

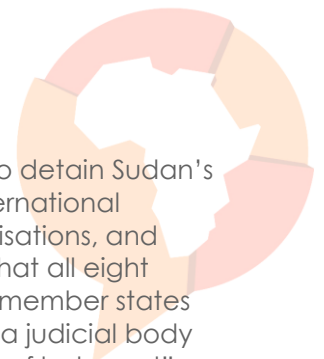


# Support for the International Criminal Court in Africa

**Evidence from Kenya**

By Rorisang Lekalake and Stephen Buchanan-Clarke

Afrobarometer Policy Paper No. 23 | August 2015



## Introduction

The South African government's recent refusal to comply with its obligation to detain Sudan's President Omar al-Bashir has sparked renewed debate on the role of the International Criminal Court (ICC) in Africa.<sup>1</sup> A number of governments, civil society organisations, and prominent academics have levelled accusations of bias at the ICC, noting that all eight states in which the court is currently intervening are African. Calls for African member states to withdraw from the ICC have often been supported by the argument that a judicial body led by the African Union (AU) would be better placed to fill the role of "court of last resort" on the continent.

The AU has called for a unified continental position on the ICC. As Maunganidze and du Plessis (2015) argue, however, African governments' views on the ICC and its members' obligations under its founding treaty, the Rome Statute, are not homogenous. As Tladi (2009, p. 57) notes, the growing rift between the ICC and the AU has "placed African states party to the Rome Statute ... in the unenviable position of having to choose between their obligation as member states of the AU, on one hand, and their obligations as states party to the Rome Statute, on the other." Support from African governments was instrumental in the ICC's formation and survival, and the continent provides the largest regional bloc of states that are party to the Rome Statute. Furthermore, many African states have demonstrated their confidence in the court by referring cases for investigation, cooperating with the prosecutor, and aiding in the pursuit and arrest of suspects. African states receive more than half of the Office of the Prosecutor's total requests for cooperation, and 70% of these requests are met with positive responses (Bensouda, 2012).

Given these competing tensions, democratically elected governments should ensure that their citizens' interests are at the heart of any decisions regarding the implementation of international justice in their respective countries. Full representation of these interests requires both awareness of and responsiveness to public opinion on this issue. At present, little is known about citizens' preferences.

Is impunity for perpetrators of gross human rights violations a major concern for African citizens? Do Africans support the ICC's efforts to fight impunity? Do they think the court is biased? Would they prefer an AU-led court?

Kenya provides the best case study of Africans' perceptions of the ICC based on its history with the court and the availability of longitudinal opinion data on this issue.

In September 2013, the Kenyan Parliament threatened to withdraw from the ICC due to the prosecution of four leading Kenyan political figures, most notably President Uhuru Kenyatta and Deputy President William Ruto, for their alleged roles in 2008 post-election violence that left about 1,100 people dead, 660,000 displaced, and thousands injured (Amnesty International, 2014). Public opinion data from Ipsos Kenya indicate, however, that a majority of Kenyans have supported the court's intervention since 2010 (Wolf, 2013). Similarly, recent Afrobarometer findings show that a majority of Kenyans believe that the ICC is an important tool in the fight against impunity, see it as an impartial institution, and reject the notion of withdrawal from the court. Further analysis reveals that opinions are sharply divided along ethnic lines, reflecting the deep discord between the country's notoriously factious ethnic groups.

At present, Afrobarometer survey data indicate that ordinary citizens do not feel that the AU plays a significant role in their respective countries. If the AU is to take on the role of

---

<sup>1</sup> According to Article 86 of the Rome Statute (1998), ICC state parties are duty bound to "co-operate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court" (ICC, 2015). In 2002, the South African Parliament passed the Implementation of the Rome Statute of the International Criminal Court Act 27, which domesticated the ICC statute in line with the country's constitution. The government was therefore obliged to arrest al-Bashir as soon as he landed in South Africa on 13 June 2015 in order to facilitate the ICC prosecution.

strengthening international justice on the continent, it will face the same political challenges that the ICC has had to navigate since its inception.



## Afrobarometer survey

Afrobarometer is a pan-African, non-partisan research network that conducts public attitude surveys on democracy, governance, economic conditions, and related issues across more than 30 countries in Africa. Five rounds of surveys were conducted between 1999 and 2013, and Round 6 surveys are currently under way (2014-2015). Afrobarometer conducts face-to-face interviews in the language of the respondent's choice with nationally representative samples of between 1,200 and 2,400 respondents.

The Afrobarometer team in Kenya, led by the Institute for Development Studies (IDS) at the University of Nairobi, interviewed 2,400 adult Kenyans between 12 November and 5 December 2014.<sup>2</sup> A sample of this size yields country-level results with a margin of error of +/-2% at a 95% confidence level. Previous surveys have been conducted in Kenya in 2003, 2005, 2008, and 2011.

## Key findings

- The latest Afrobarometer survey finds that two-thirds (66%) of Kenyans believe that their national judiciary treats people unequally. Almost nine in 10 (86%) say that ordinary citizens who break the law “never” or “rarely” go unpunished, while only 20% say that this is the case for public officials.
- Perceptions of official impunity are widespread in Africa: On average, 56% of Africans say that officials “always” or “often” go unpunished. In Kenya, 76% report the same, which represents a significant increase from 2011 (64%). These figures suggest the need for independent judicial bodies to address impunity among powerful political figures.
- Support for ICC prosecutions of Kenyan political figures is relatively high: 61% of Kenyans believe that the cases are an important tool for fighting impunity in the country. More than half believe that the court is an impartial institution (55%) and reject the notion of withdrawing from the Rome Statute/ICC (55%). Further, an overwhelming majority (86%) endorse Kenyatta's decision to appear before the court in The Hague.
- Ethnic identity and political partisanship affect public attitudes toward ICC intervention. Citizens from Kenyatta's and Ruto's ethnic groups (Kikuyu and Kalenjin, respectively) hold majority negative perceptions of the court, while groups associated with opposition politicians are highly supportive of its involvement.
- A majority of African citizens say the AU does not provide significant support to their countries: On average, 38% say the AU helps “a lot” or “somewhat.” This varies widely, from 22% of Zimbabweans and Senegalese to 68% of Namibians. Kenyans' views are close to the average, at 40%.

## The ICC intervention in Kenya

The ICC was established in 1998 “to help end impunity for the perpetrators of the most serious crimes of concern to the international community,” including genocide and crimes against humanity (ICC, 2015). Investigations in signatory states may be voluntary submissions or the initiative of the ICC's special prosecutors. The United Nations Security Council (UNSC) is the only institution empowered to refer cases in non-signatory states. The Rome Statute restricts ICC intervention to specific criteria. The court's prosecutor must determine whether there is a

---

<sup>2</sup> Only five interviews were conducted on 5 December, the date that the ICC announced its withdrawal of the Kenyatta case. Therefore the event is unlikely to have influenced survey results.



reasonable basis to initiate an investigation and is not bound to pursue cases, regardless of the referring party.

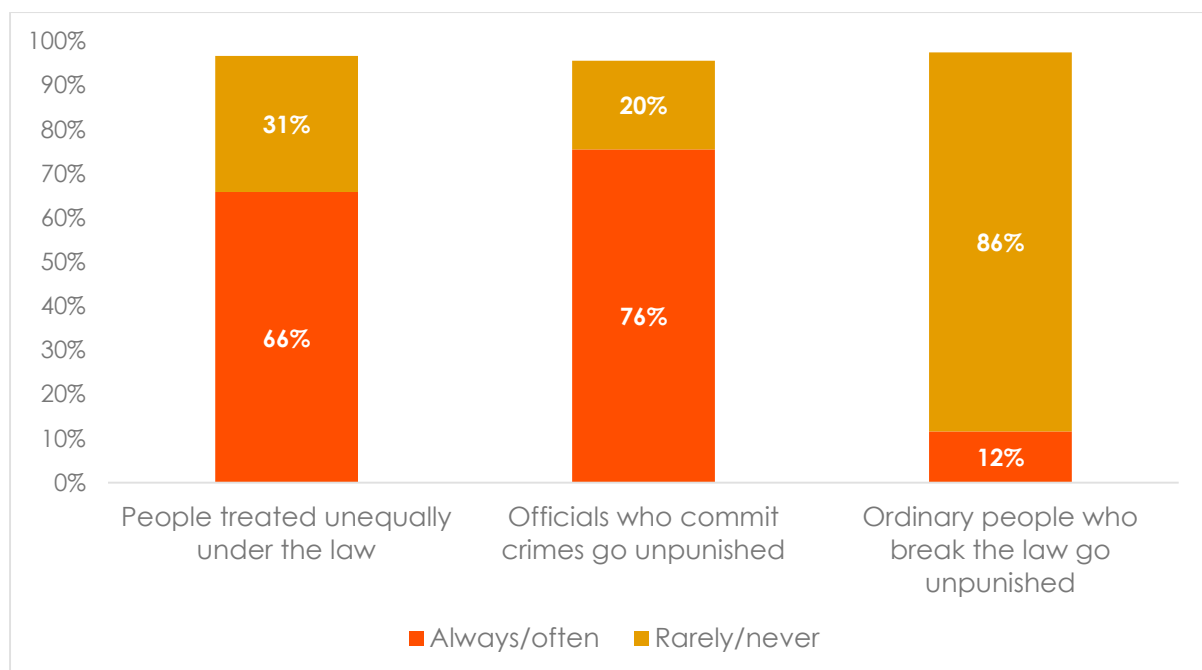
The court can only exercise its jurisdiction when the state concerned cannot, does not, or is unwilling to prosecute the perpetrators itself.

