

## **PROMOTING COMPLIMENTARITY IN THE DEMOCRATIC REPUBLIC OF CONGO**

*The Rome Statute Review Conference, Kampala, Uganda, 31 May-11 June 2010*



A presentation of ASF's integrated project aimed at enhancing the effectiveness of the Rome Statute system through capacity building for the justice sector at the national level, legal aid and strengthening the International Criminal Court.

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## **Background**

ASF established its first country office in Kinshasa in 2002, and has since opened provincial offices in Bukavu (South Kivu), Kindu (Maniema) and Mbandaka (Equateur). ASF's major activities consist of capacity building of the justice sector, legal aid and awareness raising through legal clinics, and assisting the organisation of mobile courts to provide access to justice in the most remote regions of the country.

Towards the end of 2004, ASF launched a project that combines the objectives of combating impunity and contributing to the reconstruction of the country's weak justice system, with the financial support of the European Union and has since benefitted from the support of the Government of Belgium and the MacArthur Foundation. The project was born out of a realisation that the scale of the atrocities in the DRC and the expectations of communities affected by the violence surpassed the capacities of the country's weak national legal system as well as that of the ICC. As such, the project utilized an integrated approach involving capacity building, legal aid and strengthening the International Criminal Court. The approach consisted of sets of activities which were implemented in six provinces that were most affected by instability and violence (North-Kivu, South-Kivu, Maniema, Oriental Province and Equateur and Katanga).

## **Strengthening the capacity of the Congolese justice system through the training of judges and lawyers**

Between 2005 and 2009 a total of 6 training sessions and 8 follow-up training sessions have been organized by ASF in 6 provinces. Over 460 magistrates have benefitted from these sessions. About one third of the participants were judges and prosecutors of the military tribunals, which have exclusive jurisdiction over international crimes. Similarly, between 2006 and 2007 training seminars were organised in Kinshasa and in five provinces targeting over 100 lawyers. The subjects covered during those seminars included introduction to international humanitarian law and the Rome Statute, the ICC and other mechanisms of international justice, the principle of complementarity, the applicability of international human rights conventions in the Congolese legal system, international fair trial standards, the rules of evidence and procedure in relation to the prosecution of international crimes.

Many of these training programmes were organised in collaboration with the ICC and have benefitted from the expertise of members of the different organs of the Court as well as other international organisations such as ICRC and MONUC.

It is interesting to note that merely a year after the launching of the project, Congolese magistrates have undertaken a remarkable step by applying the Rome Statute leading to dozens of trials for crimes falling under the jurisdiction of the court, as described in a case study recently published by ASF.<sup>1</sup> Despite the very limited number of trials held so far and the irregularities observed, the experience has been notable for a number of reasons. First, it involves rare initiative on the part of Congolese judges to apply the Rome Statute directly in the face of inaction on the part of political authorities and the absence of implementation legislation. Secondly, military prosecutors and judges have shown willingness to prosecute crimes involving the army and committed in the context of armed conflict. Thirdly, the rulings demonstrated a

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<sup>1</sup> The Application of the Rome Statute of the International Criminal Court by the Courts of the Democratic Republic of Congo: Case Study, ASF, November 2009 available at [http://www.asf.be/publications/ASF\\_CaseStudy\\_RomeStatute\\_Light\\_PagePerPage.pdf](http://www.asf.be/publications/ASF_CaseStudy_RomeStatute_Light_PagePerPage.pdf)

good understanding of international criminal law and the jurisprudence of the ad-hoc International Criminal Tribunals, in view of the limited training they have received. Finally, the judges have at times applied a progressive interpretation of the law both by national standards and the standards of the Rome Statute, such as the exclusion of capital punishment.

Many of the lawyers who have acted as counsel for victims or for the accused in those and other more recent trials in the DRC have benefitted from the training sessions organised as part of ASF's project. Many of these lawyers are also on ICC's list of counsel and several of them appeared in the two cases pending before the court in different capacities. At the national level, the lawyers have become active players in the development of Congolese law and jurisprudence concerning crimes falling under the Rome Statute.

