JUDICIARY COMMITTEE ON ELECTIONS

STRATEGIC PLAN

2016 – 2019
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Group photo of participants at the Judiciary Committee on Elections (JCE) Strategic Planning Workshop held on 7th-10th October, 2015 at the Great Rift Valley Lodge, Naivasha
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FOREWORD

Elections are not events, they are cycles. The completion of one cycle initiates the next. Under our Constitution, each election cycle is five years and is certainly not a static period. A plethora of events takes place in every electoral cycle, within which the role of the Judiciary in both pre-election and post-election dispute resolution is crucial. As such, the Judiciary should be adequately and constantly prepared to handle any disputes that may emerge during the electoral cycle.

Following the tragic end of the 2007 elections and the promulgation of a new Constitution in the subsequent years, the 2013 General Election came with a lot of expectations and indeed trepidation. It was an opportunity for the country to reinvigorate its democratic ideals through the auspices of a free and fair process of universal suffrage. The Judiciary, similarly, had an opportunity to regain public confidence in its work through the effective handling of electoral disputes during the period.

Owing to the anticipated large number of petitions, the reformed legal framework introduced by the Constitution of Kenya 2010 and the lessons learnt in 2007, established and unveiled the Judiciary Working Committee on Election Preparations (JWCEP) on 10th May, 2012. The Committee was tasked with putting in place arrangements to enable the Judiciary handle electoral disputes related to the 2013 General Election and beyond. Their task included organising training for members of the Judiciary, ensuring that all logistics were in place, taking a lead in the development of election petition rules and engaging with other stakeholders in accordance with the constitutional dictates of public participation.

The JWCEP had only 9 months to accomplish what should have been done in a 5-year election cycle but did not disappoint. The committee achieved its objectives and enabled the Judiciary, after the 2013 General Election, to effectively handle a total of 188 election petitions that were filed in our courts. The next elections are scheduled for August 2017 and will require an equal, if not an increased, amount of preparations to ensure that the judicial process of election dispute resolution runs smoothly.

The 2017 elections will be the second elections carried out under the Constitution, 2010 and due to an increased interest in several of the elective positions, we anticipate that there may be even more cases filed. It is imperative, therefore, that the Judiciary is prepared to handle any electoral disputes that may emerge at all stages of the electoral cycle. Indeed, determination of electoral matters has become a critical aspect of the work we do as a Judiciary. It is for this reason that I reconstituted JWCEP on 17th August 2015, as a standing Committee of the Judiciary, now known as the Judiciary Committee on Elections (JCE) under the Office of the Chief Justice. The reconstituted Committee, unlike its predecessor, is a permanent body to ensure that the Judiciary’s preparations follow the electoral cycle approach and continuously learns, improves and adapts. The Committee has representation from all the four courts and key institutions within the Judiciary and I am happy to note that it has embarked on its work in earnest. This Strategic Plan reflects the hard work and lessons learnt by the JCE and will guide the Judiciary’s roadmap for the next General Election.

The unveiling of the JCE’s Strategic Plan is a signal to the entire country that the Judiciary is already preparing for its task relating to the 2017 elections. It is my belief that with continued stakeholder engagement, all the institutions involved in the electoral justice system will start the marathon towards preparation on the same footing. An informed public will certainly make the next elections, and determination of petitions, much
more effective. As a Judiciary, our vision is to see all parties to the election petitions accept the outcome of the petitions. The Judiciary is determined to hear all petitions in a fair and efficient manner in strict adherence to the law.

The support of stakeholders is crucial to the success of the Judiciary in achieving its mandate on electoral justice. The Committee received the support of numerous stakeholders during the last electoral cycle, and for that the Judiciary is very grateful. As both the Chair of National Council for Administration of Justice and the Head of the Judiciary, I urge all stakeholders to continue to work with the Committee.

The Committee has done some outstanding work and I challenge them to continue and even surpass the achievement made so far. It rests upon them to ensure that the Judiciary will always be associated with the free and fair handling of electoral disputes and the delivery of justice.

DR. WILLY MUTUNGA
D. Jur, SC, E.G. H,
CHIEF JUSTICE AND PRESIDENT
OF THE SUPREME COURT OF KENYA
The Judiciary Committee on Elections is grateful to the Honourable Chief Justice for the trust bestowed on it to spearhead the Judiciary’s preparations on electoral dispute resolution. Since it was unveiled by the Chief Justice, the Committee has been steadfast in its efforts to ensure that the Judiciary is prepared for all aspects of election related petitions and cases. As the 2017 General Election draws nearer, we remain committed to ensuring that the Judiciary builds on its performance from the last elections and continues to enhance public confidence in the institution and its decisions. The Committee remains grateful to the Chief Justice and the Chief Registrar of the Judiciary whose doors are always open to the Committee.

Our gratitude goes to the development partners and agencies who supported the work of the JWCEP specifically Danida and USAID, through International Development Law Organisation (IDLO), DFID; and DAAD, through the Electoral Institute for Sustainable Democracy in Africa (EISA), the International Commission of Jurists (ICJ-Kenya), the German Development Cooperation (GIZ), the Ford Foundation, the International Foundations of Electoral Systems (IFES), the Institute for Law and Environmental Governance (ILEG) and the Institute for Education in Democracy (IED), as well as all the other development partners and agencies who supported the work of the JWCEP. Their support was integral in assisting the Committee achieve its mandate in the last electoral cycle. We look forward to continued cooperation with them and extend an invite to other interested partners to join our quest in bolstering Kenya’s democracy through effective electoral dispute resolution.

We would further like to thank our internal and external stakeholders, the public and well-wishers for their past support to our work. Stakeholder and public engagement has been a critical aspect of the mandate given to the Committee. We invite all stakeholders and members of the public to continue extending their interest and support to a key element of the country’s growing democratic space and electoral process. The Committee will continue to reach out and partner with stakeholders to ensure that our work benefits from their input and that the role of the Judiciary in electoral dispute resolution receives support of all stakeholders and the larger public.

In preparing this Strategic Plan, we have benefitted from the rich feedback from all stakeholders. The Plan has sought to capture these and other recommendations made by all those who were actively involved during the 2013 election petitions and appeals process. Overall feedback, recommendations and experiences of the JWCEP was captured in their Final Report which has heavily informed the development of this Strategic Plan. The JWCEP, previously chaired by Mr. Justice Ibrahim Mohammed, and later myself, released a Final Report that contains invaluable information about experiences, lessons learnt and way forward from a wide range of key stakeholders during the dispute resolution phase of the last electoral cycle. Feedback from these stakeholders was elicited primarily through forums convened by the JWCEP after the last General Election. We thank all stakeholders for their participation and look forward to continued cooperation and support in the implementation of this Strategic Plan.

Sincere appreciation must be extended to the Committee members who have continued to work tirelessly to ensure that we deliver on our mandate. While being full time on the bench with cause lists, they have discharged their respective duties as Committee members with excellence and are the very definition of teamwork. A special mention must also go to the dynamic Secretariat who have worked selflessly to ensure the
successful completion of this Strategic Plan and the rest of the work of the Committee. To the Committee and Secretariat, I thank you all for the hard work and urge you to strengthen your commitment as we embark on achieving the demanding task ahead.

Finally, we are also appreciative of the International Development Law Organisation (IDLO) for supporting the development and publication of this Strategic Plan and for availing consultants, Dr. Collins Odote, Njoki Muhoho, John Mutua and Kwame Owino, who guided the Committee in producing this Strategic Plan.