Following the 2008 post-election violence in Kenya, a Commission of Inquiry (popularly known as the Waki Commission) was established to investigate and offer recommendations to the Kenyan government. The ICC intervened only after Parliament rejected the commission's recommendation to establish a special tribunal (Wolf, 2013). A brief timeline of the ICC's role in Kenya is provided in Appendix A.

## Impunity in Kenya

Afrobarometer findings show that Kenyans perceive major inequalities in the treatment of public officials and ordinary citizens by the national court system. Two-thirds (66%) of Kenyans say that the courts "always" or "often" treat people unequally. Strikingly, more than four times as many respondents say that ordinary citizens "rarely" or "never" get away with breaking the law (86%) as report the same for public officials (20%) (Figure 1).

**Figure 1: Perceptions of impunity in Kenya | 2014 | Afrobarometer**



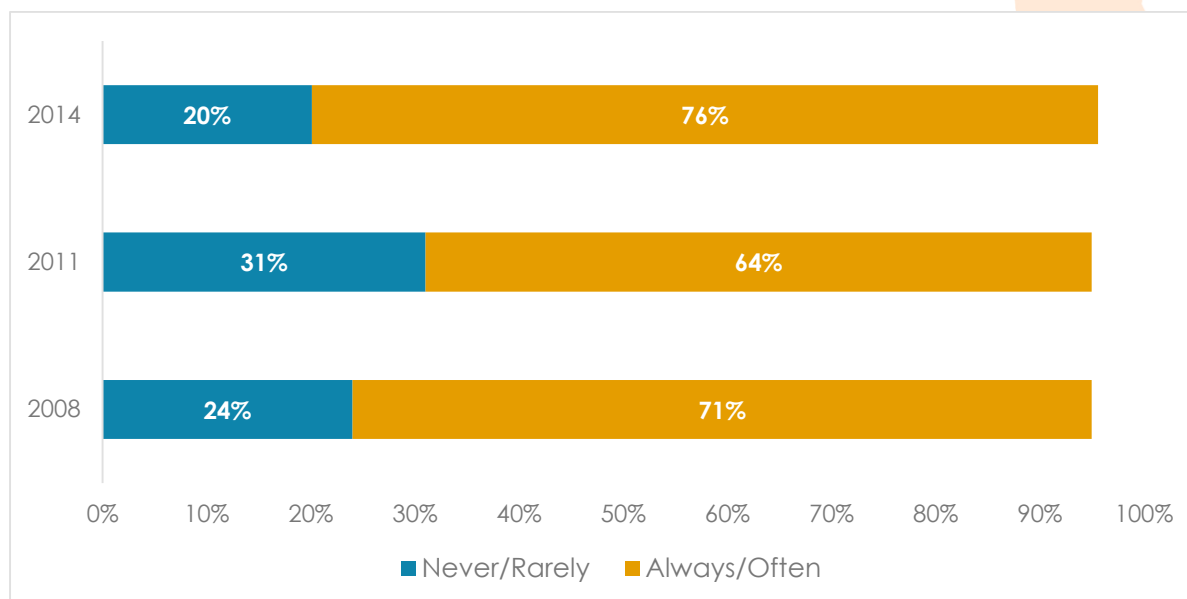
**Respondents were asked:** *In your opinion, how often, in this country:*

1. Are people treated unequally under the law?
2. Do officials who commit crimes go unpunished?
3. Do ordinary people who break the law go unpunished?

Three in four citizens (76%) say that government officials who commit crimes "always" or "often" go unpunished – an increase of 12 percentage points since the previous survey in 2011 and the highest rate since the question was first asked in 2008 (Figure 2).



**Figure 2: Perceptions of impunity for officials** | Kenya | 2008-2014 | Afrobarometer



**Respondents were asked:** *In your opinion, how often, in this country, do officials who commit crimes go unpunished?*

Given this perceived bias in the national judiciary and the senior political status of the individuals accused in Kenya's 2008 post-electoral violence, one would expect ordinary Kenyans to welcome a role for an independent judicial body, un beholden to domestic politics, such as the ICC.

### **Kenyans' evaluations of the ICC intervention, 2010-2015**

Citizens' evaluations of the ICC intervention in Kenya are highly contingent on political party affiliation. Kenya's two dominant political forces are the Jubilee Alliance and the Coalition for Reform and Democracy (CORD). The Jubilee Alliance was established in 2013 to support the joint presidential ticket of Kenyatta (The National Alliance, TNA) and Ruto (United Republican Party, URP) – both suspects in the ICC investigation into the 2008 post-electoral violence. CORD is the official opposition, formed in response to the creation of the Jubilee Alliance by Raila Odinga (Orange Democratic Movement, ODM), Kalonzo Musyoka (ODM-Wiper Party), and Moses Wetangula (FORD Kenya).

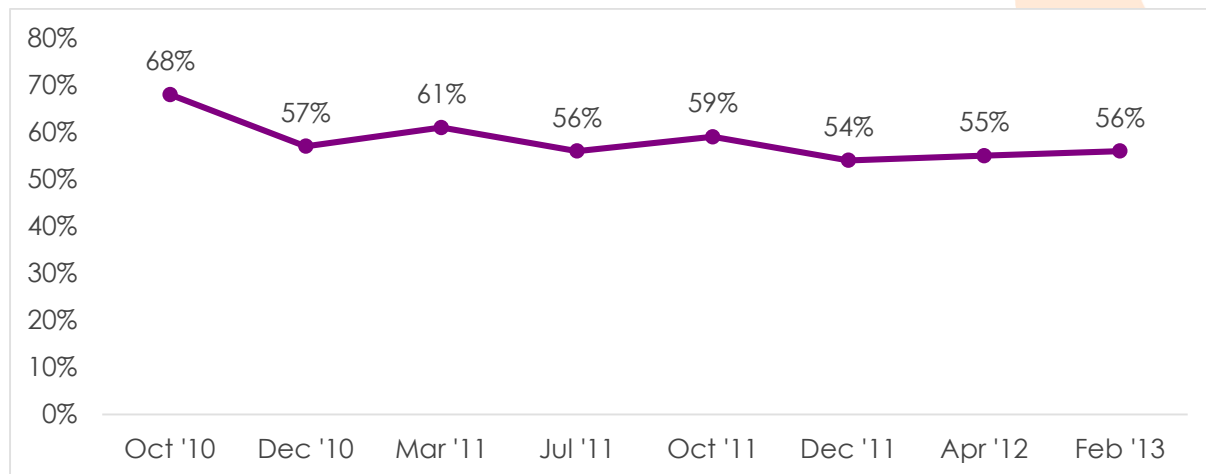
Partisanship in Kenya is, in turn, largely shaped by ethnic identity. Electoral success is determined by shifting alliances between representatives of the country's five main ethnic groups.<sup>3</sup> As Wolf (2013, p. 145) notes, "Ethnicity ... has long been recognised in Kenya as the most salient factor in how political support is organised." Jubilee is primarily supported by Kikuyu and Kalenjin Kenyans (Kenyatta and Ruto's respective ethnic groups), while CORD is supported by the Luo, Luhya, and Kamba (Odinga, Musyoka, and Wetangula's ethnic groups, respectively) (for details on party support by ethnic group, see Appendix B).