### **Ongoing training and support for local civil society organisations**

ASF organises three training sessions per year for representatives of about 40 NGOs in five provinces on a range of topics including: introduction to international criminal law and criminal procedure; trial observation; the confidentiality of communications with victims; and victims' protection and participation before Congolese courts and the ICC. The training courses also address the role and limitations of civil society organisations in the investigation of crimes. Between 2005 and 2009, more than 80 individuals representing 43 NGO's have benefitted from the training programme. This has provided a pool of trained personnel across five provinces who continue to offer valuable services to victims and their communities and have also become important interlocutors for the ICC as well as other international organisations in the field.

The support provided to local NGOs has enabled them to assist victims in the exercise of their rights before the ICC and before Congolese courts, observe trials and report upon their observations. The investigation and documentation work done by NGOs, on the other hand, has assumed a particularly crucial role in the DRC, given the reluctance and unwillingness of law enforcement officials. The number of cases brought to court by prosecutors at the instigation of civil parties assisted by NGOs, confirms the impact of activities such as those undertaken through ASF's project in influencing institutional behaviour and policy. Civil society organisations are also increasingly able to work in a manner that is systematic and sensitive to the needs of victims in gathering information and assisting victims in understanding and completing the rather complex application forms for participating in the ICC proceedings.

In broader terms, the counseling and training programme has reinforced the personal and institutional links between the different civil society actors engaged in the justice and human rights sector and contributed to a better understanding of the mandate and procedures of the ICC and its limitations when it comes to dealing with the scope of human rights violations committed in the DRC and providing redress to victims.

### **Roundtable meetings between stakeholders**

In addition to the training programmes and support for civil society organisations, the project involves roundtable discussions among local justice sector officials in the 5 provinces to examine problems encountered in tackling the issue of impunity and create synergies between stakeholders. These roundtables bring together lawyers, judges (both civilian and military), law enforcement agencies, local authorities, civil society representatives and, in some cases, MONUC.



## Legal Aid

ASF offers legal aid to victims participating in ICC proceedings and to indigent defendants and victims in proceeding before Congolese courts in order to address problems of access to justice linked to lack of financial resource and to ensure fair and efficient proceedings. Since the start of the project, ASF has been able to provide legal assistance to 506 victims and 106 defendants in about 19 cases involving international crimes, through 28 Congolese lawyers, many of whom who have benefited from the training programmes referred to above. Similarly, ASF has assisted 60 other victims during the pre-trial phase of the proceedings in the Lubanga and Katanga cases at the ICC. In addition to allowing these victims to exercise the rights provided under the Statute, the pro-bono representation provided by ASF lawyers during the pre-trial phase has assisted the ICC in distributing its limited resources to other priority areas.

## Concluding Observations

While significant, the positive results of ASF's project in the DRC must be measured against the challenges and constraints that continue to persist in the region. Despite consistent advocacy and technical assistance facilitated by ASF and other international and local NGOs, the DRC has yet to adopt implementation legislation. This has hampered the transfer of jurisdiction over international crimes to civilian courts, as foreseen in the 2006 Constitution and the draft implementation legislation, and an effective exercise of domestic jurisdiction in line with the principle of complementarity. The number of domestic trials and decisions rendered also pale significantly compared to the massive and ongoing human rights violations, particularly in eastern DRC. There have been very few new prosecutions of crimes falling under the jurisdiction of the ICC since 2008. Much needs to be done to improve the quality of the judgements, as demonstrated in the case study referred to above. More importantly, inadequate security in prisons and lack of commitment on the part of authorities has allowed a significant proportion of convicts to escape prison and remain at large. Similarly, the Congolese state has so far failed to pay the reparations awarded by the courts.

Despite the difficulties outlined above, ASF continues to believe in the important of encouraging and assisting the authorities to live up to their declared commitments as well as its activities aimed at reinforcing the capacity of the legal system and local civil society actors. ASF is planning on to restarting the training programme for lawyers in anticipation of the enactment of the long awaited implementation legislation. At the same time, the implementation of the DRC project has helped ASF identify lessons that are transferable and is currently working to standardize the training modules for use in other contexts.

## About ASF

*Avocats Sans Frontières (ASF) is an international non-governmental organization founded in 1992 in Belgium. The organization's core mission is to contribute to the building of fair and equitable societies in which the law and legal institutions serve society's most vulnerable groups and individuals. ASF has its headquarters in Brussels, Belgium and 13 permanent field offices based in Burundi, the DRC, Rwanda and Uganda. It also has specific projects in Nepal, East Timor, and in Israel and Palestine.*