HON. JUSTICE DAVID K. MARAGA
COURT OF APPEAL
CHAIR, JUDICIARY COMMITTEE ON ELECTIONS
## ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CB</td>
<td>Capacity Building Sub-Committee</td>
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<tr>
<td>CA</td>
<td>Court of Appeal</td>
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<tr>
<td>CJ</td>
<td>Chief Justice</td>
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<td>LRSE</td>
<td>Law Reform and Stakeholder Engagement Sub-committee</td>
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<td>CM</td>
<td>Chief Magistrate</td>
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<tr>
<td>CMS</td>
<td>Case Management System</td>
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<tr>
<td>COG</td>
<td>Council of Governors</td>
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<tr>
<td>CRJ</td>
<td>Chief Registrar of the Judiciary</td>
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<tr>
<td>DCRT</td>
<td>Daily Court Returns Template</td>
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<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<tr>
<td>EDR</td>
<td>Electoral Dispute Resolution</td>
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<tr>
<td>EISA</td>
<td>Electoral Institute for Sustainable Democracy in Africa</td>
</tr>
<tr>
<td>F&amp;A</td>
<td>Finance and Administration Sub-Committee</td>
</tr>
<tr>
<td>HC</td>
<td>High Court</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
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<tr>
<td>IDLO</td>
<td>International Development Law Organisation</td>
</tr>
<tr>
<td>IEA</td>
<td>Institute of Economic Affairs</td>
</tr>
<tr>
<td>IEBE</td>
<td>Independent Electoral and Boundaries Commission</td>
</tr>
<tr>
<td>IEC</td>
<td>Information, Education and Communication</td>
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<tr>
<td>IED</td>
<td>Institute for Education in Democracy</td>
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<tr>
<td>IFES</td>
<td>International Foundation of Electoral Systems</td>
</tr>
<tr>
<td>ILEG</td>
<td>Institute for Law and Environmental Governance</td>
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<tr>
<td>JCE</td>
<td>Judiciary Committee on Elections</td>
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<td>JSC</td>
<td>Judicial Service Commission</td>
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<td>JTF</td>
<td>Judiciary Transformation Framework</td>
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<td>JTI</td>
<td>Judiciary Training Institute</td>
</tr>
<tr>
<td>JWCEP</td>
<td>Judiciary Working Committee on Election Preparations</td>
</tr>
<tr>
<td>KL</td>
<td>Kenya Law</td>
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<tr>
<td>LSK</td>
<td>Law Society of Kenya</td>
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<tr>
<td>M&amp;E</td>
<td>Monitoring and Evaluation</td>
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<tr>
<td>NCAJ</td>
<td>National Council on the Administration of Justice</td>
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<tr>
<td>NCLR</td>
<td>National Council for Law Reporting</td>
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<tr>
<td>PMD</td>
<td>Performance Management Directorate</td>
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<tr>
<td>PPDT</td>
<td>Political Parties Disputes Tribunal</td>
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<tr>
<td>SC</td>
<td>Supreme Court</td>
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<tr>
<td>SPM</td>
<td>Senior Principal Magistrate</td>
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<tr>
<td>PPDT</td>
<td>Political Parties Disputes Tribunal</td>
</tr>
<tr>
<td>ToRs</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>ToT</td>
<td>Training of Trainers</td>
</tr>
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</table>
1.1 The Background

The Judiciary Committee on Elections (JCE) was launched by the Chief Justice in August 2015. The Committee succeeded the Judiciary Working Committee on Election Preparations (JWCEP), which the Chief Justice had launched in May 2012 as a temporary committee formed to help the Judiciary prepare for and adequately handle disputes arising from the 2013 elections.

In the past, the Judiciary had been accused of incompetence and bias. It was alleged that the 2007/2008 post-election violence was partly caused by the loss of public confidence in the Judiciary to efficiently and expeditiously determine the Presidential Petition that would have been filed. To restore public confidence and in conformity with the transformation within the Judiciary, an effective and efficient Electoral Dispute Resolution (EDR) process was an imperative in the run up to the 2013 elections. The work of the JWCEP was, consequently, in line with and based on the Judiciary Transformation Framework (JTF), the guiding blueprint on which judicial reforms are anchored with a view to ensuring equitable access to justice.

Based on the preparations coordinated by the JWCEP, the Judiciary discharged its role of resolving disputes related to the 2013 elections, at the pre-election and post-election stage in a timely and satisfactory manner. Reports from both domestic and international observers and feedbacks from stakeholders during post-evaluation meetings organised by the Judiciary commended the Judiciary for its preparedness, transparency and conduct in the EDR process.

While the JWCEP was a temporary committee focusing on the 2013 elections, lessons from its work demonstrated to the Judiciary the importance of continuous preparations. While elections are held every five years, the nature of electoral disputes is such that the manner of their handling has a long-lasting effect on the credibility of the Judiciary. Consequently, in August, 2015 the Chief Justice Dr. Willy Mutunga launched the Judiciary Committee on Elections (JCE) as a permanent committee of the Judiciary. The JCE is to build on the work of the JWCEP and provide a sustainable mechanism to assist the Judiciary continuously prepare for and discharge its mandate on EDR. Indeed, the JCE being an overlap from the JWCEP will benefit from some
of the activities undertaken in 2015, notably stakeholder engagement with both state and non-state actors in
the area of law reform, including the Justice and Legal Affairs Committee of the National Assembly, where
a Bill with proposed amendments to various legislation is pending. In addition, engagement with the parent
Institution on the budget process for EDR has begun earlier this time round. Making the JCE permanent
gives the Judiciary an opportunity to continuously learn and improve on its performance in handling election
disputes.

1.2 The Mandate of the JCE

The mandate of the JCE is:

I. To advise the Judiciary on the administrative arrangements and measures for the efficient disposal of
election-related disputes.

II. To develop and implement, in conjunction with the Judiciary Training Institute, a training programme
for the efficient and effective management of election disputes for judicial officers and support staff.

III. To develop and design a system for monitoring and evaluating the management and administration
of election-related disputes in court.

IV. To liaise and co-operate with other stakeholders to ensure efficient, effective and timely resolution of
election related disputes and offences.

V. To advise the Judiciary on the information that needs to be developed and disseminated to the public
through the avenues open to it to pursue electoral disputes and the approaches that will be employed.

VI. The Committee shall be answerable to the Hon. Chief Justice.

1.3 Strategic Plan Development Process

Following the launch of the Committee, and based on the experiences from the 2013 election petitions
process, the JCE undertook a Strategic Planning process so as to clearly determine its roadmap of operations
with a view to building on the successes of the past.

Strategic Planning involves a systematic process of envisioning a desired future, and translating that vision
into objectives and key activities. It involves clearly defining the Committee’s mission and an assessment of
its current state, as well as the factors affecting its operations. Success requires a well-thought-out plan on
how to properly allocate time, human capital and financial resources in implementing the identified strategies.

Between October and December, 2015, the JCE undertook its Strategic Planning for the period 2016-2019.
The Process involved review of literature, consultations with key stakeholders and discussions amongst the
Committee members. Between 7th and 10th October, 2015, a Strategic Planning workshop was held at the Great
Rift Valley Lodge, Naivasha. The workshop was attended by members of the Committee, the staff of the JCE
and International Development Law Organisation (IDLO) and the sponsors of the workshop. The workshop
was facilitated by Dr. Collins Odote, a legal advisor to the Committee and Njoki Muhoho, a Management
Consultant. Also in attendance was John Mutua, a budget expert from the Institute of Economic Affairs
(IEA), responsible for helping cost the implementation of the Strategic Plan. The full list of participants at
the Strategic Planning Workshop is attached as Annex 1.

This plan captures the outcome of all the consultations and subsequent discussions between the consultants
and the JCE. It provides a signpost and roadmap the Committee will travel over the next 4 Years to ensure
the Judiciary delivers fair and timely justice in electoral disputes.
CHAPTER 2
THE STRUCTURE AND MEMBERSHIP OF THE JUDICIARY COMMITTEE ON ELECTIONS

2.1 Judiciary Structure

The Judiciary is one of the three arms of Government. Its principal role is to resolve disputes. The JCE is a standing committee of and operates within the overall mandate and structure of the Judiciary.

