

ADVANCING TRANSITIONAL JUSTICE SERIES

TRANSITIONAL JUSTICE AND DISPLACEMENT

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INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE

BROOKINGS-LSE PROJECT ON INTERNAL DISPLACEMENT

SOCIAL SCIENCE RESEARCH COUNCIL • NEW YORK • 2012

CHAPTER 4

The Potential for Redress:
Reparations and Large-Scale Displacement

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In the past two decades, both transitional justice and displacement—especially internal displacement—have attracted significant attention as central issues to be addressed in international peacebuilding and postcrisis stabilization efforts.¹ In part, this stands as testimony to the political efforts and success of a loose coalition of international scholars, nongovernmental organizations, international civil servants, and progressive politicians, diplomats, and government officials that have worked tirelessly to get and keep these issues on the international agenda. Historically, the two issues have come to international prominence together, supported by different communities of activists. It is only recently that these communities have started to engage with each other on how to connect their fields of political action, and discussions remain in the early stages.² One focus of this shared attention has been on how reparations efforts in transitional contexts should extend to displacement, in addition to the other violations and crimes such efforts usually cover. That these initial contacts are timely and relevant is underscored by the multiple situations around the world where massive violations of international humanitarian and human rights law have gone hand in hand with large-scale displacement, both of which need to be addressed in the context of peacemaking, peacebuilding, and transitional measures following regime change.

While much of this mutual engagement has been at the international policy and advocacy level, some reparations programs have in fact engaged with displacement.³ Prominent national experiences include the compensation program established in 2004 by Law 5233 in Turkey (which compensates the displaced for their inability to access assets during displacement)⁴ and the administrative reparations program established by the recent Victims' Law in Colombia (which after long and arduous political discussions now foresees redress for displacement as such).⁵ The Property Claims Commission in Iraq also deserves mentioning here, especially the provisions in its mandate specifying access to its restitution and compensation program for Iraq's large diaspora.⁶ While it cannot be qualified as a transitional justice effort, the United

Nations Compensation Commission (UNCC) can serve as an example of a compensation scheme that provides redress for large-scale displacement. Created by the UN Security Council in the aftermath of the first Gulf War (1990–91), the UNCC provided financial compensation to, among others, those who fled Kuwait and Iraq because of the latter’s invasion of the former.⁷

Against this background, in this chapter I take a closer look at reparations in the context of large-scale displacement, focusing in particular on the idea that reparations programs should provide specific redress for displacement, independent from redress for other human rights violations. I focus on four central themes or questions connected to the idea of reparations for displacement: (1) what reparations should look like in the context of redress for large-scale displacement, (2) how to define *displacement* and whether the concept as it currently exists within the international protection discourse and practice can serve as a basis for reparations, (3) who the stakeholders are in a reparations effort, and (4) what the redress should be for (material losses, psychological suffering, etc.). In the last section, I discuss the wisdom and feasibility of reparations for large-scale displacement in fragile state contexts and in situations where extreme poverty and widespread deprivation prevail.

FROM JURIDICAL REPARATIONS TO REPARATIONS AS BENEFITS FOR VICTIMS

Juridical reparations refers to measures that “may be employed to redress the various types of harms that victims may have suffered as a consequence of certain crimes.”⁸ The “Van Boven-Bassiouni Principles,” adopted by the UN in 2005, define those measures as including “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”⁹ Juridical reparations are part and parcel of contemporary international human rights law, international humanitarian law, and international criminal law, as evidenced, for example, by the Rome Statute of the International Criminal Court.¹⁰ The concept has been primarily developed through international, regional, and national courts and tribunals, and the European and Inter-American Courts of Human Rights have played a preponderant and often trailblazing role. Today a rich treasure of jurisprudence exists, setting out the scope and nature of the reparations measures to which victims of different types of human rights and humanitarian law violations are entitled.

The objective of juridical reparations is full restitution, or returning the victims to the situation they were in before the violations took place. This is

achieved by undoing or, if that is impossible, compensating all forms of material and physical harm inflicted on the victims. Methodologically, full restitution requires the identification and evaluation of the particular harm each individual victim has suffered. This requires an individualized process and a quite intensive use of different types of evidence (documentary evidence, expert valuations, witnesses statements, and so on), as it is crucial for full restitution to establish exactly what losses and harms each victim has sustained. By definition, in the context of juridical reparations, measures of redress will tend to differ from case to case, as two victims will rarely have been in identical situations before the violations (even if they suffered from the same type of violations). The judicial processes used by courts and tribunals are well adapted to implement juridical reparations, and even if a special-purpose body is established to provide reparations for a specific caseload, the use of an individualized, judicial-style process will be unavoidable if full restitution is the aim. Inherently, judicial processes dealing with reparations for human rights violations tend to be time- and resource-consuming and hence quite demanding on the victims who need to participate in the identification, verification, and valuation of the exact violations and losses that were inflicted on them. More often than not, professional legal representation is indispensable for effective participation in such processes.

When the issue is redress for a very large number of people, juridical reparations, and the objective of full, or integral, restitution, is usually neither a viable nor, as will be argued further, a desirable option. Juridical reparations can work well in contexts where human rights violations are the exception rather than the rule and where as a consequence the universe of victims is limited. Similarly, the individualized approach to determining reparations demanded by integral restitution is possible in contexts where the number of victims is small, the specific human rights violations from which they suffered are relatively easy to establish, and the evidence to prove the particular damages each victim sustained is not too problematic to come by. None of these conditions exist in contexts where, over a prolonged period time, human rights and humanitarian law violations were the rule rather than the exception, and where many thousands of people were affected as victims of those violations, including displacement. This is even more the case if such violations occurred in environments characterized by great informality, where document trails of birth certificates, identity cards, and evidence of residence or property rights are simply unavailable for most people. In such situations, full restitution and the individualized approach that needs to accompany it tend to be impossible from both an operational and a fiscal perspective.¹¹ The selected country

examples in the box below serve as a reminder of the size and scope of several displacement situations, many of which are informal (with the notable exception of Iraq, with its long bureaucratic tradition of documenting nearly everything).¹² It is clear that the opportunities and limitations for reparations in such contexts will be shaped by the sheer number of people the programs are intended to serve.

- ✓ **Afghanistan:** more than 300,000 IDPs and 3 million refugees
- ✓ **Colombia:** between 3.6 and 5 million IDPs and more than 100,000 recognized refugees¹³
- ✓ **Democratic Republic of Congo:** about 1.7 million IDPs and around 500,000 refugees
- ✓ **Iraq:** an estimated 2.8 million IDPs and about 1 million refugees
- ✓ **Palestine:** 4.7 million refugees registered with the UN Relief and Works Agency for the Palestinian Refugees in the Near East¹⁴
- ✓ **Pakistan:** close to 1 million IDPs and more than 30,000 refugees
- ✓ **Somalia:** about 1.5 million IDPs and more than 700,000 refugees

In contexts of mass human rights violations, it is more useful to understand reparations as referring to “attempts to provide benefits directly to the victims of certain types of crime.”¹⁵ From a material perspective, this type of reparations does not aim for integral restitution but rather for the apparently more modest objective of delivering benefits that are adequate and fair and that, under most circumstances, will fall short of making up for the total losses victims sustained. Procedurally, this type of reparations does not require an individualized judicial or quasi-judicial process¹⁶ and can be implemented through much lighter and faster procedures with, crucially, much more flexible evidentiary standards.¹⁷ While at first sight this type of reparations may seem to short-change victims, in reality the (material) trade-off it appears to involve can be quite desirable from a transitional justice as well as a social justice perspective. Whereas juridical reparations tend to be available only to the relatively few victims who have the resources, education, evidence, and stamina to file and succeed a claim in court, reparations programs focusing on delivering benefits to victims have the potential to provide redress to, if not all, then at least the majority of victims, including the most vulnerable and needy among them. What distinguishes this type of reparations program from others aimed at victims’ assistance are its “roots as a legal entitlement based on an

obligation to repair harm, and ... an element of recognition of wrongdoing as well as harm, atonement or making good."¹⁸

In terms of the benefits reparations programs of this type can deliver, no benefits need be excluded on a principled basis alone (although, arguably, the choice of benefits is limited by the "adequate and fair" criterion, which will be explained further). Benefits can be symbolic, material, or both. Examples of symbolic benefits include "official apologies, rehabilitation, the change of names of public spaces, the establishment of days of commemoration, the creation of museums and parks dedicated to the memory of victims."¹⁹ The process of adopting and implementing a reparations program can contain an important symbolic element, even if it formally only provides material benefits, provided it is done properly (itself a criteria that is highly contextual). A common material benefit that so far has been a component in all large-scale reparations programs is monetary compensation for individual victims, which can be delivered in cash (single payment or installments), in the form of a pension or allowance, or through shares in microfinance institutions.²⁰ Alternatives to cash are preferential or priority access to certain types of public services or support, such as psychosocial support, targeted physical health services,²¹ social housing or housing allowances, free education, and other types of livelihood support. Finally, reparations programs can provide benefits to individual victims ("individual reparations") or collectives ("community" or "collective" reparations²²). While the latter form appears to be gathering support among transitional justice advocates, questions linger as to whether "community reparations" can ever be scaled up sufficiently to deal with a large universe of victims and affected communities and whether "such measures can be sufficiently differentiated from development programs."²³

Given that reparations that provide benefits for victims do not have integral restitution as an objective and guideline to determine what redress should look like, the questions that arise are how to then determine that the reparations effort is indeed sufficient from a material point of view and whether a formula exists that can distinguish "worthy" from "unworthy" reparations efforts. What can and will eventually be done depends on a myriad of highly contextual legal and nonlegal factors, which include the relative political prominence of the issue of victims' reparations in comparison with other pressing matters, such as the demobilization of ex-combatants; the balance of power between local political actors (and their respective positions on victims' reparations); the level of organization and political influence of victims' organizations and other civil society actors (and, indeed, their particular priorities and demands); and the international community's influence or lack thereof on local political

decisionmaking, as well as that community's priorities and preferences in the given transitional situation. An additional factor is the extent to which displacement itself is on the political radar and, indeed, from what perspective it is viewed by different political actors (it may well be that the reparations angle is simply neither used nor advocated for by the relevant local actors). Moreover, the extent to which a large-scale reparations program is subject to judicial oversight or interference may also have an impact on the benefits it eventually provides. In practice, the level of judicial control depends on the activism and attitudes of the local judiciary, the influence of international law on the domestic legal framework, domestic law, and the willingness and ability of victims' organizations to use the courts for reparations purposes.

In terms of what reparations suffice, then, no magic formula exists. However, in the context of large-scale reparations programs, the benefits provided to the victims should at least be adequate and fair. While it is difficult to pin down in the abstract what benefits can be regarded as adequate and fair, as views and standards vary from context to context, this can be a useable criterion when considered against the background of a specific situation. The more complex question is in whose eyes this adequate-and-fair standard should be met and to what extent it is possible (and important) that a consensus around this is formed. First, unless most victims perceive the benefits provided by a reparations program as adequate and fair,²⁴ the program is unlikely to bring full political closure to the reparations issue. Witness, for example, how long World War II victims of forced labor kept their reparations demands alive in light of the failure of (mostly) German companies that had profited from this forced labor to provide reparations that the victims considered adequate and fair.²⁵ Second, reparations programs also have the potential to divide the victim population from within. What is adequate and fair for one segment of that population may be seen as inappropriate and unfair by another segment. This relates to a general, and sometimes overlooked, point that the universe of victims is seldom uniform. Usually, it will be as diverse in its opinions and views, including those about the specifics of reparations and transitional justice, as the wider population in the society. But more specifically, reparations policies can themselves divide victims, and in the context of displacement, perceptions about diasporas and internally displaced populations can vary quite starkly among victims of human rights violations who never left their homes, which will be discussed in more detail later. Third, the perceptions of the broader population also matter, arguably to a lesser degree than that of the victims, although it is difficult to conceive of a successful reparations program that would not be accepted by the broader society.

