

NOVEMBER 2010

Anticipating Elections in Burma

Interview with Patrick Pierce, Head of Program, Burma

Q. On November 7, Burma will hold its first parliamentary elections since 1990. Do these elections represent a genuine transition in Burma?



A. Burma is going through a transition, but it is not yet clear what the country is transitioning to. With these elections the 2008 constitution comes into effect. There are some problematic provisions in the constitution that will restrict any ability to address human rights violations.

The constitution entrenches the leading role of the military in the political life of the country and obscures that role beneath a façade of an elected parliament.

It contains a provision that provides immunity from prosecution “for any act done in the execution of (the military personnel’s) respective duties.” Presumably, this immunity is intended to cover crimes against humanity and war crimes, counter to international legal norms.

Additionally, while the constitution includes some fundamental freedoms—freedom of assembly, speech, association—there’s an exception clause in the provision of these rights. For example, one clause states that you have the right to freedom of speech “if not contrary to the laws enacted for the union, security, prevalence of law and order, community, peace and tranquility or public order and morality.” The constitution is essentially designed to protect the military, and the military is the main perpetrator of human rights violations. So I think that the elections won’t matter that much in terms of impunity.

Q. What is the level of awareness about transitional justice mechanisms in Burma? Is current training in transitional justice methods in Burma adequate?

A. Training is very important, and at present is not adequate. Inside Burma, it is nearly impossible to talk about things like the truth, let alone issues of justice and accountability for human rights violations. For example, the UN Special Rapporteur on the situation of human rights in Burma recently issued a report, and he sent a note to the Burmese government asking for comments on the report. The government responded, “Concerning allegations of committed crimes against humanity and war crimes, there is no occurrence of such crimes in Myanmar.” If they really believe that, however, they should not be threatened by a commission of inquiry, let alone trainings on transitional justice and human rights. I would argue because they know they are implicated in these crimes, greater awareness about these issues is quite threatening.

When a government official at that level makes such a blanket denial, it cuts off all communication. It is essential that we find ways to have discussions about truth-seeking and justice-seeking measures. It is important because as I mentioned earlier, impunity is enshrined in the constitution.

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International law has shifted over the past few decades; it is no longer acceptable for amnesties to be passed for those most responsible for crimes against humanity and war crimes. This, in contrast to the government's position, speaks to the importance and need for awareness. Unfortunately in Burma, we cannot do that openly. Exile media outlets, many of whom ICTJ works with, can help facilitate awareness-raising initiatives, but more training is definitely needed.

Q. What role does ICTJ play in Burma's struggle towards justice and national political change? Any success stories from this role?

A. ICTJ has played multiple roles. Our first engagement with Burma was in 2003. At that time there seemed to be possibility for some form of change; National League for Democracy leader Aung San Suu Kyi had been released from house arrest at the time, and there appeared to be some room for dialogue. ICTJ examined various scenarios for change and began advising civil society groups on dealing with the legacy of human rights violations. ICTJ formally started a Burma program at the end of 2007, and since then our involvement has been to actively engage with civil society, primarily to provide technical assistance for groups who are collecting information about violations that are taking place.

Engagement with local human rights groups here is certainly a success story. Our main partner is the Network for Human Rights Documentation-Burma (ND-Burma), a group comprised of 13 local human rights organizations, all engaged in human rights documentation. They recognize that if they can pool their information together in a common database, the story the shared database can tell is far richer than the data a single organization can offer.

We have helped ND-Burma on questions about the methodology of data collection. We helped the network develop some very good documentation manuals, and that has led to significant improvements in their field workers' ability to collect information, analyze data, connect the analysis to the mandates of international justice mechanisms, and determine where their evidence can be used. That is definitely a success story.

Right now another important development besides the elections is the growing momentum behind a UN backed commission of inquiry into possible war crimes and crimes against humanity. ICTJ has a lot of experience on commissions of inquiry that we are able to share with local groups.

Q. Can you elaborate on the idea and support behind this commission of inquiry?

A. There are about twelve countries that support the creation of a commission of inquiry to date. The issue is being considered in a committee of the General Assembly this month. In December, the full General Assembly will vote on formal resolutions. Right now it does not look like a call for a recommendation for a commission of inquiry will be included in a resolution, but the draft is still being circulated and discussed.

There is some confusion about what the actual mandate of a commission of inquiry would be. Most are set up as 'truth-seeking measures.' The commission proposed for Burma would be intended to establish an official record of what has happened in a formal report backed by the UN, and possibly recommend other measures such as prosecutions, reparations or institutional reform based on the findings of the commission. But the commission's report itself looks to acknowledge the truth of what has happened in terms of violations of human rights.

