial officers, advocates and the public on the provisions of the Debts (Summary Recovery)

Act (Cap 42 Laws of Kenya) as a means of settling disputes out of court.

14. A Criminal Procedure Rules Committee be established under the Criminal Procedure Code (Cap 75 Laws of Kenya) to make and review rules relating to the criminal justice system.
15. Plea agreement or plea bargaining be operationalised by promulgating regulations to guide its application.
16. To avoid the backlog of traffic cases the following measures be taken:
 - (i) removal of the Police from traffic control and establishment of an independent National Road Safety Authority;
 - (ii) imposition of instant fines for traffic offenders who plead guilty;
 - (iii) information sharing between the proposed National Road Safety Authority, Police, courts and the Registrar of Motor-vehicles on traffic offenders so that renewal of licenses or transfer of motor vehicles is subject to outstanding traffic offences and payment of fines; and
 - (iv) review of driving licenses and logbooks to include adequate information.
17. Courts be empowered to dismiss criminal appeals where such appeals have not been prosecuted by the appellant within one (1) year after their admission or the appellant has served the sentence, lost interest in the appeal or cannot be traced if on bond pending appeal.
18. The Criminal Procedure Code (Cap 75 Laws of Kenya) be amended to dispense with the requirement for assessors even in cases which began with the aid of assessors.
19. The Anti-Corruption and Economic Crimes Act 2003 be amended to grant all Principal Magistrates Courts and above jurisdiction to hear corruption cases or related offences.

20. Parliament establishes mechanisms for timely settling of electoral disputes under the Elections Bill. In the interim, the National Assembly and Presidential Elections Act (Cap 7 Laws of Kenya) be reviewed.
21. The Judiciary hires research assistants for Judges of the Supreme Court, Court of Appeal and High Court.
22. 24 hour duty courts be established with Judges and magistrates on call designated to deal with urgent criminal, maritime, traffic or other similar urgent matters.
23. The Judiciary institutes in the long-term, measures towards specialisation by judicial officers through the establishment of court divisions.
24. Mechanisms and procedures be established to standardize and ensure transparent, effective and fair allocation of cases.
25. An ICT policy and master plan be operationalised in the Judiciary to ensure strategic development of ICT infrastructure and systems for present and future needs.
26. Resources be provided to the Judiciary to facilitate digitization of court records, automation of the recording of court proceedings and the establishment of interactive databases.
27. Court of Appeal and High Court vacation periods be harmonised throughout the country, and the Summer vacation reduced to five (5) weeks and renamed the August vacation.

(d) Court Administration

To improve the administration of the Judiciary, the Task Force recommends that:

1. There be separation of judicial functions from court administration through an autonomous court administration structure established under an Administration of Courts Bill.
2. The offices of the Chief Justice, Deputy Chief Justice, President of the Court of Appeal, Principal Judge of the High

Court and Chief Registrar of the Judiciary be established as substantive offices in the Judiciary.

3. The functions of the Chief Justice, Deputy Chief Justice, President of the Court of Appeal, Principal Judge of the High Court and Chief Registrar of the Judiciary be clearly defined in legislation.
4. The Chief Registrar be the chief administrator and accounting officer of the Judiciary.
5. The offices of the Registrars of the Supreme Court, Court of Appeal, High Court, JSC Secretariat, Information and Communications Department and subordinate Courts be established by legislation.
6. Clear job descriptions, reporting responsibilities and protocols be developed and issued to all judicial officers and staff to facilitate supervision, monitoring and evaluation.
7. An Inspectorate Unit be established to independently monitor the operations of the courts on a continuous and regular basis.
8. The Central Planning and Project Management Unit (CP & PMU) be strengthened to enhance its effectiveness in data collection, monitoring and evaluation in the Judiciary.

(e) Performance Management

To enhance the efficiency, performance and accountability of the Judiciary, judicial officers and staff, it is recommended that:

1. The JSC contracts experts to design a performance management system, with comprehensive planning, monitoring, appraisal, evaluation and enforcement systems and mechanisms.
2. The Judiciary develops and implements performance objectives, standards and benchmarks to guarantee the efficiency and quality of judicial and administrative systems and processes.
3. The Judiciary develops and implements a training and human resource development policy to regulate training and

continuous professional development of judicial officers and staff.

4. All newly appointed Judges, other judicial officers and staff should undergo an induction course before assuming their functions.
5. Work related factors and other contextual issues that affect the recruitment, performance and retention of judicial officers and staff of the Judiciary be addressed.
6. The Judiciary creates public awareness on performance management to enhance public participation in the process and entrench a culture of performance excellence in the Judiciary.
7. The Judicial Service Bill be enacted, to among other things, provide for an annual national address by the Chief Justice on the state of the Judiciary and the administration of justice.

(f) Corruption, Ethics and Integrity in the Judiciary

To promote ethical conduct and prevent corruption in the Judiciary, the Task Force recommends that:

1. A judicial ethics, integrity and anti-corruption strategy be developed and implemented at all levels in the Judiciary.
2. A mapping exercise be carried out within the Judiciary to identify and take remedial measures on the main areas that are prone to corruption.
3. A Complaints Sub commission of the JSC be mandated to monitor, investigate and take remedial action on complaints against judicial officers and staff in the Judiciary.
4. Judicial Service Codes of Conduct for Judges, other judicial officers, and staff be developed under the Judicial Service Bill and reviewed regularly to address emerging issues and improve compliance and effectiveness.
5. Judicial officers and staff found liable for corruption be removed from the judicial service by the JSC.

6. The Judicial Service Codes of Conduct and Ethics be disseminated to the public as a means of enhancing the accountability of judicial officers and staff and the Judiciary as a whole.
7. The Judiciary develops mechanisms for regular integrity testing and monitoring of the exercise of discretion by judicial officers.
8. Regular inspection of judicial systems be institutionalised through the proposed Inspectorate Unit to assess and mitigate systems or procedures that encourage corruption or create the perception of judicial improbity.
9. The recommendations of the previous reports on budget planning, accounts control, internal and external auditing and procurement reforms in the Judiciary be implemented forthwith.
10. Legislation be enacted to establish an independent tribunal and mechanisms and procedures for vetting sitting Judges and magistrates as envisaged in clause 23 of the Sixth Schedule of the Proposed Constitution of Kenya.
11. Peer review be institutionalized in the Judiciary through establishment of peer review committees in every court station in the country.
12. The Judicial Service Commission establishes a system for collecting, analyzing, verifying, digitizing, systematizing, retrieving, disclosing (as appropriate) and acting on the information contained in the Declaration of Income, Assets and Liabilities Forms submitted by judicial officers and staff.
13. A policy against sexual harassment be adopted and enforced in the Judiciary.

(g) Human Rights and Access to Justice

To promote human rights and access to justice, the Task Force recommends that:

1. All judicial officers and staff be trained in human rights principles and norms to ensure that the Judiciary and the

judicial process respects, protects and promotes fundamental rights and freedoms.

2. Public interest litigation guidelines be adopted and implemented to facilitate access to justice by the public on issues of public interest.
3. The development, adoption and implementation of a policy and legislative framework for legal aid be speeded up.
4. The pauper procedure in civil litigation and appeals be simplified by reviewing Orders XXXII and XLIII of the Civil Procedure Rules and incorporating the system into the National Legal Aid (and Awareness) Scheme.
5. Court stations and mobile courts be established in marginalized areas and regions that have no geographical access to courts.
6. Physical facilities in the Judiciary be made accessible and more friendly to persons with physical disabilities and other vulnerable groups.
7. Judicial officers be required to ensure that litigants especially children, vulnerable groups, victims of sexual offences and those without counsel are accorded a fair hearing within a reasonable time.
8. Court rules and procedures be reviewed regularly to ensure that they are efficient and simple.
9. A "Litigants Charter" containing information on the court system, court processes, procedures, court fees and services be developed and disseminated.
10. The establishment, procedures, mandates and operations of quasi-judicial tribunals be streamlined to ensure their independence, efficiency, effectiveness and accountability.
11. A detailed evaluation or study be undertaken on the establishment, composition, independence, functions, accountability and operations of quasi-judicial tribunals to establish areas of reform.

12. Judicial supervision of prison conditions be strengthened.
13. Measures be taken by the Government to bring prison conditions in conformity with United Nations Standard Minimum Rules for the Treatment of Prisoners through allocation of material, human and budgetary resources necessary to reduce overcrowding in prisons.
14. The Prisons Department ensures adequate facilities and establishments for separating women prisoners and children.
15. Facilities be provided in places of detention to facilitate communication between detainees, their families and legal counsel.
16. The Government establishes additional borstal institutions in each County to meet the demands of the juvenile justice system.
17. A Contempt of Courts Bill be enacted to protect the integrity of the administration of justice by the courts of law.

(h) Access to Information and Communication

To enhance access to information and communication in the Judiciary, the Task Force recommends that:

1. An Information and Communications Department headed by a Registrar be established with the mandate to develop an access to information and communication policy for the Judiciary and handle all the information, communication and publicity needs of the Judiciary.
2. The Judiciary ensures that members of the public have adequate and reliable access to quality legal and judicial information including laws, court procedures, court proceedings and decisions, judicial vacancies, disciplinary processes and their outcomes.
3. Information desks be established in all court buildings and stations.
4. The Judiciary "Open Day" and other feedback mechanisms in the Judiciary be institutionalised.

5. The Judiciary and the Judicial Service Commission be required to prepare, publish and present annual status reports to ensure public scrutiny of the administration of justice.

(i) Terms and Conditions of Service

To attract and retain the most qualified professionals in the Judiciary and to ensure that the terms and conditions of service offered in the Judiciary are competitive, the Task Force recommends that:

1. The JSC develops a comprehensive human resource development and management policy for the Judiciary.
2. The JSC adopts a welfare policy aimed at providing welfare support to judicial officers and staff and raising awareness on the importance of employee wellbeing in fulfilling the Judiciary's strategic objectives and mission.
3. The JSC establishes a Judiciary-administered, performance-based reward scheme for recognition of exemplary service by judicial officers and staff.
4. The salaries and allowances of all judicial officers and especially magistrates, Kadhis and other staff be reviewed regularly and enhanced with a view to ensuring equity and attracting and retaining highly qualified personnel.
5. The revised allowances of Judges adopted under the Judicial Service Staff Regulations 2008 be implemented.
6. The Judiciary adopts and implements a policy on merit-based and fair promotion of judicial officers and staff at all levels.
7. The JSC develops and implements a transparent transfer policy, taking into account the need for succession planning, regular transfers every three (3) years, the requirement that judicial officers must finalise pending or part-heard matters before proceeding to their new court stations and linkages between judicial transfers and performance management.
8. A mortgage scheme for judicial officers and staff be established. In the interim, Legal Notice No. 98 of 2004 made under the Housing Act (Cap 117 Laws of Kenya) be amended to include judicial officers and staff in the Housing Scheme.

9. A motor vehicle purchase scheme for judicial officers and staff be established.
10. The Judges Retirement Benefits Bill be finalised and enacted.
11. The existing medical scheme for the Judiciary be enhanced to provide for better benefits and services.
12. Personal security and safety of magistrates and all other judicial officers be assured through appropriate measures.
13. The proposed Judges' Allowances and Schemes of Service for magistrates, Kadhis and other judicial staff be implemented forthwith.
14. The working environment for judicial officers be improved by providing better court rooms, chambers, materials and equipment.
15. Psychosocial support be provided for judicial officers and staff.

(j) Institutional Reforms and Inter-Agency Co-ordination

In order to ensure related institutional reforms within the justice system and closer coordination between the agencies, the Task Force recommends that:

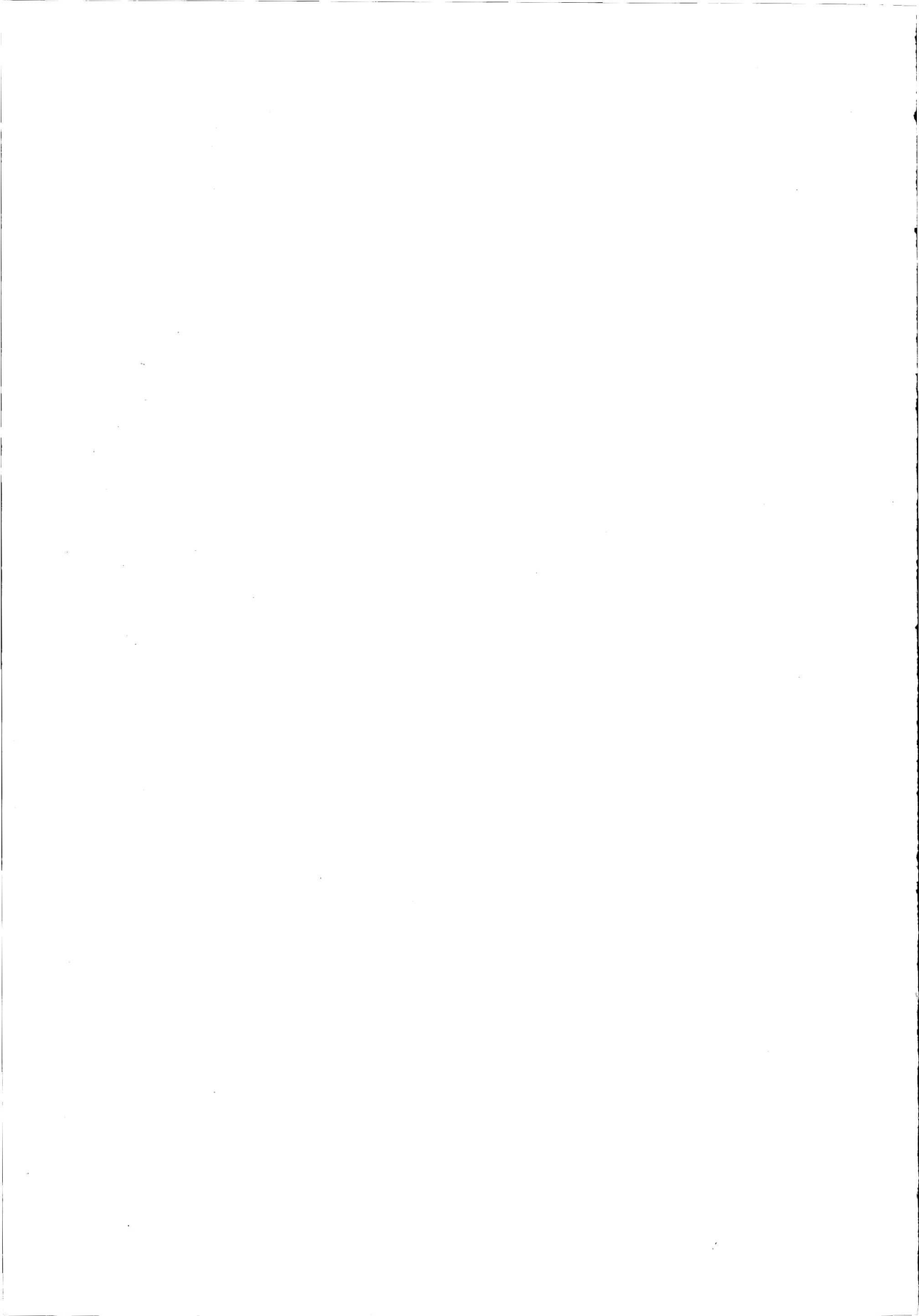
1. An information management system be established to facilitate information sharing and coordination between the Judiciary, State Law Office, Law Society of Kenya, Prisons Department, the Police and Probations Departments.
2. The Judiciary, State Law Office, Law Society of Kenya, Prisons Department and the Police review and institute processes to ensure their transparency and accountability in the administration of justice.
3. The State Law Office deploys state counsel in all High Court stations to deal with civil and criminal matters.
4. Sector-wide policies be developed and implemented to ensure efficient, effective and fair administration of justice.

5. The practice of unlawful and arbitrary arrests or swoops by the Police be promptly and impartially investigated and those found responsible subjected to disciplinary procedures.
6. Criminal prosecutions be detached from the Police and all prosecutors in the Police Department redeployed to the office of the Director of Public Prosecutions following adequate training.
7. A Code of Ethics with effective sanctions be adopted by the Law Society of Kenya to raise collective consciousness against unethical practices among its members.
8. A single complaints agency to receive, investigate, discipline and enforce sanctions against advocates be established in the long-term.
9. All magistrates and advocates be sensitized on the Community Services Orders Programme, its objectives and operations.
10. Additional resources be provided to support the Community Services Orders Programme to enable CSO officers to undertake supervision of offenders placed under the Programme.
11. Bar-Bench Committees and Court Users Committees be established in all court stations to facilitate improvements in the operations of the courts, coordinate the functions of all agencies within the justice system and improve and ensure interaction among these agencies and stakeholders.
12. Quarterly and annual regional Bar-Bench events be institutionalised to give lawyers and judicial officers a chance to reflect on their experiences in the administration of justice.
13. A National Council on the Administration of Justice be established under the Judicial Service Bill to address inter-agency issues and coordinate cohesive, efficient and effective administration of justice through policy formulation, strategic planning, resource mobilization and implementation, review and monitoring.

(k) Implementation of the Recommendations

To ensure and facilitate speedy implementation of reforms in the Judiciary, it is recommended that:

1. A multi-stakeholder Judicial Reforms Implementation Committee and its Secretariat be established to oversee the implementation, monitoring and evaluation of the proposed reforms in this Report.
2. A judicial reform strategy be adopted, costed and implemented in accordance with the recommendations of this Report.
3. Change management capacity be integrated into the implementation structure of the judicial reform strategy.
4. The Government of Kenya undertakes to provide political goodwill and resources to the Judiciary to oversee the implementation of the reforms.
5. All stakeholders and actors commit themselves to support the implementation of the recommendations proposed in the Report.



CHAPTER ONE

INTRODUCTION

1.1 Overview

An independent and effective Judiciary is vital for a democratic society founded on the rule of law and respect for fundamental rights and freedoms. The primary role of the Judiciary is to independently and impartially administer justice and arbitrate legal disputes. The Judiciary also reinforces checks and balances between the other arms of government and by so doing, ensures constitutionalism. By arbitrating on disputes in society and upholding the rule of law and limitation of governmental power, the Judiciary contributes to social order that is a foundation for social and economic development.

The Judiciary faces several challenges that undermine its ability to play its aforesaid role effectively. Many of these challenges have resulted from the failure, over many years, by policy makers to recognize the critical role played by the Judiciary in maintaining a just, fair, stable and secure society. These challenges include:

- (i) Complex rules of procedure that undermine access to justice and expeditious disposal of cases;
- (ii) Backlog and delays in the disposal of cases thereby eroding public confidence in the Judiciary;
- (iii) Manual and mechanical systems of operations that affect efficiency in service delivery;
- (iv) Inadequate financial and human resources that contribute to case backlog;
- (v) Inability to absorb donor funds due to complex procurement and other financial procedures;
- (vi) Unethical conduct on the part of some judicial officers and staff that impede the fair and impartial dispensation of justice;
- (vii) Weak administrative structures that undermine the effective administration of courts;
- (viii) Lack of operational autonomy and independence;

- (ix) Poor terms and conditions of service that make it difficult for the Judiciary to attract and retain highly qualified professionals amongst its ranks;
- (x) Less than transparent procedures for the appointment and promotion of judicial officers particularly Judges; and
- (xi) Lack of effective complaints and disciplinary mechanisms to deal with misbehaviour by Judges.

These challenges illustrate that despite social, economic and political advancements, there has been no corresponding modernization and reform of the Judiciary to administer justice in an effective manner, in an increasingly complex and litigious society. Similarly, the institutional growth of the Judiciary has not been accompanied by the introduction of better and more effective management methods over personnel and financial resources, leading to mismanagement of resources and unethical conduct on the part of some of the personnel. Finally, due to lack of prioritization, there has been very little investment made in physical facilities and modern systems and processes for the administration of justice.

1.2 Socio-Political and Historical Context

The decline of the Judiciary in Kenya has not only been influenced by the systemic challenges noted above, but also socio-political and historical factors spanning several years. Thus for many years, the Judiciary was considered as a "Department," or the "third" arm of government, imputing that the institution was not equal to the Executive or the Legislature. This subordination of the Judiciary in the supposed "hierarchy" of organs of government not only undermined its development, but also exposed it to several forces which led to its decline. Of these, political patronage has been singled out.

Over the years, patronage took hold at different levels of the institution, taking the form of political appointments; nepotism and tribalism; favouritism in appointments and promotion; and judicial subservience by some judicial officers. Internally, patronage became a means of rewarding or punishing targeted judicial officers and staff, through selective deployment, recall or transfers, as well as

stationing of judicial officers or staff in strategic positions, otherwise known as “gate keeping.” In addition, there were also cases of unfair or tokenistic allocation of judicial opportunities and facilities such as training courses, chambers, cars and houses.

The Judiciary has also been accused of its historical failure to efficiently, effectively and fairly arbitrate over politico-legal disputes. In democracies, the role of the Judiciary is not confined only to the arbitration of purely legal disputes, but also legal issues of a political nature, such as elections, legality of governmental power, constitutional review and interpretation and enforcement of human rights. In the 1980s and 1990s, the courts of law were accused of interpreting the law in such cases without regard to the political and social realities, as well as the aspirations and needs of the Kenyan people. Predictably, most court decisions were in favour of the Executive.

In relation to human rights and separation of powers, the Judiciary was perceived for many years to have abdicated its role as custodian of the rule of law and the vanguard of fundamental freedoms. Particularly during the single party-era, the courts of law were accused of failing to uphold fundamental rights and freedoms, the principle of separation of powers and the rule of law in cases before them, especially where there were political interests of individual senior government officials or their associates. In a number of cases therefore, the High Court failed to enforce the Bill of Rights, holding that the provisions were “inoperative” due to lack of rules contemplated by the Constitution.

In the area of constitutional reform, it will be remembered that the Judiciary itself was considered an obstacle to the realisation of a new Constitution, when in 2002, a section of Judges sought judicial orders to stop the discussion and adoption of provisions relating to the Judiciary in the Draft Constitution, on the basis that the Judges would be adversely affected by the proposals. While the Judges’ application was not founded on a policy of the Judiciary, it reinforced public perceptions that the Judiciary was unable to facilitate political transformation through its role as a fair, impartial and effective arbiter in the process of constitution making.

The handling of election petitions is perhaps the best illustration of the Judiciary's inability to efficiently, effectively and fairly arbitrate over political competition. With the opening of political space following the reintroduction of political pluralism, elections became highly contested, and it followed that election disputes were increasingly brought to the courts of law for adjudication. However, the resolution of these cases became and remained inefficacious and sometimes unfair, owing to undue regard to procedural technicalities by the courts and unconscionable delays (with some cases taking as many as five years to be determined, or ultimately dismissed altogether on the basis of technicalities). Accordingly, it became a matter of public notoriety over the years that presidential and parliamentary election petitions would not deliver electoral justice.

Against this background, the events leading up to the post-election political crisis in 2007 were partly as a result of this history and decline of public institutions, including the Judiciary. While the violence was sparked by the disputed presidential elections, the ensuing lawlessness was partly attributed to lack of confidence in public institutions, most of which were seen as lacking in integrity, impartiality and independence. With the Judiciary having been rejected as an impartial and independent arbiter to resolve the dispute arising from the presidential election results, violence erupted in almost all parts of the country, and only an international mediation process restored normalcy in the country. Under the Kenya National Dialogue and Reconciliation (KNDR), an agreement was reached to stop violence, restore human rights, establish a power sharing Government and implement a wide range of legal, constitutional and institutional reforms. Judicial reform was a key component of this agreement.

1.3 Establishment and Composition of the Task Force

The Judiciary has continued to perform below the expectations of the people and longstanding calls have been made for comprehensive reform of the institution. With the de-linkage of the Judiciary from the civil service in 1993, several studies have been conducted and recommendations made by internal committees, on the ways in which the Judiciary can be transformed to meet the ever changing needs and expectations of the people of Kenya.

Unfortunately, due to lack of resources and a clear framework for implementation, the execution of the recommendations has been painfully slow. Moreover, although some reforms have been carried out in the Judiciary, such as the introduction of specialized courts, the institutionalization of law reporting through the establishment of the National Council for Law Reporting and the recent establishment of the Judicial Training Institute, these isolated reforms have by themselves not been sufficient to bring far reaching changes that are needed to transform the Judiciary into a strong, efficient and independent institution.

Following the post-election crisis in 2007, judicial reform was identified as one of the areas of focus towards restoring the credibility, integrity and independence of public institutions in Kenya. Under Agenda Item IV of the Kenya National Dialogue and Reconciliation, the two Grand Coalition Government partners agreed to undertake comprehensive reform of the Constitution and key governance institutions including the Judiciary, as part of the long-term solutions to the crisis. Similarly, the Medium Term Plan (2008-2012) identifies judicial reform as an important aspect of the economic, social and political pillars of Vision 2030.

To effect these reforms, the Government established this Task Force to examine and advise on the most effective and efficient ways of transforming the Judiciary. The Task Force was established on 29th May 2009 following a consultative meeting of key stakeholders in the justice sector held on the same day at the Hilton Hotel, Nairobi. In the meeting that brought together representatives of the Judiciary, the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNNCA), State Law Office, the Kenya National Commission on Human Rights (KNCHR), the Kenya Law Reform Commission (KLRC), the Law Society of Kenya (LSK), the Kenya Section of the International Commission of Jurists (ICJ-K) and the Federation of Women Lawyers-Kenya (FIDA-K), it was agreed that there was urgent need to identify the reforms that needed to be carried out in the Judiciary in line with Agenda Item IV and Vision 2030 aforementioned.

Following this decision, the Task Force comprising of representatives from the aforesaid institutions was established with the following membership:

1. Hon. Mr. Justice William Ouko, Judge, High Court of Kenya, Chairman
2. Mr. Okongo Omogeni, Chairman, LSK, Co-Chairman
3. Hon. Mr. Justice Isaac Lenaola, Judge, High Court of Kenya and Chairman KMJA
4. Mr. Gichira Kibara, Secretary for Justice and Constitutional Affairs, MoJNCCA
5. Mr. Wilfred Nderitu, Chairman, ICJ-K
6. Mr. Kathurima M'Inoti, Chairman, KLRC
7. Ms. Florence Simbiri-Jaoko, Chairperson, KNCHR
8. Ms. Muthoni Kimani, Senior Deputy Solicitor General, State Law Office
9. Ms. Grace Maingi-Kimani, Deputy Executive Director, FIDA-K
10. Mrs. Lydia Achode, Registrar of the High Court of Kenya, Joint Secretary
11. Mr. Apollo Mboya, (initially Ag.) Chief Executive Officer, LSK, Joint Secretary
12. Mr. Steven Mukaindo (replaced later by Mr. Dan Juma), Project Coordinator, MoJNCCA, Joint Secretary

To ensure continuity of the deliberations of the Task Force, members sent alternates when they were unable to attend the meetings. Accordingly, the following participated in some meetings of the Task Force as alternate members:

1. Ms. Anne Munyiva-Ngugi, Commissioner, KNCHR and alternate member to Ms. Florence Simbiri-Jaoko
2. Mr. Evans Monari, Council member, LSK and alternate member to Mr. Okongo Omogeni

3. Mr. George Kegoro, Executive Director, ICJ-K and alternate member to Mr. Wilfred Nderitu
4. Ms. Caroline Oyula, Senior State Counsel, State Law Office and alternate member to Ms. Muthoni Kimani
5. Mr. Joash Dache, Ag. Secretary, KLRC and alternate member to Mr. Kathurima M'Inoti

1.4 Terms of Reference

The original Terms of Reference of the Task Force were as follows:

1. To consider and make recommendations on the expansion, functions and independence of the Judicial Service Commission.
2. To consider and advise on a competitive process for the recruitment of Judges.
3. To consider and advise on the short and long term measures for addressing the backlog of cases.
4. To consider and advise on the financial autonomy and accountability of the Judiciary.
5. To consider the nature and necessity or otherwise of Regulations under section 68(3) of the Constitution of Kenya.
6. To review and finalize the Judicial Service Bill.
7. To consider and advise on ways of dealing with corruption or perceived corruption in the Judiciary.
8. To consider any other measures or proposals that are necessary to strengthen and enhance the performance of the Judiciary in the short and long term.
9. To consider and advise on how and when the proposed reforms/initiatives should be carried out.

The Task Force submitted its initial report to the Government on 10th August 2009. However, following a meeting of the Cabinet Committee on Finance, Administration and Planning held on 13th October 2009, it was resolved that the membership of the Task Force be expanded to include more stakeholders. Consequently, an

expanded Task Force was appointed on 2nd December 2009, with the following additional members:

1. Amb. Amina C. Mohamed, Permanent Secretary, MoJNCCA
2. Hon. Mr. Justin B. Muturi, former Member of Parliament
3. Ms. Rebecca Miano, Advocate
4. Mr. Patrick Ochwa, Advocate
5. Ms. Judith Sijeny, Advocate

The expanded Task Force was mandated to consider the following additional Terms of Reference:

1. Examine and consider the initial Report and its recommendations against the provisions and proposals in the Proposed Constitution of Kenya; and
2. Consider any other measures or proposals that are necessary to strengthen and enhance the performance of the Judiciary.

1.5 Method of Work

The operations of the Task Force were based at the Chief Justice's Boardroom at the Milimani Commercial Courts. The Task Force transacted its business mainly through hearings and meetings. In addition to the hearings, meetings and consultations held at the Chief Justice's Boardroom at the Milimani Commercial Courts, the Task Force also convened a National Stakeholders' Workshop on Judicial Reforms on 22nd April 2010, bringing together over 65 stakeholders to validate this Report.

In sum, the Task Force held consultations with the following:

- (i) The Chief Justice
- (ii) The Minister for Justice, National Cohesion and Constitutional Affairs
- (iii) The Attorney-General
- (iv) The Presiding Judge and Judges of the Court of Appeal of Kenya

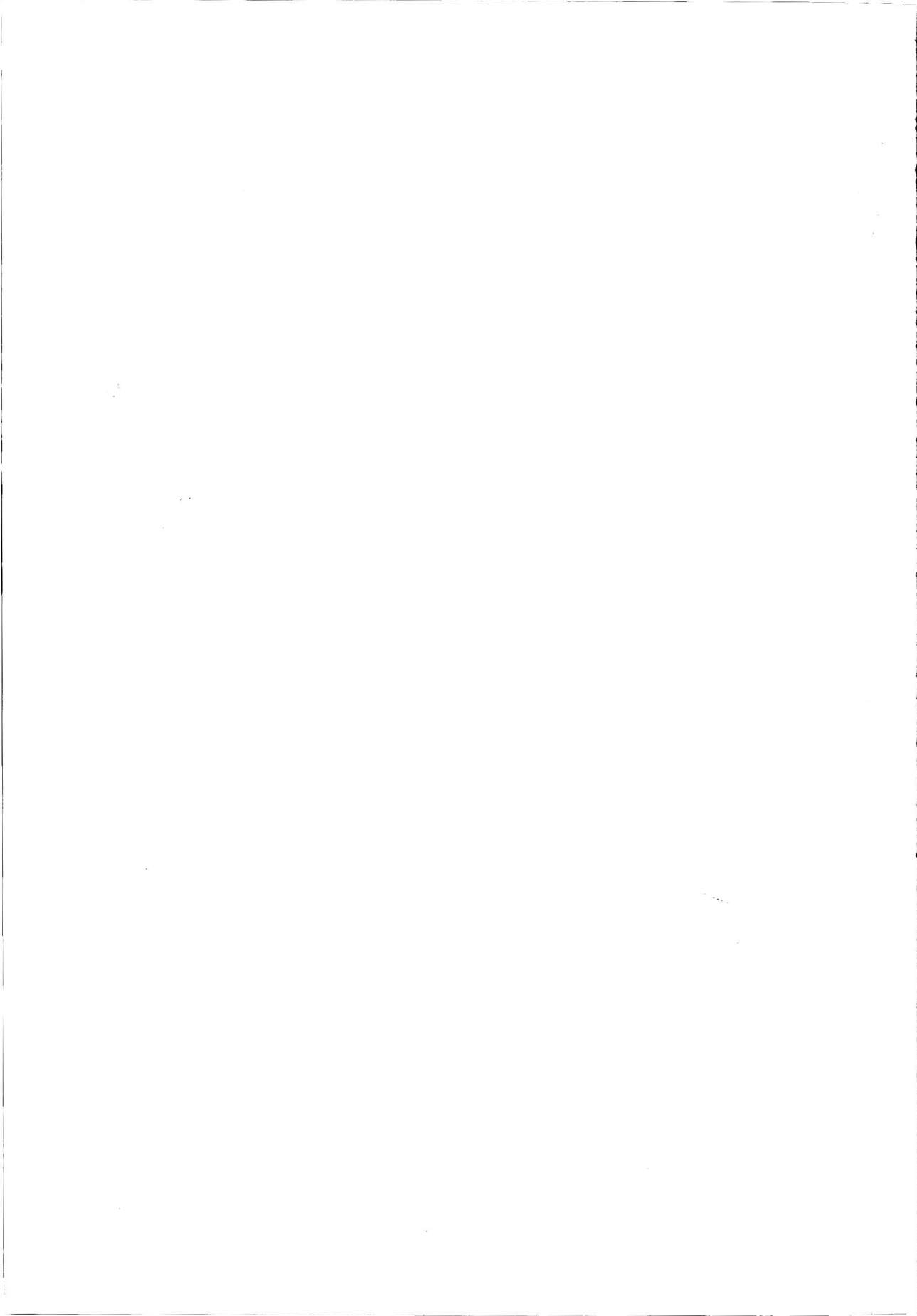
- (v) The Principal Judge and Judges of the High Court of Kenya
- (vi) Magistrates
- (vii) Court Executive Officers
- (viii) The Commissioner of Police
- (ix) The Administration Police Commandant
- (x) The Commissioner of Prisons
- (xi) The Department of Probation and After Care Services
- (xii) Kenya Anti-Corruption Commission
- (xiii) Kenya National Commission on Human Rights
- (xiv) Public Complaints Standing Committee
- (xv) The Community Services Order Committee
- (xvi) National Legal Aid (and Awareness) Programme
- (xvii) The Expeditious Disposal of Cases Committee
- (xviii) The Rules Committee
- (xix) Law Society of Kenya
- (xx) International Commission on Jurists (Kenya Section)
- (xxi) Chartered Institute of Arbitrators (Kenya Branch)
- (xxii) Business Premises Rent Tribunal
- (xxiii) Rent Restriction Tribunal
- (xxiv) Association of Kenya Insurers
- (xxv) Kenya Bankers Association
- (xxvi) International Centre for Transitional Justice
- (xxvii) Federation of Women Lawyers-Kenya (FIDA-Kenya)
- (xxviii) Kenya Human Rights Commission
- (xxix) Kituo Cha Sheria
- (xxx) Legal Resources Foundation
- (xxxi) African Centre for Open Governance

- (xxxii) Transparency International (Kenya)
- (xxxiii) Kenya Private Sector Alliance
- (xxxiv) The World Bank Kenya Country Office
- (xxxv) The Norwegian Embassy
- (xxxvi) International Development Partners participating in the Governance Justice Law and Order Sector (GJLOS) Reform Programme and the Democratic Governance Donor Group (DGDG).

Extensive reference was made to previous reports of the committees of the Judiciary and other reports and documents. These include:

- (i) The United Nations Basic Principles on the Independence of the Judiciary, 1985
- (ii) The Report of the Committee to Inquire into the Terms and Conditions of Service of the Judiciary (The Kotut Report), 1992
- (iii) The Commonwealth (Latimer House) Principles, 1998
- (iv) The Report of the Committee on the Administration of Justice (The Kwach Report), 1998
- (v) The Universal Charter of the Judge, 1999
- (vi) Report of the Advisory Panel of Eminent Commonwealth Judicial Experts for the Constitutional Review, 2002
- (vii) The Report of the Integrity and Anti-Corruption Committee of the Judiciary (The Ringera Report), 2003
- (viii) The Draft Constitution of Kenya 2004 (Bomas Draft), 2004
- (ix) Final Report of the Constitution of Kenya Review Commission, 2005
- (x) The Proposed New Constitution (Wako Draft), 2005
- (xi) The Report of the Subcommittee on the Ethics and Governance of the Judiciary (The Onyango Otieno Report), 2006

- (xii) The Report of the Task Force on Terms and Conditions of Service for Judicial Staff (The Bosire Report), 2007
- (xiii) The Consultancy Report on the Synchronised Survey of Pending Cases in Kenyan Courts, 2007
- (xiv) The Report of the Committee on Ethics and Governance of the Judiciary (The Kihara Kariuki Report), 2008
- (xv) The Kenya National Dialogue and Reconciliation: Agenda Item IV, 2008
- (xvi) The Kenya Vision 2030
- (xvii) The Medium Term Plan of Vision 2030
- (xviii) The Judiciary's Strategic Plan, 2009-2012
- (xix) An Assessment of the Needs of the Justice System in the Republic of Kenya (IBA-ILAC Report), 2009
- (xx) The Constitution and the Laws of Kenya, 2010
- (xxi) The Proposed Constitution of Kenya, 2010.



CHAPTER TWO

THE JUDICIAL SERVICE COMMISSION (JSC)

2.1 Overview

Judicial Service Commissions or Judicial Councils as they are called in some jurisdictions are central to the independence, integrity and efficiency of the judicial system. Judicial Service Commissions or Councils generally oversee the functioning of the Judiciary and ensure judicial independence and accountability through their oversight roles in the governance of the Judiciary in general, and the appointment, discipline, and removal of judicial officers in particular. Although the composition and means of appointment of the Commissions or Councils vary across different countries, an increasing trend has seen the inclusion of non-judicial membership. In most jurisdictions today, the Commission or Council is an independent entity, composed of not only Judges and representatives of other branches of government, usually the Attorney-General, but also professional associations, the Bar and public interest representatives. Similarly, the functions of the Commissions or Councils have evolved to include not only broad governance or policy-making roles on the Judiciary, but also disciplinary control over judicial officers, performance management and evaluation, and court management in some jurisdictions.

The Task Force notes that several reports on judicial reforms, including those appointed by the Judiciary, have pointed out that the composition, functions and practices of the JSC do not satisfy international best practices and standards. Under the Constitution, the main function of the JSC is the appointment, discipline and removal of the Registrar or Deputy Registrar of the High Court, magistrates of subordinate courts, Kadhis and other court officials. In relation to Judges of the Court of Appeal and High Court, the JSC only advises the President on their appointment.

In terms of the composition of the JSC, there is neither representation of the legal profession, the public nor court users. All the members of the JSC are direct presidential appointees, which reinforces a perception of lack of independence from the Executive. Finally, in comparison with the Commissions in the other branches

of government, namely the Public Service Commission and the Parliamentary Service Commission, the JSC does not have a fully functioning support administration or full-time Secretariat, separate from the judicial administration.

2.2 Composition

The composition of the JSC is set out under Section 68(1) of the current Constitution of Kenya as follows:

- (i) The Chief Justice as chairman
- (ii) The Attorney-General
- (iii) Two persons who are for the time being designated by the President from among the puisne Judges of the High Court and the Judges of the Court of Appeal
- (iv) The chairman of the Public Service Commission (PSC).

The membership of the JSC has been criticized for consisting only of persons appointed by the President and there is therefore the perception that the JSC is not sufficiently independent of the Executive. It has also been said that the current membership draws largely from the public sector, thereby locking out the potential contribution that other sections of society may bring into such a body.

The Constitution does not provide for the position of a secretary to the Commission. However, section 3(1) of the Service Commissions Act (Cap 185 Laws of Kenya) provides for a secretary to the Commission. Initially, this role was played by the personal secretary to the Chief Justice but with increasing institutionalization and complexity of the agenda of the JSC, this role was naturally vested in the Registrar of the High Court. The Secretariat functions of the JSC are performed by the Registrar instead of a Secretariat as envisaged in the Service Commissions Act. Therefore, there is lack of a clear separation between the operational or administrative arm of the Judiciary headed by the Registrar and the policy making body for the Judiciary, namely the JSC.

In order to enhance independence and promote accountability of the Judiciary, the Task Force recommends that the Constitution makes provision for the following:

- (i) An expanded membership of the JSC consisting of the following:**
 - (a) the Chief Justice, as chairperson¹**
 - (b) one Supreme Court Judge, elected by Judges of the Supreme Court²**
 - (c) one Court of Appeal judge, elected by the Judges of the Court of Appeal**
 - (d) one High Court judge, elected by the members of the association of Judges of the High Court³**
 - (e) one magistrate, elected by the members of the association of magistrates**
 - (f) the Attorney-General**
 - (g) two advocates of the opposite gender, each of whom has at least fifteen years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates**
 - (h) one person nominated by the Public Service Commission⁴**

¹ The Task Force recorded a minority position from three members, who took the view that the Chief Justice should neither be a member nor the Chairman of the JSC so as to avoid concentration of power in the office.

² The Task Force takes the view that given that the Chief Justice is also the President of the Supreme Court, Judges of the Supreme Court need not elect another Judge from among themselves to be a member of the JSC.

³ The Task Force notes that the Proposed Constitution of Kenya provides for one High Court Judge elected by the members of the association of Judges and magistrates to be a member of the JSC. The Task Force proposes that the election should be by Judges of the High Court. Accordingly, only the magistrate will be elected by the association of magistrates.

⁴ The Task Force observes that following the de-linking of the Judiciary from mainstream civil service in 1993 when judicial staff who were then seconded to the Judiciary by the Public Service Commission (PSC) became employees of the JSC, it is no longer necessary to have representation of the PSC in the JSC.

- (i) one woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly**
- (j) the Chief Registrar of the Judiciary as secretary.**
- (ii) In making nominations as proposed under (g), (h) and (i), the nominating authority shall ensure that the nominee is a person of high moral character and proven integrity.**
- (iii) An independent Secretariat of the JSC headed by a Registrar be established to support the Commission's functions.**
- (iv) Save for the Chief Justice and the Attorney-General, the other members of the Commission be required to hold office for a term of five years and may be eligible for reappointment for a further and final term of five years provided that they remain qualified.**

2.3 Functions

The functions of the JSC under the Constitution are limited to advising the President on the appointment of Judges and disciplinary control over the Registrar of the High Court, magistrates, Kadhis and other employees of the Judiciary. In effect, the JSC does not have constitutional functions relating to the discipline of Judges. It is also not mandated in the Constitution to oversee performance management, continuing judicial training and the administration of justice generally. The Task Force was also informed that on some of the JSC's important functions, such as judicial appointment, for example, there are no clear policies.

In order to strengthen the management of the Judiciary, the Task Force recommends that the JSC be responsible for promoting, facilitating and upholding the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice. The functions of the JSC should include the following:

- (i) Competitive, transparent and meritorious appointment of judicial officers and other staff of the Judiciary in**

accordance with the Constitution and relevant legislation.

- (ii) **Recommending to the President persons to be appointed as Chief Justice, Deputy Chief Justice and Judges.**
- (iii) **Receiving, investigating, evaluating and acting upon complaints against judicial officers and other staff.**
- (iv) **Discipline and removal of judicial officers and staff in the manner prescribed under the Judicial Service Bill or relevant regulations made thereunder.**
- (v) **Disciplinary control over Judges where the (mis)conduct in question does not warrant removal.⁵**
- (vi) **Presenting to the President petitions relating to the removal of a Judge on the grounds prescribed under the Constitution.**
- (vii) **Advising the President on the membership of the tribunal where a question arises regarding the removal of a Judge.**
- (viii) **Reviewing and recommending terms (other than remuneration) and conditions of service of judicial officers and staff in accordance with the Constitution.**
- (ix) **Performance management, evaluation and monitoring of judicial officers and staff and the Judiciary as a whole.**
- (x) **Preparing and implementing programmes for the continuing education and training of Judges, magistrates and other judicial staff.**
- (xi) **Advising the Government on the administration of justice.**
- (xii) **The promotion of access to justice.**

⁵ The Task Force notes that Article 260 excludes Judges in the definition of a "judicial officer," and the effect of this is to exclude Judges from the disciplinary remit of the Judicial Service Commission as provided under Article 172(1)(c) of the Proposed Constitution of Kenya.

- (xiii) The promotion of the principle of gender equality in the Judiciary.**
- (xiv) Any other functions prescribed by legislation.**

2.4 Independence

The Constitution provides that in the exercise of its functions, the JSC shall not be subject to the direction or control of any person or authority. International best practices and standards including the United Nations Basic Principles on the Independence of the Judiciary and the Commonwealth (Latimer House) Principles require states to guarantee the independence of the Judiciary, through among others, an independent Judicial Service Commission or Council. The principle is aimed at ensuring that the courts adjudicate matters on the basis of fact and law only, without any restrictions, improper influence, inducement, pressures, threats or interference, direct or indirect from any quarter or for any reason. On its part, the JSC must exercise its functions, and shall not be subject to the direction or control of any person or authority.

