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Displacement, transitional justice and reconciliation

Assumptions, challenges and lessons

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The Refugee Studies Centre's (RSC) Forced Migration Policy Briefings series seeks to stimulate debates on issues of key interest to researchers, policy makers and practitioners from the fields of forced migration and humanitarian studies. Written by academic experts, the briefings provide policy-relevant research findings in an accessible format.

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Glossary

CAVR	Commission for Reception, Truth and Reconciliation
DDR	Disarmament, demobilisation and reintegration
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IDP	Internally displaced person
IOM	International Organisation for Migration
LPDC	Lebanese–Palestinian Dialogue Committee
NGO	Non-governmental organisation
TRC	Truth and reconciliation commission
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNSC	United Nations Secretary-General

Executive summary

Interest is growing amongst researchers, policymakers and practitioners in the links between forced migration, transitional justice and reconciliation. This interest has been reflected in innovations such as the prosecution of arbitrary displacement as a war crime; the investigation of forced migration by truth commissions; the creation of restitution commissions; the provision of compensation to refugees and internally displaced persons (IDPs); and support for grassroots 'coexistence' initiatives in communities affected by displacement. Provisions advocating the involvement of displaced persons in transitional justice and reconciliation activities have been included in scores of reports, resolutions, frameworks, laws and guidelines. Although they often remain marginalised in these processes, many refugees and IDPs have participated in these efforts as witnesses, claimants, 'beneficiaries', and leaders in the push for accountability.

Underpinning many internationally-supported efforts to address displacement through transitional justice mechanisms is the assumption that these efforts are conducive to the broader goal of reconciliation. Even when refugees and IDPs are compelled to return and lack the opportunity to participate in initiatives such as trials, truth-telling and restitution commissions, their return is often interpreted as a sign that peace and reconciliation are taking hold. A closer examination demonstrates that these assumptions are often untested or unfounded. In some cases talk of reconciliation is an empty gesture, or a concerted attempt to paint over persistent post-conflict problems, so that aid can be withdrawn and camps closed. In other instances, reconciliation is an offensive proposition, or a deeply held but elusive aim.

A growing body of research suggests that at their best, transitional justice mechanisms and grassroots coexistence interventions may foster reconciliation and have a significant positive impact on the accessibility and quality of durable solutions to displacement. However, they also carry a number of risks that may in fact undermine reconciliation and effective solutions to displacement. The purpose of this briefing is to explore the links between reconciliation, transitional justice and forced migration, bringing into focus the ways in which displaced persons figure in transitional justice processes, and the implications of this involvement for reconciliation. It explores some of the challenges associated with trying to advance reconciliation in post-conflict societies affected by large-scale displacement, and highlights some of the ways in which policymakers and practitioners have sought to support reconciliation between displaced populations and other actors. It analyses some of the assumptions that have characterised these efforts, and suggests ways in which the challenges surrounding the interface of displacement, transitional justice and reconciliation may be more effectively navigated. These include:

- Aiming for increased clarity in programming and policy statements regarding what is meant by reconciliation, while recognising that preconceived definitions of reconciliation cannot simply be imposed on affected communities.
- Ensuring that expectations of transitional justice and reconciliation programmes are clear and modest, avoiding the idealisation of return as a manifestation of reconciliation.

- Looking beyond transitional justice mechanisms to recognise the critical contribution which efforts to increase security, reconstruct infrastructure, generate employment opportunities, and strengthen equitably accessible social services may make to enabling reconciliation.
- Embracing a long-term approach to supporting the pursuit of reconciliation, justice and durable solutions, recognising that even relatively successful efforts to resolve displacement, redress past injustices and promote reconciliation may bring new claims and conflicts to the fore.
- Carefully assessing the impacts of transitional justice and reconciliation initiatives on an ongoing basis, so that redress and reconciliation efforts can be recalibrated if necessary.
- Calibrating efforts involving individuals and communities affected by displacement so that they support broader peacebuilding, transitional justice and reconciliation strategies, and social processes such as urbanisation and the evolution of more equitable gender roles.
- Recognising that sole responsibility for supporting reconciliation in displacement-affected communities cannot simply be delegated to a particular agency—instead, a wide range of actors may need to be engaged and coordinated, including local and international non-governmental organisations (NGOs); UN agencies involved in forced migration, peacebuilding, development, and rule of law; the International Organisation for Migration (IOM); the World Bank; governments from the municipal to national levels; religious leaders; and displaced populations.
- Moving from platitudes to systematic efforts to equitably involve stakeholders directly affected by displacement, including refugees, IDPs, returnees, host communities, return communities, and secondary occupants, and promoting steps such as:
  - Consulting with displaced populations on the design of transitional justice and reconciliation initiatives;
  - Seeking the input of refugees and IDPs as witnesses in trials and truth commissions;
  - Convening truth commission sessions in camps or in countries with large diaspora populations, with a view to improving diaspora relations and strengthening external support for democratic and economic development;
  - Appointing displaced persons to positions of responsibility in transitional justice bodies and coexistence projects; and
  - Employing information and communication technologies to support the involvement of displaced persons in dispersed geographic locations, while respecting that the utility of such tools is limited by lack of access to advanced technologies and the need for 'in person' participation opportunities.
- Acknowledging that although it is on the whole desirable for efforts to address past injustices to be as inclusive as possible, it may not always be possible to provide direct, material benefits such as financial compensation to vast numbers of displaced persons. Particularly where material benefits are limited, expectations must be carefully managed, which requires regular, clear communications with all stakeholders about the particular benefits being offered, their limitations, eligibility, timelines, and the distribution process.

