OPEN SOCIETY JUSTICE INITIATIVE



Report on Developments | 2011

OPEN SOCIETY FOUNDATIONS

Mission

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. Our staff are based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C. The Justice Initiative is an operational program of the Open Society Foundations.

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Message from the Chairman

Evolution of the Open Society Justice Initiative

THE OPEN SOCIETY JUSTICE INITIATIVE was established as an operating program of the Open Society Foundations some eight years ago. Long a major grant-giver in efforts to promote the rule of law and international human rights, the Open Society Foundations took this step to extend and enhance our ability to deal with a number of legal issues crucial to the development of open societies that seemed to us to require additional attention and effort. Our intent has been to capitalize on some advantages available to the Foundations: our global reach and on-the-ground presence in many parts of the world; our institutional architecture which links the Justice Initiative to the full array of Open Society operating and grant-giving programs; our advocacy capacity in dealing with key governments and intergovernmental bodies; and our extensive human and financial resources.

The issues that the Justice Initiative has taken on are varied and complex. We promote fairness and equity in national criminal justice systems by challenging arbitrary and extended pretrial detention and by promoting free legal representation for indigent criminal defendants; we seek accountability for the commission of war crimes, crimes against humanity, and genocide by supporting, strengthening, and improving the operations of international criminal tribunals; we have led the way in extending the reach and the implementation of freedom of information laws, and we defend freedom of expression, particularly in circumstances that threaten the operations of independent media; we challenge such aspects of racial and ethnic discrimination as racial profiling, school segregation, and arbitrary denials of citizenship; and we build legal capacity, particularly through the development of clinical legal education at law schools worldwide and through the development of paralegal programs for use where there are no lawyers or very few lawyers. The Justice Initiative has also spearheaded an effort on behalf of the

Open Society Foundations to promote legal empowerment of the poor. Though only in its early stages, this effort is already underway in several countries in different parts of the world.

In the period covered by this report, the Open Society Justice Initiative has sustained and advanced its work on all the substantive issues on which it initially decided to focus. Also, we have launched significant programs in two additional areas that involve immensely difficult issues. The first of these to get underway has been our attempt to seek legal remedies for natural resource–related corruption. The Justice Initiative's work in this field complements grant-making that the Open Society Foundations have been engaged in for the past decade through our support for such groups as Global Witness, the Publish What You Pay coalition, and the Revenue Watch Institute. The second involves an effort to challenge what we believe are excessive and abusive restrictions on rights by governments that were ostensibly adopted to further counterterrorism strategies.

Previously, a small number of human rights organizations pursued international litigation to promote human rights. The Open Society Foundations have been a leading supporter of such groups, among them the London-based Interights, which has played a prominent role in litigation in the European Court of Human Rights and in Commonwealth countries; the Washington, D.C.-based Center for Justice and International Law, which has been a leading force in litigation in the Inter-American system, and two Budapest-based groups that we were instrumental in establishing, the European Roma Rights Center and the Mental Disability Advocacy Center. Because we believe there is more that should be done in this field, the Open Society Justice Initiative has made a substantial commitment itself to pursue international legal remedies to address our concerns. Often, this involves complex and innovative litigation. As an example, the Justice Initiative is making litigation a principal means for our work in addressing corruption related to the extraction of natural resources.

The global human rights movement has become an important force in international affairs. Among global citizen movements, only the environmental movement is comparably well organized and developed, and, possibly, comparably influential. The Open Society Foundations are a leading supporter of the worldwide human rights movement. That support has played an important role in our efforts to promote the development of open societies. We believe that our establishment of the Open Society Justice Initiative and our ongoing commitment to support its efforts are a significant addition to what we have been able to do through our support for the efforts of others.

ARYEH NEIER
New York City
January 2011

Message from the Executive Director

Value Added: The Justice Initiative and the Global Human Rights Movement

FROM CRIMES against humanity to torture to censorship, we live in a world where, sadly, human rights abuses are widespread. But it is an underappreciated achievement of the past three decades that today there is a plethora of organizations dedicated to human rights and law reform. Given this rich institutional environment, what value does the Open Society Justice Initiative add? I believe three major factors enhance our effectiveness and set us apart.

First, as part of the Open Society Foundations, we can tackle problems that receive little or no attention because they are considered too risky, costly, intractable, or time-consuming. For example, when the Extraordinary Chambers in the Courts of Cambodia—the court established to try surviving Khmer Rouge leaders—was created, many human rights organizations declined to engage with it, fearing it would fail. But the Justice Initiative decided to fight for the institution's success. We provided training and other resources to the court, while also delivering constructive criticism, pressing it to satisfy rigorous international standards. Today, the ECCC has completed its first full trial and sparked public debate about a long-ignored past, even as it struggles to meet continuing challenges.

Another issue we seek to address is "soft" censorship, by which governments use financial pressure to gain favorable media coverage or quash criticism, stifling public debate. Until recently, this was considered too endemic to parts of Latin America and Eastern Europe to root out. But the Justice Initiative challenged the practice, and several countries now have taken legal steps to prevent it.

There is also the thorny question of citizenship. When states deny citizenship to members of disfavored minority groups, some excuse it as an

expression of sovereignty. The Justice Initiative has taken up cases of people rendered stateless or refused nationality for no reason other than who they are. We have made important, though halting, progress towards greater recognition of legal protections, and continue to be a leading advocate for the right to citizenship.

These and other challenges will not be fully resolved soon—but they won't be resolved at all unless someone addresses them over a sustained period of time.

Second, we enjoy unusual flexibility in the manner in which we work. Rather than specialize in one methodology, we use many tools, including litigation, public advocacy, documentation, and institutional and human capacity building. We have the resources, the knowledge, and the global network of attorneys and allied NGOs not just to decry abuses, but to secure legal redress. In addressing ethnic profiling by police, we have produced comprehensive studies to document discriminatory patterns of police stops and searches; developed collaborative projects with law enforcement agencies to pilot nondiscriminatory practices; advocated for legislative change with officials of the European Union and national governments; and, where the opportunity presents itself and other avenues are exhausted, developed court cases seeking remedies for the discrimination inherent in ethnic profiling.

Third, our independent funding base allows us not just to work on a range of issues and deploy a variety of tactics, but also to collaborate with an array of partners. We can work with all parties—NGOs, governments, and intergovernmental bodies—without bending to the threat of retribution or the promise of financial reward.

To be sure, confronting difficult problems is one thing; achieving change is another. Given the scale of some of the issues we tackle, it would be presumptuous to suggest that we have secured many major achievements in little more than eight years. And yet, some indications of tangible progress have emerged. Over the past three years, the Justice Initiative, working in close collaboration with local partners, has accomplished the following:

- Expanded the public's understanding of international justice through websites monitoring the trials of Charles Taylor and Thomas Lubanga. With the trials taking place far from the communities most affected by the crimes in question, the Justice Initiative's monitoring websites have provided daily reports for the press and helped foster discussion among diaspora communities. We have also published studies on the impact of the International Criminal Tribunal for the former Yugoslavia, and a paper outlining court management techniques for trials involving heads of state who are accused of gross human rights violations.

- Highlighted the overwhelming negative consequences of widespread pretrial detention, leading a global call for reform. The Justice Initiative has published analyses of the costs of pretrial detention in terms of human rights, public health, government expenditures, and economic development. We also developed pilot projects to demonstrate the viability of rational pretrial detention policies, including in Nigeria. There, the government of Lagos State—which has over 40 percent of Nigeria's pretrial detainees—pledged to implement alternatives to pretrial detention, including plea bargaining and noncustodial measures.

In Mexico, our efforts to promote pretrial services have paid off: USAID has mandated such efforts as part of its ambitious rule of law effort in that country.

- Promoted legal empowerment of the poor by launching a pioneering paralegal network in Sierra Leone. This project has been hailed as a model of community engagement and legal assistance for developing countries.

- Won a landmark case challenging racial and ethnic profiling, wherein the United Nations Human Rights Committee ruled that Spanish police identity checks motivated by race or ethnicity violate the international legal prohibition against discrimination.

- Fostered the growth of university-based legal clinics in more than two dozen countries, including Afghanistan, Cambodia, China, Indonesia, Lebanon, Mexico, Mozambique, Nigeria, and Ukraine.

