

APRIL 2010

## Kenya's Struggle toward Accountability and Justice

Interview with Njonjo Mue, head of ICTJ's Nairobi office, and Comfort Ero, deputy director of ICTJ's Africa Program

**Q. The Kenyan government has taken two steps forward and two steps back in pursuing accountability for the post-election violence of early 2008. Is this a sign that transitional justice efforts are at their end or only their beginning?**

**Njonjo Mue:** We're dealing with a very dynamic situation, where transitional justice measures have not yet been fully deployed. Kenya is in a sense a post-conflict society, since the violence that killed more than 1,300 people in 2008 is no longer present. Yet there hasn't been much of a transition. The same political elite holds positions of power, some of the suspected perpetrators of post-election violence hold senior positions in government, and other suspected perpetrators are prominent business people.



*Moreno-Ocampo and Kibaki at a press conference in Nairobi, Nov. 5, 2009.  
TONY KARUMBA/AFP/Getty Images*

At the same time, we're in the middle of a constitutional reform process, in which the public is to vote in June on a new constitution. Some people have wondered if it wouldn't be better for accountability efforts to wait until we have a new constitution in place, but there are opportunities for accountability and they should not wait.

**Comfort Ero:** Kenya missed an opportunity to put in place a proper transitional process in early 2003, at the end of the presidency of Daniel arap Moi, who had been in office 24 years and whose KANU party had been the only one in power since independence since 1963. That was the chance to make a serious attempt to address the past. The fact that it didn't happen caused people to begin to doubt the willingness of Kenya's political elite to address political accountability.

**Mue:** Looking back with 20/20 vision, it's not a surprise that President Mwai Kibaki, who succeeded Moi, decided in 2003 not to set up the truth commission that had been envisioned at that time. He had been in the government from independence until 1992 and was Moi's vice-president for 10 years. So some of the things a truth commission would have investigated would have involved his own tenure. It's not surprising he developed cold feet.

**Ero:** What we can hope for is that every attempt to put in place a transitional justice mechanism pushes the door for accountability open a little bit further. There have been major turning points. The establishment of the Waki Commission to investigate the post-election violence in 2008 and the commission's decision to prepare a list of the people suspected of being responsible for the violence were major turning points. That list was given to Kofi Annan, the chief mediator in the national dialogue and reconciliation process, in a sealed envelope with a request to hand it over to the prosecutor of the International Criminal Court (ICC) if the government failed to establish a special tribunal to bring to trial people suspected of leading roles in the post-election violence. Annan did eventually hand over the envelope, as

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recommended by Justice Philip Waki, the commission's chairman. The decision by the ICC's Pre-Trial Chamber on 31 March to allow the prosecutor to open an investigation in Kenya has raised the bar further again.

All of these things mean there's now a spotlight on a number of political leaders at the center of many of the accountability and corruption scandals. It's important that Kenyan civil society keep pushing this door and strengthening the various accountability mechanisms before the next presidential election, scheduled for 2012.

**Q. You portray the country as a place where justice mechanisms are very much in flux. Can accountability measures succeed in these conditions?**

**Mue:** Kenya is special in that, unlike South Africa, and unlike Sierra Leone and Liberia, no one has drawn a line in the sand and said, "We are turning over a new leaf as of this day forward." Kenya had violence, but it was not civil war. The conflict was relatively short and confined and was an ethnic conflict, and it was quickly contained with help from the international community. The institutions of state continued to function. The various groups that were contesting power quickly came together and put together a coalition government. But it's civil society that has been pushing for accountability. The government itself is not very committed. It's being pulled kicking and screaming toward accountability. And because the 2012 elections are approaching, the window is fast closing.

**Ero:** There's almost never a perfect transitional moment. Most of the time, you negotiate processes for accountability with some of the perpetrators. It's always messy. In Kenya, there are negotiations with people who many Kenyans perceive to be perpetrators of crimes that transpired during the last several decades. I'm hoping we can put some transitional justice measures firmly in place, so that the process doesn't shut down. The most important things are that civil society remains vigilant and that it keeps pushing on the accountability door.

**Q. What is ICTJ's role?**

**Mue:** We bring the benefit of global comparative experience as we engage with the process, as imperfect as the process may be. We want to build the capacity of civil society and strengthen the transitional justice mechanisms that have been agreed upon and also aid institutional reform. There is space for contributing to the debate.

**Ero:** Our goal is to bring our comparative expertise to help support a vibrant civil society. The difference between Kenya and many other places is that in Kenya there was a clear sense of the need for accountability measures. We know that if this is to be done properly, the process has to be driven locally, it has to be driven from inside. Civil society has a clear idea about what needs to be addressed and what mechanisms need to be put in place, but it lacks a conducive environment.



*Post-election riots in Kibera, Kenya, 2007. Photo by Tom Maruko / CC BY-NC-SA 2.0*

**Q. There are polls showing strong public support for intervention by the ICC, but should public opinion be a significant matter in deciding on accountability measures?**

**Mue:** When it comes to criminal accountability, the ICC prosecutor says he will act on the basis of evidence. The ICC is not a political court. It may track public opinion, but it's not acting on the basis of public opinion. Having said that, I should add that the strong public support for ICC intervention is an important counterpoint to those who argue that such intervention is contrary to Kenya's sovereignty. The reason public opinion is strong for the ICC is that the national judiciary isn't trusted. We've gotten to this point because people believe the judiciary has failed. They believe that the ICC, being an outside mechanism, promises to deliver justice without the risk of political interference. Now it's clear an investigation will be launched, we will need to see how the court lives up to these beliefs.

