



# **MAPPING THE TRANSITIONAL JUSTICE CRUSADE:**

## **GLOBAL DISSEMINATION OF NORMS AND THEIR QUESTIONABLE CLAIMED BENEFITS**

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# Transitional Justice Crusade through TWAIL

- Documenting Norms Dissemination
  - How the “dominant coalition of social forces and States [...] legitimize their vision of world order” (Chimni 2006, 16) in terms of transitional justice matters?
  - How such hegemonic position of the western world is maintained “through political domination by painting the rest of the world as its inferior ‘other’” (Sripati 2008, 416)?
- Mapping the propagation of TJ mechanisms and their claims in conflict-affected contexts in the global south, as well as the hegemonic and post-colonial tropes being reproduced
- What are the hegemonic functions of TJ norms?

# Methodological Note: Mapping Peace Agreements Provisions

- PA-X: 1520 peace agreements across nearly 120 countries from 1990 to 2015
- 760 agreements (50%) address transitional justice matters (81 peace processes)
- A total of 1493 provisions that deal with transitional justice across various categories: reconciliation (22%), prisoners release (17%), amnesty and sanctions relief (14%), victims (13%), reparations (11%), establishment of mechanisms (7%), courts and judicial accountability (6%), general commitments or call to deal with the past (6%), missing people (4%), and vetting (1%).
- Out of these 1493 provisions, only 46 agreements include gender-specific transitional justice provisions (3%)
- Geographical and chronological coding: What type of mechanisms, through what type of actions and for what type of aims?

Sum of TjMech	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total	
Africa (excl MENA)	1	2		4		1	1	2	2	3	1	1	5	2	1	2		9	2		1		3	4	7	54	
Americas	5	1	1	2		2													1	1					2	4	19
Asia and Pacific											2	1			1	2	4	1	1		1	1		2		16	
Europe and Eurasia	1		2				1	1		2														1		8	
Middle East and North Africa					1																1			1	2	5	
<b>Total</b>	<b>7</b>	<b>3</b>	<b>3</b>	<b>6</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>10</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>10</b>	<b>13</b>	<b>102</b>	

# CONSOLIDATION OF THE HEGEMONIC PACKAGE



# TWAIL

- Understanding how International law sustaining unequal structures and maintaining growing North-South divide (Chimni 2006)
- Historical association of international human rights law with colonial conquest and western domination in Africa (Mutua 2000; 2001)

**List of Mechanisms – Institutions provided for**

1. Chamber for Amnesty and Pardon
2. Chamber for the Definition of Legal Situations
3. Chamber of Acknowledgment of Truth, Responsibility, and Establishment of Facts and Conducts
4. Claims Commission
5. Commission for the Consolidation of Peace
6. Commission for the Analysis of Violence
7. Commission for the Elucidation of the Truth, Co-existence and Non-Rep
8. Commission for Truth, Reconciliation and Healing
9. Commission on the Search for the Disappeared
11. Committee on the Nature of the Conflict
12. Compensation and Reparation Authority
13. Compensation Fund
14. Comprehensive Process for Reconciliation and Healing
15. Comprehensive System for Truth, Justice, Reparation and Non-Rep
16. Gender Sub-commission
17. Historical Committee of the Conflict and its Victims
18. Historical Investigations Unit
20. Independent Commission on Information Retrieval
21. Inquiry Commission
22. International Judicial Fact-Finding Mission
23. Investigation and Indictment Unit
24. Joint Commission to trace Missing Persons and mortal Remains
25. Justice, Truth, Reparations, and Reconciliation Commission
26. Minister of Martyrs
27. National Council for National Unity and Reconciliation
28. National Observatory for Genocide prevention
29. National Peace and Rehabilitation Commission
30. National Reconciliation and Justice Commission
31. National Reconciliation Commission
32. National Reconciliation Committee
33. National Unity and Reconciliation Commission
34. Oral History Archive
35. Peace Tribunal
36. Special Jurisdiction for Peace
37. Sub-Commission for Mission People
38. Transitional Justice and Reconciliation Commission
39. Traditional Mediation System
40. Truth and Reconciliation Commission
41. Truth and Reconciliation Committee
42. Truth Commission
43. Truth, Justice, and Reconciliation Commission

