

RESEARCH BRIEF

FORCED MIGRATION: A TRANSITIONAL JUSTICE ISSUE

Transitional justice provides holistic and inclusive strategies for addressing human rights violations that arise from violent conflicts and authoritarian rule. Forced displacement is a common consequence of such conflicts—and addressing the rights of forced migrants is a critical priority in post-conflict settings. Yet, this victim group and the specific needs they experience have not been effectively integrated into transitional justice processes. Given the regional and international impact of forced migration and the potential role of this sector in preventing future conflict, transitional justice initiatives have started to acknowledge these concerns.

To date, transitional justice mechanisms, such as prosecutions, truth commissions, reparations, and institutional reforms, have addressed forced migration in limited ways. Forced migration is largely understood as a humanitarian issue that should be resolved by the time transitional justice processes begin. Such ameliorative approaches do not provide effective remedies for the violations forced migrants have suffered and seldom engage with the physical, mental health, and socioeconomic impacts of those violations, which can have lasting and intergenerational consequences.

Moreover, when transitional justice mechanisms address forced migration, such as The Gambia's Truth, Reconciliation, and Reparations Commission, they struggle to ensure the participation and reflect the needs and demands of victims of forced migration. This diverse group may include refugees, asylum seekers,

FORCED MIGRATION:

A migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion.
— International Organization for Migration¹

TRANSITIONAL JUSTICE:

The full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.
— United Nations²

The various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.
— African Union³

internally displaced persons, returnees, the stateless, and non-status displaced people, inside the country implementing the mechanism and outside its borders. Particularly side-lined are marginalized individuals and groups, including women, children and youth, sexual minorities, disabled persons, religious and/or ethnic minorities, and residents of geographic peripheries.

This research brief presents recommendations for integrating forced migration and its victims into transitional justice processes. Based on research conducted in partnership with forced migrant communities in The Gambia, Sudan, Syria, and Bangladesh/Myanmar,⁴ the recommendations provide guidance for national and international policy makers and civil society actors working at the nexus of transition and migration.

RECOMMENDATIONS:

Integrating Forced Migration into Transitional Justice

Forced migration and its drivers and consequences need to be addressed in a consistent manner at all stages of transitional justice, from the preparation to the implementation phase, as well as in follow-up activities after the closing of a mechanism.

PREPARATION PHASE

Documentation of human rights violations linked to forced migration

Documentation of abuses during displacement can inform subsequent transitional justice mechanisms, in terms of both determining their mandates and ensuring that their design reflects the experiences and needs of those most affected. It includes violations of civil and political rights as well as economic, social, and cultural rights that initially lead to displacement. It should also include violations that occur over the entire period of displacement and at the hands of different parties (state and non-state).

Documentation efforts should aim to be comprehensive by including diverse types of forced migrants, within a country's borders and outside. To respond to forced migrants' needs, prevent (re)traumatization of those affected, and avoid duplication or gaps in the documentation, stakeholders should adopt an ethical and trauma-sensitive approach to documentation, and coordinate their efforts and combine databases when appropriate.

Awareness raising on transitional justice

To prepare those affected by forced migration for participation in a transitional justice process and to help manage their expectations, stakeholders should engage in awareness raising via tailored trainings, workshops, and outreach using both traditional and social media. This process aims to reach as many people in as many localities as possible, with a focus on marginalized communities and groups. It also raises awareness in the rest of the population of both transitional justice and issues facing forced migrants.

The design of transitional justice processes needs to be informed by local needs, priorities, and resources. Conventional one-size-fits-all approaches should be questioned and groups such as forced migrants should be more involved in conceptualizing measures that are responsive to their local context and particular needs.

Greater coordination between various partners at the national and regional level hold strong potential for strengthening advocacy and intervention initiatives. Improved opportunities for training in transitional justice and advocacy skills would serve to ensure that this sector's needs are more effectively integrated within transitional justice processes. Awareness raising can be a two-way process, with stakeholders and participants exchanging information and ideas on how to design a victim-centered and effective transitional justice process for their context.

“Transitional justice sessions offered in the north are more of a trend; all organizations at the same time announce activities related to transitional justice and provide the same information because they do not coordinate amongst themselves. As IDPs, we face difficulties in communicating with Syrian human rights centers abroad, in addition to the indifference shown by some of them toward documenting the suffering of IDPs and violations against them inside Syria.”

— Participant, Syria

Awareness raising on housing, land, and property (HLP) rights

Redress for HLP violations is often a central concern for forced migrants that needs to be resolved when they seek to return to their places of origin or find new homes. Where their land or houses have been occupied by others, these competing claims can result in renewed conflict. Forced migrants need to know their rights and be assisted in claiming redress. Where competing claims arise, context-sensitive responses need to be put in place.

Forced migration can also be a symptom of underlying social conflict about HLP rights, based on historical conflict over land ownership and occupation. A more holistic transitional justice process would offer the opportunity to evaluate existing HLP laws and policies that may require reform as part of addressing the root causes of conflict.

