

ANALYSIS OF THE STRUCTURAL DETERMINANTS OF FUNDING ALLOCATION IMPLEMENTATION IN THE KENYAN JUDICIARY

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ABSTRACT

Financial resources allocation is key to achieving judicial independence and enhancing the rule of law in any country. The significance is that in the democratic system, judges and the judicial system entirely are autonomous from any outside control and unnecessary direction coming from the other self-governing systems, such as financial institutions. Necessary conditions for operations of the court system include being able to mobilize required finances to certain its operations. Sufficient judicial financial resource allocation, which depends upon clear focus and non-malicious criteria, makes the court system less susceptible toward undue provision of direction on how to operate. This study sought to analyze the important factors in judicial autonomy such as Annual financial plan, Judicial structure and Judicial work load on funding allocation implementation in the Kenyan Judiciary. The study was guided by Resource Based Theory (RBV) as well as Theory of Change Model. A total of 67 respondents including: staff, clerical Officers, litigants, advocates and police officers were targeted,

and sample of 59 respondents were sampled. The study adopted a descriptive case study research design. A semi-structured questionnaire, with both open and closed-ended questions was used to collect both qualitative and quantitative data. Quantitative data was analyzed through descriptive statistics which include; percentages, frequencies, mean, standard deviation, and regression, while qualitative data was analyzed through thematic analysis. Authorization to conduct the field study was sought from the National Commission for Science, Technology and Innovation. Results of the study indicated that majority of the respondents were aware of financial plan being used by the judiciary to plan for its expenditure.

Key Words; Annual financial plan, Judicial structure and judicial work load.

INTRODUCTION

Strengthening the judicial systems have taken a new approach with focus being providing judicial financing to strengthen judicial autonomy, this has mainly targeted employees of the judiciary delivering on their mandate through ensuring equitable allocation of resources based on deliverable, therefore the courts financial plan is geared towards achieving the effectiveness which are envisioned in their work place (Maseh., & Katuu, 2017). In many counties the court system have mostly been affected by the vested interest from other partners, this is due to its central placement in peaceful coexistence, adding together to an entrenched refractoriness to change. The general force for growing competence and the need to get better judicial services, to a greater extent has forced European judiciaries to focus attention in handling perceptions related to litigation (Lawrence, 2014). Though there still exists serious challenges in adoption of innovative management plan on financial planning methods to the judicial system, which is also due to an entrenched concerns about judicial self-government.

In Kenya, preceding the promulgation of the Constitution (2010), the recognition of the work of the Kenyans legal system an independent arm of government charged with responsibility to deliver services and had a financial plan that was prepared and implemented as financial plan for the department anchored under the office of the vote of the office of the Attorney General. The financial resources as a result, had to be approved from Treasury like other supplementary governmental department and once the financial resources were allocated, they had to be divided based on need eventually causing delay in advancement of the resources to the judiciary (Judiciary, 2012).

Dressel (2017), says that autonomy of the judiciary cannot be overlooked by governments seeking to strengthen their rule of law. The importance of strong judiciary is key in any democratic system that all judicial staff are free from an undue influence from other agencies and improper unnecessary control from various arms of government, such as the legislature when decision about its operations are financial organization. The judiciary works independently and its mandate lies on the ability of the government to allocate enough funding to support judicial services. An adequate budget for the judiciary, which is pegged on clear objectives and clear means to achieve them, this makes the court system less vulnerable to undue impudence from other arms of the government, and, at the same time, it can make certain honesty and performance of the judges through the proper portioning of resources on judicial salaries and training (Graziadei, 2016)

In the past, the Kenyan judiciary has been faced with the problem of inadequate funding from the Government. The Constitution now grants the judiciary financial independence through the creation of the Judiciary Fund. Article 160 (1) of the 2010 constitution says; “in the event of exercising the

judicial authority, the court system will on report to the established laws of Kenya and is not supposed to be subject to the management of or direction of any person or authority.” It gives a basis for the Judiciary to work independently in order to avoid the earlier judicial practices that were crippled. The Judiciary now prepares its own budget and presents it directly to Parliament for endorsement. It has been further empowered by the organization of a Judiciary Fund that is an enactment of the Constitution. The financial resources mobilized are to be given out through the Chief Registrar and are used for judicial administrative expenses and other reason that is proved to be relevant in discharging its functions. The expenses accounted for from the Consolidated Fund (Matusse, et al. 2012).

