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**National approaches to public participation in  
strengthening crime prevention and criminal justice**

## **Background documents received from individual experts\*\***

Access to justice and crime prevention

The critical role of grassroots communities

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## Access to justice and crime prevention

### The critical role of grassroots communities

*Avocats Sans Frontières (ASF), Brussels, April 2015*

#### OVERVIEW

Based on the Lilongwe Declaration, on the UN The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and on ASF's field experience in Democratic Republic of Congo (DRC), Uganda, Burundi, Tunisia, Myanmar, Nepal and East Timor, **this presentation discusses the complementary nature of among legal aid actors**, the understanding of which is necessary to effectively improve the criminal justice system.

A significant portion of people in these countries cannot effectively access justice, due in large part to a lack of lawyers and remote populations. Authorities should officially recognise the important roles that students, CSOs, community leaders, and other legal aid providers play in the justice system, especially in delivering legal aid services.

ASF advocates for **greater encouragement of public participation in the criminal justice process through close collaboration with local field partners and national authorities.**

**Using a bottom-up approach**, the State can foster **local ownership and leadership**, as local actors are best positioned to effectively and sustainably develop legal awareness and outreach strategies, and tailor activities to their contexts. The overall objective behind this strategy is to contribute to the development of policies, laws and mechanisms responsive to the population, necessary to construct an effective criminal justice system.

**ASF is pleased to have the opportunity to share field initiatives** that work at the local level, enabling people to become effective actors rather than passive recipients, people who can then address the justice sector needs of their communities and States.

To positively impact the national level and to render criminal justice effective, **States should strengthen monitoring measures and implement guidelines** to ensure that legal aid providers' services comply with fundamental rights. These recommendations appear in full at the end of this document. **The primary recommendations are:**

- The need for **legal recognition** and regulation of certain forms of public participation;
- The need for continued **capacity-building** actions benefitting local actors involved in the criminal justice sector;
- The need to use **participatory methodologies** to ensure that the views of people in the most vulnerable situations are taken into account;
- The need to implement **protective and safety measures**, especially for victims and witnesses;
- The need to increase publicly allocated funds for **awareness-raising activities.**

## ASF'S FIELD EVIDENCE

1. Improving criminal justice processes and reforms requires involvement of various actors, as States cannot rely only on their police forces and judicial structures. **While the main responsibility to prevent and resolve conflicts belongs to States, the communities that experience daily risks related to crime have a major role to play.** States should encourage building bridges between the population and local government authorities by promoting community-based initiatives whose results are intended to increase public participation in criminal justice processes, and to develop related legislative frameworks. More importantly, involving the population in the justice sector means that the direct beneficiaries and other justice actors can take ownership of penal policies.
2. With over **twenty years of field experience in access to justice**, ASF has developed an **understanding of the key local actors** who have capacity and motivation to contribute to crime prevention, needed to reinforce peace and respect for human rights within their communities.
3. Where the State's authority is not fully guaranteed, or when the population's confidence in the judicial system is eroded (preventing victims of human rights violations from seeking recourse or remedy), **civil society organisations (CSOs) as a complement to judicial authorities are needed to fight impunity.** For example, in DRC, CSOs and communities are meaningfully involved in strengthening the criminal justice process. ASF is working closely with dozens of grassroots human rights organisations, trained to conduct fact-finding missions to increase the number of trials and prosecutions for international crimes and grave human rights violations.<sup>1</sup> They are leading the fight against impunity, and are in direct contact with individuals and communities who have suffered from international crimes. The CSOs collect and prepare the victims' files by gathering data and evidence, and explain to the affected communities about their rights and legal options to obtain reparation. **ASF's partner CSOs are contributing to greater accountability for gross human rights violations and to more frequent remedy for victims.**<sup>2</sup> Data illustrates these actions' impact: through the work of 30 CSOs within the affected communities, ASF and our partners facilitated the participation of over 7,000 victims in the proceedings before national military courts<sup>3</sup> and the International Criminal Court (ICC) between November 2010 and February 2014.<sup>4</sup>
4. **Reducing pre-trial detention and promoting increased access to justice and legal defence mechanisms is also a priority** for the international community,

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<sup>1</sup> ASF's expertise was developed in the fight against impunity for international crimes through our work in DRC since 2005. Our aim to ensure victims' access to legal proceedings before national courts and the ICC began in 2010 and continues with the 2013-2016 project "Promoting the full implementation of the Rome Statute principles" funded by the European Union.

