

## FOCUS ON...

### Avocats Sans Frontières (ASF) and The Asosiasaun Advogadu Timor Lorosa'e (AATL)

#### « *A common experience for accessible and effective justice in Timor-Leste* »

#### I. Context of ASF's intervention in Timor-Leste in 2002

##### A. 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 the 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 (RDC)<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.

##### B. ASF's decision to intervene in Timor-Leste

After having done a need assessment and evaluated its possible for added-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. The newly emerging institutions needed support, especially in relation to the need for judicial actors.

The declaration of then-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 statement about the responsibilities to be assumed by the new born institutions.

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

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

The organization considered that the newly created justice system needed to become efficient with not only trained magistrates and prosecutors but also strong defense lawyers for the effective respect of the principles of fair trial, the rule of law and the equality of arms before the jurisdictions. The multiplicity of the sources of legislation, the complexity of the official languages adopted by the new State (Tetum and Portuguese), the small number of public defenders and the tremendous need for justice of the population led ASF in conjunction with its activities with the Public Defenders, to support the initiatives of the Timorese private lawyers. In every judicial system the need for independent lawyers is key to ensuring quality representation and equality of rights before the law.

## II. The origins of the partnership, the creation and structuring of the AATL:

### A. The creation of the AATL and the advocacy for the official recognition of the private lawyers in the judicial system of Timor-Leste

- **In July 2002** ASF began its action in East Timor. **Discussions with the private lawyers regarding the formation of an East Timor Bar Association** began shortly thereafter in **October 2002**, with written questionnaires and the realization of a comparative study of other bar associations in the region and in other Portuguese-speaking countries. The programme team spent considerable time to collect information relating to the bar associations of Portugal, Macao, Hong Kong, Brazil and different bars and law societies from Australia.. At that time the idea to support the formation of a bar association was shared by the Ministry of Justice. In conjunction with the private lawyers three major issues were identified to take this process forward. They were: (a) nominating a task force to take the lead; (b) drafting a Constitution for the Bar Association; and (c) negotiating with the Government of Timor-Leste regarding formal recognition for the Bar Association.

- **In December 2002** the **first official meeting** of the private lawyers to discuss the creation of the AATL occurred. This was followed by many subsequent meetings. At first a committee of nine lawyers from nine different organisations (including a representative of the Public Defenders) was nominated as the task force. The tasks assigned to this group were to: (1) approach the Minister of Justice and hold negotiations regarding the drafting of the advocates' law; (2) organise workshops to discuss the various models of bar association that could serve as a viable model; (3) draft a Constitution and code of conduct for private lawyers; and (4) hold responsibility for reporting on these activities to all the members of the lawyer community. After the creation of the task force, several workshops were held to discuss and finalise the constitution of the bar association.

- **In April, May and June 2003** several meetings were held by ASF with the lawyers to discuss the framework for the future Advocate's Statute. Positive feedback was received and the drafting of the advocates' statute commenced in June. The first draft was completed, translated into Indonesian and circulated to the lawyers in the association. **The lawyers met several times in July 2003 to discuss the various articles of the draft Advocate's Statute.**

- **During that time** ASF assisted the private lawyers to draft the **AATL Constitution or Internal Draft Statute**, which was finalized and translated into Portuguese and Bahasa Indonesian in April 2003.



**AATL-ASF Meeting**

- **On 29<sup>th</sup> August 2003** the AATL held its first annual Constituent General Assembly, which was attended by 36 private lawyers and numerous representatives from International NGOs, governmental advisors and members of the diplomatic

community. During this General Assembly meeting the **AATL's Constitution/Internal Statute and the draft Advocacy Statute were approved by unanimous consent**. The first AATL President and Vice-President, along with a transitional administrative body of representatives were elected to continue the planning and development of the AATL.

**- In October 2003** the AATL formally presented its proposed Advocacy Statute to the Ministry of Justice and National Parliament for their consideration.