### **Support for the ICC, 2010-2013**

Given high levels of perceived impunity among public officials, it is understandable that an Ipsos Kenya poll in October 2010 found that a majority of Kenyans (68%) supported ICC involvement. Once the names of six prominent suspects in the 2008 violence (the "Ocampo Six") became public in December 2010, however, support declined to 57%, likely driven by shifts among Kenyatta and Ruto supporters. Overall support subsequently remained fairly stable through early 2013 (Figure 3).

<sup>3</sup> The main ethnic groups' national representation is as follows: Kikuyu (22%), Luhya (14%), Luo (13%), Kalenjin (12%), and Kamba (11%) (University of Pennsylvania, 2013).

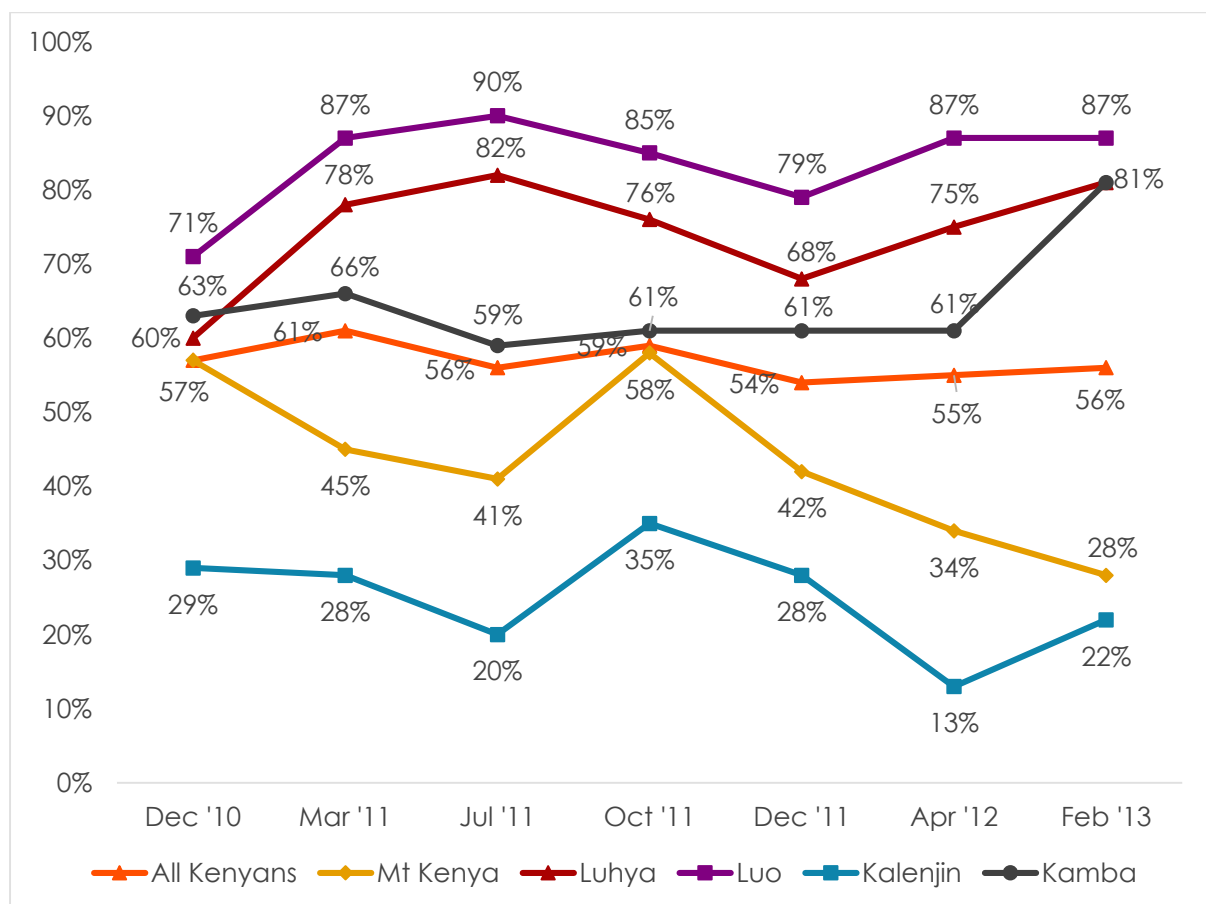
**Figure 3: Support for ICC investigations in Kenya | 2010-2013 | Ipsos Kenya**



**Source:** Figure 3 in Wolf (2013). Note: Ipsos Kenya uses face-to-face and computer-aided telephonic interviews of nationally representative samples of adult Kenyans.

In contrast to the fairly stable average public support for the ICC intervention in Kenya, evaluations by ethnicity fluctuated significantly between December 2010 and early 2013. In general, however, there was a distinct ethnic divide in opinion, with high support levels among Kamba, Luhya, and Luo citizens and low support among Kalenjin and Kikuyu citizens (Figure 4).

**Figure 4: Support for ICC investigations in Kenya | by ethnicity | 2010-2013 | Ipsos Kenya**



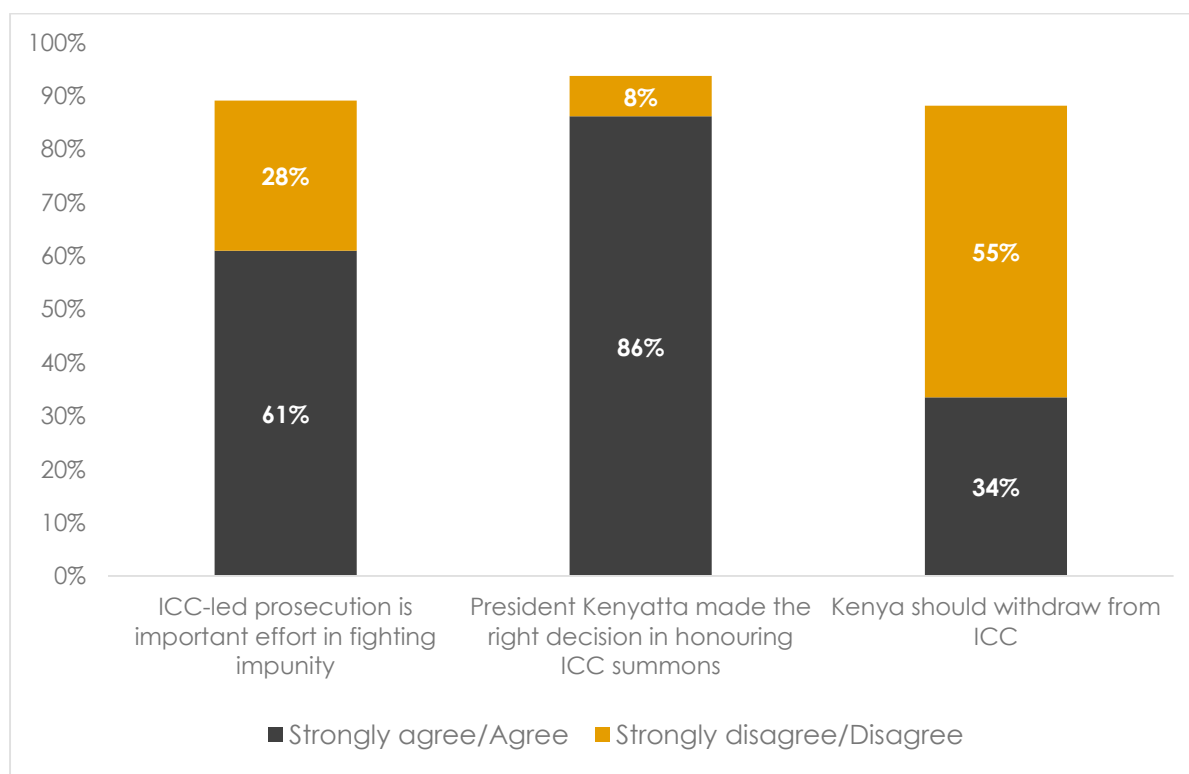
**Source:** Figure 4 in Wolf (2013). Note: Wolf reports data for "Mt Kenya," which is the region most associated with the Kikuyu ethnic group.

## Current support for the ICC (2014-2015)

Data from the November-December 2014 Afrobarometer survey indicate high overall support for the ICC: Six in 10 Kenyans (61%) believe that its case against top Kenyan leaders is important in the fight against impunity, while almost nine in 10 (86%) support Kenya's decision to appear before the court. Furthermore, 55% reject the prospect of withdrawal from the ICC (Figure 5). These findings align with independent polling by Ipsos Kenya in October 2014, which found that 87% of respondents supported Kenya's decision to honour the ICC's summons, while 56% wanted Kenya to remain an ICC member state, regardless of the outcome of the prosecutions (Ipsos, 2014).

