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2019 ONLINE CONSULTATIONS ON CUSTOMARY AND INFORMAL JUSTICE



Creating a Culture
of Justice

International Development
Law Organization

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International Development Law Organization (IDLO)

For more information, visit:
<https://www.idlo.int/consultation-customary-and-informal-justice-systems>

Introduction

Global consultations on customary and informal justice

Recurring estimates show that globally, more than 80% of legal disputes are resolved outside of the formal courts through customary and informal justice (CIJ) systems. The vast majority of these justice seekers are women, poor people, minority groups and marginalized communities. While widespread and critically important to many individuals and communities, CIJ systems are often left out of discussions held at the international level.

In 2019, IDLO launched a series of global consultations on CIJ with the aim of advancing policy dialogue and distilling lessons from programming and research to help make justice accessible for all. The consultations were backed by a [Policy and Issue Brief](#) and a [Practitioner Brief](#).

As part of the global consultations, a series of events, workshops and roundtable discussions were organized with international, justice sector and civil society partners, as well as diplomatic missions and academic institutions.

All of the consultations focused on themes including:

- > interactions between informal and formal justice actors
- > people-centered approaches
- > human rights
- > women's and girl's access to justice
- > 2030 Agenda and Sustainable Development Goals 5 and 16

Eight in-person consultation meetings and events took place in The Hague, New York, Rome and Geneva between February and October 2019. For the full list and further detail, please visit IDLO's website:

<https://www.idlo.int/consultation-customary-and-informal-justice-systems>

Online consultation

In addition, an online survey collected views from a diverse set of stakeholders around the world. The online consultation was open from 16 September - 27 October 2019. During this time, 36 submissions were received from 15 female (42%) and 21 male (58%) respondents.

The background of participants varied from academic institutions to civil society representatives to government and justice sector actors.

Sector	
Civil society organization / non-governmental organization	28%
Academic institution	19%
Lawyer / Prosecutor	14%
Government (national, local)	11%
International organization	11%
Paralegal / justice para-professional	8%
Other	6%
Judge	3%
Total	100%

Prominence

Q1. What prominence do you think customary and informal justice systems should be given as the international community advances Sustainable Goal 16 and access to justice for all?

High (this should be a main priority for the rule of law and access to justice)	64%
Medium (this is important, it should be on the agenda)	36%
Low (other justice priorities need more attention)	0%

64% of participants stated that customary and informal justice systems should be given high prominence (as a matter of priority) in efforts to enhance the rule of law and access to justice for all, as the international community advances SDG 16. The remaining participants (36%) recognized the importance of customary and informal justice systems to be included in the SDG agenda. No participant indicated that it should be a low priority.

“The SDGs provide for stronger institutions to promote peace and justice. These can only be achieved if the local leadership is consulted and advocated for. [A] justice needs assessment indicates that more trust has been built within the local leadership which harbors inclusion and diversity.”

