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Report of the  
Committee on the Administration  
of Justice

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The Hon. Mr. Justice Z. R. Chesoni,  
The Chief Justice of the Republic of Kenya,  
P. O. Box 30041,  
NAIROBI.

**RE: LETTER OF TRANSMITTAL**

Your Lordship appointed us members of the Committee on the Administration of Justice on the 7th January, 1998, with the following mandate:

1. In regard to maintenance of Judicial Rectitude of Judicial Officers in the discharge of their judicial functions;
2. On the existing system on possible improvements or better alternatives to performance appraisal, promotional incentives, in-house training and any other matter related thereto;
3. With regard to the structure, organisation, personnel and any other matters related to the operation and problems in the court registries;
4. On the improvements of physical working conditions of the judicial personnel, physical facilities, equipment and any other matter related thereto;
5. On possible improvement on the allocation, disposal and follow-up procedure of cases in all courts;

6. On how the flow of human traffic into and out of court premises (excluding judicial staff) may be guided and controlled with a view to eliminating busybodies therefrom and thereby improve security for the judicial staff and property.
7. On how to make the administration of justice, time and cost effectual; and
8. On any other matter or matters pertaining to improvement of the administration of justice in Kenya and in making the same consumer-friendly.

In carrying out this onerous task, the Committee toured and inspected several courts throughout the Republic to assess their condition, visited different jurisdictions to compare their systems with ours, heard and received representations by various stakeholders.

The Committee has benefited immensely in the discharge of its task from your Lordship's continued support and advice.

We take great pleasure in submitting this Report to your Lordship. We also take this opportunity to thank your Lordship for the honour and trust you bestowed upon us by our appointment to serve on this Committee.

We are, your Lordship's most obedient servants,

The Hon. Mr. Justice Richard Otieno Kwach

**CHAIRMAN**

The Hon. Mr. Justice Samuel Elkana Onderi Bosire

**MEMBER**

The Hon. Mr. Justice John Wycliffe Mwera

**MEMBER**

His Hon. Mr. Aggrey Otsyula Muchelule

**MEMBER**

Her Hon. Mrs. Jessie Lesiit

His Hon. Mr. William Ouko

**JOINT SECRETARIES**

## ACKNOWLEDGEMENTS

We would like to take this opportunity to thank most sincerely everyone who assisted us in one way or the other in collecting material and in considering various aspects of our Terms of Reference. It is not possible to thank each and every individual who, in one way or the other, assisted this Committee in its work. However, we are particularly grateful to the Honourable Mr. Justice Francis Nyalali, the Chief Justice of the United Republic of Tanzania, the Honourable Judges of the Court of Appeal and the High Court, who made verbal representations or sent written memoranda, the magistrates, the Attorney-General, Honourable Amos Wako, M.P., Advocates, Deputy Commissioners of Police and Prisons, U.N.D.P., Kenya's diplomatic missions in Botswana, Namibia and the United Republic of Tanzania, the Honourable Judges of the High Court of Namibia, the Honourable the Attorney-General of Botswana and the magistrates in Botswana and the United Republic of Tanzania.

We record our special gratitude for the considerable assistance provided by the Registrar of the High Court. We are grateful to the secretaries, drivers and messengers who toiled backstage without whose support and contribution this report would not have seen the light of day. We also thank all those who submitted their memoranda and those who appeared in person before us to make representations.

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## CHAPTER 1

### INTRODUCTION

The Kenyan Judiciary has experienced, in the recent past, lengthy case delays and backlog, limited access by the population, laxity in security, lack of adequate accommodation, allegations of corrupt practices, cumbersome laws and procedures, questionable recruitment and promotional procedures and general lack of training, weak or non-existence of sanctions for unethical behaviour and inequitable budget. As a result of the foregoing the Judiciary is able, only to a limited extent, to meet the demands and expectations of the private sector and the public at large. It was as a result of this that the Honourable the Chief Justice found it necessary to appoint this Committee.

The bulk of the woes facing the Judiciary today revolve around judicial budgetary allocation, which cannot cover the basic needs of the Judiciary. Judges and other court personnel work under conditions that are not conducive to efficient administration of justice. Inadequate court facilities, shortage of basic equipment and lack of technology compound the situation. Due to lack of storage space for both finalised and active case files, files are often found heaped all over the registries in no proper order.

In the course of collecting views from stakeholders the Committee visited a number of courts, held interviews with and received memoranda from various stakeholders and visited a number of countries.

## Terms of Reference

The Committee on the Administration of Justice was appointed by the Honourable Mr. Justice Z. R. Chesoni, the Chief Justice, on the 7th January 1998 with the following terms of reference:

1. In regard to maintenance of Judicial Rectitude of Judicial Officers in the discharge of their judicial functions;
2. On the existing system on possible improvements or better alternatives to performance appraisal, promotional incentives, in-house training and any other matter related thereto;
3. With regard to the structure, organisation, personnel and any other matters related to the operation and problems in the court registries;
4. On the improvement of physical working conditions of the judicial personnel, physical facilities, equipment and any other matter related thereto;
5. On possible improvement on the allocation, disposal and follow-up procedure of cases in all courts;
6. On how the flow of human traffic into and out of court premises (excluding judicial staff) may be guided and controlled with a view to eliminating busy-bodies therefrom and thereby improve security for the judicial staff and property.
7. On how to make the administration of justice, time and cost effectual; and
8. On any other matter or matters pertaining to improvement of the administration of justice in Kenya and in making the same consumer friendly.

In appointing the Committee the Honourable the Chief Justice stressed the need for the Judiciary to inspire confidence in the Kenyan public, who have perceived it with fear and suspicion; that the necessary steps need to be taken to improve the image and performance of the Judiciary in the administration of justice.

### **Interpretation of the Terms of Reference**

Before embarking on its task the Committee set up a sub-Committee to interpret the terms of reference. In this regard they saw its mandate to include inquiry into allegations of corrupt practices in courts, the probable causes for this practice, and the general disposition of members of the Judiciary.

Secondly, the Committee would inquire into the effectiveness or otherwise of the current appraisal system; the adequacy of the existing promotional incentives and a review of the training programmes. Thirdly, the Committee was expected to look into the current registry set-up and propose ways of streamlining their operations. Under the fourth term of reference, the Committee was required to address the issue of the state of court buildings, library facilities and related office equipment.

Under the fifth term of reference the Committee would address the issue of backlog of cases. The Committee was also required to assess the position of caseload, disposal rate and possible causes of delays. The Committee would also look into ways of improving security of the personnel, equipment and buildings.

Finally, the Committee was required to propose ways of demystifying the courts by making them consumer-friendly, affordable and economical. In a nutshell, the Committee saw its task as narrowed down to addressing the issue of judicial reforms generally.

## METHOD OF INQUIRY

The Committee obtained information from a broad spectrum of people who included the employees of the Judiciary, ranging from the Honourable the Chief Justice to the subordinate staff. Memoranda were invited by way of newspaper advertisements and several hundreds were received. The Committee also heard oral representations from various stakeholders.

In addition the Committee visited the Provinces to receive verbal and written presentations as shown below.

|                                  |   |                                |
|----------------------------------|---|--------------------------------|
| <b>26th - 27th January 1998</b>  | - | <b>Coast</b>                   |
| <b>11th - 13th February 1998</b> | - | <b>Central and Meru</b>        |
| <b>26th - 27th February 1998</b> | - | <b>Rift Valley</b>             |
| <b>9th - 12th March 1998</b>     | - | <b>Nairobi</b>                 |
| <b>25th March 1998</b>           | - | <b>Western</b>                 |
| <b>30th March 1998</b>           | - | <b>Nyanza</b>                  |
| <b>28th April 1998</b>           | - | <b>Machakos</b>                |
| <b>15th June 1998</b>            | - | <b>North Eastern (Garissa)</b> |

The Committee visited the United Kingdom, Botswana, Namibia, and the United Republic of Tanzania, to see how these countries are coping with challenges related to the administration of justice and to what extent modern technology is being used to address some of these problems.

## CHAPTER 2

### THE JUDICIARY IN THE 21ST CENTURY

The Kenyan Judiciary has grown from a dual colonial system with two parallel courts for the Africans on the one hand, and for the Europeans on the other, to a unified Judiciary. But even before the advent of colonialism Kenya had, as between the various ethnic groups, dispute settlement organs headed by village elders, headmen and chiefs.

It was not until 1967 that the dual system was unified under the Judiciary. This brought in the Judicature Act, the Magistrates' Courts Act and the Kadhis' Courts Act. It is worthwhile to note that, notwithstanding these developments, there were still a few areas where administrative officers performed judicial (read magisterial) functions. This can only be attributed to two factors, namely, the scarcity of legally qualified personnel and the remoteness of some parts of the country. At independence there were only a handful of judges and magistrates. As a matter of fact there were only seven (7) judges of the High Court and about forty (40) Resident Magistrates. None of these was an African. There were only six practising African advocates at independence. However, this number started increasing steadily following the establishment of the Faculty of Law at the University College, Dar-es-salaam, Tanzania, followed by the setting up by Kenya of the Kenya School of Law and the Faculty of Law at the University of Nairobi in 1970.

It is clear from the foregoing that the Judiciary has undergone tremendous transformation over the years. Currently the Kenyan Judiciary has ten (10) Court of Appeal

Judges, twenty nine (29) High Court Judges, two hundred and fifty seven (257) magistrates, 17 kadhis and 2,245 paralegal staff. Following a recent amendment to the Judicature Act the number of Court of Appeal and High Court Judges has been raised to eleven (11) and fifty (50) respectively.

