

How does displacement affect access to justice in conflict areas ? Evidence from research in the DRC

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Across the world, millions of people are on the move due to armed conflict, insecurity, or disasters. In 2015, [UNHCR](#) estimated that 65.3 million people were forcibly displaced, more than 40 million of them being internally displaced. Responses in most cases focus primarily on direct and humanitarian needs. Little is known f.i. about justice needs of displaced people, this despite the fact that they are often involved in small-scale disputes with host communities or between themselves, and seem to have limited access to justice enhancing mechanisms to settle these disputes. There also seems to be very limited knowledge on the justice concerns of people who live in displacement, the justice providers they consult to overcome their concerns, and the challenges they encounter when seeking justice or claiming their rights.

This policy brief aims to contribute to this knowledge and present some major lessons drawn from a two-year research project on justice needs of displaced people in the Democratic Republic of Congo (DRC). One of the dramatic consequences of armed conflicts in DRC is a continuous process of displacement. In 2016, the estimated number of refugees in the DRC was close to 400,000. Even more dramatic is the number of Internally Displaced Persons, which by UNOCHA is estimated to be at 1.8 million. Part of them is living in camp-like settings, yet most of them live outside these camps with host families or settle in urban centres. The research project specifically looked into the ways refugees and internally displaced persons deal with their disputes and engage with justice providers, including formal justice institutions, customary courts and mediation mechanisms. Research was carried out in different regions of the country (Nord Ubangi, Haut Uélé and South Kivu), illuminating a wide variety of justice needs, and considerable differences in formal justice capacities as well as in the presence of alternative justice mechanisms supported by international or national non-governmental organisations. Despite these differences, it can be generally concluded that displaced people find it more difficult to settle their disputes mainly because of limited access to justice providers. Our analysis reveals that this limited access is primarily the result of a lack of the necessary resources, a mistrust of the impartiality of the state, and limited capacity to mobilise social networks facilitating this access.

Lesson 1: Reasons for displacement can be multiplex, but insecurity is often a guiding motive.

It is often argued that refugees and internally displaced people strategically refer to a discourse of conflict and insecurity to conceal other reasons for their displacement, such as the search for employment opportunities. In reality, however, the reasons for a person's displacement are often multiplex and need to be assessed on an individual level. At the same time, it is important to acknowledge that also economic reasons indeed might indirectly be related to insecurity: cultivation

can become a challenge because of roaming insecurity, or access to markets might be obstructed or limited because rebel groups are controlling roads or are imposing fines and taxes. This all said, our research revealed that in the different research areas a large majority of displaced people reported a lack of security as the main reason for their displacement. Their exposure to direct or indirect acts of violence tends to have a major impact on their strategies, but also on the trust they have towards local authorities.

Lesson 2: there is limited attention to the justice needs of displaced persons

Kamanga notes that there is a 'general apathy and even resentment that displaced persons attract from host communities and policy makers' (Kamanga 2012: 5). Our research shows that there is limited attention from policy makers, humanitarian and development NGOs, and researchers alike to the specific needs of IDPs and refugees beyond their mere survival. Policy makers and humanitarian organisations working with displaced people admit that they often do not have a particular focus on issues related to justice, whereas state and non-state representatives working in the field of justice admitted not paying particular attention to refugees or IDPs and not being aware whether they face particular challenges in seeking justice. This might be partly explained by the fact that the civil and social rights of displaced persons generally fall under the broad 'protection' umbrella. Still, it is surprising that there has been little effort, both in terms of research and aid provision, to analyse and improve displaced communities' access to justice given that both refugee and human rights law explicitly protect the right to access justice.

In principle, rights of refugees and IDPs should be protected and secured according to the different treaties, but in practice national policy and legislation are not paying particular attention to refugees and even less so to IDPs. As a consequence, internally displaced persons usually do not register themselves formally and their protection and security tends to be overlooked by nation states that consider them as 'regular' citizens. As National Refugee Commission officer in the DRC states: *"Our mandate is to protect and secure refugees [...]. It would also be part of our mandate to work with IDPs but we don't get any means for this from the international community so we cannot do anything"* (CNR officer Bukavu, 02.06.2016). The direct consequence is that the needs of IDPs are often neglected or completely outsourced to international humanitarian organisations, which largely focus on direct humanitarian needs when they are present. Local civil society could take a role in monitoring conditions of IDPs but hardly does so and even tends to ignore this issue.