The Judiciary is headed by the Chief Justice, assisted by the Deputy Chief Justice. The Chief Administrator, who is also the Accounting Officer, is the Chief Registrar of the Judiciary. As an independent arm of Government, the Judiciary has a Judicial Service Commission (the JSC), headed by the Chief Justice. The JSC is responsible for policy formulation and overall guidance of the administration of justice by the Judiciary.

While the Chief Justice is the head of the Judiciary, the court structure is such that every level has a leader. The Chief Justice presides over the Supreme Court, with a President and Principal Judge leading the Court of Appeal and High Court Respectively. In addition, there are two specialised courts having coordinate jurisdiction with the High Court (Employment and Labour Relations Court and Environment and Land Court). The Tribunals and the Magistrates Courts fall under the supervisory jurisdiction of the High Court.

The Judiciary works through a hierarchy of courts namely; Superior and Subordinate courts. Below is the Court Hierarchy.

KENYA COURT HIERARCHY

<table>
<thead>
<tr>
<th>THE SUPREME COURT</th>
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<tbody>
<tr>
<td>COURT OF APPEAL</td>
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<tr>
<td>HIGH COURT/ENVIRONMENT AND LAND COURT/EMPLOYMENT AND LABOUR RELATIONS COURT</td>
</tr>
<tr>
<td>LOWER COURTS</td>
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<tr>
<td>Magistrate Courts</td>
</tr>
<tr>
<td>Kadhi’s Court</td>
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<tr>
<td>Court Martial</td>
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<tr>
<td>Local Tribunals</td>
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</tbody>
</table>
It is in this multiple structure that the JCE operates. By nature, the work of the JCE is a continuous and symbiotic work relationship with all the other units within the structure.

In developing this Strategic Plan, every effort has been made to align it with the Judiciary structure and operations while still focusing on the JCE specific mandate.

2.2 JCE Linkages within the Judiciary Structure

As stated, the JCE’s terms of reference requires it to report to the Chief Justice. To that extent it has a direct relationship with the office of the Chief Justice and through it to the Judicial Service Commission. As a committee of the Judiciary, its administrative and financial functions are linked with and facilitated through the office of the Chief Registrar of the Judiciary.

The membership of JCE includes both the President of the Court of Appeal and the Principal Judge of the High Court, a measure designed to provide linkages with the formal structures of the courts. In addition, the Judiciary Training Institute (JTI) is represented in the Committee through its Director.

To ensure coordination of actors within the justice chain, the law has created the National Council for the Administration of Justice (NCAJ) as a multi-stakeholder agency with representation from State and non-state actors in the justice chain. Electoral matters by nature involve several actors in the justice chain. Their handling is consequently a matter that the NCAJ is interested in and would occasionally discuss. The JCE, by dint of its mandate, links the Judiciary, through the Chief Justice, with the NCAJ on election matters.

2.3 JCE Structure

The JCE membership is composed of all levels of the Judiciary and headed by a Chairperson, assisted by a Deputy. The Committee also has a Chief Executive Officer who heads the Secretariat.

The Secretariat is responsible for day-to-day activities of the Committee. In addition to the Chief Executive Officer, it has technical and support staff, some seconded from the Judiciary and others hired specifically for the Committee on such terms as the Committee approves.

2.4 The Committee Governance

To ensure good governance and effective decision-making, the JCE has a sub-committee governance structure. The sub-committees have been developed around the core mandates of the JCE. With the full membership comprising the Committee with overall policy making and quality assurance of the implementation of the various activities of the JCE as coordinated by the Secretariat, sub-committees provide an effective mechanism for decision-making.

Every sub-committee elects its Chairperson. To ensure that secretarial support is provided to them, the CEO is a member of every sub-committee. For overall coordination of the JCE activities, the JCE Chairperson is at liberty to sit in all the sub-committees.
The JCE has three sub-committees, as follows:

2.4.1 Finance and Administration (F&A) Sub-Committee

The main function of this sub-committee is to ensure the JCE’s stability and sustainability through guidance and policies on resource mobilisation. They will also validate and approve the resource mobilisation policies and activities. They have an obligation to ensure that the JCE meets the donor and government financial reporting requirements.

The sub-committee will oversee mobilisation of resources from government and development partners; prudent use of resources, reporting and auditing of such resources and maintenance of relationships with funding partners of the JCE.

This sub-committee is also responsible for ensuring the JCE Secretariat is staffed with adequate and competent personnel. They will use their powers in attracting the right secondments of staff from the main Judiciary and technical assistance from development agencies. It is also the responsibility of the sub-committee to ensure that the JCE has in place the right procedures and systems including in the areas of resource mobilisation and monitoring and evaluation.

2.4.2 Capacity Building (CB) Sub-Committee

This sub-committee has an overarching responsibility of ensuring that judges, judicial officers and staff have the necessary skills, knowledge and competencies to carry out their work as relates to EDR. The sub-committee is also responsible for administrative arrangements to enable the Judiciary handle election petitions in an effective and efficient manner. They will address issues including the case management systems, security and allowances of judges and judicial officers handling election related disputes, equipment, materials and space for hearing petitions, including space for the media covering the hearings.

The sub-committee will also link with the Judicial Training Institute to coordinate training of all judicial staff. They will also coordinate needs assessment, design of training, and determination of scope, timing and programme for training on EDR.
2.4.3 Law Reform and Stakeholder Engagement (LRSE) Sub-Committee

This sub-committee is responsible for three broad tasks. First, they will have the duty of coordinating the communication functions of the JCE. This involves both internal and external communications, a task that requires development of a clear communication strategy and procurement of communication equipment. It is also supposed to ensure that the public and key stakeholders such as the State and non-state actors and the media are engaged, consulted and updated on the JCE’s work and the Judiciary’s delivery of its mandate on EDR. It will engage with other actors in the electoral process and input their contributions into the Judiciary’s mandates. In discharging its communication mandate, it will link with relevant departments of the Judiciary responsible for communication.

The LRSE sub-committee also has the overall responsibility for technical law reform. This will involve identifying areas of law that require to be reformed to improve the Judiciary’s role in EDR. Further, they will facilitate the JCE’s engagement with Parliament to lobby for consideration and adoption of electoral reform proposals from the Judiciary. The sub-committee also has the duty of facilitating the reform to rules of procedure governing the determination of election petitions by the various courts of the Judiciary. It will consequently liaise with the Rules Committee of the Judiciary and ensure election rules of procedure are periodically updated.

2.5 Current Membership

The current members of the JCE are as follows:

<table>
<thead>
<tr>
<th>No</th>
<th>NAME OF COMMITTEE MEMBERS</th>
<th>DESIGNATION</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Hon. Mr. Justice David Maraga</td>
<td>Court of Appeal (CA) Judge Chair</td>
</tr>
<tr>
<td>2</td>
<td>Hon. Mr. Justice David Majanja</td>
<td>High Court (HC) Judge Vice Chair</td>
</tr>
<tr>
<td>3</td>
<td>Hon. Mr. Justice Mohammed Ibrahim</td>
<td>Supreme Court (SC) Judge</td>
</tr>
<tr>
<td>4</td>
<td>Hon. Dr. Justice Smokin Wanjala</td>
<td>SC Judge</td>
</tr>
<tr>
<td>5</td>
<td>Hon. Mr. Justice Paul K. Kariuki</td>
<td>President CA</td>
</tr>
<tr>
<td>6</td>
<td>Hon. Mr. Justice Kathurima M’Inoti</td>
<td>CA Judge</td>
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<tr>
<td>7</td>
<td>Hon. Mr. Justice Richard Mwongo</td>
<td>Principal Judge HC</td>
</tr>
<tr>
<td>8</td>
<td>Hon. Mr. Justice Mbogholi Msagha</td>
<td>HC Judge</td>
</tr>
<tr>
<td>9</td>
<td>Hon. Prof. Justice Joel Ngugi</td>
<td>Director Judiciary Training Institute HC Judge</td>
</tr>
<tr>
<td>10</td>
<td>Hon. Lady Justice Stella Mutuku</td>
<td>HC Judge</td>
</tr>
<tr>
<td>11</td>
<td>Hon. Rosslyn Oganyo</td>
<td>Chief Magistrate (CM)</td>
</tr>
<tr>
<td>12</td>
<td>Hon. Peter Gesora</td>
<td>CM</td>
</tr>
<tr>
<td>13</td>
<td>Hon. Lillian Arika</td>
<td>Senior Principal Magistrate (SPM) Chief Executive Officer</td>
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</table>
CHAPTER 3
STRATEGIC DIRECTION AND GUIDE

There exists a strong correlation between this Strategic Plan of the JCE with the overall plans of the Judiciary. The JCE Strategic Plan is complementary and works towards fulfilling the overall vision of the Judiciary and contributing to the on-going judicial transformation.

