



Justice Needs and Satisfaction in **Kenya** **2017**

Legal problems in daily life



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Disclaimer

This report is a living document and subject to revision. Whenever the report is revised it will be posted at www.hiil.org/publications/data-reports. This version of the report was generated on January 30, 2018.

Executive summary

In cooperation with the Kenyan judiciary, in 2017, HiiL Innovating Justice conducted a nationwide Justice Needs and Satisfaction survey in Kenya. The main objective of this study is to map out the demand and supply of justice services as the Kenyan people experience them. Using a bottom-up approach, we asked 6005 randomly selected individuals across Kenya whether they had experienced a legal problem and what they did about it. Most importantly, we asked the people to evaluate the costs and quality of their justice journeys. The users of justice told us that 63% of Kenyans had encountered one or more legal problems in the past four years. To resolve these problems, the people of Kenya use various formal and informal justice mechanisms.

To better understand access to justice from the bottom up, we follow the entire justice journey, from the moment the legal problem appears, to the moment it has been resolved or abandoned. People shared a lot about their needs for the rule of law and justice, including the specifics of the legal problems that they encounter, the dispute resolution mechanisms they use, their perceptions about the quality of the justice procedures, and the quality of the outcomes and the costs of accessing justice.

In order to construct a complete picture of justice in Kenya, we enhanced the survey data with a series of qualitative interviews with key leaders from the Kenyan Judiciary. The information from justice leaders and justice providers helps us to better understand people's voices about justice. They provide a valuable and sincere account of the institutional framework of justice in Kenya.

This report pursues the following specific objectives:

- Enhance the understanding of the justice needs of the Kenyan people
- Highlight bright spots of the justice system and establish focus areas that exhibit capacity for innovation
- Provide an agenda for justice innovation that builds on the needs of users of justice processes

Needs for Justice in Kenya: Pervasive and Ever Growing

Bottom of the pyramid: Based on the data, we estimate that between 17.2 and 17.9 million Kenyan citizens have experienced one or more legal problems in the past four years. Almost two out of three adult Kenyans (63%) have encountered a

situation in which an accessible, affordable and fair justice process is needed. Crime, land problems, family-related disputes, employment problems and disagreements over money are the most frequently occurring legal problems in the everyday lives of Kenyan people.

The analysis shows that the volume and sophistication of the needs for justice in Kenya will continue to grow. Several legal, social and economic factors contribute to that trend:

- The Constitution of 2010 widens significantly the scope of the fundamental, social and economic rights;
- Growing middle-class and urban populations will encounter more and different legal problems;
- Kenya is witnessing rapid economic and technological change which affects people's relationship with the law;
- Kenyan people are increasingly more aware of their rights and entitlements;
- The legal framework becomes an ever more complicated and pervasive part of daily life.

One size does not fit all: People of different genders and from different socio-economic groups need justice

in different ways. They encounter different types of legal problems. Land problems predominantly occur among poor and rural communities. Young Kenyans face a disproportionate rate of crime victimization compared to other age groups. Lower income and poorly educated people more often report more than one problem: experiencing a legal need increases the risk of encountering another one.

The consequences of unresolved legal problems: Legal problems which are not resolved in a fair manner have profound effects on the people involved. We observe that violence is a prevalent issue among many of the respondents. The data shows that between 1.3 and 1.6 million Kenyans had to deal with violent crime or domestic violence during the past four years. Equally concerning is the fact that more than half of the respondents report to have experienced extreme stress and mental health problems due to their legal problems.

The quest for accessible and high quality justice journeys: There is a significant and growing demand for justice in Kenya. People need accessible, affordable, quick and fair justice journeys. Both users and stakeholders recognize the rising demand for high quality justice journeys.

Neutral, inclusive and respectful justice processes:

The people of Kenya actively respond to the legal problems they face. Most of the people who experience legal problems (81%) take active steps to resolve them. Besides self-help strategies, institutional providers of dispute resolution, such as courts, the police and chiefs are rated as being most helpful on the justice journeys. While courts and the police are more popular among respondents who are highly educated, wealthy or live in urban areas, chiefs are particularly helpful for the poor and rural population.

Another bright spot of justice in Kenya is that many people pro-actively reach out to the other party in the dispute. This is a solid basis for the design of innovative justice processes.

By and large, the users of justice in Kenya assess the justice processes slightly higher than the middle of the measurement scale of costs and quality of justice. On the one hand, this reveals clear room for improvement, but on the other hand we see that justice is being delivered on a daily basis.

Improvements in the quality of the justice procedures can be made in different dimensions. First, process delays and backlogs are particularly demanding problems for formal adjudication. Both users of justice and justice leaders are concerned by the time it takes to resolve legal problems through the courts.

Formalistic and difficult to understand procedures pose significant challenge for the people who navigate them. Poor and uneducated users of justice are particularly impeded by that. Three quarters of the users of justice in Kenya seek legal information and advice. However, relatively few can afford the services of lawyers to help them navigate their justice journeys. Low-income people benefit significantly less than their wealthier counterparts from advice and representation from qualified lawyers.

Fair outcomes: Fair justice processes should deliver fair outcomes. The people of Kenya want dispute resolution processes which resolve their problems, restore relationships and damages and ensure that the problem will not reoccur. A relatively strong point of the justice journeys in Kenya is that the users are positive about the resolution of the problem. The outcomes of the justice journeys involving formal justice institutions are experienced as more fair. The caveat here is that these are the perceptions of the Kenyans who managed to receive an outcome. More than half of the individuals who encountered a legal problem (54%) say that they did not manage to receive an outcome.

However, the fairness of the outcomes of the justice journeys can be significantly improved. Restorative justice scores low. Improvements can be made in how the justice processes restore monetary and

non-monetary damages. Users of justice also want to see that outcomes of justice processes improve the relationships between the disputants.

Accessible justice: The Justice Needs and Satisfaction study brings forward a mixed picture of the affordability and accessibility of justice in Kenya. The users of justice link costs with level of rationalization of the justice processes. Formal adjudication is perceived as costly in terms of money and time. People share that they spend a considerable amount of time and money traveling to the proceedings organised by formal stakeholders. Informal proceedings are less costly.

There is one dimension of people's experiences with justice which deserves focused attention. Most people experience their justice journeys as stressful. This is a significant barrier to access justice. Many reasons can contribute to this negative image. First, the uncertain duration of the justice journeys, particularly the formal processes, stresses the users. Second, in formal adjudication there are a lot of technicalities and jargon which scare people, particularly those who are not supported and represented throughout complex justice journeys. Unrepresented users of formal proceedings also tend to be poorer and less educated.

The way forward

Based on the gathered data about how the users of justice and justice leaders view justice in Kenya we formulate a set of five strategic and action recommendations:



Picture the whole justice journey: organize justice delivery around the particular needs of the Kenyan people



Strengthen the links between formal and informal justice: design seamless justice journeys



Place special attention on the most vulnerable: provide affordable and accessible justice journeys for all



Intensify consistent and thorough data collection: ensure accountability and focus on the users of justice



Promote justice innovation: encourage, build and sustain an eco-system of justice innovation and technology that supports justice delivery



1

Introduction to Justice Needs & Satisfaction research in Kenya

Introduction
Scope
Our approach
Research Methodology
Demographics

INTRODUCTION

1

Hearing Wanjiku

In 2017 HiIL conducted a Justice Needs and Satisfaction (JNS) study in Kenya in partnership with the Kenyan judiciary. This is in line with the judiciary's focus on promoting access to justice and the Kenyan Constitution. Article 159 states that judicial authority is derived from the people, and article 232-1D stipulates that the people should be included in the process of policy making. To accomplish this, we knocked on 6005 people's doors across the country to discover the volume and nature of the legal problems they had experienced in the past four years.

We followed their entire justice journeys. First, the steps they take in looking for information and advice: assessing whether they have a legal problem and developing a strategy of how to proceed. Then, the steps they take towards resolving their legal problem: did they attempt to resolve it by themselves? Did they involve other parties? If so, who? Did they receive a resolution? Thirdly, we look at how they assess their preferred dispute resolution strategies based on ten factors of fairness. We also examine people's perceptions of public and private institutions, as well as of their own legal empowerment.

This report identifies the most pressing justice needs in Kenya, told by the Kenyans themselves. Here you will find Wanjiku's voice. She will tell you how impactful her problems are, and what she did to try to solve them.

The quantitative interviews were supplemented with in-depth qualitative interviews with justice leaders and justice providers. This mixed-method approach allowed us to obtain bottom-up and top-down data to evaluate the justice system through three lenses: the users, the decision-makers, and the implementers.

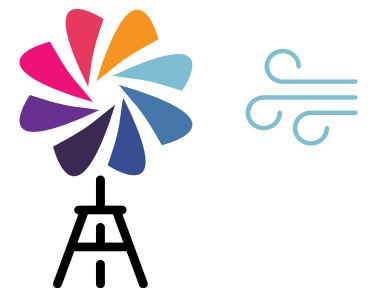
Very few legal problems reach formal courts in Kenya. This situation occurs in many countries across the world. Hence, we include both formal and informal justice providers in our methodology. Depending on the type of problem, we observe that people prefer different types of justice providers for both legal information and advice, and dispute resolution.

We have a methodology with a record of accomplishment. Through the chapters, you will see benchmarks that compare the results to other studies we have carried out. This provides a reliable comparison to

justice systems of neighbouring countries or in other parts of the world.

After the adoption of the Vision 2030 plan, and the new Constitution of 2010, the Kenyan judiciary has embarked upon a transformative process, focused on citizens and public engagement. That process is as ambitious as it is impressive. Much has been achieved. Much more still needs to be done. We are proud to have been asked by the Kenyan judiciary to contribute to this process. We hope this data will be used as a springboard for targeted, evidence-based interventions, focused on justice improvements where they are most needed.

We would like to thank the impressive justice leaders from the Judicial Training Institute, the Office of the Chief Justice, the National Council for the Administration of Justice and Judiciary's Performance Management Directorate for the excellent cooperation, constructive feedback, and what they taught us about the challenges and opportunities for judicial transformation. It has been an honour for us to work with you all.



INTRODUCTION

1

Scope of measuring the justice needs and satisfaction in Kenya

This report highlights the main findings from the 2017 Kenyan Justice Needs and Satisfaction Survey, which has been compiled with input from **more than 6,005 respondents from 28 counties**.

Purpose of the study

The main objective of this study is to **explore and understand the justice needs and experiences of the people of Kenya**. It maps out the existing justice needs of Kenyan men and women. Our next objective is to understand the strategies that the individuals employ to respond to the existing needs for justice. In that part we explore where the people seek legal information and advice; which justice journeys they pursue to resolve the existing problems.

From policy and practical perspectives the most important part of the study is the attempt to understand how much fairness and justice the people receive when they need it. To answer this question we measure the costs, the quality of the procedure and the quality of the outcome of the existing justice journeys in Kenya. This shows which justice journeys deliver what the people expect and which dimensions can be improved.

Approach of Hiil

- Is about justice in people's lives and understanding their experiences in seeking access to justice. Formal and informal justice journeys are studied.
- Enables decision-makers to focus on justice when and where it is needed most. The problem areas are highlighted by the citizens; a true bottom-up approach.
- Provides robust evidence that can support programming and policymaking in the areas of justice and rule of law.
- Builds on local knowledge about what works best (identifying the successes of justice).
- Informs users and suppliers about justice services. Enables users to be informed about where to go and which services to use and assists suppliers to improve their services.
- Offers a cost-effective alternative to monitoring progress in the justice sector. A standardised and repeatable approach leads to: economies of scale, a reduction in operational costs, increased efficiency (time and resources saved), a reduction in operational risk and cross country benchmarking.



INTRODUCTION

1

Why bottom-up justice matters?

Men and women in Kenya experience many justice needs in their daily lives. In the eyes of citizens, the needs for justice and rule of law is all about disputes and grievances, such as family problems, crime, disputes with employers and neighbours, disagreements with administrative authorities, housing problems, etc. Very few of these needs are referred to and resolved by the justice system. As such they are rarely on the radar of policy-makers, providers of justice services and international donors. Bottom-up justice is rarely part of the debate about Kenyan justice reform and its priorities. Most often the focus is on top-down justice: how the courts, prosecutorial services, police and other justice institutions mobilize resources, cope with demand and deliver results

HiIL's bottom-up approach to justice in Kenya is citizen-centric. It places the women and men of Kenya, from big cities and small villages, from the west and the east at the centre, in order to understand the needs for justice, the response

strategies and ultimately how much justice people receive or do not receive when they need it.

Bottom-up justice is key for innovating the delivery of justice. First, effective and innovative solutions can only be designed and implemented if the user of justice is in the centre of the reform. Second, change works best if it considers the problems at a grand level, but implements solutions where the people interact with justice. Third, justice innovation is about the concrete re-design and improvement of justice journeys. This is an iterative process, which, if implemented wisely, can deliver more justice to millions of people in Kenya. There are no small justice problems: every injustice that is prevented or resolved fairly, has a direct and positive contribution to the legal empowerment of citizens and human development in Kenya. Moreover, justice and rule of law are positively linked to socio-economic development.

Methodology of data collection

Data collection:

April - July 2017

Respondents:

6005

Geography:

28 counties in Kenya

Data collection:

Afriquest



INTRODUCTION

①

How we measure access to justice

To understand the role of justice in everyday life, we asked a large sample of randomly selected Kenyan citizens about their experiences with and perceptions of justice. A specially designed research tool, the Justice Needs and Satisfaction Tool, with about 110 questions, explored their attitudes about the justice journeys that exist to respond to the needs for justice. These are some questions we asked the respondents:

To what extent (scale 1-5)

- did the process make you feel frustrated?
- did the process make you feel angry?
- were you able to express your views and feelings during the dispute resolution process?
- were the same rules equally applied to you and to the other party/ies?
- was the dispute resolution process based on accurate information?
- did the adjudicator explain your rights and options during the process thoroughly and make sure you understood them?
- was it important for you that the division matches what you deserved?

Fairness on justice journeys, what was the price you paid in terms of money, time and effort? People use formal and informal processes to resolve their legal problems. In the Justice Needs and Satisfaction Tool the commonly applied justice processes are called justice journeys. HiiL measures each justice journey by asking the people about their perceptions of the process, the outcomes and costs of the journeys. The questions are categorized and displayed in ten easy-to-understand indicators of the costs and quality of access to justice. Our approach measures justice from the bottom-up.

1. The costs of justice

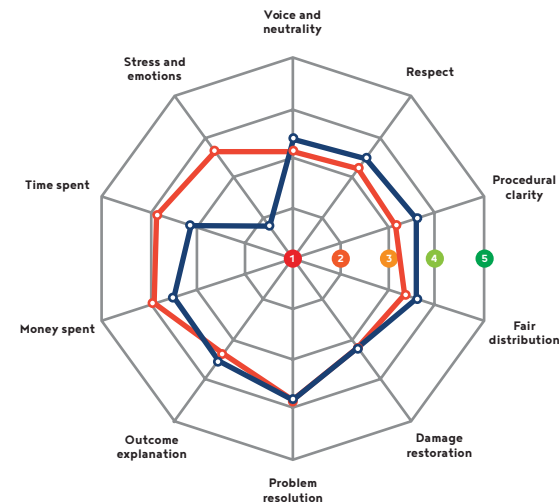
- Money spent: out-of-pocket costs for legal fees, travel, advisors
- Time spent: time spent to search for information, attend hearings, travel - Stress and negative emotions

2. The quality of the procedure

- Voice and neutrality: process control, decision control, neutrality, consistent application of rules
- Respect: respect, politeness, proper communication
- Procedural clarity: timely explanation of procedures and rights

3. The quality of the outcome

- Fair distribution: distribution is fair according to needs, equity and equality criteria
- Damage restoration: fair compensation for monetary damage, emotional harm and damage to relationships
- Problem resolution: extent to which the problem is solved and the result has been enforced
- Outcome explanation: extent to which the people receive outcome information access



For each path to justice, we plot the justice dimensions in a spiderweb chart. The number 1 means not satisfactory and number 5 means satisfactory



Research methodology

The research has been divided in four different phases:

1. The 'Project Foundation' phase
2. The 'Research' phase
3. The 'Data validation' phase
4. Report & Presentation



Project Foundation

Background research on the Kenyan judicial system and the local context in which it operates was conducted. Moreover, the research instruments were adapted to the local context and language through pilot testing and the use of local expertise.



Research

Quantitative data was collected: 6005 randomly selected adults were interviewed between the end of March and the end of June 2017. Additionally, qualitative data was collected: 30 in-depth, qualitative interviews with members of the Kenyan judiciary were conducted.



Data Validation

A triangulation workshop was organised in Nairobi in August 2017 to validate the data with a wide group of experts assembled by the Judicial Training Institute. The provided feedback and insights were incorporated into the report.



Report & Presentation

We have prepared a final report to present our findings.

INTRODUCTION

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Demographics of the sample

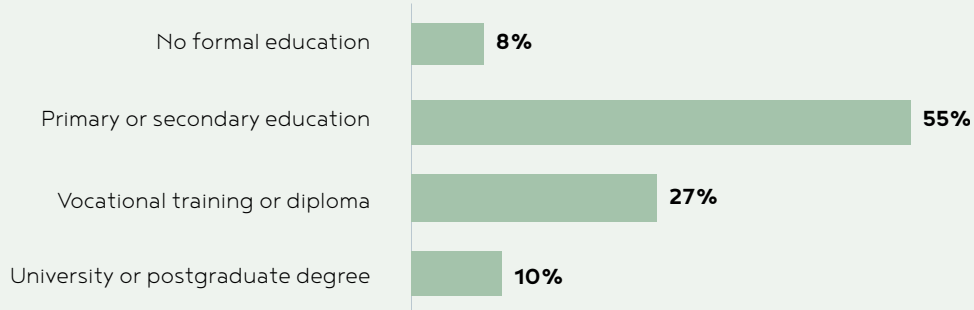
- Our sample consists of 6005 respondents that have been randomly sampled among adults residing in Kenyan settlements between the end of March and the end of June 2017. It is representative of the Kenyan adult population in terms of gender, age and the distribution of people living in urban and rural areas.
- The sample includes slightly more men than women (54% compared to 46%).
- The average age of the respondents is 34.
- The majority of the respondents are married (57%). Among respondents who are younger than 25, more than 75% are not married, while among respondents older than 25, two thirds are married.
- On average, 4.4 people live in one household.
- The level of formal education among our respondents varies substantially. Roughly 8% of the respondents have no formal education at all, while 55% have completed primary or secondary education. Slightly more than one third of the respondents have completed vocational training or have a university degree. The pattern is quite similar for both genders, though women have a slightly lower level of formal education on average than men.

Age & category name	%	Marital status	%
18-24 Youth	20%	Married	57%
25-39 Young adulthood	52%	Single, never married	27%
40-64 Middle adulthood	26%	Married, but separated	5%
65+ Old age	2%	Widowed	5%
Gender		Co-habiting	2%
		Divorced	2%

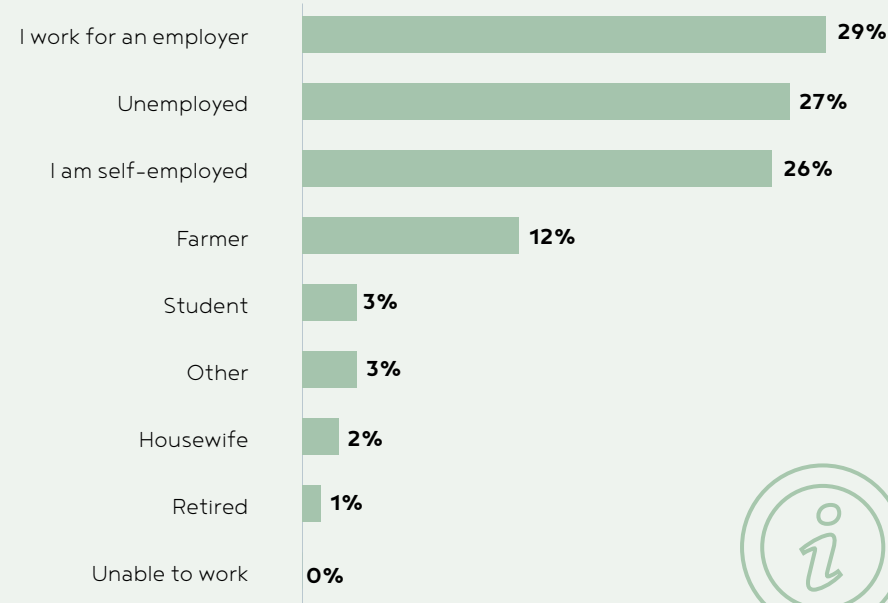
 Male 54%

 Female 46%

Education level



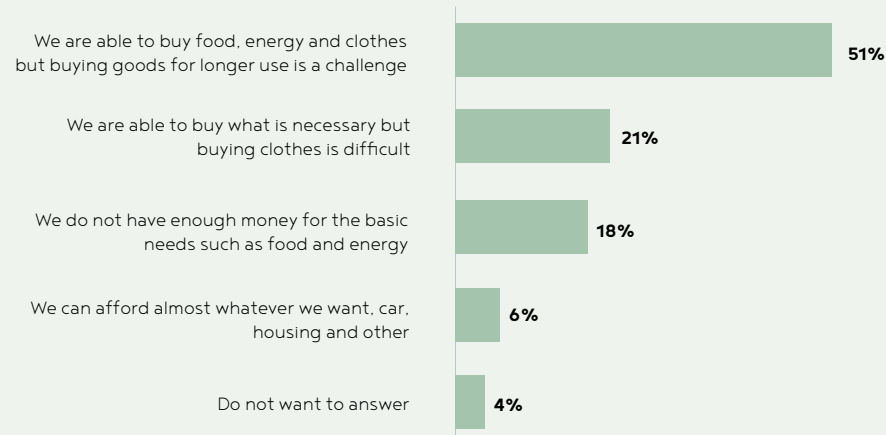
Employment status



INTRODUCTION

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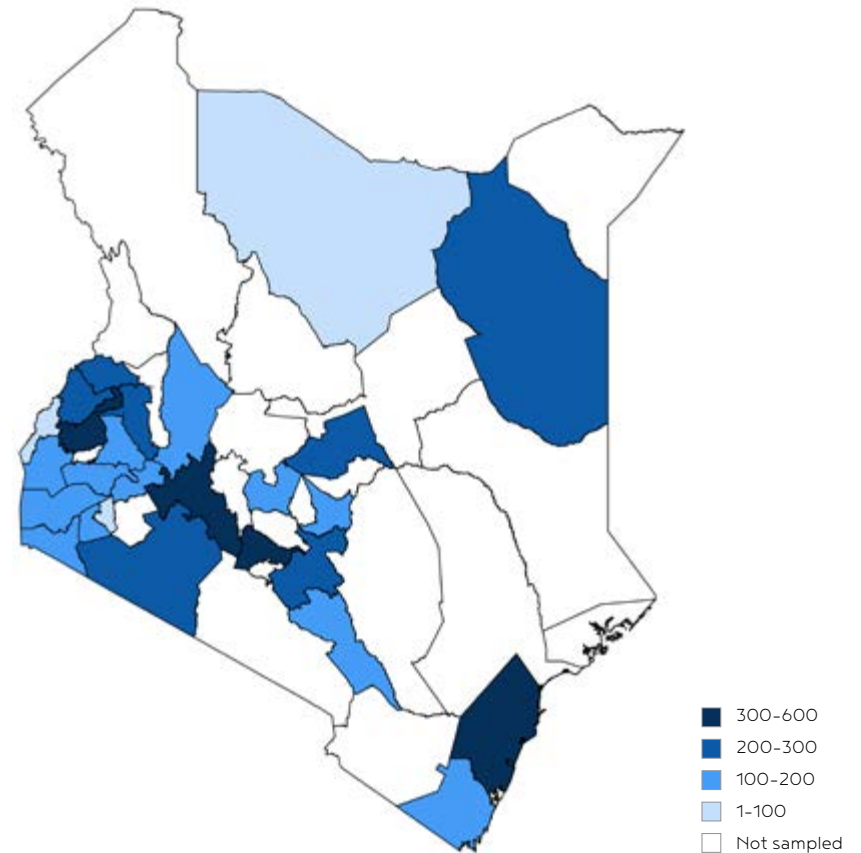
Economic status



"Other" includes all categories with less than three percent, including "Housewife", "Unable to work", "Retired".

- In our sample, the overall unemployment rate¹ is 27%. It is slightly higher for women than for men (31% compared to 24%).
- A substantial part of our sample struggles financially. Almost 20% of respondents indicate that they have trouble to make ends meet, and another 20% can afford just enough to survive.
- The data collection took place in 28 of the 47 counties in Kenya. In each county, we collected between 80 and 600 interviews.
- 71 % of interviews took place in a rural setting.

¹ According to the International Labour Organization, the official unemployment rate of Kenya was 11% in 2016. This percentage is lower than in our data, since it is calculated as the percentage of unemployed people among the labour force, whereas our data calculates the percentage of unemployed people among the total population (aged 18 or older).



The map shows the number of respondents that we interviewed per county.





2

Legal Problems in Kenya

Problem prevalence
Most serious legal problems
Types of problems
Consequences of the problem



LEGAL PROBLEMS IN KENYA

2

Between 17.2 and 17.9 million Kenyans experienced a legal problem during the past 4 year

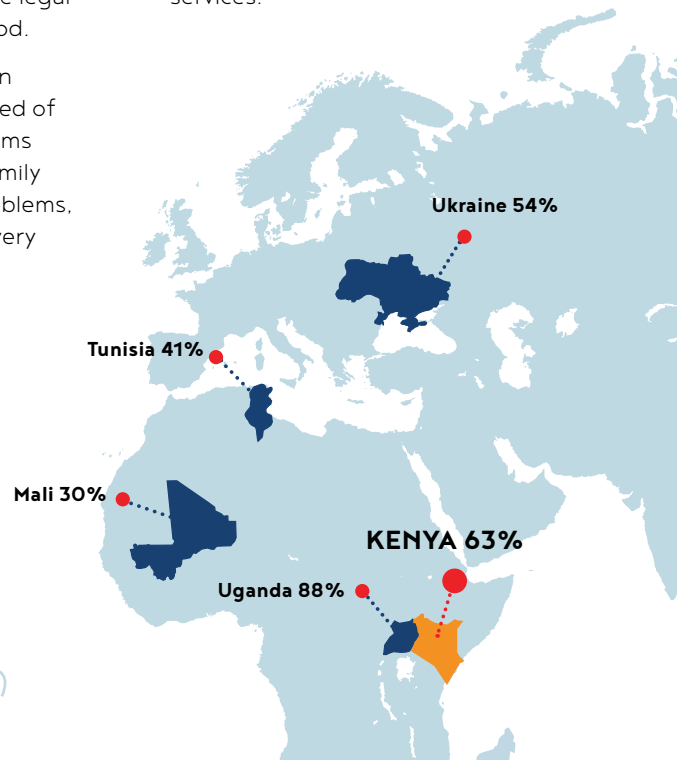
Almost two out of three people in Kenya (63%) had to deal with one or more legal problems in the past four years.

Compared to studies in other countries, a prevalence of 63% is somewhat at the higher end of the scale. In neighbouring Uganda, we found that 88% of the citizens encountered one or more legal problems for the same time period.

This means that almost 20 million Kenyans found themselves in need of a fair and just process for problems such as crimes, land disputes, family disagreements, employment problems, etc. This pattern of problems is very

similar to what we found in countries like Uganda and Mali in Africa, but also in Indonesia. For comparison, in more economically developed countries we see significantly more consumer problems, and disputes around social benefits and the provision of public services.