- Recognising both the positive role and the potential limitations of local or 'customary' approaches to advancing justice and reconciliation.
- Questioning attempts to portray transitional justice and reconciliation as a matter of 'turning back the clock' or restoring the *status quo ante*. While remedies such as restitution may be critical, recreating the *status quo ante* is often simply impossible, and may be counter-productive, particularly when the *status quo ante* was itself highly unjust.
- Continuing discussions, debate, reflection and research on the intersections between these issues, with a view to maximising the potential of transitional justice and reconciliation processes for individuals and communities affected by displacement.

1 Displacement, transitional justice and reconciliation: assumptions and opportunities[1]

Recent years have witnessed increased interest in the links between forced migration, transitional justice and reconciliation. This interest has been reflected in innovations such as the prosecution of arbitrary displacement as a war crime; the incorporation of forced migration into truth commission mandates; the creation of property restitution commissions; the provision of compensation to refugees and internally displaced persons (IDPs); and support for grassroots 'coexistence' initiatives in communities affected by displacement. Provisions advocating the involvement of displaced persons in transitional justice and reconciliation activities have been included in scores of reports, resolutions, frameworks, and laws. Thousands of refugees and IDPs have challenged their typical marginalisation in transitional justice processes by participating in these efforts as witnesses, claimants, 'beneficiaries,' and leaders in the push for accountability.

Underpinning many internationally-supported efforts to address displacement through transitional justice mechanisms is the popular assumption that these efforts are conducive to the broader goal of reconciliation. Even when refugees and IDPs are compelled to return and lack the opportunity to participate in initiatives such as trials, truth-telling and restitution commissions, their return is often interpreted as a sign that peace and reconciliation are taking hold. A closer examination demonstrates that these assumptions are often untested or unfounded. In some cases talk of reconciliation is an empty gesture, or a concerted attempt to paint over persistent post-conflict problems, so that aid can be withdrawn and camps closed. In other instances, reconciliation is an offensive proposition, or a deeply held but elusive aim.

Although displaced persons' stake in these processes has only recently started to attract scholarly and political attention, the pursuit of justice and reconciliation and the tensions between these concepts have complex and important implications for refugees and IDPs. A growing body of research suggests that transitional justice and reconciliation processes can, in some circumstances, have a significant positive impact on the accessibility and quality of durable solutions to displacement, which include local integration, resettlement and return.

The purpose of this policy briefing is to explore the links between reconciliation, transitional justice and forced migration, bringing into focus the ways in which displaced persons figure in transitional justice processes, and the implications of this involvement for reconciliation.[2] It will explore the interlinked conceptual and practical challenges associated with trying to advance reconciliation in post-conflict societies affected by large-scale displacement, and highlight some of the different ways in which policymakers and practitioners have sought to support reconciliation between displaced populations and other actors. It will analyse some of the assumptions that have characterised these efforts, and will close by suggesting ways in which these challenges may be more effectively navigated in the future.[3] While researchers and practitioners often make a close association between transitional justice and reconciliation processes, this briefing suggests that these are potentially, but not necessarily, linked processes. Beyond transitional justice processes, timely interventions in support of human rights protection, livelihoods, educational opportunities and reconstruction may play critical roles in supporting community-level reconciliation and, in turn, the sustainable (re) integration of refugees and IDPs.

2 Deficient definitions and working with vagueness

Transitional justice refers to a set of measures that can be implemented to redress the legacies of massive human rights abuses that occur during armed conflict and under authoritarian regimes, where 'redressing the legacies' means, primarily, giving force to human rights norms that were systematically violated. The different measures that together make up a holistic approach to transitional justice seek to provide recognition for victims, foster civic trust and promote possibilities for peace, reconciliation and democracy. They include criminal prosecutions of those most responsible for violations; reparations programs that distribute a mix of material and symbolic benefits to victims (including compensation and apologies); restitution programs that seek to return housing, land and property to those who were dispossessed; truth-telling initiatives that investigate and report on periods of past abuse; and justice-sensitive security system reform that seeks to transform the military, police and judiciary responsible for past violations. (Duthie 2011: 243)

In contrast, reconciliation is notoriously difficult to define. Indeed, some critics have argued that 'we have focused entirely too much on notions of closure and reconciliation', expending millions of dollars and considerable effort on 'buzzwords that have no consistent definition or conceptual clarity and promoting mechanisms to achieve these obscure outcomes with little evidence that they will make a difference' (Weinstein 2011: 3). At its core, reconciliation is a process that is fundamentally 'about building relationships of trust and cohesion' at multiple different levels, from the individual, inter-personal and communal to the national and international levels (Quinn 2009: 5). For refugees and IDPs, particularly those who return in the aftermath of conflict, reconciliation with their state and with their former neighbours may be especially complicated but critical prospects (see for example Turkish Economic and Social Studies Foundation and Norwegian Refugee Council/IDMC 2006). Although these observations may help to structure discussions of reconciliation and displacement, in the end reconciliation is simply impossible to define conclusively —much to the frustration of practitioners and researchers who prefer clear concepts and tidy categories. In this way, reconciliation is much like dignity, justice and development: the meaning of these messy but pivotal concepts will always be a matter of perspective, shaped by individual experiences and cultural contexts, and often by religious beliefs. This 'messiness' does not necessarily mean that these concepts should be set aside as hopelessly utopian or irrelevant for policy and practice. Rather, it means that efforts in this field must be characterised by an ongoing commitment to critical reflection and clarity regarding the particular goals reconciliation initiatives are attempting to promote.

Even in the absence of a precise, universal definition, it is possible to identify a spectrum of processes and outcomes that may be considered elements of reconciliation. For example, the following may all be understood as aspects of reconciliation: non-violent coexistence and conflict management; seeking justice; acknowledgement, apologies and forgiveness; establishing 'shared truth', rights and values, reflected in the rule of law; building trust and harmonious relationships between conflicted individuals, groups and institutions; and developing a shared vision of the future (Longman et al. 2004: 207; Oduro 2007; Weinstein 2011: 7).[4] On one end of the spectrum, concepts such as non-violent coexistence may be understood as part of 'thin' or 'minimal' reconciliation.

