

## ASF's actions in TIMOR LESTE 2002-2009

### ***“Creating a dynamic for effective Access to Justice for the most vulnerable within a young judicial framework”***

#### **I. Brief notes on the context of intervention**

##### About ASF's previous experiences

ASF was created back in 1992 by a group of lawyers who strongly believed that the legal profession could make a significant contribution to the fight against injustice and inequality, especially in societies that had recently gone through intense conflict or where social inequalities were particularly pronounced. At first, ASF's principal activity was a direct intervention in cases where human rights were at stake, an activity which it still continues today. In close partnership with local lawyers and judicial personnel, ASF intervened in trials in Bolivia, Chile, Colombia, Lebanon, Morocco, Tunisia, and Togo.

Then came the genocide in Rwanda. It was clear from the outset that there would be no durable peace or development in Rwanda without a fair and equitable justice process. Between December 1996 and June 2002 ASF sent close to two hundred lawyers –from Belgium and elsewhere, including other African countries– to Rwanda to defend both victims and accused in the national genocide trials. Realizing the great needs existing in Rwanda for a more structural assistance in the area of law and judicial institutions, ASF has gradually increased involvement in a wide range of activities to contribute to fair trial and effective justice for the most vulnerable. Due to this Rwandese experience ASF was also called upon in Burundi and the Democratic Republic of Congo (DRC)<sup>1</sup>, both countries where the lack of a well-functioning judicial system threatened to undermine political efforts to create long-lasting peace and stability.



*ASF Congolese lawyers before Mobile Courts*

Touched by the struggle for independence of the East Timor population, ASF decided to move beyond the “African Great Lakes” area and to launch in August 2000 an exploratory mission to assess to what extent its expertise could be of benefit to this self determined nation.

##### ASF's decision to intervene in Timor-Leste and the prevailing context

After having done an assessment of the needs and having evaluated its possibility to add-value to the country, the organization decided to install a resident mission in East Timor in July 2002.

This followed on the heels of Timor-Leste becoming independent after years of colonization followed by occupation. The new nation had to build all of its institutions from scratch and the need for effective justice was at a peak due to the culture of impunity that remained and due to the suffering the Timorese people had endured. Whereas an estimated one fourth of the population had disappeared during the 25 years of occupation and whereas three-fourths of the infrastructure was destroyed after the 1999 events, the sought after peace, stability and justice were at stake.

The choices to be made with regards the serious crimes committed and the daily management of justice would be, for the population, concrete signs for building trust and confidence in the institutions.

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<sup>1</sup> At present ASF has resident missions in Rwanda, Burundi, DRC, Uganda and Nepal and is implementing programs in Israel-Palestine.

The declaration of President Xanana GUSMAO during the official ceremony of independence that stated:

**“Our independence will have no value if the population of East Timor continues to live in the severest poverty and suffers from every kind of wrongdoing”** is a key to understanding the large responsibility to be taken on by the new born institutions.

One of the most significant challenges facing Timor-Leste that appeared in the early hours to ASF was access to justice. The lack of access threatened not only the protection of human rights but also the safety and stability that is so badly required by this newly independent nation to develop. Despite the efforts made by the authorities to establish an effective and accountable system of justice, justice was still perceived as distant, not accessible and not affordable by the majority of the population. At that time the main reasons cited for the inadequate functioning of the justice system was the lack of personnel and proper training. At the arrival of ASF in Timor Leste there were approximately 23 judges, 9 public defenders and 11 prosecutors who handled matters<sup>2</sup>, outside the jurisdiction of the Serious Crime Unit (SCU). With the exception of Dili the remaining three district courts were not yet fully operational<sup>3</sup>.

Based on its experience in other countries ASF decided to contribute to the creation and strengthening of the Timorese judicial system by concentrating its efforts in the defense side. ASF chose to act with public defenders as well as private lawyers to work towards more effective and accessible justice for the population and the most vulnerable among it.

