

FMO Research Guide: Reparations, Reconciliation and Forced Migration

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1. Introduction

The past fifteen years have witnessed an explosion of interest in reconciliation and accountability for human rights violations so that in 1998 a columnist for a mainstream American newspaper reflected, ‘There is no more important new subject on the international agenda than the necessity of balancing the human need for justice and retribution with the state’s interest in stability and reconciliation’ (Little 1999:65).

Reconciliation and the redress of injustices is a pressing concern for a wide range of stakeholders, but these questions have particular and significant implications for forced migrants, including refugees and internally displaced persons (IDPs). The success of durable solutions, especially return, often depends on reconciliation and reparations programmes designed to confront the injustices at the root of displacement, restore access to homes and properties, stimulate development and ensure that the displaced can live as equal citizens in relative peace with their neighbours. This is clearly a tall order for legal principles and norms that remain politically controversial and lack consistent, reliable enforcement mechanisms. Yet, interest in reconciliation and reparations has been sustained by the view that ‘peace and justice are, if not indivisible, at least close associates’ (Shawcross 2000: 187). Whether through truth and reconciliation commissions, tribunals, financial compensation, or a combination of these and other means, there is a popular, albeit debatable, conviction amongst donors and policymakers that confronting and responding to past injustices is essential to stabilising emerging democracies and establishing the rule of law. Researchers and practitioners are also keenly interested in how reparations can be used not only to repair past wrongs, but also to deter future violations.

This guide is not intended to provide a comprehensive discussion of reparations and reconciliation, which are both highly complex and contested concepts. Instead, the goal of this guide is to highlight some of the key legal, political, technical, ethical and development issues raised by reconciliation and redress as they relate to forced migration, with a focus on conflict-induced displacement. This guide is intended to help the reader navigate the extensive literature on reparations, reconciliation, coexistence and forced migration, and identify areas where additional research is required. Although some cases are briefly discussed for illustrative purposes, it is important to note that as this guide aims to provide a succinct introduction to the key issues, a full comparative analysis of the many relevant cases is not possible. It is also important to note that while efforts have been made to provide as many electronic references as possible, a significant amount of the most valuable literature on these issues is unfortunately not available on-line. Please refer to the bibliography at the end of this guide for suggestions regarding print literature. As the guide is a work in progress, any recommendations for additional websites or literature will be warmly welcomed.

1.1 Definitions

Definitions of reparations and reconciliation are contested at best; at worst, they are murky or esoteric. The definitions of reparations set out under international law are comparatively straight forward. The 1928 Permanent Court of International Justice *Chorzów Factory* ruling lay down the basic remedial norms for violations of international law. The court ruled that ‘reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation that would, in all probability, have existed if that act had not been committed’ (Shelton 2002: 835). Legal definitions of reparations are discussed in the International Law Commission (ILC) Articles on State Responsibility; the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law; and the UN Principles on Housing and Property Restitution for Refugees and

Displaced Persons. Under international law, reparation encompasses three main types of remedy: restitution, compensation and satisfaction. The goal of restitution is to restore the conditions that existed prior to a violation, and often involves the return of homes, artefacts or land. The ‘first form of reparation’, restitution is required unless it is ‘materially impossible’ or ‘involves a burden out of all proportion to the benefit deriving from restitution instead of compensation’ (Shelton 2002: 849). Compensation involves monetary payment for material or moral injury, while satisfaction addresses non-material injuries and may involve official apologies; assurances of non-repetition of the offence; judicial proceedings; and truth and reconciliation commissions.

However, reparation is not simply a legal concept. It also has deep roots in religious, ethical and political discourse. Outside of the legal framework, definitions of reparation, restitution and redress have become particularly muddled. For example, scholar Elazar Barkan’s definition of restitution has significant overlaps with the legal definition of reparation, but is much broader than the concept of restitution under international law. In his influential text *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, Barkan offers a comprehensive notion of restitution as the ‘entire spectrum of attempts to rectify historical injustices’ (Barkan 2001: xix). Barkan (2001: xviii) contends that the legal tools of remedy, that is, restitution, compensation and satisfaction, ‘are all different levels of acknowledgement that together create a mosaic of recognition by perpetrators for the need to amend past injustices’. Although broad, this conceptualisation is salient because it encompasses the diverse yet interrelated approaches available to remedy injustice, including high-level legal initiatives such as trials and property restitution mechanisms, political efforts such as apologies and truth commissions, and grassroots reconciliation and coexistence projects.

There are a plethora of definitions of reconciliation, ranging from modest depictions of reconciliation as the establishment of social relations that enable the members of a divided community to coexist peacefully, to more ambitious associations of reconciliation with forgiveness and friendship. Reconciliation may be described in psychological terms, and undoubtedly has different meanings and associations depending on cultural context. The word has ‘powerful religious overtones, including intimations of purification and cleansing’, and ‘it is undeniable that Christian conceptions of reconciliation are deeply implicated in the South African context’, which has had a profound influence on the development of national reconciliation programmes elsewhere in the world (Dwyer 1999: 82). One of the most influential scholars of reconciliation, Jean Paul Lederach, highlights the contradictions and paradoxes inherent in the notion of reconciliation. Lederach (1997) writes,

‘Reconciliation can be seen as dealing with three specific paradoxes. First, in an overall sense, reconciliation promotes an encounter between the open expression of the painful past, on the one hand, and the search for the articulation of a long-term, interdependent future, on the other hand. Second, reconciliation provides a place for truth and mercy to meet, where concerns for exposing what has happened *and* for letting go in favour of renewed relationship are validated and embraced. Third, reconciliation recognises the need to give time and place to

both justice and peace, where redressing the wrong is held together with the envisioning of a common, connected future.’

Please see section 4 for a more detailed discussion of reconciliation issues.

1.2 Studying reparations, reconciliation and forced migration

Researchers have approached the questions surrounding forced migration, reconciliation and reparations from a wide range of disciplinary perspectives, including law, economics, history, politics, psychology, anthropology, philosophy, geography and sociology. Many scholars have utilised a regional or comparative approach, contrasting contemporary and historical efforts to promote reconciliation and redress historical wrongs, both in post-conflict settings and in more stable political contexts. A significant body of literature is now emerging that anticipates how reconciliation and reparations initiatives may play a role in moving entrenched disputes, such as the Israeli-Palestinian conflict, towards resolution. In some cases, these studies directly address the issue of reparations for returning refugees and IDPs as an essential aspect of peace processes (for e.g. International Crisis Group 2005).