Minimal reconciliation may be associated with the ability of individuals and communities that have experienced violent conflict to share public space without resorting to violence, allowing social activities such as commerce, planting and harvesting crops, and attending school to resume. At the other end of the spectrum, 'thick' or 'maximal' reconciliation may be understood as a deeper individual and inter-personal process involving reflection, relationship building, acknowledgement and atonement, which may eventually result in forgiveness. While these different elements of reconciliation may be interlinked, and intertwined with religious beliefs, there is not necessarily a linear progression from one end of the spectrum to the other. 'Maximal' reconciliation is not always possible or preferable, and should not necessarily be seen as morally superior to 'minimal' reconciliation. In societies confronting atrocities, peaceful coexistence and mutual respect for human rights may be a remarkable achievement, and the most that can be asked, particularly in the first decades after the end of armed conflict.

For the most part, policy discussions of displacement and reconciliation (including this briefing) are concerned with minimal reconciliation. Minimal reconciliation, particularly non-violent coexistence and the establishment of a basic degree of trust and respect for rights between conflicted parties, is essential to the pursuit of durable solutions. In the absence of minimal trust and respect, displaced persons will be unable to participate in political life, equitably access services or exercise their rights. In some cases, the achievement of minimal reconciliation may open up avenues towards 'thicker' types of reconciliation between former refugees and IDPs, their neighbours and their states.

3 Linking displacement and reconciliation on paper

A wide range of actors, including governments, UN agencies and non-governmental organisations (NGOs) have released reports, resolutions and frameworks that make a close connection between transitional justice, reconciliation and displacement. For example, the influential 2004 *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* stresses the significance of 'comprehensive' rule of law and transitional justice programmes that 'pay special attention to abuses committed against groups most affected by conflict, such as… displaced persons and refugees, and establish particular measures for their protection and redress in judicial and reconciliation processes' (UNSG 2004: 9).

The agreements and frameworks that have devoted the most attention to the links between displacement and reconciliation are those concerned with durable solutions for refugees and IDPs. Frameworks such as the Guiding Principles on Internal Displacement and innumerable UN resolutions, peace treaties and UNHCR Executive Committee Conclusions pledge to ensure that the predominant solution to displacement, voluntary return, takes place in 'conditions of safety and dignity'. Effective transitional justice and reconciliation programmes may be essential to making good on these commitments, as these initiatives strive to uphold survivors' dignity by acknowledging the violations committed against them and attempting to reposition the displaced as equal citizens before the law by ensuring that they can access some form of redress for these crimes. The benefits distributed by restitution and compensation processes may strengthen displaced persons' socio-economic security, while coexistence initiatives that incentivise the peaceful use of common public spaces may reduce incidents of violence in return communities (Bradley 2012, forthcoming).[5]

Building on this commitment to safe and dignified returns, the 2008 'Policy Framework and Implementation Strategy: UNHCR's Role in Support of the Return and Reintegration of Displaced Populations' includes a section devoted to 'Rights, justice and reconciliation' and a second on 'Protection, reconciliation and the rule of law'. This document maps out a relatively holistic approach to promoting reconciliation, building on local initiatives and UNHCR's past involvement with displaced populations. The 2008 Policy Framework envisions a close connection between transitional justice and reconciliation processes, which UNHCR is to backstop through co-existence and peace education programmes (UNHCR 2008: 13, para. 60).

Similarly, the 2010 Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons devotes considerable attention to the issue of reconciliation. The Framework on Durable Solutions recognises that lack of reconciliation may represent a barrier to the resolution of displacement, and underscores the need to consult displaced persons on approaches to transitional justice and reconciliation (IASC 2010: 6, 20). The Framework urges negotiators to incorporate provisions on displacement, reconciliation and transitional justice in peace agreements, but acknowledges that top-down approaches to reconciliation may be insufficient, stating that

Beyond or in the absence of a formal peace process, community reconciliation and confidence-building mechanisms are often necessary, in particular where IDPs and the resident population or different groups within the IDP population are seen as having been associated with opposing sides in the conflict, but now live side by side (IASC 2010: 25–26).

Like UNHCR's 2008 Policy Framework on return and reintegration, the IASC Framework presents reconciliation and transitional justice as potentially closely intertwined processes, suggesting that

Securing effective remedies for the violations of international human rights and humanitarian law which caused displacement, or which occurred during displacement, may have a major impact on prospects for durable solutions for IDPs. Failure to secure effective remedies for such violations may cause risks of further displacement, impede reconciliation processes, create a prolonged sense of injustice or prejudice among IDPs, and thereby undermine the achievement of durable solutions (IASC 2010: 43).

The Introduction to the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) is more assertive in claiming a close connection between reconciliation and remedies for the displaced, particularly restitution. The Introduction declares that

The recognition throughout the international community of the direct links between housing, land and property restitution and peace, stability, reconciliation and economic development have bolstered support for the human rights remedies offered to the displaced by restitution rights, which are now widely viewed as key elements of any constructive peace-building strategy (Leckie 2005: 4).

