

# Avocats Sans Frontières

## Newsletter 2005 - II

March 2005

*Dear reader,*

*Also in the second Avocats Sans Frontières' Newsletter of 2005 you will find, in addition to the overview of the Avocats Sans Frontières activities since the last newsletter, a section providing more indepth information on one of areas of Avocats Sans Frontières' work. This time the topic chosen is the "Gacaca System" in Rwanda, which after a long preparatory period has now finally taken off. In addition to talking about Avocats Sans Frontières' involvement in this process, the section provides a summary overview of what the Gacaca system is and how it will function. It also pinpoints some of the challenges that lie ahead. The coming Newsletters will of course contain more news on the functioning of the Gacaca system and Avocats Sans Frontières' participation therein.*

*In addition to the activities described in this newsletter, Avocats Sans Frontières has also been working hard on the preparation of a number of future projects. One important project concerns the representation of victims from the Democratic Republic of Congo (DRC) before the International Criminal Court (ICC). One of the innovations of the Statute of the ICC is that it gives an important role to the victims in the ICC proceedings. Unfortunately, the budgetary means of the Court in this area are (too) limited, which will make adequate participation of the victims in the proceedings strongly dependent on NGO support. Concretely, Avocats Sans Frontières is putting together a team of qualified Congolese and international lawyers. This group will prepare itself for its work with the victims, while at the same time the organisation is making sure that it is ready to act if and when the first ICC arrest warrant concerning the DRC is issued.*

*This activity forms part of a larger project aimed at supporting the fight against impunity in the DRC and the reconstruction of the local justice system there. In this frame, Avocats Sans Frontières will, amongst other things, work with a group of Congolese lawyers to ensure -where necessary- the defence of the accused and the legal representation of victims in cases concerning international crimes or massive human rights violations taken place in the DRC before the Congolese courts . The seminar entitled "No to Impunity in the Democratic Republic of Congo" organised in Kinshasa at the end of February, about which you can read more in this Newsletter's section on the DRC, also forms part of this larger project. Other activities are planned as well - they will be reported on in the coming Newsletters.*

*One final piece of news is that a number of international law firms in Brussels have decided to choose Avocats Sans Frontières as their charity of choice for the annual 20 km run of Brussels. Over the years, lawyers and staff from many law firms have challenged themselves to participate in this annual run, raising money for charity in the process. Avocats Sans Frontières is of course very pleased to be chosen as the charity for this year's run, and to match this generous offer, has decided to put up a team of runners of its own. This team, which consists of staff members of the Secretariat here in Brussels, will join the participating law firms in their 2005 Legal Run. You will soon receive information on how you can sponsor*

*the Avocats Sans Frontières team in its physical effort to raise money for the organisation's activities and projects The same information will appear on our website at [www.asf.be](http://www.asf.be).*

*Happy reading,*

*Peter Van der Auweraert  
Executive Director*

## *ZOOM...*

### *The Gacaca Courts in Rwanda*

The first hearings before the Gacaca Courts have taken place on the 10th of March 2005. The Gacaca Courts have jurisdiction over any "offences that amount to the crime of genocide and any other crimes against humanity perpetrated between the 1st of October 1990 and the 31st of December 1994<sup>1</sup>" in Rwanda.

What does the word "Gacaca" stand for? In the Kinyarwanda language it means, "grass". Traditionally the word relates to a system of arbitration, one of "justice on the grass". The Rwandan legislator has chosen this particular system of "participatory justice" in order to tackle in the most satisfactory way the Genocide cases.

Since the end of 1996, the ordinary courts in Rwanda had already attempted to deal with the huge and complex task that is the fight against impunity, and ensuring that the victims receive justice. In other words, their will was to clearly distinguish between those who are innocent and those who are responsible for the crimes committed during the genocide period. In order to encourage the national effort to strive for justice in Rwanda, Avocats Sans Frontières decided in 1996 to develop a vast legal aid project. Both the victims and the accused were given the opportunity to receive the services of a lawyer.

The ordinary Courts have rendered many judgements since that time. However no judicial system around the world can realistically come to terms with these cases in a reasonable period of time. Indeed the Genocide Cases have no equivalent in terms of broadness and seriousness.

Rapidly it was felt that thousands of persons accused would not be judged before at least ten years and this situation could not remain as such. Furthermore the indefinite extension of preventative detention measures could not be accepted for detainees who were presumed to be innocent. On the other hand, the proclamation of an amnesty could only be seen as a victory for impunity.