Q. What's next? What are ICTJ's long-term plans for the Burma program, and what areas would you like to focus on moving forward?

A. ICTJ will continue to provide assistance to the local groups on the human rights documentation issue. That will become more and more important as we move closer to the possibility of having a commission of inquiry. We would also like to do more targeted exposure, either bringing groups in from other countries that have been through similar situations to visit with civil society groups here, or provide groups access to some other countries where they've dealt with similar issues—whether it is a commission of inquiry, community-based reconciliation or traditional approaches to justice. All of these things are on the agenda of our local partners.

There are some high expectations that the elections will lead to unanticipated political openings in Burma, that they introduce an element of unpredictability that can only be good for Burma. But an end to impunity for human rights violations—even a mere improvement in the human rights situation—does not automatically flow from the election. Justice in Burma is not inevitable. It depends on the hard work of the pro-democracy movement and human rights activists as well as the people inside the country and in the international community who support them.

ICTJ will continue to bring both a global perspective and an understanding of the local context to support the hard work of ending impunity in Burma. We also will continue to help communities deal with the long-term legacies of decades of human rights violations. ♦

INTERNATIONAL

October marked the 10th anniversary of UN Security Council Resolution 1325 on Women, Peace and Security, addressing the impact of armed conflict on women and calling for their inclusion in peacebuilding. On Oct. 26 the Security Council led an open debate on 1325 which resulted in a presidential statement calling for the adoption of indicators to measure implementation of the resolution by member states and the UN system. In the statement, the Security Council noted the role of transitional justice measures in fighting impunity for serious crimes against women and girls.

- “Security Council debate on 1325,” *UN Dispatch* (<http://www.undispatch.com/secretary-clinton-announces-u-s-commitments-on-1325-valerie-amos-gives-updates-on-niger-pakistan-and-haiti-and-more-from-un-direct>)

AFRICA

CAR/DRC

The trial of Thomas Lubanga, charged by the International Criminal Court (ICC) with war crimes including the recruitment of child soldiers in the DRC, resumed Oct. 25 after a three month suspension. On Oct. 8 the ICC Appeals Chamber reversed a Jul. 8 decision to stay the proceedings against Lubanga on grounds that the prosecutor did not obey court orders to disclose certain information to the defense.

French authorities arrested Hutu rebel leader Callixte Mbarushimana Oct. 11 on an outstanding ICC warrant for war crimes committed in the DRC. Mbarushimana, a senior rebel leader of the Democratic Forces for the Liberation of Rwanda (FDLR), faces five counts of crimes against humanity and six counts of war crimes including murder, rape and torture committed in the DRC in 2009.

The trial against Jean-Pierre Bemba, former vice-president of the DRC, will begin Nov. 22 after two prior delays, the ICC ruled Oct. 19. This follows a decision by the ICC Appeals Chamber to dismiss an admissibility challenge to the case filed by Bemba, who is charged with two counts of crimes against humanity and three counts of war crimes committed in the Central African Republic.

- “Thomas Lubanga: ICC trial of DR Congo warlord to resume,” *BBC News* (<http://www.bbc.co.uk/news/world-africa-11503799>)

- “Rwanda: Mbarushimana Arrest Major Blow to FDLR - CPR,” *allAfrica* (<http://allafrica.com/stories/201010130526.html>)
- “ICC to proceed with Bemba war crimes trial,” *BBC News* (<http://www.bbc.co.uk/news/world-africa-11573604>)

Kenya

A prominent Kenyan official has written to the ICC indicating he will surrender to the court if cited as a suspect in the inquiry into the post-election violence in 2007, ICC prosecutor Luis Moreno-Ocampo told journalists during a press conference Oct. 19. Approximately 1,300 people were killed and 500,000 displaced in the violence following Kenya's disputed 2007 presidential elections. On May 21, 2010, the ICC Pre-Trial Chamber authorized the prosecutor of the court to open investigations into crimes against humanity committed during the post-election violence.

Prior to the relocation of a regional government meeting from Nairobi to Addis Ababa, ICTJ and other organizations urged Kenya to arrest Sudanese President Omar al-Bashir if he chose to attend. On Oct. 26, the Appeals Chamber of the ICC requested the Kenyan government to inform the court “about any problem which would impede or prevent the arrest and surrender of Omar Al Bashir.” Kenya is a State Party to the Rome Statute.

