



ETHICS AND ANTI-CORRUPTION COMMISSION

A Study on Corruption and Ethics in the Judicial Sector, 2014



RESEARCH AND TRANSFORMATION DEPARTMENT

October, 2014



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**Research and Transformation
Department**

October, 2014

Tukomeshe Ufisadi, Tujenge Kenya



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Ethics & Anti-Corruption Commission



Mission Statement

Our Mandate

To combat and prevent corruption and economic crime in Kenya through law enforcement, preventive measures, public education and promotion of standards and practices of integrity, ethics and anti-corruption

Vision

A Corruption free Kenyan society that upholds integrity and the rule of law

Mission

To promote integrity and combat corruption through law enforcement, prevention and education

Core Values

Integrity
Professionalism
Fidelity to the law
Courage
Teamwork
Innovation





Foreword

A Judicial Sector of undisputed integrity is the bedrock for democracy and the rule of law in society. Corruption and unethical behavior are deleterious to the two tenets of good governance. The objective of this study on Corruption and Unethical practices in the Judicial Sector was to assess the level, nature and effects of corruption and, unethical practices in the sector. The study also assessed impact of the reform initiatives undertaken within the Sector to address these vices.

The study revealed that impediments to quick and efficient administration of justice still exist. These include limited access to the court system by service seekers, long and cumbersome processes, inadequate staffing, backlog of cases, persistent unethical practices, payment of bribes to hide files/bribery of officers and abuse of office among others.

Improvement in service delivery, sealing corruption loopholes, eliminating unethical practices, and enhancement of confidence in the Judiciary will be achieved if the above impediments are decisively, expeditiously and judiciously addressed within the framework of transformation of the Judiciary. This Report makes recommendations on measures that need to be taken urgently, in the short to medium term and the longer term to address these matters. I take this opportunity to call upon all stakeholders in the Judicial Sector to take urgent steps and measures to implement recommendations of this study by mainstreaming them in the on-going reforms in the sector. The EACC will undertake its mandate and partner with the Judicial Sector stakeholders in transforming this vital sector so as to rid it of corruption and unethical practices.



I invite all stakeholders to use the findings of the Study to identify areas that we can partner to improve governance in the Justice System.

It is my pleasure to present the Study on Corruption and Ethics in the Judicial Sector.

**Mr. Mumo Matemu, MBS
Chairperson**



Acknowledgement

The Commission wishes to register our gratitude to the Judicial System Officers for making time for our research teams. Your time and support made this Study possible.

We specifically thank the Chief Justice, Chief Registrar, Director of Public Prosecution and the Commissioner of Prison for granting us the opportunity to interact with their officers despite the high demand of their services by the general public.

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The Commission would like to particularly recognize the Officers who planned, implemented and wrote this Report. These are; Nancy Namege, Paul Kimalu, Janet Bett, Naomi Moraa, Daniel Wamweru, Meshack Collins Aluda, Vincent Okongo, Willis Wasala, and Farida Kokita.

We are grateful to all individuals and institutions that may not have been mentioned above that gave their support to make this study successful.

A handwritten signature in black ink, appearing to read 'Halakhe D. Waqo', is written over a horizontal line.

Halakhe D. Waqo, ACI Arb
Secretary/Chief Executive Officer



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Acronyms

CAJ	-	Commission on Administration of Justice
CID	-	Criminal Investigations Department
CoK	-	Constitution of Kenya
CSPRO	-	Census and Survey Processing System
CUCs	-	Court User's Committees
EACC	-	Ethic and Anti- Corruption Commission
EMU	-	Efficiency Monitoring Unit
GJLOS	-	Governance, Justice, Law & Order Sector
JSC	-	Judicial Service Commission
JTF	-	Judiciary Transformation Framework
KENAO	-	Kenya National Audits Office
MTP	-	Medium Term Plan
NACP	-	National Anti-Corruption Plan
PPOA	-	Public Procurement Oversight Authority
SPSS	-	Statistical Package for the Social Science
TJR	-	Taskforce on Judicial Reforms



Executive Summary

The main objective of the study was to assess the nature of corruption and the effects it has on service delivery in the Kenyan Courts. Specifically, the survey sought to:

- i) Assess the judicial reforms on administration of justice and quality of service delivery within the Judicial Sector for Kenyans at large;
- ii) Identify areas (process, procedures and practices) that are prone to corruption and unethical conduct in the Judicial Sector;
- iii) Establish the causes and effects of corruption and unethical practices in the administration of justice; and,
- iv) Recommend measures for addressing corruption and improving service delivery in the Justice System.

The study sought views from both Court users and officers in the Judicial System concerning what they considered as the most common problems in the Judicial Sector.

The main findings of the study are as follows:

- i) Court users reported that there were delays in delivery of judgement, documents pertaining cases disappeared and that there were variance in sentencing.



- ii) Officers in the Judicial System noted ignorance of litigants, shortage of staff, corruption, case backlogs and bureaucracy as major problems in the Judicial System. Impediments to justice still persist hence jeopardizing accessibility to judicial services. Officers in the Judicial System stated that courts were located far (62%), court services were costly (35%) and that people living with disabilities (PLWD) were not catered for (21%) thus hindering accessibility to court services. Conversely, Court users mentioned constraints to accessing justice as court processes being too long (60%), postponement of hearing (54%) and distance to the court (38%). The interviewed officers in the Judicial System, attributed un-timely service delivery to understaffing, case backlog and lack of information communication technology (ICT). Numerous hurdles involved in accessing services, in most cases create room to corruption as citizens are compelled to compromise the process for service delivery.
- iii) The general perception by both the staff within the sector and members of the public seeking services is that the level of transparency in the judicial processes is still low. It is still difficult to obtain information from the court recordings. Staff indicated lack of accessibility to case audit and charter and limited access to information by the public. Further, the public did not have reliable access to information pertaining to laws, proposed changes in legislation, court procedures, judgment, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments.



- iv) The anti-corruption courts experience a number of challenges that affect the fight against corruption and the quality of services offered in those courts. These include few magistrates thus resulting in overwhelming work; few anti-corruption courts and inadequate training in anti-corruption matters.

- v) Challenges identified in finances and infrastructures include: insufficient budget; poor utilization of finances by support services; adherence to long financial procedures especially for urgently required services e.g. stationery. Also noted challenges were: poor budgeting system; focus on recurrent expenditure as opposed to development of physical infrastructure like office space; and inadequate courts. Gaps in the implementation of financial policies and lack of transparency in expenditure have resulted to various malpractices and corruption.

- vi) Fifty three percent (53%) of the court users reported laxity as a form of unethical practice experienced when seeking judicial service. Thirty nine percent (39%) stated lack of courtesy while a minority 11 percent pointed out intemperance of officers. The officers in the Judicial System on the other hand cited bribery (22%), laxity (19%), and favoritism/nepotism (17%) as the main unethical practices.

- Vii) Seventeen percent (17%) of staff respondents in the sector indicated favoritism as one of the misconduct while 14 percent stated abuse of power while 10 percent of the staff respondents indicated absenteeism.



- viii) The officers in the Judicial System acknowledged the practice of payment of bribes to hide files (35%), abuse of office (24%), bribing the judges, prosecutors, and clerks for favorable judgment (19%) as forms of corruption encountered in the sector. On the other hand, 41 percent of the court users cited absenteeism as a form of corruption encountered followed by bribery in order to hide files (36%) and favoritism (34%).
- ix) The study sought to establish if unofficial payments were being made in the course of seeking services. In this case, 84 percent of court users indicated that there were no unofficial payments while seeking services at the courts. However, 16 percent acknowledged making unofficial payment to the officers in the Judicial System. Although judges and magistrates did not ask for unofficial payment, court clerks were noted to frequently ask for bribes.
- x) Forty six percent (47%) of the court users who made unofficial payment stated that it was demanded. Others, 34 percent identified too much delay while 16 percent cited influence to make a ruling.

The study recommends among others:

- A sector-wide approach towards eradicating corruption and unethical conduct should be adapted to planning and implementation of anti-corruption measures.
- Enhanced inter-agency collaboration and capacity building among other forms of intervention identified in this Report and reform proposals be implemented in order to have a positive impact on the fight against corruption and unethical practices in the sector.



- Organization of more open days to interact with the public and give insight on the operations of the Judiciary i.e informing the court users concerning filing fees and other court-related costs in order to preclude court staff from requesting fees that are non-existent.
- Adequate training to enhance competence and capacity of judicial officers especially in handling anti-corruption matters.
- Corruption and unethical practices in the sector should be addressed through full enforcement of laws such as Public Officers Ethics Act (POEA), Anti- Corruption and Economic Crimes Act (ACECA), Leadership and integrity Act (LIA) and Ethics and Anti-Corruption Act (EACCA) to deter officers from engaging in corruption.
- The Judicial Sector should strive to incorporate the messages on effects of corruption during their public education and sensitization for both their staff and the public so as to help curb corruption.
- The Judicial Sector should put emphasis on corruption prevention programmes such as formulation and implementation of anti-corruption policy, formation of corruption prevention committees, training integrity assurance officers among others.



Chapter 1

Background

1.0 Introduction

The constitutional mandate of the Ethics and Anti-Corruption Commission is to combat corruption through law enforcement, prevention, public education, promotion of best practices and standards for integrity, ethics and anti-corruption as provided for in the Ethics and Anti-Corruption Commission Act, 2011. The Commission partners with other government institutions to reduce incidence of corruption. The Judicial Sector¹ is one of the key organs of governance and pillars for socio-economic development of the country. It is a foundation for social order in society and the guardian of laws and societal integrity (National Anti-Corruption Plan, 2008). Therefore, an independent and effective Judicial System is vital for a democratic society founded on the rule of law and respect for fundamental rights and freedoms. A functioning Judicial Sector is the guarantor of fairness, and a powerful weapon against corruption (Harrison and Sidwell, 2011).

Fighting judicial corruption² and enhancing integrity and ethics in the Justice System are central to improving services.

¹In this study the Judicial Sector refers to institutions and personnel involved in the administration of justice in the country, namely- the Judiciary, Prisons, Law Society, Office of the Director of Public Prosecutions, Office of the Attorney General ¹In this study the Judicial Sector refers to institutions and personnel involved in the administration of justice in the country, namely- the Judiciary, Prisons, Law Society, Office of the Director of Public Prosecutions, Office of the Attorney General



Therefore, Ethics and integrity are fundamental pillars of an independent, efficient, effective, transparent and accountable Judicial System. However, corruption and unethical conduct still remain some of the greatest challenges facing the Judicial Sector in Kenya

Various initiatives have been undertaken by the government and key stakeholders in the sector to address the malaise. The Taskforce on Judicial Reforms (TJR,2010) identified key issues and challenges facing the Kenyan Judicial System including: complex rules of procedures that undermine access to justice and expeditious disposal of cases; unethical conduct on the part of some judicial officers and staff that impede the fair and impartial dispensation of justice; weak administrative structures that undermine the effective administration of courts; and manual and mechanical systems of operations that affect efficiency in service delivery. There were also issues and challenges focusing on operational autonomy, capacity, transparency and openness in appointment of judicial officers, terms and conditions of service and complaints and discipline handling. These challenges have contributed to poor service delivery, delays in the disposal of cases and erosion of public confidence in the Judiciary.

In order to enhance the independence and effectiveness of the Kenyan Judicial System, a number of reforms measures focusing on strengthening the policy, legal and institutional framework for justice

²Judicial corruption is defined as the use of public authority for private benefit of court personnel when this use undermines the rules and procedures to be applied in the provision of court service (UN Office for Drug Control and Crime Prevention 2001).



institutions have been implemented. These reforms are meant to enhance service delivery and access to justice while inculcating a culture of compliance with laws and decent human behavior in society. The reforms are in line with the Judiciary's medium to long term strategy of enhancing independence, improving service delivery and access to justice, promoting the rule of law, protecting and guaranteeing all rights and liberties of the people, improving the image and restoring confidence in the Judicial System (Kenya Vision 2030; MTP 2008-2012).

1.1 Problem Statement

The Judiciary is regarded as the guardian of laws and societal integrity and therefore critical in the guarantee of good governance. Its independence is vital in the administration of justice, the fight against bad governance and corruption (National Anti-Corruption Plan 2008; Harrison and Sidwell, 2011). Yet people's experiences in many countries fall far short of this expectation. Corruption and unethical conduct have been seen as a main impediment to the independence of the Judiciary in implementing its mandate. In Kenya, the situation has not been any different.