INTERNATIONAL PERSPECTIVE.
Prevalence rate in other countries:

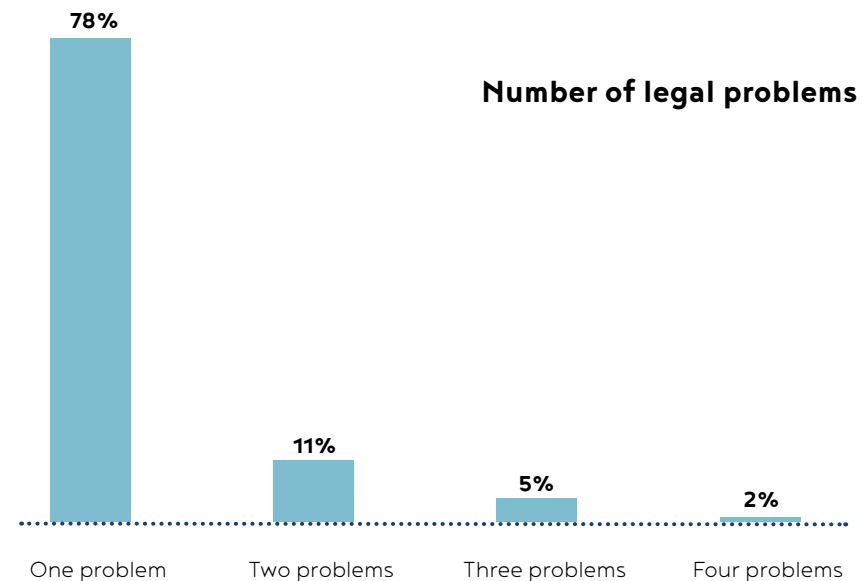


Have you experienced a legal problem in the past 4 years?



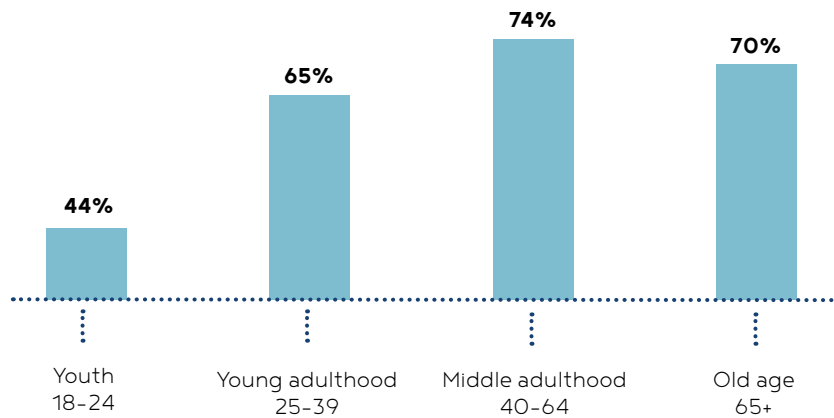
Legal problems tend to co-occur; many Kenyans report more than one legal problem. Our study shows that on average, those who report a legal problem tend to experience 1.50 problems during a four-year period. We find that 22% of the respondents who encounter a problem report two or more problems, as illustrated in the graph below (4% report

more than 4 problems). People with lower socio-economic status tend to experience multiple legal problems more often. Among those with no formal education the number is 1.77 and one out of four of them encounter two or more problems; for the lowest-income group it is 1.86 and one out of three of them encounter two or more problems.



LEGAL PROBLEMS IN KENYA

2

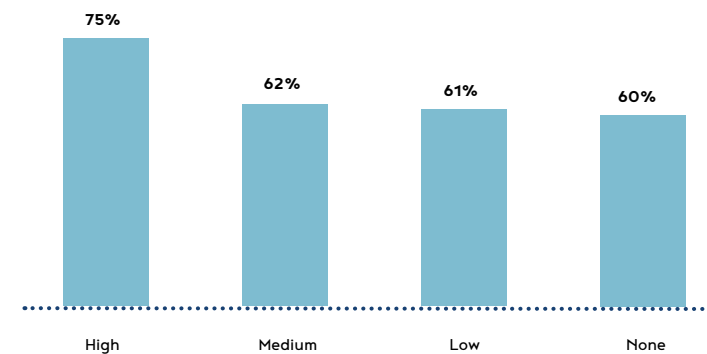
Age and legal problems

Neither gender nor rural/urban status has an influence on how many problems people encounter. Age, however, plays a significant role in the experience of legal problems. In general, younger people report fewer legal problems, which is consistent with our findings in Uganda and Tunisia. The prevalence of legal problems increases with age, reaching a peak in middle adulthood (40-64).

Approximately 74% of the respondents from this category say that in the last four years they had to deal with one or more legal problems. Senior Kenyans (65+) report slightly less experience with legal problems than the middle adulthood group, but still encounter more problems than those from the youth and young adulthood categories.

Education is another factor affecting the experience with legal problems. Those with a higher level of formal education are more likely to report an experience with legal problems. However, people with a lower formal education level, when experiencing problems, tend to report more legal problems. Those with no formal education report on average 1.77 legal problems, whereas individuals from the group with the highest level of formal education report 1.52 problems.

Perceived wealth has a similar effect on the prevalence of legal problems. People who see themselves as wealthy are more likely to report a legal problem than the rest of the respondents. As with education, however, we find that co-occurrence of problems is more common for the lowest income group, with an average of 1.86 problems. For the highest income group this figure is 1.45.

Education level and legal problems

LEGAL PROBLEMS IN KENYA

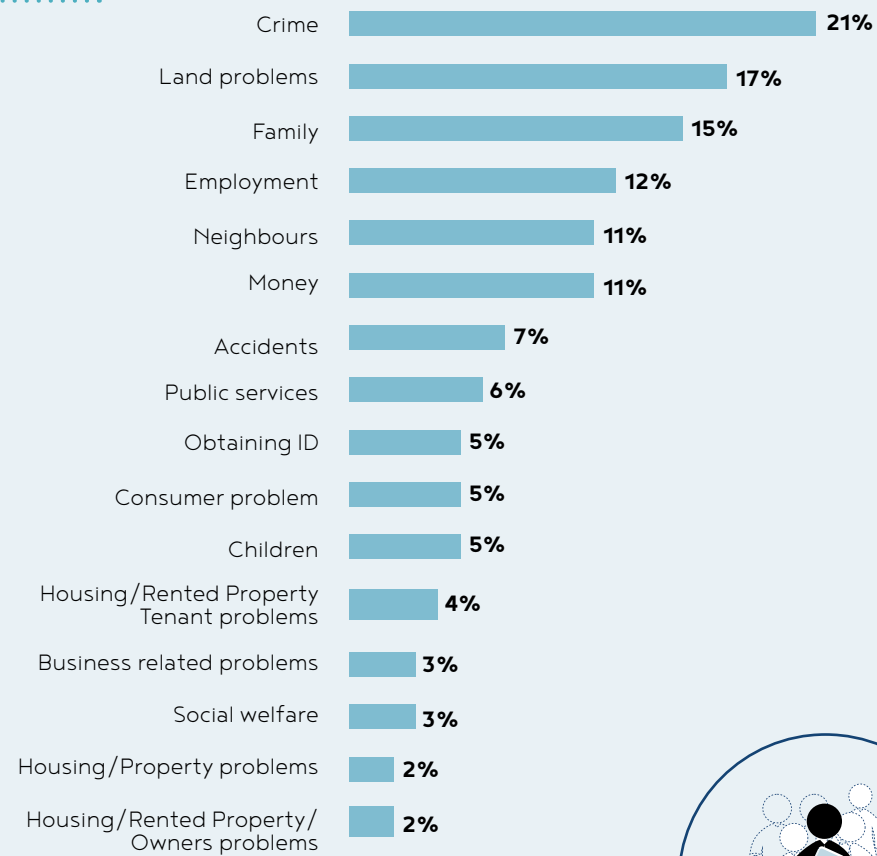
2

Categories of problems

Of the people who report one or more legal problems, 21% say that they had to deal with crime, 17% with land related disputes and 15% with family legal problems. Legal problems around employment, money and disputes with neighbours are less prevalent but still affect many Kenyans and demand fair resolution.



CATEGORIES OF PROBLEMS

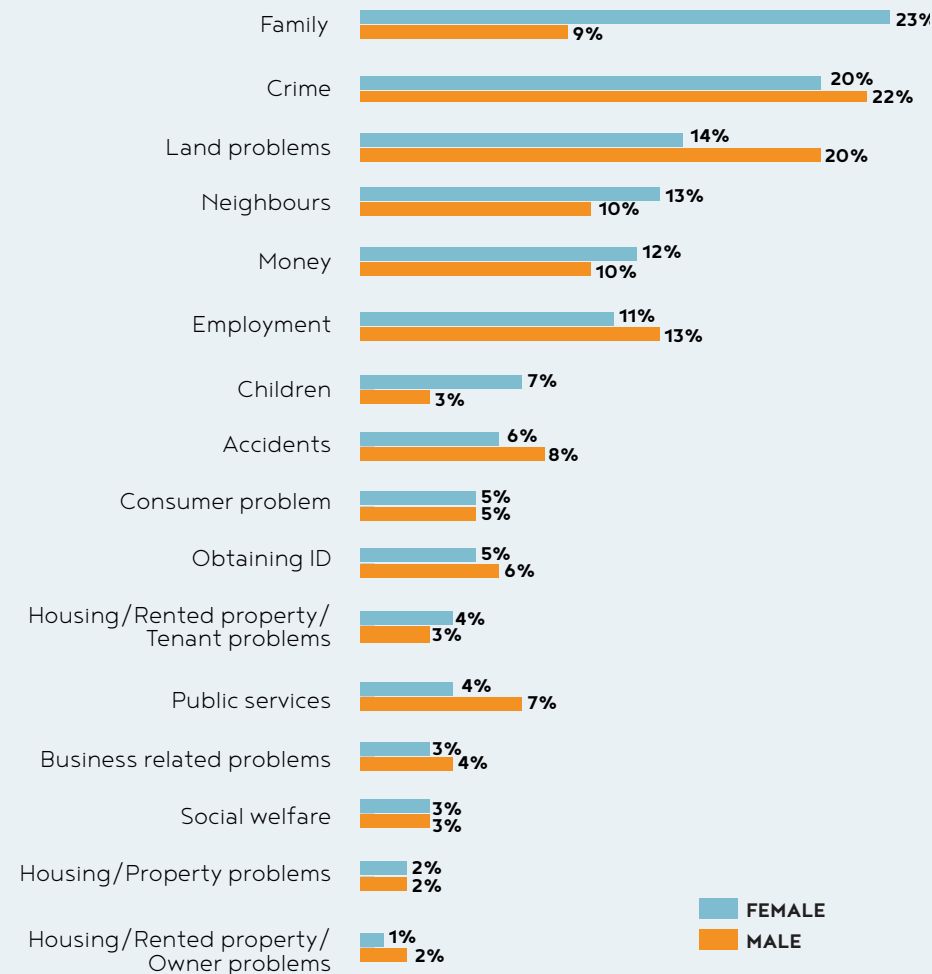




Kenyan men and women experience slightly different legal problems. Women tend to encounter more family problems. Of all women who reported one or more legal problems, **23%** say that they had to deal with a serious and impactful family dispute, while only **9%** of men report this. Unsurprisingly, women face more legal problems related to children. Disputes with neighbours is another category in which women are more likely to need a justice process.

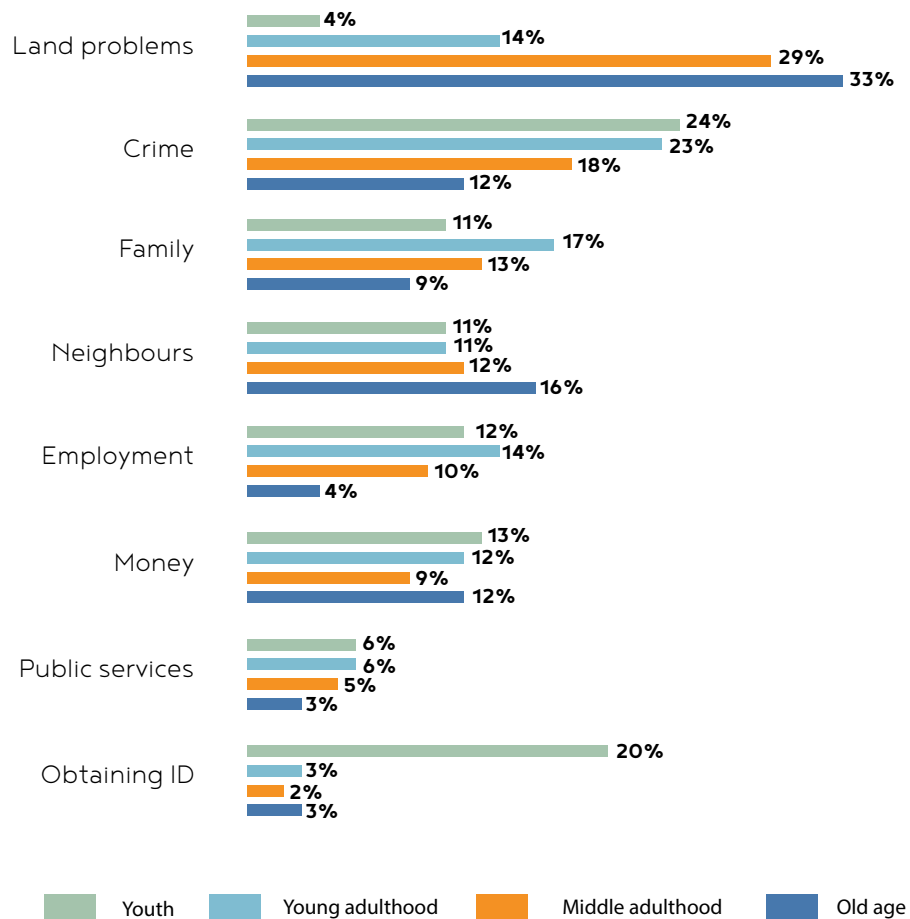
Kenyan men, on the other hand, experience legal problems related to crime (as victims), land disputes, public services, accidents, employment, and obtaining ID documents more often than women. This gender difference clearly shows that men and women need protection from the law for different situations. Later in this report we will provide deeper insight into how this difference affects the justice journeys that men and women embark upon to resolve their legal problems.

LEGAL PROBLEM CATEGORIES BY GENDER



LEGAL PROBLEMS IN KENYA

2

LEGAL PROBLEMS AND AGE

Different age groups also encounter different types of legal problems. Senior citizens (65+) are ten times more likely to report experience of a land problem than people in their early 20s. Predictably, land disputes occur twice as often in rural areas than in urban areas. With age, we also observe an increased risk of being involved in disputes with neighbours.

Younger Kenyans significantly more often report being the victim of crime and problems with obtaining ID documents. Young adults (25-39) experience elevated risk of finding themselves involved in crimes, family disputes or employment disagreements.



LEGAL PROBLEMS IN KENYA

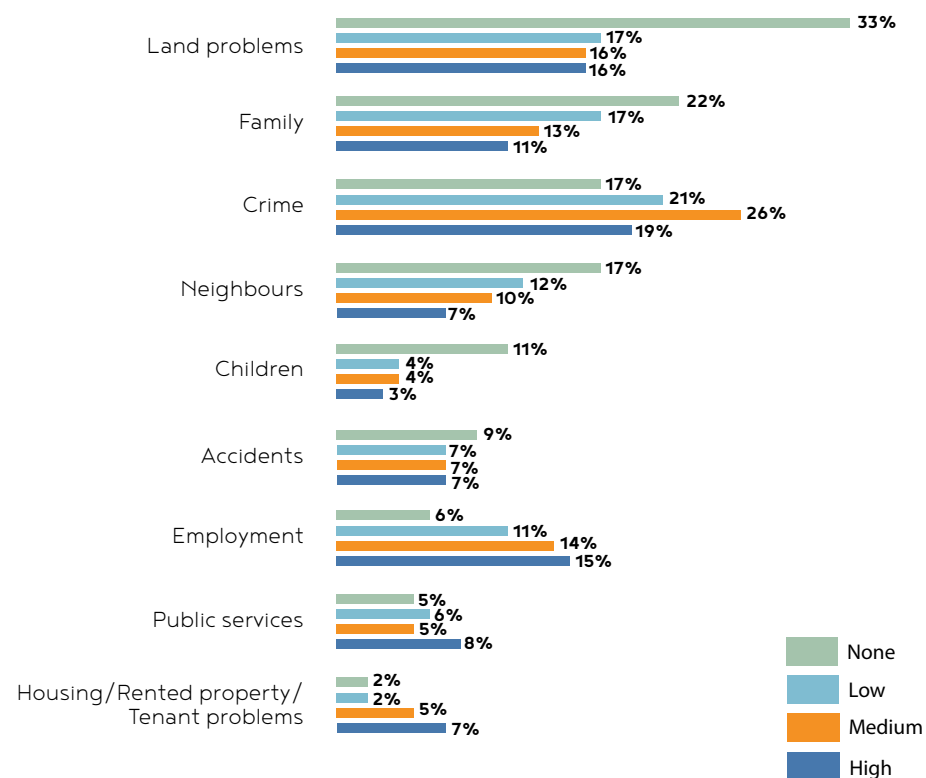
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Level of formal education also affects experience of specific types of legal problem. Almost a third of those who have no formal education say that they had to deal with a land dispute in the past four years. Experience with land disputes significantly decreases for people with a higher level of formal education. A similar trend is visible for the category of family and neighbour disputes; those

with a lower level of formal education experience significantly more of these legal problems.

People with a higher level of formal education find themselves involved in employment disagreements more often. Individuals with a higher level of formal education are also more likely to report various legal problems related to housing.

LEGAL PROBLEMS AND EDUCATION



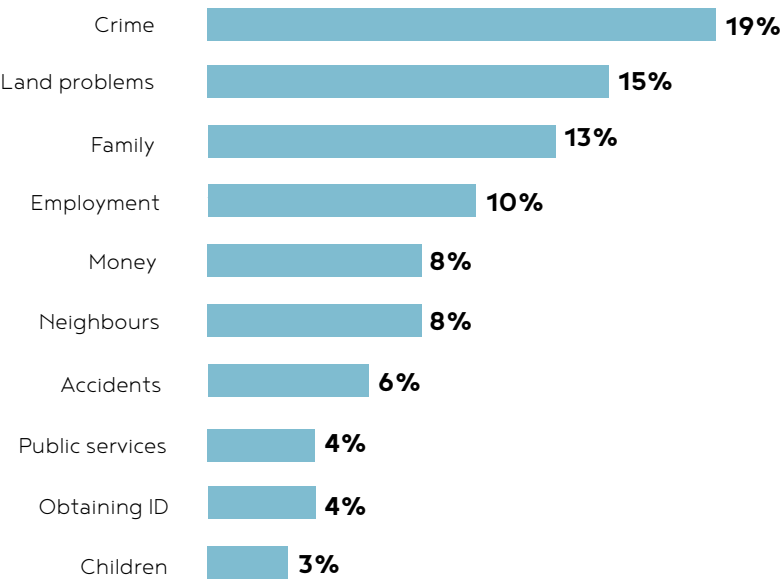
LEGAL PROBLEMS IN KENYA

2

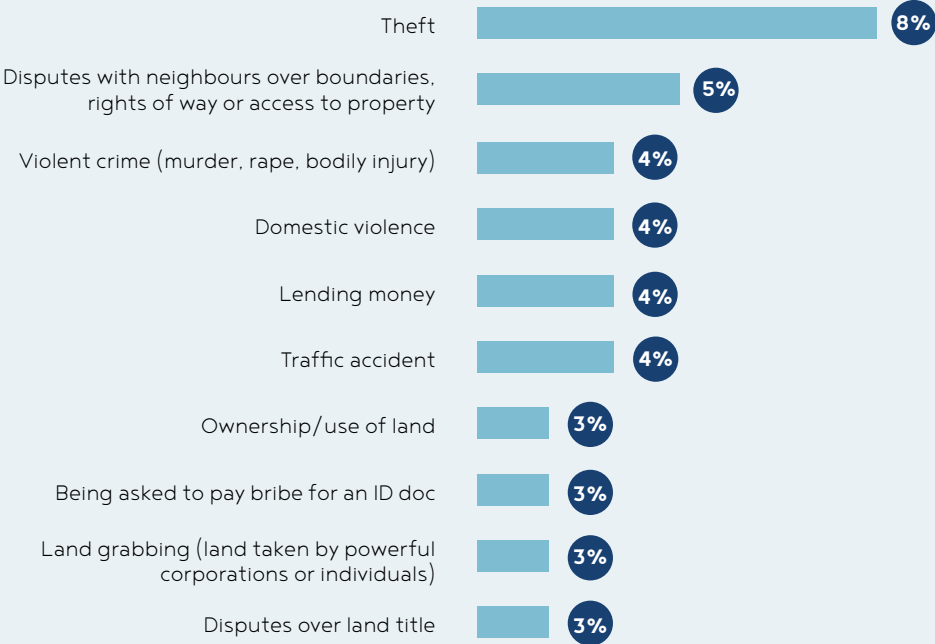
Most serious legal problem



When people reported to have experienced more than one legal problem in the past four years, we asked them to identify the most serious one. Among the most serious problems, **crime, land problems and family disagreements rank highest**. The most prevalent and most serious problems largely coincide.



MOST PREVALENT INDIVIDUAL LEGAL PROBLEMS



INDIVIDUAL LEGAL PROBLEMS

The analysis above looks at legal problems in categories. For instance, the land category consists of six specific problems covering various types of disputes and disagreements. In the graph below, we show the most prevalent individual legal problems.

Property crime is the most frequently occurring legal problem; 8% of all legal problems perceived as **most serious are thefts, burglaries and robberies**.

The second most prevalent legal problem is land disagreement between neighbours over real estate boundaries, right of way and access to property. One in twenty serious legal problems in Kenya belong to this category. Ominously, violent crime and domestic violence are the third and fourth most frequently occurring legal problems in the daily lives of Kenyan people.



The Kenyan women significantly more often need the law to protect their personal integrity.

There are visible gender differences: Kenyan women are significantly more likely to report experience of domestic violence than men. Women also report property crime and violent crime more often. This shows a picture in which Kenyan women significantly more often need the law to protect their personal integrity.

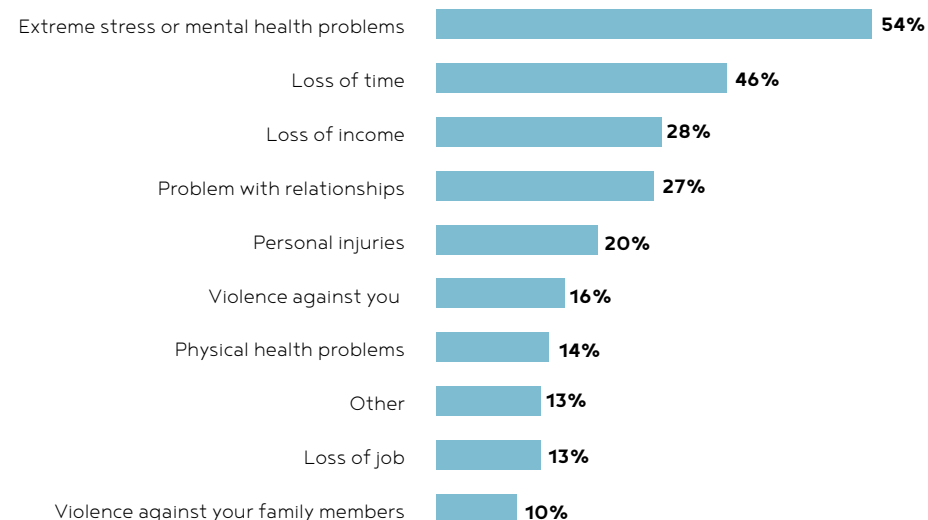
Men, on the other hand, say more frequently that their legal problems are related to arguing with neighbours about land, disagreements over land titles, cattle raiding, traffic accidents and lending money.



Consequences of legal problems

A majority of Kenyans report extreme stress or mental health problems as a result of encountering a justice problem. Also prevalent are losses of time and income, and problems with relationships.

Men report more loss of time and income than women, while women report more stress and problems with relationships than men.



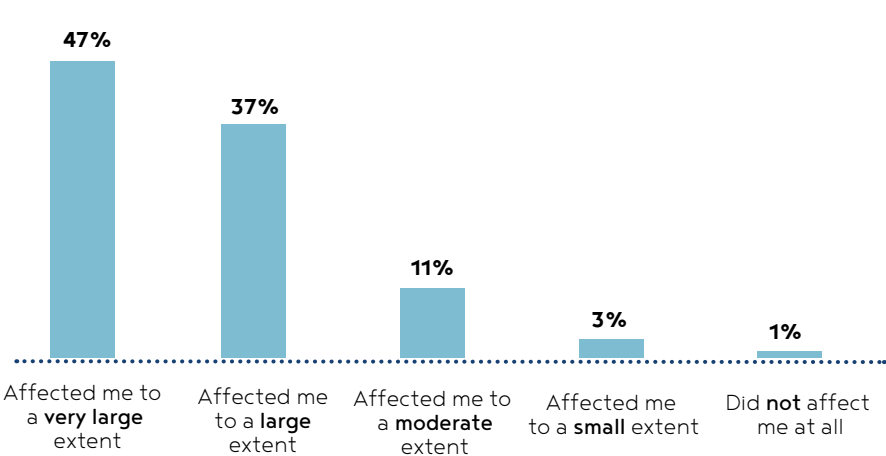
LEGAL PROBLEMS IN KENYA

2

Kenyans report that their legal problems severely affected their lives. 84% of people who experienced a problem were affected at least to a large extent. There are no differences between the way men and women are affected by their problems. Low-income respondents

reported severe effects more often than respondents at other income levels. The same pattern is repeated if we look at formal education levels, where the severity of the impact decreases as formal education level increases.

IMPACT OF PROBLEMS



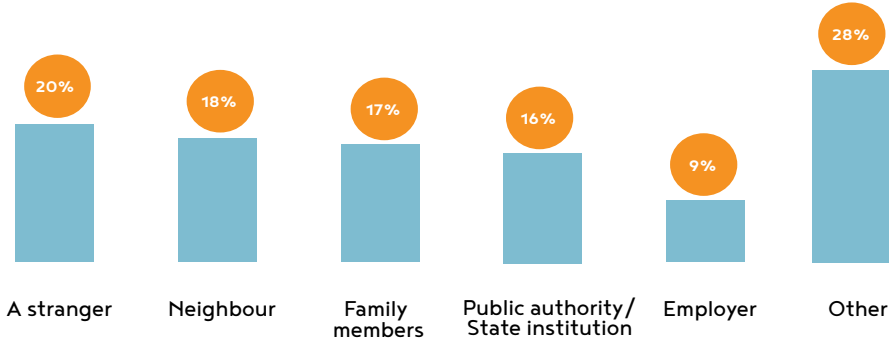
Other party in dispute

...

Strangers, neighbours, and family members are the most common other parties in disputes, which mirrors the composition of the most prevalent problems experienced in Kenya.

Conflicts with public authorities also rank high in the chart. This relates to people experiencing problems related to public services and obtaining an ID, but also crime.

WITH WHOM DID YOU HAVE A PROBLEM?



The other category includes: private company, friend, colleague, council of elders, do not want to answer, and other. All of them have less than 7% of the responses. Percentages add up to more than 100% due to the possibility of selecting multiple responses.