- “Top Kenyan is ready to surrender at The Hague,” *Daily Nation* (<http://www.nation.co.ke/News/-/1056/1032626/-/11j525jz/-/1>)
- “Kenya: Do Not Welcome Bashir Back,” ICTJ (<http://www.ictj.org/en/news/press/release/4206.html>)
- “ICC calls for Kenya to act on Al Bashir's arrest warrant,” *Radio Netherlands* (<http://www.rnw.nl/international-justice/article/icc-calls-kenya-act-al-bashir-s-arrest-warrant>)

Liberia

The Liberian Senate confirmed seven candidates nominated by President Ellen Johnson Sirleaf to Liberia's Independent National Commission on Human Rights (INCHR). The Senate rejected six of seven candidates nominated in February without public explanation for the rejections. Sirleaf met with the new commissioners Oct. 19 to officially inaugurate the operations of the INCHR.

- “Liberia: President Sirleaf Meets Commissioners of Independent National Human Rights Commission,” *allAfrica* (<http://allafrica.com/stories/201010200826.html>)

- “Liberia: Senate Should Act on New Human Rights Commissioners,” ICTJ (<http://ictj.org/en/news/press/release/3982.html>)

Sudan

Two Sudanese rebel leaders, accused of leading an attack which intentionally killed 12 African Union (AU) peacekeepers in 2007, will not contest the ICC charges against them according to a joint motion filed by the ICC prosecutor and the defense Oct. 20. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, indicted last year for three war crimes charges including intentionally attacking peacekeepers, voluntarily surrendered themselves to the ICC Jun. 16. The ICC confirmation hearing is scheduled to begin Dec. 8.

The Ethiopian government announced Oct. 27 that a regional development meeting to discuss the referendum on Southern Sudan secession, scheduled to take place in Nairobi Oct. 30, was relocated to Addis Ababa. The potential that Sudanese President Omar al-Bashir, subject to two arrest warrants, would attend the meeting in Kenya, a State Party to the Rome Statute, elicited calls from the international community for his arrest. Refer to the entry on Kenya, page 3, for more information.

On Oct. 17 justice minister Mohamed Bushara Dousa dismissed Nimr Ibrahim Mohamed, special prosecutor for crimes committed in the Darfur region since 2003, and instated his undersecretary, Abdel-Dayem Zumrawi to the position. Dousa said the change was to promote justice efforts in Darfur, and that the responsibility for prosecutions remained with the Sudanese government, not with an external party such as the ICC. An African Union report released last year suggested that the Sudanese judicial system is incapable of executing credible prosecutions, and recommended the establishment of a hybrid court.

- “ICC confirmation hearing for Darfur rebels postponed till next month,” *Sudan Tribune* (<http://www.sudantribune.com/spip.php?article36708>)
- “Sudan talks move to Addis Ababa,” *IOL News* (<http://www.iol.co.za/news/africa/sudan-talks-moves-to-addis-ababa-1.689266>)
- “Sudan fires Darfur war crimes prosecutor amid talk of ‘transitional justice,’” *Sudan Tribune* (<http://www.sudantribune.com/spip.php?article36630>)

Uganda

The Northern Uganda Transition Initiative and the Refugee Law Project of Makerere University began constructing a war memorial museum in the northern Kitgum district of Uganda in early October. The museum will be responsible for collecting and preserving images and documentation of the conflict in northern Uganda, in an effort to promote access to information and accountability for rights violations. The center is scheduled to open in February 2011.

- “Northern war museum planned,” *The New Vision* (<http://www.newvision.co.ug/D/8/16/734862>)

South Africa

On Oct. 18 the South African Department of Justice published the names of 149 persons recommended for presidential pardon of convictions for politically motivated crimes committed during the apartheid era, and invited victims to weigh in on whether or not the pardon should be granted. The invitation followed a February Constitutional Court ruling that the president must allow victims to participate in the pardons process. The pardons process was established in 2007 by former President Thabo Mbeki to consider cases of alleged politically motivated crimes committed by individuals who did not participate in the South Africa TRC.

- “South Africa: Victory in Pardons Process, Serious Follow Up Needed,” ICTJ (<http://www.ictj.org/en/news/press/release/4178.html>)

AMERICAS

Argentina

On Oct. 13 former prison chief Abel Dupuy was sentenced to life imprisonment for crimes including torture and killings committed during the 1976–1983 military dictatorship. Dupuy, head of the Penitentiary Unit 9 detention center at La Plata, stood trial with ten other former officers who received sentences ranging from 10 years to life imprisonment for the torture and ill-treatment of political prisoners detained at the center.

