



Funding the Judiciary and Independent Offices

Key Insights from Budget Analysis

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Constitution, Law & Economy Program

Outline

- Objectives
- Judiciary 2022/23
- Commissions & Independent Offices 2022/23
- Parliament 2022/23
- Conclusions

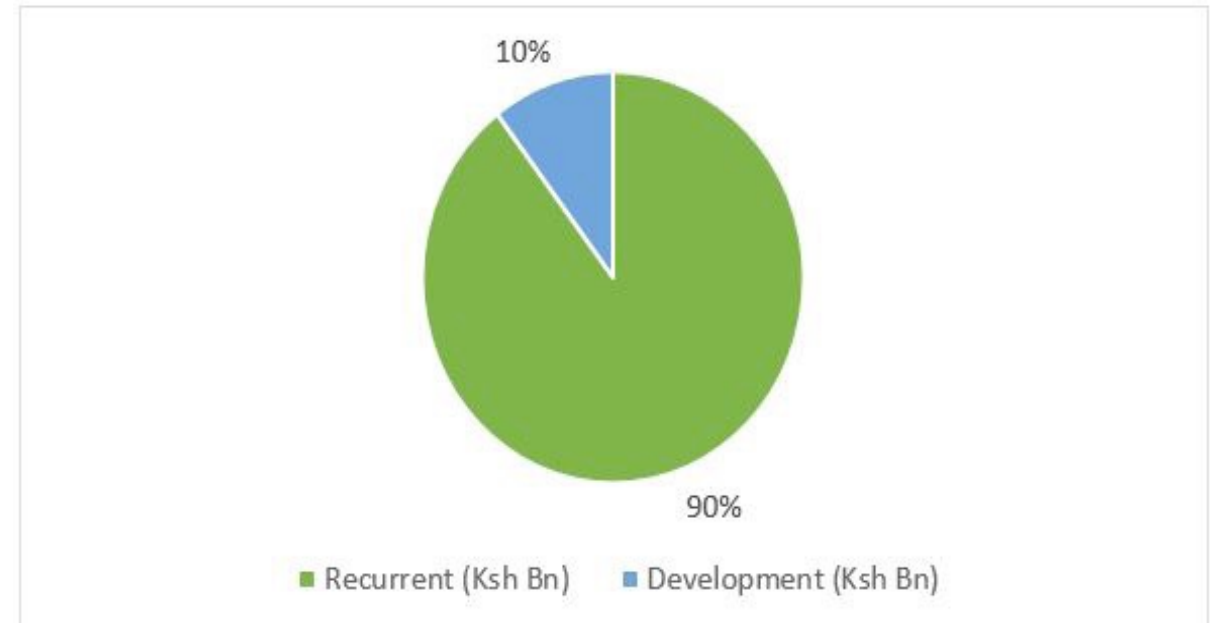
Objectives of Budget Brief for Judiciary, Independent Offices & Commissions

- Monitor judicial funding and identify issues
 - that could enhance parliament's allocations to the Judiciary
 - allow better service delivery for the provision of the public good of justice administration.
- To provide this public good, the main priorities include quick resolution of cases and elimination of case backlogs.
- Regarding constitutional commissions and independent offices,
 - They are small (in comparison to the three branches of government)
 - Political bidding during the budget process could easily be overlooked, given the oversight role these institutions play in Kenya's democratic framework.

Judiciary's Budget 2022/2023

- The Judiciary was allocated Ksh 18.30 billion for FY2022/2023
- Ksh 18.3 bn reflects an increase of Ksh 377 million from the previous year's budget of Ksh 17.92 billion, equivalent to a 2% increase.
- 90% of the budget is recurrent while the rest is development expenditure.
 - recurrent expenditure- Ksh 16.40 billion
 - development expenditure- Ksh 1.9 billion

Judiciary's Budget for the FY 2022/23



Allocation versus Resource Requirements

- Inadequate resources compound organizational problems
- The Judiciary has a Kshs. 21.9 billion resource gap, which equates to 56% of the total resource requirement for FY 2022/23.
 - Recurrent Vote is underfunded by 52%
 - Development Vote is underfunded by 71%.