**The objectives of ASF’s first actions were complementary to the efforts being made to strengthen the various judicial institutions in Timorese Society. These objectives were to:**

1. Support education, training and awareness-raising in the areas that promote the effective protection of human rights and contribute to the development of the country and its population.
2. Contribute to the promotion and reinforcement of the rule of law and the independence of the judiciary in a sustainable way that respects the cultural roots and traditions of East Timor.
3. Prevent conflicts and contribute to conflict resolution.
4. Build local capacities.

With a continuous will to meet the evolving needs of the strengthening of rule of law, ASF developed several kinds of actions over the past 7 years. Initially ASF supported the insitutionnal reinforcement of the judicial system but developping the same time models for effective legal service provision to the most vulnerable or people living in remote areas and who were never in contact with the formal judicial system.

## **II. Key activities and main achievements**

*To design and implement its activities a permanent dialogue was established between ASF and the East Timorese Authorities*

ASF is committed to ensuring the complementarity and sustainability of its actions in the countries where it intervenes. Upon its arrival in East Timor ASF was recognized by the authorities as having in a contributing role to play within the justice system. A first agreement was signed with the Ministry of Justice on 18th September 2002<sup>4</sup>. As per the agreement ASF would collaborate with the Ministry of Justice to work towards the following:

- “To strengthen the functioning of the public defenders and the performance of public defenders in the judicial system.
- To co-operate in the field of justice, especially providing capacity building to judges, prosecutors and public defenders within the programme plan of the Judicial Training Centre of the Ministry of Justice.

<sup>2</sup> In 2009 the number of trained 10 judges is, 14 prosecutors, and 13 public defenders for a one million population

<sup>3</sup> The court of Appeal began to become effective in 2003, the districts Courts facing staffing problems to be fulfill their role (to note a relaunch of the process in 2008)

<sup>4</sup> Followed by several more in the coming years

- To provide the Legal Documentation Centre at the Judicial Training Centre of the Ministry of Justice with additional judicial material and other resources.
- To provide training within the programme plan of the Judicial Training Centre of the Ministry of Justice to paralegals to support them to assume the role of legal assistants in the various districts and sub-districts.
- To assist, if requested, in the drafting of laws, especially in the context of recent ratification by Timor-Leste of the Rome Statute on the International Criminal Court (ICC).
- To carry out a feasibility study regarding the formation of an Academy of Law in Timor-Leste.”

These objectives represented a wide field of intervention and occurred in a context where the newly established institutions were being built from scratch.

### *2002-2004: the first steps undertaken for the establishment of a judicial system*

Since opening our office in July 2002, ASF has actively supported both institutional and civil society actors who contribute to the establishment of a democratic state governed by the rule of law. In the first three years of work in Timor, considering the uncertainty and fluctuation of the country's priorities and different external influences ASF's diversified activities included support to the creation and capacity building for the Public Defenders; establishment of a legal documentation centre; provision of technical assistance and legal advice to the government, the establishment of the East Timor Lawyers Association; support to private lawyers and a study on the relationship between traditional law and the newly created formal justice system.

The lack of trained judicial and court actors, the complexity of the legal background<sup>5</sup>, and the decision to choose Portuguese and Tetum as the official languages<sup>6</sup> were all factors that impacted on effective access to justice.

#### **Actions undertaken in this context:**

##### ➤ The support to the Public Defenders institution

In the year 2000 the UN transition administration for Timor-Leste appointed ten public defenders on a probationary basis however by 2002 there were only nine public defenders - seven in Dili, one each in Oecussi and Baucau. Many public defenders were overburdened, handling up to 100 to 150 cases each. Compounding this problem of scarce resources was their lack of previous work experience and practical skills in the legal profession. ASF developed an important program to support their action and provide training to assist in the drafting of the legal framework to regulate their actions. Using the Brazilian experience in Sao Paulo as a case study ASF supported the drafting of the Organizational Law on Public Defenders and the necessary corresponding trainings. In total 10 training modules for public defenders were designed and implemented by ASF. In addition, support to the public defenders' case management system through training was also provided by ASF.