The Judiciary has been riding on its constitutional positioning to safely increase budget from a substantive total of Ksh. 3.9 billion in 2010/2011 to Ksh. 7.5 billion in 2011/2012 - an impressive 93% increase. Once a strategic plan in the form of the Judiciary transformation framework (JTF) was launched, the Judiciary equipped itself with justified means to communicate to Parliament it needs for an increased budget exceeding the previous. Its ultimate aim is to garner 2.5% of the national budget, which is the international standard (Judiciary, 2012).

The study sought to solve the following research problem, that an independent judiciary to be able to achieve the dream of independence, the elements of modern constitutionalism and strong conviction on the benefits of good governance must be upheld (Fombad, &Manyatera, 2014). Judiciary has faced many challenges, key among them being lack of adequate facilities and infrastructure to enable it to function efficiently and resourcefully. Basic facilities in many courts in the country are, to say the least, undignified. In some courts, holding cells that are simple, crowded makeshift structures that vandalize the rights and dignity of the prisoners. In some cases, adults and children are made to share the same facility. Inside the courts themselves, the crowding poses an obvious security risk not only to the court staff but the court users as well. Given the current developments where the National Assembly slashed the Judiciary budget hardheartedly, Judiciary transformation programmes, as well as the promises made by the Chief Justice to the Kenyan people on improving admittance to justice, may not be realized. This study therefore sought to examine the extent to which annual financial plan, judicial structure and to judicial work load determines funding allocation implementation in the Kenyan Judiciary.

Theoretical Framework

Resource Based Theory (RBV)

Resource Based Theory avers that every association has unique resources that makes it maintain its competitiveness in operations as a way of coping up with the rapidly changing environment (Helfat, 2007). These resources may be financial, human, physical, technological and information. This theory relevant in Judiciary in terms of resource allocation to various judicial levels to enhance service delivery. These may be precious, uncommon and non-substitutable (Crook, Ketchen, Combs & Todd, 2008). According some critiques of this theory, there are some resources that help in achieving competitive advantage but others don't; meaning that not every organizational resource that can contribute to competitive benefit. The mere availability of resources is not enough unless the resources are well coordinated and integrated (Lopez, 2005). To effectively deliver judicial services, there is need to have informed and mindful deliberate budgeting allocation which will inform service delivery.

Theory of Change

The theory of change refers to the expression of the fundamental beliefs and assumptions that sets forth the method for service delivery and are significant for achieving the expected change in development, the theory is relevant in judicial reform to achieve better service delivery. This theory represents the point of view about what is needed by a given population and what methodologies will make easy to achieve the desired changes. The application of this theory set up a background for determining the relationship between mission, strategies and expected results of a system, while creating links among the service beneficiaries.

The change theory adopts two broad mechanisms. It adopts change that involves conceptualization and operationalization of its basic theoretical frames. These frames include: the number of people to be served, strategies believed to accomplish expected outcomes and what one intends to achieve. The second component involves creation of understanding of the associations among the fundamental elements and expressing the associations undoubtedly. This theory explores the need to have a change of the delivery service in judiciary which call fall a change in the mode of funding to the judiciary

METHODOLOGY

The study used descriptive research design where both quantitative and qualitative approaches were used. Descriptive research design was preferred in this study because it allows for analysis of different variables at the same time. This leads to a better understanding of the phenomenon being studied and helps to view critical factors from the perspective of those being studied. The target population was limited to staff, clerical officers, litigants, advocates, and police officers.

The target population was 67 where 19 were staff, 7 clerical officers, 21 litigants, 4 advocates and 16 police officers. Stratified random sampling was used and the sample was divided into four strata; staff, clerical officers, litigants, advocates and police officers. The sample size was identified using Slovincs formulae which helped to come up with a sample size of 59 respondents. The 59 respondents was distributed as follows; staff 18 respondents, clerical officers 6 respondents, litigants 17 respondents, advocates 3 respondents and police officers 15 respondents.

Semi-structured questionnaires were used as an instrument for primary data collection, as the presence of both close and open ended questions to allow the respondents to capture the issues under investigation fully. Pilot testing of the research instruments was carried out to ensure that the instruments work as intended. Ten questionnaires were administered randomly to staff at Thika law courts. This helped the researcher to assess their clarity, ease of use, appropriateness and completeness and validity.

