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JUSTICE NEEDS, STRATEGIES, AND MECHANISMS FOR THE DISPLACED: REVIEWING THE EVIDENCE

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ABOUT THE PROJECT

The Social Science Research Council was a partner of the [“Accommodation of Justice for Displaced in DRC”](#) research consortium, which was based at the University of Ghent. This project was funded by [Netherlands Organisation for Scientific Research](#) (NWO WOTRO), within its Security & Rule of Law in Fragile and Conflict-Affected Settings research program from October 2014 to October 2016. This literature review was conducted to establish a base of knowledge about what research has been conducted on access to justice for displaced populations.

This broader objectives of the project were to strengthen justice mechanisms in three regions of DRC (South-Kivu, Haut-Uele, and Equateur) through interactive research; enhancing justice initiatives of governmental and nongovernmental actors; and inter-regional learning. The research focuses on displaced people’s justice needs, their strategies to obtain justice, and their actual experiences with different types of authorities, including the police, justice apparatus, and traditional authorities.

ABSTRACT

This paper provides an overview of the evidence available about the specific justice needs of people displaced because of conflict. It discusses the strategies they use to respond to these needs; the justice and security providers available to displaced people; and the various mechanisms in place to promote and support justice and help them address their justice concerns. A systematic review of the scientific and nonscientific sources available, focused on conflict-affected countries in sub-Saharan Africa, illustrates that little is known about any of these topics. Limited evidence shows displaced people face violence, exploitation, and abuse, while the justice mechanisms available and accessible to them vary greatly. In some instances, the displaced engage with the prevailing mechanisms of justice in their host communities, while in others they replicate or reinvent their original justice systems. We identify the flaws (or gaps) in the literature and argue for more in-depth studies paying attention to the specific justice needs of displaced people. We believe further reflection can help bring about the development of more effective justice-enhancing mechanisms to respond to the needs of this particular group.

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Small-scale disputes are a part of life, and people usually prefer to seek a solution rather than maintain them. But how are disputes resolved? Generally, those who are in need of justice and seeking to claim their rights first try to reach agreement within the intimate sphere of the family before, perhaps, seeking mediation—an approach no different in sub-Saharan Africa (Meyer 2014). If this proves unsuccessful, they primarily seek recourse through trusted local authorities. These may be customary authorities, religious leaders, or state officials, like police officers or local court functionaries, with whom people in many places across the world have personal connections (Nader and Todd 1978; Gulliver 1979).

For displaced people in fragile and conflict-affected settings, access to justice can be more problematic. They have multiple and complex justice and security needs, often exacerbated by protracted displacement, and rarely any sort of relationship with the prevailing authority (da Costa 2006; Veroff 2010). Furthermore, the violence and instability at the root of conflict-related displacement often follows displaced communities into their new settlements. The loss of protective family and community structures often places the internally and externally displaced at an increased risk of violence, exploitation, and abuse, even as their access to justice is curtailed (Global Protection Cluster Working Group 2010). Although the state holds primary responsibility for ensuring full and equal access to justice, the displaced often suffer from an uncertain legal status or the state's unwillingness to meet its obligations.

This paper aims first to give an overview of the evidence on small-scale disputes that affect the displaced in their everyday lives. These are related

to issues such as sexual and gender-based violence (SGBV), land and other property-related disputes, and petty crime, among others. They can be, but are not necessarily, part of the larger conflicts at the root of the displacement. In conflict-affected settings, these prevalent types of small-scale disputes tend to be overlooked. Gaining a better understanding of them and the ways in which they are or are not addressed can provide insight into the microlevel challenges, experiences, and abuses displaced populations face day to day. In the volatile settings at the focus of our review, these everyday disputes can develop into large-scale conflicts.

Our review shows the evidence available on the specific justice concerns of displaced people in conflict-affected settings and the ways in which they pursue and ultimately find justice is limited. Our use of the term justice is encompassing, meaning we include both state and nonstate actors as justice providers. Displacement apparently plays a role not only in the types of disputes people struggle with, but also in the justice providers available to them. In some instances, the displaced reproduce their “home structures” of justice, while in others they adapt to prevailing structures in their host communities. Overall, most evidence pertains to camp settings, with policymakers, interventions by nongovernmental organizations (NGOs), and researchers alike tending to overlook the justice experiences of the displaced in host communities.

Similarly, refugees tend to receive more attention than internally displaced persons (IDPs), both in academic circles and international interventions. Partly, this might be related to the fact that they are often easier to identify, and the specific obligations of countries that have signed the UN Refugee Convention to protect refugees in their territories. We conclude our review with a specific case study on access to justice for the displaced in the Democratic Republic of Congo (DRC), which provides a clear example of a conflict-affected country with high numbers of internally displaced that is also home to refugees from neighboring countries, such as Burundi, the Central African Republic (CAR), Rwanda, and South Sudan.

Three main sets of research questions guided our literature review:

1. What are the justice and security needs of people who are displaced? How do they obtain access to justice and mediation and cater for their security needs? To what extent do they appropriate legal regimes existing within their host communities, appeal to state structures, refer to NGOs, or create their own parallel structures?
2. What justice providers are available to displaced people? How do different justice and security providers (public police and justice institutions, traditional authorities, and community-based structures) operate, and what are their core problems? Are they responsive to particular needs of displaced people? Are they effective in providing services? Do they add to displaced people's insecurities? What are the underlying relations among these providers?
3. How do justice-enhancing mechanisms work, and how can they be improved? How do innovative approaches initiated by nonstate actors affect the abilities of institutions to provide justice? How can these initiatives be improved, and what can we learn from them? What lessons can we learn at the local level?

Before diving into the answers to the questions, we must first explain the legal and definitional variances that divide the displaced, how we addressed these differences within our methodology, and our focus on conflict-affected sub-Saharan countries.

DISPLACED PEOPLE: IDPS, REFUGEES, AND MIGRANTS

A widely accepted definition of internally displaced persons (IDPs) is provided by the United Nations Office for the Coordination of Humanitarian Affairs:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally

recognized state border. (UN Office for the Coordination of Humanitarian Affairs 1998, 1)

This definition does not vary greatly from the often used definition of refugees, apart from the addition that the latter cross international borders; and “migrants” is yet another, more encompassing, category of people on the move.

In practice, the decision to move, especially in conflict-affected settings, is often driven by various factors for many people. While disentangling them would require a different type of study, both push and pull factors are widely acknowledged as influential. For the purpose of our review, we group together the categories of IDPs, refugees, and migrants as “displaced,” as we believe similar dynamics are at stake with regard to the problems they face in obtaining access to justice and solving disputes—that is, all three categories are usually disconnected from their “authorities at home” and might have difficulties in getting access to justice in their new environments. In a new place, a sense of belonging is, to a large extent, lacking for the displaced, and it is difficult for them to claim their rights (Den Boer 2015; Lyytinen 2015). In addition, state authorities in conflict-affected settings often lack legitimacy and are not always among the preferred providers of justice and security. This is the case for the general population, as well as for IDPs, refugees, and migrants. The justice mechanisms available might be influenced by the conflict setting; levels of legitimacy might change; and the authorities might themselves be absent.

A more relevant distinction in light of our review is that between people who seek refuge in host communities and those who reside in more camp-like structures. In host communities, people usually encounter existing and locally embedded mechanisms of justice, and they must learn how to navigate them. Displaced people in camp-like structures, on the other hand, might be faced with organizing their own justice mechanisms within the camps, sometimes with support from international humanitarian actors. In other cases, humanitarian actors take the lead. The camp also interacts with surrounding communities, where other mechanisms of justice might be in place.

Whereas justice needs, strategies, and mechanisms might not differ significantly between refugees and the internally displaced, there is an important difference in their legal status. IDPs do not cross international borders and, hence, legally should be seen and treated as regular citizens by the state. The 2001 United Nations Guiding Principles on Internal Displacement were developed to guide governments, international organizations, and other actors in the field in their interventions to assist and protect IDPs; these entities should

identify rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They [should] provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set out guarantees for safe return, resettlement and reintegration. (United Nations Office for the Coordination of Humanitarian Affairs 2001, 5)

According to article 16 of the 1951 Convention Relating to the Status of Refugees, a refugee should have free access to the courts of law and the same rights as a national within the territory, including the right to legal assistance. Yet no specific obligation to secure these rights is specified, and reality often shows a gap between theoretical entitlements and practices, as is the case in Kenya, where refugees are obliged to stay in two major camps, Kakuma and Dadaab, already limiting their access to a wide range of services to which they should be entitled (Freudenthaler 2012).

