

Strengthening Access to Civil Justice with Legal Needs Surveys

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Open Society Justice Initiative

The United Nations Sustainable Development Goals (SDGs) identify access to justice as a target for realizing inclusive and sustainable development. Expanding access to civil justice is a key strategy to confront inequality, reduce poverty, improve local governance, and secure meaningful development for marginalized groups. However, access to civil justice is not included as an indicator in global efforts to monitor the progress of the SDGs. By focusing only on narrow elements of criminal justice, the SDG indicator framework risks overlooking the pressing, everyday civil justice needs that disproportionately affect the lives of the poor and marginalized. As the global community now examines the possibility of new and amended indicators for the SDGs, the measurement framework must incorporate access to civil justice in order to realize the ambition of the SDGs.

The first step toward effective access to justice is identifying needs; doing so can inform government investment in basic justice services and strengthen delivery of other public services. But many countries face difficulties with even assessing the unmet legal needs¹ of poor and vulnerable populations. Better civil justice data enables more targeted justice services, improves delivery of other public services, and enhances performance of the justice system as a whole. Including core legal needs questions in existing national household surveys, such as those focusing on living standards, health and/or governance, can effectively capture this dimension. These efforts are essential for understanding and responding to the demands of marginalized communities, whose legal needs are too often ignored.

¹ Called “justiciable events” in legal needs surveys, these are problems or disputes which raise legal issues, whether or not this is recognized by those facing them, and whether or not lawyers or the wider legal system are invoked in any action taken to deal with them.

Access to Civil Justice: Ensure No One Is Left Behind

Civil justice problems are the most frequent—and often most pressing—legal problems people and communities face, and often have significant and disproportionate impacts on the poor. Around the world, common civil justice issues include consumer rights, access to public benefits, employment and labor issues, land and property, family matters, and debt. Those suffering from civil justice problems include the family facing eviction, the woman seeking child support benefits from an absent husband, the Roma man being denied adequate health services due to discrimination, the daily laborer not being paid wages he was promised, and the indigenous community fighting for recognition of their traditional land rights. In order to address such challenges, we must better understand their pervasive nature and harmful impact. Legal needs surveys can be an essential tool in that process.

Marginalized and socially excluded populations are more likely to experience civil legal problems than other groups. In the United States, for example, people from low-income households are approximately 30% more likely to have civil justice problems than those with high income. In Canada, civil justice problems are often cumulative: people with multiple justice problems are more likely to experience additional problems. In Jordan, poorer persons are more likely to have legal needs involving family matters (such as marriage/divorce, child support and custody, alimony, and inheritance).

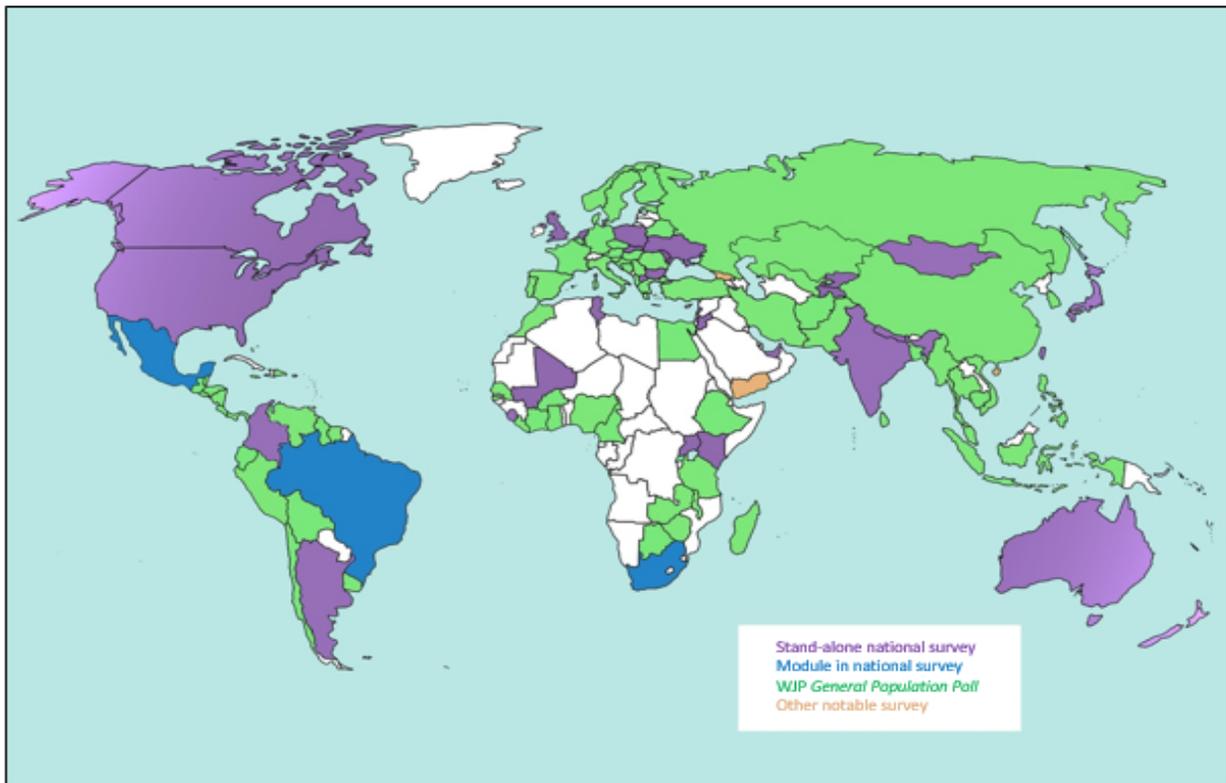
Legal Needs Surveys: An Established Methodology