**Ero:** Public opinion can't be the driving force, but it can counter the argument by perpetrators that the ICC is an unwelcomed outsider, and

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the force of public opinion can contribute to Kenya's efforts to secure accountability.

We should note that there was a process put in place through the Waki Commission to set up a special tribunal. But many agree that the attempt to establish the tribunal was undermined at every stage by the same people who are now likely to criticize the ICC as external justice that is not locally owned. Many Kenyans will argue that the ICC is a preventive tool to investigate key political figures who caused the problems at the heart of the last election and who may continue to perpetrate violence, which is why we have seen positive news coming out of Kenya about the role of the ICC.

**Q. Will the election cycle complicate accountability efforts?**

**Mue:** Obviously the democratic cycle must continue—we must have elections. Our argument is that if the perpetrators of the violence after the last elections are not held to account, then we will in all likelihood have a repeat of what happened in 2008, if not worse.

So the two are intertwined. If we have accountability for at least the top level perpetrators, then we are less likely to have violence in 2012 and more likely to have a normal election that helps people regain faith in the democratic process. But if nothing is done, then the democratic process risks collapsing. In 2008, people were killed because they voted a certain way, and because they came from a certain ethnic group. If we don't attempt to bring justice, then the message we are sending is that the people who were victimized were not full citizens of their country and are not entitled to exercise their rights without risking repercussions. We send the message that our democracy is tainted by tribal demagoguery and mass killings.

**Ero:** It's for that reason we also have to engage with the constitutional reform process, so that what we do has relevance to the wider reform within Kenya. Otherwise our work risks having little effect. We need to be engaged in the political dynamics, and the place of transitional justice is at the center of other institutional and governance reform debates, including security sector reform.

Reforming the security sector is extremely important. The Waki Commission spotlighted the role of police during the 2008 violence, and the commission came up with recommendations for change. Vetting is at the heart of those recommendations.

**Q. Given the controversies about its chairman, can the Truth, Justice and Reconciliation Commission (TJRC) perform its work?**

**Mue:** It's not looking very positive. The chairman of the TJRC served in the Moi administration and has been named in a couple of reports, one about allegedly illegal land acquisitions and another about the murder of a popular politician. Civil society says he cannot serve as a fair arbiter, since he was in positions of authority during much of the period that is being investigated and since these reports about allegedly illegal acts would be part of the TJRC's agenda. In Kenya, however, public officials have rarely resigned in the public interest. He has said he will not go. So we have a stalemate between him and civil society. All we can say is that the TJRC is looking precarious. It's difficult to see how it's going to deliver on its mandate.

The mandate itself, which covers economic crimes and gross human rights abuses that occurred during a 44-year period, is certainly a potential hindrance. Some of the politicians who were negotiating the peace in early 2008 looked at the TJRC as sort of a dust bin for everything they couldn't negotiate. People have also suggested this was deliberate, to overload the TJRC and set it up for collapse. The mandate is clearly very unwieldy.

**Ero:** This also is where we have to be careful that we don't allow ourselves to be misused by those who want to undermine the TJRC. We have to be careful that we don't fall into the trap set by politicians whose interest it would be to see the TJRC collapse and who would say it collapsed because of civil society. The goal of local and international NGOs is to ensure the viability and credibility of the TJRC, but we also do not want to see a whitewash. The goal is to secure accountability. We need to keep our eye on that goal.

**Note:** On Mar. 31, the ICC authorized Chief Prosecutor Luis Moreno-Ocampo to investigate the violence that followed Kenya's 2007 presidential elections in which over 1,000 people were killed and tens of thousands displaced. Ocampo requested ICC involvement in November 2009 and on Mar. 3 gave court judges a list of 20 senior politicians and businessmen suspected of organizing or financing the violence. This is the first time the ICC chief prosecutor has requested to open an investigation on his own motion; prior investigations were triggered either by referral from governments or the UN Security Council.

## AFRICA

### DRC/CAR

The ICC postponed the commencement date of the trial of former DRC vice president Jean-Pierre Bemba from Apr. 27 to Jul. 5. The court will hold a status hearing Apr. 27 to consider a motion filed in February by the defense on the admissibility of the case. Bemba is charged with alleged war crimes including rape, pillage and murder committed by his troops in the Central African Republic in 2002-2003.

- “Commencement of the trial of Jean-Pierre Bemba postponed until 5 July 2010,” ICC (<http://www.icc-cpi.int/NR/exeres/D4399AA5-7027-4935-A347-1621357D5E0C.htm>)

### Guinea

Guinea's interim government has scheduled the first round of presidential elections for Jun. 27. Interim leader General Sekouba Konate stated that prominent transitional government figures, including himself and acting Prime Minister Jean-Marie Dore, cannot stand in the election, and warned the military against sabotaging the country's transition to civilian rule. This is the first democratic election scheduled in Guinea since independence in 1958.

- “Guinea Interim Military Leader Will Not Run in June Elections,” *Voice of America* (<http://www1.voanews.com/english/news/africa/Butty-Guinean-Politics-15march10-87628832.html>)

### Kenya

On Mar. 31, the ICC authorized Chief Prosecutor Luis Moreno-Ocampo to investigate the violence that followed Kenya's 2007 presidential elections in which over 1,000 people were killed and tens of thousands displaced. Ocampo requested ICC involvement in November 2009 and on Mar. 3 gave court judges a list of 20 senior politicians and businessmen suspected of organizing or financing the violence. This is the first time the ICC chief prosecutor has requested to open an investigation on his own motion; prior investigations were triggered either by referral from governments or the UN Security Council.