Mental health and psychosocial support services (MHPSS) and other assistance for forced migrants

Ahead of efforts to deal with the past, stakeholders should engage with those affected by forced migration as victims and survivors who are central to transitional justice. One key element of this is acknowledging the mental health challenges they may face due to the range of violations that occurred at the moment of displacement and after. Stakeholders should develop and coordinate initiatives to provide widespread and consistent MHPSS to those affected, which build on rather than supplant local, culturally specific support mechanisms.⁵ They may also provide spaces and financial and technical support to victims and survivors to meet, form associations, and advocate for their own rights, as forced migrants or as part of a larger victims' group.

IMPLEMENTATION PHASE

Participation of forced migrants in transitional justice

Nation-wide outreach and inclusion of conventionally excluded groups in the design, implementation, and follow-up of transitional justice process mechanisms will result in a more context-responsive and effective process. Diverse stakeholders should take initiative in their fields to ensure not just consultations but the active participation of forced migrants and other victims and survivors in the process, which will contribute to their buy-in and ownership of that process. This includes liaising with networks and organizations working with forced migrants within their country of origin and abroad.

Inclusion entails considering the diversity of forced migrants, including their backgrounds, migrant experiences, location inside or outside the country, and, potentially, dual role as victims and perpetrators of past violations. Ensuring participation entails not only working with representative groups of victims, but also conducting surveys and other outreach activities with a wider range of victims to include as many perspectives as feasible.

Contextualized, holistic, and victim-centered transitional justice mechanisms

In addition to being guided by victims and survivors and integrating their testimony, transitional justice processes must address not only violations by state

and non-state actors that initially lead to forced migration, but also the violations that occur over years of displacement (often from multiple locations). These include civil-political abuses such as systematic killings, torture, and arbitrary detention as well as socioeconomic abuses such as destruction of homes, property, and sources of livelihood.

They should provide decisions and recommendations on HLP and other issues of forced migration, and binding ones if possible. They should also provide intervention support where conflicting demands from migrants and other communities require mediation or other forms of dispute resolution. Context sensitivity will be particularly needed in cases where official documents have been lost or destroyed, or never granted in the case of women and youth, for example.

To be effective, transitional justice mechanisms should be tailored to the local context, and thus may feature actors and measures that have not been included in other countries' processes. As transitions last beyond the moment of political transition, transitional justice measures can be multiple and occur over many years, as the political, social, and economic situation in a country changes. Since forced migration is often a cross-border, regional issue, at times with implications for other regions—as seen with the waves of migration to Europe from conflict-affected countries—transitional justice measures need to include more than a country focus. They may be bilateral or multilateral initiatives among countries, sponsored by different state and civil society actors.

“We have seen some proceedings of the Truth, Reparation and Reconciliation Commission and it is a welcomed development, but we do not know about the other processes. We have not been consulted and therefore we feel left out of the entire process of rebuilding the country.”

— Participant, The Gambia

Integration of MHPSS into transitional justice

Given that transitional justice processes engage with the aftermath of violent conflicts and unresolved trauma caused by the conflict, transitional justice mechanisms must include comprehensive and easily accessible MHPSS for all participants, including staff. MHPSS in transitional contexts should include the one-on-one therapeutic model, as well as more community-based and culturally specific engagements that take into account the relationship between the individual and the collective. Redressing past violations requires dealing with the causes and impacts of trauma in a way that bridges individual, family, community, national, and, in the case of forced migration, even extra-national experiences. Transitional justice mechanisms also provide an opportunity to assess and plan for improvements to the national MHPSS system.

FOLLOW-UP PHASE

Institutional reforms, including an HLP rights focus

Addressing HLP rights of migrants is likely to be a challenge that reaches beyond the immediate scope of short-term interventions such as truth commissions. Reforms to laws, policies, regulations, and institutions for addressing HLP claims often require a broader political process that needs to address both historical and recent violations. Such reforms require longer-term engagement and strengthened abilities for advocacy among marginalized groups. Mechanisms for the implementation and monitoring of these reforms must also be put in place to ensure they are more than lip service, with support from informed national and international stakeholders.

Additional accountability measures and institutional reforms may be needed that explicitly address past abuses relating to forced migration and their legacies in the present. These include, but are not limited to: 1) lustration, vetting, and reform of security forces complicit in violations relating to forced migration; 2) development or alteration of constitutional provisions and legislation to protect forced migrants' rights; 3) educational reforms, including migration-sensitive materials and teacher training on (re)integrating forced migrants; and 4) economic reforms to support forced migrants and address the likelihood of economic migration and 'brain drain' in the post-conflict period.

Regional and international protections for forced migrants

Stakeholders should draw on and elaborate regional and international legal instruments that establish common standards for the rights of forced migrants, like the African Union's Kampala Convention.⁶ These instruments help establish protections for those affected

“The mass killing, the rape, the destruction of properties, livelihood, looting, and other atrocities made our people suffer range of psychological problems that have been manifested in different forms such as depression, hallucination and nightmare, lack of motivation and frustration. These problems have been most prevalent among youth—young men and women. They feel helpless, deprived and they do not have work to do. This makes them suffer even more.”

