

# Global Human Rights Litigation

OCTOBER 2013

---

The Open Society Justice Initiative engages in strategic litigation in national, regional, and international courts and tribunals across a range of human rights issues. Legal cases brought in the public interest aim not only to obtain individual redress, but also to achieve a broader impact by setting an important precedent or otherwise reforming official policy and practice.

The Justice Initiative seeks to effect change by combining legal challenges with other activities including research into human rights problems, working with governments to reform policies that cause human rights violations, advocating with decision-makers for change, using the media to bring attention to the problem, and building the capacity of civil society to respond to violations and to campaign for redress.



# Global Human Rights Litigation

James A. Goldston, Executive Director

Since it was founded, the Open Society Justice Initiative has used strategic litigation to vindicate rights and foster change around the world. Together with other tools (including research, out-of-court advocacy, pilot projects and capacity development), the Justice Initiative pursues litigation to test and, where possible, demonstrate the power of law to improve lives. Working in Africa, Asia, Europe and Latin America, the Justice Initiative seeks to replicate successes and share lessons across borders, using decisions from one tribunal to argue a case in front of another, litigating with a global perspective.

In late 2012, the Grand Chamber of the European Court of Human Rights found that Khaled El-Masri had been tortured by the CIA when they unlawfully rendered him from Macedonia to Afghanistan, and that by acting jointly with them the Macedonian authorities were responsible for multiple violations of the European Convention. The Justice Initiative is seeking further accountability for extraordinary rendition through cases in Poland, Romania, and Lithuania.

The right to information is an essential but underdeveloped tool for open government and transparency. Litigation by the Justice Initiative has helped define this right, with leading decisions from the Inter-American Court of Human Rights (*Claude Reyes v. Chile*) and the European Court of Human Rights (*HCLU v. Hungary*) affirming access to information as a positive right that can be used by campaigners and the public alike. We have sought to extend the reach of the *Claude Reyes* decision with litigation in Peru, Chile and Paraguay.

The Justice Initiative has also sought to develop the right to the truth as an individual right, intervening to clarify the scope of the right in the cases of *Araguaia* and *Diario Militar* before the Inter-American Court of Human Rights, and before the Grand Chamber of the European Court of Human Rights in the case of *Janowiec*, dealing with the Katyn forest massacre of 1940.

In the field of equality, the Justice Initiative, together with the European Roma Rights Center, was instrumental in litigating the ground-breaking case of *D.H. and Others v. the Czech Republic*, in which the European Court of Human Rights found that the segregation of Roma children into special schools was unlawful. In *Williams v. Spain*, the UN Human Rights Committee found for the first time that racial profiling amounts to discrimination in breach of the International Covenant of Civil and Political Rights. Several cases underway seek to challenge contemporary forms of discrimination in Europe. Ground-breaking litigation in Germany is challenging the disproportionate assignment of children from minority backgrounds into lower-level classes. In France, the Justice Initiative has instigated litigation that draws attention to the widespread use of racial profiling by French police.

The Justice Initiative has been a leader in highlighting the global problem of statelessness, working with partners to obtain judgments condemning discriminatory access to nationality in the Americas (*Yean and Bosico v. Dominican Republic*), Europe (*Makuc and Others v. Slovenia*), and Africa (*Nubian Minors v. Kenya*).

Open societies can only thrive where there is freedom of the press, and the Justice Initiative has worked to ensure that hard-won legal protections for journalists are fully respected. In *Herrera v. Costa Rica*, *Marques v. Angola*, and *Hydara v. The Gambia*, we have litigated to protect the rights of journalists threatened and intimidated by their governments. In Europe, we have intervened in a series of cases to guarantee that the rights protected in Article 10 of the European Convention apply to the media across the

whole continent, leading to the first judgment on internet blocking from the Strasbourg court (*Yildirim v. Turkey*), and a clear statement of the need for media pluralism (*Centro Europa 7 v. Italy*). We have also helped obtain judgments limiting the use of defamation to silence journalists exposing corruption (*Kasabova v. Bulgaria*), protecting journalists' sources (*Sanoma v. the Netherlands*) and controlling the threat of excessive litigation costs that force newspapers to remain silent (*MGN v. UK*).

The Justice Initiative seeks to promote a balanced and efficient criminal justice system, challenging ineffective and unlawful practices such as racial profiling, excessive pre-trial detention, and the reliance on torture to obtain confessions. In 2012, the ECOWAS Community Court of Justice found in the case of *Alade v. Nigeria* that the use of the tactic of the "holding charge" to keep a detainee in pre-trial detention for more than nine years violated human rights standards, challenging the endemic problem of arbitrary and prolonged pre-trial custody. In a series of cases in Central Asia, we are combatting police killings and the uncontrolled use of torture, as well as unfair trials and the prosecution of human rights activists to silence them. In Europe, litigation is being used to give substance to the right to a lawyer from the first moment of arrest. The Justice Initiative has also filed a complaint to the European Court on behalf of Sergei Magnitsky, a whistle-blower who exposed massive government corruption, and who died in pre-trial detention after he was refused life-saving medical treatment.

In the field of international criminal justice, the Justice Initiative has used litigation in Kenya to challenge impunity for post-election violence, in Nigeria to compel the transfer of former Liberian president and indicted war criminal Charles Taylor to the Special Court for Sierra Leone, and in Haiti in pursuit of accountability for the grave crimes attributed to former President Jean Claude Duvalier.

In these and other fields, the Justice Initiative aims to secure judicial remedies, to establish precedent, to expose abuses, to shame perpetrators, to vindicate the rights of victims, and to strive by example to act as if the rule of law really did exist, even where it does not, to help make it so.

# Litigating in the Public Interest

Rupert Skilbeck, Litigation Director

Strategic human rights litigation seeks to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard.

This Litigation Report surveys Justice Initiative litigation dealing with discrimination, freedom of information, citizenship, freedom of expression, national criminal justice, deaths in custody and torture, international criminal justice, corruption and counter-terrorist policies.

Litigation can be a powerful tool, but it is resource-intensive, and the judgments of human rights tribunals are only implemented where the political will is present to do so. For the Justice Initiative, litigation is only one of our tools, which include advocacy, documentation, and institutional and human capacity building.

Our cases are selected and developed through a long and careful process. The thematic issues with which the Justice Initiative engages result from a consultation that identifies areas where there is a need for further civil society involvement. Detailed research identifies countries where a particular problem is most acute, and Justice Initiative lawyers then work on the ground to find the best NGOs and lawyers to work with, and identify the strongest cases to develop. New cases are then subjected to rigorous peer review in order to ensure that they can withstand prolonged litigation and are presented as persuasively as possible.

In the majority of cases, the Justice Initiative acts as co-counsel with local lawyers, assisting in the development of the legal arguments and the collation of supporting evidence through the domestic legal process, and then preparing an application to the relevant regional or international human rights tribunal. Sometimes the role is that of *amicus curiae*, or friend of the court, through which the Justice Initiative is able to raise particular questions of international human rights law. Sometimes, as advisor to counsel it is possible to assist lawyers behind the scenes, or to instigate litigation.

Justice Initiative litigators come from many different legal backgrounds, and are qualified across multiple jurisdictions. Professional standards are paramount, and the importance of supporting the client through what can often be long and difficult litigation.

As part of the Open Society Foundations network, the Justice Initiative works closely with partners in many countries around the world to make sure that the issues surrounding our cases are discussed in the media, considered by decision-makers, and relevant to the victims of the human rights violation.

Litigation and advocacy often continue well beyond the final decision of a Court. The Justice Initiative acts to ensure that the judgments that we achieve are fully implemented. This involves promoting the decision within the affected community, monitoring the situation on the ground to establish whether changes have been made, engaging in advocacy to clear political blockages to reform, and where necessary challenging the failure to implement by re-litigating the issue.

This litigation report includes numerous decisions where international tribunals have found national authorities to have violated fundamental rights, insisting on redress and reform. The report also reviews the wide range of ongoing cases that are currently under consideration in nearly 40 countries. More cases will reach judgment in the next 12 months, giving hope to the victims, and creating a real opportunity to bring about change.



# Discrimination

*The Justice Initiative litigates cases where minorities are treated differently on account of their race, ethnicity or religion without justification.*

DH v. The Czech Republic (2007)

European Court of Human Rights

## **Ethnic Segregation of School Children**

Racial segregation in education remains widespread throughout the Czech Republic and in many European countries. Research by the European Roma Rights Centre (ERRC), and reports by monitoring organs of the Council of Europe have consistently documented the separate and discriminatory education of Roma.

These practices include segregation of Roma in so-called special schools designed for children with developmental disabilities, segregation in Roma ghetto schools or in all-Roma classes, and denial of Roma enrolment in mainstream schools. Whatever the particular form of separate schooling, the quality of education provided to Roma is invariably inferior to the mainstream educational standards in each country.

The eighteen applicants before the European Court of Human Rights were all school children from the town of Ostrava. They were Czech nationals of Roma descent, born between 1985 and 1991. Between 1996 and 1999 they were placed into “special schools” for children with slight mental disability. The decision to place them into these schools was made by the head teacher on the basis of a psychological examination, and with the consent of the child’s parent or guardian.

Statistics presented to the court demonstrated the segregated nature of schools in Ostrava, concluding that in the year 1999 that over half of Roma children were placed in “special schools”, over half of the population of “special schools” were Roma, and that any randomly chosen Roma child was more than 27 times more likely to be placed in a “special school” than a non-Roma child. Even where Roma children managed to avoid the trap of placement in “special schools” they were most often schooled in substandard and predominantly Roma urban ghetto schools.

Once these children had been streamed into substandard education, they had little chance of accessing higher education or steady employment opportunities. Their attempts to remedy the situation in the domestic courts failed.

The Justice Initiative acted as co-counsel in this case, which was heard first before the Second Section of the European Court and then before the Grand Chamber, presenting oral arguments in support of the applicants.

The Grand Chamber held by 13 votes to 4 that there had been indirect discrimination against the school children in the provision of education, a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights read in conjunction with Article 2 of Protocol No. 1 (right to education). The decision held that disproportionate assignment of Roma children to special schools without an objective and reasonable justification amounted to unlawful discrimination. The Court explicitly embraced the principle of indirect discrimination, reasoning that a *prima facie* allegation of discrimination shifts the burden to the defendant state to prove that any difference in treatment is not discriminatory.

**Challenge to Italy's Roma Census**

In May 2008 the Italian government declared a state of emergency with regard to so-called Nomads (i.e. ethnic Roma and Sinti), granting emergency powers to local prefects. As part of the emergency measures, the government conducted a census of Roma in Italy that included the collection of fingerprints, photographs and other personal information. According to the Ministry of the Interior, during the first year of the so-called emergency, 167 Roma camps were subjected to the census, and identity checks were performed on 12,346 people. Mr. Salkanovic is an Italian citizen of Roma ethnic origin who had lived in the Roma encampment of Via Casilina 900 from 1989 until 2009 when he was forcibly evicted and the encampment was bulldozed by the government, leaving 1,000 ethnic Roma homeless. He was required to participate in the Roma census in order to secure public housing. In May 2013, the Civil Tribunal, Rome, found that the census was discriminatory, and ordered the collected data destroyed, the payment of damages, and publication of their decision. The Justice Initiative, together with Associazione 21 Luglio and Associazione Studi Giuridici Sull'Immigrazione, are insisting that the judgment is now applied to all data collected under the Roma census..

**Racist assault by police and failure to investigate**

In November 2004, three brothers were detained and severely beaten in Nalchik, the capital of the Republic of Kabardino-Balkariya, while being subjected to racist insults by city police officers. They were later released without charge. They filed criminal complaints with the local authorities but no action was taken. The Justice Initiative filed a case on their behalf at the European Court of Human Rights, arguing that the Russian authorities' racially-motivated ill-treatment of the Makhashev brothers constituted torture and inhuman and degrading treatment in violation of Article 3, and that there had been an inadequate investigation into the ill-treatment.

In July 2012 the European Court of Human Rights held that the Russian authorities ill-treated the Makhashev brothers on account of their race, and failed to adequately investigate the allegations of racial motivation. The Court awarded damages of €105,000 to the brothers.

**Racial Profiling is Discrimination**

In 1992, Rosalind Williams, a naturalized citizen of Spain, was stopped by a police officer on a train platform and ordered to produce her identity documents. When she asked why she was the only person targeted, the officer responded that he was conducting immigration identity checks and that she was stopped because she was black. The Spanish Constitutional Court rejected her claims of racial discrimination, ruling in 2001 that a person's racial or ethnic identity is a legitimate indicator of nationality, and therefore could be taken into account by law enforcement officers engaged in immigration control activities. The UN Human Rights Committee disagreed with the Spanish court, finding in July 2008 that the treatment of Ms. Williams by Spanish police amounted to racial discrimination – the first finding by an international tribunal that racial profiling is impermissible.

**Duty to Investigate Racist Motives**

In 1996, Bulgarian military police shot dead two unarmed Roma conscripts while using racist language. In 2004 the European Court of Human Rights found that the shootings and the subsequent investigation were tainted by racism, amounting to a breach of the right to life (Article 2) together with the prohibition on



discrimination (Article 14). This was the first time that the Court found racial discrimination. In November 2004 the Grand Chamber upheld the finding that states must investigate possible racist motives for acts of violence. However, the Grand Chamber found that the burden of proof should not be on the Government to demonstrate a lack of racism, and so found no violation in this case.

