

Justice, Accountability, and the Protection of Displaced Persons

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“All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all the others. I cannot detach myself from the wickedest soul.”

Mahatma Gandhi

“Injustice anywhere is a threat to justice everywhere.”

Martin Luther King, Jr.

Introduction

Situations of mass displacement are initially humanitarian crises that threaten the physical survival and well-being of the displaced. The immediate response is largely about overcoming the fundamental threat that displacement poses to one's life by providing protection and assistance in finding adequate shelter, food, medical treatment, and other essentials to those individuals and groups of individuals who have been forced to flee their homes and communities for safety elsewhere. However, the forcible displacement of persons, both inside and outside the borders of their own countries, is a complex phenomenon with dimensions that go beyond the humanitarian, particularly as the duration of displacement increases. For instance, mass displacement of a country's civilian population can have negative impacts on economic growth, poverty reduction, and governance that typically require development strategies and responses. In addition, comprehensive responses to displacement and the protection of displaced persons also involve and require efforts to promote peace, reconciliation, and justice.

The success of peacemaking and efforts to overcome the effects of conflict, violence, and mass atrocities and human rights violations that give rise to displacement are inextricably linked to addressing the interests, needs, and vulnerabilities of those displaced by these phenomena.² In many instances, the scale and the impact of displacement due to conflict, violence, and mass atrocities and human rights violations can be so great that no realistic plan to bring about peace as well as reconciliation and recovery and development over the long-term can ignore the justice-related needs of displaced persons. The promotion of the rule of law along with justice and accountability also play an essential role in creating the necessary conditions for achieving

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² Brookings-Bern Project on Internal Displacement, *Addressing Displacement in Peace Processes, Peace Agreements and Peace-Building Peacemaking* (September 2007).

“just returns” and other durable solutions.³ Many victims of conflict and displacement identify justice as one of their most pressing needs as they seek to rebuild their lives.⁴ This includes the need for a predictable and equally applied set of rules and laws that guarantee and protect their fundamental rights and freedoms. Addressing these justice needs and the promotion of the rule of law are fundamental to the protection of displaced persons.⁵

This paper explores the nexus between justice and displacement in an effort to develop a common understanding of justice and accountability measures as an integral part of comprehensive responses to conflict-induced displacement and the protection of internally displaced persons, including efforts to achieve solutions to displacement that are voluntary, dignified, and just, and therefore durable. It will also address how various justice and accountability measures associated with transitional justice have acknowledged and addressed the needs of displaced persons around the world and have included victims of displacement in their work. It will begin, however, by providing a brief overview of forced displacement, with a focus on the situation of internally displaced persons and violations of their human rights.

The Global Phenomenon of Conflict-induced Internal Displacement⁶

At the end of 2008, the number of people forced or otherwise obliged to flee their homes and communities on account of conflict, violence, mass atrocities and human rights violations totaled 42 million. In addition to the global refugee population, which is estimated at 16 million people, this population is comprised of another 26 million individuals displaced within the borders of their own countries. These people, who we classify somewhat inelegantly and impersonally as internally displaced persons, or IDPs, can be found in at least 50 countries around the world at the present time, making internal displacement truly a global phenomenon.

Most of the world's IDPs are found in Africa, where at least 11.6 million individuals are displaced within the borders of their own countries. In fact, three of the world's five largest IDP populations are located in this region. This inauspicious list includes countries such as Sudan, with 4.9 million IDPs, the Democratic Republic of the Congo with 1.4 million IDPs, and Somalia with 1.3 million IDPs. Other situations of mass displacement in Africa resulting from conflict and violence currently can be found in the Central African Republic, Cote d'Ivoire, Kenya, Uganda, and Zimbabwe.

Africans are not alone in dealing with conflict-induced internal displacement though. At the present time, there are an estimated 4.5 million IDPs in the Americas, the overwhelming majority of whom are found in Colombia, where decades of internal armed conflict, combined with violence related to narco-trafficking and organized crime, have given rise to the world's second largest population of internally displaced persons. Hundreds of thousands of individuals are also internally displaced in Mexico, Guatemala, and Peru.

³ Megan Bradley, “Back to Basic: The Conditions of Just Refugee Returns” *Journal of Refugee Studies*, vol. 21, no. 3 (2008).

