

THE JUSTICE REFORM PROJECT

*Reimagining Justice in the 21st Century and Restoring Confidence of the
People in the Justice Delivery System*

Concept Paper

June 2022

Executive Summary

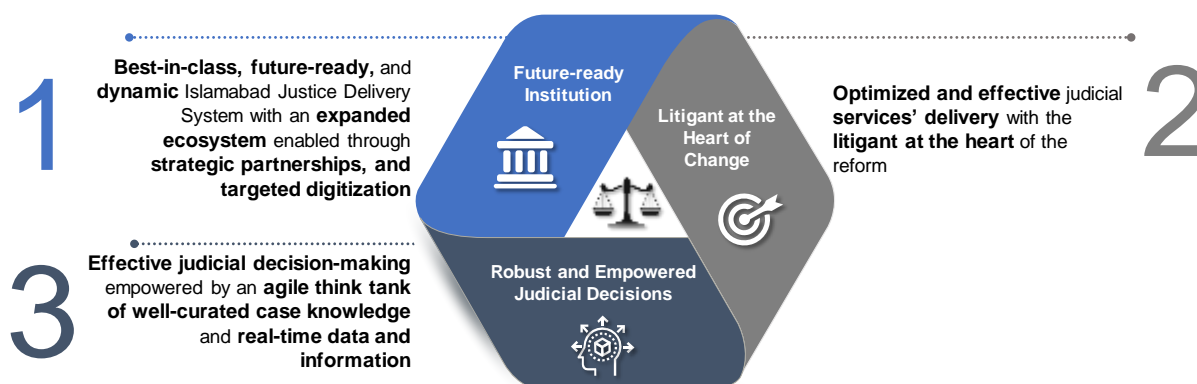
Justice is the ideal that a rule of law system aims to pursue and realize. The quality and nature of laws determines the rules in accordance with which courts dispense justice. Good laws help pursue the ideal of justice; the governance system run by the Executive determines the quality of rule of law in the polity and the number of citizens aggrieved by the state; while a functional court system is meant to hold the state accountable for discharging its obligations to the citizen as required by the Constitution.

All three pillars of the state – Legislature, Executive and Judiciary – have much room for improving the role they perform within the rule of law system designed to deliver justice. It is for each institution to introspect and hold itself accountable for where it is failing the citizen. The Islamabad High Court seeks to hold itself accountable and fix aspects of the court system in the Federal Capital to the extent that it fails to realize the ideal of justice delivery.

The Islamabad High Court administers all courts in Islamabad under the mandate of Article 203 of the Constitution. It is initiating the Justice Reform Project that seeks to *Restore the Confidence of People in Justice Delivery* (the “Project”). The objective is to reaffirm public faith in the judiciary as an independent, empathetic and efficient arbiter of the law capable of dispensing justice to ordinary underprivileged citizens in a timely fashion and upholding their right to equality, dignity, liberty and equal protection under law.

The primary focus of the Project will be on the Islamabad High Court and Islamabad District Courts (collectively referred to as the “Islamabad Justice Delivery System”), and it will engage all stakeholders who have a direct or ancillary role in the manner in which justice is delivered through the court system.

The Project has three primary objectives as identified in the illustrative below:



The Project will kick-off with a 10-week targeted and structured diagnostic study that will provide a *Charter of Reforms* and a *Transformation Roadmap*, empowered with which the Project will launch into its next and main phase – a 5-year transformation journey of the Islamabad Justice Delivery System.

To ensure the provision of requisite leadership guidance and expert project management during this diagnostic phase, the Project will have a three-tiered governance and project management model with a Steering Committee for leadership and decision-making, an IHC-housed Project Management and Implementation Unit (PMIU), and a Project Delivery Team which will include subject-matter experts and will drive output delivery ensuring quality and timeliness. It is expected that once the reform areas and required interventions (along with their interlinkages) become apparent, this governance and project management model will also evolve and expand to cater to the needs of the larger transformation project.

As for the Project's funding, approximately PKR 310 Million over 3 years has been approved by the Departmental Developmental Working Party ('DDWP') on June 6, 2022.

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1. Understanding the Problem: A Whole-of-Nation Concern

The understanding and awareness of constitutional norms and rule of law still seem to be in an evolutionary phase in Pakistan. The country's justice system suffers from apparent dysfunctionality and is marred by delays, especially when it comes to adjudication of matters that come to courts in the ordinary course. Pakistan unfortunately stood at 130th out of 139 countries and jurisdictions in the 2021 Rule of Law Index ranking.¹ This is an indictment of the governance system in our country and its disregard for rule of law. There is indeed a dire need for reform.

The aforementioned Index relies on an assessment of a number of factors that pertain to all branches of government, thus envisaging a collaborative effort involving critical institutions of the state for the dispensation of justice. Hence, the development of a judicial framework, the establishment of requisite institutions, and the promulgation and enforcement of laws and regulations is a joint and inter-laced undertaking among all relevant state institutions, including the Executive Branch of the government, performing their respective roles. As for its adoption, a large part of this responsibility falls on civil society and the business community as well to ensure that they abide by, and adhere to, the rule of law.

