

SWEDISH AND KENYAN SECTIONS OF THE
INTERNATIONAL COMMISSION OF JURISTS



ANNUAL REPORT

AFRICA HUMAN RIGHTS AND ACCESS TO JUSTICE PROGRAMME 2003

Prepared and submitted jointly by ICJ Sweden and ICJ Kenya

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CONTENTS

Acronyms and abbreviations2
Introduction3
Results – Reached Goals and Impact3
Implementation Analysis5
Timeline7
Financial report8
Future changes9
Conclusions for 2003 in AHRAJ10

ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter for Human and People’s Rights, 1981
ACmHPR	African Commission on Human And Peoples’ Rights
AHRAJ	Africa Human Rights and Access to Justice Programme
FAO	Food and Agriculture Organisation
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immuno Deficiency Syndrome
ICJ	International Commission of Jurists
ICJ-K	Kenyan Section of the International Commission of Jurists
IC-S	Swedish Section of the International Commission of Jurists
ILO	International Labour Organisation
Nepad	New Partnership for Development in Africa
NGO	Non Governmental Organisation
Sida	Swedish International Development Cooperation Agency

INTRODUCTION

In accordance with the Sida tripartite Agreement ref.2000-03095 signed in June 2001, ICJ-Sweden and ICJ-Kenya hereby jointly submit the 2003 Annual report on the implementation of the Africa Human Rights and Access to Justice (AHRAJ) Programme.

Activities have according to the original application and alterations made and agreed during the Programme implementation, been implemented under the following main components:

- 1) Case support
- 2) Case related support
- 3) Trial Observation
- 4) Capacity building

For case support AHRAJ works with thematic focus on:

- The right to fair trial and Criminal Justice
- Labour rights
- The right to health and HIV/AIDS related rights
- Women's rights
- Miscellaneous rights

RESULTS – REACHED GOALS AND IMPACT

Specifically, AHRAJ aims to domesticate international human rights standards nationally in 16 African states through human rights litigation and access to justice support. The expected result is that victims of human rights violations claim and benefit from improved legal protection of their rights and access to justice in accordance with international standards in the thematic areas of labour rights, health rights and HIV/AIDS related rights, women's rights, the right to fair trial and criminal justice rights. International comparative studies prove that increased legal protection of human rights and access to justice contributes to more equitable resource distribution, civil empowerment and poverty reduction.

Programme Targets

In 2003 AHRAJ results were indicated in the target 16 countries through:

- Support for up to 70 human rights cases in national courts or international tribunal
- The development in each case a legal opinion (70) by a lawyer with relevant international legal expertise as a national and international legal resource
- Case related training toward domestication through 2 international and 3 regional litigation workshops coincidental with Ordinary Sessions of the African Commission for Human and Peoples' Rights
- Communicating and sharing legal support, opinions, case decisions and legal skills

Case support activities

By December 31 2003, 10 of the target 16 states were participating in AHRAJ Case Support:

- The Gambia
- Senegal
- Côte d'Ivoire
- Nigeria
- Ghana
- Kenya
- Uganda
- Zimbabwe

- Botswana
- South Africa

In addition, cases were supported from 3 countries outside the target 16:

- Eritrea (media freedom)
- Swaziland (constitutional rights)
- Sierra Leone (amnesty laws)

These achievements prove that any target country will generate and require case support when information on AHRAJ support is available and follow up is efficient.

Ineffective promotion due to language barriers in Angola and Mozambique and poor communication infrastructure in Tanzania and Burkina Faso as well as limited legal capacities in Zambia and Malawi impacted on the participation of these countries. Logistical and other short-term impediments are resolvable through additional administrative inputs.

