



Policy Brief

INSIDE

1.0 Introduction	1
2.0 Enhancing delivery of justice	2
3.0 The judiciary fund	3

Comments on the Judiciary Medium-Term Expenditure Framework (MTEF) Financial Year 2022/2023-2024/2025

1.0 Introduction

The Institute of Economic Affairs is a public policy think tank that seeks to promote pluralism of ideas through open, active and informed public debates on key policy issues and to propose feasible policy alternatives. The vision of IEA is to work towards attainment of a Kenyan society that is prosperous and has a well-managed economy, in a country whose institutions uphold the principles of governance espoused in the Constitution. Following the public Hearing on the Judiciary's budget for the FY 2022/23 and the Medium Term Expenditure Framework 2022/23-2024/25, the IEA suggests the following additional proposals for consideration:

2.0 Enhancing Delivery of Justice

The IEA notes the recurring issue of inadequate funding of the Judiciary. The resource gap that translates to 56% of the total resource requirement for the FY 2022/23 implies significant underfunding of key functions, which would likely translate to continued sub-optimal operation of the courts. Noting that the FY 2022/23 budget covers the next general election, it will be critical to ensure adequate funding to allow for timely resolution of electoral disputes in addition to the regular disputes. There is need for increased stakeholder engagement and advocacy with relevant institutions including the Budget and Appropriations Committee of Parliament and the National Treasury demonstrating the costs of efficiently resolving a dispute and the opportunity costs for underfunding. The Judiciary should consider working with other stakeholders including the public, research institutions and civil society to amplify advocacy for increased resources.

Second, the allocation of resources within the Judiciary should align to the caseload by different courts. Based on the latest available data (as of June 2020), 88.54% of all the 337,510 cases filed at the Judiciary was filed at the Magistrates Courts. This large proportion of cases could be explained by the functions

of the Court and that it is a court of first instance. Accordingly, the Judiciary should consider matching available resources rationally, to the caseload at various levels of the court system.

Table 1: Filed and resolved cases by the Court, FY 2019/20

	Filed Cases	Filed Cases as Share of the total cases
Supreme Court	72	0.02%
Court of Appeal	2,620	0.78%
High Court	23,602	6.99%
ELRC	2,015	0.60%
ELC	3,156	0.94%
Magistrates' Court	298,838	88.54%
Kadhis' Court	7,207	2.14%
Total	337,510	100.0%

Source: State of the Judiciary and the Administration of Justice Annual Report 2019 – 2020¹

Similarly, out of the 617,582 pending cases at the Judiciary, the Magistrates courts level accounted for 78.35% of all pending cases which is equivalent to 483,864 court cases.

Table 2: Pending Cases as of June 30, 2020 (cumulative cases)

	Pending Cases as of June 30, 2020	Court level Pending Cases as a share of total pending cases
Supreme Court	89	0.01%
Court of Appeal	7,598	1.23%
High Court	89,415	14.48%
ELRC	12,907	2.09%
ELC	15,892	2.57%
Magistrates' Court	483,864	78.35%
Kadhis' Court	7,817	1.27%
Total	617,582	100.00%

Source: State of the Judiciary and the Administration of Justice Annual Report 2019 – 2020

¹State of the Judiciary and the Administration of Justice Annual Report 2019-2020.

<https://www.judiciary.go.ke/download/state-of-the-judiciary-and-the-administration-of-justice-annual-report-2019-2020/>

Despite the caseload in the Magistrates' Court which is demonstrated by cases filed per fiscal year and the cumulative pending cases, the allocation of the operative budget to courts is only 43%. This is highlighted in the Judiciary's Budget Guide for the Citizen for the Financial year 2020/21². 33% of the Budget goes to Tribunals, 12% to High Court, ELC and ELRC, 8% to the Court of Appeal and 4% to the Supreme Court. Relative to the workload, there is need for rationalization of this budget.

The IEA proposes the hiring of more judicial officers and expanding court access at the Magistrates Court level³. Unless the number of judicial officers meets the case supply, overall case resolution for the filed and pending cases will continue to remain suboptimal. The hiring of additional judicial officers specifically at the Magistrates Courts should be costed and highlighted under the resource requirement within the MTEF. It should also be indicated as a strategic objective. This information would be key to effective advocacy for more resources.

3.0 The Judiciary Fund

The Budget and Appropriations Committee Report on the Estimates of Revenue and Expenditure for Financial Year 2021/2022 notes that the failure to operationalize the Judiciary Fund has compelled the Judiciary to surrender funds collected every year in terms of court fees and fines to the National Treasury (Page 9)⁴. This Report was issued in June 2021. The Committee notes that this is despite the Judiciary Fund Act, 2016, which allows the Judiciary to retain monies that may accrue from investment, fees and levies.

The IEA asserts that by virtue of Article 173(1) of Constitution of Kenya, the Judiciary Fund was considered established when the Constitution came into force. Article 173(1) provides that "There is established a fund to be known as the Judiciary Fund, which shall be administered by the Chief Registrar of the Judiciary". This negates any requirement for another law to re-establish the Fund. The requirement for Parliament per Article 173(5) of the Constitution was only to provide for the Regulation of the Fund. The Judiciary Fund should therefore be considered operational.

²The Judiciary Budget: a Guide For The Citizen FY 2020/21 -Popular Version.

<https://www.judiciary.go.ke/download/the-judiciary-budget-a-guide-for-the-citizen-fy-2020-21-popular-version/>

³Institute of Economic Affairs, March 2021. The Case Backlog Problem in Kenya's Judiciary and the Solutions. <https://ieakenya.or.ke/?wpdmdl=2138>

⁴Budget and Appropriations Committee Report on the Estimates of Revenue and Expenditure for Financial Year 2021-2022

<http://www.parliament.go.ke/sites/default/files/2021-06/REPORT%20ON%20THE%20BUDGET%20ESTIMATES%20FOR%20THE%20FY%202021%20-%202022.pdf>

Policy BRIEF

The Institute of Economic Affairs is a public policy think tank which seeks to promote pluralism of ideas through open, active and informed debate on public policy issues by conducting policy research and analysis. IEA is independent of political parties, pressure groups and lobbies, or any other partisan interests.

© 2021 Institute of Economic Affairs

Constitution Law and Economy Programme

ACK Garden House, 5th Floor, 1st Ngong Avenue

P.O. Box 53989 – 00200, Nairobi~Kenya

Tel: +254 -20-2721262, +254 -20- 2717402

Fax: +254 – 20- 2716231

Email: admin@ieakenya.or.ke

Website: www.ieakenya.or.ke

Written by:

Jackline Kagume

Leo Kemboi

Board of Directors:

1. Charles Onyango-Obbo - Chairman
2. Geoffrey Monari
3. Albert Mwenda
4. Raphael Owino
5. Sammy Muvellah
6. Diana Brenda-Akoth