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Truth Is the First Step

Interview with José Zalaquett, ICTJ Board Member

Q. You have participated in the development of transitional justice from its earliest days. What have you seen as the field grew from the first modern experiences with truth commissions in Latin America?

A. The field that is now known as transitional justice was initially known in the early '80s as “the transition to democracy from past human rights abuses.” The term was coined by social scientists to refer to the transition from authoritarian or dictatorial regimes in Latin

America to democracy. It was made up after the downfall of the military regime in Argentina after the Falklands War in 1982 and the election of the first civilian president, Raul Alfonsín, in 1983.

Alfonsín created a truth commission called the National Commission on the Disappearances of Persons. The practice of disappearances had been widespread under the military regimes in Chile and

Argentina. In Argentina more than 9,000 people had been disappeared, while in Chile about 1,300 were disappeared, in addition to another 2,000 who were killed and whose bodies were returned their families.

In both cases, the disappearances were a systematic process. Since WWII—although no comparisons can be made with the enormity of the Holocaust—it was the first time the international community faced the end of a regime that had engaged in crimes against humanity and was in a position to do something about it. There was a strong demand for justice and accountability and truth, and there were great expectations.

The truth commission Alfonsín created produced a report about the disappearances of nearly 9,000 people. The commission didn't have many records to work with, so the report didn't include details about individual cases. Still, the report was very impressive, and was followed

by prosecutions and convictions of members of the three military juntas that engaged in massive human rights violations.

The revelations of the trials were a big shock for the whole of Argentina. The official trial newspaper sold more copies than established newspapers.

Eventually the military started putting up resistance: at first tacit and insidious, but then more and more out in the open, with bombings and other actions. In 1987, the Alfonsín government felt that it had to cave in. That may be criticized or understood—I leave the judgment to others. Alfonsín passed a law called *Punto final*—full stop—and another law saying that members of the military below the rank of colonel were supposed to have acted on superiors' orders, and therefore did not bear responsibility for their crimes.

That only exacerbated the mood of human rights lawyers and civil society organizations. It produced a flood of new cases before the deadline of the full stop law. For the next 25 years, Argentina went somewhat erratically from trial to pardon to annulment of the pardon and so on. It has been zigzagging, but the overall result is quite impressive.

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INTERVIEW

Q. What about Chile and other Latin American countries?

A. The Chilean transition came about in 1989-1990. It was a peaceful transition in the sense that Augusto Pinochet was defeated at the ballot box, not in the battlefield. It was embarrassing for the military regime, but they were able to rationalize their defeat by saying: “We always wanted to rid the country of these terrible Marxists and return it to a stronger democracy, and that’s what we’re doing.”

The Chilean example was seminal because there had been strong human rights organizations under the umbrella of the churches, and the records were much more complete. The truth commission established in Chile, of which I was a member, was able to produce detailed accounts of what had happened to the disappeared up to the time of their disappearance.

The commission’s report built on the example of the Argentinian one but was much more solid: It took several steps forward in the sense that together with the subsequent investigations, it provided an account of the disappearances of about 3,300 people.

After the experiences of Chile and Argentina and the subsequent truth commissions in El Salvador and Guatemala, Latin America could show an impressive record. In fact, it was considered the region where the whole practice of transitional justice developed.

Q. How did the Latin American experience contribute to the South African TRC?

A. Unlike in the Latin American examples, the transition from apartheid in South Africa involved a majority that had been oppressed by an opprobrious regime, and that could now run over the minority if they wished. But Nelson Mandela wanted to create a united South Africa on the rubble of the segregated past. If you want to create a united society you can hardly engage in full prosecutions and trials of tens of thousands of people who for five decades ran the system of apartheid—the judiciary, the military, the politicians and so forth. But you cannot sweep the dirt under the rug either, so which way to go?

They decided to study the situation of Latin America. In the spring of 1994, they organized a conference led by [future ICTJ co-founder] Alex Boraine, and invited people from seven countries. I was invited among many other people.

After Mandela was elected president in the summer of 1994, they invited Argentinians and Chileans only for a second conference. I came accompanying the former president of Chile Patricio Aylwin, who had implemented the truth commission there.

After this conference, Alex Boraine undertook a trip to Argentina and Chile to study in the field. I hosted Alex’s visit to Chile and organized visits for him. After that South Africa decided to promote a bill creating the Truth and Reconciliation Commission—a name they took from the Chilean commission. It was meant to signify that the ultimate end is to create a reconciled society that can agree on basic principles of human rights, mutual respect, and democracy, and that truth is the first necessary step in that direction.

Q. In the current debate about dealing with the legacy of the U.S. “war on terror,” the South African TRC is invoked far more than the Latin American experience. What’s being left out?

A. The South African example has stood as emblematic for two reasons: One is the historical importance for the country in the struggle against apartheid. Second, it’s an English-speaking country, so the documents can be read and disseminated without translation. This is not a cynical comment, it’s a reality, and both these things are important.

The South Africans took two years to establish their commission because they didn’t want the majority that Mandela had to ram the bill through congress; they wanted to get the assent of the white National Party. They obtained that after much negotiation. That gave it more strength, including the possibility of subpoenaing people and granting amnesties, which other commissions did not have.

In the Chilean and Argentinian cases, the report was what mattered. In South Africa, the process mattered—to give a voice to the voiceless.