Beyond underscoring that “adequate and fair” is a contextual yardstick that faces its ultimate test in victims’ perceptions, it is worth underlining that the extent to which reparative benefits allow victims to overcome social exclusion, reduce their vulnerability, and reconstruct their lives is likely to play a big role in how they think about the effort. Displaced persons in Kenya expressing the desire to have “their lives restored to normality”²⁶ when asked about their reparative demands is just one indication of how important it is for a reparations program to be about the future as well as about the past. This is especially true in contexts where those who are now victims were poor and destitute before the human rights violations took place. For such victims, a reparations program focusing on integral restitution—and hence looking at the past as a measurement to determine what to do today—would yield little in terms of opportunities to construct a better, more humane and dignified life.²⁷ They instead require a forward-looking effort, just like victims whose protracted displacement, lasting years if not decades, has pushed them (further) into poverty and despair and for whom the prior situation is not more than a distant, often idealized memory. Simplified, large-scale reparations should not seek to recreate society as it existed before the conflict or the human rights violations (this was, after all, the environment in which conflict and violations found a fertile breeding ground) but rather aim to positively contribute to the development of a new society that, in some significant way, is better than the one that existed before. It is difficult to see, then, how reparations could be successful without being connected to progressive politics, in the nonpartisan sense of trying to create a more just society with less despair and more shared “social hope.”²⁸

Working toward a reparations policy that meaningfully increases victims’ ability to construct better lives for themselves almost invariably requires taking two steps. First, policymakers need access to up-to-date and reliable information about the broad, socioeconomic make-up and situation of the victim population and, ideally, how they compare to the overall population. Without knowing much about the victim population’s (relative) levels of poverty, education, employment, and access to shelter and health services, for example, policymakers will find it difficult to design and target reparative benefits in the best possible way. When a reparations policy is being discussed, this information may already be available, as it is not uncommon for international humanitarian organizations to carry out detailed assessments of the displaced population during a crisis or conflict.²⁹ Academic studies may also be able to help policymakers get a clearer picture of the background and situation of the victim population.³⁰ This type of information collection can be complementary

to the work carried out by truth commissions, which tend to focus on the nature and truth of the violations, rather than the socioeconomic profile of the victim population. Second, policymakers and lawmakers working to turn the reparative demands of victims into a real policy need to have a grasp of the developmental effects that different benefits are likely to have. Moreover, reparations policies may work best in terms of lifting people out of poverty if they are coordinated with, or are an integral part of, a broader strategy for pro-poor economic growth and development.³¹ This is necessary to ensure that reparations fulfill their forward-looking potential, but it is also a matter of good governance. In a context of scarce resources and multiple needs, it would be irresponsible to spend significant amounts of public funds on reparations without ensuring that they provide the highest possible economic return, for the victims as well as for the broader society. Integrating these economic aspects into the design of a reparations policy can be a challenge, as those who drive reparations policymaking often tend to have a legal and human rights background and limited knowledge about how to generate economic growth and development. To overcome this hurdle, a multidisciplinary approach must be adopted from the outset at both the level of policy development (where national and international experts may be consulted) and at the institutional level (for example, within a truth commission that has a mandate to make recommendations on reparations).

The types of crimes or violations a reparations program can provide redress for is, of course, dependent on the types of violations that occurred. What a program ends up covering is, however, also invariably a product of the specific politics involved in bringing it about. Relevant political actors, in this respect, can include the main political parties; civil society actors, including religious organizations; victims' communities and their organizations; the international community; and international, regional, or national courts. The jurisprudence of such courts has sometimes proved to be one of the catalysts for governments to establish reparations programs and, indeed, bring certain crimes and violations to the forefront of the political agenda.³² Truth commissions require a special mention, as they have played a key role in calling for reparations in a number of countries, including Morocco, Chile, Guatemala, Peru, and, possibly soon, Nepal. In practice, reparations programs have focused on serious violations of basic civil and political rights and international humanitarian law, providing redress for, among other crimes, unlawful killings and assassinations, torture and unlawful imprisonment, gender-based violence, forced disappearances, forced and slave labor, and illegal seizure of land and property. Displacement was, as I have already indicated, included as

a separate violation in the UNCC mandate,³³ the Turkish Law 5233,³⁴ and the recent Victims' Law in Colombia.³⁵ In addition, the Comprehensive Reparations Program in Peru regards those who suffered from forced displacement as conflict victims eligible for reparations.³⁶ Whether displacement is treated as a separate violation in future reparations programs will depend on local political contingencies, including the extent to which international actors advocate this as a desirable practice.³⁷

In addition to the core objective of delivering benefits that are adequate and fair to victims of certain crimes,³⁸ reparations programs can serve at least two additional objectives: to recognize and acknowledge the victims and what they went through and to contribute to reestablishing "civic trust."³⁹ As already indicated, it is the element of recognition and acknowledgment that sets a reparations program fully apart from humanitarian assistance, development aid, and ordinary social policies.⁴⁰ This is a complex matter, but it suffices here to emphasize that whether victims feel that there is genuine recognition and acknowledgment will affect how they perceive the reparations effort as whole. Civic trust refers to shared normative expectations and the ability to trust that institutions and fellow citizens are acting on the basis of shared values, norms, and principles.⁴¹ Massive human rights violations tend to leave a legacy of mistrust between the victims and the state and, more broadly, a very low level of civic trust. Reparations programs can contribute to improving trust between the state and the victims (although a serious effort in this respect may well require nothing less than a full overhaul of state institutions' internal cultures and management), and they can also, through the affirmation of certain fundamental norms such as respect for basic human rights, have a positive impact on relationships between citizens (although each context would require empirical research to determine whether this is indeed the case). Finally, reparations policies should aim to avoid causing new grievances or social divisions, especially in countries that have just emerged from internal conflict. As will be discussed later on, this can be a particularly relevant issue in the context of reparations for displacement.

DEFINING DISPLACEMENT IN THE CONTEXT OF REPARATIONS

Defining displacement is central to developing a reparations program and determining who can benefit from it. The challenge is how to delineate displacement from other types of migration or population movement that should not be included in the effort to provide redress. At the international level at

least, the determination of what displacement means in the context of transitional justice has so far received only limited attention. Advocates and supporters of reparations for displacement have mostly defined it as referring to internally displaced persons (IDPs) and, to a lesser extent, refugees.⁴² This is in line with the current international protection framework and discourse, which focuses mostly on these two categories, with a shift in emphasis from refugees to IDPs over the past two decades, usually defended by reference to the greater (and increasing) number of IDPs and the smaller (and decreasing) number of refugees worldwide.⁴³ This section's point of discussion concerns the extent to which policymakers can regard this international framework—and its implied view of migration—as a sufficiently sound basis for constructing and implementing national reparations policies.

EXTERNAL DISPLACEMENT AND INTERNATIONAL PROTECTION: REFUGEES

We live in an international system constructed around the concept of state sovereignty—that is, the idea that the state has the liberty to do what it wants within its own territory.⁴⁴ In reality, the concept of state sovereignty is more complex (and, indeed, limited) than that, but this basic description structures many of the debates and policies in the international realm.⁴⁵ Despite globalization and an ever-shrinking world, sovereignty continues to function as a description of statehood, a norm that needs to be respected in international relations, and a status many continue to aspire to (witness the population's jubilation at the independence of South Sudan in 2011). In this system, the management of migration and, more broadly, cross-border movements of people is an integral part of each state's sovereign powers. The regulation of who can enter or stay in a state's territory and the connected activity of border protection are among the most jealously guarded prerogatives of sovereign states. Notice, for example, how the International Covenant on Civil and Political Rights carefully protects the right to free movement and choice of residence within one state only for those who are “lawfully” within that state⁴⁶ and limits states' right to expulse aliens only on the condition that such expulsion should be in accordance with national law.⁴⁷ Similarly, the covenant accords anyone the right to leave any state, including one's own, but fails to provide a corresponding right to access the territory of any state other than one's own.⁴⁸ This background underscores the exceptional nature of the system established by the 1951 UN Convention on the Status of Refugees.

The Refugee Convention establishes an international protection regime that obliges all state parties to the convention to allow any “migrant” who falls

within its refugee definition to remain in their territory and enjoy their protection. Article 1.a.2 defines a refugee as a person who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁴⁹

Central to the convention's protection regime is the allocation of a particular legal status—"refugee status"—through an individual asylum process, carried out by either the national authorities of the host state or the UN High Commissioner for Refugees (UNHCR), the international agency mandated with the protection of refugees.⁵⁰ Obtaining refugee status is a formal confirmation that the person in question did indeed have a "well-founded fear of being persecuted" and hence has the right to remain in the territory of the host state. While the 1951 Refugee Convention has had (and continues to have) its critics, the fact remains that, sixty years after it came about, it continues to be a source of protection for many thousands of people around the world.

The question most relevant for the discussion here, however, is whether policymakers working on reparations for displacement can assume that, at least in the vast majority of cases, the convention's concept of a refugee adequately captures the category of people who have been displaced beyond the borders of their countries of habitual residence. There are at least two reasons for exercising caution in relying on this definition in the context of a reparations effort and transitional justice programming more generally.

The first reason has to do with the changed nature of migration crises in recent decades and the increased gulf between the premises on which the 1951 Refugee Convention was based and the reality of displacement in the twenty-first century. Historically, the protection regime established through the convention was created to address a very clear problem: how to protect people who are persecuted by their own states for political, religious, or other reasons. It also found its origins in the Cold War and the need to protect those "persecuted by Communist regimes."⁵¹ The core image underlying the convention—one that many people used to associate with the term *refugee*—was that of the lone opponent of an oppressive regime who, after a heroic fight for democracy and human rights, was forced to flee across borders in fear of his or her life. Looking at population movements in the past twenty years, however, it is

clear this image no longer reflects the majority of people who flee. Rather than a small stream of individuals seeking protection from persecution by their governments, present-day migration crises are characterized by large groups crossing national borders because of a combination of drivers. Events such as the ongoing exodus of thousands of people from Somalia into northeastern Kenya and Ethiopia,⁵² the flight of tens of thousands of people from Libya into neighboring Egypt and Tunisia during the uprising against Gadhafi,⁵³ and the mass exodus from Zimbabwe to South Africa involving an estimated 2 million people between 2005 and 2009⁵⁴ all raise important issues of international protection but do not easily fit within, and have little to do with, the parameters of the 1951 Refugee Convention.

There is a vivid debate within the field of refugee studies about what the changed face of forced migration means for the current international refugee protection framework.⁵⁵ In many, if not most, contemporary contexts, only a few of those who flee across national borders are likely to be able to show an individual, well-founded fear of persecution as demanded by the 1951 Refugee Convention. In short, the risk is that a reparations effort for displacement that limits its scope to the 1951 definition of a refugee would end up excluding the majority of those who left their countries during periods of violent conflict, repression, or widespread human rights violations. Clearly, the extent to which this risk becomes reality and the degree to which such exclusion matters from a transitional justice perspective depend on the context and the reparations policy in question; however, it remains a factor to be kept in mind when discussing how to define displacement in the context of reparations.

The second reason for caution has to do with the evolving and frequently disputed meaning of the 1951 definition of a refugee. There are two interrelated components to this. First, the 1951 refugee concept has been subject to interpretations that, at both the national and international level, have evolved over time in conjunction with changes in the broader political, social, and cultural environments. Witness, for example, how awareness and practice around the gendered use and application of the 1951 definition have evolved over the past decades.⁵⁶ In the 1950s and 1960s, the questions of whether women qualify as a social group under the Refugee Convention and whether a well-founded fear of persecution for being a women could be a sufficient ground for refugee status were simply not topics of discussion. In contrast, various national jurisdictions now extend protection to certain categories of female refugees.⁵⁷ Second, interpretations of the 1951 refugee concept differ between, but also within, national settings, with some states interpreting the concept liberally and broadly and others interpreting it restrictively. Even fundamental issues,

such as whether persecution by a non-state actor can give rise to refugee status, can receive different answers in different jurisdictions.⁵⁸ Within states, different authorities, courts, tribunals, and administrative entities involved in the asylum process frequently disagree with each other about the exact scope and content of the 1951 refugee concept.⁵⁹ Finally, UNHCR and state parties to the convention at times also find themselves at odds over the right interpretation of the concept.⁶⁰

In terms of reparations for displacement, we can draw two conclusions from the reality of competing interpretations of the 1951 refugee concept. First, if policymakers decide to include the 1951 refugee definition in their legal framework for reparations, they should clarify and further define certain elements in the definition to avoid unintentionally excluding certain victims (for example, in a situation where the majority of victims suffered from persecution at the hands of non-state actors, it may be important to explicitly mention that this is deemed to be covered by the 1951 refugee definition). Second, the fact that different national asylum procedures can lead to different outcomes for similar cases puts into question whether a reparations program should ever rely solely on refugee status as recognized in the host states to which the relevant population has fled. While refugees from countries such as Colombia, Iraq, and Somalia (all countries that have diasporas scattered around the world) may have fled similar situations, whether they eventually obtain refugee status will depend on the interpretation used by the asylum process of the country where they end up.

The broader political environment in the host countries may also influence how refugees from the same country fare. For example, out of an estimated 455,000 Colombian refugees worldwide, an estimated 86 percent live in Ecuador, Panama, and Venezuela.⁶¹ Despite having fled under broadly similar circumstances, the Colombian refugees' formal legal situation differs widely depending on which of the three countries they ended up in. In Panama and Venezuela, "the majority of Colombians in need of international protection remain 'invisible', not seeking international protection and instead remaining undocumented or using alternative migratory routes," while in Ecuador, "generally the most receptive of these countries to refugees," many have been formally recognized and documented as refugees.⁶² In situations like these, a national reparations program should reinvestigate whether those involved have indeed been displaced under conditions amounting to persecution.

A final comment here concerns the fact that a significant number of countries have not ratified the 1951 Refugee Convention, especially in Asia and the Middle East.⁶³ The Palestinian refugees are not covered by the 1951 Refugee

Convention but instead fall under the mandate of the UN Relief and Works Agency for Palestinian Refugees in the Near East.⁶⁴ Arguably, the Palestinian refugee situation is the one that has seen the most research on the question of reparations and, especially, land restitution.⁶⁵ This further underscores the limited scope for directly applying the 1951 refugee definition in the context of reparations programs.

