

Research Brief

The Nexus between Displacement and Transitional Justice: A Gender-Justice Dimension

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Although transitional justice processes are intended to help heal and restore society after conflict or authoritarian rule, marginalized groups often struggle to make their voices heard. These groups include those who have been displaced by conflict and, within that category, those who have specifically faced gender-based violence and injustice within the trajectory of displacement. This paper explores the relationship between transitional justice and forced migration from a gendered perspective.

Displacement and Transitional Justice: The Need for Convergence?

To date, the fields of forced migration and transitional justice have remained largely disconnected from each other. The field of refugee protection has evolved from its more political roots into an overtly humanitarian enterprise. However, this depoliticizing of the humanitarian space has disconnected displaced people from the wider political context and violence that led to their exile and, by extension, leaves them marginalized in peace processes, political transitions, and other mechanisms that are designed to allow them to return home and genuinely reintegrate. Transitional justice is a significant tool that could potentially move forced migration discussions toward more social and political engagement, not least through the recognition of displaced persons as rights-bearers. Furthermore, from a transitional justice perspective, dealing with the fall-out from displacement is critical to the future reconstruction of the state in the aftermath of conflict and to the rebuilding of the crucial bond of citizenship. Conversely, the failure to address the injustices that generated and were created by displacement calls into question the integrity of any transitional justice process and the potential durability of peace.

The Gender Dimension

It is vital to have an understanding of the individuals or communities that make up displaced populations in order to formulate appropriate responses to the injustices they have suffered. Deploying a gender lens offers one possible framework for promoting a nuanced and contextually relevant approach because it brings a measure of social analysis into the discussion, helping us identify and describe social patterns of exclusion and providing a means for exploring ways of addressing structural inequalities. Furthermore, the failure to include the experiences of people who suffer gender-based violence in

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.

transitional justice processes—as with the failure to incorporate the explicit concerns of the displaced—ultimately undermines their ability to respond to the true social cost of violence. In addition, transitional justice processes have a transformative potential to address not only specific gender-based violations, but also the deeper structural disparities that provide the context for, if not the direct causes of, conflict and human rights violations.

Gender Dynamics within a Context of Displacement

The causes and consequences of displacement often have a strongly gendered dimension to them. Sexual violence is perhaps the most tangible example: while all are potential victims, certain groups are often at particular risk of sexual violence—for example, the specific targeting of Mayan women in Guatemala was a factor in their displacement. Other gender dynamics might also play a role in generating displacement: young men might be specifically in danger of forced recruitment, or women might flee their home because their husbands have been killed. In exile, the violence of war is often replaced by additional layers of injustice. Once again, sexual violence, including exploitation and abuse, is a well-known and high-risk problem often linked to the economic hardships associated with displacement. Likewise, for those living in camps, the notion that they are places of sanctuary and protection is too often a long way from reality. For instance, extensive documentation has shown the vulnerability of girls and women collecting firewood as they leave the central areas of camps in Uganda.

In addition, displacement itself can have a profound effect on gender relations. In a context of restricted freedom of movement and access to livelihoods, men's traditional roles are effectively taken over by humanitarian agencies. The consequent anger and helplessness felt by many refugee men is often channeled against women, leading to violent behavior as they try to assert their traditional dominant roles. Because social and cultural norms and networks that men and women would normally rely on to help them address problems such as domestic violence seldom exist in a camp environment, victims of such abuse are particularly vulnerable. On the other hand, because humanitarian assistance strongly emphasizes the vulnerability of women and children, it often leaves men and boys to cope with the violations that led to their displacement and injustices experienced during exile on their own. Men also often leave the camps to seek work in urban areas to support their families. Their legal status then becomes ambiguous, and they must also confront a plethora of challenges, including assumed associations with rebel, criminal, or political activity, and suffer an array of abuses, including arbitrary arrest and, at times, rape.

Despite these realities, in practice, gendered understandings and responses to forced migration are often seriously lacking. Gender mainstreaming, while recognized as critical in many areas—including both the development and humanitarian spheres—still lags chronically behind in terms of implementation. Tackling the problems of sexual violence prior to, during, and after displacement is a particularly significant area of neglect. Lack of access to justice is compounded by the fact that refugee or IDP camps and settlements are often run as if they were isolated islands outside of national jurisdiction, which is linked to

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the notion that what takes place inside the camp is irrelevant to wider national processes unless it has a direct bearing on the “outside.” For example, in Timor-Leste, UNHCR failed to gather information on the gendered experiences and needs of displaced women, which could have been used by the Commission for Reception, Truth and Reconciliation.