An alternative system that could deal with the Genocide Cases was soon sought; one in which the Rwandan people could participate in. This system would be structured in the same way as the administrative organisation of the country. The jurisdictions would be composed of "Inyangamugayo". These judges were to be elected by the population based on their integrity and without any prior professional qualifications being required.

The "pilot phase" of the Gacaca process began during the summer of 2002. Following a law adopted in January 2001, 751 Gacaca courts started the investigation of the files within their jurisdiction.

No judgements were given, however the first phase of the Gacaca process led to the adoption of a new framework of the Gacaca law in June 2004 that would take into account the difficulties encountered during the phase in question and the need for alterations in the

legislation.

Here are the major characteristics of this unique system of "participatory justice".

The inquiry into all of the Genocide files is done by the 9000 Gacaca Cell jurisdictions<sup>2</sup> present in Rwanda. These Cell Courts have the task to gather all the necessary information relating to the events that occurred during the genocide period, and concerning the victims, damages, and the persons accused of having participated in the massacres. The Courts then set up a list of the persons apprehended, who are placed into different categories (first, second, or third category, depending on the seriousness of the actions or on the degree of responsibility imputed to them). Following the category, the accused will then go to the Court that has jurisdiction over him. The third category accused persons (only violations of property rights) are tried before the Gacaca Cell Courts. They risk having the obligation to pay reparations to the victims. The second category accused (homicide, attempted homicide, grievous bodily harm occasioning death) are to be tried by one of the 1545 Gacaca Sector tribunals. They risk up to 30 years of imprisonment. The accused may appeal to one of the 1545 Gacaca Courts of Appeal present in every sector. The persons presumed responsible for the most serious breaches (those who planned the violations, superior responsibility, murder, torture, rape, degradation of deceased bodies) fall within the first category of crimes. It is the ordinary Courts that have the task of hearing their cases: province tribunals or military tribunals, High Court of the Republic or Military High Court, and the Supreme Court<sup>3</sup>. The sentences for this category of crimes include the death penalty.

The Gacaca system tends to favour confessions of guilt, which is close to the Anglo-Saxon concept of "plea bargaining". The Gacaca law includes a "confession of guilt procedure". The person's confession may have the effect of considerably reducing his sentence as long as all the conditions have been properly met. For example the first category accused who did not use the confession of guilt procedure and who is found guilty risks a life imprisonment sentence or even the death penalty. The accused that has successfully confessed his crimes will be sentenced to 25/30 years of imprisonment maximum. The second category accused will normally risk 25/30 years in prison. In conformity with the confession of guilt procedure, he will be sentenced to 12/15 years of prison if his plea is accepted. Depending on the moment when the confession of guilt is made, the accused may only face 7 to 12 years of imprisonment, which is half of the original sentence.

The weight given to these confessions can be readily explained by various factors. The Courts can only rely on the accounts made by the witnesses and those who are responsible for the crimes in order to discover exactly what happened during that period. The sentence will be reduced only upon the condition that the accused fully denounces his accomplices. In addition, the confession of guilt procedure must undoubtedly have the consequence of simplifying and accelerating the procedure. In other words, the confessions of guilt made by the persons who are responsible for the crimes seem to be the only possible way towards an effective national reconciliation and the only manner of establishing the truth.

The hearing of a case before the Gacaca Courts can be quite surprising for a jurist. Indeed there is no accusation<sup>4</sup> or defence<sup>5</sup>. Instead there is a debate around the facts attributed to the accused person, on the basis of his declaration, the witnesses' declarations, and of any other persons who have something to say concerning the file.

The Gacaca process requires the commitment of 170 000 Inyangamugayo (non-professional judges with integrity). The Gacaca enterprise requires an impressive logistic organisation: there are 12 103 Gacaca Courts in the territory of Rwanda. Such a massive project has led to doubts about its feasibility. Today however the Gacaca process has entered into a decisive phase.

The Cell Courts around the country have begun the inquiry phase of the files.

The Sector Courts have, on their part, begun the judgement of the second category accused persons. The investigation of their files had been done during the "pilot phase"<sup>6</sup>.

Priority has been given to the files of those who have already confessed their guilt. This is

a way of accelerating the process as well as ensuring the credibility of the system.

In less than three weeks, 180 people have been tried. 179 people were sentenced and one person has been acquitted<sup>7</sup>. In the majority of these cases, the confessions were found to be complete and sincere, and the persons in question were awarded a reduction in their sentence. On the other hand, the confessions of five of the accused were rejected for lack of sincerity and the accused persons were condemned to 30 years of imprisonment (maximum sentence for second category crimes)<sup>8</sup>.