Sejdic & Finci v. BiH (2009)

European Court of Human Rights

### **The Right to be Elected to Public Office**

Under the Dayton Peace Accords, only those belonging to one of the three Constituent Peoples of Bosnia and Herzegovina—Bosniaks, Croats or Serbs—were permitted to stand for election to the House of Peoples or for the Presidency. This excluded members of the 14 other national minorities in the country. The European Court of Human Rights found that this amounted to racial discrimination in relation to the right to be elected and stand for office. It held that while privileging certain ethnic groups and giving them more political power when the Dayton agreements were signed may have been justified at that time of signing the peace agreements, the justification for excluding citizens belonging other ethnic minority from political participation had ceased to exist with the passage of 15 years and other and newer commitments made for a transition to commonly accepted democratic and human rights standards.

Good v. Botswana (2010)

African Commission

### **No Punishment of Foreigners for Criticism**

Kenneth Good was a university lecturer in political science in Botswana for 15 years, and held an Australian passport. He wrote an article that was critical of the presidential succession. The President then expelled him from the country with 56 hours-notice on grounds of ‘national security’. His expulsion was upheld by the domestic courts. The Justice Initiative filed an amicus brief with the African Commission arguing that this expulsion were based on an impermissible difference in treatment between nationals and non-nationals. In May 2010 the African Commission decided that there was a violation of the Charter, as the decision whether to expel Mr. Good should have been a judicial one, with the government bringing evidence of the supposed threat that he posed before a court, and that he should have had the possibility of an appeal. Presidential powers should be constrained by the law, even when they dealt with foreigners.

Bagdonavichus v. Russia

European Court of Human Rights

### **Destruction of Roma Village**

Roma have lived in the village of Dorozhnoe, Kaliningrad, since 1956 when they were required by Soviet decree to settle there. The families sought to register their properties after 2001 but were prevented from doing so by local authorities. In June 2006, Russian authorities-shouting racial abuses-bull-dozed and burned their houses. Many of the families are still without permanent shelter and several of the Roma evicted have since died. The case is currently before the European Court of Human Rights.

Ethnic Profiling In France

French Domestic Courts

### **Stop and Search powers permit ethnic profiling**

Being stopped by the police for identity checks has become a part of daily life for many young people of African or Muslim origin in France. The disproportionate focus of the police on these groups points to widespread “ethnic profiling” and breaches constitutional guarantees of personal freedom. A group of French lawyers is challenging the law which grants French police broad discretion to stop and search individuals for purely subjective reasons which may have little to do with suspicious behavior. The issue is being litigated before the civil courts, and is also being referred to the *Conseil Constitutionnel* as a *Question Prioritaire de Constitutionnalité* (QPC), or priority question of constitutionality, arguing that such

stops interfere with the right to liberty and with freedom of movement, and that the lack of guidance creates a risk of ethnic profiling.

Leonardo da Vinci School, Berlin

Administrative Tribunal

### **Discrimination against ethnic minorities in Berlin schools**

Pupils from a migrant background admitted to the Leonardo da Vinci *gymnasium* in Berlin were placed in a class disproportionately composed of children with migrant backgrounds. The class and the pupils in it were informally designated by the school administrators and staff as having no academic future. Within a few months, the pupils were informed that they would be relegated from the *gymnasium* at the end of the school year to a lower level school, due to poor grades.. In August 2012, the Justice Initiative, together with local counsel, filed three cases on behalf of pupils before the Berlin Administrative Court (first instance), challenging their discriminatory treatment, and arguing that the educational reform adopted in Berlin, which in principle allows easier access to quality secondary education at the *gymnasium* level, is being implemented in a discriminatory fashion that continues to restrict educational opportunities for the children of migrant backgrounds.

S.A.S. v. France

European Court of Human Rights (Grand Chamber)

### **Criminal Penalty for wearing a full-face veil in public spaces**

In October 2010, France enacted a law banning the wearing of a full-face veil in any public space, intended to regulate the *burqa* and *niqab*, and imposing a fine and/or mandatory “citizenship training” for anyone found wearing a full-face veil in public. France enacted the law despite the fact that the number of women wearing a full-face veil is exceedingly small. The French government estimates that 1,900 women wear the veil in France and some estimates place the number as low as 400. The Justice Initiative filed written comments with the European Court of Human Rights addressing the comparative practice of Western European states with respect to regulating the full-face veil, explaining the main considerations for the application of the principle of proportionality, and setting out the findings of the Open Society Foundations report *Unveiling the Truth*, the first empirical research into the experiences and motivations of women who wear a full-face veil in France. The case was listed for hearing before the Grand Chamber of the European Court of Human Rights on 27 November 2013.

Weiss v. Germany

Constitutional Court of Germany

### **Dress Codes for only one religion**

The law of North Rhine-Westphalia forbids teachers from wearing Islamic headscarves, on the basis that by doing so they automatically endanger the neutrality and peace of the school, but allows Christian teachers to wear religious clothing. Brigitte Weiss has taught at the same school since 1991. When she sought to wear a headscarf disciplinary measures were taken against her and she risks getting fired, even after she offered to wear a non-Muslim headscarf in the ‘Grace Kelly’ style. Proceedings are pending before German courts.

# Freedom of Expression

*The Justice Initiative helps defend the right to freedom of expression by representing journalists and others whose speech rights have been violated.*

Yildirim v. Turkey (2012)

European Court of Human Rights

## **Wholesale Blocking of Websites Violates Article 10 ECHR**

A court in Turkey issued an injunction blocking access for all Turkish-based Internet users to the entire Google Sites domain, supposedly to block access to a single website which included content deemed offensive to the memory of Mustafa Kemal Ataturk, the founder of the Turkish republic. The European Court found that this violated the right to receive and impart information regardless of frontiers, given the importance of the internet for freedom of expression, and that such prior restraint must be subject to most careful scrutiny and follow a particularly strict legal framework.

### **Facts**

Ahmet Yildirim, a PhD student in computer engineering at Bosphorus University, set up and operated a website to share information about his academic work and interests. He relied on sites.google.com, a Google service, to operate, update and host his personal site.

In June 2009, a Turkish criminal court, acting on the motion of a public prosecutor, issued an injunction ordering the blocking of a Turkish-language site also hosted by Google Sites, called *Kemalist Abdominal Pain*, which had a clear anti-Ataturk, ridiculing slant. Shortly after this injunction, Yildirim tried to access his personal site, but was unable to do so, receiving a screen notice that access to the site was blocked on the basis of the court order. It appeared that the entire Google Sites domain had been blocked.

The Justice Initiative filed third-party comments with the European Court of Human Rights, arguing that orders blocking access to online content should be treated as a method of “prior restraint,” and as such should be subject to “the most careful scrutiny.” Blocking orders that indiscriminately prevent access to an entire group of websites amount to “collateral censorship” which should be avoided as unnecessary and disproportionate. Domestic laws should provide robust and prompt remedies against blocking orders in order to safeguard against unnecessary and disproportionate interferences with Article 10.

On December 18, 2012, the European Court of Human Rights held that blocking access to the applicant’s website amounted to an interference with his Article 10 rights to receive and impart information “regardless of frontiers.” The Court reiterated that access to online content “greatly contributes to improving the public’s access to news” as well as expressing and disseminating their views; the Internet “has now become one of the main ways in which people exercise their right to freedom of expression and information.” In this respect, Article 10 guarantees the rights of “any person,” irrespective of their identities or the nature of their speech online.

The Court further found, in line with the Justice Initiative’s arguments, that an interference of this nature amounted to prior restraint and must therefore be subjected to the Court’s “most careful scrutiny.” Reviewing the facts of the case, the chamber held that Turkish legislation did not clearly authorize the kind of wholesale blocking implemented in this case, and that in dictating the *method* of blocking of illegal online content, the judges had granted too much discretion to an executive agency.

The Court concluded that these shortcomings made the interference “arbitrary” and “not prescribed by law” within the meaning of Article 10(2): all measures preventing access to online content must be in conformity

with “a particularly strict [national] legal framework concerning the delimitations of the ban and providing for effective judicial review against potential abuse.”

The Court also commented on the lack of procedural guarantees highlighted by the Justice Initiative intervention, noting e.g. that Google Sites had not been informed of the blocking decision or granted an opportunity to challenge it, and that the domestic courts had failed to consider whether less invasive blocking measures could have been adopted. Whenever adopting blocking measures, national authorities should consider whether they render inaccessible “a large amount of information that would significantly affect user rights” or have other serious side effects.

## Centro Europa 7 v. Italy (2012) European Court of Human Rights (GC)

### **Italy’s Media Pluralism Gap**

In 1999, Centro Europa 7 won a contract to broadcast a new TV station in Italy, but was prevented from going on the air as its allocated frequency was occupied by Mediaset, owned by the family of then Prime Minister Berlusconi, who also had indirect control over the national broadcaster RAI in his capacity as Head of Government. The Justice Initiative filed a third-party brief on European practices of broadcast pluralism and politicians’ conflict of interest.

In June 2012, the Grand Chamber of the European Court of Human Rights found that the dominance of Mediaset failed to ensure pluralism in the media sector, violating both freedom of expression and the right to property. States have a duty “to ensure true pluralism in the audiovisual sector,” which assumes an obligation to prevent domination of the airwaves by all-powerful actors. The Court held that “A situation whereby a powerful economic or political group in society is permitted to obtain a position of dominance over the audiovisual media” which allows them to “eventually curtail the editorial freedom” of broadcasters, is incompatible with the fundamental role of free information in a democratic society. The States must ensure “effective access to the market” for new entrants “so as to guarantee diversity of overall program content.”

## Kasabova v. Bulgaria (2011) European Court of Human Rights

### **Criminal conviction of journalist for exposing corruption**

Katya Kasabova, a reporter, published an investigation of alleged corruption in the Burgas school system. She was prosecuted for the criminal offence of defamation. The local courts held that she had no defense unless she could demonstrate that the officials had been convicted of corruption. The European Court held that she could not be required to bear the same burden as the prosecution in a bribery case, and that her conviction was disproportionate. Placing the burden of proof on the defendant in a criminal libel case is not prohibited, provided that appropriate defenses (such as responsible journalism) are also available.

## MGN Ltd v. UK (2011) European Court of Human Rights

### **Excessive litigation costs threaten media freedom**

Naomi Campbell successfully sued *The Mirror* for libel in the UK courts and was awarded £3,500 in damages (approx. \$7,000 at the time). However, the newspaper also had to pay her legal costs, including a ‘success fee’ uplift, which in total amounted to nearly £1.1 million (approx. \$2,000,000). The European Court found that such massive costs were disproportionate and capable of having a chilling effect on NGOs and publishers which might discourage them from publishing important stories, in breach of Article 10.

**Protection of journalist sources and judicial review**

The police in Amsterdam wanted to obtain photos taken by a journalist of an illegal car race for the purposes of a criminal investigation into another matter. When the editor refused, the police arrested him and threatened to close down the newspaper – without a court order. On 14 September 2010 the Grand Chamber of the European Court unanimously found a violation of the Convention, finding that media premises can only be searched when it is strictly necessary to do so in the investigation of a serious crime, and where the police have obtained a judicial warrant in advance. The ruling affects not only current practice in the Netherlands, but also other countries across Europe, whose legislation is not in conformity with the judgment.

**Limits on Government agencies suing to defend their reputation**

The applicant was the editor of a newspaper in Vladivostok who published an article discussing illegal practices in the sale of timber by the local council. Although he based the article on officials' statements, he was convicted of libel on the basis that he had not checked whether the allegations were true, and was required to pay a fine amounting to four months' wages. In 2009 the European Court found a violation of the right to freedom of expression (Article 10). The article concerned an issue of public concern and relied on statements by other officials. The Court cast doubt on whether a government agency could claim protection of institutional reputation. Some judges went further, arguing that "the reputation or rights of others" in Article 10(2) did not apply to government agencies.

**Journalist Imprisoned for Criticism of President**

In 1999, journalist Rafael Marques was imprisoned for publishing a news article critical of the Angolan president. After prolonged pretrial detention, he was convicted of defamation, ordered to pay a substantial fine, and prevented from traveling. The UN Human Rights Committee declared that Angola must provide an effective remedy to Marques for his arbitrary arrest and detention, and for violations of his rights to free expression and movement.

**Seminal judgment on public interest speech**

In 1999, Herrera Ulloa, a journalist with the daily *La Nación*, was convicted of criminal defamation for a series of articles published in 1995 that cited European press reports alleging corruption by a former Costa Rican diplomat. The local courts ordered the defendants to pay a criminal fine as well as damages of about \$150,000. The Justice Initiative submitted an *amicus* brief to the Inter-American Court arguing that the convictions violated the right of freedom of expression. In August 2004 the Court found a violation of the Convention, and held that public officials and others who enter the sphere of public discourse must tolerate a greater margin of openness to debate on matters of public interest.

**Who Killed Deyda Hydara?**

On 16 December 2004, Deyda Hydara was murdered in a drive-by shooting by a gunman on a motorbike who then left the scene. Mr. Hydara was the editor of *The Point* newspaper, well known for his criticism of the government and of President Jammeh. The police investigation into the murder was half-hearted, and a second investigation by the National Intelligence Agency failed to take the most basic steps required. No

one has been brought to justice for his murder, which is just one of a series of attacks on journalists that has bred a culture of complete impunity. The case is currently being considered by the Court.

