

Research Brief

Ensuring Long-Term Protection: Justice-Sensitive Security Sector Reform and Displacement

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Research Project

Transitional Justice and Displacement

From 2010–2012, the International Center for Transitional Justice and the Brookings-LSE Project on Internal Displacement collaborated on a research project to explore the relationship between transitional justice and displacement. It examined the capacity of transitional justice measures to address displacement, engage the justice claims of displaced persons, and support durable solutions, and analyzed the links between transitional justice and the interventions of humanitarian, development, and peacebuilding actors. For more information on the project, please visit www.ictj.org/our-work/research/transitional-justice-and-displacement and www.brookings.edu/idp.

This paper explores the intersection between displacement and one particular mechanism of transitional justice—justice-sensitive security sector reform (JSSR). It aims to identify various ways in which JSSR can contribute to the protection of refugees and internally displaced persons (IDPs), and how applying the principles of JSSR can improve the prospects of developing durable solutions to displacement—that is, of meeting the long-term safety, security, and justice needs of the displaced.

Concepts of JSSR and Displacement

Finding solutions to the security and justice needs of the displaced lies at the intersection of three communities of knowledge and practice—forced migration, transitional justice, and security sector reform (SSR)—which have remained broadly separate, despite their shared goals of mitigating the effects of instability, armed conflict, and human rights abuses.

Security Sector Reform

One of the main challenges faced by countries emerging from conflict or authoritarian rule is the transformation of the institutions responsible for delivering security and justice. These are often politicized, abusive, corrupt, and lacking accountability. SSR seeks to address these problems through a focus on governance—security institutions should not only be operationally effective, appropriately sized, and financially sustainable, but also accountable, democratically controlled, and responsive to the needs of citizens. Security sector reform also emphasizes a holistic approach; it views the security and justice sectors as components within an integrated system. Institutional reforms should thus reflect the interrelated nature of how safety, security, and justice services are provided and experienced.

Justice-Sensitive Security Sector Reform

Transitional justice can help SSR to achieve its objectives by drawing attention to the importance of the past. A justice-sensitive approach to SSR emphasizes the value of four principles in preventing the recurrence of abuses by members of security and justice institutions:

- *Integrity*: ensuring that institutions and the actions of personnel are firmly grounded in the rule of law and respect for human rights.
- *Accountability*: enacting effective disciplinary mechanisms within institutions as

well as sound external oversight systems. Effective accountability mechanisms should not only apply to present and future abuses, but also to past abuses; key in this regard are measures such as vetting to remove and exclude from the institution those individuals who have committed abuses.

- *Legitimacy*: establishing institutions that enjoy public trust and confidence, and are responsive to the needs of all groups within society, including the most vulnerable.
- *Inclusion*: enabling the participation of all citizens in SSR processes, and ultimately in the governance of their safety, security, and access to justice.

Displacement and Humanitarian Protection

Physical safety and the human rights of the displaced have not traditionally been priority concerns of humanitarian efforts, even though physical security is recognized as often being as important as food, shelter, or medical care to many IDPs and refugees. Humanitarian efforts that focus only on meeting basic needs have sometimes been ad hoc and ineffective because of the failure to address the broader context of displacement in which conflict, predation, and impunity thrive. Wherever possible and appropriate, the international community should ground protection responses in a wider understanding of systematic security- and justice-system deficits. This principle should be applied at both the state level and in local contexts. For example, the UN-African Union Mission in Darfur (UNAMID) efforts to improve security in the Kalma IDP camp included organizing a community policing program complemented by regular meetings and discussions with camp residents, and particularly those who do not often have a voice in camp decision-making—women and youth. Simultaneously, UNAMID linked these discussions to local police, while supporting their reform and restructuring.

Durable Solutions and JSSR

The framework for assisting displaced persons is centered on the notion of durable solutions, which entails their return, local integration, or resettlement, and their enjoyment of rights to the same extent as their non-displaced neighbors. As such, durable solutions must ensure the long-term safety and security of the displaced. An added value of JSSR is the increased likelihood that reforms will be sustainable, due to its emphasis on building a relationship of trust and accountability between the population and the providers of security and justice. The nondiscriminatory element of durable solutions also closely links it to JSSR—specifically, the principle that security and justice systems must enjoy integrity insofar as they function as public services, treat all citizens fairly, and do not engage in human rights abuses. More than merely ensuring that police and court systems are effective, durable solutions emphasize that returnees and IDPs must not be excluded from the services such systems offer; the effort to create a more inclusive and responsive Kosovo Police Service through greater gender and minority representation is an example of this principle. A justice-sensitive approach also insists on accountability for past abuses, which would require the removal of those who have committed or enabled abuses. For example, the judicial reselection procedure in Bosnia and Herzegovina helped to rebuild public confidence in the integrity of the state justice system and thus was one factor encouraging minority returns.

