

# Transitional Justice and Displacement

## Challenges and Recommendations

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Brookings-LSE Project on  
Internal Displacement

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Transitional justice is often pursued in contexts where people have been forced from their homes and communities by human rights violations and have suffered additional abuses while displaced. Yet little attention has been paid to how transitional justice measures can be used to address the wide range of injustices associated with displacement and thereby serve as part of a comprehensive approach to the resolution of displacement. This report provides an overview of the relationship between transitional justice and displacement and offers specific guidance to policymakers and practitioners in the numerous fields that share a concern with displacement, including transitional justice, humanitarianism, peacebuilding, and development. Displaced persons often have a critical stake in transitional justice processes, which have the potential to contribute positively to efforts to uphold their rights and well-being. When displacement is linked to large-scale human rights violations, the concerns of refugees and internally displaced persons (IDPs) should be incorporated in appropriate ways into transitional justice efforts. At the same time, responses to the problem of displacement should integrate transitional justice measures.

### Transitional Justice and Displacement: Mutual Concerns

The humanitarian actors that work directly with displaced populations have traditionally focused on the immediate aims of providing life-saving assistance and protection. In contrast, actors that work to promote transitional justice generally embrace a set of different, longer-term goals. Transitional justice refers to a set of measures that seek to redress the legacies of massive human rights abuses that occur during conflict and under abusive regimes, primarily by giving force to human rights norms that were systematically violated. Transitional justice aims to provide recognition for victims, foster civic trust, and strengthen the rule of law. Transitional justice mechanisms include but are not limited to:

- criminal prosecutions of the architects and perpetrators of grave human rights violations;
- reparations programs that distribute a mix of material and symbolic benefits to victims (such as compensation and apologies);
- restitution programs that seek to return housing, land, and property to those who were dispossessed;
- truth-telling initiatives that investigate, report, and officially acknowledge periods and patterns of past violations; and
- justice-sensitive security sector reform (SSR) that seeks to transform the military, police, and judiciary responsible for past violations by building institutional accountability, legitimacy, integrity, and the empowerment of citizens (such as through vetting, the exclusion of perpetrators of abuses from these public institutions).

Transitional justice has traditionally dealt mainly with a narrow set of the most serious civil and political rights violations committed by authoritarian regimes, such as extrajudicial executions,

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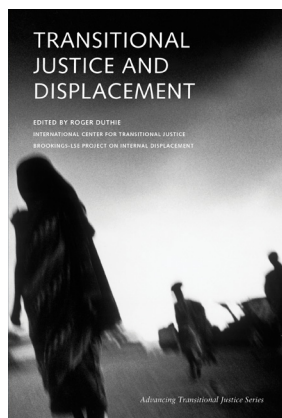
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### About the Research Project

From 2010–2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. This report highlights the main findings of this research project. Other outputs include an edited volume, *Transitional Justice and Displacement* (Social Science Research Council, 2012), as well as a series of working papers, most of which focus on a specific region or country, including Central Africa, Colombia, Israel-Palestine, Kosovo, Liberia, Peru, Timor-Leste, Turkey, and the former Yugoslavia. Please see: [www.ictj.org/our-work/research/transitional-justice-and-displacement](http://www.ictj.org/our-work/research/transitional-justice-and-displacement) and [www.brookings.edu/idp](http://www.brookings.edu/idp).



disappearances, and torture. However, these tools are increasingly applied in post- and even ongoing-conflict contexts in which widespread displacement is a significant concern. Two groups of displaced persons have a major stake in transitional justice processes: refugees and IDPs. While a refugee is an individual who has fled across an international border to escape persecution or conflict, IDPs have been forced from their homes but remain within their own countries. There are 15.3 million refugees around the world today and 26.4 million people internally displaced by conflict and violence, in addition to millions more forced from their homes due to disasters.<sup>1</sup>

The Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated to assist and protect refugees and advance solutions to their displacement. In some cases, UNHCR also supports IDP populations. UNHCR works alongside a range of other actors, including humanitarian and human rights nongovernmental organizations (NGOs), the International Organization for Migration (IOM), and national governments. National governments retain primary responsibility for protecting and assisting IDPs and supporting “durable solutions” to their displacement. Durable solutions for IDPs and refugees include voluntary return, local integration, and resettlement in a third country or community.