Pauliukiene v. Lithuania

European Court of Human Rights

#### **A fundamental right to reputation?**

A newspaper published an article alleging a local politician had committed building violations. The politician sued for libel, but lost because the national Supreme Court found that the allegations were based on official reports and other legitimate sources. He complained to the European Court that the domestic courts had failed to protect his reputation and dignity, in breach of Article 8 of the Convention, which protects the “right to private and family life.” Some sections of the European Court have found that the right to privacy includes such a right to reputation. The Justice Initiative, in its third-party intervention, argued that any such right must be construed strictly, and Article 8 protection limited to particularly serious attacks on reputation: an approach which has been adopted by several other sections of the Court in cases including *Karako v. Hungary* and *Polanco Torres v. Spain*. The case is pending.

Freedom FM v. Cameroon

African Commission

#### **Denial of radio license**

Radio Freedom FM applied for a license to broadcast as an independent current affairs radio station in Douala, Cameroon in 2002. The government first ignored the application. It then shut Freedom FM down and brought criminal charges against its owner when the station announced a date for its first program. Broadcast licenses should be granted in a fair and transparent process that respects freedom of expression, yet Freedom FM is still off the air. The Cameroon Government agreed to settle the case and grant the radio an operating license back in early 2006, but later reneged on that promise. Freedom FM went back to the Commission, before which the case is currently pending.

Gîrleanu v. Romania

European Court of Human Rights

#### **Improper to Restrict Disclosure by Journalists**

A journalist was sanctioned by the national authorities for having possession of classified information, even though the information was no longer sensitive. The Justice Initiative filed a third party intervention arguing that the relevant law was too broadly drawn. The role of journalists and others who perform a public function is fundamental in a democratic society, such that restrictions on their disclosure of information – where in the public interest – should be examined with especially close scrutiny. Journalists may not be sanctioned for the disclosure of government information, save in exceptional circumstances. Nor can governments restrict possession of information by journalists. Even minor or threatened penalties can have a chilling effect on freedom of expression.

Colombia Draft ATI Law

Constitutional Court of Colombia

#### **Defining the Scope of Freedom of Information**

In 2012 the Colombian government proposed a new right to information law which would have excluded broad swathes of information from its scope, including all information related to defense and national security, public order and international relations. The Justice Initiative presented written comments on international and comparative law, suggesting that that the law as drafted was too narrow, as it restricted some information, it allowed for perpetual secrecy, and the provisions for consideration of the public interest and for judicial oversight were insufficient. The Constitutional Court of Colombia found that many aspects of the law were unconstitutional.

# National Security

*The Justice Initiative seeks to challenge human rights violations arising out of counter-terrorism and national security policies and practices.*

El-Masri v. Macedonia (2012)

European Court of Human Rights (GC)

## **Extraordinary Renditions: the Right to the Truth**

Macedonian agents seized Khaled El-Masri from a bus and held him without charge for 23 days, accusing him of being a member of Al-Qaida. They then drove him to Skopje airport and handed him to a CIA rendition team who flew El-Masri to Kabul as part of the U.S. “Extraordinary Rendition” program, where he was detained for four months. The Grand Chamber of the European Court of Human Rights found that his treatment amounted to torture, and that he had been effectively disappeared by the US and Macedonian authorities.

### **Facts**

On December 31, 2003, Khaled El-Masri was travelling from Germany to Macedonia by bus when he was seized by Macedonian agents. The agents held him without charge for 23 days, accusing him of being a member of Al-Qaida. He was interrogated repeatedly and his frequent requests to see a lawyer, translator, or German consular official, or to contact his wife, were denied.

On January 23, 2004, the agents handcuffed and blindfolded him and drove him to Skopje airport. He was removed from the vehicle, and led to a building where he he was beaten severely, his clothes were removed, and he was thrown to the floor. His hands were pulled back and a boot was placed on his back. He then felt a firm object being forced into his anus. His blindfold was briefly removed and he saw seven or eight men in balaclavas, who then put earmuffs and eye pads on him, blindfolded him, and hooded him. El-Masri was then marched to a waiting aircraft, thrown to the floor face down and secured to the sides of the aircraft. He was injected twice and rendered nearly unconscious.

The men dressed in black clothing and ski masks were members of a United States Central Intelligence Agency (CIA) “black renditions” team, who were operating under the U.S. “extraordinary rendition” program. Flight records show that on January 23, 2004, a Boeing 737 business jet, N313P, flew El-Masri from Macedonia via Baghdad to Afghanistan. The same plane has been identified as being involved in other rendition flights.

In Afghanistan, El-Masri was detained in conditions that were inhuman and degrading, and subjected to violent and prolonged interrogations, force-fed following a 27-day hunger strike, and denied medical treatment. He was never charged, brought before a judge, granted access to German government representatives, or allowed to communicate with his family or anyone else.

On May 28, 2004, El-Masri’s passport and belongings were returned to him and he was flown on board a CIA-chartered aircraft to a military airbase in Albania. On arrival he was driven for several hours and then let out and told not to look back. Almost immediately he was arrested by the Albanian authorities and put on a commercial flight to Frankfurt. When he arrived at his home in Germany, he learned that his wife and children had relocated to Lebanon, not having heard from him for more than four months.

Following a complaint from El-Masri, prosecutors in Munich opened an investigation into his allegations in June 2004, which confirmed his version of events. On January 31, 2007, the German Prosecutor filed indictments against thirteen CIA agents for their alleged involvement in the rendition.

In the United States, the American Civil Liberties Union (ACLU) sued the director of the CIA seeking compensation and declaratory relief for violations of El-Masri's rights. The US courts dismissed the complaint on the basis of the "state secrets privilege" on the ground that "the very subject of the litigation is itself a state secret." The U.S. Supreme Court declined to accept jurisdiction.

### **Finding**

In December 2012 the Grand Chamber found that there had been multiple violations of the European Convention. The Court found that the CIA rendition team had tortured Mr. El-Masri at Skopje airport through the infliction of "capture shock" techniques, and that Macedonia was also responsible. They also found that the solitary incarceration of Mr. El-Masri for 23 days at the Skopski Merak hotel for the purpose of extracting a confession amounted to "inhuman and degrading treatment in breach of Article 3".

The unlawful transfer of Mr. El-Masri to the US authorities amounted to extraordinary rendition, "an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture or cruel, inhuman or degrading treatment." Because they "actively facilitated his subsequent detention in Afghanistan," Macedonia was responsible for the entirety of his detention, both in Skopje and then in Afghanistan. His abduction and detention amounted to "enforced disappearance", even though temporary.

The Court concluded that the investigation was insufficient. The prosecutor had not interviewed Mr. El-Masri, or the staff at the Skopski Merak hotel, or sought out further information about the CIA plane, particularly the identity of the passenger that boarded at Skopje airport that night. The prosecutor relied exclusively on information provided by the Ministry of Interior, whose agents were suspected of having been the perpetrators. The decision not to investigate further fell short of what was required.

In its most extensive discussion of the issue to date, the Court referred to "the right to truth" in finding that Macedonia had failed adequately to investigate credible allegations of torture. In doing so, the Court underlined "the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened."

The Court rejected any attempt to rely on secrecy to evade redress in this and related cases, noting: "an adequate response by the authorities in investigating allegations of serious human rights violations, as in the present case, may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts".

Due to the "extreme seriousness" of the violations of the Convention, the Court ordered that Macedonia pay Mr. El-Masri €60,000.

### **El Sharkawy v. Egypt African Commission on Human and Peoples' Rights Prolonged Detention without Charge**

Mohammed El Sharkawy was detained without charge or trial in Egypt pursuant to emergency legislation, for almost sixteen years. In the course of his detention he was brutally tortured. There have been about 16 court orders requiring his release, all of which were ignored by the government. His case has previously been highlighted by the UN Working Group on Arbitrary Detention. Although he was released in March 2011, following the fall of former President Hosni Mubarak, the Egyptian government has refused to acknowledge the violations suffered by Mr. El Sharkawy or provide him with any remedy. The Justice Initiative and the Egyptian Initiative for Personal Rights filed an application with the African Commission on Human and Peoples' Rights, where the case is currently pending.



**Complicity in Rendition, Detention and Torture at CIA Black-site Prison**

In 2002 and 2003, Poland hosted a secret CIA prison at a military intelligence training base in Stare Kiejkuty where Abd al-Rahim Husseyn Muhammad al-Nashiri was held incommunicado and tortured. Al-Nashiri continues to be held at Guantanamo Bay, where he now faces the prospect of an unfair trial by a military commission and potentially the death penalty. A Council of Europe report, by rapporteur Senator Dick Marty, confirmed that the Polish government was “knowingly complicit” in CIA rendition operations on Polish soil, entered into a secret agreement with the CIA to enable rendition operations, provided extraordinary levels of security cover for CIA rendition operations on its territory, and actively assisted the CIA in secretly transporting rendition victims like al-Nashiri in and out of the country.

The Justice Initiative is acting as counsel on behalf of al-Nashiri in proceedings before the European Court against Poland. The application argues that Poland violated the European Convention by enabling his torture, ill-treatment, and incommunicado detention on Polish territory, and violated the prohibition against the death penalty by assisting in his transfer from Poland despite a real risk that he would be subjected to capital punishment, and the real risk of both ill-treatment in Guantanamo Bay and a flagrantly unfair trial before a military commission. The case was communicated to the Polish government in 2012 and is listed for hearing in December 2013.

**Secret Detention and ill-treatment at CIA “Bright Light” facility**

Sometime between 6 June 2003 and 6 September 2006, Romania hosted a secret CIA prison code-named “Bright Light” in the basement of a government building in Bucharest where Abd al-Rahim Husseyn Muhammad al-Nashiri was held incommunicado and ill-treated before being rendered out of the country. Al-Nashiri continues to be held at Guantánamo Bay, where he now faces the prospect of an unfair trial by a military commission and if convicted, the death penalty. The Justice Initiative is acting as counsel to al-Nashiri, arguing that Romania enabled his ill-treatment and incommunicado detention, transferred him to the USA despite the real risk of ill-treatment and the death penalty, and that the authorities have failed to carry out an effective investigation. The case was communicated to the Romanian government in 2012.

**Demanding the Truth about Secret Detention Flights in Lithuania**

The Spanish Criminal Procedure Code allows the authorities to detain suspect *incommunicado* – without access to an independent lawyer or a doctor or their choice, and without contact with their families or even notification that they have been arrested – for up to five days before being brought before a judge. The applicants were arrested on suspicion of terrorist offenses and allege that they were tortured while being held *incommunicado*. The Justice Initiative argued in a third party intervention that the positive obligation to prevent torture means that the authorities must introduce safeguards to prevent it, including access to effective legal representation, access to an independence doctor, and the ability to communicate with the outside world. The absolute prohibition against torture means that these safeguards cannot be watered down.



# Statelessness

*The Justice Initiative is pursuing legal challenges to statelessness in Africa, Europe, and the Americas.*

Yean & Bosico v. Dominican Republic (2005)

Inter-American Court

## **Racial Discrimination in Access to Nationality**

Two girls born in the Dominican Republic to Dominican mothers applied for copies of their birth certificates. Local officials refused their request, as part of a deliberate policy to deny documents such as birth certificates to Dominicans of Haitian descent, refusing them recognition of their nationality. As a result of the denial, the girls could not go to school and faced other serious problems. The Inter-American Court of Human Rights found that this was racial discrimination.

### **Facts**

In 1997, the mothers of Dilcia Yean, then aged 10 months, and Violeta Bosico, then aged 12 years, went to the civil registry to ask for copies of their daughters' birth certificates. Both mothers had been born in the Dominican Republic and had documents proving their Dominican nationality. Both daughters were also born in the Dominican Republic. However, because they were of Haitian descent, the civil registry refused to give them copies of their birth certificates, and insisted that they produce a list of documents that were impossible to obtain.

This decision followed a long history of discrimination against Dominicans of Haitian descent. While the constitution of the Dominican Republic grants nationality to anyone born in the country under the principle of *jus solis*, it does not apply to those born "in transit." The government retrospectively decided to interpret this provision to mean that Haitian migrants, their children and grandchildren should be considered permanently "in transit" and therefore no longer eligible to be citizens, thus taking away the citizenship of thousands, and denying it to the two girls.

In a legal case taken to the Inter-American Commission by the Centre for Justice and International Law (CEJIL), the International Human Rights Law Clinic at the University of California, Berkeley, and the Movimiento de Mujeres Dominico-Haitianas (MUDHA), the mothers argued that their children were born on Dominican territory and should have been entitled to citizenship under the constitutionally-enshrined principle of *jus solis*, whereby citizenship is determined by place of birth, rather than by descent. Because they were refused permission to register their births, the girls were unable to obtain recognition of their legal personality, and could not enroll in school because they had no identity documents. As undocumented persons they were vulnerable to arbitrary expulsion from the country.

### **Finding**

The Inter-American Court of Human Rights issued a landmark decision in October 2005, affirming the right to nationality as the prerequisite to the equal enjoyment of all rights as civic members of a state.

The Court held that the principle of *jus soli* was enshrined in the constitution and could not be further restricted. The interpretation of the law that defined individuals born "in transit" so as to include all undocumented migrants was too broad. The burden of producing so many documents in order to claim nationality meant that it was granted in a discriminatory fashion.

The Court held that racial discrimination in access to nationality breaches the American Convention of Human Rights and concluded that the discriminatory application of nationality and birth registration laws rendered children of Haitian-descent stateless. This violated the recognition of their juridical personality, and was an affront to their dignity. They were unable to access other critical rights to education, to a lawfully registered name, and to equal protection before the law. The expulsion of Violeta Bosico from school violated her right to special protection as a child.

