

**PERFORMANCE AUDIT REPORT ON**  
**IMPLEMENTATION OF THE DISPENSATION OF**  
**JUSTICE PROGRAM**  
**BY**  
**THE JUDICIARY**

12/21/2022

LEGISLATIVE ASSEMBLY  
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Audit Services that impact on effective and sustainable service delivery

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Relevance

Accountability

Integrity

## **MOTTO**

Enhancing Accountability


## FOREWORD BY THE AUDITOR – GENERAL

I am pleased to present this performance audit report on Implementation of the Dispensation of Justice Program by the Judiciary. My Office carried out the audit under the mandate conferred on me by Section 36 of the Public Audit Act, 2015. The Act mandates the Office of the Auditor - General to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution of Kenya, 2010.

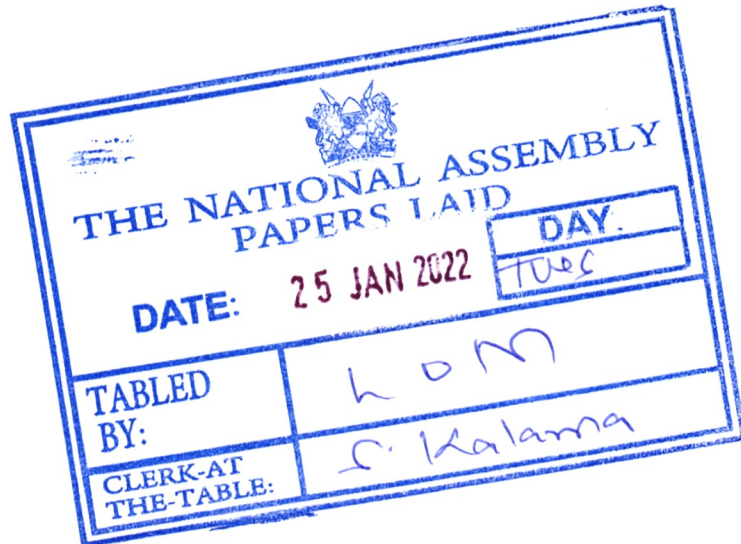
Performance, financial and compliance audits form the three-pillar audit assurance framework that I have established to give focus to the varied and wide scope of the audit work done by my Office. The framework is intended to provide a high level of assurance to stakeholders that public resources are not only correctly disbursed, recorded and accounted for, but their use results in positive impacts on the lives of all citizens. The main goal of our performance audits is to ensure effective use of public resources and promote service delivery to citizens.

Our performance audits examine compliance with policies, obligations, laws and regulations and standards, and whether the resources are managed in a sustainable manner. The also examine the economy, efficiency and effectiveness with which public resources have been expended. I am hopeful that corrective action will be taken in line with recommendations in the report.

The report is submitted to Parliament in accordance with Article 229 (7) of the Constitution of Kenya, 2010 and Section 39 (1) of the Public Audit Act, 2015. In addition, I have submitted copies of the report to the Chief Registrar of the Judiciary, the Principal Secretary, the National Treasury and the Secretary, President's Delivery Unit.

  
CPA Nancy Gathungu, CBS  
AUDITOR – GENERAL

10 November, 2021



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## LIST OF ABBREVIATION

<b>AWP</b>	Annual Work Plan
<b>CAM</b>	Court Annexed Mediation
<b>CTS</b>	Case Tracking System
<b>CUC</b>	Court User's Committee
<b>DCRT</b>	Daily Court Returns
<b>DPP</b>	Director of Public Prosecution
<b>DR</b>	Deputy Registrar
<b>FY</b>	Financial Year
<b>GIZ</b>	Deutsche Gesellschaft fur Internationale Zusammenarbeit
<b>GoK</b>	Government of Kenya
<b>HoS</b>	Head of Station
<b>ICT</b>	Information Communications Technology
<b>ICMS</b>	Integrated Case Management System
<b>JSC</b>	Judicial Service Commission
<b>JPIP</b>	Judicial Performance Improvement Project
<b>JTI</b>	Judiciary Training Institute
<b>KRA</b>	Key Result Area
<b>M&amp;E</b>	Monitoring and Evaluation
<b>NCAJ</b>	National Council on Administration of Justice
<b>ODPP</b>	Office of the Director of Public Prosecution
<b>PMMU</b>	Performance Management and Measurement Understanding
<b>UNEP</b>	United Nations Environment Programme
<b>WAN</b>	Wide Area Network

## DEFINITION OF TERMS

**Case Backlog:** These are the number of cases that remain unresolved beyond the stipulated time-frame of 365 days. It sometimes also refers to the number of unresolved cases of at least 5 years old.

**Case Clearance Rate:** A measure of the extent to which the court system is able to dispose of cases relative to the cases filed within a specified time period. It is measured as the number of resolved cases expressed as a percentage of initiated cases within a specified time period.

**Cause List:** A schedule of cases to be heard by the courts on the following day(s). Every court must have a cause list for each working day. The cause lists give details such as the court number, the bench dealing with the cases and the case details like case number, petitioner or respondent, respective advocates, among others.

**Case Tracking System:** A computer program used to monitor and manage the progress of cases within Judiciary.

**Court Station:** A court and its jurisdiction; it may be a single court usually Magistrate's or several levels of courts over the jurisdiction.

**Court User Fees:** The amount paid by court users to the court per case.

**Daily Court Return Template:** An electronic or excel template for recording daily court activities.

**Distance to Court:** A measure of the average distance travelled by court users to the nearest court and is an indicator of access to justice.

**Disposition Rate:** The percentage of cases resolved within established time-frame.

**Judicial Officer:** A Judge or magistrate appointed or designated as such by the Judicial Service Commission

**Judicial Staff:** Employees of the Judiciary who are non-Judicial.

**Litigant:** Person or organization that is involved in a case that is being discussed in a court of law.

**Mediator:** An independent, accredited and neutral person who has the expertise to assist disputing parties reach a negotiated settlement.

## EXECUTIVE SUMMARY

1. Prior to promulgation of the Constitution of Kenya, 2010, the Judiciary was characterized by financial constraints, low standards of professionalism, widespread corruption, procedural inefficiencies, lack of independence and political servitude<sup>1</sup>. This led to a decline in public confidence. Against this background, the Judiciary developed the Judiciary Transformation Framework (JTF), 2012 to 2016, in order to effectively fulfil its constitutional mandate of delivering justice and secure public confidence. To achieve the transformation, the Judiciary rolled out the Dispensation of Justice Program from the year 2013. At the same time, the Government of Kenya allocated significant resources for the transformation of the Judiciary in the second Medium Term Plan for the period 2013 to 2017, prioritizing the Dispensation of Justice Program.
2. The Judiciary Transformation Framework was set as the overall blueprint for reforming the Judiciary as an effective and independent arm of government. It was built around four pillars and ten (10) Key Result Areas that aligned towards one goal: “The expeditious and equitable delivery of justice”. The Judiciary Transformation Framework was meant to address some of the barriers litigants face in their quest for justice. The barriers include; geographical distance from courts, technicalities of procedures, lack of information on court processes, among other challenges.
3. The overall objective was to assess the implementation of the Dispensation of Justice Program by the Judiciary, and specifically to assess whether:
  - i. the program has led to expansion of ICT infrastructure;
  - ii. the program has led to efficiency in case management;
  - iii. the program has improved physical access to courts;
  - iv. the program has led to adequate capacity building in the Judiciary.

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<sup>1</sup> Judiciary Transformation Framework, 2012-2016

## **Summary of Audit Findings**

4. The audit revealed that the implementation of the Dispensation of Justice program has led to renovation and construction of courts, improvements in case management, increase in human resources and partial automation of court processes. However, the audit also established that there were insufficiencies in the implementation of the Dispensation of Justice Program as evidenced by; inadequate expansion of ICT infrastructure, inefficient case management, delays in implementation of infrastructure projects, inadequate capacity building and weak integration of the program's interventions, as indicated below: -

### **A. Inadequate Expansion of ICT Infrastructure**

#### **I. Delayed Implementation of ICT Components**

5. The Judiciary was to automate services and procedures. Physical inspection of ICT components in court stations revealed that 5 out of 12 components have not been implemented. The remaining 7 ICT components were characterized by lack of maintenance and incomplete implementation.

#### **II. Delayed and Fragmented Rollout of the Integrated Case Management System**

6. The audit established that despite the Integrated Case Management System (ICMS) being a major component of the Dispensation of Justice Program, the Judiciary had not implemented the system. More than 3 years after the set implementation date, the Judiciary had implemented only one component of ICMS, the Case Tracking System (CTS). Further, as at September 2019, CTS had only been launched in 41 out of the 139 court stations in the country.

### **B. Inefficiencies in Case Management**

#### **I. Slow Rate of Disposition of Cases**

7. Analysis of a sample of 238,738 cases for the period 2013 and 2018 revealed that 105,499 cases remained unresolved as at June 2018. Analysis of judicial records indicated that most litigants waited for an average of 2 to 3 months before obtaining the first mention dates. Interviews at the courts station, however, revealed that litigants sometimes had to wait for up to 6 months, to get a date for the first hearing.

## II. Delay in Typing of Proceedings led to Delays in Appeal Cases

8. Review of pending files showed that several files had not been typed, with some dating as far back as 2012. Interviews with registry staff revealed that appeal cases could not start without typed proceedings, furthering the need for continuous typing of proceedings.

## III. Lack of Proper Record Keeping at the Registries

9. Physical verification of files in the sampled registries indicated that staff were not fully complying to the prescribed procedures that ensure effective record keeping. Most stations adhered to colour codes for files except for instances when files were out of stock. A random sample of 52 files drawn from 12 Court Stations established that only 15 files were correctly paginated, indicating that 71% of the files were not correctly paginated. In addition, the audit found only one station that kept tracer cards as recommended.

## IV. Poor Conditions for File Storage

10. Lack of secure file storage was repeatedly reported as a problem across the sampled court stations. This was despite procurement of services to put up shelves, lockable storage facilities and biometric security measures. It was further observed that in most registries, files were kept in open shelves while some files were on the floor, counters and tables. Interviews revealed that this was majorly caused by lack of enough space in the registries.

## C. Poor Implementation of Court Infrastructure

### I. Stalled Projects, Delays and Variations in Implementation of Court Infrastructure

11. There were delays at various stages of implementation of the infrastructural project. The audit noted substantial delays for both renovations and new constructions. More than half of the projects had extensions of three or more years, from the original completion date. Completion dates were extended for all the projects, but despite that extension, none of the projects met the new timelines. The audit also noted that variations in designs contributed to delays and stalled implementation of projects.

12. More than half of the 39 government- led projects had stalled during construction. Physical verification registered stalled projects in Eldoret, Nyeri, Makadara, Chuka, Port Victoria and Garissa, where there had been no progress in implementation of the project, for more than a year. All the stalled projects were at an advanced stage of completion before the contractors abandoned the sites.

## **II. Challenges in the Completed Projects**

13. The audit observed that, out of the eighteen sampled projects, three were complete and in use. The three had been completed after the contract period elapsed. Despite occupation of the buildings, there were pending issues such as; unfinished contractual obligations by contractors, leaking roofs and complaints by staff on poor user experience in the overall building design.

### **D. Inadequate Capacity Building for Judicial Staff**

#### **Lack of Training Programmes for Judicial Staff**

14. Judicial officers undergo regular and consistent training throughout the year. In contrast, Judicial staff hardly undergo any training, as was revealed through interviews at the sampled court stations. The Judiciary had conducted minimal training for Judicial staff, for capacity building or to increase their knowledge in relevant areas, in order to improve service delivery. Moreover, there had been no training needs assessment for Judicial staff, while Judicial officers' individual needs assessments were done annually.

### **E. Challenges in Implementation of Court Annexed Mediation**

15. The audit noted various challenges in the implementation of Court Annexed Mediation (CAM), including shortage of trained staff in mediation. Further, accredited mediators had not received any payments for the cases they had mediated on. There was also a shortage of mediators in places like Garissa. In addition, the sampled stations lacked space, equipment, furniture and stationery to effectively carry out mediation sessions.

16. Through Court Annexed Mediation (CAM), it was possible to conclude cases at a faster rate than regular courts. It was also cheaper for the parties involved. A review

of CAM records and interviews with mediation staff showed that CAM had been instrumental in unlocking money back to the economy. In addition, CAM had enhanced the conclusion of decades old cases that had been stuck in the system.

#### **F. Enhanced Stakeholder Collaboration through Court Users Committees**

17. Formation of Court Users Committees (CUCs) resulted in several positive results such as; major feedback channel for court stakeholders, mobilization of the public for Judiciary open days and service weeks, sensitization and awareness of Judiciary initiatives. For instance, Court Annexed Mediation (CAM) has enhanced the seriousness with which the community addresses sexual offences, stakeholder collaboration and engagement with the police, prosecutor's office, bar, bench, litigants and advancement of court station needs.

#### **Conclusion**

18. The audit noted the efforts the Judiciary had made towards transforming service delivery through the Dispensation of Justice Program. It is expected that service delivery will improve with the full implementation of the program. However, the initiatives were not efficiently and adequately implemented, to fully achieve the intended program's transformation objectives as envisaged.
19. The audit found insufficiencies in the implementation of the Dispensation of Justice Program, with more than half of the new infrastructure projects still in progress. The project has failed to meet the expected access that was to be achieved with the use of the new and rehabilitated courts. Secondly, the interventions made in installing the Case Tracking System were not adequate to meet the objective of case efficiency and a fully automated case management system. In addition, due to the partial and inefficient implementation of ICT interventions, the program failed to achieve the intended impacts. Further, inadequate training of core registry staff in the Case Tracking System and other registry operations was a limitation to the full utilization of the system, and improved efficiency in service delivery.
20. The audit found indications of inadequate preparedness, incomplete implementation of projects, delays resulting from change of project managers, underperformance by contractors, irregular funding, and poor monitoring of projects. These implementation

setbacks led to delays in the Dispensation to Justice Program to achieve the envisioned transformation.

### **Recommendations**

21. In view of the findings, the following recommendations are proposed;
22. Automation is key to improved efficiency as evidenced by the impact of the Case Tracking System since its implementation. The Judiciary should strive to reach the goal of the automated case management system as envisioned by the program. Further, in order to streamline service delivery, the Judiciary should integrate the other automated systems into the Dispensation of Justice program. These include recording, case inquiry and payment systems.
23. The Judiciary should review the status of all infrastructural projects, improve the supervision, monitoring and reporting of issues or challenges experienced during construction. It should strive to resolve the issues causing stalled projects and prioritize the completion of the incomplete projects.
24. Judicial staff are the Judiciary's foundation and are an asset to both Judicial Officers and clients. Therefore, capacity building is key to strengthening this foundation. A well-trained staff contributes positively to improved quality of processes and services. It is crucial for the Judiciary to accelerate the pace of the training committee to achieve this.
25. The Judiciary should consider taking a critical look into the roll out of the Court Annexed Mediation (CAM) and address implementation setbacks that are holding back the potential of CAM to process a significant number of cases fairly, inexpensively and judiciously.
26. The Judiciary should consider reviewing the status of the Dispensation to Justice program, drawing lessons from the program's key areas of ICT, infrastructure, case management and capacity building. The Judiciary should also identify the remaining gaps and resources needed to complete the projects within set timelines. This may

aid in alleviating past setbacks and creating the right project implementation culture, for the next phase of transformation.

