

POLICY BRIEF

Promoting Legal Empowerment

Four themes of reflection from the field

May 2019

SUMMARY

Access to justice is a fundamental right, of which two-thirds of the world's population is effectively deprived.

For Avocats Sans Frontières (ASF), many initiatives around the world that attempt to strengthen access to justice are too narrowly focused on the logic of Rule of Law. They prioritise—sometimes exclusively—institutional reforms and state actors as agents of change. These approaches **often do not take into account the realities on the ground and do not attain the expected results in especially fragile contexts.**

Experience and empirical analysis support four core findings, which are common to many contexts where ASF intervenes:

1. There is insufficient identification and consideration of **needs and expectations of people seeking justice**, which should be the essential starting point for any effective project;
2. **Stakeholders active in their own communities**, or in their immediate surrounding area, are not sufficiently involved and considered. However, the various projects

and studies carried out by ASF in the field have highlighted the propensity of local populations to mobilise local level forums to resolve their conflicts and the benefits of local support systems for justice seekers by actors such as paralegals, community liaisons, etc.;

3. Interventions that are too focused on quantitative results in the short term, measured only in relation to predefined activities and with timing driven by accountability to donors, do not adequately consider the fact that change is a **multidimensional process**. For ASF, change occurs over the long term and often “between the lines”. Acceptance of this reality is an essential precondition to the design of any intervention. To achieve genuine improvement of access to justice, it is necessary to capitalise on different entry points and combine various approaches (Legal Empowerment, referral networks, etc.);

4. Access to justice should not be thought of only through the lens of the law. For ASF, the marginalisation of vulnerable persons can be both cause and effect of their inability to obtain justice. Thus, it is vital to envisage change using a **systemic approach**, considering the full constellation of practices and actors, and



mobilising disciplines beyond the law, such as sociology, economics, etc.

LEGAL EMPOWERMENT VS. RULE OF LAW ORTHODOXY

Globally, 5.1 billion people, more than two-thirds of the world's population, do not have effective access to justice¹.

For ASF, access to justice is the most fundamental human right, which guarantees the realisation of all other rights, including civil, cultural, economic, political and social.

Recognising the essential nature of the right to access to justice in 2015 the United Nations adopted the Sustainable Development Goals, including Goal 16 entitled "*Peace, justice and Strong Institutions*", which specifically aims to "*promote peaceful and inclusive societies for sustainable development, ensure access to justice for all, and building effective, accountable institutions at all levels*"².

To achieve this objective, two contrasting approaches are being implemented: one known as "Rule of Law Orthodoxy"³ and the other as "Legal Empowerment". According to the "Rule of Law" approach, whose positive impact has yet to be proven⁴, access to justice is realised by establishing efficient, independent and impartial state institutions. Improvement of access to justice is consequently seen as a function of institutional reforms, established at the level of institutional actors, such as courts, judges, etc. Users of the justice system are thus only involved on a secondary basis.

Under the "Legal Empowerment" approach, enhanced access to justice is realised when vulnerable and marginalised persons acquire the capacity to make choices and take

actions, using the law and legal mechanisms and services. Here, the person seeking justice is central to the process.



NEEDS AND EXPECTATIONS OF THE POPULATION AS STARTING POINT

In ASF's view, to be genuinely effective, any project aiming to improve access to justice must be based on the needs and expectations of those seeking justice. Even if this statement is now rarely contested, there is still little evidence of it being put into practice. The strategic directions of institutional donors are still excessively focused on "Rule of Law orthodoxy" and on quantitative short-term results rather than long-term social impact, and thus pose an obstacle to rigorous identification of needs and their integration in policies for strengthening access to justice.

On one hand, the urgency to take action and the need to respect the timeframes for development and implementation of projects regularly leads NGOs, international agencies and consulting companies to limit their analysis of needs, or even dispense with that analysis entirely. This way of operating often results in actors duplicating "old recipes" that have supposedly been proven in other situations, and not taking into account the

¹ Task Force on Justice, "*Justice for All – The report of the Task Force on Justice*", conference version, New York, Center on International Cooperation, April 2019, p. 12.

² United Nations, "Sustainable Development Goal 16, Peace, Justice and Strong Institutions", available at <https://www.un.org/sustainabledevelopment/en/peace-justice/>, accessed on 28 May 2019.

³ The concept of "Rule of Law Orthodoxy" was analysed by Stephen Golub in 2003 and is defined as "a state-centered approach that emphasizes law reform and government

institutions, particularly judiciaries, to establish business-friendly legal systems that presumably spur poverty alleviation ». In an article entitled "Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative", Golub demonstrates how this approach has not proven effective. ASF, based on its field experience, shares his views.

⁴ J. Moriceau et B. Langhendries, "*Legal Aid Services Providers and Community They Serve in Myanmar*", IDLO-UNDP-ASF, 2018.

local context and specific dynamics. Such an approach is extremely problematic, as it results in discrepancies between the implemented actions and actual needs on the ground.