The National Enterprise Survey by the Commission (2006) indicated that 73.6 percent of the respondents believe that the courts are never quick to resolve disputes while 28 percent believe that the courts are not accessible. In addition the Public Officers' Integrity Survey (2007) indicated that 62 percent of respondents thought that the Judiciary is not effective as a stakeholder in the fight against corruption. The National Enterprise Survey of 2007 indicated that 74 percent of respondents reported that there was excess time taken by proceedings and another 57.3 percent cited legal



costs involved in accessing justice as a constraint in court process. In addition, most judicial staff were perceived to be involved in corrupt practices. The Survey further indicated that 34.8 percent of the firms that participated had no confidence in the court system regarding legal system upholding contract and property rights in business disputes. Further, an analysis of the National Corruption Perception Survey (2010) indicates that 40 percent of judicial officers, 39 percent of court clerks and 47 percent judges/magistrates were also thought to be most involved in corruption. This has led to delays in processing, hearing and conclusion of cases in court and denial of justice. As a result, Kenyans and the business community in general have no faith and confidence in the Justice System.

The Judicial Sector has in the recent past put in place measures to address the above malaise yet corruption and poor service delivery still persist. This study examines the reasons behind the perceived persistence of corruption in the Sector despite the reforms that have been implemented to address it among other challenges. The study assesses the quality of services, the type of corrupt practices and the effectiveness of reforms in the fight against corruption. The findings of the Study provide a basis for the Commission to work closely with the Judiciary and related stakeholders in the Justice System in improving judicial service delivery and dispensation of justice in Kenya.



1.2 Objectives of the Study

The overall objective was to assess the nature of corruption and the effects it has on service delivery in the Kenyan Courts. Specifically, the survey sought to:

- Assess the judicial reforms on administration of justice and quality of service delivery within the Judicial Sector for Kenyans at large;
- Identify areas (process, procedures and practices) that are prone to corruption and unethical conduct in the Judicial Systems;
- Establish the causes and effects of corruption and unethical practices in the administration of justice; and
- Recommend measures for addressing corruption and improving service delivery in the Justice System.

1.3 Scope of the study

This was a countrywide study covering all the eighteen High Courts Stations in the country (at the time of the study). It focused mainly on interrogation of reforms implemented over the years to address service delivery, ethics, integrity, corruption, and often governance related issues in the administration of justice. It also sought to establish the nature, magnitude, causes and effects of corruption in the Judicial Sector. It should be acknowledged that the Judiciary is the major stakeholder and driver of reforms in the Judicial Sector; as such, data collection was concentrated in the precincts of the Judiciary but targeting the entire stakeholders in the Sector.



1.4 Methodology

The study relied on both quantitative and qualitative data that was gathered through exit and in-depth/Key informant interviews. This study used key informant (in-depth) interviews, through a structured guide to gather qualitative data. Relevant literature was also reviewed and analyzed to inform the objectives of the study and findings. The various documents reviewed for qualitative data and analysis included:

- Vision 2030
- Constitutional 2010 and Reform initiatives in the Judiciary
- Report of the Task Force on Judicial Reforms 2010
- The Strategic and Transformative Agenda of the Judiciary
- The Strategic Plan 2008-2012
- Judiciary Transformation framework, 2012-2016



1.4.1 Sampling and interviewing method

The Study conducted a census of all the eighteen (18) high courts in the country. Both purposive and random samplings were used to select respondents.

The three (3) categories of respondents randomly selected were:

- i) Key informants - comprising judges and magistrate (high Court and Magistrates courts). Eighteen (18) officers were sampled.
- ii) Officers in the Judicial System– included courtroom staff, court clerks, secretaries, and non-court room staff working in the registry, administration, accounts, bailiffs, police staff and prison warders. A total of 124 officers were interviewed in this category.
- iii) Court users-including litigants(plaintiffs,defendants, and accused persons), lawyers representing clients. A total of 135 litigants were targeted and 62 lawyers who were representing the litigants were interviewed.

1.4.2 Data Collection Instruments

Three sets of structured questionnaires were constructed with the aim of achieving the objectives of the study, one set for the key informant and the other for the public seeking court services and another set for the judicial staff.

1.4.3 Recruitment and Training of Research Assistants

Eight (8) Research Assistants from the existing Research Assistants database were contracted and engaged in data collection and processing. The officers from Research and Transformation Department conducted a one day training exercise to familiarize the recruited research assistants with the concepts and tools of the study.



1.4.4 Data Collection and Processing

Once field work was completed, the questionnaires were serialized and coded. Census and Survey Processing System (CSPRO) was used to capture the data that had been coded. The Statistical Package for the Social Science (SPSS) software was used to analyze the data captured from the exit and judicial staff questionnaires. Content analysis was done on the qualitative data that were obtained from the key informants to aide in identifying gaps in the judicial reforms, service delivery in the Judicial System and causes of corruption and unethical practices in the administration of justice



Chapter 2

Policy, Legal and Institutional Framework of the Judicial Sector

2.1 Introduction

This section cross-examines policy, legal and institutional frameworks that support the Judicial Sector. It highlights reforms that are ongoing in the sector and how they affect service delivery.

2.2 Vision 2030

One of the strategies mentioned in Vision 2030 under the political pillar is the Rule of Law. The goal is to enact and operationalize the key policy, legal and institutional framework vital for promoting and sustaining affordable and equitable access to justice by the year 2030. Specific strategies involve:

- Aligning the national policy and legal framework with the needs of a market based economy and national human rights and gender equity commitments;
- Increasing service availability and access (or reducing barriers) to justice;
- Streamlining the functional organization (including professionalization) of legal and judicial institutions to enhance inter-agency cooperation; and,
- Inculcating a culture of compliance with laws and decent human behavior.



Political pillar flagship projects for 2012 include the judicial and legal reforms initiative involve reforms pertaining to the rule of law and introduction of a Bill of rights, as well as reforming government institutions involved in governance and those entrusted with transparency and accountability of the public service.

The goal for the 2012 as espoused in Vision 2030 is to enact and operationalize necessary policy, legal and institutional frameworks needed to strengthen public transparency and accountability. Strategies mentioned to achieve this include: strengthening the legal framework for ethics and integrity; promoting result-based management within the public service; encouraging public access to information and data; introducing civilian oversight around the key legal, justice and security institutions; and strengthening Parliament's legislative oversight capacity.

2.3 Constitution of Kenya (CoK) 2010 and Reform initiatives in the Judiciary

The Constitution 2010 sets the agenda for reforms that are founded on human dignity, equality and rule of law for public sector and institutions. It provides for National values and Principles of governance articulated in Article 10 of the constitution and task all government organs including the Judiciary to advance the spirit and letter of the constitution.

2.4 Report of the Task Force on Judicial Reforms 2010

The Task Force on Judicial Reforms was appointed by the Government on 29th May 2009. Amongst others, the Terms of Reference (ToRs) of the Task Force were:



- i) To consider and recommend the expansion , function and independence of the Judicial Service Commission (JSC);
- ii) To consider and advice on a competitive process for the recruitment of judges;
- iii) To consider and advice on the financial autonomy and accountability of the Judiciary; and,
- iv) Consider and advise on the ways of dealing with corruption or perceived corruption in the Judiciary

The Task Force report specifically identifies some of the problems bedeviling the Judiciary as:

- i) Complex rules of procedures that undermine access to justice and expeditious disposal of cases;
- ii) Backlog and delays in the disposal of cases thereby eroding public confidence in the Judiciary;
- iii) Manual and mechanical systems of operations that affect efficiency in service delivery;
- iv) Inadequate financial and human resources that contribute to case backlog;
- v) Inability to absorb donor funds due to complex procurement and other financial procedures;
- vi) Unethical conduct on the part of some judicial officers and staff that impede the fair and impartial dispensation of justice;
- vii) Weak administrative structures that undermine the effective administration of courts;
- viii) Lack of operational autonomy and independence;
- ix) Poor terms and conditions of service that make it difficult for the Judiciary to attract and retain highly qualified professionals amongst its ranks;
- x) Less than transparent procedures for the appointment and promotion of judicial officers particularly Judges; and
- xi) Lack of effective complaints and disciplinary mechanisms to deal with misbehavior by Judges



The Report acknowledges that ethics and integrity are fundamental pillars of an independent, efficient, and accountable Judicial System yet corruption still remains one of the greatest challenges to the Judiciary in Kenya. The Judiciary being the key actor in the Judicial Sector has sought to address these concerns through its Transformation Agenda. So far the Judiciary is into its second transformative framework, the first one being The Strategic Plan 2008-2012, the second and current one that is being implemented is the Judiciary Transformation Framework, 2012-2016.

2.5 The Strategic and Transformative Agenda of the Judiciary

2.5.1 The Strategic Plan 2008-2012

The Judiciary's Strategic Plan 2008-2012, articulated the Judiciary's operation and outlined the medium term strategies to achieve the goals and objectives. The measures were expected to augment the Government's Development agenda and facilitate the creation of a democratic system that was issue- based, people centered, result-oriented and accountable to the public. The Judiciary aspired to provide an independent, accessible, responsive forum for just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution of Kenya.

The Judiciary embraces Vision 2030 which seeks to ensure adherence to the Rule of Law and protect all rights and liberties guaranteed by the Constitution. Therefore, the Strategic Plan also committed the Judiciary to participate in programmes and activities that would increase service availability and access to justice. Some of the strategic issues outlined in the plan were:



- Enhance judicial independence;
- Improve the image of the Judiciary;
- Build capacity in human resource management and development;
- Improve access to justice;
- Improve institutional structures;
- Adopt and institutionalize appropriate ICT and other facilities; and
- Enhance and streamline financial management and procurement.

In addition to addressing the goals and objectives of the Government as set out in the Vision 2030, the Judiciary is tasked to oversee and facilitate other programmes in the areas of governance and the Rule of Law through: Governance, Justice, Law & Order Sector (GJLOS) reform program; expeditious dispensation of justice; judicial reforms and anti-corruption.

2.5.2 Judiciary Transformation Framework, 2012-2016

This Framework has been formulated to define the strategic direction in transforming the Judiciary. The Framework seeks to reposition the Judiciary and the entire Governance, Justice, law and order Sector to be more responsive the needs of the people according to the Constitution. The Transformation Framework (JTF) 2012-2016 is entrenched on four pillars, and Ten Key Result Areas. These pillars are:

Pillar 1: People/User-Focused Delivery of Justice

The Key result areas under this pillar are:

1. Access to and expeditious delivery of justice,
2. People-Centeredness and public Engagement
3. Stakeholder Engagement



Pillar 2: Internal Human Resource Capacity;

The Key result areas under this pillar are:

1. Philosophy and Culture
2. Leadership and Management
3. Organizational Structure
4. Growth of Jurisprudence and Judicial Practice

Pillar 3: Infrastructure and Resource; and

The Key result areas under this pillar are:

1. Physical Infrastructure
2. Resourcing and Value for Money

Pillar 4: ICT as Enabler.

This pillar has only information and communication technologies. The Framework provides the basis for the immediate development for the Judiciary Strategic plan as well as other strategic plans for Judiciary orbit institutions (JTF, 2012-2016).

The Judiciary will pursue strategies aimed at creating a legal system which ensures equality of all before the law and an equitable legal process. As stated in the JTF (2012-2016), the Judiciary is to take deliberate measures to enhance public access to information; simplify court procedures; remove barriers; enhance proximity and access to courts.



Chapter 3

Findings of the Study

3.0 Introduction

This section examines the policy, legal, institutional framework, documents, key informant interviews, exit interviews and staff responses in meeting the objectives of the study. Key strategies being implemented with impact on corruption were scrutinized and their effectiveness and challenges in addressing the vice evaluated. The section further brings out the verbatim opinions arising from the key informants/in-depth interviews that were carried out in meeting the objective of the study.

3.1 Policy and Institutional Framework

As has been revealed earlier in this Report, the reform initiatives and instruments have been varied. This study was mainly informed by the Vision 2030, CoK 2010, Report of the Task Force on Judicial Reforms 2010; strategic plan (2008-2012) and the Judiciary Transformation Framework 2012-2016. Key governance and corruption issues relating to the four pillars mentioned in the JTF have been analyzed.

