

HIGH
COURT LIBRARY
NAIROBI

PARLIAMENT
OF KENYA
LIBRARY

REPUBLIC OF KENYA

THE JUDICIARY

REPORT OF THE ETHICS AND GOVERNANCE SUB-COMMITTEE OF THE JUDICIARY

Chairman:
The Hon. Mr. Justice J.W. Onyango Otieno

Presented to:
The Hon. Mr. Justice J.E. Gicheru E.G.H.
The Chief Justice of the Republic of Kenya

JANUARY 2006

Report of the Ethics and Governance Sub-Committee of the Judiciary

The Hon. Mr. Justice J. E. Gicheru E.G.H.
The Chief Justice of the Republic of Kenya
P.O. Box 30041
NAIROBI

Your Lordship,

RE: LETTER OF TRANSMITTAL

Your Lordship appointed us members of the Ethics and Governance Sub–Committee of the Judiciary on the 18th day of March 2005, with the following mandate:

1. To collect information relating to the integrity of the entire judiciary staff and court processes;

2. To investigate all cases of alleged corruption, unethical behaviour and other lack of integrity;

3. To study and report on the case for in-house intermediary disciplinary measures, and the process of punishment for breaches not warranting removal of a judge from office;

4. To examine and report on the orderly and efficient method consistent with the rules of natural justice for conducting investigation or inquiry into the fitness of a judicial officer to hold office or the guilt of a paralegal staff in corrupt or unethical practice;

5. To deliberate and report on the contents of the "Litigants Charter" to aid the comprehension of the process of the court by litigants;

6. To study and rationalize the previous Committees' Reports on the reforms in the Judiciary and recommend a codified and comprehensive reform matrix to entrench integrity; and,

7. To report on our findings and to recommend any remedial action and necessary reforms necessary for governance of and the entrenchment of integrity in the Judiciary.

To discharge this mandate, the Sub-Committee held meetings throughout the country; received representations from the public as well as from members of the judiciary; carried out research into the status of implementation of the recommendations of other Committees on the Judiciary and the state of judicial integrity generally, and undertook study tours in other jurisdictions for comparative purposes.

We would like to express our gratitude for the honour and trust you bestowed upon us by your appointment to serve on this Committee and for your continued support and advice in the course of our work.

It is with great humility that we submit this Report to you.

We are, Your Lordship's most obedient Servants,

The Hon. Mr. Justice J. W. Onyango Otieno

CHAIRMAN

The Hon. Mr. Justice P. Kihara Kariuki

VICE-CHAIRMAN

Her Honour Mrs. Stella M. Muketi

MEMBER

Mr. Samuel K. Kiptorus

MEMBER

His Honour Mr. Stephen N. Riechi

SECRETARY

ACKNOWLEDGEMENTS

The Ethics and Governance Sub-Committee of the Judiciary feels obliged to acknowledge most sincerely, the participation of all Kenyans both in their individual and corporate capacities during the entire period of its work.

It is not possible to extend our thanks to each and every individual or institution by name. However, we would like to mention and record our special gratitude to the Hon. the Chief Justice, Hon. Mr. Justice J. E. Gicheru, E.G.H. for the trust bestowed by him on the members of the Sub-Committee and for His Lordship's unwavering support to our work. We would also like to thank the Honourable Justices of the Court of Appeal and the High Court particularly the Hon. Mr. Justice J. Mwera, Hon. Lady Justice J. Gacheche, Hon. Mr. Justice J. Nyamu, Hon. Lady Justice H. Okwengu, Hon. Mr. Justice B. Kubo, Hon Mr. Justice K. Bauni and Hon. Mr. Justice W. Ouko for their invaluable suggestions and contributions. We would also like to thank the Registrar of the High Court of Kenya, Mr. C. K. Njai for the financial, logistical and other support that he extended to the Sub-Committee. We would further like to thank the magistrates of the stations we visited and the entire staff of the Judiciary for their contributions, suggestions and assistance, which enabled the Sub-Committee to accomplish its task.

The Sub-Committee is indebted to the British High Commission and the Department for International Development in Nairobi; the Foreign and Commonwealth Office in London; the Master of the Rolls and the Lord Justices of the Court of Appeal and High Court of England and Wales, for facilitating our study visit to the United Kingdom. Our special gratitude goes to Kenya's High Commissioner to the United Kingdom His Excellency Ambassador Joseph Muchemi and his staff for their warm reception and support during that study tour.

Our further appreciation and thanks go to the Justices of the Supreme Court of India; the Solicitor-General of India; the Chief Justice of New Delhi and other judicial staff in New Delhi. We would also like to convey our deepest gratitude to the acting Kenya's High Commissioner to India Her Excellency

Ambassador Josephine Gaita and her staff, for supporting and facilitating our study tour to India.

We would also like to appreciate and thank the Chief Justice of New Zealand, justices of the Court of Appeal and High Court of New Zealand, the Solicitor-General and the members of staff of the New Zealand Judiciary. The Sub-Committee is also grateful to the World Bank for funding the study visit to New Zealand.

Our gratitude is also extended to the Permanent Secretary, Ministry of Justice & Constitutional Affairs Ms. Dorothy Angote and the Governance, Justice, Law and Order Sector (GJLOS) Reform Program for the invaluable financial support to the Sub-Committee. We would also like to thank the Permanent Secretary, Department of Defence and the Kenya Air Force crew that flew the Sub-Committee to North Eastern Province and Lamu for its sessions. Our special thanks also go to officers of the Provincial Administration, Local Authorities and other organisations for availing their premises for use by the Sub-Committee and for other wise facilitating its sittings.

Finally, we wish to thank the following members of staff who worked tirelessly to ensure the successful completion of the work of the Sub-Committee:

1. Steven Mukaindo
2. Jackson M. Ngila
3. Danson Muguru
4. Alice Muchungu
5. Josphine Mutuota
6. Eric W. Litabalia
7. Cpl. James Dula
8. Apc. Amos Biwot
9. Leonard M. Aganya
10. Anthony K. Kasina
11. Francis Towett
12. Tom Rogoncho
13. Druscillah Kemunto

TABLE OF CONTENTS

PAGE

Letter of Transmittal ..... (i)
Acknowledgements ..... (iv)
Table of Contents ..... (vi)

CHAPTER ONE: INTRODUCTION

1.1 Background to and Establishment of the Sub-Committee 1
1.2 The Terms of Reference of the Sub-Committee 2
1.3 Interpretation of the Terms of Reference 3
1.4 The Organisation and Method of Work of the Sub-Committee 4
1.5 The Rules and Procedure of the Sub-Committee 5

CHAPTER TWO: INTEGRITY OF STAFF AND COURT PROCESSES

2.0 The Concept of Judicial Integrity 6
2.1 The Key Elements of Judicial Integrity 6
2.2 Integrity of Court Processes 7
2.3. The Integrity of the Staff of the Judiciary 9

CHAPTER THREE: CASES OF ALLEGED CORRUPTION AND LACK OF INTEGRITY ON THE PART OF SPECIFIC JUDICIARY STAFF

3.0 Allegations of Corruption and Lack of Integrity on Specific Judiciary Staff 17

CHAPTER FOUR: DISCIPLINARY MEASURES AND PROCESS FOR JUDGES

4.0 Introduction 18
4.1 Existing Disciplinary Procedures 18
4.2 Recommendations of the Sub-Committee 20

PAGE
.....(i)
.....(iv)
.....(vi)

.....1
.....2
.....3
ee 4
.....5

ROCESSES

.....6
.....6
.....7
.....9

AND LACK
STAFF

.....17

)CESS FOR

.....18
.....18
.....20

CHAPTER FIVE: DISCIPLINARY MEASURES AND PROCESS FOR MAGISTRATES, KADHIS AND THE PARALEGAL STAFF OF THE JUDICIARY

5.0 Introduction 25
5.1 Existing Disciplinary Procedures 25
5.2 Weaknesses of the current Disciplinary Procedures 26
5.3 Recommendations of the Sub-Committee 27

CHAPTER SIX: THE LITIGANTS CHARTER

6.0 Introduction 35
6.1 The Case for a Litigants Charter in Kenya.....35
6.2 The Recommendations of the Sub-Committee 38

CHAPTER SEVEN: COMPREHENSIVE REFORM MATRIX FOR THE JUDICIARY

7.0 Introduction 41
7.1 Previous Committees and their Recommendations on the Judiciary 41
7.2 Analysis and Rationalisation of the Recommendations of the past Committees on the Judiciary 44
7.3 Other Matters 65
7.4 The Comprehensive Reform Matrix for the Entrenchment of Integrity in the Judiciary 70

APPENDICES

Appendix I	Rules of Procedure of the Sub-Committee	83
Appendix II	Matters for Investigation by the Chief Justice under Chapter Four	85
Appendix III	Intermediary Disciplinary Measures that the Chief Justice May Take under Chapter Four	86
Appendix IV	Model Litigants Charter	87
Appendix V	Recommendations of Previous Committees	111
Appendix VI	Summary of the Strategic Objectives and Strategies of the Strategic Plan	150
Appendix VII	Proposed Structure of the Judiciary	153

.....83
under
.....85
Chief
.....86
.....87
.....111
tegies
.....150
.....153

CHAPTER 1

INTRODUCTION

1.1. Background to and establishment of the Sub-Committee

The Ethics and Governance Sub-Committee was established by the Hon. Mr. Justice J. E. Gicheru E.G.H. Chief Justice of the Republic of Kenya, on the 18th day of March 2005 the same day he launched the Strategic Plan of the Judiciary 2005-2008. The Strategic Plan identifies the provision of accessible, timely, efficient and effective justice and the entrenchment of integrity as quintessential values for an independent, modern and vibrant judiciary, as well as key priority areas for reform in the judiciary.

Judicial reform is part of the continuous development and modernization of the Kenya Judiciary to overcome its internal limitations and to make it more effectual and responsive to the changing needs and realities in the administration of Justice. The agenda for judicial reform began in earnest in 1992 with the establishment of a Committee on the Terms and Conditions of Service of the Judiciary. This was later followed by the 1998 Committee on the Administration of Justice and the Integrity and Anti-Corruption Committee of 2003. The recommendations of the three Committees have formed the basis for some of the critical reforms currently taking place within the Judiciary. However, the comprehensive reform of the Judiciary requires a cumulative, systematic and integrative strategy. This strategy calls for an assessment of the implementation of the recommendations of previous Committees and a review of the workings of the Judiciary generally, with a view to identifying and consolidating recommendations on further areas for reform. Furthermore, a regular appraisal of the Judiciary is necessary in order to improve and enhance measures geared towards the entrenchment of its integrity.

At the national level, judicial reform is an integral component of the larger constitutional, legal, political and governance reforms being pursued in the country. The Economic Recovery Strategy Paper 2003-2007, which is the current broad policy blue print for the Government of Kenya, emphasizes that an independent and effective judiciary is the lifeline for the rule of law and is the bulwark for the enjoyment of the rights, freedoms and liberties of

the people of Kenya. In this regard, it prescribes various measures for improvement of service delivery in the Judiciary. The appointment of this Sub-Committee is therefore an increamental effort in the realization of the broader national objectives of an accessible and efficient justice system.

1.2. The Terms of Reference of the Sub-Committee

The Sub-Committee's Terms of Reference were as follows:

1) to collect information relating to the integrity of the entire judiciary staff and court processes;

2) to investigate all cases of alleged corruption, unethical behaviour and other lack of integrity;

3) to study and report on the case for in-house intermediary disciplinary measures, and the process of punishment for breaches not warranting removal of a judge from office;

4) to examine and report on the orderly and efficient method consistent with the rules of natural justice for conducting investigation or inquiry into the fitness of a judicial officer to hold office or the guilt of a paralegal staff in corrupt or unethical practice;

5) to deliberate and report on the contents of the "Litigants Charter" to aid the comprehension of the process of the court by litigants;

6) to study and rationalize the previous Committees' Reports on the reforms in the Judiciary and recommend a codified and comprehensive reform matrix to entrench integrity; and

7) to report on its findings and recommend to the Hon. the Chief Justice any remedial action and necessary reforms for governance of and the entrenchment of integrity in the Judiciary.

The Sub-Committee was required to report to the Hon. Chief Justice by or before the 30th day of September 2005. However, this was not possible due

to the magnitude of the assignment. Consequently, the Sub-Committee requested for the extension of time, which the Hon. the Chief Justice graciously granted. Accordingly, the reporting date was extended from the 30th day of September 2005 to the 9th day of January 2006.

1.3. Interpretation of the Terms of Reference

The Sub-Committee considered its mandate under each of the terms of reference and determined that:

(i) in collecting information relating to the integrity of the entire staff and court process, it would be necessary to set out the broad parameters of the concept of judicial integrity. The parameters would then form the criteria for the evaluation of the level of integrity of the staff and the court process;

(ii) given the fact that it was required to conduct its proceedings with due regard to the rules of natural justice, the Sub-Committee would have to formulate its own rules of procedure;

(iii) in considering the case for an in-house disciplinary mechanism for judges, it would be critical to identify the weaknesses of the current system and to make proposals on ways of improving it without compromising the independence of the judiciary;

(iv) in considering methods for investigation into the fitness of judicial officers, the Sub-Committee would also consider the disciplinary sanctions that might be employed, devices for appeal and mechanisms to make the procedure more objective, responsive, realistic, accountable and accessible to the public;

(v) in order to express itself more eloquently, the Sub-Committee would prepare and append to the Report, a model 'Litigants Charter' that might act as guide in the implementation process; and

(vi) that in rationalizing previous Reports and proposing necessary reforms for the entrenchment of integrity, regard would also be had of the Strategic Plan, the on-going efforts to implement

previous Reports, and the need to identify, integrate and prioritise specific tasks for implementation of the recommendations of the Sub-Committee.

1.4. The Organization and Method of Work of the Sub-Committee

The Sub-Committee established its Secretariat at the Chief Justice's Boardroom at the Milimani Commercial Courts. The initial logistical planning was carried out within the first three weeks of its appointment after which the Sub-Committee began its work.

The Sub-Committee, through paid advertisements, invited presentations from the members of the public. In order to receive verbal and written presentations, the Sub-Committee held its sittings at various stations in the provinces. The dates of these sittings and the respective provinces in which the sittings were held are shown below:

Date	Provinces
11th of April- 25th April 2005 14th June- 17th June 2005	Nairobi;
3rd of May-13th of May 2005	Western Province;
16th of May-3rd of June 2005	Nyanza Province;
6th of June-17th of June 2005	North Eastern Province & Parts of Eastern Province and Lamu District in Coast Province;
20th of June-15th of July 2005	Rift Valley Province;
18th of July-29th of July 2005	Central Province;
1st of August-19th of August 2005	Remaining parts of Eastern Province;
22nd of August- 26th of August 2005	Coast Province other than Lamu District.

In the entire period of the Sub-Committee's work, members of the public were free to submit their memoranda to the Secretariat of the Sub-Committee.

During its sittings, the Sub-Committee received numerous oral representations and written memoranda on various aspects of its mandate. This information forms the basis of the recommendations of the Sub-Committee.

The Sub-Committee also undertook study tours to India (from the 19th to the 24th September 2005), the United Kingdom (from the 8th to the 15th October 2005) and New Zealand (from 12th to the 21st December 2005) to compare how the judiciaries in the three countries have dealt with the issues arising from the Terms of Reference of the Sub-Committee.

1.5 The Rules and Procedure of the Sub-Committee

The Sub-Committee established Rules of Procedure to regulate its business. The Rules broadly provide for the manner in which the Sub-Committee would receive information; the requirement for confidentiality in the proceedings of the Sub-Committee and in dealing with information received by it, and the powers of the Sub-Committee to summon any person and to compel the production of any books, files and documents necessary for its work. The Rules also provided for the manner of dealing with allegations of misconduct against any judicial officer including the members of the Sub-Committee. In this regard, a judicial officer against whom allegations had been made would have a right to be heard. Where allegations were made against any member of the Sub-Committee, such member would not participate in the proceedings deliberating on such complaint. To maintain veracity in the proceedings of the Sub-Committee, the Rules barred the consideration of anonymous complaints. The Rules of the Sub-Committee have been appended to this Report as Appendix I.

CHAPTER TWO

INTEGRITY OF STAFF AND COURT PROCESSES

2.0 The concept of Judicial Integrity

The integrity of staff and court processes is part of the larger concept of judicial integrity, which entails not only the integrity of judicial officers but also the institutional, structural and procedural aspects that operate to ensure that the judicial system is fair, efficient, and effective. Judicial integrity is essential for the fair, efficient and impartial administration of quality justice; the maintenance of the rule of law; the equitable and stable balance of power within the government and for the effective protection and preservation of the rights and liberties of the individual and property.

2.1 The Key Elements of Judicial Integrity

Various schools of thought suggest that the concept of judicial integrity, viewed in its broader sense comprises of the following key elements:

(i) guarantee of judicial independence;
(ii) institutional and operational independence;
(iii) financial independence;
(iv) the right to equality before the law and to a fair and impartial tribunal;
(v) access to justice;
(vi) fair, timely and effective enforcement of judgement;
(vii) security of tenure of judges and job security for other cadre of officers;
(viii) adequate qualification and objective and transparent system for selection of judicial officers;
(ix) objective and transparent promotion and transfer processes for judicial officers;
(x) objective, transparent, fair and effective disciplinary processes for judicial officers;

(xi) limited judicial immunity from civil and criminal suits;
(xii) competitive terms and conditions of employment for judicial officers;
(xiii) adequate training and continuing legal education for judicial officers;
(xiv) judicial freedom of expression and association;
(xv) high standards of judicial conduct and rules of judicial ethics;
(xvi) income and asset disclosure for judicial officers;
(xvii) conflict of interest rules;
(xviii) independent, objective, efficient and transparent court administration;
(xix) efficient judicial processes;
(xx) Judicial access to legal and judicial information; and
(xxi) public access to legal and judicial information.

These tenets are at the heart of the concept of justice and find their roots in both natural and positive law. They are acclaimed in various global and regional agreements and other instruments, and hold a pride of place in major constitutional systems of the world.

2.2 Integrity of Court Processes

The integrity of court processes refers to the degree to which structures, systems and processes in the judiciary facilitate the fair, transparent, efficient and qualitative administration of justice. The integrity of any judiciary, by a large measure, depends on the integrity of its court processes. This is because court processes, defined to consist of the procedures and practices of courts, are the mechanical aspects of justice, that every court user will interact with; and which determine, whether objectively or subjectively, the degree to which the principles of fair and efficient administration of justice, are fulfilled in respect of that court user.

The Sub-Committee received representations on the integrity of various aspects of the court process. Although in its considered view based on the representations received in various stations there was remarkable improvement in the administration of justice as a result of implementation of various reforms, there are certain areas, listed below, that still need to be addressed comprehensively and firmly, to complete the reform process.

2.2.1 Missing Files

The Sub-Committee received several complaints regarding instances of missing files leading to delays in the disposal of matters. The highest incidence of missing files was reported to be taking place at the hearing stage, during the execution process or when litigants request for proceedings. Missing of files has been a perennial problem of the judiciary and although it is attributable to the manual recording and filing systems of the Courts or the lack of due diligence on the part of certain officers, one cannot discount the fact that it may sometimes be a deliberate effort to frustrate the course of justice.

To address this anomaly, the Sub- Committee recommends:

(i) **the urgent computerization of court registries;**

(ii) **in the meanwhile, a file movement register should be introduced to track down the movement of files. All officers moving the files should strictly sign their names against the file;**

(iii) **results of both civil and criminal cases should be entered in the respective registers as soon as they are finalized; and**

(iv) **in the event of any missing file, a skeleton file to be reconstructed immediately not later than twenty-one (21) days after the file is reported missing. The practice note of the Registrar on reconstruction of files should be adhered to. After the expiry of the said twenty-one (21) days an official report should be made to the Registrar.**

2.2.2. Non-attendance of Witnesses

There were complaints that courts adjourn cases due to the mere non-attendance of witnesses. In certain cases, adjournments were allowed too many times than was reasonable. **The Sub-Committee recommends:**

(i) **that the courts should be firm on witnesses to ensure they attend court by issuing witness summons in appropriate cases;**

(ii) that witnesses should be bonded on time and there should be a close coordination between the police and the courts;

(iii) that where non-attendance is occasioned by failure by the police to bond witnesses on time, such matters should be dismissed for non- attendance of witnesses subject to the court ensuring that no miscarriage of justice is occasioned; and

(iv) that the consequences of non-compliance with court summons should be explained to the public. The Litigants Charter proposed elsewhere in this Report, should spell out the effect of non- attendance of court by witnesses.

2.2.3 Adjournment of Cases

The Sub-Committee received representations to the effect that sometimes, the courts adjourned matters without the knowledge of the parties. Consequently, litigants and witnesses turn up to court only to find that the court they were required to attend is not sitting. Further, official communication is not given that the court in question would not be sitting.

The Sub-Committee finds this practice inappropriate and wasteful and accordingly **recommends that adjournment of cases should as far as possible be communicated to the parties by telephone or other means. Further, appropriate notice should be placed at the entrance of court houses indicating the courts that would not be sitting and the cases that had been adjourned.**

The Sub-Committee received presentations that some cases do not proceed in the High Court because not all documents required are in the file due to the failure to undertake pre-trial management. This causes a lot of delay and is time wasting to the High Court. **The Sub-Committee therefore recommends that:**

(i) the deputy registrars in the High Court should have a checklist of all the documents needed before a case can proceed for hearing; and

(ii) deputy registrars should ensure that all documents needed for hearing are in the file and that all necessary steps have been taken before the file is forwarded to the judge for hearing.

2.2.4 Delays in Court Processes

There were complaints that judicial officers did not adhere to normal working hours. Delays in commencing court sessions and in delivering judgements are the norm. On their part, judicial officers explained that delays in the delivery of judgements were as a result of unrealistic workloads sometimes of up to fifty (50) matters in a day in certain stations. The judicial officers also pointed out that where there were too many cases listed, much time would be spent on adjourning them rather than disposing of them substantively.

The Committee recommends that:

(i) **judicial officers should adhere to the official working hours and failure to do so should be treated as a disciplinary matter;**

(ii) **institutionally, the judiciary should, through sensitization develop a positive work ethic;**

(iii) **a comprehensive time guideline for the various court processes including the delivery of rulings and judgements should be developed and issued by the Office of the Chief Justice;**

(iv) **the time guideline should incorporate a monitoring system to ensure that it is adhered to. This could be done by requiring judicial officers to note their pending judgments in the existing returns system; and**

(v) **ultimately, the judiciary should recruit adequate officers to handle the workload in the judiciary.**

2.2.5 Coordination between the Court and Other Agencies in the Justice System

Delays in the delivery of justice have at times been occasioned by lack of coordination between the judiciary and other agencies in the justice system such as the Prisons Department, the Police Department and the Probation Department. In this respect, the Sub-Committee heard that in a number of cases, the frustration of justice was not necessarily caused by the Judiciary but by the other agencies. Examples were given that sometimes, the Prison Department never takes suspects held in their custody on time to court; that the Police never bond witnesses or execute warrants on time; and that officers from the Probation Department do not bring their reports on time and are hardly in court to act on matters relating, for instance, to Community Service Orders. The Sub-Committee was also told that the failure by police officers to produce previous records of convictions on time and the failure of Probation and Community Service Officers to furnish the court with reports on the accused persons causes unwarranted delays in sentencing.

The Sub-Committee is of the view that the administration of justice requires a closer coordination between all the agencies involved in the justice system and to this end **recommends that:**

(i) **the judiciary should initiate and spearhead the development of multi-sectoral guidelines for the administration of justice. The Guidelines would list the expectations, duties and responsibilities of each agency in the administration of justice;**

(ii) **meetings between the judiciary and other stakeholders in the justice system should be encouraged in all court stations in order to cultivate a harmonious working relationship between them;**

(iii) **consideration should be made to locating Remand Prisons and court rooms in the same vicinity with a view to cutting down on the movement logistics; and**

(iv) **officers of the Probation Department should be required to be present in court during plea taking and to provide reports within a specified time.**

2.2.6 Control of the Fixing of Dates in Civil Cases

The taking of hearing dates in civil cases has largely been left to the litigants themselves leading to delay in the disposal of matters. Whereas the Sub-Committee appreciates that there may be wisdom in giving flexibility to parties in civil matters, to determine the timing and process of the resolution of their dispute, it is of the view that this freedom may be abused and the integrity of the judiciary undermined by clogging the judiciary with inactive cases. **We therefore recommend that the Civil Procedure Act and Rules should be amended to provide a time specific framework for the conclusion of all the stages in civil cases.**

2.2.7 The Right of Appeal in Criminal Cases

The accused person has an automatic right of appeal in criminal cases regardless of whether or not the appeal is meritorious. Whereas it is not the intention of the Sub-Committee to restrict accessibility to justice, the Sub-Committee **recommends that a preliminary process for weeding out unmeritorious appeals other than the summary rejection of appeals provided for in the Criminal Procedure Code (Chapter 75 of the Laws of Kenya), should be instituted.**

2.2.8 The Recording of Court Proceedings

Oral evidence is recorded in long hand by the trial Magistrates and Judges. This tedious process takes time and distracts the judicial officer from the issues at hand. It is possible that crucial aspects of evidence can be omitted in the record. In addition, this system is susceptible to abuse as the proceedings can be manipulated and crucial aspects of material evidence missed out. The Sub-Committee **recommends that:**

(i) **the on-going efforts to digitalise the recording of proceedings in all courts should be prioritized;**

(ii) where it is not possible to do so, palantypists should be employed; and

(iii) in the meanwhile, modern computers and adequate personnel should be employed to facilitate the production of proceedings.