Lesson 3: Internally displaced persons are often victim of stigmatisation and marginalisation

According to the latest UNOCHA figures for the Democratic Republic of Congo, only [one out of four displaced persons lives in a camp site](#), whereas three out of four live in host communities. This can have a considerable impact on these host communities, whose absorption capacity is often exceeded, resulting in depletion of resources. One consequence is that tensions between host

communities and displaced persons arise around access to local resources and livelihoods. Often, disputes also evolve around the limits of attributed plots, about unpaid debts or rents, theft and even marriage. In addition, displaced people are victim of marginalisation and stigmatisation by host communities. As a result, when crimes are committed, displaced persons often fear being accused and not being able to refute such accusations. As our research shows, it makes displaced individuals reluctant to take part in the social life of the neighbourhood. At the same time, they are often ignored by residents who have their own social circles and who do not invite newcomers when these attend associational events and meetings. This further marginalises displaced people, and limits their capacity to mobilise the necessary networks to facilitate their access to livelihoods and dispute resolution mechanisms.

Lesson 4: Access to justice for displaced is more limited than for regular residents.

One of the main conclusions of our research is that displaced people face particular barriers to access justice. This forces them to mobilise alternative dispute resolution mechanisms, even in penal cases of gender-based and sexual violence. From our case studies we can conclude that in general, internally displaced persons tend to have a more limited access to justice mechanisms when compared to residents in the host communities. Two major obstacles help to explain this limited access: limited economic means and lack of social networks often needed to facilitate their access to local authorities in case of a dispute. An additional obstacle in the DRC is the weaknesses of the formal justice system, which is seen as expensive, corrupt and unfair. These constitute major barriers for IDPs and residents alike to resort to formal mechanisms of justice.

Such conditions explain why in the DRC, displaced individuals, just like 'regular' citizens have a strong preference to resolve disputes with host communities and within their own community amicably, either through family members or through customary chiefs. Other institutions that are solicited include churches and camp authorities for those residing in camp-sites. Yet, as our research reveals, displaced persons often feel discriminated and claim that the final outcome of these arrangements often favours host populations. And we found that within the camps, these mechanisms favour social cohesion above justice. So that in cases of sexual violence, for example, the survivor is under great pressure to comply with an internal compromise arrived at through community mediation to ensure community cohesion, even if they do not feel justice has been rendered.

Across all of our research sites, displaced communities prefer alternative systems of dispute resolution to distant and expensive national courts. These alternative systems are not always available, however, and tend to add to vulnerability of these populations by dispensing arbitrary justice. As a consequence, displaced communities often try to solve disputes with the other party directly or simply refrain from seeking justice. Not trying to do anything about their dispute is most common with more impoverished displaced persons, with women more affected than men.

Conclusions

While approaches to displacement are often guided by humanitarian issues, policy makers and practitioners working in the field of justice and security tend to focus primarily on justice providers per se and on improving their functioning to the advantage of regular citizens in general. Both policies tend to ignore specific justice concerns of refugees and internally displaced persons. Our research has revealed that displacement is a major cause of small-scale disputes, often centered around the access to livelihood and resources, between host communities and newcomers. In some cases, there is also an increased incidence of gender-based violence, often with displaced people as main victims. These disputes and issues require produce specific justice needs for displaced people and require specific policies. In our case studies the resolution of such disputes is complicated by a wide range of issues, including the lack of a functioning formal justice system and the limited availability of alternative justice mechanisms. Displaced persons, however, face additional challenges. Besides the fact that they often feel disadvantaged in favour of host communities in dispute settlements, they also have limited capacity to mobilise the necessary resources to open cases or the social networks to facilitate their access to local authorities. Alternative justice enhancing mechanisms, including mediation and arbitration initiatives, are either absent or seem to have limited capacity to respond to IDP's specific justice needs. As a consequence, disputes are often dealt with through amical arrangements, yet not necessarily with the expected outcomes, or not dealt with at all. These conditions further complicate the position of displaced persons, and contribute to their marginalisation. Future policies on displacement and justice reinforcement therefore need to pay particular attention to the justice needs of refugees or displaced persons. Programmes responding to displacement should move away from a pure humanitarian perspective, while justice enhancing policies should move beyond a focus on capacity strengthening of justice providers and pay specific attention to the wider context affecting people's access to justice.

Note:

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