Displacement is integrally linked to massive human rights violations in at least three ways. First, serious and widespread rights violations, such as mass killings, arbitrary arrests, torture, and rape, often cause displacement, while some violations, such as the destruction of homes and property, can be aimed at undercutting the possibility to return home. Second, forced displacement is often a deliberate strategy adopted by parties to a conflict and can in itself constitute a war crime or a crime against humanity. Third, displacement often leaves its victims vulnerable to other human rights violations, without the basic protection provided by their homes, livelihoods, communities, and governance structures. Since transitional justice seeks to redress the legacies of massive human rights violations, it has good reason to respond to displacement. Indeed, resolving displacement in a sustainable manner requires addressing not only present vulnerabilities to human rights violations, but also past human rights abuses.

### ACKNOWLEDGING THE NEED FOR JUSTICE

Various recent reports, resolutions, and guidelines have acknowledged the need for societies and actors struggling to resolve large-scale displacement crises to respond to the justice concerns these crises entail. These include the 2004 and 2011 versions of the *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, the UN Inter-Agency Standing Committee’s (IASC) 2010 *Framework on Durable Solutions for Internally Displaced Persons*, the 2009 African Union *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the “Kampala Convention”), and the UN *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the “Pinheiro Principles”).

### Responses to the Injustices of Displacement

Transitional justice processes have not traditionally engaged in depth with the particular concerns of refugees and IDPs. However, transitional justice measures have in certain contexts been part of the response to displacement:

- **Restitution** of housing, land, and property is the form of redress perhaps most directly connected to displacement. In postwar Bosnia, for example, the restitution program processed

<sup>1</sup> See <http://www.unhcr.org/pages/49c3646c23.html>; <http://www.unhcr.org/pages/49c3646c1d.html>; and <http://www.internal-displacement.org/publications/global-overview-2011.pdf>. These figures include 4.8 million Palestinian refugees assisted by the UN Relief and Works Agency (UNRWA).

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200,000 claims for lost homes, most of which were decided in favor of the displaced claimants. The utility of restitution has been less clear, however, in contexts such as Afghanistan, the Democratic Republic of the Congo, and Timor-Leste, where restoring the property-distribution patterns that existed prior to displacement would not necessarily be just or practicable.

- **Reparations** programs can provide benefits to victims of abuses that led to displacement, to displaced persons for harms they suffered while displaced, or for the experience of displacement itself. There have been only a few examples, though, of reparations programs providing benefits directly for displacement. In Guatemala and Peru, for instance, reparations programs include displacement as a crime that merits reparation, and in Colombia, the administrative reparations program established in 2011 anticipates providing redress for forced displacement as such.
- **Truth commissions** increasingly recognize and investigate displacement as a serious human rights problem. Commissions such as those in Liberia, Sierra Leone, Timor-Leste, and Guatemala have examined the role of displacement in conflict and occupation, as well as the suffering and stigma endured by the displaced. Truth commissions have also made recommendations that respond to the concerns of displaced persons regarding issues such as the resolution of property claims and acceptance of dual nationality.
- **Criminal prosecutions** can target the perpetrators of human rights violations that led to displacement and may also target forced displacement as a crime in itself. An international legal framework exists to prosecute forced displacement when it qualifies as a war crime or crime against humanity, including the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC), and the Geneva Conventions. Some states, such as Colombia, have prosecuted the crime domestically.
- **Justice-sensitive SSR** seeks to prevent the recurrence of human rights violations, including displacement, through the transformation of safety, security, and justice institutions and the governance systems that control and oversee them. In Bosnia and Herzegovina and Kosovo, for example, reforms seeking to remove perpetrators of human rights abuses from police forces that were paired with efforts to recruit from underrepresented minority groups made a concrete contribution to enabling returns.

In some cases, humanitarian, development, and peacebuilding actors have been involved in transitional justice efforts that responded to displacement. For example, restitution initiatives often engage a range of actors. The UN's Human Settlement Program (UN Habitat) has taken a leading role in coordinating responses to housing, land, and property issues, including restitution, while actors such as UNHCR, IOM, and the Norwegian Refugee Council regularly work on restitution issues in the field. IOM also provides technical assistance and expert advice to governments implementing reparations programs, and providers of medical care such as Médecins Sans Frontières can help to establish people's status as victims by certifying that an act of violence occurred. In general, information gathered by governments or humanitarian agencies in the course of registering displaced persons is potentially valuable to reparations programs seeking to identify potential beneficiaries, although this raises difficult questions regarding issues such as confidentiality and the comprehensiveness of agencies' registration records. For example, in many cases IDPs go unregistered by governments, international organizations, and NGOs.