3.1 The Future Direction

The future direction of the JCE is a function of the Judiciary. Therefore the vision and mission statement of the JCE is in tandem with that of the Judiciary.

The vision of the JCE is:

To be the facilitator in the delivery of prompt and quality electoral justice that inspires public confidence.

The mission is to:

1. Build the capacity of the Judiciary for delivery of timely and quality electoral justice.
2. Enhance public participation in electoral justice to inspire public confidence.
3. Enhance partnerships with internal and external stakeholders.

3.2 Core Values

Core values govern personal relationships and articulate what the Committee stands for. They help explain work-styles and attitudes of the members and staff. They are the essential tenets that guide policy and decision-making and are the principles from which stakeholders are able to predict the JCE’s conduct.

The JCE’s core values reflect those of the Judiciary. However, they are inclined towards the electoral process.

a. **Integrity.** The Judiciary believes in fair and just election dispute resolution. It is committed to honesty and openness in the dispensation of justice. The veracity in service delivery and freedom from external influences so as to inspire trust and confidence amongst the public will be a guide to both the JCE and the Judiciary in EDR matters. The JCE is also committed to high standards of ethics and morality and to ensuring that its processes are not clouded by improper and corrupt practices and influences.

b. **Impartiality.** Objectivity in providing fair and free hearing of the petitions in the administration of electoral justice. The JCE will seek to enhance a culture of neutrality in dispensation of electoral justice. The Judiciary will listen to all parties to a dispute honestly and arrive at decisions based on evidence and the law. It will be independent in the determination of matters and in all actions it undertakes.

c. **Confidentiality.** Instillation of trust in the public and the stakeholders over the manner in which it handles confidential information thus inducing public confidence in the Judiciary.
d. **Diligence.** The unwavering commitment to dispense electoral justice in a fair manner. Based on this commitment and dedication to all electoral candidates and the people of Kenya, the JCE members and staff will undertake their responsibilities in a thorough and professional manner, applying skill and hard work at all times. The strict timelines in the Constitution and election laws require extra commitment so that disputes are determined expeditiously.

e. **Innovation.** Creatively looking for solutions to any challenges in the process of discharging the mandate of the JCE. The JCE is committed to delivering results and adhering to the Constitutional directive that justice should be delivered without undue regard to technicalities.

f. **Responsiveness.** As a committee of the Judiciary, the mandate to serve is derived from and ultimately accountable to the people of Kenya. The JCE will listen to and act on public critiques, suggestions and inputs. It will use these to ensure its work is relevant and adds value so that justice dispensation serves the public good.
CHAPTER 4

CONTEXTUAL ANALYSIS

There are internal and external environmental factors that influence the way people work. The best plans may fail to come to actualisation if people do not take into account these factors and plan around them.

The Committee needs to identify its Strengths so that efforts can be made in building upon them. The identified Weaknesses provide the most important areas for improvement and development. Paying attention to the weaknesses provides opportunity to improve. The Opportunities provide avenues for growth and potential optimisation while the Threats have to be hedged against if plans are to be realised.

Below is a SWOT Analysis of the JCE which has formed the basis for developing strategies for the plan period, 2016-2019.

4.1 Strengths

Strengths are things that an organisation does well. These are done well consistently and there is an innate ability to get it right all the time. Internally, members know they are consistently good and the stakeholders agree too. The JCE believes it is strong in the following areas:

**Institutionalisation of the JCE.** The *ad hoc* Judiciary Working Committee on Election Preparations has been transformed into a permanent committee. It is therefore well entrenched in the system and will thus achieve the focus that it needs. The experience of JWCEP has also formed a strong foundation for JCE. The Committee has an operational Secretariat and the goodwill and support of the Chief Justice and Chief Registrar of the Judiciary. This helps facilitate both judicial and administrative matters.

**Continuity and Commitment.** Majority of Committee members and the Secretariat staff worked in JWCEP. They were involved in the last elections. There is continuity and thus reducing steep learning curves. The established work culture is one of diligence and willingness to go beyond the call of duty. This creates a high probability of future success of the JCE.

**Support from Development Partners.** Currently, there are key development partners with national programmes on democracy. Such common objectives have seen these organisations coming on board to finance and provide technical support to the JCE. The past relationships and partnerships that the Committee developed provides a sound basis for deepening engagements with and support from development partners so as to ensure delivery of the planned strategies. Development partners provided critical financial and technical support to the Committee in the run up to the 2013 elections. They also supported the hiring of temporary staff for the Committee. These are relationships that can be built upon.

**Positive Public Perception.** The May 2014 JWCEP Performance Evaluation Report recorded positive perception of and support from the public for the Committee. This view is shared in several other external reports on the performance of the Judiciary in the 2013 elections. The support and goodwill from the public gives the JCE a strong foundation from which to continue with preparations for future elections. The support of the public is an essential element of delivery by the Judiciary. The Constitutional mandate of the Judiciary derives from the people. In all its undertakings, the JCE will seek to cultivate and nurture this goodwill.

**Existing Judicial Precedents.** The conclusion of the work of the previous committee and the ensuing decisions by the Judiciary on several aspects of elections has provided judicial precedents. There are now available judgements on several aspects of the electoral process. These are useful for helping provide consistency in judicial decision-making. They will also help the JCE in preparing capacity building curriculum, conducting trainings and electoral reform processes.

**Case Studies and Benchmarks.** The past work has provided for a database of case studies and experiences that form a benchmark, not only for Kenya but also regionally and internationally. The Kenyan Judiciary and the work of the Committee on elections continue to be cited as a best practice on handling election disputes.
**Stakeholder Engagement and Electoral Reforms.** Electoral legal reforms were carried out through wide stakeholder consultations. The stakeholders engaged included the Independent Election and Boundaries Commission (IEBC), Political Parties Dispute Tribunal (PPDT), Registrar of Political Parties, Interagency Committee comprising of Director of Public Prosecution (DPP), IEBC, National Police Service, National Council on Administration of Justice (NCAJ), National Council for Law Reporting (NCLR) and Law Society of Kenya (LSK). The stakeholder engagements have resulted in positive relationships with key actors in the electoral process, a strength that the JCE can build upon for future electoral reform and other activities within its mandate.

**4.2 Weaknesses**

These are areas for improvement—areas of one’s work or work-styles where one performs below expectations. One may occasionally get it right but are not consistent. An organisation may have the in-house potential to do better, but for a range of reasons, this does not always happen. For the JCE, these areas of weaknesses include but are not limited to:

**Inadequate Resources.** At the commencement of the work of JWCEP, a budget of Five Hundred and Eighty-Seven Million, Nine Hundred and Twenty-Seven Thousand, Two Hundred and Seventy-Five Kenya Shillings (Kshs. 587,927,275) was provided. However, no funds were specifically allocated to the Committee for the EDR process. The Committee had to apply for funds from the general Judiciary fund and fundraise from supportive development partners, with special mention to DANIDA and USAID, through International Development Law Organisation (IDLO); and DFID and DAAD through the Electoral Institute for Sustainable Democracy in Africa (EISA). The others included the International Commission of Jurists (ICJ-Kenya), the German Development Cooperation (GIZ), the Ford Foundation through the Institute for Law and Environmental Governance (ILEG), the International Foundations of Electoral Systems (IFES) and the Institute for Education in Democracy (IED). Resources were limited and the Secretariat was thin. Limited resources is a shortcoming that has the potential of hampering the work of the Committee.