Indicators (as per 31 December 2003)

Cases in 2003 - target to support	Cases in 2003 - received applications	Cases in 2003 - approved applications	Total number of supported cases during AHRAJ	Total number of concluded legal opinions during AHRAJ
70	35	12	32	6

Quantitatively, support to 12 new cases and continuing support for 25 cases was achieved. 1 trial observation mission of the Morgan Tsavingarai treason trial was supported through the Legal Resources Foundation in Zimbabwe, which continued after the end of 2003. This mission ensured that the ICJ remained engaged in human rights in Zimbabwe after authorities denied foreign observer mission's adequate access.

The low number of new cases supported in 2003 related to slow increase in numbers of applications and to that fact that number of them were submitted but could not be supported for different ineligibility reasons. The total number of applications in 2003 was 35 compared to 44 applications received in 2002. Reasons for rejection included incomplete completion of the application, and irrelevance in terms of the objectives of the support regarding domestication.

Impact

The impact foreseen by this Programme is plentiful:

- Support to cases by a regional programme like the AHRAJ gives attention to the legal issues that are being litigated. This not only brings about knowledge among national lawyers and beneficiaries about the possibility of litigating on a human rights basis but also provides courage to do so: a shared regional responsibility combined with legal support has slowly started to generate domestication.
- An ongoing litigation case often stimulates a national discussion that has the potential of developing national law reform
- Awareness and skills among jurists involved in the AHRAJ Programme transmits to others who get encouraged to follow suit. Long term capacities are being built in relation to every case supported
- Statistics will show an increase in the use of international law and mechanisms
- The trial observations carried out under AHRAJ represents one of the very few opportunities for the international community to monitor the human rights situation in Zimbabwe. This is of great importance to the entire African region.

The cases that were accepted and supported through disbursements have both actual and potential impact:

- Case 44 is the first communication brought against Eritrea before the African Commission for Human and Peoples' Rights. A positive declaration will help invalidate new media laws to license journalists before they are able to work.
- Case 53 is the first suit to be filed by a Kenyan woman who was victimised by sexual harassment at the work place, where work place policies against sexual harassment been reasoned out by the courts.

- Case 54 will challenge a common labour practice in Kenya where workers are employed against ILO Convention standards as casual workers without benefits for years instead of a maximum period of six months.
- Case 68 will enforce the right of a person living with HIV/Aids to access medical records in South Africa.

This highlight demonstrates what impact the individual cases have in their national states. In addition, the fact that these cases are supported in one country has contributed to development of similar cases in others:

- Case 16, which is a challenge to the death penalty in Kenya, led to a similar challenge under case 24 in Uganda.
- Case 34 which challenges illegal arrest and detention in The Gambia was premised on Case 4 on the same issue in Nigeria, although this case was later withdrawn.
- Case 38 which challenges arbitrary eviction of poor residents in Accra, is a direct impact of a similar successful case in South Africa *Grootboom*, and while the latter case was not supported under AHRAJ, one of the SA lawyers who was involved was supported by AHRAJ to develop a legal opinion for use by the Ghanaian lawyers.

Case related support activities

Under Case Related Support activities, an international litigation workshop was held in November 2003 in Banjul, The Gambia, in cooperation with the Institute for Human Rights and Development in Africa. More than 30 participants from eastern, western and southern Africa representing human rights NGOs attended and received training on domestication. The second international workshop was postponed until 2004. 2 out of 3 regional workshops were also held.

The 1st regional workshop was held in Niamey, Niger in May 2003 for participants from francophone West African lawyers who had not attended specialised human rights training workshop for domestication in their region. The Minister of State of Niger who is responsible for Regional Development and Nepad opened the workshop. The Niger Human Rights Commission also participated. The 2nd regional workshop was held in June 2003 in Durban, South Africa in cooperation with the University of Natal. Participants were individuals involved in human rights work in university law clinics.

During the year, AHRAJ was also represented, and was permitted to make a promotion at a sub regional workshop for eastern, central and southern Africa organised by the FAO and Oxfam GB on women's property rights in May 2003 in Pretoria, South Africa. Following this workshop, new applications were received and subsequently supported, particularly:

- Case 74 on women's property rights in KwaZuluNatal, in South Africa, and
- Case 76 on women's property rights in Zimbabwe.