Similarly, the 1969 OAU (Organization of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa declared that member states “shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees” (article II, section I); but it did not include the notion of access to national courts. Even the more recent 2009 African Union (Kampala) Convention on Internal Displacement, while stating that signatories shall bear the primary duty and responsibility for providing protection and provide simplified mechanisms to resolve property

disputes, only mentions the right of IDPs to lodge complaints with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights (African Union Convention 2009). In practice, these options are not commonly available to the displaced.

Although the right to justice and security for displaced populations has been established in the abovementioned international conventions and legal documents, the link between the two has rarely been explicitly stated. In reality, justice and security are closely connected, and people whose security is not ensured will often also have difficulties in finding justice. This disconnection across the various legal conventions to protect displaced populations in Africa is further reflected in practice and within the literature on this subject. Although much has been written on the protection responsibilities of security providers (Weiss 1954; Deng 1995; Turton 2005; Landau 2006; Betts et al. 2008; Levitt 2011), to the extent that the issue can be defined as a specific field of scholarship in the humanitarian sphere, very few studies have explicitly explored the security providers' role in ensuring refugees and IDPs have access to justice providers and support mechanisms (da Costa 2006; Veroff 2010). In fact, the vast majority of studies that bring together security providers, refugees, and IDPs focus on injustices furthered by the institutions mandated to protect displaced communities (Human Rights Watch 2002; Human Rights Watch 2010; Johnson 2012).

OUR FOCUS: CONFLICT-AFFECTED SETTINGS

The literature about displacement in conflict-affected settings with regard to justice tended to portray displaced people primarily as transitional actors, whose grievances, most often tied to the conflict, will be addressed by post-conflict transitional justice mechanisms. (Baines 2007; Huyse and Salter 2008; Harris Rimmer 2009). Yet these actors also face small-scale disputes and human rights abuses as part of everyday life during their displacement. Our explicit aim is to shed light on these disputes and the ways in which they are resolved. While the conflict-affected setting plays a role in the actual displacement; can exacerbate existing barriers to fair and equal access to justice; and has a great impact on the nature of justice actors, on how different justice mechanisms relate to one another,

and on access to justice as a whole, we treat it as background to our main focus, which is on the everyday disputes.

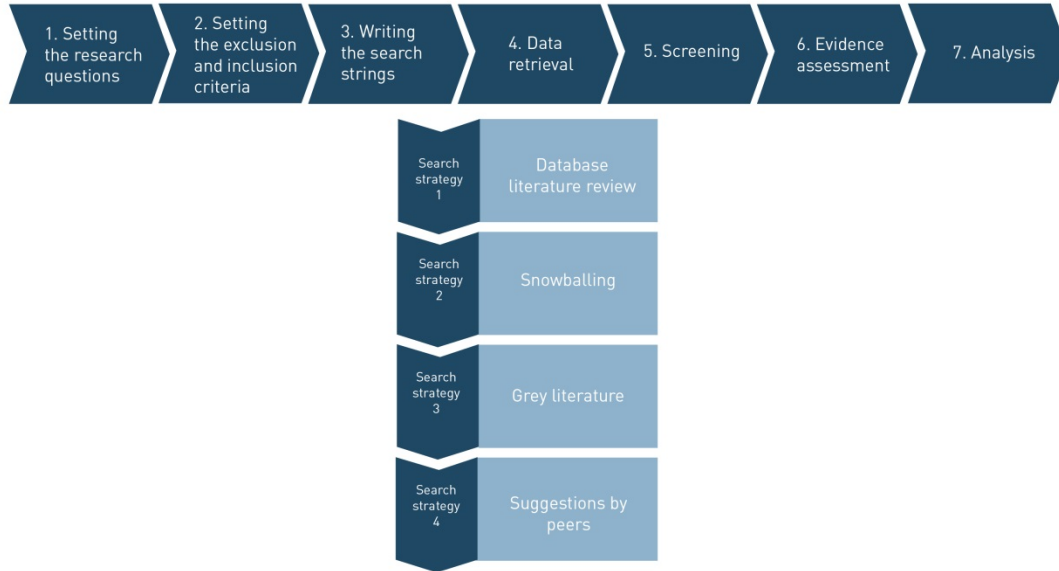
STRUCTURE OF THE PAPER

In the next section of the paper we describe the methodology for conducting the literature review. The three sections that follow are structured according to the main research questions mentioned above, examining, respectively, displaced people's justice concerns; available justice providers; and initiatives that promote and/or enhance justice while incorporating displaced people's general preferences. Next comes a case study discussing access to justice in the Democratic Republic of Congo, and we conclude by summarizing our main findings and by pointing out the gaps in the available evidence. Based on this, we formulate recommendations for further research.

METHODOLOGY

This paper largely draws from a systematic literature review—a rigorous form of review that defines standards and steps to identify, assess, and synthesize all available evidence on a given question (Gough et al. 2012; Mallett et al. 2012; Hagen-Zanker and Mallett 2013). This mechanism, which also increases the range of the screened literature and the studies identified (Hagen-Zanker and Mallett 2013), is designed to address the evidence without bias and with a focus on transparency, accountability, and reproducibility (Walker et al. 2013). Mallett et al. (2012) suggest, however, that development researchers focus “on the utility that can be gained from a systematic review approach rather than its rigid application” (Mallett et al. 2012, 453). In conducting our systematic review, we relied on guidelines provided by Hagen-Zanker and Mallett (2013).

FIGURE 1: STEPS FOLLOWED IN THE SYSTEMATIC REVIEW



Source: Adapted from Hagen-Zanker and Mallett 2013.

First, we identified the three main sets of research questions, presented above, which constituted our empirical research agenda and served as the basis for our literature review. We limited our review to countries in sub-Saharan Africa that are conflict affected and/or home to refugees and/or IDPs. We particularly focused on the DRC, given our interest in the country as members of the research consortium, “Accommodation of Justice for Displaced in DRC.” We mainly searched the English literature, adding some Francophone sources to enhance our coverage of key countries in the region. Although we did not specifically impose a time limit on our searches, the vast majority of scholarship addressing our research questions was published in the past two and a half decades (1990–2015). As the aim of this literature review was to find information on access to justice for displaced communities relative to everyday justice concerns, we excluded most of the literature on transitional justice, as these studies focused more on the core judicial issues from the conflict and were initiated in the “post-conflict” phase. Some articles referring to transitional justice were, however, included, as they were relevant for our

focus on local justice mechanisms or local initiatives to enhance access to justice, in particular for displaced populations.

After identifying the research questions, we determined the search strings and databases we would use. The following were the search strings we used:

- “displacement and justice needs”
- “forum shopping in justice”
- “justice and IDPs”
- “justice and refugees”
- “justice enhancing mechanisms”
- “justice enhancing mechanisms in Congo”
- “justice in conflict”
- “justice mechanisms in DRC”
- “security sector reform in DRC”
- “traditional justice and IDPs”
- “traditional justice and refugees”
- “access to justice and/or IDPs and refugees”

The aim of our search strategy was to identify existing and relevant literature in the social sciences, and it included several steps. The first was a database-driven search. We identified the most widely used databases as Google Scholar, Web of Science, JSTOR, and Sage. Additionally, we used an internal database at Conflict Research Group with literature on the DRC, and a publication list from the Justice and Security Research Programme (JSRP). We used the selected search strings in these databases and screened the literature found by title and abstract, according to exclusion criteria (articles focusing on transitional justice) and inclusion criteria (conflict-affected, sub-Saharan Africa). Minor changes in search strings yielded some additional literature.

The second step was a “snowball search” as we reviewed and drew literature from the bibliographies of a few key resources. This strategy in particular added a number of valuable articles and publications. Snowballing, a visual term used to describe the action of building on the research of important scholarship, is also used to get hold of non-

published studies, and to discover what is influential in the field, even if they might not be found in high-quality peer-reviewed journal articles (Hagen-Zanker and Mallett 2013).