Kenya is committed to market economy. The Government is committed to creating an enabling environment where trade and investment by individuals and companies can flourish. A competent, efficient and effective Judiciary that can expeditiously dispose of commercial disputes and enforce contracts will therefore be an absolute necessity. For this kind of judiciary to exist, the Government will have to invest heavily in the institution by improving the physical facilities, instituting appropriate technology and developing the human capacity of the judicial staff. The population of Kenya has also grown threefold and is more enlightened of their rights today than before, hence the increased caseload. As we approach the 21st century we have to deal with a number of challenges.

First and foremost, there will be need to expand physical facilities to create room for the appointment of more judges, magistrates and support staff to deal with the ever increasing caseload. Related to this is the issue of modern technology. The archaic manner of taking down proceedings in long hand will be a thing of the past. Parlantyping and audio/visual equipment will be introduced to speed up the process of administration of justice. Ancient typewriters which are currently in use in most courts will be replaced with modern wordprocessors, personal computers and electronic typewriters. Judges and magistrates will be computer-literate and will rely on these computers to write judgements and rulings. The

waiting time for processing cases will be considerably reduced. Files will no longer get lost or misplaced.

The Judiciary is set to expand in the 21st century by the establishment of courts in areas where hitherto no courts existed. The cost of litigation should be reasonable and within reach of every Kenyan. However, it should be noted that these challenges will be effective only if judicial officers are of the right calibre and professionally qualified. The procedural technicalities which have plagued our judicial system will need to be overhauled and replaced by simple and straightforward procedures.



## CHAPTER 3

### JUDICIAL RECTITUDE

An independent and honourable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved. The judicial employee's office reflects a devotion to serving the public.

The issue of corruption has taken centre stage. The economic consequences of corruption have increased pressure for accountability and transparency. We read everyday in the print media about the donor communities' insistence on the fight against corruption as one of the conditionalities for releasing aid funds to most African Governments. It is a problem that all countries have to confront. Kenya on its part has established the Kenya Anti Corruption Authority. Legislation has also been passed to deal with the issue of corruption, among other efforts. The efficiency of these efforts is one thing. But these efforts are the clearest confirmation of the existence of corruption in our society. Broadly speaking there are two forms of corruption:

- (1) "Petty" or "survival", practised by those who may be grossly underpaid.
- (2) "Grand", practised by high public officials who exercise discretionary power.

Representations received by the Committee indicate that there exists both forms of corruption in the Judiciary, taking

various patterns, generally to pervert the course of justice. These take the form of inducing court officials to lose or misplace case files, delay trials, judgements and rulings. Then there is actual payment of money to judges and magistrates to influence their decisions. The majority of those who addressed the Committee were reluctant to name officers in the Judiciary who are guilty of corrupt practices. But the Committee was given several names in confidence of those known to be corrupt.

The Committee was informed that, although this difficulty exists, there are pointers in the behaviour and other activities of certain judicial officers which leave no doubt about their involvement in corruption. These include, interaction with litigants or their relatives, entertainment of visitors in chambers, engaging in business activities, undue familiarity with the bar and local populace due to overstaying in one station; registering, hearing, and determining cases that do not emanate from their jurisdiction, delayed judgements and rulings. To some extent, it was argued, inadequate remuneration and poor terms of service have contributed to corruption in the Judiciary.

The Committee finds some merit in these views and notes that although salary levels in the Judiciary are higher than those in the civil service, they are still considered low in comparison with lawyers' earnings generally and levels of remuneration in some countries. However, the Committee takes the view that higher salaries alone is not a solution to corrupt practices. Therefore, rigorous vetting is necessary before appointment of judicial officers. The appointment process must be transparent and tailored to identify individuals

of the highest integrity for recruitment. There must be a transparent and merit-based judicial appointment system.

The Committee is of the view that the question of judicial rectitude must be addressed with urgency and therefore recommends:

- (a) **the introduction to the Judiciary of a Code of Ethics to apply to all judicial staff. It will outline the expected and prohibited forms of conduct as well as attendant penalties for transgressions against these minimum standards.**
- (b) **the adoption of a transfer policy by the Judiciary intended to reduce undue familiarity requiring all the paralegals, magistrates and judges to serve for a term not exceeding four (4) years in a station.**
- (c) **that, in order to limit access to chambers, all cases must be heard in open court, except in specific circumstances.**
- (d) **the declaration of assets by all judicial officers and the paralegal staff on first appointment and thereafter every three (3) years.**
- (e) **that the salary levels and other allowances be given serious and urgent consideration with a view to making them more realistic and attractive.**
- (f) **that there should be in place a system of vetting those proposed for judicial appointments;**
  - (i) **in the case of practising advocates being considered for judicial appointment the**

views of the Law Society of Kenya and the Advocates' Complaints Commission, among others, should be sought.

- (ii) appointment as a magistrate should be restricted to Resident Magistrate level with five (5) years experience in private practice or related fields. This should mean phasing out of recruitment to the cadre of District Magistrates.
- (iii) Section 61(3)(b) of the Constitution should be amended so that one does not qualify to be appointed a judge unless he has been engaged in private practice or related field for not less than ten (10) years.

## CHAPTER 4

### PERFORMANCE APPRAISAL, INCENTIVES & TRAINING

#### (i) Performance Appraisal

According to the Judicial Service Staff Regulations, the main object of an appraisal report is to enable the Judicial Service Commission to gauge the suitability of an officer for advancement. Such report must therefore be accurate and objective. It should take into account an officer's qualifications, ability and performance. It is a systematic method of obtaining, analysing and recording information about an employee that is needed,

- (a) for the better running of the organisation.
- (b) by the manager to help in improving the employee's performance and plan his career.
- (c) by the jobholder to assist in evaluating performance and developing himself.

The reports can also be used, for the purpose of withholding, stopping, or deferring annual increments, disciplining staff, motivating employees, identifying training needs and deployment or transfer.

Previously the performance evaluation exercise was referred to as Confidential Annual Report. The Ndegwa Commission (1970-1971) recommended the abolition of this system replacing it with one whose objective was target-oriented. Ten years later the Waruhiu Committee (1979-1980)

adopted the Ndegwa Commission recommendations. Following the Waruhiu Report, Annual Staff Appraisal Form G.P. 247 was introduced. This form has been in use in the Civil Service ever since. But this form was not without its shortcomings. In the Judiciary, although the name of the form was changed, it appears that it continued being treated with strict confidentiality and secrecy. Besides, it has not been regularly submitted.

Submissions to the Committee revealed that although the forms are completed, the exercise is haphazard. That in fact the same are not completed for the aforesaid objects. Further, that the forms are countersigned by officers who are not in a position to give objective evaluation. Finally, the Committee heard that at no time are these forms tabled before the Judicial Service Commission when dealing with cases of promotion or discipline of officers. The practice has continued notwithstanding the sentiments expressed in the Kotut Committee Report (1991-1992) on the inadequacy of the current system. However, the Implementation Committee on the Delinking of the Judiciary has redesigned the form, giving it an element of transparency and objectivity. It is more involving and gives supervisors a greater responsibility towards their subordinates. It is reasonably detailed and takes into account an employee's achievements. It is based on the concept of a patient manager who discusses with his subordinate the latter's weaknesses in order to help him develop his potential and embraces the cardinal principles of natural justice. The Committee was told that, since High Court Judges are normally elevated to the Court of Appeal, the system of appraisal be applicable to them as well. The Committee concurs with this suggestion.

The Committee further noted that currently magistrates in charge of stations as well as Resident Judges have neither supervisory nor disciplinary authority over the staff working under them. All these matters are the preserve of the headquarters. As a result of this centralized supervision, the Committee discovered that lateness is common, court fees are under-assessed and sometimes not collected, court rooms, registries and chambers are untidy and officers unkempt. The Committee therefore recommends:

- (a) that the Judicial Service Commission should now give due regard to the appraisal reports when considering an officer for promotion or in disciplinary cases and make it its yardstick for rewarding its officers and assessing their training needs.
- (b) that henceforth judges of the High Court be required to complete the form, which will be countersigned by the Chief Justice, basically on the judicial performance of the former. For magistrates, the supervising officer shall be the head of the station and the countersigning officer shall be a resident judge whom we recommend should now be called the Provincial Judge. In the case of paralegals the supervising officer shall be the Executive Officer and the countersigning officer shall be the magistrate in charge of the station.
- (c) that Provincial Judges and magistrates in charge of stations be mandated to supervise stations under their zones.

- (d) **that all supervising and countersigning officers should undergo training in performance appraisal.**

(ii) Training

Training is a systematic development of knowledge, skills and attitudes by an employee to perform adequately a given task or job. It may be formal or informal. Training needs may be derived from appraisal reports or be assessed on all new entrants to the posts in question or at introduction of new technology. The Judiciary should emphasise the main areas and priorities for training and define the scope and aims of the training, the basis of training plans, the procedure of developing formal training programmes and methods of evaluating and controlling training. There should be clear policies on;

- (a) on the job training
- (b) off the job training
- (c) external training

Until very recently training in the Judiciary was limited to preparing clerical officers for Proficiency Examinations. The evidence submitted to the Committee reveals that in the last few years training has been extended to a good number of judicial staff, for example, Judges, magistrates, secretaries, personnel officers, clerical officers and so on. This has been possible with the kind assistance of the United Nations



mandated to deal with identification of training needs and organisation. The Committee heard that selection of officers for training is more often than not based on considerations other than actual needs.

