

MOBILIZING ALTERNATIVE DISPUTE RESOLUTION (ADR) FOR JUSTICE IN ZAMBIA: THE CASE FOR A LEGAL NEEDS SURVEY

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POLICY BRIEF

MOBILIZING ALTERNATIVE DISPUTE RESOLUTION (ADR) FOR JUSTICE IN ZAMBIA: THE CASE FOR A LEGAL NEEDS SURVEY.....

KEY FINDINGS

- The formal court system is a minority provider of dispute resolution services in Zambia.
- Most Zambians use Alternative Dispute Resolution (ADR) mechanisms to meet their legal needs.
- Legal needs in Zambia are diverse. A poor understanding of legal needs vitiates evidence-based policy making.
- A legal needs survey is best practice methodology for understanding legal need and for developing ADR solutions that meet legal needs where they arise.
- Despite its importance for justice sector programming, a legal needs survey has never been conducted in Zambia.

RECOMMENDATIONS:

- Conduct a country-wide legal needs survey to inform the sustainable resourcing and capacitation of ADR structures that meet the lion's share of legal need in Zambia.

INTRODUCTION

Justice options and outcomes for most Zambians are limited. A 2022 review of the judicial sector in Zambia detailed a troubling market failure of legal services where demand outstrips supply (World Bank, 2022). The study also highlighted limited data capabilities in the justice sector, cautioning that “responsible decision-making and strategic planning [in the sector] should be data-driven and evidence-based (World Bank, 2022).”

There is limited data on legal needs in Zambia. What is known, is that justice programming focuses predominantly on the formal justice sector (Ministry of Justice Strategic Plan, 2023) even though most Zambians use traditional Alternative Dispute Resolution (ADR) mechanisms to resolve their legal problems and meet their legal needs. The first step to addressing this lop-sided approach to justice programming is to obtain a qualitative understanding of legal needs in Zambia to drive data-driven programmatic responses.

Legal need surveys are increasingly used by policymakers as an empirical tool to guide decision-making in the justice sector. Notwithstanding their importance, Zambia is one of the only countries in the region without a legal needs survey.

THE POLICY PROPOSAL: CONDUCTING ZAMBIA'S FIRST EVER LEGAL NEEDS SURVEY

This policy brief recommends the undertaking of a country-wide legal needs survey to provide the empirical data that can inform the sustainable resourcing and capacitation of ADR structures that meet the lion's share of legal need in Zambia.

The remainder of the brief examines the what, why, how, and who of a legal needs survey in the Zambian context: Specifically, the following questions are addressed:

- What is a legal needs survey?
- Why is a legal needs survey important for Zambia's justice landscape?
- How should Zambia's legal need study be conducted?
- Who should conduct Zambia's first ever legal needs survey?

What is a Legal Needs Survey?

Legal need surveys gather important population-level data about how people experience legal problems and interface with the legal system. Legal need surveys use the personal experiences of people in the legal system to better understand administrative data from institutions (IJRS., 2020).

These surveys give voice to users and would be users of justice systems, rather than solely relying on the perspectives of institutions or professionals. (OECD, 2019). Through this “bottom-up” approach, “the experience of justiciable problems from the perspective of those who face them” are brought to the attention of policy makers and justice programmers (OECD, 2019).

These surveys can consider some or all of the following:

- Frequency and type of legal problems experienced within a specified time frame
- Perceptions of the justice system (both formal and informal)
- Awareness of existing ADR mechanisms and institutions– formal and informal
- Awareness of rights and laws
- Experiences in obtaining legal information and/or legal assistance
- Pathways in the justice system
 - * Process and associated costs
 - * Prevalence of use of ADR
 - * Gaps in the availability and operation of justice mechanisms
- Barriers in accessing justice, with a focus on vulnerable populations

Legal need surveys can be as broad or as narrow as the context and/or survey objectives demand. In general, the graphic figure below surveys the 3 overarching themes that a legal survey must canvass; i) type of legal problem; (ii) action/behaviour related to legal problem; and iii) impact of problem.

Graphic 2.1
Legal Needs Survey Measurement Scheme

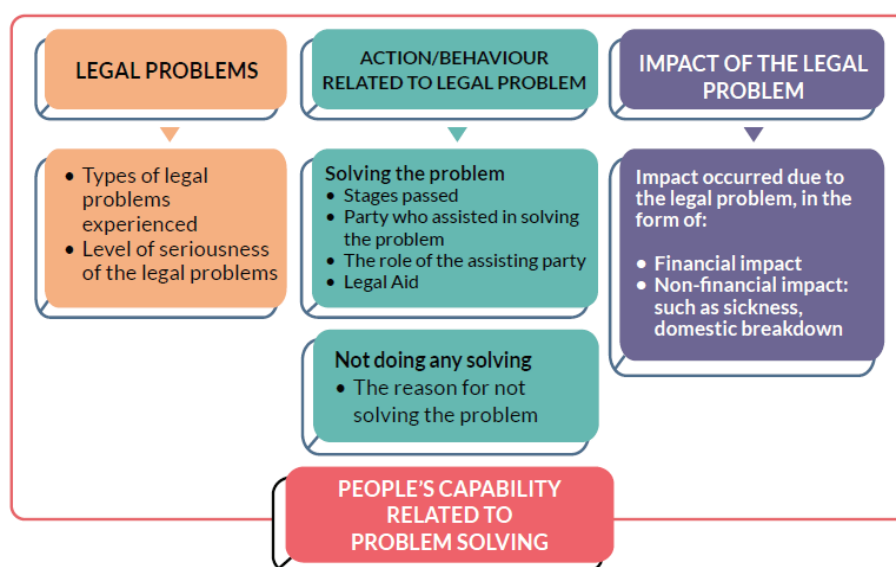


Figure 1: OECD/Open Society Foundations (2019), Legal Needs Surveys and Access to Justice

Why is a Legal Needs Survey Important for Zambia's Justice Landscape?

