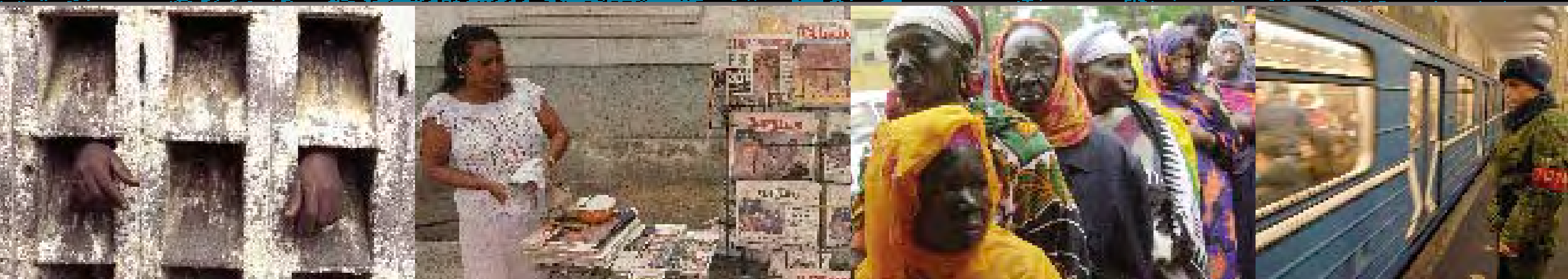
OPEN SOCIETY
JUSTICE INITIATIVE



Report on Developments 2005–2007

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Open Society Justice Initiative

Report on Developments 2005–2007

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. It has projects in over 70 countries and offices in Abuja, Budapest, and New York.

OPEN SOCIETY INSTITUTE

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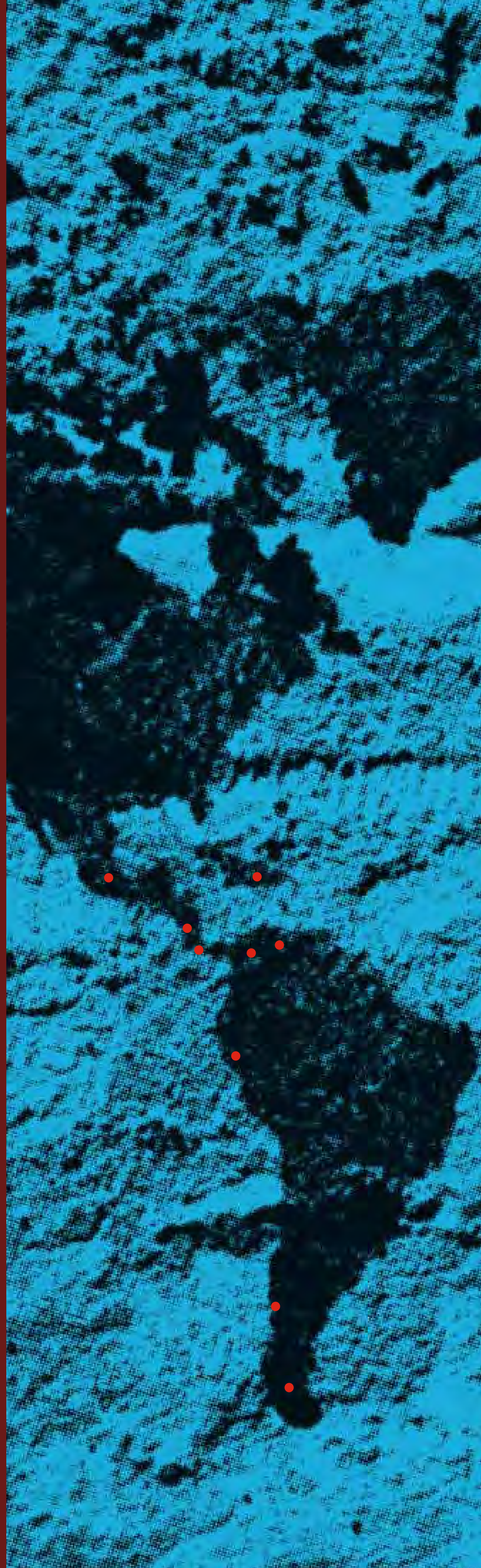


Director's Message

ADVANCING THE RULE OF LAW GLOBALLY

ONE OF THE defining characteristics of the last half century has been the expansion of the rule of law into many corners of the globe. At mid-20th century, core rule of law principles—including an independent judiciary, due process, equal protection, and reasonably fair trials—were mere aspirations in most societies. But by century's end, more than half the world's population lived in countries whose legal systems afforded at least some protection of individual rights.

Portions of this introduction are included in an essay by Executive Director James A. Goldston published in Volume 20 of the *Harvard Human Rights Journal.*

Increasing acceptance of the principle that governments and individuals alike are accountable to publicly known, nonarbitrary rules, manifested itself in numerous ways: the fall of dictatorships from Latin America to Eastern Europe; the growth of a transnational civil society movement for fundamental rights; the proliferation of donor assistance to legal institutions; and the establishment of international tribunals, including a permanent International Criminal Court, to try the most heinous crimes. Yet recent events, from Darfur to Abu Ghraib, show how far we have to go. This report on our recent activities looks at the Justice Initiative's contributions to the rule of law worldwide.

I. The Rule of Law Movement

The successful spread of law-based governance is the result of efforts by a wide array of actors. The process has been far from smooth, but it is possible to discern three main threads in the multifaceted movement to advance the rule of law.

One strand, which commenced at the conclusion of the Second World War, focuses on the international architecture of norms and institutions. The complete breakdown of institutional order, and the barbarity of the war and its accompanying Holocaust, propelled the victorious Allies to construct a new global legal system—and, for the first time, to codify recognition of fundamental human rights at its core. The founding document of the new age, the Universal Declaration of Human Rights, proclaimed it "essential . . . that human rights should be protected by the rule of law." Ever since, the web of international rules and regulations has proliferated—on subjects ranging from monetary policy and international lending to arms control and human rights.

A second dimension of the rule of law movement focuses on civil society, nourishing a wide-ranging group of individuals and nongovernmental institutions committed to using, testing, and giving meaning to international rules through peaceful action. Amnesty International, the quintessential nongovernmental rights group, was born in 1961, but the focus of energy really began to shift with the signing of the Helsinki Accords in 1975 by 35 governments in Europe and North America. Few could have anticipated the galvanizing impact its human rights provisions would have upon an entire generation. Within a year, activists in Moscow were imprisoned for demanding that the Soviet government abide by its commitments. As their fate became known, a chain reaction of international proportions spawned the growth of a worldwide network. Over the next decade, first dozens, then hundreds and ultimately thousands of people from Russia, Eastern Europe, and Latin America sought to hold their governments accountable for crimes committed by the state. By the early 1990s, independent civil society was an increasingly capable and influential member of the global body politic.

A third branch of rule of law promotion seeks to fortify the capacity of governments to provide services, protect security, and enforce laws effectively in open societies. Throughout the post-WWII period, but with increasing intensity in the 1980s and 1990s, Western donors poured money into judicial training seminars, police reform, and legal assistance programs to foster more effective and transparent states.

By the end of the 20th century, the rule of law movement could claim partial credit for a series of advances in liberty and accountability across the globe. While there remained many uncompleted tasks, on the whole advocates were reasonably confident in their tools and their objectives, if not their timetable for success. With significant exceptions, substantial areas of the world seemed to be clearly, if not always consistently, on a path toward law-based governance.

The 9/11 attacks, and the chain of violence and overreaction they spawned, have only complicated the task of rule of law reformers. The long-term goals of elaborating and refining norms and standards, as well as enhancing both state and civil society capacity, remain. But a host of new challenges has arisen. Three stand out.

First, how to compensate for the loss of U.S. leadership. The Bush administration's embrace of extraordinary rendition, disappearance, and torture has crippled U.S. influence as a constructive force for human rights for some time to come. The shifting

global calculus of power is already evident in a newly assertive and repressive Russia, a worsening climate across broad swaths of the Middle East and Central Asia, and an increasingly aggressive China ready (like many Western predecessors) to sacrifice rights for resources from Sudan to Cambodia.

The implications are clear. Rule of law advocates must cultivate alternative sources of moral, political, and financial sustenance for their work. Europe is an obvious candidate, but it has too often failed to rise above the lowest common denominator in reaching a region-wide consensus. More generally, regional institutions such as the European Union, the Organization of American States, and the African Union should be pushed to act more consistently, and publicly, in defense of international human rights norms. Greater efforts should be devoted to forging stronger and more representative networks of law reform advocates within, and beyond, national and regional borders. Reformers should seize the opportunity to build a more balanced, multipolar movement for justice, monopolized by no single model, and drawing on many.

Second, the post-9/11 world has revealed the power of nonstate actors to threaten personal security on a global scale. Weak or failed states are a threat to everyone, and the quality of governance in far-away lands has acquired new relevance. As a result, the potential constituency for rule of law reform has grown markedly.

Third, how to avoid becoming so preoccupied with terrorism and counterterrorism that other problems that may affect more people more of the time are not overlooked. Terrorism is a genuine threat to human rights and open societies, and it clearly must be addressed. Nonetheless, a host of problems not directly linked to terrorism require attention, even if they do not grab the headlines.

II. The Role of the Justice Initiative

Against this backdrop of progress and setbacks, the Justice Initiative seeks to address current challenges, even as we pursue the long-term goals of refining and elaborating international norms, and improving state and civil society capacity to apply them. A number of characteristics define our work.

First, although our headquarters is in the United States, our approach to law reform is expressly transnational. We forge coalitions of like-minded actors, and offer comparative advice and expertise, drawing upon a broad range of country and regional experience. Committed to the enforcement of international norms, we strive to shape reform initiatives that are driven by, and respond to, local demand and knowledge.

Second, though our aspirations are often grand, we seek practical solutions and enforceable remedies.

Third, underlying our work is a conviction that rule of law reform is as much art as science, as much about human beings as about law. Although we focus on legal redress, we recognize that lawyers and legal tools may not be the only—or the most appropriate—responses to many problems. Indeed, some of the most successful reform efforts involve a leap of faith—in the transformative power of courageous individuals to help bring the rule of law into being, by acting (sometimes at odds with reality on the ground) as if it mattered. Changes in laws and institutions are ultimately incomplete without changes in how people think about the law's relevance to their daily lives.

Fourth, the Justice Initiative employs a variety of tools, including litigation, advocacy, technical assistance, research and monitoring, and capacity building. We often combine collaborative assistance with more confrontational tactics, including public

criticism, and thereby seek to maximize our impact through the synergies among different approaches.

Fifth, a similar flexibility underlies our choice of partners. While our point of departure is often other civil society organizations, including national and regional Soros foundations, the Justice Initiative undertakes projects as well with governments and intergovernmental bodies. Fostering the institutional transformation needed to trigger lasting changes in justice systems may require a mix of techniques and relationships that straddle what are often seen as divided realms.

Finally, we pursue a series of thematic goals, including the following:

- *National criminal justice reform*—Rationalizing and developing alternatives to pretrial detention; increasing access to competent legal representation for indigent criminal defendants, and improving civilian police oversight mechanisms. We have ongoing national projects in several countries in Eastern Europe and the former Soviet Union, Mexico, and Nigeria, as well as comparative initiatives that span broader regions.

- *International justice*—Reinforcing mechanisms of accountability for international crimes and breaches of state obligations, including international and hybrid criminal tribunals and regional human rights courts. Major efforts combine hands-on technical assistance with broad public advocacy to support the International Criminal Court, the Extraordinary Chambers established to try surviving perpetrators of the Cambodian genocide, and the new African Court of Human and Peoples' Rights.

- *Freedom of information and expression*—Facilitating government transparency, expanding access to information, and contesting undue restrictions on print and broadcast media. We have pioneered a global tool for monitoring access to information, and are promoting the development of legal standards to address the pervasive problem of financial interference with freedom of the press.

- *Equality and citizenship*—Combating racial discrimination, arbitrary denationalization and statelessness; and defending the rights of those most vulnerable to abuse, including racial and ethnic minorities and noncitizens.

- *Legal capacity development*—Developing the capacity of lawyers and law students to pursue legal advocacy supportive of a global open society, including through support for clinical legal education and human rights fellowships.

- *Anti-Corruption*—Securing legal remedies for natural resource–related corruption.

III. Recent Accomplishments

Justice reform is a long-term process that often yields modest results and incremental change. And yet, since the end of 2002, working closely with other institutions, the Justice Initiative has achieved substantial progress in several areas.

We have had a leading role in the proliferation of freedom of information laws, now in place in approximately 65 countries worldwide, and in promoting their implementation. We have been in the forefront of efforts to improve the effectiveness of the International Criminal Court, the ad hoc criminal tribunals for Cambodia and Sierra Leone, and other international mechanisms of accountability for mass crimes. Our combined legal and advocacy campaign that helped lead to the arrest and prosecution of former Liberian President Charles Taylor for crimes against humanity is just one example of this work. We have led the way in challenging racial profiling internationally and in combating racial segregation and discrimination in Europe.

We have undertaken pathbreaking litigation before regional tribunals in Africa, Europe, and Latin America that has helped to secure landmark judgments on issues of access to citizenship and freedom of information. We have assisted in the development of university-based legal clinics providing advice and assistance to under-served populations in more than 50 countries in Africa, Eastern Europe, Latin America, the Middle East, Southeast Asia, and the former Soviet Union. We have created, nourished, and helped train a network of human rights lawyers and practitioners now numbering more than 100 individuals from nearly 40 countries. We have played an instrumental role in strengthening new and existing human rights protection mechanisms in Africa by litigating significant cases and forging civil society coalitions to monitor and publicize the work of these bodies.

We have created and disseminated Indicators of Democratic Policing, an accountability tool to measure police responsiveness to the citizens they serve. We have contributed to institutional reforms in the legal systems of Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mexico, Nigeria, and Ukraine, helping them expand government-provided legal aid and reduce reliance on pretrial detention. We have fostered a network of lawyers in Central Asia who seek concrete legal remedies for the torture and abuse of those in detention. We have contributed to the promulgation by a United Nations treaty body of a major set of principles outlawing discrimination against noncitizens.

Looking ahead, the Justice Initiative will maintain its focus on situations where we can add value to what others are already doing. We are committed to ensuring that interventions in support of the rule of law are sustainable over time. And yet, we will continue to seize moments of opportunity that make change newly possible. We look forward to collaborating with local, national, regional, and international partners in pursuing this important work.

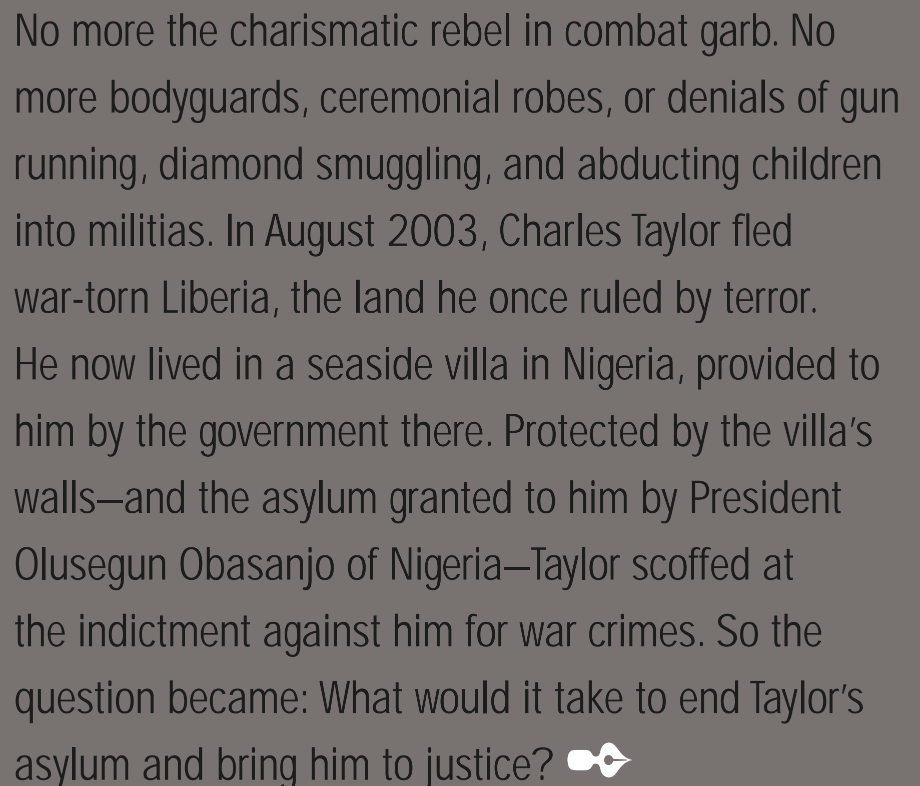
James A. Goldston
Executive Director
July 2007

AFRICA PROGRAM

Leading the campaign to bring Charles Taylor to justice.

CIVIL SOCIETY PRESSURE

Ending Charles Taylor's Asylum



No more the charismatic rebel in combat garb. No more bodyguards, ceremonial robes, or denials of gun running, diamond smuggling, and abducting children into militias. In August 2003, Charles Taylor fled war-torn Liberia, the land he once ruled by terror. He now lived in a seaside villa in Nigeria, provided to him by the government there. Protected by the villa's walls—and the asylum granted to him by President Olusegun Obasanjo of Nigeria—Taylor scoffed at the indictment against him for war crimes. So the question became: What would it take to end Taylor's asylum and bring him to justice?