Sometimes the question comes unreflectively about the Chilean and Argentinian commissions: “Why didn’t you have public hearings?” Because we never would have been able to proceed with the commission. In South Africa, when Mandela was elected, everybody knew there had been grave crimes. In Chile and Argentina, many people wanted to believe that hadn’t been the case. You had first to produce an airtight package that you could later make public with a big bang to convince them.

In certain other cases, such as in Peru and South Africa, you could have public hearings because everybody knew there were great crimes.

Q. What do you think are the lessons for the United States as it contemplates a truth commission on “war on terror” abuses?

A. I believe that during the “war on terror” as waged by the Bush administration, serious violations of human rights and international humanitarian law were committed. Many of them are probably prosecutable offenses. Key values enshrined in the U.S. Constitution were undermined. Of course there were major threats against global security and the security of the United States. But it cannot be stressed too much that respect for fundamental rights is not opposed to security concerns. On the contrary, a security policy that respects human rights may be more effective insofar as it fosters the development of professionalism among security officers and, being legitimate, it can elicit popular support.

As to whether or not something like a truth commission would be called for in the United States today, I believe that the matter should be subject to open deliberation within the country. The main objective of any exercise meant to address past abuses should be to reveal the wrongdoings of the past, mete out justice, make reparations and, above all, strengthen the laws and institutions so as to prevent the repetition of such policies and crimes. ♦

AFRICA

Burundi

In late May, ICTJ organized the first meeting of a Burundian civil society group on Enforced Disappearances and Victims' Participation. The group emerged as a recommendation from a training led by ICTJ and its partners, Aim for Human Rights and ACAT-Burundi, in December 2008. At the meeting, Burundian civil society organizations discussed how to incorporate the theme of enforced disappearances in the transitional justice process, as well as how to lay the foundations for effective victim participation in accountability initiatives to deal with past mass atrocities.

Also in late May, ICTJ held a workshop in collaboration with the UN bureau in Burundi and the office of the president of Burundi, to explore the links between transitional justice and peacebuilding. Participants produced recommendations to improve the interaction between the two processes.

Democratic Republic of Congo

On May 7, President Joseph Kabila signed an amnesty law covering acts of war and insurrection committed in the eastern provinces of North and South Kivu from June 2003 to the date of promulgation. The amnesty excludes genocide, war crimes and crimes against humanity from its reach, and does not preclude reparations. In practice, however, it perpetuates Congo's pattern of rewarding violence and creates a blanket amnesty for scores of crimes perpetrated by rebel groups, Congolese armed forces (FARDC), militias and police. By late May, human rights monitors were denouncing Congolese authorities for releasing prisoners in North and South Kivu on the basis of lists provided by rebel groups, without ensuring that those freed fell within the limited scope of the amnesty law.

- ICTJ Fact Sheet Series: "Amnesty Must Not Equal Impunity" (http://www.ictj.org/static/Factsheets/ICTJ_DRC_amnesty_fs2009.pdf - English) (http://www.ictj.org/static/Factsheets/ICTJ_DRC_amnesty_fs2009_fre.pdf - French)
- "Congo passes amnesty law for eastern rebels," *Reuters* (http://www.reuters.com/article/congo/idUSL71023868.CH_.2400)

Kenya

A report by the UN Rapporteur on Human Rights recommended that Attorney-General Amos Wako and Police Commissioner Maj-General Hussein Ali be removed for their role in abetting and condoning extra-

judicial killings during the post-election violence of 2007. The report describes the attorney general as the "embodiment of impunity" and calls on President Mwai Kibaki to acknowledge the issue of extra-judicial executions. A government taskforce has been appointed to spearhead reforms of the Kenya Police Force.

Also in May, Attorney General Wako introduced a proposed amendment to the Truth, Justice and Reconciliation Commission (TJRC) Act that would exclude amnesties for international crimes, bringing the TJRC in line with international law on amnesties. The 2008 TJRC Act gave the commission wide discretionary powers to grant amnesty for nearly all crimes apart from crimes against humanity and gross violations of human rights.

- "UN prober wants Kenya AG powers clipped," *Capital News* (<http://www.capitalfm.co.ke/news/Local/UN-prober-wants-Kenya-AG-powers-clipped-4572.html>)
- "TJRC 'won't recommend amnesty' for major poll crimes," *The Standard* (<http://www.eastandard.net/InsidePage.php?id=1144015075&cid=4&ttl=TJRC%20%E2%80%98won%E2%80%99t%20recommend%20amnesty%E2%80%99%20for%20major%20poll%20crimes>)

Liberia

Liberia's Truth and Reconciliation Commission engaged in nationwide consultations as it prepared to complete nearly three years of operations and publish its final report, due in late June. The report is expected to include recommendations on bringing about justice and accountability for the crimes committed during the country's 14-year civil conflict. In an op-ed, ICTJ Program Associate Paul James-Allen recommended the TRC articulate an accountability strategy that will pave the way for prosecutions, strengthen the domestic judicial and law enforcement sectors, mobilize victims, and address competing demands of victims for reparations and other measures.

In mid-May, the Women's NGO Secretariat of Liberia (Wongosol), Wongosol members, and Wongosol partners including ICTJ held a workshop on Liberian women's recommendations to the Liberian TRC. The project, which began in November 2008, included four regional dialogues with more than 500 women from all over the country. The recommendations were presented to the TRC on June 1 for incorporation into its final report.

