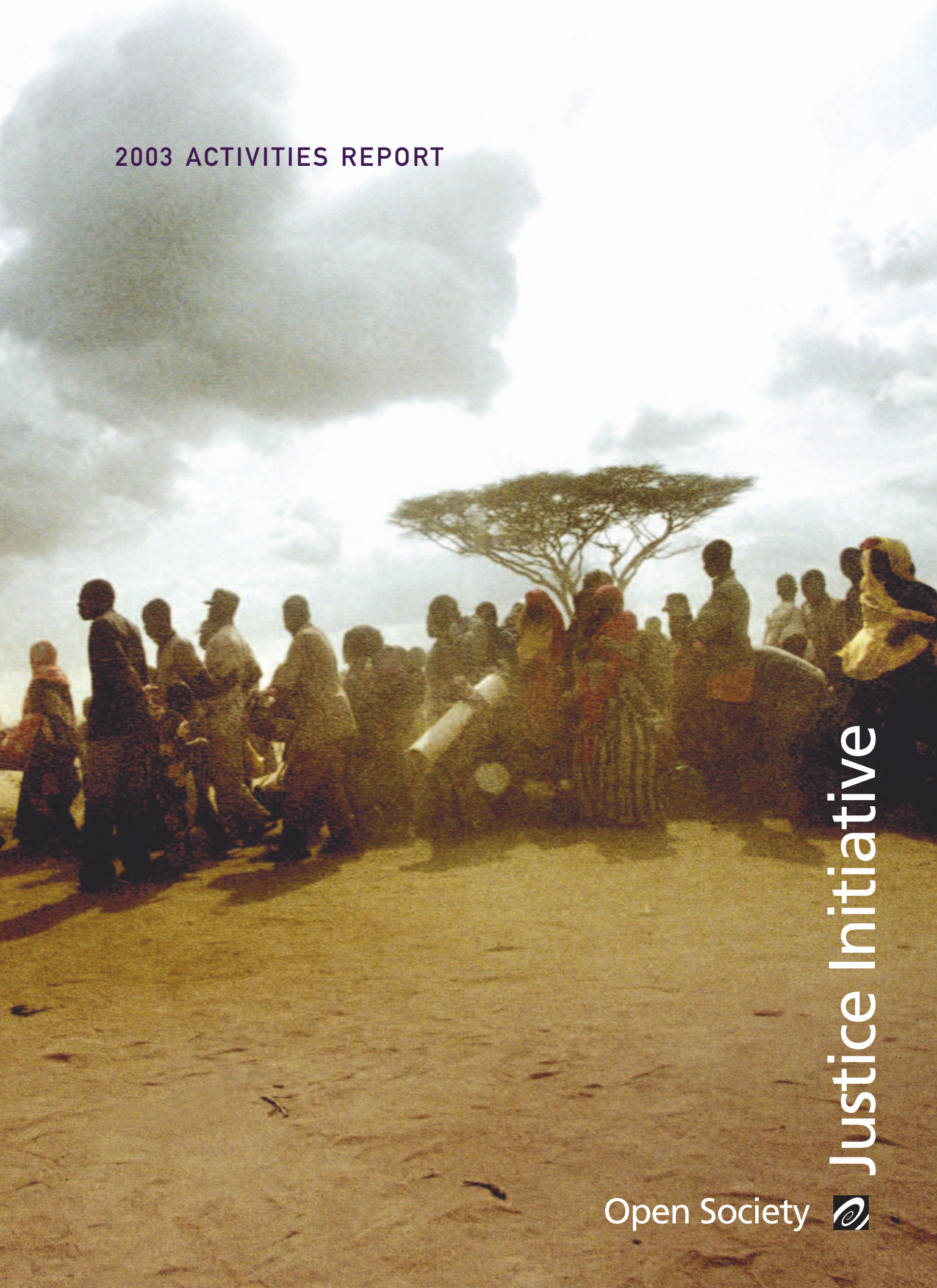


2003 ACTIVITIES REPORT



Justice Initiative

Open Society



Open Society Justice Initiative

2003 ACTIVITIES REPORT

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

www.justiceinitiative.org



OPEN SOCIETY JUSTICE INITIATIVE

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The Open Society Institute, a private operating and grantmaking foundation, aims to shape public policy to promote democratic governance, human rights, and economic, legal, and social reform. On a local level, OSI implements a range of initiatives to support the rule of law, education, public health, and independent media. At the same time, OSI works to build alliances across borders and continents on issues such as combating corruption and rights abuses.

OSI was created in 1993 by investor and philanthropist George Soros to support his foundations in Central and Eastern Europe and the former Soviet Union. Those foundations were established, starting in 1984, to help countries make the transition from communism. OSI has expanded the activities of the Soros foundations network to other areas of the world where the transition to democracy is of particular concern. The Soros foundations network encompasses more than 60 countries, including the United States.

Contact information for the Open Society Justice Initiative appears on page 83.

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WAITING TO VOTE

Combating corruption in the financing of political campaigns is one way to help insure free and fair elections.

Launching the Justice Initiative

By Patricia M. Wald, Chair, October 2002–February 2004

Just over a year has passed since OSI launched the Open Society Justice Initiative. During this time, we have assembled a staff that comes from 15 countries in Africa, Central Asia, Europe, and the Americas. And we have commenced programming in five thematic areas that lie at the core of our vision of a global open society—national criminal justice reform, international justice, freedom of information and expression, equality and citizenship, and anticorruption.

The national criminal justice reform program seeks to protect ordinary citizens from unreasonable restraints on their physical liberty and integrity, through projects designed to minimize police and prosecutor abuse of citizens taken into custody, and to assure their access to counsel. The program advocates new rules for transparency in these early procedures where most abuses occur, and initiates projects to regularize pretrial detention for adult as well as juvenile offenders. The Justice Initiative is operating a program in Kazakhstan for alternatives to custody, for juvenile offenders, has expanded a novel and promising pilot public defender program in several major cities in Lithuania, and is supporting efforts in Latvia to rationalize, and promote alternatives to, pretrial detention. An open society cannot be achieved as long as people feel that their freedom and most fundamental rights are threatened by arbitrary state power.

In international justice, the Justice Initiative is supporting several international and hybrid national/international courts

designed to hold accountable perpetrators of war crimes, crimes against humanity, and genocide. These courts, which rarely have the full resources needed to perform their complex tasks adequately, represent a dramatic step forward in the enforcement of international norms. Often they are the only resort for victims of war whose native countries are unable or unwilling to prosecute their abusers. The Justice Initiative supports the efforts of the International Criminal Court and the Special Court for Sierra Leone, and is exploring ways of assisting the embryonic Cambodian Extraordinary Chambers.

The advancement of freedom of information laws—their passage and, equally important, their effective implementation—is another priority in Eastern Europe, Africa, and Latin America. In this effort, the Justice Initiative is working with governmental authorities, NGOs, and private groups to insure proper training for the administrators of newly passed legislation and informed use of the laws by citizens. Freedom of information, so essential to an open society, lends itself readily to global networks sharing knowledge, experiences, and strategies that can be employed in furtherance of the other goals that the Justice Initiative seeks to advance.

A fourth area of concern, equality and citizenship, involves legally protecting the ability of citizens and noncitizens to pursue their social and economic fortunes in a climate of respect for their individual worth. Among our efforts in this field, the Justice Initiative is convening a series of meetings and conducting research that addresses the problems of denationalization and statelessness in Africa and other regions. Pursuing the goal of non-discrimination on the basis of race or gender, the Justice Initiative has undertaken a program in Russia to document and seek remedies for racial and ethnic prejudice by governmental authorities. Migrants are intensely vulnerable to exploitation and denial of basic services by both government and private organizations; the mobility of migrants is essential to an open society. The Justice Initiative is also initiating a project to identify forms of migrant exploitation and feasible remedies in Mexico.

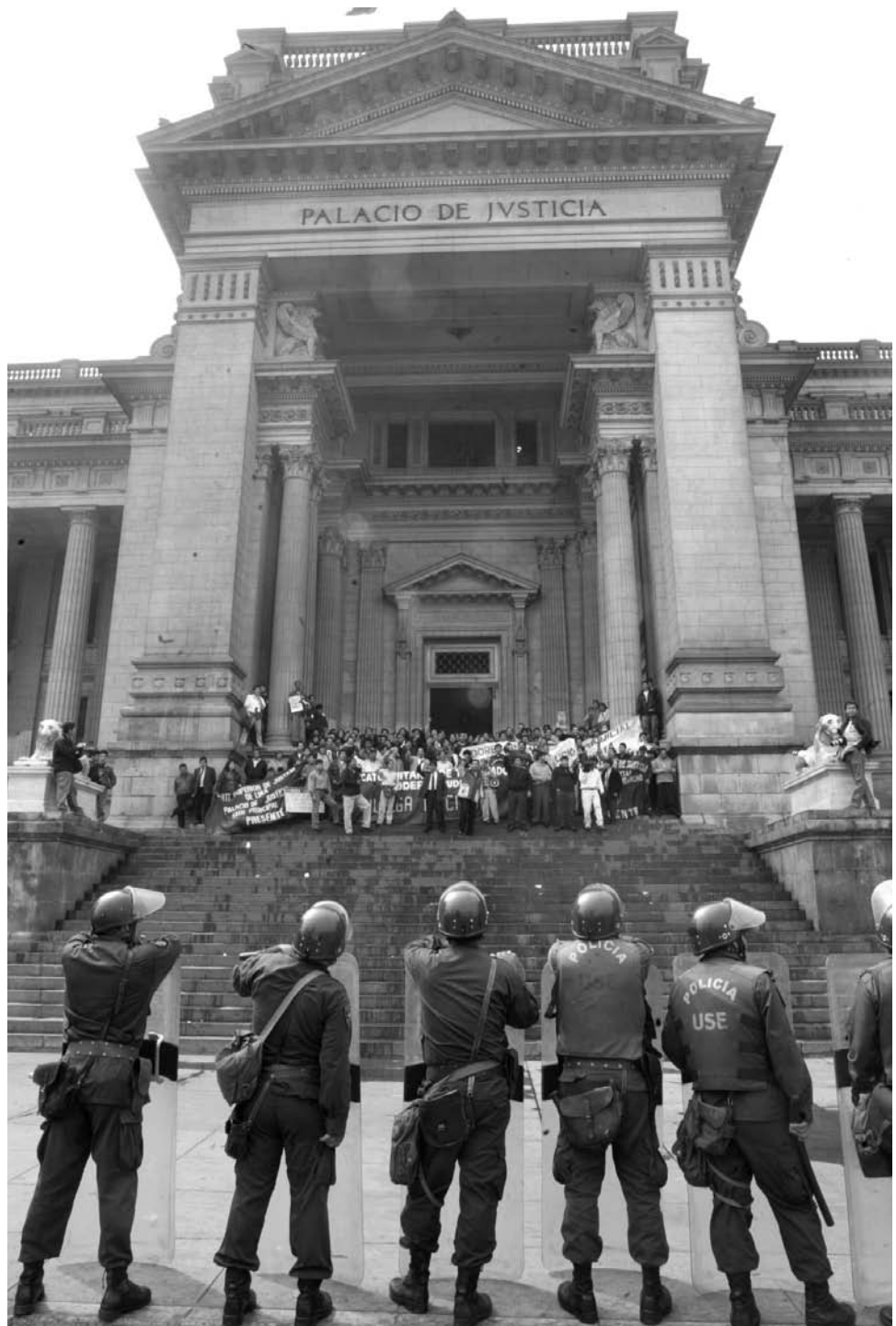
Finally, the Justice Initiative deals with the corruption endemic in major governmental institutions throughout much of the world. Decades of efforts by private and public international organizations have not made significant inroads in many countries. The Justice Initiative is preparing a monitoring guide for NGOs to identify corruption in the particular contexts in which they operate and a methodology for the monitoring of corruption in campaign and political party financing. Another project monitors corruption in the field of campaign finance in Russia.

Cutting across these programs is the Justice Initiative's goal of developing and strengthening the legal capacity of the organizations we work with so that they can operate effectively in pursuit of our areas of concern. Building on the earlier endeavors of the Constitutional and Legal Policy

Institute (COLPI)—the prior Open Society Institute legal program—the Justice Initiative supports 75 legal aid clinics and street law programs in Central and Eastern Europe and the former Soviet Union. We are helping to launch similar initiatives in Africa and Southeast Asia. We are starting a program to train paralegals to offer advice and judicial access to persons living in the rural areas of Sierra Leone where no lawyers practice. And we support several human rights fellowship programs for training lawyers in human rights and the rule of law in Eastern Europe and Africa.

The Justice Initiative is acutely aware that its resources do not permit it to operate in all areas in all countries. It selects its countries and projects on the basis of several criteria. Critical is the desire of local groups—including national foundations established and supported by George Soros, the chair of the Open Society Institute—to institute reform efforts and to operate and sustain programs after the Justice Initiative’s support is ended. We also look for effective programs that can be replicated in neighboring countries and throughout a region. We welcome partners among other private philanthropies, local groups, and governments.

The Justice Initiative seeks to show people in not-yet-open societies that there are institutions and programs that will protect them from the arbitrary actions of public officials and change their lives for the better. At the same time, we seek to demonstrate to these governments that individual rights and the rule of law are consistent with efficient and responsive governance. They are, in fact, the bedrock of an open society. In this way, the Justice Initiative serves a vital role in the Open Society Institute’s efforts to strengthen progressive movements and establish open society principles and practices throughout the world.



POLICE AND PROTESTERS

Securing the right to freedom of expression for all people is vital to open, democratic societies.

The Justice Initiative's Inaugural Year

By James A. Goldston, Executive Director

The Justice Initiative responds to the challenges and opportunities posed by globalization in the fields of law and justice.

International events pose new threats to localities while what happens inside national borders is increasingly a matter of global concern. More and more, problems calling for legal solutions straddle national borders. Growing problems for noncitizens and those whose citizenship status is precarious can be seen in restrictions on access to asylum, crackdowns on migration, discrimination, collective expulsion, and acts of violence. Demands for greater transparency in public policymaking and broadened public access to information conflict with pressures to expand secrecy and halt information flows in the name of national security. The globalization of organized crime and political terrorism presents an increased challenge to national and municipal law enforcement to reconcile the demands of public safety and individual liberty. The exploitation of natural resources in situations of armed conflict gives rise to corruption on a vast scale, for which national remedies are often inadequate.

At the same time, globalization offers new possibilities for engagement at the transnational level. A burgeoning movement seeks to apply freedom of information norms to transnational institutions that traditionally have been exempt. A body of international criminal law has emerged through the workings of ad hoc postconflict tribunals. For the first time in history, a

permanent International Criminal Court has come into being to investigate, prosecute, and try those responsible for the most heinous crimes. The creation of regional and/or subregional tribunals in Africa, Europe, and Latin America has given rise to legal cultures and networks of law reform actors extending across traditional political boundaries. The growing convergence of common and civil law systems and the development of hybrid systems that combine elements of both are breaking down barriers of procedure and legal culture. Comparative models of institutional development—from legal clinics to prosecutor offices—increasingly are accessible and relevant to law reform actors in individual countries.

