



# IJCSL NEWSLETTER

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## CITIZEN PARTICIPATION

### **BOLIVIA—BOLIVIAN LAW ALTERS NGO ROLE**

According to [\*NGOs and the Law of Popular Participation: Implementing Democratic Decentralization in Bolivia\*](#), the Bolivian Law of Popular Participation (LLP) has altered the roles of non-governmental organizations, shifting their work from independent small-scale development projects to acting as consultants for municipalities or aspiring politicians. In early December, the [Nonprofit Sector Research Fund](#) published the research paper as part of its [“Working Paper” series](#). The paper examines the development of the Bolivian Law of Popular Participation (LPP) and the roles that NGOs have played in its implementation.

### **COMMONWEALTH—STUDY FINDS RIGHT TO INFORMATION LAWS LACKING**

The [Commonwealth Human Rights Initiative \(CHRI\)](#) has released [\*Open Sesame: Looking for the Right to Information in the Commonwealth\*](#). The study finds that of the Commonwealth’s 54 member countries, ten have laws treating the right of the governed to access information. According to the report, “[t]he Commonwealth has a deficit of both democracy and development. Open government is the answer and entrenching people’s right to access information is the most practical way to achieve this.”

### **RUSSIA—ELECTIONS STANDARDS CRITICIZED**

Elections in Russia on 7 December 2003 resulted in what [THE NEW YORK TIMES](#) described as an [“overwhelming victory”](#) for United Russia, the Russian political party owing its existence in large part to its allegiance to President Vladimir Putin. While President Putin described the elections as [“open” and “fair.”](#) several international organizations monitoring the Russian elections have criticized election irregularities. In [“State Duma Elections Well Organized But Failed To Meet Many International Standards,”](#) an 8 December 2003 article, the [Organization for Security and Co-Operation in Europe \(OSCE\)](#) outlines problems in particular with the use of government resources and media, writing that “[t]he pre-election process was characterized by extensive use of the state apparatus and media favoritism to benefit the largest pro-presidential party, reflected in voter apathy.”

### **TANZANIA—LEGISLATIVE ROADMAP PUBLISHED**

[Pact Tanzania](#) and the [Tanzanian Lawyers Environmental Action Team \(LEAT\)](#) have published [Legislative Roadmap](#), a two-part guide for civil society organizations in parliamentary advocacy. The booklets, published in English and Kiswahili with funding from the [United States Agency for International Development \(USAID\)](#), are the first to describe the legislative process and how to influence public policy making in Tanzania.

## FISCAL MATTERS

### **CANADA—FINANCE DEPARTMENT TO ELIMINATE CHARITABLE DONATION TAX SHELTER**

On 5 December 2003, [Canada’s Federal Department of Finance](#) released draft legislation designed to eliminate use of charitable donations as a tax shelter tool. This draft legislation attacks two different types of tax shelters, which Robert Hayhoe discusses in full in the [December 2003 Miller Thompson Charities and Not-for-Profit Newsletter](#).

### **CENTRAL & EASTERN EUROPE—NEW EDITION OF ICNL TAX SURVEY**

[The International Center for Not-for-Profit Law \(ICNL\)](#) has published the second edition of its [Tax Survey for Central and Eastern Europe](#). The original report was based on country surveys by local experts, a compilation of the results of those surveys into useful comparative discussions and charts, and it included a set of recommendations for future reform of the tax laws in the region. Extensive research was conducted to update the materials as favorable changes in the laws were made in various countries.



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## **POLAND—CHARITABLE GIVING INCENTIVES DECLINE**

Research by the International Center for Civil Society Law (ICCSL) and associates has indicated that legal incentives for charitable giving have decreased in Poland. This finding contradicts suggestions previously reported in publications, including [the International Journal of Civil Society Law \(IJCSL\)](#) (*see Igor Golinski, Polish Parliament Adopts New Law on Public Benefit Activities & Volunteerism, IJCSL, July 2003, at 124*). One issue is that the implementation law for the Law on Public Benefit Activity and Volunteerism interprets the new “1 %” rule as a tax credit rather than as a tax designation, which potentially limits its effectiveness. In addition, in October 2003, the Polish Parliament approved a proposal to cap the tax deduction for charitable giving at 350 PLZ (approximately 100 USD) for individuals and at 10 percent of taxable income for corporations. Individuals and corporations previously were allowed to deduct up to 15 percent of their taxable income. Moreover, charitable contributions for “religious purposes” are no longer deductible at all. More information on these changes can be found in [News From Poland—1% Breakthrough](#), an article by [Anna Sledzinska](#).