- Shed light on abusive counterterrorism policies, including extraordinary rendition. We helped analyze and distribute the first government documents publicly confirming that aircraft associated with the CIA landed repeatedly at an airport located near a suspected CIA secret detention site for "high-value detainees" in Poland.

- Demonstrated through examination of court records how access to a lawyer affects trial outcomes. We collaborated with local partners on a study showing that 75 percent of criminal defendants who were sentenced to prison in Istanbul, Turkey, were never represented by a lawyer.

Although this progress is significant, daunting challenges remain for both the Justice Initiative and the human rights movement as a whole. These include deploying empirical evidence more effectively to inform our advocacy, overcoming the conceptual divide between justice reform "abroad" and "at home," improving the enforcement of judgments from international and regional courts, and building a justice movement that reflects the geographic, ethnic, and gender diversity of the world it inhabits.

But looking ahead, there are reasons for optimism. Our most valuable resource remains the community of dedicated and skilled human rights advocates across the globe with whom we collaborate. While justice remains a long-term objective, the reward of learning from and with our partners is an everyday experience.

JAMES A. GOLDSTON
New York City
January 2011

Extraordinary Rendition
Rights Abuses in the Name of National Security

Macedonian police in December 2003 seized German citizen Khaled El-Masri from a bus and held him without charge for 23 days, accusing him of being a member of Al Qaeda. They handed him over to the CIA, which flew him to Kabul where he was interrogated and tortured for four months. Eventually, the CIA became convinced that he was innocent and his detention was a mistake, and El-Masri was released without explanation, apology, or restitution.

Macedonia, which denies any involvement in El-Masri's abduction, was one of at least 11 European countries that cooperated with the U.S. government's "extraordinary rendition" program, according to two European Union investigations. In the rendition program, "terror" suspects were apprehended in one country and transferred to a detention center in another country with few or no restrictions against torture.

Advocates have struggled to obtain justice for victims of the extraordinary rendition program and to hold governments accountable for their complicity in the program's abuses of human rights. The Open Society Justice Initiative is using litigation and advocacy to combat the rights abuses and oppression attendant to governments' national security and counterterrorism efforts, including extraordinary rendition. In El-Masri's case, the Justice Initiative brought litigation first in Macedonia, and then before the European Court of Human Rights in the most compelling legal challenge against European cooperation in U.S. rendition to reach Europe's highest tribunal.

The details of the El-Masri case open a window on the operations of the U.S. rendition program—a web of complicit countries and secret detention centers that relied on the silence of all involved. Macedonian law enforcement officials detained El-Masri, who was on holiday, at the country's border on December 31, 2003, and transferred him to a Skopje hotel for interrogation. His captors questioned him constantly, insisting he admit his membership in Al Qaeda and refusing his requests to contact a lawyer, translator, German consular official or his wife. After 23 days, they drove El-Masri to Skopje airport where he was beaten, stripped naked, and abused. He saw seven or eight men dressed in black and wearing black ski masks, believed to be members of a CIA "black renditions" team.

Flown to Afghanistan on a jet owned and operated by U.S.-based corporations, he spent four months in inhuman and degrading conditions at the notorious prison known as the Salt Pit. El-Masri was beaten repeatedly by armed guards, subjected to violent and prolonged interrogations, force-fed following a 27-day hunger strike, and denied medical treatment. He was never charged with a crime or brought before a judge. As in Macedonia, his frequent requests to contact his wife or a lawyer were denied. "You are in a country with no laws," his captors told him.

Finally, on May 28, 2004, his captors flew El-Masri to Albania on a CIA-chartered jet. He was driven into a rural area and dropped at the side of the road. Albanian authorities arrested him and put him on a commercial flight to Germany. When he arrived at his home in Ulm, he learned that his wife and children had relocated to Lebanon, not having heard from him in over four months.

Following a complaint from El-Masri, German prosecutors opened an investigation and verified many of the details of his story, and in January 2007, filed charges against 13 CIA agents for their alleged involvement in the rendition. German Chancellor Angela Merkel stated publicly that Secretary of State Condoleezza Rice had admitted to her that the United States had erred in detaining El-Masri. Yet El-Masri's lawsuit was dismissed in the United States on the grounds that the "state secrets privilege" precluded litigation of his claims.

El-Masri is now seeking justice in Europe, with help from the Justice Initiative. In 2008, he filed a formal request with the Office of the Skopje Prosecutor, seeking a criminal investigation of his illegal detention and abduction, and criminal proceedings against those responsible for the crime of torture and other cruel, inhuman, or degrading treatment or punishment. But the prosecutor failed to act and the time limit for opening a criminal case expired, forcing El-Masri to submit a complaint to the European Court of Human Rights.

In September 2009, the Justice Initiative, with El-Masri's Macedonian counsel, filed an application before the European Court on El-Masri's behalf, charging the Macedonian government with illegally detaining El-Masri, handing him over to the CIA to be tortured, refusing to investigate his ordeal or offer remedy for it, and hindering efforts to establish the truth about what happened to him. The European Court is currently considering the case—the first time it has reviewed a case concerning "extraordinary renditions."

Denied justice in the United States, El-Masri awaits his day in court in Europe. By taking El-Masri's case to the European Court of Human Rights, the Justice Initiative is seeking to ensure that his rights, his humanity, and the damage done to him are finally acknowledged—and to prevent additional abuses in the name of national security.

Resolving Legal Disputes without Lawyers | Paralegals and the Legal Empowerment of the Poor

When a giant agribusiness on the southern Philippine island of Mindanao began seizing land from small farmers in the area, the farmers banded together to hold onto their property. But the agribusiness had high-priced lawyers and political connections, while the farmers could not afford even a single lawyer to represent them.

When a ten-year-old boy in Malawi was accused of attempted murder in 2007 for a fight in which he was attacked by a group of older boys, he was not formally charged or brought before a judge. Instead, he was thrown into Kachere juvenile prison, where he might wait years in overcrowded conditions for his trial, unaware of his rights.

When heavy rains washed away a bridge in Bumpeh Ngao chiefdom in southern Sierra Leone, truck drivers began driving through a shallow section of the river, fouling the source of drinking water for three nearby villages. Local residents sought to stop this practice—even attempting to rebuild the bridge themselves—but met with abuse from the truckers, who continued to drive through the river.

The people in these stories—like billions of people across the globe—are effectively excluded from the rule of law. Without access to legal advice or the courts, they live with daily injustices and have little hope of redress. As a result, they are cheated by employers, driven from their land, preyed upon by the corrupt, and victimized by violence.

In many cases, the lack of access to justice is a function of geography and demography: people in rural areas may be literally beyond the reach of courts, and in many poor and postconflict societies there are simply not enough trained lawyers and judges to meet people's justice needs. But in other cases, discrimination plays a central role: restrictions on access to justice overwhelmingly affect the poor, women, and minorities.

To address these problems, the Justice Initiative is supporting "legal empowerment of the poor." providing legal tools that enable the poor and other disadvantaged groups to protect their rights and advance their interests. Legal empowerment produces concrete benefits by helping people recognize and act upon the rights that are typically denied them. Legal empowerment not only helps address people's immediate justice needs; it also encourages them to stand up for themselves and their communities. Legal empowerment may be one way of answering the need for a more effective and more sophisticated demand for governance.

Paralegals play a key role in empowering the poor and broadening access to justice. Paralegals can be trained more quickly and with less expense than lawyers. They can provide a host of services and deploy an array of tools to resolve disputes. And perhaps most important, paralegals have a deep knowledge of the communities in which they work and can train individuals and even whole villages to defend their rights.

For these reasons, in 2003 the Justice Initiative, together with local partners, established Timap for Justice, an NGO in Sierra Leone that provides justice services to the poor and marginalized in rural areas. Timap has pioneered a creative, flexible model that uses community-based paralegals who are armed with a basic knowledge of the law, trained in basic legal skills, and supported by two lawyers. The organization's paralegals tackle a wide range of challenges through mediation, advocacy, education, community organizing, and, on rare occasions, litigation.

Timap's paralegals address individual breaches of rights (such as land disputes and domestic violence) as well as collective justice issues between the community and authorities (such as corruption, abuse of authority, and failures in service delivery). Employing the legal empowerment paradigm, Timap works with clients to solve their justice problems—thereby demonstrating concretely that justice is possible—and at the same time to cultivate the agency of the communities where it works.

