



Most Kenyans seek – and find – justice outside formal court system

Afrobarometer Dispatch No. 442 | Simon Templer Kodiaga and Paul Kamau

Summary

Kenya's Constitution calls for a justice system that is accessible, affordable, and comprehensible to ordinary people and that dispenses justice fairly, speedily, and without discrimination, fear, or favour. The Constitution lays down principles to guide the administration of justice, including equality before the law, efficiency in the delivery of justice, mainstreaming of alternative justice systems, and the importance of substantive justice regardless of legal procedures and technicalities (Republic of Kenya, 2010).

However, many Kenyans are unable to enjoy their constitutional right of access to justice, whether because of financial constraints, the complexity of the law, a lack of legal counsel, long delays, or other reasons (Logan, 2017). Kenya consistently ranks low in terms of the rule of law and judicial integrity. The World Justice Project's (2020) Rule of Law Index rates Kenya 102nd out of 128 countries globally.

A large backlog of cases remains a problem, although notable progress has been made: Between January 2017 and December 2018, the backlog was reduced from 170,186 to 102,773 cases pending for more than five years. This 40% reduction was made possible through support provided to alternative dispute resolution (ADR) mechanisms aimed at easing the burden on the courts (Republic of Kenya, 2019).

To improve efficiency and enhance access to justice, the Kenya judiciary also digitalized court files and court proceedings, automated registries, and implemented electronic filing of cases (e-filing), automated fee assessment, e-payments, and other e-services (International Law Development Organization, 2017).

But findings from the most recent Afrobarometer survey in Kenya suggest that challenges remain. Although a majority of Kenyans trust the courts, more than one-third think that most or all judges and magistrates are involved in corruption – about half the perceived corruption level for the police, but twice the rate for traditional and religious leaders. A majority of citizens who interacted with the courts reported problems such as costs they couldn't afford and judges who wouldn't listen.

Most Kenyans with justice-related problems turn to family and friends, traditional leaders, or other resources outside the formal court system, and they are generally satisfied with the outcome.

Key findings

- A majority (57%) of Kenyans said they trust courts of law “somewhat” or “a lot,” a modest improvement compared to 2016. Trust in the courts was weaker among better-educated and urban Kenyans.

- But almost nine out of 10 Kenyans (86%) said at least “some” judges and magistrates are involved in corruption, including more than one-third (35%) who said “most” or “all” of them are corrupt.
- More than eight out of 10 respondents (82%) said the president must always obey the laws and the courts, even if he thinks they are wrong. Three-fourths (74%) said that in practice, the president “rarely” or “never” ignores the laws and courts to do as he pleases.
- Among the 6% of citizens who said they had contact with the courts during the two years preceding the survey, two-thirds (65%) complained of long delays in resolving their cases, while others said they could not obtain legal counsel (57%) or were unable to pay the fees (47%).
- Among Kenyans who had justice-related problems during the previous two years, most said they resolved their conflicts with the help of family or friends (33%), traditional leaders or community support (26%), or informal settlements among the parties involved (24%). Only 3% resolved their conflicts in formal courts or tribunals.
- Almost nine out of 10 respondents (86%) who had justice-related problems said they were “fairly satisfied” or “very satisfied” with the outcomes of the various avenues they used to seek justice.

Afrobarometer surveys

Afrobarometer is a pan-African, nonpartisan survey research network that provides reliable data on African experiences and evaluations of democracy, governance, and quality of life. Seven rounds of surveys were completed in up to 38 countries between 1999 and 2018. Round 8 surveys in 2019/2021 are currently being completed. Afrobarometer conducts face-to-face interviews in the language of the respondent’s choice with nationally representative samples.

The Afrobarometer team in Kenya, led by the Institute for Development Studies, University of Nairobi, interviewed 2,400 adult citizens of Kenya in August-September 2019. A sample of this size yields country-level results with a margin of error of +/-2 percentage points at a 95% confidence level. Previous surveys in Kenya were conducted in 2003, 2005, 2008, 2011, 2014, and 2016.

