

POLICY BRIEF

Keys for access to justice in the Central African Republic

Situation after four years of action and analysis

June 2019

SUMMARY

Access to justice is a major challenge in the Central African Republic. Years of conflict, exacerbated by inter-community conflict in 2013, have disabled most institutions in the country, especially the legal system, which faces multiple challenges. Though many devolved services and administrations are tentatively trying to resume their business, an insecure climate, as well as social, political and economic fragility, still affect most of the country.

The projects and studies Avocats Sans Frontières (ASF) have undertaken in the Republic between 2016 and 2019 reveal that several actors, both institutional and in the community, are intervening to make legal services available to ensure people are able to assert their rights.

Given the absence of state legal institutions in most of the country, their disfunctionality where they do exist, and difficulties in accessing a lawyer, people have abandoned the state justice system and turned to neighbourhood justice as an alternative.

At the moment, legal services are mainly in the hands of local authorities, religious leaders and civil society organisations.

The mechanisms put in place by these actors are fragile and exposed to criticism on grounds of discrimination, corruption, abuse of power and so forth. Still, people trying to assert their rights use these services, as they consider them legitimate, local, inexpensive and readily available.

Henceforth, **any action intended to structure legal assistance and improve availability of legal services to resolve grievances must take into account such systems of resolving conflict at local level. The diversity of actors and methods must also be considered.**

There has to be a continuous, structured dialogue among the different actors involved, via frameworks for concertation. Once this is in place, there has to be a mechanism for referring those seeking justice appropriately, whether to legal counsel, or for conciliation, mediation or legal assistance.



A FAILED STATE LEGAL SYSTEM

The state legal system in the country was already weak in several respects before the 2013 crisis. Since then, it has deteriorated yet further. Looting, destruction of property and the flight of magistrates to the capital are among the factors that have brought about the current situation.

Six years after the crisis, justice in the Central African Republic is having difficulties in reasserting itself.

Access to the formal system of justice remains seriously compromised. When they seek to assert their rights, Central Africans regularly face interference from internal security services, which often abuse their powers and impose themselves as administrators of justice without having the necessary competences.

Beyond the normal functions of maintaining public order, registering complaints and referring plaintiffs to tribunals, internal security services largely tend to treat conflicts brought to their attention internally. Practices such as these are fundamentally problematic. Corruption, humiliation, intimidation, extortion, arbitrary detentions and discrimination are widely reported by observers.



This is happening in an environment of persistent insecurity, and state institutions have little influence beyond Bangui. The result is that state justice is virtually unobtainable for most of the population.

Moreover, when cases are brought to the attention of courts and tribunals, this does not ensure that compliance with the law is ensured. The formal justice system remains fragile, facing excessive delays in procedures, and occasionally, magistrates who are incompetent, or cases of extortion or corruption. That is why the public regards the state system with defiance and suspicion.

LACK OF ACCESS TO LAWYERS

ASF's study in the Central African Republic clearly shows that access to lawyers is not an option for the vast majority of citizens.¹ This is due to a chronic lack of lawyers — one per 40,000, — and to their location, almost entirely in Bangui. Legal fees are prohibitive, and lawyers are selective about the type of case they accept.

Still, lawyers do enjoy some trust among those seeking to assert their rights. There are many examples of citizens willing to entrust their cases to legal practitioners, especially regarding family law and succession, providing the price of services is realistic and proportionate to their ability to pay.

¹ B. Langhendries, « Où sont les avocats ? Etude sur les perspectives de déploiement de la profession d'avocat sur le territoire centrafricain », ASF, September 2018.

NON-GOVERNMENTAL ALTERNATIVE JUSTICE

Even though the state justice system is disfunctional, this does not mean that there is no form of justice available. Two studies show that citizens often choose to assert their rights by turning to local systems to resolve their conflicts.²

There is a rather diverse cohort of actors who are called upon to compensate for the lack of a state system. Representatives of local authorities, such as chiefs in neighbourhoods or villages, non-governmental organisations and community leaders in faith-based or women's organisations, play a role in dispensing justice, as do armed groups.

Each of these groupings pursues its own objectives and has its own way of functioning. Conflict resolution may be motivated by religion, legal norms, morals, or custom and practice. Mediation or concertation may be deployed, and the type of sanction applied may vary. Relations among other legal actors, whether formal or informal, vary greatly.

Citizens' trust in such options depends on factors such as the type of service, whether the services are free, means of action, and reputation.

The studies show clearly that alternative justice is regarded far more favourably than the state system. Only 21% of those interviewed said they trusted formal services, against 45% for alternative justice.³ Internal security services have the

lowest rating. Despite their waning influence, neighbourhood chiefs are in the middle. Many of those seeking justice see the chiefs as their main means of gaining access to justice. Civil society organisations are seen as the most trustworthy and accessible.



Nevertheless, there are obviously criticisms of alternative justice. They can be seen as fostering social inequality. Cases of discrimination and abuse of powers have been reported. Furthermore, in the absence of supervision, formalisation and cooperation among those dispensing informal justice, there is a lack of certitude that judgements will be consistent

Anarchic competition leaves decisions open to challenges; there are conflicts over competences between formal and informal systems; confusion for citizens over different structures and procedures because of ill-defined and incompatible mechanisms, as well as a lack of powers of enforcement.