3.1.1 Assessing the Reforms on Service delivery in the Justice System

In order to assess the ease with which the public has access to court services, the court users were asked to give their experiences in accessing court services. In addition, public officers working in the sector gave their opinions and shared experiences on Judicial System procedure and barriers to justice delivery.



3.1.2. Types of services sought

Various services sought in the courts include: filing of cases, fixing of hearing dates, attending hearing sessions among others. As presented in Figure 1, the survey established 43 percent of the court users were attending hearing sessions, 19 percent were filling a case and 13 percent were fixing hearing dates. The respondents were asked to evaluate the quality of services being rendered in the court. 35 percent of respondents rated the quality of services as Good compared to 47 percent who rated it Fair and 18 percent Poor.

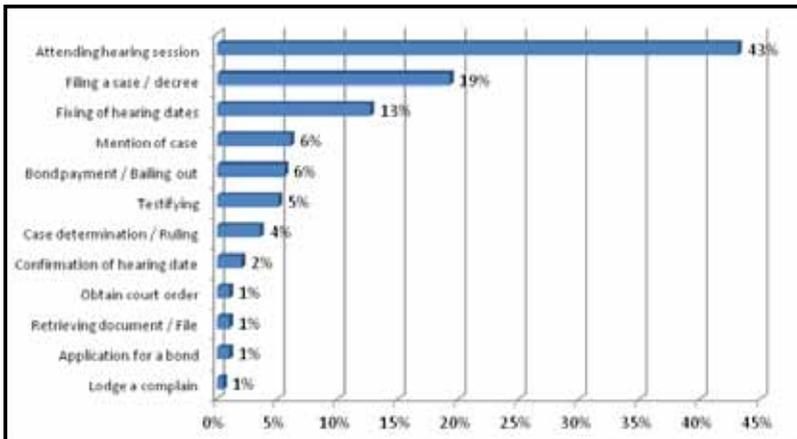


Figure 1: Types of services sought by court users

3.1.3 Assessment of accessibility to court services

As presented in Figure 2, majority 62 percent of officers in the Judicial System thought courts were located far away while 35 percent indicated that judicial services were costly whereas 21 percent supposed that people with disabilities were not being catered for.

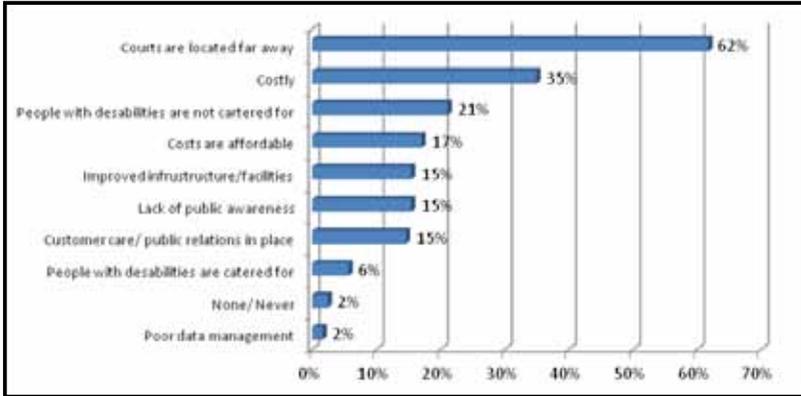


Figure 2: Assessment of accessibility of court services by officers in the Judicial System

Previous surveys done by the Commission, the National Enterprise Survey (NES) of 2007 showed that 74 percent of respondents mentioned that there was excess time taken by proceedings and another 57.3 percent cited legal cost involved in accessing justice as a constrain in court process.

In this study, Court users were asked to state what they perceived as the most significant constraints to accessing justice. Sixty percent (60%), felt that court processes were too long followed by postponement of hearings (54 %) and distance to the court (38 %) as indicated in Figure 3.

Further analysis was done to determine the views of specific court users and it was noted that 69 percent of litigants felt that court process is too long compared to 42 percent of the lawyers. The findings show that postponement of hearings was a challenge more to lawyers than litigants with 61 percent of lawyers indicating that postponement of hearing was a constraint to accessing justices compared to 50 percent of court users.

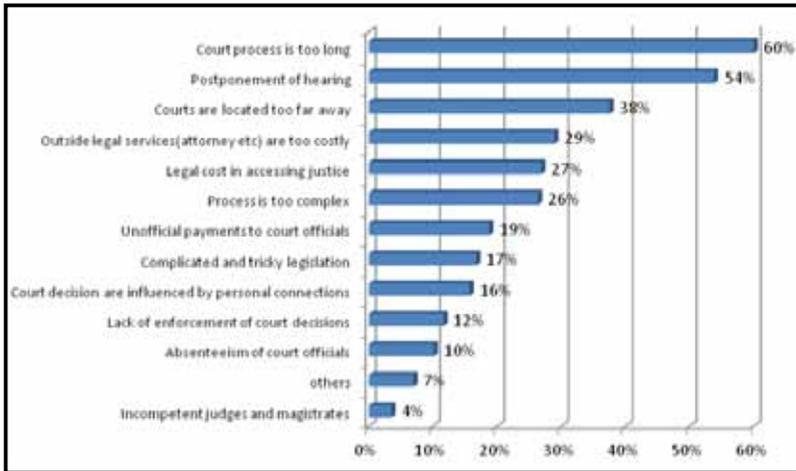


Figure 3: Constraints to accessing Justice as perceived by court users

3.1.4 Assessment of quality of service delivery

When asked to assess the quality of Judicial Systems and procedures, 68 percent of the staff agreed that meritocracy and length of service were important in determining staff recruitment, progression, and training and remuneration. On the other hand, 61 percent of staff interviewed disagreed that the records management system protects the integrity of the cases as shown in Table 1. The lack of confidence in the records management at the Judiciary is a pointer to weak systems and processes hence calling for review of the records management system.



Table 1: Evaluation of procedures in the Judicial System

	Strongly agree	Agree	Disagree	Strongly disagree	Don't Know
It is difficult obtaining information from the recordings	16%	35%	31%	15%	2%
The records management system (filing systems) protects the integrity of the cases and assures against lost records	11%	25%	40%	21%	3%
Meritocracy and length of service are important in determining how specific staffs are treated, hired, remunerated and training opportunities offered	20%	48%	18%	11%	3%
Cases are assigned to judges through an impartial system that protects against judge.	15%	37%	12%	10%	27%
There are safeguards against delay such as performance standards or normal times specified for various judicial proceedings at various stages of judicial proceedings	16%	32%	33%	6%	12%
There are public statistics on volumes of cases received clearance rate, and duration that cases are pending by court and judge	19%	33%	27%	7%	14%
Judges do assure on timely enforcement of final judicial decisions.	13%	38%	25%	11%	13%

3.1.5 Impediments to timely delivery of services

The study inquired about the impediments to timely delivery of services. According to 37 percent of officers in the Judicial System, understaffing was the main barrier to timeliness in the delivery of services while 25 percent thought that it was case backlog. Moreover 22 percent felt that lack of ICT contributed to un-timely service delivery.

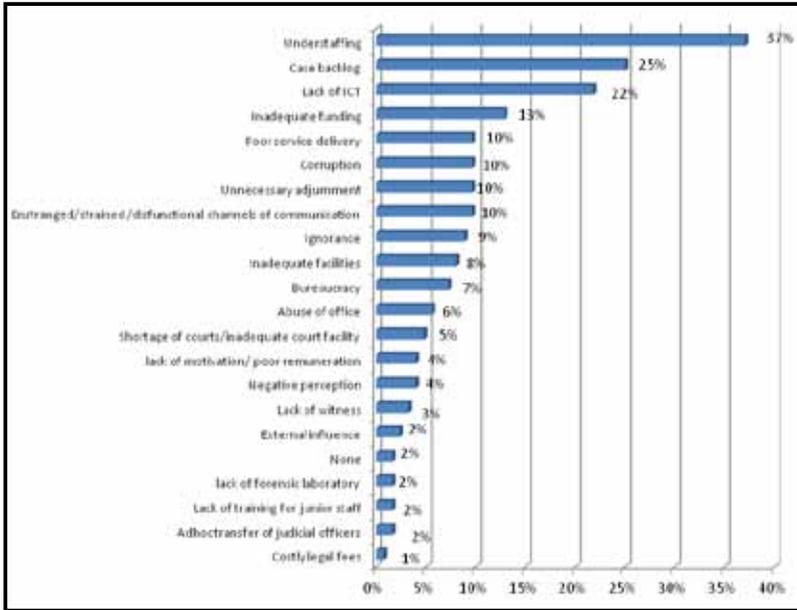


Figure 4: Impediments to timely delivery of judicial services according to Officers of the Judicial System

Delay in court proceedings was indicated by officers in the Judicial System to be an impediment to service delivery. Sixty nine percent (69%) of the staff reported that they experienced undue delay at court proceedings and gave the following as reasons for the delays; delay by other stakeholders (45%) followed by unnecessary adjournment (23%) and missing files (10%) as shown in Figure 5.



Figure 5: Causes of delays of Court Proceedings as perceived by officers of the Judicial System

When court users were asked if they experienced any delays in court proceedings, 50 percent acknowledged that there were delays. According to the findings, 41 percent, did nothing concerning the delays and waited for the process of accessing justice, while 24 percent consulted officers in charge and 10 percent lodged a complain as shown in Figure 6.

Litigants were found to be more patient when seeking services compared to lawyers. Of the court users who waited /did nothing when they experienced delay, 61 percent were litigants and 15 percent were lawyers. Forty four percent (44%) of lawyers consulted officers in charge concerning delays compared to 20 percent of Litigants.

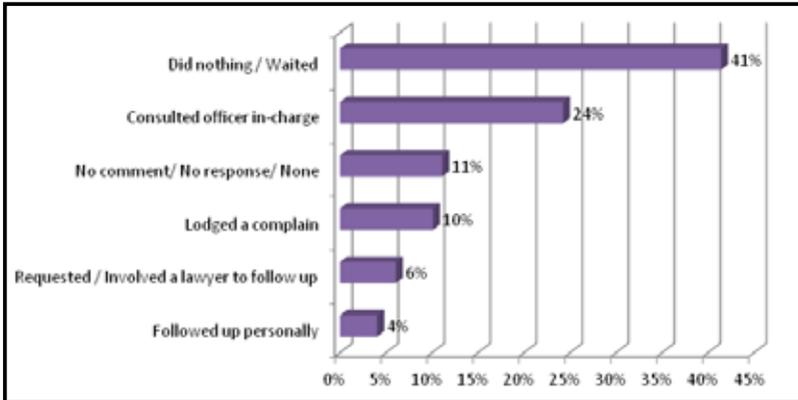


Figure 6: How court users deal with delay of court proceedings

The court users were asked how many times they had appeared before the courts (see Table 2). Majority 79 percent of court users indicated that they had appeared before the court less than five (5) times. Those that appered before the court less than ten times (10) and more than five (5) times were 14 percent.

Table 2: Number of times court users have appeared to the court

No. of times	% of court users
Less than 5	79%
5-10	14%
11-15	1%
16-20	2%
Above 20	4%

When asked if their case had been concluded majority, 86 percent said that their cases were not concluded compared to 14 percent whose cases were concluded. Of the 14 percent whose case had been completed 11percent took more than forty (40) months to conclude as shown in Table 3. This gives an indication of the continued case backlog problem in the Courts.



Table 3: Months taken to concluded a case

Months	% court users
Less than 10	25%
11-20	29%
21-30	14%
31-40	21%
Above 40	11%

These findings corroborate the findings of the National Enterprise Survey (NES) 2006 that indicated that 73.6 percent of the respondents bellicers in the Judicial System proposed a number of ways to mitigate the delays. They cited; more staffing (35%), computerization of services (28%), coordination between stakeholders (21%), judicial reforms (21%), adopting service charter (16%), public sensitization and awareness (8%), strict penalties (7%), transfers should be done after completion of cases (6%), None/ Never (5%), Better administration (5%), Police reforms (5%), Don't Know (2%), Institutional courts (2%), Regular transfer of judicial officers (2%), Decentralized government client/ lab (1%).