- “ICC to investigate Kenya 2007 election violence,” *BBC* (<http://news.bbc.co.uk/2/hi/africa/8597211.stm>)

### Rwanda

In an appeal case Mar. 18, the International Criminal Tribunal for Rwanda (ICTR) affirmed the sentence of Simon Bikindi, former

Rwandan singer, to 15 years imprisonment for publically inciting genocide in 1994. The ICTR Appeals Chamber also partially repealed the conviction against Simeon Nchamihigo, former ICTR staff member operating under a false identity, reducing the life sentence to 40 years.

- “Court upholds Rwandan singer's genocide sentence,” *AFP* (<http://www.google.com/hostednews/afp/article/ALeqM5h7re9ZqLhot8QKmeHOWaL9Wmd-Zw>)
- “Rwanda tribunal cuts lawyer's genocide term,” *AFP* ([http://www.google.com/hostednews/afp/article/ALeqM5gKJ4VBQqA-HTiSmFy7P6r\\_26IpNA](http://www.google.com/hostednews/afp/article/ALeqM5gKJ4VBQqA-HTiSmFy7P6r_26IpNA))

### Sudan

On Mar. 18, the Sudanese government signed a ceasefire with the Liberation and Justice Movement (LJM), an umbrella group comprised of 10 smaller Darfur rebel groups that united last month to negotiate with Khartoum. The talks took place in Doha under the mediation of the joint AU/UN Mediator and the facilitation of the government of Qatar.

Sudan's first multi-party election in 24 years is scheduled to take place Apr. 11. As of Mar. 21, 26 political groups including the ruling National Congress Party (NCP) had adopted the Sudan Electoral Code of Conduct prepared by the African Union, committing parties to common principles for free and fair elections. Many individuals and organizations, however, including ICC Chief Prosecutor Luis Moreno-Ocampo, the Carter Center, Human Rights Watch, and others, remain concerned that the elections will be characterized by fraud and violence.

- “Sudan signs cease-fire agreement with Darfur rebels,” *CNN* (<http://edition.cnn.com/2010/WORLD/africa/03/18/sudan.peace.agreement/>)
- “Sudan: Government Repression Threatens Fair Elections,” *ReliefWeb* (<http://www.reliefweb.int/rw/rwb.nsf/db900SID/MINE-83RPAQ?OpenDocument>)
- “Sudan: More Sudanese Political Parties Sign Electoral Code of Conduct,” *All Africa* (<http://allafrica.com/stories/201003161103.html>)

### Uganda

On Mar. 9, Uganda's parliament passed the International Criminal Court Bill. The law creates national legal provisions for the punishment of international war crimes, crimes against humanity and genocide. The bill is intended to enforce Uganda's adoption of the ICC Rome Statute in 1998, and provides for the arrest and surrender to the ICC

of persons indicted for such crimes. The ICC indicted Joseph Kony and other top commanders of Uganda's Lord's Resistance Army in 2005 for crimes against humanity including murder, slavery, pillage, rape, and the forced enlistment of child soldiers.

- "MPs pass ICC Bill," *The New Vision* (<http://www.newvision.co.ug/D/8/13/712528>)

### Zimbabwe

The Crisis in Zimbabwe Coalition released a report entitled "Cries from Goromonzi: Inside Zimbabwe's Torture Chambers" on Mar. 11, an 83 page document detailing the alleged torture of political dissidents and human rights advocates by state forces following the contested presidential elections of 2008. Speaking at the report launch, Prime Minister Morgan Tsvangirai emphasized the need for truth and justice measures to be taken in order to achieve national healing and forgiveness.

- "PM Tsvangirai launches torture report," *The Zimbabwe Telegraph* (<http://www.zimtelegraph.com/?p=6400>)

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## AMERICAS

### Argentina

Former marine Jorge "El Tigre" Acosta assumed responsibility for deaths incurred under his orders during the 1976–1983 military dictatorship, but claimed that human rights violations are unavoidable in war. Acosta, former intelligence chief of the School of Naval Mechanics (ESMA), is charged with 82 crimes against humanity; he stands trial along with 17 other former officers accused of committing crimes at the school.

Alfredo Astiz, a former captain also charged in the ESMA case, remained resistant throughout his trial, denying the killings attributed to him and criticizing former politicians for pressuring courts to try former military staff for human rights abuses. ESMA was one of Argentina's most notorious torture and detention centers: of 5,000 regime opponents who were imprisoned there, about 100 survived.

- "Former oppressor Acosta assumed responsibility for some deaths," *Momento24*, (<http://momento24.com/en/2010/03/18/former-oppressor-acosta-assumed-responsibility-for-some-deaths/>)

- "Face of Argentine military repression defiant in court," *AFP* ([http://www.google.com/hostednews/afp/article/ALeqM5geNFSrAF5UCEhGQYFQ\\_Q6zMOIw](http://www.google.com/hostednews/afp/article/ALeqM5geNFSrAF5UCEhGQYFQ_Q6zMOIw))

### Brazil

At the UN Human Rights Council in Geneva on Mar. 2, Brazil's Minister of the Special Secretariat for Human Rights Paulo Vannuchi confirmed that Brazil will establish a truth commission to investigate the military dictatorship that ruled the country between 1964 and 1985. The commission proposal, originally made in December 2009 as part of a National Program of Human Rights, has generated significant opposition from the military.

