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PROJECT APPRAISAL DOCUMENT

ON A

PROPOSED CREDIT

IN THE AMOUNT OF SDR 78.9 MILLION
(US\$ 120 MILLION EQUIVALENT)

TO THE

REPUBLIC OF KENYA

FOR A

JUDICIAL PERFORMANCE IMPROVEMENT PROJECT

October 22, 2012

Poverty Reduction and Economic Management Unit 2
Africa Region

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CURRENCY EQUIVALENTS

(Exchange Rate Effective August 2012)

Currency Unit = Kenya Shillings (K.Sh.)

K.Sh. 84 = US\$ 1

US\$ 1 = SDR 0.65703

FISCAL YEAR

July 1 – June 30

ABBREVIATIONS AND ACRONYMS

CPA	Certified Public Accountant
CPU	Central Planning Unit
CUC	Court Users Committee
DA	Designated Account
ESMF	Environment and Social Management Framework
ESMP	Environment and Social Management Plan
FLSTAP	Financial & Legal Sector Technical Assistance Project
FM	Financial Management
FY	Financial Year
GAC	Governance and Anti-Corruption
GoK	Government of Kenya
GIZ	German Gesellschaft für Internationale Zusammenarbeit/German Society for International Cooperation
HQ	Headquarters
ICB	International Competitive Bidding
ICT	Information and Communications Technology
IDA	International Development Association
IDLO	International Development Law Organization
IFA	Integrated Fiduciary Agent
IFMIS	Integrated Financial Management Information System
IFR	Interim Financial Reports
IJIP	Integrated Justice Information Portal
IPMAS	Integrated Performance Management and Accountability System
IT	Information Technology
JPIP	Judicial Performance Improvement Project
JSC	Judicial Service Commission
JTI	Judiciary Training Institute
JTF	Judiciary Transformation Framework
KENAO	Kenya National Audit Office
KSH	Kenya Shilling
KRA	Key Result Area
M&E	Monitoring and Evaluation
MoF	Ministry of Finance
NCAJ	National Council on the Administration of Justice

NCB	National Competitive Bidding
NCLR	National Council on Law Reporting
NGO	Non-Governmental Organization
ORAF	Operational Risk Assessment Framework
PDO	Project Development Objective
PMU	Project Management Unit
PPDA	Public Procurement and Disposal Act of 2005
PPA	Project Preparation Advance
PPOA	Public Procurement and Oversight Authority
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SBD	Standard Bidding Documents
SIL	Specific Investment Loan
SOE	Statement of Expenditure
TA	Technical Assistance
TOR	Terms of Reference
UNODC	United Nations Office on Drugs and Crime
USD/US\$	United States Dollar
WB	World Bank

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Country Director:	Johannes Zutt
Sector Director:	Marcelo Giugale
Sector Manager:	J. Humberto Lopez
Task Team Leader:	Nightingale Rukuba-Ngaiza
Co-Task Team Leader:	George Larbi

KENYA
JUDICIAL PERFORMANCE IMPROVEMENT PROJECT

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PROJECT APPRAISAL DOCUMENT (PAD) DATA SHEET
Kenya
Judicial Performance Improvement Project (JPIP) (P105269)

AFTP2

Basic Information				
Date:	October 22, 2012	Sectors:	Law and justice (70%), General public administration sector (10%); and Information and communication technology (20%)	
Country Director:	Johannes C. M. Zutt	Themes:	Judicial and other dispute resolution mechanisms (67%), Other accountability/anti-corruption (33%)	
Sector Manager/Director:	J. Humberto Lopez / Marcelo Giugale	EA Category:	B - Partial Assessment	
Project ID:	P105269			
Lending Instrument:	Specific Investment Loan			
Team Leaders:	Nightingale Rukuba-Ngaiza & George Larbi			
Joint IFC: No				
Borrower: Republic of Kenya Ministry of Finance The Treasury P. O. Box 30007-00100 Nairobi, Kenya Tel: (+254-20) 2252299 Fax: (+254-20) 2240045				
Responsible Agency: Judiciary of the Republic of Kenya				
Contact: Ms. Gladys Shollei		Title: Chief Registrar		
Telephone No.:	(+254-20) 2221221	Email: chiefregistrar@Judiciary.go.ke		
Project Implementation Period:	Start Date:	November 15, 2012	End Date: December 31, 2018	
Expected Effectiveness Date:	December 31, 2012			
Expected Closing Date:	December 31, 2018			
Project Financing Data(US\$M)				
<input type="checkbox"/>	Loan	<input type="checkbox"/>	Grant	Term: Standard IDA terms, with a maturity of 40 years, including a grace period of 10 years.
<input checked="" type="checkbox"/>	Credit	<input type="checkbox"/>	Guarantee	
For Loans/Credits/Others				
Total Project Cost (US\$M):		120.0		
Total Bank Financing (US\$M):		120.0		

Financing Source		Amount (US\$M)					
BORROWER/RECIPIENT							
International Development Association (IDA)		120.0					
Financing Gap		0					
Total		120.0					
Expected Disbursements (in USD Million)							
Fiscal Year	2013	2014	2015	2016	2017	2018	2019
Annual	5	20	30	35	20	8	2
Cumulative	5	25	55	90	110	118	120
Project Development Objective							
To improve the performance of the Judiciary to provide its services in the project areas in a more effective and accountable manner.							
Components							
<p>Component 1: Implementing a program of activities for strengthening the Judiciary's court administration and case management systems and processes, with a view to improving performance, accountability, access to justice and the expeditious delivery of judicial services.</p> <p>Component 2: Strengthening the capacity of the Judiciary Training Institute, through the provision of technical and advisory services, training, goods and selected operating costs, and supporting the capacity building activities of the office of Attorney-General for its legal personnel.</p> <p>Component 3: Constructing approximately 8 High Court buildings and 2 magistrate courts in priority areas, rehabilitating approximately 30 magistrate courts, supplying approximately 20 temporary or demountable courts, and establishing a unit for the supervision, maintenance and management of Judiciary's buildings.</p> <p>Component 4: Establishing and strengthening the capacity of the Project Management Unit, providing technical advisory services for procurement and financial management under the project, implementing environmental and social safeguard requirements, and carrying out monitoring and evaluation and related studies.</p>							
Component Name		Cost (USD Millions)					
1. Court Administration and Case Management		42.8					
2. Judiciary Training and Staff Development		17.0					
3. Court Infrastructure		50.0					
4. Project Management		10.2					
Compliance							
Policy							
						Yes	No
Does the project depart from the CAS in content or in other significant respects?							X
Does the project require any waivers of Bank policies?							X
Have these been approved by Bank management?							N/A
Is approval for any policy waiver sought from the Board?							X
Does the project meet the Regional criteria for readiness for implementation?						X	

Safeguard Policies Triggered by the Project			
Environmental Assessment OP/BP 4.01		X	
Natural Habitats OP/BP 4.04			X
Forests OP/BP 4.36			X
Pest Management OP 4.09			X
Physical Cultural Resources OP/BP 4.11		X	
Indigenous Peoples OP/BP 4.10			X
Involuntary Resettlement OP/BP 4.12		X	
Safety of Dams OP/BP 4.37			X
Projects on International Waterways OP/BP 7.50			X
Projects in Disputed Areas OP/BP 7.60			X
Conditions and Legal Covenants			
Legal Covenants			
Name <i>Retroactive Financing</i> Financing Agreement Reference: Schedule 2, Section IV.B.1	Recurrent	Due Date	Frequency Retroactive Financing
Description of Covenant No withdrawal shall be made for payments made prior to the date of the Financing Agreement except that withdrawals up to an aggregate amount not to exceed SDR 7,900,000 (US\$ 12,000,000 equivalent) may be made for payments made prior to this date but on or after June 30, 2012 for Eligible Expenditures.			
Name <i>Project Management Unit</i> Financing Agreement Reference Article IV 4.01 (a) and Schedule 2, Section 1 A. 4.	Recurrent	Due Date	Frequency Effectiveness
Description of Covenant The Recipient has established a Project Management Unit with staff, skills, and experience under terms of reference satisfactory to the Bank.			
Name <i>Integrated Fiduciary Agent</i> Financing Agreement Reference: Article IV 4.01 (b) and Schedule 2, Section 1. A. 5.	Recurrent	Due Date	Frequency Effectiveness
Description of Covenant The Recipient has recruited an Integrated Fiduciary Agent with relevant experience under terms of reference that are satisfactory to the Bank			
Team Composition			
Bank Staff			
Name	Title	Specialization	Unit
Nightingale Rukuba-Ngaiza	Senior Counsel	Task Team Leader	LEGAM
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Christina Biebesheimer	Chief Counsel/Advisor	Legal & Judicial Reforms	LEGJR
Christine Makori	Counsel	Legal & Judicial Reforms	LEGAM

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Josephine Kabura Ngigi	Financial Management Specialist	Financial Management	AFTME		
Jane Kibbassa	Senior Environmental Specialist	Environmental Specialist	AFTN1		
Non Bank Staff					
Name	Title	Office Phone	City		
Catherine Gachukia	Consultant, Operations		Nairobi		
Barry Walsh	Consultant, Justice Sector Reforms		Sydney		
Locations					
Country	First Administrative Division	Location	Planned	Actual	Comments
Kenya					

KENYA

JUDICIAL PERFORMANCE IMPROVEMENT PROJECT

PROJECT APPRAISAL DOCUMENT

I. STRATEGIC CONTEXT

A. Country Context

1. **Kenya’s growth rate has recovered from a downturn in 2008–09 attributable to several key factors, including the post-election violence in 2007, the global economic crisis and a severe drought.** Kenya’s growth slowed to 1.6 percent in 2008, the lowest rate since 2002 and substantially below the population growth rate of 2.7 percent. Growth recovered slightly to 2.6 percent in 2009 and picked up significantly to 5.6 percent in 2010 and 4.2 percent in 2011, a year when economic performance was affected by global turbulence and domestic shocks (inflation reached 19 percent, driven mainly by high food prices, and the country’s currency depreciated significantly). In the absence of external shocks and with improved macroeconomic stability, growth is expected to reach 5 percent in 2012 and 2013¹.

2. **However, growth in Kenya has historically been lower than in Sub-Saharan Africa (excluding South Africa).** Moreover, as illustrated by Figure 1, the differences are not insignificant: over the 1998-2007 period, annual growth in Sub-Saharan Africa was about one percent higher than in Kenya. In recognition of the need for growth, Kenya has been reflecting on the measures needed to increase growth rates in the long run. Among these measures, the country’s various economic strategies acknowledge that sustained economic growth requires investments in institutional reforms and adherence to the rule of law applicable to a modern, market-based economy in a human rights-respecting state (Vision 2030²).

3. **Although Kenya scores well on “voice, regulatory quality, revenue mobilization, public administration, and macroeconomic management”³, Kenya is weak on government accountability⁴, rule of law, and control of corruption.** According to the 2010 Worldwide Governance Indicators, Kenya scored a rating of 18.6 for control of corruption, compared to 70.8 for Rwanda and 37.3 for Tanzania. Reforming and strengthening Kenya’s Judiciary and the rule of law will improve the investment climate and create an enabling environment for sustainable growth.

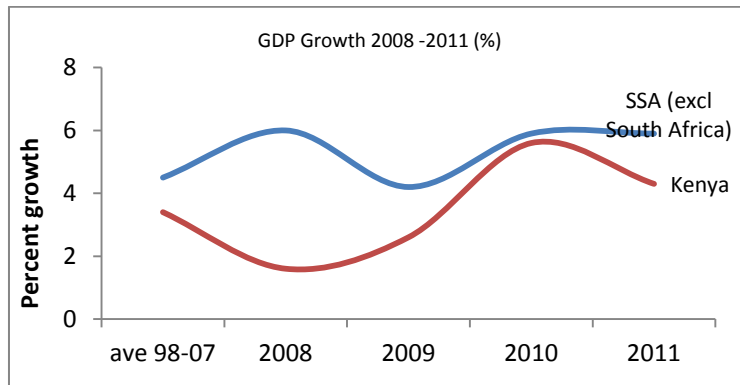
¹ Kenya Economic Update: Walking on a Tight Rope (June 2012).

² The Kenya Vision 2030 is the national long-term development blue-print that aims to transform Kenya into a newly industrializing, middle-income country by 2030.

³ World Governance Indicators, 2010.

⁴ World Justice Project, *Rule of Law Index Country Profiles: Kenya* (2011).

Figure 1: Growth in Kenya and SSA (1998-2011)



4. **The Constitution of Kenya (2010) provides a unique window of opportunity for transforming the country and the Judiciary.** It creates a more decentralized system of government to address spatial disparities in the country (e.g. between urban and rural, and between different regions)⁵, including 47 new counties with elected county governors, assemblies and other administrative units. The Judicial Services Act (2011) has determined that each of these counties will have a High Court. The Constitution has also established a basis for institutional and financial independence for the Judiciary, and together with its ambitious devolution program, creates opportunities for transforming judicial services.

B. Sectoral and Institutional Context

Historical Context

5. **Kenya's Judiciary has until recently suffered from low public trust and confidence.** Kenya's judicial system today comprises the Supreme Court, the Court of Appeal, the High Court, the Magistrates courts, and the Khadhis Courts for the application of Muslim personal status law. It also includes an expanded Judicial Service Commission (JSC). The structural and capacity problems of the Kenya Judiciary date back to colonial times (1895) when it administered a dual system of justice, one for indigenous Kenyans and another for the settlers. This system was predominantly penal, marginalized the indigenous systems of justice, and discriminated against Kenyans. Since the executive held the power to appoint judicial officers and to determine the judicial budget, the Judiciary remained an instrument of the executive. It was perceived to be a Government of Kenya (GoK) department rather than a distinct arm of the government, and executive actions went largely unchecked. Judicial authority was also highly centralized featuring successive chief justices who wielded significant authority within the Judiciary. With its attainment of independence in 1963, Kenya abolished the dual system of justice, but the Judiciary retained the challenges of that legacy, including a continuing lack of financial independence and a highly-centralized system of administration.

6. **Over the last two decades more than 20 official reviews, including some commissioned by the Judiciary, have described persistent capacity and integrity problems in the Judiciary.** These reports described the Judiciary's failure to deliver timely justice, significant case backlogs, ineffective case management systems⁶, poor conditions of

⁵ See Australian Aid and World Bank (2012): Devolution Without Disruption – Pathways to a Successful New Kenya. World Bank (2012): Kenya Economic Updates - Navigating the Storm, Delivering the Promise.

⁶ At the end of 2006, there were about 1 million cases pending.

service for its officers and deficient physical infrastructure. The reports further characterized the Judiciary as inaccessible, an instrument of the executive, and corrupt. As stated in the reviews, the Judiciary also lacks the capacity to carry out its core administrative functions, including budget management, performance evaluation and monitoring, financial management and procurement.

7. Although these reviews accurately assessed the problems and proposed some solutions, few of their recommendations were acted upon, mainly due to the lack of commitment within the Judiciary and other branches of government. Those recommendations that were implemented have had no discernible impact on the main concerns of the public, which include *case delays, ineffectiveness, and corruption*.

8. In 2003, the Judiciary’s Integrity and Anti-Corruption Committee Report led to the compulsory retirement of nearly half of the judges of the High Court and Court of Appeal, and over 70 magistrates. Critics of this exercise noted that while this was a “radical surgery”, it failed to address the underlying problems, many of which were highlighted in the earlier reports. Follow-up work in 2006 carried out by the Judiciary’s Committee on Ethics and Governance, along with a subsequent forensic audit, confirmed that the Judiciary’s fiduciary systems were extremely weak and were causing substantial financial losses to the Judiciary’s budget⁷.

9. Low public confidence in the Judiciary and other features of Kenyan state governance came into stark focus in December 2007, when violence erupted following the disputed results of the presidential elections⁸. Most of the disputes about the election results and the street violence that followed were not referred to the courts for resolution, demonstrating the lack of trust and confidence in the Judiciary. The Independent Review Commission (the Kriegler Commission) that looked into the disputed elections and the Commission of Inquiry (the Waki Commission⁹) that looked into the post-election violence made radical recommendations for judicial reforms, reiterating many recommendations contained in earlier reports.

10. In an effort to deal with the political crisis, a National Accord was concluded in 2008 which included the establishment of a Task Force on Judicial Reforms in 2009 (the William Ouko Task Force). The Accord (National Accord and Reconciliation Act, 2008) led to the reconciliation process and emphasized the need for reforming the Judiciary and the police, asserting that the public’s lack of confidence and trust in the Judiciary’s impartiality to adjudicate the disputes had contributed to the violence. The subsequent Task Force on Judicial Reforms reached the same conclusion¹⁰. The current Chief Justice, Honorable Willy Mutunga, summarized the Judiciary legacy he inherited in these terms: “We found an institution so frail in its structures, so thin on resources, so low on its confidence, so deficient in integrity, so weak in its public support that to have expected it to deliver justice was to be wildly optimistic; power and authority were highly centralized, accountability mechanisms were weak and reporting requirements absent.”¹¹

⁷ Report of the Committee on Ethics and Governance of the Judiciary, 2007, page 43.

⁸ Dr. Willy Mutunga, Chief Justice, *op.cit.*

⁹ Report of the Commission of Inquiry into Post-Election Violence, published in October 2008 (available at http://wikileaks.org/wiki/Kenya:_Waki_Commission_of_Inquiry_into_Post-Election_Violence_final_report,_15_Oct_2008).

¹⁰ Republic of Kenya: Report of the Task Force on Judicial Reforms, August 2009.

¹¹ Chief Justice Mutunga speech, “First Hundred and Twenty Days,” 19th October, 2011.

11. **Development of a World Bank-financed project for the Judiciary was initiated at the end of 2006.** However, as a result of civil and political discord in December 2007 and early 2008, and a lack of commitment to judicial reforms at the time, preparation of the project was suspended.

12. **The Constitution has provided a window of opportunity for the Judiciary, and for the proposed project, to address these specific concerns.** This window of opportunity has already heralded landmark developments, such as: the open and transparent recruitments of judicial officers; a vetting process to remove judicial officers found unsuitable; a large-scale recruitment to meet the needs of a greatly expanded Judiciary, and a program that is actively building public participation in judiciary services. The proposed project will help to build and enhance these efforts. The opportunity has also brought forward strong champions of reform — such as the new leadership of the Judiciary, the Judicial Service Commission (JSC), the new Supreme Court, Non-Governmental Organizations (NGOs), and many other stakeholder supporters — who appear to wield influence on key decisions, and are already demonstrating to non-reformers that progressive systems can be put in place. These developments are strengthening public support for judicial reforms and the window of opportunity presented.

Institutional and Policy Reforms

13. **The Constitution embraces key recommendations from past judicial commissions of inquiry.** In particular, it has mandated major institutional and managerial changes that support the implementation of reforms, including:

- (a) appointments to new offices of the Chief Justice, Deputy Chief Justice, and Chief Registrar;
- (b) establishment of a Supreme Court to address fundamental legal and policy issues (e.g. Constitution interpretation and election) and develop indigenous jurisprudence;
- (c) establishment of an expanded JSC with more representation from the public;
- (d) establishment of specialized courts — Land and Environment Court and Industrial Court — to expedite administration of justice;
- (e) establishment of the Judiciary Fund to give the Judiciary financial autonomy from the executive government (Article 173 of the Constitution);
- (f) establishment of a National Council on the Administration of Justice to coordinate reforms across all institutions in the Justice sector; and
- (g) enactment of the Vetting of Judges and Magistrates Act, 2011, which established a Vetting Board that is currently assessing the performance and integrity of all judicial officers who held office at the time of the passing of the Constitution to determine their fitness to remain in office.

14. **The level of public confidence in the Judiciary has effectively doubled.** Public opinion polling over the last four years indicates that satisfaction with the Judiciary has steadily risen from a low 31 percent in 2008 to 67 percent in April 2012¹².

15. **The Judiciary launched a *Judiciary Transformation Framework (JTF) 2012-2016* in May 2012 to prioritize its reform objectives**¹³. The overriding objective of the JTF is to achieve access to and ensure expeditious delivery of justice for all. The JTF was developed through a consultative process, incorporating information from previous internal and external reports on the Judiciary. The JTF commits the Judiciary to pursuing four “pillars” of justice outcomes: (a) delivering justice services that are more focused on the needs of the people served; (b) acquiring and delivering judicial leadership that will transform managerial and judicial outcomes; (c) achieving adequate financial resources and physical infrastructure for the Judiciary; and (d) harnessing the use of technology as an enabler for improving the effectiveness of the judicial system.

16. **The JTF and the associated package of political, constitutional and legislative changes represent a monumental change for Kenya, and is on a scale and within a timeframe that is unprecedented within the Africa Region.** The JTF describes 10 key result areas (KRAs) on which the Judiciary intends to focus in implementing its program of activities. These are: (a) access to and expeditious delivery of justice; (b) people-centeredness and public engagement; (c) stakeholder engagement; (d) philosophy and culture; (e) leadership and management; (f) organizational structure; (g) growth of jurisprudence and judicial practice; (h) physical infrastructure; (i) resources; and (j) information and communication technologies.

17. **The financial independence of the Judiciary, ensconced by the Constitution, means that its budget is submitted directly to the National Assembly for approval - and no longer through Ministry of Finance (MoF) or other government ministries.** The initial priorities of the Chief Registrar’s Office are to establish appropriate administrative implementation structures for the JTF change agenda. These efforts have prioritized a change management approach focused on judges, magistrates, and administrative staff to ensure that the entire Judiciary embraces the planned reforms at the individual level.¹⁴ To establish and sustain those efforts, the Judiciary has appointed heads of new directorates, including expanded units concerned with: (a) human resources; (b) performance management; (c) Information and Communications Technology (ICT); (d) financial management; (e) public affairs and communication; and (f) supply chain management, among other areas. Development of the capacities of these directorates is seen as a key first step in acquiring and sustaining a satisfactory standard of general managerial capacity, as well as the capacity to administer the ambitious programs that the JTF envisages over the next four years.