Kuric v. Slovenia (2012)

European Court of Human Rights (GC)

### **Government Erases Citizens from Records**

When Yugoslavia broke apart in 1991, residents of the newly constituted Slovenia were given six months to apply for citizenship of the new country. By February 1992, the government had “erased” the names of more than 18,000 former Yugoslavian citizens from its civil register, arguing that they had missed the deadline for applying for Slovenian nationality and making them stateless. The Justice Initiative filed a third party brief in the case before the Strasbourg Court.

In June 2012 the Grand Chamber of the European Court of Human Rights found that the severe impact of the erasure violated the private life of those affected, and that there had been unlawful discrimination against them on account of their nationality. The erasure had had a serious impact upon the private life of the applicants, including through the destruction of identity documents, loss of job opportunities, loss of health insurance, the impossibility of renewing identity documents or driving licences, and difficulties in regulating pension rights. The legal vacuum in the independence legislation deprived the applicants of their legal status, leaving many stateless and making it impossible to maintain meaningful family and community ties. The Court considered that there had been a difference in treatment based on the national origin of the persons concerned, and that Slovenia had therefore subjected the applicants to discrimination on grounds of nationality.

Nubian Minors v. Kenya (2011)

African Committee

### **Nubian Children Denied a Future**

The fact that Kenyan Nubians have historically been regarded as “aliens” and still have a tenuous citizenship status, preventing them from enjoying many of their rights, particularly affects Nubian children. They are not registered as Kenyans at birth, and they grow up with few life prospects, uncertain as to whether they will be recognized as citizens. Most Nubians live in enclaves of poverty, with no public utilities and limited access to education and healthcare. In March 2011, the African Committee of Experts on the Rights and Welfare of the Child issued its first decision on an individual communication, and found that such discrimination leading to statelessness violates African human rights standards.

Al-Jedda v Secretary of State (2013)

UK Supreme Court

### **Resisting Attempts to Undermine Protection for the Stateless**

The British Government is taking away British citizenship on [an unprecedented scale](#). Even people born in the UK can be stripped of citizenship. International law, incorporated into UK law, prevents governments from depriving them of their citizenship if to do so would leave them stateless, save in limited circumstances. The UK government stripped Al-Jedda of his citizenship, and argued that because he had the right to re-apply for Iraqi citizenship, he was not stateless. The UK Supreme Court disagreed, affirming the guidance of the UNHCR that when deciding whether someone is stateless, only the situation at that moment in time is relevant. The Justice Initiative intervened as *amicus curiae*, setting out the relevant international standards.

Nubian Community v. Kenya

African Commission

**Condemned to a Second Class Status**

Forcibly relocated to Kenya by the British Colonial Administration more than 100 years ago, Kenyan Nubians are still viewed as foreigners today, despite having lived in the territory for more than a century. In order to obtain a national identity card – the main proof of Kenyan citizenship – they must undergo a discriminatory and burdensome vetting process. This lack of effective access to citizenship has left many Kenyan Nubian stateless, condemned to a second class status and barred from enjoying the fundamental rights and freedoms. The Justice Initiative has brought a case before the African Commission on Human and Peoples’ Rights, which argues that this practice constitutes discrimination in access to nationality and arbitrary deprivation of nationality, and violates the prohibition on statelessness. The Nubians have also been denied property rights in their ancestral homeland of Kibera, and have suffered from a range of degrading treatment and other consequential violations.

Bueno v. Dominican Republic

Inter-American Commission

**Denial of Citizenship to Dominicans of Haitian Descent**

In order to obtain a visa to join his wife in the United States, Emildo Bueno needed to present a certified copy of his birth certificate to U.S. immigration authorities to prove his identity and establish his Dominican nationality. Although he had been previously recognized as a Dominican national, his request was denied on the basis that a 2004 migration law made him retroactively ineligible for Dominican citizenship because his parents were Haitian migrants. The denial of his birth certificate and the retroactive repudiation of his citizenship left Bueno stateless, massively disrupting his life and that of his family.

H.P. v. Denmark

European Court of Human Rights

**Torture Victim left Stateless**

A victim of torture in his native Iran, HP was granted refugee status in Denmark in 1989. After 20 years of permanent residency in the country, he has been denied Danish citizenship due to his inability to pass a language qualifying test – an inability directly tied to chronic psychiatric conditions resulting from his torture. The continued denial of citizenship has had a profound effect on HP. As a refugee he no longer has a connection to his country of birth, and may not travel there. The refusal to grant him citizenship has deprived him of the right to know who he is, to establish details of his legal identity, to form the political and legal bonds that connect him to Denmark, to acquire and exercise rights and obligations inherent to membership in a political community. The case remains pending before the European Court.

People v. Côte d’Ivoire

African Commission

**No Citizenship for Minorities**

In Côte d’Ivoire, “dioulas” – a blanket term that encompasses various ethnic groups from the north of the country who are predominantly Muslim – face extraordinary obstacles in exercising their right to nationality. They are victims of government policies that promote pure “Ivoirian” heritage as a prerequisite for citizenship. Even though many were born in the country, they are denied the official documents essential for everyday life. An unclear legal framework governing nationality has allowed widespread discriminatory practices in relation to access to identity documents, causing nearly 30% of the population to be considered “foreign” and therefore stateless.

IHRDA v. Mauritania

African Commission

**Mauritania Expels Thousands of Citizens**

In the late 1980s, the Mauritanian government initiated a policy of “Arabization” and expelled some 70,000 non-Arab citizens. Civil servants were arbitrarily arrested and deported, and villagers were driven into neighboring countries to live in camps as stateless refugees. In 2000 the African Commission on Human and Peoples' Rights found that their rights had been violated. For nine years, those expelled have sought the implementation of that decision. The Justice Initiative is working with local NGOs, UNHCR and the African Commission to ensure that their full citizenship rights are recognized.

Iсени v. Ministry of the Interior

Domestic Courts, Italy

### **Disabled Roma Youth Denied Citizenship**

Roberto Iseni, a disabled 25-year-old born in Italy of parents from the former Yugoslavia, is in danger of criminal sanctions and expulsion because he failed to apply for a passport within a 12-month window following his 18<sup>th</sup> birthday, as dictated by Italian law. Iseni, who is hearing and speech impaired and lives in a state home for the disabled, was never advised to apply for a passport. As a result, although Italy is the only country he has ever known, he now faces potential expulsion as an undocumented person. The Open Society Justice Initiative submitted a third party intervention which asked the Tribunal of Milan to grant Iseni Italian citizenship, restore his right to apply for citizenship, or officially declare him a stateless person with a right to eventually apply for citizenship.

Dabetic v. Italy

European Court of Human Rights

### **Excessive Delays in Determining Statelessness**

Velimir Dabetić, is a stateless person who has lived in Italy since 1989. For seven years he has struggled to regularize his status in Italy through prolonged status determination procedures that should take a matter of months. While waiting for the courts to decide, he is unable to conduct a normal life. Under emergency laws introduced in 2009, Mr. Dabetić is subject to criminal prosecution and punishment for his mere presence in Italy as an undocumented alien. He has been arrested on at least six occasions and subjected to countless identity checks. Multiple deportation orders have been issued against him, although they are unenforceable, as he is stateless. He cannot work or receive any benefit or service beyond emergency health care. His ability to form and maintain connections with family members, his community and wider society are severely impaired. The Justice Initiative has challenged this situation before the European Court of Human Rights, arguing that there is no reasonable justification for the inordinate delay in granting him the protection he is due, and that Italy's actions amount to a violation of his right to respect for private life (Article 8) as well as discriminatory treatment in comparison to asylum seekers (Article 14).

# Freedom of Information

*The Justice Initiative has helped obtain strong precedent-setting FOI judgments from the Inter-American and European Courts of Human Rights, and top national tribunals.*

Claude Reyes v. Chile (2006)

Inter-American Court of Human Rights

## **The Right to Know: A new fundamental right in international law**

In May 1998, members of the Terram Foundation, a Chilean environmental NGO, filed a request for information with the Chilean Foreign Investment Committee regarding a major logging undertaking, known as the Condor River project. Although the committee was required by law to vet and approve investors and gather relevant information, the requests were ignored and subsequent appeals by the victims were dismissed by the Chilean Supreme Court as “manifestly ill-founded.”

A petition was then filed with the Inter-American Commission of Human Rights, and in March 2005, Commission decided in favor of the applicants, recognizing a general right of access to government information under Article 13 of the American Convention, which includes the freedom to seek, receive, and impart information.

In July 2005, following Chile’s failure to comply with the Commission’s Article 50 report, the commission referred the case to the Inter-American Court.

The Justice Initiative, joined by four other groups, filed *amicus curiae* briefs in the case with both the Commission and the Court. Excerpts relating to Chile from *Transparency and Silence*, a Justice Initiative survey on governmental handling of information requests, were formally introduced as evidence.

In September 2006, the Court affirmed the Commission’s decision in a landmark ruling, becoming the first international tribunal to recognize a basic right of access to government information as an element of the right to freedom of expression.

The Court held that any restrictions on the right of access should comply with the requirements of Article 13.2 of the convention, the presumption being that all state-held information should be public, subject to limited exceptions. States are required to adopt a legal framework that gives effect to the right of access, and to reform secrecy laws and practices. The Court also ordered Chile to train public officials on the rules and standards that govern public access to information.

The case has also had an important impact within Chile, where the departing government of President Lagos repealed a significant number of secrecy regulations and his successor, President Michele Bachelet, was able to secure adopted of a full-fledged access to information law. It has also served as a model for subsequent cases on the right to information in a number of South American states.

Gudiel Álvarez v. Guatemala (Diario Militar) (2012) Inter-American Court

**Enforced Disappearances in Guatemala’s Civil War: The Right to Truth**

In 1999, a leaked Guatemalan government death squad diary revealed details about the last moments of 183 purported political opponents of the former military regime—their names, photos, alleged affiliations, and the facts of their executions. Nearly thirty years after their enforced disappearances and executions, there have been no prosecutions into their deaths and the military has denied family members, prosecutors, and Guatemalan society the truth about these human rights violations. Families of 27 victims of enforced disappearance, and one victim who was abducted and tortured as a child before being released, brought a case in the Inter-American Court of Human Rights to seek truth and justice. The Justice Initiative, with *La Asociación Pro-Derechos Humanos* (APRODEH) in Peru and *La Comisión Mexicana de Defensa y Promoción de los Derechos Humanos* (CMDPDH) in Mexico, filed a third party intervention in May 2012 on issues related to the right to truth, and access to information concerning human rights violations.

In November 2012 the Inter-American Court found that Guatemala responsible for the torture and disappearance of the suspected guerrillas, and that the family members of the victims had been subjected to inhuman treatment. The Court also found a violation of the Right to Truth grounded in the right to personal integrity of the families of the victims.

Gomes Lund v. Brazil (Araguaia) (2010) Inter-American Court

**Right to the Truth about disappearances by military**

In 1972, a small guerilla movement of students and workers emerged from the region of the Araguaia River in Brazil, seeking to foment a popular uprising to overthrow the military dictatorship which had been in power since 1964. For the next two years, the Brazilian Army brutally suppressed the movement, arresting and torturing suspected guerrillas. More than 60 were disappeared, their fate still unknown. For nearly 30 years the families of the victims have tried to expose the truth about what happened to their relatives, but have been prevented from doing so by Amnesty laws. The families brought a case before the Inter-American Commission, which referred the case to the Court, and the Justice Initiative together with other NGOs filed an *amicus curiae* brief on the recognition and scope of the right to the truth.

On November 24, 2010, the Inter-American Court held that Brazil’s amnesty law is “incompatible with the American Convention and void of any legal effects.” This made Brazil the third country in the region to have its dictatorship-era amnesty law invalidated by the Court. The Court affirmed its earlier recognition of a right to the truth about gross human rights violations, which it derived from Articles 8 (duty to investigate grave violations) and 25 (judicial protection of rights) of the American Convention, and recognized for the first time that the right to the truth is also “connected to the right to seek and receive information enshrined in Article 13” of the Convention.

Janowiec v. Poland and Russia (2013) European Court (GC)

**The Right to Truth for the Katyn Massacre**

In 1940, Stalin ordered the murder of more than 21,000 POWs and other Poles detained after the Soviet invasion of Poland in what became known as the Katyn forest massacre. For years the Soviet Union claimed that the killings had been conducted by the Nazis. In 1990, Russia admitted that the Soviets had done it, and disclosed the order to conduct the killings. In 1990, the Russian authorities opened criminal investigations following criminal complaints from family members of the victims. However, these investigations were closed in 2004: the decision to do so has been classified. Victims of those killed in the massacre brought the case to the European Court of Human Rights, arguing that the renewed investigation came within the temporal jurisdiction of the Court, and had been ineffective. The Justice Initiative intervened before the Grand Chamber, arguing that there is an obligation to investigate international crimes



so long as it is practically possible to do so. The right to truth may outlive the duty to investigate, and requires effective access to the results of investigations and to archives. In October 2013 the Court gave judgment, finding that while Russia had failed to comply with its obligations, they had no jurisdiction for an event that occurred prior to the entry into force of the European Convention.

