

Dispatch No. 347 | 28 February 2020

Ghanaians cite high cost, bias, and long delays as barriers to using formal justice system

Afrobarometer Dispatch No. 347 | Lionel Osse and Gildfred Boateng Asiamah

Summary

Ghana's justice sector was adjudged Africa's sixth-best in the 2019 Rule of Law Index, dropping from first position in 2018 (World Justice Project, 2019). The country is a signatory to the African Charter on Human and Peoples' Rights and the Maputo Protocol, both of which oblige the state to ensure that citizens have access to the delivery of justice. Article 14 of Ghana's Constitution also safeguards citizens' access to justice.

Nonetheless, the judicial sector is burdened with challenges that threaten the efficient delivery of justice. Conditions necessary to ensure efficient and equal access to judicial systems, such as affordability, proximity, comprehensibility, and responsiveness, are not in place for a number of Ghanaians (African Union, 2019). Access to legal assistance is a problem, even for the state: The Attorney General's Department has very few lawyers – far below the minimum number required to function effectively (Brakopowers, 2018). In addition, the Legal Aid Commission, which has the mandate of rendering free legal services to citizens, operates mainly in the major cities, inhibiting access by the poor and vulnerable (Donkor, 2019). Worse, journalists' investigative reports on alleged corruption have tainted the judiciary's reputation (Ghanaweb, 2020).

The government and the judiciary have made efforts to address issues of unequal access to justice delivery, perceived corruption, and dwindling trust in the justice sector. These include the Justice for All Programme, which seeks to reduce the large number of remand prisoners by organizing court sittings in the prisons to hear cases (Judicial Digest, 2017); the "paperless court" initiative to improve case management, reduce processing time, and enable effective monitoring of cases; and the Anticorruption Action Plan for the judicial sector aimed at promoting integrity, transparency, accountability, and responsiveness to corruption complaints (Judicial Digest, 2018).

But findings from a recent Afrobarometer survey suggest that these efforts still have a long way to go. While most Ghanaians endorse the legitimacy of the courts, they also see court officials as corrupt and untrustworthy. More than half say high costs prevent citizens from using the formal justice system, while others cite a bias in favour of the rich and powerful and long delays as barriers.

Among those who had contact with the justice system during the previous year, many rate the system as high on corruption and low on fairness and transparency.

Afrobarometer survey

Afrobarometer is a pan-African, nonpartisan survey research network that provides reliable data on Africans' experiences and evaluations of quality of life, governance, and democracy. Seven rounds of surveys were completed in up to 38 countries between 1999 and 2018. Round 8 surveys in 2019/2020 are planned in at least 35 countries. Afrobarometer

conducts face-to-face interviews in the language of the respondent's choice with nationally representative samples.

The Afrobarometer team in Ghana, led by the Ghana Center for Democratic Development (CDD-Ghana), interviewed 2,400 adult Ghanaians between 16 September and 3 October 2019. A sample of this size yields country-level results with a margin of error of +/- 2 percentage points at a 95% confidence level. Previous surveys were conducted in Ghana in 1999, 2002, 2004, 2008, 2012, 2014, and 2017.

Key findings

- More than three-fourths of Ghanaians say the president – and ordinary citizens – must obey the courts and laws.
- But court officials are widely seen as corrupt and untrustworthy.
 - More than eight in 10 Ghanaians (85%) say at least "some" judges and magistrates are corrupt, including 40% who say this about "most" or "all" of these court officials.
 - Fewer than half of respondents say they trust the courts "a lot" (16%) or "somewhat" (32%).
- Only one in 20 Ghanaians (5%) say they had contact with the formal judicial system during the previous year. The most important reasons why Ghanaians think people do not use the formal judicial system are that it is too expensive (cited by 54% of respondents), that the system favours the rich and powerful (31%), and that legal proceedings take a long time before judgment is given (31%).
- Among respondents who had contact with the judicial system during the previous year:
 - About half (52%) rate the level of corruption in the judicial system as "high" or "very high."
 - Fewer than one in three rate the judicial system favourably (with "high" or "very high" ratings) on independence (31%), professionalism (30%), fairness (21%), responsiveness (18%), and transparency (16%).
- A majority of Ghanaians say that people are "always" or "often" treated unequally under the law (58%) and that officials who commit crimes "always" or "often" go unpunished (61%).

