1. **Key development issues and rationale for Bank involvement**

The Republic of Kenya’s *Economic Recovery Strategy* (ERS 2003–2007) has identified governance as the core challenge to economic development. The ERS 2003-2007 identifies strengthening the rule of law as a starting point for reviving the economy and meeting the expectations of Kenyans for better living conditions, and recognizes that improving judicial performance and public trust is key to deepening the rule of law. Similarly, the Bank’s *Country Assistance Strategy Progress Report 2004-2008* (CAS PR) focuses on equity and governance, and on strengthening the Judiciary in particular. The CAS PR notes that there has been recent improvement in Kenya’s macroeconomic management and economic growth, and that the principal remaining constraint to greater growth is governance.

Kenya’s judiciary faces significant challenges: it lacks financial autonomy; court administration needs improvement, including a reduction in the backlog of cases. Although caseload is increasing, the proportion of the population using the courts remains low due to access barriers; judicial training is ad-hoc and newly appointed judges require specialized training for conducting trials and performing judicial functions, as well as training in other specialized areas.

The Judiciary recognizes the need for further steps to address these challenges, but so far progress has been limited and uneven. The Government of Kenya (GoK) and the Judiciary see these measures as important and urgent, but the financial resources so far committed are inadequate.

The CAS Progress Report recommends that the Bank support focus on governance and anticorruption, in line with the Government’s 2007 *Governance Strategy for a Prosperous Kenya and Governance Action Plan* and its goal to strengthen the Judiciary and increase access to justice.
For priorities under the Project, the Bank will draw upon existing assessments and the Judiciary’s Strategic Plan. The Project will also build upon past and ongoing activities by the Bank, the GoK and other donors in the justice sector, such as the Financial Legal and Technical Assistance Project (FLSTAP), the Norwegian grant for automating the recording of court proceedings; the two IDF grants on Capacity Building to Support Gender Responsive Implementation of the Expanded Legal Sector Reform Program and Capacity Building of the Legal Profession; the BNPP grant for Justice for the Poor; and the Governance, Justice, Law and Order Program (GJLOS).

2. Proposed objective(s)

The development objective of the Project is to improve the performance of the Judiciary in areas that are critical for public accountability and user satisfaction, by increasing the Judiciary’s ability to manage and monitor its performance.

3. Preliminary description

The Judicial Performance Improvement Project will consist of the following components: (1) Court Administration and Case Management, (2) Judicial Training and Education (3) Access to Justice, (4) Public Communications Transparency and Accountability, and (5) Project Management and Financial Management.

Component 1: Court Administration and Case Management. In order to enhance accountability and judicial transparency, this component will address the ability of the Judiciary to monitor its performance and ensure that it meets standards the Judiciary sets for itself. The component will assess the existing court administration system and its ability to promote the transparent and effective administration of justice, and recommend and implement an appropriate system which allows for more effective budget management, case management and performance evaluation and monitoring.

This component will also address the transparency and effectiveness of case management. Focus areas will be automating and rationalizing procedures; the introduction of Alternative Dispute Resolution (ADR) and implementing Court-supervised ADR in order to speed up dispute resolution; automating recording of court proceedings, currently a manual process; automating registries and digitizing court files; and clearing the backlog of cases. The Project will work with the Expeditious Disposal of Cases Committee which plans a survey to generate data on the backlog of cases to devise remedial measures under the FLSTAP. The component will build on work undertaken under the FLSTAP to address the backlog.

Component 2: Judicial Training. This component will (a) carry out a comprehensive assessment of the training needs of the different categories of personnel within the Judiciary, e.g. paralegal staff, court administrators, magistrates and judges. It will (b) develop and implement a plan to set up a Judicial Training Institute. The modalities of conducting judicial training will be reviewed with the Judiciary’s Implementation Committee created to assist with project implementation, and will include the possibility of outsourcing training services or developing partnerships with universities and law schools. The training will not only provide general opportunities for professional development for judicial officers, but also introduce them to tools
and concepts particularly relevant to the judiciary’s performance goals (and thus the goals of this Project), such as effective planning and management as well as methods for measuring judicial performance. Indicative elements of such training would be equipping the Judiciary’s Central Planning Unit with the knowledge and skills to do better budget preparation and expenditure management. In order to strengthen the technical capacity for research, interpretation and analysis by judges and magistrates, the Project will also (c) design and implement a support program for court clerks and researchers.