2.2.9 Court Assessors

The Sub-Committee received submissions to the effect that delays in murder trials in the High Court were occasioned by the frequent non-attendance of assessors. The Sub-Committee has come to the conclusion that the full potential of the assessor system has not been realized in our court system and therefore **recommends that the institution of assessors should be abolished.**

2.2.10 Committal Warrants

The Sub-Committee noted that delays in some cases was as a result of committal warrants being endorsed and extended by court clerks without regard to the dates in the court files. This discrepancy means that inmates are not brought to court on the correct hearing dates. The Sub-Committee is of the view that this is an administrative matter that requires judicial officers hearing criminal matters to supervise their court clerks to ensure that committal warrants are endorsed with the correct dates. **The Sub-Committee therefore recommends that the Office of the Chief Justice should issue a practice note accordingly.**

2.2.11 Transparency in Court Processes

The hearing of cases and delivering of rulings and judgments in judicial officers' chambers or in places other than designated court premises, as opposed to open courts, has raised serious questions of transparency in the judiciary and the integrity of the judicial staff concerned. The failure of courts to publish court fees charts at places that are visible to litigants is also seen as an *indicum* of the absence of transparency in the judicial process.

The Sub-Committee agrees with the view that the judicial process should be as transparent as possible. The confidence of the public in the judiciary

would be greatly undermined if court processes are conducted in a manner that brings into question the substantive or apparent integrity of the system or the staff working in the judiciary.

The Sub-Committee therefore recommends that:

(i) **all matters including the delivery of rulings or judgements should as far as possible be transacted in open court; and**

(ii) **the judiciary should demystify the judicial process by providing to the public as much information as possible about court procedures and processes.**

2.2.12 Enforcement of judgements

The enforcement of judgments takes too long and is complex, cumbersome and is sometimes frustrated as a result of an inadequate and opaque legal framework; political and legal difficulties in enforcing judgements against the State and especially other institutions of Government; long delays in the enforcement process caused by lack of a time specific framework; inertia on the part of personnel involved in the execution process; excessive cost of enforcement of judgements; failure to receive a fair notice of court judgements; lack of access to information necessary to enforce judgements and lack of accountability by the executing agents.

Consequently, **the Sub-Committee recommends:**

(i) **that the law relating to the enforcement of court judgements including the law relating to the enforcement of judgements against the State should be reviewed with a view to consolidating it; making it more adequate, transparent efficient and cost effective; and increasing the control of the court in the enforcement process; and**

(ii) **that the law relating to agents for the enforcement of court judgements should be reviewed in order to define clearly the roles and responsibilities of enforcement agents, to establish enforceable standards and codes of ethics and to increase the control and accountability of the agents.**

2.2.13 Congestion of the Courts

Courts in Kenya are congested due to the lack of appropriate alternative mechanisms to resolve disputes. To ensure efficiency and to decongest the courts, the Sub-Committee **recommends that:**

(i) **small claims courts should be set up to speedily deal with matters that are not complicated and that involve small amounts of money;**

(ii) **petty crimes courts should also be set up to deal with petty crimes; and**

(iii) **alternative dispute resolution mechanisms should be incorporated into the court system by appropriate legislation and that reconciliation and mediation should be encouraged in the court process.**

2.2.14 Other Matters related to the Court Process

During the sittings of the Sub-Committee, observations were made that courts were inconsistent in the issuance and prescription of terms of bail/ bond. It was also pointed out that the storage, treatment and disposal of exhibits was haphazard. **The Sub-Committee is of the view that the matters raised require attention and accordingly recommends:**

(i) **that the Office of the Chief Justice should issue practice guidelines on bail and bond and on sentencing; and**

(ii) **that the Office of the Chief Justice should also issue practice guidelines on the management and disposal of exhibits.**

2.3 Integrity of the Staff of the Judiciary

The Sub-Committee received representations that some staff of the judiciary were involved in one or more of the following misdeeds:

(i) delay of the trial process;
(ii) delay in the delivery of judgments and rulings;

(iii) misplacement of files;
(iv) non-accounting for monies received from litigants;
(v) manipulation of official receipts;
(vi) drawing pleadings for litigants;
(vii) giving some preferential treatment to certain advocates and litigants;
(viii) irregular dealings with exhibits;
(ix) employment of relatives and friends;
(x) undue familiarity between judicial officers and litigants, and advocates;
(xi) undue familiarity between senior judicial officers and their junior staff members;
(xii) the 'shopping' for specific judicial officers to hear cases;
(xiii) the mis-listing or non listing of matters on the cause lists;
(xiv) entertainment of litigants in Chambers;
(xv) the indiscreet visiting of bars and pubs;
(xvi) the hearing of cases that are outside a particular court's jurisdiction;
(xvii) the unexplained adjournment of matters;
(xviii) outright wrong and unreasoned interpretations of the law or judgements;
(xix) the giving of certain matters preferential hearing dates without proper explanation;
(xx) giving ex-parte and at times final orders without observing the basic legal tenets;
(xxi) delivering judgements on dates other than those scheduled without adequate explanation; and
(xxii) the irregular registration of pleas.

Many of the examples listed here are breaches of the Code of Conduct and accordingly, **the Sub-Committee recommends:**

(i) **the strict supervision and enforcement of the Judicial Code of Conduct. Those guilty of breach should be subjected to the disciplinary procedure; and**

(ii) **the incorporation of integrity and anti-corruption strategies throughout the work of the judiciary.**

CHAPTER THREE

CASES OF ALLEGED CORRUPTION AND LACK OF INTEGRITY ON THE PART OF SPECIFIC JUDICIARY STAFF

3.0 Allegations of Corruption and Lack of Integrity on Specific Judiciary Staff

The Sub-Committee, pursuant to its mandate, received and investigated allegations of unethical conduct on the part of specific judicial officers. On the whole, the Sub-Committee received specific complaints against some judges of the Court of Appeal, judges of the High Court, magistrates, Kadhis and paralegal staff. The Sub-Committee, in accordance with its Rules of Procedure invited the judiciary staff concerned to respond to the allegations made against them. After a full consideration of the allegations and the defences of the staff concerned, the Sub-Committee has prepared a report on its findings together with its recommendations in respect of each judicial officer. However, to ensure that justice is done, and given the fact that further investigations may be necessary, the report is not included in this Report as it is not for dissemination to the public but both reports will nevertheless be submitted to the Hon. the Chief Justice at the same time.

The foregoing notwithstanding, representations received from the public indicated that since the Report of the Integrity and Anti-Corruption Committee of the Judiciary was released in September 2003, there has been a marked improvement in the integrity of the Judiciary. Unfortunately, the spirit of that Report has been demeaned by busy bodies that see it as a green light to ridicule the judiciary in the pretext of enforcing or ingraining integrity in the Judiciary. The view of the Sub-Committee is that the requirements of judicial integrity should not be used to bring ridicule to the Judiciary and accordingly **recommends that firm and deliberate action should be taken to remove busy bodies from court precincts and to restore the integrity of the judiciary.**

CHAPTER FOUR

DISCIPLINARY MEASURES AND PROCESS FOR JUDGE

4.0 Introduction

An independent and honourable judiciary and the preservation of the ru of law, depend on the maintenance of a high degree of discipline on the pa of judges as role models. The judicial independence and constitution protections that judges enjoy should not be an end in themselves. They mu be counterbalanced by an objective, transparent, fair and effecti disciplinary procedure to ensure accountability of judges. However, in th interest of justice, the disciplinary procedure should be set in the context the need to protect judicial independence. Generally, judges should only b subjected to the disciplinary procedure for serious misbehaviou disciplinary or criminal offences or incapacity that renders them unable t discharge their functions. While it is not every misdeed that justifies th removal of a judge, the dignity of the office necessitates the establishment mechanisms to deal with such cases.

The disciplinary procedure should not be used to challenge or call t question, the legality or correctness of any instruction, direction, orde judgement or other decision given or made by a judge in relation to leg proceedings. This would amount to an interference with the decision independence of judges. The proper way to proceed in these matters is t appeal or seek review of the decision of a judge to a higher tribunal. Judg the subject of disciplinary proceedings are entitled to the univers guarantees of a fair trial. The judge must have the right to be fully informe of the charges, to be represented at the hearing, to make a full defence, an to be judged by an independent and impartial tribunal.

4.1 Existing Disciplinary Procedures

Judges of the High Court and the Court of Appeal enjoy security of tenu under Section 62 of the Constitution of Kenya, and in terms of sectio 62(3) thereof may be removed from office only for inability to perform th functions of his/her office or for misbehaviour and cannot otherwise b removed except in accordance with the section. A judge can only b

removed from office by His Excellency the President if the Honourable the Chief Justice represents to the President that the question of the judge's removal has arisen and the President has appointed a tribunal which has investigated the matter fully and recommended to the President that such judge be removed.

As the law stands at the present time, the allegations or charges on the basis of which the President institutes a tribunal to investigate the conduct of a judge are presented to the President solely by the Chief Justice. In other words, it is the Chief Justice alone who decides that the allegations prima facie justify the removal of a judge from office. There is absolutely no indication or guidance under section 62(5) of the Constitution as to how the Chief Justice is expected to go about establishing a case for the removal of a judge. The matter is left entirely in the sole discretion of the Chief Justice and there would appear to be even no obligation whatsoever imposed on the Chief Justice's exercise of this power to observe the rules of natural justice. Accordingly, the absence of express constitutional or statutory provisions regarding the exercise of this power is open to abuse and can lead to a miscarriage of justice. It was clear from the submissions we received that there is now an urgent need to impose appropriate safeguards to avoid possible abuse of this power.

In order to assist us in making recommendations on the issue of removal of judges, the Sub-Committee reviewed the suggestions it received during the hearings and considered disciplinary procedures which apply to judges in several Commonwealth and other jurisdictions including Australia, Canada, England and Wales, India, New Zealand, Nigeria, Uganda and the United states of America, among other countries. In all these jurisdictions, we found that the disciplinary procedure is set out in clear rules of procedure that have their foundations in the principles of natural justice. We also found that international standards have been formulated on issues relating to judicial discipline. In this regard, we had occasion to consider the ***Bangalore Principles of Judicial Conduct*** as adopted and endorsed at the 59th Session of the United Nations Human Rights Commission at Geneva in April 2003 amongst other international instruments relating to this matter. We are satisfied that only a transparent disciplinary procedure can guarantee and ensure fairness both to the judge against whom complaints are brought and the complainant as well as enhance public confidence in the

process. Such a process would also discourage malicious and anonymo complaints intended, without justification, to ridicule, intimidate scandalize the Judiciary.

The Sub-Committee is also persuaded that there is need to establish a intermediary and informal mechanism to deal with misbehaviour for whic a judge need not necessarily be subjected to the disciplinary procedure bu which if not addressed, may bring the judiciary into disrepute. Such mechanism should avail judges an opportunity to resolve relatively mino problems of integrity before they escalate to serious cases of misconduct.

4.2 Recommendations of the Sub-Committee

The procedure of appointing a tribunal to investigate the conduct of a Judg is an old and common practice within the Commonwealth and we find n reason or merit to recommend its removal. For the reasons state hereinabove however, we do nonetheless recommend that:

(1) **section 62(5) and (7) of the Constitution be repealed an replaced with new provisions to the following effect;**

(2) **a Judges Complaints and Disciplinary Committe (hereinafter referred to as " the JCDC") be created an established to investigate allegations made against judge before they are made the subject of proceedings before tribunal. The "JCDC" shall make rules to regulate it business and its proceedings shall be private. Members of thi Committee should be:**

(i) **two (2) judges of the Court of Appeal elected by th judges of that Court;**
(ii) **three (3) judges of the High Court (at least one o whom shall be a lady judge) elected by judges o that Court;**
(iii) **a chairman appointed by the Chief Justice fro amongst its members; and**
(iv) **a secretary appointed by the Committee fro amongst its membership to record its proceedings**

(3) the Chief Justice as the Head of the Judiciary shall not be eligible for election as a member of the Committee but by virtue of his position and office shall continue to receive all complaints made against judges and to deal with those thereof which would not result in the removal of a judge from office. The Chief Justice may establish a permanent secretariat specifically to receive, screen and record complaints received against judges. The matters outlined in Appendix II hereof should be investigated as a matter of necessity;

(4) where complaints are not of such a nature as to result in removal of a judge, the Chief Justice may choose to speak or write to the judge involved and may take intermediary disciplinary measures on the lines suggested in Appendix III hereof. If the Chief Justice does not personally wish to speak or write to the judge against whom an allegation has been made, he may request the Chairman of the Peer Committee proposed in paragraph 14 below, to speak or write to the judge on his behalf;

(5) where in the opinion of the Chief Justice the allegation made against a judge is of such a nature as would justify a representation being made to the President for the dismissal of the judge concerned, the Chief Justice shall, in the first instance, refer the complaint to the "JCDC" for investigation and report;

(6) the charges to be faced by the judge before the "JCDC" shall be framed by the Chief Justice and forwarded to the Chairman of the Committee and the judge against whom a complaint has been preferred. The judge will be entitled to appear before the Committee and to cross-examine any witnesses called in support of the charges and shall also be entitled to be represented by counsel at his own expense;

(7) if after investigation the Committee finds the allegation not proved, the "JCDC" shall dismiss it and advise the Chief Justice accordingly. The Chief Justice shall then

communicate the result to the complainant and that will be the end to the matter;

(8) if, however, the Committee finds that there is substance in the allegation or complaint, the "JCDC" will inform the accused judge and the Chief Justice accordingly;

(9) upon receipt of communication from the Committee in terms of paragraph eight (8) hereof, the Chief Justice shall write to the Judge concerned informing him that in light of the decision of the Committee he intends to refer the matter to the President with a request to set up a tribunal to investigate the conduct of the judge. The Chief Justice will also explain to the judge the options open to him (for example to resign, retire or to face the tribunal);

(10) as regards the composition of the tribunal to investigate the judge, in the case of a judge of the Court of Appeal, the members shall be three (3) persons (one of whom shall be the Chairman) who hold or have held the office of a judge of the Court of Appeal, the Chairman of the Law Society of Kenya and a Senior Counsel. In the case of a judge of the High Court the membership shall be the same as in the case of a judge of the Court of Appeal other than that of the three (3) judges, two (2) shall be judges of the High Court one of whom shall be a lady judge. In both instances and as far as is reasonably practicable, seniority shall be observed to avoid situations where senior judges are investigated by their junior colleagues;

(11) where the judge being investigated is the Chief Justice, the tribunal shall be chaired by a sitting or retired Chief Justice from any Commonwealth country;

(12) while the judge is being investigated, he shall not be assigned any duties but shall be entitled to his full salary, allowances benefits and all the privileges pertaining to his office;

(13) at the tribunal, the charges against the judge shall be limited to those made against him before the "JCDC" and passed to the President by the Chief Justice. The tribunal shall make its findings and accordingly advise the President and the Chief Justice;

(14) a Committee to be known as the Judges Peers Committee (herein after referred to as " the JPC ") should be established immediately to deal with misbehaviour for which a judge need not be subjected to the disciplinary process. This Committee should have eight (8) members of whom at least three (3) shall be lady judges. Of the eight, three (3) should be judges of the Court of Appeal and five (5) judges of the High Court. Given the nature and mandate of the "JPC", the judges themselves must retain the freedom to decide who among them should sit on the "JPC";

(15) once both courts (the High Court and the Court of Appeal) have elected their representatives, the members should then meet and elect their Chairman and Secretary. As the "JPC" is intended to be a confidential and informal forum of equals, the judges should also retain the freedom to formulate the JPC's rules of procedure and to regulate its business;

(16) the membership of the "JPC" should be changed after every three years to give as many judges as possible an opportunity to serve on the Committee. To ensure continuity, one (1) judge of the Court of Appeal and one (1) of the High Court shall be re-elected from amongst the retiring members to serve for a second term of three (3) years. The judges so elected for a second term shall not be eligible for re-election thereafter;

(17) to encourage judges to make the best use of the "JPC" and to speak with candour, the Chief Justice should not sit on the "JPC" as in any event, the "JPC" may wish to consult him informally on any matter before it for advice and guidance;

(18) naturally and needless to say, if a judge ignores the advice of his peers, the matter should at that point be passed on formally to the Chief Justice to deal with as appropriate; and

(19) in making these recommendations, we are fully alive to the fact that measures relating to the "JCDC", if accepted by the Chief Justice, will require legislative action but the "JPC" can be established immediately because it can be instituted administratively by the Chief Justice.

CHAPTER FIVE

DISCIPLINARY MEASURES AND PROCESS FOR MAGISTRATES, KADHIS AND THE PARALEGAL STAFF OF THE JUDICIARY

5.0 Introduction

Magistrates and the paralegal staff of the judiciary are part of the public symbols of justice and the rule of law. They must individually and collectively uphold the judiciary as a public trust, and accordingly maintain its dignity at all times. Improper conduct and the lack of due diligence on the part of judicial officers (which in this Chapter excludes judges) erodes public confidence in the judiciary and impairs the fair and efficient administration of quality justice. The maintenance of integrity of the judiciary requires the presence of an elaborate system to receive and address complaints against members of the judiciary, and a fair and impartial disciplinary mechanism to deal with those guilty of serious misconduct. However, whereas it is desirable to deal with judicial officers who are guilty of misconduct, it is fundamental to ensure that the complaints and disciplinary procedures are employed to defend and not to defeat the very independence and integrity for which they were established.

5.1 Existing Disciplinary Procedures

The power to discipline magistrates, Kadhis and the paralegal staff of the judiciary is vested in the Judicial Service Commission. In carrying out its functions in this respect, the Commission relies on Regulations 16 and 31 of the Judicial Service Commission Regulations in the case of magistrates and Kadhis, and Regulations 22 and 44 of the same in the case of the paralegal staff. The Regulations are established under the Service Commissions Act (Chapter 185 of the Laws of Kenya). The Judicial Service Commission is also empowered by Section 38 of the Public Officer Ethics Act, 2003 to investigate and take action against magistrates, Kadhis and the paralegal staff of the judiciary who contravene the Code of Conduct.

The Judicial Service Commission Regulations set out the disciplinary procedure and sanctions that may be applied to an officer who is the subject

of the process. The disciplinary powers of the Judicial Service Commission are shared with the Chief Justice in the case of magistrates and Kadhis and with the Registrar, in case of the paralegal staff of the judiciary. In respect to the latter, the Commission has, except for paralegal staff in job groups PLS 10 and above, delegated its entire disciplinary powers to the Registrar, who exercises it with the Ministerial Advisory Committee. Paralegal officers in job groups PLS 10 and above are subjected to the same disciplinary procedures as magistrates and Kadhis. An officer who is found guilty of misconduct, may be surcharged, demoted, dismissed or retired in the public interest. The Commission may also defer, withhold or stop the salary increament that is due to an officer. An officer aggrieved by the decision of the Commission or of the Registrar may appeal against the decision to the Commission. A further right of appeal lies to the Commission, in respect of the second decision.

5.2 Weaknesses of the current Disciplinary Procedure

In the considered view of the Sub-Committee, the existing complaints and disciplinary procedure for magistrates, Kadhis and the paralegal staff of the judiciary has the following weaknesses:

(i) it lacks the independence and impartiality that is expected of such tribunals and justice and fairness cannot be achieved in such an arrangement. This is because the Chief Justice and the Registrar who prepare the charges also sit as members of the Judicial Service Commission to try them. If an appeal is preferred, the same persons sit to hear the appeal and if a second appeal is preferred, they also sit to hear and determine the second appeal;

(ii) the power vested in both the Chief Justice and the Registrar in the first instance, and the Judicial Service Commission is without regulation. The law leaves it to their discretion to decide whether to subject an officer to the disciplinary process and if they do so, what sanctions to apply including whether or not to retire the officer in the public interest;

(iii) the process does not grant officers against whom allegations have been made, opportunity to adequately defend themselves

including giving oral evidence and cross-examining the complainants;

(iv) decisions are based on correspondence and there is no express requirement that the Chief Justice or the Registrar furnishes the officer concerned with full particulars of the allegations made against him;

(v) the system is not accountable because the Commission is not under obligation to inform the complainant of its decision nor is it required to give the proceedings of its deliberations and the reasons for its decisions to the officer against whom complaints have been made; and

(vi) finally, due to its centralized nature, the mechanism is rigid and is unable to deal with cases that require immediate intermediary action.

5.3 Recommendations of the Sub-Committee

The Sub-Committee **recommends as follows:**

5.3.1 General principles of the Disciplinary Procedure

(i) that magistrates and Kadhis should be granted security of tenure because they perform judicial functions. Appropriate legislative amendments should be made to the Magistrates Courts Act and the Kadhis Courts Act;

(ii) that the disciplinary Committees herein provided for should be a permanent rather than an ad hoc feature of the judicial system and appropriate amendments to the law should be made to give the recommendations effect;

(iii) that disciplinary action should be taken promptly, fairly, consistently and in line with the rules of natural justice;

(iv) that disciplinary proceedings should be confidential in order to retain the integrity of the judiciary;

(v) that complaints about judicial decisions should not, per se, be entertained. However, improper conduct of a judicial officer during the course of a case may be the subject of complaints; and

(vi) that there shall be a distinct disciplinary procedure for magistrates and Kadhis, on the one hand, and the paralegal staff, on the other hand.

5.3.2 The Disciplinary Procedure for Magistrates and Kadhis

(i) that to save costs and ensure consistency, a permanent Disciplinary Committee of the Judicial Service Commission should be established to receive and deal with complaints relating to magistrates and Kadhis. The Disciplinary Committee should have a secretariat to facilitate its functions. The Disciplinary Committee shall delegate the power to take intermediary disciplinary measures to the presiding judge or head of station upon such terms as it may determine. The secretariat should have a criteria and mechanism for sorting out frivolous complaints so that only complaints that require serious consideration are placed before the Committee;

(ii) that the Judicial Service Commission shall appoint the members of the Disciplinary Committee consisting of a judge of the High Court who shall be the chairman, one (1) magistrate, one (1) Kadhi, one (1) paralegal staff of job groups PLS1-9 and one (1) paralegal staff of the job groups PLS 10 and above. The Chief Justice shall appoint one of the members as secretary to the Committee;

(iii) that the Disciplinary Committee shall regulate its own procedure and in doing so shall ensure that the rules of natural justice are adhered to;

(iv) that Peer Committees should be established in each region at different levels in the hierarchy to informally advise

colleagues. The Peer Committee need not act on any specific complaint. It may, on its own motion,caution an officer whose conduct raises concern. The members of the Peer Committee will be elected by the magistrates and Kadhis in the given regions. The presiding judge or head of station shall not be a member of the Peer Committee;

(v) that in order to foster the decentralisation and efficiency of the disciplinary mechanism, the presiding judge or head of station shall subject to the provisions of paragraph (i) above have the authority to take intermediary disciplinary measures against a magistrate or Kadhi who is alleged to have committed serious or gross misconduct as described in paragraph (xii) below;

(vi) that subject to the provisions of paragraph (i) above, the intermediary steps that the presiding judge or head of station may take shall include but may not limited to a reprimand, severe reprimand or interdiction. The presiding judge or head of station shall upon taking an intermediary disciplinary measure, report the matter to the Disciplinary Committee within fourteen (14) days for further action (if necessary);

(vii) that complaints relating to any magistrate or Kadhi should be made to the Disciplinary Committee. The complaints must be in writing and must give the identity of the complainant. The presiding judge or head of station may receive complaints and file them with the Disciplinary Committee;

(viii) that once the complaint has been received and found worthy of consideration by the Disciplinary Committee, the officer against whom a complaint has been received should be notified in writing of the allegations leveled against him. He should then be invited to give his version of the events orally or if he so chooses, by way of affidavit;

(ix) that the Disciplinary Committee should then weigh the evidence and decide whether the matter should be dealt with

informally or whether the formal disciplinary procedure should be commenced;

(x) that where the Disciplinary Committee decides to informally proceed with the matter, it may require the presiding judge or head of the station or the chairman of the Peer Committee of the region, to speak or write to the officer concerned and leave the matter at that;

(xi) that if a decision is made to commence the formal disciplinary procedure further investigations (if necessary) should be carried out promptly, evidence compiled and a formal hearing held in which the officer concerned may be able to cross examine the complainant or to explain himself. If there is no merit in the complaint, it will be dismissed and the complainant will be informed appropriately;

(xii) that for purposes of the disciplinary process recommended herein, misconduct may be classified into three categories, namely, minor misconduct, serious misconduct and gross misconduct. Minor misconduct could include but would not be limited to lateness, breaches of rules of conduct, e.g. entertaining litigants in chambers, failure to follow working practices and procedures, and misuse of office equipment. Serious misconduct could include, but would not be limited to refusal to follow a reasonable management instruction, threatening violent behaviour or language; use of working time for purposes unrelated to the job; unsatisfactory time keeping; unreasonable absences; abuse of sick absence procedures; inability to perform normal duties as a result of being under the influence of drinks or drugs, insubordination and intentional damage to property. Gross misconduct on the other hand could include but would not be limited to assault against other employees or members of public; fraud; theft; willful making of false statements in order to obtain employment; serious breaches of security; falsification of records; unauthorized disclosure of official information; corruption; sexual harassment, and breach of the Judicial Code of Conduct;

(xiii) that in the event that merit is found in the complaint made, then the seriousness of the offence should be determined having regard to the guidelines set out in paragraph (xii) above. To establish the presence or otherwise of misconduct, the allegations must be proved on a balance of probabilities;

(xiv) that if the Disciplinary Committee is of the opinion that a minor misconduct has been established, then it may reprimand, surcharge, suspend, interdict, demote, or withhold the salary or promotion of the officer against whom allegations have been proved. The Committee may also issue the first warning letter to the officer concerned. The warning letter should clearly indicate the findings of the Disciplinary Committee and the behavioral changes required. A copy of the letter should then be placed in the officer's file. The warning will be taken into further consideration if the officer is involved in further misconduct within twelve (12) months of the first warning;

(xv) that in cases of serious misconduct or where the officer concerned has been warned before, the Disciplinary Committee may issue the final warning letter. The letter should specify the improvement and behavioural changes that are required of him and the period within which this must be done. The letter should also clearly notify the officer that this is the second stage of the formal disciplinary process. This warning letter should be put in the officers file and may only be disregarded after twelve (12) months of good behaviour;

(xvi) that in cases of gross misconduct or where an officer has in existence a final warning letter, the Disciplinary Committee may dismiss the officer against whom allegations have been proved;

5.3.3 The Appeals Procedure

(i) that appeals against the decision of the Disciplinary Committee will lie to the Judicial Service Commission. The

Commission shall promulgate rules to regulate the appeal procedure;

(ii) that appeals must be filed within thirty (30) days of th communication of the decision of the Disciplinar Committee to the officer concerned. In communicating i decision, the Disciplinary Committee shall also furnish th officer, with a record of its proceedings and reasons of i decisions;

(iii) that the implementation of the decision of the Disciplinar Committee will be stayed until the end of the thirty (30) da if no appeal has been preferred. Where an appeal has bee preferred, the decision of the Disciplinary Committee shall b stayed until the conclusion of the appeal and th communication of the reasons and decision of the Judici Service Commission;

(iv) that once the appeal is filed, the Judicial Service Commissio shall determine the appeal expeditiously but in any even within sixty days (60) days of the filing of the appeal;

(v) that the Judicial Service Commission shall sit to hear th appeal by the officer concerned and shall avail him th opportunity to adequately defend himself. The Judici Service Commission may allow the production of furth evidence, if it deems fit to do so; and

(vi) that the decision of the Judicial Service Commission shall b final and once made the Judicial Service Commission sh communicate the same and the reasons thereof in writing the officer concerned.