For instance, some officers have attended more seminars, workshops and international conferences than others, while a good number have not attended training of any kind. The Committee further heard that currently there are several officers dealing with training, a fact which has not only caused confusion but also proved quite expensive to the Judiciary as these officers receive monthly honoraria. The Committee noted with dismay that the Judiciary does not conduct induction and orientation for newly appointed officers. Needless to say, a new employee's attitude, morale, motivation and subsequent productivity, to a large extent, depends on his exposure to his work environment, supervisors, and fellow employees. It is at this stage that a career is launched. It is the opinion of this Committee that a programme of induction and orientation be instituted immediately. **As a result the Committee recommends the establishment of one Judicial Training Committee with a Judge of Appeal as its chairman and members drawn from the High Court, magisterial bench and paralegal cadre, whose secretary shall be the Training and Staff Development Officer.**

(iii) Incentives

The status of a judicial officer is reflected in the salary he earns, accommodation and transport he enjoys, and the other facilities made available to enable him to execute his duties efficiently. The remuneration and other benefits for judicial officers must, however, be sufficient to maintain him and his family to avoid the temptation of looking for additional income on the side. The independence of the Judiciary is threatened more by financial anxiety than anything else. **Therefore, judicial officers should be entitled to salaries, allowances and other fringe benefits commensurate with their status.**

(a) Schemes of Service

Career prospects are normally spelt out in the schemes of service. All the prevailing schemes in the Judiciary today were prepared by the Directorate of Personnel Management from which the Judiciary currently stands delinked, and so they could not and did not take into consideration the unique position of the Judiciary, where some categories of staff lack such schemes altogether or require revised ones.

Following the delinking of the Judiciary from the mainstream civil service the **Committee recommends the formulation of schemes of service for all cadres in the Judiciary except Judges.**

(b) Salaries and Allowances

Salaries must be adequate not only to attract and maintain high quality professionals but also to create a cushion against temptations. Remuneration levels should be reviewed on a systematic and logical basis with a view to effecting adjustments to cover inflation, changes in the cost of living and improving efficiency and effectiveness of the service, always taking into consideration prevailing economic conditions.

We have noted that the Government accepted the recommendations of the Kotut Committee with respect to salaries and other benefits. Following this, it was found necessary to set up the Delinking Committee to implement some of these recommendations. It was further noted with appreciation that since its establishment in 1995, the Delinking Committee has taken steps to review salaries and allowances. As a result, the salary and allowance levels of the Judiciary staff are comparatively higher than those of their counterparts in the civil service. However, it was generally felt that it was high time salaries and allowances were once again reviewed for the Judiciary staff. In particular, representations made to the Committee indicate concern about the non-existence of a medical scheme, following the discontinuation, with effect from 1st May, 1989, of the out-patient medical refund.

It was submitted that the nature of work of judicial officers is very demanding and exhausting and makes

them vulnerable to stress and health problems. The Kotut Committee recommended a non-contributory scheme, which pays directly medical expenses for staff and their immediate families and upto 4 dependant children below the age of 23 years. The Committee heard of distressing cases of Judges, magistrates and their families having to borrow money to pay medical bills. This is a disgrace. So far the only scheme in operation is that promoted by the Kenya Magistrates and Judges Association with Africa Air Rescue (AAR).

The Committee concurs with these views and recommends further **that the Judicial Service Commission should, with immediate effect, devise a medical scheme of the nature recommended by the Kotut Committee to cater for all Judiciary staff.**

(c) Transport

Another area of concern is that of official transport. Paragraph 151 of the Kotut Report recommended that Judges be provided with appropriate and suitable transport. Since the Report was accepted by the Government in 1992, no action has been taken in this regard. Judges continue using dilapidated cars well beyond their use-by dates and which break down frequently causing them considerable embarrassment. The Committee noted that although Judges are entitled to official transport, there is no standardization of cars allocated to them. **We recommend that all the official motor vehicles currently being used by Judges be replaced with new and appropriate ones.** For

**instance Mercedes Benz-E230 series to be assigned to the judges of the Court of Appeal and Mercedes E220 or Volvo 940 to the judges of the High Court.**

It was also submitted that there is need to provide the higher echelons of the magistracy with official transport. There are a number of such magistrates who are in charge of large stations and have supervisory responsibility over lower satellite courts. The Committee noted the need for transport in each and every court in the country. At the moment magistrates depend on transport from the police, prisons officers, lawyers or litigants to visit scenes of crime. The Committee finds these arrangements not only unsatisfactory but also unacceptable as this may lead to judicial officers being compromised. The Committee was further informed that although transport allowance is payable to judges and magistrates no such allowance is paid to the paralegal staff.

**The Committee recommends that each magistrate of the level of Senior Principal Magistrate and above be provided with personal official transport and all court stations should have independent transport. The Committee further recommends the payment of transport allowance to all paralegal staff.**

(d) Housing

All Government employees are eligible for housing provided by the Government, in four categories.

1. those housed in Government owned quarters.
2. those housed in Government-leased houses.
3. in lieu of (1) and (2) above, officers are paid house allowance and
4. those occupying their own houses are paid owner-occupied house allowance.

Houses in the first category have almost been phased out. The problem with the second category is the rent ceiling which is considered unrealistic and inadequate considering prevailing market conditions. Currently the ceiling for judges is Ksh.50,000 per month and Ksh.30,000 for Chief Magistrates and Principal Magistrates. House allowance and owner-occupied house allowance levels have not kept pace with the escalation of rents forcing judicial officers in the first case to rent houses in areas that are not in keeping with their status. The Committee found cases of magistrates renting houses in slums. The situation is set to deteriorate following the issuance of **Treasury Circular, 6/98 of 11th June, 1998**. The effect of this circular is that the Government will no longer provide residential houses for its officers except constitutional office holders.

**The Committee recommends;**

- (1) **That the application to the Judiciary of Treasury Circular No.6/98 be waived.**
- (2) **That decent accommodation (maisonettes and flats) should be rented for magistrates in major urban centres like Nairobi, Mombasa, Kisumu, Eldoret, Kitale, Nyeri, Meru, Kakamega,**

**Nakuru and Kisii, and proper security be provided. This will also make provision of common transport for judicial officers and their families easier.**

(e) Promotions

For any judicial system to dispense justice, its service providers must be highly qualified, competent, motivated and respected individuals in society. Therefore, adequate institutional mechanisms must exist for selecting and maintaining such individuals in the judicial structure. These mechanisms include appointment processes, terms of appointment and a clear promotion policy, which must be effective, transparent and merit-based. Responsibility for the recruitment, appointment, promotion and discipline of the Registrar, magistrates, kadhis and paralegal staff is vested in the Judicial Service Commission.

In addition to this, the Commission advises the President on the appointment of Judges, other than the Chief Justice, and also with regard to the appointment of a tribunal should the question of removal of a judge arise. The Committee noted that there are inadequate career development arrangements for magistrates.

Representations were made that although a scheme of service for magistrates exists, the same has not been followed in the promotion of magistrates. Promotion procedures are haphazard and appear not to be based on any set criteria or merit. It was also noted that the current scheme of service for magistrates does not take into account services rendered by applicants elsewhere but in a related legal field. For instance,

those who have been in private practice before joining the Judiciary have been appointed to the lowest cadre of the magistracy. This has not only demoralised the officers concerned but also discouraged suitable candidates from joining the Judiciary.

It was also submitted that the clerical staff have stagnated for many years as they are required to pass Proficiency Examination before further advancement. These examinations largely have no relevance to court clerks since they examine candidates on accounts, supplies, personnel matters, among other areas, with the result that the majority of clerical officers from the Judiciary who have attempted these examinations have failed and those who have not are scared to attempt.

The greatest achievement of the Kotut Committee was the delinking of the Judiciary from the mainstream civil service with effect from 1993. This in effect meant that those who were hitherto seconded to the Judiciary by the Public Service Commission became employees of the Judiciary. The entire support staff comprising personnel officers, accountants, supplies officers, librarians and so on were absorbed into the Judiciary. As earlier observed in this Report the Committee learnt that although the paralegal staff were absorbed by the Judicial Service Commission, no scheme of service has been formulated for each of these cadres to reflect the delinked status of the Judiciary. The Committee received representations that currently there is no scheme of service for the Kadhis and there is an urgent need to formulate one.

There were representations that ministerial transfers of staff from other ministries to the Judiciary has posed a real



threat to the promotional prospects of staff in the Judiciary. The Committee was informed that some of those transferred are almost retiring while others have poor records. In short, the Judiciary has been used as a dumping ground.

Concern was also expressed on a practice that has gained notoriety in the Judiciary, that of retaining staff beyond the mandatory retirement age. This practice has tended to demoralise officers working under these retirees as the latter continue occupying posts which should otherwise be occupied by the former;

**The Committee therefore recommends;**

- (a) that promotions be based on merit and that vacancies should be advertised and interviews conducted before promotion. The provisions of the relevant schemes of service must also be respected and followed.
- (b) that schemes of service for magistrates, kadhis, secretarial staff, librarians, supplies officers, accountants, personnel officers and clerical officers be formulated as a matter of urgency.
- (c) that clerical officers from the Judiciary be subjected to relevant examination, even if it forms part of the Proficiency Examinations as an option.
- (d) an immediate embargo be placed on transfers of officers from other ministries to the Judiciary or alternatively the applicants for ministerial transfers be interviewed.