The first two steps of our search strategy did not incorporate a means of retrieving “grey literature,” such as working papers, concept notes, donor reports, policy documents, and briefings on justice-enhancing mechanisms and access to justice for displaced communities. According to Hagen-Zanker and Mallett (2013, 11), grey literature is “often considered to be of lower quality than the peer-reviewed literature,” but, they add, “a focus on grey literature can really help increase the breadth, relevance, topicality and ultimate utility of your review.” To rectify this omission, we added a third step to our strategy: a search of institutional websites to capture some of their material on the subject. Among these were the websites of the United Nations High Commissioner for Refugees (UNHCR), the World Bank, RCN Justice et Démocratie, International Crisis Group (ICG), CORDAID, Avocats Sans Frontières (ASF), and the Brookings-LSE Project on Internal Displacement.

Eventually, we added a fourth step as well: we consulted a number of experts and peers, asking them to recommend some leading references and studies that could be useful for this review. Table 1 shows a summary of the results of the entire literature review, including the number of hits, the number of articles scanned, and the number of articles selected for review.

TABLE 1: SEARCH RESULTS

	Database used	Hits	Scanned hits	Selected hits
Search strategy Step 1: Database-driven search	Google Scholar	364,879	1,589	17
	Web of Science	91	52	0
	CRG Database	519	200	5
	JSRP Blog	77	77	3
	JSTOR	55,055	597	9
	Sage	9,331	198	6
	WorldCat	9,448	62	5

	TOTAL search strategy step 1	44
Search strategy Step 2: Snowball search of bibliographies	References added	16
Search strategy Step 3: Website search for grey literature	References added	17
Search strategy Step 4: Peer inquiries	References added	6
	Grand total	79

OVERVIEW OF THE LITERATURE

Having undertaken this multistep process and then selected a number of relevant articles, reports, and publications for review based upon their relevance to the research questions, there were some expected commonalities, but also some surprising characteristics within the selected literature.

First, we found relatively few peer-reviewed journal articles in the major databases specifically focused on displaced populations' access to justice. Although many articles referenced judicial issues in broader debates about protection or human rights, this specific subject was rarely the central thread of the journal articles we surveyed. Targeted searches within international websites produced more specific and relevant material.

Second, we noted among the selected sources a preponderance of studies using qualitative methods, which were largely narrative-based and built upon the testimony of displaced populations. Exceptions were quantitative studies carried out for CARE International (Jeene 2009) and the Norwegian Refugee Council (2014), both focusing on IDPs in Goma, eastern DRC.

Third, a great deal of the research focused on the displaced settled in Kenya and Uganda, both in camp and urban settings. While understandable, given the long history of protracted displacement as a result of the conflicts in Somalia and the Lord's Resistance Army (LRA) crisis in Uganda, the amount of this research is perhaps disproportionate relative to the other cases across the continent. This focus might be a limitation of the earlier research in this field, but it might also represent an Anglophone bias within the field of study and our own efforts, despite our commitment to supplementing our findings with Francophone sources.

The next sections focus on the specific findings from our literature review, according to the three research areas listed above.

JUSTICE CONCERNS OF THE DEPLACED

The literature we reviewed referred frequently to four justice issues reported by the displaced in conflict-affected settings:

1. Sexual and gender-based violence (SGBV), including rape, assault, and domestic violence
2. Land and other property-related disputes, including theft and inheritance disputes
3. The violation of basic rights
4. Discrimination

Da Costa's 2006 study, prepared on behalf of UNHCR, provided findings on how justice matters are resolved in refugee camps. Across the thirteen countries surveyed, SGBV and theft were the two most consistent and pervasive justice issues reported by UNHCR staff. Veroff's study (2010), based on interviews and focus groups conducted within three communities in the Meheba refugee settlement in Zambia—with refugees largely from Angola, the DRC, and Rwanda—similarly highlighted SGBV as a prevalent justice need. In particular, the subjects of rape and defilement generated the most discussion among female and youth respondents and were regarded as commonplace. Schmiechen's 2004 research on the protection and redress for displaced women in camps identified discrimination and abuse as common occurrences, with women at risk of

sexual violence from multiple sources. Most literature that examined SGBV did so in displacement camps, and the often informal and insecure structure of camps can, indeed, increase the risk of such forms of violence. People from displaced communities, however—particularly women and young girls—were found also to risk exposure to SGBV when living among host communities in urban areas (Fielden 2008). In a similar vein, Krause analysed SGBV in refugee camps as part of a continuum of violence that had begun before displacement (Krause 2015).

Female refugee respondents in Veroff's study (2010) also cited structural injustices and discrimination obstructing refugees' access to education, employment, and police protection. Reports from UNHCR's Protection Division (2006) corroborated this, noting limitations by numerous host governments on refugees' equal access to courts, resulting in a lack of legal representation. The inadequacies of a state legal framework that discriminates against women and girls are often compounded by their lower levels of education and literacy rates, which limit their comprehension of the justice mechanisms at their disposal (Schmiechen 2004; Fricke and Khair 2007). According to Rubbers and Gallez (2012), women are therefore often represented by male family members.

Similarly, traditional and customary methods of justice often favor men or lack the capacity to adjudicate on SGBV issues—those most often reported by women and girls. In most cases, victims of SGBV suffer from a lack of access to justice. In addition to the underreporting of rape and sexual violence, laws governing rape are significantly deficient, making it nearly impossible for victims to seek justice through the available legal services (Fricke and Khair 2007). Da Costa (2006) and Veroff (2010) note that in instances of rape, UNHCR's services targeted toward the protection of women can provide vital support to victims in their justice needs.

Da Costa (2006) and Veroff (2010) both highlighted theft among the displaced as a frequent justice concern. The types of theft reported ranged from violent robbery and the looting of cattle and other goods to petty theft, including theft of money, clothing, and community property, such as crops and structures for shelters. According to a survey of the general population ($n = 2,620$) carried out in the eastern DRC by Vinck and others

(2008) on attitudes toward peace, justice, and social reconstruction, 54.5 percent of respondents reported having had land stolen and/or confiscated since 1993, 66 percent had a house destroyed or confiscated, 76 percent had cattle or livestock stolen, and more than 80 percent had goods destroyed or stolen. Although the data were not disaggregated for displaced and nondisplaced persons, these concerns were likely significant for the displaced, as 80 percent of the survey respondents indicated having been displaced at some point since the onset of the conflict in 1993 (Vinck et al. 2008). In Veroff's 2010 in Zambia, displaced respondents from two male focus groups, in addition to many female respondents, reported disputes over unpaid debt and theft. Also raised were land ownership disputes and crop destruction between refugees and local Zambian communities living close by. Land and property disputes have also been important reasons for IDPs in camps in eastern DRC not to return home, as shown by a 2009 UNHCR survey conducted in camps in North Kivu (Sylla 2010).

Restrictions on basic human rights by the host country were another justice problem regularly reported in the literature. Both da Costa (2006) and Veroff (2010) recorded government restrictions on freedom of movement, an infringement particularly common for refugees. Those in Meheba reported the government requirement of a permit specifying the terms of travel in and around Zambia, despite the right to freedom of movement stated in the 1951 convention.

In conclusion, the evidence available on the specific justice concerns with which displaced people struggle is clearly limited. The evidence of those living in host communities is even sparser. A number of issues seem recurrent, however: SGBV, land and other property-related disputes, the violation of basic rights (especially the freedom from want and the freedom from fear), and discrimination and marginalization. Some of these might be more serious in camp-like settings, while others might be more common among the displaced in host communities. The selected literature provided too few examples of scholarship examining the displaced in host communities, however, to make any substantive distinctions among the judicial concerns faced by the displaced in different environments.

JUSTICE PROVIDERS

In this section, we explore the various justice providers usually available within the legally plural landscape in conflict-affected settings. Two broad categories can be distinguished: formal or statutory justice and more informal, nonstate justice providers. The formal justice system “involves civil and criminal justice and includes formal state-based justice institutions and procedures, such as police, prosecution, courts and custodial measures” (Wojkowska 2006, 5). The definition of informal justice systems is more complicated, as different characteristics must be taken into account, and they are very context specific. Nonstate justice can be understood as the “range of traditional, customary, religious and informal mechanisms that deal with disputes and/or security matters” (Scheye and McLean 2007, 22). In our review, we also include various forms of self-help justice, such as self-defense groups who undertake the dual responsibility of providing security and often play a role in the administration of justice.