**Paralegal respondent
Uganda**

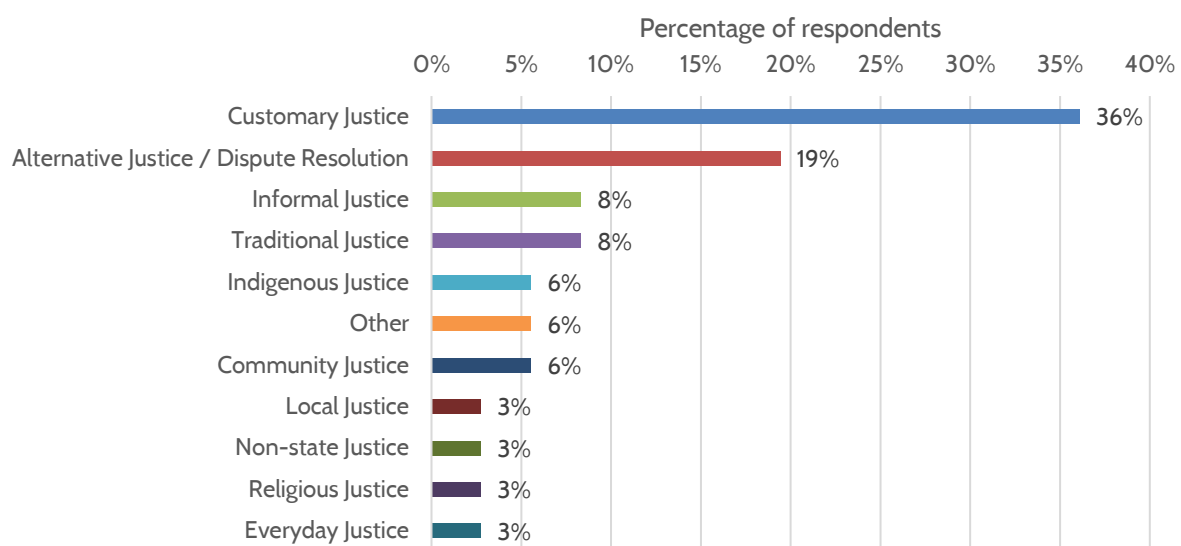
Terminology

Q2. What terminology do you normally use or prefer to describe customary and informal justice systems?

While the nomenclature customary and informal justice is most commonly adopted, various terms are used to describe mechanisms of justice and conflict resolution that operate outside the formal, court, and state-based legal systems, although state recognition can vary. There is no definitive nor universally accepted terminology, given the nuanced use and understanding of concepts that in turn materialize as mechanisms of justice across countries and cultures. Different terms are used based on context, cultural sensitivity and engagement priorities. For further information on terminology and common usage for this question, please read pp. 8–11 of the [Policy and Issue Brief](#).

'Customary Justice' was the most selected term (36.1% of participants), followed by 'Alternative Justice / Dispute Resolution' (19.4% of participants) and then Informal Justice (8.3% of participants) and Traditional Justice (8.3% of participants). The preference for particular terminologies varied across and within sectors, but participants reinforced that 'customary justice' is the most commonly used and preferred term. In comments, it was recognized as a more accurate and neutral term, compared to others, which were described by some as having different meanings and connotations.

What terminology do you normally use or prefer to describe customary and informal justice systems?



Male participants were predominant in recognizing 'Alternative Justice / Dispute Resolution', but this was also one of the more contested terms. Some participants articulated that in their view, Alternative Dispute Resolution refers to facilitated mediation by a neutral third-party and does not include customary mechanisms. Additionally, some felt that the word 'alternative' may be interpreted as a secondary option instead of a viable solution. Similarly, one participant highlighted that the term 'informal justice' risks denouncing the complex and 'formal' systems, procedures and rituals involved in customary and informal justice systems.

After 'customary justice', female participants preferred other terms, such as traditional or informal justice. Comments stressed the importance of recognizing the origin and source of local, community-based, traditional, and/or indigenous cultures, values, and practices.

"I do believe that the use of the word "alternative" can be understood as a second option, instead of a viable solution to a problem, which can negatively impact the perception of the public on the efficacy of this system. NGOs are pushing for the installment of a system called "Daily / Popular Justice", which includes a less formal procedure with no judicial or investigative authorities involved, unless needed. It privileges the will of those involved in a process, with people specialized in peaceful solutions and conflict management."

**Civil society respondent
Uganda**

Engagement

Q3. What are the most effective ways to engage with customary and informal justice systems?

Identify and support reforms of customary and informal justice systems	50%
Strengthen interfaces between formal and customary and informal justice	17%
Empower justice seekers through options to access justice	14%
Other / No response	19%

Half of the participants recognized identifying and supporting reforms of customary and informal justice systems as the most effective way to engage. Strengthening the link between formal and informal justice mechanisms (17%) and empowering justice seekers through options to access justice (14%) were also identified by remaining participants as keys to effective engagement.

