

ICTJ | 10 years



BROOKINGS-LSE

Project on Internal Displacement

Case Studies on Transitional Justice and Displacement

# Gender, Transitional Justice, and Displacement

Challenges in Africa's Great Lakes Region

Lucy Hovil  
July 2012

### **Transitional Justice and Displacement Project**

From 2010-2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. The project examined the capacity of transitional justice measures to respond to the issue of displacement, to engage the justice claims of displaced persons, and to contribute to durable solutions. It also analyzed the links between transitional justice and other policy interventions, including those of humanitarian, development, and peacebuilding actors. Please see: [www.ictj.org/our-work/research/transitional-justice-and-displacement](http://www.ictj.org/our-work/research/transitional-justice-and-displacement) and [www.brookings.edu/idp](http://www.brookings.edu/idp).

### **About the Author**

Lucy Hovil is Senior Researcher at the International Refugee Rights Initiative and co-ordinates a project entitled Citizenship and Displacement in the Great Lakes region, a policy-oriented research initiative carried out in conjunction with the Social Science Research Council. To date she has carried out studies in Tanzania, Burundi, Uganda, Democratic Republic of Congo, and South Sudan. She is also the Managing Editor of the *International Journal of Transitional Justice*. Previously she spent eight years at the Refugee Law Project, Makerere University, Uganda, where she founded and developed the organization's research and advocacy department, and wrote or edited 21 working papers on displacement, conflict, and post-conflict reconstruction in Uganda. Before that, she wrote her doctoral thesis at the School of Oriental and African Studies, London University, on the relationship between violence and identity, using a case study of the conflict prior to South Africa's first democratic election.

### **Acknowledgements**

ICTJ and the Brookings-LSE Project on Internal Displacement wish to thank the Swiss Federal Department of Foreign Affairs (FDFA) and the Canadian Department of Foreign Affairs and International Trade (DFAIT), which provided the funding that made this project possible.

### **About ICTJ**

ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice measures, including criminal prosecutions, reparations initiatives, truth seeking, memorialization efforts, and institutional reform. For more information, visit [www.ictj.org](http://www.ictj.org).

### **About the Brookings-LSE Project on Internal Displacement**

The Brookings-LSE Project on Internal Displacement was created to promote a more effective response to the global problem of internal displacement and supports the work of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. It conducts research, promotes the dissemination and application of the Guiding Principles on Internal Displacement, and works with governments, regional bodies, international organizations and civil society to create more effective policies and institutional arrangements for IDPs. For more information, visit: [www.brookings.edu/idp](http://www.brookings.edu/idp).

---

The views expressed in this paper are the author's own and do not necessarily reflect the views of the International Center for Transitional Justice or the Brookings-LSE Project on Internal Displacement.

## Table of Contents

<b>1. Introduction</b> .....	<b>4</b>
<b>2. Sexual and Gender-Based Violence</b> .....	<b>5</b>
<b>3. Return, Access to Land, and the Economic Context</b> .....	<b>8</b>
<b>4. Men and the Association of Guilt</b> .....	<b>11</b>
<b>5. Conclusion</b> .....	<b>13</b>
<b>6. Notes</b> .....	<b>14</b>

## Introduction

Displacement is one of the most widespread and tangible consequences of conflict.<sup>1</sup> Yet although it is a trademark of many of today's wars and their aftermath, legislation and mechanisms that deal with the legacies of displacement lag far behind. This deficit is nowhere more apparent than in the Great Lakes region of Africa, where Uganda, Sudan, Rwanda, Burundi, Kenya, and the Democratic Republic of the Congo (DRC) have all experienced massive levels of war-induced displacement. While the region is now host to a dizzying number of ongoing and proposed experiments with the tools of transitional justice—international and hybrid tribunals, truth and reconciliation commissions, *gacaca*, special courts, and International Criminal Court (ICC) investigations—none have effectively and explicitly dealt with identifying individual criminal responsibility for forced displacement and its consequences,<sup>2</sup> although the ICC has charged numerous individuals in Sudan and Kenya with crimes against humanity that include forcible transfer or deportation.<sup>3</sup>

Displacement by definition represents a fundamental rupture between individuals and their homeland; it is a profound demonstration of a government's failure to protect—or, worse still, of its role as the perpetrator of abuses against its citizens. Whether as refugees who have fled across a border or as internally displaced persons (IDPs) who have remained within the geographical borders of their state, displacement often represents a chronic failure on the part of the government to ensure the safety of its citizens. The need to deal with the fallout from displacement, therefore, is critical to the future reconstruction of the state in the aftermath of conflict—and to the rebuilding of the crucial bond of citizenship. Relevant to this process are the key goals of transitional justice as recently outlined by Pablo de Greiff—namely, to provide recognition to victims, foster civic trust, and contribute to reconciliation and democratization.<sup>4</sup> Transitional justice mechanisms, therefore, cannot afford to overlook this area of injustice: they are vital tools not only for creating the conditions for return, but also for ensuring the durability of that return.