Here are a few impressions concerning the Gacaca process that have been reported from the field: "The difficulties appear to be less important than predicted. There are not as many cases of trauma than it was feared. The Gacaca decisions have a quite positive impact on the population. The Inyangamugayo take their role very seriously and are also taken very seriously by the people."

Thus the beginning of the process seems to be encouraging.

Nevertheless, many questions remain unanswered.

The real difficulty in the Gacaca courts' task will be to try persons who deny any implication in the genocide.

Equally difficult are the risks underlying the confession of guilt procedure. For example, some people might hope to spend less time in jail and confess crimes they did not commit, just so that the confession procedure and the possible reduction of sentence may apply to them. On the other hand, many innocent people will end up staying indefinitely in prison without knowing if and when they will be heard before a Court.

The Inyangamugayo have important responsibilities and power: they can decide whether a person is guilty or innocent of offences amounting to the crime of genocide. During the investigation phase of the files, they can even order preventive measures that can restrict individual liberty, whilst control mechanisms for such a decision are far from being clear.

The National Service for the Gacaca Courts states that over 800 000 persons are to account for their actions before the Gacaca tribunals or before the ordinary Courts.

The "pilot phase" estimates show that approximately 10% of the people concerned by violations of the law fall within the first category crimes, thus facing trials before the ordinary courts. These courts will have to deal with 70 000 or 80 000 accused persons<sup>9</sup>.

The Inyangamugayo are volunteers. For those who are optimistic, the end of the Gacaca process could be set in 2007. The judges are supposed to hear the cases once a week (a day per week), without receiving any financial compensation. Preparing a hearing takes time and requires work on the part of the judges. How will these "judges with integrity" keep their motivation on the long run?

The philosophy underlying the Gacaca process is the absolute participation of the population in the system. Again, how can the process be successful on the long run when one knows that coming to a hearing before the Court means that the person will not work during that day and that he will not be able to cultivate his land?

Finally, the law adopted in June 2004 fails to adequately tackle the question of the reparations for the victims. Only damages done to property can lead to a civil law sentence. The law mentions nothing in relation to physical or moral damage done in relation to the death of a father, a mother, a sister or a child. The Rwandan legislative authority has to this day not yet adopted a law creating the long promised reparation fund. Indeed the financial issue regarding reparations seems to have no solution.

However one can only hope that the challenge will be less impossible than predicted.

Because Rwandans have no other choice but to believe in the process, Avocats Sans Frontières has decided to believe in it too, and to contribute to the reasons in believing in

it. For example, Avocats Sans Frontières has started organising training sessions for the Inyangamugayo of the Sector and Appeal courts. In addition, Avocats Sans Frontières has elaborated a project in which the Gacaca tribunals will be carefully observed. Furthermore, Avocats Sans Frontières is present each time it is possible to promote the respect for the right to a fair trial.

The only way the judicial system can aim for a national reconciliation is if it functions properly and if it is well respected. For it to be properly respected it needs to be equitable.

The genocide happened eleven years ago. Recently two films about the genocide have been made. Go and see "Hotel Rwanda". Go and see "Sometimes in April", even if it is only through fiction that we can apprehend those months filled with horror that have forever tainted our conscience as human beings.

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<sup>1</sup> In conformity with the legislation adopted on the 19th of June 2004. The exact statement of the law is that the Gacaca courts are "charged with the investigation and judgement of the offences that amount to the crime of genocide and any other crimes against humanity perpetrated between the 1st of October 1990 and the 31st of December 1994".

<sup>2</sup> The "Cell" is the smallest administrative entity in the country. The Cells are grouped into Sectors, of which Rwanda counts approximately 1545. A group of Sectors forms a District, and they in turn form a Province.

<sup>3</sup> In conformity with the judicial reform started in 2004. This reform has transformed the entire organisation of the Courts and tribunals.

<sup>4</sup> Even if the Public Ministry can be heard, in the same manner as a witness.

<sup>5</sup> Even if, in theory, an accused person can be ask for the services of a lawyer. Furthermore, if the law were to forbid the accused to be assisted by a lawyer, this would be a violation of the Constitution of Rwanda.

<sup>6</sup> For now, only 118 Sector tribunals are concerned by the phase out of a total of 1545. The other Gacaca Sector tribunals will be seized only once the Cell courts will have ended the investigation phase.