IMPLEMENTATION ANALYSIS

Implementation is regulated by bi-party agreement between ICJ-K and ICJ-S. Responsibility for implementation is shared. ICJ-K is the executing agency. ICJ-S has financial oversight. Implementation here refers to achievement of *Case Support* (case funding and legal expertise), *Case Related Support* (training workshops, trial observation, capacity building) and *Administration* (planning, monitoring, evaluation, reporting).

Administration

The partnership in implementation has been working very well. Some issues of communication (failing telephone lines and internet service provider breakdown) caused frustration and delays but were overcome by cell phone availability. The ICJ-K and ICJ-S programme implementation teamwork continued to improve during 2003.

A new Executive Director was appointed to ICJ-K in August 2003. During the preceding three months, ICJ-K suffered a period lacking full time executive leadership as recruitment was delayed. During that period the ICJ-K AHRAJ Programme Officer functioned as part time acting director. This naturally had negative effect on AHRAJ implementation.

The ICJ-K Council was re-elected in November 2003. The new Chairman is Mr Otiende Amollo, who previously was the Secretary. About half of the Council members were newly elected.

At the Annual Meeting of ICJ-S a new Board was elected. The Chairman remained the same as the previous year – Prof. Joakim Nergelius.

ICJ-S recruited a Programme Officer in September to support the AHRAJ on a part time basis.

To allow for more intense legal inputs by ICJ member lawyers, the ICJ-S steering committee for AHRAJ was reformed in December 2003. It was transformed into five thematic groups that will participate in decision-making to take up cases and in the development of legal opinions and workshops through independent lawyers or as teams in thematic groups. Parallel thematic groups are being set up in ICJ-K to allow teamwork across borders and cross-fertilization of ideas and experiences. The thematic group members will have an important role in generating both awareness of AHRAJ and new case applications, although the main focus of their mission will be to provide legal expertise.

Meetings and missions

During the year the ICJ-S steering committee met regularly to monitor the implementation of the AHRAJ. One member - Mr Bengt Arnerius – undertook a mission to West Africa in December 2003. The purpose was to promote AHRAJ and explore possibilities for collaboration and generation of case applications.

The Programme Manager and Financial Manager travelled to Nairobi in March 2003 to have administrative meetings with ICJ-K.

The new Programme Officer travelled to the International Litigation workshop in Banjul, the Gambia, in November 2003 to participate in the workshop and have programmatic meetings with ICJ-K.

The ICJ-K AHRAJ Programme Officer undertook several missions to African countries in order to promote the programme, generate case applications and prepare workshops.

The Chairman and Secretary of the ICJ-K Council and the AHRAJ Programme Officer travelled to Sweden to discuss programme implementation issues (EXCO meeting). The Council has several times been involved in decisions on implementation issues of the Programme.

The ICJ-K Secretary travelled to Zimbabwe for the trial observation mission conducted there.

Issues

Case applications

75% of new case applications were received in the 2nd and 4th quarters of 2003. From March to September 2003 ICJ-K K experienced unplanned administrative changes, which distracted effective implementation. Disproportionate time was spent on administration instead of project promotion and case support. The consequence is the low number of cases against the overall target and monthly mean targets during March – September 2003. In March 2003, Sida withheld the 2003 disbursement pending an audit, which was not implemented. Late funding follow up and administrative shortfalls combined contributed to delay in both promotion and support.

Case disbursements:

Implementing case support disbursement to NGOs required 1st payment of 50% of approved costs support and 2nd and other payments were pegged to expenditure and case progress reports. Reports were received and scrutinised in diverse forms that needed lengthy follow up. In some cases reports were late. In October 2003 notice was issued to NGOs to close unpaid balances if reports were not received and approved by 31 December 2003. Balances were remitted to the joint global account when 7 out of 32 cases were closed without full disbursement. In future reporting procedures will be standardised and de-centralised.