Ipsos Kenya polling in March-April 2015 indicates that support levels for the ICC have declined since the court announced its intention to withdraw charges against Kenya in December 2014, with opinion split evenly between those who support withdrawal from the ICC (50%) and those who reject this proposal (50%). Furthermore, there is slightly more support (54%) for an AU-led human rights tribunal than for the ICC. At present, however, an African-led alternative to the ICC does not exist, and past efforts to establish regional judicial bodies have failed.

**Figure 5: Attitudes toward the ICC | Kenya | 2014 | Afrobarometer**

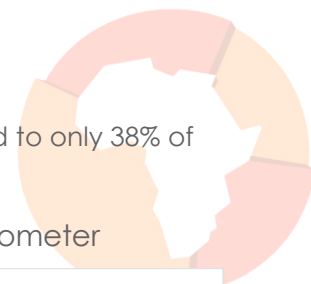


**Respondents were asked:** For each of the following statements, please tell me whether you disagree or agree:

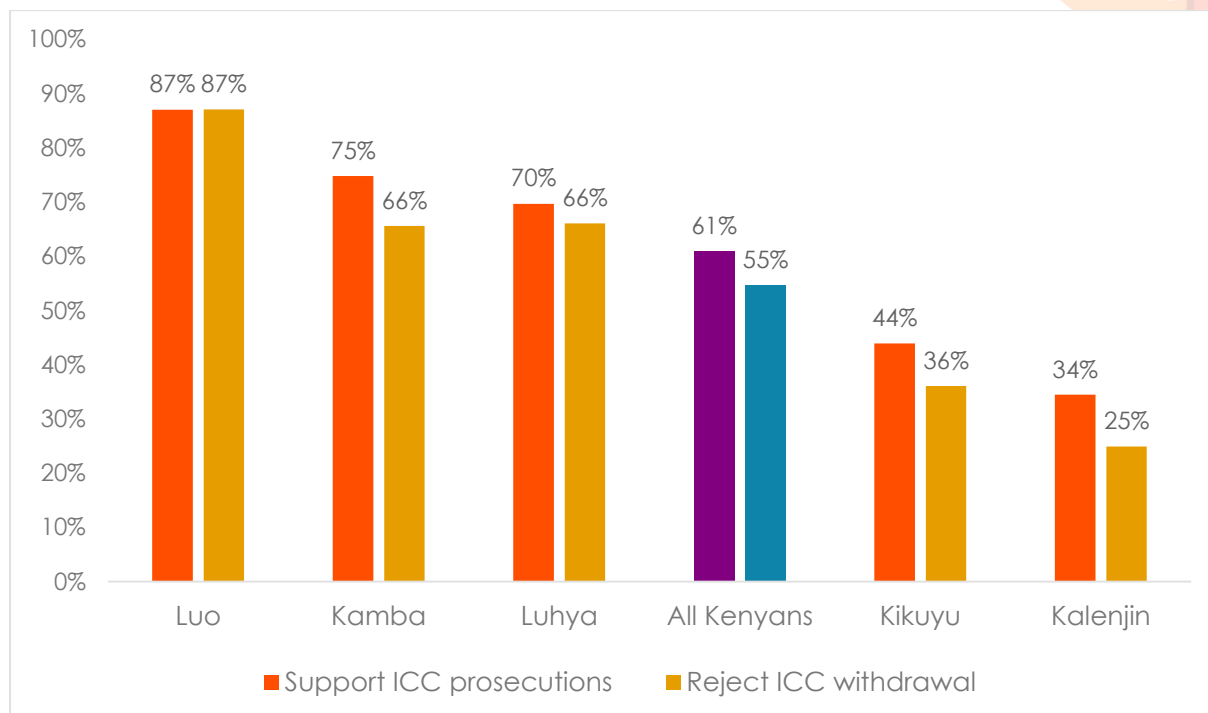
1. The prosecution of Kenyan leaders by the International Criminal Court or ICC is an important effort to fight impunity in Kenya.
2. As a sitting president, Uhuru Kenya made the right decision to honour the ICC summons to physically appear before the court.
3. The National Assembly should pass legislation to enable Kenya to withdraw from the ICC.

Analysis of Afrobarometer findings by ethnicity indicates that Luo Kenyans express the highest levels of support for ICC prosecutions (87%), followed by Kamba (75%) and Luhya (70%) respondents. In contrast, fewer than half of Kalenjin (34%) and Kikuyu (44%) respondents believe that the intervention is "an important effort in the fight against impunity." Outright rejection of ICC withdrawal is generally slightly lower than support for prosecution (Figure 6). Ipsos Kenya (2014) found that two-thirds (67%) of the governing Jubilee coalition's supporters

believed that the government had fully cooperated with the ICC, compared to only 38% of opposition (CORD) supporters.<sup>4</sup>



**Figure 6: Support for ICC in Kenya | by ethnic group | 2014 | Afrobarometer**



**Respondents were asked:** For each of the following statements, please tell me whether you disagree or agree:

1. The prosecution of Kenyan leaders by the International Criminal Court or ICC is an important effort to fight impunity in Kenya ICC. (% who “strongly agree” or “agree”)
2. The National Assembly should pass legislation to enable Kenya to withdraw from the ICC. (% who “strongly disagree” or “disagree”)

### Perceptions of ICC impartiality (2014)

Allegations of ICC bias derive from the fact that all eight of its current interventions are in African states. However, such charges overlook the specific criteria by which the court determines when and where to intervene. As ICC Special Prosecutor Fatou Bensouda (2012) states:

*Simply put, the Court cannot investigate if a state itself is investigating and prosecuting the same crime. In all situations referred to the Court by states themselves (Uganda, DRC, Central African Republic, ...), the Office [of the Prosecutor] started investigating only after determining that there were no ongoing investigations. Even in situations referred to the Office by the UNSC (Sudan and Libya) or situations in which the Office opens investigations by [its] own motion (Kenya), the Office is obliged to first determine whether there are ongoing national proceedings before starting its own investigations.*

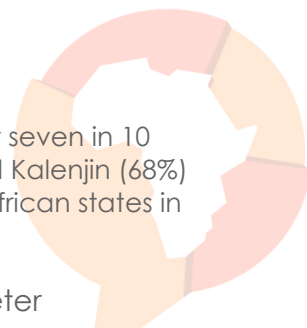
This justification explains why preliminary examinations into cases in Iraq and Venezuela have been closed, whilst similar examinations are still ongoing in Afghanistan, Colombia, Georgia, Guinea, Honduras, Iraq, Nigeria, Ukraine, and Palestine.

Contrary to growing international criticism of the ICC, Afrobarometer data show that more than half of Kenyan respondents (55%) believe that the ICC is an impartial institution, vs. 35% who say that it is biased against Kenya and other African countries (Figure 7). Nine in 10 Luo

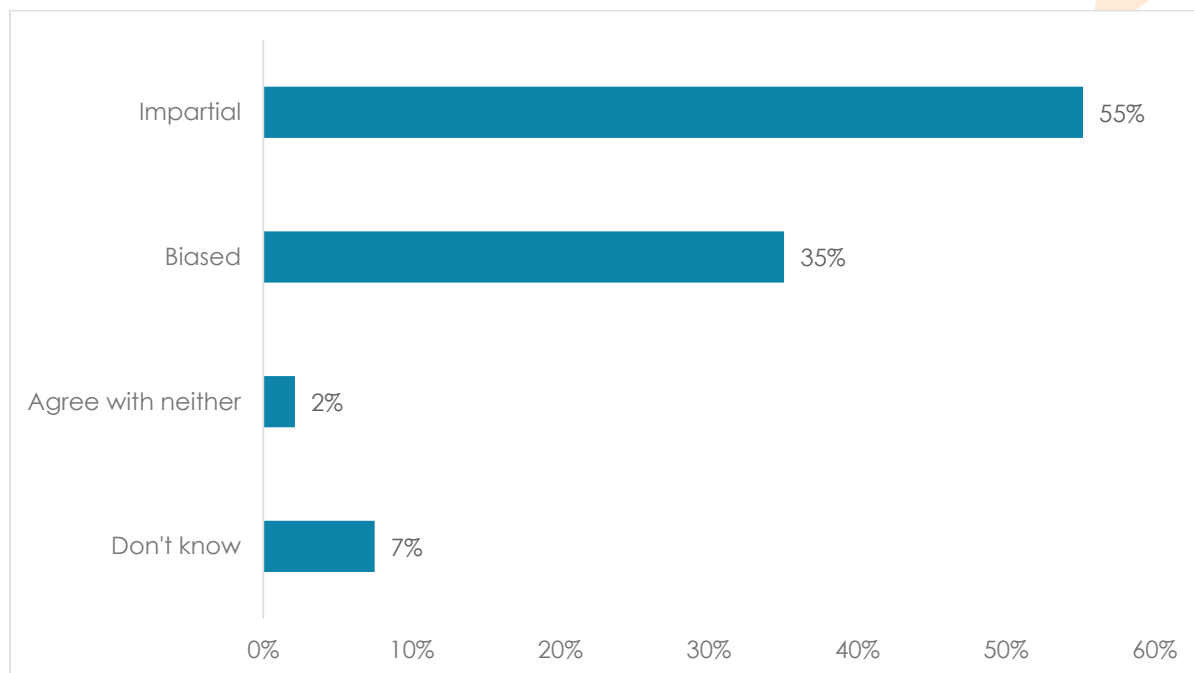
<sup>4</sup> Wolf (2013) notes that “Kenyan survey firms refrain from releasing results with such ethnic group correlations, though there is no legal restriction on doing so” (p. 159, footnote 31).



