international center for TRANSITIONAL JUSTICE

FOCUS: ICTJ AND THE RIGHT TO A REMEDY

Effective Remedies to Human Rights Violations

Major international and regional human rights treaties demand an effective remedy be available for individual victims of human rights violations. A remedy involves two elements: a victim's access to the appropriate authorities to have his claim fairly heard and decided; and the redress or relief that he can receive. Much of the work by the International Center for Transitional Justice—and in fact much of the field of transitional justice—can be understood as the pursuit of effective remedies for victims of severe human rights violations. ICTJ's work focuses on the practical and technical aspects of such remedies.

OBLIGATIONS AFTER HUMAN RIGHTS ABUSES

Transitional justice experts generally identify four important state obligations in contexts of gross or systematic violations of human rights: full exploration of the truth, prosecution, reparations that respect the dignity of each beneficiary, and reforms of state laws and institutions. ICTJ uses its global network and in depth comparative experience to advise victims, communities, and policymakers on best practice and real life challenges when developing policies to meet these obligations.

ICTJ's efforts to improve the strength and accessibility of remedies include:

Cambodia

The ongoing criminal trial of former Khmer Rouge leaders before the Extraordinary Chambers in the Courts of Cambodia (ECCC) allows victims to pursue claims for reparations as civil parties. The ECCC can award "moral and collective" reparations. Since 2006, ICTJ has given input on potential provisions and mechanisms for such claims. ICTJ's work has included a workshop for ECCC judges on comparative experiences of judicial reparations, workshops with representatives of victims' organizations, and responses to requests by the ECCC Victims Unit for information.

In November 2009 ICTJ's Reparations Unit, submitted a paper to the ECCC entitled "Practical, Feasible and Meaningful: How the Khmer Rouge Tribunal Can Fulfill Its Reparations Mandate." The paper, available also in Khmer, offered guidance for dealing with the practical and legal issues that have arisen as the ECCC seeks to fulfill its reparations mandate, including proposals that address the challenges of how meaningful measures can be implemented even when resources are limited and the beneficiaries are collective, rather than individual.

Colombia

In recent years ICTJ filed three amicus curiae briefs with Colombia's Constitutional Court in support of victims' rights. The first called for enhanced protections for victims as defined by the 2005 Justice and Peace Law, with a particular emphasis on women. The second reviewed legal and substantive differences between humanitarian assistance and reparation measures, arguing that the Colombian government could not conflate humanitarian measures with fulfillment of state reparations'

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obligations. A third brief focused on concept of victim according to international human rights law and the need to adapt national procedures to encompass the particular type of victimization suffered by lesbian, gay, bisexual and transsexual persons. ICTJ intervened in order to ensure same-sex partners of direct victims were recognized as beneficiaries of victim services and reparations programs. The court included all three briefs in its formal record and adopted their proposed lines of reasoning.

Morocco

In January 2004, King Mohammed VI established an Equity and Reconciliation Commission (IER) to establish the truth about enforced disappearances and arbitrary detentions that occurred between 1956 and 1999, identify institutional responsibility for such abuses; provide reparations to victim, recommend reforms to prevent the repetition of violations; and promote reconciliation.

The IER was the first official truth-seeking experiment in the Middle East and North Africa. ICTJ worked with IER commissioners, many of whom were well known civil society activists, to ensure the Commission's work benefited from the truth-seeking experiences of other countries. The technical information provided by ICTJ enabled Commissioners to strengthen its hearings strategy and in particular commit to holding ground-breaking public hearings. ICTJ advice also assisted IER commissioners to define and develop a feasible and innovative reparations policy that was gender sensitive and included both communal and individual reparations mechanisms.

ICTJ has worked with local civil society partners to strengthen monitoring and follow up by government and civil society of the IER's recommendations, and to assist activists and stakeholders in the Middle East and North Africa region benefit from the skills and expertise of their Moroccan colleagues.

South Africa

In coalition with local NGOs, ICTJ in 2009 played an instrumental role in overturning a national prosecution policy which provided effective impunity for apartheid era perpetrators. Victims complained that the prosecution policy provided for a closed-door rerun of the TRC's amnesty process under the guise of prosecutorial discretion. ICTJ helped prepare a constitutional law challenge to this policy which was struck down by the High Court in December 2008. ICTJ was a public interest applicant in the court case.

Prosecutors may no longer resort to amnesty-type criteria for purposes of declining to prosecute. ICTJ is now pushing for the prosecution of key cases from the past. Prosecutors have agreed to pursue these cases which include enforced disappearances, murder and torture. The outcome has important implications for the rights of victims to justice and the role of the state in public prosecutions.

ICTJ also played a central role in challenging the Special Dispensation on Political Pardons. This special dispensation provided for a secret procedure for processing pardon applications from perpetrators who claimed to have committed offences for a political purpose. Politicians who worked behind closed doors presided over the process, excluding victims and other interested parties. ICTJ prepared the urgent court application. The High Court issued an interim court order restraining the President from granting any pardons under the Special Dispensation for Political Pardons pending the outcome of the legal proceedings. The perpetrators who applied for political pardons retain their convictions and sanctions pending the outcome of this case. This matter has been taken on appeal to the Constitutional Court. The outcome has important implications for victims' rights in pardons and amnesty processes.

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