



1. Project Data

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| Project ID P105269 | Project Name KE-Judicial Performance Improv SIL (FY13) | |
| Country Kenya | Practice Area(Lead) Governance | |
| L/C/TF Number(s) IDA-51810 | Closing Date (Original) 31-Dec-2018 | Total Project Cost (USD) 108,660,998.51 |
| Bank Approval Date 15-Nov-2012 | Closing Date (Actual) 31-Oct-2021 | |
| | IBRD/IDA (USD) | Grants (USD) |
| Original Commitment | 120,000,000.00 | 0.00 |
| Revised Commitment | 117,768,527.21 | 0.00 |
| Actual | 108,660,998.51 | 0.00 |

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2. Project Objectives and Components

a. Objectives

The project's development objectives were to improve the performance of the judiciary to provide its services in the project areas in a more effective and accountable manner (ICR, p. 13). The outcome targets were revised at restructurings in 2016 and 2018, both upward and downward. A split evaluation will not be undertaken, as over 80 percent of funds were disbursed after the 2016 restructuring, and the 2018 targets were exceeded.



b. Were the project objectives/key associated outcome targets revised during implementation?

Yes

Did the Board approve the revised objectives/key associated outcome targets?

Yes

Date of Board Approval

31-Mar-2016

c. Will a split evaluation be undertaken?

No

d. Components

The project originally contained four components: (1) Court Administration and Case Management; (2); Judiciary Training and Staff Development; (3) Court Infrastructure; and (4) Project Management.

The first project component comprised two subcomponents: 1. Court Administration and 2. Case Management. The first subcomponent included an emphasis on strengthening court administration systems. Key planned activities under this subcomponent included: an organizational review of the judiciary; the development and implementation of the Integrated Performance Management and Accountability System (IPMAS); support to Court User Committees (CUCs); and capacity building for the Judiciary's Directorates. The second subcomponent included the design, installation, and commissioning of information and communication technology (ICT) hardware; the implementation of a Case Management Information System that offers audio/visual recordings of court proceedings and electronic case tracking and management, and an Integrated Justice Information Portal.

At the first restructuring (approved in March 2016), the first project component was substantially revised. Several proposed activities were dropped, including activities relating to the Case Management Information System and the planned Integrated Justice Information Portal, as well as information technology upgrades such as video recording and videoconferencing. With regard to the latter, the Kenyan judiciary indicated it was not ready to proceed with these activities. Additionally, capacity building activities for the Judiciary's Directorates were dropped.

The aim of the second project component originally was to strengthen the capacity of the Judiciary Training Institute (JTI); provide structure for defining critical competencies of judicial officers; establish a Legal Research Resource Center concerned with developing online training and legal information services for judges, magistrates, and judiciary staff; and support capacity-building efforts for the legal personnel at the Office of the Attorney General.

The third project component included the construction of eight High Court buildings, the refurbishment of approximately 30 magistrates courts, the construction of two magistrates courts, and the supply of a minimum of 20 demountable or temporary courts. As originally planned, the project area consisted of approximately 68 courts where service improvements were to be made. Funding under this project component was primarily directed to courts that were most likely to produce improvements in services and improved access to courts. The project also supported the establishment of a unit responsible for design, supervision, maintenance, and management of judicial buildings.



The fourth project component was to facilitate project implementation. Planned activities included, among other things, supporting the function of the Project Management Unit; financing an Integrated Fiduciary Agent (IFA) responsible for the project’s fiduciary management and procurement functions; supporting monitoring and evaluation (M&E) and collection of data to facilitate impact evaluation; implementing environmental and social safeguard requirements; and developing and implementing the project’s information, education, and communication strategy.

These project components (with the exception of the fourth component) were subsequently substantially revised following a 2015 mid-term review (MTR). Implementation of activities based on the initially proposed structure experienced significant challenges, and it was decided to shift away from focus on institutional inputs toward more priority on service delivery functions. As a result, the substantive project components were revised as follows at the 2016 restructuring:

Table 1. Change in Component Names and Costs (US\$, Millions)

| Component Name (Original) | Component Name (Revised) | Cost (Original) | Cost (Revised) | Change (%) |
|--|--|-----------------|----------------|------------|
| Court Administration and Case Management | Increase Access to Courts and Legal Information | 42.80 | 50.00 | +16.8 |
| Judiciary Training and Staff Development | Improve Timeliness of Judiciary Services | 17.00 | 45.00 | +164.7 |
| Court Infrastructure | Enhance Performance and Quality of Decision Making | 50.00 | 20.00 | -60.0 |
| Project Management | Project Management | 010.20 | 5.00 | -49.0 |
| | Total | 120.00 | 120.00 | — |

The revised project components are discussed below:

1. Increase Access to Courts and Legal Information (Appraised Cost US\$ 42.80 million, Actual Cost: US\$ 41.55 million). This component aimed at reducing geographical distance to courts, improving links to court users, and enhancing access to legal information. To improve access to courts, the project sought to improve court outreach to communities, with the planned addition of 25 newly constructed courts. The original target of 10 new courts was increased to 25, as a result of a re-classification of some court buildings from “upgraded” to “new” to reflect the scale of the work being constructed (new courts were defined as courts where more than 60% of the final floor space was newly constructed). Secondly, to improve access to legal information, the project aimed to increase the average number of unique monthly visitors of the Kenya Law Reports from 350,000 to 900,000, and improve the dissemination and publication of legal information and court decisions.