## CHAPTER ONE

### BACKGROUND TO THE AUDIT

#### Introduction

- 1.1 Justice is the result of fair and proper administration of the law<sup>2</sup>. According to the World Justice Report<sup>3</sup>, access to justice refers to the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, efficient, effective and culturally competent institutions of justice.
- 1.2 The Judiciary is the independent custodian of justice in Kenya, its primary role is to exercise judicial authority. The Judiciary exercises judicial authority given to it by the people of Kenya and delivers justice according to the Constitution and other laws. Prior to promulgation of the Constitution of Kenya, 2010, the Judiciary was characterized by financial constraints, low standards of professionalism, widespread corruption, procedural inefficiencies, lack of independence and political servitude<sup>4</sup>. This led to a decline in public confidence in the Judiciary. Against this background, the Judiciary developed the Judiciary Transformation Framework (JTF), 2012 to 2016, in order to effectively fulfil its constitutional mandate of delivering justice and also to secure public confidence.
- 1.3 The Judiciary Transformation Framework was set as the overall blueprint for reforming the Judiciary as an effective and independent arm of government. It was built around four pillars of justice and service delivery; transformative leadership, organizational management, infrastructure and financial resources and Information Communication and Technology (ICT). The pillars targeted at ten Key Result Areas (KRAs). The four pillars and ten (10) KRAs are aligned towards one goal: "The expeditious and equitable delivery of justice". The Judiciary Transformation Framework was meant to address some of the barriers litigants face in their quest for justice. The barriers include; geographical distance from courts, technicalities of procedures, lack of legal representation, lack of information on court processes,

<sup>2</sup> <https://definitions.uslegal.com/j/justice/>

<sup>3</sup> A report from the World Justice Project Rule of Law Index® which measures how the rule of law is experienced and perceived by the general public in 126 countries and jurisdictions worldwide.

<sup>4</sup> Judiciary Transformation Framework, 2012-2016

impartial and unfair decisions, among other challenges. To achieve the Judicial transformation, the Judiciary rolled out the Dispensation of Justice Program from the year 2013.

### Motivation for the Audit

1.4 The following factors motivated the Office of the Auditor-General (OAG) to conduct the audit:

- i) ***Inadequacies in Provision of Justice:*** According to published stakeholders' reports, the Judiciary is affected by a high number of pending cases and backlog, slow, lengthy court procedures and an inadequate number of courts. A report by the National Council on Administration of Justice (NCAJ), conducted in the year 2015, revealed that 75% of pre-trial detainees have their cases dragging on for very long. Slow services by the Judiciary was the top most complaint received in the financial year 2016/17, by the Office of the Ombudsman's. Out of the 3,005 complaints received, 31% were on slow service delivery, followed by missing files at 26% and poor services at 17%. At the end of the financial year 2016/17, there were 533,350 pending cases in the Judiciary, an increase of 7%, compared to the financial year 2015/16. Out of the 533,350 pending cases, 59% of the cases were categorized as backlog. It was therefore necessary to conduct an audit to establish the causes of the continuous backlog of cases.
- ii) ***Significant Budgetary Allocation to Achieve Judiciary Reform:*** In the financial year 2010/11, the Judiciary's budget was at 0.05% of the national budget, compared with the international benchmark of 2.5%<sup>5</sup>. For the Judiciary to effectively implement the transformation program, the Government of Kenya (GoK) increased their budget. In 2012/2013 the Judiciary received Ksh 15.4 billion which represents 1.05% of the budget. The budget increased further the next several years, reflecting the high priority placed on Judicial reforms. The Judiciary also attracted donor support. In November 2012, the World Bank began a \$120-million project to support

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<sup>5</sup> State of the Judiciary 2011–12, 64.

judicial reforms while further in 2018, the European Union committed Ksh 4.3 Billion, to support a 5-year program on 'initiative towards universal access to justice in Kenya.'

The magnitude of financial resources allocated for judicial reforms motivated the Office to conduct an audit, to establish if the significant budget allocation has led to achievement of the intended transformation objectives.

- iii) ***Public Outcry Reported in the Media:*** There have been several reports in the media on challenges experienced by Kenyans in the judicial system. The Daily Nation of 21 March 2018 reported that delays in the Judiciary is a collective problem that could only be addressed through concerted efforts by Judicial Officers, lawyers and litigants. The same paper highlighted complaints from the public in May 2018, it stated that the Judiciary favored the rich and disadvantaged the poor.
  
- iv) ***The Judiciary Transformation Framework Contributes to the Attainment of Kenya's Vision 2030 and Sustainable Development Goals:*** The Vision 2030 outlines judicial and legal reforms as a flagship project that relates to reforms in the rule of law and enhancement of the Bill of Rights. Inadequate access to and delivery of justice directly impedes the achievement of Sustainable Development Goals; SDG 16 on Peace, Justice and Strong Institutions, indirectly affects SDG 5 on Gender Equality and SDG 10 on Reduced Inequalities.

## CHAPTER TWO

### DESIGN OF THE AUDIT

#### Audit Objective

2.1 The overall audit objective was to assess the Implementation of the Dispensation of Justice Program by the Judiciary. The specific audit objectives were to assess whether:

- i. the program has led to expansion of ICT infrastructure;
- ii. the program has led to efficiency in case management;
- iii. the program has improved physical access to courts; and
- iv. the Program has led to adequate capacity building in the Judiciary.

To respond to the above audit objectives, audit questions were formulated as outlined in **Appendix 1**.

#### Audit Scope

2.2 The audit focused on the Judiciary's implementation of the Dispensation of Justice Program, to achieve the goals of the Judiciary Transformation Framework. The audit covered the financial years 2013/2014 to 2018/2019. The audit focused on the following components of the program; case management, automation, capacity building and infrastructure. The audit assessed how the components were implemented within Magistrate and High Courts, in 18 out of 139 court stations across the country.

2.3 Non-probability sampling was used to select regions, clustered into eight geographical zones. To have a countrywide representation of court stations, court stations were purposively selected from each of the eight regions, with due consideration of counties within these regions. The selection of the court stations was further subjected to a combination of criteria as described in **Appendix 2**.

#### Methods Used to Gather Audit Evidence

2.4 The audit was conducted in accordance with Performance Auditing Guidelines issued by the International Organization of Supreme Audit Institutions (INTOSAI).

The guidelines state that in conducting a performance audit, auditors should follow the INTOSAI code of ethics and auditing standards as well as relevant Office of the Auditor-General's audit policies and procedures. The INTOSAI general auditing standards state that the audit and the Supreme Audit Institution (SAI) must be independent, possess required competence and exercise due care to provide a guide on execution and reporting of audit findings.

- 2.5 To understand the operations of the Judiciary and implementation of the program, the team interviewed Judicial Officers in various High Courts and Magistrate Courts. Interviews were also conducted with various head of departments such as Human Resource (HR), Information Communications & Technology (ICT), Directorate Building Services (DBS), Performance Management Directorate (PMD), registry staff, Clerk of Works, site managers, among others. More details on the purpose of the interviews are in **Appendix 3**.
- 2.6 Further, to understand the implementation of the program, the audit team reviewed various documents such as; the Judiciary Transformation Framework (JTF), the Judiciary Strategic Plan for the period 2014 to 2018, financial agreements, project documents, audited financial statements, among other documents. Details on the documents reviewed and the reason for their review are provided in **Appendix 4**.
- 2.7 To verify the information collected from interviews and documents reviewed, the audit team conducted site visits to observe the progress of various projects implemented by the Judiciary. The team evaluated ICT systems, observed ICT infrastructure, registry conditions, registry staff interactions with the Case Tracking System (CTS), among others. This was to ascertain the implementation, progress and impact of the program at court level.
- 2.8 The collected data was analyzed using both qualitative and quantitative methods. Quantitative data was compiled, organized and summarized using excel. The team extracted data from Daily Court Returns (DCRT) and Case Tracking System (CTS) in excel format, to generate sample output. The evidence collected was analyzed using excel analysis tools and presented using tables and graphs, as appropriate.

Qualitative data collected through interviews and document review was categorized based on main themes under each audit question.

## **Assessment Criteria**

2.9 The audit team assessed the implementation of the Dispensation of Justice Program against criteria drawn from the Constitution of Kenya, 2010, Judicial Transformation Framework (JTF), the Judiciary Strategic Plan, 2014-2018, financial agreements, project documents, Judiciary's Human Resource Manual, registry manuals for Magistrates Courts and High Courts, as listed in **Appendix 5**. The assessment criteria used to assess the implementation of the Dispensation of Justice Program includes, but is not limited to:

### **a) Efficiency in Case Management**

- i. Judicial Guidelines as outlined in the Judiciary's Service Charter require cases to take 360 days from filing to judgement.
- ii. According to the Judiciary's Strategic Plan, 2014-18, there was a plan to develop and roll out an Integrated Case Management System (ICMS) in the financial year 2015/16. The system was to have the following components; Case Tracking System (CTS), court proceeding recording technology, dictation software, weighting caseload allocation system and automate payment of fines or fees to enhance service delivery.
- iii. According to Section 50 (5) of the Constitution of Kenya, 2010, an accused person; (a) charged with an offence, other than an offence that the court may try by summary procedures is entitled during the trial to a copy of the record of the proceedings of the trial on request (b) has a right to a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law.

### **b) Expansion of Information and Communication Technology**

- i. According to the Judiciary's Strategic Plan, 2014-2018, Information and Communication Technology (ICT) had the potential to provide a quantum leap

in the administration of justice and aimed to automate registry procedures by the financial year, 2016/17.

- ii. The registry's manual states that registry services and procedures shall be conducted with the aid of ICT, as is practically possible. This shall include the use of computers, emails, software and other ICT related systems and services.

**c) Improvement of Physical Access to Courts**

- i. In the Judiciary's Strategic Plan, 2014-2018, facilities development and management was identified as a strategic issue. The construction of modern Courts that are well equipped with state-of-the-art registries and libraries was prioritized. The construction was to integrate supportive ICT infrastructure which was to include audio recording of proceedings and transcription, teleconferencing facilities and electronic billboards.
- ii. In the Judiciary's Strategic Plan, 2014-2018, strategic issue under KRA 13 was to enhance public image and stakeholder engagement by promoting stakeholder dialog, collaboration and partnerships.
- iii. Article 159 of the Constitution of Kenya, 2010, Alternative Dispute Resolution (ADR) mechanisms is informed by key conceptual imperatives of access to justice in expedition, fairness, equality of opportunity, flexibility, cost-effectiveness, party satisfaction, proportionality, fostering relationships, voluntariness, autonomy over process, outcome and choice of a third party.

**d) Adequacy of Capacity Building in the Judiciary**

- i. Training and development needs assessment and a comprehensive and integrated training curriculum were identified as instruments applied by the Human Resource Department to achieve a modernized workforce.
- ii. In Key Result Area (KRA) 4, the Judiciary outlined one of the ways to achieve a competent workforce as recruiting professional personnel and developing their technical and managerial capacity.

## CHAPTER THREE

### DESCRIPTION OF THE AUDIT AREA

#### The Judiciary

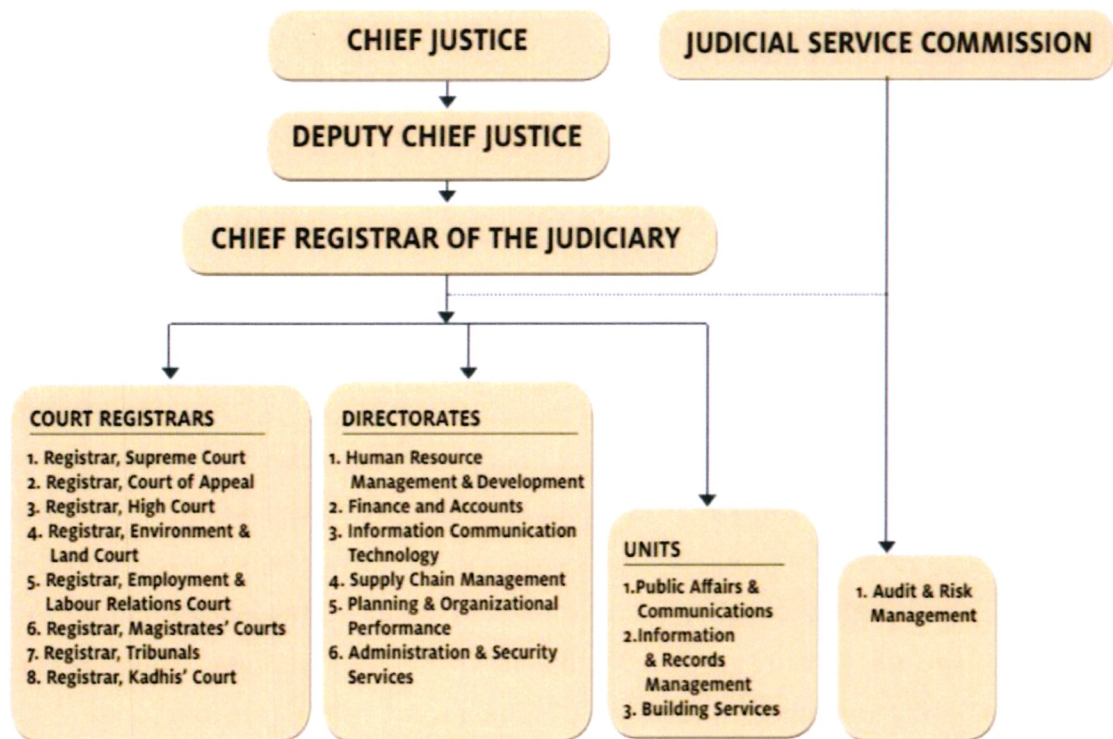
- 3.1 The Judiciary is one of the three arms of government, established under Chapter 10, Article 159 of the Constitution of Kenya, 2010. It is an independent organ being the custodian of justice in Kenya. The institution is mandated to deliver justice in line with the Constitution and other laws. It is expected to resolve disputes in a just manner with a view to protecting the rights and liberties of all, thereby facilitating the attainment of the ideal rule of law.
- 3.2 The Judiciary's mission is to administer justice in a fair, timely, accountable and accessible manner, uphold the rule of law, advance indigenous jurisprudence and protect the Constitution. The vision is to be an independent institution of excellence in the delivery of justice to all.

#### The Judiciary's Organizational Structure

- 3.3 In carrying out its activities, the judicial system has divided its functions into judicial and administrative roles. The Chief Justice is the head of the Judiciary and President of the Supreme Court. The leadership cascades the court hierarchy through the President of the Court of Appeal, the Principal Judge of the High Court and the Heads of Stations. The court stations consist of Judges and Magistrates referred to as judicial officers and judicial staff.
- 3.4 The courts are facilitated by administrative services provided through the Office of the Chief Registrar, who is the Chief Administrator and Accounting Officer of the Judiciary. Registrars in various courts are responsible for day to day administration of courts. They ensure proper custody of court files, that cases are properly filed and listed for action by judicial officers and that the orders of the courts are executed. Various directorates such as ICT, Building Services, Human Resources and Development, are responsible for providing courts with support regarding records management, procurement, performance evaluation, infrastructure management and

capacity building. The organizational structure is illustrated by the organogram in Figure 1.

**Figure 1 : The Judiciary's Administrative Structure**



Source: *The Judiciary's Strategic Plan, 2019-23*

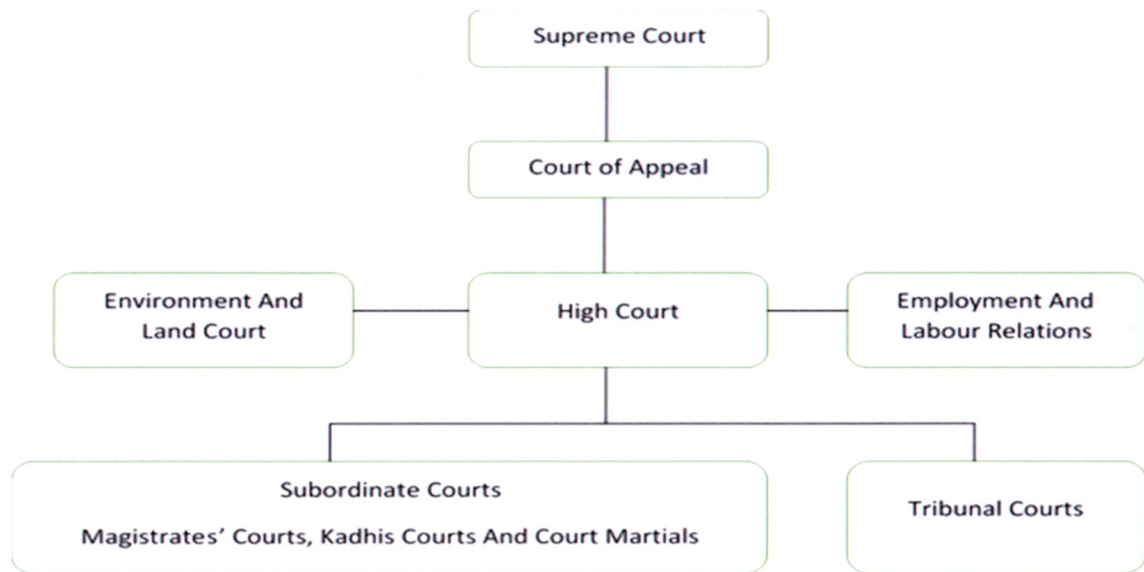
## The Judiciary's Court Structure

3.5 The Kenyan Court system is organized on different levels, with different jurisdictions as described below:

- i. **The Supreme Court** - Has exclusive original jurisdiction to hear and determine disputes relating to the elections to the Office of President. In addition, it has appellate jurisdiction over matters emerging from the Court of Appeal and other courts or national tribunals, as may be prescribed by statute. It also issues advisory opinions to the State, the National and County governments and determines questions relating to the declaration of a state of emergency.