In contrast, the 2011 Decision of the Secretary-General's Policy Committee on Durable Solutions and the accompanying 'Preliminary Framework for supporting a more coherent, predictive and effective response to the durable solutions needs of refugee returnees and internally displaced persons' includes a strong focus on reconciliation, but frames this more as a contribution to grassroots peacebuilding and durable solutions than as a consequence of remedies such as restitution. For example, the Preliminary Framework notes that 'Lack of adequate reconciliation and peace building efforts, including psycho-social programmes and social cohesion strategies at community level, lead to continued discrimination and stigmatisation of returning refugees and IDPs, negatively impacting the achievement of durable solutions' (UNSG 2011: para 9). The Preliminary Framework calls for the early launch of 'Community based reconciliation initiatives', with the goal of 'address[ing] the open and underlying tensions amongst refugee returnees, IDPs and host or receiving communities… Early capacity support should be provided to prioritised co-existence projects, psychosocial support and local peacemaking initiatives' (UNSG 2011: para 12). Under the preliminary framework, UNHCR is charged with a leading role in promoting reconciliation. In particular, UNHCR is called to support 'reintegration coexistence programmes', and to 'incorporate an adequate protection and community

reconciliation lens in durable solutions policies, in particular to ensure a voluntary choice of settlement option' (UNSG 2011: Annex 1, Potential Response Matrix).

Several important trends are evident in these and the many other provisions on displacement and reconciliation that have emerged in recent years. First and foremost, while these documents make a clear connection between reconciliation and displacement, it is striking that the architects of these policies have often failed to clarify what they mean by reconciliation, and do not appear to consider what reconciliation might signify for those most intimately involved in the process, including refugees, IDPs, returnees and their neighbours. Second, in recent years, there has been a notable trend towards refocusing on the relevance of coexistence initiatives for enabling reconciliation at the local level. Grassroots-level, locally-led coexistence activities may indeed be best positioned to make a concrete contribution to opening up durable solutions. However, an exclusive focus on interpersonal or local-level reconciliation may sideline important questions about political reconciliation and how trust may be fostered between displaced populations and the state institutions complicit in their abuse.

Some policy documents appear to take for granted the links between reconciliation and displacement, and tend to treat reconciliation as an item on a check list that can be delegated to a particular agency, glossing over the complexities of promoting even 'minimal' reconciliation in violently divided communities (see for example the Secretary-General's 2011 'Preliminary Framework' on durable solutions). However, a survey of recent policy research suggests that within some corners of the international community at least, there is increasingly nuanced recognition of both the promises and limitations of such efforts. For instance, the IASC's 2002 report *Growing the Sheltering Tree* underlines that

It is one thing to preach forgiveness as an outsider; it is quite another to walk in the shoes of a person whose family members have been slaughtered, whose house has been burned to the ground, and whose family inheritance (land or other valuable property) has been confiscated. Sensitivity, patience and humility on the part of humanitarians is important and humanitarian organisations will do well to seek out the opinions of a variety of persons who lived through abuses prior to setting up programmes (IASC 2002: 189).

Overall, the record of efforts to appropriately and effectively address reconciliation and displacement 'on paper' is therefore patchy, with some important policy documents and frameworks still overlooking entirely the relevance of reconciliation to responses to displacement.[6]

4 Linking displacement and reconciliation in practice?

While efforts to craft effective policies on displacement and reconciliation have been a mixed bag, attempts to transform these policies into practice have met with modest levels of success at best. This is perhaps unsurprising, given the complexity and often controversial nature of efforts to advance reconciliation in societies grappling with large-scale forced migration.

Research, policy and practice have focused largely on the links between reconciliation and the resolution of displacement. However, the concept of reconciliation, understood as a process of 'building relationships of trust and cohesion' between different actors at different levels may be relevant at all phases of displacement (Quinn 2009: 5). Lack of reconciliation between members of historically conflicted communities can be an important, although rarely acknowledged, cause of forced migration. While 'ancient hatreds' have often been overstated or oversimplified as a cause of conflicts, it is clear that deep-seated, unresolved grievances can undercut peaceful relations from the local to national levels, particularly when grievances are related to access to land and other resources required for viable livelihoods. As the build up to conflict and genocide in countries such as Rwanda and the former Yugoslavia makes clear, unreconciled tensions can stymie the efficacy of conflict management and conflict resolution processes, further increasing the likelihood of displacement.

Secure shelter for refugees and IDPs can also be undermined by a lack of reconciliation between displaced populations and members of host communities. Particularly when displacement is protracted, it is not uncommon for conflicts to emerge between hosts and displaced populations. Conflict is especially likely when access to assistance is inequitable, and when forced migrants are perceived as straining limited resources, unsettling power balances, or actively contributing to violence. Such tensions can result in xenophobic attacks, abusive policies, and the marginalisation of generations of forced migrants. Recent efforts to promote at least a degree of reconciliation between refugees and their hosts include the Lebanese–Palestinian Dialogue Committee (LPDC). Launched in 2005, the LPDC aims to improve relations between Lebanese citizens and the Palestinian refugees, and support the revision of Lebanon's highly discriminatory policies against the Palestinian refugees. Rooted in the conviction that dialogue is essential to improving relations, the LPDC (2011) is based on the acknowledgement that

the living conditions of the refugees within the camps are dire and unacceptable, and that the lack of opportunities available to the refugees is an impediment to their welfare and their right to live a dignified and prosperous life under the rule of law… By recognising this we have turned a new leaf on a difficult and painful past full of mistakes on all sides and for which both the Lebanese and Palestinians have paid too high a price.

Elsewhere, UNHCR has implemented peace education programmes to strengthen peaceful and open relations between displaced persons and their hosts, as well as in resettlement and return communities (Baxter 2001, UNHCR n.d.). By using the period of displacement as an opportunity to help refugees and IDPs prepare themselves to

build peaceful relations with their hosts and former neighbours, UNHCR and other organisations that work closely with forced migrants may maximise their potential contribution to reconciliation.

Reconciliation and resolving displacement

Reconciliation between displaced persons, their former neighbours and their states represents a significant factor affecting the success of durable solutions including, but not limited to, return. International involvement in supporting reconciliation amongst the displaced generally falls into two interconnected categories: first, attempts to promote 'coexistence' through community-based interventions; and second, efforts to ensure that transitional justice processes engage and respond to the concerns of the displaced, with the hope that access to a measure of justice will translate into reconciliation and sustainable solutions.

