**Pretrial Justice Portfolio Review Summary and Outcomes**

**New York, August 11, 2014**

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***Introduction and background***

Following the welcome, the group agreed that the portfolio review would reflect on the present portfolio of Justice Initiative (JI) pretrial justice projects through the evolution of its past work on pretrial justice, and draw lessons from JI’s prior efforts on pretrial justice norm adoption and implementation.

Martin Schönteich (MS) introduced the discussion with a historical reflection on JI’s criminal justice work. In 2007/08, JI focused its national criminal justice reform activities on reframing efforts on the problems of *pretrial justice* – defined as excesses of pretrial detention and the lack of legal assistance to detainees in the earliest stages after arrest, which led to the development of a Global Campaign for Pretrial Justice in 2009. The objective was to catalyze a field of reformers, implementers, governmental policy makers, and donors to focus on pretrial justice in a sustained manner.

Relative to JI’s prior engagement – which was largely country-based and attentive to national impact – its new thematically focused approach was *deeper* in using a wider array of tools, including more systematic production and dissemination of knowledge; *broader* in engaging associated and complementary fields; and more *sustaining* in helping to build a legacy on which others can build to sustain a field of pretrial justice reformers, implementers, and activists.

JI’s focus on pretrial justice was grounded in specific factors, including: (i) empirical evidence that pretrial justice is crucial if broader criminal justice reforms are to succeed; (ii) the realization that pretrial justice is an important component of OSF’s overall mission of growing open and free societies – pretrial justice is a key component of the rule of law and addresses issues of torture, corruption, and discrimination in the criminal justice system; (iii) a recognition that half the world’s population will live in Africa and South Asia by 2050, and without effective pretrial justice in these regions there will be a global explosion in unrepresented pretrial detainees; and (iv) the creation of an new OSI network fund, the Special Initiatives Fund (now the Human Rights Initiative) with a focus on pretrial justice.

In retrospect, JI could have done a number of things differently. In addition to what is discussed in the portfolio review memo, JI might have:

* Focused earlier on the growth of regional and sub-regional networks, rather than also pursuing the creation of a global network of activists and reformers collaborating on joint activities. For some time JI sought to accomplish both, arguably diluting its efforts.
* Nurtured donor support specifically through a bottom-up strategy and at a later stage during the Global Campaign. JI realized quite late that donors were not easily persuaded in the abstract, but country- or regional-level donor offices supported JI’s efforts on the basis of concrete achievements or activities.
* Focused more on the implementation of pretrial justice reforms. With its piloting work JI focused too narrowly on the demonstration aspect at the expense of promoting the sustainable implementation of the models it helped pilot.

***Feedback and discussion***

Chris Stone (CS) provided the following feedback on the portfolio review memo and oral presentation:

* JI’s reasons for focusing on pretrial justice are persuasive and remain relevant.
* While the resources JI allocated to pretrial justice might seem modest, in combination with Human Rights Initiative’s investment on the issue, this constituted a substantial effort.
* One theme running through the portfolio review document is the question of a global campaign versus a series of regional campaigns. In retrospect, would JI focus its efforts more at the country level?
* The closeness in language between “pretrial justice” and “pretrial detention” may confuse external audiences. Pretrial justice is meant to broaden the issue to include, for example, effective legal representation. However, when describing its indicators work, JI tends to use the terminology of pretrial detention. Grantees might have perceived our requests as having them focus their work on a fairly narrow issue, impeding JI’s efforts persuading others to prioritize pretrial justice.
* Is there coherence between JI’s focus areas of legal representation and pretrial detention? While they go together – one cannot effectively address pretrial detention without legal representation – did JI have other intervention points relevant to the issue of pretrial justice reform? Are there, for example, interventions focused on police and prosecutorial reform which JI should address in its pretrial justice strategy?

MS noted that promoting pretrial justice involves a variety of actors and interventions, including legal representation and assistance, prosecutorial practices, crime prevention, arrest policies, judicial independence, policing strategy, corruption, and state capacity. JI lacks the capacity to engage simultaneously with all potential intervention points in reforming pretrial justice practices.

Zaza Namoradze pointed out that during a 2007 JI subcommittee discussion on how to turn the issue of legal aid into one more attractive for donors, it was proposed to focus on “early access” given its potential to leverage broader public and institutional benefits. The decision was made to frame JI’s work around pretrial justice. In retrospect it is difficult to say whether in the Global Campaign it would have been better to focus narrowly on pretrial detention, or whether we should have focused on more than simply legal aid / early access and pretrial detention. Thus far, advancements on early access have been mainly achieved through international and regional human rights norm setting and subsequent advocacy for their implementation.

CS asserted that JI’s pretrial justice work achieved a huge amount. One reason it is useful to focus on pretrial justice is that it intersects with a wide variety of criminal justice institutions and many aspects of the criminal justice process. JI’s engagement has changed the conversation around pretrial justice.

At CS’ urging, this aspect of the discussion ended with portfolio review participants reflecting on the greatest (or most surprising) achievements and biggest disappointments in respect of JI’s pretrial justice work to date.

***CS’ summary of the discussion and outcomes***

1. JI and OSF’s leadership should deliberate on what role we might play to promote the implementation of successful legislative reforms. Our role might be most effective focusing on targeted advocacy efforts, while leaving it up to national governments to deploy state resources on the practical implementation of new legislative mandates. As a donor, OSF might focus more on supporting advocacy and less on the development of demonstration projects and the provision of technical assistance.
2. The adoption of regional and global norm was a powerful surprise. However, national policy does not operate at that level. Rational arguments do not necessarily change the day-to-day operations of criminal justice institutions. Rather, criminal justice practice is often driven by bureaucratic limitations and political considerations and constraints. Now that the global and regional rational arguments have been “solved”, JI may want to focus on addressing the routine bureaucratic practices undermining the delivery of pretrial justice.
3. In 2008, JI made a double shift – from a national to a global focus, and from a narrow to a wider and deeper engagement. The sudden geographic *and* thematic expansion might have been too bold to maintain disciplined work.
4. Based on the varied description by staff of surprises and disappointments in their work, it appears that staff may not always be fully informed about their colleagues’ work.
5. If one outcome of the GC is a set of regional or global instruments, in a long term it may lead to a harder, less direct route to success in securing implementation on the national level.