Demands that Nigeria arrest Taylor and transfer him to the Special Court for Sierra Leone arose immediately after it became clear that Taylor was, indeed, in Nigeria. The Open Society Justice Initiative led the campaign to have him extradited. It gathered human rights advocates to examine the legal underpinnings of Taylor's status in Nigeria, and they concluded that his asylum violated both Nigerian and international law. The Justice Initiative subsequently presented the Nigerian authorities with formal requests for a review of Taylor's status, but these requests yielded nothing but silence. Even attempts by Justice Initiative representatives to discuss the matter with Nigerian government officials came to nothing.

Former Liberian President Charles Taylor being transferred in Liberia to a helicopter bound for Sierra Leone.

Then, on May 13, 2004, David Anyaele and Emmanuel Egbuna—assisted by the Justice Initiative—initiated judicial review proceedings before Nigeria's Federal High Court in Abuja to force the Nigerian government to lift Taylor's asylum and hand him over for trial. Anyaele and Egbuna had sound reasons to seek Taylor's transfer to the Sierra Leone special court. The men were Nigerian citizens. They had been eking out an existence as traders in Sierra Leone's capital, Freetown, when, in 1999, they fell into the hands of the Revolutionary United Front (RUF), a rebel militia funded and controlled by Taylor. RUF soldiers hacked off both of Anyaele's hands, and mutilated Egbuna. Their only crime was Nigerian citizenship. The militia considered Nigerians enemies, because Nigerian officers were commanding the multinational military contingent known as the Economic Community of West African States Monitoring Group, which was striving to bring some semblance of security to Sierra Leone. The RUF soldiers who chopped off Anyaele's hands told him to return to Nigeria and show everyone there what Liberia could do.

In order to draw public and official attention to the court case, Nigerian, Liberian, and international human rights advocates organized the Coalition Against Impunity (CAI), an umbrella group whose membership includes more than 345 NGOs from 17 African countries as well as Amnesty International, Human Rights Watch, the Nigerian Coalition on the International Criminal Court, and the Transitional Justice Working Group in Liberia. The Justice Initiative was a founding member of CAI, conceiving and forging its formation and spearheading its advocacy work across West Africa. As the court case unfolded, CAI helped make the Nigerian public aware of Anyaele and Egbuna and the courage they were showing by coming forward, as plaintiffs, to demand Taylor's handover in defiance of President Obasanjo's decision to grant him asylum. Senior government officials who had previously ignored the case began to voice sympathy for Anyaele and Egbuna.

Only after the court proceedings commenced did Nigeria's government formally admit that it had offered Taylor asylum. A spokesman for Taylor asserted that Taylor's stay in Nigeria was a political arrangement, something not subject to Nigeria's judiciary, which effectively meant that Taylor even considered himself to be above the law of his host country. In November 2004, the Justice Initiative filed an amicus curiae brief in support of Anyaele and Egbuna's

application. The brief summarized the obligation states have to surrender or prosecute persons accused of serious international crimes and to deny refugee status to such accused, including Charles Taylor.

Nigeria's government attempted to drag out the court proceedings and used police pressure in an attempt to intimidate CAI members. In July and August 2005, Nigeria's State Security Service arrested a number of Nigerians who had been calling for Taylor's arrest and extradition, holding them in custody for five days. Security forces arrested Steve Omali and Michael Damisa and seized 10,000 copies of "Wanted" posters bearing Taylor's picture—reprints of a poster Interpol had issued for Taylor in 2003. A day later, two persons claiming to be members of the State Security Service visited the Justice Initiative's offices, clearly in connection with its efforts to spearhead the call to arrest Taylor. These tactics backfired, embarrassing the Nigerian government. Pressure from abroad and from within Nigeria and its government forced the leadership to end its surveillance and harassment activities.

In November 2005, after 18 months of legal wrangling, the Federal High Court ruled that Anyaele and Egbuna had legal standing as plaintiffs and that their suit could proceed. This ruling effectively removed any legal support for Taylor's asylum in Nigeria, but the government appealed the ruling, thereby initiating new delays. In Liberia itself, however, CAI members were pushing the issue of Taylor's extradition to the forefront of the political agenda. For months, CAI members called upon candidates running for office in Liberia to take a position on Taylor's asylum in Nigeria and declare that, if elected, they would support demanding the warlord's extradition to Liberia and transfer to Sierra Leone's special court. On November 23, 2005, the state electoral commission declared Ellen Sirleaf Johnson to be the winner of Liberia's presidential election. In March 2006, she officially requested that Nigeria hand Taylor over.

On March 17, 2006, President Obasanjo confirmed that Nigeria had received Liberia's request, but he notified African leaders that Nigeria had not yet decided whether it would comply. By March 25, however, after representatives from Liberia and Nigeria met to discuss the question, Obasanjo had relented. Nigeria announced that it would allow the Liberian authorities to arrest Taylor. Three days later, Taylor disappeared from the walled villa on Nigeria's seacoast. Nigerian border guards captured him at dawn on March 29, trying to cross Nigeria's frontier into Cameroon. The Nigerian authorities placed Taylor on a plane to Liberia. There, he was transferred to a waiting United Nations helicopter and transported to Sierra Leone to face charges. On June 20, 2006, the tribunal moved him to a more secure prison cell in the Netherlands. His trial began in The Hague in June 2007.

Nigerian lawyers in court. Nigeria's legal decision to revoke Charles Taylor's asylum paved the way for his war crimes trial.

The civil society campaign waged by the Justice Initiative and other advocacy organizations to flush Charles Taylor out of hiding—including both the legal efforts to have the Nigerian authorities quash his asylum and CAI's public advocacy efforts—played a key role in the sequence of events that led to his incarceration in a holding cell in The Hague. The campaign encouraged CAI to begin examining other cases involving leadership figures and human rights abuses in Africa, and the Justice Initiative will continue to provide resources and expertise to justice advocates working to bring human rights violators to trial.

PROGRAM PORTRAIT

Africa Program

Women carrying firewood outside their camp for internally displaced persons in Darfur, Sudan.

Pretrial detainees in Nigeria and elsewhere are often held under harsh conditions.

Most of the Justice Initiative's activity is organized by thematic (as opposed to geographic) areas. But because Africa is the nexus of so much of the organization's activity, and because other foundations in the OSI network are so active there, the Justice Initiative operates a cross-cutting program focused on Africa.

The Open Society Justice Initiative supports institutions and norms in Africa that provide legal protections for people and advance human rights. The Justice Initiative also advocates for reforms that ensure more effective human rights protection and the application of existing human rights laws and norms.

Advocacy priorities include aiding police reform and increasing accountability for national law enforcement and criminal justice systems; promoting the adoption of freedom of information laws in leading African countries; helping develop effective protection of citizenship rights in Africa; increasing the effectiveness and participation of African states in international justice; and working to reform the African regional human rights system, including the establishment of the African Court on Human and Peoples' Rights.

The Justice Initiative's work in Africa is shaped by conditions in the region. Political processes and government functions remain largely personalized and arbitrary in most countries,

while institutional foundations are quite weak. As a result, abuse of state power continues to go largely unchecked.

Official secrecy and opaque government practices are major obstacles to accountable governance in Africa. In some countries, mechanisms of law enforcement and accountability are completely dysfunctional. State failure on this scale creates room for militias and nonstate actors to take over many of the roles of the state, creating a context that is ripe for civil conflict and citizenship-based discrimination. International justice mechanisms are often required to address these problems.

The primary tools employed by the Africa program are litigation, institution- and coalition-building, and public advocacy. The program supports national and regional actors who can work effectively to improve justice outcomes in Africa.

The Justice Initiative also plays a leading role in helping reform the institutions of the African regional human rights system, including the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.

The following are several highlights of the Africa Program's recent work:

Charles Taylor Rendition

International justice in Africa took a major step forward in 2006 when Charles Taylor, the former president of Liberia and an accused war criminal, was handed over by Nigeria, where he had been granted asylum, to Liberia and then to the Special Court for Sierra Leone (SCSL). The end of Taylor's impunity was the direct result of advocacy by victims and human rights workers in West Africa—advocacy that was largely coordinated by the Justice Initiative.

For years, Taylor lived in a seaside villa in Nigeria, despite protests by the Justice Initiative and others that his asylum violated Nigerian law. The Justice Initiative helped bring a lawsuit in Nigeria against Taylor, on behalf of two victims who were mutilated by Taylor-backed militants in Sierra Leone. The case helped crystallize opposition to Taylor's asylum and the Nigerian court sided with the victims, ruling they had standing to challenge Taylor's asylum. This decision marked the beginning of the end of Taylor's freedom. He now faces 11 charges of war crimes and crimes against humanity. To read more about the Justice Initiative's pursuit of Charles Taylor, please see *Civil Society Presssure: Ending Charles Taylor's Asylum* on page 11.

The Darfur Consortium

To help end the genocide in Darfur and bring those responsible to justice, the Justice Initiative in 2004 helped organize an Extraordinary Session of the African Commission on Human and Peoples' Rights focused on Darfur, which resulted in the creation of the Darfur Consortium. Currently cochaired by the Justice Initiative, the Darfur Consortium enables over 100 African civil society groups to provide their perspective on the crisis and to present a unified front calling for effective protection for the people of Darfur and international accountability for the crimes committed there.

Coalition for the African Court on Human and Peoples' Rights

The Coalition for the African Court on Human and Peoples' Rights was established in 2003, in part through the efforts of the Open Society Justice Initiative and INTERIGHTS. By 2006, the coalition comprised over 500 NGOs and independent national human rights institutions within and outside Africa. The coalition advocates for full ratification of the protocol establishing the African Court by all 53 African Union member states. The coalition also assists the court in creating standards for selecting judges and works to ensure that the court is transparent and fully accessible to civil society organizations.

Reform of Legal Aid Delivery and Pretrial Detention in Nigeria

In 2005, the Open Society Justice Initiative, in collaboration with Nigeria's Legal Aid Council and the Nigeria police force, launched a multifaceted project to reform pretrial detention and legal aid service delivery in Nigeria. The project addresses deep-rooted problems in Nigeria's criminal justice system through better information management and improved communication and coordination between the criminal justice agencies made possible by CRIMSYS, a software program developed by the Justice Initiative. The project also fosters effective legal representation for arrested suspects and detained defendants through a "Duty Solicitor Scheme" that places lawyers on 24-hour call at designated police stations to provide legal assistance to suspects. These efforts are complemented by advocacy to improve Nigeria's legal aid law. To read more about the Justice Initiative's efforts to reform pretrial detention in Nigeria, please see *Arrested in Nigeria: The Sentence Comes First—Years in Pretrial Detention* on page 57.

EQUALITY AND CITIZENSHIP

More than 11 million people around the globe are effectively stateless.

KENYAN NUBIANS

Without Papers, Who Are You?

It is a simple identity card, in Swahili a *kitambulisho*: handwritten ink-pen letters, a registration number, a photo and fingerprint of the holder, a signature of the registration officer. Receive the *kitambulisho*, possess it, and you can place your child in a good school, obtain free health care, receive a passport perhaps, and enjoy all the other rights and benefits that citizenship in Kenya entails.

But lose the *kitambulisho*, let it drop from your pocket onto a dusty street, fail to notice fingers picking it from your handbag on the *citi hoppa* minibus that bounces from Kibera into central Nairobi, and, if you are a minority Nubian, you will for years confront glowering eyes and batteries of questions:

"Who are you?"

"Where do you hail from?"

"Where is your birth certificate?"

"What was your grandfather's place of birth?"

"Where were your father and mother born?"

"Do you have their birth certificates?"

"Why not?"

Lose the *kitambulisho* and—if you are a Kenyan Nubian—you must fear arrest for loitering or worse. While other Kenyans who lose the card can readily secure a replacement, you cannot because the application form asks for your "tribe." To declare your tribe is Nubian is to invite rejection, in view of the pervasive hostility toward Nubians in much of Kenya. Even your name is a likely giveaway, indicating to the clerk that you are not a "real" Kenyan, and hence do not deserve a new *kitambulisho*. Without it, you will not travel outside Kenya's borders, because you cannot qualify for a passport. You will watch other parents send their children to the good schools and the free state hospital. You will hear that their children have received scholarships to study abroad while yours linger in Kibera.

Kenya's Nubians, more than 100,000 of them, have descended from soldiers whom the British Empire transferred, in some instances over a century ago, from Sudan to Kenya. Many received permits to settle outside Nairobi on the hillside known as Kibera during the 1920s. Others arrived in Kibera in the 1950s, during Kenya's rebellion against colonial rule, because the British considered them loyal. Kenya won independence in 1963. The British departed. And the Nubians' small subsistence-farming plots have been engulfed by the sprawling slum that Kibera has become—a warren of poverty where 600,000 of Nairobi's three million residents reside.

Like almost all of Kenya's Nubians, Abdalla Yasuf and Shafir Ali Hussein were born in Kenya. Yasuf, born in 1935, has been a life-long resident of Kibera. He has fathered seven children and has several grandchildren, all of them born in Kenya. He had a *kitambulisho*, acquired in 1951 and updated in 1980 and 1996; and he even received a one-year passport in January 2004. Soon afterward, however, Yasuf lost his identity card. On July 28, 2004, he applied for a replacement. He has yet to receive it.

"I cannot be employed," Yasuf says. "I cannot use a bank. I can be arrested for not having the identity card. I have always done my civic duty and voted like a good citizen, but I could not vote during the 2005 referendum on the proposed constitution of Kenya. This was shocking to me. I had a passport but could not use it to vote. I was frustrated because I could not express my opinion on that constitution when it mattered, because the government was delaying giving me my ID. This delay has not been explained to me by any official, but I deem it selective, deliberate, and discriminatory toward me because I am a Nubian."

Shafir Ali Hussein's great-grandfather was a soldier in the King's African Rifles when he was ordered to Kenya. Hussein's grandfather, born in Kenya, also served in the King's African Rifles. Hussein's father was born in Kibera. And Hussein was born there in 1961. He has lived there almost ever since. His daughter was born there.

In about 1987, Hussein received a job offer from a friend of his aunt. The position was in Saudi Arabia, and the pay would have allowed him to move his family to a better house.

Hussein was excited. He went to apply for a passport. He submitted the completed passport application form and returned, as instructed, after a few weeks, and again after a few weeks more, and again, and again until, after five months of returning for a passport never issued, he saw the job in Saudi Arabia go to someone else. Hussein was angry. Gone was the good job—and with it the chance to move his family to a better place. About a year later, he returned to the immigration department. His passport application

had disappeared. He returned, as instructed, in a week. He learned his file had been lost. His original birth certificate was inside. Fill out more forms. Come back . . . come back . . . come back. Hussein abandoned hope.

"Applying for a birth certificate is a headache and I do not want to go through it," he says. "The reason that there are obstacles is because being a Muslim is a global headache and being a Nubian is a headache in Kenya. I feel as if there is no help for me. My feeling of patriotism is gone. Unless you have a friend who knows someone in government or who is in government, your problem cannot get solved."

Kibera is far from a hospital. So Hussein's daughter was born at home and he has had to apply for her birth certificate without the support of the hospital clerks.

"I was told to go to city hall," he says. "At city hall, I was asked for my wife's clinic card and my daughter's clinic card. I brought both these cards back but I was told that they were not stamped. I had to return to the hospital and get them stamped. I took the stamped cards back to city hall but I could not find the person I was dealing with. After some visits, I found the officer and he told me to fill a form B3. The form asked for names of the child, the father, and the mother and the date of birth of the child. I filled out the form. I then had to take the form to the chief and the subchief for signatures. I returned the form to city hall on Tuesday, February 4, 2006."

He is still waiting for a response. "The government has neglected us," Hussein says. "This is because Nubians are a small percentage of the population here and so they have no political power. Kibera is neglected because Nubians have no political support. Development only happens where the people of a member of parliament are. I don't think that anything will change."

More than 11 million people around the globe are effectively stateless like Abdalla Yasuf and Shafir Ali Hussein. From Kenya to the Dominican Republic, national governments are manipulating citizenship laws to relegate members of entire ethnic groups—people born and raised inside their country's borders—to statelessness, stripping them of the fundamental rights to political participation, freedom of movement, education, and employment. As never before, the right to citizenship is under threat.

Since the collapse of communism in Europe, ethnic nationalism has led to the exclusion of minorities from citizenship in a number of new or successor states. In Africa, ethnic tensions arising from decolonization and state-building, combined with the growing significance of political rights in emerging democracies, have driven armed conflict and forced racial and ethnic minorities to the margins of society. In Asia and the Middle East, discriminatory citizenship laws perpetuate the inequalities women suffer and disenfranchise minority ethnic groups. Stateless people are subject to social exclusion, sexual and physical violence, and other human rights violations, and fall outside the protection and assistance of aid agencies and the United Nations citizenship policy.

Kenyan Nubians line up to vote in Nairobi.

In Botswana, Côte d'Ivoire, the Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Mauritania, Morocco, Niger, Nigeria, Sierra Leone, Uganda, Zambia, and Zimbabwe, the Justice Initiative is working with local partners to document patterns of ethnic, racial, gender, and citizenship-based discrimination, identify opportunities for litigation to challenge discriminatory laws and practices, and advocate for comprehensive antidiscrimination protections based upon international and regional standards.

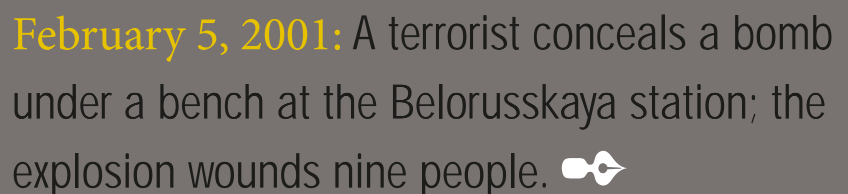
The Justice Initiative and several Soros foundations, including the Open Society Initiative for East Africa, are also working to help the stateless of Kenya, including the Nubians, to organize themselves, to campaign for access to citizenship, and to fight for their right to the simple card, the *kitambulisho*.