Humanitarian actors also at times support truth-telling processes. UNHCR has assisted truth commissions in Sierra Leone, where it helped to facilitate refugee participation, and in Timor-Leste, where it sought to promote return, reintegration, and reconciliation of displaced persons. Actors from different fields also sometimes work together in justice-sensitive SSR. In Chad, for example, a joint program run by the United Nations Development Program (UNDP) and UNHCR provided funding, training, and equipment to a special national police unit set up to provide

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protection to displaced persons and escorts to humanitarians. In Kosovo, a Joint Task Force on Minorities, with representatives from the security, justice, and humanitarian sectors, worked to change the policing dynamic as it related to displaced populations.

Humanitarian organizations also generally support and promote efforts to fight impunity, but they worry that public cooperation with criminal justice processes may compromise their neutrality, undermine their access to vulnerable populations, and put their staff at risk. In 2009, for example, the government of Sudan accused 16 organizations of collaborating with the ICC and expelled them from the country. Nevertheless, some agencies, such as UNHCR, have engaged with criminal tribunals, and a number of tools or protective measures exist to minimize potential negative effects, including witness confidentiality and nondisclosure of information to the public. Nonetheless, cooperation between humanitarian agencies and criminal justice processes remains a sensitive proposition that must be carefully timed and implemented.

### **Transitional Justice and Resolving Displacement**

The most important long-term contribution that transitional justice can make to resolving displacement, arguably, is in facilitating the integration or reintegration of displaced persons. Whether refugees and IDPs voluntarily return, remain where they sought shelter, or resettle elsewhere, (re)integration is a critical aspect of achieving a durable solution. However, (re)integration can be significantly hindered by legacies of past abuses, which can affect both individuals and their societies. Yet the primary actors working on displacement do not generally focus on dealing directly with past abuses and their impact. Transitional justice can therefore play a positive role in supporting (re)integration in various ways:

- Criminal justice and justice-sensitive SSR can facilitate (re)integration by improving the safety and security of formerly displaced persons, and make (re)integration more durable by helping to prevent the recurrence of the abuses that led to displacement. They can do this by contributing to the reform of security and justice institutions, including vetting to remove the individuals responsible for such abuses from power.
- Reparations and restitution can facilitate economic (re)integration and the rebuilding of sustainable livelihoods. Restitution is often seen as a precondition for return because it enables (re)integration by increasing access to shelter and land for agriculture or other economic activities. Financial compensation can also help displaced persons to access resettlement or local integration opportunities by supporting the construction of new homes and businesses. Reparations and restitution may be especially crucial to the well-being of households headed by female returnees.
- Truth-telling efforts can contribute to social (re)integration by reducing tensions between those who stayed and those who were displaced, revealing and validating the experiences of the different groups. Truth-telling can also bring low-level offenders among the displaced together with communities to determine what steps may lead to their (re)integration. In Timor-Leste, for example, the truth commission facilitated a process through which displaced perpetrators of “less serious” crimes could acknowledge their violations, undertake reparative actions agreed upon by the community, and then return home.
- Transitional justice measures can facilitate the political (re)integration of formerly displaced persons at a broad level by reaffirming basic norms that were systematically violated and by strengthening displaced persons’ rights as citizens. Transitional justice can help empower the displaced through the inclusion of their voices in national narratives that frame how societies move forward.

Transitional justice will not always make a tangible, positive contribution to the resolution of displacement, however. For example, transitional justice mechanisms are often linked rhetorically to the contested concept of reconciliation, which can be important for durable solutions. But while the acknowledgement of past abuses may represent an important step toward peaceful coexistence and reconciliation on different levels, a linear relationship between justice and reconciliation cannot be assumed. Transitional justice processes are long-term undertakings that can support but cannot guarantee reconciliation.

Furthermore, transitional justice and durable solutions to displacement are not always mutually reinforcing. Criminal justice measures, for example, can in some cases jeopardize the neutrality, access, and safety of humanitarian groups, and may create a disincentive to return for displaced persons accused of complicity in violence. The prospect of being held accountable for forcing citizens from their homes can also increase authorities' resistance to officially recognizing their involvement in past displacement, disclosing information necessary to facilitate other measures such as truth-telling or reparations programs, or permitting return movements. And actors who benefited from displacement by taking over forced migrants' properties can impede return processes if they believe that the displaced will reclaim their properties or push for the architects of their displacement to stand trial.