<sup>2</sup> According to Congolese stakeholders, victims could not have participated in the judicial proceedings without ASF's and the CSOs' assistance and support. The collection of evidence has, in some occasions, also led the accused to confess to their crimes.

<sup>3</sup> Some of the most well-known cases are: Ministère public c/ Bokila Lolemi et consorts (TMG Mbandaka, 12.04.06), Ministère public c/ Gédéon et consorts (TMG Kipushi, 06.03.09), Ministère public c/ Kakado (TMG Bunia, 09.08.10), Ministère Public c. Nzale Nkumu Ngandu et consorts (CMO Nord Kivu, 05.05.14) and Ministère public c/ Bedi Mobuli Engangela (CM Sud Kivu, 15.12.14).

<sup>4</sup> The Prosecutor v. Thomas Lubanga Dyilo (ICC-01/04-01/06), the Prosecutor v. Bosco Ntaganda (ICC-01/04-02/06), the Prosecutor v. Callixte Mbarushimana (ICC-01/04-01/10), the Prosecutor v. Germain Katanga (ICC-01/04-01/07).

recognised as such in the Salvador Declaration.<sup>5</sup> To make this a reality, national **authorities need to support implementation of new approaches that go beyond the effective right of accused persons to a lawyer.** It has been demonstrated that absence of legal representation often means that detainees have no one to advocate for a speedy trial, and no one to fairly and effectively represent them once their trial date is set. Even if a prisoner has enough financial resources to appoint a lawyer, there is a significant shortage of defence lawyers in most countries. To help reduce prison overcrowding, **the detainees must be involved in finding solutions as actors in their own right.**

5. **To develop prisoners' power to act, ASF has engaged a strategy based on law student involvement.** Well-trained, coached by their university professors, and selected on the basis of their motivation and oratory skills, their actions in prison aim to improve the detainees' knowledge, so that they understand their cases and defend their procedural rights. Their work is effectively reducing court backlog, and challenging prison overpopulation by delivering legal advice and identifying illegal pre-trial detention cases, which are then referred to lawyers for legal assistance. Law students are also key actors in promoting empowerment through legal awareness sessions. For example, in DRC,<sup>6</sup> the Criminal Procedure Code allows a defendant to appeal a decision for continued detention within 24 hours. The limited appeal time means that if detainees go back to the penitentiary, they will not be able to exercise their rights on time. One of law students' duties is to explain to pre-trial detainees that they have the right, if they do not accept the decision, to appeal immediately after the judgment at the hearing. The students' commitment to help the detainees better understand the procedures and their rights, in addition to the limited financial cost of this type of action, **makes this approach a sustainable long-term strategy.**
6. Strengthening the rule of law requires a community-based approach to initiate actions from the local level, taking root in civil society's involvement and constructive participation of the criminal justice planning mechanisms. The notion of this **participatory development** is defined as "*a process through which stakeholders can influence and share control over development initiatives, and over the decisions and resources that affect themselves*".<sup>7</sup> States should **place the rights-holder at the centre of the action**, prioritising their meaningful participation in shaping strategy and solutions.
7. One way to ensure this victim and community involvement in judicial proceedings is to increasingly use a **"bottom-up" participatory approach that allows them to share their opinions and be more than just an object of the justice system.** For a successful justice reform process, State approaches need to be inclusive and emphasise a broad public participation at the local level. These kinds of initiatives aim to create greater understanding amongst those subject to the law of how the justice system is

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<sup>5</sup> "52. We recommend that Member States endeavor to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms", Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (Twelfth United Nations Congress on Crime Prevention and Criminal Justice).

<sup>6</sup> ASF has been implementing programmes in DRC since 2002, each one with a pre-trial detention component. Currently, two projects "*Contributing to consolidation of the rule of law in the DRC by combating mass illegal pre-trial detentions*", from 2014 to 2016 and funded by the Belgian Development Cooperation, and "*Bringing justice to people in Eastern DRC*", from 2012 to 2015, funded by the European Union, deal specifically with this thematic.