TASZ v. Hungary (2009)

European Court of Human Rights

**Right of access as element of watchdogs' free speech**

A Hungarian Member of Parliament filed a complaint with the Constitutional Court about Hungary's drug laws. The Hungarian Civil Liberties Union (known as TASZ in Hungarian) applied to the Court to receive a copy of the complaint, but was refused. TASZ complained to the European Court of Human Rights, and the Justice Initiative filed third party intervention setting out the right to information in European law and practice, and in other regional human rights systems, in particular referring to the decision in *Claude Reyes v. Chile*. The European Court held, in a major precedent, that this interfered with the right of a group to access information that was needed for them to play their role as a public watchdog. By refusing to grant access to information of clear public interest, state authorities created an unacceptable government monopoly on such information. The Justice Initiative had urged the Court, in a third-party brief, to recognize an Article 10 right of access to state-held information.

Casas Cordero v. National Customs (2007)

Constitutional Court of Chile

**Constitutional right of access recognized**

The businessman applicant requested information regarding the customs regulations applicable to, and relevant data provided by, its foreign competitors. The Customs department denied access, relying on a statutory provision protecting third-party commercial secrets. The case, brought after the *Claude Reyes* judgment, raised a question of whether the Chilean constitution guaranteed the right to know. The Justice Initiative filed an amicus brief. The Constitutional Court ruled that the right of access enjoyed constitutional protection, and that it was unconstitutional for authorities to deny access to third-party data at their own discretion.

Casas Chardon v. Transport Ministry (2009)

Constitutional Court of Peru

**Demanding the Right to Public Information**

The Press and Society Institute (IPYS) in Lima asked for access to the detailed assets declarations of the Minister of Transport and his deputy, but were refused on the basis of an executive decree that kept such data secret. The Justice Initiative submitted an *amicus curiae* brief which provided an overview of how countries in Latin America and around the world have reconciled the publication of assets declarations with privacy concerns and other competing interests. In 2009 the Constitutional Court over-ruled in part the decree and held that the publication of asset declarations "is one of the most effective mechanisms of corruption prevention." Disclosing information on the officials' property and assets already recorded in public registers does not raise privacy issues. Restrictions on privacy through publication serve the legitimate purpose of good governance, but it is not necessary for all details of asset declarations to be made public, given the personal safety implications. Therefore, information about publicly paid salaries and publicly registered assets should be published, but detailed data need not be disclosed.

Vargas Telles v. City of San Lorenzo (2013)

Supreme Court of Paraguay

**Access to official remuneration data**

The petitioner, a local transparency activist, requested information from his township regarding the functions and salaries of local officials, due to concerns about nepotism in hiring practices. The information was denied on personal privacy grounds. On appeal to the Supreme Court, Vargas Telles claims, in the first

case of its kind, that he has a constitutional right to government information. The Justice Initiative argued in an amicus brief, joined by several regional groups, that access to salary grades and the actual salaries of senior officials is generally public in democracies. In October 2013, the Court gave judgment, recognizing the right of access to information as a constitutional right.

Bubon v. Russia

European Court of Human Rights

**Access to crime statistics**

The applicant, a legal scholar, requested from a local police department statistics on the prosecution of sexual violence offenses. The police refused access, claiming that it was not legally required to provide the data to ordinary citizens. The applicant claims a violation of his Article 10 right to know. The Justice Initiative argued in a third-party brief that no special justification is required for the exercise of a basic right such as the right to know; and that detailed information on crime statistics is routinely released in democratic countries.

# Combating Torture

*The Justice Initiative litigates cases of torture and deaths in custody in Central Asia challenging widespread and often systematic abuse by the law enforcement and security services.*

Moidunov v. Kyrgyzstan (2011)

UN Human Rights Committee

## **Strangulation in Police Station**

In October 2004, Tashkenbai Moidunov and his wife were arguing on the street when police officers intervened and took them to the police station at Bazar-Kurgan. After she made a statement against her husband, Mrs. Moidunova was released. Shortly afterwards she was called back, and told that her husband had died of a heart attack. When his body was examined, a nurse found fingermarks around his neck. The police then claimed that he had hanged himself. There has never been a proper investigation into his death.

In January 2008, the Justice Initiative and Kyrgyz lawyer Tair Asanov filed a complaint to the UN Human Rights Committee. The complaint argued that Tashkenbaj Moidunov was arbitrarily deprived of his life by police officers while he was in custody, in breach of the right to life protected by Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR). It also showed that Moidunov was subjected to unlawful force by police officers while in custody, amounting to torture and/or ill-treatment in violation of Article 7 of the ICCPR. Finally, it argued that Kyrgyzstan had failed to conduct an impartial and effective investigation into Moidunov's death and, as a result, failed to prosecute and punish those responsible, and had also failed to award adequate compensation to the relatives of the victim for his death. These failures constituted further violations of Article 2(3) in conjunction with Article 6(1) and Article 7 of the ICCPR

## **Decision**

On July 19, 2011, the UN Human Rights Committee issued a decision finding that Moidunov had been killed in custody, and that Kyrgyzstan had violated the right to life. The Committee concluded that in the absence of arguments from the state rebutting the allegation that Moidunov had been killed in custody, the state was responsible for the arbitrary killing, contrary to Article 6(1) of the ICCPR. They also concluded that the evidence demonstrated that Moidunov had received injuries while in custody, substantiating the claim that he had been ill-treated before his death, contrary to Article 7 of the ICCPR.

The Committee found that the authorities had failed to investigate the allegations properly, and had therefore denied his mother a remedy, in violation of her rights under Article 2(3) taken with Articles 6(1) and 7. The committee noted that the investigative order stated that Moidunov had killed himself, thus preventing the investigation of the allegation that he had been killed. The authorities failed to get a detailed description of the crime scene, did not carry out a reconstruction, did not establish the exact sequence of events, did not request medical records, did not carry out a scientific examination of the sport trousers, and did not find out what happened to the cash that he had on him.

The Committee concluded that Kyrgyzstan was under an obligation to provide a remedy which should include an impartial, effective, and thorough investigation into the circumstances of the author's son's death, prosecution of those responsible, and full reparation including appropriate compensation. The Committee also stated that Kyrgyzstan is under an obligation to prevent similar violations in the future.

**Police Beating to Force Confession**

Alexander Gerasimov went to the police station in March 2007 in order to ask about his son who had been arrested. He was then interrogated and beaten by police officers for 24 hours, before being released without charge. As a result of the abuse he suffered in detention, he had to be treated in hospital for 13 days and was diagnosed with PTSD. Despite this, local authorities claimed that his injuries were not sufficiently serious for them to investigate the case any further. The Justice Initiative brought a complaint before the UN Committee against Torture. However, instead of addressing the grievance or conducting an impartial investigation of the officers who tortured Gerasimov, the government of Kazakhstan has sought to intimidate him into dropping his complaint to the United Nations. The case is currently pending.

In May 2012 the Committee against Torture found Kazakhstan responsible for several violations of UNCAT. The treatment of Mr. Gerasimov was of sufficient severity to amount to torture, and was done for the purpose of eliciting a confession. The police also failed to register Mr. Gerasimov's detention, to provide him with a lawyer and with access to an independent medical examination. The investigation was not independent or prompt, and relied heavily on the evidence of the officers accused. The pressure and intimidation against Mr. Gerasimov amounted to a violation of the right of petition. The Committee urged Kazakhstan to conduct a proper, impartial and effective investigation in order to bring to justice those responsible for mistreatment of Mr. Gerasimov, to take effective measures to ensure that he and his family are protected from any forms of threats and intimidation, to provide him with full and adequate reparation for the suffering inflicted, including compensation and rehabilitation, and to prevent similar violations in the future.

## Askarov v. Kyrgyzstan

## UN Human Rights Committee

**Torture of Prisoner of Conscience**

Human rights defender Azimzhan Askarov, an ethnic Uzbek, was detained on June 15, 2010 in Bazar-Korgon, southern Kyrgyzstan. He was tortured during the first days in detention, and was subsequently charged with provoking a crowd to kill a policeman during the ethnic violence in Kyrgyzstan in the summer of 2010. Throughout the pre-trial proceedings, the intimidation continued, and his lawyer was prevented from meeting with Askarov and repeatedly attacked. The trial started in September 2010 and has been roundly condemned as a show trial, and included physical attacks on his family and his lawyers. Askarov was sentenced to life imprisonment, and is recognized as a prisoner of conscience by Amnesty International. The Justice Initiative is preparing a communication to the UN Human Rights Committee regarding his detention, torture, and lack of a fair trial.

## Ernazarov v. Kyrgyzstan

## UN Human Rights Committee

**No Proper Investigation into Police Cell Death**

Rahmonberdi Ernazarov was arrested in November 2005 and charged with a sexual offence. Despite the nature of the allegations he was detained in a police cell with a number of other men, who subjected him to constant abuse and degrading treatment. He said that he feared for his life, and the police were aware of this abuse, telling his sisters that he was "better off dead". Sixteen days later he was found dead in the cell. The government failed to conduct an effective investigation into his death, and instead claims that he cut his own throat, however an independent analysis of the autopsy cast doubt on this. The Justice Initiative submitted a communication to the UN Human Rights Committee arguing that the Government was responsible for Ernazarov's death because it had failed to protect the life of a vulnerable prisoner, and had failed to independently investigate and provide an adequate explanation for his death in police detention. The case is currently pending before the Committee.

**Police Beating Leads to Death**

In May 2005, Turdubek Akmatov was arrested by police on suspicion of theft and taken to Myrza-Aki Police Station. Twelve hours later he was returned by police to his parents' house in a critical condition, and barely able to walk. He told his family that the police had beaten him, and a few hours later died. An autopsy revealed multiple injuries to his head and his internal organs, and that he died from cerebral bleeding. No proper investigation has been carried out into his death.

**No investigation for death in police cell**

Bektemir Akunov was arrested by police in Naryn on administrative charges for drinking in public late in the evening after he participated in anti-government protest in April 2007. He was the only detainee kept overnight. Multiple witnesses saw the police beating him outside of the station that night – they claim that he had tried to escape, but continues to kick him even when he was handcuffed. The next morning he was found dead in his cell. The police claim he hung himself with his shirt. An autopsy revealed multiple bruises to his body. There has been no investigation into his death.

**Unfair Trial Silences Human Rights Defender**

On September 3, 2009, after a rushed and unfair trial, prominent Kazakh human rights defender Evgeniy Zhovtis was sentenced to four years imprisonment for a traffic accident that resulted in the death of a pedestrian. Zhovtis was prevented from mounting an adequate defense, and the investigation and trial that led to his conviction were marred by serious procedural flaws. The excessive prison term appears to be designed to stifle civil society activism as Kazakhstan assumed the chair of the Organization for Security and Cooperation in Europe (OSCE). The Zhovtis case highlights systemic flaws in Kazakhstan's judicial system and its vulnerability to political interference.

**Death in Custody of Human Rights Activist after Secret Trial**

Ogulsapar Muradova, a journalist and human rights activist, died in custody in Turkmenistan in September 2006. The Turkmen authorities had tortured her, before holding a secret trial that even her lawyer was barred from. The authorities have never investigated her death or provided redress, but instead persecuted her family members when they brought attention to her case. The actions of the authorities were designed to stop Muradova's journalism and human rights activism, to punish her for it, and to discourage others who might take up her work. The Open Society Justice Initiative filed a petition to the U.N. Human Rights Committee on behalf of Muradova's brother, Annadurdy Hadzhiyev.



# Corruption

*The Justice Initiative is developing cases to uncover and challenge the corruption connected to the exploitation of natural resources*

APDHE v. Equatorial Guinea

African Commission

## **Who Should Benefit from Africa's Oil?**

In Equatorial Guinea a small clique of ruling families reaps huge profits through corruption and monopoly control of the national petro-carbon industry, while leaving the ordinary people to live in poverty. This violates the right of the people to freely dispose of their natural wealth protected in the African Charter on Human and Peoples' Rights.

### **Facts**

Equatorial Guinea has a relatively small population of about 550,000. It has vast wealth from its natural gifts, above all its abundant hydrocarbon deposits, but also forestry, fishing, and undeveloped resources including titanium, iron ore, manganese, uranium, and alluvial gold. Unlike many of its neighbors, the country has also been spared the ravages of civil war and invasion.

Equatorial Guinea gained independence from Spain in 1968. Under its first President, Francisco Macias, the country's economy collapsed amid a torrent of bloody repression and incompetent economic management. One quarter or more of the country's population at the time fled or died in the terror.

The current President, Teodoro Obiang, seized power in a coup in 1979. Beginning in the early 1980s, President Obiang began to implement wholesale expropriations of rich agricultural farmland on Bioko Island, owned mostly by Spaniards but also in some cases by Equatoguineans. This was then distributed to members of his family and a small number of allied families, mostly from the president's Mongomo region, known as the Nguema/Mongomo group. This pattern of appropriation continued in other areas including timber and even urban residential neighborhoods, all of which was undertaken without independent judicial oversight or meaningful compensation to owners, in violation of individual and collective property rights protected by the African Charter on Human and Peoples' Rights.

When large deposits of exploitable petroleum and gas were discovered in Equatoguinean waters in the early 1990s, the ruling group used its previous acquisitions and political dominance to ensure itself control over the vast hydrocarbon resources, locking up for themselves the benefit of these new opportunities.

Despite this wealth, Equatorial Guinea remains at or near the bottom for every major development and governance indicator, far below countries whose per capita wealth should make them peers

### **Justice Initiative Involvement**

Together with the Spanish human rights organization *Asociación pro Derechos Humanos de España* (APDHE) and EG Justice, a U.S.-based rights organization, the Open Society Justice Initiative filed a complaint to the African Commission on Human and Peoples' Rights, arguing that this diversion of the oil wealth violates the African Charter on Human and Peoples' Rights.