Most of the research that explicitly examines the connection between forced migration and redress focuses on housing and property restitution from a socio-legal perspective (for e.g. Leckie 2003). However, there is also a burgeoning collection of work on return, reintegration and reconciliation in post-conflict communities (for e.g. Minow and Chayes 2003). Much of this research looks at former combatants, particularly child soldiers. Although these studies are not typically focused on questions of forced migration, they may nonetheless be of interest to researchers in the field of refugee studies, as many of the combatants involved in reintegration and reconciliation programmes were themselves displaced, and were often involved in perpetuating the forced migration of civilians. Human rights advocates, psychologists and anthropologists have often taken the lead on this research agenda, which has yielded particularly interesting studies on the use of local cultural resources to enable reconciliation and reintegration (for e.g. Honwana 1998, Nordstrom 1997).

Many studies on reparations and reconciliation have been conducted by advocacy or humanitarian organisations, with a view to improving individuals’ access to accountability mechanisms and the efficacy of reconciliation interventions. In this vein, the comparative study of reparations and reconciliation processes is increasingly used to identify practices that may help or hinder the resolution of displacement situations and the establishment of stability in transitional environments. A significant proportion of the research carried out in this field has concentrated on the macro-level analysis of the institutional arrangements used to facilitate reconciliation and reparations. However, there is also a growing body of critical literature on the disjoint between national-level reconciliation and justice programmes and the concerns facing the survivors of human rights violations at the grassroots (for e.g. Stover and Weinstein 2004). It is increasingly recognized that more research is needed that examines the perspectives of individual survivors, and addresses questions of cultural context and gender. Future research may also beneficially address the long-term impact of reconciliation and redress programmes

on the survivors of human rights abuses, including refugees and IDPs. Research with the survivors of human rights violations raises important ethical questions, which will require continued consideration and navigation as the research agenda matures.

Websites

Center for Human Rights and Conflict Resolution at Tuft's University Fletcher School of Diplomacy

<http://www.chrcr.org>

Coalition to Stop the Use of Child Soldiers

<http://www.child-soldiers.org/>

Governance Resource Centre (GRC) Exchange-Safety, Security and Access to Justice Program (Transitional Justice)

http://www.grc-exchange.org/g_themes/ssaj_transitionaljustice.html

INCORE

<http://www.incore.ulst.ac.uk>

International Development Research Centre- Peace, Conflict and Development Program

<http://www.idrc.ca/peace>

International Transitional Justice Research Network- Africa Component

http://www.idrc.ca/en/ev-92623-201-1-DO_TOPIC.html

International Peace Academy

<http://www.ipacademy.org>

Palestinian Refugee Research Net (PRRN)

http://www.arts.mcgill.ca/mepp/new_prn/

Psychosocial Working Group on Forced Migration

<http://www.forcedmigration.org/psychosocial>

Settling Accounts: Truth, Justice and Redress in Post-Conflict Societies-Conference Webpage

<http://www.wcfia.harvard.edu/conferences/truthjustice>

United States Institute of Peace

<http://www.usip.org>

1.3 Key actors and organisations

In addition to national governments and the survivors of human rights violations, key actors in redress and reconciliation processes include national, regional and international courts, ad hoc claims commissions, truth and reconciliation commissions, donor agencies,

UN institutions and other regional and international organisations. In particular, the International Organisation for Migration (IOM) has been responsible for administering various major restitution and compensation commissions, and offers expert advice to several national claims bodies. The work of the former UN Special Rapporteur on Restitution and the UN Special Rapporteur on Housing and Property Restitution for Refugees and Displaced Persons helped clarify the rights and responsibilities held by the victims and perpetrators of displacement and other human rights violations. Scholars have been instrumental in articulating many of the legal, political and normative concepts which guide the pursuit of reparations and reconciliation, and have also played a key role in documenting human rights abuses and gathering the information necessary to support reparations claims. In addition to these efforts, the media and non-governmental organisations (NGOs) have mobilised popular support for accountability initiatives and raised issues of historical injustice onto the international agenda. NGOs such as the Norwegian Refugee Council and Redress provide information to the victims of human rights abuses, including refugees, on the avenues open to them to obtain reparations. Meanwhile, groups such as the International Center for Transitional Justice (ICTJ) offer advice on the establishment, operation and evaluation of mechanisms such as tribunals and truth and reconciliation commissions. Working in cooperation with the UN Special Rapporteur on Housing and Property Restitution for Refugees and Displaced Persons, the Centre on Housing Rights and Evictions (COHRE) played a leading role in generating policies and improving practice on housing and property restitution for the displaced.

Websites

Amnesty International

<http://www.amnesty.org>

Badil Resource Centre for Palestinian Residency and Refugee Rights

<http://www.badil.org>

Carnegie Center for Ethics and International Affairs

<http://www.cceia.org>

Centre on Housing Rights and Evictions (COHRE)

<http://www.cohre.org>

Human Rights Watch

<http://www.hrw.org>

International Center for Transitional Justice

<http://www.ictj.org>

International Council on Human Rights Policy

<http://www.ichrp.org>

International Crisis Group

<http://www.crisisgroup.org/home/index.cfm>

International Law Commission

<http://www.un.org/law/ilc>

International Organization for Migration

<http://www.iom.int>

Norwegian Refugee Council

<http://www.nrc.no/engindex.htm>

Office of the United Nations High Commissioner for Human Rights

<http://www.ohchr.org/english>

Open Society Justice Initiative

<http://www.justiceinitiative.org>

Organization for Security and Cooperation in Europe (OSCE)

<http://www.osce.org/>

Prison Fellowship International Centre for Justice and Reconciliation

<http://www.pficjr.org>

Project on Justice in Times of Transition

<http://www.pjtt.org>

Redress

<http://www.redress.org>

Search for Common Ground

<http://www.sfcg.org>

United Nations Commission on Human Rights

<http://www.unhcr.ch/html/menu2/2/chr.htm>

United Nations High Commissioner for Refugees

<http://www.unhcr.ch>

1.4 Historical cases

Historically, individuals have not been recognised as subjects under international law, and have been unable to access legal redress for state-sponsored abuses such as forced displacement. The individual's right to reparations evolved out of the post-World War II human rights regime, which firmly established the individual as a bearer of rights and duties under international law. Barkan points to West Germany's efforts to compensate Holocaust survivors as the first example of a large-scale, modern reparations programme. Since 1952, Germany's reparations programme has involved the transfer of over 60 billion dollars from Germany to Israel and individual survivors (Bazyler 2002: 38). In

the agreement reached between Germany, Israel and various Jewish organisations, the Jewish negotiators acknowledged Germany's attempt to atone for its crimes, but did not forgive them. This compromise entrenched a place for atonement in politically negotiated reparations processes, but pragmatically recognised that forgiveness and reconciliation cannot be compelled.

