

## Progress Is Unmistakable

Interview with Juan E. Méndez, President of ICTJ

### Q. How would you characterize the main advances and setbacks in transitional justice during the past few months?

A. I think we are still very much facing a pushback. The more our discipline of transitional justice becomes known, the more political leaders realize that it places great constraints on their flexibility to deal with their problems however they see fit. We need to explain chapter



and verse what the obligations of international law mean. You're obliged to try to obtain certain objectives, but you have discretion to decide by what means and with what instruments. We have been created to generate those conversations about what the options are, how they work in certain settings, how they can be adapted to other settings.

Another reason we're facing pushback is that the more we insist that these are in fact *legal* obligations,

the more leaders and even civil society organizations in some poor countries say, "Why do they apply to us and not the big powers?"

Here the real loss of prestige and influence by the United States is hurting transitional justice. That could be reversed if the United States owned up to the violations its forces have committed during the war on terror and the two theaters of war—and really showed the world that it's ready not only to turn a new page, but to look back at what has gone on, seriously, honestly and in good faith. It could show the world that there are principles that apply across the board to everybody.

### Q. How likely do you think that is?

A. I don't have an assessment because there are so many question marks. But I am gratified that American civil society has always been organized to resist attacks on human rights principles generally, and is now getting ready to insist on accountability for them. I have confidence

that at least there'll be very serious policy issues raised with the new administration.

### Q. Aside from the obligations of international law, can an argument be made for implementing transitional justice mechanisms based on self-interest?

A. The argument moves from international law to the nature of democracy and the quality of the rule of law.

If you're overcoming dictatorship or conflict and you're building a new way of relating to each other in your country, you want the population to have confidence in your institutions. Those institutions need to build credibility fast—not over generations, but fast—because that's the way you establish the stability of the new setting.

For example, you can't expect people to trust the judiciary if it has all sorts of mandates but is prohibited from going into the violations of the recent past. That affects its credibility, because in a sense it says, "If you steal one chicken or hurt one person, the whole rigor of the law is going to be brought to bear on you, but if you were in a position of authority and murdered hundreds, then you're technically exempt. Not only are you not going to be prosecuted, maybe you'll even have a position of authority in what's supposed to be a new democratic setting." That's why first, those new institutions have to be able to deal with the past honestly and fairly, and second, they also have to be cleansed of people who have abused authority in the recent past and may still be there.

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## INTERVIEW

### **Q. What sort of challenge does the rise of China and its increased activity in the UN Security Council pose to an international human rights agenda?**

A. The underlying problem is that China and several big subregional actors take the position that human rights are a matter of domestic policy, and that the international community has no interest, let alone the right, to probe into the way governments treat their citizens.

That is a notion of sovereignty that international law—I don't say the West or the North, but international law generally—has long abandoned, at least since 1945, though it's still making headway. If governments like China are more willing to allow offending governments to get away with not cooperating and restricting access to peacekeepers and humanitarian aid, then that creates a very serious setback for us.

But I also think that China and other subregional actors also have aspirations to become influential international actors. Maybe because they're rising powers they don't see the need to protect and promote human rights around the globe, but sooner or later they're going to have to, because they will see that their influence is diminished.

I would say the same thing happened with the United States in the 1950s and the 1960s. There was no concern here that the United States could be a paradigm of democracy inside and then support really repressive regimes outside, and even topple democratic regimes. But in the 1970s, it became clear that that was no way of exercising U.S. influence, that a mature long-term superpower could not afford to have this dichotomy of pushing for freedom and democracy inside and doing the opposite abroad.

The self-interest of a major power is never only about resources or about trade. It's also about influence. If China and Russia as members of the Security Council are going to be important international actors in the long term, sooner or later they're going to have to reckon with the need to support human rights. You can start seeing it in the case of Darfur, where it's clear that China does not want to be accused of being the protector of the Khartoum regime. For now their main interest is to make sure that the flow of oil from Sudan to China is not interrupted. At the same time, they seem to be using quiet diplomacy to persuade Bashir to do some things too.