**- In June 2004** the AATL was provided with an exceptional opportunity when ASF and The Asia Foundation co-sponsored an Exchange Training Program with the Malaysian Bar Council in Kuala Lumpur, Malaysia. Over the course of 6 days, 4 AATL members and an ASF representative were provided with a unique opportunity to learn from a more experienced, regional bar association about the challenges faced in the development and administration of a professional, independent bar association. Individual sessions were held with the Malaysian Bar Council Secretariat and Office Bearers on organizational structure and administration, the proper role of a bar association, how to maintain active bar membership, and financial sustainability.<sup>1</sup>

**- In November 2004** after considerable delay, members of the National Parliament approached the AATL for further consideration of the proposed Advocacy Statute and a Joint Working Committee of AATL members and Parliamentary Members was created. With the assistance of International Advisors from ASF and the National Parliament, the initial draft of the Advocacy Statute was re-drafted to meet the strict format requirements of the Parliament and new provisions adopted to make it more in line with the Portuguese model.

**- In August 2005** the revised draft was officially presented to the President of the National Parliament for approval and subsequently transferred to the members of Commission A in preparation for the public consultation process.

**This Advocacy Statute represented a milestone in Parliamentary history in East Timor, as it was the first legislation presented for enactment by a private organization directly through members of Parliament, instead of through the respective line Ministries.**

In parallel to the National Parliament's acceptance of the AATL's proposed Advocacy Statute, the Ministry of Justice drafted its own Decree Law proposing to assume regulation and control of the private lawyers, their training, accreditation, discipline and the future recognition of a government-approved bar association. This Decree Law had been delayed for further consideration by the Council of Ministers, but was re-introduced for approval and submitted to National Parliament for consideration at the same time as the AATL's proposed Advocacy Statute. This competitive approach resulted in a delay in finalizing the legislation while the branches of Government determined which version of the legislation should move forward. Ultimately the version of the law that was initially proposed by the AATL together with National Parliament was the version that succeeded.

**- At the same time**, with the completion of the AATL's third annual Constituent General Assembly, a new Executive Committee was elected including the re-election of the previous President and Secretary, as well as the first election for the position of Vice-President. The transitional administrative body was disbanded and replaced by a Sub-Committee structure, including Sub-Committees in the areas of Accreditation, Advocacy Statute, Code of Conduct/Ethics, Public Information, and Training.

**- The 2006 crisis** and the following political changes had an impact on the future of the draft legislation.

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<sup>1</sup> Additional sessions were held with (1) the Malaysian Bar Council Disciplinary Board on the development of disciplinary rules and regulations, filing of complaints and administrative procedures; (2) the Legal Aid Board on the development of a nation-wide, pro bono, legal aid service; (3) Professional Development Program Director and staff on the identification, prioritization and delivery of professional development programs with limited resources; (4) individual Bar Association Sub-Committees on programming and the division of responsibilities; (5) visits to the Courts; and (6) informal discussions with Human Rights groups and Malaysian lawyers on the challenges faced in combating government corruption and abuse of power.

- **In November 2006** the AATL leadership organised a meeting with then-Prime Minister Ramos HORTA who expressed strong support for the organization and its activities. The credibility and reputation of the AATL had been growing and AATL was included in the stakeholder's meetings and functions related to the justice sector.

- **In September 2007** the AATL held its annual General Assembly meeting which was attended by the newly appointed Minister of Justice as well as members of Parliament.

- **In October 2007** the representatives of the AATL held a meeting with the President and the Prime Minister which was further indication of the growing interest from the authorities in this association.

- **In November 2007** the AATL and ASF were each invited to make written and verbal submissions on the draft lawyer's legislation to Parliament.

- **From April 2007 to June 2008** the AATL, as well as ASF, was engaged in advocacy activities promoting the realization of a formalized "Bar Association". ASF assisted the AATL to secure funding from two donors (World Bank and ETCAS AusAID), which then enabled AATL to mobilize an active "lobby committee" which lobbied the Government on the private lawyer's legislation.