The fledgling restitution movement largely stagnated until the early 1990s when class action suits were filed in American courts against three prominent Swiss banks for their complicity in the Holocaust. This sparked renewed interest in the question of amending historical injustices, and launched several complex reparations cases onto political agendas worldwide, including compensation for Korean 'comfort women' and Japanese North Americans interned during the Second World War, and apologies and the return of sacred lands to indigenous peoples in Canada and New Zealand. The longstanding debate on reparations for slavery was also reinvigorated in the United States, while reparations for post-colonial states were discussed at international forums including the World Conference Against Racism. By the late 1990s, Dwyer (1999: 81) suggests, a 'global frenzy to balance moral ledgers' was brewing in courtrooms, NGO offices, legislatures and newsrooms from Zurich to Seoul. This was supported by the establishment of internationally-supported tribunals and claims commissions through which the victims of human rights violations, including refugees and IDPs, could pursue their claims. Several excellent historical and comparative studies have been completed on Germany's reparations for Holocaust survivors, and the subsequent Swiss Banks restitution campaign (for e.g. Bazylar 2002).

Refugees have long been intertwined with the law and politics of redress. Most cases have focused on restitution or compensation for refugees from their state of origin, however, various legal scholars have also addressed compensation for states of asylum from countries of origin (for e.g. Lee 1986, Garry 1998). Under the Swiss Banks' Holocaust settlement, five classes of eligible claimants were identified, including a 'Refugee Class'. This class consisted of individuals who attempted to gain asylum in Switzerland from the Nazis and were either denied entry or, after gaining entry, were refouled or mistreated. This little-known case is one of the only examples of a state of asylum acting on their responsibility to provide restitution for refouled refugees.

Some of the most important political statements on reparations for refugees arose after some 726,000 Palestinians were displaced through the establishment of the Israeli state (Fischbach 2003: xxi). In 1948, the UN Mediator on Palestine (1948) wrote, 'The right of the Arab refugees to return to their homes in Jewish-controlled territory at the earliest possible date should be affirmed by the UN, and their repatriation, resettlement and economic and social rehabilitation, and payment of adequate compensation for the property of those choosing not to return, should be supervised and assisted by the UN.' UN Member States echoed Bernadotte's recommendations in General Assembly Resolution 194 of 1948, which resolves that 'refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date', and that 'compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of

international law or in equity, should be made good by the Governments or authorities responsible'. Although never implemented, these provisions have been repeated in numerous General Assembly resolutions, and formed the backbone of calls for restitution and compensation in other refugee cases.

The genesis of international and scholarly focus on reconciliation is comparatively more recent. Principally, research and policy initiatives on reconciliation were galvanised with the creation of the Truth and Reconciliation Commission (TRC) for South Africa. The controversial founding of the South African TRC was followed by the establishment of truth and reconciliation commissions in various Latin American countries that were emerging from dictatorships. The focus on national-level reconciliation commissions also sparked greater interest in grassroots reconciliation and coexistence initiatives. Many of these early initiatives were documented and analysed by anthropologists, political scientists and NGO representatives in often short-term research projects with specific programmatic goals.

Websites

Center for Information on Holocaust Restitution

<http://www.holocaustrestitution.net>

Eizenstat, S. (2003) 'The Work of an International Negotiator in Restitution Cases and the Legacy of World War II', lecture given as part of the *Beyond History and Memory* seminar series, Carnegie Council on Ethics and International Affairs, New York, 6 May 2003.

<http://www.cceia.org/resources/transcripts/962.html>

Holocaust Victim Assets Litigation-Claims Resolution Tribunal

<http://www.crt-ii.org>

Holocaust Victim Assets Litigation-Swiss Banks Claims

<http://www.swissbankclaims.com/>

IOM Holocaust Victim Assets Programme (Swiss Banks)

<http://www.swissbankclaims.iom.int>

Salzburg Seminar Institute for Historical Justice and Reconciliation

<http://www.salzburgseminar.org/ihjr/index.cfm?Status=home>

Simon Wiesenthal Center-Holocaust Restitution

<http://www.wiesenthal.com/site/pp.asp?c=fwLYKnN8LzH&b=242503>

2. Legal Provisions, Principles, Guidelines and Agreements

2.1 Reparations in international law and United Nations documents

The right to a remedy for violations of human rights is set out in the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights,

and several key regional agreements such as the European Convention on Human Rights. Reparations for human rights violations are usually claimed against states or individual state agents, but claims have also been made against actors such as banks, companies, and international financial institutions (for e.g. Slaughter and Bosco 2000).

The International Law Commission Articles on State Responsibility recognise three main types of remedy for violations of international law (focusing on the state-to-state level): restitution, compensation and satisfaction. The Rome Statute of the International Criminal Court includes provisions on reparations, while the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law clarify current international legal principles and emerging norms on reparation, and discuss the scope of the state's obligations to prevent, investigate, punish and remedy infractions of human rights.

The institutions used to uphold the right to a remedy under international law include the International Criminal Court (ICC), the International Court of Justice (ICJ), regional courts such as the Inter-American Court of Human Rights and the European Court of Human Rights, specially mandated bodies such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and ad hoc claims commissions such as the United Nations Compensation Commission (UNCC). Through bodies such as the ICTY and ICTR, significant progress has been made in using international law to ensure individual accountability for gross human rights violations. Although the judges at the Nuremberg trials famously concluded that 'international wrongs are committed by individuals and not by abstract entities', it is increasingly recognized that it is essential to hold both individuals and states responsible for human rights abuses such as mass expulsions (Echeverria 2002: 1). Notably, in February 2006, the world's first trial of a *state* charged with genocide opened at the International Court of Justice (ICJ). The case was initially filed by Bosnia-Herzegovina against Serbia (then Yugoslavia) in March 1993, but it has taken thirteen years of legal wrangling for the case to come before the court for a full hearing. If the court rules in favour of Bosnia it could order Serbia to make a formal apology to Bosnia, pay compensation, or both. The Bosnian government has not specified how much it is seeking in reparations. However, Croatia has filed a similar case against Serbia with the ICJ, and is claiming \$29 billion in damages (Partos 2006).