respondents (91%) consider the ICC to be an impartial institution, followed by seven in 10 Kamba and Luhya. This is in sharp contrast to the majority of Kikuyu (64%) and Kalenjin (68%) respondents who perceive the court to be biased against the country and African states in general (Figure 8).



**Figure 7: Perceptions of ICC impartiality | Kenya | 2014 | Afrobarometer**

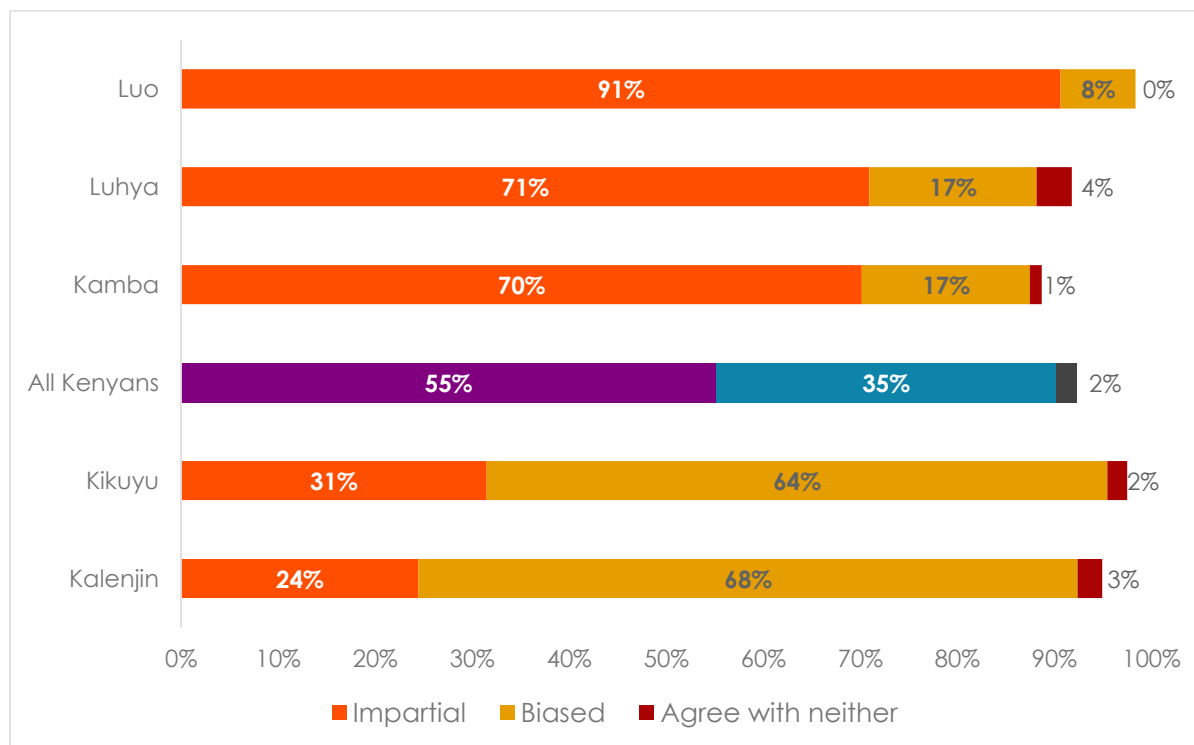


**Respondents were asked:** Which of the following statements is closest to your view? Choose Statement 1 or Statement 2.

Statement 1: The ICC is an impartial international institution for justice.

Statement 2: The ICC is biased against Kenya and other African countries.

**Figure 8: Perceptions of ICC impartiality | by ethnic group | Kenya | 2014 | Afrobarometer**





## Prospects for an African-led alternative to the ICC

The African Court on Human and Peoples' Rights was established around the same time as the ICC (June 1998) to promote and protect human rights on the continent. It came into effect in January 2004, and at present, 28 of the 54 AU member states have ratified the protocol (African Court on Human and Peoples' Rights, 2015).<sup>5</sup> This decade-long delay in ratification indicates a lack of consensus among AU member states. Unlike the ICC, the African Court does not currently have the jurisdiction to try international crimes, and agreement on extending its role is likely to be, at best, several years away.

The Southern African Development Community (SADC) Tribunal is a notable example of an African regional court's inability to overcome political pressure. The SADC Tribunal was dissolved following Zimbabwe's withdrawal resulting from an unfavourable ruling in one of its first cases (*Mike Campbell (Pvt) Ltd and Others v. Republic of Zimbabwe* (2008)). As Fritz (2014) argues, the tribunal failed because of its inability to find "champions among other SADC heads of state."

## Impunity in Africa

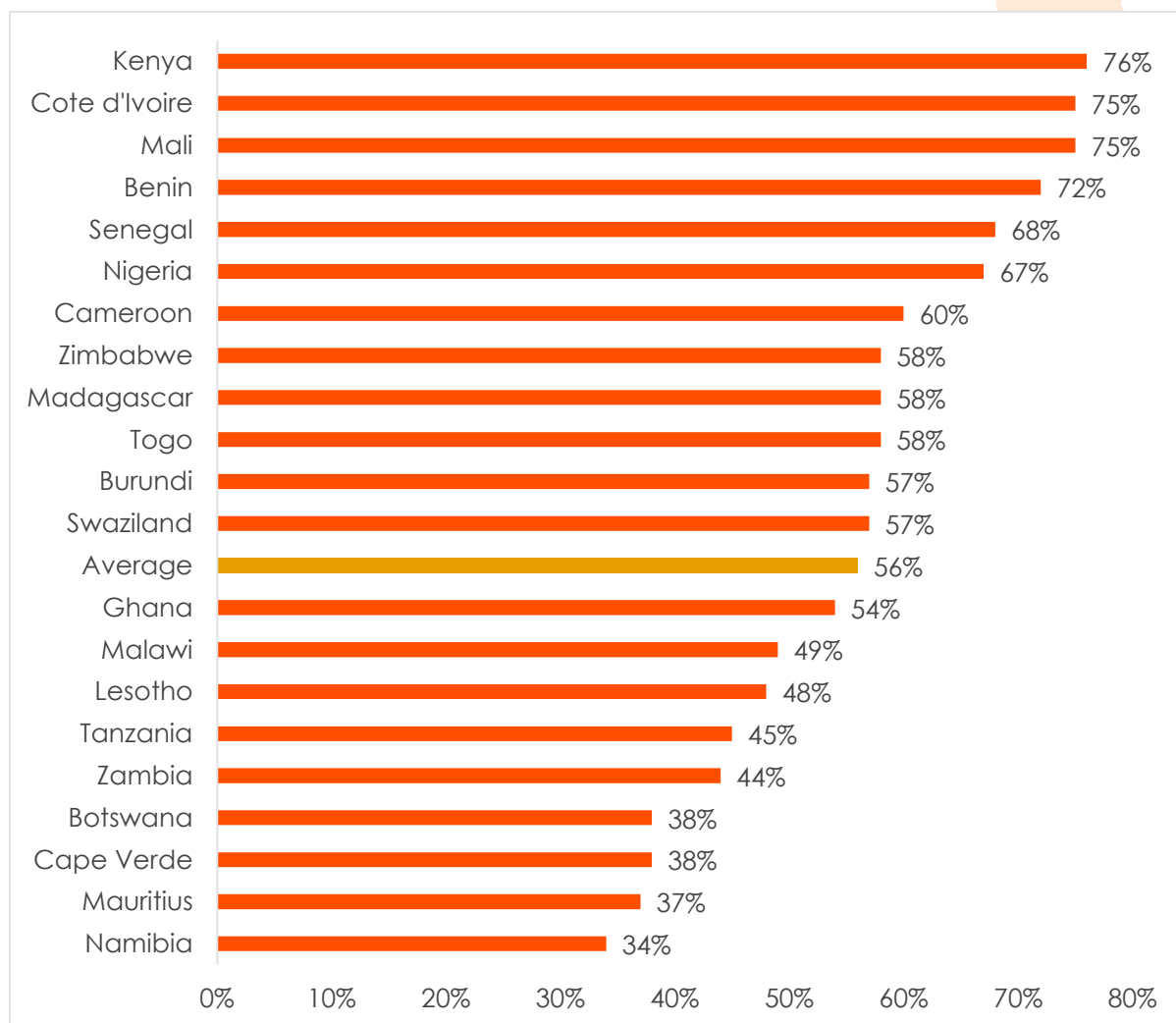
The rule of law is a cornerstone of a functioning democracy. "Safety and Rule of Law" is one of the four conceptual areas captured in the Ibrahim Index of African Governance (Mo Ibrahim Foundation, 2014). On average, African countries currently score 47.1 points (out of 100) on rule of law and 38.9 on accountability. Among the four subcategories of "Safety and Rule of Law," accountability experienced the greatest decline over the past five years (Mo Ibrahim Foundation, 2014).