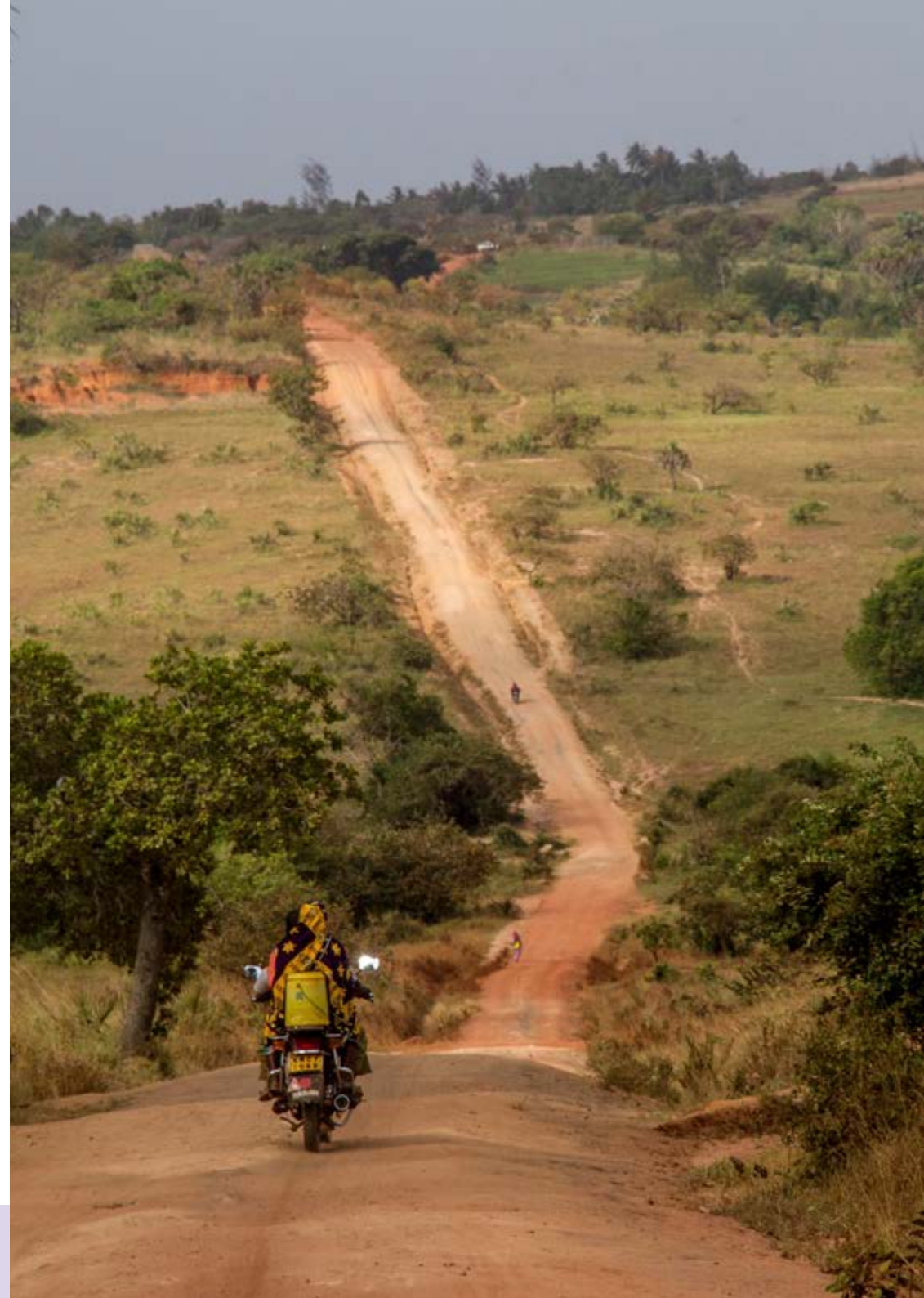
3

Legal Information and Advice

Access to legal information and advice
Formal and informal sources
Reasons for not seeking information
Most helpful sources of legal information and advice

Introduction

In this chapter we discuss where people go to find information and advice when they are faced with a legal problem. Knowing whom people turn to provides an important insight into their resolution strategies. Moreover, it is also critical to know why certain respondents choose not to look for information and advice. The chapter starts by looking at whether or not respondents look for information and advice and if they do, where they go and which source is most helpful. Respondents that do not look for information and advice are asked what prevented them from doing so. Lastly we look at which public sources of information are used.



LEGAL INFORMATION & ADVICE

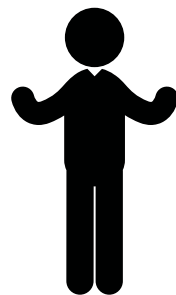
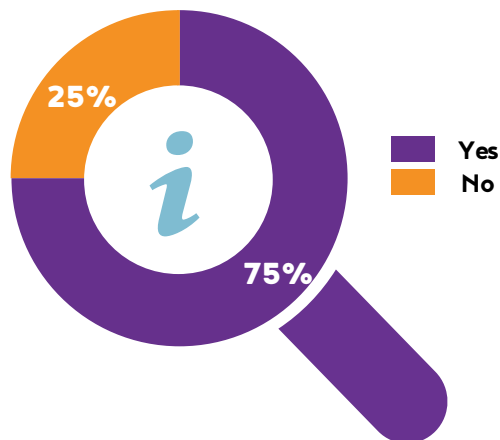
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Access to legal information and advice

Finding relevant information and advice about the legal problem at hand is often the first step in resolving it. The data shows that seven out of ten Kenyans who encountered a legal problem sought some sort of information and advice. This indicates that a strong majority actually looks for information and advice, while a minority does not.

Kenyans are more active in seeking information and legal advice than people in Uganda and Tunisia

HAVE YOU SOUGHT INFORMATION OR ADVICE TO RESOLVE THE LEGAL PROBLEM?

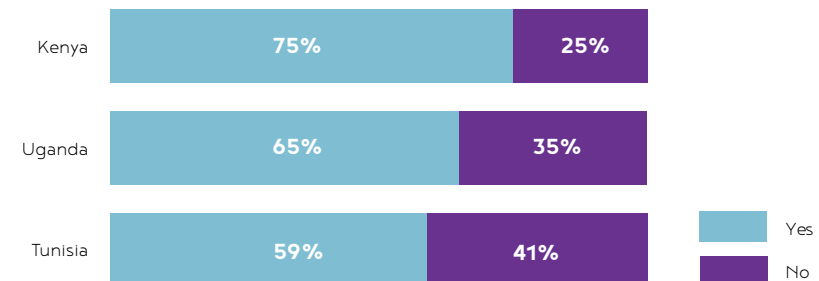


There are no significant differences in the likelihood of seeking information and advice between residents of rural and urban areas or men and women. However, when looking at different age groups, individuals in the youth category (18-24) are less likely to seek information and advice (65%), while those in middle adulthood (40-64) are more likely to do so (80%). Furthermore, the respondent's level of formal education and wealth status are positively related to the likelihood of seeking information and advice. Simply put, respondents with a higher level of formal education and/or a higher level of wealth are more likely to seek information and advice.

Respondents who experienced problems with land, family, property, and social welfare are more likely to search for information and advice (more than 80%). In the case of crime, the most serious problem in Kenya, 75% percent of respondents indicate having sought information and advice.

For problems related to public services, consumer problems, and obtaining an ID, respondents are less likely to seek information and advice. Respondents who encounter problems related to public services are more unlikely to do so, with only 42% indicating they searched for information and advice.

LOOKING FOR INFORMATION AND ADVICE COMPARED



Informal sources

Six out of ten respondents sought information and advice from an informal source to resolve their most serious legal problem. This is illustrated in the graph below (note: the question allows for multiple answers so the total in the graph adds up to over 100 percent).

In comparative terms, Kenyans rely on informal sources of information and advice less than Ugandans; eight out of ten Ugandans declared to have consulted informal sources. Regarding the preferred sources, both samples signal family members and friends as the most frequently contacted source. This appears to be a very common trend; family and friends are also the top informal sources of information and advice in Tunisia, Ukraine and many other countries.



6 out of 10 Kenyans
have consulted informal
sources

The most frequent strategy for seeking information from informal sources is to go to a family member or friend. A close personal connection is thus an important part of asking someone for information and advice. For problems relating to land and family almost 80% of the respondents looked for an informal source, while for public service related problems, only 28% did so.

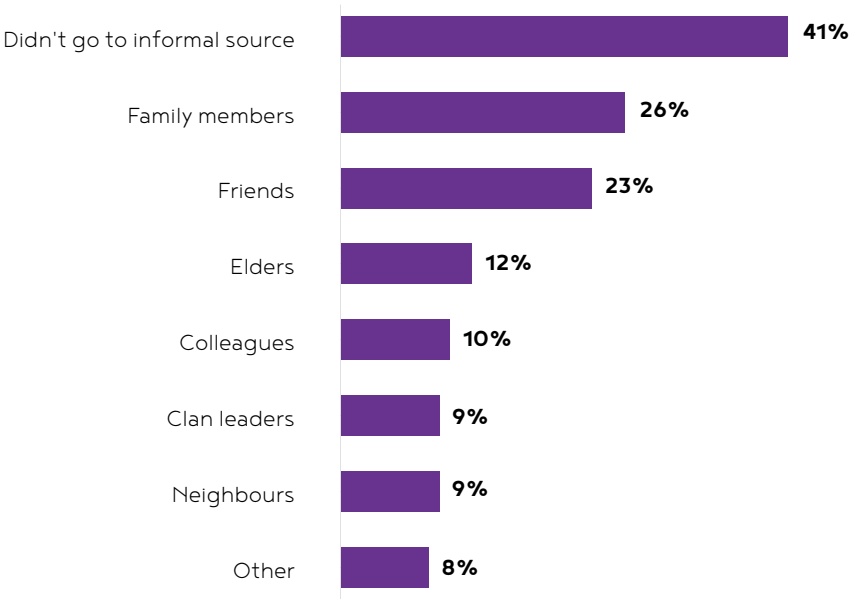
Age also plays a role in which source respondents prefer to use. Older respondents are less likely to rely on friends, but more likely to rely on clan leaders. Respondents in the youth category are less likely to use traditional sources of information, such as clan leaders and elders, and instead prefer to go directly to friends or family.

For both formal education levels and wealth levels, a similar pattern is observed. Respondents with a higher level of formal education and/or perceived wealth status are more likely to go to friends and colleagues, while they are less likely to go to clan leaders and elders.

There is also a distinct difference between residents of urban and rural areas. Respondents from urban parts of the country are more likely to go to colleagues, while respondents from rural areas rely more on clan leaders and elders. Moreover, respondents from rural

areas are more likely to go to informal sources in the first place: 61%, while for urban respondents this figure is 51%.

WHICH INFORMAL SOURCE PROVIDED LEGAL INFORMATION AND ADVICE?



The other category includes: Other, church leaders, and cultural leaders. Each category accounts for less than 5%.

LEGAL INFORMATION & ADVICE

3

Institutional sources of legal information and advice

As with informal sources of legal information and advice, just over half of the respondents indicate having searched for information and advice from institutional sources. Police and chiefs are the most popular sources, while Kadhi courts, employers, central government organisations, and NGOs are the least popular (each scoring less than 2%).

For problems related to land and accidents, respondents are most likely to go to institutional sources (more than 70%). Institutional sources of legal advice are least used in the following areas: public services, obtaining an ID, employment, money, and consumer problems. When dealing with crime, 44% of the respondents go to the police.

Age plays a factor in the decision to use institutional sources of information, with younger respondents being far less likely to do so. In fact, 65% of the respondents in the youth category indicate they did not use any institutional source. Older

respondents are more likely to go to the court of law, the police, a lawyer or the chief. Interestingly, young respondents are more likely than older respondents to go to an administrative tribunal.

International perspective

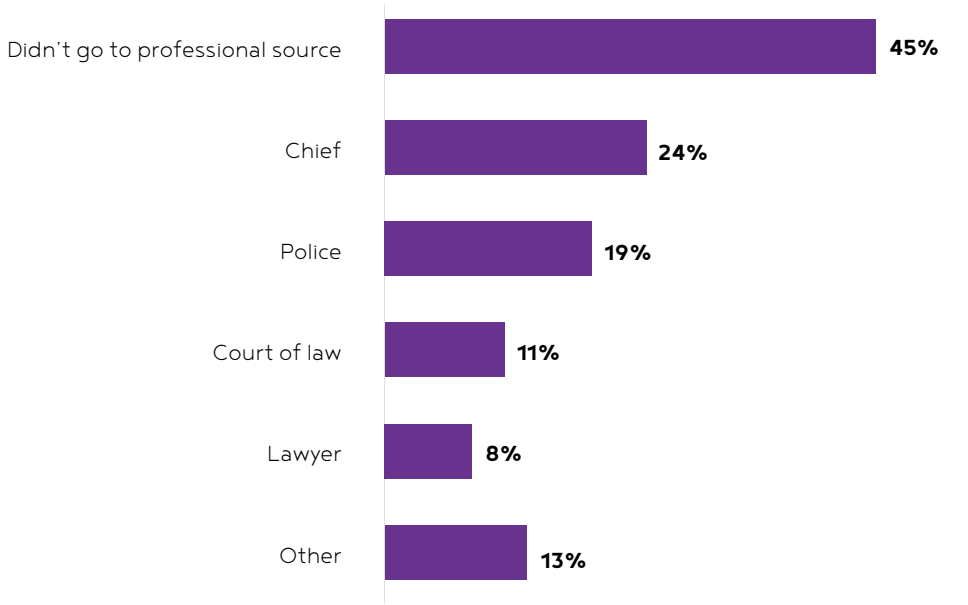
Kenyans rely less on institutional sources of legal information and advice than Ugandans. In Uganda, 66% of people consult institutional sources, whereas in Kenya, just 55% do so.

As with informal sources of information, both formal education level and wealth level have a major influence on where respondents seek information. A higher level of formal education and/or perceived wealth status is strongly related to going to a court, the police or a lawyer. Respondents with a lower level of formal education or perceived wealth status are more likely to go to the chief. Moreover, both of these characteristics also strongly influence whether or not someone will go to a formal source of information in the first place. Among respondents with

a higher level of formal education, 73% look for information and advice from an institutional source, and for those with a high perceived wealth status, 78% choose to do so. Compared to the overall average of 55%, this is quite a substantial difference.

We find that urban respondents are somewhat more likely than rural ones to go to the court of law, police, or a lawyer. Rural respondents are, however, more likely than their urban counterparts to go to the chief.

INSTITUTIONAL SOURCES OF LEGAL INFORMATION AND ADVICE



The other category includes: Other, county government, administrative tribunal, Kadhi court, employer, central government organisation, and NGO. Each category accounts for less than 5%.

LEGAL INFORMATION & ADVICE

3

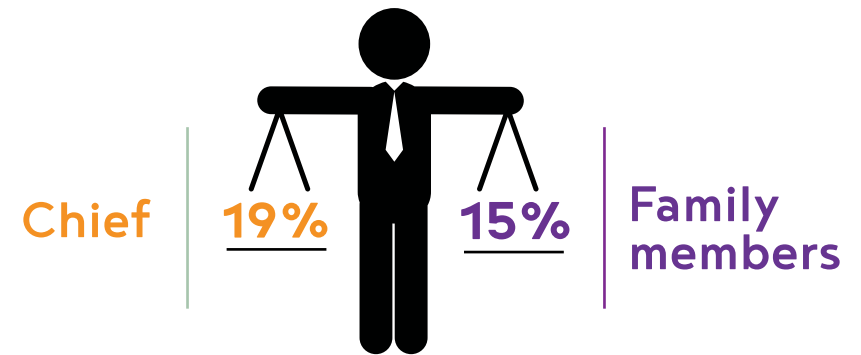
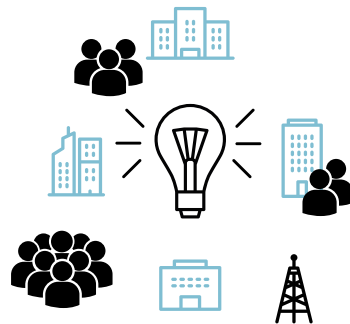
Most helpful sources of legal information and advice

Overall, 54% of the respondents opt for an institutional source of information as the most helpful (chief, police, courts, and lawyers), while 41% choose an informal source (mainly family members and friends).

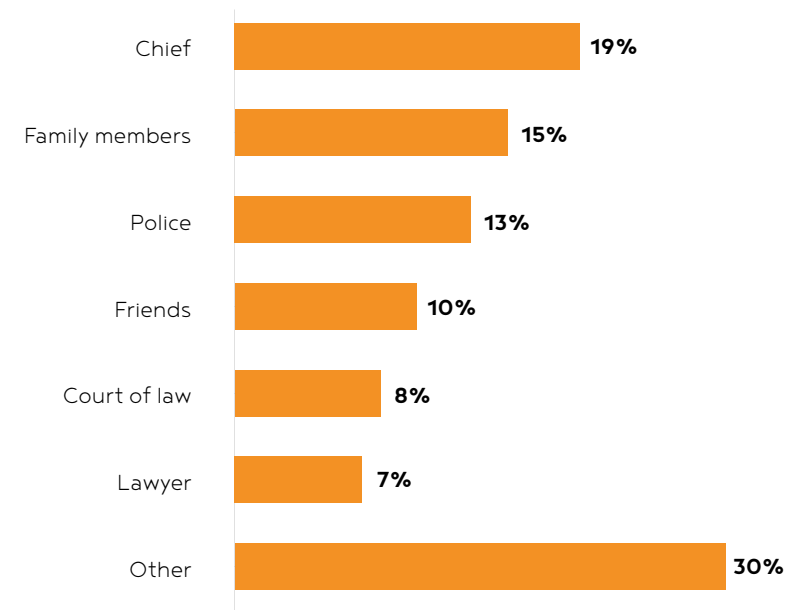
When looking at the six most prevalent problems and the most helpful sources of information and advice, some patterns can be distinguished:

- For land related problems people prefer to go to the chief or to a court.
- For neighbour related problems the chief is the most helpful source, while he/she also plays an important role in family, crime and money related problems.
- For employment related problems the most helpful source are colleagues.

- Family members are the most helpful source for family related problems.
- The police and the chief are most helpful for crime related issues.
- Friends and family members are considered to be the most helpful information and advice sources when it comes to money related problems.



MOST HELPFUL SOURCES OF LEGAL INFORMATION AND ADVICE



The other category includes: Other, colleagues, elders, neighbours, clan leaders, assistant chief, administrative tribunal, county government, none of the above, Kadhi court, church leaders, cultural leaders, employer, central government organisation, and NGO. Each individual category accounts for less than 5%.

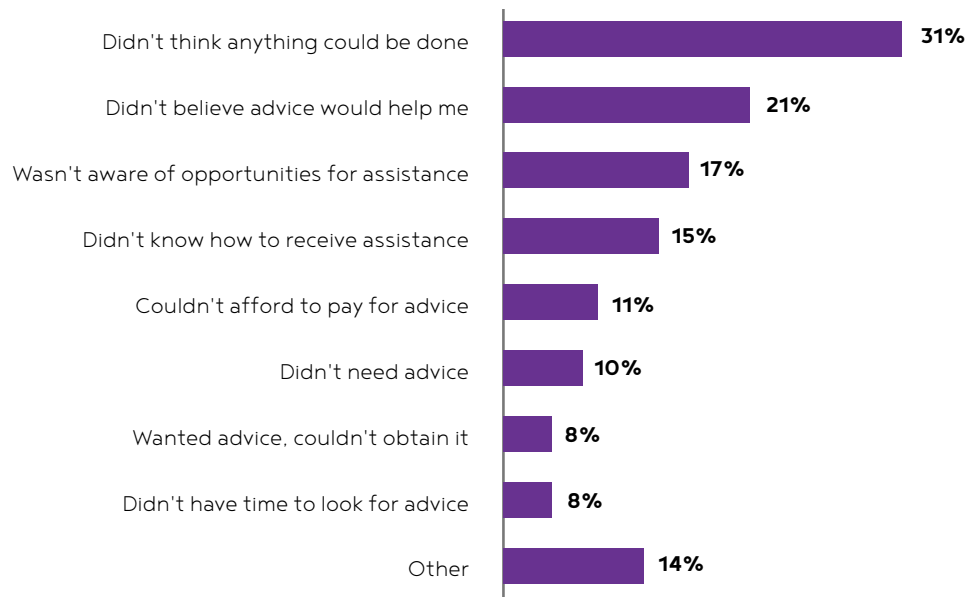
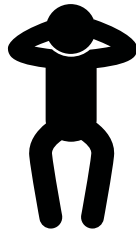
LEGAL INFORMATION & ADVICE

3

Barriers to legal information and advice

As discussed above, 25% of the respondents did not seek legal information and advice from any source. Respondents were asked to clarify why they chose to do so.

25% did not look for legal information and advice



The other category includes: Other, the person in a position to help me was difficult to reach, the problem wasn't important, and don't know. Each individual category accounts for less than 5%.

The most frequently cited reasons for not seeking any information and advice are that respondents either did not believe that doing so would amount to anything or were unsure how to obtain such information and advice.

For problems related to crime, over 45% of the respondents indicate that they did not believe anything could be done,

indicating a clear sense of hopelessness among this group. For land related problems the most common barrier is not being able to afford legal advice.

These figures provide an indication where investment in the provision of legal information and advice might be made to increase legal empowerment.



LEGAL INFORMATION & ADVICE

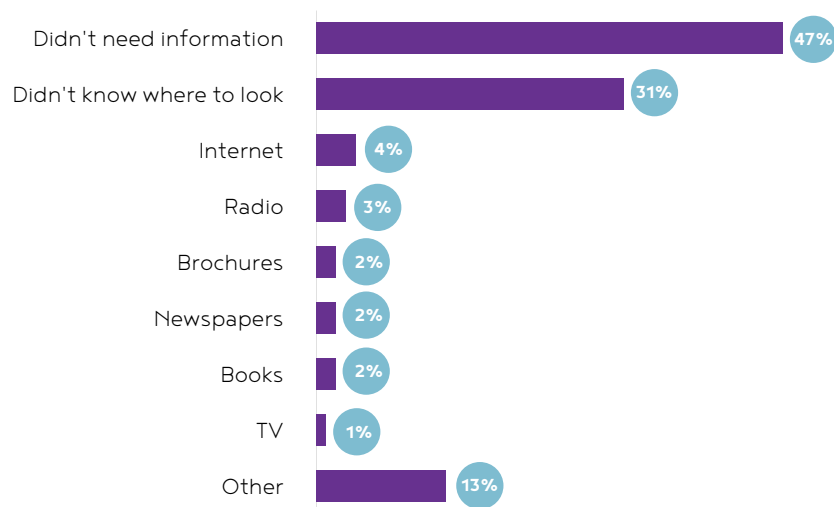
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Legal information from electronic and printed sources

Respondents were also asked whether they sought information from public sources, such as radio, TV, newspapers, web pages etc. These channels of legal information usually do not require personal interaction as they disburse more general information about the options for resolving a problem.

Apparently very few people use public

sources of information to inform themselves about their legal problems. The most popular source is the internet, but still only 4% of the respondents indicate having used it. In fact, half of the respondents claim they did not need public sources of information and approximately one third did not even know where to look.



The other category includes: Other and don't know.

Conclusion

Looking for legal information and advice is quite common in Kenya, with seven out of ten respondents doing so. This is more than in other countries we have studied. Family and friends are the most commonly used and the most helpful informal sources of information. For institutional sources of information, respondents turn most often to the police and the chief. In general, the institutional providers are more popular among the respondents than informal sources. The biggest barriers to seeking information and advice are either the assessment that looking would not amount to anything or insecurity about how to obtain information and advice.

The information sources tends to

differ with age category, level of formal education, perceived wealth status and the type of problem. Generally speaking, people with a higher level of formal education and/or perceived wealth status are more likely to look for information and advice and turn to institutional sources, such as lawyers, more often. On the other end of this spectrum (lower level of formal education and lower perceived wealth), people tend to turn to more traditional sources of information, such as the chief.

Public sources of information are typically not utilized in the search for legal information and advice. Around 80% of the respondents indicate not using any public source of information.





4

Dispute Resolution

Problem solving strategies
Self-help strategies
Social network
Dispute resolution forums
Most helpful source for dispute resolution
Costs and quality of access to justice

Introduction

Here we investigate what actions respondents take to resolve their most pressing legal needs. We focus on three different approaches: trying to resolve the problem with own actions, contacting a non-institutional third party, and contacting an institutional third party. Besides revealing what specific actions people take, we analyse how helpful they are, which barriers users encounter and whether or not taking action has actually helped to resolve the problem at hand.

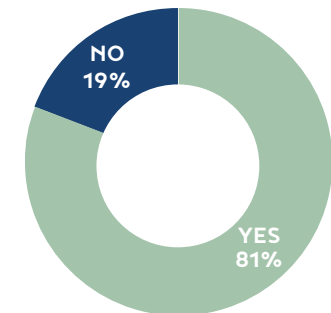


Own actions

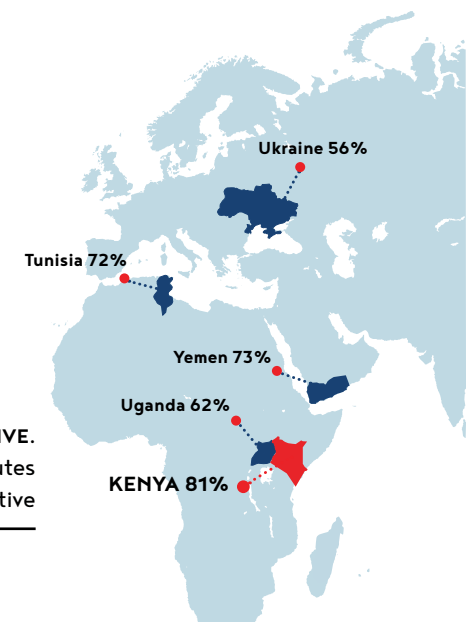
As discussed in the previous chapter, seeking information and advice is often the first step in a justice journey. However, the next step is even more crucial: taking some sort of action to resolve the problem. As highlighted by the graph below, 81% of the respondents make a move to resolve their legal problem. This is the highest percentage among countries we have studied and it indicates a high level of legal empowerment.

- Respondents are most likely to take action when faced with land or housing related problems, with over 90% taking action on these issues.
- Respondents are least likely to take action when faced with matters related to employment (72%), obtaining ID documents (66%) and public services (56%).
- Younger people are less likely to take action, whereas individuals with a higher level of formal education and/or perceived wealth status are more likely to take action.

HAVE YOU TAKEN ANY ACTION TO RESOLVE THE PROBLEM?



INTERNATIONAL PERSPECTIVE.
Taking action to solve disputes
in comparative perspective



DISPUTE RESOLUTION

4

Own actions



When reviewing which self-actions respondents take, we find that 64% took self-action to solve their problems. Contacting the other party directly or via a friend, neighbour or colleague is

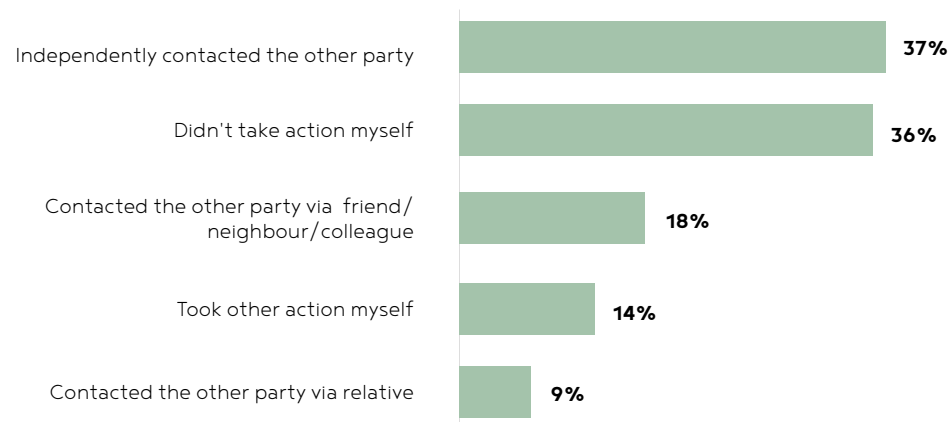
the most common way of doing this. The question (Did you take any action yourself?) allows for multiple answers, unless the respondent did not take any action his or herself. Hence, respondents can take multiple actions and the total in the graph adds up to over 100 percent.

For problems related to land, housing, family, neighbours, consumer problems, and money, taking some sort of action yourself is a very common strategy. Over 70% of the respondents act themselves when faced with these problems.

However, taking action yourself is less popular for problems related to public services, crime, accidents, and obtaining ID documents (only roughly 50% take action themselves in these areas).