The challenge, of course, is determining what it might look like in practice for transitional justice to address the legacies of displacement, and in order to do this there is a need to unwrap some of the dynamics surrounding the concept of displacement itself. Displacement is not a homogenous term: inevitably, it takes multiple forms and incorporates a plethora of different experiences along cultural,

ethnic, religious, generational, political, and economic lines. For instance, not only are there significant legal distinctions between refugees and IDPs, but within these two categories there is massive discrepancy with regard to the experience of displacement. Of specific interest to this paper is the extent to which a common trajectory of displacement—flight, exile, and return—affects men and women, and boys and girls differently.<sup>5</sup> It is crucial to ensure a specifically gendered understanding of displacement and the mechanisms that are needed not only to reabsorb those who return, but also to address the issues that generated their flight in the first place and the additional challenges they might have encountered in exile. It is argued, therefore, that while transitional justice mechanisms must engage with the impact of displacement in general, any discussion regarding the causes and impacts of displacement and its aftermath needs to be mindful of a number of gender-specific dynamics that can all too easily be obscured by the sheer scale and devastation of the problem.

This paper focuses on Africa's Great Lakes region, where levels of displacement have been chronically high by any standard. It considers briefly three salient gender-specific dynamics of conflict and displacement that need to be incorporated within any post-conflict reconstruction or transitional justice effort. These three areas are by no means the only gender-specific dynamics that could be discussed, but they represent specific concerns highlighted by recent research conducted by the author in the Great Lakes region.<sup>6</sup> They also point to the fact that gender-specific understandings of conflict and displacement are critical more generally to any post-conflict reconstruction. First, the paper considers the implications of sexual and gender-based violence against women and men at all stages of displacement (prior to, during, and post displacement) and the implications for transitional justice mechanisms. Second, it looks at some of the gender-specific economic consequences of displacement and the subsequent search for durable solutions, focusing specifically on the challenges faced by women at the point of return and the relevance of gender specificities for any reparations or restitution programs. Finally, it considers the vulnerability of young men and their association with conflict, which affects their ability to safely repatriate within certain contexts.

## Sexual and Gender-Based Violence

Rape and other forms of sexual and gender-based violence (SGBV) are increasingly being recognized within the context of gross violations of human rights and as war crimes.<sup>7</sup> This recognition is critical, given that SGBV has been used extensively as a weapon of war within the Great Lakes region. Several factors have led not only to high levels of sexual violence in the region, but also to a chronic deficit in dealing with both the survivors and perpetrators of such violence. The prevalence of conflict in the region is perhaps the most palpable factor—conflicts in which civilians are not only unprotected but also often primary targets of violence. For instance, over the course of 15 years of conflict in the DRC, extraordinarily high numbers of civilians have become victims of rape, with rebels and government forces alike accused of perpetrating sexual crimes.<sup>8</sup> Likewise, in Sudan, in both the civil war between North and South Sudan and the ongoing conflict in Darfur, parties to the conflicts have used sexual violence as a weapon of war. This sexual violence “is not sporadic or random, but is inexorably linked to the systematic destruction of their communities”<sup>9</sup> and, therefore, is itself a cause of displacement. Conflict, in turn, has inevitably led to high levels of displacement in which refugees and IDPs remain

particularly vulnerable to sexual abuse, both during flight and in a context of displacement. In the IDP camps in northern Uganda, for instance, research has shown that the environment of the camps, created deliberately as part of the government's counterinsurgency campaign, was a major cause of SGBV. Not only were community structures broken down as a result of displacement, and further disrupted by the reorganizing constraints of humanitarian response, but the structures of the camps were themselves seen as having exacerbated—or at least provided the context for—incidents of SGBV.<sup>10</sup> High levels of SGBV were specifically linked to men not fulfilling their domestic obligations with regard to providing for their families and contributing to school fees, due to the loss of their power as a result of the conditions in the camps and the resultant change in their identity.<sup>11</sup> Likewise, in IDP camps in Sudan, women and children have remained vulnerable to sexual violence,<sup>12</sup> particularly when forced to collect firewood in areas where they are commonly targeted by groups of armed men who rape them. Domestic violence within the IDP camps is also reportedly high.<sup>13</sup>

Within this context, access to justice has too often been appallingly deficient, and perpetrators are held accountable neither while the conflict is ongoing nor, even less excusably, in post-conflict environments.<sup>14</sup> Access to justice within refugee and IDP camps is lacking or nonexistent. Camps are too often run and perceived as isolated islands outside of national jurisdiction, particularly in cases where UNHCR or other international actors effectively run the camps in a context of limited national capacity. Linked to this is the somewhat xenophobic notion that what goes on inside a camp is irrelevant to wider national processes unless it has a direct bearing on the “outside.”<sup>15</sup> At the same time, those living outside of the camps as self-settled refugees often have ambiguous legal status and are therefore a) less likely to report crimes committed against them and b) less likely to be taken seriously if they do. As a result, women and girls are vulnerable to suffering double marginalization in exile.

While this situation often reflects a wider culture of impunity, sexual violence is a particularly hidden crime as victims are reluctant—or unable—to report attacks: survivors of sexual violence frequently encounter severe prejudice from members of their families and communities and are therefore reluctant to publicize any attacks. In an enclosed context such as a refugee camp, the impact of stigma is only more powerful—and, worse, the violence is seen as somehow “normal” or at least inevitable. And sexual violence has far-reaching effects beyond its immediate physical and psychological trauma. Both within the context of displacement and at the point of return, survivors are often rejected by their spouses and families and shunned by their communities; the stigma prevents many from ever being able to lead a “normal” life.