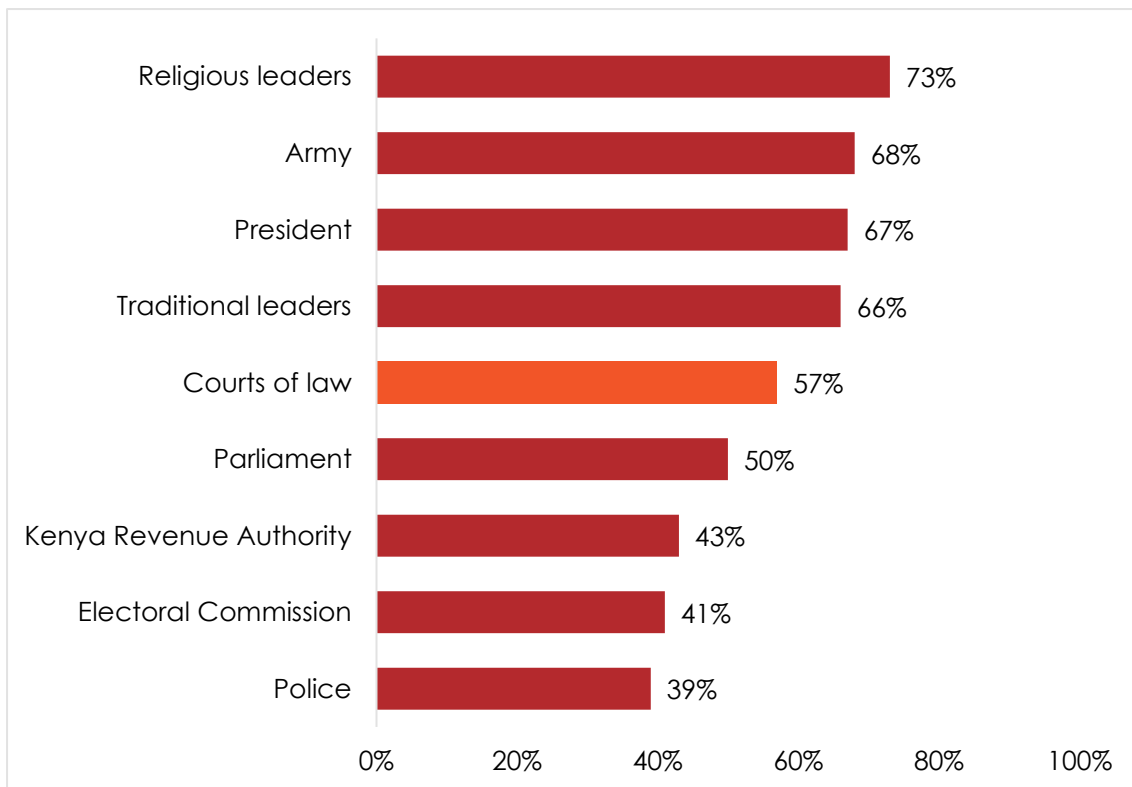
Popular trust in the courts

A majority (57%) of Kenyans said they trust courts of law “somewhat” or “a lot,” while 42% expressed just a little or no trust in the courts. Trust in the courts was considerably lower than in religious leaders (73%), the army (68%), the president (67%), and traditional leaders (66%), but higher than in Parliament (50%) and the police (39%) (Figure 1).

Trust in the courts increased by 5 percentage points compared to the previous survey in 2016 (52%) but remained below its high point of 61% in 2011 (Figure 2).

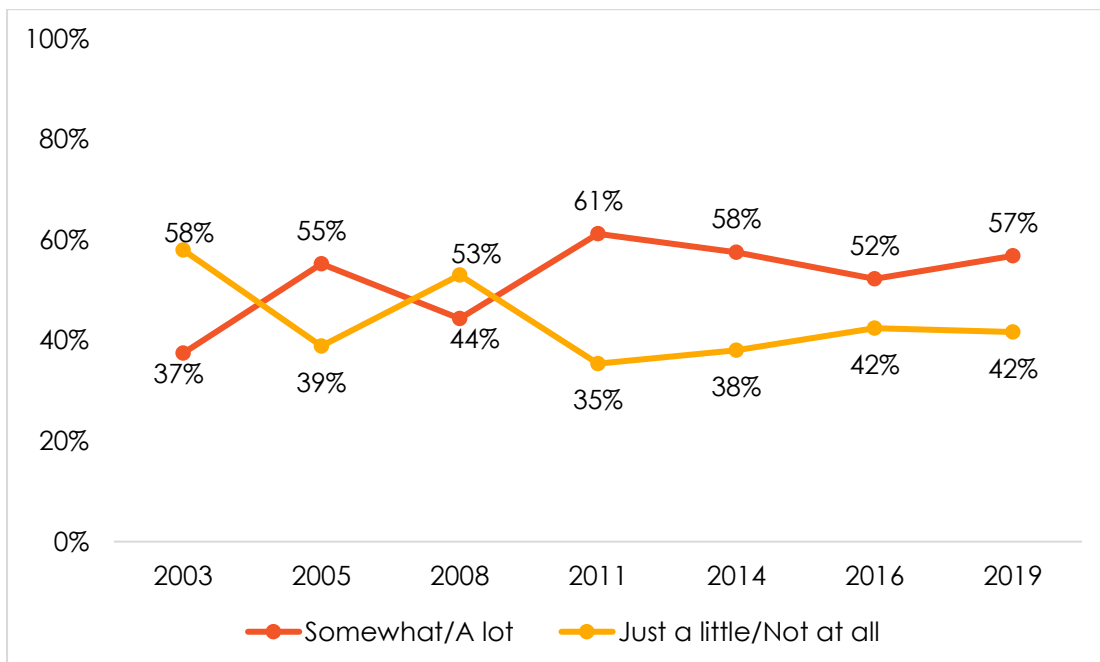
Trust in the courts was weaker among better-educated Kenyans, ranging from 66% of those with no formal education to 52% of those with post-secondary qualifications. Urban residents were less likely to express trust in the courts (50%) than their rural counterparts (60%) (Figure 3).