One participant stressed that along with these measures, customary and informal justice actors should be engaged in general public policy reforms, particularly regarding criminal justice, fundamental rights to access basic services, and other socio-economic and cultural rights. Several participants highlighted that field research and knowledge sharing about how traditional beliefs, customs and laws work at the grassroots level, and how people think about the legal system are ways to engage effectively. Knowledge sharing platforms were also identified as providing a space for community members themselves to study and reflect on how decisions are made within their own communities, via customary and informal systems.

Identifying and supporting reforms of customary and informal justice systems

Most participants identified that engaging directly with existing customary and informal justice mechanisms is crucial to increasing access to justice, particularly for marginalized and vulnerable populations. However, many also highlighted the need to reform traditional laws and practices that may increase the risks of human rights abuses and discrimination through context specific and culturally sensitive avenues.

“Most victims of violence are poor and not able to afford court costs and thus the informal justice system is most convenient and accessible to them. Culture still plays a major role in the property rights of communities, especially for women. There is need to meaningfully engage the cultural structures in demystifying the repugnant cultures and applying the principles of the constitution and existing legislation to ensure equality and non-discrimination is adhered to.”

Civil society respondent
Kenya

Strengthening the link between formal and informal justice mechanisms

A few participants also highlighted the importance of legal and policy reforms at the national level to support the integration of customary and informal justice mechanisms within the formal system. For example, the recognition of the customary laws and justice mechanisms by the national Constitution, and training for law enforcement actors to better understand alternative means of dispute resolution.

“Usually, there are conflicts in the administration of the two systems. If the two systems can be made to work together in a simple, realistic but legal way, it would help. The primary aim would be to have many people access justice.”

Paralegal respondent
Zambia

Empowering justice seekers through options to access justice

Providing information to the general public through community legal empowerment, community paralegals, civic education and awareness raising activities is considered important for the empowerment of justice seekers. Several participants emphasized the importance of accessing reliable information about informal and formal justice mechanisms, how they work, which cases can be solved by which medium, and where/how to access the relevant services to resolve their cases. Establishing a system of accountability between the community and customary and informal mechanisms as well as women’s engagement in traditional mechanisms were also identified as important.

“Empowering community justice seekers through support of the community leaders is very important. In Uganda we have the Local Council based at the community level and religious leaders and these community leaders are very important and therefore should be supported. Capacity building and integrating the community justice system with the adversarial system [are important]. The community leadership should be able to know how the legal system operates and refer complex matters to the [formal] legal system where they do not have capacity.”