In sub-Saharan Africa, an estimated 80 to 90 percent of justice services are delivered by nonstate actors (Baker and Scheye 2007; Scheye and McLean 2007), and “customary courts are often the dominant form of regulation and dispute resolution, covering up to 90% of the population” (Baker and Scheye 2007, 512). It should be noted, however, that in many instances, the most effective way to solve cases is through mutual agreement, as shown, for instance, by Meyer (2014) in the case of the DRC.¹ This type of settlement largely remains outside the scope of research, because it is often not recognized as an act of justice by the parties involved, as preliminary findings of our own field research show.

STATE AUTHORITIES

While authors noted that some national governments have little interest in prosecuting offenses that occur in displaced people’s camps (Schmiechen 2004; Branch 2005; da Costa 2006; Holzer 2013), the literature identified state structures as one area where the displaced can seek justice in line with the Refugee Convention laws (Geneva 1950). These structures include

national judicial mechanisms, such as courts of law and official domestic law enforced by law enforcement authorities.

Surprisingly, 51 percent of all respondents to Vinck's 2008 survey in eastern Congo, including the internally displaced, said they believed the national court system was best at achieving justice, followed by 26 percent believing the International Criminal Court was best, 15 percent choosing military courts, and 15 percent citing customary justice. The findings might be explained by our own observation that people often do not acknowledge nonstate justice interventions as "justice." Yet the majority of refugees surveyed in da Costa's study were also most interested in pursuing justice through the state legal system, specifically in cases of violent crimes such as murder, robbery, and rape, and particularly when the victim was a minor. Notably, the research suggested the displaced were more likely to pursue justice via state legal systems when no alternative redress mechanism was available at the camp level or when the perpetrator was a nondisplaced person.

Most of the literature surveyed focused on the limitations of state judicial institutions. Weak and underfunded state infrastructure, a lack of political will, and the overall inefficiency of national judicial systems were consistently recorded as deterrents for the displaced (Lomo 2000; Schmiechen 2004; da Costa 2006; Kitale 2011). In the case of the externally displaced, most host governments were found to prefer and encourage refugee populations to manage their own affairs to lessen the strain on national legal mechanisms. In the case of the internally displaced, the displaced might be more skeptical of seeking justice through national institutions when they perceived the actions of their governments as responsible for rights violations (Schmiechen 2004).

Low levels of literacy, education, and high poverty rates among the displaced further compound these issues (Lomo 2000). In most of the thirteen countries da Costa (2006) surveyed, the author found lack of familiarity with the substantive or procedural aspects of state legal systems discouraged refugees from appealing to state structures. Additionally, the remoteness of many displaced camps hampered displaced people's access to legal services and institutions. Restrictions

on movement were specifically mentioned as a barrier to refugees' access to justice in displaced camps in Kenya and Ethiopia (da Costa 2006).

POLICE AND MILITARY

Police forces are generally responsible for providing security and maintaining law and order in urban and camp environments, and state militaries also engage with the displaced, especially when they settle near conflict zones. In many cases, however, the security services are active and complicit in the violence that causes displacement and are themselves sources of injustice, as Daley (2013) and Human Rights Watch (2010) illustrated in their accounts of the Congolese national army, FARDC (Forces Armées de la République Démocratique du Congo) in the DRC. Both argued that military objectives are privileged over the level of trust these security providers try to maintain with the population. The army and police are often involved in the extremely unpopular practice of forced deportations and relocations and even the forced closure of protective camps (Human Rights Watch 2010).²

Tania Kaiser, in her 2005 study of the "Self-Reliance Strategy" of the Ugandan government and UNHCR, described one of these events that took place during the LRA era, when an Acholi population was rounded up at gunpoint in Kiryandongo and transferred to camps in West Nile. While forced deportations are legally permitted under humanitarian law to help host states ensure the safety of civilian populations, and for "imperative military reasons,"³ an analysis by the Civil Society Organisations for Peace in Northern Uganda (CSOPNU) showed that the government failed to meet the necessary conditions to justify this particular policy decision. The tendency to rationalize these operations in the name of the security of the general population clearly shows the right to justice for displaced communities is, at best, a secondary concern. It is in these sorts of highly contested environments where, the literature showed, state security services struggle to provide justice or sufficient protection, especially when higher authorities have broader strategic objectives. Yet, as Branch (2005) showed for Northern Uganda and El-Zain (2008) for Khartoum, failing to protect, or punishing, a particular subsection of the displaced population may be in itself a goal of the government in power. These

decisions certainly lower the levels of legitimacy displaced populations confer on these authorities.⁴

In urban environments, the relationship between state security services and displaced populations is also fraught, and rarely are the police the first actors the displaced turn to for assistance. Fear and a lack of trust in state authorities lead the vast majority of urban displaced to stay hidden rather than seek out the state for their justice needs, as was shown by Jacobsen (2005) in her study on refugees in Johannesburg. Bernstein and Okello reported that urban refugees in Kampala often decline to seek redress for crimes committed against them, out of “fears of Uganda’s alleged relationships with rebel groups in their countries of origin” (2007, 53). Instead, they may seek to address the problem themselves, sometimes through extralegal means (*ibid.*).

According to the literature, the police inspire distrust among displaced populations by regularly using their position of power to harass, extort bribes from, and threaten them with deportation and the confiscation of official documents (Human Rights Watch 2002; Bailey 2004; Briant and Kennedy 2004; Jacobsen 2005; Campbell 2005; Landau 2006; Hovil 2007). Instead of providing security, these actors can be seen as contributing to insecurity. In Dabaab, Kenya, in the early 2000s, for example, the posting by the government of police officers to a displaced camp was intended as punishment from the Kenyan government for abuses these officers had committed elsewhere within the country (Casa Consulting 2001).

The other side of the coin is that police deployed to monitor and protect displaced communities are generally provided very little support, training, or capacity to perform their duties effectively. Illustrating this point is an account by Veroff (2010) of the administration of justice in Zambia’s Meheba refugee settlement, where approximately ten police officers (regular or paramilitary) in rotation were responsible for nearly fourteen thousand refugees. They were given no training in refugee protection other than an initial UNHCR workshop and had no vehicles or basic communication equipment, only a few holding cells, and little capacity to conduct thorough investigations.

In circumstances such as these, the literature often characterized the police as gatekeepers between the displaced population and the appropriate legal forum, as police may have the capability to direct complaints but not always to investigate and follow through with decisions. The choice is often between orienting the complaint to the public legal system, such as the state court, or allowing traditional or family structures to resolve the dispute. Some scholars, such as da Costa (2006), have observed low levels of motivation and a lack of political willingness on the part of certain police or judicial authorities to process and transfer refugee cases to the state legal system, especially when a national is not involved. Consequently, most authorities prefer to transfer cases back to refugee judicial structures. On the other hand, in Dadaab and Kakuma in Kenya, Turton (2005) witnessed traditional authorities sometimes ruling on criminal cases, which by Kenyan law should be dealt with by the state.

MOBILE COURTS

Mobile courts are among the different types of providers the displaced can look to as they access to justice. They aim to bring proper judicial proceedings to remote areas through regular field visits to displacement sites. This system is provided by NGOs, which—usually with international funding—facilitate the transport of state magistrates and lawyers to remote areas. State officials and NGO staff provide legal advice and training (Cordaid 2014). According to Davis and Turku, “Studies have shown that mobile courts are the most effective means of reducing judicial delay and allowing more vulnerable populations to access the justice system in countries where courts are centralized in the capitals and remote areas are not well connected by roads” (2011, 57).

Mobile courts have also been used as a strategy to enhance justice in refugee camps (UNHCR 2006). They were first introduced in 1998 in Kenya’s Dadaab and Kakuma camps, where local magistrates would, in principle, visit every month to hear cases, and UNHCR would monitor the proceedings and provide material and advisory assistance to witnesses. Due to overstretched judicial resources and often slow processing times of these mobile courts, however, refugees often preferred to resort to replications of the traditional structures they were familiar with back

home (“*maslaha*” in Dadaab and “bench courts” in Kakuma; Turton 2005). These mobile institutions also raised some concerns, not only in relation to sustainability and dependency on external funding, but also with regard to their effectiveness and negative consequences. Douma and Hilhorst found that judges who were given compensation by NGOs during mobile court hearings felt a moral obligation to convict suspects, “regardless of the evidence that is presented” (2012, 10). In the DRC, where mobile courts are supposed to oversee a wide variety of cases in rural areas where no legal infrastructure exists, they are almost only used for cases of sexual violence, mainly targeting military justice. The limited presence of the mobile courts also means there is no time for follow-up.

