Q. In your recent article on transitional justice and economic crimes, you warn that chronically poor and conflict-ridden countries are likely to remain so in spite of transitional justice measures. Why?

A. Because transitional justice measures are usually narrowly focused. There are reasons for that, and many of them are legitimate, rooted in the conflict they seek to address and the capacities of the measures themselves. But because they’re narrow, they tend not to address economic issues that relate to the conflict—that may even be the roots of it—and that certainly will have an impact after the conflict is over.

Q. What are some examples of the links between transitional justice and economic issues?

A. Chile gives us a good example. We talk about how responses to human rights violations by the Pinochet regime contributed to the development of truth commissions and prosecutions. What’s not been given as much attention has been the legacy of corruption of the Pinochet administration and of Pinochet himself.

When transitional justice initiatives were being pursued in Chile, the focus was on what were perceived to be the most urgent accountability measures. Pinochet had escaped any form of accountability and was approaching the end of his life having evaded the judgment of history. Even with a truth commission working against him, he could say, “I did well for Chile. You could question how I did it, but in the end, in terms of the economy, I succeeded.” That was just assumed to be true. It led to the myth of the so-called “clean dictatorship.”

When it emerged that Pinochet had bank accounts in the United States, and when corruption charges were filed against his family after his death, and accounts emerged of his involvement in arms smuggling, it was important because it shattered the myth of the clean dictatorship.

In South Africa, apartheid was not just a violation of civil and political rights; it was also a system anchored in economic crimes carried out by the state. Still, the Truth and Reconciliation Commission there excluded investigating economic crimes. A report prepared by South African NGOs for a National Anti-Corruption Summit in 2006 concluded that this omission would have very strategic, very long-term implications for how South African society moved forward.

One thing the report mentioned was that the ruling class was happy with this exclusion. You have addressed issues of racial inequality to an extent, you have addressed political power and how it’s transferred, you have addressed specific human rights violations committed against specific victims. But if you exclude the economic foundation of apartheid, I’m not sure how much change the record of truth-seeking will create in terms of the lives of the majority of South Africans.

Q. Why have transitional justice measures traditionally had a narrower focus?

A. We have to go back to the evolution of human rights as a concept. Two sets of instruments were created: one that deals with civil and political rights and the other dealing with economic and social rights. That dichotomy is reflected now in how transitional justice deals with social and economic rights. Generally, it doesn’t. There’s now a recognition that this dichotomy is a hindrance to transitional justice.
INTERVIEW

Former UN High Commissioner for Human Rights Louise Arbour said that transitional justice must do what even traditional justice hasn’t done: Go beyond that dichotomy, disregard false hierarchies and address economic rights violations taking place in a conflict, as well as the root causes of violations that are economic in character.

Capacity is a limitation, however. The human rights movement started as a very legalistic movement anchored in individual rights and individual violations. Even transitional justice as a concept had to struggle against that, to point out that many violations are carried out in massive ways where victims are so numerous that conventional instruments of justice can’t address them.

In Timor-Leste, the Indonesian occupation wasn’t just about torturing opponents or carrying out military operations. It was also about displacing civilian populations, forcing them into the mountains, letting them die of hunger. The truth commission report that came out in Timor said that of the 100,000-200,000 who were identified as having died during the occupation, the majority died because of hunger and disease—not because of military operations, not during detentions, not during any deliberate massacres, but because of economic crimes.

Q. In transitions that replace one set of ruling elites with another, isn’t there bound to be resistance to addressing economic crimes?

A. Yes, since many of the perpetrators have an important stake in ensuring that the profits they amassed will not be taken away. One way of ensuring this is to prevent any form of accountability from reaching into that part of the past. But the public sees little distinction between those who inflicted political repression and those who then profited from it, or between those who led warring factions in a civil war over resources and those who then became rich because they led the warring factions. It’s strange that while victims and societies in general see that these are not separable sets of abuses, the responses to them have been anchored in them being separate.

Q. Are there cases where the two have been treated as connected?

A. There are, in countries such as Liberia and Sierra Leone. In Liberia the truth commission is mandated to look at economic crimes. That’s a bit difficult, because Liberia doesn’t have many precedents to look at and say, “This strategy of addressing economic crimes failed, maybe this one is workable.” In Sierra Leone, even if the mandate wasn’t explicit, the report of the truth commission moves beyond violations that involved murder, killing, torture, and goes into the economic process behind these acts: Who was controlling diamond mining, who was controlling logging.

In a sense, it’s almost unavoidable for truth commissions in countries such as these to deal with history as it happened, rather than focusing on a more narrow mandate.