18. **The Judiciary is working to strengthen governance and service delivery through stakeholder participation, monitoring, accountability and ICT.** It is enhancing public education and information programs, user surveys on service and performance, media outreach, citizens’ open days, and the establishment of help desks. The Judiciary has established Leadership and Management Committees responsible for overseeing the day-to-

¹² The Kenya National Dialogue and Reconciliation Monitoring Project: Reforms and Preparedness for Elections, Review Report (May 2012), page 30.

¹³ See <http://www.judiciary.go.ke/portal/assets/downloads/reports/Judiciary%27s%20Transformation%20Framework-fv.pdf>

¹⁴ Although the JTF has been prepared with broad participation of the Judiciary, the Judiciary is going to embarking on a country wide “change management” campaign to ensure that all the judicial officers understand and embrace the JTF.

day running of courts, including customer care desks, and Court Users Committees (CUCs) in every court. Stakeholders will participate in Judiciary services at the national level via the National Council on the Administration of Justice and at the local level via the CUCs. These forums comprise representatives of groups interested in court services such as the police, NGOs, lawyers and the general public. CUCs discuss and report on the performance of their respective courts and on areas where improvement is needed. A CUC status report, recently finalized by the Judiciary in June 2012, demonstrates the value of these committees, especially in the areas of accountability, service performance, and coordination. The proposed Judicial Performance Improvement Project (JPIP) is designed to scale up and sustain this important stakeholder participation in the administration of justice.

19. The Judiciary has also embarked on measures to address the perennial problems of large pending caseloads in the higher courts. According to the preliminary report on the Synchronized Survey of Pending Cases, as of 2007 there were 796,213 pending cases, of which 723,321 were in the magistrate courts. This equated to an average pending caseload of 2,853 cases per magistrate.¹⁵ The same study also identified long delays in the typical times to dispose of cases, concluding that 47 percent of High Court pending cases were over five years old, while 76 percent of pending magistrate court criminal cases (excluding traffic cases) were more than 12 months old and 28 percent were over five years old. Of the pending civil cases in magistrates' courts in 2007, 83 percent were over one year old and 44 percent were over five years old¹⁶. Recent efforts, however, indicate that the Judiciary has made substantial progress in reducing the backlog. As of May 2012, the Court of Appeal had 3,800 pending cases, which it reduced to 3,349 by a rapid administrative culling of inactive cases. Similar results have been achieved in High Court divisions such as those concerned with commercial, admiralty, constitutional, human rights, judicial review, criminal and family law cases; and again, essentially by the administrative disposal of cases unlikely to go to trial¹⁷. These achievements in the higher courts, however, are yet to be translated to the magistracy, the largest tier of courts in Kenya in terms of case volumes, where managerial reforms and resource improvements are yet to be realized. The proposed JPIP will support substantial case management improvement efforts in the Judiciary, primarily for the magistrates' courts.

20. The Judiciary is significantly understaffed. The ratio of judges to population in Kenya is low, at 1.4 judges per 100,000 inhabitants, compared to 2.39 in Tanzania, 3.83 in South Africa and 3.5 in the United Kingdom¹⁸. In response to this, seven judges have been appointed to the newly-established Supreme Court, eight to the High Court, twelve judges to the Industrial Court, and sixteen for the Land and Environment Court. Seven vacancies in the Court of Appeal have recently been filled and 109 magistrates and 83 legal researchers have been hired. The Judiciary currently has a total of 4,109 staff.

¹⁵ Restoring Integrity: An assessment of the needs of the justice system in the Republic of Kenya (February 2010), page 59

¹⁶ Preliminary Report on the Synchronized Survey of Pending Cases in Kenyan Courts, October 2007, World Bank analytical report by Barry R Walsh, October 15, 2007

¹⁷ Ibid

¹⁸ European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems Edition 2010: Efficiency and quality of justice*, (2010) p. 117.

Sector Investments

21. **The Judiciary operates from dilapidated and sometimes condemned buildings in most towns and cities across the country.** The Judiciary needs additional courtrooms in existing court stations and it needs to construct additional courthouses for the High Courts and for magistrates' courts. The Judicial Services Act (2011) mandates the establishment of a High Court station in each of the 47 counties; so far only 17 exist. In pursuance of this mandate, and in anticipation of a major program of courthouse construction, the Judiciary has conducted an audit of court facilities. It has also designed a prototype court using a process that involved significant public input and interest (for more details on this, see Annex 6). These initiatives were the precursors to what could be the largest courthouse construction program in any Sub-Saharan African country to date. The major points of demand are community expectations that new courts will be made available in counties, including remote and previously under-serviced areas, and the poor condition of magistrate stations. There is also an urgent need for court construction to keep pace with the new judicial appointments and with the JTF initiatives under early implementation. The GoK's construction and refurbishment program, requiring construction of a total of 30 new High Court buildings, 90 magistrate court refurbishments and over 200 new magistrate courts, has an allocation of US\$ 26.4 million for FY2012/13, with higher amounts projected over the next few years. The proposed JPIP will contribute to this program by financing the construction of eight new High Court buildings (27 percent), two new magistrate court buildings (about one percent), the refurbishment of about 30 magistrate courts (33 percent), and supplying at least 20 demountables or temporary courts. The JPIP will also provide the Judiciary with the expertise and systems by which such construction and refurbishment programs can be effectively managed.

22. **The Judiciary has also increased its training budget in response to expanding workforce requirements.** The Judiciary is expected to contribute about KSH 235 million (US\$ 2.8 million) starting in FY2012/13, the bulk of which will be spent on direct costs related to training. The JPIP will assist in strengthening the administrative and training capacity of the Judicial Training Institute (JTI), as well as provide the resources needed to support the Judiciary's training. The JTI has been in existence since 2008 but remains a fledgling organization in operational terms, and it has yet to develop managerial structures and facilities, including a full-time director and faculty directors.

23. **The overall estimated cost of JTF is US\$ 450 million for the next four years, of which the GoK is requesting US\$ 230.5 million from the World Bank and other international donors.** As presently proposed, World Bank assistance would total US\$ 120 million over six years, about 26 percent of the estimated total cost of the JTF. The rest of the funding will be provided by GoK and other development partners. A summary of the JTF areas supported is shown in Table 1 below.

Table 1: Summary of Government and Donor Support for the JTF

<i>JTF Pillars</i>	<i>Key Government and Donor Support</i>
People-Focused Delivery of Justice	GoK: Model court development promoting accessibility, including customer care desks. Mobile court provision. Simplifying and translating court procedures. Promoting use of Alternative Dispute Resolution and active case management. Open days and judicial marches. WB (JPIP): Support for regular user surveys, customer care desks, court

<i>JTF Pillars</i>	<i>Key Government and Donor Support</i>
	counsel and court-annexed mediation. GiZ: Service charters, Open Days, help desks and scaling up Court Users Committees.
Transformative Leadership, Culture and Staff	GoK: Hiring to employ a total of 187 judges, 656 magistrates, 116 legal researchers and support staff (registrars, paralegals, and court counsel). Reviewing staffing structures, roles, training needs and benefits. Integrated Performance Management and Accountability System (IPMAS). Training judicial officers and staff in core values, including ethics, communications and customer care. WB (JPIP): Support to JTI in curricula development, training materials and implementation, and impact assessments. Supporting implementation of IPMAS and development of corruption mapping and a corruption prevention strategy. GiZ: Development of National Council on the Administration of Justice policy. IDLO: Capacity needs assessment for Judiciary Training Institute. UNODC: Development of a Code of Conduct and related training. Criminal/counter terrorism curriculum development with Judiciary Training Institute.
Financial and Physical Resources	GoK: US\$ 26.4 million for infrastructure for FY12/13. Infrastructure inventory needs assessment and maintenance. WB (JPIP): US\$ 50 million for infrastructure for FY13-FY18. Leasing premises for the use of Judiciary Training Institute, the National Council on Law Reporting, and the Judiciary’s Building Services Unit.
Technology as Justice Enabler	GoK: Developing ICT management capacity. Using ICT to make court records available. Internet and SMS complaints system. WB (JPIP): Integrated Court Management System (including case automation; court recording; administration). Support to the National Council on Law Reporting on a sentencing information system. USAID: Piloting electronic case management system in Eldoret with the National Council of Law Reporting.

C. Higher Level Objectives to which the Project Contributes

24. **The project contributes to Kenya’s Vision 2030, the GoK’s long-term development strategy, which aims at transforming the country into a middle income country.** Under its political pillar, the strategy lays out a vision of “adherence to the rule of law applicable to a modern, market-based economy in a human rights-respecting state.” Specifically, the strategy aims to operationalize the policy, legal and institutional framework vital for fair, affordable and equitable access to justice by 2012 (as part of Medium-Term Plan for the strategy covering 2008-2012) by streamlining the organization of legal and judicial institutions and the professionalization of their personnel.

25. **The proposed JPIP also contributes to the World Bank’s FY10-13 Kenya Country Partnership Strategy (CPS) governance pillar, and supports the regional**

strategy “Africa’s Future and the World Bank’s Support to It” (2011). In particular, it supports the updated CPS agenda for increased public confidence in the Judiciary and for improved transparency and accountability (CPS Progress Report, March 16, 2012). Similarly, the project is aligned with the 2011 Africa Regional Strategy which identifies governance and public sector capacity as its foundation and notes that governance and leadership constitute the main challenges underlying Africa’s development.

26. The JPIP’s components and activities are selected based on agreement with the GoK/Judiciary on the priority JTF areas for support. The JPIP components are: (a) Court Administration and Case Management; (b) Judiciary Training and Staff Development; (c) Court Infrastructure; and (d) Project Management. These components collectively reflect and reinforce the JTF pillars and KRAs. Under Component 1, the Court Administration sub-component supports Pillar 2 of the JTF, which aims at improving the organizational structure of the Judiciary to ensure that it promotes the optimum performance of its key functions, including performance evaluation. The Case Management sub-component under Component 1 supports Pillars 1 and 4 of the JTF, which respectively aim at promoting access to and expeditious delivery of judicial services, along with the harnessing of technology to enable the Judiciary to deliver prompt justice. Component 2 (Judiciary Training and Staff Development) will support Pillar 2, which aims at developing a cadre of professional judicial staff to administer justice and promoting growth of robust jurisprudence. Component 3 (Court Infrastructure) supports Pillar 3, which aims at ensuring that the Judiciary has adequate infrastructure to enable it to carry out its functions. Component 4 (Project Management), though primarily designed to address the fiduciary aspects of the project, will also build the Judiciary’s financial and procurement management capacities so that it can sustain competent fiduciary autonomy, especially for the management of the new Judiciary Fund.

27. The project will make every effort to build on and remain aligned with the ongoing or proposed assistance from other Development Partners. The project design takes into account the work of other donors to help build on these efforts (e.g. on GIZ’s support for CUCs and the USAID-financed case management project in Eldoret) to ensure that there is no duplication of effort (e.g. on the Code of Conduct work by UNDOC).

28. The proposed JPIP will also build on other World Bank-financed activities in support of judicial reforms, including the ongoing Financial and Legal Sector Technical Assistance Project (FLSTAP). The Case Management sub-component (Component 1) will build on the Judiciary’s ICT and case management groundwork financed by the FLSTAP. This includes preparation of an ICT policy and plan, preliminary assessments on the extent of case backlogs, and amendments to the Civil Procedure Rules to give judges more control over case management. In addition, it will take 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 National Council of Law Reporting (Gender Responsive Legal Reforms Project, TF053703).

29. Moreover, the training component (Component 2) will build on the World Bank’s assistance in establishing the JTI. This includes development of a judiciary training policy, development of an early training needs assessment, and curriculum development. The training component also builds on the recommendation of the World Bank-financed Judicial Sector Assessment (2012) regarding application of the social context

in magistrates' court to develop sentencing guidelines. Finally, the Project Management component (Component 4) will build on lessons learned from the Judiciary's 2008 forensic audit, and the recommendations made in the institutional risk-based policy framework (funded via *FLSTAP*) to address the fiduciary capacity constraints in the Judiciary.

II. PROJECT DEVELOPMENT OBJECTIVE

A. PDO

30. The PDO is to improve the performance of the Judiciary to provide its services in the Project areas¹⁹ in a more effective and accountable manner.

Project Beneficiaries

31. **The beneficiaries of the project are the judiciary staff and court users (comprising members of the public, including private sector investors who expect to have timely and fair resolution of disputes).** In the context of Kenya's tumultuous period of political conflict and constitutional change during 2007-2010, the JPIP's beneficiaries can also be taken to include the Kenyan citizenry, who have by referendum in 2010 resoundingly adopted a constitution that heavily underscores the urgency of judicial reform.

PDO Level Results Indicators

32. **The project's results indicators have been selected to ensure alignment with the above PDO and JTF as well as to ensure pragmatism in data collection.** The project's Results Framework (Annex 1) presents the PDO-level and the Intermediate Results Indicators. The key PDO-level results indicators aimed at measuring the performance of the Judiciary include: (a) a reduction in the average time it takes to dispose of cases in courts adopting the new case management system; (b) use of the Integrated Performance Management and Accountability System to assess staff performance; (c) reduction in the average distance to courts as a result of constructing new courts; (d) percentage of users satisfied with the delivery of judiciary services in project courts; and (e) number of direct project beneficiaries disaggregated by gender.

III. PROJECT DESCRIPTION

A. Project Components

33. **The proposed project comprises four main components.** The project activities under each component are summarized below, with details presented in Annex 2, including Project Activities and Sequencing in Table 3.

¹⁹ The Project area consists of approximately 68 courts where service improvements will be made. These courts are located (or are to be located) in eight new high court buildings, two new magistrate court buildings, 30 rehabilitated magistrate court buildings, and 28 existing magistrate court buildings that do not need rehabilitation. In addition, at least 20 temporary or demountable buildings will be provided to allow early operational capacities in courthouses that are earmarked for refurbishment (or localities in which a courthouse is yet to be built). Project focus also includes a national emphasis on strengthening court administration systems and processes including for organizational planning and coordination, human resource development, judicial training, information technology and performance measurement, among others.

34. **Component 1: Court Administration and Case Management (Cost Estimate: US\$ 42.8 million).** This component has two sub-components. The Court Administration sub-component aims at improving the organizational structure, functions, and culture of the Judiciary for optimum performance and accountability. The Case Management sub-component aims at promoting access to and the expeditious delivery of judicial services, and will assist the Judiciary in reducing case delays and hence contribute to the effective delivery of justice. Major ICT infrastructure and systems for the development of a Case Management Information System will be advanced under this component with the general aim of developing systems on a scale necessary to achieve the transformational improvements in services and outcomes that the Judiciary aspires. The automation of court management, for example, aids systemization and allows information about case processing and court procedures to be more transparent to users, both of which support improve accountability. JPIP will finance the Case Management Information System for 68 courts, comprising the Bank-financed court construction (10 sites) and rehabilitations (30 sites), as well as 28 existing courts that do not need major rehabilitation.

- i) ***Court Administration sub-component 1.1 (US\$ 13.8 million):*** The activities to be supported under this sub-component will include: (a) an organizational review of the Judiciary that takes into account the structure, capacity, and roles of Judiciary staff; (b) development and implementation of an Integrated Performance Management and Accountability System; (c) change management efforts to help transition Judiciary staff to the institution's new vision, culture, structure, and processes; (d) data collection and analysis, including the publication of regular court user survey results (for the first time in Kenya) as a key transparency and accountability tool; (e) support to CUCs, including implementation of their court improvement plans; (f) development and implementation of a governance and anti-corruption strategy for the Judiciary; (g) support for court services innovation, research and testing; (h) capacity building for the Judiciary's directorates, the JSC, the National Council on Administration of Justice, and the National Council of Law Reporting of Kenya (NCLR); and (i) support for the extension of GoK's Integrated Financial Management Information System (IFMIS) to court stations in project areas.
- ii) ***Case Management sub-component 1.2 (US\$ 29 million):*** This subcomponent will support initiatives that will have an impact for court users in the courtrooms and registries. It will: (a) support the design, installation and commissioning of ICT hardware and connectivity infrastructure for court stations, and provide relevant staff training; (b) implement a Case Management Information System that offers audio/visual recording of court proceedings, electronic case tracking and management, an Integrated Justice Information Portal, the electronic display of case listings, SMS notifications of court case events, video conferencing facilities for courts, versatile reporting tools/business intelligence, a sentencing information system and other legal knowledge processing databases for the use of magistrates and judges; (c) provide container data centres to centralize all data belonging to the Judiciary; (d) provide support to establish and sustain Customer Care Desk operations and Court Counsel services, including transparency tools to allow users to better understand court processes in project area court stations; and (e) support the establishment of court-annexed mediation. The aim of this range of activities is to foster the development of competencies and ICT-enabled systems that permit more effective use of court time and greater reliance on court-annexed mediation and information

systems as a means for reducing the proportion of cases that need to go to trial or appeal.

35. **Expected key results include:** (a) reduction in the average time it takes to dispose of cases in courts adopting the new case management system; (b) use of the IPMAS for assessing staff performance; (c) reduction in the backlog of cases; and (d) improved user satisfaction with the delivery of court services in project courts.

36. **Component 2: Judiciary Training and Staff Development (Cost Estimate: US\$ 17.0 million).** This component aims at strengthening the administrative and training capacity of the JTI. It will also support the delivery of training in support of the Judiciary's transformation agenda and its expanding workforce. In particular, the component will: (a) strengthen the capacity of the JTI to carry out its education and training mandate and conduct impact evaluation of selected training programs; (b) provide a structure for defining the critical competencies of Judiciary officers and for their ongoing training toward those competencies; (c) establish a Legal Research Resource Centre concerned with developing online training and legal information services for judges, magistrates and Judiciary staff; and (d) support capacity building efforts for the legal personnel at the Office of the Attorney General, especially in areas that support the performance of the Judiciary, e.g. on representation roles, drafting, negotiation, project financing, etc.

37. **Expected key results include:** (a) increased number of Judiciary staff who are satisfied with the knowledge and skills acquired from training; and (b) improved impact of training on personnel trained (to be assessed through impact evaluation of two programs).

38. **Component 3: Court Infrastructure (Cost Estimate: US\$ 50.0 million):** Over the six-year period, the project will support the construction of eight High Court buildings, the refurbishment of approximately 30 magistrates courts, the construction of two magistrate courts and the supply of at least 20 demountables or temporary courts, prioritized from the indicative lists and in accordance with the agreed criteria (see Annex 6). The focus on refurbishing courthouses will provide an early capacity to accommodate Kenya's rapidly growing number of serving magistrates and the need to extend services to areas that are presently under-serviced. The project's funding will be directed to courts that are most likely to produce early and significant improvements in services and improved physical access to courts in those localities that are far from public transport. It will also support establishment of a unit responsible for design, supervision, maintenance and management of judicial buildings.

39. **Expected key results include:** (a) reduction in the average distance to courts as a result of constructing new courts; (b) construction of new courts to improve access to courts; and (c) renovation of existing courts to improve quality and access to judicial services.

40. **Component 4: Project Management (Cost Estimate: US\$ 10.2 million):** This component is to assist the Judiciary in managing and coordinating project activities, including environmental and social impacts of the project. It will also build the capacity of Judiciary personnel in procurement, managing financial resources, and monitoring and evaluation. Specifically, the component will: (a) support the function of a Project Management Unit (PMU); (b) finance an Integrated Fiduciary Agent (IFA) responsible for the financial management and procurement functions of the project during the initial two years of project implementation; (c) support M&E and the collection of data to facilitate impact evaluation,

and (d) implement environmental and social safeguard requirements. This component will also support development and implementation of an information, education, and communications strategy for the project.

B. Project Financing

41. **The project received a Project Preparation Advance (PPA) in the amount of US\$ 750,000.** This was provided to: (a) collect baseline data; (b) prepare plans and designs for construction of new court houses; (c) assess and recruit project preparatory staff; (d) prepare a detailed plan for scaling up case management; (e) prepare environmental and social assessment documents; (f) develop an institutional risk management policy framework to address project related risks; and (g) carry out workshops and study tours. The activities have largely been carried out and the Judiciary is in the process of recruiting project staff for the PMU. As a result, 80 percent of the advance has been committed. Given the significant level of activity that has to be undertaken for the JPIP’s IT and infrastructure works, retroactive financing of up to US\$ 12 million will be made available to cover eligible expenditures incurred on or after June 30, 2012. Although no resettlement is envisaged, provision has been made by the GoK to finance possible costs of resettlement in case this contingency arises. The JPIP will be 100 percent financed by the World Bank.

C. Lending Instrument

42. **The lending instrument chosen for this project is a Specific Investment Loan (SIL), because it will support rehabilitation and construction of specific institutional infrastructure.** In addition, the project will support capacity building, consultant services, goods and training programs. The activities against which funds will be disbursed are well-defined and specific.

43. **Alternative instruments considered and reasons for rejection.** The project team considered the use of Adaptable Program Lending and Result-Based Lending instrument but did not find either instrument appropriate. The Borrower has a well-defined institutional and policy reform program outlining specific investments, which are more suitable for a SIL.

44. **The JPIP is estimated to cost US\$ 120 million.** The summary financing plan is shown below based on a detailed cost analysis discussed with the GoK which is available in project files.

Table 2: Project Cost and Financing

<i>Project Component</i>	<i>Estimated Cost in US\$</i>	<i>IDA Financing (% of total)</i>
1. Court Administration and Case Management	42,800,000	35.7
1.1. Court Administration	13,800,000	
1.2. Case Management	29,000,000	
2. Judiciary Training and Staff Development	17,000,000	14.1

<i>Project Component</i>	<i>Estimated Cost in US\$</i>	<i>IDA Financing (% of total)</i>	
3. Court Infrastructure	50,000,000		41.7
A. Courts Construction	33,000,000		
B. Courts Rehabilitation	9,000,000		
C. Prefabricated Units	6,000,000		
D. Buildings Services Unit	2,000,000		
4. Project Management	10,200,000		8.5
A. Integrated Fiduciary Agent	2,300,000		
B. PMU Costs and studies	6,800,000		
C. Safeguards Implementation	1,100,000		
	Total Costs	120,000,000	100
Of which:		7,250,000	7.3
Contingencies			6.0
Project Preparation Advance		750,000	0.8
			0.6

D. Lessons Learned and Reflected in the Project Design

45. The World Bank has been supporting judicial reform projects in Kenya and elsewhere since 2001. Local, regional and international project experiences from the justice sector, as well as the regular country portfolio reviews of Bank-financed projects in Kenya, offer many useful lessons. Several pertinent ones that were addressed during project preparation and reflected in the project design are summarized below.