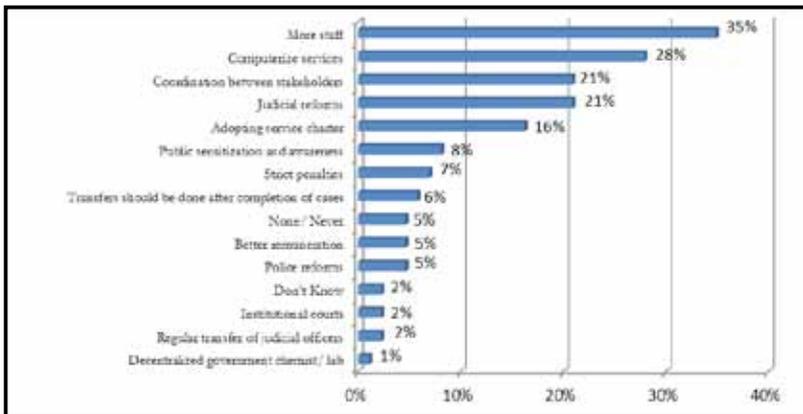


Figure 7: Measures to mitigate delays in service delivery as cited by officer of the Judicial System



3.1.6 Problems affecting service delivery

The Study sought views from both court users and officers in the Judicial System concerning what they considered as the most common problems in the Judicial Sector. Seventy one percent (71%) of court users reported that there were delays in delivery of judgement, while 32 percent of court users stated that case files disappeared. In addition, 20 percent of court users indicated that there was variance in sentencing as indicated in Figure 8 which provides a summary of problems affecting the Judicial System.

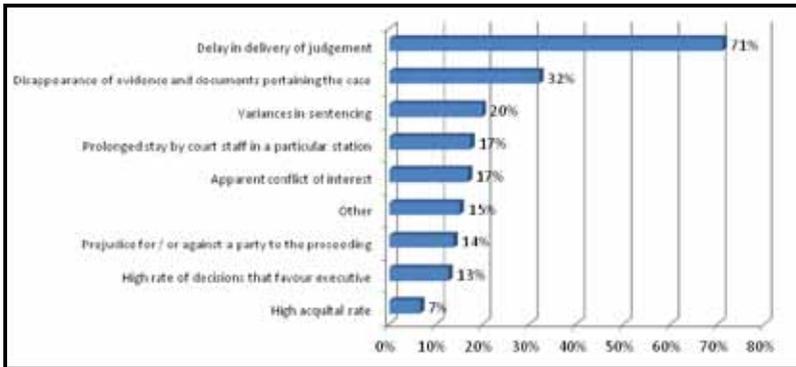


Figure 8: Problems in the Justice System as perceived by court users

The officers in the justices system on the other hand mentioned a range of problems in the Justice System such as ignorance of litigants (30%), shortage of staff (24%), corruption (18%), case backlogs (15%) and bureucracy (15%) as problem in the Judicial System .

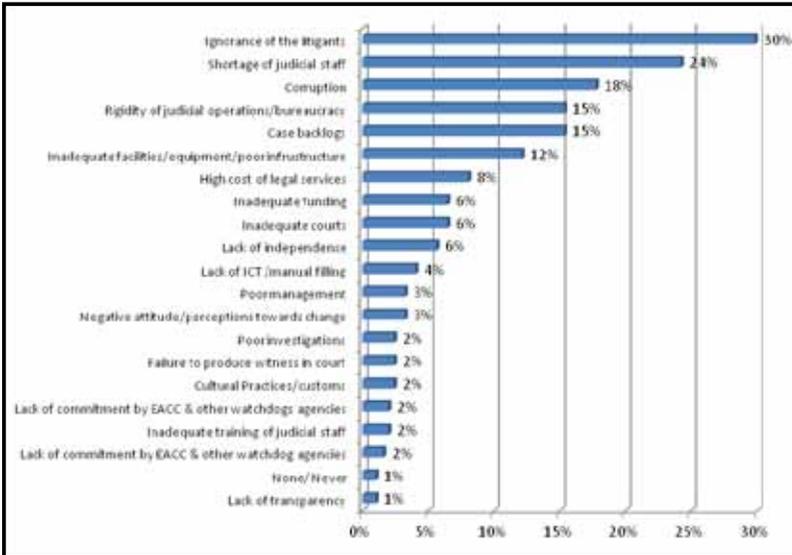


Figure 9: Problems in the Justice System as perceived by officers in the sector

3.2 Assessment of the judicial processes

According to USAID (2009), a transparent Judicial System guards against corruption by exposing to public scrutiny the operation of the Judicial System. Furthermore, transparency entails public access to information about selection, assets and income of judges and other senior officials and the costs and productivity of courts (USAID 2009). The Kenya Vision 2030 requires a transparent and accountable system of governance that is expected to promote integrity, free flow of information and enhance the accountability of leaders.



3.2.1 Transparency in judicial processes

The Officers in the Judicial Systems (courtroom staff, court clerks, secretaries, and non-court room staff working in the registry, administration, accounts, bailiffs, police staff and prison warders) were asked to give their opinions regarding transparency in the Judicial Sector: Fifty six percent (56%) of staff indicated that there was inaccessibility to case audit & service charter. Forty eight percent (48%) said there was regular case audits whereas 40 percent pointed out that there was limited access to information by the public as shown in Figure 10. The staff proposed that courts should avail information to court users (25 %), create public awareness (21 %) and have open avenues for communication with the public (19 %) .

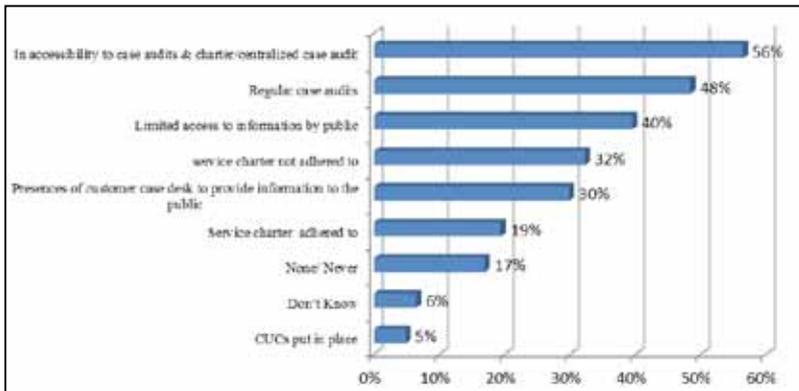


Figure 10: Assessment of the transparency of judicial processes by Officer of the Judicial System



The officers in the Judicial System mentioned that carrying out internal audits (43%), liaison with watchdog agencies (29%), supervision of staff (29%) as shown in Figure 11 ensured that there was transparency in its operations.

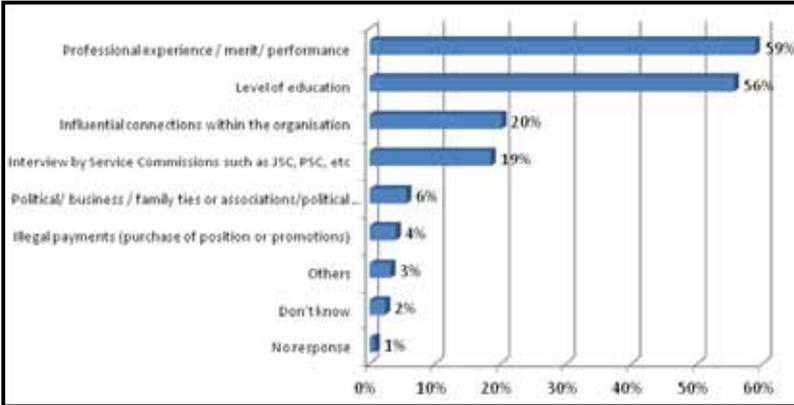


Figure 11: How the Judicial System ensures transparency of processes

3.2.2 Independence of Judicial System

Transformation Framework of the judiciary aspires to ensure independence and incidences of corruption and the persistent backlog of cases are adequately addressed and dealt with effectively. It is felt that the restructuring of the judiciary focuses on giving the public their rights as enshrined in the Constitution.

The study sought to know from the officers in the Judicial System whether the Judicial System was able to deliver judgment without undue influence from interested parties, and whether the system was fair and impartial. Forty percent (40%) of officers in the Judicial System indicated that the system was independent while, 30 percent agreed that the courts were impartial and 18 percent felt that there was influence by interested parties. Two percent of the officers felt that vetting of judges ensured independence.

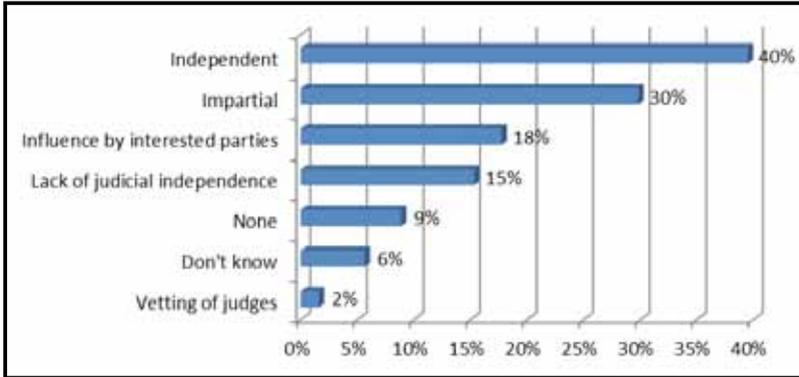


Figure 12: Assessment of independence of court services by officers in the Judicial System

The study sought court users’ assessment of the independence of Judicial System as shown in Table 4. According to the Table, 54 percent of the court users agree that the Judicial System is fair and impartial while 51 percent think that there is political interference in the Justice System. Forty one percent (41%) of court users believe that the Judiciary only works for the rich and powerful.

Table 4: Ratings of independence on the Judicial System by the court users

	Strongly agree	Agree	Disagree	Strongly disagree	Do not know
The Judiciary is transparent and independent	10%	38%	34%	11%	8%
There is political interference in the Justice System	19%	33%	23%	11%	14%
The executive branch of the government interferes with the courts	17%	36%	24%	11%	12%
The Judiciary only works for the rich and powerful	13%	28%	39%	13%	7%
The country's Judicial System is fair and impartial	15%	39%	29%	12%	6%



3.2.3 Evaluation of Quality of Service Provided by Judicial Staff

One of the Transformation objective articulated in the JTF is to emerge and operate as a service entity which serves the people. Therefore, Court users were asked to evaluate the quality of services provided by judicial staff on a scale of 1 (poor) to 5 (excellent), the service provided by judges was evaluated by 63 percent of the respondents as good and excellent, followed by magistrates as (24% good 24% very good 8% excellent). The service provided by court clerks were rated by 51 percent as fair and poor ranking them the highest negatively rated (see Table 5).

Table 5: Evaluation of quality of services provided by judicial staff

Judicial Staff	Poor	Fair	Good	Very good	Excellent	Do not Know
Judges	3%	24%	29%	24%	10%	10%
Magistrates	10%	25%	24%	24%	8%	9%
Prosecutors	20%	29%	25%	16%	1%	8%
Public attorney	14%	20%	28%	12%	3%	23%
Private attorney	10%	21%	30%	18%	4%	17%
Court clerks	23%	28%	25%	10%	2%	11%
Enforcement personnel	17%	22%	28%	16%	3%	14%
Prisons personnel	15%	16%	27%	19%	4%	18%



3.2.4 Effectiveness of the Judicial System

Premised on the principle of robust independence and constructive interdependence, the Judiciary will position itself as a strong, effective and equal independent arm of government, (JTF 2012-2016). To assess this objective the officers within the judicial system and court users were asked to assess the effective of the of the judicial sytem based on their experiences and observations. Forty three percent (43%) of the officers in the Judicial System acknowledged that the Judiciary is effective in enforcing rulings whereas 21percent thought that there was lack of jurisdiction to enforce rulings, 14 percent felt that there was delays in enforcement of rulings.