Judicial independence has the following underlying implications, each of which is addressed in different parts of this Report:

- (i) That judicial officers must be persons of integrity and ability, with appropriate training and qualifications in law.**
- (ii) That the tenure of judicial officers should be secured in the constitution and/or any other law.**
- (iii) That adequate resources are provided for the Judiciary to operate effectively without any undue constraints which may hamper its independence.**
- (iv) That the Judiciary's budget should be separately presented for approval by the Legislature and managed autonomously. The Judiciary itself should undertake its planning and management of the Judiciary Fund.**
- (v) That the remuneration of judicial officers and other judicial staff and expenses of the Judiciary be secured by law and charged on the Consolidated Fund. Further, that the**

remuneration of Judges should not be reduced or altered to their disadvantage.

- (vi) That judicial officers and staff should be paid competitive salaries determined on a regular basis by an independent body.
- (vii) That funds allocated to the Judiciary must be sufficient and sustainable. Funds allocated to the Judiciary through the budgetary process should be 'ring-fenced' so that the resources are not subject to reduction by Treasury.
- (viii) That judicial officers are not liable in any action or suit for any act or omission done or not done in the exercise of their judicial functions.
- (ix) That appointment of judicial officers must be merit based and transparent.
- (x) That judicial appointments to all levels of the Judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and other historic factors of discrimination.
- (xi) That the Judicial Service Commission should not be under the direction or control of any body, person or authority.

The question of the independence of the Judiciary has arisen particularly with regard to the funding of its operations. The Judiciary is funded from public resources through the Medium Term Expenditure Framework (MTEF) process in which public institutions are grouped into sectors. The Judiciary is grouped in the Governance, Justice, Law and Order Sector, together with the Office of the President, the Office of the Vice President and Ministry of Home Affairs, Parliament, MoJNCCA, State Law Office, the Kenya Anti Corruption Commission, Ministry of State for Immigration and Registration of Persons and the Interim Independent Electoral Commission. Each institution in the sector is subjected to a resources "ceiling".

While the sector approach is intended to achieve a coordinated approach to financing of public expenditure, the Judiciary has not received funding commensurate with its needs. For example, the

Task Force was informed that whereas the optimal expenditure of the Judiciary is KSh. 6 billion *per annum*, over the years, the allocation has been between KSh. 800 million and KSh. 1.2 billion constituting 0.3% or less of the total budget.

The Task Force established that in the 2009/2010 annual estimates, the Executive was allocated 98.2% of the national annual budget, the National Assembly 1.3% while the Judiciary was allocated only 0.5% of the Budget as tabulated in the table below. This demonstrates that the Judiciary is grossly under-funded and under-prioritized despite its functions and the fact that it is a substantial revenue earner to the Exchequer.

Table 1: Recurrent and Development Vote 2009/2010

Institution	Net Budgetary allocations in KSh.	Allocation as % of total gross allocation	Appropriation-in-Aid (A-I-A) in KSh.
Executive	598,720,812,637	98.2	41,203,725,920
National Assembly	7,688,893,530	1.3	
Judiciary	3,054,800,000	0.5	546,000,000
Total	609,464,506,167	100	41,752,725,920

To address the independence of the JSC and the Judiciary, the Task Force recommends that:

- (i) Legislation proposed in several parts of this Report be enacted so as to cumulatively guarantee the independence of the JSC and the Judiciary.**
- (ii) The remuneration and benefits payable to judicial officers and the administrative expenses of the Judiciary be charged on and issued out of the Consolidated Fund.**
- (iii) The Judiciary be allocated in the minimum 2.5% of the annual national budget to meet its recurrent and development expenditure.**

- (iv) **Financial allocations to the Judiciary be provided on a sustained basis to facilitate the proposed judicial reforms in this Report.**
- (v) **A Judiciary Fund be established and mechanisms for 'ring-fencing' its funds entrenched under the Judicial Service Bill.**
- (vi) **Legislation be enacted to regulate the management of a Judiciary Fund and establish procedures that guarantee the financial independence of the Judiciary.**

2.5 Accountability

Judicial independence must be tempered with judicial accountability. For this reason, the Task Force is of the view that the increased independence of the Judiciary should be reciprocated with increased judicial transparency and accountability. The Task Force received views of discourtesy, laziness, indifference, intemperance, rudeness, lateness and laxity by some judicial officers and staff, practices which have contributed to the negative image of the Judiciary. Representations were also made that the absence of a comprehensive and all-inclusive performance management system within the Judiciary has undermined judicial accountability.

While the Task Force is aware of the existence of administrative avenues for individual accountability, it is apparent that the public has no access to an autonomous complaints procedure to submit complaints on alleged misconduct and unethical behaviour by judicial officers and staff. In this regard, the Task Force recommends elsewhere in this Report the establishment of a Sub commission of the JSC and an Inspectorate Unit with oversight functions. The Task Force further notes the need to strengthen the relevant normative frameworks to ensure judicial accountability of individual officers and the institution as a whole, including through the development of separate Judicial Service Codes of Conduct for Judges, other judicial officers and staff.

The Task Force has further considered that as the head of the Judiciary and the chairperson of the JSC, the Chief Justice must be seen to be in the front line of fostering judicial accountability. In this

regard, representations were made that in addition to annual reports by the Judiciary and the JSC, the Chief Justice be required by law to deliver an annual national address reviewing the Judiciary's performance in the preceding year and outlining the Judiciary's policy directions, strategic objectives and plans of action in the ensuing year.

To realize and enforce accountability, the Task Force recommends that:

- (i) The JSC establishes an autonomous and transparent complaints and disciplinary procedure to receive, investigate and act upon complaints on alleged misconduct and unethical behaviour by judicial officers and staff.**
- (ii) In addition to the sanctions by the JSC complaints mechanism, the Judiciary institutes effective administrative sanctions for misconduct or unethical behaviour by judicial officers and staff.**
- (iii) The JSC develops and implements a performance management system as a means of ensuring accountability of judicial officers and staff and the Judiciary as a whole.**
- (iv) Peer review mechanisms be instituted in all court stations across the country so as to enhance internal and external accountability.**
- (v) The JSC prepares and submits annual reports to the President and Parliament.**
- (vi) The Judicial Service Bill provides for an annual address to the nation by the Chief Justice on the state of the Judiciary and the administration of justice.**

CHAPTER THREE

APPOINTMENT, DISCIPLINE AND REMOVAL OF JUDGES, JUDICIAL OFFICERS AND STAFF

3.1 Overview

The process of appointment of judicial officers has an important bearing on judicial independence, accountability, performance and integrity. Indeed, one of the causes of loss of public confidence in the Judiciary has been the use of non-transparent procedures in the appointment of Judges. In many jurisdictions, the appointment of Judges is no longer the exclusive province of the Executive. Candidates originate from an independent Judicial Service Commission or Council, and are only appointed by the Executive upon the written recommendation of such Commission or Council. In many jurisdictions, judicial recruitment is preceded by advertisement, vetting and interviews so as to attract talent and reduce risks of purely political appointments.

Similarly, the discipline and removal of Judges and other judicial officers also has an important bearing on judicial independence, accountability, performance and integrity. This is the basis of security of tenure for Judges, which protects Judges from sham disciplinary procedures or removal from judicial office, save in very clearly defined circumstances and in accordance with the due process of law. The distinction here is that disciplinary action should be taken where the complaint relates to less serious misconduct, misdemeanour or unprofessional conduct not warranting removal, whereas removal should be effected where a judge breaches the Code of Conduct and Ethics for Judges, or is otherwise unable or unfit to perform the functions of office due to incompetence, mental or physical incapacity, bankruptcy, gross misconduct or misbehaviour.

Judicial appointment, disciplinary and removal procedures have a function of ensuring judicial independence and accountability. The Task Force is aware of the inadequacies of the appointment, discipline and removal procedures for Judges under the current Constitution. The qualifications for appointment as a puisne or Court of Appeal Judge are basic, and a person is qualified if such person

has been a Judge of a court with unlimited jurisdiction in criminal and civil matters in some part of the Commonwealth, or has been an advocate of the High Court of Kenya of not less than seven years standing. The process through which candidates for appointment are currently identified and vetted by the JSC is neither transparent, nor based on any publicly known or measurable criteria. Similarly, the JSC lacks an institutionalized complaints mechanism to receive and process complaints against judicial officers and staff. The Constitution provides for the procedures for removal of Judges only; there are no equivalent procedures for disciplinary action against a Judge for alleged misconduct not warranting removal. Accordingly, disciplinary control over Judges is the responsibility of the Chief Justice, whose powers are discretionary.

In relation to other judicial officers and staff, the Judicial Service Commission Regulations, promulgated under the Service Commissions Act (Cap 185 Laws of Kenya), govern appointment, discipline and removal procedures. The appointment of magistrates is now preceded by advertisement, although this has not been institutionalized. Under the current disciplinary procedures, a judicial officer or staff may be surcharged, dismissed, demoted, or retired in the public interest for misconduct or misbehaviour. The Commission may also defer, withhold or stop salary increment. The current disciplinary procedures are however inadequate, due in part to the Regulations and their application.

3.2 Qualifications for Appointment of Judges

Under sections 61(3) and 64(3) of the current Constitution, a person shall not be qualified to be appointed a Judge of the Court of Appeal and the High Court unless:

- (a) he is, or has been, a Judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or a court having jurisdiction in appeals from such a court; or
- (b) he is an advocate of the High Court of Kenya of not less than seven years standing; or

- (c) he holds, and has held for a period of, or for periods amounting in the aggregate to, not less than seven years, one or other of the qualifications specified in sections 12 and 13 of the Advocates Act.

The foregoing qualifications are clearly insufficient to ensure the appointment of appropriately qualified and experienced persons. The Task Force observes that at the time when these qualifications were set, Kenya had just gained independence and did not have many qualified persons to take up appointment as Judges of the Court of Appeal and the High Court. **The Task Force therefore recommends that the Chief Justice, Deputy Chief Justice, Judges of the Supreme Court, Court of Appeal and the High Court be appointed from persons of high moral character, diligence, integrity and impartiality and who possess all of the following qualifications, skills or attributes:**

- (i) **In case of the Chief Justice, Deputy Chief Justice, Judge of the Supreme Court or Court of Appeal,⁶ at least fifteen (15) years or an aggregate of 15 years experience as a superior court Judge, distinguished academic, judicial officer or other relevant legal practice in the public, private or any other sector in Kenya or in other Commonwealth jurisdiction.**
- (ii) **In case of a Judge of the High Court, at least ten (10) years or an aggregate of 10 years experience as a distinguished academic, judicial officer or other relevant legal practice in the public, private or any other sector in Kenya or in other Commonwealth jurisdiction.**
- (iii) **Organizational and administrative skills, written and oral communication skills and professional and intellectual ability as demonstrated by academic qualifications and knowledge of substantive and procedural law.**

⁶ The Task Force notes that the qualifications for appointment as a Judge of the Court of Appeal and High Court are similar under Article 166(4) of the Proposed Constitution of Kenya. The Task Force is however of the view that the qualifications for appointment as a Judge of the Court of Appeal should be similar to qualifications for appointment as a Judge of the Supreme Court.

3.3 Procedure for Appointment of Judges

Under the current Constitution, Judges are appointed by the President on the advice of the JSC. In the case of the Chief Justice, the President has the prerogative of appointment without the advice of the JSC. In sharp contrast with the process of appointment of magistrates, which is preceded by advertisement and interviews, the process through which candidates for appointment as Judges are currently identified and vetted by the JSC is neither transparent, competitive nor based on any publicly known or measurable criteria. This approach, which has been referred to as “tap on the shoulder,” has denied many interested and qualified Kenyans equal opportunity to serve as Judges in the Judiciary.

The Task Force notes that since 2002, the appointment of Judges has been preceded by some form of vetting and consultation, but hastens to add that the vetting and consultations have not been institutionalized in any form by the JSC. The vetting process has also been fraught with systemic challenges or failures on the part of some agencies, hence undermining the integrity of the process. Due to these failures and lack of an open and merit-based process, it is likely that persons may be appointed as Judges when in fact they may not qualify on account of pending disciplinary cases, criminal investigations or any other reasons that otherwise disqualify them.

The Task Force is also concerned with the practice of appointment of Judges on acting or contractual basis. Internationally, it is generally accepted that such appointments undermine the independence of the Judiciary and should be discouraged. In order to address this and the concerns raised over the process of identification of persons to be appointed as Judges, the Task Force is convinced that there is need to open up the process so as to ensure equality of opportunity for all who are eligible for judicial office, through a transparent, open and merit based appointment process.

Accordingly, the Task Force recommends that:

- (i) The process of appointment of Judges be preceded by advertisement or any other acceptable transparent and fair process of identifying suitable candidates.**
- (ii) The appointment of all Judges be preceded by interviews.**
- (iii) The JSC subjects the names of those selected after interviews but before appointment to background investigation and thorough vetting on their moral probity, professional discipline and criminal record through bodies and offices such as the Chief Registrar of the Judiciary, Advocates Complaints Commission, the Criminal Investigation Department, the Disciplinary Committee of the LSK, the Kenya Anti-Corruption Commission (KACC) and the National Security Intelligence Service (NSIS) among other relevant institutions.**
- (iv) The JSC develops and implements a Judicial Selection Policy.**
- (v) The Chief Justice and the Deputy Chief Justice be appointed by the President in accordance with the recommendation of the Judicial Service Commission, and subject to the approval of the National Assembly.**
- (vi) The Chief Justice should hold office for a maximum of ten years or upon attaining the retirement age of seventy years, provided that if the Chief Justice's term of office expires before the retirement, the Chief Justice may continue in office as a Judge of the Supreme Court.**
- (vii) The procedure for vetting and appointment of Judges be underpinned by regulations made under the Judicial Service Bill proposed in Annex I.**

3.4 Discipline and Removal of Judges

Disciplinary and removal procedures are hallmarks of an independent and accountable Judiciary. In order to protect the integrity of the Judiciary, there must be procedures for disciplining Judges for misconduct or other unethical or unprofessional behaviour not warranting removal. Similarly, bankruptcy, inability to perform the functions of office arising from mental or physical incapacity, breach of the Judges Code of Conduct and Ethics, incompetence, misbehaviour or gross misconduct should render a Judge liable to removal from office in accordance with the Constitution. Both removal and disciplinary procedures must have constitutional safeguards and be in conformity with the rules of natural justice, due process and fairness, so that removal or disciplinary procedures are not used to victimize Judges.

Disciplinary action should generally follow complaints that do not warrant the removal of a Judge from office. Such grounds include less serious misconduct, misdemeanour or unprofessional conduct. Under the current legal framework, the Constitution provides for the procedures for removal of Judges only, and there are no equivalent procedures for disciplinary action against a Judge for misconduct not warranting removal. Thus, the Judicial Service Commission Regulations, promulgated under the Service Commissions Act (Cap 185 Laws of Kenya), govern only the discipline of other judicial officers and staff. The effect is that disciplinary control over Judges is the responsibility of the Chief Justice as the head of the Judiciary. However, this role is exercised in a limited manner, and is discretionary, for instance, through transfers, withdrawal of official work, refusal to grant permission to attend conferences or workshops or refusal to grant leave.

On removal of Judges, section 62(5) of the Constitution provides that a Judge may be removed if the Chief Justice represents to the President the question that the said Judge ought to be investigated. The Judicial Service Commission lacks an institutionalized complaints mechanism to receive and process complaints that may trigger the removal process. Therefore, in practice, the Chief Justice receives petitions from the Law Society of Kenya or reports from the integrity committees of the Judiciary. However, the Chief Justice has

discretion on whether or not to refer a question regarding the removal of a Judge to the President.

The grounds for removal of a Judge under the Constitution are limited to inability to perform the function of the office of Judge (whether arising from infirmity of body or mind or from any other cause) and misbehaviour. Where the Chief Justice presents a petition to the President that the question of removal of a Judge ought to be investigated, the President is required to appoint a tribunal which shall inquire into the matter and report to him on whether or not the Judge in question ought to be removed.

The Task Force is of the view that these glaring gaps in the discipline and removal procedures for Judges do not augur well for an independent and accountable Judiciary and therefore recommends that:

- (i) A Judge of a superior court may be removed from office on the grounds of**
 - (a) inability to perform the functions of office arising from mental or physical incapacity;**
 - (b) a breach of the Judges Code of Conduct and Ethics;**
 - (c) bankruptcy;**
 - (d) incompetence; or**
 - (e) gross misconduct or misbehaviour.**
- (ii) The removal of a Judge may be initiated only by the Judicial Service Commission, acting on its own motion or on the petition of any person submitted to it.**
- (iii) A Complaints Sub commission of the JSC be created to continuously receive, investigate, evaluate and act upon complaints against Judges, other judicial officers and staff.**

- (iv) **The Complaints Sub commission of the JSC be charged with disciplinary control over Judges where the (mis)conduct in question does not warrant removal.⁷**
- (v) **Where a Judge is charged with a misdemeanour, the JSC may recommend that administrative action such as formal warning, censure, surcharge, admonition or reprimand be taken by the Chief Justice.**
- (vi) **Where a Judge is charged with a felony, the JSC should recommend to the President the suspension of the Judge from exercising the functions of judicial office pending the determination of the matter.**

3.5 Appointment, Discipline and Removal of other Judicial Officers and Staff

Judicial officers and judicial staff are the face of the Judiciary. They symbolize not only the institution, but also the state of the Judiciary in terms of its performance and practices. The Task Force considers therefore that emphasis must be placed on strengthening the procedures and standards for appointment, discipline and removal of judicial officers and staff as a matter of urgency.

The Judicial Service Commission Regulations, promulgated under the Service Commissions Act (Cap 185 Laws of Kenya), govern the recruitment, discipline and removal of judicial officers and staff. The Task Force notes that following the recommendations of previous committees, the appointment of magistrates has been preceded by advertisement. However, there is need to institutionalize this system across the Judiciary, and ensure only merit-based appointments. In particular, the Task Force notes that the qualifications for appointment of Kadhis are inadequate and therefore in need of review. Under section 66(2) of the current Constitution of Kenya, a person is qualified to be appointed a Kadhi or acting Kadhi if that person professes the Muslim religion, and possesses such knowledge of the Muslim law applicable to any sect or sects of Muslims. In line

⁷ The Task Force notes that Article 172(1)(c) of the Proposed Constitution of Kenya does not give the JSC disciplinary powers or functions over Judges given the absence of reference to Judges in the Article, as well as the omission of Judges in the definition of a "judicial officer" under Article 260.

with this provision, the JSC has the responsibility to determine the competences, which in its opinion, qualifies a person to hold the offices of a Kadhi, and has in the past established a degree requirement in Muslim law. However, the Task Force was informed that a number of past Kadhis had inadequate or inappropriate qualifications in law, despite the thresholds set by the JSC.

In relation to disciplinary procedures, a judicial officer or staff who is found guilty of misconduct may be surcharged, dismissed, demoted, or retired in the public interest. The Commission may also defer, withhold or stop salary increment. The Task Force however notes the weaknesses of the current disciplinary procedures as identified in past reports, as follows:

- (a) It lacks independence because the JSC prepares the charges, determines the same, and considers and determines appeals thereon.
- (b) It is highly discretionary, that is, the Chief Justice and the Registrar have the latitude to decide whether or not to subject an officer to the procedures.
- (c) Other than in the case of magistrates, it has inadequate procedural fairness safeguards, including the rules of natural justice.
- (d) It has inadequate interface with or feedback to the complainant.

The Task Force affirms the recommendations of previous reports on the appointment, discipline and removal of judicial officers and staff and further recommends that:

- (i) The recruitment of judicial officers and staff be meritorious and competitive, taking into account the diversity of the Kenyan people.**
- (ii) Comprehensive criteria for the recruitment of judicial officers and staff be developed and adopted by the JSC to ensure standardization in the recruitment process.**
- (iii) A person should not be qualified for appointment as a magistrate or Kadhi unless such person is of high moral character, diligence, integrity and impartiality, and**

possesses the following additional qualifications, skills and attributes:

- (e) In the case of a magistrate, a degree in law from a recognized University and relevant experience following admission as an advocate of the High Court of Kenya as per the Judicial Service Schemes of Service 2008.**
- (f) In the case of a Kadhi, profess the Muslim faith and possess a degree in humanities or social sciences from a recognized University, in addition to qualifications in Muslim or Islamic law from a recognized University.**
- (iv) The appointment of all judicial officers and senior staff be preceded by advertisement, interviews and vetting by the JSC.**
- (v) Procedures and regulations for receiving and processing complaints and enforcing disciplinary actions against all judicial officers and staff be enacted under the Judicial Service Bill.**
- (vi) In cases not warranting removal, disciplinary action be taken against judicial officers and staff by the JSC Complaints Sub commission promptly, fairly and decisively.**
- (vii) Judicial officers and staff be liable to removal on the grounds of inability to perform the functions of office arising from mental or physical incapacity; for breach of the relevant Judicial Service Code of Conduct and Ethics; bankruptcy; incompetence; gross misconduct or misbehaviour.**
- (viii) Feedback mechanisms be established to ensure that complainants and the public are informed of disciplinary action taken against judicial officers and staff by the JSC.**

CHAPTER FOUR

CASE BACKLOG AND MANAGEMENT

4.1 Overview

Case backlog is one of the greatest challenges facing the Judiciary today. According to the Report on the Synchronized Survey of Pending Cases in Kenyan Courts (December 2009), the cases pending before the Court of Appeal in Nairobi and its circuit stations were estimated at 2,372, the High Court stations at 115,344 and magistrates' courts at 792,297 making a total of 910,013. Of the cases in the magistrates' courts, 144,963 were classified as criminal cases, 398,136 as traffic cases and the rest as civil cases. The said report defines backlog as cases pending for over five years. However, it is the view of the Task Force that a case that remains undetermined for a period of three years constitutes backlog.

Case backlog in the Judiciary has arisen from a number of factors. These include shortage of judicial officers and staff, inadequate number of courts and infrastructure, inappropriate rules of procedure, court vacations, jurisdictional limits on magistrates courts and mechanical management of court records and proceedings. The Task Force also considered that the problem of backlog arises from weak case management systems in the Judiciary. Representations were made that the weak case tracking and records control systems make it difficult or impossible to generate quick and accurate statistics on the number of cases before the courts, and their actual status. This in turn undermines effective case management, as well as timely identification of patterns that need remedial action in the interest of the administration of justice.

4.2 Shortage of Judicial Officers and Staff

The Judiciary suffers from a chronic shortage of judicial officers and staff. Currently, the total number of vacant positions in the Judiciary stands at 1,456 against an establishment of 4,681. Thus there are eleven (11) Court of Appeal Judges out of an establishment of fourteen (14) Judges and forty six (46) High Court Judges out of an establishment of seventy (70). The total number of magistrates in post is two hundred and seventy seven (277) against an

establishment of five hundred and fifty four (554). The Task Force also noted that the deployment of judicial officers neither reflects the caseload in the various courts nor takes into account the population of the areas served by the courts. Additionally, the distribution of judicial officers in the country is not based on any objective criteria such as population trends, caseload or availability of infrastructure or facilities.

Table 2: Distribution of Judges and other judicial officers in High Court stations

Court/Division	High Court Judge	Chief Magistrate	Senior/ Principal Magistrate	Senior/ Resident Magistrate	Chief/ Kadhi
Nairobi (JTI)	1		2		
Nairobi (Kibera/Makadara Juvenile/City Court)		5	13	17	
Nairobi (Milimani/Commercial)	3	1	5	4	1
Nairobi (Family)	2				
Nairobi (Constitutional and Judicial Review)	2				
Nairobi (Civil)	5				
Nairobi (Criminal)	4				
Nairobi (Environment/Land)	3				
Mombasa	4	1	2	8	2
Malindi	1	1	1	1	1
Machakos	1	1	2	2	
Embu	1	1	1	2	
Meru	2	1	2	2	
Kakamega	2	1	1	3	
Bungoma	1	1	2	2	1
Busia	1		1	3	
Kericho	1		2	2	
Nakuru	3	1	3	6	1
Eldoret	2	1	2	5	1
Kitale	1	1	2	2	
Kisii	2	1	2	4	
Kisumu	2	1	2	3	1
Nyeri	1	1	1	4	1
Total	45	19	46	70	9

While the table above is only representative of the distribution of Judges and other judicial officers in High Court stations, the number of Judges and magistrates as demonstrated in the table does not reflect reasonable symmetry with the growing population, increased number of litigants and the increased levels of literacy and awareness. Viewed in the context of an estimated population of 40 million, this ratio is disproportionately below that of countries with comparable populations. Presently the population to Judge ratio stands at 603,448 persons per Judge in Kenya, while in Canada there are about 2,000 Judges (who include judicial officers equivalent to magistrates) who serve a population of 35 million, translating to 17,500 persons to every Judge.

The Task Force established that one of the reasons why the vacancies for judicial officers have not been filled for some time is because of lack of physical facilities to accommodate them. To address this, the Judiciary is undertaking construction of courts in several stations in the country. The construction has however been delayed due to the Government of Kenya's practice of not providing all the funds that are needed to complete the work in time. As a result, construction of courts is spread over many years, resulting in escalation of costs. The best illustration of this is the conversion of the Income Tax Building to the Milimani Law Courts Project. The tendering process began in 2004, whereupon construction work commenced in 2005. The original contract sum in 2005 was KSh. 696,101,909.00, which has since been revised to KSh. 928,595,606.40. One of the reasons causing the delay in completion of the Project is that Treasury opted to spread the finances for the Project across four financial years, beyond the recommended two years.

The Task Force is of the view that this approach to the financing of projects does not augur well for the Judiciary. To address the problem of physical space, the Judiciary should in addition to constructing courts, consider leasing offices as a short term solution. In addition, the Task Force is of the opinion that court construction projects should be allocated adequate finances to enable finalization within reasonable time. The Task Force is also aware that there are cases where parcels of land belonging to the Judiciary have been

irregularly acquired by or allocated to private individuals or companies, and recommends the repossession thereof. These include the former official residential houses of the Chief Justice in Nairobi and other judicial officers in Embu, Meru and Malindi and parcels of land in Kakamega, Kerugoya, Kisii, Kiambu, Kisumu, Eldoret and Mombasa, some of which have been recently reinstated to the Judiciary.

To address the problem of shortage of judicial officers and staff in the Judiciary, the Task Force recommends that:

- (i) All vacant posts for judicial officers be filled without further delay through a competitive and transparent process.**
- (ii) Section 7 of the Judicature Act (Cap 8 Laws of Kenya) be amended to increase the establishment of the Court of Appeal to at least 30⁸ Judges and the High Court to 120 Judges.**
- (iii) The JSC hires and distributes judicial officers equitably across the country, taking into account caseload, population trends and any other special needs such as those of marginalised areas.**
- (iv) The JSC hires additional support staff to enhance the capacity of the understaffed units such as Finance, the Central Planning and Project Management Unit, ICT and the Secretarial Service Unit.**
- (v) The Court of Appeal be decentralized to Mombasa, Kisumu, Nakuru and Nyeri with the intention of gradually phasing out the Court of Appeal circuit system.**
- (vi) New High Court stations be established in Migori, Kitui, Thika, Busia and Garissa.**

⁸ The Task Force notes that given its recommendations regarding the establishment of a Supreme Court, decentralization of the Court of Appeal and increment in the number of High Court Judges and stations, the minimum number of Judges of the Court of Appeal should be 30.

- (vii) Magistrates courts of appropriate designation be established in Kasarani, Kinango, Munjila, Masalani, Bute, Laisamis, Marimanti, Kyuso, Wote, Engineer, Chaka, Lokitaung, Lokichar, Wamba, Kesses, Kapsowar, Kabiyet, Chemolingot, Eldama Ravine, Rumuruti, Loitoktok, Lumakanda, Kapsokwony, Budalangi, Amogoro, Kosele and Mbita and any other additional places as need arises.**
- (viii) Funds be availed for the construction of court buildings in Kericho, Kisii, Eldoret and Machakos and expansion of constrained physical infrastructure and court buildings in Kakamega, Meru, Mombasa, Kitale, Bungoma, Embu, Garissa, Thika and Nakuru.**
- (ix) Pending the construction of courts, funds be availed for leasing of premises for the courts in Meru, Mombasa, Nakuru, Kisii, Eldoret and Kakamega.**
- (x) Funds be immediately provided for the completion and acquisition of furniture and equipment for the Income Tax Building in Nairobi and the other courts under construction in Nyeri, Gatundu, Malindi, Kisumu, Migori, Kehancha, Naivasha, Narok, Kakamega, Sirisia, Busia and Garissa.**
- (xi) The acquisition of Forodha House for use by the Judiciary be expedited.**
- (xii) The Ministry of Lands and the Judiciary repossess all the former residential houses of the Judiciary and land parcels irregularly divested from the Judiciary and reinstate titles thereto to the Judiciary.**

4.3 Commissioners of Assize

In the past, Commissioners of Assize have been appointed to deal with backlog of cases in the High Court pursuant to the Commissioners of Assize Act (Cap 12 Laws of Kenya). The Task Force is aware of the concerns that have been raised in the past over the appointment of Commissioners of Assize. For instance, representations were made that Commissioners of Assize were effectively 'Judges in waiting,' yet they had been contracted to perform specific tasks. Furthermore, the Task Force notes that some Commissioners of Assize exercised jurisdiction in relation to new cases, instead of focusing only on the backlog cases. Finally, past Commissioners of Assize have not been subjected to a rigorous performance appraisal system or other means of measuring their outputs.

Learning from these experiences, it is the considered view of the Task Force that as a temporary measure towards addressing the backlog of cases, pending the hiring of Judges, Commissioners of Assize be appointed and the above shortcomings addressed. **The Task Force therefore recommends that:**

- (i) Commissioners of Assize be appointed for an initial period of one (1) year to hear and determine cases in the High Court that are pending for over 5 years or as may be directed by the Chief Justice.**
- (ii) In hearing and determining cases, Commissioners of Assize shall exercise the same powers as Judges of the High Court of Kenya, provided that they may only deal with backlog cases pending for over 5 years and no other newly filed matters.**
- (iii) The Commissioners of Assize be deployed as shown in the table below or in any other High Court stations as the Chief Justice may determine.**

Table 3: Proposed Deployment of Commissioners of Assize

High Court Station	Proposed Deployment of Commissioners of Assize
Commercial and Tax Division Milimani	4
Mombasa	2
Meru	2
Nyeri	1
Nakuru	2
Machakos	1
Kakamega	2
Eldoret	2
Kisii	1
Kisumu	1
Civil Division in Nairobi	2
Criminal Division in Nairobi	2
Total	22

- (iv) **The Commissioners of Assize be appointed through an open, competitive and merit-based process.**
- (v) **To be qualified for appointment as a Commissioner of Assize, a person should be of high moral character, integrity and impartiality and meet all of the following qualifications-**
 - (a) **at least ten (10) years or an aggregate of 10 years experience in active legal practice in the public or private sector or any other sector in Kenya or in any other Commonwealth jurisdiction.**
 - (b) **intellectual ability as demonstrated by academic qualifications and eminence in legal practice or public service.**
 - (c) **should not have attained the mandatory retirement age for Judges.**
- (vi) **Competitive remuneration be offered to the Commissioners of Assize in order to attract**

appropriately qualified persons as proposed in the Draft Instrument of Appointment appended to this Report as Annex III.

- (vii) The performance of the Commissioners of Assize be reviewed six months after appointment or as the Chief Justice may determine.**
- (viii) All Commissioners of Assize be required to take an oath of office under the Promissory Oaths Act (Cap 100 Laws of Kenya) before assuming their functions.**

4.4 Specialisation by Judicial Officers

The Task Force considered representations whether Judges should specialise in specific areas of law. The argument in favour of specialization is that whereas judicial officers should be competent in all legal subjects, they should have special knowledge of the subject areas that they adjudicate upon so as to develop jurisprudence in line with contemporary advancements. Secondly, specialisation has the potential of expeditious disposal of cases as such specialisation facilitates speedier resolution of complex issues on which the court is called upon to determine.

The Task Force is aware that these advantages notwithstanding, specialization may restrict judicial officers to specific areas of law, leading to narrowness of judicial thought. Additionally, most cases are not neatly compartmentalised by subject areas, and as such judicial officers must remain competent in a considerable number of legal areas. Moreover, the requirement for regular transfer of judicial officers may also affect the implementation of specialization, given that the specialized court divisions may not be spread throughout the country. This challenge also applies to concerns that where a judicial officer is promoted to a higher court, such officer is expected to demonstrate knowledge of all branches of the law. The Task Force therefore considers that the implementation of this recommendation should be flexible so that specialization is not too restrictive of the subject areas in which judicial officers specialize. Finally, specialisation would require that the shortage of Judges and magistrates and the transfer policy is addressed as recommended elsewhere in this Report. **The Task Force therefore recommends**

that the Judiciary institutes in the long-term, measures towards specialisation by judicial officers through the establishment of court divisions throughout the country.

4.5 Assessors

The Statute Law (Miscellaneous Amendment) Act No. 7 of 2007 removed the use of assessors in murder trials. The amendment did not give clear direction as to what was to happen to the on-going murder cases involving assessors. As a result, some Judges discharged the assessors who were in the trials while others retained them in the trials. The Court of Appeal has now held that where trials commenced with the aid of assessors before the aforesaid amendment, the trials must proceed to conclusion with assessors. Accordingly, a number of cases where assessors had been discharged have been declared a nullity and retrials ordered resulting in more delays and backlog. The overall effect of these decisions is that the mischief sought to be addressed by the amendment has not been achieved.

To address this situation, the Task Force recommends that the Criminal Procedure Code (Cap 75 Laws of Kenya) be amended to dispense with the requirement for assessors even in cases which had begun with the aid of assessors before the amendment.

4.6 Criminal Appeals in the High Court

Section 349 of the Criminal Procedure Code (Cap 75 Laws of Kenya) provides that a person convicted after a trial by a subordinate court may appeal to the High Court within fourteen days from the date of sentence. Many appellants having filed appeals fail to prosecute them for one reason or another. Unlike in the Civil Procedure Rules (CPR), there are no provisions in the CPC for dismissal for want of prosecution. It has been held by the Court of Appeal that where the appellant does not present himself before the court to prosecute his appeal, the only option for the High Court is to either adjourn the appeal to another day or determine it in the absence of counsel or the appellant. Accordingly, the High Court has no discretion to dismiss such cases for want of prosecution.

Under section 359 of the Criminal Procedure Code, appeals from subordinate courts shall be heard by two Judges of the High Court, except when in any particular case the Chief Justice, or a Judge to whom the Chief Justice has given authority in writing, directs that the appeal be heard by one Judge of the High Court. The Task Force takes the view that this provision does not advance the objective of fair and efficient administration of justice, and should be amended to provide that with the exception of appeals relating to capital offenses, all other criminal appeals from subordinate courts shall be heard by one judge of the High Court.

The Task Force therefore recommends that:

- (i) The Criminal procedure Code (Cap 75 Laws of Kenya) be amended to grant the High Court power to dismiss appeals for want of prosecution, after notice of intention to dismiss is given by the Court, where the appellant**
 - (a) cannot be traced if on bond pending appeal**
 - (b) has taken no steps to prosecute the appeal within one year without justification**
 - (c) has served the sentence.**
- (ii) Section 359 of the Criminal Procedure Code be amended to provide that criminal appeals from subordinate courts shall be heard by one Judge of the High Court, except in cases relating to capital offences.**

4.7 Plea Agreement Negotiations (Plea Bargaining)

Plea agreement or plea bargaining is a practice that has been adopted in many jurisdictions including common law countries. Plea bargaining or plea agreement (known in other jurisdictions as plea deal or copping a plea) is an arrangement in a criminal case where the prosecutor and the accused person agree on a reduced charge or a reduced number of counts to save the court's and accused person's time.

The Statute Law (Miscellaneous Amendments) Act, Act No. 11 of 2008 amended the Criminal Procedure Code by introducing Section 137A-O on Plea Agreement Negotiations. Under Section 137 O, the

Attorney-General is required to make rules operationalising plea bargaining. The Task Force was informed that the rules have not been made. In the absence of the rules, judicial officers have been reluctant to invoke this law, for fear that it may subject them to perceptions and allegations of compromise and corruption, in the absence of sensitization of the public on the idea of plea bargaining. Representations were also made that there is a tendency by state counsel to defer and delay plea bargaining, claiming that they neither have the discretion nor the "full-powers" to make decisions without reference to the Attorney-General or the Director of Public Prosecutions.

The Task Force is of the view that plea bargaining can assist in the expeditious disposal of criminal cases in the Judiciary and accordingly recommends that:

- (i) The public, judicial officers, advocates and prosecutors be sensitised on plea bargaining.**
- (ii) The Attorney-General promulgates rules under Section 137 O of the CPC without further delay.**

4.8 Rules of Procedure

The complex rules of procedure of courts in Kenya are partly the cause of case delays and backlog. The Task Force noted that the institutionalization of law reporting, induction courses and continuous judicial training notwithstanding, the Judiciary lacks adequate and appropriate easy-to-read, authoritative reference material for serving and newly appointed judicial officers. The Task Force notes that criminal procedure bench books had been developed by the Judiciary for magistrates in the past, but these have not been widely availed to judicial officers.

The Rules Committee and the Expeditious Disposal of Cases Committee of the Judiciary have the mandate of reviewing the rules of procedure in order to improve access to justice and hasten the pace of the administration of Justice. The Rules Committee is established under the Civil Procedure Act, whereas the Expeditious Disposal of Cases Committee is administrative. The mandate of the Rules Committee is however limited to civil procedure, and there is

no equivalent to the Rules Committee to deal with rules of procedure in criminal matters.

There has been some improvement of the rules as a result of the work of both Committees. The Rules Committee submitted a report to the Task Force proposing several far-reaching amendments and initiatives to reform the civil rules of procedure. One of these proposals is that the Civil Procedure Act should be amended to introduce court-annexed mediation. These proposals were incorporated in the Statute Law (Miscellaneous Amendment) Bill 2009. The Task Force has established that the amendments were withdrawn from the Bill that was enacted, due to concerns raised in Parliament.

The Task Force has examined the various reports compiled by the two Committees and it is apparent that some of their recommendations will require legislative amendments while others will require amendments to the rules. **To expedite the reform of the rules, the Task Force recommends that:**

- (i) The reports and recommendations of the Rules Committee and Expeditious Disposal of Cases Committee be implemented forthwith.**
- (ii) A Criminal Procedure Rules Committee be established under the Criminal Procedure Code (Cap 75 Laws of Kenya) to make and review rules relating to the criminal justice system.**
- (iii) The recommendations that will require legislative amendment be isolated and forwarded to the office of the Attorney-General for necessary action and eventual enactment by Parliament.**
- (iv) Criminal Law and Civil Procedure bench books be developed and distributed to all judicial officers.**

4.9 Case Management

Delay in delivery of judgements in the courts of law has led to loss of confidence in and increased public perception of corruption and incompetence in the Judiciary. Attention of the Task Force was drawn to cases where judgements and rulings have been pending for periods as long as three years or more. This is despite the fact that Order XX Rule 1 of the Civil Procedure Rules limits the period for delivery of judgements to 42 days from the date of the conclusion of trial.

The Task Force is aware that some judicial officers do not take case management seriously and have instead left lawyers, litigants and prosecutors to dictate the pace of proceedings. The Task Force is of the view that if speedier dispensation of justice is to be achieved, courts must exercise greater control of the proceedings before them. The Practice Directions issued by the Chief Justice in Gazette Notice 8167 of 5th September 2008 provide a useful basis to begin the process of case management. They require, amongst other things:

- (a) That courts should permit the filing and exchange by parties of written submissions to minimize oral arguments.
- (b) That parties should file and serve a list of authorities three clear days before the hearing and the same be paginated and highlighted.
- (c) That courts should mention their matters at least once before the hearing date for purposes of an order for directions.
- (d) That courts should hold monthly call-over of the cases on the day's cause list for purposes of ascertaining their readiness for hearing and allocating time for the hearing.
- (e) That courts should conduct prison visits.
- (f) That courts should set aside at least a day in each month for purposes of examining cases concluded and orders made by subordinate courts.
- (g) That courts should deliver timely judgements, on specified dates.

- (h) That courts should list for hearing only such number of cases that they can reasonably handle.
- (i) That courts should undertake preliminary inquiries into periods of detention by the police for the accused person.
- (j) That courts should enforce Order XIV which requires that statements of agreed issues for determination be framed and filed before hearing in civil cases.
- (k) That typing of proceedings be a continuous process.
- (l) That parties should exchange summaries of respective cases before trial.
- (m) That there be a capping of the time for hearing of cases and applications.
- (n) That old cases and cases involving children and all criminal cases be fast tracked.
- (o) That interlocutory matters under Order XLVIII R. 5 of the Civil Procedure Rules be heard by Deputy Registrars.

The Task Force is of the view that these Practice Directions can contribute immensely to efficient dispensation of justice. Unfortunately, many judicial officers and advocates are unaware of, or do not pay keen attention to them and as such, their impact is yet to improve the effectiveness of the administration of justice. **In the circumstances and in order to improve case management in courts, the Task Force recommends that:**

- (i) **Judicial officers be required to take responsibility for managing and reducing backlog of cases through practical measures including:**
 - (a) **enforcement of the Judicial Service Regulations relating to the opening and closing hours of the courts;**
 - (b) **enforcement of Order XVI of the Civil Procedure Rules (dismissals for want of prosecution);**

- (c) **adjourning matters to specific dates with specific directions and in this regard avoiding the practice of Stood Over Generally (SOG); and**
 - (d) **dismissing matters in which there is no reasonable justification for failure to proceed on a scheduled date.**
- (ii) **Judicial officers and advocates be sensitized on the Chief Justice's Practice Directions to improve compliance.**
- (iii) **Deputy Registrars undertake adequate pre-trial case management by ensuring among other things that all documents needed for hearings are filed before a case can proceed to hearing.**
- (iv) **Order XX Rule 1 of the Civil Procedure Rules on delivery of judgment within 42 days be strictly observed and failure to do so should attract a Notice to Show Cause from the Chief Justice, who will set in motion enforcement of administrative sanctions if no sufficient cause is shown for the delay.**
- (v) **Case monitoring registers be created and published to track overdue judgements and rulings and the dates reserved for judgements and rulings.**
- (vi) **Resident Judges and heads of stations be required to hold quarterly station meetings to discuss matters affecting the work of their courts including backlog of cases. As a monitoring measure, the minutes of such meetings should be forwarded to the Chief Justice and Chief Registrar of the Judiciary.**
- (vii) **Bar-Bench Committees be mandated to submit a list of judgements or rulings pending beyond the 42-days' limit to the Chief Justice for remedial action.**

4.10 Allocation of Cases

The Task Force has observed elsewhere in this Report that cases are allocated separately by both judicial officers and registry clerks. The result is a bloated and unrealistic cause list which leads to matters being taken out, unwarranted adjournments and poor public perception of judicial officers' ability to perform their functions. In a station with more than one magistrate, magistrates-in-charge usually allocate cases to all other courts. Other magistrates in the station do not play a role in allocation of matters while in some instances, matters are allocated to magistrates who do not have jurisdiction to hear such cases.

The Task Force has further noted a tendency where advocates or parties arrange for their cases to be heard before particular judicial officers of their choice whom they consider more favourable. The Task Force also notes that the system of listing cases varies from one court station to another, with some listing applications in the morning while others in the afternoon. In addition, some courts issue daily or weekly cause lists while others prepare monthly cause lists. Finally, there is also a practice in some courts where, depending on the flare of the Judge, cases are allocated to the Judge as per their preference and not the needs of the administration of justice. In this regard, representations were made to the Task Force for a random or computer-based system, or any other mechanism that guarantees transparent and fair allocation of cases and ensures that cases are not pre-directed to particular judicial officers.

To ensure standardized, transparent and fair allocation of cases and to address the weaknesses noted in the system, the Task Force recommends that:

- (i) Mechanisms be developed for harmonizing dates taken at the registry and those given in court so as to avoid over-listing.**
- (ii) Cause lists should be based on the complexity of cases. In this regard,**
 - (a) Cause lists for the High Court should consist of a maximum of 10 applications and 4 hearings per day; and**

- (b) Cause lists for magistrates' courts should consist of a maximum of 10 applications and 8- 10 hearings per day.
- (iii) Standardized court sittings and procedures be introduced in all courts so that all courts sit between Monday to Thursday and Friday be set aside for "Judge matters" (matters fixed by judicial officers, mentions, rulings, judgements and visits to *locus in quo*).
 - (iv) All courts should begin their sittings by 9.00 a.m., with applications commencing between 9.00 a.m. and 11.00 a.m. and trials or hearings thereafter.
 - (v) Any registry staff or judicial officer found engaging in forum shopping (i.e. fixing a matter before a particular judicial officer considered favourable) be subjected to disciplinary action.
 - (vi) Cause lists be fixed by courts on a weekly basis.
 - (vii) In courts with more than one magistrate of even jurisdiction, cases be allocated by the magistrates on a rotational basis.
 - (viii) Cases be allocated taking into account the pecuniary jurisdiction of the magistrate to whom the case is allocated.
 - (ix) Criminal and civil cases be given equal attention in the allocation of cases.

4.11 Traffic Cases

The Report of the Synchronized Survey of Pending Cases in Kenyan Courts (December 2009) indicates that out of the 792,297 pending in magistrates courts 398,136 are traffic cases. The Task Force has observed that nearly all these traffic cases relate to minor offences under section 117 of the Traffic Act, in which the police are permitted to issue police notification forms charging the offender and which require the offender to plead guilty and forward the same to the court for imposition of a fine. In practice, however, it has been extremely difficult for courts to collect these fines because in most

cases the details of the offender are not correct and the offending vehicle may have been transferred to another party. To date, approximately KSh. 90 million is held up in form of these uncollected fines.