Figure 1: Popular trust in institutions and leaders | Kenya | 2019



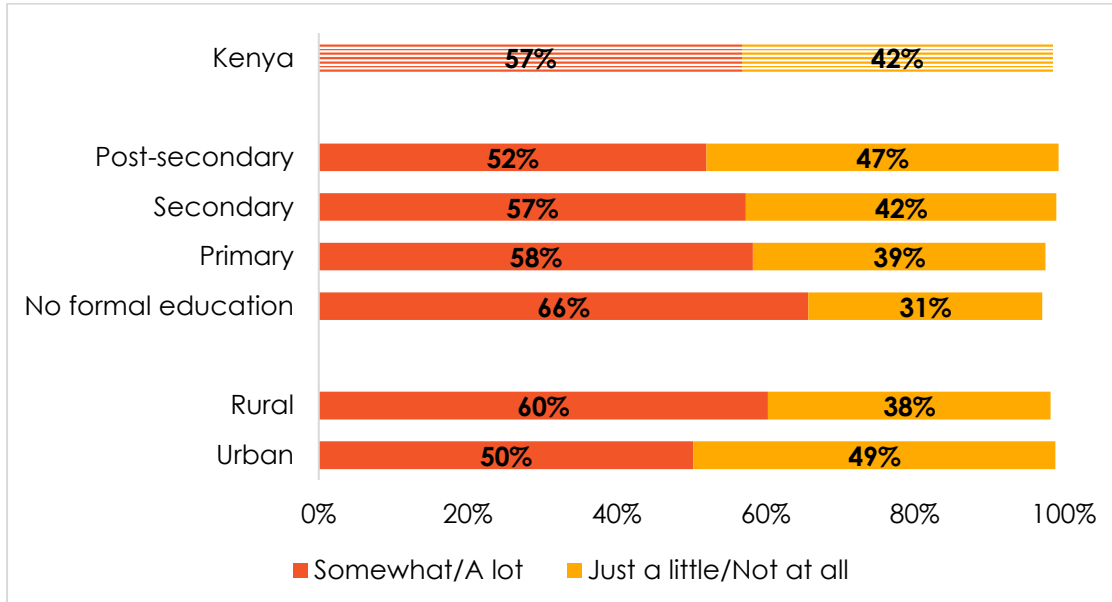
Respondents were asked: How much do you trust each of the following, or haven't you heard enough about them to say? (% who say "somewhat" or "a lot")

Figure 2: Popular trust in courts of law | Kenya | 2003-2019



Respondents were asked: How much do you trust each of the following, or haven't you heard enough about them to say? Courts of law?

Figure 3: Popular trust in courts of law | by education level and rural-urban residency | Kenya | 2019



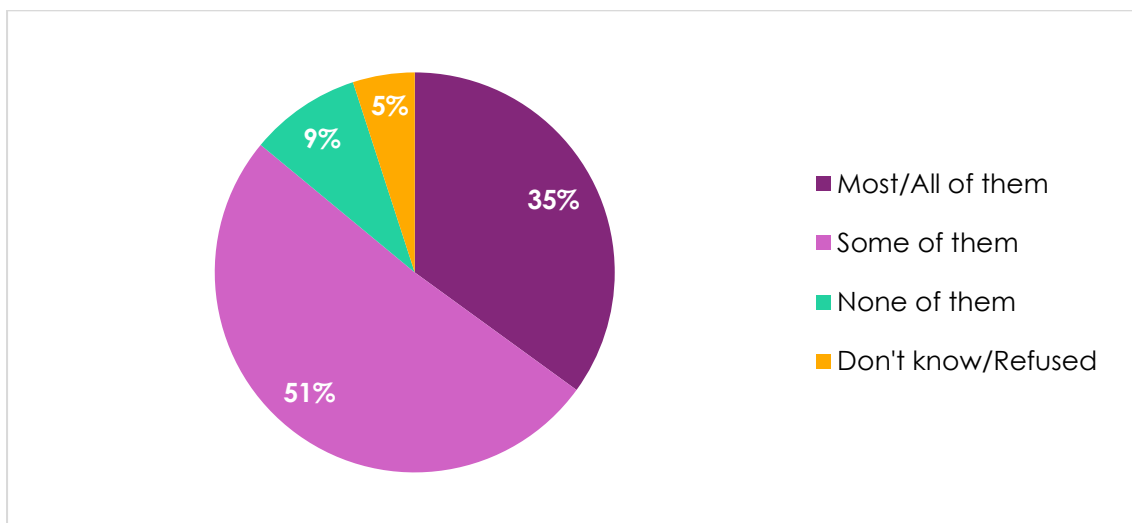
Respondents were asked: How much do you trust each of the following, or haven't you heard enough about them to say: Courts of law?

Perceived corruption in the legal system

Closely related to popular trust is the public perception of official corruption. In January 2021, President Uhuru Kenyatta seemed to admit to corruption within the government, saying the country was losing up to Sh2 billion a day to corruption (Star, 2021).

Almost nine out of 10 Kenyans (86%) said at least "some" judges and magistrates are involved in corruption, including more than one-third (35%) who said "most" or "all" of them are corrupt (Figure 4).