- "Vannuchi anuncia 'Comissão da Verdade' em conselho da ONU" *AFP* (<http://ultimosegundo.ig.com.br/brasil/2010/03/02/brasil+anuncia+na+onu+revisao+da+ditadura+militar+9414257.html>)

### Chile

The National Commission on Political Detention and Torture has handled 2,800 cases of human rights violations in its first month since reopening on Feb. 17. The aim of the commission is to collect testimonies of victims of violations committed under the Pinochet military regime of 1973-1990 to ensure that individuals are not excluded from receiving reparations.

- "Tratan más de 2800 casos de violaciones a los DDHH en Chile," *Pais 24* (<http://pais24.com/index.php?go=n&cid=30039>)

### Colombia

Colombian NGOs and policy groups voiced concern after a number of candidates with alleged links to paramilitary groups and drug traffickers were elected to office in the March 14 legislative elections. Over the past four years, prosecutors have identified more than 80 lawmakers accused of collaborating with paramilitaries; 10 have been convicted.

More details about the involvement of government forces in human rights abuses were revealed in the depositions (versions libres) of the Justice and Justice Process, in which demobilized paramilitaries are compelled to provide testimony about involvement in human rights violations in exchange for shorter prison sentences. According to testimonies, several military officers trained paramilitary members from the Autodefensas Campesinas de Córdoba y Urabá. In a separate incident, the army and DAS, (el Departamento Administrativo de Seguridad) allegedly collaborated with paramilitaries in a massacre in Barrancabermeja in 1988 where 32 people were killed.

ICTJ held two conferences in Colombia in March: one on transitional justice at the local level and another on proposals for an administrative reparations program. Academics, government officials, and members of civil society shared lessons learned and best practices in order to impact policy at the local and national level. ICTJ launched the book “Pending Tasks: Proposals for the Design of Public Policy on Reparations in Colombia.”

- “Colombia voters elect political novices with possible links to death squads,” *The Washington Post* (<http://www.washingtonpost.com/wp-dyn/content/article/2010/03/16/AR2010031604120.html>)
- “Paramilitares se entrenaron en batallón del Ejército en Chocó,” *VerdadAbierta* (<http://www.verdadabierta.com/justicia-y-paz/2308-paramilitares-se-entrenaron-en-batallon-del-ejercito-en-choco>)
- “Masacre de Barranca: nuevos señalamientos del ‘Panadero’ a miembros de la Fuerza Pública” *VerdadAbierta* (<http://www.verdadabierta.com/justicia-y-paz/2277-masacre-de-barranca-los-nuevos-senalamientos-del-panadero-a-miembros-de-la-fuerza-publica>)
- “Tareas pendientes: propuestas para la formulación de políticas públicas de reparación en Colombia” ICTJ ([http://reparaciones.ictjcolombia.org/edicion6/docs/TAREAS\\_PENDIENTES.pdf](http://reparaciones.ictjcolombia.org/edicion6/docs/TAREAS_PENDIENTES.pdf))

### Honduras

The Inter-American Commission on Human Rights (IACHR) released a report Mar. 8 condemning ongoing kidnappings, arbitrary detention, torture, sexual violations, and deaths reported in Honduras following the military coup on Jun. 28, 2009. Selective assassinations or attempts have been reported in the news even in recent weeks, targeting journalists, political figures, and social movement members. While blame for the attacks has been placed on both supporters and opponents of the coup, the IACHR report places the overall responsibility for ending the violence and protecting human rights on the newly installed government.

- “Report condemns Honduras violence,” *CNN* (<http://edition.cnn.com/2010/WORLD/americas/03/08/honduras.human.rights/>)
- «Honduran reporter hides in hospital after attacks,» Associated Press (<http://www.google.com/hostednews/ap/article/ALeqM5hWtsVft--KY85kq6Gfj0jRjDuQwD9ELP8800>)
- “Manifestação nacional em Honduras por fim da repressão,” *Prensa Latina* ([http://www.prensa-latina.cu/index.php?option=com\\_content&task=view&id=173663&Itemid=1](http://www.prensa-latina.cu/index.php?option=com_content&task=view&id=173663&Itemid=1))

### Peru

In Peru, advances were made in the distribution of reparations for human rights violations committed during the 20-year civil war. In March, the government began implementing of six collective reparations programs in San Martín and began registering victims for reparations in Ayacucho. To date, approximately 67,000 individuals and over 5,400 towns affected by the violence have registered for reparations.

- “Resarcen a los pueblos víctimas del terrorismo,” *El Peruano* (<http://www.elperuano.com.pe/edc/2010/03/08/pol5.asp>)
- “Lanzan programa de registro de víctimas,” *Diario Jornada* (<http://www.jornada.com.pe/local/2801-lanzan-programa-de-registro-de-victimas-.html>)

### United States

On Mar. 8, a U.S. district judge allowed two Americans who claim they were tortured under U.S.-approved tactics to proceed with their civil lawsuit against former Defense Secretary Donald Rumsfeld. Donald Vance and Nathan Ertel, former employees of Shield Group Security (SGS) in Iraq, claim that “physically and mentally coercive tactics” were used on them after they reported suspicions that other SGS employees were engaged in illegal arms deals.

A British committee investigating the war in Iraq has requested testimonies from senior Bush administration officials, including the former President George Bush, Dick Cheney, Donald Rumsfeld and Condoleezza Rice. The independent inquiry, chaired by Privy Council member Sir John Chilcot, has already extensively questioned the UK’s Tony Blair and Gordon Brown about their role in the decision to enter the war.