The Task Force also considers that the deployment of the Police in traffic control does not augur well with efficient use of security sector resources. The Task Force takes the view that the Police should focus on crime prevention and maintenance of law and order. In this regard, the Task Force recommends that a National Road Safety Authority be established independent of the Kenya Police Service to regulate, oversee and enforce compliance with road safety policy and legislation, including the disposal of petty traffic offences. The Task Force notes that similar institutions have been established in other jurisdictions, with the mandate to develop and enforce road safety standards, and calls for wide consultations with stakeholders including but not limited to the Police, the Judiciary, the State Law Office, the Ministry of Transport, the Kenya Revenue Authority, Law Society of Kenya, local authorities, transport industry players and the private sector towards the creation of the proposed body.

To address the problem of traffic cases, the Task Force recommends that:

- (i) A National Road Safety Authority be established independent of the Police Service to manage petty traffic offences and other related matters.**
- (ii) Instant (on the spot) imposition of fines be introduced for traffic offences as proposed by the Minister for Finance in the 2009/2010 Budget Speech.**
- (iii) An information and data networking mechanism be developed to enable information sharing between the proposed National Road Safety Authority, the Police, the courts and the Registrar of Motor Vehicles on traffic offenders.**
- (iv) Driving licenses and logbooks be reviewed to include adequate information so that all transactions involving registration of motor vehicles and renewal of driving**

licenses are subject to the full payment of outstanding fines.

- (v) **The Kenya Revenue Authority (KRA) be engaged by the Judiciary in collecting the arrears of revenue in traffic cases.**
- (vi) **An audit be carried out to identify the ‘dead’ traffic cases with a view to disposing of them.**
- (vii) **Notification of a Traffic Offence under Section 117 of the Traffic Act be forwarded to court together with the offender.**

4.12 Election Petitions

This Report has noted elsewhere that the management of election petitions by the Judiciary has historically been unsatisfactory. Thus a number of election petitions have been concluded or even dismissed following years of delay, sometimes stretching into the subsequent elections. For example, 25 parliamentary election petitions were filed following the 2002 General Elections. A number of these cases were determined as late as 2007, while some were not finalized at all by the time of the subsequent elections in December 2007. The Task Force was told that the delays in election petitions are caused by workload, since Judges who hear election petitions also preside over other cases allocated to them. Second, election petitions are adjourned severally, and are not prioritized in the cause lists, despite the law’s requirement that petitions be heard on a day-to-day basis. The Task Force was also told that frequent transfers and the slow process of appointment and gazettelement of Judges to hear election petitions by the Chief Justice have been other causes of delay.

In addition to the delay in disposing elections petitions, the courts of law have also been accused of dismissing petitions on the basis of undue procedural technicalities. Representations were made that as a result, the jurisprudence in election petitions remains fragmentary. While the Task Force is aware that procedural law is a component of substantive justice, members take the view that procedure must be the handmaiden of substance. Accordingly, the courts of law must consider both procedure and substance with equal measure, taking

caution not to place undue attention to procedural technicalities. The Task Force was however told by practitioners that the dismissal of election petitions has been occasioned by the inflexible provisions of the National Assembly and Presidential Elections Act (Cap 7 Laws of Kenya), and that unless the Act was amended, the courts of law may continue to apply this law as it is.

The Task Force notes that Article 87 of the Proposed Constitution of Kenya enjoins Parliament to enact legislation establishing mechanisms for timely settling of electoral disputes and calls for speedy enactment of the Elections Bill. In the interim, the Task Force recommends the review of the National Assembly and Presidential Elections Act (Cap 7 Laws of Kenya).

4.13 Anti-Corruption Courts

The Task Force received representations that whereas specialized courts are a means of ensuring efficient and effective resolution of cases, the anti-corruption courts established under the Anti-Corruption and Economic Crimes Act 2003 have not met these objectives. The Task Force was informed that there have been delays in conclusion of corruption cases due to the limited number of designated magistrates, frequent adjournments, transfer of magistrates and constitutional references.

The Task Force notes that despite the law's requirement that these cases are heard on a day-to-day basis, frequent requests for adjournments have been sought by advocates and granted by the courts. The Task Force is further aware that constitutional applications in the High Court effectively stay the hearing of these cases, as the High Court often grants stay orders in cases where these are sought by the applicants. Accordingly, in corruption cases involving more than one accused person, constitutional applications are deliberately made successively, even where a preceding application has been dismissed. This stops and delays the hearing of each of these cases, effectively frustrating speedy determination of corruption cases in the magistrates' courts.

Under section 3 of the Anti-Corruption and Economic Crimes Act, the Chief Justice may, by notification in the Kenya Gazette, appoint as many special magistrates as may be necessary for such area or

areas to try corruption and economic crimes and related offences. The Task Force takes the view that the designation of special magistrates, while carrying the potential of specialisation of such judicial officers over time, is not necessary. The Task Force is of the view that every magistrate in or above the rank of a Principal Magistrate should have jurisdiction to try corruption cases, without need for designation of the magistrate or the court by the Chief Justice. **The Task Force therefore recommends that the Anti-Corruption and Economic Crimes Act 2003 be amended to grant all Principal Magistrates Courts and above jurisdiction to hear corruption cases or related offences.**

4.14 References to the Chief Justice

Rule 10 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, operationalised through Legal Notice No. 6 of 2006, empowers the Chief Justice to appoint a bench of Judges to hear constitutional references. The Rule provides that “[u]pon receipt of the reference, the Registrar shall within seven days place the matter before the Chief Justice to constitute a bench in accordance with the provisions of section 67(3) of the Constitution, unless there is an interlocutory matter in the reference, in which case the Registrar shall place the matter before a Judge for determination.”

The Task Force heard that there is a growing tendency in the High Court particularly in Nairobi, where Judges refer, as a matter of course, cases to the Chief Justice for directions when such cases do not fall within those envisaged in law for reference to the Chief Justice. This has resulted in an abuse of the process, and sometimes undue delays or even misplacement or loss of files. **To address this, the Task Force recommends that:**

- (i) Matters should only be referred to the Chief Justice where there is an express requirement by the law and the case meets these requirements.**
- (ii) Where matters are referred to the Chief Justice for directions, the court should indicate clearly the nature**

of directions sought and set down a specific date for appearance before the Chief Justice.

- (iii) A Deputy Registrar be designated to assist the Chief Justice in the management of cases referred to the Chief Justice for direction or any other related judicial work.**

4.15 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is increasingly gaining recognition globally as a way of reducing backlog of cases in court and ensuring speedy and affordable access to justice. ADR covers a whole range of dispute resolution mechanisms, and include arbitration, mediation, mediation-arbitration, negotiation, conciliation, adjudication and so on. The main advantage of this form of dispute settlement is that it allows the parties to control the process and arrive at a solution acceptable to them. While this mechanism has been adopted in a number of jurisdictions including countries in the region, its application in Kenya is limited. The Civil Procedure Act provides for an Arbitration Procedure under Part VI- Special Proceedings. An attempt to institutionalize court annexed mediation through the Statute Law (Miscellaneous Amendments) Bill, 2009 failed when the Bill was taken to Parliament.

Representations were made to the Task Force over the need to regulate the practice of arbitrators and mediators so as to protect end users from professional misconduct, negligence or conflict of interest. The Task Force was informed that currently, no single institution is in place for the accreditation, regulation and disciplining of ADR practitioners. For example, in the mediation arena alone, there are in Kenya, mediators accredited by a number of overseas organizations including but not limited to the Chartered Institute of Arbitrators (U.K.), the London Court of International Arbitration (U.K.), the Centre for Dispute Resolution (U.K.), the International Chamber of Commerce (France), the American Arbitration Association (U.S.A.), to mention but a few. In this regard, representations were made to the Task Force that a national regulatory body for ADR disciplines should be established, to oversee accreditation, standard setting, monitoring and enforcement through appropriate complaints and discipline procedures.

The Task Force therefore recommends that:

- (i) Enabling legislation for mediation and other ADR disciplines such as mediation-arbitration, negotiation, conciliation and adjudication be enacted.**
- (ii) Courts and the Bar should encourage out of court settlement of claims particularly in family and commercial disputes.**
- (iii) Judicial officers be trained in Alternative Dispute Resolution mechanisms through the JTI and other training institutions locally and abroad.**
- (iv) A complaints mechanism be established and appropriate Codes of Conduct developed for arbitrators, mediators and other ADR disciplines.**

4.16 Small Claims Courts

Due to delays in the determination of cases through the conventional court system, some litigants pursue their legal rights through the police, local administration or self help. There are many cases of a minor nature that have clogged the judicial system, which ought not to be in the ordinary courts. **The Task Force is of the view that minor cases should be resolved rapidly through less technical mechanisms. In this regard, the Task Force recommends the enactment of the Small Claims Courts Bill to establish small claims courts. A draft of this legislation is appended to this Report as Annex II.**

4.17 Courts of Petty Sessions

Courts of petty sessions have been established in some countries to exercise summary jurisdiction in minor criminal offences. The jurisdiction of these courts include not only adjudicating and passing sentences on summary or less serious criminal offences in some countries, but also preliminary hearings to determine whether there is sufficient evidence in select criminal cases following which the cases are referred to higher courts for trial. In addition, criminal offences prosecuted by other agencies (other than the Director of

Public Prosecutions) are generally heard in the courts of petty sessions.

The Task Force is aware that case backlog in the courts is partly contributed by petty cases which can otherwise be disposed of through summary procedures. Moreover, in line with the recommendation for small claims courts in civil matters elsewhere in this Report, the Task Force takes the view that there is need to establish courts of petty sessions to deal with minor criminal offences. **The Task Force therefore recommends that a Courts of Petty Sessions Bill be enacted to establish courts of petty sessions with summary jurisdiction in minor criminal offences defined thereunder or in any other law.**

4.18 Research Assistants

Research assistants are engaged in a number of jurisdictions to support Judges in researching and writing legal opinions. In Kenya today, Judges spend a lot of time researching for authorities in the course of writing judgements and rulings. Similarly, Judges spend considerable time proof reading judgements and rulings. **In order to save time and support Judges in their work, it is recommended that:**

- (i) The Judiciary hires research assistants for Judges of the Supreme Court, Court of Appeal and High Court.**
- (ii) Research assistants should be holders of a law degree, with excellent knowledge of the legal process and such other qualifications as may be determined by the JSC.**
- (iii) In addition to research assistants, a pupillage programme be developed in the Judiciary to provide pupillage to law students preparing for admission as advocates. In this regard, appropriate enabling legislation be enacted to regulate the Judiciary's pupillage programme.**
- (iv) The duties and responsibilities of research assistants be clearly defined to among others include researching and writing legal opinions for approval by Judges, proof reading judgements and rulings, confirming that orders**

are drawn in accordance with judgements or rulings, and performing such other functions as may be assigned to them by the Judge.

- (v) **Research assistants be required to take or subscribe to an oath for confidentiality and impartiality before assuming their functions.**

4.19 Debts (Summary Recovery) Act (Cap 42 Laws of Kenya)

The intention of Parliament in enacting this Act was to provide a procedure for summary recovery of civil debts through a quick and simple procedure. If properly applied, the invocation of procedures under this Act would reduce significantly the volume of cases in the courts. The Task Force notes that while the Act provides a useful means of settlement of claims, it is hardly used due to ignorance of the public and advocates as to its existence. **In the circumstances, the Task Force recommends that:**

- (i) **The JTI and LSK sensitise judicial officers and advocates on the provisions of the Debts (Summary Recovery) Act (Cap 42 Laws of Kenya).**
- (ii) **Judicial officers should encourage parties to seek remedy using the Act.**

4.20 24 Hour Duty Courts

In recent years, several jurisdictions have established courts on call on a 24 hour basis, including weekends, to deal with special cases. For example, 24 hour or weekend courts have been established in some jurisdictions such as Ghana as a means of dealing with case backlog and ensuring speedy access to justice. 24 hour courts, with judicial officers on call during ordinary non-working hours, have also been employed in matters of extreme urgency, in maritime law matters as is the case in Kenya, or to deal with the high volume of traffic offences and criminal cases where witnesses or victims are on transit. These courts are intended to meet the convenience of the victims, claimants, witnesses and the working public who would otherwise have to reschedule their travel, or take time off from work to attend court.

It is the considered view of the Task Force that 24 hour duty courts should be established and judicial officers designated for the same in admiralty cases, select criminal and traffic matters, and to a limited extent, civil cases and any other urgent applications. In addition, the Task Force is also persuaded that some applications for bail may also be considered on a 24 hour basis as a means of enforcing fundamental rights and freedoms. **The Task Force therefore recommends that:**

- (i) 24 hour courts be established or designated by the Judiciary to deal with urgent matters primarily relating to criminal, traffic and maritime cases in the evening and during the weekend.**
- (ii) High Court and magistrates' courts be designated to deal with urgent matters every day of the week on a 24 hour basis in Nairobi, Mombasa, Kisumu, Eldoret, Nyeri and Nakuru and transit or border towns such as Malaba, Isebania, Busia, Namanga, Nandapal, Maramba, Moyale, Liboi, Tarakeya, Taveta, Kapkweta, Lunga Lunga and Kehancha.**

4.21 Court Vacation

Vacations are observed by the Court of Appeal and High Court three times every year. The Easter vacation is observed a week before Easter and an additional week after Easter, while Summer vacation falls between 1st August- 15th September. The Christmas vacation is observed between 21st December- 6th January. In Coast Province, the Easter vacation commences on the Saturday preceding Good Friday, while Summer vacation falls between 1st - 18th August. The Christmas vacation is observed between 21st December- 4th February. Vacations do not apply to criminal appeal sessions and magistrates courts. High Court and Court of Appeal registries are however open to the public up to 12 O'clock. The Chief Justice appoints Judges to hear and try cases during vacation and a party to any case may file an urgent application to be heard during a vacation, if by the nature of its urgency it qualifies and is certified to be heard during the vacation.

The public is concerned whether the vacations are justified in view of the backlog. While the Task Force is aware that the vacation period enables Judges to take leave, deal with backlog, write judgements and attend to other professional responsibilities, it is the view of members that emphasis should be placed on addressing the antecedent systemic challenges that lead to backlog of cases. **The Task Force therefore recommends that:**

- (i) The number of Judges who sit during vacation be increased.**
- (ii) The vacation periods be harmonised throughout the country, and the Summer vacation reduced to five (5) weeks and renamed the August vacation.**
- (iii) All court registries should remain open during the normal court working hours during the vacation period.**
- (iv) Every High Court station should have a duty Judge at least once a week during the vacation period.**
- (v) Judicial officers be granted leave during vacation.**
- (vi) The vacation rules under the Judicature Act (Cap 8 Laws) be reviewed and revised to operationalise these recommendations.**

4.22 Implementation of ICT in the Judiciary

ICT has enormous potential to improve the administration of justice. Countries that have introduced ICT in the justice system have recorded higher efficiency in the disposal of cases. Similarly, introduction of appropriate ICT in Kenyan courts would not only facilitate speedier trials but also guarantee transparency and fairness in the adjudication of cases. Further, automation of courts would minimize the risk of misplacement or loss of court files thereby enhancing public confidence in the judicial process. Towards this end, the Judiciary is implementing a number of ICT initiatives aimed at automating judicial operations. These include:

- (i) digitization of court records**
- (ii) an SMS inquiry system**

- (iii) tele-conferencing
- (iv) electronic billboards
- (v) audio visual recording systems
- (vi) case tracking
- (vii) integrated personnel and payroll system
- (viii) digital recording of proceedings and transcription

The case tracking system is currently being implemented in the Family Division of the High Court on a pilot basis. **To augment these initiatives, the Task Force recommends that:**

- (i) The implementation of ICT including automation and digitisation in the Judiciary be fast-tracked.**
- (ii) Adequate finances and human resources be availed to roll out full implementation of an ICT strategy in the Judiciary.**
- (iii) Judicial officers and staff undergo mandatory initial training in ICT and subsequently on a continuous basis.**
- (iv) All judicial officers be provided with appropriate laptops, computers and other ICT equipment.**

CHAPTER FIVE

COURT ADMINISTRATION

5.1 Overview

There is a direct relation between the way the courts are managed and the way disputes are resolved by judicial officials. Courts are administered by the Chief Justice, Registrar of the High Court and the Chief Court Administrator. They are assisted in the regions by the Resident Judges, Deputy Registrars, magistrates-in-charge of court stations and Executive Officers. It has been noted in previous reports that judicial administration as presently constituted is inadequate to bring about effective and efficient administration of courts.

The functions and the roles of the Registrar and the Chief Court Administrator are not clearly distinguished. Most of those charged with administration of courts have no relevant qualifications or training in public administration. While the Presiding Judge of the Court of Appeal, the Principal Judge of the High Court, Heads of the High Court Divisions and Resident Judges assist the Chief Justice in the administration of the courts, the Chief Justice remains inundated by mundane matters which can be dealt with by the Registrar, Presiding or Principal Judges. Finally, the Task Force was informed that the rate of absorption of funds in the Judiciary, and particularly donor funds, has been wanting due to lack of capacity and the long and cumbersome procedures.

5.2 The role of the Chief Justice and other Judicial Officers

The Chief Justice is the head of the Judiciary, and is the link between the Judiciary and the other arms of Government. Under the current Constitution, the Chief Justice exercises judicial functions as a Judge of the Court of Appeal and High Court and in the regulation of the practice and procedures of the courts of law, through among others, practice directions. The Chief Justice also assigns judicial work to Court of Appeal and High Court Judges.

In addition to these roles, the position also entails leadership and managerial functions. For example, under sections 62(5) and 64(3) of the current Constitution of Kenya, the Chief Justice may represent

to the President that the question of removing a Judge of the Court of Appeal or High Court ought to be investigated. The Chief Justice also chairs the Judicial Service Commission, which, among other things, advises the President on persons to be appointed as Judges of the superior courts of record. The manner of exercising some of the administrative or managerial roles is sometimes discretionary and not subject to institutionalised consultations.

There is no doubt that the exercise of these powers can pose a risk to independence of individual judicial officers as well as institutional independence of the Judiciary. Representations were made to the Task Force that given these roles and the hierarchical nature of the Judiciary, the powers of the Chief Justice must be exercised judiciously and be subjected to safeguards. The Task Force welcomes the establishment of additional offices of the Deputy Chief Justice, President of the Court of Appeal, Principal Judge of the High Court, and the Chief Registrar, which offices will share leadership and management responsibility in the Judiciary. The Task Force reiterates that the functions of these offices should be clearly defined to avoid any potentialities of misuse of power or conflict. **The Task Force therefore recommends that:**

- (i) The offices of the Chief Justice, President of the Supreme Court, Deputy Chief Justice, President of the Court of Appeal, Principal Judge of the High Court and Chief Registrar of the Judiciary be established as substantive offices in the Judiciary.**
- (ii) The Judicial Service Bill be enacted to provide for the functions of the offices of the Chief Justice, Deputy Chief Justice, President of the Court of Appeal, Principal Judge of the High Court and Chief Registrar of the Judiciary.**
- (iii) Accountability lines and mechanisms between the Chief Justice, Deputy Chief Justice, President of the Court of Appeal, Principal Judge of the High Court and Chief Registrar of the Judiciary be established.**
- (iv) The offices of Deputy Registrar and Personal Assistant to the Chief Justice be institutionalized to assist the**

Chief Justice in the exercise of the office's administrative and judicial functions.

- (v) The Chief Registrar be the chief administrator and accounting officer of the Judiciary.**

5.3 Court Administrative Structure

In order to establish an efficient and effective framework for decision-making, management, supervision and operational practices in the Judiciary, an effective administrative structure is fundamental. In line with comparative experience, the Task Force received representations about the need to separate court administration from judicial functions. Today, the responsibility for the operation of the court station is divided between the judicial officers-in-charge and executive officers. Judicial officers therefore not only perform judicial, but also administrative functions, sometimes shifting the focus away from their core judicial functions. This bifurcated approach has led to confusion because of blurred lines of authority, responsibility and accountability.

The Task Force concurs that a new model for the administration and management of the Judiciary is required to meet the growing demands on the court system. The advantages and disadvantages of establishing a new court management and administration model should be examined, given the complexities and implications involved. Representations were made that whatever model is chosen should cure the deficiencies in the current system by freeing administrative functions from Judges and magistrates and vesting the management and administration of courts of law in an autonomous entity such as a Judicial Services Unit, Administrative Unit, Agency or Department, as is the case in countries like United Kingdom. The model should also ensure clear lines of responsibility and accountability for managerial, administrative and operational matters in the Judiciary. **The Task Force therefore recommends that:**

- (i) There be a separation of judicial functions from court administration through the establishment of an autonomous court administration structure under legislation to oversee the administration and management of courts.**

- (ii) The offices of the Registrars of the Supreme Court, Court of Appeal, High Court, JSC and subordinate Courts be established by legislation.**
- (iii) Clear job descriptions, reporting responsibilities and protocols be developed and issued to all judicial officers and staff to facilitate supervision, monitoring and evaluation in the Judiciary.**
- (iv) The Human Resources Department be strengthened to oversee human resource management and development in the Judiciary.**
- (v) An Inspectorate Unit be established to independently monitor the operations of the courts on a continuous and regular basis.**
- (vi) The Central Planning and Project Management Unit (CP & PMU) be strengthened to enhance its effectiveness in data collection, monitoring and evaluation in the Judiciary.**
- (vii) Pending the appointment of professional court administrators, all officers engaged in court administration be trained in court administration and management.**
- (viii) Resident Judges be required to supervise courts within the region in which the High Court is situated and present status reports to the Chief Justice and the Chief Registrar of the Judiciary.**

CHAPTER SIX

PERFORMANCE MANAGEMENT

6.1 Overview

Performance management is the process of planning, executing, reviewing, monitoring, evaluating and measuring results vis-à-vis set institutional as well as individual objectives and targets. Performance management is an important mechanism for ensuring that an organization's functions and objectives are met fairly, effectively and efficiently so as to meet the needs and expectations of the public and the organizations' stakeholders.

The issue of performance management in the Judiciary has provoked public debate in the recent past. The Judiciary has been under increased pressure to improve its performance by strengthening the ethical infrastructure and instituting performance management systems through appraisals, monitoring and evaluation of individual judicial officers and the Judiciary as an institution. Through this, judicial officers and staff and the Judiciary as a whole can be appraised or evaluated on the basis of set targets, benchmarks and performance objectives.

The Judiciary, like other service institutions, has an interest in ensuring that it is managed in a way that will ensure its mission and vision are realized. The Judiciary has adopted strategic planning, and is currently implementing the 2009- 2012 Strategic Plan. The Strategic Plan lays down the planning context and the operational environment, and outlines the strategic focus and strategies for realizing the Judiciary's objectives. The Task Force is aware that while the Judiciary is not part of the Performance Contracting Programme in the public service overseen by the office of the Prime Minister, it is not averse to performance management. Indeed, the Judiciary has over the years conducted annual appraisals for magistrates, Kadhis and support staff. The Court of Appeal has also began publishing its annual report, whereas the High Court and subordinate courts make monthly returns on the number of cases pending at the beginning of each month, the number of cases filed during the month, the number of cases disposed of by individual

judicial officers and the number of cases pending at the end of the month.

The Task Force however received representations that the analysis, review and follow-up action on the appraisals and returns are *ad hoc* and therefore ineffective. Accordingly, performance management in the Judiciary is weak and without clearly defined components of a sound performance management system. The Task Force is therefore of the view that the first step must be to establish a performance management system, with performance appraisals, monitoring and evaluation as components thereof, and taking into account the uniqueness of judicial functions and the court process.

6.2 Performance Evaluation

Performance evaluation is the process by which performance is periodically assessed against set standards and targets, with a view to measuring, managing and improving quality and results. Evaluations may be conducted on individuals, although they are mostly conducted on institutions. Different methodologies apply depending on the objectives of the evaluation and the type of work or activities the individual or institution is involved in. In the global arena, the concept of evaluation against set standards has been advanced by the International Organization of Standardization (ISO), which leads international standard setting for goods and services, through among others the certification process.

The Task Force is aware that performance evaluation is a pre-condition for the improvement of quality as well as efficiency of the administration of justice. Performance evaluation presupposes the existence of a system of planning, performance monitoring, assessment, feedback and enforcement. The Task Force established that performance evaluation within the Judiciary is based only on some aspects of this process, that is, the monthly returns completed by judicial officers. The returns have failed to achieve their objective primarily because they are designed to measure quantity but not quality. The Central Planning and Project Monitoring Unit (CP & PMU), which is responsible for analyzing the returns with a view to assisting in follow-up and quality control, has not been able to discharge its task for a variety of reasons, including severe under-

establishment. Representations were also made that the process has become perfunctory, with some judicial officers neglecting to file returns in time. Even where returns are made, evidence is scanty as to whether these returns are used to improve performance in the institution or among individual judicial officers. The upshot is that there is technically no performance evaluation or appraisal system in the Judiciary.

The Task Force therefore recommends that:

- (i) The JSC contracts experts to design an effective and comprehensive Performance Evaluation System for the Judiciary, incorporating standard setting and benchmarking, planning, performance monitoring, assessment, feedback and enforcement processes and mechanisms.**
- (ii) Contextual issues that affect the performance of judicial officers and staff including ensuring that the Judiciary recruits and retains in service, persons of the highest calibre be addressed.**
- (iii) The Judiciary adopts peer review as a means of enhancing performance in the institution.**
- (iv) The Judiciary works towards acquiring the ISO Certification.**
- (v) The Judiciary creates public awareness on performance management to enhance public participation in the process.**

6.3 Performance Appraisal

Performance appraisal or review is a key component of performance management. A process, and not an event, performance appraisal entails an evaluation of actual against desired or projected performance of individuals, taking into account the various factors which influence performance. Typically, such review is conducted on a continuous basis, through setting standards, objectives and expectations, planning, monitoring, review, feedback and enforcement.

Representations were made to the Task Force that Judges are required to file Form STAT: H 1 with the office of the Chief Justice on a monthly basis. Form STAT: H 1 is a statistical form in which Judges are required to indicate the number of cases before them at the beginning of the month, additional cases filed during the month, the number of cases determined in the month and the number of cases pending on the last day of the month. In addition, Judges who head court stations are also required to file summary statistical returns. Magistrates file monthly returns to the Registrar of the High Court, providing a summary per category of cases pending at the beginning of the month, cases filed during the month, cases disposed during the month, fines imposed and collected and cases pending at the end of the month.

In addition to the monthly returns, there is also a formal performance appraisal system implemented by the Judicial Service Commission for all magistrates, Kadhis and senior judicial staff. The appraisal is by way of a Performance Appraisal Form (PAF). The completed PAFs are sent to the Registrar of the High Court and placed in the officer's confidential file. The information is used in assessing the officer's training needs, disciplinary matters and as a general guide to the officer's potential for promotion. In addition to the PAF, the JSC also uses special *ad hoc* reports to appraise a particular officer in cases where their promotion or deployment is under consideration, in addition to oral interviews as a method of appraisal. Judges are however not subject to the performance appraisal system.

The performance appraisal system currently in place is weak and inadequate for the following reasons:

- (a) It is not properly institutionalized and effectively enforced. For this reason, the PAFs are not submitted on time or at all and when they are submitted, they are not evaluated due to lack of systems and personnel. The absence of such evaluation means that the process is not used to inform improvements of the Judiciary as a whole.
- (b) It lacks clear performance objectives.
- (c) The PAF is a standard personnel appraisal form. It does not in any exhaustive manner reflect the unique nature of judicial

work and as such is an inadequate tool for evaluation of performance.

- (d) It is not supported by known pre-established criteria and benchmarks against which performance is measured and rated.
- (e) It is not backed by a credible system of rewards and sanctions and as such is reduced to a formalistic exercise that is not given the weight it deserves by both management and staff.
- (f) It excludes the voices of court users and cannot therefore be of much value pointing at performance weaknesses of the Judiciary or in proposing strategies to address them.
- (g) Magistrates, Kadhis and other para-legal staff neither own nor have the proper attitudes towards the performance appraisal system because it is not supported by any mechanism for reward. Lack of ownership means that the system has little impact on their work.
- (h) Judges are not subject to the performance appraisal system.

The Task Force therefore recommends that:

- (i) The JSC contracts experts to design a Performance Appraisal System for the Judiciary with linkages to the broader performance evaluation and management system.**
- (ii) The Judiciary's performance management system incorporates a performance appraisal-based reward and sanctions system so as to motivate excellence in the institution and deal with poor performance.**
- (iii) Performance appraisal processes should ensure knowledge sharing between judicial officers and staff as a strategy for enhancing excellence in the Judiciary.**
- (iv) The JSC hires additional support staff to enhance the capacity of the Human Resources Department and the Central Planning and Project Management Unit in monitoring and reviewing the performance of individual officers.**

6.4 Judicial Training

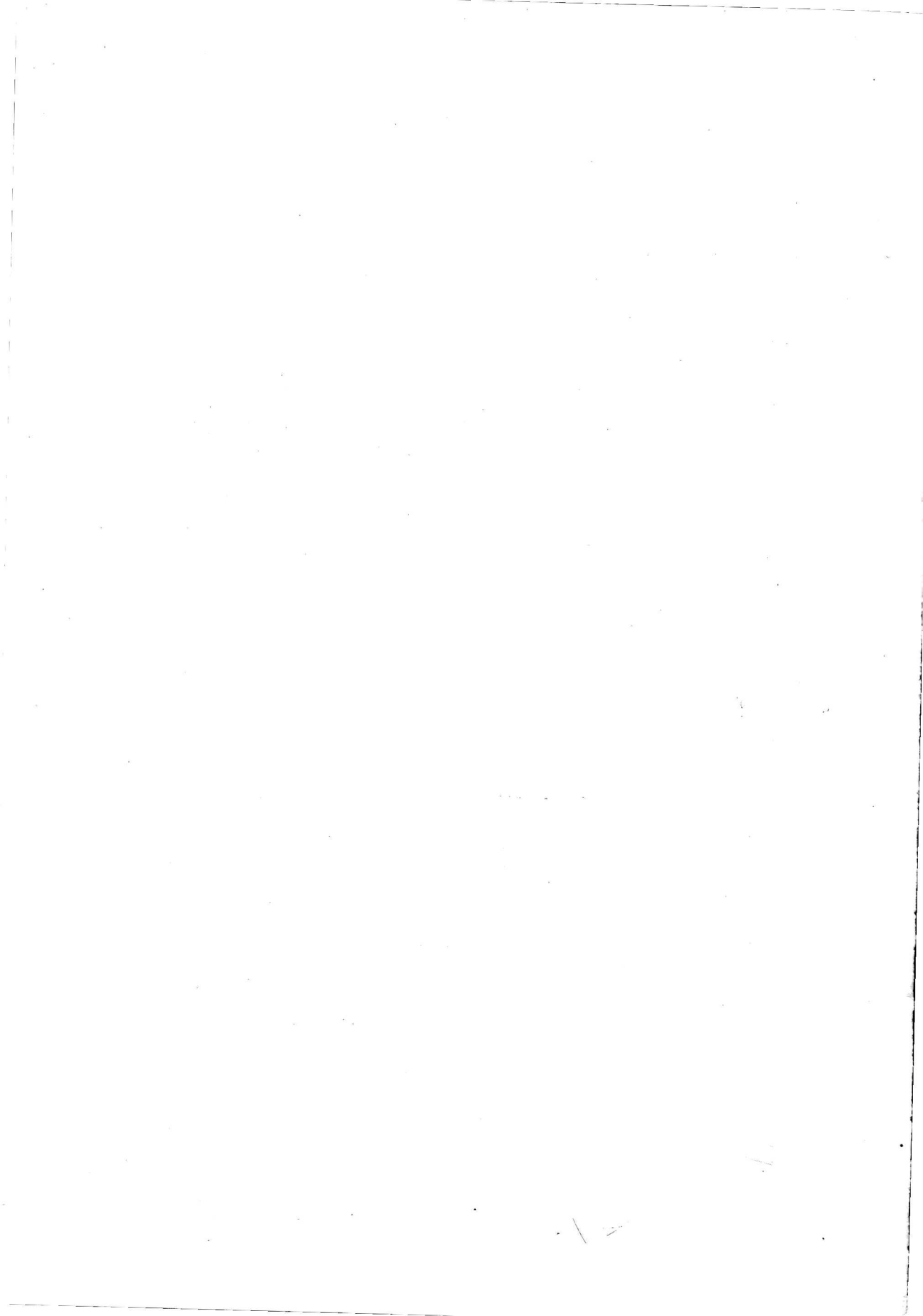
Judicial training is integral to the improvement of performance in the institution. In many jurisdictions, judiciaries have over time embraced the culture of quality service and efficiency in order to meet increasing workload and expectations of the consumers of their services. In this regard, the Judiciary established the Judicial Training Institute (JTI) in September 2008. The mandate of the JTI is to provide induction courses and continuous professional development for judicial officers and other staff. The JTI has developed training modules and courses which are structured by way of content, duration and method of delivery. So far, the Institute has trained a total of 650 judicial officers, clerical officers, librarians and registry staff.

Continuous professional development of staff is vital if the Judiciary is to enhance its capacity in service delivery. It is commendable that the Judiciary has now embraced the role of training and continuous professional development of judicial officers and staff seriously. More, however, needs to be done. For example, the Task Force established that study opportunities in the Judiciary do not match those in the civil service and parliamentary service. The Task Force was told that once recruited, Kadhis should undergo continuous legal training like other judicial officers.

The Task Force recommends that:

- (i) The Judiciary develops and implements a training and human resource development policy to guide training and continuous development of judicial officers including Kadhis and staff.**
- (ii) The Judiciary develops a need based training calendar for all judicial officers and staff using the outcomes of the performance evaluation and appraisal system.**
- (iii) The Judiciary schedules regional knowledge-sharing workshops to enable judicial officers and staff to share their experiences in the judicial process and the administration of the courts.**
- (iv) The JTI be required to hold periodic training on case management to improve efficiency in the Judiciary.**

- (v) All newly appointed judicial officers should undergo an induction course before assuming their functions.**
- (vi) Training and continuous professional development of judicial officers and staff be embraced as a core function of the Judiciary.**
- (vii) The training modules offered at JTI be made relevant to the work of judicial officers and staff and be offered in a consistent and sustainable manner.**
- (viii) Judicial officers and staff be provided with an opportunity to undertake training by facilitating paid study leaves and time-offs to attend training courses.**
- (ix) Adequate funds be availed to the Judiciary to purchase land for the construction of the JTI or to purchase and equip the premises where it is currently located.**
- (x) A Judicial Training Bill be enacted to regulate continuous legal training of all judicial officers and staff.**



CHAPTER SEVEN

CORRUPTION, ETHICS AND INTEGRITY IN THE JUDICIARY

7.1 Overview

Ethics and integrity are fundamental pillars of an independent, efficient, and accountable judicial system. Judicial officers and staff are expected to conform to high moral and ethical standards of behaviour befitting persons mandated to safeguard the law and administer justice. They are also expected to be above reproach, scrupulously impartial and fair in their judicial functions as well as in their public and private lives. These precepts are not ends in themselves, but means of safeguarding the personal and moral integrity of judicial officers and staff, and thereby ensuring public confidence in the justice system.

Despite this, corruption remains one of the greatest challenges to the Judiciary. The Task Force received representations that whereas there have been measures to address corruption within the Judiciary, the results have been suboptimal as borne out by the number of judicial officers and staff who have been disciplined by the JSC on corruption claims or otherwise faced corruption charges in the courts of law. As a result, corruption remains a major contribution to the Judiciary's institutional decline and low public confidence in the judicial process. In addition to the JSC's disciplinary procedures, the Chief Justice has in the past appointed integrity committees on a bi-annual basis, the last of which was appointed in 2008, to investigate ethics and integrity issues in the Judiciary and recommend remedial action. These efforts, while increasing transparency and surveillance in the Judiciary, have only contributed dismally to the reduction of corruption or perceived corruption.

Finally, on ethics and integrity, the Task Force received representations that the current Judicial Code of Conduct and Ethics has been construed by some as not applicable to Judges, yet it is. It is however the considered view of the Task Force that separate Codes of Conduct should be developed for Judges, other judicial officers and staff. This recommendation follows the provisions of the Proposed Constitution of Kenya, which stipulate that breach of the

Judicial Code of Conduct and Ethics is a basis for removal of a Judge, hence the need to develop a specific Code of Conduct and Ethics applicable to Judges.

7.2 Corruption in the Judiciary

Corruption is one of the biggest challenges to fair administration of justice. Corruption not only undermines the rule of law and impartial dispensation of justice, but also other public goods such as economic growth, investor confidence and equal treatment of all persons before the law. In the judicial process, corruption may also lead to pernicious inefficiencies of the justice system, loss of Government revenue, lack of public confidence in the administration of justice and resort to extra-judicial resolution of disputes. Accordingly, corruption in the Judiciary must be addressed fairly and squarely.

Previous integrity committees of the Judiciary have addressed corruption in the Judiciary and made recommendations on how to combat the practice. Most recently, the Kenya Anti-Corruption Commission began an integrity-testing programme in conjunction with the Judiciary, with the objective of identifying the areas prone to corruption in the Judiciary. The Task Force received representations from stakeholders including Non-Governmental Organizations working in the area of public accountability, and more elaborately, the Kenya Anti-Corruption Commission, of allegations or complaints on the following forms of corruption in the Judiciary:

1. Bribery

- (i) Gifts
- (ii) Supply of building materials and fuel
- (iii) Harambee contributions

2. Fraud

- (i) Non accounting of money received from litigants
- (ii) Manipulation of official receipts so that the amount shown on the duplicate receipts kept by the courts is less than what has been paid and reflected in the payee's original receipts

- (iii) Non-refund of money paid to court either for bond or deposit
- (iv) Issuance of parallel receipts, duplicates or photocopies of receipts when fine has been paid (especially in traffic cases)
- (v) Falsification and forgery of cash registers to defraud the Government, and false reports thereon by internal auditors
- (vi) False claims for reimbursements
- (vii) Collusion between court clerks and District treasury clerks/cashiers to embezzle funds received
- (viii) Irregular sale of court exhibits
- (ix) Theft of exhibits and Government stores such as furniture
- (x) Non-issuance of receipts where accused persons are released on cash bail, and the records indicate that the release is on free bond
- (xi) Overcharging for affidavits

3. **Abuse of Judicial office**

- (i) Undue influence or pressure by or between judicial officers on specific cases
- (ii) Withdrawal of or pre-direction of files to specific officers
- (iii) Drawing of pleadings by judicial officers and staff at a fee
- (iv) Rendering legal advice on actual or intended litigation
- (v) Manipulation or doctoring of the record of evidence and proceedings
- (vi) Manipulation of the dates of delivery of judgements and rulings

- (vii) Acquiring an interest in the subject matter of litigation e.g. land or a percentage of the damages awarded in tort or contract
- (viii) Employment of relatives and friends
- (ix) Unmeritorious recruitment and promotions
- (x) Favouritism of some litigants, accused persons or advocates
- (xi) Award of inflated or inordinately high damages
- (xii) Failure, neglect or refusal by judicial officers and staff to pay for goods sold and delivered or for services rendered at their request and instance
- (xiii) Purchase of bonded goods at less than their market value
- (xiv) Conduct of business without the required license(s)
- (xv) Use of prison labour for private purposes
- (xvi) Receipt of *per diem* payment for official duty which is not performed
- (xvii) Release of criminals at a fee
- (xviii) Allegations of bias by judicial officers after a litigant turns down request for bribes
- (xix) Undue familiarity with court personnel or advocates
- (xx) Collusion between judicial officers, court clerks, prosecutors, probation officers and litigants
- (xxi) Unfair rulings e.g. sentence of imprisonment for failure to pay rent
- (xxii) Delayed judgements
- (xxiii) Collusion with brokers or association with persons of questionable character within court precincts

4. Receiving favours

- (i) Free transport
- (ii) Free entertainment and hospitality
- (iii) Employment of relatives and friends of judicial officers
- (iv) Gifts
- (v) Sexual favours

The Task Force further received representations that while these forms of corruption exist in the Judiciary, there are busy bodies in the court corridors who, apart from masquerading as agents of judicial officers, are also involved in other illegal practices such as disappearance of files or presentation of forged bail documents. It is therefore clear that while corruption exists in the Judiciary, such operatives have increased perceptions of judicial corruption and exposed the public to extortion. The Task Force noted in this regard that in addition to the perceptions surveys conducted by watchdogs or opinion pollsters, there is need for an approach aimed at assessing real as opposed to perceived instances of corruption in the Judiciary.

Representations were made to the Task Force that corruption in the Judiciary and perceptions thereof are related to corruption within the Bar. For example, there are instances where advocates convey or offer bribes or other forms of improper inducement to judicial officers on behalf of their clients. The Task Force also received representations from the insurance industry that some advocates collude with judicial officers in fraudulent insurance claims, who award unconscionable or unfairly huge damages. Finally, the Task Force notes that corruption in the Judiciary has resulted from "gate keeping" and undue familiarity between judicial officers and staff, the Bar and other court users, hence the need to address such practices.

In order to address corruption in the Judiciary, the Task Force recommends that:

- (i) **A corruption prevention policy within the Judiciary be developed and implemented to guide all the anti-corruption initiatives in the institution.**

- (ii) A mapping exercise be carried out within the Judiciary to identify and take remedial measures on the main areas that are prone to corruption.**
- (iii) Mechanisms for regular monitoring of the exercise of discretion by judicial officers be developed to ensure judicial transparency and accountability.**
- (iv) Duty Judges be stationed for one term only so as to ensure rotation of Judges in this function.**
- (v) The Judiciary and other stakeholders in the justice sector ensure public awareness on the content of the Judicial Service Codes of Conduct and Ethics.**
- (vi) Regular inspection of judicial systems be institutionalised through the Inspectorate Unit to assess and mitigate on any systems or procedures that encourage corruption or create perceptions of judicial improbity.**
- (vii) The Judiciary provides accessible facilities for direct banking of court fees, charges and fines by the public, litigants or advocates to avoid instances of fraud in the management of funds collected by the institution.**
- (viii) A manual be developed to guide judicial officers on the award of damages in civil cases and other aspects of judicial discretion.**
- (ix) The recommendations of previous integrity committees on procurement and financial management in the Judiciary be implemented without further delay.**
- (x) The Judiciary develops case management and statistical systems that track the productivity of all judicial officers and other court personnel against performance standards to minimize opportunities for delay of cases and corruption.**
- (xi) Judicial officers and staff found liable for corruption be removed from the judicial service by the JSC.**

- (xii) **All judicial officers and staff be identified by badges, name tags and court uniform within the court precincts.**

7.3 Ethics and Integrity

Breaches of ethics and integrity in the Judiciary range from conventional bribery, corruption, abuse of judicial office, to sexual harassment, non-disclosure of conflict of interest and perpetual intemperance. To address these aspects, the Judiciary adopted the Judicial Service Code of Conduct and Ethics in 2003, pursuant to the Public Officer Ethics Act, 2003. The Task Force notes that the Code of Conduct and Ethics has not been reviewed since its adoption to assess and improve compliance and address new perspectives. It is also clear that the Code has not been applied to the letter, due in part to the weaknesses in the system of collecting, analyzing, verifying, digitizing, systematizing, retrieving and acting on the information contained in the Declaration of Income, Assets and Liabilities Forms.

In this context, the Task Force reiterates the need for an effective ethical infrastructure and recommends that:

- (i) **A judicial ethics, integrity and anti-corruption strategy be developed and implemented to prevent and mitigate corruption at all levels in the Judiciary.**
- (ii) **A Complaints Sub commission of the JSC be mandated to monitor, receive, investigate and take remedial action on complaints against judicial officers and staff in the Judiciary.**
- (iii) **Separate Codes of Conduct for Judges, other judicial officers, and staff be enacted under the Judicial Service Bill and reviewed regularly to address emerging issues and improve compliance and effectiveness.**
- (iv) **The Judicial Codes of Conduct and Ethics be disseminated to the public as a means of enhancing the accountability of judicial officers and the Judiciary as a whole.**

- (v) **The Judicial Codes of Conduct and Ethics be strictly applied and enforced, with fair and transparent disciplinary actions and sanctions for breach thereof.**
- (vi) **The JSC develops a system for collecting, analyzing, verifying, digitizing, systematizing, retrieving and acting on the information contained in the Declaration of Income, Assets and Liabilities Forms submitted by judicial officers and staff.**
- (vii) **The Judiciary develops mechanisms for regular integrity testing at different levels of the institution.**
- (viii) **The Judiciary partners with the Kenya Anti-Corruption Commission, Law Society of Kenya and Kenya Magistrates and Judges Association to create awareness among judicial officers and staff on integrity, accountability and professionalism upon appointment and at regular intervals during their tenure.**

7.4 Peer Review

The prevention of corruption and other unethical behaviour cannot succeed without formal and informal mechanisms to deal with the temptation for corruption or unethical conduct. One of the informal mechanisms that can be used is the peer review mechanism. If institutionalized in the Judiciary, peer review would:

- (i) make the Judiciary a self regulating body.
- (ii) put in place an internal forum where judicial officers can give feedback, discuss progress and respond to cases of improper behaviour.
- (iii) improve communication among judicial officers.
- (iv) address the issue of corruption through peer pressure.
- (v) provide an environment which encourages disclosure and self audit.
- (vi) increase internal accountability and restore integrity and respectability.