Comparative data from Afrobarometer demonstrates that African publics regard the legal impunity of political leaders as a problem throughout the continent; on average, in countries for which 2014-2015 data is available, 56% of African citizens believe that officials "often" or "always" go unpunished (Figure 9). This points to a pressing need to strengthen national judicial systems. Given the additional complexities of prosecuting international crimes, an independent court of last resort is also necessary, whether African-led or otherwise. (For further analysis of perceptions of impunity in Africa, see Appendix C).

---

<sup>5</sup> Algeria, Benin, Burkina Faso, Burundi, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda.

**Figure 9: Perceptions of impunity** | 21 countries | 2014/2015 | Afrobarometer



**Respondents were asked:** *In your opinion, how often, in this country, do officials who commit crimes go unpunished?*  
 (% who say "always" or "often")

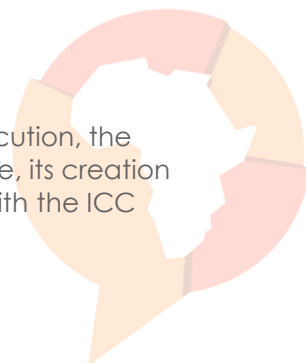
### Evaluations of the African Union (AU)

In February 2014, the African Union announced its opposition to the ICC's efforts to prosecute sitting presidents. An official communiqué insisted that "African States Parties should comply with African Union Decisions on ICC and continue to speak with one voice ... in line with their obligations under the Constitutive Act of the Union" (African Union, 2014, p. 2). In June of that year, the AU Assembly adopted a draft protocol to extend the jurisdiction of the African Court on Human and Peoples' Rights to international criminal justice (including genocide, war crimes, and crimes against humanity), but this has not yet been ratified (Maunganidze & du Plessis, 2015).

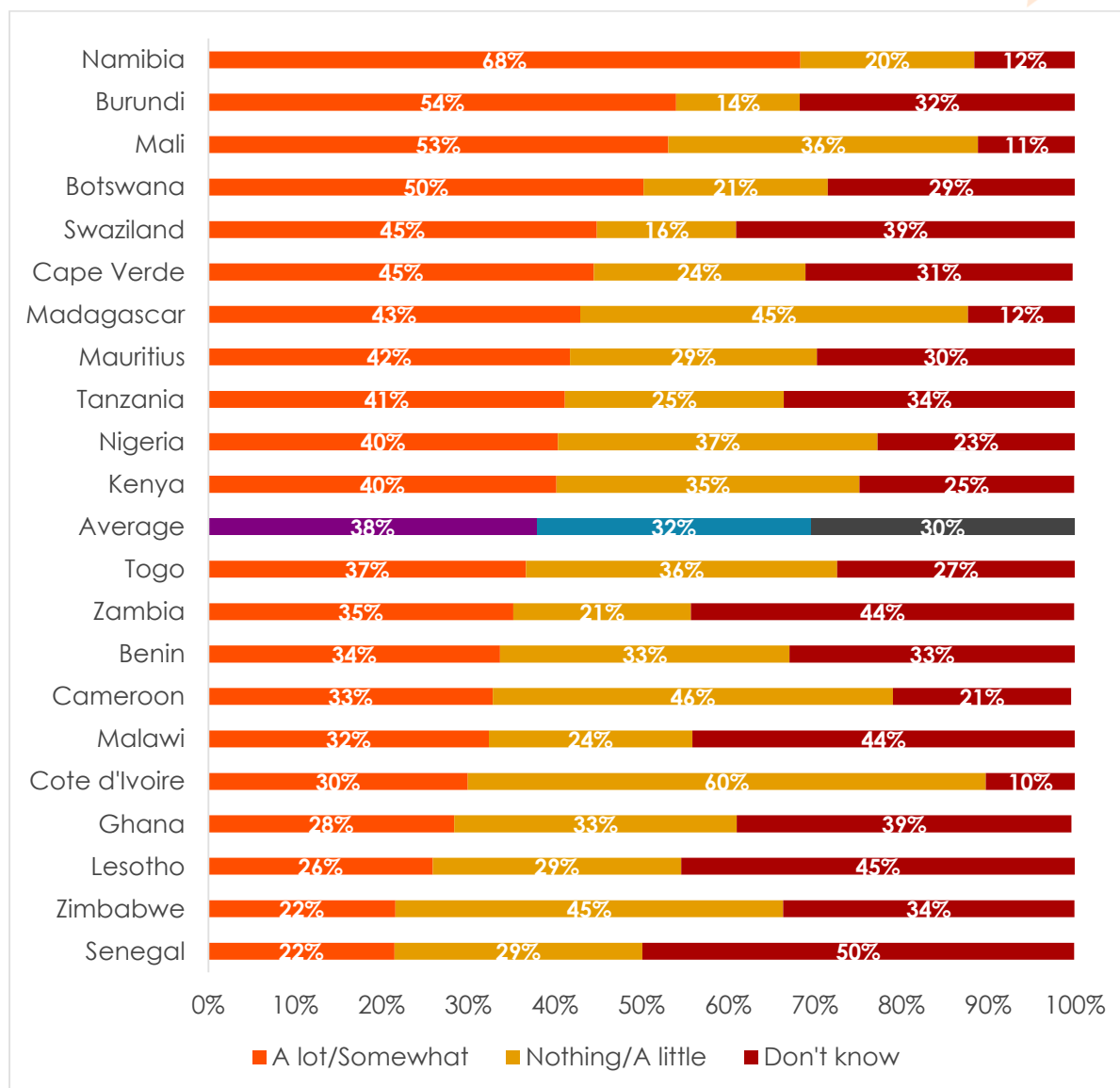
Afrobarometer does not have a specific survey question regarding the proposal for an alternative, African-led court, but it does ask citizens for their opinions on the role that the AU plays in their respective countries. African perceptions of the AU range widely: Seven in 10 Namibians (68%) believe that the AU helps their country "somewhat" or "a lot," while only 22% of Zimbabwean and Senegalese citizens say the same. On average, only four in 10 Africans (38%) feel that the AU contributes "somewhat" or "a lot," while 32% believe that it does "little" or "nothing" to help their country, and 30% say they "don't know" (Figure 10). Overall, only minorities of citizens in 17 of 21 countries currently find the AU helpful.

Given that ordinary citizens do not see the AU as a major player in a large number of African countries, the proposed African-led tribunal could enhance the role of the AU on the

continent. If, however, it insists on exempting political incumbents from prosecution, the African Court would create a major obstacle to fighting impunity. Furthermore, its creation could create additional complexities arising from potential judicial overlap with the ICC (Maunganidze & du Plessis, 2015).