- (a) Major investments in the judicial sector are likely to be unsustainable without a focus on the institutional capacity to manage the change process.* The Kenyan Judiciary shows a strong commitment to modernization and reform, but lacks the experience and expertise to apply modern management approaches to efficiently and effectively serve the needs of court users. Judges are expert in hearing evidence and rendering judicial decisions, but they need assistance to manage the courts and to respond to an increasing demand for services within an ever-changing legal environment. Furthermore, the application of new technologies in court administration is unlikely to be effective without an understanding of the incentives that presently support regressive features of manual administrative systems, such as the problems of court delays and corruption.
- (b) Improvement processes need to be supported by a broad stakeholder group.* As outlined in the Bank’s CPS, given Kenya’s history of patrimonial politics, a central challenge is to identify and support interventions that can “crowd in” more stakeholders to ensure that public resources are efficiently and effectively used for the purposes intended. To achieve early and broad stakeholder buy-in for JPIP, intensive

stakeholder consultations and workshops were conducted during project preparation. The broad consultative processes applied in developing the JTF — which is the basis of JPIP’s components — also confirm that the project design has the support of relevant stakeholders. JPIP will continue to support an inclusive process for reform implementation.

- (c) ***There must be an effective champion and leadership team.*** This was a lesson drawn from earlier Bank attempts to finance digital recording of court proceedings under the Norwegian grant (TF052274). The grant was implemented by the Ministry of Justice and Constitutional Affairs on behalf of the Judiciary. The grant became problematic as a result of untenable leadership arrangements, exacerbated by procurement and other capacity constraints. The project has taken this lesson into account by undertaking extensive consultation processes within and outside the Judiciary, and by conducting institutional assessments to support sound institutional arrangements for the project.
- (d) ***The project must be aligned with the Judiciary’s own interests, intents, and priorities*** if it is to have meaningful ownership and commitment. The JPIP is fully aligned with the JTF and is financing the JTF’s key areas.
- (e) ***Government commitment and judicial independence must be taken into account*** — not simply by relying on *de jure* and declarative factors, but on demonstrating commitment in practice — including a focus on political factors and underlying cultural behaviors. The passing of the new Constitution, the setting up of the Judiciary Fund, and recent judicial decisions that have not been favorable to the executive (nor have they triggered retaliation from the executive) signify the independence of the Judiciary and a genuine separation of powers.
- (f) ***Construction needs to be phased and monitored, and designs must reflect accessibility and functionality of the courts.*** In order to increase accountability and transparency throughout the construction process, JPIP will support information dissemination to the local population and other interventions for stakeholder oversight (including third party monitoring) during courthouse construction. Lessons from other projects also indicate the importance of ensuring that the designs of court buildings reflect not only safety standards, but also the specific needs and workflow of the courts, with a special emphasis on accessibility and user friendliness.
- (g) ***Major judicial reform programs need to be accompanied by significant public outreach and education activities to be successful.*** It is necessary to enhance the public’s understanding of the role and responsibilities of the courts, how the reforms are improving court operations, and how these changes will benefit them. The Project Management Unit will carry out public outreach activities to disseminate progress on the reforms in the project and will also support the Judiciary’s institution-wide efforts.
- (h) ***Lack of skills and unfamiliarity with World Bank Procedures, especially in fiduciary management, could negatively affect project performance.*** An IFA will be hired in the interim, to provide the necessary fiduciary management expertise and support to the Judiciary during the initial two years of the JPIP implementation. The IFA will also be required in its contract to provide training and transfer skills to the Judiciary.

- (i) ***Development of automated court systems takes time.*** Depending on ground work and local capacities, the development of effective court automation systems demands that learning experience be disseminated across the country in a carefully piloted and measured approach. Changes in court rules and paper procedures can support and have as much impact as automation alone. The project will pilot automation in the initial courts rehabilitated and constructed, as well as those ready for IT installations. It will also review automation work undertaken in the Supreme Court and incorporate the lessons learned from the automation process.
- (j) ***Sector-wide approach initiatives and project features aimed at financing a range of institutions in the justice sector can pose administrative and institutional challenges.*** In contrast, the JPIP is not sector-wide; it has fewer sector players and supports a narrower focus designed to benefit the Judiciary and those it impacts. This lesson was drawn from the experiences of the Bank-financed *Tanzania Accountability, Transparency and Infrastructure Project (Credit No.4171-TA)*. The Tanzania project also underscored how critical it was to address weak fiduciary systems and ensure adequate mitigation measures, including putting in place alternative interim options if necessary.
- (k) ***Performance of other justice sector institutions will affect the performance of the Judiciary, e.g. the police, prisons department, and advocates.*** This will be monitored through existing structures that bring together all justice sector institutions, both at a national level (the National Council on Administration of Justice) and at the court levels (CUCs). The JPIP Steering Committee provides another critical link between the judicial reforms/JPIP and overall justice sector. The project will also help to strengthen reform coordination and participation in the sector.

IV. IMPLEMENTATION

A. Institutional and Implementation Arrangements

46. **Overall project execution will be carried out by the Judiciary, assisted by a PMU responsible for project management and coordination.** Actual implementation will be carried out by the relevant Judiciary directorates and agencies. Technical oversight will be provided by a Project Technical Committee and policy guidance by a Project Steering Committee. Details of these arrangements are provided in Annex 3, including an organogram (Figure 2) outlining the project's reporting lines and relationships. The key institutional arrangements of the project are summarized below.

47. ***Project Management Unit.*** Coordination of project implementation and provision of support services to the directorates and agencies that are executing project activities will be carried out by a PMU. The PMU will be supported in the first two years of project implementation by the IFA (see paragraph below). The PMU and the IFA will report to a senior Judiciary official designated by the Chief Registrar, in consultation with the Chief Justice. The Chief Registrar's designate will oversee both the PMU and the IFA on behalf of the Judiciary. The PMU will be located in the Judiciary, with a team consisting of a full-time Project Coordinator, a Monitoring and Evaluation Officer, a Communications Specialist and a Construction Expert/Civil Engineer. In addition, the PMU will receive full-time support from two Finance Directorate staff and two Supply Chain Management Directorate staff seconded to the IFA. The PMU will also have the support of consultants on a need-be basis

to assist, for example, with safeguards, procurement coordination, ICT architecture and other requirements.

48. ***Integrated Fiduciary Agent.*** The IFA will be responsible for the procurement and financial management of the project, on behalf of the Judiciary, during the initial two years of project implementation. The agency will report to the Chief Registrar's designate. The agency will be competitively recruited by the Judiciary and will be responsible for, among other things, accounting, financial reporting, carrying out procurements based on the annual work plans prepared by the Judiciary, preparing bidding documents, advertising procurement bids and facilitating the approvals of proposed contracts by the Judiciary Tender Committees (see Annex 3 for further details). As part of its terms of reference, the IFA will have a responsibility to train the Judiciary staff to take over the fiduciary aspects after the initial two years of project implementation.

49. ***JPIP Technical Committee.*** The technical oversight of the JPIP will be carried out by a Project Technical Committee chaired by a senior official designated by the Chief Registrar, in consultation with the Chief Justice. The Committee will be comprised of all the directors of the directorates involved with JPIP, the Director of the JTI or his/her nominee, a representative of the National Council on the Administration of Justice, the Executive Director of the National Council of Law Reporting or his/her nominee, the Head of the Judiciary Transformation Secretariat, the JPIP Project Coordinator and any other official designated by the Chief Justice or the Chief Registrar. The Technical Committee will meet quarterly and will be responsible for the quality assurance of all technical aspects of the project and will oversee implementation of project activities. The Committee will also review and approve the project's annual progress reports and proposed annual work plans and budgets. It is recommended that the Committee set up sub-committees from its members who would be responsible for: (a) case management including IT; (b) court infrastructure; and (c) judiciary training and staff development.

50. ***JPIP Steering Committee.*** This is the project's highest decision-making body on policy and strategic issues, represented by key justice sector stakeholders and chaired by the Chief Justice or his designate. It will include the Deputy Chief Justice, the Chief Registrar, the JTI Director, one representative from the directorates of the Judiciary, the Chairman of the Kenya Magistrates and Judges' Association, the Head of the Judiciary Transformation Secretariat, the Chief of Staff of the Chief Justice, two representatives from the Kenya Judiciary Staff Association, and one representative each from the Ministry of Justice and Constitutional Affairs, the MoF, the Office of the Attorney General, the Kenya Women Judges' Association and the Law Society. The Committee will meet biannually to review the project's progress towards achieving the PDO, to ensure coordination with other justice sector programs, and to provide strategic and policy guidance on judicial reforms. It will also be responsible for resolving any constraints that may hamper project implementation or may require interactions with other justice sector institutions.

B. Results Monitoring and Evaluation

51. **The PMU, in consultation with the executing directorates and agencies, will be responsible for tracking the project's performance indicators as defined in the Results Framework (Annex 1).** It is expected that the PMU will work closely with the relevant directorates of the Judiciary in carrying out the monitoring and evaluation (M&E) function. The existing institutional arrangements for monitoring and evaluating results are still weak.

The project will provide relevant training, mentoring and technical assistance for the Judiciary and recruit a full-time M&E Officer as a part of the PMU team. The project will also engage independent “third party” monitoring, including the participation of community service organizations, courts users and affected communities. JPIP will draw on funding from the multi-donor Governance Partnership Facility to support third party monitoring of the project.

52. **The Results Framework has been developed through a consultative process involving both the Judiciary and other stakeholders.** In addition, project staff have developed an M&E plan to operationalize the Results Framework, including defining appropriate templates for data capturing, analysis, and reporting as part of the Project Implementation Manual.

53. **The quality of judicial service provision will be assessed through regular client satisfaction surveys.** A mid-term evaluation will be undertaken and if the findings point to gaps in the achievement of the PDO, remedial measures will be initiated to correct them.

C. Sustainability

54. **The activities of the project are likely to be sustainable, given the broad ownership of the JTF on which the project is anchored.** Extensive consultations on the JPIP were carried out with the Ministry of Justice and Constitutional Affairs, the Office of the Attorney General, the legal fraternity through the Law Society, and civil society institutions in the justice sector such as the International Commission of Jurists - Kenya Chapter, Kituo Cha Sheria, International Federation of Women Lawyers - Kenya Chapter (FIDA), and Transparency International. These consultations have confirmed the alignment of the JPIP with the Judiciary’s transformation agenda. Furthermore, the benefits of the project are likely to be sustained, given the constitutionally guaranteed funding from the National Assembly to the Judiciary through the Judiciary Fund.

V. KEY RISKS AND MITIGATION MEASURES

A. Risk Ratings Summary Table

Risk	Rating
Stakeholder Risk	High
Implementing Agency Risk	
I. Capacity	High
II. Governance	High
Project Risk	
III. Design	High
IV. Social and Environmental	Moderate
V. Program and Donor	Moderate
VI. Delivery Monitoring and Sustainability	High
Overall Implementation Risk	High

B. Overall Risk Rating Explanation

55. **The overall implementation risk is rated high.** This is because of: (a) weak implementation capacity of the Judiciary; (b) uncertainties and anxieties surrounding the vetting process for judicial appointments and their impact on the Judiciary's ability to deliver; (c) proposed investments in infrastructure, ICT equipment, and capacity building services which are vulnerable to corruption; and (d) the forthcoming elections in 2013 and the transition to a new government, which could result in waning political commitment to the Judiciary's reform agenda. The Constitutional provisions that establish the institutional and financial basis for judicial independence were approved in a public referendum and public support has not diminished, which will constrain the ability of politicians to reverse the reform process. The project emphasizes participation by court users and outreach to the public, and will seek to support certain changes that will be difficult to reverse if they garner public approval and support. The Bank task team will monitor political commitment, and should changing political developments affect project objectives, the team will work with the Judiciary and with other project stakeholders to consider measures for responding to them. Risk mitigation measures are explained in detail in the ORAF (Annex 4) and in the Governance and Anti-Corruption (GAC) Action Plan (Annex 8).

56. **Weak governance has affected a number of Bank-financed projects in Kenya, resulting in their closure or suspension due to poor internal controls on expenditures.** Projects with decentralized expenditures have been primarily vulnerable to fiduciary and integrity issues. The JPIP will not be using decentralized expenditures. In addition, a World Bank Governance and Anti-Corruption Committee, comprising Bank sector and fiduciary staff has been established within the World Bank Kenya office, to review lessons from affected projects and provide guidance to Bank and GoK project teams. In-depth fiduciary reviews are also being undertaken for high-risk Bank-financed projects in Kenya, and intensive supervision is ongoing on a continuous basis. The JPIP will receive intensive Bank supervision, including fraud and corruption awareness training for Judiciary staff and other relevant project stakeholders by the World Bank's Integrity Vice Presidency. In addition, other governance-enhancing modalities, such as social accountability tools, open recruitment, and corruption perception surveys are being embedded in project design. These are articulated in the project's GAC Action Plan (Annex 8).

VI. APPRAISAL SUMMARY

A. Economic and Financial Analyses

57. **The expected benefits from improvements in judicial performance are both economic and financial.** Court quality is associated with economic growth and development, most directly through improvements in the business climate (e.g. reduction in transaction costs). Courts serve businesses best when they are efficient and fair²⁰. On one measure of efficiency for businesses (enforcement of contracts), Kenya's courts currently rank 127 out of 183 globally, below the average for Sub-Saharan Africa (117) and well behind neighboring Tanzania (36) and nearby Rwanda (39)²¹. The project will support measures to increase the number and efficiency of the courts, also addressing issues of fairness that will help to lower the cost of doing business by reducing administrative

²⁰ World Bank, *Doing Business in 2005: Removing Obstacles to Growth* (2005), p. 60

²¹ World Bank, *Doing Business Economy Profile: Kenya* (2012), p. 84

corruption. For example, more uniform application of the rule of law will contribute to a more predictable and level playing field for business, spurring investment and thus promoting economic growth. The increase of judicial services in underserved areas can be expected to have a particularly positive impact on the poor. Financial benefits from the project will also arise from activities that support improved systems for the use of all (not just World Bank) resources in the justice sector. This is crucial since public resources allocated by the GoK to the judicial system have increased rapidly between 2010-2011 (KSH 3.9 billion) and 2012-2013 (KSH 16.4 billion). Project activities that will improve the management of project resources include the extension of IFMIS to court stations in project areas. In addition, the IPMAS is expected to promote better management of human resources and improved productivity of the Judiciary (see Annex 7 for more details).

B. Technical

58. **Project design was based on comparative international best practice regarding the improvement of court performance.** It was developed through a broad participatory process and within a comprehensive framework for reform. It is based on significant analytical work, and on a review of Bank experience in the sector in Kenya and globally.

C. Financial Management

59. **A World Bank financial management assessment of the Judiciary was conducted in January 2012.** The assessment focused on determining whether the overall financial management arrangements in the Judiciary are appropriate and adequate for the needs of the project and whether the required conditions are met. The financial management risk rating before mitigation is assessed as **High**. Although the financial management arrangements satisfy the minimum requirements under OP/BP 10.02, considering the high political economy risks and the need to focus on results, the project will finance the IFA during the initial two years of project implementation. The IFA will be a competitively-procured private sector firm that will be responsible for budgeting (based on the budgets submitted by the executing directorates and agencies), accounting, preparing credit withdrawal applications and financial reporting. This arrangement will also allow for progressive capacity strengthening for financial management within the Judiciary. The IFA will be phased out once there is capacity in the Judiciary/PMU, estimated to be in place within the initial two years of project implementation. The Judiciary and the World Bank have agreed on the terms of reference, evaluation criteria, and short list for the IFA, and the procurement process is advanced. The Judiciary will carry out other actions to help strengthen its financial management and procurement capacity. These are contained in a Financial Management Action Plan (Annex 3, Table 5) specific to financial management, and in a broader Fiduciary Management Capacity Enhancement Plan (Annex 3, Table 6) developed to address the overall fiduciary management capacity concerns.

D. Procurement

60. **The procurement risk associated with the project before mitigation is High.** The mitigation measures are detailed in Annex 3. The World Bank assessment of the capacity of the Judiciary to implement procurement actions for the project reviewed the organizational structure for implementing the project and the interaction between the staff responsible for procurement duties and the management of their respective agencies.

61. **Key procurement issues and risks have been identified that require mitigation.** They include systemic weaknesses in the areas of: (a) accountability of procurement decisions; (b) procurement record keeping; (c) capacity of procurement staff; (d) procurement planning; (e) procurement process administration, including award of contracts; (f) contract management; and (g) procurement oversight. The Judiciary recently established a Directorate of Supply Chain Management responsible for procurement (not related to the project). The directorate has limited capacity but it will receive project resources to help strengthen its capacity and remove this constraint. In addition, two of the directorate staff specialized in procurement will be seconded to work closely with the IFA on a full-time basis. The IFA will be required, as part of its terms of reference, to build the capacity of the Judiciary's procurement staff who are expected to take over the project's procurement function after the first two years of project implementation.

E. Social (including Safeguards)

62. **The social benefits of the project will accrue as a result of the creation of an independent and effective Judiciary, which is essential for equitable delivery of basic social services and social protection assurance for marginalized and vulnerable groups.** As articulated in the JTF, the Kenyan Judiciary is called upon to do more than resolve disputes. It also fosters political and social stability and promotes national social and economic development. Reforming the Kenyan Judiciary will provide a mechanism for protecting the rights of individuals, and particularly, the poor and marginalized. The social impacts of this project will be to: (a) improve access to justice, both in terms of physical accessibility (court facilities made available in locations where none existed and those existing are rehabilitated for improved public access to justice); (b) reduce the cost of judicial services (e.g. increased court efficiency in reduced time and procedural steps for court cases, thereby reducing the cost of legal services); (c) more effective protection of citizens' rights and freedoms, including for vulnerable groups (through reducing the time for judicial processes, achieving more transparency in the Judiciary, and eliminating sources for corruption); and (d) better access for citizens to information about their legal rights and obligations and the means for their protection (e.g. through a public outreach program, court user surveys and public opinion polls). Since Bank-financed construction and rehabilitation activities will be implemented on land owned by the Judiciary, there is a low likelihood of encroachment claims, resettlements or private land acquisition under the project. During project implementation, social monitoring and consultations will be carried out on an ongoing basis.

F. Environment (including Safeguards)

63. **JPIP is rated Category B for environmental purposes.** The project will entail the construction and rehabilitation of courts and in this respect will trigger World Bank safeguard policies OP/BP 4.01 on Environmental Assessment (EA) and OP/BP 4.12 on Involuntary Resettlement. The majority of court buildings to be rehabilitated are small magistrate court facilities and as such their environmental impacts are likely to be moderate. The project will finance construction of eight new High Court buildings and two new magistrate courts. An indicative list of the courts to be rehabilitated and constructed with project resources, including criteria for their final selection, is provided in Annex 6. To ensure the minimization or elimination of any negative impacts, the GoK has prepared an Environmental and Social Management Framework (ESMF) and a Resettlement Policy Framework (RPF). The ESMF includes guidance on dealing with physical cultural resources, which may be affected by the court rehabilitation and construction activities. Both

documents were disclosed in-country on September 20, 2012, and at the InfoShop on September 21, 2012. In addition, the GoK has prepared Environmental and Social Management Plans (ESMPs) for the first two magistrate courts proposed to be rehabilitated, i.e., the Kangema and Kitui magistrate courts. These ESMPs have been consulted upon and were disclosed in-country and at the InfoShop on October 11, 2012. Additional ESMPs will be prepared during project implementation once sites and works are finalized. In the event that there will be land acquisition, impact on assets, or loss in economic activity and/or livelihood, a Resettlement Action Plan (RAP) will be developed to govern implementation of the project, and is to be cleared by the Bank prior to the start of construction.

64. **A suitable legal framework for the management of the environment exists in Kenya, the National Environment Management and Coordination Act (1999) (EMCA).** The Act provides that the Minister of Environment and Natural Resources appoint local Committees chaired by the Provincial Commissioners and District Commissioners, which decide on the management of the environment within their respective provinces or districts. These local entities will be consulted during the project’s Environmental Assessment (EA) preparation process. They will also be involved in the environmental decision-making process related to the selection of sites for the proposed courts.

65. **JPIP will ensure that there is adequate capacity within the Judiciary to implement the ESMF and any subsequent ESMPs and/or RAPs.** It will also support the mainstreaming of the environment in the planning processes in courts by ensuring that the unit in charge of construction and monitoring of project implementation is appropriately financed to carry out its obligations.