The Justice Initiative seeks to take advantage of these emerging possibilities for collaborative justice reform work among public and private actors at national, regional, and international levels.

We bring a global perspective to our work, as reflected both in the composition of our staff and in the multinational experiences upon which we draw. This makes possible a richness of intellectual and programmatic diversity essential to an institution that operates in several dozen countries.

The thematic and geographic range of problems dictates a flexible approach. Depending on the situation, we employ a variety of tools, including litigation; advocacy beyond the courtroom; technical assistance to governments, NGOs, and/or intergovernmental bodies; investigation, research, and reporting; and capacity building.

A similar flexibility underlies our choice of partners. The Justice Initiative undertakes projects in consultation with Soros foundations and other civil society organizations, as well as governments and intergovernmental bodies.

Most of our projects are guided by a few common principles. First, we aim to enhance and expand human rights protection. Second, our hands-on assistance is grounded firmly in actual knowledge of local social, political, and legal contexts. Third, we collaborate closely with partner institutions in all aspects of project development, including conceptualization, design, execution, and evaluation. Fourth, where appropriate, we seek to maximize our “value-added” potential by sharing knowledge and expertise across geographic and thematic borders.

Finally, Justice Initiative projects pursue particular substantive goals—greater public access to information, improved police accountability, more effective legal representation for indigent criminal defendants—while contributing to local capacity to carry these efforts forward in the future.

Justice reform is a long-term process that often yields modest results and incremental change. And yet, in partnership with others, Justice Initiative projects produced a number of tangible accomplishments in 2003, some of which are discussed more fully in this report.

LITIGATION

- The Justice Initiative filed a formal legal request that the government of Nigeria reverse President Obasanjo’s purported grant of asylum to Charles Taylor. The legal action, which was reported in the *New York Times* and several African media outlets, led to the emergence of an organized advocacy coalition of West African groups, compelled the Nigerian government to acknowledge the possibility of returning Taylor to face trial outside Nigeria, and secured the commitment of Nigeria’s federal legislature to holding a public hearing on Taylor’s asylum in Nigeria.
- The Justice Initiative filed a complaint with the Constitutional Court in Albania, forcing the government to disclose and rescind a gag order preventing most government officials from speaking to the press about public policies.

ADVOCACY

- The Justice Initiative helped organize an informal working group of NGOs and independent experts focused on the “Extraordinary Chambers” process for the trial of serious crimes during the Khmer Rouge era in Cambodia. After discussions with government and NGO representatives in Phnom Penh, we put forward a plan to provide assistance on judicial selection criteria, training for judges and prosecutors, public outreach and education, and independent monitoring and advocacy.
- The Justice Initiative assisted local NGOs in Georgia in advocating for ratification of the Rome Statute of the International Criminal Court. Justice Initiative staff met with senior government officials and provided international expertise on legal questions related to ratification and implementation. In mid-2003, the government of Georgia ratified the Rome Statute.¹
- A public letter the Justice Initiative sent to the Bulgarian Parliament surveyed international free expression standards and underlined human rights problems with proposed criminal code amendments that would criminalize all disclosures of classified information. Local media, rights groups, and parliamentarians used this letter in discussing and reporting on the objectionable provisions.²
- In collaboration with leading African regional institutions and NGOs, the Justice Initiative advocated to secure sufficient ratifications for the establishment of the African Court on Human and Peoples’ Rights. Our

involvement—which included facilitating regional meetings of senior officials of the governments of East, West, and Southern African states—contributed to securing six additional ratifications for the Protocol establishing the Court. The Protocol came into force on January 25, 2004.

- We promoted the adoption of freedom of information (FOI) legislation in Armenia, Turkey, and several countries of South Eastern Europe through a series of strategy meetings, conferences, and study tours for advocates, and through provision of substantive comments on draft legislation. By year’s end, sound FOI legislation had been adopted in Armenia, Croatia, Kosovo, Slovenia, and Turkey.³

TECHNICAL ASSISTANCE TO GOVERNMENTS, NGOS, AND INTERGOVERNMENTAL BODIES

- The Justice Initiative helped draft guidelines for the monitoring of police conduct in Nigeria’s spring parliamentary elections, and assisted the Police Service Commission (PSC) in publicizing the guidelines. This generated substantial public attention for the PSC and for the issue of election-related police conduct in Nigeria.
- We provided legal expertise to the Office of the United Nations Special Representative in Kosovo concerning draft provisions of the criminal code relating to freedom of expression. As ultimately adopted, the code deleted or reduced criminal penalties for journalists who defame public officials.
- We collaborated closely with the Soros Foundation–Latvia in providing technical assistance to the government in developing and piloting alternatives to pretrial detention for juveniles. An innovative bail supervision center in Leipaja was officially opened in November.
- Working together with the local Soros foundation, we contributed to improved juvenile justice in Kazakhstan through training of criminal justice officials and creation of a cross-sectoral working group to foster more rational juvenile justice policymaking across different government agencies.
- The Justice Initiative led two international expert missions to Mexico to conduct training and educational sessions in order to help government officials and NGOs prepare for the challenges of implementing new federal freedom of information legislation.

- In Lithuania, the Justice Initiative, as part of a government working group on legal aid reform, provided advice and comparative expertise, assisted in the drafting of a comprehensive governmental concept paper, addressed the Parliament on legal aid, and gave targeted assistance to two pilot public defender offices. The government in November adopted the concept paper and committed to drafting legislation to overhaul the legal aid system in 2004.

INVESTIGATION/DOCUMENTATION/REPORTING

- We collaborated with Transparency International–Russia in monitoring the diversion of administrative resources in the December parliamentary elections in Russia. Preliminary results showed that the abuse of administrative resources is a systematic problem across party and ideological lines.
- The Justice Initiative completed research for an Access to Information Monitoring Tool, a five-country pilot project applying the most comprehensive methodology to date to monitor access to public information. The research suggests that the judiciary is often the most closed government institution.

CAPACITY BUILDING

- The Justice Initiative provided technical assistance to a network of more than 70 university-based legal clinics in Central and Eastern Europe and the former Soviet Union on issues of management, curriculum, and student supervision. We convened workshops for faculty and clinical supervisors focused specifically on legal representation of refugees, women, and children, and organized English and Russian language clinical teacher training sessions at Yerevan State University in Armenia and Charles University in Prague.
- With the University of Natal, Durban, the Justice Initiative organized an All-African Clinical Legal Education Colloquium that brought together academics and clinicians from more than 20 African countries. By the end of the year, the Justice Initiative was working with local university partners in Mozambique, Ethiopia, Nigeria, Sierra Leone, and Senegal to develop in-country pilot initiatives on clinical legal education.

- We organized a roundtable in Mexico City on clinical education for representatives of three leading law schools.
- We established a legal clinic at the Pannasastra University in Phnom Penh, Cambodia, with sections focused on street law and criminal legal aid.
- The Justice Initiative assisted in establishing the first street law clinic of its kind in Turkey in cooperation with Bilgi University in Istanbul.
- Together with the Open Society Initiative for Southern Africa, we launched a human rights fellowship program based in Brazil for young activists from Angola and Mozambique.

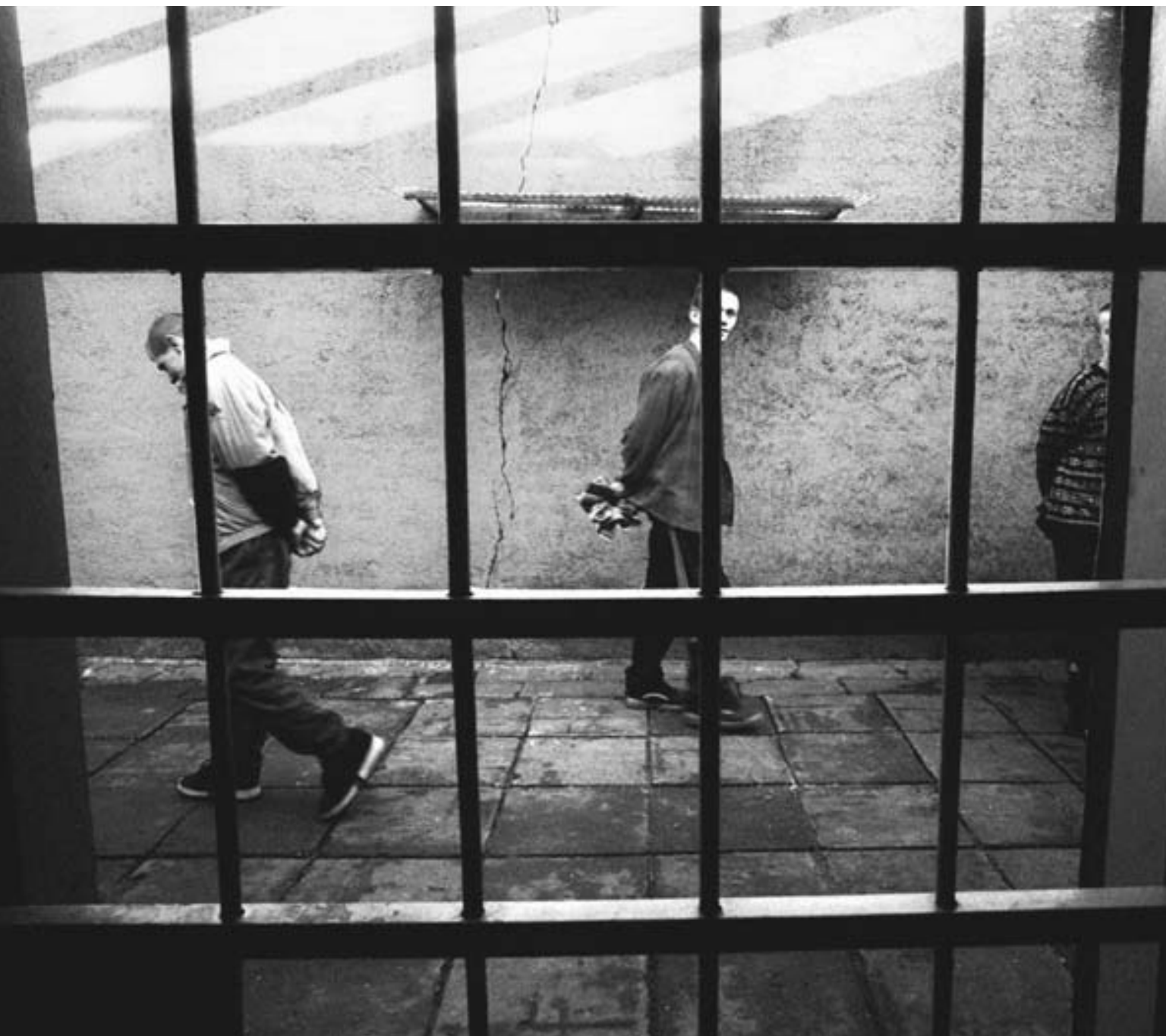
During the course of the year, the Justice Initiative embarked on a number of other activities that may take more time to generate results. These included casework in particular countries to secure accountability for war crimes and crimes against humanity, particularly through the International Criminal Court; research and advocacy addressing the problems of statelessness, denationalization, and racial discrimination in access to citizenship; and the development of comparative expertise on mechanisms for promoting enhanced effectiveness and accountability of law enforcement bodies.

Each of these activities, important in itself, is one step in a longer process of building legal foundations for open societies. The Justice Initiative is committed to working with partners at all levels toward this essential goal.

National Criminal Justice Reform

www.justiceinitiative.org/activities/ncjr

Fair and effective justice systems based on the rule of law are a prerequisite for open societies. Criminal justice systems that function poorly contribute to the infringement of human rights—of victims and suspects as well as convicted offenders—and sustain a general climate of impunity. The Justice Initiative has identified three critical and related human rights needs in the criminal justice sphere for priority attention: criminal justice and public safety, alternatives to pretrial detention, and legal assistance for indigent persons.



JUVENILE DETENTION

Young people caught in the criminal justice system are entitled to a lawyer at arrest, conditional pretrial release, and a fair trial.

Criminal Justice and Public Safety

www.justiceinitiative.org/activities/ncjr/police

Public safety and security are fundamental preconditions to the enjoyment of human rights. An essential function of a criminal justice system in an open society is to safeguard individuals from crime and protect the rights of victims, while simultaneously assuring that those charged with offenses receive due process and fair trials. In many countries, widespread fear of crime engenders support for repressive measures taken by both state and nonstate actors. The Justice Initiative seeks to enhance both the effectiveness of law enforcement in ensuring freedom from crime and the accountability of law enforcement personnel to the public, including their observation of human rights while enforcing the law. The Justice Initiative actively engages civil society organizations in helping and monitoring the police and prosecution; promotes baseline research to fill existing information gaps, including crime mapping and victimization surveys; and, where there is a strong will for reform, provides education and technical assistance in crime prevention, community policing, investigative methods, and prosecutorial reform.

BULGARIA: PROMOTING PROSECUTORIAL ACCOUNTABILITY

By conducting a broad comparative study of prosecutorial systems, the Justice Initiative will provide Bulgaria with solid recommendations for reforming its prosecutor's office.

www.justiceinitiative.org/activities/ncjr/police/bulgaria_pros

In Bulgaria, the office of the prosecutor general, the country's highest prosecutor, is endowed with broad and extensive powers. Yet neither the office nor the prosecution service as a whole exercises power in an accountable and transparent manner. The office of the prosecutor general is closed to any form of parliamentary or public scrutiny. It is not obliged to report on its activities and, except for publishing statistics on cases prosecuted, does not do so. Not surprisingly, allegations of mismanagement, nepotism, and corruption within the prosecution service are rife, and public confidence in Bulgaria's prosecutors is extremely low.

The hierarchical and centralized nature of the Bulgarian prosecution service aggravates the problem. The prosecutor general has the power to interfere in the decision making of individual prosecutors and the prosecution of individual cases. The prosecutor general, who enjoys tenure

for life and immunity from criminal prosecution, exercises complete control over the career development of prosecutors, severely impeding the independence of individual prosecutors in Bulgaria.

The lack of accountability, standards, and performance criteria as well as the nontransparent selection and promotion process in the Bulgarian prosecution service has resulted in a poorly performing and inefficient institution that is generally unsuccessful in prosecuting serious crimes. An April 2003 Bulgarian Constitutional Court decision further entrenched the independence of the prosecutor general's office, making significant legal reform of the office unlikely in the next year or two.

The Justice Initiative intends to use this period to build the reform movement, acting as a catalyst to bring about a more accountable and transparent prosecution service. With the Open Society Foundation–Sofia, the Justice Initiative will commission a comparative research report on prosecution services in Chile, France, Germany, Hungary, Italy, Russia, South Africa, the United Kingdom, and the United States. The aim is to stimulate debate on prosecutorial reform in Bulgaria by engaging, among others, reform-minded politicians, criminal justice practitioners, academics, and journalists. Legal experts both within and outside Bulgaria will study the organizational structure of each country's national prosecution service, the laws and regulations determining its powers and duties, and the relationship between the prosecution service and other state institutions. Particular attention will be given to the mechanisms governing prosecutorial accountability and independence.

