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Maintaining the Process?

Aid to Transitional Justice in Rwanda and Guatemala,
1995-2005

Commissioned by



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Preface and Acknowledgements

This study was commissioned by the Working Group on Development and Peace (FriEnt) on the occasion of the international conference "Building a future on peace and justice" held in Nuremberg, Germany from 25-27 June 2007. The study was financed by the German Federal Ministry of Economic Cooperation and Development and prepared for presentation at the conference workshop "Looking back and moving forward: The nexus between justice and development", organised by FriEnt and the German Federal Ministry for Economic Cooperation and Development (BMZ).

The research involved the collection of quantitative and qualitative data from donor agencies. 22 donor representatives were interviewed by telephone, and two responded in writing. The quantitative data is presented in condensed form in this study, but the figures may be provided upon request. Collection of data from representatives of the countries and institutions that received the aid was not within the framework of this research.

CMI conducted the study in the period from mid-February to mid-June 2007. Ingrid Samset (researcher and project leader) did the overall analysis, wrote the introductory and concluding chapter and edited the report; Stina Petersen (research assistant and team member) collected, systematised and did the preliminary analysis of the data; while Vibeke Wang (researcher and team member) contributed to data collection and analysis.

The study team wishes to thank the donor representatives, who contributed their knowledge and assessments to inform this report, and CMI research director Siri Gloppen, who read previous drafts and provided useful advice throughout the process. The findings and considerations expressed in this study remain those of the authors.

Bergen, June 2007

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1. Introduction

How does aid to transitional justice work? What are the patterns, types and causes of such aid?

Research on transitional justice (TJ) has boomed in the last couple of decades. In recent years the policy world has also started assisting countries coming out of periods of massive violence. Yet even if this donor engagement emerged more than a decade ago, we still know little about the dynamics of external economic assistance to national transitional justice efforts.

This study fills some of this gap. We examine the aid that was given to assist two countries that were “post-conflict”, in the sense of being in a process of transition from a past period of massive armed violence. The two cases, Rwanda and Guatemala from 1995 to 2005, are selected since they received considerable foreign aid to deal with their violent pasts. The failure of the international community to prevent and stop the 1994 genocide in Rwanda, and the relative success of the efforts to negotiate a solution to Guatemala’s long civil war in the mid-1990s, were followed by considerable donor attention to these two countries’ post-conflict needs – including their need to deal with a past of violence. Yet although much aid was given to transitional justice, little research has been conducted on how this aid has worked, let alone on its scope and patterns.

In this study we take stock of this aid. We do not assess its impact; nor do we look at how it was perceived by the recipients. Yet on the basis of data from donors, in the context of Rwanda and Guatemala from 1995 to 2005 this study:

- Maps the terrain – by giving an overview of which donors provided how much aid for what transitional justice mechanisms, when and where; and
- Explores some of that terrain – by examining how the transitional justice aid was followed up, to what extent different interventions complemented each other, and what factors influenced donor priorities.

Beyond this introduction and the conclusion, the report has three parts. Chapter 2 outlines the theoretical and empirical context of the study. It introduces the status of academic knowledge on aid to transitional justice; the categories of transitional justice mechanisms that we adopt; and the empirical context of Rwanda and Guatemala from 1995-2005, including the development aid that these countries received.

Chapters 3 and 4 analyse the aid that targeted transitional justice in particular in Rwanda and Guatemala. Chapter 3 presents our quantitative data on this issue, and chapter 4 our qualitative data. Chapter 3 outlines how much the TJ aid made up of overall development aid; where the TJ aid came from (what donors) and where it went to (what mechanisms); as well as the sequencing of the aid over time. Having thus mapped the terrain, in chapter 4 we explore that terrain. Drawing on interview data, we analyse how the TJ aid was followed up over time, how donor priorities were shaped, and how donors attempted to ensure complementarity of efforts.

In the conclusion we identify lessons that can be learned from these experiences, as well as recommendations for future research and policy.

2. Theoretical and Empirical Context

2.1. Does Transitional Justice Help Build Peace?

In recent years transitional justice has emerged as a key focus of research and policy. The priority arose in response to a wave of changes that started in Latin America in the 1980s and moved on to Eastern Europe, Sub-Saharan Africa and other parts of the world during the 1990s. In the space of a few years, many countries emerged from a past of authoritarian rule or massive violence – and, in order to protect their fragile democracy and peace, saw a need to “deal” with the violations of the past. But how could they? A past of violence is also a past of conflict. How could the violence be dealt with without reigniting the conflict?

While some countries opted for establishing commissions of inquiry into what had happened, others identified alleged perpetrators of the violence and sought to try them judicially. Others made use of more informal mechanisms, such as rituals, ceremonies and community-level conflict resolution. Some countries sought the assistance of international courts; others opted to reinforce their national systems of justice. Others opted for doing nothing – other than giving amnesty to the accused and leaving the past in silence.

These processes gained sway before the term “transitional justice” was coined in the 1990s.¹ Yet the research that emerged on this issue was certainly inspired by the variety of options countries explored, and by the seeming reconciliation effect that many of these processes had. Turned into objects of research, the different ways in which societies tried to deal with a conflictual past were described as transitional justice “mechanisms”. A truth commission is thus seen as having similar traits to, for instance, a war crimes tribunal – as the various mechanisms are assumed to have similar aims, or functions. Four sets of functions of transitional justice can be identified (drawing on Crocker 2003):

- Truth, documentation, history writing;
- Acknowledgement, restitution, dignity (for victims);
- Accountability, deterrence, rule of law, respect for human rights; and
- Reconciliation and peaceful coexistence.

Not all transitional mechanisms fulfil all the functions, however. As Leebaw (2008, forthcoming) argues, the different aims of transitional justice are often irreconcilable. A revelation of some of the truth about past violence, for instance, may trigger more post-war violence rather than less. A trial may deter some crimes from being committed, but also lead persons who perceive it as victor’s justice to conduct revenge attacks. Financial compensation to some victims may trigger mischief by others who feel forgotten, and a destructive competition for being the most victimised may result. The writing of history is not neutral either as, to use an image of our time, one person’s terrorist may be another’s freedom fighter.

The justice of a transition – from war to peace, from authoritarianism to democracy – is therefore not necessarily justice for all. What is, then, the net effect? Is post-conflict justice for some and injustice for others better than no post-conflict justice at all?

These are questions on which academic research remains inconclusive. So far, scholarship on the effects of transitional justice has largely been limited to case

studies, with little systematic cross-country analysis. The shortage of knowledge in this field can be illustrated by the fact that only very recently did a quantitative study first emerge that tries to gauge the effect on duration of post-conflict peace of various transitional justice mechanisms (Lie et al. 2006). Research has hence tended to be normative, and the job of systematising the emerging knowledge from case studies has only just begun.

This is the context within which the policy world has started engaging. Policy-makers realised the growing importance of the new phenomenon of transitional justice, and have since the 1990s transferred billions of aid dollars to enable “post-conflict” countries to deal with their pasts. Yet as noted, the foundations for knowing what effects transitional justice would have on, for instance, governance and peacebuilding, remained shallow. Not only has the scientific basis been weak for knowing how transitional justice in and for itself would affect developments in a post-conflict country. Donors have also had little academic research to draw on for estimating how the aid to this field would impact. It is likely that if a transitional justice mechanism is funded mainly by external sources, this might have an impact on how it is perceived and hence what results it will have – as compared to an internally funded mechanism. But what difference does the source of funding actually make?

In contrast to an increasingly rich literature on international transitional justice institutions such as international courts and tribunals (see e.g. Kaminski et al. 2006), research on the impact of foreign aid to national transitional justice efforts remains modest. Despite this scarcity of knowledge, which extends to the effects of transitional justice on e.g. the consolidation of peace, transitional justice is increasingly seen as a necessary component of peace building. The research world is thus effectively lagging behind the policy rush to promote transitional justice: there is a huge need for assessment of how the aid actually works.

Moreover, research on transitional justice often focuses on one mechanism, and more rarely on the combined impact of different mechanisms over time. Truth commission research has, for instance, highlighted the need for recommendations of the commissions to be followed up, through e.g. reparations (see e.g. Mani 2005). It is thus assumed that in a post-conflict context, a truth commission and/or trial process should be initiated early and reparations should come subsequently as a form of closure. The rebuilding and strengthening of the justice sector is also seen as a process that should start early after the conflict. Yet the argument that such sequencing promotes peace consolidation, democratisation and reconciliation has not yet been thoroughly tested in cross-case empirical research.

Whether aid to transitional justice helps build peace therefore remains an open question. Rwanda and Guatemala illustrate this doubt. From the mid-1990s, both countries have received substantial amounts of aid to address the massive violence their peoples lived through. Today, both countries remain at “peace” – minimally defined as the absence of civil war. Yet Guatemala has one of the highest rates of violence of Latin America. And in Rwanda, the opposition in exile has been growing while civil society and media remain restricted across the thousand hills. What kind of peace have the two countries got – after a decade of transitional justice, and of donor assistance to this field? The following pages point to parts of the answer to this question.

2.2. Classifying Aid to Transitional Justice

Given that aid to transitional justice only recently has been conceptualised as such, no standard way of categorising this form of aid has yet emerged. In line

with the ToR for this study, we classify the assistance in accordance with the mechanisms targeted by it. Five such mechanisms were relevant to assess in the cases of post-conflict Rwanda and Guatemala:

- Criminal courts,
- Truth commissions,
- Mechanisms for “traditional” justice,
- The security sector, and
- Reparations.²

Criminal courts comprise, in this study, international and domestic attempts to prosecute persons who allegedly perpetrated war crimes, crimes against humanity and/or genocide during the previous armed conflict. The category also embraces governmental human rights bodies with an investigative and/or prosecution mandate. It should be noted that the formal courts system, i.e. courts that do not deal primarily with serious crimes from the past conflict, is not included in this category but instead in the security sector (see below).

Truth commissions can be defined as “institutions outside of the judicial apparatus, established ... to uncover evidence about abuses committed under a previous regime or during a civil war” (Gloppen 2005: 27). This category covers both the set-up and operation of such commissions as well as the dissemination of their findings.

Traditional justice mechanisms include so-called traditional forms of restorative justice that can be found beyond the formal justice system.

The security sector involves the police, the judiciary, the penal institutions and the armed forces. In this category we include *reforms* within this sector (security sector reform, SSR) as well as programmes of demobilisation, disarmament and reintegration of ex-combatants (DDR). Building institutions within the justice sector is also categorised as SSR.

Reparations involve the symbolic and material rehabilitation of the victims of the violent conflict. The category includes a wide range of efforts aimed at rehabilitation, such as financial compensation, exhumations of mass graves, mental health programmes for victims, and the building of museums and monuments.

Institutions within each of these five categories were supported by considerable donor funding in Rwanda and Guatemala between 1995 and 2005. In chapter 3 we outline which institutions these were and the relative distribution of aid across the five categories. First, though, let us take a closer look at the empirical contexts into which the aid was channelled.

2.3. Rwanda and Guatemala 1995-2005: Cases, Donors, and Aid Trends

The Cases

The period from 1995 through 2005 was a time of transition from past periods of massive armed violence in Rwanda and Guatemala. Rwanda went through a civil war from 1990-1993 and genocide in 1994. Guatemala, for its part, finally put an end to a 36 year long civil war in 1996, which also had involved acts of genocide against indigenous groups. Table 1 provides key facts about the two countries and the conflicts their populations lived through.

Table 1. Conflict and Post-Conflict Rwanda and Guatemala: Key Facts

	<i>Rwanda</i>	<i>Guatemala</i>
Type of conflict	Civil war and genocide	Civil war with acts of genocide
Period of conflict*	1990-1993 and 1994	1960-1996
Peaks of violence	1994	1966-67 and 1981-83
Number of persons killed during conflict	Civil war: Approx. 5.000 Genocide: Approx. 1m	More than 200.000
Population (2006 est.)	Approx. 9.2m	Approx. 13m
Size of country	26.338 sq km	108.889 sq km
GDP/capita	272 USD (2006 est.)	2.535 USD (2005 est.)
Post-conflict elections	2003, upcoming in 2010	1999, 2003, 2007

Sources: CEH (1999), EIU (2006 and 2007), Lacinia and Gleditsch (2005), Reyntjens (2004) and Wickham-Crowley (1992).

*Immediately prior to the period analysed in this study.

While the “transition” in both countries involved gradual moves towards electoral democracy, it was triggered by the end of a period of massive armed violence – through a negotiated solution in Guatemala, and a military victory in Rwanda in 1994. The transitions in question are therefore first and foremost war-to-peace transitions. The conflict from which Rwanda emerged was relatively short and intensive, while Guatemala’s was long and of lower intensity. The way the war ended also impacted on the nature of the transition: in Guatemala it was the stronger party during the conflict that continued to dominate power after the war, while in Rwanda it was the party representing the victims of the genocide that gained power. This clearly impacted on the interest of the post-conflict regime in pursuing transitional justice, which turned out to be far stronger in Rwanda’s than in Guatemala’s case.

The two cases also differ inasmuch as Guatemala’s territory is more than four times bigger than Rwanda’s, the latter country being more densely populated. Rwanda is also much poorer than Guatemala. By the end of the 11-year period studied, GDP per capita was almost ten times bigger in the Central American than the Central African country. That economic difference is worth keeping in mind when assessing the levels and relative importance of post-conflict aid.