Q. Is transitional justice as a field moving toward a broader understanding of the need to address economic crimes?

A. I’m not sure. There has been a push on the part of many civil society actors and some post-transition state actors toward the inclusion of economic crimes. In Kenya, for example, the ongoing discussions on the mandate of the Truth, Justice and Reconciliation Commission include a discussion of economic crimes, but it has become mired in questions about amnesties for economic crimes.

Some of the resistance has come from institutions afraid that expanding the mandate of truth commissions would render them ineffective, since it would be beyond the resources, capacity and competence of those involved.

There is some validity to that concern. But it also raises the question of skills and capacity building. When special courts were being formed in Cambodia and Sierra Leone to try war crimes, there were debates over whether Cambodian or Sierra Leonian lawyers could fill roles in these courts. To some extent they have. In the same way, if you were to incorporate economic crimes into the mandate of truth commissions, I don’t see why you couldn’t build capacity in that area as well.

The best hope is in civil society—which I think has been more consistent than international NGOs in pursuing this issue—and also in the emergence of the UN Convention Against Corruption and other anti-corruption measures for addressing corruption that are now blending into the transitional justice work.

Q. Apart from expanding the mandate of truth commissions, what transitional justice tools are there that can address economic crimes?

A. Reparations is an obvious area. Assets recovered from perpetrators would seem to be a logical source for reparations. This is the case in the Philippines, where pending legislation proposes using $200 million out of $680 million recovered from the Marcos family for reparations to the victims of the Marcos dictatorship. In Cambodia, the Khmer Rouge tribunal is mandated to use assets recovered from convicted perpetrators as reparations. Even in the case of International Criminal Court, the statute establishing the court talks about using the assets of convicted perpetrators for reparations through the Trust Fund for Victims.

Prosecutions are more difficult, especially since they have traditionally been framed for very specific crimes in international law. There are arguments, though, that certain war crimes are economic crimes in themselves—pillage, deprivation of property, starvation.

You could develop legal mechanisms that would incorporate economic crimes as so-called system crimes. The acts that allow a regime or warring faction to sustain itself, to maintain the capacity to carry out violence, would include corruption or economic crimes.

Lastly we often talk about institutional reform as a tool of transitional justice, but then we tend to then narrow it to security sector reform and vetting. In vetting, we make some general reference to the vetting of corrupt officials, but what do we use as a basis for vetting them? Institutional reform should be fleshed out, and one way of doing that is to look at where corruption and economic crimes should be the basis for specific reforms.
AFRICA

Central African Republic
During pre-trial hearings in mid-January, the International Criminal Court (ICC) confirmed war crimes charges against Jean-Pierre Bemba for abuses his troops allegedly committed in the Central African Republic in 2002-03. Bemba is charged with three counts of crimes against humanity and five counts of war crimes. He was arrested in Belgium in May 2008.

- ICTJ Fact Sheet: Jean-Pierre Bemba and the International Criminal Court (PDF) (http://www.ictj.org/static/Factsheets/ICTJ_BembaTrial_fs2009.pdf)
- ICTJ Fact Sheet: Confronting Past Crimes at the National Level (PDF) (http://www.ictj.org/static/Factsheets/ICTJ_CAR_fs2009.pdf)

Democratic Republic of Congo
The ICC’s first-ever trial, against former DRC militia leader Thomas Lubanga, began on Jan. 26. The case was briefly suspended after two days, however, when a former child soldier recanted his testimony on the witness stand. Lubanga is charged with conscripting child soldiers into his private army during the long-running conflict in the DRC.

Congolese Tutsi rebel leader Laurent Nkunda was arrested in Rwanda on Jan. 22 amid a joint Rwandan-Congolese military campaign to forcibly disarm Hutu militias. Nkunda is in Rwandan custody, though DRC is seeking his extradition. Rwanda and DRC began joint military operations in DRC in January.

- “Testimony of former Congo child soldier halted,” Associated Press (http://www.google.com/hostednews/ap/article/ALeqM5jI1QpLKyj3NhJa50Xg3Wte4yJlW9D960S92O0)
- “DR Congo wary depite Nkunda arrest,” BBC (http://news.bbc.co.uk/2/hi/africa/7850086.stm)

Kenya
Parliament debated legislation establishing a special tribunal to address grave crimes committed during election-related violence in December 2007 and January 2008, though the Jan. 30 deadline for the passage of the bill elapsed without final approval. In a letter to members of the Kenyan government, ICTJ welcomed the bill’s focus on the rights of victims, fair trial standards and provisions for international participation, but urged a reconsideration of immunity provisions and a clearer focus on those bearing the greatest responsibility.