### **Q. Are there personal or professional triumphs that you take inspiration from when you're dealing with especially difficult issues?**

A. In all of them there are reasons for hope and reasons for concern. It's great that we are able to work with civil society in Kenya and Zimbabwe, to help with peaceful resolution of the disputes in those

countries after the election violence and election fraud in the case of Zimbabwe. We can help civil society inject into those talks the need to look at accountability issues, truth, justice, reparations and institutional reform—not only for the recent violence during the electoral period, but for the legacies of past abuse in both those countries.

But it's all very fragile, because political forces align themselves, and of course sometimes they support civil society organizations and sometimes they turn their back on them. The basic matter is how strong civil society can be to make its voice heard and influence public policy in a positive way.

I would say it's great to see trials like that of Fujimori in Peru, which we've been following very closely. We're very gratified that it's happening and the way that it's happening, with absolute respect for due process and fair trial guarantees.

But if you look at the broader political picture, it's all very fragile. The political leadership of Peru—and I mean not only the government, but the opposition as well—is not drawing from the Fujimori trial the lessons that we would like all countries to draw. There is a sense that any gain that may come through the trial may be short-lived. People are already talking about amnesties and pardons and commutations, and all in the context of political deals rather than in the context of humanitarian or legal concerns.

### **Q. Are there any clear signs of progress?**

A. If we look back 25 years, the progress is unmistakable. For example, the International Criminal Court: It was unimaginable 25 years ago to think of a permanent, independent and impartial instrument of justice that would be there when governments were unwilling or unable to live up to their responsibilities. Now we have it, and it's already having cases brought before it.

At the same time we have a crisis of legitimacy in Africa with the ICC, first and foremost with governments. That issue was to be expected. Second, though, there is tension with civil society, where we have had a problem of dashed expectations and perhaps unwarranted expectations that we have not really been able to deal with adequately. Third, there's the question of whether the ICC deals only with Africa, which in an important way is a problem of perception. The ICC is exerting serious influence in other parts of the world as well just by being there, conducting preliminary investigation and analysis. It's important that we work to strengthen the legitimacy of the ICC and to make it even more effective.

## AFRICA

### Democratic Republic of Congo

Fighting escalated in eastern DRC between militia forces led by General Laurent Nkunda and the DRC military, with Nkunda threatening to take control of the city of Goma. ICTJ called on the UN Secretary-General to speak more forcefully about the human cost of the conflict, the UN Security Council to bolster support for the UN Mission in Congo (MONUC), and the Congolese and Rwandan governments to meet their obligations under previous ceasefires to disarm, demobilize and repatriate militias.

The ICC Appeals Chamber left Thomas Lubanga in legal limbo by upholding the suspension of his trial on war crimes charges due to the prosecutor's failure to disclose potentially exculpatory evidence, but declining to release him. Lubanga, who is accused of kidnapping children and using them as soldiers in his private army, awaits a new decision by the Trial Chamber on whether his trial will continue.

- Q&A: Fighting in Eastern Congo (<http://ictj.org/en/news/features/2104.html>)
- ICC: The Trial of Thomas Lubanga (<http://ictj.org/en/news/features/2078.html>)

### Kenya

Kenya's Parliament approved a Truth, Justice and Reconciliation Commission Bill that would establish a nine-member TRC. ICTJ sharply criticized the bill, which awaits the president's signature, for allowing amnesties for human rights violations and economic crimes, for failing to guarantee gender parity in the commission, and for excluding victims from the TRC process.

- "Kenya's Truth Commission: What is wisdom?" *Radio Netherlands Worldwide* (<http://www.rnw.nl/internationaljustice/specials/commentary/081028-kenyatrc>)

### Liberia

The Truth and Reconciliation Commission held three days of hearings on the possibility of reparations for victims of atrocities committed during the country's civil wars from 1989 to 2003, as well as three days of hearings on the role of the media in the conflict, which brought testimony by prominent domestic and international journalists.

Testimony against former Liberian president Charles Taylor continued at the Special Tribunal for Sierra Leone in The Hague. Victims told

stories of amputation, rape and forced labor by rebel forces that Taylor had sponsored during Sierra Leone's 11-year civil war.

On Oct. 30, Charles "Chuckie" Taylor Jr. was convicted in a U.S. Federal Court in Florida of torture and atrocities. The charges stemmed from Taylor's actions as the leader of a military unit known as the Demon Forces during his father's rule. Taylor was the first person charged under a 1994 U.S. law that allows for prosecution in the United States of persons who committed torture abroad.