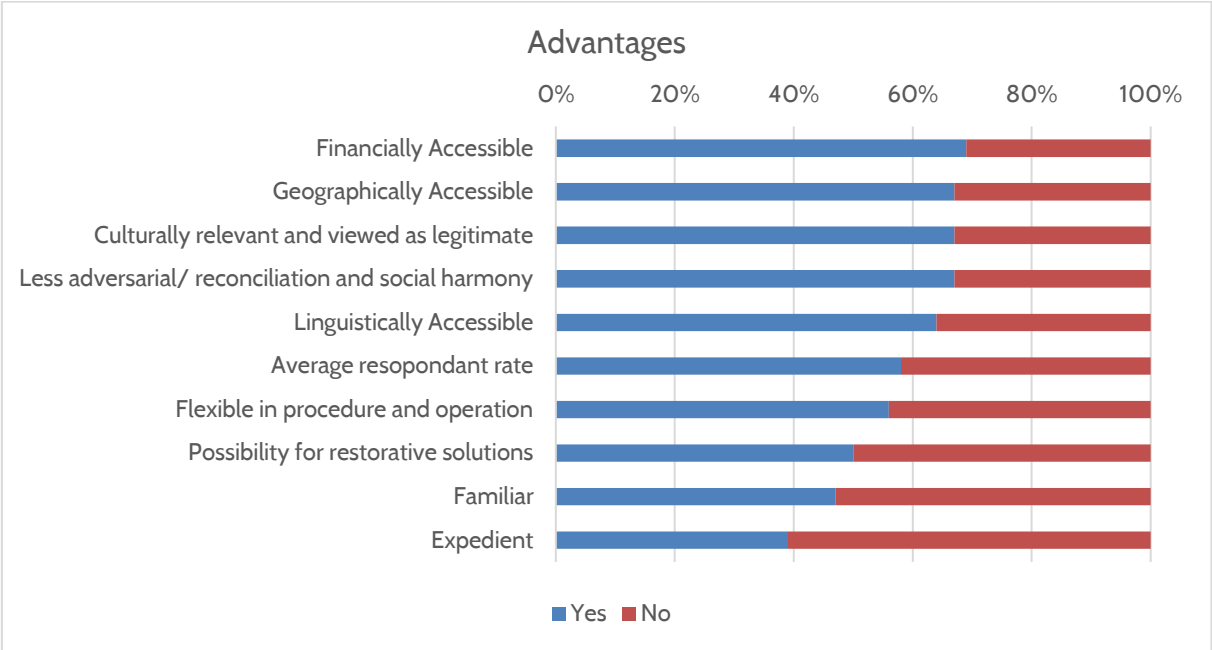
Paralegal respondent
Uganda

Advantages and Challenges

Q4. What are the main advantages and challenges of customary and informal justice systems?

Advantages

The majority of participants identified the following attributes as advantages of customary and informal justice systems: financially accessible (69%); culturally relevant and viewed as legitimate (67%); less adversarial with emphasis on reconciliation and social harmony (67%); geographically accessible (67%); and linguistically accessible (64%). Flexible procedures and operations (56%) and the possibility for restorative solutions (50%) were also identified as key advantages.



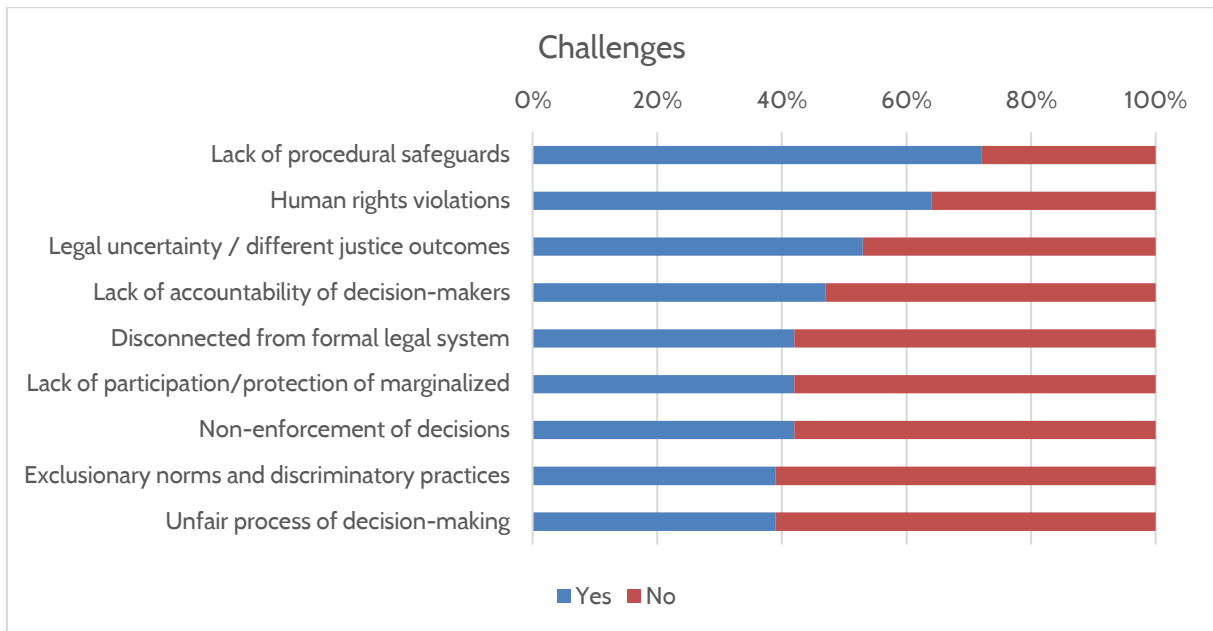
“Customary and informal justice systems play crucial roles in resolving some issues amicably within communities whose members sometimes lack enough resources to follow sophisticated legal avenues to achieve justice.”