After the research is completed, the experts, in consultation with other legal specialists, policymakers, and senior criminal justice personnel, will identify a range of appropriate and effective mechanisms for ensuring a more accountable and transparent prosecution service in Bulgaria and elsewhere.

PERU: POLICE ACCOUNTABILITY THROUGH CITIZEN COUNCILS

As Peru moves toward firm civilian control of the armed forces and police, the Justice Initiative is assisting in the development of police-citizen accountability mechanisms.

www.justiceinitiative.org/activities/ncjr/police/peru_cdsc

With relative peace returning to Peru in the late 1990s after 20 years of brutal internal conflict costing 70,000 lives, the country entered a critical transition period. A turning point on the path to democratization came in February 2003 with the creation by the Peruvian Parliament of a National Citizen Security System, coordinated by a new Consejo Nacional de Seguridad Ciudadana

(CONASEC). The system promotes local, participatory crime prevention initiatives and makes police more responsive to communities through a combination of top-down and bottom-up structures for police accountability to civilian authorities.

To do so, it relies on local citizen security councils or CDSCs (*consejos distritales de seguridad ciudadana*), where police commanders work directly with local authorities and community representatives on crime and law and order. The CDSCs design a citizen security plan and mobilize local cooperation and resources. They then evaluate the plan's impact and monitor the performance of public employees, including police officers, in implementing the plan. The new system also creates provincial and regional committees.

Experience in other settings indicates that to function effectively, mechanisms like the CDSCs need support and capacity, particularly in their oversight roles. Without technical expertise in conducting diagnostics and evaluations and access to model strategies for social crime prevention, CDSCs risk atrophying into purely formal entities without effective oversight or influence. They may even pose a danger for human rights protection, should political factions seek to control and exploit them or should they become vehicles for local conflict or for discrimination against marginal sectors of society.

The Justice Initiative's contribution is to: assist the CDSC system with intensive support for district, provincial, and regional committees in six pilot areas; develop methodologies for the different elements of the committees' mandate—security diagnostics, complaints procedures, impact and personnel evaluation; provide access to specialized crime prevention techniques, tried and tested elsewhere, for the CDSCs, the police, and CONASEC; identify lessons and establish best practices in accountable policing; and monitor and prevent potentially negative outcomes for human rights protection.

In September 2003, the Justice Initiative launched pilot projects in six regions in Peru.

For two further projects in the area of Criminal Justice and Public Safety, see Nigeria: Police Oversight and Professionalization, page 40, and South Africa: Enhancing Police Accountability, page 41.

Alternatives to Pretrial Detention

www.justiceinitiative.org/activities/ncjr/ptd

In numerous countries where the Justice Initiative is active, arrest is often arbitrary and pretrial detention unduly prolonged, vulnerable groups suffer disproportionate confinement, and the conditions of detention can threaten public health. Consistent with international standards, the Justice Initiative aims to rationalize the resort to pretrial detention, discouraging its use except where there is a genuine risk of flight, obstruction of justice, or serious further criminal activity. This program also seeks to promote credible alternatives to pretrial detention such as bail supervision, and to improve the capacity of civil society, as well as national and regional mechanisms, to monitor conditions of detention.

LATVIA: PROMOTING BAIL SUPERVISION AS AN ALTERNATIVE TO PRETRIAL DETENTION

To address the high rate of imprisonment without trial in Latvia, the Justice Initiative is documenting judicial practice and demonstrating the value of alternatives, notably bail.

www.justiceinitiative.org/activities/ncjr/ptd/latvia_bail

Latvia has the fourth highest imprisonment rate in Europe, with 359 prisoners for every 100,000 members of the general population. Forty-three percent of prisoners are in pretrial detention; 63 percent of juvenile detainees are awaiting trial. Latvia suffers from a dearth of alternatives to pretrial detention, inadequate access to counsel for those charged with crimes, and a low level of public awareness of the social, health, and other costs of the pretrial detention of excessive numbers of people for long periods of time. The Latvian Center for Human Rights and Ethnic Studies, in a 2003 report, describes “long pretrial detention periods” as “the main human rights problem in Latvia.” The European Committee for the Prevention of Torture, reporting to the Latvian government after its 1999 investigations, referred to “intolerable” conditions in Latvian pretrial detention centers.

This is the context for a joint project of the Justice Initiative and the Soros Foundation–Latvia to promote bail supervision as an alternative to pretrial detention. The project is designed to assist the Latvian government in complying with international standards by reducing the number of persons held in pretrial detention and shortening the duration of their detention. The project involves studying recent cases to determine to what extent judges in practice consider alternatives to pretrial detention, and undertaking an

expert evaluation of the proposed new criminal procedure code. It will further offer comparative models of noncustodial alternatives to pretrial detention and establish pilot programs demonstrating their viability; familiarize the Latvian government and bar with the ongoing legal aid program in neighboring Lithuania; and support a campaign to enhance public awareness of the importance of reform.

Preliminary research confirms allegations that judges routinely ignore legislative presumptions that the detention of accused persons should be the exception and not the rule, and that pretrial detention decisions are insufficiently (if at all) reasoned. The research will be disseminated through workshops and written recommendations, and applied directly in a pilot project that offers bail as a practical institutional alternative to detention.

KAZAKHSTAN: INTRODUCING INTERNATIONAL STANDARDS ON CHILDREN'S RIGHTS

Working with police and prosecutors in pilot districts of Kazakhstan, the Justice Initiative has helped assure juvenile detainees' right to counsel and the presence of a guardian at key moments following arrest.

www.justiceinitiative.org/activities/ncjr/ptd/kazakhstan_jj

Kazakhstan has the highest rate of juvenile incarceration in Central Asia and the former Soviet Union. Each year between 900 and 1,500 minors are deprived of their freedom, often for terms of two years or more. This high figure is due in part to a criminal justice system—shared by most former Soviet countries—that holds children accountable under the same laws, agencies, and courts as adults. If police, prosecutors, or judges make allowances for adolescent conduct by adopting less punitive options, their actions can reflect poorly in the statistics traditionally used to evaluate performance.

Several factors make this a good time for reform of the treatment of under-18s in Kazakhstan's justice system. First, several high-level officials in the criminal justice arena are concerned that the justice system is not well equipped to protect children's rights. Second, since children's welfare is not politically controversial, agencies such as the Ministry of Internal Affairs and the Office of the General Prosecutor are open to reform in this area. Third, in 2003, the United Nations Committee on the Rights of the Child reported on Kazakhstan's poor record on protecting children's rights. Juvenile justice is a key issue for introducing practices consistent with international standards into a criminal justice system that might otherwise be resistant to change.

The juvenile justice project, operating within the existing structures of the Kazakh justice system, seeks to assist police, investigators, prosecutors, judges, and lawyers in applying standards of treatment consistent with the International Convention on the Rights of the Child. The project was launched in two districts in Almaty and Almaty County to establish a model system of justice for juveniles accused of crimes. The two model programs focus on providing every arrested juvenile with a lawyer from the moment of arrest, ensuring protection of their rights to silence, conditional pretrial release, and a fair trial, including the right against self-incrimination. Kazakh authorities anticipate that the observance of human rights will increase respect for justice among Kazakhstan's next generation of adults.

Results to date are encouraging:

- The project has activated the right to counsel as a matter of policy for the first time in all juvenile cases in the pilot Auezovskiy district of Almaty.
- In 90 percent of cases in which project lawyers have been involved, parents or guardians are present during the earliest stages after a juvenile's arrest, before police interrogation takes place.
- The project has redefined the moment of arrest for purposes of triggering the right to counsel and related rights, to begin when the defendant is not at liberty to leave, rather than when an arrest certificate is filed.
- Police are reexamining the practice and usefulness of interrogation immediately after arrest.
- Police, prosecutors, judges, defenders, and top-level government officials and policymakers are engaged in a running dialogue on juvenile and human rights.
- Project lawyers and social workers are increasingly committed to upholding their clients' rights.
- Future steps will include a public awareness campaign on the benefits of a juvenile justice system based on human rights, and the development of recommendations to amend the criminal code and regulations affecting juvenile defendants and offenders.

Legal Assistance for Indigent Persons

www.justiceinitiative.org/activities/ncjr/atj

Most persons charged with crimes cannot afford a private lawyer and must rely on government-supported legal aid. But all too often, inefficient and underfunded government programs undercut the promise of effective legal assistance. In some jurisdictions, mandatory legal aid is provided only for the most serious crimes, leaving many accused without any legal representation. Despite these problems, legal aid for criminal defendants is often overlooked in donor-supported criminal justice initiatives. The Justice Initiative aims to expand government support for legal aid, promote the development of reliable models for assuring effective legal representation, and improve the quality of criminal defense advocacy and paralegal services.

LITHUANIA: REFORMING LEGAL AID SERVICES

The success of two pilot public defender offices established with Justice Initiative help had, by early 2004, galvanized reform of the Lithuanian legal aid system as a whole.

www.justiceinitiative.org/activities/ncjr/atj/lithuania_atj

Designed in cooperation with the Open Society Foundation–Lithuania and the Lithuanian Bar Association, this project assists the Ministry of Justice in creating a system of state-guaranteed legal assistance for indigent criminal suspects and defendants. The project’s efforts have helped establish the first public defender offices in Central and Eastern Europe. The offices comprise both public defenders and private counsel appointed “ex officio” under the surviving post-Soviet system. They demonstrate that, budgetary restrictions notwithstanding, the state can provide a higher quality legal defense service using public defenders.

The first pilot public defender office, established in Siauliai, Lithuania, has helped public defenders handle more than half of all cases at the investigation and trial stages where the presence of a lawyer is required by law. Interviews and a sampling of case studies indicate heightened output on the part of staff attorneys over the course of the project. At the request of the Ministry of Justice, OSI also helped establish another public defender office in the capital, Vilnius, in May 2002.

The two pilot offices played an important role in identifying serious shortcomings in the existing legal aid delivery system, prompting the Justice Initiative and project partners to assist the government in redesigning the system as a whole. The Lithuanian government on November 25, 2003,



DEFENDING THE POOR

In Lithuania, lawyers from the Justice Initiative-assisted Vilnius Public Defender Office meet with police to discuss case referrals.

adopted a resolution to extend the public defender network throughout the country, using the pilot offices as models. A commission created by the government to assess the offices judged both to have improved access to justice for indigents accused of crimes.

The Justice Initiative will continue this unusual experiment in civil society–government cooperation in the field of legal aid. It will provide financial support and training in advocacy to staff attorneys, as well as continual input and oversight of pilot office operations and political and technical support for government efforts to establish the legal aid system nationwide.

BULGARIA: ACCESS TO JUSTICE

Lessons from Lithuania have been brought to Bulgaria, where access to justice has long been a recognized problem. A pilot public defender office is now in operation in Veliko Turnovo.

www.justiceinitiative.org/activities/ncjr/atj/bulgaria_atj

The Bulgarian access to justice project began at a Sofia forum in 2001, when the Bulgarian Helsinki Committee presented a study identifying serious violations of international standards and constitutional guarantees in the ordinary criminal process in Bulgaria. The study reported that close to one-third of defendants who eventually received prison terms were not represented by legal counsel at any stage.

In Bulgaria, legal aid services are distributed among different institutions with little coordination and cooperation. Government funding is insufficient and nontransparent. In the appointment of ex officio counsel to criminal cases, certain functions are given to the bar while others remain with the prosecuting authorities. The procedure contains no safeguards against corrupt practices. Mechanisms do not exist to assess the qualifications of lawyers entering the legal aid system. There is no way of monitoring service quality and little incentive for lawyers to specialize.

The project, modeled after the Justice Initiative’s Lithuanian project, has these short-term objectives:

- To pilot, in the Bulgarian judicial district of Veliko Turnovo, a public defender model of legal aid provision in criminal cases as an alternative to the present system of ex officio–assigned counsel
- To establish criteria for measuring the quality and cost-efficiency of criminal legal aid services

- To propose mechanisms for assessing the material status of defendants and accused persons
- To give young lawyers an opportunity to develop skills in criminal defense advocacy

A longer-term objective is to encourage reform of the legal aid system with a view to improving its financing and administration through the creation of a legal aid management board.

A project advisory council, which determines strategy and oversees implementation, consists of the vice president of the Supreme Bar Council, a vice minister of justice, a criminal law professor, two criminal court judges, an experienced criminal practitioner, and two representatives of the Open Society Foundation–Sofia.

A Legal Aid Bureau was created in May 2003 in the pilot region of Veliko Turnovo, staffed by a bureau manager and five young lawyers. Specially designed training modules improved the criminal law skills of the staff lawyers. Where there are conflicts of interest or case overload, cases are referred by the bureau manager to outside lawyers.

A supervisory assistant federal public defender from the United States joined the Bureau for two months in 2003, courtesy of the International Senior Lawyers Project, to assist with management techniques and in designing training modules for lawyers in motion drafting, legal writing, and investigation.

SIERRA LEONE: CREATING A PARALEGAL ADVICE OFFICE PROGRAM

The Justice Initiative in November 2003 launched a project to make available minimal access to basic rights and legal assistance to rural Sierra Leoneans.

www.justiceinitiative.org/activities/ncjr/atj/sierraleone_atj

Sierra Leone’s official legal system is of limited practical relevance for most people in the country. The common law system is nominally supreme under Sierra Leone’s Constitution. Yet courts—and the great majority of the country’s lawyers—operate only in the country’s 12 district headquarter towns.

Almost everywhere else in Sierra Leone, most crimes and disputes are regulated by customary laws and procedures, using informal and traditional mechanisms. Unfortunately, these sometimes fail to accord with either Sierra Leone’s Constitution or the international human rights treaties to which the country is committed. Discrimination against women and bias on

the basis of social status are particularly rampant. A major challenge for the Justice Initiative and its partner, the National Forum for Human Rights, is to find ways to reform customary law and procedures, rather than supplanting them.

Another concern is access to the common law system, not only in many rural areas of Sierra Leone, but even where courts are functioning. Few Sierra Leoneans can afford lawyers, and the country's only legal services organization, the Lawyers Center for Legal Assistance (LAWCLA), a member of the National Forum for Human Rights, serves only Freetown and Makeni. Many criminal defendants go unrepresented. Civil litigants know little about their rights, putting those who cannot afford representation at an often-decisive disadvantage.

Under circumstances in which many Sierra Leoneans can neither assert nor defend their legal rights, the constitutional promise of human rights, the rule of law, and equal access to justice (regardless of "economic or other disability") remains unfulfilled. With the civil war finally over and political stability in view, the time is ripe to address these problems.

Working with a coalition of Sierra Leonean NGOs, the Justice Initiative launched a pilot project in November 2003 to improve access to justice outside the country's major cities. Individuals from five rural communities are being trained and employed as advice officers. Their role is to help others access common law courts and traditional dispute resolution mechanisms. Beneficiaries include those engaged in civil disputes over land and other forms of property; detained indigent persons; and victims of crime. Apart from the project coordinator, these paralegals cannot act as formal legal representatives, but they can provide information and advice on rights, and referrals to lawyers. The project is one component of a multifaceted, long-term effort to help rural Sierra Leoneans know, assert, and vindicate their rights.