In fact, paralegals were essential to resolving the three justice problems described earlier:

- In the Philippines, lawyers from the Balay Alternative Legal Advocates for Development helped train local small farmers as paralegals. Working at the local level in Mindanao and in courts in Manila, they were able to secure a judgment forcing the agribusiness to agree to a more equitable distribution of land in the area.

- In Malawi, paralegals from the Paralegal Advisory Service Institute (PASI) have access to pretrial detention centers where the accused are held while awaiting trial. PASI paralegals provide training to the detainees, informing them of their rights and helping them apply for bail. In the case of the ten-year-old, they were able to help him secure bail and return to his family instead of rotting in Kachere prison.

- In Sierra Leone, Timap for Justice paralegals first contacted the Sierra Leone Drivers Union and convinced the truckers to stop abusing local residents and to use the bridge once it was rebuilt. Then, the paralegals advocated with the Sierra Leone Roads Authority to rebuild the bridge. Construction was completed just before the rainy season began.

Justice at a Distance | Making International Trials Accessible to the Victims

"When will we solve political difference through a free, fair, and transparent electoral process? When will we not deprive others of socioeconomic mobility, which sows the seed for hate and rebellion? What can our generation do to ensure a society free of these ills and vices?"

This impassioned comment was posted by a visitor to www.CharlesTaylorTrial.org, a website set up by the Open Society Justice Initiative. Initially intended to provide journalists in Sierra Leone and Liberia with accurate updates on the trial of Charles Taylor, the former president of Liberia, the website has become a forum for lively debate—and a vivid illustration of

the way international justice efforts can be strengthened by the involvement of those affected by crimes.

Charles Taylor faces 11 counts of war crimes, crimes against humanity, and other serious international crimes for his alleged role in backing rebel groups that fought in Sierra Leone's brutal civil war from 1991 to 2002. Taylor was charged by the Special Court for Sierra Leone (SCSL), an international tribunal established at the end of the war by the country's government and the United Nations. But Taylor's trial—the court's biggest and most controversial—had to be moved to The Hague for security reasons, leaving the victims of his alleged crimes thousands of miles away from the justice process.

Some observers hoped that moving Taylor's trial would earn it greater coverage from the Western media, but after the opening of the trial, even the international news agencies stopped reporting on the proceedings. The Justice Initiative's website became the only source of daily, detailed reports, and media and non-governmental organizations in Liberia have come to rely on it as a crucial source of information.

That flow of news from the courtroom to people in the region—and to members of diasporas in the United States, Britain, and other countries—is vital if such trials are to help restore people's faith in justice. In Taylor's case, providing a way for West Africans to follow and discuss the trial's issues can also help dispel misconceptions, such as that the court is biased or is a tool of Western powers.

The Charles Taylor trial website receives hundreds of visits and records dozens of comments each day from engaged West Africans who are following the proceedings closely. As one commenter noted, people who not long ago might have been trading gunfire are now trading opinions in the site's "Commentary" section.

On the other side of the world, the Justice Initiative is involved in a different effort to raise public awareness of another judicial landmark, the court set up in Cambodia to bring justice to the victims of the Khmer Rouge. The court, known as the Extraordinary Chambers in the Courts of Cambodia (ECCC), is expected to help Cambodians understand the process by which surviving Khmer Rouge leaders are held to account for their roles in the killings of 1.7 million people from 1975 to 1979.

Many Cambodians know little about the court, however, or lack adequate information about its role and its powers. The Justice Initiative has played a major role in trying to address the gaps in public understanding and engagement, and in helping nongovernmental organizations with similar aims, through public discussion forums, radio call-in programs, documentary films, and public events designed to explain the court and its role. The Justice Initiative also issues regular reports on the ECCC designed to ensure the trials are fair and impartial.

With a similar hope of promoting justice by informing the most affected populations, the Justice Initiative has also set up www.LubangaTrial.org, a website that tracks the trial of the Congolese militia leader Thomas Lubanga Dyilo, the first person to be tried at the International Criminal Court (ICC), which also sits in The Hague.

The ICC, the only permanent international institution established to try individuals responsible for war crimes, crimes against humanity, and genocide, was established in 2002 and is under enormous pressure to succeed.

To date, the court has opened criminal investigations in Uganda, the Democratic Republic of the Congo, the Central African Republic, Sudan, and Kenya. In January 2009, the court began the trial of Lubanga, who has been charged with war crimes for using child soldiers to fuel the brutal conflict in the Democratic Republic of the Congo during 2002 and 2003.

Although the Justice Initiative's efforts to explain the work of the SCSL, ECCC, and ICC take different forms, they all seek to meet a demand for public involvement that has not been adequately addressed. By providing a steady stream of objective information about such trials, the Justice Initiative helps connect these new international judicial procedures with the needs of victims—and of war-scarred societies—to see that justice is being done.

A Recipe for Kleptocracy
Oil Wealth, Dictatorship, and International Indifference

An account executive drags suitcases of cash from the embassy of a small but oil-rich African nation into his office at a prominent U.S. bank in Washington, D.C.

In the same small but oil-rich African nation, well over half the population struggles to survive on less than $1 a day and has no access to clean drinking water as a tiny elite diverts the nation's wealth to foreign banks and buys exotic sports cars and luxury homes and other properties in Malibu and the Canary Islands.

These scenes provide a glimpse of business as usual for one of the world's worst kleptocracies, Equatorial Guinea.

In a kleptocracy, a small group of leaders controls a nation's government, its military, its economy, and its natural resources and uses them to enrich themselves at the expense of the country and its citizens. This is a system of repression and plunder that President Teodoro Obiang Nguema has perfected during his 30 years of rule in Equatorial Guinea.

Obiang and his close circle of family and friends have not done this entirely on their own. An abundance of oil, unscrupulous international financial institutions, and foreign governments that prioritize access to oil over challenging massive corruption and abuse of power have all contributed to Equatorial Guinea's rise as a kleptocracy.

The behavior of Equatorial Guinea's leaders demonstrates their unbridled greed and a fundamental contempt for citizens and the public interest. Half of the $35 million asking price for the Malibu mansion that Obiang's son and

agriculture minister Teodorin bought in 2006 could have provided essential medical care for 85 percent of the country. The $1.2 million Teodorin spent on an exotic Bugatti sports car in 2007 could have given every child a durable mosquito net that can cut malaria deaths by up to 44 percent.

The Open Society Justice Initiative, working with human rights organizations in Spain and the United States, is challenging the Obiang regime's squandering of the country's finances and chances for development.

The Justice Initiative is assisting the Spanish human rights organization Asociación Pro Derechos Humanos de España (APDHE) to bring major money laundering charges against Obiang's family and other close associates. In February 2009, Spanish judge Baltasar Garzón allowed the investigation to move forward at the Pre-Trial Investigative Court in Las Palmas, Spain.

"While many countries turn a blind eye to large-scale corruption, this investigation shows that no one is above the law," said James A. Goldston, executive director of the Open Society Justice Initiative, which helped research the criminal complaint.

The Justice Initiative and APDHE are documenting how the defendants diverted funds from the Equatorial Guinea's Treasury to Riggs Bank, a once prominent Washington, D.C.–based financial institution that asked very few questions about the millions of dollars gushing in from Equatorial Guinea. By 2003, when U.S. officials began investigating Riggs for banking law violations, Obiang and his associates were the bank's largest clients with $700 million in 60 different accounts. Riggs eventually had to pay $41 million in fines and collapsed, but not before the $700 million was moved to banks outside the United States where it is shielded by banking privacy laws. In 2007, the $700 million had grown to an estimated $3 billion.

The APDHE and Justice Initiative investigation focuses on how the defendants used Riggs to channel money into a secret Spanish bank account and how these transfers correlated with nine real estate purchases in the Canary Islands on behalf of the president, members of his family, and other close associates.

The Las Palmas case is just one example from the long period of misrule that has plagued Equatorial Guinea since the country gained independence from Spain in 1968. Instead of bringing new hope and opportunities, the discovery of oil in 1996 has only provided more fuel for corruption and abuse.