- “Ex jefe penitenciario de Argentina condenado por crímenes en dictadura,” *Agencia EFE* (<http://www.abc.es/agencias/noticia.asp?noticia=551714>)

Brazil

At a public lecture held Oct. 13, Human Rights Minister Paulo Vannuchi and former Justice Minister Tarso Genro stated they advocate revisions to the interpretation of the 1979 Amnesty Law, arguing that amnesty should not be extended to state officials accused of human rights crimes such as torture and enforced disappearance. The Supreme Court rejected a motion Apr. 29 proposed by the Brazilian Bar Association to modify the amnesty law to exclude such crimes.

Also speaking at the lecture, Spanish judge Baltasar Garzón stated that crimes such as enforced disappearances and torture should be treated as human rights violations rather than political crimes and called for the opening of military archives from the 1964–1985 dictatorship. Relatives of victims of the dictatorship have also called upon the new Brazilian government, elected this month, to open the military files allegedly revealing the locations of the remains of disappeared persons. The military, however, has claimed these files were destroyed.

- “Tarso e Vannuchi vão insistir em nova interpretação da Lei da Anistia,” *DefesaNet* (http://www.defesanet.com.br/br/2010_44.htm)
- “Garzón defende abertura de arquivos da ditadura,” *DefesaNet* (http://www.defesanet.com.br/br/2010_43.htm)
- “Perseguidos e parentes de vítimas querem que novo presidente abra arquivos,” *Correio do Estado* (http://www.correiodoestado.com.br/noticias/perseguidos-e-parentes-de-vitimas-querem-que-novo-presidente_79100/)

Colombia

On Oct. 21 the government began implementing an emergency land restitution plan, designed to remedy those dispossessed of their lands by the ongoing conflict. President Juan Manuel Santos presented the first three land titles to families in the northern village of Macayepo. The government plans to restore around two million hectares (approximately 4.9 million acres) of land over the course of the next eight years.

The House of Representatives passed the International Convention for the Protection of All Persons from Enforced Disappearance Oct. 19, in a unanimous vote. The convention will now be presented to the Constitutional Court for review, followed by the option of ratification by the president.

On Oct. 11 a Bogota judge issued the first conviction for the Massacre of Trujillo, where over the course of 1990–1992 more than 200 people were killed or disappeared by government forces for alleged ties to guerrilla groups. The court sentenced former commander Alirio Antonio Urueña Jaramillo to 44 years imprisonment for extrajudicial executions and acquitted two other former police and military officials.

- “Gobierno entrega títulos de propiedad a víctimas del conflicto,” *El Espectador* (<http://www.elespectador.com/articulo-230836-gobierno-entrega-titulos-de-propiedad-victimas-del-conflicto>)
- “Restitución de tierras será retroactiva a 15 años,” *El Tiempo* (http://www.eltiempo.com/justicia/restitucion-de-tierras-a-victimas-de-la-violencia_8127782-4)
- “Aprueban adhesión de Colombia a Convención contra desaparición forzada,” *El Tiempo* (http://www.eltiempo.com/politica/aprueban-adhesion-de-colombia-a-convencion-contra-desaparicion-forzada_8152280-4)
- “Histórica condena contra ex comandante operativo del Batallón Palacé por Masacre de Trujillo,” *Caracol Radio* (<http://www.caracol.com.co/nota.aspx?id=1369776>)

Honduras

On Oct. 22 Secretary of Defense Marlon Pascua and Armed Forces Joint Chief of Staff Major General Carlos Cuéllar formally presented reports to the Truth and Reconciliation Commission detailing the events surrounding the military coup on June 28, 2009. The TRC, established May 4, also heard testimonies from mayors and local governance officials Oct. 14 and has requested interviews with former presidents Manuel Zelaya, ousted by the 2009 coup, and Roberto Micheletti.

- “Defensa y FFAA. entregan sus informes a Comisión de la Verdad,” *La Tribuna* (<http://www.latribuna.hn/web2.0/?p=197175>)
- “Comisión de la Verdad escucha a alcaldes,” *La Tribuna* (<http://www.latribuna.hn/web2.0/?p=194935>)

Peru

Construction of the Place of Memory, designed to establish the truth and commemorate victims of the political violence in the 1980s and 1990s, will begin Nov. 4 according to Fernando de Szyszlo, president of the commission responsible for the memorialization project. Szyszlo was named president of the commission after writer and Nobel Prize laureate Mario Vargas Llosa resigned in protest of the controversial

Decree 1097, denounced as providing amnesty for those accused of atrocities during the 1980–2000 civil war. The decree, repealed Sep. 16, ruled that prosecutions for human rights abuses must be halted if they don't lead to a court verdict within 16 months of opening.

