



# Interview with Juan Mendez (Washington College of Law, American University and the International Center for Transitional Justice)

Jessica Kantor

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**Jessica Kantor: Can you please introduce yourself, the organization that you are a part of, and the challenge that you are addressing?**

**Juan Mendez:** My name is Juan Mendez, and I'm a professor of human rights law at the Washington College of Law, American University in Washington, DC. I was a Skoll awardee in 2009, I believe when I was the president of the International Center for Transitional Justice (ICTJ). That year I left ICTJ and I came to Washington, and I've been working, teaching, and researching and writing mostly on prevention of torture. But my main areas of interest are prevention of torture, prevention of genocide and transitional justice. On all of those, I continue to be active.

**Jessica Kantor: For the ICTJ, can you speak about the ways that you were addressing the challenges that you were working on through that organization?**

**Juan Mendez:** The International Center for Transitional Justice was founded in 2001. I joined it as the President. I joined it in 2004 and ran it for five years. The center was meant to accumulate knowledge, disseminate it, and provide advice on the application of these principles that we call transitional justice, which were developed in the '80s and '90s and continue to be developed when societies try to confront a legacy of serious human rights violations while addressing that legacy with different techniques like truth telling, justice making, reparations, and measures of non-repetition. In turn, those experiences have developed into principles of international law that have been documented, and that the ICTJ cites as the foundation for its recommendations and suggestions. Essentially the ICTJ works with governments, with government entities like truth commissions and even with courts, depending on whether they are interested in our assistance, and formulate recommendations as to how best to apply these principles to the confrontation of legacies at different given moments in the history of societies.



**Jessica Kantor: Who would you say are the main beneficiaries of the ICTJ?**

**Juan Mendez:** First and foremost, the victims of human rights violations or their families, because some of them are no longer living. For example, the families of the disappeared, the families of people wrongly convicted through unjust trials, and of course the families of people who were either executed or killed in extrajudicial executions for political reasons. But not only the victims, I think the beneficiaries are society at large, of course, and more practically the non-governmental organizations and official governmental organizations that are tasked with confronting these legacies and coming up with solutions towards overcoming the violations and their harmful consequences with measures like truth telling, like prosecution of violators, like offering reparations to the victims, and what we call measures of non-repetition that mostly take the form of institutional reform. In all of those areas, obviously we advise individuals but also institutions and including governmental institutions.

**Jessica Kantor: Can you share a couple of challenges that the organization faced in public-private partnerships trying to work with governments? How were you able to either adjust to fit needs or overcome those challenges?**

**Juan Mendez:** We had a variety of ways of approaching the situation, but first, of course, we were approached by organizations that were set out, for example, a truth commission. I remember the very first one was a pretty well-known example, the truth commission created in the early 2000s in Peru to deal with the legacies of violations going back to the surge of the insurgencies, the shining path and Túpac Amaru Revolutionary Movement (MRTA) insurgencies, and the reactions by several governments, including the previous 10 years by the dictatorship of Mr. Fujimori. At the end of that government, the newly democratic government of Peru created a truth commission, and the truth commission actually contacted ICTJ, and we provided training for their staff. Providing examples of the way other truth commissions around the world, including Argentina, Chile, and South Africa, had conducted their own actions. So in that case, we were approached by the truth commission.

In other cases, we were approached by NGOs representing, for example, associations of victims of human rights abuses that wanted to propose to the state some transitional justice mechanism. We were then engaged in telling them what had happened in other similar situations around the world. And if they succeeded in getting, for example, legislation or a governmental measure moving towards a transitional justice mechanism, say for example, reparations, we then engaged also with the governmental agencies, including parliament because we sometimes advised congressional committees on how to legislate around transitional justice issues. Mostly it was more on the operational side with organizations already tasked with coming up with some operations and measures of this sort. We mostly provided advice arising from experiences from



other latitudes, but also obviously trying to apply them to the very specific context and culture in which they were about to be applied.

**Jessica Kantor: Do you think the ICTJ has a distinctive approach?**

**Juan Mendez:** We had a distinctive approach in the sense that we were relatively the only organization specializing in it. Other human rights organizations like Amnesty International and Human Rights Watch, to name only the most important ones, had worked on transitional justice issues as well, and continued throughout my period, but also up to now. But mostly their role was advocacy and to comment on specific forms of transitional justice and whether they were going in the right direction or the wrong direction, which is also very useful. We did, too, but because we were very focused on transitional justice, we also incorporated advice and counseling on how to conduct transitional justice. We retained an ability to critique and to be independent and impartial, but combined that outsider look with insider advice when we were asked for it. We didn't provide any advice that we couldn't openly talk about anyway, and we would not have accepted if there were conditions for our engagement, that we were confidential about the advice that we gave. But fortunately, that was never the case. If the institutions wanted to approach us, it was because they were also committed to transparency and openness about this. So there was really no conflict of that sort.