The low number of public defenders meant that there was a need to increase the “supply” side of judicial actors. At this point, private lawyers in Timor-Leste were practicing law despite the fact that they were not officially recognized. Seeing this as an opportunity to contribute to improving the supply side of justice **ASF decided to also support the association of the Timorese private lawyers (which became the AATL) to federate their energies, organize themselves for quality services and advocate for their official recognition and the creation of a future Bar Association.** Since ASF's initial intervention, other institutions have taken the lead in supporting the Public Defenders.

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<sup>5</sup> Multiplicity of sources of law: newly enacted legislation, UNTAET regulations, ratified international laws, Indonesian legislation and preexisting non written traditional law

<sup>6</sup> Most of the judicial actors and authorities were trained in Bahasa Indonesian. The two official languages are Portuguese and Tetum, while official working languages also include Bahasa Indonesian and English.

➤ The support to and training of the private lawyers

ASF worked actively to institutionalise the independence of the private lawyers in Timor-Leste and supported the Asosiasun Advogadu Timor Lorosa'eto to unite its members. ASF was actively involved with the AATL to advocate for the official recognition of private lawyers in Timor Leste. ASF together with the AATL created an initial draft of legislation governing private lawyers with the goal of enabling the profession to deliver legal services with high quality standards and to ensure better access to justice for the Timorese population<sup>7</sup>.

➤ The creation of a legal documentation center

In order to reinforce the structure of the existing library in the Legal Training Centre, ASF coordinated the creation of a fully comprehensive legal documentation centre. This centre was to be used by the professional legal community, including those studying at the Legal Training Centre and the private lawyer community. The Portuguese government offered 1500 books, the UN provided UN documentation and the ASF complemented these contributions with documents in Bahasa Indonesian and other legal references. In addition ASF organized the management of the office and provided training to the personnel in charge to ensure that its resources would be available to the largest amount of people. On 24 September 2003 the Legal Documentation Center was inaugurated.



➤ The realization of a preliminary study on the creation of an Academy of Law

In December 2002 ASF conducted a preliminary study on the creation of an Academy of Law. The purpose was to explore the idea of starting an Academy of Law in East Timor in a public institution. The objective was to provide ideas to the education authority to initiate the formation of an Academy of Law in East Timor.

➤ The option of paralegals to reach the population

Considering the small number of legal actors and the remote location of the majority of the population the ability of a significant portion of the population to effectively access justice was compromised. Moreover, traditional practices in these areas were prevalent, limiting the possibilities for the newly established institutions to regulate tensions and issues in accordance to the new Timorese law.



In 2004 ASF began a programme of information and explanation about the law, aimed at rural populations. A questionnaire was distributed amongst a selection of national and international NGOs and government agencies working within the area of justice in order to evaluate what form and style to lend to this campaign. The replies of these participants allowed ASF to target specific areas of intervention and to decide which topics to engage in. With the same aim of maintaining close connections with the general population who benefit from these laws, ASF envisaged directly entrusting the campaign of public awareness to the people who were affected by the issues themselves.

To better understand how traditional law was regulating communities at the grassroots level, ASF organized, in partnership with the East Timor Study Group (ETSJ), information gathering on traditional law (through the use of questionnaires in tetum in the Liquisa and Ermera districts). It also participated in a working group in this matter created by several organizations in Dili in order to share views and compare the results of the different studies.

<sup>7</sup> For more information on the whole ASF-AATL process, please see the special note dedicated to it

## 2005-2007: the growing necessity to reinforce the links between the population and Justice

### ➤ ASF's study on legal aid

The establishment of a free legal aid service for individuals who cannot afford lawyers is a key element of any legal system. Recognising this, in 2005 ASF tried to open the debate on legal aid. In partnership with the United Nations Human Rights Unit ASF conducted a study<sup>8</sup> to identify the legal aid needs in East Timor, particularly in the rural communities. The study was conducted in five districts (Baucau, Covalima, Lautem, Manufahi and Dili). People were asked about their actual perception of the national legal system and on its capacity to respond to their needs. The data collected led to a report that was presented to the Ministry of Justice.