<sup>7</sup> One should not be astonished by the weak rate of acquittal, because the files in question almost all had confessions of guilt attached to them.

<sup>8</sup> This information has been given by the Gacaca Courts National Service.

<sup>9</sup> The Public Prosecutor has put forward the number of 100 000 accused persons awaiting a trial.

## Timor Leste

### Context

President Xanana Gusmao of Timor has recently expressed his will to go forward with the plans to establish a bilateral truth commission to deal with the Indonesian atrocities committed in 1999. President Gusmao and his counterpart the Indonesian President should meet in the near future in order to sign two bilateral conventions concerning land borders and the establishment of a Truth and Friendship Commission. Those critical of the Government of Timor-Leste's stance have demanded that the United Nations set up an international tribunal to bring to trial those responsible for committing the atrocities in 1999.

The Truth Commission between Timor and Indonesia should start functioning still in 2005, once an agreement has been reached between the two presidents. They both believe that the establishment of such a commission is the most appropriate way to resolve the past events. The United Nations will, on the other hand, set up a Commission of Experts, amongst which the Indonesian Ad Hoc Human Rights Commission, in order to re-examine the process carried out by Indonesia in resolving the incidents that occurred after 1999.

An important event in relation to the justice sector has been the announcement of the results of the exams held for the judges subsequent to their participation in a professional training course at the Judicial Training Centre. The poor results reinforce the need for proper training of the Timorese judges and the judicial actors generally. In reaction to the results, the President of the Court of Appeal Claudio Ximenes, has declared that all judges would be required to attend the two and a half years course to enable them to become effective judges. In the meantime,

international judges would carry out their work. It is expected that this decision will have a serious impact on the capacity of the judicial system to deal with cases brought before it during this period. Already there is a severe backlog of pending cases, a situation which thus risks to be further exacerbated.

As to the controversial law proposing to regulate demonstrations and assemblies (see previous Newsletter), the President has not yet expressed his intentions as to his acceptance or refusal of the law. International human rights organisations continue to urge him not to accept the law as such, as it is considered to be in contradiction with international human rights standards.

## Activities

As regards the activities of Avocats Sans Frontières, the team in Dili has met with a delegate of the UN Human Rights Unit and the director of the Rights and Citizen Department to begin organising the Legal Aid Workshop it will hold in collaboration with the Ministry of Justice. During this workshop, the results of the research on the problem of access to justice will be presented, and possible durable solutions to improve this access will be discussed. It is clear that, today, the very limited access of the population to the formal justice system remains one of the key problems in Timor. The problem is serious also in the capital Dili but is especially pronounced in the districts.

In the past period, Avocats Sans Frontières has continued its work with the Timorese Bar Association (AATL). Efforts to further improve participation of individual lawyers in the AATL have been increased with success – it is clear that the AATL can only survive if a large number of lawyers remain active within it. Avocats Sans Frontières has also played an important mediating role between the AATL, on the one hand, and the Ministry of Justice, on the other, especially in the frame of a controversial draft law proposal that might have a detrimental impact on the self-regulation and control capacities of the private lawyers. The AATL members are currently working hard on a formal response to the proposal, with the technical support of the Avocats Sans Frontières Project Officer. Avocats Sans Frontières will continue to urge the maintenance of open lines of communication and positive dialogue with the Ministry of Justice on these issues. One practical work carried out by Avocats Sans Frontières has been the translation of the draft law in the relevant languages and the distribution of the document to those interested in it. Partly as a result of the organisation's efforts, the Ministry of Justice has agreed to meet with representatives of the private lawyers to discuss the draft.

An important event in the near future will be the opening of a dedicated AATL office, which will be housed within the compound of the new Avocats Sans Frontières offices in Dili. Indeed with the expansion of the office to almost twenty staff members, Avocats Sans Frontières has had to decide moving premises, the present offices having become too small. Renovation works are on the way, and in principle the move should take place in the month of April.

Further in respect of the private lawyers activities, Avocats Sans Frontières has begun the implementation of the next phase of the Mentorship Training Program with the eligible lawyers enrolled for the program. Meetings will be held on a bi-weekly schedule and additional topics will be identified depending on the express needs of the participants.

As to the Avocats Sans Frontières Civil Society Project, the implementation of the project with the three local NGO partners has now started. A three-month working plan was developed, and the first stage of the research interviews in the districts has been commenced. Regular meetings with the NGO partners and Avocats Sans Frontières program co-ordinators will take place in order to monitor and discuss the progress and implementation of the activities. More concrete news on this first stage will be reported in the coming newsletter.

