



# FUNDING KENYA'S JUDICIARY 2020/2021

IEA ANNUAL PRE-BUDGET STAKEHOLDERS HEARING ON 5<sup>TH</sup> FEBRUARY, 2020

# WHY FUND THE JUDICIARY

- The Constitutional Imperatives of Judiciary as a co-equal branch of Government.
- The Judiciary requires sufficient funds to perform the core functions assigned to it by the Constitution and other Legislation. (This is mainly adjudicating all cases filed in courts and service to other arms of government such as swearing in Elected officials and other state officers)
- These create a workload which needs to be managed. The Judiciary is an institution for the citizens. No less than any other branch. Funding the Judiciary is not a discretionary act on the part of the Legislature or Executive.

# HOW DO WE FUND THE JUDICIARY?

- It should be an engagement between the Judiciary and the Legislature.
- In USA< Supreme Court Justices actually make presentations to congress on the Fedral Judiciary Budget. (Justices Alito and Kagan testified at a hearing on March 7, 2019, before the House Appropriations Financial Services Subcommittee with regard to the FY 2020 budget request for the Supreme Court, which is a separate line item in the Judiciary's budget).
- They urged Congress to protect the Judiciary from Deficit reduction in future Budgets.

# EXAMPLES OF JUDICIAL ACTION TO FUNDING

- In 1991, a Judge in Alamance County in North Carolina convened a Grand Jury to inspect the conditions of the courthouse and make recommendations for its renovation.
- The Judge then issued an ex-parte order renovation requiring the County Commission to provide the court with adequate facilities including orders on the size of each room to be provided.
- Reversed on Appeal by the NC Supreme Court but it affirmed that the Judiciary had inherent power to require funding from another branch of Government.

# SUING THE EXECUTIVE

- When New York Governor Mario Cuomo submitted a budget that was less than what the Judiciary thought was sufficient for operation of the State Courts, the Chief Judge of the NY Court of Appeals sued the Governor and the state Legislature to compel adequate funding.
- The two cases asserted the inherent power of the courts to compel funding on the need for Judicial Independence.

# PROPOSED APPROACHES TO JUDICIAL FUNDING

- Assert adequate funding as essential for the Independence of the Judiciary
- Assert and display Judiciary as a service function to the Citizen
- Transparency on processes of the Judiciary to demonstrate benefit for the Citizens (compare to rights to education, health, etc)
- Develop comparison matrices for Funding(e.g. amount of Judicial Budget as compared to the Parliament, cost per case filed, etc)
- Prioritise expenditure of the Judiciary in a public friendly way. Show a sensitivity to austerity when required.
- Engage the Legislature as the purse holder, rather than the executive | Budget Formulation.