Allocations to Judiciary (Nominal, Unadjusted)

Entity	2012/2013	2018/19	2020/2021
Judiciary (Ksh Bn)	12.5	17.3	17.42
Parliament (Ksh Bn)	13.9	35.14	39.15
Growth in Judiciary (%)		38%	1%
Growth in Parliament (%)		153%	11%

Source: IEA Budget Guide (Various issues)

Budget Speech's promise to operationalize the Judiciary's fund

IEA's view on Judiciary Fund

- The Judiciary Fund was considered established when the Constitution entered into force under Article 173(1).
- According to Article 173(1), “a fund to be known as the Judiciary Fund is established, which shall be administered by the Chief Registrar of the Judiciary.”
- This eliminates the need for another law to re-establish the Fund. Article 173(5) of the Constitution only required Parliament to provide for the regulation of the Fund.
- As a result, the Judiciary Fund should be considered operational
- **Dictates of the Constitution should prevail over all other arguments**

CS Treasury Promise in Budget Speech & Steps

- The steps for the Judiciary Fund's operationalization have been completed, as per CS- National Treasury.
- These steps are:
 1. enacting the Judiciary Fund Act and Regulations
 2. opening bank accounts at the Central Bank of Kenya for the Fund
 3. developing an appropriate budget for the Judiciary for the fiscal year 2022–2023
 4. improving IFMIS to support Judiciary Fund operations.
- **The fund is considered operational from 2022/2023 financial year**
- **A formal report should be issued by Judiciary if this has already been operationalized!**
- **One of the things IEA will be tracking going forward.**

Allocations to Commissions and Independent Offices

No.		2021/2022 Budget (Ksh Bn)	2022/2023 Budget (Ksh Bn)	Changes
1	Judicial Service Commission	0.580	0.587	1%
2	Salaries and Remuneration Commission	0.620	0.613	-1%
3	Kenya National Commission on Human Rights	0.410	0.464	13%
4	National Police Service Commission	0.720	1.029	43%
5	Auditor General	5.860	6.508	11%
6	Controller of Budget	2.280	0.702	-69%
7	Public Service Commission	2.391	2.582	8%
8	Independent Policing Oversight Authority	0.950	1.025	8%
9	Ethics and Anti-Corruption Commission	3.326	3.579	8%
10	Commission of Administrative Justice	0.615	0.724	18%
11	National Gender and Equality Commission	0.437	0.483	11%
		18.189	18.297	1%

Parliament's 2022/2023

	2021/2022 Budget	2022/2023 Budget	Changes (%)
Parliamentary Service Commission (Senate Affairs)	6.612	8.785	33%
National Assembly (National Legislation, Representation and Oversight)	23.502	33.27	42%
Parliamentary Joint Services	7.768	8.165	5%
Parliamentary Budget in Total	37.882	50.22	33%

Conclusions -- Commissions and Independent Offices

Office of the Auditor General

- NA should increase the resources available to OAG to broaden the scope of audits, type of audits to include more performance audits & increase the frequency of special audits and forensic audits.

OAG Resource Requirement & Allocation

Financial Year	Resource Requirement	Budget Allocation	Budget Shortfall (%)
2016/2017	8.253	4.428	-46%
2017/2018	8.722	5.296	-39%
2018/2019	9.206	5.968	-35%
2019/2020	8.88	5.505	-38%
2020/2021	8.9	5.525	-38%

Other Commissions

- The advocacy by stakeholders should revolve around urging members of Parliament to be fair and just in their decisions and allow institutions that play an important role in managing public affairs to be just
- Different stakeholders (Civil Society organizations, the Parliamentary Budget Office, & Budget Appropriations committees of Parliament) should estimate the costs associated with the consumer mandate of the constitutional commissions and use them as the basis for reaching an agreement and deciding how much funding should be given to each individual commission.

Conclusions- Judiciary Budget 2022/23

- The Judiciary should issue a post-budget analysis document
 - that details the opportunity cost of the National Assembly allocating less than half of its resource requirements
 - with clear illustrations of how it is slowing service delivery and efficiency in providing this public good.
 - The document should explain how a lack of financial independence or adequate resources affects judicial independence.
- Judiciary should rank its priorities so that they are consistent with those that will raise indicators of public service delivery.
 - Increasing the number of judges and expanding access to courts in counties where none exist.
 - This will increase public understanding of the judiciary's budget and political agreement on what should be Judiciary's budget.
- Parliament's top priority should be to clear the backlog of cases & strengthen the Judiciary's ability to provide this public good-
 - To meet filing demands at the Magistrates Court level, as well as special high courts such as land & environment, & Court of Appeal, the IEA proposes hiring more judicial officers & expanding court access.
- Unless the number of judicial officers matches the number of cases
 - overall case resolution for filed and pending cases will remain suboptimal.
 - Hiring additional judicial officers, particularly at Magistrates Courts and Court of Appeal Benches should be costed and prioritized in terms of resource requirements to Parliament.

Conclusions- Parliament

- The priority of resource allocations should go to parliament's ability to build capacity for oversight, provide checks & balances, & represent the people of Kenya.
- Comparative to Judiciary and Constitutional Commissions, **Parliament, as the purse holder**, faces no resource constraints.
- Legislature should justify its spending and priorities to prove that they are fair in decisions to allocate resources to the Judiciary, Constitutional Commissions, and the Executive.

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Thank you

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