NONSTATE PROVIDERS OF JUSTICE

The majority of the literature reviewed described the use of parallel legal systems—in the form of customary and displaced-led justice institutions—as an avenue of justice for the displaced (for representative examples see: da Costa 2006; Griek 2007; Fiechter 2009; Veroff 2010; Beitzel and Castle 2013). The Norwegian Refugee Council’s study (2014) on the internally displaced in Goma, DRC, revealed that for property or family disputes, the most common outlet is family or customary courts, and for criminal matters and cases of physical harm it is often locally created IDP committees consisting of respected members of the community, rather than the police. In response to the inaccessibility of state justice actors, IDPs thus create alternative mechanisms to find justice.

TRADITIONAL AUTHORITIES AND OTHER ALTERNATIVES

According to Griek’s 2007 study on access to justice in the Kakuma and Dabaab refugee camps, displaced populations often seek justice on the local level through traditional mechanisms. These can be both formal and informal—though more frequently informal—and are used to address a number of justice issues and disputes. The literature described a variety of systems drawn from religious, cultural, and/or ethnic practices, widely focusing on achieving justice through reconciliation and reintegration, accountability, and community participation (Thorne 2005; da Costa 2006; Wojkowska, 2006; Griek 2007; Fiechter 2009, Jacques and Tuckey 2009).

Certain studies found traditional systems often preferred among the displaced, as the customary nature of the law and institutions are more recognizable by communities, and their decisions are more binding. This contradicts Vinck's research on the DRC presented above. Traditional forms of justice used in Northern Uganda were perceived as having greater legitimacy among the displaced surveyed in Beitzel (2013) and Jacques and Tuckey's (2009) research in Uganda. Others scholars, however, criticized these mechanisms in Uganda as they were promoted by international actors as key components of the transitional justice efforts during negotiations with the LRA, despite the fact they were often weak and fragmented (Allen and MacDonald 2013).

INTERNATIONAL AGENCIES AND SUPPORT FOR LOCAL INITIATIVES

Displaced communities may also gain access to justice through NGOs and international agencies, if they are present. The state-like administrative and governance functions of these nonstate actors often lend themselves well to maintaining law and order (Veroff 2010). The justice role of UNHCR is frequently described in the literature. Authors noted that although UNHCR (and similar partners) do not have the legal authority to manage the administration of justice (da Costa 2006), their role is flexible enough to meet the justice needs of displaced communities (Schmiechen 2004; Veroff 2010). In some instances, UNHCR plays an active support role by ensuring customary justice mechanisms used by the displaced meet basic international standards or by designing programs specifically to address justice needs (Veroff 2010). In the Meheba settlement, UNHCR occasionally trained police and refugee chairmen and provided financial support to a mobile court, along with providing defense counsel to refugees (Veroff 2010).

Sagy (2013) reported that UNHCR played a crucial role in directing disputes in Buduburam Camp in Ghana by pushing to privatize the judicial process toward refugee structures to "empower" the camp population. Yet, according to the study, the refugee-led Arbitration and Discipline Committee (ADC) suppressed violations, such as rape and domestic violence, and UNHCR did not accept responsibility for these decisions.

Slaughter and Crisp observed that UNHCR has also played the “role of the surrogate state,” especially in protracted refugee situations, and has absorbed the state responsibilities of developing judicial mechanisms “to enable refugees to benefit from some approximation to the rule of law” (2009, 4). Its doing so is generally explained by a state’s weak and overwhelmed judicial sector, poor prison conditions, and a broad interpretation of UNHCR’s protection mandate for refugees.

In the first few years of the 2000s, after recognizing a shift in population flows away from camps, and after its role was criticized in a series of studies (Human Rights Watch 2002; Bernstein and Okello 2007), UNHCR had to update and adjust its registration policies to better incorporate and protect urban refugees and IDPs. During this period, legal limbo was still a reality for a substantial segment of displaced populations. Bailey (2004), in particular, highlighted a few examples of disagreements between host states and UNHCR on who were eligible for judicial assistance. Even as recently as 2013, the agency has had to adjust its approach to better incorporate the IDP populations living in spontaneously established sites, rather than official camp settlements (Refugee International 2013). Despite these tensions, UNHCR was and is still seen as an essential source of support for displaced people who have been abused by state security services or the local population, especially in cases of sexual violence. For example, Johnson’s research in Cairo (2012) explored the difficult journey South Sudan women must take to maintain their refugee status with the UN agency by breaking the family taboo of discussing rape.

ALTERNATIVES DEVELOPED FOR AND BY THE DISPLACED

In some instances, displaced communities may create ad hoc and innovative justice systems (da Costa 2006). The setups of these systems may be drawn from the customary practices of multiple ethnic and religious groups residing in the same camp, or from international agencies, such as UNHCR, and NGOs working in the area. Our review sheds light on some of these structures that exist within IDP or refugee camps, although we did not find any sources that examined in particular their existence within communities that host displaced people. The extent

to which such structures are created by the displaced residing in host communities thus remains unclear, based on the literature reviewed.

In camp environments, “refugee committees,” composed of elected refugee camp leaders, or tribal elders, may be brought in by the displaced to provide access to justice, with specialized subcommittees to address specific issues, such as domestic violence (da Costa 2006). The host government may also establish legal structures within displaced camps. In Guinea, for example, government camp administrators held overall responsibility for ensuring law and order in the displaced camps, a Central Committee (composed of refugees) handled the majority of cases, and a Mixed Brigade would ensure camp security and play a role in indictment and prosecution (da Costa 2006).

UNHCR’s model case of these local developed refugee security providers was the neighborhood watch team (NWT) in Buduburam Refugee Camp, Ghana, where the deployment of this self-initiated force reduced crime, improved cooperation with the national police, empowered and encouraged its female members, and trained participants on how better to prevent and respond to SGBV and perform first aid (UNHCR 2006). Scholars such as Sagy (2013) strongly criticized their positive characterization by UNCHR, and elsewhere in the literature the challenges of NWTs were more pronounced. In Zambia’s Meheba settlement, “neighborhood watch” groups were trained at the initiative of the police. In some cases, they were elected by the community blocks, but in no cases were they paid. The quality of these groups, and therefore the legitimacy they garnered from the displaced community, varied, as some were known to abuse their power through corruption and intimidation.

An alternative model created in Kenya’s Kakuma camp was similarly subject to criticism. The force of 120 local guards was drawn from the refugee and local surrounding population and financially and materially supported by the Lutheran World Federation (Crisp 1999). While the joint force was undoubtedly intended to reduce a source of tension in the camp, its relatively limited numbers did little to increase protection and facilitate greater access to justice. Another example in the literature has been the raising of the “Arrow Boys” in Western Equatoria State, South Sudan, as a

local defense against the LRA in the absence of the state's response to the threat. Although the Arrow Boys are primarily concerned with local protection, they also play a significant role in justice provision. In a 2013 survey, 80 percent of respondents (both displaced and nondisplaced) were in favor of the Arrow Boys, but only 14 percent mentioned them as the trusted judicial actor to solve disputes outside one's family (Rigterink et al. 2013).

In principle, the notion of creating locally rooted institutions from and for displaced populations fills a much-needed void in security and access to justice. Sometimes these institutions are solely locally grown; in other instances, they are promoted and/or supported by international actors. The literature revealed a number of challenges they must overcome to be successful, however. Ensuring they are not manipulated and coopted by the state or other power holders seems to be the primary lesson from past failures. When they have had a positive impact, the local defense groups have been elected and accountable to the population they were mandated to protect and sufficiently trained and supported by external actors. The idea of integrating and engaging the surrounding communities into these institutions might also be a useful mechanism to reduce tensions, but without some sort of compensation or added incentive, some members from these groups have tended to abuse the power they have been given (CSOPNU 2004; Veroff 2010; Sagy 2013). Investing time and resources into these groups, therefore, seems to be key to their success (UNHCR 2006).