On Mar. 10, UN Special Rapporteur on Torture Manfred Nowak issued a critique of the current administration for not conducting investigations into allegations of torture occurring during the Bush administration, emphasizing the legal obligations of the United States as a member of the UN Convention Against Torture. Nowak has previously called for the prosecution of U.S. officials and military personnel allegedly responsible for abuses of detainees in the “war on terror” and criticized the U.S. on its secret detention practices in a joint report for the UN Human Rights Council.

- “Judge Won’t Toss Torture Suit Naming Rumsfeld,” *Associated Press* (<http://www.commondreams.org/headline/2010/03/06-1>)

- “Iraq Inquiry asks to question George Bush’s senior officials,” *Telegraph* (<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/7488615/Iraq-Inquiry-asks-to-question-George-Bushs-senior-officials.html>)
- “UN expert slams US for not looking into torture claims,” *AFP* ([http://www.google.com/hostednews/afp/article/ALeqM5gnyu\\_O0KkJ9S1fB2kzdMuOCkaRg](http://www.google.com/hostednews/afp/article/ALeqM5gnyu_O0KkJ9S1fB2kzdMuOCkaRg))

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## ASIA

### Bangladesh

The Bangladesh cabinet ratified the Rome Statute of the International Criminal Court on Mar. 22, becoming the 111<sup>th</sup> state to join the ICC. Bangladesh was the first South Asian country to sign the Statute on July 17, 1998, signaling intent to ratify. Also on Mar. 22, the government finalized the formation of a three-member war crimes tribunal tasked with the prosecution of those accused of war crimes during the 1971 conflict.

- “Tribunal, prosecution, probe agency finalised,” *The Daily Star* (<http://www.thedailystar.net/newDesign/news-details.php?nid=131224>)

### Burma

On Mar. 10, Burma’s ruling junta, the State Peace and Development Council, published a series of election laws which: officially abolish the results of the 1990 elections, bar anyone convicted by a court of law—including pro-democracy leader Aung San Suu Kyi and other key opposition leaders—from participating in the elections, set a 60-day deadline for parties to register, and open the possibility of elections not being held in many ethnic areas. Once the elections take place, the 2008 constitution, which includes a provision providing immunity for human rights violations, will come into effect.

In a report delivered to the UN Human Rights Council on Mar. 11, Tomas Ojea Quintana, UN special rapporteur on the situation of human rights in Myanmar, recommended that the UN consider establishing an international commission of inquiry to investigate possible war crimes and crimes against humanity committed by the ruling military junta. At a Human Rights Council meeting Mar. 15, Australia became the first state to publically support the call for an international inquiry into the alleged crimes.

- “Myanmar unveils election law,” *Al Jazeera* (<http://english.aljazeera.net/news/asia-pacific/2010/03/2010394417778884.html>)
- “Australia Supports Considering UN Commission of Inquiry,” *The Irrawaddy* ([http://irrawaddy.org/article.php?art\\_id=18061](http://irrawaddy.org/article.php?art_id=18061))

### Cambodia

The Extraordinary Chambers in the Courts of Cambodia (ECCC) and ICTJ hosted a three-day workshop on transitional justice outreach Mar. 3-5. The workshop brought together outreach experts and representatives from almost every section of the court, focusing on how to improve court interaction with civil society and maximize the effectiveness of the court as a tool for social reconciliation.

- “The Court Report: March 2010” ECCC (<http://www.eccc.gov.kh/english/cabinet/fileUpload/151/The%20Court%20Report%20%5BMar%202010%5D%20English.pdf>)

### Nepal

Nepal Army Chief of Staff Singh Gurung has refused to integrate former Maoist rebel fighters into the national army en masse, counter to the peace agreement brokered by the UN in 2006 between the two forces. Meanwhile, relations between the government and the UN Mission in Nepal (UNMIN) have become increasingly strained since the beginning of March. The government has alleged that UNMIN’s refusal to share information about former Maoist combatants living in UN cantonments is in violation of the peace process; the UN maintains the information is confidential.

On Mar. 11, after a visit to assess the peace process, UN undersecretary-general for political affairs B Lynn Pasco voiced international disappointment with the progress of DDR efforts in Nepal, as well as concern that Nepal’s major political parties will fail to meet the May deadline for the drafting of a new constitution.

- “Nepal army chief refuses to induct Maoist fighters en masse,” *Times of India* (<http://timesofindia.indiatimes.com/world/south-asia/Nepal-army-chief-refuses-to-induct-Maoist-fighters-en-masse/articleshow/5679626.cms>)
- “Govt-UNMIN ties sour,” *My Republica* ([http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=15860](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=15860))
- “UN disappointed with Nepal’s peace process,” *Times of India* (<http://timesofindia.indiatimes.com/world/south-asia/UN-disappointed-with-Nepals-peace-process/articleshow/5672021.cms>)

### Solomon Islands

The Solomon Islands Truth and Reconciliation Commission (TRC), created to address abuses that occurred during the “tensions” of 1998–2003, held its first public hearings Mar. 9. Around 20 victims gave personal testimonies about their experiences during the five years of ethnic conflict. The TRC will continue to conduct hearings throughout the country during its period of operation.

- “Solomon Islands: Launch of Public Hearings A Landmark Moment,” ICTJ (<http://www.ictj.org/en/news/press/release/3519.html>)

### Timor-Leste

Forensic anthropologists surveying an area marked for development outside of Dili uncovered two unmarked graves containing nine bodies Mar. 12. The bodies, still wearing the remnants of blindfolds, are thought to be the remains of resistance fighters killed by the Indonesian military during its 1975-1999 occupation. Timor-Leste and Indonesia are conducting ongoing investigations and reconciliation measures through the Commission for Truth and Friendship (CTF), established to address human rights violations that occurred during the occupation.