Oil companies, led by U.S. giants like ExxonMobil and ChevronTexaco, have poured billions of dollars into the country. By 2008, United States investments totalled more than $12 billion making it the largest bilateral foreign investor in Equatorial Guinea. Equatorial Guinea is now sub-Saharan Africa's third largest oil producer behind Nigeria and Angola.

Despite reports documenting torture in Equatorial Guinea issued by her own department, U.S. Secretary of State Condoleezza Rice described Obiang as a "good friend" when she met him in the United States during an official visit in 2006.

Members of Obiang's government continue to travel freely to the United States, despite a U.S. law and a 2004 presidential proclamation barring officials suspected of corruption from receiving American visas and entering the country.

"It's because of the oil," John Bennett, a former U.S. ambassador to Equatorial Guinea told the *New York Times* in 2009. Bennett compared Equatorial Guinea to a similarly corrupt country, Zimbabwe, and concluded, "If Zimbabwe had Equatorial Guinea's oil, Zimbabwean officials wouldn't still be blocked from the United States."

As President Obiang and his cronies benefit from the wealth and political access brought by Equatorial Guinea's oil, the people endure the world's fourth highest infant mortality rate and an average life expectancy of barely 50 years.

The Justice Initiative, in partnership with APDHE and EG Justice, a U.S.-based rights organization, is also addressing the government's abuse of public resources with a complaint to the African Commission on Human and Peoples' Rights. The complaint argues that the Obiang government's diversion of the country's oil wealth violates the African Charter on Human and Peoples' Rights. Obiang and his small group of political officials and friends have had a decades-long de facto monopoly on virtually all of the people's natural resources and the economic opportunities they represent, a violation of article 21 of the charter which grants the people of a given country the right to full and exclusive enjoyment of the country's wealth.

It is too early to predict the impact of a victory in these landmark proceedings, but they could mark the first steps toward dismantling a system of kleptocracy that has squandered public resources and crippled development in Equatorial Guinea.

More Fair, More Effective
Identifying, Exposing, and Reforming Ethnic Profiling by Police

The officer from Spain's National Police watched as an entire train load of people disembarked at the Campo Grande station in Valladolid. Of the hundreds of passengers crowding the platform that day in 1992, he singled out the only black one, Rosalind Williams, whom he stopped and asked for identity papers. Williams, an African American who became a Spanish citizen in 1969 and who was traveling with her Spanish husband, asked why she was the only person being stopped. The officer explained that he had been instructed to stop people who "looked like her."

In the years that followed her stop, Williams challenged her treatment in Spanish courts, but without success. In 2001, Spain's highest court ruled against Williams, finding that it was reasonable to stop her based only on her race as this was a reasonable indicator that she was an undocumented migrant. Given the diversity of Western Europe's population today, this assumption is both inaccurate and discriminatory.

Every day, across Europe, police stop people based solely on the color of their skin or other racial and ethnic traits. In Moscow, an Open Society Justice Initiative study found that ethnic and racial minorities were over 20 times more likely to be stopped by police than those who appeared Slavic. A similar study in Paris found that blacks were up to 11.5 times more likely to be stopped than

whites, and Arabs were up to 14.8 times more likely than whites to be singled out for police stops.

Many of those who are stopped by police describe the experience as deeply humiliating. In Spain, one Moroccan interviewee told Justice Initiative researchers that he gets stopped daily, and another said police called him "Arab shit." A Roma interviewee in Bulgaria said police called him "dirty Gypsy." A Hungarian police officer admitted, "I consider the Roma suspicious," and an officer in Spain said of Roma: "They do no work at all; they commit robberies."

Ethnic profiling is a longstanding practice in which police rely on stereotypes about race, ethnicity, religion, or national origin—rather than objective evidence or individual behavior—in making decisions about who has been or may be involved in criminal activity. (Ethnic profiling—often called "racial profiling" in the United States—should not be confused with the lawful use of race as an element in the description of a specific suspect.) Although it is widespread in Europe, ethnic profiling is rarely examined or documented; aside from the United Kingdom, no European government collects information on the ethnicity of those stopped by police.

The frequency with which police stop minorities, the disproportion between stops of minorities and members of the majority population, and the bias exhibited by some officers were little known and largely undocumented in Europe before the Justice Initiative began its effort to first measure and then challenge and reform ethnic profiling by police. Unaware of its costs, many people consider ethnic profiling to be an important policing tool.

But ethnic profiling should not be accepted in today's Europe. As Rosalind Williams' experience makes clear, it is a form of discrimination and a violation of fundamental human rights norms. By relying on ethnic, racial, or religious stereotypes, ethnic profiling breaches a basic principle of law: that each person must be treated as an individual. Ethnic profiling undermines the presumption of innocence. It also contributes to discrimination in the broader society: if police officers are treating minorities and immigrants differently, why shouldn't landlords or shopkeepers do the same?

Ethnic profiling is also ineffective. Studies in the U.S., United Kingdom, Netherlands, and Sweden have concluded that it does not stop crime or prevent terrorism. In fact, ethnic profiling reduces police efficacy by diverting law enforcement resources from the proper police work of gathering clues and pursuing leads to simply stopping those who look different. In addition, the practice makes it easier for criminals who do not fit the profile to evade police attention: before the July 7, 2005, London bombings, the leader of the plot came to the attention of authorities but was dismissed as a possible terrorist because he did not conform to their profile. Finally, by engaging in profiling against minorities and immigrants, police alienate the very communities whose cooperation is necessary to prevent and detect crime.

But despite being both discriminatory and ineffective, ethnic profiling has not been explicitly outlawed by any European government. The Justice Initiative is seeking to change that: it is the first organization to document the practice across Europe and challenge its legality. The Justice Initiative's project on ethnic profiling is using several methods to seek an end to ethnic profiling and provide police with more effective alternatives.

First, the Justice Initiative set out to document the extent of the problem, finding widespread ethnic profiling in all nine European countries it studied. Then, it conducted pilot projects with police forces in Spain, Hungary, and Bulgaria, to reform police practice and demonstrate that profiling is ineffective and that better alternatives exist. At the most successful of the pilot projects, in Fuenlabrada, Spain, the number of police stops fell by over 70 percent but the percentage of successful stops (those that uncovered criminal activity) increased by over 300 percent when police abandoned ethnic profiling in favor of new techniques, including increased community collaboration and stops based on individual behavior. By reducing the disproportionate stops of minorities and immigrants, police in Fuenlabrada became more efficient. The Justice Initiative is now working with other police forces to develop and adopt alternative practices that move away from ethnic profiling and toward more rational, more effective policing—while also pressing European governments to outlaw the practice.

At the same time, the Justice Initiative is pursuing litigation to end ethnic profiling. After years of setbacks, that litigation bore fruit in 2009 when the United Nations Human Rights Committee ruled in favor of Rosalind Williams, who was represented by the Justice Initiative and Women's Link Worldwide. The committee found that Williams "was singled out only because of her racial characteristics," in violation of the International Covenant on Civil and Political Rights. *Williams v. Spain* was the first case to explicitly challenge ethnic profiling, and the UN Human Rights Committee is the first international tribunal to issue a ruling prohibiting police stops based solely on race or ethnicity.

Considered Innocent, but Locked Up | The Need for Pretrial Justice

Growing up amid the steep mountainsides and rocky footpaths of the southern Mexican state of Guerrero, Sócrates González Genaro dreamed of becoming a schoolteacher. But at age 15, with his father having abandoned the family and his older brother killed in a car accident, Sócrates left school to support his mother, grandmother, and five younger sisters. He still enjoyed hanging out by his old school's basketball court, which is where the municipal police arrested him on January 14, 2004, soon after his 18th birthday, charging him with loitering. That night, residents of the small town heard screams coming from the local jail. Three days later, police told Sócrates's mother that her son was dead. Although it was clear that he had been severely beaten, the official cause of death was given as suicide.

Sócrates's story reflects a global problem whose scale and consequences are vast, harming individuals, families, and entire communities: the overuse of pretrial detention.

Under international standards, people awaiting trial should be presumed innocent and allowed to return home on condition that they respect the law and appear for trial on a set date. Individuals should be detained pending trial only in exceptional circumstances: There must be reasonable grounds to believe the person committed the alleged offense and a genuine risk of the person absconding, posing a danger to the community or interfering with the course of justice.