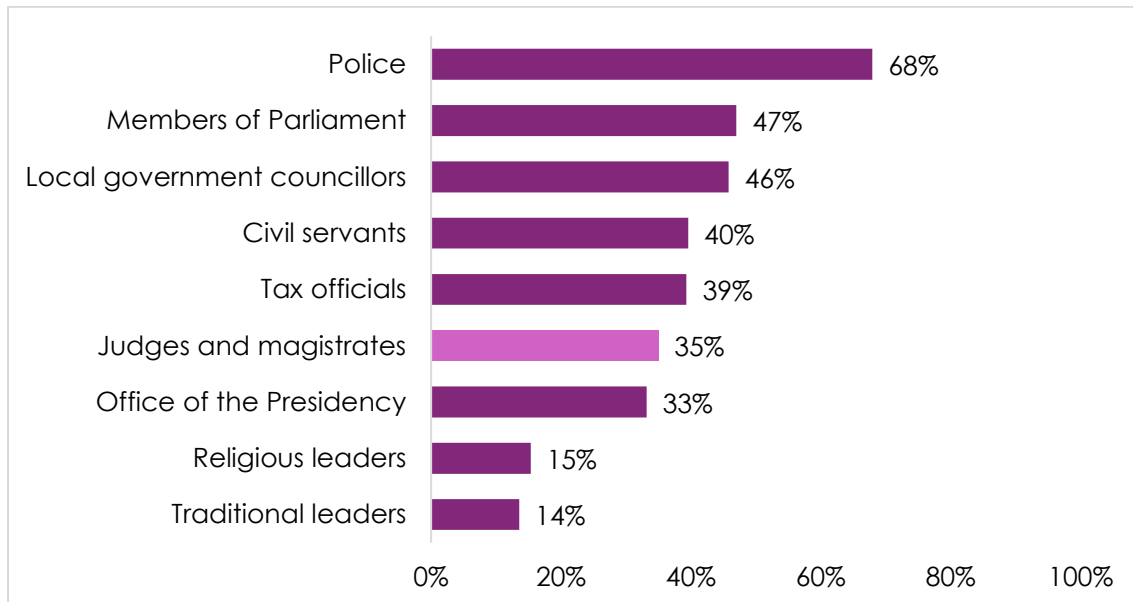
Figure 4: Perceived corruption among judges and magistrates | Kenya | 2019



Respondents were asked: How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say: Judges and magistrates?

In contrast, far more Kenyans saw most/all police officials as corrupt (68%). But far fewer saw widespread corruption among traditional and religious leaders (14% and 15%, respectively) (Figure 5).

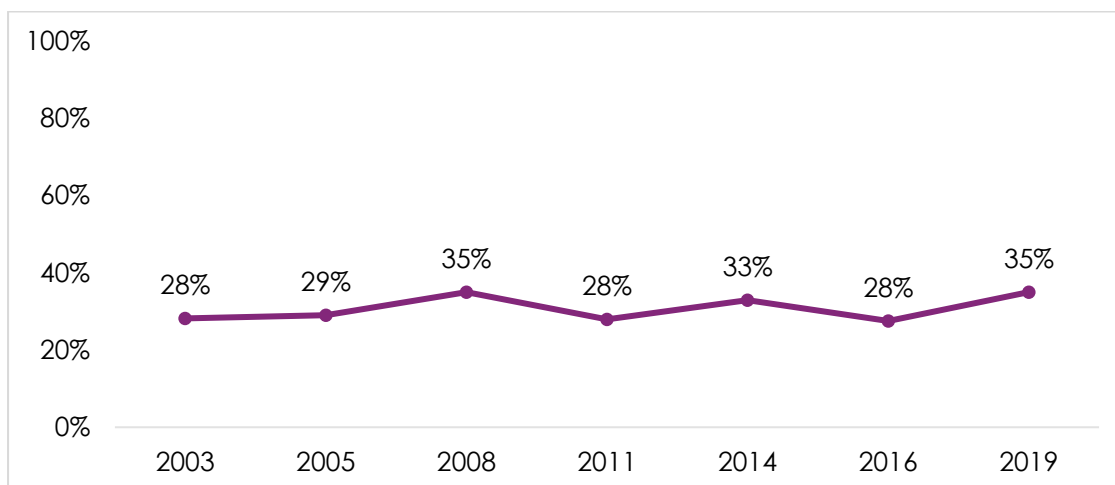
Figure 5: Perceived corruption among institutions and leaders | Kenya 2019



Respondents were asked: How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say? (% who say "most of them" or "all of them")

Despite the promulgation of Kenya's 2010 Constitution and ambitious judicial reforms put in place by outgoing Chief Justice David Maraga, the perception that most/all judges and magistrates are corrupt has been fairly consistent, ranging between 28% and 35% since 2003 (Figure 6).

Figure 6: Perception that most/all judges and magistrates are corrupt | Kenya | 2003-2019



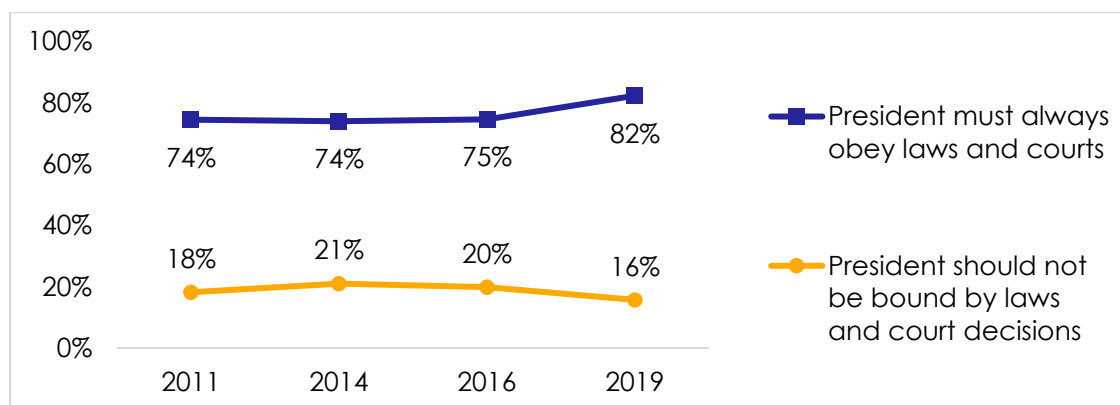
Respondents were asked: How many of the following people do you think are involved in corruption, or haven't you heard enough about them to say: Judges and magistrates? (% who say "most of them" or "all of them")