On June 2, Liberian President Ellen Johnson Sirleaf met with ICTJ staff members Suliman Baldo, Comfort Ero, Aaron Weah and Lansana Gberie to discuss ICTJ's work in Liberia, post-TRC priorities and peacebuilding and human rights issues in Liberia. ICTJ staff highlighted their involvement in building the capacity of Liberians to address these issues and their interest in promoting community healing and reconciliation initiatives.

- “The Liberia TRC and criminal accountability: different signals but what makes ‘the best’ sense?” *The Daily Observer* (<http://ictj.org/en/news/coverage/article/2680.html>)
- “Liberian Women Recommend Punishment for Liberian Warlords,” *New Liberian* (<http://newliberian.com/?p=835#more-835>)

Rwanda

In Quebec, a Canadian court found Rwandan Hutu Désiré Munyaneza guilty of seven counts of war crimes related to the 1994 Rwandan genocide. Munyaneza is the first person to be convicted under a Canadian law that allows the prosecution of Canadian residents for war crimes committed abroad. The case was seen as a trial-run for the law, which took effect in 2000.

On June 1, Finland charged Francois Bazaramba, a Rwandan former preacher, with genocide for his alleged role in 1994 killings. Bazaramba had been detained for more than two years after seeking asylum in 2003. Prosecutors said they preferred to try him in Finland rather than extradite him to Rwanda, where they believed he may not have gotten a fair trial. If found guilty, Bazaramba would face a maximum sentence of life in prison.

Also on June 1, more than 70 scholars and human rights advocates issued a joint letter calling on UN Secretary-General Ban-ki Moon, U.S. President Barack Obama and British Prime Minister Gordon Brown to ensure that the International Criminal Tribunal for Rwanda (ICTR) fulfils its mandate by prosecuting soldiers of the Rwandan Patriotic Front (RPF) who committed crimes against humanity and war crimes in Rwanda in 1994. Otherwise, the authors warned, the ICTR may be dismissed as “victor’s justice.” The ICTR prosecutor was due to address the UN Security Council about the Tribunal’s completion strategy on June 4.

- “Quebec court convicts Munyaneza of war crimes in Rwanda,” *CBC* (<http://www.cbc.ca/canada/montreal/story/2009/05/22/quebec-rwanda-war-crimes-guilty.html>)
- “Finland Charges Rwandan Suspect,” *BBC* (<http://news.bbc.co.uk/2/hi/europe/8077441.stm>)

- “Rwanda: Tribunal Risks Supporting ‘Victor’s Justice,’” *YubaNet* (<http://yubanet.com/world/Rwanda-Tribunal-Risks-Supporting-Victor-s-Justice.php>)

South Africa

On April 29, the North Gauteng High Court in Pretoria made a ruling blocking South Africa’s president from granting pardons for political offenses until victims are given a greater role in the proceedings. ICTJ, which was part of a coalition of civil society organizations that brought the case, hailed the ruling as a major victory for victims’ rights and the rule of law.

In a separate ruling on May 4, the North Gauteng High Court in Pretoria confirmed the obligation of prosecutors in South Africa to investigate cases from the apartheid era, especially those involving persons who have been denied amnesty. A coalition of civil society groups including ICTJ successfully argued that earlier changes to the country’s Prosecutions Policy had undermined the integrity of the truth and reconciliation process, limited the independence of prosecutors and infringed the rights of victims.

Apartheid-era Minister of Law and Order Adriaan Vlok washed the feet of 13 former police and army members to apologize for having “led them onto the wrong path.” Vlok was the sole cabinet member to admit to apartheid-era crimes before the TRC, including bombings targeting anti-apartheid activists, and was granted amnesty in 1999.

- “South Africa: Court Backs Civil Society by Blocking Political Pardons,” ICTJ (<http://ictj.org/en/news/press/release/2568.html>)
- “South Africa: Court Clears Way for Prosecution of Cases from Apartheid Era,” ICTJ (<http://ictj.org/en/news/press/release/2579.html>)
- “Vlok Washes More Feet,” *Mail and Guardian* (<http://www.mg.co.za/article/2009-05-25-vlok-washes-more-feeet>)

Togo

Togo President Faure Gnassingbe has called for the establishment of a Truth, Justice and Reconciliation Commission. The commission, to be composed of religious figures, traditional chiefs and academics, will investigate the 2005 political violence that resulted in an estimated 400 to 500 dead, according to the UN.

- “Togo gets truth and reconciliation commission,” *Associated Press* (<http://www.google.com/hostednews/afp/article/ALeqM5hIexosJCahs388aN4H0oJmEYZQGA>)

Zimbabwe

Zimbabwe Prime Minister Morgan Tsvangirai has asked the African Union and the Southern African Development Community to help break the deadlock in the coalition government between President Robert Mugabe's ZANU-PF party and Tsvangirai's Movement for Democratic Change. At the core of the deadlock are President Mugabe's appointments for significant government positions, including the office of the attorney general, which has detained opposition and human rights activists on terrorism charges.

The Research and Advocacy Unit NGO released a video and written report documenting political and human rights violations against women in Zimbabwe. ICTJ will be co-hosting the official launch of the video report in Cape Town in June. The Women Coalition of Zimbabwe also called on the government to bring to justice people who committed human rights violations, including sexual abuse, against women during election-related violence.