Such observations may seem alarming, but ASF's recent studies have shown they need to be put in proportion.⁴ On the one hand, having someone with some knowledge of

² L. Umubyeyi, « Dans l'ombre de l'Etat, une justice en pleine effervescence : Etude sur les dispositifs de règlement des différends en République centrafricaine (Bambari, Bangassou, Berberati, Bria & Ndélé) », ASF, December 2016 ; L. Umubyeyi, « Résoudre des conflits sans pouvoir : Les pratiques de facilitation d'accès à la justice des organisations de la société civile centrafricaine », ASF, February 2018 ; L. Umubyeyi, « D'une justice à une autre : Les perceptions et les usages des mécanismes judiciaires par la population centrafricaine », ASF, February 2018.

³ P. Vinck, PN Pham, M. Balthazard, AS Magbe, « Sondages Paix, Justice et Sécurité », Report 2, Harvard Humanitarian Initiative, PNUD, MINUSCA, March 2018.

⁴ L. Umubyeyi, « D'une justice à une autre : Les perceptions et les usages des mécanismes judiciaires par la population centrafricaine », ASF, February 2018 ; C. Benoist, « Etude sur les interactions entre les acteurs de l'accès à la justice en République centrafricaine », ASF, to be published

legal and administrative fundamentals can readily mitigate the risk of abuses on the part of the authorities.

On the other hand, with time, the actors involved increasingly cooperate with one other and become more consistent. Putting in place a framework for cooperation — forums for those involved in alternative justice — is particularly promising in fostering ongoing dialogue.

Potentially, this could lead to fewer actors being involved as a filtering process takes place. Thus access to justice would be better able to function despite the authorities posing obstacles because of corruption, abuse of powers, or other means.



STRATEGIES FOR REINFORCING ACCESS TO JUSTICE DESPITE WEAKNESSES IN 'SYSTEMS'

Crises in the Central African Republic have motivated the international community to finance numerous projects to improve the situation.

Some international agencies seek to rehabilitate tribunals and prisons gradually, while others, ASF among them, cooperate with members of the Bar to put in place a national system of legal aid for those most vulnerable.

ASF notes that strategic priorities are mainly intended to improve state justice, that is, at the level of legal tribunals and the Bar. As argued above, ASF research shows evidence

of neglect in the state justice system, and lack of access to lawyers. That is why alternative justice, whatever its shortcomings, remains the main form of justice in the country.

While welcoming international initiatives and supporting the country's own efforts to improve access to justice, ASF questions the strategies deployed.

Any strategy to improve access to justice that does not take into account the context, whether regarding state actors or alternatives, cannot succeed in meeting needs. It is therefore destined to fail. It is essential to take into account the realities on the ground, not only via projects addressing the state legal system, but also alternative justice.

ASF is also concerned about the allocation of resources, whether human resources or funding between the state legal system and the alternatives. Most international funding goes to the state system, rather than to alternatives. Alternative justice, provided locally, lacks the resources it needs.

RECOMMENDATIONS – TREAT THE LEGAL SYSTEM HOLISTICALLY

In line with conclusions based on its research, ASF draws attention to the need to treat the legal system holistically by taking into account all actors working towards better access to justice in the Central African Republic.

ASF maintains that collaborative work must take place both with actors in the state system and the Bar, and those organisations working in the field.

Given the dominant role of civil society organisations, and given that citizens perceive them as accessible and trustworthy, it is essential to cooperate with them.

ASF calls for an aid and development strategy that is based, on the one hand, on a legal state aid system, cooperating with the Bar, and on the other hand, on structuring civil society organisations to ensure they are able to operate on a long term basis.

ASF SUPPORTS ACCESS TO JUSTICE

Avocats Sans Frontières is an international non-governmental organisation that puts those seeking justice at the forefront of its work. It defends human rights and supports justice in fragile countries. It promotes stability regarding the application of law by improving access to justice for those most vulnerable and marginalised. They are the ones most in need of justice. ASF aims to raise awareness of legal rights, the better to defend them, and to consolidate the skills of the legal actors that defend them.

ASF has been working on projects aimed at improving the legal situation and access to justice in the Central African Republic since 2015. It is carrying out projects financed by the Fonds Bêkou, the European Union and the French Ministry of Foreign Affairs.

Its work led to studies to identify needs and means for action that could ensure improvements in access to justice in the country. This document is the outcome of lessons learned after four years of work in the Central African Republic:



Dans l'ombre de l'Etat, une justice en pleine effervescence : Etude sur les dispositifs de règlement des différends en République centrafricaine (December 2016).



D'une justice à une autre : Les perceptions et les usages des mécanismes judiciaires par la population centrafricaine (February 2018).



Résoudre des conflits sans pouvoir : Les pratiques de facilitation d'accès à la justice des organisations de la société civile centrafricaine (February 2018).



Où sont les avocats ? Etude sur les perspectives de déploiement de la profession d'avocat sur le territoire centrafricain (September 2018).



Etude sur les interactions entre les acteurs de l'accès à la justice en République centrafricaine (to be published)