Although less attention is given to sexual violence against men, this particular category of SGBV is a serious issue that also demands careful consideration in situations of conflict, in the context of displacement, and in any subsequent transitional justice mechanisms.<sup>16</sup> Reports of sexual violence against men and boys have come from across the Great Lakes countries, including Burundi, Central African Republic, DRC, Rwanda, Sudan, and Uganda.<sup>17</sup> Both during conflicts and in displacement, there is growing awareness of the extent to which men and boys have been victims of SGBV.<sup>18</sup> The true scale of the situation remains unknown, as it is difficult to obtain reliable statistics for male victims, just as with female victims, for a number of reasons, including a fear of reporting the problem due to the particular stigmatization associated with sexual violence against men.

While many of those who have not fled might still have been victims of SGBV, the displaced are

particularly vulnerable at the point of return. In many instances, the perpetrators are from within, or are known to, the victims' communities, and returning to the place where the crime took place can be not only psychologically painful but also dangerous. In addition, the enormous ramifications for an individual's health and the potential for pregnancy resulting from rape are long-term consequences that have to be carefully dealt with. Too often, acts of SGBV are effectively a death sentence for the victims—physically and psychologically. Recent research in the DRC's North Kivu province points to chronically high levels of mental breakdown following SGBV: extreme levels of brutality, in particular SGBV, were frequently referred to with regard to the destruction of communities and the fear of return. One woman talked of how she had been abandoned by her husband after being raped while pregnant,<sup>19</sup> while a young man told of how his wife became mentally ill as a result of the trauma of rape.<sup>20</sup> Furthermore, displacement has reinforced the impact of the war, as, in addition to being forced from their homes, the majority of displaced people have been forced to live in chronically unstable conditions amid ongoing insecurity. Many feared that returning home would lead to a resurgence of the brutality that forced them to flee. Mechanisms for dealing with these atrocities are critical to the rebuilding of lives; otherwise, personal vendettas will continue to haunt communities and generate the conditions for future violence.<sup>21</sup>

The need for transitional justice mechanisms to be mindful of the realities of SGBV that might have taken place before flight and during displacement is critical. In order for a country to meaningfully deal with legacies of violence, this particularly pernicious and hidden crime needs to come to light and be dealt with—but in ways that do not reinforce the stigma and the consequences associated with such crimes. Within this context, the question of how to pursue justice is extremely fraught and will likely be highly context specific. For instance, how such crimes can be incorporated into a truth-telling process in such a way as to not further exacerbate trauma and vulnerability is critical, as is the need to protect survivors in criminal prosecutions. Institutional reform, particularly within the security sector, is a key area for generating both justice and the longer-term conditions of security. The issue of reparations is also vital—indeed, for many, this might be a priority, as women are left looking after children born as a result of rape or are living with the massive economic, physical, and psychological consequences of contracting sexually transmitted diseases. Yet, once again, pursuing appropriate justice in this context—one in which resources are minimal and justice mechanisms are already overstretched—is highly problematic and has yet to be adequately grappled with in a context such as the Great Lakes.

That said, it is encouraging that the policy context is increasingly recognizing the scope of the problem of SGBV as well as its linkages with conflict and the general failure to protect human rights in the region. For instance, the International Conference on the Great Lakes Region (ICGLR), a regional grouping of 11 states<sup>22</sup> mandated to develop laws, policies, and programs to combat the interrelated problems of peace, security, development, and good governance in the region, adopted a Protocol on the Prevention and Suppression of Sexual Violence against Women and Children (the “Sexual Violence Protocol”) in 2006. This protocol was one of 10 adopted under the framework of the *Pact on Security, Stability and Development in the Great Lakes Region*, addressing a wide ambit of issues from good governance to nonaggression. The inclusion of the Sexual Violence Protocol signals an understanding by states that tackling SGBV is an essential element of building peace and security in the region and is thus a regional responsibility. The protocol explicitly recognizes the destructive impact of SGBV

on the “lives, health, physical, psychological, social and economic wellbeing of women and children,” and its contribution to the perpetuation of conflict—“spill over”—and the creation of impediments to the right to development in the region.<sup>23</sup>

Reflecting this holistic conception of the phenomenon, the Sexual Violence Protocol deals with the criminal law dimensions of SGBV, significantly expanding the range of acts proscribed under international and national law, while also addressing how to prevent sexual violence, support and compensate survivors, and treat offenders. A detailed overview of the protocol is beyond the scope of this paper, but among its critical—and in some respects extremely progressive—elements from a transitional justice perspective are an expanded definition of SGBV, the abolition of statutes of limitations for SGBV crimes, requirements for compensation, and the creation of special procedures to ensure that the vulnerability of victims of SGBV is not an obstacle to the lodging of complaints. While the protocol refers to SGBV in multiple contexts, all of these facets are relevant in any situation of displacement. Its major shortcoming, however, is that it does not recognize the prevalence of SGBV against men (although it does mention SGBV against boys under 18)—but there is recognition of this flaw by civil society.<sup>24</sup>

Finally, and as something of an antidote to the levels of victimization that inevitably result from widespread SGBV, it is also important to emphasize that women can play a key—and often unrecognized—role in ending conflict.<sup>25</sup> For example, during Uganda’s West Nile conflicts, which took place in the aftermath of President Yoweri Museveni’s rise to power, women refused to sleep with their husbands unless the men renounced rebellion and turned themselves in to the army under an amnesty.<sup>26</sup> The empowerment that this represents should be recognized and capitalized upon in transitional justice processes. The psychological and physical scars of SGBV are likely to never fully heal, but empowering those who have been its victims to retake control of their lives is a powerful antidote to the dehumanizing nature of such abuse. Therefore, to the extent possible, transitional justice should try to play a crucial empowering role by acknowledging and making known the positive contribution made by women and other groups typically seen only as “victims” in order to help restore a sense of identity, and for those who not only suffered SGBV but have also been displaced, to help to redress the multiple layers of violation that they have experienced.