- "Tough-decisions day for Mugabe," *The Times*
(<http://www.thetimes.co.za/News/Article.aspx?id=999951>)
- "Detained Zimbabwean Rights Lawyer Released On Bail," *RTT News*
(<http://www.rttnews.com/ArticleView.aspx?Id=951523&SMap=1>)
- "NGO Documents Women Abuse," *Zimbabwe Standard*
(<http://www.thezimbabwestandard.com/entertainment/20321-ngo-documents-women-abuse.html>)
- "WCoZ's Demands in the Transitional Process of Zimbabwe," Women's Coalition of Zimbabwe (http://www.zimwomen.co.zw/index.php?option=com_content&task=view&id=47&Itemid=9)

AMERICAS

Bolivia

The Bolivian Supreme Court began hearing arguments in the trial of former President Gonzalo Sánchez de Lozada and 16 members of his cabinet for the killing of 60 people during a demonstration in the city of El Alto in 2002. Half of the accused were absent from the hearing, including Sánchez, who lives in the United States. Bolivian law will not permit a trial to proceed unless the accused are present; extraditions of the accused living abroad are pending.

- "Bolivia ex-leader's trial opens," *BBC*
(<http://news.bbc.co.uk/2/hi/americas/8056718.stm>)

Brazil

President Luiz Inácio Lula da Silva has proposed legislation to expand public access to government records related to human rights, as well as a project called "Memories Revealed," a virtual network of public institutions and federal and state archives relating to human rights cases between 1960 and 1980. ICTJ participated in an event in Brasilia related to these initiatives, which President Lula said are aimed at securing a collective memory of the country's dictatorship from 1964-1979.

The Brazilian Supreme Court is deliberating over a petition by the Brazilian Bar Association to nullify an amnesty law for crimes perpetrated by military.

- Memories Revealed: Reference Center on the Political Conflict in Brazil (1964-1985)
(<http://www.memoriasreveladas.arquivonacional.gov.br>)

Canada

On June 4, The Globe and Mail reported that Justice Murray Sinclair, an aboriginal judge, would be appointed the new chair of Canada's Residential Schools Truth and Reconciliation Commission, to be joined by Assembly of First Nations regional chief Wilton Littlechild and former CBC regional director Marie Wilson. Canada's TRC has been in limbo since the October 2008 resignation of its former chair, Justice Harry LaForme, followed by the resignations of his two co-commissioners. The TRC is tasked with investigating Canada's century-long policy of forced assimilation of aboriginal peoples via residential schooling.

In late May, the head of the Roman Catholic Church in the Northwest Territories, Bishop Murray Chatlain, offered an emotional apology to aboriginal leaders over the Catholic Church's role in the forced enrollment of more than 150,000 aboriginal children at church-run boarding schools starting in 1874. In late April, Pope Benedict XVI expressed his "sorrow" over the abuses while meeting with a delegation of aboriginal leaders in the Vatican. Seventy-five percent of the schools involved were Catholic.

- "Native judge to be new chair of residential schools commission," *Globe and Mail*
(<http://www.theglobeandmail.com/news/national/native-judge-to-be-new-chair-of-residential-schools-commission/article1166269/>)

- “I am sorry,” N.W.T. bishop says to Dene residential school survivors,” *CBC News* (<http://www.cbc.ca/canada/north/story/2009/05/28/catholic-dene-apology.html>)

Colombia

In late May, the Truth Commission investigating the 1985 Palace of Justice siege held public meetings with individuals who were in the government, the M-19 guerrillas and the military forces when the massacre took place. The meetings, which were facilitated by ICTJ, highlighted the need for acknowledgment of responsibility by perpetrators, as well as a process of reconciliation based on truth and dignity for victims. In November 1985, a confrontation between the M-19 guerilla organization and the Colombian Army at the Palace of Justice resulted in the deaths of 95 people and the disappearance of 11.

On May 22, Colombian Senators Piedad Córdoba and Rodrigo Lara met in Washington, DC, with one of the 17 paramilitary leaders extradited to the U.S. during the last year, Salvatore Mancuso, who is reportedly willing to confess to human rights violations, reveal his connections with top politicians, and provide reparations to Colombian victims. Mancuso is on trial in the U.S. for alleged drug trafficking.

The National Reparation and Reconciliation Commission (CNRR) announced that the first round of reparations will be paid in June to 3,300 victims of land mines and sexual crimes. The next round of payments will be made out to approximately 2,200 minors recruited by illegal paramilitary groups. To date, over 205,000 people have asked the committee for reparations, according to the CNRR.

- “Que Colombia no se convierta en un gran Palacio de Justicia, pidió la Comisión de la Verdad al finalizar conversatorio,” ICTJ (<http://www.ictj.org/es/news/press/release/2643.html>)
- “Mancuso to say names of politicians who were involved in paramilitary crimes,” *Colombia Reports* (<http://colombiareports.com/colombia-news/news/4171-mancuso-to-say-names-of-politicians-who-were-involved-in-paramilitary-crimes.html>)
- “¿Por qué los ‘paras’ extraditados buscan a Piedad?” *Semana* (<http://www.semana.com/noticias-justicia/paras-extraditados-buscan-piedad/124274.aspx>)
- “Reparación, primero para afectados por minas antipersona, menores en la guerra y mujeres víctimas,” *El Tiempo* (http://www.eltiempo.com/colombia/politica/reparacion-primero-para-afectados-por-minas-antipersona-menores-en-la-guerra-y-mujeres-abusadas_5207627-1)

Chile

President Michelle Bachelet announced the creation of a National Museum of Memory, to be established by the end of 2009. Bachelet said that the initiative will aim to educate Chileans about human rights violations under Augusto Pinochet from 1973 and 1990, to allow for collective reflection, and to ensure that violations will never happen again.