Data was analyzed using Tabachnick and Fidel's (2013), understanding, which envisages data analysis as the technique that involves the packaging of collected information, formulating and arranging its main components to such a degree that it can be easily and effectively conveyed. Thematic analysis was used to analyze qualitative data where patterns or themes were identified, examined and recorded. Quantitative data was coded, entered and analyzed using regression analysis and descriptive statistics which included; percentages, frequencies, mean, standard deviation. The following regression model was used

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + E$$

Where;

Y= Structural determinants of funding allocation implementation the Kenyan judiciary

. β_0 = Constant

X1= Annual financial plan

X2= Judicial structure

X3= Judicial work load

E= Error Term

The data was then stored and backed up in a secure place for future reference. On ethical consideration the researcher provided sufficient information about the study. The researcher also ensured that no harm comes to the respondents as a result of participating in the study. This was through maintaining privacy and confidentiality of the respondents. The data collected was used for research purposes only. The researcher also obtained necessary documentation and authorization prior to collecting data from Kenyatta University and National Commission for Science, Technology and Innovation

EMPIRICAL REVIEW

Funding allocation execution is done by the national government on the judiciary, many instruments of international human rights have specified minimum principles and important requirements in judicial funding. It forms the required background for the needed requirements and institutional structure for the justice administration. Laibuta, (2012) study which shaped specific objective of this survey was to carry out the assessment of about requirements and constitutional requirements in Kenya, to assess the how of happy the consumers in the justice system with particular reference to the principles of amount, self-sufficiency, journey, impartiality of process, extent and equality of possibility of right to use for suitable policy and lawmaking improvement means for speedy administration and the boost of equal admission to civil justice. The findings is that present Kenya's rule and legal outlay are not well harmonized for assurance for the efficient liberation, and equity in accessing and that the system of justice procedural is not fine suited for delivery of excellence outcomes and effective therapy.

Annual financial plan and funding allocation implementation

Nthuku et al. (2014), the efficiency of civil justice has become a central issue in several communities, including national states that have undertaken to reform their civil procedures rules and to implement methods of case management"(Nthuku, et al 2014). Also, there has been interest among legal academics and professionals in judicial/court administration to establish how funding allocation affects functionality of the judiciary. In numerous jurisdictions, setting the yearly budget for the judiciary can be controversial and tiring in collaboration is not acquired. Different department have different necessities which may present with challenge for allocation of resources needed by the judiciary and therefore accountability in management of financial resources are most often seen as interfering with the principles of justice and independence of the justice system including human resources sourcing and allocation. In many occasions, the problem has not been to do with inadequate capital nevertheless invariably this has been a source of irritation but a shared effort in approaching that has shown that neither branch clearly is aware off or limits its operations their mandate and goals (Nzamu, 2015).

The need for important changes aimed at betterment of the administrations of the judiciary can be equated to other management reforms in the public system in addition to the factors which are either within or without to the sector that is no within the range of this study. In addition to a combine level of exceptions, extracted sections have not provided robust examination of the judicial sector development that deliberately resulted from these advanced budgeting practices; certainly, there is only inadequate research evidence to date of the precise effects of these initiatives. Clear evident characteristic that is associated with the judicial allocation of fund can be clearly related to their

contribution toward promotion and development of a more accomplished, occupied professional managerial guided within the judicial sector (Dutton, 2017).

The judicial systems operate as either public institutions or organizations. Operating as a public institution means that its funding, hiring and recruitment of staff and all the procedural rules are governed by the state. In terms of operating as an organization, the judicial system offers dispute resolution services and its operations are governed by the courts. The importance of capacity management of the former is currently acknowledged by most professionals, even when the compatibility between legal and managerial rationality is questionable (Brown, et al 2014).

Judicial structure and funding allocation implementation

The judicial service is not devolved, although it has undergone various forms decentralization (Ambani, 2014). Judicial governance and independence is a concept that is fairly recognized by international resolutions and local laws of a contemporary democracy. The fundamental principles of the UN on having Independent Judiciary and the role of lawyers were endorsed between 1985 and 1990 by the UN General Assembly. Subsequently, the Bangalore Principles conduct in Judiciary endorsed in 2003 recognizes “judicial independence as a catalyst to the rule of law and a fundamental guarantee of a fair trial. Judges are therefore expected to uphold and exemplify judicial independence in both their individual and institutional aspects. Some legal scholars equate independence judiciary to judicial power” (Fleck, 2014).