Documenting discrimination: the most extreme ethnic profiling ever measured.

ON THE MOSCOW METRO

Ethnic Profiling Is Pervasive—and Ineffective

August 8, 2000: A bomb blows up inside a pedestrian tunnel in the Pushkinskaya Metro station, killing 13 people and injuring 118 more.



February 5, 2001: A terrorist conceals a bomb under a bench at the Belorusskaya station; the explosion wounds nine people.

October 19, 2002: One person dies when a bomb explodes in a fast-food restaurant at the Yugo-Zapadnaya station.

February 6, 2004: A bomb blast kills over 60 people in a train tunnel near the Avtozavodskaya station.

August 29, 2004: Less than a week after explosive devices brought down two airplanes after take-off from Domodedovo Airport, a suicide bomber kills 10 people at the Rizhskaya station.

Terrorism has scarred Moscow and its vast Metro system, despite a massive security presence and laws that give the police broad authority to stop passengers and check their documents. During the hours before the terrorist attacks of the past seven years, it is safe to assume that the police were acting as they would at any other time. Uniformed officers were patrolling each of the city's Metro stations. They were approaching passengers at entrances and exits, in dimly lit passageways, and on vast staircases under brilliant crystal chandeliers. They were checking identification papers against the backdrop of socialist realist murals. And, whether they were simply following orders or working to augment miserable salaries by harvesting small bribes from people whose papers were not in order, these police officers were using ethnic profiling to pick out and question people who appeared to be members of minority groups from Central Asia and the Caucasus.

But ethnic profiling did not prevent the bloodshed and loss of life.

Anecdotal accounts of the racism that pervades Russia and the authorities' tolerance of racist violence and official discrimination led the Open Society Justice Initiative to undertake a study of ethnic profiling by police in the Moscow Metro system during the summer of 2005. The study, conducted in partnership with the Russian human rights NGO JURIX and Lamberth Consulting, concluded that ethnic profiling in the Metro was widespread yet ineffective, resulting in the discovery of very few violations of a law.

Ethnic Profiling: From the Anecdotal to the Statistically Sound

The Moscow Metro Monitoring Study was the first study outside the United States and United Kingdom to apply a rigorous methodology known as "observational benchmarking" to assess ethnic profiling. The study's designers chose to monitor exits at 15 Moscow Metro stations, because the stations had a high level of passenger traffic and a stable police presence, and the exits were in areas where monitors could consistently observe the actions of the police in an unobtrusive manner. Taken together, these stations also attract a broad spectrum of the city's people: one of the stations was located at an open-air market, three were located at railway terminals, three at bus terminals, four in the downtown district, and four in residential neighborhoods.

The study's designers trained monitors to survey the characteristics of the people using the stations, to observe the police stopping people passing out of the stations, to

record data about these police stops, and to interview a sampling of the individuals whom the police had stopped. To determine whether the police were disproportionately stopping members of a certain ethnic group at the Metro exits, the study also had to measure the ethnic composition of the sample population under scrutiny. This measurement is the "observational benchmark."

The monitors classified individual Metro passengers in three distinct ethnic categories to mirror what the study's designers posited to be the stereotypes employed by the police in linking physical appearance to ethnicity and national origin. The first category consisted of "Slavs," namely those individuals with fair complexion who appear to be ethnic Russians, Ukrainians, and Byelorussians. The second category comprised "minorities," encompassing people who appeared to be members of the national minorities of the former Soviet Union, namely people hailing from the Caucasus and Central Asia. Individuals in this category are typically identified as having a darker complexion than individuals of Slavic appearance, with darker hair and some pronounced facial features. The third category was classified as "other." This last group was designated to encompass all individuals who appeared to come from outside the territory of the former Soviet Union, including Africans, East Asians, Western Europeans, Americans, and others not included in the first two categories. During the monitoring, only a minuscule number of people—170 out of 33,891 individuals in one aspect of the survey—were identified as "other."

The monitors conducted interviews with selected people whom the police had stopped, in order to determine these individuals' perceptions of their encounter with the police. The monitors asked these respondents a set of questions, including whether the police had stopped them before and, if so, how often it had happened. The monitors also asked whether the respondents' papers were currently

A police officer checks the documents of a man at a Moscow Metro station in November 2002.

in order, whether the police had confirmed the status of their papers during the stop, whether the police had behaved courteously to them, whether they had paid a fine, and why the police had let them go.

The Results: An Unambiguous Case of Discrimination

The Moscow Metro Monitoring Study showed conclusively that the police in the Metro use ethnic profiling. The monitors at the 15 stations observed and classified 33,760 individuals to benchmark ethnicity and 32,686 individuals to benchmark gender/age. The benchmarking concluded that the passenger population of Moscow's Metro is heavily Slavic and that Slavic riders constituted 95.4 percent of all riders at the 15 stations. The monitors observed 1,523 police stops and conducted 367 interviews with selected individuals whom the police had stopped.

The study found that, although persons of non-Slavic appearance constituted only 4.6 percent of those emerging through the exits of the 15 selected Metro stations, these people accounted for fully 50.9 percent of those persons whom the police stopped. In other words, people who appeared to be non-Slavic were, on average, 21.8 times more likely to be stopped than people who appeared to be Slavic. At one station, Medvedkovo, people who appeared to be non-Slavs were 85 times more likely to be stopped than people who appeared to be Slavs.

The ratios in Moscow reflect the most extreme ethnic profiling ever documented through a statistical survey of the practice. For the sake of comparison, ratios above 2.0 typically indicate that there is potential targeting of minorities for police stops. Surveys of ethnic or racial profiling in the United States and the United Kingdom show that, at most, police are four to five times more likely to stop persons who appear to be members of minority groups than persons who appear to be members of the majority population.

The most important piece of information produced by observational monitoring of ethnic profiling is the "hit rate" associated with the police stops, or the rate at which the police discover a breach of the law through their stops. The results of the Moscow Metro Monitoring Study clearly demonstrate that the police are wasting their time and efforts. In the overwhelming majority of instances, the police simply released those persons they had stopped, and only 3 percent of the police stops revealed an administrative infraction like possessing improper documents. The clear pattern that emerged from the study was that police officers stop a rider, examine his or her identity papers, and then release him or her without recording any information. However, the overwhelming proportion (89 percent) of the riders interviewed said the police had been courteous to them.

Ethnic Profiling Does Not Prevent Terrorism. The low hit rate measured by the Moscow Metro Monitoring Study should be a reason for concern among Russian political leaders, police administrators, the ministers charged with maintaining public security, and members of the Russian general public. Fruitless document checks and discriminatory harassment of minority group members divert law enforcement efforts from the effective prevention and investigation of acts of terrorism like those that claimed so many lives at Pushkinskaya station, the Belorusskaya station, and the other sites in Moscow.

Russia is not alone in its mistaken use of ethnic profiling. After 9/11, the United States government also embarked on three law enforcement campaigns purportedly as counterterrorism pursuits; these campaigns explicitly targeted Arab, Muslim, and South Asian men. In an article in the *New York Review of Books* on March 9, 2006,

Police officers patrol an underground station in Moscow in January 2007.

Interior Ministry troops stand watch in a Moscow Metro station in February 2004.

David Cole summed up the resounding failure of this discriminatory effort as follows: "Of the 80,000 Arabs and Muslim foreign nationals who were required to register after September 11, the 8,000 called in for FBI interviews, and more than 5,000 locked up in preventive detention, not one stands convicted of a terrorist crime today. In what has surely been the most aggressive national campaign of ethnic profiling since World War II, the government's record is 0 for 93,000." Many law enforcement officials argue that behavioral criteria, rather than race or ethnicity, are more effective for picking out persons likely to be intending to commit criminal acts or terrorist attacks.

Ethnic Profiling Is Illegal. A number of core international human rights norms prohibiting racial and ethnic discrimination are relevant to ethnic profiling. For example, the United Nations Race Convention prohibits racial discrimination with respect to "freedom of movement" and the "right to equal treatment before the tribunals and all other organs administering justice." Provisions of the International Covenant on Civil and Political Rights prohibit racial discrimination, including with respect to arrest, detention, freedom of movement, and the administration of justice. The Program of Action of the UN World Conference Against Racism in 2000 endorsed these universal standards when it urged "states to design, implement, and enforce effective measures to eliminate the phenomenon popularly known as 'racial profiling.'"

Ethnic Profiling Alienates Minority Group Members. Baseless targeting of innocent members of a racial and ethnic community also breeds fear and suspicion of the police. By undermining relations between law enforcement officials and institutions and law-abiding members of minority communities, ethnic profiling has the perverse effect of ultimately decreasing public safety for all. It makes law-abiding members of minority groups less likely to speak up about members of their community who might be engaging in criminal behavior. The Moscow Metro Monitoring Study was not designed to measure corruption. But interviews with persons who were subject to police stops and with members of the families of police officers indicate that a key motivating factor for conducting these stops is the opportunity to supplement meager police salaries by demanding bribes in exchange for sparing their victims arrest, detention, harassment, and possibly worse.

The Open Society Justice Initiative and its partners are working to convince Russia's political leaders and law enforcement authorities to stop the costly and counterproductive use of ethnic profiling. Losing the struggle against terrorism is too high a price to pay for allowing racism to dampen the effectiveness of law enforcement methods.

PROGRAM PORTRAIT

Equality and Citizenship Program

In some countries, it is nearly impossible for ethnic minorities to get birth certificates, passports, and other official documents.

The Justice Initiative combats discrimination against racial and ethnic minorities, and promotes the right to citizenship. Although national and international law forbids discrimination on a growing number of grounds, the struggle for equality is far from over. Despite an international consensus against it, governments continue to perpetuate discrimination by ignoring or selectively enforcing legal prohibitions.

The Justice Initiative is committed to exposing, documenting, and challenging discriminatory practices, whether overt (such as the demolition of Roma houses by Russian authorities) or more subtle (such as ethnic profiling by police in much of Europe). Acting with local lawyers and advocacy groups, the Equality and Citizenship Program works toward enforcement of non-discrimination standards through advocacy, litigation, and research.

Following are several examples of work in the area of equality and citizenship:

Using the Courts

The Justice Initiative is pursuing litigation to combat racial discrimination in a number of jurisdictions. In Russia, the Justice Initiative filed an application with the European Court of Human Rights on behalf of 33 Roma whose homes in the Kaliningrad region were bulldozed and set afire by police and local government officials yelling racist insults and threatening them with machine guns. The application seeks a declaration by the court that the Russian government has breached numerous provisions of the European Convention of Human Rights.

The Justice Initiative is also co-counsel, with the European Roma Rights Centre, in *D.H. and Others v. Czech Republic*, a landmark case before the European Court of Human Rights that seeks to end the practice—common in several Central and Eastern European countries—of segregating Roma children in schools for the mentally disabled, regardless of their actual intellectual abilities.

The Justice Initiative is cocounsel in *Rosalind Williams v. Spain*, the first-ever legal challenge to racial profiling filed with an international human rights tribunal—in this case, the United Nations Human Rights Committee. *Williams v. Spain* contests a ruling by the Spanish Constitutional Court, which held that police could target blacks for identity checks because racial appearance is a proxy for immigration status. In highlighting the problem of racial profiling in Europe, the case seeks clarification that race may not be used as a criterion in police stops.

The Justice Initiative's Contemporary Discrimination in Europe project pursues litigation in national and European courts to realize the potential of new EU equality directives and to highlight the use of law as a tool for positive change. A particular

focus is discrimination against Muslims or people perceived as Muslims, whether rooted in racial prejudice, religious intolerance, or competing visions of gender equality.

Documenting the Problem

Discrimination by law enforcement officials and the phenomenon of ethnic profiling are widespread but little understood. In Russia, the Justice Initiative conducted a study of ethnic profiling by police in Moscow that found rampant discrimination. The study, published as *Ethnic Profiling in the Moscow Metro*, documented a stunning disparity: Moscow Metro riders who look non-Slavic are over 20 times more likely to be stopped by police than riders who look Slavic. To read more about the Moscow study, please see *On the Moscow Metro: Ethnic Profiling Is Pervasive—and Ineffective* on page 21.

The Justice Initiative publication *"I Can Stop and Search Whoever I Want": Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain* presented the findings from research carried out by the Justice Initiative and its national partners establishing that police officers in all three countries subject Roma and immigrants of ethnic minority origin to ethnic profiling. The report is part of an ongoing, multipronged effort to raise awareness of the prevalence of ethnic profiling by police throughout Europe. The Strategies for Effective Police Stop and Search project, another major component of Justice Initiative antidiscrimination efforts, seeks to improve police relations with minority communities, including Roma, through more accountable and effective use of police stops, identity checks, and searches.

Focus on Citizenship

Equal treatment is an especially difficult challenge where citizenship is concerned. Because states traditionally enjoy broad discretion over access to citizenship, and citizenship is a foundation for the exercise of many rights, people not recognized as citizens are especially vulnerable to discrimination. Today, the human right to citizenship—that is, the right to belong to a nation state and enjoy its protections—is under threat as never before.

Around the world, racial and ethnic minorities are increasingly denied or stripped of citizenship through mass expulsion, legislation, arbitrary administrative action, or the application of insurmountable bureaucratic requirements, in direct contravention of Article 15 of the Universal Declaration of Human Rights.

Discrimination based on citizenship fuels the growth of statelessness in countries as disparate as Bhutan, the Democratic Republic of Congo, the Dominican Republic, and Latvia. Stateless individuals are often subject to deportation without notice. They wield no political power, and are unable to participate in the most fundamental civic decision-making processes. They are systematically deprived of public goods and services such as health care, education, and housing. Lack of documentation often prevents them from obtaining gainful employment, resulting in a cycle of poverty for generations. In parts of Africa, the ethnicization of citizenship has created de facto stateless populations that can contribute to conflict by taking up arms.

The Justice Initiative is responding to the crisis of statelessness with a comprehensive approach that seeks to implement existing legal norms prohibiting discrimination and arbitrary deprivation of nationality, while promoting an effective international framework to guarantee the universal right to citizenship.

Promoting International Norms

Working with a growing number of NGOs, the Justice Initiative has developed resolutions on statelessness and promotes their adoption by international bodies such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the UN High Commissioner for Human Rights (OHCHR), the UN Committee on the Elimination of Racial Discrimination, the African Commission on Human and Peoples' Rights, and the African Union.

The Justice Initiative filed a brief as amicus curiae to help secure a landmark ruling in 2005 from the Inter-American Court of Human Rights. In the case of *Dilcia Yean and Violeta Bosico v. Dominican Republic*, the court ruled that racial discrimination in access to nationality constitutes a breach of the American Convention of Human Rights.

The Justice Initiative is working to ensure implementation of a landmark judgment of the African Commission on Human and Peoples' Rights on the arbitrary denationalization and expulsion of black Mauritanians. Tens of thousands of black Mauritanians were rounded up by police and soldiers, stripped of their identity documents, and forced across the border into Senegal, where they now live in refugee camps. Together with the African Commission, the Justice Initiative is documenting the human rights violations suffered by the expellees, seeking to bring Mauritania into compliance with the Commission's judgment.

Other cases are now being prepared, and two cases are pending before the African Commission on Human and Peoples' Rights on behalf of stateless populations in Kenya and Côte d'Ivoire. For a closer look at the Kenyan case, please see *Kenyan Nubians: Without Papers, Who Are You?* on page 17.

FREEDOM OF INFORMATION AND EXPRESSION

Authoritarian governments manipulate media rules to stifle dissent.

RADIO IN CAMEROON

Voices of Freedom Muffled as President Rules

Until the late 1990s, the regime of Cameroon's president, Paul Biya, used violence to mute criticism of its policies. Police officers and soldiers invaded newsrooms with guns drawn. They smashed computers and seized printing presses. They chased off newspaper vendors and beat up and jailed journalists.

Community radio is an essential method of communication in many parts of Africa. Above, an NGO-funded radio station in Mali.

One government critic was Pius Njawé, the owner and editor of *Le Messager,* a newspaper critical of President Biya's policies. Njawé has found himself in police custody 126 times, so far, and his arrests and prison stays—sharing cells, he says, with "gangsters" and "burglars"—made him a symbol of the struggle for press freedom in Africa. In 1991, the Committee to Protect Journalists (CPJ) made Njawé one of the first recipients of its International Press Freedom Dangerous Assignments Award. After years of pressure from CPJ and other foreign organizations, Cameroon's leadership grew sensitive to criticism of its record on press freedom and stopped its heavy-handed tactics.

Now, the Biya regime relies upon loopholes in Cameroon's law on mass communications to muzzle media criticism. And it was Pius Njawé's application for a license to operate a radio station that prompted the Open Society Justice Initiative to take on Cameroon's government before the African Union's judicial guardian of human rights: the African Commission on Human and Peoples' Rights.

On October 29, 2002, Njawé applied to Cameroon's Ministry of Communication for a license to operate an FM radio station. As he awaited the ministry's decision, Njawé acquired transmission equipment. He set up two sound studios with digital equipment in a new building in the port city of Douala. He hired staff. He dubbed his station "Freedom FM." And he heard nothing from the government, despite the fact that the law gives the Ministry of Communication a maximum of six months to decide whether or not to grant an applicant a license.

After the six-month period elapsed, Njawé decided that the government's failure to respond to his application was tantamount to approval to begin broadcasting. He took out newspaper ads announcing that Freedom FM would take to the airwaves on May 24, 2003. At noon on the preceding day, however, police officers, soldiers, and members of Cameroon's gendarmerie surrounded his studios. They sealed the building. The Ministry of Communication informed Njawé that he had failed to follow proper procedures and could not go on the air. The authorities kept troops around the station for weeks before pressing criminal charges against him.