- *Spoliation.* Article 21 of the African Charter grants the people of Equatorial Guinea the right to full and exclusive enjoyment of the country's wealth, for decades the Nguema/Mongomo group has held a de facto monopoly on virtually all of the people's natural resources and the resulting economic

opportunities. This spoliation is made possible through a system of corruption, control of the judiciary, and silencing of any dissent.

- *Corruption.* In order to accomplish these violations, the Nguema/Mongomo group has established and maintains a far-reaching system of corruption affecting every sphere of life within Equatorial Guinea.
- *Control of the Judiciary.* The government bolsters this system of corruption by control of the judiciary, using judges to implement and ratify the massive diversion of the people's wealth, violating the duty to guarantee the independence of the courts, and the closely related duty to ensure the right of every individual to have his cause heard. The legal system in Equatorial Guinea is entirely subordinate to the will of the president and is regularly used to justify and directly enforce land expropriations.
- *Prohibition of Dissent.* Protest and dissent are ruthlessly suppressed, and routine tools of governance include ignorance, censorship, fear, indefinite detention, kidnapping, torture, and extrajudicial execution.

APDHE v. Obiang Family

Domestic Courts, Spain

### **Tracking Down Africa's Oil Wealth**

The people of Equatorial Guinea live in poverty, despite vast oil revenues. In July 2004, a U.S. Senate report found that huge sums of money had passed through Riggs Bank in the United States from Equatorial Guinea. \$26 million was diverted by President Obiang from Riggs to an account in Spain of a shell company owned by him. It appears that a large portion of this money was then used to buy villas in Spain for members of his family. The Justice Initiative undertook investigations with APDHE which revealed close correlations in timing between at least five of these transfers and nine real estate purchases in Madrid, Gijon, and Las Palmas de Gran Canaria in the Canary Islands on behalf of the President, members of his family, and other close associates. A dossier has been submitted for criminal investigation.



# International Justice

*The Justice Initiative intervenes in cases to challenge impunity and where a question of international criminal law arises.*

Post-Election Violence in Kenya

High Court, Nairobi

## **The Duty to Investigate and Prosecute Crimes against Humanity**

Kenya's national elections on December 27, 2007 were marked by significant ethnic violence. Immediately following the announcement of election results on December 30, 2007, large areas of the country erupted into violence. Despite sustained domestic and international pressure for prosecution of the material and intellectual perpetrators of crimes allegedly committed by police and others during the post-election violence, the Government of Kenya has not carried out independent and effective investigations nor convicted any police officials of post-election violence crimes, and no-one has been prosecuted for sexual offences. The Justice Initiative has supported two legal claims challenging this state of impunity.

### **Facts**

The response of the police to the post-election violence was brutal, often indiscriminate, and frequently lethal. According to government reports, at least 1,100 people were killed during the post-election violence, of which at least 405 died as a direct result of police shootings. At least 962 additional victims were maimed but not killed when they were shot by the police.

In addition, women and children often were targeted for attack. Data from Nairobi Women's Hospital show that more than 600 women were treated within the first 72 hours of their attack. Eighty percent of the victims had been raped, approximately half of whom were children. Victim studies show widespread incidents of rape, gang rape, and forced pregnancy. The victims were sexually assaulted in their homes and while seeking refuge in informal camps in schools, police stations and other public sites. Many victims of sexual violence did not report the crimes committed against them because they feared that nothing would be done to assist them or that the police would protect state-actor perpetrators.

Four Kenyans face trial at the International Criminal Court (ICC) in the Hague for orchestrating crimes against humanity committed during the post-election violence.

### **CAVi and Others v. A-G of Kenya**

With the support of Citizens Against Violence, South Rift Human Rights and Advocacy Centre, and Kalenjin Youth Alliance, the families of police shooting victims and surviving victims claim that the failure to train police in lawful methods of conducting law enforcement operations, failures in the planning and preparation of police operations during the post-election violence, unlawful orders, and the failure to respond to allegations of unlawful conduct by the police caused the deaths and serious injuries of the victims.

The claimants further allege that the unlawful and fatal shootings by the police have not been investigated at all or that any investigations have not been genuine, independent, or effective.

The victims ask the Court to order the government to establish an internationalized, independent body for the investigation and prosecution of the crimes, which they contend amount to crimes against humanity.

## **COVAW and Others v. A-G of Kenya**

To date, the government has not conducted credible investigations, and no one has been prosecuted for sexual offenses committed during the post-election violence. In one study, nearly 40 percent of rape victims (over 200 victims) could identify their attacker, but even these victims had not been interviewed as part of a criminal investigation. While many of the perpetrators were non-state actors including members of organized gangs, some crimes were also committed by the police and other security forces.

Sexual and gender based violence during Kenya's 2007/2008 post-election violence and the failure to punish perpetrators and provide reparations to the victims violate numerous provisions of Kenyan and international law, including the right to life, the prohibition of torture, and the right to effective remedies.

## The Gaza Inquiry (2010)

## United Nations Inquiry

### **The Duty to Investigate and Prosecute War Crimes**

The Goldstone Report of the Fact-Finding Mission on the Gaza Conflict, published in September 2009, made a number of conclusions with regard to the independence and impartiality of the military investigations that were undertaken or underway by the Military Advocate General's Corps of the Israeli Defence Forces (IDF). The Justice Initiative prepared a memorandum analyzing the IDF response, and providing a comparative review of the legal standards in four comparative countries, concluding that the IDF investigative system was not prompt, effective, or independent. In September 2010 the UN Committee of Experts established in the context of follow-up to the report of the International Fact-Finding mission submitted their report UN Human Rights Council. Their report set out the relevant human rights standards, reviewed the process of military investigations, and highlighted a number of concerns as to their promptness, independence and impartiality. The report concluded that the actual operation of the military investigations systems was called into doubt by the dual role of the Military Advocate General to provide legal advice to the IDF on the planning of military operations, as well as to conduct any prosecutions, given that those responsible for planning might have been complicit in any human rights violations.

## Anyaele v. Taylor (2006)

## High Court, Nigeria

### **Challenge to Asylum for Indicted Head of State**

On May 13, 2004, Emmanuel Egbuna and David Anyaele, two survivors of wartime amputations at the hands of Charles Taylor-supported rebels in wartime Sierra Leone, initiated judicial review proceedings before Nigeria's Federal High Court in Abuja seeking the lifting of asylum granted to Taylor by Nigeria's President.

The applicants argued that as a person indicted for war crimes and crimes against humanity before an international court, Taylor was not eligible for asylum status, which provides him with immunity from suit. Taylor declined to enter appearance in or contest the suit; however, Nigeria's federal government filed a formal objection to the standing of the two amputees to initiate the case. The Open Society Justice Initiative was granted leave to intervene and filed arguments in the case. Ultimately, the Federal High Court declared the case moot after Charles Taylor was arrested and transferred to the Special Court for Sierra Leone on March 29, 2006.

## Prosecutor v. Nahimana (2007) International Criminal Tribunal for Rwanda

### **Incitement to commit Genocide**

In 2002 the founders of Rwanda's *Radio-Television Libre des Mille Collines (RTL)* were convicted by the International Criminal Tribunal for Rwanda (ICTR) of direct and public incitement to commit genocide on the basis of statements encouraging the killing. Parts of the judgment could be interpreted to provide cover for the suppression of legitimate dissent through overly broad restrictions on speech and incitement, and

some governments apparently seized upon the trial judgment to justify silencing independent media. The Justice Initiative submitted an amicus brief to the ICTR Appeals Chamber, in collaboration with African and international human rights and freedom of speech/expression groups, which urged the Appeals Chamber to clarify the applicable legal standard in three principal areas. In November 2007 the Appeals Chamber concluded that international jurisprudence on hate speech is not directly relevant in assessing whether a defendant committed the offense of inciting the commission of genocide.

Jean-Claude Duvalier

Domestic Courts, Haiti

### **Former Haitian Dictator Tries to Evade Domestic Prosecution**

In January 2011, former dictator Jean-Claude Duvalier returned to Haiti after 25 years in exile. His 15-year regime was characterized by widespread violations of human rights. He is currently under investigation for offenses including corruption, attempted murder and sequestration. Despite domestic and international calls to address the systematic violation of human rights committed during Duvalier's rule, his defense lawyers have publicly argued that he qualifies for immunity from prosecution, and that he cannot be tried for crimes against humanity in a Haitian court. The Justice Initiative filed an *amicus curiae* brief to the domestic authorities arguing that there are no impediments to his prosecution. In early 2013 Duvalier appeared before the *Cour d'Appel* in Port au Prince.



# National Criminal Justice

*More than 10 million people are held in pre-trial detention globally at any one time. The Justice Initiative seeks to challenge the excessive use of PTD and the violations that arise from it, as well as to promote the rights of suspects on arrest.*

Alade v. Nigeria (2012)

ECOWAS Community Court of Justice

## **Nearly a Decade in Pre-Trial Detention Violates the African Charter**

Police in Nigeria routinely charge suspects with a serious offense in order to have them detained, but make little or no effort to investigate or prosecute the case. As of October 2012, 38,352 persons or 71% of the prison population were detained awaiting uncertain trial. Regrettably, the percentage of pretrial detainees as a proportion of the prison population has been stable over the last two decades... In 2006, the Nigerian Prisons Service reported that the average period of pre-trial detention in Nigeria was nearly four years, with many held for longer..Sikuru Alade was held in pre-trial custody for more than nine years without being tried. The Community Court of Justice of the Economic Community of West African States (ECOWAS) found that this violated the prohibition of arbitrary detention in the African Charter on Human and Peoples' Rights.

### **Facts**

Sikuru Alade was arrested in March 2003. On May 15, 2003, he was brought before the Magistrates' Court in Yaba, Lagos State, on an allegation of armed robbery under the procedure known as the "holding charge," a process by which a suspect is brought before a magistrates' court that lacks jurisdiction over the offense for which the suspect has been detained. The magistrate ordered Alade to be remanded in custody. He was then held at the Kirikiri Maximum Security Prison in Apapa, Lagos, for more than nine years without being returned to court, or charged with a crime under any law before any court of competent jurisdiction.

Over 70 per cent of Nigeria's prison population consists of pretrial detainees, and nearly a quarter of them have been held for at least one year, reflecting both an overburdened justice system and structural problems between Nigeria's state and federal justice systems.

The Justice Initiative, together with co-counsel Mutiu Ganiyu, sought to review the use of the holding charge to justify indefinite pre-trial detention through a legal challenge brought on behalf of Alade to the Community Court of Justice of ECOWAS.

### **Findings**

In its judgment of June 11, 2012, the ECOWAS Court found that the prolonged detention of Alade was unlawful, and violated both the African Charter on Human and Peoples' Rights and the 2005 ECOWAS Protocol.

The Court concluded that "where deprivation of liberty continues for some time, the grounds that originally warranted detention may subsequently cease to exist. Here, "even though the original detention was by a competent court, the Magistrate court on a holding charge ... was not competent to try the allegation... and the holding charged ceased to be effective in law because of that influx of time". The Court further held that the purpose of the detention was relevant to whether or not the detention was unlawful, finding that "it is the position in law that the said process was not meant to keep the plaintiff perpetually in custody but to be tried by an appropriate court thereby making the process legal and competent". The Court concluded

that “No court would allow such prolonged detention to continue without abating same. For that reason, the said detention is hereby adjudged illegal and this Court holds that the plaintiff has satisfied the requirements of proof ...that his human right was violated.”

The Court concluded that damages should be awarded in order to “place the claimant in the position he/she would have been, had the friction complained of not taken place”. The Court ordered compensation of 300,000 Naira for each of the nine years that he had been detained, a total of 2,700,000 Naira (approximately \$17,000 USD).

The Court found that as the plaintiff “was entitled to the relief sought including that of his discharge/release from Kirikiri Maximum Security Prison forthwith, and this Court so orders. The applicant is hereby discharged from detention accordingly”.

On September 18, 2012, following the judgment of the ECOWAS Court, he was released following a review by the Chief Judge of Lagos.

Magnitsky v. Russia

European Court of Human Rights

### **Denial of Healthcare for whistleblower leads to his death in custody**

Sergei Magnitsky died after spending almost a year in pretrial detention and being denied essential medical care, in retaliation for exposing a \$230m fraud involving senior Interior Ministry officials. The Justice Initiative filed a complaint to the European Court of Human Rights on behalf of his mother, asking the Court to find that the Russian Federation violated six articles of the European Convention of Human Rights: Article 2 (denial of right to life); Article 3 (torture); Article 5 (unlawful detention); Article 10 (retaliation against whistle-blowers); and Article 13 (failure to provide an effective remedy). The application also seeks a finding that there must be an independent and impartial investigation into the death that is capable of bringing about the prosecution and punishment of all the relevant perpetrators.

Case No. K/19 (Lipowicz)

Constitutional Court of Poland

### **Denial of Right to a Lawyer for Petty Offences**

In Poland, people who are accused of petty offenses are denied their right to a lawyer until the investigation into their alleged offense has been completed. This denial of a fundamental fair trial right is being challenged in the Constitutional Court by the Polish Commissioner for Civil Rights. The Justice Initiative, with the assistance of the Polish Helsinki Committee, submitted an *amicus curiae* brief to the Polish Constitutional Court. The brief provides an expert opinion on recent developments within the European Court of Human Rights jurisprudence, as well as other guiding standards from the EU and international bodies.