Too many countries, however, refuse to comply with these standards. On any given day, an estimated three million people around the world are behind bars awaiting trial. In the course of a single year, nearly 10 million people will be held in pretrial detention. Globally, one out of every three people in detention is awaiting trial. Many will spend months and even years in detention—without being tried or found guilty—usually languishing under worse conditions than people convicted of crimes and sentenced to prison.

In some countries, over three quarters of all prisoners are pretrial detainees. This includes Liberia (97 percent), Mali (89 percent), Haiti (84 percent), Andorra (77 percent), Niger (76 percent), and Bolivia (75 percent). The average time spent in pretrial detention in the European Union is estimated to be 167 days. In Nigeria, the average time is estimated to be 3.7 years.

Many pretrial detainees are exposed to torture, violence, and disease, and are subject to the arbitrary actions of corrupt officials. Throughout their ordeal, most never see a lawyer or legal adviser and often lack information on their basic rights. When they eventually reach a courtroom—without representation and often beaten down by months of mistreatment—the odds are stacked against them. The longer a detainee is held before trial, the more likely he or she is to be found guilty.

Pretrial detainees may lose their jobs and homes, and suffer physical and psychological damage that lasts long after their detention ends. They are exposed to institutional violence, initiation rituals, and gang violence. Both homicide and suicide rates are significantly higher among pretrial detainees than among sentenced prisoners.

Infectious diseases spread among pretrial detainees because of overcrowded and unsanitary conditions. When detainees are released, they carry these diseases back to their home communities. Outbreaks of tuberculosis in Russia, hepatitis C in California, and HIV in South Africa have been traced to pretrial detention centers.

A study of HIV in Central Asia found that the countries with the highest percentage of pretrial detainees also had the highest infection rates.

Misuse of pretrial detention disproportionately affects poor and marginalized communities, whose members are more likely to be arbitrarily arrested and, unable to afford legal assistance, are most vulnerable to spending prolonged periods in pretrial detention. When individuals are detained for excessive periods and lose their employment, their families slip deeper into poverty, facing hunger and homelessness. When Sócrates was arrested, his seven family members lost their only bread winner. And after his death, the family had to sell its only mule to pay for his funeral.

The predominant pattern of an excessive and arbitrary use of pretrial detention not only undermines the presumption of innocence—one of the cornerstones of a rights-based system—but also contributes to the chronic, costly, and counterproductive overcrowding of detention facilities. A more rational use of pretrial detention would enable governments to reduce overcrowding and channel associated costs to crime prevention, legal aid, and education.

To promote alternatives to pretrial detention and expand access to legal aid services, the Open Society Justice Initiative developed the Global Campaign for Pretrial Justice. The campaign is gathering evidence to document the scale and gravity of the problem and building communities of expertise among NGOs, researchers, and policymakers, including links with such associated fields as public health, anticorruption, rule of law, and socioeconomic development. The campaign is also supporting pilot programs in Malawi, Sierra Leone, and Mexico to explore effective, low-cost solutions to the overuse of pretrial detention and lack of legal representation that plague so many justice systems.

Sócrates's case illustrates many of the reasons pretrial detention is such a grave problem. As a member of the Tlapanec indigenous group, he was from a poor, marginalized ethnic community. Arrested for a minor infraction, he was held pending trial. Like an alarming number of pretrial detainees, he never had a lawyer or saw a judge. Reforming dysfunctional and unjust pretrial detention regimes will help avoid deaths like Sócrates's—and improve the lives of millions around the world whose basic rights are denied on a daily basis.

Millions of Stateless People

Without Citizenship, There Are No Rights

To Milan Makuc, there was no question about his citizenship. He had always considered himself Slovenian. His parents were Slovenian. He made his life in Slovenia. He even joined the Slovenian military to defend his homeland during the ten-day war following the country's secession from Yugoslavia. Milan had been a registered resident of Slovenia from the time he was seven years old, and after Slovenia declared its independence he waited to be granted Slovenian citizenship.

Instead, with the stroke of a pen, he was rendered stateless. On February 26, 1992, when he was 43, Milan's name—along with the names of 18,304 other Slovenians—was deleted by the government from its official registry of residents. After the dissolution of Yugoslavia and the emergence of an independent Slovenia, the new state adopted laws allowing residents to apply for

Slovene citizenship. However, the citizenship application process was cumbersome and the government did not publicize it effectively. As a result, thousands of legal residents of Slovenia did not apply. When the Slovene government erased the names of the 18,305 residents from its register of citizens, it relisted them as foreigners residing illegally in Slovenia.

From that time forward, Milan and the others were considered foreigners in their own country and denied social services. In an instant, Milan lost his government job, his health insurance, and 21 years of pension contributions. With no options and no place to go, Milan became homeless.

Citizenship is the essential foundation of a person's legal identity. It enables someone to vote, hold public office, and exit and enter a country freely. In practice, it often is necessary to obtain housing, health care, employment, and education. Stateless people are denied those rights and suffer terrible personal consequences. They are more vulnerable to violence, discrimination, and other rights violations.

Statelessness is not limited to countries in the former Yugoslavia or people living in countries newly born out of independence movements—it is a problem of global dimension. By some estimates, it affects 12 to 15 million people: From the Biharis in Bangladesh, to the Thailand Hill Tribes in Asia, to Dominicans of Haitian descent in the Caribbean, all suffer the consequences of government policies that fail to recognize them as nationals, despite connection to these countries going back for generations.

Stateless persons may lose their job and end up homeless. Parents may struggle to register their children for school. Families watch as their loved ones are denied critical health care. Beyond the individual human toll, statelessness has social and political dimensions as well. Statelessness is often an underlying factor in civil conflicts and insecurity among states. Although the problems related to statelessness may manifest themselves differently, at root is a group of people who have been denied a legal identity.

Milan tried repeatedly to obtain Slovene citizenship. After years of unsuccessful attempts, in 2006, Milan and 10 other people took their cause to the European Court of Human Rights in the case of *Makuc and Others v. Slovenia*. The Open Society Justice Initiative in 2007 briefed the court on the legal implications of the government's "erasure" of thousands of residents from the government registry. The Justice Initiative argued that the government's action violated Article 8 of the European Convention on Human Rights, which protects individuals' right to sustain the personal and family relations that link them to the society in which they habitually reside.

Makuc and Others v. Slovenia is one of a number of legal challenges to statelessness and/or citizenship denial in which the Justice Initiative is involved. In *Yean and Bosico v. Dominican Republic* and *Bueno v. Dominican Republic*, the Justice Initiative is fighting to restore citizenship for Dominicans of Haitian ancestry. In *Nubian Minors v. Kenya*, the Justice Initiative is trying to help stateless children secure their basic right to education.

"Successful legal challenges will help make it harder for states to deny or deprive people of citizenship," said James Goldston, executive director of the Open Society Justice Initiative. "Our goal is to eliminate statelessness itself, thereby alleviating its consequences—human trafficking, discrimination, and armed violence, among other problems."

The Justice Initiative's efforts are not limited to courtrooms. It is working to make the right to citizenship a reality by urging national and international bodies to document the problem. Right now there are only estimates of the number of stateless people around the world. Documentation can demonstrate the scope and significance of the problem, as well as the fact that statelessness appears to be growing.

The Justice Initiative is also advocating for existing institutions to act more effectively on behalf of the stateless; whether it is the U.S. Department of State, which only recently took on the task of including in its annual country reports on human rights practices the issues of citizenship or statelessness, or the United Nations Human Rights Council, which should appoint a special rapporteur to report annually on the situation of the stateless around the world.

In July 2010, the European Court of Human Rights issued a groundbreaking decision on citizenship, ruling that it was unlawful for Slovenia to deny permanent residency staus to long-term residents in the aftermath of state succession.

Sadly, the court's ruling came too late for Milan Makuc, who never received citizenship from Slovenia. He died in June 2008 and was buried in the cemetery in Piran, Slovenia.

Freedom of Information | Exposing Corruption and Rights Violations

In December 2009, Enrique Albistur, Argentina's media secretary, handed in his resignation to President Cristina Fernandez de Kirchner. Albistur was embroiled in a scandal and facing criminal charges that he and other officials used public government advertising funds to favor media companies with close ties to the Kirchner administration.

The alleged abuses came to light because civil society groups used access to information requests to reveal substantial irregularities in how Albistur handled advertising funds. These findings prompted Argentina's attorney general to initiate an investigation in 2008.