2. Improve Timeliness of Judiciary Services (Appraised Cost: US\$ 17.00 million, Actual Cost: US \$ 51.00 million). The project was to support improvements to court infrastructure and management, as well as the modernization of the registry and filing processes in courts. To this end, the project aimed to standardize registry processes, and to introduce new records management policies and registry operation manuals. The project was also to support internet connectivity in all the courts that were constructed. It aimed at increasing efficiencies through the upgrading of court facilities and the provision of adequate furniture and equipment. Another aim was to increase the speed of case resolution through the implementation of court-annexed mediation, the holding of special sessions (justice@last) to clear old



cases over five years, active case management in criminal cases, and provision of adequate ICT equipment.

3. Enhance Performance and Quality of Decision Making (Appraised Cost: US\$ 50.00 million. Actual Cost: US \$14.00 million). To improve the work of the Kenyan judiciary, the project aimed to support the introduction of performance and data systems including Performance Management and Measurement Understandings (PMMUs). In furtherance of this aim, the project was to support various studies and surveys, including: (i) an impact evaluation undertaken by the judiciary (through the support of the WB DIME system); (ii) a study to determine the workload of magistrates courts and to assess optimal resource allocation as well as allocation of budgetary resources among courts; (iii) court user and court stakeholder surveys; (iv) a governance and anti-corruption mapping survey, including the preparation of reports to guide the judiciary to combat and prevent corruption; and (v) the financing of a training needs assessment to support the JTI in the delivery of its annual programs and review of the judiciary's training needs.

4. Project Management (Appraised Cost: US\$ 10.20 million, Actual Cost: US \$4.00 million). Planned activities included improvements in the way the judiciary worked and implemented its oversight role. This was to be done through a number of mechanisms, including: (a) the use of project dashboards to monitor and report on performance; (b) the introduction of bimonthly meetings with the World Bank task team on project implementation; (c) internal judiciary construction sub-committee meetings (tasked with monitoring new court constructions); (d) payment diagnostics and tracking systems to detect payment delays and take corrective measures; and (e) the introduction of a Geo-Enabling Initiative for Monitoring and Supervision (GEMS) to monitor project implementation.

e. Comments on Project Cost, Financing, Borrower Contribution, and Dates

Project cost and financing: Project cost at appraisal was US\$ 120 million, to be financed by an IDA Credit. Exchange rate depreciation resulted in the reduction of the original credit and inability of the project to be fully implemented, as the sums originally envisioned under the project were not fully available towards the end of project. Actual costs were US\$ 110.55 million (ICR, p. 48).

Dates: The project was approved on November 15, 2012 and became effective on April 30, 2013. An MTR was undertaken in July 2015. The project underwent four restructurings, resulting in various changes to the initial design and implementation structure of the project, fewer implementing units and activities, new outcome indicators, and revised closing dates.

- The first restructuring (approved on March 31, 2016) shifted focus to judicial services: (a) access to courts and legal information, (b) timeliness of services, and (c) performance and quality of decision-making. This, in turn, resulted in project adjustments focused on: streamlining and re-organizing of project activities; the reallocation of funding between the new components; revisions to the results framework; changes in data collection methods; and revisions to outcome indicators. The project components were revised to address key issues that the public continued to raise frequently in their interactions with the judiciary. Moreover, the restructuring sought to reduce transaction costs associated with the initial design of components by input types, such as "training" and "infrastructure." The latter involved a large number of implementing units (21 units in total), resulting in a situation where annual work planning processes undermined the focus on development outcomes; and more importance was given to the needs of the implementing units rather than



problems faced by the court users and public. The restructuring was intended to address these issues.

- A second restructuring (approved on December 14, 2018) extended the project's closing date from December 31, 2018 to October 30, 2020. Due to the exchange rate depreciation, the restructuring also resulted in the reduction of the original credit from US\$120 million to US\$110.55 million, and further changes in the results framework.
- During a third restructuring (approved on October 21, 2020), the project closing date was extended again from October 30, 2020 to July 31, 2021. This was in response to the COVID-19 pandemic, with the ICR noting that the COVID-19 pandemic negatively affected the schedule of delivery of ten courts.
- A fourth restructuring (approved on 19 July 2021) extended the project closing date from July 31, 2021 to October 31, 2021. The purpose of the extension was to allow for the completion of the remaining court constructions.

3. Relevance of Objectives

Rationale

Country Context: The project was highly relevant to the needs and priorities of the Kenyan judiciary. The judiciary is one of the three arms of the state and critical to the maintenance of the rule of law in the country. The Constitution of Kenya (2010) specifically provides a role for courts to act a counterbalance to executive power, independent of the executive apparatus, and as a guardian and arbiter of human rights. It also establishes a basis for the institutional and financial independence of the judiciary (ICR, p. 10), promoting decentralized budgeting.