- ii. **The Court of Appeal** - Has jurisdiction to hear appeals from the High Court, the Industrial Court, the Environment and Land Court, as well as any other cases as prescribed by law.
- iii. **The High Court** - Has jurisdiction in criminal and civil matters, fundamental freedoms in the Bill of Rights and is also mandated to hear appeals arising from decisions of subordinate courts and any question respecting the interpretation of the Constitution.
- iv. **Employment and Labour Court** – The Constitution has established it as a High Court and it deals with employment and labour relations matters. It was formerly known as Industrial Court.
- v. **Environment and Land Court** - Deals with matters with respect to the environment and the use and occupation of, and title to, land. It enjoys the same status as the High Court.
- vi. **Magistrates' Court** – are the courts of first instance and deals with the majority of cases in Kenya. A Magistrate's Court has the authority to hear all criminal cases except murder, treason and crimes under international criminal law. Magistrates' courts also hear all civil cases except those limited by statute.
- vii. **Kadhis' Court** – The jurisdiction of the Kadhis' Court is limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis' Court.
- viii. **Court Martial** - The Constitution and the Kenya Defence Forces Act give Court Martial powers to try any person subject to the Act for any offence. The Court Martial has jurisdiction over, and to award any punishment provided by law for it. This Judiciary court structure is illustrated in **Figure 2**.

**Figure 2 : The Judiciary's Court Structure**



Source: *The Judiciary's Strategic Plan, 2019-23*

### **The Judiciary Transformation Framework (JTF)**

3.6 The Judiciary Transformation Framework (JTF) was developed through a consultative process, incorporating information from previous internal and external reports on the Judiciary. The Judiciary developed ten Key Result Areas (KRAs) on which to focus while implementing the Dispensation of Justice Program. These are:

- i. Access to and expeditious delivery of justice;
- ii. People-centeredness and public engagement;
- iii. Stakeholder engagement;
- iv. Physical infrastructure;
- v. Information and communication technologies;
- vi. Growth of jurisprudence and Judicial practice;
- vii. Philosophy and culture;
- viii. Leadership and management;
- ix. Organizational structure; and
- x. Resources.

### **The Dispensation of Justice Program**

3.7 To achieve the strategic objectives intended by JTF, the Judiciary designed the Dispensation of Justice Program, 2013 -2018, through which the Key Results Areas (KRAs) would be implemented. The program is divided into four main components as described below:

I. **Court Administration and Case Management:** This has two sub-components namely:

a) **Court Administration:** The activities to be supported under this sub-component include;

- i. Development and implementation of an integrated performance management and accountability system, change management effort to help transition Judiciary staff to the institution's new vision, culture, structure and processes;
- ii. Data collection and analysis including the publication of regular court surveys;
- iii. Support to Court Users Committees (CUCs), development and implementation of a governance and anti-corruption strategy for the Judiciary; and
- iv. Capacity building for Judiciary's directorates, Judicial Service Commission (JSC), National Council on Administration of Justice (NCAJ), National Council on Law and Reporting (NCLR) and support for extension of Integrated Financial Information System (IFMIS) to court stations in project areas.

b) **Case Management System:** The activities include:

- i) Support design, installation and commission of ICT infrastructure for court stations and providing relevant staff training;
- ii) Implement a Case Management Information System that offers visual or audio recording of court proceedings, electronic case tracking and management and an integrated justice information portal, the electronic display of case listings, SMS notification of court case events and video conferencing facilities for courts;
- iii) Provide container data centers to centralize all data belonging to the Judiciary;
- iv) Provide support to establish and sustain customer care desk operations; and
- v) Support establishment of court annexed mediation.

- II. **The Judiciary's Training and Staff Development:** Aims at strengthening administrative and training capacity of the Judiciary Training Institute (JTI). It will support the delivery of training in line with the Judiciary's transformation agenda and its expanding work force.
- III. **Court Infrastructure:** Construction of new courts, renovation of existing court premises, construction and improvement of physical access to court facilities; ramps restrooms, waiting areas, customer care centers, gate houses, robbing rooms, lifts, signage, cells and mediation rooms.
- IV. **Project Management:** This was to assist the Judiciary in managing and coordinating project activities including environmental and social impacts of the activities.

### Process Description for the Implementation of the Dispensation of Justice Program

#### *Strategic Planning*

- 3.8 The Judiciary Transformation Framework (JTF), 2012 to 2016, was a product of a highly consultative process that involved all stakeholders in the justice sector. It was conceptualized in 2012 as the Judiciary's blueprint for effecting systemic and cultural change. It provides the basis for the realization of transformation of the Judiciary.
- 3.9 In actualizing the transformation framework, the Judiciary developed a Strategic Plan for the years 2014-2018, to achieve the objectives of JTF. The Strategic Plan contains specific and detailed strategies of intervention for the Key Result Areas (KRAs).
- 3.10 Annual Work Plans (AWPs) were derived from the Strategic Plan (SP) to outline the Judiciary's annual commitments to achieve specific results against the goals and objectives. Annual Work Plans guide the budget activities. They were financed through budget lines in the Judiciary's overall budget from the Government of Kenya (GoK) and donor funding. This was summarized in the Dispensation of Justice Program from 2013 to 2018, as outlined in the second Medium Term Plan<sup>6</sup>. The

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<sup>6</sup> Second in a series of successive 5-yr medium term plans which implement the Kenya Vision 2030. identified key policy actions, reforms, programmers and projects that the Government was to implement in the 2013-2017 period in line with the Government's priorities.

Judiciary was to ensure that there is adequate allocation of funds towards the activities of the program.

#### *Implementation and Reporting*

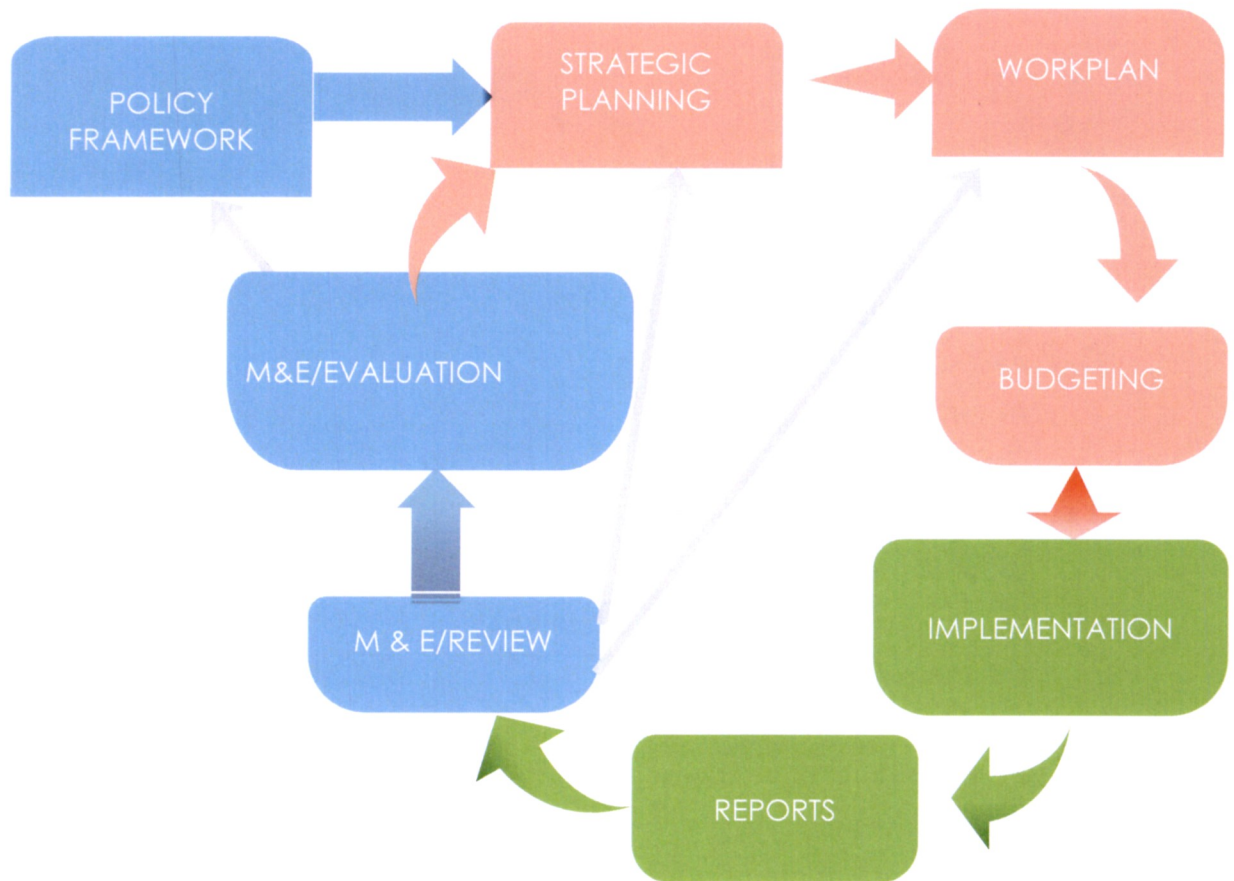
3.11 The implementation of the Judiciary Transformation Framework was to reside in the Office of the Chief Justice and was to be supported by a Secretariat. The implementation was to be executed through a bottom-up approach where each unit, court station, and directorate was required to contextualize the relevant strategies in a manner that best serves their particular service delivery requirements. Consequently, the daily work of implementing the framework was to be executed by each respective officer of the Judiciary.

3.12 Reporting was an integral part of the implementation process, in order to provide data and progress for the monitoring and evaluation. The reports would identify challenges faced and how to overcome them in the subsequent phase.

#### *Monitoring and Evaluation*

3.13 Monitoring and Evaluation activities were planned for in AWP's and were to be financed through budget lines in the Judiciary's overall budget. The Judiciary was to ensure that there is adequate allocation of funds towards monitoring and evaluation, every financial year. **Figure 3** illustrates a summary of the process from the inception of JTF to the Monitoring and Evaluation process.

**Figure 3: Process Description for Implementation of the Dispensation of Justice Program**



Source: *The Judiciary's Strategic Plan, 2014-2018*

### Sources of Funding for the Dispensation of Justice Program

3.14 The implementation of the Dispensation of Justice Program was funded by both the Government of Kenya and donors, with the biggest donor being the World Bank. The World Bank advanced a grant of US \$120 million for the program, running from 2012 to 2018. The program's cost and financing for various components of the transformation, as agreed upon in the financing agreement between the Government of Kenya and the World Bank in 2012, is outlined in **Table 1**. As the table shows, infrastructure was allocated the highest amount at \$41.7 million, followed by court administration and case management at US \$35.7 million and finally training and development at US \$17 million. The program also set aside US \$8.5 million, for project management, which was for managing and coordinating the program's activities.

**Table 1: The World Bank's Project Financing and Cost for the Implementation of the Dispensation of Justice Program**

<b>Project Component</b>	<b>Estimated Cost in US \$</b>	<b>World Bank Financing (% of total)</b>
<b>Court Infrastructure</b>	<b>50,000,000</b>	<b>41.7%</b>
a) <b>Courts Construction</b>	33,000,000	
b) <b>Courts Rehabilitation</b>	9,000,000	
c) <b>Prefabricated Units</b>	6,000,000	
d) <b>Building Services Unit</b>	2,000,000	
<b>Court Administration and Case Management</b>	<b>42,800,000</b>	<b>35.7%</b>
e) <b>Court Administration</b>	13,800,000	
f) <b>Case Management</b>	29,000,000	
<b>Judiciary Training and Staff Development</b>	<b>17,000,000</b>	<b>14.1%</b>
<b>Project Management</b>	<b>10,200,000</b>	<b>8.5%</b>
a) <b>Integrated Fiduciary Agent</b>	2,300,000	
b) <b>Performance Management Unit costs and studies</b>	6,800,000	
c) <b>Safeguards Implementation</b>	1,100,000	
<b>Total Costs</b>	<b>120,000,000</b>	<b>100%</b>

*Source: Audit Team analysis of documents on The World Banks financing of the Dispensation of Justice Program*

3.15 As at 30 June, 2018, the National Treasury had disbursed \$56 Million<sup>7</sup> from the World Bank and Ksh 15 billion for development expenditure towards the implementation of the Dispensation of Justice program. Further details on disbursement for the period 2013/2014 to 2017/2018 financial years are outlined in the expenditure summary in **Table 2**.

**Table 2: Expenditure Summary**

Financial Year	Development Funds from the Government of Kenya	Donor Funds (USD 120,000,000 )
	Disbursement	
	Ksh	USD
2013/2014	2,696,297,500	7,285,492
2014/2015	3,093,000,000	3,133,032
2015/2016	3,114,978,000	11,212,182
2016/2017	4,449,000,000	16,478,131
2017/2018	1,658,000,000	18,010,496
<b>Total</b>	<b>15,011,275,500</b>	<b>56,119,333</b>

Source: Sector Reports and Audited Financial Statements

<sup>7</sup> Audited Financial Statements 2013/14-2017-18

## CHAPTER FOUR

### FINDINGS OF THE AUDIT

- 4.1 The audit indicates that there has been notable progress made through the Dispensation of Justice Program. The Judiciary has renovated old courts, constructed new courts, improved in case management, increased human resources and initiated automation in court procedures.
- 4.2 However, detailed findings indicate insufficiencies in the implementation of the Dispensation of Justice Program. This is evidenced by inadequate implementation of ICT infrastructure, inefficient case management, delays in implementation of infrastructural projects, inadequate capacity building and weak integration of the program's interventions. The findings are presented in more details below.