**Figure 10: Perceptions of the African Union** | 21 countries | 2014/2015  
| Afrobarometer

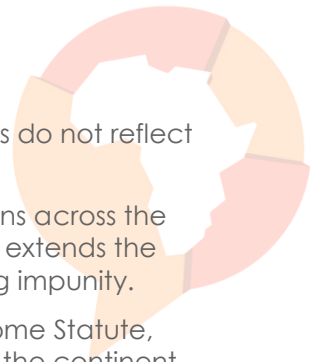


**Respondents were asked:** *In your opinion, how much do each of the following do to help your country, or haven't you heard enough to say: African Union (AU)?*

## Conclusion

Debate on the ICC's role in Africa has strayed from what matters most: ending impunity for perpetrators of gross human rights violations by providing access to justice and impartial adjudication for victims. Instead, attention has largely turned to ideological and geopolitical disputes.

Kenyan public opinion highlights the pivotal role that domestic politics play in shaping perceptions of the ICC. Kenyans' attitudes toward ICC prosecutions of national leaders are driven by ethnicity and partisanship. On average, however, a majority of Kenyans support the ICC prosecutions and reject the notion that the court is a biased institution. While the AU has called for African solidarity against specific articles of the Rome Statute and the Kenyan



government has previously called for withdrawal from the ICC, these positions do not reflect the wishes of ordinary citizens.

The apparent impunity of top public officials is a major concern among citizens across the continent. The AU's proposal to amend Article 27 of the Rome Statute, which extends the ICC's jurisdiction to sitting presidents, is a significant impediment to addressing impunity.

Most of the critiques of the ICC have focused on its implementation of the Rome Statute, rather than its stated goals. Any efforts to better serve international justice on the continent, whether based in The Hague or Addis Ababa, will have to confront the same challenges in navigating internal and external political forces.

Policy recommendations:

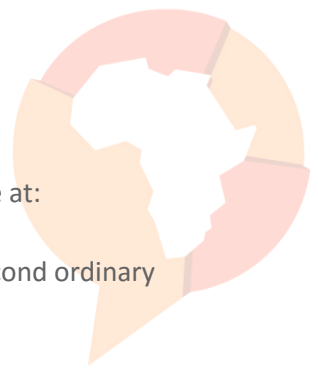
1. Public opinion researchers should gather more data about Africans' views on the ICC and any potential alternative tribunals, including one led by the AU. They should also broadly disseminate survey results to help ensure that citizen views are taken into account in any government decisions.
2. Governments should strengthen the capacity of national judicial systems in order to locally adjudicate cases pertaining to gross human rights violations. Reforms must include the domestication of international criminal justice legislation and the provision of technical training to local officials, perhaps through partnerships with the ICC and civil society organisations.
3. Governments must make lasting commitments to the independence of the judiciary and the rule of law in order to ensure that no individual is exempt from prosecution, regardless of position. Only then will impunity among public officials, including incumbents, be addressed.
4. Regardless of the justice mechanisms adopted by African states, they must demonstrate full commitment to upholding treaties to which they are party in order to avoid undermining established principles of international criminal law.

---

To further explore this data, please visit Afrobarometer's online data analysis facility at [www.afrobarometer.org/online-data-analysis](http://www.afrobarometer.org/online-data-analysis).

---



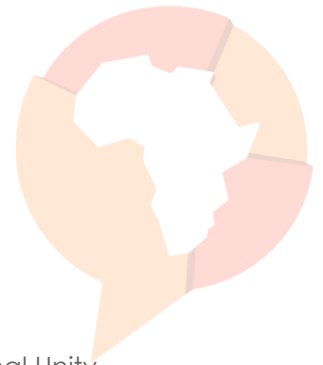


## References

- African Court on Human and Peoples' Rights (2015). African court in brief. Available at: <http://www.african-court.org/en/index.php/about-the-court/brief-history>.
- African Union (2014). Decisions and declaration: Assembly of the union, twenty-second ordinary session. 1 February 2014. Available at: [http://www.au.int/en/sites/default/files/Assembly%20AU%20Dec%20490-516%20%28XXII%29%20\\_E.pdf](http://www.au.int/en/sites/default/files/Assembly%20AU%20Dec%20490-516%20%28XXII%29%20_E.pdf).
- Al Jazeera (2013). Kenya parliament votes to withdraw from ICC. 5 September 2013. Available at: <http://www.aljazeera.com/news/africa/2013/09/20139515027359326.html>.
- Amnesty International. (2014). Crying for justice: Victims' perspectives on justice for the post-election violence in Kenya. Available at: <https://www.amnesty.org/en/press-releases/2014/07/kenya-victims-still-seeking-justice-post-election-violence/>.
- Bensouda, F. (2012). Setting the record straight: The ICC's new prosecutor responds to African concerns. Office of the Prosecutor, International Criminal Court. 10 October 2012. Available at: [http://www.icc-cpi.int/en\\_menus/asp/complementarity/CompletedProjects/Lists/Capacity%20Building/Attachments/22/10Oct2012ICCKeyNoteAddress.pdf](http://www.icc-cpi.int/en_menus/asp/complementarity/CompletedProjects/Lists/Capacity%20Building/Attachments/22/10Oct2012ICCKeyNoteAddress.pdf).
- Fritz, N. (2014). Quiet death of an important SADC institution. Mail & Guardian. 29 August 2014. Available at: <http://www.mg.co.za/article/2014-08-29-quiet-death-of-an-important-sadc-institution>.
- Institute for Security Studies (2015). International justice at a crossroads in Africa. Live webcast. 16 July 2015. Pretoria, South Africa.
- International Criminal Court (2015). About the court. Available at: <http://www.icc-cpi.int/menus/icc/about%the%court>.
- Ipsos Kenya (2014). SPEC Barometer. 15 October 2014. Available at: [http://www.ipsos.co.ke/spr/downloads/downloads.php?dir=polls&file=KE\\_Ipsos\\_Current\\_Affairs\\_Poll%20Report\\_October\\_2014\\_PA.pdf](http://www.ipsos.co.ke/spr/downloads/downloads.php?dir=polls&file=KE_Ipsos_Current_Affairs_Poll%20Report_October_2014_PA.pdf).
- Ipsos Kenya (2015). Ipsos' 1st quarter SPEC (social, political, economic and cultural) survey: Election and political issues. 30 May 2015. Available at: <http://www.ipsos.co.ke/spr/downloads/downloads.php?dir=polls&file=9th%20Media%20Release%20Election%20and%20Political%20Issues%20Narrative.pdf>.
- Kanyinga, K., Okello, D., & Akech, A. (2010). Contradictions of transition to democracy in fragmented societies: The Kenya 2007 general elections in perspective. In Kanyinga, K., & D. Okello (eds.), *Tensions and Reversals in Democratic Transitions: The Kenya 2007 General Elections*. Nairobi: Society for International Development and Institute for Development Studies (IDS)/University of Nairobi), pp. 1-28.
- Mail & Guardian (2014). African Union unites against ICC trials. 2 February 2014. Available at: <http://mg.co.za/article/2014-02-02-african-union-unites-against-icc-trials>.
- Maunganidze, O. A., & du Plessis, A. (2015). The ICC and the AU. In Stahn, C. (ed.), *The Law and Practice of the International Criminal Court*. Oxford: Oxford University Press..
- Mo Ibrahim Foundation (2014). 2014 Ibrahim index on African governance: Summary report with key findings. Available at: <http://www.moibrahimfoundation.org/downloads/publications/2014/2014-summary-report-with-key-findings.pdf>.
- Tladi, D. (2009). The African Union and the International Criminal Court: The battle for the soul of international law. *South African Yearbook of International Law*, 34, 57-69. Available at: <http://www.councilandcourt.org/files/2012/11/Tladi-AU-and-ICC.pdf>.
- University of Pennsylvania. (2015). Kenya: A profile. In *East Africa Living Encyclopaedia*. African Studies Centre. Accessed on 28 June 2015. Available at: <http://www.africa.upenn.edu/NEH/khome.htm>.