In recognition of the need to embrace peer review, the Judiciary has developed draft guidelines and made recommendations for the establishment of peer review committees in the Judiciary.

The Task Force recommends that:

- (i) **The draft guidelines for the setting up of peer review committees be finalized, validated and implemented without delay.**
- (ii) **Peer review be institutionalized in the Judiciary through establishment of peer review committees in every court station in the country.**

7.5 Vetting of Judges and Magistrates

The Proposed Constitution of Kenya makes provision for vetting of all sitting Judges and magistrates as a means of restoring public confidence in the Judiciary and providing a fresh start under the new Constitution. The process of vetting entails assessing the integrity of individuals to determine their suitability for continued or prospective public employment. In the context of transitional justice, vetting is linked to the state's duty to prevent the recurrence of human rights abuses, corruption and abuse of office, and can be a significant pillar of institutional reform. Broadly, the key objectives of vetting are as follows:

- (i) transforming institutions in order to prevent the recurrence of past wrongs such as corruption, human rights violations and other forms of abuse of office and public trust
- (ii) acting as a sanction to exclude persons unfit for public office due to culpability for corruption, abuse of office, incompetence or human rights violations
- (iii) re-establishing the legitimacy of public institutions and restoring citizens' trust in the institutions

The Task Force reiterates its recommendations for a permanent Complaints Sub commission to handle complaints against individual judicial officers and staff. Additionally, the Task Force notes that as a transitional measure, clause 23 of the Sixth Schedule of the Proposed Constitution of Kenya provides for vetting of sitting

Judges and magistrates upon the promulgation of a new Constitution, to be undertaken through mechanisms and procedures established under an Act of Parliament to be enacted after consultations with stakeholders. The Task Force considers that in order to guarantee the integrity of the process, the vetting of Judges and magistrates should be in conformity with international best practices and standards. The legal framework should ensure that the process is non-political, objective and respects the rule of law, human rights and the principle of individual responsibility.

The Task Force therefore recommends that the body to undertake the vetting be an independent tribunal consisting of nine members (including its chairperson) none of whom shall be a sitting judge or magistrate at the time of promulgation of the new Constitution. The Task Force also considers that the process should be undertaken within a year following the enactment of the legal framework so as to bring the matter to closure and normalize the functioning of the Judiciary. In addition, the process should also ensure that there is no vacuum in the Judiciary as a result, through continuous or simultaneous hiring of judicial officers under improved terms and conditions of service. Finally, the Task Force has also examined the legislative history of the provision on vetting, and considered that a Judge or magistrate may opt to retire instead of undergoing the vetting process, and be entitled on retirement to the benefits they would have been entitled to at the date of the retirement or as may be considered appropriate.

The Task Force recommends that legislation be enacted to establish an independent tribunal and mechanisms and procedures for vetting sitting Judges and magistrates as envisaged in clause 23 of the Sixth Schedule of the Proposed Constitution of Kenya, within the parameters appended in Annex IV.

7.6 Policy against Sexual Harassment

Sexual harassment occurs when an employee makes continued, unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature, to another employee, litigant, or any other person against his or her wishes. This conduct

affects and interferes with performance at work, and undermines the rights and dignity of the victim. When an employee or other victim complains about sexual harassment to a superior or supervisor, immediate investigation of the complaint should commence. Judicial officers and staff need to understand that they have an obligation to report sexual harassment concerns to their supervisors' or the human resources office.

In order to ensure a safe and healthy working environment for all judicial officers and staff, the Task Force recommends that:

- (i) **The Judiciary develops a policy against sexual harassment with clear lines of responsibility and sanctions.**
- (ii) **Reports of sexual harassment be taken seriously and dealt with promptly.**
- (iii) **Where sexual harassment is found to have occurred, the Judiciary takes prompt and appropriate disciplinary action against those responsible.**
- (iv) **Confidentiality and privacy of persons reporting or accused of sexual harassment, to the extent reasonably possible, be protected by the Judiciary.**
- (v) **Retaliation and reprisals against any person who in good faith provides information in an investigation on sexual harassment be treated as gross misbehaviour warranting dismissal.**
- (vi) **The giving of false reports or information in sexual harassment cases should constitute grounds for disciplinary action.**



CHAPTER EIGHT

HUMAN RIGHTS AND ACCESS TO JUSTICE

8.1 Overview

The Judiciary has an important role to play in the promotion, protection and enforcement of fundamental rights and freedoms. Over the years, the Judiciary has been criticized for not playing this role effectively. For example, until the late 1990's, the courts were extremely rigid in their interpretation and enforcement of fundamental rights and freedoms and particularly so in 'political' cases, laying undue regard to procedural technicalities than substantive justice. This view was reinforced by the fact that past Chief Justices did not formulate rules of procedure for the High Court in relation to the enforcement of fundamental rights and freedoms as required under section 84(6) of the Constitution until 1999 when the first rules were enacted and subsequently revised in 2006.

The Task Force notes that judicial attitudes towards human rights have changed over the years, and the Judiciary has in recent times been more proactive in the enforcement of fundamental rights and freedoms. Further, with the establishment of special divisions of the High Court, the Judiciary has been very robust in matters of fundamental rights including the rights of minorities and vulnerable groups. This notwithstanding, there are a number of factors that undermine human rights in the judicial process. First, case backlog remains a serious challenge in the Judiciary as it affects the right to access justice. Further, the slow pace in determining criminal cases and appeals has contributed immensely to congestion in the prisons thereby compromising the rights of accused persons to a fair trial. In terms of legal aid, the pauper brief system run by the Judiciary has not been efficiently managed. Finally, the Task Force was informed that whereas *locus standi* rules are now applied by the courts liberally, the cost of litigation continues to undermine public spirited litigation.

8.2 Access to Justice and the Courts

The Task Force received representations that while access to justice and the courts has improved over the years, there are a number of factors which hinder access to justice and the courts. First, the Task Force was informed that some courts place undue regard to procedural technicalities at the expense of substantive justice, undermining the very purpose of the judicial process. Second, the Task Force received representations that the cost of litigation remains high and beyond reach, thereby denying many people access to justice. Third, uneven distribution of courts is a hindrance to equal access to legal resources and the protection of the law. In Northern Kenya, for example, courts are situated as far as 500 kilometres away from users. In addition to these systemic obstacles, access to the courts in these rural and marginalized areas is also exacerbated by lack of advocates and other legal service providers.

While the Judiciary is addressing some of these shortcomings through mobile courts, the distribution of courts in marginalized and rural areas remains highly sparse. In addition, the Task Force was informed that the number of Kadhis courts has also not been reviewed for many years despite the growing population of Muslims. Under section 4(1) of the Kadhis Courts Act (Cap 11 Laws of Kenya), the Chief Justice in consultation with the Chief Kadhi determines the number of Kadhis courts. The Task Force however notes that there are only about 17 Kadhis courts. Moreover, the Task Force is also aware that there is need to review the jurisdiction of magistrates courts regularly so as to ensure that these courts are seized of matters within their areas. The Task Force was informed that, for example, in court stations where there is a High Court, the magistrates courts do not exercise jurisdiction relating to succession matters, yet magistrates courts of similar status competently exercise jurisdiction in succession matters in other courts stations where there is no High Court.

Finally, the Task Force was also informed that some Kadhis courts have in the past exercised powers beyond their jurisdiction as stipulated under the Constitution and the Kadhis Courts Act. Representations were made that Kadhis courts continue to use the procedures of the subordinate courts prescribed under the Civil

Procedure Act, since the Chief Justice has not made rules providing for the procedure and practice of Kadhis courts as provided in section 8 of the Kadhis Courts Act.

It is the view of the Task Force that courts be established in the areas without courts as a matter of priority. To address the high costs of the legal process, there should be deliberate efforts to simplify the court language and procedures to enable individuals to take advantage of the right to self-representation. In this regard, the Task Force reiterates the recommendations of past Committees on the publication and dissemination of basic information about the court system, process and procedures. **The Task Force therefore recommends that:**

- (i) All courts administer substantive justice without undue regard to procedural technicalities.**
- (ii) The provisions of sections 3A & 3B of the Appellate Jurisdiction Act (Cap 9 Laws of Kenya) and sections 1A & 1B of the Civil Procedure Act (Cap 21 Laws of Kenya) be enforced by the courts.**
- (iii) Court stations and mobile courts be established in marginalized areas and regions that have no geographical access to courts including Munjila, Masalani, Bute, Laisamis, Marimanti, Kyuso, Wote, Engineer, Chaka Lokitaung, Lokichar, Wamba, Kesses, Kapsowar, Kabiyet, Chemolingot, Eldama Ravine, Rumuruti, Lokitaung, Lumakanda, Kapsokwony, Budalangi, Amogoro, Kosele and Mbita.**
- (iv) Rules of procedure of Kadhis courts be developed and enacted to standardize the procedures and practices of the courts.**
- (v) Court rules and procedures be reviewed regularly to ensure that they are efficient and simple.**
- (vi) Section 198(4) of the Criminal Procedure Code be amended by providing that the language of the High Court shall be English or Swahili.**

- (vii) **Popular or simplified versions of the Civil Procedure Act and the Criminal Procedure Code be developed and disseminated to the public.**
- (viii) **The Judiciary disseminates the “Litigants Charter” so as to demystify the court system and court procedures.**
- (ix) **Physical facilities of courts be made more accessible to persons with physical disabilities and other vulnerable groups.**
- (x) **The jurisdiction of magistrates be reviewed regularly to enhance speedy access to justice in matters relating to children and other vulnerable groups, sexual offenses and succession among others.**
- (xi) **Each High Court station, Division and the satellite courts publish pamphlets on issues unique to their work.**
- (xii) **The Kadhis Courts Act (Cap 11 Laws of Kenya) be reviewed.**

8.3 Legal Aid

Access to justice is one of the fundamental freedoms of the individual and foremost functions of the state. The legal system underpins the rule of law and plays this function of access to justice. In practice, however, political, social, economic and cultural limitations and inequality repudiate equal access to justice by all. Legal aid, an important aspect of the legal system, works towards ensuring that every individual enjoys the right to access to justice, equal protection of the law and access to justice.

In Kenya, legal aid and representation provided by the state remains insufficient. It does not include all categories of people who cannot afford the formal justice system. The state only provides legal aid for persons charged with murder in the High Court, whereas persons accused of equally serious crimes such as robbery with violence or attempted robbery with violence, are not. In the case of vulnerable groups such as children, for example, the guarantee of legal assistance provided by section 186 (b) of the Children Act, 2001, is conditional on a child offender having no other recourse to legal

assistance. The result is that non-governmental organizations remain the key providers of legal aid and advocates of public interest litigation. However, in the absence of institutionalized quality assurance or peer review mechanisms, the quality of legal aid services by these organisations remains at stake. This is further compounded by their limited human resources and financial capacity as only a negligible number of cases can be enlisted for litigation.

In November 2007, the Government appointed the National Legal Aid (and Awareness) Steering Committee to oversee, co-ordinate, monitor and provide policy direction to the National Legal Aid (and Awareness) Programme. The Task Force recognizes the achievements of the Programme, but recommends that there is need to move with speed to enact legislation establishing the Committee and an appropriate implementing authority. This is important so as to address the current shortcomings of the legal aid system in the country and to meet the requirements of the rights to equality, fair administration, access to justice, and fair trial entrenched in the new Constitution. The Task Force also notes that the Attorney-General's role in the promotion, protection and upholding of the rule of law and defence of the public interest should be strengthened, as a means of addressing public interest issues by the state. **The Task Force therefore recommends that:**

- (i) A policy and legislative framework establishing a national legal aid system be adopted and implemented.**
- (ii) Public interest litigation guidelines be adopted and implemented to facilitate access to justice on issues of public interest.**
- (iii) The pauper procedure in civil litigation and appeals be simplified by reviewing Orders XXXII and XLIII of the Civil Procedure Rules and incorporating the system into the National Legal Aid (and Awareness) Scheme.**
- (iv) The Judiciary and LSK collaborate to develop mechanisms that require lawyers to take up pauper briefs as part of their service to society.**

- (v) **The Judiciary engages the services of professional interpreters for vernacular, foreign and sign languages.**
- (vi) **Judicial officers be required to ensure that litigants especially children and other vulnerable groups, victims of sexual offenses, and those without counsel are accorded a fair hearing within a reasonable time.**

8.4 Bail Policy

With the exception of cases where the offence is punishable by death, it is a constitutional right of every person arrested or detained to be released through bail or bond. The Task Force received representations that disparities in the granting of bail have led to pre-trial detention of persons who otherwise qualify for release pending trial or appeal. As a general principle, the amount of bail is dependent upon the circumstances of the case. It should not be excessive as to result in denial of bail and pre-trial detention. However, in practice, subordinate courts have required disproportionately excessive bond terms, leading to applications in the High Court for review. This has led to circuitous court applications, in addition to overcrowding in prison facilities.

The Task Force is aware that the courts have lately resorted to denying bail because of falsification of bond documents such as title deeds and motor-vehicle logbooks by some sureties. However, the Task Force takes the view that the denial of bail does not address the underlying systemic problems. **The Task Force therefore recommends that:**

- (i) **Bail guidelines be adopted to ensure that bail or bond terms are affordable, reasonable and consistent with the law.**
- (ii) **A coordinated verification mechanism be instituted by the Judiciary, the Registrar of Motor Vehicles and Commissioner of Lands for documents used as security.**

8.5 Quasi-Judicial Tribunals

In recent times, quasi-judicial tribunals increasingly play a critical part in adjudication and resolution of disputes. Virtually every

regulatory statute enacted lately by Parliament establishes a tribunal of one type or another. Consequently, there are over 60 quasi-judicial tribunals in Kenya, a sample of which is appended to this Report as Annex V. The establishment of tribunals is intended to provide more specialized, cheaper, speedier, accessible justice and flexible procedures. However, an examination of the various tribunals in Kenya today shows that some of them have not lived to this expectation, and have instead undermined access to justice. Representations were also made that these tribunals lack adequate safeguards to guarantee their independence and accountability. Most tribunals are administrative in nature, established and sometimes overseen by the Executive. The consequence of this is that some of the tribunals have been perceived to be appendages of the Executive, their independence notwithstanding. Additionally, most of the legislation establishing the tribunals do not set the criteria for appointment, leaving room for political appointments.

The Task Force appreciates that the reform of quasi-judicial tribunals is beyond its mandate. This is because tribunals are not within the structure of the Judiciary, and have no relationship with the Judiciary except in relation to the review of their quasi-judicial functions, by the High Court exercising its supervisory jurisdiction. The supervisory jurisdiction of the High Court is not self-executing, and the High Court has to be moved by an application for judicial review. Because of this, the way in which quasi-judicial tribunals operate affects the Judiciary. Moreover, the Task Force notes that the appointment of some of the chairpersons of some tribunals by the Chief Justice, or the practice of seconding judicial officers to serve in some of these tribunals has also created perceptions that these tribunals are part of the Judiciary. Given these connections, the Task Force therefore takes the view that there is need to streamline the independence, establishment, composition, functions, procedures and lines of accountability of tribunals. In this regard, the Task Force singles out three tribunals on which it received several representations, namely the Land Disputes Tribunals, the Business Premises Rent Tribunal and the Rent Restriction Tribunal.

The Task Force was informed that following numerous representations by key stakeholders on the problems associated with

operations of the land disputes tribunals established under the Land Disputes Tribunal Act (No. 18 of 1990), the Kenya Law Reform Commission has undertaken an examination of the Act. The Commission established that although the Act was envisaged to aid the expeditious resolution of land disputes, its application especially by the tribunals and the appeals committees has instead contributed to delay or denial of justice and case backlog as evidenced by the large number of judicial review applications filed in the High Court. Other concerns relate to arbitrary selection of the panel of elders who constitute the tribunals; the qualifications of the elders; non-observance of the rules of natural justice; lack of appreciation of basic legal principles in proceedings; lack of sufficient facilitation by the Ministry of Lands; lack of appreciation of jurisdictional limits and poor enforcement mechanisms of the tribunals' awards, among others.

The Task Force notes that Article 162(2)(b) of the Proposed Constitution of Kenya provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the use and occupation of, and the title to, land, and recommends that these issues be revisited during the enactment of such legislation or in the consolidation of land laws as envisaged in the Sessional Paper No. 3 of 2009 on the National Land Policy.

The Task Force was informed that the problems faced by the Land Disputes Tribunals are largely replicated in the operations of the Business Premises Rent and the Rent Restriction Tribunals. In particular, the Task Force notes that these tribunals are not effectively decentralized, and instead rely on the circuit system. The Task Force notes the absence of clear or adequate qualifications for appointment as a member and their accountability under the Landlords and Tenant's (Shops, Hotels and Catering Establishments) Act (Cap 301 Laws of Kenya) and the Rent Restriction Act (Cap 296 Laws of Kenya). The Task Force is aware that the Cabinet has approved the Landlord and Tenant Bill, which proposes to simplify, modernize and consolidate the laws relating to the landlord-tenant relationship, by among others amalgamating the Business Premises Rent and the Rent Restriction Tribunals.

As part of the wider justice reforms, the Task Force therefore recommends that:

- (i) A detailed evaluation or study be undertaken by the Kenya Law Reform Commission on the establishment, membership, qualifications for appointment, independence, functions, accountability and operations of tribunals to establish areas of reform.**
- (ii) The adjudication of land disputes be streamlined through the review of the Land Disputes Act and enactment of enabling land legislation in accordance with the provisions of the Proposed Constitution of Kenya.**
- (iii) The procedures of all quasi-judicial tribunals should as far as possible be simple and should not replicate the Civil Procedure Rules.**
- (iv) The Landlord and Tenant Bill 2010 be enacted forthwith so as to make provision for the establishment, composition, qualification for appointment, independence, functions, accountability and operations of the Landlord and Tenant Tribunal.**

8.6 Sentencing Policy

The Judiciary has time and again come under criticism because of varied sentences in like criminal cases. The perception of the public is that the exercise of judicial discretion in sentencing is neither judicious nor fair and just. Citing specific examples, representations were made to the Task Force that persons of means always get away with light sentences while the poor end up with heavy sentences. This has given the Judiciary the appearance of bias or corruption, even in cases where lenient or heavy sentences are justified in the circumstances of the case.

While each of such cases should be considered individually, the Task Force is concerned that they erode public confidence in the institution. **The Task Force therefore recommends that:**

- (i) **A sentencing policy be developed and implemented to guide the passing of sentences in criminal cases.**
- (ii) **The Judiciary develops a sentencing manual to guide judicial officers in the imposition of sentences.**

8.7 Human Rights and the Administration of Justice

The objective of every justice system is to administer justice by protecting parties' legal rights and the rights of citizens. The Task Force received representations that some aspects of the justice system undermine instead of advancing human rights and fundamental freedoms. In this regard, representations were made relating to overcrowding in prisons, in part due to the absence of bail and sentencing policies. The Task Force was informed that the current prison facilities hold more than double their capacity. Representations were also made that there are children held in adult prisons, contrary to international human rights standards and the Children's Act (Act No. 8 of 2001), which requires separation of children in prisons facilities. The Task Force was informed that this has been caused in part by the failure of most judicial officers to regularly inspect prisons as *ex officio* visiting justices as provided by section 72 of the Prisons Act (Cap 90 Laws of Kenya) and the Chief Justice's Practice Directions 2008, outlined elsewhere in this Report.

The Task Force also received representations that an efficient, human rights-compliant, people-oriented, and accountable Police is indispensable to a functional and fair justice system. Representations were made that unless the integrity of the functions of the police is guaranteed, the judicial process may not by itself provide access to justice. For instance, the Task Force was informed that arbitrary police arrests or 'swoops' or ill-treatment have an impact on judicial caseload and public trust in the justice system and should be addressed immediately as part of the ongoing police reforms. Finally, representations were made that the investigation and prosecution roles of the police should be separated.

To entrench human rights in the justice system, the Task Force recommends that:

- (i) **The Judiciary collaborates with the KNCHR and other human rights organizations to develop appropriate**

training programs for judicial officers and staff on human rights.

- (ii) Judicial supervision of prison conditions be strengthened through requirement for regular visits by judicial officers and follow-up procedures.
- (iii) Effective measures be taken by the Government to bring prison conditions in conformity with United Nations Standard Minimum Rules for the Treatment of Prisoners through allocation of material, human and budgetary resources necessary to reduce overcrowding in prisons.
- (iv) The Prisons Department ensures adequate facilities and establishments for separating women prisoners and children.
- (v) Facilities be provided in places of detention to facilitate communication between detainees, their families and legal counsel.
- (vi) Additional borstal institutions be established in each County to meet the demands of the juvenile justice system.
- (vii) Human rights training programmes in the Police and Prisons Department be expanded and reinforced with the objective of bringing about a change in attitudes and behaviour.
- (viii) The practice of unlawful and arbitrary arrests or swoops by the Police be promptly and impartially investigated and those found responsible subjected to disciplinary procedures.

8.8 Contempt of Court and the Administration of Justice

In recent years, effective administration of justice has not only been undermined by the systemic challenges outlined in several parts of this Report, but also acts and omissions that constitute contempt of court. Indeed, effective and independent administration of justice requires respect for the dignity and sanctity of the courts of law at all

times by parties to disputes and their representatives, consumers of justice, the public and the other organs of the government. In relation to the latter, the Commonwealth (Latimer House) Principles urge that relations between all the three organs of government should be governed by mutual respect and complementarity.

The Task Force received representations that there are several instances where the administration of justice has been threatened by disrespectful conduct towards the Judiciary by some members of the Executive and the Legislature, without remedy. However, the courts have refrained from punishing contempt of court, in part due to the inadequacies of the contempt of court law. Under section 5 of the Judicature Act (Cap 8 Laws of Kenya), the superior courts have jurisdiction to punish for contempt for the time being possessed by the High Court of Justice in England. However, the applicable law and procedures are cumbersome and blurred, given that the law relating to contempt continues to be modified by the High Court of Justice in England from time to time.

The Task Force considers that it is in the public interest that contempt of court be punished to uphold the authority of the Judiciary as the defender of the rule of law. The Task Force however takes the view that this power should be exercised judiciously and fairly. **The Task Force therefore recommends that section 5 of the Judicature Act be repealed and a substantive Contempt of Court Bill enacted.**

CHAPTER NINE

ACCESS TO INFORMATION AND COMMUNICATION

9.1 Overview

Transparent, accountable and open governance institutions are pillars of Vision 2030, and indeed underpin the entire reform agenda in Kenya. Accessibility of information relating to the Judiciary is an integral component of judicial integrity and a fundamental pillar of access to justice. Accessibility to information promotes transparency, accountability and effective use of court processes. This in turn results in enhanced public confidence in the judicial process. On the other hand, lack of information on basic issues such as court fees reinforces public perceptions that the judicial process is inaccessible and lacks transparency. In addition, lack of a sustained communication strategy remains one of the main causes of public discontent with the Judiciary.

Representations were made to the Task Force that whereas the Judiciary is implementing a number of information and communication technology initiatives, it has not fully embraced an effective, strategic use of ICT in improving access to justice, performance management, court administration and the administration of justice generally. This is borne out by the continued ineffectiveness of case management, poor coordination with other justice sector institutions, inadequate public access to judicial information and the negative perceptions on the Judiciary in general. Accordingly, the Task Force takes the view that judicial reforms must also focus on information and communications management in the institution.

9.2 Access to Information

The Task Force notes that the establishment of the National Council for Law Reporting and Libraries Committee has led to an improvement in accessibility of information on judicial decisions. The Task Force also received representations that the Court of Appeal has begun preparing annual reports of its activities. Despite the increased accessibility of information relating to judicial decisions, views were received that on various other matters on the Judiciary, information asymmetries exist not only between the

institution and the general public, but also between the different cadres of judicial officers and staff on important issues such as the Judiciary's policies.

In order to address this gap, the Task Force takes the view that the Judiciary should have a clear policy on access to information by judicial officers and staff as well as the public. Such information should include, but be not limited to, the Judiciary's policies, activities, performance, challenges, and any other matters in which there is public interest. Finally, as part of enhancing access to information in the judicial process, courts should adopt an 'open justice' policy, and hearing of cases and delivering of rulings and judgements in judicial officers' chambers should be avoided as such practice may raise questions of transparency in the Judiciary and the integrity of the judicial officers concerned. Accordingly, the lack of adequate courtrooms, occasioning delivery of judgements in chambers, should be addressed as recommended elsewhere in this Report as a matter of urgency.

The Task Force therefore recommends that:

- (i) Adequate financial resources be allocated to facilitate effective information and communication management by and within the Judiciary.**
- (ii) The Judiciary ensures that members of the public have adequate and reliable access to quality legal and judicial information including laws, court procedures, proceedings and decisions, judicial vacancies, disciplinary processes and so on.**
- (iii) All courts adopt an 'open justice' policy, with hearing of cases and delivering of rulings and judgements being conducted in open court, save where there are inadequate courtrooms, or in few and strictly defined exceptional circumstances relating to the need to protect personal or confidential information.**
- (iv) Public education and information materials containing information on the services offered in the Judiciary and procedures for accessing such services be published and distributed.**

- (v) **Information desks, sign posts, and notice boards be put up in all court buildings and stations.**
- (vi) **The Judiciary develops easy-to-read handbooks on its policies and regulations for distribution to all judicial officers, staff and the public.**

9.3 Communication

Timely information dissemination and effective communication are building blocks of a vibrant and accountable Judiciary. Communication and outreach is valuable in enhancing public understanding of the court system and promoting public confidence in the entire judicial system. Whereas the Judiciary has instituted an "Open Day" on an annual basis, it has not been consistently proactive in engaging stakeholders to explain the challenges it faces and the initiatives it is making in order to improve service delivery to the people. The Task Force takes the view that the "Open Day," while laudable, cannot be a substitute for regular and structured means of communication between the Judiciary and consumers of justice. In this regard, the Task Force is concerned that the Judiciary has no Information and Communications Department to manage its information and communication needs.

The Task Force therefore recommends that:

- (i) **An Information and Communications Department be established with the mandate to develop an access to information and communication policy for the Judiciary and to create awareness and handle all the information, communication and publicity needs of the Judiciary.**
- (ii) **The Information and Communications Department be headed by a Registrar with knowledge of law and qualifications and skills in communication and public relations.**
- (iii) **The Judiciary "Open Day" and other feedback mechanisms by the Judiciary such as an annual address by the Chief Justice be institutionalised.**

- (iv) The Judiciary and the Judicial Service Commission prepare and publish regular reports as may be required by law as a means of information dissemination and communication with the public.**
- (v) The Judiciary embraces other communication media such as newsletters, pamphlets, newspapers, internet, radio, television and SMS.**

CHAPTER TEN

TERMS AND CONDITIONS OF SERVICE IN THE JUDICIARY

10.1 Overview

The terms and conditions of service of judicial officers and staff have an important bearing on the integrity, efficiency, effectiveness and independence of the Judiciary. A Judiciary whose terms and conditions of service are insufficient lacks the attitudinal and institutional environment within which the administration of justice can be conducted efficiently, fairly, impartially and independently. Inadequate or uncompetitive terms and conditions of service also undermine the ability of the institution to attract and retain qualified and capable personnel.

The Task Force received representations that there have been long standing concerns over the disparities between the remuneration of magistrates and Judges. The Task Force also heard that the concerns by Kadhis on their terms and conditions of service have not been addressed for many years, and that this has affected the recruitment and retention of highly qualified Kadhis. The Task Force was told that these concerns, cumulatively with other factors have contributed immensely to the problems faced by the Judiciary in the administration of justice.

10.2 Welfare

Employees are the most valuable resource in any institution. An investment in employees therefore directly impacts on the efficiency and effectiveness of the institution. Similarly, a caring and supportive working environment, which is conducive to the welfare of all employees, contributes to the development of human resources towards the achievement of institutional objectives.

Against this background, the Task Force is convinced that the welfare of all judicial officers and staff is essential to achieving the Judiciary's objectives and mission, and accordingly the JSC must take the well being of all judicial officers and staff as a primary objective. This requires support for judicial officers and staff through a range of policies and activities aimed at protecting,

promoting and supporting the health and well-being of members of the Judiciary. The Task Force is aware of the existence of a Judges Welfare Committee, but hastens to add that similar Committees should be established for other judicial officers and staff. **The Task Force therefore recommends that the JSC adopts a judicial officers and staff welfare policy aimed at providing welfare support to judicial officers and staff and raising awareness of the importance of employee welfare in fulfilling the Judiciary's strategic objectives and mission. The Task Force further recommends that:**

- (i) The JSC establishes a Judiciary-administered, performance-based reward scheme for recognition of judicial officers and staff for exemplary service.**
- (ii) The JSC establishes long service or recognition awards for judicial officers and staff proceeding on retirement.**

10.3 Salaries and Allowances

Salaries and other benefits in the Judiciary have not been reviewed regularly to take into consideration the increase in work load, cost of living and inflationary trends. This has particularly had an impact on the magistracy, Kadhis and paralegal cadres, in terms of the recruitment and retention of highly qualified personnel. Representations were also made that the delay in the implementation of the reviewed allowances for Judges adopted by the JSC on 13th June 2008 has led to discrepancies in the allowances of Judges and magistrates, with some senior magistrates earning more allowances than some Judges. The Task Force was also informed that staff promotion had neither been streamlined nor integrated as a key performance management tool in the Judiciary. The Task Force received information, for instance, of officers who have worked for over twenty years without promotion, their good performance notwithstanding. **In the circumstances, the Task Force recommends that:**

- (i) The salaries and allowances of judicial officers and other staff be reviewed regularly and enhanced with a view to ensuring equity and attracting and retaining highly qualified personnel.**

- (ii) **The allowances of Judges under the revised Judicial Service Staff Regulations, 2008 be implemented.**
- (iii) **The Judiciary adopts and implements a policy on merit-based and fair promotion of judicial officers and staff at all levels.**
- (iv) **The new schemes of service for judicial officers and staff be implemented immediately.**

10.4 Pension Scheme for Judiciary

Following the delinking of the Judiciary from the mainstream civil service in 1993, the pension benefits of retired judicial officers and paralegal staff have continued to be calculated on the basis of equivalent civil service salary scales and not the actual pensionable emolument at the time of retirement, resulting in a flood gate of litigations. The Judiciary has recently established a contributory pension scheme for magistrates, Kadhis and paralegal staff. The Task Force has also proposed the enactment of the Judges (Retirement Benefits) Bill to underpin the pensions of Judges as is the case in other jurisdictions. **The Task Force affirms these proposals and recommends that:**

- (i) **The contributory Judicial Service Staff Superannuation Scheme in respect of magistrates, Kadhis and paralegal staff be operationalised.**
- (ii) **The Judges (Retirement Benefits) Bill be finalized and enacted.**

10.5 Security

By the very nature of their work, Judges and magistrates are vulnerable and exposed to threats or actual acts of physical violence. Despite this, the issue of personal security of Judges and magistrates has not been given serious and deserving consideration. There are instances where judicial officers have suffered physical attacks while some have even lost their lives. Some magistrates, for lack of either personal or pool transport, use public means to travel on duty thus exposing them to criminal attacks. **To address this situation, the Task Force recommends that:**

- (i) Appropriate security arrangements be made for all judicial officers.**
- (ii) The Judiciary in consultation with the Police establish its own Security Department to oversee all aspects of security and safety in the Judiciary.**
- (iii) The Judiciary installs CCTV in all court stations so as to enhance security within court precincts.**

10.6 Medical and Group Personal Accident Schemes

An in-patient and out-patient medical scheme for the Judiciary was introduced in 1999. The scheme, which provides medical cover to the officer, spouse and four children, is inadequate due to low limits imposed on the basis of low premiums paid by the JSC. The Task Force also notes that the limits under the Group Personal Accident Policy are also low. **The Task Force recommends that the current financial limits for the Medical Cover Scheme and the Group Personal Accident Policy be reviewed and enhanced.**

10.7 Motor Vehicles and Motor Vehicle Purchase Scheme

The Judiciary with its decentralized structure suffers from serious shortage of vehicles. This makes it impossible for judicial officers to visit *locus in quo* and scenes of crime as well as inspect satellite courts. Whereas Judges are entitled to official transport, not all have been provided with vehicles. The recent Government directive that all public officers surrender vehicles above 1800 cc will adversely affect a number of Judges and exacerbate the already bad situation. **The Task Force therefore recommends that:**

- (i) The Judiciary be provided with adequate resources to purchase utility vehicles for court inspection and scene visits outside Nairobi in a phased manner beginning with High Court stations.**
- (ii) A revolving fund be established in the Judiciary to enable judicial officers and staff purchase motor vehicles.**

10.8 Residential Houses and Mortgage Scheme

All public officers including judicial officers and staff are subject to regular transfers. In the Judiciary, however, some transfers are without adequate notice, whereas in some cases, judicial officers are transferred to areas without suitable accommodation to relocate their families. This compromises their work and their security. In addition, judicial officers and staff do not have a scheme to enable them purchase their own houses despite the fact that the civil service and the parliamentary service have this kind of scheme.

To address the problem of housing in the Judiciary, the Task Force recommends that:

- (i) A mortgage scheme be established to enable judicial officers and staff purchase their own houses.**
- (ii) Pending the establishment of a mortgage scheme by the JSC, Legal Notice No. 98 of 2004 made under the Housing Act (Cap 117 Laws of Kenya) be amended to include judicial officers and staff in the Housing Scheme.**
- (iii) The Judiciary provides furnished housing for judicial officers in hardship areas.**

10.9 Transfers in the Judiciary

It is a Government policy that public officials be ready to serve in any part of the country. The Task Force established that in the absence of a clear policy or consistency in the manner in which transfers are effected in the Judiciary, transfers appeared haphazard. It was established, for example, that sometimes judicial officers are transferred frequently, or not given adequate notice thereby seriously disrupting their family lives and court work. In some instances, cases whose hearing had not been completed were referred to the judicial officers in their new court stations, thereby inconveniencing the litigants or even leading to misplacement of files during their referral. The Task Force also received representations that some judicial officers and staff have worked in some stations for too long without transfer, thereby compromising their integrity.

The Task Force therefore recommends that:

- (i) A transfer and deployment policy be adopted and applied evenly amongst all judicial officers and staff so as to make provision for among others**
 - (a) regular transfers every three (3) years, with notice of not less than three (3) months, provided that the period may be shorter in exceptional circumstances;**
 - (b) the requirement that judicial officers must finalise pending or part-heard matters before proceeding to their new court stations;**
 - (c) linkages between judicial transfers and performance management; and**
 - (d) succession planning.**
- (ii) Transfer of judicial officers and staff should not be used as a disciplinary measure.**

10.10 Gender Parity in the Judiciary

The principle of gender parity is one that is of general application and is recognized as official Government policy. Specifically, the Proposed Constitution of Kenya enjoins all state organs to ensure gender equality. In addition, Agenda Item 4 of the Kenya National Dialogue and Reconciliation requires commitment by the Judiciary to gender equity. The table below illustrates the composition of the Judiciary.

Table 4: Gender Parity in the Judiciary

Designation	Male	Female
Chief Justice	1	
Court of Appeal Judges	11	0
High Court Judges	27	18
High Court Registrar		1
Chief Court Administrator	1	
Magistrates	168	109
Kadhis	17	0
Paralegal Staff	1865	1531

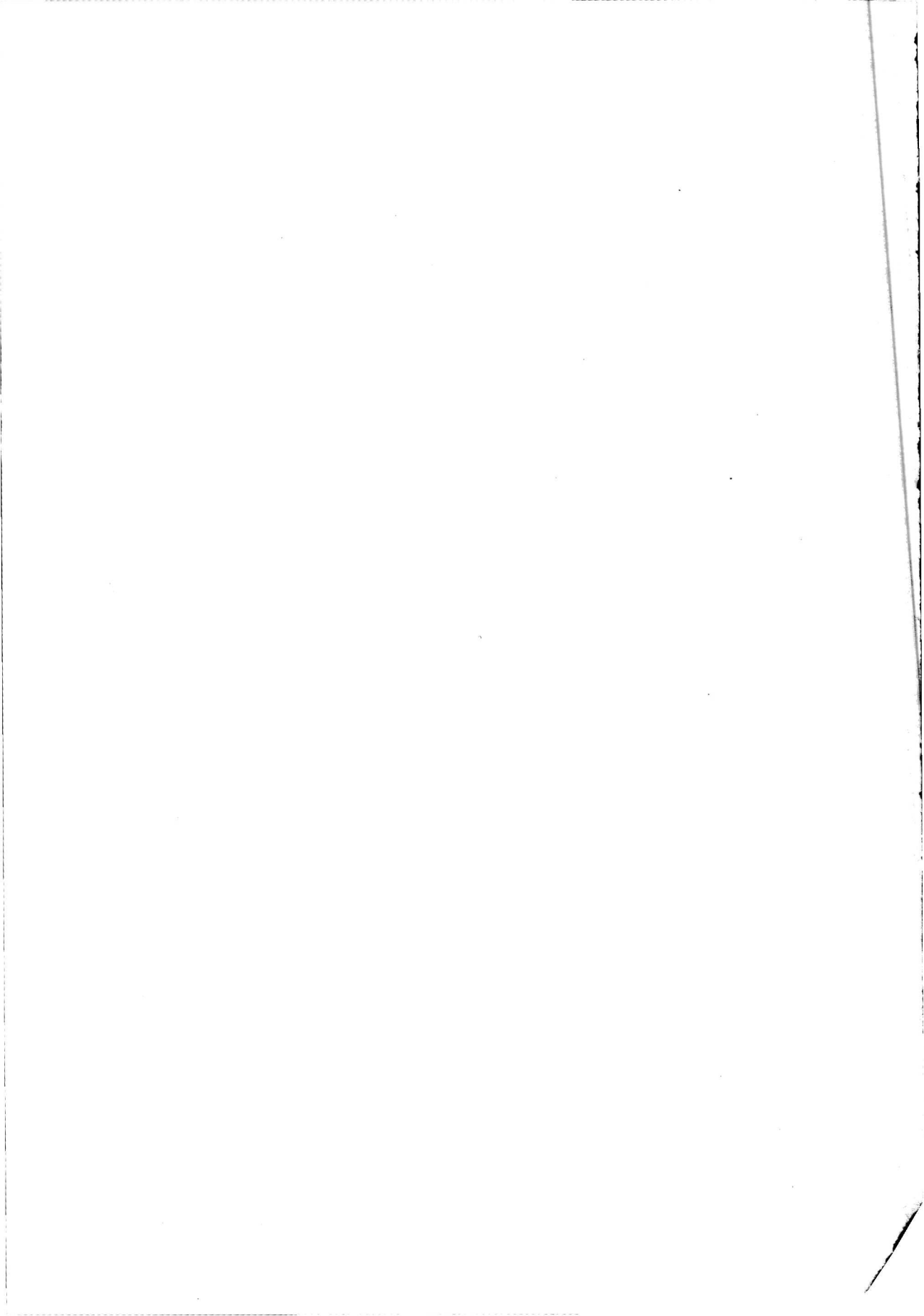
While it is noted that there is equitable gender balance at the magistracy and paralegal staff levels and an improvement in the High Court, the same cannot be said of the Court of Appeal and Kadhis courts, where all the Judges and Kadhis respectively are of the male gender. **The Task Force therefore recommends that:**

- (i) The JSC ensures there is gender parity in appointments at all levels in the Judiciary in accordance with the requirements of the new Constitution.**
- (ii) Deliberate progression towards gender parity be made in the appointment of Judges, magistrates, Kadhis and judicial staff.**

10.11 HIV/ AIDS Policy

HIV/AIDS has afflicted all institutions of society including the Judiciary. To address it, every institution needs to provide adequate sensitization for its staff and support for those affected. The Judiciary established an Aids Control Unit in July 2001 to provide leadership in HIV prevention and control. The membership of the Unit includes only paralegal staff, with no Judge or magistrate being a member. The Task Force received representations that there is neither office space nor allocated staff to manage the Unit. **To address HIV and AIDS issues in the Judiciary, the Task Force recommends that:**

- (i) The HIV/AIDS Control Unit of the Judiciary be reconstituted and revitalized to provide training and to address other HIV/AIDS related issues in the Judiciary.**
- (ii) An evaluation of HIV/AIDS prevention, control and management in the Judiciary be undertaken.**
- (iii) The Judiciary holds continuous HIV/AIDS awareness sessions for all judicial officers, staff and their families.**
- (iv) Internal peer counsellors be appointed to provide support to judicial officers and staff affected or infected by HIV/AIDS.**



CHAPTER ELEVEN

INSTITUTIONAL REFORMS AND INTER-AGENCY COORDINATION

11.1 Overview

The integrity of the justice system depends on the effective, fair and efficient functioning of all actors and stakeholders in the sector. The ineffectiveness of the justice system has at times been occasioned by lack of coordination between the Judiciary and other agencies in the sector, such as the Police, Prisons Department, the Probation Department, the State Law Office and the Bar. In this respect, the Task Force heard that in a number of cases, delay in justice was not caused by the Judiciary but by the other actors. For example, representations were made that there are cases where the Prison Department failed to take suspects held in their custody in time to court, state counsel failed to appear in court, or the Police failed to provide medical or expert reports, bond witnesses or execute warrants in time. The Task Force was also told that unwarranted delay in sentencing was sometimes caused by the failure of police and probation officers to produce previous records of convictions and reports on accused persons in time. Finally, on the Bar, the Task Force heard that the decline in the efficiency and effectiveness of the justice system has been attributed in part to the inability of advocates to play their roles effectively as officers of the court.

These problems point to the challenge of inter-agency coordination in the justice sector. While the Task Force notes the challenges faced by the Judiciary as highlighted above, it is also aware that the Police, Prisons Department, the Probation Department, the State Law Office and the Bar also have their dissatisfaction with various aspects of the administration of justice by the Judiciary. In the view of the Task Force, these problems cannot be adequately addressed by a coordination mechanism without reviewing and strengthening the institutional capacity of each of the agencies individually and collectively. In this regard, the Task Force notes the proposed and ongoing reforms in the Police, Prisons Department, the Probation Department, the State Law Office and the Bar, among others, and urges their speedy implementation.

11.2 Community Service Orders Programme

The Community Service Orders (CSO) Programme was introduced by the Community Service Orders Act (No. 10 of 1998). The Act was intended to decongest the prisons and allow offenders to serve non-custodial sentences imposed by courts by performing unpaid public service as an alternative to imprisonment. In addition to decongesting prisons, the CSO Programme is also aimed at rehabilitating offenders. The Programme targets mainly offences that attract prison terms of three years or less. Going by the number of offenders serving under this Programme (estimated at 47,000), the Task Force is persuaded that the Judiciary is playing its part fairly well, although not optimally.

Like all new initiatives, the CSO Programme has its challenges, key among them inadequate financial resources and capacity for supervision of the offenders. In addition, most magistrates have not embraced community service orders as a sentencing option. In this regard, the Task Force is aware that the Community Service Orders Programme is undergoing review in order to improve its effectiveness.

To further strengthen the CSO Programme, the Task Force recommends that:

- (i) All magistrates and advocates be sensitized on the CSO Programme, its objectives and operations.**
- (ii) Additional resources be provided to support the CSO Programme to enable CSO officers to undertake supervision of offenders placed under the Programme.**
- (iii) More supervisors be hired to ensure more effective supervision of offenders.**

11.3 The State Law Office

The State Law Office facilitates the functions conferred under the Constitution and statute to the Attorney-General. The responsibilities assigned to the Attorney-General are executed through various departments in the State Law Office, of which the Department of

Public Prosecutions and the Civil Litigation Department play a key role in the administration of justice. In these roles, the Task Force received representations of alleged collusion by some state counsel with litigants and advocates, unconscionable settlements and consents between state counsel and litigants and failure by state counsel to attend court or respond to applications, thereby resulting into loss of public funds.

Finally, representations were made regarding the difficulties of settling decrees and judgements against various Government agencies, a problem which has been imputed to the Attorney-General. The Task Force was informed that whereas it is the accounting officers in the Government who are under an obligation to settle the decrees, litigants usually have to seek judicial review orders and contempt proceedings against these officers seeking to compel payment of the decretal sums. Even where such orders are given, prompt payment is not guaranteed.

The Task Force is cognisant of the reform of the State Law Office envisaged in the separation of the offices of the Attorney-General and Director of Public Prosecutions under the Proposed Constitution of Kenya as well as the reforms currently ongoing in the State Law Office. These include disciplinary action against officers for misconduct, the phasing out of police prosecutors and their replacement with state counsel and the implementation of ICT. In addition to training programmes to equip state counsel and prosecutors with skills to deal with emerging trends in crime, there are also plans to hire more prosecutors to meet the rising demands. The Task Force was also informed that there are plans to strengthen the Civil Litigation Department by hiring more staff in all the provinces, who will undergo specialised training in Alternative Dispute Resolution among other areas. The Task Force was informed by stakeholders that in order to consolidate these reforms, the high turnover rate at the State Law Office resulting from poor terms and conditions of service need be addressed as a matter of priority.