## Return, Access to Land, and the Economic Context

A second gender-specific issue that needs to be incorporated into transitional justice efforts relates to the economic well-being of families in the aftermath of displacement. In particular, the needs of women who do not have the active support of a male relative suggest that reparations or restitution programs are critical and urgent at the point of return, with access to land being one of the key issues in this regard. While humanitarian aid might alleviate some of the struggles for returning refugees and IDPs, evidence shows that it is too often inadequate and, inevitably, only palliative; too often it fails to deal with root causes of inequality. Longer-term solutions need to be sought, and transitional justice mechanisms can play a role in ensuring that the approaches used not only are equitable but also deliberately take into consideration gender concerns. In addition, humanitarian aid is too often

driven by political agendas that determine who is helped where. For instance, in the case of refugees, UNHCR, which acts as the primary coordinator of aid, will generally not assist refugees who were living outside of designated settlements during exile or who do not conform to the agency's model of repatriation. The way in which repatriation exercises are typically carried out can often undermine refugees' coping mechanisms—for instance, they might be forced to move just before their crops are ready for harvest, forcing them to leave all their food behind, or to leave in the middle of the academic year, which negatively impacts children at school.

The current return process in Burundi following the signing of the Arusha Agreement provides an example of some of the issues that are typically raised at the point of return from exile and some of the pressure points that have arisen as a result of inadequate transitional mechanisms being in place. Burundi is feeling its way through a fragile transition toward sustainable peace after decades of conflict: its economy is in tatters; it is demobilizing thousands of former rebels; and it is trying to reconstruct governance and judicial institutions that are critical to the running of the country.<sup>27</sup>

It is in this context of transition that Burundi has witnessed the return of almost half a million refugees since 2002. Their return has been motivated, at least in part, by push factors in countries of exile, in particular Tanzania, which has put pressure on Burundian refugees to leave.<sup>28</sup> The process of return—which has been carried out with serious limitations on resources and a chronic deficit in available land for livelihoods within Burundi—has placed huge demands on families as they seek to reconstruct their lives in their homeland. Burundian land law, which would generally exclude many of the returnees from (re)accessing land due to the length of time they have been out of the country (many since 1972), is being balanced against the requirements of the country's transitional arrangements and developing international norms that emphasize the need for accommodation of returning populations.<sup>29</sup> The Arusha Peace Accords acknowledge the need to balance the restitution of property to returnees with the need to safeguard the rights of the current legitimate property holders, providing that “all refugees and/or *sinistrés* must be able to recover their property, especially their land; if recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification.”<sup>30</sup> In practice, what this means is that returnees are being asked to share the land that they owned prior to flight with those who are currently on the land—but without any compensation, due to resource constraints. The government is deliberately articulating this approach as a means of promoting reconciliation, and in many respects it is hard to see a viable alternative. And while many of those who are being forced to share land generally recognize it as a pragmatic response to a complex problem, in reality it is putting households under enormous economic pressure.<sup>31</sup>

Within this context, women-headed households are particularly vulnerable. In the first instance, their immediate survival is hugely challenging as they have returned home with almost nothing after decades in exile.<sup>32</sup> Second, women encounter significant hurdles to (re)accessing land. Current Burundian law does not allow women to inherit land from their parents, and instead many women are forced to rely on the goodwill of their families, often a precarious situation. In addition, widows struggle to retake possession of their husbands' land in situations in which their in-laws do not recognize their right to the land, and women whose husbands had died before they had had children spoke of how they are not able to claim their husband's possessions, including land that he would have inherited. A further complication is the extent to which many men apparently refuse to recognize

the legitimacy of marriages that took place in exile under either customary or Tanzanian law. As a consequence, there have apparently been numerous instances in which husbands use this as an excuse to abandon their wives and marry other women under Burundian law. Finally, there was reference to the fact that while polygamy is legal in Tanzania, in Burundi it is not. Therefore, second and third wives find themselves abandoned at the point of return.<sup>33</sup>

As a result, many women-headed households, including those headed by widows and women abandoned by their husbands, remain in limbo, unable to access land and therefore unable to support their families. The official humanitarian response has been to create “peace villages”—an attempt by UNHCR to resolve the issue. These artificially created villages, on pieces of vacant or unwanted land, were seen by those who had been relocated there to exemplify the worst of return and reintegration. Returnees were adamant that the villages provided neither compensation for land that has been lost nor the much-needed assistance for those who are unable to locate or reclaim their land. Most importantly, the villages are not seen to offer the potential for returnees to genuinely reintegrate within Burundi or to feel included in the wider processes of the country; the creation of the villages did not take into consideration the need for anything more than the immediate physical survival of returnees.<sup>34</sup> In other words, women who already felt marginalized were further isolated by the mechanisms that were supposedly put in place to assist them.

