

# Avocats Sans Frontières

## Newsletter 2004 - VI

*october 2004*

*Dear reader,*

*It is with pleasure that we issue the new edition of Avocats Sans Frontières' Newsletter.*

*In addition to the news you will find in this edition, Avocats Sans Frontières is happy to announce that Nicolas Jacobs has joined the team in Brussels as project co-ordinator for our activities in Israel, Gaza and the West Bank. As will be detailed below, he is among other things in charge of the organisation of a four-day training seminar for thirty Israeli and Palestinian lawyers. You can reach him via e-mail ([njacobs@asf.be](mailto:njacobs@asf.be)) or by phone at the regular number.*

*As announced in the previous Newsletter, you will find an outline of the new allocation of functions with in the board of directors.*

*Happy reading!*

*Peter Van der Auweraert  
Executive Director*

## **Timor Leste**

This month, the context in Timor-Leste is seemingly opportune for legal debates. Indeed, the project to establish an international tribunal to try the serious crimes committed during the referendum of 1999 is still discussed by the government and the population of Timor, since the Jakarta ad hoc tribunal does not have the power to sentence people who have been found guilty. The government of East Timor is still worried however about the tensions with Indonesia that an international tribunal is likely to provoke.

In addition, three international judges mandated by the UNDP have taken up their functions at the Court of Dili, in order to assist the legal systems of the four districts of Dili, Baucau, Suai and Oecusse. At the occasion of the opening ceremony of the training of judges, prosecutors and public defenders, the Prime Minister and the President of the Superior Judicial Magistrate recognised that the judicial system of Timor-Leste faces a large number of difficulties and that priority should be given to the training of judges.

The institutionalisation of the Bar Association of Timor is underway. ASF took advantage of its participation in the second Constituent General Assembly of the Bar to draft the first newsletter of this organ and to launch a competition for the elaboration of a logo. The Law Directory is since completed, and is ready to be distributed to law firms and public offices. A meeting with representatives of private

lawyers has permitted the establishment of a programme and a timetable for a training seminar. A training manual has been drafted and its translation into Tetum is underway in order to facilitate the instruction.

Finally, translated copies of the Code of Conduct have been distributed to the members of the Bar as preparation for the series of workshops that will be held in November and December, with the participation of various international organisations having prior experience working with Bar Associations.

## Rwanda

Rwanda, Uganda and the DRC have signed an agreement in order to disarm, demobilise and reintegrate the armed rebel groups and militias constituting sources of tension in the region. Nevertheless, suspicion remains strong in the Rwandan and Congolese headquarters as regards the sporadic but recurrent actions by rebel movements in east DRC in September and early October.

Alongside the Burundi border, rumours and uncertainties concerning the end of the transition period and the report of elections in the country provoke a massive arrival of Burundis, seeking refuge in the neighbouring Rwandan provinces.

Relations are defrosting between Rwanda and the ICTR, and for the first time since the creation of the tribunal, officials from Arusha have been on a visit. The debate of the passed few days concerns the possible transfer of cases and detainees from the ICTR to Rwanda. In the framework of these discussions, the Rwandan government has announced that it is ready to refrain from the capital punishment as regards cases that would be transferred from the ICTR. In the mean time the trial of father Athanase Seromba, first catholic priest to be judged by the ICTR, has begun in Arusha. Priest in the parish of Nyange, in the region of Kibuye, during the 1994 genocide, father Athanase Seromba stands accused of genocide, complicity to genocide, agreement to commit genocide and crimes against humanity. He pleads not guilty.

The Rwandan government has finally reacted to the report of the parliamentary Commission, on the perseverance of a genocidal ideology in Rwanda (c.f. earlier newsletters). In an official statement made public in Kigali, the government has asked the Attorney General of the Republic to inquire into the accusations made by the parliamentary Commission and to hold the people concerned accountable if facts were shown to be true. The presidency of the European Union has reacted to this report by saying that it "*regrets that the Government of Rwanda has not unequivocally stated that those mentioned in the parliamentary report are presumed innocent until the contrary is proven. Individuals have been publicly accused on the basis of information that is insufficiently substantiated*"

The publication of the last report of *Human Rights Watch* in Rwanda concerns rapes committed in the framework of the genocide, and it stigmatises an absence of victim-care as well as weaknesses in the Rwandan judicial system as regards the treatment of these crimes.

In collaboration with the Bar Association of Kigali, Avocats Sans Frontières has organised training concerning the legal reform in Rwanda, from September 20th to 24th. Conscious of the complete remodelling that has been undertaken on the level of structure and legal institutions as well as on that of procedure and applicable law, Rwandan lawyers have shown a great interest in this technical training. They have been able to emphasise questions relating to the unconstitutionality of certain new dispositions, or to conflicts and contradictions between various norms.

ASF's mission in Rwanda has also been involved in the initial training of the new Magistrates, organised by the Rwandan Supreme Court. A member of the ASF team has thus been able to exempt a number of lessons.

In the framework of the technical support that the ASF brings to the Gacaca procedure, the elaboration of various didactic tools, such as the "*Guide du jugement*" (judgement guide) and the "*Manuel Explicatif des Juridictions Gacaca*" (explanatory manual of Gacaca jurisdictions), is underway. The training courses for educators, scheduled for November, are also under preparation.