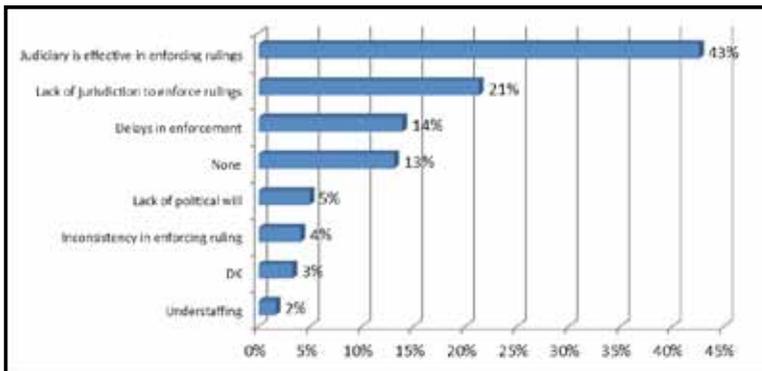


Figure 13: Assessment of effectiveness of court services according to officers in the Judicial System

About 34.8 percent of the firms that participated in a survey done earlier had no confidence in the court system regarding legal system upholding contract and property rights in business disputes (NES 2007). This study on the contrary confirmed that there is perceived confidence in the ability to enforce court decisions. Court users were asked how confident they were that the Judicial System will uphold their rights, only 13 percent were not confident that the Judicial System



will uphold their rights. This finding was corroborated on by further probing when 12 percent of the court users expressed perceived lack of enforcement of court decision as shown in Table 6.

Table 6: Level of confidence in judicial service as perceived by court users

Aspects of Judicial procedures and practices	Very confident	Confident	Moderately confident	Not confident	Do not know
Enhance quick disposal of cases	5%	23%	38%	31%	2%
The record management system will protect the integrity of the cases	7%	24%	34%	26%	10%
Improve the quality and caliber of personnel in the Judiciary	11%	37%	27%	16%	9%
Will uphold your rights	15%	44%	26%	13%	3%
Enhance access of justice	16%	40%	29%	12%	3%

The Judiciary must win back public confidence; express itself with such authority and integrity that the public will always respect its opinions and decisions even- when they disagree with those decision, (JTF 2012-2016).

3.3 Public Engagement with the Judicial Sector

Pursuant to Article 10 of the Constitution of Kenya, public participation is a key National Principle of governance. Therefore, people are sovereign and must determine the activities of constitutional institutions and offices. The Task Force on Judicial Reforms noted that there was lack of an effective complaints and disciplinary mechanisms to deal with misbehavior by Judges. As espoused in the JTF, the Judiciary was to expand the Office of the Ombudsperson to receive and deal with public complaints. Towards this end



an internet –based and SMS Code complaints system is to be rolled out. As at the time of the study, the Judiciary had established a complaints desk, and internet address provided but no functioning SMS code complaints system The Judiciary being one of the institutions is tasked with the ability to engage the public in various dimensions such as; provide public information, facilitate education and communication strategies so as to improve the judicial service delivery.

3.3.1 Availability of Information at the court

On a scale of 1 (strongly agree) to 4 (strongly disagree), court user were asked to rate the availability of information at the courts. The ranking of their responses are presented in Table 7. From the Table, 52 percent of respondents disagreed that the public have reliable access to information pertaining to laws and the court systems in general. Forty two percent (42%) of court users disagreed with the statement that judicial mechanisms legally advise on rights and procedures before, during and after court proceedings. This might explain why fewer litigants report their complaints.

Table 7: Responses of court users on the availability of information at the court

Judicial practice	Strongly agree	Agree	Disagree	Strongly disagree	Do not know
Judicial mechanisms legally advices on rights and procedures before, during and after court proceedings	10%	36%	34%	8%	12%
The public have reliable access to information pertaining to laws, proposed changes in legislation, court procedures, judgment, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments	8%	32%	38%	14%	8%
There are public statistics on volumes of cases received clearance rate, and duration that cases are pending by court and judge	4%	26%	36%	10%	24%



Based on Table 7, the Judicial system and more so the Judiciary needs to enhance access to information pertaining judicial process in case management, information pertaining to law, court procedures and processes.

When asked if they had access to express their views in the Judicial System, 50 percent of the court users indicated that they did not have an opportunity to express their experience within the Justice System. Contrary to this opinion, majority 74 percent of the officers in the Judicial System reported that court users had the opportunity to express their views.

3.4 Human Resource Development

The Task Force on Judicial Reforms was appointed by the Government on 29th May 2009. Amongst others, the Terms of Reference (ToRs) of the Task Force was to consider and advice on a competitive process for the recruitment of judges and other judicial staff. Among some of the challenges identified by the Taskforce and JTF ethnicity, privatization and personalization of leadership space , weak professional cadres at administrative level, weak financial and human resource policies and operations and absence of a performance management system. The study sought to establish the processes of appointment, promotions and trainings put in place for the officers in the Judicial System and the requirements of the system to ensure efficiency in delivery of services.



3.4.1 Appointment of officers in the Judicial System

The Task Force on Judicial Reforms acknowledged that there was less than transparent procedures for the appointment and promotion of judicial officers particularly Judges. According to the study as indicated in Figure 14, 59 percent of officers in the Judicial System felt that professionalism/merit/performance and level of education (56%) influenced judicial appointment. The findings give an indication of trust and integrity in the appointment process.

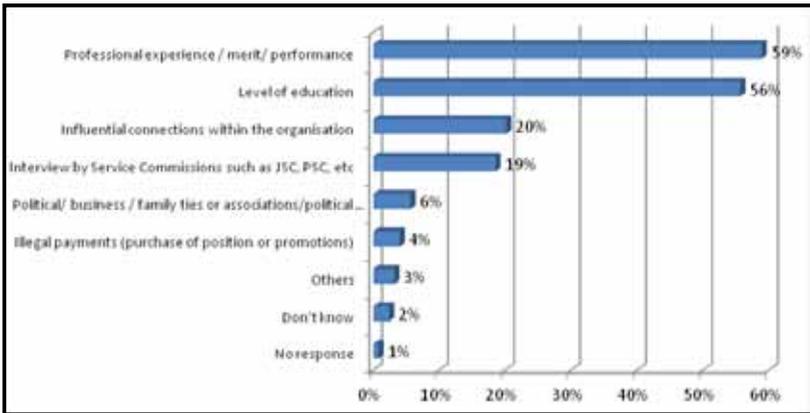


Figure 14: Factors influencing appointments of officers of the Judicial System



3.4.2 Promotions of officers in the Judicial System

The officers in the Judicial System point out that professional experience/merit/performance (66%), level of education (43%) and seniority/length of service (22%) among others as reasons that influence promotions in the Judicial System, as shown in Figure 15.

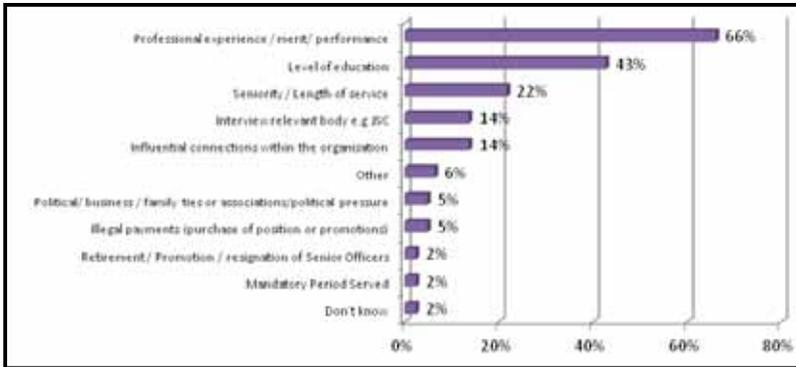


Figure 15: Factors influencing promotions of officers in the Judicial System

Less than transparent procedures for the appointment and promotion of judicial officers particularly Judges had been identified as a problem by the Taskforce on Judicial Reforms. From the results, only a few of the officers interviewed cast aspersions on the process of promotions, this problem seems to have been addressed by the JTF.

Further, the judicial officers were asked how transparency and fairness in human resource could be enhanced. The findings showed that 52 percent of staff thought that the process should be based on merit, while 27 percent and 25 percent recommend frequent recruitment, promotion and equal training respectively.

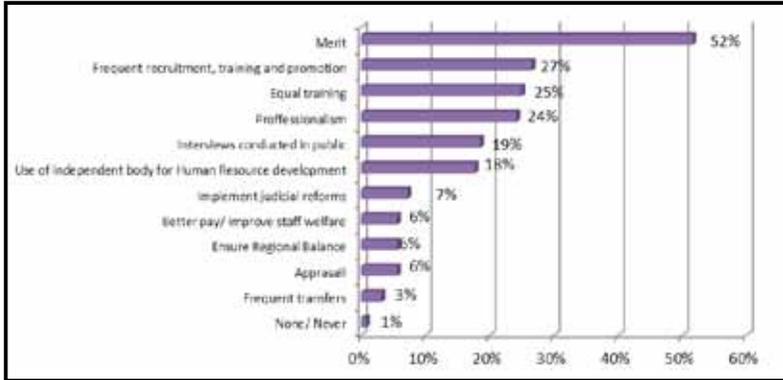


Figure 16: Opinions of Judicial Officers on how to enhance transparency and fairness in human resource process

3.4.3 Human resources issues that affect quality of service delivery

Majority 70 percent of officers in the Judicial System felt that inadequate staffing was a challenge that compromised the delivery of services; while 48 percent thought that inadequate training opportunities for staff was the main challenge. In addition 35 percent pointed out that unfair recruitment and promotion were the challenges.

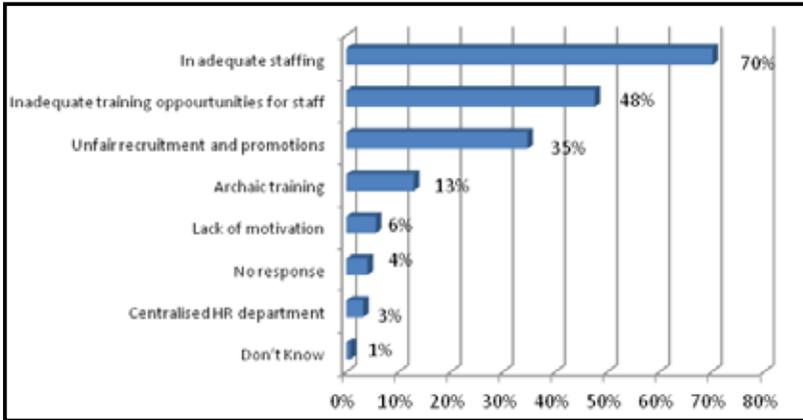


Figure 17: Challenges that compromise human resource in the Judicial Sector

Among others, the Task Force on Judicial Reforms also identified poor terms and conditions of service as a contributing factor that make it difficult for the Judiciary to attract and retain highly qualified professionals amongst its ranks. The officers in the Judicial Systems were asked to indicate important issues that, if addressed, would improve their work. Majority 60 percent of officers indicated better pay while 49 percent felt that better equipment and facilities would improve their work. Another 49 percent thought that improving staff welfare would advance their work performance.

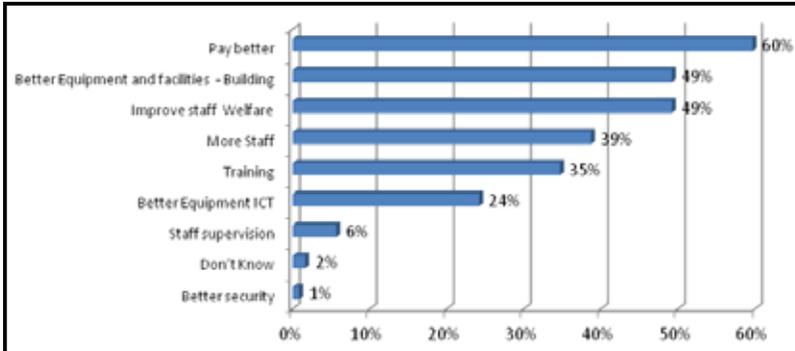


Figure 18: Views of officers in the Judicial System on how to address human resource challenges in the Judiciary

3.5 Infrastructure and Resources

Task Force on Judicial Reforms mentions inadequate financial and human resources as contributing factors to case backlog; inability to absorb donor funds due to complex procurement and other financial procedures as factors on the overall performance of the Judiciary. The Judiciary transformation Framework is concerned with the adequacy of the physical infrastructure and financial resources.

3.5.1 Financial Management

In addition to addressing the goals and objectives of the Government as set out in the Vision 2030, the Judiciary is tasked to oversee and facilitate other programmes in the areas of governance and the Rule of Law through: Governance, Justice, Law Order and Sector (GJLOS) reform program; expeditious dispensation of justice; judicial reforms and anti-corruption. As such through the JTF the Judiciary has set out to enhance and streamline financial management and procurement.