INTERNAL DISPLACEMENT AND INTERNATIONAL PROTECTION: IDPs

Attempts to develop a specific international protection regime for IDPs came to the fore in the 1990s, eventually leading to what has become the key international document in this regard—the UN Guiding Principles on Internal Displacement. Presented by the representative of the secretary-general on the human rights of IDPs to the UN Commission on Human Rights in April 1998, the Guiding Principles have been gathering increased recognition ever since.⁶⁶ Roberta Cohen, one of the protagonists in the political struggle to bring the plight of IDPs to the forefront of international attention, points to four reasons why the idea that IDPs needed international protection eventually got traction among key governments and within the United Nations.⁶⁷ These include a growing realization of the security context of internal displacement and, especially, of how large-scale internal population movements not only can disrupt the stability of the affected country but also frequently undermine regional and international security. Moreover, the change in the notion of sovereignty after the end of the Cold War created a new possibility for crossing borders and reaching people in need. Also, the growth in the number of IDPs was an important factor: “In 1982, 1.2 million people were found to be uprooted in their home countries. Four years later the total had grown to 14 million. By 1995, there were an estimated 20 to 25 million in more than 40 countries, twice as many as refugees.”⁶⁸ Finally, the asylum agenda had an influence on the increasing willingness of the international community to look at international protection for IDPs. The post–Cold War increase in refugees, especially from the Global South, brought to the fore the idea that protecting and assisting people within their own borders was the first line of defense against ever larger refugee flows and rising asylum applications. In short, assisting IDPs in their own countries was seen as a way to avoid the same people becoming refugees.

From a legal perspective, there are significant differences between the international protection regime for refugees and the one for IDPs. Whereas the former is enshrined in an international convention, the latter is laid down in an international “soft law” instrument⁶⁹ developed by a group of international

experts but never negotiated and formally adopted by the international community of states.⁷⁰ In principle, then, the Guiding Principles are not legally binding on states. The proponents of the principles maintain, however, that the practical impact of this difference is less than meets the eye, given that the principles “are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally displaced persons that are inherent in these bodies of law.”⁷¹ In that sense, they only repeat obligations that governments already had based on the international “hard law” contained in human rights treaties, the Geneva Conventions, and international customary law. The Guiding Principles have in fact become the dominant framework through which international actors tend to approach crisis situations involving large internal population movements.⁷² Similarly, an increasing number of national governments have incorporated the principles into their legislation and displacement policies.⁷³ Finally, a number of regional efforts have strengthened the legal and political standing of the Guiding Principles, including the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, which obliges signatory governments to incorporate the Guiding Principles into their national laws,⁷⁴ and the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa, which is broadly based on the Guiding Principles.⁷⁵

Can the international protection framework’s conception of displacement be used as a basis for a reparations program? The definition of an IDP is much broader than the 1951 definition of a refugee and therefore much more grounded in the reality of today’s migration crises. The Guiding Principles define IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internally recognized state border.”⁷⁶ Using this definition in the context of a reparations program for displacement, then, is unlikely to lead to the same level of exclusion as the 1951 refugee concept would. In that sense, the former may often be more useful to policymakers than the latter. However, reparations programs will likely still have to undertake efforts to identify who is an IDP in a given context.

It is worth emphasizing here that the term *internally displaced person*, unlike *refugee*, does not denote a legal status, at least as it is intended in the Guiding Principles. As the *Handbook for the Protection of Internally Displaced Persons* puts it, “The IDP definition is a descriptive definition rather than a legal definition,”

one that “simply describes the factual situation of a person being uprooted within his/her country of habitual residence” and “does not confer a special status or rights in the same way that recognition as a refugee does.”⁷⁷ One implication of this is that, from an international perspective, there is no need for an equivalent to the asylum process in an IDP context. In practice, however, information is often available about IDPs that reparations programs can rely on, at least as a starting point. For example, in countries such as Colombia, official procedures exist to register IDPs, usually in the context of programs intended to provide specific support or assistance to the displaced population.⁷⁸ Furthermore, in most contexts where large-scale displacement is taking place, international humanitarian actors will register IDPs as part of their efforts to manage and target humanitarian aid. One caveat, however, is that both official and international registration efforts may not be exhaustive. For official procedures, access may be an issue, especially for the most vulnerable IDPs, as may be the capacity of national institutions responsible for registration. International registration efforts tend to focus on IDPs in camps, leaving out those living with host families or in rented accommodations in urban settings. Another caveat, which applies especially to international humanitarian efforts to register IDPs, concerns the criteria that are used to decide who to register and how “tight” the registration process is. Humanitarian registration is not an official administrative process, nor is it intended to be. However, the extent to which this hinders a reparations program’s adoption of IDP registration as sufficient evidence for its purposes is a contextual issue that needs to be thought through ahead of time. Notwithstanding earlier registration efforts, this may be another reason for reparations programs to get involved in determining who is an IDP.

DISTINGUISHING BETWEEN VOLUNTARY MIGRATION AND DISPLACEMENT

Providing benefits to victims through a reparations program inevitably involves a decision as to who can and who cannot be considered a victim. Such choices need to be made at the policy level—that is, at the moment the program mandate is being debated and developed—and at the operational level—that is, when the categories and their respective definitions contained in the mandate need to be applied to real-life cases and claims. Two important pitfalls exist in respect of this exercise: the program can be so restrictive that victims that reasonably should have been included in the effort to provide redress find themselves excluded, or it can be so broad in its mandate or lax in the concrete application of the victims’ categories that the program includes people

who cannot reasonably be considered victims. If not managed properly, these issues have the potential to undermine a reparations effort.

Following the international protection framework for forced displacement, the key distinction to be made here is between those who voluntarily migrate across or within national borders and those who, against their will, become displaced. The protection regimes for both IDPs and refugees want to distinguish their own target populations from migrants who leave their homes behind to seek a better life abroad or elsewhere in the same country. There may be disagreements among advocates and practitioners about the scope and application of the Guiding Principles, but “it is clear that [the principles] do not apply to persons who move voluntarily from one place to another solely in order to improve their economic circumstances.”⁷⁹ Both the practicability of distinguishing between voluntary migration and displacement and the routine emphasis on socioeconomic migrants as “the other” from whom IDPs and refugees need to be distinguished pose challenges for reparations and tend to be especially difficult in countries affected by so-called complex emergencies⁸⁰ and in contexts where a combination of factors such as state failure, violent conflict, human rights violations, livelihood collapse, and environmental degradation drive people to migrate elsewhere in the country or across borders. The more protracted a crisis or displacement situation becomes, the more difficult it is to neatly divide people who left their habitual places of residence behind into categories such as IDPs, economic migrants, and refugees.

The Democratic Republic of Congo (DRC) offers a case in point. Decades of mismanagement, repeated foreign interventions, widespread internal conflict, and brutal violence have been accompanied by multiple waves of displacement of entire communities across and within national borders.⁸¹ Years into the transition from war to peace (which officially started in 2003), a large portion of the Congolese population struggles to survive in a country where, in large parts of the territory, formal institutions have all but ceased to exist and violence and displacement continue to be part of daily life.⁸² As indicated in the table earlier in the chapter, many thousands have been affected and are now living away from their original homes and villages. Nevertheless, it would be extremely difficult to determine who in this population would qualify as displaced. As an International Committee of the Red Cross official working in the DRC recently wrote: “The labels ‘refugee’, ‘urban IDP’, ‘host family’ and ‘economic migrant’ may be convenient for aid workers and policymakers but they can often be misleading in that they seldom describe a person’s overall situation.”⁸³ How, she asks, do you categorize “a family from a village in North Kivu which has some members who commute between Goma town and

Rwanda selling produce, and others who left after an armed attack and moved to Kinshasa in search of a safer and better life”? Are people who share their time between Goma and Rwanda “refugees or internally displaced people”? And “what about the group of people from a village that has been looted who decide to go to a bigger town, having heard that displaced people can make money there”? Are their motives “economic or related to armed violence”?⁸⁴ Similar conundrums emerge when one takes a closer look at the refugee and migration crises affecting countries such as Afghanistan, Iraq, Somalia, and Sudan,⁸⁵ among others, making it very difficult for any future reparations programs in these places to determine who should be in and who should be out.

Two final considerations have to do with the almost routine exclusion of voluntary, or socioeconomic, migrants from the category of displacement. First, in many contexts socioeconomic drivers play a role in the decision to move either abroad or elsewhere in the same country (the most common example, in this respect, is people moving from rural to urban areas during conflict).⁸⁶ Iraqis who fled post-Saddam Hussein Iraq or moved within the country did so for political as well as socioeconomic reasons, including political and religious persecution mostly by non-state actors (especially relevant for members of Iraq’s small minorities);⁸⁷ the collapse of law and order and the generalized insecurity and violence it engendered; the further deterioration and, in some areas, collapse of basic public services such as water, electricity, health care, and education;⁸⁸ the lack of economic opportunities and the rapid deterioration of the labor market; and a fundamental pessimism about where the country was heading.⁸⁹ Concepts such as “survival migration”⁹⁰ and “mixed migration flows”⁹¹ have been developed to express the complexity of migratory movements during crisis situations, but the bottom line is that in many circumstances, the dichotomy between political and economic migrants simply fails to reflect reality and is unsuitable as the basis for a reparations program once the crisis is over.

Second, it is debatable whether reparations programs should always endorse and reproduce the routine exclusion of socioeconomic deprivation as specific and stand-alone grounds for considering displacement nonvoluntary, as is done in the context of the international protection framework. There are certainly scenarios imaginable where a transition requires coming to terms with the fact that a former regime deliberately refused to invest in education, health care, and other basic services, siphoned money away from the country into private bank accounts (for example, in the context of the exploitation of high-value natural resources), and never did anything to save people from poverty and disease. In such circumstances, reparations benefits for the displaced,

such as the official recognition of their suffering, the acknowledgment of their rights, and the restoration of civic trust, may need to be extended to victims of economic deprivation, including those who had to leave their homes behind to survive. Of course, doing so may be difficult if the available resources are limited, but this is more a matter of how different violations (and categories of victims) are prioritized than a matter of resources per se.

Given that the causes of displacement and the movement of people themselves are often diverse and characterized by “mixed flows, multifarious motivations and multiple labels,”⁹² policymakers and experts alike are well advised to keep the concept of displacement open, at least at the outset of the policy development process. Automatically assuming that the categories and distinctions emanating from the international protection framework are adequate for the local context may mean excluding people who should be included in any reparations effort for displacement. A careful analysis of the local realities of both external and internal displacement is indispensable before deciding how the reparations policy in question should define displacement and whether displacement is, in the particular transitional context, an adequate ground for reparations. Discussing, negotiating, and determining what displacement is and means in the given context needs to be a central component of the participatory process of establishing a reparations program. Whether such an exercise can establish a clear line between voluntary migration and displacement that does not exclude some of the displaced while including those who are not displaced and that can be realistically applied depends on the context. In many of the countries listed in the table earlier in the chapter, achieving such results would not be easy.

REPARATIONS FOR DISPLACEMENT AND PARTICIPATION

It is often said that the quality of the process of coming to a reparations program can be as important as the quality of the program itself. The thinking is that broad participation in the discussion and decisionmaking about what reparations policies are necessary in a particular context may in itself be a powerful signifier that from now on, governance and community relations will be different from what went on in the period before the transition. Whereas, it is argued, a reparations policy put together by a small, closed group of decision-makers with little or no consultation with the victims or the wider population may signal that the transition is really just “more of the same” and the reparations program is more an attempt to appease than a genuine effort to provide

redress. Moreover, participatory processes are also seen as a means to encourage victims' ownership of the reparations program and as having a "potential healing effect on victims and communities."⁹³ Similarly, it is often argued that a process leading up to a reparations program in which victims are consulted and treated as full citizens and rights' bearers can in and of itself be an important step in achieving the symbolic goals of reparations. Finally, consultation is seen as a "virtue that will make reparations more responsive to reality and thus more effective."⁹⁴

While using a participatory process to develop a reparations program is commonly seen as good practice, real participation can be difficult to achieve, even in contexts where no large-scale displacement has taken place.⁹⁵ What, for example, does meaningful participation consist of in contexts such as Colombia or the DRC, where hundreds of thousands of people have been affected by violence and human rights violations? Truth commissions have demonstrated they can fulfill an important role in engaging with victims' communities⁹⁶ but may not be in a position to reach more than a fraction of the victim population in situations where numbers run into the hundreds of thousands. Involving victims' organizations, nongovernmental organizations, and civil society groups is another way of trying to ensure that a reparations program reflects victims' needs and concerns, but their representativeness of the wider victim population is not always a given. Moreover, such groups tend to be heterogeneous in terms of the types of violations they focus on, and strong differences in political clout or sympathy, cultural approaches, and levels of negotiating experience often exist among victims' organizations.⁹⁷ This can lead to conflict and disputes between organizations around, for example, the nature and scope of the desired reparations effort. Surveys may be a good way of gauging what victims' perceptions of justice and reparations are in contexts where numbers or local circumstances do not allow for actual engagement, but this remains quite far removed from a real participatory process.⁹⁸ Finally, creative solutions involving customary forms of social mobilization, grassroots conferences, and other bottom-up consultation processes⁹⁹ can be useful, but achieving real participation is invariably a big challenge, especially when it comes to the most vulnerable victims.