The Donors of Development Aid

A range of donors supported Rwanda’s and Guatemala’s efforts to rebuild and develop their war-torn countries from the mid-1990s onwards. We identified 15 of the most important donors – three multilateral and 12 bilateral ones. These are, alphabetically ordered:

Multilateral donors:

- the European Commission (EC),
- the United Nations Development Programme (UNDP),
- the World Bank (WB); and

Bilateral donors:

- Belgium (Belgian MFA and DGDC),
- Canada (CIDA),
- Denmark (Danida),
- Finland (Finnish MFA),
- France (French MFA),
- Germany (BMZ and GTZ),

- the Netherlands (Dutch MFA),
- Norway (Norwegian MFA and Norad),
- Spain (Spanish MFA and AECI),
- Sweden (Sida),
- the United Kingdom (British MFA and DFID), and
- the United States of America (USAID).

Not all of these donors contributed aid to transitional justice, but all were important players on the scene of development assistance in the two countries.

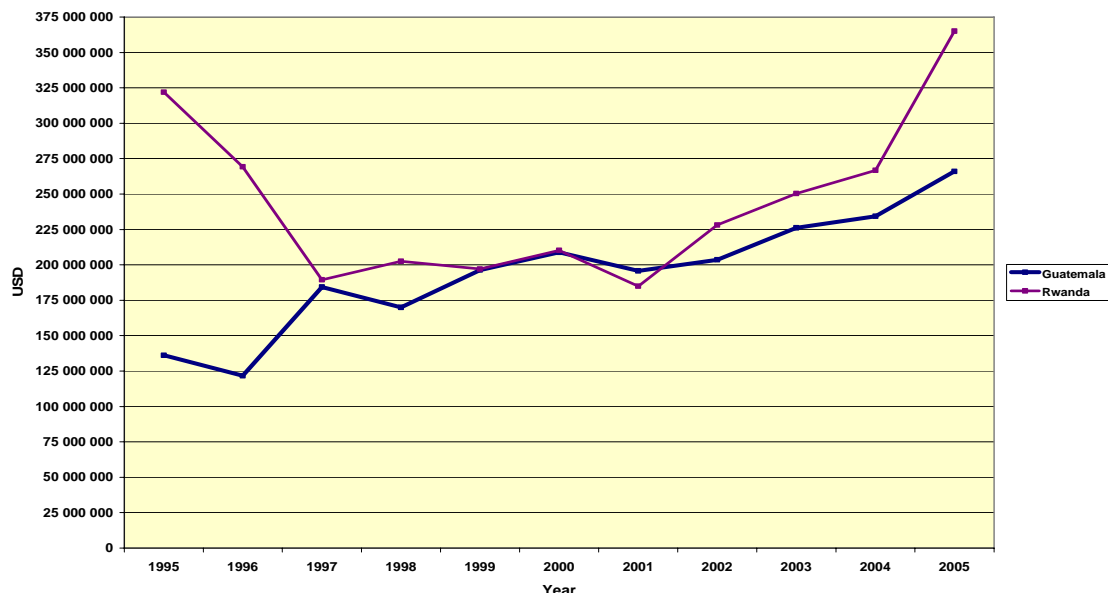
Aid Trends in Rwanda and Guatemala, 1995-2005

How much development aid did the donors provide? To answer we analysed official development assistance (ODA)³ figures from 13 of the 15 donors, excluding UNDP and the World Bank from which data proved difficult to access.

Rwanda received some 25 percent more aid than did Guatemala from the 13 donors in question. From 1995-2005 the donors contributed ODA worth approximately 2.7bn USD to Rwanda, while Guatemala received 2.1bn USD. On average per year, Rwanda received 244m USD and Guatemala 195m USD in development assistance.

Figure 1 illustrates the actual distribution per year of the development aid across the 11-year period. As the figure shows, aid was sequenced rather differently in the two countries. Aid to Rwanda peaked in the initial and final part of the period, while aid to Guatemala rose relatively steadily throughout the 11 years. Rwanda's pattern is a U curve, while Guatemala's is more akin to an upward straight line.

Figure 1. Development Aid to Rwanda and Guatemala, 1995-2005 (in USD)



Both countries saw an overall increase in aid throughout the post-conflict phase, receiving more in 2005 than they did when the period started. Yet this increase was greater in Guatemala's than in Rwanda's case. Guatemala saw aid rising from around 125m annually in 1995 and 1996, when the final peace accords were being negotiated and signed, to 266m in 2005 – more than double. Even if we start from Guatemala's first "real" post-conflict year, 1997, the increase is

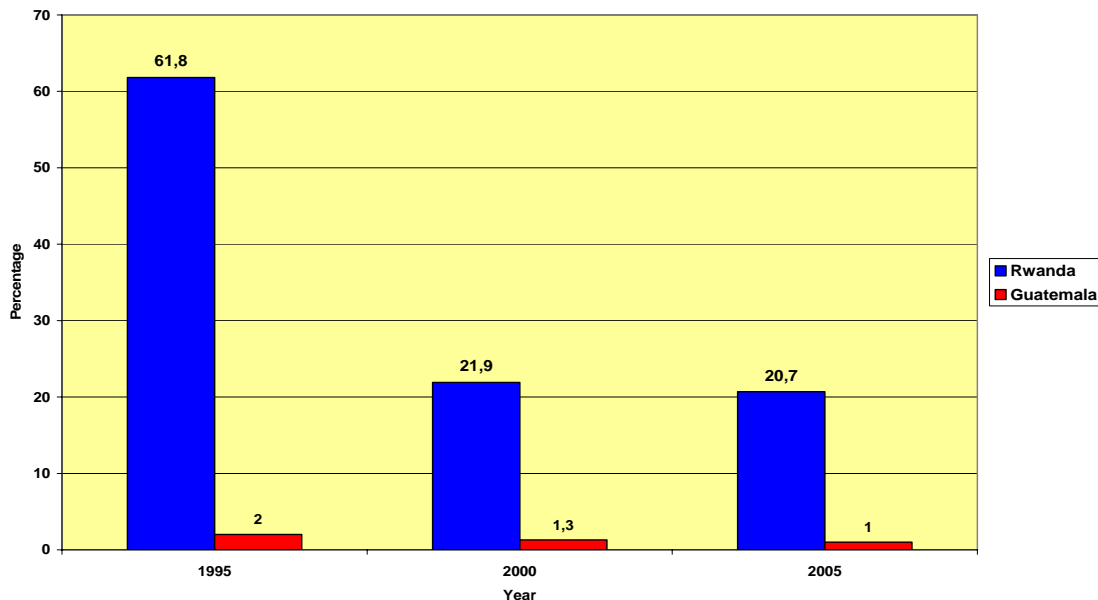
substantial – from 185m in 1997 to 266m in 2005. In Rwanda’s case, by contrast, aid dropped substantially from the first through the second and third post-conflict year – and only started rising considerably again in 2001, the seventh year post-genocide. In line with the U-shaped pattern, aid to Rwanda grew less than in Guatemala’s case. In 1995 ODA to Rwanda was worth 325m USD, and in 2005 it exceeded this amount for the first time in 11 years – reaching 365m USD.

The steady growth of ODA to Guatemala, and the initial drop and later growth of ODA to Rwanda also imply that the two countries attained roughly the same level of aid in the middle of the period. In 1997 and from 1999 through 2001, annual ODA to both countries was close to the 200m mark. From 2001 onwards aid to both countries increased, but at a faster rate in Rwanda’s case which resulted in a new divergence.

Rwanda also saw greater variation in donor contributions throughout the post-conflict period. ODA to Rwanda varied between approximately 185m USD in 1997 and 2001 and 365m in 2005 – 180m more, or roughly double the level of only four years earlier. In Guatemala’s case the amount varied between 122m USD in 1996 and 266m in 2005, which was also more than double – but a smaller increase in absolute terms (144m USD) and also one that materialised in the course of a longer period.

It is also important to note that the relative importance of the aid as a source of national income varied hugely between the two countries. We looked at the share that ODA made up of each country’s Gross National Income at three points in time during the 11-year period – the first, sixth, and eleventh year. Figure 2 provides the results.

Figure 2. Development Aid’s Share of Gross National Income in Rwanda and Guatemala, in 1995, 2000 and 2005 (in percent)



Sources: DAC (2001, 2002 and 2007).

As the figure makes abundantly clear, development aid was a far more important source of revenue in Rwanda than it was in Guatemala. We have already seen that Rwanda received roughly 25 percent more aid overall than Guatemala – but this aid made up between 20 and 60 percent of its income; as opposed to between only one and two percent in Guatemala’s case. This is because Guatemala’s economy was much larger than Rwanda’s. Table 1 also suggested

this, as it showed that Guatemala had roughly a ten times higher GDP/capita. Both countries depended most on aid in the beginning of the post-conflict period, but the divergence remained vast also many years into the peace.

There is hence no doubt that post-conflict Rwanda depended far more on aid than did Guatemala. This is important to keep in mind when assessing the aid the two countries received to the field of transitional justice.

3. Transitional Justice Aid to Rwanda and Guatemala: Mapping the Terrain

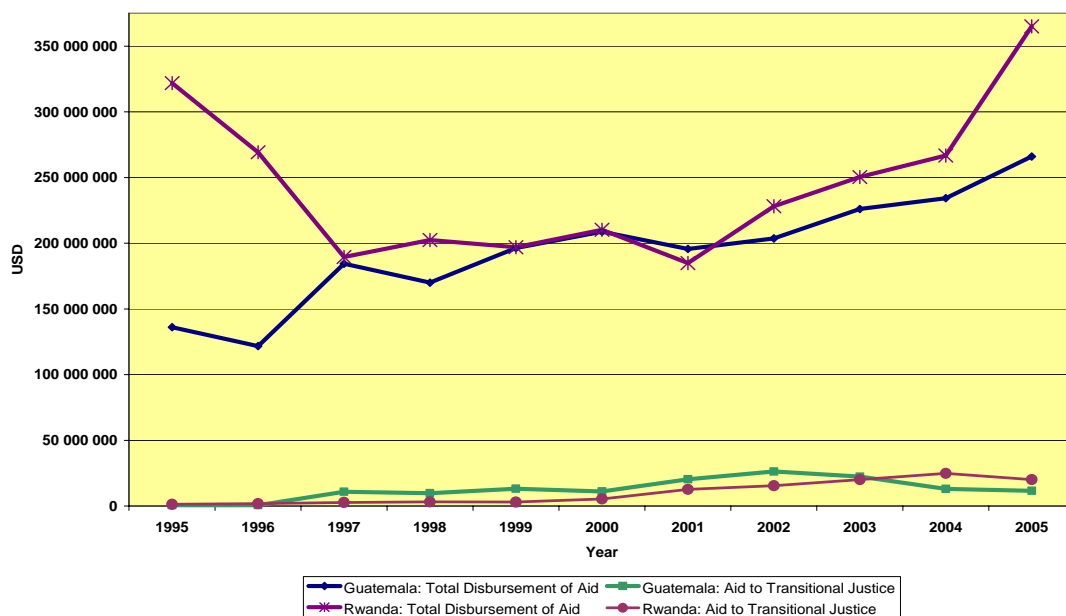
In this second part of the study we map the terrain of aid to transitional justice in post-conflict Rwanda and Guatemala, by analysing quantitative data on this issue. We first outline the levels of such aid compared to overall development aid; then assess the aid to transitional justice in terms of where it came from (what donors) and where it went to (what mechanisms). Finally we examine how the TJ assistance was sequenced over time.

3.1. Transitional Justice Aid vs. Development Aid

If Rwanda received more development aid than did Guatemala, the part of the aid that went to transitional justice was greater in the Central American than in the Central African case. In total over the 11 years, Rwanda received 111m USD in aid to the transitional justice mechanisms we assess, and Guatemala 140m USD – approximately 35 percent more. On average per year, Rwanda hence received 10.1m USD and Guatemala 12.7m USD in transitional justice assistance.

Figure 3 gives an idea of how this level of transitional justice aid compared to overall development assistance, and also of how the TJ aid varied over time.

Figure 3. Development Aid vs. TJ Aid to Rwanda and Guatemala, 1995-2005 (in USD)

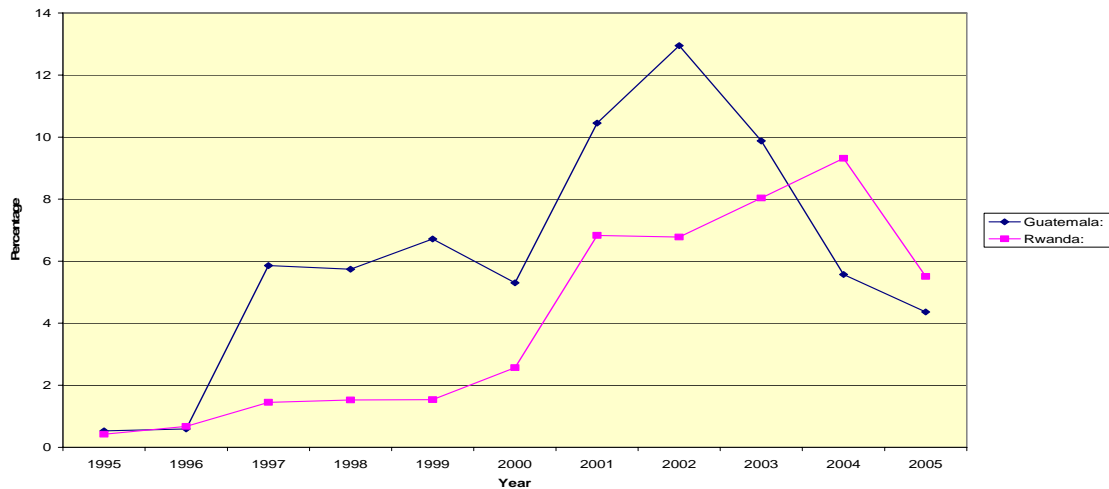


We get back to the sequencing of the TJ assistance in section 3.4 below. Suffice to note here that Guatemala received more TJ aid than Rwanda most of the

period, except the first two and the last two years. We also see that TJ aid increased over time in both countries – starting from a low level in 1995-96 to reach peaks in the last half of the period.