Transitional justice measures also risk creating competition or divisions among conflict-affected groups, particularly around the determination of "victim" status, qualification for benefits, and the expectations that come with them. Limitations on the number of victims who benefit from reparations can generate dissatisfaction and have a detrimental effect on (re)integration, particularly if displaced persons are excluded, or if their recognition as victims crowds out attention for other groups.

## Challenges

Responding to the violations and vulnerabilities associated with displacement through transitional justice measures raises a particular set of challenges. Given the scope and complexity of large-scale displacement, transitional justice measures have a limited capacity to deal directly with the problem, let alone resolve the many hardships faced by displaced populations.

This is particularly the case with measures that seek to provide redress directly to victims, because large displaced populations present significant resource and capacity challenges. For example, providing financial compensation for lost property and the suffering of thousands or even millions of displaced persons is often simply unaffordable for transitional governments, particularly in developing countries. Technical and institutional challenges include assessing the needs and rights of displaced populations and distributing an appropriate range of benefits in an efficient and fair manner. Determining who qualifies as a victim of forced displacement and as a potential reparations beneficiary is often especially difficult, as many displaced persons are not formally registered. There is therefore a real risk of overloading the capacity of justice measures. For instance, displaced persons are included as beneficiaries of Peru's reparations program, but in practice they have not received any material benefits, in part because of limited resources and the large number of potential claimants.

Criminal justice efforts are constrained because international jurisprudence on forced migration as a crime, while evolving, is not yet as developed as is the jurisprudence for other violations. Furthermore, resource, political, evidentiary, and other constraints tend to lead prosecutors to prioritize more traditional crimes. National criminal justice systems often focus on the crimes



connected to displacement rather than the crime of displacement itself: displacement is often seen as a natural consequence of other crimes or as an inherent effect of armed conflict, and as a result, there are few investigations of the criminality or rationale of the multiple actors involved in these crimes.

Dynamics among victims of displacement, and between them and victims of other abuses, can also present difficulties, whether at the local level or across borders. For example, diasporas can make valuable contributions to transitional justice processes such as truth commissions. However, the participation of diaspora communities may also be highly politicized and discordant with the interests and priorities of those who were unable to leave the country. A particularly sensitive issue in resource-scarce environments is how to rank material reparations for displacement in relation to other priorities.

Victims of displacement also face obstacles to participating in or accessing transitional justice measures. In some cases, information about transitional justice measures is not available to IDPs and refugees, which can prevent them from making claims and may affect their decisions on whether to attempt to return, locally integrate, or resettle elsewhere. In addition, displaced people often lack identity documents, which can create difficulties in accessing restitution and reparations programs. Impoverishment, social marginalization, and physical inaccessibility can also pose significant barriers to direct involvement in transitional justice processes. Displaced populations often face significant material and logistical challenges that impede their mobilization, including a lack of human and financial resources and weak levels of coordination. In countries such as Colombia, where displaced persons have organized themselves to demand their remedial rights, IDP leaders have been the targets of harassment, violence, and assassinations.

These challenges underline that while significant progress has been made in redressing displacement and engaging refugees and IDPs in transitional justice processes, many displaced persons and the issues important to them remain sidelined. If transitional justice processes do not respond appropriately (or at all) to the needs and claims of displaced persons, their exclusion may persist. This heightens the risk that abuses and displacement may recur.

## Recommendations

Two overarching and interrelated recommendations emerge from this crosscutting study. First, responses to displacement in post-conflict and transitional contexts should more concertedly incorporate transitional justice mechanisms. Second, transitional justice measures should address the problem of displacement and include in their processes those forced from their homes. Building on these central findings, the following recommendations aim to maximize the potential contributions transitional justice mechanisms may make in displacement contexts, while responding to the challenges that come with attempts to bridge these fields.

### From Ad Hoc Approaches to Informed, Strategic Engagement

Efforts to address displacement through transitional justice mechanisms are often ad hoc, failing to systematically respond to the problem of displacement, engage uprooted populations, or learn from past efforts. These ad hoc approaches should be replaced by more informed, strategic engagement between transitional justice and displacement actors. From the outset, transitional justice actors working in contexts characterized by large-scale displacement should develop a strategy for identifying and responding to the concerns of refugees and IDPs alongside other stakeholders. While strategies for addressing forced migration and engaging the displaced will have to be refined as transitional justice processes unfold, ultimately, a strategic approach to

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linking displacement and transitional justice should lead to the development of measures that are appropriate, feasible, coherent, and context sensitive; facilitate the involvement of refugees and IDPs; and maximize the positive contributions transitional justice mechanisms may make to durable solutions. Effective strategies should look to relevant international documents for their guidance and obligations, but they should also be based on detailed assessments of regional, national, and local contexts. For example, while standards such as the Pinheiro Principles advocate restitution as the preferred remedy for displacement, an assessment of local, national, and regional dynamics may suggest that compensation is a more fitting form of redress.