Respect for legal system

As reported previously, Kenyans overwhelmingly favour a government that follows the law even if the law conflicts with the will of ruling-party supporters (Afrobarometer, 2020).

Survey findings indicate strong support among Kenyans for respect of the law and courts by the president. More than eight out of 10 respondents (82%) said the president must always obey the laws and the courts, even if he thinks they are wrong. Support has been increasing for this view (Figure 7), which also rises with respondents' education level (Figure 8).

Figure 7: Should the president be bound by laws and courts? | Kenya | 2011-2019



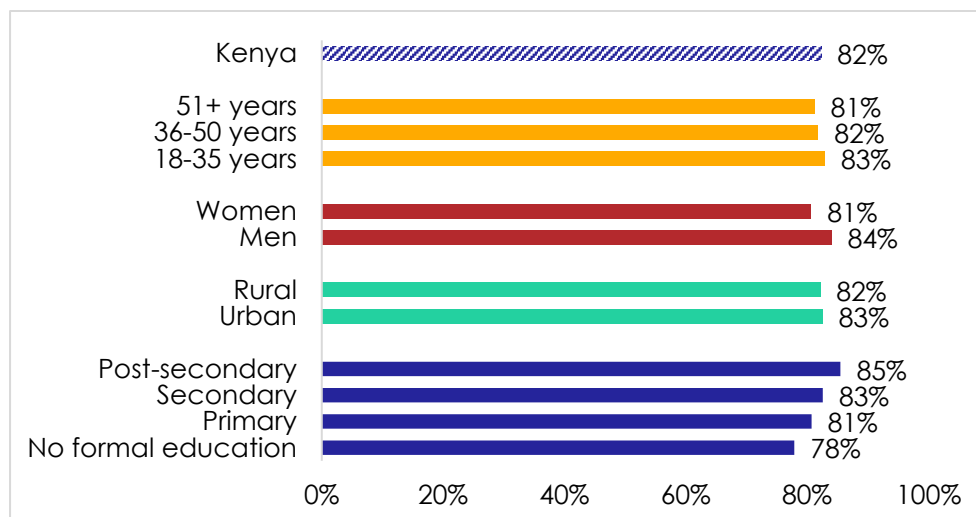
Respondents were asked: Which of the following statements is closest to your view?

Statement 1: Since the president was elected to lead the country, he should not be bound by laws or court decisions that he thinks are wrong.

Statement 2: The president must always obey the laws and the courts, even if he thinks they are wrong.

(% who "agreed" or "agreed very strongly" with each statement)

Figure 8: President should be bound by laws and courts | by socio-demographic group | Kenya | 2019



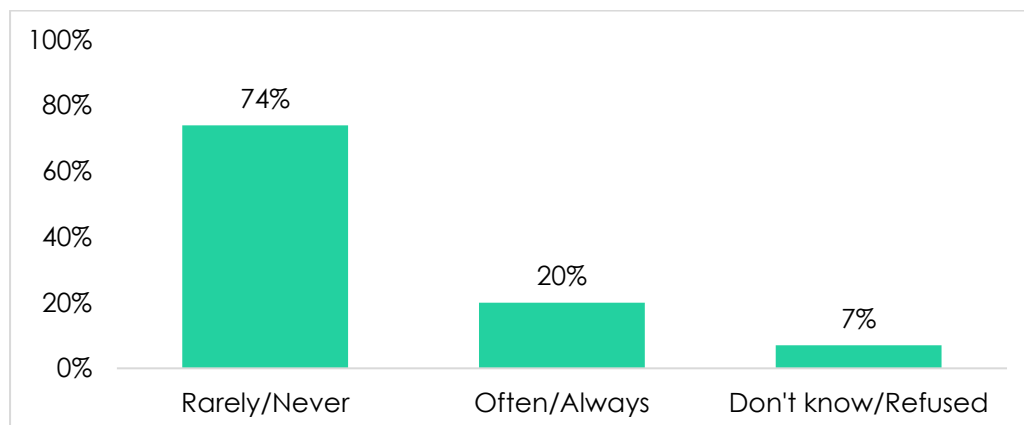
Respondents were asked: Which of the following statements is closest to your view?

Statement 1: Since the president was elected to lead the country, he should not be bound by laws or court decisions that he thinks are wrong.