⁴ William G. O’Neill, “Rebuilding the Rule of Law after Identity-Based Conflict: What Responsibility to Protect Practitioners Will Confront,” *Global Responsibility to Protect*, vol. 1 (2009) at 478-505.

⁵ *Justice for a Lawless World? Rights and Reconciliation in a New Era of International Law: Interview with Dennis McNamara*, IRIN, available at <http://www.irinnews.org/InDepthMain.aspx?InDepthId=7&ReportId=59452>

⁶ Displacement data cited in this section is available in Internal Displacement Monitoring Center (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2008* (April 2009), and United Nations High Commissioner for Human Rights (UNHCR), *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons* (16 June 2009).

Moving eastward, the number of IDPs in the Middle East currently numbers about 3.9 million people. More than 2.8 million individuals remain displaced inside Iraq, roughly two-thirds of whom have been displaced from sectarian violence following the ouster of the regime of Saddam Hussein. Internally displaced persons can also be found in Syria, Lebanon, Israel, and Palestine, many of whom have been displaced for decades. In addition, recent political violence and conflict in Yemen has given rise to over 100,000 IDPs on the Arabian Peninsula.

Large populations of displaced persons can be found in dozens of other countries around the world as well. This includes many countries in South and South-East Asia such as the Philippines and Sri Lanka, where the total number of displaced persons increased by roughly 600,000 and 200,000 persons respectively in 2008 as a result of escalating violence. In 2009, approximately 2 million Pakistanis were displaced during counter-insurgency operations in the Swat Valley and surrounding areas. In neighboring Afghanistan, several hundred thousand Afghans, including many former refugees from Pakistan and elsewhere, have also been displaced as a result of conflict and violence. Complex situations of displacement also exist in India and in neighboring Bangladesh, where development as well as social and ethnic tensions and other triggers have given rise to the displacement of hundreds of thousands.

Situations of internal displacement also continue to confront countries in Europe and Eurasia, where a total of 2.5 million people remain internally displaced. If we look to the Balkans, where the term “ethnic cleansing” was coined to describe violence in Bosnia, Serbia, and Kosovo, and to Armenia, Azerbaijan, and Georgia in the South Caucasus, we can find hundreds of thousands of internally displaced persons, many of whom who have been displaced for more than a decade. Roughly 1 million persons are internally displaced within Turkey, while 200,000 IDPs can be found in Cyprus. In the North Caucasus of the Russian Federation, more than 70,000 persons are thought to be internally displaced as a result of violence there.

Frameworks for Justice and Displacement

Over the past half century, the world has witnessed astounding levels of mass atrocities and human rights violations associated with armed conflicts and situations of generalized violence in all parts of the globe as well as a surge in the number of internally displaced persons like those cited above. At the same, two sets of frameworks have been developed to address these phenomena: 1) a framework for the protection of internally displaced persons and the prevention of forced displacement, and 2) a framework for justice and accountability, including measures of transitional justice. Both frameworks comprise a set of norms and institutions meant to prevent these phenomena and, if they occur, to mitigate their most pernicious effects.

For its part, the justice and accountability framework is comprised of an overlapping series of international instruments including the Universal Declaration on Human Rights and binding human rights conventions and agreements⁷ as well as those of international humanitarian and criminal law, i.e. Convention Against Torture, the Geneva Conventions, the Rome Statute of the International Criminal Court (ICC), and statutes of other international, regional, and hybrid courts and tribunals. The principal aim of these instruments is to protect the safety, security, and dignity of individuals *vis a vis* state and non-state actors by guaranteeing the fundamental

⁷ These include, *inter alia*, international instruments such as the *United Nations Charter*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Elimination of Racial Discrimination*, and the *Convention on the Rights of the Child*, in addition to similar instruments at the regional level in Africa, the Americas, and Europe.

human rights and freedoms of all persons, including the right to a remedy and some form of justice when these rights have been violated.