Transitional justice strategies should be developed in consultation with displaced communities, where possible, and with actors involved in providing support and protection to refugees and IDPs. Initiatives such as the Liberian Truth and Reconciliation Commission's diaspora project represent a valuable source of insight on how displaced populations and civil society organizations may contribute to transitional justice processes. While there is no blueprint for a successful strategy, there is a need to balance early action on transitional justice with a long-term approach to maximizing its contribution to resolving displacement.

More research on the relationship between displacement and transitional justice issues is needed to support well-informed strategies for linking these sectors. In particular, careful monitoring and evaluation of transitional justice processes should specifically engage displaced persons and/or address displacement, so that lessons can be learned and applied to improve practice, with a view to moving beyond the current ad hoc approaches. In order to achieve this goal, concerted efforts are also required to build capacity among transitional justice actors for addressing displacement, and vice versa (see below).

#### **Developing Coherent Transitional Justice Programs and Responses to Displacement**

Given the limited capacity of transitional justice measures to address the range of injustices experienced by refugees and IDPs, maintaining realistic expectations is essential. Furthermore, transitional justice measures are likely to be most effective in addressing displacement when they form part of a broader but coherent overall response to the problem.

Transitional justice programs should be designed and implemented in a holistic manner, so that different remedies for displacement-related injustice are mutually reinforcing. Victims of human rights violations such as torture or forced labor have been less inclined to see reparations as an attempt to "buy them off" when those reparations are combined with measures to hold perpetrators accountable, acknowledge the truth, and reform institutions in order to prevent the recurrence of abuses. Similarly, refugees and IDPs who receive reparations for or in response to their experiences of displacement may be more likely to view this as a positive step if reparations are combined with other transitional justice measures that also address the injustice of displacement.

Transitional justice measures that seek to contribute to the resolution of displacement should also strive for complementarity with other interventions, including those of humanitarian, development, and peacebuilding actors. In this regard, both the contributions that transitional justice measures can make to durable solutions and the inherent tensions stemming from competing policy aims and objectives among transitional justice and other interventions must be acknowledged. However, these tensions should not be overstated: most humanitarian concerns about transitional justice have to do with criminal justice, which is only one aspect of a multifaceted approach to transitional justice. Concerns and incompatibilities with one aspect of transitional justice should not preclude broader coordination and cooperation on other aspects.

## ICTJ/Brookings

### Transitional Justice and Displacement

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The potential impact of transitional justice responses to displacement also depends on the extent to which they form part of a broader set of structural reforms that address the root causes of displacement, including land reform, broader justice and security sector reform, and institutional capacity building. For example, justice-sensitive SSR efforts that focus only on police and military and not on the judiciary and prison systems are likely to have a limited impact on the long-term protection needs of the displaced and formerly displaced. Similarly, in contexts characterized by overlapping land tenure systems and competing land claims, successful restitution programs must be appropriately situated in relation to broader land tenure reform processes. For instance, one of the strengths of South Africa's approach to restitution for communities displaced under the apartheid regime was that these claims were negotiated alongside a broader process of land reform that aimed—with admittedly limited success—to redistribute territory to black South Africans.

#### **Strengthening Organizational Capacities and Contributions**

Given the contributions that restitution, truth-telling, and other remedies can make to the (re)integration of displaced populations, key actors involved in protecting and assisting forced migrants should strengthen their capacity to engage with and more systematically support transitional justice processes. In part, this may be achieved through secondments and specialized training opportunities. To maximize effective engagement on transitional justice issues, displacement-focused organizations such as UNHCR should consider appointing a focal point for transitional justice.

Beyond facilitating displaced persons' participation in transitional justice processes, humanitarian actors can play valuable roles in truth-telling processes in particular, as witnesses and as sources of information on the dynamics of displacement in particular conflicts. International actors' willingness to engage openly in truth-telling processes may be especially important when these actors have themselves played a part in displaced persons' exposure to exploitation or grossly inadequate protection, such as in Srebrenica. Acknowledging humanitarian actors' own failures can be a critical part of truth-telling efforts.