## **UNITED STATES—NGOS POLICY ACTION LIMITED BY LEGAL MIS-UNDERSTANDING**

[The Lobbying Law is More Charitable Than They Think](#), a 30 November story in [THE WASHINGTON POST](#), details a study that indicates that many charitable not-for-profit organizations in the US do not engage in public policy activities to the extent they are permitted to because they misunderstand the legal restrictions on “lobbying” under the Internal Revenue Code. Although the largest charitable organizations, such as the American Cancer Society and the American Heart Association, are sophisticated enough not to be intimidated by the law, the results demonstrate that most charitable organizations unnecessarily limit their advocacy before state legislatures and Congress.

## **UNITED STATES – CHARITABLE GIVING SURVEY PUBLISHED**

[Newtithing Group](#), an American not-for-profit organization, has published [Wealth and Affordable Donations in Uncertain Times](#), a report that details giving trends and patterns since 1997. The report discloses an interesting finding: Some of the country’s wealthiest taxpayers contribute more to charity than the amount they are permitted to deduct for income tax purposes.

## **FREEDOM OF EXPRESSION**

### **INTERNATIONAL—FREEDOM OF EXPRESSION RESOURCES ON THE INTERNET**

The [International Freedom of Expression Exchange \(IFEX\)](#) has devoted a [special section of its web site](#) to freedom of expression issues at the [World Summit on the Information Society \(WSIS\)](#), which held its annual international conference in Geneva during the week of 8 December 2003. The IFEX site offers articles, position papers and Internet links.

### **AFRICA—MEDIA WATCHDOG CALLS FOR REPEAL OF LAWS SHIELDING PUBLIC OFFICIALS**

The [IFEX has called for governments in Africa to repeal insult and criminal defamation laws](#) because those laws can be used to shield public officials from scrutiny. IFEX maintains that in many African countries insult and criminal defamation laws contradict the right to freedom of expression provided for in their constitutions and recognized in international law. The [World Press Freedom Committee \(WPFC\)](#) supports the IFEX campaign, along with [ARTICLE 19](#) and the [Media Institute of Southern Africa](#).

### **KYRGYZSTAN—NEW LAW ON MEDIA LIBEL PROPOSED**

In late December 2003, President Askar Akayev placed a new bill before Kyrgyzstan's parliament that will decriminalize media libel. According to [Kyrgyzstan: Government Proposes Decriminalising Media Libel](#), some experts call this a positive step; others suggest that the major problem of press freedom in Kyrgyzstan is not with criminal laws but with civil suits brought by government officials to bankrupt newspapers that oppose government policies.



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## **NIGERIA—INCREASING VIOLATIONS OF FREEDOM OF EXPRESSION**

In [\*Nigeria: Renewed Crackdown on Freedom of Expression\*](#), a December 2003 [Human Rights Watch \(HRW\)](#) report, HRW has documented Nigerian government violations of freedom of expression over the past two years. Violations include government killings, arrests, torture and other forms of harassment and intimidation in response to popular attempts to protest social and political developments in Nigeria.

## **RWANDA—COURT CONVICTS MEDIA OF GENOCIDE & CRIMES AGAINST HUMANITY**

On 3 December 2003, in the so-called “Media Case,” the [International Criminal Tribunal for Rwanda \(ICTR\)](#) convicted Ferdinand Nahimana and Jean Bosco Barayagwiza, founding members of the Radio-télévision libre des mille collines (RTLM), and Hassan Ngeze, former owner and editor of *Kangura*, a Hutu newspaper, of genocide, incitement to genocide, conspiracy and crimes against humanity—extermination and persecution. This is the first time that members of the media have been implicated for their role in such crimes since Julius Streicher, the editor of *Der Stuermer*, was convicted at Nuremberg. ICTR sentenced Ferdinand Nahimana and Hassan Ngeze to life imprisonment—the harshest punishment available to the court—and Jean Bosco Barayagwiza to 35 years imprisonment.