**Jessica Kantor: And how were you measuring success?**

**Juan Mendez:** That is a very difficult question. Obviously an immediate measure of success was obtaining, for example, some kind of governmental decision to embark on transitional justice mechanisms. But evaluating the success of the mechanisms themselves and of their results, say for example, if a truth commission had issued a report, then you could sink your teeth on the report itself and try to measure the extent to which it reflected the reality of what had happened, but also the recommendations that the truth commission made, whether they were sound or unsound, whether they went far enough or not, those things you can comment on. Ultimately, the result in achieving some kind of peace and harmonization between the previously contending forces in a society, that's a lot more difficult, because obviously it is part of our approach. The approach of transitional justice is precisely to do all of these things because it ultimately can result in abandonment of conflict or at least of processing conflict through democratic and peaceful means, especially in the aftermath of internal armed conflict.

The extent to which the purpose of never again suffering those kinds of violations is very difficult to assess either because we were in the middle of attempting those solutions, or even years later, if the society was still not reconciled and was in conflict, it could have been for new reasons, new developments, historical developments, and it was not necessarily because of not doing the



appropriate things to achieve reconciliation. What I can say is that there are no examples of where the measures themselves contributed to conflict. On the contrary, if anything, they may have been insufficient or simply irrelevant to reconciliation, but they did not ever create conflict. This is important because some of the criticism that we receive from different coders, not only us, but that are present everywhere, is that if you dig too much into the facts, then you can reproduce the conditions for conflict and things like that. I think it is safe to say that has never happened, that there has never been an occasion in which some exploration of the recent past led to more conflict.

**Jessica Kantor: That's such an interesting criticism. Where do you think that comes from?**

**Juan Mendez:** Well, it comes from sources in each society that want to retain a certain narrative. For example, if during a military dictatorship, the government said that all the measures that were taken were justified because of dangers to this national security or the peace of the population, they obviously don't want to look back into each case of torture, disappearance, or murder because then the narrative gets questioned. Obviously, first and foremost, the people who were actually involved in the violations are the ones who object. But unfortunately, it's also true that at the time when they committed the violations, they were supported by some sources of society, some sectors, for example, people who had privileged positions or even political parties that were of a conservative or more authoritarian-bent and were in favor of what the military dictatorship was doing. Now they don't want to explore the facts because they will be asked to account for why they supported the things that they support.

There's always some sectors in the society, even in countries that have achieved a high degree of consensus about how wrong it had been to commit serious human rights violations at a large scale. Even then, there are always voices that want to rewrite history: want to engage in what is called 'denialism' or want to have a different explanation for what happened. That is, of course, the nature of things and the nature of democracy. People can have and should have different opinions about very controversial issues. What can be required, however, is that they don't distort reality; they don't rewrite history; they don't engage in revisionism in favor of human rights violations. Even that cannot be suppressed, should not be suppressed, because suppression only gives them a chance to play victims. We're not allowed to have opinions, et cetera. So you have to live with those opinions while at the same time confronting each denial, each lie with the facts that have been uncovered by the transitional justice mechanisms.

**Jessica Kantor: Do you have other examples that illustrate the impact of your work that shows how your consulting or advice helped or found justice for a particular issue?**



**Juan Mendez:** Some occasions there are people who are very interested in transitional justice measures, and they do that in good faith and they want to explore everything that happened, but they also want to ignore some aspects of the reality. For example, whether some persons who were killed were killed in combat rather than out of combat. That makes a big difference, obviously, because if they died in combat, the death is not necessarily a human rights violation. On the contrary, if it is illegitimate combat, it is not. There are some forces that want to impose their own narrative. Their own narrative may have a lot of elements of reality, therefore, they should be encouraged to explore all of those things, but they should also be expected to be honest about the aspects of that reality that they want to suppress or ignore.