#### **Designing and Implementing Context-Sensitive Remedies for Displacement**

Transitional justice measures should respond to the injustices of displacement in a context-sensitive manner, which means taking into account factors such as ongoing conflict and displacement, land and property issues, and informal justice and security measures.

#### ***Transitional justice amid ongoing conflict and displacement***

In countries such as Colombia and Iraq, transitional justice measures have been used to try to redress forced migrants while conflict and displacement are ongoing. Justice-sensitive SSR, for example, can help serve the security and justice needs of displaced persons, including by providing protection from immediate harm—as in Chad where a special police unit was set up and trained specifically to police IDP camps—while also helping to establish the stability necessary for return and reintegration. In contexts where a political settlement has yet to be reached, however, efforts to achieve accountability and redress for displacement may be particularly restricted and of limited relevance.

#### ***Context-sensitive responses to land and property issues***

Responding to the justice concerns of displaced persons frequently involves addressing land and property disputes. However, restitution proponents should be cognizant of the sensitivity of land and property in post-conflict settings. In countries such as Afghanistan, Iraq, and the Democratic Republic of the Congo, patterns of ongoing and protracted displacement have resulted in complex, overlapping claims. Tackling such a politically charged issue can lead to renewed tensions, particularly when conflicts are ongoing or peace is fragile, but there is a consensus that failing to address land and property issues may lead to further conflict and displacement. Effective



responses in these cases require carefully calibrated political strategies that ensure evenhanded responses to different groups' land claims and build up political will to address these issues in a prompt and transparent manner.

Injustice related to land and property is often linked to the effects of prior discrimination and marginalization, which justice efforts should seek to address or at least avoid reinforcing. Where groups have been marginalized through the prior denial of crucial property rights, special steps should be taken to include them on a full and equal basis in the restitution process.

#### ***The role of informal justice and security mechanisms***

An appropriately contextualized approach to displaced persons' justice claims can necessitate engagement with unofficial or customary justice and security mechanisms. Particularly in developing countries, customary law and/or plural legal systems often provide the only accessible forms of justice for much of the population and play a pivotal role in resolving grievances. In post-conflict urban settings, where the displaced are frequently the most vulnerable group, informal policing and governance authorities should in some instances be considered valid interlocutors in developing security and justice arrangements. International support can help refugees and IDPs effectively access these mechanisms, and help ensure that customary processes are attuned to human rights principles. For example, as the Norwegian Refugee Council's experiences in Afghanistan demonstrate, the provision of legal aid can help returning refugees and IDPs use customary institutions to effectively resolve their property claims.

#### **Integrating Displacement into Transitional Justice Program Design**

In displacement contexts, transitional justice measures should be designed with the specific aims of addressing displacement and responding to the justice claims of displaced populations. For different transitional justice measures, overcoming the challenges discussed above requires different types of innovative program design. For example:

##### ***Administrative processes: Maximizing efficiency in responding to massive displacement***

Justice measures should be designed to respond as effectively and efficiently as possible to the massive numbers of people affected by displacement. For restitution and reparations programs that provide redress for large-scale displacement, administrative processes are more appropriate than judicial ones. Administrative programs are faster, more accessible, more cost-effective, and more flexible in terms of evidentiary standards, which is important because displaced persons often lack documentation backstopping their claims. However, in some cases such administrative programs may be seen as lacking legitimacy, a concern that should be addressed through outreach to potential claimants explaining the rationale for the programs, and to local leaders and officials whose support may bolster the perceived legitimacy of the administrative processes.

##### ***Basing remedies on careful needs assessments***

Reparations programs should be crafted in response to an assessment of the needs and priorities of displaced populations. Since displacement often occurs in contexts of poverty, benefits should be targeted to contribute to overcoming social exclusion, reducing socioeconomic vulnerability, and improving long-term self-sufficiency. Benefits can include access to higher education, livelihood support, and cash grants, although it may not always be appropriate or viable to provide financial compensation for displacement itself. Symbolic reparations may be particularly appropriate, given resource constraints. If reparations are indeed provided to IDPs in Peru and Colombia, findings from previous studies and workshops could provide guidance about shaping benefits.