ASF and the AATL were heard by Commission A and the **Law n° 2/II/1 on the Regulatory Framework for Private Lawyers and Lawyer Training passed on 10 June 2008 was promulgated on 14 July 2008<sup>1</sup>**.

This legislation is a huge step forward for the private lawyers, as well as the judicial system in Timor-Leste. It officially recognizes the status of the private lawyers as part of the Timorese judicial actors and organizes their regulation, training for a 3 years transitional period.

Following its adoption, ASF published a public statement emphasizing the great achievements made but also pointing out the need to continue to strengthen the justice system by ensuring the creation of an independent Timorese Bar Association in the future.

In cooperation with Commission A from the National Parliament and the AATL, ASF translated this key legislation into both English and Tetum and published it together with the Portuguese version in a book format to ensure broad diffusion within the legal community. **The publication and distribution of this book occurred in August 2009.**

*B. The progressive structuring of the AATL as the private lawyers representative organization*

Through these years, in addition to the advocacy for the recognition of the profession, the AATL was able, thanks to the energy and dynamism of its growing number of members, to reinforce its structure, develop fields of expertise and become more and more independent as the private lawyers representative body in East Timor.



<sup>1</sup> Law n° 11 2008 "Régime Juridico Da Advocacia Privada e Da Formacao dos Advogados" promulgated on July 14 2008, published in *Journal da Republica* 30 July 2008 and came into effect 30 October 2008.

➤ **The structuring of the association<sup>1</sup>**

- **In April 2005** the AATL achieved a major milestone when it opened its own office located immediately adjacent to, but independent of the ASF offices. This allowed the AATL to publicly set up its headquarters until a time when it would be able (in 2009) to move in its proper location. These adjacent offices were also the occasion for the AATL and ASF to reinforce the daily management of the association and the Timorese association to become more independent step by step. The AATL office included an administrative office completely furnished, a developing law library and reading area, an open air conference room, and separate offices for the AATL leadership.

- **In 2005** the creation of several sub-committees to work in different areas (continuing education, access to the profession, free legal services, a code of ethics, communication and public information) created a new dynamic within the AATL. Through the “public information” sub-committee, the AATL began to publish newsletters for its members as well as informational brochures containing simplified information intended for the general public. The “code of ethics” sub-committee drafted a document that is intended to serve as a foundation for the disciplinary procedures and regulation of lawyers as a profession. The “legal aid” sub-committee worked on exploring how the AATL might improve its aid to the population of Timor-Leste and how it might establish legal aid institutions. The “access to the profession” sub-committee also worked on a document summarizing the educational needs of the profession to be submitted to the Ministry of Justice.

- **In July 2005** continuing with its strategy to help the AATL to organize its structure, ASF hired a part-time Administrative Officer who became a full time employee of the AATL in October 2005.

- **In February 2006** ASF also hired a part-time Secretary/Finance/Administrative Assistant, to enable the AATL to develop its administrative structures, develop financial management capacity, and manage its internal policies and procedures to allow it to become more independent and sustainable over the long-term.

*AATL office*



These permanent staff members enabled the association to develop its actions: organization of private lawyers training, creation of new sub-committees like the “**women’s sub-committee**” **in August 2006**. The women’s sub-committee was in charge of improving the capacity of female lawyers, strengthening of personal and professional relationships among female lawyers, enhancing public awareness of legal issues, publishing and widely distributing brochures about the sub-committee with information on the 14 women lawyers to raise their professional image and awareness of their services, organizing a TV talk show on women’s and children’s legal issues, and networking and coordinating with other organizations and agencies following the crisis, such as UNIFEM, UNICEF, RedeFeto (national women’s network), and the Rights Monitoring Network project being funded by UNHCR through the Ombudsman’s office.

From beginning a handful of members in 2002 and growing to a membership of over 90 effective members, the AATL’s growth as an organization is reflective of the important increase in interest being shown by members of the profession.