Legitimacy of the courts, perceived corruption, and popular trust

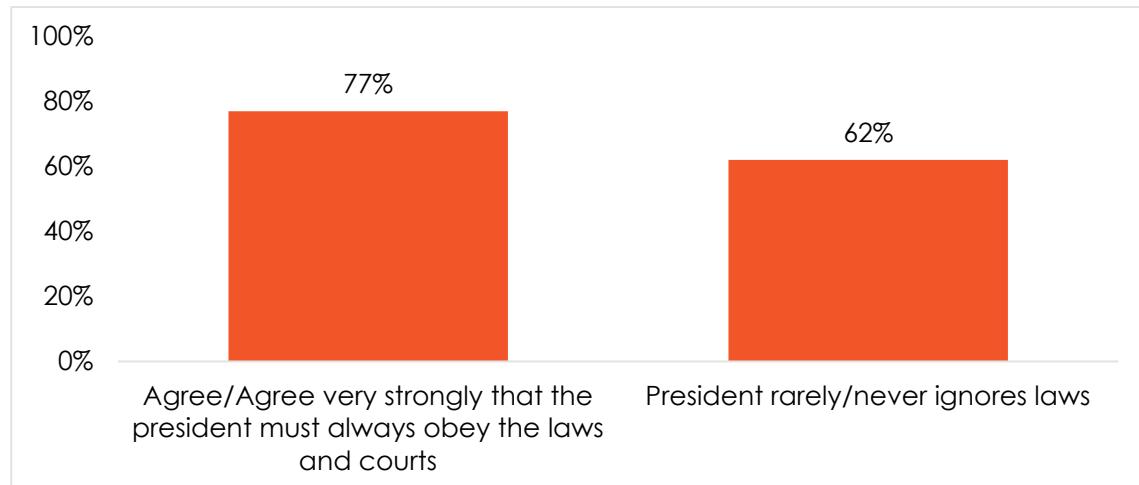
Most Ghanaians believe in the legitimacy and power of the courts. More than three-fourths (77%) of survey respondents "agree" or "agree very strongly" that the president must always obey the laws and the courts, even if he thinks they are wrong (Figure 1). In Afrobarometer's previous survey in Ghana, in 2017, about the same majority (78%) agreed that the courts "have the right to make decisions that people always have to abide by."

A majority (62%) also say the president "rarely" or "never" ignores the courts and laws, while 22% say he does so "often" or "always."

Yet Ghanaians overwhelmingly see corruption in the judicial system, and only a minority trust the courts. Four out of 10 Ghanaians (40%) say that "most" or "all" judges and magistrates are corrupt, while an additional 45% think that "some" are corrupt. Only one out of 20 Ghanaians (5%) say there's no corruption among judges and magistrates, who are thus more widely seen as corrupt than any other type of public official the survey asked about except the police (Figure 2).

In line with high levels of perceived corruption, fewer than half of Ghanaians say they trust the courts "a lot" (16%) or "somewhat" (32%) (Figure 3). The military, presidency, religious and traditional leaders, and the Electoral Commission are more trusted than the courts.

Figure 1: Views on courts' legitimacy | Ghana | 2019



Respondents were asked:

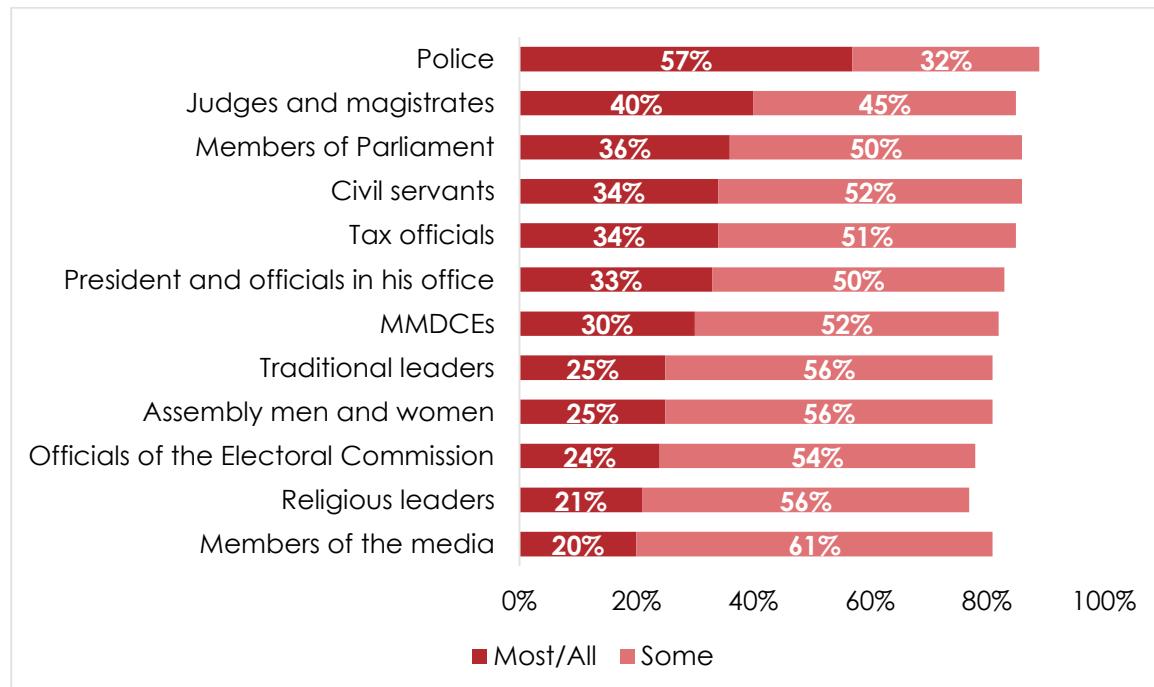
Which of the following statements is closest to your view?