- Mensaje Presidencial 2009, Gobierno de Chile (<http://www.gobiernodechile.cl/viewEjeSocial.aspx?idarticulo=27560&idSeccionPadre=119>)

Guatemala

In a video the lawyer Rodrigo Rosenberg recorded before his death, he accused Guatemalan President Alvaro Colom of orchestrating his death, as well as the April 2009 assassination of prominent Guatemalan businessman Khalil Musa and his daughter. President Colom has denied the accusations and requested the assistance of the UN International Commission against Impunity in Guatemala and the U.S. Federal Bureau of Investigations to investigate the murders.

- “The positive effects of Guatemala’s current crisis: Election law of Magistrates and support for CICIG,” *The Guatemala Times* (<http://guatemala-times.com/news/guatemala/1121-the-positive-effects-of-guatemalas-current-crisis-election-law-of-magistrates-and-support-for-cicig-.html>)
- “Insulza insta a fortalecer institucionalidad del país,” *Prensa Libre* (<http://www.prensalibre.com/pl/2009/mayo/26/316683.html>)

Peru

A request by counsel for former Peruvian President Alberto Fujimori to recuse three judges from Fujimori’s trial on corruption charges has been denied. The same three judges found Fujimori guilty in April of kidnapping, murder and other human rights crimes and sentenced him to a 25-year prison term. The defense has appealed the conviction.

- “Nakazaki recusa a otros cinco jueces supremos,” *La Republica* (<http://www.larepublica.pe/politica/21/05/2009/nakazaki-recusa-otros-cinco-jueces-supremos>)

United States

The growing debate in the U.S. about accountability for abuses in relation to the counter-terrorism policy focused on a major national security speech by President Barack Obama on May 21 and an address the same day by former Vice President Cheney in defense of Bush administration policies.

The president, controversially, proposed creating a legal regime for prolonged detention of detainees “who cannot be prosecuted yet who pose a clear danger to the American people,” while confirming his decisions to ban torture and close Guantanamo. He continues to oppose an independent commission of inquiry into abuses, but stated, “I believe our existing democratic institutions are strong enough to deliver accountability.” He drew heavy criticism from human rights advocates for opposing the court-ordered release of additional photos showing the alleged abuse of detainees between 2002 and 2004.

In a joint letter to U.S. President Barack Obama, ICTJ joined the ACLU and numerous other human rights organizations and advocacy groups in calling on the president to reconsider his decision to block the release of the photos. The letter said in part, “The hallmark of an open society is that we do not conceal information that reflects poorly on us – we expose it to the light of day, so that wrongdoers can be held accountable and future abuses prevented.”

Cheney defended the practices and legality of “enhanced interrogations,” extraordinary renditions, and other elements of the Bush-era counterterrorism policy. He decried the Obama administration’s decision to close Guantanamo Bay, and the release of torture memos.

UN Special Rapporteur on extrajudicial killings Philip Alston called for a national commission of inquiry in the U.S. to investigate “policies and practices that lead to deaths and other abuses” in U.S. international operations, and for the appointment of an independent special prosecutor.

- Text of Obama’s speech on national security on May 21, 2009 (<http://www.nytimes.com/2009/05/21/us/politics/21obama.text.html>)
- Open letter from ICTJ and other human rights organizations to President Obama (<http://ictj.org/en/news/features/2679.html>)
- Text of Cheney’s speech at the American Enterprise Institute on May 21, 2009 (<http://www.aei.org/speech/100050>)
- *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Special Rapporteur on Extrajudicial Killings (PDF) (www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.5.pdf)

ASIA

Cambodia

The first trial before the Extraordinary Chambers in the Courts of Cambodia, a tribunal formed to prosecute former officials of the Khmer Rouge, progressed amid concerns about a lack of coordination with victims’ representatives, political influence and corruption. Co-investigating judge Marcel Lemonde said he would leave the court if he believed the trial was compromised by political interference or corruption.

- “ECCC judge says he would quit if job compromised,” *The Phnom Penh Post* (<http://www.phnompenhpost.com/index.php/2009052826117/National-news/ECCC-judge-says-he-would-quit-if-job-compromised.html>)
- “Government rejects charges of political manipulation at ECCC,” *The Phnom Penh Post* (<http://www.phnompenhpost.com/index.php/2009052926142/National-news/Government-rejects-charges-of-political-manipulation-at-ECCC.html>)

Indonesia

In early May, ICTJ Asia Director Patrick Burgess met with the new President of the ICC, Sang-Hyun Song, in Indonesia. Song emphasized that Asia was behind the rest of the world in terms of membership of the court, and strongly encouraged the Indonesian government to ratify the Rome Statute on the ICC.