The Key informants felt that there was insufficient budget; poor utilization of finances by support services; lack of adherence to financial procedures especially for urgently required services; inadequate funding to support the current transformation framework. Other issues identified are: poor budgeting system that focuses on recurrent expenditure as opposed to development of physical infrastructure like office space and court rooms which are lacking; a gap in the implementation of financial policies and standards and lack of transparency in expenditure because the station heads and executive officers are the only ones in possession of the money, therefore predisposing the financial management process to corrupt practices.

The officers in the Judicial System corroborated the findings of the key informants as follows; majority 81 percent of officers in the Judicial System indicated that there was insufficient budget allocation, lack of adherence to financial guidelines (21%); Long process of cash payment (6%) and centralized financial resource (3%).

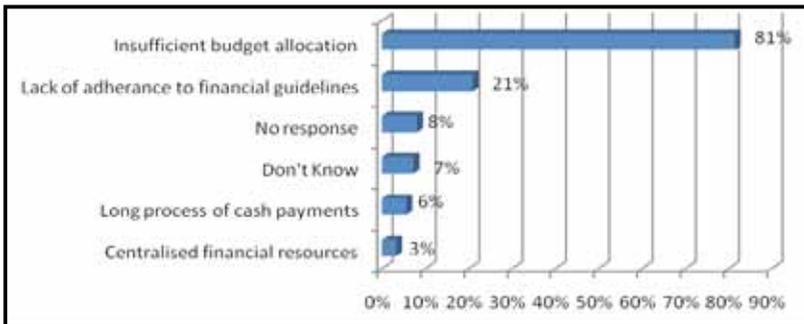


Figure 19: Opinion of Judicial officers on challenges that compromise financial resources in the Judicial Sector



3.5.2 Physical infrastructure

JTF (2012-2016) acknowledges that infrastructural investment in facilities has been inadequate. It further states that the Court stations and court rooms are not only unfriendly, they are also few and far between hence undermining the objective to access justice.

Key informants respondents stated that few courtrooms; inadequate ICT; inadequate furniture; lack of research assistants to help carry out legal research for the already swarmed judicial officers and lack of special needs facilities like ramps and sign language translators as challenges that compromise the quality of service in their working environment. The same challenges were echoed by the officers in the Judicial System where majority of the staff (66%) said that ICT was not available while, 43 percent pointed out that courtrooms were inadequate/ dilapidated and 41 percent mentioned inadequate equipment.

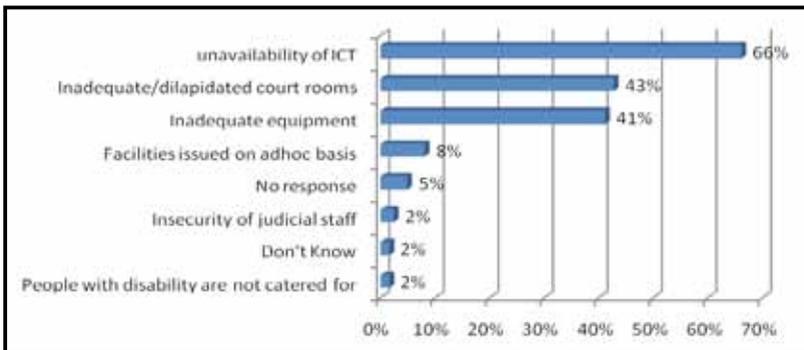


Figure 20: challenges that compromise general working environment in Judicial Sector as expressed by Judicial officers



3.6 Corruption & Ethics in the Judicial Sector

The Task Force on Judicial Reforms mentioned unethical conduct on the part of some judicial officers and staff as being an impediment to fair and impartial dispensation of justice. This section looks into issues pertaining to corruption and ethics in the Judicial Sector. It seeks to establish the causes, effects and extent of corruption and unethical practices in the administration of justice.

3.6.1 Forms of corruption while seeking service

The officers in the Judicial System acknowledged the practice of payment of bribes to hide files (35%), abuse of office (24%), bribing the judges, prosecutors, and clerks for favorable judgment (19%) as forms of corruption encountered in the sector.

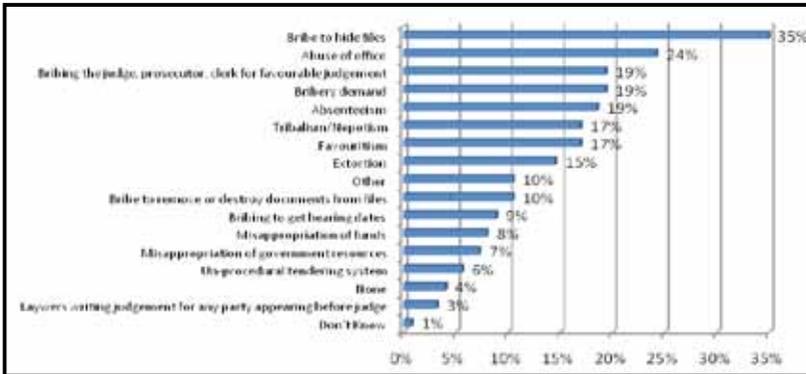


Figure 21: Forms of corruption encountered in Judicial Sector by Officers of the Judicial System

On the other hand forty one percent (41%) of the court users cited absenteeism as a form of corruption encountered followed by bribes in order to hide files (36%), favoritism (34%) as indicated in Figure 22

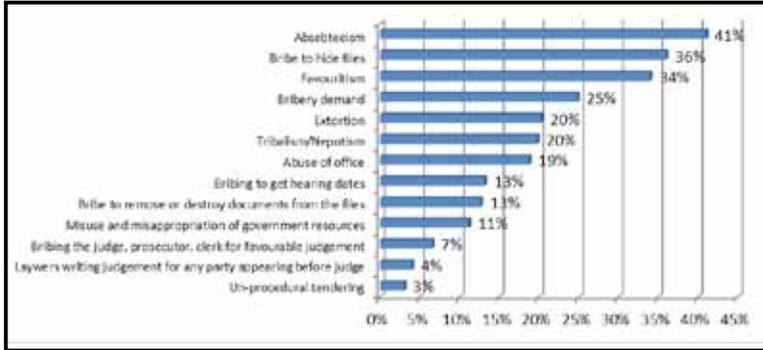


Figure 22: Forms of corruption encountered in the court by court users and officers

Nineteen percent (19%) of officers in the Judicial System and 36% of court users identified absenteeism as a form of corruption encountered; whereas, 31 percent of court users and 19 percent of officers in the Judicial System reported payment of bribes to hide files.

3.6.2 Unethical Practices in the Judicial Sector

There were several misconducts cited as common in the Judicial Sector as shown in Figure 23. Twenty two percent (22%) of staff respondents in the Judicial Sector indicated bribery as one of the misconduct while 19 percent stated laxity. Seventeen percent (17%) of the staff respondents indicated favouritism.

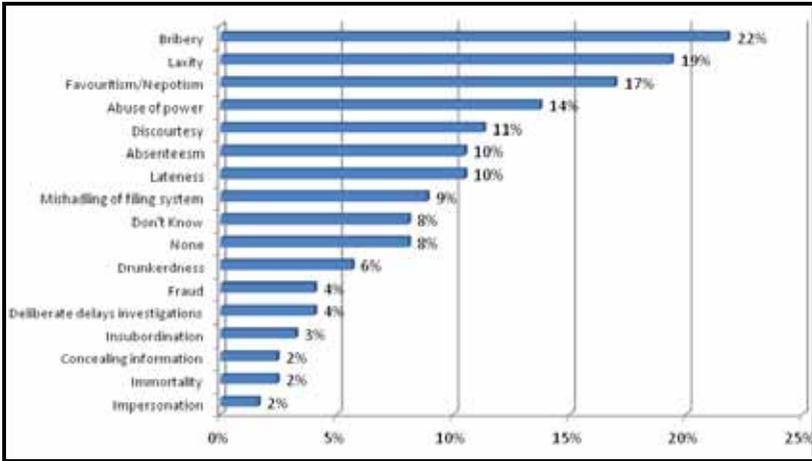


Figure 23: Most Common/prevalent types of Misconduct in the Judicial Sector as reported by officers of the Judicial System

Majority 53 percent of the court users reported laxity as a form of unethical practice experienced when seeking judicial service. Thirty nine percent (39%) stated lack of courtesy while 11 percent pointed out intemperance as shown in Figure 24. Twenty two percent (22%) of officers in the Judicial System cited bribery, laxity (19%) and favoritism/nepotism (17%) as the prevalent forms of misconduct.

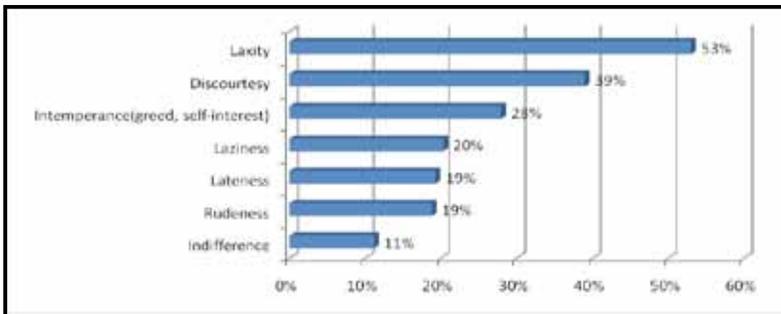


Figure 24: Forms of unethical practice in the Judicial Sector according to court users



3.6.3 Availability and knowledge of Governance instruments

Instruments of ethics in an institution are proof of institutional continuity in embracing their vision and promoting good governance.

The study investigated the availability of a number of governance instruments of ethics and their adequacy. The number of governance instruments that were identified included: code of ethics; disciplinary measures; communication channels among others as shown in Table 8. Ninety one percent (91%) of the staff acknowledge the availability of code of conduct and ethics, while 83 percent of the staff felt that the code of conduct and ethics were adequate. The study found out that 88 percent of staff were aware of various communication channels while, 70 percent of them (staff) agreed that the channels of communication were adequate. Although 69 percent of staff mentioned that there were court inspections, 28 percent felt that the inspections were inadequate.



Table 8: Availability of instruments of ethics and their adequacy

Availability of instruments of ethics and their adequacy	Yes %	No %	Adequate %	Inadequate %	Don't know %
Code of conduct and ethics	91	9	83	15	0
Enforcement of disciplinary measures	83	17	77	23	0
Communication channels	88	12	70	26	0
Knowledge of Regulations	77	23	72	23	5
Court Inspections	69	31	54	28	18
Impartiality of inspection	64	36	59	20	20
Impartiality of vetting	69	31	70	16	14
Quality assurance or quality improvement system	73	27	61	24	14
Mechanisms in place to record and respond to public complaints	79	21	68	21	10
Are data available to analyze absenteeism among various categories of personnel?	74	26	67	23	10
Are there accountability measures for example oversight boards, citizen committees, output measures, supervision systems?	76	24	68	20	12

3.6.4 Unofficial payment made to officers in the Judicial System

Eighty four percent (84%) of court users indicated that there were no unofficial payments while seeking services at the courts. However, 16 percent acknowledged making unofficial payment to the officers in the Judicial System. According to the study, Judges and magistrates did not ask for unofficial payment

However, court clerks are noted to frequently ask for bribes. Respondents (Court users) mentioned court clerks as the most corrupt with an average bribe demand, payable of Kes. 111,300.00, followed by prosecutors (Kes. 71,500) and public attorney (Kes. 50,000) respectively. Further,



an analysis of the National Corruption Perception Survey (2010) indicates that 40 percent of judicial officers, 39 percent of court clerks and 47 percent judges/magistrates were also thought to be most involved in corruption. These findings correlate with the earlier findings on the quality of services (refer to Table 5) provided by judicial staff where court clerks were evaluated as the worst performers by (51%) of the respondents followed by prosecutors (49%); and enforcement personnel (39%).