Kenya's judiciary suffered from a range of structural and capacity problems, many of which are historic and political in nature (ICR, p. 10). There was general mistrust and dissatisfaction with the court system among the public (ICR, p. 10). The court system suffered in a significant way from a lack of funding, poor physical infrastructure, and persistent capacity and integrity problems (including the judiciary's failure to deliver timely justice, poor conditions of service for its officers, and ineffective case management systems), all of which have been well documented over the last four decades in various commissioned reviews of the judiciary, including reviews commissioned by the judiciary itself (ICR, p. 10). The lack of physical facilities hampered performance and efficiency significantly, with court users in some areas having to travel over 200 km to access the nearest court (ICR, p. 55) and the judiciary struggling to reach poor and marginalized segments of the Kenyan population that live in remote areas. Indeed, the Kenyan judiciary was fundamentally "characterized by inaccessibility and undue delays" (ICR, p. 52). Despite past reform efforts, including government-wide and internal judiciary-driven attempts to improve judicial performance, justice administration suffered from severe weaknesses. At the time of project design, "access to justice was a major problem for the vulnerable and the marginalized" (ICR, p. 24), and especially for women "as they had to cover excessive distances to courts" (ICR, p. 24).

In addition, there was significant risk, that if left unaddressed, weaknesses in judicial administration and court structure would destabilize democratic governance and electoral processes in the country, potentially leading to a breakdown of rule of law and order. Thus, both the Independent Review Commission (Kriegler Commission) and the Commission of Inquiry on Post-Election Violence (Waki Commission), both



established in February 2008, linked the poor state of the judicial arm of government with electoral irregularities and electoral violence in 2007-2008, making a strong case for judicial reform in the country (ICR, p. 6).

Alignment with Kenyan Government Strategy: The underlying objective of the project – improving the effectiveness and accountability of the Kenyan judiciary – was well aligned with several high-level policies and strategies. The project was fully aligned with the government's overall objective of improving the judiciary's performance in a more effective and accountable manner (ICR, p 15). It was also aligned with the government's long-term development strategy, Vision 2030, which lays out a plan for “adherence to the rule of law applicable to a modern, market-based economy in a human rights-respecting state.”

The project components collectively reflected and reinforced the country's Judiciary Transformation Framework (2012-2016) pillars and subsequent blueprint on Sustaining Judiciary Transformation (2017-2021). The project also considered the strategic plans of other justice sector actors including the National Council for Law Reporting, the Judicial Service Commission, and the National Council for the Administration of Justice.

Alignment with World Bank Strategy: The project was aligned with the most recent 2014-2018 Country Partnership Framework (CPF). The CPF identified good governance as a cross-cutting platform facilitating achievement of results across three dimensions: (i) competitiveness and sustainability; (ii) protection and potential; and (iii) consistency and equity. (The CPF was extended to 2020 and again to 2021, and a new CPF is currently under preparation.) The 2020 Kenya Systematic Country Diagnostic (SCD) highlighted the importance of the judiciary in magnifying citizen voice, counterbalancing executive power, and upholding the constitutionally enshrined Bill of Rights in the country (SCD, p. 23). Objectives were aligned with the 2021 Country Policy and Institutional Assessment, which highlighted the significance of a fully independent Judiciary with direct financial accountability lines to the Parliament.

Overall, the relevance of the project's objectives is rated as High.

Rating

High

4. Achievement of Objectives (Efficacy)

OBJECTIVE 1

Objective

To improve the performance of the Judiciary to provide its services in the Project Areas in a more effective manner.

Rationale

The causal chain by which the project was to achieve its objectives was not explicit at design; the Project Appraisal Document (PAD) did not have an explicit Theory of Change (TOC). The ICR constructed a TOC for



the at the time of project approval in 2013 (ICR, p. 12). A revised TOC was developed following the restructurings to the project and is reproduced in the ICR's Annex 7 (p. 75). The ICR traces the ineffectiveness and inefficiency of the Kenyan Judiciary primarily back to inadequate physical infrastructure, poor court management, and more broadly, a lack of independence of the Judiciary, noting that prior to 2017, the Judiciary “was totally dependent on the Ministry of Public Works for designing, managing, and maintaining all capital investments” (ICR, p. 24).

The TOC held that the construction and rehabilitation of courts (including the establishing of mobile courts), investments in ICT, court registries, and new court data systems, and improved court processes would help improve court functioning and make the judiciary more effective and accountable. Against this background, the TOC identified clear outputs specifically focused on improving the efficiency and operations of Kenya’s national court system and boosting the capacity of local courts (including through court outreach in remote regions) to absorb cases and reduce long delays in court proceedings (through alternative dispute resolution techniques, information kiosks, better case management, and improved filing mechanisms and digitization, among other things).

Overall, the TOC was aligned with and contributed to the two thematic objectives of the PDO focused on “effectiveness” and “accountability.” (Accountability was primarily to be addressed through improved performance evaluation frameworks and training to improve the quality of judicial decision making, see below). However, there was some lack of clarity in the articulation of outputs and intended outcomes specifically for each of the two thematic areas. Although “effectiveness” and “accountability” frequently overlap, the TOC could have drawn out more explicit linkages between the project interventions, the proposed outputs and intended outcomes, and each objective. This could have also been applied in the results framework more effectively.

The key outputs and outcomes relating to “effectiveness” are evaluated below.

Reduction of case backlog. As stated, one of the greatest weaknesses and most immediate issues in the Kenyan Judiciary was the large number of delayed and backlogged cases, which in turn, profoundly impacted public trust and confidence in courts. Therefore, a key component of the project was to reduce the backlog and increase the speed of case resolution. To this end, multiple delay reduction strategies were employed. The project supported the holding of special sessions – referred to as justice@last – in the judiciary’s High Court civil division. Special sessions/benches were held initially in a one-week event where 15,000 cases over five years were resolved. This led to the strategy being adopted by the Magistrates Courts and Court of Appeal, triggering a series of events commonly referred to as “service weeks.” Additionally, the project supported the establishment of an alternative and less costly case resolution mechanism, CAMP (ICR, p. 61).