On Oct. 15 women from the province of Anta who were subject to a sterilization program implemented under the Fujimori regime filed a second lawsuit seeking reparation from those responsible for the family planning policies in 1996–2000. The previous lawsuit was suspended in May 2009 on the grounds that the statute of limitations on crimes committed during that time period had expired.

The Peruvian government has acknowledged that approximately 300,000 sterilizations were performed under an alleged voluntary program. However, a study conducted by the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) collected testimonies from over 2,000 women who claim to have been subjected to the program without their consent, and concluded that the program systematically targeted poor, indigenous women.

- “El 4 de noviembre se iniciará construcción del Lugar de la Memoria,” *RPP* (http://www.rpp.com.pe/2010-10-17-el-4-de-noviembre-se-iniciara-construccion-del-lugar-de-la-memoria-noticia_303445.html)
- “Women Sterilised Against Their Will Seek Justice, Again,” *IPS* (<http://www.ipsnews.net/news.asp?idnews=53177>)

Uruguay

On Oct. 20 the Uruguayan House of Representatives voted to nullify an amnesty law that allowed crimes committed during the 1973–1985 dictatorship to go unpunished. The Expiry Law, also popularly known as the Law of Impunity, in effect prevented the prosecution and conviction of security personnel who committed crimes such as kidnapping, torture, rape of detainees, murder and disappearances between 1973 and 1985. The nullification proposal will now be presented to the Senate for a final vote.

- “Los diputados uruguayos invalidan una ley que amparó a los represores de la dictadura”, *EFE* (http://www.google.com/hostednews/epa/article/ALeqM5h0x7L4_0polyQfGoUWpsTgYlrZdw?docId=1389004)

ASIA

Bangladesh

Five Jamaat-e-Islami leaders detained by the International Crimes Tribunal filed separate petitions Sep. 29 challenging the validity of the tribunal in the High Court. The detainees are accused of war crimes committed during the 1971 Bangladesh independence conflict. The petitions claim that the tribunal issued arrest warrants without framing formal charges.

- “5 Jamaat leaders plea for quashing crimes tribunal,” *Daily Star* (http://www.thedailystar.net/newDesign/latest_news.php?nid=26124)

Burma

International support for the creation of a UN-backed commission of inquiry into war crimes and crimes against humanity in Burma increased in September and October. As of Oct. 26, the list of countries supporting the call for a commission included the United States, the United Kingdom, Hungary, Slovakia, the Czech Republic, Australia, France, Canada, the Netherlands, New Zealand, Ireland and Lithuania. China, on the other hand, has begun an active campaign against the proposal for an international inquiry, targeting high-level UN officials and European and Asian governments.

- “Lithuania joins chorus seeking UN inquiry on Burma abuses,” *Mizzima* (<http://www.mizzima.com/news/world/4412>)
- “China campaigns against Burma war crimes inquiry,” *Washington Post* (<http://www.washingtonpost.com/wp-dyn/content/article/2010/10/25/AR2010102505462.html>)

Cambodia

On Oct. 19 prosecutors submitted an appeal the Extraordinary Chambers in the Courts of Cambodia (ECCC) requesting that the sentence for former Khmer Rouge official Kaing Guek Eav, alias Duch, be increased from 35 years to life imprisonment. The request reflected doubts that the remorse Duch expressed during his trial was genuine, as well as the sentiment that the magnitude of the crimes required a longer sentence, prosecutors said. The appeal also sought additional convictions for crimes against humanity, including extermination, enslavement, torture, political persecution and other inhumane acts.

- “ECCC prosecutors seek life term for Duch,” *Radio Netherlands* (<http://www.rnw.nl/international-justice/article/eccc-prosecutors-seek-life-term-duch>)

Indonesia

The Indonesian government signed the International Convention for the Protection of All Persons from Enforced Disappearance Sep. 28, and presented it to the House of Representatives for ratification. The signing took place one year after the House special committee on missing persons recommended the establishment of an ad-hoc court, mandated to investigate cases of persons disappeared under the Soeharto regime, provide reparations to family members and ratify the convention.

Indonesian president Susilo Bambang Yudhoyono swore in Gen. Timur Pradopo as new National Police Chief Oct. 22. The National Commission for Human Rights and other human rights organizations questioned the selection of Timur as the sole nominee to the post, pointing to his role as a senior chief of security in 1998 when soldiers and police officers allegedly opened fire on student protesters, killing four and wounding hundreds. Timur refused to testify on the allegations and the House of Representatives declined to include questions about the 1998 incident in their approval of the candidate to the position.