The Task Force therefore takes the view that these reforms should be fast-tracked and further recommends that:

- (i) Comprehensive reforms be undertaken in the State Law Office to strengthen and enhance its performance, accountability and efficiency in the administration of justice.**
- (ii) Additional state counsel be recruited and deployed in at least each High Court station to expedite the prosecution of criminal cases and litigation of civil cases.**
- (iii) The terms and conditions of service of officers and staff in the State Law Office be reviewed and improved so as to attract and retain highly qualified personnel.**
- (iv) The process of computerization and digitisation of registries in the State Law Office be speeded up.**

11.4 The Bar

The integrity, efficiency and effectiveness of the judicial process are not only functions of the Judiciary, but also the Bar. The advocates who practice in the courts, are officers of the court, and hence have a major impact on the judicial process. Their diligence and conduct determines the pace, integrity and outcome of the legal proceedings in the courts. For example, the Task Force heard of instances where some advocates collude with court officials to pre-direct cases to particular judicial officers or to cause files to disappear. Advocates, as legal representatives of parties, can be agents of corruption, conveying bribes or offering other forms of improper inducement to judicial officers on behalf of their clients. Delay in cases may also be caused by unnecessary adjournments or frivolous court applications aimed at sabotaging the administration of justice, or contempt of court by advocates, bringing the judicial process into disrepute. To this list may be added cases of collusion by advocates with judicial officers in fraudulent insurance claims.

The concerns above illustrate that the Bar can be an obstacle to judicial independence, accountability and integrity. However, the Bar can also offer leadership in improving the administration of

justice by upholding high professional standards and instituting checks on the Judiciary or otherwise directly influencing judicial reform through its own reform. A Bar that effectively polices itself to prevent or eliminate misconduct and unethical practices can make a strong contribution to the administration of justice. The Task Force acknowledges the efforts by the Law Society of Kenya towards this end, but also notes that the two principal disciplinary bodies for advocates, that is, the Advocates Complaints Commission and the Disciplinary Committee, remain under-funded, under-resourced and beset with inadequate case management systems. Their procedures are cumbersome and in need of urgent reform to provide a coherent case management system and reduce delays that exist.

The Task Force was also informed that there is need to address an emerging trend where advocates with pending or ongoing cases before the Disciplinary Committee delay the finalization of these cases by seeking judicial review orders in the High Court, and upon obtaining orders of stay, ignore or neglect to prosecute the application, thereby delaying the determination of proceedings before the Disciplinary Committee. Finally, the Task Force is of the opinion that there is need to review and strengthen the Continuing Legal Education Programme to ensure that it is not perfunctory. The Task Force received representations that some advocates send their law clerks to impersonate them and attend the CLE training sessions on their behalf, whereas some advocates make technical appearances in CLE sessions and depart after registering, without undergoing the full CLE training session.

In order to address these issues and broaden the base for reform, the Task Force reiterates the need for the Bar to effectively, and independently play its role in the administration of justice and recommends that:

- (i) Quarterly and annual regional Bar-Bench events be institutionalised to give lawyers and judicial officers a chance to reflect on their experiences in the administration of justice.**

- (ii) **The Law Society of Kenya partners with the Judiciary to develop mechanisms of addressing judicial process related corruption among its members.**
- (iii) **A Code of Ethics with effective sanctions be adopted by the Law Society of Kenya to raise collective consciousness against unethical practices or violations of professional responsibility.**
- (iv) **The legal profession adopts a Code of Ethics with effective mechanisms for penalizing corruption and other misconduct or any other form or unprofessional conduct.**
- (v) **There be established a single complaints agency to receive, investigate, discipline and enforce sanctions against advocates.**

11.5 Bar-Bench Committees

Bar-Bench Committees have been formed in some jurisdictions to foster better understanding and good working relations between the Bar and the Bench. Comprising members of the Bar and the Bench, Bar-Bench committees are convened periodically to provide an opportunity for dialogue between the courts and the legal profession on the procedures, practices and emerging issues and initiatives in the courts of law. They are therefore a "sounding board" for members to explore ideas and seek agreement on pertinent issues of mutual concern. Thus, members of the Bench may raise issues on the Bar, whereas the Bar may raise concerns about judicial officers or staff, the operation of the court system or other issues important to the advocates. In the end, the committees facilitate cooperation among all concerned with the goal of efficiently addressing all such issues and avoiding scenarios such as court boycotts or walkouts that have been witnessed in recent times. Bar-Bench committees may also be an avenue for identifying outstanding judicial officers and staff who have exceeded the call of judicial duty or have otherwise contributed to an improved judicial process.

In view of the need to foster cooperation between the Bar and the Bench, the Task Force therefore recommends that Bar-

Bench Committees be established in every court station across the country.

11.6 Court Users Committees

It is imperative that there should be avenues of bringing players in the administration of justice as well as users of the justice system to address the problems of the sector. Some courts have established Court Users Committees made up of key agencies at the court station level. The Task Force considers this mechanism as an important initiative as it ensures that problems in the administration of justice are addressed at the local level by all the agencies and stakeholders concerned. The mechanism can also serve to promote accountability and performance improvement in the courts. **For this reason, the Task Force recommends that:**

- (i) Court Users Committees be established in all court stations in the country, with the following membership:**
 - (a) the Resident Judge or any other judicial officer-in-charge**
 - (b) a representative of the Attorney-General's office**
 - (c) a representative of the Director of Public Prosecution's office**
 - (d) a representative of the Police**
 - (e) a representative of the restructured Provincial administration**
 - (f) a representative of the Prisons**
 - (g) a representative of the Children Department**
 - (h) a representative of the Probation and After Care Services Department**
 - (i) a representative of the Law Society of Kenya**
 - (j) a representative of local legal aid Non Governmental Organizations (NGOs)**
- (ii) Representatives from the agencies listed above other than the resident Judge should be of the highest rank in**

the region to ensure deliberations and decisions are policy-oriented.

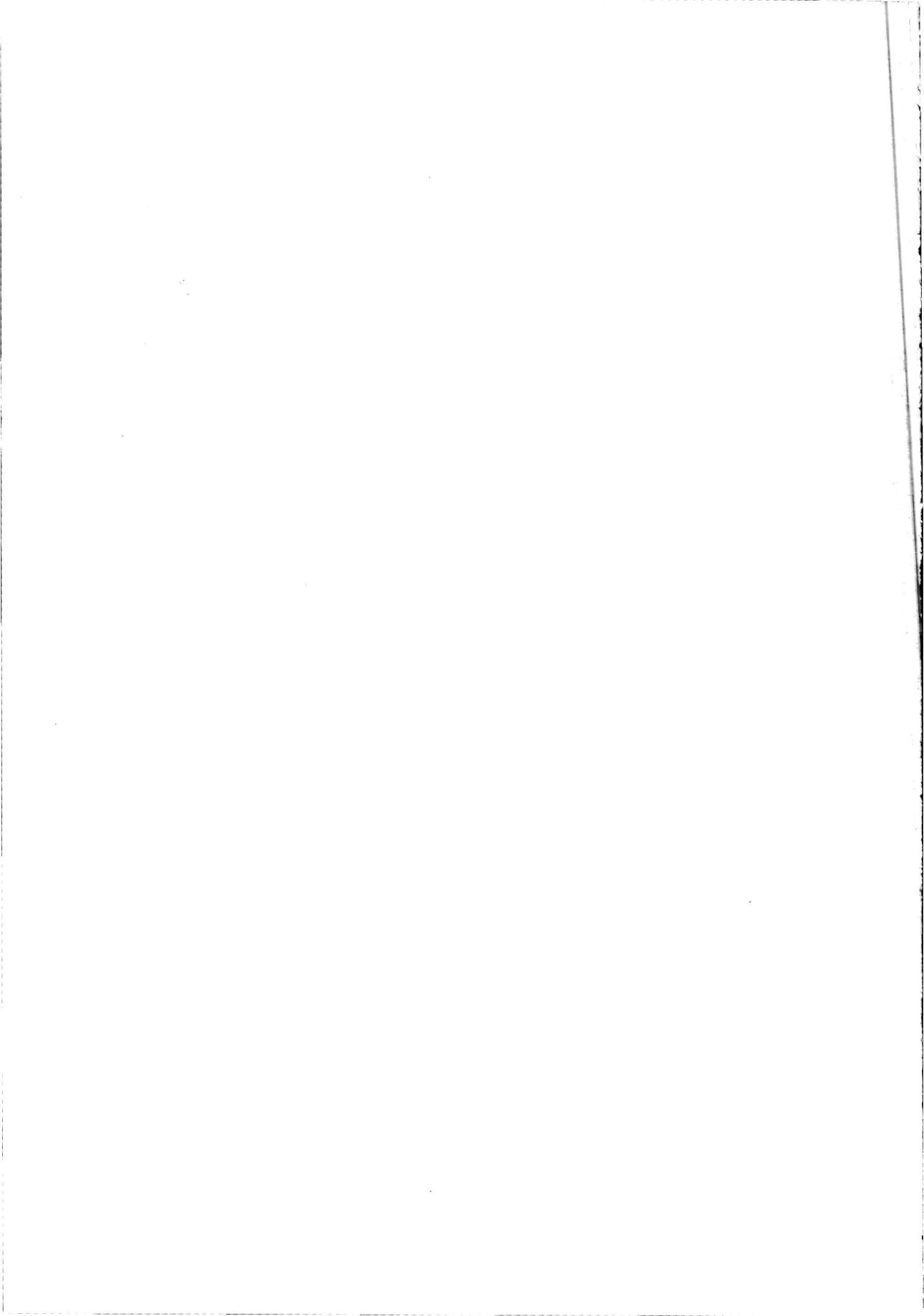
- (iii) **The mandate of the Committees be to consider improvements in the operations of the courts, coordinate the functions of all agencies within the justice system and improve interaction among these agencies and stakeholders.**
- (iv) **The Committees be required to hold monthly meetings and submit reports to the National Council on the Administration of Justice not later than the 10th day of every month.**

11.7 The National Council on Administration of Justice

The Task Force is of the view that the administration of justice requires closer coordination between all the agencies involved in the justice system. This means that only comprehensive reforms can restore the integrity, efficiency and effectiveness of the administration of justice. **In order to have a coordinated and consultative approach in administration of justice, the Task Force recommends as follows that:**

- (i) **A National Council on the Administration of Justice made up of the following members be established under the Judicial Service Bill:**
 - (a) **The Chief Justice as chairperson**
 - (b) **The Cabinet Secretary for the time being in charge of Justice**
 - (c) **The Attorney-General**
 - (d) **The Director of Public Prosecutions**
 - (e) **Inspector General of Police**
 - (f) **Commissioner of Prisons**
 - (g) **Chairperson of the Law Society of Kenya**
 - (h) **The Principal Secretary for the time being in charge of the Cabinet and Public Service**

- (i) The Principal Secretary for the time being in charge of Gender, Women and Children's Affairs**
- (j) A representative of legal aid Non Governmental Organizations (NGOs)**
- (k) The Director of Probation and After Care Services**
- (l) The Chief Registrar of the Judiciary as Secretary**
- (ii) The role of the Council be to coordinate cohesive, efficient and effective administration of justice through policy formulation, strategic planning, resource mobilization, monitoring and review.**
- (iii) The Council be required to hold quarterly meetings.**
- (iv) A Secretariat be established to facilitate the work of the Council.**
- (v) The Council be mandated to oversee the operations of the National Crime Research Centre.**
- (vi) The Council prepares and presents annual reports to Parliament.**



CHAPTER TWELVE

IMPLEMENTATION OF THE RECOMMENDATIONS

12.1 Overview

The slow pace and sometimes non-implementation of reform initiatives in the Judiciary has been a matter of concern to this Task Force. The Task Force has established that even where these reforms have been proposed and identified by the Judiciary's internal committees, full implementation has never been achieved. The Task Force further notes that the last two committees established by the Judiciary made proposals to enhance the efficacy of implementation of their recommendations, with suboptimal results.

The Task Force is convinced that unless the reforms identified in this Report and the other reports of past committees are implemented, stakeholders and actors in the justice sector will continue to become sceptical and critical of the Judiciary. This way, the Judiciary will lose the opportunity and the support it needs to perform its functions. Further, it is the view of the Task Force that piecemeal initiatives will not be sufficient to reform the Judiciary. The Task Force takes the view that only substantial and radical reforms in a coordinated and consistent manner will restore the efficiency, effectiveness and credibility of the Judiciary. In this regard, it is the considered view of the Task Force that the Proposed Constitution of Kenya will provide an important foundation for the wide array of reforms proposed in this Report.

12.2 Challenges and Obstacles to Implementation

The Task Force has reviewed the challenges that have been identified in the past as the cause of the non-implementation of the recommendations by various committees mandated to make proposals on judicial reform. In this regard, representations were made to the Task Force that:

- (i) Slow response on the part of the Judiciary has denied the implementation initiatives the urgency, focus and direction necessary for the implementation of the bold reform strategies contained in the previous committee reports.

- (ii) The implementation of recommendations is not properly structured. There is no department or unit of the Judiciary which is specifically charged with, and therefore responsible for, the coordination of reforms. Implementation is largely left to the disjointed efforts of various departments or sections of the Judiciary, some of which may not prioritize the reforms.
- (iii) Recommendations for reform by various integrity committees have not been mainstreamed as part of the day-to-day operations of the Judiciary.
- (iv) The unplanned and unstructured nature of the implementation makes it difficult to allocate funds and other resources therefor, thus denying reform activities the much needed resources.
- (v) The non-implementation of previous recommendations has resulted in many members of the public and staff to view the review exercises as perfunctory, thereby denying the Judiciary the public support and internal goodwill it requires to implement the reforms.
- (vi) Failure to publish some of the reports of previous committees makes it difficult for the public to appreciate and support the proposed changes. It also makes it difficult for the Judiciary to be held to account for the non-implementation of the recommendations.
- (vii) The institutional weaknesses within the Judiciary mean that policy changes and interventions are a matter of discretion and initiative on the part of the Judiciary's leadership. The lack of a properly structured and representative Judicial Service commission means that there are no accountability measures for the implementation of reforms.
- (viii) The implementation of reforms is also hampered by the lack of adequate and properly qualified staff. As noted elsewhere in this Report, the Central Planning and Monitoring Unit, which is the department responsible for planning and monitoring of activities in the Judiciary, is understaffed and is therefore unable to discharge its mandate effectively.

- (ix) The implementation of previous recommendations has been hampered by failure to adopt and align them with the strategic plans and development budgets of the Judiciary.
- (x) Isolation and poor relations between the Judiciary and other organs of government has greatly affected implementation of reforms especially those that require complementary initiative of those organs of government. In this regard, reforms that require legislative action or additional capital investment have largely not been pursued.
- (xi) The poor rate of implementation is also attributed to challenges in implementing donor funded programs. These challenges include lack of technical capacity to engage with donors, slow and lengthy procedures associated with release and expenditure of donor funds, suspension of donor funds as a result of poor relations between the government and development partners, and lack of a clear strategy and focus for reform hence duplication and haphazard implementation.

The Task Force therefore recommends that:

- (i) **Change management capacity be integrated into the implementation structure of the recommendations in this Report.**
- (ii) **The above challenges be addressed to guarantee the implementation of the recommendations in this Report.**

12.3 Implementation of the Recommendations

To guarantee that these reforms are sustained, it is important to ensure that they are owned internally within the Judiciary. In this regard, each judicial officer, from the highest to the lowest ranks, and every member of the Judiciary has a role and an input to make towards the achievement of these reforms. They must be part of this process, because unless they see the need to reform, they may be obstacles to change. On its part, the JSC and the leadership of the Judiciary should ensure that there is adequate internal capacity to deal with the reforms.

Similarly, external stakeholders are critical to the reform and transformation of the Judiciary. This is because they influence and impact, in various ways, the operations of the Judiciary. In many cases, they are themselves challenges to the effective working of the Judiciary. It is imperative therefore that they be incorporated in the reform process so as to support it and be transformed by it. The Task Force is also convinced that stakeholder ownership is particularly imperative in generating and sustaining the momentum needed to bring meaningful change in the Judiciary.

The Task Force is of the view that currently, there is political support and goodwill to carry out the reforms that are needed in the Judiciary. The Government should commit itself to sustaining this momentum, whereas the Judiciary should use this opportunity to see the judicial reform agenda succeed. In this regard, the Task Force is hopeful that the Government of Kenya will provide leadership and commitment by supporting the proposed reforms through policy and legal development as well as financial and human resources.

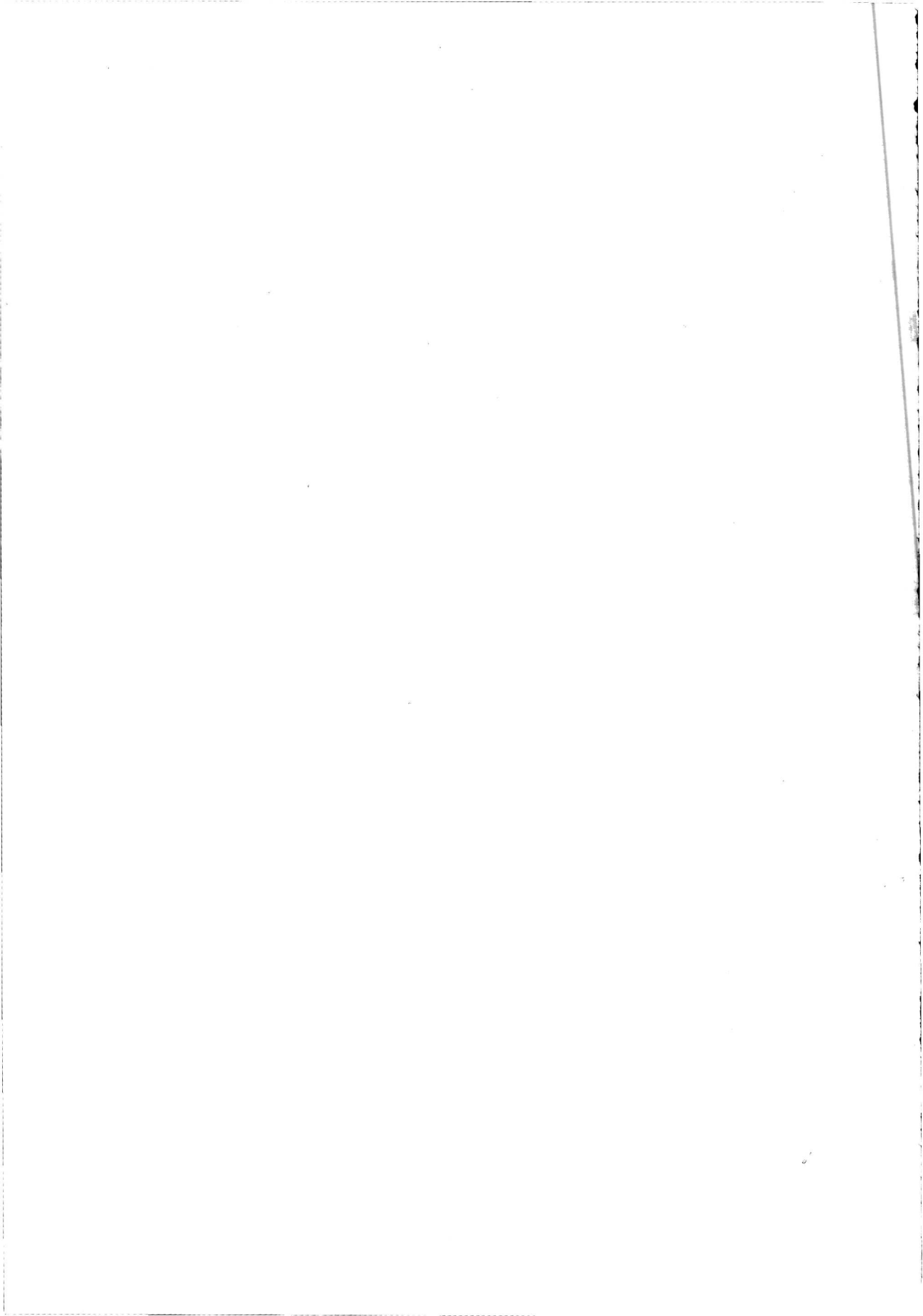
The Task Force also notes that a number of development partners have indicated their willingness to provide technical and financial resources towards the reform of the Judiciary. In this regard, the Task Force has undertaken a preliminary costing of the proposed reforms, and notes that the Judiciary will require averagely KSh. 6 billion *per annum* over the next four years in order to realize these reforms. The Task Force is aware that in the past, funds have been unutilized owing to cumbersome and inflexible procedures and recommends that the Judiciary and the development partners institute a framework that addresses these challenges.

Finally, the Task Force notes that the success of judicial reforms will depend on the reform of other related institutions, as well as coordination between them. The Task Force therefore recommends that the reform of the Police, Prisons, State Law Office, the Bar and related institutions be speeded up, as well as the coordination between them. **The Task Force therefore recommends that:**

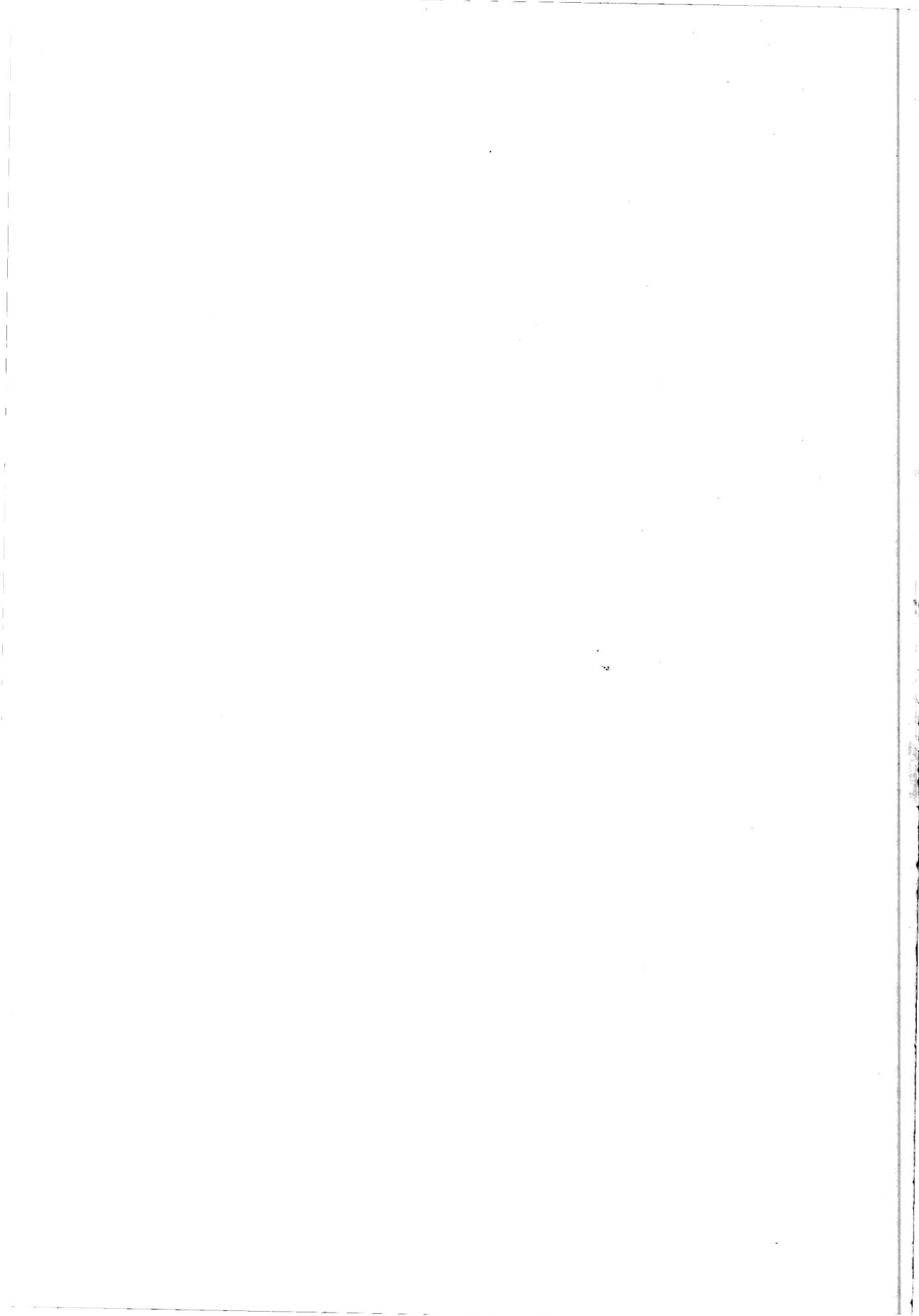
- (i) **A multi-stakeholder implementation committee with a Secretariat be established within 2 months of publication**

of this Report to oversee the implementation of the short-term recommendations made in this Report.

- (ii) The expanded Judicial Service Commission be mandated to oversee the implementation of the long-term recommendations made in this Report.**
- (iii) A judicial reform strategy be adopted, costed and implemented in accordance with the recommendations of this Report.**
- (iv) The recommendations of this Report be rationalized and prioritized to ensure that they are implemented in a coherent and efficacious manner as suggested in the matrix appended to this Report as Annex VII.**



ANNEXURES



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THE JUDICIAL SERVICE BILL, 2010

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2- Interpretation
3- Objects and purpose
4- Standards of service
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THE JUDICIAL SERVICE BILL, 2010

A Bill for

An Act of Parliament to make provision for judicial services and administration of the Judiciary; to provide for the structure of the Judicial Service Commission; to make provision for the operations of the Judiciary Fund; to provide for the procedure for appointment, discipline and removal of judges, other judicial officers and staff; to establish the National Council on Administration of Justice and for connected purposes;

ENACTED by the Parliament of Kenya as follows—

PART I — PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Judicial Service Act, 2010 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint but not later than sixty [60] days from the date of assent.

Interpretation.

2. In this Act, unless the context otherwise requires—
“Accounting Officer” means an accounting officer appointed under section 17 of the Government Financial Management Act, 2004;

“Authorized Officer” means the Chief Registrar;

“Chairman” includes the vice-chairman or any other member of the Commission when discharging the functions of the chairman;

“Commission” means Judicial Service Commission;

“Committee” includes a Sub commission or Panel;

“Fund” means the Judiciary Fund established under the Constitution;

“Chief Registrar” means the Chief Registrar appointed under Constitution;

“Judicial officer” means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of any other court or local tribunal as may be established by an Act of Parliament, other than the courts established to hear and

determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land;

“Judicial staff” means persons in the employ of judiciary but without power to make judicial decisions and includes staff of the Commission;

“Minister” means the Minister who is for the time being responsible for matters relating to the Judiciary;

“Secretary” means the Secretary to the Commission appointed in accordance with the Constitution and includes the Deputy Chief Registrar or any other member of staff of the Commission when discharging the functions of the Secretary;

“Sub commission” means a unit of the Commission formed by the Commission to exercise any delegated powers and functions for purposes of the Constitution, this Act and the Regulations made thereunder;

Object and purpose.

3. The object and purpose of this Act is to secure provisions therein that shall ensure that the Judicial Service Commission shall—

[a] be the organ of management of judicial services and, in that behalf, shall uphold, sustain and facilitate a Judiciary that is independent, impartial and subject only to the provisions of the Constitution and the law;

[b] not be subject to the control or direction of any other person or authority ;

[c] facilitate the conduct of a judicial process designed to render justice to all;

[d] be accountable to the people of Kenya;

[e] facilitate a judicial process that is committed to the expeditious determination of disputes;

[f] facilitate a judicial process that is committed to the just resolution of disputes;

[g] support and sustain a judicial process that is committed to the protection of the people and of their human rights;

[h] promote and sustain fair procedures in its functioning and in the operations of the judicial process, and in particular shall be guided in all cases in which it has the responsibility of taking a decision affecting a judicial officer of any rank or its own employee, by the rules of natural justice.

[i] be the administrative manifestation of the Judiciary's autonomy and inherent power to protect and regulate its own process, achieving these objects through application of principles set out in the Constitution, and other laws;

[j] guided in its internal affairs, and in the discharge of its mandate in relation to the Judiciary by considerations of social and gender equity and the need to remove any historical factors of discrimination; and

[k] endeavour to keep a modern approach to its operation, informed by international trends, and shall promote the role of international law in its various forms in the interpretation of law within the judicial process.

Standard of service.

4. In the exercise of the powers or the performance of the functions conferred by this Act, the Commission and the Judiciary shall –

[a] have the technical and administrative competence to ensure that the requirements of the judicial process are fulfilled;

[b] adopt quality service as a core principle and, to uphold this principle, the Commission and the Judiciary shall formulate a modern and constantly updated scheme of judicial and other training for all categories of Judges, judicial officers and for the Commission's and staff;

[c] guided in their activities by the relevant provisions of the constitution;

[d] uphold the judicial service code of conduct and ethics as may by regulations be prescribed;

[e] be non-partisan and non-political in orientation and operations;

[f] promote and uphold honesty and integrity in its operations, and shall give fulfilment to all values essential for the discharge of judicial functions; and

[g] apply and promote such other positive values as the Commission may by regulations prescribe.

PART II – ADMINISTRATION OF THE JUDICIARY

Functions of the
Chief Justice and the
Deputy Chief Justice.

5. [1] The Chief Justice shall be Head of the Judiciary and the president of the Supreme Court and shall in that role be the link between the Judiciary and the other arms of Government.

[2] Notwithstanding the generality of subsection [1] the Chief Justice shall—

[a] regulate the practice and procedure of the courts of law;

[b] empanel judges to hear cases;

[c] assign duties to the Deputy Chief Justice, president of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar of the Judiciary;

[d] give an annual address to the nation on the state of the Judiciary and the administration of justice; and

[e] in consultation with the Deputy Chief Justice, president of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar of the Judiciary, administer the Judiciary.

[3] The Deputy Chief Justice shall be the Deputy Head of the Judiciary and the vice-president of the Supreme Court and shall be responsible to the Chief Justice in the exercise of the functions and duties of the office.

The President of the
Court of Appeal, the
Principal Judge of the
High Court, Resident
Judges and Division
Heads.

6. [1] The president of the Court of Appeal and the Principal Judge of the High Court shall each serve for a non-renewable term of three [3] years.

[2] The president of the Court of Appeal and the Principal Judge of the High Court shall in consultation with the Chief Registrar of the Judiciary be responsible to the Chief Justice for the administration of the Court of Appeal and High Court respectively.

[3] A Resident Judges and High Court Division Head shall in consultation with the Chief Registrar be responsible to the Principal Judge of the High Court for the administration of their station or division.

[4] Notwithstanding the generality of subsection [3] a Resident Judge shall in particular—

[a] supervise the courts within the region in which the High Court is situate; and

[b] present the necessary status reports to the Chief Justice through the Chief Registrar.

Research Assistants.

7. [1] The Chief Justice and the Deputy Chief Justice shall have Research Assistants who shall be advocates of the High Court with at least two years post-qualification experience.

[2] Every judge shall have a Research Assistant who shall be an advocate of the High Court with at least two years post-qualification experience.

Office of the Chief Registrar, functions and powers.

8. [1] There shall be a Chief Registrar of the Judiciary who shall be the chief administrator and accounting officer of the Judiciary and shall in particular—

[a] be responsible for the overall administration and management of the Judiciary;

[b] perform judicial functions vested in the office of the Registrar by law;

[c] exercise powers vested by virtue of any regulations and give effect to the directives of the Chief Justice;

[d] account for any service in respect of which monies have been appropriated by Parliament and to whom issues are made from the exchequer account;

[e] be authorized officer for the Judiciary who is responsible for efficient management of the day-to-day operations and administration of human resources in the judicial service;

[f] be in-charge of support services in the judiciary and in particular planning, development and organization of staff;

[g] monitor and enhance administration and office procedures to maximize quality of service;

[h] plan, prepare, implement and monitor the budget and collect, receive and account for revenue;

[i] prepare reports and proposals on administrative issues;

[j] be in-charge of the procurement of all stores, management and maintenance of all physical facilities;

[k] maintain and develop co-operation with key staff in the public service and other institutions and agencies; and

[l] perform such other duties as may be assigned by the Chief Justice from time to time.

[2] The Chief Registrar shall have all the necessary powers for the execution the functions enumerated under subsection [1].

Qualifications of the Chief Registrar.

9. No person shall be qualified for appointment as the Chief Registrar under this section unless such person—

[a] is an advocate of the High Court of Kenya and has since qualification —

[i] attained qualifications of a High Court Judge; or

[ii] attained at least ten [10] years as professionally qualified magistrate; or

[iii] attained at least ten years experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; or

[iii] held the qualifications mentioned in paragraphs[i] to [iii] for a period amounting, in the aggregate, to ten years; and

[b] has performed duties of an administrative nature for not less than five [5] years.

Deputy Chief Registrar etc.

10. [1] There may be appointed a Deputy Chief Registrar and such other Registrars, Deputy Registrars and Assistant Registrars as may be necessary for the discharge of judicial service.

[2] Of the Registrars appointed under subsection [1], there shall be a Registrar each for the Supreme Court, Court of Appeal, High Court, the Commission and subordinate courts.

[3] All the Registrars appointed under subsection [2] shall be responsible to the Chief Registrar in the performance of their duties.

Temporary vacancy
in the office of the
Chief Registrar.

11. Where the office of the Chief Registrar temporarily falls vacant or if for any reason the Chief Registrar is unable to exercise the functions of the office, the Deputy Chief Registrar and in their absence, any officer who for the time being is qualified to perform the duties of the Chief Registrar under section 9, shall have and may exercise all the functions, duties and powers of the Chief Registrar subject to such conditions, exceptions, qualifications as the Commission may in writing direct.

Suspension or
removal of the Chief
Registrar.

12. [1] The Chief Registrar may at any time, and in such manner as may be prescribed under this Act, be suspended or removed from office by the Commission for inability to perform the functions of the office whether arising from infirmity of body or mind or from any other cause or for misbehaviour or incompetence.

[2] Before the Chief Registrar is removed under subsection [1], they shall be informed of the case against them and shall be given appropriate opportunity to defend themselves against any such allegations.

PART III – ESTABLISHMENT, COMPOSITION, STRUCTURE AND OPERATIONS OF THE COMMISSION

Establishment,
membership and
incorporation of the
Commission.

13. [1] The establishment and functions of the Commission and appointment of members shall be in accordance with the Constitution.

[2] The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –

[a] suing and being sued;

[b] purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;

[c] borrowing and lending money;

[d] entering into contracts;

[e] doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully done or performed by a body corporate.

[3] A member of the Commission shall be guided in the discharge of his responsibilities by the principles contained in the Constitution and in this Act.

[4] The Commission shall have all the necessary powers for the execution of its functions under the Constitution and this Act.

Structure of the
Commission.

14. [1] There shall be such sections or departments or divisions of the Commission, and such categories and classifications of staff under the Commission as the Commission may, from time to time, determine.

[2] The units referred to in subsection [1] shall be set up with specific mandates.

[3] The Commission may from time to time-

[a] allocate functions to any such units; and

[b] make such arrangements as may appear to the Commission to be expedient in connection with the division, amalgamation or abolition of any such units.

[4] Nothing in this section may be construed as precluding the Commission from constituting such Sub commissions, committees or panels for the effective discharge of its mandate.

Secretariat.

15. [1] There shall be a secretariat of the Commission which shall be headed by a Registrar appointed by the Commission.

[2] The Registrar shall be the chief executive and administrator of secretariat and shall serve on a full-time basis.

[3] The Registrar shall among others be responsible to the Chief Registrar for-

[a] the day to day administration of the affairs of the Commission;

[b] the coordination of the Commission's studies, reviews, research and evaluations;

[c] the recording of the Commission's proceedings;

[d] providing the Commission with accurate information on the status of facilities and services required for the proper conduct of the judicial process in the country;

[e] securing the maintenance and provision of facilities and services required for the discharge of judicial functions;

[f] providing the Commission with accurate records and information regarding judicial personnel, staff affairs, and the status of operations in the judicial process in the country;

[g] maintaining accurate records on financial matters and resource use;

[h] ensuring the drawing up and approval of an annual budget;

[i] the custody of all records and documents of the Commission; and

[j] Performing any other duties as may be assigned by the Commission from time to time.

[4] Subject to the provisions of the Constitution or any other written law, the Commission may delegate such of its functions as are necessary for the day-to-day management of the judicial service.

Staff.

16. [1] The staff of the Commission shall comprise –

[a] such judicial officers and other staff as the Commission may appoint to assist it in the discharge of its functions under the Constitution and this Act; and

[b] such public officers as may upon the request of the Commission, be seconded to the Commission.

[2] A public officer who is seconded to the Commission under subsection [1], shall, during the secondment, be deemed to be an officer of the Commission and subject to its direction and control.

Secretary.

17. [1] The Chief Registrar shall be the Secretary of the Commission.

[2] In relation to the proceedings before the Commission, the Secretary shall act in accordance with the provisions of the Constitution, this Act and these Regulations and shall, in particular, be responsible for←

[a] the acceptance, transmission, service and custody of documents in accordance with these Regulations;

[b] the enforcement of decisions of the Commission;

[c] certifying that any order, direction or decision is an order, direction or decision of the Commission, the Chairman or a member, as the case may be;

[d] causing to be kept records of the proceedings and minutes of the meetings of the Commission and such other records as the Commission may direct; and

[e] undertaking any duties assigned by the Commission.

[3] With the authorization of the Commission, the Secretary may consider and dispose of procedural or administrative matters in accordance with these Regulations.

[4] Any administrative function of the Secretary under this section may in the Secretary's absence, be performed by the any member of staff of the Commission whom the Chairman may authorize for that purpose.

Meetings.

18. [1] The Chairman shall convene a meeting of the Commission at least once every quarter.

[2] There shall be given to members a notice of seven clear days for every meeting called by the Commission.

[3] Notwithstanding the provisions of subsection [1], the Chairman may at any time convene a special meeting of the Commission, or shall do so within seven [7] days of the receipt by him of a written requisition thereof signed by at least three [3] members.

[4] Subject to subsection [5], the Commission shall hold such number of meetings in such places, at such times and in such manner as the Commission shall consider necessary for the discharge of its functions under the Constitution and these Regulations.

[5] The quorum of the Commission and any of its Committees shall be five [5] members.

[6] The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

[7] All the questions before the Commission or a Committee thereof shall be determined by consensus, but in the absence of consensus, decisions of the Commission shall be determined by a majority of the members present and voting.

Records of the Commission.

19. The Commission shall keep a record of the proceedings of every meeting of the Commission and its committees.

Seal of the Commission.

20. [1] The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

[2] The affixing of the seal shall be authenticated by the Chairman or any other person authorized in that behalf by a resolution of the Commission.

[3] Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

PART IV – TERMS AND CONDITIONS OF JUDICIAL OFFICERS AND STAFF

Retirement and resignation of judicial officers and staff of the Commission.

21. [1] A judicial officer or staff of the Commission shall retire on attaining the mandatory retirement age for public officers.

[2] A person in respect of whom subsection [1] applies may after attaining the age of fifty five [55] years, elect to retire from the Commission at any time.

[3] Notwithstanding the provisions of subsection [2] the Commission may, in such manner and for such reasons as may be prescribed by regulations under this Act, require a judicial officer or staff to retire or resign from service at any time.

[4] Except for voluntary retirement or resignation, this section shall not apply where the judicial officer concerned is a judge.

Review of terms and conditions and development of scheme of service.

22. [1] Subject to the provisions of subsection [4], the Commission shall undertake a periodic review of the terms and conditions of service for judicial officers and staff

[2] Notwithstanding the provisions of subsection [1] the Commission shall deliberate on and make decisions regarding the implementation of -

- [a] terms and conditions of service for judicial staff;
- [b] salaries, allowances, pensions and related benefits;
- [c] retirement benefits and gratuities;
- [d] health benefits;
- [e] benefits following death;
- [f] administrative expenses; and
- [g] services and facilities;

[3] The Commission shall develop a scheme of service for judicial officers and staff, which scheme of service shall include provisions relating to-

- [a] the appointment and confirmation of such staff;
- [b] promotions, resignations, retirement, and termination of appointments;
- [c] scale of salaries and allowances;
- [d] designations and grades; and
- [e] training and development.

[4] The Commission shall at least once every five years appoint an independent body of experts to review the terms and conditions of service of judicial officers and staff.

[5] The Commission shall upon receipt of the report of experts appointed under subsection [4], review the report and make such alterations thereto as it may consider necessary, and, shall thereafter approve the new terms and

conditions of service, save that in respect of salaries for judges, recommendations shall be made in accordance with the Constitution and the Constitutional Offices [Remuneration] Act.

[6] The provisions of subsection [3] shall not apply in respect of judges.

Principles governing terms and conditions of service of judicial officers and staff.

23. In determining or recommending as the case may be, the terms and conditions of service for judicial officers and staff, the Commission shall be guided by among others, the following principles-

[a] that judicial function falls in a strategic sector in the constitutional and governance process and the nature of the service entailed requires commensurate compensation;

[b] that the status of trust held by judicial officers requires probity, integrity and incorruptibility;

[c] that comparability with sectors of a similar class should be the starting point in the formulation of appropriate terms and conditions of service;

[d] that the special nature of service at the various levels requires reasonable and commensurate terms and conditions of service at those levels.

Social security scheme

24. The Commission-

[a] shall establish a contributory pension scheme for all judicial officers and staff; and

[b] may establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for all judicial officers and may grant pensions, gratuities, retirement allowances or sickness or injury benefits to such officer.

PART V –FUNDS OF THE JUDICIARY

Expenses of the Judiciary.

25. [1] The expenses of the Judiciary incurred for the purposes of this Act shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

[2] Without prejudice to subsection [1], there may be made to the Judiciary grants, gifts, donations or bequests towards the achievement of the objects of the Commission.

[3] The Judiciary shall not accept any grant, gift, donation or bequest made on any condition that the Commission or the Judiciary performs any function or discharge any duty or obligation other than duties under this Act.

Judiciary Fund.

26. [1] There is established a special fund to be known as the Judiciary Fund which shall be administered by the Chief Registrar.

[2] There shall be paid into the Fund –

[a] such monies as may be appropriated out of the Consolidated Fund pursuant to this Act;

[b] any grants, gifts, donations or bequests; and

[c] such monies as may be allocated for that purpose from investments, fees or levies administered by the Commission.

[3] There shall be paid out of the Fund all payments in respect of any expenses incurred in pursuance of the provisions of this Act.

[4] Unless the Treasury directs otherwise, the receipts, earnings or accruals of the Fund and the balances of the Fund at the close of each financial year, shall not be paid into the Consolidated Fund but shall be retained for the purposes of the Fund.

[5] Subject to this section, the Chief Justice may by regulations provide for the management and administration of the Fund and for anything or incidental to or connected therewith.

Bank accounts.

27. The Judiciary shall open and maintain such bank accounts as are necessary for the exercise of its functions.

Financial estimates.

28. [1] At least three months before the commencement of each financial year, the Chief Registrar shall cause to be prepared, estimates of all the expenditure required for the purposes of this Act for that year, and shall present such estimates to the Commission for review.

[2] The Commission shall review the estimates forwarded under subsection [1] and may make such alterations thereto as it may consider necessary.

[3] The Chief Registrar shall forward the estimates approved by the Commission under sub-section [2] to the National Assembly for approval, and upon approval the estimates shall be a first charge to the Consolidated Fund.

[4] Upon the approval of the estimates presented to the National Assembly under subsection [3], all monies from time to time required for the purposes of this Act shall be paid from the Consolidated Fund into the Judiciary Fund.

PART VI- PROCEDURE FOR APPOINTMENT, DISCIPLINE AND REMOVAL OF JUDGES, OTHER JUDICIAL OFFICERS AND STAFF

Appointment of Judges.

29. [1] For the purposes of transparent recruitment of Judges, the Commission shall constitute a selection panel consisting of at least three [3] members.

[2] The function of the selection panel shall be to short-list persons for selection and nomination by the Commission as Judges in accordance with the First Schedule.

[3] The provisions of this section shall apply to the appointment of the Chief Justice and Deputy Chief Justice except that in such case, a person shall not be appointed without the requisite Parliamentary approval.

[4] Members of the selection panel shall elect a chairperson and vice-chairperson of the selection panel from amongst their number.

[5] The chairperson and vice-chairperson elected under subsection [4] shall be persons of opposite gender. [6] Subject to the provisions of the First Schedule, the selection panel shall determine its own procedure.

Discipline of Judges.

30. [1] For the purposes of discipline of Judges, the Commission shall constitute a Sub commission to examine, investigate and determine complaints against judges.

[2] The Second Schedule elaborates the procedure to govern the conduct of the Sub commission.

[3] Members of the Sub commission shall elect a chairperson and vice-chairperson of the selection panel from amongst their number.

[5] The chairperson and vice-chairperson elected under subsection [4] shall be persons of opposite gender.

[6] Subject to the provisions of the Second Schedule, the selection panel shall determine its own procedure.

Removal of judges.