Forty six percent (46%) of the court users who made unofficial payment stated that it was demanded. Others, 34 percent identified too much delay while 16% cited influence to make ruling (see Figure 25)

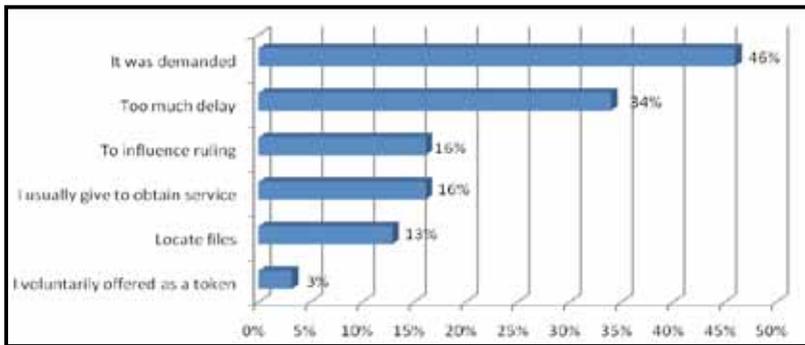


Figure 25: Reasons for making unofficial payment

3.6.5 The extent of corruption

Compared to a year ago, 58% of court users stated that the level of corruption had reduced while 16% thought that it had remained the same. Another 16% did not know if corruption had increased or reduced. From the study findings, it seems evident that the ongoing judicial reforms are bearing fruits.

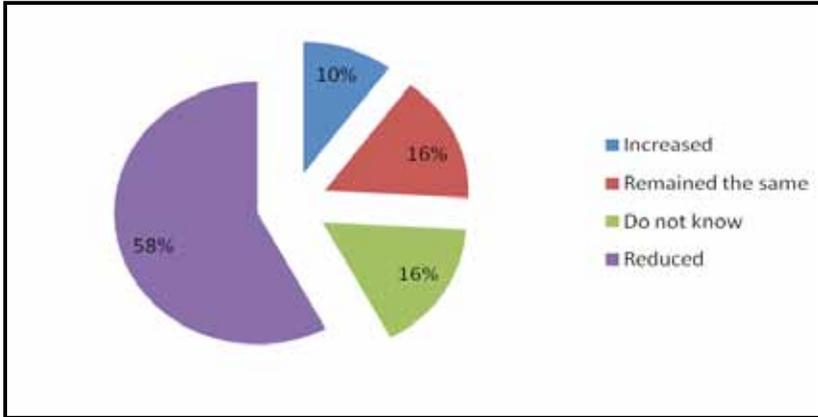


Figure 26: Level of corruption in Kenya

3.6.6 Assessment of processes, procedures and practices in the Judicial System

A chain analysis of the judicial process was carried out starting with the first step one ought to take in seeking justice to the last stage. Towards this end, the study sought to know which processes and procedures are prone to corruption and unethical practices, the nature of corrupt or unethical practice involved in the procedures, the causes of corrupt acts and the consequences of the malpractice as shown in Table 9.



Table 9: Assessment of processes, procedures and practices in the Judicial System

In your opinion, which process and procedures are prone to corruption and unethical practices?	Nature of corrupt or unethical practice	Causes of corrupt and unethical practice	Consequences of the malpractices
1. Filing of case at Registry	<ul style="list-style-type: none"> • Bribery • Delays in service delivery in registry 	<ul style="list-style-type: none"> • Direct interaction between service seekers and employees • Lack of technology • Bad governance • Loopholes in the system • Bureaucracy 	<ul style="list-style-type: none"> • Case backlog • Delay in justice delivery
2. Assessment of costs of the case	<ul style="list-style-type: none"> • Under assessment • Over assessment 	<ul style="list-style-type: none"> • Bureaucracy 	<ul style="list-style-type: none"> • Loss of revenue because litigants pay less than stipulated cost • Litigants end up paying more than the stipulated costs • Loss of revenue for the courts • Justice denied



In your opinion, which process and procedures are prone to corruption and unethical practices?	Nature of corrupt or unethical practice	Causes of corrupt and unethical practice	Consequences of the malpractices
3. Filing of case	<ul style="list-style-type: none"> • Disappearance of files • Tempering with information/ documents in the file • Bribery 	<ul style="list-style-type: none"> • Greed • Delay and denial of justice • Manual nature of record keeping • Understaffing • over stay of staff in one station • Public ignorance and lack of knowledge on judicial process • Bureaucracy 	<ul style="list-style-type: none"> • Case backlog • Loss of revenue • Justice denied • Overcharging of ignorant court users
4. Fixing of hearing date	<ul style="list-style-type: none"> • Favourism to get hearing dates • Date fixed to favour one party • Disappearance of files • Extortion • Bribery • Influencing the case to be assigned to particular magistrate 	<ul style="list-style-type: none"> • Delay and denial of justice • Manual nature of record keeping • Bureaucracy • Understaffing • over stay of staff in one station • Public ignorance and lack of knowledge on judicial process • Need to secure a convenient hearing date • Need for favorable ruling • Greed and unfairness 	<ul style="list-style-type: none"> • Case backlog • Poorly compiled case files • Some parties inconvenienced and denied justice • Biases/favourable ruling • Denial of justice



In your opinion, which process and procedures are prone to corruption and unethical practices?	Nature of corrupt or unethical practice	Causes of corrupt and unethical practice	Consequences of the malpractices
5. Availability and clarity of information on cause list and formalities of the court	<ul style="list-style-type: none"> • Extortion 	<ul style="list-style-type: none"> • Manual nature of record keeping • Understaffing over stay of staff in one station • Public ignorance and lack of knowledge on judicial process • Bureaucracy 	<ul style="list-style-type: none"> • Lack of information on the court proceedings • Justice denied
6. Simplicity and clarity of court process and language	<ul style="list-style-type: none"> • Extortion 	<ul style="list-style-type: none"> • Public ignorance and lack of knowledge on judicial Bureaucracy process 	<ul style="list-style-type: none"> • Lack of information on the court proceedings • Justice denied
7. Investigations	<ul style="list-style-type: none"> • Extortion • Tampering with evidence 	<ul style="list-style-type: none"> • Public ignorance and lack of knowledge on judicial process • Manipulate investigations • Bureaucracy 	<ul style="list-style-type: none"> • Crucial witnesses locked out • Cases compromised • Cases terminated due to lack of evidence • Justice denied



In your opinion, which process and procedures are prone to corruption and unethical practices?	Nature of corrupt or unethical practice	Causes of corrupt and unethical practice	Consequences of the malpractices
1. Others a) Proceedings	<ul style="list-style-type: none"> • Extortion • Recording officer misreporting proceedings or omitting crucial information • Biased rulings and judgment 	<ul style="list-style-type: none"> • Conflict of interest • External influence • Lack of technology to ensure factual recording • Long time frame it takes to access judicial services • Public ignorance and lack of knowledge on judicial process 	<ul style="list-style-type: none"> • Justice denied
b) Procurement	<ul style="list-style-type: none"> • Extortion • Misappropriation of funds • Misuse of equipment and facilities 	<ul style="list-style-type: none"> • Poor supervision • Public ignorance and lack of knowledge on judicial process • Bureaucracy 	<ul style="list-style-type: none"> • Inflation of prices • Loss of revenue for both the supplier and the government • Compromised quality of food supply

3.6.7 Fight against corruption in the Judicial Sector

Forty six percent (46%) of court users believe that the fight against corruption was being handled well. While 24 percent thought that the fight against corruption was not handled well as shown in Figure 27.

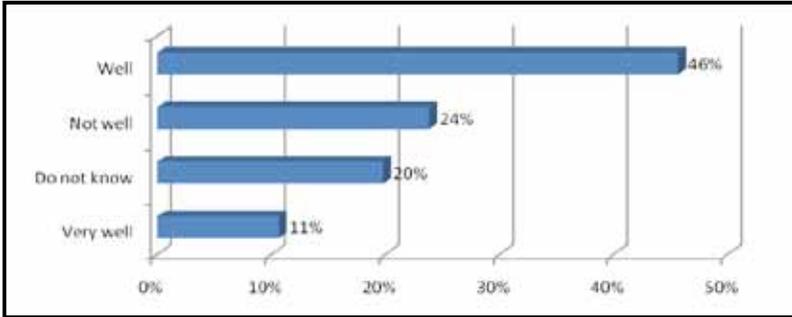


Figure 27: How well the fight against corruption is being handled in the Judicial Sector

The 24 percent of the court users who indicated that the fight against corruption is not well handled in Figure 28, majority 76 percent of them indicated rampant corruption whereas lack of disciplinary measures 11 % and deliberate delays in cases judgment 6 %, as shown in Figure 28

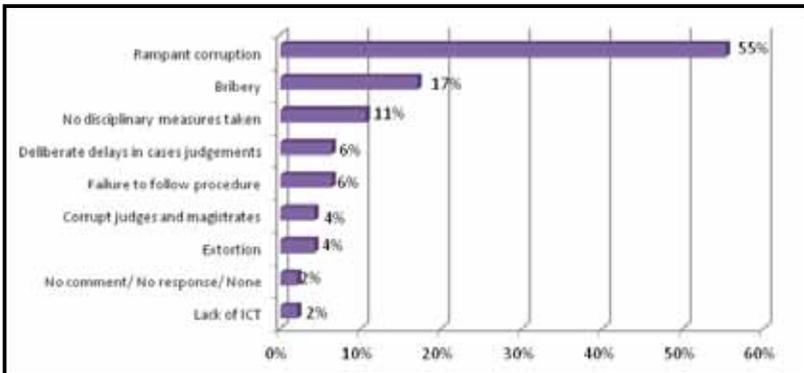


Figure 28: Reasons for the rating on how well the Judicial Sector is handling the fight against corruption by court users



The Key informants were asked to indicate the reforms which have had the most and least profound effect in the Judiciary.

Table 10: Key informant responses of reform initiatives in the Judicial Sector

Profound impact in reducing corruption and improving service delivery.	Least impact in reducing corruption and improving service delivery.
<ol style="list-style-type: none"> 1. Having open days to interact with the public to give insight on the operations of the Judiciary 2. Creation of Court User's Committees (CUCs) that provide an avenue for institutions involved in the administration of justice to dialogue and come up with solutions to emerging challenges 3. Trainings to improve capacity of officers in the Judicial System 4. Promulgation of the new constitution 5. Peer review committees for reviewing each other professionally 6. Openness in recruitment to ensure the best get appointed to office 7. Suspension of corrupt personnel to deter others from engaging in corruption 8. Embracing ICT as it has made the Judiciary more accessible and eliminates loopholes for corruption 9. Establishment of the office of the Ombudsperson which opens up the Judiciary to public scrutiny 10. Establishing a new system for the payment of court fees i.e. the direct banking system where clients deposit money in the bank and bring the deposit slips to the accounts office for receipting 11. Decentralization of judicial services especially the mobile courts 12. Public vetting of top judicial officers like the A.G, Registrar and Judges has restored public confidence in the Judiciary 	<ol style="list-style-type: none"> 1. The coordination and follow up on strategies within the Judiciary 2. Improvement of remuneration with the aim to combat corruption has failed to curb the vice since corruption is not connected to remuneration but is a personal choice 3. Mass transfer of magistrates who are corrupt from one station to another in an attempt to stop them from being corrupt. This has failed because such magistrates just take their habits to the new station 4. Frequent transfers of staff has caused case backlog because a case has to be restarted a fresh if the judicial officer handling it is transferred. Same case with the transfer of an investigator 5. Police reforms have not had any impact on the Judiciary yet e.g. investigation is still a problem 6. Open office system is reducing seriousness in regards to court processes and procedures since it brings the aspect of familiarity 7. Vetting of judicial officers may sometimes be personalized to settle scores

The officers in the Judicial System pointed out that vetting of judicial officer (29%), better remuneration (26%), and adoption of ICT (19%) were reforms that had great impact in reducing corruption.



3.6.8 Strategies that Enhance Ethics and Governance in Service Delivery

The court users were asked to give suggestions on how to improve the existing anti-corruption initiative and the responses were as varied as the respondents (see Figure 29). Twenty one percent (21%) of the respondents suggested that corrupt judicial officers should be sacked while 18 percent indicated that there should be an increase in public sensitization and another 15 percent thought that it would be important to implement the already existing anti-corruption initiatives.

On the other hand, 29 percent of litigants felt that sacking corrupt judicial officers will enhance service delivery compared to 18 percent of lawyers who had the same view. Twenty 21 percent (21%) of lawyers believe that public sensitization will improve service delivery compared to 18 percent of litigants, while 13 percent of lawyers indicated that automation of operation at the registry was crucial in making service delivery better.