<sup>7</sup> Asian Development Bank, "*Framework for Mainstreaming Participatory Development Processes*", 1996.

organised; this is a necessary step to increase confidence in and accessibility of justice mechanisms. There are techniques to ensure that people are included in the participation strategy, such as a **participatory needs assessment**. The Tunisian Forum for Economic and Social Rights (FTDES), a grassroots movement in Tunisia's most marginalised regions has been trained by ASF on this technique to enable workers to better defend their social and economic rights.<sup>8</sup> This methodology enabled the FTDES to better understand the views and needs of workers, and thus better prepare their cases before the court, strengthening their fight for legal protection of their rights. At the end of the project FTDES and ASF implemented together, a domestic court acknowledged the wrongful nature of the workers' dismissals by a company which had filed for bankruptcy. The textile factory workers won their case and the court recognised their right to almost all of the benefits owed to them: back-pay, bonuses and compensation for unfair dismissal, for a total amount of four million Tunisian dinars, equivalent to €1.8 million.<sup>9</sup>

8. Local community involvement is a way to **better identify the root causes of crime**, and to implement crime prevention strategies that address these causes directly. **Consultative meetings to seek communities' views and recommendations should be encouraged and facilitated by States and other stakeholders**. Illustrative of this is ASF's experience in Ugandan government's initiative to ensure the participation of war-affected communities in designing a transitional justice policy tailored to their needs. The Transitional Justice Policy was shared with stakeholders on 21 May 2013 to seek their input in the draft. In light of the policy's victim-centered approach, ASF organised discussions with victims and war-affected communities in Gulu, Barlonyo and Abia. During these meetings, facilitators shared and explained the key aspects of the draft policy and ascertained victims' views on the provisions for formal justice, traditional justice, truth-telling, reparations and amnesty.
9. Another manner to reinforce bridges between formal and informal actors involved in the justice system is to train **justice officials while also engaging community representatives in legal education, as a cross-cutting objective of a capacity-building strategy**. A broad understanding of "legal awareness" includes local and national authorities as relevant stakeholders and beneficiaries. In Myanmar, ASF in consortium with IDLO and BABSEA-CLE, is implementing a new approach to reinforce basic legal training on knowledge, skills and values and general legal awareness for justice sector professionals, while simultaneously increasing public legal awareness and **laying the basis for building trust in the justice system**.<sup>10</sup>

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<sup>8</sup> ASF project "The defense of economic and social rights of vulnerable groups in the Monastir and Mining basin regions", implemented over two years, from 2013 to 2014, funded by the European Union.

<sup>9</sup> For more information about this particular judicial case, a side event called "The role of Tunisia's justice system in democracy-building" is being organised by ASF during this Congress.

<sup>10</sup> ASF-IDLO-BABSEA-CLE project funded by UNDP "Implementing Pilot Rule of Law Trainings in Lashio (Shan) and Mandalay City (Mandalay)", from September 2014 to March 2015.

## CONCLUSIONS AND RECOMMENDATIONS

10. Avocats Sans Frontières has been involved in facilitating cooperation between local populations and the justice sector since 1992, and has developed a variety of strategies to make the right of access to justice a reality for the most vulnerable segments of the population. **Based on this experience, ASF highlights approaches and good practices to improve the quality of public participation** in crime prevention and criminal justice reform.
11. At the top of States' priorities, there is **the need for legal recognition and regulation of individuals playing strategic roles within their communities**. ASF advocates in favour of professional regulation to reduce misunderstandings about their roles, skills and legal abilities. States should require legal aid providers to have clear terms of reference and conditions, to be **certified** by a recognised body, to **respect a code of professional ethics** and a national standard of practice or expertise. In Burundi's National Legal Aid Strategy, ASF successfully lobbied for the recognition of grassroots representatives and law students as institutionalised legal aid providers, and the draft legislation seems to be taking this into account; however, it is still a work in progress.<sup>11</sup>
12. In addition to formal legal recognition and the obligation to respect commonly agreed security standards, it is **imperative that careful attention is given to initial and continuous training and coaching** in order to avoid inaccurate public legal education. To efficiently respond to the population's needs, legal aid providers must be well-trained and educated in basic laws and other skills such as mediation, education and advocacy before they are able to deliver any legal service. Because capacity-building actions must favour solutions that are both long-term and integrated into pre-existing structures, **training of trainers** is a **key factor for durable engagement** with the criminal justice system's operating structures.
13. Another key element for an action's sustainability is the **monitoring of legal aid providers' work** for a significant period of time, via a pragmatic "**learning by doing**" approach, coupled with regular **technical support**. In Nepal, from 2010 to 2013, ASF's capacity-building activities enabled a number of CSO representatives to assert their interest in taking a leading role in designing and delivering outreach activities in legal matters for their community.<sup>12</sup> In DRC and Burundi, ASF and our partners organise follow-up workshops with community leaders and law students involved with the projects, so they can share their difficulties, good practices and continue training with role-playing and simulation exercises. Another important lesson learned from our projects is **the need to incorporate into the training materials a focus on children and women**, to ensure that all trained legal aid providers are aware of, and ready to defend women's and children's rights in the mediation cases in which they participate, and make proper referrals to the relevant legal and/or medical services, especially for crimes that should not be, but often are, mediated.