Safeguard Policies Triggered by the Project	Yes	No
Environmental Assessment (OP/BP 4.01)	[X]	[]
Natural Habitats (OP/BP 4.04)	[]	[X]
Pest Management (OP 4.09)	[]	[X]
Indigenous Peoples (OP/BP 4.10)	[]	[X]
Physical Cultural Resources (OP/BP 4.11)	[X]	[]
Involuntary Resettlement (OP/BP 4.12)	[X]	[]
Forests (OP/BP 4.36)	[]	[X]
Safety of Dams (OP/BP 4.37)	[]	[X]
Projects on International Waterways (OP/BP 7.50)	[]	[X]
Projects in Disputed Areas (OP/BP 7.60)	[]	[X]

ANNEX 1: Results Framework and Monitoring

KENYA: Judicial Performance Improvement Project (JPIP)

Project Development Objective (PDO): To improve the performance of the Judiciary to provide its services in the project areas in a more effective and accountable manner													
PDO Level Results Indicators*	Core	Unit of Measure	Baseline (2012)	Cumulative Target Values**					2018	Frequency	Data Source/ Methodology	Responsibility for Data Collection	Description (indicator definition etc.)
				2013	2014	2015	2016	2017					
Indicator 1: The average time it takes to dispose of cases in courts adopting the new case management system	<input type="checkbox"/>	Number of months	15	15	14	11	10	9	8	Annual	Court Registers	Judiciary	Average age of cases in months from the time of filing to disposal
Indicator 2 The Integrated Performance Management and Accountability System used to assess staff performance	<input type="checkbox"/>	Yes/No	No	No	No	Yes	Yes	Yes	Yes	Annual	IPMAS system	Directorate of Performance Management and JSC	Annual Project Performance Reviews
Indicator 3 The average distance to courts as a result of constructing new courts	<input type="checkbox"/>	Kilometers (Km)	394	394	380	300	270	220	186	Annual	New court distance	Judiciary	In counties where new courts are being constructed, furthest distance to nearest existing court minus furthest distance to the new court. 6 new courts to be completed by 2016 and additional 4 by

PDO Level Results Indicators*	Core	Unit of Measure	Baseline (2012)	Cumulative Target Values**					2018	Frequency	Data Source/ Methodology	Responsibility for Data Collection	Description (indicator definition etc.)
				2013	2014	2015	2016	2017					
												2018.	
Indicator 4 Users' satisfaction with the delivery of court services in project courts	<input type="checkbox"/>	%	35%	37%	40%	45%	50%	55%	60%	Annually	User survey	Judiciary	Rapid baseline user satisfaction survey was conducted using one high and one lower court in each of the 8 provinces in June 2012
Indicator 5 Direct project beneficiaries (number), of which female (percentage)	<input checked="" type="checkbox"/>	Number %	Users = 157,000 (20%) Personnel trained = 2200 (21% female) Total = 159,400 (23%)	157,000 (20%) 2200 (21%) 154,000 (23%)	167,000 (23%) 3200 (25%) 165,000 (23%)	180,000 (25%) 4500 (28%) 180,000 (25%)	190,000 (30%) 5500 (30%) 190,000 (30%)	200,000 (37%) 6500 (35%) 200,000 (35%)	Users = 204,100 (40%) Personnel Trained= 4000 (40% female) Total= 208,100 (40%)	Population served estimate list from cases registered; quarterly project reports. JTI training records/reports	Court station registrars and JPIP M&E officer JTI Director/Deputy Director	Users of 10 new and 30 refurbished courts estimated by cases filed in May 2012 multiplied by a minimum of two litigants multiplied by 12 for all courts to be constructed and renovated. Personnel trained by JTI	
INTERMEDIATE RESULTS													
Intermediate Result (Component One): Court Administration and Case Management													
<i>Intermediate Results Indicator (IRI)1:</i> Annual court users satisfaction surveys conducted		Yes/No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Annual	Report on user survey.	Judiciary's PMU	

PDO Level Results Indicators*	Core	Unit of Measure	Baseline (2012)	Cumulative Target Values**					2018	Frequency	Data Source/ Methodology	Responsibility for Data Collection	Description (indicator definition etc.)
				2013	2014	2015	2016	2017					
IRI 2: Court stations using an automated system in project intervention courts	<input type="checkbox"/>	Number	0	0	28	38	48	58	68	Annual	Project Progress Reports	Judiciary/PMU	Periodic reporting on progress in the implementation of court automation for case management.
IRI 3: Backlog of cases in the selected project intervention courts.	<input type="checkbox"/>	%	Ave: 43%	37	30	24	19	15	12	Annual			Percent of courts where estimated number of months required to clear pending cases is rated as 'serious' or 'unacceptable'.
			Affiliation. 46%	39	31	25	20	13	11				
			Civil 56%	47	37	30	24	12	9				
			Criminal 29%	25	20	16	13	10	6				
			Land 56%	48	39	31	25	18	14				
			Others 43%	37	30	24	19	14	11				
			Succession 52%	44	35	28	22	11	8				
Traffic 37%	32	26	21	16	11	9							
Intermediate Result (Component Two): Judiciary Training and Staff Development													
IRI 1: Judiciary staff who are satisfied with the knowledge and skills acquired from training.		%	No training under this project has been carried out yet	50%	55%	60%	65%	70%	75%	Annual	Feedback survey questionnaires completed by the trained staff	Judiciary Training Institute	Trained staff express their various opinions about the application of the training immediately BEFORE and AFTER training
IRI 2: Impact evaluation of two trainings conducted.		Number	0	0	1	1	1	2	2	Annually	Evaluation report	JTI with support from WB	
Intermediate Result (Component Three): Court Infrastructure													
IRI 1: New courts		Number	0	0	2	6	8	10	10	Annual			Periodic reporting on

PDO Level Results Indicators*	Core	Unit of Measure	Baseline (2012)	Cumulative Target Values**					2018	Frequency	Data Source/ Methodology	Responsibility for Data Collection	Description (indicator definition etc.)
				2013	2014	2015	2016	2017					
constructed by the project to improve access to court.													the progress in the implementation of the construction program
<i>IRI 2:</i> Existing courts renovated by the project to improve the quality and access to service.		Number	0	1	4	15	20	25	30	Annual			Periodic reporting on the progress in the implementation of the construction program
<i>IRI 3:</i> Users reporting court facilities are “satisfactory”.	<input type="checkbox"/>	%	A=38 B=42 C=58 D =42	A=35 B=43 C=58 D =42	A=38 B= 45 C=60 D= 45	A=44 B=53 C= 65 D=53	A = 48 B = 57 C = 68 D = 56	A=52. B=63 C=72 D=60	A=55 B=65 C=75 D=63	Annually	Users’ Survey	Judiciary/PMU	Surveys of users of the selected project intervention courts

ANNEX 2: Detailed Project Description

KENYA: Judicial Performance Improvement Project (JPIP)

1. **The proposed JPIP will finance technical assistance activities and procurement in areas considered most likely to augment and reinforce the performance improvement goals of the JTF.** The overriding objective of the JTF is to achieve access to and expeditious delivery of justice for all. The JTF commits the Judiciary to pursuing four “pillars” of justice outcomes: (a) delivering justice services that are more focused on the needs of the people served; (b) acquiring and delivering a judicial leadership that will transform managerial and judicial outcomes; (c) achieving adequate financial resources and physical infrastructure for the Judiciary; and (d) harnessing the use of technology as an enabler for improving the effectiveness of the justice system. The JTF also describes 10 KRAs on which the Judiciary intends to focus in implementing its program of activities. These are: (a) access to and expeditious delivery of justice; (b) people-centeredness and public engagement; (c) stakeholder engagement; (d) philosophy and culture; (e) leadership and management; (f) organizational structure; (g) growth of jurisprudence and judicial practice; (h) physical infrastructure; (i) resources; and (j) information and communication technologies.
2. **The JPIP components are:** (a) Court Administration and Case Management; (b) Judiciary Training and Staff Development; (c) Court Infrastructure; and (d) Project Management. These components collectively reflect and reinforce the JTF pillars and KRAs and, in turn, support the proposed PDO *to improve the performance of the Judiciary to provide its services in the project areas in a more effective and accountable manner.*
3. **The Project area consists of approximately 68 courts where service improvements will be made.** These courts are located (or are to be located) in eight new high court buildings, two new magistrate court buildings, 30 rehabilitated magistrate court buildings, and 28 existing magistrate court buildings that do not need rehabilitation. In addition, at least 20 temporary or demountable buildings will be provided to allow early operational capacities in courthouses that are earmarked for refurbishment (or localities in which a courthouse is yet to be built). Project focus also includes a national emphasis on strengthening court administration systems and processes including for organizational planning and coordination, human resource development, judicial training, information technology and performance measurement, among others.
4. **JPIP will also finance activities aimed at promoting gender equity in accessing judicial services and third party oversight in the implementation of project activities.** Third party monitoring will feature the involvement of civil society organizations in project supervision and procurement monitoring. It will also emphasize public access to project information. As far as practicable these features will be incorporated into all project activities and processes under each component.

Component 1: Court Administration and Case Management (US\$ 42.8 million)

5. **This component has two sub-components.** The Court Administration sub-component (Pillar 2 of the JTF) aims at improving the organizational structure, functions, and culture of the Judiciary for optimum performance and accountability. The Case Management sub-component (Pillars 1 and 4 of the JTF) aims at promoting access to and the expeditious delivery of judicial services. These two sub-components are described below.

Court Administration Sub-Component 1.1 (US\$ 13.8 million)

6. **This sub-component will support the improvement in court administration.** It will support, for example, an organizational review, improved performance management, regular court user surveys, and development of a governance and anti-corruption strategy. It will also help in strengthening the capacities of various directorates and agencies of the Judiciary. Below are the major activities of the sub-component.

7. **Conduct an Organizational Review for the Judiciary.** Various reviews and studies of the court administration in Kenya have noted the highly centralized administrative structures; a remnant of the colonial legacy leading to poor supervision of the courts, unsatisfactory personnel deployment practices and inconsistent policy formulation on various aspects of court management²². This sub-component will support a comprehensive organizational review of the Judiciary that takes into account the structure (existing and proposed), capacity, and roles of Judiciary staff. This will also cover areas of importance, such as: (a) the reorganization of judicial cadres as a consequence of Constitutional changes and the establishment of new courts (e.g. Land and Environment, special courts for children and other vulnerable groups, small claims courts and courts of petty offenders); and (b) clarifying the relationships between judicial leaders of the courts and other essential units, such as the JSC, the Chief Registrar's Office, and the National Council for the Administration of Justice.

8. **Development and implementation of an Integrated Performance Management and Accountability System (IPMAS).** The project will assist the Judiciary to develop and implement an IPMAS by providing technical assistance, goods, and capacity building support. The system will introduce Judiciary personnel to modern tools and concepts that will operationalize performance management and accountability in the institution. Specifically, the IPMAS will establish performance factors, criteria and scoring guidance; performance agreements at unit and individual levels; and links between performance and reward mechanisms.

9. **Change management efforts to help transition Judiciary personnel to the institution's new vision, culture, structure and processes.** The sub-component will support the Judiciary's efforts in promoting a cultural change that meets the institution's transformed agenda in accordance with the JTF. Specifically, the project will support technical assistance to design and implement training curricula in change management, events, information packages

²² Judiciary Watch Report-Judicial Reform in Kenya, 1/2005. Publication of the Kenyan Section of the International Commission of Jurists (ICJ Kenya) No. 3 in the Judiciary Watch Series.

and other change management requirements, including those arising from the organizational review and IPMAS work described above.

10. **Data collection and use, including court user satisfaction surveys.** This supports the development and maintenance of systems and processes for data collection and use, including procedures for ensuring that quality data is made available for essential decision-making. It will encompass the implementation, analysis and publication of results from regular court user surveys (satisfaction on factors including process, facilities, corruption and access to information), including recommendations for reforms based on user views.

11. **Institutionalization of CUCs, including implementation of their court improvement plans.** The sub-component will support a review of the draft policy on CUCs. These committees will be institutionalized in 40 project intervention courts targeted for construction and rehabilitation works, and financing will be provided to implement their court improvement implementation plans. CUCs include members of the Judiciary, justice sector agencies and the public and are an important transparency and participation tool. In essence, this sub-component will help to scale up and sustain stakeholder participation in the administration of justice.

12. **Development and implementation of a Governance and Anti-Corruption Strategy for the Judiciary.** The sub-component will provide technical assistance for the development of a draft governance and anti-corruption strategy for the Judiciary, incorporating elements concerned with codes of conduct and procedures for processing complaints made against the Judiciary and its staff. The activity is led by a Supreme Court Judge who is also a former Assistant Director of the defunct Kenya Anti-Corruption Commission. He will work closely with the Judiciary's Ombudsman's office and the GoK's Ethics and Anti-corruption Commission, as well with NGOs working on governance. The activity will include public consultations and the development of databases for receiving and processing complaints against the Judiciary using ICT. It will also involve the review of systems for monitoring the exercise of discretionary decisions in the Judiciary;

13. **Support court services' innovation, research, and testing.** Technical assistance to support the development of improved court services provision and other emerging ideas, innovations, and initiatives, such as on: (a) processes for increased public participation in court management; (b) improved social accountability by courts; (c) utilizing the potential value of community-based paralegals; (d) using technology for surveying litigant needs and processing public complaints; and (e) identifying options for productive interactions by courts with local and traditional dispute resolution processes and practices.

14. **Strengthening the capacities of the Judiciary's directorates.** The sub-component will support the recently established administrative support directorates under the Chief Registrar's office by helping them improve their capacity to implement respective core functions. The directorates' functions include budgeting, strategic planning, performance management, ICT development, infrastructure planning, financial management, accountability, human resources, asset management, and organizational development, among others. In particular, the project will finance implementation of the directorates' work plans that are within the scope of JPIP.

15. **Strengthening the JSC's capacity.** The sub-component will support the JSC's capacity building efforts in fulfilling its mandate, including in the development and implementation of its strategic plan. Technical assistance will also be made available to assist the JSC Secretariat develop its systems and its advisory, management and research expertise. In addition, the sub-component will help the Secretariat to develop relevant policies, such as on deployment/judicial transfers, and to better define its role vis-à-vis other justice sector institutions. It will also provide necessary goods and logistical support.

16. **Support to the National Council on the Administration of Justice.** Technical assistance to support the National Council on the Administration of Justice, particularly on its efforts to ensure a coordinated, efficient and consultative approach in the administration of reforms in the Judiciary. Project assistance will also cover the development and implementation of a strategic plan, training and support for working sessions by the Council and/or its committees. This assistance to the Council is expected to be fully assumed by the Borrower before the end of the project.

17. **Support to the National Council of Law Reporting of Kenya.** Assistance will be provided to solidify NCLR's work on developing ICT systems for case management, on producing legal information, and on enhancing its research capacity. The sub-component will finance technical assistance, training, goods, and logistical needs for the NCLR, as well as office space leasing costs.

18. **The JPIP will support extension of IFMIS to court stations in project areas, including LANs, intranet, end-user equipment, and last mile connectivity from the GoK's wide area network.** This will include the cost of a systems integrator to facilitate integration as required with court management systems specific to the Judiciary.

Case Management Sub-Component 1.2 (US\$ 29.0 million)

19. **This sub-component will seek to improve case management.** This will entail compiling information of regular and complete statistical data on case delay and backlog, and devising strategies to address backlog. Activities that will be supported by this sub-component include supplying and installing audio/visual recording of court proceedings (currently a manual process); establishing case tracking; digitizing records management systems in court registries; and introducing court-annexed mediation programs as a means of offering genuine Alternative Dispute Resolution options. The key activities are described in more detail below.

20. **ICT hardware and connectivity infrastructure for court stations, and staff training.** The sub-component will support the design, installation and commissioning of ICT hardware and connectivity infrastructure for court stations, as well as carry out relevant staff training. It finances the development of an Integrated Case Management Information System; a key part of the Judiciary's Court Station ICT Transformation Program. Specifically it will provide the following:

- (a) **Hardware and connectivity for court stations.** This will provide local area networks for all personnel, voice communication systems, CCTV, and power outage backup capacity, among other items. It may include mobile technology support for mobile courts. The

project will help to scale up ICT installations in the country by financing 68 court installations. These include the JPIP-financed court construction (10) and rehabilitations (30), as well as 28 existing courts in the country that do not need major rehabilitation work. Selection of the 28 existing courts will be based on criteria that take into account country coverage, case loads, and population served. The Judiciary has already embarked on the installation process for 21 stations (16 High Courts, JTI, and 4 magistrate courts in Nairobi) programmed for FY12/13 implementation. This work will be advanced in stages that target about 40 installations a year.

(b) Staff Awareness and Training. The Directorate of ICT is also undertaking a program to increase awareness among Judiciary staff on the upcoming ICT-enabled case management systems. The program includes staff training on IT knowledge and skills.

21. **Implementation of a Case Management Information System.** The activity will entail the design, supply, installation and commissioning of a case management module for courts. The system will include:

- audio/visual recording of court proceedings;
- an electronic case tracking and management system;
- an Integrated Justice Information Portal (IJIP) that establishes and expands a centralized and secure portal for linking the information systems of courts and other justice agencies concerned with litigation, prosecutions and other processes for dispute resolution (e.g. police, prosecutors, legal aid agencies);
- the electronic display of case listings and SMS notification of court case events;
- tele-justice (video conferencing) facilities in at least one courtroom in each station;
- versatile reporting tools/business intelligence; and
- a Sentencing Information System (SIS) and other legal knowledge processing databases for the use of magistrates and judges. The aim of the SIS is to make use of real case data so that it can be used to help develop greater consistency in sentencing.

22. **Provision of Container Data Centers.** The Case Management Information System as well as all the data belonging to the Judiciary needs to be centralized. The Judiciary does not have a case management system at present and any data available is located at different islands of information. The Judiciary intends to construct a data centre building and a replication centre building in the long term, subject to the availability of land and funding. As an interim measure, the JPIP will support the purchase of a Container Data Center (40ft), fully equipped with a server and the ancillary equipment. The container has a 20-year life span.

23. **Introduction of court-annexed mediation.** Technical assistance to develop and implement a system for administering court-annexed mediation programs in all trial court stations. The sub-component will help to assess and establish a court-annexed mediation pilot in

year one of the project. Thereafter, the program will be rolled out in the 40 project intervention courts targeted for construction and rehabilitation. A central secretariat will be responsible for developing the operational methodologies, printed materials and relevant staff.

24. **Customer care desks and court counsel support.** Technical assistance to establish and sustain customer care and court counsel services in the 40 project intervention court stations, along with relevant training programs. These services assist users to understand court processes by providing them with expert advice. They thus increase transparency of the courts and bolster the accountability of court personnel as they are then dealing with more informed users. This activity is expected to include a research program, followed by multi-stakeholder consultations, and a pilot court counsel program to be evaluated by year 3. The extent of the pilot will be to deploy a court counsel in each court station that is upgraded by other JPIP components with improved ICT and case management facilities; and to roll out the number of courts covered in tandem with these related components.

25. **Expected key results include:** (a) reduction in the average time it takes to dispose of cases in courts adopting the new case management system; (b) use of the IPMAS for assessing staff performance; (c) reduction in the backlog of cases, and (d) improved user satisfaction with the delivery of court services in project courts.

Component 2: Judiciary Training and Staff Development (US\$ 17.0 million)

26. **The Constitution of Kenya places continuing education and training of Judiciary officers at the core of laying the foundation of efficient, effective and fair administration of justice.** Although the JTI has been set up, Judiciary training has not been fully institutionalized and both pre-service and in-service training for magistrates and other judiciary staff is still weak, while continuous training for all Judiciary officers remains haphazard.

27. **This component will strengthen the capacity of the JTI to carry out its education and training mandate.** In particular, it will: (a) review the progress to date of the performance of the JTI and identify areas for strengthening its capacity to deliver timely and relevant training, including reinforcing processes by which training programs can be offered steadily and consistently throughout each court year; (b) in reviewing the modalities of conducting training, include the possibility of outsourcing training services or developing partnerships with universities and law schools and via new media, such as by the development of accredited online learning programs; (c) support the JTI's faculty and staff development, including capacity building aspects related to training of trainers and other providers; (d) support JTI's knowledge management and policy advisory capacity which include surveys, special studies, publications, information dissemination, and training policy developments for the Judiciary and the judicial sector; (e) help purchase equipment and software; and (f) support costs for leasing premises for the JTI.

28. **In addition, the component will provide a structure for defining the critical competencies of Judiciary officers and for their ongoing training toward those competencies.** Specifically, it will assist the JTI to conduct training needs of different

categories of personnel within the Judiciary. It will also develop and implement relevant training for the Judiciary. The key JTI activities supported by the project are listed below.

- ***Support to develop and deliver annual training programs.*** Since the JTF program will be advancing rapid change in many courts and areas of court management, it is expected that the JTI training programs will be large scale, covering large components concerned with new systems training, and targeting more than 4,000 personnel. The JTI will be expected to administer special training programs related to the JTF, for example, on induction, mentorship programs, trainer-of-trainers, court-annexed mediation, complaints handling, performance management, IT skills, audio/visual recording and transcription, accounting and financial management, planning, procurement, complaints processing, corruption prevention, CUCs, and other change initiatives.
- ***Support to administer study tours funded by JPPI.*** This administrative role will include organizing the logistics of missions and/or exchange programs, including the processes for receiving and taking action on reports furnished by the study tour participants.
- ***Design and implementation of specific programs to help strengthen the technical capacity for research, interpretation, and analysis.*** This will be targeted at judges, magistrates, court administrative managers, judicial clerks, registry personnel and staff retained to undertake research or assist the general public.

29. **The component will also help to establish a Research and Development Resource Centre concerned with developing online training and legal information services for judges, magistrates and Judiciary staff.** This activity will be implemented alongside programs to ensure that adequate quantity of essential materials are maintained for the practical use of judges, magistrates and other Judiciary staff. The centre's online information systems will be developed in collaboration with the NCLR and will include materials to permit long distance learning as part of JTI's educational and training programs.

30. **Finally, the JTI will support the capacity building efforts for the legal personnel at the Office of the Attorney General (US\$ 1 million).** In particular, it will assist capacity building activities that support the performance of the Judiciary, e.g. in their representation roles, drafting, negotiation, project financing, etc. Specifically, the sub-component will finance training, study tours, expert visits, workshops and other capacity building initiatives, including relevant technical assistance and goods. The Office of the Attorney General will prepare annual training work programs for implementation.

31. **Expected results** include: (a) increased number of Judiciary staff who are satisfied with the knowledge and skills acquired from training; and (b) improved impact of training on personnel trained (to be assessed through impact evaluation of two programs).