Age plays a role in determining whether or not to take action yourself, with older respondents being more likely to do so. This is particularly true for contacting the other party yourself; over 40% of the older respondents take this approach, while only 26% of the youngest respondents opts for this form of action. Furthermore, respondents with a higher level of formal education and/or perceived wealth status are more likely to take action themselves and pursue multiple paths along this route.

WHICH ACTIONS DID YOU TAKE YOURSELF?



DISPUTE RESOLUTION

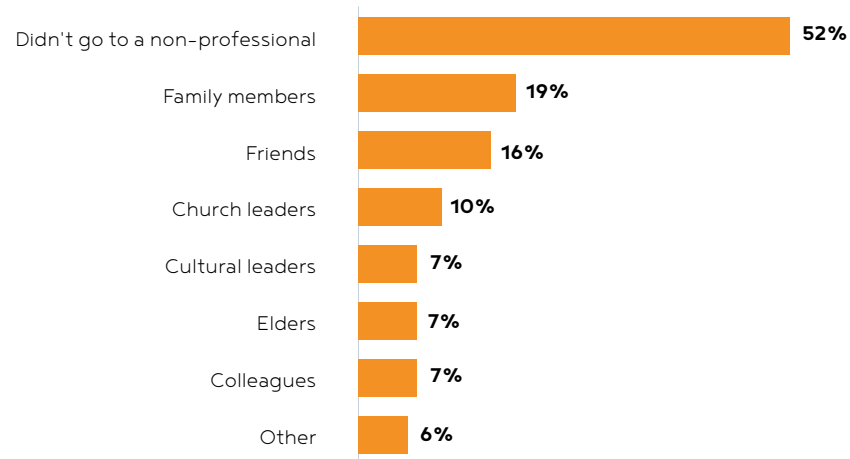
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Non-institutional dispute resolution mechanisms

People can also attempt to resolve their legal problem through a non-institutional third party. The graph below illustrates that this is not a very popular dispute resolution strategy: 52% indicated they did not use this approach. For those who do opt for this strategy, family members, friends, and church leaders are the most

popular non-institutional third parties. The question (Did you try to solve the problem through a non-institutional third party?) allows for multiple answers, unless the respondent did not go to any such third party. Hence, respondents can take multiple actions and the total in the graph adds up to over 100 percent.

DID YOU TRY TO SOLVE THE PROBLEM THROUGH A NON-INSTITUTIONAL THIRD PARTY?



The category "other" includes: Other, neighbours, and clan leaders. Each individual category accounts for less than 5%.

Respondents are most likely to attempt to resolve the problem through a non-institutional third party when faced with problems related to land and family, with almost 70% of the respondents taking this kind of action. At the other end of the spectrum we find respondents less likely to pursue this kind of action when faced with public service, accident, and business related problems. Other notable observations are that i) land problems are often handled by family members, church leaders or elders and ii) family related problems are often handled by family members.

We also find that younger respondents rely more on friends, while older respondents are more likely to go to elders or church leaders. As before, formal education level and wealth status also play a role. The likelihood of engaging a non-institutional dispute resolution mechanisms is not affected by formal education level or wealth status, but these characteristics do affect the party that people decide to consult. Those with a higher level of formal education and/or a higher level of perceived wealth are more likely to rely on their friends, colleagues, and family members. For respondents with a lower level of formal education and/or wealth status, elders and church leaders are the more popular choice.



DISPUTE RESOLUTION

4

Institutional dispute resolution mechanisms

50% of the people use non-institutional dispute resolution mechanisms, ranging from chiefs to courts. The most frequently used institutional third parties are the police and the chief. The question (Did you try to solve the problem through an institutional third party?) allows for multiple answers, unless the respondent did not go to any institutional third party. Hence, respondents can take multiple actions and the total in the graph adds up to over 100 percent.

Institutional third parties are used particularly for land problems, with 80% of the people using them. The chief is used 52% of the time and the court in 25% of land cases. Other interesting observations are the use of lawyers for property and social welfare related problems and the use of the police (41%) for crime related issues. People are least likely to rely on institution third parties when faced with employment, public service, consumer, or ID document related problems.

- People in middle adulthood are most likely to use an institutional third party (over 60%). However, respondents in the youth category only opt for this option 30% of the time.
- People with a higher level of formal education and/or perceived wealth status are more likely to use institutional third parties. They mostly rely on the court of law, the police, and lawyers, while those with a lower level of formal education and/or wealth status are more likely to turn to the chief.
- The chief is two times more popular in rural areas (28%) than in urban areas (14%). On the other hand, the court of law, the police, and lawyers are more frequently used by urban respondents than rural respondents.

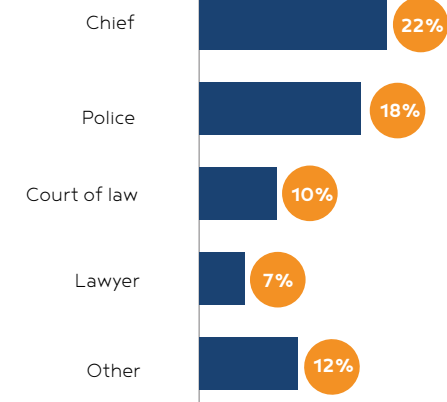
49%



Did not go to an institutional third party

DID YOU TRY TO SOLVE THE PROBLEM THROUGH AN INSTITUTIONAL THIRD PARTY?

Didn't go to a professional third party



The category "other" includes: Elders, clan leaders, assistant-chief, neighbours, contact other party via relative, colleagues, administrative tribunal, county government, Kadhi court, church leaders, other (non-institutional), employer, cultural leaders, central government organisation, and NGO. Each individual category accounts for less than 3%.

DISPUTE RESOLUTION

4

Most helpful way to resolve the legal problem

As discussed above, respondents are capable of following multiple paths to resolve their legal problems. The graph below highlights which particular process is considered to be most helpful in resolving the issue at hand.

International perspective

The most helpful processes to solve legal problems are very similar to Uganda. The top five there included: The Local Council Court (19%); the police (17%); independently contacting the other party (9%); family members (8%); and Courts of Law (5%).

The chief is perceived as the most helpful in resolving a legal problem. Notable exception is the perceived helpfulness of the police in crime related issues (36%).

Younger respondents have a preference for directly contacting the other party or relying on friends and family members. Respondents with a higher formal education level and/or higher wealth status seem to favor courts and lawyers, while those with a lower formal education level and/or lower wealth status tend to go to the chief.

The biggest difference between urban and rural respondents is found in the helpfulness of the courts and the chiefs. Courts are more popular dispute resolution strategies in urban areas and the chiefs are preferred in rural areas.

WHICH PROCESS HELPED THE MOST TO RESOLVE THE PROBLEM?

	%
Chief	17%
Independently contact other party	14%
Police	12%
Court	11%
Family members	8%
Took other actions myself	6%
Friends	5%
Other (institutional)	4%
Contact other party via friend/ neighbour/colleague	4%
Lawyer	4%
Other	18%

The other category includes: Elders, clan leaders, assistant-chief, neighbours, contact other party via relative, colleagues, administrative tribunal, county government, Kadhi court, church leaders, other(non-institutional), employer, cultural leaders, central government organisation, and NGO. Each individual category accounts for less than 3%.



DISPUTE RESOLUTION

4

Barriers to resolving legal problems

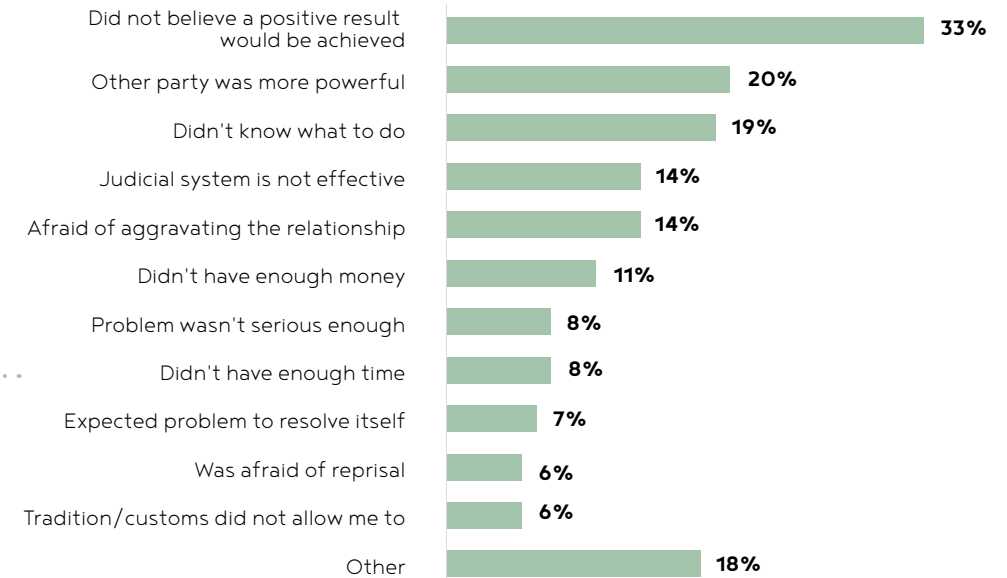
As seen in the first section of this chapter, one in five respondents did not take any kind of action. When asked to identify which barriers they were facing, the most important reason was the belief that taking action was not going to help. This was the strongest reason for those that face a land or crime related problem. The question allows for multiple answers, hence respondents can indicate multiple reasons and the total in the graph adds up to over 100 percent.

Resolved

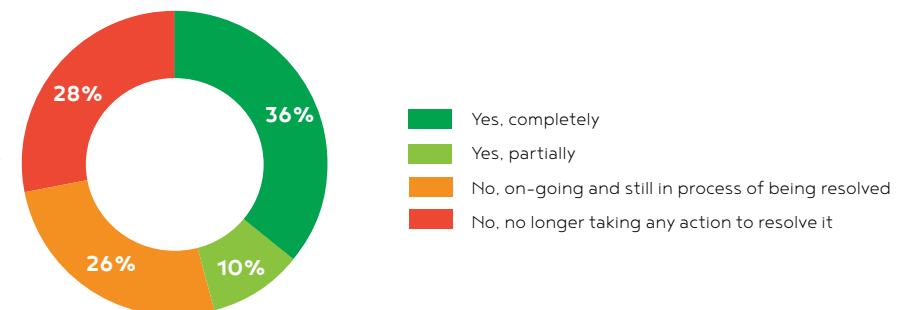
After taking action, one would expect a problem to move forward and come to some sort of resolution. We find that, for respondents who took action, 46% of the problems have been resolved either partially or fully. One in four respondents are still in the process of attempting to resolve the issue and the same number of respondents have given up on resolving their problem altogether. Additionally, at 70%, the oldest category of respondents indicate that their problem has not been resolved more often than their younger counterparts. Taking action is thus by no means a way of resolving a legal problem, with approximately only 1 in 2 problems finding partial or complete resolution.



WHAT WERE THE MOST IMPORTANT REASONS FOR NOT TAKING ANY ACTION?



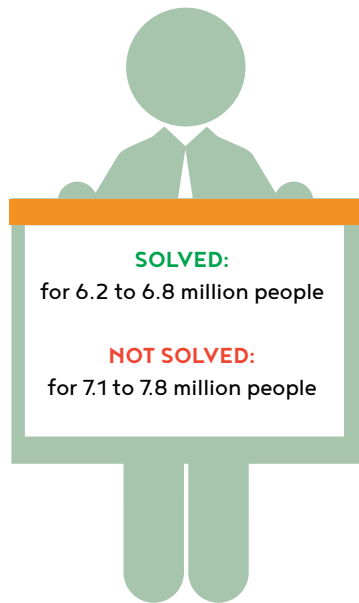
HAS YOUR PROBLEM BEEN RESOLVED?



DISPUTE RESOLUTION

4

Costs and quality of justice journeys



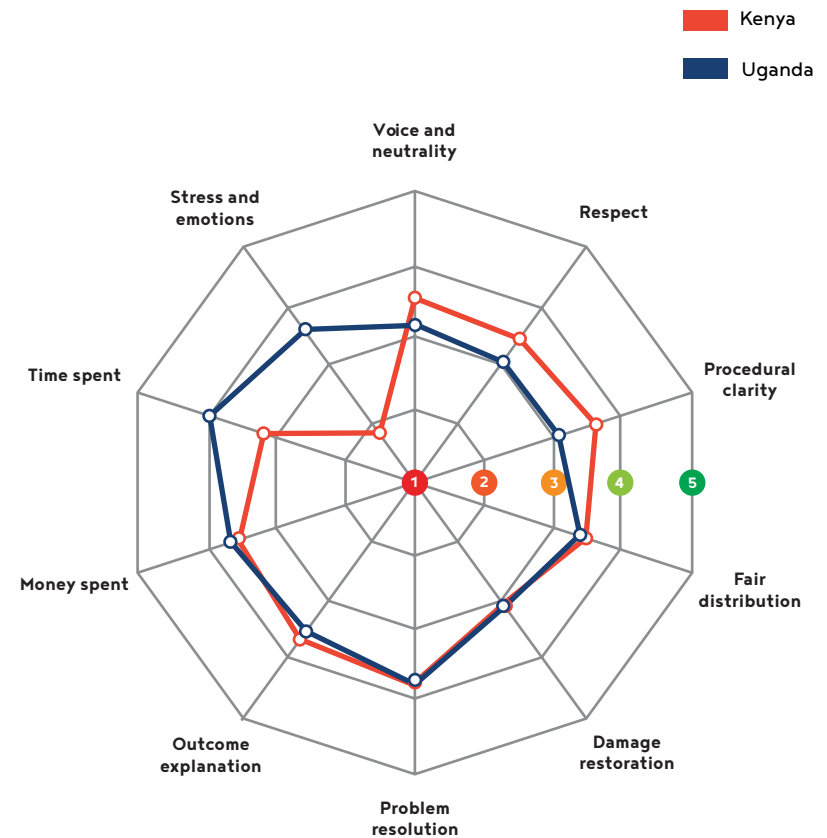
Problem resolution in numbers

Respondents who used one or more dispute resolution strategies were also asked to evaluate the cost and quality of their justice journeys. On eight out of ten dimensions the scores are very positive. All of these dimensions are rated with an above average score. However, when it comes to the amount of stress and emotions experienced by the respondents, the results are very negative.

International perspective

Kenya outperforms Uganda in the procedural aspects of dispute resolution. Outcomes are rated similarly in both countries. The costs of justice, however, especially the time spent and the stress of the procedure, are rated worse by the Kenyan population than by the Ugandan population.

EVALUATION OF JUSTICE JOURNEYS IN KENYA AND UGANDA

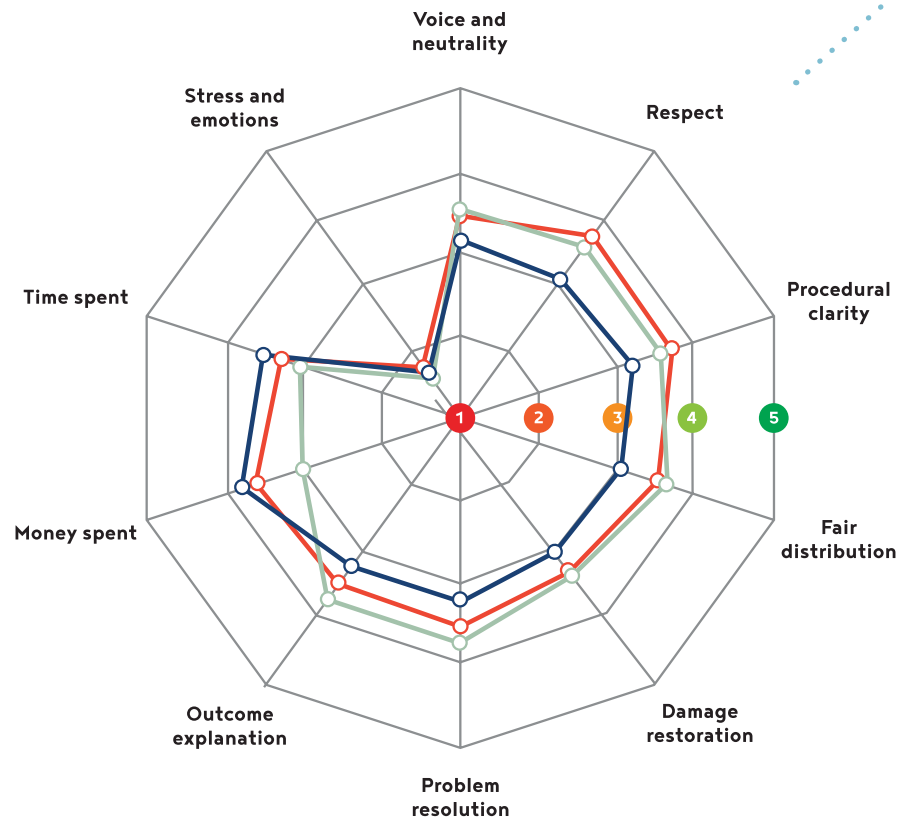


DISPUTE RESOLUTION

4

Different approaches

- Non-professional
- Own action
- Professional



The graph highlights the justice journeys of people based on the approach they deemed most helpful. It is clear that both institutional and non-institutional dispute resolution strategies score very similarly on the quality of the procedure and the quality of the outcome. Taking own actions is rated less favourably on these two dimensions.

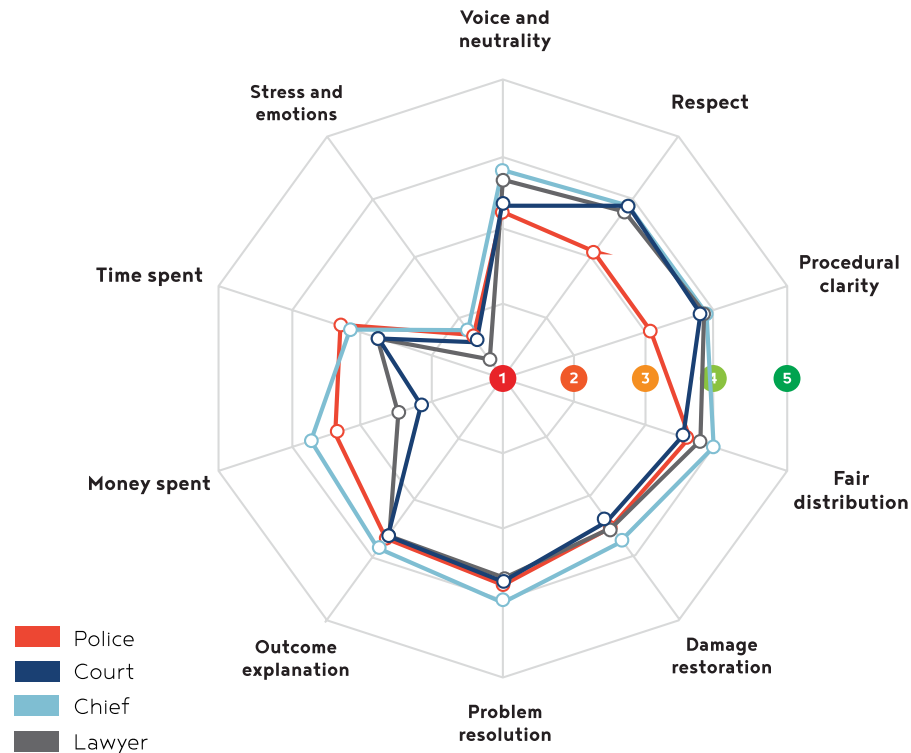
The costs of justice are rated quite differently, with own action and non-institutional justice journeys rating higher than institutional paths. When relying on institutional dispute resolution mechanisms, people find that the monetary costs and time requirements are steeper than for the other two paths.

Stress and emotions are the exception here; they are rated very poorly regardless of which approach people use. Clearly, this indicator shows that there is substantial potential for improving the justice journeys in Kenya. This is directly related to the local and international experts' view that justice processes should be humanized and psychological approaches should be incorporated into the delivery of justice.

Institutional justice journeys

It is worth looking at the institutional mechanisms for dispute resolution in more detail. The way Wanjiku understands the formal legal system is very different from how she understands the informal system. According to the local experts, Wanjiku does not speak the language of the formal system and is thus drawn towards informal dispute resolution mechanisms. In this light, we investigate the justice journeys of the people who use the most frequently used institutional justice journeys, namely chiefs, police, courts and lawyers.





Here we see that the chiefs consistently score well on the different aspects of the justice journey. They provide affordable justice in an efficient manner, which is rated highly in terms of the quality of both the procedure and the outcome. Lawyers and courts are also seen as performing quite well, but from the costs dimensions it quickly becomes clear that many Kenyans have difficulties with affording their processes and services. This suggests that creating more expedient court procedures and finding ways to reduce the costs of going to court and retaining a lawyer is one way of making the formal legal system more attractive to Kenyan citizens.

The police are scored less favourably on the indicators related to procedure, making for a justice journey where people feel less heard and respected.

Overall the spider web illustrates why people in Kenya continue to rely on informal justice, as it provides a viable path to justice that is easily accessible and considered fair. A way forward could be to further empower the chiefs to deliver justice to their communities. All of these findings are in line with the recommendation from the local experts to invest in the dispute resolution capacity of chiefs and assistant chiefs.

Conclusion

When it comes to taking action to resolve their legal problems, Kenyans are proactive. Eight out of ten respondents choosing to take some form of action to achieve a fair resolution to their legal problems. Taking own action by the concerned individual is the most frequently adopted resolution strategy. Non-institutional or institutional third parties are used less often. Contacting the chief is considered the most helpful strategy for dispute resolution, followed by contacting the other party directly and going to the police. Note that while many people take action themselves, they generally consider institutional third parties very helpful.

Filing a claim in a court or informing police are particularly popular among respon-

dents with higher level of formal education, higher perceived wealth status and/or living in urban areas. The chief, on the other hand, is mostly engaged in dispute resolution by those with lower level of formal education, perceived wealth and/or living in rural areas

Age is also an important factor in determining a course of action. Younger respondents are less likely to take action to resolve their problems and also rely less on institutional third parties. This could be related to the fact that they are also less likely to seek information and advice, as discussed in the previous chapter.

Let's follow Tom's justice journey

Using our data, we developed the fictitious story of Tom to illustrate the average justice journey in Kenya. In this way, we bring the data to life.

Tom is a 34-year-old man who lives in rural Kenya. He is a lower educated middle class citizen, happily married and has two children. However, Tom does not feel very safe in his neighbourhood, particularly after dark. This is related to an event that occurred about a year ago; Tom was robbed while on his way home from work. The assailant stole his bag, containing his wallet and phone, causing high levels of stress and even some physical injuries.

However, Tom decided that he should not stay passive after the incident and started to look for information and advice on how best to resolve his problem: he wanted to know who robbed him, see them punished, and receive fair compensation for his damages. He asked his friends and family on how to achieve this, in the end turning to the police for help. In fact, it turned out that the police were very cooperative and Tom was satisfied to a large extent by the support provided. They advised him that if he provided a statement they could start an investigation. They also told him that the prosecutor could then bring a case on his behalf.

After this, Tom decided that he would make that statement. He went to the police and the chief for this, rather than trying to resolve the problem himself or relying on his social network. In Tom's situation, local police and chiefs were the most useful channels for problem resolution.

However, despite his proactive approach towards the problem, he was not able to obtain just resolution to his problem; the robber got away with the crime and Tom was left feeling dissatisfied with his incomplete justice journey.

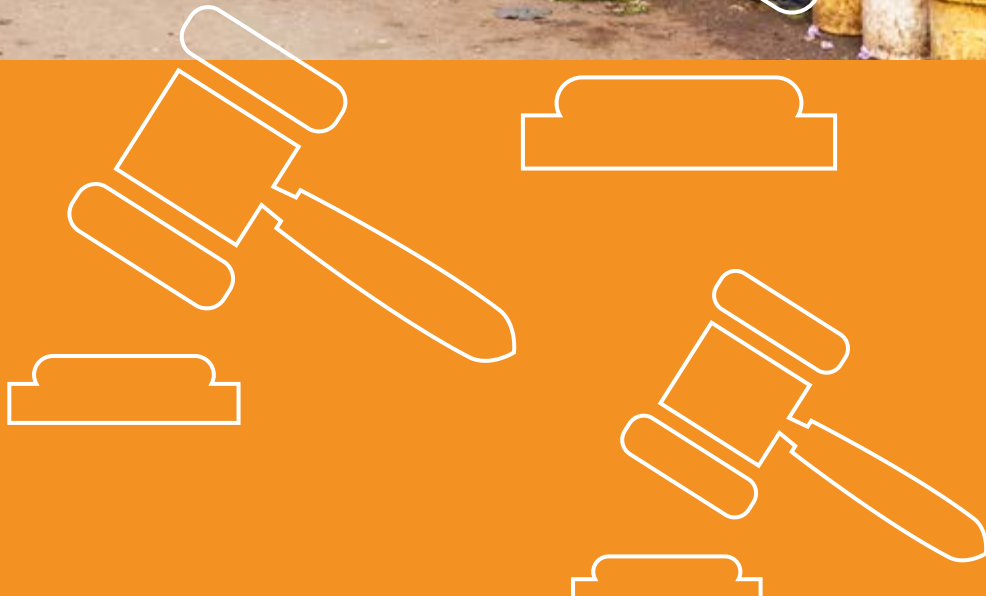




5

Trust in Institutions and Legal Empowerment

Trust in justice institutions
Subjective legal empowerment



TRUST IN INSTITUTIONS AND LEGAL EMPOWERMENT

5

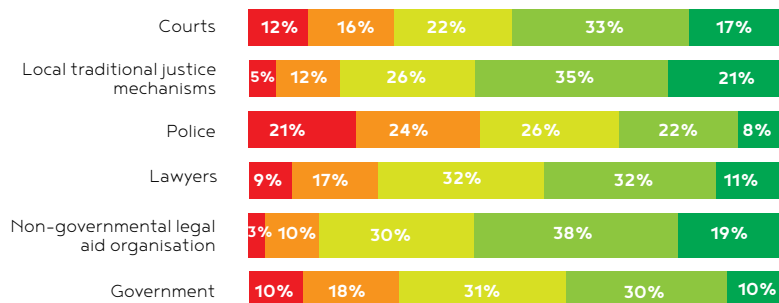
Trust in legal institutions

In order to assess and improve people's justice journeys, it is important to evaluate to what degree they put trust in the local justice institutions. In addition, we analyse to what degree the respondents feel empowered to deal with legal problems. We ask them whether they feel that they can rely on the justice system and if

they have access to the courts or the possibility of receiving advice from lawyers. In addition, we ask them to evaluate the outcomes of hypothetical judicial problem scenarios. Our analysis identifies bright spots of the system and points towards areas where improvement through innovation is possible.

In order to assess how much trust the people of Kenya have in the justice system, we asked them to rate their trust in different institutions on a scale from 1 to 5. The respondents expressed the highest amount of trust for non-governmental legal aid institutions as well as local traditional justice mechanisms. Trust in public sector institutions, such as courts, the government, and especially the police, is significantly lower.

TRUST IN DIFFERENT LEGAL INSTITUTIONS



■ Disagree strongly
 ■ Disagree
 ■ Neither agree nor disagree
 ■ Agree
 ■ Agree strongly

Higher trust among educated & wealthier respondents

We looked at whether factors such as age, gender and location, or socio-economic factors such as employment level or the financial situation of the household had an effect on trust.



TRUST IN INSTITUTIONS AND LEGAL EMPOWERMENT

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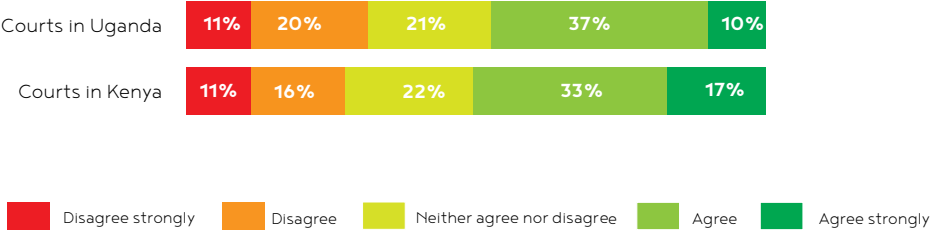
Neither gender nor the area where people live affects the average level of trust in the different justice institutions. It would be misleading to make special efforts to increase the trust in the justice sector specifically among rural areas in Kenya. Instead, policy should be guided by other factors.