Outcomes:

- Cumulatively, 217,018 backlogged cases (including those that matured over time to 5 years) were resolved (ICR, p. 19). This represented a 124 percent achievement of the target (175,000 cases) (ICR, p. 22).
- Since the launch of CAMP in 2018-19, over 6,900 cases were resolved using mediation, “releasing over KSh 50 billion (\$US 44 million) in restricted resources back into the Kenyan economy” (ICR, p. 23).
- CAMP also resulted in a significant reduction of the time taken to finalize cases, i.e., 2 months compared to around 11 months if cases that went through litigation.



Average time to dispose of cases in courts. The project supported the modernization of court registries and filing infrastructure. Specific challenges included lost files, misfiling, damaged files, delays in registering cases, and difficulties in locating records and filing documentation. To address these and related challenges, registry processes were to be streamlined through the creation of modern registries in courts. Files were standardized for maintenance of file integrity and easy identification and retrieval. In total, 1.5 million color-coded file folders were procured and distributed to all court stations. The project also supported the development of registry operational manuals and court procedures for all court cadres. Information kiosks and queue management systems were commissioned at Milimani Law Courts. In response to filing and record-keeping challenges, the Judiciary developed a Draft Records Management Policy in 2017.

The project also supported increased efficiency through improvements to ICT equipment and infrastructure, and internet connectivity in all the courts constructed. Installation and commissioning of Local Area Networks was completed in 25 courts. 1,300 computers were procured and distributed across 128 court stations.

In order to ascertain the total volume of backlogs in the judiciary as well as the causes of delay in case resolutions, Case Audits and Institutional Surveys were done in 2014 and in 2016 (the judiciary case audit and institutional capacity survey conducted in August 2014; and the judiciary case census and institutional capacity survey in 2016). In addition, a case diagnostic study (to assess the cause of delays in case processing) was done in 2015. An impact evaluation study was conducted to determine the main reasons for adjournments in sample courts. This entailed conducting a randomized controlled trial study across 124 court stations in Kenya. As part of the study, courts were randomly divided into groups, with certain courts as well as CUCs being asked to report on adjournments using a one-page feedback form.

Additionally, all the constructed and refurbished courts were fully equipped with furniture. This eliminated the problem of staff working in turns, thereby increasing efficiency and productivity. The Directorate of Building Services (DBS) was fully established with staff to help manage and supervise court construction and renovation programs. Additionally, to enhance efficient operations for eight court stations (Ngong, Kikuyu, Webuye, Wanguru, Kisii, Homabay, Eldoret, and Meru law courts), the project procured fabricated containers serving as registry, courtrooms, and/or archives. Through these initiatives, courts were able to expand existing space available by about 300 square feet for provision of services.

Outcomes:

- The average time to dispose of cases was reduced from 15 months to 10 months. The original target was 8 months, which was revised to 11 months in 2016, and then to 10 months in 2018. The project achieved the 2018 revised target of 10 months. This represents a 100 percent achievement of the 2018 revised target (ICR, p. 20).
- 74% of court users reported timely services. However, as no baselines were reported, it is not possible to estimate how much progress was achieved.
- At project completion, 64% of cases were completed in less than one year of filing. No baseline was provided, thus it is not possible to estimate improvement.
- Costs involved in case processes were reduced through electronic filing; however, the ICR does not indicate the extent of the cost reductions and what cost unit was used to measure costs.

Average distance to courts as a result of constructing new courts. This was a significant achievement of the project. A total of 21 new courts were constructed. Nine mobile courts were introduced to serve the most remote parts of Kenya (ICR, p. 17). Although the project mentions an increase in the number of cases filed



per day after a court construction (ICR, p. 19), it did not measure usage of courts, such as, for example measuring how extensively certain courts were used and by which types of project beneficiaries.

Outcomes:

- The project aimed at reducing the average distance to courts from 394 km originally to 186 km (the original target). This target was revised in 2016 to 110 km, and then revised in 2018 to 140km. At project conclusion, the average distance was 152 km, representing progress toward but not meeting the revised target (ICR, p. 20).

Users' satisfaction with the delivery of court services in project courts. The project supported carrying out surveys including court user surveys (2015), employee surveys (2017), and environmental satisfaction surveys (2019), which collectively measured satisfaction in terms of accessibility, fairness, accuracy, timeliness, knowledge, and courtesy. As part of the surveys, a satisfaction index was developed and used to establish the level of improvement. (ICR, p. 60). A legal needs and satisfaction survey was conducted in 2017

Outcomes:

- The surveys showed an improvement in the delivery of court services from a satisfaction index of 56 percent in 2015 to 67 percent in 2019, exceeding the original target of 60 percent and the 2016/2018 revised targets of 65 percent (ICR, p. 20).
- The ICR notes that the new courts with improved customer service facilities improved court efficiency. In particular, out of 11 parameters of satisfaction, the users expressed relatively greater satisfaction with the services at the customer care desk, where staff were courteous and provided more useful guidance to clients, including compliance with the service charter on time.
- The ICR links the construction of new courts with improved overall access to the justice system, noting that “the number of cases filed per day after a court construction is completed increased by approximately 30 percent on average” (ICR, p. 19)

Gender Impact. There was positive gender impact. The project promoted gender equity in accessing judicial services through new court buildings, which were designed to provide a conducive and dignified space for women (for example, separate cells for women and children). In addition, the project facilitated waiting areas, service bays, and lactating rooms for nursing mothers. The project also supported CAMP and facilitated mediation on family and succession issues that most commonly adversely affect women. Training on alternative forms of dispute resolution helped with handling sexual offense cases in court. Further, the project supported capacity building of female judges and magistrates.