Component 3: Court Infrastructure (US\$ 50.0 million)

32. **World Bank funding for new court construction and for court renovation is intended to help accelerate the overall construction and renovation program being funded by the GoK.** The Judiciary plans to construct 30 new High Court buildings, rehabilitate 90 magistrate courts and build over 200 new magistrate courts across the country in support of the devolution of service agenda. The GoK has allocated US\$ 26.4 million to finance infrastructure for FY2012/13, with higher allocations projected in subsequent years. The Bank's financial contribution covers the six-year project period and will support the construction of eight new High Court buildings (27 percent), the refurbishment of approximately 30 magistrates courts (33 percent), the construction of two new magistrate courts (about one percent) and the supply of at least 20 demountables or temporary courts, prioritized from the indicative lists and in accordance with the agreed criteria (see Annex 6).

33. **This component focuses on providing the necessary infrastructure for the Judiciary to hold trials and provide access to courts by providing the physical space necessary.** It will help to address a multitude of infrastructure related problems, including: (a) the shortage of courthouses; (b) building deterioration and other structural problems affecting functionality, health, and safety; (c) inadequate security, particularly with respect to internal building circulation for judges, the public, and defendants in custody; (d) lack of public amenities, such as disabled person accessibility, public restrooms and waiting areas, and (e) lengthy distances and travel times for those who need to attend court. A detailed description of the current challenges, including the objectives and rationale for Bank involvement, is provided in Annex 6. In summary, this component will:

- (a) promote the development of cost effective and uniform space planning and design standards for court buildings;
- (b) recruit a consulting firm to design and supervise construction of new courts;
- (c) establish, equip, and support office space lease costs for a Judiciary Building Services unit to help manage and supervise the court construction and renovation program;
- (d) construct ten new court buildings (eight High Courts and two Magistrate courts) and rehabilitate approximately 30 magistrates' courts;
- (e) support the provision and use of at least 20 demountable buildings where necessary; and
- (f) carry out assessments for compliance with Bank safeguards policies.

34. **Temporary/Demountable Court Buildings will be used to provide early operational capacities in courthouses that are earmarked for refurbishment (or localities in which a courthouse is yet to be built).** The aim is to reduce the high risks that delays in courthouse construction or refurbishment may confound or frustrate achievement of JTF's early operational improvement goals in those localities. The demountables may be adapted for use as courtrooms, magistrate offices, public toilets, conference/mediation rooms, secure records storage or any purposes that facilitate case disposals and public service. The intention is that when new construction or refurbishment is completed in each location, any demountable in use may be

converted to an associated purpose on-site or sold (proceeds from sale will be channeled to activities that support the project's PDO).

35. **The World Bank will not finance any construction with land acquisition and/or access limitation implications.** These will be picked up by the GoK to help ensure that those supported by the Bank strictly follow Bank procedures and do not trigger social or environmental safeguards. In this regard, the Bank-financed sites will be selected from those sites that are already owned and exclusively occupied by the Judiciary.

36. **The primary costs of construction and rehabilitation and other details about court infrastructure and IT are in project files.** They will be updated periodically during the life of the project when procurement packages and environmental documents are prepared and bidding processes are initiated. All relevant information on costs are filed for technical deliberations and project M&E in the World Bank's information system.

37. **The ESMF and the RPF have been prepared and disclosed.** In addition, ESMPs for the first two magistrate courts proposed to be rehabilitated, i.e. the Kangema and Kitui magistrate courts, were prepared, consulted upon and disclosed in-country and at the World Bank InfoShop on October 11, 2012. In the event that there will be land acquisition and/or impact on assets or loss in economic activity and/or livelihood, a RAP will be developed to govern implementation of the project. Although no resettlement is envisaged, provision has also been made by the Borrower for possible costs of resettlement in case this contingency arises.

38. **Expected key results include:** (a) reduction in the average distance to courts as a result of constructing new courts; (b) new courts constructed to improve access to courts; and (c) existing courts renovated to improve quality and access to judicial services.

Component 4: Project Management (US\$ 10.2 million)

39. **The objective of this component is to help the Judiciary manage and coordinate project activities, including the financial management and procurement functions.** Specifically, the component will:

- (a) support a PMU including the professional and administrative staff, equipment and maintenance, operating costs and training for staff;
- (b) finance an IFA responsible for the financial management and procurement functions of the project, as well as training/transfer of these skills to Judiciary staff;
- (c) support the collection, analysis, and dissemination of data to ensure monitoring and impact evaluation of the project;
- (d) implement environmental and social safeguard requirements;
- (e) design and implement a public engagement communications strategy and work plan for the project, including regular review of its effectiveness for continued improvement;

- (f) produce quarterly IFR/FMRs, annual work plans, annual procurement plans, annual progress reports, a mid-term report and a completion report, while ensuring the Judiciary is kept regularly updated and able to address or adjust implementation requirements as needed, based on timely monitoring, reporting and coordination by the PMU; and
- (g) support participation in relevant social initiatives financed by other development partners or by the GoK, such as courts' outreach activities, open days, score card programs and legal awareness campaigns.

40. **The Judiciary, with assistance from the PMU, will be responsible for carrying out a Mid-Term Review of the project.** In particular, it will ensure to:

- a) no later than one month prior to the project's mid-term review, submit to the Bank for comments a report, in such detail as the Bank shall reasonably request, on the progress of the project, and giving details of the various matters to be discussed at such review;
- b) no later than 36 months after project effectiveness, undertake in conjunction with all agencies involved in the project, a comprehensive mid-term review of the Project during which views are exchanged with the Bank and implementing agencies on all matters relating to the progress of the project, the performance by the Judiciary of its obligations and the performance of the implementing agencies, particularly in regard to the performance indicators and the PDO; and
- c) following the mid-term review, act promptly and diligently to take the corrective actions deemed necessary to remedy any shortcoming noted in the implementation of the project, or to implement such other measures as may be required in furtherance of the objectives of the project.

41. **The project activities under each component will be sequenced and prioritized as summarized in Table 3 below.** This will facilitate preparation of annual work programs by the Judiciary and implementation support by the Bank.

Table 3: Project Activities and Sequencing

	<i>Components and Activities</i>	<i>YR 1</i>	<i>YR2</i>	<i>YR3</i>	<i>YR4</i>	<i>YR5</i>	<i>YR6</i>
1.	COURT ADMINISTRATION AND CASE MANAGEMENT	X	X	X	X	X	X
<i>1.1</i>	<i>Court Administration</i>						
(a)	Conduct a functional and organizational review of the Judiciary (approximately months 6)	X					
(b)	Development and implementation of an Integrated Performance Management and Accountability System	X	X	X	X	X	X
(c)	Change management supporting the efforts to transition all personnel to the institution's new vision, culture, structure and processes	X	X	X	X	X	X
(d)	Establish data collection and use, including regular court user surveys	X	X	X	X	X	X
(e)	Review draft policy on Court Users Committees (months 1-3) and roll out the setting up and supporting of CUCs implementation plans in project intervention courts (months 3-72)	X	X	X	X	X	X
(f)	Develop and implement a Governance and Anti-Corruption Strategy for the Judiciary	X	X	X	X	X	X
(g)	Support a court services' innovation, research and testing program	X	X	X	X	X	X
(h)	Strengthening the capacities of the Judiciary's directorates	X	X	X	X	X	X
(i)	Strengthening the Judicial Service Commission's capacity	X	X	X	X	X	X
(j)	Support to the National Council on the Administration of Justice	X	X	X	X	X	X
(k)	Support to the National Council of Law Reporting of Kenya	X	X	X	X	X	X
(l)	Support extension of IFMIS to court stations in project areas	X	X	X	X	X	X
<i>1.2</i>	<i>Case Management</i>						
(a)	Design, installation and commissioning of ICT hardware and connectivity infrastructure for court stations, as well as relevant staff training	X	X				
(b)	Implementation of a Case Management Information System	X	X	X	X		
(c)	Provision of a Container Data Center.	X					

	<i>Components and Activities</i>	<i>YR 1</i>	<i>YR2</i>	<i>YR3</i>	<i>YR4</i>	<i>YR5</i>	<i>YR6</i>
(d)	Assess and establish a court-annexed mediation (in pilot, Yr. 1), and rolled out in project intervention courts (from year 2)	X	X	X	X		
(e)	Establish customer care desks and court counsel support	X	X	X	X		
2.	JUDICIARY TRAINING AND STAFF DEVELOPMENT						
(a)	Review and implement a program to strengthen the capacity of the JTI to carry out its education and training mandate	X	X				
(b)	Review and implement a program for defining the critical competencies of judiciary officers	X	X				
(c)	Develop and deliver the annual training programs for judiciary staff	X	X	X	X	X	X
(d)	Develop and establish the Research and Development Resource Centre			X	X		
(e)	Support the capacity building efforts of the legal personnel at the Office of the Attorney General	X	X	X			
3.	COURT INFRASTRUCTURE						
(a)	Develop standard court design and standards for court maintenance (months 1-3)	X					
(b)	Recruit consulting firm to design and supervise construction of new courts (within 4 months of effectiveness)	X	X	X	X		
(c)	Establish and equip a unit for the Judiciary Buildings Services unit (establish within 1 year, and its operating costs for 2 years)	X	X				
(d)	Construct ten new courts (eight High Court building and two magistrates courts)	X	X	X	X		
(e)	Rehabilitate about 30 selected magistrates courts in accordance with the Courts Rehabilitation Needs Assessment Plan, Design Guide and rehabilitation plan for each court	X	X	X	X		
(f)	Construction and deployment of at least 20 demountable court buildings	X	X	X	X		
(g)	Carry out assessments for compliance with Bank safeguards policies	X	X	X	X		

	<i>Components and Activities</i>	<i>YR 1</i>	<i>YR2</i>	<i>YR3</i>	<i>YR4</i>	<i>YR5</i>	<i>YR6</i>
4.	PROJECT MANAGEMENT						
(a)	Establish a Project Management Unit (project effectiveness condition)	X					
(b)	Recruit the Integrated Fiduciary Agent (project effectiveness condition)	X					
(c)	Support the collection, analysis and dissemination of data to ensure monitoring and impact evaluation of the project	X	X	X	X	X	X
(d)	Implement environmental and social safeguard requirements	X	X	X	X		
(e)	Design and Implement a Communication Strategy (design is within first 4 months and implementation is throughout the project)	X	X	X	X	X	X
(f)	Produce quarterly IFR/FMRs, annual work plans, annual procurement plans, annual progress reports, a mid-term report and a completion report	X	X	X	X	X	X

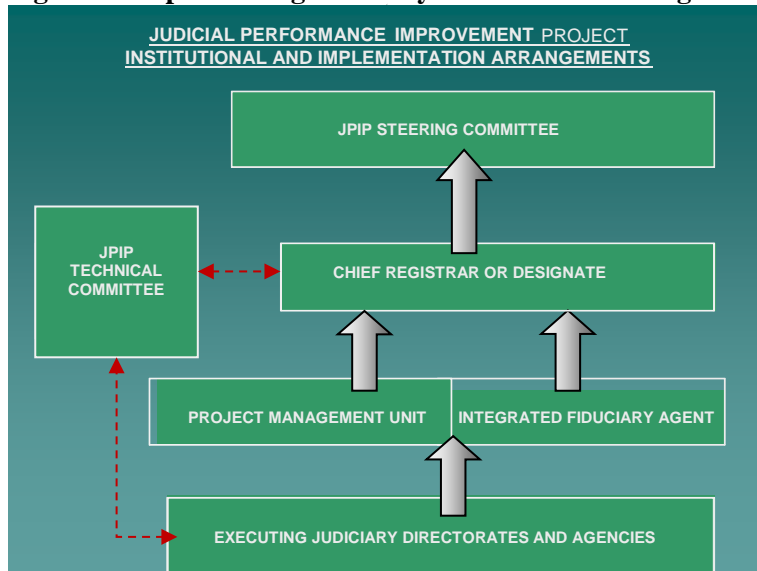
ANNEX 3: Implementation Arrangements

KENYA: Judicial Performance Improvement Project (JPIP)

A. Institutional Arrangements

1. **Project implementation will be coordinated by a PMU which will liaise and obtain work programs from the directorates and agencies benefiting from the project.** The PMU will be assisted in the first two years of project implementation by the IFA (see paragraph below). Technical oversight will be provided by a JPIP Technical Committee and policy guidance by a high level JPIP Steering Committee. An organogram (Figure 2) outlining the relationships and reporting lines of the key institutions involved in project implementation is shown below.

Figure 2: Implementing Judiciary Directorates and Agencies



2. **The PMU team comprises a Project Coordinator, a Monitoring & Evaluation Specialist, a Communications Officer and a Construction Expert/Civil Engineer.** The PMU will also include four staff members seconded by the Finance Directorate and the Supply Chain Management Directorate on a full-time basis to the IFA. The Chief Registrar, in consultation with the Chief Justice, will designate a senior official to oversee both the PMU and the IFA on behalf of the Judiciary. Consultant support for the PMU will also be contracted as needed, for example, to help with safeguards, procurement coordination and other technical requirements. The PMU will be physically located within the Judiciary, and will work closely with the IFA and with the Judiciary directorates and agencies executing project activities. The PMU under the guidance of the Project Coordinator will be responsible for: (a) ensuring compliance with environmental and social safeguards; (b) assessing and consolidating project work plans, budgets, and progress reports prepared by the directorates and agencies; (c) undertaking quality control of work plans, budgets, reports, draft terms of reference and other key documents initiated by the executing directorates and agencies; (d) monitoring and evaluation of project activities; (e) liaising with the IFA on all fiduciary aspects of project implementation; and (f)

liaising with the executing directorates and agencies on implementation related issues and proposing necessary adjustments and amendments to implementation methods, all in accordance with the Project Implementation Manual. At the end of the initial two years of project implementation the PMU will be expected to take over full fiduciary responsibilities from the IFA, subject to satisfactory assessment of the PMU capacity and performance.

3. The Project Coordinator will have qualifications, experience and terms of reference satisfactory to the Bank. He/she will be responsible for: (a) the overall coordination of and reporting on the project; (b) consolidating work plans, budgets and reports from the executing directorates and agencies, including providing quality assurance support; (c) preparing and submitting project work plans and reports to the JPIP's Technical and Steering Committees, as appropriate; (d) convening meetings with the Technical Committee on a quarterly basis, and with the Steering Committee biannually; (e) ensuring that adequate coordination exists with the directorates and agencies, the IFA, the Technical Committee and the Steering Committee; (f) ensuring all safeguard policies are adhered to; and (g) keeping and maintaining all project records, reports and information.

4. The IFA will be responsible, in consultation with the Judiciary, for the procurement and financial management of the project during the initial two years of project implementation. The Chief Registrar's designate will supervise both the IFA and the PMU. In addition to working closely with the PMU, the IFA will also collaborate with the directorates and agencies executing project activities. All efforts will be made to have the PMU and IFA co-located in the Judiciary. At a minimum, in view of the space shortages, the seconded Judiciary staff will reside in the IFA's office, located as close as possible to the Judiciary. The IFA and the project will be subject to audits by the Office of the Auditor General and by the Internal Audit Department. The Chief Registrar will be responsible for ensuring that the audit process is carried out efficiently and in line with the terms of the Financing Agreement. He/she will also be responsible for ensuring that the matters arising from the audits are dealt with expeditiously.

5. The directorates of Finance and Supplies Chain Management will second four of their staff (procurement and financial management) to the IFA on a full-time basis to facilitate skills transfer and to provide further support to the PMU. The IFA is expected to hand over its responsibilities to the Judiciary at the end of the initial two years of project implementation. This transfer will be subject to assessment and confirmation that the PMU has built the necessary skills to carry out the fiduciary responsibilities of the project. Performance of the IFA will be assessed regularly by the Judiciary and by the Bank implementation support missions, at least twice a year. Assessment will be based on criteria, including deliverables, to be specified in the IFA's contract that includes, for example, the timeliness of reporting and payments and the effective transfer of skills based on an agreed training program. The training program will identify targeted training activities that supplement the Judiciary staff on-the-job experience. The Judiciary staff receiving training from the IFA will be included in the periodic assessments of the IFA.

6. The IFA will work in close consultation with the Judiciary. The key activities that will be carried out by the IFA include the following:

Financial Management

- (a) budgeting, based on the budgets submitted by the executing directorates and agencies, through the PMU;
- (b) managing the project's bank account (see further details under the funds flow and disbursement section below);
- (c) preparing the annual financial statements;
- (d) preparing the IFRs; and
- (e) preparing IDA credit withdrawal applications for submission by the Judiciary to World Bank, through MoF.

Procurement Management

- (f) preparing and updating project procurement plan based on the annual work plans received from the executing directorates and agencies, through PMU;
- (g) preparing bidding documents, expressions of interest, and requests for proposals;
- (h) advertising for invitation to bids, expressions of interest and request for proposals;
- (i) facilitating the formation of shortlisting committees, bid and proposal evaluation Committees, and ensuring the completion of shortlisting and bid/proposal evaluations in a timely manner;
- (j) preparing shortlisting, bid and proposal evaluation reports for submission to the Bank, and responding to Bank queries or comments;
- (k) facilitating the approvals of proposed contracts by the Judiciary Tender Committee, including any contract negotiations;
- (l) preparing contract documents for signature by relevant Judiciary officials;
- (m) facilitating issuance of letters of contract award;
- (n) supervising and managing contracts of goods, and ensuring that the other types of contracts, e.g. construction and consultancies are being supervised by the relevant users, i.e. the executing directorates and agencies;
- (o) ensuring any received contractual disputes are resolved by the Judiciary in a timely manner;
- (p) working closely with and transferring fiduciary knowledge and skills to the Judiciary staff supporting the PMU staff in carrying out its procurement and financial management functions; and

- (q) preparing procurement progress reports, including those required for triggering disbursements.

7. **The executing directorates and agencies will be responsible for leading, executing and monitoring those project components and activities that fall within their jurisdiction in collaboration with the PMU.** The directorates are administrative functions in the Judiciary that fall under the Chief Registrar's office. The relevant directorates for the project, led by their directors, would encompass, for example, the ICT Directorate for the project's IT activities, HR for personnel related activities, and the Directorate of Performance Management for IPMAS. The executing agencies comprise the JSC, JTI, the National Council on the Administration of Justice, and the NCLR. Specifically, these executing directorates and agencies will be responsible for the following:

- (a) liaising with the Project Coordinator and PMU to ensure developed work plans are in alignment with the project activities and the overall Judiciary transformation agenda;
- (b) assisting the Project Coordinator and PMU in managing the day-to-day operations of their respective component(s);
- (c) planning, directing, controlling and coordinating activities of the project under their management;
- (d) assisting the Project Coordinator and PMU in monitoring the performance of consultants and contractors in accordance with agreed contractual obligations and advising the Project Coordinator if contractual obligations will not be met;
- (e) implementing their project activities in accordance with the overall plan of operations and activity schedules, and report changes thereto;
- (f) ensuring that there is structured and consistent monitoring of progress in project implementation;
- (g) ensuring project progress reports are submitted to the Project Coordinator in a timely manner; and
- (h) participating in the Project Technical Committee to support successful coordination, implementation and monitoring of the project.

8. **The technical oversight of the project will be carried out by a JPIP Technical Committee chaired by the Chief Registrar's designate.** The Committee will meet at least quarterly and will comprise of all the Directors of the directorates involved in project implementation, the Director of the JTI or his/her nominee, a representative of the National Council on the Administration of Justice, the Executive Director of the National Council of Law Reporting or his/her nominee, the Head of the Judiciary Transformation Secretariat, the JPIP Project Coordinator and any other official designated by the Chief Justice or the Chief Registrar. The Technical Committee will be responsible for quality assurance of all technical aspects of the project and will oversee implementation of the JPIP activities. It will also review and approve the annual progress reports and proposed annual work plans and budgets. It is recommended that

the Technical Committee set up sub-Committees that are responsible for: (a) case management including IT; (b) court infrastructure; and (c) judiciary training and staff development.

9. **A JPIP Steering Committee will be responsible for high level guidance on project activities.** It will make decisions on significant implementation or policy issues. The Committee will be chaired by the Chief Justice or his designate, and will include the Deputy Chief Justice, the Chief Registrar, the Director of the JTI, one representative from the directorates (this position may be held on a rotational basis), the Chairman of the Kenya Magistrates and Judges' Association, the Head of the Judiciary Transformation Secretariat, two representatives from the Kenya Judiciary Staff Association, and one representative from the Ministry of Justice and Constitutional Affairs, the MoF, the Office of the Attorney General, the Kenya Women Judges' Association and the Law Society. The Committee will meet biannually to review the project's progress towards achieving the PDO, to ensure coordination with other justice sector programs, and to provide strategic and policy guidance on judicial reforms. It will also be responsible for resolving any constraints that may hamper project implementation or may require interactions with other justice sector institutions. The Steering Committee will nominate a secretary.

B. Financial Management

10. **A World Bank financial management assessment of the Judiciary was conducted in January 2012.** It focused on determining whether the financial management arrangements are appropriate for the needs of the project and whether the required conditions are met. In particular, it reviewed whether the financial management arrangements are: (a) capable of correctly and completely recording all transactions and balances relating to the project; (b) facilitate the preparation of regular, accurate, reliable and timely financial statements; (c) safeguard the project's entity assets; and (d) are subject to auditing arrangements acceptable to the Bank.

11. **The financial management risk rating before mitigation is assessed as High.** Though the financial management arrangements satisfy the minimum requirements under OP/BP 10.02, considering the high political economy risks and the need to focus on results, the project will finance the IFA during the initial two years of project implementation. The IFA will be a competitively procured private sector firm responsible for budgeting (based on the budgets submitted by the executing directorates and agencies), accounting, preparing credit withdrawal applications and reporting functions of the project. This arrangement will also allow for progressive capacity strengthening for financial management within the Judiciary. The IFA will be phased out once there is capacity in the Judiciary/PMU, estimated to be in place within the initial two years of project implementation. The Judiciary and the World Bank have agreed on the terms of reference, evaluation criteria, and short list for the IFA, and the procurement process is advanced.