31. [1] The Third Schedule elaborates the procedure to govern the conduct of a tribunal set up for purposes of removing the Chief Justice, Deputy Chief Justice or a Judge.

[2] If the tribunal set up under subsection [1] is for the removal of a Judge, the appointing authority shall appoint the chairperson and the members shall elect a vice-chairperson of the tribunal from amongst their number.

[3] The chairperson and vice-chairperson appointed for purposes of removal of a Chief Justice or Deputy Chief Justice or elected under subsection [2] shall be persons of opposite gender.

[4] The appointing authority may appoint a counsel to assist the Tribunal.

[5] Subject to the provisions of the Third Schedule, the Tribunal shall determine its own procedure.

Appointment,
Discipline and
Removal of Judicial
Officers and Staff.

32. [1] For the purposes of appointment, discipline and removal of judicial officers and staff, the Commission shall constitute a Sub commission.

[2] Notwithstanding the generality of subsection [1], a person shall not be qualified to be appointed as a magistrate by the Commission unless the person—

[a] has a degree in law from a recognized university;

[b] has a diploma in law;

[c] has high moral character, integrity and impartiality;

[d] has demonstrable management skills;

[e] has proficiency in computer applications; and

[f] has no pending complaints from the Advocates Complaints Commission, the Disciplinary Committee or adverse report from a previous employer.

[3] The Fourth Schedule elaborates the procedure to govern the conduct of the Sub commission.

[4] Members of the Sub commission shall elect a chairperson and vice-chairperson of the selection panel from amongst their number.

[5] The chairperson and vice-chairperson elected under subsection [4] shall be persons of opposite gender.

[6] Subject to the provisions of the Fourth Schedule, the selection panel shall determine its own procedure.

Commission to
provide secretariat.

33. The Commission shall provide secretariat services to the Sub commissions or panels constituted under this Part.

PART VII- THE NATIONAL COUNCIL ON ADMINISTRATION OF JUSTICE

Establishment of the
National Council on
the Administration of
Justice.

34. [1] There is established an unincorporated body to be known as the National Council on the Administration of Justice.

[2] The Council shall be composed of —

[a] The Chief Justice as Chairperson;

[b] The Cabinet Secretary for the time being responsible for matters relating to Justice;

[c] The Attorney-General;

[d] The Director of Public Prosecutions;

[e] The Inspector General of Police;

[f] The Commissioner of Prisons;

[g] The Chairperson Law Society of Kenya;

[h] The Principal Secretary for the time being responsible for matters relating to the Cabinet and Public Service;

[i] The Principal Secretary for the time being responsible for matters relating to Gender, Women and Children's Affairs;

[j] A representative of legal aid Non Governmental Organizations; and

[k] The Director of Probation and After-Care Department.

[3] The Chief Registrar shall be the Secretary to the Council.

[4] The Commission shall provide secretariat services to the Council.

Purpose and functions of the Council.

35. [1] It shall be the duty of the Council to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.

[2] To achieve the objectives set out under subsection [1], the Council shall—

[a] formulate policies relating administration of justice;

[b] implement, monitor, evaluate and review strategies for administration of justice; and

[c] mobilize resources for purposes of efficient administration of justice.

[3] The Council shall also —

[a] oversee the operations of the National Crime Research Centre; and

[b] review and implement the reports of the Court Users Committees.

[4] The Council shall have all the necessary powers for the execution of its functions under this Act.

Meetings of the Council.

36. The Council shall hold quarterly meetings and regulate its own procedure.

Reports of the Council.

37. The Council shall prepare and submit annual reports on its activities to the Minister for onward transmission to the National Assembly.

PART VIII- ANNUAL REPORT AND AUDITED ACCOUNTS OF THE JUDICIARY

38. [1] The Judiciary shall cause an Annual Report to be prepared for each financial year.

[2] The Judiciary shall submit the annual report to the minister within three months after the end of the year to which it relates.

[3] The annual report shall contain, in respect to the year to which it relates-

[a] the financial statements of the judiciary; and

[b] a description of the activities of the Judiciary.

[4] Without limiting what may be included in the annual report, the annual report shall include-

[a] the information set out in the reports of the committees to which the annual report relates;

[b] a summary of the steps taken during the year, in the identification, selection and appointment of judicial officers and staff;

[b] information relating to disposal of cases;

[c] information on issues of access to justice;

[d] information relating to performance of the judiciary and attendant challenges; and

[d] such other statistical information as the Judiciary considers appropriate relating to its functions and judicial activities.

[5] The minister shall within thirty days after receiving the annual report transmit it to the National Assembly.

[6] The Judiciary shall cause the annual report to be published in the Gazette and in such other manner as the Judiciary may determine.

Accounts and audit.

39. [1] The Chief Registrar shall ensure that proper books and records of accounts of the Judiciary are kept and maintained.

[2] Within three months after the end of each financial year, the Registrar shall submit to the Controller and Auditor-General the accounts of the Judiciary for the year.

[3] The accounts of the Judiciary shall be audited annually and shall form part of the annual report.

[4] The accounts of the Judiciary shall be audited and reported on in accordance with the provisions of the Public Audit Act.

PART VIII- GENERAL PROVISIONS

Oath of office of members, Chief Registrar, other judicial officers and staff.

40. [1] The chairman and members of the Commission shall, on first appointment, take the oath or make the affirmation in the prescribed form.

[2] The Chief Registrar and such other judicial officers and staff of the Commission as the Commission may require so to do, shall, on first appointment, take the oath or make the affirmation in the prescribed form.

Remuneration of members.

41. Members of the Commission shall receive such allowances as may be determined by the Salaries and Remuneration Commission.

Powers of the Commission and the duty to co-operate.

42. The Commission may summon any public officer or other person to appear before it or its committee or to produce any document or thing or information that may be considered relevant to its functions and it shall be the duty of any such public officer or person to co-operate with the Commission.

Confidentiality.

43. [1] A member or staff of the Commission shall not without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

[2] The limitation on disclosure referred to under paragraph [1] shall not be construed to prevent the disclosure of criminal activity by a member or staff of the Commission.

Conflict of interest.

44. [1] If any member is present at a meeting of the Commission or any committee at which any matter is the

subject of consideration and in which matter that person or that person's associates or family members directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

[2] A disclosure of interest made under subsection [1] shall be recorded in the minutes of the meeting at which it is made.

Protection from
personal liability.

45. [1] A member, Chief Registrar, Registrar or judicial officers and staff of the Commission shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done in good faith as a member, Registrar or staff of the Commission.

[2] A member of the Commission or the Chief Registrar shall not be liable to arrest under civil process while participating in any meeting of the Commission or of any committee thereof.

[3] A person who appears before the Commission shall not, whether such appearance is in pursuance of any summons by the Commission under this Act or not, be liable to any criminal or civil proceedings, or to any penalty or forfeiture whatsoever in respect of any evidence or information given to the Commission by such person.

Offences and
penalties.

46. [1] Any person who-

[a] In connection with an application by himself or by any other person for employment, appointment or promotion by the Commission, or in connection with any matter on which it is the duty of the Commission to inquire, wilfully gives to the Commission or to any member of the Commission any information which is false or misleading in any material particular; or

[b] Without the consent in writing of the chairman, publishes or discloses to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or

information, which has come to his knowledge in the course of his duties under this Act, and any person who knowingly acts in contravention of this section; or

[c] otherwise than in the course of duty, directly or indirectly by himself or by any other person in any manner influences or attempts to influence any decision of the Commission or of any member thereof; or

[d] disobeys any order made by the Commission or a committee for attendance or for production of papers, books, documents or records;

Commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

[2] Notwithstanding the provisions of paragraph [c] of this section, nothing shall prohibit any person from supplying any information or assistance upon formal request made by the Commission.

Regulations.

47. [1] The Commission may make Regulations for the better carrying out of the purposes of this Act.

[2] Without prejudice to the generality of subsection [1], such regulations may provide for-

[a] the code of conduct and ethics for judges, other judicial officers and staff;

[b] the administration and management of the services and facilities for the discharge of judicial functions;

[c] the terms and conditions of service, pension, discipline, retirement and other benefits of judicial officers and staff;

[d] disciplinary measures for enforcement by the Commission;

[e] preliminary procedures for making any recommendations required to be made under the Constitution;

[f] the financial procedures of the Commission;

[g] orientation and training for judicial officers and staff;

- [h] operations of the Judiciary Fund; and
- [i] the security of judicial officers and staff.

Transition.

48. [1] Every valid contract entered into before the commencement of this Act shall continue to be in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of this Act.

[2] All movable and immovable property and all the rights and liabilities previously attaching to the judiciary, and all the property movable or immovable held by any person on behalf of the judiciary, before the commencement of this Act shall vest in the Judiciary or where applicable, the Commission, after the commencement of this Act.

Amendments to Cap
185.

49. The Service Commissions Act is amended-

[a] in section 2 by deleting in the definition of "Commission" the words "the Judicial Service Commission as established under the Constitution of Kenya" and substituting the words "other Commission to which by or under the Constitution or any other written law, this Act applies".

[b] in section 4 by deleting the words "and the Judicial Service Commission" after the words "The members of the Public Service Commission".

[c] In the Schedules by deleting 'Judicial Service Commission Regulations'.

FIRST SCHEDULE

THE JUDICIAL SERVICE COMMISSION [APPOINTMENT OF JUDGES] REGULATIONS, 2010

LEGAL NOTICE NO.

THE JUDICIAL SERVICE ACT, 2010

IN EXERCISE of the powers conferred by section 29 of this Act, the Judicial Service Commission makes the following Regulations —

PART I—PRELIMINARY

- Citation. 1. These Regulations may be cited as the Judicial Service Commission [Appointment of Judges] Regulations, 2010 and shall come into force on publication in the Gazette.
- Interpretation. 2. In these Regulations, unless the context otherwise requires—
- “Act” means the Judicial Service Act, 2010;
- “Applicant” means any person making an application to the Commission for consideration for appointment as a Judge;
- “Chairman” means the person holding office as Chairman of the Commission appointed under the Constitution;
- “Commission” means the Judicial Service Commission;
- “Member” means a Member of the Commission appointed under the Constitution;
- “Secretary” means the Secretary to the Commission appointed in accordance with the Constitution and includes the Deputy Chief Registrar or any other member of staff of the Commission when discharging the functions of the Secretary;
- “Sub commission” means the Complaints Sub commission of the Commission established to exercise any delegated powers and functions for purposes of the Constitution, this Act and the Regulations made thereunder;

Application.

3. [1] These Regulations provide for the procedures for selection of applicants for recommendation for appointment as Judges, the criteria for determining their qualifications and for connected purposes.

[2] Notwithstanding the generality of paragraph [1], Parts III, IV, V, VI and VII of these Regulations detail the nature of the selection process relating to—

[a] the steps that an applicant must take in order to be considered for a judicial appointment; and

[b] the steps that are taken by the Commission to ensure that applicants are fairly evaluated and that the most qualified are nominated.

[3] The procedures referred to under paragraph [2] shall be published in the Commission's annual reports and posted on the Commission's website.

PART II—VACANCIES AND APPLICATIONS

Notice of vacancy.

4. [1] Where a vacancy occurs or exists in the office of a judge, the Chief Justice shall place a notice thereof in the Gazette and the Commission shall thereafter—

[a] advertise the vacancy in at least three daily newspapers of national circulation;

[b] post a notice on its website; and

[c] send notice of the vacancy to the Law Society of Kenya and any other lawyers' professional associations.

[2] The advertisement and the notice referred to in paragraph [1] shall—[a] describe the judicial vacancy;

[b] state the constitutional and statutory requirements for the position;

[c] invite all qualified persons to apply;

[d] inform interested persons how to obtain applications; and

[e] set the deadline for submission of application which period shall not be less than twenty one [21] days after the announcement of the vacancy by the Commission.

5. [1] Application forms for advertised judicial positions may be obtained upon request from the Commission's offices and availed on the Commission's website.

[2] Each applicant seeking consideration for nomination and recommendation for appointment to a judicial office shall complete and file the prescribed application form and comply with all requirements described therein.

[3] The prescribed application form shall require an applicant to provide-

[a] Background information and in particular information that may be relevant to determine qualifications for office, including but not limited to-academic, employment, legal practice or judicial discipline, and credit history; community service, pro bono activity and non-legal interests; involvement as a party in litigation; criminal record; residential address; and the applicant's ability to perform essential job functions with reasonable remuneration;

[b] References and in particular the names of three professional references and two character references and the names of persons who can verify and comment about the applicant's past and present employment;

[c] If in legal practice, detailed information about the applicant's practice of law within the past five years; and if in engaged elsewhere, detailed information on that engagement in the last five years.

[d] Writing sample of the applicant and may include any legal publications the applicant has authored;

[e] a declaration of income and liabilities at the time of application; and

[f] A brief written summary of the applicant's bio-data including legal education, and legal experience.

[4] An applicant shall submit the completed questionnaire, writing sample and their photograph to the Commission by or before the date set forth in the notice of vacancy.

Non- public and public materials.

6. [1] The Commission shall maintain the confidentiality of sensitive and highly personal information in applications, including but not limited to home and e-mail addresses; home and mobile telephone numbers; income; names and occupations of immediate family members; formal disciplinary or ethical complaints, charges or grievances brought against the applicant as a lawyer or otherwise that did not result in public discipline; medical and health history; the financial interests of the applicant; and all unsolicited comments and letters for which the author requests confidentiality or which the Commission in its discretion believes should remain confidential to protect third parties.

[2] Information not described under paragraph [1] as non-public material shall be set forth in a separate part of the application and may be available to the public.

PART III-REVIEW OF APPLICATIONS AND BACKGROUND INVESTIGATION

Initial review for completeness and compliance with Constitutional and statutory requirements.

7. [1] Within fourteen [14] days of receipt of applications, the Commission shall review the applications for completeness and may reject non-conforming applications.

[2] In particular, the review adverted to under paragraph [1] shall relate to a determination of whether the applicant meets the minimum Constitutional and statutory requirements for the position.

[3]The Commission may request additional information from an applicant to resolve any potential problems the applicant may have in meeting statutory requirements and if the additional information does not resolve the problem, the secretariat will refer the issue to the Commission for a determination.

Reference check.

8. [1] The Commission shall within twenty one [21] days of the initial review verify and supplement information provided by the applicant by writing to all of the applicant's references and former employers who will be asked to comment on the applicants' qualifications under the criteria set forth under these Regulations.

[2] For the avoidance of doubt, the Commission may not share with the applicants any materials it solicits or reveal the identity of the source of information unless the source waives anonymity.

Background investigation and vetting.

9. [1] The Commission shall within thirty [30] days of the reference check, investigate and verify in consultation with the relevant and other professional bodies; the applicant's professional and personal background for information that could pose a significant problem for the proper functioning of the courts should the applicant be appointed.

[2] The background investigation and verification referred to under paragraph [1] may continue until the time the Commission votes on its nominations.

Publication of the names of applicants.

10. [1] Upon the expiry of the application deadline, the Commission shall issue a press release announcing the names of the applicants; publicize and post on its website the place and approximate date of the Commission meeting for interviews.

PART IV-INTERVIEW PROCEDURES

Interview scheduling and conduct.

11. [1] The Commission shall schedule specific interview times for each applicant.

[2] The applicant shall be notified in writing of the date, time, and location of their interview.

[3] The notice referred to under paragraph [2] shall not be less than fourteen [14] days.

[4] The Commission shall interview the applicant in person or may at its discretion arrange an interview by telephone or other electronic means.

[5] All the interviews will be conducted in private.

Disclosure by members.

12. Immediately before interviewing an applicant, the Commission shall briefly convene a private session to facilitate the disclosure by a member of any relevant information known or communicated to the member about the applicant that other members may not be seized of.

Questions based on confidential or anonymous source.

13. Questions to an applicant about information received in confidence shall be phrased to avoid revealing the confidential source's identity, and the Commission shall not otherwise disclose the source to the applicant during the interview or at any other time.

PART V—CRITERIA FOR EVALUATING QUALIFICATIONS OF INDIVIDUAL APPLICANTS

Criteria for evaluation of qualifications.

14. [1] In determining the qualifications of individual applicants under the Constitution and these Regulations, the Commission shall be guided by a selection criteria formulated for that purpose.

[2] The selection criteria referred to under paragraph [1] shall capture the following attributes:

[a] Professional competence: elements of which shall include but limited to-intellectual capacity; legal judgment; diligence; substantive and procedural knowledge of the law; organizational and administrative skills; and the ability to work well with a variety of types of people;

[b] Written and oral communication skills: the elements of which shall include but not limited to- ability to communicate in writing and speaking; ability to discuss factual and legal issues in clear, logical, and accurate legal writing; and effectiveness in communicating orally in a way that will readily be understood and respected by people from all walks of life;

[c] Integrity: elements of which shall include but not limited to- demonstrable consistent history of honesty and high moral character in professional and personal life; respect for professional duties arising under the codes of professional and judicial conduct; and ability to understand the need to maintain propriety and the appearance of propriety;

[d] Fairness: elements of which shall include but not limited to- demonstrable ability to be impartial to all persons and commitment to equal justice under the law; open-mindedness and capacity to decide issues according

to the law, even when the law conflicts with personal views:

[e] Temperament: elements of which shall include but not limited to- demonstrable possession of compassion and humility; history of courtesy and civility in dealing with others; ability to maintain composure under stress; and ability to control anger and maintain calmness and order;

[f] Judgment: including common sense, elements of which shall include but not limited to- a sound balance between abstract knowledge and practical reality and in particular, demonstrable ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles;

[g] Legal and life experience: elements of which shall include but not limited to- the amount and breadth of legal experience and the suitability of that experience for the position sought, including trial and other courtroom experience and administrative skills; broader qualities reflected in life experiences, such as the diversity of personal and educational history, exposure to persons of different ethnic and cultural backgrounds, and demonstrable interests in areas outside the legal field; and

[h] Demonstrable commitment to public and community service: elements of which shall include but not limited to- the extent to which an applicant has demonstrated a commitment to the community generally and to improving access to the justice system in particular.

Vote to nominate most qualified applicants.

15. [1] The Commission shall within seven [7] days of conclusion of interviews deliberate and nominate the most qualified applicants.

[2] Each member shall vote according to that member's personal assessment of the applicants' qualifications as determined under the criteria and procedures set out in these Regulations.

[3] The Secretary shall administer the voting and shall declare the voting completed after all the applicants have been considered and all members have voted.

[4] Notwithstanding the provisions of paragraph [3], a member may at any time during but before the declaration of completion of the vote, change their vote for or against any applicant.

[5] To be nominated for recommendation for appointment, an applicant must receive three [3] or more affirmative votes.

PART VI—POST-NOMINATION PROCEDURES

Notification of nominations.

16. [1] The Secretary shall within seven [7] days of the Commission's vote, cause the applicants to be notified by telephone or electronic means, about the Commission's decision.

[2] Notwithstanding paragraph [1], the Secretary shall cause to be transmitted to each applicant, a written notice of the Commission's decision.

[3] The names of the persons nominated for recommendation for judicial appointment may be posted on the Commission's website as well as placed in its press release.

Request for additional names or reconsideration.

17. The Commission shall not reconsider its nominees after the names are submitted to the President except in the case of death, disability, or withdrawal of a nominee.

PART VII—GENERAL PROVISIONS

Irregularities.

18. [1] Any irregularity resulting from failure to comply with any provision of these Regulations shall not of itself render the proceedings void or invalid where the irregularity does not occasion a miscarriage of justice.

[2] Where any such irregularity comes to the attention of the Commission, the Commission may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it deems just, to cure or waive the irregularity before reaching its decision.

[3] Clerical mistakes in any document recording a direction, order or decision of the Commission, or errors arising in such a document from an accidental slip or

omission, may be corrected by the Chairman, by certificate under his hand.

Offences and penalties. 19. Any person who contravenes the provisions of these Regulations shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding six [6] thousand shillings or to imprisonment for a term not exceeding six [6] months or to both such fine and imprisonment.

Extension of time. 20. The Commission may, for sufficient cause shown, extend the time prescribed by these Regulations for doing any act upon such terms and conditions, if any, as appear to it just and expedient.

General power of the Commission. 21. [1] Subject to the Constitution and these Regulations, the Commission may regulate its own procedure and the procedure of any of its committees.

[2] Nothing in these Regulations shall limit or otherwise affect the inherent power of the Commission to make such decisions as may be necessary for the ends of justice or to prevent abuse of the process of the Commission.

Made by order of the Commission this.....day of2010.

HON. CHIEF JUSTICE J. E. GICHERU,
Chairman, Judicial Service Commission.

SECOND SCHEDULE

THE JUDICIAL SERVICE COMMISSION [COMPLAINTS AND DISCIPLINARY] REGULATIONS 2010

LEGAL NOTICE NO.

THE JUDICIAL SERVICE ACT, 2010

IN EXERCISE of the powers conferred by section 30 of this Act, the Judicial Service Commission makes the following Regulations —

PART I — PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Judicial Service Commission [Complaints and Disciplinary] Regulations, 2010 and shall come into force on publication in the Gazette.

Interpretation.

2. In this Regulations, unless the context otherwise requires:-

“Act” means the Judicial Service Act, 2010;

“Commission” means the Judicial Service Commission;

“Head of station” includes a presiding judge, principal judge, resident judge or chief magistrate;

“Hearing” means a sitting of a Panel duly constituted for the purpose of receiving evidence, hearing submissions from a party, delivering a decision, or doing anything lawfully required to enable the Panel to reach a decision, on any complaint before it;

“Member” means a Member of the Commission appointed under the Constitution;

“Organized legal profession” means any recognized professional body of lawyers;

“Secretary” means the Secretary to the Commission appointed in accordance with the Constitution and includes the Deputy Chief Registrar or any other member of staff of the Commission when discharging the functions of the Secretary;

“Sub commission” means the Complaints Sub commission of the Commission established to exercise any delegated powers and functions for purposes of the Constitution, this Act and the Regulations made there under;

PART II— ESTABLISHMENT, FUNCTIONS AND POWERS

Establishment.

3. There shall be a Sub commission of the Commission to be known as the Complaints and Disciplinary Sub commission.

Functions.

4. [1] The Sub commission shall exercise the functions conferred upon it by the Commission under the Constitution and these Regulations.

[2] Notwithstanding the generality of sub-clause [1] it shall be the primary duty of the Sub commission to examine, investigate, determine and report to the Commission on complaints against judges.

[3] For the avoidance of doubt, no disciplinary proceedings may be commenced against a judge in the absence of a report from the Sub commission or its Panel.

Composition of Panels
and co-option.

5. [1] For purposes of exercising the functions of the Sub commission, the Commission shall from time to time constitute a Panel of at least three [3] members.

[2] Nothing in this clause may be construed as precluding the Commission from co-opting any other person as a panellist for purposes of determining a complaint against a judge except that-

[a] the number of panellists co-opted shall not, at any one time, exceed two;

[b] no person shall be co-opted under this sub-clause unless such person would be qualified for appointment as a member of the Commission; and

[c] a person co-opted as an additional panellist shall cease to act as such upon completion of the task in respect of which such person was co-opted.

[4] A Panel shall be constituted in respect of each complaint against a judge save that where there is more than one concurrent complaint against a judge the same Panel may deal with all such complaints.

[5] A Panel may under the circumstances considered appropriate by the Commission, deal with two [2] or more complaints.

[6] The Commission may appoint a counsel or such other officers as may be necessary to assist a Panel.

Powers of the Sub commission, its Panels and the duty to cooperate.

6. The Sub commission may summon any public officer or other person to appear before it or its Panel or to produce any document or thing or information that may be considered relevant to its functions and it shall be the duty of any such public officer or person to cooperate with the Sub commission or its Panel.

PART III— COMPLAINTS AGAINST JUDGES

Nature and filing of complaints.

7. [1] Any person may file a complaint with the Sub commission about a matter that concerns the ability, competence or behaviour of a judge so long as the Sub commission is satisfied as to the non-exclusion of the complaint under clause 8.

[2] A complaint may be made in relation to a matter even where the matter -

[a] is the subject of investigation by any other person or authority; or

[b] constitutes a criminal offence.

[2] Nothing in this clause precludes a head station from referring complaints to the Sub commission for investigation and determination.

Exclusion of complaints.

8. [1] The Sub commission shall not deal with a complaint unless—

[a] it appears to the Sub commission that-

[i] the matter, if substantiated, could justify the removal of the judge from office; or

[ii] the matter warrants further examination on the ground that the same may affect the performance of duties of the officer even if it may not justify their removal from office;

[b] the matter arose-

[i] after the appointment of the judge; or

[ii] before the appointment of the judge to the judicial office but if substantiated, could justify consideration of their removal from office; and

[c] the matter is not the subject of proceedings before court.

[2] Nothing in this clause precludes the Sub commission from rejecting a complaint on any other reasonable ground.

Dismissal of complaints.

9. [1] The Sub commission shall dismiss a complaint which in its opinion-

[a] should be dismissed on any of the grounds on which the Sub commission may summarily dismiss complaints; or

[b] has not been substantiated.

[2] The power to dismiss a complaint [whether summarily or not] shall include power to dismiss part of a complaint.

Examination or investigation of a complaint.

10. [1] A Panel shall examine any complaint against a judge referred to it if the complaint is not excluded under clause 8.

[2] In examining the complaint, the Panel may initiate such investigations as it may consider appropriate.

[3] The examination of or investigations into a complaint shall, as far as practicable, be conducted in private.

Extension of a complaint.

11. [1] Nothing in these Regulations may be construed as precluding a Panel from enquiring into misconduct that it encounters in the course of investigating an original complaint.

[2] For the avoidance of doubt, a Panel may, in examining or investigating a complaint against a judicial officer, enquire into matters which may constitute a complaint against another judicial officer if and when such matters come to its attention.

Hearings.

12. [1] A Panel may hold hearings in relation to any complaint it is examining or investigating for purposes of determining whether a complaint against a judge is substantiated or otherwise.

[2] Hearings referred to under sub-clause [1] shall be conducted in private and the Panel may give directions as to the persons who may be present.

[3] A judge whose conduct is the subject of a complaint shall be entitled to legal representation at a hearing.

[4] At a hearing-

[a] counsel assisting the Panel,

[b] any person authorised by the Panel to appear before it; or

[c] any advocate representing a judicial officer pursuant to sub-clause [3];

may, to the extent the Panel thinks appropriate, examine or cross-examine any witness on any matter that the Panel considers relevant.

Panel Report.

13. [1] Where the Panel determines that a complaint is wholly or partly substantiated and forms an opinion that the matter justifies the removal of the judge from office, the Sub commission shall cause the Panel's report to be forwarded to the Commission.

[2] Where the Panel determines that a complaint is wholly or partly substantiated but forms an opinion that the matter does not justify the removal of the judge from office, the Sub commission shall cause the Panel's report to be forwarded to the Commission and the Commission may refer the matter to the Chief Justice for any administrative action; and

[3] A report under sub-clause [4] may include recommendations as to what administrative actions the Chief Justice could take.

Termination of investigations and referrals.

14. [1] The Sub commission or its Panel shall terminate the examination or investigation of a complaint against a judge where-

[a] such judge ceases to hold office for any reason;
or

[b] it concludes after determining a complaint against such judge that it will be unnecessary to examine or investigate similar or related complaints.

[2] Nothing in this clause shall be construed as precluding the Sub commission or its Panel from referring a complaint to a competent person or authority save that making the referral does not thereby-

[a] make the Sub commission or its Panel a complainant for the purposes of any other law; or

[b] release the Sub commission or its Panel of its obligation for the complaint under these Regulations.

Complaints involving non-judicial officers.

15. Where a complaint against a judge involves a non-judicial officer or a person who has ceased to be a judge, the Sub commission or its Panel may, to the extent necessary investigate the non-judicial officer or the person who has ceased to be a judge for purposes of determining the complaint against the judge.

Vexatious or frivolous complaints.

16. [1] A person who habitually or mischievously and without any reasonable cause, makes complaints against the same or different judges, may be declared a vexatious complainant by the Sub commission or its Panel.

[2] Where a declaration referred to under sub-clause [1] is in force against a vexatious complainant, the Sub commission or its Panel may disregard any complaint made by the vexatious complainant.

PART IV—GENERAL PROVISIONS

Protection from personal liability.

17. A panellist or counsel assisting the Panel shall not be personally liable for any act or omission done or omitted to be done in good faith in carrying out the functions of the Sub commission under these Regulations.

Confidentiality.

18. [1] A panellist or staff of the Sub commission shall not without the consent in writing given by, or on behalf of, the Sub commission, publish or disclose to any

person otherwise than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under these Regulations.

[2] The limitation on disclosure referred to under paragraph [1] shall not be construed to prevent the disclosure of criminal activity by a panellist or staff of the Sub commission.

Conflict of interest.

19. [1] If any member is present at a meeting of the Panel at which any matter is the subject of consideration and in which matter that person or that person's associates or family members directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

[2] A disclosure of interest made under subsection [1] shall be recorded in the minutes of the meeting at which it is made.

Recording proceedings

of **20.** The Chairperson shall take or cause to be taken notes of all proceedings before the Panel or may direct that the record of any proceedings before the Panel be taken by shorthand notes or tape-recorded or, at the discretion of the Panel, electronically recorded.

Irregularities.

21. [1] Any irregularity resulting from failure to comply with any provision of these Regulations shall not of itself render the proceedings void or invalid where the irregularity does not occasion a miscarriage of justice.

[2] Where any such irregularity comes to the attention of a Panel, the Panel may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it deems just, to cure or waive the irregularity before reaching its decision.

[3] Clerical mistakes in any document recording a direction, order or decision of the Panel, or errors arising

in such a document from an accidental slip or omission, may be corrected by the Chairperson, by certificate under his hand.

Offences and penalties.

22. Any person who contravenes the provisions of these Regulations shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding six [6] thousand shillings or to imprisonment for a term not exceeding six [6] months or to both such fine and imprisonment.

General power of the Sub commission.

23. [1] Subject to the Constitution and these Regulations, the Sub commission may regulate its own procedure and the procedure of any of its Panels.

[2] Nothing in these Regulations shall limit or otherwise affect the inherent power of the Sub commission or its Panel to make such decisions as may be necessary for the ends of justice or to prevent abuse of the process of the Sub commission or its Panel.

Made by order of the Commission this.....day of2010.

HON. CHIEF JUSTICE J.E. GICHERU,
Chairman, Judicial Service Commission.

THIRD SCHEDULE

**THE JUDICIAL SERVICE COMMISSION [TRIBUNAL ON
REMOVAL OF JUDGES] REGULATIONS, 2010**

LEGAL NOTICE NO.

THE JUDICIAL SERVICE ACT, 2010

IN EXERCISE of the powers conferred by section 31 of this Act, the
Judicial Service Commission makes the following Regulations —

PART I — PRELIMINARY

Citation and
commencement.

1. These Regulations may be cited as the Judicial
Service Commission [Tribunal on Removal of Judges]
Regulations, 2010 and shall come into force on
publication in the Gazette.

Interpretation.

2. In this Regulations, unless the context otherwise
requires:-

“Act” means the Judicial Service Act, 2010;

“Chairperson” means the chairperson of the Tribunal
appointed under the Constitution or this Act;

“Commission” means the Judicial Service Commission;

“Hearing” means a sitting of the Tribunal duly
constituted for the purpose of receiving evidence,
hearing submissions from a party, delivering a decision,
or doing anything lawfully required to enable the
Tribunal to reach a decision, on any complaint before it;

“Member” means a Member of the Tribunal appointed
under the Constitution;

“Register” means the register where all pleadings and
supporting documents and all orders and decisions of
the Tribunal are kept in accordance with these rules;

“Registry” means the registry of the Tribunal;

“Secretary” means the Secretary to the Commission
appointed in accordance with the Constitution and
includes the Deputy Chief Registrar or any other
member of staff of the Commission when discharging
the functions of the Secretary;

PART III — ADMINISTRATION OF THE TRIBUNAL

Chairperson.

3. The Chairperson shall co-ordinate the work of the Tribunal and shall in addition be responsible for—

- [a] constituting of such panel or panels of the Tribunal as shall be necessary for the fair and expeditious disposal of the business of the Tribunal;
- [b] assigning the business of the Tribunal to the members;
- [c] supervising the activities of the Secretary and of the Registry; and
- [d] exercising all other functions implied by Section 168 of the Constitution or conferred by the Act and these Rules.

Secretary.

4. [1] In relation to the proceedings before the Tribunal, the Secretary shall act in accordance with the instructions of the Chairperson and shall, in particular, be responsible for—

- [a] the establishment and maintenance of the register and registry;
 - [b] the acceptance, transmission, service and custody of documents in accordance with these rules;
 - [c] the enforcement of decisions of the Tribunal;
 - [d] certifying that any order, direction or decision is an order, direction or decision of the Tribunal, the Chairperson or a member, as the case may be;
 - [d] causing to be kept records of the proceedings and minutes of the meetings of the Tribunal and such other records as the Tribunal may direct; and
 - [e] undertaking any duties assigned by the Tribunal for benefit of the Tribunal.
- [2] With the authorization of the Chairperson, the Secretary may consider and dispose of

procedural or administrative matters in accordance with these Rules.

[3] A party may within seven days of any exercise by the Secretary of the functions pursuant to sub rule [3] request in writing that the exercise of such functions be reviewed by the Tribunal.

[4] Any administrative function of the Secretary may in the Secretary's absence, be performed by any member of staff of the Tribunal whom the Chairperson may authorize for that purpose.

[5] The Secretary shall have, in addition to any powers specifically given by or under these Rules, such powers as are generally provided under Order XLVIII of the Civil Procedure Rules, with such modifications as may be necessary.

Quorum and business of the Tribunal.

5. [1] The quorum necessary for the conduct of the hearing of the Tribunal shall be the Chairperson and two [2] other members.

[2] Notwithstanding sub-clause [1], the business of the tribunal shall be carried on by any three members and the Secretary.

PART IV — APPLICATION OF RULES

Tribunal to uphold the principle of substantial justice.

6. [1] The Tribunal shall interpret these rules in a manner that promotes the principle of substantial justice.

[2] Any irregularity resulting from failure to comply with any provision of these Rules shall not of itself render the proceedings void or invalid where the irregularity does not occasion a miscarriage of justice.

[3] Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and shall if it considers any person may have been prejudiced by the irregularity, give such directions as it deems just, to cure or waive the irregularity before reaching its decision.

[4] Clerical mistakes in any document recording a direction, order or decision of the Tribunal, or errors arising in such a document from an accidental slip or

omission, may be corrected by the Presiding Judge, by certificate under their hand.

Powers of the Tribunal not affected or limited.

7. Nothing in these Rules shall be deemed to limit or otherwise affect all the powers of the Tribunal necessary for the proper execution of its mandate as set out in the Constitution and this Act.

PART V — HEARINGS AND EVIDENCE

Service of notice.

8. [1] The Tribunal shall serve on each Judge whose conduct is the subject of an investigation a hearing notice, at least fourteen [14] days before the date of hearing.

[2] The Counsel assisting the Tribunal shall draw up a list of the allegations against each subject of the investigation, together with a summary of the evidence in support of the allegations and shall serve the document containing the allegations and the summary of the evidence on the subject of the investigation, at least fourteen [14] days before the date of hearing.

Hearings to be private.

9. [1] The hearings shall be held in private save that the Judge whose conduct is subject of the investigation may choose to have the hearing in public.

[2] the Tribunal may exclude any person or class of persons from all or any part of the hearing if satisfied that it is desirable so to do for -

[a] the preservation of order; or

[b] the due conduct of the investigation; or

[c] the protection of any witness in the investigation or any person referred to in the course of the investigation or the property or reputation of such witness or person; and

[d] may, if satisfied that it is desirable for any of the purposes aforesaid so to do, order that no person shall publish the name, address photograph of any such witness or person or any evidence or information whereby he would or may be identified from.

Right to be present at hearing and to legal counsel.

10. The Judge whose conduct is subject of the investigation shall have the right to be present during all of the proceedings that relate to them and shall be entitled to legal representation by counsel.

Assisting counsel to present evidence.

11. The Counsel assisting the Tribunal will present evidence relating to the conduct of the subject and any matter relevant to the investigation.

Summoning of witnesses.

12. [1] The Tribunal may, at its sole discretion, summon any person or persons to testify before it on oath or to produce such documents as the Tribunal may require, and the person so summoned shall be obliged to attend and to testify or produce the required documents and the provisions applying to witnesses summoned by ordinary courts of law shall apply to such person.

[2] A request made under paragraph [1] shall be in writing and shall be addressed to the Secretary to the Tribunal.

Tribunal not bound rules of evidence.

13. The tribunal shall not be bound by the provisions of the Evidence Act but shall be guided by the ordinary rules of evidence and procedure, including the rules of natural justice and relevancy.

Right to cross-examine witnesses.

14. A judge whose conduct is the subject of the investigation shall have the right to cross-examine any or all witnesses during the hearing.

Right to call evidence and personal appearance.

15. [1] A Judge whose conduct is the subject of the investigation shall be entitled to call evidence to rebut allegations made against them.

[2] The judge duly served may elect not to attend in person or by counsel or at all, in which event in Tribunal shall be entitled to consider the evidence available and make a report and appropriate recommendations.

Tribunal and Counsel assisting Tribunal to cross-examine witnesses.

16. [1] The Tribunal and Counsel assisting the Tribunal shall be entitled to cross-examine the subject or any of the witnesses called by the judge whose conduct is the subject of investigation.

[2] The Tribunal shall have the power to recall any such witness.

Form of evidence.

17. [1] Evidence before the Tribunal may be presented in the form of memorandum, affidavit or other documentation and the Tribunal shall be entitled to receive such documents and to use the contents thereof in forming its opinion.

[2] A judge whose conduct is the subject of investigations shall be furnished with copies of any documentary evidence and may seek leave to address the Tribunal thereon.

Submissions.

18. At the close of the hearing all evidence before the tribunal, Counsel assisting the Tribunal and the judge whose conduct is the subject of investigation or their Counsel shall be entitled to make submissions.

Delivery of the decision.

19.[1] All decisions of the Tribunal shall be in writing and shall contain a concise statement of the investigation, the points for determination, the decision thereon, and the reasons for such decision upon each separate issue.

[2] The decision of the Tribunal shall be delivered in public on a date fixed for that purpose but not later than fourteen days after conclusion of the proceedings.

[3] The Secretary shall cause the decision of the Tribunal to be published in the Gazette and posted on the Tribunal's website.

PART VI —GENERAL AND SUPPLEMENTARY

Sittings of the Tribunal.

20. The Tribunal shall sit on such days, and at such times and venues as shall be determined by the Tribunal.

Registry hours.

21. The Registry shall be open for business from 8.30 am to 4.30 pm but may be open at other times for urgent business at the direction of the Chairperson.

Summonses to be signed by Secretary.

22. Summonses issued by the Tribunal shall be endorsed by and bear the signature of the Secretary.

Recording of proceedings.

23. The chairperson shall cause to be taken notes of all proceedings before the Tribunal or may direct that the record of any proceedings before the Tribunal be taken by shorthand notes or tape-recorded or, at the discretion of the Tribunal, electronically recorded.

Practice directions.

24. The Chairperson may issue Practice Directions for the just, efficient and economical determination of proceedings under these Rules, and the Practice Directions so issued shall be special rules of practice and procedure of the Tribunal and shall have the same status as these Rules.

Extension of time.

25. The Tribunal may, for sufficient cause shown, extend the time prescribed by these Rules for doing any act or taking any proceedings upon such terms and conditions, if any, as may appear just and expedient.

Amendment of rules.

26. The Tribunal may, from time to time, by notice in the Gazette amend these Rules.

General power of the Tribunal.

27. [1] Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

[2] The Chairperson may issue practice directions in relation to the procedures provided for by these Rules.

[3] Nothing in these Rules shall limit or otherwise affect the inherent power of the Tribunal conferred by Section 168 of the Constitution either on its own motion or on the application of a party to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

Made by order of the Commission this.....day of2010.

HON. CHIEF JUSTICE J. E. GICHERU,
Chairman, Judicial Service Commission.

FOURTH SCHEDULE

THE JUDICIAL SERVICE COMMISSION [APPOINTMENT, DISCIPLINE AND REMOVAL OF JUDICIAL OFFICERS AND STAFF] REGULATIONS, 2010

LEGAL NOTICE NO.

THE JUDICIAL SERVICE ACT, 2010

IN EXERCISE of the powers conferred by section 32 of this Act, the
Judicial Service Commission makes the following Regulations —

PART I-PRELIMINARY

Citation

1. These Regulations may be cited as the Judicial Service Commission [Appointment, Discipline and Removal of Judicial Officers and staff] Regulations.

Interpretation

2. In these Regulations —

“the Chairman” means the chairman of the Commission;

“the Commission” means the Judicial Service Commission established under the Constitution;

“judicial officer” means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of any other court or local tribunal as may be established by an Act of Parliament, other than the courts established to hear and determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land;

“official document” means any document or paper prepared by any public officer in the course of his employment or any document or paper which comes into the custody of any public officer in the course of such employment;

“promotion” means the conferment upon a person in the public service of an office to which is attached a higher salary or higher salary scale than that attached to the office to which he was last substantively appointed;

“public officer” means any person holding or acting in any public office;

“seniority” means the relative authority of officers and, except as may be otherwise provided by the Commission or in these Regulations, shall be determinable and shall be regarded as having always been determinable as follows –

- i. as between officers of the same grade
 - a. by reference to the dates on which they respectively entered the grade;
 - b. if any officers entered that grade on the same day by reference to their seniority on the day immediately preceding that day;
 - c. if any officers who entered the same grade on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade) their seniority relative to each other shall be determinable by reference to their respective age.
- ii. as between officers of different grades on the same scale or same flat rate of salary, by reference to the dates on which they respectively entered their grades.
- iii. as between officers of different grades on different salary scales, by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate;

Provided that when assessing the seniority of a pensionable officer, service by himself or any other person in a non-pensionable capacity shall not be taken into account:

“transfer” means the conferment, whether permanently or otherwise, of some office other than that to which the person concerned was last substantively appointed, not necessarily being a promotion; but the posting or secondment of a public officer between duty posts in the same grade in the public service shall not be regarded for this purpose as a transfer.

PART II-GENERAL

Decision may be
made by
circulation of
papers

3. Decisions may be made by the Commission without a meeting by circulation of the expression of their views in writing, but any member shall be entitled to require that any such decision shall be deferred until the subject matter shall be considered at a meeting of the Commission.

Dissent
members by

4. Any member who dissents from a decision of the Commission shall be entitled to have his dissent and his reasons therefor set out in the records of the Commission.

Record
meetings of

5. A record shall be kept of the members present and of the business transacted at every meeting of the Commission.

Commission may
require attendance
and production of
documents

6. [1]The Commission may require any public officer to attend and give information before it concerning any matter which it is required to consider in exercise of its functions.

[2] The Commission may require the production of any official document relevant to any exercise of its functions, and any public officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

[3] Any public officer who without reasonable excuse fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission may direct the person responsible for initiating disciplinary proceedings against such public officer that disciplinary proceedings should be instituted against him.

[4] Notwithstanding paragraphs [1], [2] and [3] a public officer may withhold information on any matter or production of an official document when directed by the President in writing to do so.

Correspondence

7. All correspondence for the Commission shall be addressed to the Secretary or, in special cases, to the Chairman.

PART III-APPOINTMENTS, PROMOTIONS, TRANSFERS, CONFIRMATIONS AND TERMINATIONS

Notification of vacancies

8. The Chairman shall by administrative directions made in his capacity as Chief Justice ensure that he is informed of all vacancies which concern the Commission.

Advertisement of vacancies

9. [1] Subject to paragraph [2], applications for appointment to vacancies shall be invited by public advertisement in such manner as the Commission may determine.

[2] A vacancy need not be advertised where-

[a] the Commission is satisfied that the vacancy should be filled by the appointment or reappointment of a public officer held against the establishment of the Judicial Service or by the continued employment of a public officer on temporary terms; or

[b] the Commission is satisfied that there is no reasonable likelihood of any application being received in response to advertisement in Kenya from a candidate who is likely to be qualified.

[3] Where in the opinion of the Commission it is likely that a suitable public officer will be found in some Ministry or department other than the Judiciary, it may invite applications from serving officers only.

Criteria concerning appointments

10. [1] In selecting candidates for appointment, promotion and transfer, the Commission shall have regard to the efficiency of the judiciary and, in considering public officers for promotion, merit and ability shall be taken into account as well as seniority, experience and official qualifications; and as between public officers qualifications, proved merit and suitability for the vacancy in question, will be given greater weight than seniority.

[2] When considering candidates for promotion, the Commission shall inquire as to the relative seniority of the candidates.

Probationary
appointments

11. The Chairman shall by administrative directions made in his capacity as Chief Justice ensure that he is informed of the impending expiration of a probationary period not less than three months before the expiration of that period.

Further
engagement on
contract

12. The Chairman shall by administrative directions made in his capacity as Chief Justice ensure that where an officer is serving on contract and is willing to engage for a further term of service he, the Chairman, is informed of that fact as soon as possible before the expiration of the contract.