**Inadequate Legal Research.** A total of 6 legal researchers and 2 research interns were available to the Committee in the run up to the 2013 elections. Currently, there are only two legal researchers seconded to the Committee. Even these are only available occasionally as they are also engaged and allocated to specific judges as part of their normal duties. Compared with the research needs of the Committee, this arrangement and numbers are not sufficient to meet the Committee’s research requirements.

**Heavy Workload.** The Committee members have dual roles, which interrupts personal time due to the immense workload. They are also constantly under immense pressure of work. Judges and magistrates who handled the petitions had to be excused from their normal court work. While this ensured that the petitions were disposed of within the set timelines, it had a reverse effect. The backlog of the normal court cases was exacerbated. The Judiciary needs to address this challenge.

**Incomplete Relocation of Judges.** The improved administrative rules on management of petitions at the court level required that judges do not hear petitions in their domicile stations. The plan was to relocate all the judges and magistrates handling petitions. However, due to logistical and financial resource challenges only 12 judges were moved.

**Inadequate Court Space.** In some regions, the EDR process was affected by limitations in physical courts’ space. Some cases had to be moved to Nairobi as a result. This disadvantaged the people involved and in a way defeated the Judiciary’s goal of taking justice to the people. Secondly, in certain instances, provision had not been made for the media. Until the construction of additional court premises across the country is complete, space constrains will continue to be a weakness that the JCE has to contend with in planning for EDR.
Lack of Effective Monitoring and Evaluation System. The Committee does not have an in-house performance evaluation system. The importance of such a system is highlighted in the JWCEP Evaluation Report of May 2014.

Insufficient Capacity Building. It was important that the judges, judicial officers and staff be well equipped for the job at hand. In conjunction with the JTI, a training curriculum was developed for both judicial officers and the Judiciary staff. In addition, Training of Trainers was also conducted to ensure wider and continuous coverage.

Over 90% of the judges from the High Court, Court of Appeal, Employment and Labour Relations Court, Environmental and Land Court, and Magistrates, were trained on election dispute resolution. Judiciary staff trained included staff of the Supreme Court and Court of Appeal, Deputy Registrars, Law Clerks, Legal Researchers ICT Assistants and Executive Officers.

However, the training was inadequate in both scope and coverage. There is need for more detailed training, need assessments, fine tuned curriculum and sufficient delivery to a wider group of target participants.

Failed Case Management System. An attempt was made at establishing an administrative and case management system to monitor the management of all petitions which arose from the 2013 elections. The purpose was to provide reports on progress in the petitions to the committee in real-time. This unfortunately did not work as planned and was abandoned. The Committee found temporary alternative in piggy-backing on the National Council for Law Reporting documentation services.

The Appeal Process Gap. The legal framework as originally crafted with clear and strict timelines did not factor in a second appeal. The fact that second appeals took place worked against the need for timely disposal of matters. Given the stipulated election petitions dispute resolutions timeframe, there is need to strike a balance between right of appeal and need for quick resolution of election disputes.

4.3 Opportunities

These are talents, resources or general opportunities that remain untapped. This could be because of lack of awareness of the existence or lack or planning on how to optimise.

Judiciary Goodwill. There is an opportunity to optimise on the goodwill that the JCE enjoys from the CJ, CRJ and the entire Judiciary leadership.

Stakeholder Goodwill. The stakeholders in the legal fraternity, elections field and the general public are supportive and willing to engage. They are willing to share ideas and information. This provides a good work environment for the JCE.

Development Partner Support. The JCE continues to enjoy support, both financial and technical, from development partners. This helps to meet the resource gaps and thus increases the ability to handle more volume of work and to expedite projects.

Parliamentary Support. Parliament has shown willingness to work with the Judiciary in electoral reform. There is more potential in utilising the goodwill to reform the electoral laws to address some gaps, especially those that hinder the Judiciary in resolving disputes effectively.

On-going Law Reforms. The country has been in a reform trajectory. The adoption of a new Constitution and the subsequent legislative and institutional reforms provides a favourable environment for improvement and engagement. This provides opportunities not just for reform of electoral laws but for the work of the JCE geared towards improving the roles and performance of the Judiciary in resolving electoral disputes.
4.4 Threats

These are barriers in one’s path. They are factors in one’s environment that block our desired achievements. One is not responsible for their presence. While they are beyond an institution’s power and ability to influence and cannot be removed, an institution can hedge against them.

**Budgetary Competing Needs.** Resources for the JCE are first allocated to the Judiciary. It is procedural that Judiciary budgets are debated and approved by The National Assembly. The National Assembly has direct influence on the size of the budget and that, eventually has influence on the resources available for the JCE. Previously, no money was allocated to the Committee. Up to this stage, all financial requirements have been met through donations from other Judiciary sections and development agencies. The JCE has prepared a separate budget for its operations and it is hoped that the National Assembly will approve it as a component of the overall Judiciary budget.

**Politicisation of the EDR Process.** While the handling of electoral petition disputes is a technical process, the actual elections are political by nature. Thus, the tendency to politicise the EDR process is high. Potentially, this creates a volatile environment in which the Judges and judicial officers have to wade through to deliver justice.

**Multiple Jurisdictions.** In EDR, the Judiciary is the principle player. However, there are other bodies such as PPDT and IEBC with mandates that cover aspects of the EDR process. There is no clarity on jurisdiction in certain cases resulting in overlaps. The manner in which these bodies decide to dispose cases within their mandate directly affects the Judiciary’s mandate on EDR.

**Disobedience of Court Orders.** There is a tendency and propensity for parties to disobey court orders. This generates impunity and erodes the public and court users’ confidence in the judicial process.

**Transition in Judiciary.** Transition is part and parcel of every institution. The Constitution provides for term limits for the office of the Chief Justice and Deputy Chief Justice. Similarly, a retirement age is provided for all judges. This brings with it double transitions within the Judiciary. With the transitions come disruptions and succession challenges that impact on the delivery of justice. These have the potential of affecting JCE’s work and delivery of EDR by the Judiciary.

**Legislative Amendments.** Good practice requires clarity in legislative framework. To ensure effective implementation, it is common practice that electoral laws are not changed less than one year before elections. However, Legislators have powers to make such changes at any time. Indeed, they have in the past made unexpected amendments too close to the elections. This was the experience in the 2013 elections. This has the potential of disrupting electoral processes and impacting on EDR.

**General Insecurity.** There exists general insecurity in the country. This affects the judges, judicial officers and their staff. The nature of their work also escalates their personal insecurity.

**Development Agencies’ Changing Priorities.** The current strong interest in the electoral process by development agencies is not guaranteed to run indefinitely. Development agencies’ preferences change with time. The current interest in electoral disputes could fade with time and thus the financial support may dry up.

**Stakeholder Apathy.** Stakeholders have their own objectives and mandate. There exists the threat that, should the work of the JCE not directly contribute to their organisational objectives, they are likely to withdraw or minimise support.

The Committee has no control of the stakeholder’s perceptions towards elections and election dispute resolutions.
5.1 Overview

Based on the past engagements, experience from 2013 and a review of internal and external factors affecting the operations of the JCE, several thematic areas of focus emerged. The themes contain issues that will affect the realisation of the JCE’s mission. Around every thematic area, objectives and strategies have been crafted to guide the JCE’s operations over the current plan period.