Judge respondent

Challenges

With respect to disadvantages, 72% of participants highlighted that the lack of procedural safeguards is the greatest challenge in customary and informal justice systems. Associated with this, human rights violations were

identified as the second biggest challenge (64%), followed by legal uncertainty and different justice outcomes (53%).



“Customary mechanisms are good at grassroot [levels], they help to main local order and peace, and community cohesion is achieved through them. But the challenges are that they tend to violate human rights, they are discriminatory, especially against women as they emanate from men, and they lack proper procedures when administering justice.”

**Lawyer / advocate respondent
South Sudan**

“There is danger that the patriarchal nature of some customary systems may sideline women and children and care must be taken to ensure that women in particular are aware of their customary as well as their civilly protected rights. The civil courts must be in a position to adjudicate on certain customary matters where it would be in the interest of the parties to do so in order to safeguard individual rights.”

**Advocate respondent
South Africa**

“Another challenge is that local support to the marginalized community is there to adopt customary justice but the local law enforcement does not allow it, which makes matters worse. In the same way, the bureaucracy effectively tries to negate the positive outcomes of the parallel/informal/ customary justice system.”

**Prosecutor respondent
India**

Examples shared by participants

Q5. Can you share examples of effective, accountable, and inclusive customary and informal justice mechanisms?

Kenya
“Kituo cha Sheria has applied alternative justice in resolving disputes that arose during the post-election period in Kenya to enhance accountability. Hearings are conducted by community leaders who have been trained as paralegals. The Constitution is applicable to ensure that the outcomes are still within the confines of formal law.”

Uganda
“At the West Nile Mediation Center, we have court accredited mediators and ADR experts who have engaged in community justice transformation and refugee community leadership trainings. Involvement of the different leaders without due regard to ethnicity and tribe, age, gender, color and race, geographical location has helped to empower the local community leadership to promote peace building mechanisms in their communities.”
“In Uganda, we have the village mates choosing their 9-member committee of village leaders. Five of these constitute the village court. The state Local Council Court laws regulate the way decisions are arrived at as well as prescribe the pecuniary jurisdiction for these courts. They have no criminal jurisdiction at all. Criminal cases are tried by state courts. They use local languages and lawyers are not allowed to represent parties there. Litigants prefer them to formal courts. I find this very effective, accountable and inclusive.”

South Sudan
“Currently women rights are being recognized in Eastern Lakes, Yirol. The town bench court includes a female chief and this has helped women to secure their justice in that court, unlike before in Yirol where there was not much attention put into problems facing.”

Pakistan
“Local tribal courts of KPK province in Pakistan are [...] a good example of speedy and customary, though at times non-inclusive and less accountable, justice mechanism.”

India
“In India, the Indian Panchayat System has been given Constitutional recognition and is being enforced along with the ordinary course of law.”

Zambia
“In the Zambian context, the provisions in the written laws that cater for customary law is one example.”

Latin America
“Indigenous justice in Latin American countries.”

Nigeria
“The Sulhu panels of the Emirates of northern Nigeria.”

Conclusion

As reinforced by the online consultation, it is important to recognize that while the values and standards of the rule of law are universal and must be universally respected, there exists a plurality of legal systems, both formal and informal, through which the rule of law is realized and implemented in practice.

There is a shift in focus within the rule of law sector from institutions exclusively towards institutions and individuals – successful justice strategies are rooted in the needs of justice seekers and service delivery, rather than in the strengthening of institutional capacity alone.

Enhancing access to equitable and quality justice for all, thereby contributing to realizing SDG 16's vision of effective, accountable and inclusive justice, will only become viable if we:

- > Recognize that the state and judges are not the sole justice provider and establish spaces for further dialogue on how customary and informal justice systems may fit within justice delivery; and
- > Engage and strengthen the variety of justice actors and mechanisms used by individuals, particularly for those who are marginalized, to resolve their disputes through context-specific, inclusive and innovative ways.