Figure 3 also clearly demonstrates the smallness of transitional justice assistance compared to overall ODA. In effect, during the 11 years from 1995 through 2005, only around five percent of the development aid went to transitional justice in the two countries. Rwanda's 111m USD made up 4.1 percent of total ODA, and Guatemala's 140m USD constituted 6.5 percent. Figure 4 (overleaf) shows how the relative share of TJ aid to ODA varied over time.

Figure 4. TJ Aid's Share of Development Aid in Rwanda and Guatemala, 1995-2005 (in percent)



As the figure demonstrates, in both countries aid to transitional justice grew from making up less than one percent of ODA in 1995 and 1996, to reach peaks of 13 percent in Guatemala's case in 2002, and nine percent in Rwanda's in 2004.

On Rwanda's part two phases can be distinguished with regard to the relative importance of the transitional justice assistance. In the initial six years post-conflict less than 2.6 percent of ODA went to the TJ field. In the last five years, by contrast, the TJ share was 7.3 percent on average.⁴ Guatemala saw more of an inversed U curve, with four periods:

- a first low in 1995-1996, which was before the final peace accords had been signed;
- a medium level during the first four post-war years, when TJ aid made up 5-7 percent of ODA;
- a peak from the fifth to seventh post-war year, when TJ assistance constituted 10-13 percent, and
- a return to roughly the medium level of 4-6 percent TJ aid out of overall ODA in the eighth and ninth post-war year.

We take a closer look at the sequencing of the aid in section 3.4 below, after having assessed from where and to what mechanisms the transitional justice aid was flowing.

3.2. The Donors of Aid to Transitional Justice

Not all the donors of development aid identified earlier were involved in supporting transitional justice. Moreover, the study team was not able to obtain sufficient data from all relevant donors. Beyond the three multilaterals (which all

provided data on TJ aid), we thus assess data from 7-8 bilateral donors in relation to each recipient country. These are:

In Rwanda’s case:

- Belgium (Belgian MFA and DGDC),
- Canada (CIDA),
- France (French MFA),
- Germany (BMZ and GTZ),
- the Netherlands (Dutch MFA),
- Norway (Norwegian MFA and Norad),
- the UK (British MFA and DFID),
- the USA (USAID); and

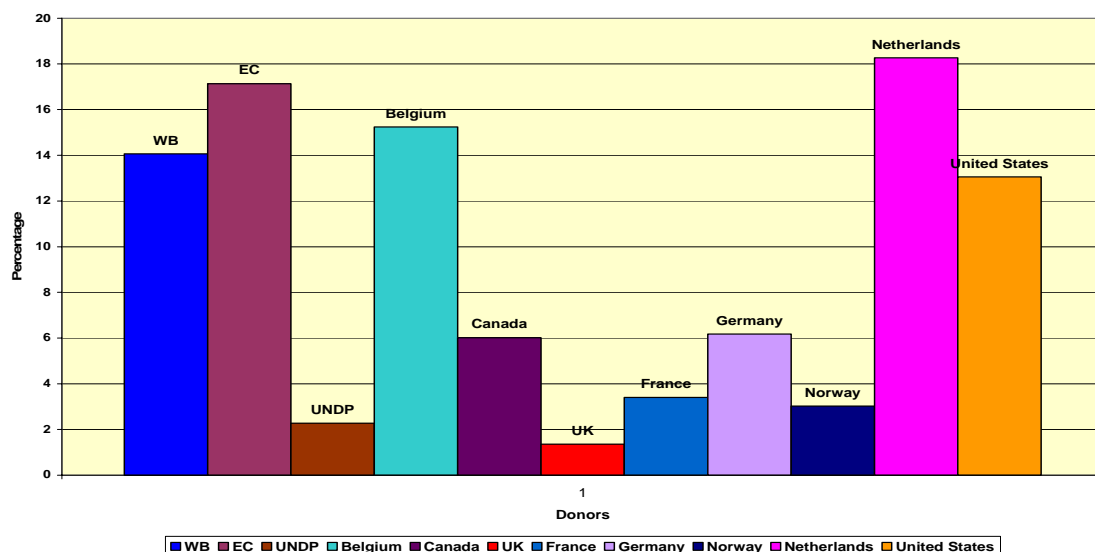
In Guatemala’s case:

- Denmark (Danida),
- Germany (BMZ and GTZ),
- Norway (Norwegian MFA and Norad),
- the Netherlands (Dutch MFA),
- Sweden (Sida),
- the UK (British MFA and DFID), and
- the USA (USAID).

Compared to our initial list of 12 bilateral donors of development aid, it can be noted that two donors – Finland and Spain – no longer figure, while five donors – Belgium, Canada, Denmark, France, and Sweden – only figure for one of the two countries assessed. The remaining five – Germany, the Netherlands, Norway, the UK and the US – are thus the only ones analysed in relation to both countries. Taking into account the three multilateral donors too, we hence examine TJ aid from 11 donors to Rwanda and 10 donors to Guatemala.

How much of the total aid to transitional justice did each of the donors contribute? Figure 5 provides the data on this for Rwanda; depicting the relative contribution of each of the 11 donors to the total of 111m USD that Rwanda received in TJ aid.

Figure 5. Donors’ Relative Contribution to TJ in Rwanda, 1995-2005 (in percent)

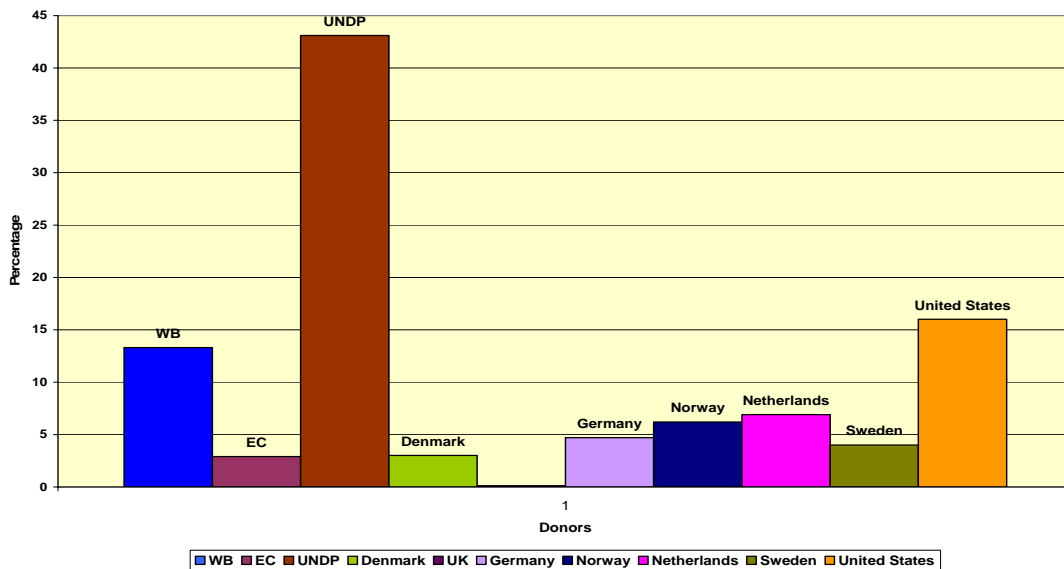


As the figure shows, the Netherlands contributed the most TJ aid and the UK the least among the 11 donors. While the European Commission was the second biggest donor of TJ aid to Rwanda, only 34 percent of TJ funds went through the three multilateral organisations taken together. The UNDP played only a minor financial role. The bilateral trio of the Netherlands, Belgium and the US contributed considerably more than the three multilaterals.

Figure 5 therefore also illustrates a pattern that we elaborate on in chapter 4 of this study: that in the Rwandan case the bilateral donors dominated the field of transitional justice and chose to establish direct partnerships with the Rwandan government. In Guatemala, by contrast, 59 percent of the TJ aid went through multilateral donors – mainly the UNDP. Almost two thirds of the aid to transitional justice went through the multilaterals in Guatemala, only one third in Rwanda.

Figure 6 illustrates the dominance of the multilateral agencies in Guatemala’s case. As the figure shows, 43 percent of TJ aid in that country went through the UNDP. The practical expression of this, which we discuss further in chapter 4, was that many bilateral donors worked through the UNDP instead of collaborating directly with the Guatemalan authorities.

Figure 6. Donors’ Relative Contribution to TJ in Guatemala, 1995-2005 (in percent)



While the direct bilateral contributions were less significant in Guatemala’s case than in Rwanda’s, the most important bilateral donor was the United States, which contributed some 16 percent of the TJ assistance. The six other country donors gave less than half that each in TJ assistance directly to Guatemalan authorities, the UK being the smallest contributor. It was beyond the scope of this study to go into the UNDP “box” and investigate how much the bilateral donors contributed to the UNDP. Yet it should be noted that Spain, which did not contribute bilaterally, was an important player through its TJ contributions to the UNDP.

The Netherlands and the United States emerge as the key contributors to transitional justice in both Rwanda and Guatemala. Germany and Norway were also present in both countries, but with smaller contributions. We will now take a look at what mechanisms all the aid went to.

3.3. Distribution of TJ Aid Across Mechanisms

As noted in chapter 2 of this study, transitional justice can be defined in various ways and no standard manner of classifying this field has yet materialised. We have adopted a fairly broad definition; including not only the “classical” institutions of truth commissions, criminal courts and reparations, but also informal mechanisms called “traditional”, as well as, importantly, the large area of security sector reform.

The broadness of our definition of transitional justice makes it particularly interesting to find out where the TJ aid went. How much of it targeted the “core” of the TJ field, identified as the institutions whose primary task is to deal with the violent past – such as criminal courts, truth commissions, and reparations? How much went to the institutions whose primary task is to deal with the violence of the present and prevent it in the future, namely those within the security sector? And, to what extent were mechanisms identified as “traditional” supported?

Our data leaves no doubt that **security sector reform** was by far the most supported mechanism. As Figures 7 and 8 illustrate; SSR aid made up more than half of the TJ aid in Rwanda and Guatemala – in the latter case almost three quarters.

Apart from the overwhelming share of TJ aid that went to the security sector, how do the two cases compare as regards the aid to other TJ mechanisms?

With regard to **criminal courts**, a far higher share of the aid went to this mechanism in Rwanda than in Guatemala: roughly 20 percent in the former, and only three percent in the latter. Institutions in this category include:

In Guatemala:

- The government human rights bodies such as the HR Ombudsman and the Women’s Ombudsman;

In Rwanda:

- The National Commission for HR in Rwanda (CNDH), and
- The International Criminal Tribunal for Rwanda (ICTR).

Figure 7. Distribution Across Mechanisms of TJ Aid to Rwanda, 1995-2005 (in percent)

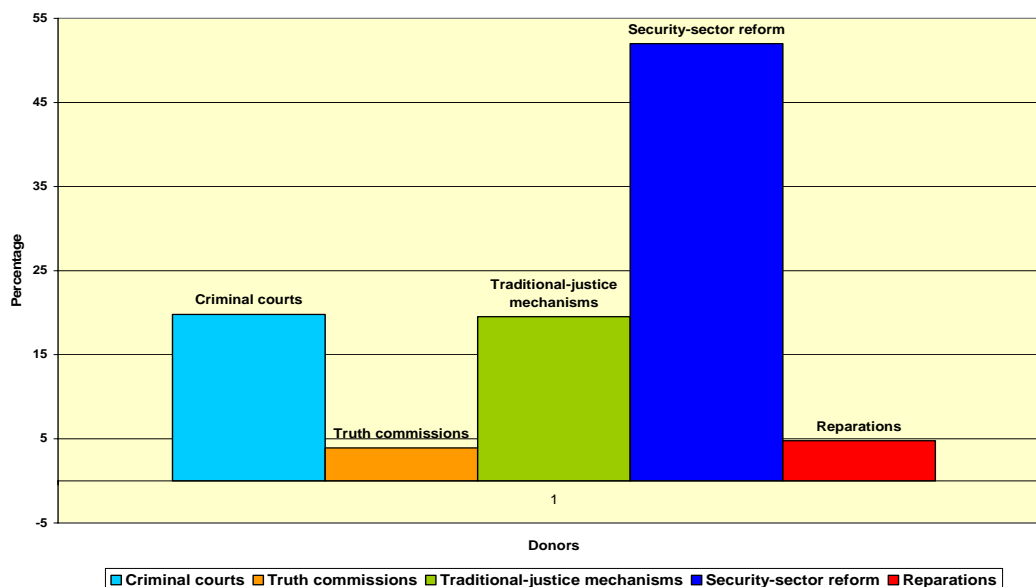
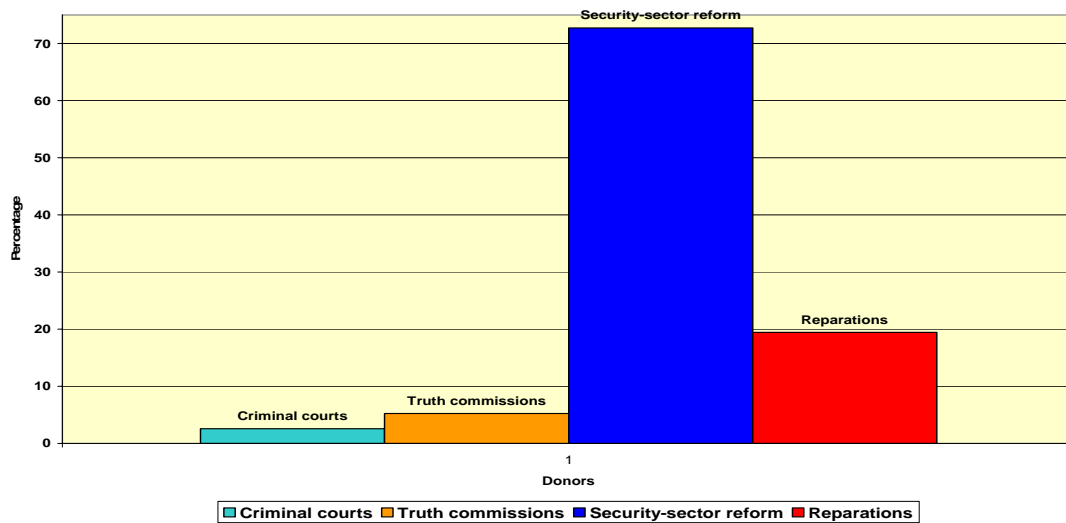


Figure 8. Distribution Across Mechanisms of TJ Aid to Guatemala, 1995-2005 (in percent)



While our data cover bilateral and multilateral contributions to the ICTR, it should, however, be noted that this tribunal was also supported through the UN system. Criminal courts support in Rwanda’s case is therefore likely to have been somewhat higher in reality than what our data suggest.

