



# POLICY BRIEF

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## Recognizing Natural Disasters as a Concern for Transitional Justice

By Megan Bradley

Natural disasters are frequently accompanied by human rights violations. However, because disasters are often seen as blameless misfortunes, injustices associated with disasters are often ignored. The proliferation of unmet justice claims in many postdisaster contexts, coupled with the need to recognize victims, build civic trust and advance reconciliation, suggest that transitional justice mechanisms may have a significant role to play in disasters characterized by grave and systematic rights violations.

### WHAT'S AT STAKE?

Natural disasters are often accompanied by gross human rights violations, yet these injustices are rarely acknowledged and addressed through transitional justice processes. Transitional justice refers to efforts to "redress the legacies of massive human rights abuses," with the aims of recognizing victims, nurturing civic trust, and ultimately strengthening democracy and advancing reconciliation (de Grief, 2012). Transitional justice often involves mechanisms such as trials, truth commissions, compensation, restitution, apologies and other forms of redress. Transitional justice processes typically apply to societies emerging from periods of conflict and repression, to address large-scale or systematic human rights violations (ICTJ, 2018). But could widespread, grave abuses occurring in the contexts of natural disaster and postdisaster also fall within the scope of transitional justice?

### KEY RESULTS

- Grave and systematic human rights violations in disaster situations should be recognized as a concern for the field of transitional justice.
- Transitional justice mechanisms such as truth commissions, memorials, restitution and compensation programs and trials may, in some cases, make significant contributions to redressing abuses in disaster situations.
- Victims' perspectives and priorities should guide discussions on the relevance and application of particular transitional justice mechanisms.

Recent decades have witnessed increased rates of devastating natural disasters. Between 1994 and 2013, 1.35 million people died in over 6,870 natural disasters (CRED, 2015). While disasters inevitably entail losses, many of them are also characterized by grave injustices. Vulnerability to disasters disproportionately falls on the poor and marginalized, and postdisaster contexts often see systematic rights violations and amplify preexisting injustices, sometimes catalyzing major social upheavals (Button and Schuller, 2016). However, because disasters are often seen as “natural,” blameless misfortunes, injustices associated with disasters are often ignored.

While few scholars have questioned this exclusion, researcher Megan Bradley argues in her article entitled “More than misfortune: Recognizing natural disasters as a concern for transitional justice” that in some circumstances, transitional justice approaches and mechanisms may have valuable contributions to make in responding to violations and injustices associated with disasters. Based on theoretical and empirical insights and examples, Bradley contends that transitional justice scholars and practitioners should acknowledge and encourage the growing interest amongst policy makers and disaster-affected community members in accountability and redress for mass injustices associated with natural disasters. She details why disasters characterized by widespread rights violations that exacerbate victims’ suffering may fall within the scope of transitional justice, and provides some insights on how transitional justice mechanisms can contribute to redressing injustices in postdisaster contexts.

## MAKING THE LINK BETWEEN DISASTERS AND TRANSITIONAL JUSTICE

In disaster studies, disasters are understood as socially constructed products of historically rooted structural inequalities; those who are already marginalized are usually the most vulnerable to harms and losses in disasters (Aijazi, 2015; Button and Schuller, 2016). Disasters thus involve injustice, and victims are entitled to seek redress for rights violations they experience in disasters. Yet for the most part, the field of transitional justice has not considered disaster situations at all, or has unquestioningly categorized harms associated with disasters as outside its scope because these harms are usually not explicitly intended, or entirely caused by human hands.

However, environmental phenomena outside direct human control intermingle with harms caused directly and indirectly by humans, such as relegating marginalized groups to live in high-risks areas, denying or inequitably distributing lifesaving aid, and refusing to allow or help uprooted people to return and rebuild their homes.

Even though there has been little focused discussion on the potential of transitional justice in responding to injustices in disaster contexts, several developments point to growing interest in this direction.