➤ **The financial support needed and the growing autonomy in the fundraising process**

- **In 2007-2008** ASF, through the support of its international Finance, Administrative and Logistics Officer and its successive Heads of Mission, assisted the AATL to secure direct, independent donor funding. As a result of the work done by ASF and

<sup>1</sup> Website of the AATL created : <http://aatl.minihub.org/>

the AATL, the private lawyers association was finally recognized by donors as a legitimate grantee in its own right. With ASF's support the AATL was successfully awarded two direct small grants in 2008 from the World Bank and AusAID ETCAS. During this time the AATL also opened a bank account and established an accounting system and administrative procedures all of which indicated the faith international donors are gaining in the organization's long-term viability in Timor-Leste. Further credibility was given to the organization when it was awarded small grants from the Prime Minister's office in 2008 to support its members legal aid activities.

- **In 2009** long term funding from international donors was not accessible in East Timor. Therefore, ASF was not any more in a position to provide extra support for the AATL<sup>1</sup> (despite the numerous proposals made including support to actions for the AATL). As a result, ASF's support to the AATL became limited to supporting the costs of the institution (salaries and operational costs) rather than providing technical support. Supporting the autonomy process of the AATL and hoping to assist the AATL to secure additional funds, ASF out of necessity tailored its support to focus on helping the administrator to write proposals and training the administrative staff.

### III. The provision of technical support to the private lawyers and the actions in favour of the Timorese population in need:

#### A. The training of private lawyers

Prior to any official recognition, no specific training was organized by the authorities for the private lawyer profession, as had been done for the magistrates, prosecutors and public defenders. However Timorese private lawyers wanted specific training sessions to be organized in order to enable the profession to update their knowledge and act more effectively.

- **In late-2004** ASF began its Private Lawyer Training Program in order to reinforce the quality of the service delivered by lawyers to the population. ASF provided regular monthly training workshops on various law topics and legal techniques that would assist the private lawyers in their professional and educational development. However, the resources for this kind of a program were limited because it did not benefit from the assistance of the Government or other large donor organizations or agencies. ASF slowly incorporated the AATL into the future planning and implementation of the program, as part of the AATL's commitment to providing professional development and continuing legal education opportunities to its members. At that time, ASF in cooperation with the AATL also conducted training workshops and programs<sup>2</sup>. An in-office Mentorship Program for the private lawyers was implemented, where ASF staff assisted participating lawyers in case management, office management, law office technology, budget management, marketing and specialization. However, maintaining sustained participation and attendance of the private lawyers proved to be difficult over time.

In addition to the legal technical trainings delivered to the private lawyers, some attempts were made to improve the private lawyers' understanding of the Portuguese language.<sup>3</sup> This was necessary to understand the legislation of the country, which is written predominantly in the Portuguese language. **In January 2006** ASF provided the private lawyers with a Portuguese language course in



<sup>1</sup> Despite its financial problems ASF was able to maintain its support for the AATL structure (office, maintenance, equipment and staff) until 30 June 2009. At that time the AATL moved to a separate office and ASF launched its exit strategy process.

<sup>2</sup> Program including: Professional Ethics – 2 workshops / Client Counselling Techniques/ Human Rights and Gender Based Violence Cases /Habeas Corpus/ Proceedings / Civil Law Procedures – 2 workshops / Children's Rights and Juvenile Justice / Working with Interpreters/Translators in the Courtroom / Land Law and Land Mediation (2 days) / Legislative Process (in relation to the Advocacy Statute) – 2 workshops / Constitutional Rights

<sup>3</sup> The government's decision to use Portuguese and Tetum during the course of judicial procedures rather than Bahasa Indonesian which was a common language of instruction, prompted ASF, in partnership with the Portuguese Embassy, to offer Portuguese classes to the lawyers in private practice.

cooperation with the Portuguese Embassy. The provision of Portuguese courses was re-launched by the AATL **in 2008** for a number of months, once again in cooperation with the Portuguese Embassy.