Therefore, the issues pertaining to rule of law are undoubtedly a "*whole of nation*" concern; any reform process cannot be meaningful unless it is gradually introduced throughout the whole ecosystem of stakeholders and institutions, instead of being confined to the court system.

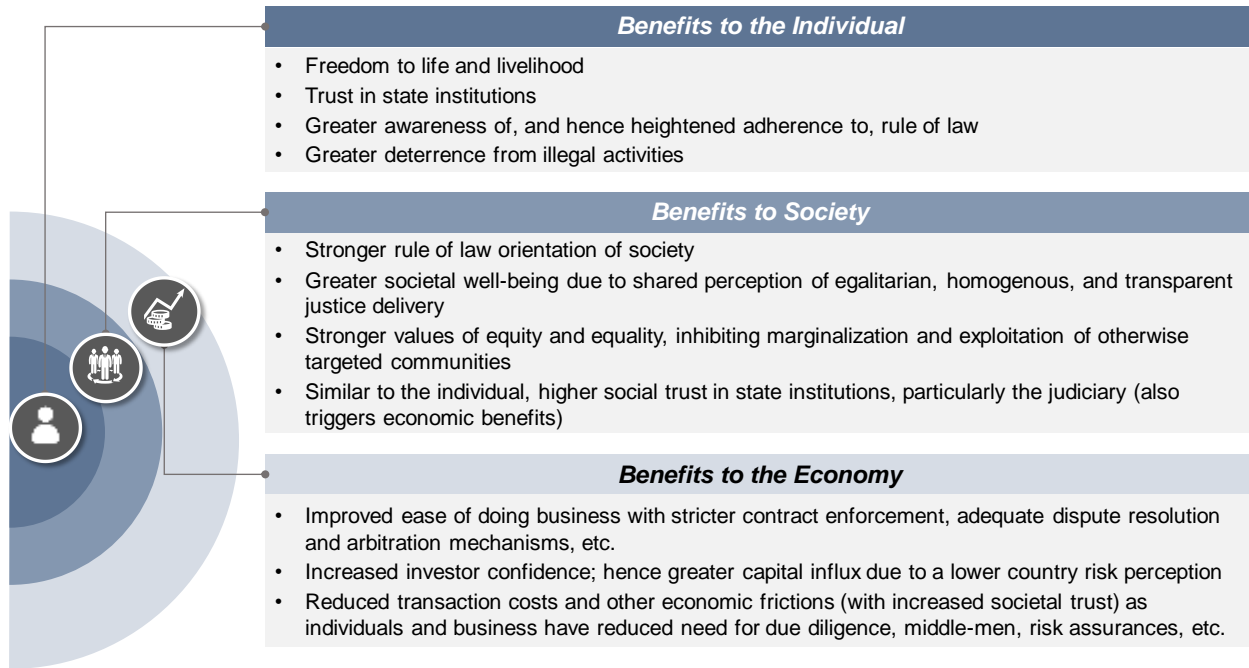
2. Islamabad's Justice Delivery System: Need for Change

The Benefits of Effective Delivery of Justice

Access to justice, characterized by fair trial and due process, are fundamental rights guaranteed by the Constitution of Pakistan (Articles 9 and 10A). A sound and effective justice system has resonating, compounding and multidimensional benefits, to the individual, to society, and to the economy at large. Figure 1 identifies some of these benefits:

¹ The Rule of Law Index is prepared by the World Justice Project, an international civil society organization dedicated to promoting rule of law around the globe.

Figure 1: Multidimensional Benefits of an Effective Justice System



Existing Issues and Problems leading to Ineffective Justice Delivery

The deleterious consequences of a moth-eaten justice system ripple across the political and socioeconomic layers of a society. With the focus of this paper on the Islamabad Justice Delivery System, three issues stand out as most dire and consequential from the perspective of effective service delivery to the litigant:

Delays: This is arguably the main problem impairing the effective delivery of justice in the country. Analysts suggest that it may take up to twenty years for a case to be adjudicated through the system, starting with the district courts through to the final decision by the Supreme Court. At its core, the issue of delays arises from the pendency of cases within the system. As on 1st June 2022, country-wide pendency cases stood at over 2 million across all courts, of which about 82 per cent were pending in the district-level courts.² At the Federal level, the total pending cases at the Islamabad High Court ('IHC') stood at 17,000; however, in the district courts this figure stood at three times that of the IHC with 50,000 pending cases.²

Cumbersome Processes and Procedures: End-users of the justice system (both litigants and lawyers) have to navigate a myriad of archaic and sub-optimally designed processes and procedures. These are not only tedious to navigate and execute (causing further delays), but also result in increased cost of litigation.

