

Section 2: Situation Analysis

The Constitution of Kenya 2010 and the Judiciary

The new Constitution establishes a number of fundamental values and principles of leadership and integrity, which will impact greatly on how the judicial officers operate. In particular, the provisions of the Constitution on leadership and integrity establish important principles for the regulation of judicial ethics. For example, Article 75 characterizes the mandate of all State Officers, including judicial officers, as a “public trust.” It provides that all such officers carry “the responsibility to serve the people, rather than the power to rule them.” Other significant guiding principles established by the Constitution are objectivity and impartiality in decision making, selfless service, accountability to the public for decisions and actions, and discipline and commitment in service to the people. It will be necessary to train judicial officers and support staff, so that they can embrace these values and principles in performing their functions.

Additionally, Article 172 of the Constitution entrusts the Judicial Service Commission with the function of preparing and implementing programs for the continuing education and training of judges and judicial officers. The new leadership of the Judiciary has also identified the growth of jurisprudence and judicial practice as a linchpin of its Transformation Strategic Framework. It seeks to realize this strategic objective through learning, training, partnerships, benchmarking, research and development initiatives as well as continuous learning and peer review programs. The vision of the new Chief Justice is to establish and nurture a vibrant judicial education and training institution as outlined in the Transformation Strategic Framework. This will entail building institutional capacity of the KMJA to meet the needs of a transformed Judiciary, developing a continuous learning and training program, and developing technical partnerships with other learning and research institutions.

The Constitution also establishes the National Council for the Administration of Justice (NCAJ), which is chaired by the Chief Justice and whose main function is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. Since the leadership of the NCAJ has been entrusted to the Judiciary, the KMJA should aim to provide education and training to the other justice sector institutions who are members of the NCAJ. It should also provide a forum where the various justice sector institutions can share knowledge and experiences on the administration of justice.

Environmental Analysis for the KMJA

Strength	Strategic implications for the KMJA
Strong and committed membership	Involve members in the implementation activities and resource mobilization.
Long history of survival under very difficult circumstances	Document the history of the Association, and disseminate it. Extract lessons learned and incorporate them in the Plan.
Visionary and dynamic executive council members/ leadership	Use the fact that vying for the position is highly desirable to review the criteria to ensure that the best candidates are interested.
Legal capacity among members	Use the capacity to involve members into activities.
Weaknesses	
Inadequate capacity	Focus on capacity building for members through regional and international opportunities and strong collaboration with KIJE. Priority capacity areas include resource mobilization, change management, stakeholders' engagement, research and lobbying and advocacy, communication.
Inadequate governance and management structure	Need to align KMJA Constitution to current realities; develop management policies and systems; Code of Conduct
Internal wrangling and competition	Review conflict resolution mechanisms and procedures. Review/ develop Code of Conduct and disseminate it to members.
The culture of hierarchy and ranks, turf protection, silos mentality, over dependence on individuals	Develop and implement team strengthening interventions; encourage open communication; develop and institutionalize learning for e learning.
Not acknowledging innovation or nurturing talent	Develop and suggest mechanisms for rewarding innovation, creativity and individual achievements.
Opportunities	
The Judicial Transformation process	Through the current judicial transformation, KMJA has an opportunity to cut a niche to specifically address CUCs, peer review and members' welfare.
Increased revenue allocation	Use this increased funding for capacity strengthening for the Association and other activities.
Good will from development	Use this goodwill to establish partnerships with key

partners, the Judiciary and the legal profession	development partners and then develop proposals for possible areas of cooperation.
Regional integration, global collaboration	Opportunities for training, benchmarking, learning, sharing of experiences, growth of jurisprudence. EAC offers opportunities to partner with other bodies e.g. EAMJA, CMJA which enables us to learn best practices in the region and exposure.
Internet and social media	Through social networks and technological advancements, KMJA is afforded an opportunity to interact and engage with each other and the public at large in the real time; at the click of a button
The Constitution of Kenya 2010	Ensure that the implications for the Judiciary are well understood by all members.
Committed Judiciary	Use the commitment to strengthen the Association.
Threats	
Vetting process that is not well communicated	Prepare members through counseling; conduct continuous dialogue with JMVb, Office of the CJ, chief registrar, Judicial Service Commission
Uncoordinated Judiciary transformation process. Fragmented, stand alone reform efforts, with multiple reports with sometimes conflicting recommendations.	KMJA will mainstream the JTF into its operations through giving the members the opportunity to discuss it and plan joined activities. Invite feedback from members on the Framework. Plan for review workshops.
Inadequate legislative framework at the county, national, regional and international levels	Identify and analyse legislative gaps and disseminate the report. Prepare position papers and lobbying interventions for changes in Kenyan and regional regulatory environment. Encourage members to become involved at the regional and international levels.
Political interference	Inculcate in members the values of Judiciary, particularly the independence. Use diffusion strategy with involvement of senior people.
Lack of public trust in the Judiciary that is perceived as corrupt, bureaucratic and inefficient.	The KMJA will launch the strategic plan to a wide audience with Kenyan and international stakeholders. Cooperate with the Judges and Magistrates Vetting Board. Develop suitable IEC materials jointly with the Judiciary for displaying in court facilities.

Resistance to change.	The Association will take lead in change management for its members as part of the JTF.