President Biya has led Cameroon for over two decades. Analysts say his followers had a simple, compelling reason to keep Pius Njawé and Freedom FM off the air. Njawé was a jail-tested critic of President Biya, and in 2003, Biya was preparing for another reelection campaign. Radio is popular in Cameroon, where many voters cannot afford newspapers. (*Le Messager* prints about 12,000 copies each day, and it is estimated that 15 people read each copy; Freedom FM's signal would have covered an area with three million listeners.) By preventing Freedom FM from covering the 2004 election, President Biya helped dampen criticism of his policies and win himself another seven years in office.

On behalf of Pius Njawé and Freedom FM, on June 21, 2004, the Justice Initiative lodged a complaint before the African Commission on Human and Peoples' Rights against Cameroon's government. The complaint attacked the government's practice of giving radio and television station owners only provisional authorization to operate, rather than granting them formal broadcasting licenses. It argued, among other things, that the issuance of a provisional

A billboard in Cameroon promotes the presidency of Paul Biya during his reelection campaign in 2004.

authorization leaves broadcasters in a legal limbo that allows the Ministry of Communication to silence them quickly and arbitrarily if they anger the authorities. The complaint also argued that the government's treatment of Freedom FM amounted to an attack on Njawé's freedom of expression.

Cameroon's minister of communications, Pierre Moukoko Mbonjo, has disputed criticism of the practice of issuing provisional authorizations. The system, he said, has benefited radio and television owners because it has allowed them to operate without paying licensing fees. Mbonjo said Cameroon has more than 60 private radio stations and asserted that some of these do not favor the government and have not had problems.

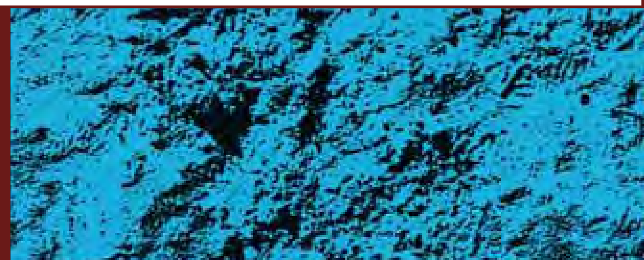
The complaint before the Commission on Human and Peoples' Rights and the Justice Initiative's efforts to mediate between Freedom FM and Cameroon's government have had some effect. On June 24, 2005, the government and Freedom FM signed a settlement agreement. The government agreed to drop the criminal charges against Njawé, to release Freedom FM's equipment, to grant Freedom FM a provisional authorization to broadcast, and to process, in a fair and equitable manner, Freedom FM's application for a full license. For its part, Freedom FM agreed to drop the complaint before the Commission on Human and Peoples' Rights.

When the government finally unsealed the radio station in July 2005, however, Njawé found that Cameroon's harsh climate had damaged the studios and much of their digital equipment beyond repair. The Justice Initiative is assisting Njawé's efforts to gain compensation for the damage and bring Freedom FM to the airwaves.

As of spring 2007, Freedom FM remained silent and Cameroon's Ministry of Communication had yet to license a single radio or television station.

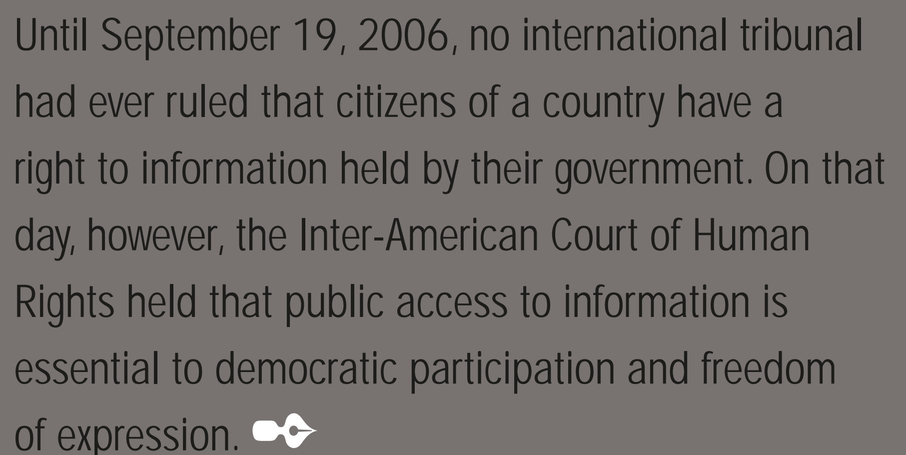
FREEDOM OF INFORMATION AND EXPRESSION

In a democratic society it is indispensable that state authorities are governed by the principle of maximum disclosure.



COURT RULING ON CHILE

Democracy Demands "Maximum Disclosure" of Information



Until September 19, 2006, no international tribunal had ever ruled that citizens of a country have a right to information held by their government. On that day, however, the Inter-American Court of Human Rights held that public access to information is essential to democratic participation and freedom of expression.

The Inter-American Court, an autonomous judicial institution, ruled on the application of the American Convention on Human Rights, which Chile has ratified. The aim of the convention is to consolidate in the Western Hemisphere a system of personal liberty and social justice based upon respect for essential human rights. The court ruled that countries that have signed the convention must develop procedures for releasing government-held information that are guided by the principle of "maximum disclosure." This means that, with few exceptions, all government-held information must be made accessible.

"This milestone ruling establishes a precedent that other courts and other countries should now follow," said Darian Pavli, the legal officer for freedom of information and expression at the Justice Initiative, which helped take the case to the Inter-American Court and submitted an amicus curiae brief. As support for its ruling, the court cited a Justice Initiative report, *Transparency & Silence*, which compares freedom of information laws and practices in 14 countries, including Chile.

The case that produced the ruling, *Claude Reyes and Others v. Chile*, involved an environmental dispute that erupted in the early 1990s when a United States–based logging company purchased tracts of virgin forest in Chile's swath of Tierra del Fuego, at the southernmost tip of South America. The company submitted a proposal to the Chilean government to extract timber from these lands, made an environmental impact statement, and, in 1996, began harvesting. Chilean and international environmental groups mounted opposition to the logging operation, arguing that it would adversely affect the region's fragile ecosystems.

One of these environmental groups was the Terram Foundation, whose activists were interested in acquiring more information about the logging project. On May 6, 1998, Terram filed a request for access to documents and information with an agency of Chile's government, the Chilean Foreign Investment Committee, which had vetted the logging company's preliminary foreign investment application. On May 19, 1998, the vice president of the Foreign Investment Committee agreed to provide information only on the amount of the logging company's total investment, which the committee later provided to Terram by fax. The committee failed, however, to respond to Terram's other requests. Two follow-up letters went unanswered. The committee provided neither information nor any reasons for its failure to provide the information.

Terram's executive director, Marcel Claude Reyes, and others sought relief in Chile's domestic courts. They filed three successive appeals against the committee's effective denial of their request, claiming a violation of their right to information under the Chilean Constitution and the American Convention on Human Rights. The Chilean Supreme Court summarily dismissed these appeals on July 31, 1998, saying they were "manifestly ill-founded."

On behalf of Reyes and the other persons who had sought information from the commission, a group of NGOs and members of Chile's parliament filed a petition on December 17, 1998, with the Inter-American Commission on Human Rights, which provides recourse to individuals who have suffered violations of their rights under the American Convention on Human Rights. About three months later, the Inter-American Commission found Chile responsible for multiple violations of the convention and recommended that Chile comply with a number of measures that sought to remedy the individual violations at issue, as well as the systemic shortcomings of the Chilean systems for providing access to information and access to justice.

On July 8, 2005—that is, after seven years of legal wrangling—the commission referred the case to the Inter-American Court of Human Rights, asserting that Chile had violated Reyes's and the others' right of access to public information and their right to judicial protection under Articles 13 and 25 of the convention and that, by virtue of its failure to "ensure the victims' rights to access to information and to judicial protection and [to] have mechanisms in place to guarantee the right to access to

public information," Chile had also violated Articles 1.1 and 2 of the convention.

The Inter-American Court of Human Rights had never before had an opportunity to consider fully the question of whether the convention guarantees a right of general access to information held by public authorities. The Justice Initiative joined with four other groups—ARTICLE 19; Libertad de Información Mexico-Asociación Civil (LIMAC); Instituto Prensa y Sociedad of Peru; and Access Info Europe—to file an amicus curiae brief in support of Reyes and the others. The brief argued that a fundamental right of people to access information held by their governments has been established internationally and that this right is contained in the American Convention on Human Rights. The brief also asked the court to rule that the convention guarantees a general right of citizens to information held by public authorities and that Chile had to improve its access to information law and honor requests for information in the future.

In its judgment, the Inter-American Court concluded that Article 13 of the convention contains a right of general access to government-held information and that Chilean authorities had violated this right. Article 13, the court said, "supports the right of persons to receive such information and the positive obligation on the state to supply it," except in the few cases where access is limited by the convention, and said "information should be provided without a need to demonstrate a direct interest in obtaining it."

The court highlighted the connection between freedom of expression and information and rights of democratic participation in concluding that "access to information held by the State . . . permits participation in public governance."

"[I]n a democratic society it is indispensable that state authorities are governed by the principle of maximum disclosure, which establishes the presumption that all information should be accessible, subject to a restricted system of exceptions," the court stated, before concluding that the burden is upon the state "to prove that in setting restrictions on access to information in its possession it complied with the restrictions" laid out by the court.

The court ordered Chile to provide the information requested about the logging project. In addition, the court ordered the state to train public officials on the right of access to information, noting with concern that "various elements of proof presented in this case coincide in showing that public officials do not respond effectively to information requests."

The judgment of the Inter-American Court is expected to have an important impact on the development of the right to information at the national level in the Americas. In those countries where the American Convention has been incorporated into domestic law, individuals and groups can now simply cite the *Claude Reyes* judgment to assert a right of access to government-held information.

The results of clear cutting in Chile. A lawsuit challenging the practice resulted in an important Inter-American Court ruling on access to information.

PROGRAM PORTRAIT

Freedom of Information and Expression Program

The official State Archive in Tomsk, Russia. Citizen access to government-held information is a central principle of open societies.

Freedom of information and expression is essential to an open society. The Justice Initiative promotes these intertwined rights as a foundation for government accountability, civic participation, and the democratic process.

Freedom of Information

The ability of citizens to hold their governments accountable and to participate fully in democratic society depends on their access to government-held information. History demonstrates that human rights and national security are best protected when the press and public can effectively monitor government decisions. By enabling public scrutiny, access to information complements freedom of expression in safeguarding against government abuse, subversion of the democratic process, and the squandering of public assets.

Because access to information plays such a fundamental role in the functioning of democracy, the Justice Initiative has made a priority of supporting the adoption and implementation of freedom of information (FOI) laws around the world.

In 1990, only 12 countries had FOI laws. By the end of 2006, 58 additional countries—throughout Central, Eastern, and Southern Europe, Latin America, and parts of Africa and Asia—had adopted such laws, several with support from the Justice Initiative.

Over the past few years, the Justice Initiative has supported adoption of FOI legislation in numerous countries (including Chile, Croatia, Macedonia, Nigeria, and Serbia) and efforts to reform weak FOI laws in many more.

Passage of an FOI law is no guarantee of government openness, however, and the Justice Initiative has also helped to increase and promote the full implementation of existing laws. In collaboration with partners in Albania, Argentina, Georgia, Peru, and Romania, the Justice Initiative has worked to gain the release of information on corruption, public health, government contracts, and the salaries of government officials. In Mexico and Peru, the Justice Initiative has joined with partner organizations to provide technical assistance to government bodies, resulting in improved systems for receiving and processing requests from the public.

Justice Initiative efforts to promote and strengthen enforcement of FOI legislation have produced significant results. The Access to Information Program, a Bulgarian partner NGO, has successfully litigated to gain access to documents that demonstrated corruption in the use of EU funds and helped an investigative journalist identify the killer of Bulgarian dissident Georgi Markov in London a quarter century ago. In Albania, the Justice Initiative and the Centre for Democratization and Development of Institutions (CDDI) won Albania's first FOI court case, challenging the central government's refusal to release certain information. In Romania, advocacy by the Justice Initiative and the Romanian Center for Independent Journalism—including bringing a lawsuit that exposed abusive practices by the former government—resulted in requirements for Romanian government agencies to post major advertising contracts online.

In 2006, the Justice Initiative made progress in expanding the passage and implementation of FOI laws through the following efforts.

Assessing Freedom of Information in 14 countries

The Justice Initiative published *Transparency & Silence: A Survey of Access to Information Laws and Practices in 14 Countries* in September 2006, which documented how various countries did—or did not—honor the right of access to information. The report analyzed over 1,900 requests for information filed and found that countries with access to information laws performed better than those with no law or with administrative provisions instead of a law. *Transparency & Silence* also revealed that government failure to provide information was common: 47 percent of requests received no response, with Chile, Ghana, and South Africa performing especially poorly. The report highlighted widespread inequality in the provision of information: requestors from ethnic minorities and other marginalized groups (such as Roma) consistently received less information than other requestors, even though their requests were identical. *Transparency & Silence* also reported that nongovernmental groups play an important role in promoting access to information as a right: governments are most responsive where those groups are most active.

A Landmark Freedom of Information Ruling

The research behind the Justice Initiative's *Transparency & Silence* report was cited in one of the most important court cases in the history of the FOI movement. In October 2006, the Inter-American Court of Human Rights broke new ground in declaring that all people have a general right of access to government-held information. The court's pioneering ruling in the case *Marcel Claude Reyes and Others v. Chile* marked the first time an international tribunal confirmed the existence of a full right of access to information held by the government and other public bodies. In the ruling, the court also established that countries must train public officials on procedures for releasing information and that they must be guided by the principle of "maximum disclosure," meaning that, with few exceptions, all government-held information must be made accessible. The Justice Initiative helped bring the *Claude Reyes* case to the Inter-American Court and filed an amicus curiae brief. The Justice Initiative is now working with in-country partners to use the court's ruling to encourage governments in Latin America to pass strong FOI laws and to implement fully those that already exist. For more about *Claude Reyes* and its importance, please see *Court Ruling on Chile: Democracy Demands "Maximum Disclosure" of Information* on page 33.

The First Treaty on FOI

The Justice Initiative is working, as one of only three NGO members on the Council of Europe's group of experts, to help draft a robust FOI treaty for adoption by Council of Europe member states. Once adopted, the treaty will be the first multilateral treaty in the world guaranteeing the right of the public to access government-held information.

Access to Information and Anticorruption Campaigns

In 2006, the Justice Initiative commenced a project in eight countries—Albania, Bulgaria, Hungary, Mexico, Moldova, Peru, Spain, and the UK—to monitor information about government contracts, especially in the oil, gas, and construction sectors.

Paper stall in Colombia. The Justice Initiative is working with local groups to address "soft censorship" of newspapers in Latin America.

The project aims to bring to light the information governments refuse to disclose that is necessary to monitor corruption. The project will soon be expanded to Azerbaijan and other countries.

Development of Freedom of Information Resources and Networks

The Justice Initiative has helped develop resources for FOI activists, information commissioners, academics, and government officials. The Justice Initiative helped launch freedominfo.org, the leading website on freedom of information; the FOI Advocates Network (www.foiadvocates.net), a global network of over 90 member organizations in 60 countries that runs a listserv on access to information issues; and the African FOI Center, based in Abuja. The Justice Initiative conducted a global survey that will be published as a guide to the best law and practice regarding access to information issues.

Next Steps

Notwithstanding the dramatic advances over the past 15 years, the right to information remains in its infancy. In the coming years, the Justice Initiative will expand its efforts to promote adoption of FOI laws throughout Africa, and will begin work in parts of Asia and the Middle East. It will continue to support the full implementation of laws that are already on the books, press for reform of weak laws, and fend off efforts to water down good laws. It will continue to strengthen the development of norms by working for the best possible treaties, statements of principles, and case law at the international and regional levels.

Freedom of Expression

Freedom of expression is among the most fundamental of rights. It protects the ability of individuals to express themselves and to share and advance knowledge. Democracy cannot survive without a free exchange of ideas and the ability of citizens to dissent from official policy and criticize those who govern them. Freedom of speech is also increasingly recognized as a key contributor to socioeconomic development: where policies and politics are transparent and can be challenged, they tend to more effectively serve the common good.

It is for these reasons that the Justice Initiative promotes respect for freedom of expression, in what continues to be a challenging mission. Governments in many transitional societies—from Central Asia to large swaths of Africa to Latin America—have shown themselves all too willing to sacrifice free expression and other rights to preserve power at any cost.

Unfortunately, many new democracies continue to employ the same methods, and sometimes the very tools of suppression—such as criminal libel or sedition laws—developed by the autocracies or colonial powers they replaced.

The Justice Initiative seeks to address these tendencies as well as new forms of censorship by exposing abuses and fostering the reform of antiquated laws that muzzle free speech. The Justice Initiative also pursues litigation to prompt regional and international bodies such as the Inter-American Court of Human Rights, the European Court of Human Rights, the African Commission on Human and Peoples' Rights, and the UN Human Rights Committee to ensure compliance with international free expression standards.

Following are several recent highlights of the Justice Initiative's work in freedom of expression:

Confronting Direct Threats to the Press and Freedom of Expression

In Gambia and Sierra Leone, the Justice Initiative has supported constitutional challenges by local press associations against legislation that suppresses free expression. In other countries, including Albania, Cambodia, and Costa Rica, as well as UN-administered Kosovo, the Justice Initiative has worked with local actors and reform-minded legislators to build better defamation law regimes and encourage decriminalization of expression. In Costa Rica, for example, the Justice Initiative first supported a high-profile libel case filed by a local journalist with the Inter-American Court of Human Rights. After the court found Costa Rica in violation of the American Convention of Human Rights, the Justice Initiative pursued changes in domestic legislation to bring Costa Rica's libel laws into compliance with the court's ruling. The Justice Initiative has also challenged the use of "institutional libel" to silence government critics in Russia. In *Romanenko v. Russia*, a case pending before the European Court of Human Rights, the Justice Initiative argued that government bodies should not be allowed to sue and collect damages for institutional libel that does not directly affect individual officials.