Legal opinions

Legal opinions under separate contract did not meet target indicators. 6 legal opinions were developed against 32 cases. Procedures for legal opinions, including recruitment of experts, were not fully realised. In some cases, an NGO and the expert failed to establish communication. Demand for legal opinions was very high but agreement on their form; content and when they should be issued had not been reached with all target groups whose case briefs were needed before proper opinions were completed. A new methodology for the development of legal opinions was agreed to remedy this problem during 2004.

Workshops

While administrative hindrances could not be foreseen, language, communication and logistical challenges were. Training workshops were accomplished with more success. Due to logistical difficulties of travel to Niger the 1st international litigation workshop planned for May 2003 was postponed and a regional workshop held instead. This reduced participation to French-speaking West Africa. A 2nd litigation workshop planned for October 2003 was moved by weeks when the ACmHPR postponed its 34th Ordinary Session. Delay affected pre-workshop planning and participation. In future AHRAJ must implement case related support with less logistical reliance on external partners, or seek more institutionally developed partners.

Reporting:

AHRAJ met its reporting obligations. In March 2003 Sida raised queries regarding specific indicators to prove that administration of Sida funding was efficient, effective and transparent. Additional measures were put in place and AHRAJ is still awaiting the conduct of the audit.

TIMELINE

The case support timeline stipulates that cases are supported for a year. *In reality*, ongoing cases - unless decided under summary procedures - take more than a year. Cases before the ACmHPR are concluded on average 3 years after filing. AHRAJ has imposed a deliberate policy to commit case funds before December 31 of each year to prevent balances building up surpluses. Case support takes place on a continuing basis and decisions on applications are rendered once a month at the appropriate teleconference.

The other activities were implemented on a 6-month time scale decided in February and July 2003.

2003 Planned	2003 Realised	Comments
January		
Sida Disbursement	- Completed	- Disbursement from surplus 2002
Activity planning	- Completed	
Application Form 2003	- Completed	
February		
Decision on Cases	- Completed	
March		
Decision on Cases	- Completed	
Planning Meeting	- Completed	
Annual reporting 2004	- Completed	
April		
Regional workshop	- Not completed	- Pushed to May
Decision on Cases	- Completed	
May		
International litigation workshop	- Not completed	- Converted into regional workshop
Case decisions	- Not completed	- No new cases

2003 Planned	2003 Realised	Comments
June		
Regional Workshop	- Completed	
Case decisions	- Not completed	- ICJ-K executive director leaves
July		
Case decisions	- Not completed	- No new cases
Financial Reporting	- Completed	
August		
Case Decisions	- Not completed	- No new cases
September		
Case Decisions	- Completed	- New ICJ-K executive director recruited
October		
International litigation workshop	- Not completed	- Pushed to November
Case Decisions	- Completed	
November		
Proposal 2004 – 2006 submitted to Sida	- Completed	
Case decisions	- Completed	
December		
Executive Committee meeting	- Completed	
Reporting	- Completed	

FINANCIAL REPORT

In 2003, it was decided to increase the amount for case support from \$3000 to \$6000 per case. \$4000 should be directly disbursed, while \$2000 would meet the legal opinion cost. In addition, financial reporting between ICJ-K and ICJ-S was made monthly and it included bank statements and reconciliation for AHRAJ accounts.

In 2003 US dollar transfers were delayed by restrictions imposed by the US in its terrorism support crackdown. New measures increased delay between the time that support was agreed and disbursement was received. One transfer was delayed for a month due to a US embargo on Zimbabwe.

During 2003 a standard Case Support Financial Report format was developed for supported NGOs. While some have been able to comply with the format, others felt that the rate of disclosures and time spent on financial compliance was too stringent for grants of \$4000. Some NGOs could not transmit original invoices with the reports before their internal audits, while those to whom the support met partial commitments to the entire case were not able to send original invoices until a global audit of the case was concluded. Due to these and other reasons, AHRAJ will evaluate the format at the beginning of 2004. New procedures will be informed by the risk levels Sida and the ICJ-K and ICJ-S are willing to take regarding individual case support disbursements.