- (e) retention of officers beyond the retirement age be limited to judicial officers only and not to be continued beyond the age of sixty (60) years.**
- (f) all the contracts of the paralegals over the age of fifty-five (55) years currently employed on the so called temporary terms be terminated to make way for younger officers.**

## CHAPTER 5

# COURT REGISTRIES

Both criminal and civil litigation start and end in the court registries. An inefficient registry can be frustrating both to litigants and judicial officers. The Committee inspected several registries throughout the country. Coupled with this first hand knowledge the Committee heard that most registries are extremely congested and lack the necessary filing cabinets and racks. This aspect, more than anything else, has been a major contributing factor to the disappearance and misplacement of court files.

Retrieval of files from these registries can be a nightmare. Registries have no system of monitoring the movement of files and no system of cataloguing exists. It was also submitted that lawyers, litigants and even members of the public have unrestricted access to registries. The Committee was informed that the administrative hierarchy in most registries is seriously wanting and not clearly defined. As a result registries are manned by executive officers and clerks with no legal training.

In many stations, the Committee noted that these Executive Officers exercise immense powers, allocating cases to judges and magistrates alike. In Nairobi, the Duty Judge allocates cases with the assistance of an Executive Assistant. In both situations the arrangement is anomalous and undesirable because the Committee considers this to be a judicial function which should not be delegated to an executive officer. The preparation of the cause list in the High Court

should be undertaken by the Duty Judge and a professional Deputy Registrar.

In addition, inspection of various court stations revealed a serious attitude of indifference on the part of the magistrates with regard to the registries. It was evident that some hardly get to know what goes on in their registries. As a result the Executive Officers in charge of these registries have allowed filing of cases where the courts have neither geographical nor pecuniary jurisdiction. The Committee was concerned about the lack of basic training of those working in the registries, particularly those assigned the responsibility of assessment of court fees. Generally, fees are either not levied at all or grossly under-assessed. Although all courts visited have the handbook on the "Guide on the Assessment of Court Fees", no reference is ever made to this guide when assessing court fees. The obvious result is under-collection of Appropriations-In-Aid. The Committee found the worst cases of non and under-collection at Nakuru, Bungoma, Mumias, Oyugis, Migori, Rongo and Thika. There is therefore an urgent need for closer supervision coupled with appropriate training of the court staff. Closely related to this is the issue of strangers in the registries.

Following the adoption by the Government of the policy of District Focus for Rural Development, the Judiciary has suffered greatly in terms of failing in complying with its obligations with regard to moneys deposited in court and lack of general accountability. All the cash collection points in all courts outside Nairobi are manned by people who are not employees of the Judiciary but seconded to it by the District Commissioners' offices. Their main duty is to collect any money paid to the courts in the form of fines, fees and deposits

for onward transmission to the District Treasuries. As a result of this arrangement the Judiciary has lost millions of shillings and has been unable to refund deposits to depositors in many cases. The Committee was told of an incident in Malindi of an exasperated depositor who threatened court staff with violence when he failed to get his refund from the District Commissioner's office. The Committee concurs with representations that the Judiciary should be financially delinked from the District Treasuries.

**The Committee accordingly recommends that;**

- (a) filing cabinets and lockable racks should be purchased and installed in all registries.**
- (b) computers be introduced immediately in major registries throughout the country in order to minimize the mischief of loss of files, monitor file movement and measure output. Every court document should be micro-filmed as a back-up measure.**
- (c) all High Court registries should be headed by legally qualified Deputy Registrars, who will hear interlocutory applications and be in charge of staff in the registries.**
- (d) those in charge of registries and the staff under them should undergo training to enable them to cope more effectively with the demands of their jobs.**
- (e) access to registries should be limited to staff only. Members of the public including lawyers and litigants should be served across the counter.**

- (f) collection of court fees, fines, deposits, and forfeitures is the responsibility of the court. Cashiers in all courts must be the employees of the Judiciary.**
- (g) each court should open an account with local commercial banks in which to deposit all collections. The account to be operated jointly by the Magistrate in charge and the Executive Officer.**
- (h) all transactions relating to these accounts to be reported to the Accounts Controller in Nairobi on a weekly basis.**

## CHAPTER 6

### PHYSICAL FACILITIES AND EQUIPMENT

Historically, court facilities have not been a priority in the allocation of national budget and therefore no modern court facilities have been provided in the recent past. Court facilities affect the overall perception and image of the administration of justice. They reflect the needs of the court personnel and the users of the system. The Committee noted that the working environment of the Judiciary is unsightly and degrading. Court houses throughout the country are congested and dilapidated. Many cases are heard in chambers in contravention of the law due to lack of court rooms. In some instances magistrates are compelled to share chambers.

Secretarial staff attached to judges and magistrates work in typing pools away from the officers they work for. Chambers and courts are so arranged that Judges and magistrates have to jostle through crowds to get to them. The necessary basic furnishings and stores are either inadequate or lacking altogether, and where these exist, they are inappropriate or badly worn out. Inspection conducted by the Committee of a number of court buildings indicates that many newly constructed courts are in a pathetic state due to poor workmanship. The Committee came across three court buildings which stand condemned, namely, Mukurweini, Eldoret and Kericho. What is more worrying is the fact that these courts continue to be used at the risk of the staff as well as other court users. The flat roof design of courts has been the major cause of woes facing the majority of court buildings today. They are not suitable for the climatic conditions of this

region. There are no standard court designs; instead each court building has different configuration.

The Committee further noted that most courts lack basic court design and facilities such as a separate entrance for judicial officers, library, fence, cells, information desks, ramps for the physically disabled, common rooms, public toilets, stores and fire escape routes. As a result, court facilities do not meet the increased demands on the judicial system. Judges and other court personnel work under conditions which are not conducive to efficient administration of justice. The Nairobi Law Courts is a typical example of excessive congestion with magistrates sharing chambers and alternating open court hearings; files are stored in the most undesirable manner; the security of judicial officers is seriously compromised. In all the courts visited by the Committee it was noted that there were no records on inventory of assets of the Judiciary and therefore it is not possible to plan for replacement, repair, additional supply of equipment and accounting.

Due to increased caseload there is an urgent need to expand the establishment of Judges, magistrates and support staff. This cannot be undertaken in the light of limited facilities. Without expansion of these facilities the question of backlog will remain unresolved. The Committee found that currently posting of magistrates and other staff is done without due regard to availability of accommodation and other facilities. The result is that while some courts are congested others are seriously understaffed.

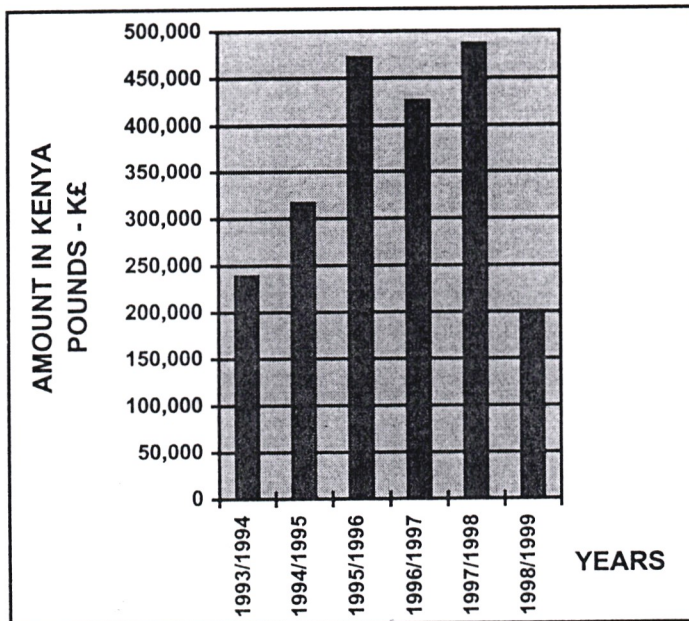
Representations received by the Committee indicate that the Judiciary has lost, through alienation to private developers,



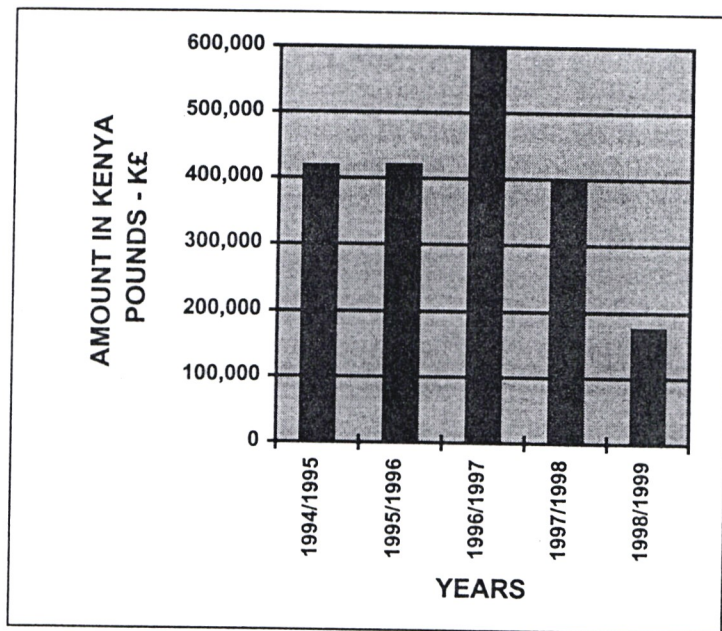
land set aside for construction of courts as well as residential properties, a situation which has adversely contributed to the accommodation problems the Judiciary is facing today. The Committee also found that the Judiciary holds no titles to lands on which its facilities stand.

