

# Displacement in connection with climate change: does transitional justice offer a lens for durable solutions?

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2020-05-05T09:30:04

Forced displacement is not a recent phenomenon. However, in recent years, the United Nations High Commissioner for Refugees (UNHCR) has [estimated](#) that there are over 65.6 million persons forcibly displaced from their homes as a result of conflicts, disasters, persecution, and other factors. In fact, the [number](#) of individuals forcibly displaced is the highest since the Second World War. Given this unprecedented number of forcibly displaced persons worldwide, corresponding protection for these individuals must be safeguarded. Yet at the same time, international human rights law is not always able to provide redress in situations of forced displacement. For instance, international human rights law does not have the mechanisms in place to assist those whose homes have been destroyed as a result of conflicts or disasters either through compensatory or non-compensatory means. Further, international human rights law does not permit those who have been forcibly displaced to tell their stories as active participants at the decision-making table. Transitional justice mechanisms have the potential to fill these legal gaps. One example is the establishment of the [Pinheiro Principles](#), which are the culmination of international and local activities in support of the emerging right to housing and property restitution as a core remedy to displacement. This blogpost therefore addresses the key question of protracted refugee situations where much of the problem is the issue of non-admission of refugees because receiving States refuse local integration while other States refuse resettlement.

This blogpost argues that transitional justice mechanisms may not only assist in post-political transition or in post-armed conflict contexts, but also have the potential to provide durable solutions for those forcibly displaced from their homes as a result of conflicts, disasters, and persecution. First, transitional justice is redemptive in that it permits forcibly displaced persons to seek justice through means other than the law. Second, transitional justice is restitutive in that it allows forcibly displaced persons to reclaim their lost homes through compensatory or other means. Third, transitional justice is restorative in that forcibly displaced persons may regain their human dignity through rebuilding relationships with the local community. By working together with international human rights law, transitional justice mechanisms may have the potential to provide durable solutions for forcibly displaced persons.

## Durable solutions and displacement

[Durable solutions](#), in the context of forced displacement, are solutions that have some permanence and are able to provide relief to those who need them. Durable

solutions may reduce instances of [protracted situations](#) in which refugees are in a long-lasting and intractable state of limbo. In the context of transitional justice, those who are forcibly displaced may need redress in situations where their homes have been destroyed and where they have no community to return to, in the aftermath of threat or harm. Displacement is not a problem in itself. However, when [displacement](#) is forced, individuals have no choice but to find a new place to move and to leave behind their homes, communities, and livelihoods in order to flee from conflicts, disasters, and persecution. As official UNHCR data above shows, the issue of forced displacement has become an increasingly globalized phenomenon, leading to the urgent need to seek durable solutions for individuals whose human rights may have been violated while being in transit.

Transitional justice provides [unique solutions](#) that are valuable to those specifically vulnerable in the context of forced displacement. Transitional justice may take many forms, including through criminal prosecutions, truth-seeking processes, reparations for human rights violations, and reform of laws and institutions. While there is no tailor-made solution for any given individual forcibly displaced due to conflict, disaster, or persecution, there are three specific ways in which transitional justice may provide durable solutions in case of displacement.

### **Displacement and transitional justice**

It has been suggested that there is a nexus between displacement and transitional justice. There is, however, more need for scholarly research on the link. It has been argued by [some scholars](#) that essential to the linkage between displacement and transitional justice is the need for transitional justice to not only address displacement, but also to take into account and establish links with relevant actors. Some transitional justice [literature](#) also suggests that transitional justice mechanisms have, in the past, already dealt with displacement, including through the use of truth commissions, reparation and restitution programs, as well as criminal prosecutions. These transitional justice processes dealt with displacement by reporting on human rights violations in conflicts, distributing benefits, restoring lost homes, and prosecuting perpetrators responsible for human rights violations leading to displacement. However, transitional justice approaches to displacement also have their limits. These may include limited capacity to deal directly with the displaced population and the inability of transitioning governments in developing countries to provide financial compensation to millions of displaced persons.

### **Transitional justice: durable solutions for displacement?**

Transitional justice mechanisms have the potential to provide durable solutions for cases of displacement.

#### **1. Transitional justice is redemptive**

Transitional justice mechanisms may permit forcibly displaced persons to seek justice through means other than the law. International human rights law norms seek to protect individuals from gross violations of human rights such as being persecuted, tortured or being subjected to treatment that is inhuman or degrading.