The literature on justice providers was predominated by studies on failures to protect IDPs and refugees and ensure their access to state justice. The displaced have been inventive in creating mechanisms to resolve their daily justice-related issues, and, whenever available, NGOs and UN agencies have played an undeniable role in facilitating and accompanying IDPs in their search for justice; but all have fallen short in preventing injustices from taking place. The literature also showed IDPs often look elsewhere for justice to avoid mistreatment from state justice actors who are frequently involved in practices that increase insecurity instead of protecting the population. Parallel legal structures operate in the midst of complex settings affected by conflict. Customary chiefs, local

NGOs, and IDP committees enhancing access to justice face major challenges. Instead of reinforcing each other's efforts, the various justice providers seek to treat cases at their own levels, even if they are not competent to do so.

JUSTICE INITIATIVES AND DISPLACED PEOPLE'S PREFERENCES

The examples provided above of the ways in which the displaced seek access to justice fall into four main categories: the use of their own traditions and customs; the appropriation of host justice structures; the creation of ad hoc structures; and the use of formal structures, such as refugee committees (Lomo 2000; Fricke and Khair 2007; Kitale 2011; Beitzel 2013). Preferences are highly contextual and case dependent. Several studies showed how popular perceptions and actions are determined by, for instance, the specific needs and constraints of the camp, the type of issue at hand or crime committed, and the customs of the different displaced groups (Lomo 2000; da Costa 2006; Veroff 2010).

Kitale's study (2011) described a clear general preference for seeking justice through refugee dispute resolution systems rather than the host country's judicial system. A generalized mistrust of the host country's system by the refugee population tends to produce more pressure to settle cases through customary means rather than by using the national legal system, but customary means may also be preferred in cases where perpetrators are refugees and the victims fear reprisal (da Costa 2006). Both Kitale (2011) and Beitzel (2013) recorded the popularity of traditional mechanisms with displaced women, noting that women using them were more likely to receive compensation and have easier and quicker access to justice than they would through state institutions.

Displaced communities that relied on dispute resolution by elders before displacement often continue this practice afterwards. In certain cases in Ethiopia and Guinea, where entire communities are displaced, the original leadership structures and dispute resolution systems are replicated (da Costa 2006). Studies by Ssenyonjo (2007) and Beitzel and Castle (2013) of the Acholi people in northern Uganda echoed these findings. The experience of unending conflict there resulted in the creation of Mato Oput,

a commitment to reconciliation, and a peaceful settlement of the conflict in a traditional way, with religious and traditional leaders and other public forums calling for the government to pursue dialogue and to introduce a comprehensive amnesty for combatants (Afako 2002). More generally, refugees who share the same religion and traditional background as locals sometimes prefer to use these religious systems or courts to get access to justice; this is also true of displaced communities living close to local host populations (da Costa 2006).

Some articles highlighted the weakened role of elders in situations of mass displacement. During the conflict in Sierra Leone, the association of traditional leaders with the perceived corruption of the existing regime caused them to be specifically targeted by armed groups (Alie 2008). In other examples, the impact of conflict on community structures, placing arms and subsequently power in the hands of youth rebel movements, challenged the influential role of community elders (Chapman and Kagaha 2009). Similarly, poverty and the unfamiliar structure of displaced camp settings have further challenged the replication of previously used traditional justice mechanisms by limiting the authority and status of elders (ibid.).

Kitale (2011) acknowledged that displacement camps often do not provide adequate legal access. Traditional mechanisms frequently lack the capacity to deliver appropriate judicial processes, particularly for more serious crimes. In Schmiechen's (2004) research, Human Rights Watch noted that community-based mediation in Tanzania should not be viewed as an "acceptable substitute for redress" (Schmiechen 2004, 492). The literature also cited discrimination as a barrier to obtaining justice from traditional mechanisms. In a number of cases where sexual violence had occurred, remedies were inadequate, with studies finding community elders discounted the justice needs of female SGBV victims (ibid.). The privileging of men in judicial decisions and the community stigma and shame associated with crimes of SGBV also led women to shy away from seeking justice through customary means (Corey 2004).

With regard to seeking justice through NGOs and international agencies, Fricke and Khair (2007) found displaced individuals hesitant as the result

of a climate of fear and suspicion, produced either by local unfamiliarity with these organizations or, as in Darfur, by the state regulation and infiltration of them. In instances where this was not the case, authors highlighted government restrictions on the operations of nonstate actors as a barrier to displaced communities seeking redress (Lomo 2000; Schmiechen 2004; Kitale 2011). The lack of domestic resources could also hamper human rights groups' effectiveness in providing justice support (Lomo 2000), in addition to the unsafe working conditions in which NGOs and international agencies often operate (Schmiechen 2004).

In sum, the literature on justice initiatives and displaced people's preferences showed a strong partiality towards traditional justice and dispute resolution mechanisms within camp structures; state justice seems largely inaccessible for IDPs. These traditional mechanisms, however, often lack the legal capacity to deliver justice on criminal cases. Earlier in this paper we mentioned little is known about the justice concerns of displaced people living in host communities. This holds as well for their experiences with different justice providers.

CASE STUDY: ACCESS TO JUSTICE IN THE DRC

The Democratic Republic of Congo is a clear example of a conflict-affected country with high numbers of displaced people in different parts of the country. Some of them are refugees from neighboring countries, such as the Central African Republic, Rwanda, and South Sudan, who have been living in the DRC for many years. In other regions, especially in the east of the country, most are internally displaced. Whereas displaced people are typically pictured as living in camps, this is often not the situation in the DRC. Approximately 26 percent of the registered Central African refugees are living with Congolese families. In the eastern province of North Kivu, only about 22 percent of IDPs reside in IDP camps, while the other 78 percent live in host communities.⁵

In this section, we provide some data on the state of justice in the DRC and the challenges people face in getting access to justice there. Although the literature on access to justice and informal justice is growing, not so much is known about the justice-enhancing mechanisms and innovative

approaches used to promote justice in the DRC (but see, for example, Clark 2008), and even less is known about the access to justice for displaced populations there. The DRC is an interesting case in light of this research, as it is host to large numbers of IDPs and refugees in different regions of the country and with different characteristics. In particular, eastern DRC has high concentrations of both, and of civil society and international humanitarian actors engaged in the promotion of justice and human rights.

According to a massive audit in 2004, only about 20 percent of the overall population had access to the formal justice system (Altit 2004; Savage and Kambala wa Kabala 2008; Mbongo 2013). A more recent study found only 53 of the 180 peace tribunals (the lowest level of the state justice administration) operational, mainly in urban areas (Rubbers and Gallez 2012). Customary chiefs are often the only accessible authorities, especially in rural areas. Almost self-evidently, they are the primary source of justice in rural areas for people who decide to take their dispute outside the family or internal group (Cuvelier et al. 2013). Tellingly, 95 percent of the disputes on land tenure in the DRC are mediated and adjudicated by customary authorities (Sondrop et al. 2013).

LITIGANTS' PERCEPTIONS AND EXPERIENCES OF THE DRC'S JUSTICE SYSTEM AND AUTHORITIES

According to survey research conducted in the DRC by Avocats Sans Frontières (ASF),⁶ 25 percent of respondents claimed not to know where they have to go when seeking justice (Meyer 2014). In addition, the Congolese population expressed little trust in the justice system (Meyer 2014). Although 11 percent of respondents identified “modern” justice tribunals as one of the most important actors managing disputes, only 29 percent said they had confidence in the justice system. Resolving disputes through mutual agreement was deemed most important by the displaced (45 percent), followed by mediation by elders, the church, or other mediators (16 percent; Meyer 2014). Thus, more than 60 percent of the respondents identified dispute mediation and mutual agreement as the most plausible ways to manage disputes. This high rate must be taken into consideration in discussions of enhancing access to justice.

In the population-based survey conducted by Vinck and others (2008) in eastern DRC, 50.6 percent of respondents considered the national court system the most important means to obtain justice. Truth mechanisms were considered most important by 20.2 percent of the respondents, traditional justice by only 15.4 percent, and dispute resolution projects of NGOs and religious organizations by 14.3 percent.

The two studies gave different results, but both showed how the population considered justice and dispute mediation to be two distinct concepts. Informal mediation mechanisms can, however, contribute a great deal to achieving justice. Indeed, “access to justice” means a lot more than access to courts. It also means access to justice assistance and to relevant information and knowledge, as well to formal or informal justice mechanisms, including traditional justice and other initiatives. Moreover, it means equal access to justice and equal treatment for all, irrespective of gender, race, religion, age, or class (Wojkowska 2006). In addition, once justice is obtained, enforcement of the ruling, which can also be hampered, is needed.