To the extent that gaining access to land is key to accommodating up to half a million returnees, it is clear that transitional justice processes will have to engage with this issue, in particular through restitution or reparation programs. It is also clear that the needs of women, who are particularly vulnerable in this context, should not be overlooked by any such programs that might take place in Burundi in the future. While a considerable amount of lip service is paid to particular “vulnerable groups” within humanitarian discourse, in practice those who are most vulnerable too often fall off the official radar and become “invisible” within official assistance structures.

Furthermore, in pushing for reparations or restitution of property, careful attention needs to be given to the rights of women in a country in which the preconflict context was profoundly biased against women. There is a need to address not only the fallout from the conflict, but also inequalities and discrimination that existed before and regardless of the conflict. Creating an opportunity for a better realization of equal citizenship regardless of gender<sup>35</sup> should be promoted by any transitional justice mechanisms that are instituted. While many of the wrongs cannot necessarily be righted in this regard, recognition of the specific nature of suffering that groups have undergone can become a driver of post-conflict reconstruction. In other words, inequalities linked to the inability to resecure the rights attached to citizenship can be addressed<sup>36</sup> through the restoration (or creation) of civic trust—which, in turn, would play a key role in restoring the citizen-state bond.

The inability to reclaim property can, then, in some circumstances, be a critical obstacle to the return of refugees. In this context, there has been an effort to clarify international obligations of states with regard to ensuring that populations that have fled are able to reclaim property left behind in the country of origin. These have drawn on general principles of law and international principles relating to property rights. Some particularly important reference points are the Guiding Principles on Internal Displacement, the International Law Association Declaration of Principles of International Law on

Internal Displacement, and the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles). In addition, a new regional agreement dealing with the issue of the property of returning populations has recently entered into force in Burundi: the International Conference on the Great Lakes Region Protocol on the Property Rights of Returning Persons. The protocol explicitly deals with the specific challenges facing displaced women returning home, including issues relating to deceased spouses and title succession and single parenthood. More broadly, it requires that member states “give effect to the legal capacity of returning women *and all women*, including single women, to own land and other property in their own right, without discrimination of any kind.”<sup>37</sup> Thus, although focused on addressing the protection of the rights of the forcibly displaced and particularly forcibly displaced women, the protocol has the potential to expand the quality of protection available to all women with respect to the registration and recognition of land title—in other words, for transitional justice and humanitarian mechanisms to be part of a broader process of institutional reform. It is expected, however, to be quite a while before the protocol’s vision and systems of dispute resolution around land issues are actually implemented effectively.

## Men and the Association of Guilt

A third area of specific concern within the context of displacement and transitional justice, and one that is perhaps less obvious within a gender-specific paradigm, is the plight of men who are associated by virtue of their age and gender with participation in conflict. Throughout the Great Lakes region, young men have been vulnerable to forced recruitment not only in the context of conflict itself, but also in exile. During Sudan’s civil war, for instance, the Sudan People’s Liberation Army (SPLA) forcibly recruited young men out of the refugee camps in northwestern Uganda with the acquiescence of the government of Uganda’s armed forces, the Uganda People’s Defence Forces.<sup>38</sup> As a result, many young men fled to Kampala, where their protection concerns were ignored; they were denied access to assistance unless they returned to the camps. Inevitably, many refused to return and became exceedingly vulnerable to arbitrary arrest as a result.

Recent research among Rwandan refugees living in Uganda<sup>39</sup> further highlights some of the issues relating to the negative association of men with armed conflict. In particular, men who are considered old enough to have participated in the genocide that took place in Rwanda in 1994 and who are currently displaced are having considerable problems returning to Rwanda. For this group, particularly those of Hutu ethnicity, there is often an assumption, particularly within the government, that they must be *génocidaires*. The stories told by those who remain in exile revealed that many displaced men are afraid to return home because of the *gacaca* courts, a traditional community-level mechanism of justice that was transformed into a tool for dealing with perpetrators of genocide. While these courts represent a creative response to the overwhelming need for justice in the aftermath of the genocide, and have achieved this goal in some respects, the research findings suggest that in practice they have become vulnerable to manipulation by those seeking to settle personal grudges or as an instrument of government repression.

The initial failure by states of asylum to screen refugee populations and bring génocidaires in their midst to justice has only exacerbated the collective assumption of guilt, leaving considerable numbers of men vulnerable as a result. Indeed, the former Rwandan armed forces, the *Forces Armées Rwandaises*, were able to regroup and restructure within refugee camps to devastating effect,<sup>40</sup> and the fallout from the failure to distinguish génocidaires from genuine refugees continues to be felt today. It also led to a major shift within the humanitarian establishment, with growing awareness of the political ramifications of humanitarian action as the concept of the passive “good” refugee without agency or political intention began to be challenged: “It was recognised that humanitarian action carried out without corresponding attention to justice and international humanitarian law obligations could create the context for situations of massive violations of human rights. The lack of adequate screening at the point of flight continues to haunt the ability for those displaced to return.”<sup>41</sup>