Outcomes:

- The project targeted at least 30 percent of the project beneficiaries to be women. Project beneficiaries are defined as both the number of court users and the number of judicial personnel trained. At project closing, at least 45% of project beneficiaries were women, exceeding expectations.



Despite the difficulties experienced in implementation, the project substantially contributed to the modernization of the court system in Kenya and greater judicial capacity. All revised output targets were substantially achieved, including a marked increase in access to and satisfaction with courts.

Rating

Substantial

OBJECTIVE 2

Objective

To improve the performance of the Judiciary to provide its services in the Project Areas in a more accountable manner.

Rationale

At project design, there was a lack of performance reporting in place and insufficient information about performance measures and standards. The project identified deficiencies in the accountability framework of the Kenyan Judiciary and the need to enhance the accountability of judicial officers and staff, in general. The TOC, as it related to accountability, was premised on the notion that introducing mechanisms and tools for improving judicial performance would lead to greater judicial accountability.

However, the originally planned IPMAS, which was to be used as a tool for evaluating staff performance, was dropped, and with it the related outcome indicator.

Additional activities specifically relevant to the thematic area of accountability are discussed below. Some outputs are the same as under Objective 1, as the reforms that contributed to improved court functioning and court processes also enhanced judicial accountability. For example, the publication of regular court user survey results is a crucial transparency and accountability tool.

Number of PMMUs signed. The project supported entrenchment of PMMUs/performance contracts in the Judiciary. Performance contracts were gradually introduced, with 284 performance contracts having been signed at project closing (ICR, p. 23). Performance contracting has been fully adopted, with the ICR noting that this contributed to more efficient and overall improved service delivery by the Judiciary, as described under the first objective.

Improved consistency and clarity of judicial decision-making, and increased access to legal information. The project financed a training needs assessment to support the JTI in its annual programs through a review of the Judiciary's training needs. The assessment identified specific knowledge and skills that employees need to be trained on to be more productive, efficient, and innovative in their jobs. To increase legal knowledge and improve practices, the project supported the dissemination of legal materials to the Judiciary for use by judicial officers (over 620 Grey Books were disseminated to the Judiciary) and members of the public (4,500 copies of the Kenya Law Reports and 100,000 pocket-sized copies of the Constitution were provided to the public to "enhance understanding of the law and bridge the knowledge gap"). A total of 6,000 volumes of Commonwealth Law Reports and East Africa Law Reports, among a host of other titles, were bought and distributed to 28 court stations for legal research by judicial officers/legal



practitioners. Additionally, the National Council for Law Reporting website (kenyalaw.org) was revamped to enhance access to legal information, leading to a 93 percent increase in average monthly unique users.

Strengthened integrity of decision-making. A governance and anti-corruption mapping survey was undertaken, as well as preparation of a report to guide the Judiciary in addressing and preventing corruption. The complaints management system of the office of the Judiciary Ombudsman was reviewed, strengthened, and upgraded. The system was upgraded with the following features: (1) auto response – allowing clients to lodge complaints via emails upon which they receive an automatic response to the effect that a ticket has been created; (2) search options – the search parameters were broadened to enhance the search function; (3) contact editing – to allow enhanced feedback whenever a clients contact changes; (4) merging tool – enabling users to efficiently handle more than one ticket relating to the same customer simultaneously and; (5) complaints trends – this enables knowing frequency of each category of complaints. (ICR, p. 61). Additionally, the project funded the installation of audio recording equipment in 26 courts for quick and easy access to the recordings of any proceeding.

Impact Evaluations to Improve Judicial Performance. With the support of the World Bank's DIME program, the Judiciary undertook an impact evaluation to determine how to improve judicial performance. Toward case weighting and optimal resource allocation, the project facilitated a study for magistrates courts, which assessed: (a) the workload of judicial cases in the magistrates courts and established optimal resources, (b) the appropriate number of judicial officers necessary for effective case resolution, (c) the duration of a case from registration to resolution, (d) the distribution of cases among magistrates, and (e) allocation of budgetary resources among courts.

Although achievement of the objective is rated Substantial based on these activities, a more outcomes-based analysis of accountability would have improved the ICR's argument in this area.

Rating
Substantial

OVERALL EFFICACY

Rationale

The project significantly reduced case backlogs, modernized court registries and related processes, and improved access to courts and legal information, leading to substantial practical achievements under the first objective of improving the effectiveness of the Kenyan court system. Several project activities supported improvements in judicial accountability. Overall efficacy is therefore rated Substantial.

Overall Efficacy Rating



Substantial

5. Efficiency

The ICR does not include a formal economic analysis, and economic benefits are not discussed.