- "Liberia: More victims testify in Taylor trial," *allAfrica* (<http://allafrica.com/stories/200810201311.html>)
- "Son of Liberian warlord convicted of torture in U.S.," *Reuters* (<http://africa.reuters.com/top/news/usnJOE49U00O.html>)

### South Africa

After the resignation of President Thabo Mbeki, ICTJ and other civil society organizations opposed to the ongoing presidential pardon process for apartheid-era crimes wrote to interim President Kgalema Motlanthe, renewing their request for victim participation in and public information about the process.

From Sep. 30 to Oct. 1, ICTJ convened a Southern African Regional Assessment Workshop in Cape Town to assess TJ developments in South Africa, Mozambique, Zimbabwe, Angola and Namibia. In all the cases discussed, inequality continues to be a corrosive force, and in several cases delegates recommended community reparations as a step toward equality and justice.

### Zimbabwe

Emergency talks to shore up a power-sharing deal between President Robert Mugabe's ZANU-PF and Morgan Tsvangirai's Movement for Democratic Change (MDC) failed to end a dispute over cabinet appointments. The leaders of South Africa, Angola, Mozambique and Swaziland called for a larger regional summit to seek a deal.

The Zimbabwe Christian Alliance, a coalition of churches, called for a TRC to aid the country's political transition after a coalition government is formed. Tsvangirai made his own call, saying, "What we have to accept is that in order to heal there must be justice, and in order to have justice there must be truth."

ICTJ joined the Center for the Study of Violence and Reconciliation and the Institute for Justice and Reconciliation in a statement supporting the women of Zimbabwe amid the failure to resolve the

country's crisis, which has increased the suffering of Zimbabweans, especially women and children.

- “Zimbabwe talks fail to reach deal,” *BBC* (<http://www.zimonline.co.za/Article.aspx?ArticleId=3718>)
- “Tsvangirai calls for Zimbabwe truth commission,” *AFP* (<http://afp.google.com/article/ALeqM5jLFn6Px5ZLSux9UnjqLxXt117rig>)
- Zimbabwe: Call for justice and meeting basic needs (<http://ictj.org/en/news/features/2109.html>)

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## AMERICAS

### Canada

The TRC investigating Canada's century-long policy of forced assimilation of aboriginal peoples via residential schooling was in limbo after the resignation of chairperson Justice Harry LaForme. In an op-ed, ICTJ Americas Program Deputy Director Eduardo Gonzalez called for a rapid appointment of a new chairperson to restore confidence in the TRC—a position taken by both aboriginal leaders and the churches who helped run the residential schools.

One of the two remaining commissioners, Claudette Dumont-Smith, initiated the Missing Children Research Project, an examination of the deaths and disappearances of thousands of aboriginal children at residential school sites throughout the country.

- “Give truth a chance, Canada,” *Globe and Mail* (<http://ictj.org/en/news/coverage/article/2108.html>)
- “Commission to probe graves at school sites,” *Globe and Mail* (<http://www.theglobeandmail.com/servlet/story/RTGAM.20081027.wgraves28/BNStory/National/>)

### Colombia

The House of Representatives discussed the Victims Act, a draft law on reparations for victims of the country's decades-long armed conflict, though the bill met government opposition over recognizing and compensating victims of state abuses.

The administration of President Álvaro Uribe is jeopardizing efforts to secure justice for crimes committed by paramilitaries in Colombia, Human Rights Watch said in a report. It accused Uribe's administration of attacks on the independence of the Supreme Court and blocking Congressional reforms to eliminate paramilitary influence. International Crisis Group released a separate report saying that the implementation of the Justice and Peace Law was being stymied by a relative lack of interest in promoting victims' rights on the part of the Uribe government and much of political and civil society.

- “Gobierno cede en ley de víctimas, pero aún falta consenso,” *Semana* (<http://www.semana.com/noticias-proceso-de-paz/gobierno-cede-ley-victimas-pero-falta-consenso/116673.aspx>)
- Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia, HRW (<http://www.hrw.org/reports/2008/colombia1008/>)
- Correcting Course: Victims and the Justice and Peace Law in Colombia, ICG (<http://www.crisisgroup.org/home/index.cfm?id=5753&l=1>)

### Mexico

Oct. 2 brought the 40th anniversary of the Tlatelolco massacre, when Mexican army and police forces opened fire on 5,000 people at an anti-government protest, ICTJ and Amnesty International called on the Mexican state to reveal the full truth about the massacre and lift obstacles to investigating past crimes by military personnel.