Challenging the Growth of Soft Censorship

Increasingly, the enemies of free expression are employing less visible and more sophisticated schemes to interfere with the free flow of information and ideas. These forms of subtler "soft censorship" are not entirely new, but they are now being used on a scale not seen before. From the perspective of free speech activists, the emergence of soft censorship is the price of success: as more widespread and effective domestic and international exposure has raised the costs of heavy-handed censorship, governments around the world are opting for less obvious, but equally effective ways of meddling with free expression.

A common form of soft censorship is the abuse by governments of advertising funds, subsidies, and other financial incentives to buy media friendship or punish critical voices. By allocating such financial favors in a discriminatory fashion, governments undermine fair media competition and promote a culture of silence and favoritism.

A year-long investigation by the Justice Initiative and the Buenos Aires–based Association for Civil Rights resulted in the publication of *Buying the News*, a 2005 report that documented the widespread use of soft censorship in Argentina. The report generated extensive debate in Argentina and a movement to end the abuse of government advertising and subsidies. It also resonated in other countries in Central and South America, where the Justice Initiative is now working with local groups to address similar issues. The Justice Initiative has also helped Romanian civil society groups to expose and find a solution to the widespread manipulation of government advertising in that country. This effort culminated with the passage of new legislation by the Romanian Parliament—the first of its kind in Eastern Europe—that greatly enhanced the fairness and transparency of government advertising expenditures.

Increasing Access to the Airwaves

The Justice Initiative has focused on freedom of broadcasting because radio and television are major sources of news and information for billions of people around the world, yet traditionally disadvantaged groups, such as indigenous, rural or poor communities, are often shunned by mainstream media and denied communication rights. A growing movement of community-based media is starting to fill this void by using television and radio to provide vital social and cultural services to their communities. Unfortunately, these broadcasters often struggle with legal segregation and uncertainty about their rights. Justice Initiative activities have helped broadcasters overcome these challenges and serve their communities more effectively.

In Mexico, after decades of legalized exclusion of community broadcasters, a Justice Initiative–supported effort managed to secure the first operating licenses for a dozen community radio stations. A similar project is underway in Guatemala, where the Justice Initiative is working with a government-convened roundtable to reform broadcasting laws and implement the communication provisions of the Peace Accords.

In other contexts, where broadcasting is tightly controlled by the government, the Justice Initiative supports the rights of independent voices to free and fair access to the airwaves. In Cameroon, the Justice Initiative represented an aspiring broadcaster in a case brought before the African Commission on Human and Peoples' Rights to challenge the government's arbitrary denial of its license application—the first such case in the history of the African human rights system. The resulting settlement obliges the Cameroonian government to allow Freedom FM radio on the air. For more on this case, see *Radio in Cameroon: Voices of Freedom Muffled As President Rules* on page 29.

INTERNATIONAL JUSTICE

An imperfect institution, the ECCC is attempting to deliver justice for victims of the Khmer Rouge.

LAST BEST CHANCE FOR JUSTICE

The Extraordinary Chambers in the Courts of Cambodia

When he arrived at Phnom Penh International Airport in July 2006, Robert Petit had a daunting task before him. As the newly appointed co-chief prosecutor of the Extraordinary Chambers in the Courts of Cambodia (ECCC), he was expected to investigate, indict, and try senior leaders and those "most responsible" for the 1975-79 genocide that killed an estimated 1.7 million Cambodians. After 30 years of waiting, Cambodians expected him to deliver justice.

Yet Petit had few resources at his disposal. He had only a skeleton staff. Translators and investigators were desperately needed. The courthouse, located on the far outskirts of the capital, was still being painted. Much of the court's furniture and equipment was still in boxes, and its jail cells had not been built yet. The ECCC had only three years and $56 million—much less than similar tribunals—to address one of the most notorious mass crimes in history. And people didn't just want Petit to bring justice—they wanted him to explain why.

Petit is a veteran of international tribunals, having worked on special courts for Sierra Leone, Kosovo, Rwanda, and East Timor. But even that experience did not fully prepare him for the challenges of Cambodia. Comparing the ECCC to his previous stints, Petit describes it as "working with limited resources and the smallest staff I have seen." The International Criminal Tribunal for the former Yugoslavia (ICTY), by comparison, had over 1,000 staffers and a budget of $100 million per year.

Beyond budget and staffing, the ECCC presents challenges in its very make-up. As the "Extraordinary Chambers in the Courts of Cambodia" name indicates, the court's structure is highly unusual, as is the predominance of Cambodian judges and prosecutors. Unlike other hybrid tribunals, such as the Special Court for Sierra Leone, that also blend international and national laws and personnel, the ECCC is largely a national court: Cambodian jurists make up a majority of all judges, although at least one international judge must concur with the majority for a decision to stand. And this "supermajority" system is not the court's only complexity. There are international and Cambodian coprosecutors and co–investigating magistrates—so rather than leading the prosecution, Petit will work together with a Cambodian counterpart, Chea Leang. This bifurcated structure has created what even court personnel refer to as the "Cambodian side" and the "international side" of the ECCC and placed a premium on cooperation, coordination, and translation services. Even the type of food—Cambodian or continental—served in the ECCC's cafeteria has been the subject of dispute.

Such disputes are not surprising given the court's origin. The result of seven years of complex and tendentious negotiations between the UN and Cambodian government, the ECCC is an imperfect institution saddled with impossible expectations. It is expected to punish the leaders "most responsible" for the mass crimes of the Khmer Rouge period, but won't address the great majority of crimes committed by lower-level cadres. It is expected to help Cambodians understand the accountability process, but it has little funding for outreach to the public. It is expected to leave as its legacy an improved justice system in Cambodia, but the country's judiciary is known for corruption and even the Cambodian judges on the ECCC have been accused of succumbing to political influence.

The Open Society Justice Initiative, since its inception, has devoted substantial effort and resources to first ensuring that the court was created, and then working for its success.

Cambodian Buddhists attend ceremonies marking the opening of the ECCC, February 26, 2006.

The Justice Initiative has had personnel on the ground since 2003 and the organization's Phnom Penh–based staff works closely with Cambodian NGOs to support the ECCC and maximize its impact.

Before the ECCC was established, the Justice Initiative was providing input from NGOs, legal scholars, and diplomats on the court's design and functioning. When Petit arrived with just three years to address crimes that are 30 years old, the Justice Initiative provided him with a 50-page memo detailing sources of evidence he could use in his indictments and subsequent trials: everything from the locations of mass graves to the contents of old Khmer Rouge newsreels.

Its assistance to Petit is just one example of the Justice Initiative's commitment to the ECCC. The organization has flown a series of experts to Phnom Penh, to train and advise all parts of the court, and provided the court with a series of expert papers on topics such as international fair trial standards and principles of defense. It conducted "best practices" trainings—based on lessons learned from other hybrid tribunals—for the ECCC's prosecutors, investigating magistrates, and principal defenders. The Justice Initiative has also stationed a court monitor in Phnom Penh who works alongside a Cambodian legal officer.

Outside of Cambodia, the Justice Initiative has worked to increase support and funding for the ECCC, briefing diplomats and NGOs on the court and encouraging donor nations to both engage with the court and support it financially. A listserv established by the Justice Initiative is a leading source of information about the ECCC.

Of course, the most important audience for news about the court is inside Cambodia, where survivors of the Khmer Rouge have high expectations but little actual knowledge of the ECCC. This is especially true in rural areas where 85 percent of the country's population lives and where literacy rates are low. Many rural Cambodians know nothing about the ECCC. Others think low-level perpetrators will be punished. Still others believe they will receive compensation from the ECCC for their losses under the Khmer Rouge.

These beliefs were voiced recently at a community forum in Kampot, a few hours' drive south of Phnom Penh, organized by the Justice Initiative and a Cambodian NGO, the Khmer Institute of Democracy. On a humid night, Nget Sok, a widowed farmer, and about two dozen other area residents gathered to learn more about the ECCC. They heard speakers, who used a pictorial flip chart developed by the Justice Initiative rather than written materials, describe the court, its purpose and function.

They saw a 35-minute documentary film, *Waiting To See the Truth,* in which older Cambodians describe their suffering during the Khmer Rouge period and younger Cambodians—some of whom initially laugh incredulously at the stories—struggle to understand their country's past. The film led to an animated exchange of questions, recollections, and suggestions from the Kampot audience.

Generating conversation and understanding about the Khmer Rouge and the ECCC is why the Justice Initiative commissioned the film and is showing it at community forums across the country. Justice Initiative personnel, including one working exclusively on outreach, use the forums to make the ECCC accessible to rural Cambodians. By allowing people to grapple with their personal experiences and the nation's traumas, such outreach work can help the country come to terms with its past while moving forward.

In this way, the ECCC can benefit ordinary Cambodians even if—as Nget Sok learned that night—they will not receive monetary compensation or see low-level cadres punished. The ECCC itself will also benefit, as the Justice Initiative takes questions, thoughts, and recommendations from these outreach sessions back to the court in Phnom Penh. As Sok said, "If the Khmer Rouge are punished, that is good. But the most important thing is to understand."

The Justice Initiative has invested thousands of hours and tens of thousands of dollars in supporting the successful functioning of the ECCC and helping people like Nget Sok to understand the court's work. This is a major investment in a court with a complex structure, uneven history, and uncertain future. Disputes over the court's rules and the exact amalgam of international and Cambodian law could still derail the entire process.

But Petit, for one, is optimistic. "We've made a lot of progress," he said, "especially considering the resources we have."

Supporting the ECCC remains a major gamble for the Justice Initiative, and one that could still go wrong. But it is a risk the organization is willing to take in order to provide the justice and accountability that Robert Petit, Nget Sok, and the Cambodian people seek.

PROGRAM PORTRAIT

International Justice Program

The Extraordinary Chambers in the Courts of Cambodia building, where senior leaders and "those most responsible" for the mass crimes of the Khmer Rouge are to be tried.

International justice—the name given to efforts to prosecute high level perpetrators of mass atrocities including genocide, crimes against humanity, and war crimes—has undergone a renaissance since the early 1990s. The Nuremberg and Tokyo tribunals of the 1940s brought individual perpetrators of World War II atrocities to justice. After the tribunals closed, the international community made little effort to replicate these institutions for more than 40 years. But in response to the horrors in Bosnia in the early 1990s and the 100 days of slaughter in Rwanda in 1994, the international community formed two separate international war crimes tribunals to try high level perpetrators: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Since then, other more localized international justice efforts (sometimes referred to as "hybrid tribunals," because they combine international and national elements) have emerged in Sierra Leone, East Timor, Cambodia, and elsewhere. A permanent institution, the International Criminal Court, came into existence in July 2002 after 60 states ratified its statute. These efforts demonstrate a commitment on the part of the international community to ensure that individualized accountability, rather than impunity, becomes the norm in response to large-scale violence.

Former Liberian President Charles Taylor at the Special Court for Sierra Leone in April 2006.

Because international justice is such a recent phenomenon, the Justice Initiative has developed its own program to support international and hybrid tribunals around the world. Many factors will determine the success of the international and hybrid courts. Some of the most critical are: (1) the fairness and effectiveness of the investigations, prosecutions, and trials; (2) the degree to which affected populations are engaged in and informed about the workings of the courts; (3) the courts' contribution to the long-term capacity building of local justice systems and to the sense of justice felt by the victims; (4) the jurisprudence and practices emerging from these courts; (5) the impact on peace and security, the rule of law, and regional stability; and (6) the extent to which the international community supports the work of international justice mechanisms, both financially and politically.

International tribunals are often underresourced and lack sufficient state cooperation in facilitating arrests and providing information. As a result, they must often rely on NGOs such as the Justice Initiative for additional expertise and technical assistance. The Justice Initiative has provided assistance to various arms of these courts, including the office of the prosecutor, the registry (the administrative organ of international tribunals) the judicial chambers, and the defense. The Justice Initiative has also engaged in advocacy and public education efforts to strengthen support for international and hybrid tribunals among the UN Secretariat, the diplomatic community, the media, and the bench and bar.

Some of the key areas of focus for Justice Initiative work in this field are the following:

The Extraordinary Chambers in the Courts of Cambodia (ECCC)

The Justice Initiative views the ECCC as the last real chance to bring some measure of justice to victims of Khmer Rouge–era crimes, and thus is committed to working with Cambodian civil society, all organs of the ECCC, the United Nations, and other stakeholders to ensure that

A Ugandan soldier questions two boys who escaped from the Lord's Resistance Army (LRA). The International Criminal Court has indicted leaders of the LRA on charges of war crimes and crimes against humanity, including the forced enlistment of child soldiers.

the ECCC trials are—and are seen to be—independent, legitimate, and fair. Since 2003, the Justice Initiative has maintained an on-the-ground presence in Cambodia to monitor developments, engage in advocacy, and provide technical assistance to help prepare for the ECCC's establishment. This has included a full-time international court monitor in Phnom Penh tracking the court's progress, and a resident fellow working with the Cambodian NGO, Khmer Institute for Democracy, on outreach activities, providing information on the ECCC to people in the provinces and conveying their reactions and needs back to the court. The Justice Initiative has brought numerous experts from other international and hybrid tribunals to Cambodia to work with NGOs, the Government Task Force on the Khmer Rouge trials, and ECCC staff on a broad range of issues, from fundraising to court administration and operation to interpretation and translation. The Justice Initiative has also issued a series of reports highlighting the court's pressing needs. In both New York and Phnom Penh, the Justice Initiative has worked with the UN secretariat and UN missions to generate and sustain international engagement with the ECCC. For more about the ECCC, please see *Last Best Chance for Justice* on page 41.

International Criminal Court

The Justice Initiative works closely with the International Criminal Court (ICC), helping it function as efficiently and effectively as possible. Among other activities, the Justice Initiative assists local human rights advocates in gathering and presenting information of use to the ICC, pursues advocacy and public education with governments to secure support for the ICC, and contributes to building the capacity of ICC staff on a range of issues.

International Criminal Tribunals for Rwanda and the former Yugoslavia

The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) have ceased opening new investigations, are functioning at full trial capacity, and are expected to finalize all appeals and close down in 2010. Because of this, the courts' completion strategies have already been implemented and they have begun transferring some cases to national courts. Closing these two tribunals requires consideration of residual war crimes issues, including how to deal with indictees arrested after the courts have ceased operations, what happens when new evidence is discovered which could exonerate someone convicted by either court, how requests by persons convicted should be handled (such as requests for early release), how witness protection issues will be maintained, initiated, and/or monitored, what happens to the courts' archives, and other judicial and nonjudicial issues inherent in a criminal judicial process. The Justice Initiative is spearheading efforts to establish a Residual War Crimes Office that will take up these issues and help determine the ongoing legacy of these courts.

The Justice Initiative continues to actively engage with the ICTR on gender issues and handover, as the court transfers more cases to domestic courts in Rwanda as part of its completion strategy. With the ICTY, the Justice Initiative pursues advocacy efforts aimed at securing the arrests of accused war criminals Radovan Karadzic and Ratko Mladic and their transfer to the ICTY, while determining how to best capitalize on the vast evidence developed against Slobodan Milosevic before his death.

Special Court for Sierra Leone

Charles Taylor, the former president of Liberia, was arrested in early 2006, marking the capture of the court's highest profile indictee. Security concerns within West Africa prompted the UN Security Council to transfer Taylor to The Hague, where he will be tried by the Special Court for Sierra Leone using the International Criminal Court's premises. The Justice Initiative is providing technical assistance to help the SCSL prepare for Taylor's trial. To read more about the Justice Initiative's pursuit of Charles Taylor, please see *Civil Society Pressure: Ending Charles Taylor's Asylum* on page 9.

Beyond the Taylor case, the Justice Initiative undertakes assessments of the court's operations, facilitates the court's public outreach, enhances the quality of jurisprudence through submission of amicus briefs, and develops and implements projects to ensure that, when it concludes operations, the court leaves a positive legacy in West Africa and elsewhere.

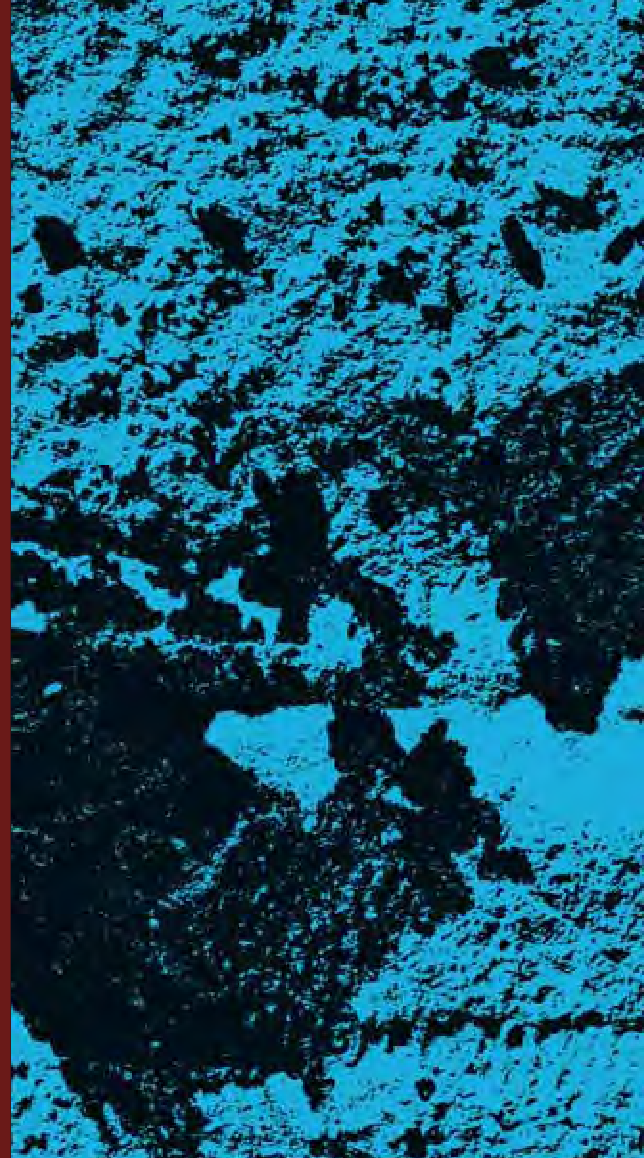
East Timor

In 2004, representatives from the Justice Initiative and the Coalition for International Justice traveled to East Timor and Indonesia and coauthored the report *Unfulfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor*. The report served as a foundation for advocacy that helped lead to the establishment of a Commission of Experts to review the justice failures in East Timor and Indonesia. The Justice Initiative has since partnered with other civil society organizations in supporting the commission's call for accountability for crimes committed in East Timor and Indonesia.