# Rwanda

## Context

Since the beginning of 2005, the crisis between Rwanda and the Democratic Republic of Congo is entering into a calmer phase. Two relatively successful summits of the African Union have taken place during the month of January.

The President of Rwanda, Paul Kagame, and his Congolese counterpart, Joseph Kabila, have met on the 10th and 11th of January at Libreville in Gabon. Rwanda is accusing the Democratic Republic of Congo (DRC) of supporting the rebels (the Ex-FAR and the Interahamwe) on its territory. The Peace and Security Council of the African Union has passed a resolution at the outcome of the summit. The resolution aims to assist the "DRC in the disarmament process of the Ex-FAR and of the Interahamwe situated in the East of the DRC", as well as to encourage "both Presidents to regularly meet and take all appropriate measures to set up formal diplomatic relations".

During the second Summit which took place on the 29th and 30th of January in Abuja, Nigeria, the African Union has decided to deploy troops in the East of the DRC in order to disarm the Interahamwe and the Ex-FAR. Rwanda was relieved following this decision, and its President Paul Kagame, stressed that he believed the African Union to be the only entity capable of reaching the fundamental objective of disarming the rebels.

On the national level, the global debate in relation to the Report of the Parliamentary Commission on the persistence of the genocide ideology has spread to the question of public liberties. Certain NGOs and some members of NGOs feel threatened by the lack of freedoms. The departure of members of the Rwandan League for the Promotion of Human Rights clearly illustrates this problem. The public liberties at stake in the present context are the right of free association and the freedom of the press. Threats, persecutions, and bullying against Rwandan journalists are common ground, says the Network for the Promotion and Defence of Human Rights, a French based Rwandan organisation. The Network indicates as well that the High Council for the Press often closes its eyes on the threats against the journalists instead of offering them its protection.

Filip Reyntjens, a Belgian researcher specialised in Rwanda, has publicly announced that he will no longer co-operate with the International Criminal Tribunal for Rwanda (ICTR) as long as the tribunal refuses to institute proceedings against the members of the FPR in power in Kigali. M. Reyntjens is convinced that the crimes committed by members of the FPR in 1994 also fall within the jurisdiction of the ICTR. The general Prosecutor of the ICTR has for the moment only evaluated the evidence regarding the crimes imputed to the FPR.

## Activities

As to Avocats Sans Frontières's activities, one very important event has to be noticed. The Vade-mecum on "the crime of genocide and the crimes against humanity before the ordinary courts in Rwanda" completed by Avocats Sans Frontières at the end of 2004, has been officially presented in Kigali on the 17th of January 2005. The presentation to the public was made by three of its authors, Caroline Stainier (Desk officer for Rwanda), Hugo Moudiki Jombwe (Head of Mission for Rwanda), and Albert Muhayeyezu (co-ordinator of the project). Many representatives of the judiciary, and of local and international NGOs were present at the event. During the ceremony, 96 French copies of the work were given out. The distribution has continued around the country for judges, officials of the Public Ministry, lawyers, victims' associations, and NGOs. The kinyarwanda version of the work is in the process of being printed and will be available normally from may 2005.

The training session for the first group of officials of the Public Ministry has taken place from the 14th until the 16th of January 2005. The training relates to the new rules applicable in the genocide cases. The objective of Avocats Sans Frontières's training is to familiarise the public prosecutor's department with the rules regarding the genocide cases. It was equally launched to focus on the right to an equitable trial. By the end of March 2005, a second group will be required to follow the training.

Avocats Sans Frontières, the Head of the Bar Association and the President of the Consultation and Defence Bureau have met on the 23rd of February. The topics of the reunion were legal aid, the reform of the Bar, and the state of the memorandum of understanding between Avocats Sans Frontières and the Kigali Bar association concerning legal aid in the genocide cases. Indeed the genocide trials have some difficulty in being launched before the Courts. Special thought has been given to the dimension of the legal aid in relation to the first category genocide cases and for the cases concerning minors. In the long term, the reflection is directed to finding a durable system of legal aid in Rwanda.

A plan of future collaboration between Avocats Sans Frontières and the Faculty of law of the National University in Rwanda has been introduced. The Head of mission of Avocats Sans Frontières and the Dean of the Faculty, Alphonse Ngagi, have reached an agreement. The National University will nominate a professor to become a member of the scientific committee. Their objective is to publish, through Avocats Sans Frontières's efforts, a Collection of commentaries on the genocide case law in Rwanda. Other ways to collaborate will be given thought, in particular the one regarding the access of vulnerable groups to judicial information.