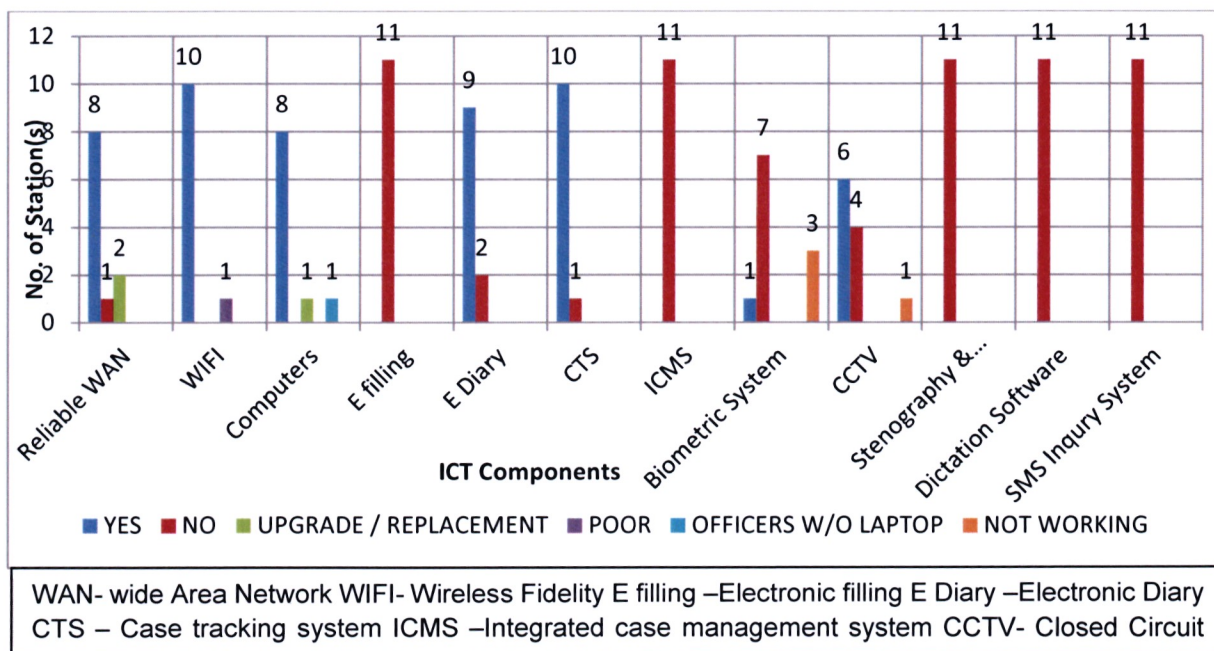
### A: Inadequate Expansion of Information and Communication Technology Infrastructure

#### I. Delayed Implementation of Information and Communication Technology Components

- 4.3 According to the Judiciary's Strategic Plan, 2014 to 2018, Information Communication Technology (ICT) was expected to provide a quantum leap in the administration of justice and aimed to automate registry procedures by the financial year 2016/17. Further, the Registry Manual states that registry services and procedures shall be conducted with the aid of ICT, as is practically possible. This shall include the use of computers, emails, software and other ICT related systems and services.
- 4.4 The audit established that five out of twelve components have not been implemented in any of the twelve Court Stations sampled. These components were, Integrated Court Management System (ICMS), stenography and transcription, E-filing, dictation software and SMS inquiry. The audit was only able to establish the status of the remaining seven components in only eleven Court Stations, excluding Chuka where there was no ICT officer in place.

4.5 Physical inspection of ICT components in eleven Court Stations revealed that eight stations had reliable Wide Area Network (WAN) while two stations had unreliable WAN, with one lacking entirely. Wi-Fi in ten stations was deemed as reliable by the Court Stations; eight stations had adequate computers while two did not; E-Diary was only available in nine stations; CTS was only available in ten stations and was missing in two Court Stations<sup>8</sup>; CCTV was working in six stations, unavailable in four stations while one had a defunct CCTV and the biometric was available in only four stations, out of which only one was working and unavailable in seven stations, as depicted in **Figure 4**.

**Figure 4: A graph showing the status and implementation of Information Communication Technology components**



4.6 Interviews with ICT officers at the sampled stations revealed that in some stations, the available Wide Area Network (WAN) needed an urgent upgrade to accommodate the newly implemented Case Tracking System (CTS), which requires adequate bandwidth. Though all the stations sampled were using WIFI, they had an inadequate number of computers and experienced low speed due to low bandwidth and poor coverage. The remaining seven ICT components were characterized by lack of maintenance and incomplete implementation.

<sup>8</sup> Chuka was included based on interview with head of station

- 4.7 Additionally, the installed biometric security systems in three stations, namely Makadara, Garissa and Nyeri, were not working at the time of the audit. In the other eight stations, biometric security systems had not been installed, hence exposing the restricted areas to possible unauthorized access.
- 4.8 Interviews with the Judiciary's ICT officers indicated that lack of a functional Local Area Network (LAN) and its components, which is the backbone of any ICT infrastructure, may have hindered the implementation of ICT components. This was the case in Chuka and Kilifi where lack of ICT infrastructure limited the implementation of the Case Tracking System. Further, interviews revealed that the major reasons why CCTV and biometric systems were failing is that they were never handed over to the Judiciary ICT staff. In addition, training on the systems was not done. The delay in the implementation of some ICT components was attributed to lack of an Integrated Case Management System. However, the audit noted that these components can still be implemented individually.
- 4.9 Delay in the implementation of these ICT components leads to lack of automation thereby resulting in slow service delivery. Lack of preventive measures such as CCTV and biometric systems exposes the court stations to intruders and illegal entry to sensitive areas like server rooms.

## **II. Delayed and Fragmented Rollout of the Integrated Case Management System**

- 4.10 According to the Strategic Plan, 2014 to 2018, the Judiciary had a plan to develop and roll out an Integrated Case Management System (ICMS), in the financial year 2015/2016. The system was to have five components; Case Tracking System (CTS), court proceeding recording technology, dictation software, weighting caseload allocation system and automate payment of fines or fees to enhance service delivery. This was aimed at reducing the case processing turnaround time, increasing security of the data and securing the financial collection system by introducing a cashless system.
- 4.11 Despite ICMS being a major output of the Dispensation of Justice Program, the Judiciary had not fully implemented it. Three years after the set implementation

date, the Judiciary had implemented only the Case Tracking System<sup>9</sup> component, out of the five components. As at September 2019, CTS had only been launched in 41 out of the 139 Court Stations in the country. The audit established that out of the twelve sampled court stations, ten had a Case Tracking System. These were Kerugoya, Nyeri, Garissa, Eldoret, Milimani, Kakamega, Busia, Makadara, Mombasa and Kisumu. CTS had not been rolled out in Kilifi and Chuka Law Courts.

- 4.12 In the stations where CTS had been implemented, the audit noted increased efficiency in retrieval of selected case data for the Judiciary's needs. The court stations had captured case numbers and status of active cases into the system. Prior to the use of CTS, data on cases was captured manually. Therefore, tracking of records was difficult and time consuming, a condition that was evident in the two sampled stations without CTS.
- 4.13 The Case Tracking System was expected to have the ability to generate cause list which provides information on upcoming court matters. This would ensure that all parties involved have adequate time to prepare to be in court as scheduled. CTS was to be embedded with internal controls that could identify who did the data entry, when it was done and in case of any alteration make it easier to locate the responsible staff. In addition, the system was to cut down time needed to retrieve information thus improving service delivery in the court stations, as well as providing data and information on cases for timely decision making by the Judiciary. Lastly, the system was to provide information on the caseload and the rate of disposition of each Judicial Officer, giving it a monitoring and evaluation component.
- 4.14 The audit noted deficiencies in CTS, such as; the provision for electronic filing of cases to enable litigants and lawyers file their cases electronically, link to SMS services that keeps parties updated on filed matters and access by a self-service kiosk to help improve efficiency for litigants by enabling them access information on their cases within the Judiciary environs. The audit observed that self-service kiosks were only available in three stations, namely; Milimani, Nyeri and Mombasa

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<sup>9</sup> A computer program used to monitor and manage the progress of cases within Judiciary

Law Courts, out of which only Mombasa was functional. The Kakamega Law Courts was using a hybrid of manual and electronic system for case management. The Eldoret Law Court lacked adequate up-to-date computers to run the new CTS, hence required more current computers that could work with the new system.

- 4.15 An interview with the ICT Directorate revealed that the implementation process of ICMS components was characterized by incomplete implementation of projects, delays in roll out and abandoned projects. The Directorate attributed the delay to outsourced vendors, who stopped their services without prior arrangement, hence stalling the entire process, leading to a fresh start. Consequently, the collective impact of the above issues led to slow access, slow retrieval of information, manual preparation and tracking of court cases, resulting in slow delivery of justice. Additionally, the Judiciary attributed the slow implementation of ICMS to underfunding for the automation budget as shown in **Table 3**.

**Table 3: The Judiciary's Amount Requested against Amount Received**

FINANCIAL YEAR	AMOUNT REQUESTED Ksh	AMOUNT RECEIVED Ksh	DEFICIT %
2016/17	833,161,118	142,000,000	83%
2017/18	630,000,000	28,000,000	96%
2019/20	1,200,000,000	199,728,000	83%

Source: Analysis of data on financing of ICMS

## **B: Inefficiencies in Case Management**

### **I. Slow Rate of Disposition of Cases**

- 4.16 According to the Judicial Service Charter and Institutionalizing Performance Management and Measurement in Judiciary's Report of April 2015, cases should take no more than 360 days, from filing to judgment.
- 4.17 The audit analyzed 238,738 cases, to establish the duration each case took from filing to judgement. The sample was drawn from the Daily Court Return Template (DCRT) reports of 12 court stations for the period 2012 to 2018. The analysis

revealed that 105,499 (44%) of the cases still remained unresolved after 360 days. Hence the Courts were only able to process 56% of the cases registered.

4.18 Further analysis of the unresolved backlog cases indicated that there is an overall 22% clearance rate, of backlog cases. This means that on average 78% of the existing backlog cases still remained unresolved at year end. **Table 4** represent the number of cases identified as backlog within each year.

**Table 4: Backlog Cases and Clearance Rate**

Year of Registration	Number of Backlog Cases	Number of Cases Cleared	Percentage Clearance
<2012	26,310	4,860	19%
2012	5,639	1,441	26%
2013	7,471	1,995	27%
2014	11,694	2,573	22%
2015	16,752	3,950	24%
2016	17,705	4,010	23%
2017	14,115	3,164	22%
2018	5,813	997	17%
<b>Total/Average clearance rate</b>	105,499	22,990	<b>22%</b>

Source: Audit Team Analysis of Backlog Cases, 2019

4.19 The audit found that most of the sampled Courts had considerable waiting times for both the first mention and hearing of cases once filed. Analysis of Judicial records as at September 2019 indicated that most litigants had to wait 2 to 3 months before obtaining the first mention dates, unless the matter is filed under certificate of urgency, as shown in the **Table 5**.

**Table 5: Next available mention dates**

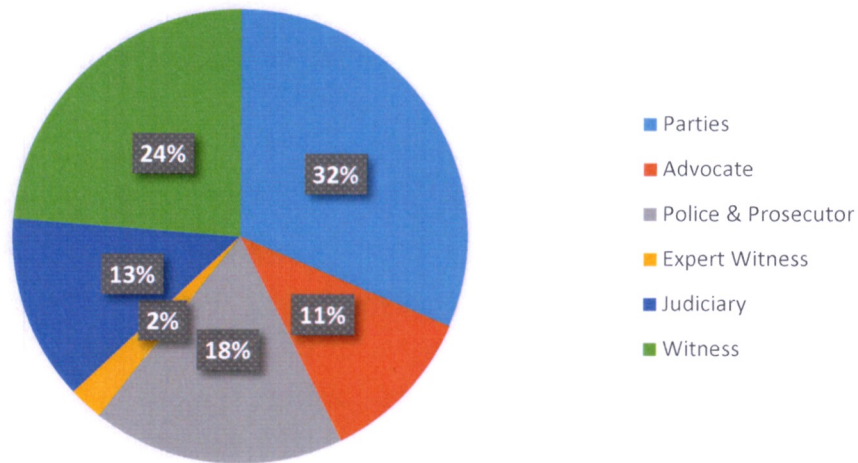
Station	Date of Audit	Next available mention Date	Waiting Period
Chuka High Court	25/9/2019	January 2020	3 Months
Chuka law Courts	25/9/2019	January 2020	3 Months
Kerugoya High Court- Civil Division	01/10/2019	January 2019	3 months
Kerugoya Magistrate Court- Civil Division	01/10/2019	January 2020	3 Months
Busia High Court- Civil Division	16/9/2019	December 2019	3 months
Busia Magistrate- Civil Division	16/9/2019	January 2020	3 months
Kakamega Magistrate Court- Civil Division	18/9/2019	January 2020	3 months
Nyeri Law Courts	30/9/2019	December 2019	2 months
Kerugoya High Court- Criminal Division	01/10/2019	5 December, 2019	2 months
Eldoret Magistrates Court- Civil Division	19/9/2019	13 November, 2019	2 months
Garissa law courts	22/9/2019	6 November, 2019	Over 1 month
Eldoret High Court- Civil Division	19/9/2019	15 October, 2019	1 month

**Source:** Analysis of data on next available mention dates

- 4.20 Further, interviews with registry officials revealed that it can sometimes take up to 6 months to get a date for the first hearing. Despite the audit not being able to establish the stipulated waiting period for a mention or hearing, it noted that this initial lag may negatively affect the conclusion of cases within the 360 days, contributing to the backlog. Further, head of stations expressed that the substantial delay at the beginning of a case discourage some litigants as they find the delivery of justice taking too long.
- 4.21 Interviews with Judicial Officers and analysis of Daily Court Return Templates on reasons for adjournment, revealed that the slow disposition rate was due to frequent adjournments from both internal and external parties. The causes include; failure of police to avail witnesses, unexpected workshops for Judicial Officers, parties failing to show up, delay of reports from experts and transfer of police and Office of the Director of Public Prosecutions (ODPP) staff. Witnesses and advocates are the major causes of frequent adjournments in court as depicted in **Figure 6**. Consequently, there was a backlog of unresolved cases and erosion of public trust due to delayed justice.

**Figure 5 : Causes of Adjournment**

**A chart showing causes of adjournment**



Source: Analysis done by the Audit Team in September 2019

## **II. Delays in Typing of Proceedings**

- 4.22 According to Section 50 (5) of the Constitution of Kenya, 2010, an accused person charged with an offence, other than an offence that the Court may try by summary procedures, is entitled to; (a) during the trial to a copy of the record of the proceedings of the trial on request (b) a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee, as prescribed by law. Further, the Magistrate and Kadhis' Registry Manual, Part E Section 62(b) states that 'there shall be continuous typing of proceedings by the Office Administrative Assistant attached to respective Judicial Officers'. In addition, the Judiciary Service Charter stipulates that typed proceedings should be availed in 10 working days, upon a written request.
- 4.23 Through JTF, the Judiciary identified technology as an enabler to justice and sought to implement dictation software, transcription and digital recording of proceedings in order to enhance judicial procedure. The dictation software once implemented would eliminate the need to type and consequently, reduce the waiting period for hearing of appeals.

4.24 The audit established that the dictation software was not implemented. In the absence of the dictation software, the Judiciary maintained a manual system of typing of proceedings. Inconsistent typing of cases and consequently the pending of those matters was registered as a major issue across court stations. Interviews with various staff revealed that appeal cases could not start without typed proceedings.

4.25 The audit found that the 10 working days' timeline for availing of typed court proceedings, as provided for in the Judiciary Service Charter, was not being met. Documentary review of pending files revealed several files that had not been typed, with some registered from as far back as the year 2012. Interviews with Judicial Officers revealed that it was possible to have an accused person stay in remand, due to the long time taken to type proceedings, especially when the accused person is too poor to afford bail. **Table 6** shows the total number of cases that were pending for typing, at the time of the audit, in various court stations as per the year of registration. At least 460 litigants' appeal hearings were delayed in various High Courts due to un-typed proceedings as shown in the table.

**Table 6: Number of files pending for typing of proceedings**

Year/Station	2012	2013	2014	2015	2016	2017	2018	2019	Total
Eldoret High Court Criminal Division	7	22	18	14	20	8	26	99	214
Kakamega High Court Criminal Division	3	4	5	7	2	4	18	30	73
Siaya High Court Criminal Division	0	0	0	0	5	6	18	31	60
Kerugoya High Criminal Division	0	6	0	2	3	0	13	21	45
Kerugoya High Civil Division	-	-	-	-	-	-	-	38	38
Nyeri High Court Criminal Division	1	3	2	2	5	1	1	15	30
Total	11	35	25	25	35	19	76	234	460

Source: Analysis of files pending for typing of proceedings by the Audit Team in September 2019

- 4.26 The audit noted reasons for the backlog include inadequate number of typists and poor or ineligible handwriting by the concerned Judicial Officers. Further, the few typists available were not continuously monitored to ensure the continuous typing of proceedings. As a result, the appealed cases were pending before court, leading to delay in delivery of justice.
- 4.27 Interviews with Head of Stations in Mombasa and Kakamega revealed that the stations identified ways to reduce the delay. This was through conducting service weeks dedicated to typing of proceedings, hiring extra typists for the period needed, and establishing internal checks such as the Typing Committee monitoring the typing progress.