The absence of technical staff within the Judiciary to properly cost and design courts led to severe underestimation of the costs of court construction. While this issue was later rectified and reflected in the MTR (the project supported experts to strengthen capacities of the Building Services Unit), even with more accurate cost estimates (because costs were estimated as of 2015), by the time most of these courts were completed (2020-2022) prices of construction materials had significantly risen.

Implementation was hampered by a range of procurement issues, including irregular tender committee meetings, repeated errors in procurement processes, infrequent scheduling of evaluation committees, delays in writing up committee reports, and the need to seek legal opinions on the implementation of World Bank procurement protocols in the context of domestic legislation (ICR, p. 51).

Contract management and monitoring was inadequate. The ICR comments on the poor performance of the IFA, noting that “due to the inability of the IFA to conduct due diligence, some of the engaged contractors lacked financial capacity to independently continue with the construction” (ICR, p. 26). The project also experienced implementation delays in processing payments to contractors (ICR, p. 26). Timely contractual remedial measures were not adequately pursued for non-performing contracts. As a result, deliveries/completions of many court building contracts were delayed compared to contracted completion dates. This problem was compounded by challenges posed by the COVID-19 pandemic.

While the Project Management Unit attempted to monitor the situation, remedies were not always proactive. The World Bank team fielded a number of missions, including virtual follow-ups, to improve the situation; however, many of the challenges persisted.

Overall, efficiency is rated Modest. Implementation of the project required significantly more time than was originally allotted, and it suffered from various operational inefficiencies, thus delaying benefits to intended beneficiaries.

Efficiency Rating

Modest

a. If available, enter the Economic Rate of Return (ERR) and/or Financial Rate of Return (FRR) at appraisal and the re-estimated value at evaluation:

| | Rate Available? | Point value (%) | *Coverage/Scope (%) |
|-----------|-----------------|-----------------|--|
| Appraisal | | 0 | 0 <input type="checkbox"/> Not Applicable |



| | | |
|--------------|---|--|
| ICR Estimate | 0 | 0 <input type="checkbox"/> Not Applicable |
|--------------|---|--|

* Refers to percent of total project cost for which ERR/FRR was calculated.

6. Outcome

The project's objectives were highly relevant to the Kenya 2030 Vision, country conditions, and Bank strategy. Achievement of both objectives is rated Substantial. Efficiency is rated modest due to project under-costing, delays in implementation, and the absence of economic analysis. Overall, these ratings are indicative of moderate shortcomings in the project's preparation, implementation, and results, producing an Outcome rating of Moderately Satisfactory.

a. Outcome Rating

Moderately Satisfactory

7. Risk to Development Outcome

The following two factors are likely to lower risks to development outcomes: (1) the passage and operationalization of the Judicial Fund Act 2016; and (2) the willingness of members of the Kenyan Judiciary (including judiciary leadership) to continue with the reform process, including important cultural reforms.

The Judicial Fund Act was enacted on 12 June 2016 and finally operationalized in 2022. This is expected to ensure that the Judiciary has adequate resources to carry out maintenance and improvements of court houses, vehicles, and ICT infrastructure. Also, according to Bank staff, the Judiciary is invested in many of the reforms. The current Chief Justice is seeking to ensure that “institutional and cultural aspects are being maintained” (ICR, p. 27). However, the length of the Chief Justice's appointment term is uncertain.

Training and staffing issues: The absence of continuing training on ICT infrastructure maintenance is considered a significant risk to the longevity of the reforms. The ICR highlights limited technical knowledge of staff as an issue, stating, that after project closing, as consultants left the project, staff remaining in the finance and accounting functions were in need of additional training and had limited or no technical knowledge of the project (ICR, p.27). Recruitment issues are also a risk to the project's maintenance. To fill the gap in the DBS created by the departure of the 20 short-term consultants leaving the project, additional recruitment by the judiciary as well as training of staff in technical departments is needed. Delays in the recruitment process may create challenges for the maintenance of project outcomes. These issues could be resolved by ensuring that staff tasked with continuing the reforms implemented by the project have additional and continuous technical training, and that proper recruitment is implemented.

Resource issues: Financing is likely to pose a major risk to the continuity of the project. While the Judiciary agreed to finance unfinished courts from its own resources, there is a realistic risk that this will not be achieved in a political climate where austerity measures were – at the project's closing – being implemented to curb public spending. A lack of adequate financing in the medium-term expenditure framework could result in the Judiciary not being regularly able to maintain and improve IT infrastructure and building facilities, resulting in a deterioration of both. There is also risk that increased



tensions between the executive and Judiciary result in less funding being allocated to the Judiciary. This problem is compounded by inadequate life cycle costing of court buildings and ICT infrastructure, which, in turn, could result in improper maintenance and run-down buildings and systems.

Lack of Improvements to Accountability Framework: The success of the reforms will depend on further improvements to accountability, as the quality of the justice system will depend on citizens having access to courts (and other dispute resolution systems) that are trusted and accountable.

8. Assessment of Bank Performance

a. Quality-at-Entry

The project was prepared with sound background analysis, based on the government's reform objectives and priorities as well as prior judiciary reform initiatives in Kenya (ICR, p. 25). Thus, the initial M&E design suffered from various shortcomings, including the large number of implementing units, as well as a large number of small internally focused activities (266 in total were designed in FY2013/14 alone, many of which were not completed).