² Approximate (rounded) numbers have been presented based on "Consolidated statement showing pendency, institution and disposal of cases during the period 1- 30 April, 2022 in the Supreme Court of Pakistan, Federal Shariat Court, High Courts and District Judiciary", Law & Justice Commission of Pakistan, April 2022, http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/courts.pdf. Accessed 1 June 2022.

Quality of Decisions: Judges are generally confronted with an overloaded docket, little time for research, and lack of quality research assistance. As a result, the quality of the decision rendered is impacted. This in turn results in the unsuccessful parties appealing the matter, thereby adding to the docket of the court, and further compounding the core problem of delays mentioned above.

3. Required Reforms: Primary Areas of Focus

While a structured diagnostic study is required to produce a more comprehensive list of key interventions, some key areas of reform are immediately apparent that require strengthening and revamping the core institutions (the IHC and the Islamabad District Courts), building out the institutional ecosystem of the Islamabad Justice Delivery System, and putting in place foundational enablers of sustained institutional strength:

Figure 2: Critical and Known Reform Categories

| | | | |
|---|----|--|--|
| Strengthening and Revamping the Core | 1 | Organizational Redesign | Organizational assessment and restructuring to more closely align with best practices and activate functions required to achieve the Islamabad Justice Delivery System's strategic mandate |
| | 2 | HR Model Redesign and Capacity Building | Review and modernization of the existing HR and capacity building model for both judicial officers and other staff in the Islamabad Justice Delivery System; this includes recruitment, compensation, performance management, training and capacity building |
| | 3 | Case Flow Management | Assessment, revision and implementation of the end-to-end process while keeping the litigant at the heart of the redesign; innovation and digitization should be leveraged to optimize case flow |
| | 4 | Case Backlog Management | Focused assessment of key causal factors to reduce case pendency and delays; short-to-medium term interventions may include supplementing capacity through additional quality resources |
| | 5 | Key Processes/Procedures, Cost Regimes and Controls | Review and optimize to (i) reduce the resource burden for, and providing clarity to, a litigant; (ii) as act as a 'barrier to entry' for frivolous litigations, limine motions and dilatory tactics attempting to prolong cases; and (iii) enhance judicial administration, case hearings and adjournments |
| | 6 | Rules/Regulations for Islamabad's Justice Delivery Functions | Review and streamlining of current legislation (rules and regulations) to ensure effective judicial administration, case hearings and adjournments |
| Building out the Institutional Framework | 7 | Criminal Justice System | Review of the components of the criminal justice system, including investigation, prosecution and penitentiaries to be able to distinguish between the accused and the guilty, so the principle of 'innocent until proven guilty' is upheld while ensuring conviction of the guilty |
| | 8 | Alternative Dispute Resolution (ADR) /Mediation | Build-out of an effective ADR regime, catalyzing its adoption Development of the ADR and mediation institutional framework (particularly setting up of international arbitration institution), ADR capacity building and engagement of requisite subject-matter expertise |
| | 9 | Dedicated Commercial Courts | Set up of dedicated commercial courts with a special focus on adjudicating disputes involving international parties and foreign investors |
| Establishing Foundational Enablers | 10 | Strategic Partnerships | Determination and establishment of key strategic partnerships to supplement capabilities of the Islamabad Justice Delivery System, hence robustly expanding their ecosystem and building, advancing operational capability, and building a critical mass of cutting-edge expertise and knowledge |
| | 11 | Strategic Digitization | Strategic need determination for, and implementation of, technology to (i) optimize core processes including case management, (ii) enable data-driven decision making through real-time data and information, and (iii) elevate and facilitate court functions and judicial proceedings |
| | 12 | Legal Ethics in Courts | Establishment of ways to institutionalize the principles stated in the Legal Practitioners and Bar Councils Act, 1976, while engaging with legal fraternity, to strengthen the dignity of the legal professions and further the rights of the litigants as consumers of the justice system |

The list above focuses on categories of reform other than those involving provision of physical infrastructure such as the buildings in which the courtrooms will actually be housed.

While several attempts to reform have been undertaken in the past, they have not borne fruit. The core issues still persist. This is because such a large-scale transformative effort requires a comprehensive approach that encompasses all key components of a system's governance and

operating model. Due to the interlinked nature of various reforms, isolated attempts in niche areas that focus on visible yet surface-level interventions lack robustness and resilience.

A comprehensive reform effort may, at first glance, appear to be rather onerous and optimistic. However, examples such as that of Singapore serve as testaments that this is indeed possible. Before the 1990s, Singapore’s court system was characterized by some of the same problems Pakistan faces today: significant delays and pendency, high costs, and cumbersome procedures. It was estimated that in 1990, the Supreme Court of Singapore would take at least five years to resolve pending cases and subordinate courts had a pendency of about 250,000 cases (a large number, considering that Singapore is a small country). However, through a process of reform spanning just over a decade, Singapore’s court system became recognized as one of the most efficient and effective in the world.³ With the benefit of best practices emerging from similar best-in-class efforts, a substantial transformation can be made to the Islamabad Justice Delivery System in the medium term.