Statement 2: The president must always obey the laws and the courts, even if he thinks they are wrong. (% who "agreed" or "agreed very strongly" with Statement 2)

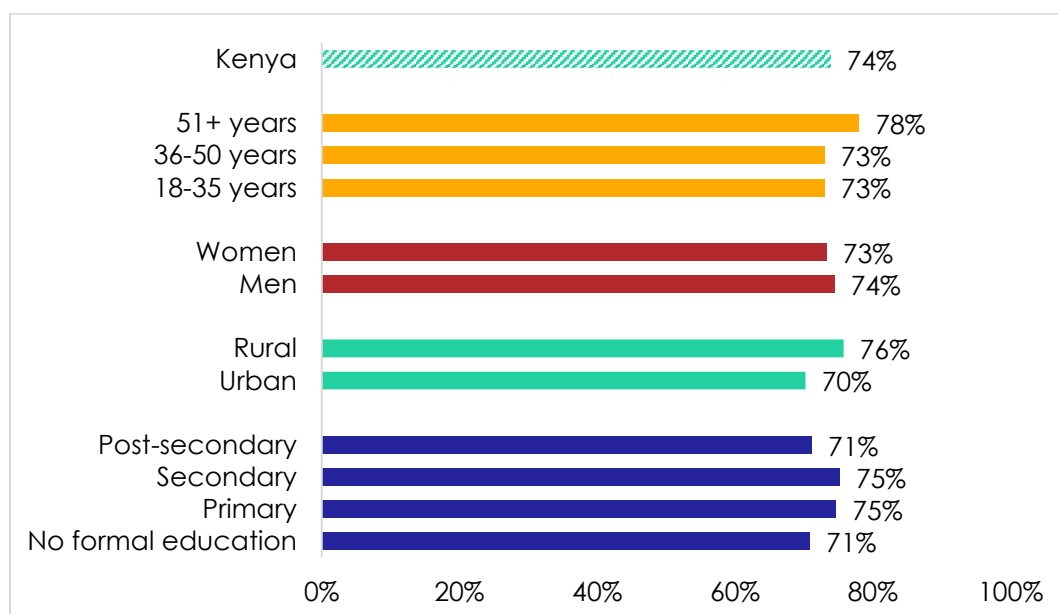
Three-fourths (74%) of Kenyans said that in practice their president “rarely” or “never” ignores the courts and the laws of the country (Figure 9). Rural residents (76%) and older citizens (78% of those over age 50) were more likely to hold this view than urban residents (70%) and younger respondents (73%) (Figure 10).

Figure 9: How often president ignores courts and laws | Kenya | 2019



Respondents were asked: In your opinion, how often, in this country, does the president ignore the courts and laws of this country?

Figure 10: President rarely/never ignores courts and laws | by socio-demographic group | Kenya | 2019

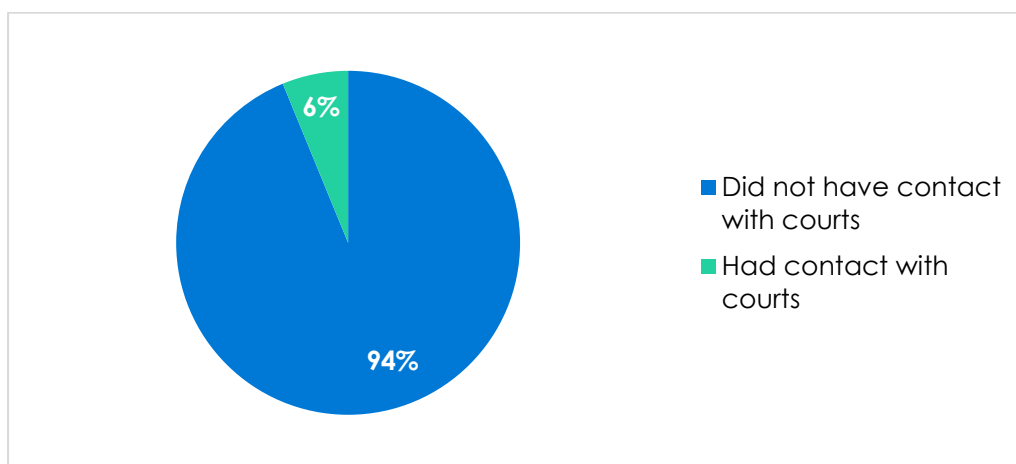


Respondents were asked: In your opinion, how often, in this country, does the president ignore the courts and laws of this country? (% who said “rarely” or “never”)

Engagement with the justice system

Only about one in 20 Kenyans (6%) reported having contact with the formal judicial system during the 24 months preceding the survey (Figure 11). One could debate whether this is a high or low rate of contact and whether a higher rate would be positive (e.g. as evidence that costs are acceptable and outcomes are expected to be fair) or negative (suggesting perhaps that alternative resolution mechanisms are lacking or that crime rates are high).