In this context, a mechanism that has been implemented to try to address the complexities of creating justice in Rwanda in the aftermath of the genocide—the gacaca courts—has, inadvertently, become a tool for repressing a section of the population. This has created a tension between the demands of justice and the delivery of justice, where the government is largely dictating and controlling the latter. It is clear, then, that in a context in which, effectively, victor’s justice is allowed to dominate, certain categories of people are likely to be vulnerable to miscarriages of justice—in this case through the collective association of guilt with a certain category of men—which, in turn, has a strong, negative impact on their ability to return. It is therefore important that adequate checks and balances are in place in order to insure that everyone has access to fair trial regardless of gender, ethnicity, or age. This is easier said than done, of course, but adequate awareness and recognition of the shortcomings of any process is a crucial first step to addressing them. In particular, proper implementation of the exclusion clauses set out in the two principal refugee conventions,<sup>42</sup> which prohibit individuals who have committed serious crimes from being considered refugees, would make a significant difference regarding the way in which groups of refugees are associated with the violence from which they fled.

Rwanda has aggressively pursued the return of all its citizens, and the geopolitical dynamics in the region mean that there is decreasing ability for Rwandans to remain in exile. Without adequate recognition of the protection concerns of displaced men, they will remain extremely vulnerable to forced deportation, as recently witnessed in Uganda.<sup>43</sup> At the same time, it is vital that transitional justice mechanisms are not politically manipulated to the extent that they become a source of injustice. The extent to which men in exile have remained vulnerable is linked to the fact that transitional justice mechanisms in Rwanda have been profoundly one-sided, creating and reinforcing a victim/perpetrator dichotomy based strongly along ethnic lines. The reinforcement of singular versions of history in Rwanda, in which all Tutsis are victims and all Hutus perpetrators, has perpetuated the dangerous cyclical polarization of identities that has had such a devastating impact on the country. As a result, many Rwandan refugees, particularly those who fit certain profiles, see an unequal political and justice system that makes return not only unpleasant but dangerous.

Although such victor’s justice is somewhat predictable in a context where the current government is seen to have been responsible for ending the genocide—and, therefore, has huge amounts of justice capital as a result—it is critical that the fallout from this is adequately recognized. Many Rwandan men are likely to remain vulnerable until Rwanda engages in a far more honest appraisal of its history,

including the genocide and violence that preceded and followed it. The specific vulnerabilities of these men need to be recognized, not least in a context in which there is considerable pressure on them to repatriate.

## Conclusion

The gender implications of displacement and their linkages with transitional justice processes are enormous, and this paper only begins to skim the surface. However, at the end of the day, as when dealing with gender implications more generally, the critical factor is that all responses both to displacement and transitional justice maintain a gender perspective and a commitment to searching for the specific, and often hidden, dynamics that have their roots in gender inequality or the build-up of specific prejudice against groups. At the end of the day, if the key goals of transitional justice are to give recognition to victims, foster civic trust, and contribute to reconciliation and democratisation,<sup>44</sup> then it is vital that specific groups of people—whether on the basis of gender or any other category—are not excluded from the process. These goals can infuse wider processes of post-conflict reconstruction, such as broader structural reform or humanitarian and development mechanisms. But ultimately, of course, this discussion remains largely hypothetical; it is still focused on potential future mechanisms of justice rather than on what is currently being delivered. These ideals, while critical, have to translate into workable deliverables in a context that is hugely challenging economically and politically.

## Notes

- <sup>1</sup> See Lucy Hovil, “Confronting a Deficit: Decades of Injustice in northern Uganda” (E-Newsletter, African Transitional Justice Research Network, February 2009), <http://www.transitionaljustice.org.za/~atjrnor/images/docs/newsletter3.pdf>.
- <sup>2</sup> Interestingly, the African Commission on Human and Peoples’ Rights has made findings relating to state responsibility for forced displacement and exile.
- <sup>3</sup> Article 8(2)(e)(viii) of the Rome Statute defines a war crime in noninternational armed conflict as, among others, “ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.” UN General Assembly, Rome Statute of the International Criminal Court, July 17, 1998, *entered into force* July 1, 2002, U.N. Doc. A/CONF.183/9. Regarding charges against individuals in the Sudan and Kenya cases, see “ICC-02/05: Situation in Darfur, Sudan,” International Criminal Court, <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/>; and “ICC-01/09: Situation in the Republic of Kenya,” International Criminal Court, <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200109/>.
- <sup>4</sup> Pablo de Greiff, “Theorizing Transitional Justice,” in *NOMOS LI: Transitional Justice*, ed. Melissa Williams, Rosemary Nagy, and Jon Elster (New York: New York University Press, 2012).
- <sup>5</sup> Other trajectories of displacement include resettlement or local integration. Lucy Hovil, “The Inter-relationship between Violence, Displacement and the Transition to Stability in the Great Lakes region” (Concept Paper, Violence and Transition Roundtable, May 7–9, 2008, Centre for the Study of Violence and Reconciliation, Johannesburg, South Africa), <http://www.refugee-rights.org/Publications/Papers/2008/PDFs/CSVRPaper.Mayo8.pdf>.
- <sup>6</sup> The author is the senior researcher for a region-wide research and advocacy project, Citizenship and Displacement in the Great Lakes Region, which has been undertaken by the International Refugee Rights Initiative (IRRI) and the Social Science Research Council (SSRC). To date, four papers have been published by IRRI, all available on [www.refugee-rights.org](http://www.refugee-rights.org): with Rema Ministries, “Going Home or Staying Home: Ending Displacement for Burundian Refugees in Tanzania” (Working Paper no. 1, Citizenship and Displacement in the Great Lakes Region, November 2008); also with Rema Ministries, “‘Two People Can’t Share the Same Pair of Shoes’: Citizenship, Land and the Return of Refugees to Burundi” (Working Paper no. 2, Citizenship and Forced Migration in the Great Lakes Region, November 2009); “Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo” (Working Paper no. 3, Citizenship and Displacement in the Great Lakes Region, March 2010); and with the Refugee Law Project, “A Dangerous Impasse: Rwandan Refugees in Uganda”