A number of UN documents provide specific guidance on the question of reparations for forced migrants. Principle 29 of the Guiding Principles on Internal Displacement states, 'Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.' The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons offer detailed guidance on the interpretation and application of the right of refugees and IDPs to have their homes and properties restored to them. The issue has also been addressed in several resolutions of the UN Sub-

Commission on the Prevention of Discrimination and Protection of Minorities (for e.g. UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities Resolution 1998/26). General Assembly Resolution 194 of 1948 on the Palestinian refugees articulates principles on restitution and compensation which have been used to help resolve various displacement situations, although the Palestinian case of course remains outstanding. As the provisions of Resolution 194 have been reiterated in many subsequent General Assembly resolutions, some legal scholars have argued that they now represent 'hard' international law (Boling 2001). COHRE's 2001 publication *Housing and Property Restitution for Refugees and Internally Displaced Persons: International, Regional and National Legal Resources* is an excellent compilation of legal documents pertaining to restitution for the displaced.

Although documents such as the ILC Articles on State Responsibility took forty years to negotiate, this is a rapidly evolving field of international law and scholarship. Not surprisingly, most research on reparations for human rights violations under international law has been carried out by legal scholars, and involves traditional approaches such as the analysis of key rulings and legal texts. However, a growing body of work integrates these legal perspectives with analyses of the political context within which international law evolves and is implemented.

Websites

Boling, G. (2001) 'Palestinian Refugees and the Right of Return: An International Law Analysis', *BADIL Information and Discussion Brief* 8.
<http://www.badil.org/>

Centre on Housing Rights and Evictions (COHRE) (2001) *Housing and Property Restitution for Refugees and Internally Displaced Persons: International, Regional and National Legal Resources*, Geneva, COHRE.
<http://www.cohre.org/>

Echeverria, G. (2002) 'The Draft Basic Principles and Guidelines on the Right to Remedy and Reparation: An Effort to Develop a Coherent Theory and Consistent Practice of Reparation for Victims', *Article 2 1* (6).
<http://www.article2.org/mainfile.php/0106/60/>

European Court of Human Rights
<http://www.echr.coe.int/echr>

International Criminal Court
<http://www.icc-cpi.int>

Partos, G. (2006) 'Analysis: Serbia in the dock', *BBC News*, 27 February.
<http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4748960.stm>

Pinheiro Principles: UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, E/CN.4/Sub.2/2005.

<http://www.cohre.org/>

Redress (2002) *The Reparation Sourcebook*, London, REDRESS.

<http://www.redress.org/publications/SourceBook.pdf>

2.2 Reparations in domestic law

Many countries possess robust domestic laws on human rights and reparations, or have integrated international legal standards on these issues into national law. In countries with well-developed legal systems such as Canada and the United States, reparations claims are often pursued at the national level under domestic laws, without direct appeal to international laws or institutions. Indeed, the United States' class action litigation system was used to launch several prominent and highly successful reparations campaigns, such as the movement to secure restitution for Holocaust survivors from the Swiss banks. In countries with well-developed litigation systems, remedies may be negotiated entirely outside of the courtroom, with the claimants using the threat of legal action to secure an acceptable settlement.

However, using national laws to secure redress is a complex process that is often inaccessible to marginalised groups such as displaced persons. Indeed, in most countries experiencing serious forced migration problems, judicial systems are already stretched to capacity, and cannot effectively accommodate a large number of claims from displaced persons or other groups seeking reparations. In countries that lack a strong judiciary, establishing specialised, temporary bodies may be essential to the successful provision of remedies for the survivors of human rights violations. For example, Rwanda formally instituted the *gacaca* system, which deals with crimes from the 1994 genocide at the community level (see section 3.3). Working in tandem with international lawyers may support both the reparations process and the broader task of strengthening legal capacity and the rule of law. Indeed, the reparations process may provide a valuable opportunity to overhaul the domestic legal system. For example, in Bosnia and Herzegovina, part of the property restitution process involved repealing arcane property laws left over from the Communist era, as well as those laws that discriminated against the displaced. This created a clearer and sustainable property law system, and thereby improved the country's ability to attract investment. There is a growing body of literature on cooperation between international actors and national legal authorities to support reparations processes. Much of this work comes from international lawyers and property experts who were directly involved in restitution processes in countries such as Bosnia and Herzegovina (for e.g. Philpott 2005).

It should be noted that while reconciliation is not a legal concept, national truth and reconciliation commissions are usually mandated under domestic law, and failure to comply with TRC investigations may have legal ramifications. For example, the perpetrators of grievous abuses under the apartheid system were only able to avoid prosecution and punishment by fully disclosing their crimes and cooperating with the South African TRC (see section 4.2).

Websites

Inkiko Gacaca-National Service of Gacaca Jurisdictions
<http://www.inkiko-gacaca.gov.rw/En/EnIntroduction.htm>

IDRC: Reparation for Internal Displacement in Colombia
http://www.idrc.ca/en/ev-92623-201-1-DO_TOPIC.html

2.3 Reparations and peace agreements

Virtually every peace agreement concluded since 1995 includes provisions on the right of return and reparations for those who were forced from their homes. The controversial 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) set a new standard for incorporating reparations into peace agreements by including provisions on cooperation with the ICTY, and establishing mechanisms to provide housing and property restitution to the displaced. Although the implementation of the Dayton Agreement has been slow, costly and flawed, the comprehensive, rights-based language on return used in the Agreement has been emulated in several other treaties. In particular, the Dayton Agreement's conception of the right to return as the right to reclaim one's original home has been highly influential and has arguably helped establish this right as a new international norm.

While there is an impressive and growing body of case-specific literature on the criminal tribunals and reconciliation commissions mandated under peace agreements, comparatively little attention has been paid to the broader comparative analysis of the reparations provisions in peace agreements as they pertain to the displaced. The few analyses that have been completed on this issue have adopted a primarily legal approach (for e.g. Phuong 2005). Political and historical examinations of the process of negotiating the reparations provisions in peace agreements could improve shared understandings of how to affirm and protect the rights of displaced persons in the context of peace agreements.