Acknowledging past wrongs and building trust between longstanding residents and newer arrivals may be essential to realising local integration as a durable solution to displacement. At the same time, the engagement of non-returning refugees in transitional justice and reconciliation processes in their countries of origin may yield beneficial results in terms of successful integration and strengthened diaspora relations. Due to factors including geographical isolation, political marginalisation, intimidation, lack of resources, inadequate outreach, limited civil society engagement, and narrow institutional mandates, refugees and IDPs have often been excluded from transitional justice and reconciliation processes (Bradley 2012, Duthie 2011: 249, Harris 2006).[7] However, where displaced persons have been able to participate in transitional justice and reconciliation processes, some positive—if modest and contingent—benefits have emerged, which have in turn supported integration processes. These include validation of displaced persons' experiences as part of the national narrative; peaceful resolution of property claims; and the ability to use tangible benefits such as compensation to support the reconstruction of homes and the development of new livelihoods (Duthie 2012). In the absence of concerted and innovative efforts to engage non-returning refugees in transitional justice and reconciliation processes, relations between diaspora communities and their states of origin may remain fraught, with relatively powerful and well-resourced diaspora members holding back their potential contributions to reconstruction and development. In some cases, diaspora members may actively undermine peacebuilding efforts by lobbying against peace plans, and providing funds and arms to spoilers.

The Liberian Truth and Reconciliation Commission's diaspora project stands out as an important example of how refugees and other diaspora members may assume leadership roles in transitional justice and reconciliation processes, potentially strengthening state–diaspora relations. One of the few truth commissions to date to strategically engage diaspora members, the Liberian TRC worked in cooperation with a US-based NGO (Advocates for Human Rights) and diaspora leaders to collect more than 1,600 statements in Ghana, the United Kingdom and the United States. In addition, official hearings were convened in the

United States, at which diaspora members could testify. The results of the diaspora project informed the official findings of the Liberian TRC, and were featured in a separate report, *A House with Two Rooms: Final Report of the Truth and Reconciliation Commission of Liberia Diaspora Project* (Advocates for Human Rights 2009). As a result of diaspora engagement, the Liberian TRC produced recommendations of particular interest to refugees and other diaspora members, including allowing those in the diaspora to vote in Liberian elections, and legalising dual citizenship. The exercise has elicited interest from members of other diaspora groups interested in contributing to national truth-telling and reconciliation processes, and has arguably strengthened relations between Liberia and its diaspora. However, the process has also been critiqued as providing little insight into the role of the US-based diaspora in the war, and revealing Liberians' ambivalence about the truth-telling process itself (Bradley 2012, Hayner 2011: 67, Steinberg 2010, Young and Park 2009).

While transitional justice and reconciliation processes may therefore be relevant for those who locally integrate or resettle elsewhere, the links between *return* and reconciliation have undoubtedly attracted the lion's share of attention. Although some researchers and practitioners have interpreted return itself as a manifestation of reconciliation, in most cases this is a highly problematic assumption (see for example Nalepa forthcoming). Refugees and IDPs choose or are compelled to return to their homes for a range of reasons, including the desire to reclaim lost lands; insecure status; and lack of support for other options. The return process puts reconciliation challenges front and centre; rarely is it a sign that reconciliation is already underway, or that it has actually been accomplished.

Some 15 years ago, the question of reconciliation was catapulted onto the agendas of organisations such as UNHCR that were, in accordance with donor and host countries' demands, attempting to secure the return of millions uprooted by the genocides in Bosnia and Rwanda. High Commissioner Ogata argued that if sustainable returns and the consolidation of peace were to be achieved in these deeply divided countries, 'the fabric of society would have to be stitched back together. This meant looking at individuals and their communities in the most holistic way and designing integrative projects that amalgamated social, economic, cultural and spiritual aspects into a cohesive whole' (Ogata 2003: xi–xvi). UNHCR rolled out programmes such as 'Imagine Coexistence', which was predicated on the view that while deeper levels of reconciliation might be unattainable in the early aftermath of conflict when refugees and IDPs were expected to return, interventions that brought together and mutually benefited members of divided communities could make returns sustainable. Projects addressed a range of fields, such as employment and livelihoods; education; sports and culture; the media; and commemorations (Babbitt et al. 2002, Chayes and Minow 2003, Haider 2009). Looking back on its involvement in a range of coexistence, reconciliation and transitional justice activities since the mid-1990s, UNHCR (2008, paras. 13, 14) reflects that

…in operations throughout the world, UNHCR and its partners implemented a range of programmes aimed at providing returnees and their communities with the means to re-establish themselves… co-existence projects, based on inter-communal project design and

implementation, were introduced to foster social reconciliation. In addition, legal assistance and capacity-building programmes were introduced to facilitate the recovery of land and property and to ensure non-discriminatory access to services… During much of this period it was the prevailing sentiment that UNHCR could hand over its reintegration activities to development partners who, in consultation with the authorities, would include returnees in national development efforts. Experience has cast doubt on the feasibility of this approach… reintegration programmes proved to be more limited in their impact and sustainability, often because they were planned and implemented in isolation from national development processes and priorities.

At the same time as UNHCR was exploring the contribution it could make to enabling return through coexistence initiatives, a range of transitional justice interventions also contributed, indirectly or by design, to the return of refugees and IDPs. Perhaps most notably, since 1995 dozens of property restitution commissions have been established, through which hundreds of thousands of displaced persons have reclaimed their lost lands. While it is clear that restitution is not in itself sufficient to enable return or reconciliation, for many refugees and IDPs, regaining their lost lands restores a modest degree of confidence in their state, and represents a valuable resource as they pursue a sustainable solution to their displacement (Williams 2012).