But the main constraint in capital development is that of budgetary deficit. Allocation of resources to the Judiciary for construction of new court buildings and maintenance of existing ones has been disappointing. The following charts show allocation under Development Vote and Maintenance allocation for the last six (6) years.

| DEVELOPMENT    |                             |
|----------------|-----------------------------|
| FINANCIAL YEAR | AMOUNT IN KENYA POUNDS - K£ |
| 1993/1994      | 239,000                     |
| 1994/1995      | 316,080                     |
| 1995/1996      | 471,492                     |
| 1996/1997      | 425,540                     |
| 1997/1998      | 486,240                     |
| 1998/1999      | 200,480                     |



| <u>MAINTENANCE</u><br><u>OF BUILDINGS</u><br><u>ITEM 260</u> |                                   |
|--|-----------------------------------|
| FINANCIAL<br>YEAR  | AMOUNT IN<br>KENYA<br>POUNDS - K£ |
| 1994/1995  | 418,000                           |
| 1995/1996  | 420,000                           |
| 1996/1997  | 600,000                           |
| 1997/1998  | 400,000                           |
| 1998/1999  | 175,000                           |



The other issue which has hampered the administration of justice in Kenya is the lack of basic amenities. Rampant cases of missing files and other related critical problems facing the Judiciary today can be attributed to lack of equipment. The Committee heard that the registries lack lockable cabinets for safe storage of court records. Currently the courts utilise a paper-based filing and retrieval system on racks. This is labour intensive, outdated and intensely slow. This contributes to delayed response to queries and sometimes to disappearance of court files. In addition to the foregoing, the Committee was informed that the registries have no backup systems. Should a fire disaster occur, the entire record network would be completely destroyed. There are no smoke detectors, fire extinguishers or water sprinklers in the registries. In the offices and chambers throughout the country, the necessary furniture is lacking. The furniture currently in use does not reflect the status and image of judicial officers. In some stations the Committee observed that the furniture being used is either borrowed or part of discarded court exhibits. Most courts do not have typewriters or wordprocessors.

Submissions received by the Committee indicate that appeals from the lower and superior courts are delayed due to typing of proceedings, which is in turn caused by lack of typewriters. The situation is made worse by serious shortage of basic stationery like files, forms, folders, recording paper, pens, ink and so on. The Committee noted that there was disparity in the distribution of stationery to outside stations. The control of distribution from Nairobi has led to wastage of time and money by officers travelling from various stations to Nairobi to collect stationery. Quite often they return empty-handed.

Computerisation is another area of court automation which has been completely ignored. The Committee noted that although the Judiciary has a number of computers, these are not fully utilised to their maximum capacity. As a matter of fact they are merely used as word processors. The importance of computer technology in the administration of justice today cannot be overemphasised. It is the best, the safest and the cheapest means of data and information storage and retrieval. It is now a standard case management technique in many jurisdictions. It was further submitted that quite often litigants leave court rooms without having followed the proceedings due to poor acoustics. This situation calls for the installation of public address systems in courts.

A law library with basic reference books and periodicals is an integral part of the administration of justice. The Committee heard representations and observed that many courts have no libraries and those that have, the libraries are grossly inadequate and poorly stocked. Grey Books are lacking and magistrates are forced either to share or borrow from the police or advocates.

It was further noted that copies of the Court of Appeal decisions are circulated to High Court stations but these do not reach magistrates working in these stations. Related to this is the issue of law reporting. For sometime there has been no law reporting of decisions of our courts. It is only through law reporting that harmonization of court decisions can be attained and jurisprudence developed. The Committee was informed that although the National Council for Law Reporting Act was passed 2 years ago, funds are yet to be allocated to start it off. The Committee was not told when funds will be allocated.

In view of the foregoing the Committee makes the following recommendations.

- (a) **The Judiciary should commence negotiations with the Treasury on the issue of a more realistic funding and more aggressive approach to be adopted in soliciting for funding from the donor community to improve court facilities and buy the necessary equipment.**
- (b) **Transfers and posting of judges, magistrates and other staff should be rationalised to ensure that these are justified by the caseload and necessary facilities.**
- (c) **Future court designs should be standardised, taking into account the number of court officials expected to use it, security, fire escape routes, ramps for the physically disabled, public toilets, reception, spacious registries, common rooms and so on.**
- (d) **The Judiciary to obtain Title Deeds for all court houses, residential properties occupied by its staff and plots allocated to it for expansion.**
- (e) **All courts should have records and inventory of assets which should be updated annually.**
- (f) **The Judiciary to introduce the use of computers in the registries. This can be started on a pilot basis in the Court of Appeal registry in Nairobi, High Court registries, and Chief Magistrates' courts.**
- (g) **Judges, magistrates and senior paralegal staff should be encouraged to attend computer**

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training at the expense of the Judiciary. Judges should be provided with laptop computers.

- (h) The distribution of stationery should be decentralised to the provinces.
- (i) The court buildings at Kericho, Mukurweini and Eldoret be closed to avert imminent catastrophe.
- (j) Public Address systems should be installed in all Court of Appeal and High Court rooms.
- (k) All chambers should be appropriately designed, furnished and stocked with basic legal material.
- (l) The Chief Justice should cause an inquiry to be conducted into the circumstances in which land belonging to the judiciary in Mombasa, Eldoret and Kisumu was alienated to private developers.
- (m) All High Court stations should have fully equiped libraries and all other stations should be provided with basic law reference books and statutes.

## CHAPTER 7

### ALLOCATION, DISPOSAL AND FOLLOW-UP OF CASES

The Kenyan public is now more literate, and has a greater degree of awareness. This trend is set to continue in future and it gives rise to high expectations and to an increasing demand for accountability. The Judiciary is currently under serious public scrutiny. There is an increasing outcry about the length of time cases take to be finalised; a cry over the ever increasing backlog. Delays and backlog are, among others, a product of poor case management. Case management is the basis of efficient administration of justice. Currently the High Court in Nairobi, with a strength of fifteen (15) judges has the following cases pending.

|                            |   |                |
|----------------------------|---|----------------|
| Civil                      | - | 90,511         |
| Miscellaneous Applications | - | 18,223         |
| Adoption                   | - | 495            |
| Probate & Administration   | - | 3,297          |
| Civil Appeals              | - | 3,437          |
| Divorce                    | - | <u>1,423</u>   |
| Grand Total                | - | <u>117,386</u> |
|                            |   |                |
| Criminal (murder)          | - | 92             |
| Criminal Revision          | - | 49             |
| Criminal Appeals           | - | 1,587          |
| Criminal Applications      | - | <u>216</u>     |
| Total                      | - | <u>1,944</u>   |



The Committee heard that the existing procedures of allocating cases to judges and magistrates is not streamlined and requires urgent review. In addition, there is also a need to introduce case tracking technology for the maintenance of accurate case statistics. It was also submitted that currently no system is in place to monitor the progress of a case; that judges and magistrates are passive observers when it comes to case management. The "Diary" system of case allocation is often ignored. The Committee noted a tendency where advocates and litigants arrange for their cases to be heard by a magistrate or judge whom they consider might give decisions in their favour. The Committee further noted that a number of stations do not have courts designated as Traffic or Civil courts. In some courts cases are distributed to the hearing magistrates on the morning of the hearing. The result is that litigants and their counsel waste a lot of time trying to locate the relevant courts.

The issue of Duty Judge in Nairobi High Court was raised with regard to the period a judge should serve in this position. The Committee, however, noted with satisfaction that this position has since changed. The Committee learnt that in a number of instances magistrates have abdicated judicial duties to Executive Officers and court clerks, to sign orders, mention criminal cases and fix next dates for appearance. Sometimes, the Committee heard, magistrates mention criminal cases in the absence of the accused persons, defeating the whole purpose of mentioning criminal cases. All matters relating to bail are judicial. However, the Committee learnt that courts have abdicated their responsibility to the prosecution which now has the final say as to whether an accused person can be remanded on bail. The prosecution being a party in a criminal case has no

right to impose upon the court the terms upon which bail should be granted to a suspect.

Serious concern has also been expressed regarding the undesirable practice of giving judgements on notice. The practise engenders laxity and attendant delay in finalizing cases and consequently it leads to a build up of pending judgements and rulings. It was argued that, more often than not, those officers who are fond of this practice tend to forget the facts of the case and find it difficult to deliver judgements for long periods. It was observed that in the High Court in Nairobi the daily cause lists are overloaded and unrealistic. A glance at any daily cause list leaves no doubt that listing is done without due consideration to the nature and the length of the cases. Representation was made to the Committee that currently the Deputy Registrars are not fully utilised in hearing interlocutory applications. Many of these applications are listed before judges thereby overloading their lists. There is no system in place to deal with old cases.

**Consequently the Committee recommends;**

- (a) the splitting of the cause list into a more realistic time segment.**
- (b) the introduction of case monitoring techniques, which should clearly indicate the output of each judge or magistrate. These returns should be submitted to the Chief Justice once a month or as and when required.**
- (c) that simple divisions be created in the magistrate's courts covering criminal, civil and traffic cases. Each division to be headed by a**

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magistrate, on rotational basis, who must distribute cases equitably to other magistrates.

- (d) identification of matters, interlocutory or any others, which should be dealt with by Deputy Registrars, rather than all manner of applications being listed and dealt with by judges.
- (e) a deliberate move to hear and dispose of all old cases. A team of Commissioners of Assize should be appointed under the provisions of the Commissioners of Assize Act (Cap 12) to deal exclusively with old cases in Nairobi.
- (f) the pecuniary jurisdiction of magistrates to be increased to relieve the High Court of some of the backlog.
- (g) the Chief Justice should issue a circular to all Judges in the High Court and magistrates reminding them that where under Order 20 rule 1 of the Civil Procedure Rules, judgement is reserved the date of delivery must be stated and judgement must be delivered on that date.