Websites

ACCORD (African Centre for the Constructive Resolution of Disputes)
<http://www.accord.org.za/web/home.htm>

Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict in Guatemala (1994).
<http://www.c-r.org/our-work/accord/guatemala/resettlement-agreement.php>

Conciliation Resources
<http://www.c-r.org>

Eschenbacher, J. (2005) 'IDPs and Peace Processes' in Eschenbacher, J. (ed.) *Internal Displacement: Global Overview of Trends and Developments in 2004*, Geneva, Norwegian Refugee Council.
<http://www.internal-displacement.org/>

General Framework Agreement for Peace in Bosnia and Herzegovina (1995).
http://www.ohr.int/dpa/default.asp?content_id=380

General Peace Agreement for Mozambique (1992).
<http://www.c-r.org/accord/moz/accord3/rome1.shtml>

International Crisis Group (2005) 'Georgia-South Ossetia: Refugee Return the Path to Peace', *Europe Briefing* No. 38.
<http://www.crisisgroup.org/home/index.cfm?id=3380&l=1>

Phuong, C. (2005) *Forcible displacement and peace agreements*, Geneva, International Council on Human Rights Policy.
http://www.ichrp.org/public/workingpapers.php?id_projet=27&lang=AN

Public International Law and Policy Group (2005) *Peace Agreement Drafter's Handbook*, Washington, D.C., Public International Law and Policy Group.
<http://www.pilpg.org/areas/peacebuilding/peacehandbook/#refugees>

2.4 Reparations and development-induced displacement

In response to increasing pressure from civil society groups and communities displaced by large-scale development projects in the 1980s and 1990s, the international financial institutions began developing operational guidelines on development-induced displacement. A major early example of such a policy is the World Bank's 1990 Operational Directive 4.30 on Involuntary Resettlement. The international financial institutions now recognise, at least rhetorically, that projects involving large-scale forced displacement should generally not receive financial support as they generate unacceptable negative consequences for development and human rights. However, in cases where projects are judged worthy of support despite unavoidable forced relocation, these policies identify the type of reparations that must be provided to the displaced. Generally speaking, financial compensation is recognised as an inferior option to the provision of substitute land upon which displaced communities can continue to practice their livelihoods. However, this guidance is not always followed, particularly when land is scarce or expensive. When the displaced community has strong indigenous ties to the land, the provision of substitute land may not be an acceptable solution.

Over the past decade, international financial institutions, particularly the World Bank, have carried out a range of in-depth studies on the social and economic implications of involuntary resettlement, and how the negative effects of displacement may be mitigated through reparations. Advocacy organisations are also a principle source of information on development-induced displacement and campaigns for redress for the displaced. For example, the Geneva-based Centre on Housing Rights and Evictions has documented and supported the struggle for reparations from the international financial institutions involved in financing the Chixoy dam in Guatemala during the country's civil war. In India, the grassroots campaign against the Sardar Sarovar dam on the Narmada River has been chronicled and supported by a wide range of national and international organizations and prominent Indian nationals such as Arundati Roy.

For additional information on this issue, see the Forced Migration On-line Research Guide on [Development-Induced Displacement and Resettlement](#).

Websites

Asian Development Bank

<http://www.adb.org/>

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<http://www.cohre.org/>

Inter-American Development Bank

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International Rivers Network

<http://www.irn.org>

United Nations Environment Programme Dams and Development Project

<http://www.unep.org/dams/>

World Bank

<http://www.worldbank.org>

World Bank Involuntary Resettlement Team

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTINVRES/0,,menuPK:410241~pagePK:149018~piPK:149093~theSitePK:410235,00.html>

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3. Types of reparations and mechanisms

3.1 Housing and property restitution

Housing and property restitution is typically the form of redress most relevant to forced

migrants, and particularly returnees. While they are displaced, many refugees and IDPs' homes are taken over by 'secondary occupants', who may themselves be displaced. Restoring displaced persons' access to their homes and land is essential to enabling reintegration and rebuilding livelihoods.

Developed by the UN Special Rapporteur on Housing and Property Restitution, the Draft Principles on Housing and Property Restitution for Refugees and Internally Displaced Persons serve as a valuable new tool to guide the restitution process. The Principles support the now widely-accepted view that the right to return entails return not only to the country of origin, but also original homes. They draw on experiences in providing restitution in places such as Kosovo, Tajikistan, Guatemala and Bosnia, where the first comprehensive effort to provide restitution to displaced persons took place under the auspices of the Dayton Agreement. Extensive analyses of the property restitution process in Bosnia have been published in recent years, principally by legal scholars and the practitioners involved in the process. This literature analyses the laws underlying the restitution process, the institutional arrangements used to carry out the restitution process, the obstacles to implementing the restitution process, and the connections (or lack thereof) between restitution and sustainable minority returns.

An innovative World Bank-sponsored project is examining how land registration and restitution may be used to enable the return of Colombian IDPs, and deter the displacement of at-risk communities. Other key issues for researchers and practitioners concerned with restitution and forced migration include post-restitution support programmes, the gendered impact of restitution, and the resolution of collective and informal claims.

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Research Paper No. 21 2000-01.

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Iraq Property Claims Commission

http://www.ipcciraq.org/01_about.htm

Kosovo Housing and Property Directorate

<http://www.hpdkosovo.org>

Land Claims Court of South Africa

<http://www.law.wits.ac.za/lcc>

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3.2 Compensation and claims commissions

Compensation may be provided in lieu of housing and property restitution, and may also be extended to the displaced and other victims of human rights violations as a form of redress for property damages, lost income, and for physical and psychological suffering. However, most of the countries grappling with forced migration problems simply cannot afford to provide financial compensation to the displaced. In some cases, international donors may provide financial support for compensation, but in practice compensation is a rare form of redress for the displaced. When compensation is made available, specialised, ad hoc claims commissions are an important mechanism to evaluate claims and distribute funds to successful claimants. The United Nations Compensation Commission (UNCC) was a key precedent-setting claims commission established to provide redress to individuals, corporations and states harmed as a result of Iraq's 1991 invasion of Kuwait. Using funds from Iraq's oil revenues, the Commission compensated millions of people forced to flee Iraq and Kuwait during the Gulf War. The UNCC has

been examined in several legal and political studies that analyse the structure and legal principles underpinning the Commission, and the lessons learned from the Commission that may inform other compensation processes.

Other scholarship on compensation for human rights violations has addressed the moral and ethical questions raised by the provision of compensation, such as whether claims for redress grow stronger or weaker as time passes, and how the responsibility of compensating the victims of state-sponsored crimes should be distributed. A diverse group of Palestinian, Israeli and international researchers have explored the question of how compensation may support the resolution of the Palestinians' displacement, and the peaceful resolution of the Palestinian-Israeli conflict. Major issues include the assessment of the Palestinians' claims, the calculation of interest, international support for the provision of compensation, and different modalities for compensation.