Experience has shown that in contexts where displacement has occurred on a massive scale, the engagement of all relevant actors tends to be even more complicated than normal, both politically and logistically. In practice, "sufficient engagement with displaced persons has often not been the case," although a number of truth commissions, including the ones in Guatemala and Liberia, have engaged with refugees and internally displaced persons.¹⁰⁰

Moreover, beyond participation in the determination of what a reparations effort should look like in a given context, large-scale displacement also tends to raise specific operational and technical challenges related to the displaced population's access to reparations. In Iraq, for example, the Property Claims Commission has so far been unable to process the approximately 5,000 claims it received from Iraqis living outside the country because of a lack of specific rules and procedures for engaging with claimants who live abroad. In Colombia, the extent to which refugees will be able to claim reparations under the recent Victims' Law remains to be seen, but there is no doubt that significant obstacles exist.¹⁰¹ Common hurdles are related to documentation and evidence, a lack of financial and human resources, and difficulties in coordination and management.¹⁰² While these can be formidable, the remainder of this section will focus more on participation in the development of reparations policies.

ENGAGING THE DIASPORA

Recent advances in technology have expanded the ways diaspora communities can interact with the home country. Cheaper and faster communications accessible to a broader swath of the population have quite literally shortened distances between those who remained and those who left. More researchers than ever before are now studying the diaspora-conflict-peace nexus,¹⁰³ although so far they have paid only limited attention to how diaspora communities can contribute to (or, indeed, undermine) transitional justice efforts in their countries of origin.¹⁰⁴ The diaspora concept itself is quite fuzzy and can have different meanings depending on the context and who is using it,¹⁰⁵ but for our purposes the concept is most usefully understood as including political refugees, alien residents, guest workers, immigrants, and overseas communities more broadly. This can be complemented with the notion that the diaspora concept is best seen as building on three criteria: "dispersal; settlement in multiple locations; and the idea of a 'homeland.'"¹⁰⁶

Concerning the possible involvement of members of a diaspora in the development of reparations policies (whether or not they eventually include reparations for displacement), a number of factors are important to keep in mind. First is the heterogeneous nature of most, if not all, diaspora groups in terms of socioeconomic stratification, political views and allegiances, levels of social and political organization, and remaining connections and interests with the homeland.¹⁰⁷ Members of the diaspora may, for instance, disagree about what peace and transitional justice in the home country should look

like. The makeup of diaspora groups can also vary strongly from host country to host country. These differences may have been there from the outset (for example, the socioeconomic background of Iraqis fleeing to Jordan between 2003 and 2006 tended to differ somewhat from the background of those leaving Iraq for Syria)¹⁰⁸ or may arise from the different experiences provided by life in different host countries (for example, whether Palestinian refugees live in a camp in Lebanon or in a nice neighborhood of New York will inevitably have some influence on their outlook on life). Similarly, the politics of different host countries toward the diaspora or the diaspora's home country also tends to be a factor of influence regarding the scope of diaspora engagement in peacebuilding and transitional justice.

Good reasons exist to involve the diaspora in the development of transitional justice initiatives beyond the fact that at least some of its members will have been victims of persecution or human rights violations. If it is indeed true that, as a number of researchers have argued, diasporas can often play a negative role in perpetuating conflict or increasing the risk of a recurrence of conflict, then obtaining their political engagement in peacebuilding, post-conflict recovery, and transitional justice may be crucial for a sustained peace.¹⁰⁹ Moreover, it may also facilitate their eventual reintegration into the home country, if they eventually decide to return. Such engagement with the diaspora is, however, best seen as a multidimensional effort that needs to include but also go beyond simple outreach by the home state government.¹¹⁰ It may require the political mobilization of diaspora communities around a set of common goals; engagement with host states, which may look suspiciously at any political activity with or in the diaspora; and outreach by diaspora victims to those victims who remained behind in the home state to try to foster a shared transitional justice project. Finally, it is important to underscore that the positive impact of diaspora engagement is not a given. The effect of transnational peacebuilding activities "remains less than clear," as "the existing literature relies to a large extent on speculations and hypotheses to assess impact."¹¹¹

In practice, then, some risks are attached to the involvement of the diaspora, which, depending on the context, may require careful management (posing the difficult question of who would be able to perform such management). One element to highlight is that the diaspora's involvement in the policy development of reparations may be driven by a small group of its members who want to seize the opportunity of the transition to get their wealth back. As such, this may not be problematic, except that the immediate aftermath of the cessation of violence or the change of a regime may give this group a comparative advantage to push through a reparations program that primarily serves its

own interests, which may or may not be aligned with those of the victims who never left or the less wealthy among the diaspora victims. The establishment of the Iraq Property Claims Commission, for example, had originally more to do with the advocacy and lobbying by a small group of Iraqi exiles (who had been able to organize themselves during their years abroad, including some spent in the United States) than with any consultations with or endorsement by the victims who had remained in Saddam Hussein's Iraq (who had had little opportunity to organize themselves and formulate their desired transitional justice policies). While the diaspora's role as a transitional justice front-runner can be a good thing, it can also deepen tensions between diaspora actors and those who were never able to leave. Arguably, this risk is heightened in situations where displacement was protracted and exile was spent in countries that were much better off economically than the homeland (think, for example, of Somali exiles living in London or Helsinki versus those living through the conflict in Somalia).

PARTICIPATION OF IDPs: BUSINESS AS USUAL?

In principle, the participation of IDPs in the development of reparations policies should not raise challenges that, politically and operationally, differ greatly from those related to ensuring that the wider victim population is fully engaged. The fact they remained within national borders means that, at least theoretically, they remain within reach of the national authorities. Practical hurdles such as a lack of documentation (including official identity documents and birth certificates) may affect IDPs as well as other types of victims, especially in countries where the state apparatus is rather weak and underdeveloped. Moreover, the common assumption that IDPs are necessarily the most vulnerable victims—and hence the most difficult to reach and engage in participatory processes to establish a national reparations policy—does not always hold true and needs to be reassessed in each context.¹¹² Also, in terms of their ability to politically organize themselves, IDPs may be stronger and more advanced than other, nondisplaced victims. This is the case in Colombia, where the strongest victims' organizations tend to be those representing IDPs.¹¹³ Finally, the reality or perception of international humanitarian attention focusing exclusively on IDPs can cause resentment and anger among other vulnerable groups. Where that is the case, centering the subsequent reparations debate on the displaced (who may be the largest group within the universe of victims) can lead to victim competition, which may hinder the objectives of reparations.

MIGRANTS IN TRANSITION CONTEXTS: A FORGOTTEN GROUP?

Recent events in Libya have brought migrants, and especially migrant workers, onto the radar screen of the international protection community. Before the uprising against the Gadhafi regime, Libya counted an estimated 2.5 million foreign workers in the country, employed in the oil industry, construction, and the informal sector.¹¹⁴ In the recent conflict, reports indicate, migrants from sub-Saharan Africa suffered abuse and human rights violations “at the hand both of the rebels and of Gadhafi loyalists,” under the accusation of being “foreign mercenaries.”¹¹⁵ As of November 14, 2011, close to 770,000 of those migrants had fled Libya either to neighboring countries or, often with international assistance, back home farther afield.¹¹⁶ Many observers have argued that this crisis “highlighted a gap in the international regime for protection of IDPs and in particular migrant workers” and further “called into question the relevance to modern humanitarian crises of a dated refugee definition.”¹¹⁷ Some have criticized the lack of clarity about whether migrant workers who are displaced within the country where they work are actually covered by the Guiding Principles on Internal Displacement. This lack of attention to the fate of migrants during crises is symptomatic of the broader reluctance at the international level to seriously engage with the human rights of migrants, during war and peace. It is no coincidence that the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families has seen the “slowest progress between initial adoption and ultimate entry into force, and the smallest number of participating countries” of any international treaty.¹¹⁸ This, in turn, is a further confirmation of socioeconomic migrants as the “other” in international protection discourse and practice in relation to displacement, as discussed earlier in the chapter.

The events in Libya have shown, however, that in a globalized world, regular and irregular migrant workers are increasingly affected by conflict and widespread human rights violations. Beyond the challenge of international protection, this poses the question of how and to what extent reparations programs can and should take this group into account, both as participants and as eventual beneficiaries. This applies to reparations programs providing redress for displacement in situations, such as Libya, where migrant workers are forced to flee the country in which they work, sometimes under direct threats and as victims of looting and extortion. It is also relevant for reparations efforts focusing on human rights violations more broadly—for example, when migrant workers are among the victims of a brutal dictatorship, as most likely is the case in Libya. Many challenges may exist to achieving redress,

including resistance from the “indigenous” to the inclusion of migrants in local transitional justice efforts, the logistical difficulties of reaching out to people who have returned home (possibly temporarily),¹¹⁹ and the challenge of how to deal with irregular migrant workers who, as in the Libyan context, made up the majority of migrant workers in the country. In addition, there is always the danger of overloading reparations and other transitional justice measures with more issues than they can handle. At the same time, however, if labor and other migrants are permanent features of the transitional society in question, it is difficult to see how the objectives of reparations could be achieved without including them, as they form an integral part of the local social fabric.

INTERNATIONAL ASPECTS OF DISPLACEMENT AND REPARATIONS

Another issue is how a reparations effort can address the international features of displacement, which are easiest to observe when large numbers of refugees cross borders into neighboring countries. At the local level, the communities living in the areas where refugees settle will invariably be affected by this new population. Mass displacement tends to have “a profound effect on ecosystems and consequently on livelihoods and state stability” and hence on the likelihood of human rights violations and, indeed, further displacement.¹²⁰ Things may become especially complicated when, over time, those refugees become independent players in the local political landscape or an integral part of local conflict and strife. The Palestinian refugees in Lebanon and their role in the civil war there may be an extreme, but in no way isolated, example of how the destinies of a refugee community and a host community can become intimately connected.¹²¹ The international drivers of displacement both inside and outside national borders are often connected to the nature of contemporary conflict. “Conflict in the Global South has been shown to spill into neighboring states through the spread of small arms, the movement of armed groups and the policies of neighboring states,” whereby population movements are clearly “linked to the regionalization of conflict.”¹²² The reality that communities can be victims of multiple instances of displacement involving movement both within and across national borders further underscores that the phenomenon cannot always be explained by reference to national factors (and actors) alone.

In such situations, focusing on reparations at the national level risks divorcing those efforts from the reality of what people went through, as well as potentially excluding actors that can be considered victims of displacement

(for instance, host communities in neighboring countries that eventually become displaced themselves because of pressures from the arriving refugees). Whether a regional approach is desirable and feasible depends on the existing linkages between the states involved and the people living in those states, their joint histories and political evolutions, the presence of an identity of regional belonging overlaying national and local identities, and the extent to which regional displacement is interconnected as a whole. While there are as yet no real examples of regional reparations programs,¹²³ recent policy initiatives such as the International Conference on the Great Lakes Region in eastern and central Africa and the ensuing Great Lakes Pact can serve as examples in this respect. The pact, which grew out of a realization that people living in the Great Lakes area are so “interlinked ethnically, culturally and linguistically that the instability initially generated by purely internal causes in each country quickly spread to generate and maintain the dynamic conflict in the entire region,”¹²⁴ was adopted by regional governments on December 15, 2006, and set out new norms, standards, and mechanisms for protecting displaced persons.¹²⁵ While the process through which the pact came about can serve as an example (involving governments, civil society actors, and international and national experts), the difficulties related to its subsequent implementation, including the lack of sustained political will and the barriers caused by weak and dysfunctional state institutions, point toward the possible limitations of a regional approach. At the same time, in contexts where resources are extremely limited, the regional pooling of resources may be one (partial) step forward.

REPARATIONS FOR FORCED DISPLACEMENT: REMEDIES

As explained at the outset, large-scale human rights violations usually call for reparations to be approached as a matter of providing benefits directly to victims rather than as an attempt to achieve full restitution. Concerning what those benefits should be, there is no magic formula that can be applied in every situation. As a general minimum standard, those benefits should at least be adequate and fair, and where appropriate, they should be targeted to reduce victims’ overall socioeconomic vulnerability. When it comes to material benefits, this standard does not require a direct link between the actual material losses victims sustained and the eventual benefits the reparations program provides to them. Of course, victims may well dismiss benefits as unfair and inadequate if no such link exists, but this is not always the case. One example is

the German Forced Labor Compensation Program, which between 2000 and 2006 provided former forced and slave laborers from the Nazi era with monetary compensation.¹²⁶ Despite the fact that the compensation amounts were very low compared to the material, physical, and psychological losses many victims had sustained, the program appears to have been generally accepted as adequate and fair and, indeed, a legitimate way to bring closure to this particular reparations issue politically.¹²⁷ It is hence a good example of a reparations effort where a remedy not directly connected to the actual loss (and also never presented as such) provided some measure of justice to the victims. As regards the symbolic benefits of recognition and acknowledgment, these relate, by their very nature, more to the violations than the ensuing losses (although officially recognizing and acknowledging those violations often involves a simultaneous reference to the losses victims sustained as a consequence). In broad terms, the options and limitations (fiscal and otherwise) regarding the types of benefits that can be provided in the context of large-scale reparations for displacement are not substantially different from those in the context of reparations for other human rights violations, although underlying needs may, of course, be somewhat different.