"Albistur and members of the Kirchner government have been exposed for potentially violating two cornerstones of democracy: freedom of information and freedom of expression," said Open Society Justice Initiative senior attorney Darian Pavli.

Protecting freedom of information and expression is a continuing commitment for the Justice Initiative. In Argentina, the Justice Initiative helped develop the case against Albistur by supporting the Association for Civil Rights, which challenged the Argentine government's denials of access to information requests about advertising funds.

Access to information is an essential and basic tool for protecting fundamental rights and holding governments accountable. By 2010, more than 4.5 billion people living in some 85 countries had a legal right to obtain information from their governments. Yet in practice secrecy remains the rule, and openness the exception.

The Justice Initiative in 2006 produced *Transparency and Silence*, a survey of access to information laws and practices in 14 countries. The report confirmed that these laws have had a significant, positive impact. In countries with freedom of information laws, the rate of responses to information requests was nearly three times higher than in states without such laws.

These positive developments are balanced by findings that significant numbers of requests were ignored in all 14 countries. The survey also found that officials responded more promptly to persons who presented themselves as journalists or representatives of NGOs and businesses. Requests from racial, ethnic, religious, or socioeconomic groups routinely subjected to discrimination tended to be ignored or refused.

Since the survey's release, the Justice Initiative and other Open Society Foundations programs have worked with officials and civil society groups across the globe to establish and improve the implementation of freedom of information laws.

In 2009, Russia's parliament passed the country's first ever freedom of information law. Valery Komissarov, one of the bill's authors, told the *Moscow Times* that the law will work to "reduce corruption at all levels and increase people's trust in the authorities." Passage of the law is largely due to a public campaign that encouraged citizens to write letters to President Medvedev and educate government officials about the importance of access to information.

In Uganda, two journalists filed a case in 2009 that tests the country's access to information law by demanding that the government release production sharing agreements it signed with several Western oil companies. Knowledge about the agreements and the public revenues they generate is crucial for pursuing development polices that will benefit the majority of Uganda's citizens. Gaining access to the agreements will also, as one commentator noted, show that the country's access to information laws are "not just there to impress donors."

In Europe, the Justice Initiative used local freedom of information laws to investigate the involvement of European governments in the U.S. extraordinary rendition program. Information obtained from these requests has helped the Justice Initiative bring the El-*Masri v. Macedonia* case before the European Court of Human Rights (see page 8). Information requests in Poland and Romania have spurred public demands for full investigations into the role that these countries may have played in the rendition program.

By using freedom of information laws to reveal possible wrongdoing by Argentina's media secretary, civil society groups also helped shed light on indirect censorship, an increasingly common technique for stifling freedom of expression.

Indirect censorship occurs when government officials use either regulations or financing for media groups to influence and control what journalists and media organizations say.

In Albistur's case, he apparently awarded disproportionate amounts of advertising contracts to media organizations that were close to the government and gave it favorable coverage. At the same time he withheld or reduced advertising with organizations that carried unfavorable or critical coverage of the Kirchner administration.

This kind of abuse is not particular to Argentina.

"As journalists, we report on the activities of government agencies," said Colombian radio journalist Carlos Hurtado. "Yet those same agencies give us advertising money that we compete for. Therefore, journalists who might want to say that the agencies are doing something wrong abstain from publishing. One tends to soften the criticism."

Throughout Latin America and other regions where states are experiencing democratic transitions, indirect censorship is emerging as the preferred alternative to violence and intimidation for controlling the press.

Buying the News (2006) and *The Price of Silence* (2008)—two Justice Initiative reports that document indirect censorship in Latin America—were the first systematic attempts to analyze how indirect censorship works and what can be done about it.

The reports examined conditions in Argentina, Chile, Colombia, Costa Rica, Honduras, Peru, and Uruguay. The reports found that all of these countries were marked by government agencies, particularly at the regional and local level, that used public advertising money, regulations, and direct contacts between officials and journalists to stifle critical coverage and promote positive news about officials and the government.

Following up on the two reports' findings, the Justice Initiative has worked with civil society groups and officials to bring more attention to indirect censorship.

In a groundbreaking 2007 decision, Argentina's Supreme Court ruled that the provincial government in Neuquen, which featured prominently in *Buying the News*, had violated a local newspaper's free speech rights by withdrawing advertising money in response to critical coverage from the paper. In the province of Tierra del Fuego, the Justice Initiative helped develop a public campaign around indirect censorship that prompted the provincial government in 2008 to establish objective criteria for the allocation of advertising contracts.

This steady progress has strengthened the Justice Initiative's resolve to continue challenging violations of freedom of information and freedom of expression and to bring citizens and officials together to pursue reform.

Bosnia
Botswana
Brazil
Bulgaria
Cameroon
Chile
Cote d'Ivoire
Czech Republic
Dominican Republic
Equatorial Guinea
Germany
Hungary
Israel
Italy
Kazakhstan
Kenya
Lithuania
Macedonia
Mauritania
Netherlands
Nigeria
Paraguay
Russia
Slovenia
Spain
United Kingdom

Litigation

Geographic Origins of the Justice Initiative's Cases

The Justice Initiative engages in strategic litigation in national, regional, and international courts and tribunals across a range of human rights issues. Cases in the public interest aim not only for individual redress, but also for broader impact by setting an important precedent or otherwise reforming official policy and practice. Litigation can be a powerful tool, but it is resource-intensive. By combining legal filings with research, advocacy, and other activities, the Justice Initiative hopes to effect change.

At any given time, the Justice Initiative is engaged in dozens of cases in courts around the world. On the next two pages are brief descriptions of five cases and a map showing the countries where our cases originate. The names of the countries are listed to the left.

★ *Anyaele v. Taylor*

Charles Taylor, former President of Liberia, was granted safe haven in Nigeria, despite having been indicted for war crimes and crimes against humanity by the Special Court for Sierra Leone. In 2004, two survivors of wartime Sierra Leone, David Anyaele and Emmanuel Egbuna, initiated legal proceedings before the Federal High Court in Abuja seeking to lift the asylum granted to Taylor by Nigeria's president.

The applicants argued that as a person indicted for war crimes and crimes against humanity before an international court, Taylor was not eligible for asylum status, which provided him with immunity from the lawsuit. The Justice Initiative filed formal briefs in the case, and Nigeria's High Court ruled that the plaintiffs had the legal standing to pursue their case. With legal pressure on him mounting, Taylor tried to flee Nigeria, was apprehended and handed over to the Special Court for Sierra Leone, where he is currently being tried on 11 counts of war crimes and crimes against humanity.

★ *Claude v. Chile*

In 1998, an environmental NGO in Chile filed a request for information with the government about a major logging contract. Chile's Supreme Court denied the request in a decision that threatened to block public access to government-held information. The applicants challenged the decision before the Inter-American Court of Human Rights, with the Justice Initiative and four other groups filing amicus briefs in the case. Research conducted by the Justice Initiative—a comparative survey of government responses to information requests in 14 countries—was formally introduced as evidence by the applicants.

In its landmark 2006 *Claude* ruling, the Inter-American Court held that Article 13 of the American Convention on Human Rights guaranteed the right to government-held information. In reaching its decision, the court relied in part on the Justice Initiative's research to draw conclusions about the state of international legal practice. The court ruled that all state-held information should be public, subject to limited exceptions. States are required to adopt a legal framework that gives effect to the right of access, and to reform secrecy laws and practices. The court also ordered Chile to train public officials on the rules and standards that govern public access to information.

★ *Gerasimov v. Kazakhstan*

Alexander Gerasimov went to the local police station in Kostanay, Kazakhstan, in March 2007 to ask about his son, who had been arrested hours before. Instead of being given the information, Gerasimov was detained by the police, interrogated, and savagely beaten in an attempt to force him to confess to an unsolved murder. After the police released him without charge, Gerasimov spent two weeks in the hospital with injuries to his head, back, and kidneys. Local authorities refused to investigate.

The Justice Initiative assisted the local lawyer in attempts to force an effective investigation, and is acting as cocounsel in the first complaint against Kazakhstan before the United Nations Committee against Torture, where the case is currently being considered.