4. Call to Action: The Justice Reform Project

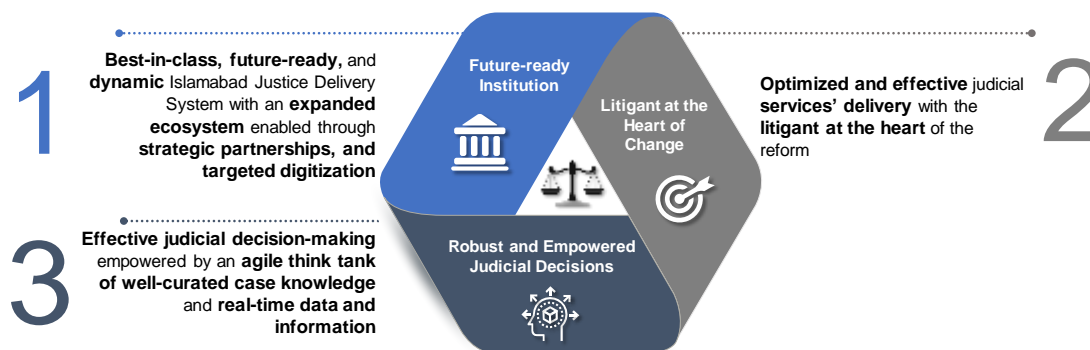
Key Reform Objectives

It is abundantly clear that a systemic and dynamic overhaul of the judicial system is required. Thus, we launch the Justice Reform Project (the “Project”) which focuses on reforming the Islamabad Justice Delivery System, including in its scope the IHC and the District Courts.

The Project’s mandate is the large-scale transformation of the Islamabad Justice Delivery System. It is being developed in line with the vision of the Honorable Chief Justice and other judges of the IHC. The Project has been entrusted to the Planning Commission of Pakistan.

With clarity of intent, there are three (3) primary objectives of this reformatory Project:

Figure 3: Justice Reform Project - Primary Project Objectives



³ See “Judiciary-Led Reforms in Singapore: Frameworks, Strategies and Lessons” (The World Bank 2007)

Putting the House in Order

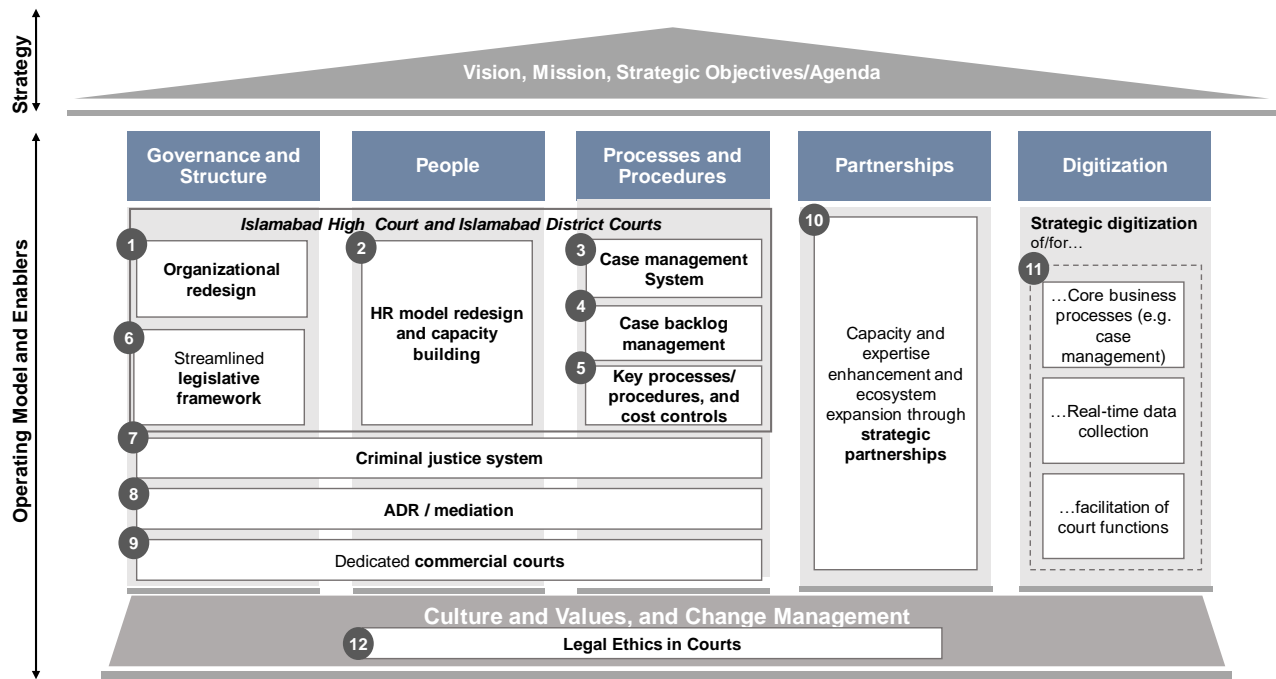
This large-scale transformation will pursue a comprehensive reform both at the strategic as well as the operational layers of the Islamabad Justice Delivery System:

At the *Strategic level*, there is a need for a unified vision and mission, along with clearly established and communicated strategic objectives – collectively forming the strategic mandate of the Islamabad Justice Delivery System.