- “What law on violence tribunal should take into consideration,” Daily Nation (Kenya) (http://www.nation.co.ke/oped/Opinion/-/440808/519118/-/42c82h/-/index.html)

Liberia
Liberia’s Truth and Reconciliation Commission (TRC) released the first volume of its final report at the end of January, a 107-page document titled “Findings and Determinations.” ICTJ and Liberian civil society groups are currently reviewing the report in depth.

The Liberian Ministry of Justice indicted Benjamin Yeaten, former Special Security Services Director and head of Charles Taylor’s private anti-terrorist unit, on murder charges. The ministry said it had evidence Yeaten planned and participated in the murder of a politician and two former ministers who opposed Taylor. An arrest warrant was issued for Yeaten, who fled Liberia shortly after Taylor relinquished power in 2003.

On Jan. 7, ICTJ Liberia Program Assistant Aaron Weah met with Liberian President Ellen Johnson Sirleaf to present her with a copy of the book Impunity Under Attack, which Weah co-authored with civil society activists Samuel Toe and Aaron Sleh. The book examines the culture of impunity surrounding 14 years of violence against civilians in Liberia, as well as the establishment of the TRC in 2006 to hold perpetrators accountable.


Sierra Leone
On Jan. 30, the government of Sierra Leone launched a reparations program for victims of the country’s 11-year civil war, as recommended by the 1999 Lomé Peace Agreement and Sierra Leone’s TRC Act of 2000. The Sierra Leone Court Monitoring Programme (SLCMP) welcomed the program but called on the government to issue a public apology to victims of the 1991-2002 war.

Sudan

Sudanese President Omar al-Bashir remained defiant as the ICC approached a decision on whether to issue an arrest warrant for him on charges related to the conflict in Darfur. Bashir referred to the ICC in an interview in late January as “a mosquito in an elephant’s ear.”

A Sudanese court sentenced former policeman Mohamed Alsary Ibrahim to 17 years in prison for allegedly cooperating with the ICC in its case against Sudanese State Minister for Humanitarian Affairs Ahmed Haroun. Meanwhile, fighting intensified in Darfur in the latter half of January, with renewed clashes between the Sudanese military and rebels displacing 9,000 people, according to the UN.

- “Sudan man jailed for ‘spying’ in war crimes case,” Reuters (http://www.reuters.com/article/africaCrisis/idUSB182675)

Uganda

Continued fighting between the LRA and the Ugandan military in northeastern DRC has led to new fears of insecurity in Northern Uganda. Civil society is responding by conceiving new approaches to transitional justice in Uganda. ICTJ is assisting the Northern Uganda Transitional Justice Working Group to create a strategy for civil society leadership on transitional justice in the country. The Justice, Law and Order Sector of the government has been delayed in its proposed development of the Special Chamber in the High Court to try War Crimes, as well as the creation of reparations and programs to demobilize combatants and reintegrate them into society.

Zimbabwe

On Jan. 30, Morgan Tsvangirai’s opposition Movement for Democratic Change accepted a power-sharing deal with Robert Mugabe’s ZANU-PF party, apparently ending an 11-month standoff following disputed elections in March 2008. Under the agreement Tsvangirai would be sworn in as prime minister of a coalition government on Feb. 11 and Mugabe would remain as president.

Zimbabwe’s lack of a functioning government since March 2008 has put millions of Zimbabweans at risk of starvation and exacerbated a cholera epidemic that has infected more than 60,000 people and killed more than 3,000, according to the World Health Organization.

- “Tsvangirai risks all as he does deal with Mugabe on sharing power” Times (UK) (http://www.timesonline.co.uk/tol/news/world/africa/article5622266.ece)

AMERICAS

Canada

Three months after the resignation of Indian Residential Schools TRC chairman Justice Harry LaForme, the commission’s two remaining members, Jane Morley and Claudette Dumont-Smith, announced they would resign effective June 1, 2009. The two said in a statement that “the best way forward” for the TRC was to have an entirely new slate of commissioners. The commission is mandated to investigate Canada’s century-long policy of forced assimilation of aboriginal peoples via residential schooling.


Colombia

The trial of former Colombian Army Colonel Luis Alfonso Plazas for crimes against humanity was suspended after a military court asked to take charge of the criminal investigation. Plazas is on trial in civil court for his alleged involvement in the disappearance of 11 people during the 1985 military assault on the Colombian Supreme Court. ICTJ and other human rights organizations condemned the suspension, saying the military justice system could not legally conduct a trial for crimes against humanity.