## CHAPTER 8

### HUMAN TRAFFIC AND SECURITY IN COURT

By the very nature of their work, Judges and magistrates are quite vulnerable to acts of violence or threats. The issue of personal security of Judges and magistrates seems to have been taken for granted or ignored. Judges and magistrates lead a risky life which requires physical protection from threats by criminals. Security of tenure in its wider sense also includes physical protection of a judicial officer and his family. He cannot be expected to go about his duties while apprehensive about his security and that of his family.

The Committee was informed that apart from a few stations outside Nairobi, a good number of courts have no form of security arrangements. Judges and magistrates use the same entrances into court as the rest of the members of the public. Their chambers are equally open to members of the public. There is no form of searches or screening and people enter court precincts with bags, briefcases and so forth. Judicial officers have lost, through theft, items from their chambers. Court buildings are used as thoroughfares by people. Crowds of people are often seen crowding court corridors without genuine business in court. Others come to see and bring food to their relatives who are in custody. Most court buildings are not fenced. There are no emergency exits in court buildings. And in the Nairobi Law Courts the original entrances have been long abandoned. Residences of judges and a few magistrates outside Nairobi, are guarded by Administration Police personnel, but a great majority of magistrates have no

such security. Besides personal security, the courts contain certain valuable equipment such as computers, typewriters, PABX machines etc., which must also be protected against theft. Another factor which causes crowding in courts, is the lack of co-ordinated security system.

**The Committee therefore recommends that;**

- (a) Judges' and magistrates' chambers must be immune from uninvited intrusions. Their entrances into the court house should be separate from those used by the rest.**
- (b) all court staff, including judges and magistrates, should be issued with plastic identification cards.**
- (c) there should be screening of all persons entering courts to prevent the carrying of concealed weapons or other prohibited items into court buildings or court rooms.**
- (d) each Judge and magistrate should have a uniformed security-vetted usher or marshal to escort the officer to and from court and remain in court to maintain order during proceedings.**
- (e) metal detectors to be introduced and X-ray machines to be located at the entrance to every court house.**
- (f) the Judiciary to create its own Security Department to oversee all aspects of security and safety operations in the Judiciary. The unit to be headed by a senior security officer, who will oversee all facets of the Judiciary's security and safety operations.**

- (g) all courts without fences to be fenced without delay, starting with the Law Courts - Nairobi, which requires high square metal bar fencing all around and its original entrances to the east and west of the building be restored.**
- (h) arrangements be made for magistrates to mention criminal cases at major prisons where there is no transport to the courts.**
- (i) courts should have information desks to direct members of the public and provide any required information and assistance.**

## CHAPTER 9

### TIME AND COST EFFECTUAL ADMINISTRATION OF JUSTICE

With the increase in economic activity the courts have also experienced a corresponding increase in the number of cases filed. Although the courts have tried to deal with these cases there is still a huge backlog. Courts throughout the Republic are plagued with delays and backlog of cases. In order to prescribe a cure for the problems which have bedevilled the administration of justice it is necessary to identify the underlying causes. Some of the causes are beyond the control of the Judiciary (such as the increased growth of the Kenyan population and its urbanisation) or beyond the scope of procedural reform (such as the implementation of privatisation policies and improvement in legal education). Furthermore, not all causes require change; some, such as the principle of impartiality, reflect positive control tenets of justice. But many other causes are within the reach of new measures and this Committee has focused attention on those features.

The Committee has looked at the critical functions of the court process and the systematic allocations of responsibility to different institutions and non-institutional actors to perform such functions. A number of causes can be attributed to this state of affairs. They range from the attitude of judicial officers, advocates, litigants, lack of experts, police, procedural bottlenecks, which leads to criticism about the performance of the courts. To confront delays it is important that specific bottlenecks be identified. It was argued that part of the cause of the problem of delay is the fact that judges and magistrates

do not take an active role in moving cases through the system, with the result that case management appears to be left entirely in the hands of parties or their counsel. It was submitted that in the midst of hard-working judicial officers there are a few joy riders. There are those who would look for any excuse to adjourn cases, while others would take several months to deliver judgements and rulings. A few are known to report on duty late and break off early. All these lapses have persisted due to the absence of any form of case monitoring to determine the output of judges and magistrates. The Committee also heard of cases where lazy and incompetent officers are rewarded by promotion instead of being dismissed or denied advancement.

There has been, in addition to the foregoing, total lack of supervision of the courts. The Committee heard that immediately after Independence the Judiciary had an inspection unit which supervised all courts in the country. Because of the lack of any form of supervision, the Committee discovered that magistrates and other members of staff report on duty late; are involved in matters that are likely to conflict with their judicial duties; allow cases arising outside their jurisdiction to be filed in their courts; entertain cases which are far beyond their pecuniary jurisdiction; do not collect revenue; and leave the court premises to fall into disuse.

As indicated elsewhere in this report, listing of cases appears to be done without due regard to their nature. It has also been noted that the current problem of loss of files is caused by, among other things, congestion in the registries. This congestion has been attributed to the fact that all High Court case files, apart from the probate and criminal are stored



in one registry. It is this registry that is notorious for misplacement of files and retrieval takes several hours and, quite often days or months. The Committee came across a large number of pending criminal cases due to delay in procuring:

- (a) the Attorney-General's consent.
- (b) committal bundles.
- (c) the attendance of expert witnesses (document examiners, ballistic experts police pathologists and so on). The Committee heard that there is only one (1) document examiner and two (2) ballistic experts in Kenya.

A lot of time is wasted by courts in waiting for prisoners to be brought for trial or mentions. Quite often they are not brought. This was attributed to lack of transport facilities by the Prisons Department. For instance, one truck has the impossible task of covering between Kamiti, Thika, Githunguri, Nairobi Law Courts, Kibera, Makadara and Machakos.

Advocates have contributed to delays and backlog by coming to court unprepared, coming late or not at all. Others take too many cases in different courts. These result in numerous applications for adjournment. There are also procedural bottlenecks which cause delays and create backlogs, for instance, preparation of committal bundles in murder trials, preparation and presentation of appeal files in criminal matters and summons for directions in civil cases. It is imperative to find appropriate solutions while maintaining protection which was meant to be provided by these procedures. These

improvements can be achieved through revision of the Civil Procedure Rules, the Criminal Procedure Code and reorganisation of courts to create parallel but specialised streams for different types of cases.

The Committee was informed that it was high time the Judiciary introduced Alternative Disputes Resolution (A.D.R.) mechanisms, which may include informal procedures emphasizing the rapid settlement of disputes without compromising the integrity of the system. The Committee is of the opinion that Alternative Dispute Resolution requires further and careful study as it may well hold the key to the solution of the problems of delay and backlog.

The Committee found that the issue of geographical jurisdiction has been ignored in filing suits, in particular, running down claims. This is not only expensive to the parties but also contrary to the law. It is also being used by ambulance chasers to ambush or harass insurance companies with the connivance of some courts and the police. The current procedure of recording proceedings in long hand has similarly hampered the administration of justice. Judges and magistrates have no stenographers or electronic facilities for recording of proceedings.

**The Committee now recommends;**

- (a) That judges and magistrates should be sensitised to get more involved in case management by applying court's inherent jurisdiction and deal firmly but judiciously with applications for adjournment and interlocutory applications generally.**

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- (b) Each magistrate, at the end of each month, files a return indicating the number of cases finalised, pending judgements and rulings and when they are due for delivery through the Head of Station who will in turn transmit them to the Chief Justice. In this regard an appropriate Return Form should be designed.
- (c) Reporting and court business time must be enforced as laid down.
- (d) An Inspectorate Unit should be set up to monitor the operations of the courts on a continuous basis. The team to be called "Courts Inspectorate" should be composed of a Judge of Appeal, one puisne Judge, the Chief Court Administrator, a Chief Magistrate, Accounts Controller, and the Deputy Registrar in charge of monitoring complaints relating to gender issues. Except for the Chief Court Administrator, Accounts Controller and the Deputy Registrar, members of the Court Inspectorate should be changed every 3 years. They should visit courts regularly unannounced and submit reports to the Chief Justice.
- (e) (i) The High Court in Nairobi be split into four (4) divisions, each with its own registry which together will comprise the Central Registry as follows;
- Family Division
  - Criminal Division
  - Civil Division
  - Commercial Division

- (ii) The senior judge in each Division shall be the head of the Division, with the Chief Justice being an ex officio member of all Divisions.
- (iii) Judges should not stay in any one Division for more than three (3) years, at the end of which they should be moved to other Divisions.
- (iv) Every Division head shall submit a report on the performance of the Division to the Chief Justice every month.
- (v) Each Division should be under the administrative control and supervision of a professional Deputy Registrar. Provincial Judges should be given administrative and supervisory control of the subordinate courts within their provinces. They should also submit quarterly reports to the Chief Justice.
- (f) Section 3 (2) of the Magistrates' Courts Act (Cap 10) should be amended to redefine the geographical jurisdiction of the magistrate's court.
- (g) Each High Court registry should be placed under the control of professional Deputy Registrars, who will be answerable to the respective Deputy Registrar in the Central Registry in Nairobi.
- (h) In criminal cases, the police should not continue to perform the dual functions of investigators and prosecutors. Police officers in the prosecution section should be absorbed into the Attorney-General's Chambers to work under the Director of Public Prosecutions (DPP). This idea has the full support of the Attorney-General and the Commissioner of Police.