- Mexico: Forty years on, justice is unfinished business (<http://ictj.org/en/news/features/2025.html>)
- 40th Anniversary of Tlatelolco massacre: AI calls for justice ([http://www.amnesty.org.uk/news\\_details.asp?NewsID=17893](http://www.amnesty.org.uk/news_details.asp?NewsID=17893))

### United States

In *Learning from Greensboro: Truth and Reconciliation in the United States*, ICTJ Senior Associate for US Programs Lisa Magarrell and co-author Joya Wesley provide an insider account of the 2004-2006 TRC in Greensboro, North Carolina. The independent commission was established to investigate the events, causes and consequences of November 3, 1979, when Ku Klux Klan and Nazi Party members opened fire on a mostly unarmed crowd of anti-Klan protesters, killing five and wounding 10.

- Lisa Magarrell: Learning from Greensboro (<http://ictj.org/en/news/features/2085.html>)

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## ASIA

### Bangladesh

The Truth and Accountability Commission, which allows corrupt businessmen and politicians to avoid jail if they confess and refund money obtained illegally, has extended its deadline for applications for a third time. The commission has received over 300 applications, and has summoned 17 high-ranking government officials for questioning.

- “Deadline to apply for TAC clemency extended,” *The New Nation* (<http://nation.ittefaq.com/issues/2008/10/30/news0675.htm>)

### Indonesia

Separatist leader Hasan di Toro returned to Indonesia after 30 years in exile on a trip coordinated by the Aceh Transitional Committee, which was formerly the Free Aceh Movement's military arm but is now a group that helps with the reintegration of ex-combatants. His trip was welcomed as a sign that the tentative peace after three decades of fighting in Aceh would last, but also criticized as a political ploy in view of coming parliamentary elections in April.

- "Legendary Aceh leader returns to a tense province," *IHT* (<http://www.iht.com/articles/2008/10/13/asia/aceh.php>)

### Nepal

Speaking before the UN General Assembly on Sep. 26, Maoist leader and newly appointed Prime Minister Prachandra restated his commitment to ending the culture of impunity in Nepal, and said the country's proposed TRC would seek a balance between peace and justice. The latest draft bill for the TRC, which contained a broad amnesty provision, brought significant public criticism.

Finance Minister Baburam Bhattarai announced that the government would provide NRS 1 million (\$12,800) in compensation to each family which lost a member during the decade-long insurgency unleashed by the Maoists.

Minister for Peace and Reconstruction Janardan Sharma said the government would soon start work to find the condition and whereabouts of people who disappeared during the conflict. The ICRC and the Nepal Red Cross Society are expected to publish the names of more than 1,200 people reported missing between 1996 and 2006.

- "Nepal Maoist head sworn in as PM," *BBC* ([http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south\\_asia/7568039.stm](http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/south_asia/7568039.stm))

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## EUROPE

### Finland

Former Finnish President Martti Ahtisaari received the Nobel Peace Prize "for his important efforts, on several continents and over more than three decades, to resolve international conflicts." Ahtisaari was a UN mediator on Kosovo, helped end the conflict in Indonesia's Aceh province and helped Namibia achieve independence.

- "Ahtisaari wins Nobel Peace Prize," *BBC* (<http://news.bbc.co.uk/2/hi/europe/7662922.stm>)

### Former Yugoslavia

The Bosnian War Crimes Chamber's early success makes it a potential model for other countries pursuing justice for past atrocities, but the court risks being overwhelmed by its caseload and undermined by perceptions of ethnic bias, ICTJ said in a new report, *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*.

- The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court (<http://www.ictj.org/images/content/1/0/1088.pdf>)

### Spain

Spanish Judge Baltasar Garzon, who initiated the arrest of General Augusto Pinochet in London and his eventual return to Chile in the late 1990s, launched a criminal investigation into mass killings in Spain during its Civil War (1936-1939) and in the early years of the dictatorship of General Francisco Franco. Garzon alleges that the Franco regime oversaw a campaign to eliminate left-wing opponents that led to 114,000 disappearances.