Finally, Avocats Sans Frontières has been very active in relation to the Gacaca jurisdictions (see Zoom for more detailed information on the subject). By January 2005, Avocats Sans Frontières had completed its vast training program for the judges of the first instance and appeal courts of the Gacaca jurisdictions. The judges in question will be called to try second category cases (the highest level for the Gacaca jurisdictions). The persons accused risk up to thirty years of imprisonment. The first Gacaca jurisdictions should be operative starting from the 10th of March 2005.

## Burundi

### Context

The referendum concerning the temporary Constitution has finally taken place on the 28th of February 2005, after having been cancelled in October and subsequently in November of 2004. The population massively voted and no major incidents were recorded. The result was an overwhelming "yes".

The northern provinces have been devastated by a severe famine. Faced with such an alarming humanitarian situation, NGOs have tried to handle the crisis. The government has on its part, responded by creating an "obligatory contribution to national solidarity". Money is thus taken from any individual or company whose activities in Burundi generate profits.

Although an amelioration of security conditions has been felt on most of the territory of Burundi, the free movement of weapons has nevertheless not diminished. The government has had to deal with an increase in the acts of violence and is not yet able to control these outbursts. The population is more and more upset regarding this situation and is strongly tempted to take justice in its own hands often through immediate and cruel ways.

### Activities

As regards to the activities of Avocats Sans Frontières during the month of January 2005, the team in Bujumbura has participated in meetings held by the presidents of the Court of Appeal and the Court of First Instance of the various jurisdictions. These meetings were intended to evaluate the criminal law sessions of the Courts of First Instance since September 2004, as well as to program the upcoming sessions that are to be held in 2005.

Apart from the last week of January, the criminal law sessions have started before the jurisdictions of the country. Although the number of completed files is still low, some progress has been noticed. Indeed the Courts of First Instance do not systematically postpone the case in the absence of certain witnesses any more, but they hear out the witnesses that are present on the day of the audience. Some jurisdictions have even put pressure on the parties to the case to carefully select their witnesses, and a genuine will to accelerate the processing of files has been felt.

The hearing by the Court of the OMS file (concerning the murder of Dr. Kassy Manlan) has been called six times during the month of January, and by a decision of the magistrates on the 7th of February, the judgement has been postponed. The witnesses, as well as the prosecution's charge and the pleadings of both lawyers have been heard. The sentences requested vary from two years of criminal service to the death penalty. Mrs Gertrude Nyamoya's expatriate lawyer's pleadings have particularly intrigued the public opinion. He has emphasised what is at stake in this trial and he has even asked the Prosecutor to inquire into the question of whether the ex President of the Republic and his wife could be held responsible for the murder of Dr. Kassy Manlan.

A follow up procedure has been elaborated concerning the situation of the persons accused that are defended by Avocats Sans Frontières. Visits by Avocats Sans Frontières agents to the prisons of Bujumbura and Ngozi have taken place during this period. Every prisoner has been given a pamphlet which describes the conditions and procedures necessary in order to request either freedom on condition for those convicted to a life sentence, or a petition for a reprieve for those sentenced to the death penalty.

Regarding the "radio theatre" project, the programs have been successfully completed. The theme of these programs is the following: "the victim of sexual violence at the police station". They are carried out by the famous Ninde Company, and recorded by the Tubane Studio. All the steps that a victim has to go through when filing a complaint, as well as all the obstacles the victim has to face (the indifference and contempt of the police) are dealt with. The broadcasting of the program will take place on a weekly schedule for a period of eight weeks starting from the 17th of February on the National Radio Television of Burundi.

For the international women's day (the 8th of March 2005), Avocats Sans Frontières, MSF-Belgium and Search for Common Ground have decided to organise, with the help of the Ninde Company, a theatre animation day at the Kamenge Youth Centre (North side of Bujumbura). The Bureau for the North associations of Bujumbura as well as the Peace Centre for the Women have been asked to invite members of the associations North and South of Bujumbura. The themes of the plays have already been determined, and the scenarios deal with the difficulties and daily discriminations women have to face.

Finally, the team in Bujumbura has received the first visit of their desk officer, Indra Van Gisbergen, during the week of 18th of January 2005.