One particularly sensitive issue is how to rank material reparations for displacement among redress measures for other violations. In large-scale reparations programs, benefits are best tied to violations, rather than to the actual material losses of individual victims. Unless the same material redress is provided for each type of violation, a reparations program has to somehow rank the different types of violations it covers, so as to decide what benefits to attach to what violation. For example, if the material redress is compensation, then the issue is what violation should be granted the highest amount of compensation, which one the second highest, and so on all the way down to the violation that will be granted the lowest amount. The alternative of providing the same amount to all victims independent of the type of violation they have suffered has, at least to my knowledge, never been put into practice, possibly because it would be perceived as unfair and unjust (even if we can agree that all victims of human rights violations in a particular country have suffered, we usually also can agree that certain violations cause graver suffering than others). Any ranking needs to conform to the prevailing moral code and sensibilities of the society, and of course, whose code and sensibilities should prevail will likely be a source of disagreement. Arguably, those whose moral code and sensibilities matter most are the victims themselves, and ideally, a reparations program would appeal to the largest possible number of victims in this respect, avoiding creating new or deepening existing divisions among victims.¹²⁸

Displacement may be more difficult to rank or even accept as a separate violation than other abuses, such as torture and murder, and this has to do with the perception of victims who did not leave regarding those who did. In the eyes of the former, it is not always true that the latter suffered more. Indeed, those who did not leave may see those who left as the lucky ones and may have little enthusiasm for creating a specific material remedy for the displaced. While there are no universally applicable rules here, mixed sentiments may more likely be felt about a diaspora than an internally displaced population, especially after a protracted period of displacement. It is not uncommon for real tensions to exist between those who lived through years or decades of repression, human rights violations, or conflict and those who spent those same years as refugees living elsewhere.¹²⁹

A number of points should be made concerning what types of restitution would be suitable for displaced populations. First, the preferences and priorities of the displaced—often informed by their socioeconomic situation—must be considered, so that where victim populations are poor and vulnerable, the emphasis will lie on measures that help reestablish living conditions and economic security.¹³⁰ Cash compensation frequently makes it to the top of the list of victims' preferred benefits,¹³¹ sometimes driven by a lack of faith that the government will deliver on other, more long-term reparative measures. In Timor-Leste, for example, IDPs showed little faith in the government's promise to build new houses, instead preferring immediate cash payments as a condition for their leaving the camps.¹³² Notably, these priorities often reflect pressing needs rather than specific ideas victims may have about what reparations should offer them as distinct from humanitarian aid, social services, or state support, broadly speaking.¹³³ As argued earlier, these preferences then need to be counterbalanced with considerations related to the economic effectiveness of benefits and their ability to lift victims out of poverty and vulnerability. The latter consideration may point toward measures that increase long-term self-sufficiency for the victims, such as improved access to higher education, livelihood support, and also cash grants, with or without incentives to spend this money on services and items that have a durable effect. Second, the Framework on Durable Solutions for Internally Displaced Persons can also provide guidance on the choice of benefits.¹³⁴ It defines a durable solution as having been achieved when IDPs "no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination resulting from their displacement."¹³⁵ In addition to pointing toward measures that can assist IDPs with return, local integration, or resettlement, the Framework provides eight criteria that can be

used to determine the extent to which a durable solution has been achieved, which can guide policymakers considering what reparative benefits are the most adequate for victims of displacement.¹³⁶

As argued earlier, one crucial step in designing a reparations program that can make a real contribution to pro-poor growth and development is to carry out an assessment of the overall socioeconomic situation of the victim population, including the extent to which it has access to basic services. Such assessments should also include a comparative element, so that the situation of the displaced population is evaluated against that of the overall population. In Colombia, studies have demonstrated “the precarious living conditions of displaced households . . . in comparison to the rest of the Colombian population living in poverty, and specifically in relation to the non-displaced neighboring households of the same economic stratum.”¹³⁷ Findings such as this not only help quantify the negative impact of displacement on those affected but can also play a positive role in building political support for a reparations effort that includes the displaced, as well as increasing understanding and acknowledgment of what this population has experienced. Where governments lack the capacity to carry out such assessments, international support is often available in the form of institutional capacity building or as part of international humanitarian or development assistance programs.

The idea that reparations for displacement should help victims overcome its consequences raises the issue of how reparations efforts differ from humanitarian assistance, early recovery support, and development aid.¹³⁸ Conceptually, reparations efforts sit closer to early recovery than humanitarian aid, at least if humanitarian efforts include only immediate life-saving support such as the distribution of food and water and the provision of tents. The Cluster Working Group on Early Recovery defines early recovery as “a multidimensional process” that “begins early in humanitarian settings,” is “guided by development principles,” and aims to “generate self-sustaining national owned and resilient processes for post-crisis recovery.”¹³⁹ In terms of activities, it covers “the restoration of basic services, livelihoods, shelter, governance, security and the rule of law, environment and social dimensions, including the reintegration of displaced populations.”¹⁴⁰ Early recovery activities are mostly carried out by the same national and international actors that provide humanitarian assistance. While it would be beyond the scope of this chapter to exhaustively discuss possible overlaps and differences between early recovery, on the one hand, and reparations, on the other, the following considerations arise.

The principal distinction between reparations measures and early recovery support does not lie in the type of benefits national and international actors

can use to achieve their respective goals. Any benefit that can be used to repair victims' lives (compensation, preferential access to basic services, allocation of land and housing, the provision of psychosocial support) can, at least in principle, also be used by actors trying to foster the early recovery of communities and individuals affected by crisis. The Timor-Leste National Recovery Strategy adopted to address the 2006 internal displacement crisis, for example, provided IDPs with cash grants to cover the destruction, looting, or damaging of their homes. Presented in a different language—as compensation for a violation of rights—this strategy could, from a benefits perspective alone, easily have qualified as a reparations effort, even though it was not.¹⁴¹ Nor does the distinction necessarily lie in the process through which reparations and early recovery come about. Reparations and early recovery guidelines and manuals emphasize the need to use participatory processes that bring to light the priorities and demands of the victims or beneficiaries themselves, even if those processes are often flouted in practice. Clearly, it can also not just be a matter of what language or discourse is used to describe the effort: it is unlikely that victims would accept a government simply requalifying social or humanitarian assistance as “reparations” (on the other hand, deliberately not defining cash grants as compensation or reparations does, inevitably, disqualify an effort for the reparations label).¹⁴² Instead, the main distinction between reparations and early recovery can be found in the broader political context, including the public discourse around the efforts, whether they are treated as official acknowledgments of past violations and are openly intended to provide justice for past suffering, and the perceived good faith of decisionmakers. The distinction also has to do with what other measures a government takes to address past violations, including efforts to unearth the truth, promote and achieve accountability, and engage in genuine institutional reforms.¹⁴³ Not all these measures need to happen simultaneously,¹⁴⁴ but a broader transitional justice process of sorts is required to elevate a benefits-for-victims program above the “ordinary” provision of humanitarian assistance or social support.

LIMITATIONS OF REPARATIONS FOR DISPLACEMENT: FRAGILE STATES AND EXTREME POVERTY

As the table earlier in the chapter testifies, displacement often occurs in contexts where poverty is widespread, the most basic of needs remain unmet for important portions of the population, and state and governance structures are weak or in some parts of the territory nonexistent. Developing effective

reparations measures in such contexts can be challenging, in part because of the sheer number of people affected by displacement and hence the size of the universe of victims that a reparations program needs to cover. The two main challenges to be overcome in such contexts are (1) where to find the financial resources to fund the administration and implementation of a large-scale reparations effort and (2) how to operationalize the provision of benefits to tens or hundreds of thousands of victims in a more or less efficient and fair manner.

The issue of material resources is one of absolute scarcity and prioritization of available means. Absolute scarcity occurs in situations where the state, as the entity responsible for providing effective remedies to victims of human rights violations, has no resources to cover a reparations effort for all the victims. Funding by the international community may be an alternative, but examples where international funds have actually been used for providing reparations remain scarce, although attitudes may slowly be shifting in this respect.¹⁴⁵ The prioritization of available means is possible when at least some material resources are available but spending more on reparations is likely to require spending less on something else. This dilemma (which needs to be looked at carefully in each situation, as it is open to abuse by those opposing reparations for political reasons) is starkest when widespread poverty also requires increased spending on basic needs. While it is well beyond this chapter to discuss this (potential) dilemma in depth,¹⁴⁶ two related points are worth emphasizing.

In situations where victims are mostly poor—for example, in Colombia¹⁴⁷—the apparent tension between development and reparations spending can be reduced (if not resolved) by tailoring benefits with their developmental impact in mind.¹⁴⁸ If benefits provided to victims by a reparations program also allow them to escape poverty in a durable manner, then the goals of both development and reparations may have been met. If benefits are designed with a vulnerability- and poverty-reduction goal in mind, then implementing reparations not only has a fiscal cost but also offers fiscal benefits through an eventual reduction in expenditures on humanitarian assistance, social aid, and so on. This needs to be carefully looked at in each situation, but as a starting point, reparations are best seen as potentially generating both fiscal costs and fiscal benefits.

The institutional challenges related to the implementation of a reparations program involving tens or hundreds of thousands of displaced persons inside and across national borders may be as formidable as the material resource challenge in contexts where state institutions are fragile. Issues of transparency, corruption, central control, political bias, and a lack of state presence in parts

of the territory may individually or collectively render the implementation of a reparations program extremely challenging. The need to involve embassies, consular offices, and host governments to reach refugees and other displaced populations can further complicate the picture of how to achieve this where state institutions struggle to even carry out the most basic tasks. International support and capacity building can help, but institutional building is inherently a long-term process. As a rule, practicability needs to be a central concern from the beginning: it is no good designing or advocating for measures of redress that go well beyond what local institutions can implement.

Material and institutional constraints should not, however, be an excuse for not doing anything at all in terms of reparations for displacement. They do not, for instance, prevent governments from implementing symbolic reparations efforts in line with victims' demands.¹⁴⁹ There are multiple, displacement-focused symbolic measures that can be conceived, and what can be done is limited primarily by what victims themselves consider to be real and meaningful efforts. Examples include the official recognition that displacement did take place, that it was caused by the deliberate acts of concrete actors, and that displaced people were also victims of human rights violations.¹⁵⁰ Official accounts that simply blame displacement on generalized violence and instability, and suggest that no identifiable actors can be held accountable for the fact that so many people had to leave their homes and livelihoods behind, are unlikely to achieve the restorative goals sought by reparations and other transitional justice efforts.¹⁵¹ Memorialization and the inclusion of the experience and causes of displacement in the official posttransitional historical narrative can be meaningful, although the dangers of an excessive politicization of the "new" national history are always present in transitional situations.¹⁵² Similarly, the systematic revision of official rules and practices concerning how the state responds to the particular needs and circumstances of the formerly displaced population can make a positive contribution, especially if it occurs against the background of a broader transitional justice effort. Finally, symbolic reparations can also involve supporting particular ceremonies (traditional or otherwise),¹⁵³ changing the names of streets or institutions,¹⁵⁴ and erecting monuments or artworks connected to the displacement experience. In and of themselves, symbolic reparations may not answer to all the victims' expectations, but a genuine effort does have the potential to make a meaningful difference. It can also make a significant contribution to—and be an integral part of—restoring confidence in the state and transforming state institutions, a necessary ingredient of any policy aimed at breaking the cycle of violent conflict that affects so many fragile states.¹⁵⁵

It is also important to keep in mind the connection between the success of humanitarian assistance and economic development, on the one hand, and demands for material reparations, on the other. As pointed out earlier, victims' concrete reparations demands will often be closely connected to their socio-economic situation. To somewhat oversimplify: the more victims are affected by poverty, a lack of livelihood opportunities, and overall vulnerability, the more likely their reparative demands will focus on material and livelihood support measures. The high expectations that victims invest in material reparations can also reflect the lack of other avenues available to them for improving their circumstances. While somewhat speculative, it is difficult not to see a relationship between Colombian civil society actors' strong advocacy for, and high political investment in, demands for material reparations for IDPs and the continued poverty of IDPs in both absolute and relative terms compared to the overall Colombian population.¹⁵⁶ When past assistance and ongoing economic development policies fail to bring people out of their misery, the displaced may invest reparations measures with hopes and expectations that they cannot really fulfill. This further underscores the need to make effective victims' assistance, as well as pro-poor economic development that includes the targeting of victims of past violations, a central part of the overall transitional effort. Addressing the social and economic marginalization of victims is not only necessary to reduce pressures on, and unrealistic expectations in, material reparations, but it is also required to reduce the chances of vulnerable populations becoming victims of human rights violations again in the future.