Individuals with a higher level of formal education express proportionately more trust in courts, whereas respondents

with a lower level of formal education express proportionately more trust in the local traditional justice mechanisms. Still, the magnitudes are small and do not explain the large overall variation in trust between governmental and non-governmental justice institutions.

Overall, our results suggest to target policy towards improving the image of the police as well as the Kenyan government.

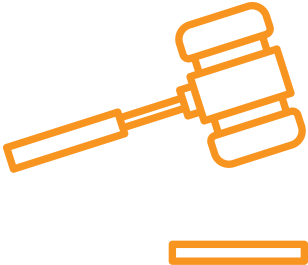
TRUST IN COURTS: KENYA AND UGANDA



COURTS IN GENERAL PROTECT THE INTERESTS OF THE RICH AND POWERFUL ABOVE THOSE OF OTHERS

Strongly agree	41%
Agree	27%
Neither agree nor disagree	19%
Disagree	9%
Strongly disagree	4%

When the respondents were asked about whether or not they agreed with the statement that courts in Kenya generally protect the interests of the rich and powerful above those of others, 41% strongly agreed. An additional 27% of respondents generally agreed with the statement. This result is rather worrisome. The wealthiest respondents in our dataset disagree with the above statement slightly more often than the rest of the respondents.



TRUST IN INSTITUTIONS AND LEGAL EMPOWERMENT

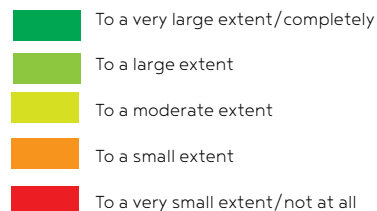
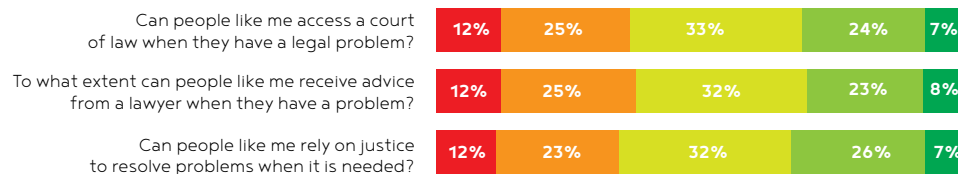
5

Subjective legal empowerment

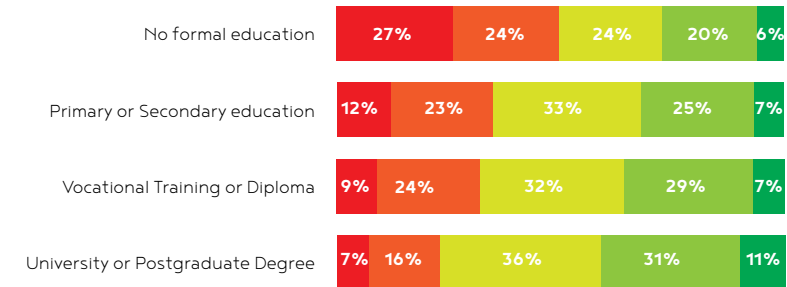
Besides investigating the level of trust, it is important to know whether the Kenyan citizens feel legally empowered to deal with their justice needs. Even if trust in the justice institutions is high, it would be of no value if the citizens did not have access to them or were hesitant to use them. To gauge levels of subjective legal

empowerment, we asked the respondents whether they feel they can rely on the justice system in general, whether they have access to lawyers and courts, and how they judge the likelihood of getting fair solution when presented with a number of hypothetical legal problem situations.

TRUST IN DIFFERENT LEGAL INSTITUTIONS



RELY ON JUSTICE TO SOLVE PROBLEM – EDUCATION



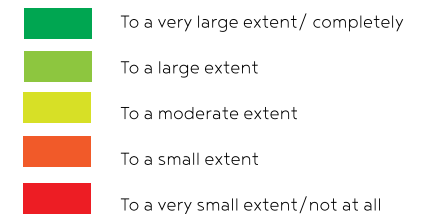
Much variation in perceived reliability of the justice system

There is much variation in how much the respondents feel that they can rely on the justice system in Kenya.

Roughly one third of the respondents feel that they can rely on it, one third has a rather neutral view, and one third feels that they cannot rely on the justice system.

We observe the same pattern for the question of whether or not the respondents feel that they can rely on lawyers or courts to resolve their problems.

In order to investigate where this variation in subjective legal empowerment stems from, we again looked for patterns across demographics and socio-economic status.



It appears that there is no clear pattern for gender, age or rural/urban residency. However, we observe an interesting pattern for varying levels of formal education and subjective financial well-being. Subjective legal empowerment increases with the level of formal education as well as perceived wealth. This pattern is found for the perceptions of the reliability of the justice system as well as for the access to justice institutions. It would therefore be beneficial to specifically target groups of low-income families as well as individuals with lower levels of formal education when launching programs to improve the population's legal empowerment.

TRUST IN INSTITUTIONS AND LEGAL EMPOWERMENT

5

Less empowerment when dealing with public services

In order to examine if subjective legal empowerment differs across different problem categories, we presented our respondents with the following six theoretical situations:

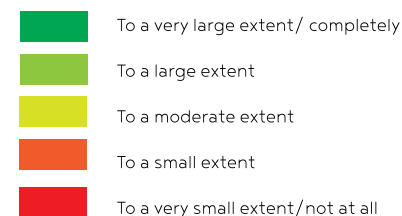
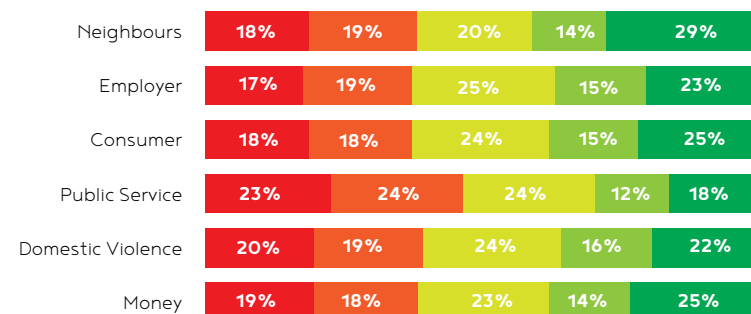
- Imagine you had a conflict with a neighbour (villager) who often causes a significant disturbance to you, for instance by trespassing on your land or grazing cattle on your land.
- Imagine you had a problem with your employer, for example a conflict over your dismissal.
- Imagine you bought a cell phone from a big retailer, and it was defective.
- Imagine you had a conflict with the official authority that issues driving licenses (or similar).
- Imagine you became a victim of domestic violence (or sexual violence), and were physically hurt by a family member.
- Imagine you lent approximately 25,000 Kenyan shillings to a friend, and he refuses to pay it back.

The respondents were asked to assess how likely it was that they would achieve a fair solution to the specific problems.

While there is much variation across individuals, the respondents are a little more negative about expecting a fair solution when facing conflicts with public services.



How likely is it that you would get a solution to the following problem?



TRUST IN INSTITUTIONS AND LEGAL EMPOWERMENT

5

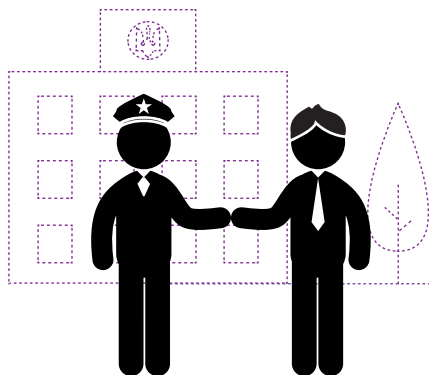
Trust and empowerment related to past experiences with the legal system

Apart from socio-economic background, it is important to check if people's past experiences with the judicial system are correlated with their current perception of it.

In general, having experienced a legal problem in the past does not affect the respondents' trust in the legal institutions much. When we look specifically at the respondents' trust in the police,

we observe a clear pattern. Having experienced a problem is associated with an increased trust in the police.

Moreover, we also observe that subjective legal empowerment is higher among those respondents who have experienced a legal problem in the past four years.



DO YOU TRUST THE POLICE?

I trust the police

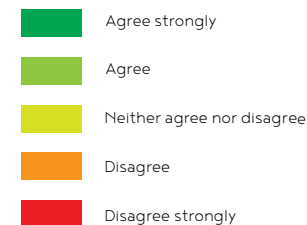


Respondents who have **not** experienced a legal problem in the past

I trust the police



Respondents who have experienced a legal problem in the past



TRUST IN INSTITUTIONS AND LEGAL EMPOWERMENT

5

Higher trust among respondents who have experienced legal problems

Past experiences with the judicial system are correlated with how empowered people feel about the justice system. There are many types of legal problems people face during their daily lives, some of which are easier to solve than others. Hence, people might show fairly different levels of trust in the justice system, depending on what type of problem they had to deal with in the past.

When we compare average trust levels in the Kenyan legal institutions for respondents who have experienced different legal problems in the past, we see that people feel especially

powerless when they experienced problems related to the government, such as obtaining ID documents or facing a dispute with public services. Trust is also low among those who have experienced conflicts related to crime. Recall that when the respondents were presented with a set of hypothetical justice problems, they expected the least favourable outcome when facing conflicts with public services. Hence, both legal empowerment as well as trust are low among Kenyan residents regarding public service issues.



TRUST (AND MOST SERIOUS PROBLEMS)

Category	%
Housing/Property problems	3.49
Children	3.49
Accidents	3.45
Family	3.39
Land problems	3.38
Housing/Rented Property/Tenant problems	3.37
Housing/Rented Property/Owners problems	3.37
Neighbours	3.37
Business related problems	3.33
Money	3.33
Consumer problem	3.28
Social welfare	3.24
Employment	3.18
Obtaining ID	3.16
Crime	3.15
Public services	3.06

Conclusion

Trust is higher in non-public justice institutions than in public justice institutions.

Trust does not vary by rural/urban residency, gender or age. Respondents with a higher formal education level tend to favour courts compared to respondents with a lower formal education level, and these people express slightly more trust in traditional justice mechanisms.

People with higher formal education levels and higher perceived wealth express higher levels of legal empowerment.

Trust in the justice system is low among respondents who have experienced problems with the government, such as obtaining ID documents and public services disputes. In addition, it is low among respondents who have money problems.

Similarly, the respondents feel less legally empowered when they are confronted with a hypothetical problem regarding conflicts with public services.

Average trust in the institutions does not vary much among respondents who have or have not experienced a problem. However, trust in the police increases with having experienced problems in the past.

Legal empowerment is greater among respondents who have experienced a problem in the past.





6

Land Problems

Prevalence
Impact
Information & Advice
Dispute Resolution

LAND PROBLEMS

6

Introduction

Land is arguably the most important economic resource for rural inhabitants in Sub-Saharan Africa. In Kenya, 40% of the rural population lives on 5% of the arable land, while 3% of the population owns 20% of the land². It is reported that small landowners and users live under pressure. In Chapter 2 we saw that land problems are the second most prevalent and serious category of legal problem that people face, only behind crime problems. Land problems were the most serious legal problem for 15% of the respondents. This means that between 2.4 and 2.8 million Kenyans encounter land-related legal problems.

- Men are more likely to experience land problems compared to women: 18% of all men who experienced one or more legal problems experienced a land problem; for women that is 11%.

- People who have not received formal education are more likely to report land problems: more than a quarter of the legal problems of people without formal education are land problems. In other education groups, the percentage is roughly 14%.
- Land problems are more prevalent among rural inhabitants: they represent 17% of all their legal problems, while the proportion is lower in urban areas (9%). Socio-economic status does not affect the risk of experiencing a land problem considerably.

² Jayne, T. S., & Muyanga, M. (2012). Land constraints in Kenya's densely populated rural areas: implications for food policy and institutional reform. *Food Security*, 4 (3), 399–421.



LAND PROBLEMS

6

Most serious land problems

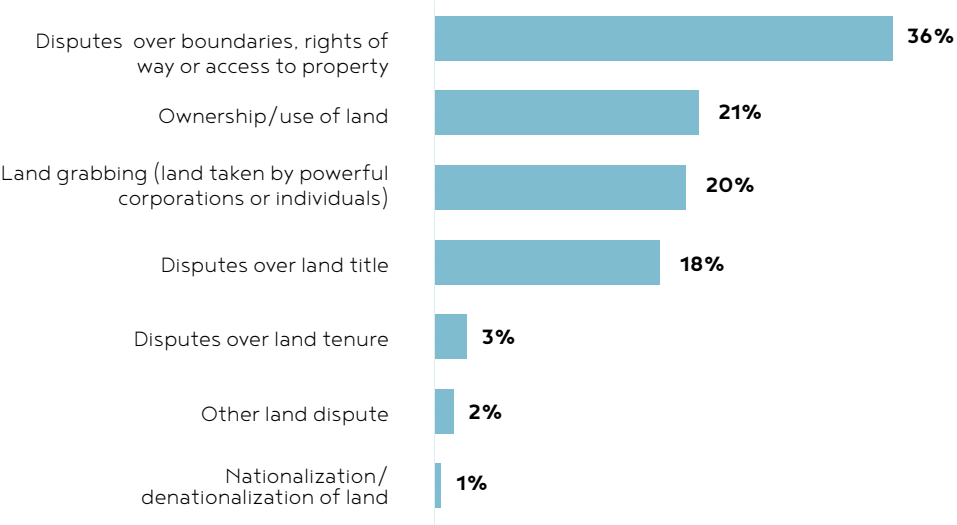
We found significant differences in terms of how different groups are affected by specific legal problems related to land.

- Men are more likely to experience disputes over boundaries or access to land (39% for men compared to 29% for women). Women are more frequently involved in disputes around ownership or use of land (27% for women compared to 18% for men).
- People with lower formal education levels are more affected by land grabbing (30% compared to around 20% for other groups). People with a higher level of formal education face more disputes with neighbours over boundaries and access to land. The data suggests that vulnerable

- groups are more likely to have their property rights affected by other people or corporations. Groups with a higher level of formal education have disputes about access and use of their property with neighbours.
- Wealthier respondents reported more frequently having legal disputes over land titles.



MOST SERIOUS LAND PROBLEMS



Specific Land Problems	Level of education			
	None	Low	Medium	High
Disputes with neighbours over boundaries, rights of way or access to property	21%	37%	37%	44%
Ownership/use of land	22%	25%	18%	12%
Disputes over land title	22%	14%	22%	22%
Land grabbing (land taken by powerful corporations or individuals)	29%	18%	16%	20%
Nationalization/denationalization of land	1%	0%	1%	2%
Disputes over land tenure	3%	3%	4%	0%
Other land dispute	1%	3%	2%	0%

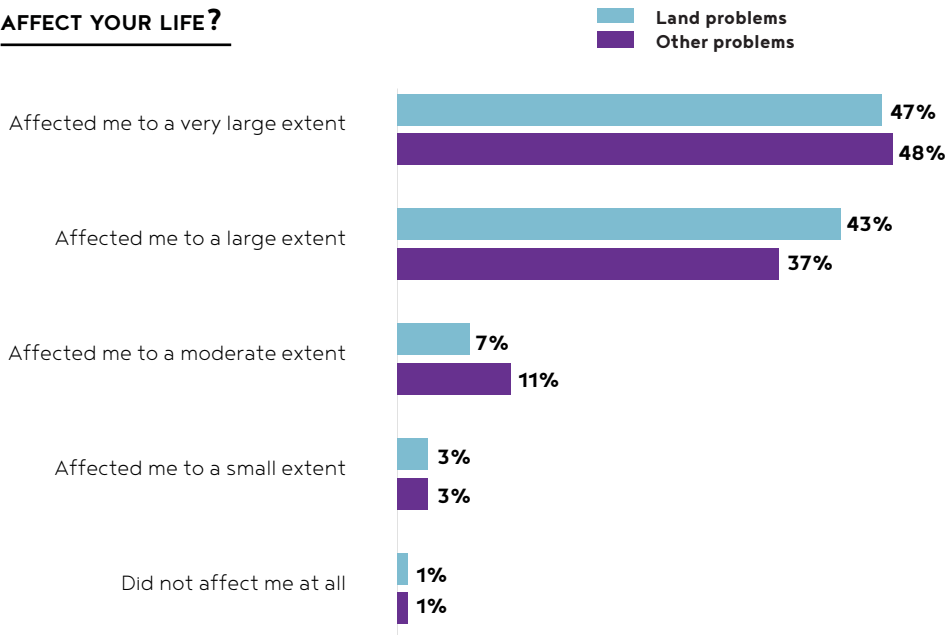
LAND PROBLEMS

6

Impact and effects

People facing land problems experience severe negative effects in their lives.

TO WHAT EXTENT DID THE PROBLEM AFFECT YOUR LIFE?



Because of the problem, did you experience...?	Land Problems	Other Problems
Extreme stress or mental health problems	62%	53%
Loss of time	52%	44%
Loss of income	30%	28%
Problem with relationships	28%	27%
Violence against you	21%	16%
Violence against your family members	17%	9%
Vandalism against you	11%	7%
Physical health problems	11%	14%
Personal injuries	9%	22%
Loss of job	7%	14%
Other	2%	6%

When looking at the specific consequences of legal problems, people with land problems report suffering from stress and loss of time considerably more often than people with other problems. Violence and vandalism is also more common among people dealing with land disputes. This is not surprising as for many people land disputes mean endangered livelihoods.

LAND PROBLEMS

6

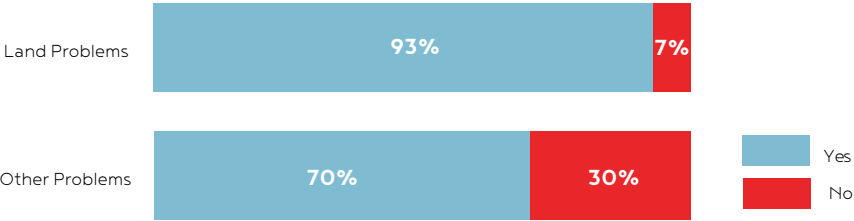
Information and advice for land problems

People facing a land problem are more likely to seek information and advice, either via formal or informal sources, than those facing other problems.

Men, wealthier respondents, and respondents with a higher level of

formal education are more likely to seek legal information and advice. Differences in age, and living in rural or urban areas do not have an effect on the propensity to seek legal information.

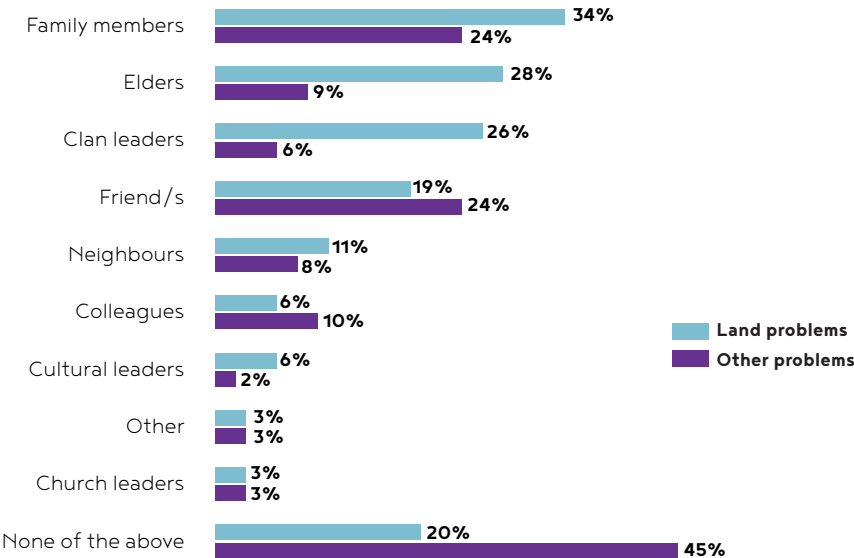
LOOKING FOR INFORMATION AND ADVICE



Informal sources of legal information

Family members are the most frequently used informal source of information and advice, followed by elders and clan leaders. Friends and colleagues are less likely to be involved at this stage by people dealing with land problems than those facing other types of legal problems.

INFORMAL SOURCES OF INFORMATION



LAND PROBLEMS

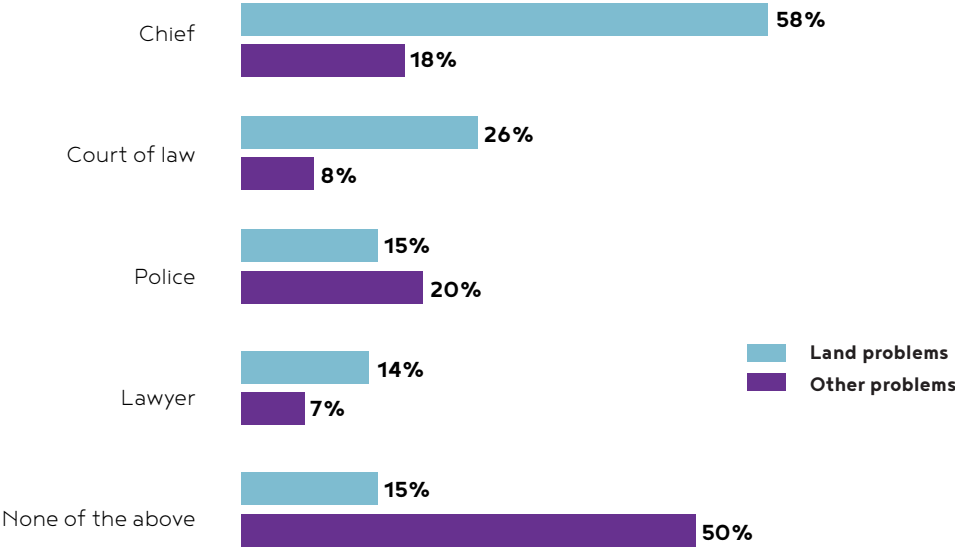
6

Institutional sources of information and advice

People prefer chiefs and courts of law as institutional sources of legal information and advice. The police, prevalent in other types of problem, are seldom contacted. A closer look at these sources of legal information allows us to identify lawyers and courts of law as more frequently

consulted by wealthier people, while chiefs are preferred by the lower income segments of the population. The graph below shows the most common sources.

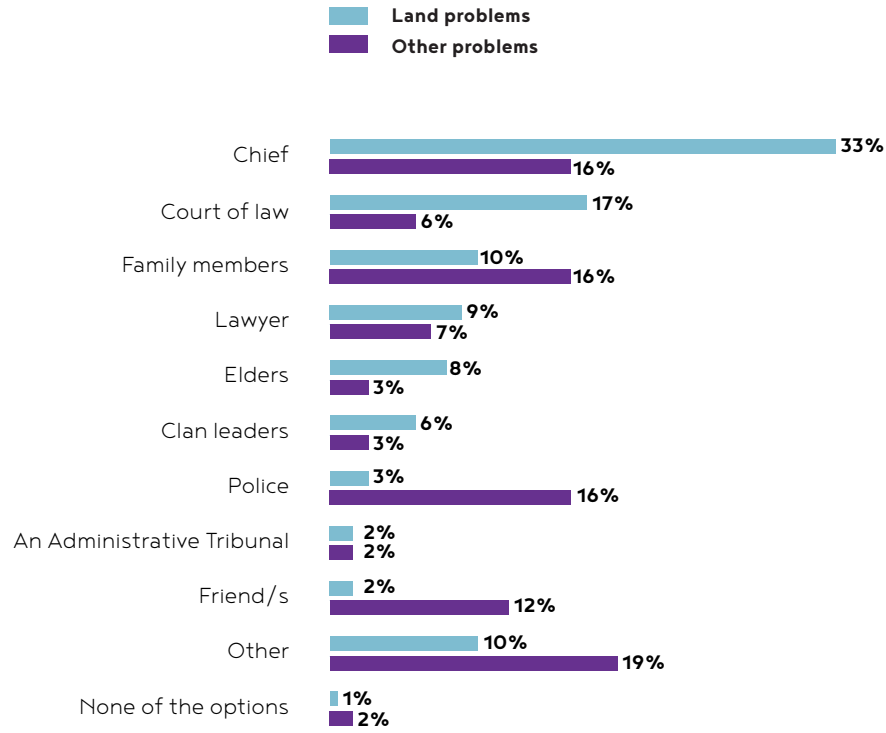
FORMAL SOURCES OF INFORMATION



Most helpful sources of information

Chiefs and courts of law are identified as the most useful sources of information, performing better in comparison to other problems. Again, a socio-economic divide

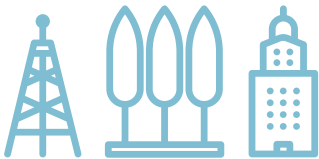
appears, because courts of law are more frequently used by affluent people, while chiefs are consulted by people of lower income.



LAND PROBLEMS

6

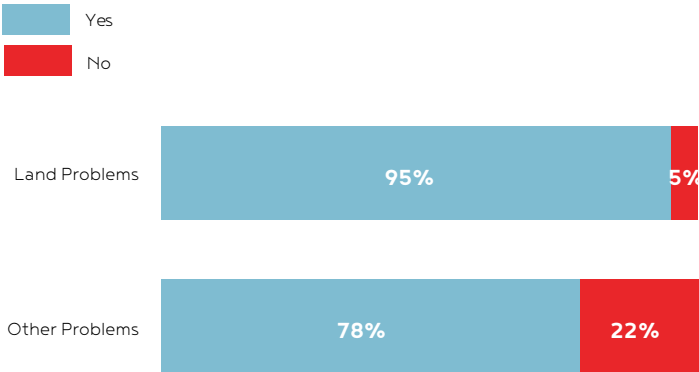
Dispute resolution



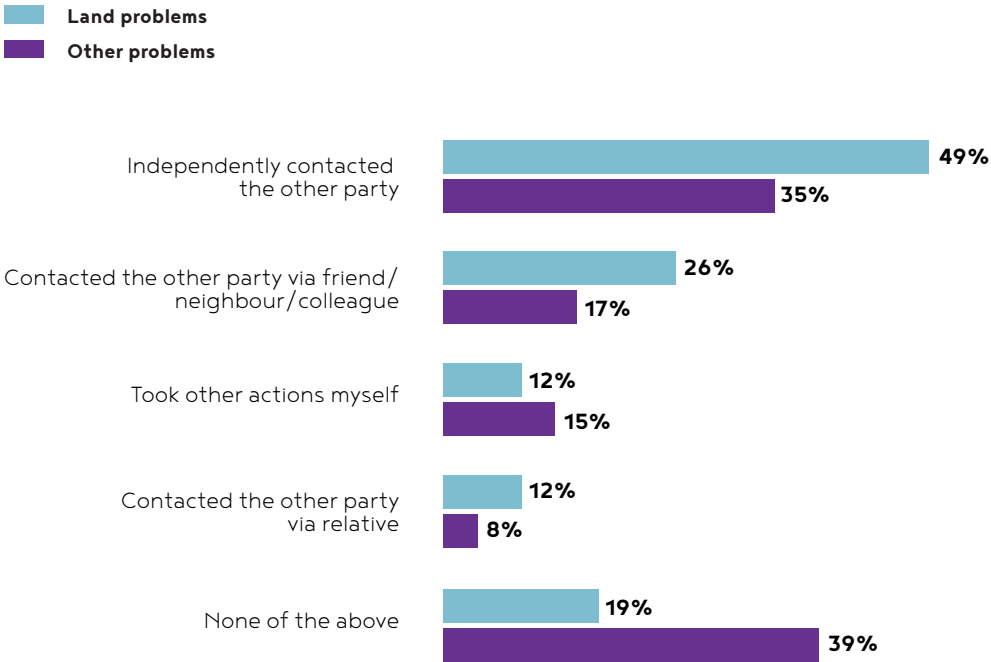
People facing land problems take action to resolve them more frequently than those experiencing other legal problems.