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

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

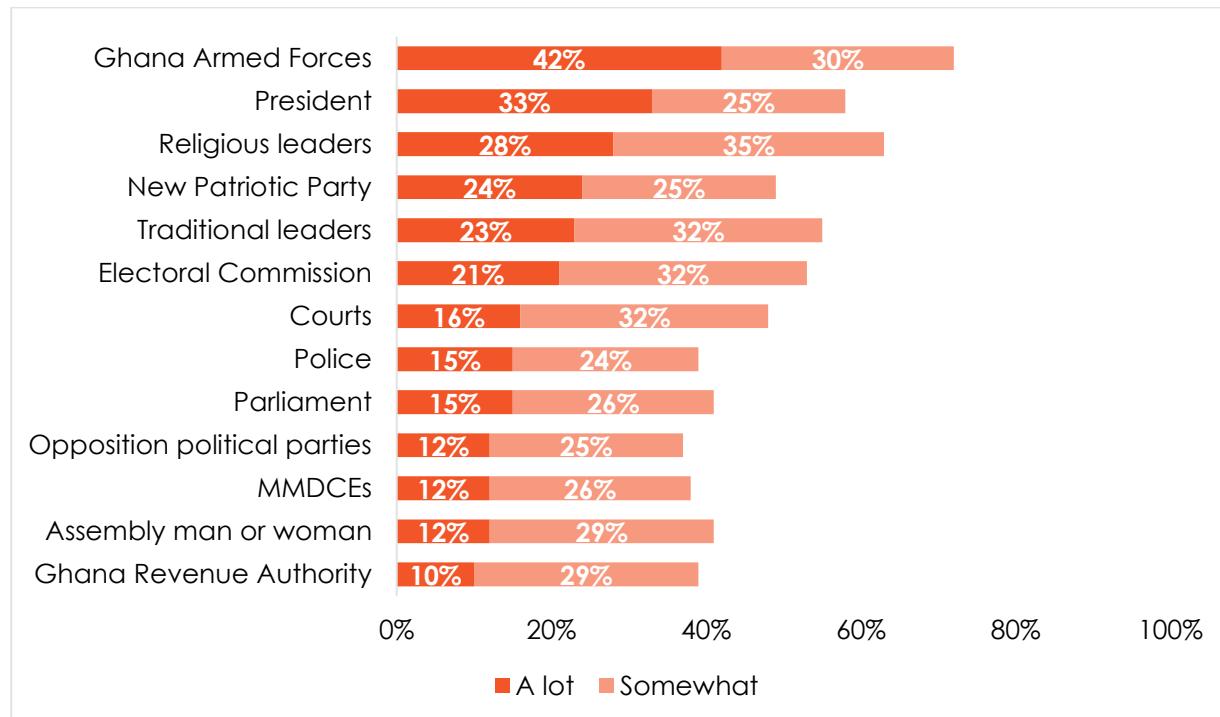
In your opinion, how often, in this country does the president ignore the courts and laws of this country?

Figure 2: Perceived corruption among judges/magistrates and other officials | Ghana | 2019