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Two other criteria for durable solutions are also relevant to JSSR, although less self-evidently: the restoration of housing, land, and property; and access to remedies and justice. While the restitution process may be long and complex, it requires that displaced persons have access to an effective justice and compensation mechanism, and that they are able to reside safely and securely in the meantime. To this end, the Norwegian Refugee Council has implemented programs to increase the capacity of displaced individuals, state and local authorities, as well as traditional leaders to resolve land disputes in both Liberia and Afghanistan, where returnees often face obstacles to reclaiming land and judicial remedies are difficult to access and enforce, while informal remedies are often biased. JSSR must also include access to effective remedies and justice for displaced persons who have been victims of human rights violations; a series of rulings by the Colombian Constitutional Court provides an example of the ways in which one judicial system has sought to increase the legal empowerment of IDPs.

Growing Convergence and Challenges for Displacement and JSSR

Forced migration and JSSR approaches have gradually converged on the conceptual level through their intensifying focus on rights. Displacement has largely been seen as a focus of humanitarian efforts; however, a transitional justice approach helps to broaden the frame from a classic humanitarian one to a rights-based one in which victims are seen as actors, having rights to truth, justice, and reconciliation, and to humanitarian assistance and protection of basic physical needs. Displacement indicates a fundamental failure of the state to provide for the physical safety and protection of the rights of its citizens, and the renewed responsibility of the state for displaced persons' safety, security, and justice is critical to restoring the bonds of citizenship and civic trust. JSSR aims to ensure this protection in an equitable, legitimate, inclusive, and accountable way. Additionally, as people displaced by conflict or repression are often already marginalized in social, economic, or political terms, a JSSR approach recognizes the need to address the specific security concerns of vulnerable groups and seeks to promote their participation in finding solutions to their needs at multiple levels.

This conceptual convergence is becoming mirrored on the practical and operational levels, highlighting the need to transcend institutional and disciplinary boundaries. A JSSR approach recognizes that concerns for integrity, accountability, inclusion, and legitimacy should be addressed at the earliest stages as they may impact the effectiveness of further reforms, and prospects for returns and rebuilding the bonds of community after return. Returns of refugees and IDPs hinge on their assurance of some measure of physical security and, at the very least, that state security forces will not engage in the types of abuses that may have initially caused people to flee their homes and communities. Effective vetting and removal of the worst perpetrators from security forces is an essential measure which must be supplemented by further reforms. The failure to adequately vet former combatants who were integrated into the Congolese military, and the absence of further reforms that would fundamentally transform the Congolese military have contributed to continuing abuses of civilians and displacement crises in Eastern DRC.

About the Author

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A JSSR approach recognizes the need to address the specific security concerns of vulnerable groups and seeks to promote their participation in finding solutions at multiple levels to address their needs.

Conceptual convergence between the fields of displacement and JSSR is further driven by the growing recognition of the interconnections between security and justice and the need for holistic approaches. For example, the efforts of the international community to enable minority returns as a central mechanism of peacebuilding in post-war Bosnia demonstrate the links between returns and security, property reclamation, unbiased laws, fair enforcement by police, prosecutors, and courts, and other elements such as access to local services and employment opportunities.

Failure to adopt a holistic approach to reform will limit or undermine the effectiveness of efforts to mitigate harm at all stages of displacement. For example, the efforts of a special national police unit in Chad trained by UN peacekeepers to provide security in refugee and IDP camps were impeded by a dysfunctional and discriminatory justice system. More broadly, a justice-sensitive approach to SSR that responds to the needs of the displaced must focus not only on safety and security arrangements, but also on access to justice; security and justice needs should be analyzed together, with the objective of formulating integrated, coordinated solutions. Overcoming the compartmentalization of the justice, humanitarian, peacekeeping, and development communities is another major challenge to implementing a holistic approach to ensuring the long-term protection and returns of the displaced. Recent efforts by the UN to transcend institutional silos dealing with policing, corrections, and the justice sector in international peacekeeping missions speak to a similar concern with achieving a more holistic, coordinated, and effective response.

Finally, since displacement commonly takes place in fragile, conflict-affected environments, where the majority of the population relies on customary justice providers, both formal and traditional justice systems must be considered as a locus for JSSR. This is true both for the displaced in rural settings and for those who live in large urban environments, where they may be particularly impoverished and vulnerable, and must often rely on traditional authorities or informal, self-policing arrangements. While such arrangements may be perceived as having some local legitimacy, they may not be accountable or uphold the rule of law or international human rights principles.

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Research Brief Series

ICTJ Research Briefs summarize longer studies prepared as part of research projects conducted by ICTJ's Research Unit. This set of briefs on transitional justice and displacement summarizes the chapters of *Transitional Justice and Displacement* (Social Science Research Council, 2012), edited by Roger Duthie.



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