First, increasing academic work addresses injustices in disasters. Exploration of transitional justice processes such as victim mobilization, commemoration and social repair in the context of disasters provides promising potential entry points for new conversations between the fields of disaster studies and transitional justice.

Second, there is a growing interest in accountability for harms associated with disasters in various laws and policies. For instance, standards such as the UN Principles of Housing and Property Restitution for Refugees and Displaced Persons, and the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons stress that the resolution of displacement arising from both conflict and disasters requires redress, particularly in the form of property restitution and compensation, mechanisms related to the field of transitional justice.

Third, as discussed in greater detail below, the growing disaster studies literature explores many disasters as sites of injustice. In many instances survivors understand themselves as victims of injustice and mobilize to seek redress. In postdisaster contexts, survivors and their advocates have taken diverse approaches, formal and informal, to voice and pursue recognition and remedies for their justice claims. These efforts that have ranged from criminal trials and lawsuits against negligent or corrupt government officials to memorials and annual commemorations.



## DISASTERS AS SITES OF INJUSTICE

Disaster scholars have long recognized that “the most vulnerable of people end up taking the brunt of disasters” (Erikson, 1978). Per capita death rates in comparable disasters are almost four times higher in the global South than in the global North, where losses are tempered by, for example, more well-resourced risk reduction strategies, emergency preparedness and response systems, and healthcare systems (Stromberg, 2007; Blum and Lockwood, 2013). This reflects the view that disasters are not simply misfortunes but products of structural inequalities and injustices.

In many cases, simple and affordable disaster risk reduction steps are not taken, with grievous consequences (Dixon, 2017). Massive harms arising from egregious state negligence clearly merit redress from a moral perspective. Under international human rights law, there is no explicit right for individuals to benefit from state protection in disasters. Yet according to the [International Law Commission](#), states are obliged to take appropriate measures to reduce disaster risks (International Law Commission, 2016). Agreements such as the Kampala Convention and the Sendai Framework support the notion that disaster victims may have legitimate claims for redress if states grossly neglected their duty to take steps to reduce disaster risks. In these cases, remedial efforts would "correct not against the natural disaster as such but against the lack of adequate action by those who could have otherwise ameliorated the harm" (Blum and Lockwood, 2013).

In addition to injustices associated with exposure to disasters in the first place, disaster relief and reconstruction processes are often beset by serious, systematic violations. For example, governments may be discriminatory in providing access to aid, and may exploit survivors or prevent them from returning to their homes. Governments may wish to prevent an influx of aid workers who may critique the government, or punish victims from communities perceived as government opponents. In a particularly egregious case, in 2008 in the aftermath of Cyclone Nargis, the military leaders of Myanmar initially refused to allow international humanitarian aid, dramatically compounding the death rate.



## ARE DISASTERS A CONCERN FOR TRANSITIONAL JUSTICE?

As discussed, disasters are often products of structural injustices in which harms disproportionately fall on those already marginalized, and magnify their vulnerability to further abuse. But to what extent is it analytically insightful and coherent to view these injustices, and survivors' claims, through the lens of transitional justice?

To answer this question, Bradley draws on de Greiff (2012), who argues that transitional justice measures operate in contexts of "massive rule breakdown" in which there is a struggle to ensure compliance with basic social norms, and major risks to institutions involved in trying to respond to and overcome these breakdowns.

Might postdisaster contexts reflect these conditions? Are they situations in which the goals of transitional justice – particularly recognition and civic trust – are relevant?

In the run-up to disasters, and in responses to them, there can be massive rule breakdowns such that the state abrogates its duty to prevent and protect citizens from major harms. Further, disaster responses may be deeply exploitative and discriminatory, violating basic norms on the rights and equality of citizens. In massive disasters, the challenge of governing and upholding norms may be exacerbated by the sudden death of scores of officials, and the fact that surviving authorities may themselves be struggling with devastating losses.