Within the sphere of international humanitarian law, parties to a conflict, including both state and non-state actors, are prohibited by the Geneva Conventions and customary international humanitarian law from coercing and forcing civilians to leave their homes and communities unless necessary for their safety or the conduct of military operations.⁸ In addition, Article 7 of the ICC Statute, which also serves as a model for domestic legislation aimed at prosecuting mass atrocities, identifies deportation and the forcible transfer of civilian populations through expulsion and other coercive acts as a crime against humanity.⁹ The ICC Statute also defines war crimes as including the “unlawful deportation and transfer of civilians” as well as the “ordering of displacement of the civilian population.”¹⁰

This normative framework is supported and ultimately applied and enforced by a number of institutional pillars. In addition to national judicial systems, these pillars include regional and sub-regional courts and commissions; judicial and quasi-judicial bodies of the United Nations system, such as treaty oversight bodies and *ad hoc* criminal tribunals; and the permanent International Criminal Court. These institutions have become increasingly active over the past decade as *accountability mechanisms* by investigating and prosecuting those responsible for violations of human rights and humanitarian law in places such as Bosnia, Rwanda, Sierra Leone, Timor Leste, Cambodia, and many others. They have also served as an important role in as *justice mechanisms* by acknowledging the victims of these crimes and providing redress for the violations of their rights by illegal acts of state and non-state actors.

These pillars are complemented by so-called transitional justice measures at the national level which are considered to encompass the “full range of processes and mechanisms associated with a society's attempt to come to term with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”¹¹ Transitional justice measures, which also aim to build trust among victims, the state, and society, consist of both judicial and non-judicial processes and mechanisms, namely prosecutions, truth-seeking, reparations programs, and reform of domestic justice and security sector institutions, i.e. courts, law enforcement agencies, and military and security apparatuses. The design and use of these measures, in combination with the promotion of greater awareness and respect for the norms that underpin their activities, can contribute to comprehensive efforts to promote and protect the rights of all persons in conflict and post-conflict contexts, including victims of displacement.

The framework for the protection of internally displaced persons is, first and foremost, centered on the United Nations *Guiding Principles on Internal Displacement*, which were endorsed by the UN General Assembly in 1998 and recognized by the 2005 World Summit Outcome Document as an “important international framework for the protection of internally displaced persons.”¹² The *Guiding Principles* do not create new law but restate existing rights and freedoms found in

⁸ See, Article 49, *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 75 UNTS 287.

⁹ *Rome Statute of the International Criminal Court*, A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90.

¹⁰ *Id.*, Article 8.

¹¹ *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Report of the Secretary General of the United Nations, S/2004/616, 23 August, 2004, para.8.

¹² See para. 132, *2005 World Summit Outcome*, UN General Assembly Resolution, A/RES/60/1. Other instruments, such as 1951 *UN Convention Relating to the Status of Refugees* and regional instruments including the *OAU Convention of 1969* and the *Cartagena Declaration of 1984*, although related, address the protection of refugees not internally displaced persons.

relevant provisions of binding instruments of international human rights, humanitarian, and refugee law,¹³ as well as customary international law, and interpret them in the context of IDP vulnerabilities and protection needs. These rights and freedoms are grouped into the following four areas:

- Rights related to physical security and integrity (e.g., rights to life, integrity and dignity of the person; freedom from arbitrary detention, torture, sexual abuse, and exploitation);
- Rights related to basic necessities of life (e.g., rights to food, potable water, and health);
- Rights related to civil and political protection (e.g., rights to personal documentation, political participation, and freedom from discrimination); and
- Rights related to economic, social, and cultural protection (e.g., rights to employment, education, and property).¹⁴

In addition, the *Guiding Principles* guarantee the right of all persons to protection from arbitrary displacement and the right of those who have been displaced to finding durable solutions to their displacement.¹⁵ Regarding measures related to justice and accountability, the *Principles* also recognize the obligation of national authorities to establish conditions that allow IDPs to return to their homes or resettle elsewhere. This includes an explicit obligation to provide for the restitution of property, compensation, or other forms of just reparation as well an obligation to create secure conditions for return or resettlement, from which the duty to pursue transitional justice measures can be reasonably inferred.¹⁶

Notably, the *Guiding Principles* do not criminalize acts giving rise to internal displacement. However, they do make clear that national authorities have the primary duty to guarantee and protect the rights of internally displaced persons through domestic laws and policies, which should conform to international standards. This duty is based on the notion that with sovereignty comes responsibility. In other words, although states have the right to conduct their internal affairs without interference, they must do so in a way that protects the rights of their population, including displaced persons. The international community can play a subsidiary or complementary role only when national authorities are unable or unwilling to do so, much like the system of international justice and accountability which is based on the principle of complementarity. Although the United Nations High Commissioner for Refugees (UNHCR), does not have an explicit mandate to protect and assist internally displaced person, it has taken a leading role in addressing their needs along with the Office of the High Commissioner for Human Rights (OHCHR), which support transitional justice measures, and other UN agencies, such as the Office of the Coordinator for Humanitarian Affairs (OCHA), and other humanitarian organizations.