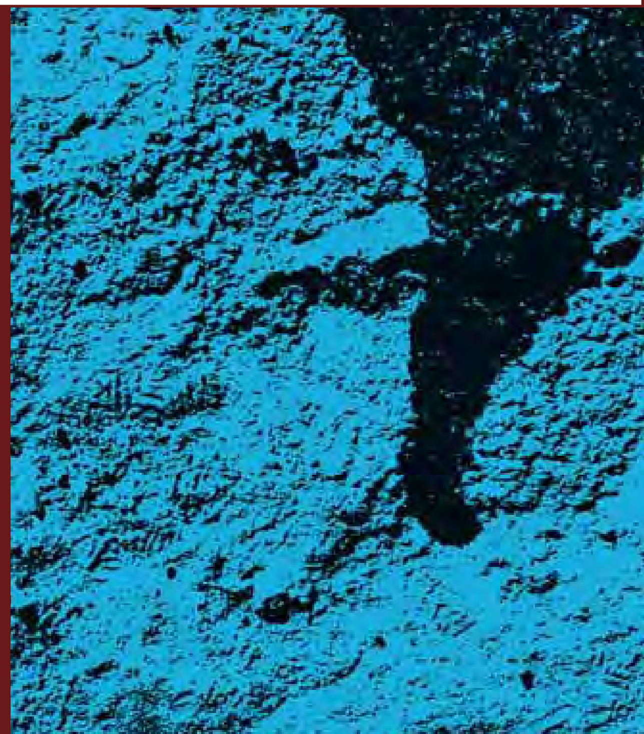
Other Tribunal-related Projects

In 2006, the Justice Initiative participated in a training for Iraqi judges and prosecutors (organized by the Global Justice Center) and contributed to workshops on other potential tribunals for crimes committed in Afghanistan, Burma, Burundi, Lebanon, and Liberia. It has also undertaken a tribunal assessment project to examine the impact of the ICTY and other tribunals and derive lessons that could be useful to future courts.

LEGAL CAPACITY DEVELOPMENT

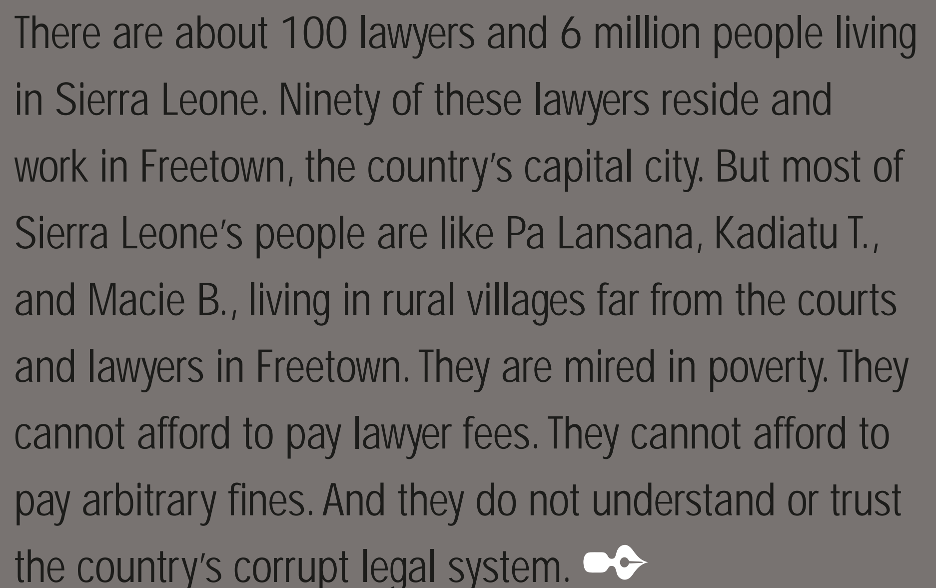


Training paralegals to navigate between two justice systems.



WITCHES AND BIG MEN

Sierra Leone Paralegals Resolve All Kinds of Disputes



There are about 100 lawyers and 6 million people living in Sierra Leone. Ninety of these lawyers reside and work in Freetown, the country's capital city. But most of Sierra Leone's people are like Pa Lansana, Kadiatu T., and Macie B., living in rural villages far from the courts and lawyers in Freetown. They are mired in poverty. They cannot afford to pay lawyer fees. They cannot afford to pay arbitrary fines. And they do not understand or trust the country's corrupt legal system.

So, what is Pa Lansana, the aged patriarch of a rural family, to do when tenant farmers refuse to pay for using his family's land and a corrupt tribal chief related to the farmers levies one fine after the next upon the patriarch and his family?

Who will compensate Kadiatu T., a tobacco vendor, when a policeman takes a cigarette on credit, then beats her until she is unconscious; when she must pay for her medical care; when the policeman struts around her village boasting of his deed; when her friends say in Creole, "na fo biya no mo"—"one should bear, nothing more," and tell her to ignore the injustice?

And what is Macie B. to do when the deaths of her three children lead to accusations that she is a witch, when her family shuns her, when she is pregnant and does not have enough to eat?

And what are thousands more victims of domestic violence, child abandonment, corruption, police abuse, economic exploitation, abuse of traditional authority, and violations of rights of employment, education, and health to do?

Too frequently, people like these resort to violence. And it has been this way for years. In fact, many men and boys who went to fight during the 11 years of Sierra Leone's civil war were frustrated with their poverty, with the inequality of their country's social structure, with their inability to find justice through institutions. The wartime violence, most of it directed at civilians, made matters worse. And most of the men and boys who committed the estimated 4,500 wartime killings and 6,000 abductions, who maimed untold thousands of children, and who used sexual violence as a weapon of terror still live in the country.

Timap: Team Up for Justice

Resolving the interpersonal disputes that fuel much of the frustration simmering beneath the surface in Sierra Leone is crucial for preventing future explosions of violence and building a viable, open society. For this reason, Sierra Leone's National Forum for Human Rights and the Open Society Justice Initiative initiated a program to organize community-based paralegals to deliver urgently needed justice services to impoverished people like Pa Lansana, Kadiatu T., and Macie B. This program has evolved into an independent organization called Timap for Justice, which was cofounded by Vivek Maru, an American-trained lawyer and Justice Initiative fellow, and Simeon Koroma, a lawyer from Sierra Leone.

Timap for Justice, like any effort to resolve disputes in Sierra Leone, must deal with three overarching realities.

First, Sierra Leone's institutions are dysfunctional. The government has minimal resources. Corruption is rampant. Communication is difficult. Inadequate health and education systems have left a shortage of healthy, educated economic actors.

Second, power in Sierra Leone is concentrated in the hands of powerful men, known as *di big man dem*, at every level from the country's president, *di pa*, or "the father," down to the village chief, school principal, or head of the village farmers' association.

Third, Sierra Leone has two legal systems: a formal legal system, which is concentrated mostly in Freetown and survives as the legacy of Sierra Leone's former colonial ruler, Great Britain; and a parallel, customary legal system, which is far more relevant for most of Sierra Leone's people.

Customary law varies by tribe, it is not codified, and it is supposed to comply with the national constitution and not contradict "enactments of parliament" or "principles of natural justice and equity." But these formal limitations are seldom if ever enforced. *Di big man dem*, the tribal chiefs, or paramount chiefs, appoint the chairmen of local courts that act as arbiters of disputes brought to the customary legal system for resolution. The paramount chiefs and the elders they favor have almost all the say over how the local courts function. Favoritism and excessive fines are commonplace in the customary legal system. A lack of independent review of decisions exacerbates substantive and procedural unfairness.

Timap's paralegals rely primarily on mediation, backed up by litigation when necessary.

After a needs assessment, Timap for Justice hired and trained 13 paralegals for five chiefdoms, three in the southern part of the country and two in the north. The project directors, who are attorneys, spend more than half of every month traveling between the program's eight offices, reviewing the paralegals' handling of cases, working directly with selected clients, and providing training on pertinent areas of the law or the workings of government. Oversight boards, appointed by community members and approved by the directors, monitor the paralegals' work to ensure that the program is serving the needs of each chiefdom's people.

For problems involving individuals—for example, a woman beaten by her husband or a juvenile wrongfully detained by the police—the paralegals provide information on rights and procedures and assistance in dealing with government and chiefdom authorities. If both parties in a dispute are interested in a settlement, the paralegals conduct a structured, six-step mediation process that includes all of

the parties, family elders, or other mutually respected people from either side. For community problems—for example, the broad problem of domestic violence in the community or the general problem of detention by police of juveniles along with adults—the paralegals engage in community education and dialogue, advocate for change with both traditional and formal authorities, and organize community members to undertake collective action.

Litigation is a tool at Timap's disposal, and this carries significant weight. But Timap's actual litigation capacity is small. Only Simeon Koroma is qualified to appear in court. And the organization has chosen to litigate only as a last resort and only for a small number of cases that have had the possibility of either making a significant legal impact or have involved particularly severe injustices and an unwillingness of the parties to respond to paralegal advocacy or negotiation.

Timap's paralegals tackle a much wider range of disputes than a typical legal services program. Villagers in one chiefdom, for example, approached Timap paralegals to complain that they had been cut off from basic services because of the condition of the feeder road that connects their community to a main road; in response, paralegals organized village residents for a day of voluntary, collective road maintenance. Timap's paralegals have mediated child neglect cases, land disputes, contested cases of wrongful detention, and helped farmers apply for a grant of seed rice.

The cases of Pa Lansana, Kadiatu T., and Macie B. illustrate how Timap's approach secures justice under the most difficult conditions.

A Timap paralegal discusses a case with local community leaders.

The Case of Pa Lansana. After exhausting his money paying fines to a paramount chief related to the families who refused to pay for the use of Lansana's land, Pa Lansana approached the Timap office. A paralegal took a statement, read it back to Pa Lansana, and had him ink his thumb and press it on the paper. The paralegal explained that the paramount chief's actions had violated the Local Courts Act and that Pa Lansana had the right to appeal. The paralegal presented Lansana's case to the local court supervisor, who raised the issue with the customary law officer; both the supervisor and the law officer visited the chief, who, faced with a government lawyer from Freetown, a bigger man than himself, agreed to remand the case to the local court and refund some of the fines Pa Lansana had paid. In the meantime, the paralegal paid a courtesy call to the paramount chief to make sure the case had not badly damaged their relations, because a vindictive paramount chief could shut down one of Timap's offices in an instant. Later, before the local court, Pa Lansana won the underlying dispute over compensation for use of his family's land.

The Case of Kadiatu T. After a month of inaction by the internal disciplinary board of the police department, Kadiatu T. and her boyfriend came to the Timap office in Freetown. A paralegal assured Kadiatu T. that if the police officer did beat her in the way she described, then the officer committed a serious violation of the law.
The paralegal took interviews that generally confirmed Kadiatu T.'s story. He wrote a letter on Timap letterhead to the police officer, recounting the allegations, asserting that they amounted to serious infractions, and inviting the officer to visit the Timap office to tell his side of the story. The officer showed up and, after some discussion, admitted his wrongdoing. The paralegal informed him that Timap would monitor the proceedings in the police disciplinary board and, depending on the outcome, would consider the possibility of a civil suit for damages. After leaving Timap, the officer approached senior police officers to intercede for him with Kadiatu T., and she agreed to accept the officer's apology and promise that he would pay her 138,000 Leones (about 46 U.S. dollars), which is no small sum in Sierra Leone. She also agreed to drop her complaint with the internal disciplinary board. Timap for Justice did not find out about the arrangement until Kadiatu T. came to the office the following week to report that the police officer had paid only part of the money he had promised. The paralegal spoke to the senior officers, and eventually all the money was paid.

The Case of Macie B. Family members brought Macie B. to Timap. "What do you want us to do with this child?" they asked. "She is a confessed witch. She gave three of her children to witches to be eaten. Her husband's family has returned her to us and left the village. We haven't money to support her. We fear her ourselves. What do you human rights people have to say about this?"

Timap's local paralegals were at a loss. Under customary law, Macie B.'s confession was reason enough for her husband's family to "return" her, and for her own family to refuse to take her in. Under formal law, her family had no obligation to care for her, because she was no longer a child. The paralegals set aside their own beliefs in witchcraft and focused on saving Macie B. from being abandoned by appealing to love and applying tribal custom rather than law.

"We have listened, and we respect the seriousness of the situation," the paralegals told Macie B.'s family members. "We want to remind you, though, that this is your daughter. You brought her into this world. She has nowhere else to turn." They also tried to convince them that the deaths of her children might have been due to neglect rather than witchcraft and that she needed help now because she was pregnant again. The family agreed to continue to shelter Macie B. despite the scarcity of food in their household. Timap's codirectors Simeon Koroma and Vivek Maru gave a small amount of their own money so Macie B. could visit a clinic for prenatal care and purchase some additional food.

After the birth of Macie B.'s child, one of the members of Timap's community oversight board, a part-time diviner, prepared a meal and held a ceremony for Macie B. to exorcise the witch. The strategy worked: Macie B. was welcomed back into her husband's family. But her baby soon died. Sierra Leone has the world's highest infant and child mortality rates.

PROGRAM PORTRAIT

Legal Capacity Development Program

A student in Afghanistan studies for exams. The Justice Initiative worked with the International Legal Foundation to open a criminal defense clinic at Herat University. Such clinics offer law students hands-on experience.

In many countries around the world, lawyers with the courage and skills needed to defend human rights and pursue cases in the public interest are scarce. Expanding human rights protections and the rule of law hinges on developing local capacity to spearhead change in legal practice and advocacy. One of the principal ways to achieve this is to create opportunities for local actors to learn by doing. Through the Justice Initiative's Legal Capacity Development (LCD) Program, aspiring human rights advocates receive professional training in litigation, advocacy, technical assistance, research, and writing. In the long term, creating and sustaining growth in human rights requires a critical mass of skilled and committed advocates.

The LCD program promotes skills and opportunities for human rights advocacy among young lawyers and seeks to develop a culture of public service in the legal profession. The Justice Initiative works to develop legal capacity in two principal ways: through clinic-based training programs and human rights fellowships.

Clinical Legal Education

The Justice Initiative's clinical legal education project operates through university-based legal clinics: faculty and student-run legal aid offices that provide pro-bono legal services to the most vulnerable members of society. These clinics offer front-line justice services to the poor and disenfranchised, in areas ranging from criminal defense to community legal empowerment to legal assistance for people with HIV/AIDS.

University-based legal clinics require only modest financial and human resources. But in addition to providing legal services to those who otherwise would not receive them, these clinics help introduce new subjects and innovative legal teaching methods to existing law school curricula. Moreover, they provide opportunities for law students to gain practical skills while developing a human rights and public service ethos.

Starting in Eastern Europe and the former Soviet Union, where the program helped establish nearly 75 legal clinics, the Justice Initiative has created new clinics around the world. From Fourah Bay College in Sierra Leone to Istanbul Bilgi University in Turkey to Panassastra University in Cambodia, clinics founded or supported by the Justice Initiative now help train scores of lawyers a year.

In addition, the Justice Initiative seeds new clinics by conducting trainings in promising locales. Recent trainings have been held for

teachers and administrators from Afghanistan, Indonesia, Lebanon, Malaysia, Nigeria, and Tajikistan. After one such training, the International Legal Foundation created a criminal defense clinic at Herat University in Afghanistan, following groundwork laid by the Justice Initiative. Preparations are underway to establish community empowerment clinics at Pasundan University and International Islamic University in Indonesia, and a public interest law clinic at the University of the Holy Spirit in Kaslik, Lebanon.

Central Asia Project

The LCD Program has a special focus on Central Asia, where it seeks to buld the capacity of lawyers to advocate for human rights and promote change through legal means. Currently, its main activity is seeking legal remedies for torture, which remains widespread in Central Asia. The project provides qualified legal counsel to victims of torture, helping them obtain redress through domestic litigation, and, where appropriate, application to the UN Human Rights Committee or other international mechanisms. The project's concentration on strategic litigation is designed to complement existing anti-torture activities in the region. After starting in Kyrgyzstan, the project recently began taking cases in Kazakhstan and Uzbekistan.

Human Rights Fellowship Program

Through its Human Rights Fellowship Program, the Justice Initiative works directly with lawyers and law students, preparing them to pursue human rights advocacy and fortifying the growing network of advocates essential to an open society. The fellows spend one year attending human rights courses and interning with an NGO, then spend a second year working full-time for an NGO in their home countries. The program provides fellows—all of whom come from non-Western countries—with important first-hand experience, while building the capacity of human rights organizations.