A legal needs survey is the best practice methodology for understanding the user perspective of a justice system in a jurisdiction. While there have been hundreds of legal needs surveys conducted in over 108 jurisdictions, no legal needs study has been conducted in Zambia (World Justice Project Atlas of Legal Needs Surveys, 2023) (figure 2).



Figure 2: World Justice Project, Atlas of Legal Needs Surveys in Africa Source: World Justice Project, Atlas of Legal Needs Survey (2023)

An effective justice system is one that meets justice needs where they arise. Zambia's population is predominantly rural, and as such, justice needs largely arise in rural areas that lack access to formal justice infrastructure. In these settings, traditional ADR mechanisms are the default. As explained elsewhere:

In rural communities, the vast majority of civil disputes are settled locally by traditional courts according to customary law. ...In practice, 80 to 90% of civil cases start at the traditional courts (Limondin & Dinda, 2023).

Given this demographic reality, improving ADR systems is an essential component to enhanced justice outcomes for the most vulnerable. For Zambia, a legal needs survey can provide a baseline understanding of justice needs in rural communities and can help policy makers triage and prioritize support to the ADR sector. Currently, the majority of budgetary and capacity building support goes to the formal justice sector.

Mapping out justice journeys and capacitating the ADR sites that justice seekers most frequent is an important component of people-centered justice. Capacitation must involve safeguarding the substantive and due process rights of the justice seekers who use these forums. Even within the formal courts themselves, adjudicators must be capacitated to discern when disputants would be better served by ADR mechanisms. Capacitation efforts must also pay keen attention to the sustainable resourcing of ADR structures that provide these critical dispute resolution services.

Without a baseline understanding of how people experience the justice system, the exact extent to which legal needs are resolved through the formal system, or addressed in parallel, ADR systems, or remain unresolved entirely, is unknown. Without this data, justice programming lacks an empirical basis.

Legal need surveys can also provide useful information to CSOs and cooperating partners who support the government's work in the justice sector. These surveys "provide the ability to track how justiciable problems vary and are distributed among populations through generated data" and "are a crucial source of empirical information that can inform actionable and people-centered justice reform (World Justice Project, n.d.)."

How Should Zambia's Legal Needs Study be Conducted?

The best approach to a legal needs survey is one that takes a people centred approach, placing citizens and their engagement with the legal system at the centre of inquiry. Grass-root level legal need surveys investigate how ordinary people deal with their legal problems and how they interact with justice institutions (both formal and informal). As observed elsewhere:

Legal Needs Surveys have a "bottom-up" approach: instead of collecting institutional information, polling experts focus on the experiences of people facing unmet justice needs or justiciable problems. Legal Needs Surveys provide the ability to track how justiciable problems vary and are distributed among populations through generated data. For those reasons, Legal Needs Surveys are a crucial source of empirical information that can inform actionable and people-centered justice reform (World Justice Project, n.d.).

SUGGESTED METHODOLOGY

The following methods can form the basis of the proposed legal needs survey in Zambia:

- A **Literature Review** to situate contemporary understanding of legal needs in Zambia is required. The goal of this review will be to understand how prior studies have framed justice seeking behavior (and outcomes) in Zambia, and what information from the literature, published and grey, is available on the following:
 - * Who experiences legal needs and where and when do these legal needs most commonly arise?
 - What existing mechanisms meet these needs most frequently and most effectively?
 - How are these mechanisms deployed
 - How much need remains unmet and why?
- A **survey** with respondents from select districts representing the socio-economic and regional diversity of Zambia must be conducted. Demographic information from the Zambia Statistics Agency can be used as a sampling frame. Sampling must be proportional to the population size of each district. Selected respondents can complete a face-to-face interview with trained enumerators. The interview questionnaire must be developed with reference to the literature review and consultation with justice sector stakeholders. A survey expert must be engaged to monitor the data collection process and ensure the accuracy and consistency of the data set.
- **Stakeholder consultation** must feature prominently throughout the survey. The development of the survey instrument will be informed by stakeholder consultation. Key findings of the survey must also be presented to and validated by stakeholders. This engagement will help identify trends, patterns, and emergent themes in the collected data.
- **Synthesis:** data collected from the survey should be triangulated with the literature review findings, stakeholder consultation findings, and administrative data collected by justice sector institutions.

WHO SHOULD CONDUCT ZAMBIA'S FIRST EVER LEGAL NEEDS SURVEY?

A legal needs survey is expensive and requires technical expertise. Also, since it involves human subjects, ethical clearance and access to study subjects is key. A multi-sectoral approach is therefore recommended. As the custodian of Zambia's access to justice project, the Ministry of Justice (MoJ) must be the primary driver of this process. Technical and financial support to the MoJ can be provided by cooperating partners, research institutions, and other key stakeholders in Zambia's justice ecosystem.

CONCLUSION

The level of unmet legal needs in Zambia is a crisis. While formal courts play an important role in meeting legal needs, these courts do not hold a monopoly on resolving legal problems in Zambia. In fact, only a small percentage of legal need is met by the formal court system. Most legal needs are met by ADR structures. The sooner that this understanding is embedded into policy making and justice programming frameworks, the quicker that the data driven work of reducing justice barriers and enhancing access to justice for all Zambians can begin.

To be sure, the crisis of unmet legal needs “must be tackled by data-driven, actionable, and people-centered policies (World Justice Report, n.d.)” This brief has put forward the undertaking of a country-wide legal needs survey as a practical, for-ward looking policy proposal that can inform the sustainable resourcing and capacitation of ADR structures that meet the bulk of legal need in Zambia.





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