

Research Brief

Addressing Concerns about Transitional Justice in Contexts of Displacement: A Humanitarian Perspective

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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.

Humanitarians, development agencies, human rights organizations, and peacebuilding actors are commonly drawn to the same flash points of conflict, human rights violations, and states in need of rebuilding. Operating in common country contexts leads to increased interactions between these actors, creating tensions as well as opportunities for collaboration and cooperation. This paper focuses on the specific concerns of humanitarian actors regarding transitional justice in contexts of displacement, and offers some suggestions for bridging the apparent divide between humanitarian and transitional justice actors.

Concerns among Humanitarian Actors about Transitional Justice

Transitional justice is not praised by all segments of the humanitarian community. Discrepancies between the objectives and approaches of the two fields can generate tensions around such issues as the participation of displaced persons in transitional justice initiatives and the access of humanitarian groups to displaced populations. Displacement actors, and humanitarians in general, have a more immediate and focused mandate than transitional justice proponents. Their fundamental objective is to save lives while remaining impartial and neutral; while they may be explicitly committed to particular values, including human rights principles, they typically do not take sides in political debates and conflicts, and must be willing to work with, or around, state and nonstate actors to deliver critical aid to those in need. In contrast, transitional justice actors are often perceived as taking sides in matters concerning those actors. Despite these basic differences, the growing use of a rights-based approach to issues such as protection and durable solutions among humanitarians is leading to greater recognition of the interests they share with transitional justice actors.

This recognition of common interests, however, does not always lead to collaboration or cooperation. Historically, there has been a lack of involvement of displaced populations in the planning and operation of transitional justice efforts, for reasons including geographic dispersion, remoteness, and limited government capacity. Displacement actors may also feel that transitional justice initiatives do not deliver enough concrete benefits for refugees and internally displaced persons (IDPs). When transitional justice measures are set up and displaced persons are excluded, such that their particular justice claims

and experiences go unaddressed, this frustration can be even greater. This is one reason to encourage greater coordination between displacement and transitional justice actors. In addition, when operating in the same countries or responding to the same crises as transitional justice practitioners, groups may see each other as competitors for scarce funding and resources.

Humanitarian actors may also find access to target populations disrupted due to the actions of others in pursuit of justice. Although criminal prosecutions are only one aspect of transitional justice, they are frequently cited as the sort of politically charged initiative that can impact the work of humanitarian actors. For example, following the International Criminal Court's (ICC) issuance of arrest warrants against leaders of the Lord's Resistance Army (LRA) in Uganda, the entire international community present in the region became a target for reprisals, and humanitarian workers were attacked. In a similar scenario, humanitarian organizations were pestered, interfered with, and in some cases expelled from Darfur in retaliation for the criminal charges leveled by the ICC against President Omar al-Bashir of Sudan.

While the Uganda and Darfur examples demonstrate that humanitarian groups can be put at risk or expelled regardless of whether they are associated with the transitional justice measures that provoke such responses, humanitarians often have good reasons to limit or avoid participation in such efforts. They are not generally eager to offer evidence in specific criminal cases because of the risk it may bring to themselves, their access, or the people they are trying to reach. Nevertheless, sometimes humanitarians' participation in criminal justice proceedings against human rights violations is not voluntary. In response to the requirement to testify, humanitarians can request that sources of their testimony not be revealed, seek special protection measures for the safety of their witnesses, or appeal for a leave of absence to produce written testimony from outside the country. Exceptions to the rule have also been made: the International Committee of the Red Cross (ICRC), for example, enjoys testimonial immunity at the ICC, while certain loopholes and organizational policies have created workarounds for some additional humanitarian actors.

While the concerns of the humanitarian community about transitional justice measures need to be taken seriously, it is important to note that these concerns often focus on one element of transitional justice—namely, criminal justice—and that they are heightened in the particular contexts of ongoing conflict and displacement.

A Multifaceted Approach to Transitional Justice

The ways in which transitional justice measures are designed and implemented can lessen humanitarian actors' anxieties about working alongside or collaborating with these programs. The adoption of a multifaceted approach should mitigate some concerns by demonstrating that transitional justice is not just about criminal justice but also requires a range of other measures such as truth-telling processes, reparations and restitution programs,

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and various types of institutional reform, such as vetting. Such an approach is supported by transitional justice proponents for theoretical reasons, including its ability to mitigate the shortcomings of individual measures, provide mutual reinforcement and positive spillover effects, and demonstrate the level of a state's commitment to reestablishing fundamental norms. Empirically, a multiple program approach has been found to correlate with success in improving human rights protections and promoting democracy.

From a displacement perspective, holistic programming is critical because it underlines that transitional justice is multifaceted—that it is more than just criminal justice, and thus will not necessarily interfere with, and may even support, the development of other state-building capacities in parallel with its efforts. For example, reparations and restitution programs may help address housing, land, and property issues that are key to finding durable solutions to displacement, and rebuilding schools or clinics in war-torn areas may help facilitate the return of displaced persons.

Timing and Sequencing

The specific implications of a holistic, multifaceted transitional justice program for displaced persons and displacement actors will also depend on the timing of that program and the individual measures that comprise it. Since the operations of transitional justice actors can create difficulties for humanitarians, one easily identifiable solution from the displacement perspective would be for transitional justice actors to wait until the fighting ends and displacement is resolved to begin their initiatives. However, transitional justice measures are increasingly being applied in cases of ongoing conflict, and displacement often continues even after a conflict is over, making it more likely that the activities of these two fields will overlap. Therefore, it is important to consider the implications of the timing of transitional justice measures in more detail.

One way to address the concerns of displacement actors would be to employ transitional justice mechanisms when they can maximize participation among the displaced. Studies of transitional justice processes have shown that these processes are usually implemented sequentially and several years after the political transition occurs, by which time many returns will have already occurred. Thus as time passes, transitional justice should be less likely to disrupt humanitarian access, and actual physical displacement should play less of a role in preventing people from engaging with the justice process.

Importantly for this discussion, studies have also found that in country contexts where multiple transitional justice mechanisms have been adopted, their development is influenced by the initially implemented measure. This suggests that the involvement of the displaced in a transitional justice measure should have a positive effect on their involvement in later measures. In particular, transitional justice measures that address land and property rights early in a transition can significantly contribute to the performance of other transitional justice and development initiatives that follow, by enabling populations to be in a position to participate in and benefit from those initiatives. They

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may also provide recognition and compensation that go a long way toward aiding the displaced in regaining or improving their livelihoods. Other justice measures may also aid future restitution efforts, such as truth-telling efforts or criminal trials that document the violence that drove the displaced from their homes and establish the truth behind rival property claims as they existed prior to conflict and displacement.

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Conclusion

Transitional justice and displacement actors have unique roles and goals during periods of transition from conflict to peacemaking to peacebuilding. However, they also have points of commonality, and the long-term solutions to the problems addressed by both sets of actors are in many ways interdependent. Lasting results are increasingly seen to depend on the connections between security, peace, and justice, and the displaced are at risk when any of them are neglected. IDPs and refugees are inherently in precarious situations, so systemic changes to address their security, political, and human rights needs, and the chance for the displaced to live in peace, are closely linked. In other words, transitional justice goals are well suited to promote conditions for durable solutions for IDPs and refugees.

Given the connections between the goals of both humanitarian actors and transitional justice actors, cooperation or, at a minimum, co-existence during conflict and throughout transition is essential. Though there are undeniable differences between their fundamental objectives and approaches, humanitarian and transitional justice actors have clear reasons to overcome these concerns to foster a mutually supportive working arrangement.

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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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