5.3.4 The Disciplinary Procedure for the Paralegal Staff of th Judiciary

(i) that Peer Committees should be encouraged at all levels paralegal staff as a mechanism for informally sanctioning a

entrenching judicial integrity. Accordingly, two Peer Committees should be established: one for staff of job groups PLS 1-PLS 9, and the other, for staff of job groups PLS 10 and above. The staff within the respective categories shall elect the members of their respective Peer Committees. The Peer Committees shall, as far as possible, endeavour to have a presence in all stations in which the paralegal staff are found;

(ii) that the disciplinary and appeals procedure for staff of job groups PLS 10 and above, shall be the same as the one for magistrates and Kadhis described in parts 5.3.2 and 5.3.3 above except that reference to the Peer Committee will be construed to mean the Peer Committee established for the paralegal staff of the respective job groups;

(iii) that the complaints against paralegal staff of job groups PLS 1-PLS 9 shall be handled by the Inter-Departmental Disciplinary Committee consisting of all the heads of Departments of the Judiciary. The Committee shall be chaired by the Registrar and shall regulate its own procedure. The head of personnel matters shall be the secretary of the Committee. The Committee shall delegate the power to take intermediary disciplinary measures to the presiding judge or head of station upon such terms as it may determine;

(iv) that the presiding judge or head of station may receive complaints against any paralegal staff within this category and forward them to the Inter-Departmental Disciplinary Committee. In the intervening period, he may, subject to the provisions of paragraph (iii) above, take intermediary disciplinary steps against a paralegal staff who is alleged to have committed serious or gross misconduct as described in part 5.3.2 paragraph (xii) above;

(v) that subject to the provisions of paragraph (iii) above, the intermediary disciplinary steps that the presiding judge or head of station may take include but would not limited to a reprimand, severe reprimand or interdiction. The presiding

judge or head of station shall upon taking an intermediar disciplinary measure report the matter to the Inter Departmental Disciplinary Committee within fourteen (14 days for further action (if necessary);

(vi) that the Inter-Departmental Disciplinary Committee shal have power to impose sanctions and adopt similar procedure as those of the Disciplinary Committee described in par 5.3.2 hereof in dealing with complaints against the paraleg staff concerned;

(vii) that an appeal in respect of a decision of the Inter Departmental Disciplinary Committee shall lie to th Disciplinary Committee. There shall be no further appe from the decision of the Disciplinary Committee;

(viii) that the Disciplinary Committee shall adopt the rules procedure of the Judicial Service Commission, in dealin with appeals from the Inter-Departmental Disciplinar Committee.

CHAPTER SIX

THE LITIGANTS CHARTER

6.0 Introduction

Accessibility of information relating to the judiciary is one of the fundamental pillars of access to justice and an integral component of judicial integrity. Accessibility to information promotes transparency, accountability and the greater and more effective use of court processes. Information relating to the court processes may be packaged in different media for distribution to the people who need it. One of such medium is the Litigants Charter.

The Litigants Charter is a compilation of critical information for use by court users. Such information may include, but is not limited to basic information about the court system, court process and procedures, services provided by different judicial offices, information relating to the role of other agencies in the justice system, information on the rights and obligations of litigants in relation to the courts, procedures for recording complaints, information relating legal aid and so forth. By providing such information, the Litigants Charter demystifies the courts and court procedures and enhances their accessibility. A well informed litigant is an empowered litigant. He is able to make choices and decisions relating to the court process from a point of knowledge, and is able to take advantage of the opportunities in the law to advance the protection of his interests. On the other hand, an uninformed or misinformed litigant is a victim of the law because the law detests ignorance.

The Litigants Charter itself can be a barrier to accessibility to information if it is not comprehensive or if it is not presented in the language of the user. It is important therefore to ensure that the Litigants Charter provides all the necessary information and that it is presented in a language that the user can understand.

6.1 The case for a Litigants Charter in Kenya

The Constitution of Kenya guarantees the right to a fair trial before an impartial court. The enjoyment of this right by individuals depends on their

ability to access the courts. Unfortunately, accessibility to courts in Keny has been constricted by, among others, the lack of information an understanding of the working of the judiciary on the part of the individual who may potentially use the courts.

The need to improve accessibility to Kenyan courts by disseminatin information relating to the judiciary has been felt for a long time. Previou Committees on the Judiciary, such as the 1998 Committee on th Administration of Justice **("the Kwach Committee")** and the 200 Integrity and Anti-Corruption Committee **("the Ringera Committee")** identified the absence of adequate information and the low levels of literac on the court process, as some of the barriers to public access to justice. I addition, these factors contributed greatly to the corruption in the judician In particular, the Ringera Committee at page 18 of its Report conclude that

> **" It is a truism that a majority of persons who deal with th Courts as litigants, complainants or witnesses are ignorant o their procedural and substantive legal rights, entitlement and obligations or the consequences of their acts or omission in the eyes of the law. They do not know of the free servic they are entitled to and they do not know what Judici Officers and Staff are supposed to do or not to do.... suc ignorance was taken advantage of by judicial officer prosecutors, Paralegal Staff and even probation officers"**

In addition to previous findings, the Sub-Committee received furth representations to the effect that:

(i) majority of litigants are not aware of the services offered by th Judiciary;

(ii) court rules and procedures are too complex to understand;

(iii) lack of information relating to the judiciary and failure on th part of the judiciary to reply to letters has led members of th public to direct their complaints to the wrong persons or office

(iv) litigants are unaware of their obligations towards the courts and sometimes have misplaced expectations of them;

(v) the Judiciary is unfriendly and litigants still have immense phobia for the courts;

(vi) litigants do not know the role of other agencies in the administration of justice;

(vii) many court stations do not prepare cause lists and litigants find it difficult to trace the courts in which their matters are to be heard;

(viii) the fees for services offered by the Judiciary is still unknown to a majority of the litigants as information relating to former is not easily available;

(ix) litigants do not know how to deal with complaints against judicial officers. In particular, a number of them do not distinguish matters that may be the subject of complaints for purposes of disciplinary proceedings and those that may only be dealt with by way of appeal, review or revision;

(x) litigants are not aware of their rights in the client-advocate relationship and have been the subject of manipulation and exploitation;

(xi) many litigants had been sanctioned for disobeying the courts in instances they did not understand;

(xii) that the courts had refused to give advice or information to persons in custody;

(xiii) that there was mishandling of litigants who were genuinely seeking information;

(xiv) litigants, particularly in criminal appeals, are not aware of the progress of their appeals; and

(xv) the judiciary is still a closed institution compared to other ar of government. Whereas the latter have gone out to provi information on their policies and programmes, the judiciary h not done enough to open itself to the public and is considered be an ivory tower.

Upon a close analysis of the submissions, the Sub-Committee is convinc that there is an enormous information gap relating to the working of t judiciary that needs to be addressed.

6.2 The Recommendations of the Sub-Committee

The Sub-Committee, having regard to the submissions received, the practi of other government institutions as well as the practice in vario jurisdictions such as the United Kingdom, India and South Africa persuaded that there is great need to undertake a deliberate policy i disseminate information relating to the courts and the court process an accordingly **recommends that:**

(i) **the judiciary should develop a broad public information an education policy that would be under constant review t ensure that it is responsive to the needs of the time;**

(ii) **a department of public relations and communicatio incorporating the existing Public Relations Office should b created within the judiciary to increase the level of publi awareness of the judicial system;**

(iii) **the public relations and communication department shoul publish newsletters on a regular basis to educate the publi and to disseminate information on pertinent issues relating t the judiciary;**

(iv) **suggestion boxes should be placed strategically in every cou to enable the judiciary receive feedback on its services;**

(v) **the judiciary should prepare and distribute a Litigant Charter whose content should include but should not b limited to information relating to the following:**

(a) the structure and functions of the judiciary;
(b) the services provided by the various offices in the judiciary;
(c) the court system;
(d) the rights and obligations of litigants in the court process;
(e) the obligations and responsibilities of the judiciary and its staff to litigants;
(f) court fees and payment;
(g) the role and responsibilities of other agencies in the administration of justice;
(h) court procedures (criminal, civil, petitions, family matters);
(i) legal aid;
(j) where to direct complaints relating to advocates;
(k) the complaints procedure; and
(l) the contacts of various judicial offices and officers.

A model Litigants Charter has been appended to this Report as Appendix IV.

(vi) the Litigants Charter should as far as possible be availed in all major languages of the people of Kenya and should be made available in every court for easy accessibility to litigants at no cost;

(vii) information desks should be placed at strategic points in all courts houses to provide the necessary information to the public;

(viii) the judiciary should embrace a public education policy for the benefit of the people;

(ix) each court station should display the cause list at strategic locations at least one day before the case. In addition, efforts should be made to install electronic cause lists at the Court of Appeal and all High Court stations;

(x) each court station should summarise the court fees payable in respect of each item and display them at a strategic location in the court house; and

(xi) the judiciary should adopt a deliberate policy to reply to all correspondence within a reasonable period.

CHAPTER SEVEN

COMPREHENSIVE REFORM MATRIX FOR THE JUDICIARY

7.0 Introduction

The comprehensive reform of the judiciary and the effective entrenchment of integrity requires a review and rationalization of the recommendations of previous Committees on the Judiciary, and the concerted implementation of those that are outstanding as well the recommendations we have made.

7.1 Previous Committees and their Recommendations on the Judiciary

In its study, the Sub-Committee realized that numerous Committees had been appointed before and after independence, to study various aspects of the civil service, which until the early 1990s, included the Judiciary. The most relevant Committees, whose Reports the Sub-Committee studied were the following: -

(a) Flemming Commission Report, 1960
(b) Pratt Commission Report, 1963
(c) Miller – Craig Commission Report, 1967
(d) Ndegwa Commission Report, 1971
(e) Waruhiu Committee Report, 1979/80
(f) Ramtu Committee Report, 1985;
(g) Mbithi Committee Report, 1990/91;
(h) Report of the Committee to Inquire into the Terms and Conditions of Service of the Judiciary, 1991-1992 (the "Kotut Report");
(i) The Report of the Committee on the Administration of Justice, 1998(the " Kwach Report"); and
(j) The Report of the Integrity and Anti-Corruption Committee, 2003(the "Ringera Report").

Owing to the time that has elapsed since they made their recommendations, and due to their lack of specificity, the Sub-Committee found many of these reports to be out of context with current trends in the Judiciary. In the final

analysis therefore, the Sub-Committee concentrated on the Reports of the Waruhiu Committee, the Mbithi Committee, the Committee to Inquire into the Terms and Conditions of Service of the Judiciary, Committee on the Administration of Justice and Integrity and Anti-Corruption Committee. In addition to studying these Reports, the Sub-Committee found it also necessary to study the Strategic Plan of the Judiciary 2005-2008 in as far as it makes proposals for reform. The highlights of these Reports as well as the strategic activities mentioned in the Strategic Plan are presented in the following paragraphs.

7.1.1 The Waruhiu Committee Report 1979/1980

The Waruhiu Committee devoted Chapter XII of its Report to the Judiciary where it recorded three key recommendations. On the independence of the judiciary, the Committee proposed that the independence of the judiciary ought to be maintained and that the judiciary ought not be treated as an appendix of the office of the Attorney general. The Government accepted this recommendation in Sessional Paper No. 10 of 1980 and this need is partly captured in the current Constitution. On the terms of service of judicial officers, the Committee recommended that Judges and Magistrates ought to be on permanent and pensionable terms of service as a step towards enhancing their security of tenure. This was accepted by the Government and was implemented. On the localization of the judiciary, the Committee proposed the intensification of the training and recruitment of local lawyers to take over from the expatriate Magistrates and Judges. The Committee also proposed a training programme for clerical staff, executive officers and court interpreters. This recommendation is yet to be implemented.

7.1.2 The Mbithi Committee Report 1990/91

The Mbithi Committtee addressed the Judiciary in Chapter XI of its Report. In that chapter, the Committee recommended the decentralisation of the judicial service to provincial level and district level as the lowest possible level to aid administration of justice; the computerization of record keeping in the courts, and the strengthening of the Kenya School of Law to enable it offer specified and enhanced professional training to paralegal staff.

7.1.3 The Report of the Committee to Inquire into the Terms and Conditions of Service of the Judiciary Committee, 1991/1992

The Committee to Inquire into the Terms and Conditions of Service of the Judiciary 1991/1992, commonly referred to as **" the Kotut Committee"** was appointed to inquire into ways and means of establishing a structure of salaries, conditions of service and related benefits for the judiciary separate from those of the Civil Service. The Committee made several recommendations on the structure of the judiciary, recruitment and development of judicial personnel including paralegal staff, and the structure and other terms and conditions of service of judicial officers. An extract of details of these recommendations is appended to this Report as Appendix V. The implementation of these recommendations was charged on the Akiwumi Committee. The Committee was responsible for the formulation of the Judicial Service Staff Regulations, and the publication of Gazette Notice No. 3801 of 8th May 1995 signed by the then President by which the Judiciary ceased to be a part of the Civil Service, with respect to the terms and conditions of service of its staff.

7.1.4 The Report of the Committee on the Administration of Justice, 1998

The Committee on the Administration of Justice, popularly known us the **"the Kwach Committee"** was appointed on 7th January 1998 to review the administration of Justice in Kenya. In its Report presented later that year, the Committee examined and made various recommendations on strategies for the improvement of the administration of justice. The recommendations dwelt on *inter alia,* strategies to enhance judicial rectitude, court performance, physical facilities and equipment, security procedures, court administration and the management and disposal of cases. The details of the recommendations of the Committee are appended to this Report as Appendix V. The implementation of the Kwach Report was the responsibility of an implementation committee chaired by Hon. Mr. Justice J.E. Gicheru.

7.1.5 The Report of the Integrity and Anti-Corruption Committee 2003

The Integrity and Anti-Corruption Committee, which has come to be referred as " **the Ringera Committee**" was appointed on the 18th March 2003 to investigate the nature, level and impact of corruption in the judiciary and to recommend strategies for its detection and prevention. It was also required to investigate and identify corrupt members of the judiciary and to recommend disciplinary measures against them. The Committee presented its Report on the 30th day of September 2003. In the Report, the Committee concluded that corruption in its various forms was rooted in the judiciary and recommended various strategies for its detection and prevention. An extract of the findings and recommendations of the Committee is appended to this Report as Appendix V. The Ringera Report was partly implemented by the Judiciary Reform and Development Committee.

7.1.6 Strategic Plan 2005-2008

The Sub-Committee also considered the Strategic Plan for the Judiciary 2005-2008. The Strategic Plan is the blueprint for the reform of the Judiciary and was relevant to the work of the Sub-Committee in as far as it stipulated strategies and activities for the reform of various aspects of the Judiciary. The summary of the strategic objectives and strategies is appended to this Report as Appendix VI. In the formulation and implementation of these strategic activities, it is expected that many of the recommendations made by the various Committees will be implemented. The implementation of the Strategic Plan will be a joint effort between the office of the Chief Justice, the Judicial Service Commission, the Registrar of the High Court and other stakeholders.

7.2 Analysis and Rationalisation of the Recommendations of the Past Committees on the Judiciary

The analysis and review of the implementation of previous Reports is the precursor to the compilation of the comprehensive matrix for judicial reform. Accordingly, the Sub-Committee scrutinized previous recommendations on judicial reform and rationalized them into key

strategic areas on which proposals for judicial reform have hitherto focused. These strategic areas, which are discussed below, will form the material for the implementation matrix.

7.2.1 Judicial Independence

Previous reports have emphasized the need to entrench the institutional, operational and financial autonomy of the judiciary. To this effect, recommendations have been made that judicial officers should not participate in the District Development Committees, the District Security Committees and political gatherings and that the accounting system of the judiciary should be de-linked from that of the Provincial Administration. The President through Gazette Notice No. 3801 of 8th May 1995 de-linked the Judiciary from being part of the Civil Service, with respect to the terms and conditions of service of its staff. The Sub-Committee found that these recommendations had not been implemented satisfactorily and **would recommend that the same be implemented fully.**

Further, the Sub-Committee noted the recent trend in which members of other arms of government have failed to respect court decisions. The Sub-Committee is of the view that this threat to the independence of the Judiciary should be dealt with firmly and consequently makes the **following additional recommendations:**

(i) **an amendment of the current Constitution be made to vest judicial power directly in the Judiciary;**

(ii) **an amendment should be made to the Constitution to provide explicitly that court orders and decisions shall be binding on all persons, entities, organs and institutions of state to whom and to which they apply;**

(iii) **a Contempt of Court Act should be enacted to consolidate the law and procedure relating to contempt of court proceedings and to provide for more appropriate sanctions for disobedience of court orders;**

(iv) **that the finances of the judiciary should be a direct charge on the Consolidated Fund and that an appropriate and elaborate constitutional provision should be enacted to give effect to this recommendation; and**

(v) **that a fully-fledged and strengthened Accounts and Finance Department be established within the judiciary to handle matters relating to finance, budgeting and accounts.**

7.2.2 Judicial Service Commission

Previous reports have also made recommendations to the effect that the Judicial Service Commission being one of the organs to underpin the independence of the Judiciary, should be completely overhauled in order to make it more independent and inclusive. The proposals have been that the Chief Justice should chair the Commission whose membership should include, inter alia, a judge of the Court of Appeal, a judge of the High Court, a representative of the Law Society of Kenya, and representative of Kenya Magistrates and Judges Association. Each of these representatives should be elected by their peers. Other recommendations have been that the Judicial Service Commission should be independent of the Public Service and should have an independent secretariat.

The Sub-Committee received representations to the effect that the Judicial Service Commission should also have representatives from the magistracy and the paralegal staff.

The Sub-Committee concurs with these recommendations and urges that they should be implemented. Further, the Sub-Committee recommends the amendment of the Constitution to entrench the restructured Commission and the enactment of the proposed Judicial Service Bill to provide for the operations of the Commission. The Sub-Committee recommends further that the representative of the Kenya Magistrates and Judges Association must be a magistrate.

7.2.3 Court Structure and Administration

Previous recommendations relating to the structure and administration of the judiciary have dealt with the following variety of issues.

(a) Establishment of a Supreme Court

Previous Committee reports have proposed the establishment of a Supreme Court to strengthen the quality of decision making in the lower courts and also to act as a specialized court to deal with constitutional appeals. The Sub-Committee concurs with this recommendation and urges its implementation through an appropriate constitutional amendment and enactment of a Supreme Court Act to govern its operations. **The Sub-Committee also agrees that the membership of the court should be the Chief Justice who shall be the presiding judge and such number of justices of the Supreme Court not being less than six, as parliament may by law establish.**

(b) Administrative Structure of the Judiciary

There have been previous recommendations that the Judiciary should be divided into two divisions, namely, the Judicial Division and the Court Administrative Division. In the proposals, the Judicial division would consist of the Supreme Court, the Court of Appeal, the High Court and the subordinate courts. Each of these courts would in turn have a registrar to deal with their matters. On the other hand, the Court Administration Division would be headed by the Chief Court Administrator and would consist of six departments, namely, Accounts, Human Resources, Information and Technology, Security, Transport and Supplies, Planning Research and Development and Building and Maintenance. The departments would be headed by officers subordinate to the Chief Court Administrator. The Strategic Plan 2005-2008, has represented the proposed structure in a chart which we append to this Report as Appendix VII. To date, the office of the Chief Court Administrator and the Public Relations Office are in place. Other recommendations are yet to be implemented including the establishment of the respective departments.

The Sub-Committee is of the view that to improve efficiency and delivery of services, these proposals should be implemented with a keen eye on the need to decentralize as much of judicial services as possible.

(c) Divisions of the High Court

It was also recommended that the High Court in Nairobi should be split into four divisions, namely, the Family, Criminal, Civil and Commercial

and that each of these divisions should be headed by a senior judge an administered by a professionally qualified deputy registrar. Each of th divisions would also have their registries headed by a professionally qualifie deputy registrar. Judges appointed to the divisions would have to b transferred to other divisions every three (3) years.

On the whole, this recommendation has been implemented in Nairobi. Th **Sub-Committee recommends that the recommendation b implemented in other High Court stations where appropriate.**

(d) Appointment of Presiding Judicial Officers

Previous Committees have recommended the appointment of heads division, region or station to decentralize and facilitate the prop supervision of the administration of the Judiciary. Indeed the recommendations have been implemented. The heads of the various Hig Court divisions at Nairobi, station heads as well as presiding judges f judicial administrative districts are now in place.

Invariably, the tradition of the judiciary has been that the most senior jud or judicial officer automatically becomes the head of station or the presidi judge. This system presents some difficulties where the most senior judge judicial officer is not necessarily the most qualified to be appointed, or is n interested in assuming administrative functions. In other cases, it caus unnecessary administrative disruptions because once a more senior judic officer is posted to that station, the presiding judicial officer in place has concede to the new one.

The Sub-Committee recommends that in addition to the length service of a judge or judicial officer, the following other factors shou be put into consideration when appointing a presiding judge or head station:

(i) **relevant academic qualifications;**
(ii) **further training in relevant disciplines such administration, computer, accounting etc;**
(iii) **previous administrative experience;**
(iv) **integrity and previous conduct of judicial officer;**
(v) **performance appraisal of the judicial officer;**

(vi) the need to ensure consistency and succession in administration;
(vii) the need to encourage diversity;
(viii) the need to consult with other judicial officers, for example, in the Court of Appeal; and,
(ix) the need to respect and enhance the dignity of the office of the presiding judge or head of station by consulting him when decisions in respect to the station, division or region are to be made;
(x) the need to delegate specific administrative powers to the office of presiding judge or head of station to enable him effectively carry out his responsibilities;
(xi) the need to pay a remunerative allowance in recognition of the added responsibilities; and
(xii) the need to provide adequate office space and support facilities and other privileges.

(e) Court Vacations

Previous Committees were of the opinion that the existing court vacations for the superior courts were too long and ought to be reviewed in order to increase the time available for the disposal of court matters. Proposals were made that the court vacations occur between 16th to 30th April, 1st to 31st August and 21st December to 6th of January every year.

The Sub-Committee concurs with this recommendation and proposes that it be implemented.

(f) New High Court Stations

Previous Reports have called for the establishment of new High Court stations at Embu, Malindi and Garissa. These recommendations have been implemented except in respect to Garissa. **The Sub-Committee recommends that new High Court stations be established in Busia, Kericho and Garissa. Further, that a High Court Sub-Registry be established in Kitui with a visiting judge from Machakos High Court Station.**

(g) New Magistrates Courts

Previous Committee Reports have advised that Magistrates Courts appropriate jurisdiction should be established in a number of new are including in Samburu at Wamba and Baragoi; in Turkana at Lokichoggi in Tana River at Garsen; in Nairobi at Kasarani, Embakasi, and Waithak in Nakuru at Shabab; in Eldoret at Shauri Yako; in Kajiado at Ngong; Siaya at Yala and Ugunja; in Lamu at Hindi, Mpeketoni and t translocation of the current court to Mukowe; in Nyandarua at Ol Kalo and Tulaga; in Taita Taveta at Wundanyi; in Mount Elgon at Kapsakwon in Teso at Malaba and a night court at Jomo Kenyatta International Airpo to deal with petty criminal cases involving foreign travelers. Further, it h also been recommended that Magistrates Courts in Garissa, Lam Marsabit, Mandera and Lodwar should be manned by Magistrates of t rank of Senior Resident Magistrate and above, in order to enable them deal with the range of serious crimes found in those areas.

The Sub-Committee is aware that some of the court stations have be created and urges the full implementation of the recommendation. T Sub-Committee further recommends that visiting and satellite courts Marimanti, Kapsowar, Mpeketoni, Dadaab, Kakuma, Wamb Loitokitok and Mutomo should be converted into full stations. T Sub-Committee further proposes the establishment of a Kadhis Cou in Moyale.