Increasingly, international and domestic tribunals for countries such as Bosnia and Cambodia prosecute forced migration as a legal violation, and these bodies may play a pivotal role in enabling return by removing those responsible for uprooting refugees and IDPs from the communities to which they would return (Nalepa, forthcoming). Truth commissions are also investigating displacement and making recommendations relevant to forced migrants' needs and concerns. However, the only truth commission explicitly mandated to advance the resolution of displacement to date is Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR). Intended to facilitate the return and reintegration of displaced persons, including some 10,000 low-level offenders and former militia members, the CAVR's 'reception' function enabled those accused of 'less serious' crimes to return after admitting and redressing their wrongdoing according to terms set by the community. In this way, the CAVR's reception function arguably made a significant contribution to resolving the displacement of low-level perpetrators, while advancing broader reintegration and reconstruction processes by strengthening local-level governance structures (Harris Rimmer 2010a, 2010b: 85–103, Roht-Arriaza 2004: 133–134).

At their best, transitional justice mechanisms and grassroots coexistence interventions may foster reconciliation and enable more safe, dignified and sustainable returns. However, they also carry a number of risks that may in fact undermine reconciliation and effective solutions to displacement. First, the architects of transitional justice and coexistence programmes inevitably have to make difficult decisions about who is eligible for benefits and assistance, and who is not. This may generate competition between victim groups for access to benefits, and resentment on the part of those who are excluded (Duthie 2011: 253). Second, transitional justice mechanisms such as restitution may run

counter to the material interests of those who have taken over displaced persons' homes and lands. These actors may actively attempt to undermine return and reconciliation processes in order to protect assets they may well have come to see as their own. Third, efforts to promote reconciliation can inadvertently exacerbate returnees' marginalisation when they are divorced from careful political analysis and in-depth consultation with would-be beneficiaries. For instance, UNHCR recently created a network of 'Peace Villages' to accommodate largely landless returnees to Burundi. While the villages were to reflect 'a vision of an ethnically reconciled Burundi', in practice they were mono-ethnic, economically and geographically isolated communities that returnees saw

as a new form of exile… This example of a no doubt well meaning but misguided intervention on the part of UNHCR shows the extent to which the promotion of 'reconciliation' as an ideal can be extremely harmful—particularly when reconciliation was effectively being equated with an exclusively humanitarian gift of a small, infertile piece of land (Hovil 2012).

Fourth, in resource-strapped post-conflict environments, transitional justice and coexistence activities may distract attention and support from broader efforts to reduce poverty and improve security, which have in some cases been shown to be more conducive to reconciliation (Longman et al. 2004: 219). Given these risks, it is incumbent on the backers of such initiatives to pay close attention to the insights gained through practice in recent decades.

5 Lessons and recommendations

Many lessons have emerged through efforts to advance justice and reconciliation in communities affected by widespread displacement. The following list highlights some of the most significant lessons, particularly for international agencies, NGOs and governments, but is by no means exhaustive.

Aiming for clarity

The vast majority of policy statements addressing reconciliation and displacement fail to clarify (or completely ignore) the complex question of what is meant by reconciliation. The need for greater clarity must be balanced against the recognition that preconceived definitions of reconciliation cannot simply be imposed on affected communities. Advocates of transitional justice and reconciliation must be clear and modest in their expectations, avoiding the idealisation of return as a manifestation of reconciliation, and accepting that in some cases 'minimal' reconciliation may be the best that can be achieved.

Care is needed in the use of this often loaded term, as expecting survivors and perpetrators to reconcile soon after egregious human rights violations may be deeply offensive. In addition, reconciliation between in-country survivors and returning diaspora members may be highly fraught as returnees may be resented for having escaped the brunt of the conflict. Antagonisms may also emerge if returnees have been complicit in abuses (for example as former combatants), but are not held to account for these crimes.

Caution is required because the rhetoric of reconciliation may be used to advance political agendas at odds with the rights and wellbeing of the displaced. For example, the Colombian government's assertion that the country's armed conflict is over and the reconciliation process is underway has been interpreted as an attempt to paint the displaced as anomalies out of step with the movement towards peace, rather than citizens whose predicament underlines the government's continued failure to ensure equal and effective human rights protections (Vidal Lopez 2011/2012). Reconciliation rhetoric was also manipulated after the civil war in Lebanon, where official reconciliation ceremonies were used to unilaterally declare communities reconciled and open to return, despite the fact that this politically mandated process was completely divorced from realities on the ground (Maroun 2011).

Looking beyond transitional justice mechanisms

Many researchers and practitioners are confident that transitional justice mechanisms such as truth commissions and apologies may lead to reconciliation, or at least help create conditions in which different kinds of reconciliation may be possible.[8] However, the impacts of transitional justice mechanisms on reconciliation are extremely difficult to assess (see Dancy 2010, Pham and Vinck 2007, and Thoms et al. 2010). While transitional justice may be conducive to reconciliation in some displacement contexts, evidence suggests that efforts to increase security, reconstruct infrastructure, generate employment opportunities, and strengthen equitably accessible social services may make a more

significant contribution to enabling reconciliation, particularly in return communities, and should potentially be prioritised (see for example projects profiled and evaluated in Babbitt et al. 2002, Chayes and Minow 2003, IASC 2002). In Rwanda, for example, survey research conducted in the pilot stages of the gacaca process suggests that while there was strong support for accountability efforts, particularly criminal trials and gacaca, there was 'little relationship between attitudes toward the various trials and openness to reconciliation' (Longman et al. 2004: 219). Instead, this research contended that 'perceptions of improved security and an improved situation for poverty are associated with greater openness to reconciliation' (Longman et al. 2004: 219). More recent studies suggest that as the gacaca process has unfolded, public support has grown for the notion that some degree of reconciliation is essential, as Rwandans must continue to live and work in often close-knit communities (Clark 2010).