### **III. Lack of proper Record Keeping at the Registries**

- 4.28 Records in the Court Registries play a critical role in enabling the Judiciary to perform its constitutional mandate with ease. In addition, according to the Strategic Plan, 2014 to 2018, the Judiciary was to adopt proper information, records and archive management practices. To realize this, the Judiciary launched the Registry Manuals in 2017, as part of the Dispensation of Justice program. The Registry Manual was intended to simplify and standardize registry procedures, increase efficiency in registries, guide litigants and staff on registry processes and highlight the roles of various registry staff, for increased accountability.
- 4.29 According to the Registry Manual, case files should be filed in alpha-numerical order. In addition, all pleadings and proceedings should be numbered sequentially, including the case number, using an indelible ink pen. All proceedings should be paginated by the Judicial Officer. Further, the system of numbering correspondence must be consistent, with proceedings being numbered from left to right, and pleadings from right to left. Further, a station is supposed to have tracer card and to maintain a diary.
- 4.30 It was noted that most stations adhered to colour codes for files, except for instances when files were out of stock. However, physical verification of files in the sampled registries indicated that staff were not fully complying to the

prescribed procedures that ensure effective record keeping. A random sample of 52 files drawn from 12 Court Stations established that only 15 files were correctly paginated, as shown in **Appendix 6**. The audit also noted that none of the stations had tracer cards, except for Nyeri High Court Criminal Registry and Kerugoya Magistrates Court Civil Registry.

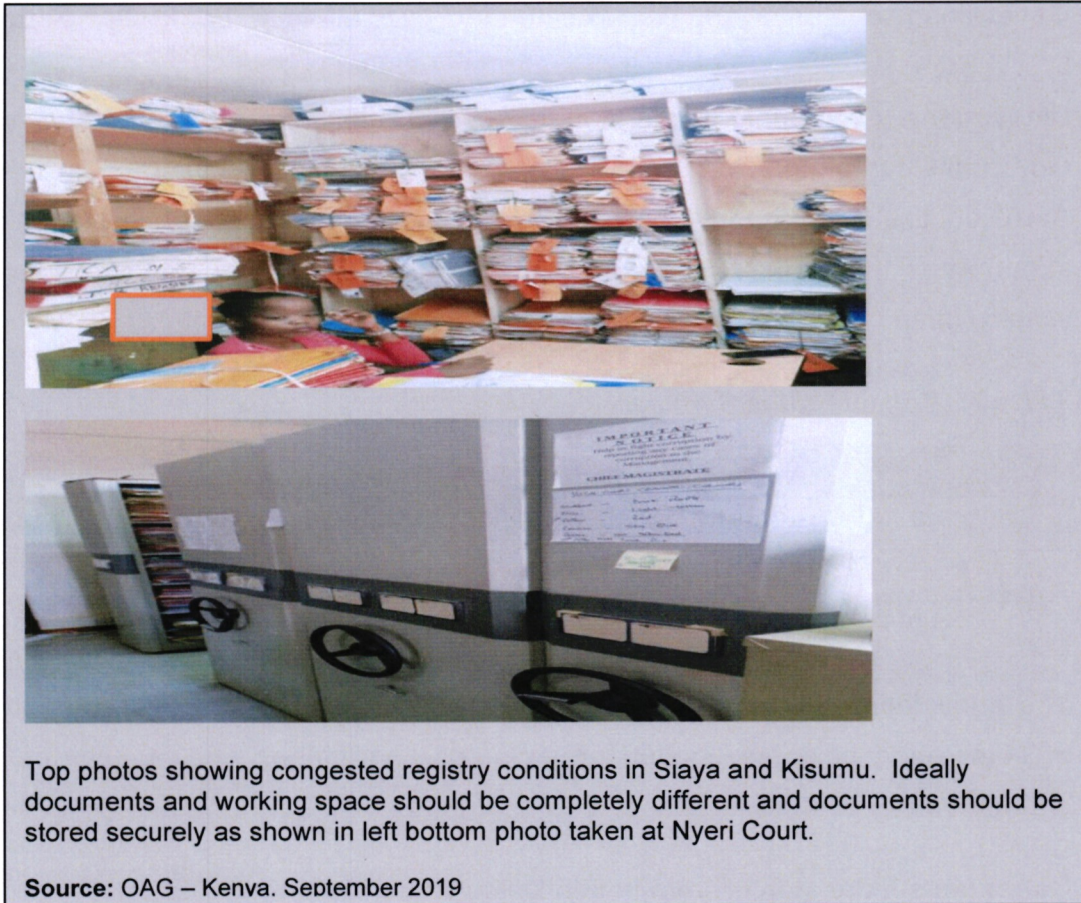
- 4.31 The audit noted that the inefficiencies in pagination were due to lack of internal controls to ensure that procedures were adhered to, as well as lack of training on standardized filing procedures. The audit established a case could not proceed if any of the pages in the file were missing. This was especially critical if any issues arose within the case or if an appeal was made on the case. The risk of papers either getting torn or falling off was increased by poor storage and the poor quality of papers and files used.

#### **IV. Poor File Storage Conditions**

- 4.32 According to the Judiciary's Strategic Plan, 2014-2018, under Key Result Area 6, the Judiciary sought to modernize the storage, access and retrieval of court case files across all registries in the organization over a period of four years.
- 4.33 The audit noted that despite procurement of services to put up shelves and lockable storage facilities, the sampled Court Stations had unlockable cabinets for file storage. Further, document review revealed that the Judiciary had awarded a contract in October 2017, for modernizing shelves for registries in Kisumu, Busia and Bomet Law Courts at a cost of Ksh 29 Million. However, as at the time of audit in September 2019, the contractor had abandoned the site, leaving behind incomplete work. The audit could not establish the reasons for the contractor's departure, extent of work done and payment done as onsite supervision and records were not available.
- 4.34 During the audit, it was further observed that in most registries, files were kept in open shelves, except for Nyeri High Court Criminal Division and Nyeri Magistrate Court Civil Division. Additionally, there were files on the floor, counters and tables around the registries. Interviews with registry officials indicated that this was majorly

caused by lack of enough space in the registries. Registry conditions in sampled courts is illustrated by **Figure 6**.

**Figure 6: Case file storage in various registries**



4.35 This has hindered service delivery in registries. For instance, file retrieval may take a lot of time as well as increasing the risk of unauthorized access to case files.

### **C: Poor Implementation of Court Infrastructure**

4.36 According to the Judiciary's Strategic Plan, 2014-2018, the Judiciary was to construct modern courts that are well equipped with state-of-the-art registries and libraries. These would integrate supportive ICT infrastructure and would include audio recording of proceedings and transcription, teleconferencing facilities and

electronic billboards. In addition to the new courts, the Judiciary was to renovate and upgrade the infrastructure of existing courts by the financial year 2018/19.

4.37 Documentary review of the Judiciary’s project reports revealed that the Judiciary undertook 69 infrastructural projects, out which 39 were funded by the Government of Kenya and 30 were funded by the World Bank. Out of this, the World Bank had 17 new and 13 renovations, while GoK had 29 new and 10 were renovations. At the time of the audit, review of Judiciary documents showed that GoK had 9 completed<sup>10</sup> projects, 10 continuing projects and 20 stalled. The World Bank on the other hand had seven (7) completed, 23 continuing projects. A summary of the above is provided in **Table 7** and further details on the projects are provided in **Appendix 7** .

**Table 7: Project Status Summary**

World Bank Funded Projects			Government of Kenya Funded Projects		
Complete	Continuing	Stalled	Complete	Continuing	Stalled
7	23	0	9	10	20

Source: Audit Team analysis of the Judiciary projects’ status

4.38 The audit found that implementation of projects was characterized by extension of completion of dates, stalled projects, cost variations and challenges in the completed projects as discussed below: -

**I. Continuous Extension of Completion Dates**

4.39 Documentary review of project files and interviews, with the Head of Stations (HoS), site managers and Clerk of Works revealed continuous delays at various stages of implementation of infrastructural projects. The audit noted substantial delays for both renovations and new constructions. An analysis of project files show extensions of three or more years, from the original completion date, in more than half of the sampled projects. Documentary review revealed that completion dates were extended for all sampled projects. However, despite the extensions, no project met the new set timelines.

<sup>10</sup> Completed projects had to be marked as complete and above 98%

4.40 For instance, in Molo, the project was to take 52 weeks starting on 19 June, 2015 to 17 June, 2016. However, extensions were granted beyond the deadline and it was completed on 30 November, 2017, more than a year after the set completion period. In Makindu, the project commenced on 8 March, 2016 and was to take twelve calendar months. However, this did not happen and despite a thirteen weeks' extension, the contractor did not finish the work on time but was handed over to the Judiciary on 13 February 2018, about a year after the agreed completion period.

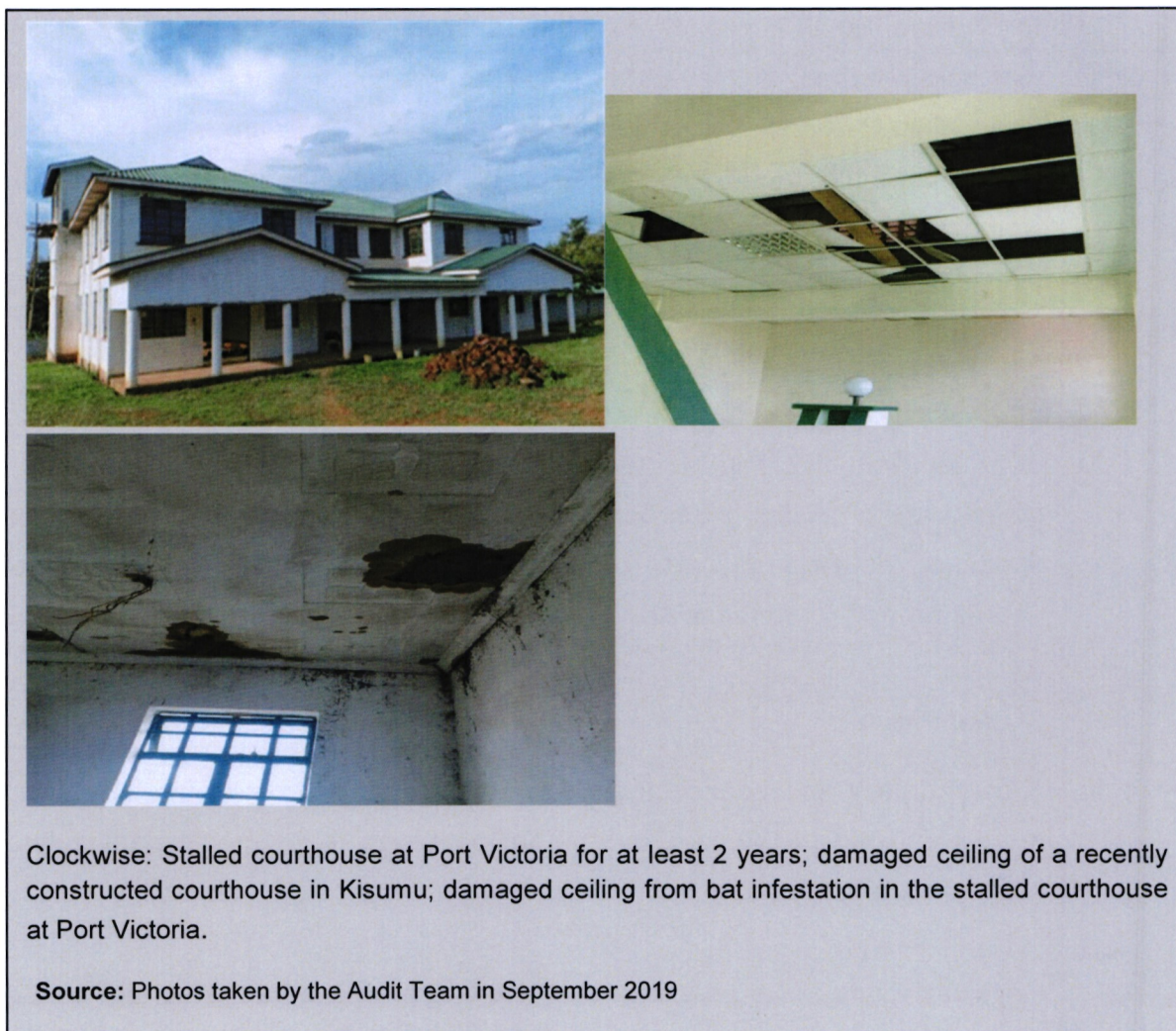
4.41 Interviews and documentary review revealed delays in the following critical points of project implementation; during approval of certificates by consultants and the Directorate of Building Services (DBS), payment of approved certificates by the Judiciary, delayed payment of suppliers and workers by the contractor. More details on project timelines and reasons for delays are provided in **Appendix 8**.

## **II. Stalled Projects**

4.42 Documentary review of project documents revealed that at the time of the audit, more than half of the 39 Government of Kenya led projects had stalled during construction.

4.43 Physical verification revealed that stalled projects had reached an advanced stage of completion, at the time contractors abandoned the sites. For instance, in Port Victoria, the contractor had left the site in the year 2016, having done 90% of the work. As at the time of audit in September 2019, it was notable that due to the long period of neglect, the building had been infested by bats and parts of the ceiling had decayed and was caving as shown in **Figure 7**. Further reasons for stalled projects are as shown in **Appendix 9**.

**Figure 7: State of Infrastructure in Various Locations**



### III. Cost Variations during Implementation of Projects

- 4.44 Documentary review of project files revealed that seven out of nine sampled projects had cost variations, majorly from structural changes made in original plans. These were executed under the instructions of project managers and site inspectors from DBS. However, no payments, for the variations, had been made to contractors. Interviews revealed that the variations arose due to failure to involve court users during the planning and design stage. Consequently, there were delays in implementation of projects as the Judiciary could not agree on payments of the variations made by contractors. A summary and further reasons for variations are as shown in **Table 8** and **Appendix 10**, respectively.

Table 8: The Judiciary Projects with Variations

STATION	PROJECT AMOUNT (Ksh)	VARIATION	THE CONTRACT SUM %	REASONS FOR VARIATIONS
PORT VICTORIA	46,529,557	7,751,700	16.66%	A ramp for the disabled was omitted in the BQ.
CHUKA	98,106,542	16,381,166	16.7%	Additional works given due to omissions in the original BQ.
GARISSA	351,323,457	51,038,787	14.52%	Changes of the structural design from strip foundation to raft foundation and subsequent stages of the projects. Addition of extra works to the project as a result of omission on design and the BQ.
NYERI	18,482,123	4,417,850	23.9%	Variations had been made due to major alterations in the design of the court

Source: Audit Team analysis of Projects with variations

4.45 Interviews with Judicial staff and contractors, as well as documentary review of progress reports, cite reasons for delay in implementation of various projects as; slow implementation of the project by contractors due to inadequate manpower deployed, delay in payment of approved certificates by clients, dispute in approval on variations and delay in providing critical details by the initial consultant.

#### IV. Challenges in the Completed Projects

4.46 The audit observed that, out of the eighteen sampled projects, three were complete and in use. However, there were challenges in the completed projects. For instance, in Makindu, the contractor had not fulfilled his contract obligations which included; fitting the gutters, ensuring the building is connected to a three-phase source of power, training staff on the fire alarm system and supplying a generator. This was despite the cost being catered for in the Bill of Quantities (BQs). Further, physical verification revealed that the roof was leaking. According to documentary review, the defects were to be resolved by 30 May 2018, but this had not happened, almost a year later, as at 15 March, 2019; the date of the audit. In Molo, the contractor had not completed the drainage system and other minor contractual obligations.

- 4.47 The audit noted complaints by staff on overall project design. For instance, in Kitui, an extension was added to the existing building, to accommodate registries. However, the location of the Civil Registry and the public service counters were located far apart, hence staff had to walk to the counter and back to the office in order to serve the clients. In Molo, the audit noted the new building was generally damp. Interviews with registry staff indicated that the dampness accelerated the deterioration of case files and stored papers.
- 4.48 Due to the implementation challenges, Judicial Officers and staff had inadequate space in registries and offices, old dilapidated buildings and buildings with no facilities for the disabled. Further, buildings lacked vital facilities such as; the children's court room, prosecution office and library. As the Judiciary delays the completion of new buildings installed with new technology, clients and staff are denied fast and efficient court services.