Oszkár and Others

Miskolc Appeal Court, Hungary

### **Convictions based on admissions obtained without legal advice**

Nine Roma men in Miskolc, Hungary, were convicted of hate crimes for physically attacking a car containing far right extremists, following a notorious spate of attacks against Roma. The evidence relied on by the prosecution that the accused carried out the attack because of their hatred of “Hungarians” was a baseball bat with “death to Hungarians” carved into it and an admission obtained by one of the accused in an interview conducted without a lawyer. The accused alleged that he was physically assaulted in order to obtain the confession; he had numerous injuries shortly after the interview, sufficient for the prison to refuse to accept him as a detainee. The Justice Initiative has provided the Miskolc appeal court with a briefing on the relevant law of the European Court of Human Rights, which holds that no admission obtained without a lawyer present in interview should be used against the accused.

# Justice Initiative Expertise

*Litigators work on Justice Initiative cases from our offices in New York, Amsterdam, Bishkek, Budapest, Abuja, and London.*

## **Ben Batros**

Based in the New York office, Ben Batros serves as legal officer, litigation. Batros has experience in litigation in both international and domestic fora. Batros spent five years as appeals counsel at the International Criminal Court where he conducted appellate litigation and supported the work of prosecution trial teams, in particular on complex legal issues. Previously, Batros worked at the Australian Attorney-General's Department, focused on the development of regional criminal justice systems as part of Australia's partnerships in Asia and the Pacific as well as domestic criminal justice reform, and also practiced as a litigator in Australia at Jackson McDonald.

Batros received his Masters of Laws (LLM) at the University of Cambridge and his Bachelor of Laws (LLB) and Bachelor of Arts (BA) from the University of Western Australia in Perth.

## **Svetlana Bezinyan**

Svetlana Bezinyan serves as program coordinator, litigation, based in New York. Bezinyan received her bachelor of arts degree in political science at Columbia University. She spent several years working internationally as a paralegal with Cleary Gottlieb Steen & Hamilton LLP and spent a year and a half in Paris as a litigation paralegal with the international litigation and arbitration practice group. She has experience in non-profit work with The Starr Foundation, where she assisted program officers on site visits and reported on grant-receiving organizations and their programs.

## **Laura Bingham**

Laura Bingham serves as a legal officer specializing in discrimination and citizenship law. Bingham previously worked as a litigation associate at Debevoise & Plimpton, LLP, based in New York and as a law clerk to U.S. district court judges Hon. Lawrence F. Stengel (Eastern District of Pennsylvania) and Hon. Raymond J. Dearie (Chief Judge, Eastern District of New York). She received a JD from the University of California, Berkeley, School of Law, Order of the Coif. During law school, Bingham worked for the ICTR as a legal intern and spent a semester in Senegal researching the potential trial of former Chadian dictator Hissène Habré, for torture and crimes against humanity. Before law school, she completed a master's degree in human rights law at Central European University in Budapest, Hungary, made possible through a Rotary International Ambassadorial scholarship.

## **Alexandra Cherkasenko**

Alexandra Cherkasenko works as an associate legal officer based in Bishkek, with the Legal Remedies for Torture in Central Asia project. Cherkasenko received her LLM degree from Central European University, Budapest, and her bachelor's degree from American University of Central Asia (AUCA). Prior to joining the Justice Initiative she worked at AUCA's legal clinic, lectured at the AUCA law department and worked as a legal protection officer with the Danish Refugee Council.

## **Sandra Coliver**

Sandra Coliver is senior legal officer for the Freedom of Information and Expression Program of the Open Society Justice Initiative. Based in the New York office, she served as the director of the Center for Justice and Accountability, a San Francisco-based organization which works to deter torture and other severe human rights abuses by helping survivors hold persecutors legally accountable. For more than two decades, she has managed or participated in human rights and rule of law programs in Mongolia, Morocco,

Southeast Asia, Southern Africa, Rwanda, Russia, and parts of Europe, including three years during which she was based in Bosnia.

For several years, she directed the law program of Article 19, the Global Campaign for Free Expression. In that capacity she helped develop the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, wrote a commentary and edited a book of papers on that theme; wrote A19's first Handbook on FOE Best Law and Practice; edited a book on hate speech laws and practice in more than two dozen countries; and co-authored two other books on freedom of expression and information issues.

Coliver received her law degree from the University of California at Berkeley and her undergraduate degree from Yale. She clerked for the Ninth Circuit Court of Appeals, and worked as a public defender and a litigator in private practice in San Francisco. Before joining the Open Society Justice Initiative, she was a member of the Faculty of the Summer Program on International Human Rights and Humanitarian Law at American University Washington College of Law.

### **Simon Cox**

Simon Cox is the migration lawyer for the Open Society Justice Initiative. Based in London, Cox develops, implements and manages legal strategies and projects to promote the rights of international migrants worldwide. He works closely with the Open Society Foundations' International Migration Initiative.

Cox took up his post in October 2011. Before that, he was for fifteen years a self-employed barrister at the Bar of England and Wales, practicing from Doughty Street Chambers in London. He specialized in public law, particularly immigration, asylum, social welfare, European Union, human rights and discrimination law. Acting primarily for individual claimants, he appeared before United Kingdom and European Union courts and tribunals at all levels, including the UK Supreme Court and the Court of Justice of the European Union. He acted for many civil society organizations, including Amnesty International, the AIRE Centre, Joint Council for the Welfare of Immigrants, Refugee Legal Centre, Child Poverty Action Group and the British Union for the Abolition of Vivisection.

Cox is a member of the Tribunal Procedures Committee, which makes the procedure rules for the UK's First-tier and Upper Tribunals and he serves on their subcommittee for immigration & asylum. He is a director of the UK based Association of Lawyers for Animal Welfare. He remains a member of the Bar of England and Wales and is an Associate Tenant of Doughty Street Chambers

### **Maxim Ferschtman**

Maxim Ferschtman is senior legal advisor with principal responsibility for the project to combat contemporary forms of discrimination in Europe. Based in Amsterdam, Ferschtman comes to the Open Society Justice Initiative from Böhler Franken Koppe Wijngaarden Advocaten, a law firm based in the Netherlands concentrating in criminal law, immigration law and international law & human rights.

Ferschtman has brought a number of leading cases before the European Court of Human Rights, and has led training events in international human rights law for lawyers and members of the judiciaries of Central and Eastern Europe, Georgia, Armenia, Russia, and the Netherlands. Previously, he worked as a lawyer within the registry of the European Court of Human Rights and as a program officer at the Council of Europe for Human Rights Education and Democratic Citizenship.

Ferschtman graduated with master's degrees in International Law and Human Rights Law as well as Russian Studies from the University of Leiden in the Netherlands, where he subsequently lectured. He speaks Dutch, French, German, Russian, and English.

### **Liliana Gamboa**

Liliana Gamboa is the project coordinator for the Open Society Justice Initiative project on antidiscrimination in the Dominican Republic. Gamboa received her MA in international affairs from The



New School in New York City where she wrote her thesis, "*Transnational Motherhood: the experience of Dominican migrant women in New York.*" She received her undergraduate degree in linguistics from the Universidad de Playa Ancha, Chile.

### **Julia Harrington Reddy**

Julia Harrington Reddy is senior legal officer for equality and citizenship issues. After graduation from law school she was an Echoing Green fellow, working for two years as a legal officer at the African Commission on Human and Peoples' Rights in Banjul, The Gambia.

In 1997, Harrington Reddy cofounded and became executive director of the Institute for Human Rights and Development in Africa, also based in The Gambia, which became a leader in human rights litigation in the African regional system. She and the co-founder of the Institute, Alpha Fall, won Ashoka fellowships for the Institute's work. Harrington Reddy joined the Justice Initiative in 2003 and is based in the New York office.

### **Costanza Hermanin**

Costanza Hermanin is responsible for implementing litigation projects in Italy, devising advocacy strategies related to the work of the Justice Initiative in Europe, and advising on strategic litigation opportunities within the EU. Her advocacy aims to advance the work of the Open Society Foundations and operational programs on justice and equality, including anti-discrimination and statelessness. She joined the Open Society Foundations in January 2012 as program officer.

Hermanin's previous experience includes working for the French Ministry of Foreign Affairs, the European Commission's Secretariat General, the Centre d'Etudes Européennes of Sciences-Po Paris, and the World Bank. She completed a PhD on the enforcement of the EU's Racial Equality Directive in France, Germany and Italy at the European University Institute in Florence. In 2011, she was a Fulbright visiting scholar at the Law Schools of Columbia University and UC Berkeley, where she wrote on the public and private enforcement of racial anti-discrimination law.

### **Jonathan Horowitz**

Based in the New York office, Jonathan Horowitz is Associate Legal Officer for National Security and Counterterrorism. Prior to joining the Justice Initiative, Horowitz worked on detainee affairs at the U.S. Embassy in Kabul where he advised the embassy on its detention policy.

Previously, he was a grantee of the Open Society Foundations, documenting detainee and night-raid abuses in Afghanistan. This work included monitoring U.S. Detainee Review Boards, authoring public reports, and conducting advocacy with the media, Defense Department, and others. He also established an Afghan civil society working-group aimed at improving the rights of Afghan detainees.

As the Research Director at One World Research, he managed a team of investigators who documented human rights abuses in Pakistan, provided factual research for asylum lawyers, and was an investigator for habeas lawyers representing Afghans detained at Guantanamo Bay. He worked as a Sudan/Chad analyst at the International Criminal Court as a consultant for Human Rights Watch working on Darfur, Sudan, and as a U.N. human rights officer in Sudan from 2005 to 2007.

Horowitz obtained an LLM from the University of Essex in 2004.

### **Kenneth Hurwitz**

Kenneth Hurwitz is a senior legal officer working on anti-corruption issues. Based in the New York office, Hurwitz was previously a senior associate at Human Rights First (formerly, Lawyers Committee for Human Rights), where he worked to help ensure legal accountability for serious human rights violations in international and national fora, including support of the International Criminal Court and human rights litigations in U.S. courts. At Human Rights First, Hurwitz also worked on rights issues arising out of U.S.

anti-terrorism policies, focusing on the detention and treatment of alleged terrorists at Guantanamo Bay, in Iraq and Afghanistan, and within the United States, and on military commissions.

Hurwitz began his career as a corporate and commercial attorney at the New York law firm Proskauer Rose LLP, and later served as associate general counsel for a New York-based international banking and shipping group.

### **Stanley Ibe**

Stanley Ibe is an associate legal officer, based in the Abuja office. He previously held senior program position at Constitutional Rights Project where he coordinated a civil society coalition on the United Nations Universal Periodic Review of Nigeria and conducted an audit of prisons in Lagos State, Nigeria.

Prior to joining Constitutional Rights Project, Ibe was program officer at the Network of University Legal Aid Institutions with responsibility over five pilot university based law clinics in Nigeria. He has also provided program leadership in criminal justice reform and human rights at the Human Rights Law Service.

A Solicitor and Advocate of the Supreme Court of Nigeria, Ibe holds a Master of Laws (LLM) degree in Globalization and Human Rights from Maastricht University, The Netherlands. He is published in diverse subjects of criminal justice reform, international human rights, and international law. His premier co-publication, *Travesty of Justice: An Advocacy Manual against the Holding Charge*, is a veritable resource for the enforcement of the right to personal liberty in Nigeria.

### **Marion Isobel**

Marion Isobel is an associate legal officer specializing in legal aid and the rights of suspects on arrest. Before joining the Open Society Justice Initiative, she worked as an associate legal officer for the Extraordinary Chambers in the Courts of Cambodia, working within the office responsible for investigating crimes that took place during the Khmer Rouge regime.

Previously, Isobel lectured in public international law at the University of the South Pacific in Vanuatu, and worked as a senior legal reporter at Thomson Reuters in Australia.

Isobel holds master's and bachelor's degrees in law, specializing in international and criminal law, from the University of Queensland in Australia. She is admitted to practice law as a solicitor in the state of Victoria.

### **Steve Kostas**

Steve Kostas serves with the Open Society Justice Initiative as legal officer, litigation, based in the London office. Kostas previously worked at INTERIGHTS on counter-terrorism and national security cases. Prior to joining INTERIGHTS he worked as the senior legal officer in the appeals chamber and legal advisor to the President of the Special Court for Sierra Leone, as an associate legal officer to the President of the International Criminal Tribunal for the Former Yugoslavia, and as an IBA fellow in the appeals chamber of the International Criminal Tribunal for Rwanda. He has also worked as a litigation associate at Kirkland & Ellis LLP in Washington D.C. and for human rights NGOs in Delhi, Geneva, Chicago, and Washington, D.C. Kostas received a JD from the University of Chicago, and a PhD from Johns Hopkins University. He is a member of the New York bar.

### **Marc Krupanski**

Marc Krupanski serves as program officer for equality and citizenship. Previously, Krupanski worked for DCAF: A Centre for Security, Development and the Rule of Law in Geneva on security sector reform and governance. He also worked for the Center for Constitutional Rights in New York on criminal justice reform, immigration, and racial justice, amongst other areas. Krupanski has also been actively involved in diverse community organizing campaigns in the U.S. and has conducted field work and research in Mexico, Haiti, Cuba, and Dine' (Navajo) reservations.

## **Masha Lisitsyna**

Masha Lisitsyna is project manager for litigation against torture in Central Asia. Lisitsyna recently served as a Central Asia researcher at Human Rights Watch focusing on civil and political rights in Turkmenistan, the rights of Uzbek refugees, and the rights of migrant workers in Russia and Kazakhstan. She has researched and written reports on issues of discrimination in Russia, Uzbekistan, Tajikistan, and Kyrgyzstan.