- "Franco Inquiry Polarises Spain," *BBC* (<http://news.bbc.co.uk/2/hi/europe/7679457.stm>)

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## MIDDLE EAST AND NORTH AFRICA

### Iraq

On Sep. 11-13, 2008, with the support of the UN, ICTJ conducted a workshop for the three bodies implementing reparations programs in Iraq: the Martyrs Foundation, the Political Prisoners Foundation, and the Commission for the Resolution of Real Property Disputes. Senior officials from all three bodies gave presentations on the challenges they face in implementing their mandates, discussed policy options and lessons learned from global experiences, and evaluated progress they had made in Iraq.

ICTJ later held a workshop for civil society, parliamentarians and political representatives in the northern city of Erbil. The workshop provided an introduction to transitional justice and explored TJ initiatives in the Kurdistan region.

### Lebanon

In a year that has already brought several apologies from various factions in Lebanon, Lebanese Forces Party leader Samir Geagea publicly apologized on Sep. 21 for his wrongdoings as a militia leader during the 1975-1990 Lebanese civil war. He later called for the



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establishment of a fact-finding commission to investigate alleged war crimes committed by all factions.

ICTJ hosted David Tolbert, special advisor to the UN Secretary-General on UN Assistance to the Khmer Rouge Trials and former Deputy Prosecutor of the ICTY, and Paul Seils, the head of the Situation Analysis Section of the ICC Prosecutor's Office, to discuss the challenges of pursuing justice in the context of amnesty, during a workshop organized by the Lebanese organization UMAM Documentation and Research.

## THEMATIC REPORT

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### Gender

ICTJ staff participated in a conference at the American University Washington College of Law on prosecuting sexual and gender-based crimes before the ICC and ad hoc and hybrid criminal tribunals. Together with lawyers from the ICC and ICTY and experts in feminist jurisprudence, they discussed advances and missed opportunities, as well as concrete steps to promote the prosecution of sexual and gender-based crimes.

On October 17, the ICTJ Gender Program hosted a meeting on sexual minorities and transitional justice with a group of experts working on international LGBT human rights. ICTJ presented groundbreaking research on how transitional justice mechanisms have addressed or failed to address the targeting of sexual minorities during periods of conflict. The experts discussed the role race and class can play in abuse suffered by LGBT individuals, as well as the need for capacity-building among local LGBT rights groups to document violations. They also shared the latest developments in the protection of LGBT rights at the regional and international level and the use of unofficial truth-seeking mechanisms to address LGBT abuses.

### Prosecutions

Former employees of the ICC and rights groups said the court has a flawed approach to investigating sexual violence, and that ICC investigative missions to Uganda, DRC and Sudan have suffered from inadequate analysis and planning. ICC prosecutors pointed to their limited resources, but insisted they have made efforts to bring sexual violence charges and thoroughly train investigators.

- "ICC Investigative Strategy Under Fire," *IWPR* ([http://www.iwpr.net/?p=acr&s=f&o=347200&apc\\_state=henh](http://www.iwpr.net/?p=acr&s=f&o=347200&apc_state=henh))
- "Hague Court Considers Bolstering Local Judiciary," *IWPR* ([http://www.iwpr.net/?p=acr&s=f&o=347198&apc\\_state=henh](http://www.iwpr.net/?p=acr&s=f&o=347198&apc_state=henh))

### Reparations

Italy's top court ruled that Germany must pay compensation to the Italian families of nine people killed in a 1944 German army massacre, rejecting Germany's argument that international law gave it immunity from prosecution by private citizens. The court ruled Germany should pay around 1 million euros (\$1.3 million) in damages for the WWII massacre of 203 people in Civitella, Tuscany.