The identified and prioritised thematic issues are:

- Committee structure
- Resource mobilisation
- Information management
- Capacity development
- Electoral reform
- Public participation and stakeholder engagement
- Efficient management of EDR.

5.2 Themes and Objectives

5.2.1 Theme 1: Committee Structure

An Organisational Structure is a framework around which the Committee is organised and ensures that it functions effectively. The JCE is now a permanent Committee and needs a well-defined structure. Building on the 2013 elections dispute administration and management, the Committee members are more aware of the Committee needs. There is need for a structure that will facilitate the administration, processes and expedited decision-making for the Committee. The structure has to be alive to the huge workload that comes with sustaining effective and efficient resolution of electoral disputes by the Judiciary.

This informs the need for the Committee’s structure to be robust and clarify the Committee members’ roles and responsibilities, establish and strengthen sub-committees, improve relationships between the Committee and other organs of the Judiciary, set clear guidelines for the Secretariat on their roles and responsibilities, reporting relationships, flow of information and decision-making. Once clarified, the structure must also be operationalised and its functioning resourced.
**Objective 1:** Strengthen the Committee structures and internal systems and processes and ensure delivery on the JCE mandate.

<table>
<thead>
<tr>
<th>No</th>
<th>Recommended Activities</th>
<th>Resources Needed</th>
<th>By When</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Governance Structure</td>
<td>Consultant to develop structure, ToRs and reporting relationships and Round-table meeting to discuss and validate the structure.</td>
<td>January 2016</td>
</tr>
<tr>
<td></td>
<td>Develop a governance structure that guides the Committee’s operations and decision-making.</td>
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<td></td>
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<tr>
<td>2</td>
<td>Secretariat Structure and Roles</td>
<td>An Organisational Development specialist to draft and present to the JCE for validation.</td>
<td>March 2016</td>
</tr>
<tr>
<td></td>
<td>Identify the essential services required and develop key jobs and the associated key performance areas.</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>Staffing</td>
<td>The JCE to approach the CRJ for secondment and also apply for technical support from partner Development Agencies.</td>
<td>March 2016</td>
</tr>
<tr>
<td></td>
<td>The Committee will require staff to take up the identified roles and responsibilities. These will be seconded from The Judiciary. Some roles will be supported by Development Agencies. The structure must be populated for the committee to achieve its objectives.</td>
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<tr>
<td>4</td>
<td>Enhanced Engagement with the Chief Justice</td>
<td>The JCE and Chairman to hold regular briefings with the CJ and send him periodic updates.</td>
<td>Immediate and continuous Submission of quarterly reports</td>
</tr>
<tr>
<td></td>
<td>There is need to optimise engagements with and support of the CJ for the JCE through regular interactions and briefing on electoral matters and the JCE activities.</td>
<td>Invitation to the CJ to strategic JCE events.</td>
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<tr>
<td></td>
<td>The CJ’s engagements in the JCE activities will also enhance the visibility for the JCE.</td>
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**5.2.2 Theme 2: Resource Mobilisation**

The financial, human and infrastructure requirements for the Committee are enormous. There is urgent need to raise and commit resources to the JCE activities. While the Judiciary successfully prepared for and discharged its role in delivering credible EDR processes in the last General Election, resources were a key constraint to the Committee’s operations. For sustainability of the JCE activities and improvement of the Judiciary’s EDR performance, there is need for sufficient resources. The JCE will, consequently prepare realistic and accurate budgets and work plans, seek resources both from the Judiciary and development partners so as to enable timely implementation of all planned activities.
**Objective 2:** Ensure the sustainability of the JCE and execution of its mandate through proactive resource mobilisation, both within the government and from development partners.

<table>
<thead>
<tr>
<th>No</th>
<th>Recommended Activities</th>
<th>Resources Needed</th>
<th>By when</th>
</tr>
</thead>
</table>
| 1  | Development of detailed annual work plans | - Secretariat to develop work plans
- Budget expert to cost work plans and prepare annual budgets
- Cost of meetings to validate work plans by the Committee | By February, 2016, then yearly |
| 2  | Secure budgetary support | The Finance and Administration Sub-Committee and the JCE CEO to identify opportunities and present budget for approval and release of funds. | March, 2016 |
| 3  | Develop Fundraising Strategy | - Finance and Administration Sub-Committee to approve policy and fund raising strategy.
- The JCE-CEO to spearhead the proposals and presentations. | April, 2016, and then continuous |
| 4  | Donor Round-table | Finance and Administration Sub-Committee, the CEO and Chairperson to spearhead | March, 2016, then periodic |
5.2.3 Theme 3: Information Management

Elections involve and produce a mass of information and documents. Dispute resolution relies on these documents and produces others. In 2013, the Committee gathered a huge amount of information. The capture, storage and sharing of information is a critical aspect of successful management of EDR. The JCE has prioritised information management. Processes for collecting information, storing, processing and disseminating that information to stakeholders will be key activities. To do so, the JCE will leverage on technology to effectively ensure relevant information is collected and stored for use by the Committee, Judiciary and election stakeholders. The target is to make the JCE the repository of all materials on EDR in Kenya. In discharging this function, the JCE will partner with the ICT Directorate of the Judiciary.

Objective 3: Improve the ability to capture, analyse data, store and disseminate information efficiently and in a timely manner.

<table>
<thead>
<tr>
<th>No</th>
<th>Activities</th>
<th>Resources</th>
<th>Delivery Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Design and develop an interactive JCE Website</td>
<td>Engage A Website Consultant. The Sub- Committee on Law Reform and Stakeholder Engagement to approve policy and content</td>
<td>April, 2016</td>
</tr>
<tr>
<td>2</td>
<td>Recruit and engage ICT/ and Communications Professionals</td>
<td>Recruitment/Secondment of ICT/Communications</td>
<td>April, 2016</td>
</tr>
<tr>
<td>3</td>
<td>Develop Case Management System</td>
<td>Engage an ICT Consultant Develop CMS Procurement of necessary infrastructure and communication</td>
<td>June, 2016; January, 2017</td>
</tr>
<tr>
<td>4</td>
<td>Operationalise the CMS on Electoral Matters</td>
<td>ICT Consultant</td>
<td>March, 2017</td>
</tr>
<tr>
<td></td>
<td>• Procurement and for the system</td>
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<tr>
<td></td>
<td>• Liaise with ICT Directorate of Judiciary to test the CMS</td>
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<td></td>
<td>• Train staff on use of CMS</td>
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<tr>
<td>5</td>
<td>Equip the Secretariat with the necessary equipment including: Computers, printers, servers, iPads and phones among others.</td>
<td>Follow procurement process. Make the necessary requisitions.</td>
<td>March, 2016</td>
</tr>
<tr>
<td>6</td>
<td>Develop Case Digests and Compendium</td>
<td></td>
<td>2016-2019</td>
</tr>
<tr>
<td></td>
<td>The digests and compendium to capture emerging jurisprudence on EDR from Kenyan courts and use this to benchmark Kenya’s EDR regionally and internationally</td>
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<tr>
<td>7</td>
<td>Ensure the acquisition of relevant books, journals and law reports on EDR and accessibility of these to judges, judicial officers and legal researchers</td>
<td></td>
<td>2016-2019</td>
</tr>
</tbody>
</table>
5.2.4 Theme 4: Capacity Development

The May 2014 JCE Evaluation report indicates that although capacity development was carried out before the last elections, this was not sufficient. Ninety per cent (90%) of the judges, magistrates and staff involved in the process underwent technical training and refresher courses, but there is need to increase the scope of the training, both in depth and coverage. More people need to go through the training. There is need for deeper training based on a training needs analysis.

Technical capacity to deliver on the mandate is essential for the success of EDR. Refresher programmes for those trained in 2013 are also needed before the hearing of election petitions. Lessons learned from handling the 2013 petitions will form a core part of the trainings. In addition, several reforms to the legal framework that are anticipated will mean changes to the law and procedures issues that need to be discussed with those who will be involved in EDR.