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<http://207.57.19.226/journal/Vol13/No1/130161.pdf>

United Nations Compensation Commission
<http://www2.unog.ch/uncc/>

Stocktaking II Conference on Palestinian Refugee Research
http://www.idrc.ca/en/ev-32583-201-1-DO_TOPIC.html

Workshop on Compensation as Part of a Comprehensive Solution to the Palestinian Refugee Problem
<http://www.arts.mcgill.ca/MEPP/PRRN/prcomp.html>

3.3 Courts, tribunals and other types of reparations

In addition to restitution and compensation, reparations of 'satisfaction' may also be particularly relevant to forced migrants. Satisfaction addresses non-material injuries through means such as official apologies, assurances of non-repetition of the offence, trials and truth and reconciliation commissions (see section 4.2). Historically, the authorities responsible for forced displacement and other major human rights violations have enjoyed immunity from prosecution, which has often been bolstered through amnesties set out in the context of peace agreements or national plans for the transition from dictatorship or military rule to democracy. However, trials for grave human rights violations are increasingly common and are perhaps the foremost type of remedy falling under the category of 'satisfaction'. The trial itself is a form of remedy, but courts may also have the prerogative to award reparations such as compensation. The reparations provisions in the Rome Statute of the International Criminal Court have been applauded

by human rights advocates, and have attracted significant interest from legal scholars. As the court rules on its first cases, the practical significance of these provisions for the victims of human rights violations should become clearer.

Since the early 1990s, there has been a proliferation of studies examining the range of courts and tribunals used to prosecute those actors responsible for grave violations of human rights. Research in this field has principally been led by legal and political science scholars focusing on international courts, particularly the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). However, national-level trials and quasi-international courts working in other post-conflict countries such as Iraq are now garnering increased attention. Rwanda's use of *gacaca* 'courts' to try perpetrators of the 1994 genocide has also attracted interest from a wide range of researchers, including lawyers, anthropologists, and human rights advocates. Indeed, interest is growing amongst scholars and practitioners on how local cultural resources may be used in addition to formal legal mechanisms to advance the pursuit of justice in post-conflict environments.

Although many courts and tribunals have prosecuted displacement as a crime against humanity, and clarified the international legal prohibitions against forced migration, very little research on human rights courts and tribunals has focused on the practical significance of these institutions to the displaced. The public opinion studies published in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (by Eric Stover and Harvey M Weinstein, Cambridge University Press 2006) question the relevance of high-level accountability initiatives such as trials to achieving a sense of justice at the local level, but further focused, case-specific research is required before conclusions can be drawn about the significance of trials from the point of view of displaced populations.

Beyond trials, official apologies and public commemorations can make a vital contribution to resolving grievances between the state and the victims of human rights violations, including the displaced. Although apologies have sometimes been characterised as attempts to avoid the high cost of restitution and compensation, the case of the Korean comfort women (*ianfu*) sexually enslaved by the Japanese Imperial Army during World War II illustrates the centrality of apologies to successful redress and reconciliation. The *ianfu* refused to accept the generous compensation packages offered by the Japanese government because the compensation was not accompanied by adequate official apologies and the inclusion of the history of the comfort women in Japanese textbooks. As the comfort women were denied the opportunity to have their claims heard in an official court, the surviving comfort women, in cooperation with international advocacy groups, convened a 'People's Tribunal' in 2000, which aired their grievances and was staffed by jurists from courts such as the ICTY.

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<http://www.echr.coe.int/echr>

Human Rights Watch (2004) *Bringing Justice: The Special Court for Sierra Leone Accomplishments, Shortcomings, and Needed Support*, New York, Human Rights Watch.

<http://hrw.org/reports/2004/sierraleone0904/>

Human Rights Watch (2004) *Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro*, New York, Human Rights Watch.

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Inkiko Gacaca-National Service of Gacaca Jurisdictions

<http://www.inkiko-gacaca.gov.rw/En/EnIntroduction.htm>

International Criminal Tribunal for the Former Yugoslavia

<http://www.un.org/icty>

International Criminal Tribunal for Rwanda

<http://69.94.11.53/>

International Criminal Court

<http://www.icc-cpi.int>

The Coalition Provisional Authority: The Statute of the Iraqi Special Tribunal

http://www.cpa-iraq.org/human_rights/Statute.htm

Project on International Courts and Tribunals

<http://www.pict-pcti.org>

Special Court for Sierra Leone

<http://www.sc-sl.org/>

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<http://www.ictj.org/>

4. Reconciliation and forced migration

4.1 Theoretical and political issues

Reconciliation is a complex and controversial prospect, both for the members of divided communities and for researchers studying the process. Since the 1990s, a burgeoning collection of research has probed the nature and meaning of reconciliation for individuals, communities and states. Efforts to define and describe reconciliation as a psychological, social and political process naturally cannot yield definitive answers;

nonetheless, these efforts have opened up important new avenues for research and practice. Principal areas for research include the religious and cultural roots of reconciliation, the political impact of reconciliation initiatives, the compatibility of reconciliation and justice, and other moral concerns associated with the pursuit of reconciliation.

Websites

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<http://www.cceia.org/misc/sitemap.html>

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<http://www.c-r.org/accord/>

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<http://www.idea.int/publications/reconciliation/>

Institute for Justice and Reconciliation
<http://www.ijr.org.za>

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<http://www.nd.edu/~krocinst/>

Rosenthal, J. (2001) *Making Peace: Dilemmas of Reconciliation*.
<http://www.cceia.org/>

Templeton Foundation- Forgiveness and Reconciliation: Religious Contributions to Conflict Resolution
http://www.templeton.org/spirituality_and_health/forgiveandreconcile/index.html

4.2 Truth and reconciliation commissions

The first national truth and reconciliation commission (TRC) was established in South Africa to address some of the most grievous abuses of the apartheid regime. The creation of the South African TRC sparked the instigation of truth and reconciliation commissions in a wide range of countries such as East Timor, Sierra Leone, and in various Latin American countries. While it is not possible to go into detail here about the diverse range of reconciliation commissions that have been formed in the context of national transitional justice processes, it is safe to say that from the start, the truth and reconciliation commission model has had both impassioned supporters and fervent critics amongst the public, researchers and policymakers. The large and growing literature on truth and reconciliation commissions has raised and investigated a plethora of criticisms of the TRC approach, from the lack of cultural relevance of reconciliation commissions to the morality and political advisedness of 'swapping' truth for justice. Various

researchers have compared and evaluated the mandates held by different commissions. For example, the South African TRC focused on the crimes committed by individuals, and was a relatively powerful commission insofar as it could 'name names' and instigate legal proceedings in the event of non-compliance. In contrast, the Guatemalan Commission for Historical Clarification (CEH) was criticised as a structurally weak body, as it could not identify or investigate the individual perpetrators of the crimes carried out during the country's civil war. However, the Guatemalan CEH arguably met with more success than its South African counterpart in highlighting the social forces that fostered impoverishment, conflict, and unchecked abuse from government and military forces. The Guatemalan CEH is notable as it was perhaps one of the more successful TRCs in terms of integrating the perspectives of displaced persons. CEH investigators hiked into remote areas of the country to interview thousands of civilians who were displaced by the war. Although the CEH was unable to interview all those who wished to give testimony, many of the formerly displaced persons who testified indicated that they found the experience to be an affirming one. The Commission concluded that the murder and forced displacement of thousands of Mayan civilians during the Guatemalan civil war was genocide, and deemed the Guatemalan state and its paramilitaries responsible for 93 percent of the atrocities committed during the war (Guatemala: Memory of Silence—Report of the Commission for Historical Clarification).