CONCLUSION

Displacement in situations of conflict, oppression, and widespread human rights violations is a complex phenomenon that cannot be easily reduced to a matter of refugees and IDPs alone. A key understanding of how displacement has played out in a given context, how the experiences of the displaced and the nondisplaced have differed, and perceptions of and within the displaced population is essential in determining whether reparations for displacement are appropriate. Whether they are deemed appropriate or not will (and should) usually be determined by local, inclusive politics, but to the extent that international advocacy has a role to play in this determination, it should start by understanding how displacement fits within the broader local cultural, social, economic, and political context, as assumptions about who is vulnerable and who should be considered a victim may bring more problems than assistance

to the displaced. Even the use of the term *victim* to describe the displaced population may not fit well with dominant self-perceptions and identities in a particular situation. Finally, thinking about reparations for displacement also brings to the fore how reparations can integrate the realities of today's globalized world, where national causes are frequently insufficient to explain crises, and where reparations may need to reach those beyond a given national community. When oppression and human rights violations happen in Libya, communities in countries as far afield as Bangladesh feel the effects and, indeed, have victims in their midst. How reparations measures, and transitional justice more broadly, can grapple with these issues without sinking under expectations they will never be able to fulfill remains one of the main challenges ahead for the field.

NOTES

- 1 I would like to thank Marwan Shehadi and Emilie Arnaud for their efficient and effective research assistance and the editors for their pointed comments and suggestions. The opinions expressed in this chapter are mine alone.
- 2 For a similar observation regarding displacement and transitional justice more broadly, see Roger Duthie, "Transitional Justice and Displacement," *International Journal of Transitional Justice* 5, no. 2 (2011): 242–61. For a plea to conduct research on how to connect transitional justice and displacement, see Susan Harris Rimmer, "Reconceiving Refugees and Internally Displaced Persons as Transitional Justice Actors," (Research Paper no. 187, New Issues in Refugee Research, UNHCR, Geneva, April 2010).
- 3 Other transitional justice measures have also engaged with forced displacement, including truth commissions in Timor-Leste and Sierra Leone and land restitution efforts in Colombia, Bosnia, and Iraq. See Commission for Reception, Truth, and Reconciliation in East Timor, "Forced Displacement and Famine," in *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor* (Dili: CAVR, 2005); Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the Sierra Leone Truth and Reconciliation Commission*, 2 vols. (Accra: GPL Press, 2004); Rodrigo Umprimny-Yepes and Nelson Camilo Sanchez, "Los dilemas de la restitución de tierras en Colombia," *Revista estudios socio-juridicos* 12, no. 2 (2010): 305–42; Rhodri Williams, "Post-conflict Property Restitution and Property Return in Bosnia and Herzegovina: Implications for

- International Standard-Setting and Practice,” *New York University Journal of International Law and Politics* 37, no. 3 (2005): 442–553; and Peter Van der Auweraert, “Policy Challenge for Property Restitution in Transition,” in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, ed. Carla Ferstman, Mariana Goetz, and Alan Stephens (The Hague: Martinus Nijhoff, 2009), 459–82.
- 4 Turkey, Law 5233 on the Compensation of Damages that Occurred Due to Terror and the Fight against Terror, July 2004, <http://www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx>. The beneficiaries of this law are not limited to the displaced, although “it was evident from the debates in the parliament that the law was to be adopted for the displaced.” Dilek Kurban, “Reparations and Displacement in Turkey: Lessons Learned from the Compensation Law” (paper prepared for ICT) / Brookings Project on Transitional Justice and Displacement, 2012).
 - 5 Colombia, Ley 1448 de víctimas y restitución de tierras [Law 1448 on victims and land restitution], June 10, 2011, <http://www.archivogeneral.gov.co/index.php?idcategoria=4419#>.
 - 6 Iraq, Statute of the Commission for the Resolution of Real Property Disputes, January 9, 2006, art. 30, <http://www.brookings.edu/projects/idp/Laws-and-Policies/iraq.aspx>.
 - 7 *Ibid.*, 335.
 - 8 Pablo de Greiff, “Justice and Reparations,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 451.
 - 9 United Nations General Assembly, Resolution 60/147, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147/, March 21, 2006, art. 18.
 - 10 United Nations General Assembly, Rome Statute of the International Criminal Court, A/CONF. 183/9, July 17, 1998, art. 75.
 - 11 Caution is warranted in assessing fiscal arguments either against reparations or as a basis to limit reparations. They are easily misused by those who, for other more political reasons, do not wish to see a reparations program come to light, and they are best judged against the background of solid cost assessments for different types of reparations, public expenditure in other areas, the overall state budget, and the types of competing needs.
 - 12 Unless indicated otherwise, the figures were taken from Internal Displacement Monitoring Centre, “Global Statistics,” <http://www.internal-displacement.org>.
 - 13 The official number is 3.6 million individuals, or seven hundred thousand households, which reflects the number of people registered in the information system on the displaced population. Civil society organizations such as CODHES claim that “the official figures do not reflect the total number of displaced persons as there is a perceptible percentage of under-registration amongst this population.” CODHES estimates the total number to be around 4.5 million IDPs. See Luis Jorge Garay Salamanca, Fernando Barberi Gomez, and Clara Ramirez Gomez, *The Humanitarian Tragedy of Forced Displace-*

- ment in Colombia (Bogota: CODHES, January 15, 2011), 1, http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52.
- 14 See United Nations Relief and Works Agency for Palestinian Refugees in the Near East, *UNRWA in Figures* (Gaza: UNRWA, July 2011), <http://www.unrwa.org/userfiles/2011092751539.pdf>. The population registered with the agency is only a proportion of the total Palestinian refugee population around the world.
- 15 De Greiff, "Justice and Reparations," 451. One component of large-scale reparations can be the restitution of land and property, as is the case in Colombia. For more on land and property restitution, see Rhodri Williams, in this volume.
- 16 As David Cantor points out, there is an international legal obligation that a remedy provided by the state with respect to human rights violations should be judicial in nature and "effective in practice as well as in law." David Cantor, "Restitution, Compensation, Satisfaction: Transnational Reparations and Colombia's Victims' Law," (Working Paper no. 215, New Issues in Refugee Research, Evaluation and Policy Analysis Unit, UNHCR, August 2011), 29.
- 17 For a broad discussion of technical issues of large-scale administrative processes, including issues of evidence, see Permanent Court of Arbitration, ed., *Redressing Injustices through Mass Claims Processes: Innovative Responses to Unique Challenges* (Oxford: Oxford University Press, 2006). See also International Organization for Migration, *Property Restitution and Compensation: Practices and Experiences of Claims Programs* (Geneva: IOM, 2009), especially 117–51.
- 18 Naomi Roht-Arriaza and Katharine Orlovsky, "A Complementary Relationship: Reparations and Development," in *Transitional Justice and Development: Making Connections*, ed. Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, 2009), 172.
- 19 De Greiff, "Justice and Reparations," 453.
- 20 See Andre Armstrong and Hans Dieter Seibel, "Reparations and Microfinance Schemes" in de Greiff, *Handbook of Reparations*, 676–98.
- 21 This was the case in the reparations program in Sierra Leone. See International Organization for Migration, "IOM Provides Technical Assistance to Reparations Programme for Victims of Sexual Violence in Sierra Leone," press briefing, March 23, 2010, www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/cache/offonce?entryId=27138.
- 22 For more on collective reparations, see International Center for Transitional Justice, *The Rabat Report: The Concept and Challenges of Collective Reparations* (Rabat: ICTJ, 2009), <http://ictj.org/sites/default/files/ICTJ-Morocco-Reparations-Report-2009-English.pdf>.
- 23 Pablo de Greiff, "Articulating the Links between Transitional Justice and Development: Justice and Social Integration," in de Greiff and Duthie, *Transitional Justice and Development*, 38.
- 24 Although this is sometimes overlooked, victims are rarely a homogenous group, and they are often as politically diverse as the population as a whole, so that when it comes

- to redress for the violations they suffered, they frequently have diverging opinions.
- 25 In the late 1990s, more than four decades after the violations took place, victims and victims' organizations filed lawsuits in the United States and elsewhere against high-profile German companies they accused of having used forced labor during World War II and of never having provided "adequate and fair" reparations to the victims. Under pressure, the German government and private sector eventually established a fund under the management of the Foundation "Remembrance, Responsibility and Future" that by the end of 2006 had paid out a total of EUR 4.37 billion in compensation to more than 1.66 million former forced laborers and other victims of National Socialism in ninety-eight countries (see www.stiftung-evz.de). On this program, see John Authers, "Making Good Again: German Compensation for Forced and Slave Laborers," in de Greiff, *Handbook of Reparations*, 420–48; and Peter Van der Auweraert, "The Practicalities of Forced Labor Compensation," in *NS-Forced Labor: Remembrance and Responsibility: Legal and Historical Observations*, ed. Peer Zumbansen (Baden-Baden: Nomos, 2002), 301–18.
 - 26 An IDP in a camp in the Rift Valley, Kenya, quoted in Simon Robins, "To Live as Other Kenyans Do": A Study of the Reparative Demands of Kenyan Victims of Human Rights Violations (New York: ICTJ, 2011), 21.
 - 27 See Rhodri Williams, in this volume, for a discussion of this issue in regard to property restitution.
 - 28 See Richard Rorty, *Philosophy and Social Hope* (London: Penguin Books, 1999). Arguably, this applies less in contexts where the victims targeted by a reparations program are "more or less well-off." However, the countries in which today's conflicts and large-scale, systematic human rights violations play out make this scenario the exception rather than the rule.
 - 29 Among many possible examples from the International Organization for Migration and UNHCR, see the regular needs assessments carried out by the former regarding the displaced population in Iraq at www.iom-iraq.net.
 - 30 For studies in the Turkish context, see Internal Displacement Monitoring Centre and Turkish Economic and Social Studies Foundation, *Overcoming a Legacy of Mistrust: Towards Reconciliation between the State and the Displaced* (Geneva/Istanbul: IDMC / TESEV, 2006).
 - 31 See Overseas Development Institute, "Pro-poor Growth and Development" (Briefing Paper no. 33, ODI, London, January 2008), <http://www.odi.org.uk/resources/docs/825.pdf>. See also Roht-Arriaza and Orlovsky, "A Complementary Relationship."
 - 32 This has been the case in both Colombia and Turkey. Regarding the latter, the consistent jurisprudence of the European Court for Human Rights ordering Turkey to pay compensation to individual victims played an important role in the creation of Law 5233. See Dilek Kurban, "Reparations and Displacement in Turkey," 16.
 - 33 For an overview of how the UNCC was created by the UN Security Council and, especially, the different decisions made by the UNCC Governing Council, see www.uncc.ch/decision.htm.

- 34 Turkey, Law 5233.
- 35 Colombia, Ley de víctimas y restitución de tierras.
- 36 Rafael Barrantes Segura, “Reparations and Displacement in Peru” (paper prepared for ICTJ / Brookings Project on Transitional Justice and Displacement, 2012).
- 37 There are of course instances of ongoing conflict where it is impossible to imagine a durable peace without some form of reparations for displacement, with the Israeli-Palestinian conflict being the most emblematic example. See Leila Hilal, “Transitional Justice Responses to Palestinian Dispossession: Focus on Restitution” (paper prepared for ICTJ / Brookings Project on Transitional Justice and Displacement, 2012).
- 38 Actual delivery should be central to reparations from the outset. Too often, the reality of implementation lags behind the lofty reparations principles contained in the laws and policy documents that are supposed to frame the reparations effort. The result is not infrequently a revictimization of the very people reparations are intended to serve. Take the example of Sierra Leone, where only some of the victims of sexual violence received reparations, while others who went through the same ordeals received nothing because of a lack of funds.
- 39 De Greiff, “Articulating the Links.”
- 40 Arguably, this was absent in the Turkish case. See Dilek Kurban, “Reparations and Displacement in Turkey,” 8. Conversely, however, acknowledgment does not necessarily turn a support program into a reparations effort. See Peter Van der Auweraert, “Dealing with the 2006 Internal Displacement Crisis in Timor-Leste: Between Reparations and Humanitarian Policy-Making” (paper prepared for ICTJ / Brookings Project on Transitional Justice and Displacement, 2012), 25.
- 41 De Greiff, “Articulating the Links,” 46.
- 42 See for example, Harris Rimmer, “Reconceiving Refugees,” which refers to the need to conceive of “refugees and IDPs” as transitional justice actors.
- 43 According to UNHCR, at the end of 2010 some 43.7 million people worldwide were displaced because of conflict and persecution, the highest number in more than fifteen years. This included 15.4 million refugees and 27.5 million IDPs, as well as over eight hundred thousand people whose asylum applications had not yet been adjudicated by the end of the reporting period. For the latest figures, see www.unhcr.org.
- 44 See article 2.7 of the UN Charter, which emphasizes that “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” For an interesting historical contextualization of the sovereignty concept in international law, see Philip Allott, *The Health of Nations: Society and Law beyond the State* (Cambridge: Cambridge University Press, 2002), especially 342–80.
- 45 For a critical discussion of the concept of state sovereignty and its ever fleeting content, see Martti Koskeniemi, *From Apology to Utopia* (Helsinki: Finnish Lawyers’ Publishing Company, 1989), 192–263.