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

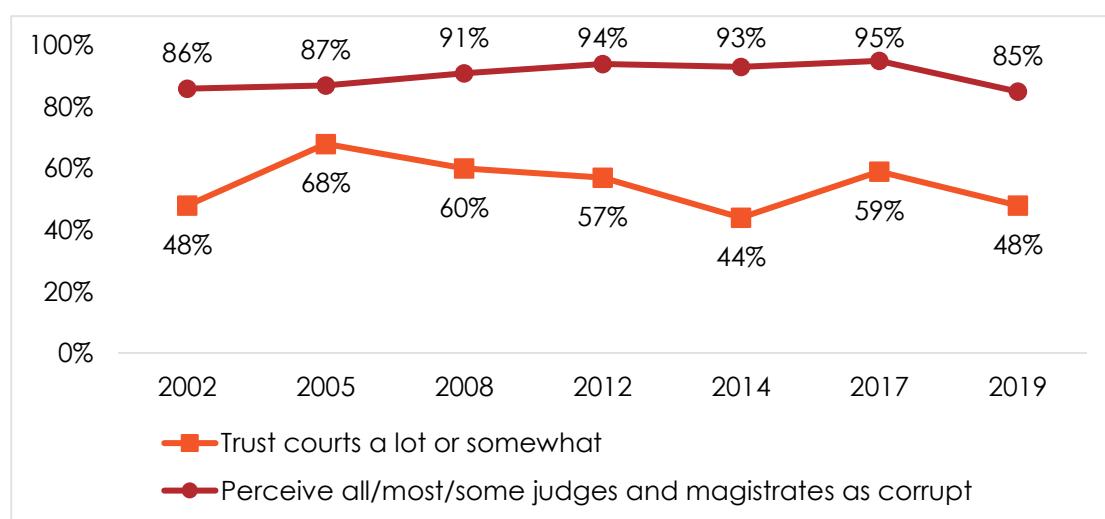
Figure 3: Trust in the courts | Ghana | 2019



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

Over time, the perception that at least some judges and magistrates are corrupt has been consistently high, despite a 10-percentage-point dip between 2017 (95%) and 2019 (85%) (Figure 4). But trust ("a lot" or "somewhat") in the courts also decreased, by 9 percentage points, compared to 2017.

Figure 4: Trust and perceived corruption in the courts | Ghana | 2002-2019



Respondents were asked:

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

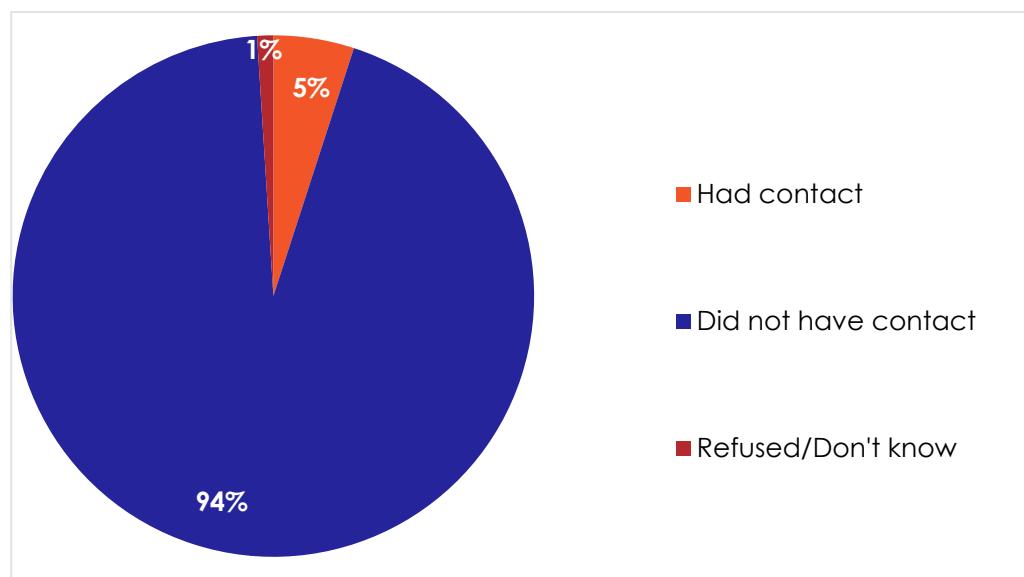
How much do you trust each of the following, or haven't you heard enough about them to say: Courts of law?

Engagement with the justice system

Only one in 20 Ghanaians (5%) report having had contact with the formal judicial system during the 12 months preceding the survey (Figure 5). One could debate whether this is a high or low rate of contact, whether a higher rate would be positive (e.g. as evidence that costs are acceptable and outcomes are expected to be fair) or negative (suggesting perhaps that alternative resolution mechanisms are lacking or that crime rates are high).

It does not seem inconsistent with Afrobarometer's previous finding across 36 African countries surveyed in 2014/2015 that on average 13% of citizens (including 9% of Ghanaians) reported contact with the judicial system during the previous five years (as opposed to one year for the most recent survey in Ghana) (Logan, 2017).

Figure 5: Contact with formal justice system | Ghana | 2019



Respondents were asked: Have you, in the past 12 months, had contact or experience with the formal justice system in Ghana?