- “Indonesia signs UN convention on enforced disappearance,” *Antara News* (<http://www.antaraneews.com/en/news/1285670427/>)
- “Hanura won’t quiz Timur on human rights abuse allegations,” *Jakarta Post* (<http://www.thejakartapost.com/news/2010/10/13/hanura-won-t-quiz-timur-human-rights-abuse-allegations.html>)

Solomon Islands

To restore public confidence in the police force, the Royal Solomon Islands Police Force in September created a voluntary early retirement scheme for officers who may have been involved in the 1998–2003 ethnic tensions in Guadalcanal. Officers who chose to retire under the scheme were required to attend closed hearings conducted by the TRC in October as part of a healing and reconciliation process.

- “TRC conducts healing process for Police Officers,” *Island Sun* (<http://www.islandsun.com.sb/index.php/latest-news/latest-news/1534-trc-conducts-healing-process-for-police-officers>)

Sri Lanka

On Oct. 14, Human Rights Watch, Amnesty International and International Crisis Group publically declined an invitation by Sri Lanka’s Lessons Learnt and Reconciliation Commission to testify in ongoing hearings on the 1983–2009 civil war. The reason given by the international organizations was the commission’s failure “to meet basic international standards for independent and impartial inquiries” as well as ongoing “failure to address impunity and continuing human rights abuses.”

- “Sri Lanka: Government defends reconciliation commission,” IRIN (<http://www.irinnews.org/Report.aspx?ReportID=90844>)

Timor-Leste

On Sep. 29, Parliament delayed until February the debate on two draft laws implementing key recommendations made by Timor-Leste’s two truth commissions: The Commission for Reception, Truth and Reconciliation (CAVR) and the Commission for Truth and Friendship (CTF). The draft laws propose the creation of a national reparations program and the establishment of an “Institute for Memory,” as well as promote the search for persons missing as a result of conflict, human rights documentation and education. Postponing the debate ignores the needs and rights of victims and delays justice, ICTJ said.

- “Timor-Leste: Parliament’s Delay on Draft Laws Denies Justice,” ICTJ (<http://ictj.org/en/news/press/release/4138.html>)

EUROPE

The Former Yugoslavia

A search of Lake Perucac for the remains of individuals missing since the 1992–1995 war in Bosnia and Herzegovina (BiH) concluded Oct. 4. The lake, situated on the border between BiH and Serbia, is thought to be the largest mass grave in Europe. Conducted by both Bosnian and Serbian officials and forensic experts since Jul. 26, the search unearthed the remains of around 100 people believed to be some of the 1,000 Bosnian Muslims who disappeared from the surrounding region in 1992. Approximately 14,000 people are still missing from the wars in the Balkans during the 1990s.

- “Some 100 victims’ remains found in Bosnia-Serbia,” *Reuters* (<http://ca.reuters.com/article/topNews/idCATRE69P2TH20101026>)

MENA

Israel/Occupied Palestinian Territory

Israeli military police have opened an investigation into senior Israeli military officials for having authorized the January 2009 airstrike which resulted in the deaths of 21 civilians, all part of the same family. Soldiers who were on site during the attack indicated that the commanders may have been aware of civilian presence in the area when they ordered the strike. The incident was investigated several times through official inquiries and was included as a case in the report of the UN Fact-Finding Mission on the Gaza Conflict.

On Sep. 29 the UN Human Rights Council adopted follow-up resolutions to the report of the UN Committee of Experts into serious violations of international law during the 2008–2009 Gaza conflict. The resolutions called on the Palestinian Independent Commission and Israel to complete investigations, condemned Israel's non-cooperation and renewed the Committee's mandate, requesting it to present an updated report to the Council in March 2011. Local human rights organizations protested the renewal of the body's mandate, calling on the matter to be moved to the UN General Assembly.

- “It was the Gaza assault's worst atrocity. Now the truth may finally be told,” *The Independent* (<http://www.independent.co.uk/news/world/middle-east/2114250.html>)
- “Council Adopts Texts on Follow-up on Report of Fact-Finding Mission on Flotilla Attack and on Committee of Independent Experts on Gaza Conflict,” *Office of the UN High Commissioner for Human Rights* (<http://unispal.un.org/UNISPAL.NSF/0/523EF152037C0416852577AD006744FC>)

Morocco

The “Archive, History and Memory Program” program was officially launched Oct. 5, to be implemented by Morocco's Advisory Council on Human Rights (CCDH) with funding from the European Union. With a budget of 8 million euro, the program includes several components including the organization of the archives of the Equity and Reconciliation Commission and CCDH, the creation of a national institution for the archives in Morocco, the teaching of contemporary history in the official curriculum, activities to honor the victims of the Years of Lead and the creation of a national museum of contemporary history.