The independent National Commission on Human Rights proposed a forum for Indonesia’s three presidential candidates to discuss how they would deal with human rights issues if elected. At least two of the vice presidential candidates are believed to have been involved in major human rights violations including fatal shooting of students and subsequent riots in Jakarta in 1998. The election is scheduled for July 8, 2009.

- “Politicos May Talk Human Rights,” *The Jakarta Globe* (<http://www.thejakartaglobe.com/home/politicos-may-talk-human-rights/278184>)

Nepal

Nepal entered a political and constitutional crisis as the Maoist Prime Minister, Prachanda, resigned in early May over the President's reinstatement of the army chief earlier sacked by the Maoist-led coalition government. A fresh dispute has arisen over the true number of Nepal's former Maoist combatants as verified by the United Nations. The dispute began in May with the appearance of a video in which Prachanda admitted to having exaggerated the strength of his forces 18 months ago to have more bargaining power during peace negotiations. The situation has posed the gravest threat to the country's peace process since a ceasefire was agreed in 2006 to end Nepal's civil war. The new Prime Minister, Madhav Kumar Nepal, asked the Maoist party to join his government, saying its participation was essential to the country's continuing process of "consensus, reconciliation and unity."

- "Nepal's new PM asks Maoists to join govt," *AFP* (http://www.google.com/hostednews/afp/article/ALeqM5ggKvryGhkKhINvhWVqC9_iqNPZQA)

Solomon Islands

The Solomon Islands TRC, which aims to address the country's 1998-2003 conflict, has entered the preparation stage of its work, beginning staff recruitment and developing its strategic plan. Its timeline has been delayed while arrangements are made for the arrival of the two non-national commissioners. The TRC was publicly launched by South Africa's Archbishop Emeritus Desmond Tutu on Apr. 29. ICTJ now has an in-country presence and has consulted extensively with the commission, including training that ICTJ Asia Director Patrick Burgess and ICTJ Senior Associate Patrick Pierce have provided for the newly appointed national commissioners and senior commission staff.

- Solomon Island Truth and Reconciliation Act (http://www.paclii.org/sb/legis/num_act/tarca2008371/)

EUROPE

Former Yugoslavia

Bosnian victims' groups and politicians accused the prosecutor's office at the International Criminal Tribunal for the Former Yugoslavia (ICTY) of destroying evidence from the 1995 Srebrenica massacre, including loved ones' possessions exhumed at the site. The Hague Prosecutor neither confirmed nor denied the allegation. Victims' families and representatives said that the destruction of evidence would be a scandal and an enormous loss for the country.

The ICTY more than tripled the sentence against Yugoslav People's Army officer Veselin Sljivancanin to 17 years imprisonment. The Appeals Chamber found that the lower court had erred when it acquitted Sljivancanin of aiding and abetting the murders of 194 non-Serbs seeking refuge at a Vukovar hospital in 1991 and convicted him only of aiding and abetting torture. His earlier sentence of five years imprisonment had caused an outcry in Croatia.

ICTY Chief Prosecutor Serge Brammertz visited Belgrade and met with Serbian President Boris Tadić in mid-May ahead of the prosecutor's June report to the UN Security Council on Serbia's cooperation with the Tribunal. Serbian authorities expect a positive assessment of Serbia's cooperation. President Tadić stressed that Serbia had extradited 44 indictees for war crimes and said it was working on locating the remaining fugitives.

- "Loss of Srebrenica Victims' Possessions Shocks Families," *Balkan Insight* (<http://www.balkaninsight.com/en/main/analysis/18891/>)
- "Hague triples Vukovar jail term," *BBC* (<http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/8033635.stm>)
- "Chief UN war crimes prosecutor visits Belgrade to assess progress," *AFP* (http://www.ekathimerini.com/4dcgi/_w_articles_world_1_12/05/2009_107077)

Germany

An intense historical debate erupted in Germany following the revelation that the policeman who shot a Berlin student in 1967, helping provoke a student protest movement in 1968 and the emergence of the far-left Baader-Meinhof terrorist group, was a spy for the East German Stasi intelligence service. The revelation also raised questions about whether the massive archive of Stasi files is being studied adequately to reveal the full truth of the Stasi's activity in West Germany during the Cold War.

- "Western Germany Wants Stasi's Influence to Remain Hidden," *Der Spiegel* (<http://www.spiegel.de/international/germany/0,1518,627115,00.html>)

Russia

In mid-May, President Dmitry Medvedev formed a commission "To Counter Attempts to Falsify History to the Detriment of Russian Federation's Interests," the latest salvo in a battle over portrayals of the Soviet era between Russia and other former Soviet states. The 28-person committee will include Kremlin officials, politicians, historians, and

members of the FSB security service. It will have no legal authority, but an accompanying draft law, “On Countering the Rehabilitation of Nazism and Nazi Criminals and Their Accomplices on the Territory of Independent States That Are Former Republics of the USSR,” stipulates fines and prison sentences of up to five years for “denying the decisions of the Nuremberg Tribunal.”

- “No Doubt Allowed Medvedev New Commission: Censored or Patriots?” *Russia Profile* (<http://www.cdi.org/russia/johnson/2009-96-8.cfm>)

MIDDLE EAST AND NORTH AFRICA

Israel and the Occupied Palestinian Territory

On June 1, ICTJ Board member Richard Goldstone and a 15-member team began an investigation into possible breaches of international human rights and humanitarian law in Gaza by both Israel and Hamas in the context of the military operations which took place in late December 2008 and early January 2009. Goldstone expressed disappointment at the Israeli government’s refusal to allow the team to enter Gaza from Israel; they entered from Egypt instead.