Websites

Carnegie Council on Ethics and International Affairs (2005) *Genocide and Aftermath: Rationalizing the Process of Truth and Reconciliation*.

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East Timor Commission for Reception, Truth and Reconciliation

<http://www.easttimor-reconciliation.org>

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<http://shr.aaas.org/guatemala/ceh/report/english/toc.html>

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South African Truth and Reconciliation Commission

<http://www.doj.gov.za/trc>

TRC: Commissioning the Past Workshop Page

<http://www.trcresearch.org.za>

Turkish Armenian Reconciliation Commission

<http://www.tarc.info>

4.3 Local reconciliation and coexistence initiatives

Following the genocides in the Balkans and Rwanda, the centrality of reconciliation to return and reintegration processes was made clear. Although complete reconciliation in the aftermath of such atrocities is clearly out of reach, some degree of reconciliation or an openness to coexistence is central to enabling refugees and IDPs to access durable solutions. Local-level reconciliation initiatives were launched in Bosnia and Rwanda by UN agencies and international, national and grassroots NGOs. Many focused on encouraging members of conflicting ethnic groups to undertake cooperative agricultural or entrepreneurial activities, or share public spaces such as schools and sports clubs. In countries such as Mozambique and Sierra Leone, even more informal routes to reconciliation have been pursued, drawing on local cultural resources such as traditional healing ceremonies. While some researchers and practitioners have wholeheartedly advocated the use of traditional cultural practices to promote reconciliation, other scholars have been more cautious, questioning the relevance of some of these practices for younger generations, their association with the subordination of women, and their ability to address the injustices at the root of conflict and displacement (for e.g. Nordstrom 1997, Honwana 1998).

In cooperation with Tufts and Harvard Universities, UNHCR sponsored a multi-year programme in return communities in Bosnia and Rwanda entitled *Imagine Coexistence*, through which UNHCR supported locally-led initiatives intended to promote the reintegration of minority returnees into communities struggling with persistent ethnic divides. The analysis of *Imagine Coexistence* and similar programmes have provided practitioners with valuable insights into the design and implementation of locally relevant reconciliation and coexistence activities that may translate into improved conditions for returnees and their neighbours.

Another major area for research on reconciliation is the ‘group encounter’ model, whereby selected members of conflicting groups are brought together to meet, become acquainted with one another’s viewpoints, and discuss approaches to conflict resolution. This approach has been used extensively in the Palestinian-Israeli context, at the local level as well as at the level of emerging political leaders (for e.g. Kelman 2004).

Websites

Abraham Fund

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<http://fletcher.tufts.edu/chrcr/pdf/imagine.pdf>

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<http://www.brandeis.edu/programs/Slifka>

Centre for the Study of Violence and Reconciliation
<http://www.csvr.org.za>

Fafo People-to-People Program
<http://www.people-to-people.org/>

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<http://www.c-r.org/>

IDRC Southern African Reconciliation Study
http://www.idrc.ca/en/ev-4465-201-1-DO_TOPIC.html

Parents Circle-Families Forum: Bereaved Families Supporting Peace, Reconciliation and Tolerance
<http://www.theparentscircle.com/>

Peace Research Institute in the Middle East (PRIME)
<http://vispo.com/PRIME/>

Weatherhead Center for International Affairs, Harvard University.
<http://www.wcfia.harvard.edu/>

5. Justice and reconciliation challenges

5.1 Models of justice

The pursuit of reconciliation and redress raises a range of complex questions about the goals, scope and limitations of justice, particularly in post-conflict environments. These questions have both practical and theoretical implications, and have been approached by philosophers as well as lawyers, practitioners, and students of politics and religion. Key issues include: negotiating inter-generational claims, distributing responsibility for past wrongs, and striking the correct balance between the 'forward-looking' and 'backward-looking' aspects of redress—that is, to what extent should justice be retributive, restorative, or distributive? Are criminal justice and reconciliation mutually exclusive? If not, how can these approaches be integrated? Are justice and reconciliation best pursued at the local, national or international levels? What roles do punishment and forgiveness play in post-conflict justice? While there are certainly no hard and fast answers to these questions, reflection on these theoretical debates, their practical impact, and their significance for displaced populations in particular is an essential part of improving approaches to transitional justice.

Websites

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IDRC Project, Community Justice as Restorative Justice in Colombia

http://www.idrc.ca/en/ev-59364-201-1-DO_TOPIC.html

Prison Fellowship International Restorative Justice On-line

<http://www.restorativejustice.org>

Rettberg, A. (ed.) (2005) *Between Pardon and Retribution*, Ottawa: International Development Research Centre. (Spanish)

http://www.idrc.ca/en/ev-83747-201-1-DO_TOPIC.html#begining

5.2 Public participation in reparations and reconciliation

Reconciliation and redress are complex, multi-faceted processes often involving hundreds of thousands of people from the grassroots to the level of national and international politics. As reparation and reconciliation are negotiated processes, displaced populations should have the opportunity to participate in decision-making on the types and structure of remedies offered for human rights violations, and local and national approaches to reconciliation. However, public participation in the negotiation of redress is unfortunately rare in practice. Nonetheless, researchers have been able to document several key cases of leadership from displaced communities in the negotiations process. For example, Guatemalan refugees in Mexico organised themselves into Permanent Commissions which, with the support of the international community, became influential actors in the national peace process. The Permanent Commissions engaged directly with the Guatemalan government to negotiate the conditions of their repatriation, including the establishment of a land restitution programme. Within Guatemala, small groups of IDPs bonded together to form Communities of Peoples in Resistance, which also reached agreements with the government on restitution. There is a need for further research on the decision-making, advocacy and organisational strategies employed by different groups of displaced persons. In addition, there is a dearth of information on how public participation influences the success of reparation and reconciliation programmes, and how programmes informed by popular participation fare in comparison to those that are not.