**- In 2007 to 2008** the AATL took further steps towards autonomy by taking the lead on developing training for its members. This initiative to ensure the training of its members on specific topics is a proof of dynamism and demonstrates the will of the AATL to improve the quality of representation by its members and assistance to the Timorese citizens.

With the official recognition of the private lawyers in 2008, the Legal Training Center is set to take the lead in capacity building private lawyers and may enable lawyers and the future Bar association to organize specific workshop to complement this training in depth.

#### **B. Actions in favour of the most vulnerable**

Working in LBHs (legal aid organizations), independently or within legal NGOs, the AATL lawyers have progressively developed actions in favour of the most vulnerable part of the Timorese population. In a striking example a group of private lawyers decided to provide free legal advice and assistance to victims who had been detained in the aftermath of the 2006 crisis. In addition, through its support to a number of LBHs the Asia Foundation has also supported private lawyers to provide free legal services to the population. At the same time the AATL had created information tools for wide distribution to the population focusing on specific legal topics including women's rights and children's rights.



**Lawyer from ASF mobile legal team giving free legal advice to a woman in Cova Lima.**

ASF saw the opportunity to reinforce this action in conjunction with the AATL, and **in 2007** launched its access to justice program with the collaboration of 3 full time AATL lawyers. This access to law program provided free legal advice to IDPs in Dili and to vulnerable people living in the districts of Cova Lima and Liquisa. There was a particular focus on women and children. The actions of the private lawyers was initiated in combination with several integrated activities such as legal information at the grassroots level, collaboration with trained community leaders, the use of referrals to the relevant organisations of services to create a bridge between the population in need, living far from the institutions and the formal justice system. This program was mentored by an international lawyer and over its duration assisted hundreds of people to access solutions to their legal problems.

Despite the achievements of this integrated project, the action came to an end **in June 2009** due to long term funding difficulties.

#### **IV. ASF's vision on the coming stakes for the private lawyers profession and beneficiaries**

Over the 7 year period of collaboration, the AATL with the support of ASF was able to demonstrate its ability to unify the private lawyer's profession and mobilize it to act for effective access to justice by the Timorese citizens. Further support is needed to help the AATL to continue its representative work and enable the profession to stay fully independent and ensure during the judicial process independent and efficacious legal assistance. Many things still have to be done in order to reinforce access to justice for the population and fair and impartial justice delivery in Timor.

##### **For the profession, the main future stakes will be:**

- To fully exploit the potential of the 2008 legislation to increase the level of training of the profession, create an efficient regulation process, organize the training of newly arrived young lawyers (theory and practice), defending the most vulnerable in full independency and put the law and citizens' rights before other interests;
- To become at the end of the transition process fully independent and create checks and balances within the society;

- To become strong “transformative” lawyers within society, to act as an independent watchdog, to contribute to promoting the culture of the rule of law, to fight against impunity and private justice;
- To support the most vulnerable to access effective justice because justice must not be neither a luxury nor a myth for a sustainable peace.

**For the AATL:**

- To support its members and the profession, as the representative association of private lawyers, and advocate for a strong commitment for the creation of a future independent Bar Association
- To develop a proper strategic planning to ensure the development of the association and its actions for the population
- To continue to develop its expertise in advising on draft legislation, providing continuing legal education to its members and organizing public information sessions for the community.

**For the People from Timor-Leste:**

- To benefit from effective access to justice and for the most vulnerable affordable, accessible and quality legal assistance.

ASF, in this scope and despite the closure of its resident mission, is still committed to continuing to support the work of the Timorese private lawyers. ASF is also still committed to providing the adapted and necessary support with respect to the will and independency of the AATL. The appointment of ASF’s Special Representative in Timor-Leste in September 2009 will enable ASF to maintain its links with the AATL and create synergies to continue its work.

Through its growing International Legal Network which enables experienced international lawyers to provide support, mentoring and sharing of experiences, ASF hopes to continue to build upon the huge work done with the private lawyers and the AATL over the past 7 years in Timor-Leste.

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