The sixth volume of the "*Recueil de jurisprudence sur le contentieux du génocide*" (Collection of jurisprudence on the contention of the genocide), realised by ASF's mission in Rwanda under the auspices of the Supreme Court, is to be found at the printers, where the last corrections are made.

In addition, the mission has at the beginning of October had the pleasure to welcome during one week the new person in charge of the project in Rwanda, Mrs Caroline Stainier.

## Burundi

The Burundi political circles are preoccupied by the question of the post-transition Constitution and by that of power sharing between Hutus and Tutsis. In order to circumvent the blockage imposed by the Tutsi parties, the President of the Republic gave a decree, which called for the two chambers of representatives of the transition parliament to meet and study the Constitution at a special assembly. During an extraordinary session, the parliament thus approved the project for a new constitution, which will come into effect from the 1st of November 2004. The ten Tutsi political parties (G10) have not concealed their dissatisfaction, and they seized the Constitutional Court on the 27th of September in order to have the Constitutional project declared invalid.

After having launched international arrest warrants against the leaders of the NLF following the massacres of Gatumba (see previous newsletter), the President of the Republic asked the General Assembly of the UN to classify the rebel movement still active in Burundi as a terrorist organisation. Moreover, Burundi has ratified the statute of the International Criminal Court without reserves.

The day for reflection "on the development of criminal audiences" organised on the 9th of July by ASF (see previous newsletter) has proven very constructive. Participants have indeed committed themselves to the realisation of the conclusions reached during the day, and to the organisation of criminal case sessions of one or two weeks, depending on the volume of cases pending before the higher authority (Tribunal de Grande Instance). The planning of sessions until December 2004 should allow for a more rapid progression. Thus, the higher authorities within the competences of Bujumbura, Ngozi and Gitega began their criminal hearings during September.

In addition Group II, initially formed by ASF and comports magistrates who have been promoted to the higher authority, began its second session on the 13th of September. The promotion and the solid training of these magistrates are indispensable due to the urgency in ending the delays in the legal contentions, resulting from the troubled period which the country has gone through. The three week long training benefited 35 magistrates and dealt essentially with criminal matters.

Finally, as regards the case of the assassination of Dr. Kassy Manlan (see previous newsletters), ASF is in charge of the legal assistance of Mr. Jean-Paul Bukeyenzeza, guard at the doctors' residence, and of Mr. Nuni Martin, condemned for qualified theft and supposedly extracted from prison in order to participate in the murder.

## Democratic Republic of Congo

As regards politics and security, the transition has witnessed its share of commotion during the past month. The attention has been turned towards the pygmies of MLC (*Mouvement de Libération Congolais*), according to whom the crimes of anthropophagy committed during 2003 in Ituri were part of a plot by the party of the opposition. Furthermore focus has been given to the military movements of the imperceptible Kunda, to the invasion of the town of Katanga by the Maï-Maï, to the audit of the public sector and the publication of the astronomical salaries received by the "directors.

ASF's project "Boutique de Droit" has been successfully launched. The members of the AFEAC (The DRC association of female lawyers) are in charge, and they commit themselves with enthusiasm. The number of female lawyers has thus passed from 25 to 29. The task of these lawyers is to set up itinerant sessions for people whose movements are restricted for financial or professional reasons. Sensitising activities have multiplied and diversified thanks to the manufacture of a bilingual leaflet, the animation of a show on Radio Okapi and the setting-up of a model to popularise access to justice. The impact of these activities is witnessed by the increase in registered consultations at the workshop (boutique) and during the itinerant sessions.

The first open hearing took place in Ndemba, in the district of Lulua in eastern Kasai. This initial experience proved very positive, both from the perspective of the people having participated with interest to the audience, and from that of the magistrates and the lawyers. The court ruled on criminal and civil matters regarding new cases and regarding legal arrears. The next session will be held in Tshimbulu, also in eastern Kasai, at the beginning of November, and will last six weeks.

In October the people in charge of the "training" and "open hearing" projects had the opportunity to go to Mbandaka, capital of the province of Equateur. The aim of the mission was to prepare the organisation of ASF's activities, i.e. the opening of a decentralised antenna, the organisation of the recycling of the magistrates of the province, and the setting-up of open hearings. For technical and logistical reasons, the town of Gemena in the district of Sud Ubangi has been chosen for the implementation of ASF's actions in Equateur.

## Israel and the Palestinian territories

In October the project concerning networking and reinforcement of relations between Israeli and Palestinian lawyers entered into its first phase of implementation with the arrival at the secretariat of Nicolas Jacobs, formerly active in Israel, Gaza and the West Bank, who will now be in charge of the present project. The project directly follows the principles of ASF's intervention in the region, i.e. to work in synergy with civil society and lawyers, Israeli as well as Palestinian, in order to promote as far as possible a dialogue between the two parties as regards concrete action.