People who face land problems take their own actions to resolve their conflicts more frequently than people who experience other legal problems.

TAKING ACTION



OWN ACTIONS



LAND PROBLEMS

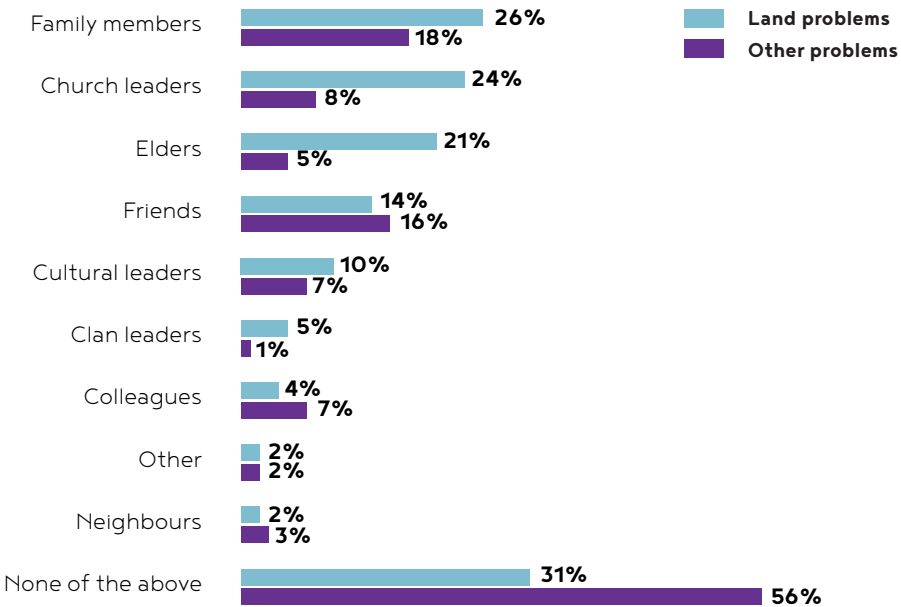
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Involving a non-institutional neutral third party to resolve the dispute

Among their social network, people with land problems prefer to involve family members, church leaders, and elders. Note that friends are contacted less often to resolve land problems than to resolve other legal problems.



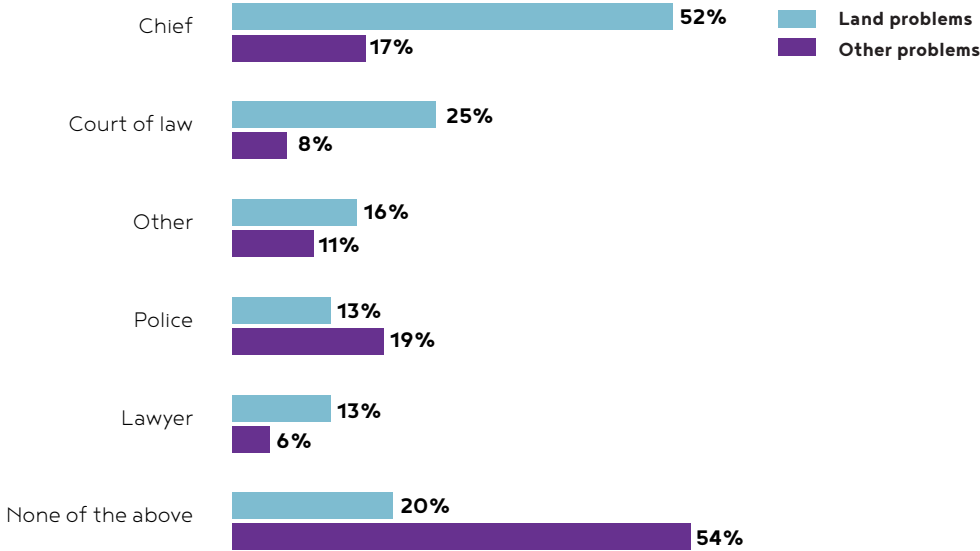
NON-INSTITUTIONAL NEUTRAL THIRD PARTY



Institutional mechanisms for dispute resolution

Chiefs and courts are the most widely used dispute resolution institutions to solve land problems. Overall, people rely more on formal institutions to solve their land problems.

INSTITUTIONAL NEUTRAL THIRD PARTY



LAND PROBLEMS

6

Most helpful justice journeys for resolving land problems

We also looked into what was the most helpful mechanism for resolving land problems.

	Land problems	Other problems
Chief	32%	13%
Court	23%	8%
Independently contacted the other party	8%	15%
Lawyer	5%	3%
Family members	4%	9%
Clan leaders	4%	2%
Elders	4%	3%
Administrative tribunal	3%	1%
Police	3%	14%
Other	15%	32%

The table on the left displays the most helpful institutions or actions for solving land related legal problems. Chiefs are the most helpful actors when trying to solve a land problem, followed by courts of law.

If we look at gender, we see the same proportions for the most helpful dispute resolution mechanisms. Respondents with a lower formal education and income level indicated that chiefs were more helpful than courts more often than other groups.



LAND PROBLEMS

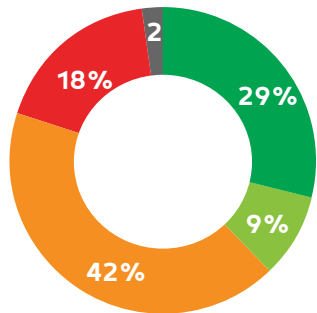
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Low rates of resolution of land disputes

.....

Only 38% of the respondents had their land problem solved in the past four years. More than 40% of the respondents report that their problems were unresolved at the time of the interview. Almost a fifth of the respondents had given up on achieving a resolution of their land problem.

HAS YOUR PROBLEM BEEN RESOLVED?

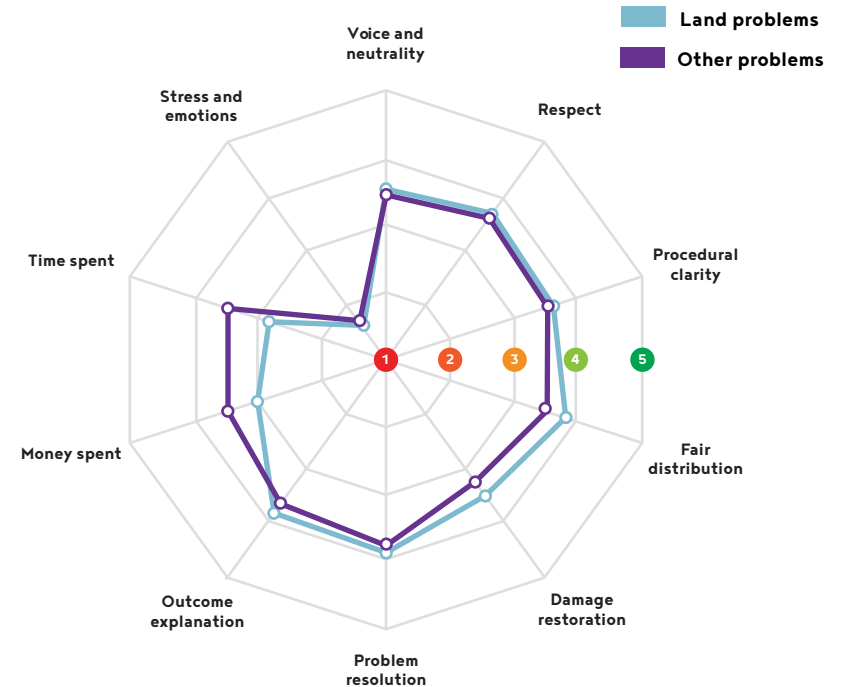


- Yes, completely
- Yes, partially
- No, the problem is on-going and is still in the process of being resolved
- No, and I am no longer taking any action to resolve it (I accepted that it will not be solved)
- Don't know

Evaluation of the justice journey

- Land problems cost more time and money to resolve than other legal problems.
- There are virtually no differences when we split the sample by gender.
- Users are marginally more satisfied with the process in terms of distributive justice and restorative justice.

EVALUATION OF LAND JUSTICE

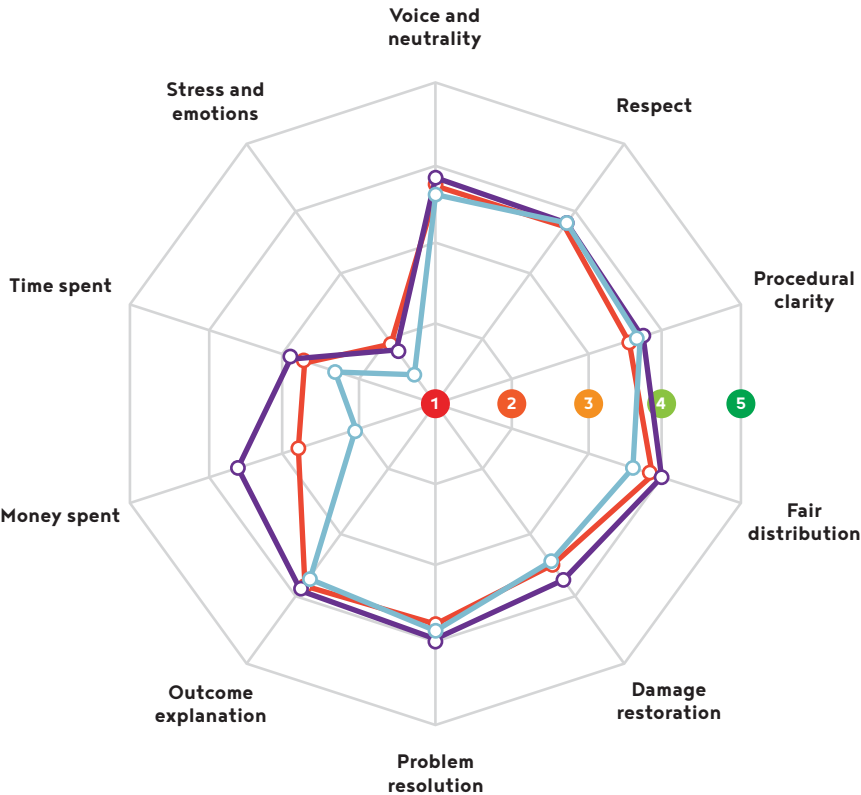


LAND PROBLEMS

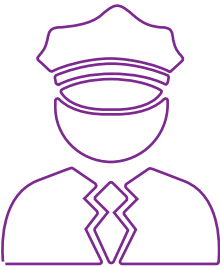
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EVALUATION OF DIFFERENT ACTORS

- Chiefs
- Police
- Courts



Here we compare the two top dispute resolution mechanisms used by Kenyans to resolve their land problems, chiefs and courts of law, to one that is less popular in land problems but very popular in other problems, the police.



Chiefs receive consistently higher scores on the quality of the procedure, the quality of the outcome and the costs of justice than courts and the police. They score particularly higher at being affordable and their ability to restore the damages caused by the problem. It should be noted that it is possible that chiefs and courts deal with different types of land problems. It is plausible that courts decide disputes which are more complicated legally and factually. Therefore, the chart should not be used as a direct comparison but as an indication of how the users of justice perceive the two institutions.

Courts are praised for the quality of their procedures. People appreciate the clarity and respect offered during the process, as well as the outcome. However, courts are rated poorly in terms of costs and stress. Distributive justice is also better rated for chiefs than for the courts. The police ranks in between these institutions, despite being perceived as less useful in these problems.



Conclusion



The most prevalent specific land problems are disputes with neighbours over boundaries, rights of way or access to property.

Land problems are more prevalent among rural inhabitants: they represent 17% of all their legal problems, while the proportion is smaller in urban areas (9%).

People with lower levels of formal education are more likely to report land problems.

Wealthier people report more problems related to disputes with neighbours about access to land, and, more noticeably, problems related to land titles. For lower income people, land ownership problems are more prevalent than for other groups.

Men are more likely to experience disputes with neighbours over boundaries, or access to land, while women face more ownership/use of land problems.

Land problems cause a lot of stress and mental health problems. They also cost a lot of time to resolve.

It seems that good legal information and advice is even more important for land problems than for other legal problems.

Chiefs, courts of law, and family members are the most helpful sources of information and advice.

People facing land problems take action to solve them more frequently than those experiencing other problems do.

Chiefs and courts of law are the preferred institutions to solve land problems.

Wealthier people prefer the courts, while lower income people prefer chiefs.

There are no differences in how men and women rate land justice.



7

Family Justice

Overview

Seeking legal information and advice

Dispute resolution

Domestic violence

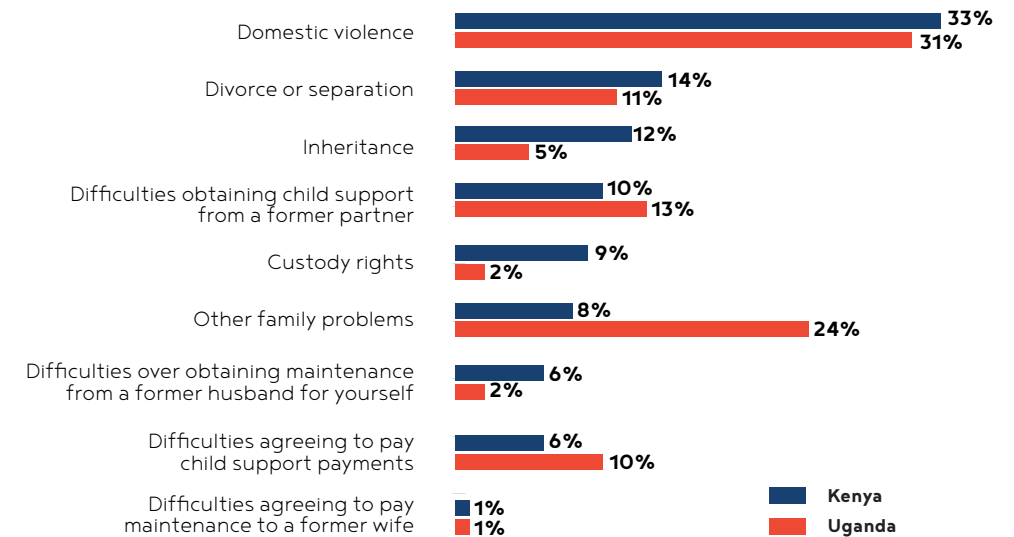
Introduction

Family-related legal problems are the third most serious problem category for people in Kenya. In research previously conducted in other countries, we have found that family problems tend to disproportionately affect women. For instance, in Uganda 28% of women declared to have a family problem, compared to just 10% of men. Domestic violence is a huge problem for Ugandan women. Women are almost 3 times more likely than men to suffer from it. Family issues also arise with higher frequency among young people.

The data shows that in Kenya family problems also disproportionately affect women.

- In Kenya, 20% of the women who reported to have a legal problem experienced a conflict related to family, compared to just 7% of men.
- Family problems are more prevalent among people with no formal education than those with formal education
- Family problems are also more prevalent among young adults (25-39) and middle-aged ones (40-64), compared to young people (18-24) and senior citizens (65+).
- Rural citizens report slightly more family problems (13%) than urban citizens (11%).

MOST SERIOUS INDIVIDUAL FAMILY PROBLEMS IN KENYA AND UGANDA



- Domestic violence is the most serious family legal problem. It is prevalent for both genders, but highest for women (35% of women with family problems report domestic violence, while 28% of men do).
- It is also more prevalent in particular stages of people's lives; young people [18-24] and senior respondents [65+] are more frequently affected.
- Domestic violence is less prevalent amongst the affluent; for them, inheritance is the most prevalent family justice problem.
- Inheritance becomes a more prevalent family justice problem as people grow older.

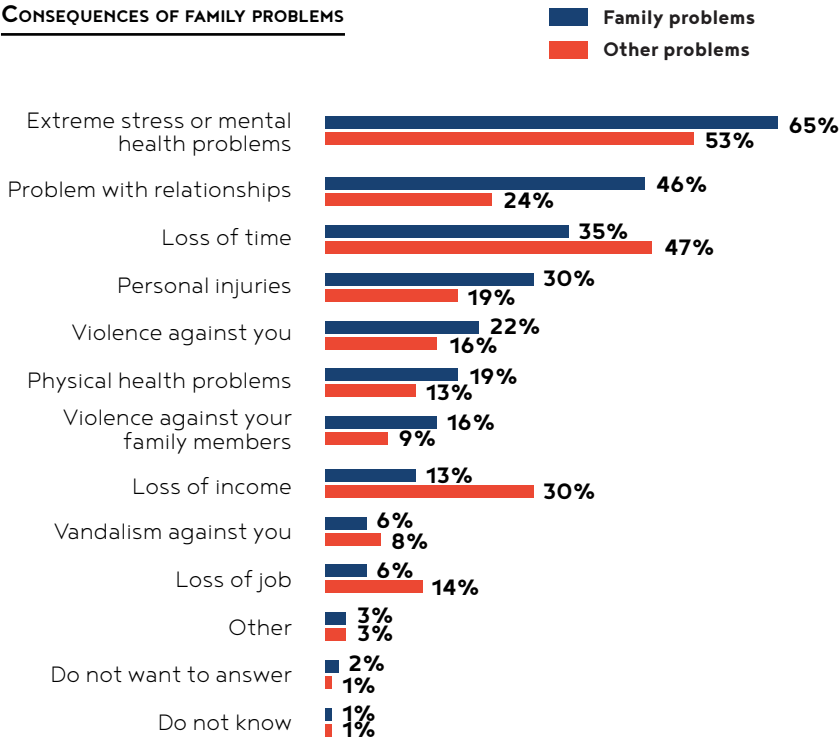
FAMILY JUSTICE

7

Impact and consequences

Family problems are very impactful. The graph below shows that the most common effects of experiencing problems are associated with emotional and physical wellbeing, rather than economic wellbeing. You can also see that compared to other problems, people report more injuries and violence. It is worrying that violence is more widely present among poorer respondents.

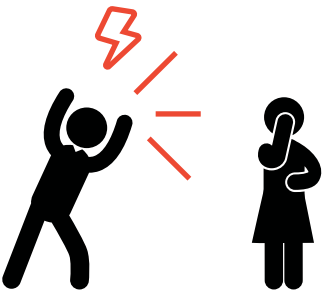
CONSEQUENCES OF FAMILY PROBLEMS



Impact level	Family Problems	Other Problems
Did not affect me at all	0%	1%
Affected me to a small extent	3%	3%
Affected me to a moderate extent	7%	11%
Affected me to a large extent	41%	37%
Affected me to a very large extent	49%	47%

Family problems have a big impact, as can be seen in the table above. 90% of the respondents with family problems said that the problem affected them to a large or very large extent.

People with a low socio-economic status are affected most severely by family justice problems: more than 66% of the respondents who report to not have enough money for the basic needs say that the problem affected their lives to a very large extent, compared to 43% of the rest of the survey respondents.



FAMILY JUSTICE

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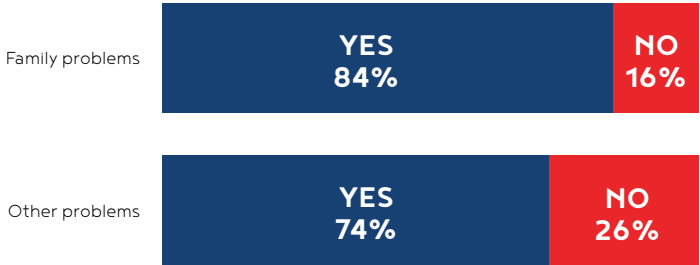
Legal information and advice for family problems

As with land problems, legal information and advice is important for people encountering family problems. The vast majority of respondents with family problems actively seek information and advice (84%).

Wealthier respondents tend to be most active; 95% of this group sought information and advice.



LOOKING FOR INFORMATION AND ADVICE: ALL SOURCES



Informal sources of information

- Family members are the most common informal source of information and advice. They are also seen as the most helpful source of information.
- Friends are the second most common source.
- Clan leaders and elders are also important sources.

There are no gender differences regarding seeking informal sources of information. Low income respondents tend to consult elders more frequently than the more affluent groups.

Informal sources	Family problems	Other problems
Family members	53%	22%
Friend/s	23%	23%
None of the options	22%	44%
Clan leaders	17%	8%
Elders	16%	11%
Church leaders	9%	2%
Colleagues	7%	10%
Cultural leaders	5%	2%
Neighbours	5%	9%

FAMILY JUSTICE

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Institutional sources of legal information and advice

- The institutional sources of legal information and advice that are used most frequently for family problems are chiefs, the police and courts.
- For affluent people, lawyers are the most common institutional source of information and advice. They also tend to involve courts of law and Kadhi courts more often than less affluent people.
- We observe that almost 60% of the low income respondents did not seek information and advice from any of the institutional sources listed in the questionnaire

Institutional sources	Family Problems	Other Problems
None of the options	45%	45%
Chief	33%	23%
Lawyer	10%	8%
Police	10%	21%
Court of law	8%	11%
Kadhi court	4%	0%
Other	7%	12%



FAMILY JUSTICE

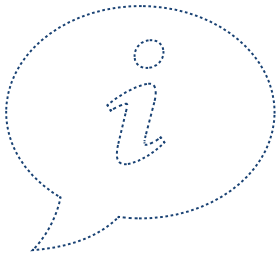
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Most helpful provider of legal information and advice

Family members are the most helpful providers of information and advice for family problems (32%). In comparison, only 12% of respondents with other problems identify family members as most helpful. The second most helpful source for family problems is chiefs. Other institutional sources, such as courts or police, are perceived as less helpful for providing legal advice for family problems.

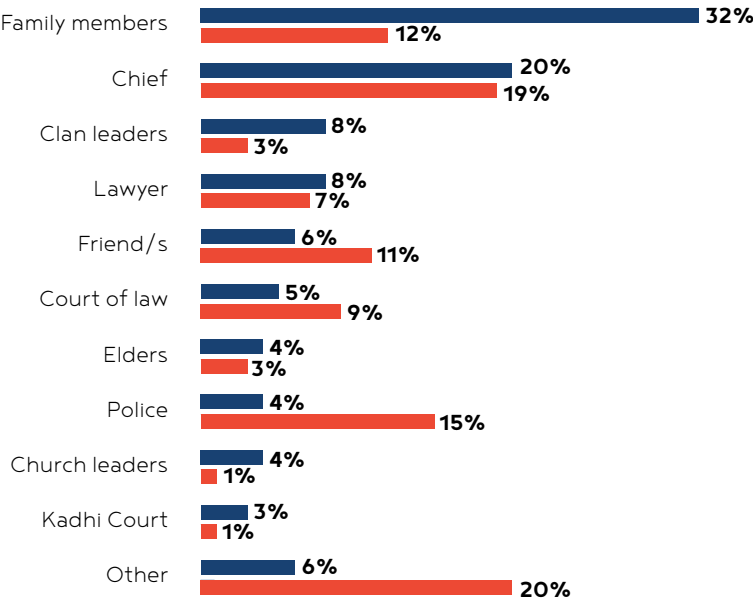
- Clan leaders and elders are more helpful for the lower income group than for higher income respondents.
- More affluent respondents identify lawyers as the most helpful source of legal information and advice.

The most frequently reported reason for not seeking legal information and advice among respondents with family problems is that they did not believe that legal advice would have helped them to solve the problem (33%). In contrast to that, the most frequent answer among respondents with other legal problems is that they did not think that anything could be done (31%).



MOST HELPFUL AT PROVIDING INFORMATION AND ADVICE

Family problems
Other problems



FAMILY JUSTICE

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Dispute resolution mechanisms for family problems

People facing family problems are more likely to take action than those that experience other problems.

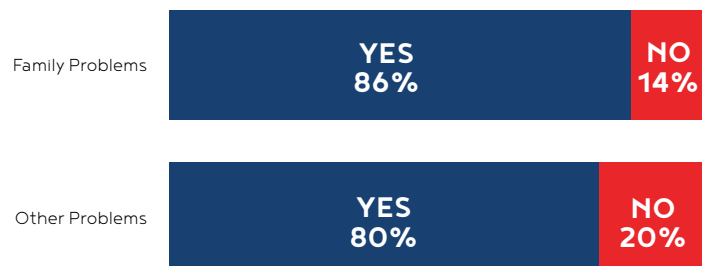
- More affluent respondents tend to take action more often.
- Men are slightly more likely than women to take action to resolve their disputes.

- What is worrying is that about a fifth of the respondents who faced domestic violence as their most serious legal problem did not take action to resolve the situation.

Reasons for not taking action

- The fear of aggravating the relationship with the other party or of reprisals seems to be more of a reason not to take dispute resolution action than with other problems.
- On the bright side, fewer people were deterred by the idea that nothing could be achieved.

TAKING ACTION TO SOLVE FAMILY PROBLEMS

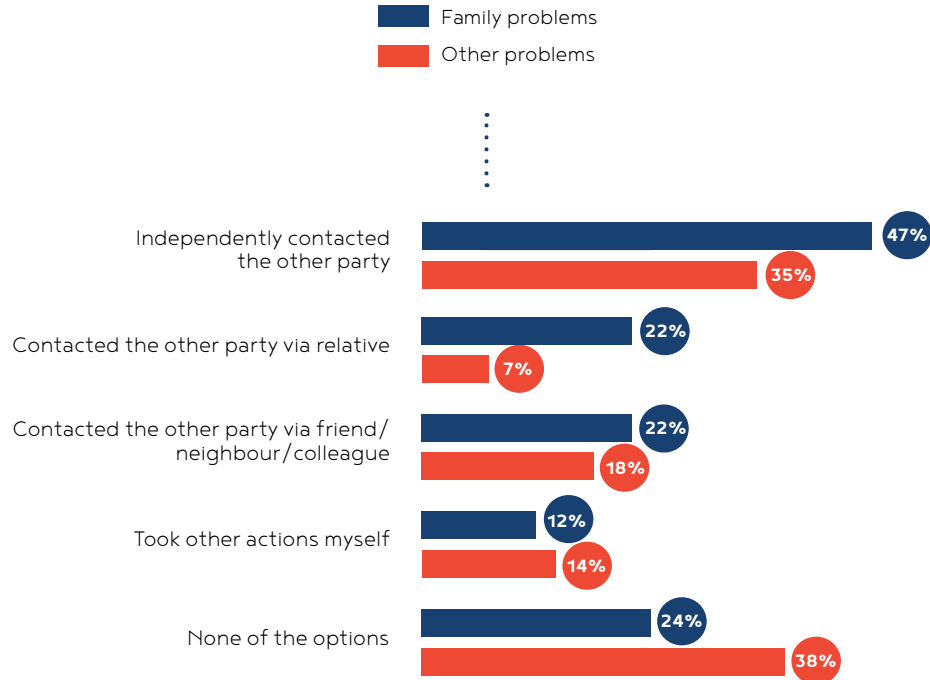


FAMILY JUSTICE

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Own actions

People with family problems are more likely to take their own actions to resolve their problems than those with other problems.