- “Official Launch of the Program of Archives, History and Memory,” *CCDH* (<http://www.ccdh.org.ma/spip.php?article3642>)

PUBLICATIONS

Institutional Reform in the New Kenya Constitution

On August 4, 2010, Kenyans voted in a referendum to adopt a new Constitution, replacing the previous one that had been negotiated at independence from British rule in 1963. This ICTJ report, written by Dr. Migai Akech, finds that the new Constitution establishes the framework for the restoration of constitutional democracy in Kenya. It strengthens the likelihood of accountability for past abuses, of guarantees that they will not reoccur and of reparations for victims. However, although the adoption of the new Constitution is an important milestone, it is just a starting point in the long road to addressing the root causes of conflict in Kenya.

- “Institutional Reform in the New Constitution of Kenya,” ICTJ (http://www.ictj.org/static/Publications/ICTJ_KE_Institutional_Reform_pb2010.pdf)

After Torture: U.S. Accountability and the Right to Redress

ICTJ has released the third in a series of detailed policy briefs on options for addressing serious and systematic violations of human rights committed in U.S. counter-terrorism operations. *After Torture* addresses the question of the U.S. legal obligation to provide redress after torture and other serious human rights abuses of detainees. The report recommends that multiple elements of redress be considered, such as rehabilitation needs and recognition of wrongdoing on the part of the United States. Redress is a right under international and U.S. law that ultimately cannot be ignored if the U.S. is to come to terms with past abuses and live up to accountability standards it has supported around the world.

- “After Torture: U.S. Accountability and the Right to Redress,” ICTJ (http://www.ictj.org/static/Publications/ICTJ_USA_RightToRedress_pb2010.pdf)

A propósito del proyecto de ley de víctimas

A bill recently presented by the Colombian government is one of many measures the government has begun to take to assist and compensate victims of the ongoing conflict. ICTJ has prepared a briefing paper analyzing this Victims Bill, emphasizing the need for the bill to reflect the responsibility of the state to provide humanitarian assistance to victims of human rights abuses and violations of humanitarian law under international legal obligations.

- “A propósito del proyecto de ley de víctimas,” ICTJ (<http://www.ictj.org/images/content/2/2/2222.pdf>)

Unfulfilled Expectations: Victims’ perceptions of justice and reparations in Timor-Leste

Timor-Leste has experimented with a number of transitional justice mechanisms to address a legacy of human rights violations, but has thus far failed to provide victims with meaningful reparations for the harms they suffered. This report, based on a consultation with victims of human rights violations throughout Timor-Leste, documents victims’ demands for recognition, material reparation and for the perpetrators of human rights violations to be brought to justice. *Unfulfilled Expectations* is designed to inform policy makers’ decisions on the structure of mechanisms addressing victim needs, demonstrate that justice for past crimes remains an important issue for many and assist victims’ groups and NGOs to lobby for change.

- “Unfulfilled Expectations: Victims’ perceptions of justice and reparations in Timor-Leste,” ICTJ (http://www.ictj.org/static/Publications/ICTJ_TL_UnfulfilledExpectations_pb2010_Eng.pdf)

Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference?

Lack of sustained political will is the main obstacle to justice and accountability for gross human rights violations committed in East Timor in 1975–1999, according to a new report by ICTJ and the Judicial System Monitoring Programme (JSMP). This report looks in detail at the work of the United Nations Serious Crimes Investigation Team (SCIT) and reveals the difficulty in prosecuting those most responsible for atrocities committed in East Timor in 1999. In order for the investigations conducted by SCIT to lead to credible prosecutions, the political leaders in both Timor-Leste and Indonesia must support the initiative.