Further, in the aftermath of disasters characterized by systematic violations, ordinary expectations of justice will not usually be satisfied. This is in part because massive disasters entail injuries ill-suited to redress through formal, ordinary justice mechanisms, such as collective trauma, the loss of community and livelihoods, and the undercutting of long-standing struggles to achieve self-sufficiency. Given the massive number of victims and the catastrophic scale of their losses, legal justice systems may be overwhelmed. In such situations, resource limitations usually mean that full restitution will not be made. Rather, survivors rely on themselves to rebuild their homes and lives, and often struggle to have their justice claims recognized, much less fully addressed.

And yet as de Greiff (2012) observes, "Almost without fail, one of the first demands of victims is precisely to obtain recognition of the fact that they have been harmed," particularly when this harm is intentional. Recognition in disaster contexts is thus a critical matter which involves acknowledging those injustices that are intentional, as well as suffering that was not explicitly intended but which nonetheless constitutes injustice. Looking beyond intentionally-caused suffering can attune scholars and advocates to the possibility that what begins in part as misfortune can become injustice, and enable more comprehensive and effective responses to calls for recognition in such contexts. Applying a transitional justice lens to postdisaster settings can bring into focus survivors' claims not only for emergency relief and reconstruction aid, but also for redress of the wrongs surrounding the disaster.

Finally, civic trust can be highly undermined by disasters. For instance, the failure of federal, state and local officials to protect New Orleans' most vulnerable citizens when Hurricane Katrina struck in 2005 tore new holes in the American social fabric resulting in a profound questioning of founding national narratives (Eyerman, 2015). In the case of the Haiti earthquake, 97 % of residents of highly affected areas reported decreased trust in their neighbors four years after the quake (Sherwood et al., 2014). This suggests that re-establishing civic trust is vital in many postdisaster contexts (Aijazi, 2015), particularly as disasters can throw senses of shared norms and values into disarray, especially when survivors feel they have been abandoned or betrayed.

## APPLYING TRANSITIONAL JUSTICE MECHANISMS AFTER DISASTERS

The proliferation of unmet justice claims in many postdisaster contexts, coupled with the need to recognize victims, build civic trust and advance reconciliation, suggest that in particular circumstances, transitional justice mechanisms have a significant role to play. For instance:

**Ad hoc international or quasi-international trials** may be pertinent when there is strong evidence that systemic and egregious disaster-related violations were intentionally committed. Particularly when disasters exhibiting these characteristics unfold in countries already experiencing armed conflicts, such extreme violations could be integrated into the mandates of ad hoc international criminal tribunals, or could potentially be taken up by the International Criminal Court. For instance, officials who purposefully withhold life- saving aid from disaster survivors could potentially be charged with crimes against humanity.

**Reparation and restitution programmes** may have a role to play given the widespread loss of life, displacement and physical damages that typically accompany major disasters. When displaced persons encounter inappropriate barriers to reclaiming their homes and lands, property restitution programmes may be particularly pertinent. While some survivors have obtained compensation through ordinary justice systems, addressing claims through reparation and restitution programmes informed by a transitional justice approach could have the benefit of increased accessibility for victims, and more clearly connecting material remedies with fuller acknowledgment of victims' suffering.

**Truth commissions, memorials and other forms of commemoration** may have particular resonance following major injustices in disasters. Truth commissions may help establish a clear record of violations leading to, during and after a disaster, and may offer key recommendations to remedy and avoid repetition of these abuses. Memorials and other forms of commemoration may promote acknowledgment of victims' losses, and encourage rethinking of the policies, practices and structures that exacerbated their suffering.

The applicability of particularly transitional justice mechanisms will depend on the specifics of the situation; it should not be assumed that transitional justice mechanisms are necessarily relevant. This is best determined through dialogue with survivors themselves, bearing in mind that other dimensions of justice such as redistributive and social justice may be equally or even more pertinent in postdisaster contexts.

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