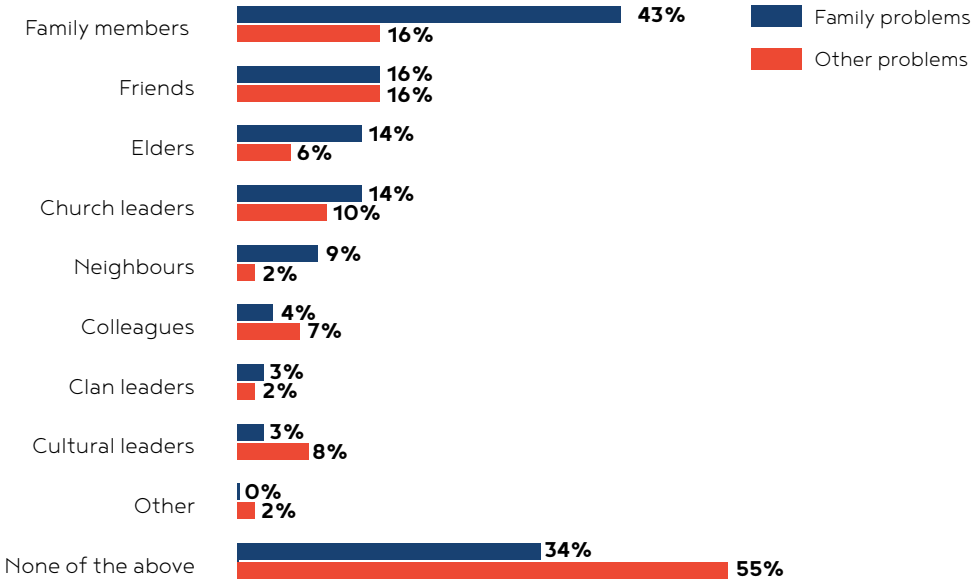


Non-institutional neutral third parties

Our data show that among non-institutional dispute resolution mechanisms, respondents with family problems are most likely to involve family members. Friends, elders, and church leaders are less likely to be involved. Note that family members are on average three times more likely to be involved to solve a

family problem than to solve other legal problems.

Poorer people are more likely to involve elders and church leaders than any other socio-economic group.

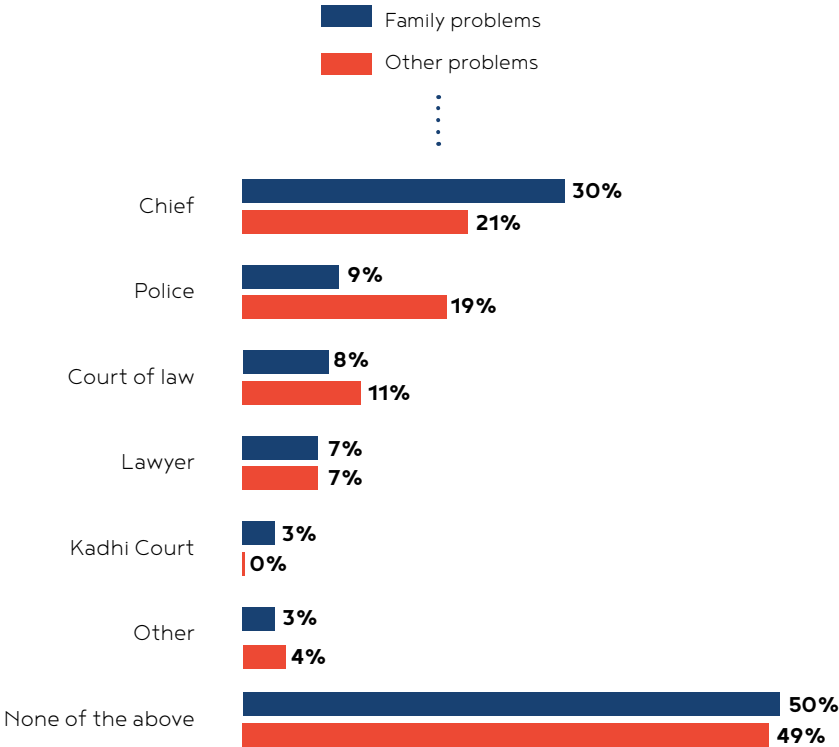


FAMILY JUSTICE

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Actions via institutional neutral third parties

The users of justice are not very likely to involve institutional neutral third parties in the resolution of family problems. If they do, the most popular choice is chiefs (34%). It is noteworthy that people are substantially less likely to act via the police in family problems, compared to other problems.



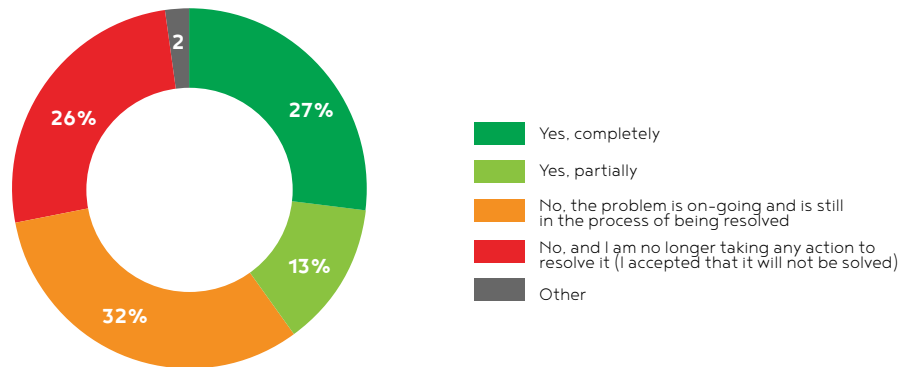
Most helpful to solve the problem

The table below shows that family members, chiefs, and independently contacting the other party are the most helpful options when trying to solve a family justice problem. It is noticeable that the police and courts are deemed less helpful in family problems compared to other problems.

	Family Problems	Other Problems
Family members	20%	6%
Chief	17%	17%
Independently contacted the other party	14%	14%
Clan leaders	7%	2%
Court of law	6%	11%
Elders	6%	2%
Police	4%	13%
Lawyer	4%	4%
Contacted the other party via relative	4%	2%
Contacted the other party via friend / neighbour / colleague	3%	4%
Other	16%	27%

FAMILY JUSTICE

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HAS YOUR PROBLEM BEEN SOLVED?

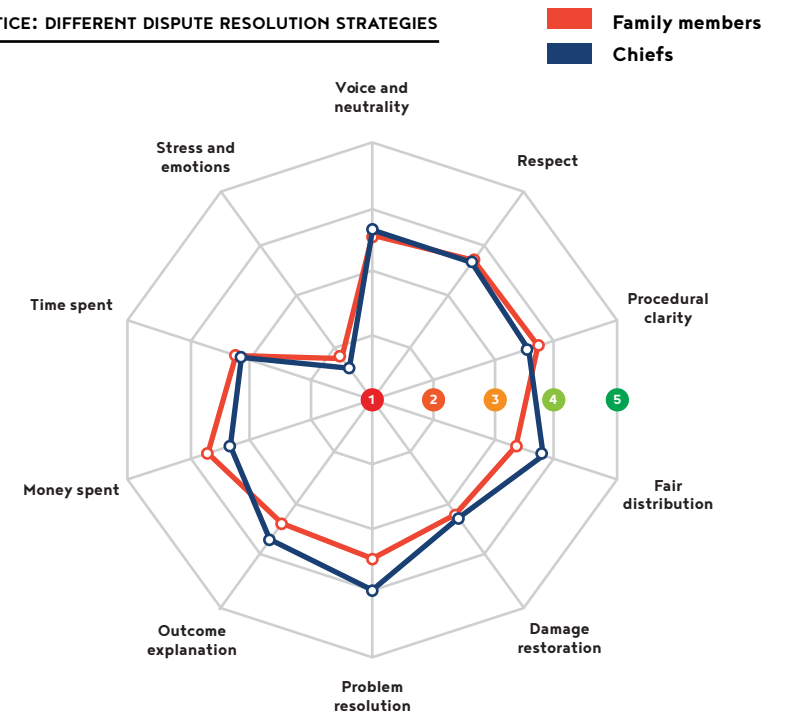
- 40% of the respondents had solved their problem within four years.
- One in four respondents gave up pursuing resolution of the family problem.
- Using chiefs as a dispute resolution strategy resolved (completely or partially) 45% of the problems, family members solved 37%, and independently contacting the other party solved 23% of the problems.



Evaluation of costs & quality of Justice Journeys

The respondents who are facing family problems do not experience the justice journey differently than those who face other legal problems. The rates for all dimensions except for stress and emotions are average. The only noticeable

difference is that people with family problems are slightly less satisfied with the time aspect of the journey. Similarly, no differences appear when we split the sample by gender.

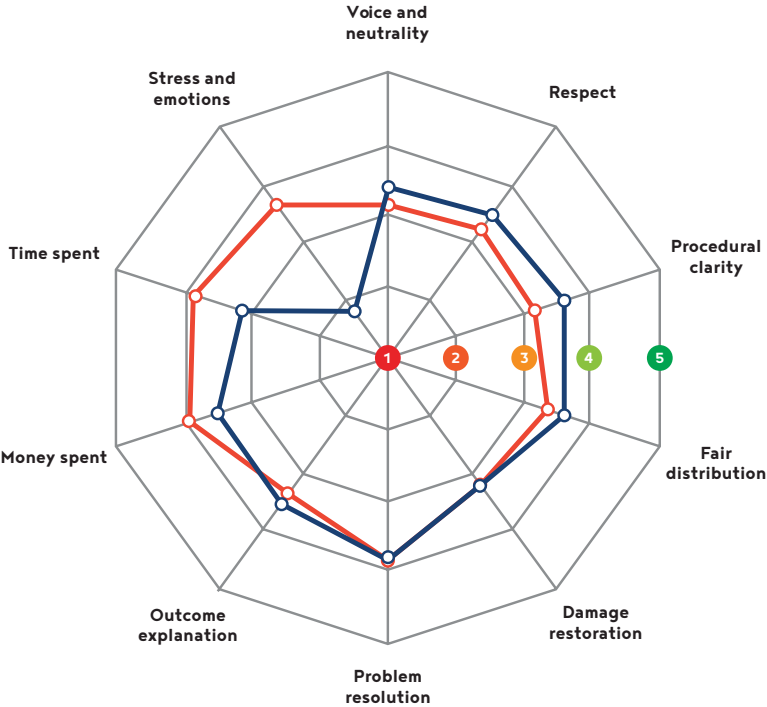
FAMILY JUSTICE: DIFFERENT DISPUTE RESOLUTION STRATEGIES

FAMILY JUSTICE

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COMPARING FAMILY JUSTICE IN KENYA AND UGANDA

Kenya
Uganda



More interesting is the fact that if we split the data by dispute resolution mechanism, chiefs are better rated in outcome explanation, problem resolution and fair distribution, compared to family members.

International comparison

Family problems in Kenya cause significantly more stress and emotions than family problems in Uganda.

Conclusion

Family justice problems are one of the most impactful and prevalent legal problems in Kenya.

They disproportionately affect women, young and old citizens, as well as people with a low level of formal education.

Domestic violence is the most prevalent specific problem in this category, and women are the most affected group.

Family problems tend to severely affect people; their effects are more related to emotional and physical wellbeing than economic wellbeing.

For the lowest income group, informal living arrangements play more of a role in family justice problems than with other income groups.

Most people look for legal information and advice (84%) and take some form of action to resolve their problem (86%).

Among formal dispute resolution mechanisms, lower income groups rely most often on chiefs, while higher income groups rely more on lawyers and courts.

The most helpful action to solve the problem is acting via other family members, as well as independently contacting the other party.

People with family problems do not experience the costs and quality of the justice journey differently than people who experience other legal problems.

Disputants in dispute resolution mechanisms organized by chiefs receive substantially better outcomes in terms of fair distribution and problem resolution than people who involve family members to resolve the problem.

8

The Justice Journeys of People from Low-income Households



Introduction

One of the key roles of a well-functioning justice system is to protect vulnerable groups within a society. The justice system should offer a way of addressing power imbalances and provide access to justice for all. In this chapter we investigate to what extent the income level of people affects their justice journeys. The different income groups will first be defined and then we will take a closer look at the paths to justice available to them.

How we define low-income households

In our Justice Needs and Satisfaction study we asked the respondents which of the following four statements best describes their family's financial situation:

- We do not have enough money for the basic needs such as food and energy
- We are able to buy what is necessary but buying clothes is difficult

- We are able to buy food, energy and clothes but buying goods for longer use is a challenge
- We can afford almost whatever we want – car, housing and other things

On this basis we divided the respondents into four groups.

- Those who self-identify as low-income are mostly rural residents, have significantly lower formal education levels and are less likely to be employed.
- The higher-income families, on the other hand, are more likely to live in urban areas and have jobs. Over 75% of the highest-income families report a medium or high formal education level, whereas for the families from the lowest-income category this proportion is just 12%.

Income	Level of Education			
	None	Low	Medium	High
Lowest-income	24%	65%	9%	3%
Low-income	7%	69%	20%	4%
High-income	3%	21%	36%	10%
Highest-income	1%	21%	36%	43%
	Urban		Rural	
Lowest-income	13%		87%	
Low-income	27%		73%	
High-income	31%		69%	
Highest-income	50%		50%	
	Engaged in gainful employment?			
	YES		NO	
Lowest-income	57%		43%	
Low-income	67%		33%	
High-income	80%		20%	
Highest-income	94%		6%	

JUSTICE JOURNEYS

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Prevalence of legal problems

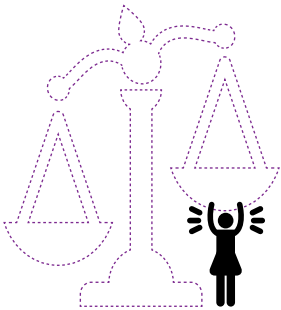
In the graph on the right, the prevalence of legal problems is linked to the four income groups:

It is interesting to note that the higher income groups report legal problems slightly more often. At the same time, we know that there are millions of lower-income Kenyans who also encounter situations in which the law can be used to provide a fair solution. The lower-income respondents tend to have a lower level of formal education. It is therefore possible that those who have less income are less capable of recognizing a legal problem. Although our methodology does not expect that people recognize the legal aspects of a dispute, disagreement or grievance, individuals with a higher level of formal education may be more likely to conceptualize a situation as a legal problem.

It is also important to keep in mind that for the lowest-income group co-occurrence of problems is much higher than it is for the other three income groups. So, when an individual from the lowest-income group does experience a legal problem, there is a higher chance that another legal problem will also manifest itself (for example, divorce connected with housing problems or debt problems connected with a crime problem).

To further explore this issue, we will have a look at the categories and instances of legal problems that low and high-income people report.

EXPERIENCE WITH LEGAL PROBLEMS



JUSTICE JOURNEYS

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Types of problems

There are slight but telling differences in the legal problems that low and high-income Kenyans encounter. All four groups experience the same three problems most often, albeit with some differences in the prevalence, namely crime, land and family disputes.

However, those who self-identify as lower-income more frequently experience family disputes and disputes connected with children, disagreements between neighbours, money-related problems, accidents, grievances connected with public services, and obtaining ID documents.

When looking at the differences between rural and urban lower-income respondents, we find that land problems are more common in rural areas (16% compared to 5%) and crime is more common in urban areas (27% compared to 16%).

On the other hand, higher-income Kenyans encounter more legal problems related to housing, particularly as owners and landlords, but also as tenants. The

group that self-identifies as highest-income also encounters crime less often than the other groups.

Multiple problems

Differences between low and high-income respondents also appear when we explore the individual categories of legal problems. Focusing on the three most prevalent categories, we find that cattle raids are problematic for the lowest-income group in the crime category. Land problems tend to co-occur particularly for the lowest-income group, specifically problems related to use of land, disputes with neighbours over boundaries and land grabbing. For family problems, domestic violence is more common among lower-income families, while inheritance problems and alimony problems are more prevalent among the highest-income group. Another observation worth highlighting is the fact that lower-income people seem to have more problems obtaining their ID documents.

MULTIPLE PROBLEMS

	Lowest income	Low income	High income	Highest income
Crime	23%	21%	22%	16%
Land problems	22%	14%	17%	21%
Family	20%	15%	13%	17%
Employment	11%	11%	13%	10%
Neighbours	15%	12%	10%	7%
Money	10%	10%	12%	7%
Accidents	8%	9%	6%	4%
Public services	8%	6%	5%	6%
Obtaining ID	8%	6%	4%	2%
Consumer problem	6%	3%	4%	5%
Children	7%	5%	3%	2%
Housing/Rented Property/Tenant problems	2%	4%	4%	4%
Business related problems	3%	2%	3%	7%
Social welfare	4%	2%	2%	3%
Housing/Property problems	2%	1%	1%	4%
Housing/Rented Property/Owners problems	1%	2%	1%	7%

JUSTICE JOURNEYS

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Impact of legal problems



There are no major differences in the impact of the legal problems on low and high-income respondents. Around 85% of the individuals from both groups say that the legal problem affected them negatively to a large or a very large extent. Land problems, housing, and obtaining ID documents have a somewhat harsher impact on the lower-income groups compared to the higher-income groups.

Respondents from the lower-income group are more likely to report that they experienced personal injuries, violence, and physical health problems as a result of the problem. For the higher-income groups we find that loss of time and problems with relationships are more common impacts.

Legal information and advice

We find that both the lowest and highest-income groups rely more on family members for information and advice than the two groups in between. Lower-income respondents also rely more on elders (15% for the lowest-income group). The highest-income group is about twice as likely to seek the advice of colleagues (19%) than the other groups.

An interesting and worrisome picture emerges from the responses to the question about the use of institutional sources of information and advice. First, about half of the lower-income respondents say that they did not receive legal information or advice from such sources. Only 43% of people from the high-income category say that they have not used such sources, while only 22% say so in the highest-income group. This is a very substantial difference which indicates different levels of access to justice for high and low income groups in Kenya.

Most striking is the stark difference in the use of lawyers and courts among the different income groups with legal problems. Less than 5% of lower-income Kenyans go to a lawyer for information and advice, while less than 8% go to courts. For high-income respondents these numbers are slightly higher, at 9% and 10% respectively. However, for the highest-income group 28% indicate going to a lawyer and 24% indicate going to the courts. These differences mark a significant disparity in the access to competent legal information and advice.

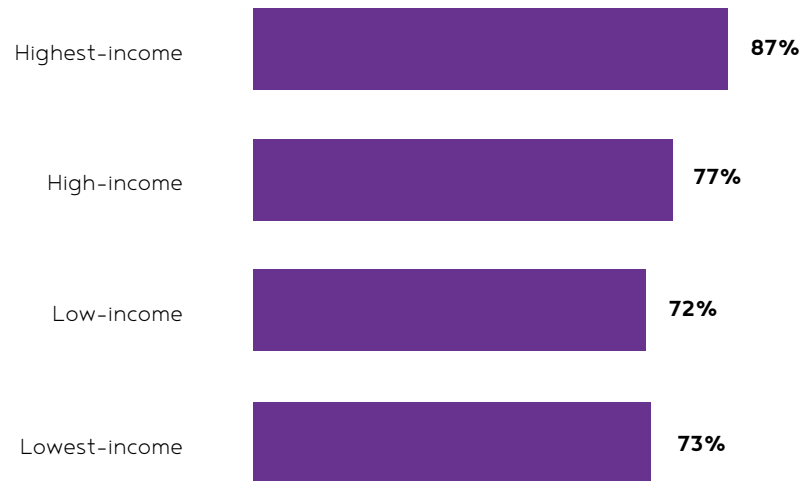
In general, lower-income people seek legal information and advice less frequently when they face a legal problem, as illustrated in the graph on the next page.



JUSTICE JOURNEYS

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SEEKING INFORMATION & ADVICE FOR LEGAL PROBLEMS



Interestingly, about the same number of people across the four groups who did not seek legal information and advice say that they remained passive because they did not think that anything could have been done. Lack of money is a bigger issue for the lower-income Kenyans,

which is to be expected. Lower-income people are also much more likely to indicate not knowing what to do to receive legal advice or not being aware of opportunities for receiving assistance.

Dispute resolution strategies

Kenyan people are active in looking for resolutions to their problems. On average 81% report that they took action to find a resolution to their legal problem. Lower-income groups, however, are at significantly higher risk of simply abandoning their legal problem and doing nothing. One in four of the lowest income group who encounter a problem say that they did not act to solve the problem. For the highest income group this number is only one in ten.

Despite the difference in the responses to legal problems, the low and high-income respondents report only slightly different rates of resolution of the legal problems. Around 43% of the lower-income and 49% of the higher-income groups say that the problem has been resolved completely or partially. The difference between the lowest and highest-income groups is quite substantial, however, at 37% and 51% respectively.

TAKING ACTION



JUSTICE JOURNEYS

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Strategies for responding to legal problems

Lower-income people are significantly less likely to engage an institutional dispute resolution provider than higher-income respondents. This is especially true for courts and lawyers.

On the other hand, the lowest-income people go to chiefs slightly more often. This clearly indicates that they are dependent on dispute resolution processes that are close to the communities.

	Lowest income	Low income	High income	Highest income
Chief	24%	22%	22%	16%
Police	18%	17%	17%	20%
Court of law	9%	8%	9%	20%
Lawyer	2%	4%	7%	23%
Assistant-Chief	3%	3%	4%	15%
Other	1%	3%	2%	10%
County Government	3%	1%	2%	3%
Administrative Tribunal	1%	1%	1%	0%
Employer	0%	0%	1%	2%
Central government organisation	0%	0%	1%	2%
Kadhi Court	0%	1%	0%	1%
NGO	0%	1%	0%	1%

	Lowest income	Low income	High income	Highest income
Family members	23%	19%	18%	25%
Friends	17%	14%	16%	28%
Church leaders	13%	9%	11%	6%
Cultural leaders	6%	6%	8%	9%
Elders	11%	7%	6%	6%
Colleagues	8%	5%	7%	16%
Neighbours	3%	2%	3%	1%
Other	2%	2%	2%	5%
Clan leaders	2%	2%	1%	2%

Furthermore, lower-income people are not more reliant on non-institutional mechanisms, such as clan leaders and elders, than those who are better off.

This concurs with the finding that the higher-income respondents are significantly more likely to undertake their own actions in order to find a fair

resolution to the legal problem. Having a larger social network helps them to deal with the legal problems in their own way. They contact the other party significantly more often themselves or through a proxy than those in the lower-income groups.

	Lowest income	Low income	High income	Highest income
Independently contacted the other party	30%	36%	37%	51%
Contacted the other party via friend/ neighbour/colleague	15%	17%	20%	27%
Took other actions myself	15%	11%	14%	26%
Contacted the other party via relative	13%	7%	9%	12%

JUSTICE JOURNEYS

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Reasons for not taking action

There are Kenyans who encountered a serious legal problem and preferred to do nothing. 37% of the lower-income groups say that they remained passive because they did not believe in their capabilities to resolve the problem. For the higher-income Kenyans this percentage is much lower, 30% and 27% for the two higher-income groups, respectively. Interestingly, the lower-income respondents report slightly more often that the main reason for doing nothing is that they did not know what to do to resolve the issue (15% higher-income; 24% lower-income). In a similar fashion, lower-income Kenyans

are also more likely to say that they did not pursue justice because of a lack of money (8.5% higher-income; 16.3% lower-income). We also observe that 28% of Kenyans from the lowest income group say they did nothing because the other party was more powerful, whereas among the highest income group this is only 13%. This indicates that the justice system is not seen as an equalizing force by a sizable part of the population.

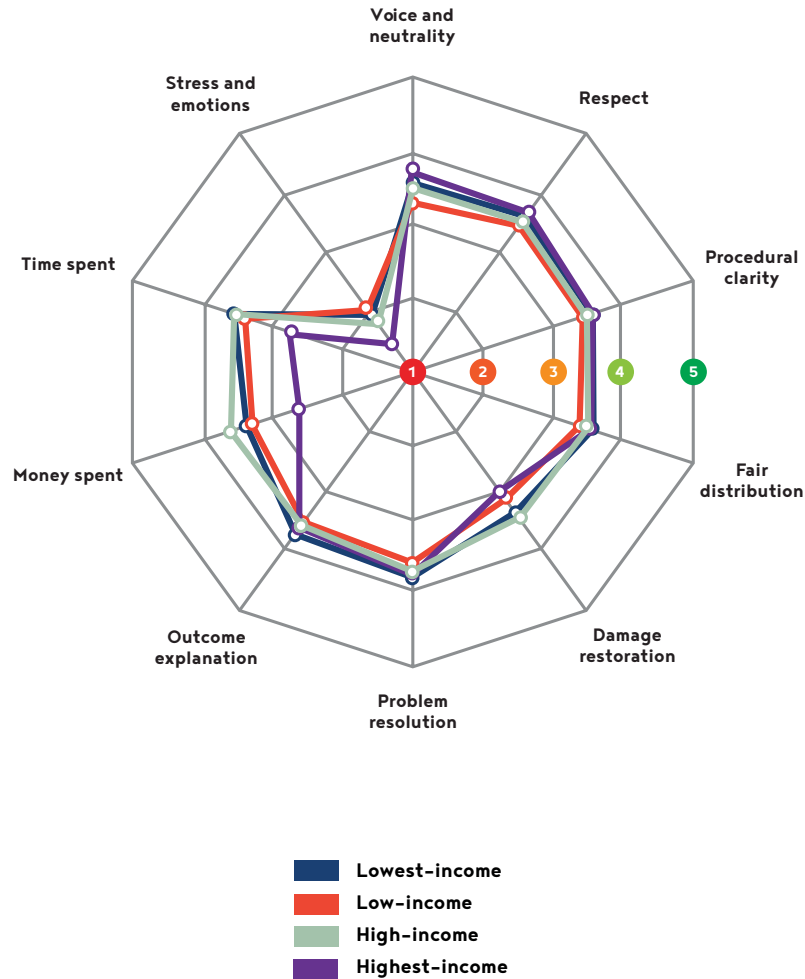
Costs, quality of process, quality of outcome

Based on how people perceive and evaluate the fairness and costs of the justice journeys, we can conclude that the outcomes for the different income groups are not all that different. The highest-income group experiences the justice processes as more stressful and spends more time and money to resolve a problem on average. Since the above dimensions measure subjective assessment, it could very well be the case that the different groups have different expectations from the procedures. Keeping this caveat in mind, it is clear that despite the fact that the groups follow very different paths in their justice journeys, the outcomes are evaluated approximately the same across the groups.



JUSTICE JOURNEYS

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Conclusion

Respondents from the different income groups experience problems at comparable rates but they encounter slightly different types of problems.

Lower-income people are significantly less likely to receive legal information and legal advice from competent sources. The higher-income respondents are significantly more empowered in terms of legal information and advice.

Higher-income respondents are significantly more likely to resolve their legal problem with the help of an institutional neutral third party. Being in the highest-income group increases the chance that someone will involve a lawyer by over ten times compared to someone from the lowest-income group.

Lower-income Kenyans are generally less confident that they can successfully deal with legal problems.

Despite the differences in the justice journeys of the different income groups, the quality of the process and outcomes are evaluated roughly the same across the four income groups.

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The Voices of the Justice Leaders in Kenya

Justice transition processes
Quality of justice processes
Costs

Introduction

Parallel to our Justice Needs and Satisfaction survey, we interviewed 30 individuals who occupy high-level positions in Judiciary Kenya. Our primary goal was to explore and understand their views, experiences, and expectations regarding how people navigate their justice journeys, and the possibilities for improvement. To expand the range of views, we decided to aim for two groups: justice leaders, those who are in a position of decision making, and justice providers, those who are on the service's front lines.

In the next paragraphs, we provide an analysis of those semi-structured interviews. Our intention is to map out the views of the justice leaders in Kenya on the challenges and opportunities in delivering fair resolutions to people's problems. The analysis covers the quality of the justice processes, the quality of the outcomes, and the costs of justice. In that way, we will put the views of the justice stakeholders with the perceptions of the Kenyan people side by side.



Justice transition processes in Kenya

2010 Constitution

The 2010 Constitution affects profoundly the justice landscape in Kenya. Access to justice, along with many other fundamental rights, has been explicitly enshrined in Kenyan primary law. Article 48 clearly envisions that the Kenyan state is the duty-bearer responsible for operationalizing the right to access to justice.

Article 48

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

Article 159, par. (2):

In exercising judicial authority, the courts and tribunals shall be guided by the following principles:

- (a) justice shall be done to all, irrespective of status;
- (b) justice shall not be delayed;
- (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted.

In 2016 a Legal Aid Act put into place a system of legal aid designed to guarantee the right to access to justice. Many of the justice leaders in the judiciary link the 2010 Constitution to a new trend of increased demand for justice. The comprehensive Bill of Rights empowers Kenyan citizens to actively pursue their legal rights.