At the *Operational and Enabling level*, a comprehensive and systematic overhaul is required which should include governance, structure, capacity building (among both judicial officers and other staff) key processes and procedures, strategic partnerships, and targeted and strategic digitization. Additionally, building out a strong value system and culture that upholds legal ethics and enables agility, forward-thinking, and openness to change would fortify the sustainability of reforms eventually implemented.

Hence, transformational interventions across the strategic, operational and enabling layers will ensure that the Islamabad Justice Delivery System puts its proverbial house in order, starting with the IHC and followed by the District Courts of Islamabad. Figure 4 below illustrates this framework and also indicatively maps the twelve (12) key reform areas that are already evident.

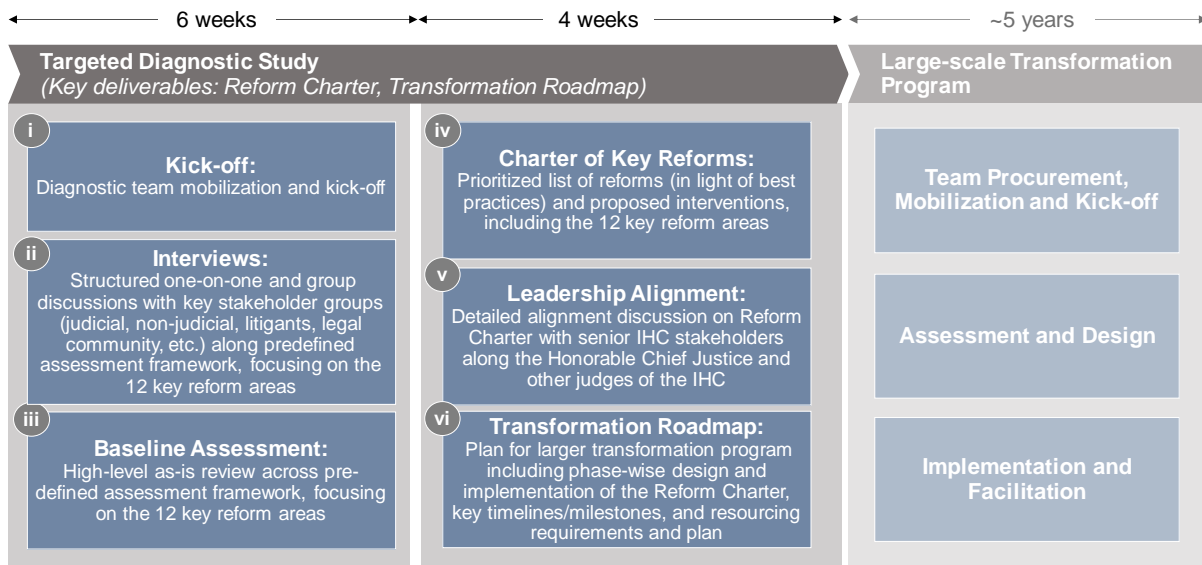
Figure 4: The Assessment and Reform Framework



Targeted Diagnostic Study

The Project will kick-off with a 10-week strategic and targeted diagnostic study, illustrated in Figure 5 below, comprising six (6) main steps:

Figure 5: Strategic Diagnostic Study - Approach and Estimated Timelines



The scope of the study will focus primarily on the IHC and secondarily on the Islamabad District Courts, being the two pillars of the Islamabad Justice Delivery System.

The diagnostic study will provide two (2) key outputs:

- A *Charter of Key Reforms*, with a prioritized list of required reforms, proposed interventions, and key performance indicators, including the twelve (12) key reform areas already identified;
- A *Transformation Roadmap* for the Project's large-scale 5-year transformation program for the Islamabad Justice Delivery System, which will include a phase-wise design and implementation plan, key milestones and timelines, progress metrics to track the implementation of each intervention, governance and project management model, resource requirements and procurement planning to ensure the successful and streamlined execution of the program.