12. **In addition to acquiring an IFA, the Judiciary will carry out other actions to strengthen its financial management capacity.** These are contained in a Financial Management Action Plan (Table 5) specific to financial management, and in a broader Fiduciary Management Capacity Enhancement Plan (Table 6) developed to address both the procurement and financial management capacity concerns.

Budgeting

13. **The project will be fully integrated into the activities of the Judiciary including compatibility with the GoK budgeting systems.** Project budgeting will be done by the Project Coordinator with inputs from each of the respective project implementing directorates and agencies. The project budget will be forwarded to the Judiciary's Finance Directorate for consolidation. The consolidated budget will then be forwarded to the Chief Registrar for submission to the National Assembly for approval. The budgeting process will follow financial management procedures to be prepared/updated by the IFA, which should largely borrow from the public financial management laws and regulations. The Judiciary's budget execution process uses the GoK IFMIS system. The GoK budget for 2012/13 was prepared on two platforms: the old system and the system known as *Hyperion*. The ministries are expected to run the old system, in parallel with the new one, until the new one is stable. Assessment on the adequacy of the budgeting module can only be completed once the re-engineering of IFMIS is fully installed. This installation process started in February 2011 led by the directorate of IFMIS at the MoF. The directorate has selected a consultant financed by the *Transparency and Communications Infrastructure Project (Credit No. 5092-KE)* to help the GoK tackle the IFMIS issues.

14. **The Judiciary's budgetary process is primarily based on historical data and does not meet its current resource needs.** The Judiciary has now embraced program based budgeting and all spending units are required to prepare workplans that are linked to budgets. Prior to the new Constitution, the consolidated Judiciary budget was forwarded to the MoF. In the new constitutional provisions, the Judiciary's financial independence has been secured by a provision that its budget is submitted directly to the National Assembly from which it obtains an allocation from the GoK's Consolidated Fund.

15. **The budgetary needs of district courts consist of both recurrent and capital budgets.** Previously, the Project budgeting was administered by the Central Planning Unit (CPU), which then sends the budget to the deputy Chief Finance officer for consolidation with the recurrent budget. Currently, there are no staff in the CPU as all have left. Project budgeting is now carried out by the new Directorate of Finance. Budget monitoring is not presently carried out. Although the Chief Registrar's Office sends 'Authority to Incur Expenditures' (AIEs) to district courts on a quarterly basis, the expenditure returns are sent to the MoF by the district accountants who are staff of the MoF, and not usually on a timely basis. The project will assist in ensuring that appropriate monitoring systems are working.

Accounting Staffing

16. **The IFA will provide its own staff with the right mix of skills and qualifications.** The agency is not yet in place, and consequently its staffing cannot be evaluated. However, the terms of reference for its selection are specific on the staffing level required, particularly in terms of essential qualifications. The final selection of the IFA will be approved by the Bank to ensure that the level of staffing is appropriate.

17. **Staffing at the Judiciary is considered inadequately qualified in financial management.** Most of its accountants meet the minimum qualifications of Certified Public Accountant (CPA) II, which is considered adequate. Out of about 113 courts, a significant

number have accountants with no professional qualifications. To help address this, district MoF accountants working on the project will be included in the next batch of ongoing training conducted by the Kenya School of Government (e-Distance Learning Center) for project accountants working on Bank-assisted projects. The district courts use district MoF accountants who do not report to the Chief Registrar, the administrative Vote Controller for the Judiciary. They report instead to the Accountant General, MoF. Government is taking steps to clarify the reporting lines for financial management staff as direct professional reports to the Accountant General or Country Treasurer, and administratively as reports to the Vote Controller.

Accounting Policies and Procedures

18. **The Judiciary has been using several fragmented financial management procedure manuals, prepared by various teams, since project preparation started.** With the Public Financial Management Law now passed, the MoF is developing Financial Regulations to be followed by an operations manual that will be aligned with the re-engineered business processes for IFMIS. In the meantime, a Project Implementation Manual has been prepared (October 2012) by the Judiciary for the project and it contains a financial management manual.

IFMIS

19. **Using the re-engineered IFMIS, the IFA will be required to ensure that a sound financial and accounting system is maintained for the project.** IFMIS is being rolled-out on a pilot basis and the core modules are in use by the Judiciary. The major challenge is availability of sufficient end-user equipment and connectivity to district offices. Request for proposals for end-user equipment and last mile connectivity at the county level is ongoing. The shortcomings of the current IFMIS will be dealt with under the Bank-financed *Transparency and Communications Infrastructure Project*. With regard to the Judiciary, IFMIS will not be extended from the head offices to all the county court stations. The JPIP will support IFMIS extension from county HQ to court stations within the project areas.

Internal Controls and Internal Audit

20. **The project's accounting and internal control systems have been developed and are documented in the Financial Management Manual.** A review of the manual imprest registers used within the Chief Registrar's Office indicated long outstanding imprests, staff taking more than one imprest, and incomplete details in the registers as to the surrender dates of some imprests. Tagging of the assets has not been done. Fixed assets schedules are not updated and the Judiciary does not maintain a fixed assets register or an assets listing. The Judiciary has been advised to initiate an asset verification exercise and at the same time gather relevant asset details for entry into the Asset Module of IFMIS when it becomes fully operational after an asset policy is issued by the MoF. At the time of review in January 2012, bank reconciliations had been done up to October 2011. They were reviewed and signed by the Chief Accountant but some reconciling items were long outstanding. The internal audit function of the JPIP will be undertaken by officers seconded by the Internal Audit Department of the MoF.

21. **Currently, the Judiciary has six internal auditors seconded by the MoF's Internal Auditor General Office.** The six auditors have adequate experience and are qualified. The

Chief Internal Auditor is a Certified Public Accountant (CPA) II with 13 years in internal audit and 23 years as an accountant in the civil service. He has previous experience as an auditor for a World Bank-funded project. He is supported by three senior internal auditors who are university undergraduates and holders of CPA (K) with six years of Internal Audit experience, and two internal auditors who hold CPA (K) and six years of experience.

22. **The Audit Committee, dormant since September 2010, was recently reconstituted.** It was reconstituted and reactivated by the Chief Registrar as stated in her letter dated September 25, 2012, to the appointed members of the Committee. Prior to this development, the auditors were reporting to the Finance and Administration Committee, which is a sub-committee of the JSC.

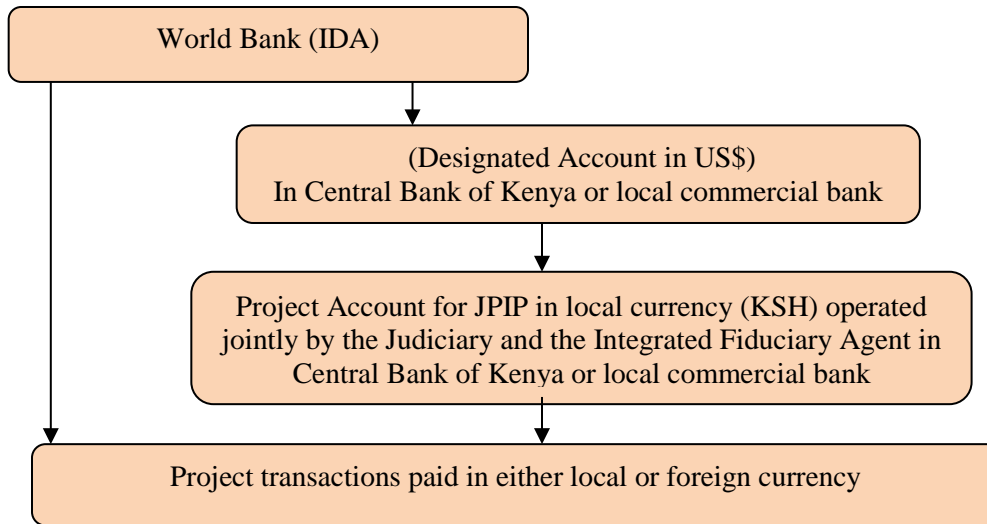
Bank, Disbursements and Funds Flow

23. **Banking arrangements.** The MoF will be required to open a Designated Account denominated in United States dollars, and the Judiciary will open a Project Account denominated in Kenyan Shillings. Both accounts will be opened in either the Central Bank of Kenya or a local commercial bank acceptable to the World Bank. In order to protect the accountability, independence, and efficiency of the financial management function by the IFA, the GoK and the World Bank have agreed that the project account in local currency will be jointly operated by the Judiciary and the IFA. The project account will have two signatories, i.e., the head of the IFA (who signs first) and the Chief Registrar and/or his/her designate. Details of the two accounts once opened (including the signatories) are to be submitted to the Bank.

24. **Disbursement arrangements.** Disbursements for this project will be transaction-based. The project implementing agency will receive an advance into a Designated Account (DA) that should provide sufficient liquidity to cover four months of project expenditures. Retroactive financing up to US\$ 12 million will be made available to cover eligible expenditures incurred on or after June 30, 2012. All replenishments to the DA or reimbursements to the government's account that was used to pre-finance expenditures will need to be documented through statement of expenditures. The ceilings for full supporting documentation, i.e. thresholds for submitting all records such as contracts and invoices are stipulated in the Disbursement letter which is subject to periodic updates. In addition, whenever needed, the direct payment method of disbursement, involving direct payments to suppliers for works, goods and services upon the Borrower's request, may also be used. Payments may also be made to a commercial bank for expenditures against Special Commitments. The IDA Disbursement Letter stipulates the minimum application value for direct payment, Special Commitments (Letters of Credit) and Reimbursements and describes all disbursement procedures.

25. **Funds Flow.** Funds will be transferred from the Designated Account at the Central Bank of Kenya or a local Commercial Bank and transferred into a JPIP project account (Figure 3). The IFA will prepare the withdrawal applications, which will be submitted by the Judiciary to the Bank through the MoF. Payments for goods and services will be done centrally from Nairobi.

Figure 3: Funds Flow Diagram



Financial Reporting

26. **The IFA will prepare quarterly unaudited Interim Financial Reports (IFRs) for the project in a form and content satisfactory to the Bank.** These will be submitted to the Bank within 45 days after the end of the quarter to which they relate. The Judiciary has already been submitting quarterly IFRs for the JPIP's PPA and should continue to do so. The format for the JPIP's IFR will be different from the PPA's version to reflect the specific components of the main credit. The revised IFR was agreed upon between the Judiciary and the Bank at negotiations. Its contents include:

- (a) Statement of Sources and Uses of Funds; and
- (b) Statement of Uses of Funds by Project Activity/Component.

27. **The IFA will also prepare the project's annual accounts/financial statements within three months after the end of the accounting year, in accordance with accounting standards acceptable to the Bank.** The audited financial statements should be submitted to the Bank within six months after the end of the accounting year. The accounts will be prepared in accordance with International Public Sector Accounting Standards.

External Auditing

28. **The Office of the Auditor General will audit the project's annual financial statements prepared by the IFA using the International Standards on Auditing.** The audited financial statements will be submitted to the Bank within six months after the end of the fiscal year along with the management letter and management response thereto (as specified in Table 4).

29. **There are no overdue audit reports for the ongoing JPIP PPA.** The audit report will be disclosed in accordance with the Bank’s disclosure policy. The audit reports for the financial year ended 30 June 2011 received an unqualified (clean) audit opinion.

Table 4: Audit Reports and Due Dates

<i>JPIP Audit Report</i>	<i>Due Date</i>
Project specific annual audited financial statements and Management Letter for the project (including reconciliation of the Designated Accounts with appropriate notes and disclosures).	Within six months after the end of each fiscal/financial year.

Table 5: Financial Management Action Plan

	<i>Action</i>	<i>Due Date</i>	<i>Responsible Party</i>
(a)	Procurement of an appropriately qualified and experienced Integrated Fiduciary Agent	Before effectiveness	Judiciary
(b)	Ensure the Integrated Fiduciary Agent are fully orientated on WB financial management procedures and IFMIS	During implementation	World Bank Financial Management Specialist
(c)	Ministry of Finance to develop a new government Financial Management Manual for the Judiciary that is aligned with the Public Financial Management law	During Implementation	Ministry of Finance and Judiciary
(d)	Ministry of Finance to finalize the complete installation of IFMIS particularly the module pertaining to the asset register.	During Implementation	Ministry of Finance and Judiciary
(e)	Judiciary to finalize their asset verification process and recording of all assets in a fixed asset register	During Implementation	Judiciary

Table 6: Fiduciary Management Capacity Enhancement Plan

	<i>Judiciary Key Actions</i>
(a)	By effectiveness, procure the services of an IFA with clear responsibility for the transfer of procurement skills to staff seconded from the Directorate of Supply Chain Management. This skills transfer requirement will be incorporated in the agency’s terms of reference.
(b)	Develop and agree with the Bank on a financial management and procurement training plan for the staff members who will be seconded from the directorates of Supply Chain Management and Finance to the IFA.
(c)	Work with MOF to develop and carry out financial management training to strengthen the capacities of the court district MoF accountants.
(d)	Ensure that the Directorate of Finance staff receive the necessary training required under the JPIP funding allocated for directorates in component 1.

<i>Judiciary Key Actions</i>	
(e)	Work closely with MoF to facilitate the complete installation of IFMIS, particularly the module pertaining to the asset register.
(f)	Work closely with the Ministry of Finance to develop a new government Financial Management Manual that is aligned with the Public Financial Management Law.
(g)	Ensure that the Judiciary has finalized its asset verification process and recording of all assets in a fixed asset register.
(h)	Align the preparation processes for procurement plans, work plans, and budget estimates.
(i)	Establish separate effective tracking systems for: (i) procurement plan implementation; and (ii) processing of payments to contractors and suppliers.
(j)	Establish separate effective tracking systems for: (i) procurement plan implementation; and (ii) processing of payments to contractors and suppliers.
(k)	In consultation with the Public Procurement and Oversight Authority and the Kenya National Audit Office (KENAO), ensure that procurement audits by PPOA and financial audits by KENAO are conducted jointly.

C. Procurement Arrangements

General

30. **Based on a World Bank procurement capacity assessment carried out in April 2012, and acknowledging the experience gained by the Judiciary in implementing the JPIP's PPA, the overall project risk for procurement before mitigation is rated High.** The assessment reviewed the organizational structure for implementing the project, the interaction between the staff responsible for procurement duties and the management of their respective agencies.

31. **Key procurement issues and risks have been identified that require mitigation.** They include systemic weaknesses in the areas of: (a) accountability of procurement decisions; (b) procurement record keeping; (c) capacity of procurement staff; (d) procurement planning; (e) procurement process administration, including award of contracts; (f) contract management; and (g) procurement oversight. The Judiciary recently established a Directorate of Supply Chain Management responsible for procurement (not related to the project). The directorate has limited capacity but it will receive project resources to help strengthen its capacity and remove this constraint. In addition, two of the directorate's staff on procurement will be seconded to work closely with the IFA on a full-time basis. The IFA will be required, as part of its terms of reference, to build the capacity of the Judiciary's procurement staff who are expected to take over the project's procurement function after the first two years of project implementation. These and other procurement mitigation measures are defined in the Fiduciary Management Capacity Enhancement Plan (Table 6).

32. **Procurement for the proposed project would be carried out in accordance with the World Bank's Guidelines: Procurement Under IBRD Loans and IDA Credits** dated January 2011; and *Guidelines: Selection and Employment of Consultants by World Bank Borrower* dated January 2011, and the provisions stipulated in the Financing Agreement. The various items under different expenditure categories are described below. For each contract to be financed by the Credit, the different procurement methods or consultant selection methods, the need for pre-qualification, the estimated costs, the prior review requirements, and the time frame are agreed between the Borrower and the Bank in the procurement plan. The procurement plan will be updated at least annually or as required to reflect the actual project implementation needs and improvements in institutional capacity.

33. **Use of National Procurement Procedures.** All contracts other than those to be procured on the basis of ICB and consulting services shall follow the procedures set out in the Public Procurement and Disposal Act of 2005. The Public Procurement and Disposal Act of 2005 (PPDA) governs purchase of works, goods and services using public resources by the central government entities, local authorities, state corporations, education institutions, and other GoK institutions. Under the PPDA, the Public Procurement Oversight Authority (PPOA) has been established in addition to the Public Procurement Directorate in the MoF. The PPDA sets out the rules and procedures of public procurement and provides a mechanism for enforcement of the law. Some provisions of PPDA are not fully consistent with the World Bank procurement guidelines and Consultants Guidelines, and therefore these may not be applied for the implementation of this project without modification. These provisions and their respective modifications are listed below.

- (a) PPDA 55(2): instead, the tender submission date shall be set so as to allow a period of at least 30 days from the later of: (i) the date of advertisement, and (ii) the date of availability of the tender documents.
- (b) PPDA 4(2) (c): instead, Recipient's government-owned enterprises shall be allowed to participate in the tendering only if they can establish that they are legally and financially autonomous, operate under commercial law and are an independent agency of the recipient's government.
- (c) The Borrower shall use, or cause to be used, bidding documents and tender documents (containing, inter alia, draft contracts and conditions of contracts, including provisions on fraud and corruption, audit and publication of award) in form and substance satisfactory to the Bank.
- (d) PPDA 61(4): instead, extension of tender validity shall be allowed once only, and for not more than thirty (30) days, unless otherwise previously agreed in writing by the Association.
- (e) PPDA 66(3) (b): instead, evaluation of tenders shall be based on quantifiable criteria expressed in monetary terms as defined in the tender documents. It shall not be based on a merit points system.
- (f) PPDA 39: instead, no domestic preference shall be used in the evaluation of tenders.

Therefore, as a result of the non-application of PPDA 66(3) (b) and 39, contracts shall be awarded to qualified tenders having submitted the lowest evaluated substantially responsive tender.

- (g) PPDA 67: instead, notification of contract award shall constitute formation of the contract. No negotiation shall be carried out prior to contract award.
- (h) PPDA 91: instead, shopping procedure will apply for each low value contracts, in lieu of Direct Procurement, except as otherwise previously agreed in writing by the Association.
- (i) Regulations 47: instead, the two envelope bid opening procedure shall not apply under NCB the Bank's standard bidding documents for goods and works shall be used with appropriate modifications.

34. **Procurement of Works.** Works procured under this project will include construction and rehabilitation of courts. The procurement will be done using the Bank's Standard Bidding Documents (SBD) for all International Competitive Bidding (ICB) and NCB contracts.

35. **Procurement of Goods.** Goods procured under this project would include Information Communication Technology (ICT) goods (hardware and software), office furniture and equipment, motor vehicles, etc.

36. **The use of Framework Agreements.** This is permitted as an alternative to the shopping and NCB methods, and may be used to implement procurements such such as: (a) goods that can be procured off-the-shelf or are common use with standard specifications; (b) non-consulting services that are of a simple and non-complex nature and may be required from time to time by the same agency(ies) of the Borrower; or (c) small value contracts for works under emergency operations. Such arrangements should not restrict foreign competition and should be restricted to a maximum duration of three years. The nature and budget for such goods including the circumstances and justification for its use, the particular approach and model to be adopted, the procedures for selection and award, and the terms and conditions of contracts will be defined and agreed upon between the Borrower and IDA prior to their inclusion in the updated annual procurement plans.

37. **Procurement of non-consulting services.** Non-consulting services envisaged under the project include distribution of supplies to county and district courts, workshop venues, IT services, and leasing of premises for the JTI, the Building Services Unit and the NCLR. The type and budget for such services will be defined and agreed between the Borrower and the Bank prior to their inclusion in the updated annual procurement plan.

38. **Selection of Consultants.** Consulting services to be procured under the project include selection of firms and individuals for the provision of integrated fiduciary services, feasibility studies, designs and supervision of construction and rehabilitation contracts and technical assistance services.

39. **Universities and research institutions.** Those owned by the GoK in the Borrower's country and uniquely qualified on specialized tasks, may participate with prior agreement between the Borrower and the Bank at project preparation and disclosed in the project documents

or may participate as sub-consultants in competitive selections in association with private consultants. Contracts to be procured under these arrangements include preparation of specialized training modules, political economy analysis, customer satisfaction surveys, etc. The budget for such services will be defined and agreed upon between the Borrower and the Bank prior to their inclusion in the updated annual procurement plan.

40. **Operating Costs.** The Borrower will finance operating costs from its own funds with the exception of the costs for renting premises for the JTI, the NCLR, and the Building Services Unit and the operating costs for the PMU. Operating costs include project vehicles' operation and maintenance, maintenance of equipment, communication and insurance costs, office administration costs, travel and per diem, advertising expenses, and administrative support staff (excluding the salaries of civil servants). The Borrower will pay for costs associated with any resettlement, land acquisition, compensation and relocation.

41. **Project Implementation Manual.** The procurement procedures and SBDs to be used for each procurement method, as well as model contracts for works and goods procured, are presented in the Project Implementation Manual.

Procurement Plan

42. **The Judiciary has prepared a procurement plan that provides the basis for the procurement methods.** This will be posted on the Bank's external website following board approval, and will be updated in agreement with the Bank on annual basis, or as required, to reflect the actual project implementation needs and improvements in institutional capacity. The review of procurement decisions by the Bank will also be provided in the procurement plan.

Frequency of Procurement Supervision

43. **In addition to the prior review supervision to be carried out from the Bank office, there will be biannual supervision field missions to carry out post reviews of procurement actions, as most of the contracts will be subject to the Bank's prior review.** A follow-up assessment will be carried out prior to the contract end of the IFA and its transfer of procurement responsibilities to the Directorate of Supply Chain Management together with the PMU.

Details of the Procurement Arrangements Involving International Competition

44. **Thresholds, Goods, Works, and Non Consulting Services.** The thresholds and prior review requirements for the project are specified in Table 7.1 below. The planned contract packages for goods (Table 7.2), works and technical services (Table 7.3) and consultancy services (Table 7.4) are also found below.