(h) Divisions in the Magistrates Courts

There have also been proposals that criminal, civil and traffic divisions Magistrates Courts should be established in stations that have considera amount of work. The Sub-Committee is aware that this arrangement h been implemented in Nairobi and would **recommend that considerati be made for implementing the same arrangement in other maj stations throughout the country.**

(i) Kadhis Courts

Recommendations were also made that the entire structure and organisati of the Kadhis Courts should be re-examined. In particular, it has also be

recommended that Section 66(2) of the Constitution should be amended to require that persons for appointment as Kadhis should have a relevant degree in Islamic law .

The Sub-Committee agrees with the recommendations and proposes that they should be implemented. Further that persons for appointment as Kadhis should have a good knowledge of English, Kiswahili and Arabic. Successful applicants should also attend the Kenya School of Law for professional studies on laws of procedure.

7.2.4 Financial Autonomy and Administration

Proposals have been made on the need for the judiciary to maintain financial autonomy. In this regard, it has been recommended that each court should open an account to bank all monies collected in respect of Court fees, fines, deposits and forfeitures. The magistrate in charge of the station and the executive officer of the station would operate this account. In this arrangement, the transactions would be reported every week to the accounts controller at the head quarters.

These recommendations have largely been implemented but **the Sub-Committee recommends that deposits by litigants in civil cases and cash bail in criminal cases should also be banked at the courts' accounts. Reports of transactions relating to the accounts should also be made to the Registrar.**

7.2.5 Physical Facilities, Equipment and Stationery

The key recommendation in all the reports has been the need to ensure that the judiciary has adequate physical facilities, equipment and stationery to enable it undertake its affairs effectively. The following specific recommendations were made in these Reports in respect of physical facilities, equipment and stationery:

(i) court buildings should be kept in a good state of repair. Court houses in Kericho, Mukurweini and Eldoret were declared unfit for habitation and that they should be vacated and new ones built in their place;

(ii) that court designs should be standardized having regard to th need to ensure they are spacious enough to deal with needs of a ever expanding judiciary and are accessible to persons wit disabilities;

(iii) that each station should keep an up to date inventory of all asse including title deeds to land belonging to the judiciary. Furthe that officers who destroy equipment should be surcharged;

(iv) that the judiciary should investigate the grabbing of its land i Mombasa, Eldoret and Kisumu;

(v) that juvenile homes and remands should be built throughout th country;

(vi) that the distribution of supplies should be decentralised t stations;

(vii) that laptop computers should be provided to judges and a publi address system should be installed in the Court of Appeal;

The Sub-Committee noted that improvements had been witnessed in th supply of stationery and equipment especially in Nairobi. Judges of th Court of Appeal have been issued with laptop computers. **All in all, th Sub-Committee reiterates these proposals and recommends thei implementation throughout all stations in the judiciary. The Sub Committee makes the following further recommendations:**

(i) that the judiciary should construct court houses where ther are none or where the existing ones are not habitable;

(ii) that the processing of title deeds for land belonging to th judiciary should be finalized in respect of all stations; and

(iii) the Registrar should issue guidelines on the procurement o office equipment and supplies in line with the ne Procurement Act.

7.2.6 Management of Human Traffic and Security in Court Buildings

Previous Reports also made recommendations on the need to secure court buildings by the management and screening of human traffic coming into the courts and by providing adequate security to guard building during the day as well as in the night. Proposals were also made to the effect that a security department should be introduced in the judiciary with a view of coordinating security arrangements for judicial officers as well as the court buildings. Other security measures proposed were the introduction of plastic identification cards for the members of staff, the fencing of all court buildings and information desks to guide people through the offices in the court houses.

The Sub-Committee is aware that some of these recommendations have been implemented especially in Nairobi but would recommend that the same should be replicated throughout all court stations having regard to the specific needs of each station.

7.2.7 Establishment and Supervision of Judicial Personnel

Previous Committees were unanimous that the judiciary is understaffed and lacks mechanisms for the effective supervision of staff. The Sub-Committee received numerous representations to the effect that the number of judicial officers is way below the ideal. It was argued that this is partly the reason why there had been a backlog of cases in the judiciary. The Sub-Committee was also told that the problem was exacerbated by the resignations that followed the Ringera Committee recommendations.

The Sub-Committee concurs with these representations and recommends:

(i) **that personnel assessment and rationalisation should be undertaken so that the actual number of staff needed is ascertained and recruited; and**

(ii) **that a clear chain of command should be established throughout the judiciary. In this regard, paralegal officers should report to their head of department in each station**

while judges and magistrates in a station should be under th supervision of the presiding judge or head of station as th case may be.

7.2.8 Terms and Conditions of Service for the Staff of the Judiciary

(a) Salaries and Other Emoluments

Previous Reports strongly proposed that the terms and conditions of servic for judicial officers should be looked into with a view to making them mor competitive. The general feeling of those members of staff and members o the public who appeared before us was that the salary currently paid to th Magistrates and paralegal staff is far below the level required to ensur integrity and a corrupt free Judiciary and that the 200 % increase which ha been indicated should have been adhered to. The Sub-Committee was als told that other allowances paid to staff are too little and unrealistic. **Th Sub-Committee recommends:**

(i) **that magistrates, Kadhis and the paralegal staff be granted proper and adequate increament to their salaries;**

(ii) **that an upward review should be made of the allowances paid to all the judiciary staff; and**

(iii) **that salaries, allowances and schemes of service of all staff o the judiciary should be reviewed every three years by a independent panel appointed by the Judicial Servic Commission.**

(b) Schemes of Service

Recommendations in this respect have emphasized the need for the Judicial Service Commission to establish schemes of service for all employees in the Judiciary. The Sub-Committee is aware that the Judicial Servic Commission had commissioned some work in this regard and that the work is complete and accordingly **recommends that the proposed scheme should be implemented.**

(c) Recruitment and Promotion

Previous Reports have emphasized the need for a transparent and meritorious recruitment and promotion of judicial officers. In particular, they have required that all recruitments should be preceded by an advertisement and that the short-listing panel should not be the one interviewing the applicants. In addition, they also recommended that all applicants being considered should be vetted for integrity. The recommendations relating to advertisement of vacancies have been implemented except in the case of judges. The Sub-Committee however also heard that there were cases where the rule on advertisements had been broken. In respect to promotions, the Sub-Committee was told that the promotions took too long and were not effected in a transparent manner. **Accordingly, the Sub-Committee recommends that:**

(i) **vacancies for judges should be advertised;**

(ii) **the short listing of applicants in the case of judges should be done by a panel supervised by a judge of the Court of Appeal;**

(iii) **the interviews should be done by a separate panel from the one that short listed the applicants;**

(iv) **in case of magistrates, Kadhis and paralegal staff of job groups PLS 10 and above the short listing and interviewing panels should be chaired by a judge of the High Court. In the case of paralegal staff of job groups PLS 1-9, the short listing and interviewing panels should be made up of heads of departments. The heads of departments who sit in the short listing panels should not sit on the interviewing panels;**

(v) **a clear policy on the promotion of judicial officers should be developed;**

(vi) **whenever a vacancy arises for promotion of judicial officers, the same shall in the first instance be advertised internally. If the post is not filled, the same should be advertised for the general public; and**

(vii) **the list of applicants for promotion should also be short-listed and interviewed by separate panels appointed by the Judicial Service Commission.**

On the question of qualifications for appointment of judges and magistrates, previous Reports recommended that for appointment as a magistrate, a person should have a law degree from a recognized University and should have a minimum of five (5) years experience in the practice of law or other recognised field of law. For the judges, the proposal has been that the Constitution should be amended to require that judges should also be holders of a law degree from a recognized university and coupled with not less than ten (10) years experience as a magistrate or in the practice of law or other recognised field of law. **The Sub-Committee finds merit in these proposals and recommends that they should be implemented. Further, the Sub-Committee recommends that the Judicial Service Commission should formulate guidelines relating to the procedure, criteria and other matters to be considered in short listing and interviewing of applicants for vacancies in the Judiciary.**

(d) Transfer

Recommendations on transfer have been on the need to develop a transparent and predictable transfer policy. Previous Reports have proposed that judicial officers should be transferred on a regular but predictable basis of between three (3) to five (5) years. The Reports have cautioned the use of transfers as a disciplinary measure.

The Sub-Committee received numerous representations to the effect that transfer of judicial officers is haphazard. Some officers remained in a station for far too long while others were subjected to frequent transfers. The Sub-Committee also heard that the manner of effecting transfers did not avail time to judicial officers to finalise matters pending before them in court resulting in too many part-heard cases and delays. Having considered all these matters, **the Sub-Committee recommends that:**

(i) **previous recommendations on the establishment of a transfer and deployment policy for the Judiciary should be implemented;**

(ii) judicial officers or paralegal staff in hardship areas should not remain in one station for a period exceeding two (2) years. On the other hand, judicial officers and staff in other areas should not remain in one station or in the same region for more than three (3) years unless special circumstances to be recorded justify the exception;

(iii) officers due for their transfer should be granted a maximum transfer notice of three months or such shorter notice as may be expedient depending on the workload, to enable them complete matters pending before them. During this time, they should not entertain new matters; and

(iv) transfers should as far as possible be effected at the end of the year.

(e) Housing

Previous Reports have recommended the provision of adequate housing or in the alternative, the payment of adequate housing allowance to judicial officers. The Government policy at the moment has been to pay house allowance rather than providing housing for its employees. As a result, the Sub-Committee found out that some judicial officers were living away from their work stations. For example, the Sub-Committee found out that a Magistrate at Nyeri was living at Nanyuki, some at Machakos were living in Nairobi and one at Kerugoya was living in Embu.

The Sub-Committee strongly recommends that the government should provide housing for judicial officers at their work stations. Where this is completely impossible, it should review the house allowances to ensure that what is paid reflects the market rates to enable judicial officers live in decent housing at their work stations. Further, the Judiciary should extend house loans on concessionary rates to all the staff of the judiciary.

(f) Medical Scheme

Previous Committees also proposed the establishment of an appropriate medical scheme for judicial officers. The Sub-Committee is aware that a

medical scheme is in place for members of the Judiciary although it receive representations to the effect that the scheme was inconsistent. **The Sub Committee accordingly recommends that the medical scheme should b reviewed to ensure that it meets all needs of the members of th judiciary and their immediate family and that it is taken with reputable underwriter.**

(g) Security

Previous Reports have also made recommendations to the effect that Judge and magistrates should be provided with adequate security at their home and chambers. Although this recommendation has been implemented in th case of judges, many magistrates and Kadhis are without security and w **accordingly reiterate the recommendation and urge that it should b implemented. Further, the Sub-Committee recommends th establishment of a Security Department and a Police Unit of th Judiciary. The officers in the Police Unit of the Judiciary shoul undergo relevant training whereafter, they shall be deployed in th Judiciary. Officers under the Police Unit of the Judiciary shall be unde the control of the Judiciary.**

(h) Transport

On transport, the key recommendation of previous Committees has bee that judges and Magistrates and Kadhis of the rank of Principal Magistra should be provided with official transport. In addition, it has also bee recommended that all court stations should have adequate transport f their work. **The Sub-Committee reiterates these recommendations an urges that they should be implemented. Further, the Sub-Committe recommends that:**

(i) **paralegal staff other than those for whom official transpo has been provided should be paid transport allowance; and**

(ii) **the Judiciary should extend car loans at concessionary rates all its staff .**

(i) Training

The development of a continuous training policy for judicial officers has been recommended by previous Committees. These Reports proposed that judicial officers should undergo training on computer technology, judicial ethics and on new legal developments. They also proposed that new judges and magistrates should go for orientation courses before they can begin their work.

The Sub-Committee learnt that a Judicial Training Committee is in place and a number of courses have been conducted for paralegal staff. Judges have also attended a number of seminars. **To strengthen the training function of the judiciary, the Sub-Committee recommends:**

(i) **the elevation of the training Committee into a department of the judiciary and the provision of adequate resources for its work;**

(ii) **the establishment of a Judicial Training College with the appropriate number of officers to evaluate training needs and to mount necessary training for judicial officers. In the meantime, the Kenya School of law should develop a curriculum for continuous legal education for the judiciary;**

(iii) **that judges , magistrates and the paralegal staff who are newly appointed to the judiciary should undergo a mandatory induction course before they could start working;**

(iv) **that the judiciary should encourage further education for its staff;**

(v) **that training and seminars should be conducted in such a manner as to ensure that all officers benefit; and**

(vi) **that continuous legal and other training should be compulsory for the judiciary.**

(j) Retirement of Judicial Officers

Previous reports have sought the review of the retirement ages for both judges and magistrates. In respect to judges, the proposal has been that compulsory retirement age for judges should be reduced from seventy-four (74) to seventy (70) years while voluntary retirement could be allowed at sixty-five (65) years. In cases of magistrates, the proposal has been that their compulsory retirement age should be elevated to sixty-five (65) years while their voluntary retirement age can be left at fifty-five (55) years. In respect to retirement benefits, the proposals have been that judges and magistrates should retire with the benefit of their full salary and that judges should in addition be entitled to transport, personal security and domestic servant.

The Sub-Committee agrees with previous recommendations on the retirement of judicial officers. The Sub-Committee further recommends that:

(i) an appropriate retirement and benefits scheme be developed and implemented for the judiciary; and

(ii) retired officers should be paid their retirement package expeditiously, upon retirement.

7.2.9 Judicial Ethics and Discipline

Previous reports made recommendation on the need to establish a judicial Code of Conduct and a disciplinary mechanism as a permanent feature of the judiciary to deal with complaints against judicial officers. Recommendations were also made to the effect that corruption prevention Committees and suggestion boxes should be introduced in all stations.

The need to establish a permanent mechanism to deal with misconduct has been addressed elsewhere in this Report and we are satisfied that the recommendations we have made will address the problem identified by previous Committees.

The Judicial Code of Conduct has been in place since the year 2003 but we are of the view that the same is not adequate and **accordingly recommend that:**

(i) **the breach of the Code of Conduct and Ethics should be a disciplinary matter to be handled in accordance with the disciplinary procedure proposed in this Report or otherwise as may be provided by law;**

(ii) **the Code of Conduct should make more practical and elaborate definitions of conflict of interest to ensure that all situations of possible conflict are covered;**

(iii) **the requirements for income and asset disclosure should be made more elaborate to ensure that the information given in the disclosures is adequate enough to identify the property, and that the information is accessible to members of the public; and**

(iv) **the Judicial Service Commission, which is the relevant Commission in this case, should have a clear procedure for collecting, systematising and disclosing the information.**

The Sub-Committee noted that there have been cases in which litigants have expressed their reservations as to the impartiality of the presiding judicial officer but the presiding officers have insisted on going on to hear the case. The Sub-Committee agrees that in many cases, there might not be a good reason for the judge to be biased. However, impartiality is also about perception. If a litigant is of the opinion that the presiding judicial officer may be influenced by other considerations, the right thing to do in the circumstances might be to step down in order that justice may be seen to be done in respect of the litigant who may have registered his or her reservations.

The Sub-Committee therefore **recommends that in the interest of the independence of the judiciary, the Office of the Chief Justice should issue guidelines on the impartiality of judicial officers in order to correct the situation.**

7.2.10 Allocation and Management of Cases

The previous Committees recommended the need to introduce a transparent and realistic system for the allocation of cases. Proposals were

made that the cause lists should be manageable and that judicial officers should have a day off every week to write their judgements. They further proposed that in order to deal with the backlog of cases, interlocutory matters should be dealt with by the registrars and that Commissioners of Assize should be appointed to deal with old cases. Proposals were also made to the effect that judges should deal more firmly with interlocutory applications and applications for adjournments and that the pecuniary jurisdiction of magistrates should be enhanced, to relieve the High Court of much of the work.

The Sub-Committee agrees that there is need for these measures and recommends the implementation of previous recommendations by way of administrative directives and appropriate amendments to the law. In respect to the assignment of cases, the Chief Justice should develop a policy for the transparent assignment of cases. A lottery system or the use of the alphabetical order of the names of the judicial officers are some of the systems that can be considered. Officers assigned cases should not be removed except for good cause such as conflict of interest or excessive workload.

7.2.11 Court Performance, Monitoring and Evaluation

In addition to case management techniques, previous Committees have proposed the need to establish a system of performance appraisal of judicial officers and a monitoring and evaluation system for the entire judiciary to measure the performance of various aspects of the judiciary as well as the impact of judicial reform. In respect to performance appraisal, the Committees have favoured the introduction of case returns while for monitoring and evaluation, the preponderance of opinion was that an inspectorate unit of the judiciary should be established.

The Sub-Committee is convinced that individualized performance appraisal as well as a monitoring and evaluation framework is necessary for the judiciary and accordingly recommends that previous recommendations in this regard should be implemented.

7.2.12 Court Registries and the Management of Court Records.

Recommendations in respect to court registries have dwelt on the need to make the registries more efficient and secure in their operations. Recommendations have also been made on the need to promote the electronic recording of evidence. The Sub-Committee concurs with the recommendations of other Committees that professionally qualified staff should man the registries and that the same registries should be computerized to promote efficiency. The Sub-Committee is also in agreement that registry clerks should be properly trained and effectively monitored to curb corruption. In addition, the Sub-Committee **recommends the development of a records management policy for the judiciary which will clearly state the duties and responsibilities of the registry and the registry officials in relation to judicial records. The policy should provide details on what records are to be kept, and by whom; the process of accessing those records and the long-term preservation of the records. The Policy should also be clear on who would be responsible for court records in each registry and the hierarchy of reporting in the management process.**

7.2.13 Court interpreters and Process Servers

There have been recommendations on the need to properly train and adequately support the work of court interpreters and process servers. **The Sub-Committee agrees with the recommendations that this category of staff should be properly trained and posted to all stations. Court process servers should be provided with appropriate means of transport for their duties.**

7.2.14 The Criminal and Civil Processes

Previous Committees have emphasized the need to ensure that the criminal and civil process is efficient. In this respect, proposals have been made for the abolition of the summons for directions, committal proceedings and the requirement for consent to prosecute in certain criminal cases. Recommendations have also been made to the effect the criminal prosecution should be detached from the police and all prosecutors in the Police Department should be absorbed by the office of the Director for Public Prosecutions.

The Sub-Committee notes that these recommendations have been implemented except the recommendation on consent to prosecute in certain cases which should also be implemented without further delay.

7.2.15 Access to Justice

Recommendations aimed at improving access to justice have also been made. Proposals for the reduction of court fees, public education on the rights, privileges and obligations of litigants have also been made. The Committees also proposed the need to take measures to ensure that courthouses are accessible to physically challenged persons. **The Sub-Committee agrees with these recommendations and urges that they should be implemented. Further, the Sub-Committee recommends that:**

(i) **a public legal aid fund be established through legislation to administer legal aid throughout the country;**

(ii) **in the meanwhile, advocates should be encouraged to take up a number of pauper briefs; and**

(iii) **court rules and processes should be reviewed regularly to ensure that they are simple enough to understand. The same should also be communicated to the public by means of a Litigants Charter as proposed in Chapter Six hereof or through other appropriate means.**

7.2.16 Accessibility to Judicial Information

Previous Committees considered and recommended on the need to ensure that all High Court stations had fully equipped libraries and that other stations were provided with adequate basic legal texts such as statutes and law reports. The establishment of an institution to undertake law reporting was also proposed.

The Sub-Committee noted that the recommendations relating to the provision of library services and law reporting had been implemented and had lead to improvement in the quality of justice. The National Council for Law Reporting is in place and a Libraries Committee is also in place to deal with library matters.

The Sub-Committee would like to point out that accessibility to judicial information addresses both accessibility of information by judicial officers as well as the members of public. Given the principle of stare decisis, judges and magistrates should have adequate and reliable access to legal and judicial information. Members of the public also should have adequate and reliable access to quality legal and judicial information including laws, procedural information, court decisions, judicial vacancies and information on the disciplinary process etc.

The Sub-Committee is aware that the complete automatisation of the judiciary is yet to take place and therefore much of the information from one station may not be easily available in another judicial station.

The Sub-Committee **agrees with the measures proposed in the Strategic Plan 2005-2008 for the strengthening of the National Council for Law Reporting and library services; for the full computerization of the judiciary and for the provision of internet services in all judicial stations. Further, the Sub-Committee recommends that judges be provided with research assistants qualified in law to undertake background research on cases that the judges are handling in order to improve the quality and reduce the time taken in the delivery of judgements.**

7.3 Other Matters

There are other matters that the Sub-Committee considered necessary for the full entrenchment of the integrity of the judiciary and upon which the Sub-Committee felt compelled to make recommendations as they touched on matters discussed in this Chapter. These matters are the following.

(a) Judicial Freedom of Expression and Association

Judges and other judicial officers like other citizens, are entitled to the freedom of expression, belief, association and assembly. However, in exercising such rights, judicial officers should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. Professional organisations set up by judicial officers are important because they effectively contribute to the

promotion, protection and defence of the interests and independence of the judiciary. Professional organisations for members of the judiciary can play a key role in judicial reforms.

The Sub-Committee noted that the association of judges and magistrates in Kenya is not strong or vocal enough. The Sub-Committee is also aware that the freedom of association and assembly for judges and magistrates is subject to the restriction that they must seek the authority of the Chief Justice in certain circumstances before they could exercise such rights. The Sub-Committee is of the view that a less restricted judiciary with a strong and vibrant professional association would play a great role in the development of the judiciary and **therefore recommends that:**

(i) **judicial officers should be encouraged to form and participate effectively in their professional organisations. In this regard, the Kenya Magistrates and Judges Association should be strengthened particularly in relation to activities that would contribute to their welfare and professional development; and**

(ii) **the paralegal staff of the judiciary should be encouraged to form a welfare association.**

(b) Pending Judgements by Retired Judges

The Sub-Committee received presentations to the effect that there were cases that were heard by the judges who retired in 2003 but which either were not completed or judgement not delivered. The Sub-Committee was also told that the files in these matters could not be traced. As a consequence, the litigants involved have been denied justice.

The Sub-Committee recommends that:

(i) **the Office of the Chief Justice be pleased to cause to be written to all the retired judges requiring them to surrender all files that may be in their custody in order that any pending judgements may be written and delivered in accordance with the appropriate rules of procedure; and**

(ii) **those matters that had not been heard should be listed for hearing.**

(c) Poor management of Registries

The Sub-Committee received submissions that there were some registries that were poorly managed and controlled. This has led to instances of missing files, mistreatment of litigants and creating opportunity for corruption. While no specific and direct allegation of corruption and lack of integrity of the registry staff was made, we concluded that there is inadequate supervision of the registry staff consequently leading to poor service to litigants. This was particularly so in Bungoma and Murang'a registries. **We therefore recommend that the registries at these stations and others with similar problems be streamlined.**

(d) Burnt Files

The Sub-Committee received presentations on the difficulty experienced by litigants whose files were destroyed or otherwise misplaced after judgement, and who would like to appeal against the judgements or orders. This is particularly so in respect of files destroyed in fire incidents in registries at Kerugoya, Nakuru, Nyahururu and Sotik. **We found that these were genuine concerns and recommend that the office of the Chief Justice gives guidance with a view to reconstruction of civil files and in collaboration with the Police, criminal files be reconstructed. Further, concerning the civil cases involved, where it may be necessary to file the matters afresh, the filing fee should be waived.**

(e) Children in Adult Prisons

The Sub-Committee received presentations to the effect that there were children held in adult prisons. This is against the Childrens Act (Act No. 8 of 2001). **We recommend that judges and magistrates regularly visit prisons to ensure that no children are kept with adult prisoners. The Office of the Chief Justice should issue instructions to this effect.**

(f) Private Process Servers

The Sub-Committee noted that some private process servers were abusing their positions by engaging in other activities detrimental to the integrity of the Judiciary such as posing as advocates to unsuspecting and ignorant litigants. **The Sub-Committee recommends that:**

(i) **all process servers should be carefully vetted, interviewed and successful ones issued with process servers certificates renewable annually ;**

(ii) **a private court process server or a process server employed by an advocate who wishes to renew his certificate should include in their application, an affidavit from the advocate deponing to the fact that the process server concerned works with the advocate and that he is a suitable person for appointment as a court process server;**

(iii) **the Registrar should revoke the certificate of any process server who is engaged in any misconduct and refuse to renew the certificate if the process server has been involved in matters prejudicial to the integrity of the judiciary; and**

(iv) **the process servers should be closely monitored by the nearest court.**

(g) Police Statements

Presentations were made to the effect that the statements made to the police by witnesses in criminal cases are supplied to the accused on payment of photocopying charges. Such statements are necessary for the preparation of the defence of the accused person. The requirement to pay photocopying charges amounts to a denial of justice in cases where persons are unable to afford the charges. **The Sub-Committee recommends that witness statements should be supplied to accused persons at government expense.**

(h) Standardisation of Fines in Traffic Offences;

The Sub-Committee received presentations that a lot of time is wasted by litigants who have been charged with minor traffic offences for which they would plead guilty but for which they have to wait for the files to go through the court process before they pay the fines. We find that these are genuine concerns. **In order to expedite these cases, we recommend that the Traffic Act be amended to provide for specific fines for minor offences and the collection of these fines to be streamlined.**

(i) Training for Land Disputes Tribunals

The Sub-Committee received presentations that there were a number of land cases handled by the Land Disputes Tribunals that were brought back to court due to mistakes made by the Tribunals. This results in delay in the finalisation of cases and leads to backlog in the courts. These mistakes could have been avoided if the members of the Tribunals were trained. **To give them capacity to deal with land matters effectively, we recommend that the judiciary should liaise with the parent ministry so as to have them trained on their powers and procedures when handling land matters.**

(j) Disposal of Cases involving Children

If cases in which children are involved take long, there is a danger that they may forget the evidence or may be subjected to the trauma of the offence for too long particularly in cases of defilement. There is need therefore for these cases to be fast tracked in the courts. **The Sub-Committee therefore recommends that the Chief Justice should issue directions advising that these cases should be given priority.**

(k) Duty Judge

The sub-Committee received presentations to the effect that judges should not serve in the Duty Judge's Court for a very long time as this may open opportunity for mischief or create the perception of corruption. This practice was particularly common in Nairobi Central Registry. In order to expose as many judges to the duties of the court as possible and to eliminate any temptation of impropriety on the part of the judge, the **Sub-**

Committee recommends that judges should serve in the Duty Judge's Court on a rotational basis with each rotation lasting not more than three (3) months.