POLICE RAID

Police officers, as a result of departmental culture or policy, sometimes enforce the laws selectively, targeting ethnic and racial minorities for special attention.

International Justice

www.justiceinitiative.org/activities/ij

The last decade has seen an unparalleled drive to establish a norm of legal accountability for the most egregious violations of human rights. The international justice movement, comprised of governments, intergovernmental and nongovernmental organizations, and individual rule-of-law advocates, aims to ensure that a fair and consistent legal process is brought to bear on individuals responsible for crimes under international law.

The system of international justice now emerging includes the newly established International Criminal Court (ICC), the ad hoc tribunals for the former Yugoslavia and for Rwanda, and “hybrid” or “internationalized” processes such as the Special Court for Sierra Leone. These efforts are supplemented by national criminal justice systems exercising universal and other forms of jurisdiction, by more broadly mandated commissions of inquiry (“truth and reconciliation commissions”), and by processes aimed at seeking redress through compensation for the victims of international crimes.

The movement to establish an effective system of international justice is at a crucial point. The unprecedented pace of development in international criminal law following the end of the Cold War has raised expectations that the most grievous human rights crimes are now subject to international scrutiny and legal action. As a result, international criminal law is poised to become a more effective legal reality, and to make a sustained contribution to lessening the conduct and the frequency of armed conflict around the world.



IMPRISONMENT AND TORTURE

The Justice Initiative has assisted both government and civil society as Cambodia moves toward establishing a special court to try serious crimes under international law during the Khmer Rouge era.

International justice is, and needs to be, global in its reach, yet it must manifest itself differently across regions and countries. States undergoing or emerging from armed conflict, or suffering major systematic human rights abuses, have the most glaring need for accountability processes. The complex conflicts in the Democratic Republic of Congo and elsewhere in Africa are examples. So are the continuing conflicts in the Middle East, Central and South Asia, the South Pacific, and Latin America (notably Colombia). In addition, Argentina, Cambodia, Chile, East Timor, Indonesia, Sierra Leone, the countries of the former Yugoslavia, and other places live with the legacy of past conflict. In such conflict or postconflict societies, international criminal law is part of a broad matrix of developmental processes—political, economic, and social—aimed at securing peace and building stable and open societies based on the rule of law and democracy.

But international justice also has a role to play in more stable countries. Established democracies can provide important financial and political support for international justice efforts, as well as support for enforcement and deterrence through their peacekeeping personnel and other aspects of their foreign policy. Stable democracies are also immigration destinations for both abusers and their victims. These countries are finding it necessary to train and discipline their military and peacekeeping personnel in international humanitarian law, to apply their legal processes to international crimes committed by individuals within their jurisdiction, and to take action against atrocities happening elsewhere. Moreover, the support of states from every region is necessary to ensure the legitimacy and effectiveness of institutions such as the ICC.

The Justice Initiative’s international justice program has the following objectives:

- Strengthening national ability to contribute to accountability for genocide, crimes against humanity, and war crimes through measures such as the widespread ratification and implementation into national law of the Rome Statute for the ICC
- Assisting in the referral of credible, well-documented instances of crimes that fall within the ICC prosecutor’s jurisdiction
- Contributing to the mobilization, training, support, and coordination of civil society in advancing international justice, including through informational and educational activities
- Supporting “hybrid” or “internationalized” tribunals such as the Extraordinary Chambers in Cambodia as integral to the present phase of international justice

PREPARING FOR THE INTERNATIONAL CRIMINAL COURT

www.justiceinitiative.org/activities/ij/cases

With the establishment of the International Criminal Court (ICC), the effort to create an effective system of international justice is at a pivotal point. Given what is at stake, and the vehemence of some governments' opposition, it will be important to make sure that the first cases the ICC pursues command universal support and are well documented. The Justice Initiative is working with human rights groups and others in several countries to investigate and build a series of cases documenting violations of international humanitarian law that might be forwarded to the ICC prosecutor.

In 2003, the Justice Initiative convened meetings with local and international human rights and humanitarian law NGOs, as well as individuals with practical experience in international criminal investigation and prosecution. These meetings discussed case selection criteria, witness interview protocol, the elements of crimes under the Rome Statute, the hazards of field investigation and how to overcome them, and the importance of documenting the domestic legal system's capabilities. In selected countries where the Justice Initiative operates, a working group of domestic and international advocates oversees investigations and guides the preparation of submissions to the ICC prosecutor.

ROME STATUTE RATIFICATION

www.justiceinitiative.org/activities/ij/ratification

The ICC's jurisdiction is limited to acts by nationals of, or by individuals on the territory of, ratifying states. To establish the court as truly global, close to universal ratification of the Rome Statute is ultimately necessary. Such a display of widespread support would enhance the court's authority, legitimacy, political base, and financial strength.

Unlike the International Criminal Tribunal for the Former Yugoslavia, which was granted primacy over national jurisdictions in cases where it chose to act, the International Criminal Court is based upon the principle of "complementarity." Since the ICC will intervene only when national authorities are unwilling or unable to act, states that ratify the Rome Statute have an incentive to undertake genuine proceedings if they do not wish the ICC to do so in their stead. This fact has led to legislative efforts that promise significantly to enhance the statutory basis, at the national level, for investigations and prosecutions of crimes under international law.

The Justice Initiative facilitates such legislative efforts. In July 2003, for example, the Parliament of the Republic of Georgia ratified the Rome Statute, with 146 parliamentarians voting in favor and none against. The Justice Initiative, in cooperation with the Open Society Georgia Foundation, supported efforts by other NGOs and legal experts to help prepare the comprehensive package of legislation needed to ratify the statute.⁴

HYBRID COURTS AND TRIBUNALS

www.justiceinitiative.org/activities/ij/hybrid

In Phnom Penh, Cambodia, the Justice Initiative assisted and guided an informal nongovernmental working group preparing for the establishment of the “Extraordinary Chambers” for the trial of serious crimes committed during the Khmer Rouge era. Working group members met with government officials planning the Chambers and NGOs who will monitor the process, and developed a “Lessons Learned” paper distilling relevant experiences of prior hybrid and international tribunals.



WALL OF VICTIMS

Holding the perpetrators of crimes against humanity accountable can bring healing and closure to the families of victims.

Africa

www.justiceinitiative.org/regions/africa

Working for legal reforms in Africa is complex and challenging. State weakness often manifests itself as repression, and peace and security can be fragile or absent. The region suffers from massive flows of populations, both voluntary and involuntary, a distrust of state institutions generally, and those of law enforcement and justice in particular.

The Justice Initiative's engagement in Africa takes place within the context of the Open Society Institute's increased activities on the continent. The Open Society Foundation for South Africa, with whom the Justice Initiative is collaborating on a police oversight project (see page 41), has implemented and operated programs for more than a decade in that country. The Open Society Initiative for Southern Africa and the Open Society Initiative for West Africa both support projects in the justice sector and human rights field.



REFUGEES FLEEING CONFLICT

Millions of Africans migrate, either by choice or force; many others become stateless without ever crossing an international border. Their rights as noncitizens depend on enforcement of strong regional and international laws.

CITIZENSHIP, MIGRATION, AND NATIONALITY

The greatest justice sector problems in Africa today arise at the intersection of citizenship, migration, and nationality. Postcolonial African states have struggled, largely unsuccessfully, to evolve national identities from the multinational and multiethnic people within their borders. Many groups straddle porous national borders. Rather than ease the tensions between the different nationalities, national legal and political processes often exacerbate them, resulting in voluntary and involuntary migration. States throughout Africa are ill-equipped to respond adequately to individuals or groups forced to cross international borders in search of refuge or a better life. Such people are often left to fend for themselves with help provided by family and ethnic relations.

Africa's leaders have been ineffective, in some cases deliberately so, in responding to the multiethnic and multicultural nature of their people. Many of Africa's recent conflicts, including those in Burundi, Côte d'Ivoire, the Democratic Republic of Congo, and Rwanda, resulted from the denial of the citizenship rights of vast segments of the population. In countries such as Tanzania, Zimbabwe, and Zambia, the state has been complicit in creating nationality-based exclusions as a means of persecuting its own people. The crisis in Côte d'Ivoire, for instance, results from discrimination against nationals whose ancestry is traceable to communities in neighboring countries, especially Burkina Faso.

In eastern Congo, Banyamulenge are branded as "Rwandans" and, therefore, enemies in their own country. In Rwanda itself, a genocidal ideology evolved around claims that, of two otherwise indistinguishable identities, the Tutsi are "Nilotics" from the Nile basin of the Horn of Africa and must be physically eliminated from the region. In Nigeria, episodic slaughter in intercommunal conflicts revolves around the issue of who is an "indigene" and who is a "settler."

In addition, there is a long history in African countries of nationality-based gender discrimination. Women are notoriously unable to pass their nationality to their children and, in many cases, are forced to give up their nationality of birth if they marry and live with men from outside their own country.

The causes of voluntary migration in Africa are diverse. Millions of African nationals live and work in countries other than their own; millions are also entitled to claim more than one nationality because of the peculiar evolution of colonial borders that now define their countries. Some people simply cross into neighboring communities with whom they share language, culture, and identity. Others travel long distances in search of employment in industrial or agricultural centers, such as Egypt, Nigeria, Senegal or South

Africa. In Southern Africa and parts of West Africa, the mines and the cocoa plantations respectively attracted significant populations of migrant labor during the colonial period, later becoming “settler communities.”

In response to these problems, the Economic Community of West African States (ECOWAS) since 1979 has attempted to evolve norms for the protection of nationals of West African countries in the subregion. The crisis in Côte d’Ivoire, with its attendant persecution of people branded non-nationals, shows both the limitations of these norms and the need to make them more effective.

A recent and growing migration trend is the trafficking of women and children among African countries and from Africa to different parts of Europe, the United States, the Middle East, and Asia. In December 2001, ECOWAS adopted an Initial Plan of Action against Trafficking in Persons. In December 2002, the Second Africa-Europe Ministerial Conference also adopted a Plan of Action to Combat Trafficking in Humans, Especially Women and Children. International recognition of this problem has resulted in several standards, including the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted in 2000 as a protocol to the Convention Against Transnational Organized Crime.

STRENGTHENING AFRICAN REGIONAL PROTECTION MECHANISMS

www.justiceinitiative.org/regions/africa/courts

Of the over 40 permanent judicial and quasi-judicial international and regional courts worldwide, at least 15 are in Africa or limit their jurisdiction to African countries and territories. Of these, two exercise criminal jurisdiction: the International Criminal Tribunal for Rwanda and the more recent Special Court for Sierra Leone. There are also seven existing or contemplated regional courts of justice, including the Common Market Court of Justice of East and Southern Africa; the courts of justice of the East African Community, ECOWAS, and the Union Economique et Monetaire Ouest-Africaine; and the Tribunal of the Southern African Development Community.

Apart from these, three human rights courts and tribunals stand out: the African Commission on Human and Peoples’ Rights, established under the African Charter on Human and Peoples’ Rights; the soon-to-be-established African Court on Human and Peoples’ Rights contemplated by a 1998 Protocol to the same Charter; and the African Committee of Experts on the Rights and

Welfare of the Child, established under the African Charter on the Rights and Welfare of the Child (1990) and inaugurated in 2002.

Throughout 2003, the Justice Initiative pursued advocacy in collaboration with leading African and international NGOs to secure sufficient ratifications for the establishment of the African Court on Human and Peoples' Rights. Our involvement in this work, which included facilitating regional meetings of senior officials of the governments of East, West, and Southern African States, helped garner six additional ratifications for the Protocol establishing the Court. As a result, the Protocol came into force on January 25, 2004.

In addition to promoting litigation before the African Commission on Human and Peoples' Rights, we are developing cases with transnational teams of African lawyers for submission to little-used subregional mechanisms, such as the ECOWAS Court of Justice (located in Abuja, Nigeria) and the Common Market Court of Justice of East and Southern Africa (located in Lusaka, Zambia). These efforts will contribute to the construction of Africa's legal architecture, and demonstrate tangible results flowing from the resolution of significant cases vindicating fundamental human rights.

NIGERIA: POLICE OVERSIGHT AND PROFESSIONALIZATION

In early 2003, the Justice Initiative worked with the Nigerian Police Service Commission to draft, distribute, and apply guidelines for police conduct in Nigeria's April elections.

www.justiceinitiative.org/activities/ncjr/police/nigeria_psc/

The 1999 transition to elected civilian rule presented Nigeria, Africa's most populous nation, with its best opportunity in decades to consolidate democracy. Yet progress since the transition has been slow, and Nigeria continues to suffer from endemic corruption, ongoing economic malaise and poverty, and ethno-religious divisions and conflict. Successive military governments, viewing the Nigerian Police Force as a potential threat, starved it of resources. The present civilian government, however, has embarked on an ambitious expansion effort that aims to double the size of the police force by 2005. If Nigeria's police are not reformed simultaneously, this expansion might reproduce many existing problems on a larger scale.

In November 2001, a constitutional and statutory body exercising civilian oversight over Nigeria's police was created: the Nigerian Police Service Commission (PSC). With responsibility for appointments, promotions, and discipline, including the authority to dismiss, the PSC enjoys unusual power—at least in theory—to influence police performance. The PSC could ensure after-the-fact accountability, promulgate measures to prevent

abuse, and, by proposing policy changes, infuse policing practices with human rights values.

Democratic elections have a checkered history in Nigeria. Charged with policing elections and ensuring that they are peaceful, Nigeria's police force has instead subverted the integrity of elections. Police officials at the highest levels have routinely helped manipulate election results, intimidate voters and opposition candidates, and procure the alteration of results as well as other sundry acts of electoral violence and malpractice. Standards of police conduct during elections have been unclear or nonexistent, and impunity for misconduct has been widespread.

The Justice Initiative, in cooperation with the Centre for Law Enforcement Education in Nigeria (CLEEN) and the Police Service Commission, supported a project to monitor police conduct during elections. The project offered short-term financial assistance and technical support for the PSC to check and report on police behavior during Nigeria's 2003 gubernatorial and presidential elections on April 19 and state elections on May 3. A solid performance in curbing police misconduct during the high-profile election period gave a needed boost to the PSC's public credibility and future performance potential.

In 2004, the project will support the development of a strategy and action plan for the PSC, which will include a review of comparative models and experience with civilian review and the organization of public meetings on issues of policing. In consultation with the Open Society Initiative for West Africa, as well as project partners, the Vera Institute of Justice and CLEEN, the Justice Initiative will provide ongoing assistance in promoting accountability and preventing abuse of police power; introducing disciplinary mechanisms and oversight; and improving police evaluation and management.

The goal is to support the growth of the PSC into an effective tool for the professionalization of police performance in conformity with human rights.

SOUTH AFRICA: ENHANCING POLICE ACCOUNTABILITY

The rise in crime in South Africa through the 1990s has resulted in tougher law enforcement. The Justice Initiative is working with local civil society groups to ensure that human rights still prevail.

www.justiceinitiative.org/activities/ncjr/police/sa_police

South African state institutions have undergone a profound transformation since the end of the apartheid era. The government has expended much effort in changing the mission of state agencies from enforcing apartheid to serving

the public. For the South African Police Service (SAPS), the change has been particularly wrenching. In 1994, the first year of democratic government, a group of visionary reformers revamped South African policing policy, drawing upon best practices that emphasized crime prevention and civilian control. Subsequent reforms have created multiple accountability mechanisms at different levels of government and in local communities.