With the 61st anniversary of the 1948 War and the establishment of the state of Israel, multiple documentary video projects are recording testimonies about how these events were seen by each side. An Israeli parliamentarian from the Yisrael Beitneinu party has also proposed a bill that seeks to outlaw the holding of public events or ceremonies that commemorate what Palestinians term the *nakba*: the destruction of Arab villages and displacement of hundreds of thousands of Palestinians from their homes.

- “Rights Investigation Team Enters Gaza,” *New York Times* (<http://www.nytimes.com/2009/06/02/world/middleeast/02gaza.html>)
- “On Fiery Birth of Israel, Memories of Two Sides Speak,” *New York Times* (http://www.nytimes.com/2009/05/18/world/middleeast/18israel.html?_r=1&ref=middleeast)
- “New Legal Developments,” Adalah and the Arab Association for Human Rights (http://www.adalah.org/features/political/Adalah_HRA_Briefing_note_FINAL_4.6.09%5B1%5D.pdf)

Lebanon

On April 29, the Special Tribunal for Lebanon released four generals who had been detained since 2005 by Lebanese authorities and had been in the tribunal’s custody since April 2009. The pre-trial judge

concluded that the prosecutor had insufficient evidence to prosecute the generals for the 2005 assassination of Lebanese Prime Minister Rafik Hariri. While this decision helped buttress the tribunal’s legitimacy across the Lebanese political spectrum, the Lebanese judiciary and Investigative Commission were heavily criticized in the wake of the generals’ release. The four generals were the only suspects held to date in the investigation into Hariri’s murder.

- “Funding, transparency seen as key to tribunal success,” *Daily Star* (http://www.dailystar.com.lb/article.asp?edition_id=1&category_id=1&article_id=101984)

THEMATIC REPORT

Gender Justice

The U.S. Senate Foreign Relations Committee heard testimony in mid-May on the use of rape as a weapon of war in Africa, Asia and Europe in recent decades. Melanne Verwee, the State Department’s ambassador-at-large for global women’s issues, testified that hundreds of thousands of women, girls and babies have been raped during more than a decade of conflict in Eastern Congo, with similar atrocities occurring in Darfur. Perpetrators are rarely brought to justice.

Testimony in the ICC trial of Congolese warlord Thomas Lubanga has thrown light on the gender dimensions of the recruitment of child soldiers. According to testimony by clinical psychologist Elisabeth Schauer, at least 40 percent of child soldiers worldwide are girls. Witnesses testified that all child soldiers received the same training irrespective of age or gender, though girls were also expected to cook as well as provide “sexual services” for commanders.

On May 11, former ICTJ President Juan E. Méndez announced the winners of the Women’s Link Worldwide Gender Justice Uncovered Awards, identifying the best and worst judicial decisions related to gender justice in Spain, Latin America, and the Caribbean. The award for the best decision went to the Supreme Court of Mexico, which held that Mexico City’s law legalizing abortion in the first twelve weeks of pregnancy is constitutional because it protects women’s fundamental rights.

- Trial transcripts for *The Prosecutor v. Thomas Lubanga Dyilo* (<http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0104/Related+Cases/ICC+0104+0106/Transcripts/Trial+Chamber+I/>)

- “Rape is effective weapon of war, senators told,” *Associated Press* (<http://www.google.com/hostednews/ap/article/ALeqM5gVjQg2x9BMpHlmdrzKqA0K2UGPTgD985KEQG0>)
- “Gender Justice Uncovered Awards,” ICTJ (<http://ictj.org/en/news/features/2625.html>)
- “After War, Mass Rapes Persist,” *New York Times* (<http://www.nytimes.com/2009/05/21/opinion/21kristof.html>)

Prosecutions

African opposition to the ICC in the aftermath of the court’s arrest warrant for Sudanese President Omar Al-Bashir continued. African state parties to the Rome Statute planned to meet in Addis Ababa on June 8-9, where it was expected that several states, including Senegal, Djibouti and Gabon, might withdraw from the Rome Statute. ICTJ and other civil society organizations called on all African states to reaffirm their commitment to addressing impunity through national, regional and international legal instruments. ICTJ also called on nations that have not yet joined the Rome Statute to do so.

- “Reaffirming Africa’s Commitment to Non-Impunity,” ICTJ (<http://ictj.org/en/news/press/release/2676.html>)

PUBLICATIONS

Small Steps, Large Hurdles: The EU’s role in promoting justice in peacemaking in the DRC

In Congo over the past decade, demands for justice have been largely unmet in peace negotiations: Impunity for the worst crimes is entrenched, and the root causes of the conflict remain unaddressed. The new ICTJ report *Small Steps, Large Hurdles: The EU’s role in promoting justice in peacemaking in the DRC* analyzes the role of the European Union and European Union Special Representatives (EUSRs) in recent peace deals in Congo. It offers recommendations for how the EU could strengthen its role in promoting justice and human rights in peace agreements in the Democratic Republic of Congo and elsewhere.