Due to the implementation issues and the slow disbursement of case funding for the year 2003 by Sida, full completion of activities for 2003 require an extension up to June 2004. If permitted by Sida, it is anticipated that with staff investments and new administrative procedures as well as with improved case generation, higher case funding limit and speedy liquidation of funds by the supported NGOs, AHRAJ will be able to utilize all the funds, i.e. implement the Programme and reach the set goals.

Financial report for 2003 (average exchange rate 7,50 SEK / USD)

Income	SEK	USD
Allocation from Sida	7 623 500	1 059 915
IB Sida funds from 2002	2 289 466	305 262
Total income	9 912 966	1 365 177
Project related costs		
Administration ICJ-K	200 528	26 737
Sub total	200 528	26 737
Case support		
Case commitments from 2002	159 818	21 309
Case commitments 2003	113 948	15 193
Sub total	273 765	36 502
Case related costs		
Programme manager, expert work	141 323	18 843
EXCO/ Decision committee	108 443	14 459
HR Litigation workshops	300 000	40 000
Expert task teams meeting	21 278	2 837
Trial observation	22 500	3 000
Regional contact point	29 715	3 962
Capacity building	13 268	1 769
Travels	186 510	24 868
Sub total	823 035	109 738
Total project related costs	1 297 328	109 738
Administration surcharge 9%	623 500	82 895
TOTAL COSTS	1 920 828	255 872
Balance brought forward to 2004, to be used for the first half year 2004	8 319 788	1 109 305

FUTURE CHANGES

To ensure meeting current and new case support targets including legal opinions, the Programme will require more staff. It has been decided to recruit two new full time legal officers in ICJ-K and one new part time legal officer in ICJ-S who will prepare legal opinions and administer legal expertise in thematic areas. One administrative assistant will be recruited to assist ICJ-K. The current programme Officer will be part time occupied with administration (30%) and part time with legal expertise (70%).

ICJ-S and ICJ-K oversight functions at the board level will be enhanced through a joint Executive Committee, which will monitor closely implementation of the plan of activities and scrutinise reports.

CONCLUSIONS FOR 2003 IN AHRAJ

The objective behind the programme - to develop the protection of human rights by covering part of costs in individual court cases – has been achieved in 2003 in a way that there are many good reasons to continue the program for another period of support

The impact of cases as described in this report shows that an individual case can change the interpretation and implementation of a national law in a country in relation to human rights standards.

However - the planned increase of cases and expert opinions during 2003 has not been achieved. The basic reason for the lack of increase is a shortage of staff in the programme. Due to different reasons the legal programme officer within the ICJ-K secretariat could not allocate all his time for the promotion and development of the programme during the year. The legal programme officer was as well the only fulltime legally qualified staff member in the programme. Obviously there is now a need for additional legally qualified staff members in the programme.

Additional staff ought to be engaged as soon as possible in the programme during the next period. There is a need for expert input in cases and legal analyses of the best praxis related to the international standards in different legal thematic areas. The additional staff will also make it possible for the legal programme officer to promote the programme as expected. But it is also very important that the support do not decrease because of too high costs for staff/administration. The objective and the number of countries in the programme need at least three legal qualified staff members.

The choice of legal thematic areas Health-, Labour-, Women's Rights and Fair Trial/Criminal Justice should not be changed or added to in the near future. It is very essential that the programme concentrates and sustains the present position of the programme. Lawyers in the different countries have then the possibility to learn and understand how to approach the programme with their applications and request for information.

The programme has, as planned, developed specific case study workshops to be held twice a year. The lawyers that have taken the case to national courts or to the African Commission present cases within the respective legal thematic areas at these study workshops. Through the discussions at the workshops it has been clear that there is a need for exchange of experiences between the practicing lawyers in order to develop an effective use of international human rights standards.

The ICJ-K and ICJ-S with the support from Sida have a real chance to make a difference in Africa the coming years.