Considerable increases in violent crime have accompanied South Africa's postapartheid political and socioeconomic transition. Growing public fear of criminality has diminished confidence in the effectiveness of the SAPS, and the human rights emphasis of the initial post-1994 policing strategy has given way to more hard-line law enforcement.

Today, South Africa has a number of state agencies formally responsible for policing oversight and accountability, including an Independent Complaints Directorate (ICD), national and provincial Secretariats for Safety and Security, and a parliamentary Portfolio Committee for Safety and Security. The actual impact of this institutional framework for police accountability, however, is increasingly challenged by serious police abuse as well as the urgent need to improve police services and efficiency.

Civil society organizations seeking to reinforce accountability mechanisms have experienced increased police resistance to external scrutiny. With inadequate access to relevant data about police conduct, many NGOs and researchers are confronting strategic choices about the appropriate balance between critical monitoring versus collaborative support.

Working closely with the Open Society Foundation for South Africa and South African NGO partners, the Justice Initiative is helping build the capacity of civil society organizations and state civilian oversight bodies to document reports of police abuse. The Justice Initiative and its partners are also promoting the monitoring and community outreach activities that contribute to the success of municipal police agencies. This support includes financial and technical assistance in:

- developing public awareness of standards of police practice and avenues for reporting allegations of misconduct;
- promoting public education about the functions of municipal police forces and ways of cooperating with the police to improve public safety; and
- establishing civil society monitoring functions, including the collection of complaint data on municipal police performance.

FIRST ALL-AFRICA COLLOQUIUM ON CLINICAL LEGAL EDUCATION

A groundbreaking meeting organized by the Justice Initiative and partners in Durban in June 2003 has given a boost to the creation of legal clinics in African universities.

www.justiceinitiative.org/activities/lcd/cle/durban2003

University faculty and legal practitioners from over 20 countries attended the All-Africa Colloquium on Clinical Legal Education in Durban, June 23–28, 2003. The Colloquium was the first continent-wide meeting on university-based legal clinics and brought together over 60 people from both long-established clinics (Kenya, South Africa, and Zimbabwe) and the newest clinics (Mozambique and Sierra Leone). Participants also came from countries considering the creation of university-based clinics—Angola, Ethiopia, and Nigeria. Reports from clinics outside Africa—in Bangladesh and Brazil—provided further valuable perspectives.

The Colloquium’s objectives included compiling an inventory of existing and expected clinical initiatives and discovering how practitioners can learn from each other, as well as identifying and addressing the key challenges to establishing clinical programs. Region-specific working groups discussed legal clinic construction within universities, defining the objectives of clinical education and affirming the importance of a comprehensive legal education for students. Participants also examined the South African experience of integrating clinics with the state legal aid board and community-based paralegal networks to create “justice centers” offering fundamental legal support for individuals everywhere.

Presentations focused on the role of the legal profession in advancing social justice and human rights, the importance of real-life legal experience to a lawyer’s education, and the vital contribution law students can make to increased access to justice. There was much debate about the potential of clinics in Africa, where legal aid systems are often weak, university law departments inflexible or conservative, and access to justice incomplete.

The Colloquium generated proposals that included the following initiatives:

- Developing clinics in a number of countries, notably in West Africa, where a nascent clinic in Sierra Leone has been joined, since the Colloquium, by a pilot clinic in Nigeria. Initiatives in francophone western Africa are also contemplated. Other countries where developments are expected, resulting in part from the meeting, include Angola and Mozambique.
- Organizing training courses for clinical professors at the University of Natal in 2004

- Organizing weeklong study visits for national clinical teams to functioning South African clinics, which began in late 2003 with groups from Nigeria, Sierra Leone, and Ethiopia
- Compiling Colloquium materials and expanding them so they serve as start-up and operational resources for clinical programs on the continent

To build on the momentum generated by the Colloquium, a second colloquium was planned for 2004, and a steering committee was formed to oversee arrangements.

DEMANDING NIGERIA REVOKE CHARLES TAYLOR'S ASYLUM

The Justice Initiative launched a legal action to revoke wanted war criminal Charles Taylor's asylum status in Nigeria.

www.justiceinitiative.org/activities/ij/adv/ct_pr_dec2003

A coalition of rights organizations on December 10, 2003, called on the Nigerian authorities to hand over war crimes indictee Charles Taylor for prosecution. In separate letters to Nigeria's national commissioner for refugees and the federal attorney general, groups from Liberia, Nigeria, and Sierra Leone claimed that the granting of asylum to the former Liberian president was unlawful. They urged that Taylor's status be revoked and that he be made to face justice before an international war crimes tribunal in Freetown, Sierra Leone.

Taylor was indicted by the UN-sponsored Special Court for Sierra Leone in March for bearing "the greatest responsibility" for war crimes committed during Sierra Leone's conflict. He was forced to resign the Liberian presidency on August 11, 2003. Nigerian President Olusegun Obasanjo granted Taylor asylum the same day and welcomed him to Nigeria, where he has lived ever since. Taylor has appealed his indictment. But pressure for his surrender has mounted with an arrest warrant issued by Interpol on December 4 last year.

The coalition, which, along with the Justice Initiative, includes the Association of Victims of War in Sierra Leone and Liberia, the Nigerian International Criminal Court Coalition, and the Nigerian Union of Journalists, argues that the decision to shelter Taylor violates both international and Nigerian law. In their letters, the groups noted that the 1951 Geneva Refugee Convention forbids an award of asylum "when there are

serious reasons to believe that [the applicant] has committed a crime against peace, a war crime or a crime against humanity.” Nigeria’s refugee law of 1989 incorporates the Refugee Convention and uses identical language. Taylor’s indictment for war crimes is just such a “serious reason,” according to the letters.

Taylor came to power in 1997 in severely flawed elections held after eight years of civil war. The conflict continued until his forced flight to Nigeria. Taylor is widely seen as the main backer of Foday Sankoh’s Revolutionary United Front (RUF), responsible for destabilizing diamond-rich Sierra Leone, which shares a border with Liberia. Taylor is accused of having financed and sheltered RUF and other brutal armed gangs that operated in Sierra Leone.

The coalition’s statement, carried in the *New York Times* and several African media outlets, contributed to the emergence of an organized advocacy effort by West African groups. The Nigerian government has indicated that Taylor might be returned to trial outside Nigeria.

Freedom of Information and Expression

www.justiceinitiative.org/activities/foifoe

The Open Society Justice Initiative promotes freedom of information and expression as quintessential rights in an open society, with particular concern for their exercise by marginalized groups. Freedom of information enables citizen participation in decision making by governments and international bodies, promotes accountability to the public, and underpins efforts to combat corruption. Freedom of expression is a prerequisite for the protection of democracy and other human rights. The Justice Initiative focuses on the defense of political expression through the mass media and other means. In support of freedom of information and expression, the Justice Initiative works closely with other parts of the OSI network, including national and regional Soros foundations, the Network Media Program, and the Information Program. It also partners with many national and international NGOs and academic institutions.



SEPTEMBER 28, RIGHT TO KNOW DAY

The right of access to government-held information is increasingly being recognized in law and practice as a fundamental human right.

Freedom of Information

www.justiceinitiative.org/activities/foifoe/foi

DISSENT, ADVOCACY, ENGAGEMENT

Widespread participation of civil society organizations in advocating for—and even drafting—freedom of information legislation marks a significant shift in favor of democracy.

www.justiceinitiative.org/publications/justiceinitiatives/2003/darbishire0603

The development of open societies can be tracked during the past decade by the adoption of legislation guaranteeing the right of access to government-held information (“freedom of information” or “FOI” laws). At the start of 1992 there were only 12 freedom of information laws around the world; by 1999 there were 32; in December 2003 there were 52.

A striking feature of this global wave is the role played by civil society organizations in enacting FOI laws, especially in the emerging democracies of Eastern Europe, Latin America, and Africa. Civil society organizations have lobbied parliaments, presented draft legislation, carried out public awareness campaigns, garnered international attention, and kept the pressure on governments until the day the new law enters into force.

A number of factors are crucial to the adoption of a freedom of information law. First, a minimum level of open, democratic society must be reached, featuring respect for freedom of association, a healthy—and expanding—civil society, and freedom of expression, extending to a vibrant and independent media. Also, genuine political plurality, reasonably free and fair legislative and presidential elections, and some commitment within government to transparency are all vital. Indeed, in many countries, a level of de facto openness in government is likely to be in place prior to the adoption of FOI laws. Legal reform, rather than driving the human rights agenda, often accompanies it.

With FOI laws increasingly the norm in democratic countries, some authoritarian governments adopt these laws to enhance their image in the eyes of the international community. If, however, the above elements are not present, nicely titled laws stand little chance of successfully promoting genuine access to information consistent with international standards. For example, freedom of information laws in Zimbabwe and Uzbekistan do not deliver what they promise, and cannot be counted as FOI laws.

The challenges of implementation

Passing a law is only the start of the transformation of a society from a culture of secrecy to one of openness. The next step is implementation. The Bulgarian Access to Information Program (AIP), a leading organization in

this field, has supported implementation by raising public awareness of Bulgaria's law, training government officials in applying it, providing legal advice to those requesting information, and, where necessary, going to court to challenge refusals to provide information. Since the introduction of the Bulgarian FOI law in July 2000, AIP has initiated some 60 cases, half of which are still pending. Sixteen cases ended in victories, five were settled favorably; in two cases that were lost, the court provided useful guidance on handling requests for information under the new law.

A valuable outcome of litigation can be clarification of vague or contradictory provisions of a given law. In Bulgaria, for example, the courts ruled that the law does not permit silent refusals (failure to respond at all to a request); the agency must always give reasons for not providing information and is therefore obliged to respond. Court cases can open up opportunities for collaboration between government and civil society. In one case, lawyers from a government agency asked AIP for advice on dealing with information requests and drawing up internal guidelines. Reportedly, that agency is now providing more and better information.

Litigation is proving particularly important in securing access to information in countries lacking an information commissioner or ombudsman. Appeals to courts can challenge the grounds for withholding information, and a "public interest" test can be applied to determine whether information should be made public even where grounds for exemptions from FOI laws might exist. For example, in December 2001 the Slovakian Supreme Court overruled an attempt to apply a "commercial confidentiality" exemption to a request for a safety report on a nuclear power plant.

The Justice Initiative is supporting legal advice and litigation projects in a number of countries, including Bulgaria, Georgia, Peru, Romania, and Mexico. In all cases, we work with partner organizations in developing litigation strategies and criteria for taking cases to international tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights, should the national-level appeals fail.

A global civil society

Direct participation by civil society organizations in the drafting and adoption of legislation and their collaboration with governments reflect a profound transformation in civil society—from dissidence to advocacy to engagement. The enactment and enforcement of freedom of information laws constitute benchmarks in the evolution of civil society.

The movement to promote freedom of information is increasingly global, with civil society organizations exchanging experiences and ideas on freedom of information in numerous forums. Organizations at a September 2002 meeting in Sofia, Bulgaria, agreed to form a Freedom of Information Advocates Network to facilitate the exchange of information and increase collaboration at regional and international levels. The Justice Initiative's active engagement in this network includes support for its coordinator during

the initial phase of development. The Network, with members from Europe, the Americas, Africa, and Asia, has become a dynamic forum for exchanging information about new laws, legal cases, and other issues.

The FOI Advocates Network members have named September 28 International Right to Know Day. The first celebration of this day in 2003 was an opportunity to promote greater awareness of the right to ask for information from governments and the right to receive it as elaborated by the new FOI laws. (For further information on the network, visit www.foiadvocates.net.)

Another forum for the exchange of news and information on FOI worldwide is the website freedominfo.org, run by the National Security Archive (NSA). As Tom Blanton of NSA has stated, for many societies with new information laws, the biggest prize is still ahead: the cultural shift from closed to open societies. It is this goal that the Justice Initiative and its FOI partners around the world are working to achieve.

IMPLEMENTING FREEDOM OF INFORMATION LEGISLATION IN MEXICO

In Mexico, the Justice Initiative has helped prepare civil society and government for the flood of information requests that followed the enactment of an FOI law in 2003.

Mexico's Federal Freedom of Information Law (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental or LFTAI) was signed into law by President Vicente Fox on June 10, 2002, and came into force in June 2003. The catalyst behind adoption of the law was a campaign by a group of journalists, academics, and NGOs dubbed the "Grupo Oaxaca." With the passage of the bill, a new NGO called LIMAC (Libertad de Información Mexico Asociación Civil) was formed to make use of the federal law and promote the adoption and implementation of FOI laws in Mexico's individual states.

The Justice Initiative has been working with LIMAC and other FOI advocates in Mexico since 2002 on the development of a strategy for implementation of the law. The strategy has a number of components, including technical assistance and training for government officers charged with implementing the law, advice on drafting internal regulations and establishing appeal procedures, training government employees responsible for responding to information requests, and undertaking public education and awareness campaigns. In addition, we are cooperating with Mexican NGOs and journalists in filing requests and, where necessary, pursuing litigation to ensure proper application of the law.

In February and May 2003, the Justice Initiative led teams of experts on FOI legislation from Hungary, Slovakia, Sweden, and the United Kingdom on technical assistance missions to discuss with Mexican government officials

practical details of implementation and to assess future support needs. These teams met with officials at the federal level as well as in the states of Sinaloa and Durango, both of which recently adopted FOI laws. Eight of Mexico's 32 states have so far adopted access to information legislation.

Efforts in Mexico to raise awareness of the right to access information and prepare the public authorities to respond have brought results. From June 12 to November 27, 2003, a total of 23,089 requests were filed, according to the computer tracking system run by the Federal Access to Information Institute (Instituto Federal Acceso a la Información or IFAI). Of these, 19,495 had been answered. During this period, there were 560 complaints to the IFAI, 300 of which had been resolved by the end of 2003. In 85 percent of cases, the IFAI ordered the government bodies to release the information.

ACCESS TO INFORMATION MONITORING TOOL

In 2003, the Justice Initiative launched a tool to measure the efficacy of national FOI laws and tested it in five countries. A comparative study is due for release in 2004.

www.justiceinitiative.org/activities/foifoe/foi/foi_aimt

With the proliferation of FOI laws of varying quality worldwide, the need to be able to evaluate access to information in practice becomes ever more apparent. The Justice Initiative has developed a monitoring tool to assess whether national laws meet international standards both on paper and in practice. The Justice Initiative Access to Information Monitoring Tool can identify reasons for failures in transparency, and the results can be used to recommend reforms that will lead to genuinely open government.

The monitoring tool is used to measure various indicators, including response times to requests for information, fees charged for documents, the use of exemptions, or the existence of discriminatory practices in the provision of information to different categories of requestors, such as persons from marginalized groups. Comparisons between different government bodies can be made, as well as cross-border evaluations of transparency in response to similar requests.