The Justice and Displacement Nexus

¹³ These include: *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social, and Cultural Rights*, *Convention Against Torture*, *Geneva Conventions*, and by analogy, the *Refugee Convention*.

¹⁴ For all the rights and freedoms enjoyed by internally displacement persons, see United Nations, *Guiding Principles on Internal Displacement* (1998), available at http://www.brookings.edu/projects/idp/gp_page.aspx. For an explanation of these rights, see Walter Kalin, *Guiding Principles on Internal Displacement: Annotations*, 2nd edition, *Studies in Transnational Legal Policy* 38 (American Society of International Law and Brookings Institution, 2008)

¹⁵ *Guiding Principles on Internal Displacement*, Principle 6 and Principle 28.

¹⁶ *Id.*, Principle 28.

Considerable attention has been given to the advent and implementation of these frameworks by the international community. Over the past decade, the promotion of justice and the protection of displaced persons have both become major undertakings by national and international actors. However, the two frameworks, and the norms, institutions, and measures they encompass, exist somewhat separately and independently of one another at an operational level. A relationship, or nexus, between the two does exist though, and the two frameworks can be mutually reinforcing. Each is centered on protecting individuals and groups of individuals from harm associated with conflict, violence, and mass atrocities and human rights violations. And, in the event this harm takes place, both frameworks seek to provide some form of remedy. Moreover, wherever situations of conflict and systematic human rights violations occur, mass displacement can also be found. As evidenced by the lives of 26 million conflict-induced IDPs, these phenomena unfortunately go hand in hand.

To be forcibly displaced from one's home and community and unable to return is to suffer injustice on a daily basis. Persons who have been uprooted against their will, forced from their communities, and separated from their families as a result of armed conflict are also very often victims of crimes that can shock the conscience of humanity. In addition to suffering from the act of forced displacement itself, displaced persons can fall victim to other acts of violence and to violations of international human rights and humanitarian law threaten their safety, security, and dignity. This can include inhumane treatment, serious bodily harm and the loss of life, deprivation of property, enforced disappearances, arbitrary detention, and modern forms of enslavement such as human trafficking. Women and children, who tend to make up the majority of displaced populations, face an acute risk of gender-based violence and sexual exploitation as a consequence of their displacement.¹⁷ These and similar violent acts and abuses, in addition to the discrimination and marginalization that tend to beset the displaced, can take place during all phases of an individual's displacement. And, they can affect those living in camps as well as those who have managed to find more traditional and secure forms of shelter and accommodation.

Justice in displacement contexts requires accountability for the insecurity, exploitation, and abuse suffered by the victims of displacement. In the words of a displaced person in Colombia: "[displacement] is very unjust. Where's the compensation, the justice? You ask yourself: 'Who's going to put this right? How are you going to put it right?'"¹⁸ The justice and displacement nexus provides the means ground accountability and combat impunity for the violation of the rights of the displaced and for violence they experience. Doing so can prevent the occurrence of displacement in the future, while also providing victims of displacement with some satisfaction that those responsible for their suffering will be held to account for their actions. As another Colombian IDP has declared, "they [those who displaced us] deserve to be punished, to pay for what they've done. They are bad, too bad to be living amongst others. They've destroyed the lives of innocent people, people who didn't have anything to do with them. So I think they should be punished, that they should pay for what they've done."¹⁹

The redress of past wrongs and the pursuit of justice and accountability in the wake of violent conflict through prosecutions of the perpetrators, public truth-telling and apologies, and reparations that seek to make the victims whole again are not only important ends unto themselves. They can also provide essential means to address the root causes and remedy the effects of conflict, violence, and mass atrocities and human rights violations, including forced

¹⁷ International Committee of the Red Cross, *Internal Displacement in Armed Conflict: Facing up to the Challenges*, (2009), at 7-9.