Prior to her work at Human Rights Watch, Lisitsyna cofounded and served for more than ten years as the executive director of the Youth Human Rights Group, one of the main human rights NGOs in Kyrgyzstan. While at YHRG, she developed a human rights monitoring program focused on custodial institutions including orphanages, detention centers, and mental health institutions; conducted advocacy at the United Nations, the Organization for Security and Co-operation in Europe, and the European Union; and ran human rights trainings for lawyers, teachers, and NGO activists.

Lisitsyna is also the founder of the Independent Human Rights Group, an NGO specializing in legal protection of human rights, juvenile justice, and freedom of information. In 2005, she served as a member of Kyrgyzstan's Constitutional Council, the body convened to work on constitutional amendments. Lisitsyna holds a JD from Kyrgyz-Russian Academy of Education.

## **Emi MacLean**

Emi MacLean works as a legal officer focusing on freedom of information and expression internationally. MacLean worked previously as a staff attorney at the Center for Constitutional Rights (CCR) on issues related to Guantánamo and other forms of executive detention, including through litigation, legislative reform, and international advocacy. She also worked for Médecins Sans Frontières (MSF, or Doctors without Borders) as the deputy head of mission for MSF's HIV/AIDS care and treatment project in South Africa; and later as the U.S. director of the MSF Campaign for Access to Essential Medicines.

## **Chidi Odinkalu**

Chidi Odinkalu is senior legal officer, Africa. He is also a lecturer in laws at Harvard Law School, Cambridge, Massachusetts. Based in the Abuja office, Odinkalu is also a lawyer and advocate from Nigeria.

Prior to joining the staff of Open Society Justice Initiative, Odinkalu was senior legal officer responsible for Africa and Middle East at the International Centre for the Legal Protection of Human Rights in London, Human Rights Advisor to the United Nations Observer Mission in Sierra Leone, and Brandeis International Fellow at the Centre for Ethics, Justice and Public Life of the Brandeis University, Waltham, Massachusetts.

Odinkalu is widely published on diverse subjects of international law, international economic and human rights law, public policy, and political economy affecting African countries. He is frequently called upon to advise multilateral and bilateral institutions on Africa-related policy, including the United Nations Economic Commission for Africa, the African Union, the Economic Community of West African States, and the World Economic Forum.

## **Darian Pavli**

Darian Pavli is senior attorney working on freedom of information and freedom of expression cases. Based in the New York office, he has been involved, among other things, with impact litigation before international human rights mechanisms, and has played a leading role in efforts to establish the right of access to government information as a basic human right internationally.

Pavli works closely with human rights groups in Africa, Eastern Europe, Latin America, and elsewhere to address a broad range of freedom of expression and information deficits, and writes and speaks extensively on these issues. Prior to joining the Open Society Justice Initiative, Pavli was the Southern Balkans

researcher for Human Rights Watch and a senior attorney for the Organization for Security and Co-operation in Europe's Mission in Albania. He taught constitutional law in his native Albania, and holds advanced law degrees from NYU Law School and Central European University. Pavli is a founder and steering committee member of the International Media Lawyers' Association.

### **Erica Razook**

Erica Razook is associate legal officer for anticorruption with the Open Society Justice Initiative. Based in the New York office, Razook previously spent four years in Amnesty International's Business and Human Rights program and as Economic Relations Policy Director where she developed corporate accountability strategies and represented Amnesty before national and inter-national bodies, civil society, and the media.

Previously, Razook was a consultant with Arthur Andersen, where she conducted compliance reviews of anti money-laundering and anti-terrorism regulation within the financial services industry. She received her Juris Doctor from Brooklyn Law School and her Bachelor of Science in Finance and Information Systems from New York University.

### **Cristina de la Serna**

Cristina de la Serna is a Resident Fellow in Spain and works to: challenge ethnic profiling by police officers while carrying out immigration enforcement activities; generate public awareness on the negative impacts of ethnic profiling; and promote the introduction of good practices among the different police forces in Spain. Prior to joining the Justice Initiative, she worked with the Spanish Society for International Human Rights Law and collaborated with the Spanish section of Amnesty International on issues related to discrimination and migrant's rights. Before that, de la Serna worked for three years as a criminal law practicing attorney in *Uría Menéndez*, a leading Spanish law firm. She is a member of the Madrid Bar Association and holds two bachelor's degree—in Law and in Political Science and Public Administration—from the *Universidad Autónoma de Madrid* and an LLM in International Protection of Human Rights from the *Universidad de Alcalá de Henares*.

### **Amrit Singh**

Amrit Singh works as senior legal officer for national security and counterterrorism. Previously, she served as a staff attorney at the ACLU Immigrants' Rights Project. She was counsel, among other cases, in *ACLU v. Dep't of Defense*, which resulted in the public disclosure of thousands of documents concerning the abuse of prisoners held by the U.S. overseas. She is co-author (with Jameel Jaffer) of *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia University Press, 2007).

Prior to joining the ACLU, Singh served as a law clerk to the Hon. Miriam Goldman Cedarbaum, U.S. District Court for the Southern District of New York. Before embarking on her legal career, she was an economist at the International Monetary Fund in Washington, D.C. She is a graduate of Cambridge University, Oxford University, and the Yale Law School.

# Litigation Support

*Justice Initiative lawyers are assisted in their work by pro bono assistance, seconded litigation associates, and through legal clinics.*

## Pro Bono

The Justice Initiative is assisted in many cases through *pro bono* support from law firms around the world. This help allows us to intervene in many more cases than would otherwise be possible. Law firms have given their time to support and maximize the impact of the Justice Initiative's work in a range of ways. With the Justice Initiative engaging in litigation, firms have provided support by taking witness statements, conducting local, comparative and international legal research, advising on questions of procedure, preparing legal arguments, and drafting briefs for filing in court. Firms also provide broader support to the Justice Initiative's activities by monitoring developments to identify potential cases, preparing summaries or surveys of emerging areas of law, and conducting research in support of reports and policy briefs.

## Litigation Associates

The Justice Initiative benefits from the contribution of recent law school graduates who are funded to work for six months to one year on public interest or human rights issues by a university fellowships or the future law firm employers. These Litigation Associates work as integral members of the Justice Initiative team, conducting research, formulating proposals for future projects and litigation, developing legal arguments, and drafting and editing briefs. Each Associate will usually work with staff members on cases relating to two or three areas of the Justice Initiative's work, and may also take primary responsibility for one case or project.

## Litigation Clinics

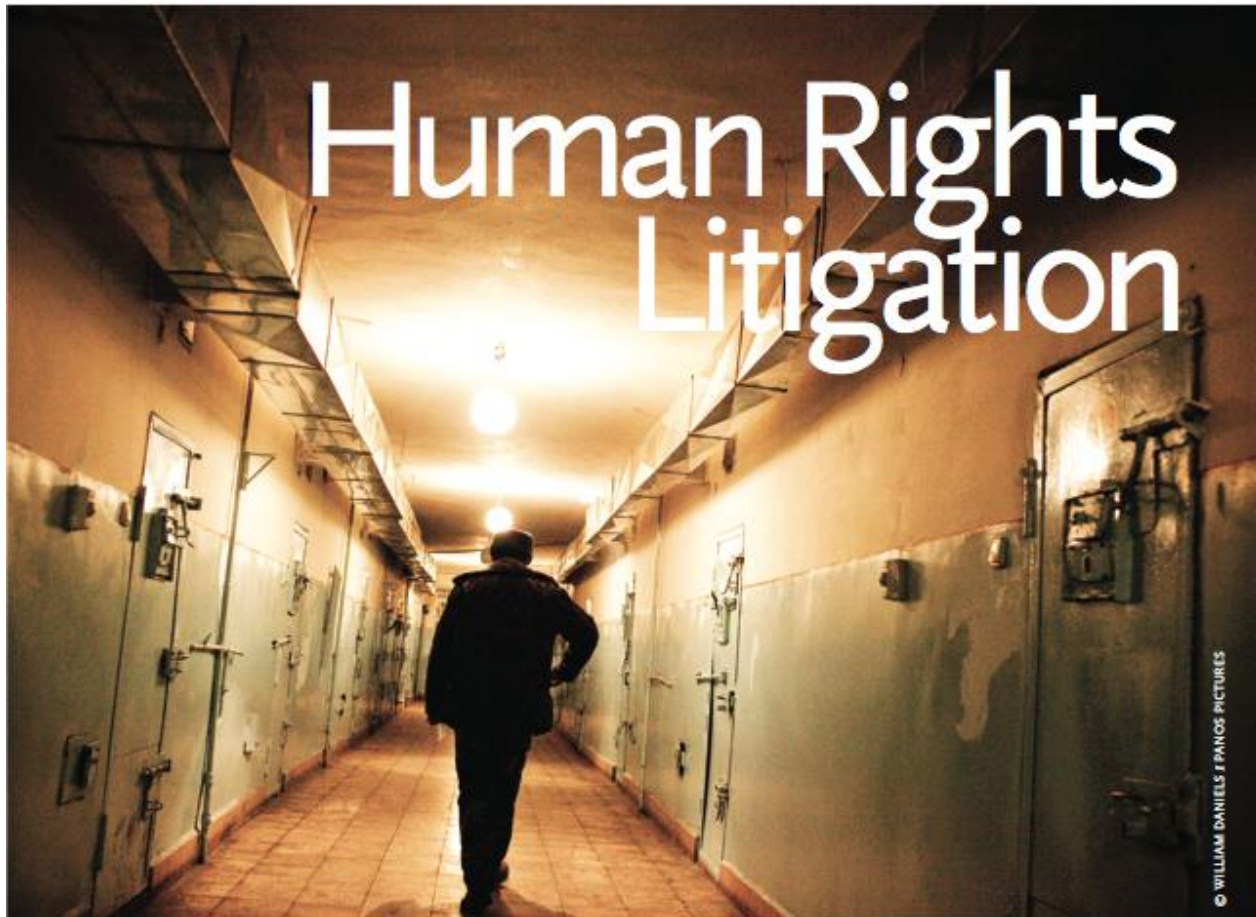
In addition, the Justice Initiative promotes the development of clinical legal education in universities and also works with law clinics to help prepare cases for litigation. This interaction provides a unique opportunity for law students to work on real cases. Clinics have assisted the Justice Initiative with legal and factual research: summarizing cases, providing updates on recent developments in an area of law, researching patterns of violations and identifying opportunities for litigation, and proposing legal arguments. Clinics have also assisted with the drafting of legal arguments, submitting *amicus curiae* briefs, and undertaking missions to countries in order to speak to witnesses and gather evidence. Justice Initiative staff work with students in order to explain the relevant legal standards and procedures and to develop the project.

## CEU Summer School

The Justice Initiative offers a one-week course on "Strategic Human Rights Litigation" as part of the Summer University Program offered by Central European University. The course was first delivered in 2011, and will be repeated in 2013. The course offers training and workshops for human rights lawyers in order to encourage cross-regional information sharing that will develop new ideas and perspectives.

The course develops skills and thinking in the field of public interest litigation, examining the way in which the impact of such legal action can be maximized to bring about policy change. By bringing together faculty from different legal backgrounds and participants working in different regions and fields, the course will generate new thinking and ideas which can be developed by the Justice Initiative in subsequent work. The syllabus assists participants to develop their knowledge and refine their skills, and encourages innovation in their work.

# Human Rights Litigation



© WILLIAM DANIELS / PANOS PICTURES

**HUMAN RIGHTS LITIGATION** is one of the methods by which civil society organizations can bring about social change. Our summer course for human rights professionals will develop the skills and knowledge needed to successfully bring cases to the regional human rights systems and the UN treaty bodies, and to use those cases to achieve practical change. The course invites applications from human rights litigators and activists with three years of work experience, who are seeking to enforce the rights of the individual against the state.

Application deadline: **15 February 2013**

Course dates: **15-19 July 2013**

Course website: [www.summer.ceu.hu/litigation-2013](http://www.summer.ceu.hu/litigation-2013)

HELD BY THE OPEN SOCIETY JUSTICE INITIATIVE AND THE CEU SUMMER UNIVERSITY



**E-mail: [info@justiceinitiative.org](mailto:info@justiceinitiative.org)  
[www.justiceinitiative.org](http://www.justiceinitiative.org)**



---

#### **Open Society Justice Initiative**

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

The Justice Initiative is governed by a Board composed of the following members: Chaloka Beyani, Maja Daruwala, Yonko Grozev, Asma Jahangir, Anthony Lester QC, Jenny S. Martinez, Juan E. Méndez, Herman Schwartz, Christopher Stone, and L. Muthoni Wanyeki.

The staff includes James A. Goldston, executive director; Robert O. Varenik, program director; Zaza Namoradze, Budapest office director; Kelly Askin, senior legal officer, international justice; David Berry, senior officer, communications; Sandra Coliver, senior legal officer, freedom of information and expression; Indira Goris, director of administration; Tracey Gurd, senior advocacy officer; Julia Harrington Reddy, senior legal officer, equality and citizenship; Ken Hurwitz, senior legal officer, anticorruption; Chidi Odinkalu, senior legal officer, Africa; Martin Schönreich, senior legal officer, national criminal justice; Amrit Singh, senior legal officer, national security and counterterrorism; and Rupert Skilbeck, litigation director.

[www.justiceinitiative.org](http://www.justiceinitiative.org)

#### **Open Society Foundations**

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 70 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

[www.opensocietyfoundations.org](http://www.opensocietyfoundations.org)