During 2003, the Justice Initiative piloted the monitoring tool in five countries at different stages in the evolution of their FOI laws—Armenia, Bulgaria, Macedonia, Peru, and South Africa. Of the five, Macedonia and Armenia did not have FOI laws in place at the end of 2003. Peru is in the early phase of implementing legislation adopted in 2002. Both South Africa and Bulgaria have had laws in place since 2000—the South African law is stronger on paper, but absent systematic monitoring it is difficult to know which of the two is actually working better. Together, the five countries represented a range of cultural and political environments in which to test the monitoring tool.

In each country, civil society organizations committed to freedom of information undertook a pilot monitoring project between May and October 2003. In countries without FOI laws, requests and calculations of time frames were based on constitutional provisions and the relevant sections of administrative law.

Preliminary results indicated the following trends in the implementation of new access to information laws:

- Worryingly high levels of silent refusals—i.e., a failure to respond to a request for information within the time frames established by law—were observed, averaging 40 percent of all requests in all countries.
- Central government bodies were significantly more likely to fulfill FOI requests than local bodies.
- Oral requests were frequently more difficult to file than written requests and stood less chance of fulfillment. Twenty-two percent of attempted oral requests could not be submitted at all. In South Africa, in spite of a legal requirement on public officials to assist all oral requestors in converting their requests into a written format, our monitoring showed that one illiterate requestor was unable to file any of 10 requests she attempted to make. Clearly bureaucratic procedures may pose obstacles to equal information access and citizen participation in government in countries with high levels of illiteracy.

Follow-up interviews with the agencies receiving requests revealed that a lack of training on the law and/or inadequate human resources were among the main obstacles in responding to requests for information. The full report on the Access to Information Monitoring Tool will be available in 2004. Monitoring will be carried out in a wider range of countries in Europe, Africa, and Latin America during 2004.

THE RISING TIDE: FREEDOM OF INFORMATION IN SOUTH EASTERN EUROPE

A meeting in Zagreb, Croatia, in March 2003, gave impetus to freedom of information legislation and practice in that country, where a law now exists, as well as in the wider region.

www.justiceinitiative.org/activities/foifoe/foi/foi_adoption/zagreb

The countries and territories of the former Yugoslavia have been among the last in Central and Eastern Europe to adopt access to information laws, but 2003 was the year when they caught up. At the start of the year, only Bosnia

and Herzegovina had an access to information law. By year's end Croatia, Slovenia, and Kosovo had also adopted laws, and Macedonia, Montenegro, and Serbia were looking at drafts.

The particular significance of this achievement in postconflict and former communist countries should not be underestimated. Authoritarian regimes breed entrenched cultures of misinformation and mistrust. As one participant at a Justice Initiative conference put it, official secrecy “has proven to be one of the harshest legacies of the totalitarian past and the most difficult to surmount.” More than a decade after transition, another noted, “we are still societies thirsty for information.”

Throughout 2003, the Justice Initiative worked to provide civil society organizations with guidance at a series of regional and national strategy meetings, and contributed to the development of draft legislation. For example, in March 2003, the Justice Initiative, in cooperation with Croatian human rights organizations and Article 19, held a high-profile regional access to information conference in Zagreb. At the conference, Croatian President Stipe Mesic pledged his support for an FOI law for that country, while representatives of the OSCE and the Council of Europe underlined the importance of access to information as a benchmark of democracy. Civil society actors from countries that have already adopted laws—Albania, Bosnia, Bulgaria, Romania, and Slovakia—offered comparative expertise at the conference—and, subsequently, in the drafting of Croatia's law. Organizations from Kosovo, Macedonia, Montenegro, Serbia, and Slovenia also participated.

Numerous speakers in Zagreb noted that freedom of information is not only essential to democracy but also an important human right. The right to “seek, receive and impart information” is set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Article 19 of both). Increasingly, it is inscribed in national constitutions. “Public information is our property,” a Romanian participant said. “It is created using our money by civil servants paid with our money. To have access to information . . . is simply to activate the right to something that is already ours.” Croatian Minister of Science and Technology Gvozden Flego agreed: “At the root of democracy is the idea that the people, regardless of how we define them, have supreme power—and have the right to know who is taking what decisions on their behalf.”

In addition to the conference in Croatia, the Justice Initiative held meetings with government officials and parliamentarians in Macedonia and Serbia. In countries that have now adopted FOI laws, the Justice Initiative is continuing to assist civil society with implementation to ensure that the right to information becomes a reality.⁵

NATIONAL SECURITY AND ACCESS TO INFORMATION

It has become increasingly necessary to monitor the use governments make of the “national security exemption.”

www.justiceinitiative.org/activities/foifoe/foi/opengov

International norms recognize that certain restrictions may be placed upon information in order to protect other rights (such as privacy and reputation), public order or national security—so exemptions are a standard feature of FOI laws everywhere. Yet they remain controversial. The national security exemption, for example, has frequently been used in ways inconsistent with international standards—exploited in recent history as a loophole to cover up government wrongdoing or conceal facts embarrassing to authorities.

Since September 11, 2001, concern over national security exemptions has increased. In May 2003, the Justice Initiative and the Campbell Public Affairs Institute, a research center of the Maxwell School of Syracuse University, convened a workshop on national security in Washington, D.C. One conclusion was that in the last decade, in the words of Professor Alasdair Roberts of the Campbell Institute, the world had seen “double-edged” progress: the passage of many new FOI laws matched by numerous secrecy laws and other measures, such as bilateral and multilateral treaties exempting information from the scope of national laws.

The global war against terror has given governments greater latitude for increased use of national security legislation. In general, people are less critical of restrictions on information if the government has a plausible reason for claiming that keeping information classified serves the public interest. Some officials, for instance, have suggested that enhanced secrecy is mandated by membership in intergovernmental bodies such as the North Atlantic Treaty Organization (NATO). The Justice Initiative worked during 2003 to ensure that such arguments do not lead to legislation that could result in violations of the right to freedom of expression and information. For example, in Bulgaria, we worked with local civil society organizations to oppose the adoption of criminal code provisions setting stiff prison sentences for anyone who merely disseminated classified information, irrespective of whether the disclosure caused actual harm to national security interests.⁶

The Justice Initiative has also made challenging national security exemptions a strategic priority of litigation projects. The Romanian government in December 2003 released information about secret wire-tapping operations carried out over the past several years only after a lengthy legal battle.

Freedom of Expression

www.justiceinitiative.org/activities/foifoe/foe

The Justice Initiative promotes the fundamental freedom, guaranteed by international and regional bills of rights, to impart and receive information and ideas. Currently our work focuses on threats to free expression from defamation and sedition laws and practices, financial pressure and other indirect interference, and lack of fairness and pluralism in broadcasting.

Defamation and sedition laws and practices

Governments and officials in many countries around the world, including occasionally in established democracies, continue to use inappropriate criminal and civil defamation laws to silence the media and other voices. The Justice Initiative advocates against criminal defamation and other content-based criminal sanctions, which are inherently inimical to freedom of expression and the values of an open society.

We also recognize and seek to address the chilling effects of excessive damage awards and other problematic aspects of civil defamation. The alternative promoted by the Justice Initiative is civil defamation laws that strike an appropriate balance between freedom of expression, on the one hand, and reputational and privacy rights, on the other. The greater the public interest in receiving information and ideas, the greater should be the weight accorded to free expression and information.

To promote these objectives, the Justice Initiative uses advocacy, technical assistance, and strategic litigation. In Kosovo, for example, we worked with the Office of the United Nations Special Representative to improve and rationalize the criminal defamation provisions of the new Criminal Code. In Bulgaria, we supported an application to the European Court of Human Rights by an investigative journalist improperly sanctioned for defamation in Bulgaria's courts. We combine litigation and advocacy in similar projects in Russia, Eastern Europe, Central Asia, and West Africa.

Financial pressure and other indirect interference

Persistent watchdog monitoring combined with international condemnation are making the outright suppression of free expression more and more untenable for governments. Where the authorities lack the political will to let a genuinely open society develop, however, they often employ covert and indirect means to interfere with freedom of speech.

Indirect interference of this kind takes various forms. These include the discriminatory use of state subsidies and advertising, pressures on private advertisers, unjustified denial of access to printing facilities, unfair application of tax and labor laws, and myriad other types of indirect pressures, all aimed at silencing dissenters and interfering with the free flow of information and ideas.



REPORTING ON MARKET PRICES

Community radio, the only source of news for millions of Africans, allows people from all walks of life to contribute freely to public information.

The Justice Initiative is working to document and publish such abuses, and develop new standards and remedies. In particular, we seek to promote the use of both traditional and innovative legal strategies to offset or eliminate the negative effect of indirect interference with free expression. Projects are being developed in Africa, Europe, and Latin America.

Lack of fairness and pluralism in broadcasting

Radio and television broadcasting has become a key source of information and ideas around the world. Its democratic potential is denied, however, to many through arbitrary, discriminatory, and exclusionary licensing practices. The victims include indigenous communities in Latin America, political dissenters in the former Soviet republics, and entire nations in sub-Saharan Africa. The Justice Initiative promotes fairness and pluralism in broadcasting by combating undemocratic practices such as legal or de facto bans on private broadcasting, denial of access to the airwaves for independent or community broadcasters, and discrimination in allocation of licenses.

The Justice Initiative is working to bring to an end the legal exclusion of long-marginalized community radio stations in Mexico. Harassment of community broadcasters in Africa and Latin America and excessive control over the airwaves by state television monopolies in Africa are likely areas of involvement in the future.

Capacity building of lawyers and NGOs

The Justice Initiative is involved in a number of initiatives to train young media lawyers from the regions in which it operates.

The first Media Law Advocates Summer School was held in Oxford in the summer of 2002, in cooperation with the Oxford Programme in Comparative Media Law and Policy. Twenty-five young lawyers from South Eastern Europe and the Southern Caucasus participated in seminars on media freedom standards, a discussion of national freedom of expression cases, and a moot court held in a real courtroom. The second Media Law Advocates Training Program took place in July–August 2003. The program was expanded to include representatives from Council of Europe members Moldova, the Russian Federation, and Ukraine.

Such training sessions give participants an excellent opportunity to network with media lawyers and activists from other countries and to acquire valuable comparative perspectives. The 2004 Oxford Media Law Advocates Summer School is open to media lawyers from Africa and Latin America as well as Eastern Europe.

CONSTITUTIONAL LITIGATION IN ALBANIA

A nonpublic ban on Albanian civil servants talking to the media was lifted after a Justice Initiative-led challenge was launched in the Constitutional Court.

www.justiceinitiative.org/activities/foifoe/adv/albania2

Just five days before the Constitutional Court was due to consider a challenge brought by the Justice Initiative on the legality of a gag order, the Albanian prime minister revoked the order. A government representative announced the decision at a Constitutional Court session convened to hear the case on November 17. The government failed to give advance notice to the petitioners about the repeal of the order.

The gag order, issued in August 2002 but never publicly disclosed, banned senior civil servants from providing official information to the media. Five media and human rights organizations petitioned the Constitutional Court in early October to strike down the ban as a blatant violation of freedom of expression and information.

Albanian media opinion hailed the repeal of the order as a victory for free expression and democratic openness, and criticized the government for its opaque handling of the issue. In a press statement, the Justice Initiative, which assisted the petitioners, welcomed the result but noted that “only a court judgment declaring the gag order plainly unlawful would have provided a fully satisfactory outcome.”

LEGAL ADVOCACY TO REMOVE CRIMINAL DEFAMATION FROM THE NEW KOSOVO CRIMINAL CODE

The United Nations Mission in Kosovo (UNMIK) adopted a new Interim Penal Code for Kosovo in July 2003. The Justice Initiative was instrumental in eliminating or weakening the code’s punitive antidefamation provisions.

The Justice Initiative on May 1, 2003, wrote to the head of UNMIK to express concern that the draft criminal code for Kosovo failed to meet international and European standards. The Justice Initiative drew attention to a section of the draft on “criminal offenses against honor and reputation” that imposed fines and prison terms of up to one year for insult, libel, and invasion of privacy.

The Justice Initiative argued that the use of prison terms and other criminal sanctions for the purpose of protecting a person’s reputation “contravenes a clear trend in international law and practice.” The letter urged UNMIK to follow the example of the High Representative in Bosnia and Herzegovina, which abolished criminal defamation in favor of balanced civil defamation principles.

The Justice Initiative urged UNMIK to consider a number of amendments aimed at minimizing the provision’s chilling effect on freedom of expression

in Kosovo. The final version of the new code (Chapter XVIII) reflected many of these suggestions.

- Although prison terms for insult, defamation, and invasion of privacy were not removed altogether, they were reduced to a flat maximum of three months. Six- and twelve-month prison terms for defamation with unspecified “serious consequences” were deleted.
- Truth is now a complete defense for libel and, combined with good cause, for violation of privacy. A clause providing that a true statement could give rise to liability for insult was removed.
- The new state-of-mind requirement for libel is deliberate or malicious defamatory intent. Article 188 of the Code requires actual knowledge of the falsity or lack of “a well-founded reason to believe in the veracity” of the defamatory statement.
- Unlike earlier drafts, the final code does not place the burden of proving the truthfulness of allegedly defamatory statements on the defendant, using instead a neutral formulation (“if the statement . . . is true”).
- Provisions granting special protection to public officials, including through ex officio prosecution, have been entirely deleted.

CHALLENGING BULGARIAN RESTRICTIONS ON EXPRESSION AND INFORMATION

In a letter to Bulgarian lawmakers, the Justice Initiative in November urged the rejection of proposed amendments to the criminal code that threaten free expression.⁷ Part of a legislative package pending before the parliament, the changes would make it a crime for anyone to disclose state secrets, punishable by up to six years in prison. Although Bulgarian law already covers leaks by government officials, the proposed measure would also criminalize disclosures by journalists and other social communicators.

The Justice Initiative noted that the bill made no exceptions for disclosures of classified information that serve the public interest or cause no harm to national security. Such an absolutist approach to protection of classified information is inconsistent with international and European standards. The European Court of Human Rights has long held that the public has a fundamental right to receive information and ideas, including on national security.

Our letter included detailed suggestions for changes to the draft. It was widely circulated and used by the local media and rights groups in support of free expression, particularly at a December public hearing of the Parliament’s legal committee. Several leading MPs expressed their willingness to rewrite the amendments by taking civil society objections into serious consideration.

Equality and Citizenship

www.justiceinitiative.org/activities/ec

The Justice Initiative pursues documentation, standard setting, law reform, and litigation in the distinct yet interrelated fields of equality and citizenship. The program seeks to address three broad sets of overlapping problems: ethnic and racial discrimination, discrimination in access to citizenship, and discrimination on the basis of citizenship.

Equality

Discrimination on a wide and growing range of grounds is forbidden in national and international law. The struggles for racial and gender equality have proceeded along different tracks and are far from over, while laws and policies ensuring equality continue to be refined, driven in part by the still-developing understanding that equality is not a matter of legislation alone. Yet there is an advancing international consensus on the list of grounds upon which it is impermissible to discriminate: race, ethnicity, gender, language, religious belief, and, although at times contested, sexual orientation.