#### **D: Inadequate Capacity Building for Judicial Staff**

- 4.49 According to the Judiciary's Strategic Plan, 2014-2018, the Judiciary was to grow and expand its human resource capacity through recruitment, promotion, training and development, to meet the needs of delivering justice. There was to be continuous staff rationalization, skills audit and workload analysis to inform the staffing needs. The World Bank allocated US \$17 Million, through the Dispensation of Justice Program, to build up the capacity of both the staff and officers. However, the audit found lack of training programmes and lack of training needs assessment for the Judicial staff.

##### **I. Lack of Training Programmes for Judicial Staff**

- 4.50 Training and development needs assessment and a comprehensive and integrated training curriculum were identified as instruments applied by the Human Resource Directorate to achieve a modernized workforce. In addition, Section F2 of the Judiciary's Human Resource Manual stipulates that training should be based on Training Needs Assessment and annual employee's appraisals. Further, Section F3 states that all employees are eligible to at least five days training in a year.

- 4.51 Documentary review revealed that Judicial Officers undergo regular and consistent training, throughout the year. For instance, annual colloquium, continuous judicial training in thematic areas such as children's matters, land matters, elections, among others. Interviews with Judicial Officers indicated that the trainings had sensitized them on how to handle different cases, as well as guiding them in delivering quality judgement.
- 4.52 On the contrary, Judicial Staff hardly undergo any training, as was revealed through interviews in sampled Court Stations. Since the inception of the Dispensation of Justice Program, there has been minimal training to staff to build capacity or increase knowledge in relevant areas in order to improve service delivery. Interviews with Judicial staff revealed a distinct lack of training for staff in all areas of service, including supervisory roles, training for HR staff, training in record keeping, handling litigant's communication and ICT for registry staff, among others. Majority of the staff interviewed had not been trained even once, despite many years of service. Further, as at the time of the audit, up to 90% of the staff in sampled Court Stations had not been trained in the last 2 years.
- 4.53 Interviews with the management of the Judiciary Training Institute (JTI) informed the audit that training of judicial staff is not part of their mandate, as only Judicial Officers are defined in the Constitutional mandate. As such, JTI is neither required to design nor implement any training for the judicial staff unless under the request of the Judiciary. JTI conducted only two group trainings for the judicial staff for the period 2013 to 2018, under the request of the Judiciary, for the Dispensation of Justice Program. An interview with the HR Directorate revealed that at the time of the audit, the Judiciary had set up a staff training committee to look into staff training needs and capacity building. However, at the time of the audit, a year into its formation, it was yet to be operationalized.

## **II. Lack of Training Needs Assessment for Judicial Staff**

- 4.54 The Judiciary's Human Resource Manual, Section F2, stipulates that training should be based on Training Needs Assessment and annual employee's appraisals. An interview with the Director Human Resources informed that there had been inadequacies by the Directorate of Human Resource in determining staff

training needs. Further, there had been no training needs assessment for Judicial staff, while for Judicial Officers, individual needs assessments were done annually. For the Judiciary to be well informed on how to maximize its human resources, two skills audits, general and detailed, were to be carried out to map skills and match the skills with the needs identified. However, the Judiciary only conducted a general skills audit. The HR Directorate further confirmed that at the time of the audit, an institutional-wide training needs exercise had not been conducted, despite the end of the Dispensation of Justice program.

- 4.55 An interview with the Human Resource Directorate indicated that there was centralization of staff capacity building at headquarters and lacked an inclusive bottom up approach for determining training needs. It was hoped that the yet to be operationalized staff training committee would solve this problem by exclusively dealing with staff training matters.
- 4.56 Interviews with Judicial staff indicated that lack of continuous learning and mentoring programmes has led to low morale and knowledge gaps in their work, eventually affecting the quality of their work. The Judicial Officers interviewed confirmed that the trainings they had attended addressed their identified training needs and greatly contributed to the quality of their work.

#### **E: Challenges in Implementation of Court Annexed Mediation**

- 4.57 Article 159 Section 2(c) of the Constitution of Kenya, 2010, states that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms, shall be promoted.
- 4.58 The roll out of the Court Annexed Mediation<sup>11</sup> (CAM) started in the year 2018, in selected stations around the country. The audit found seven stations<sup>12</sup> that were at various stages of the roll out. Through CAM, it was possible to conclude cases at a faster rate than regular courts, it was also cheaper for the parties involved. A review of CAM records and interviews with mediation staff showed that it had been

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<sup>11</sup> A mediation process conducted under the umbrella of the court

<sup>12</sup> Garissa, Eldoret, Kakamega, Nyeri, Kilifi, Mombasa, Milimani, Makadara, Busia and Chuka

instrumental in unlocking money back to the economy and the conclusion of decade old cases that had been stuck in the system. For example, in Eldoret, a twenty-four-year-old<sup>13</sup> case was resolved in a couple of months. **Table 9** provides a status summary as observed in the audit.

**Table 9: Court Annexed Mediation Summary**

Court Station	CAM Available	Date when CAM Started	Remarks
Eldoret	Yes	February 2019	223 cases referred, 128 concluded
Kakamega	Yes	October 2018	70 cases resolved
Nyeri	Yes	November 2018	246 matters screened & admitted
Kilifi	Yes	October 2018	Available but registry is based in Mombasa
Mombasa	Yes	October 2018	55.8% finalization rate
Garissa	Yes	February 2019	**
Milimani	Yes	**	**
Makadara	No	-	-
Busia	No	-	-
Chuka	No	-	-

\*\*Data not obtained

Source: Audit Team Analysis of data on CAM, 2019

4.59 Despite the above impacts, the audit noted various challenges in the implementation of CAM. Documentary review and interviews indicated that there was a shortage of staff trained in mediation. For instance, in Kisumu, Kakamega and Nyeri court stations, most of the staff handling mediation had been drawn from regular registry duties, without substantial training in mediation. Interviews with mediation staff established that the procedures and practices in mediation differ from those in open court. Therefore, there was need for staff dealing with CAM to be trained on mediation procedures and practices.

<sup>13</sup> Case No. P&A 199/1995

- 4.60 Interviews revealed that accredited mediators<sup>14</sup> had not received any payments for the cases they had mediated on, leading to reluctance to take on more cases. The audit noted a shortage of accredited mediators in Garissa, where there was only one accredited mediator and three under mentorship. This was despite CAM being an especially important intervention in this region, as a formal alternative to the local Maslaha, who arbitrarily solve criminal matters out of Court.
- 4.61 In addition, the sampled stations lacked space to carry out mediation sessions. For example, in Eldoret and Kisumu, mediators and clients had to wait till one of the open courts was not in session. In Kakamega, CAM was conducted in tents, that were not suitable for the rainy weather. Mediators also lacked equipment, furniture and stationery to effectively carry out the sessions.

#### **F: Enhanced Stakeholder Collaboration through Court Users Committees**

- 4.62 According to the Judiciary's Strategic Plan, 2014-2018, one of the strategies was to enhance public image and stakeholder engagement by promoting stakeholder dialog, collaboration and partnerships. Court Users Committees (CUCs) were established to address matters in the administration of justice, while enhancing public participation and stakeholder engagement; developing public understanding of Court operations and promoting effective justice sector partnerships.
- 4.63 Documentary review and interviews with various Heads of Stations established that the formation of CUCs has resulted in several positive results such as; serving as a major feedback channel for court stakeholders, mobilization of the public for the Judiciary open days and service weeks, sensitization & awareness of Judiciary initiatives, seriousness with which the community addresses sexual offences, advancement of Court Station needs such as water tanks, photocopiers, juvenile cells in Kitui and women's cells in Nyeri, among others.

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<sup>14</sup> Are mediators who meet **Accreditation Standards** set by the Mediation Accreditation Committee (MAC); a committee established under section 59A of the Civil Procedure Act (Chapter 21, Laws of Kenya).

## CHAPTER FIVE

### CONCLUSION

- 5.1 The audit noted the efforts the Judiciary had made towards transforming service delivery through the Dispensation of Justice Program. It is expected that service delivery will improve with the full implementation of the program. However, the initiatives were not efficiently and adequately implemented, to fully achieve the intended program's transformation objectives as envisaged.
- 5.2 The audit found insufficiencies in the implementation of the Dispensation of Justice Program, with more than half of the new infrastructure projects still in progress. The project has failed to meet the expected access that was to be achieved with the use of the new and rehabilitated courts. Secondly, the interventions made in installing the Case Tracking System were not adequate to meet the objective of case efficiency and a fully automated case management system. In addition, due to the partial and inefficient implementation of ICT interventions, the program failed to achieve the intended impacts. Further, inadequate training of core registry staff in the Case Tracking System and other registry operations was a limitation to the full utilization of the system and improved efficiency in service delivery.
- 5.3 The audit found indications of inadequate preparedness, incomplete implementation of projects, delays resulting from change of project managers, underperformance by contractors, irregular funding, and poor monitoring of projects. These implementation setbacks led to delays in the Dispensation to Justice Program to achieve the envisioned transformation.

## CHAPTER SIX

### RECOMMENDATIONS

- 6.1 In view of the findings, the following recommendations are proposed;
- 6.2 Automation is key to improved efficiency as evidenced by the impact of the Case Tracking System since its implementation. The Judiciary should strive to reach the goal of the automated case management system as envisioned by the program. Further, in order to streamline service delivery, the Judiciary should integrate the other automated systems into the Dispensation of Justice program. These include recording, case inquiry and payment systems.
- 6.3 The Judiciary should review the status of all infrastructural projects, improve the supervision, monitoring and reporting of issues or challenges experienced during construction. It should strive to resolve the issues causing stalled projects and prioritize the completion of the incomplete projects.
- 6.4 Judicial staff are the Judiciary's foundation and are an asset to both Judicial Officers and clients. Therefore, capacity building is key to strengthening this foundation. A well-trained staff contributes positively to improved quality of processes and services. It is crucial for the Judiciary to accelerate the pace of the training committee to achieve this.
- 6.5 The Judiciary should consider taking a critical look into the roll out of the Court Annexed Mediation (CAM) and address implementation setbacks that are holding back the potential of CAM to process a significant number of cases fairly, inexpensively and judiciously.
- 6.6 The Judiciary should consider reviewing the status of the Dispensation to Justice program, drawing lessons from the program's key areas of ICT, infrastructure, case management and capacity building. The Judiciary should also identify the remaining gaps and resources needed to complete the projects within set timelines. This may aid in alleviating past setbacks and creating the right project implementation culture, for the next phase of transformation.

**Appendix 1: Audit Questions**

AUDIT OBJECTIVE	AUDIT SUB-OBJECTIVE	AUDIT SUB-QUESTIONS
<p><b>Assess the implementation of the Dispensation of Justice Program by the Judiciary</b></p>	<p><b>To assess whether the Dispensation of Justice Program has led to efficiency in case management.</b></p>	<p>To what extent did the Judiciary tackle slow disposition rates in order to improve case management?</p>
		<p>How did the Judiciary integrate automation in case management to improve efficiency?</p>
		<p>How does the Judiciary coordinate its stakeholders to improve case management?</p>
	<p><b>To assess whether the program has led to expansion of ICT infrastructure</b></p>	<p>Were the proposed ICT solutions implemented as per the plan?</p>
	<p><b>To assess whether the Dispensation of Justice Program has improved physical access to courts.</b></p>	<p>Were the buildings' erection and rehabilitation of courts executed as per the plan?</p>
		<p>Did the Judiciary achieve improved court infrastructure?</p>
		<p>In what other ways does the Judiciary ensure improved access to Judicial services?</p>
	<p><b>To assess whether the Dispensation of Justice Program has led to adequate capacity building for the Judicial Officers and staff.</b></p>	<p>How does the Judiciary conduct and ensure adequate needs assessment for its staff?</p>
		<p>How does the Judiciary ensure adequate training for its officers and staff?</p>

## Appendix 2: Sample Selection Criteria

Consideration	Remarks
<p><b>Regional Balance</b></p>	<p>The Judiciary has 139 court stations spread out throughout the country. Out of these, there are 39 High Courts.</p> <p>The audit selected stations from each of the eight previous regions i.e Coast, Nairobi, Nyanza, Western, Rift Valley, Eastern, N. Eastern and Central. Further each station, represents a different county, hence a total of 13 out of 47 counties have been represented.</p> <p>The Court stations sampled include; Mombasa, Kilifi, Kisumu, Siaya, Kakamega, Nyeri, Kerugoya, Garissa, Makadara, Chuka, Busia and Milimani.</p> <p>Findings also include data collected from Kitui, Makindu, Kajiado, Nakuru, Molo and Kibera.</p>
<p><b>Court type</b></p>	<p>The Judiciary has courts of various ranking and purpose as outlined in chapter 3 of this report, under the <i>Structure of the Court System</i>.</p> <p>The audit focused on two court types, Magistrate's Court (MC) and High Courts (HC). Out of these, 18 were MC and 7 HC namely; Kisumu, Eldoret, Nyeri, Mombasa, Busia, Garissa and Kakamega.</p>
<p><b>Implementation of projects</b></p>	<p>The sample size took into consideration project implementation of the various components of automation, case management and infrastructural projects. The stations chosen have program projects of varying levels of completion.</p>

### Appendix 3: Officers Interviewed

<b>Role of Interviewee</b>	<b>Purpose of the interview</b>
<b>Head of Court Station</b>	Get a general overview of the cascade of the program at station level. Obtain information on case management, allocation, backlog, Court Annexed Mediation, capacity building, Infrastructure and challenges experienced at station level.
<b>Deputy Registrar</b>	To obtain information regarding High Court matters such as case management; allocation, backlog, challenges encountered in handling backlog as well as the status of Court Annexed Mediation in stations where it had been rolled out.
<b>Executive Officer or Court Administrator</b>	To obtain information on case management, filing system, typing of proceedings, record keeping as carried out in each court station. As well as information on capacity building of both Judicial officers and staff.
<b>Chief Finance Officer</b>	To obtain information regarding the funding of the Judiciary, financing agreement between the Judiciary and other financiers. To obtain information regarding the status of on-going projects in stations where construction or rehabilitation of courts were taking place, cost of the project and how monitoring and evaluation is done.
<b>Judicial Performance Improvement Project (JPIP) Project Manager</b>	To understand the implementation of the World Bank funded projects.
<b>Procurement Officer and Accountants within the stations</b>	To understand how the procurement process for the projects is carried out.
<b>Registry Staff</b>	To understand the service delivery process, types of cases, case data and number of staff involved at the registry
<b>ICT Officers</b>	To understand the rollout of ICT projects and their function within the station, status of the ICT Infrastructure and number of staff involved in ICT related duties
<b>Clerk of Works</b>	Representative of Directorate Building Services (DBS) on the ground, who supervise day to day activities of the contractor, ensure that the

<b>Role of Interviewee</b>	<b>Purpose of the interview</b>
	required quality and standards of the BQs are met. Interviewed to gain further understanding on the infrastructure projects.
<b>Site Managers</b>	Representative of the contractor who supervise day to day activities of the project. Interviewed to understand the daily operations of the projects and how they address the issues raised by the project committee.
<b>Directorate of Building Services</b>	Department of the Judiciary in charge of supervising the projects. They were interviewed to get information how the contractors were sourced, monitoring and evaluation of the projects.
<b>Performance Management Directorate</b>	To understand judiciary's performance measurement tools, monitoring and evaluation framework.
<b>Directorate of Human Resource Management and Development</b>	To gain understanding on the Judiciary's capacity building framework and human resource management.
<b>Mediation Registry Staff</b>	To gain understanding on the implementation, challenges and gains of the Court Annexed Mediation.
<b>Judiciary Training Institute (JTI)</b>	To gain understanding of its role in capacity building of the Judiciary officers and staff.

