



Transitional Justice in International Development Assistance

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The Rise of Transitional Justice (TJ)

- Significant advances in the field of ‘transitional justice’ over the two decades, especially in terms of developing TJ norms and principles;
- Since the 1990s, rise of TJ in international peacebuilding and development => also reflected in a worldwide increase in the funding of TJ initiatives and programs;
- Increasing attention from academia and policy-makers
- Nevertheless, little information about scale and nature of international TJ assistance (focus in presentation on bilateral and multilateral international TJ assistance)

UN Secretary-General (2004)

“The notion of **transitional justice** [...] comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”

UNSG, 2004, ‘The Rule of Law and Transitional Justice on Conflict and Post-Conflict Societies’, S/2004/616.

World Development Report (2011)

- Overcoming the **peace vs. justice divide**, and bridging security and development discourses => acknowledged the importance of transitional justice in breaking cycles of violence
- Report recommended that transitional justice be applied as one of the '**core program tools**' in the pursuit of 'restoring confidence' and 'transforming institutions'
- Some processes to be delivered at an early stage (i) to signal a break with the past and to generate support for change; (ii) to prove accountability for past wrongs and acknowledgment of suffering; and (iii) to convey the normative promise that the rule of law will be adhered to

Overview of International TJ Assistance

Despite growing donor involvement, **little consolidated data available** about the amount of external assistance going toward TJ initiatives

- Vagueness as to the conceptualisation of TJ
- Role of TJ in policies and programming
- Little available research into international TJ assistance (e.g. Muck & Wiebelhaus-Brahm 2012)

Overview of International TJ Assistance

- Early TJ initiatives during the **1980s** largely funded domestically (such as in South America) and mostly concerned transitions in post-authoritarian contexts;
- **End of the Cold War** and new engagement of the international community in TJ matters, increasingly dealing with post-conflict contexts and often in conjunction with peace operations;
- Individual donors take **different approaches** to TJ in their policies and programming

Example 1: The United Kingdom

- Early consideration of ‘transitional justice’ in at the turn of the millennium
- 2007 DFID/ICTJ donor roundtable in London
- Turn-around: nowadays term ‘TJ’ almost disappeared from official documents
- Increasing focus of DFID’s work on fragile and conflict-affected countries
- TJ mainly considered in the framework of the UK’s work on ‘governance and conflict’, more specifically in the field of peacebuilding and conflict prevention

Example 2: Switzerland

- Only country so far to have integrated TJ as a dedicated focal theme in its foreign policy and development cooperation
- “Dealing with the Past”: Federal Department of Foreign Affairs (EDA) developed its own conceptual approach (connecting TJ to human security, human rights, and conflict transformation) and established a dedicated interdepartmental ‘task force’ with permanent focal point
- Focus on counselling, coaching and mediating, as well as policy initiatives at the multilateral level, e.g. new special procedure mandate under the UN Human Rights Council

Example 3: The European Union

- **Multilateral TJ assistance**
- EU an important TJ donor
- 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy: “develop policy on transitional justice” (goal was 2014, ongoing consultations)
- Grant-making and initiatives both through “Common and Foreign Security Policy” pillar (through crisis management measures) and through development and cooperation policy (particularly through ‘Instrument for Stability’)

Overview of International TJ Assistance

Great **variety of approaches among key ODA donors:**

- Whole-of-government approach (Switzerland)
- Prominent role in governance/peacebuilding strategies and programs (Norway, Sweden)
- Early consideration, but no pursuit of a strategic approach (UK, the Netherlands, Canada)
- Regular TJ funding in the framework of rule of law/peacebuilding work, with no specific strategic consideration (Germany, United States)
- TJ strategies in preparation (France, EU)

Trends in International TJ Assistance

- Shift in international TJ assistance further away from post-authoritarian contexts to fragile and **post-conflict situations** (but MENA region)
- Continuous lack of clarity as to the **conceptualisation and operationalisation** of TJ, especially within the broader framework of peacebuilding and development.
- General recognition of the value of TJ, BUT **inter-linkages** and contributions to other macro-processes and policy objectives remain ambiguous
- TJ processes are complex and long-term processes, challenges in assessing **impact** of TJ measures (M&E)

Observations from Cambodia

Funding to the Khmer Rouge Tribunal to date:

No.	Donors	International Component	%	Natioal Component	%	Total	%
1	Japan	64,852,518	39%	16,086,025	29%	80,938,543	36%
2	Australia*	20,017,232	12%	3,174,033	6%	23,191,265	10%
3	United States of America ***	20,820,808	13%	-	0%	20,820,808	9%
4	Germany **	10,183,294	6%	3,391,501	6%	13,574,795	6%
5	Cambodia ****	-	0%	13,266,068	24%	13,266,068	6%
6	United Kingdom	9,978,426	6%	1,547,982	3%	11,526,408	5%
7	European Union	3,603,960	2%	5,262,186	10%	8,866,146	4%
8	France	8,008,115	5%	233,281	0%	8,241,396	4%
9	Sweden	8,191,033	5%	-	0%	8,191,033	4%
10	Norway	6,087,306	4%	1,006,880	2%	7,094,186	3%
11	UN Trust Fund (30 countries)-UNTF	-	0%	5,371,417	10%	5,371,417	2%
12	Republic of Korea	2,650,000	2%	-	0%	2,650,000	1%
13	Canada	2,487,538	1%	-	0%	2,487,538	1%
14	Denmark	2,048,991	1%	-	0%	2,048,991	1%
15	Finland	2,040,063	1%	6,800	0%	2,046,863	1%
16	Netherlands	1,800,909	1%	9,388	0%	1,810,297	1%
17	Spain	1,078,729	1%	-	0%	1,078,729	0%
18	New Zealand	867,814	1%	160,260	0%	1,028,074	0%

Source: ECCC, 'Financial Outlook' (as of 31 October 2014)

Observations from Cambodia

- **Evolution in TJ funding**
- **Strategic approach**
 - => justice and stability / good governance & rule of law
 - => long-term vs. short-term
- **International justice vs. transitional justice!?**
- Marginal themes and **donor coordination**
- International interventions, official TJ mechanisms, and the challenges of local ownership

Some Take-Away Points

- Long way for concepts from norms to policies...
- ... and even a longer way to arrive in aid programming and implementation;
- Theoretical vs. practical utility of concepts
- Challenging data collection: do we know what we do?
- Integrated post-conflict development and peacebuilding interventions still an ongoing work in progress with major obstacles on the way
- The role of academic and policy-oriented research