Judicial work load and funding allocation implementation

Judicial work load in many countries is concerned with achievement of excellent service delivery to the litigants. Judicial workload requires accountability for jurisprudence to be said to have been served. Such a mandate and performance are subject to another’s oversight, direction or request that the individual or agency provides information or justification for its action. Therefore transparency can be practiced where individuals in authority are answerable for their actions and are able to achieve deliverables as per the work plan (Sihanya, 2014).

In the Kenyan system, the Judiciary consists of judges and magistrates, and paralegal staff that are largely accountable to the Judicial Service Commission (JSC). The expectation of the legal system in achieving responsibility of the other arms of administration and may be understood against the backdrop of the wider role the judiciary is expected to play, including providing informative interpretation of the Constitution as the laws. It is also important to note that the Kenyan 2010 Constitution empowers and strengthens the Judiciary to enable it perform its functions (Esposito, G. et al .2014).

In spite of its great importance, Kenya is yet to put in place necessary measures for securing and preserving the concept of independence in judiciary that entrenches service provision in the various levels in the court through allocation of funds enough to run the judicial processes. This might be associated with practical aspects of judicial independence have been found to be elusive regardless of theoretical predictions that are competing. Some part of scholarly literature argues that “judicial independence can be achieved through broader institutional legal and judicial reforms” (Bado, 2014). Other thinkers believe that judicial independence by choosing judges fairly (Zoll, 2012). Other scholars feel that weaker traditional ethics, increased corruption and in appropriate code of conduct judicial system play a significant role in undermining independence of the judiciary. Others associate judicial independence with fair distribution of cases (Szarvas, 2014). However, all these propositions experience a lot of challenges in evaluating validity of their predictions due to lack of empirical work

for scientific testing and relay concrete outcome. However, analyzing these predictions in the context of Kenya's judiciary shows a lot of challenges that significantly affect the process of institutionalizing judicial independence in Kenya majorly based on budgetary allocation to the judiciary.

Decisional independence emphasizes on the powers vested on judges for deciding cases without any intimidation that could make them deviate from the rule of law (Geyh,2015). Similarly, in 2017, Becker argued that judicial independence is the extent to which judges believe they decide consistently based on their personal conceptions, attitudes and values of the judicial responsibility, contrary to what others who have political and judicial powers think about or desire in like matters.

However, the actual realization of judicial independence through proper budgeting that informs service delivery in Kenya seems to be a pipe dream. According to scholars, although there is a global convergence, especially even in new democracies concerning what an impartial and independent court is, what is needed in implementing an independent judicial system remains a challenge because of legal systems adopted in different states. However, someone can argue that these practical challenges concerning judicial independence does not majorly rely on the differences in legal systems. Instead, it is mostly based on cultural attitude and moral of law makers (Shetreet, 2014).

Discussions in the following sub-sections adopt ideological polarization in to provide a coherent relationship between independence in Judiciary and the above theoretical predictions. This framework advances a significant understanding of how the enforcement of courts autonomy proper funding to the legal mechanism is more often than not challenging because of ideological distance between groups of people, hence diverging the interests of particular players in society. Therefore, each discussion on every sub-section provides insights into understanding challenges that hinder achievement of judicial independence. To be more precise budgetary allocation in the judiciary which is attributed to the failure in judicial service delivery (Shetreet, 2014).

RESULTS

Regression Analysis

Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Change Statistics	
					R-Square Change	F-Change
1	.863 ^a	.745	.723	.52480	.745	34.050

(Survey data, 2019)

a. Predictors: (Constant), Judicial work load, Awareness of Financial plan, Level of court structure influence

b. Dependent Variable: Funding allocation

Coefficients

Model	Unstandardized Coefficients		Standardized Coefficients	Level of Significance
	B	Std. Error	Beta	
(Constant)	.140	.302		.463
Awareness of Financial plan	-.056	.172	-.028	.404
Level of court structure influence	.806	.145	.599	.511
Judicial work load	.352	.106	.356	.131

(Survey data, 2019)

In terms of Awareness of Financial plan variable, the analysis outcome indicates there is a negative significant relationship with Funding allocation. Thus increase in the Awareness of Financial plan has no probability of the Funding allocation increase is by -0.404, holding other variables constant.

The second hypothesis suggests that there is high significant relationship between Level of court structure influence and Funding allocation in the judiciary. It is accepted because the analyzed data has revealed a significant relationship ($r = 0.806$, $p = .511$), with the level of court structure influence P-value greater than critical P-value. The results demonstrate that an increase in Level of court structure influence will likely lead to an increase in Funding allocation in the judiciary.