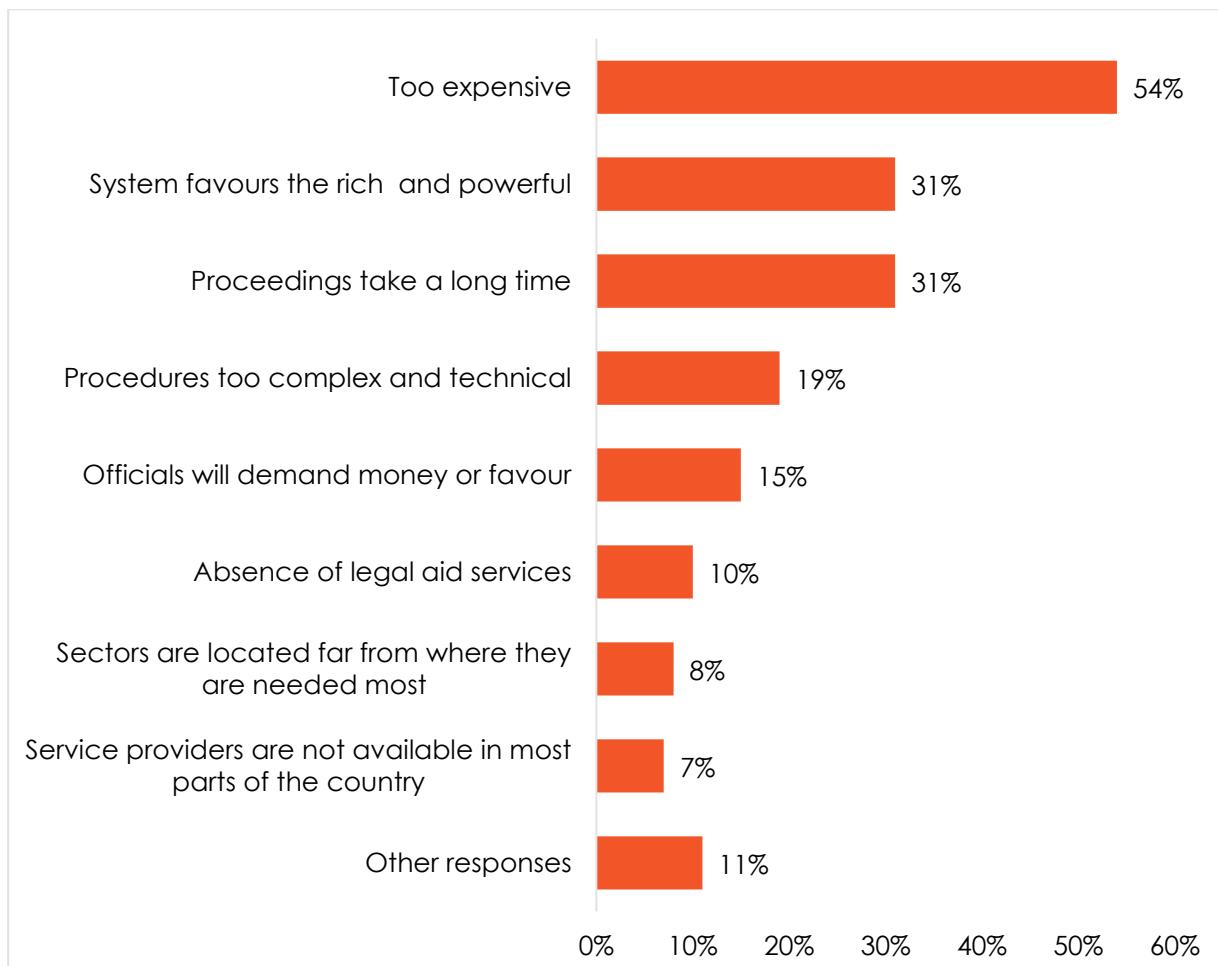
Nor does it preclude the possibility that some Ghanaians are not being served by the judicial system. Indeed, about three-fourths (74%) of survey respondents were able to cite reasons (up to three per respondent) that would prevent Ghanaians like themselves from using the formal judicial system.

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The most frequently cited reason is that engaging with the justice system is too expensive (mentioned by 54% of respondents) (Figure 6). About three in 10 respondents say citizens would refrain from using the judicial system because it favours the rich and powerful (31%) and because the proceedings

take a long time before judgment is given (31%). Other common reasons are that procedures are too complex and technical (19%), that officials will demand money or favours (15%), and that no legal aid services are available (10%). About one in seven respondents attribute it to the remoteness of justice centers (8%) or the lack of service providers in most parts of the country (7%).