While it can be said that international human rights law norms function to protect, and in many cases act as a deterrence mechanism, they may not be able to provide redress in situations where the violation of those norms has already taken place. One [criticism](#) of international human rights law is that there is no universal rights enforcer. [Another criticism](#) is that individuals who are able to bring their grievances before international human rights courts such as the Inter-American Court of Human Rights or the European Court of Human Rights, against the States allegedly involved in the violation of their human rights, may not always obtain redress. Instead, transitional justice mechanisms may fill in the legal gap where international human rights law may not. In this manner, transitional justice mechanisms may work in conjunction with international human rights law to potentially provide durable solutions for forcibly displaced persons.

While international human rights law may not have the mechanisms to permit forcibly displaced persons to voice their concerns and find healing from past wrongs, transitional justice mechanisms may fill this gap. For example, in the [situation of Syria](#), the internal conflict has led to millions being displaced from their homes. However, reconciliation in the context of Syria may only be seen as the international community's plan for the country, and not readily available in the short-term, given the ongoing conflict still taking place in Syria. National reconciliation may take the form of permitting the voices of those who have been marginalized, such as those who have been forcibly displaced as a result of the Syrian conflict, to voice their concerns. The assistance of civil society through peaceful demonstrations and advocacy may also help to draw the international community's attention and support.

As these examples briefly show, although international law may not have the mechanisms in place to bring redress to forcibly displaced persons through means other than the law, transitional justice mechanisms have the potential to provide avenues to permit forcibly displaced persons to engage in reconciliation through meaningful participation and voicing their concerns regarding past wrongs. [Mechanisms](#) such as truth-telling initiatives have powerful healing effects that the law often may not be able to provide.

### **1. Transitional justice is restitutive**

Transitional justice mechanisms may permit those who are forcibly displaced to regain lost homes through compensatory or other means. It has been suggested by [scholars](#) that using property as a form of reparative transitional justice is highly practical for those who have been forcibly displaced because property rights may provide shelter, security, and the possibility of making one's own living.

The reinstatement of property rights through restitution may assist with the transition to democracy. Owning property permits forcibly displaced persons to once again exercise their agencies or ability to be self-reliant. While [some scholars](#) have argued that property restitution on its own may be insufficient to address the lack of economic development in transitional societies, this blogpost suggests instead that often the main priorities of those forcibly displaced would be to find shelter and a place to settle. The *Pinheiro Principles* are applicable precisely for this reason, so that forcibly displaced persons who have been arbitrarily deprived of

their former homes, lands, properties or places of habitual residence, would have their right to housing and property reinstated. The *Pinheiro Principles* are the most comprehensive and most referenced compared to other international law instruments addressing post-conflict property rights.

### 1. Transitional justice is restorative

Transitional justice mechanisms may permit forcibly displaced persons to regain their human dignity by rebuilding relationships with the local community. Property reinstatement as a form of transitional justice done through reparations may help to reintegrate forcibly displaced persons within their communities after return. However, the distribution of such property and the actual reintegration process of those forcibly displaced upon return are not without their own challenges. For example, over 2.2 million persons were forcibly displaced during the 1992-1995 war in Bosnia and Herzegovina. After the war, many Bosnians returned to hostilities, mistrust and residual fear within the community. Returning to post-conflict societies has also been difficult for forcibly displaced persons as a result of the need to re-establish broken relationships and heal past wounds. It has also been the case that physical reconstruction of communities through reinstatement of properties to those forcibly displaced may occur faster than social healing and repair.

Despite these difficulties in restoring social cohesion in transitional and post-conflict societies transitional justice mechanisms have, over time, through the use of property and land restitution programs, the potential to improve relationships within the community. First, some [scholars](#) suggested that having a home to return to meant that forcibly displaced persons have the opportunity to focus on other needs and priorities, such as education for children, employment opportunities and other income-generating activities, and social activities with the local community. Second, other [scholars](#) suggested that property reinstatement may allow forcibly displaced persons to re-establish their cultural identity through interactions with neighbours and participating in joint activities. Through these initiatives, transitional justice mechanisms have the potential to not only improve social cohesion in the local community and for forcibly displaced persons to reintegrate, but also help to enhance the agency that forcibly displaced persons have to rebuild their lives.

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*The author would like to thank Professor Joanna R. Quinn for comments in a previous course paper on the same topic, which helped to formulate this blogpost. The course paper is on file with the author.*

Cite as: Jenny Poon, “Displacement in connection with climate change: does transitional justice offer a lens for durable solutions?”, *Völkerrechtsblog*, 5 May 2020.

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