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- (i) Requirement for committal bundles in murder and treason cases should be abolished so that arraignment is made direct to the High Court.
- (j) Consent to prosecute should similarly be abolished.
- (k) Summons for directions in civil cases should be done away with.

## CHAPTER 10

### MAKING THE JUDICIARY CONSUMER-FRIENDLY

It is imperative that a user of any facility should feel unhindered to get to that facility. Courts are public institutions and should be open to the public. The services provided by the courts must aim at meeting legitimate expectations of the public.

The Committee noted two main obstacles which prohibit the public's access to justice, namely psychological and information barriers. There are also other barriers such as economic, physical, geographical and literacy. It is important that court fees be reasonable, fair, realistic and affordable so as not to inhibit the use of the system. The current court and advocates fee structure has raised accessibility concerns. Due to limited resources the Judiciary has been slow in establishing courts in areas which were hitherto regarded as remote. For instance, in Eastern Province there are courts only in Moyale and Marsabit and in North Eastern Province, in Wajir, Garissa, and Mandera. The pace is slow because there are still a number of needy areas where litigants and witnesses have to travel very long distances to reach a court. Justice in these regions is therefore inaccessible to the majority. Court houses should have facilities for the physically handicapped and disabled persons. Those who do not speak official court language should be provided with interpreters. Deaf and dumb interpreters should be at hand to assist those court users who cannot speak or hear. This is a need the accomplishment of which must be assigned the highest priority.

The presiding officer and the support staff must treat witnesses, parties and members of the public with respect and humility. People very often arrive in court confused, fearful and open to exploitation. The judicial system is by nature intimidating. The language of the court is foreign while the dress is antiquated. Authoritarian approach by presiding officers or support staff only goes to add to these technical hurdles.

Many courts inspected by the Committee lack simple sign boards to direct members of the public to the location of the court house. And once in the court house there are no information desks or direction sign boards showing the location of various court rooms, chambers, registries, libraries, etc.

Apart from the Nairobi Juvenile Court, all other courts in the country have no special facilities for juvenile offenders. The Committee found that although the law requires that juvenile offenders be tried in juvenile courts, in almost all the cases involving them, trials are conducted in ordinary courts. Juvenile offenders are also mixed with adult offenders in court cells as well as in remand.

The Committee received complaints that complainants in sexual offences are exposed to hostile atmosphere in open court, in the presence of the public and the offenders. If courts had waiting rooms complainants and witnesses in these cases would be provided with the necessary protection. As noted earlier, going to court can be quite traumatic, particularly if it is the first time. There is, therefore, an urgent need to have special rooms in every court building where witnesses can wait.

This will in turn reduce crowding in the corridors. The Committee was concerned about the absence of any programme specifically directed towards creating awareness about the role of the courts, the language, dress and so on. At the present moment there is no office mandated to educate the public about the workings of the courts and to deal with the media.

**The Committee therefore recommends;**

- (a) the establishment of a Department dealing with public and media concerns.**
- (b) the introduction of pamphlets, to be issued free of charge to the public giving information about the Judiciary.**
- (c) that each court building should have a waiting room, public toilets, hospitality and inquiry desk and water points.**
- (d) that sign boards showing the location of a court should be erected in appropriate areas.**
- (e) the establishment of juvenile remand homes and juvenile courts throughout the country.**
- (f) that the Chief Justice should issue a directive to all magistrates reminding them that in sexual offences, section 77(10) of the Constitution of Kenya gives them the power to conduct certain proceedings in camera to protect the dignity of certain categories of witnesses. They should use this provision in cases of sexual offences to protect the honour and dignity of the women and children involved in these cases by taking their testimony in camera.**



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- (g) the establishment of more subordinate courts in Samburu at Wamba and Baragoi; in Turkana at Lokichogio; in Tana River at Garsen; in Nairobi at Kasarani, Embakasi, and Waithaka; in Mombasa at Bamburi, Changamwe and Likoni; in Nakuru at Shabab; in Eldoret at Shauri Yako; in Kajiado at Ngong; in Siaya at Yala and Ugunja; in Lamu at Hindi, Mpeketoni and the translocation of the current court to Mukowe; in Nyandarua at Ol Kalau and Tulaga; in Taita Taveta at Wundanyi; in Mount Elgon at Kapsakwony; in Teso at Malaba and a night court at Jomo Kenyatta International Airport to deal with petty criminal cases involving foreign travellers.
  - (h) High Court sub registries should be opened at Garissa and Malindi and judges should be sent there on sessions on a regular basis.
  - (i) the magistrate's courts at Garissa, Lamu, Marsabit, Mandera, Moyale, Wajir, Isiolo, Maralal, Lodwar and Hola should be manned at no lower level than Senior Resident Magistrate so that they can deal with serious cases such as robbery with violence to save witnesses and the relatives of the accused persons the expense and inconvenience of travelling long distances.
  - (j) the establishment of a cadre of Court Interpreters, with their own Scheme of Service.
  - (k) the simplification and modernisation of the mode of dress in the Court of Appeal and the High Court to demystify the Judiciary.

## CHAPTER 11

### OTHER MATTERS

In the process of tackling specific terms of reference the Committee came across a number of problems which also directly affect the operations of the courts and which need to be addressed. This Chapter is devoted to these matters.

#### (a) THE JUDICIAL SERVICE COMMISSION

The Judicial Service Commission should be completely overhauled to provide for **the representation of the Law Society of Kenya and the Kenya Magistrates and Judges Association.** The representatives of the Court of Appeal and the High Court on the Judicial Service Commission should be elected by the Judges of those courts and not just selected as is the practice at the moment **and should not serve for more than one term of four(4) years at a time.** The Commission should also have its own secretariat completely separate from the Registrar of the High Court.

#### (b) ADMINISTRATIVE STRUCTURE

The Committee noted that the current administrative structure has contributed, to some extent, to some of the problems cited elsewhere in this Report, such as poor supervision of courts, unsatisfactory

personnel deployment and the inconsistent policy formulation on various aspects of court management.

Consequently the Committee recommends that the Judiciary be split into two (2) main divisions, namely, **JUDICIAL DIVISION** and **COURT ADMINISTRATION DIVISION**. The Judicial Division shall deal exclusively with judicial matters while the Court Administration Division shall deal with all aspects of court administration. The Committee also recommends the establishment of the post of the **CHIEF REGISTRAR** of the Judiciary, who shall be the Chief Executive and the Accounting Officer.

### **Judicial Division**

This Division shall comprise

- the Court of Appeal
- the High Court, and
- the subordinate courts

The Committee further recommends the establishment of the post of **DEPUTY CHIEF REGISTRAR**, who will be in charge of the Judicial Division and answerable to the Chief Registrar.

Each of the above courts shall be headed by a Registrar. The Registrar of the Court of Appeal will be in charge of all sub-registries of the Court of Appeal in Mombasa, Nakuru, Nyeri and Kisumu, while the Registrar of the High Court will be the overall in charge of the proposed Divisions of the High Court as well as all High Court stations and sub-registries throughout the

country. The Registrar of the subordinate courts will be in charge of all subordinate courts' registries throughout Kenya.

### **Court Administration Division**

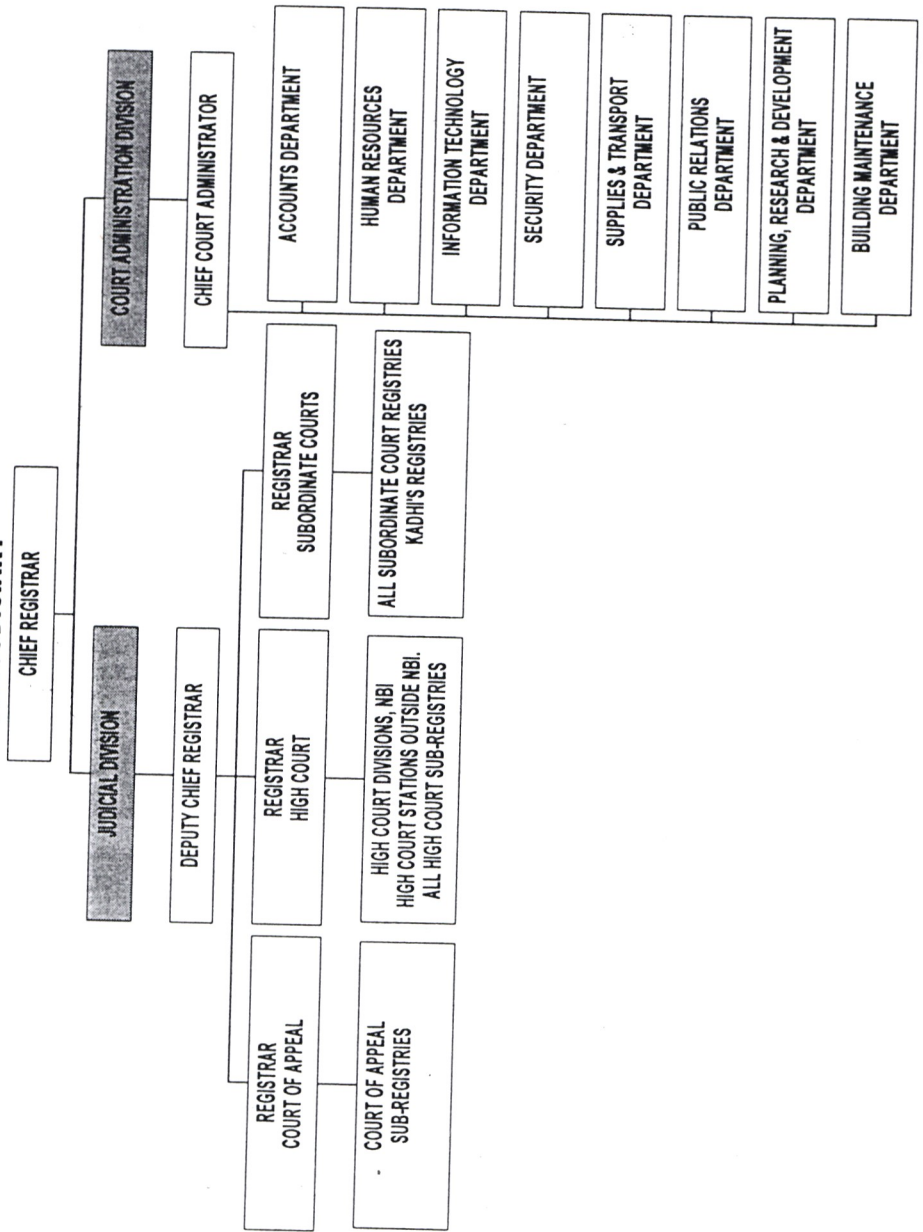
This Division shall consist of the following Departments, namely;

