II. Sectoral and Institutional Context

I. Project Context

Country Context

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, the country’s currency, and the shilling depreciated significantly). In the absence of external shocks and with improved macroeconomic stability, growth is expected to reach 5 percent in 2012 and 2013.

However, growth in Kenya has historically been lower than in Sub-Saharan Africa (excluding South Africa). Moreover, 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 for some time been reflecting on measures than need 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 2030).

Although Kenya scores well on “voice, regulatory quality, revenue mobilization, public administration, and macroeconomic management”, Kenya is weak on government accountability 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. Thus reforming and strengthening the Judiciary and the rule of law will improve the investment climate and create an enabling environment for sustainable growth.

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

II. Sectoral and Institutional Context

Historical Context

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.

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 describe the Judiciary’s failure to deliver timely justice, significant case backlogs, ineffective case management systems, poor conditions of service for its officers and a deficient physical infrastructure. The reports further characterized the Judiciary as inaccessible, an instrument of the executive, and corrupt. The Judiciary also lacks the capacity to carry out its core administrative functions, including budget management, performance evaluation and monitoring, financial management and procurement.
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 delay, ineffectiveness, and corruption.

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.

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 election. 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 Commission that looked into the post-election violence) made radical recommendations for judicial reforms, reiterating many recommendations contained in earlier reports.

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 conclusion. The current Chief Justice, Honourable 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.” (Chief Justice Mutunga speech “First Hundred and Twenty Days. 19th October, 2011). 

Development of a World Bank-financed project for the Judiciary was first initiated at the end of 2006. However, as a result of civil and political discord in December 2007 and early 2008, coupled with the lack of commitment then to judicial reforms, preparation of the project was put on hold.

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 recruitment 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 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 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 systems can be put in place. All of these efforts are strengthening public support for judicial reforms and widening the window of opportunity.

Institutional and Policy Reforms

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) expansion and devolution of the High Court into counties, along with establishment of specialized courts (Land & 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 (Act 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.

The level of public confidence in the Judiciary has effectively doubled. Public opinion polling over the last four years indicate that satisfaction with the Judiciary has steadily risen from a low 31 percent in 2008 to 67 percent in April 2012.

The Judiciary launched a Judiciary Transformation Framework (JTF) 2012-2016 in May 2012 to prioritize its reform objectives. The overriding objective of the JTF is to improve access to and 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 a judicial leadership that will transform managerial and judicial outcomes; (c) achieving adequate financial resources and physical infrastructure for the
The Judiciary intends to focus on 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.

The financial independence of the Judiciary, enshrined 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. 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.

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 & Management Committees responsible for overseeing the day to 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.

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 out of which 723,321 were in the magistrate courts. This equated to an average pending caseload of 2,853 cases per magistrate. 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, and while 76 percent of pending magistrate court criminal cases (excluding traffic cases) were more than 12 months old and 28 percent were over 5 years old. Of the pending civil cases in magistrates’ courts in 2007, 83 percent were over one year old and 44 percent were over 5 years old. 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 trial. 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.

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 Kingdom. 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 urgently needs to fill its vacancies and to accommodate them with courtrooms and offices. The Judiciary currently has a total of 4,109 staff.

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 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 additional courtrooms in existing court stations and it needs to construct additional courthouses for the High Courts and for magistrates’ courts.

The Judiciary has also increased its training budget in response to its expanding workforce requirements. It is expected to contribute about K.Sh. 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.
The overall estimated cost of JTF is US$ 450 million for the next 4 years, out 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.

III. Project Development Objectives
The Project Development Objective is to strengthen the capacity of the Judiciary to provide its services in the project areas, in a more effective, transparent and accountable manner.

IV. Project Description
Component Name

Component 1: Court Administration and Case Management (USD 40m). This component will entail Implementation of 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.

Component 2: Training and Staff Development (USD 16m). The component will strengthen 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.

Component 3: Court Infrastructure (USD 47m). This component will entail construction of 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.

Component 4: Project Management (USD 9m). This component will entail establishment 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.

V. Financing (in USD Million)

<table>
<thead>
<tr>
<th>For Loans/Credits/Others</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>BORROWER/RECIPIENT</td>
<td>0.00</td>
</tr>
<tr>
<td>International Development Association (IDA)</td>
<td>120.00</td>
</tr>
<tr>
<td>Financing Gap</td>
<td>0.00</td>
</tr>
<tr>
<td>Total</td>
<td>120.00</td>
</tr>
</tbody>
</table>

VI. Implementation

A. Institutional and Implementation Arrangements

Overall project execution will be carried out by the Judiciary, assisted by a Project Management Unit (PMU) responsible for project management and coordination. The PMU will be supported, in the first two years, by an integrated Fiduciary Agent (IFA) responsible for the project’s fiduciary function. 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. The key institutional arrangements of the project are summarized below.

PMU: 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. This unit 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 and support 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
The agency and two Supply Chain Management Judiciary 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.

Integrated Fiduciary Agent. An IFA will be responsible for the procurement and financial management of the project on behalf of the Judiciary. The agency will report to the Chief Registrar 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.

JPiP Technical Committee. The technical oversight of the JPiP will be carried out by a Project Technical Committee chaired by the Chief Registrar designate, 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 JTJ 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 supervise implementation of project activities. The Committee will also review and approve the project’s annual progress reports and annual work plans. It is recommended that the Committee provides sub-committees responsible for: (a) case management including IT; (b) court infrastructure; and (c) judiciary training and staff development.

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 JTJ 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

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. It is expected that the PMU will work closely with the relevant directorates of the Judiciary in 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.

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 that will feed into the Project Implementation Manual.

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

C. Sustainability

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 constitutional guaranteed funding from the National Assembly to the Judiciary through the Judiciary Fund.

VII. Safeguard Policies (including public consultation)

<table>
<thead>
<tr>
<th>Safeguard Policies Triggered by the Project</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Assessment OP/BP 4.01</td>
<td>×</td>
<td></td>
</tr>
<tr>
<td>Natural Habitats OP/BP 4.04</td>
<td></td>
<td>×</td>
</tr>
<tr>
<td>Forests OP/BP 4.36</td>
<td></td>
<td>×</td>
</tr>
<tr>
<td>Pest Management OP 4.09</td>
<td></td>
<td>×</td>
</tr>
<tr>
<td>Physical Cultural Resources OP/BP 4.11</td>
<td></td>
<td>×</td>
</tr>
<tr>
<td>Indigenous Peoples OP/BP 4.10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involuntary Resettlement OP/BP 4.12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safety of Dams OP/BP 4.37</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Projects on International Waterways OP/BP 7.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Projects in Disputed Areas OP/BP 7.60</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
VIII. Contact point

World Bank
Contact: Nightingale Rukuba-Ngaiza
Title: Senior Counsel
Tel: 5368+6359
Email: nrukubangaiza@worldbank.org

Borrower/Client/Recipient
Name: Ministry of Finance
Contact: Mr. Joseph Kinyua
Title: Permanent Secretary
Tel: 254202252299
Email: psfinance@treasury.go.ke

Implementing Agencies
Name: The Judiciary
Contact: Gladys Sholei
Title: Chief Registrar
Tel: 254202221221
Email: chiefregistrar@gov.ke

IX. For more information contact:
The InfoShop
The World Bank
1818 H Street, NW
Washington, D.C. 20433
Telephone: (202) 458-4500
Fax: (202) 522-1500
Web: http://www.worldbank.org/infoshop