## **ZIMBABWE—DAILY NEWS WINS COURT VICTORY**

According to [\*Zimbabwe: Ban on Newspaper Lifted\*](#), Zimbabwe's best-selling newspaper, [THE DAILY NEWS](#), won a court decision on 19 December 2003, which allows it to publish pending a Supreme Court hearing on the government's appeal. The privately owned newspaper, along with its sister paper THE DAILY NEWS ON SUNDAY, were shut down by the police in September for operating without a license. The publishers of THE DAILY NEWS returned to the Administrative Court to seek an order to allow them to re-open while the Supreme Court prepared to hear an appeal by the government against an earlier decision to grant them a license. Information Minister Jonathan Moyo reportedly condemned the verdict.

## **FREEDOM OF RELIGION & BELIEF**

### **EUROPEAN UNION—RELIGIOUS FREEDOM IMPORTANT FOR COUNTRIES TO JOIN EU**

In [\*EU Accession Countries: What About Religious Freedom?\*](#), a 2 December 2003 commentary in the [Forum 18 News Service](#), Arie de Pater, Director of Jubilee Campaign NL, argues that the European Union (EU) should pay greater attention to restrictions on religious freedom in states wanting to join the EU. In May 2004, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia & Slovenia will be eligible to join the EU; in 2007, Bulgaria, Croatia, Romania and Turkey will become eligible to join to the EU.

### **EUROPEAN UNION—ANTI-SEMITISM REPORT SHELVED**

[\*Manifestations of Anti-Semitism in the European Union\*](#), a report conducted by the Center for Research on Anti-Semitism at the Technische Universität in Berlin on behalf of the [EU's Monitoring Centre on Racism and Xenophobia \(EUMC\)](#), was shelved on account of its sensitive content. Controversy surfaced after the European Jewish Congress (EJC), an umbrella organization for Europe's Jewish organizations, and Green MEP Daniel Cohn-Bendit published the study online and the EU later released the report.

### **FRANCE—HEADSCARF CONTROVERSY CONTINUES**

In December 2003, the continuing controversy about whether Muslim women and girls can be prohibited from wearing headscarves erupted again when a government panel recommended that such prominent manifestations of religious belief (including Jewish skull-caps and large crosses) should be banned in public schools. President Jacques Chirac went further than the commission and indicated in a speech on 17 December 2003 that he would recommend the adoption of legislation to ensure the secularism of public schools and that would also permit private employers to make work rules forbidding the wearing of such religious symbols. [Time Europe](#) offers useful background information on these issues in France and other European countries.



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## **TAJIKISTAN—RELIGIOUS COMMUNITIES REGISTRATION NOT COMPULSORY**

In [\*Tajikistan: Religious Freedom Survey, November 2003, Forum 18\*](#) reports that confusion leads officials wrongly to insist that registration of religious communities is compulsory. Unregistered religious communities do encounter difficulties with the authorities, but Forum 18 has been told that excesses “are not as a rule state policy, but simply the arbitrary actions of local officials.” Compared to neighboring Uzbekistan, Tajikistan generally follows a more lenient policy towards unregistered religious communities. The possibility exists that government pressure on believers may intensify in the near future, under a proposed new law on religion.

## **LEGAL FRAMEWORK**

### **CENTRAL & EASTERN EUROPE/FORMER SOVIET UNION—REPORT ON THE RELATIONSHIP BETWEEN NGO ACTIVITY & LEGAL REFORM**

In an article entitled *NGO Growth in Transition Economies: A Cause or Effect of Legal Reform and Donor Aid?* and published in the *Journal of Human Rights* Vol. 2, No. 3, Clifford Zinnes and Sarah Bell report their conclusions. Based on a 25-country econometric model of NGOs, the authors explain the growth and legal impact of NGOs by disentangling the contributions of economic forces, donor aid and the legal environment in the so-called ‘transition’ economies of Eastern Europe and the Former Soviet Union. The authors find that while greater civil liberty has had a positive impact on NGO proliferation in the Balkans, civil liberty has actually *reduced* their number in Central Asia. Conversely, NGOs have had a positive impact on many aspects of the legal environment in Eastern Europe and the Western FSU, though not in the Caucasus or Central Asia. Increases in NGO activity, however, have often led to increased corruption (though the inverse has generally not occurred). Donor aid has not had a uniformly positive effect on promoting NGOs: Depending on the region, donors and NGOs may act as complements or substitutes for services. Finally, while there are positive income effects on NGO growth, improvements in telecommunications infrastructure have by far a greater impact on NGO activity. The full article is available for purchase (17.00 USD) on the [Taylor & Francis, Ltd. website](#).