Wolf, T. (2013). International justice vs. public opinion? The ICC and ethnic polarization in the 2013 Kenya election. *Journal for African Elections*, 12(1), 143-177. Available at: <http://www.content.eisa.org.za/node/2083>





## Appendices

### Appendix A: Timeline of the ICC investigation in Kenya

- 27 Dec. 2007 General elections take place in Kenya.
- 30 Dec. 2007 Incumbent President Mwai Kikabi of the Party of National Unity (PNU) is declared victor over Ralia Odinga of the Orange Democratic Movement (ODM). Allegations of electoral fraud are made from both sides, triggering outbreaks of violence leading to the deaths of between 800 and 1,500 and the displacement of between 180,000 and 600,000 Kenyans.
- 5 Feb. 2008 The ICC announces commencement of a preliminary investigation into the post-election violence.
- 28 Feb. 2008 The Kenyan government establishes the Commission of Inquiry on Post-Election Violence (CIPEV), popularly known as the Waki Commission after its chair, Judge Philip Waki.
- 15 Oct. 2008 The Waki Commission submits its final report to the government, which calls for the establishment of a special tribunal to investigate and prosecute individuals involved in post-election violence within 6 months of the submission, or the Commission would refer the case to the ICC.
- 12 Feb. 2009 The Kenyan Parliament votes against the establishment of the proposed tribunal.
- 3 June 2009 Three Kenyan Cabinet ministers sign an agreement with the ICC committing Kenya to the establishment of a credible and independent tribunal to try perpetrators of post-election violence.
- 16 July 2009 The Waki Commission refers the case to the ICC and includes a list of suspects.
- 15 Dec. 2010 ICC Prosecutor Luis Moreno Ocampo names six suspects (popularly known as the "Ocampo Six"): William Samoei Ruto, Henry Kiprono Kosgey, Joshua arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohamed Hussein Ali.
- 23 Jan. 2012 The ICC confirms charges against four of the six suspects (Ruto, Sang, Muthaura, and Kenyatta).
- 4 Dec. 2012 Former rivals Kenyatta and Ruto establish a political alliance (the Jubilee Alliance) to run for president and deputy president in the March 2013 elections.
- 11 March 2013 The ICC withdraws its case against Muthaura after a key witness is discredited.
- 30 March 2013 Kenya's Supreme Court validates Jubilee's victory after receiving legal challenges to the electoral result.
- 19 Dec. 2013 The ICC postpones Kenyatta's trial by three months after the defence requests more preparation time.
- 5 Sept. 2013 Kenya's Parliament votes to back a call for the government to pull out of the ICC.
- 8 Oct. 2014 Kenyatta becomes the first serving head of state to appear before the ICC in The Hague.

- 5 Dec. 2014 ICC prosecutors withdraw their case against Kenyatta, saying that the Kenyan government's failure to cooperate with the investigation has left them with too little evidence to go to trial. The cases against Ruto and Sang remain open.
- 13 March 2015 The ICC confirms its decision to withdraw charges against Kenyatta.



## Appendix B: Partisanship and ethnicity in Kenya<sup>6</sup>



**Table B.1: Party affiliations** | by Kenyan major ethnic group | 2014  
| Afrobarometer

	Jubilee	CORD	Other alliance	N/A	Refused to answer
<b>Kikuyu</b>	59%	1%	2%	37%	1%
<b>Luo</b>	2%	80%	0%	15%	2%
<b>Luhya</b>	9%	36%	2%	49%	2%
<b>Kamba</b>	16%	39%	0%	41%	4%
<b>Kalenjin</b>	70%	5%	3%	21%	0%

**Respondents were asked:** Do you feel close to any particular political party? Answers of “No,” “Don’t know,” or “Refused to answer” are shown as “Not applicable.” If the answer was “Yes,” respondents were asked: Which party is that?

**Table B.2: Voting intentions** | by Kenyan major ethnic group | 2014 |  
Afrobarometer

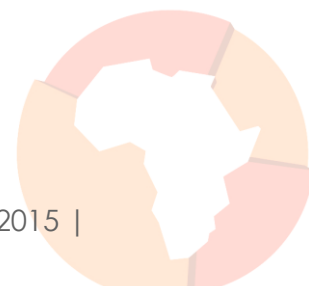
	Jubilee	CORD	Other alliance	Would not vote	Refused to answer
<b>Kikuyu</b>	59%	1%	2%	37%	1%
<b>Luo</b>	2%	80%	0%	15%	2%
<b>Luhya</b>	9%	36%	2%	49%	2%
<b>Kamba</b>	16%	39%	0%	41%	4%
<b>Kalenjin</b>	70%	5%	3%	21%	0%

**Respondents were asked:** If presidential elections were held tomorrow, which party's candidate would you vote for?

<sup>6</sup> Parties included in the Afrobarometer questionnaire were grouped as per Ipsos Kenya's classification: Kenya Social Congress (Other), NARC Kenya (Other), Orange Democratic Movement (CORD), Restore and Build Kenya (Other), SAFINA Party (Other), The National Alliance (Jubilee), United Democratic Front (Other), United Republican Party (Jubilee), Wiper Democratic Movement (CORD), and FORD Kenya (CORD). All other parties have been excluded from this analysis.



## Appendix C: Impunity in Africa



**Table C.1: Perceptions of impunity in Africa** | 21 countries | 2014/2015 | Afrobarometer

	People are treated unequally under the law			Officials who commit crimes go unpunished			Ordinary people who break the law go unpunished		
	Never/Rarely	Always/Often	Don't know	Never/Rarely	Always/Often	Don't know	Never/Rarely	Always/Often	Don't know
Benin	28%	70%	2%	26%	72%	2%	83%	17%	1%
Botswana	62%	34%	4%	54%	38%	8%	81%	15%	3%
Burundi	40%	58%	2%	40%	57%	3%	79%	19%	2%
Cameroon	29%	67%	4%	34%	60%	6%	74%	23%	3%
Cape Verde	36%	59%	5%	51%	38%	10%	76%	19%	5%
Cote d'Ivoire	17%	81%	2%	22%	75%	3%	62%	37%	1%
Ghana	42%	53%	5%	39%	54%	7%	76%	19%	5%
Kenya	30%	67%	3%	20%	76%	4%	86%	12%	2%
Lesotho	37%	51%	12%	36%	48%	16%	66%	28%	6%
Madagascar	45%	55%	0%	42%	58%	0%	72%	27%	%
Malawi	53%	43%	3%	48%	49%	3%	86%	12%	2%
Mali	17%	83%	0%	25%	75%	0%	75%	25%	%
Mauritius	54%	42%	4%	58%	37%	5%	90%	6%	4%
Namibia	68%	31%	1%	66%	34%	1%	85%	14%	1%
Nigeria	42%	57%	1%	30%	67%	2%	75%	23%	2%
Senegal	22%	75%	4%	28%	68%	5%	88%	9%	2%
Swaziland	34%	62%	4%	39%	57%	5%	86%	12%	2%
Tanzania	48%	48%	4%	46%	45%	9%	73%	24%	3%
Togo	31%	66%	4%	34%	58%	9%	77%	21%	2%
Zambia	50%	45%	4%	51%	44%	5%	69%	28%	2%
Zimbabwe	40%	56%	4%	33%	58%	9%	74%	21%	5%
<b>21-country average</b>	<b>40%</b>	<b>57%</b>	<b>3%</b>	<b>38%</b>	<b>56%</b>	<b>5%</b>	<b>78%</b>	<b>19%</b>	<b>3%</b>

**Respondents were asked:** *In your opinion, how often, in this country:*

1. Are people treated unequally under the law?
2. Do officials who commit crimes go unpunished?
3. Do ordinary people who break the law go unpunished?



# AFRO BAROMETER

LET THE PEOPLE HAVE A SAY

**Rorisang Lekalake** is assistant project manager for Afrobarometer in Southern Africa at the Institute for Justice and Reconciliation (IJR) in Cape Town, South Africa.

**Stephen Buchanan-Clarke** is an MA candidate in security studies at the University of KwaZulu-Natal and an IJR consultant.

Afrobarometer is produced collaboratively by social scientists from more than 30 African countries. Coordination is provided by the Center for Democratic Development (CDD) in Ghana, the Institute for Justice and Reconciliation (IJR) in South Africa, the Institute for Development Studies (IDS) at the University of Nairobi in Kenya, and the Institute for Empirical Research in Political Economy (IREEP) in Benin. Michigan State University (MSU) and the University of Cape Town (UCT) provide technical support to the network.

Core support for Afrobarometer Rounds 5 and 6 has been provided by the UK's Department for International Development (DFID), the Mo Ibrahim Foundation, the Swedish International Development Cooperation Agency (SIDA), the United States Agency for International Development (USAID), and the World Bank.

For more information, please visit [www.afrobarometer.org](http://www.afrobarometer.org).

*Cover image: Adapted from photograph by Stephen Buchanan-Clarke [CC BY 2.0 (<http://creativecommons.org/licenses/by/2.0>)]. Photograph shows the mural All Shall Be Equal Before the Law by Faith47 at Rhodes House, 60 Queen Victoria St., Gardens, Cape Town.*

Contact: [rlekalake@ijr.org.za](mailto:rlekalake@ijr.org.za)  
[sclarke@ijr.org.za](mailto:sclarke@ijr.org.za)

Afrobarometer Policy Paper No. 23 | August 2015