**Lists of Actions**

1. Address/ Look into Human Rights Violations
2. Bring the Guilty to Justice
3. Civic, Peace and Reconciliation Education
4. Clarify events
5. Clarify history
6. Cleansing Ritual
7. Compensation for Victims
8. Consultations regarding Grievances
9. Consultations for Social Contract
11. Create Archive
12. Determine Reparations and Compensation
13. Document and examine crimes
14. Efforts to fight Impunity
16. Establish Collective Responsibilities
17. Establish Consequences
18. Establish Facts
19. Establish Number of deaths
20. Establish Responsibility for Environment Damage
21. Explain nature of the conflict
22. Fact-finding in government sources
23. Fight against discrimination
24. Guarantee human rights
25. Hearing victims
26. Identify destroyed sites
27. Identify responsible for Human Rights Violations
28. Identify victims
29. Establish Inter-ethnic front to resist genocide
30. Investigate events, human rights violations, most serious crimes
31. Legislation against genocide
32. Make public apology
33. Perpetrator tell their story
34. Produce report
35. Punish responsible
36. Qualify crimes
37. Qualify crimes for reparation
38. Qualify crimes whose authors must be brought to justice
39. Qualify political crimes
40. Refer case to justice
41. Regional Monitoring for genocide prevention
43. Rehabilitation of victims of genocide
44. Report Crime Qualification
45. Reports Events
46. Restore Victims' Dignity
47. Rewrite history
48. Security of witnesses and victims
49. Travel bans for responsible human rights violations
50. Treat claims
51. Truth-telling
52. Vetting
53. Victims tell story
54. Work out transitional justice programme

**List of Functions/Overarching Aims**

1. For Accountability
2. For Co-existence
3. For Consolidation of Rule of Law
4. For Forgiveness
5. For Institutional Reforms
6. For Justice
7. For Non-Repetition
8. For Reconciliation
9. For Rehabilitation
10. For Reparation
11. For Truth
12. To End (Fight Against) Impunity
13. To Heal
14. To Investigate events
15. To Monitor Society/ prevention
16. To Repair Harm Caused
17. To Strengthen Democracy

Mechanisms Type		Actions	Stated Aims		
Truth	44	Fact Finding - Investigation	71	For reconciliation	27
Inquiry	26	Produce report	19	For Non-Repetition	19
Reconciliation	9	Clarify Events - History	16	To Investigate events	9
Reparations	6	Compensation for Victims	9	To Heal	8
Genocide Prevention	3	Efforts to Fight Against Impunity	8	For Accountability	5
Tradition	3	Treating claims	8	For Justice	5
Justice	2	Address - Look into HRV	7	To Repair Harm Caused	5
Peace	1	Bring guilty to Justice - Punish	7	For Rehabilitation	4
Gender	1	Qualify Crimes	6	For Forgiveness	3
		truth-telling	6	For Reparation	3
		Civic, Peace and Reconciliation Education	4	For Rule of Law Consolidation	2
		Vetting - Sanctions	4	To end impunity	2
		Rehabilitation of Victims of genocide	3	For Co-existence	1
		Work out TJ programme	3	For Institutional Reforms	1
		Adopt Legislation against genocide	2	For Truth	1
		Consultations	2	To Monitor society (prevention)	1
		Inter-ethnic front to resist genocide	2	To Strengthen Democracy	1
		Make public apology	2		
		Regional Monitoring (genocide prevention)	2		
		Reports Events	2		
		Cleansing Ritual	1		
		Fight against discrimination	1		
		Rewrite History	1		
		Security of Witnesses and Victims	1		



- Consolidation of package of mechanisms and its associated claims transported around the world
- Ideological adherence to the package
- Norms dissemination ignoring critique that contest these claims (early 2000's)
  - Optimistic and Policy scholars respond with 'holistic vision'
  - TJ crusader bringing TJ hegemonic vision – with the hegemonic claims culminating in the holistic vision