The Belgian Ministry of Justice stands mainly for the funding of this project, which envisages the organisation of a four-day long seminar in Brussels, in March 2005. The seminar is to include 30 participants, with an equal number of Palestinian and Israeli lawyers. Each group of about 15 participants will comprise a small number of more experienced lawyers, the rest of the group being made up of "young" lawyers, working either in private cabinets or within local NGO's with whom ASF has entertained relations since 2002. The participation in the seminar of female Israeli and Palestinian lawyers will be particularly encouraged. In addition, Belgian legal circles, and in particular the Belgian lawyers invited to participate in the seminar, will benefit from a unique occasion to meet with their Israeli and Palestinian counterparts to discuss the respective judicial systems, and the practical difficulties

posed by the reality of the Israeli -Palestinian conflict.

The follow-up of requests for funding, as well as the search for new possible sources will be carried out in parallel, in the aim to ensure continuity and development of the ASF's two-year old involvement in the region.

## International Justice

As in the past, Avocats Sans Frontières assisted the third session of the Assembly of States Parties as observers from 6 to 10 september 2004. This session was the first to be held in The Hague, seat of the Court.

The third assembly took place at a crucial moment. The International Criminal Court is now operational. The offices and the first courtrooms are ready. The first two instructions (relative to the situations of Uganda and the Democratic Republic of Congo respectively) are underway. The ASP was to adopt the budget for 2005, but also to approve a series of other texts and decisions, such as the rules for the Victim's Trust Fund, the code of conduct for the councils, and the relationship agreement with the United Nations.

### *The budget for the legal aid and the Victims' Trust Fund*

The Registry has elaborated a budget reflecting its own options, in particular as concerns the organisation of the defence and representation of victims. The registry has, in order to elaborate these mechanisms, organised several seminars with council organisations, and even with certain NGOs. It is a unique initiative in the history of international tribunals, and it should be welcomed as such. ASP took part in these deliberations, and some of its members were heard as experts.

As regards legal aid, a system to remunerate councils has been elaborated which takes into consideration the problems encountered by the ad hoc tribunals. Moreover, the creation of a public defence service is envisaged in order to assist the defence of the accused, but also to play an important role in the representation of victims.

The budget elaborated by the Court has been criticised on various points by the Committee on Budget and Finance (CBF). The latter has recommended important reductions, in particular as regards legal aid to victims, posts which already at their strictest minimum however.

During the conference, NGOs, organised within the Coalition for the International Criminal Court (CICC), lobbied to safeguard the means necessary for an effective participation of victims, for an efficient Victims' Trust Fund and for a stronger presence of the Court in the field. The prosecutor and the registrar admitted weaknesses in the budget as regards the latter and asked for a complementary budget for field officers, in particular for the public prosecutor's department and the office of the victims. The lobbying on behalf of the NGO's did not remain without effect. Posts conceived for the defence of victims, envisaged as "conditional" by the Court and of which the CBF recommended the suppression, were retained in the budget. The victims' compensation fund will also benefit from a secretariat in charge of the general budget.

## Board of Directors : composition and responsibilities

As announced in the previous Newsletter, Prof. Lieven A. Denys (lawyer at the Bar

of Brussels -NI) has recently been elected President and Jean-Louis Libert (lawyer at the Bar of Liège) Vice-President.

The daily administration is taken care of by Chantal Van Cutsem (lawyer at the Bar of Brussels -NI) as secretary; Luc Walley (lawyer at the Bar of Brussels -NI), former President and in charge of the International Justice Commission; Marc Nève (lawyer at the Bar of Liège) former President and responsible for the European Criminal Justice Commission; and Joelle Van Ex (magistrate in Brussels).

Hafida Talhaoui (lawyer at the Bar of Antwerp) and the President will entertain relations with Flemish Bar Associations, and Philippe Van Roost (lawyer at the Bar of Brussels -Fr) and Jean-Marc Verjus (lawyer at the Bar of Liège) will do so with French-speaking Bar Associations. Tom De Keersmaecker (lawyer at the Bar of Antwerp), the President and the Vice-President will keep contact with European and International Bar Associations.

Other tasks relative to the various commissions following projects in Congo, Rwanda, Burundi and Timor Leste and other initiatives under elaboration have been distributed as follows: Congo - Joelle Van Ex and Jean-Louis Libert; Burundi - Anne Monseu (lawyer at the Bar of Brussels -Fr) and Jean-Louis Libert; Rwanda - Marc Nève and Chantal Van Cutsem; and Timor Leste - Philippe Van Roost.

## ASF NEEDS YOU!

**ASF has to urgently increase its free reserves. This important goal can only be reached with your help. Only your generosity will ensure the association's long term survival. Make a donation to ASF. All cash donations equalling or exceeding thirty Euro are tax-deductible in Belgium.**

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*There are also other ways to help ASF:*

- Become a member of ASF and regularly receive the ASF newsletter (40 Euro/Year - 20 Euro for students - Bank account: ING/Caisse Privée 630-0227491-85 - IBAN: BE89 6300 2274 8185 - BIC : BRUBE<sup>BB</sup> - Mention: "membership 2004") ;
- Regularly consult our website ([www.asf.be](http://www.asf.be)) to find our regularly updated vacancies for volunteers, interns and regular staff.