I don't think that is a particularly difficult problem because, in fact, that's why we create truth commissions, and official fact finding, and things like that because those fact-finding measures are governed by certain intellectual and academic rules, if you will, that make it impossible to have partial visions of reality, or at least are meant to make it impossible to have partial visions of reality. If they're applied in good faith, all aspects of the reality, the ones we like and the ones we don't like, come out and that's the way it should be. I would say that people who decry the results of these explorations of the past generally have their own interests in mind. If they have some good arguments, those arguments should be explored to the ultimate consequences. But if the arguments are based on denials and obscuring the facts and ignoring larger contexts, then the deceit should come out in the open. We should all have faith that open debate about these things is what ultimately comes up with a truth that we can all accept or at least a basis of truth that we can all accept, because then after that, we can all have different interpretations of reality. But interpretations are one thing and the facts are another.

**Jessica Kantor: Whose job is it to provide that to the person? Is that the government, is that an organization like the ICTJ that is coming in and investigating and consulting, is it the general public, or maybe another fourth party? Also, how do you feel about that statement now in 2024 with the role of social media and misinformation and people who are actively trying to share false information versus just trying to get to their own version of the truth?**

**Juan Mendez:** We operate on the basis that the international law requires states to take on the task of clarifying the history of human rights violations, especially at the end of a period in which they have been extensive, massive, and perhaps deliberate as well. We encourage states to take that responsibility, and at the same time, to do it with guarantees of independence and impartiality. In a democratic society, that's the task of the courts and prosecutors with reference to due process rules that allow for all views, including those of the defendant, to be heard.



But when you have a fledgling democracy that's just begun to operate after years of dictatorship, the task may be too much for their courts to do. That's why we come up with official but temporary mechanisms like truth commissions.

For example, in the case of Columbia, a special jurisdiction for peace, and they are official courts, but they're temporary and dedicated to the violations committed in the context of the conflict with the Revolutionary Armed Forces of Colombia—People's Army (FARC).

All of those things are measures that, in principle at least, satisfy international standards and international obligations of the state to truth, to justice, to reparations, and to measures of non-repetition, which is basically what the states are obliged to do. In the course of that, the ICTJ might comment about the worth of certain proposals or mechanisms already put in place, but we would not be the organization charged with telling the truth, because then we will be substituting for an obligation of the state. The state can do it with official mechanisms that are also open to all voices and all views, but that ultimately come up with a version of the facts that can be accepted by all, and if not accepted, as I said, not in interpretation, but at least a basis of facts that are undeniable. That is as much as we can aspire to.

I had an occasion in between 2020 and 2021 to be a part of an independent experts mechanism to look at human rights violations that occurred in the context of electoral violence that happened in Bolivia in late 2019. This was created by the Inter-American Commission on Human Rights of the Organization of American States. I mention it because it was a fact finding for purposes of reporting and recommendations to the state, but it was at a time when social media and especially video recording was everywhere. I got to thinking that this technology that is so accessible now for everybody had some great benefits for fact finding because, for example, there had been a couple of incidents in which police and military shot at demonstrators, and there were immediately different versions about what had happened. You could go back, and we did go back with our staff to all kinds of retrievals of videos, some shown on television, for example, but some that just private people had taken. You could see the same incident from different angles, and so you could debunk some myths about them while at the same time trying to establish what actually had happened. Obviously, that doesn't substitute for taking testimony of the actual witnesses, from reading documentation, for example, court records and things like that, but visual instruments like that are extremely helpful in fact finding.

On the other hand, some of the technical aspects are not that good. You see part of the event, but you don't see what's off camera, what's maybe even happening right next to it. You have to be very careful with how you interpret the video. But worse than that, the social media was awash with all of these things and with interpretations of what they meant. And so sorting those things out and persuading people who are clients, are customers off social media, that what they see may not be



exactly what they think they see, but that they should allow for a more technical and also more professional way of analyzing evidence is not that easy. I think in the report that we wrote on Bolivia was very good because we had a lot of access to visual information, but it was also difficult and not necessarily persuasive to all sources in Bolivia that we came up with a version of what really happened that was as close to reality and as impartial as could have been.

**Jessica Kantor: What insights or teachable lessons can be taken from your work, not just at ICTJ, that others could use, or what advice would you give to someone who wants to do something similar?**

**Juan Mendez:** Fortunately, ICTJ is still very much an operation, and they have perfected the methodologies. The whole idea of having an organization like that was to gather knowledge about what other people had done before, but also to learn from its own operations. I don't have daily contact with the organization, so I don't comment on what they do or how they do it, but I am persuaded that they're a very credible organization dedicated to this very specific area of international human rights law, which we call transitional justice. There are other organizations that deal with these things, as well. Largely, the divide seems to be that some people use the word transitional justice to mean mostly that you promote reconciliation, and that if the measure is not immediately dedicated to promoting reconciliation, then it's not the proper thing to do in transitional justice. I've always resisted that idea, because I think reconciliation is of course an ultimate end, but assessing measures on the basis of whether they immediately promote reconciliation or not sometimes leads some of these people, they're mostly academic scholars and they're very good on the countries that they know most about, but it seems to me that they understand transitional justice either as an obstacle to peace because you are reliving tragic stories and things like that, or you are threatening with prosecution. So the people who are responsible for those violations will not give up the fight and will continue fighting. All of those things have merit. But I don't think transitional justice should be measured in those ways.