¹⁸ "Life Story of Ismael Maestre," *Colombia: Rights to Truth, Justice and Reparations*, IDP Voices, available at: <http://www.idpvoices.org>.

¹⁹ *Id.*, "Life Story of Juan."

displacement. Similarly, justice and accountability can contribute to the establishment of conditions necessary for resolving existing situations of displacement. As the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons has warned, “[w]here impunity prevails, ... because of lack of political will to hold those responsible for crimes accountable, ... durable solutions for displaced persons are not possible and such impunity may create new tensions, endangering a fragile peace.”²⁰

Justice and Durable Solutions to Internal Displacement

Justice and accountability can play an important role in resolving situations of displacement triggered by conflict, violence, and mass atrocities and remedying the adverse effects of these phenomena on the displaced and society as a whole. This begs the inevitable question: when does displacement end? The emerging consensus holds that displacement ends when its victims no longer have needs and vulnerabilities specifically related to their displacement and when they have realized one of three durable solutions: return to their place of origin, local integration in the area of their displacement, or resettlement in another part of the country.²¹ Creating the processes and conditions under which displaced persons may achieve one of these solutions is at the core of comprehensive responses to displacement. Ensuring respect for human rights and holding to account those responsible for mass atrocities and systematic rights abuse through justice and accountability measures is an essential part of this response. These measures can contribute to the creation of the physical, economic, and social conditions necessary for the displaced to return or settle elsewhere.

One of these conditions is achieved when individuals “do not suffer attacks, harassment, intimidation, persecution or any other form of punitive action upon return to their home communities or settlement in other locations.”²² In those situations where justice and accountability have not figured prominently in the response to displacement, victims will most likely be unable or unwilling to return to their homes, integrate locally, or resettle elsewhere. The displaced may fear for their physical safety where armed groups and individuals who forced them to flee are present and remain part of the community. In addition, just solutions to displacement remain elusive where displaced persons are discriminated against and are unable to access basic government services, including humanitarian and reconstruction assistance. Measures aimed at disarming and demobilizing armed groups, promoting truth seeking processes, investigating and prosecuting those responsible for violent acts and rights violations that gave rise to displacement, and promoting greater respect for human rights, including the right to non-discrimination, can go a long way toward removing perpetrators of displacement from public life and creating conditions of safety and security within the community that facilitate the end to displacement and the achievement of just solutions.

Reparations can also play an important role in establishing conditions necessary for just and durable solutions to displacement by providing redress to the victims of displacement through a variety of material and symbolic benefits.²³ In situations of displacement, property restitution and

²⁰ See mission reports of the RSG, including E/CN.4/2006/71/Add.4 (Bosnia-Herzegovina), para. 35, and E/CN.4/2006/71/Add.7 (Georgia), paras 35-36.

²¹ Brookings-Bern Project on Internal Displacement, *When Displacement Ends: A Framework for Durable Solutions* (2007) (Hereafter, *Framework for Durable Solutions*).

²² *Id.*, at 14.

²³ See also, *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution of the UN General Assembly, A/RES/60/147, 21 March 2006.

compensation are perhaps the most effective measures for remedying the economic insecurity that results from an individual's displacement and the loss of livelihood.²⁴ Enabling victims of displacement to return to their homes and regain lost property, including both commercial and agricultural property, not only provides them with shelter and economic security, it also allows them to reclaim a semblance of normalcy in their lives and achieve some degree of parity with other members of society.²⁵ Similarly, symbolic forms of reparations, such as official apologies, commemorations, and memorialization can restore the confidence of victims of displacement in public institutions and contribute to social solidarity and trust, all of which contribute to voluntary, dignified, and just returns and other solutions to displacement.

Enabling just and durable solutions to displacement also requires processes aimed at increasing awareness and understanding of the situation of displacement and its victims. Truth seeking processes, which can take the form of truth and reconciliation commissions, commissions of inquiry, and other non-judicial mechanisms, can feed into processes aimed at bringing about return or resettlement of the displaced. For instance, these mechanisms can examine and document patterns of violence and human rights violations as well as explore their underlying causes and consequences, including displacement. In doing so, truth seeking processes facilitate recognition of the victims' suffering and can ground responsibility for this suffering. These processes, which are aimed at alleviating tension and building trust among victims and society, can also contribute to the creation of a climate in which other mechanisms for justice and accountability such as prosecutions and reparations can emerge. Like all transitional justice mechanisms in displacement contexts, truth seeking processes should be tailored to societal conditions and include consultations with the displaced and other stakeholders such as host communities, civil society organizations, and public institutions.