Figure 6: Most important reasons why Ghanaians do not use justice system | Ghana | 2019



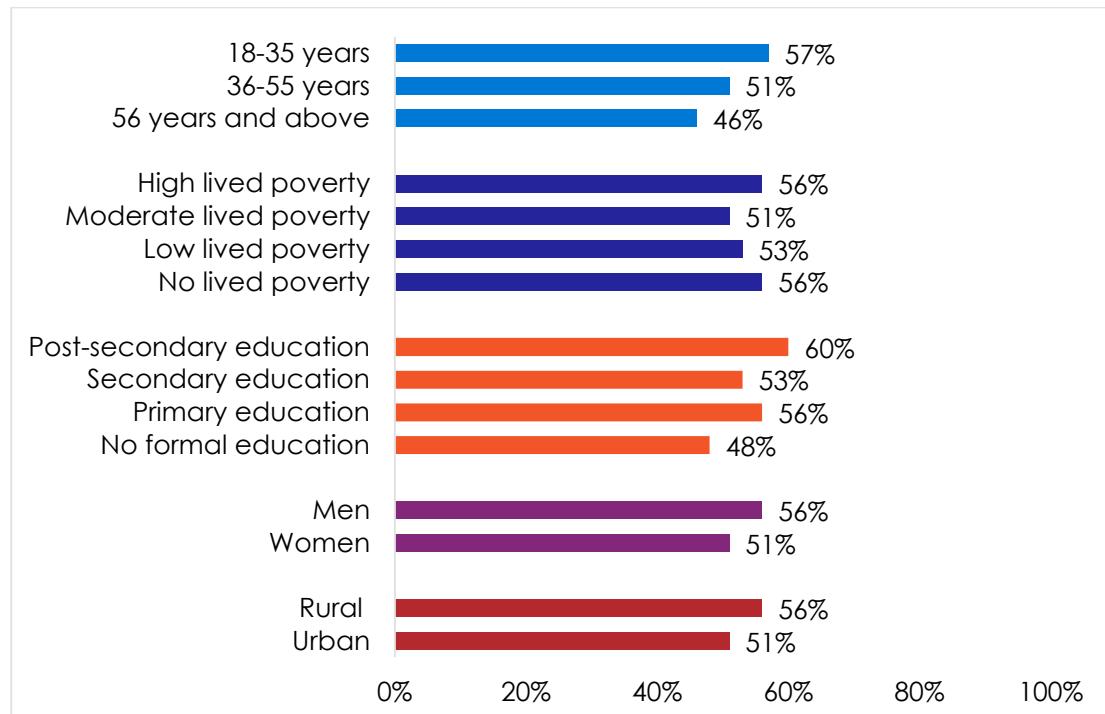
Respondents were asked: What three most important reasons would prevent you or any Ghanaian like you from using the formal justice delivery system in Ghana? (Respondents could cite up to three reasons each.)

The notion that the formal judicial system is too expensive is most pronounced among the highly educated (60%), young adults (57%), men (56%), and rural residents (56%) (Figure 7).

Perhaps a bit counterintuitively, bias in favour of the rich and powerful is cited more often by relatively well-off citizens (40%) than by the poor¹ (21%) (Figure 8). This reason is also cited more often by the highly educated (38%), men (34%), and rural residents (36%) than by those with no formal education (24%), women (28%), and urban residents (26%).

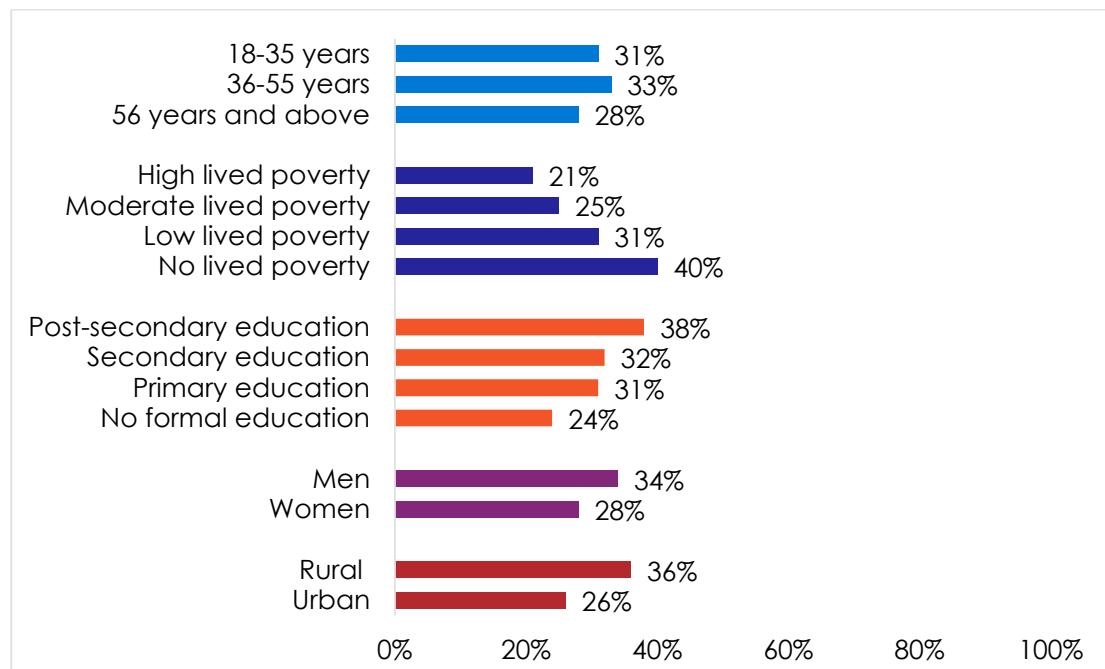
¹ Afrobarometer's Lived Poverty Index (LPI) measures respondents' levels of material deprivation by asking how often they or their families went without basic necessities (enough food, enough water, medical care, enough cooking fuel, and a cash income) during the preceding year. For more on lived poverty, see Mattes, Dulani, & Gyimah-Boadi (2016).

