

# Kenyan refugees included in transitional justice processes

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**In the complex relationship between forced migration and transitional justice, a visit by the Kenyan Truth, Justice and Reconciliation Commission to a refugee settlement in Uganda seems to mark a significant step.**

After Kenya's 2007 national presidential elections were marked by violence resulting in loss of lives and widespread displacement, a Truth, Justice and Reconciliation Commission (TJRC) was established. Some of the reported 12,000 Kenyans who fled to Uganda had returned spontaneously shortly after arrival.



Mulanda Refugee Transit Centre in Tororo, Uganda: home to several thousand Kenyan refugees who fled post-election violence after the December 2007 presidential elections.

Others, however, found themselves unable to return so long as the issues which contributed to their flight remained unresolved. In March 2011 members of the TJRC visited Kenyan refugees in Kiryandongo in Uganda to invite the community to air their grievances and offer suggestions on how refugees could be included in the transitional justice process. The TJRC also recorded refugees' stories to share with the rest of the country and for inclusion in the process.

It remains to be seen how far the refugees' views will be incorporated into the emerging Kenyan process and whether doing so will enable them to obtain justice and facilitate their return. Yet a demonstrated willingness on the part of the home country to engage in transitional justice processes, improve governance and otherwise ensure that the

original violence does not recur could be key to facilitating the return of such residual populations of refugees.

## Transitional justice

Transitional justice concerns itself with how societies address legacies of past human rights abuses and mass atrocity in order to build a democratic, just and peaceful future. It is concerned with halting ongoing human rights abuses, investigating past crimes, identifying persons responsible for human rights violations, preventing future human rights abuses, preserving and enhancing peace, providing reparations to victims, and fostering individual and national reconciliation.<sup>1</sup>

The inclusion of all affected parties, and victims in particular, in the planning and execution of any transitional justice process has increasingly been recognised as crucial to the proceeding's success. This in turn has resulted in the increased popularity of quasi-judicial bodies such as truth and reconciliation commissions which provide greater opportunity for victim participation than formal legal processes. If decision makers can demonstrate the value they attach to the refugees' opinion, they may be able to increase refugees' willingness to return. The psychological impact for forced migrants of feeling heard cannot be over-emphasised.

Although the true impact of this single consultation act is not yet known, the Kenyan TRJC's visit does at least demonstrate a respect for the refugees' rights as Kenyan citizens. A majority of the refugees

were excited to make contact with fellow countrymen involved in the reconciliation discussions, and commented that they have not, after all, been forgotten as they had feared.

Generally, transitional justice mechanisms are limited in their outreach. Resident populations are often surveyed about their attitudes to transitional justice options but no refugee or IDP populations are asked their views. The Liberian truth commission<sup>2</sup> was unusual in that it specifically sought to integrate people in the diaspora, collecting statements from victims in countries across West Africa and further afield and conducting public hearings in the US. Other truth commissions in countries such as Sierra Leone, Guatemala, Peru and Timor-Leste did not consult those still displaced over issues wider than human rights violations.

The gesture by the Kenyan TJRC can thus be seen as 'leading by example'. Whether displaced internally or externally, those who flee violence deserve the right to participate as citizens in rebuilding, reshaping and transforming their country. More work is needed in the transitional justice field to determine the best ways in which victims forced into flight can be heard in these respects. In particular, explicit connections must be made between victims' right to restitution and refugees' right to return home in safety and dignity. With Uganda embarking on its own transitional justice process aimed at addressing the legacy of its two-decade-long civil war, the question is whether Uganda too will include the diaspora in its deliberations.

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1. OHCHR Principles and Guidelines [www2.ohchr.org/english/law/remedy.htm](http://www2.ohchr.org/english/law/remedy.htm)

2. The Liberian TRC reported in 2009 <http://trcofliberia.org/>