The United Nations' Financing for Development Addis Ababa Action Agenda argues that high quality data is essential for smart and transparent decision-making. High-quality data can improve policy-making analysis, monitoring, and reporting of progress on SDGs at all levels.

Legal needs surveys are an established methodology and an effective tool to measure progress on access to civil justice in target 16.3. Legal needs surveys help to identify the scope of legal needs in a community or in a country by adopting an individual—rather than an institutional—perspective. In this way, they are uniquely able to inform justice policies.

Civil justice issues are complex. Numerous institutions have mandates to resolve civil justice issues, from formal courts and administrative agencies, to community groups and religious organizations. Similarly, people may seek help in resolving civil justice issues from many institutions, from legal aid attorneys and paralegals, to their neighbors and the internet. Legal needs surveys allow policy makers understand the range of institutions and sources of advice people turn to in trying to seek a resolution.

Legal needs surveys are not a new phenomenon. As Table 1 demonstrates, a growing number of countries are using legal needs surveys. Indeed, by the end of 2018 legal needs studies will have been conducted in more than 100 countries from every region.

Table 1. Global use of legal needs surveys

Countries have conducted different types of surveys at the national level:

- Governments have invested in stand-alone surveys focused on justice needs, such as the 2017 *Justice Gap* survey in the United States.
- Statistical agencies are now experimenting with the inclusion of legal needs methodologies in ongoing, general-interest state surveys, for example by Statistics South Africa, the Kenya National Bureau of Statistics, Indonesia’s Planning Agency, and Colombia’s National Planning Department.
- Philanthropic foundations and development organizations continue to fund national legal needs surveys, including in Mongolia, Ukraine, Nepal, and Sierra Leone in 2017, as well as population-specific surveys in Moldova and Macedonia.
- Global actors are expanding coverage across countries. The Hague Institute for the Innovation of Law has used its *Justice Needs and Satisfaction* survey tool to more than a dozen countries, including recently in Bangladesh and Kenya. The World Justice Project has developed a global *Paths to Justice* civil justice module that is gathering data on more than 100 countries by 2018, and is the first globally comparable civil legal needs data set.

Core Elements of Legal Needs Methodologies

While legal needs surveys have historically varied across countries, increasing alignment is emerging among recent efforts. To improve policy relevance, each legal needs survey methodology should include the same core areas of inquiry:

- *Problem identification:* What problems or disputes did the respondent experience in the preceding two years?
- *Information, advice, or representation:* Did the respondent seek information and advice? Where did the respondent seek advice? If no advice was sought, why not?
- *Action taken:* What was done to try to resolve the dispute?
- *Resolution:* How was the dispute ultimately resolved, if at all?
- *Outcomes:* Does the respondent think the outcome was fair, timely, and cost-effective?
- *Impacts:* What were the impacts on social, health, financial, or other wellbeing factors?

Legal needs survey methodologies should be developed in ways that enable policymakers to better understand differentiated experiences—by race, gender, income group, and geographic setting, among others. Civil justice experiences mirror and can reinforce social inequalities and discrimination. Incorporating legal needs methodologies into existing surveys on poverty, living standards, or governance holds particular potential for addressing these challenges. This has been the approach taken in Colombia, Kenya, and South Africa, where policymakers are able to understand how civil justice issues relate to and impact socioeconomic factors. In cases where experiences of specific marginalized communities are likely to be captured in general surveys, governments should invest in oversampling or specific research into the experiences of these groups.