Objective 4: Undertake in-depth and structured trainings on EDR to ensure that the judges, judicial officers and staff have the necessary competencies to execute their duties.

5.2.5 Theme 5: Electoral Reform

Law reform is on-going and requires continuous engagement and consultations internally and externally. Laws that require amendments will continue to be identified and necessary recommendations made.

The JCE’s delivery of effective management of electoral disputes by the Judiciary rests on a strong foundation of sound electoral laws. The Committee will identify legal provisions that hinder effective EDR and propose reforms based on consultations with members of the Judiciary and other stakeholders. Indeed the primary body responsible for making and amending laws is Parliament. The JCE will consequently engage Parliament and its committees and other actors in the legal reform process so that the process and outcome supports effective EDR.

Objective 5: Proactivity in identifying electoral laws that require amendments and spearheading the necessary electoral reforms.

<table>
<thead>
<tr>
<th>No</th>
<th>Recommended Activities</th>
<th>Resources Needed</th>
<th>By when</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Identify statutes for potential reform</td>
<td>Round-table meetings</td>
<td>On-going and by March, 2016</td>
</tr>
<tr>
<td>2</td>
<td><strong>Stakeholder Engagement in Reform</strong></td>
<td>Roundtable meetings</td>
<td>On-going</td>
</tr>
<tr>
<td></td>
<td>• Engage stakeholders (State Actors, Civil Society, LSK and JLAC) to drive reform</td>
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<td></td>
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<tr>
<td>3</td>
<td><strong>Development of Rules, regulations and systems</strong></td>
<td>Round-table meetings</td>
<td>Continuous Complete on key ones by March, 2016</td>
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<td></td>
<td>• Engage with internal and external stakeholders</td>
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</tbody>
</table>
5.2.6 Theme 6: Public Participation and Stakeholder Engagement

The JCE has a constitutional requirement to ensure public participation in EDR processes. During the last elections, and from the JWCEP Evaluation Report, there was substantial public participation. However, this is not sufficient and needs to be improved.

In the next 4 years, closer working relationship with stakeholders will among others, save on time and resources. This is supposed to ensure that the Judiciary continues to be responsive to the public and serves public interests in the discharge of its EDR functions. This will save the JCE on time and resources and also build public confidence and support for its work.

Objective 6: To ensure sufficient public participation and relevance through effective stakeholder engagement.

<table>
<thead>
<tr>
<th>No</th>
<th>Activity</th>
<th>Resource</th>
<th>By When</th>
</tr>
</thead>
</table>
| 1  | Design and develop a Communications Strategy.  
   • The JCE Secretariat to draft and develop a communications strategy and policy for validation and approval by the Sub-Committee on Law Reform and Stakeholder Engagement. This should cover; what information, channels of communications and whom to share it with | Engage a Communications Expert/Secondment | April, 2016 |
| 2  | Develop a communications schedule for public communication as part of the communications strategy  
   • Newspaper publications  
   • TV/Radio Interviews  
   • Press Conferences  
   • Participating in the ASK Show’s countrywide  
   • Sensitising the Public on where to file their disputes  
   • Develop Frequently Asked Questions | Cost of print, radio and TV adverts  
PR/Communications Consultant | June, 2016  
Commence rolling out communication to the public |
| 3  | Stakeholder engagement activities to include but not limited to:  
   • LSK CLE Seminars  
   • Court Users Committee  
   • Judiciary Open days  
   • Governors during Annual Conference of Governors (CoG) | • Travel  
• Allowances | Continuous |
| 4  | Engaging the media. Activities to include but not limited to:  
   • Breakfast meetings with editors  
   • Media training on EDR  
   • Provision on information on demand | • Media Breakfast  
• Conference facilities | Continuous |
| 5  | Development of IEC and publicity materials  
   • Flyers and brochures  
   • Branding through banners, T-shirts, hats  
   • Information on demand  
   • Public FAQs and responses | Paid advertisement:  
Print, radio  
Printing of flyers and brochures  
Banners  
Conference facilities | Continuous |
5.2.7 Theme 7: Efficient Management of EDR

The case management system developed to handle the 2013 election petitions failed. The Committee turned to the National Council for Law Reporting as a substitute. While this met the immediate needs, there is need for a more robust and sustainable solution for management of EDR cases. The Judiciary should develop a comprehensive solution for the election petitions system that will include all user needs in consideration of the Human Resource Structure, Procedure Manuals, ICT Infrastructure and Stakeholders.

It is anticipated the number of petitions will increase by a large margin in the next elections. This is based on the projected interests in several elective petitions in the next elections, especially positions at the Counties and Gubernatorial seats. In addition, while the Constitution and election laws required resolution of election petitions within a maximum period of six months, these had not factored in appeal processes. The end result is the existence of some election petitions within the court system more than two years after the 2013 elections. An effective case management system is consequently necessary to help keep track of cases on elections.

**Objective 7:** Ensure effective distribution of Election Petitions Workload and the management of normal court activities and backlog to ensure that election petitions do not exacerbate the case backlog situation.

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<thead>
<tr>
<th>No</th>
<th>Activities</th>
<th>Resources</th>
<th>When</th>
</tr>
</thead>
</table>
| 1  | **Workload Distribution**  
- Extract Registered Petitions from Daily Court Returns Template (DCRT)  
- Identify and select the Election Petitions Courts for all registered petitions  
- Forward recommendations to the CJ for validation and approval  
- Gazettement  | Secretariat | Within one month of elections |
| 2  | **Court Workload Backlog**  
To avoid accumulation of normal court cases backlog due to Election Petitions prioritisation:  
- Study DCRT  
- Stakeholder engagement  
- Fast tracking decisions  | Personal Emoluments  
Performance Management Directorate (PMD)  
ICT Directorate  
Registrars  
JCE  
Directorate of Public Prosecution  
LSK  
CUCs  
Media | Continuous |
| 3  | **Database of Rulings and Judgements**  
- Collection of all Election Petitions Rulings and Judgement for Data Base uploading real time  
- Upload onto ICT System  | Secretariat | Upon delivery of each Ruling and Judgment |
CHAPTER 6
BUDGET SUMMARY

The budget covers the period 2016-2019. However, this will be regularly revised to accommodate changing work and the prevailing economic environment.

Below is a summary of the budget needed for the implementation of the 4-year strategy.

### SUMMARY OF THE JCE BUDGET - FINANCIAL YEAR RUNS FROM JULY TO JUNE (KSH)

<table>
<thead>
<tr>
<th>THEMES</th>
<th>2015/16</th>
<th>2016/17</th>
<th>2017/18</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAPACITY DEVELOPMENT</td>
<td>45,320,500</td>
<td>149,529,500</td>
<td>9,041,500</td>
<td>9,011,500</td>
</tr>
<tr>
<td>PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT</td>
<td>6,782,000</td>
<td>8,842,000</td>
<td>7,149,000</td>
<td>7,342,000</td>
</tr>
<tr>
<td>INFORMATION MANAGEMENT</td>
<td>1,278,000</td>
<td>1,118,000</td>
<td>1,206,800</td>
<td>1,254,032</td>
</tr>
<tr>
<td>ELECTORAL REFORMS</td>
<td>1,780,000</td>
<td>1,780,000</td>
<td>2,200,000</td>
<td>2,920,000</td>
</tr>
<tr>
<td>EFFICIENT MANAGEMENT OF EDR</td>
<td>50,000</td>
<td>11,698,500</td>
<td>2,561,580,000</td>
<td>71,599,000</td>
</tr>
<tr>
<td>COMMITTEE STRUCTURE</td>
<td>5,554,000</td>
<td>11,628,400</td>
<td>11,656,304</td>
<td>12,285,842</td>
</tr>
<tr>
<td>RESOURCE MOBILISATION</td>
<td>467,500</td>
<td>417,500</td>
<td>417,500</td>
<td>417,500</td>
</tr>
<tr>
<td><strong>TOTAL BUDGET by FY</strong></td>
<td>61,232,000</td>
<td>185,013,900</td>
<td>2,593,251,104</td>
<td>104,829,874</td>
</tr>
</tbody>
</table>

