

**Women's Access to Justice
Avocats Sans Frontières' ORAL submission to the****Committee on the Elimination of Discrimination against
Women**

On the occasion of a general discussion on the elaboration of a

**General Recommendation
on Access to Justice**

1 February 2013

Introduction

Avocats Sans Frontières (ASF) welcomes the opportunity to submit a contribution to the Committee on the Elimination of Discrimination against Women's (the Committee) discussion on the elaboration of a General Recommendation on access to justice. This submission is informed by ASF's twenty years' experience promoting access to justice for people in vulnerable contexts, especially women.

Discrimination against women is both a cause and consequence of their lack of access to justice. ASF would like to use this widely accepted correlation as a starting point **to highlight the importance of translating norms and standards on anti-discrimination into concrete change in the lives of women globally**. To achieve this objective, ASF focuses its efforts to promote and protect **access to justice¹ as a human right² that is key to achieving and realising all other human rights and an instrument that can help combat discrimination against women**.

In the fragile countries where ASF works, **the issue is less the absence of norms and guidelines to which this woman could turn, and more about enforcing existing laws**. Most women become **victims not only of discrimination, but also of the lack of enforceability of the existing protection norms**. Enhancing access to justice mechanisms is often the **only way to hold duty-bearers to account in respecting human rights and making tangible women's rights**. This is the challenge of enforceability of women's rights.

Concretely, ASF strongly recommends that **more efforts to translate norms into action be directed at all stakeholders in the legal chain** – from the rights-holders (to know that they have rights, such as the woman above), to civil society, lawyers and the State. That means focusing first on the importance of (a) justiciability and access to justice mechanisms to enforce the existing legal means. In fragile States, enhancing enforceability of human rights requires innovative approaches that must

¹ Women's access to justice involves the strategies, processes and mechanisms that ensure that this right is implemented in order to provide a legally-based response to a problematic situation (formulated in terms of human rights violation), whether on an individual or group basis.

² See for example, Article 14 of the International Covenant on Civil and Political Rights

(b) legally empower right-holders, (c) engage with the State as the duty-bearer, while also recognising the importance of (d) customary justice and alternative dispute mechanisms.

Within this intervention, ASF would like to stress four points:

1. Participation of rights-holders can have a positive effect in encouraging the State to fulfil its human rights obligations, especially in fragile settings. **But the lack of awareness is a basic obstacle to address**, and one that can provide significant progress in ensuring that women can use legal mechanisms. This requires legally empowered women, who know their rights and know how to go about claiming them.

2. Participative strategies, involving all the relevant stakeholders in a holistic approach, must lead fragile States to set priorities and consider the rule of law and access to justice as essential aspects for fulfilling their human rights obligations. They should devote the necessary resources, both human and financial, to meeting women's needs in the justice sector.

3. ASF also suggests looking at **how the formal justice system can reinforce the customary justice system in upholding human rights norms and ensuring global access to justice for women**. States should take a proactive approach **in engaging with customary justice actors and other alternative dispute resolution mechanisms**, in order to emphasise their responsibility in applying their norms in accordance with international human rights standards. Given that many legal contexts recognise the authority of customary leaders, this engagement does not have to be seen as taken away their traditional power, but rather supporting them in remaining relevant and necessary for the vast majority of populations who are unable to access the formal justice systems.³

4. In conclusion, ASF is keen to emphasise the **holistic approach needed to enforce already existing international norms and standards**. The only sustainable solutions are ones that take into account the role of the State, and the role of all other stakeholders, such as the rights-holders, the civil society that represents them, the lawyers and other legal actors who are responsible for the proper functioning of justice system, but also customary leaders to which rights-holders in fragile countries often turn. Knowledge of the laws and norms is the foundation for any strategy based on legal empowerment, and should be a starting point for analysing both the obstacles women face in accessing justice, and the realities of discrimination that women face in general. Finally, enhancing access to justice for women is an absolute condition to guarantee the justiciability of human rights, thus enforcing the illegality of discrimination against women.

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³ ASF is working with customary and religious leaders in Chad to understand the complementarity and duality of the legal systems, and to support them in effectively applying it. In this context, given the difficulty in general of managing conflicting norms, it is especially important to focus on supporting those who find themselves managing this in a context of little or no available formal justice actors or the State. In Chad, there are around 100 lawyers in a population of around 11.5 million, the vast majority of them in the capital of N'Djamena. Given that the State and its legal and administrative apparatus are largely absent, and generally untrusted when present, in the lives of the majority of people in Chad, the religious and customary leaders have a crucial role to play in promoting and ensuring women's access to justice; they are often the only ones who are in a situation to make a difference.