The third hypothesis was that there is significant relationship Judicial work load and Funding allocation in the judiciary. According to the findings, the study rejected this hypothesis. There is significant relationship between Judicial work load and Funding allocation in the judiciary ($r = 0.352$, $p = .31$), with Judicial work load P-value more than the critical P-value. It was found that an increase in judicial work load is likely going to result to increase in Funding allocation in the judiciary.

The resulting general regression Model was:

$$Y = 0.140 + .056X_1 + 0.806X_2 + 0.352X_3.$$

Where; Y= Funding allocation. X1= Awareness of Financial plan, X2 = Level of court structure influence, X3= Judicial work load.

DISCUSSION OF FINDINGS

Annual financial plan

The first objective sought to examine how annual financial plan determines funding allocation implementation in the Kenyan Judiciary. Most of the survey participants were aware of the financial plan (59.0%) and the minority at (38.5%). This shows there was high level of awareness regarding financial plan being used by the judiciary to plan for its expenditure. In terms of the participation in the formulation of annual financial plan, most of the survey participants said they were not involved in the formulation of annual financial plan (69.2%) and the minority at (25.6 %). This shows there was low level of involvement in formulating the annual financial plan being used by the judiciary. A few respondents (5.1%) were however not willing to participate in the answering questions pertaining the variable.

Judicial structure

As to whether judicial structure affects funding allocation to the judiciary majority were in an agreement by saying it has impacts on funding allocation in the judiciary. Court structure affects funding allocation in the judiciary, a majority of respondents (33.3%) said that supreme court has high influence on funding allocation implementation, 25.6% rated very high, 28.2% rated moderate effect, 5.1% rated not applicable while 7.7% of the respondents were not willing to give their verdict concerning the variable.

Judicial work load

The findings showed that 79.5% of the respondent did not give their verdict on this variable, 7.7% said that workload is the key important thing since it is the basic aspect in the judiciary that consumes a lot of funding.

The findings were summarized as majority rated litigation to have high influence on funding allocation (43.6%), (33%) rated very high 2.8% rated it to have moderate effect on funding allocation in the judiciary.

The findings indicated that male respondents were slightly higher than female. Although there was no direct objective on gender, the consideration of gender in the study was not to be ignored because in practice, gender dynamics may influence leadership practices and management strategies in organizations.

Education levels are important as far as leadership and management are concerned and therefore research participants were asked to show their levels of education by ticking the appropriate age bracket. From the findings it was evident that almost all of them were literate and thus able to answer objectively the questionnaire. Based on the group culture, they are in a position to express their thoughts to group leaders on issues affecting them and the projects. From the findings it was evident that most of the employees were between the age of 25-30 years meaning that more young people are being employed.

CONCLUSION

According to the first objective, the study sought to examine how annual financial plan affects judicial funding allocation in the judiciary in Kenya. Analysis of the collected data indicates that most of the respondents agreed that there was less awareness of staff in preparation of financial plan for the judiciary. This in result was an indication of gap in needs assessment for the different stakeholders when preparing financial budget. However, a majority felt that the involvement level was good and that they were relatively engaged. This therefore led the study to conclude that there was need to create awareness of the significant of annual financial plan, increase involvement level and increase advocate for adequate remuneration of the judicial staff which is commensurate to their job level.

On judicial structure, majority agreed that to the judicial structure was a factor influencing funding allocation implementation in the judiciary; they found that the court levels to be having effect on funding allocation process to access justice too costly while others agreed that given more funds, there are immediate systems changes they would recommend. Therefore, the study concluded that judicial structure influenced funding allocation implementation in the judiciary in Kenya positively meaning that more funds would lead to improved delivery of service.

From the findings, a majority agreed that judicial workload had a great influence on funding allocation implementation in the judiciary. Majority said that procurement consumed the huge share of the workload fund; respondents also agreed that other arms of government determined the funding allocation for the various workloads which eventually influenced judicial workload. This in result was an indication of gap in needs assessment for the different stakeholders when preparing financial budget. However, a majority felt that the litigation would greatly be affected by funding allocation to the judiciary, majority also said that lack of good funding allocation will lead to backlog of cases while proper funding will lead to reduced cases, timely adjudication of cases and adequate judicial staff. This therefore led the study to conclude that there was need to advocate for funding that would allow for adequate implementation of judicial services.

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