- 46 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, A/6316, December 16, 1966, art. 12.1.
- 47 *Ibid.*, art. 13. The distinction between “aliens” and “nationals” is relevant to the discussion of reparations for displacement, as will be discussed further.
- 48 “Everyone shall be free to leave any country, including his own.” *Ibid.*, art. 12.2.
- 49 Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, art. 1.a.2, <http://www.unhcr.org/3b66c2aa10.html>. For an introductory discussion of the interpretation and meaning of the different elements of the definition as well as a basic explanation of the concept of cessation of refugee status, see Office of the United Nations High Commissioner for Refugees, *An Introduction to International Protection: Protecting Persons of Concern to UNHCR* (Geneva: UNHCR, 2005), 55–59.
- 50 For a recent discussion of the role of UNHCR in global refugee protection, see Gil Loescher and James Milner, “UNHCR and the Global Governance of Refugees,” in *Global Migration Governance*, ed. Alexander Betts (Oxford: Oxford University Press, 2011), 189–209. UNHCR is not, however, responsible for the protection of the Palestinian refugees, who fall under the United Nations Relief and Works Agency for Palestinian Refugees in the Near East. For an extensive overview, see Ricardo Bocco and Lex Takkenberg, eds., “UNRWA and the Palestinians Refugees 60 Years Later,” special issue, *Refugee Survey Quarterly* 28, nos. 2 and 3 (2009).
- 51 For a discussion of the origins and post–Cold War shifts in the approach to international refugee law and the protection mechanisms it created, see B. S. Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies* 11, no. 4 (December 1998): 350–74. For a brief description of historical shifts, see also Loescher and Milner, “UNHCR and the Global Governance of Refugees,” 193–95.
- 52 UNHCR, “Almost 320,000 Civilians Flee Somalia This Year, Including 20,000 to Yemen,” October 21, 2011, <http://www.unhcr.org/4ea185356.html>.
- 53 By November 27, 2011, close to eight hundred thousand people (mostly migrants) had left Libya since the start of the crisis. For the latest updated figures compiled by the International Organization for Migration, see <http://www.migration-crisis.com/libya/page/index/2>.
- 54 Alexander Betts and Esra Kaytaz, “National and International Responses to the Zimbabwean Exodus: Implications for the Refugee Protection Regime,” (Working Paper no. 175, New Issues in Refugee Research, Evaluation and Policy Analysis Unit, UNHCR, 2009).
- 55 See for example, Guy Goodwin–Gill, “After the Cold War: Asylum and the Refugee Concept Move On,” *Forced Migration Review* 10 (April 2001): 14.
- 56 See, for example, Carol Bohmer and Amy Shuman, “Gender and Political Asylum,” *Foreign Policy Blogs*, April 13, 2011, <http://foreignpolicyblogs.com/2011/04/13/gender-political-asylum/>; Nahla Valji, Lee Anne De La Hunt, and Hellen Moffet, “Where Are the Women? Gender Discrimination in Refugee Policies and Practices,” in *Refugee Law Reader Syllabus*, 3rd ed., ed. Rosemary Byrne (Budapest: UNHCR, 2005), 30; and Jaqueline Great-

- batch, "The Gender Difference: Feminist Critiques of Refugee Discourse," *International Journal of Refugee Law* 1, no. 4 (1989): 518–27.
- 57 See, for example, Nicole LaViolette, "Gender-Related Refugee Claims: Expanding the Scope of the Canadian Guidelines," *International Journal of Refugee Law* 19, no. 2 (2007): 169–214.
- 58 See Karin Landren, "The Future of Refugee Protection: Four Challenges," *Journal of Refugee Studies* 11, no. 4 (1998), especially 417–20. For a comparative case study of differences in national practices, see Ekaterina Yahyaoui Krivenka, "Muslim Women's Claims to Refugee Status within the Context of Child Custody upon Divorce under Islamic Law," *International Journal of Refugee Law* 22, no. 1 (2010): 48–71, which finds strong discrepancies between Great Britain, on the one hand, and Canada and New Zealand, on the other.
- 59 For a discussion of the differences between various European asylum procedures, see Liza Schutser, "A Comparative Analysis of the Asylum Policy of Seven European Governments," *Journal of Refugee Studies* 12, no. 1 (2000): 118–32.
- 60 See Michael Kagan, "The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination," *International Journal of Refugee Law* 18, no. 1 (2006): 1–29.
- 61 David Cantor, "Restitution, Compensation, Satisfaction," 29.
- 62 *Ibid.*, 30.
- 63 Asian countries that have not ratified the convention include Bangladesh, India, Indonesia, Malaysia, Nepal, and Pakistan. No Middle Eastern countries have become state parties to the convention.
- 64 See www.unrwa.org.
- 65 Out of many studies, see, for example, Shahira Sami, *Reparations to Palestinian Refugees: A Comparative Perspective* (London: Routledge, 2010); and Hilal, "Transitional Justice Responses to Palestinian Dispossession."
- 66 United Nations Commission on Human Rights, "Human Rights, Mass Exoduses and Displaced Persons: Addendum—Guiding Principles on Internal Displacement," Report of the Representative of the Secretary-General, Mr. Francis M. Deng, E/CN.4/1998/53/Add.2, February 11, 1998 ("Guiding Principles").
- 67 See Roberta Cohen, "Nowhere to Run, No Place to Hide," *Bulletin of Atomic Scientists* 58, no. 6 (November/December 2002): 37–45, http://www.brookings.edu/articles/2002/11humanrights_cohen.aspx.
- 68 *Ibid.* See also Roberta Cohen, "The Guiding Principles on Internal Displacement: A New Instrument for International Organizations and NGOs," *Forced Migration Review* 2 (August 1998): 31–33.
- 69 On international soft law instruments, see Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organizations* 54, no. 3 (2000): 421–56.

- 70 For a discussion of the reasons why this route was chosen over the development of a UN convention for IDPs, see Khaled Koser, “Internally Displaced Persons,” in Betts, *Global Migration Governance*, 219. For an argument that it would still be wrong to push for a convention, see Walter Kälin, “The Future of the Guiding Principles,” in “Ten Years of the Guiding Principles on Internal Displacement,” ed. Marion Couldrey and Maurice Heron, special issue, *Forced Migration Review*, December 2008, 38–40.
- 71 Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, Studies in Transnational Legal Policy no. 38 (Washington, DC: American Society of International Law, 2008), viii.
- 72 The Guiding Principles have also spawned a whole range of tools and instruments intended to assist international actors with protecting internally displaced populations. A key example is the Inter-Agency Standing Committee’s *Handbook for the Protection of Internally Displaced Persons* (Geneva: IASC, June 2010), www.unhcr.org/refworld/docid/4790cbco2.html.
- 73 In October 2000, Angola was the first country to enact elements of the Guiding Principles directly into its national law. For other examples and an overview of national legislation on internal displacement more broadly, see http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.
- 74 The pact is the first multilateral instrument to commit member states to adopting and implementing the Guiding Principles as a framework. It also addresses some specific concerns that have arisen from the experience of internal displacement in the African Great Lakes region, such as protection measures for pastoralists, host communities, and families of mixed ethnic identity. Furthermore, it strengthens the legal basis for IDPs to claim their rights, including the right to access to information, to be consulted about and participate in decisions that affect their lives, and to receive humanitarian assistance. The full text can be retrieved at www.internal-displacement.org/greatlakes.
- 75 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Kampala, Uganda, 2009, www.unhcr.org/refworld/docid/4ae572d82.html.
- 76 UN Commission on Human Rights, Guiding Principles, preamble, art. 3.
- 77 Inter-Agency Standing Committee, *Handbook for the Protection of Internally Displaced Persons*, 8.
- 78 See Karina Wong, *Colombia: A Case Study in the Role of the Affected State in Humanitarian Action* (London: Overseas Development Institute, 2008), especially 12–17.
- 79 Kälin, *Guiding Principles on Internal Displacement*, 4.
- 80 The Inter-Agency Standing Committee defines a complex emergency as “a humanitarian crisis in a country, region, or society where there is a total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country program.” See ReliefWeb, *Glossary of Humanitarian Terms* (ReliefWeb, August 2008), 18.

- 81 For background, see Gérard Prunier, *Africa's World War: Congo, the Rwandan Genocide and the Making of a Continental Catastrophe* (Oxford: Oxford University Press, 2009).
- 82 Séverine Autesserre, *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding* (Cambridge: Cambridge University Press, 2010).
- 83 Veronika Talviste, "ICRC: Careful Analysis Is the Key," *Forced Migration Review* 36 (November 2010): 43.
- 84 Ibid.
- 85 See Hiram A. Ruiz, "Afghanistan: Conflict and Displacement, 1978 to 2001," *Forced Migration Review* 13 (2004): 8–10; Géraldine Chatelard, "What Visibility Conceals: Re-embedding Refugee Migration from Iraq," in *Dispossession and Displacement: Forced Migration in the Middle East and Africa*, ed. Dawn Chatty and Bill Finlayson (New York: Oxford University Press, 2010), 17–44; Hassan Noor, "Emergency within an Emergency: Somali IDPs," *Forced Migration Review* 28 (2007): 29–31; Anna Lindley, "Crisis and Displacement in Somalia," *Forced Migration Review* 33 (2009): 18–19; and Colin Thomas-Jensen, *Crisis and Opportunity: Protracted Displacement in Sudan* (Middle East Institute / Foundation pour la Recherche Stratégique, May 2011), www.refugeecooperation.org/publications/sudan/pdf/09_thomas.pdf. For an older overview on Sudan, see Eltigani E. Eltigani, ed., *War and Drought in Sudan: Essays on Population Displacement* (Gainesville: University of Florida Press, 1994).
- 86 Colombia and Turkey are two examples where violence in the rural areas led to an accelerated urbanization process that, in all likelihood, will turn out to be irreversible.
- 87 See Chris Chapman and Preti Taneja, *Uncertain Refuge and Dangerous Return: Iraq's Uprooted Minorities* (London: Minority Rights Group International, 2009), <http://www.aina.org/reports/mrgiraq200909.pdf>.
- 88 In the final decade of Saddam Hussein's rule, basic services had already declined to a very low level. See Peter Van der Auweraert, *Displacement and National Institutions: Reflections on the Iraqi Experience* (Middle East Institute / Foundation pour la Recherche Stratégique, June 2011), 8–11, www.refugeecooperation.org/publications/Iraq/08_auweraert.php.
- 89 All of these reasons were mentioned repeatedly by Iraqi refugees and IDPs during focus group discussions with the author. See also Géraldine Chatelard, *Iraqi Refugees and IDPs: From Humanitarian Intervention to Durable Solutions* (Middle East Institute / Foundation pour la Recherche Stratégique, June 2011), 22.
- 90 See Alexander Betts, "Survival Migration: A New Protection Framework," *Global Governance* 16, no. 3 (2010): 362. He defines "survival migrants" as people who are "outside their country of origin because of an existential threat for which they have no access to a domestic remedy or resolution," where the "existential threat" includes livelihood collapse and broader socioeconomic drivers.
- 91 This term is used to refer to migration flows that are made up of "refugees, asylum-seekers, survival migrants, economic migrants, victims of trafficking, and other migrants"

- and that often accompany protracted conflicts or repression. International Organization for Migration, “Irregular Migration and Mixed Flows: IOM’s Approach,” IOM Council, 98th session, MC/ONG/297, October 19, 2009, 1.
- 92 Talviste, “ICRC: Careful Analysis,” 43.
- 93 See, for example Maria Suchkova, *The Importance of a Participatory Reparations Process and Its Relationship to the Principles of Reparations* (Briefing Paper no. 5, Reparations Unit, Transitional Justice Network, University of Essex, 2011), 2.
- 94 Lisa Magarrell, “Outreach to and Engagement of Victims on Reparations: Lessons Learned from Truth and Reconciliation Processes” (presentation made at the conference Reparations for Victims of Genocide, Crimes Against Humanity and War Crimes: Systems in Place and Systems in the Making, The Hague, March 1–2, 2007), 2, <http://www.redress.org/downloads/events/OutreachEngagementLM.pdf>.
- 95 For a discussion, see also Cristián Correa, Julie Guillerot, and Lisa Magarrell, “Reparations and Victim Participation: A Look at the Truth Commission Experience,” in Ferstman, Goetz, and Stephens, *Reparations for Victims of Genocide*, 385–414.
- 96 Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-conflict States: Reparations Programs* (New York: OHCHR, 2008), 11.
- 97 Magarrell, “Outreach to and Engagement of Victims,” 4.
- 98 For an example, see Phoung Pham et al., *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda* (New York: ICTJ, 2005), <http://reliefweb.int/sites/reliefweb.int/files/resources/A1AABC919BF22E384925704A0022B98D-hrc-uga-25jul.pdf>.
- 99 For examples in the context of peacebuilding, see Autesserre, *Trouble with the Congo*, 247.
- 100 Duthie, “Transitional Justice and Displacement,” 248.
- 101 For a discussion, see Cantor, “Restitution, Compensation, Satisfaction.”
- 102 See also Duthie, “Transitional Justice and Displacement,” 249.
- 103 For an overview, see Päivi Pirkkalainen and Mahdi Abdile, *The Diaspora-Conflict-Peace Nexus: A Literature Review* (Jyväskylä, Finland: DIASPEACE, March 2009). Among many case studies, see, for example, Cindy Horst and Mohammed Hussein Gaas, “Diaspora Organizations from the Horn of Africa in Norway: Contributions to Peacebuilding?” (Policy Brief 2, International Peace Research Institute, Oslo, 2009); and R. Cheran, *Diaspora Circulation and Transnationalism as Agents for Change in the Post-conflict Zones of Sri Lanka* (Berlin: Berghof Foundation for Conflict Management, 2004). See also Hazel Smith and Paul Stares, eds., *Diasporas in Conflict: Peace-Makers or Peace-Wreckers* (Tokyo: United Nations University Press, 2007).
- 104 For an exception, see Elyda Mey, *Cambodian Diaspora Communities in Transitional Justice* (New York: ICTJ, March 2008).
- 105 See, for example, Judith T. Shuval, “Diaspora Migration: Definitional Ambiguities and a Theoretical Paradigm,” *International Migration* 38, no. 5 (December 2000): 41–56.