Figure 7: Justice delivery system is too expensive | by socio-demographic group | Ghana | 2019



Respondents were asked: What three most important reasons would prevent you or any Ghanaian like you from using the formal justice delivery system in Ghana? (% who say the system is too expensive)

Figure 8: Justice delivery system favours the rich and powerful | by socio-demographic group | Ghana | 2019



Respondents were asked: What three most important reasons would prevent you or any Ghanaian like you from using the formal justice delivery system in Ghana? (% who say the system favours the rich and powerful over the poor)

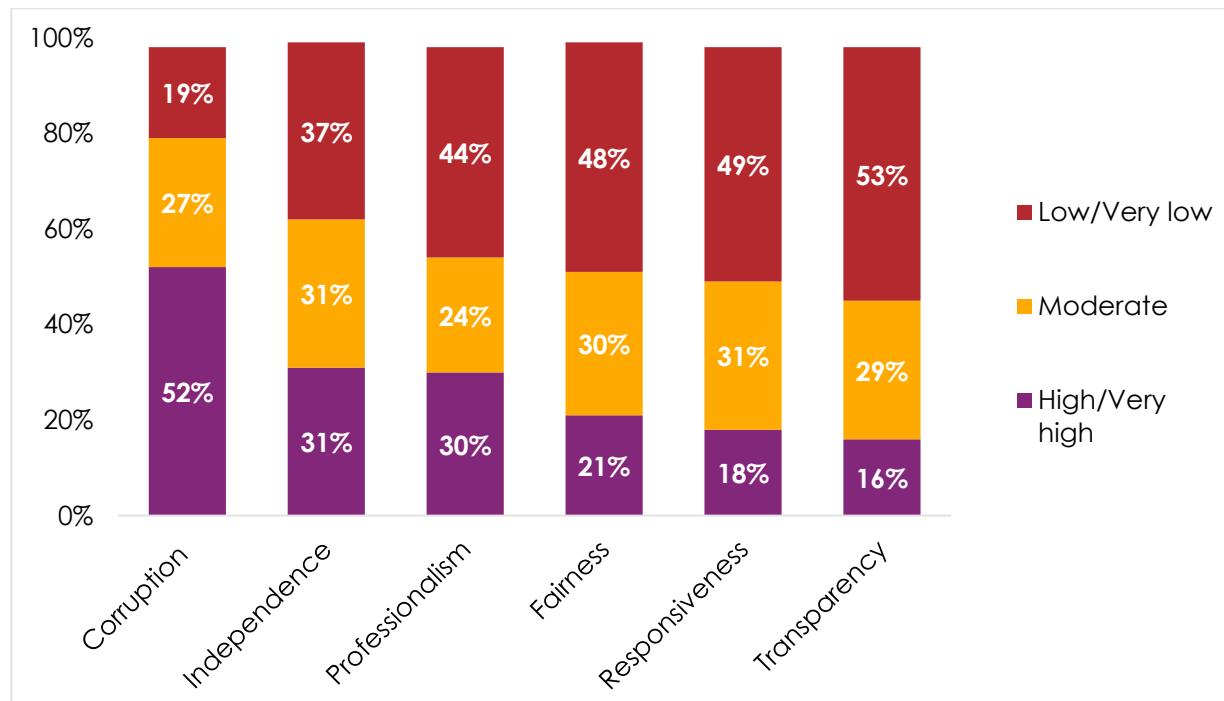
Evaluation of the justice system

Afrobarometer asked the 5% of respondents who had contact with the judicial system during the previous year to judge its performance on a range of characteristics.

More than half (52%) of these respondents rate the level of corruption in the system as "high" or "very high" (Figure 9). In addition, 27% say corruption levels are "moderate." Only two out of 10 (19%) describe corruption levels in the judiciary as "low" or "very low." Perceived corruption in the judicial sector is Ghana's worst-performing indicator in the Rule of Law Index (World Justice Project, 2019).