- "Germany must compensate Nazi victims says Italian court," *IHT* (<http://www.iht.com/articles/reuters/2008/10/21/europe/OUKWD-UK-ITALY-GERMANY-NAZI.php>)

## nov

**November 4:**  
**Conference and TRC hearing on Colombian Palace of Justice crisis**  
*Bogotá, Colombia, Luis Angel Arango Library*  
*For more information, contact Maria Cristina Rivera: [mrivera@ictj.org](mailto:mrivera@ictj.org)*

**November 4-7:**  
**ICTJ Bogotá training for new Truth and Justice Law prosecutors**  
*Cundinamarca, Colombia*  
*For more information, contact Maria Cristina Rivera: [mrivera@ictj.org](mailto:mrivera@ictj.org)*

**November 10-11:**  
**ICTJ Bogotá workshop on non-official truth initiatives**  
*Barranquilla, Colombia*  
*For more information, contact Maria Cristina Rivera: [mrivera@ictj.org](mailto:mrivera@ictj.org)*

**November 12-14:**  
**ICTJ Essentials Course: Spotlight on the European experience**  
*ICTJ Brussels/Irish College, Leuven, Belgium*  
*For more information, write to [bxlessentials@ictj.org](mailto:bxlessentials@ictj.org)*

**November 13:**  
**Lecture by Argentinian Supreme Court Justice Ricardo Luis Lorenzetti**  
*ICTJ New York/NYU Center for Human Rights and Global Justice*  
*For more information, visit <http://ictj.org/en/news/event/2091.html>*

**November 25:**  
**ICTJ/European Policy Centre event on legacy of ICTY**  
*ICTJ Brussels*  
*For more information, contact Dorothee Marotine: [dmarotine@ictj.org](mailto:dmarotine@ictj.org)*

## dec

**December 10-12:**  
**Regional forum on the prevention of genocide**  
*Buenos Aires, Argentina*  
*For more information, contact Gustavo Rutilo: [gtv@mrecic.gov.ar](mailto:gtv@mrecic.gov.ar)*

**December 15-17:**  
**Kosovo Transitional Justice workshop**  
*Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Skopje, Macedonia*  
*For more information, write to [info@osce.org](mailto:info@osce.org)*

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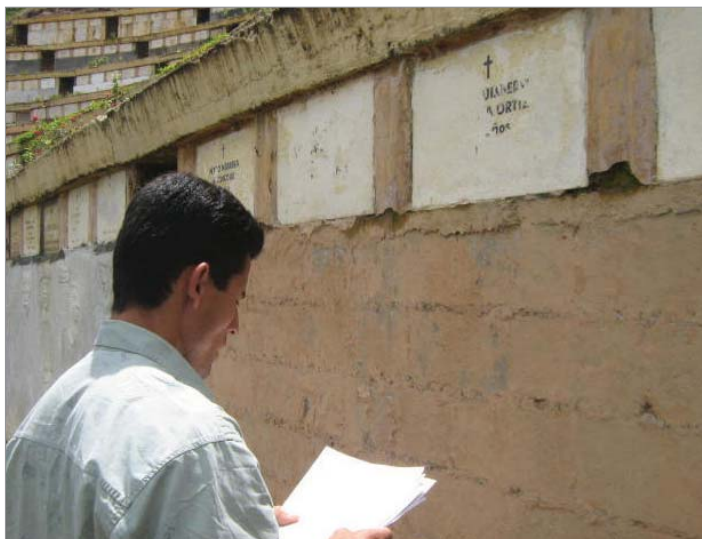
## Making a Difference

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

“Thanks to the ICTJ report and your work on our behalf, the Historical Memory Group can continue carrying out its work at a new and highly respected level. I must express to you, and to ICTJ President Juan Méndez, Eduardo Gonzalez and your entire staff in Bogotá, our most sincere thanks for the help you have offered us from day one across the board. Realizing that expectations are high for the future, and that our task continues to grow, I invite you to continue to be our partners in the reconstruction of the memory and truth of the Colombian conflict. Let me reiterate to you and the great collective that is the ICTJ my sincere thanks.” - Gonzalo Sánchez G., Director, Memoria Histórica, Comisión Nacional de Reparación y Reconciliación

The ICTJ provides invaluable expertise that transforms the lives of victims and creates healthy judicial systems and sustainable societies. International demand for our assistance increases each year, and your support has never been more important.

Learn more at [www.ictj.org/support](http://www.ictj.org/support) or contact MaryClaire Brooks, Director of Individual Giving, at 917-637-3844, or [mbrooks@ictj.org](mailto:mbrooks@ictj.org).



*A victim's family member visiting the Trujillo Memorial Garden, a memorial to the 342 people assassinated in the southwestern Colombian city of Trujillo between 1989 and 1994. The massacres were the first case investigated by Colombia's Historical Memory Group. Photo by ICTJ Bogotá.*

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### About ICTJ

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

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