Table 7.1: Thresholds for JPIP’s Procurement Methods and Prior Review

Expenditure Category	Contract Value Threshold (US\$)	Procurement/Selection Method	Contracts Subject to Prior Review
Works	≥5,000,000	ICB	All
	<5,000,000	NCB	None (Post review) unless specified in the PP
	<80,000	Shopping	None (Post review)
	All values	Direct Contracting	All
Goods	≥500,000	ICB	All
	<500,000	NCB	None (Post review) unless specified in the PP
	<80,000	Shopping	None (Post review)
	All values	Direct Contracting	All
Consulting Services - Firms¹	≥ All Values	(QCBS QBS/FBS/LCS)	Any contract above US\$ 200,000 to be subject to prior review
	< 300,000	CQS	Any contract above US\$200,000 subject to prior review
	All values	SSS	All
Consulting Services – Individuals (IC)	≥100,000	IC - Qualification	ALL
	<100,000	IC - Qualification	None (Post review)
	All Values	IC - SSS	All

Table 7.2: JPIP’s Contract Packages for Goods

SN	Contract Package (Description)	Estimated cost (US\$’000)	Procurement Method	Review by Bank (Prior / Post)	Start Date for prep of Bid docs	Expected Bid-Opening Date	Expected Cont. completion date
(a)	Procurement of Motor vehicles (4 lots, i.e. 5 No 4X4 Utility vehicles, 2 No 52-60 Seater bus, 2 No 4X4 Double cab pick-up, 2 NO Saloon Cars)	1000	ICB	PRIOR	5/1/13	15/4/13	15/11/13
(b)	Office Equipment (photo copiers, shredders, safes, punches, staplers, telephone sets, etc.)	200	NCB	POST	5/1/13	15/4/13	15/11/13
(c)	Library Materials	1,600	ICB	PRIOR	5/2/13	N/A	30/9/13
(d)	Office Furniture	350	NCB	POST	5/1/13	22/4/13	15/11/13
(e)	Containers for Data Centers	50	Shopping	POST	5/1/13	22/4/13	15/11/13
(f)	Computers and peripherals	325	NCB	POST	5/2/13	15/5/13	15/12/13

Table 7.3: JPIP Estimated Contract Packages for Proposed Works and Technical Services

SN	Contract Package (Description)	Estimated cost (US\$'000)	Procurement Method	Review by Bank (Prior / Post)	Start Date for preparation of Bidding documents	Expected Bid-Opening Date	Expected Contract completion date
(a)	ICT Installations	25,000	ICB with PQ	PRIOR	1/6/13	1/9/13	1/3/16
(b)	Court Construction (1) Ngong/Rongai Law Court (2) Kasarani Law Court Kasarani Law Court; (3) Court Construction - Kabete (Children's Court)	9,900	ICB	PRIOR	1/1/13	1/9/13	31/12/14
(c)	Court Construction - Nanyuki Law Court	3,500	NCB	POST	1/1/13	1/7/14	31/8/15
(d)	Court Construction - Garissa Law Court	3,800	NCB	POST	1/1/13	7/7/14	31/8/15
(e)	Court Construction - Kapsowar Law Court	4,000	NCB	POST	1/1/13	14/7/14	31/8/15
(f)	Court Construction - Kakamega	3,500	NCB	POST	1/1/13	14/9/13	31/12/14
(g)	Court Construction - Mombasa	3,400	NCB	PRIOR	1/1/13	21/9/13	31/12/14
(h)	Court Construction - Nakuru	3,400	NCB	POST	1/1/13	28/7/14	31/8/15
(i)	Court Construction - Bomet Law Court	3,500	NCB	POST	1/1/13	7/9/13	31/12/14

Table 7.4: JPIP Contract Packages for Consulting Services for Proposed Works and Technical Services

SN	Contract Package (Description)	Estimated cost (US\$'000)	Procurement Method	Review by Bank (Prior / Post)	Start Date for prep of request for Proposal documents	Expected Proposal Opening Date	Expected Contract completion date
(a)	Integrated Fiduciary Agent (IFA).	2000	QCBS	PRIOR	1/8/12	12/10/12	31/12/14
(b)	Engineering Consultants for New Court Construction (Kabete/Ngong/Rongai /Kasarani Law Court)	940	LCS	PRIOR	1/8/12	20/11/12	31/12/14
(c)	Engineering Consultants for New Court Construction (Kapsowar and Kakamega Law Courts)	1065	LCS	PRIOR	1/8/12	20/11/12	31/12/14
(d)	Engineering Consultants for New Court Construction (Nakuru and Bomet Law Courts),	1000	LCS	PRIOR	1/8/12	20/11/12	31/12/15
(e)	Engineering Consultants for New Court Construction (Mombasai Law Courts)	980	LCS	PRIOR	1/8/12	20/11/12	31/12/14
(f)	Engineering Consultants for New Court Construction (Nanyuki and Garissa Law courts)	1065	LCS	PRIOR	1/8/12	20/11/12	31/8/15
(g)	ICT Consultants	2400	QCBS	PRIOR	1/8/12	15/11/12	31/12/15
(h)	PMU Contract Staff (M& E Specialist)	500	IC	POST	17/9/12	19/10/12	01/12/18
(i)	PMU Contract Staff (Project	500	IC	POST	17/9/12	19/10/12	01/12/18

SN	Contract Package (Description)	Estimated cost (US\$'000)	Procurement Method	Review by Bank (Prior / Post)	Start Date for prep of request for Proposal documents	Expected Proposal Opening Date	Expected Contract completion date
	Architect)						
(j)	PMU Contract Staff (PR Officer)	500	IC	POST	17/9/12	19/10/12	01/12/18
(k)	Consultants for Court Rehabilitations	300	CQS	PRIOR	1/10/12	N/A	30/6/13
(l)	Technical Assistance to review Judiciary management structure, directorates and committees, including organization of the JTF secretariat and prepare proposals and plans for improvements.	600	QCBS	PRIOR	1/10/12	15/1/13	31/12/13
(m)	Technical Assistance to review and make proposals for procedural rules to improve case management.	120	QCBS	PRIOR	15/2/12	15/6/13	31/12/13
(n)	Technical Assistance to conduct organizational review of the independence of Judges, magistrates and Commissions and make proposals for improvements.	120	QCBS	POST	15/2/12	15/6/13	31/12/13
(o)	Technical Assistance to prepare a base-line census of court case management , including diagnostic studies on case flow, volumes, backlogs, human capacity and baseline data for performance evaluation, including annual surveys to assess satisfaction.	600	QCBS	PRIOR	1/3/13	15/7/13	15/3/14
(p)	Technical Assistance Research Officer/ Technical Assistants.	340	QCBS	PRIOR	5/2/13	15/4/13	15/5/16
(q)	Technical Assistance to review JTI's management structure and capacity and to prepare proposals and plans for improvements.	270	QCBS	PRIOR	1/10/12	15/1/13	31/12/13
(r)	Technical Assistance to assess current training programs, identify training needs and gaps and prepare a proposal for improvements to the programs.	120	QCBS	POST	15/2/12	15/7/13	31/12/13
(s)	Technical Assistance to develop training program, curricula, respectively for judges, magistrates and other judicial staff, including for paralegals and covering judiciary policies, transformation and constitution.	210	QCBS	PRIOR	15/2/12	15/6/13	31/12/13
(t)	Technical Assistance to design and implement a training program for court-accredited mediators & court personnel.	60	CQ	POST	15/2/12	15/3/13	30/9/13

Note: Contract Packages for Consultant Services

- i. Consultancy services estimated to cost above US\$ 200,000 equivalent per contract and single source selection of consultants (firms) will be subject to prior review by the Bank.
- ii. Shortlists composed entirely of national consultants: shortlists of consultants for services estimated to cost less than US\$ 200,000 equivalent per contract may be composed entirely of national consultants in accordance with the provisions of paragraph 2.7 of the Consultant Guidelines.

ANNEX 4: Operational Risk Assessment Framework (ORAF)

KENYA: Judicial Performance Improvement Project (JPIP)

Project Stakeholder Risks	Rating	High
<p>Description: There might not be enough knowledge, consensus, or buy-in from critical Judiciary staff for ongoing reforms, or the project.</p> <p>There is high level commitment and ownership for both the JTF and the project. However, there are elements in the Judiciary that would like to protect the status quo and could potentially oppose change heralded by the project. Non-reformers, including some in the executive and parliament, are likely to be an obstacle or to constrain the pace of reforms if the opportunity arises.</p> <p>Public pressure to see results in the short term when reforms, in reality, are medium-long term could dent public confidence and morale. However, this is unlikely to derail project implementation.</p> <p>Government, donor and NGO relationships with the project are satisfactory, especially since the project objectives are agreed with them, and are closely aligned with ongoing Judiciary reform program as well as with public expectations.</p>	<p>Risk Management: The Judiciary’s leadership team is working on building broader knowledge and on involving judges, magistrates, registrars and other staff in its reform program and particularly on the implementation and monitoring arrangements, as well as on the expected results.</p> <p>Resp: client Stage: implementation Due Date: continuous Status: in progress</p>	
	<p>Risk Management: The Judiciary has embarked on a wide public outreach campaign to inform its citizens about its reform program, its plans and preliminary results. It is also building public participation in the Judiciary through the National Council on the Administration of Justice at the national level and through the Court Users Committee at the local level. This is all strengthening public support for the reforms in the Judiciary. The project will support and help to build up these communication and participation efforts.</p> <p>Furthermore, the public is already witnessing the tough measures being taken to improve the credibility and performance of the Judiciary; all signaling a clear break from the past. It is difficult now to openly challenge the Judiciary – the public mood is in support of judicial reforms. The champions of reform — i.e. the progressive judiciary officers, the Judicial Service Commission, the Judiciary’s new leadership, the new Supreme Court, NGOs, and many other stakeholders — appear to be wielding influence on key decisions, and are already demonstrating to non-reformers within and outside the Judiciary that systems can be put in place. In addition, the foundations for reforms have firmed up with the Constitution, providing the Judicial Service Commission and the public the leverage to push through obstacles by non-reformers.</p> <p>Resp: client Stage: implementation Due Date: continuous Status: in progress</p>	
	Implementing Agency Risks (including fiduciary)	
Capacity	Rating	High
<p>Description: The Judiciary has weak institutional capacity, and lacks experience in World Bank fiduciary systems. The proposed modernization and reform investments are likely to be unsustainable without a focus on the institutional capacity to manage the change process.</p>	<p>Risk Management: A Project Management Unit will be established within the Judiciary to coordinate and implement the project.</p> <p>Resp: client Stage: effectiveness Due Date: 12/31/2012 Status: ongoing</p>	
	<p>Risk Management: An Integrated Fiduciary Agent will be hired to manage the project’s fiduciary function, while transferring these skills to Judiciary staff.</p>	

<p>The institution is also very formal and the process of approvals and authorizations for project activities may undermine timely and efficient decision making.</p> <p>Recently, the Judiciary established nine new directorates to strengthen management and monitoring structures, including Performance Management, ICT, Financial Management, Research and Development, and Supply Chain Management, among others — and is in the process of recruiting the staff for these directorates. However, these new directorates will need some time to develop their capacity and systems.</p>	<p>Resp: client Stage: effectiveness Due Date:12/31/2012 Status: in progress</p>	
	<p>Attention will be taken to ensure clear, high-level and efficient reporting lines for business authorizations in the project design.</p>	
	<p>Resp: client Stage: preparation Due Date: 09/25/2012 Status: complete</p> <p>Risk Management: Extensive capacity building support will be provided by the project for the new directorates including other relevant departments and staff.</p> <p>Resp: client/Bank Stage: implementation Due Date: continuous Status: not yet due</p>	
Governance	Rating	High
<p>Description: The Judiciary has historically suffered from low public trust and confidence. A number of public enquiries and reviews in the past have characterized the Judiciary as inaccessible, an instrument of the executive, and corrupt.</p> <p>Grievance and complaints handling mechanisms and anti-corruption policy are in the early stages of development.</p>	<p>Risk Management: The project will specifically include third party participation and monitoring arrangements as part of its Governance and Anti-Corruption Action Plan (see Annex 8) to build and sustain public engagement in the Judiciary. The involvement of stakeholders will help to promote project oversight, transparency and accountability. The JPIP will also develop and support the implementation of a Judiciary Governance and Anti-Corruption Strategy.</p> <p>Resp: client Stage: implementation Due Date: continuous Status: in progress</p>	
	<p>Risk management: The GAC Action Plan will support grievance handling mechanisms and development and implementation of an anti-corruption policy for the Judiciary.</p> <p>Resp: client/Bank Stage: implementation Due Date: continuous Status: in progress</p>	
Project Risks		
Design	Rating:	High
<p>Description: Adequate project coordination and engagement across components, and particularly across the institution’s directorates, courts, local and regional levels may be lacking.</p>	<p>Risk Management: A JPIP Project Technical Committee, staffed by those directorates executing or benefiting from the project and led by a high level Judiciary official, will support the PMU and the Integrated Fiduciary Agent in ensuring coordination, communication, monitoring, and delivery occurs across the institution.</p> <p>Resp: client Stage: implementation Due Date: continuous Status: not yet due</p>	
Social & Environmental	Rating:	Moderate

<p>Description: The funding provided by the Bank for new courts construction and existing courts renovation is intended to help accelerate the overall construction and renovation program funded by the Government of Kenya. Caution is needed to ensure that the Bank-financed portions follow Bank procedures and comply with environmental and social safeguards.</p> <p>Access to justice is a major problem for the vulnerable and marginalized with regard to distances to courts, gender obstacles, barriers to information, judicial training, alternative dispute resolutions, disabled accessibility, case delays, etc. An inadequate focus or approach to this issue could undermine the other reform efforts, including development results.</p>	<p>Risk Management: The Judiciary and the Bank team have agreed that the Bank-financed sites will only be selected from sites that are already owned and exclusively occupied by the Judiciary. In addition, safeguard compliance assessments and plans will be required prior to the start of construction or renovation works. The Judiciary has completed consultations on an Environmental and Social Management Framework and a Resettlement Policy Framework, and both have been publicly disclosed.</p> <p>Environmental and Social Management Plans for two of the first rehabilitation sites have been prepared, consulted upon, and disclosed.</p> <p>Resp: client Stage: preparation Due Date: 10/30/2012 Status: complete</p>	
<p>Program & Donor</p>	<p>Rating:</p>	<p>Moderate</p>
<p>Description: There is the risk that the Judiciary could get impatient with lengthy Bank procedures, especially with the pressure for quick results, and thus opt to transfer and pay for some planned project activities from other sources, such as Government or other donors.</p> <p>As no co-financing is expected for activities planned, there are no risks associated with other donor contributions. Consultation and information sharing activities were carried out with donors during project preparation and will continue through the project period to support donor coordination and common development goals.</p>	<p>Risk Management: The Judiciary reviewed and confirmed that the activities proposed for the JPIP match the priorities, timelines and funding sources articulated in the JTF.</p> <p>The project will provide the Judiciary with the necessary expertise in Bank procedures (though the PMU, Integrated Fiduciary Agent, and other technical assistance) so that procedures can be understood and implemented in a timely and efficient manner.</p> <p>Resp: client Stage: implementation Due Date: continuous Status: not yet due</p>	
<p>Delivery Monitoring & Sustainability</p>	<p>Rating:</p>	<p>High</p>
<p>Description: M&E implementation, especially in collecting and reporting data, could prove difficult if capacity, engagement, and interest across the institution is low. To a large extent, this will be mitigated by the establishment in the Judiciary of a new Performance Management Directorate staffed by M&E professionals hired from the open market. Since the JPIP and JTF results indicators are relatively similar, at the very least the client</p>	<p>Risk Management: The project will provide the Judiciary with relevant technical assistance and capacity building support for M&E, including the financing of regular surveys. The PMU will also provide implementation support and accountability for the M&E project function through its M&E staff .</p> <p>Resp: client Stage: implementation Due Date: continuous Status: not yet due</p> <p>Risk Management: To help support implementation and monitoring efforts, including sustainability prospects, the project's results indicators will be aligned as much as possible with those of the JTF.</p>	

<p>will not be burdened by collecting substantially new or additional data specific for the project. Skills transfer and sustainability of the Integrated Fiduciary Agent's capacity will not be possible without proactive, monitored measures.</p>	<p>Resp: client Stage: preparation Due Date: 07/15/2012 Status: complete</p> <hr/> <p>Risk Management: The performance-based contract of the Integrated Fiduciary Agent requires it to transfer its skills and knowledge, and ensure satisfactory capacity development for a smooth hand over within the first two years of project implementation.</p> <p>Resp: client Stage: implementation Due Date: review every six months Status: not yet due</p>
<p>Overall Risk Rating</p>	
<p>Implementation Risk Rating: High</p>	
<p>Comments: Risks include : (a) weak implementation capacity of the Judiciary; (b) uncertainties and anxieties surrounding the vetting process for judicial appointments and their impact on the Judiciary's ability to deliver; (c) proposed investments in infrastructure, ICT equipment, and capacity building services which are vulnerable to corruption; and (d) the forthcoming elections in 2013 and the transition to a new government, which could result in waning political commitment to the independence of the Judiciary and its reform agenda.</p>	

ANNEX 5: Implementation Support Plan

KENYA: Judicial Performance Improvement Project (JPIP)

Focus of Supervision

1. **Implementation support will focus on actions that are critical for project success.** In particular, emphasis will be placed on the quality of works for construction and rehabilitation of the courts; technical compliance; the timely payment to contractors, suppliers and consultants; timely award of contracts; and adherence to project implementation schedules, among other important areas of focus (summarized in Table 8.1 below). Continuous supervision will be encouraged, given that most of the Bank's task team members are based in the Bank's country office in Kenya. This will therefore enable continuous and cost-effective supervision of the project.
2. **Upstream reporting, auditing and accountability, and technical compliance measures to ensure early detection and remedy of problems through ongoing oversight of the project implementation activities will be emphasized.** For civil works contracts, there will be speedy review of project implementation progress reports prepared by the engineering supervision firms that will perform the day-to-day independent certification of the quality of work, payment certificates and compliance with contract terms.
3. **In case of procurement documents subject to prior review, these will be carefully reviewed by both the technical expert(s) and the procurement specialist on the team to ensure that they comply with the project's technical requirements and the Bank's procurement guidelines.**
4. **The Financial Management Specialist will carry out periodic reviews of the IFA's financial management systems and controls as well as those of the Judiciary's PMU.** Where necessary, the specialist will conduct reviews of statements of expenditure as reported in the quarterly Financial Monitoring Reports/Interim Financial Reports. These reviews will be utilized for improving the implementing agencies' systems and performance in these areas. This will be vital since the IFA will be transferring the fiduciary responsibilities to the Judiciary after the initial two years of project implementation.
5. **Before each implementation support mission, the Judiciary will provide a detailed implementation progress report which will provide the status of the project activities and identify all implementation issues facing the project.** These reports combined with site visits will be the basis for reaching agreement with the client on the activities for the upcoming period and resolution of implementation issues facing the project.

Mode of Supervision

6. **The Bank's Task Team will undertake supervision as follows:**
 - a) Where necessary, provide technical, procurement and financial management support to

the project's implementing agencies from the country based team.

- b) Quarterly implementation support reviews of the project, including visits to the project sites. The review teams will comprise a court infrastructure specialist, procurement specialist, financial management specialist, communications specialist, environmental specialist, social development specialist, governance specialist and the task team leaders (Table 8.2).
- c) Annual fully fledged implementation support missions involving all the key task team members.
- d) The Communications Specialist on the team will prepare a brief on the implementation status of the project and post it on the external country office website semi-annually.
- e) Similarly, the Communications Specialist on the team will assist the Judiciary to prepare brief implementation progress reports of the project, and post them on the Judiciary's website.

Monitoring

7. **On the side of the GoK, the capacity of the implementation agencies is augmented by technical assistance and consultant services, particularly in the areas of design, supervision, project coordination, monitoring and evaluation, and user surveys.** The annual Monitoring and Evaluation (M&E) reports produced by the M&E consultants (an accredited university in Kenya) will be discussed at workshops with stakeholders, both during their preparation and on finalization.

Budget

8. **The above activities would require adequate resources for the Bank staff to be able to carry out comprehensive project implementation support.** Inadequate resources will hamper the implementation of the proposed intensive follow up and monitoring required for mitigating the potential risks identified.

Table 8.1: What would be the main focus in terms of support during implementation

<i>Time</i>	<i>Focus</i>	<i>Skills Needed</i>	<i>Resource Estimate</i>	<i>Partner Role</i>
First twelve months	Technical review of bidding documents, proposals and bid and technical evaluation reports and review of technical reports (feasibility and design study reports).	Civil engineering/court infrastructure, ICT specialist, financial management, procurement, an independent technical/procurement specialist and communication.	45 staff-weeks of Bank staff plus 26 staff-weeks of Short-Term Consultant. Approx. US\$ 250,000.	No partner involved but the information will be shared by other development partners with programs in the Judiciary.
12-48 months	Technical review of bidding documents, proposals and supervision of works, and technical reports.	Civil engineering/court infrastructure, financial management, M&E, environmental and social development specialists, procurement and communication	Annually, 30 staff-weeks of Bank staff plus 18 staff-weeks of STC. Approx. US\$ 190,000 per annum.	
Other				

Table 8.2: Skills Mix Required

<i>Skills Needed</i>	<i>Number of Staff Weeks/annum</i>	<i>Number of Trips/annum</i>	<i>Comments</i>
Team Leadership	26	4 site visits (local)	Country Office (CO) staff
Civil engineering/Court Infrastructure	10	4 site visits (local)	
IT Specialist	8	2 site visits	STC (International)
Procurement	5	2 site visits	CO
Social Development	2	2 site visits	CO staff
M&E	2	2 site visits	STC (local)
Financial Management	5	2 site visits	CO staff
Environmental	3	2 site visits	HQ staff
Court Infrastructure	6	2 site visits	STC (International)
Communications	2	4 site visits	CO staff
Justice Reform Specialist(s)	5	2 site visits	HQ staff

Annex 6: Objectives for Construction and Renovation

KENYA: Judicial Performance Improvement Project (JPIP)

Current Conditions

1. **The Kenyan population has considerably increased from 20 million (in 1985) to 41 million with minimal investment in court infrastructure.** The capacity of court buildings, as a result, is notably inadequate. Indeed, justice is a service that is absent for much of the country due to poor geographical coverage. There are no courts in 43 percent of the existing districts, with only 83 out of the 146 districts having at least one court. For many Kenyans, the nearest courts are located at such a distance that the travel costs alone prohibit them from pursuing justice. Equally concerning are the urban courts where a huge number of cases are handled. These courts have too few magistrates and can neither accommodate the limited staff, nor the many litigants and their lawyers. The space limitations not only make efficient handling of cases impossible, but also present unsafe and unsanitary conditions for everyone involved.