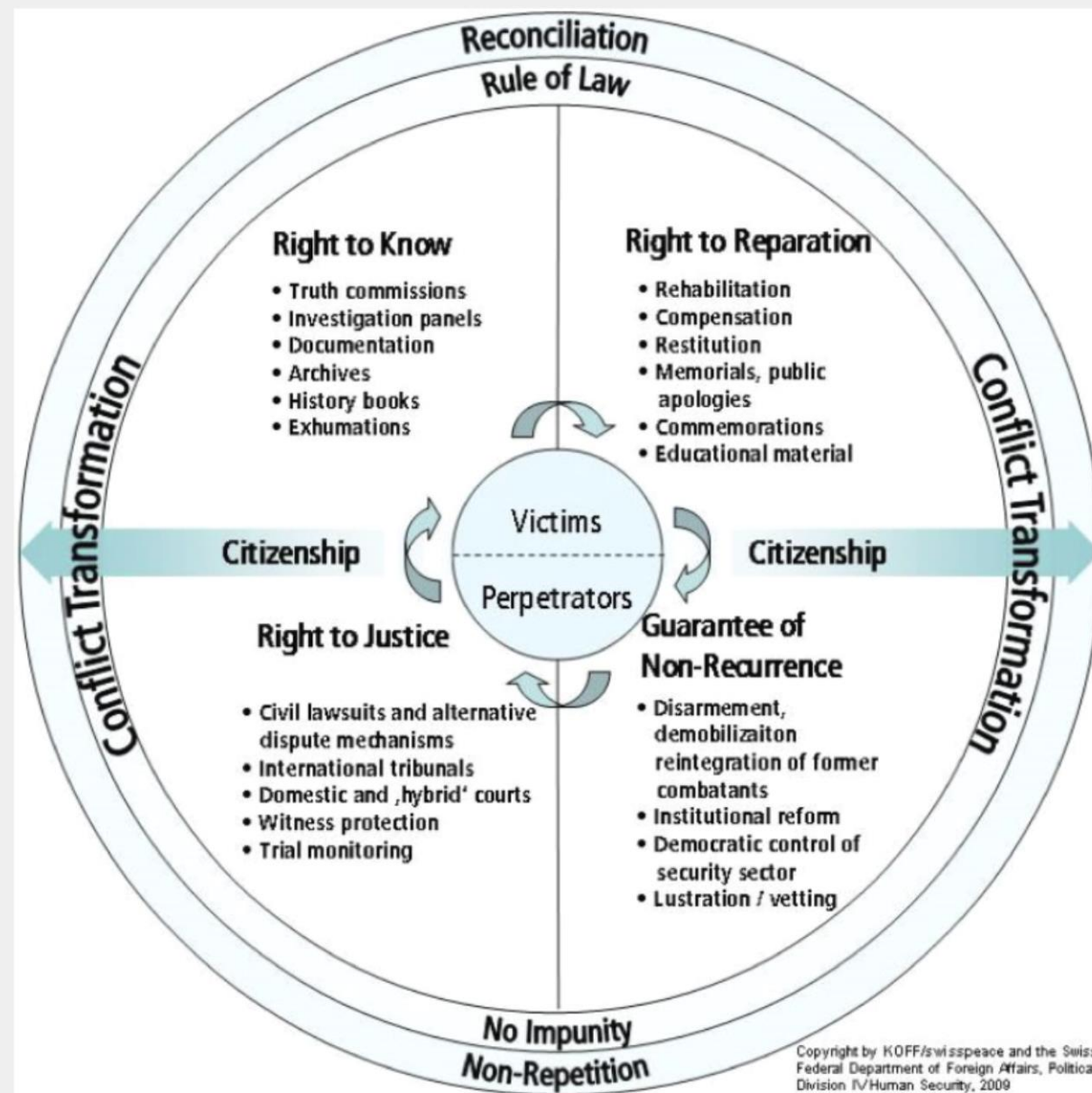
## WHAT DOES THIS ALL SAY?



# ‘Hegemonic package’

A normative guide for action addressed to international and national experts that entails a set of mechanisms to achieve a set of aims to redress a ‘broken’ society seeking truth, justice, reparation and non-repetition

Mostly transported to Africa, but also to Afghanistan or the Philippines.



# TRANSITIONAL JUSTICE SAVIOURS



# Power at Play: Hierarchy of Saviours



International, Regional and National Saviours

Idealised international and national professionals imply that aid-dependent TJ practitioners ‘know better’, thanks to their expert knowledge of how to fix ‘dysfunctional states’ – reproduction unequal hierarchical social structures

- “The knowledgeable experts and on the other side black victims who need saving – re-enacts and perpetuates the civilizing mission of the past centuries” (Madlingozi, 2010)

# Conclusion: What are the effects of TJ normative crusade?

## Hegemonic Functions of TJ Norms

### Silencing unexpected outcomes

- Hegemonic package: leave limited creativity to tailored to given contexts
- Impunity for global (essentially Western) responsibility in regards with authoritarianism and/or mass violence under scrutiny
- Silence Political Tensions inherent of transitional processes -> Opens the door to political manipulation
- Continues to project a vision of the world where the North are portrayed as international saviours and the Global South depicted as broken societies