Reconciliation comes from honestly confronting the truth; meeting out the investigation, persecution, and punishment of those highly deserving of that because if you don't remove the people who are the spoilers, you won't have peace.

If you cater to their demands and their own view of what happened and why, you may also be recreating the conditions that led to the fighting in the first place. I think there are different versions of transitional justice, and all of them are worthy of attention. But my sense is that the different versions split on the question of whether a transitional justice measure leads to peace or not. As I said, if it leads to an immediate cessation of hostilities, it's always good, but it has to be a cessation of hostilities without the prospect of renewed hostilities. Sometimes, peace agreements are not a good solution because they leave open wounds -- not even scars -- but open wounds in the tissue of society that become a source of new violations and new conflicts. We





should have confidence that the transitional justice mechanisms will eventually lead to reconciliation and to peace, but in the meantime, we have to do something about those things. Sometimes some of the things that we have to do are difficult to implement precisely because there's so much resistance to them and because they're tragic things. It's sometimes in human nature to say, "Let's just forget about it and look forward," but looking forward when the wounds are still open is not a good solution either.

**Jessica Kantor: What do you think is needed from other actors in this space in order for that to happen, where there can be a resolution that is accepted by all parties and transitions into peace smoothly?**

**Juan Mendez:** What everybody needs to understand is that these practices have worked in some latitudes and some moments in the history of a nation but may or may not work in another. We have to look honestly and openly at the reality of the society in which we are trying to work in order to adapt these practices and principles to what is best within that particular cultural setting.

At the same time, the practices have yielded some very interesting lessons, not only practical and operational lessons but also principles of international law that are mandatory. For example, there's no disagreement that an act of torture requires from the state an obligation to investigate, prosecute, and punish the torturer, but also truth telling about who was tortured and why and in what measure. Also offering reparations to the torture victim as well as measures of non-repetition, that is that the organizations, the state institutions that practice torture will not in the future continue to resort to torture. That's just an example. That applies also across the board to extrajudicial executions, to violations of the laws of war, like shooting against civilians or killing enemy soldiers that are out of combat and have surrendered or are wounded.

All of those things require what in transitional justice we call the four types of measures: truth, justice, reparations, and measures of non-repetition. Now, that's very well established in international law, although obviously some people question whether they are always and at all times hard, legal obligations of the state. These are more legal developments that have come forward, but what are absolutely binding legal obligations are the prohibition of torture, the prohibition of disappearances, the prohibition of extrajudicial killings, the prohibition of wartime atrocities of all sort. These four things, truth, justice, reparations and measures of non-repetition are distillations in international law of how to deal with those obligations when they have been violated.

**Jessica Kantor: Basically although every situation is unique, what you need from other actors in the space for the proper evaluation of the situation and proper outcome -- not necessarily**





**discipline -- in order to satisfy the wants and needs of the parties who were hurt or their families.**

**Juan Mendez:** Yes, exactly. For example, the immediate outcome of a truth commission is a report. But if that's all that happens, a report will be forgotten eventually or will be in some library that only researchers will have access to. The report also has to contain not only a truthful representation of what really happened in reality, but also an assessment of, if not personal responsibilities, at least institutional responsibilities for why they happen. And third, it should include recommendations as to what to investigate and how as to what reparations to offer, et cetera. Finally, also recommendations on reform of the institutions so that, for example, forms of torture that have been prevalent are abandoned and replaced by decent ways and legal ways of investigating crime. The report is more useful if it includes all of that, but then also if the state acts upon those recommendations.

For example, if a truth commission says you have to investigate these different places where people were held clandestinely, then the prosecution's offices and the courts have to investigate who was responsible for those things and initiate criminal proceedings against those people who, at least those bearing the highest responsibility for those crimes. That takes a long time and a lot of commitment to truth and justice. Then in parallel, the state may offer reparations and can have an administrative program so that it's made simple and that it is comprehensive. There are certain rules about these things that, of course, experience has come up with. The same with measures of non-repetition. There could be an overhaul of the police forces or there could be some other things. It really depends on the problem that has been identified with the institutions so that you can make sure that these things don't happen again.