##### ***Including displacement in the work of truth commissions***

For truth commissions set up in contexts where displacement has figured centrally, it is beneficial to explicitly mandate these bodies to investigate forced migration and engage refugee and IDP

populations. For example, the truth commission for Timor-Leste was explicitly mandated to address displacement, which helped ensure that this human rights violation was concerted and investigated and addressed in the commission's report. Truth commissions should consider convening sessions specifically focused on the theme of displacement, with a view to deepening understanding of the violations associated with forced migration and increasing the engagement of refugees and IDPs. The causes and consequences of forced migration should be explicitly addressed in truth commission reports, so that the experiences of displaced populations are reflected adequately in the narratives these reports help to establish, and in the recommendations they issue. Themes of special relevance to displaced persons include conditions in camps, land claims, return and reintegration, and diaspora relations.

#### *Investigating displacement for accountability and redress*

For criminal prosecutions, investigation methodologies should be established at the national level for the crime of forced displacement, independently of any other crimes in connection with which it was committed. Providing accountability and redress for displacement entails determining the scope and dynamics of the displacement of an often large and complex population; demographic evidence and testimony should therefore be used, when appropriate, to ensure an accurate portrayal of this group, its experiences, and responsibility for its displacement. Prosecutors should find ways, however, to present such evidence in accessible and understandable ways. In cases of essentially civil redress, such as restitution and reparations, legal frameworks should be based on a legislative recognition of clearly established patterns of victimization that occurred in connection with displacement as a means of justifying and facilitating efficient procedural approaches, such as reduced burdens of evidence.

#### *Exploring and enhancing regional approaches*

In light of the regional dimensions of many conflicts and displacement crises in places such as West Africa and the Great Lakes region, transitional justice processes should consider taking on a regional dimension in order to fully understand and acknowledge forced migrants' experiences. Exploring regional truth-telling and reparations opportunities/initiatives may increase the relevance of these processes for refugees and returnees, and regional pooling of resources for reparations programs could be a step forward in contexts of limited resources. However, the desirability and feasibility of regional efforts depends on local and regional politics, identities, and histories.

#### **Strengthening Outreach and Participation**

Transitional justice measures should seek to engage in meaningful ways with displaced persons through a carefully managed, multidimensional process that includes outreach and participation. Ideally, this process should be preceded by the engagement of refugees and IDPs in the peace processes that set the stage for transitional justice mechanisms. Peace treaties should include detailed provisions on the rights of refugees and IDPs, including as they pertain to remedies such as restitution and compensation. The importance of the active participation of displaced populations in peace negotiations was evident in the case of the Accra peace process in Liberia, where the lack of IDP representation was part of the reason that the peace agreement and subsequent transitional justice processes did not address the concerns of the internally displaced.

Outreach programs should attempt to reach all displaced communities, extending their functions across borders in refugee situations. This can entail making reports available in different languages, holding events outside the country in which the justice measure is implemented, and appropriately using media and technology to maximize dissemination of information. Investigators or officials should be dispatched to refugee and IDP camps in the region. Efforts should be made to connect with displaced populations living both inside and outside refugee and IDP camps and to engage members of host communities significantly affected by displacement. It is important that this participation and two-way communication continue throughout the implementation phase and

not be limited to the design of a justice process. Tensions can develop between participation of the displaced and other victims, on the one hand, and efficiency and expediency, on the other, but the former should not be neglected. With measures such as truth commissions, in addition to giving testimony to investigators and participating as witnesses and audience members, displaced persons should be considered for formal roles—as investigators, community liaisons, or commissioners. Opportunities to use communications technologies, such as interactive websites, to facilitate the participation of refugees and IDPs should be further explored, but these cannot be substituted for accessible opportunities for in-person interactions.

Particularly in countries such as Colombia, where displaced transitional justice advocates have been threatened, attacked, and murdered, effective protections must be provided to enable secure participation in these processes. Obstacles to participation in transitional justice processes can be particularly significant for displaced women from conservative societies and those living in insecure environments such that travelling to participate may increase the risk of attack. Despite these obstacles, displaced women should have equitable opportunities to participate in justice processes at all stages. This can be enhanced by ensuring that displaced women and women's groups are actively consulted in the design and implementation of justice processes; that mechanisms are in place to ensure their physical security; and that women occupy leadership roles in justice institutions. Opportunities to participate actively that take seriously the rights and experiences of women can help empower women in societies emerging from conflict and displacement.

#### **Addressing Gender Justice Through Redress for the Displaced**

A gendered perspective on justice in the aftermath of conflict and displacement is important for those who have suffered specific gender-based violations and for ensuring that transitional justice mechanisms respond to the often marginalized concerns of displaced women. Transitional justice efforts in general, and as they relate to displaced persons, need to engage more thoughtfully and systematically with gender injustice and the gendered dimensions of displacement.