The result of this growing consensus is that much work on equality consists of fact-finding and enforcement: challenging discriminatory practices that are contrary to the law, or demonstrating that prima facie nondiscriminatory rules have discriminatory results or are applied in a discriminatory way. Where the legal framework of nondiscrimination is well



DEPARTURE FROM REFUGEE CAMP

The arbitrary power of states to extend or withdraw citizenship leaves all refugees, migrants, and even minorities vulnerable to discrimination and abuse.

established the courts are often an effective way to challenge de facto discrimination. However, bringing cases to court requires the development of special expertise; proving discrimination is not simple. In many countries, legal norms still need supplementing with greater public and judicial acceptance and support.

Introducing judges to new legal concepts requires imagination and tenacity. The Justice Initiative assists lawyers and advocacy groups in utilizing legal tools to document and prove discrimination and obtain remedies. By drawing on a growing body of comparative and international standards, the Justice Initiative and local partners work to secure effective enforcement of equality principles in all areas of public life.

Citizenship

Citizenship is a matter of legal and social inclusion. All societies must find ways to answer these questions: Who belongs to a community? What degrees of belonging are legally recognized? What kinds of participation are open to members and nonmembers of that community? The laws developed in response have been traditionally divided into three different strands, each with a different degree of international consensus and codification: asylum law, the laws on migrant workers, and laws on nationality.

The law of asylum—international law governing those who flee their countries due to political persecution—is of long standing. However, despite a high degree of formal international consensus, access to the right of asylum is threatened in practice. As ethnic strife, a more globalized economy, and other factors have increased human flows across borders, the fundamental distinction between refugees and other migrants—the involuntary nature of the refugee’s journey—has blurred. As a result, refugee policy is no longer driven solely by the plight of refugees, and a far larger population than is provided for in the law of asylum seeks to take advantage of this limited “right” to immigrate.

In contrast to the law on asylum, the laws on migrant workers have traditionally been considered a matter of national prerogative. The desire to escape poverty and social constraints, or simply better one’s life, does not confer the right to change one’s country or nationality. And yet, the numbers of migrants continue to increase. Recognizing the need to establish an international standard, the United Nations in 1990 adopted the Convention on the Protection of All Migrant Workers and Members of Their Families. However, the Convention largely reaffirms rights that exist in other international conventions, and it lacks an enforcement mechanism.

International law has traditionally accorded states broad discretion to extend or withdraw citizenship. Although post–World War II international instruments have articulated protections against statelessness and arbitrary deprivation of nationality, these norms are regularly breached.

While the needs and situations of different categories of noncitizens vary, all noncitizens are uniquely vulnerable to discrimination and abuse in ways that have not been adequately recognized by the international community.

CLARIFYING AND EXPANDING THE RIGHTS OF NONCITIZENS

The Justice Initiative is working toward full international recognition of the fundamental rights of noncitizens.

www.justiceinitiative.org/activities/ec/ec_noncitizens

Citizenship poses a special problem for the norm of equality. Because states are the guarantors of rights, noncitizens constitute an extremely vulnerable group. Given that an estimated 175 million individuals are not citizens of the countries in which they live, their lack of protection is a far-reaching and dangerous problem.

In principle, noncitizens enjoy many of the same rights as citizens, with exceptions limited chiefly to political participation and freedom of movement. In practice, noncitizens live under the threat of deportation, which, legal or not, decisively precludes the assertion of other rights. The rights of migrants, refugees, and other noncitizens are vaguely proclaimed, inadequately enforced, and routinely overridden by arguments about national security, cultural purity, economic welfare, and public health. Their situation in many countries has deteriorated since September 2001, with governments using the threat of terrorism to justify draconian policies and overt denial of rights. All too often, legitimate security measures have given way to xenophobia and scapegoating.

The Justice Initiative is working closely with a diverse group of non-citizens and advocates to clarify, extend, and improve enforcement of existing norms to better protect the right to citizenship and the rights of noncitizens. A series of meetings is being convened to identify common problems and points of action.

MIGRATION IN MEXICO: DOCUMENTATION, LITIGATION, AND LAW REFORM

The Justice Initiative is working to monitor violations of the rights of migrants and deportees in Mexico and Guatemala, with a view to possible litigation and eventual policy reform.

www.justiceinitiative.org/activities/ec/ec_mexico

Human rights abuses against migrants—particularly the mistreatment of undocumented migrants as they are deported—are a growing problem in Mexico and Guatemala. The trend is caused in part by the higher numbers of non-Latin Americans, particularly from Africa and Asia, arriving through Central America on their way to the United States—and the Bush administration’s intensified efforts since September 11 to “move the border south.” The Fox administration in Mexico has accommodated these efforts, and by early 2004 it appeared that its attempt to engender more favorable treatment of Mexican migrants in the United States might be bearing fruit. At the same time, Mexican police and border guards have cracked down on migrants to Mexico, often viciously, almost always with impunity.

Large numbers of Central Americans, as well as Africans, South Asians, and others, are arrested in Mexico and deported under questionable conditions. Mexico undertakes about 150,000 deportations each year. Those awaiting deportation are detained in Mexico City and at centers in the southern states, including Chiapas, Veracruz, and Tabasco. Central Americans are deported directly to their country of origin, while all others are deported automatically to Guatemala.

In response, several NGOs are monitoring state officials’ actions, defending migrants in court, and, at the regional level, advocating for better detention and deportation standards. The OAS Special Rapporteur on Migrant Workers and Their Families has visited Mexico and Guatemala and reported on significant recent case law on the importance of the principles of due process and equality to detention and deportation provisions.

There remains much to be done, particularly in the southern states of Mexico, and in Guatemala, where NGOs are often not as well-funded as in Mexico City, and where efforts to hold state officials accountable for their actions toward migrants are still recent. Significant monitoring and litigation efforts must be focused on the corruption of border guards and police in both Mexico and Guatemala.

The Justice Initiative is cooperating closely with a leading Mexico City–based migrants’ rights NGO, Sin Fronteras, to address these problems. A joint project seeks to provide training and assistance to smaller NGOs in documenting and reporting on individual cases of abuse, as well as to cooperate in pursuing legal remedies in court. The project will also contribute to reform efforts to bring Mexican migration legislation into compliance with international standards. To promote long-term legal

capacity, the Justice Initiative will work closely with the first Mexican university-based legal clinic focused on migrants' problems.

COMBATING DISCRIMINATION IN RUSSIA: STRATEGIES FOR LAWYERS AND NGOS

Together with Russian human rights NGOs, the Justice Initiative is launching a number of projects to address the increasingly visible problem of ethnic discrimination in Russia.

www.justiceinitiative.org/publications/activities/ec/ec_russia

Over the past few years, anecdotal evidence and the reports of nongovernmental monitoring organizations have documented widespread discriminatory practices and violence against racial and ethnic minorities on the territory of the Russian Federation. In March 2003, the UN's Committee on the Elimination of Racial Discrimination expressed concern about serious shortcomings in Russian legal protections for, and official behavior toward, ethnic minorities.

The Open Society Justice Initiative on January 27–29, 2003 convened a workshop in Moscow on combating discrimination in Russia. Russian human rights organizations and lawyers met with experienced human rights advocates from other countries and compared strategies for challenging racial, ethnic, and gender discrimination in Europe, South Africa, and the United States. The discussions resulted in the preliminary formulation of a number of projects to address discrimination in Russia.

A general equality clause in Russia's Constitution (Article 19) is reproduced in the civil code, criminal code, and labor and administrative laws, yet discrimination is nowhere defined or explicitly banned in Russian legislation. Theoretically, the Constitution can be applied in ordinary courts, but lawyers are not accustomed to seeking—nor are judges accustomed to approving—redress for acts of discrimination.

Russian lawyers are, however, turning to the European Court of Human Rights in increasing numbers. In 2001–2002, applications from Russia to the Court exceeded 10,000, outnumbering those from any other country in the Council of Europe. During the same period, however, only 14 cases from Russia were ruled admissible. Clearly the demand for effective human rights litigation in Russia is matched by the need for training and strategic thinking in the use of domestic and regional human rights instruments. The Justice Initiative has initiated a number of projects in an effort to develop approaches to case building and documentation, and generate Russian NGOs' capacity to use these approaches in litigation.

Antidiscrimination Steering Committee

As follow-up to the January 2003 workshop, the Justice Initiative and a number of leading Russian human rights NGOs formed an Antidiscrimination Coalition Steering Committee. The Committee meets quarterly and serves as an advisory body on projects focusing on specific geographic subregions and specific manifestations of discrimination.

Identification and documentation of discrimination through legal aid clinics

Two leading human rights organizations, Memorial and the Moscow Helsinki Group, are at the center of a network of almost 100 legal aid clinics throughout Russia. These clinics are now collecting information from their clients to identify potential legal cases challenging discrimination.

Discrimination against ethnic Tajiks, Roma, Meskhetians, and others

In addition to country-wide initiatives, the Justice Initiative is developing small-scale documentation and advocacy projects in different Russian regions, focusing particularly on the rights of minority groups. Ethnic Tajiks, Roma, and Meskhetians suffer grave discrimination from both state and nonstate actors. These groups are generally politically and economically disadvantaged. Very often authorities have refused to grant them documentation to which they are legally entitled, leaving them in effect stateless. Some have lived with such discrimination for generations. Many ethnic Tajiks are migrant workers who, despite their importance to the Russian economy, are denied security of residence and the right to live in peace.

The Justice Initiative will work with community groups and public-interest law firms to bring cases of discrimination to light and seek legal remedies where appropriate.

AFRICA CITIZENSHIP AUDIT

Citizenship policy is becoming a common vehicle for discriminatory action in a number of African countries. The Justice Initiative is mapping the worst offenders.

www.justiceinitiative.org/activities/ec/ec_africacitizenship

During the 1990s, partly as a result of the increasing importance in Africa of multiparty elections in a context of ethnic allegiance, incidents of denationalization of political opponents or entire groups became increasingly common. Several countries, such as the Democratic Republic of Congo and Zimbabwe, adopted restrictive nationality laws, which place the burden upon individuals to “prove” they are citizens, often requiring unobtainable doc-

umentation. Others, such as Sierra Leone, have legislation that discriminates explicitly against particular ethnic groups, for example denying them access to customary dispute resolution mechanisms or ownership of land. In yet other countries, such as Côte d'Ivoire, discrimination targets the speakers of particular languages.

To gain a more complete picture of current problems and trends on discriminatory laws and policies in Africa, the Justice Initiative is undertaking an Africa Citizenship Audit. The Audit will consist of an 18-month survey of citizenship laws and practices in a range of countries with notable migrant or noncitizen populations, where citizenship policies have played a role in civic unrest.

Many African states are subject to overlapping international and regional human rights treaties. However, national laws often do not conform to treaties protecting the rights of ethnic groups and noncitizens. And even where a national law is nondiscriminatory, state practice may yet discriminate—in access to land, education, and available social benefits. Failure of the authorities to intervene to protect vulnerable populations from discrimination or violence by private individuals is an ominously common human rights violation.

The Africa Audit's country reports will include a breakdown of existing legal provisions on discrimination, citizenship and nationality, refugees, migrant workers, and immigrants, as well as statistical information, where available, on noncitizens' and refugees' numbers, state practices toward them, cases that have entered the courts and their outcome, and the effects of ethnically discriminatory and apparently neutral legal provisions on vulnerable populations.

The Audit will propose a normative basis for the reform of citizenship and antidiscrimination laws and policies in African countries, as well as the basis for litigation at the national, regional or international level at a later stage. The documentation effort may eventually be extended to additional countries.

Anticorruption

www.justiceinitiative.org/activities/ac

The primary focus of the Justice Initiative's anticorruption efforts is to promote the role and build the capacity of civil society in combating corruption. There is growing evidence that some NGO monitoring and advocacy efforts are having an impact on corruption, by identifying corrupt practices and mobilizing public pressure for the development of sound anticorruption policies. The Justice Initiative seeks to document and systematize these emerging good practices worldwide and to formalize the guiding principles that inform successful initiatives.



COUNTING BALLOTS

The Justice Initiative is disseminating a flexible methodology to monitor campaign spending to assure that everyone's vote counts equally in an election.

POLITICAL PARTY AND CAMPAIGN FINANCING

www.justiceinitiative.org/activities/ac/cfm

The Justice Initiative in 2003 focused on political corruption issues, particularly on combating corruption in the financing of political parties and electoral campaigns. In many countries, private interests have bought off politicians to distort the regulatory environment and government policy to their own benefit. The financing of political parties is particularly susceptible to such influence: It is expensive to operate a party, particularly during an election campaign, and public funding—when available—tends to be insufficient. A growing dependence of politicians and parties on contributions from a small number of powerful economic actors alienates parties from the electorate, and contributes to mounting cynicism about the political system in general.

In some countries, however, NGOs have successfully brought the issue of campaign finance to public attention and helped achieve regulatory reform. The United States offers some useful examples, where NGOs have focused on tracking the relationship between donations and political decisions, inviting scrutiny of questionable dealings from voters and regulators alike. Yet NGO practices in the United States rest on extensive public disclosure requirements, often lacking in other countries. Where strict regulations do not exist, NGOs have drawn attention to the deficiencies of regulations governing party and campaign finance by monitoring expenditures instead of donations. Campaign spending, which is visible and trackable, may indicate a minimum of total campaign donations. By demonstrating the high levels of funding required to run an election campaign, these NGOs have generated a public demand for funding disclosure and greater transparency and accountability rules on party financing.

Monitoring campaign spending, particularly on media advertising—an approach that originated in Latin America—has been tried with some success in Central and Eastern Europe. However, the limitations of this methodology in different national contexts—for example, in Slovakia, where campaign advertising is banned from electronic media altogether—has highlighted the need to develop a more flexible methodology that takes into account other categories of spending.

The Justice Initiative is attempting to fill this need with a new multidimensional approach that allows NGOs to monitor campaign financing in a way that best reflects their own objectives and national circumstances. The Justice Initiative methodology provides guidance on monitoring both income sources—to the extent that existing disclosure requirements permit—and context-specific expenditures.

The Justice Initiative's major innovation, however, is to spotlight the often neglected issue of public resource abuse for electoral purposes. Working

in Russia, in partnership with the Center for Anti-Corruption Research and Initiative/TI Russia, the Justice Initiative has been exploring ways NGOs can monitor the political abuse of “administrative resources,” in addition to the more common forms of campaign finance corruption. A joint project monitoring administrative resource misuse in Russia’s 2003 parliamentary election campaign is expected to yield lessons on how best to track this spending. It will serve as a pilot for developing a more detailed methodology in 2004.

The Justice Initiative methodology, which is to be published as a handbook in print and electronic form, will be disseminated further through regional workshops and in-country monitoring projects in cooperation with local partners.

Other Justice Initiative anticorruption work includes exploring legal instruments that can support the work of NGOs engaged in advocacy around corruption arising from the exploitation of natural resources, from oil in Angola to timber in Cambodia to coltan in the Democratic Republic of Congo. Public attention has increasingly focused on the lack of transparency that often occludes the web of transactions among public and private actors in this field. To date, however, legal remedies for the unlawful plunder of natural resources have been few.