**Jessica Kantor: Earlier we spoke about measuring success, and you shared a very interesting answer for that. I was wondering, keeping in mind that you mentioned that measuring success is very hard in this realm, what is the evidence that you are making progress? Do you have any evidence that you are making progress?**

**Juan Mendez:** Well, there's different ways of looking at it. For example, from the perspective of law, one measure of success is whether the courts in a democratic country have begun some inquiries into possible criminal prosecution of some of the crimes identified in the truth commission report. Then, you identify obstacles and limitations and perhaps even backtracking on those things.

From the point of view of political scientists, for example, you want to look at whether all of these things have resulted in, a more peaceful way of resolving conflict in the society, a good management of the facts by different sources, state sources but also public opinion, for example,



whether there's less confrontation and more willingness to engage in peaceful ways, whether in fact there's been any recurrence of violence, because then you look at whether that recurrence of violence has been motivated by the transitional justice mechanisms or not. The fact that there's no violence at all, even decades after the events doesn't mean that the society is reconciled or that it achieves other democratic goals. Ultimately, for example, some political scientists have been looking at trying to measure the effects of these measures by looking at the reality of what goes on in the society at another point in the future or in the present, I mean, but distant from the facts themselves, from the violence. They look for example like whether there is good exchange of views as a robust democratic debate or not, whether there's been any censorship or not, whether there's been suppression of views in different ways. Then they try to track them back to whether the transitional justice mechanisms have had an effect on that or not. That, of course, is debatable.

People trying to pursue the same objectives can come up with different views and different critiques of what was attempted and was not attempted, or what was attempted but failed, and things like that. This is an endless discussion, but it's useful to have it anyway. Even some political scientists have engaged. And this, I am not in a position to comment on, critically or not, on them because it's off my field, but they have tried to come up with mathematical models of measuring success. I don't know. I found a very interesting book by a political scientist now at Harvard, but at that time, she was in Minnesota. Her name is Kathryn Sikkink, and the book is called *The Justice Cascade*. It's about measuring justice. And again, immediately when she published these several different versions of it, there were other political scientists challenging some of our findings, as well. I thought it was a very good way of analyzing, at least certainly from the perspective of political science, the worthiness or not of engaging in transitional justice.

**Jessica Kantor: Just to build on what you just shared about the different ways to measure success and potentially looking at it from a mathematical landscape as well, do you, and this could be just a personal opinion or based on your time at the ICTJ, but do you think that the ICTJ and other organizations like it are indeed making progress, or do you think that those types of organizations are just playing catch up on all of the human rights violations that continue to occur? Is there any type of sustainable change happening because of these analyses and reports?**

**Juan Mendez:** I would say that they are making progress, and they're also catching up because they may make progress in a certain kind of resolution of a conflict that happened in the recent or less recent past. But the world is always coming up with more atrocities and more tragedies. So it's not like Simón Bolívar, the South American liberator, once said about plowing in the sea in the sense that all the effort that you put into, in his case, liberation from colonialism, were brought to



not because of other events that happen sometimes within the South American countries and sometimes from abroad, as well.

It's very easy to throw up your arms feeling defeated because the world is so awashed with tragedies and violations. There are so many disappointing backtracking by democratic leaders that should know better, but that doesn't mean there are not certain measures of progress as well; it doesn't mean that it has not been worthwhile to engage in efforts of transitional justice. For a given place in the world -- for a given moment in the history of that place in the world -- it may have yielded good results, even if not final or completely as we would've wished. There's a meaningful measure of advancing the cause of justice for people who deserve our attention and our support.

Again, the problem is not whether we measure success by saying there are no more human rights violations, because then we might as well not even try, but we have to understand, be rigorous as well with success, not satisfy ourselves that we did something and therefore must have been good, but we should be self-critical and analytical about the successes. We also should give credit where credit is due. The success is not the success of ICTJ. It is a success of the people who toil in the trenches and in the front lines because they don't want to give up; they feel they owe it to their kin, their children, and their societies to not give up. If we have at least given them a little bit of support in whatever they achieve, then the effort has been worthwhile.

*Jessica Kantor is an independent journalist specializing in health, human rights, and social impact. Her work can be found in Fast Company, Healthcare Quarterly, The Las Vegas Review-Journal, and others. She is a living kidney donor.*

*\* This interview has been edited and condensed.*