7.4 The Comprehensive Matrix for the Entrenchment of Integrity in the Judiciary

The comprehensive entrenchment of integrity of the judiciary requires the reform of the various institutional, structural and procedural aspects of the judicial processes to ensure that they contribute and facilitate the transparent, efficient, fair and quality administration of justice. Our analysis of previous Reports and consideration of the submissions we received, has left us with a number of core objectives that the entrenchment of integrity must address. Under each objective, we have identified what needs to be done in order to achieve that objective. Finally, we have allocated duties and responsibilities to various offices within the judiciary in order to encourage initiative. We did not consider allocating time duration for the achievement of these objectives because we were convinced that many of the activities can be undertaken simultaneously and the allocation of time may be distorting the real picture. In any event, we realized that there were many other reform activities in the pipeline and which will come to fruition sooner than latter thereby cutting down any time that might be ascribed to these activities. However, it was necessary to list these details, if for any thing, to ensure the task ahead is crystal clear.

We are encouraged that many of the reforms that have been implemented in response to the proposals of the previous Committees have begun to bear fruit. There is no doubt that the full implementation of the matrix below will change the entire administration of justice in this country. We encourage the judiciary to build coalitions with other relevant institutions and persons, to ensure the matrix is fully implemented.

In our view, having studied previous Committees' Reports and having considered the submissions we received, we are convinced that the most important thing that the judiciary needs to commit itself to is the implementation of the recommendations made by the previous Committees as well as those we have made in this Report.

Duty Judge's
not more than

of Integrity in

ry requires the
aspects of the
facilitate the
justice. Our
bmissions we
ntrenchment
dentified what
have allocated
ry in order to
ation for the
at many of the
n of time may
ere were many
e to fruition
be ascribed to
ls, if for any

implemented
begun to bear
matrix below
country. We
e institutions

and having
at the most
if to is the
Committees

THE COMPREHENSIVE REFORM MATRIX FOR ENTRENCHMENT OF INTEGRITY IN THE JUDICIARY

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
1.	**Entrench the Independence of the Judiciary**	Amend Constitution to vest judicial power in Judiciary,	CJ/AG/Parliament
		Amend Constitution to emphasize that all decisions of court are binding on all persons including organs of state	CJ/AG/Parliament
		Enact a Contempt of Court Act to consolidate the law relating to contempt of court and to enhance punishments	CJ/AG/Parliament
		Amend Constitution to provide that expenses of judiciary will be a direct charge on consolidated fund	CJ/AG/Parliament
2.	**Strengthen the Judicial Service Commission**	Restructure the membership of the Judicial Service Commission and entrench it in the Constitution	CJ/AG/Parliament
		Enact the Judicial Service Act to provide operation of the Commission	CJ/AG/Parliament
3.	**Establish the Supreme Court**	Amend the Constitution to establish Supreme Court	CJ/AG/Parliament
		Enact Supreme Court Act to the routine of the Supreme Court	CJ/AG/Parliament
4.	**Reform administrative Structure of Judiciary**	Establish the Judicial Division of the Judiciary consisting of the Supreme Court, Court of Appeal, High Court and Subordinate Courts	CJ
		Recruit and deploy Registrars in charge of the Supreme Court, Court of Appeal, High Court and Subordinate Courts	CJ/RHC/JSC

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
		Recruit and deploy Registrars in charge of the Supreme Court, Court of Appeal, High Court and Subordinate Courts	CJ/RHC/JSC
		Establish the Court Administration Division of the Judiciary consisting of the Accounts Department, Information and Technology Department, Transport and Supplies Department, Planning Research and Development Department and Building and Maintenance Department by rationalizing existing Departments and creating those that do not exist	CJ/RHC
		Strengthen Office of Chief Court Administrator and appoint principal officers to take charge of the Departments	CJ/RHC/JSC
		Enact the Administration of Courts Act to provide for the administration of Courts	CJ/AG/Parliament
5.	**Review and improve the running of the Duty Judge s Court**	Establish rotas of not more than three (3) months for the Duty Judge s Court	CJ
6.	**Review Court Vacations**	Amend the Judicature Act to provide for the new Court vacations; i.e., 16th to 30th of April, 1st to 31st of August and 21st of December to 6th of January of every year	CJ/AG/Parliament

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
7.	**Establish new Magistrates Courts**	Establish Magistrates courts of appropriate designation in Samburu at Wamba and Baragoi; in Turkana at Lokichoggio; in Tana River at Garsen; in Nairobi at Kasarani, Embakasi, and Waithaka; in Nakuru at Shabab; in Eldoret at Shauri Yako; in Kajiado at Ngong; in Siaya at Yala and Ugunja; in Lamu at Hindi, Mpeketoni and the translocation of the current court to Mukowe; in Nyandarua at Ol Kalou and Tulaga; in Taita Taveta at Wundanyi; in Mount Elgon at Kapsakwony; in Teso at Malaba and a night court at Jomo Kenyatta International Airport	CJ/RHC
		Establish permanent magistrates courts in marimanti, Kapsowar, Mpeketoni, Daadab, Kakuma, Loitokitok , Mutomo, and Kadhis Court in Moyale	CJ/ RHC
8.	**Establish Juvenile Homes and Remands**	Establish juvenile homes and remands throughout the country	MOHA
9.	**Review jurisdiction of Magistrates Courts in certain areas**	Magistrates Courts in Garissa, Lamu, Marsabit, Mandera, Kerugoya and Lodwar should be manned by Magistrates of the rank of Senior Resident Magistrate and above	CJ/RHC
10.	**Review structure and organization of the Kadhis Courts and the qualification for a appointment as Kadhi**	Review structure and organization of Kadhis Courts	CJ/AG/Parliament
		Amend Constitution to require an Islamic law degree in the appointment of Kadhis	CJ/AG/Parliament

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
11.	**Streamline financial administration**	The payment of all litigants deposits into the courts accounts	CJ/RHC/ MoF
12.	**Maintenance of court buildings**	Repair all courts houses especially the ones in Kericho, Eldoret and Mukurweini	RHC
13.	**Prepare inventory of Assets**	Prepare and inventory of all assets of each station	RHC/ Presiding Judge/Head of Station
		Surcharge judicial officers who have destroyed , mishandled or lost property	RHC/ Presiding Judge/Head of Station
		The acquiring of title deeds to all land belonging to judiciary	RHC/ Presiding Judge/Head of Station
14.	**Investigate grabbing of land belonging to the judiciary**	Investigate grapping of land belonging to the judiciary in Mombasa, Eldoret and Kisumu	CJ/RHC
15.	**Improve the procurement and distribution of stationery and Supplies**	Decentralize the distribution of stationery and supplies	RHC
16.	**Management of Human Traffic and Security of Court buildings**	Establish Security Department for the Judiciary	CJ/RHC
		Establish a Security Unit for the Judiciary	CJ/AG/MoIS/Cabinet/ Parliament
		Construct fences around all court buildings	RHC
		Establish systems for screening of visitors coming into buildings	RHC
		Provide identification Cards to all employees of the Judiciary	RHC

		STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING

		Construct fences around all court buildings	Parliament RHC
		Establish systems for screening of visitors coming into buildings	RHC
		Provide identification Cards to all employees of the Judiciary	RHC

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
		Establish information desks in court house to guide court users	RHC/PRO
17.	**improve the supervision of judicial personnel**	Undertake a personnel assessment and rationalization of the entire judiciary	RHC/Heads of Department
		Recruit new judicial officers to fill the staff shortage	CJ/RHC/JSC
		Deploy at least two (2) Magistrates in every Station	CJ/RHC
		Review the establishment of judges in Mombasa High Court to four (4) and post an additional Judge	CJ/RHC
		Establish clear reporting systems in each court station	CJ/RHC
18.	**Review and develop competitive terms and Conditions of Service for Judicial Officers**	Grant proper and adequate salary increament to magistrates and other paralegal staff	JSC/ MoF
		Establish and implement competitive schemes of service for Magistrates and other judicial Officers	CJ/RHC/JSC
		Advertise all vacancies for Judges	CJ/ JSC
		Establish and implement a clear recruitment and promotion policy for magistrates and other paralegal staff	CJ/ JSC
		Review the qualification for appointment of Magistrates to require at least 5 years of experience in the practice of law or other relevant areas of law	JSC
		Develop and implement a transfer and deployment policy	CJ/RHC/ Consultant
		Transfer all judicial officers who have stayed in their station for more than three (3) years	CJ/RHC

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
		Provide housing to all judges and Magistrates or in the alternative (which is discouraged) pay house allowances commensurate to the market rates and the status of the respective judicial officers	CJ/RHC/MoF
		Review the medical scheme against the needs of the members and to ensure the insurer is secure	RHC/JSC
		Provide adequate security to all Magistrates and Kadhis of the rank of principal magistrate and above	CJ/ RHC
		Provide official transport for all Magistrates and Kadhis above the rank of Principal Magistrates	CJ/RHC
		Establish and implement a continuous training policy for all judicial staff	CJ/RHC/JSC/ Consultant
		Develop a curriculum for continuous training of judicial officers	CJ/RHC/Consultant
		Establish a Training Department within the Judiciary	CJ
		Establish a Judicial College for the training of the Judiciary	CJ/AG/ Parliament
19.	**Review of qualifications for appointment of Judges and Magistrates**	Review the qualification for appointment of Magistrates to require a law degree and at least 5 years of experience before appointment of as a Magistrates	JSC
		Amend the Constitutional provisions relating to qualification for appointment of a judge to requires that persons for appointment should have a law degree from a recognized university and at least ten (10) years experience	CJ/AG/ Parliament

		STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING

	for appointment of Judges and Magistrates	Amend the Constitutional provisions relating to qualification for appointment of a judge to requires that persons for appointment should have a law degree from a recognized university and at least ten (10) years experience	CJ/AG/ Parliament

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
20.	**Review of the retirement age and benefit for Judges and Magistrates**	Amend the Constitution to allow Judges to mandatorily retire at the age of seventy (70) years but with the option of voluntarily retiring at sixty-five (65) years	CJ/AG/ Parliament
		Review the retirement age of Magistrates to a mandatory retirement age of sixty-five (65) but with the option of voluntary retirement at fifty-five (55) years	CJ/AG/ Parliament
		Develop and implement an appropriate retirement benefits scheme for the Judiciary	RHC/JSC
21.	**Review and Strengthen the implementation of the Judicial Code of Conduct**	Review the Judicial Code of Conduct and the Public Officer Ethics Act to make more elaborate and provisions on conflict of interest and disclosure of information	JSC/AG/ Parliament
		Review the sanctions for the breach of the Code of Conduct to provide that disciplinary measures will be taken against persons guilty of breach of code of Conduct	JSC
		The issuance of practice guidelines on impartiality and the exercise of judicial discretion	CJ
22.	**Improve the allocation and management of cases**	Establish and implement a transparent system for the allocation of cases	CJ
		Appoint Commissioners of Assize and magistrates to deal with backlog of cases	CJ/JSC/ President
		Review the pecuniary jurisdiction of Magistrates to reduce the number of cases being filed at the High Court	CJ

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
		Office of Chief Justice to issue practice guidelines on the management of interlocutory applications and applications for adjournment	CJ
		Establish a case tracking and management system for the judiciary	CJ/ RHC
23.	**Establish and implement monitoring and evaluation systems for the judiciary**	Establish and implement performance appraisals for all judicial officers	RHC/ Heads of Department
		Establish and implement a monitoring and evaluation framework for the Judiciary	CJ/ RHC/ Planning Department/ Consultant
		Establish an Inspectorate Unit for the judiciary	CJ
24.	**Improve court registries and the management of Court records**	Development and implementation of court records management policy	CJ/RHC
		Computerization of all court registries	RHC/Procurement Department
		Recruitment and deployment of professionally qualified staff to take charge of registries	JSC/RHC
		Electronic recording and preservation of records	CJ/RHC
		Streamline operations of registries at Bungoma and Murang a	RHC
25.	**Court interpreters and process servers**	Recruit, employ and train adequate Court Interpreters and Court Process Servers for all stations	RHC/JSC
		Provide appropriate transport for Court Process Servers in their work	RHC
		Establish regulations relating to the recruitment, conduct and supervision of Court Processes Servers	RHC

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY

25.	**Court interpreters and process servers**	Recruit, employ and train adequate Court Interpreters and Court Process Servers for all stations	RHC/JSC
		Provide appropriate transport for Court Process Servers in their work	RHC
		Establish regulations relating to the recruitment, conduct and supervision of Court Processes Servers	RHC

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
26.	**Improving access to justice**	Establish a Legal Aid Fund to administer legal aid in both criminal and civil matters throughout the Country	CJ/AG/ Parliament
		Enhance the pauper briefs system	CJ/AG/LSK
		Review and simplify Court Rules and Procedures	CJ/ Rules Committee
		Upgrade PROs office into a full Public Relations and Communication Department	CJ/RHC
		Review Court fees downwards	CJ/RHC
		Standardize fines for minor traffic offences	CJ/ KRA/Minister for Transport
		Abolish charges for witness statements	CJ/ Police Commissioner/ MoF
27.	**Improving access to justice for children**	Issue directions to all courts on the need to expedite cases in which children are involved	CJ
		Issue directions to all courts on the need for judges and magistrates to visit prisons regularly to ensure that children are not kept in the same prisons confinement with adult inmates	CJ
28.	**Appropriately deal with cases pending as a result of retirement of judges**	All retired judges with court files of cases pending before them be required to return them for appropriate action	CJ

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
29.	**Accessibility to judicial information**	Undertake the full computerization of the Judiciary	RHC
		Recruitment and employment of Research Assistants for Judges	RHC/JSC
		Install internet services in all court stations	RHC
		Strengthen the role of the Library Committee	RHC
		Provision of library services in all High Court stations	RHC/Library Committee
		Provision of basic legal texts in all other court stations	RHC/Library Committee
		Develop and implement a broad public information and education policy	RHC/ PRO/ Consultant
		Prepare and distribute the Litigants Charter	RHC/ PRO
		Summarize the court fees and display them on strategic locations in court houses	RHC/ Presiding Judge/ Head of Station
30.	**Enhance judicial freedom of expression, association and Assembly**	Encourage the strengthening of the Kenya Magistrates and Judges Association	RHC/ CJ
		Encourage the establishment of a welfare association for the paralegal staff	RHC/ CJ

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	AGENCY

	2nd Assembly	Encourage the establishment of a welfare association for the paralegal staff	RHC/ CJ

	OBJECTIVE	STRATEGIC IMPLEMENTATION	AGENCY
31.	Entrench integrity in court processes	Development and implementation of multi-sectoral guidelines for the administration of juice to improve coordination between the judiciary and other agencies in the justice system	CJ/ Prisons Department/ Police Department/ AG/ CSO/ LSK/Probation Department
		Amendment of the Civil Procedure Act and other Rules of procedure to provide a time specific framework for the conclusion of all stages in civil cases	CJ/ Rules Committee
		Establishment of a preliminary process to weed out unmeritorious appeals	Task Force/ CJ/AG/ Parliament
		Digitalisation of Court proceedings	RHC
		Abolition of the court assessors system	CJ/AG/ Parliament
		Establishment of practice guidelines on bail / bond	CJ
		Development and implementation of sentencing guidelines	CJ
		Establishment of practice guidelines for the treatment and disposal of exhibits	CJ
		Reform of the law relating to enforcement of court judgements to achieve transparency, efficiency and cost effectiveness	CJ/AG/ Parliament
32.	Establish and implement appropriate disciplinary procedures for all staff of the judiciary	Amendment of Section 62 of the Constitution to provide for a Judges Complaints and Disciplinary Committee	CJ/AG/ Parliament

	OBJECTIVE	STRATEGIC IMPLEMENTATION ACTIVITIES	IMPLEMENTING AGENCY
		The establishment of the Judges Peer Committee	CJ
		Amendment of the Magistrates Courts Act to provide for the security of tenure for judicial officers	CJ/AG/ Parliament
		The establishment of the Disciplinary Committee of the Judicial Service Commission	JSC/AG/ Parliament
		The establishment Peer Committees for Magistrates and Kadhis	CJ
		The establishment of Peer Committees for the paralegal staff of the Judiciary	CJ/ RHC

APPENDIX I

RULES OF PROCEDURE
(Under Chapter One)

1. The hearings of the Committee shall be held *in camera* – in confidence.

2. Without leave of the Committee, no complaint, evidence, submission, comments or any document presented to the committee shall be published, or in any way disseminated to the public.

3. Any person against whom a complaint, allegation, or in any other way is adversely mentioned shall be entitled to be heard by the committee in person, if he so wishes and may adduce material evidence on his behalf in connection with the matter before the committee.

4. Any person who makes a complaint and/or allegation against any judicial officer may be required to supply the full particulars of the allegation, which may include any document, books or files in support of the allegation.

5. The committee shall not consider any allegation unless the complainant has provided his name and address. The committee will not entertain anonymous complaints.

6. The committee may summon any person or persons to appear before it and answer questions or produce any books, files or documents the committee may request.

7. The committee will receive information or evidence in the following form:

    - Oral testimony before the committee
    - Memoranda
    - Written submissions

- Affidavit or commission
- Information

8. The committee may call for any file, document or any other record it deems it fit to ensure justice and fair play, provided the committee may require the deponent or author of the memorandum to appear before it to clarify any issues orally arising thereof, or further in writing.

9. The Chairman shall be the official spokesperson of the committee.

10. The members of the committee and all those involved shall keep information received confidential and shall not divulge it to any person or persons without the written authority of the Chairman.

11. In the event that a complaint is made against any member of this Sub-Committee, then such member will withdraw from the meeting and the remaining members will hear the complainant.

12. The committee may in the course of its mandate amend, add to, repeal or otherwise adjust the rules or procedure as the demands of the work may require.

APPENDIX II

MATTERS FOR INVESTIGATION BY THE CHIEF JUSTICE
(Under Chapter Four)

The following are the matters that the Chief Justice should inquire into whenever they are raised in respect of a judge. If any one of the allegations is proved, the judge concerned would be the subject of the removal procedure. The list is not exhaustive but is only meant as a guide. These matters are: -

(i) Misbehaviour;
(ii) Incapacity;
(iii) Incompetence;
(iv) Failure to comply with training requirements;
(v) Persistent failure to comply with sitting requirements without good reason;
(vi) Habitual intemperance;
(vii) Willful and perpetual failure to perform duties;
(viii) Sustained failure to observe the standards reasonably expected from a holder of such office.

APPENDIX III

INTERMEDIARY DISCIPLINARY MEASURES THAT THE CHIEF JUSTICE MAY TAKE

(Under Chapter Four)

The following is a list of intermediary measures that the Chief Justice may take in cases that, in his opinion do not oblige the invocation of the disciplinary procedure. They are meant as a guideline and not an exhaustive list–

(i) Speak to the judge concerned/private admonition;
(ii) Ask the Peer Committee to speak to the judge concerned;
(iii) Give formal advice;
(iv) Give formal warning or reprimand;
(v) Demand a written assurance to reform;
(vi) Ask the judge to offer an apology to the complainant;
(vii) Impose limitations on the performance of judicial duties;
(viii) Defer disciplinary sanction on condition that the judge complies with conditions or limitations on future conduct;
(ix) Censure the judge for misconduct;
(x) Require the judge to complete a probationary period pursuant to conditions deemed appropriate;
(xi) Follow a remedial course of action; and
(xii) Take any other appropriate action in the circumstances.

APPENDIX IV

MODEL LITIGANTS CHARTER

(Under Chapter Six)

Introduction

Our Constitution guarantees the rights of every person to a fair and independent judiciary to facilitate the settlement of their disputes. As a corollary of this right, each and every person has a right of access to information relating to the judiciary and how it operates in facilitating the administration of justice. This Charter is prepared by the judiciary in recognition of this fact and with a view to improving the accessibility of our courts.

This Charter is a summary of the basic information you need to know to enable you access and make use of court services effectively.

The Judiciary and its functions

The Judiciary is one of the three arms of Government established under the Constitution. The judiciary is independent from the other arms of government. Its mandate is the fair, efficient and timely administration of justice. The Judiciary administers justice through the courts.

The Vision of the Judiciary

The vision of the Judiciary is to be an independent and accessible provider of quality justice for all.

LEGAL
COURT LIBRARY
NAIROBI

The Mission of the Judiciary

The mission of the Judiciary is to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the constitution of Kenya.

The Core Values of the Judiciary

- To cherish and defend the independence of the Judiciary,
- To uphold integrity and honesty in administration of justice,
- To be fair, timely and efficient in dispensing justice,
- To provide service that is accessible and affordable to all, and
- To promote the spirit of teamwork in a friendly, courteous and responsive environment.

The Commitments of the Judiciary

The Judiciary is committed to the following policy priorities:

- To enhance and promote timely, efficient and effective administration of Justice;
- To promote Law and Order;
- To ensure accessible justice to all;
- To fight against corruption, poor governance and unethical practices;
- To enhance case law reporting;
- To attract, develop and retain competent staff;
- To automate the Judicial processes especially recording of proceedings;
- To improve infrastructure especially expanding the court facilities;
- To reduce case backlog;
- To reduce the cost of litigation;

Our Standards of Service at the Judiciary

At the Judiciary the staff shall:

- Deal with you professionally and accord you fair and equal treatment irrespective of your race, gender, socio economic status, disability and other attributes;
- Identify themselves by name and wear name tags;
- Address you directly with respect and dignity whether you have legal representation or not;
- Treat you courteously and apologise when things go wrong;
- Give you accurate, consistent and up-to-date information about your case i.e. hearing dates and other procedure issues; and,
- Provide reasonable decision.

The Structure and Organisation of the Judiciary

The Judiciary is divided into two units. The technical unit, which comprises of the courts, and the administrative unit which consists of various departments of the judiciary, namely, Administration, Personnel, Accounts, Procurement, Planning, and Library services, Information and Communication Technology and the National Council for Law Reporting (NCLR). The Judicial Service Commission addresses terms and conditions of service for the Judiciary.

Charts showing the court and organizational structures of the judiciary are annexed at pages 93 and 94.

The Courts System

The Court system in Kenya consists of the Court of Appeal, the High Court, the Magistrates Courts and Kadhis Courts

The Court of Appeal

The Court of Appeal is the highest court in the land and established under Section 64 of the Constitution. Its function is to hear appeals from the High Court in certain matters. .

The Court of Appeal is situated in Nairobi but it periodically holds its sessions in Mombasa, Kisumu, Nakuru, Nyeri and Eldoret.

The High Court

The High Court is the second court in the hierarchy. It is established under Section 60 of the Constitution. The court may hear both criminal and civil matters.

The High Court in Nairobi has the following specialized divisions:

- Family Division
- Criminal Division
- Civil Division
- Commercial Division
- Constitutional and Judicial Review Division.

There are fifteen (15) High Court stations in the country. These are Nairobi, Milimani, Kisumu, Kisii, Bungoma, Kakamega, Nakuru, Eldoret, Kitale, Embu, Nyeri, Mombasa, Malindi, Meru, Machakos with sub registries in Kericho and Busia.

Magistrates Courts

Magistrates Courts are created under the Magistrates Courts Act (Chapter 10 of the Laws of Kenya). They handle civil and criminal matters depending on the rank of the magistrate. The higher the rank of the magistrate, the bigger the case he can handle. The hierarchy of Magistrates in descending order is as follows:

- Chief Magistrate
- Senior Principal Magistrate
- Principal Magistrate
- Senior Resident Magistrate
- Resident Magistrate
- District Magistrate.

There are one hundred and five (105) Magistrates Courts in the country that are stationed at the following district or divisional levels: City Court in Nairobi, Nairobi Law Courts, Milimani Commercial Courts Nairobi, Kibera, Makadara, Ukwala, Bondo, Siaya, Nyando, Nyamira, Keroka, Ogembo, Homa bay, Migori, Oyugis, Rongo, Ndhiwa, Tamu, Kisii, Maseno, Kehancha, Winam, Mumias, Butere, Butali, Hamisi, Bungoma, Sirisia, Kimilili, Vihiga, Busia, Kakamega, Kabarnet, Sotik, Bomet, Kapsabet, Iten, Narok, Kajiado, Kapenguria, Maralal, Nakuru, Molo, Naivasha, Eldama-ravine, Kericho, Eldoret, Kitale, Nanyuki, Nyahururu, Lodwar,Kilgoris, Othaya, Karatina, Mukurweini, Kigumo, Kangema, Kandara, Gatundu, Limuru, Githunguri, Kikuyu, Wanguru, Kerugoya, Gichugu, Baricho, Nyeri, Muranga, Thika, Kiambu, Kwale, Hola, Wundanyi, Mombasa, Kilifi, Kaloleni, Malindi, Lamu, Voi, Taveta, Embu, Runyenjes, Siakago, Chuka, Nkubu, Maua, Tigania, Tawa, Kitui, Kilungu, Mwingi, Nunguni, Yatta, Makueni, Kangundo, Makindu, Meru, Machakos, Isiolo, Garissa, Marsabit, Wajir, Moyale and Mandera.