Despite the decline of the justice sector in the DRC and its image as highly corrupt, expensive, and unpredictable, people still take cases to court. Rubbers and Gallez (2012) explored the reasons behind this in their research in Lubumbashi. They noted that levels of education and knowledge about the justice system seem to have an important impact, as well as gender. People with higher levels of education (secondary school and beyond) and employment (those working in business or administration) tend to be more knowledgeable about ways to navigate the state’s justice system. Gaining access to justice can be more complicated for women, as we have seen in the previous section, but this is not always the case (Douma and Hilhorst 2012).

Sexual violence in the DRC is a recurrent theme for justice seekers but also one taken up by many NGOs, sometimes with adverse consequences. Douma and Hilhorst explored in their research “the unintended side-effects of sexual violence assistance in the Democratic Republic of Congo” (2012, 5). They found that,

while the culture of impunity is effectively changing, it has resulted in a system that is biased towards producing rape convictions while the rights of suspects are severely breached. Judicial actors feel pressured by the zero-tolerance policy of the government, the advocacy of NGOs, and public opinion to convict suspects. As a result they disregard actual evidence to support cases and become biased and subjective in their rulings. This is even more the case when NGOs pay for organizing the mobile court hearings and select the cases to be heard. (Douma and Hilhorst 2012, 11)

Furthermore, according to Douma and Hilhorst, some litigants take their cases to court because they see it as a way to punish and humiliate their opponents. Sometimes taking a case to court can intensify the dispute, leading to the court to become a playground for competing social status in a community (Rubbers and Gallez 2012).

JUSTICE-ENHANCING MECHANISMS

Most societies host a wide variety of justice providers. People tend to seek justice from authorities that are accessible to them, and the ones they prefer are often those with whom they have personal relationships. This is especially the case in small-scale communities (Holleman 1973). In more urbanized settings this can be more difficult. When state actors are ill-functioning or mistrusted, nonstate actors tend to gain prominence. These can be traditional authorities or NGOs. Some might be directly involved in justice interventions themselves, as set out above. Others might be engaged in improving the functioning of justice providers or in facilitating people's access to justice; the already mentioned mobile courts that are supported by NGOs provide an example of this. Here we refer to the complex of interventions that target justice seekers and/or providers to improve the functioning of and/or access to the justice sector as "justice-enhancing mechanisms" (JEMs). Our findings pertain especially to the DRC, although some general lessons were brought in from the broader sub-Saharan region.

A wide range of initiatives is used to prevent or resolve disputes or to increase the accessibility of formal justice providers. Different strategies and innovative methodologies are explored to promote reconciliation and dispute resolution.

When accessible state justice is lacking, especially in conflict-affected settings, local nonstate initiatives tend to fill the gap, and they aim to enhance justice. In the DRC, traditional leaders, local NGOs, and other civil society organizations have initiated a range of mechanisms to maintain social harmony in communities. Although traditional justice systems are informal, they are more accessible in terms of time, money, and language. With their long histories of solving local disputes, they are embedded in the community and part of the legally plural landscape in Congo. Local NGOs, on the other hand, are rather new structures that work on mediation, reconciliation, and dispute resolution, mostly with the support of international donors. Often they draw on locally existing mechanisms of justice to strengthen their new initiatives; officially, they don't have the responsibility to intervene in justice cases, but they have an impact on the justice landscape and are seen as justice-promoting actors.

RAISING AWARENESS AND SUPPORTING ACCESS TO JUSTICE

In the DRC alone, *Avocats Sans Frontières* (ASF) suggests more than three thousand associations offer legal aid, of which 33 percent work partly or exclusively in the field of human rights and justice (Meyer 2014). Surprisingly, little attention is paid to displaced populations, and few NGOs beyond humanitarian circles consider them a particular target group. Given the high prevalence of people who are or have been displaced there, the displaced in the DRC likely are among the targeted beneficiaries of interventions in the field of justice.

In this section, we discuss some general mechanisms of assistance, as well as a few specific examples of direct NGO engagement with refugees. High levels of involvement by international organizations in certain areas of the DRC have an impact on the types of interventions that are set up; shifts in donor agendas are reflected in the topics eligible for funding and, subsequently, in the programs set up by donor-dependent NGOs. As our

own field experience shows, these differences lead to increased attention to sexual violence, for instance, or land conflicts. The lack of protection offered by the customary and state courts for property rights has inspired civil society organizations and local human rights groups to introduce mechanisms aimed at strengthening the capacities of land owners to claim their rights and at helping to resolve land disputes (Vlassenroot and Romeka 2007).

In short, the failure of the state to provide justice to its population in the whole of the country has led to the involvement of a wide range of state and nonstate actors, such as churches, civil society organizations (CSOs), and NGOs, in alternative dispute resolution. They are active in promoting human rights and justice and raising awareness, and they offer training on justice issues, including access to justice. They can also act as a bridge between litigant and justice institutions and even help negotiate IDPs' placement with host communities, as the Umoja project revealed in Goma (Jeene 2009). More often, however, they play an active and important role in dispute mediation and resolution to avoid further escalation.

These initiatives have proved their effectiveness and are locally embedded, but financial viability in the mid- to long terms is a big challenge (Bernstein and Okello 2007; Bakrania et al. 2010). Indeed, many organizations are dependent on the availability of external donors (Kälin 2007). In addition, NGOs may face pressure to adhere to the government line in their provision of support, as was shown in the case of Kampala (Bernstein and Okello 2007, 48). In recent years, the majority of NGOs, including those in the DRC, have faced increasing difficulty in finding adequate sources of funding (Bulte et al. 2015).

BARZA INTER-COMMUNAUTAIRE

The *Barza Inter-Communautaire* is an example of an innovative approach to enhancing justice available to the displaced in the DRC, based on the existing traditional mechanism of community meetings. According to Clark, "The *Barza* assembles leaders from North Kivu's nine major ethnic groups to discuss issues central to community life . . . the primary purpose (according to the President of *Barza*) . . . is to 'prevent, resolve,

and heal wounds after conflict” (Clark 2008, 6). Dunn has written that its objective is to reconstruct trust and relationships, with the aim of building a better community (2013). International donors began supporting this kind of local peace initiative, and this had a transformative impact on their development. The assemblies proved their effectiveness by preventing local disputes from escalating and succeeded in resolving ethnic disputes, mainly concerning land issues in North Kivu (Clark 2008). Unfortunately, by the end of 2005, the *Barza* collapsed, but in some places the members continued to meet to resolve local disputes (ibid.): “Moreover, partly as a result of the *Barza*[’s] work, there is now a trend among the displaced people to settle in multi-ethnic rather than mono-ethnic villages in North Kivu” (ibid., 8).

Initiatives of the same type have emerged in other regions in the DRC, such as Ituri (Van Puijenbroek 2008) and Haut-Uele, although a lack of independent research and literature on them has made it difficult to make strong statements on their effectiveness. A lot depends on the individuals leading the meetings and the extent to which they manage to gain trust from a wider audience. This works better in some communities than others. Furthermore, Dunn (2013) has objected that while this system is accessible to vulnerable groups, it reinforces this vulnerability at the same time by not challenging structures that maintain inequality.

SOCIOTHERAPY

In 2007, a Congolese NGO, Innovation et Formation pour le Développement et la Paix (IFDP), introduced sociotherapy—an approach to dispute prevention developed two years earlier in Byumba, Rwanda—in the eastern DRC province of South Kivu. Although sociotherapy was not solely developed as a justice-enhancing mechanism for the displaced, it is certainly an indirect initiative, aiming to help the participants regain feelings of dignity and safety and to reduce mental and social distress (Richters et al. 2008). The program promotes dialogue within households and communities, contributing to increased trust and improved relationships, and thus reducing the likelihood of disputes taking place as people connect to each other in more positive ways and become aware of the impact of their behavior on others.

In the DRC, more than twenty-five thousand people have been trained in the approach since it was initiated there, and the program has been evaluated as a valuable mechanism that complements other interventions. Several other NGOs have similarly become interested in actively promoting the approach, which increases its potential impact (Bulte et al. 2015). Overall, sociotherapy has been considered an advantageous and relevant method to address post-conflict social issues in the Great Lakes region of Africa (Richters et al. 2008).