★ Yean and Bosico v. Dominican Republic

Two girls born in the Dominican Republic to Dominican mothers applied for copies of their birth certificates. Local officials refused their request, as part of a deliberate policy to deny documents such as birth certificates to Dominicans of Haitian descent, refusing them recognition of their nationality. As a result of the denial, the girls could not go to school.

The Justice Initiative submitted an amicus brief to the Inter-American Court of Human Rights describing the prohibition of racial discrimination in access to nationality in international law. The Inter-American Court found the Dominican Republic's treatment of the girls constituted unlawful racial discrimination. In a landmark decision in October 2005, the court affirmed the human right to nationality as the prerequisite to the equal enjoyment of all rights as civic members of a state.

The Dominican government has fought the ruling. In 2005, the Dominican Senate passed a resolution rejecting the Inter-American Court's decision, and the country's highest court issued a ruling reaffirming that undocumented migrants could be considered "in transit" and refused government services—a direct refutation of the IAC's decision. In 2009, the constitution of the Dominican Republic was amended to redefine citizenship and make it more difficult for Dominicans of Haitian descent to gain official recognition of their citizenship. The Justice Initiative has continued litigation in the Dominican Republic to enforce the Inter-American Court's decision.

★ Bagdonavichus v. Russia

In June 2006, Russian authorities destroyed a Roma settlement in the village of Dorozhnoe, Kaliningrad, which had stood since 1956. Using bulldozers, wielding machine guns, and shouting racist slurs, local authorities destroyed the settlement, leveling the homes of six families and setting their possessions on fire.

The authorities failed to provide alternative housing, and most of the families were broken apart. Some moved in with neighbors while others still live in tents on the site of their former homes. The displaced families have suffered greatly: four residents died as a direct result of their eviction, including a woman—pregnant when her home was razed—who was forced to give birth in a field and died of infection; her newborn son was sent to an orphanage.

The Justice Initiative is representing several of the Roma families whose homes were destroyed and/or who were the victims of official violence. The case is currently being considered by the European Court of Human Rights.

Publications | Available from the Justice Initiative

To order or download the following publications, go to http://www.soros.org/initiatives/justice/articles_publications or email info@justiceinitiative.org.

Corporate War Crimes: Prosecuting Pillage of Natural Resources

Although the prohibition against pillage dates to the Roman Empire, pillaging is a modern war crime that can be prosecuted before international and domestic criminal courts. *Corporate War Crimes* offers a roadmap of the law governing pillage as applied to the illegal exploitation of natural resources by corporations and their officers, providing a long-awaited blueprint for prosecuting corporate plunder during war. The book seeks to guide investigative bodies, war crimes prosecutors, and judges engaged with the technicalities of pillage. It should also be useful for advocates, political institutions, and companies interested in curbing resource wars. (2010; 157 pp.)

From Judgment to Justice: Implementing International and Regional Human Rights Decisions

International and regional human rights systems have the potential to provide powerful rights protections to individuals while compelling states to live up to their legal obligations. Yet too often, the decisions of human rights bodies suffer from a lack of implementation. *From Judgment to Justice* examines the challenges of implementing the decisions of international and regional human rights bodies, with separate chapters focusing in detail on the European, Inter-American, and African systems, as well as on the UN treaty body system. The book notes where implementation has succeeded and where it has fallen short, examining specific cases, rulings, and remedies. *From Judgment to Justice* concludes by offering timely recommendations on specific steps to improve implementation and to ensure that human rights bodies fulfill their potential. (2010; 198 pp.)

The Socioeconomic Impact of Pretrial Detention

Locking away millions of people who are presumed innocent is a violation of international norms and a tragic waste of human potential that undermines economic development. This pioneering study attempts for the first time to count the full cost of excessive pretrial detention, including lost employment, missed tax payments, the spread of disease and corruption, and the misuse of state resources that could otherwise be invested more fruitfully. Combining statistics, anecdotes, and recommendations for reform, *The Socioeconomic Impact of Pretrial Detention* should be of interest to anyone concerned with poverty, human rights, and development. (2010; 72 pp.)

Community-based Paralegals: A Practitioner's Guide

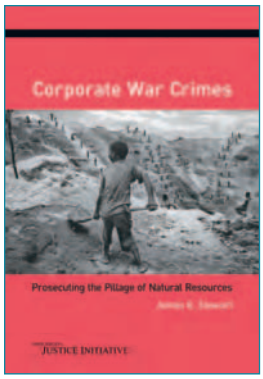
Living and working in the communities they serve, community-based paralegals use their knowledge of the formal justice system, alternative means of resolution such as mediation, and community education practices to help the poor and marginalized address their justice problems. This how-to guide provides information on all aspects of establishing and operating a community-based paralegal program, from assessing a community's needs to training paralegals and resolving justice problems. The book includes case studies, training curricula, client intake forms, and other materials drawn from paralegal programs in Cambodia, Hungary, the Philippines, and elsewhere. *Community-based Paralegals: A Practitioner's Guide* should be useful for anyone who wants to start a new paralegals program, improve an existing one, or learn more about paralegals and the legal empowerment of the poor. (2010; 170 pp.)

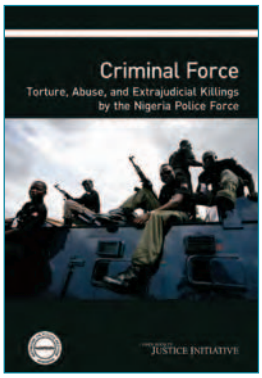
Managing Pretrial Release: Balancing the Presumption of Innocence with Public Safety

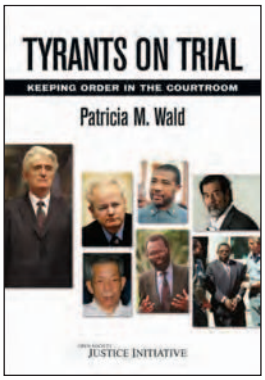
To minimize any risks that arrested defendants might pose to public safety, the state needs to make two key decisions at the "front-end" of the criminal justice system: Is the charge worth pursuing? And if so, should arrested accused persons be released pending trial or held in detention? This Spanish-language monograph focuses on the latter question, and discusses how best to manage the pretrial release/detention decision. This monograph seeks to assist decision makers during this critically important time of criminal justice reform, by promoting and enriching the debate around the problem of pretrial detention in Mexico. (2010; 52 pp.; available in Spanish only)

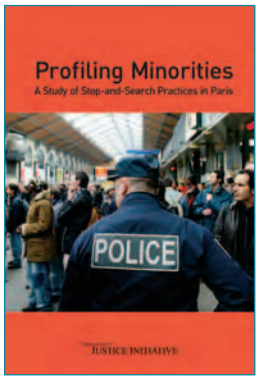
The Use of Pretrial Detention in Nuevo León: A Quantitative Study

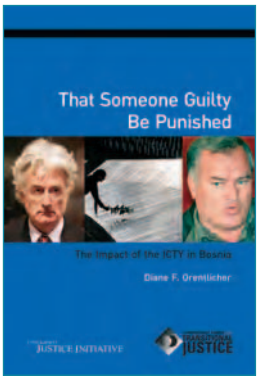
This report examines pretrial detention case processing in Mexico, focusing on the state of Nuevo León. Researchers looked at whether the judicial process at the pretrial stage meets minimum standards for due process, is consistent with international and local norms, follows predictable criteria, applies pretrial detention to an appropriate set of people, and uses information properly to achieve justice. By debunking some of the myths about people who are detained, this study aims to promote the presumption of innocence, help the public accept pretrial release, assist the government in channeling its resources more efficiently, and help officials establish policies that will take advantage of the reform climate in Mexico and contribute to the improvement of the criminal justice system. (2010; 60 pp.; available in Spanish only)











That Someone Guilty Be Punished: The Impact of the ICTY in Bosnia

When the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993, few could have foreseen its deep and lasting impact on Bosnia and Herzegovina, the Balkans, and international law. This report looks at the effects and effectiveness of the ICTY, including lessons to improve future efforts to provide justice for survivors of atrocious crimes. The expectations, hopes, and disappointments of victims and survivors are chronicled alongside the tribunal's achievements and limitations. Based on hundreds of hours of interviews—and featuring the voices and perceptions of dozens of Bosnian interlocutors—*That Someone Guilty Be Punished* provides a comprehensive and complex portrait of the ICTY and its impact on Bosnia. (2010; 210 pp.)

Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force

Nigeria Police Force personnel routinely carry out summary executions of persons accused or suspected of crime; rely on torture as a principal means of investigation; commit rape of both sexes, with a particular focus on sex workers; and engage in extortion at nearly every opportunity. The Nigerian government has acknowledged these problems and promised to address them in the past, but to date, abuses have continued with no real accountability. This report, based on independent field monitoring and investigation at more than 400 police stations over two years, catalogues a shocking array of crimes committed by police and makes extensive recommendations for reform. (2010; 130 pp.)

Costly Confinement: The Direct and Indirect Costs of Pretrial Detention in Mexico

The costs of pretrial detention in Mexico are painfully high—for the state and its citizens in general, and for detainees and their families in particular. Moreover, the true cost of pretrial detention is often hidden, because the state counts only the direct costs of housing and feeding pretrial detainees and overlooks indirect costs such as the lost productivity and reduced tax payments of pretrial detainees who could have continued working if they were released before trial. *Costly Confinement* calculates the true costs of pretrial detention, including the social programs that could be funded with money that is currently being spent in locking up large numbers of people who pose little threat to society and who by law must be considered innocent. (2010; 85 pp.; available in Spanish only)

Tyrants on Trial: Keeping Order in the Courtroom

Trials involving heads of state and other leaders accountable for gross abuses of human rights pose particular challenges for judges and prosecutors. *Tyrants on Trial* examines the difficulties of ensuring a fair trial when former leaders defend themselves, often by attacking the court while simultaneously treating it as a platform for lengthy espousals of their political and ideological views. Drawing on the experiences of judges and participants in such proceedings, the report provides insightful lessons learned and practical recommendations on the scope of the charges, judicial control of proceedings, self-representation, and media relations. (2009; 76 pp.)

Profiling Minorities: A Study of Stop-and-Search Practices in Paris

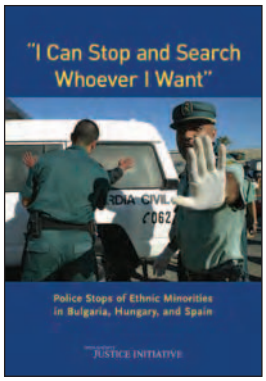
Police officers in Paris consistently stop people on the basis of ethnicity and dress rather than on the basis of suspicious individual behavior, according to this report, which documents over 500 police stops during a one-year period. The data show that blacks were between 3.3 and 11.5 times more likely than whites to be stopped, while Arabs were between 1.8 and 14.8 times more likely to be stopped than whites. The report recommends the reform of laws and policies that allow ethnic profiling; an explicit ban on discrimination by police officials; stronger criteria for the "reasonable suspicion" required to stop persons; and enhanced record keeping and review of stops to assess their impact and promote better practice. (2009; 84 pp; available in French and English)

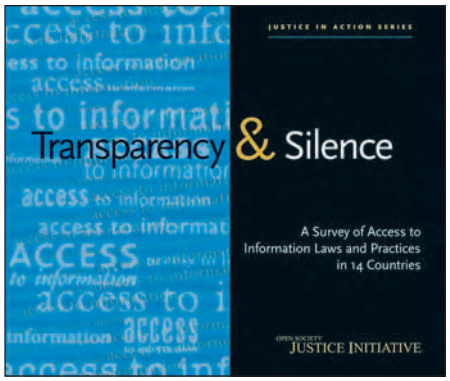
Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory

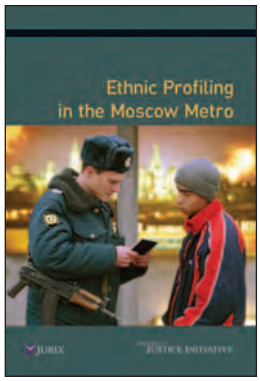
This report analyzes ethnic profiling across Europe in both ordinary policing and in counterterrorism contexts and finds that it is not just a violation of European laws and international human rights norms—it is also an ineffective use of police resources that leaves the public less safe. The damage from ethnic profiling—to the rule of law, to effective law enforcement, and especially to those who are targeted—is considerable. In addition to providing a comprehensive examination of ethnic profiling and a consideration of its legality, the book offers effective alternatives that increase security, advance counterterrorism efforts, and respect human rights. (2009; 198 pp.)

Addressing Ethnic Profiling by Police: A Report on the Strategies for Effective Police Stop and Search Project

This report details efforts to reform police practices in three European countries and provides a roadmap toward greater fairness, improved efficiency, and better police–community relations. *Addressing Ethnic Profiling by Police* details the successes and shortcomings of the reform project. It tracks the changes undertaken by participating police forces, including a municipal police force in Spain that increased the effectiveness of stops while reducing their number and disproportionate impact on minority communities. The book includes chapters on the nature and legality of ethnic profiling and the process of evaluating and changing police practices. It also includes a guide to resources







for police forces wishing to undertake reforms. (2009; 100 pp.)

The Price of Silence: The Growing Threat of Soft Censorship in Latin America

This report examines a growing trend in Latin America: behind-the-scenes government interference with media freedom and editorial independence. These abuses, characterized as "soft censorship," remain largely invisible to the general public, while casting a long, insidious shadow on free expression. In particular, this report documents government abuses of financial and regulatory powers over the media, such as those related to advertising and licensing processes, as well as other content-based interferences. It also describes forms of government pressure that may be very powerful and direct—such as ultimatums to fire vocal journalists—but which have remained unexposed and unchallenged. The study catalogues abuses in Argentina, Chile, Colombia, Costa Rica, Honduras, Peru, and Uruguay. (2008; 180 pp.)

Shrinking the Space for Denial: The Impact of the ICTY in Serbia

This groundbreaking report examines the impact in Serbia of the International Criminal Tribunal for the former Yugoslavia (ICTY), providing the most comprehensive analysis to date of the court's impact in a country directly affected by its work. The report provides a detailed look at the ICTY's role and challenges in: dispelling the impunity of Serbians accused of playing a key role in atrocities committed in the Balkan wars of the 1990s; contributing to Serbian society's progress in acknowledging and condemning Serbian leaders' and institutions' role in those atrocities; and strengthening the rule of law in Serbia. (2008; 132 pp.)

"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 make them the face of a changing 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. Includes a foreword by George Soros. (2006, reprinted 2010; 34 pp.)

Transparency & Silence: A Survey of Access to Information Laws and Practices in 14 Countries

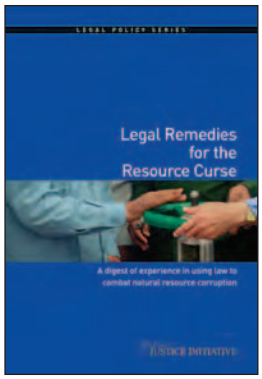
The right to access government-held information is a bedrock principle essential to any open society. Yet in many countries, access to information laws are weak, riddled with loopholes, and poorly implemented. *Transparency & Silence* takes a close look at access to information laws in 14 countries and 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.)

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 currently 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, reprinted in 2010; 20 pp.; available in English and Spanish)

Justice Initiatives: Pretrial Detention

The excessive and irrational use of pretrial detention wastes public resources, undermines the rule of law, disrupts families and communities, and endangers public health. By definition, pretrial detention only affects people who have not yet been judged and are presumed innocent. Each year, an estimated 10 million people around the world were held in pretrial detention, yet it remains an overlooked area of criminal justice. Abuses are common: conditions are often worse for pretrial detainees than for sentenced prisoners and torture more widespread. Fortunately, innovative approaches to reform, documented in the publication, are beginning to emerge. (2008; 182 pp.; available in English and Spanish)

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 finally began trying 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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PAGE 10: Two paralegals take notes during a law lecture at Timap, a nonprofit provider of community justice services. Bumpeh, Sierra Leone, 2006.
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Justice is a priority for the Open Society Foundations. Our efforts focus on accountability for international crimes, racial discrimination and statelessness, criminal justice reform, national security and counterterrorism abuses, freedom of information and expression, and natural resource corruption. In addition to justice, the Open Society Foundations work in over 70 countries to advance health, rights and equality, education and youth, governance and accountability, and media and arts. We seek to build vibrant and tolerant democracies whose governments are accountable to their citizens.

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