The ICR also points to issues surrounding the weak capacity of the IFA, which do not appear to have been adequately considered at point of entry. The IFA was ineffectively staffed and non-responsive to PMU and Judiciary needs, adding little in terms of capacity development or quality. These weaknesses became apparent in 2013 (when the IFA was contracted) and were also highlighted during the MTR in 2015, which, among other things, decided that the IFA would be phased out and its procurement and financial management functions directly transferred to the PMU.

On the upside, the project preparation team took into account country-specific implementation and procurement challenges and considered the work of other World Bank-financed activities in support of judicial reforms, as well as the work of other donors (such as the German Agency for International Cooperation's support for CUCs, the United States Agency for International Development-financed Case Management Project in Eldoret, and code of conduct work facilitated by the United Nations Office on Drugs and Crime) in an attempt to build on prior efforts and avoid duplication.

Lessons learned from previous initiatives in Kenya and similar operations throughout the region were incorporated. Thus, the project management component (Component 4) was built on lessons learned from the judiciary's 2008 forensic audit and the recommendations made in the institutional risk-based policy framework (funded through the World Bank FLSTAP – the Financial and Legal Sector Technical Assistance Project) to address fiduciary capacity constraints in the judiciary (ICR, p. 26). The project preparation team also took into account the procurement challenges experienced in automating the recording of court proceedings (under the Norwegian grant for the Kenya Public Sector Management Project, TF052274, FY02) and in the piloting of a case tracking system for the High Court Family Court Division by the NCLR (Gender Responsive Legal Reforms Project, TF053703).

Quality-at-Entry Rating



Moderately Unsatisfactory

b. Quality of supervision

The project was implemented in a “context of weak public sector governance and government accountability” (ICR, p. 25). The task team, through supervision missions, regularly highlighted issues for World Bank management’s attention. Quarterly and annual progress reports and monthly fiscal reports were used to monitor project outcomes and results indicators. Throughout the lifecycle of the project, several rounds of adjustments were made, including four project restructurings and extensions of project completion dates. During the MTR, shortcomings were identified (such as those relating to the large number of implementing units and related high transaction costs, as well as cumbersome annual planning processes), and the project was restructured away from focus on institutional inputs, as originally designed at entry, towards service delivery outcomes. However, as the ICR notes, it took over two years for the team to take the remedial action of replacing the IFA. This factor contributed to delays and slow disbursements. After the team’s decision to restructure the project, significant improvements were noted in achievement of outputs and outcomes. The direct involvement of the PMU (and the hiring of procurement and financial management consultants who reported directly to the Project Coordinator) improved efficacy and efficiency, increasing responsiveness and reducing costs.

The World Bank intensified its supervision efforts during the final year of project implementation. The Bank held more frequent technical and management meetings with the client and provided day-to-day support in the final months, to help accelerate implementation and completion of the project. During the COVID-19 pandemic, the task team was effective, successfully switching to virtual meetings and missions. It deployed ICT innovatively to minimize disruptions to service delivery and to supervise court constructions remotely (using the GEMS tracking tool, for example).

Quality of Supervision Rating

Moderately Satisfactory

Overall Bank Performance Rating

Moderately Satisfactory

9. M&E Design, Implementation, & Utilization

a. M&E Design

Primary responsibility for M&E was with the PMU, which was tasked with tracking the project’s performance indicators as defined in the results framework. That framework (developed as part of a consultative process with the Judiciary and other stakeholders) included five PDO-level indicators and six intermediate indicators, linked to the project’s objectives. In carrying out its monitoring function, the PMU worked closely with the directorates of the Judiciary. The project provided M&E training, mentoring, and technical assistance for the Judiciary and recruited a full-time M&E officer as part of the PMU team, in addition to



engaging independent third-party monitoring (through community service organizations, court users, and affected communities). An M&E plan was developed to operationalize the results framework.

Moreover, the cumbersome structure consisting of many implementing units and small internally focused activities adopted as part of M&E made it difficult to prioritize activities for clear assessment of project achievements and monitoring of redefined components and outcome indicators. Corrective actions were taken to improve M&E design after the first restructuring. Additionally, some of the outcome indicators were flawed, as there was no baseline to measure progress.

The TOC is reflected in the results framework, which measures practical progress using both efficiency and quality indicators. The latter measured the delivery of quality court services (data gathered using client and court stakeholder surveys), whereas the former relied on numerical targets and indicators (geographic distance to courts, reduction of case backlog, timeliness and speed of case resolution, and the number of PPMU contracts adopted across courts). Overall, however, M&E did not include enough indicators to understand how progress toward the achievement of the accountability objective would be measured.

b. M&E Implementation

Implementation of M&E improved over time. However, the ICR notes that data in some cases were collected with delays due to coordination issues with government departments. In particular, the ICR notes that “data collection had gaps in the early years” which were addressed later, with M&E implementation being conducted more rigorously in the final years of the project.

c. M&E Utilization

The project supported the development of a Daily Court Returns Template (DCRT), a data collection and administrative system to collect data from each court system. The DCRT was folded into the electronic case management system and is used for various purposes, including hiring and promotion of judges, decision-making to deploy infrastructure, allocation of court budgets, performance monitoring through the performance dashboard implemented by the PMU, and the GEMS e-supervision tracking tool.