Kadhis Courts

Kadhis Courts are established under section 66 of the Constitution. Their operations are regulated under the Kadhis Courts Act (Chapter 11 of the Laws of Kenya). Kadhis Courts deal with matters relating to personal status, marriage, divorce, inheritance in proceedings in which both parties profess the Muslim faith. Kadhis Courts are subordinate to the High Court.

There are fifteen (15) Kadhis Court stations in the country, namely, Mombasa, Garissa, Lamu, Marsabit, Bungoma, Kisumu, Isiolo, Eldoret, Wajir, Nairobi, Nyeri, Nakuru, Kwale, Hola and Malindi.

Specialised Courts

In addition to these courts, we have the following additional courts

- Childrens Courts that deal with matters relating to children;
- Anti-corruption Courts that deal with matters relating to corruption and integrity;

Tribunals

Tribunals are established under various laws made by Parliament to deal with disputes that arise in the course of the regulation and administration of certain matters. There are over sixty (60) tribunals in Kenya. The most common tribunals are:

- the Industrial Court established to deal with labour disputes;
- the Land Disputes Tribunals that deal with disputes relating to land issues such as the division of land and boundaries of land and so on;
- the Rent Restriction Tribunal hears and resolves disputes between landlord and tenants of residential houses; and
- the Business Premises Tribunal hears and decides cases involving landlords and tenants of business premises such as shops and hotels.

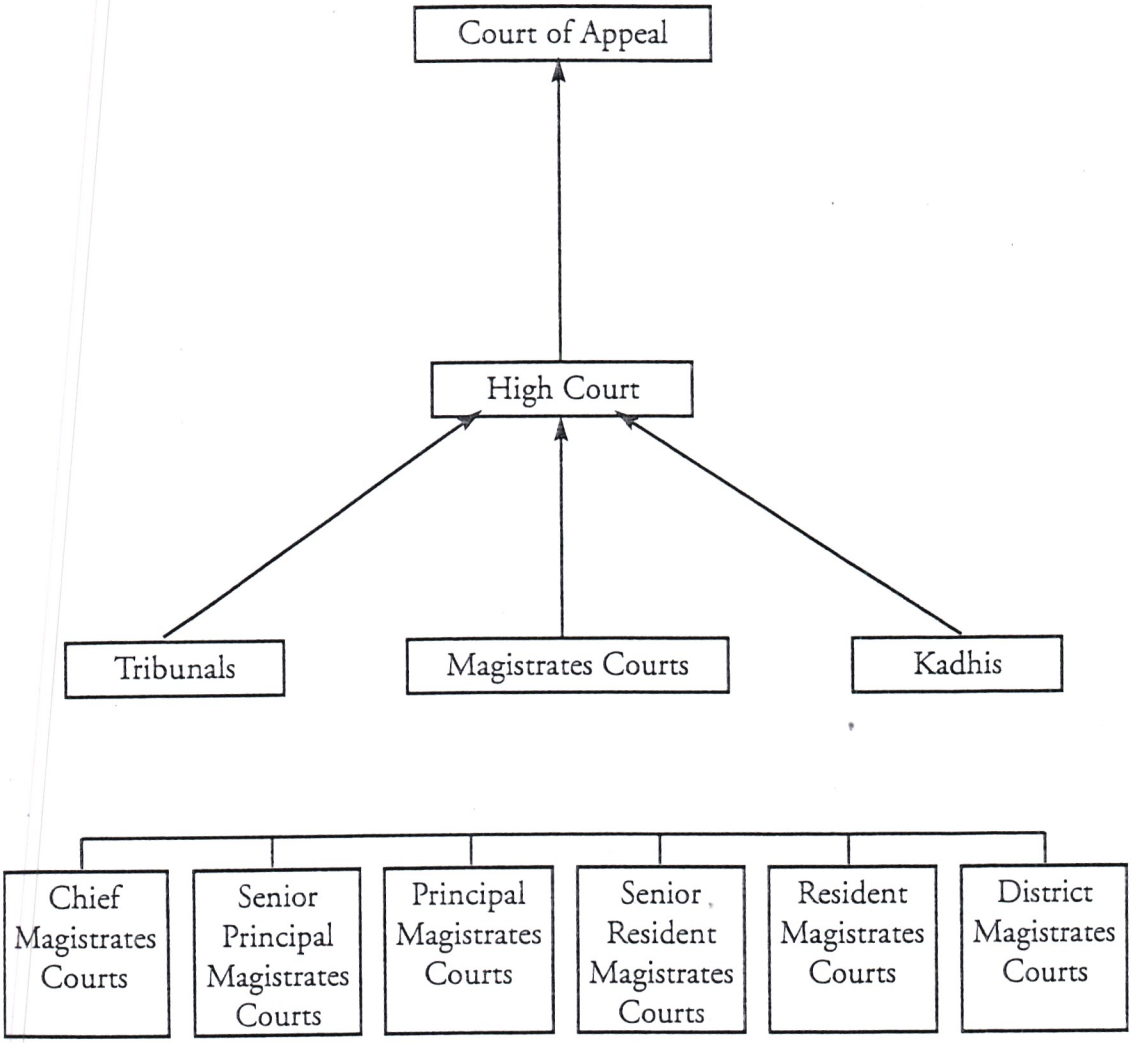
The difference between the tribunals and the courts is that the tribunals only hear certain specific matters. However, when you are before a tribunal,

you are entitled to same rights and standards of service as you are entitled to in the ordinary courts.

If you have a dispute that may be dealt with by the tribunals, it is better for you to take it there rather than the ordinary courts. This is because even if you file your case in the Magistrates Courts, the Magistrates Courts will refer you back to the tribunals in which case you will have lost your time and money. In any event, tribunals finish their cases within a shorter time.

If you are dissatisfied with the decision of a tribunal, you may be required to appeal to another tribunal, or to the minister in charge of that ministry or to the High Court.

THE COURT STRUCTURE

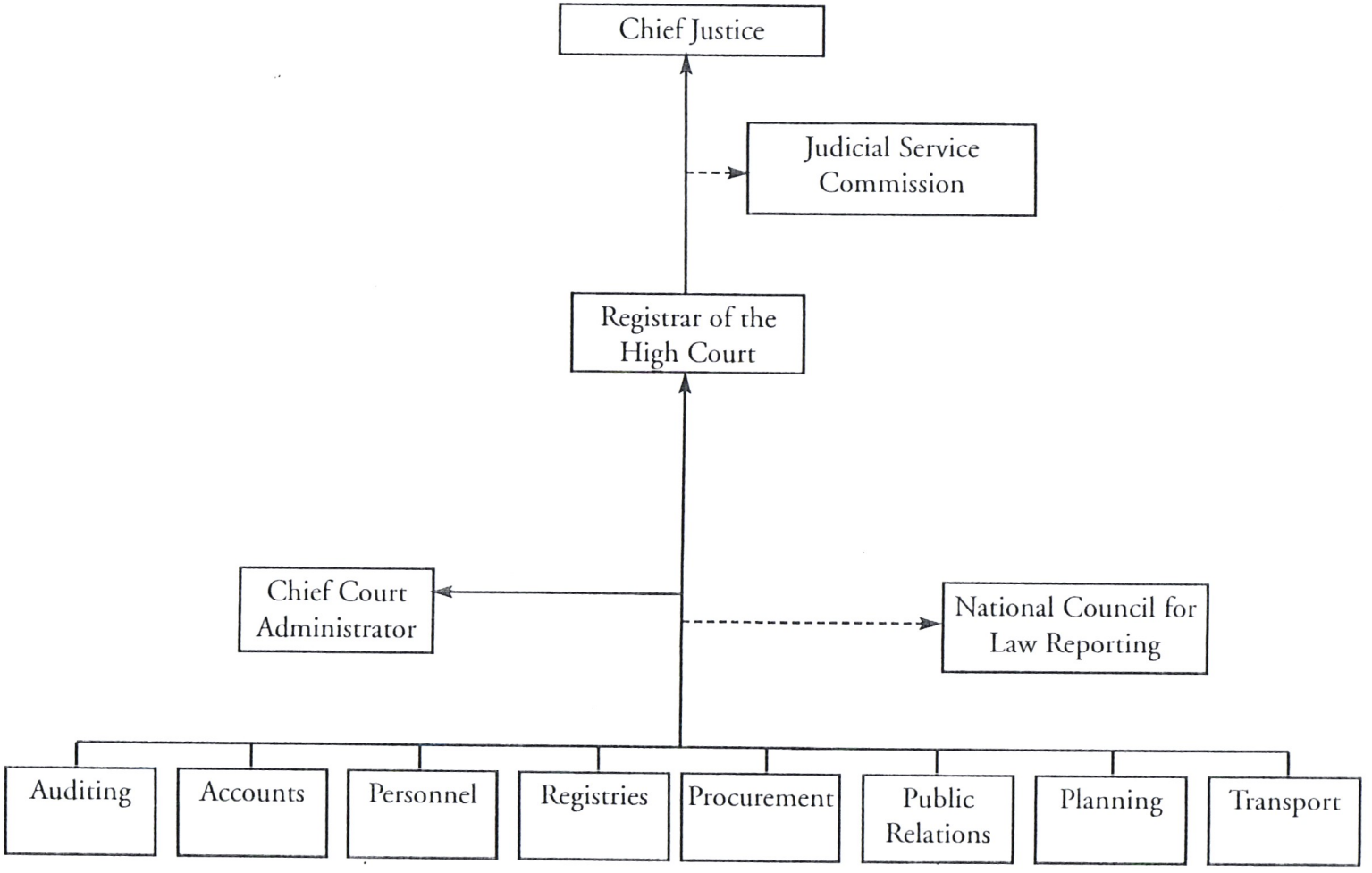


Note

1. **Appeals from the Magistrates Courts go to the High Court.**

2. **The District Magistrates Courts are the lowest while the Chief Magistrates Courts are the highest in the hierarchy of Magistrates Courts.**

Current Administrative Structure of the Judiciary



The Court Registries

The administrative and executive functions of the courts are performed at court registries. Court registries provide the following services:

- Documentation, storage and retrieval centre for files, exhibits and other documents in every court;
- Registration and processing of cases at every stage till they are finalized;
- Assessment and collection of court fees deposits and fines:
- Processing of typed proceedings;
- Dispatch and handling of correspondence;
- Processing of bonds/bail documents;
- The preparation and execution of warrants and summons for signature by judicial officers i.e. Magistrates/Deputy Registrars and or Judges in some cases;
- Preparation of cause lists;
- Preparation of appeal records;
- Provide a link between courts and litigants;
- Execution of court orders and or decrees;
- Preparation of documents e.g. summons, remand warrants, bond etc;
- Keeping of court dairies and allocation of mention and hearing dates;
- Service of summons at the counter;
- Receiving and stamping documents;
- Verifying documents before they are accepted for filing of case;
- Issuance of court rulings/judgments and orders (copies of the above);
- Keeping of exhibits and verifying the same;
- Submission of judicial returns;
- Issuance of summons;
- Custody of court seals;
- Housing Court registers;
- Informing litigants of changes in case allocation;
- Preparations of files in orderly manner and sequence;
- Assisting litigants on information about cases and dates of cases;

- Receiving affidavit and other documents i.e. memo, court fee etc.
- Maintain records of files in the registry.
- Keeping safe custody of court files; and
- Typing pool for proceedings, letters, summons and other court matters.

Outline of the Criminal Procedure

1) Arrest

You can be arrested where reliable grounds exists that you have committed or about to commit an offence. You will be taken to police station. If the offence is not serious one, the police can promptly bail you at the station.

2) Interview

At the Police Station, you will be interviewed under caution. The police should tell you the offence that they are preferring against you. The purpose of the police interview is to give you an opportunity to answer the version of events in a formal record that will be placed before the court. Note that the police are not allowed to take a statement from you but they can take you to a magistrate for purposes of recording any statement if you want to do so. If you do not wish to record any statement, inform the police that you do not wish to make one.

3) Court

From the Police Station, the police will take you to court as soon as they can but certainly not later than 24 hours unless there is a holiday. At Court they will charge you with the offence or request more time to keep you in custody in a police station or prison while they continue with investigation.

4) Remand

At your first appearance in court, it is likely the case will be adjourned to another date, in which case, the decision will need to be made whether you should be allowed out on bail or remanded in custody. First appearance in court is generally for taking plea.

5) Bail

- Bail is provisional release while awaiting trial.
- Bail may be granted by the court or senior police officer at the police station.
- You can request for bail as soon as possible after arrest at the police station or at your first appearance in court.
- You can be granted bail so long as the offence is not punishable by death, if the court is of the opinion that you will not run away, frighten witnesses, commit further offence or disturb public order.
- To satisfy the bail conditions convince the court that you have a fixed abode;
- Provide surety and any other required condition if you have been granted the bail;
- It is your constitutional right to get bail unless the interests of Justice require otherwise by the court.
- If bail is refused you can reapply to the court if there is change of circumstance i.e. security provided as surety and other conditions met.
- You can also appeal to a higher court if you feel the bail denial is not justified.
- You can also without any appeal, make fresh bail application in the high court.
- If the bail is granted, you can go home and carry on with your life but you should remember the date when you are required to return to the court for the next mention or hearing.

6) Charge

This is a concise statement of the offence that you are alleged to have committed. When you next appear in court, the court will read to you the charge. If the charge is different from the alleged offence for which you were arrested for, you should then bring it to the attention of the court. There after you will be required to attend court regularly for mention. If bail has not been granted, or if bail was granted but you have not met the terms of the bail then you will be produced in court every 14 days or as often as the court may direct.

7) Plea

- If you plead guilty, the prosecution will read out the facts and if you accept the facts, then the Magistrate/Judge will convict you. Before sentencing you, the court will ask you to mitigate i.e. you put forward your reasons why you seek leniency. The prosecution will then be asked to produce your past records i.e whether you had committed any offence in the past or not.

- If you plead not guilty the matter will be adjourned for trial.

8) Trial

Your trial whether in the Magistrates Courts or the High Court should take place within a reasonable time. At the end of the trial, the courts will either find you not guilty of the offence and you will be acquitted (set free). If you are found guilty of the offence you will be sentenced.

9) Sentence

If you plead guilty after a trial, you will be sentenced according to the law, the circumstance in which you committed the offence and your mitigation.

10) Appeal

You have the right to appeal against the sentence passed or against conviction within fourteen (14) days. If for any reason such as failure to get proceedings within the 14 days, you can apply for leave to appeal out of time.

Outline of the Civil Procedure

- Civil suits are normally filed by way of plaints, originating summons or miscellaneous applications as circumstance may dictate. If filed by way of originating summons or miscellaneous application then they have to be accompanied by verifying affidavits and annextures.

- If filed by way of plaint only, then they must be accompanied by verifying affidavits stating among other things that no other suit on the same matter between the same parties has been filed before.

- A plaint must bear the signature of the plaintiff i.e. the person suing, his address and the address of the person sued (defendant). The plaintiff's counsel can sign the plaint on behalf of the plaintiff.

- A plaint, at the time of filing in court must also be accompanied by summons to enter appearance (i.e. documents requiring the person sued i.e. the defendant, to enter appearance to the suit) within a specified period of time.

- Upon presentation in court, a plaint is assessed for court fees payable and whether it meets all the requirements stipulated in the Civil Procedure Act.

- Once checked and found in order, a plaint is assigned a case number and you will then be required to pay court fees.

- After registration, a case file is opened in the registry and the summons requiring the defendant's appearance is submitted for signature to a judicial officer i.e. Magistrate/Deputy Registrar.

- In the subordinate courts, summons to enter appearance are in most cases signed by Executive Officers who must have a written authority from the Hon. the Chief Justice.

- Once signed, summons are collected by the plaintiff or his appointed counsel for service upon the defendant.

- Court fees for issue of summons is paid simultaneously with the other fees for a plaint unless there is an application for the re-issue of summons where the previous ones have not been served within the stipulated period.

- Summons are valid only for a period not exceeding one year. On expiry, one has to make an application for extension of the summons which application must be accompanied by affidavit stating the reason or reason(s) for failure to effect service within the one year period.

- The service of summons is done by Court Process Servers who must have a Court Process Server's certificate.

- Once served, a return of service of the summons is filed in court by the person who served it detailing the manner of service and the person upon whom it was served.

- The defendant, once served with the summons, which is also accompanied by a copy of the plaint at the time of service files his memorandum of appearance which is ordinarily within 15 days from the date of service of the summons.

- The defendant will, after entering appearance, file his defence to the suit to which a plaintiff will also file his reply to the defence filed.

- The two parties i.e. the plaintiff and the defendant will then each file a list of the issues or documents they will want to raise/rely on during the hearing of the suits. These documents/issues are exchanged between the two parties and they may also opt or agree to file only those issues they have agreed upon, commonly knows as the "agreed issues"

- Once all the necessary documentation has been done, the suit is set down for hearing. Each of the parties to the suit has an obligation to ensure that the suit so filed in court is set down for hearing.

- The process of taking dates or setting down the suit for hearing is by each of the parties inviting the other to meet at the court registry on specified date and time to fix the suit for hearing.

- Each of the parties may fix the suit, in case the other one fails to turn up on the date invited, provided, of course, a hearing notice is served upon the defaulting party.

- On the day the suit is set down for hearing, it will be displayed in the daily cause list which is normally pinned on a notice board at a conspicuous place at the court

- On the hearing date, the suit will then be heard and if hearing is finalized, judgment is reserved for delivery on a particular date unless there is a good reason for the case not to be heard and as such, adjournment granted. In case of an application that is very urgent, and the same having been certified as urgent by a Judge or Magistrate, a ruling or interim orders can be issued on the same day

- Once the judgment is delivered, one of the parties will obviously have the judgment in its favour whereas the other one will have lost the case.

- The loosing party will, if it so desires, prefer an appeal against the decision of the court which must be done within the period stipulated by law. Normally, in civil cases the period given is 30 days unless in special circumstances.

- If the case had been filed at the lower court (Magistrates Courts), the aggrieved party would appeal in the High Court (as a first appeal), and if still aggrieved by the decision of the High Court, he can appeal (as a second and final appeal) to the Court of Appeal, which is currently the final court in Kenya. If the case initially started at the High Court, then the aggrieved party can only appeal in the Court of Appeal.

- In case the stipulated time for appeal has elapsed without the aggrieved party appealing, leave to appeal out of time can be sought, by an application in which one gives good and acceptable reason(s) why he/she could not have appealed within the time stipulated.

- In civil suits, the record of appeal is prepared by the party appealing.
- In some instances, a case may not go for full hearing especially where there is no response to summons to enter appearance or where there is failure by a defendant to file its defence.
- In such cases, default judgment may be applied for and consequently entered by the court.
- Both parties to a suit have the same chances of getting a default judgment i.e. where the defendant has failed to respond to summons and/or file his defence and in case of the plaintiff, where he has failed to set down his suit for hearing or where either party is absent on the date set for hearing.
- For succession cases, there are forms provided at the Family Division registry at a certain fee. Please ensure you get the right forms.
- All cases which are not criminal are civil cases and include:
    - Land cases
    - Running down/accident cases
    - Commercial cases
    - Family matters e.g. divorce causes, Probate and Administration causes and Succession causes
    - Winding Up of Companies cases
    - Labour disputes
    - Bankruptcy causes
    - Miscellaneous causes i.e. applications, arbitration awards, foreign judgements e.t.c.
    - Admiralty cases

What to expect in the Judiciary:

- We acknowledge that courts are public places and that your security and ours is paramount. You will therefore expect security checks at the court entrance subject to your consent.

- Your case to be heard in open court unless other wise directed;
- The court building will be open for business from 8.00 a.m. to 5 p.m. from Monday to Friday except public holidays.
- A clean court house with adequate lighting, reasonably spacious, accessible and user friendly.
- Special services such as ramps for the physically challenged.
- Your case will be handled by independent, accountable and impartial judicial officers.
- Other non judicial officers such as the: Police, prison officers, probation officers, prosecutors, state counsels, advocates, assessors, witnesses, and other litigants. These stakeholders perform their duties as per their institutional schedule of duties.
- A cash office where you can pay court fees and be issued with official receipt.
- Our court process to be transparent, fair and reliable.
- Prompt delivery of records of proceedings upon making request and paying necessary fees.
- A court library that may be accessed on request.
- A notice board with cause list showing cases for that day.
- Court fees displayed in the notice boards. You may also get a copy of the same on request.
- Public Relations Office where you can get any information on matters you do not understand.
- Clear direction to courts.
- Public toilets.
- Registries where you can file your case and other related matters.
- The official language in High court shall be English but in other subordinate courts it is English or Kiswahili.
- There shall be free of charge court interpreters for your suitable language.

Your obligations

To ensure that we can serve you better, please:

- Avoid seeking any favours from judicial officer in relation to your case.

- Follow the correct procedure at all times: there are no shortcuts to justice.
- Bribing is a criminal offence.
- Report any officer soliciting for bribes to any senior officer nearby or to the police.
- Treat court staff with courtesy, you may address them appropriately as: My Lord/Your Lordship in case of Judges, Your Honour in case of Magistrates and Sir/Madam in case of other court officers.
- Switch off your mobile phones while in court.
- Pay court fees or apply for pauper brief if you cannot afford to pay for the fees.
- Be in the court at least 30 minutes before your case.
- Understand the basic law as it applies to you.
- File your case in good time.
- Move the court particularly on civil cases.
- If you have not been treated well, do not just complain, lodge a complaint with the presiding judge or the head of station.
- Defend your case in person or hire an advocate for objective legal advice.
- You may or may not apply for the proceedings of your case. If you do so, you will be asked to pay some fee.
- Do not ignore court summons/orders.
- Understand that your case might not be finalized in one hearing on the listed date due to several reasons.
- Uphold the dignity of the court and its precincts.
- Ensure that all documents necessary in filing a suit are in order, affidavits, and annexure clearly marked.
- Get a receipt for all monies paid into court.
- Confirm that all your documents presented are duly stamped with the court-receiving stamp.
- Ensure that court orders, decrees, summons and warrants bear the official court seal and are duly signed by a Judge/Magistrate/Deputy Registrar/Executive Officer as the case may be.
- Direct queries/complaints to officers responsible for administrative functions of the court.

- Do not "jump the queue" especially in court registries. Line up or follow the procedure in question for provision of services to you.
- Acquaint yourself with all the changes taking place in the Judiciary both administrative and structural
- We cherish ideas, tell us when and where we err and provide constructive suggestions.
- Do not bring prohibited items to court.
- Understand that our staff cannot provide legal advice.
- Provide accurate and complete information.

How we deal with Complaints

When you are not satisfied with any of our services, the following options are open:

Complaints about Judicial Decisions

If you are dissatisfied with the decision of a judicial officer in your case, you may seek a review of the decision or appeal to a higher court. We do not entertain complaints about decisions that have been made by a judge or magistrate in your case.

Complaints about Court Services and Personal Conduct of Judicial Officers

If you are unhappy about the treatment you receive from or the handling of your case by court officers or you are unhappy about their behaviour, you may:

- Raise your concern directly with the officer concerned.
- Inform the head of the concerned section.
- Speak to the magistrate or the Judge in charge of the station.
- Speak or write to the resident Judge/or the Judge- in-charge.

If you are not satisfied, you may telephone or write to:

- Registrar of the High Court
- The Hon the Chief justice

- The relevant disciplinary Committee
- The presiding judge or head of station.

Format of the complaint:

To facilitate further action by the above offices, adhere to the following requirements:

- Judiciary does not entertain anonymous complaints, sign your letter, providing full name and address.
- State briefly the nature of the complaint giving your: case number, court and trial magistrate/judge.
- Attach copies of relevant supporting documents.

NOTE:

(i) That you should fill your complaint in the prescribed form which is similar to the one attached.

(ii) That your complaint shall be treated with due confidentiality, in case of further investigation, the rules of natural justice will be applied.

Complaints about non judicial officers

Note that we do not handle complaints against non-judiciary officers such as the Police, Prosecutors, State Counsels, Advocates or Auctioneers . Please refer them to the relevant authorities. For example, the Complaints Commission in case of advocates, the Commissioner of Police, Commissioner of Prisons, the Attorney General amongst others. You may however seek advice from our public relations office.

REPUBLIC OF KENYA

THE JUDICIARY

JUDICIAL COMPLAINTS FORM

To: tick the appropriate office [Chief Justice] [Judges Complaints and Disciplinary Committee] [Disciplinary Committee of the Judiciary] [Inter-Departmental Disciplinary Committee] [Registrar] [Presiding Judge/Head of Station]

Part I: General Information on the Complainant

Name----------

Tel----------

Box----------

Email----------

Physical Address----------

Part II: Specific Information Regarding Complaint

Name of officer complained against----------

Case No----------

Court----------

Date of Alleged act complained of----------

Nature of complaint----------

Part III: Additional Information

(Attach any relevant copies of supporting documents)

Name, Signature of Complainant & Date

How to Contact Us

Telephone

If you phone, our telephone personnel will :

- Answer the phone within 3 rings, identify the centre and give their name;
- Be helpful and deal with your inquiry promptly. For us to serve you better, be precise in your call and note it is courteous for you to introduce yourself.