The findings and recommendations from the study were able to encourage a debate on legal aid. ASF and the United Nations Human Rights Unit found that:

*"The Public Defenders Office is an important institution providing free legal aid. This institution receives its budget from the government. It is important to acknowledge that Timor-Leste has made an important step by institutionalizing legal aid through the establishment of the Public Defenders Office, however, data collected during this study indicates that during 2003 and 2004 the Public Defenders Office provided legal aid in only 20% of cases; in the remaining 80% of cases legal aid was provided by other organizations including NGOs and LBHs (legal aid organisations)." (p.24)*

As private lawyers were not officially recognized, they were acting in a "shadow zone". This confirmed the need to advocate for a recognition of the profession to enable the regulation and training of the lawyers in order to ensure that quality services were provided to the population.

Moreover, the study indicated that:

*"Although a significant number of lawyers are currently available in Timor-Leste, access to their services is disproportionate across the country. Data compiled in this report indicates that although only 20% of the population reside in the District of Dili (based on the National Census), approximately 80% of legal aid during 2003 and 2004 was provided in Dili." (p.24)*

There was a gap. The majority of the population was living in remote and rural areas and had no access to these services. **Thus, ASF recommended to the authorities to:**

- 1. The Ministry of Justice open a dialogue with all organizations involved in legal aid to strengthen the mechanisms to provide free legal aid in the short and long terms with the aim of enhancing the population's access to justice;*
- 2. A specific mechanism be developed for long-term planning in order to ensure the sustainability of free legal aid. This mechanism would need to include the means for ensuring regular access to legal aid in rural areas and to encourage the private legal profession, together with the Public Defenders Office, to participate in the provision of free legal aid;*
- 3. A mechanism be developed to coordinate the legal aid currently being provided by organizations in Timor-Leste, which could be pivotal in efforts to guarantee the effective use of limited resources currently available;*
- 4. The financial and human resources of the Public Defenders Office be increased so that it can more effectively carry out its work to assist the people of Timor-Leste; and*
- 5. Stakeholders work to address the issue of traditional justice and to develop appropriate mechanisms to resolve disputes at the grassroots level in Timor-Leste*

<sup>8</sup> Access to Legal Aid in Timor-Leste, ASF – Human Rights Unit, May 2005

➤ Starting of ASF's "Grassroots Justice Program" in 3 rural districts of the country

Recognising the need for improved access to justice in rural communities, ASF carried out an innovative 3-year pilot program to establish a network of trained community legal resource persons and to raise legal awareness at the grassroots level. The goal was to alleviate the severe lack of knowledge on human rights, the legal process and the law, with an initial focus on Cova Lima, Baucau and Liquisa districts. ASF worked in partnership with locally based civic education and human rights NGOs. By utilising local expertise, contacts and local languages, as well as creative methods adapted to the audience, ASF delivered legal and rights education in a way that empowers and meets the special needs of rural communities.

The trainees were carefully selected from among respected village, youth, women, church and traditional leaders. They were trained in basic legal principles, procedures and institutions, as well as mediation skills. When a legal problem arises, residents can approach a Community Legal Liaison to receive information on their rights and legal options, and if appropriate the Liaison can mediate the dispute. For crimes and more complex problems, people are referred by the community leader to another suitable service provider, such as a lawyer or the police. This program was implemented through ongoing participatory skills workshops. After each skills workshop the leaders were supported by

the ASF team to facilitate information sessions on legal issues for their own communities. By developing this network of informed and capable leaders at the community level, ASF and its partners have contributed to bridge the gaps between the population and the formal justice sector, while respecting the traditions and leadership roles of Timorese cultures.

After the three year program was complete an external evaluation was performed. The recommendations from this evaluation were incorporated into the follow-on two year program known as "Reach Out For Rights" which built upon the Community Legal Liaison network that was developed in these districts.