- *Small Steps, Large Hurdles: The EU’s role in promoting justice in peacemaking in the DRC* (<http://www.ictj.org/images/content/1/4/1453.pdf>)

Transitional Justice and Georgia’s Conflicts: Breaking the Silence

In a new ICTJ report, author Magdalena Frichova examines conflicts involving Georgia from a transitional justice perspective, and argues that introducing TJ into public discourse in the country could promote constructive social change. The report recommends that the international community, especially the EU, reinforce demands for justice and support judicial and non-judicial accountability mechanisms for the sake of long-term conflict resolution and democratization.

- *Transitional Justice and Georgia’s Conflicts: Breaking the Silence* (http://www.ictj.org/static/Europe/ICTJFrichova_GEO_BreakingtheSilence_pa2009.pdf)

june

June 4-5:
**ICTJ/ Konrad Adenauer Foundation
Workshop with Supreme Court Justices
from Argentina, Colombia and Peru**

Mexico City, Mexico

For more information, please contact: María
Cristina Rivera, mrivera@ictj.org

June 5:
**ICC Prosecutor's briefing to UN Security
Council on Darfur**

United Nations Headquarters

New York, New York

For more information, visit: <http://www.un.org/webcast/index.asp>

June 5-7:
**Leuven University Conference:
"Transitional Justice and Rule of Law"**

Brussels, Belgium

For more information, write: info@kuleuven.be

June 7, 10:
Film screening: The Sari Soldiers

2009 Brooklyn International Film Festival

Brooklyn, New York

For more information, visit: <http://ictj.org/en/news/event/2672.html>

June 12:
**New York film premiere: The Reckoning -
The Battle for the International Criminal**

2009 Human Rights Watch International Film
Festival

New York, New York

For more information, visit: <http://www.hrw.org/en/iff/reckoning>

June 15-19:
**Transitional Justice Summer School:
"Negotiating Peace, Negotiating Justice"**

Jordanstown, Northern Ireland

For more information, visit: http://transitionaljustice.ulster.ac.uk/events_news/summer_school_2009.html

June 16-18:
**ICTJ/NYU Law School Essentials Course in
Transitional Justice**

National University of Singapore

For more information, visit: <http://www.ictj.org/en/workshops/courses/index.html>

June 20:
**New York film premiere: My Neighbour,
My Killer**

2009 Human Rights Watch International Film
Festival

New York, New York

For more information, visit: <http://www.hrw.org/en/iff/neighbor-killer>

Making a Difference

ICTJ needs your support to help societies address the past as they emerge from conflict, to give them a better chance for a decent future and a lasting peace. Since 2001 ICTJ has worked in more than 35 countries, partnering with justice and truth-seeking institutions, local civic groups, governments and international organizations.

In societies dealing with legacies of abuse, victim participation in criminal proceedings is key. It ensures that victims' voices are heard alongside those of alleged perpetrators, acknowledges victims' experiences, and can help them to heal by restoring their dignity as citizens. It also sets an example for local and international courts, increases and enhances truth-seeking, and strengthens the legitimacy of the judicial system addressing past crimes. ICTJ works all over the world to support local efforts to include victims in the prosecution of widespread violence and exploitation.

In March 2009, ICTJ co-sponsored a workshop in Phnom Penh for victims' representatives at the Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid Cambodian-UN tribunal for the crimes of the Khmer Rouge regime. "Leaving a Lasting Legacy for Victims" was designed by ICTJ Deputy Director of Prosecutions Caitlin Reiger, and held in collaboration with the ECCC Victim's Unit and the Cambodian Human Rights Action Committee (CHRAC). Over 75 people attended the day-long workshop, including Cambodian and international lawyers who are representing victims before the ECCC, as well as representatives of the Cambodian Defenders Project, the Center for Social Development, the Khmer Institute for Democracy and other civil society groups. ECCC senior court officials in attendance included judges, legal advisors and staff from the Victim's Unit.

After an opening by Keat Bophal (head of the ECCC Victims' Unit) and Theary Seng (head of the Center for Social Development and a civil party applicant herself), the workshop began with a presentation by Michael Reed, director of ICTJ's Colombia office, who shared lessons from Latin America. Small group discussions let participants identify the practical and legal challenges of victim involvement, and methods to address them. Caitlin Reiger discussed ways the ECCC can leave a positive long-term legacy for national justice efforts.

The workshop concluded with recommendations for all the parties facilitating victim participation in the trials, including increased



A monument with remains of victims of the Khmer Rouge regime at the Killing Fields Memorial in Choeng Ek. Photo by Caitlin Reiger.



A memorial site to victims of the Khmer Rouge regime at the Killing Fields Memorial in Choeng Ek. Photo by Caitlin Reiger.

communications and contact with victims and their representatives, the creation of a legal aid program, and more coordination and outreach on the part of the Victims' Unit.

ICTJ provides expertise that transforms the lives of victims and creates healthy judicial systems and sustainable societies. International demand for our assistance increases each year, and your support has never been more important. Learn more at www.ictj.org or contact MaryClaire Brooks, Director of Individual Giving, at 917-637-3844, or via email at mbrooks@ictj.org.

About ICTJ

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ, headquartered in New York, has offices in Beirut, Bogotá, Brussels, Bujumbura, Cape Town, Dili, Geneva, Jakarta, Kathmandu, Kinshasa and Monrovia.

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