In general, transitional justice mechanisms should engage displaced persons and address the violations they have suffered, but it cannot be assumed that this will naturally lead to reconciliation, or that this is the best approach to promoting reconciliation between displaced persons, their neighbours and their governments. For instance, in Timor-Leste, dialogue processes between conflicted groups were integrated into the CAVR and the broader humanitarian response to the 2006 displacement crisis. However, rather than deepening reconciliation, at a certain point these well-meant exercises became rote, resulting in 'dialogue fatigue' and detracting attention from unresolved grievances related to development, security and governance (Vieira 2011/2012).

Critically assessing the links between reconciliation, transitional justice and durable solutions

More innovative approaches are needed to maximise the potential links between transitional justice, reconciliation initiatives and durable solutions. Rather than waiting for the initiation of return movements to begin activities in support of reconciliation, programmes intended to foster reconciliation and peace can be helpfully implemented while displacement is ongoing. For example, peace education programmes and targeted livelihoods training can equip refugees and IDPs to play leading roles in creating peaceful and prosperous communities both during and after displacement (Milner 2009: 27).

Past experiences in contexts such as Kosovo have shown that timely efforts to resolve displaced persons' land claims can play a significant role in enabling sustainable returns. However, recent evidence suggests that 'timely' and effective land restitution and compensation programmes are not necessarily those that are rolled out the fastest. Rather, in order for land restitution and compensation to support reconciliation and durable returns, these efforts need to be accompanied by post-restitution development support that ensures that access to land actually translates into viable livelihoods, and that the communities that are rebuilt on repossessed lands have adequate infrastructure and services (Conway and Xipu 2010). At the same time, tackling land claims can stir

up grievances, particularly when claims overlap. A straightforward link between return, restitution or compensation, and reconciliation therefore cannot be assumed.

While attention has focused on the intersection of transitional justice, reconciliation and returns, access to accountability measures and reconciliation efforts is relevant even when refugees and IDPs do not return. As evidenced by the Liberian TRC's diaspora project, involving non-returning refugees in transitional justice and reconciliation programmes in their country of origin can improve diaspora relations, resulting in stronger external support for democratic and economic development. Equally, reconciliation efforts in host communities may support the local integration of refugees and IDPs, particularly when violent conflicts have emerged between the displaced and host community members that undercut social trust and peaceful inter-communal relations.

Adopting a long-term approach

The need for a long-term commitment to supporting the pursuit of reconciliation, justice and durable solutions to displacement cannot be a mere platitude. Rather, long-term approaches need to be built into programmatic plans from the outset. However, it cannot be assumed that there will necessarily be a linear relationship between reconciliation and the passage of time. In some cases, even relatively successful efforts to redress past injustices and promote reconciliation may bring new claims and conflicts to the fore. For example, South Africans' sense that they are 'victims of historical land injustices' is 'becoming more, not less widespread over time' (Gibson 2009: 28), even though the deadline for concluding the work of the country's Land Claims Commission passed in 2011. This dynamic underlines the need for a sustained commitment to addressing grievances, recognising that different generations may have different perceptions, needs and concerns.

In order to make long-term approaches fruitful, the engagement of development actors alongside humanitarian, peacebuilding and transitional justice actors is essential. In addition, more careful attention is needed to the ongoing assessment of reconciliation interventions. This is essential so that efforts to promote redress and reconciliation can be periodically recalibrated to ensure that they stay on track to achieve their stated aims.

The need for cross-cutting, contextualised efforts

Efforts to advance reconciliation amongst individuals and communities affected by displacement must be carefully calibrated to respond to rights and concerns on a number of different levels. Local, national and regional-level activities should fit within the context of broader peacebuilding, transitional justice and reconciliation efforts, and ongoing social processes such as urbanisation and the evolution of gender roles. Appropriately cross-cutting efforts necessitate the purposeful engagement of a wide range of stakeholders directly affected by displacement, including refugees, IDPs, returnees, host communities, return communities, and secondary occupants. Sole responsibility for supporting reconciliation

in displacement-affected communities cannot simply be delegated to a particular agency such as UNHCR, as the Secretary-General's 2011 'Preliminary Framework' for supporting durable solutions proposes. Instead, a wide range of actors may need to be engaged, including local and international NGOs; UN agencies involved in forced migration, peacebuilding, development, and the rule of law; the International Organisation for Migration (IOM); the World Bank; and governments from the municipal to national levels. Religious leaders and organisations may also have a pivotal role to play. Many of these actors will be working at different levels and in different sectors, but information sharing and coordination may be promoted through mechanisms such as the IASC.

Participation of displaced persons: From platitudes to systematic, significant engagement

Despite increased interest in the involvement of displaced populations in transitional justice and reconciliation initiatives, at present many still lack the opportunity to actively participate in and benefit from these efforts. Displaced persons should be recognised as critical stakeholders in transitional justice and reconciliation processes, and their arbitrary exclusion should be challenged. Ad hoc approaches to engaging the displaced should be replaced by systematic efforts on the part of organisations such as UNHCR to build on insights from past experiences, and take into consideration obstacles to participation that may be linked to gender, age, and socio-economic status. Ensuring that displaced populations have equitable opportunities to participate will also require raising awareness amongst transitional justice experts of the particular concerns facing refugees and IDPs that may affect their ability to access and engage in transitional justice and reconciliation processes.

The participation of displaced persons in transitional justice and reconciliation processes may be facilitated by, for example, extensively consulting displaced populations on the design of transitional justice and reconciliation initiatives; directly seeking their input as witnesses; convening truth commission sessions in camps or in countries with large diaspora populations; and appointing displaced persons to positions of responsibility in transitional justice bodies and coexistence projects. Information and communication technologies may support the involvement of displaced persons in dispersed geographic locations by, for instance, enabling the remote submission of claims and testimony, and disseminating the conclusions of truth commission investigations. However, the experiences of the Liberian and Sierra Leonean TRCs suggest that the utility of such tools is limited by lack of access to advanced technologies in post-conflict communities, and survivors' sense that it is more meaningful to participate in these processes 'in person' (Pelsinger 2010).