Addressing Displacement in Justice and Accountability Mechanisms

In a small but growing number of countries, displacement is indeed being addressed through the adoption of displacement-specific laws and policies along with the establishment of justice and accountability mechanisms. At the present time, approximately 20 countries have promulgated normative acts to protect the rights of IDPs, many of which either directly incorporate or reference the *Guiding Principles on Internal Displacement*.²⁶ In addition to setting forth the rights of IDPs and the obligations of national authorities toward them, a handful of these laws and policies establish a basis for IDPs to obtain restitution and compensation. The Turkish Compensation Law of 2004, for instance, makes available monetary awards and other forms of compensatory relief for physical injury and loss of property as a result of displacement.²⁷ Laws that have adopted similar approaches to compensation and property restitution as a remedy to displacement can be found in Bosnia, Georgia, and Kosovo.

In addition to laws and policies and the national level, regional and sub regional organizations are

²⁴ See *Guiding Principles on Internal Displacement*, Principle 29, *supra* note X; See also, *Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)*, E/CN.4/Sub.2/2005/17 (2005)

²⁵ Bradely, "Back to Basic: The Conditions of Just Refugee Returns" *supra* note 12, at 299 and 300. See also, Pablo De Greiff, "Justice and Reparations," in Pablo De Greiff, ed., *THE HANDBOOK OF REPARATIONS*, Oxford University Press, 2006.

²⁶ Angola, Armenia, Azerbaijan, Bosnia, Burundi, Colombia, Guatemala, India, Iraq, Liberia, Nepal, Peru, Russian Federation, Serbia, Sierra Leone, Sri Lanka, Tajikistan, Turkey, United States, and Uganda. For more information on laws and policies, see the website of Brookings-Bern Project at: http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx

²⁷ Article 7, *Law of Turkey on the Compensation of Damages that Occurred due to Terror and the Fight Against Terrorism*, Law No. 5233, (July 2004).

adopting multilateral agreements, based on the *Guiding Principles*, that obligate their members to protect internally displaced persons and seek an end to displacement in their countries. This includes the recently adopted African Union *Convention on the Protection and Assistance of Internally Displaced Persons* and two IDP-related protocols of the *International Conference of the Great Lakes Region*, each of which references some form of justice and accountability in response to forced or arbitrary displacement.²⁸ For its part, the AU Convention explicitly obligates states parties to criminalize acts of arbitrary displacement in domestic law, ensure individual responsibility for these acts, and provide victims of displacement with effective remedies.²⁹

Over the past decade, several truth commissions have reviewed acts of forced displacement and contemplated remedies for its victims. These include truth commissions in Guatemala, Liberia, Peru, Sierra Leone, and Timor Leste.³⁰ In Timor Leste, for example, internally displaced persons were consulted by the Commission for Reception, Truth, and Reconciliation and given a platform to speak about their suffering.³¹ In Guatemala, the Commission for Historical Clarification concluded, based on interviews with IDPs and others, the violence and persecution directed against the displaced Mayan population amounted to genocide.³² And, in Peru, the Truth and Reconciliation recognized the suffering of displaced persons and recommended that the victims receive compensation for the loss of property and land.³³ In a variety of other jurisdictions, such as Bosnia, Kosovo, Lebanon, and Northern Cyprus, similar types of commissions have devised restitution and compensation schemes for displaced persons.³⁴

Forced displacement has also been investigated and prosecuted by domestic and international courts and tribunals. Following the violence and displacement that occurred in Timor Leste, the Special Panels for Serious Crimes investigated and prosecuted numerous acts of forcible transfer as a crime against humanity.³⁵ Also at the national level, the War Crimes Chamber of the Bosnian State Court has addressed forced displacement and recently concluded a trial that resulted in the conviction of a senior Bosnian Serb commander for the forcible transfer of the Bosniak population from the Srebrenica enclave.³⁶ In addition, the Iraqi High Tribunal found senior officials of Saddam Hussein regime guilty in the forcible transfer of Kurds during the so-called Anfal Campaign.³⁷

²⁸ African Union *Convention for the Protection and Assistance of Internally Displaced Persons*, adopted October 23, 2009; International Conference on the Great Lakes Regions (ICGLR), *Protocol on the Protection and Assistance to Internally Displaced Persons*, adopted November 30, 2006; and ICGLR, *Protocol on the Property Rights of Returning Person*, adopted November 30, 2006.