Governance and Project Management

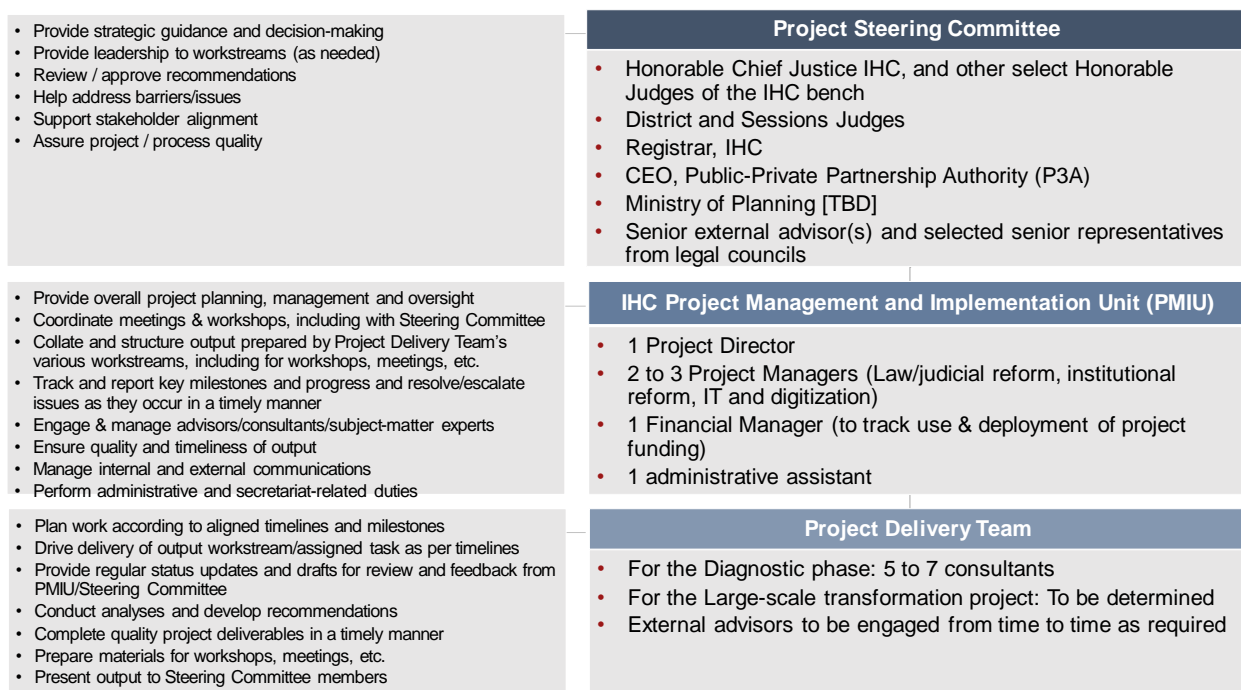
Given its size and scale, it is critical that the Project be provided the requisite leadership guidance and managerial expertise to steer it towards success. Hence, for the Strategic Diagnostic Study a three-tiered governance and project management model has been designed:

- **Tier 1:** The Project Steering Committee, to provide leadership, decision-making, and overall strategic direction;

- **Tier 2:** The Project Management and Implementation Unit (PMIU) housed within the IHC, to program manage the Project, manage the various consultants and advisors engaged as needed, coordinate delivery across various workstreams, monitor and report on the progress, and ensure quality and timeliness of outputs;
- **Tier 3:** Project Delivery Team, to execute the required scope of work, while ensuring quality and timeliness. Externally procured experts and consultants will be engaged as needed from time to time.

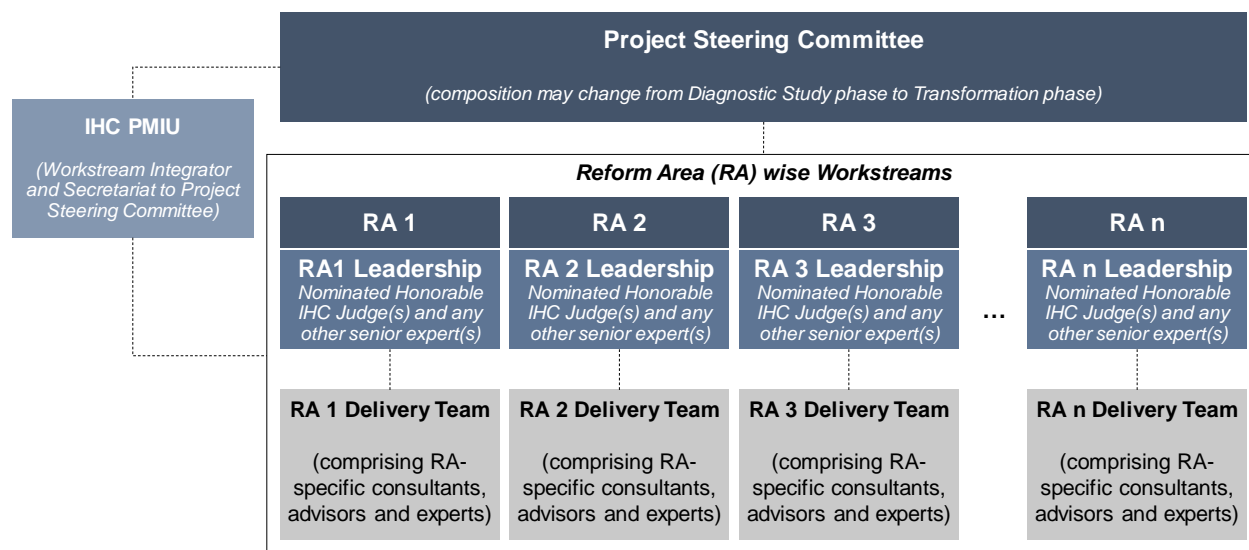
The details of the structure for the Diagnostic phase, along with roles and responsibilities, are illustrated in Figure 6 below:

Figure 6: Governance and Project Management Model



For the large-scale transformation, it is envisaged that the governance and management model will expand and branch out depending on the number of reform areas that emerge, with each area or cluster of areas having its own vertical. This structure will be provided in the Transformation Roadmap deliverable. A sample illustrative of such a model is provided in Figure 7 below:

Figure 7: High-level View of Expanded Governance and Management Model
(Illustrative/Example)



As for the Project’s funding, approximately PKR 310 Million over 3 years has already been approved by the Departmental Developmental Working Party (‘DDWP’) on June 6, 2022.

5. Way Forward: Key Next Steps

In order to initiate the work under the Project, the following immediate next steps are required:

| Key Next Step | Responsible Agencies |
|---|---|
| 1 Obtain Requisite Approvals | IHC, P3A (Planning Commission to facilitate) |
| 2 Secure funding | Planning Commission, P3A, Finance Ministry |
| 3 Set-up of PMIU in IHC | IHC (P3A and its external advisors to facilitate) |
| 4 Officially launch the Project | IHC (P3A and Planning Commission to facilitate) |
| 5 Set-up the Project Delivery Team; engage required advisors and consultants for the Diagnostic Study | PMIU (P3A to facilitate) |
| 6 Detail the workplan and workstreams with clear milestones and Steering Committee meetings | PMIU (P3A to facilitate) |
| 7 Allocate workstreams to Project Delivery Team: mobilize and kick-off the Project | PMIU (P3A to facilitate) |

6. Appendix

Details on Key Reform Areas

| | | | |
|--|----|--|--|
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1. A critical aspect of large-scale transformation is to take a big-picture structural view of the institution under assessment. Hence, a key area of potential reform is organizational redesign. This will entail the assessment and review of the existing organizational structure of the IHC first, followed by the Islamabad District Courts, to identify areas requiring restructuring based on best practices.
2. There is a need to re-design human resources framework for the courts as well as to introduce reforms in the framework for court administration. While envisioning a modern 21st century justice delivery system, one of the most critical reform initiatives will be to ensure that the right individuals are engaged by the courts, are adequately compensated (so as to attract good talent), and that there is periodic and effective performance management (that has a causal connection with promotion). In particular, this intervention will seek to optimize the performance of non-judicial court staff that plays a very important role in effective judiciaries around the world in terms of supporting judges through the adjudication life-cycle. From our analysis of this issue, it appears that this is an area that requires significant transformation and optimization.

Redesigning mechanisms for judicial recruitment (district courts) and capacity building of judicial officers. With respect to reform of district courts, the framework for recruitment and promotion currently in place needs to be re-examined in light of international best practices. The reform measure will be intended to ensure that high quality lawyers are attracted to the judiciary, that they are adequately compensated, that there is proper performance appraisal (linked to promotions), as well as effective training (starting with the initial recruitment to the system).

3. The design and implementation of an effective case flow management system is an extremely important initiative that will allow efficient processing of cases by the courts. It is important to note that this would not merely involve automating certain processes currently performed manually. Instead, an enterprise-level solution will be required, tailored/optimized to the particular requirements of the court while aligned with international best practices.
4. The pendency of cases in courts have increased substantially over time. In order to improve the performance of the courts, special measures have to be taken in the short-to-medium term for case backlog reduction. For instance, the court may require additional resources for a certain period of time to be able to effectively reduce the backlog that has accumulated over time. The mechanism and the resources allocated will have to be optimized to ensure that the backlog can be effectively reduced at an accelerated pace, while at the same time ensuring the quality of the decisions reached. Such special measures have been successfully implemented in certain countries.
5. An important measure that may need to be taken is to re-examine the current key processes, procedures and cost regimes applicable to litigation, and to optimize these for the purposes of (i) making the process less cumbersome by simplifying or removing unnecessary steps; (ii) disincentivizing frivolous litigation and limine motions; and (iii) disincentivizing dilatory tactics used by litigants and their counsel to unnecessarily prolong cases. This would require the assessment and revision/creation of effective and efficient processes/procedures and cost-based controls for judicial administration, case hearings and adjournments. In certain cases, changes in legislation may be required, while in other cases courts would be competent to prescribe the applicable procedures.
6. There may be a need to review the existing legislative framework governing the functions of the IHC and Islamabad District Courts, and frame rules to streamline processes to cater to the evolving needs of the state and its litigants.
7. The criminal justice system – comprising police, judiciary, prisons, prosecution, probation and parole – is afflicted with dysfunctionality and procedural lapses. Its perceived reputation is that of being faulty, exploitative and inequitable. No substantive specialization or workload management is in place. Dire capacity gaps exist across police,

investigators, prosecutors, jail staff, etc. The principle of ‘innocent until proven guilty’ is muddled and non-existent, while those who are guilty escape sentencing due to procedural lapses and the lack of effectiveness and competence in one or more components of the criminal justice system. There is a need to critically evaluate the main components of the criminal justice system, along with their interlinkages with one another, and launch a series of targeted interventions to reform it.