One of the Justice Initiative's fellows went on to found Timap for Justice, a nonprofit in Sierra Leone that trains paralegals to help fill gaps in the justice system—gaps that are alarmingly common in one of the poorest countries in the world. Please see *Witches and Big Men: Sierra Leone Paralegals Resolve All Kinds of Disputes* on page 49 for more on Timap and the cases they take on, from a street vendor beaten by a police officer to a woman accused of being a witch.

In the past five years, the Justice Initiative has helped train 81 fellows from Africa, Central and Southeast Asia, Eastern Europe, and Latin America. Following are brief profiles of selected fellows:

Solomon Abebe (Ethiopia) is a lawyer for the NGO Action: Professionals' Association for the People. He organizes and conducts human rights trainings for judges and prosecutors, carries out research, and develops human rights training materials.

Renata Arianingtyas (Indonesia) is director of the Bridging Diversity Program at the Tifa Foundation in Jakarta, where she conducts trainings in human rights education, conflict resolution, consensus building, and interreligious tolerance.

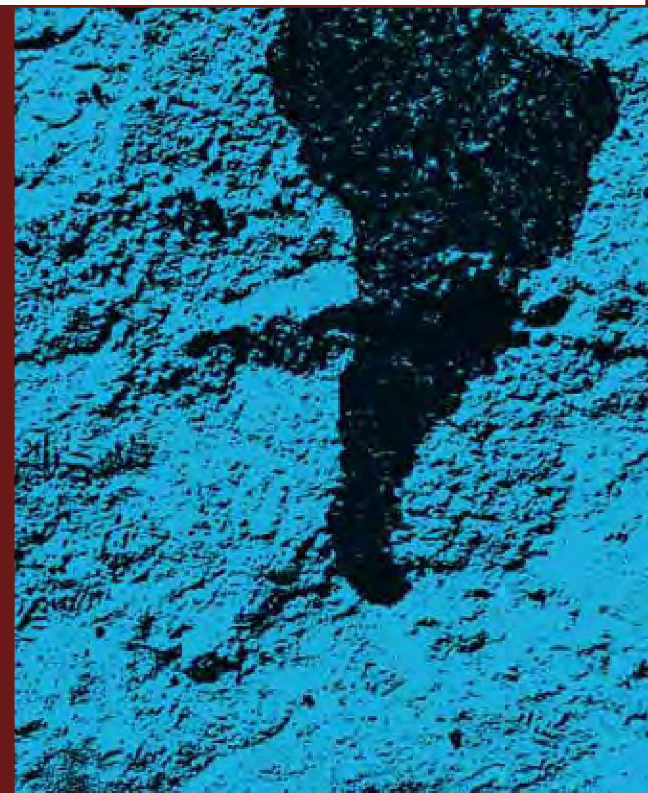
Elvira Habibulina (Kyrgyzstan) is director of the Center for Legal Assistance for Prisoners, an NGO devoted to protecting prisoners' rights, assisting in penal reform, and reducing incarceration. She monitors prisoners' rights; provides legal aid to prisoners, former prisoners, and their relatives; and advocates for the liberalization of criminal legislation, with special emphasis on the application of alternatives to incarceration.

Akaki Minashvili (Georgia) is a lawyer at the Liberty Institute, a Georgian human rights NGO. He provides free legal counseling to victims of human rights violations, focusing on freedom of expression and freedom of information issues. He is currently participating in the drafting of a law on freedom of the press, speech, and broadcasting, and was actively involved in drafting the new Criminal Procedural Code of Georgia.

Marta Villarreal (Mexico) coordinates the Clinical Legal Education Program and Public Interest Law Clinic projects conducted by the Department of Law at the Instituto Tecnológico Autónomo de México (ITAM) where she has also worked with the Access to Justice Program.

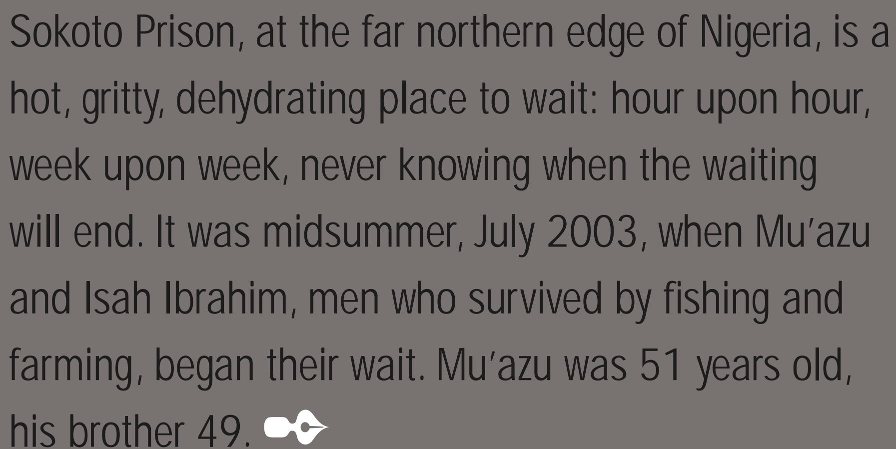
NATIONAL CRIMINAL JUSTICE REFORM

Most pretrial detainees are jailed without being given access to legal representation.



ARRESTED IN NIGERIA

The Sentence Comes First—Years in Pretrial Detention



Sokoto Prison, at the far northern edge of Nigeria, is a hot, gritty, dehydrating place to wait: hour upon hour, week upon week, never knowing when the waiting will end. It was midsummer, July 2003, when Mu'azu and Isah Ibrahim, men who survived by fishing and farming, began their wait. Mu'azu was 51 years old, his brother 49.

In the early 1990s, the Ibrahim brothers were involved in a dispute over a parcel of farmland in their native village, a place called Kabanga. Another village man claimed he was the just heir to the plot; the Ibrahim brothers maintained that they were the rightful inheritors. The man disappeared in about 1993. After 10 years, the missing man's nephew made allegations to the authorities that the Ibrahim brothers had killed his uncle. This was enough information for the police to bring the brothers into custody, to transfer them to Sokoto Prison, and to leave them there, surrounded by walls 20 feet high, to wait, without counsel or any other means of influencing the judicial process that had swept them up.

The brothers were not alone in their predicament. Almost two out of every three prisoners in Nigeria's jails today are in pretrial detention—detainees awaiting trial. On average, these people languish in custody for more than three and a half years, and a few have waited more than 10 years. Never mind that Nigeria's constitution requires the arraignment of detainees before a court within 48 hours and trials for accused persons within a "reasonable" time. Almost three-quarters of these detainees have no legal counsel, leaving them at the mercy of police officers and criminal justice officials who are, in too many instances, corrupt.

Days turned into weeks for Mu'azu and Isah Ibrahim. Months passed. The seasons changed, as they do even in dry, hot Sokoto. And years of prison life ground by behind doors that did not open even to allow the brothers a bail hearing.

Reasons for the Endless Waiting

Several factors prolong pretrial detention in Nigeria. Responsibility for investigating crimes and managing evidence rests with the police, a federal-level agency in Nigeria. But 90 percent of the country's crime occurs at the state and local levels, and most trial courts are state-level institutions whose prosecutors rely heavily upon supervision and authorization by federal officials and agencies. The slow interaction between these multiple layers of bureaucracy leads too frequently to miscommunication and even loss of documents.

Nigeria's police are quick to act first and ask questions later, arresting suspects even if only an initial investigation links them to a crime. The police start their investigation in earnest only after they make an arrest, but they can only release or prosecute a suspect with authorization from the director of public prosecutions, which can take more than five years to obtain. In 2005, 3.7 percent of pretrial detainees were in custody because their case files could not be found, 7.8 percent were in custody because the investigating police officers assigned to their cases had been transferred to other regions or states, and 17.1 percent were in custody as a result of delays in investigations. Nigeria's courts are not required to set time limits on investigations or monitor the duration of pretrial custody.

In most cases, the police and the prosecution do nothing after the magistrates have issued a remand order. One reason for this is that promotion of police officers and prosecutors depends upon the number of arrests and convictions they record.

In too many cases, law enforcement authorities fail or refuse to expedite investigation of the allegation and the filing of a charge in order to obtain bribes from the suspects and their relatives.

Most detainees do not receive access to legal representation at the beginning of their court cases. The police frequently deny suspects contact with family or lawyers until they have found incriminating evidence or extracted confessions—often through torture. A 2005 presidential committee found that 75 percent of suspects in pretrial detention have no legal representation of any kind.

In December 2004, the Legal Aid Council of Nigeria and the Open Society Justice Initiative launched a two-year pilot project to reduce the number of pretrial detainees in the overall prison population in Sokoto and three other Nigerian states and to address the underlying causes of the problem of inordinately long periods of pretrial detention.

The project relied upon the services of trained Legal Aid Council lawyers who have been recently called to the bar as solicitors and advocates but are on compulsory service to the state for one year. The lawyers on compulsory service are not paid salaries, but receive a monthly government allowance to augment stipends from their places of primary assignment.

The 20 lawyers participating in the pilot states made numerous applications to the police, the director of public prosecution, and the courts calling for the release of detainees on grounds that they had no case to answer or for want of diligent prosecution. In some cases, the lawyers filed applications citing the Fundamental Human Rights Enforcement Procedure Rules, through which the court can unconditionally release persons who are unlawfully detained. In other cases, the lawyers filed applications for release of detainees on bail.

Reports by the project team to the chief judges of the pilot states led to the release of numerous pretrial detainees. Engagement with the police at both the national and state levels led to better monitoring of police behavior and reduced the incidence of police abuse. This monitoring has helped raise the levels of professionalism in police investigations and reduced delays and arraignments.

A Record of Success

During its first year, the project achieved significant successes.

- There were 3,011 detainees awaiting trial in the four pilot states at the beginning of the project. Within one year, the project's efforts secured the release of 1,255 (42 percent) of these detainees. The duration of pretrial detention in the four pilot states fell dramatically, including a 61 percent drop in Sokoto. The overall average period of pretrial detention in the four pilot states before the project was 552 days; after one year, the project had reduced this average period to 172 days.
- Through the advocacy efforts of project lawyers at police stations and in courtrooms, 636 suspects—379 of them in Sokoto—were allowed to post bail rather than being remanded to prison custody.
- The project team developed the trust of the police, courts, and other criminal justice agencies and their cooperation ensured success where past programs failed. On April 28, 2005, for example, the inspector-general instructed police commanders in the four pilot states to give the project's lawyers unhindered access to police cells in order to interview and offer legal advice and assistance to inmates. Before this instruction, lawyers were rebuffed at the police stations and were told to go to court if they had any complaints against the police.
- The chief judges in Sokoto and two other states adopted the project's model procedures, known as Practice Direction. As a result, police investigative teams have improved their work. The chief judge in Kaduna state is considering the Practice Direction model.
- Coordination has improved among the agencies responsible for administering criminal justice.

Sustaining and expanding the reform of Nigeria's pretrial detention regime is possible. Prospects are bright for passage of the Administration of Criminal Justice Bill and the Legal Aid (Amendment) Bill. Adoption of the project's Practice Direction model by more states will broaden implementation of its mechanism for magistrate courts to monitor and review pretrial custodial orders. The police authorities have established human rights sections at the divisional, area, and state command levels in an effort to strengthen respect for human rights, rule of law, and due process through better training. Police training manuals have been revised to include instructions defining human rights and how to respect them. Police authorities have also reorganized their internal oversight to root out corrupt practices and corrupt police officers.

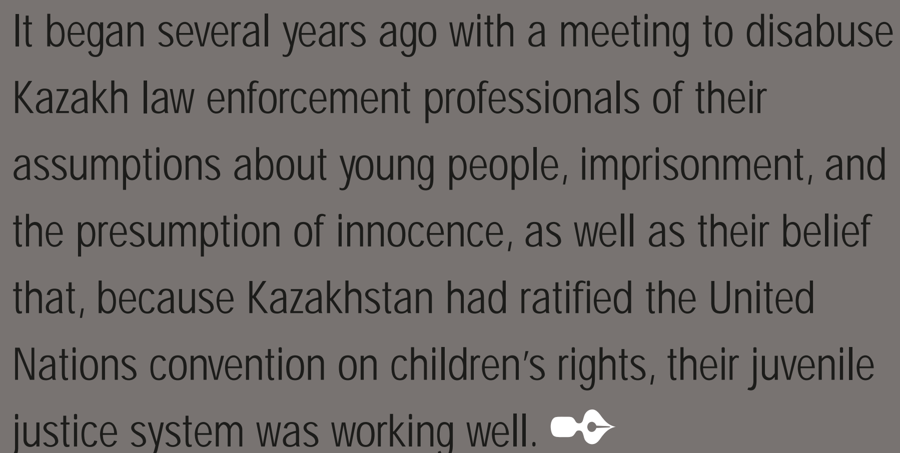
Three years passed before Mu'azu and Isah Ibrahim found their way out of Sokoto Prison and returned to Kabanga to fish and farm once more. They stayed in prison three years despite the fact that the police had no body, and despite the fact that there were no witnesses linking the Ibrahim brothers with the disappearance. It took three years for legal aid attorneys to convince a court to free them. Today, they remain in Kabanga—free on bail.

NATIONAL CRIMINAL JUSTICE REFORM

Reforming a justice system that made no distinction between youths and adults.

JUVENILE JUSTICE IN KAZAKHSTAN

Even Accused Youths Have Rights



It began several years ago with a meeting to disabuse Kazakh law enforcement professionals of their assumptions about young people, imprisonment, and the presumption of innocence, as well as their belief that, because Kazakhstan had ratified the United Nations convention on children's rights, their juvenile justice system was working well.

The atmosphere in the meeting room in Almaty was at first rigid with reticence. The shadow of Soviet power still hung over lawyers, police officers, and judges gathered there. Perhaps they had chatted privately about human rights with their close friends, perhaps they had expressed frustration over a criminal justice system that made no distinction between accused young offenders and hardened adult criminals. But openly discussing human rights in Kazakhstan had once been a subversive act. Pressuring the government to respect human rights was dangerously close to a criminal offense, and anyone who did it might expect an invitation from the police for a "discussion." Publicly protesting human rights violations or colluding with foreigners to create an organization to safeguard human rights meant risking imprisonment.

The reticence seemed to absorb every sound in the meeting room when people were asked to speak up, to admit that human rights violations still exist, right in front of human rights advocates once considered subversives and the kind of foreigners once considered spies.

Krzystof Pawlowski, a Pole, was one of the foreigners in the room, but not really a "foreign" foreigner. Poland, though not part of the Soviet Union, had been a Soviet satellite for 45 years. Everyone knew Warsaw has a wedding-cake skyscraper topped by a star, just like the ones that glowed ruby red at night over Almaty. And Pawlowski spoke Russian as well as any Kazakh. So his willingness to speak out and encourage others to open up made it seem less risky.

"How many of you have ever committed a crime?"

He asked to see a show of hands. None went up. "Come on," he said, "none of you ever stole a piece of candy or money lying around the house, or maybe a piece of jewelry or a watch that you thought no one would miss? Maybe when you were very young?"

People began to fidget. One, two, a few hands went up.

"You never smoked when it was illegal because you were too young? You never took a shot of alcohol before you were 18?"

Pawlowski's hand went up. Lots of hands went up.

"But no one would suggest that we are criminals."

His point struck home. Young people make mistakes. Even young people who grow up to become police officers, lawyers, judges, make mistakes and are not predestined to become hardened criminals. So why treat so many juvenile delinquents as if they were seasoned, adult criminals?

Group exercises, films, and role-playing games followed Pawlowski's presentation. They lured the police officers, lawyers, and judges—professionals who assumed they had well-honed powers to determine guilt and innocence and incorrigibility—into drawing erroneous conclusions due to mistaken identity, false confessions, and other factors that send too many of Kazakhstan's young people into prison for years.

These professionals learned that the presumption of innocence is a valuable tool to ensure that their criminal investigations and judicial proceedings have just outcomes. They learned that immaturity, impulsive behavior, and peer pressure predispose teenagers to act in ways that are alien to their general makeup or to do things they would not do with the wisdom of a few more years. They learned that there are positive alternatives to coming down hard on the young.

Since 2003, Kazakhstan's presidential administration, its government and courts, a number of local NGOs, the Open Society Justice Initiative, and the Soros Foundation–Kazakhstan have designed and implemented a pilot project to build respect in the country's criminal justice system for the rights guaranteed juveniles under the United Nations Convention on the Rights of the Child, other international conventions and protocols, and Kazakhstan's law.

In June 2005, the chairman of Kazakhstan's Supreme Court declared the pilot project a success. After almost three years of operation, the project had significantly improved respect for basic rights in the pilot districts:

- In 2002, only 5 percent of juvenile suspects were released from custody after three days; by mid-

2005, 75 to 80 percent of juvenile suspects were released within 24 hours.

- In 2002, about 90 percent of arrests led to the filing of criminal charges and fewer than 33 percent of all cases were resolved before trial; by mid-2005, 30 to 35 percent of arrests led to the filing of criminal charges and 66 percent of all cases were resolved before trial.

- In 2002, the appointment of defense attorneys was erratic; by mid-2005, defense attorneys were appointed in all juvenile cases and defense attorneys were on call around the clock.

- In roughly 75 percent of the 250 criminal cases the project affected, the actions of justice professionals have shown consistent adherence to international standards of juvenile justice.

Attaining the project's goals required effecting dramatic shifts in attitudes and practices. Now, with their reticence fading, the criminal justice professionals who participated in the juvenile justice project are calling for incorporating many of the project's structures and procedures into a new, nationwide juvenile justice system.