— Participant, Sudan

by forced migration, such as dual nationality options for displaced persons and potential returnees. They should also prevent forced return, allowing displaced persons the option to settle legally and safely in a new location, including outside their countries of origin.

National MHPSS system improvements

Transitional justice processes offer the opportunity to raise awareness of the need for MHPSS, implement MHPSS measures within mechanisms, and assess the state of the national MHPSS system with a view to improving it. Stakeholders should take lessons from these processes and invest in expanding MHPSS at the national level, through tertiary education and training for MHPSS professionals, public facilities, and programs for making MHPSS available across the country and in marginalized communities, and public information campaigns on mental health. As noted above, national MHPSS should not impose an external therapeutic model but rather build on existing understandings of mental health, language commonly used to describe its challenges, and local family and community support structures—all in a contextually relevant and culturally appropriate manner.

In addition to benefitting the larger population, investing in a national MHPSS system will help ensure that victims and survivors have access to the MHPSS support they need consistently and in the long term. This population group should also receive additional state funding for healthcare, including mental health.

Relief, reintegration, and equal development for forced migrants

Victims and survivors of forced migration require ongoing support beyond MHPSS. Informed by outcomes of transitional justice mechanisms, and alongside reparations, stakeholders should work with forced migrants to develop national and local-level programs that facilitate (re-)integration into communities and ensure access to MHPSS, healthcare, education, employment, economic empowerment, and skill development initiatives, as well as information on these initiatives. As those affected by forced migration are among the most marginalized in society, they require ongoing attention from stakeholders.

“We try to see each other a lot, stay positive, and keep our hope alive, so that we don’t give up in the face of these conditions. ... We try to stick together and live together in settlements that become known for the town we’re coming from. We do this so that we don’t feel so alienated and displaced.”

— Participant, Syria

THIS IS A PROJECT OF THE GLOBAL INITIATIVE FOR JUSTICE, TRUTH, AND RECONCILIATION (GIJTR).

Launched in 2014 by the International Coalition of Sites of Conscience, GIJTR is a consortium of nine international organizations focused on offering holistic, integrative, and multidisciplinary approaches to issues of truth, justice, and reconciliation. GIJTR works primarily with local populations, civil society organizations, survivors, and governments to develop transitional justice approaches that are victim-centered, collaborative, and support dignity, respect, inclusion, and transparency in societies emerging from conflict or periods of authoritarian rule. Since its founding, GIJTR has engaged with people from 72 countries, worked with 681 CSOs, and conducted 323 community-driven projects and more than 5040 human rights violations initiatives.

gijtr.org



CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION

The Centre for the Study of Violence and Reconciliation (CSVR) is a multi-disciplinary organization whose vision is to understand and prevent violence, heal its effects, and build sustainable peace at community, national, and regional (continental) levels. CSVR works with partners with local capacities in national contexts to implement transitional justice processes that are grounded in local experiences, solutions, and approaches to justice. Over the past 30 years, CSVR has engaged with partners (national, regional, and international) to promote effective transitional justice processes in a range of countries, through regional mechanisms as well as in global forums.

csvr.org.za



INTERNATIONAL COALITION OF SITES OF CONSCIENCE

The International Coalition of Sites of Conscience (ICSC) is the only worldwide network dedicated to transforming places that preserve the past into spaces that promote civic action. With more than 300 Sites of Conscience in 65 countries, ICSC engages tens of millions of people every year in using the lessons of history to take action on challenges to democracy and human rights today.

sitesofconscience.org



ENDNOTES

- 1 International Organization for Migration, *Glossary on Migration* (2019), 77.
- 2 United Nations, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," UN Doc. S/2004/616 (2014), para. 8.
- 3 African Union Transitional Justice Policy (2019), para. 19.
- 4 Fatou Bintou Sallah, *Forced Migration and Transitional Justice in The Gambia*; Gabriel Young (Syria Justice & Accountability Centre), *Forced Migration and Transitional Justice in Syria: The Case of Idlib and Internal Displacement*; The Day After, *Forced Displacement and Transitional Justice in Northern Syria*; and Zuhair Bashar, *Forced Migration, Internal Displacement and Transitional Justice in Sudan* (Johannesburg: Centre for the Study of Violence and Reconciliation and International Coalition of Sites of Conscience, 2022). These case studies and additional resources are available at <https://gijtr.org/resources>.
- 5 See the practitioner lessons outlined in Jasmina Brankovic, *Integrating Mental Health and Psychosocial Support into Transitional Justice in The Gambia: Practitioner Perspectives* (Johannesburg: Centre for the Study of Violence and Reconciliation and Global Initiative for Justice, Truth, and Reconciliation, 2021).
- 6 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009).