²⁹ See, *Convention for the Protection and Assistance of Internally Displaced Persons*, Article 3(a)(b) and Article 4(6).

³⁰ Megan Bradley, *Forced Migration Online Research Guide: Reconciliation, Reparations and Forced Migration*, available at: <http://www.forcedmigration.org/guides/fmo044/fmo044.pdf>. See also, Brookings-Bern Project on Internal Displacement, *Internal Displacement and the Construction of Peace: Summary Report* (2009)

³¹ *Id.*, at 50-51.

³² See, *Guatemala: Memory of Silence. Report of the Commission for Historical Clarification*, paras. 108 available at: <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>.

³³ Internal Displacement Monitoring Center, *Peru: Compensation Pending for Victims of Forced Displacement*, (June 2007).

³⁴ *Internal Displacement and the Construction of Peace*, *supra* note 28, at 48.

³⁵ Joint System Monitoring Program, *Digest of the Jurisprudence of the Special Panels for Serious Crimes*, JSMP Report (April 2007).

³⁶ *Press Release: Trbic Found Guilty*, State Court of Bosnia Herzegovina, available at: <http://www.sudbih.gov.ba/?id=1403&jezik=e>

³⁷ *Anfal Cassation Panel Decision*, Iraqi High Tribunal, (September 4, 2007), available at: http://law.case.edu/grotian-moment-blog/documents/Anfal_Cassation_Panel_Opinion.pdf

At the international level, the International Criminal Tribunal for the Former Yugoslavia has prosecuted and convicted numerous bad actors for crimes including deportation, forcible transfer, and forcible displacement.³⁸ These crimes feature prominently among the charges of genocide and crimes against humanity levied at the former Bosnian Serb leader Radovan Karadzic in his case, which is now before the judges at the ICTY.³⁹ Displacement also features prominently in the indictments issued by the International Criminal Court in the case of Darfur. For example, forcible transfer of the civilian population as a war crime and a crime against humanity is among the many criminal acts cited by the ICC Prosecutor in the indictments issued for Sudan's president, Omar Bashir, and senior government officials, Ahmad Harun and Ali Kushayb.⁴⁰ Also, the displacement of roughly 300,000 Kenyans as a result of election-related violence at the end 2008 is also likely to figure prominently in the recently initiated ICC investigation into this situation.

Conclusion: Dealing with the Past and Looking Ahead

Countries and societies emerging from situations of conflict, violence, and mass atrocities and human rights violations, including the forcible displacement of its citizens and residents, face sizable challenges. Similarly, the protection of displaced persons in these environments and efforts to facilitate their return or resettlement in a voluntary, dignified, secure, and just fashion require considerable attention. Protection is not complete without dealing with the effects of past injustices and addressing the justice-related needs that displaced persons have as a result of their displacement. These justice needs can include knowing that those responsible for their suffering are prosecuted and punished. However, justice in this context should be recognized as much more comprehensive or broader than criminal justice and retribution. Justice in displacement contexts should also have social and restorative dimensions that are aimed at facilitating civic trust and reconciliation as well as respecting the rights of the displaced and restoring their place within society. Responses to displacement should be cognizant of the justice and displacement nexus and should seek to use the norms and institutions of both frameworks in a coherent manner to empower the displaced, facilitate their access to justice, and assist them in rebuilding their lives and creating new futures for themselves and their communities.

³⁸ Human Rights Watch, *Genocide, War Crimes, and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia* (1 July 2006).

³⁹ *The Prosecutor v. Radovan Karadzic*, Trial Chamber III, IT-95-5/18-PT D2632-D26270 (19 October 2009).

⁴⁰ *The Prosecutor v. Omar Hassan Ahmad Al Bashir* – Pre-Trial Chamber I, ICC-02/05-01/09 (4 March 2009) and *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")* - Pre-Trial Chamber I, ICC-02/05-01/07, (27 April 2007).