## Democratic Republic of Congo

### Context

At the beginning of January 2005, the President of the Democratic Republic of Congo (DRC) has nominated ministers and vice-ministers, thus completing the

resourcing of his Government.

Initially, the local, legislative and presidential elections were to take place in June 2005. However on the 6th of January, the President of the Independent Electoral Commission (IEC), Appollinaire Malu Malu has announced that the elections were going to be postponed. The population responded very strongly to this declaration. Tensions between the population and the police have led to casualties in certain popular areas of Kinshasa. The 14th of January was declared "Dead City", and as a consequence no activity was allowed during that day.

The Eastern region of the DRC has been the focus of the international community at the end of February. An armed group killed nine United Nations soldiers. On the 27th of February, the Congolese Government sent its Defence Minister in the Province of Ituri where the incident had occurred. The Government has given its assurance that it will work in collaboration with the MONUC, and that those responsible for the crime will be found and punished.

The MONUC has launched an operation on the 3rd of March against the armed group presumably responsible for the deaths of the UN soldiers. Over 50 people, civilians and others, were killed as a result of the operation.

The humanitarian aid that has been given to thousands of refugees in the Eastern Province in the past months has been suspended due to the lack of security in the region. Today the Province of Ituri is prone to political and ethnical instability.

The President of Medecins Sans Frontières (MSF) has deplored that the number of sexual violences et violations of Human Rights is still increasing.

## Activities

Avocats Sans Frontières has been concentrating on its training activities during the month of January 2005, in particular on the project regarding capacity building of the judicial actors. The project in question aims at recycling the magistrates in Mbuji Mayi. In the province of Kasai, 91 magistrates are going to participate to the project.

From 24 to 26 February, Avocats Sans Frontières organised a seminar entitled "No to Impunity in the Democratic Republic of Congo". The seminar was originally planned to take place in Lubumbashi, but to ensure participation of the Deputy Prosecutor of the International Criminal Court (ICC) and his team, the event was transferred to Kinshasa instead. The seminar brought together local human rights NGOs, lawyers and military and civil judges and prosecutors from four different provinces: Katanga, Maniema, Kasai Oriental and Kasai Occidental. This activity fit in the frame of the larger Avocats Sans Frontières project around the fight against impunity in the DRC and the reconstruction of the Congolese legal system.

International speakers included Serge Brammertz, Deputy Prosecutor from the International Criminal Court; Ms Sonia Bakar, Human Rights Officer with MONUC, the United Nations Mission in the Democratic Republic of Congo; Ms Karen Strauss from Human Rights Watch; Francesca Bonioti, Head of Mission for Avocats Sans Frontières in Kinshasa and Peter Van der Auweraert, Executive Director of Avocats Sans Frontières. National experts included Professor Emmanuel Luzolo Bami Lessa from the University of Kinshasa; Frank Mulenda, a lawyer at the Kinshasa bar and military law expert; and Ms Nicole Odia Kayembe, lawyer at the Kinshasa bar and active in the Congolese NGO "Action contre l'impunité pour les Droits Humains".

Despite the at times suffocating heat, the debates and discussions that followed the different interventions were intense and animated. While it is clear that very important obstacles remain in order to successfully prosecute and trial those who are

responsible for the egregious international crimes that even today continue to take place in the DRC, participants also expressed some optimism as to the possibilities of a real fight against impunity in the DRC, be it at least initially most likely at a very modest scale. There was near unanimity that prosecuting those that are responsible for often extreme acts of violence and brutality is an important condition for a more peaceful future for the DRC. One important contribution that the seminar made in this respect is that it established, or further reinforced, personal and institutional links between the different actors who have a role to play in this fight against impunity.

Other important effects of the seminar were a better understanding of the mandate and the functioning of the ICC and the (limited) role the Court can play in the fight against impunity in the DRC; a clearer comprehension of the role victims can play in the procedures before the ICC and in Congolese trials related to international crimes and a better understanding of the particularities of working with groups of victims of international crimes or massive human rights violations; and a further realisation of the difficulties related to the protection of victims and witnesses as well as prosecutors, judges and lawyers involved in legal proceedings related to the international crimes and massive human rights violations that have taken place in the DRC. Finally, a number of possible strategies for advancing the fight against impunity in the DRC were identified and discussed.

Concerning the "mobile courts" project, Avocats Sans Frontières has pursued its activities in Tshimbulu (see previous Newsletter, in particular the Zoom), and in Kazumba during the month of January (participation to the mobile court session of the registrar and of the bailiff on the 17th of January). The Kazumba session was successfully completed on the 26th of February 2005. In addition, Avocats Sans Frontières has been preparing the opening of the decentralised office of Kindu.