#### Community Legal Information

ASF has developed an innovative and far-reaching methodology to raise awareness and understanding of the formal justice system and the most important legal issues facing rural communities, working hand in hand with local partners. Priority topics identified by the target population include land and property disputes, domestic violence and gender issues, basic process in criminal cases, human rights, the court system, and child rights. Through lively community workshops and various audiovisual materials, ASF disseminated practical information to communities about laws and rights. Our outreach to the village level ensures that the maximum number of people is reached, with active participation from all gender and age groups.



**Community Legal Liaisons with their certificates**



**Game to teach about the steps in the formal justice process**



**Old woman and young children at community legal education session**

During community workshops, ASF engaged local experts from government and the private sector to give presentations and then facilitators lead open discussions on the topic of the day. ASF also used live drama and film whenever possible to demonstrate the messages clearly and ensure that people of all ages and education levels can understand. Through these strategies, ASF were empowering the disadvantaged to seek peaceful resolution of disputes through the formal justice system and other appropriate avenues.

Reinforcing local justice mechanisms' ability to deal more appropriately with local disputes is an important step in reducing conflict escalation and preventing violence. An external evaluation of ASF's three year pilot program which ended in December 2007 found that this program can effect positive change on a community's ability to resolve disputes before they escalate into violence. Suggesting actions to undertake in order to increase the impact and create more sustainability, the evaluator found that :

*"...in the project sites the project contributed towards decreased conflict and an increased understanding of the way in which the formal legal system should operate and how to access it." p41*

*"... in many project sites, the mediation skills of CLLS [dispute resolution focal points] provides an alternative for community members who feel they have been unfairly treated by the traditional system." p 41*

*"The grassroots justice project has succeeded in developing a network of community leaders who are well equipped to provide basic paralegal services that are highly relevant to their communities. The particular model used is well suited to the Timor Leste context. The project has also delivered an intensive programme of community level legal and human rights education."*

The program was continued and amended based on the external evaluator's comments for more impact in 2008 and 2009 until the closure of the ASF mission.

**The 2006 crisis and its consequences increased the population's lack of confidence in the institutions and revealed that the Timor-Leste "success story" perceived by the international community was fragile.** Tremendous efforts are still required to restore belief in rule of law and support the fight against impunity in the country.

During the crisis security concerns forced ASF to suspend its program until the situation was stabilized and collaborators were able to work in the geographic areas of intervention without concerns for their security.

➤ **Producing and broadcasting the educational movie "Dalan Ba Justisa" (The Road to Justice)**

To increase the impact of the awareness sessions within the communities, ASF produced a ground-breaking educational film drama in 2007. This film was performed by Timorese actors entirely in the Tetum language. The film was used to expand the target audience and create a powerful vehicle for the key messages about the criminal justice process. The film "Road to Justice" has reached thousands of people through television and mobile video demonstrations, with significant effects on comprehension of vital facts about the judicial system. The movie was broadcast several times on the TVTL and used as a educational tools by ASF in its grassroots project as well as by other organizations including national NGOs and UNDP.



➤ *Sending mobile legal clinics staffed by Timorese private lawyers to the population*

Within this post-crisis context, the AATL and its members undertook an important initiative and created a 'Legal Team' which provided legal aid to victims of the crisis of April-May 2006. This legal team was made up of a group of AATL lawyers who volunteered to provide free legal services to victims of the 2006 crisis.

This AATL initiative inspired the launch of the legal aid service provision phase of ASF's intervention. To accompany this dynamic from the AATL, ASF also developed a legal aid project in 2007 which came into force in 2008.

A key component of any formal justice system is the provision of adequate legal assistance, including free legal aid services for those who cannot afford to pay fees to a lawyer. The prevalence of poverty in Timor-Leste has the potential to severely limit genuine and widespread access to justice. Research has shown that increased services of both private lawyers and public defenders are essential to provide legal aid to the far-flung population of the country.

