



# **Political Economy of Judiciary Resource Allocation & the Cost of its Consumer Mandate**

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**April 28, 2023**

<https://ieakenya.or.ke/download/problem-driven-political-economy-analysis-of-judiciarys-resource-allocations/>



# Objectives of problem driven PEA

1. Study political economy constraints in the resource allocations to the Judiciary?
2. Assess if the question of adequate funding for the Judiciary been appropriately defined and addressed?
3. Structural factors that explains the priorities & prioritization process of the proposed allocations to the Judiciary by the National Assembly?
4. Explain the decisions & logic of behaviours of different stakeholders (i.e. National Assembly, National Treasury) involved in resource allocations towards Judicial functions?

# Power Dynamics: Allocations to Judiciary & Parliament (Ksh Bn)

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)<sup>3</sup>

# PEA problem: Judiciary's Resource Requirement vis-à-vis Allocation

Fiscal Year	Resource Requirement (Ksh Bn)	Allocation (Ksh Bn)	The gap between Judiciary request and parliamentary allocation
2017/18	35.95	17.56	51%
2018/19	31.17	17.30	44%
2019/20	23.29	18.86	19%
2020/21	37.42	17.42	53%

Source: “The Judiciary Budget Public Hearing for The FY 2021/22-2023/24 Medium Term Budget<sup>14</sup>”

# Understanding the Political Economy of Budget Allocations

## Supply Side Players

- National Assembly (whole House)
- Budget and Appropriations Committee (BAC)
- National Treasury
- Cabinet Secretary- National Treasury
- Justice and Legal Affairs Committee (JLAC)

## Demand Side Players

- JSC Commissioners
- Chief Registrar of the Judiciary
- Court Leaders
- National Council for the Administration of Justice (NCAJ) members

# **Factors & Actions that have influenced the suboptimal allocations to the Judiciary**

- 1. Bypassing Constitution in Running of Kenya's Public Finance Management**
  - i. National Treasury Reinforcing Norms of the Previous PFM Arrangement.
  - ii. Judiciary Fund
- 2. Overlooked role of the Judiciary in the Criminal Justice System**
- 3. National Treasury's upper hand in setting the Spending Priorities (Budget Circular and the Budget Policy Statement)**

# Findings of the PEA

1. National Treasury has an advantage in creating budgets due to its special status and broad mandate under the Public Finance Management Act.
2. National Treasury has significant influence over budget ceilings, which determines budget estimates for the judiciary.
3. Justice and legal affairs committee should examine the issue of adequate allocation and resource requirements based on the judiciary's performance.
4. NA (BAC) has the power to level up the powers of different institutions and should address institutional weaknesses to ensure proper resource allocation to the judiciary.





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## Costing the Consumer Mandate of the Judiciary in Kenya



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# Methodology

1. IEA separated the core functions of the judiciary in a data frame for costing and aggregation purposes.
2. IEA analysed three years' worth of approved judiciary appropriations to identify the necessary resource allocation framework.
3. IEA gathered information on case backlogs at the court level and determine their short and long-term effects on fiscal policy.
4. IEA examined the appropriate procedures for allocating resources to the judiciary in other pertinent jurisdictions through case studies.
5. Created a new framework using insights from the IEA's analysis and case studies.
6. Provided a cost indicative of the Consumer mandate for the Judiciary for the 2023–2024 fiscal year based on the new framework and analysis.

# Justification for the study

1. Case Resolution and Interpretation of laws provided by the Judiciary is a public good
2. The backlog of cases has several negative effects on the economy and the delivery of justice.
3. Unintended effects of slow case resolutions on society and public policy processes
4. Democracy suffers when the judiciary lacks both financial and operational independence.