The low level of aid to criminal courts in Guatemala had to do with the fact that alleged perpetrators of war-time crimes were not brought to trial internally in the country. Spanish courts and the Inter-American Court of Human Rights were used for this purpose, primarily by civil society groups. Yet most aid to these prosecution attempts fell beyond the scope of this study.

Truth commissions received a relatively similar share of the TJ aid in both countries – around five percent only. In Guatemala more aid was given to truth commissions than to criminal courts; in Rwanda the reverse was true. The institutions supported were, in Guatemala’s case, the Historical Clarification Commission (CEH) and the Recovery of Historical Memory Commission (REHMI), and in Rwanda the National Unity and Reconciliation Commission (NURC). It should be noted, however, that the NURC (which still exists at the time of writing) does not fit all the standard requirements for a truth commission, since it has not had a mandate to reveal the truth about the past and disseminate such information. It has shared the aim of promoting reconciliation with (other) truth commissions but has sought to obtain this through other means than documenting past conflicts.

The third category also involves a borderline institution. For as regards **“traditional” mechanisms**, Figures 7 and 8 reveal that only in Rwanda was this category supported, with roughly 20 percent of the TJ aid – about the same as what went to criminal courts. The only institution in this category is *gacaca*. Guatemala too had programmes that might be called “traditional” justice, but we classify these within the security sector since they aimed to strengthen the rights of the indigenous people within the framework of the formal justice system, and to incorporate customary law into the formal legal system.

Yet the location of *gacaca* in the “traditional” mechanism category is not unproblematic either. Although *gacaca* existed in pre-colonial Rwanda as a local conflict resolution body, the Rwandan government transformed it considerably to make it fit its current policy priority of bringing alleged genocide criminals to justice. Moreover, *gacaca* is similar to the truth commission mechanism inasmuch

as it encourages stories to be told and reconciliation to be reached at a multitude of locations across the thousand hills. The mechanisms could also be put in the criminal court category, since *gacaca* – which means “justice on the grass” in Kinyarwanda – can sentence the accused, if found guilty of the most serious crime for which the court has jurisdiction, to life imprisonment.⁵ Yet even though it is not fully “traditional” and has similarities with other TJ mechanisms, we chose to categorise *gacaca* as a “traditional” measure – since this classification enables us to assess its quantitative importance relative to other mechanisms.

Apart from SSR, **reparations** is the only category which got a higher share of the TJ aid in Guatemala than in Rwanda: almost 20 percent in the former, versus roughly five in the latter. In Rwanda, reparations aid went to no major institution or programme of financial compensation to victims – but rather to initiatives such as mental health programmes and the building of museums, monuments and memorials. In Guatemala too, reparation funds went to mental health programmes, but also to exhumations and to efforts to facilitate the set-up and functioning of the National Programme of Reparations (PNR). Yet by the end of 2005, hardly any Guatemalan war victims had yet received any financial compensation (Naveda and Hurtado 2007).⁶ And as opposed to Rwanda, reparations aid in Guatemala does not seem to have involved any funding of the building of museums and monuments in remembrance of the conflict.

To sum up, security sector reform was a key target of TJ aid in both countries. We return to the justifications and composition of this aid in chapter 4. TJ assistance further went to a wider range of mechanisms in Rwanda than in Guatemala, including local and international courts. Yet more was allocated to reparations in Guatemala’s case. In both countries, truth commissions only received a tiny amount of the transitional justice assistance.

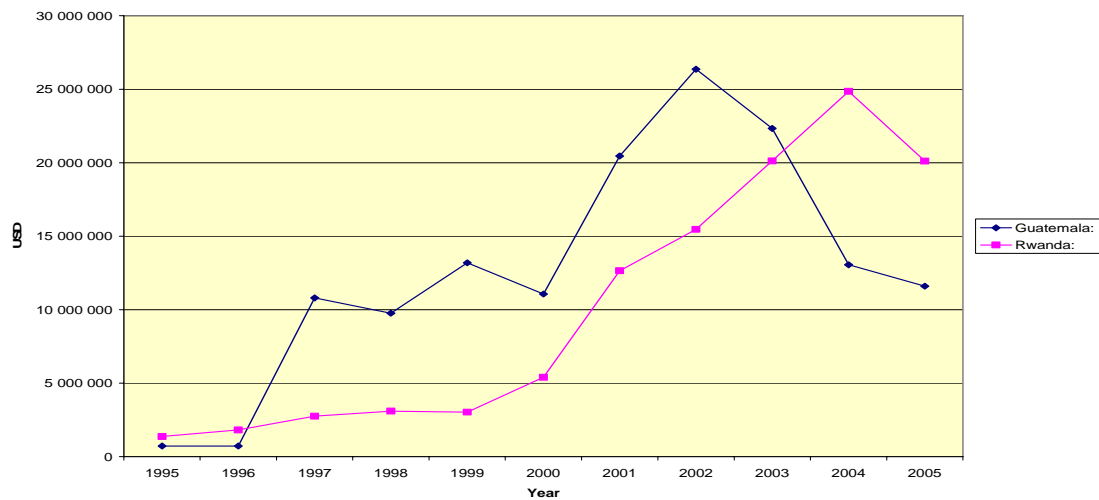
3.4. Sequencing of the TJ Assistance

How was the aid to transitional justice in post-conflict Rwanda and Guatemala distributed over time? To answer we will now first take a closer look at the aggregate TJ figures, and subsequently disaggregate the data between the five TJ mechanisms.

Aggregate Trends

As noted in section 2.1, our data suggest that Rwanda and Guatemala received 111m and 140m USD respectively in TJ aid during the studied period. When comparing this aid to overall ODA figures, we saw that the aid to transitional justice increased over time in each country, from an initial low point in 1995-96 to peaks in the last half of the period (Figure 3). Figure 9 zooms in on this distribution of the TJ aid across the 11 years studied, and brings new details to light.

Figure 9. Sequencing of Aid to TJ in Rwanda and Guatemala, 1995-2005 (in USD)



The pattern in absolute figures is similar to that of the relative figures, which we detected in Figure 4 where we presented trends as regards TJ aid as a share of ODA. We identified, in Rwanda's case, two sequences during the 11-year period, and in Guatemala's case, four. As Figure 9 illustrates, these sequences recur in the patterns of the absolute figures of TJ aid. In Rwanda, aid to transitional justice was far lower during the first six post-conflict years than during the last five. In Guatemala, by contrast, the aid followed an inverted U pattern, with a medium level during the first four post-war years, a peak during year five, six and seven, and a drop to the medium level again in year eight and nine after the peace deal. In Rwanda, TJ aid during the first sequence grew from 1.4m to roughly 5m USD, while during the last sequence it ranged between approximately 13m and 25m USD per year. In post-war Guatemala, by contrast, TJ aid ranged between 10m and 14m USD in the first and last phase, while it in the middle sequence it peaked at between 20m and 26m USD annually.

Donors hence started engaging much earlier in transitional justice in post-conflict Guatemala than in post-conflict Rwanda. It is striking that while Guatemala received more than 10m USD annually for transitional justice during the first *four* post-war years (and even more after that), Rwanda got less than 5m USD annually during the first *six* post-conflict years for the same purpose. Only in the seventh year did Rwanda reach a level of TJ aid similar to that of post-war Guatemala. Even with regard to the last part of the period, on which we have the best data, Rwanda remained below Guatemala's level up to and including 2003. Only ten years after the genocide did Rwanda receive more aid for transitional justice than did Guatemala, which was then in its eighth post-war year. The bulk of the 111m USD that Rwanda received in total – 93.2m USD – was disbursed between 2001 and 2005.

The historical time factor is relevant to keep in mind when deciphering the patterns. It is noteworthy that during the last five years of the 11-year period, from 2001 onwards, aid to TJ was at a considerably higher level than it was during the 1990s. This is likely to relate to factors beyond the particular contexts of Rwanda and Guatemala, such as the increased focus on security issues in the post-9/11 world, which also can help explain the SSR dominance in the TJ assistance. It also relates to an accumulation of experience from a range of post-conflict countries, suggesting that a process for dealing with the past might be needed to build peace.

At the same time though, a historical factor may also have contributed to create a bias in our data, inasmuch as “transitional justice” and “security sector reform” only started emerging as policy categories in the last part of the period. This, in turn, complicated our collection of data on this issue covering the years of the 1990s. The skewed pattern, with more TJ aid in the end than in the beginning of the 11-year period, may therefore be slightly exaggerated.

Trends of Support Across TJ Mechanisms

We will now examine how the aid was distributed across different transitional justice mechanisms. Figures 10 and 11 show the key patterns.

Figure 10. Aid to TJ Mechanisms in Rwanda, 1995-2005 (in USD)

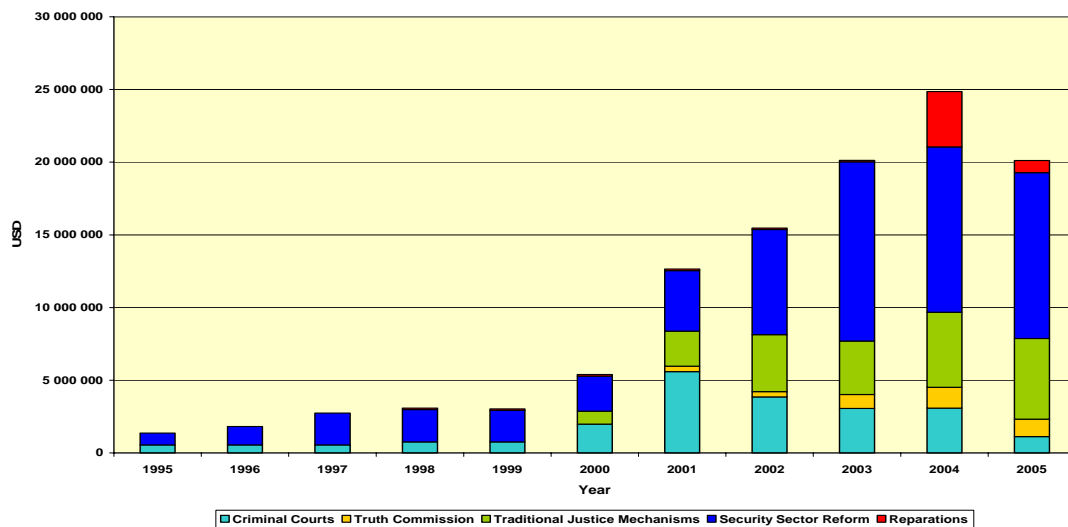
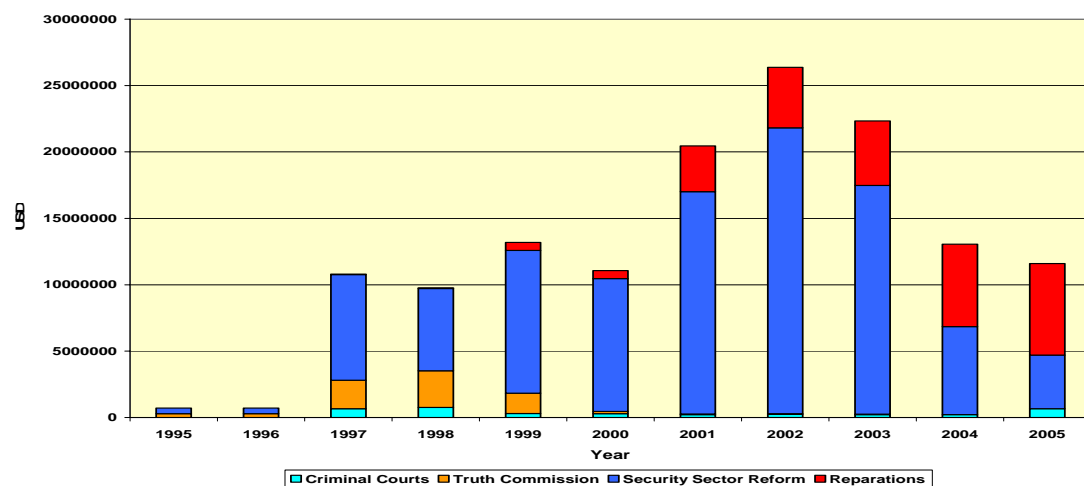


Figure 11. Aid to TJ Mechanisms in Guatemala, 1995-2005 (in USD)



The two figures reproduce the aggregate picture already seen, with Rwanda displaying a first six-year phase of little TJ aid and an ensuing five-year period with much more flowing in; and Guatemala the inverted U from 1997 onwards. Yet Figures 10 and 11 also enable us to spot the proportions of aid that went to the different mechanisms of transitional justice. As Figure 11 makes clear, in Guatemala’s case TJ aid had not really started in the two first years of the 11-

year period, as the final peace accords had not yet been signed at that time. We therefore analyse the trends taking 1995 as the first post-conflict year in Rwanda's case and 1997 in Guatemala's.