On the whole, it is desirable for efforts to address past injustices to be as inclusive as possible (de Greiff 2006). However, because displacement often affects vast numbers of people, it may not always be possible for transitional justice and reconciliation processes with limited resources to provide direct, material benefits such as financial compensation to the displaced. In some cases, compensation may need to be limited, for example to

those who were unable to access restitution, or may need to be shared by communities rather than distributed to individuals. In order to ensure that transitional justice and reconciliation programmes support the durable resolution of displacement, expectations must be carefully managed. This requires regular, clear communications with refugees, IDPs, returnees and other stakeholders about the particular benefits being offered, their limitations, eligibility, timelines, and the distribution process (Ramírez-Barat 2011).

Supporting local, 'customary' approaches

Formal, high-level accountability efforts are essential to acknowledging violations, combating impunity, and reforming national political cultures. However, transitional justice and reconciliation proponents cannot simply implement high-level initiatives and expect that positive reconciliatory effects will 'trickle down' to the local level. In light of this recognition, there has been growing interest in local approaches to advancing justice and reconciliation (Clark 2010, Hinton 2011, Huyse and Salter 2008, McEvoy and McGregor 2008, Shaw et al. 2010). From Timor-Leste to Mozambique and West Africa, 'traditional' or 'customary' processes and rituals have been adapted and applied to promote justice, reconciliation, and the peaceful return and reintegration of displaced persons and former combatants. In some cases, efforts have been made to integrate local or customary approaches into internationally supported, formal transitional justice and reconciliation processes. Such efforts require a careful balancing act, as outside interference in these systems may inadvertently undermine their legitimacy and effectiveness. At the same time, the potential limitations of formal and informal or customary approaches alike need to be acknowledged. The traditional or religious beliefs and values that often underpin 'customary' approaches may not be shared across the affected population, and may run counter to human rights norms on issues such as gender equality (Honwana 1998, Ogora and Murthi 2011).

Questioning attempts to 'turn back the clock'

Perhaps due to the obvious relevance of property restitution as a remedy for displacement, debates on justice and reconciliation for refugees and IDPs are often infused by talk of undoing injustice and restoring the *'status quo ante'*, the conditions that existed prior to displacement. Restitution may be a critical component of efforts to redress the wrongs done to forced migrants and enable post-conflict reconciliation. However, policymakers and practitioners alike must be aware that restoring the *status quo ante* is often simply impossible, particularly in cases of protracted displacement. Attempts to 'turn back the clock' may be counter-productive, particularly when the *status quo ante* was itself highly unjust. Striving to restore past conditions may generate new injustices and undermine reconciliation and durable solutions to displacement by re-establishing inequitable distributions of land and political and economic power. Experiences in regions such as Central America suggest that in some instances returnees may be willing to forgo reclaiming their properties from longstanding secondary occupants if they are given other options that present viable opportunities for restoring or rebuilding their livelihoods,

such as settling on available land near their original homes, or moving to more fertile or populous regions where a wider range of employment options are accessible.

Continuing discussions, debates, reflection and research

Research, policy and practice on the links between displacement, transitional justice and reconciliation are still in relatively early stages of development. While there will never be a simple blueprint for tackling these intersecting challenges, they need to be addressed more systematically in peacebuilding strategies and operational policies (particularly those focused on durable solutions, rule of law, tenure reform and economic development), integrating insights from past successes and failures alike. At their best, transitional justice and reconciliation processes can challenge and change personal outlooks; improve relations between neighbours; backstop peace processes; and strengthen the quality of citizenship in post-conflict states. Maximising the potential of transitional justice and reconciliation processes for refugees and IDPs will require careful reflection, further research, and sustained dialogue between the diverse actors involved in communities affected by large-scale displacement.

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Endnotes

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2 For a more detailed discussion of the links between displacement and transitional justice and the role of particular transitional justice mechanisms in responding to displacement, see the policy briefing on *Transitional Justice and Displacement* by the Brookings Institution and the International Center for Transitional Justice (ICTJ), available at http://ictj.org/our-work/research/transitional-justice-and-displacement. This policy briefing summarises insights from a multi-year research project that brought together researchers and practitioners from the humanitarian and transitional justice sectors to examine the relationship between these fields. See also *Transitional Justice and Displacement* (ed. Roger Duthie, 2012).

3 This briefing does not address the return and reintegration of displaced combatants or 'refugee warriors'. However, the interface of displacement, disarmament, demobilisation and reintegration (DDR), transitional justice and reconciliation is an important area for future research and potential policy interventions.

4 Some researchers and practitioners differentiate between coexistence and reconciliation. See for example Pope 2008: 207.

5 Coexistence initiatives have included, for example, joint economic endeavours, integrated schools and the development of public spaces in which members of divided communities may come together. See Chayes and Minow (2003) for an analysis of coexistence efforts in Bosnia and Rwanda.

6 For example, the 2010 Transitional Solutions Initiative launched by UNHCR and the United Nations Development Programme (UNDP) in cooperation with the World Bank aims to 'work towards including displacement needs on the developmental agenda' with a view to increasing the 'sustainability of interventions for refugees and IDPs and local community members'. Although equitable access to humanitarian aid and development support has been recognised as critical to post-conflict reconciliation, the Initiative does not mention reconciliation in its guiding document.

7 Similar obstacles have been faced by returning child soldiers. See Drumbl (2012).

8 It is important to note that there is little agreement amongst researchers and practitioners on whether prosecutions are conducive to reconciliation, with many observers attributing the continuation of conflict in countries such as Uganda to the ill-timed issuing of indictments by the International Criminal Court (ICC).

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