Public participation in the negotiation and implementation of reparations and reconciliation programmes may help to shape favourable public opinions towards redress, repatriation and reintegration of the displaced. These issues are explored in a growing body of public opinion studies that have been carried out in a variety of post-conflict contexts (for e.g. Stover and Weinstein 2004).

Websites

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Chinese Head Tax and Exclusion Act Redress Campaign
<http://www.ccnc.ca/redress>

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<http://www.cidh.oas.org/countryrep/CPR.94eng/Table.of.Contents.htm>

International Center for Transitional Justice and Human Rights Center of University of California, Berkeley (2005) *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda*, New York, ICTJ.
<http://www.ictj.org/>

Ouko, M. (2004) 'From warriors to peacemakers: People-to-people peacemaking in southern Sudan', *Forced Migration Review* 21: 28-29.
<http://www.fmreview.org/text/FMR/21/10.htm>

Riess, S. (2000) 'Return is Struggle, Not Resignation: Lessons from the Repatriation of Guatemalan Refugees from Mexico', *UNHCR New Issues in Refugee Research Working Paper No. 21*.
<http://www.unhcr.org/research/RESEARCH/3ae6a0c97.pdf>

Women Waging Peace
<http://www.womenwagingpeace.net>

5.3 Reparations, reconciliation and gender

Reparation and reconciliation processes often reflect and even exacerbate inequalities between men and women. While some scholars working in the field of reconciliation and transitional justice have effectively integrated gender analyses into their work, a significant proportion of the literature still fails to consistently engage with the gendered nature of human rights violations, displacement and redress. However, there is a notable body of work that specifically focuses on questions of gender, displacement and remedies for human rights abuses. Much of this research was sparked by the adoption in October 2000 of the groundbreaking Security Council Resolution 1325 on Women, Peace and Security, which calls on all actors involved in negotiating and implementing peace agreements to adopt a gender perspective that addresses 'the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction'. Major issues for research have included the prosecution of sexual crimes such as systematic rape by the ICTY and ICTR; the provisions made for prosecuting gendered crimes under the statutes of international courts such as the ICC; women-led campaigns for reparations and reconciliation; and the gendered impact of real property restitution programmes.

Websites

Farha, L. (2000) 'Women's Rights to Land, Property and Housing', *Forced Migration Review* 7.

<http://www.fmreview.org/text/FMR/07/07.htm>

IDRC: Gender and Reparations: Opportunities for Transitional Democracies?

http://www.idrc.ca/en/ev-82010-201-1-DO_TOPIC.html

Rehn, E. and Sirleaf, E.J. (2002) *Women War Peace: The Independent Experts' Assessment*, New York, UNIFEM.

<http://www.womenwarpeace.org/>

UNIFEM Portal on Women, Peace and Security

<http://www.womenwarpeace.org>

Women's Commission for Refugee Women and Children

<http://www.womenscommission.org>

6. Reparations, reconciliation and durable solutions

Please note that a significant proportion of the literature on reparations, reconciliation and the facilitation of durable solutions to displacement is addressed in the above sections. The purpose of this section is to provide additional detail on the nature and scope of the literature, and highlight a limited number of issues not addressed earlier in the guide.

6.1 Reparations, reconciliation and return

While the literature on reconciliation and reparations does not typically explicitly address the issue of forced migration, the connection between reparations, reconciliation and durable solutions has attracted considerable attention from researchers, who have focused in particular on the potential and limitations of real property restitution and compensation in terms of enabling the return of refugees and IDPs (for e.g. Black and Eastmond 2006). Redress for resettled or locally integrated refugees have rarely been explicitly investigated or discussed in the academic literature.

It is worth noting here that most studies on reparations, reconciliation and return are case-specific; to date, the return of displaced Bosnians and the potential return of the Palestinian refugees have received the most consideration. Research on restitution, compensation and the displaced Palestinians has focused on how redress may be used to resolve the refugee crisis and thereby support the achievement of peace between the Palestinians and Israelis. The International Development Research Centre has been instrumental in supporting this research agenda; many of the findings from this research programme are available through the Palestinian Refugee Research Net (PRRN).

Following the Bosnian war, the international community was optimistic that by ensuring

displaced Bosnians could regain access to their homes, they would return and thereby 'reverse the tide' of ethnic cleansing. However, evaluation studies completed by the wide variety of organisations and experts involved in the return and restitution processes confirmed that by itself restitution was not sufficient to establish conditions amenable to the return of refugees and IDPs, particularly those from minority groups. In light of the difficulties encountered in encouraging minority returns through restitution in Bosnia, several researchers have turned their attention to how restitution can be used alongside a broader range of reparation, reconciliation, development and security initiatives to enable return (for e.g. Englbrecht 2004). Increasingly, researchers concerned with the Balkans are adopting a broader and more critical focus, looking at the limitations of using reparations and reconciliation programmes to promote return, and examining the insights the Bosnian case holds for other regions.

Notably, researchers working in Bosnia as well as in countries such as Guatemala have also examined the significance of exhumations and dignified burials for returnees (for e.g. Pollack 2003, Psychosocial Working Group 2005). Exhumations may be the first step in gathering the evidence necessary to launch trials and other means of redress that entrench the experiences of displaced persons and other victims of human rights violations in the national historical record.

Websites

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Palestinian Refugee Research Net (PRRN)
http://www.arts.mcgill.ca/mepp/new_prn/

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Psychosocial Working Group
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6.2 Reparations, reconciliation and democratic and economic development

Reparations and reconciliation programmes have the potential to stimulate economic development and the establishment of democratic governance and the rule of law. The developmental impact of redress is closely tied to the ability of redress to promote durable solutions to displacement (see section 6.1). For many refugees and IDPs, housing and property restitution and compensation is essential to rebuilding livelihoods and reintegrating into the community. The land tenure reform process that often accompanies the housing and property restitution programmes is critical to long-term sustainable development, as is the provision of support to communities that have regained access to their lands through restitution. In South Africa, for example, communities that regained title over their traditional lands typically remained impoverished and the productive capacity of the land plummeted as the owners lacked the skills and support necessary to establish or sustain viable enterprises (Tomkova 2006). Despite the need for post-land transfer support programmes, such initiatives are virtually non-existent, and issue has been largely neglected by researchers.

Scholars writing on reparations and reconciliation have suggested that the willingness to deal with the legacy of past injustices and uphold the right to a remedy is a 'pillar of the rule of law and democracy' (Echeverria 2002: 2). The question of how to build domestic support for reconciliation and reparation programmes in democratic countries such as Israel is a complex one that is being tackled by a number of civil society organisations as well as by researchers.

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