It was obvious that both the judicial staff and court users would like to see corrupt judicial officers sacked and an increase in public sensitization done so as to improve service delivery

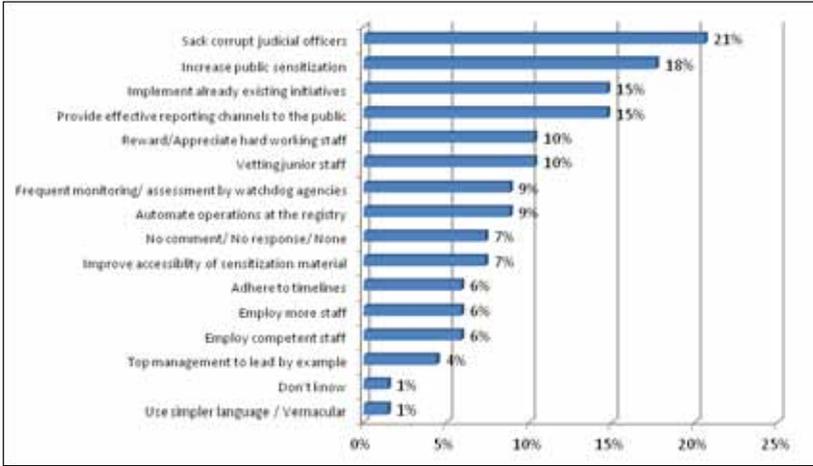


Figure 29: Suggestions of improving the existing anti-corruption initiatives

The officers in the Judicial System gave suggestions on what the government should undertake in fighting corruption. Thirty six percent (36%) suggested increase public awareness, better pay/ Remuneration (29%) and embracing ICT (29%) as shown in Figure 30.

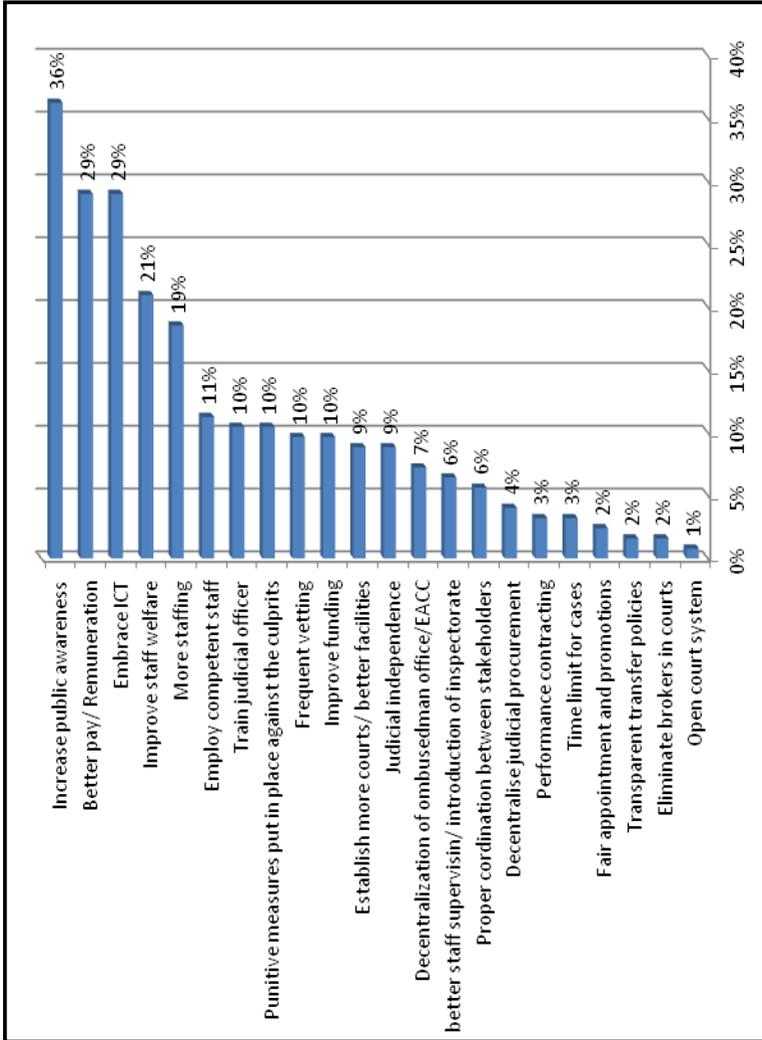


Figure 30: Suggestions of fighting corruption and improving service delivery in the Judiciary



Chapter 4

Conclusion and Recommendations

4.0 Conclusion

The Judicial System is undergoing transition and the reforms therein are anchored on several legislations and policy instruments that have been mentioned in the Report. The Judiciary being the key player in the Judicial System is tasked with a greater responsibility and even though that is the case, the Judiciary requires support from the stakeholders so as to deliver its mandate as stipulated in the Constitution of Kenya 2010 among other reform initiatives. With the ongoing reforms, it is noted that there is a perceived confidence of court users that the Justice System will uphold their right (69%) and enhance access to justice (56%).

a) Service Delivery

The study established that main challenges faced while seeking justice include: delay in delivery of judgment; disappearance of evidence and documents pertaining to a case and variance in sentencing among others. Also mentioned as major problems were: ignorance of litigants; shortage of staff; corruption; case backlogs and bureaucracy as major problems in the Judicial System .

It was noted that the internal controls are weak or lacking. The officers indicated that there is limited internal auditing and monitoring of the processes; coupled with inadequate staffing and lack of adherence to financial guidelines thereby exposing the processes to corruption and unethical conduct.



Various impediments to justice still persist hence jeopardizing accessibility to judicial services. Officers in the Judicial System stated that courts were located far (62%), court services were costly (35%) and that people living with disabilities (PLWD) were not catered for (21%) thus hindering accessibility to court services. Conversely, court users mentioned constraints in accessing justice as court processes are too long (60%); postponement of hearings (54%) and distance to the court (38 %). The interviewed officers in the Judicial System, attributed un-timely service delivery to understaffing, case backlog and lack of ICT. Numerous hurdles involved in accessing services, in most cases lend room to corruption as citizens are compelled to compromise the process for service delivery.

b) Assessment of Judicial processes and public participation

The general perception by both the staff within the sector and members of the public seeking services is that the level of transparency in the judicial processes is still low. It is still difficult to obtain information from the court recordings. Staff indicated lack of accessibility to case audit & service charter and limited access to information by the public. The public does not have reliable access to information pertaining to laws, proposed changes in legislation, court procedures and judgments.

c) Human Resource Development

At the time of the study, it was reported that the Judicial Sector faced a shortage of personnel, inadequate training opportunities and unfair practices in the recruitment and promotions. The anti-corruption courts experience a number of challenges that affect the fight against corruption and the quality of services offered in those courts. These include: few magistrates thus resulting in overwhelming work; few anti-corruption courts; and lack of capacity in the Judiciary to deal



with corruption cases. It was noted that not all magistrates have the capacity to handle corruption cases.

d) Infrastructure and Resources

Challenges identified in finances and infrastructure include insufficient budget; poor utilization of finances by support services; adherence to long financial procedures especially for urgently required services e.g. stationery. Also noted were: poor budgeting system; focus on recurrent expenditure as opposed to development of physical infrastructure like office space, and inadequate court room. Gaps in the implementation of financial policies and standards, and lack of transparency in expenditure were attributed to the fact that the station head and executive officers are the only officers in charge thus resulting in various malpractices and corruption.

The study noted that most court user respondents acknowledged bribery to hide files as a form of corruption they experience while seeking services. Although it was ranked second by officers in the Judicial System, there is a general feeling that bribes to hide files is predominant in the courts.

The most prevalent unethical practices experienced by court users were: laxity on the part of staff; discourtesy; intemperance; bribery; favoritism/nepotism; abuse of power, and discourtesy as forms of unethical practices experienced in the judicial service. The officers in the Judicial Systems were more forthcoming in this response than the court users.



4.1 Recommendations

a) A sector-wide approach towards eradicating corruption and unethical conduct

A sector-wide approach towards eradicating corruption and unethical conduct should be adapted in planning and implementation of anti-corruption measures. Further, there should be enhanced inter-agency collaboration and capacity building among other interventions:

- Organizing more open days to interact with the public and explain the operations of the Judiciary i.e informing the court users concerning filing fees and other court-related costs in order to preclude court staff from requesting fees that are non-existing.
- Adequate trainings to equip officers in the Judicial System with requisite capacity, especially those in the Anti-Corruption court so as to facilitate them in dealing with corruption cases.
- Embrace ICT in the administration of justice and service delivery to improve efficiency and effectiveness and reduce corruption and unethical practices.
- Ensure that staff (Judges and magistrates) being transferred handover properly to avoid restarting of cases and avoid delay in conclusions and case backlog.
- Decentralize and improve court infrastructure with all the required facilities such as stenographer, electronic system of document i.e computerizing court proceedings.
- Improve terms and conditions of work to all staff across the cadres so as to motivate staff, and improve performance.
- Avail and adopt the use of service charter in courts for the timely delivery of judicial decisions to ensure that standards and regulations are adhered to.



- Monitor caseload assigned to individual judicial officers to avoid over stretching of staff, to low work interest and poor delivery of services.
- Implement other methods of dispute resolution in the community to reduce the case backlogs.
- Ensure the full implementation of the JTF so as to put in place strong internal control in Human Resource Management, finance and
- budget and procurement and other areas of reforms and transformation.

b) Corruption prone areas, unethical conduct, causes and effects

- Computerize court files and streamlining the records management system to eliminate the court users' perception that files are lost and hence would require an official payment to retrieve the files thus enhancing corruption.
- Address corruption and unethical practices in the sector through enforcement of laws such as Leadership and Integrity Act (LIA); Public Officers Ethics Act (POEA) and Anti- Corruption and Economic Crimes Act (ACECA) to deter officers from engaging in corruption.
- The Judicial Sector should strive to incorporate anti-corruption and ethical topics during their public education and sensitization for both their staff and the public so as to help curb corruption.
- Emphasize corruption prevention programmes such as anti-corruption policy, formation of corruption prevention committees, training integrity assurance officers and conducting corruption risk assessment within their institutions;
- Monitor and evaluate court staff performance with view to identify performer and non-performance.
- Establishing a disciplinary board to discipline staff breaching the code of conduct to help officers deter



corruption.

- Train all Judicial Sector staff on ethics and integrity so as to enable them perform their duties and a void corruption.
- Establish information and inquiries desk in all courts where litigants can make inquiries on court procedures and processes.
- Establish a communications office that would help in dissemination of information eliminating the opportunities for corruption.
- Ensure constant transfers of officers to avoid and eliminate opportunity for corruption caused by familiarity.



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Appendices

Appendix 1: Characteristics of the Sample Group and Data Collecting Instrument

Data Collecting Instrument	Type of Respondent
Exit interviews	1. Court users/lawyers representing clients
Officers in the Judicial System	1. All the Magistrates
	2. Registrars
	3. Probation officers
	4. Prison warders
	5. Senior staff from human resource
	6. Senior staff from finance OR
	7. Bailiffs/process servers (employed by government) OR
Key Informant	8. Senior staff from procurement
	1. Chief magistrate OR
	2. Registrar of courts OR
	3. Judge



Appendix 2: Distribution of Survey Sample for the Court Users

COUNTIES		TYPE OF RESPONDENT	
		Lawyer representing clients	Court user
Nairobi (Milimani law court & Kibera law court)	Nairobi	6	17
	Nyeri	2	8
	Mombasa	5	8
	Kilifi	5	6
	Meru	0	10
	Embu	0	10
	Machakos	2	8
	Garissa	4	7
	Kisumu	8	8
	Kisii	4	6
	Transzoia	5	5
	Uasin Gishu	2	8
	Nakuru	3	8
	Kericho	4	7
	Kakamega	5	6
	Bungoma	5	5
	Busia	2	8
Total	18	62	135



Appendix 3: Distribution of Survey Sample for the Officers in the Judicial System Interviews

County	Officers in the Judicial System
Nairobi	14
Nyeri	7
Mombasa	7
Kilifi	7
Meru	7
Embu	6
Machakos	7
Garissa	7
Kisumu	7
Kisii	7
Transzoia	6
Uasin Gishu	7
Nakuru	7
Kericho	7
Kakamega	7
Bungoma	7
Busia	7
Total 18	124

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