Accompanying note to the conference organised by Avocats Sans Frontières

HOW ACCESS TO JUSTICE CAN REDUCE POVERTY

"Development must be understood as a process for expanding real freedoms enjoyed by individuals"

Amartya Sen
Nobel Prize in Economics
Development as Freedom

Introduction

With two years left until the deadline for achieving the Millennium Development Goals, Avocats Sans Frontières is taking the opportunity to highlight the potential interaction between access to justice and the fight against extreme poverty.

On 22 May 2013, Avocats Sans Frontières will host a conference in Brussels entitled “How access to justice can help reduce poverty”. This initiative aims to make an active contribution to the preparation and implementation of new development approaches for the post-MDG policy arena where access to justice is a means to combat poverty.

Through the accounts of key actors - field based interlocutors, policy makers, States and international aid donors -, the conference will highlight their experiences and actions in access to justice that directly contribute to poverty reduction. This conference will provide a forum for stakeholders with different perspectives (human rights-based approach, economic development, governance and rule of law) to discuss together how to improve access to justice initiatives by integrating the issue into poverty reduction strategies.

This event corresponds with ASF’s programmatic objectives: access to justice as a means to enable the world’s most marginalised individuals to realise all of their human rights using the law and all legal and judicial mechanisms available.

Access to justice is a human right. It combines all of the processes and mechanisms that ensure that this right is implemented in order to provide a response to a problematic situation (human rights violation) based on the law, whether on an individual or group basis.
**Context**

"Rampant poverty, which has festered for far too long, is linked to social unrest and threats to peace and security", declared Ban Ki-moon, Secretary-General of the United Nations, at the International Day for the Eradication of Poverty on 17 October 2012.

The civilian populations of countries emerging from bloody conflict or political revolution suffer, more often than not simultaneously, from the wholesale violation of their human rights, a lack of security, and extreme poverty.

Against this backdrop, poverty can be regarded less as a situation caused solely by factors such as the lack of available natural resources or macroeconomic constraints, than as a symptom of a more structural situation related to the deprivation of human rights and populations’ insufficient control over public policy development.

While the reality of this close link between extreme poverty and these forms of both physical and structural violence1 is not debatable, it is however necessary to implement innovative approaches within the aid and development policy framework in order to meet these populations’ needs.

The relationship between the construction of a State subject to the rule of law – reinforcing peace and security – on one hand, and combating extreme poverty on the other, is particularly relevant in post conflict and fragile settings.

With 2013 marking the twentieth anniversary of the International Day for the Eradication of Poverty, Avocats Sans Frontières notes that access to independent, impartial and high-quality justice – an essential component of the rule of law – remains a major challenge for the most marginalised people in society.

Furthermore, the challenge concerning access to justice is, to date, still absent from the agenda of the UN high-level panel responsible for defining the development programme beyond 2015, the deadline for achieving the Millennium Development Goals, and of the working groups established for this occasion.2

During the conference organised by Avocats Sans Frontières, the issue at stake – access to justice and the fight against poverty – will be discussed as follows:

- Integrating equal access to justice for all people into the strategies aimed at combating poverty provides a genuine development opportunity for the most socially and economically marginalised groups. **How can we be more committed to combating poverty through innovative strategies aimed at reinforcing access to justice?**

- Access to justice must be considered as an essential tool serving those facing legal proceedings, or those needing legal services to defend their rights, in order to guide States toward realising their obligations vis-à-vis rights-holders, and prioritising the implementation of non-discriminatory and sustainable policies aimed at combating poverty. **How should we respond to the political, organisational and financial challenges encountered by most developing countries so that justice is accessible to those who need it the most?**

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2 A working group on Governance including the OHCHR, UNDP and Germany [http://www.worldwewant2015.org/governance](http://www.worldwewant2015.org/governance)
Against a global backdrop of multiple crises, the nature and scope of the commitment by all stakeholders in ensuring access to justice are being put to the test. This calls for new approaches that involve strengthening State governance and institutions, as well as State accountability. Furthermore, as indicated in several OECD reports, even though the resources allocated have on the whole increased in recent years, the financial and economic crisis has had a direct impact on international aid and development policies. How can we maintain, or even increase, the commitment of key players in the field of access to justice as a means to reduce poverty?

**Development**

1. **The effect of access to justice on poverty**

Access to justice may have an effect of a change in the living conditions of marginalised populations.

Promoting the importance of this right, and therefore of the rule of law, implies strengthening access to justice for everyone, particularly those who find themselves in vulnerable situations.

More and more experts are indicating that non-discriminatory access to justice is an essential pillar for developing and combating poverty, in that it leads to the effective implementation of other human rights.

In the absence of transparency and accountability of State institutions, and of opportunities for rights-holders to participate in the justice process, people are deprived of their right to access to justice. This makes it all the harder for them to realise their other human rights, and they risk finding themselves in a prolonged situation of extreme poverty.