Gender Justice and Displacement

So where can, and should, the points of convergence lie? Clearly, causes of displacement are a key set of issues and could potentially be absorbed into wider national discussions on root causes of violations. These issues might be addressed throughout the stages of displacement—prior to, as part of, and after any repatriation process. Transitional justice and displacement should also overlap during the process of return. Restitution, for example, has a unique potential to redress not only singular violations committed prior to, or during, displacement, but can also address some of the underlying gender inequalities. What is less clear is the extent to which injustices suffered during displacement, which are often committed under the watch of actors outside of the normal jurisdiction of national transitional justice processes, can fall under the purview of those processes. Realistically, while it might not be possible for such mechanisms to hold perpetrators accountable in situations of exile, broader engagement with issues of injustice associated with displacement still remains firmly in reach. In particular, the aspirations of transitional justice and the need to resolve displacement overlap from a gender-specific perspective in the following areas.

Empowerment through Participation in Transitional Justice Processes

A number of factors can prevent the inclusive engagement of displaced persons in discussions about the resolution of problems associated with displacement, many of which appear logistical but reflect deeper structural inequalities. By ensuring adequate engagement of women or other marginalized groups with mechanisms that might render peace and justice more attainable, the perception of refugees and IDPs as passive victims and recipients of aid can be subverted. Examples from post-conflict Guatemala to Uganda’s West Nile region to the Liberian Women in Peacebuilding Network demonstrate that displaced women are not passive victims either during war or in negotiations to end war. Deliberately ensuring that displaced people, including women, are consulted in designing transitional justice processes provides an opportunity to ensure that traditionally marginalized voices are given adequate hearing, and can be instrumental in ensuring that transitional justice measures specifically respond to the needs of victims of gender injustice and displacement. The opportunity to engage with such measures can also help mobilize groups to come together to discuss these issues.

Durable Solutions

Transitional justice can play a key role from a gender perspective in the implementation of durable solutions. Durable solutions are the end game of displacement, which is generally understood to be resolved when displaced persons achieve local integration, return or repatriation, or resettlement. Return or repatriation has typically been viewed as the optimal outcome, yet an end to hostilities does not necessarily mean that it is

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either safe or timely to return. In particular, for those who suffered specific crimes—in particular sexual violence—returning to a situation in which perpetrators are still living in the area is likely to be both painful and dangerous. Other gender-defined groups might also be prohibited from returning; for example, male Rwandan refugees living in Uganda are often presumed to be *génocidaires*. Specific groups may also face particular economic challenges on return, such as women who are trying to support their families alone. Reclaiming lost property may be highly problematic for these women in patriarchal societies where women have been excluded from owning land, and are therefore not able to prove their possession of the land before displacement.

The Transformative Potential of Transitional Justice

Giving a voice to those who are displaced and incorporating their concerns in discussions on durable solutions is important but ultimately only palliative unless the structural injustices that underpin the causes of displacement are addressed—including those that have a gender dimension. Neither transitional justice measures nor interventions to resolve displacement by themselves are likely to transform these structural injustices, but in addressing such issues they can a) avoid reinforcing them, b) contribute to long-term change, and c) draw attention to the need for broader reform efforts as well. In this regard, the resolution of displacement, particularly through return, presents both challenges and opportunities. While women may become more vulnerable when they are forced to become heads of households in exile, it also provides opportunities for the redistribution of resources. A transitional justice framework might also facilitate a far more gender-aware and transformative approach to land restitution during reintegration. However, initiatives that seek to transform structural economic injustice without consideration for the wider political, social, cultural, and judicial context, can be profoundly unhelpful. The success of such processes also depends on the meaningful participation of refugees and IDPs—both men and women.

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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The Brookings-LSE Project on Internal Displacement promotes the human rights of internally displaced persons and their protection and assistance, in particular by supporting the work of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. It conducts research and works with governments, regional bodies, civil society and international organizations to promote more effective responses to internal displacement. For more information, visit www.brookings.edu/idp.