- ICTJ expresa su preocupación porque se dilate jucio ordinario a coronel Alfonso Plazas Vega en el caso de Palacio de Justicia (Spanish only) (http://www.ictj.org/es/index.html)

Peru

The trial of former Peruvian President Alberto Fujimori for human rights abuses during his presidency from 1990-2000 entered its final stages after a year of hearings. Fujimori faces up to 30 years in prison if convicted of charges related to the massacre of 25 civilians and two kidnappings. The Peruvian government has also begun to pay reparations to survivors of the massacres as part of a larger effort to restore justice and account for abuses during Fujimori’s rule.
**WORLD REPORT**

- “Fujimori trial enters final stage,” *BBC* ([http://news.bbc.co.uk/2/hi/americas/7825568.stm](http://news.bbc.co.uk/2/hi/americas/7825568.stm))

**United States**

Immediately upon taking office, U.S. President Barack Obama signed an executive order banning torture and harsh interrogation techniques used since Sep. 11, 2001, as well as an order mandating the closure of the U.S. prison at Guantánamo Bay, Cuba, within a year.

UN Rapporteur on Torture Manfred Nowak called on the U.S. to prosecute former President George W. Bush and Defence Secretary Donald Rumsfeld for the torture of Guantánamo prisoners. Nowak noted that the U.S. had ratified the UN Convention Against Torture, which requires states to prosecute those who violate it.

Shortly before President Obama’s Jan. 20th inauguration, the House Judiciary Committee released a 487-page report titled *Reining in the Imperial Presidency: Lessons and Recommendations Relating to the Presidency of George W. Bush*. The report’s recommendations include executive and Justice Department actions to end torture and extraordinary rendition, close Guantánamo Bay, provide due process to detainees and end the abuse of presidential signing statements and excessive secrecy about intelligence information.


**ASIA**

**Afghanistan**

In anticipation of upcoming parliamentary and presidential elections in Afghanistan, ICTJ released *Vetting Lessons for the 2009-10 Elections in Afghanistan*. The report emphasizes that the elections will be crucial for ensuring the Afghan public’s trust in their government, as well as ongoing state-building and stabilization work. Experiences in previous elections show that the process of vetting candidates for links to illegal armed groups will likely fail without immediate and thorough attention to the political, legal and operational challenges of the process. The report outlines a number of options for candidate vetting and emphasizes that it should be viewed as one component among a range of mechanisms to promote the independence, integrity and transparency of the electoral process.


**Cambodia**

Controversy surrounding the Extraordinary Chambers of the Courts of Cambodia (ECCC) intensified with the approach of the tribunal’s first trial of a former Khmer Rouge leader for crimes against humanity, set for Feb. 17. The first case before the joint UN-Cambodian court is against Kaing Guek Eav, known as Duch, for his alleged role as chief of the notorious S21 detention center. The tribunal, which has faced corruption allegations, has four other suspected leaders of the Khmer Rouge regime in custody. Their trials are not expected until late 2009.

The national and international co-prosecutors of the ECCC clashed publicly over whether to investigate a further group of suspects. Canadian Robert Petit has said there is enough evidence to proceed, while his Cambodian counterpart Chea Leang has opposed further indictments, citing the ECCC’s limited resources and a risk to national stability.

- “Cambodia’s first Khmer Rouge trial to start mid-February,” *AFP* ([http://www.google.com/hostednews/afp/article/ALeqM5jvzO-DgRygj5Dz2hPLauZnZ1xv4g](http://www.google.com/hostednews/afp/article/ALeqM5jvzO-DgRygj5Dz2hPLauZnZ1xv4g))

**Nepal**

The Maoist government raised concern in late January by attempting to adopt three new bills on disappearances and truth and reconciliation without the approval of parliament. The International Commission of Jurists, Amnesty International and Human Rights Watch asked
the government of Prime Minister Pushpa Kamal Dahal (known as Prachanda) to submit the bills to parliament “to ensure transparency and public participation in the legislative process.” The laws would make enforced disappearances a crime and establish two commissions of inquiry into atrocities committed during 10 years of civil conflict.


**EUROPE**

**Northern Ireland**

On Jan. 28 the British government-appointed Consultative Group on the Past released a report on what more is needed in Northern Ireland to address the legacy of 40 years of violence there. The report met with strong opposition, notably from the Unionist (Protestant) side over proposed “recognition payments” of £12,000 to families of all the 3,700 people killed during the Troubles. The report’s centerpiece is the recommendation to establish a Legacy Commission to work for five years conducting further investigations that may lead to prosecution while also seeking truth recovery and reconciliation. It was generally welcomed by those working for and with victims and survivors as a serious and comprehensive effort towards reconciliation and tackling the persistent sectarianism in Northern Irish society.