MEDIATION AND RECONCILIATION INITIATIVES

NGOs have also introduced new trends in the local landscape of justice, such as mediation and reconciliation initiatives or alternative dispute resolution (ADR) mechanisms. In addition to the aforementioned *Barza Inter-Communaire* is a range of initiatives to maintain social order and harmony in the community. Some are financed and encouraged by international donors, while others can be seen as spontaneous. According to Wojkowsja (2006), however, the support to informal justice systems, such as alternative dispute resolution mechanisms, was very limited. Nevertheless, there are a great many of these kinds of mechanisms, and they must not be ignored; in many countries, informal justice systems are the primary means of resolving disputes (Wojkowsja 2006). Even so, most development assistance seems to focus on the “rule of law” approach. In the eastern DRC, research has shown that “local mediation can play a crucial role in resolving local disputes and building trust and peace . . . particularly on local issues around land” (Nsengimana 2010, 18). The aim of the mediation process is to come to an understanding of the situation and expel all negative prejudices, rumors, and myths, which facilitates dialogue between the communities (Nsengimana 2010). Alternative dispute resolution allows disputes to be resolved outside the courts in favor of all participants, reducing costs and procedural delays (Day 2001).

STRENGTHENING THE JUSTICE SECTOR

Apart from raising awareness about human rights and helping citizens obtain access to justice, some of the international and national NGOs also

engage in strengthening the justice sector itself. Strengthening the functioning of the sector can help increase legitimacy and make statutory justice a more attractive and viable option for people. There is an implicit assumption in the design of many support programs that a stronger justice sector will increase procedural fairness and equity for both litigants and perpetrators in dispute cases. Assuming the displaced are often the ones in a disadvantageous position in legal procedures, improving the sector would be beneficial for this group of marginalized people. Interventions that aim to improve the functioning of the sector are provided in the form of trainings for justice officials and logistical support, but they also include the more innovative approach of performance-based financing (PBF).

PERFORMANCE-BASED FINANCING

The PBF approach finds its roots in the education and health sectors, but it is also increasingly promoted within other service sectors. Its point of departure is to restore the social contract between the state and its citizens; state officials are held directly accountable for their performances, with community members, together with local NGOs, checking the reported performances. Satisfactory results are rewarded with financial incentives by the international agency.

The strong advantage of this kind of mechanism is its involvement of the existing justice system and state officials. The important role of the state in the delivery of justice and security cannot be ignored (Scheye and McLean 2007). If the functioning of this sector improves, all justice seekers can benefit from it. Where other international agencies and organizations so often condemn and ignore the state as being too weak to work with, this system involves them and aims for sustainability. While supporting the state delivery of justice may be crucial to achieving sustainable access to justice, however, an excessive focus on strengthening state capacities in a fragile state (ibid. 2007), such as the DRC, might miss its target if it does not take the larger context and cultural sensitivities into consideration.

Whereas performance can be measured relatively easily in the health care, education, and infrastructure sectors, the justice sector is much more complicated in this regard (Sondrop et al. 2013). So far, the international community has mainly focused on the formal justice structures and justice sector reforms, which, while reflecting the Western understanding of justice, does not reflect the prevailing conditions in post-conflict societies and what the population views as legitimate and effective (Thorne 2005). Several reports have stated that working only with the formal justice sector risks excluding mechanisms that are widely accepted by the population (Thorne 2005) and ignoring the strength of locally embedded mechanisms. Therefore, agencies that intervene with performance-based financing also support programs with local NGOs.

In sum, despite the great many IDPs and refugees in the DRC, this case study finds only limited studies available on how they obtain access to justice. Additionally, NGO programs appear also to struggle with prioritizing their particular justice needs. While the range of initiatives employed by international agencies and NGOs to enhance access to justice is fairly broad, they are mostly described as responses to inept state justice. With independent academic research largely lacking, these programs have also received little assessment. This case study also shows that, despite the preference among IDPs and the Congolese population in general for mediation and alternative dispute resolution as justice mechanisms, most development assistance seems to focus on the “rule of law” approach and reinforce state justice systems, with very little support going to informal justice systems.

CONCLUSION

Literature that explores the state of justice for the displaced tends to be somewhat one-sided; it looks primarily at the larger conflicts at the root of displacement and often portrays displaced people as transitional justice actors. We argue this is an oversimplification that does not pay heed to the day-to-day struggles and everyday disputes experienced by displaced people. Our findings show these struggles and the ways in which they are actively dealt with, both by displaced people themselves and by justice providers, are worth exploring.

Most of the literature reviewed was qualitative in nature. Some included detailed case studies involving focus groups and interviews with displaced populations; these were the most useful in providing evidence-based findings on how the displaced obtain justice. Nearly all the literature reviewed focused on displaced communities living within camp settlements and the preferred route of resolving most disputes through nonstate justice providers. The research suggests, however, that the displaced are more likely to pursue justice via state legal systems when no alternative redress mechanism is available at the camp level, or when the perpetrator is a nondisplaced person.

Self-settled displaced and refugee populations remain outside the traditional scope of scholarship, and we know very little about their experiences and how they get access to the justice mechanisms prevalent in their communities. The studies we found on those displaced in urban environments focused primarily on access to livelihoods. Given that in the DRC, for instance, approximately 70 percent of IDPs (Human Rights Watch 2010) and 28 percent of Central African refugees (UNHCR 2016) are believed to live outside the camps,⁷ this gap is significant. An explanation for this lack of literature might be found in methodological challenges of researching this category of people; they are less visible and hence more difficult to identify than people living in camp-like settings.

Literature that touches on the role of security services working with displaced populations, whether they are formal state actors, neighborhood watch groups, or traditional structures, focuses much more on their protection failures than their role in facilitating access to justice. In the scope of this review, the role played by security providers in the accommodation of justice for displaced populations has been primarily negative, although the study did reveal some of the pressures these actors face and a few innovations that have improved their performance in meeting their dual responsibilities of providing security and access to justice for displaced populations.

In-depth studies on how justice is administered in refugee and IDP camps are seriously lacking; even more so, on how displaced populations get

access to justice in host communities across the cases considered in this review, with very few found outside UNHCR evaluations or sponsored projects. While the very limited reach of the state judiciary sector, especially toward the periphery of the state, is very well known, the more we know about the locally developed mechanisms on which people rely in the state's absence, the better we can advise and empower local government and international justice initiatives and provide support to the local actors who contribute to the making of peaceful societies.

We are convinced that, to improve existing NGO programs on the access to justice and also inform future programs, more insights are needed into the ways in which displaced populations obtain justice. More context-specific research is needed to guarantee the sustainability of existing and future NGO programs that provide access to justice for displaced civilians. Policymakers should also consider the situation of IDPs and refugees when designing and implementing policy programs. Our review shows that, at all levels, attention paid to the justice needs of the displaced is limited.

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NOTES

1. This research was conducted in 2013 by Avocats Sans Frontières, based on a survey (n = 2,502) covering six provinces in the DRC, mostly not affected by conflict (Kinshasa, Kasai-Occidental, Bas-Congo, Province Orientale, North- and South-Kivu).
2. They were also reported as frequently being involved in dispute resolution of civil cases (Verweijen 2013), although no evidence was found on whether these services, which often require fees, are extended to IDPs or refugee populations.
3. Article 17 of Additional Protocol II of the Geneva Conventions, June 8, 1977.
4. Branch argued that the Ugandan government and Uganda People's Defence Force (UPDF) had both political and economic interests in maintaining the conflict against the LRA. One such theory is that the ineffective campaign and the use of poorly equipped Acholi militia to protect IDP camps, was, in fact, revenge for Acholi violence against the civilian population of Luwero during the National Resistance Army's civil war.
5. "Réfugiés de la République centrafricaine," United Nations High Commissioner for Refugees (UNHCR), 31 August; "Province du Nord-Kivu: Personnes en situation de déplacement interne (au 25 février 2015)" (2015), United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

6. Following statistics are the result of a research conducted in 2013 by Lawyers Without Borders, reaching more than 2000 respondents and covering 6 provinces in the DRC, including South Kivu, North Kivu, Orientale, Bas-Congo, Kinshasa, and Kasai-Occidental.

7. These estimates are only based on Central African Republic refugees in the DRC; information on the divisions within Angolan and Rwandan refugee communities is less available.

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