- 106 Pirkkalainen and Abdile, *Diaspora-Conflict-Peace Nexus*, 8.
- 107 See Pnina Werbner, “The Place Which Is Diaspora: Citizenship, Religion and Gender in the Making of Chaordic Transnationalism,” *Journal of Ethnic and Migration Studies* 28 (2002): 119–33.
- 108 See Géraldine Chatelard and Mohamed Kamei Dorai, “La présence Irakienne en Syrie et en Jordanie : Dynamiques sociales et spatiales, et mode de gestion par les pays d'accueil,” *Revue française Maghreb-Machrek* 199 (2009): 43–60, http://hal.archives-ouvertes.fr/docs/00/39/62/77/PDF/Maghreb_Machrek_Chatelard_Dorai.pdf.
- 109 “A large diaspora considerably increases the risk of further conflict.” Paul Collier and Anke Hoefler, “Greed and Grievance in Civil War” (Policy Research Working Paper 2355, World Bank, Washington, DC, 2000), 21. See also Pirkkalainen and Abdile, *Diaspora-Conflict-Peace Nexus*, 5.
- 110 The obligation to inform the diaspora of reparations programs is laid down in various international and national legal instruments. Examples include article 204 of the new Colombian Victims’ Law, which obliges the Ministry of Foreign Affairs to ensure that Colombians living abroad are correctly informed about the law, and principle 13.4 of the Pinheiro Principles, which recommends making information about reparations programs available to the countries of asylum or wherever victims have fled. There is also jurisprudence confirming that an obligation to inform exists; see Cantor, “Restitution, Compensation, Satisfaction,” 11. However, these examples cover access to existing reparations programs, rather than (political) participation in the development of the policies that bring them about.
- 111 Pirkkalainen and Abdile, *Diaspora-Conflict-Peace Nexus*, 7.
- 112 In Timor-Leste, for example, the socioeconomic situation of the population in the IDP camps following the 2006 crisis was, on average, not different from that of the general population (despite initial assumptions by the international community to the contrary). See Peter Van der Auweraert, “Dealing with the 2006 Internal Displacement Crisis,” 9.
- 113 One of the strongest organizations in this respect is undoubtedly the Consultorio para Los Derechos Humanos y Desplazamiento (Codhes). See www.codhes.org.
- 114 See Anna Di Bartolomeo, Thibaut Jaulin, and Delphine Perrin, “Carim Migration Profile Libya” (European University Institute and Robert Schuman Center for Advanced Studies, 2011), 2, http://www.carim.org/public/migrationprofiles/MP_Libya_EN.pdf.
- 115 Khalid Koser, “Responding to Migration from Complex Humanitarian Emergencies: Lessons Learned from Libya” (Chatham House Briefing Paper, Royal Institute of International Affairs, London, November 2011), 3.
- 116 For regularly updated figures, see <http://www.migration-crisis.com/libya/reports>.
- 117 Koser, “Lessons Learned From Libya,” 1.
- 118 Graziano Battistella, “Migration and Human Rights: The Uneasy but Essential Relationship,” in *Migration and Human Rights: The United Nations Convention on Migrant Workers’*

- Rights, ed. Ryszard Cholewinski, Paul de Guchteneire, and Antoine Pécoud (Cambridge: Cambridge University Press, 2009), 47.
- 119 In Libya, some of the migrant workers who fled the violence quickly returned to take up their former (or other) jobs.
- 120 Refugee Studies Center, *Forced Migration Research and Policy: Overview of Current Trends and Future Directions* (Oxford: Refugee Studies Centre / University of Oxford, April 2010), 12.
- 121 The standard work on the Lebanese civil war is without a doubt Robert Fisk's *Pity the Nation: The Abduction of Lebanon* (New York: Nation Books, 2002). See also Rebecca Roberts, *Palestinian Refugees in Lebanon: Living with Long-Term Displacement* (London: Tauris, 2010).
- 122 Refugee Studies Center, *Forced Migration Research and Policy*, 6.
- 123 Arguably, one (so far) missed opportunity in this respect is the former Yugoslavia, where an approach to reparations for civilian victims of the war also would have reconciliatory potential. On victims' reparations in the former Yugoslavia, see Djordje Djordjević, *A Casualty of Politics: Overview of Acts and Projects of Reparation on the Territory of the Former Yugoslavia* (New York: ICTJ), July 2002, <http://www.ictj.org/publication/casualty-politics-overview-acts-and-projects-reparation-territory-former-yugoslavia>.
- 124 "International Conference on Peace, Security, Democracy and Development in the Great Lakes Region: A Concept Paper," quoted in International Displacement Monitoring Center, *The Great Lakes Pact and the Rights of Displaced People: A Guide for Civil Society* (Geneva: IDMC, 2008), 9.
- 125 Ibid.
- 126 See Peter Van der Auweraert, "The Practicalities of Forced Labor Compensation," in Zumbansen, *NS-Forced Labor*, 301–18. For a similar program related to Swiss bank holdings belonging to Holocaust survivors, see Peter Van der Auweraert, "Holocaust Reparations Claims Fifty Years After: The Swiss Banks Litigation," *Nordic Journal of International Law* 71, no. 4 (2002): 557–83.
- 127 The Foundation "Remembrance, Responsibility and Future" has commissioned a broad study on the perceptions of beneficiaries and the impact of the compensation program, the results of which are forthcoming.
- 128 The provision of humanitarian aid can also lead to divisions among victims. See "Drought Causing Divisions Amongst Victims," www.youtube.com/watch?v=VrxICQhxTxc, where Kenyan victims of drought complain they are being ignored by international aid agencies while Somali refugees get all the attention and support.
- 129 Many factors can play a role in the tensions between those who left and those who stayed behind, including the circumstances under which people became displaced—for example, instances where people fled following targeted persecution in the context of ethnic cleansing versus situations where people fled generalized violence or insecurity. Such tensions played out in Iraq after Saddam Hussein was overthrown. They also

- existed when Yasser Arafat returned to Palestine, and those who had spent their time in exile in Tunis immediately clashed with local leaders who had remained in the West Bank and Gaza. See Maher El-Sheikh, "Arafat's Homecoming: Hopes and Fears," *Palestine-Israel Journal of Politics, Economics and Culture* 1, no. 3 (1994).
- 130 See, for example, Robins, "To Live as Other Kenyans Do," 21; and Rafael Barrantes Segura, "Reparations and Displacement in Peru," 15; which refers to the findings in Peru that two priority reparative measures for displaced persons were "economic assistance or help with schooling materials" and "employment opportunities." In Cambodia, surveys show a strong support and preference for livelihood and social support as reparative measures for victims of the Khmer Rouge. See www.peacebuildingdata.org/cambodia/results/reparations.
- 131 This was true also in the Kenyan case; see Robins, "To Live as Other Kenyans Do," 21, 22. The Kenyan study also shows the link between the socioeconomic situation of the victims and their reparative preferences. As the author writes, "Only a small minority of victims who were financially secure (and largely educated and urban) saw issues of truth and justice as of a higher priority than compensation."
- 132 Van der Auweraert, "Dealing with the 2006 Internal Displacement Crisis."
- 133 In Iraq, for example, 75 percent of IDPs identified access to work as their highest-priority need in interviews. See International Organization for Migration, *Five Years after the Samarra Bombing: Review of Displacement and Return in Iraq* (Baghdad: IOM-Iraq, February 2011), 8. While there has been no participatory process regarding reparations for post-2003 displacement, focus group discussions and informal conversations the author participated in suggest that were such a process to be organized, results in terms of reparations' priority measures would be quite similar.
- 134 See Brookings-Bern Project on Internal Displacement, *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington, DC: Brookings Institution / University of Bern Project on Internal Displacement, April 2010).
- 135 *Ibid.*, 1.
- 136 These criteria are safety and security; an adequate standard of living; access to livelihoods; restoration of housing, land, and property; access to documentation; family reunification; participation in public affairs; and access to effective remedies and justice. *Ibid.*, 4.
- 137 See Garay Salamanca, Barberi Gomez, and Rimirez Gomez, *Humanitarian Tragedy*, 9.
- 138 On the links with development aid, see especially Marcus Lenzen, "Roads Less Traveled? Conceptual Pathways (and Stumbling Blocks) for Development and Transitional Justice," in de Greiff and Duthie, *Transitional Justice and Development*, 76–109.
- 139 "Early Recover Cluster Overview," OneResponse, <http://oneresponse.info/GLOBALCLUSTERS/EARLY%20RECOVERY/Pages/default.aspx>.
- 140 *Ibid.*

- 141 Van der Auweraert, “Dealing with the 2006 Internal Displacement Crisis.”
- 142 This is, indeed, the key reason why the already mentioned National Recovery Strategy in Timor-Leste cannot be considered a reparations program. *Ibid.*
- 143 The criticism that, for example, Dilek Kurban formulates toward Law 5233 in Turkey is that such a “broader package” wasn’t included in the legislation. See Dilek Kurban, “Reparations and Displacement in Turkey,” 19.
- 144 Indeed, there may be advantages from a displacement perspective when measures are sequential rather than simultaneous. See Bryce Campbell, in this volume.
- 145 One example where the international community did provide the (initial) funding for reparations is Sierra Leone. In this case, the funding came from the UN Peacebuilding Fund. Compared to the instances of forced displacement listed at the outset of the chapter, however, the number of victims covered here was relatively small (thirty-three thousand registered victims). See International Organization for Migration, “Support for the Sierra Leone Reparations Program,” <http://www.iom.ch/jahia/Jahia/support-for-the-sierra-leone-reparations-programme>.
- 146 The framing of the discussion as reparations versus spending on basic needs is already a political move, especially in circumstances where significant budgetary provisions must be made for many other matters, like military spending. Whether a reparations-versus-basic-needs dilemma exists needs to be assessed against the background of full government expenditure. For an exhaustive treatment of the links between development and transitional justice more broadly, see de Greiff and Duthie, *Transitional Justice and Development*.
- 147 On the socioeconomic characteristics of the displaced population in Colombia, see Garay Salamanca, Barberi Gomez and Rimirez Gomez, *Humanitarian Tragedy*, 9.
- 148 For a discussion of the relationship between financial compensation and poverty in the context of large-scale development projects, see Michael M. Cernea and Hari Mohan Mathur, eds., *Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing* (Oxford: Oxford University Press, 2008).
- 149 A survey in Cambodia, for example, found that 91 percent of those surveyed believed it was important to provide symbolic reparations to victims of the Khmer Rouge or their families. See www.peacebuildingdata.org/cambodia/results/reparations.
- 150 On truth-telling and displacement, see Megan Bradley, in this volume.
- 151 For the argument that this is where the Turkish effort with Law 5233 fell short, see Kurban, “Reparations and Displacement in Turkey.”
- 152 See, for example, Ereshnee Naidu, *Symbolic Reparations: A Fractured Opportunity* (Cape Town: Center for the Study of Violence and Reconciliation, 2004), which focuses on the experience in South Africa.
- 153 For an example in Sierra Leone, see Hope–Sierra Leone, *Sierra Leone Reparations Program 2009: Report of Symbolic Reparations (Memorials and Reburials), Bomaru, Kailahun District, 21–23 March 2009* (Freetown: Hope–Sierra Leone, 2009).

- 154 See Mia Swart, "Name Changes as Symbolic Reparations after Transition: The Examples of Germany and South Africa," *German Law Journal* 9 (2008): 105–21.
- 155 See World Bank, *World Development Report 2011* (Washington, DC: World Bank, 2011), especially 99–117, http://wdr2011.worldbank.org/sites/default/files/pdfs/WDR2011_Full_Text.pdf.
- 156 On the poverty and vulnerability of Colombian IDPs, see Garay Salamanca, Barberi Gomez, and Ramirez Gomez, *Humanitarian Tragedy*.