- “Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference?” ICTJ (http://www.ictj.org/static/Publications/ICTJ-JSMP_TL_SCIT_pb2010_Eng.pdf)
- Also available in Portuguese (http://www.ictj.org/static/Publications/ICTJ-JSMP_TL_SCIT_pb2010_Por.pdf) and Tetum (http://www.ictj.org/static/Publications/ICTJ-JSMP_TL_SCIT_pb2010_Tetum.pdf)

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November 3

Negociación con las guerrillas: Entre la paz y la justicia

Bogotá, Colombia

For more information, visit

<http://www.ictj.org/en/news/event/4193.html>

November 4–5

Good Governance and Security: The Role of Parliament

Rabat, Morocco

For more information, contact Julie Guillerot at

jguillerot@ictj.org

November 5

Assessing a Transitional Justice Approach for Kyrgyzstan

New York, NY

For more information, visit

<http://www.ictj.org/en/news/event/4209.html>

November 10

The Fifth Annual Emilio Mignone Lecture on Transitional Justice: The Dilemmas of Human Rights Fact Finding

New York, NY

For more information, contact Kelly Ryan at

ryank@exchange.law.nyu.edu

November 10–11

Workshop: Role of the Solomon Islands Christian Association in the TRC

Honiara, Solomon Islands

For more information, contact Daniela

Gavshon at dgavshon@ictj.org

November 15–16

The Challenges of Relief and Reparations Policy

Kathmandu, Nepal

For more information, contact Clare Garvie at

cgarvie@ictj.org

November 17

Regional Forum on Collective Reparations

Medellín, Colombia

For more information, contact Estefanie

Robertson at erobertson@ictj.org

November 23

National Hearing: Women's Transitional Justice Manifesto

Kathmandu, Nepal

For more information, contact Clare Garvie at

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November 30

National Forum: Victim Participation in Transitional Justice Processes

Bogotá, Colombia

For more information, contact Estefanie

Robertson at erobertson@ictj.org

December 8

High Level Conference on Transitional Justice

Kathmandu, Nepal

For more information, contact Clare Garvie at

cgarvie@ictj.org

December 9–10

Liberian Victims and Reparations: Finding a Way Forward

Monrovia, Liberia

For more information, contact Ruben Carranza

at rcarranza@ictj.org

December 15–16

Seminar: Morocco's Transitional Justice Experience in the Educational Curriculum

Rabat, Morocco

For more information, contact Julie Guillerot at

jguillerot@ictj.org

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Making a Difference

“As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success.”

– Luis Moreno-Ocampo at the Ceremony for the Solemn Undertaking of the Chief Prosecutor of the International Criminal Court, June 16, 2003

ICTJ convened a high-level meeting on “Complementarity After Kampala: The Way Forward” on October 28–29 at the Greentree Estate in Long Island, New York. The meeting built on the work of the Rome Statute Review Conference, held in Kampala, Uganda June 2010 to evaluate the progress of the International Criminal Court (ICC) and the challenges that it faces.

ICTJ brought together the court’s leadership and over 60 high level officials from states parties of the ICC, key UN departments and agencies tasked with addressing rule of law issues, NGOs that provide rule of law assistance or work on ICC issues and development agencies. Central to the discussion was the question of how to take practical steps to support national responsibility for domestic prosecutions of international crimes.

The principle of complementarity refers to the fact that the ICC will investigate and prosecute crimes only when a country “is unwilling or unable genuinely” to do so. Thus, the Court’s role while important is limited. The impunity gap created by mass atrocity or crimes against humanity, as well as the needs of victims of these violations, must be addressed primarily by states. It is crucial, therefore, that national justice systems be strengthened to be able to carry out investigations and prosecutions of these crimes.

ICTJ is involved with strengthening the capacity of national judicial systems to address serious crimes in a number of countries. In Colombia, for example, ICTJ provides expert advice based on international and comparative experiences to a number of judicial mechanisms, including the Supreme Court of Justice, the special Justice and Peace proceedings and the Office of Public Defenders. In October 2010, ICTJ organized a training in The Hague for judges and the Registrar of the War Crimes Division (WCD) of the High Court of Uganda, to contribute to the quality and efficiency of proceedings



ICTJ President David Tolbert meets with participants at Complementarity After Kampala, convened by ICTJ October 28–29.

and reinforce skills and procedures to ensure the norms of fair and diligent trials. On Sudan, ICTJ staff has also testified before the African Union Panel on Darfur and contributed to a joint statement on the importance of a comprehensive approach to justice and a need to respect the Rome Statute.

The recent complementarity meeting built on this work at an international policy level, facilitating dynamic discussion between development partners, national authorities and the ICC. Discussions led to clear calls for follow-up steps, including facilitating further partnership with development agencies and garnering attention to the issue of complementarity at the forthcoming Assembly of States Parties meeting in December.

The initiative was hailed by participants as a critical step towards making the complementarity principle work on the ground.

“To fight impunity, the world has to strengthen national justice systems,” ICTJ President David Tolbert said. “That’s a long term task, and the only way it can happen is if development and rule of law actors begin to work together to do so. This meeting opened the conversation; it will be critically important for these actors to begin to work together in concrete ways.”

About ICTJ

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

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