#### Appendix 4: Documents Reviewed

<b>Documents Reviewed</b>	<b>Purpose of review</b>
<b>The Constitution of Kenya, 2010</b>	To obtain information on formulation of the Judiciary and its mandate to the citizens of Kenya as enshrined in the supreme law. Also obtained information on constitutional requirement on the Judiciary to formulate and encourage alternative forms of dispute resolution.
<b>Judiciary Transformation Framework (JTF)</b>	This is the overall blueprint that sets out modalities for reclaiming, reforming and repositioning the Judiciary as an effective and independent arm of government.
<b>Judiciary Strategic Plan, 2014-2018</b>	To obtain an understanding of Judiciary's establishment, administrative and organization structure, mission and vision. As well as, the enabling strategies that were aimed at expanding access to justice, enhancing organisational efficiency, safeguarding judicial independence and strengthening relationships with stakeholders.
<b>Financing Agreement</b>	Sources and level of funding of the project components as well as the output required from the funded projects
<b>Registry Manuals</b>	To obtain information on operations of registries as well as its management and coordination within the Judiciary
<b>Daily Court Returns</b>	To understand how the DCRT system works and the Judiciary's case data.
<b>Progress Reports</b>	The status of the report, matters arising during site meetings and the recommendations of the project acceptance committee.
<b>Infrastructure Project File</b>	To understand the implementation process of the infrastructural projects through committee minutes, status reports of the projects, the tender documents, Bill of Quantities and correspondences.
<b>Staff Establishment</b>	To understand the human resource requirement needs for both Judicial Officers and Judicial Staff, at the station level.
<b>Judiciary Service Act, 2011</b>	To understand the legal framework under which the Judiciary operates on.
<b>Service Charter</b>	To obtain the Judiciary's definition of their mission, functions, obligations to and expectations of their clients, timelines and targets, as well as gain insights into how the Judiciary operates.
<b>Audited Financial Statements from the financial year 2012/2013 to 2017/2018</b>	To understand the Judiciary's funding levels, their sources and utilization of financial resources.

**Appendix 5: Sources of Audit Criteria**

SUB-OBJECTIVE	AUDIT CRITERIA	SOURCE
<p><b>Assess whether the program has led to efficiency in case management</b></p>	<p>The Judicial Guidelines require cases to take 365 days from filing to judgement.</p>	<p>The Judiciary's Service Charter</p>
	<p>The Judiciary was to develop and roll out an Integrated Case Management System (ICMS) in the financial year 2015/16. The system was to have the following components; Case Tracking System (CTS), court proceeding recording technology, dictation software, weighting caseload allocation system, automate payment of fines or fees to enhance service delivery</p>	<p>The Judiciary's Strategic Plan, 2014-18</p>
	<p>According to Section 50 (5)(a) (b), an accused person charged with an offence, other than an offence that the court may try by summary procedures, is entitled during the trial to a copy of the record of the proceedings of the trial on request as well a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law.</p>	<p>The Constitution of Kenya, 2010</p>
	<p>Part E Section 62(b) states that 'there shall be continuous typing of proceedings by the Office Administrative Assistant attached to respective Judicial Officers.</p>	<p>The Magistrate and Kadhis' Registry Manual</p>
	<p>The Judiciary identified interventions to secure files including use of biometric access in registries to monitor entry and access of files, storing files in lockable cabinets in both registry and archives and installation of Closed-Circuit Television (CCTV) coverage in order to ensure authorized access to files.</p>	<p>The Judiciary's Strategic Plan, 2014-2018</p>
<p><b>Assess whether the program has improved physical access to courts</b></p>	<p>The Judiciary identified facilities development and management as a strategic issue in which it focused on construction of modern Courts that are well equipped with state-of-the-art registries and libraries. These will integrate supportive ICT infrastructure which will include audio recording of</p>	<p>The Judiciary's Strategic Plan, 2014-2018</p>

SUB-OBJECTIVE	AUDIT CRITERIA	SOURCE
	proceedings and transcription, teleconferencing facilities and electronic billboards	
	The Judiciary was to construct new courts, renovate the infrastructure of existing courts and construction of access facilities to courts by 2018/19.	The Judiciary's Strategic Plan, 2014-2018, The financial agreement
	The strategic issue under KRA (13) was to enhance public image and stakeholder engagement by promoting stakeholder dialog, collaboration and partnerships.	The Judiciary's Strategic Plan, 2014-2018
	According to Article 159, ADR mechanisms were informed by key conceptual imperatives of access to justice in expedition, fairness, equality of opportunity, flexibility, cost-effectiveness, party satisfaction, proportionality, fostering relationships, voluntariness, autonomy over process, outcome and choice of a third party.	The Constitution of Kenya, 2010
<b>Assess whether the Program has led to adequate capacity building in the Judiciary</b>	Training and development needs assessment and a comprehensive and integrated training curriculum were identified as instruments applied by HR to achieve a modernized workforce.	The Judiciary's Strategic plan, 2014-18
	In Key Result Area 4, the Judiciary outlined one of the ways to achieve a competent workforce through recruiting professional personnel and develop their technical and managerial capacity.	The Judiciary's Strategic Plan, 2014-18

**Appendix 6: Summary on File Pagination & Colour Code**

<b>Station</b>	<b>Sampled file</b>	<b>Remarks</b>
Makadara Magistrates' Court	MCCR/797/16 MCCR/2479/16 MCCR/109/17 MCCR/1558/16	All paginated Correctly
Chuka High Court- Civil Division	HCCA/16/19 HCCA/19/18 HCCA/12/18	Not paginated Partially paginated Partially paginated
Chuka High Court- Criminal Division	HCCR/22/18 HCCR/21/18 HCCRA/30/2018	Partially paginated
Chuka Magistrates' Court- Criminal Division	MCSO/13/19 MCSO/5/19 MCCR/378/19	Not paginated Partially paginated Not paginated
Chuka Magistrates' Court- Civil Division	MCCC/161/17 MCCC/18/17 MCCC/158	All paginated correctly
Garissa High Court- Civil & Criminal Division	HCCR/5/17 HCCRA/47/18 HCCC/3/12	Partially paginated Not paginated All paginated correctly
Garissa Magistrates' Court- Civil & Criminal Division	MCCR/264/18 MCSO/82/18 MCCR/1/15 MCCR/11/15	Not paginated Not paginated Not paginated Partially paginated
Nyeri High Court- Civil Division	HCCC/8/19 HCCC/5/19 HCCC/4/18	Not paginated Not paginated All paginated correctly
Nyeri High Court- Criminal Division	HCCR/4/19 HCPET/9/19 HCMIS/22/19	Paginated correctly Partially paginated Not paginated
Nyeri Magistrates' Court- Criminal Division	MCCR/646/19 MCCR/626/19 MCSO/23/19 MCCR/1550/19	Not paginated Not paginated Partially paginated Not paginated
Nyeri Magistrates' Court- Civil Division	MCCC/226/19 ELC/223/18 MCL&E/20/18	Not paginated
Kerugoya High Court- Civil Division	HCCA/68/18 HCCA/28/17 HCCA/49/18 HCCA/49/16 HCCA/46/16	Paginated Not paginated Not paginated Not paginated Not paginated
Kerugoya High Court- Criminal Division	HCCRA/48/18 HCCRC/11/18	Paginated Not paginated
Kerugoya Magistrates' Court- Civil Division	MCCC/77/19 MCCC/4/16 MCCC/211/16	All paginated correctly

<b>Station</b>	<b>Sampled file</b>	<b>Remarks</b>
Kerugoya Magistrates' Court- Criminal Division	MCCR/144/17	Not paginated
	MCCR/739/19	Not paginated
	MCCR/210/19	Not paginated
	MCCR/547/15	Partially paginated
Eldoret High Court- Civil Division	HCCC/6/18	Not paginated
	HCCC/83/18	Partially paginated

**Appendix 7 : Summary of Infrastructural Projects**

**World Bank Led projects**

<u>Project</u>	<u>Contract Sum</u>	<u>Start Date</u>	<u>Original Completion Date</u>	<u>Revised Completion Date</u>	<u>Extended time period in weeks</u>	<u>Original Contract Period (Weeks)</u>	<u>% Complete</u>	<u>Renovations New</u>	<u>Status Report</u>
1 Kitui Law Courts									Complete
2 Kangema Law Courts (Phase-I)									Complete
3 Kigumo Law Courts	94,160,933	6/29/2015	6/29/2016	12/30/2019	183	52	100%	Upgrade	Complete
4 Chuka Law Courts	98,106,542	6/5/2015	6/13/2016	12/30/2019	185	52	90%	Upgrade	On-Going
5 Engineer Law Courts	96,881,316	6/8/2015	8/8/2016	3/30/2019	138	52	98%	Upgrade	Complete
6 Vihiga Law Courts	78,476,529	9/16/2015	9/14/2016	12/30/2019	172	52	96%	Upgrade	On-Going
7 Nyando Law Courts	74,827,121	9/4/2015	9/2/2016	12/30/2019	173	52	99%	Upgrade	Complete
8 Molo Law Courts	99,910,995	6/19/2015	6/17/2016	12/30/2019	184	52	99%	Upgrade	Complete
9 Oyugis Law Courts	109,731,080	6/29/2015	6/28/2016	12/30/2019	183	52	95%	Upgrade	On-Going
10 Nyamira Law Courts	118,305,748	6/18/2015	6/17/2016	12/30/2019	184	52	90%	Upgrade	On-Going
11 Muhoroni Law Courts (Tamu)	74,879,919	9/6/2015	6/8/2016	12/30/2019	186	52	97%	Upgrade	On-Going
12 Nakuru Law Courts	347,765,950	2/18/2016	8/18/2017	12/30/2019	123	110	87%	New	On-Going
13 Siaya Law Courts	342,751,951	3/21/2016	9/21/2017	12/30/2019	119	110	73%	New	On-Going
14 Garissa Law Courts	351,323,457	1/22/2016	7/22/2017	12/30/2019	127	110	80%	New	On-Going
15 Makindu Law Courts	96,855,446	3/8/2016	3/7/2017	12/30/2019	147	52	100%	New	Complete
16 Nanyuki Law Courts	318,559,759	3/10/2016	9/10/2017	12/30/2019	120	110	70%	New	On-Going
17 Kibera Law Courts	137,649,133	4/13/2016	4/13/2017	12/30/2019	142	52	65%	Upgrade	On-Going
18 Voi Law Courts	347,582,674	3/29/2017	9/29/2018			78	40%	New	On-Going
19 Kapenguria Law Courts	400,880,621	3/21/2017	9/22/2018	2/21/2020	74	78	37%	New	On-Going
20 Maralal Law Courts	378,745,872	3/23/2017	9/23/2018			78	32%	New	On-Going

21	Isiolo Law Court	379,082,160	10/4/2017	10/10/2018	8/7/2019	43	78	42%	New	On-Going
22	Kwale Law Courts	389,998,592	5/19/2017	9/19/2018			78	25%	New	On-Going
23	Wajir Law Courts	369,567,057	9/27/2017	3/27/2019			78	10%	New	On-Going
24	Oi-Kalou Law Courts	399,323,129	9/18/2017	3/17/2019			78	16%	New	On-Going
25	Kakamega Law Courts	387,664,343	9/21/2017	3/21/2019			78	35%	New	On-Going
26	Mukurweini Law Courts	158,978,307	9/19/2017	9/18/2018			52	30%	New	On-Going
27	Mombasa Law Courts	445,173,322	9/28/2017	3/28/2019			78	32%	New	On-Going
28	Makueni Law Courts	410,099,717	9/25/2017	3/25/2019			78	20%	New	On-Going
29	Kangema Law Courts (Phase II)	42,992,271	9/20/2017	9/18/2018			52	50%	Upgrade	On-Going
30	Kajiado Law Courts	398,407,995	3/25/2018	9/15/2019			78	10%	New	On-Going

## Projects under Government of Kenya

Project	Contract Value (KSH)	Start Date	Original Completion Date	Revised Completion Date	Extended period in weeks	Contract Period (Wks)	% Complete	Renovations or New building	Status Reports
1 Homabay Law Courts	367,308,473.46	3/13/2017	7/30/2018			72	26%	New	Stalled Reason Budget Cut
2 Kabarnet Law Courts	366,798,387.60	3/17/2017	9/17/2018			72	15%	New	Stalled Reason Budget Cut
3 Marsabit Law Courts	370,222,599.79	3/17/2017	9/17/2018			72	29%	New	Stalled Reason Budget Cut
4 Amagoro Law Courts	137,988,040	3/13/2017	3/13/2018	3/13/2019	52	54	15%	New	Stalled Reason Budget Cut
5 Githongo Law Courts	130,895,657.00	5/4/2017	4/4/2018	4/4/2019	52	54	42%	New	Stalled Reason Budget Cut
6 Kandara Law Courts	137,817,417.00	3/4/2017	4/4/2018	3/17/2019	50	54	36%	New	Stalled Reason Budget Cut
7 Machakos Law Courts	34,084,690.00	5/18/2017	11/18/2017	8/17/2018	39	24	65%	New	Stalled Reason Budget Cut
8 Marsabit Law Courts	10,888,254.42	5/2/2017	10/17/2017	3/13/2019	73	72	75%	New	Stalled Reason Budget Cut
9 Supreme court	21,538,285.00	4/4/2017	10/4/2017	10/15/2018	54	16	100%	Renovations	Complete
10 Kiambu law courts	7,510,360.00	5/31/2017	1/8/2018	7/8/2018	26	24	100%	New	Complete
11 JSC offices	13,748,982.00	8/18/2017	11/15/2017			24	98%	Renovations	Complete
12 Mbita Law Courts	148,325,073.00	3/15/2017	3/14/2018	3/14/2019	52	52	52%	New	Stalled Reason Budget Cut
13 Habasweini Law Courts	143,192,128.00	9/28/2017	9/27/2018			52	9%	New	Stalled Reason Budget Cut
14 Hamisi Law Courts	55,199,905.00	12/4/2015	11/3/2015	4/11/2018	127	120	98%	New	Practically Complete
15 Embu Law Courts	178,932,022.32	1/15/2015	9/15/2016	10/18/2017	57	84	95%	New	Practically Complete
	9,555,546.40	1/15/2015	9/15/2016			84	95%		
	8,058,350.00	1/15/2015	9/15/2016			84	95%		
	19,279,228.00	1/15/2015	9/15/2016			84	95%		
	13,500,000.00	1/15/2015	9/15/2016			84	95%		
	23,578,502.00						95%		
16 Nkubu Law Courts	85,958,760.80	1/12/2015	12/30/2016			78	100%	New	Complete
17 Muranga Law Courts	62,086,413.20	5/19/2015	2/20/2016	8/17/2018	130	36	65%	Renovations	Stalled Reason Budget Cut
18 Mandera Law Courts	107,034,445.00	5/19/2015	2/20/2016	12/30/2018	149	52	86%	New	Stalled Reason Budget Cut

**Appendix 8: Summary of Extended Projects**

STATION	PROJECT NO.	FINANCIAL	CONTRACT SUM (KSH)	DATE OF COMMENCEMENT	ORIGINAL COMPLETION DATE	REVISED DATE OF COMPLETION	EXTENSION PERIOD IN WEEKS	REASONS FOR EXTENSION
Port Victoria	JUD/98/2014-2015	GOK	46,529,557	12/2/2015	12/2/2016	27/6/2018	-	Delay in payment of the approved certificates by the client. Variations raised by the judiciary
Eldoret	JUD/8/2014/15	GOK	38,095,640	23/2/2015	27/6/2016	31/6/2017	-	Delay in payment of the approved certificates by the client.
Garissa	JPIP/NCB/WOR KS/30/2015-2016	WORLD BANK-JPIP	351,323,457	22/1/2016	22/7/2017	30/12/2019	-	Delay in payment of the approved certificates by the client.
Nyeri	JUD/CON/09/2013-2014	GOK	18,482,123	17/4/2014	2/10/2015	31/12/2019	210	Lack of a project manager for a long time. The project manager before was JKUAT Enterprises Ltd Delay in payment of the approved certificates by the client.
Kakamega	JPIP/NCB/WOR KS/2016-2017	WORLD BANK-JPIP	388,744,343	21/9/2017	21/3/2019	21/3/2020	54	Delay in payment of the approved certificates by the client. Lack of approval of variations which led to delay in implementation of project. Delay in providing critical details by the initial consultant.
Chuka	JPIP/NCB/03/2014-2015	WORLD BANK-JPIP	98,106,542	5/6/2015	13/6/2016	30/12/2019		Delay in payment of the approved certificates by the client.
Siaya		WORLD BANK-JPIP	342,751,951	21/3/2016	21/9/2017	30/12/2019	32	Delay in payment of the approved certificates by the client.