The team in Kinshasa has completed its report on the activities concerning the project on the "legal clinics", which had started on the 1st of March 2004. The project was carried out by Avocats Sans Frontières in collaboration with the AFEAC (Association of Women Lawyers of the DRC). The objectives of the project for the year 2004 have been successfully achieved. Approximately 807 persons have come to the legal clinics and 603 people have been given judicial advice. Avocats Sans Frontières has been following the AFEAC during the project, and has ensured that the objectives set out have been successfully pursued. The Avocats Sans Frontières team has also given the necessary material and logistical support to the project. It is interesting to point out that the number of consultations in the legal clinics has substantially increased thanks to Avocats Sans Frontières's parallel activities of sensitisation.

The activities of Avocats Sans Frontières regarding the legal clinics have started again after the New Year festivities. Between the 7th and the 23rd of February 2005, 73 consultations have been given. This figure is equivalent to the monthly average during the last months of 2004.

Regarding the mobile legal clinics, the activities have also started again. On the 21st of February, Avocats Sans Frontières and the AFEAC held a meeting in order to elaborate strategies to increase the number of consultations given to the population.

The team in Kinshasa has completed its report concerning the sensitisation activities in Tshimbulu, in conformity with the memorandum of understanding signed on the 6th of November 2004. The memorandum was agreed between the Head of mission of Avocats Sans Frontières and the representative of REPRODHOC (Provincial Network of Human Rights' Organisations in DRC). Amongst all the activities related to the project, Avocats Sans Frontières has distributed a number of prospectuses and carried out sessions of sensitisation, as well as constituted a mobile court's observatory (see previous Newsletter) and trained the members of the observatory. Overall the population is satisfied with the outcome of the project. To the question of whether the person would come back to the mobile court if an incident occurred again, 36 answered yes while 17 persons said they would not.

# Israel and the Palestinian territories

A major event for Avocats Sans Frontières has been the training seminar for Israeli and Palestinian lawyers, which took place at the "Maison de l'Avocat" in Brussels, from the 10th until the 13th of March 2005. The subject of the seminar was the Globalisation of Justice: International Law and the Protection of Fundamental Rights. Its aim is to teach how to work together, that is with the civil society and both Israeli and Palestinian lawyers, in order to favour a positive dialogue and as much as possible, concrete actions, between these actors.

Many distinguished speakers were present for the opening of the seminar such as the President of Avocats Sans Frontières, the Vice-Prime Minister and Minister of Justice, the President of the Committee of Directors of the Ministry of Foreign Affairs, the Heads of both the Flemish and the francophone Bar associations of Brussels, and finally the President of the Conference of the Youth Bar of Brussels. The Professor Eric David of the Université Libre de Bruxelles delivered the Keynote address.

Five panels of four to six experts were organised. Amongst the panels, one could find lawyers, magistrates, university professors, and members of Belgian and other European NGOs. The themes of the panels were the following: The Emerging International Criminal System, The Applicability of International Law in Domestic Legal Systems and the Concept of Universal Jurisdiction, Concrete Examples of Prosecution of International Crimes in Domestic Jurisdictions, Enforcing International Standards in the Israeli and Palestinian Judicial Systems, Problems of Detention and Legal Protection of Prisoners. A report on the interventions and discussions made by the panellists is being prepared.


In particular, the social program set up in collaboration with the Conference of the Youth Bar was very impressive in terms of creating a real sense of exchange. As a result it led to an excellent group dynamic, such as the quality of the debates during the workshops reveals. The 27 participants have in their evaluation of the seminar underlined, on one hand their satisfaction in terms of the quality and of the relevancy of the topics, and on the other hand the importance of setting up a network that will reinforce the professional collaboration between the Human Rights lawyers. Suggestions were made in order to extend and sustain the network in question, as well as specific requests concerning professional training. An ad hoc discussion group via the Internet appears to constitute a satisfactory vehicle of communication, just as the creation of a network for information would (sharing information, news, case law, legislation, and international conventions...).

As a consequence of the success of the seminar and bearing in mind the comments made by the participants, Avocats Sans Frontières foresees to ensure a follow up of the project that would consist in the organisation of an eight day training cycle in Israel and in the Palestinian territories. The objective would be to develop a structured and open partnership between the lawyers.

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- Become a member of Avocats Sans Frontières and regularly receive the Avocats Sans Frontières 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.