Finally, the Justice Initiative has undertaken an assessment of donor, government, and NGO anticorruption programming in Georgia, in close cooperation with other parts of the OSI network, with the aim of contributing to an understanding of the elements that form effective anticorruption policies.

Legal Capacity Development

www.justiceinitiative.org/activities/lcd

The Justice Initiative aims to fortify and expand a worldwide network of human rights lawyers and activists committed to pursuing reform through law. By enhancing the skills of public interest lawyers, nourishing a culture of public service within the legal profession, and fostering the independence and professionalism of bar associations and rights-based NGOs, the legal capacity development program seeks to strengthen awareness and defense of human rights.

The transformation of legal culture, norms, and practices takes years of investment in human and institutional development. The Justice Initiative adopts a long-term approach of providing viable examples of reform through legal advocacy and activism. The legal capacity development program identifies opportunities for lawyers to “learn by doing,” through direct engagement in litigation, legal research, publication, and technical assistance.

In developing legal capacity, the Justice Initiative focuses on projects for clinical legal education, human rights fellows, and litigation training and support.



IMPROVING LEGAL EDUCATION

The All-Africa Colloquium on Clinical Legal Education (see page 43) brought together university faculty from 22 African countries to establish and strengthen legal clinics on the continent.

CLINICAL LEGAL EDUCATION

www.justiceinitiative.org/activities/lcd/cle

Clinical legal education is a cross-cutting discipline. If done comprehensively, it deepens the quality of education and helps law students pursue their careers with a greater sense of commitment to public service. Clinics address a range of legal issues and often provide needed services to the larger community beyond the classroom. Ultimately, clinics immerse the legal academy—both students and teachers—in the world as actors, not merely observers.

Clinical legal education is defined in many different ways throughout the world. Clinics can be based in law school facilities or they may function as externships, in which students work in a law office under the supervision of a practicing attorney, either with or without law school credit for their work. If undertaken within a law school, a clinical program may be based on real or hypothetical cases. One popular model for a legal clinic, often referred to as “street law,” offers education on law and rights to young people or particularly vulnerable groups such as prisoners.

In more sophisticated clinical programs, law students enroll in a clinical course of study for credit. They represent real clients, providing them with needed advice or services, while pursuing a course of study paralleling their field experience. Members of the law school faculty closely supervise students’ work on a limited number of cases.

The goals of clinical legal education include the following:

- Offering students a unique, structured educational opportunity to experience actual or simulated client representation
- Providing needed legal services to those without access to the legal system, with clinics acting as an important supplement (not a replacement) for services
- Showing students the importance of public interest work, and thus creating a more responsible legal profession
- Using experiential teaching methods to encourage students to use the law in ways that theoretical lectures or readings often cannot
- Improving links between the bar and the academy by helping clinical professors contribute to theories of legal practice
- Strengthening civil society by nurturing a sense of professional responsibility among lawyers to provide legal services to underserved, vulnerable populations

The Justice Initiative supports a growing and increasingly cohesive network of more than 75 university-based legal clinics (pursuing alternately legal representation and street law–style education) in Central and Eastern

Europe, the former Soviet Union, and beyond. The clinics also help develop networks among law faculties in different legal systems. In South Africa, the Justice Initiative has used clinics to forge close relationships with a pool of talented lawyers and law faculty involved in the country's well-developed clinical education system.

In 2003, extending this effort to other countries, we helped launch a clinic at the law faculty of Mondlane University in Maputo, Mozambique. In Freetown, Sierra Leone, we deepened our engagement with a human rights clinic at Fourah Bay College. In Istanbul, Turkey, we provided technical assistance to a nascent clinic at Bilgi University. In Mexico, the Justice Initiative organized a meeting on clinical education with representatives of several law faculties in Mexico City. In Cambodia, we arranged to station a Justice Initiative fellow in Phnom Penh for the purpose of establishing a clinic at Pannasastra University. And in June, the Justice Initiative convened the first All-Africa Colloquium on Clinical Legal Education in Durban, South Africa, which brought together clinicians, lawyers, and law school faculty from 22 countries.

Legal clinics are well positioned to protect the rights of vulnerable individuals and marginalized groups, whose cases are seldom taken by mainstream legal defenders. In Poland, for example, the legal clinic at Warsaw University advanced the rights of women with a case that prompted widespread public debate. In the case, police conducted two physical examinations of a woman after she had an abortion. The police claimed they were seeking forensic evidence to prosecute the doctor for performing an illegal operation. Clinic lawyers argued successfully that woman had not consented to the examinations, which violated her fundamental right to dignity.

TEACHER TRAINING FOR CLINICIANS

In 2003, the Justice Initiative co-organized two training sessions for clinical teachers from Central Europe and the former Soviet Union. A total of 50 clinical teachers participated. The sessions focused on new teaching methods and practical skills—such as cross-examination—and new subjects for clinical curricula.

ISSUE-BASED CLINICAL PROGRAM EVENTS

Over the course of 2003, the Justice Initiative supported issue-based and impact-oriented clinical programs by convening three workshops for clinics, devoted to specific topics of public interest. The workshops aimed to promote clinic sustainability, through the development of specialized curricula and teaching methodologies, and by emphasizing the importance of public interest law. A number of NGOs specializing in the rights of refugees, women, and children participated. The first issue-focused workshop took place on May 30–31, 2003, in Budapest, Hungary, and focused on gender and cultural issues in representing refugee clients. The second workshop focused on developing children's rights clinics in Central and Eastern Europe and took place on November 17–18, 2003, also in Budapest. The third workshop focused on developing women's rights clinics and was co-organized by the Warsaw University Legal Clinic on December 1–2, 2003, in Warsaw, Poland.

HUMAN RIGHTS FELLOWSHIP PROGRAM

www.justiceinitiative.org/activities/lcd/fellows

The Justice Initiative supports a variety of fellowship programs to encourage the professional development of young lawyers and enhance the capacity of leading human rights NGOs. Beginning in 1996, COLPI, the Justice Initiative's predecessor, established a fellowship program at the American University Washington College of Law. Young lawyers from Central and Eastern Europe were nominated by regional human rights NGOs for a two-year fellowship program. The first year was spent in the United States attending human rights courses and participating in internships with NGOs. In the second year, fellows returned to their home country, where the fellowship covered the costs of a year's full-time work with their nominating NGO. Although no longer operating at the American University, the Justice Initiative now conducts fellowship programs involving a similar combination of study and NGO work experience with Columbia University, Central European University, and Sao Paolo University.

The Fellowship Program includes the Justice Initiative Human Rights Fellows Program, Central European University (Budapest); PILI/Justice Initiative Public Interest Law Fellows Program, Columbia University (New York); OSISA/Justice Initiative Human Rights Fellows Program for Angola and Mozambique in partnership with a Brazilian NGO, Connectas, and Sao Paolo University; and Justice Initiative Practicing Human Rights Fellows Program for students from Central European University and the University of Essex.

To date, more than 50 human rights lawyers have completed the program. One fellow successfully introduced expert testimony in police brutality cases in Hungary. Another has used lessons from the U.S. civil rights campaign to tackle racial discrimination in Bulgaria. A third has gained international attention by documenting cases of coerced sterilization in Slovakia. Although the program was designed initially for Central European law graduates, since 2002 fellows have come from Ghana, Indonesia, Nigeria, Senegal, and Sierra Leone. Similar programs are being developed for lawyers from Angola and Mozambique.

Lukasz Bojarski, a 1996–97 fellow and now a lawyer with the Helsinki Foundation for Human Rights, speaks for many fellows when he writes: “I have been able to apply many of the lessons I learned in America to the research, advocacy, and human rights protection trainings that I frequently conduct with judges and other members of the judiciary.”

Bojarski remembers that when he arrived in the American University’s Washington College of Law for the first year of his fellowship, somebody asked him, “Lukasz, how do you sue the government in Poland?” Despite five years of studying Polish law, he did not have a good answer, because in the Polish legal tradition, it was politicians, local community leaders, and scientists who changed the world, not lawyers.

“This thinking dies hard,” he writes, “and there is much we must still learn from the American experience. American lawyers are often caricatured as greedy businessmen, hired guns, and ambulance chasers, but there are also American lawyers who are engines of social change. Their use of law to serve the public interest continues to fascinate and inspire me.”

HUMAN RIGHTS AND PUBLIC INTEREST LAW FELLOWS RETREAT

www.justiceinitiative.org/activities/lcd/fellows/istanbul_retreat

In July 2003, the OSI-Supported Human Rights and Public Interest Law Fellows Retreat in Istanbul brought together 64 leading human rights scholars and activists from 25 countries on four continents. In his opening statement, Zaza Namoradze, director of the Justice Initiative’s Budapest office, observed that the participants collectively epitomized “the future of global human rights activism all in one room.” The retreat was organized by the Justice Initiative in partnership with the Public Interest Law Initiative, Central European University’s Legal Studies Department, and the OSI Network Scholarship Program.

The July meeting was the first gathering of fellows from all programs and all previous years—and by far the largest OSI-supported retreat of its kind to date. Also taking part were Scholarship Program “OSI/Chevening” scholars—law graduates from the former Soviet Union who study human rights for one year at the University of Essex. For all present, the meeting provided an opportunity to discuss the practice and theory of human rights; to hear first-hand accounts of the experiences of NGO activists from around the world; to learn practical skills in organization, negotiation, and communication; and to recognize and deepen their participation in a growing global network of human rights activists.

Fellows of many different nationalities presented papers that demonstrated a wide range of legal interests and activities. Subjects included an account of a sustained legal challenge to the forced sterilization of Romani women in Slovakia; the legality of so-called “Article 98” bilateral agreements used by the United States to shield its nationals from the jurisdiction of the International Criminal Court; the surge in importance of civil society organizations in Indonesia since 1998; and an analysis of discrimination against women in citizenship regimes in many countries.

Skills training sessions for the fellows covered negotiating for better outcomes, resource and income development, public speaking, producing key documents, and basics in evaluation. The sessions fostered many opportunities for collaboration and learning by bringing fellows with extensive human rights experience together with colleagues fresh out of university. A number of partnerships have already resulted in collaborations. Bulgarian and Russian fellows, for example, are working with Interights, a London-based NGO, to bring cases from Russia before the European Court of Human Rights. The Court recently ruled in favor of the litigant in one such case, *Rakevich v. Russia*.

LITIGATION TRAINING AND SUPPORT PROGRAM

www.justiceinitiative.org/activities/lcd/lcd_training

In the 1990s, COLPI, the Justice Initiative’s predecessor, organized and supported a series of intensive training programs in human rights litigation for lawyers from South Eastern Europe, the south Caucasus, Central Asia, Ukraine, and Russia. These programs were conducted jointly with international NGOs, including Interights, the Bulgarian Helsinki Committee, and the Netherlands Helsinki Committee. The training format provided a carefully selected group of lawyers with new knowledge and practical skills development in sessions conducted in both Russian and English.

The Justice Initiative continues to support training programs launched in 2001 for human rights lawyers from Armenia, Azerbaijan, and Georgia in partnership with Interights and the Netherlands Helsinki Committee. The primary aim is to enhance the ability of human rights litigators to apply provisions of the European Convention on Human Rights and Fundamental Freedoms and United Nations human rights instruments in domestic courts and internationally. A separate set of training sessions has focused on litigation in the areas of equality and nondiscrimination. Twenty-one human rights lawyers from Georgia completed the program in April 2003. Identical programs started in Armenia in the fall of 2003 and will start in Azerbaijan in 2004 with the support of the Justice Initiative, the relevant Soros foundations, and the Dutch government. Ten graduates from each country program will participate in a two-week training program in Soesterberg, the Netherlands, in 2005.

BOARD OF DIRECTORS

Aryeh Neier, *Chair*, is president of the Open Society Institute. He served 12 years as executive director of Human Rights Watch, and worked for the American Civil Liberties Union for 15 years, including eight as national director. Neier served as an adjunct professor of law at New York University for more than a dozen years and has lectured at a number of leading universities.

Chaloka Beyani is a senior lecturer in international law and human rights at the London School of Economics and Political Science (LSE), where he has taught since 1996. Previously he taught at Oxford University and the University of Zambia. He sits on the Advisory Board of the Centre for the Study of Human Rights at LSE; the Advisory Council of the Commonwealth Institute, the Justice Initiative's Africa Advisory Committee; and the boards of Interights and the International Minority Rights Group.

Maja Daruwala is the executive director of Commonwealth Human Rights Initiative, an international NGO mandated to ensure the practical realization of human rights within the Commonwealth. Her service includes chairperson of Minority Rights Group International and also of People's Watch Tamil Nadu.

J. 'Kayode Fayemi heads the Centre for Democracy & Development, an independent research, advocacy, and training institution dedicated to policy-oriented scholarship on issues of democratization and peace building in Africa. He is an adviser to the Economic Community of West African States on peace and security issues.

Anthony Lester, QC, is a practicing member of the English Bar and a Liberal Democrat Peer. He specializes in constitutional law and European human rights law. Lord Lester is president of Interights (the International Centre for the Legal Protection of Human Rights) and an honorary senior legal counsel of the European Roma Rights Center.

Juan E. Méndez is a professor of law and director of the Center for Human and Civil Rights at the University of Notre Dame. He has served as the president of the Inter-American Commission on Human Rights and executive director of the Interamerican Institute of Human Rights in Costa Rica, and held numerous senior posts at Human Rights Watch.

Diane Orentlicher is professor of international law at the Washington College of Law, American University in Washington, D.C., where she has taught since

1992. She is also director of the law school's War Crimes Research Office and codirector of its Center for Human Rights and Humanitarian Law.

Wiktor Osiatyński is a professor at Central European University and a member of the Advisory Board of the Open Society Institute. Between 1991 and 2001 he was a recurrent visiting professor at the University of Chicago Law School and has taught at other major universities in the United States.

András Sajó is a professor in the Legal Studies Department and chair of Comparative Constitutional Programs at Central European University. He also serves as a recurrent professor with the Global Law Faculty, New York University School of Law. He has served as deputy chair of Hungary's Constitution Drafting Committee (1988–89), legal counsel to the president of the Hungarian Republic (1991–92), and chair of the Drafting Commission for Broadcast Law (1994).

Herman Schwartz, professor of law at American University, advises numerous former Soviet bloc countries on constitutional, human rights, and other legal reforms. He has served as a member of the U.S. Delegation to the UN Human Rights Commission. In 1983, he founded and now administers the US/Israel Civil Liberties Law program. He is codirector of the Washington College of Law Human Rights Center, and a member of the boards of the Foundation for a Civil Society and Helsinki Watch.

Christopher E. Stone has served as director of the Vera Institute of Justice since 1994. He joined Vera in 1986, serving first as director of its London office, then as founding director of the Center for Alternative Sentencing and Employment Services and the Neighborhood Defender Service of Harlem. He is chair of the Altus Global Alliance, which unites six well-established organizations spanning five continents into a unique alliance for justice reform.

Hon. Patricia M. Wald served as chair of the Open Society Justice Initiative from October 2002 until February 2004 when she accepted an appointment to the President's commission investigating prewar intelligence on Iraq.

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