8. While there has been progress in recent years in terms of special legislation enabling *alternative dispute resolution (ADR)*, as well as the setting up of ADR centers focusing on mediation, ADR is still not widely used by litigants. Mechanisms and procedures may need to be put into place to effectively catalyze the usage of ADR, and to make it widely accepted as a credible method of resolving disputes. As various commentators, including Honorable Justices of the Superior Courts of Pakistan, have noted, adoption of ADR may be one of the most effective mechanisms to not only divert cases away from regular litigation (and thereby reduce pendency), but also to ensure provision of timely and effective justice in a less cumbersome manner.

Further, an important initiative that needs to be considered is the building out of the *institutional framework for ADR*. There is a need to set up an *international arbitration institution* in the country, so that there is a forum within Pakistan for the resolution of disputes involving foreign investors (as opposed to the disputes being administered by arbitral institutions in other jurisdictions). This will not only be an important step towards making Pakistan a destination of choice for foreign investment, but would also ensure that a forum is available within the country to resolve disputes in a timely and cost-effective manner. Such an arbitral institute could have on its panel both foreign and local experts. An important step that would also be needed in this regard is the reform of the law governing arbitration in the country, namely the Arbitration Act 1940.

There is also a need to build a critical mass of *subject-matter experts* – whether through *capacity building* or by establishing Islamabad as a node in the global network of ADR/mediation centers to enable the fluid exchange of expertise and knowledge. Locally, building out the ADR/mediation ecosystem requires capacity building and training to familiarize the legal community with the intricacies of the processes for the same, as well as advance adoption, in accordance with best practices.

9. In addition to improving the functioning of the current courts, keeping in view the goal of attracting foreign investment, certain special initiatives may also be considered in light of developments in commercially advanced jurisdictions. The setting up of a *dedicated commercial court* with a special focus on adjudicating disputes involving international investment will attract further capital into Pakistan. Such commercial courts with specialist judges trained to adjudicate complex commercial matters expeditiously may provide comfort to investors, and significantly reduce the political and legal risk of investing in the country. Such courts have existed in certain western jurisdictions such as

the United States and England for some time. However, recently, commercial courts focused especially on adjudicating international disputes have been set up in emerging economies, including the Singapore International Commercial Court, the Qatar International Court, the China International Commercial Court, and the courts set up at the international financial centers at Dubai and Astana.

10. There is a need to expand the capabilities of the Islamabad Justice Delivery System, either by building them out or by establishing *strategic partnerships* that enhance the IHC's enabling ecosystem. Such partnerships can include research institutes, think tanks, academic institutions, technical and forensic labs, among others. They may also trigger the "crowding in" of private sector participation, and along with that its specializations, and managerial and technical expertise. Thus, targeted partnerships that cascade from, and strongly align with, the strategic objectives and mandate of an institution not only elevate and strengthen its operational capacity, but enable the collation of the required critical mass of technical expertise and knowledge – much needed enhancements for the justice system.
11. A comprehensive attempt should be made to *strategically employ technology to serve targeted objectives* including i) optimization of key business processes including case management to increase effectiveness of judicial functions, ii) data-driven and effective decision-making through the availability of real-time data and information, and iii) enhancement of court functions and proceedings. In this regard, it is noted that many courts around the world have digitized key aspects of the litigation process (including in the US and EU, as well as countries with highly advanced judicial systems such as Singapore). One recent example of an emerging economy that digitized its system is that of Indonesia, where the "electronic court" system was introduced in 2019 allowing online submission (and receipt) of various litigation-related documents (such as claims, petitions, summon/notification, response) as well as receipt of payments, etc. The new e-court system also allows parties to opt for e-litigation at certain stages (i.e. proceedings to be conducted online), and also allows elimination of unnecessary steps (such as the requirement to attend hearings just to submit court documents). Further, in addition to digitization of processes, innovations in such fields as *artificial intelligence* may also be considered to see how processes can be further fast-tracked and made highly efficient.
12. At the very foundation of the justice delivery system, there is a need to revive and strengthen its value system, the core of which are the *legal ethics* to be upheld by every legal practitioner. This reform area requires interventions that may vary from the behavioral – to strongly embed legal ethics in practice, and encourage and motivate upholders – to the procedural level – to institute accountability and consequences for those who are found in violation of them. Hence, it is necessary to understand the drivers that lead to legal practitioners violating ethical principles, and to devise and institute targeted interventions that counter such drivers. This is critical to maintain the sanctity and dignity of the legal profession and to safeguard the rights of the litigants.