**Appendix 9: List of Stalled Projects**

STATION	PROJECT NO.	FINANCIER	CONTRACT SUM (KSH)	DATE OF COMMENCEMENT	ORIGINAL COMPLETION DATE	REVISED DATE OF COMPLETION	PERCENTAGE OF WORK DONE	REASONS
PORT VICTORIA	JUD/98/2014-2015	GOK	46,529,557	12/2/2015	12/2/2016	27/6/2018	92%	The project has stalled due to non-formalization of variation works for a total of Kshs. 7,751,700. Majority of the variations have already been executed under instructions of the project manager, yet payments have not been made. The project had stalled for more than 2 1/2 years
ELDORET	JUD/8/2014/15	GOK	38,095,640	23/2/2015	27/6/2016	31/6/2017	90%	The main contractor had been granted various extensions of time and had failed to complete the project. The main contractor had no capacity to complete the work since he had subcontracted the works to a third party. Several warnings had been issued to the contractor but to no avail.
GARISSA	JPIP/NCB/WORKS/30/2015-2016	WORLD BANK-JPIP	351,323,457	22/1/2016	22/7/2017	30/12/2019	87%	The contractor abandoned the site on 10 <sup>th</sup> , June, 2019 citing that he had not been paid the 9 <sup>th</sup> certificate he had raised to the Judiciary for payments of works done. The contractor had done some variations in the building which he was instructed but no payments had been made for the same.
NYERI	JUD/CON/09/2013-2014	GOK	18,482,123	17/4/2014	2/10/2015	31/12/2019	95%	The project had stalled since 2015. The contractor had not been paid for some certificates he had raised. The contractor had already done variations that were raised by the inspection committee but payments for the same had not been done.

**Appendix 10: List of Projects with Variations**

STATION	PROJECT NO	PROJECT AMOUNT (Ksh)	VARIATION	PERCENTAGE OF THE CONTRACT SUM	REASONS FOR VARIATIONS
PORT VICTORIA	JUD/98/2014-2015	46,529,557	7,751,700	16.66%	A ramp for the disabled was omitted in the BQ.
CHUKA	JJPIP/NCB/03/2014-2015	98,106,542	16,381,166	16.7%	Additional works given due to omissions in the original BQ.
GARISSA	JPIP/NCB/WORKS/30/2015-2016	351,323,457	51,038,787	14.52%	Changes of the structural design from strip foundation to raft foundation and subsequent stages of the projects. Addition of extra works to the project as a result of omission on design and the BQ.
KAKAMEGA	JPIP/NCB/WORKS/2016-2017	388,744,343	The cost Information was not provided	-	There were a lot of omissions leading to variations. There was an introduction of a ground beam that was not captured.
SIAYA		342,751,951	The cost Information was not provided	-	There were omissions in the BQs for provision of grills, replacement of tiles to terrazzo. New needs- reduction in size of the land and relocation of toilets and sewer line.
MAKADARA	JUD/038/2016-2017	9,895,300	The cost Information was not provided	-	In the Makadara Station, the contractor had done extra work and he was advised to apply for payments.
NYERI	JUD/CON/09/2013-2014	18,482,123	4,417,850	23.9%	Variations had been made due to major alterations in the design of the court.

**Appendix 11: Management Response**

Audit Finding(s)	Management Response	Auditor's Comments
<b><i>Inadequate Implementation of ICT Infrastructure</i></b>		
<p><b>Paragraphs 4.4 &amp; 4.5</b></p> <p>The audit established that five out of twelve components have not been implemented in any of the twelve Court Stations sampled. These components include ICMS, stenography and transcription, E-filing, dictation software and SMS inquiry. The audit was only able to establish the status of the remaining seven components in only eleven Court Stations, excluding Chuka which had no ICT Officer in place.</p> <p>Physical inspection of ICT components in eleven Court Stations revealed that eight stations had reliable WAN while two stations had unreliable WANS with one.</p>	<p>The Judiciary has since signed a contract for the upgrade and maintenance of a Data Centre which will go a long way in enhancing the Judiciary ICT experience and data storage. All courts have since been provided with additional desktop computers to facilitate automation process. Network issues have been addressed by the service provider. E-filing program was recently launched on 1st July 2020 for the Nairobi courts. While there have been hiccups as expected of any new system, the same has been a game changer especially with the outbreak of the Covid-19 pandemic that requires minimal physical contact. The crowding previously associated with our registries is substantially reduced and advocates and litigant are able to access and undertake processes online. This is in addition to the increased use of virtual</p>	<p>The response is well noted. However, the finding remains as reported since it is in agreement with the audit observation as at then and only outlines the various interventions being carried out now by the Judiciary to address the issues.</p> <p>The Office will however do a follow-up on the same.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>lacking entirely, the Wi-Fi in ten stations was deemed as reliable by the Court Stations; eight stations had adequate computers while two did not; E-Diary was only available in nine stations; CTS was only available in ten stations and was missing in two Court Stations; CCTV was working in six stations, unavailable in four stations while one had a defunct CCTV and the biometric was available in only four stations out of which only one was working and unavailable in seven stations.</p>	<p>platforms in the hearing of cases and delivery of court decisions.</p> <p>Additionally, with the expansion of the physical infrastructure throughout the country, more courts have established self-service kiosks and HUDUMA Center like facilities in the new courts. This is evident in Courts like Nanyuki, Isiolo, Nakuru, Oyugis, among others.</p> <p>Lastly, all courts are now on either LAN/WAN or WIFI with CTS already rolled out in all stations (128 stations) and 20 tribunals.</p> <p>Additionally, the Judiciary is in contact with the provider of the systems to ensure that the biometric and CCTV systems are functional.</p>	
<p><b><i>Delayed and Fragmented Rollout of the Integrated Case Management System</i></b></p>		
<p><b>Paragraph 4.11</b></p> <p>The audit established that despite ICMS being a major output of the</p>	<p>To fully automate judicial functions in all courts including ICMS, the Judiciary will require about Ksh 4 billion. The</p>	<p>The response is fully noted. The finding has been amended to</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>Dispensation of Justice Program, the Judiciary had not fully implemented ICMS. Further, 3 (three) years after the set implementation date, the Judiciary implemented only one component of ICMS which was CTS; a computer program used to monitor and manage the progress of cases within the Judiciary. As of September 2019, CTS had only been launched in 41 out of 139 court stations, representing 29% of all the court stations in the country. Out of the sampled court stations, ten out of the twelve stations had CTS. These stations were Kerugoya, Nyeri, Garissa, Eldoret, Milimani, Kakamega, Busia, Makadara, Mombasa and Kisumu while in Kilifi and Chuka Law Courts CTS had not been rolled out.</p>	<p>slow implementation of ICMS can be attributed to underfunding for automation budget. For example, in FY 2016/17 the Judiciary requested Ksh 833,161,118 and in 2017/18, they only received Ksh 142,000,000. In 2018/19 they requested Ksh 630,000,000 but only received Ksh 28,000,000. FY 2019/2020 against a requirement of Ksh 1,200,000,000. CTS has now been rolled out in all court stations (128 stations) and 20 tribunals.</p>	<p>incorporate information provided in the management response, as a major cause of delayed rollout of ICMS.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<b>Slow Disposition Rate of Cases</b>		
<p><b>Paragraph 4.17 &amp; 4.18</b></p> <p>Analysis of a sampled 238,736 cases from the Daily Court Return Template (DCRT) reports, from 12 of 360 days for the resolution of court cases will continue to be unattained. The appointment of additional judges and recruitment of additional judicial officers and staff is critical in the realisation of expeditious disposal of cases. Court Annexed Mediation has also played a critical role in resolving court cases and cumulatively Kshs 7 billion had been released to the economy by June 2020. The program has already been rolled in 13 High Court stations and the whole country will be covered by June 2022.</p> <p>Further analysis of the 105,499 backlog cases which forms part of the backlog in the system indicated that there is an overall 22% clearance rate of the backlog cases. This means that on average, 78% of</p>	<p>The sub-optimal number of Judicial Officers means that the optimal case clearance rate and turn-around period of 360 days for the resolution of court cases will continue to be unattained. The appointment of additional judges and recruitment of additional judicial officers and staff is critical in the realisation of expeditious disposal of cases. Court Annexed Mediation has also played a critical role in resolving court cases and cumulatively Kshs 7 billion had been released to the economy by June 2020. The program has already been rolled in 13 High Court stations and the whole country will be covered by June 2022.</p> <p>At the commencement of the Judiciary Transformation Framework in 2012, there were about 1 million cases in the system. The Judiciary adopted strategies and initiatives in case backlog reduction and has been able to reduce this number to 617,582 as at 30<sup>th</sup> June, 2020. This is despite the increased rate at which new cases are being filed. In 2014/15, there were 334,685 cases filed;</p>	<p>The audit notes with appreciation the efforts made by the Judiciary to address the issue, and the challenges encountered as outlined in the response.</p> <p>However, the finding remains as reported.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>the existing backlog cases still remain unresolved at year end.</p>	<p>460,961 cases in 2015/16; 344,180 cases in 2016/17; 402,243 cases in 2017/18; 484, 349 cases in 2018/19 and 337,510 cases filed in 2019/20.</p> <p>Judges and judicial officers have continued to put their best foot forward as is evident from the number of resolved cases, thus:</p> <p>2014/15- 272,605 cases;  2015/16- 191,625 cases;  2016/17- 304,182 cases;  2017/18- 410,455 cases;  2018/19- 469,359 cases; and  2019/20 – 298,728 cases.</p> <p>This is despite the challenges brought about by COVID 19 pandemic that disrupted court operations between March and June, 2020. In addition, at the launch of Sustaining Judiciary Transformation blues print in January, 2017 the Judiciary identified 170,186 cases that were 5 years and above since filling. The Judiciary had committed to resolve all these cases by December, 2019. A total of 201,206 cases resolved in that period the</p>	

Audit Finding(s)	Management Response	Auditor's Comments
	<p>overshooting being cases were that were less than 5 years old at the commencement of the exercise but which graduated to that bracket in the course of the exercise.</p> <p>The essence of the above statistics is to place in the proper perspective the finding on slow disposition of cases. The increased workload has not been appropriately supported by an increased workforce. Indeed, the number of judges, Judicial Officers and Staff has not been commensurate with the increased workload.</p> <p>In the Performance Management and Measurement Understandings (PMMUs) signed by all courts, targets have been set to ensure that an increasing number of court cases are disposed-off expeditiously. This has witnessed the growth of the case clearance from 42 % in 2015/16 to 86% in 2019/20. In addition to the sheer hard work by the judges and Judicial Officers, the introduction of Court Annexed Mediation (CAM) has also progressively played a critical role in resolving court cases.</p>	

Audit Finding(s)	Management Response	Auditor's Comments
<p><b>Paragraph 4.21</b></p> <p>Interviews with Judicial Officers and DCRT analysis on reasons for adjournment revealed that the slow disposition rate was due to frequent adjournments from both internal and external causes such as failure of police to avail witnesses, unexpected workshop for Judicial Officers, parties failing to show up, delay in reports from experts, transfer of police and Office of Director of Public Prosecutions (ODPP) staff. Witnesses and advocates are the major causes of frequent adjournments in court.</p>	<p>Judiciary has provided data for the reasons for adjournment in the various courts and at national level.</p>	<p>The response is well noted. However, the finding remains as reported.</p>
<p><b>Paragraph 4.24</b></p> <p>The audit established that in the absence of the dictation software, the Judiciary maintained a manual system of typing of proceedings.</p>	<p>In the PMMU of the current financial year, all High Courts and Courts of equal status, the Magistrates and Courts and Kadhi Courts have signed targets to ensure that they type and transmit proceedings for appeal purposes within</p>	<p>Response noted. The audit finding however remains as reported.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>Inconsistent typing of cases and consequently the pending of those matters was registered as a major issue across sampled Court Stations by the audit. Interviews with various staff revealed that appeal cases could not start without the typed proceedings, and therefore there was need to have the proceedings typed continuously.</p>	<p>60 days. This coupled with the roll out of transcription services in some courts will significantly reduce, if not eliminate the delays in the hearing of appeals associated with delayed typing of proceedings.</p> <p>The problem was noted as one of the contributing factors is inadequate secretaries and addressed as follows. Some courts have no secretary relievers and, in some courts, secretaries are shared across courts in law court. To address the challenge, the Performance Management and Measurement Steering Committee introduced an indicator on typing of proceeding of appeal in the Kadhis Courts, Magistrates Courts, ELC, ELRC and High Court. The indicator was introduced during 2019/2020 PMMUs.</p>	
<p><b><i>Inadequate Record Keeping at the Registries</i></b></p>		
<p><b>Paragraph 4.29</b></p> <p>It was noted that most stations adhered to colour codes for files except for instances when files were out of stock. However, physical</p>	<p>All courts are also being appraised and graded in regard to how they manage their registries, and especially the records management function. From the report of the Evaluation of the Performance of Courts, the registry</p>	<p>The response is well noted.</p> <p>The audit finding remains the reported.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>verification of files in the registries indicated that staff were not fully complying to the prescribed procedures that ensure effective record keeping. A random sample of 52 files drawn from twelve Court Stations established that only 15 files were correctly paginated. The audit also noted that none of the stations had tracer cards except Nyeri High Court Criminal Registry and Kerugoya Magistrates Court Civil Registry.</p>	<p>function has experienced continuous improvement with adherence to the respective Registry Manuals and good practices adopted over the years.</p>	
<p><b>Poor Implementation of Court Infrastructure</b></p>		
<p><b>Paragraph 4.36 &amp; 4.37</b></p> <p>The Judiciary was to construct modern courts that are well equipped with state-of-the-art registries and libraries. These would integrate supportive ICT infrastructure and would include</p>	<p>The Judiciary has been supported in the roll out of its infrastructure in the last 8 years mainly by the World Bank Through Judicial Performance Improvement Project (JPIP), the GOK through budgetary allocation, UNODC</p>	<p>The finding remains as reported as the management response is not in variance with the audit observation.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>audio recording of proceedings and transcription, teleconferencing facilities and electronic billboards. In addition to the new courts, the Judiciary was to renovate and upgrade the infrastructure of existing courts by financial year, 2018/19.</p>	<p>for Shanzu and Kahawa Law Courts and the NG-CDF (formerly CDF) in some areas.</p>	
<p>The Judiciary undertook 69 infrastructural projects, out which 39 were GoK led and 30 World Bank funded. Out of this, the World Bank had 17 new and 13 upgrade (renovations), while GoK had 29 new and ten (10) were renovations. At the time of the audit, review of Judiciary documents show that GoK had nine (9) completed<sup>15</sup> projects, ten (10) continuing projects and 20 stalled. World Bank on the other</p>	<p>As correctly observed, the projects by the JPIP are on course and seven were already complete and handed over at the time of the audit. Addition courts have since been handed over and the remaining courts will be finalised and handed over within the remaining period of the contact of 30<sup>th</sup> June 2021. This has been made possible by the reliability of funding provided by the World Bank.</p>	

Audit Finding(s)	Management Response	Auditor's Comments
<p>hand had seven (7) completed, 23 continuing, and zero (0) stalled projects.</p>		
<p><b><i>Inadequate Capacity Building for Judicial Staff</i></b></p>		
<p><b>Paragraph 4.52</b></p> <p>In contrast to Judicial Officers, the Judicial Staff hardly undergo any training as was revealed through interviews at Court stations. After its introduction, the Judiciary has done minimal training to staff to build capacity or increase knowledge in relevant areas to improve service delivery. Interviews with Judicial staff revealed a distinct lack of training of staff in all areas of service including supervisory roles, HR training for HR staff, training in record keeping, handling litigant's communication and ICT for registry staff. Majority of the staff</p>	<p>Training of staff. According to the employees' satisfaction survey 2019, the satisfaction level of training was 45%. 28% of the judges and judicial officers had attended training in the last years. The survey results indicated that 68% of Judiciary's employees had not attended any training in the last 2 years.</p>	<p>The audit notes the management response. However, the audit observation remains as reported.</p>

Audit Finding(s)	Management Response	Auditor's Comments
<p>interviewed had never gone for a training despite many years of service and data gathered show that in some cases up to 90% of the staff in a Court Station had not been trained in the last 2 years.</p>		

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