M&E Quality Rating

Modest

10. Other Issues

a. Safeguards

Environmental Safeguards

The project was in compliance with environmental and social safeguards (ICR, p. 26). It was rated Category B for environmental purposes. The project entailed construction and rehabilitation of courts and therefore triggered the World Bank’s safeguard policies OP/BP 4.01 on Environmental Assessment and OP/BP 4.12 on Involuntary Resettlement. The majority of court buildings rehabilitated were small magistrates court



facilities, and environmental impacts were expected to be moderate. To ensure the minimization of environmental impacts on court facilities, the Kenyan Government prepared a number of policies to guide the process: (i) an Environmental and Social Management Framework (which included guidance on dealing with physical cultural resources that could be affected by the court rehabilitation and construction facilities; (ii) a Resettlement Policy Framework; (iii) Environmental and Management Plans (ESMPs) for the first two courts to be rehabilitated (Kangema and Kitui Magistrates Courts); and (iv) a Resettlement Action Plan that was developed in the event that there were land acquisitions that would impact assets or cause loss in economic activity.

Social Safeguards

As part of the project, adverse social impacts were minimized through implementation of a resettlement audit and payment of compensation to 14 project-affected persons. Further, to strengthen oversight, a safeguards focal point was appointed at the PMU; CUCs were established in each court to function as a complaints mechanism where issues between court users and the Judiciary could be raised and settled; and any new contractors or subcontractors brought onto site were briefed on the ESMP and were required to develop and implement a contractor ESMP, as well as follow up on the ESMP during site meetings.

b. Fiduciary Compliance

The ICR (p. 26) comments on the shortcomings of the IFA, which performed below expectations during 2014-15, failing to put in place adequate processes to conduct quarterly audits and create appropriate filing and document management systems. Moreover, as the ICR notes, the IFA made repeated mistakes in procurement processing and invested only marginally toward enhancing the capacity of the seconded Judiciary staff. Due to the inability of the IFA to conduct due diligence, some of the engaged contractors lacked financial capacity to independently continue with construction, causing delays to project implementation.

c. Unintended impacts (Positive or Negative)

n/a

d. Other

11. Ratings

| Ratings | ICR | IEG | Reason for Disagreements/Comment |
|---------|--------------|-------------------------|---|
| Outcome | Satisfactory | Moderately Satisfactory | Significant operational and implementation inefficiencies |



| | | | |
|------------------|-------------------------|-------------------------|--|
| Bank Performance | Moderately Satisfactory | Moderately Satisfactory | |
| Quality of M&E | Substantial | Modest | Shortcomings in M&E design and implementation, delays in data collection |
| Quality of ICR | --- | Modest | |

12. Lessons

IEG concurs with the lessons set out in the ICR. The project offers some lessons specific to Kenya and others that may be applicable more generally. Below, the most pertinent lessons are extracted:

The Value in Leveraging Partnerships with World Bank Units. The project team sought assistance from DIME in the design of data systems, especially for the data collection system, which helped the Judiciary in transforming its data collection mechanisms for performance contracts, budgeting, training, and infrastructure.

The broader justice community plays a crucial role in the local reform process. The rich experiences from the justice community, as well as other task teams in other judiciary projects, can help inform a project’s implementation, including providing guidance on best-fit options that a project can pursue to address emerging challenges.

Institutionalizing change management champions within the judiciary can help drive the reform process forward. Change management champions are essential to ensure that reform activities continue being implemented, despite changes in the leadership body of the judiciary. For example, key reforms implemented as part of this project – such as the development of a governance and anti-corruption strategy, and conducting an organization review assessment and a court-annexed mediation pilot – continued despite changes in the judiciary’s leadership body.

IEG adds the following:

The quality of judicial performance cannot be determined solely by numbers of cases resolved. Numerical case resolution targets must be coupled with other qualitative factors to determine judicial performance and avoid potential adverse effects associated with the application of numerical case resolution targets alone (such as judgments being processed too quickly, or summarily being dismissed). In this context, quality surveys are essential, and establishing a continuous process for court user surveys and reporting on court performance is essential to ensure that quality standards are maintained. Court reports on performance ought to be conducted on a regular basis (for example, on an annual basis) to enable cross-comparisons on a year-to-year basis. In the interests of transparency and improving public trust and confidence in courts, the reports should be made available publicly.

In the justice sector, outcome indicators chosen ought to measure improved quality in usage of courts. While reducing the distance to courthouses is essential, outcome indicators ideally should also capture how extensively courthouses are used, where and by which intended project



beneficiaries. Rigorous monitoring and evaluation systems are required to determine improvements in usage, and thus correct continuing deficits.

13. Assessment Recommended?

No

14. Comments on Quality of ICR

The ICR substantiated its conclusions with a thorough assessment of the project's design, restructurings, and achievements. The report is especially useful in setting out risks to the project's reforms and outcomes, as well as lessons learned and recommendations for similar or future projects. The information in the report was generally accessible, with conclusions presented in a clear and structured way. However, it was challenging to glean a clear list of identifiable initiatives that were taken under the project, and in this regard the information may have benefitted from being set out in a more thematic manner, especially in so far as the information relates to the project's two objectives. It was especially difficult to determine how much practical progress was made toward achieving improved accountability, and what gaps remain. In addition, there could have been less overlap between the substance of the report and Annex 4. The ICR strayed from guidelines by assessing achievement of components, rather than achievement of objectives. Moreover, its efficiency discussion assessed sectoral/judicial system efficiency, not project efficiency.

a. Quality of ICR Rating

Modest