# Judiciary's functions and fiscal implications

Functions of the Judiciary	Functions of the Judiciary
The authority of the courts and tribunals established by or pursuant to the Constitution is used to resolve cases.	<ul style="list-style-type: none"> <li>• Establish a court and all of its amenities, including furniture.</li> </ul>
Interpret the law and constitution	<ul style="list-style-type: none"> <li>• Hire judicial officials and pay them in accordance with the applicable law</li> </ul>
Provides advisory opinions to agencies of government at request.	<ul style="list-style-type: none"> <li>• Automated court filing and payment procedures</li> <li>• Automate court recordings</li> </ul>
Make sure that everyone receives justice, regardless of status	
Make sure that justice is served promptly.	<ul style="list-style-type: none"> <li>• Ensure that judges and other members of the judiciary have mobility</li> </ul>
Ensure that traditional dispute resolution methods as well as alternative dispute resolution methods like arbitration, reconciliation, and mediation are encouraged	<ul style="list-style-type: none"> <li>• Provide stationary and other material such as constitution et al</li> </ul>
Make sure the proper process is followed when administering justice.	<ul style="list-style-type: none"> <li>• Provide necessary support to Judiciary</li> </ul>
Make sure the constitution's goals and tenets are upheld and promoted.	<ul style="list-style-type: none"> <li>• Create committees within the judiciary to handle matters of policy and management.</li> </ul>

# Main Spending Areas in the Judiciary

	Approved Budget 2021/22 (Ksh Mn)	Share of the total Budget
Compensation of Employees	9,881	57%
Use of Goods and Services- Recurrent	4,177	24%
Social Benefits	20	0%
Other Expense	566	3%
Non-Financial Assets -Recurrent	189	1%
Financial Assets- Recurrent	170	1%
Use of Goods and Services – Capital	75	0%
Non-Financial Assets- Capital	1,521	9%
Financial Assets- Capital	738	4%
	17,337	100%

Source: The Judiciary Budget for the Financial Year 2022/23 and Medium Term

# Main Spending Areas and Resource Requirements

	Approved Budget 2021/22	2022/23 Resource Requirement	Additional Resources Requested	Additional Resources Requested 2022/23 /Approved Budget 2021/22
Compensation of Employees	9,881	16,443	6,562	38%
Use of Goods and Services- Recurrent	4,177	13,172	8,995	52%
Social Benefits	20	62	42	0%
Other Expense	566	1,784	1,218	7%
Non-Financial Assets -Recurrent	189	597	408	2%
Financial Assets	170	536	366	2%
Use of Goods and Services- Capital	75	222	147	1%
Non-Financial Assets- Capital	1,521	4,536	3,015	17%
Financial Assets	738	2,203	1,465	8%
<b>Total</b>	<b>17,337</b>	<b>39,555</b>	<b>22,218</b>	<b>128%</b>

Source: The Judiciary Budget for the Financial Year 2022/23 and Medium Term

# Simulation on one-time fixed costs

Cost of Constructing a court station (Ksh Million)	200
Number of subcounties targeted	236
Estimated Cost of constructing a court station (Ksh Billion)	47.20
Annual costs for Budget if it follows a 10 year trend (Ksh Bn)	4.72
Annual costs for Budget if it follows a 5 year trend (Ksh Bn)	7.87

Source: Author's own calculations

# Indicative Budget Costs for the Judiciary

	Amount (Ksh Bn)	Share of the total Budget
<b>Fixed Costs</b>		
Compensation of Employees	16.4	41%
Use of Goods and Services	12.0	30%
<b>One time Infrastructure costs</b>		
Courts and other facilities	7.9	20%
<b>O&amp;M Costs</b>		
O&M costs	3.6	9%
	40.0	

Source: Authors Own Calculations



# Findings and Conclusions

1. Top priorities for the judiciary are availability of personnel, facilities, and necessary goods/services.
2. Ring-fencing these resources is crucial for optimal functioning and resolving case backlogs.
3. Budgeting should prioritize increasing court access and judicial staffing levels across all counties.
4. Arbitrary allocation targets are not advisable due to the nature of the judiciary's services.
5. **Estimated cost of court infrastructure for desired level of access in every county is Ksh 47.20 billion.**
6. Computed cost for judiciary in 2022-2023 fiscal year should be Ksh 40 billion for optimal functioning.

# Next Course of Action for Judiciary

- Prepare Budget Books, raise level of transparency
- Itemized Budget Requests
- Build a public case for more resources using explicit Justifications

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