By the end of 2006, Kazakhstan's Supreme Court was on the verge of establishing permanent juvenile courts. Kazakhstan's ombudsman submitted his annual report on the state of juvenile rights to President Nursultan Nazarbayev and made three references to the juvenile justice pilot project as he recommended reforms to the justice system. The Almaty City Bar was preparing to form a group to oversee the licensing of defense attorneys qualified to take assignments in juvenile cases and work in partnership with child advocates. And officials of the Ministry of Internal Affairs, the Office of the General Prosecutor, the Presidential Commission on Human Rights, and the Constitutional Council drew upon the project's components when they gave provisional support to the idea of establishing a network of juvenile justice commissions to work toward improving respect for the rights of juveniles caught up in the criminal justice system throughout Kazakhstan.

The pilot project demonstrated that reforming Kazakhstan's justice system can improve the lives of many thousands of the country's young people and their family members. By applying the lessons learned during the pilot project, Kazakhstan has offered proof that it is striving to uphold international standards of human rights in this important arena. The project has also shown that rights-based justice can be applied to Kazakhstan's criminal justice system overall and that reform can be a bellwether for criminal justice reform elsewhere in Central Asia.

All it might take to begin is a Pawlowski and a show of hands.

A juvenile prison in Russia, circa late 1990. Kazakhstan's juvenile justice system was a legacy of the Soviet Union.

PROGRAM PORTRAIT

National Criminal Justice Reform Program

Police on patrol in South Africa. The Justice Initiative's work in criminal justice reform supports the state's ability to secure order, while protecting individual rights.

Fair and effective justice systems based on the rule of law are a prerequisite for open societies. Conversely, poorly functioning systems disserve crime victims, suspects, convicted offenders, and members of the general public. Essential functions of a criminal justice system in an open society are safeguarding individuals from crime, protecting the rights of victims, and assuring due process and fair trials for those charged with offenses. In many countries, widespread fear of crime engenders support for repressive measures by state and nonstate actors.

The Justice Initiative's work on national criminal justice reform promotes the state's ability to secure order and administer justice, so as to protect individual rights and enable citizens' full participation in public life. To this end, the Justice Initiative promotes human rights within the criminal justice sphere by pursuing three main aims:

- developing alternatives to and reducing the state's use of pretrial detention—the practice of holding suspects in jail rather than releasing them on bail or other forms of security
- ensuring accountability for conduct and performance by the police and prosecution, while improving their ability to provide security to the public
- broadening access to competent legal representation for indigent criminal defendants

Pretrial Detention

Excessive pretrial detention not only undermines the rights to liberty and speedy process, but can cause other abuses resulting from overcrowded, unsanitary, and dangerous jails and detention centers. In this way, it can actually contribute to criminality, especially for juvenile defendants. Pretrial detention often results in social and economic hardship for detainees and their families. In numerous countries where the Justice Initiative is active, arrest is often arbitrary and vulnerable groups are detained disproportionately.

Consistent with international standards, the Justice Initiative aims to rationalize the use of pretrial detention, and to encourage its use only where there is a genuine risk of flight, obstruction of justice, or additional serious criminal activity. The Justice Initiative also seeks to promote credible alternatives to pretrial detention, and to improve the capacity of civil society, as well as national and regional mechanisms, to monitor conditions of detention.

In Mexico, the Justice Initiative is working with a local NGO partner, Renace, and the state government of Chihuahua to develop a pilot bail evaluation and supervision center in

Chihuahua City that has the potential to change radically the way pretrial detention decisions are made and administered. These reforms are intended to provide all defendants with the right to be considered for pretrial release. The project has commissioned Mexico's first cost-benefit analysis of pretrial detention practices and alternative models to pretrial detention, to illustrate the price of the current system and bolster the case for change.

More broadly, the Justice Initiative is studying efforts to reform pretrial detention in 10 countries to understand the political impetus for, and limits to, change; document successes and failures in different contexts; and extract empirical knowledge for more general application. The Justice Initiative aims to inform further pretrial detention reform efforts by disseminating these case studies to donors, governments, intergovernmental bodies, and NGOs.

Current Justice Initiative work on pretrial detention builds on previous successful initiatives, including projects to improve the juvenile justice system in Kazakhstan and reform pretrial detention in Latvia and Ukraine. Please see *Juvenile Justice in Kazakhstan: Even Accused Youths Have Rights* on page 61 for more about the Justice Initiative's efforts to promote changes in Kazakhstan's juvenile justice system.

Law Enforcement Accountability and Effectiveness

The Justice Initiative's work in the field of law enforcement accountability and effectiveness enhances state capacity to promote public security, and create a more open and responsive criminal justice system. To this end, the Justice Initiative has created Indicators of Democratic Policing, a sophisticated yet practical tool for measuring police accountability and responsiveness.

The Justice Initiative is also addressing the use of ethnic profiling by law enforcement authorities in Europe in both ordinary criminal justice and counterterrorism. A multi-faceted project in several European Union member states is raising public awareness through research and documentation, pressing for the adoption of standards that limit or ban ethnic profiling, and fostering the development of collaborative approaches to policing that involve minority communities as partners.

In Georgia, the Justice Initiative is assisting the prosecutor general in developing a community prosecution model that will improve how the prosecution service understands and responds to the public safety needs of the community. Community prosecution, which originated in the United States, is a growing movement in countries as diverse as Chile, South Africa, and the Netherlands. The project in Georgia aims to enhance the prosecution service's accountability to the general public, empower prosecutors to more effectively deal with specific endemic crime problems, and improve public trust in the prosecution service and the criminal justice system as a whole.

Legal Aid for Indigent Criminal Defendants

Throughout the world, the vast majority of people charged with crimes cannot afford private counsel. Although international standards require provision of free and effective legal assistance to all indigent criminal defendants accused of serious crime, in practice many governments fail to live up to this responsibility.

The Justice Initiative helps governments improve the management, administration, financing, and monitoring of legal services delivery. Projects develop and implement models of effective legal aid provision, carry out research to measure the quantity and quality of legal representation, and promote local development of minimum lawyering skills and standards of defense.

The Justice Initiative also led efforts to conceptualize and initiate a project on access to justice in Sierra Leone, currently run by the NGO Timap for Justice, which trains and deploys paralegals to provide legal services in rural areas of the country. To read more about Timap, please see *Witches and Big Men* on page 49.

In recent years, the Justice Initiative has supported several legal aid reform efforts in Central and Eastern Europe and the former Soviet Union. For example, a pilot public defender office (PDO) in Kharkiv, Ukraine, has five lawyers and a paralegal working full-time on behalf of indigent criminal defendants, and two more pilot offices will soon open in other parts of the country. In Lithuania, the success of the Justice Initiative's model PDO led to a new law on nationwide legal aid guaranteed and financed by the state. Efforts in Bulgaria resulted in a new law that restructures how the government delivers, funds, and organizes legal aid. In other countries, including Georgia, Mongolia, Moldova, Nigeria, and Kyrgyzstan, the Justice Initiative is working with governments to lay the groundwork for legal aid reform.

Resource extraction industries such as diamond mining (above, in Sierra Leone) provide abundant opportunities for corruption.

PROGRAM PORTRAIT

Anti-Corruption Project

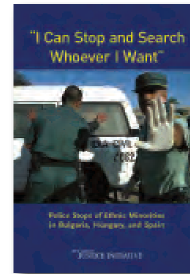
Beginning in mid-2006, the Justice Initiative began implementing a pilot project to address corruption in the resource extraction industries, such as oil, gas, and diamonds. Corruption linked to natural resource extraction often results from a lack of transparency in the generation, transfer, and investment of revenues. Recent efforts, including some sponsored by OSI, have aimed to create preventive transparency mechanisms—both voluntary and mandatory—aimed at corporations, banks, and governments. The Anti-Corruption Project aims to utilize legal action—civil and administrative suits, criminal investigation and prosecution, and application of regulatory norms—as a complement to these preventive transparency initiatives. The Justice Initiative plans to pursue legal remedies in various forums, including the home countries of the multinational extractive industry corporations and banks.

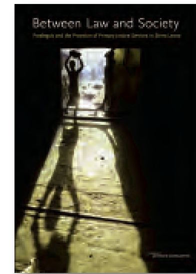
To date, much of the legal community's interest in these matters has centered on human rights violations and environmental damage associated with the extractive industries. Direct legal responses to corruption remain relatively rare, despite the fact that spoliation often occurs independently of human rights and environmental abuses, and typically underlies these broader problems where they occur. The establishment of a legal environment that renders the theft of public assets, bribery, and money laundering impossible, or at least unprofitable, would be a significant step toward ending resource spoliation, and diminishing the likelihood of the human rights and environmental violations that accompany it.

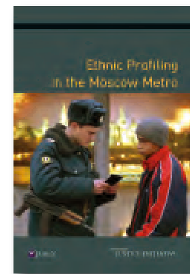
The initial geographic focus of the project is Africa. Activities under exploration, in close collaboration with local lawyers and NGOs, include researching resource-related corruption; initiating litigation in target countries, in third countries, and before international tribunals (including the African regional human rights protection mechanisms and subregional bodies); and providing technical input to governments seeking to recover looted assets, document or prosecute economic crimes, and/or review their current contractual arrangements with extractive industries. The project will also aim to build national capacity for investigating and remedying financial crimes.

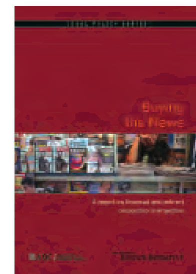
Publications Available from the Justice Initiative

To order or download the following publications, go to www.justiceinitiative.org/publications, or email info@justiceinitiative.org.







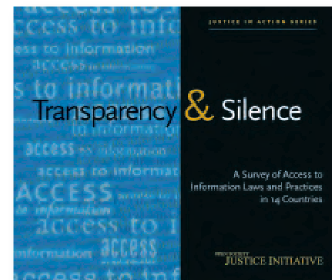


"I Can Stop and Search Whoever I Want"—Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain
This study fills major gaps in what is known about ethnic profiling by police in Europe. Using quantitative data as well as interviews with police officers and members of minority groups, the book looks closely at the practice in three countries whose significant minority populations reflect the changing face of Europe. In combining statistical analyses, first-person accounts, and policy recommendations, the book makes clear that ethnic profiling is taking place in all three countries, and that it is both discriminatory and an ineffective way to fight crime. (2007; 106 pp.)

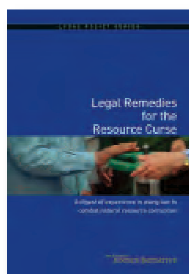
Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone One of the poorest nations in the world, Sierra Leone has just 100 lawyers to serve a population of six million people. So what happens to Pa Lansana when he is cheated by a corrupt local chief, or Macie B., who is accused of being a witch? *Between Law and Society* tells the story of a pioneering organization determined to provide justice services in Sierra Leone. By training paralegals and navigating between the country's formal and customary legal systems, Timap for Justice is securing justice for Pa Lansana, Macie B., and people like them. Using stories from Timap's case files, the book examines why and how the paralegal approach works and characteristics of a successful community-based paralegal program. (2006; 34 pp.)

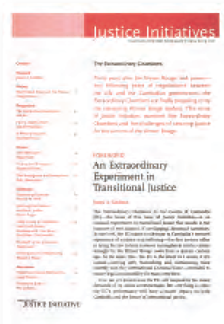
Transparency & Silence: A Survey of Access to Information Laws and Practices in 14 Countries The right to access government-held information is essential to any open society. Yet in many countries, access to information laws are weak, riddled with loopholes, and poorly implemented. *Transparency & Silence* takes a close look at access to information laws in 14 countries and how they work in practice, and lays out a role for NGOs and citizens in promoting government openness and accountability. By tracking more than 1,900 actual requests for information submitted to government offices in countries ranging from Nigeria to Macedonia to France, this survey shines a bright light on where and how access to information laws work—and where they don't. (2006; 190 pp.; also available in Spanish)

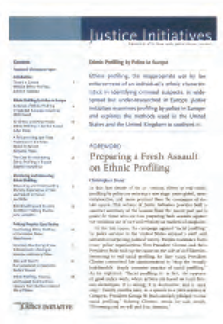
Ethnic Profiling in the Moscow Metro
The first report to quantify discriminatory policing in Russia, *Ethnic Profiling in the Moscow Metro* shows that Metro riders who look non-Slavic are over 20 times more likely to be stopped by police than those who appear Slavic. The study, conducted jointly by the Justice Initiative and the Moscow-based NGO JURIX, further finds that these stops do not prevent crime. This book provides a detailed, statistically supported examination of discrimination by Moscow police. It also looks behind the numbers at current police practices and places them in the context of law enforcement challenges in multiethnic Moscow today. (2006; 68 pp.; also available in Russian)

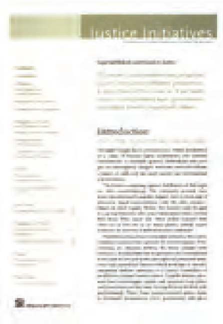


Buying the News: A Report on Financial and Indirect Censorship in Argentina
This study examines some of the more subtle ways in which government officials interfere with media freedom and editorial independence in Argentina. Government officials practice indirect censorship by using advertising funds and regulatory power as carrots or sticks to manipulate the media for political purposes, rewarding "friendly" publications and seeking to bankrupt critical ones. *Buying the News* responds to this official interference by offering policymakers, journalists, and media freedom advocates a comprehensive set of recommendations for reform. (2005; 124 pp.; also available in Spanish).









Monitoring Election Campaign Finance Adequate disclosure and regulation of campaign finance are necessary prerequisites to controlling political corruption. Yet in many countries, laws governing campaign finance are riddled with loopholes and poorly enforced. Responding to the growing need for practical tools to help monitor and fight corruption, this book draws on the experience of citizens challenging corrupt practices in more than a dozen countries. It will help NGOs carry out effective campaign finance monitoring and reform programs by providing practical guidelines and examples of good practices and lessons learned. (2005; 176 pp.)

Legal Remedies for the Resource Curse When resource extraction companies can obtain oil, diamonds, gold, and other natural resources through covert contacts with unaccountable government officials, the losers are the people in the communities where the wealth originates. This report reviews some of the main legal instruments used to date to combat natural resource corruption—as well as new, untested legal remedies that appear promising. Focusing on resource spoliation in Africa, it provides case studies to demonstrate what has and has not worked, and identifies opportunities for civil society action. (2005; 82 pp.)

Myths of Pretrial Detention in Mexico Over 80,000 people languish in Mexican prisons, waiting to be tried. They are presumed innocent, yet must suffer the deprivation of their liberty in violent and disease-ridden confinement. Empirical evidence gathered here demonstrates that this practice does not increase public safety. This report strips away myths and rhetoric to show that the use of pretrial detention in Mexico is irrational and indiscriminate—and growing in frequency. (2005; 20 pp.; also available in Spanish)

The Police that We Want: A Handbook for Oversight of Police in South Africa Since the advent of democracy, there have been dramatic changes in policing in South Africa—but more needs to be done. This handbook uses the concept of democratic policing as a framework for assessing policing in South Africa and other countries in transition to democracy. The book provides concrete measures of police performance and accountability and examines how oversight bodies can improve policing. Published by the Centre for the Study of Violence and Reconciliation in association with the Open Society Foundation for South Africa and the Open Society Justice Initiative. (2005; 74 pp.)

Justice Initiatives: The Extraordinary Chambers Thirty years after the Khmer Rouge took power—and following years of negotiations between the UN and the Cambodian government—the Extraordinary Chambers in the Courts of Cambodia are finally preparing to try the remaining Khmer Rouge leaders. This issue of *Justice Initiatives* examines the Extraordinary Chambers and the challenges of securing justice for the victims of the Khmer Rouge. (2006; 160 pp.; also available in Khmer)

Justice Initiatives: Ethnic Profiling by Police in Europe Ethnic profiling, the inappropriate use by law enforcement of an individual's ethnic characteristics in identifying criminal suspects, is widespread but underresearched in Europe. This issue of *Justice Initiatives* looks at profiling by police in Europe and explores the methods used in the United States and United Kingdom to confront it. (2005; 100 pp.)

Justice Initiatives: Human Rights and Justice Sector Reform in Africa: Contemporary Issues and Responses Whether addressing media repression in Gambia, police reform in Nigeria, or citizenship issues across the continent, this issue of *Justice Initiatives* documents some of the principal challenges to justice sector reform in Africa today, and the varied approaches that interested actors are pursuing in response. (2005; 72 pp.)

Justice Initiatives: Legal Aid Reform and Access to Justice Examining legal aid reform from several different perspectives, this issue of *Justice Initiatives* concerns state-provided legal representation for indigent persons charged with crimes. (2004; 60 pp.; also available in Russian)

Justice Initiatives: The Global Freedom of Information Movement This issue of *Justice Initiatives* looks at freedom of information successes and challenges around the world, including Nigeria, Mexico, and Bulgaria. Other articles examine the role of the International Criminal Court in resolving conflicts, clinical legal education, and efforts in Slovakia to consolidate the rule of law. (2003; available online only)

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The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

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Open Society Institute

The Open Society Institute works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. On a local level, OSI implements a range of initiatives to advance justice, education, public health, and independent media. At the same time, OSI builds alliances across borders and continents on issues such as corruption and freedom of information. OSI places a high priority on protecting and improving the lives of marginalized people and communities.

Investor and philanthropist George Soros in 1993 created OSI as a private operating and grantmaking foundation to support his foundations in Central and Eastern Europe and the former Soviet Union. These foundations were established, starting in 1984, to help countries make the transition from communism. OSI has expanded the activities of the Soros foundations network to encompass the United States and more than 60 countries in Europe, Asia, Africa, and Latin America. Each Soros foundation relies on the expertise of boards composed of eminent citizens who determine individual agendas based on local priorities.

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