- “Grave likely holds East Timorese freedom fighters,” *Herald Online* (<http://www.heraldonline.com/2010/03/12/2013051/grave-likely-holds-east-timorese.html>)

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## EUROPE

### Former Yugoslavia

In a statement released Mar. 16, UN Secretary-General Ban Ki-Moon said that the International Criminal Tribunal for the former Yugoslavia (ICTY) will remain in operation beyond the originally scheduled closure at the end of this year, and possibly into 2013. Two leading suspects wanted for war crimes and crimes against humanity committed during the conflicts in the 1990s remain at large: Bosnian Serb military chief Ratko Mladic and Serb politician from Croatia Goran Hadzic.

Serbia’s parliament issued a declaration Mar. 31 condemning the crimes against the Bosniak (Bosnian Muslim) population in Srebrenica in July 1995, and offering a formal apology to the victims’ families. The declaration does not use the term genocide, but does refer to the 2007 International Court of Justice ruling which classifies the 1995 deaths of over 8,000 men and boys and the expulsion of more than 25,000 civilians as genocide.

- “UN war crimes tribunal for former Yugoslavia needs more time, says Ban,” *UN News Centre* (<http://www.un.org/apps/news/story.asp?NewsID=34103&Cr=icty&Cr1>)
- “Serbia apologises for Srebrenica massacre,” *AFP* (<http://www.google.com/hostednews/afp/article/ALeqM5gPjSSGUmVLjIbVjvbotOegR2YmA>)

### Germany

On Mar. 23, a German court in Aachen convicted Heinrich Boere, an 88-year-old former SS soldier, of the reprisal killings of three Dutch civilians for attacks by Dutch resistance fighters in 1944. Boere was found guilty of the killings by a Dutch court in 1949 and sentenced to death, but he fled to Germany where he has been residing since.

- “Ex-Nazi Guilty in Wartime Murders,” *New York Times* (<http://www.nytimes.com/2010/03/24/world/europe/24nazi.html?ref=world>)

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## MENA

### Iraq

Iraq held national parliamentary elections Mar. 7, with over 300 political and religious parties contesting to fill 325 legislative seats. Voter turnout was reported to be 62 percent. Final results of the elections were published Mar. 26, with the coalition of former Iraqi Prime Minister Iyad Allawi garnering the most seats, two more than the incumbent State of Law Coalition. The pre-election period was marked by tension caused by the banning of a number of candidates with alleged links to Saddam Hussein’s Baath Party.

- Iraq election: Iyad Allawi’s bloc wins most seats,” *BBC* ([http://news.bbc.co.uk/2/hi/middle\\_east/8590017.stm](http://news.bbc.co.uk/2/hi/middle_east/8590017.stm))

### Israel/OPT

On Mar. 3, the European Parliament endorsed the report of the UN Fact-Finding Mission on the Gaza Conflict, which alleged war crimes and crimes against humanity that occurred during the 22-day operation. The Parliament called on EU member states to publicly demand the implementation of its recommendations and accountability for all violations of international law, and urges both sides to conduct investigations that meet international standards of independence, impartiality, transparency, promptness and effectiveness.



As a follow-up to the report, the UN Human Rights Council passed a resolution calling for the establishment of a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal, or other proceedings undertaken by both Israeli and Palestinian officials. It also called on the High Commissioner to explore and determine the appropriate modalities for the establishment of an escrow fund for the provision of reparations.

- “Gaza conflict: implementing the Goldstone recommendations,” *European Parliament* ([http://www.europarl.europa.eu/pdfs/news/expert/infopress/20100309IPR70270/20100309IPR70270\\_en.pdf](http://www.europarl.europa.eu/pdfs/news/expert/infopress/20100309IPR70270/20100309IPR70270_en.pdf))
- “UN Human Rights Council calls for independent inquiry into Gaza conflict,” *UN News Centre* (<http://www.un.org/apps/news/story.asp?NewsID=34203&Cr=gaza&Cr1>)

### Lebanon

On March 10, a former member of the Lebanese security services filed a lawsuit before a Lebanese court accusing five men, including four Syrian officers, for abduction, torture and illegal detention. He claims that he was kidnapped by Syrian soldiers in 1992 and detained in Syria until his release in 2000. Victims’ organizations claim that over 600 persons are still detained in Syria and have been demanding the creation of an international commission of inquiry to address their fate and secure their release.

- “Lebanese man becomes first to sue former Syrian ‘jailers,’” *The Daily Star* ([http://dailystar.com.lb/article.asp?edition\\_id=1&categ\\_id=2&article\\_id=112640](http://dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=112640))

### Morocco

Morocco’s national Advisory Council on Human Rights (CCDH) and “Entraide nationale,” a state development agency, launched an assessment of social and economic needs of communities benefiting from the communal reparations program in the province of Khemisset. In April 2009, CCDH and “Entraide nationale” had signed a partnership agreement with the aim of implementing the communal reparation program by carrying out social programs for people living in regions benefiting from the program.