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<sup>11</sup> ASF has been working in Burundi since 1999, developing access to justice programmes. We work with the bar association to put in place a sustainable system of legal aid that can be supported by the government and international community.

<sup>12</sup> ASF project "*Act for better access to justice for vulnerable people in Nepal*", from 2010 to 2013, funded by the Belgium Ministry of Foreign Affairs. Geographical coverage included Kathmandu, Kanchanpur, Kaski, Makawanpur, Morang and Rupandehi.

14. Internal and external evaluations and reviews have shown that **if substantial financial, human and technical resources are allocated to the capacity-building sector, outcomes and results are greatly improved**. In East Timor, training and workshop activities helped increase legal aid providers' understanding of the formal justice system, its institutions and procedures. They gained sound knowledge of the difference between civil and criminal cases, which contributed to more appropriate reporting of criminal cases, especially sexual violence. In DRC, the CSOs who carried out data collection in criminal cases have demonstrated the skills they acquired from the capacity-building sessions organised by ASF. Because of the quality of their work, the last data collection missions, including the subsequent filing of cases before national courts, were planned and implemented without ASF's technical support. This means that, through relevant and continuous capacity-building plans, CSOs become autonomous in their work, and are now able to collect data in conformity with human rights standards, meeting the judicial standard of proof required to open a criminal case. In Tunisia, ASF has worked with members of FTDES on developing their negotiation arguments based on human rights. Based on these new skills, disputes were able to be resolved through negotiation, avoiding lengthy legal actions.<sup>13</sup>
15. **Guaranteeing and strengthening partnerships, coordination and networking** are also crucial for ensuring effective, holistic and rapid **multi-sectoral responses** to the justice needs of communities. Continuous collaboration between grassroots actors and local public authorities is particularly important **to effectively improve institutional actors' commitment** to acquiring good administrative and judicial practices. CSOs, law students, paralegals and other legal aid providers must be accompanied, and coordination and referral mechanisms must be endorsed by authorities and by technical and financial partners. To act as a bridge to the formal criminal justice system, legal aid providers and CSOs need **to know how to effectively refer cases to the relevant authorities**; otherwise the impact of their participation could be negative. In East Timor, at the beginning of ASF's project, only one on seven cases of domestic violence was reported to the police. Information gathered during reviews indicated that the Community Leader Liaisons (CLLs) were only reporting cases of domestic violence to the police if they thought there was evidence of serious physical injury. ASF created initiatives (trainings and coaching, as well as meetings and workshops with relevant judicial authorities) for a more systematic recourse to referral mechanisms. And it worked.
16. However, adopting a community-based approach should not lead to a restricted vision of a community as having one view or being easily represented by one person. **Not all community members have the same interests**, and not all village chiefs or traditional leaders have the best interests of everyone in the community at heart. To guarantee that **participatory action includes marginalised people**, taking into account their participation and the mechanisms needed to ensure their secure and meaningful participation, the **following questions are useful**: can they speak without fear of reprisal? Should there be multiple forums for different stakeholders (by gender or ethnic group, for example)? What sort of preparatory actions are needed to make sure that those representing their communities are actually respected and do take the views of the most marginalised people into account? **Authorities and stakeholders must**

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<sup>13</sup> Of thirteen cases subject of negotiations (sometimes with local authorities, sometimes with the employer directly), seven resulted in an agreement.

**succeed in identifying key individuals who respect the various interests within the community.** A gender-mainstreaming approach is essential, and **efforts must be made to ensure women's inclusion** in the public participation network, in order to better meet their often under-represented needs in the process. In East Timor, ASF achieved a minimum of 30/40% female participation in its community education activities, including a focus on domestic violence. Getting even to this 40% was a real challenge, as criteria to qualify for training as a community leader (being literate, prior standing as community leader) are implicitly discriminating. Government policies and projects must recognise that increasing women's access to justice is high priority and should plan accordingly. To be truly representative of the views and recommendations of the communities, the actors who make the link between local populations and the authorities must be in **direct and regular contact with people, in order to build mutual confidence** and allow for open and constructive dialogue about the target group's needs and perceptions.<sup>14</sup>