- (Working Paper no. 4, Citizenship and Displacement in the Great Lakes Region, June 2010). Research is currently underway for a fifth study focusing on the repatriation of Sudanese refugees from Uganda.
- 7 Ruth Rubio-Marín, “The Gender of Reparations in Transitional Societies,” in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009).
  - 8 Oxfam, “Women and Children First: On the Frontline of War in the Kivus” (Oxfam briefing paper on the protection of civilians in the Kivus, DRC, July 2010), <http://www.oxfam.org/sites/www.oxfam.org/files/congo-protection-survey-2010-07.pdf>.
  - 9 Refugees International, “Laws without Justice: An Assessment of Sudanese Laws Affecting Survivors of Rape,” June 2007, <http://www.refugeesinternational.org/policy/in-depth-report/laws-without-justice-assessment-sudanese-laws-affecting-survivors-rape>.
  - 10 Moses Chrispus Okello and Lucy Hovil, “Confronting the Reality of Gender-based Violence in Northern Uganda,” *International Journal of Transitional Justice* 1, no. 3, (December 2007): 433–443.
  - 11 See Chris Dolan, “Collapsing Masculinities and Weak States: A Case Study of Northern Uganda,” in *Masculinity Matters: Men, Masculinities and Gender Relations in Development*, ed. F. Cleaver (London: Zed Books, 2003).
  - 12 Internal Displacement Monitoring Centre, *Sudan: 4.9 million IDPs across Sudan Face Ongoing Turmoil: A Profile of the Internal Displacement Situation*, May 27, 2009, <http://www.unhcr.org/refworld/docid/4a1d400c2.html>.
  - 13 Human Rights Watch, “Five Years On: No Justice for Sexual Violence in Darfur,” April 2008, [http://www.hrw.org/sites/default/files/reports/darfuro408\\_1.pdf](http://www.hrw.org/sites/default/files/reports/darfuro408_1.pdf).
  - 14 For example, consider the substantial problems relating to access to justice in Uganda’s West Nile region. See Lucy Hovil and Moses Chrispus Okello, “Partial Justice: Formal and Informal Justice Mechanisms in Post Conflict West Nile” (Refugee Law Project Working Paper 21, May 2007), [http://www.refugeelawproject.org/working\\_papers/RLP.WP21.pdf](http://www.refugeelawproject.org/working_papers/RLP.WP21.pdf).
  - 15 See, for example, Jennifer Hyndman, “Refugee Camps as Conflict Zones: The Politics of Gender,” in *Sites of Violence: Women and Conflict Zones*, ed. Wenona Giles and Jennifer Hyndman (Berkeley and Los Angeles: University of California Press, 2004), 193–211.
  - 16 See Human Rights Watch, “Seeking Justice: The Prosecution of Sexual Violence in the Congo War,” March 7, 2005, <http://www.hrw.org/reports/2005/03/07/seeking-justice>; and Refugee Law Project, “Nobody is Immune: Gender Against Men,” press release, June 3, 2009, [http://www.refugeelawproject.org/press\\_releases/Gender\\_Against\\_Men\\_Press\\_Release.pdf](http://www.refugeelawproject.org/press_releases/Gender_Against_Men_Press_Release.pdf).
  - 17 Sandesh Sivakumaran, “Sexual Violence against Men in Armed Conflict,” *European Journal of International Law* 18, no. 2 (April 2007): 253–276.
  - 18 See, for example, the Refugee Law Project documentary *Gender Against Men*, which exposes the hidden world of SGBV against men in the conflicts of the Great Lakes region. The film demonstrates how male identities are under attack and how rape, when used as a weapon of war, affects all men—husbands, fathers and brothers—as well as the wider community. Refugee Law Project, 2008, available on Vimeo, <http://vimeo.com/10430187>.
  - 19 Interview with Congolese woman, Nyakabande Transit Camp, Kisoro, May 25, 2009, cited in IRRI and SSRC, “Who Belongs Where?”
  - 20 Interview with Congolese man, Nakivale (Ngarama), May 21, 2009, cited in IRRI and SSRC, “Who Belongs Where?”
  - 21 IRRI and SSRC, “Who Belongs Where?”
  - 22 Angola, Burundi, Central African Republic, Democratic Republic of the Congo, Kenya, Republic of the Congo, Rwanda, Sudan, Tanzania, Uganda, and Zambia.
  - 23 Preamble, ICGLR Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, November 2006.