- **Accounts Department**
- **Human Resources Department**
- **Information Technology Department**
- **Security Department**
- **Supplies and Transport Department**
- **Planning, Research and Development**
- **Departments**
- **Buildings Maintenance Department**

The Division shall be headed by the Chief Court Administrator, a post created and already filled, albeit, on an acting capacity. The Chief Court Administrator shall report to the Chief Registrar.

It is the view of the Committee that the implementation of this structure will require a change in the law. **The Committee, therefore recommends the enactment of the Administration of Courts Act to give effect to these changes.**

# THE ADMINISTRATIVE STRUCTURE OF THE JUDICIARY



(c) **SECURITY, CLEANING AND SECRETARIAL SERVICES**

The Committee noted that the Judiciary is currently spending colossal sums of money in salaries, allowances and other benefits for security personnel, secretarial staff and cleaners. Yet the current trend is to privatise these services. It is economical and efficient. **It is therefore recommended that security, secretarial and cleaning services be contracted out and those currently performing these functions be retrenched.**

(d) **THE COURT OF APPEAL**

After discussions with the Honourable Judges of the Court of Appeal, the Committee **recomends that the Court of Appeal should have a Presiding Judge, its own Registrar and a separate vote. The day to day running of the Court of Appeal, settling of the Cause List and assignment of Judges should be the responsibility of the Presiding Judge.**

The Committee noted that Section 64(4) of the Constitution is open to abuse and **recommends that it be repealed so that a puisne Judge who has been elevated to the Court of Appeal cannot continue to deal with part-heard cases in the High Court.**

(e) **RETIREMENT OF JUDGES AND MAGISTRATES**

- (i) **Retirement age for Judges should be reduced from seventy-four (74) years to seventy (70)**

years to create room at the top for younger people. **Voluntary retirement age for Judges should be sixty-five (65) years.** A judge should retire with a decent package to enable him lead a decent life after retirement which should include, **his full salary, transport, personal security and a domestic servant.** **Retired Judges should remain on call until they reach the age of seventy-four (74) years.** Where a Judge gives only his year of birth without a date he should be deemed to have been born on 1st January of that year.

- (ii) **Compulsory retirement age for magistrates should be raised to sixty-five (65) years, leaving fifty-five (55) years as voluntary retirement age. A retired magistrate shall be entitled to his full salary.**
- (iii) **Legislation be introduced to extend security of tenure to magistrates.**
- (iv) Representations received by the committee indicate numerous instances of serious and inordinate delayed judgments and/or rulings by judges, some of which date back to ten years.

Pleas by the parties or their advocates to the previous Chief Justices and the judges involved have gone unheeded.

Failure to write and deliver judgments and/or rulings can only be attributed to incompetence on the part of the judges involved.

Consequently, the Committee recommends the amendment to Section 62(3) of the Constitution to include incompetence as a ground for the removal of a judge from office.

**(f) CAPITAL ROBBERY AND OTHER APPEALS**

- (i) Capital robbery appeals emanating from subordinate courts outside Nairobi should be heard in the provinces. To constitute two Judge panels for these appeals, Judges in the Criminal Division of the High Court in Nairobi should be sent on circuit for this purpose. This has the twin merit of giving the Provincial Judges an opportunity of handling these appeals and at the same time decongesting the Central Registry in Nairobi. For the purpose of giving effect to this recommendation the Chief Justice shall designate a senior Judge in each province to co-ordinate these appeals.
- (ii) After the opening of sub-registries at Garissa and Malindi the Chief Justice will make arrangements to extend this recommendation on capital robberies to Garissa and Malindi.

**(g) BACKLOG OF CASES IN THE DISTRICT REGISTRIES OF THE HIGH COURT**

The backlog of cases at Eldoret, Meru, Kisii and Kisumu does not justify the posting of additional Judges to those stations. The problem can be solved by the appointment of one or two Commissioners of Assize



at each of those stations under the Commissioners of Assize Act (Cap 12) for limited periods to deal only with old cases.

However, in the case of Mombasa High Court, the volume of cases is such that the services of four (4) judges is required.

(h) **TRANSFER OF MAGISTRATES**

A key element of the recommendations of the Committee is that **all magistrates and executive officers (except in exceptional circumstances) who have served at their present stations and sections for more than five (5) years should be transferred to new stations.** Unless this reshuffle is undertaken as a matter of urgency it will be virtually impossible to tackle the serious problem of corruption which poses the greatest threat to the rule of law in Kenya today.

(i) **JURISDICTION OF KADHIS**

- (i) The Jurisdiction of a Kadhi is defined in section 5 of the Kadhis' Act (Cap 11). The Judicial Service Commission extended the jurisdiction of two Kadhis at Eldoret and Bungoma (Vide L.N. No. 2096/97 and L. N. No. 6024/97) by appointing them District Magistrates (Second Class), thereby giving them the power to hear criminal cases. This appears to us to be contrary to the law. Because of this, and the fact that the other Kadhis are also agitating for similar appointments, **the Honourable the Chief Justice should take the**

**earliest opportunity to have these appointments revoked.**

- (ii) In addition to the qualifications spelt out in section 66(2) of the Constitution of Kenya **the basic qualification for the appointment of a Kadhi should be a relevant degree in Islamic law from a recognised University.**

(j) **GENDER ISSUES**

The population of female employees in the Judiciary has risen to nearly one-third (1/3) of the establishment. The Committee came across cases of sexual harassment. The victims suffer in silence for fear of being targeted or losing their jobs because the offenders are usually persons in positions of authority in the Judiciary. **The Committee therefore recommends that a committee composed of two puisne Judges and a lady Deputy Registrar be established to receive complaints relating to gender issues in confidence and pass on genuine cases to the Chief Justice for appropriate disciplinary action.**

(k) **COURT VACATIONS**

At the moment Judges of the High Court and the Court of Appeal spend 90 days on vacation every year when they do not do any work. During these vacations, one of which still carries the archaic and colonial nomenclature of "summer vacation", the courts are virtually closed and no business is conducted. **The**

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Committee recommends that these vacations be abolished and replaced with three recesses as follows;

- (1) Easter Vacation from 16th to 30th April
- (2) August Vacation from 1st to 31st August
- (3) Christmas Vacation from 21st December to 6th January.

Judges should be encouraged to take their annual leave during vacation.

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(l) **DAILY CAUSE LISTS**

At the moment too many matters are listed before each Judge in the High Court in Nairobi daily. The listing is totally unrealistic and oppressive and has the negative effect of impairing the Judge's capacity to perform. It is absolutely ludicrous to place forty-five (45) matters before one Judge in a day! **The Committee recommends as an interim measure, and pending the creating of Divisions in the High Court, that each Judge should be allocated no more than five (5) applications and three (3) hearings daily. And each Judge should have one free day a week when he/she can write judgements and rulings.** The practice should be to encourage substantive determination of issues by trial as opposed to interlocutory applications.

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(m) **COMPLAINTS AGAINST MAGISTRATES**

At the moment complaints of every kind against Judges and magistrates by members of the public are addressed to the Chief Justice. The Committee feels that

a system should be devised to deal with some of these complaints.

**Consequently the Committee recommends the setting up of a Complaints Committee, answerable to the Chief Justice, made up of 4 puisne Judges, one each from every Division, which shall receive and deal with all complaints by members of the public regarding the conduct and performance of any magistrate. The Chief Justice shall nominate one of the Judges to be the chairman of the Committee.**

**(n) ANNUAL CONFERENCES**

In order to enhance intellectual discourse and interpersonal relationships, the Committee recommends that there should be two annual conferences one for the Judges and another for magistrates paid for by the Judiciary.

Dated at Nairobi this ..... day of ....., 1998

1. The Hon. Mr. Justice R. O. Kwach

**CHAIRMAN**

2. The Hon. Mr. Justice S. E. O. Bosire

**MEMBER**

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3. The Hon. Mr. Justice J. W. Mwera

**MEMBER**

4. His Honour Aggrey Muchelule

**MEMBER**

5. Her Honour Jessie Lesiit

**JOINT SECRETARY**

6. His Honour William Ouko

**JOINT SECRETARY**