**GRAND 5-YEAR JCE BUDGET**

2,944,326,878

### BUDGET RATIOS BY STRATEGIC THEMES (%)

<table>
<thead>
<tr>
<th>THEMES</th>
<th>2015/16</th>
<th>2016/17</th>
<th>2017/18</th>
<th>2018/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAPACITY DEVELOPMENT</td>
<td>74.01</td>
<td>80.82</td>
<td>0.35</td>
<td>8.60</td>
</tr>
<tr>
<td>PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT</td>
<td>11.08</td>
<td>4.78</td>
<td>0.28</td>
<td>7.00</td>
</tr>
<tr>
<td>INFORMATION MANAGEMENT</td>
<td>2.09</td>
<td>0.60</td>
<td>0.05</td>
<td>1.20</td>
</tr>
<tr>
<td>ELECTORAL REFORMS</td>
<td>2.91</td>
<td>0.96</td>
<td>0.08</td>
<td>2.79</td>
</tr>
<tr>
<td>EFFICIENT MANAGEMENT OF EDR</td>
<td>0.08</td>
<td>6.32</td>
<td>98.78</td>
<td>68.30</td>
</tr>
<tr>
<td>COMMITTEE STRUCTURE</td>
<td>9.07</td>
<td>6.29</td>
<td>0.45</td>
<td>11.72</td>
</tr>
<tr>
<td>RESOURCE MOBILISATION</td>
<td>0.76</td>
<td>0.23</td>
<td>0.02</td>
<td>0.40</td>
</tr>
</tbody>
</table>
CHAPTER 7
IMPLEMENTATION PLAN

A strategic plan is not a rigid document but a live and dynamic document, and which determines how an organisation relates and collaborates with others, especially stakeholders. Dynamic changes within the environment will directly affect the JCE operations and its ability to achieve its objectives. It is therefore essential that the JCE defines how to keep this plan alive and relevant.

The Strategy Implementation Team

A select team from the Committee and the Secretariat have been nominated to facilitate and monitor the achievement of this Strategic Plan. Factors in the environment in which the JCE work are likely to change. It is important that this is also monitored to ensure that the strategic plan remains relevant.

The Strategy Implementation team is comprised of:

1. The JCE Vice Chairperson
2. One Committee member of the JCE
3. The Secretariat CEO

The team will hold quarterly reviews of the progress on the strategic actions. They will report back to the main Committee. Their terms of reference include:

- Report on the achievement of key strategic actions.
- Flag out any actions that are lagging behind and provide recommendations.
- Revise the agreed strategic actions and initiatives to ensure that they are appropriate to the changing work environment factors and present these to the Committee.
- Generate new action points as may be necessitated by any changing environment and update the main Committee.

Development of Annual Work Plans

To ensure implementation of the Strategic Plan, the Secretariat will be responsible for generating yearly work plans in consultation with the Sub-Committees. These will be then approved by the Committee every year and form the basis for activities for that year.

Strategic Plan Review

A formal review of this strategy will be carried out in 2019. At this time, the election petitions dispute resolution and appeals process will be complete and lessons still fresh in people’s mind.

Henceforth, the JCE will develop a fresh strategic plan every four years with a review on the third year. The process will incorporate lessons learnt from that election period and will be an all-inclusive and participatory process.
CHAPTER 8
CONCLUSION

The JCE’s strategy has the advantage of the JWCEP precedence. This has provided the necessary experience on what works, and what could work better. The experience also provided facts and knowledge that is a basis for risk management. These have been incorporated in this strategic document. By taking into account what may have been planned for before but did not work as expected, and what was unplanned for, yet worked well, the JCE is now confident that the current plan is sound and will translate to the expected outcomes.

This four-year plan will also require constant reviews. It is important to remain cognisant of the ever changing environment in which the JCE operates. Such changes may require key and strategic adjustments to the work plan and also impact on the budget.
### ANNEX I

**LIST OF STRATEGIC PLAN WORKSHOP PARTICIPANTS**

8-9 October, 2015. Great Rift Valley Lodge, Naivasha

<table>
<thead>
<tr>
<th>No</th>
<th>NAME OF PARTICIPANTS</th>
<th>DESIGNATION</th>
<th>CURRENT STATIONS/ EMPLOYER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Hon. Mr. Justice David Maraga</td>
<td>CA Judge Chair</td>
<td>Presiding Judge, Court of Appeal, Kisumu</td>
</tr>
<tr>
<td>2.</td>
<td>Hon. Mr. Justice Kathurima M’Inoti</td>
<td>CA Judge</td>
<td>Court of Appeal</td>
</tr>
<tr>
<td>3.</td>
<td>Hon. Mr. Paul Kihara Kariuki</td>
<td>CA Judge</td>
<td>President, Court of Appeal</td>
</tr>
<tr>
<td>4.</td>
<td>Hon. Mr. Justice Mbogholi Msagha</td>
<td>HC Judge</td>
<td>Presiding Judge Civil Division</td>
</tr>
<tr>
<td>5.</td>
<td>Hon. Lady Justice Stella Mutuku</td>
<td>HC Judge</td>
<td>Milimani Law Courts</td>
</tr>
<tr>
<td>6.</td>
<td>Hon. Lillian Arika</td>
<td>SPM Executive Secretary</td>
<td>Milimani Commercial Courts</td>
</tr>
<tr>
<td>7.</td>
<td>Hon. Denis Mikoyan</td>
<td>Principal Magistrate</td>
<td>Judiciary Training Institute</td>
</tr>
<tr>
<td>8.</td>
<td>Judith Kibuye</td>
<td>Admin and Operations</td>
<td>JCE Secretariat</td>
</tr>
<tr>
<td>9.</td>
<td>Peter Muriithi</td>
<td>Accountant</td>
<td>Milimani Law Courts</td>
</tr>
<tr>
<td>10.</td>
<td>Valentine Nyokabi Njogu</td>
<td>Court of Appeal</td>
<td>Legal Researcher</td>
</tr>
<tr>
<td>11.</td>
<td>Rhoda Rutto</td>
<td>Supreme Court</td>
<td>Law Clerk</td>
</tr>
<tr>
<td>12.</td>
<td>Enid Muthoni</td>
<td>Country Director</td>
<td>IDLO</td>
</tr>
<tr>
<td>13.</td>
<td>Felix Kyalo</td>
<td>Programme Manager</td>
<td>IDLO</td>
</tr>
<tr>
<td>14.</td>
<td>Dr. Collins Odote</td>
<td>Lead Consultant Elections/Strategy</td>
<td>Nairobi University</td>
</tr>
<tr>
<td>15.</td>
<td>Njoki Muhoho</td>
<td>Management Consultant - Strategy</td>
<td>Independent</td>
</tr>
<tr>
<td>16.</td>
<td>John Mutua</td>
<td>Consultant- Budgeting</td>
<td>Institute of Economic Affairs</td>
</tr>
</tbody>
</table>
ANNEX II

LIST OF REVIEWED LITERATURE


5. The speech by the Hon CJ. JCE Launch. 17th August, 2015.


11. Resolutions from the debrief sessions with the judges and magistrates who handled election petitions held between September 2015 and December 2015.

12. Recommendations from stakeholders’ meetings held in 2015 with State-actors, the Legal Fraternity, Political Parties, Civil Society Organisations and the Justice and Legal Affairs Committee of the National Assembly.


15. Numerous JWCEP Committee Meetings Notes.

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jce@judiciary.go.ke
www.judiciary.go.ke

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