- “Khemisset : Diagnostic des besoins sociaux des communes concernées par le programme de réparation communautaire,” *Agence Maghreb Arabe Presse* ([http://www.map.ma/fr/sections/lire\\_aussi/khemisset\\_\\_\\_diagnost/view](http://www.map.ma/fr/sections/lire_aussi/khemisset___diagnost/view))

## OTHER

### Mini-documentary Series on International Criminal Justice

Skylight Pictures has created a series of mini-documentaries from the proceedings of the Consultative Conference on International Criminal Justice, held at UN Headquarters in New York in September 2009. Participants of the conference included leading international institutions, state actors and non-governmental organizations. ICTJ was a member of the conference steering committee and President Emeritus Juan E. Mendez and Senior Fellow Cecile Aptel were key presenters.

Each of these eight videos, 5-7 minutes long, highlights a contemporary issue facing the system of international criminal justice. They will be released over the next eight weeks, and are available at <http://www.internationalcriminaljustice.net>.

### Documentary topics:

- Kenya and the International Criminal Court
- Humanitarian NGOs and the International Criminal Court;
- Domestic and Regional Complementarity;
- The Role of Preliminary Examinations;
- Colombia and the International Criminal Court;
- Victim Participation and Fair Trials at the International Criminal Court;
- The Emerging System of International Criminal Justice;
- The International Criminal Court and International Relations;

For more information on the topics addressed in the conference, Discussion Papers prepared by each presenter are available at [http://www.internationalcriminaljustice.net/experience\\_the\\_conference.php](http://www.internationalcriminaljustice.net/experience_the_conference.php). Juan Mendez’ paper, Regional Courts and Commissions (<http://www.internationalcriminaljustice.net/experience/papers/session5.pdf>), highlights the role of regional courts, such as the ICTY or ECCC, as mechanisms for holding states, rather than individuals, accountable for human rights violations. In Domestic Justice Systems and the Rome Statute (<http://www.internationalcriminaljustice.net/experience/papers/session7.pdf>), Cecile Aptel discusses the continued importance of domestic justice mechanisms and the principle of complementarity, which stipulates that the ICC should assume jurisdiction only when the relevant states are unwilling or unable to carry out the necessary investigation or prosecution.

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## PUBLICATIONS

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### **Disarming the Past: Transitional Justice and Ex-combatants**

disarmament, demobilization and reintegration (DDR) programs are seldom analyzed in a manner that considers justice-related aims. Similarly, transitional justice mechanisms rarely articulate strategies for coordinating with DDR. This book, the product of an ICTJ research project, examines how these two types of initiatives have connected—or failed to connect—in peacebuilding contexts, and begins to articulate how future DDR programs ought to link with transitional justice aims.

- “Disarming the Past: Transitional Justice and Ex-combatants,” SSRC ([http://www.ssrc.org/workspace/images/crm/new\\_publication\\_3/%7B465ede38-0c0d-df11-9d32-001cc477ec70%7D.pdf](http://www.ssrc.org/workspace/images/crm/new_publication_3/%7B465ede38-0c0d-df11-9d32-001cc477ec70%7D.pdf))

### **Children and Transitional Justice: Truth-Telling, Accountability, and Reconciliation**

This book, developed by UNICEF and the Human Rights Program at Harvard Law School, with chapters authored by ICTJ staff members, explores questions raised when children’s issues—and children themselves—are prioritized in transitional justice processes. It analyzes practical experiences to determine how the range of international courts, truth commissions and traditional processes can be applied, both to improve accountability for crimes perpetrated against children and to protect the rights of children involved.

- “Children and Transitional Justice: Truth-Telling, Accountability, and Reconciliation,” UNICEF ([http://www.unicef-irc.org/presscentre/presskit/harvard/tj\\_publication\\_eng.pdf](http://www.unicef-irc.org/presscentre/presskit/harvard/tj_publication_eng.pdf))

### **The Justice and Peace Criminal Process Since the Intervention of the Public Ministry**

ICTJ presents a collection of articles written by attorneys involved in implementing Colombia’s Justice and Peace law. This publication is designed to support the implementation of the Justice and Peace law, and to serve as a resource for other judicial officers and individuals interested in understanding the evolution and development of Justice and Peace process from the perspective of Public Ministry. This resource is only available in Spanish.

- “El proceso penal de Justicia y Paz desde la intervención del Ministerio Público,” ICTJ (<http://www.ictj.org/images/content/1/9/1968.pdf>)

### **Pending Tasks: Proposals for the Creation of a Public Policy on Reparations in Colombia**

This ICTJ publication is a technical response to the shortfalls of the currently very limited compensation policy that has been adopted by the Colombian government. It presents five policy papers, each addressing one of the focal points of a desired administrative reparations program: education, forced displacement, psychological rehabilitation, land restitution, and collective reparations. The studies lay out a conceptual framework, analyze existing institutional reparations efforts, and make concrete recommendations on how to achieve a coherent, comprehensive reparations program. This resource is only available in Spanish.

- “Tareas pendientes: propuestas para la formulación de políticas públicas de reparación en Colombia,” ICTJ ([http://reparaciones.ictjcolombia.org/edicion6/docs/TAREAS\\_PENDIENTES.pdf](http://reparaciones.ictjcolombia.org/edicion6/docs/TAREAS_PENDIENTES.pdf))

### **Final report of the expert group meeting on “Closing the International and Hybrid Criminal Tribunals: Mechanisms to Address Residual Issues”**

Five tribunals, the ICTR, ICTY, ECCC, the Special Court for Sierra Leone (SCSL), and the Special Tribunal for Lebanon (STL) are scheduled to complete their mandates in the coming years. Some of their practical and legal obligations, however, will continue after the physical closure. This final report presents the main discussion points and findings of an expert group meeting, hosted in February by ICTJ in cooperation with the University of Western Ontario and the Canadian Permanent Mission to the UN.