Shaping Policies through Legal Needs Data

In numerous country contexts, legal needs surveys have played a critical role in **shaping legal aid and justice reform frameworks** by helping to identify common legal problems, impacts, strategies for resolution, and potential solutions. In Ukraine, the findings of legal needs surveys have fundamentally reshaped national legal aid delivery, as the government has moved to a system of primary and secondary legal aid. In Argentina, the Ministry of Justice and Human Rights is using a legal needs survey to better frame priorities and reform models of service delivery. The Ministry is in the process of developing specific indicators on access to civil justice that it intends to collect every two years. Legal Aid South Africa has used its legal needs survey to better plan and deliver legal service programs for poor and geographically remote populations.

Legal needs survey methodologies also **strengthen national development planning and the delivery of public services**. Through a concrete understanding of the scope of civil justice issues—often closely related to sector-specific developmental priorities like health, education, and housing—national development plans are able to more effectively promote inclusive

development. In the United States, legal needs survey methods were essential in mobilizing political will for the White House Legal Aid Inter-Agency Roundtable, which has increased sector-specific investments in civil justice critical to furthering the **poverty reduction** agenda. In Colombia, the Department of National Planning has developed a justice needs module in its National Life Quality Survey, and findings from this module contribute to nearly half of the indicators in the National Index on Effective Access to Justice. Furthermore, this module forms the “demand side” basis for the justice chapter in Colombia’s national development plan. In Indonesia, a new legal needs module will be an important element of the national access to justice index, as part of the national planning framework.

Partnerships to Maximize the Potential of Legal Needs Surveys

Conceptualization and formulation

Legal needs surveys are effective when those defining and supporting the research, whether from government or civil society organizations, bring other groups into the process. Defining and contextualizing the legal problems people experience, as well as possible mechanisms for resolution, is a challenging exercise. Meaningful engagement with frontline service providers and community groups enables the development of a better, more responsive survey. Such interaction equips frontline organizations with a deeper understanding of the survey process, which will, in turn, generate trust and enable those organizations to engage with the findings.

When incorporating civil legal needs questions into government surveys, the previous experiences of independent civil society in conducting surveys have proven to be a valuable guide for government policymakers. In Colombia, for example, when the Department of National Planning sought to integrate a national civil justice module they looked to the experiences of the civil society organization Dejusticia, which had previously conducted an urban legal needs survey. By working in partnership, the government was able to learn from Dejusticia’s experience, while Dejusticia in turn was better prepared to make use of the survey’s findings. In Nepal, the National Judicial Academy partnered with the Social Science Baha, a civil society think tank, to develop and implement a nationwide legal needs survey.

Implementation

Conducting the survey through an inclusive process both provides the best results and enables the most effective use of the findings by different stakeholders. In both government-led and independent surveys, civil society groups can serve as important partners for connecting with hard-to-reach groups. In Nepal, for example, legal service providers are working with a research team to better account for the range of civil justice problems and active justice institutions at the local level. In Kenya, a legal assistance and advocacy organization helped introduce the research team to a marginalized community where there was deep suspicion of external and government representatives. In South Africa, organizations supporting community advice offices have

participated in testing and refining a civil justice questionnaire being developed by Statistics South Africa. Greater inclusivity will enable policymakers and advocates to understand how the survey generates particular types of information and strengthens possibilities for policy impact.

Interpretation

Finally, inclusive processes can enhance the value of survey findings. A wide range of government agencies and civil society organizations may be affected by legal needs findings. Each agency or organization can play a role to play in interpreting findings and driving programmatic and policy reform. Governments and civil society organizations have used a number of public dissemination techniques to discuss the findings, their dissemination, and the strategic use of media.

Guaranteeing the availability of data is also a key consideration. Surveys are costly undertakings and lead agencies are often unable to conduct the numerous types of analyses that are relevant to particular constituencies. It is critical that independent organizations and government institutions make anonymized survey data available for researchers and advocates. This approach ensures that the survey exercise has broader use and applicability and can be combined with other sources of justice data to inform policy in a multitude of ways.

Expanding Evidence and Amplifying Impacts

The inclusion of access to justice in the Sustainable Development Goals presents new opportunities for justice advocates to link civil justice with broader development and anti-poverty measurement and programming. Global methodological guidance on conducting legal needs surveys—developed by the Open Society Justice Initiative and the Organisation for Economic Co-operation and Development—can help policymakers and justice practitioners to more efficiently construct contextually appropriate methodologies to measure civil justice at a national level. OECD and OSJI will launch this guidance in 2018.

Current global SDG indicators are an initial framework to be improved and refined over time, taking into account lessons from implementation, methodological development, and technological advances. It is time for the global community to focus on the civil justice problems that vulnerable communities grapple with every day. Civil justice data can meaningfully contribute to the fundamental vision, principles, and goals of the sustainable development agenda; eliminate poverty; and ensure no one is left behind.

More Information

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