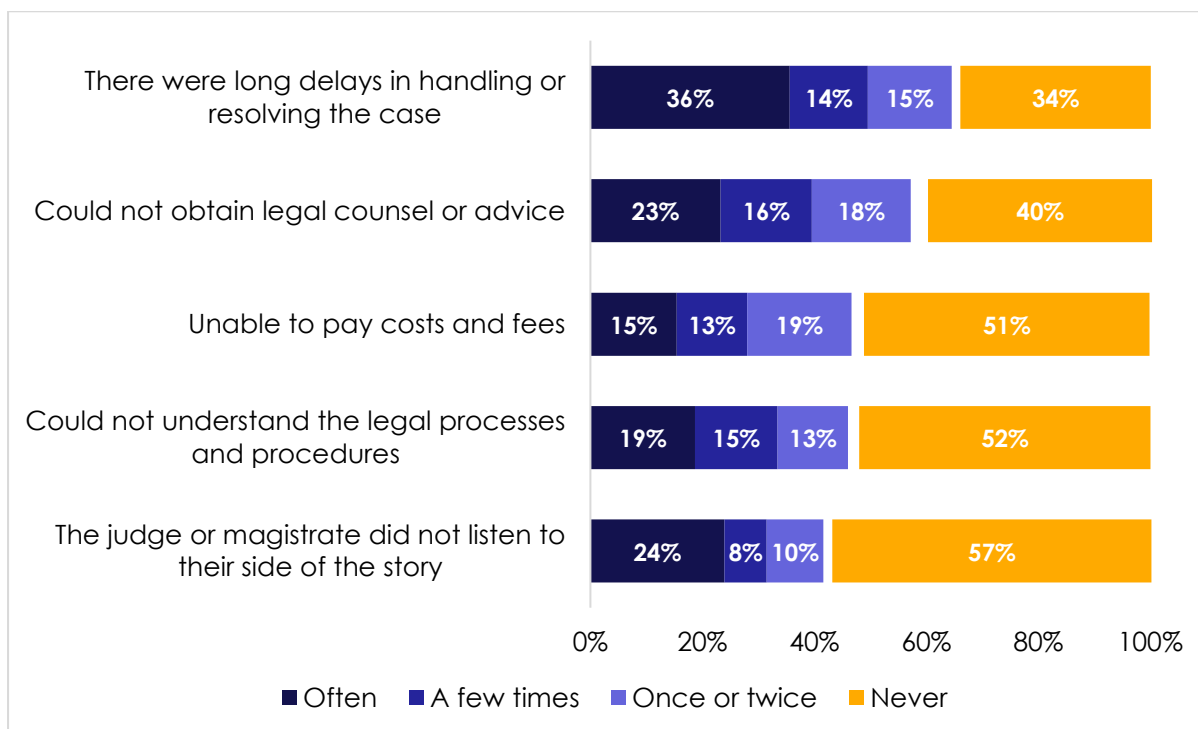
Figure 11: Contact with government courts | Kenya | 2019



Respondents were asked: *In the past two years, have you had contact with government courts?*

Among those who had contact with courts during the past two years, two-thirds (65%) said there were long delays in handling and resolving their cases, including 36% who said this happened “often” (Figure 12). About six in 10 (57%) said they could not obtain legal counsel or advice, while about half were unable to pay the fees (47%) or to understand the legal processes or procedures (46%). Four in 10 (42%) said the judge or magistrate did not listen to their side of the story.

Figure 12: Problems in encounters with government courts | Kenya | 2019



Respondents who said they had contact with the courts during the previous two years were asked: *Have you encountered any of the following problems in your contact with government courts in the past two years? (Due to rounding, the sum of subcategories may differ by 1 percentage point from the reported overall total.) (Respondents who did not have contact with the courts are excluded.)*

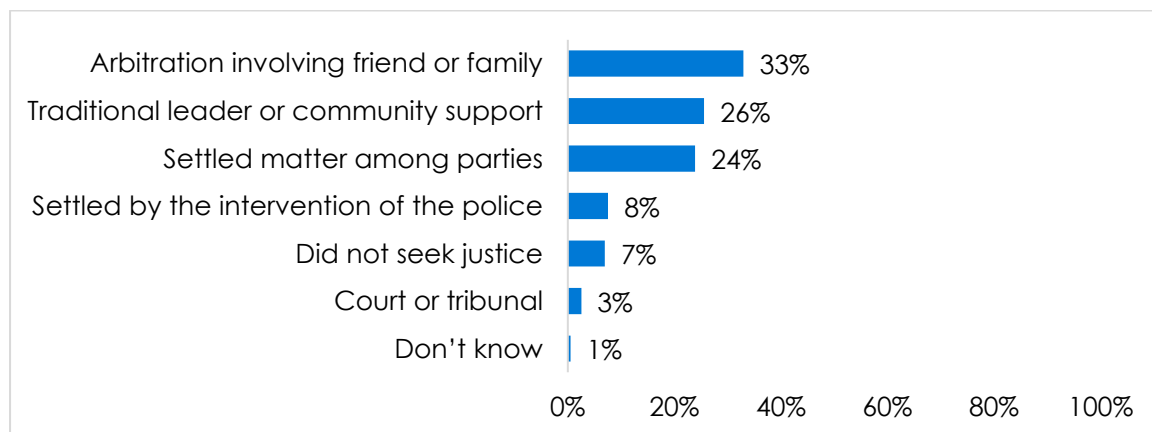
Alternative avenues to seek justice

Alternative dispute resolution (ADR) is commonly defined as any process or procedure for resolving a dispute other than through determination by a judge/magistrate in a standard statutory court. To the extent that ADR results in resolution or settlement of disputes, it is considered an apparatus for access to justice.

Most Kenyans with justice-related problems turn to ADR mechanisms rather than the formal court system. Among those who had justice-related problems during the previous two years, most said they resolved their conflicts with the help of family or friends (33%), traditional leaders or community support (26%), or informal settlements among the parties involved (24%). Only 3% said they sought justice through the formal courts (Figure 13).