Compulsory
retirement on
reaching retiring
age

13. [1] If it appears to the Chief Justice that there is reason why a pensionable officer should be called on to retire on the ground that he has reached the age at which he can lawfully be required to retire under the pensions laws, the Chief Justice shall cause that officer to be advised that his compulsory retirement is under consideration and to be asked if he wishes to make any representations against such retirement; and if any such representations are made they shall be placed before the Commission and the Commission shall decide whether such officer should be called upon to retire.

[2] The Commission shall notify the officer concerned of its decision and, if the officer is to be retired, the Pensions Branch of the Treasury shall also be informed.

[3] An officer whose compulsory retirement is under consideration under this regulation shall, where possible be given the option to retire voluntarily.

Retirement on
grounds of ill
health

14. [1] Where it appears to the Chief Justice that an officer is incapable by reason of any infirmity of mind or body or discharging the functions of his office, he may [and shall if the officer so requests] call upon such officer to present himself before a medical board [which shall be appointed by the Director of Medical Services] with a view to it being ascertained whether or not such officer is capable as aforesaid.

[2] After the officer has been examined the Director of Medical Services shall forward the medical board's proceedings, together with the comments thereon, to the

Chief Justice who in return shall lay them, and any representations the officer desires to make, before the Commission.

[3] Unless the Commission considers that further inquiry is necessary, in which case it shall cause such inquiry to be made, it shall decide forthwith whether the officer should be called upon to retire on the grounds of ill health.

[4] The decision of the Commission shall be notified to the officer and, if he is to be retired on the grounds of ill health, the Pensions Branch of the Treasury shall also be notified.

Special procedure

15. Where the Commission is satisfied that the public interest requires that any matter relating to the appointment, promotion, transfer, secondment or confirmation in his appointment of an officer be dealt with otherwise than in accordance with the procedure laid down in this Part, it shall take such action or issue such directions with regard to that matter as appears to it to be most appropriate in the circumstances.

PART IV-DISCIPLINE

Delegation of powers

16. [1] The following disciplinary powers vested in the Commission are delegated to the Chief Justice –

- [a] the power to interdict an officer under regulation 17;
- [b] the power to suspend an officer under regulation 18;
- [c] the power to administer a severe reprimand or a reprimand to an officer.

[2] The Chief Justice when exercising the powers delegated to him by this regulation shall act in accordance with these Regulations and in accordance with any other appropriate regulation which may be in force.

Interdiction

17. [1] If in any case the Chief Justice is satisfied that the public interest requires that an officer should cease forthwith to exercise the powers and functions of his office, he may interdict the officer from the exercise

of those powers and functions, provided proceedings which may lead to his dismissal are being taken or are about to be taken or that criminal proceedings are being instituted against him.

[2] An officer who is interdicted shall receive such salary, not being less than half his salary, as the Chief Justice shall think fit.

[3] Where disciplinary or criminal proceedings have been taken or instituted against an officer under interdiction and such officer is neither dismissed nor otherwise punished under these Regulations, the whole of any salary withheld under paragraph [2] of this regulation shall be restored to him upon the termination of such proceedings.

[4] If any punishment other than dismissal is inflicted, the officer may be refunded such proportion of the salary withheld as a result of his interdiction as the Commission shall decide.

[5] An officer who is under interdiction may not leave his station without the permission on behalf of the Chief Justice.

[6] For the purposes of this regulation and regulation 18 of these Regulations "salary" means basic salary and, where applicable, includes inducements or overseas allowances.

Suspension

18. [1] Where an officer has been convicted of a serious criminal offence, other than such as are referred to in regulation 29[2], the Chief Justice may suspend the officer from the exercise of the functions of his office pending consideration of his case under these Regulations.

[2] The Chief Justice may suspend from the exercise of the functions of his officer against whom proceedings for dismissal have been taken if, as a result of those proceedings, he considers that the officer ought to be dismissed.

[3] While an officer is suspended from the exercise of the functions of his office shall be granted an

alimentary allowance in such amount and on such terms as he may determine.

[4] An officer who is suspended may not leave his station without the permission of the Chief Justice or of any officer who is empowered to give such permission on behalf of the Chief Justice.

Where criminal
charge pending

19. [1] When a preliminary investigation or disciplinary inquiry discloses that a criminal offence may have been committed by an officer the Chief Justice shall, unless action by the police has been or is about to be taken, consult the Attorney-General as to whether a prosecution should be instituted; and if the Attorney-General does not advise a prosecution the Chief Justice shall decide whether disciplinary proceedings are necessary, and if he considers that such proceedings are necessary he shall act under either regulation 26 or regulation 27, as may be appropriate.

[2] If criminal proceedings are instituted against an officer, proceedings for his dismissal upon any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal therefrom:

Provided that nothing in this regulation shall be construed as prohibiting or restricting the power of the Chief Justice to interdict or suspend such officer.

[3] An officer acquitted of a criminal charge shall not be dismissed or otherwise punished on any charge upon which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished on any other charge arising out of his conduct in the matter, unless the charge raises substantially the same issues as those on which he has been acquitted.

Punishments

20. [1] The following are the punishments which may be inflicted on an officer as a result of disciplinary proceedings under this Part of these Regulations –

[a] dismissal;

[b] stoppage of increment;

[c] withholding of increment;

[d] deferment of increment;

[e] severe reprimand and reprimand;

[f] recovery of the cost or part of the cost of any loss or breakage caused by default or negligence, provided no such cost has been recovered by surcharge action under the appropriate financial instructions or regulations.

[2] Nothing in this regulation shall limit the powers conferred by these Regulations to require an officer to retire from the public service on the grounds of public interest.

[3] No punishment shall be inflicted on any officer which would be contrary to any law for the time being in force.

Reprimand by
Chief Justice

21. [1] Notwithstanding any other provisions of these Regulations, the Chief Justice may, without reference to the Commission, after investigation and after giving the officer concerned an opportunity for making his defence (which shall be recorded), administer to an officer a severe reprimand or reprimand.

[2] The Chief Justice, when exercising the powers referred to in this regulation, shall act in accordance with these Regulations.

Absence from
duty without leave

22. Where an officer is absent from duty without leave or reasonable cause for a period exceeding twenty-four hours and the officer cannot be traced within a period of ten days from the commencement of such absence, or if traced no reply to a charge of absence without leave is received from him within ten days after the dispatch of the charge to him, the Commission may summarily dismiss him.

Pension rights and
privileges lost on
dismissal

23. Subject to any other law, an officer who is dismissed shall forfeit all rights or claims to a pension, gratuity, annual allowance or other retiring award, and any rights or claims he enjoys in regard to leave or passages at the public expense.

Copies of proceedings

24. [1] An officer in respect of whom disciplinary proceedings are to be held under this Part shall be entitled to receive a free copy of any documentary evidence relied on for the purpose of the proceedings, or to be allowed access to it.

[2] The officer may also be given a copy of the evidence [including documents tendered in evidence] after the proceedings are closed, on payment of five shillings per page or each document tendered in evidence.

Provided that he shall not be entitled to copies of office orders, minutes, reports or recorded reasons for decisions.

Officer to be informed of decision

25. Where proceedings have been taken against an officer, the officer shall be informed of the findings on each charge which has been preferred against him and of the punishment [if any] to be inflicted upon him.

Proceedings for dismissal

26. [1] Where the Chief Justice after such inquiry as he may think fit to make considers it necessary to institute disciplinary proceedings against an officer on the ground of misconduct which, if proved, would in his opinion justify dismissal, he shall frame a charge or charges against the officer and shall forward a statement of the said charge or charges to the officer together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based, and shall invite the officer to state in writing should he so desire, before a day to be specified, any grounds on which he relies to exculpate himself.

[2] If the officer does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Chief Justice he fails to exculpate himself, the Chief Justice shall cause copies of the statement of the charge, or charges, and the reply, if any, of the officer to be laid before the Commission, and the Commission shall decide whether the disciplinary proceedings should continue or not.

[3] [a] If it is decided that the disciplinary proceedings should continue, the

Commission shall appoint a sub commission to investigate the matter consisting of two or more persons who shall be persons to whom the Commission may by virtue of the Constitution delegate its powers.

[b] The Chief Justice shall not be a member of the sub commission, but if puisne judges of the High Court has been designated as members of the Commission under the Constitution they may be members of the sub commission.

[4] The sub commission shall inform the officer that on a specified day the charges made against him will be investigated and that he shall be allowed or, if the submission so determine, shall be required to appear before it to defend himself.

[5] If witnesses are examined by the sub commission, the officer shall be given an opportunity of being present and of putting questions on his own behalf to the witnesses, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

[6] The Attorney-General shall if requested by the Commission direct a legally qualified officer from the Office of the Attorney-General to present to the sub commission the case against the officer concerned.

[7] The sub commission shall permit the accused officer to be represented by an advocate.

[8] If during the course of the investigation grounds for the framing of additional charges are disclosed, the Chief Justice shall follow the same procedure as was adopted in framing the original charges.

[9] The sub commission, having investigated the matter, shall forward its report thereon to the Commission together with the record of charges framed, the evidence led, the defence and other proceedings relevant to the investigation; and the report of the sub commission shall include –

- [a] statement whether in the sub commission's judgement the charge or charges against the officer have been proved and the reasons therefore;
- [b] details of any matters which in the sub commission's opinion aggravate or alleviate the gravity of the case; and
- [c] a summing up and such general comments as will indicate clearly the opinion of the sub commission on the matter being investigated;

But the sub commission shall not make any recommendation regarding the form of punishment to be inflicted on the officer.

[10] The Commission, after consideration of the report of the sub commission, shall, if it is of the opinion that the report should be amplified in any way or that further investigation and report.

[11] The Commission shall consider the report and shall decide on the punishment, if any, which should be inflicted on the officer or whether he should be required to retire in the public interest.

Proceedings for
misconduct not
warranting
dismissal

27. [1] Where the Chief Justice, after preliminary investigation, considers it necessary to institute disciplinary proceedings against an officer to whom this regulation applies but is of the opinion that the misconduct alleged, if proved, would not be serious enough to warrant dismissal, he shall forward to the officer a statement of the charge or charges against him and shall invite him to state in writing should he so desire, before a day to be specified, any grounds on which he relies to exculpate himself.

[2] If the officer does not furnish a reply within the period specified or does not, in the opinion of the Chief Justice, exculpate himself, the Chief Justice shall cause copies of the statement of the charge, or charges, and the reply, if any, of the officer to be laid before the Commission.

[3] If, on consideration of the report, including the grounds, if any, on which the officer relies to exculpate

himself, the Commission is of the opinion that no further investigation is necessary, it shall forthwith decide on the punishment, if any [other than dismissal], which should be inflicted on the officer.

[4] If the Commission is of the opinion that the matter should be further investigated, it shall request the Chief Justice to cause further investigations to be made.

[5] Any such investigation shall normally be undertaken by the Registrar or by an officer senior to the officer accused.

[6] In an investigation under this regulation an officer to whom this regulation applies shall be entitled to know the whole case against him and shall be given an adequate opportunity of making his defence.

[7] The Chief Justice shall bring the result of any such investigation before the Commission, and unless the Commission requests the Chief Justice to make yet further inquiry the Commission shall decide on the punishment, if any [other than dismissal], which should be inflicted on the officer, or whether he should be required to retire in the public interest.

[8] Notwithstanding this regulation, if at any stage during the proceedings taken under it before final submission to the Commission –

- [a] it appears to the Chief Justice that the offence, if proved, would justify dismissal; or
- [b] the Chief Justice considers that proceedings for the retirement of the officer on grounds of public interest would be more appropriate.

Such proceedings shall be discontinued and the procedure in regulation 26 or regulation 28, as the case may be, shall be followed.

[9] Where a reference is made to the Commission under this regulation, it shall, if it considers that proceedings should be instituted under regulation 26 of these Regulations, direct the Chief Justice accordingly and thereupon the proceedings under this regulation shall be discontinued.

Retirement on
grounds of public
interest

28. [1] If the Chief Justice, after having considered every report in his possession made with regard to an officer, is of the opinion that it is desirable in the public interest that the service of such officer should be terminated on grounds which cannot suitably be death with under any other provision of these Regulations, he shall notify the officer, in writing, specifying the complaints reason by which his retirement is contemplated together with the substance of any report or part thereof that is detrimental to the officer.

[2] If, after giving the officer an opportunity of showing cause why he should not be retired in the public interest, the Chief Justice is satisfied that the officer should be required to retire in the public interest, he shall lay before the Commission a report on the case, the officer's reply and his own recommendation, and the Commission shall decide whether the officer should be required to retire in the public interest.

Officer convicted
of criminal
offence

29. [1] If an officer is convicted of a criminal offence which in the opinion of the Chief Justice warrants disciplinary proceedings he shall lay a copy of the charge and of the judgment and sentence and of any judgment or order made on appeal or in revision before the Commission, and the Commission shall decide whether the officer should be dismissed or subjected to any of the other punishments mentioned in the Regulations.

[2] For the purposes of this regulation, proceedings for minor offences, such as those under the Traffic Act and by-laws, may be disregarded, and disciplinary proceedings should normally be confined to proceedings under the Penal Code and other Acts where a prison sentence may be imposed other than in default of payment of a fine.

PART V

Services of
notices, etc

30. Where under these Regulations

[a] it is necessary either –

[i] to serve any notice, charge or other

document upon an officer; or

[ii] to communicate any information to any public officer having absented himself from duty;

[b] it is not possible to effect such service upon or communicate such information to such officers personally,

it shall be sufficient if such notice, charge or other document, or a letter containing such information, is sent by registered post addressed to his usual or last known place of address or post office box.

Cases not covered
by Regulations

31. Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Commission may from time to time issue.

Made by order of the Commission this.....day of2010.

HON. CHIEF JUSTICE J. E. GICHERU,
Chairman, Judicial Service Commission.

ANNEX II

THE SMALL CLAIMS COURT BILL, 2010

ARRANGEMENT OF CLAUSES

PART 1—PRELIMINARY

Section

- 1.— Short title and commencement.
- 2.— Purpose.
- 3.— Interpretation.

PART II—ESTABLISHMENT AND JURISDICTION OF SMALL CLAIMS COURT

- 4.— Establishment of Small Claims Court.
- 5.— Appointment of Commissioners.
- 6.— Language of Proceedings.
- 7.— Jurisdiction in respect of causes of action.
- 8.— Area of jurisdiction.
- 9.— Jurisdiction in respect of persons.
- 10.— Exclusion of other jurisdiction.
- 11.— Transfer of claims.
- 12.— No division of claims
- 13.— Abandonment of part of claim to small claims court jurisdiction.
- 14.— Transfer of counterclaim from Small Claim Court to other courts.
- 15.— Functions of Small Claims Court.
- 16.— Registry.
- 17.— Appointment of Clerk.
- 18.— Lodging of Claims.
- 19.— Contents of Claim.
- 20.— Powers of Court.
- 21.— Consultations before court by electronic means.
- 22.— Service of claim and notice of hearing.
- 23.— Claim may be admitted orally or in writing.
- 24.— Parties.
- 25.— Hearing to be informal.
- 26.— Right of audience.

- 27.— Proceedings to be in public.
- 28.— Proceedings in Small Claims Court conducted by electronic means.
- 29.— Claims may be heard together.
- 30.— Representative claims.
- 31.— Evidence.
- 32.— Judgment in default of appearance.
- 33.— Control of procedure.
- 34.— No costs allowed in the proceedings.
- 35.— Split, frivolous or vexatious claims.
- 36.— Adjournments.
- 37.— Withdrawal of claims.
- 38.— Orders of Small Claims Court.
- 39.— Enforcement of orders to pay money.
- 40.— Enforcement of work order.

PART III— EXECUTION

- 41.— Money to be paid to the judgment creditor.
- 42.— Inquiry into financial position.
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- 46.— Orders of Small Claims Court to be final.
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- 49.— Protection of Commissioners.
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- 51.— Publication of court orders.
- 52.— Person not precluded from filing claim in other courts.
- 53.— Practice Directions.

SMALL CLAIMS COURT BILL, 2010

A Bill for

An Act of Parliament for the establishment of small claims court, its composition, jurisdiction, procedures and for connected purposes.

ENACTED by the Parliament of Kenya as follows:

PART I—PRELIMINARY

Short Title and Commencement.

1. [1] This Act may be cited as the Small Claims Court Act, 2009, and shall come into operation on the date appointed by the Minister in the Gazette.

[2] Different dates may be determined under subsection [1] in respect of different provisions of this Act.

[3] Sections 18[6], 21 and 28 of this Act shall commence on such date as the Chief Justice may by notice in the Gazette appoint.

[4] For the avoidance of doubt, the operationalisation of the sections referred to under subsection [3] shall be preceded by formulation of the necessary practice directions by the Chief Justice.

Purpose.

2. It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are resolved informally, inexpensively, expeditiously but in accordance with established principles of law and natural justice.

Interpretation.

3. In this Act, unless the context otherwise requires—

“Claim” means a claim lodged with a small claims court under section 18;

“Claimant” means a person who lodges a claim with a small claims court and includes any person who becomes a party to the proceedings on any claim in the capacity of a claimant;

“Clerk” means the Clerk of Small Claims Court appointed under section 17;

“Commissioner” means a Commissioner appointed under section 5[1];

“Court” means any court of competent jurisdiction in Kenya;

“Electronic” includes electrical, digital, magnetic, optical, biometric, electrochemical, wireless or electromagnetic technology;

“Electronic system” means any electronic device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data and includes a permanent, removable or any other electronic storage medium;

“Party” means a claimant or respondent and any person joined as a third party;

“Practice directions” means practice directions made under section 53;

“Prescribed limit” means KSh. 100,000 or such other sum as the Chief Justice may substitute therefore by order published in the *Gazette*;

“Registry” means the Registry of Small Claims Court established under section 16;

“Respondent” means any person against whom a claim is made and any person who becomes a party to the proceedings on any claim in the capacity of a respondent;

“Review Panel” means a panel of Commissioners constituted for purposes of review under part IV of this Act;

“Small claims courts” means a Small Claims Court established under section 4;

“Work order” means an order to rectify a defect in goods or to make good any deficiency in the performance of services, by doing the work or attending to matters [including the replacement of goods or parts thereof] as may be specified in the order.

PART II—ESTABLISHMENT AND JURISDICTION OF SMALL CLAIMS COURT

Establishment of Courts.

4. [1] There is hereby established a Small Claims Court as a court subordinate to the High Court to exercise the jurisdiction in respect of this Act.

[2] The Chief justice may by notice in the Gazette determine one or more places in any division for the holding of sessions of such a Court.

Appointment of Commissioners.

5.[1] A Small Claims Court shall be presided over by a Commissioner;

[a] designated as such by the Chief Justice from serving judicial officers; or

[b] appointed by the Judicial Service Commission.

[2] No person shall be appointed as Commissioner unless the person is a lawyer or an advocate of at least five years.

[3] Every person appointed to be Commissioner shall hold office for such term as may be specified in the instrument of appointment, and may from time to time be reappointed.

[4] A Commissioner shall, on first appointment, take the oath or make the affirmation in the prescribed form

Language of proceedings.

6. [1] Either English, Kiswahili or any other appropriate language may be used at any stage of the proceedings of Small Claims Court.

[2] Notwithstanding the provisions of subsection [1], any party to the proceedings may bring their own interpreter to interpret the proceedings on their behalf.

Jurisdiction in respect of causes of action.

7. [1] Subject to the provisions of this Act, a small claims court has jurisdiction to hear and determine —

[a] any claim relating to a dispute arising from any contract for the sale of goods, monies received or services rendered;

[b] any claim in tort in respect of damage caused to any property or for the delivery or recovery of property or arising from personal injury claims, counterclaims; and

[c] any claim or thing authorized or directed by an Act of Parliament to be determined pursuant to this Act.

[2] A small claims court shall, subject to subsections [1] have jurisdiction to hear and determine any claim the value of which does not exceed KSh. 100,000 or such other sum as the Chief Justice may, by order published in the Gazette.

[3] Where a small claims court is of the opinion that a claim lodged with it pursuant to section 17 [1] is beyond its jurisdiction, the court shall discontinue the proceedings and advise the claimant and respondent accordingly.

Area of jurisdiction.

8. The area of jurisdiction of a Small Claims Court is the judicial division for which it is established.

Jurisdiction in respect of persons.

9. A small claims court has jurisdiction in respect of –

[a] any person who:

[i] resides;

[ii] carries on business; or

[iii] is employed

within the area of jurisdiction of the court;

[b] any person in respect of proceedings incidental to any action within the area of jurisdiction of the court, if the cause of action arose wholly within that area;

[c] any person who owns immovable property within the area of jurisdiction of the court in actions in respect of such property.

Exclusion of other Jurisdiction.

10. [1] If a claim has been lodged with a small claims court, no proceedings relating to that claim shall be brought before any other court except—

[a] where the proceedings before that court were commenced before the claim was lodged with the small claims court; or

[b] where the claim before the court has been withdrawn or abandoned.

[2] No claim shall be brought before a small claims court if proceedings relating to that claim are pending in or have been heard and determined by any other court.

[3] For purposes of this section, a claim is lodged with a court when section 18 has been complied with.

Transfer of claims.

11. [1] Notwithstanding section 7, a small claims court may, at any time if it is of the opinion that a claim ought to be dealt with by any other court, transfer the proceedings to that other court whereupon the practice and procedure of that other court shall apply.

[2] If at the consultation the Court is of the opinion that a claim or counterclaim lodged is outside the jurisdiction of a small claims court, the Court must discontinue the proceedings and advise the claimant and respondent accordingly.

No division of claims.

12. No claim shall be split and pursued in separate proceedings before a small claims court for the sole purpose of bringing the sum claimed in each of such proceedings within the jurisdiction of a small claims court.

Abandonment of part of claim to Small Claims Court Jurisdiction.

13. [1] If the value of a claim exceeds the prescribed limit, the claimant may abandon the excess, and thereupon the court shall have jurisdiction to hear and determine the claim.

[2] If the small claims court has jurisdiction to hear and determine a claim by virtue of subsection [1], an order of the court under this Act in relation to that claim shall be in full discharge of all demands in respect thereof.

Transfer of counterclaim from Small Claim Court to other Courts.

14. [1] Where any counterclaim or any set-off and counterclaim in proceedings before a small claims court is a monetary claim which is not within the jurisdiction

of the Court, any party in those proceedings may apply to an appropriate court, within such time as may be prescribed by the rules of that court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to that court.

[2] On any such application, the court may order —

[a] that the whole proceedings be transferred to that court;

[b] that the whole proceedings be heard before a small claims court; or

[c] that the proceedings on the counterclaim or set-off and counterclaim be transferred to that court and that the claim by the claimant and the defence thereto other than the set-off, if any, be heard before a Small claims court.

[3] Where an order is made under subsection [2] [c] and Judgment on the claim is given for the claimant, execution thereon shall, unless the court at any time otherwise orders, be stayed until the proceedings transferred to that court have been concluded.

[4] Where no application is made under subsection [1] or where on such an application it is ordered that the whole proceedings be heard before a small claims court, the small claims court shall have jurisdiction to hear the proceedings notwithstanding any other provisions of this Act.

Functions of Small
Claims Court.

15. [1] The primary function of a small claims court is to attempt to bring the parties to a dispute to an agreed settlement.

[2] Where an agreed settlement is reached, a small claims court may make one or more of the orders, which it is empowered to make under section 38.

[3] If it appears to a small claims court that it is impossible to reach a settlement under subsection [1] within a reasonable time, the court shall proceed to determine the dispute.

[4] A small claims court shall determine the dispute according to the substantial merits and justice of the case and in doing so shall have regard to the law but shall not be bound to give effect to strict legal forms or technicalities.

Registry.

16. [1] There shall be established and maintained a Registry of Small Claims Courts in which all records of the court shall be kept.

[2] The record of a small claims court shall consist of —

- [a] claims and responses lodged with the court by parties;
- [b] summaries of the facts of the issues in dispute in respect of those claims as determined and recorded by the court during the hearing of the claims; and
- [c] orders made by the court in relation to those claims.

[3] Any party to the claim shall, upon payment of a prescribed fee, be entitled to a copy of the record of a small claims court and such record shall be admissible in evidence before any other court for the purposes of any proceedings before that court.

Appointment of Clerk.

17. The Chief Justice may appoint a Clerk for each small claims court and such officers as may be necessary for the proper functioning of small claims courts.

Lodging of Claims.

18. [1] Small Claims Court Proceedings commence by lodging a claim with the Clerk in the prescribed form signed by the claimant.

[2] A claimant who is not able to complete the form must be assisted by the Clerk of the court.

[3] The Clerk may permit a claim to be made orally and cause it to be reduced to writing in the prescribed form.

[4] After the claim has been reduced to writing, it must be read over and explained to the claimant and, if confirmed correct by the claimant, must be signed by the claimant and a copy given to him.

[5] In any joint or representative claim —

[a] the Clerk may permit the claim to be filed notwithstanding that it has not been signed by all the claimants or persons represented on condition that all the claimants or such persons must do so before the date of hearing; and

[b] the name of a claimant or person represented who has not signed the claim before the hearing may be deleted from the claim and the amount of the claim reduced accordingly if the court so directs.

[6] The Clerk may, in accordance with practice directions issued by the Chief Justice, permit a claim to be lodged by electronic means.

Contents of Claim.

19. A claim must contain —

[a] the name and address of each claimant and, in the case of a representative claim, the name and address of each person represented;

[b] the name and address of each respondent;

[c] the sum of money claimed by each claimant or person represented; and

[d] Other particulars of the claim as are reasonably sufficient to inform the respondent of the ground for the claim and the manner in which the amount claimed by each claimant or person represented has been calculated.

Powers of Court.

20. [1] The Court may, when a claim has been filed, invite all the parties to the dispute for consultation with a view to effecting a settlement acceptable to all the parties.

[2] Where such a settlement is made, the Court must, at the request of the claimant, make an order under section 38 that gives effect to the terms of the settlement.

[3] Any person aggrieved by a decision of the Court made under subsection [2] may within fourteen days apply for review by a panel under Part IV and the panel may make an order confirming, reversing or varying the decision of the Court.

[4] If a claimant fails to appear at the consultation, in person or by a representative pursuant to section 21 [2], the Court may make an order dismissing the claim or, if there is a counterclaim by the respondent, make any order, which a small claims court may make under section 38.

Consultations before court by electronic means.

21. [1] The Court may, on such conditions as the Chief Justice may impose, permit consultations to be conducted by telephone, videophone or any other electronic means.

[2] The Court may at any time direct any consultation by electronic means to cease and order the parties to appear in person at a designated place for the consultation.

[3] Any order made by the Court at the consultation by electronic means may be set aside on the application of any person aggrieved by that order if the Court is satisfied that either party has been impersonated or that any person who participated in the consultation did not have authority to represent the party concerned.

[4] An application made under subsection [3] shall be made within fourteen day after the order was made or such further period as the Court may allow.

Service of claim and Notice of hearing.

22. [1] If the Court is unable to achieve a settlement acceptable to all the parties to the dispute, the Court shall —

[a] fix a place and date for hearing the claim and give notice thereof in the prescribed form to the claimant; and

[b] as soon as is reasonably practicable, cause a copy of the written claim and a notice in the prescribed form of the place and date of hearing to be served on--

[i] the respondent; and

[ii] every person who appears from the claim form to have a sufficient interest in the settlement of the dispute to which the claim relates.

[2] The claimant shall serve each respondent with a certified copy of the original claim document, notice of hearing and a form of defence and upon such service, the respondent shall file his response within fourteen days from the date of service.

[3] A party may call a witness during the hearing of a claim.

[4] The Court may summon any person to appear before a small claims court if, in the Court's opinion, the presence of the person is necessary to enable the court to determine the questions in dispute in the claim.

[5] Subject to subsection [2], service of a copy of the written claim and the notice of hearing and of a summons or any document that is to be served on any person in any proceedings before a small claims court may be effected by such person as may be appointed by the Court for the purpose.

Claim may be admitted
by orally or in writing.

23. [1] The Court may, on such conditions as the Court may impose; permit a respondent, at any time before the Court has made an order on the claim, to admit the claim against the respondent orally.

[2] The Court may accept any admission to the claim in writing by the respondent if such admission is received before any order on the claim had been made by the court.

[3] The Court may, reject an admission allegedly made under subsection [1] or [2] and direct the respondent to appear in person at the consultation or before a small claims court.

[4] If the Court is satisfied that an admission under subsection [1] or [2] is in order, the Court may make an order under section 38 against the respondent and the order shall have effect as if it were an order of a court under that section.

[5] Any order made by the Court under subsection [4] may be set aside on the application of the respondent if the Court is satisfied that the admission was not made by the respondent or with the respondent's authority.

[6] An application under subsection [5] shall be made within fourteen days after the date of the order or such further period as the Court may allow.

Parties.

24. [1] Subject to subsection [2], the claimant and the respondent and every person to whom notice of a claim has been given under section 22 [1] [b] shall be parties to the proceedings on that claim.

[2] A small claims court may, at any time, order that the name of a person who appears to it to have been improperly joined as a party be struck out from the claim.

Hearing to be informal.

25. [1] Proceedings before a small claims court shall be conducted in an informal manner.

[2] A small claims court may, of its own motion or at the request of any party, summon any witness and require the production of any document, record, book of account or other thing, which is relevant in any proceedings.

[3] A small claims court shall inquire into any matter, which it may consider relevant to a claim, whether or not a party has raised it. .

Right of audience.

26. [1] Subject to this section, a party to proceedings before a small claims court shall present their case in person.

[a] a minor and is, in the opinion of the court, unable to present his own case, his parent or guardian or any other person as may be approved by the court, may present the case on his behalf;

[b] a person who is not resident in Kenya and who is unable to remain in Kenya until the hearing of the case, any other person who is duly authorized by him in writing may, with the approval of the court, present the case on his behalf; and

[c] a person who is, in the opinion of the court, unable to present their own case by reason of old age, illiteracy or infirmity of mind or body, any other person who is duly authorized by the

claimant in writing or who is approved by the court may present the case on their behalf.

[2] A party shall not be allowed to be represented by an advocate.

[3] A small claims court must, before permitting a person to act as a representative under subsection [1], satisfy itself that the person has sufficient knowledge of the case and sufficient authority to bind the party being represented.

Proceedings to be in public.

27. All proceedings before a small claims court may be held in public or in chambers.

Proceedings in Small Claims Court conducted by electronic means etc.

28. [1] A small claims court may, on such conditions as the Chief Justice may impose, permit proceedings before the court to be conducted by telephone, videophone or any other electronic means.

[2] The court may at any time direct any proceedings before it conducted by electronic means to cease and order the parties to appear in person at a designated place for the hearing.

[3] Any order made by the court at the proceedings before it by electronic means may be set aside on the application of a person aggrieved by that order if the Court is satisfied that either party has been impersonated or that any person who participated in the hearing did not have authority to represent the party concerned.

[4] An application made under subsection [3] shall be made within one month after the order was made or such further period as the court may allow.

Claims may be heard together.

29. [1] Where two or more claims are filed and it appears to a small claims court that —

[a] a common question of fact or law arises in both or all of them;

[b] the claims arose out of the same cause of action;
or

[c] it would be in the interests of justice, the court may order that such claims be heard at the same time.

[2] A small claims court may exercise the powers conferred by this section notwithstanding that the hearing of one or more of the claims has begun.

Representative claims.

30. [1] Subject to subsection [2], if two or more persons have claims against the same respondent, such claims may be brought in the name of one of such persons as the representative of some or all of them save that the authority to act as a representative shall be given in writing.

[2] A small claims court may, if at any stage of the proceedings it considers that a representative claim may prejudice the respondent, order that the claims of all or any of the persons represented be heard separately.

[3] Each person represented in a representative claim shall be considered to have authorized the representative on their behalf to—

[a] call and give evidence and make submissions to a small claims court on any matter arising during the hearing of the claim;

[b] file affidavits, statements or other documents;

[c] agree to an adjournment or change of venue;

[d] agree to a settlement of the claim on such terms as the person thinks fit;

[e] amend or abandon the claim; and

[f] act generally in as full and free a manner as such claimant may act on his own behalf.

[4] The authority deemed to be given to a representative by subsection [3] should not be withdrawn except by leave of the court.

[5] A court may, at any time before determining any claim, grant leave to any person to join in the claim as a person represented on such terms as it may think fit.

Evidence.

31. [1] A small claims court shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

[2] Notwithstanding the generality of subsection [1] the court may admit as evidence in any proceedings before it any oral or written testimony, record or other thing that the court considers is credible or trustworthy even though the testimony, record or other thing is not admissible as evidence in any other court under the law of evidence.

[3] Evidence tendered to a small claims court by or on behalf of a party to any proceedings need not be given on oath but the court may, at any stage of the proceedings, require that such evidence or any part thereof be given on oath whether orally or in writing.

[4] A small claims court may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit.

[5] All evidence and information received and ascertained by the court under subsection [3] shall be disclosed to every party.

[6] For the purposes of subsection [2], a Commissioner is empowered to administer an oath.

[7] A Commissioner may require any written evidence given in the proceedings before a Small Claims Court to be verified by statutory declaration.

[8] A Small Claims Court is not required to keep a record of the evidence given in any proceedings before it but shall make —

[a] a summary for the purposes of section 16 (2);
and

[b] notes of the proceedings.

Judgment in default of appearance.

32. [1] If a respondent fails to appear at the hearing, by himself or by a representative pursuant to section 23 (2), the claimant may apply to the court for an order to be made against the respondent.

[2] Upon application made by the claimant under subsection [1], the court shall grant the claimant the order if it is satisfied that the claimant is entitled thereto.

[3] An order shall not be made against a respondent under this section unless the court is satisfied that a copy of the written claim and the notice of hearing have been served on the respondent under section 22.

Control of procedure.

33. Subject to this Act and practice directions, a small claims court has control of its own procedure in the hearing of claims and, in the exercise of that control, must have regard to the principles of natural justice.

No costs allowed in the proceedings.

34. Except as provided in section 32, costs other than disbursements, are not granted to or awarded against any party to any proceedings before a small claims court.

Split, frivolous or vexatious claims.

35. A small claims court may at any time dismiss a split claim or that which it considers frivolous or vexatious on such terms as to costs as it thinks fit.

Adjournments.

36. A small claims court may at any time-

[a] of its own motion; or

[b] on the application of any party; adjourn the hearing of proceedings on a claim on such terms as it thinks fit.

Withdrawal of claim.

37. A claimant may at any time withdraw a claim whether or not the court has heard the claim.

Orders of a Small Claims Court.

38. [1] A court may, as regards any claim within its jurisdiction, make one or more of the following orders and may include therein such stipulations and conditions [whether as to the time for, or mode of, compliance or otherwise] as it thinks fit:

[a] the court may order a party to the proceedings to pay money to another party;

[b] the court may make a work order against any party to the proceedings;

[c] the court may make an order requiring a party to the proceedings to do anything referred to in paragraph [b] within such time as may be specified in the order and, in default of his complying with that order, to pay money to a person specified in the order;

[d] the court may make an order dismissing the claim to which the proceedings relate; and

[e] the court may make such ancillary orders as may be necessary.

[2] The following provisions shall apply to an order made under subsection [1]:

[a] an order made under subsection [1] [a] shall not require payment of money exceeding the prescribed limit;

[b] the value of the work required to be performed by the order shall not exceed the prescribed limit; and

[c] the order may provide that, in default of compliance with the order within the time specified in it, the claimant may have the work needed to rectify the defect done by a competent person.

[3] The Court shall arrange for a copy of an order made under subsection [1] to be served on the person against whom it is made as soon as practicable.

[4] Nothing in this section precludes the court from making any order or giving any direction it thinks is necessary for the achievement of the purposes of this Act.

Enforcement of orders to pay money.

39. [1] Every order made by a small claims court requiring a party to pay money shall be enforced according to the provisions of this Act.

[2] Where application is made to the court for the issue of any process to enforce an order provided for by section 38 [1] [c] [requiring a party to pay money to another as an alternative to compliance with a work order], the court shall give notice of the application to the party against whom enforcement is sought.

[3] If that party does not file in the court within the period prescribed for so doing a notice of objection in the prescribed form, the order may, after the expiry of that period, be enforced pursuant to subsection [1].

[4] The notice referred to in subsection [3] may only be given on the ground that it is the belief of the party that the order of the court has been fully complied with and that the party therefore disputes the entitlement of the applicant to enforce it.

[5] If the party against whom enforcement is sought files the notice referred to in subsection [3] within the prescribed period, the matter shall be determined as provided under section 40 [3].

[6] No filing fee shall be payable by a person who seeks to enforce an order pursuant to subsection [1] but any fee which would otherwise be payable therefore shall be included in and be considered as part of the award of the court and shall be recoverable from the opposite party for the credit of the Consolidated Fund.

Enforcement of Work
orders.

40. [1] If —

[a] a party in whose favour a work order has been made considers that the work order has not been complied with by the other party; and

[b] that other party has not complied with the alternative money order provided for by section 36 [1] [c],

the party in whose favour the work order was made may lodge with the court a request in the prescribed form that the work order be enforced.

[2] Subsequent proceedings shall be taken on a request for enforcement under subsection [1] and on notice under section 38 [5] as if such request or notice were a claim lodged under section 18

[3] Upon the hearing of the matter, the court may —

[a] vary the work order, or make a further work order or any other order which is authorized by section 38;

[b] grant leave to the party in whose favour the work order was made to enforce the alternative money order provided for by section 38 or so much thereof as the court may allow, and

either subject to or without compliance with section 38 [2]; or discharge any order previously made by the court.

PART III - EXECUTION AND REVIEW

Money to be paid directly to the judgment creditor.

41. Money payable in terms of a judgment or court order is paid by the judgment debtor direct to the judgment creditor.

Inquiry into financial position.

42. [1] When a court grants judgment for the payment of a sum of money, the court shall enquire from the judgment debtor whether he is able to comply with the judgment without delay, and if he indicates that he is unable to do so, the court may, in chambers, conduct an inquiry into the financial position of the judgment debtor and into his ability to pay the judgment debt and costs.

[2] After such an inquiry the court may –

[a] order the judgment debtor to pay the judgment debt costs in specified instalments or otherwise;

[b] authorize the issue of a warrant of execution against any property of the judgment debtor, or such part thereof as the court may consider necessary;

[c] authorize the issue of a warrant under paragraph [b] and make an order under paragraph [a], and suspend the execution of the warrant and the order either wholly or in part on such conditions as to security or otherwise as the court may determine.

Offer by judgment debtor after judgement.

43. If no order has been made in terms of section 42[2], the judgment debtor may within 10 days after the court has granted judgment for the payment of a sum of money, make a written offer to the judgment creditor to pay the judgment debt in specified instalments or otherwise, and if such an offer is accepted by the judgment creditor, the clerk of the court shall, at the written request of the judgment creditor, accompanied by the offer, order the judgment debtor to pay the

judgment debt in accordance with his offer, and such an order shall be considered to be an order of the court in terms of section 38.

Manner of execution.

44. [1] When a court has granted judgment for the payment of money or made an order for the payment of money in instalments, that judgment, in the case of failure to pay the money within 10 days, or that order, in the case of failure to pay an instalment at the time and in the manner determined by the court, shall be enforceable by execution against the movable property and, if insufficient movable property is found to satisfy the judgment or order or the court on good cause shown so orders, against the immovable property of the party against whom such judgment has been given or such order has been made.

[2] Upon failure to pay an instalment in accordance with an order of court, execution may be levied in respect of the whole of the judgment debt and costs then still unpaid, unless the court, on application by the party that is liable, orders otherwise.

Review of orders or awards of Small Claims Courts.

45. [1] A panel of three [3] Commissioners may, on application by any aggrieved party or on its own motion review any order or award of a small claims court made pursuant to section 38[1] or 42 on the ground -

- [a] that the order was made ex-parte without notice to the party concerned;
- [b] that the claim or order or award was outside the jurisdiction of the small claims court;
- [c] that a mistake occurred in the making of the order or award;
- [d] that the order or award is fraudulent;
- [e] that there was gross irregularity in the proceedings; and
- [f] that there is need to correct an error apparent on the face of the record.

[2] The application referred to under subsection [1] shall be made within 30 day of the order or award sought to be reviewed.

PART V – MISCELLANEOUS PROVISIONS

Order of Small Claims
Court to be final.

46. An order of a small claims court shall be final and binding on all parties to the proceedings and, except as provided in section 45, no appeal shall lie in respect thereof.

Setting aside of orders.

47. [1] Any order of the small claims court made under section 38 [3] or 32 [1] may, on the application of a person aggrieved by that order, be set aside by the small claims court and the court may make such further order as in the interest of justice.

[2] An application under subsection [1] shall be made within fourteen days after the date on which the order was made or such further period as the court may allow.

Stay of execution on
review.

48. [1] The filing of an application for review shall not operate as a stay of execution of an order unless the small claims court or the review panel, as the case may be, otherwise orders.

[2] Any stay of execution may be subject to such conditions as to costs, payment into a small claims court, the giving of security or otherwise as the small claims court or the review panel considers fit.

Protection of
Commissioners.

49. [1] A Commissioner shall have and enjoy the same protection as a judge has and enjoys under the Judicature Act [Cap. 9].

[2] For the avoidance of doubt as to the privileges and immunities of Commissioners, parties, representatives and witnesses in the proceedings of a small claims court, it is declared that such proceedings are judicial proceedings.

[3] The privileges and immunities referred to in subsection [2] extend and apply to—

[a] a small claim court acting under section 28 [3] and [4]; and

[b] a person who gives information or makes any statement to the Clerk or court on any such occasion.

Removal of
Commissioners.

50. The provisions of the Constitution and the law relating to discipline and removal of magistrates shall apply with necessary modifications to the discipline and removal of Commissioners.

Publication of court
orders.

51. The Clerk shall cause to be published, in such manner as the Chief Justice from time to time directs, such particulars relating to proceedings in small claims court as the Chief Justice specifies in the direction.

Person not precluded
from filing claim in other
courts.

52. Nothing in this Act precludes a person from lodging a claim that is within the jurisdiction of a small claims court in any other court if that person elects to institute proceedings in that other court to hear and determine that claim.

Practice directions.

53. [1] The Chief Justice may give directions consistent with this Act respecting matters of practice and procedure.

ANNEX III
THE COMMISSIONERS OF ASSIZE ACT (CAP 12 LAWS OF KENYA)

INSTRUMENT OF APPOINTMENT

GAZETTE NOTICE NO.....

APPOINTMENT

IN THE EXERCISE of powers conferred on me by section 2 of the Commissioners of Assize Act and following the joint representation by the Chief Justice and Attorney-General on the need to expedite the disposal of criminal and civil causes or matters pending in the High Court, I, Mwai Kibaki President and Commander-in-Chief of the Armed Forces of the Republic of Kenya appoint—

to be a Commissioner of Assize and to hold office subject to the terms and conditions of this Instrument of Appointment.

Dated this ----- day of ----- 2010.

MWAI KIBAKI,
President.

**TERMS AND CONDITIONS OF APPOINTMENT OF
COMMISSIONERS OF ASSIZE, 2010**

This Instrument will upon execution by both parties, operate as an agreement between the Government of Kenya [hereinafter called "the Government"] of the one part

AND-----of **P. O. BOX** ----- [hereinafter called "the Commissioner"] of the other part;

WHEREAS, the Government wishes to have the Commissioner of Assize perform the judicial services detailed in this Instrument [hereinafter referred to as "the Services," and WHEREAS, the Commissioner is willing to perform the said services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Qualifications and Competencies

This appointment is premised on the understanding that the Commissioner possesses the qualifications and competencies specified in Appendix A. "Qualifications and Competencies of Commissioners of Assize," which is made an integral part of this Instrument. Should the Commissioner cease to be so qualified during the course of this engagement, the appointment will stand revoked.

2. Scope of Services

The Commissioner shall perform the Services specified in Appendix B. "Terms of Reference and Scope of Services," which is made an integral part of this Instrument save that the Commissioner shall within the first month after execution of the Agreement, draw up a Case Management Programme in respect of the causes or matters assigned.

3. Term

The Commissioner shall perform the Services during the period commencing -----and continuing through to -----or any other period[s] as may be subsequently determined by the parties in writing.

4. Payment

(A) Ceiling

For Services rendered pursuant to Appendix B, the Government shall pay the Commissioner an amount not to exceed a ceiling of Kenya Shillings

800,000.00 per month (being Consolidated Pay). This amount has been established based on the understanding that it includes all of the Commissioner's costs and profits as well as any tax obligation that may be imposed on the Commissioner. The payments made under the Agreement consist of the Commissioner's remuneration as defined in sub-paragraph [B].

(B) Remuneration

The Government shall pay the Commissioner for Services monthly.

(C) Payment Conditions

Payment shall be made in Kenya shillings unless otherwise specified not later than thirty [30] days following submission of invoices in duplicate to the Coordinator designated in Clause 4 here below. If the Government has delayed payments beyond thirty [30] days after the date hereof, simple interest shall be paid to the Commissioner for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

5. Supervision and Administration

(A) Co-ordinator

The Government through the Chief Justice designates the Chief Registrar as the Coordinator. The Coordinator shall be responsible for the coordination of activities under the Agreement; receiving and approving invoices for payment; and acceptance of the deliverables by the Government.