17. Using a participatory methodology should be accompanied by **guidelines that ensure the right conditions for free speech in the population.** There are numerous means of creating an environment conducive to the exchange of experiences: ensuring people's physical safety and psychological health, devoting sufficient time to the exchange, organising bilateral talks to ensure confidentiality, identifying power dynamics within communities and, on these grounds, finding possibilities for discussions with individuals away from the negative influence of potentially harmful leaders.
18. States must **implement protective and safety measures** for people. If authorities pursue public participation in the criminal justice system, it is necessary that, along with legal recognition, the protection of these participants is effectively ensured. A comprehensive protection system should take into account, not only for the victims and witnesses, but also for of their relatives. In DRC for instance, civil society members acting as intermediaries to assist victims of international crimes to prepare their files for court were threatened several times. Protection mechanisms which are strictly deployed by the institutions (involving only State actors such as police) will only work if the population has confidence in them, and only if the threat does not come from the institutions themselves. **ASF generally recommends mixed systems involving institutional actors in liaison with civil society**, which can provide valuable services such as focal points designation and safe houses.<sup>15</sup>
19. Finally, the **need to increase publicly allocated funds for awareness-raising sessions** must not be underestimated, as they constitute the foundational mechanisms for crime prevention. ASF's experience in Uganda, from awareness-raising sessions about sexual and gender-based violence (SGBV) demonstrates this. At the end of ASF's project, the evaluation showed that community leaders had been very active in referring victims of SGBV to those services that could actually help them, establishing that they acquired a new understanding of their roles and a greater commitment to referring people to the

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<sup>14</sup> This is what one of our partners in Tunisia suggested, noting that "*When the project started, the workers lacked confidence in us. They were reluctant to give information. But trust has built progressively*".

<sup>15</sup> The effectiveness of the whole system depends on a crucial aspect of protection: enabling a constant flux of reliable information, allowing accurate risk assessments. Establishing constant communications and contact is essential; otherwise, there cannot be any rapid reaction system. Such joint efforts usually require building CSOs' capacity, especially on self-protection training.

relevant services.<sup>16</sup> Their active participation in mobilising their communities for legal education and legal aid activities was invaluable. Nearly half of the people who came to ASF seeking legal advice were referred to our services by their community leaders. In Tunisia, a FTDES member stressed the importance of awareness-raising sessions for legal empowerment. According to him, after two years of legal education, people "*begin to think about solutions to their problems, which show they understand the methodology for identifying violations and those responsible for these violations.*" In the process of developing crime prevention strategies, governments should increase their budgets to support these actions while taking into account that addressing such needs requires a long-term commitment, since these issues cannot be dealt with in a single intervention.

**It is essential to complement the work States do at the macro-level with grassroots actions to enable the population to become actors in the development of the criminal justice system. The full success of a justice system that is fair, efficient, adequate, recognised and owned by the population depends on the use of a bottom-up approach, with a recognised will for inclusive participatory methodologies to include all actors in the justice chain.**

Avocats Sans Frontières<sup>17</sup> (ASF) is an independent international non-governmental organisation (NGO) **founded in Belgium in 1992**. With headquarters in Brussels, ASF has offices and activities around the world in various post-conflict and fragile countries (Tunisia, Democratic Republic of Congo, Burundi, Uganda, Chad, Morocco, Egypt, Nepal, and Myanmar).

We promote the rule of law through improved access to justice for society's most vulnerable and marginalised groups, focusing our programmes **on access to justice at local and national levels**. Programme results and policy interventions are used at the international level **to influence changes in international policy** and stakeholder attitudes.

ASF's strategy rests on **its theory of change that access to justice mechanisms** (which are available, accessible, acceptable and adaptable) combined with a quality legal or judicial solution to the problem, contribute to the establishment of the rule of law.

The law and access to justice can be used as effective mechanisms for change. In fragile countries, marginalised groups are often those who are deprived of their rights (civil, cultural, economic, political and social). Because law itself can be instrumental in oppressing specific groups, acting on **access to justice with a human rights approach is essential** for bringing about positive social change for the most marginalised people in society.

**ASF key objectives are:**

1. Improving access to justice for people in vulnerable situations (using the human rights AAAA framework of availability, accessibility, acceptability and adaptability);
2. Improving legal aid mechanisms;
3. Strengthening lawyers' and other key actors' capacities (including NGOs and bar associations);
4. Improving legal and normative framework and policies.

<sup>16</sup> ASF project "*Improving access to Justice for Women and Children in Uganda*", from 2008 to 2009 funded by the European Union. Geographical coverage included the districts of Soroti and Gulu.

<sup>17</sup> Avocats Sans Frontières means *lawyers without borders* in French.