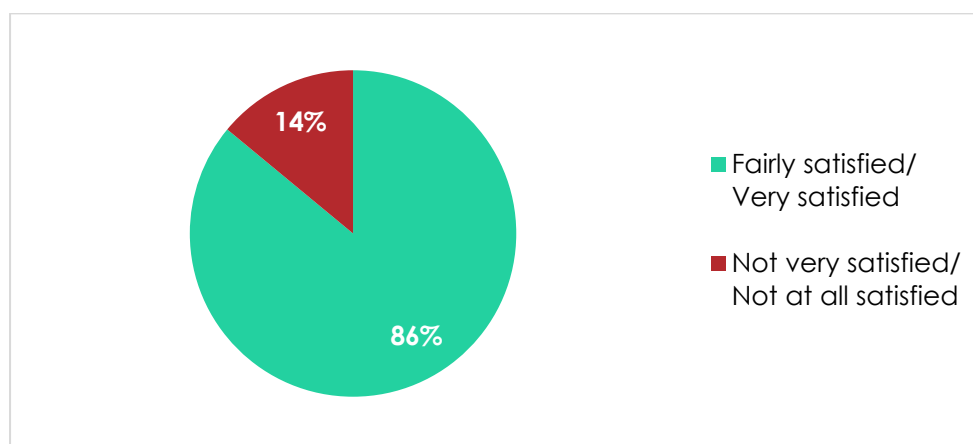
And most were satisfied with the result. Almost nine out of 10 respondents (86%) who had justice-related problems said they were “fairly satisfied” or “very satisfied” with the outcomes of the various avenues they used to seek justice (Figure 14).

Figure 13: Avenues to seek justice | Kenya | 2019



Respondents were asked: Thinking about problems you have encountered with either family members, neighbours, an employer, the government, or other entities in the last two years, which of the following avenues did you use to seek justice? (Respondents who said they had no justice-related problem during the previous two years are excluded.)

Figure 14: Satisfaction with justice outcomes | Kenya | 2019



Respondents were asked: Given the avenue you used to seek justice, how satisfied were you with the outcome? (Respondents who said they had no justice-related problem during the previous two years are excluded.)

Conclusion

Most Kenyans who have justice-related problems do not go to court but seek assistance from alternative sources of justice, such as family and friends or traditional leaders. Importantly, the overwhelming majority are satisfied with the outcome.

Among citizens who did interact with the court system, majorities reported a variety of problems, including long delays, high costs, judges they perceived as unwilling to listen, the complexity of procedures, and a lack of legal counsel.

Moreover, a sizeable minority of Kenyans distrust the courts and see judges and magistrates as corrupt.

These findings highlight challenges that the judiciary must confront, even as it works to expand and promote public awareness of alternative dispute resolution mechanisms.

Do your own analysis of Afrobarometer data – on any question,
for any country and survey round. It's easy and free at
www.afrobarometer.org/online-data-analysis.

References

- Afrobarometer. (2020). Kenyans support rule of law in governance, respect for the law and courts by the president. Afrobarometer news release. 8 September.
- International Law Development Organization. (2017). Access to justice in Kenya.
- Logan, C. (2017). Ambitious SDG goal confronts challenging realities: Access to justice is still elusive for many Africans. Afrobarometer Policy Paper No. 39.
- Republic of Kenya. (2010). Constitution of Kenya, 2010.
- Republic of Kenya. (2019). The judiciary mediation manual.
- Star. (2021). BBI cost: People are stealing up to Sh2 billion daily – Uhuru. 18 January.
- World Justice Project. (2020). Rule of law index 2020.

Simon Templer Kodiaga is Afrobarometer regional communications coordinator for East Africa, based at the Institute for Democratic Development (IDS), University of Nairobi, Kenya. Email: skodiaga@afrobarometer.org.

Paul Kamau is a senior research fellow at the Institute for Development Studies (IDS), University of Nairobi, Kenya. Email: pkamau@uonbi.ac.ke.

Afrobarometer, a non-profit corporation with headquarters in Ghana, is a pan-African, non-partisan research network. Regional coordination of national partners in about 35 countries is provided by the Ghana Center for Democratic Development (CDD-Ghana), the Institute for Justice and Reconciliation (IJR) in South Africa, and the Institute for Development Studies (IDS) at the University of Nairobi in Kenya. Michigan State University (MSU) and the University of Cape Town (UCT) provide technical support to the network.

Financial support for Afrobarometer Round 8 has been provided by Sweden via the Swedish International Development Cooperation Agency, the Mo Ibrahim Foundation, the Open Society Foundations, the William and Flora Hewlett Foundation, the U.S. Agency for International Development (USAID) via the U.S. Institute of Peace, the National Endowment for Democracy, the European Union Delegation to the African Union, Freedom House, the Embassy of the Kingdom of the Netherlands in Uganda, GIZ, and Humanity United.

Donations help the Afrobarometer Project give voice to African citizens. Please consider making a contribution (at www.afrobarometer.org) or contact Bruno van Dyk (bruno.v.dyk@afrobarometer.org) to discuss institutional funding.

Follow our releases on #VoicesAfrica.



Afrobarometer Dispatch No. 442 | 16 April 2021