In order to respond to these immediate needs, beginning in 2007 ASF has been actively working with Timorese lawyers to provide free basic legal advice to the population, beginning first with a pilot project in the city of Dili and expanding mobile legal clinics into the district of Cova Lima in late 2008. The team of lawyers was specially trained to provide appropriate and practical advice in simple terms, and to refer clients to other service providers who can assist them to resolve all related aspects of their situation, whether they are legal or otherwise. The advice activity was closely linked with awareness raising sessions within the communities, which ensures a wide reach and builds confidence of the public in the justice system.



*ASF team interviewing family in remote village*

➤ *Reinforcing its inner structure to develop more connections with stakeholders*

During 2007 and 2008 ASF also benefited from an "advancement grant" from The Sigrid Rausing Trust. This funding enabled ASF to reinforce its administrative structure with the arrival of an International Administrative Finance and Logistics Manager. The Administration Finance and Logistics Manager was able to provide training to ASF's NGO partners and enabled ASF not only to support the legal development of its partners, but to also support their administration and structural development, for greater sustainability. This provided an occasion for the NGO partners to reinforce their organizational structure and enable them to fundraise and plan strategic events. The arrival of the Administration, Finance and Logistics Manager also enabled ASF to increase time spent on liaising with stakeholders and enhancing the visibility of its actions.

**2008-2009: Downsizing the level of the activities and empowering for Timorese sustainability**

Having **successfully created an integrated set of interventions that linked remote communities at the grassroots level with legal information, advice and assistance from formal judicial actors**, ASF was faced with the challenge of securing long-term funding and establishing long term strategies for its interventions in Timor-Leste. ASF is a project-based organization with little core-funding and in 2008 the Timor-Leste mission has to juggle 12 different donor contracts to support its actions. Unfortunately however, despite ongoing efforts to secure long-term significant funding the organization was not able to secure sufficient funding to continue its actions.



Recognizing that the mission would be forced to close, ASF implemented a downsizing process which stressed upon transmitting knowledge and methodologies to the national NGO partners such as The *Centru ba Edukasaun no Informasaun Timor Leste* (CIES.TL) from Baucau, the *Sub-Comissão Justisa e Paz* (SJPC) from, and its new partner *Dezenvolve Sociedade Timor Leste* (DSTL) from Cova Lima for its grassroots project, and the AATL.

At the time of the closure of its resident mission, some figures can better summarize the accomplishments made:

- Over 50,000 village residents participated in legal educational activities of the program.
- A network of over 175 volunteer community legal liaisons from 4 districts of the country has been created and trained. They are able to act as legal focal points and mediate civil matters. This Community Legal Liaison network is operating in 4 districts, including Baucau, Liquisa, Cova Lima and Dili. It is found in 76 sucos in these 4 districts and entirely covers 9 out of 65 sub-districts.
- A monitoring process was tested at the grassroots level to control the role of the Community leaders and ensure respect of the Timorese legislation.
- More than 300 people received free one-on-one legal consultations from specially trained Timorese private lawyers through mobile legal clinics in IDP camps and Cova Lima.
- ASF has empowered three national NGO partners and contributed to the development of the AATL and the private lawyers profession.

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ASF would like to thank all of its collaborators who believe in the same values of peace and rule of law and who contributed to support the new born nation of East Timor.

Despite the closure of its resident mission ASF is still committed to continue to support the work of the Timorese private lawyers and, if requested, is willing to continue to provide its expertise to the strengthening of the Timorese judicial sector.

The appointment of an ASF's Representative in Timor-Leste on September 2009 will enable to keep the links and create synergies to continue the work.

*For more information about future strategies for action, comments or reactions to the present "focus note" please contact Avocats Sans Frontières Headquarter in Brussels on [asoger@asf.be](mailto:asoger@asf.be), or contact in Timor-Leste ASF's Representative Ms Maria Veronika MOA on [tim-po@asf.be](mailto:tim-po@asf.be) or +670 726 4720.*