Letters

If you write, you can expect:

- An acknowledgment of receipt of your letter by the court within seven (7) days;
- If it is a simple matter, you will receive a reply within thirty (30) days of receipt of your letter;
- If the matter is complex, you will receive acknowledgement within seven (7) working days and detailed correspondence not later than three (3) months;
- The correspondence shall be in plain language and where possible, in your preferred language

Summons

When you are requested to come to the court you can expect:

- To be provided in advance with clear information as to the time, reason for the summons, place of your court appearance and any other relevant details;
- The language used in the court shall be official language and your preferred language on request;
- If you ignore such summons, it may have adverse effects on you

Where to contact us

We value your views regarding your experiences in courts. Please contact us at the addresses below:

The Judiciary
High Court Building
City Hall Way
P. O. Box 30041
Nairobi
Telephone: 020-221 221
Fax No: 020-318 172
E Mail: reghck@nbnet.co.ke
Website: www.judiciary.go.ke

lease contact us

APPENDIX V

RECOMMENDATIONS OF PREVIOUS COMMITTEES

(Under Chapter Seven)

RECOMMENDATIONS OF THE COMMITTEE TO INQUIRE INTO THE TERMS AND CONDITIONS OF SERVICE OF THE JUDICIARY 1991-1992
"The Kotut Committee"

THE ROLE AND CHALLENGES OF THE JUDICIARY

That the Judicial Service Commission should formulate principles and procedures for the maintenance of professional standards by judicial officers and should establish a code of conduct for the guidance of judicial officers.

FUTURE STRUCTURE OF THE JUDICIARY

(a) That the Judicial Service Commission should be expanded by the appointment by the President of two additional members to represent the public interest.

(b) That a senior public officer should be appointed as Secretary to the Judicial Service Commission as required by the Service Commission Act (Cap 185).

(c) That a Supreme Court, consisting of seven judges including the Chief Justice should be established once the number of Judges recommended in this Report is recruited.

(d) That the law should be amended to provide for an additional 20* judges of the High Court and 7 judges of Appeal.

(e) That the title "Puisne judge" should be replaced by the title "Judge of the High Court".

(f) That the Chief Justice, sitting in the Court of Appeal and, later in the Supreme Court will remain the head of the Judiciary as whole and his membership of the High Court be ex-officio only and he should not hear cases in that court.

(g) That there should be two separate Registrars, one for the High Court, the other for the Court of Appeal, and, eventually a third one for the Supreme Court.

(h) That the minimum period of experience either as an advocate or as a magistrate required for appointment as a judge should be increased to 15 years.

(i) That changes should be effected to the nomenclature of magistrates as follows:

(i) Magistrate II.
(ii) Magistrate I.
(iii) Senior Magistrate.
(iv) Principal Magistrate.
(v) Senior Principal Magistrate.
(vi) Chief Magistrate.

(j) That the Resident Magistrate's Court should be abolished and jurisdiction now exercised by it be vested in the District Court.

(k) That funding should be secured for the construction of court buildings at all the new High Court stations as well as Embu and Kisumu.

(l) That the land adjoining the main Law Courts building in Nairobi currently used as a car park should be made available to the Judiciary for expansion of the Law Court buildings as soon as possible.

(m) That the Judiciary should undertake an assessment of the volume of litigation and situation of courts relative to population centres to determine the need and siting of new courts at further administration centers.

(n) That the entire structure and organization of the Kadhis' courts should be examined.

(o) That urgent inspection of all courts should be undertaken, to assess the need for repair, rehabilitation and maintenance and finances to be made available for this purpose as a matter of urgency.

(p) The courts should adopt modern systems for recording of evidence commencing with parlantyping in the High Court.

(q) That provision should be made for well stocked libraries at all High Courts and courts manned by senior magistrates and above.

(r) That as a matter of urgency, an editorial board comprised of representatives of the Judiciary, the State Law Office, the Faculties of Law in the universities and the legal profession should be established to facilitate law reporting on a permanent basis.

(s) That all presiding officers of the Rent Restriction and the Business Premises Tribunals should be appointed by the Judicial Service Commission.

(t) That non-professional members of these tribunals should be appointed from among persons of high integrity who are experienced and knowledgeable.

(u) That the para-legal staff appointed to serve in these tribunals should be persons who are conversant with the operations thereof.

(v) That these tribunals should be decentralized.

(a) That all para-legal staff should be absorbed by the Judiciary and be employees of the Judicial Service Commission.

(b) That a post of Chief Court Administrator should be established, the holder of which will be the accounting officer for the entire Judiciary.

(c) That appropriate subordinate posts should be created, the occupants of which will work under the Chief Court Administrator but alongside the Registrars.

(d) That the Chief Court Administrator should be responsible to the Chief Justice.

(e) That suitable training programmes for secretarial staff in the Judiciary should be devised.

(f) That in future, the Judiciary should only employ secretaries whose initial training includes aspects of legal secretarial duties.

(g) That a cadre to be officially designated as court interpreters should be recruited and trained.

(h) That motor-cycles and bicycles should be provided to process servers to facilitate their work.

(i) That the Judicial Service Commission should provide security for judicial officers both in their homes and in chambers.

(j) That appointments and schemes of service of other para-legal staff in the Judiciary should be administered by the J. S. C.

RECRUITMENT AND DEVELOPMENT OF JUDICIARY PERSONNEL

(a) That a new scheme of service for professional magistrates should be devised under the new terms and conditions of service recommended in this Report.

(b) That Kadhis' courts should be decentralized.

(c) That on-the-job training programmes should be devised for relevant areas.

(d) That the induction process for newly recruited magistrates should be extended for at least one year.

(e) That the training for judges should include both formal and exposure programmes.

(f) That relevant training programmes should be designed for para-legal staff, and be related to the various schemes of service recommended in this Report.

PROPOSED SALARY STRUCTURE

(a) That a new salary structure should be established in the Judiciary

(b) That the annual salary incremental points for judges should be fifteen and that the annual incremental factor should be 6 per cent.

(c) That the new posts, job titles and job grades for the Registrar, Magistrates and Kadhis should be as shown in Table VIII-9.

(d) That a scheme of service should be developed for the Court Administrator cadre to include four job grades.

(e) That for the para-legal staff, the job titles and job grades should be as in Table VIII-10.

OTHER TERMS AND CONDITIONS OF SERVICE

(a) That the Judiciary should have its own institutional housing in all stations, and in sufficient numbers to house judicial officers.

(b) That the level of owner occupier house allowance should be as shown in Table IX-1.

(c) That the level of house allowance should be revised as shown in Table IX-2.

(d) That the Judicial Service Commission should devise a medical scheme for staff and their families and arrange with specific hospitals to provide treatment.

(e) That a new group accident insurance cover should be taken out for the staff of the Judiciary.

(f) That the responsibility allowance currently paid to judges should be increased as shown in Table IX-3.

(g) That the responsibility allowance for the Registrar, Chief Court Administrator, Magistrates and Kadhis should be increased as shown in Table IX-4.

(h) That the entertainment allowance paid to judges should be increased as shown in Table IX-5.

(i) That the entertainment allowance paid to the Registrar should be enhanced while the Chief Court Administrator, Senior Magistrates and the Chief Kadhi should be paid this allowance as shown in Table IX-6.

(j) That an item should be created in the vote for official* entertainment to be utilized at the discretion of the Chief Justice.

(k) That appropriate official transport should be provided to all judges.

(l) That official transport should be provided to the Chief, Senior Principal and Principal Magistrates and the Chief Kadhi.

(m) That transport facilities should be made available in all court stations.

(n) That transport allowance should be paid to judges as shown in Table IX-7.

(o) That transport allowance should be paid to the Registrar, Chief Court Administrator, Magistrates and Kadhis as shown in Table IX-8.

(p) That hotel accommodation expenses for judicial officers should be paid by the Judicial Department directly.

(q) That transfer allowance should be paid to all employees of the Judiciary.

(r) That employees of the Judiciary should be entitled to leave allowance once a year at a fixed rate as shown in Table IX-9.

(s) That robes and wigs should be purchased for all judges and thereafter they be paid a maintenance and replacement allowance annually.

(t) That judges should be eligible for sabbatical leave once every five years.

(u) That the loan ceilings for purchase of motor vehicles by judges should be as shown in Table IX-10, and Tables IX-11 and IX-12.

(v) That the maximum motor vehicle repayment loan period should be extended from 84 to 96 months.

(w) That the compulsory retirement age for judges should be reduced from 74 years to 65 years, but that they be allowed optional retirement at the age of 60 years.

IMPLEMENTATION

That the proposed salaries and other terms and conditions of service should be implemented with effect from 1st July, 1992.

NB. Tables referred to herein are tables in the Report of the Committee.

RECOMMENDATIONS OF THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE "THE KWACH COMMITTEE"

JUDICIAL RECTITUDE

The Committee is of the view that the question of judicial rectitude must be addressed with urgency and therefore recommends:

(a) the introduction to the Judiciary of a Code of Ethics to apply to all judicial staff. It will outline the expected and prohibited forms of conduct as well as attendant penalties for transgressions against these minimum standards.

(b) the adoption of a transfer policy by the Judiciary intended to reduce undue familiarity requiring all the paralegals, magistrates and judges to serve for a team not exceeding four (4) years in a station.

(c) that, in order to limit access to chambers, all cases must be heard in open court, except in specific circumstances.

(d) the declaration of assets by all judicial officers and the paralegal staff on first appointment and thereafter every three (3) years.

(e) that the salary levels and other allowances be given serious and urgent consideration with a view to making them more realistic and attractive.

(f) that there should be in place a system of vetting those proposed for judicial appointments;

    (i) in the case of practicing advocates being considered for judicial appointment the views of the Law Society of Kenya and the Advocates Complaints Commission, among others, should be sought.

(ii) appointment as a magistrate should be with five (5) years experience in private practice or related fields. This should mean phasing out recruitment to the cadre of District Magistrates.

(iii) Section 61(3) (b) of the Constitution should be amended so that one does not qualify to be appointed a judge unless he has been engaged in private practice or related field for not less than ten (10) years.

PERFORMANCE APPRAISAL, INCENTIVES & TRAINING

(i) Performance Appraisal

The Committee recommends:

(a) that the Judicial Service Commission should now give due regard to the appraisal reports when considering an officer for promotion or in disciplinary cases and make it its yardstick for rewarding its officers and assessing their training needs.

(b) that henceforth judges of the High Court be required to complete the form, which will be countersigned by the Chief Justice, basically on the judicial performance of the former. For magistrates, the supervising officer shall be the head of the station and the countersigning officer shall be a resident judge whom we recommend should now be called the Provincial Judge. In the case of paralegals, the supervising officer shall be the Executive Officer and the countersigning officer shall be the magistrate in charge of the station.

(c) that Provincial Judges and magistrates in charge of stations mandated to supervise stations under their zones.

(d) that all supervising and countersigning officers should undergo training in performance appraisal.

(ii) Training

The Committee recommends the establishment of one Judicial Training Committee with a Judge of Appeal as its chairman and members drawn from the High Court, magisterial bench and paralegal cadre, whose secretary shall be the Training and Staff Development Officer.

(iii) Incentives

Therefore, judicial officers should be entitled to salaries, allowances and other fringe benefits commensurate with their status.

(a) Scheme of Service

The Committee recommends the formulation of schemes of service for all cadres in the Judiciary except Judges.

(b) Salaries and Allowances

That the judicial Service Commission should, with immediate effect, devise a medical scheme of the nature recommended by the Kotut Committee to cater for all Judiciary staff.

(c) Transport

We recommend that all the official motor vehicles currently being used by Judges be replaced with new and appropriate ones. For instance Mercedes Benz-E230 series to be assigned to the judges of the Court of Appeal and Mercedes E220 or Volvo 940 to the judges of the High Court.

The Committee recommends that each magistrate of the level of Senior Principal Magistrate and above be provided with personal official transport and all court stations should have independent transport. The committee further recommends the payment of transport allowance to all paralegal staff.

(d) Housing

The Committee recommends;

(1) That the application to the Judiciary of Treasury Circular No.6/98 be waived.

(2) That decent accommodation (maisonettes and flats) should be rented for magistrates in major urban centres like Nairobi, Mombasa, Kisumu, Eldoret, Kitale, Nyeri, Meru, Kakamega, Nakuru and Kisii, and proper security be provided. This will also make provision of common transport for judicial officers and their families easier.

(e) Promotions

The Committee recommends;

(a) that promotions be based on merit and that vacancies should be advertised and interviews conducted before promotion. The provisions of the relevant schemes of service must also be respected and followed.

(b) that schemes of service for magistrates, Kadhis, secretarial staff, librarians, supplies officers, accountants, personnel officers and clerical officers be formulated as a matter of urgency.

(c) that clerical officers from the Judiciary be subjected to relevant examination, even if it forms part of the Proficiency Examinations as an option.

(d) an immediate embargo be placed on transfers of officers from other ministries to the Judiciary or alternatively the applicants for ministerial transfers be interviewed.

(e) retention of officers beyond the retirement age be limited to judicial officers only and not to be continued beyond the age of sixty (60) years.

(f) all the contracts of the paralegals over the age of fifty-five (55) years currently employed on the so called temporary terms be terminated to make way for younger officers.

COURT REGISTRIES

The Committee accordingly recommends that;

(a) filing cabinets and lockable racks should be purchased and installed in all registries.

(b) computers be introduced immediately in major registries throughout the country in order to minimize the mischief of loss of files, monitor file movement and measure output. Every court document should be micro-filmed as a back-up measure.

(c) all High Court registries should be headed by legally qualified Deputy Registrars, who will hear interlocutory applications and be in charge of staff in the registries.

(d) those in charge of registries and the staff under them should undergo training to enable them to cope more effectively with the demands of their jobs.

(e) access to registries should be limited to staff only. Members of the public including lawyers and litigants should be served across the counter.

(f) collection of court fees, fines, deposits, and forfeitures is the responsibility of the court. Cashiers in all courts must be the employees of the Judiciary.

(g) each court should open an account with local commercial banks in which to deposit all collections. The account to be operated jointly by the Magistrate in charge and the Executive Officer.

(h) all transactions relating to these accounts to be reported to the Accounts Controller in Nairobi on a weekly basis.

PHYSICAL FACILITIES AND EQUIPMENT

The Committee makes the following recommendations.

(a) The Judiciary should commence negotiations with the Treasury on the issue of a more realistic funding and more aggressive approach to be adopted in soliciting for funding from the donor community to improve court facilities and buy the necessary equipment.

(b) Transfers and posting of judges, magistrates and other staff should be rationalized to ensure that these are justified by the caseload and necessary facilities.

(c) Future court designs should be standardized, taking into account the number of court officials expected to use it, security, fire escape routes, ramps for the physically disabled, public toilets, reception, spacious registries, common rooms and so on.

(d) The Judiciary should obtain Title Deeds for all court houses, residential properties occupied by its staff and plots allocated to it for expansion.

(e) All courts should have records and inventory of assets which should be updated annually.

(f) The Judiciary to introduce the use of computers in the registries. This can be started on a pilot basis in the Court of Appeal registry in Nairobi, High Court registries, and Chief Magistrates' courts.

(g) Judges, magistrates and senior paralegal staff should be encouraged to attend computer training at the expense of the Judiciary. Judges should be provided with laptop computers.

(h) The distribution of stationery should be decentralized to the provinces.

(i) The court buildings at Kericho, Mukurweini and Eldoret be closed to avert imminent catastrophe.

(j) Public Address systems should be installed in all Court of Appeal and High Court rooms.

(k) All chambers should be appropriately designed, furnished and stocked with basic legal material.

(l) The Chief Justice should cause an inquiry to be conducted into the circumstances in which land belonging to the judiciary in Mombasa, Eldoret and Kisumu was alienated to private developers.

(m) All High Court stations should have fully equipped libraries and all other stations should be provided with basic law reference books and statutes.

ALLOCATION, DISPOSAL AND FOLLOW-UP OF CASES

The Committee recommends;

(a) the splitting of the cause list into a more realistic time segment.

(b) the introduction of case monitoring techniques, which should clearly indicate the output of each judge or magistrate. These returns should be submitted to the Chief Justice once a month or as and when required.

(c) that simple divisions be created in the magistrate's courts covering criminal, civil and traffic cases. Each division to be headed by a magistrate, on rotational basis, who must distribute cases equitably to other magistrates.

(d) identification of matters, interlocutory or any others, which should be dealt with by Deputy Registrars, rather than all manner of applications being listed and dealt with by judges.

(e) a deliberate move to hear and dispose of all old cases. A team of Commissioners of Assize should be appointed under the provisions of the Commissioners of Assize Act (Cap 12) to deal exclusively with old cases in Nairobi.

(f) the pecuniary jurisdiction of magistrates to be increased to relieve the High Court of some of the backlog.

(g) the Chief Justice should issue a circular to all Judges in the High Court and magistrates reminding them that where under Order 20 rule 1 of the Civil Procedure Rules, judgement is reserved the date of delivery must be stated and judgement must be delivered on that date.

HUMAN TRAFFIC AND SECURITY IN COURT

The Committee recommends that;

(a) Judges' and magistrates' chambers must be immune from uninvited intrusions. Their entrances into the court house should be separate from those used by the rest.

(b) all court staff, including judges and magistrates, should be issued with plastic identification cards.

(c) there should be screening of all persons entering courts to prevent the carrying of concealed weapons or other prohibited items into court buildings and court rooms.

(d) each Judge and magistrate should have a uniformed security-vetted usher or marshal to escort the officer to and from court and remain in court to maintain order during proceedings.

(e) metal detectors to be introduced and X-ray machines to be located at the entrance to every court house.

(f) the Judiciary to create its own Security Department to oversee all aspects of security and safety operations in the Judiciary. The unit

to be headed by a senior security officer, who will oversee all facets of the Judiciary's security and safety operations.

(g) all courts without fences to be fenced without delay, starting with the Law Courts – Nairobi, which requires high square metal bar fencing all around and its original entrances to the east and west of the building to be restored.

(h) arrangements to be made for magistrates to mention criminal cases at major prisons where there is no transport to the courts.

(i) courts should have information desks to direct members of the public and provide any required information and assistance.

TIME AND COST EFFECTUAL ADMINISTRATION OF JUSTICE

The Committee now recommends;

(a) That judges and magistrates should be sensitized to get more involved in case management by applying court's inherent jurisdiction and deal firmly but judiciously with applications for adjournment and interlocutory applications generally.

(b) Each magistrate, at the end of each month, files a return indicating the number of cases finalized, pending judgements and rulings and when they are due for delivery through the Head of Station who will in turn transmit them to the Chief Justice. In this regard an appropriate Return Form should be designed.

(c) Reporting and court business time must be enforced as laid down.

(d) An Inspectorate Unit should be set up to monitor the operations of the courts on a continuous basis. The team to be called "Courts Inspectorate" should be composed of a Judge of Appeal, one puisne Judge, the Chief Court Administrator, a Chief Magistrate, Accounts Controller, and the Deputy Registrar in charge of monitoring complaints relating to gender issues.

Except for the Chief Court Administrator, Accounts Controller and the Deputy Registrar, members of the Court Inspectorate should be changed every 3 years. They should visit courts regularly unannounced and submit reports to the Chief Justice.

(e) (i) The High Court in Nairobi be split into four (4) divisions, each with its own registry which together will comprise the Central Registry as follows;

- Family Division
- Criminal Division
- Civil Division
- Commercial Division

(ii) The senior judge in each Division shall be the head of the Division, with the Chief Justice being an ex officio member of all Divisions.

(iii) Judges should not stay in any one Division for more than three (3) years, at the end of which they should be moved to other Divisions.

(iv) Every Division head shall submit a report on the performance of the Division to the Chief Justice every month.

(v) Each Division should be under the administrative control and supervision of a professional Deputy Registrar. Provincial Judges should be given administrative and supervisory control of the subordinate courts within their provinces. They should also submit quarterly reports to the Chief Justice.

(f) Section 3 (2) of the Magistrates' Court Act (Cap 10) should be amended to redefine the geographical jurisdiction of the magistrate's court.

(g) Each High Court registry should be placed under the control of professional Deputy Registrars, who will be answerable to the respective Deputy Registrar in the Central Registry in Nairobi.

(h) In criminal cases, the police should not continue to perform the dual functions of investigators and prosecutors. Police officers in the prosecution section should be absorbed into the Attorney-General's Chambers to work under the Director of Public Prosecutions (DPP). This idea has the full support of the Attorney-General and the Commissioner of Police.

(i) Requirement for committal bundles in murder and treason cases should be abolished so that arraignment is made direct to the High Court.

(j) Consent to prosecute should similarly be abolished.

(k) Summons for directions in civil cases should be done away with.

MAKING THE JUDICIARY CONSUMER-FRIENDLY

The Committee recommends;

(a) the establishment of a Department dealing with public and media concerns.

(b) the introduction of pamphlets, to be issued free of charge to the public giving information about the Judiciary.

(c) that each court building should have a waiting room, public toilets, hospitality and inquiry desk and water points.

(d) that sign boards showing the location of a court should be erected in appropriate areas.

(e) the establishment of juvenile remand homes and juvenile courts throughout the country.

(f) that the Chief Justice should issue a directive to all magistrates reminding them that in sexual offences, section 77(10) of the Constitution of Kenya gives them the power to conduct certain proceedings in camera to protect the dignity of certain categories of witnesses. They should use this provision in cases of sexual offences to protect the honour and dignity of the women and children involved in these cases by taking their testimony in camera.

(g) the establishment of more subordinate courts in Samburu at Wamba and Baragoi; in Turkana at Lokichoggio; in Tana River at Garsen; in Nairobi at Kasarani, Embakasi, and Waithaka; in Nakuru at Shabab; in Eldoret at Shauri Yako; in Kajiado at Ngong; in Siaya at Yala and Ugunja; in Lamu at Hindi, Mpeketoni and the translocation of the current court to Mukowe; in Nyandarua at Ol Kalau and Tulaga; in Taita Taveta at Wundanyi; in Mount Elgon at Kapsakwony; in Teso at Malaba and a night court at Jomo Kenyatta International Airport to deal with petty criminal cases involving foreign travelers.

(h) High Court sub registries should be opened at Garissa and Malindi and judges should be sent there on sessions on a regular basis.

(i) the magistrate's courts at Garissa, Lamu, Marsabit, Mandera, Lodwar and Hola should be manned at no lower level than Senior Resident Magistrate so that they can deal with serious cases such as robbery with violence to save witnesses and the relatives of the accused persons the expense and inconvenience of traveling long distances.

(j) the establishment of a cadre of Court Interpreters, with their own Scheme of Service.

(k) the simplification and modernization of the mode of dress in the Court of Appeal and the High Court to demystify the Judiciary.

OTHER MATTERS

(a) THE JUDICIAL SERVICE COMMISSION

The Judicial Service Commission should be completely overhauled to provide for the representation of the Law Society of Kenya and the Kenya Magistrates and Judges Association. The representatives of the Court of Appeal and the High Court on the Judicial Service Commission should be elected by the Judges of those courts and not just selected as is the practice at the moment and should not serve for more than one term of four (4) years at a time. The Commissions should also have its own secretariat completely separate from the Registrar of the High Court.

(b) ADMINISTRATIVE STRUCTURE

Consequently The Committee recommends that the Judiciary be split into two (2) main divisions, namely, JUDICIAL DIVISION and COURT ADMINISTRATION DIVISION. The Judicial Division shall deal exclusively with judicial matters while the Court Administration Division shall deal with all aspects of court administration. The Committee also recommends the establishment of the post CHIEF REGISTRAR of the Judiciary, who shall be the Chief Executive and the Accounting Officer.

Judicial Division

This Division shall comprise

- the Court of Appeal
- the High Court, and
- the subordinate courts.

The Committee further recommends the establishment of the post of DEPUTY CHIEF REGISTRAR, who will be in charge of the Judicial Division and answerable to the Chief Registrar.

Court Administration Division

This Division shall consist of the following Departments, namely;

- Accounts Department
- Human Resources Department
- Information Technology Department
- Security Department
- Supplies and Transport Department
- Planning, Research and Development Departments
- Building and Maintenance Department.

It is the view of the Committee that the implementation of this structure will require a change in the law. The Committee therefore recommends the enactment of the Administration of Courts Act to give effect to these changes.

(c) SECURITY, CLEANING AND SECRETARIAL SERVICES

It is therefore recommended that security, secretarial and cleaning services be contracted out and those currently performing these functions be retrenched.

(d) THE COURT OF APPEAL

After discussions with the Honourable Judges of the Court of Appeal, the Committee recommends that the Court of Appeal should have a Presiding Judge, its own Registrar and a separate vote. The day to day running of the Court of Appeal, settling of the Cause List and assignment of Judges should be the responsibility of the Presiding Judge.

The Committee noted that Section 64(4) of the Constitution is open to abuse and recommends that it be replaced so that a puisne Judge who has been elevated to the Court of Appeal cannot continue to deal with part-heard cases in the High Court.

(e) RETIREMENT OF JUDGES AND MAGISTRATES

(i) Retirement for Judges should be reduced from seventy-four (74) years to seventy (70) years to create room at the top for younger people. Voluntary retirement age for Judges should be sixty-five (65) years. A judge should retire with a decent package to enable him lead a decent life after retirement which should include, his full salary, transport, personal security and a domestic servant. Retired Judges should remain on call until they reach the age of seventy-four (74) years. Where a Judge gives only his year of birth without a date he should be deemed to have been born on 1st January of that year.

(ii) Compulsory retirement age for magistrates should be raised to sixty-five (65) years leaving fifty-five (55) years as voluntary retirement age. A retired magistrate shall be entitled to his full salary.

(iv) Legislation be introduced to extend security of tenure to magistrates.

(v) Section 62(3) of the Constitution to include incompetence as a ground for the removal of a judge from office.

(f) CAPITAL ROBBERY AND OTHER APPEALS

Capital robbery appeals emanating from subordinate courts outside Nairobi should be heard in the provinces. To constitute two Judge panels for these appeals, Judges in the Criminal Division of the High Court in Nairobi should be sent on circuit for this purpose.

The Chief Justice shall designate a senior Judge in each province to co-ordinate these appeals.

(g) BACKLOG OF CASES IN THE DISTRICT REGISTRIES OF THE HIGH COURT

The committee recommends by the appointment of one or two Commissioners of Assize at each of those stations.

However, in the case of Mombasa High Court, the volume of cases is such that the services of four (4) judges is required.