Criminal courts. Support to this mechanism was sequenced very differently in the two cases. In Rwanda the timing largely paralleled the overall sequencing of TJ assistance. Criminal courts received very little aid during the first five post-genocide years, only around one million per year. In the second half of the first post-conflict decade, however, this category got between two and six million annually, while in the eleventh year aid dropped to reach the level of the 1990s again. In Guatemala by contrast, aid to criminal courts was far smaller, never exceeding one million per year during the first nine post-war years. It was also sequenced in the opposite manner, with a little more aid in the beginning and the end of the period than in the middle, when hardly any foreign assistance targeted the criminal courts.

Truth commissions. Aid to truth commissions was also sequenced in diverging ways in the two countries. In Rwanda this category received donor funding only in the last half of the period and in Guatemala only in the first half. This was for obvious reasons: in Guatemala the two commissions that donors supported, the CEH and REHMI, were operational only in the 1990s and issued their final reports in, respectively, 1999 and 1998. Correspondingly, aid flows were largest from 1997 through 1999, when the commissions received 2-3m USD annually, with trickles only in the two preceding years and in 2000. In Rwanda by contrast, the supported commission (NURC) was established in 1998 and became operational in 1999 (Ingelaere 2006; Kimonyo et al. 2004). Aid to this commission remained minor in 2001 and 2002, and only in 2003 through 2005, half a decade after it was set up, did donors start investing more in it – with aid averaging roughly one million per year.

Traditional justice mechanisms. As noted earlier, aid was channelled into this category only in Rwanda's case, where donors supported the *gacaca* institution. In 2001 the first *gacaca* legislation was passed in the Rwandan parliament and preparations for the process started. The same year, foreign aid to *gacaca* began trickling in. From a modest start in 2000, when roughly one million USD was given to *gacaca*, aid flows grew relatively steadily in ensuing years, reaching roughly 5m USD in 2005 – the year *gacaca* was launched, after an initial pilot phase. Already by 2002 *gacaca* received roughly the same amount in external aid as did criminal courts in Rwanda, and from 2003 onwards more aid was given to *gacaca* than to criminal courts.⁷ From 2003 onwards *gacaca* was the mechanism that received second-most support, passed only by security sector reform.

The security sector. During most of the years of the 11-year period, security sector reform was the category that received the most TJ aid in both countries. In Rwanda SSR received roughly half the aid or more in all years except 2000, 2001 and 2004. In post-war Guatemala, only in the final year of the post-war period did SSR receive less than half of TJ aid.

In absolute numbers, SSR aid trends follow the overall trends in both countries. In Rwanda, SSR received less than three million USD per year during the first six years, and between approximately 4m and 12m USD per year from 2001 through 2005. In Guatemala, SSR received some 4m to 10m USD annually in the first and last phase of the post-war period, but from 2001 through 2003 far more, some 16-21m USD each year.

It is illustrative that in some years, aid to security sector reform passed the 10-million mark in Rwanda and the 20-million mark in Guatemala, while other mechanisms hardly went beyond the 5-million mark any given year. Only two

exceptions are found to this trend: criminal court aid in Rwanda in 2001 and reparations aid in Guatemala in 2005, which both went slightly beyond the 5-million mark in these years. By and large SSR clearly dominated the field.

Reparations. As noted earlier, in Rwanda far less donor money was allocated to reparations than in Guatemala. Reparations tend to become an issue only some time after the end of an armed conflict, when it becomes clear – often as a result of the work in other TJ mechanisms, such as courts and truth commissions – who might be eligible for financial compensation. It also takes some time before more pressing post-conflict needs of reconstruction and development are minimally satisfied and space hence can be opened for memorials, museums, exhumations of mass graves and mental health programmes.

In both Rwanda and Guatemala, aid to reparations followed this trend of coming in late, towards the end of the first post-conflict decade. But it came much later and was far less in Rwanda's case. In Guatemala reparations assistance first emerged in 1999, the third post-war year and at the time when the truth commission reports had just come out. In Rwanda by contrast, only ten years after the genocide – in 2004 – did reparations aid first emerge, followed by a smaller contribution the year after, which is the last year covered by our data. We hence know little on the extent to which reparations aid was sustained over time in Rwanda. The data on Guatemala, by contrast, suggest a strong "staying power" of donors within this field. Reparations assistance was not only given at the time when the truth commissions published their recommendations that victims should be compensated; it continued throughout the latter part of the post-war period, six to seven years after the two reports were published. From 2001 through 2005 reparations aid vacillated between two and five million USD per year. In Rwanda, by contrast, only some five million USD was provided in total for this purpose.

As noted earlier, only in Guatemala's case did some of this aid aim at financially compensating victims of the conflict. But such compensation had not been paid out by the end of the assessed period, with the exception of a few individuals. The most tangible results of the reparations assistance were mental health programmes (in both cases), exhumations (in Guatemala) and memorials and museums (in Rwanda).

4. Transitional Justice Aid to Rwanda and Guatemala: Exploring the Terrain

We have now mapped the terrain of aid to transitional justice in Rwanda and Guatemala, by outlining the quantitative trends of this aid from 1995 through 2005. Yet the analysis of the figures gives rise to many questions. How was the aid to the various mechanisms followed up? Why did the donors prioritise the way they did? And how did the donor-supported transitional justice initiatives relate to one another, and to the two countries' governments? These are the issues we explore in the following sections.

4.1. Follow up Mechanisms

Introductory Remarks

A key purpose of this study is to assess the extent to which the transitional justice processes in Rwanda and Guatemala were maintained over time. We

therefore sought to find out how transitional justice initiatives in the two countries were followed up in the 11-year period.

However, this is conceptually a difficult task since one transitional justice mechanism can represent a follow-up of another. We have hence already touched upon follow-up mechanisms in this study, as we have examined the various TJ mechanisms and how they were supported. For instance, reparations, one of the mechanisms assessed, is normally a follow-up of the work by criminal courts or truth commissions. In Rwanda, moreover, it can be argued that *gacaca* represents a follow-up of the work of criminal courts – since it was realised that the formal court system did not have the capacity to try all the *génocidaires*, which triggered the use of the more informal judicial mechanism of *gacaca*.

Also in donors' categorisations, it sometimes proved difficult to separate funding to the follow-up of a mechanism from funding to the mechanism itself. A donor might, for instance, have supported the investigations by a Guatemalan truth commission *and* the dissemination of its findings. While dissemination can be seen as a follow-up to the truth commission, the aid may still remain categorised as truth commission assistance.⁸ These conceptual and classificatory difficulties explain some of the overlaps that are visible in the ensuing analysis.

Follow-up Support Across Mechanisms

We understand follow-up mechanisms as processes aimed at sustaining the positive results of the transitional justice efforts. Follow-up can take the form of dissemination of truth commission reports, education, and reparations. In Rwanda and Guatemala, donors engaged in a range of such follow-up programmes. Table 1 gives an overview of this, listing projects supported, donors backing each project and, if available, the period of support.

Table 2. Donor-Supported TJ Follow-Up Work in Rwanda and Guatemala, 1995-2005

	<i>Rwanda</i>	<i>Guatemala</i>
<i>Criminal courts</i>	<i>Gacaca</i> and ICTR news coverage (USAID 2000-03)	(None)
<i>Truth commissions</i>	Handbook of civic education (GTZ 1995-2004) Rwanda Reconciliation Radio (Belgium 2003-04) Radio programme support (GTZ) Documentary film on the NURC (UNDP 2003-05)	CEH (UNDP-Danida 1997-99) Office of Human Rights of the Archbishop of Guatemala/REHMI (Denmark 1998-2000) REHMI (Sida 1995-96) REHMI (GTZ 1998-2000) Follow-up of CEH (UNDP-Sida 1999) Publication of CEH report (DFID/British MFA 1999) Disseminations of CEH and REHMI reports (Norad/Norwegian MFA)
<i>Traditional justice mechanisms</i>	<i>Gacaca</i> : Dissemination of booklets and calendar (UNDP 2003-05) <i>Gacaca</i> judges training (UNDP 2003-05, USAID 2004-05)	(None)
<i>Security sector reform</i>	Training/education of judges (GTZ, CIDA 1995-2000, UNDP 2003-05) and of lawyers (USAID 1997-03)	Training/education of judges (Netherlands 1997-2004, WB 1999-2004)

Maintaining the Process?

	<i>Rwanda</i>	<i>Guatemala</i>
	<p>Follow-up project of the justice sector programmes (1996-1998)</p> <p>Documentation centre (French MFA 2000-03)</p> <p>Justice evaluation survey (USAID 2002)</p> <p>Research support to NGOs, video material to the justice sector (Netherlands)</p>	<p>Support to the National Commission of Follow-up and Support to the Strengthening of the Justice Sector, the CNSAFJ (UNDP 2002-03)</p>
<i>Reparations</i>	(None)	<p>Reparations as recommended in CEH (GTZ), via PASOC (UNDP, Norad, Sida, Danida)</p> <p>Exhumations (USAID, 2001-04)</p> <p>Anthropologic-forensic research (Netherlands 1999-2003)</p> <p>Dignification and psychosocial attention (UNDP 2001-05)</p>

As the table suggests, donors did contribute to sustaining the transitional justice efforts – with some variations.

The least follow-up support is detected for the **criminal courts**. Only one donor-supported programme was noted as disseminating information about the work of criminal courts, in the case of Rwanda. In Guatemala no follow-up support to criminal courts was registered.

In the **truth commission** category, by contrast, donors were more active in follow-up activities in Guatemala than they were in Rwanda. The CEH and REHMI commissions were supported not only in their operations but also in the publication and dissemination of their reports. In Rwanda the NURC was less supported. Follow-up activities in the truth commission category include media and outreach projects related to civic education and reconciliation, including a handbook, radio programmes and a film. These activities also spread information about the NURC which, as noted earlier, was not a “classical” truth commission but rather, essentially, a reconciliation commission.

Support to follow up the work of **traditional justice mechanisms** came forth in relation to the *gacaca* process in Rwanda, in the form of funding of the training of judges for *gacaca* as well as the spread of information about the *gacaca* process.

In the **SSR** category training and education of judges and lawyers was also an activity supported by many donors. Apart from this, only one other follow-up activity was backed in Guatemala’s case: the ambitiously named National Commission for the Follow-up and Support to the Strengthening of the Justice Sector, abbreviated CNSAFJ. In Rwanda other SSR follow-up work included support for research, documentation and evaluations. Follow-up activities of SSR were thus more far-reaching in Rwanda than in Guatemala.

Aid to follow up on **reparations** was only registered in Guatemala’s case. Several donors supported the efforts to implement the truth commissions’ recommendations on reparations, while others supported work on exhumations, forensic research and psychosocial support. The experience of reparations aid was mixed, however. Norway, for instance, funded a UNDP civil society programme to push for the creation of a governmental reparations programme, as recommended by the CEH (interview, representative of the Norwegian MFA in

Guatemala). Yet although donors and civil society made a strong effort to follow up on the truth commissions' recommendations by supporting e.g. the strengthening of the justice sector (the CNSAFJ commission), much of this was to little avail as the national government showed little political will to carry out the recommendations (interview, representative of the UNDP).

Concluding Remarks

The above analysis suggests the extent of follow-up support to a TJ mechanism largely depended on the degree of other funding to the TJ mechanism in question. SSR, for instance, which dominated TJ assistance, was also a target of considerable follow-up support, in particular to the training of legal officials. In Rwanda's case reparations, which came in late, got no follow-up support, and the organ identified as a truth commission, which also got little donor funding, hardly received follow-up aid either. In Guatemala criminal courts, which received little aid, also got no follow-up assistance; while the truth commissions and reparations were strongly backed both in operations and follow-up.

While donors did sustain the transitional justice efforts they had supported, they hence did so to a varying extent across mechanisms, with the better-funded activities receiving the most of the follow-up support.

4.2. Donor Priorities

We now have a relatively complete map of the terrain of transitional justice aid to Rwanda and Guatemala, including an outline of how this aid was followed up throughout the 11 years from 1995 to 2005. But how was the landscape we now can imagine, shaped? Why did donors choose to intervene – where they did, when they did, and with as much money as they did?

All the donors we interviewed confirmed that both international obligations, such as international humanitarian law and peace agreements, and the priorities of the recipient country's government and of former parties to the conflict impacted on their funding decisions. Nonetheless, other elements also influenced donor policy. Shifts in the post-conflict contexts, for instance, seem to have been crucial in forming their strategies.

Before we take a closer look at how donor priorities were shaped in each country, a note is useful on the most striking difference in approach: in Rwanda donors tended to respond to the agenda of the government with which they worked quite closely, while in Guatemala most donors supported the UN-brokered peace accords and, with some exceptions, did not want to get involved in any direct partnership with the Guatemalan authorities.

Priorities in Relation to Rwanda

Rwanda's 1994 genocide is a dark hallmark of African history. The world's failure to prevent and stop this mass slaughter triggered an international guilt complex. In the donor community this seems to have translated into some humility, and a willingness to support the Rwandan government directly and to enable it to set the terms for the country's development.