- “Final report of the expert group meeting on ‘Closing the International and Hybrid Criminal Tribunals: Mechanisms to Address Residual Issues,’” ICTJ ([http://www.ictj.org/static/Prosecutions/ICTJ\\_ResidIssues\\_2010rp\\_Final.pdf](http://www.ictj.org/static/Prosecutions/ICTJ_ResidIssues_2010rp_Final.pdf))

### **All Things Pass, Except the Past**

A civil war, a brutal repression, apartheid: it never dies completely. The unanswered questions and the sadness these events leave behind live on in the minds of those who experienced them. *All Things Pass, Except the Past*, written by ICTJ Board member Luc Huyse, is meant to be a practical field guide for communities that find themselves having to deal with a past legacy of war and human rights violations.

- “All Things Pass, Except the Past,” AWEPa ([http://www.awepa.org/images/stories/2009\\_2010/Projects/Seminars/Bryssels\\_Dec\\_Peace/luc\\_huyse\\_en.pdf](http://www.awepa.org/images/stories/2009_2010/Projects/Seminars/Bryssels_Dec_Peace/luc_huyse_en.pdf))

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**April 5-7**

**The Role of Faith-based Communities in Kenya's Transitional Justice Process**

Nairobi, Kenya

For more information, contact Njonjo Mue at [nmue@ictj.org](mailto:nmue@ictj.org)

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**April 5-9**

**Training for Kosovo Activists on the Initiative of a Regional Truth Commission for the Western Balkans (RECOM)**

Pristina, Kosovo

For more information, contact Eduardo Gonzalez at [egonzalez@ictj.org](mailto:egonzalez@ictj.org)

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**April 7**

**Workshop with Women Parliamentarians**

Dili, Timor-Leste

For more information, contact Manuela Pereira at [mpereira@ictj.org](mailto:mpereira@ictj.org)

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**April 8**

**Weaving a Net of Accountability: Taking on Extraordinary Rendition at the State and Regional Level**

Durham, North Carolina

For more information, visit <http://www.ictj.org/en/news/event/3556.html>

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**April 14**

**In the Absence of Transition: Veterans, Refugees, and the Search for Truth and Justice in Iraq**

New York, NY

For more information, visit <http://www.ictj.org/en/news/event/3582.html>

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**April 15**

**Afghanistan and State Building**

La Verne/Pomona, California

For more information, visit <http://www.ictj.org/en/news/event/3549.html>

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**April 21-24**

**Negotiating Justice: The Challenge of Justice and Accountability in Peace Negotiations**

Wilton Park, West Sussex, UK

For more information, visit <http://www.ictj.org/en/news/event/3412.html>

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**May 27**

**Facing the Past: International Conference on the Effectiveness of Remedies for Grave Historical Injustices**

Utrecht, Netherlands

For more information, visit <http://www.ictj.org/en/news/event/3564.html>

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**May 31 - June 11**

**Review Conference of the Rome Statute of the ICC**

Kampala, Uganda

For more information, contact Marieke Wierda at [mwierda@ictj.org](mailto:mwierda@ictj.org)

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## Making a Difference

With the departure of former president Charles Taylor and the conclusion of a Comprehensive Peace Agreement in Accra, Ghana in August 2003, Liberia entered its first period of relative calm in 14 years. Elections in 2005 brought economist and former World Bank official Ellen Johnson-Sirleaf to the presidency. The country is grappling with the significant challenges it faces in dealing with past human rights abuses. Yet, there are encouraging signs that Liberia may be moving toward a period of formal reckoning with its violent past.

As is often the case, women bore a disproportionate amount of suffering during the war. Women were brutally raped and kidnapped, forced to watch their husbands and children tortured and killed, or forcibly conscripted into various warring factions. It is also estimated that the conflict in Liberia produced the highest number of female perpetrators in comparison to civil conflicts in other parts of the world, creating an unusually complex situation in terms of gender and the violation of human rights.

ICTJ's Gender Justice Program has provided ongoing technical assistance and training to the Liberian TRC and civil society. ICTJ worked with a consortium of women's organizations under the Women NGO Secretariat of Liberia (WONGOSOL) to organize a series of nation-wide community dialogue forums and study group meetings about the TRC process and other transitional justice issues with rural women.

The intention was to engage Liberian women in discussions on transitional justice and examine community and individual responsibility for healing and transforming Liberian society. Four community dialogues were held with women from around the country. Each meeting drew over 100 women who discussed the TRC process and identified recommendations they would like to see in the commission's final report. A summary of the project and its findings was presented to the TRC for consideration in its final determinations. The concerns and needs expressed by women victims during these



*Women from southeastern Liberia participate in a community dialogue forum in Fishtown, River Gee County, March 21, 2009. Photo courtesy of Lizzie Goodfriend.*

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workshops were reflected in Volume III of the TRC Final Report published in December 2009.

The study group has produced critiques of the TRC report, as well as analyses of the opportunities presents to advance gender justice. The final position paper of the group will be published by mid-2010. Building on this assessment, ICTJ will continue to provide technical assistance to women's groups in their future transitional justice activities through 2010.

You can help us as we work to build human rights accountability and restitution from the ground up. Your gift to ICTJ will help ensure that we can continue to respond flexibly to address victims' needs and their often constraining political contexts. To learn more or to make a gift, visit [www.ictj.org](http://www.ictj.org) or contact Lesley Bourns, Director of Development, at (917) 637-3841 or [lbourns@ictj.org](mailto:lbourns@ictj.org).

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### 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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