(h) TRANSFER OF MAGISTRATES

All magistrates and executive officers (except in exceptional circumstances) who have served at their present stations and sections for more than five (5) years should be transferred to new stations.

(i) JURISDICTION OF KADHIS

(i) That the Chief Justice should take the earliest opportunity to revoke L.N. No.2096/97 and L.N. No. 6024/97 which appointed two (2) Kadhis in Eldoret and Bungoma as District Magistrates (second class).

(ii) In addition to qualifications spelt out in section 66(2) of the Constitution of Kenya the basic qualification for the appointment of a Kadhi should be a relevant degree in Islamic law from a recognized university.

(j) GENDER ISSUES

The Committee recommends that a committee composed of two puisne Judges and a lady Deputy Registrar be established to receive complaints relating to gender issues in confidence and pass on genuine cases to the Chief Justice for appropriate disciplinary action.

(k) COURT VACATIONS

The Committee recommends that these vacations be abolished and replaced with three recesses as follows;

(1) Easter Vacation from 16th to 30th April;

(2) August Vacation from 1st to 31st August; and,

(3) Christmas Vacation from 21st December to 6th January.

Judges should be encouraged to take their annual leave during vacation.

(l) DAILY CAUSE LISTS

The Committee recommends as an interim measure, and pending the creating of Divisions in the High Court, that each Judge should be allocated no more than five (5) applications and three (3) hearings daily. And each Judge should have one free day a week when he/she can write judgements and rulings.

(m) COMPLAINTS AGAINST MAGISTRATES

The Committee recommends the setting up of a Complaints Committee, answerable to the Chief Justice, made up of 4 puisne Judges, one each from every Division, which shall receive and deal with all complaints by members of the public regarding the conduct and performance of any magistrate. The Chief Justice shall nominate one of the Judges to be the chairman of the Committee.

(n) ANNUAL CONFERENCES

The Committee recommends that there should be two annual conferences one for the Judges and another for magistrates paid for by the Judiciary.

RECOMMENDATIONS OF THE INTEGRITY AND ANTI-CORRUPTION COMMITTEE OF THE JUDICIARY " THE RINGERA COMMITTEE"

CAUSES OF CORRUPTION IN THE JUDICIARY

(a) Poor terms and conductions of service;
(b) Bad deployment and transfer policy and practice;
(c) Delays in the hearing and/or determination of cases;
(d) Non meritocratic recruitment and promotion practices;
(e) Human greed;
(f) Ignorance by members of the public about their legal rights and entitlements, procedures and processes of the court and about the law generally;
(g) The existence of wide discretion on the part of the judicial officers in both civil and criminal matters;
(h) The existence of a culture of corruption in the Society at large;
(i) Excessive workload on judicial officers due to insufficient personnel and inadequate and/or antiquated equipment;
(j) Inadequate or non existent supervision of judicial officers and Staff;
(k) Inaction or ineffective action against identified corrupt officers;
(l) Protection of corrupt officers by their superiors;
(m) Loss or misplacement of court files;
(n) Interference by the executive;
(o) Retention in service of judicial officers after attaining compulsory retirement age;
(p) Conflict of interest on the part of judicial officers;
(q) The legal system's inherent delays;
(r) Existence of some procedural rules and regulations which allow corruption;
(s) Lack of sensitization of magistrates on corruption issues;
(t) Non availability or inaccessibility of judicial services;
(u) Existing phobia for courts among common people; and
(v) Poor conditions in prisons and remands.

THE MAGNITUDE AND LEVEL OF CORRUPTION IN THE JUDICIARY

Both petty corruption and grand corruption have a place in the Kenyan Judiciary and enhancement of rank is an invitation to enhanced bribes.

THE IMPACT OF CORRUPTION ON THE JUDICIARY

(a) Loss of confidence in the Judiciary;
(b) Denial of justice; delay of justice;
(c) Undermining the rule of law;
(d) Promotion of the apathy and inefficiency on the part of judicial officers;
(e) Dilution of the quality of jurisprudence;
(f) Disorganization in court registries;
(g) Loss of self respect and esteem on the part of Judicial officers;
(h) Poor economic growth,
(i) Loss of government revenue;
(j) Loss of confidence in the justice system as a whole;
(k) Increase in crime;
(l) Prison congestion;
(m) Resort to extra judicial methods of conflict resolution;
(n) Violence against judicial officers; and
(o) Reinforcement of a corruption culture in society.

IDENTIFICATION OF CORRUPT MEMBERS OF THE JUDICIARY AND RECOMMENDED ACTION AGAINST THEM

(a) That five (5) Court of Appeal Judges, eighteen (18) High Court Judges, eighty two (82) Magistrates and forty three (43) Paralegal Officers are implicated in judicial corruption, misbehavious or want of ethics.

(b) That for the identified judicial officers implicated in judicial corruption and misbehaviour, and want of ethics, the Chief Justice should recommend immediate prosecution and/or initiate administrative disciplinary action as appropriate in the circumstances

unless the officers concerned voluntarily relinquish their judicial offices;

(c) That for the identified officers implicated in misconduct in their extra judicial capacities, the Chief Justice should counsel them to live up to their personal obligations to their erstwhile clients or supplier of services as the case may be.

STRATEGIES FOR THE DETECTION AND PREVENTION OF CORRUPTION

1. Corruption Detection

We recommend that appropriate instruments for corruption detection are a periodic declaration of the quantum and sources of wealth by Judicial Officers and a permanent mechanism for monitoring their work and habits. We are happy to note that the former instrument has been instituted under the Public Officers ad Ethics Act, Act No. 4 of 2003. As regards the monitoring mechanisms, we shall say more anon.

2. Personal Factors

Staff Welfare

We accordingly recommend the following measures-

(i) Salaries for Magistrates and Paralegals should be considerably improved as a matter of urgency. The gap between the highest paid Magistrate and the lowest paid Judge should be narrowed considerably;

(ii) The Judiciary should lease appropriate housing for its officers or pay them such housing allowances as will enable them to lease or purchase on mortgage terms houses commensurate with the honour and dignity of Judicial Officers;

(iii) There should be an adequate medicare scheme for Judicial Officers and their families;

(iv) All Judges and Magistrates should be accorded adequate security at work and at home;

(v) Senior Magistrates should be provided with official transport;

(vi) There should be a facility for easy and affordable car loans for all Judicial Officers; and

(vii) The Judiciary should develop and design a clear training policy for all cadre of officers and available training opportunities should be drawn to the attention of officers and beneficiaries thereof should be selected on the basis of need and merit.

3. Institutional Governance Concerns

(a) Recruitment and Promotion

Recruitment and promotion ought to be transparent and merit based. To achieve that, we recommend the following measures-

(i) Vacancies for Paralegals, Magistrates and Judges ought to be publicly advertised and the advertisement should clearly indicate the qualifications required for the job;

(ii) Short listed candidates should be vetted for personal integrity and probity by appropriate means;

(iii) Serving Judicial Officers should not participate in the interviewing of candidates in respect of whom they have a personal interest;

(iv) The practice of delegating recruitment to heads of stations should be stopped and recruitment be centralized; and

(v) There should be separate and clear schemes of service for Magistrates and Paralegal and the same ought to be strictly followed in promotions.

We accordingly recommend that necessary measures should be employed to ensure that members of the Judicial Service Commission and those personnel officers to whom the task of recruitment may be delegated by the Judicial Service Commission are persons of the highest possible personal integrity.

(b) **Retention of retired Officers on contractual terms**

We accordingly recommend that the contracts of those Judicial Officers who have reached the mandatory retirement age should not be renewed and that the practice of employing retiring offices on short term contracts should be discontinued.

(c) **Deployment and transfer policy and practice**

Judicial staff should be subject to a predictable periodic transfer if the corruption contributed to by over familiarity is to be avoided. We accordingly recommend the following measures:-

(i) High Court Judges and Magistrates should be transferred after every three (3) to five (5) years to any place in Kenya. The maximum period of stay in any station should be five (5) years. In order not to disrupt work in progress and to facilitate the conclusion of part heard matters without resorting to the expensive and disruptive frequent sojourns in the previous stations, we further recommend that officers be given a transfer notice at least four (4) months in advance;

(ii) Paralegal Staff of the rank of Executive Officer and above should be amenable to the same transfer policy and Judges and Magistrates;

(iii) As regards Clerical, Secretarial and Subordinate Staff, we consider that they should not be employed and deployed to their home areas. They too should be amenable to transfer every 3 – 5 years but in doing so, care must be taken not to deprive stations of competent interpreters of various local *lingua franca;*

(iv) Under no circumstances should a transfer be resorted to as a disciplinary measure; and

(v) Relatives should not work in the same station.

(d) <u>Human greed and the Disciplinary question</u>

We accordingly recommend the following measures:-

(i) The Judiciary should invest in corruption detection institutions and measures including but not limited to-

(a) establishment of a permanent mechanism to receive and deal with complaints or allegations of corruption and unethical conduct and to randomly check on the performance of Judicial Officers in terms of competence, procedural compliance, the speedy disposal of matters, and otherwise monitor the corruption pointers adumbrated in paragraph 7:2:0 hereof.

Such a mechanism should comprise of at least, a judge of the Court of Appeal, a judge of the High Court and a senior magistrate. It should be reporting directly to the Chief Justice. It may be called the Integrity and Anti-Corruption Committee or the Judicial Audit Committee;

(b) There should be established corruption prevention Committees in all big stations to receive complaints and to advise the Head of Station on, *inter alia,* strategies of corruption detection and prevention;

(c) There should be installed a suggestion-cum-

complaints box at every Court house. Such box to be opened regularly by a senior Officer of integrity and the contents thereof drawn to the attention of the Integrity and Anti-Corruption Committee or a similar body; and

(d) The wealth declaration forms should be carefully studied and any suspicious accumulation of wealth should be investigated.

(ii) Corruption and unethical behaviour should be promptly and adequately sanctioned by either-

(a) dismissal from office without benefits irrespective of the period served; and/or,
(b) criminal prosecution where appropriate; and/or

(c) recovery of all corruptly acquired property or the value thereof;

AND never by a transfer or any other form of molly coddling. Indeed from the evidence gathered, this Committee is of the firm view that had respective past Chief Justices and High Court Registrars dealt with reported incidents of corruption and unethical conduct with the requisite promptitude and severity, the Kenyan Judiciary would be largely a corruption-free institution.

(iii) There should be no prosecution of any corrupt or unethical Judicial Officer on consideration of kith and kin, tribalism, friendship or otherwise whatsoever and the disciplinary process and the ordinary law should be equally applied to all such officers. Impunity should not be in the vocabulary of psychology of any Judicial Officer.

(e) Conflict of interest

The Judicial Code of Conduct and Ethics recently published addresses the issue in fairly broad terms. It provides that a Judicial Officer undertakes

"not to engage in any occupation or business which might prejudice his status as a member of the Judicial Service or bring the Judicial Service into disrepute." We think the prohibition is in terms that mean different things to different people. Accordingly, we recommend that the Code be amended to include in addition to the generality an express prohibition of officers engaging in the businesses of public transport, service of food and beverages, shop keeping, pool tables and petrol stations.

(f) **Elimination or minimization of delay in the hearing and determination of cases**

We agree that both deliberate and non deliberate delays should be minimized, if not eliminated, as a corruption fighting measure. In our view, to do so, it is necessary to increase the number of officers to reduce the workload; the officers should employ themselves diligently; they should be aided by modern technology and the errant ones should be sanctioned. We do not believe that the process of litigation is amenable to fixed timelines. Indeed if there was a fixed timetable, the same would be abused to the detriment of the course of justice. Taking that view of the matter, we recommend the following measures;-

(i) All Judicial Officers should as a minimum keep the official hours;

(ii) The number of Judicial Officers should be increased to cope with population increase and the increased workload. To that end we recommend a scientific study be undertaken of the optimum number of officers required;

(iii) It would be idle to increase the number of officers without a corresponding increase in the number of court rooms, chambers and other supporting infrastructure and facilities. It is accordingly recommended that Judicial facilities be expanded as a prerequisite to the proposed increase in the number of officers;

(iv) The recording of court proceedings should be automated to save on the time spent in manual recording;

(v) Judicial Officers who are guilty of inordinate delay in the writing of judgements and rulings should be personally sanctioned with such measures as demotion, withholding of part of the pay, compulsory leave without pay, and even dismissal as may be appropriate considering the circumstances of the officer in question. In order to judge whether delay is inordinate we recommend that the timelines for writing judgements and rulings should be 45 days for judgements and 30 days for rulings and that those timelines be incorporated in the Judicial Code of Conduct.

(g) Effective supervision of Judicial Staff

The Committee agrees that it is necessary to have close supervision of all cadre of Judicial Staff without interfering with the adjudicatory independence. As to who is to supervise, we think it ought to be the Chief Justice, the Registrar and the Heads of Station. We think Resident Judges should concentrate on Judicial duties and render only such administrative advice as may be sought by the Deputy Registrars and Heads of Station. We accordingly recommend the following:-

(i) Judicial administration should be decentralized up to the station level. The Heads of Station or Deputy Registrars, as the case maybe, should be vested with administrative authority including disciplinary powers of reprimand and interdiction of errant staff.

(ii) Resident Judges should keep out of Judicial administration but should be available for advice, if necessary.

(h) Transparent and corruption-free allocation of Judicial work

We accordingly recommend the following measures:-

(i) The task allocation of judicial work should not be a clerical function. It ought to be exercised under the supervision of senior officers such as the Presiding Judge in the Court of Appeal or the various heads of Divisions or Stations in the High Court and the Subordinate Courts;

(ii) Save for part-heards, the method of allocation ought to be random and, if technology allows computer generated;

(iii) The cause lists should be prepared and published only the day before the hearing.

(i) **Ready availability of court files and records**

We accordingly recommend the following measures:

(i) Court registries should be expanded and computerized complete with back-up systems; and

(ii) Court registry staff should be closely supervised and monitored for integrity.

(j) **Judicial Independence**

We accordingly recommend the following:-

(i) The system of Judicial accounting should be wholly delinked from the Provincial Administration;

(ii) The Judiciary should build or lease its own institutional housing; and

(iii) Heads of Judicial stations should be provided with their own independent transport.

We accordingly recommend that Judicial Officers should not participate in such forums as-

(i) District Development Committees;

(ii) District Security Committees; and

(iii) Political gatherings by whomsoever organized.

(k) Reduction of costs of litigation

We accordingly recommend the following -

(i) Judicial facilities should be easily accessible to the people;

(ii) Court fees should be lowered to make a majority of citizens access the courts in a straightforward manner; and

(iii) Judicial Officers should discourage the adjournment of matters save on the most compelling reasons.

(l) Adequate and Enforceable Code of Conduct

We accordingly recommend that:-

(i) There should be promulgated an adequate and enforceable Code of Conduct for Paralegals; and

(ii) The existing Code of Conduct for Judges and Magistrates should be subject to periodic reviews to ensure it keeps pace with changing times and that at all times it is hostile to corruption and unethical behaviour.

(m) Adequate Anti-Corruption Education for Judicial Officers

We recommend that –

(i) All Judicial Officers should receive anti-corruption education and sensitization through a well devised training programme; and

(ii) The Kenya Magistrates and Judges Association (K.M.J.A.) could be used in that endeavour to reach all members.

CREATION OF A CORRUPTION HOSTILE LEGAL REGIME

We recommend:-

(i) That a detailed study of the issue of Judicial discretion be commissioned by the Judiciary and as necessary legislative reforms be informed by such a study;

(ii) That Judicial immunity from suit should remain undisturbed;

(iii) That as a matter of policy, all prosecutions should be undertaken by State Counsels, and to that end, Government should embark on a vigorous policy of recruitment and training of the necessary personnel;

(iv) Judicial Officers should be encouraged through appropriate training and guidelines to adopt a liberal and realistic bail policy consistent with the peculiar circumstances in specific cases and places; and

(v) The practice of assessment of costs by Magistrates or Executive Officers and the drawing of decrees without reference to both parties should be abolished and the pertinent rules in the subordinate Courts should be amended to bring the practice at par with High Court practice and procedure.

AN ENABLING EXTERNAL ENVIRONMENT

We would to that end make the following recommendation:-

(i) There should be close co-operation and coalition building in the Justice Sector in confronting Judicial corruption. Within the framework, the Judiciary, the Executive and the Law Society of Kenya should devise and implement a holistic strategy to address the corruption of the principal stakeholders, namely Judicial Officers, Advocates, the Police Force and correctional services;

(ii) There should be public education on the rights, privileges and obligations of litigants and witnesses in the court process. Such an awareness campaign may be delivered by the Judiciary itself or civil society. In that regard the Judiciary should organize open days for courts at least twice a year whereby members of the public can interact with Judicial Officers and be educated on their basic procedural rights and privileges and the forms and dangers of Judicial corruption and their role in eradicating it; and

(iii) There should be a campaign of public education on the impact of corruption on the national economy and life generally. Such a campaign should also aim at inculcating new positive ideas in the minds of Kenyans.

THE PROBLEM OF PERCEIVED CORRUPTION

We would recommend the following:-

(i) There is need for a strong public relations office in the Judiciary. Such office should be decentralized to respond effectively to some of the complaints and to offer meaningful public education;
(ii) In so far as possible and appropriate, all hearings and delivery of rulings and judgements should take place in open Court; and

(iii) There should be instituted adequate measures of crowd control in the court corridors and precincts.

OTHER MATTERS

(i) Legal Reform Matters

Provisions akin to Section 200 of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya) should be made to allow a judge of the High Court to take over a part heard criminal hearing where the presiding judge has ceased to exercise his judicial functions as a judge.

To curb the abuse of the power of nolle prosequi we would recommend that the instruments be personally signed by the Attorney General.

We agree and recommend the establishment of the Supreme Court which would have appellate jurisdiction over the Court of Appeal.

We recommend that amendments to relevant laws be made with a view to reducing references to the High Court in Criminal Cases. Alternatively, such applications should be disposed off with speed to avoid undue delay in these matters.

(ii) Administrative Matters

That Magistrates Courts in Marsabit and Moyale be manned by officers of the cadre of Senior Resident Magistrate and above.

That all courts should be made self reliant. They should have their own motor vehicles and sufficient money for transport operations. They should also be de-linked from the District Treasuries, to enable them take full control of their finances.

That the duties of the Registrar and the Chief Court Administrator should be clearly defined. The office of the Registrar should deal with matters pertaining to judges and magistrates. The office of the Chief Court Administrator should be left to deal with paralegal matters and other day to day administrative matters

That the recommendations of the "Kwach Report" should be implemented in full.

APPENDIX VI

(Under Chapter Seven)

SUMMARY OF THE STRATEGIC OBJECTIVES AND STRATEGIES OF THE STRATEGIC PLAN 2005-2008

SER. NO	STRATEGIC OBJECTIVES	STRATEGIES
1.	To achieve complete independence of the Judiciary	(i) Implement Gazette Notice Number 3801 of 8th May 1995 de-linking the judiciary from the civil service (ii) Amendment of the Judicature Act (iii) Drafting of the Judicial Service Bill (iv) The Judiciary to guard and assert its independence against external and internal interference
2.	To attract, develop and retain adequate, well trained, competent, efficient and well motivated staff	(i) Review and develop of competitive schemes of services and terms and conditions of service (ii) Review and develop rational, and objective recruitment, promotion and deployment policy (iii) Establish a continuing education and training policy (iv) Develop and implement appropriate performance management systems (v) Recruit adequate staff to improve service delivery (vi) Mainstreaming gender issues (vii) Sensitizing members of staff in the prevention and control of HIV/AIDS and strengthen the ACU and VCT facilities

		delivery (vi) Mainstreaming gender issues (vii) Sensitizing members of staff in the prevention and control of HIV/AIDS and strengthen the ACU and VCT facilities

SER. NO	STRATEGIC OBJECTIVES	STRATEGIES
		(viii) Develop and implement a security and disaster management policy
3.	To establish well coordinated and streamlined structures, systems and processes that ensure workflow and responsiveness to changing needs	(i) Clarify of the reporting relationships at all levels (ii) Strengthen the Judicial Service Commission (iii) Establish a policy and programme to strengthen links with key stakeholders (iv) Improve case flow management systems and processes (v) Elimination of opportunities for rent seeking and graft (vi) Mainstreaming of monitoring and evaluation systems
4.	To improve infrastructure	(i) To provide adequate facilities and equipment to facilitate service delivery, (ii) To provide transport (iii) To establish responsive registry facilities in all court stations (iv) To strengthen the National Council for Law Reporting

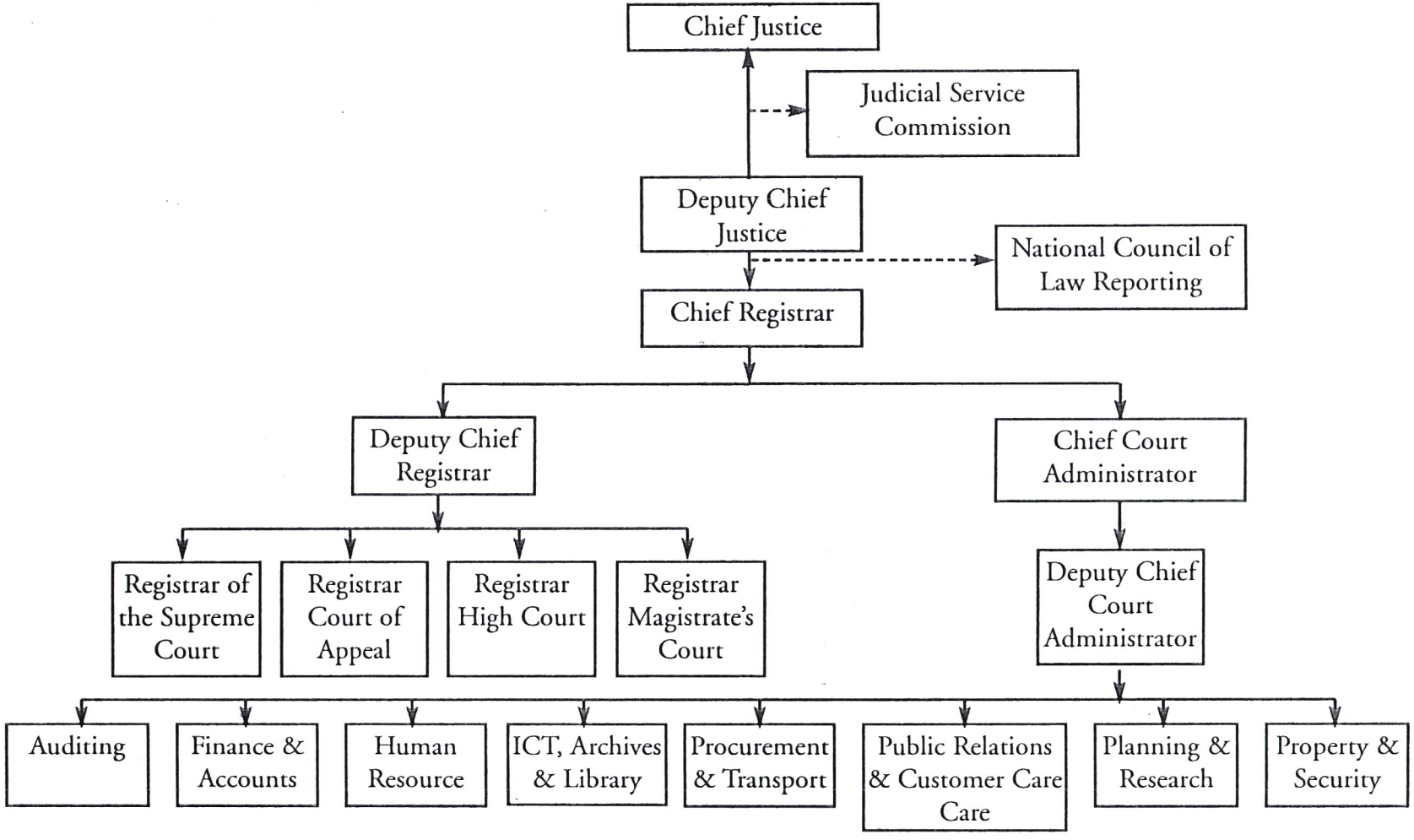
SER NO	STRATEGIC OBJECTIVES	STRATEGIES
5.	To automate the judiciary through the installation of appropriate facilities by the development an implementation of an ICT Policy and Strategy	To develop an implement ICT Policy and Strategy
6.	To improve financial resources and promote prudent financial management systems	To secure independence in financial resource mobilisation
7.	To ensure that members of the public and litigants have easy and proper access to justice	(i) Establish more courts (ii) Establish small claims courts, (iii) Review the legal fees and the simultaneously improvement of the legal aid system and the pauper brief system (iv) Introduce Alternative Dispute resolution in the judicial system, Review and demystify the rules and procedures in the courts (v) Establish standard fines for minor traffic offences to be identified (vi) Establish the Supreme Court
8.	To improve the image of the judiciary	(i) Develop a public relations and customer care policy; (ii) Build capacity in customer` care skills; (iii) Improve transparency in the judiciary

8.	To improve the image of the judiciary	(i) Develop a public relations and customer care policy; (ii) Build capacity in customer care skills; (iii) Improve transparency in the judiciary

APPENDIX VII

THE PROPOSED STRUCTURE OF THE JUDICIARY

(Under Chapter Seven)



REPUBLIC OF KENYA

THE JUDICIARY

REPORT OF THE ETHICS AND GOVERNANCE SUB-COMMITTEE OF THE JUDICIARY

Chairman:
The Hon. Mr. Justice J.W. Onyango Otieno

Presented to:
The Hon. Mr. Justice J.E. Gicheru E.G.H.
The Chief Justice of the Republic of Kenya

JANUARY 2006