When asked about the background for their support to transitional justice in Rwanda, several aid officers highlighted the moral and political imperative their governments felt to enable post-genocide Rwanda to have a well-functioning justice sector. The donors expressed a clear wish to contribute their experiences and resources to make that happen. As one officer put it:

“The basis of funding was bilateral agreements and Rwandan politics. The main objective of the Rwandan government was to stabilise the country and improve the governmental work, also the institutions of justice. It is their wish that we are engaged in the field.” (Interview, representative of the German BMZ)

The donors were hence inclined to allocate their money in line with the political interests of the Government of Rwanda. The *gacaca* tribunals are a clear example of such a nationally driven initiative, which upon the government’s request received considerable support from some donors in spite of their lack of experience with such a traditional justice mechanism. Another field officer thus commented,

“... it was also due to priorities of the Rwandan government. *Gacaca* was the Rwandans’ choice, although in the preliminary phases *gacaca* was an unknown project to the donors and therefore everyone was sceptical to get involved.” (Interview, representative of the Belgian MFA)

Donors’ preference for giving direct aid to the Rwandan authorities was hence justified with reference to the wish to strengthen governmental institutions, such as the Ministry of Justice and the law enforcement units. Yet the donors’ choice of partners, as well as the volume and nature of the aid, depended on the situation on the ground – which changed over time. Several donor representatives remarked that the period from 1995 to 1998 remained one of emergency in Rwanda. Funding therefore targeted humanitarian efforts while aid to transitional justice was postponed. This helps explain the two-stage pattern we have detected in TJ aid to Rwanda: in the early aftermath of the conflict, Rwanda received little TJ aid since most donor funding was channelled through international NGOs for the humanitarian effort. But in the latter part of the period, with the emergency left behind and elections being held, aid to transitional justice picked up – and more was channelled directly to the government. The cooperation also shifted to larger-scale and longer-term programmes and became more focused on institution building. A field officer commented:

“We looked at the capacity – can they implement it? Do they have enough budgets? Hence, our aid was channelled from NGOs to governmental institutions [...]. Between 2001 and 2003, permanent institutions were still not in place. Therefore, we supported INGOs in the beginning.” (Interview, representative of the Netherlands’ MFA)

Among the transitional justice mechanisms, donors in Rwanda clearly prioritised security sector reform – more specifically, the building of institutions within the sector. This donor priority was shaped both by the Rwandan government, which encouraged the donors to allocate funds to SSR-related activities, and also by global policy trends in the studied period, when “good governance” emerged as a key priority, beyond human rights and democracy. When justifying their SSR funding, the donor representatives generally referred to overall policy goals such as the imperative to create an independent justice sector within a democratic society.

The fact that the NURC, unlike other truth commissions, has not played a major role in promoting reparations to the victims of the conflict might help explain why funding to reparations was small and came late in Rwanda’s case. According to some donor representatives, the issue of reparations remained highly controversial in the country.

In sum, in Rwanda the donors allocated their funds according to national priorities as far as possible within the post-war context. Although there were still

human rights concerns in Rwanda, the donors tended to be satisfied with the fruitful immediate results of the Rwandan government, which managed to achieve increasingly greater capacity in the justice sector.

Priorities in Relation to Guatemala

A key determinant of donor priorities in transitional justice in Guatemala was the peace accords. Justice sector aspects were covered by altogether five partial peace agreements (Sieder 2003: 142). The partial accord entitled “Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society” (the AFPC) (MINUGUA 1996), signed in September 1996, was particularly influential in guiding the allocation of aid to the security sector.

As noted in chapter 3 of this study, SSR received almost three quarters of all TJ aid in Guatemala. What explains this strong donor preference for security sector reform?

The loyalty of donors to the peace deal framework is part of the explanation. Given the strong focus in the peace accords on SSR measures as a means of bringing lasting peace to Guatemala, donors became heavily involved in supporting this area. Some sections of the accord, notably the justice system, received substantially more funding than other sections. The first post-war government followed up on this by creating a Commission on the Strengthening of the Justice System (CFJ),⁹ and the Judicial Branch Modernisation Unit,¹⁰ the latter with the intention of coordinating the implementation of the reforms (MINUGUA 1996: §15; MINUGUA 1997: §41). These governmental initiatives were supported by funding from multilateral banks and donors (MINUGUA 1998: §72).

The rush to support SSR also had less positive sides, however. Our data suggest that there was strong concentration of aid in the judiciary. Important measures in the AFPC such as the creation of the security advisory bodies and the law enforcement units, such as the national civilian police, were thus to some extent neglected.

Interviews also suggest that the donors had a long-term funding strategy for SSR. In the immediate aftermath of the civil war, they launched long-term programmes aimed at institution building, particularly in the justice sector, and this gradually expanded until 2003. But in 2004 and 2005, SSR funding dropped significantly – a result, according to several donors, of the withdrawal of MINUGUA, the UN Verification Mission that had been responsible for a major multi-donor trust fund in the area of SSR.

Aid from Sweden, Norway, Denmark and the Netherlands was strongly coloured by the wish to carry through the 1996 peace accords. In fact, the Nordic and the Dutch agencies only got engaged in aid to Guatemala after the signing of the accords – in order to follow up on their engagement in the peace process. A former field officer commented that Norway felt a particular responsibility towards the implementation of the partial peace agreement called the truth commission agreement (the full name being the “Agreement on the establishment of the commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer”), signed in Oslo in June 1994. Norwegian authorities felt a certain “ownership” of the agreement since they had been strongly engaged in the process leading up to its signing (interview, former representative of the Norwegian MFA in Guatemala). Also, Norwegian authorities wanted to maintain the political position of the warring parties in the post-war regime (interview, representative of the Norwegian MFA in Guatemala).

The donors hence tended to care less about the priorities of the post-war government than they did about the guidelines of the peace agreements. This seems to be related to the fact that the Guatemalan authorities did not make a major effort to coordinate donor activities throughout the transitional period (interviews). A majority of the donors instead decided to allocate their aid in huge UN multi-donor trust funds. As one field officer pointed out, this tended to create a state within the state as MINUGUA took over many state functions. Consequently, some governmental institutions were undermined and did not build up sufficient capacity (interview, representative of the Danish MFA).

By comparison, the donor agencies in Rwanda seem to have managed to transfer capacity to governmental institutions in accordance with the priorities of the national authorities. Even though human rights concerns have prevailed in Rwanda, the apparent state-building effect that the aid to transitional justice has had is food for thought when compared to contemporary Guatemala. A few years after the 11-year period studied this country, where the government was not a key target of TJ aid, finds itself in a deep state crisis. In spite of the heavy investments in SSR and transitional justice throughout the post-war period, the justice sector and the law enforcement agencies today function poorly and post-war violence continues unabated.

4.3. Complementarity

The effects of donor aid partly depend on the extent to which the supported activities complement one another. Complementarity of activities can be improved through coordination amongst key actors such as donors, government actors and civil society. Forums for coordinating the interventions in the field of transitional justice are therefore, presumably, important – also in a longer-term perspective, for the purposes of sustaining the aid's positive results.

While we will return to the question of complementarity of the different TJ mechanisms that were supported in the two countries when concluding this study, we will here assess how such coordination mechanisms worked in the cases of post-conflict Rwanda and Guatemala. Who participated, what roles did the different actors play, and what were the results? The following analysis focuses on the functionality of the two forums that were most central to enhancing complementarity within the TJ field, namely the "Justice Sector Cluster" in Rwanda and the "*Petit Comité* on Justice and Security" in Guatemala.

The Justice Sector Cluster in Rwanda

The Justice Sector Cluster (JSC) was established towards the end of the studied period, in 2004, the year after Rwanda held its first post-conflict elections. The aim was better coordination of the aid to the justice sector. The Rwandan government contributed to setting up the cluster upon its signing of the Paris Declaration on Aid Effectiveness in 2004 (interview, representative of UNDP Rwanda).

The purpose of the cluster, which still is in existence at the time of writing (June 2007), is to ensure that the aid to justice and reconciliation related activities is allocated according to a nationally driven sector approach. The Rwandan government's justice sector strategy has been used as a basis on which aid projects are to be harmonised and duplication is to be prevented. An important function of the group has been to discuss the government's strategy for the justice sector, to share information about the donor programmes and to discuss the government's budgets in this field (interview, representative of the Belgian MFA). According to a donor representative, Rwanda's Ministry of Finance has

played an important role in the cluster by urging the members to coordinate their resources and to avoid a situation where the donors “go on with their own projects” (interview, representative of the Netherlands’ MFA).

The group has been co-chaired by the UNDP in Rwanda and the Rwandan Ministry of Justice. It currently consists of representatives of 13 governmental institutions within the justice, law and order areas, as well as two non-governmental bodies – plus donors. The 15 Rwandan member institutions are (UNDP-Rwanda 2007a):

Governmental agencies: Rwanda’s

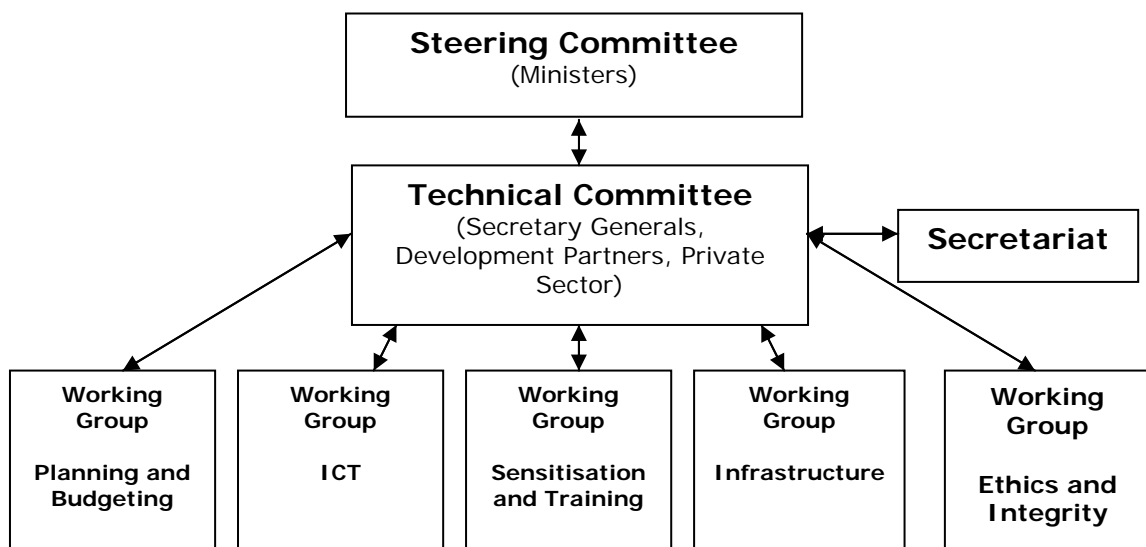
- Supreme Court and Military High Court,
- Office of the Prosecutor General,
- Ministries of Justice, Internal Security, and Finance,
- Prisons Department,
- National Police,
- National Secretariat for the *Gacaca* Jurisdiction,
- National Unity and Reconciliation Commission,
- National Human Rights Commission,
- Office of the Ombudsman,
- *Travaux d’Intérêt Général* (TIG), and

Non-governmental agencies:

- The Kigali Bar Association,
- The Institute of Legal Practice and Development (ILPD).

Figure 12 gives a more detailed view of how the justice sector cluster is organised.

Figure 12. Organisational Structure of the Justice Sector Cluster in Rwanda



As the figure shows, the cluster is organised as a three-level hierarchy (UNDP-Rwanda 2007b). At the top level is the national Steering Committee, which includes most of the governmental institutions listed above; represented by their ministers and leaders. At this top level of the coordination body there is hence no donor representation.

Below is the Technical Committee, composed of the secretary-generals of governmental institutions as well as representatives of national civil society organisations and donors. According to a cooperation officer, the Technical Committee works more or less like a think-tank by elaborating strategies for coordination and harmonisation in the justice area. It meets once a month and submits proposals to the steering committee, which takes the final decisions (interview, representative of UNDP Rwanda).

At the third organisational level we find the working groups, which discuss specific justice sector issues and feed back to the Technical Committee. Finally the cluster has a secretariat which convenes the meetings of the Technical Committee and elaborates strategy proposals in collaboration with the different levels (interview, representative of UNDP Rwanda).

According to representatives of some of the principal donors who have followed the JSC process, the cluster has clearly helped promoting complementary of donor and government efforts within the justice sector. Many emphasised that the cluster has contributed to the government taking responsibility for the coordination of the aid.

Nonetheless, the cluster has also encountered some challenges. One is that the various governmental institutions represented in it, some from the executive and others from the judicial branch have tended to claim their institutional and financial autonomy, which reportedly has complicated coordination efforts (interview, representative of the Belgian MFA). Another difficulty has been the presence of many donors and NGOs, which in some informants' view has complicated efforts to streamline the aid (interview, representative of the Netherlands' MFA). The large number of actors involved in the cluster, while probably necessary to harmonise the various initiatives in the TJ field, thus also seems to have complicated the very process of harmonisation.

As for the participation of civil society in the cluster, ensuring this has been an important donor priority. Yet in the eyes of one aid officer, the collaboration between civil society, donors and government has been made difficult due to the nature and function of civil society in Rwanda. NGOs play a watchdog role and tend to point out deficiencies with regard to the cooperation programmes, which sometimes made it challenging for donors and the government to cooperate with civil society (interview, representative of the Netherlands' MFA). In general terms, however, civil society in Rwanda was still weak and had not constituted a strong stakeholder in the cluster.

Other Complementarity Mechanisms in Rwanda

Beyond the justice sector cluster, Rwanda also saw other donor attempts to coordinate the aid to transitional justice. A noteworthy such initiative was taken by three major donors to Rwanda towards the end of the 11-year period studied. Belgium, the Netherlands and the EC then elaborated a division of labour for their support, in view of enabling a stronger specialisation of each donor in different areas of the justice sector.