- <sup>24</sup> Refugee Law Project, *Gender against Men*.
- <sup>25</sup> Although UN Security Council Resolution 1325 shows a recognition of both the impact of armed conflict on women and the role they have to play in its resolution, the integration of women's voices into post-conflict discussions—and into the mechanisms that are associated with the idea of transitional justice—remains somewhat opaque. This point is made by Rubio-Marin, “Gender of Reparations.”
- <sup>26</sup> For more information on the West Nile conflicts, see Lucy Hovil and Zachary Lomo, “Negotiating Peace: Resolution of Conflicts in Uganda’s West Nile Nile” (Refugee Law Project Working Paper No. 12, June 2004), [http://www.refugeelawproject.org/working\\_papers/RLP.WP12.pdf](http://www.refugeelawproject.org/working_papers/RLP.WP12.pdf).
- <sup>27</sup> The question of whether cycles of violence have been broken in any permanent way by the Arusha Agreement and subsequent political progress (although the recent July 2010 elections call into question the extent to which such progress is being made) is critical to the discussion on the sustainable return and reintegration of refugees. While considerable progress has been made through the creation of a new integrated *Forces de défense nationale*, which gives a roughly equal stake to both ethnic groups, this more integrated and representative army needs to be accompanied by similar efforts to support the integration of the civilian population. Other mechanisms of accountability—truth telling, vetting, or prosecutions—have yet to be implemented, although the Arusha Agreement contains provision for the formation of a truth and reconciliation process. On June 20, 2008, the Burundian government, the Joint Steering Committee for Consolidation of Peace in Burundi, and the United Nations Development Programme signed an agreement in support of the national consultations on the structure of the mechanisms for transitional justice in Burundi, viewed as the first step toward the setting up of a truth and reconciliation commission as well as a court as outlined in the peace accords of 2000. However, neither has yet been established.
- <sup>28</sup> See IRRI and the Centre for the Study of Forced Migration, “I Don’t Know Where to Go: Burundian Refugees in Tanzania Under Pressure to Leave,” September 2009, [http://www.ssrc.org/workspace/images/crm/new\\_publication\\_3/%7B427172a0-a511-df11-9d32-001cc477ec70%7D.pdf](http://www.ssrc.org/workspace/images/crm/new_publication_3/%7B427172a0-a511-df11-9d32-001cc477ec70%7D.pdf).
- <sup>29</sup> IRRI, Rema Ministries, and SSRC, “Two People.”
- <sup>30</sup> Arusha Peace and Reconciliation Agreement. *Sinistrés* are war-affected persons.
- <sup>31</sup> See Lucy Hovil, “Citizenship and Land: A Potent Relationship,” *African Arguments* (blog), December 14, 2009, <http://africanarguments.org/2009/12/14/citizenship-and-land-a-potent-relationship/>.
- <sup>32</sup> Refugees were given an allowance of 50 kilograms per household at the point of return and, as many said with great bitterness, they were not even allowed to bring their doors, one of their greatest assets, with them. Many were forced to sell the assets that they had accumulated over decades in exile at poor prices due to the pressure that was being put on them to repatriate within a tight timeframe. They therefore arrived in Burundi with very little with which to rebuild their lives. For women, particularly those who were supporting their families on their own, reconstructing their lives and livelihoods in their homeland has left them extremely vulnerable.
- <sup>33</sup> These are some of the issues that were raised during the field research conducted for IRRI and SSRC, “Who Belongs Where?” and subsequent discussion with one of the researchers, Theo Mbazamutima.
- <sup>34</sup> IRRI, Rema Ministries, and SSRC, “Two People.”
- <sup>35</sup> Rubio-Marin, “Gender of Reparations.”
- <sup>36</sup> Amanda Gouw, “A Gender Perspective on Citizenship in Africa,” *African Arguments* (blog), February 1, 2010, <http://africanarguments.org/2010/02/a-gender-perspective-on-citizenship-in-africa/>.
- <sup>37</sup> International Conference on the Great Lakes Region, Protocol on the Property Rights of Returning Persons, November 30, 2006, art. 5(3), emphasis added.
- <sup>38</sup> Lucy Hovil, “Refugees and the Security Situation in Adjumani District” (Refugee Law Project Working Paper No. 2, June 2001), [http://www.refugeelawproject.org/working\\_papers/RLP.WPo2.pdf](http://www.refugeelawproject.org/working_papers/RLP.WPo2.pdf).
- <sup>39</sup> IRRI and RLP, “A Dangerous Impasse.”
- <sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Article 1(F)(a)–(e) of the United Nations Convention relating to the Status of Refugees, July 28, 1951, *entered into force* April 22, 1954; and Article I(5) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, September 10, 1969, *entered into force* June 20, 1974. For a full legal analysis see Lawyers Committee for Human Rights, “Review of States’ Procedures and Practices Relating to Detention of Asylum Seekers: Final Report” (prepared by Debevoise and Plimpton, September 2002), <http://www.queensu.ca/samp/sampresources/migrationdocuments/documents/2002/lawyers.pdf>.

<sup>43</sup> See IIRRI and Refugee Law Project, “Mass Removal of Rwandan Refugees from Ugandan Refugee Settlements,” press release, July 15, 2010, <http://www.refugee-rights.org/Publications/PR/Mass%20removal%20of%20Rwandans%20from%20Ugandan%20Refugee%20Settlements-2.pdf>.

<sup>44</sup> De Greiff, “Theorizing Transitional Justice.”