##### ***Incorporating family concerns***

Reparations for the loss of family members may be a particularly important form of redress for displaced women, who may flee with their children while adult male family members are more likely to be engaged in combat, and may be specifically targeted by hostile forces who perceive them as a threat. Discovering the location of missing family members (living or deceased) can be a particularly important form of reparation. Such family considerations should be taken into account to strengthen the gender sensitivity and impact of transitional justice programs.

##### ***Addressing sexual and gender-based violence***

Sexual and gender-based violence, including systematic rape, is often an important factor in generating forced migration. While displaced, many refugees and IDPs are exposed to heightened risk of sexual and gender-based violence. Efforts to redress these forms of violence should be carefully incorporated into transitional justice programs, recognizing that men and boys may also be subjected to such abuse. In seeking to engage displaced women in justice processes, however, it cannot be assumed that sexual and gender-based violence is their primary concern or the predominant element of the suffering they endured during displacement. Refugee and IDP women also have significant concerns regarding the socioeconomic repercussions of conflict and displacement and the ramifications of violence and forced migration for family life, which merit attention from transitional justice processes.

##### ***Calibrating gender-sensitive restitution and compensation programs***

Policy decisions regarding the scope of and eligibility for restitution and compensation programs can have considerable impact on gender equity and the socioeconomic well-being of displaced women. In countries emerging from large-scale displacement crises, women often lack formal

*Transitional justice measures should seek to engage in meaningful ways with displaced persons through a carefully managed, multidimensional process that includes outreach and participation.*

## ICTJ/Brookings

### Transitional Justice and Displacement

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## ICTJ

ICTJ works to assist societies in regaining humanity in the wake of massive human rights abuses. We provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org).

## Brookings-LSE Project on Internal Displacement

The Brookings-LSE Project on Internal Displacement was created to promote a more effective response to the global problem of internal displacement and supports the work of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. It conducts research, promotes the dissemination and application of the Guiding Principles on Internal Displacement, and works with governments, regional bodies, international organizations and civil society to create more effective policies and institutional arrangements for IDPs. For more information, visit: [www.brookings.edu/idp](http://www.brookings.edu/idp).

title to the lands they inhabited and have less power than men under customary or formal land ownership and management systems. Restitution programs that overlook women's claims and simply restore predisplacement land-holding patterns can be detrimental to the needs and concerns of displaced women. However, restitution programs that challenge entrenched approaches to property ownership may meet with significant local resistance. Efforts to redress displacement should not simply seek to restore the conditions that existed before displacement, but should strive to contribute to the transformation of the structures and institutions that facilitated abuses including forced migration and gender injustice. Yet these efforts must be sensitive to local value systems and identities and realistic about the scope and pace of durable social change.

Certain approaches to compensation can have more beneficial outcomes for women than others. For instance, providing compensation on an individual basis rather than per family can give women greater control over how their share is used to advance durable solutions to their displacement. Providing reparations in the form of targeted access to educational and training programs for displaced women can also have particularly beneficial impacts in promoting equitable development and (re)integration.

## Conclusion

Responding appropriately to the injustices associated with displacement should be a concern for all those who work to protect refugees and IDPs and provide durable solutions to displacement. A better understanding of how transitional justice relates to displacement can help shape more effective interventions to resolve displacement. Carefully crafted transitional justice processes can contribute to durable solutions most importantly by facilitating the long-term economic, social, and political (re)integration of formerly displaced people in their societies and communities: by improving the safety and security of formerly displaced persons and helping to prevent the recurrence of abuse; by facilitating the rebuilding of sustainable livelihoods; by reducing tensions between those who remained in their communities and those who were displaced; and by reaffirming basic norms and strengthening displaced persons' rights as citizens.

Increasingly, transitional justice measures are being used to address displacement, particularly restitution programs and truth-telling initiatives, and in numerous cases a range of actors have been involved in such efforts, including humanitarian, development, and peacebuilding actors. These initiatives have faced significant challenges, however, related to capacity limitations, legal obstacles, political resistance, barriers to participation, and the persistence of an ad hoc approach to systematically addressing displaced persons' justice concerns. Further research on this topic is necessary, but adopting the recommendations in this report would be a useful step toward ensuring that refugees and IDPs are able to participate in and benefit from transitional justice initiatives on an equitable basis.