In line with this thinking, Belgium funded capacity building and institutional support for the Ministry of Justice, support to the ILPD training centre and support to the Prosecution Office (while supporting civil society through different funding mechanisms). The Netherlands, for its part, funded the operation of tribunals and courts, while the EC sponsored justice sector infrastructure, the National Human Rights Commission and civil society. *Gacaca* was one of the few justice sector institutions supported by all three donors.

Coordination between the three also consisted of the set-up and running of a common reporting system (interview, representative of the Belgian MFA). This stands in contrast to the justice sector cluster, which had not yet established common reporting procedures.

Guatemala: Coordination via the Government, the UN and the *Petit Comité*

In contrast to the considerable coordination efforts in Rwanda towards the end of the period, in Guatemala donor coordination of the transitional justice aid remained poor throughout the 11 years. Some harmonisation attempts were made though. We track the coordination efforts and reasons why they remained limited along two axes, the government and the UN.

The government axis. Guatemala's peace accords stipulated the setting up of domestic institutions such as the Commission for the Strengthening of the Justice System (the previously mentioned CFJ). Soon after the war was over, the CFJ elaborated a proposal for justice sector reform. Many of these proposals were incorporated into the judiciary's plan for modernisation from mid-1997 onwards (Sieder 2003: 143). The reform proposals also framed the aid to the justice sector (interview, former representative of the Swedish MFA in Guatemala). Judicial reform was, however, one of the few processes coming out of the peace accord framework that the government gave priority to in the early aftermath of the conflict – which helps explain the previously mentioned dominance of aid to this part of SSR, at the expense of other parts of this sector.

Much of the aid to the justice sector was coordinated by the above mentioned Judicial Branch Modernisation Unit of the Government of Guatemala (interview, former representative of the Danish MFA in Guatemala).¹¹ But this Unit paid most of its attention to coordinating the bigger contributions, in particular the loans from the World Bank and the Inter-American Development Bank (interview, former representative of the Swedish MFA in Guatemala). The government was apparently less attentive to coordinating the aid from smaller donors. Coordination thus remained lopsided.

The weak government commitment to coordinate TJ assistance also relates to the previously noted fact that Guatemala did not depend on aid as a source of revenue. Aid constituted less than two percent of gross national income. According to one aid official, this was also an important reason why donors took few initiatives to counter the shortage of coordination attempts by their Guatemalan counterpart (interview, representative of the German BMZ). The realisation by donors that aid had such a small leverage thus seems to have discouraged them from “getting their acts together” and harmonising their efforts. In Rwanda, by contrast, where aid constituted more than one fifth of the national revenue, donors had a stronger incentive to coordinate with a view to obtaining positive results.

The UN axis. Beyond Guatemala's government, limited coordination of the TJ aid also related to the UN agencies, first and foremost MINUGUA and UNDP – which played pivotal roles as administrators of the bulk of bilateral aid (interviews). Ironically, perhaps, an important reason why bilateral donors opted for the UN was exactly the wish to see a strong and efficient coordination of the aid to the justice sector, including to transitional justice.

The Nordic group was the clearest proponent of a streamlining of the aid via the UN system (interview, representative of the UNDP). According to a former aid official, the UNDP had a clear mandate to coordinate donor efforts from 1997 onwards (interview, former representative of the Norwegian MFA). Yet only in

2003 did the UNDP establish the *Petit Comité* ("little committee") on Justice and Security in order to harmonise the aid to these areas (interview, representative of the UNDP).

There were several reasons why UN coordination performance did not live up to expectations. One aid officer argued that the problem was that no donor took the lead in this field; no agency committed itself to coordinating the rest of the transitional justice donors (interview, representative of the German BMZ). In the opinion of another official, the problem was that the UNDP was unable to assume such a leading administrative and political role as long as MINUGUA was present (interview, representative of the UNDP). Other donor representatives commented that neither MINUGUA nor UNDP were able to coordinate the aid due to a lack of coordination between the two, which had different agendas and whose interrelations do not seem to have been very smooth (interviews).

The two agencies had different but somewhat overlapping mandates. MINUGUA represented the UN Secretary-General and initially assumed responsibility for helping to implement certain aspects of the peace accords. At the same time, MINUGUA was supposed to be verifying the very same implementation (thereby its name, the UN Verification Commission). One former official remarked that this double role could be problematic in itself. The head of the UNDP, for its part, was the UN's resident coordinator and was in charge of the development programmes. The division of labour between the UN resident coordinator and the SG's special representative was not obvious to everybody (interview, former representative of the Norwegian MFA).

The *Petit Comité* on Justice and Security still became the most permanent forum of donor coordination in post-war Guatemala. The following nine donors were most frequently present in the forum:

Multilateral donors:

- the European Commission, and
- the UNDP,

Bilateral donors:

- Denmark (Danida),
- Germany (BMZ and GTZ),
- The Netherlands (Dutch MFA),
- Norway (Norwegian MFA),
- Spain (AECI),
- Sweden (Sida), and
- The United States (USAID).

The *Petit Comité*, which adopted a flat membership structure, was created to facilitate the exchange of information between donors about activities in the area of justice and security. However, an aid official remarked that the work of the committee did not lead to a stronger division of labour between the donors in this field (interview, representative of the German BMZ). The high number of justice units in Guatemala was also referred to as a reason why coordination was difficult (interview, representative of the Swedish MFA). This suggests that the challenge experienced in Rwanda, of coordinating a large number of governmental institutions by having them on board the coordinating body was not rendered less important by not having the national institutions on board, as was the case in the *Petit Comité*. When reflecting on the UN-related experience, Guatemala informants also revealed a pattern of little donor commitment to coordination or to working out a common approach to the justice sector.

To sum up, the general pattern seems to be that the Guatemalan government was not *committed* to coordination due to little ownership and involvement in post-war TJ assistance; the UN was not *able* to coordinate due to conflicting and unclear mandates as well as task overload; and donors were not *committed* to coordinate due to the small leverage their aid was likely to have – in a country where TJ assistance was of tiny importance in the overall economy.

Other Complementarity Mechanisms in Guatemala

Akin to the cooperation efforts between the donors most strongly involved in the transitional justice field in Rwanda, in Guatemala, too, some of the donors that were most engaged in the field formed their own coordination mechanisms. Former Scandinavian and Dutch cooperation officials report on an informal coordination of the aid between Sweden, Norway, Denmark and the Netherlands in the early post-war phase. Aid officials from these countries used to meet in order to discuss policies and strategies and to coordinate their views and opinions prior to the donor meetings (interviews, former representative of the Danish MFA, the Swedish MFA, the Norwegian and the Netherlands' MFA in Guatemala). A certain division of labour seems to have emerged as a result of these efforts. Compared to the similar attempts by like-minded donors in Rwanda however, this initiative was more modest and did not trigger a common reporting standard.

5. Conclusions and Recommendations

This study has taken stock of and assessed the aid that was given in support of transitional justice in post-conflict Rwanda and Guatemala. It has mapped the terrain of resource allocation; examined how donors followed up on their support; sought to explain donor priorities; and explored the extent to which different actors coordinated and complemented one another in the transitional justice field. In line with the Terms of Reference for the study we defined transitional justice broadly, including not only criminal courts, truth commissions and reparations but also “traditional” mechanisms as well as security sector reform. Quantitative data from 15 donors and qualitative information from 24 donor representatives was analysed. In the following we first sum up main findings, and then present key recommendations.

Transitional justice assistance made up only around five percent of overall development aid in the two post-conflict cases. Guatemala received slightly more aid to this field than did Rwanda, while Rwanda got more development aid overall. Key donors in the transitional justice field were the Netherlands, USA, Germany and Norway. In Guatemala most of the aid was channelled through multilateral organisations, while in Rwanda it tended to be given directly to the national government. More than half of the TJ assistance went to reform of the security sector, in Guatemala almost three quarters. In Rwanda roughly 20 percent of the TJ aid went to criminal courts such as the ICTR, and an equal share to the *gacaca* process. In Guatemala, by contrast, more aid went to reparations and some also to the countries' two truth commissions – while criminal courts only received a tiny share of the donors' support.

The assistance to transitional justice was differently sequenced in the two countries. In Rwanda very little TJ aid was given during the first six post-genocide years, but much more during the last five. In post-war Guatemala, the TJ aid pattern followed an inverted U shape – with considerable amounts allocated during the first four years, even more in years five to seven, and smaller but still considerable volumes in the final part of the period.

During the studied period donors followed up on the TJ aid through programmes of training and education (e.g. of judges), the dissemination of truth commission reports, information about *gacaca* and media projects. Aid to follow up on reparations was more significant in Guatemala than in Rwanda, and in general the better-funded mechanisms received the most follow-up support.

Rwanda was a far more aid-dependent country than was Guatemala. In relation to Rwanda the international community was influenced by a certain guilt complex after the 1994 genocide, which it had failed to prevent. While foreign governments surely were committed to backing Guatemala's hard-won peace as well, they did so in a different way: by supporting primarily the framework of the peace agreement, rather than the post-conflict government. In Rwanda, by contrast, donor commitment translated into strong support of the post-1994 government, especially after the post-genocide emergency phase had been laid behind. While donor justifications for aiding transitional justice in the two countries were largely similar – drawing on principles such as the rule of law, human rights and good governance – they hence chose different strategies for realising these aims. The approaches seem to have had opposite effects. In Rwanda, where TJ assistance targeted the government, the state has been strengthened, and in Guatemala, where the aid largely evaded the government, the state remains weak.

In Rwanda transitional justice assistance was also better coordinated than it was in Guatemala. In the Central African case, donors had a stronger incentive to coordinate since aid made up a key source of income in Rwanda, and tangible results therefore were more likely – if donors could get their acts together. The political will of the Rwandan government to engage in coordinating the transitional justice efforts also played an important part. In the Central American case, by contrast, it was not clear whether it was up to the government or the UN agencies to coordinate the TJ aid. While some donors thought that this was the responsibility of the UN, the peace accords also stipulated that coordination tasks should be assumed by the government. Uncertainty further prevailed as to which of the UN agencies should coordinate. Moreover, several donors showed little commitment to ensuring the complementarity of their efforts. An opportunity was therefore missed – both to ensure greater effectiveness of the TJ aid through coordination and to enhance ownership by the Guatemalan authorities of the transitional justice effort.

What can we learn from these experiences? Lessons can be drawn both on the sustainability of the transitional justice processes, and on the complementarity of funding in this field.

Sustainability

For the positive results of aid to be sustained over time, it is crucial that key actors in the recipient countries feel an ownership of the aid programmes. As regards transitional justice assistance to post-conflict Rwanda and Guatemala, such ownership was far greater in the former than in the latter case. It is important to learn from the Guatemalan experience, since it reflects a dilemma donors often face in war-to-peace transitions: whether to be loyal to the peace agreement or to the post-conflict government. In Guatemala, donors were most loyal to the agreement and thus to the UN agencies with a key responsibility for implementing it. This contributed to weak government ownership. If donors had coordinated their efforts better and cooperated more directly with the government, positive results are more likely to have been sustained over time.

In Rwanda the donors' choice of main partner was easier. Although there were peace deals in place, the main 1993 agreement collapsed with the genocide. The

peace accord framework therefore lost its potency. Further, the UN was not a very strong player in post-conflict Rwanda. The Kigali government hence emerged as the key actor, in a country which also had a long tradition of centralised rule. Although it took time before this government became a core partner of the international community, relations improved and trust was built over time. When the government started preparing its own and very home-grown TJ initiative from 2000 onwards, namely the *gacaca*, donors started supporting this programme – reluctantly at first, but increasingly over time. The relatively weak support to the ICTR suggested by our data can also be interpreted as an expression of donor support for government strategies – knowing that the Kigali authorities were often sceptical about the operations of this international tribunal.

Sustainability of aid can also be seen in a different light, however. So far we have argued that for the positive results of the aid to be sustained over time, the supported projects must be rooted locally, so that institutions in the recipient country will have an interest in maintaining the process. But in a broader perspective, it might be argued that sustainability rather should be assessed in relation to the overall aims of transitional justice. We identified some of the key aims in the beginning of this study – including truth, restitution, accountability and reconciliation. In line with this perspective, the positive results of an aid-supported project should only be sustained inasmuch as (a) the aims of the project were consistent with key aims of transitional justice, and (b) the aims were reached, or in the process of being reached.

Gacaca aid is an illustrative example of this. On the one hand, it can be argued that supporting *gacaca* was smart in a sustainability perspective, since this was a government owned initiative – and its positive results therefore are likely to be maintained over time by local actors. On the other hand, it can be argued that *gacaca* does not promote all the aims of transitional justice, such as e.g. the rule of law (the accused do not have the right to a defence lawyer) and peaceful coexistence (many Rwandans have fled during this process, and violence in connection with it has been reported). And if a TJ institution does not help in reaching the aims of transitional justice, maintaining the process of that institution through donor support becomes more problematic.

A similar argument can be made in relation to Guatemala and the failure to bring alleged perpetrators of war crimes in that country to justice. If funding is sustained for transitional justice purposes in a country over many years, and a key overall aim of transitional justice is not being reached – in this case accountability and deterrence – it can be questioned to what extent the positive results of single projects might be undermined by the lack of positive results on other, more overall aspects. This brings donors into a moral dilemma. If aid is given but intended results do not materialise, to what extent are donors implicitly responsible? Should transitional justice processes be maintained by donors if, after years of involvement, they still do not see key aims of transitional justice being reached?

In sum, sustainability does not simply mean ensuring national content and ownership. It also implies a difficult balancing act between rooting the programmes in local realities, and committing to the overall goals of transitional justice. Such commitment implies that donors must see a minimum degree of progress towards these goals over time, with failure to meet these goals leading to some sort of reaction – such as reduction or a withdrawal of the aid. The logic behind this is simple: if little progress toward the aims is assured, people in the recipient country are likely to lose trust in the transitional justice programmes, which in turn will undermine local ownership – and thereby the entire effort.