Fewer than one in three citizens who had contact with the judicial system rate it favourably (with "high" or very high" ratings) on independence (31%), professionalism (30%), fairness (21%), responsiveness (18%), and transparency (16%).

Figure 9: Evaluation of the formal justice system | Ghana | 2019

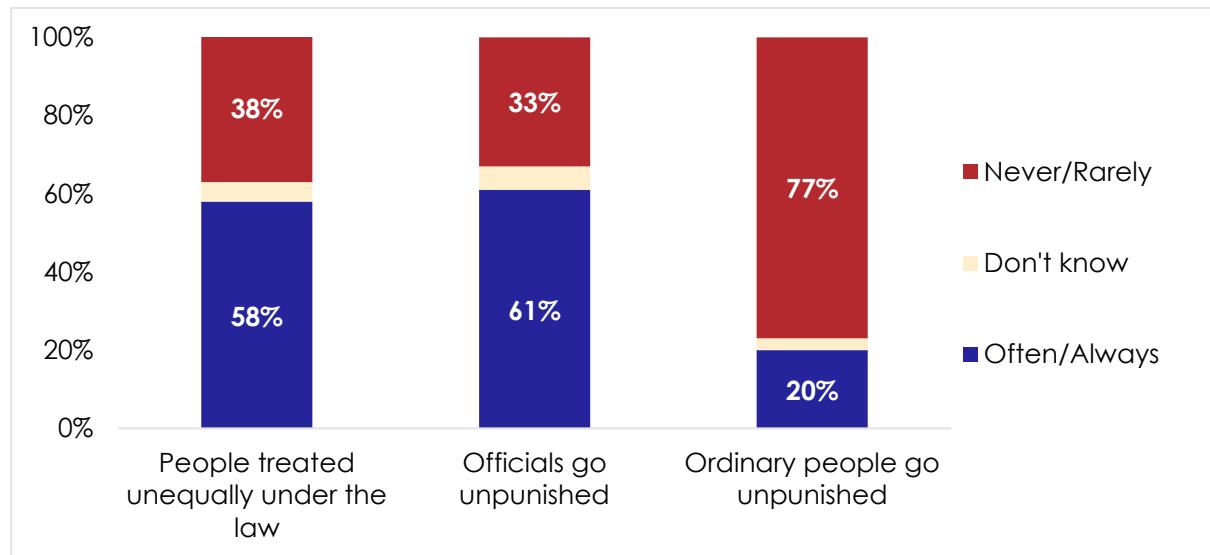


Respondents who had contact or experience with the formal justice system were asked: How would you rate the formal justice delivery system on the following: Independence of institutions within the justice system? Professionalism of officials within the justice system? Corruption in institutions within the justice system? Fairness of justice and administrative processes and proceedings? Responsiveness of the justice and administrative processes and proceedings? Transparency in justice and administrative processes and proceedings?

(Note: Since these questions were posed only to the 113 respondents who said they had contact with the justice system, the margin of error for these findings is substantially larger than for questions posed to all 2,400 respondents.)

Concerns about the fairness of the legal system are also reflected in responses to other survey questions. A majority (58%) of Ghanaians say people are "always" or "often" treated unequally under the law. Even more (61%) believe that officials who commit crimes "always" or "often" go unpunished, while only 20% see the same treatment for ordinary people who break the law (Figure 10).

Figure 10: Inequalities under the law | Ghana | 2019



Respondents were asked: In your opinion, how often, in this country: Are people treated unequally under the law? Do officials who commit crimes go unpunished? Do ordinary people who break the law go unpunished?

Conclusion

While Ghanaians believe in the legitimacy of their justice system, many citizens think the courts are corrupt, untrustworthy, and unfair. Those who had personal experience with the courts during the previous year affirm that judgment, rating the justice system high on corruption and less than high on fairness, transparency, professionalism, and independence. And high costs, bias in favour of the rich and powerful, and lengthy delays are widely seen as barriers to access to justice for ordinary citizens.

Given the importance of effective justice delivery and rule of law for a country's human-rights, economic, and political development, it is critical that the reforms in the Anti-Corruption Action Plan for the judicial sector be fully implemented to instill integrity and promote transparency and accountability in the justice system. And while underlying socio-economic barriers such as poverty lie beyond the reach of even the best judicial system, legal aid, fairness, and responsiveness may go a long way toward changing the widespread perception that justice is reserved for the rich and powerful.

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

Financial support for Afrobarometer Round 8 has been provided by Sweden, the Mo Ibrahim Foundation, the Open Society Foundations, the William and Flora Hewlett Foundation, and the U.S. Agency for International Development (USAID) via the U.S. Institute of Peace.

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