On the other hand, a deep and relevant analysis of needs and expectations of the populace requires the cooperation of different organisations working in the area. There are still difficulties in establishing dialogue and ongoing exchange among national and international organisations. Approaches that are too focused on implementation of activities limit sharing of information and lessons learned, to the detriment of the cooperation that is necessary for meeting needs of justice seekers.

Moreover, it appears that even when a deep analysis of practices and needs has been carried out, the weak response from political actors, who generally prefer a vertical or top-down approach, does not allow for sufficient consideration of those needs analyses in the actual activities.

LOCAL SUPPORT TO JUSTICE SEEKERS

The projects and studies undertaken by ASF indicate that the absence or limited presence of justice authorities (such as lawyers, magistrates, and bailiffs), especially in rural areas far from major cities and main institutions, does not stop individuals from taking action to affirm their rights. On the contrary, those people are active and mobilising resources at local level to resolve conflicts (via local government, civil society organisations, religious authorities, armed forces, etc.)⁵.

Justice seekers have a tendency to navigate from one service to another and to duplicate their requests for assistance⁶. While this demonstrates a dynamic attitude on the part of the population, which is often ignored, it also indicates the insecurity that often they often face; given the lack of mutual recognition among coexisting justice mechanisms, what emerges is a form of anarchical competition, in which citizens seek tirelessly to win their case in different forums. In this regard, the question of recognition and enforceability of alternative methods of conflict resolution by judicial authorities arises frequently.

Studies by ASF have also highlighted that, where respect for the rule of law is fragile, people seeking to enforce their rights are less at risk of abuse by authorities (for example, through arbitrary detention, threats, extortion, or discrimination) when they are accompanied by a third party who understands the fundamentals of legal and administrative procedures⁷.

It follows that to promote better access to judicial actors and procedures, it is essential to work in concert with local actors, variously called "community liaisons", "paralegals", or "community facilitators". As members of the community itself, these actors share the same values and lifestyle as the local

⁵ L. Umubyeyi, *"In the Shadow of the State, Justice Thrives"*, ASF, 2016.

⁶ L. Umubyeyi, *Idem*.

⁷ L. Umubyeyi, *"From one Form of Justice to Another: Perceptions and Uses of judicial mechanisms in the Central African Republic"*, ASF, 2018.

population, and thus tend to gain their confidence more easily.



When they have a clear vision of their role and are adequately trained on the fundamentals of law and local procedures, these local actors can strengthen the dialogue among community stakeholders, civil society and state institutions; ensure linkages between justice seekers and inaccessible justice institutions; better identify and consider the needs and expectations of the population, especially victims of serious human rights violations; promote social cohesion and legal security by disseminating and explaining the laws relevant to the issues affecting the community; and support justice seekers beyond the time required to resolve their case before the courts, which favors the effective realisation of human rights.

The official recognition of these actors could promote the legitimisation of their work and its quality.

LEGAL EMPOWERMENT, A MULTIDIMENSIONAL PROCESS

For ASF, Legal Empowerment should not only be measured by the organisation of specific activities. Certainly, community awareness raising, radio programs and legal services are all actions that can, when specifically adapted to the target population and interconnected, contribute to strengthening people's power to take action.

However, ASF has learned that change often occurs between the lines and in the long term, within a context of informal exchanges and continuous activities led by individuals familiar with the realities of the community.

For ASF, Legal Empowerment should also not be considered as sufficient in and of itself, but rather as one element included in broader strategies for access to justice. For genuine empowerment to occur, it is necessary not only for people to become more aware of their rights, but also that they be truly capable of asserting those rights. To do so, the relevant institutions – both formal and alternative – are indispensable, which makes it essential to exploit different entry points and to combine global and local approaches.

LEGAL EMPOWERMENT, A SYSTEMATIC TOOL FOR CHANGE

In accordance with the "Guiding Principles on Extreme Poverty and Human Rights", ASF considers the marginalisation of vulnerable persons as multifaceted, and as both cause and effect of their lack of access to justice⁸.



For ASF, it is therefore vital to envisage Legal Empowerment as a systemic and non-linear approach, encompassing the entire constellation of practices and actors, instead of an approach limited to implementation of activities.

⁸ United Nations General Assembly, Human Rights Council, "Final version of draft guiding principles on extreme poverty and human rights", presented by the Special Rapporteur on Human

Rights and Extreme Poverty, Magdalena Sepúlveda Carmona », 18 July 2012, Preamble, paragraph 4.

This implies abandonment of the paradigm of “justice can only be achieved via the law”. Alongside legal expertise, social science disciplines such as sociology, criminology, anthropology, and psychology, as well as history and economy, are

essential for full consideration of the multiple factors operating at local level.

ASF SUPPORTS ACCES TO JUSTICE

Avocats Sans Frontières is a non-governmental international organisation specialised in defending human rights and supporting justice in fragile countries. ASF promotes the rule of law by improving access to justice for the most vulnerable and marginalized people in society.

ASF places justice seekers at the center of its work, building their capacity to understand and assert their rights, while also strengthening the skills of legal actors who work to defend them.



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