(B) Timesheets

During the course of work under this Agreement, including chamber sessions, the Commissioner providing Services under this Agreement may be required to complete timesheets or any other document used to identify time spent, as instructed by the Coordinator.

(C) Records and Accounts

The Commissioner shall keep accurate and systematic records and accounts in respect of the Services which will clearly identify all charges and expenses. The Government reserves the right to audit under the Public Audit Act, the Commissioner's records relating to amounts claimed under this Agreement during its term and any extension and for a period of three months thereafter.

6. Full-Time Engagement and Deployment

A Commissioner shall take this engagement on a full-time basis and may not serve or be deployed within the jurisdiction or areas where they ordinarily practice law.

7. Methodology / Approach

The Commissioner will be responsible for the overall management of the work described in the Terms of Reference, including the quality and timely delivery of the agreed outputs. The Commissioner will implement this assignment in a professional manner, ensuring the buy in and ownership of the Judiciary.

8. Expected Outputs

The Commissioner is required to work full-time and deliver timely and reasoned judgements, rulings or any such other orders as may by law be pronounced.

9. Performance Standard

The Commissioner undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. For the avoidance of doubt, the

Commissioner shall during the period of the engagement, be governed by the extant Code of Conduct and Ethics or Regulations applicable to a Judge of the High Court of Kenya.

10. Mid-Term and other Periodic Reviews and Evaluation

The Chief Justice shall through the Expeditious Disposal of Cases Committee or any such suitable machinery make administrative arrangements as may be necessary to carry out a mid-term or any such periodic review or evaluation of the performance of the Commissioner. For the avoidance of doubt, the results of such review or evaluation will have a direct bearing on the extension or otherwise of the Commissioner's engagement.

11. Confidentiality

The Commissioner shall not, during the term of this Agreement and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Agreement or the Government's business or operations without the prior written consent of the Government.

12. Ownership of Material

Any studies, reports or other material prepared by the Commissioner for the Government under the Agreement shall belong to and remain the property of the Government. The Commissioner may retain a copy of such documents and software.

13. Conflict of Interest

The Commissioner agrees that during the term of this Agreement and after its termination, the Commissioner and any entity affiliated with the Commissioner shall be disqualified from providing goods, works or services for any project resulting from or closely related to the Services. Any non-disclosure or false declaration of material facts renders the Agreement void.

14. Insurance

The Commissioner will be responsible for taking out any appropriate insurance coverage.

15. Assignment

The Commissioner shall not assign this Agreement or sub-contract any portion thereof.

16. Law Governing Agreement and Language

The Agreement shall be governed by the Laws of Kenya and the language of the Agreement shall be English.

17. Dispute Resolution

The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or its interpretation. Any dispute arising out of this Agreement which cannot be amicably settled between the parties, shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

18. False Disclosure

False declaration or non-disclosure of material facts on the part of the Commissioner shall forthwith render this Agreement null and void.

FOR THE GOVERNMENT

Full Name: _____

Title: _____

Signature: _____

Date: _____

FOR THE COMMISSIONER

Full name: _____

Title: _____

Signature: _____

Date: _____

LIST OF APPENDICES

Appendix A: Qualifications and Attributes of Commissioner

Appendix B: Terms of Reference and Scope of Services

APPENDIX A

Qualifications and Attributes of a Commissioner of Assize

A Commissioner must during the period of engagement possess the following qualifications and attributes:

1. A minimum of seven (10) years experience in Kenya or in any other Commonwealth common law jurisdiction –
 - (a) As professionally qualified magistrate; or
 - (b) As an advocate in private practice or employed in the public service;
2. Demonstrable professional competence: elements of which shall include but limited to-intellectual capacity; legal judgment; diligence; substantive and procedural knowledge of the law; organizational and administrative skills; and the ability to work well in a multi-cultural environment;
3. Written and oral communication skills: the elements of which shall include but not limited to- ability to communicate in writing and speaking; ability to discuss factual and legal issues in clear, logical, and accurate legal writing; and effectiveness in communicating orally in a way that will readily be understood and respected by people from all walks of life;
4. Integrity: elements of which shall include but not limited to-demonstrable consistent history of honesty and high moral character in professional and personal life; respect for professional duties arising under the codes of professional and judicial conduct; and ability to understand the need to maintain propriety and the appearance of propriety;
5. Fairness: elements of which shall include but not limited to-demonstrable ability to be impartial to all persons and commitment to equal justice under the law; open-mindedness and capacity to decide issues according to the law, even when the law conflicts with personal views;
6. Temperament: elements of which shall include but not limited to-demonstrable possession of compassion and humility; history of courtesy and civility in dealing with others; ability to maintain

composure under stress; and ability to control anger and maintain calmness and order;

- 7. Judgment: including common sense, elements of which shall include but not limited to- a sound balance between abstract knowledge and practical reality and in particular, demonstrable ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles;**
- 8. Legal and life experience: elements of which shall include but not limited to- the amount and breadth of legal experience and the suitability of that experience for the position sought, including trial and other courtroom experience and administrative skills; broader qualities reflected in life experiences, such as the diversity of personal and educational history, exposure to persons of different ethnic and cultural backgrounds, and demonstrable interests in areas outside the legal field;**
- 9. Demonstrable commitment to public and community service: elements of which shall include but not limited to- the extent to which an applicant has demonstrated a commitment to the community generally and to improving access to the justice system in particular; and**
- 10. Not attained the age of retirement for Judges.**

APPENDIX B

Terms of Reference and Scope of Services

1. Draw up a case management programme as stipulated under clause 2 of the Instrument of Appointment.
2. Dispose of or parts of the criminal or civil causes or matters assigned in a timely manner and in any event within the period specified under clause 3 of the Instrument of Appointment.
3. Undertake any other duty that may be assigned by the Chief Justice in furtherance of the above duties.

ANNEX IV
GUIDING PRINCIPLES OF THE JUDGES AND MAGISTRATES
VETTING BILL

The legislation on vetting of serving Judges and magistrates envisaged under Clause 23, Sixth Schedule of the Proposed Constitution of Kenya should be premised on the following:

1. The Vetting Body

The vetting body shall be an independent Tribunal.

2. Composition

The Tribunal be constituted by nine members appointed following a competitive selection process preceded by advertisement, interview and approval by the National Assembly as follows:

- (i) 3 Members appointed from among the members of the reconstituted JSC
- (ii) 6 members (from among experienced members of the Bar and retired judicial officers of proven integrity) appointed from outside the JSC, one of whom shall be the chairperson. The Vice-chairperson shall be elected by the members.

In order to manage conflict of interest, no member of the JSC who is subject to the vetting process, having been a Judge or magistrate at the time of the effective date of the Proposed Constitution of Kenya, shall be a member of the Tribunal.

The Tribunal shall be assisted by three Joint Secretaries appointed following a competitive selection process preceded by advertisement, interview and approval by the National Assembly from among members of the legal profession.

3. Panels

To ensure expeditious disposal of the matters, the Task Force recommends that the chairperson should constitute three Panels each composed of three members to work concurrently.

4. Time Frame

The Task Force notes that the vetting period should not exceed one (1) year so as to avoid any protracted anxiety that may build amongst serving judicial officers. The Tribunal shall stand dissolved on execution of its mandate.

5. Relevant Considerations

The Task Force recommends that the Tribunal should consider:

- (i) In the case of a Judge, whether the Judge would have met the constitutional suitability thresholds for appointment as a Judge of the superior courts of record as provided in the Proposed Constitution of Kenya including incompetence, mental or physical incapacity, bankruptcy, gross misconduct or misbehaviour
- (ii) In the case of a magistrate, whether the magistrate meets the suitability thresholds for appointment as a magistrate including incompetence, mental or physical incapacity, bankruptcy, gross misconduct or misbehaviour
- (iii) Any pending or concluded criminal cases before a court of law against the judicial officer
- (iv) Any recommendations for prosecution by the Attorney-General or Kenya Anti Corruption Commission
- (v) The track record of the judicial officer including prior judicial pronouncements, competence and diligence
- (vi) Complaints from any person or body including but not limited to the Law Society of Kenya, Kenya Anti Corruption Commission, Disciplinary Committee, Advocates Complaints Commission, the Attorney-General, Public Complaints Standing Committee, Kenya National Commission on Human Rights, National Security Intelligence Service, the Police and the Judicial Service Commission.

6. Procedure

- (i) The Tribunal shall consider information gathered in the course of personal interviews with the judicial officer as well as the judicial officer's records

- (ii) All information obtained by the Tribunal, including that obtained during personal interviews and records of the judicial officer shall be confidential.
- (iii) Every judicial officer to be vetted shall be given sufficient notice.
- (iv) The hearings by the Tribunal may not be conducted in public.
- (v) The rules of natural justice shall apply.
- (vi) The tribunal shall have powers to regulate its procedure.

7. Guiding Principles

The Task Force recommends that in undertaking the vetting, the Tribunal should at all times be guided by the principles and standards of judicial independence as well as the national values and principles set out under Articles 10 and 159 of the Proposed Constitution of Kenya.

8. Order of Priority

The Task Force recommends that for an orderly vetting of the serving judicial officers, the vetting will be undertaken in the order of seniority of Judges of the Court of Appeal, followed by High Court Judges, Chief Magistrates and other cadres of magistrates in that order.

9. Preliminary Findings

The Task Force recommends that the proposed legislation should provide that upon a finding that a serving judicial officer should be removed, the said judicial officer shall be required to immediately proceed on leave.

10. Final Determination

The Task Force recommends that upon making the final determination, the Tribunal shall inform the judicial officer in writing whereupon the judicial officer shall be deemed removed or suitable for judicial office. The decision on suitability or to remove a judicial officer shall be made public.

11. Review

The Task Force recommends that where a judicial officer is dissatisfied with the findings of a Panel, they may apply for review (within a specified period) of that decision by a five member Panel whose decision shall be final.

12. Terminal Benefits

The proposed legislation shall make provision allowing serving judicial officers to elect within three (3) months of enactment, whether to be

subjected to the vetting process or to leave judicial service voluntarily. Where a judicial officer elects the former and is found unsuitable, they may be entitled to their benefits accruing at the date of the finding or retirement.

13. Filling of Vacancies

The filling of vacancies occasioned by the removal of serving judicial officers under the vetting legislation will be as provided for in the Proposed Constitution of Kenya.

14. Conflict of Interest

The Task Force recommends that a person who serves on the Tribunal as chairperson, vice-chairperson, member or Joint Secretary shall be precluded from being appointed as a Judge or judicial officer for a period of five years from the close of the vetting process.

ANNEX V

EXAMPLES OF QUASI-JUDICIAL BODIES/TRIBUNALS IN KENYA

	Tribunal	Act	Functions	Appointing Authority	Right of Appeal
1.	Advocates Complaints Commission	Advocates Act, Cap 16, S. 53	Inquires into complaints against Advocates	Commissioners appointed by the President	No right of appeal
2.	Advocates Disciplinary Committee	Advocates Act, Cap 16, S. 55	Exercises disciplinary powers over Advocates	Members are the AG, SG, or a person deputed by the AG, 6 members elected by the LSK and 3 other members, not being advocates appointed by the AG on the recommendation of the LSK.	Right of appeal to High Court with a further appeal to the Court of Appeal
3.	Teachers Service Appeals Tribunal	Teachers Service Commission Act, Cap 212, S. 11	Hears appeals from Teachers denied registration or deregistered	Members appointed by the Minister	Decision is final
4.	Rent Restriction Tribunals	Rent Restriction Act, Cap 296, S. 4	Resolving disputes between landlords and tenants	All members are appointed by the Minister	Limited right of appeal to the High Court
5.	Business Premises Tribunal	Landlord and Tenant (Shops, Hotels & Catering Establishments Act), Cap 301, S. 11	Resolves disputes between landlords and tenants	All members are appointed by the Minister	Right of appeal to the H C from references only

	Tribunal	Act	Functions	Appointing Authority	Right of Appeal
6.	Land Control Board	Land Control Act, Cap 302, S. 5	Hears and sanctions transactions affecting agricultural land	All members are appointed by the Minister	Right of appeal to Provincial Land Control Appeals Board
7.	Provincial Land Control Appeals Board	Land Control Act, Cap 302, S. 10	Hears appeals from Land Control Boards	All members are appointed by the Minister	Appeals to Central Land Control Appeals Board
8.	Central Land Control Appeals Board	Land Control Act, Cap 302, S. 12	Hears appeals from Provincial Land Control Appeals Board	Members are 5 Ministers and the AG by virtue of their offices	Decision final and conclusive
9.	Agricultural Appeals Tribunal	Agriculture Act, Cap 318, S. 193	Hears appeals from the decision of the Minister under the Act making a land preservation order and from several other Boards established under different Acts	C J appoints the chair and the Minister appoints the other members	Decision final and conclusive save for the power to state a case on a question of law for the opinion of the High Court
10.	The Seeds and Plants Tribunal	Seeds and Plant Varieties Act Cap 326, S. 28	Hears appeals a decision of the Minister refusing to include or exempting a plant variety in the index of names of plant varieties, allowing or refusing to grant plant breeder's rights, cancelling such grant, allowing or refusing licenses	All members are appointed by the Minister	Right of appeal to the High Court on points of law

	Tribunal	Act	Functions	Appointing Authority	Right of Appeal
11.	Sugar Arbitration Tribunal	Sugar Act, No. 10 of 2001, S. 31	Arbitrates disputes between parties under the Sugar Act	The members are appointed by the Minister in consultation with the AG	No right of appeal is provided
12.	Water Appeal Board	Water Act, No. 8 of 2002, S. 84	Hears appeals by any holder of a proprietary right or license affected by a decision of the Water Resources Management Authority, the Minister or the Water Services Regulatory Board concerning a permit or license under the Act	The Chair is appointed by the President on the recommendation of the Chief Justice, while other two members are appointed by the Minister	Decision is final though an appeal lies to the High Court on a matter of law
13.	Wildlife Conservation and Management Service Appeals Tribunal	Wildlife (Conservation and Management) Act, Cap 376, S. 65	Hears appeals by parties aggrieved by refusal of grant or issue or cancellation or suspension of any license or permit as well as appeals on compensation made or denied under the Act	All the Members are appointed by the Minister	No right of appeal is provided
14.	Tourist Appeal Board	Tourist Industry Licensing Act, Cap 381, S. 9	Hears appeals by parties whose application for license is refused or whose license is cancelled or varied	The Minister appoints 2 members whilst the other is a member by virtue of office	No right of appeal is provided

	Tribunal	Act	Functions	Appointing Authority	Right of Appeal
15.	Transport Licensing Appeal Tribunal	Transport Licensing Act, Cap 404, S. 19	Hears appeals from Transport Licensing Boards which are empowered to license motor vehicles and ships for carriage of goods, passengers, hire or reward, trade or business	The President appoints the chair whilst the Minister appoints the other 4 members	Decision of the Tribunal is final and conclusive
16.	State Corporations Appeals Tribunal	State Corporations Act, Cap 446, S. 22	Hears appeals by persons aggrieved by surcharges or disallowance of accounts by the Inspector General, Corporations	The President appoints the chair and the Minister appoints two members	Right of further appeal to the High Court whose decision is final
17.	Value Added Tax Appeals Tribunal	Value Added Tax Act, Cap 476, S. 32	Hears appeals from decisions of the Commissioner of Value Added Tax.	All members are appointed by the Minister	Right of Appeal to the High Court
18.	Capital Markets Tribunal	Capital Markets Authority Act, Cap 485, S. 35	Hears appeals by any person aggrieved by a decision of the Authority refusing a license, imposing restrictions on a license, suspending trading of a security on a securities exchange, etc.	All members are appointed by the Minister	No right of further appeal is provided
19.	Insurance Appeals Tribunal	Insurance Act, Cap 487, S. 169	Hears appeals under the Insurance Act and from decisions of the Commissioner of Insurance	All members are appointed by the Minister	Right of appeal on issues of law to the High Court

	Tribunal	Act	Functions	Appointing Authority	Right of Appeal
20.	Co-operatives Tribunal	Co-operative Societies Act, Cap 490 as amended by Act No. 2 of 2004	Hears disputes concerning the business of a Co-operative Society	3 members are appointed by the Minister on nomination, 1 on discretion and 3 on consultation	Right of Appeal to the High Court whose decision is final
21.	Hotels and Restaurants Appeals Tribunal	Hotels and Restaurants Act, Cap 494, S. 10	Hears appeals by parties aggrieved by decisions of the Hotels and Restaurants Authority refusing a license, attaching any conditions on a license or suspending or cancelling a license	All members are appointed by the Minister	No right of appeal provided
22.	Restrictive Trade Practices Tribunal	Restrictive Trade Practices, Monopolies and Price Controls Act, Cap 504, S. 20	Hears appeals by persons aggrieved by an order by the Minister requiring them to desist from committing a restrictive trade practice	All the members are appointed by the Minister	Further right of appeal to the High Court, whose decision is final
23.	Land Disputes Tribunals	Land Disputes Tribunals Act, No 18 of 1990	Hears disputes of a civil nature regarding division of land, determination of boundaries, claims to occupy or work land and trespass to land	The Minister appoints a panel of elders from which the District Commissioner selects the Chair and 2 or 4 elders to constitute a Tribunal	Right of appeal to the Land Disputes Appeals Committee whose decision is final, unless on an issue of law, where a further appeal to the High Court lies
24.	Land Disputes Appeals Committee	Land Disputes Tribunals Act, No 18	Hears appeals from decisions of land Disputes	The chair is appointed by the Provincial	Decision is final save on an issue of law where an

	Tribunal	Act	Functions	Appointing Authority	Right of Appeal
		of 1990, S. 9	Tribunals	Commissioner from a panel appointed by the Minister. The Minister appoints the other 5 Members	appeal lies to the High Court
25.	National Environment Tribunal	Environmental management and Co-ordination Act, No 8 of 1999, S. 125	Hears appeals by parties aggrieved by refusal of a license, imposition of conditions, revocation, suspension or variation of license or imposition of an environmental restoration or improvement order	The chair is nominated by the Judicial service Committee, one member is nominated by the Law Society of Kenya and 3 others are appointed by the Minister	Right of appeal to the High Court whose decision is final.

ANNEX VI

RECOMMENDATIONS SUBMITTED TO THE PARLIAMENTARY SELECT COMMITTEE ON THE PROPOSED CONSTITUTION OF KENYA

1. Independence of the Judiciary

The concept of judicial independence entails institutional as well as decisional/individual independence. Article 160(1) of the Proposed Constitution of Kenya enshrines the concept of independence of the Judiciary as constituted under Article 161. However, Article 161 constitutes only judicial offices/officers (and not the courts, which are established under Articles 163- 165 and 169). Article 160 therefore leaves out institutional aspects of judicial independence.

The Task Force recommends that the Article on Independence of the Judiciary (Art. 160(1) be reviewed to include not only independence of judicial office(s) constituted under Art. 161, but also the courts of law established under Articles. 163- 165 and 169.

2. Definition of a Judicial Officer

The Proposed Constitution of Kenya provides under Article 161 that the Judiciary consists of the judges of the superior courts, magistrate, other judicial officers and staff. This Article does not stipulate all the judicial officers as contemplated by the marginal note. Article 260 provides that a "judicial officer" means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 169(1) (d). The definition of a "judicial officer" under Article 260 does not include a judge nor brings out the distinction between judicial officers and staff. This is a far-reaching omission. Its implications may be to exclude judges from provisions/references in the Constitution relating to judicial officers, for example, on the disciplinary powers of the Judicial Service Commission under Article 172(c).

The Task Force therefore recommends that:

- (i) The marginal note of Article 161 be re-titled Judicial Offices, Officers and Staff so as to be in conformity with the substance of the Article.**
- (ii) Article 260 be reviewed to include Judges in the definition of "judicial officer."**
- (iii) The offices of President of the Court of Appeal and Principal Judge of the High Court be established under Article 161(2).**

3. The High Court and Superior Courts of Record

The Proposed Constitution of Kenya provides that the superior courts are the Supreme Court, the Court of Appeal and the High Court. Further, Article 162 provides that Parliament may establish other superior courts with the status of the High Court to hear and determine employment/labour and land/environment disputes. While it would appear that the subject matter is confined to employment/labour and land/environment disputes, there is likelihood that such courts established by Parliament may oust the unlimited original jurisdiction of the High Court. Moreover, given the jurisdiction of the High Court under Article 165, it is not clear how the jurisdiction of these courts will be exercised where these employment/labour and land/environment disputes relate, directly or indirectly, to questions of fundamental rights and freedoms in the Bill of Rights or interpretation of the Constitution.

The Task Force takes the view that the High Court should be the repository of unlimited original jurisdiction in all civil and criminal matters, which jurisdiction should not be amenable to ousting by Parliament unless by a constitutional amendment. Accordingly, the provision granting Parliament the authority to establish other superior courts with the status of the High Court to hear and determine employment/labour and land/environment disputes should be deleted as it leaves room for mischief. Granting Parliament untempered authority to establish other superior courts of record may undermine judicial independence and separation of powers.

The Task Force therefore recommends that:

- (i) Parliament should only have powers to establish subordinate courts.**
- (ii) Article 162(1), (2) and (3) be reviewed by deleting the provisions contemplating other superior courts other than the Supreme Court, Court of Appeal and the High Court.**

4. Composition of the High Court

Shortage of judicial officers and staff is a major contributor to backlog of cases, and as such, the number of Judges should be increased. The minimum number prescribed should take this into account, as well as the jurisdiction vested in the courts. The Proposed Constitution of Kenya stipulates the number of Judges of the Supreme Court. In the case of the Court of Appeal, there is a prescribed minimum number of 12, Parliament being vested with authority to prescribe the numbers by legislation. However, in the case of the High Court, there is no minimum prescribed

number. This is a reversal of the current Constitution, which stipulates the minimum number of Judges in the High Court (section 60(2)). Failure to prescribe a minimum may also leave room for the Executive to fail to appoint Judges (to the minimum required).

The Task Force therefore recommends that Article 165 be reviewed by providing that the High Court shall be composed of not less than 70 Judges, and not more than a number of Judges as prescribed by legislation.

5. Term of Office of President of Court of Appeal and Presiding Judge of the High Court

The Task Force acknowledges the potential role that the President of the Court of Appeal and Presiding Judge of the High Court can play in the administration of these courts. Articles 164 and 165 stipulate that the President of Court of Appeal and Presiding Judge of the High Court are to be elected by, from among the Judges of the respective Courts. It does not provide the term.

The Task Force recommends the stipulation of a term. Prescribing a period is in line with the move away from self-perpetuation in certain key offices. For example, section 118 of the Constitution of Madagascar (1992) provides that the President of Supreme Court shall serve for a term of 3 years, and may be re-elected once. The Task Force therefore recommends a term of three-years, without the option for renewal.

The Task Force therefore recommends that Articles 164/165 or 167 provide that the terms of the President of Court of Appeal and Presiding Judge of the High Court shall be three (3) years, non-renewable.

6. Qualifications and Procedure for Appointment of Judges

The qualifications and appointment process of judicial officers are important components of judicial independence and integrity. The Task Force notes that the appointment process should be transparent, competitive, open and meritorious. In terms of qualifications, it is notable that the Proposed Constitution of Kenya has enhanced the qualifications for judicial appointments. However, the qualifications for appointment of Judges of the Court of Appeal and High Court need reconsideration. Judges of the Court of Appeal should have higher qualifications than those of the High Court. The qualifications of Judges of the Court of Appeal should be similar to qualifications for appointment as a Judge of the Supreme Court.

The Task Force therefore recommends that:

- (i) The qualification for appointment to Court of Appeal under Article 166(4) be reviewed to 15 years.
- (ii) The provisions of the new Constitution in relation to the qualifications and retirement of Judges be harmonised with the Constitutions of the East African Community (EAC) countries.

7. Constitution and Functions of the Judicial Service Commission

Article 171 of the Proposed Constitution of Kenya provides the membership of the Judicial Service Commission. The Supreme Court has double representation, by the Chief Justice and a Judge elected by members of the Court. Further, the Task Force observes that following the de-linking of the Judiciary from mainstream civil service in 1993 when judicial staff were seconded to the institution by the Public Service Commission, it is no longer necessary to have representation of the PSC in the JSC.

The functions of the Judicial Service Commission are stipulated in Article 172 of the Proposed Constitution of Kenya. Performance management, a key function of the Judicial Service Commission, is omitted. Finally, on the removal and discipline of Judges, the proposed new Constitution provides for the procedure and powers of the Commission in relation to removal of judges only. It has no express equivalent disciplinary procedures for judges. The Task Force noted that disciplinary control over judges must not be the sole responsibility of the Chief Justice. Instead, it should be done through the Judicial Service Commission, through a Complaints Sub commission.

The Task Force therefore recommends that:

- (i) The membership of the Judicial Service Commission as stipulated under Article 171(2) be reduced by deleting the following:
 - a) One judge elected from among the judges of the Supreme Court; and
 - b) One person nominated by the Public Service Commission.
- (ii) Article 172 be revised to include performance management (evaluation, monitoring and enhancement of performance of the judicial officers and staff).
- (iii) The Judicial Service Commission should have disciplinary functions/powers over Judges.

ANNEX VII

STRATEGIC IMPLEMENTATION MATRIX

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
Activities for implementation within the next Three (3) months (by 30th September 2010)		
1. Judicial Reforms Implementation Committee	<ul style="list-style-type: none"> ▪ Establishment of an Multi-stakeholder Implementation Committee ▪ Development of a Strategy/Plan for implementation of the Recommendations of the Final Report of the Task Force on Judicial Reforms 	<p>MOJNCCA/ CJ/ AG</p> <p>MOJNCCA/ CJ/AG</p>
2. Inter-Agency Coordination	<ul style="list-style-type: none"> ▪ Establishment of Bar-Bench Committees ▪ Establishment of Court Users Committees in all Court Stations 	<p>Judiciary/LSK</p> <p>Judiciary/LSK/Court users</p>
Activities for implementation within the next Six (6) months (by 31st November 2010)		
3. Establishment of the expanded Judicial Service Commission	<ul style="list-style-type: none"> ▪ Appointment of the expanded Judicial Service Commission within sixty days of the effective date of the New Constitution as provided for under Article 171 and Article 20 of the Sixth Schedule of the Proposed Constitution of Kenya ▪ Establishment of an autonomous JSC Secretariat 	<p>President/JSC/Supreme Court/Court of Appeal/High Court/AG/PSC/Parliament/KMJA/LSK</p> <p>JSC</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
4. Appointment of Judges	<ul style="list-style-type: none"> ▪ Promulgation of Regulations on the appointment of Judges ▪ Filling in of vacancies in the office of judges 	<p>JSC</p> <p>President/JSC</p>
5. Appointment of Commissioners of Assize, Magistrates and Paralegals	<ul style="list-style-type: none"> ▪ Appointment of at least 22 Commissioners of Assize ▪ Appointment of Magistrates and Kadhis ▪ Appointment of Paralegals ▪ Assessment and evaluation of the Judiciary's human resource needs with a view to ascertaining and recruiting adequate and qualified personnel Hiring of professional interpreters for vernacular, foreign and sign languages 	<p>AG/CJ/President</p> <p>JSC</p> <p>JSC</p> <p>JSC</p>
6. Establishment of a new Courts Administration Structure	<ul style="list-style-type: none"> ▪ Development and implementation of the new administrative structure for the Judiciary through enactment of an Administration of Courts Act ▪ Establishment of clear accountability and reporting systems in the Judiciary and each court station ▪ Strengthening of the CP&PMU by recruitment of additional staff to the Unit, training of existing ones and development and implementation of the project monitoring and evaluation systems for the Judiciary ▪ Development of Terms of Reference for the Chief 	<p>CJ/JSC/CR</p> <p>CJ/JSC</p> <p>CJ/JSC/CR/JTI</p> <p>CJ/JSC/CR</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	<p>Justice, Presiding Judge, the Principal Judge, Resident Judge and Heads of Stations</p> <ul style="list-style-type: none"> ▪ Recruitment of Registrars in charge of the Supreme Court, Court of Appeal, High Court and Subordinate Courts ▪ Establish as system for payment of all litigants deposits into the courts account 	<p>JSC</p> <p>JSC/CJ/CR</p>
7. Infrastructure Development	<ul style="list-style-type: none"> ▪ Provision of additional resources to the Judiciary to complete the construction of the Income Tax Building and other strategic court buildings ▪ Provision of resources to enable the leasing of premises for the additional officers and staff ▪ Lease premises for courts in Meru, Mombasa, Nakuru, Kisii, Eldoret and Kakamega ▪ Acquisition of the Forodha House for the Judiciary and the adjacent plot 	<p>CR/Treasury/Cabinet</p> <p>CR/Treasury</p> <p>JSC/CR</p> <p>JSC/CR/Treasury/Cabinet</p>
8. Management of Traffic Cases	<ul style="list-style-type: none"> ▪ Conduct of a study to facilitate the development of a legal framework for a National Road Safety Authority ▪ Review of the Traffic Act so as to <ul style="list-style-type: none"> ✓ Provide for Imposition of instant fines ✓ Establish a framework for linking Police and Court 	<p>JRIC/Police/KRA</p> <p>AG/KRA/Traffic Police/Parliament</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	<p>information on Traffic offenders with the Registrar of Motor Vehicles</p> <ul style="list-style-type: none"> ✓ Require license renewals and transfer of vehicles to be subject to the payment of any outstanding fines ✓ Amend the Notification of Traffic Office Form under Section 117 of the Traffic Act to provide for more details of traffic offenders 	
<p>9. Review of Terms and Conditions of Service in the Judiciary</p>	<ul style="list-style-type: none"> ▪ Review the Terms and Conditions of Service for Magistrates, Kadhis and Paralegals to make them more competitive ▪ Development and implementation of a transfer and deployment policy ▪ Review and enhancement of the existing Medical Scheme to provide better benefits and services ▪ Development and Implementation of a Security Policy for Magistrates ▪ Reconstitution and revitalization of the AIDs control Unit of for the Judiciary ▪ Conduct of an HIV/AIDS impact analysis on the Judiciary ▪ Provision of identification cards to all employees of the judiciary 	<p>JSC/ MOJNCCA</p> <p>JSC</p> <p>JSC</p> <p>JSC/OP</p> <p>CR</p> <p>JSC/CR</p> <p>JSC/CR</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
10. Review and Enforcement of the Judicial Code of Conduct and Ethics	<ul style="list-style-type: none"> ▪ Review of the Judicial Service Code of Conduct and Ethics to strengthen it and enhance compliance ▪ Development of separate Judicial Service Codes of Conduct for judges, judicial officers and staff ▪ Establishment of a system for collecting, analyzing, verifying, digitizing, systematizing, retrieving and acting on the information contained in the Declaration of Income, Assets and Liabilities Forms submitted by judicial officers and staff. ▪ Establishment and institutionalization of peer review mechanisms in all court stations ▪ Review of the sanctions for the breach of the Code of Conduct and Ethics to provide that disciplinary measures will be taken against persons guilty of breach of Code of Conduct and Ethics 	<p>JSC/LSK/KACC/KMJA</p> <p>JSC/KACC/KMJA</p> <p>JSC</p> <p>CJ/ KMJA</p> <p>CJ/JSC/KMJA/KACC</p>
11. Implementation of a Case Management System	<ul style="list-style-type: none"> ▪ Sensitization of judicial officers and advocates on the provisions of the Practice Directions of 5th September 2008 ▪ Standardization of cause lists in all courts: cause lists for High Court to consist of 10 applications and 4 hearings per day and for Magistrates Courts to consist 	<p>CJ/CR/LSK/KMJA</p> <p>CJ</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	<p>of 10 applications and 8-10 hearings per day</p> <ul style="list-style-type: none"> ▪ Standardization of court sittings across the country: i.e. by requiring courts to sit between Monday and Thursday from 9.00 a.m., with Fridays reserved for judgements and rulings ▪ Standardization of court sittings across the country: i.e. by requiring that applications are heard between 9.00 a.m. - 11.00 a.m. followed by hearings ▪ Standardization of the practice of cause lists in all courts by requiring that all courts prepare weekly cause lists ▪ Recruitment of Research Assistants for Judges ▪ Amendment of the Advocates Act to allow establishment of pupillage programme in the Judiciary ▪ Implement the pupillage program in the Judiciary ▪ Review of the jurisdiction of magistrates as appropriate to enhance speedy access to justice in matters such as succession ▪ Establishment and Implementation of a comprehensive Case Management System across the country 	<p>CJ/CR/JSC</p> <p>CJ/CR</p> <p>CJ/CR</p> <p>JSC</p> <p>CJ/AG/CLE/LSK/Parliament</p> <p>JSC/ CJ/CR/KSL/JTI/CLE</p> <p>AG/CJ/Parliament</p> <p>CJ/CR</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	<ul style="list-style-type: none"> ▪ Adoption and implementation of a transparent system for allocation of cases ▪ Development and implementation of court records management policy ▪ Recruitment and deployment of professionally qualified staff to take charge of registries ▪ Establishment of regulations relating to the recruitment, conduct and supervision of Court processes Servers 	<p>CJ/CR</p> <p>CJ/CR</p> <p>JSC</p> <p>CJ/CR</p>
12. Dealing with Case Backlog	<ul style="list-style-type: none"> ▪ Review the pecuniary jurisdiction of Magistrates to reduce the number of cases being filed at the High Court 	CJ
13. Institutional Reforms and Inter-Agency Coordination	<ul style="list-style-type: none"> ▪ Establishment of the National Council on Administration of Justice (NCAJ) including establishment of a Secretariat for the Council 	President/CJ/AG/MOJNCCA/Parliament
Activities for Implementation within the Nine (9) Months (By 31st December 2010)		
14. Amendment to the Judicature Act and Appointment of	<ul style="list-style-type: none"> ▪ Review of the Judicature Act to increase the number of Court of Appeal judges to at least 12 and High Court Judges to at least 120 	CJ/AG/MOJNCCA/Parliament

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
Judges	<ul style="list-style-type: none"> ▪ Development of a framework to determine the number of Judges against caseload and population ▪ Amendment of the Judicature Act to provide for the new Court vacations 	<p>JSC/NCAJ</p> <p>CJ/AG/MOJNCCA/Parliament</p>
15. Enactment of the Judicial Service Bill	<ul style="list-style-type: none"> ▪ Finalization and enactment of the Judicial Service Bill 	CJ/AG/MOJNCCA/Parliament
16. Enactment of a Judges Benefits and Pension Law	<ul style="list-style-type: none"> ▪ Finalization and enactment of a judges benefits and pension law 	CJ/AG/MOJNCCA/Parliament
17. Case Management	<ul style="list-style-type: none"> ▪ Promulgation of Plea Agreement Negotiation Rule under the CPC ▪ Sensitization of judicial officers and advocates on plea bargaining ▪ Establishment of 24 Hour Duty Courts ▪ Publicize the Debts (Summary Recovery) amongst all judicial officers and advocates ▪ Publicize the CSO Program amongst judicial officers, prosecutors and advocates ▪ Finalization of the amendment of the Civil Procedure 	<p>AG</p> <p>CJ/ JTI/AG/LSK</p> <p>JSC/CJ/AG/MOJNCCA/Parliament</p> <p>CJ/ JTI/LSK</p> <p>CJ/CR/JTI/AG/LSK</p> <p>CJ/AG/Rules Committee/Parliament</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	Act and the Civil Procedure Rules <ul style="list-style-type: none"> ▪ Development of practice guidelines on bail/bond ▪ Development and implementation of sentencing guidelines 	CJ CJ
18. Automation and Computerization of the Courts	<ul style="list-style-type: none"> ▪ Computerization and automation of the Judiciary, including establishment or electronic databases, digitization of court records, purchase of ICT equipment such as laptops for all judges and interconnection of internal and external judicial institutions ▪ Provision of funds for the computerization/automation of the Courts 	CJ/CR/Treasury/MoIC CJ/CR/Treasury
19. Criminal Procedure Law Reform	<ul style="list-style-type: none"> ▪ Review of the CPC to empower the High Court to dismiss criminal appeals for want of prosecution ▪ Establishment of a preliminary process to weed out unmeritorious appeals ▪ Review of the CPC to establish a Rules Committee, dispense with assessors even in cases where trials begun with assessors and provide for the dismissal of appeals for want of prosecution ▪ Establishment of a Rules Committee 	CJ/AG/MOJNCCA/Parliament CJ/AG/MOJNCCA/Parliament CJ/CR/LSK CJ/CR/LSK

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
20. Contempt of Court Legislation	<ul style="list-style-type: none"> ▪ Finalisation and enactment of a Contempt of Court Bill 	CJ/AG/KLRC/MOJNCCA/Parliament
21. Enactment of enabling Legislation for Alternative Dispute Resolution	<ul style="list-style-type: none"> ▪ Development and enactment of a mediation law to provide for court mandated legislation Training of judicial officers on Alternative Dispute Resolution ▪ Finalization and enactment of the Small Claims Court Bill ▪ Review of the Arbitration Act to make provision for an ethical infrastructure for arbitrators 	<p>CJ/AG/KLRC/Parliament</p> <p>CJ/ CR/JTI</p> <p>CJ/AG/MOJNCCA/Parliament</p> <p>CJ/AG/MOJNCCA/CIARB/Parliament</p>
22. Performance Management	<ul style="list-style-type: none"> ▪ Introduction and institutionalization of Performance management in the Judiciary ▪ Conduct of a baseline survey to inform the development of performance management framework for the Judiciary 	<p>JSC</p> <p>JSC/CJ/CR</p>
23. Ethics and Integrity in the Judiciary	<ul style="list-style-type: none"> ▪ Development and implementation of a judicial ethics, integrity and anti-corruption strategy be developed and implemented at all levels in the Judiciary ▪ Development of a policy against sexual harassment for the Judiciary 	<p>JSC/CJ/CR</p> <p>JSC/CJ/CR</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
Activities for Implementation within the next Twelve (12) Months (By 30th September 2011)		
24. Ethics and Integrity in the Judiciary	<ul style="list-style-type: none"> ▪ Finalization and enactment of vetting legislation as provided for under Article 23 of the 6th Schedule of the Proposed Constitution of Kenya 	JSC/CIC/PSC/MOJNCCA/Parliament
25. Appointment of Judges	<ul style="list-style-type: none"> ▪ Appointment of Judges 	President/JSC
26. Courts Administration	<ul style="list-style-type: none"> ▪ Establishment of an Inspectorate Unit to independently monitor the operations of the courts on a continuous and regular basis ▪ Decentralization of the Court of Appeal to Mombasa, Nakuru, Kisumu and Nyeri 	CJ/JSC CJ/CR/JSC
27. Access to Justice & Human Rights	<ul style="list-style-type: none"> ▪ Training of judicial officers in human rights and the human rights aspects of their work ▪ Development and issuance of directions to all courts on the need for judges and magistrates to visit prisons regularly to ensure that children are not kept-in the same prison confinement with adult inmates ▪ Enhancement of access of all court stations to persons with disability and other vulnerable groups 	CJ/CR/JTI/KNCHR/Human Rights NGOs CJ/CR, CJ/CR

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
28. Legal Aid & Public Interest Litigation	<ul style="list-style-type: none"> ▪ The development, adoption and implementation of a policy and legislative framework establishing an oversight organ, implementing authority and fund for legal aid ▪ Incorporation of paupers briefs into the National Legal Aid (and Awareness) scheme under the Ministry of Justice, National Cohesion and Constitutional Affairs ▪ Review of the fees paid to advocates handling pauper briefs ▪ Adoption and Implementation of public interest litigation guidelines be adopted and implemented to facilitate access to justice on critical issues of public interest 	<p>CJ/MOJNCCA</p> <p>JSC/CJ/CR</p> <p>CJ</p> <p>CJ/LSK</p>
29. Terms and Conditions of Service	<ul style="list-style-type: none"> ▪ Establishment and implementation of competitive schemes of service for Magistrates and other judicial officers and Staff 	<p>JSC/CJ/CR/Treasury</p>
30. Infrastructure Development and Establishment of Court Stations	<ul style="list-style-type: none"> ▪ Establishment of High Court stations in Thika, Busia and Garissa ▪ Establishment of Magistrates Courts of appropriate designation in Kasarani, Kinango, Munjila, Masalani, Bute, Laisamis, Marimanti, Kyuso, Wote, Engineer, Chaka Lokitaung, Lokichar, Wamba, Kesses, 	<p>CJ/CR/Treasury</p> <p>CJ/CR/Treasury</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	<p>Kapsowar, Kabiyet, Chemolingot, Eldama Ravine, Rumuruti, Loitoktok, Lumakanda, Kapsokwony, Budalangi, Amogoro, Kosele and Mbita and any other additional places as need arises</p> <ul style="list-style-type: none"> ▪ Expansion of Court facilities in Kakamega, Meru, Mombasa Nakuru, Kitale, Bungoma, Embu, Garissa, Thika and Kiambu ▪ Purchase of land and construction of new courts in Kericho, Kisii, Eldoret and Machakos ▪ Purchase of premises for the JTI ▪ Construction of residential houses for judicial officers be constructed in court stations outside of Nairobi and especially in hardship areas ▪ Finalisation and construction and expansion of court buildings for the Judiciary 	<p>CJ/CR/Treasury</p> <p>CR/Treasury/MOPW</p> <p>JSC/CJ/CR/Treasury/MOP</p> <p>JSC/CJ/CR/Treasury/MOPW</p> <p>JSC/CJ/CR/Treasury/MOPW</p>
31. Performance Management	<ul style="list-style-type: none"> ▪ ISO Certification of the Judiciary 	CR
32. Information, Communication and Technology in the Judiciary	<ul style="list-style-type: none"> ▪ Finalisation and the implementation of ICT in the Judiciary ▪ Electronic recording and preservation of records 	<p>JSC/CJ/CR/Treasury/MOIC</p> <p>JSC/CJ/CR/Treasury/MOIC</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
33. Terms and Conditions of Service	<ul style="list-style-type: none"> ▪ Establishment of a Mortgage scheme for Judicial officers and staff ▪ Establishment of a motor vehicle purchase scheme for judicial officers ▪ Provide official transport for all Magistrates and Kadhis above the rank of Principal Magistrate 	<p>JSC/CJ/CR/Treasury</p> <p>JSC/CJ/CR/Treasury</p> <p>JSC/CJ/CR/Treasury</p>
34. Institutional Reforms and Inter-Agency Coordination	<ul style="list-style-type: none"> ▪ Development and implementation of multi-sectoral guidelines for the administration of justice to improve coordination between the Judiciary and other agencies in the justice system ▪ Enactment of a Contempt of Court legislation to consolidate the law relating to contempt of court and to enhance punishments ▪ Establishment of juvenile homes and remands and other borstal institutions 	<p>JSC/AG/LSK/MOJNCCA/Parliament</p> <p>JSC/AG/LSK/MOJNCCA/Parliament</p> <p>MOG</p>
ACTIVITIES FOR CONTINUOUS IMPLEMENTATION		
35. Enhancement of Terms and Conditions of Service	<ul style="list-style-type: none"> ▪ Establishment and implementation of a clear recruitment and promotion policy for magistrates and other para-legal staff ▪ Improvement of the working environment for judicial 	<p>JSC/CJ/CR/Treasury</p> <p>JSC/CJ/CR</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
	<p>officers and staff by providing better court rooms and chambers</p> <ul style="list-style-type: none"> ▪ Provision of psychosocial support to judicial officers and staff who need it ▪ Encourage the establishment of a welfare association for the para-legal staff 	<p>JSC/CJ/CR</p> <p>JSC/CJ/CR</p>
<p>36. Performance Management</p>	<ul style="list-style-type: none"> ▪ Establishment of effective and comprehensive performance management systems ▪ Establishment and implementation of standards and benchmarks for efficiency and quality of all judicial systems and processes ▪ Design and implementation of an effective performance appraisal system at all levels in the Judiciary ▪ Establishment of a judicial monitoring and evaluation programme 	<p>JSC/CJ/CR</p> <p>JSC/CJ/CR</p> <p>JSC/CJ/CR</p> <p>JSC/CJ/CR</p>
<p>37. Continuous Judicial Training</p>	<ul style="list-style-type: none"> ▪ Provide periodic training on case management for judicial officers ▪ Provide relevant training for judicial officers and staff ▪ Afford time off/opportunity for Judiciary staff to undertake training 	<p>CJ/CR/JTI</p> <p>CJ/CR/JTI</p> <p>CJ/CR/JTI</p>

NO	STRATEGIC IMPLEMENTATION ACTIVITY	IMPLEMENTING AGENCY
38. Judicial Integrity and Ethics Enforcement	<ul style="list-style-type: none"> ▪ Address complaints against judicial officers and staff through a permanent mechanism ▪ Monitoring and Enforcement action on the Declaration of Income, assets and Liabilities Form ▪ Monitoring and action on cases of sexual harassment promptly 	<p>JSC/CJ/CR</p> <p>JSC</p> <p>JSC</p>
39. Legal Aid/Pauper Briefs	<ul style="list-style-type: none"> ▪ Enhance collaboration between the Judiciary and LSK on pauper briefs 	CJ/CR/LSK/MOJNCCA
40. Gender Equality	<ul style="list-style-type: none"> ▪ Ensure gender parity in appointments at all levels ▪ Undertake affirmative action to ensure parity in appointments 	<p>JSC</p> <p>JSC</p>

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