2. **There are currently 17 High Court facilities and 113 magistrate courts, 14 of these are shared locations with High Courts.** Ongoing building works in the country area, based on plans that were initiated prior to the reform program, include five High Courts under construction (or refurbishment, in the case of the Nairobi High Court) and nine magistrate court buildings at some stage of construction or refurbishment. The amount of GoK funding for the Judiciary's infrastructure program (FY2012/13) and the number of courts to be constructed and rehabilitated under the GoK financing, alongside the Bank-financed facilities, is described in Annex 2.

3. **The need to overcome space shortages has been even made more urgent by the new Constitution.** There will be a 320 percent increase in the number of High Court judges, a total of 150 (up from 47). This will require related new infrastructure (i.e. courts, libraries, registries, etc.) and human resources in 47 counties. Equally, there will be a 140 percent increase in the number of magistrates and associated new courts across the country. The Judiciary is in the process of hiring 160 new magistrates. 116 legal researchers have already been hired.

4. **Other serious issues related to court facilities in the country were highlighted by a 2009 assessment that included interviews with court users²³ (see Box 1).** These challenges

Box 1: Court Facility Problems Identified in 2009

- No space for important court functions in many buildings.
- Courtrooms of inadequate numbers and size.
- Inadequate storage space for evidence and records.
- No space for libraries.
- Inadequate space for remanded defendants, including lack of separate facilities for females, males, and juveniles.
- Inadequate space for services such as help desks, court-annexed mediation, small claims courts, etc.
- Building capacities' inadequate for automated and sound recording equipment.
- Inadequate security, including lack of separated internal building circulation for judges, public, and defendants in remand.
- Lack of public amenities, such as handicap accessibility and restrooms.
- General building deterioration and structural problems affecting functionality, health, and safety.
- Great distances and travel times to available courts for many citizens.

²³ Report prepared for the Judiciary by P. Gerald Thacker, August 2009, on developing a Kenyan Judiciary design guide and criteria for selecting and prioritizing capital projects under the JPIP.

continue to affect the Judiciary’s ability to comprehensively and effectively address service delivery.

5. **In February 2012, the Judiciary launched a new nationwide radio campaign to collect ideas and views from the public on what should be incorporated in newly-constructed or renovated courts.** An online competition²⁴ for Kenyan students, architectural professionals, and artists was also part of the process. Applicants were expected to design a court prototype that symbolizes “a vibrant, accessible, transparent, and impartial Judiciary”. Entries were evaluated on creativity, functionality, form and strength of design concept, quality of sustainable ideas, durability, internal comfort and green ideas, and the impact the proposal will have on accessibility and transparency of the Judiciary. These are all service aspirations that resonate with and contribute to JTF/JPIP’s reform objectives.

6. **A winner from the design completion was announced in mid-2012.** The Judiciary’s new prototype court design and guidelines for Kenyan courts rests on this work, along with the application of international design standards.

Rationale for Supporting Construction and Renovation

7. **The funding provided by the Bank is intended to help accelerate the overall construction and renovation program being funded by the GoK.** It is also aimed at supporting the development of cost effective, uniform-space planning, and design standards that promote better judicial services. The decision to support this program is influenced by three key factors:

- a) The construction is intended to help improve the Judiciary’s delivery of services. Specifically, its functionality, transparency, accessibility, clients’ safety, health and comfort, efficacy, and environmental friendliness, among other service qualities. It is, therefore, an intervention that pursues pertinent and valuable results for the objectives of the project, particularly with regard to improving the quality, effectiveness, and transparency of judicial services. (See Table 10, Objectives, Expectations, and Criteria for Court Construction & Renovations).
- b) The Bank is supporting several other initiatives in the project. However, many of these — such as better case tracking, automation, sound recording, safety, public amenities, access to information and to justice, court-annexed mediation — cannot be fully implemented without adequate support infrastructure. Unless the physical court conditions are improved, they are likely to dilute and weigh down many of the other efforts taken to enhance the delivery of services, including public perceptions.
- c) If the opportunity to address the construction issue is not approached in a robust and integrated manner, then the opportunity to help build the Judiciary’s capacity for managing its capital investments in a strategic, transparent, and effective way may also be lost.

²⁴ Located at <http://www.Judiciary.go.ke/competition/index.html>.

8. **The World Bank offers comparative advantages in dealing with this subject.** For example, it added value to the process of developing design guidelines and selection criteria for construction through technical assistance and international best practice. In addition, it has reflected the lessons learned from local and regional infrastructure implementation experience into the project design. And it will also draw its implementation support for this project from a strong locally-based infrastructure team that has substantial implementation experience in Kenya. Furthermore, because the Bank will be involved in other critical performance areas of the Judiciary — spanning management, operations, technical assistance, modernization, transparency, etc. — it can add value by helping the Judiciary ensure an overall approach that is strategic, integrated and participatory, including for its capital investments management.

Selection and Locations of Courts

9. **JPIP infrastructure funding is to be directed to courts that are most likely to produce early and significant improvements in services and improved physical access to justice in those localities that are far from public transport.** The 10 new courts to be constructed and 30 courts to be rehabilitated will be selected from the indicative list below (Table 9). The prioritized first movers for rehabilitation are the Kangema and Kitui Magistrate Courts, selected because of their extreme dilapidation. Both courts are also extremely busy and are easily accessible from Nairobi which facilitates implementation and supervision. The final selection of Bank-financed courts will be based on the following criteria:

- a) the Judiciary already owns and occupies the land;
- b) a high number of people are likely to be served by the court;
- c) distance of population to be served from existing court(s) (for new courts);
- d) a high number of pending cases and a long backlog of cases currently exists (including in neighboring courts likely to be relieved by the construction);
- e) a significant positive impact on other stakeholders is likely (e.g. assisting with a large police case load); and
- f) the site does not pose security risks for staff involved with the program.

Table 9: Indicative List of Courts for Construction and Rehabilitation

<i>Indicative List for Bank-Financed Courts</i>			
<i>Courts for Construction</i>		<i>Courts for Rehabilitation</i>	
1. Ngong/Rongai Law Courts	1. Kitui	13. Lunga Lunga	24. Kabete
2. Nanyuki Law Court	2. Tawa	14. Kisii	25. Budalangi
3. Garissa Law Court	3. Kigumo	15. Kibera	26. Lokichar
4. Kapsowar Law Court	4. Hola	16. Vihiga	27. Archers Post
5. Kasarani Law Court	5. Garsen	17. Makindu	28. Karaba
6. Kakamega	6. Tamu/Muhoroni	18. Nyando	29. Othaya
7. Mombasa	7. Lamu	19. Bondo	30. Makueni
8. Nakuru	8. Mpeketoni	20. Molo	31. Chukia
9. Kabete* (Children’s Court)	9. Marimanti	21. Homabay	32. Oyugis
10. Bomet Law Court	10. Eldama Ravine	22. Nkubu	33. Githinguri
11. Ol’Kalou (Nyandarua)	11. Kabarnet	23. Kapsokwonyi	34. Namire
12. Malaba	12. Kasarani		35. Mukureweini
13. Lunga Lunga			

**Kabete has an existing magistrates court building located on extensive Judiciary grounds where a new Children’s Court is also proposed for construction.*

Table 10: Objectives, Expectations, and Criteria for Court Construction & Renovations

<i>Strategic Objectives</i>	<i>Key Expectations & Criteria</i>
Better functional performance	<p><i>Court Designs and Guidelines that:</i></p> <ol style="list-style-type: none"> are based on an analysis of the problems, concerns, and requirements determined by a survey of users and stakeholders support modern initiatives such as case tracking, court automation and sound recording to improve timeliness, user satisfaction, transparency, and the ability to monitor case performance (accountability) enable other potential improvements that impact the delivery of services such as signage, help desks, small claims courts, court-annexed mediation, etc. adapt international “good practices” to address the specific conditions in Kenya
Enhanced security, comfort health, and access	<p><i>Court Designs and Guidelines that address the existing problems related to:</i></p> <ol style="list-style-type: none"> lack of adequate security, including separated internal building circulation for judges, public, and defendants in remand non-threatening rooms from which children can “appear” in the courtroom barrier free accessibility for the handicapped, including architectural features that are welcoming to citizens with sight, mobility, and hearing impairments basic public amenities, including restrooms, waiting rooms, space for reviewing documents, etc. general building deterioration and structural problems affecting functionality, health, and safety great distances and travel times to available courts for many citizens
Improved efficacy and rationalization of space	<p><i>Court Designs and Guidelines that address the existing lack of space for important court functions, including:</i></p> <ol style="list-style-type: none"> the practice of holding court proceedings in “private” judges’ offices because of the inadequate number and sizes of court rooms overcrowded courts and Magistrate stations inadequate storage space for evidence and for records lack of space for libraries inadequate space for remanded defendants, including separate facilities for female, males, and juveniles need for court building that are designed with expansion strategies/flexibility of space in mind to allow for the growing caseloads and numbers of judges and staff, and especially the devolution demands lack of separate High Court buildings

Strategic Objectives

Key Expectations & Criteria

A Construction and Renovation Program that:

Greater strategic, transparency and management capacity for capital investments

1. has determined a criteria that is transparent, uncomplicated, and replicable for the selection of new courts and renovations
2. includes citizens in social audits of construction timetables and quality
3. reflects the judicial reform's strategic goals, including value for money
4. promotes low operating costs, including energy efficiencies, for all buildings
5. incorporates sustainable life-cycle costs that can be maintained by the Judiciary
6. includes prototypical concept designs and guidelines which will apply uniform space and design standards for modest, functional, flexible, and cost effective designs
7. ensures environmental and settlement safeguards are evaluated and adhered to
8. profiles the existing facilities, including information on location, size, ownership, type of construction, occupancy, major problems, compliance with the design guidelines and criteria described above, etc.
9. shows a detailed project schedule for the projects that are to be designed and constructed during the next 3 to 5 years
10. defines and promotes a timely and effective M&E plan, including third party participation and monitoring
11. limits the Bank-financed sites to 3 – 4 geographical areas to help accelerate monitoring and implementation prospects (for this and other project interventions) within the project's limited time frame
12. applies the criteria described here, including in a final format agreed upon by the Judiciary and the Bank, for those construction and renovation selected for IDA financing.

ANNEX 7: Economic and Financial Analyses

KENYA: Judicial Performance Improvement Project (JPIP)

1. The benefits from improvements in judicial performance are both economic and financial.

Economic

2. **Adam Smith identified peace, low taxes, and “a tolerable administration of justice” as essential conditions for economic growth.** A number of empirical studies support this, finding an association between better courts and development – including economic growth (and the factors that contribute to growth such as access to credit, firm efficiency, and willingness to invest).

3. **World Bank studies have identified a number of factors that can improve the efficiency of courts and through this contribute to an improvement in the business climate,** namely: (a) functional judicial information systems; (b) transfer of non-contentious matters (like administrative disputes) from courts to administrative bodies to reduce judicial caseloads; (c) simplified judicial procedures and processes; and (d) establishing small claims courts and specialized commercial courts.

4. **Courts serve businesses best when they are efficient and fair²⁵.** The project will support a number of measures to increase the efficiency of the courts and the productivity of judges (including some of the measures identified above). In particular, emphasis will be placed on new and refurbished court facilities, better administrative arrangements through a comprehensive court management information system, automated case management processes, and simplified procedural rules, all contributing to the efficiency of the court system. These measures will contribute to lowering the cost of doing business by reducing the distance to courts and the time for resolution of disputes, balancing commercial relationships and enhancing businesses’ confidence in their legal rights - thus contributing to an improved investment climate in Kenya.

5. **In matters of fairness, measures to support judicial independence – which includes building public confidence through greater transparency and accountability - increases the chances of the courts enforcing executive decisions and holding the executive to account.** Improved oversight of administrative decisions will help to lower the cost of doing business and help to reduce administrative corruption, yielding a positive economic benefit in the long term.

6. **Taken as a whole, more predictable and uniform application of the rule of law contributes to a more predictable and level playing field for business, spurring investment, and thus promoting economic growth.** The increase of judicial services in underserved areas can be expected to have a particularly positive impact on the poor.

²⁵ World Bank, *Doing Business in 2005: Removing Obstacles to Growth* (2005), p. 60.

7. **Given the nature of the direct and indirect benefits, calculating a precise economic impact (or rate of return) is difficult for judicial reform projects and is not the norm for World Bank judicial reform projects.**

Financial

8. **Public resources allocated by the GoK to the judicial system have increased rapidly between 2010-2011 (KSH 3.9 billion) and 2012-2013 (KSH 16.4 billion).** Project activities will support improved use of all (not just IDA) resources in the justice sector. Project activities that will improve the management of project resources include the extension of IFMIS to court stations in project areas. In addition, the IPMAS is expected to promote better management of human resources and improved Judiciary productivity.

9. **Under Component 1, strengthening the information base used to monitor the performance of the courts and improving the analytical capability of key judicial institutions to use this data for planning will improve the efficiency with which resources are used.** Strengthening the Judiciary's central capacity for planning and managing facilities and civil works investments will improve the rate of return on capital investments overtime. Finally, the project will support the application of uniform, space and design standards for modest, functional and flexible court buildings that can be maintained at a reasonable cost, now and in the future.

ANNEX 8: Governance and Anti-Corruption Action Plan

KENYA: Judicial Performance Improvement Project (JPIP)

- 1. Kenya is making progress on governance reforms, but weak governance systems remain a major binding constraint on achieving development impact.** In particular, such systems create opportunities for corruption and hinder poverty reduction and service delivery. Kenya's record on governance has been mixed. Although the country scores well on voice, regulatory quality, revenue mobilization, public administration, and macroeconomic management, it scores poorly on rule of law and control of corruption.
- 2. At the same time, the Kenyan media is very outspoken and independent by regional standards.** In addition, the capacity for investigative journalism is gradually improving and there is a vibrant civil society able to challenge decisions of public officials.
- 3. The new Constitution lays out a framework for Kenya to address long-standing governance challenges, including strengthening transparency and accountability in the public sector.** The Constitution provides clearer delineation of roles, stronger checks and balances among the three arms of government, improves public access to information, introduces a new bill of rights, and includes an ambitious devolution program. It also outlines a transparent recruitment process for key positions and establishes the Office of the Ombudsman and the National Council on the Administration of Justice.
- 4. The coming elections in 2013 will test the maturity of Kenya's democracy.** The coalition government seems to be working, with the risk of widespread political violence low, given lessons learned from the previous elections, the cases pending in the International Criminal Court against some key politicians/public figures and the legislation against hate speech. Nevertheless, political violence remains a potential risk and could impact the operational environment of development projects in the affected areas.
- 5. Kenya's Judiciary has historically suffered from low public trust and confidence and has been perceived as corrupt.** Until recently the Judiciary was perceived as being too close to the executive arm of government. The reform measures taken by the new leadership of the Judiciary under the JTF provide a major platform for reforms that improve governance and mitigate corruption, but risks remain real and significant. The reform momentum could be hampered by non-reformers comprising judges from the old system accustomed to the status quo and lawyers involved in bribing judicial officers. A number of measures in the country will mitigate this risk. Some include the ongoing vetting process to remove unsuitable judicial officers, a transparent recruitment process in the judiciary and establishment of a Judiciary Fund to provide the Judiciary financial independence. The table below outlines the measures for controlling fraud and corruption in the project.

Table 11: Governance and Anti Corruption Action Plan

<i>Risk</i>	<i>Control Actions</i>	<i>Status</i>
1. Risk of political commitment waning and conflict	<p><u>Bank:</u> Monitor political commitment by:</p> <ul style="list-style-type: none"> a) Willingness and ability to continue with the vetting process for judges and magistrates. b) Any changes in regulations, laws and constitutional provisions that affect the independence of the Judiciary. c) changes in membership of the Judicial Service Commission and possible impact on reforms. d) Follow up political economy analysis or stakeholder analysis during implementation. e) Suspension of disbursement or cancellation of the project as a last resort. 	<ul style="list-style-type: none"> a) Vetting process is progressing with some judges already removed. b) Political economy analysis suggests some level of resistance to reforms, but this has no significant effect on JPIP and the reforms in the Judiciary. c) New constitution and laws provide protection of the Judiciary and its independence.
2. Weak complaints handling mechanism	<p><u>Client:</u></p> <ul style="list-style-type: none"> a) Tracking and complaint management system for JPIP with designated desk officer be established with standard time to respond. b) Establish complaints handling and customer desk in court stations with support of JPIP. c) Use information campaigns to raise citizens' awareness of existence of complaints handling mechanism. 	<ul style="list-style-type: none"> a) Judiciary Ombudsperson office set up to handle public complaints. b) Automated feedback mechanisms established servicedesk@Judiciary.go.ke c) Instant phone messaging number to report corruption is operational : 5384
3. Weak fiduciary capacity	<p><u>Client:</u></p> <ul style="list-style-type: none"> a) Recruitment of an Integrated Fiduciary Agency for the first 2 years to manage the project's fiduciary function, while transferring these skills to the Judiciary staff. b) The Integrated Fiduciary Agency will report to the Chief Registrar's designate. It will be subject to audits by the Office of the Auditor General and by the Internal Audit department. c) JPIP will not use decentralized expenditures. d) Ensure works and IT contracts are large enough to attract international and large domestic firms to bid. e) Ensure that contracts are not deliberately split to circumvent the Bank's prior review thresholds or to limit competition. 	<ul style="list-style-type: none"> a) Recruitment of the Integrated Fiduciary Agent at technical evaluation stage. b) New directorates of Financial Management and Supply Chain Management have been set up. JPIP will provide Judiciary staff with procurement and financial management training. d) Publication of contract awards for all ICB, NCB, Direct Contracting and Selection of Consultants for contracts exceeding a value of US\$ 200,000. No contract of this value has been processed.

<i>Risk</i>	<i>Control Actions</i>	<i>Status</i>
	<u>Bank:</u> f) Undertake forensic audit, if necessary. g) Use INT services if necessary.	
4. Risks of collusion and bid rigging	<u>Client:</u> a) Publication of contract awards for all ICB, NCB, Direct Contracting and Selection of Consultants for contracts exceeding a value of US\$ 200,000. b) Use post-qualification, instead of pre-qualification, to avoid advance knowledge of the firms invited to bid. c) Contract watch to be used to improve the transparency and accountability of major procurements under JPIP, including supervision of monitoring the quality of works. d) Establish a transparent, evidence-based and consistently implemented system of debarment of poor performers and contractors engaged in fraud and corruption practice. <u>Bank:</u> e) Include bank audit rights in works and ICT contracts. f) Ensure contracts values are not deliberately split to circumvent the Bank’s prior review thresholds or limit competition. g) Engage an independent Procurement Specialist and Engineer to review all works bid documents for Bank funded contracts.	(d) Discussions with WBI to use coalition of NGOs for contract watch and procurement monitoring to be finalized prior to effectiveness. Client to engage a civil engineering firm to supervise construction works.
5. Project oversight and supervision risks	<u>Client:</u> a) Use of Third Party Monitoring (civil society organizations) and court users to help provide oversight and supervision of the project. b) Project Steering Committee chaired by Chief Justice meet biannually to review progress. <u>Bank:</u> c) Intensive Bank implementation support: 3-4 times in first 2 years, plus trouble shooting missions.	a) Discussions with reputable NGOs during preparation held and follow up planned to select NGOs for third party monitoring.

<i>Risk</i>	<i>Control Actions</i>	<i>Status</i>
6. Fraud and corruption risks	<p><u>Client</u></p> <p>(a) Use existing corruption report hotline.</p> <p>(b) Include corruption perception questions in annual user surveys to assess level of corruption.</p> <p>(c) Monitor effective functioning of complaints handling mechanisms and make changes if appropriate</p> <p>(d) Establish robust record keeping system for project</p> <p><u>Bank:</u></p> <p>(e) Use JPIP to support development and implementation of a governance and anti-corruption strategy for the Judiciary.</p> <p>(f) Undertake forensic audit of project, if warranted.</p> <p>(g) Provide fraud and corruption training at the project launch meeting.</p>	<p>(a) The Judiciary has designated a reputable judge to coordinate anti-corruption policy.</p> <p>(b) Ongoing vetting process to remove corrupt and incompetent judicial officers.</p> <p>(d) Preliminary work to map out corruption in Judiciary ongoing.</p>
7. Weak capacity to detect and deal with fraud and corruption issues in the project	<p><u>Bank:</u></p> <p>a) Facilitate training workshops focusing on fraud and corruption issues and on identifying red flags, including establishing controls in procurement and financial management, especially in the building infrastructure and ICT contracts.</p>	<p>a) Training to be arranged during project launch in collaboration with the Bank's Integrity Vice Presidency.</p>
8. Opaque recruitment system with risk of nepotism	<p><u>Client:</u></p> <p>a) Use an open and competitive recruitment process for the Project Management Unit team based on merit.</p> <p><u>Bank:</u></p> <p>b) Review TORs and interview evaluation reports to ensure compliance before Bank 'No Objection' is issued.</p>	<p>(a) PMU positions openly advertised in two national newspapers.</p> <p>(b) TORs reviewed. Evaluation reports to be sent to the Bank for review.</p>