In this respect, the lack of access to justice becomes an aggravating factor of the poverty in which the most marginalised populations live: legal exclusion is added to socio-economic exclusion, making this even more difficult to combat.

This exclusion is particularly felt by women, who are often finding themselves feeling multiple forms of discrimination. They have further limitations in accessing rights and justice, making their social and economic situation even more fragile.

Conversely, strengthening access to justice can be an essential tool for combating individual, group, and structural practices that generate poverty and a lack of security; this is likely to make the policies aimed at reducing poverty more effective.

2. **The impact of national public policies on access to justice**

Access to justice is a State obligation. In most Global North countries, this access is today, on the whole, guaranteed by the combined system of legal advice, pro bono assistance and State-subsidised legal aid.

Since 2008, the financial and economic crises have had a direct impact on States’ budgetary commitment in a number of public service sectors, including the justice sector, of which access to justice for the most vulnerable groups is one of the key components.

In most fragile countries, and today even in countries considered "stable", the State finds it difficult to embark on the construction of a system that ensures access to justice for everyone.

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3 Aid and Beyond: Mobilizing more resources for financing development
(http://www.friendsofeurope.org/Contentnavigation/Publications/Libraryoverview/tabid/1186/articleType/ArticleView/articleId/3330/Aid-and-beyond-mobilizing-more-resources-for-financing-development.aspx)
Too frequently civil society (bar associations and lawyers, local and international organisations) assumes the sole responsibility for guaranteeing this access for vulnerable groups.

Failing State commitment to develop this right limits access of those groups living in poverty to courts and other (formal) justice mechanisms. This situation reduces also their capacity to realise their other rights and improve their living conditions.

In this respect, how can sustainable mechanisms for access to justice be introduced in which the State intervenes alongside other players already operating in this field? Recognising the pivotal role played by the law in the social and political transformation processes implies that rights-holders can have this access and thus enjoy the State’s obligation to guarantee it.

A crucial question lies at the heart of constructing a democratic State and good governance: how to bring the population nearer to the judicial system and restore the confidence necessary for establishing the rule of law? The law, and consequently, State institutions are only respected when the State is no longer perceived as a factor of oppression, but rather, fulfilling its obligation to protect the most marginalised members of society.

States should recognise that investing in access to justice for all is not only an obligation but also an opportunity to reinforce human rights and fight poverty.

### 3. Integrating access to justice in international aid strategies

With two years left until the deadline set for the MDGs, it is necessary to evaluate the limitations of the implemented strategies aimed at combating poverty, particularly the position given to the principle of equality in access to justice for everyone. On the long term, all stakeholders will need to reflect on strategies and resources required in the framework of international and development aid policies in order to bring States to engage in processes reinforcing access to justice.

Organisations that have invested in the access-to-justice approach as a component of the fight against poverty are concerned about divestment by some donor countries in this sector; these countries could be convinced to counterbalance their new aid policies, even though access to justice only represents a minor portion of the current development aid budgets.

These concerns about the reduction of direct aid and the consequential erosion of access to justice in beneficiary countries must be understood from a perspective centred on responding to the needs of populations benefiting from aid, especially those living in extreme poverty.

This perspective calls for a review of strategies and priorities, and the search for the most innovative and least costly approaches. Non-public donors such as foundations also have a role to play in supporting access to justice programmes.

International donors are invited to consider the resources available to encourage beneficiary States to integrate the equal right of access to justice in their national strategies aimed at reducing poverty, to make it an essential component of their strategies, and not to use these economic crises as an excuse to disinvest in this sector.

### Conclusion

How can we – donors, civil society organisations and States - together make access to justice for all one of the new priorities for 2015 and beyond?

Achieving the equal right of access to high-quality justice must be regarded as one of the keystones of upcoming international development and aid policies. Not only does this right contribute to the rule of law, it also empowers beneficiary States to become more responsible for sustainable policies that help reduce poverty and promote social transformation for people in vulnerable situations.
To this end, the international community that organises the development strategies, together with these beneficiary countries, must take into account and integrate this new component in the fight against poverty.

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Access to justice: at the heart of Avocats Sans Frontières’ work

Founded in 1992, Avocats Sans Frontières has over the years become a major non-governmental organisation (NGO) in the field of projects promoting and supporting human rights realisation, access to justice, and support for the rule of law in countries in post-conflict and/or development situations, from Uganda to Tunisia, from the Democratic Republic of Congo to Nepal.4

The goal of human rights realisation for everyone is a central prerequisite for changing the lives of the most vulnerable individuals in the long-term. For Avocats Sans Frontières, access to justice and human rights realisation is an instrument that must accompany all strategies aimed at developing and combating poverty and insecurity.

An active member of civil society, Avocats Sans Frontières invites all stakeholders – NGOs, foundations, ministries concerned, international courts, the UN, bilateral and multilateral donors, including the World Bank and the European Union – to increase their investment on the twofold challenge of access to justice and combating poverty.

4 For more information, visit www.asf.be