Increasing post-conflict violence and state crisis in Guatemala can be interpreted along these lines – as a result of both the government and the public's loss of confidence in the transitional justice efforts. For the government's part this might be due to its lack of involvement; for the public it might relate to the lack of accountability for past crimes – as war criminals were not brought to justice, and the recommendations of the truth commissions were not implemented.

As for sustainability, this study of post-conflict Rwanda and Guatemala hence suggests that donors should not try to maintain the process of transitional justice just for the sake of it. What they should try to maintain is rather the difficult balance between promoting local ownership of transitional justice and promoting the overall aims of transitional justice.

Complementarity

Our study of aid to Rwanda's and Guatemala's transitional justice efforts has revealed a highly skewed distribution of this aid across mechanisms. Security sector reform dominates the field entirely. Is this an ideal situation?

Donors we interviewed supported SSR with a view to building institutions and securing human rights. Still, reform of the security sector remains essentially a forward-looking measure. As the case of Guatemala makes abundantly clear, a huge donor effort to strengthen the security sector can coexist with a failure to try the alleged perpetrators of past crimes. SSR can be seen as a comparatively easier mechanism to support from a donor's point of view, since it is normally less controversial politically than, for instance, criminal courts and truth commissions. Yet, SSR does not clearly respond to the need many post-conflict populations feel to come to terms with their violent past. What is worse, SSR may even prevent that need from being met. If, for instance, a post-conflict government has an interest in hiding some aspects of the past, it may use SSR aid to strengthen its ability to repress popular efforts to address that past – with a police force well equipped and trained through donor money.

It might be asked what kind of peace Rwanda and Guatemala have achieved at the end of roughly a decade of support to transitional justice. More than half of that support went to reforming each country's security sector. Were Rwandans and Guatemalans more secure in 2005 than they were at the start of the period? In Rwanda state security increased, but did the security of citizens – including those who dissent from government opinions – also increase? In Guatemala, we know that state authority remains weak, and brutal violence is widespread.

What we do not know is whether the post-conflict challenges that both countries experience would have been smaller had aid been more evenly distributed across mechanisms. But there is a case for suggesting that donors be more courageous. If donors go into the field of transitional justice, they should do so with both feet – and stand up for the local populations' needs to deal with the past. It is often overlooked that in post-conflict countries opinions vary on how the past should be dealt with. The policy of the government will, for instance, be strongly coloured according to which side it was on during the conflict. There are situations where a post-conflict government's TJ policy clashes with the wishes of victims' groups (this has happened both in Rwanda and Guatemala) and also with more general pressures of public opinion. These are situations when donors should not only strike the balance between local ownership and reaching overall goals of transitional justice. They also need to go into the "box" of local ownership to try to promote national debates on what kind of transitional justice various parts of the nation want. This may involve a realisation that some groups may not want to deal with the past, and a consideration of how the needs of different groups in relation to the past violence should and can be

accommodated. For if only one actor in the country – such as the government – is allowed to set the agenda, the justice of the transition is likely to be lop-sided. This bias, in turn, might threaten the entire transition.

Enabling space to be opened for local opinions on transitional justice should therefore be a key aim of donor policy. There is no magic formula as to how much different transitional justice mechanisms should receive across post-conflict cases. But there are two basic guidelines: that the “justice” of transitional justice equates to “fairness”, and that the “transition” of transitional justice is a real transition – to social peace, and to participatory democracy. If years and years of transitional justice aid neither lead to less tension or violence nor to freer participation, donors should reconsider whether the effort is worthwhile.

In terms of complementarity, security sector reform should therefore not overwhelm other transitional justice mechanisms. SSR cannot fulfil the functions of acknowledgment and restitution that are key aims of transitional justice. Nor can it provide the truth about the past. It can help promote the rule of law as well as some degree of political stability, and thus be a basis for economic development. And it is true that societies emerging from conflict do need to develop, to move forward. But they also often need to look back. Donors engaged in transitional justice should take that need to look back more seriously – by promoting debate in the post-conflict country on transitional justice, and by daring to promote the backward-looking institutions. For it is only having looked back that a “post-conflict” society can truly overcome its past conflict – and thereby be able move forward.

Endnotes

¹ The seminal works by Neil Kritz and Ruti Teitel set the terms of much of the scholarly debate (Kritz 1995, Teitel 2000). Other key writings were books by Hayner (2001), Mani (2002) and Minow (1998).

² Two additional mechanisms were considered for inclusion. *Lustration*, or vetting, should according to the ToR be assessed. Vetting can be defined as “assessing integrity to determine suitability for public employment” (OHCHR 2006). We excluded this since no official vetting processes occurred in the two scrutinised cases. We also considered including *human rights agencies* as a separate category, since human rights NGOs were given much donor funding. This category was not included in the ToR however, and HR work sometimes figures on the borderlines of transitional justice. We did, however, include governmental HR bodies with an investigation and/or prosecution mandate in the criminal court category.

³ We analyse net disbursements of ODA, defined by OECD DAC as “those flows to developing countries and multilateral institutions provided by official agencies, including state and local governments or by their executive agencies; each transaction of which meets the following test: (i) it is administered with the promotion of the economic development and welfare of developing countries as its main objective, and (ii) it is concessional in character and conveys a grant element of at least 25 per cent” (DAC 2006).

⁴ The low level of aid in the first half of the period may partly derive from a data bias. Data on TJ assistance to Rwanda was far more difficult to access for the first half than for the second half of the period.

⁵ For more in-depth analysis of *gacaca*, see e.g. Corey and Joireman (2004) and Schabas (2005).

⁶ In April 2003, the PNR was assigned an annual fund of 300m quetzales (worth approximately 40m USD, using a 2007 exchange rate). But according to the Human Rights Ombudsman, by September 2006 only 623 of the 10 000 solicitors had received any compensation (Naveda and Hurtado 2007). The initial internal conflicts among the NGOs of the war victims and the subsequent bureaucratic and administrative problems with the management of funds reportedly slowed down the distribution of compensation to the victims (*ibid.*, Isaacs 2006).

⁷ As noted earlier though, some of the aid to criminal courts, notably the support to the ICTR, was not covered by our data since it came from other donors than those examined here, such as other UN agencies. Some of our donor informants argued that the *gacaca* received too little support in comparison with e.g. the ICTR.

⁸ Few donors explicitly referred to follow-up mechanisms in their evaluations or statistical overviews. Exceptions include Canada (CIDA 2007), UNDP (UNDP Rwanda, 2005, UNDP Guatemala 2007) and Sweden (Sida 2007).

⁹ In Spanish, *la Comisión de Fortalecimiento de la Justicia* (MINUGUA 1997: §41).

¹⁰ In Spanish, *la Instancia Coordinadora de Modernización del Sector Justicia* (MINUGUA 1998: §54). The four justice actors which participated in the commission were the Judiciary (*Ministerio de Organismo Judicial*), the Attorney General (*Ministerio de Gobernación*), the Institute for Public Defence (*Instituto de la Defensa Pública Penal*) and the Public Prosecutor’s Office (*Ministerio Público*) (Skaar et al. 2004: 44).

¹¹ The Unit was composed of Guatemala’s Attorney General, President of the Supreme Court of Justice, Public Minister, and Director of the Institute of Public Defence

Appendix

1. Abbreviations

AECI	Spanish Agency of International Cooperation
AFPC	Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society (Guatemala)
BMZ	Federal Ministry for Economic Cooperation and Development (Germany)
CEH	Historical Clarification Commission (Guatemala)
CFJ	Commission for the Strengthening of the Justice System (Guatemala)
CIDA	Canadian International Development Agency
CNDH	National Human Rights Commission (Rwanda)
CNSAFJ	National Commission of Follow-up and Support to the Strengthening of the Justice Sector (Guatemala)
DAC	Development Assistance Committee (OECD)
Danida	Danish International Development Agency
DDR	Demobilisation, Disarmament and Reintegration
DFID	Department for International Development (UK)
DGDC	Directorate-General for Development Cooperation (Belgium)
EC	European Commission
GANA	Grand National Alliance (Guatemala)
GTZ	German Technical Cooperation
HR	Human Rights
ICT	Information and communication technology
ICTR	International Criminal Tribunal for Rwanda
IDEA	International Institute for Democracy and Electoral Assistance
ILPD	Institute of Legal Practice and Development (Rwanda)
INGO	International NGO
JSC	Justice Sector Cluster (Rwanda)
MFA	Ministry of Foreign Affairs
MINUGUA	United Nations' Verification Mission in Guatemala
PNR	National Programme of Reparations (Guatemala)
NGO	Non-Governmental Organisation
Norad	Norwegian Agency for Development Cooperation
NURC	National Unity and Reconciliation Commission (Rwanda)

ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office for the United Nations High Commissioner for Human Rights
REHMI	Recovery of Historic Memory (Guatemala)
RPF	Rwandan Patriotic Front
SSR	Security Sector Reform
Sida	Swedish International Development Cooperation Agency
TJ	Transitional Justice
TIG	<i>Travaux d'Interêt Générales</i> (Rwanda)
UN	United Nations
UNDP	United Nations Development Programme
UNOPS	United Nations Office for Project Services
URNG	Guatemalan National Revolutionary Unity
USAID	US Agency for International Development
WB	World Bank

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4. List of Informants

<i>Last name</i>	<i>First name</i>	<i>Professional position at time of interview</i>	<i>Institutional affiliation at time of interview</i>	<i>Other position and/or affiliation from 1995-2005 (if provided)</i>	<i>Donor country (if relevant)</i>	<i>Country specialisation of informant</i>	<i>Date of interview</i>
Beijers	Ellen	Political Officer, Governance	The Netherlands' Embassy in Rwanda	-	The Netherlands	Rwanda	24.04.2007
Brems	Dirk	1 st secretary cooperation	Embassy of Belgium, Rwanda	-	Belgium	Rwanda	25.04.2007
Brødholt	Jon Otto	Senior advisor	HQ, Norwegian MFA	Head of the justice sector cooperation programmes February 1997-June 2002, Norwegian Embassy in Guatemala	Norway	Guatemala	04.05.2007
De Voogd	Ella	Advisor, Governance	The Netherlands' Embassy in Guatemala	-	The Netherlands	Guatemala	25.04.2007
Dirksen	Christa	Desk Officer	BMZ, area of Burundi, Rwanda, Togo and Central-Africa	-	Germany	Rwanda	05.04.2007
Freiberg Strauss	Jörg	Coordinator of the Peace Support Programme	GTZ Guatemala	-	Germany	Guatemala	17.04.2007
Hedvall	Ulla-Britt	First secretary, head of the justice sector cooperation programmes	Swedish Embassy in Guatemala	-	Sweden	Guatemala	28.03.2007
Jacobi	Susanne	Coordinator	GTZ HQ Rwanda	-	Germany	Rwanda	23.03.2007
Karlsen	Ketil	Deputy and head of cooperation	Royal Danish Embassy for Central America	Danish MFA in Denmark, UN, EC on Central America	Denmark	Guatemala	22.03.2007
Lenzen	Marcus	Programme Specialist	Programme and Management Analyst Bureau for Crisis Prevention and Recovery, UNDP	-	-	Rwanda and Guatemala	28.03.2007
Magnusson	Hans	Director	Latin America Division, SIDA HQ	-	Norway	Guatemala	18.04.2007
Maqsam	Dieter	Lawyer	Strafverteid.	GTZ	German	Rwanda	16.04.

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<i>Last name</i>	<i>First name</i>	<i>Professional position at time of interview</i>	<i>Institutional affiliation at time of interview</i>	<i>Other position and/or affiliation from 1995-2005 (if provided)</i>	<i>Donor country (if relevant)</i>	<i>Country specialisation of informant</i>	<i>Date of interview</i>
			Fachanwalt Arbeitsrecht	coordinator in Rwanda 2003-2005	y		2007
Mendez	Ana Maria	Head of Governance Unit	UNDP Guatemala	-	-	Guatemala	30.03.2007
Neher	Constanze	Desk Officer	BMZ, Central America and Caribbean	-	Germany	Guatemala	17.04.2007
Nygård	Aslaug	Second secretary	Norwegian Embassy in Guatemala	-	Norway	Guatemala	19.04.2007
Plomp	Wouter	Head of the Central and Southern Africa Division, the Netherlands' MFA	HQ, the Netherlands' MFA	Head of Cooperation Department, the Netherlands' Embassy in Guatemala	The Netherlands	Guatemala	27.04.2007
Pylyser	Benoit	Programme Analyst, Justice and Human Rights	UNDP Rwanda	-	-	Rwanda	08.05.2007
Rusten	Guri	Senior advisor	Multilateral Bank and Finance Section, MFA Norway	In charge of the justice programme 2002-04, Norwegian Embassy in Guatemala. Employed at the embassy 1998-2004.	Norway	Guatemala	12.04.2007
Verheyleweghen	Solveig	Second secretary, responsible for Rwanda	Norwegian Embassy in Uganda	-	Norway	Rwanda	04.04.2007
Wulff	Klavs	Director	Ibis Guatemala	Regional coordination of PRODECA, Danish MFA 1998-2004	Denmark	Guatemala	10.04.2007

Other institutions from which information was obtained:

<i>Institution</i>	<i>Donor country</i>	<i>Country to which the information provided pertained</i>	<i>Date of interview</i>
Directorate-General for International Co-operation and Development (DGCID), MFA France	France	Rwanda	27.04.2007
USAID	United States	Rwanda	02.04.2007
EC	-	Rwanda	10.04.2007
CIDA	Canada	Rwanda	12.04.2007
BMZ	Germany	Rwanda	16.04.2007