### **UKRAINE—NGO STUDY PUBLISHED**

In November 2003, [Board Source](#) published [\*Survey on Non-profit Governance Practices in the Ukraine\*](#). The survey shows that: (1) Ukrainian NGOs are developing quickly; (2) many organizations do not clearly distinguish between governance and management; (3) in 80 percent of organizations, the chief executive is also the governing body chair; (4) nearly two-thirds of respondents report that staff members are also members of the governing body, nearly always with voting rights; and (5) fewer than 40 percent of respondents identify monitoring the organization’s finances and ensuring accountability as important governing body responsibilities.

## **MISCELLANEOUS**

### **AFRICA—HUMAN RIGHTS COURT FOR AFRICA**

[allAfrica.com reports](#) that, on 30 December 2003, the Union of Comoros became the 15th member state of the [African Union](#) to deposit an Instrument of Ratification of the protocol relating to the establishment of the [African Court on Human and Peoples’ Rights](#) with Prof. Alpha Oumar Konaré, the Chairperson of the African Union (AU) Commission. With the deposit of the instrument by the Union of Comoros, the number of ratifications required for the entry into force of the Protocol on the African Court on Human and Peoples’ Rights has been fulfilled. In accordance with its Article 34 (3), the Protocol will enter into force thirty days after the deposit of the 15th instrument of ratification, namely, 25th January 2004. The [African Commission on Human and Peoples’ Rights](#) has also established a working group to oversee the court’s development. The court, once established, will rule on cases brought under the 1982 African Charter on Human and Peoples’ Rights, which all members of the AU have signed and ratified.



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## **CANADA—VOLUNTARY SECTOR INITIATIVE MAKES REPORT AVAILABLE**

On 5 December 2003, [Volunteer Sector Initiative \(VSI\)](#) published [Taking the Accord Forward: The First Report to Canadians on Implementing An Accord Between the Government of Canada and the Voluntary Sector](#) on its web site. The report reviews the last two years of “The Accord,” a document stating the desired nature of relations between the Canadian government and Canadian NGOs.

## **NORTHERN IRELAND—GOVERNMENT-NGO RELATIONS MODEL**

In [Making Hope and History Rhyme: A Model for the Nonprofit Role in Active Democracy](#), a paper published in the [Fall 2003 issue of Nonprofit Quarterly](#), Aideen McGinley discusses the fact that the government and NPOs have a real partnership with respect to both advocacy and service delivery. She notes that, in Northern Ireland, “government has taken the sector seriously, officially and formally recognizing the nature, scope, diversity and value of the sector. In particular, government respected and supported the voluntary sector’s independent nature and right to campaign and to challenge, and it values CSO participation in developing public policy. In return, the voluntary sector recognizes government’s discrete and strategic role in the development of public policy and the delivery of services within the legislative and financial framework of public accountability. Members of the voluntary sector saw their role as independent advocates who can campaign for change in response to need, and recognize how working in partnership can enhance their ability to meet their objectives.”

## **POLAND—CIVIL SOCIETY ADVISORY COUNCIL ESTABLISHED**

In November 2003, the new [Council on Public Benefit Activities](#) initiated its activities. The Council was created pursuant to the Law on Public Benefit Activities and Volunteerism, which was signed into law in May 2003. The Council was established to advise the Polish government on the role of civil society in Poland, and it is intended to comment on draft laws and the implementation of existing laws. The Council has ten representatives from the NPO sector, five from the national government and five from local governments.

## **UNITED STATES—IRS GUIDES CHARITIES TO PREVENT FUNDING TERRORISM**

The [Internal Revenue Service \(IRS\)](#) has indicated that is interested to counsel charities and other NPOs on how to prevent their being used to finance terrorism. The [Council on Foundations](#) has published [IRS Announcement 2003-29: What Does It Mean?](#), an analysis of possible implications of the IRS announcement.

## **IN MEMORIAM**

Marek Nowicki, President of the [Helsinki Foundation for Human Rights in Poland](#), and a renowned human rights activist and educator, died on 10 October 2003. He was a great man and a friend who tirelessly pursued the goals of human rights and civil society.



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