"What has happened over the last six years, is that there has been a lot of demand [for justice], mainly because of the new Constitution, so a lot of Kenyans are coming to court. [...] if it wasn't for the fact that we were able to recruit more officers and staff, we would not have been able to meet this demand. We are now able to meet this demand because of the numbers and we have the facilities in terms of more courts which have been set up." Senior Judge

VOICES OF JUSTICE LEADERS

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Within the justice system there is an impression of a massive rise in the number of court cases. We do not have baseline data but our study finds that 63% of Kenyans had to deal with one or more serious legal problems in the past several years. As discussed above, this is a rather high prevalence rate when compared to other countries.

“[...] you find the amount of cases filed from that time [before 2010] to now is almost, I would say five times or ten times what we had before.” Senior Judge

Besides the enhancement of the constitutionally promulgated fundamental rights, other factors that contribute to the perceived increase of court cases in Kenya are the rising awareness of rights as well as the evolving and improving institutional framework.

“The population continues to grow, people know about their rights and the more you try to deal with the backlog, the more it increases.” Senior Judge

At the same time, this rising awareness is not equally distributed across society. Interviewees often expressed concerns about the lack of sufficient knowledge and understanding of laws and rights. This concern is particularly strong for vulnerable social groups such as poor, uneducated people living in remote areas etc.

“There is also the challenge of access in terms of just knowing, the information needs of Kenyans, they don't have the information. They might have a problem but they don't know this is a problem that ought to be resolved in a court.” Senior Judge

According to the leaders of Judiciary Kenya, there are more dispute resolution institutions nowadays. Several respondents highlighted the presence of courts even in the “remotest parts” of the country. Many more judges and magistrates are serving the justice needs of the citizens. Many respondents gave the example of the mobile courts as a good practice for delivering justice to people and communities that cannot overcome the most rudimentary barriers to justice. Nonetheless, as we will discuss below, there are serious concerns about the human resources available to the Kenyan judiciary.

The judiciary in 2017 is seen as more open and willing to listen. Leadership, from current and previous Chief Justices and other senior members of the judiciary, explained the main factors in the increasing transparency and accountability of the system:

“One of the very positive things that has happened over the years is the openness. Previously the judiciary played the old school game which is a judge speaks only through their judgments. You do not speak to the press. If you are being bashed and so on you kept quiet.” Senior Judge

Included in the increasing culture of openness and transparency are the efforts to integrate self-assessment, performance measurement and management in the functioning and evaluation of the judiciary.

“Judges themselves set goals to be accomplished in a year. We now have a Performance Measurement and Management Unit (PMMU), which is a mechanism for collecting data to see if they are meeting their targets.” Industry representative

Despite the numerous positive trends, the interviewed leaders of the Kenyan judiciary outlined challenges that impede the processes of justice delivery. Delayed justice and the backlog of cases in the courts are clearly the most serious problems for many senior judges, administrators and attorneys. Below we discuss the problem of delayed justice from the perspective of both the users and justice leaders.



“The biggest problem is maybe the backlog that we are still experiencing despite the fact that the Chief Justice and the Judicial Service Commission have tried to increase the number of judges” Advocate at the High Court

VOICES OF JUSTICE LEADERS

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“What has to be done? First, reduction of backlog. Because cases themselves, if you follow them through the litigation procedures, you cannot complete them in a year. A year would be very, very speedy. On average I think it's about five years.” Senior Judge

Allegations of corruption are bothering many of the leaders of Judiciary Kenya. It should be noted that numerous interviewees are aggrieved that there is a perception of corruption, which oftentimes is based on hearsay and media speculation. As discussed above only around 10% of the serious legal problems in Kenya are actually referred for resolution to the court system.

“We all know that the perception out there is that you can find your way...you know that you can bribe your way through justice. That's why you see instant justice like on criminals at the lower level whereas I've stolen billions but I'm still free and I ...I can walk around.” Advocate at the High Court

Another challenge on the systemic level is the independence of the judiciary as a whole and the individual judges, magistrates, DPP (Department of Public Prosecution) staff, police investigators and officers and other stakeholders. The interviewed leaders clearly recognize that rule of law and justice are only possible when individual and social disputes are resolved by an objective and unbiased third party.

“The courts should be able to independently come up with rulings without fear of threats

by the executive, or parliamentarians saying that something being discussed in parliament can't be adjudicated, they should really be that independent because if we don't have it, then we lose the fight.” Advocate at the High Court

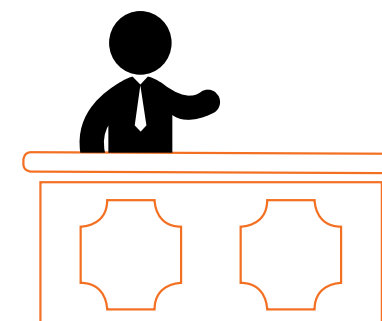
Many other challenges were outlined in the interviews with the justice leaders. Lack of proper ICT systems decreases efficiency and limits the opportunities to scale. Despite the Legal Aid Act of 2016, a significant proportion of the litigants in the Kenyan courts are unrepresented. According to some interviewees, nine out of ten individuals in appellate cases are not represented by a qualified lawyer. The fact that the ability to access justice is directly related to socio-economic status is particularly damaging to the social fabric of Kenya. Other barriers, such as monetary costs, physical infrastructure and knowledge, impede access to justice.

Given the increasing demand for justice in Kenya and the heightened expectations of the users, the biggest challenge is whether the Kenyan judiciary can provide high quality justice services to meet the demand.

“Legal disputes have grown exponentially and are continuing to grow with the new Constitution and we can't just afford to do business as we used to before and of course the public is more demanding, they want more action like yesterday; they want justice, they want a fair process.” Senior Judge

“More importantly, as a training institute quality justice has to be delivered. Now what do I mean by quality justice? The judges, the judicial officers and the judicial support staff must render effective and fast justice to the people of Kenya.” Senior Officer, Judicial Training Institute

In the next sections we discuss how the leaders of the Kenyan justice system perceive the costs and quality of the available justice journeys.



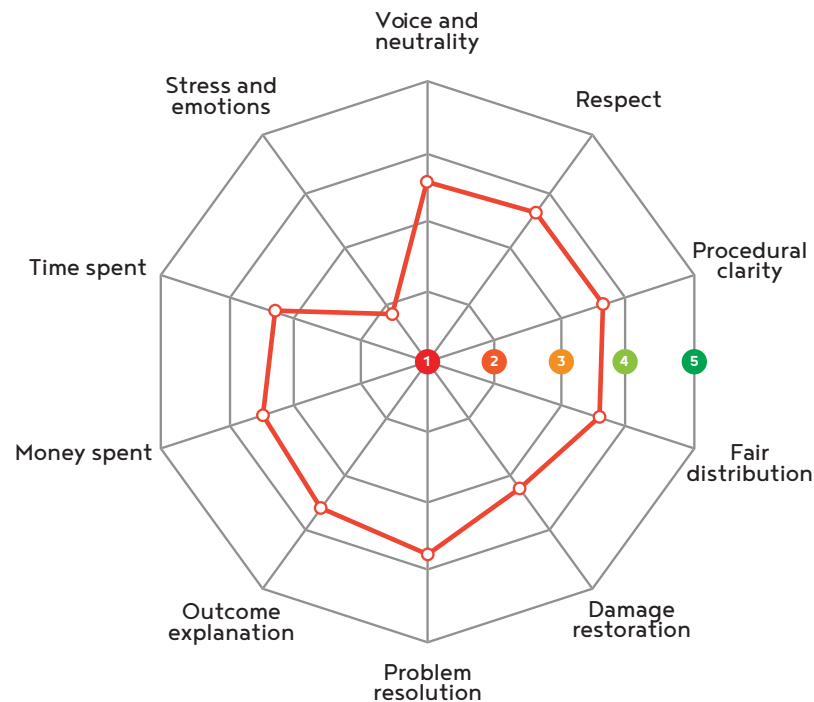
Leaders' views on the quality of procedures, quality of outcomes and costs of justice

For the people of Kenya justice is not an abstract notion. As we saw above, there are millions of legal problems that have to be resolved every single day. An accessible, affordable, quick and fair justice journey is needed for each of these problems.

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The chart below shows how the users of justice perceive the quality of the processes, the quality of the outcomes and the costs of formal and informal justice journeys. Tellingly, during the Triangulation Workshop in Nairobi and the individual interviews, the justice leaders recognized many of the problems of the users of justice. Below we analyse the high and low points of the three dimensions of the justice journeys: quality of the procedure, quality of the outcome and the costs of justice.

GENERAL EVALUATION OF JUSTICE PROCESSES

Quality of justice processes

Several related topics emerge when the leaders of the justice chain in Kenya deliberate about the formal and informal processes:

- Delayed justice delivery
- Independent and neutral third parties who give the parties opportunity to express their interests and listen to these interests
- Clear process information
- Unrepresented litigants
- Linkages between formal and traditional justice

Justice delayed is justice denied. Slow justice is the most frequently mentioned concern in the interviews with justice leaders. Not only from a systemic perspective but also as a problem in specific justice processes. Long processes are perceived as low quality.

“Delay is a big thing and delay occurs in so many ways. The judiciary gets bashed 99% by the public. To the public the courts are responsible for discharging justice.” Senior Judge

“People want not instant justice but justice within a reasonable time.” Advocate at the High Court

Interviewees from the Kenyan judiciary recognize the need for listening to the parties in a court proceeding. Justice processes have to be clear and understandable. We see in the chart above that all dimensions of the process, including the procedural clarity, receive from the users of justice scores in the middle of the scale. One of the most important procedural functions of a neutral decision maker is to explain the process to the participants. This gives the parties certainty and predictability. Sufficient and timely procedural information also signals to the disputants that the neutral decision maker values them as respected members of society.

The quote below expresses concern that some traditional justice mechanisms might fail the disputants in terms of voice. Therefore, the respondent emphasizes the mission of the judiciary to deliver justice through procedures in

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which all participants are allowed to express needs, present evidence and make claims and statements.

“In fact you’ll find in some communities the parties are not even supposed to attend such a session. So if you are the person affected and you are not allowed to attend, then it means that it’s not working for you. But for the judicial process, I think we are able to treat everyone fairly, we pay special attention to vulnerable groups and these are mainly children and women and elderly persons and unrepresented litigants. We will always ensure that we bend over backwards to ensure they have attended, we explain to them the process, they are aware of the steps and we give them enough time to actually do what they are supposed to do and bring their papers to court. But I know for some the court process is also quite alien because they don’t understand the procedures. So you have to explain to them when they first appear in court, they stand up and say ‘oh we want to sell part of the land so that we can pay the surveyor’ you have to explain to them that look you can’t just stand up in court and tell me that, you have to file an application, take it to the registry, then get a date. So these procedures are really alien to most Kenyans and especially if they are unrepresented.”
 Senior Judge

Well explained justice procedures are central tenets of access to justice. An interviewee from the judiciary identifies a clear causal link between the clarity of procedure and the willingness to embark on a justice journey.

“A Kenyan can file a claim on their own at the registry because they are now understanding simple procedures

of how to lodge, how to file a case and how to prosecute a case.” Senior Court Administrator

Reassuringly, other respondents share this feeling that rich and timely process information together with equal application of the procedural rules is at the core of fair processes. Moreover, there is a direct link between the need for process information and the satisfaction of the users of justice. This respondent talks about the satisfaction of the litigants and the necessity to respect the rights of the parties:

“In the process respecting the rights of the litigants, making sure that the litigants know exactly what is going on in my court and also making sure that by the time the process is over they are satisfied in the sense they know what went on and if there is any next action that they ought to take, they know exactly what they are supposed to do.” Senior Magistrate

Procedural formalism has been seen as a challenge for the quality of court proceedings in Kenya. Legal technicalities, jargon and difficult to navigate procedural rules and devices hinder the abilities of the litigants to freely navigate the court proceedings. Here, it should be noted that high and

unpredictable legal fees urge many litigants to navigate through the system on their own.

“Most of the justice resolution in our area is adversarial through the process. But now there are efforts being made towards...the creation of the small claims courts which is less formal.” Senior Court Administrator

“Then the other shortfall is the technical nature of the proceedings. A lot of litigants in non-commercial issues, they are not lawyers, they are ordinary Kenyan citizens and in many cases they come to court, they can see there is a judge or a magistrate they can see advocates but they don’t know what is going on, ok what is going on here, now I am not sure how that can be addressed.” Senior Officer, Judicial Training Institute

“One of the deliberate legal tools is to avoid unnecessary technicalities in the justice and legal processes. [Procedural rules have to be] clear and simplified to all court users and the clients ... who we want to use them. In the judiciary, that has been identified as a critical area and we have to reduce these unnecessary barriers.” Senior Court Administrator

Quality of the outcomes of justice processes

We asked the justice leaders in Kenya about the quality of the outcomes of the justice processes. In terms of substantive justice, the respondents identified the following issues:

- Delays in dispensing justice.
- The need to move beyond the conception of justice outcomes as a zero-sum game.
- Challenges of people understanding the technical dimensions of justice outcomes.

Just like the quality of the procedure, the quality of the outcomes of court (but also other forms of justice) processes is to a large extent a function of how speedily the legal problem has been resolved. In the quote below, a respondent from the Kenyan judiciary talks about two aspects of justice outcomes: The need to motivate and explain decisions and the time dimension of justice delivery.

“They [litigants] find that outcomes are too technical, sometimes they don’t understand what’s going on and what the magistrate is saying. The delay is really the most frequent complaint and leads to perceptions of bribery and corruption.”

Senior Court Administrator

Specific concern about the quality of the outcomes of justice processes in Kenya is the perceived “winner takes it all” mentality. The common perception is that one party in a dispute resolution process wins whereas the other party loses. Thus, by definition half of the users of justice should be dissatisfied with justice. However, many of the interviewed justice leaders see this zero-sum approach as bad process design rather than an inherent feature of justice procedures. A fair and just process makes the parties more understanding (and perhaps compliant) to unfavourable outcomes.

A shift towards win-win outcomes is seen as a strategic possibility for change. Examples of such justice designs are seen in more traditional dispute resolution methods, such as reconciliation and negotiation:

“Some parties will be dissatisfied, others will be satisfied because in a win/lose situation the outcome is based on evidence appearing in court and facts as per the law. Other processes ... can explore a win/win situation where the outcome is in favour of both parties. In reconciliation there are more favourable [outcomes] as opposed to court processes which are clear cut win/lose.” Senior Court Administrator

“The outcome is that one party wins and one party loses. Because it is not a negotiating process, the loser will usually be unhappy and the winner will be happy. But there are times when the loser also feels that they have lost fairly. Yeah this also happens. But losing fairly or winning after a long delay, it also effects the justice outcome because maybe the value of whatever was at stake, other things have gone wrong.” Senior Court Administrator



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Costs of justice processes

According to the spider web, the users of justice in Kenya are very dissatisfied with the costs of justice processes. The dimension of stress and negative emotions receives particularly low scores. In the interviews with leaders from the Kenyan judiciary we see confirmation of that trend as well as explanations and possible corrective actions. The following topics emerge:

- Delay as cost of justice.
- Stressful procedures and links to delays.
- Monetary costs of traveling a path to justice.

Slow-moving court proceedings take a significant toll on the users. People have to spend more money and time in order to resolve their legal problems. Several respondents articulated that long court procedures freeze valuable assets of the parties, such as money, property, and the ability to start new family or employment relationships.

“Of course it is very frustrating especially in terms of issues that require immediate

remedial action and it is under a certificate of urgency and it just takes long and long. It is really frustrating having to wait so long to get justice even in matters that require urgency.” Advocate at the High Court

“You know legal matters...they can even be concluded in a week, others will take ten years, others even 50 years.” Advocate at the High Court

There is another dimension of prolonged procedures: Stress and negative emotions. Several senior members of the Kenyan judiciary outlined the direct link between delayed justice processes and stress.

“I know for certain that a good number of people, the thing that they dread is the hearing date. Cause they are not sure that this thing will take off, so that is a lot of stress before the hearing, whether it's going to take off or not. When it takes off they will always be happy, win or lose but at least the case took off. That's one area that we need to address, perhaps it

does not give them [the users of justice] a good experience.” Senior Officer, Judicial Training Institute

Stress and negative emotions is the justice dimension that receives the lowest ranking from the users of justice in Kenya. We see also in many other countries that justice procedures are experienced as very stressful events. This is caused by delays in justice but also by hostile procedures. Hence, there is a link between stress as a cost of justice and the quality of the justice processes:

“You know sometimes Kenyans think judges or magistrates are not normal people. They fear the courts, some even fear coming to the gates of courts, you can go to places where people, I don't know, they think the courts are alien, I don't know what.” Senior Court Administrator

Adjudication is known for its high and unpredictable costs. The interviewed leaders of the Kenyan judiciary are concerned about the effect of the high



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monetary costs related to litigation. The unease is naturally for the ability of poor and disadvantaged people to access and receive justice:

“The cost of litigation is too high and for a poor person, if he does not have money to pay and the court appearances, the lawyers and even the costs that emanate if you don't win the cases, I think someone just shy away.” Advocate at the High Court

“Some actually have their rights...stepped on because of lack of funds they cannot hire advocates to do cases for them, they cannot face the courts.” Senior Court Administrator

“Poverty inhibits them in a number of ways. There are those who even don't have the money to just travel to court. There are days when you sit in court and you ask, where are the witnesses? And you are told actually the witnesses couldn't come because they don't have transport, especially in the rural areas and where I sit

is actually a rural county.” Senior Judge

Beside the costs of representation, fees are also a matter of debate in Kenya. One of the interviewees declared that the Supreme Court:

“is the cheapest court to file a petition, and it is the highest court in the country. It is leading by example.” Senior Court Administrator

However, the costs are still high in comparison to people's income. Our respondent continued:

“[...] we charge an application 400KES only, but still that money is a lot for the poor Kenyans (...) we have gone ahead and said for those who cannot afford, 'please come and tell us, and we will give you an OK for filing without a single cent'. Senior Court Administrator



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Conclusions and Recommendations



Conclusions

Pervasiveness of legal problems:

Two out of three Kenyans encountered at least one legal problem during the last four years. Every 4 years the people have to deal with around 18 million legal problems. About 3.7 million people were affected by crime problems. Also, legal issues around land and family justice are severe and impactful, affecting around 3.0 million and 2.6 million people, respectively. Various aspects of these problems are governed by laws. Problems tend to co-occur. The average number of legal problems for those who did report at least one is 1.50. In fact, 22% of the respondents reported 2 or more problems.

Most legal problems are not extraordinary events but are an intrinsic part of daily life:

Kenyans experience high levels of stress and negative emotions caused by legal problems. In fact, more than 80% told us that their problems affected them to a large extent. Their problems affect their livelihoods, and impact relationships and income. Focusing on the delivery of justice for frequently occurring legal problems

means impacting millions of people. It is therefore urgent to improve justice journeys as a way to achieve a better quality of life for millions of Kenyans. Accessible, fair and effective justice journeys will immensely benefit the people of Kenya.

Kenyans are very active in seeking legal information and advice. Both formal and informal sources are explored:

In fact, three out of four Kenyans consulted at least one source of information as a step towards resolution. This is the one of the highest rates that we have found in our studies across the world. Family members and friends are the most commonly consulted informal sources, while the police and chiefs are the most commonly consulted sources in the formal sector. People need reliable sources of information. Among those who did not consult any source, they argue that they did not believe anything could be achieved, or that information would not help them. This type of hopelessness needs to be addressed to improve access to justice.



Diverse and non-linear justice journeys.

Most Kenyans (81%) seek resolution of their legal problems. Various strategies are used – ranging from own actions, to non-institutional and institutional neutral third parties. People contact the other party, seek involvement of family members, friends, church and cultural leaders, elders and colleagues. Some of the legal problems are referred to institutional mechanisms for dispute resolution – chiefs, police, courts etc. The justice journeys are diverse and involve various steps.

Many legal problems remain unsolved.

Despite Kenyans being very active at the time of engaging in a dispute resolution process, not all of them achieve an outcome. 54% had not yet reached an outcome for their legal disputes. In other words, around 7.5 million people did not solve their problems. Moreover, about a quarter of them have given up hope of achieving anything at all. This constitutes an urgent area for improvement. Not being able to obtain an outcome has tremendous consequences for people's lives. Young Kenyans are the least likely to take action.

Different levels of access to justice.

Affluent Kenyans more often rely on private lawyers, and refer to courts of law in higher proportion than their

less affluent fellows. Kenyans with low incomes go to chiefs for an affordable and speedy justice process. This is patent in the case of land problems. People with crime problems rely on the police, as one would expect. For those who did not take action to solve their problems, again hopelessness is the main deterrent.

People demand more emotionally-friendly processes.

Kenyans rate their justice journeys around average. This means that there is a lot of potential for improvement, particularly regarding stress and negative emotions. Kenyans suffer a great deal due to both their problems and the procedures they undergo. People in Kenya want to see justice processes led by a fair, objective and respectful neutral decision maker, who is good at restoring the damage caused by their problem.

All in all, Kenyans with low incomes experience more problems on average than the rest of the population, they are also less likely to seek information and advice, as well as less likely to take action to solve their problems. Therefore, steps towards improving access to justice should consider the most vulnerable Kenyans first.

Recommendations



Picture the whole justice journey: organize justice delivery around the particular needs of the Kenyan people

We see from the data that a lot of fairness – both in terms of process and in terms of a solution – is provided outside the so-called formal justice system. So only strengthening the formal justice system will not be enough to deal with the demand for justice that emerges from the data. At the same time, only focusing on informal justice systems is not enough either. The data suggests that the perspective for developing policies needs to be that of a whole justice journey for a particular type of justice problem, ultimately leading to a fairness for as many situations as possible. Envisage a strategy that focuses on developing improved justice journeys for the four most pressing justice needs that emerge from the survey: crime, land, family and employment. Bring

all those who can contribute to making a particular justice journey together, rather than just lawmakers and the judiciary. Borrowing from the health sector: the emphasis would be less on only building hospitals and educating doctors and more on preventing and curing the most prevalent diseases.



Strengthen the links between formal and informal justice: design seamless justice journeys

The data supports the critical importance of what is listed as one of the key priorities in the Sustaining Judicial Transformation strategy: a focus on informal justice. Informal justice mechanisms are an important source of information and resolution for the most frequently occurring legal problems. In each of these areas, the data shows that many users of justice are active; legal empowerment is high. Six out of ten respondents used informal sources such as family, friends, and elders to obtain information about rights and available processes. A lot can be done to strengthen informal sources of legal information and advice, building on the high levels of legal empowerment that is visible. Informal justice mechanisms are also important when it comes to

dispute resolution. Here we also see a lot of self-action and use of informal justice mechanisms. Without diminishing the importance of strengthening the formal justice system, the informal systems can be made stronger. The data shows where and how. One can also envisage hybrid forms of legal services, where the two work together and complement each other. Affordable and competent hybrid providers provide legal advice, dispute resolution and after-care services. Achieving that will positively affect millions of lives in Kenya.



Place special attention on the most vulnerable: provide affordable and accessible justice journeys for all

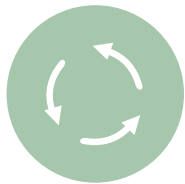
The data also supports the vision expressed in the Sustaining Judicial Transformation strategy for a focus on increasing access to justice for the most vulnerable Kenyans, in particular lower income groups. This group has lower levels of legal empowerment: they often do not realize that a problem can have a legal solution. The journeys to justice for the lowest income groups are often full of huge potholes and often even blocked entirely. It is more challenging for them to get legal information and advice and more difficult to reach formal justice institutions. Inclusive justice journeys are needed to make sure that the vulnerable people can receive just and fair resolutions whenever and whenever needed. Just like other basic public services – education, healthcare, housing and security, the vulnerable should also have access to basic justice care. Another dimension of basic justice care in Kenya is the growing middle class. As Kenyans become more educated and prosperous into the future, the legal needs will rise. Organising basic justice care is also an investment into the future.



Intensify consistent and thorough data collection: ensure accountability and focus on the users of justice

Kenya is one of the countries best placed globally to embed the voice of the citizen into the development of its justice system, for two reasons. Firstly, the Constitution, some of the laws that implement it, and the judicial transformation strategies adopted thus far are very explicit in putting the citizen centre-stage. Secondly, by commissioning this and other studies, the leadership of the Kenyan judiciary has demonstrated a receptiveness to the idea of developing the justice system on the basis of data about the users of the system. Two inspiring examples of institutional design for evidence-based policies are Judiciary's Performance Management Directorate and the Court User Committees. Kenya is well placed to be a world leader of evidence based, user centred development of its justice system. To realize this, a first step would be to develop a network or unit that is devoted to systematically collecting such data – rigorously and constantly – and making it available to policy makers, civil society, and others. This can be done through surveys

like this one, but also through all kinds of innovative ways, using social media, open data and other sources. Systems can subsequently be developed that make that data available and actionable for courts, lawyers, ministries, civil society organisations, political parties, and others to use to work on improved services. The Minister of Justice of Mali is working on an independent Observatory that would have that function: to annually provide feedback on the functioning of the justice system, based on data from the experience of users. That is a true innovation, made in Africa, which might also be developed in Kenya.



Promote justice innovation: encourage, build and sustain an eco-system of justice innovation and technology that supports justice delivery

Kenya, the country that pioneered mPesa, is huge on entrepreneurship and innovation. A lot of innovation is possible around the justice challenges that emerge from this study. Two shifts are needed to really unlock the potential of technology and innovation. Firstly, innovation and information technology should be seen as much more than a way to modernize existing procedures. Technologies can become an integral part of entirely new value propositions that improve delivery of justice. Smart, scalable and sustainable internet-based platforms can resolve many of these problems. ICT platforms that provide easy and affordable access to competent legal information and advice when the people need it. We have seen a few starting to operate in Kenya already. They can also support and enhance dispute resolution processes. They can improve justice administration – automating and preserving records, facilitating information flows. They also facilitate monitoring service quality and holding justice providers accountable. The second shift is about working methods and ecosystems.

To truly unlock the enormous potential for justice innovation that we see in Kenya the design of improvements can be made more user centered. This means not only having data (see the data recommendation above), but also have mechanisms to use that data in the design of better procedures. In the IT world this is called user-centered design. It uses evidence based, iterative processes to develop innovations and it is quite different from the known approaches in the legal world. Formalism and legal technicalities should not be barriers to justice. Innovative procedures are based on constant exchange of information – between all participants in the justice processes. Specifically focus on the exchange between the neutral third parties and the users of justice. Find what works and scale it up. Share the rewards with justice users and innovators. Innovations ecosystems are also needed. Connect to the fantastic innovation ecosystem in Kenya and East Africa broadly. Designate justice innovation budgets. Allow yourself to be challenged from the outside. Accept experiments, trial and error. Issuing innovation challenges will help to improve existing journeys or design new processes.



About Hiil

Our mission:

By 2030, 150 million people will be able to prevent or resolve their most pressing justice problems.

Our approach focuses on empowering innovation in the justice system. We collect data about the needs and satisfaction of the users of the justice system. We aim to understand how justice works in ordinary people's lives and how they fulfil their justice needs. Our Justice Needs and Satisfaction Tool (JNST) is able to track more than 40 elements of the justice experience.

We believe that justice is about justice providers in the broadest sense, not only about courts or other formal institutions. We therefore argue that change needs to happen where justice occurs - recognising that many factors that influence justice lie outside the realm of 'traditional' legal services.

To achieve this aim, we rely on international and local expertise to identify what works best in the context we are in.

Furthermore, the JNST offers a cost-effective alternative to monitoring progress in the justice sector. This standardised and repeatable approach leads to economies of scale, a reduction in operational costs, increased efficiency (time and resources saved), a reduction in operational risk and cross-country benchmarking. We also make the data available to policy-makers through clever interfaces so they can keep working with the findings. Data gives knowledge, creates empowerment, and builds accountability.

The countries we have worked in include: the Netherlands, Indonesia, Mali, Tunisia, Uganda, Ukraine and UAE. We are currently working in Bangladesh, Jordan and Lebanon. Our target countries for 2018 are: Nigeria, Rwanda, and second JNS studies in Mali and Uganda.

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