**Component 3: Access to Justice.** The proportion of the population using the Court system remains small. This component of the Project will (a) assess the reasons why those seeking justice do not resort to courts, e.g. geographic obstacles, cost, etc., (b) assess existing programs and support additional activities for bringing justice to people in remote parts of the country such as Kakuma, Dadaab, Archer’s Post, and Karaba, (c) support an assessment of needs relating to demand for court houses in high population areas such as Westlands, Ngong, Kasarani and Thika, (d) assess the need for and construct new courts where appropriate; (e) renovate and refurbish old courts and (f) evaluate the existing legal aid schemes administered by the Judiciary and recommend and implement appropriate improvements as may be required. This component will be able to take advantage of research being carried out in the Bank’s *Justice for the Poor* project which examines the way in which the poor navigate through local justice systems, as well as work undertaken on the use of informal justice systems to determine why and in what numbers people do not use the courts.

**Component 4: Transparency, Public Communication and Outreach.** Diagnostic work carried out by the Judiciary indicates declining judicial corruption, but public opinion polls show persistent concerns about corruption in the Judiciary. The Judiciary is thus interested in continuing to address corruption and increase accountability, and in increasing outreach to and feedback from the public. Automation of court proceedings, and provision of timely and user-friendly public access to records of proceedings is underway (and will be supported by the Project), all of which constitutes an important step toward greater transparency. Similarly, the recent Open Day that the Judiciary held on February 16 – 17, 2007 was an important first step in communicating with the public, and the establishment of a structured Public Complaints mechanism is a key step to ensuring that public opinion becomes part of the input to the Judiciary in monitoring its performance.

This component will build on these reforms, providing technical support for the Judiciary’s Peer Review Mechanism, formalization of the Biennial Integrity and Governance Review, enforcement of the Judicial Code of Conduct, and establishment of a structured public complaints mechanism. The component will also improve communication with the public through Public Information Desks in the courts, and create more opportunities for the public to interact with the Judiciary such as a continuation of Judiciary Open Days, appropriate TV and radio programs, and the launch of the Litigants’ Charter, a charter resulting from the Ethics and Integrity Committee’s Report which describes the rights of litigants and the duties of courts toward litigants. Building on lessons learned from the Open Day, the Project will support outreach and educational campaigns to inform the public about their rights and the functioning of the Judiciary. These programs will seek to promote the rule of law, evaluate the experience of end users of judicial services under new systems financed by the Project, and replicate innovative approaches such as school-to-court and court-to-school visits.
Component 5: Project Management. Since the Judiciary will be responsible for Project implementation, including procurement and financial management, a small Project Technical Unit (PTU) will work with staff of the Judiciary’s Central Planning Unit. It will coordinate with the Judiciary’s auditing, accounting and procurement divisions, providing them with specialized expertise regarding Bank project implementation processes, and it will be in charge of Project monitoring and evaluation. The PTU -- together with, as necessary for project implementation, staff of the Central Planning Unit and the auditing, accounting and procurement divisions -- will receive technical assistance, equipment and training from Project funds to enable them to undertake professional project implementation. Responsibility for Project oversight and policy direction will vest in the Implementation Committee set up and chaired by the Chief Justice. It includes the Chairman of the Rules Committee and the Expeditious Disposal of Cases committee, the Presiding Judge of the Court of Appeal, two judges of the High Court as well as the Registrar of the High Court.

Safeguard policies that might apply

Any necessary environmental impact or related assessments to possible construction are yet to be determined.

4. Tentative financing
Source: ($m.)
BORROWER/RECIPIENT 0
International Development Association (IDA) 40
Total 40

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