**MIDDLE EAST AND NORTH AFRICA**

**Gaza**

Israel’s military incursion into Gaza brought calls for an impartial international investigation into allegations of serious violations of the laws of war by the Israeli military and Hamas. As of the ceasefire declarations on Jan. 18, some 1,300 Palestinians had been killed and over 5,300 wounded, with 39 percent of the casualties being women and children, according to Amnesty International. During the same period, Palestinian rocket fire killed three Israeli civilians and wounded more than 80. Ten Israeli soldiers were killed.


**THEMATIC REPORT**

**Memory, Memorials and Museums**

The Documentation Affinity Group (DAG), established in 2005 by ICTJ and five partner organizations, has published *Documenting Truth*, a collection of best practices in documenting human rights violations based on the work of organizations in Cambodia, Guatemala, Burma, Iraq, Serbia and the United States. The publication aims to provide useful lessons for groups documenting abuses, working toward the protection and promotion of truth, and establishing just and democratic societies.


**ICTJ Productions**

*The Reckoning*, a feature-length documentary about the creation and work of the ICC, premiered with a week of screenings at the Sundance Film Festival, Jan. 19 to 23. The film documents the inner workings of the ICC at its headquarters in The Hague and in five countries: Uganda, Democratic Republic of Congo, the Central African Republic and Colombia. ICTJ aided Skylight Pictures throughout the production of *The Reckoning*.

February 4:
Geneva Peacebuilding Platform seminar on Transitional Justice in the Americas
Geneva Centre for Security Policy
Geneva, Switzerland
For more information, contact: gpp@gcsp.ch

February 6:
Conference “The Pursuit of International Criminal Justice: The Case of Darfur”
Yale Law School, New Haven, Connecticut
For more information, contact: pascale.mathieu@yale.edu

February 7-8:
ICTJ/UMAM workshop “Lest the Past Escape Us: Archiving and Documentation”
Beirut, Lebanon
For more information, contact Monika Borgmann Slim: m.b.slim@umam-dr.org, or Lynn Maalouf: lmaalouf@ictj.org

February 9:
ICTJ/Stanford Law Essentials Course in Transitional Justice Application Deadline
Stanford Law School, Palo Alto, California
For more information, visit: http://www.ictj.org/en/workshops/courses/index.html

February 9-13:
ICTJ conference “Transition in Mexico: No truth or justice?”
Centro de Estudios Internacionales, El Colegio de México
For more information, contact Fabián Sánchez: fabito23@hotmail.com

February 12-14:
ICTJ/Advisory Council on Human Rights in Morocco Symposium on Collective Reparations
Rabat, Morocco
For more information, contact Julie Guillerot: jguillerot@ictj.org, or Zainabi Ahmed Taoufi: t.zainabi@gmail.com

February 26-27:
Conference “Memory and the Future”
New School for Social Research, New York
For more information, contact: nssrmemory@gmail.com

February 27:
ICTJ Rabat Francophone Fellowship Program Application Deadline
For more information, visit http://www.ictj.org/en/workshops/fellowships/ottawa/index.html

March 12-14:
ICTJ/Stanford Law Essentials Course in Transitional Justice
Stanford Law School, Palo Alto, California
For more information, visit: http://www.ictj.org/en/workshops/courses/index.html
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.

Three years ago ICTJ deepened its engagement with Liberia by opening an office in Monrovia. Since then, staff and consultants have held intensive meetings with members of the Truth and Reconciliation Commission, civil society and government representatives. We organize trainings and information-sharing sessions focusing on truth commissions and security sector reform.

We also keep an eye on institutional reform efforts and remain engaged in debates about the nature of potential memorialization projects, reparations plans and prosecution strategies—measures that are highly interconnected. ICTJ has worked with TRC members on interpreting the commission’s mandate, structuring and organizing the commission, and training staff in taking statements.

In January 2009, ICTJ Liberia Program Assistant Aaron Weah and Liberian civil society activist Aaron Sleh were invited to meet Liberian President Ellen Johnson Sirleaf to present her with a copy of their book Impunity Under Attack: The Evolution and Imperative of the Liberian Truth Commission. The president praised the book as a bold new step for Liberia. She asked Weah and Sleh for their thoughts on the TRC process and assured them of her commitment to seeing the commission’s work through to the end.

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/support or contact MaryClaire Brooks, Director of Individual Giving, at 917-637-3844, or mbrooks@ictj.org.