

KENYAN AND SWEDISH SECTIONS OF THE  
INTERNATIONAL COMMISSION OF JURISTS



**ANNUAL REPORT**

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**AFRICA HUMAN RIGHTS AND ACCESS TO JUSTICE  
PROGRAMME 2004**

Prepared and submitted jointly by ICJ Kenya and ICJ-Sweden

Stockholm 9 June, 2005



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## ACRONYMS AND ABBREVIATIONS

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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 Immune 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

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## INTRODUCTION

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In accordance with the Sida Tripartite Agreement ref. 2000-03095 signed in June 2001, and its extensions up to 31 December 2004, ICJ Sweden (ICJ-S) and ICJ Kenya (ICJ-K) hereby jointly submit the 2004 Annual Report on the implementation of the Africa Human Rights and Access to Justice Programme (AHRAJ).

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## RESULTS – REACHED GOALS AND IMPACT

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### **The aim:**

AHRAJ aims to develop legal protection of human rights in Sub-Saharan African, by developing national laws and regional practices to comply with minimum international protection standards.

This development is achieved substantively through supporting human rights litigation and case studies financially and by additional legal expertise. In addition, training workshops for national lawyers and human rights defenders share and develop legal expertise needed for domestic knowledge and activism to develop a jurisprudence of protection and adherence to international standards.

Victims of violation of human rights in the areas of labour rights, health rights & HIV/Aids, women's rights, fair trial & criminal justice rights and access to justice are eligible for support through their institutional representatives. There are five thematic task teams respectively.

In 2004, protection standards were developed through AHRAJ assistance in the countries of South Africa, Swaziland, Botswana, Namibia, Zimbabwe, Tanzania, Kenya, Eritrea, Uganda, Ghana, Nigeria, Cameroon, Cote d'Ivoire, The Gambia and Senegal. These represent 15 of 27 possible countries.

In 2004, AHRAJ aimed to support up to 70 distinct cases before a national human rights court with the capacity to develop the law and legal standards, or before an appropriate international human rights tribunal, such as the African Commission for Human and Peoples' Rights.

42 cases were assisted. These are 29 from applications filed after 1 January 2004 and 13 continued from 2003. 32 applications received in 2004 were deferred after December 31, 2004. 61 applications were received during 2004.

One important factor for the result was that the programme was without funding agreement between July and November during the year. This situation hampered the promotion of the programme and it was not possible to promote the engagement of lawyers in Sweden and in Kenya during the period.

### **The impact**

The cases that were supported have great actual and potential impact. In the course of 2004, several cases assisted under AHRAJ were concluded with positive results. In short the most important impact of the programme could be summarised as follows:

- In Case No.31 the High Court in The Gambia granted orders against the government to release the applicant who had been arrested without charges.
- In Case No.54 the Court of Appeal in Kenya found on 6 July 2004 that the lower court should retry the labour rights of more than 200 undocumented workers.
- In Case No.65, challenging the dismissal and eviction of farm-workers, monetary compensation was paid out in addition to a declaration of protection of rights.
- In Case No.79 the African Commission for Human and Peoples' Rights found that a complaint against dispossession of foreigners in Cameroon was admissible. The case is now at merits stage.
- In Case No.115 the Gambia Press Union was supported to challenge a new law for compulsory registration of journalists. The law was repealed on December 13, 2004.
- In Case 116 Lawyers for Human Rights, Swaziland succeeded in finding that the historical 1973 King's Decree was unconstitutional.
- Various other cases reported successes at various stages in their progression toward the precedent setting value for which they were supported.

### **Quality of Networking**

AHRAJ case support cannot be implemented without the network of NGOs, national lawyers and experts. The success of the disbursement of case support funds fully depends on the network capacity and ability to share information and expertise timely and cost effectively. In 2004, AHRAJ support to the different cases through the Nairobi secretariat continued to be based on minimal administrative costs, and dependence on viable communications means. The network expanded to include a significant institutional partner in each country. The quality of the network also improved with partners participating in case related support activities of the programme and undertaking to promote AHRAJ protection values and activities in their own countries.

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## **CASE RELATED SUPPORT**

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Two international litigation workshops were held in May 2004 and November 2004 in Dakar Senegal. Participants were drawn from all three participating regions.

An AHRAJ Forum was held in Berlin, Germany in September 2004 concurrently with the ICJ Biennial Meeting. The forum reviewed the role of ICJ Geneva in AHRAJ and the latter's role in promoting the ICJ partnership values in legal protection in Africa.

A regional forum on the right to access to justice was supported in November 2004 in Lilongwe, Malawi.

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## THE ROLES OF THE ICJ-SECTIONS WITHIN AHRAJ

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Implementation of the AHRAJ programme is regulated by a bi-party agreement between ICJ-K and ICJ-S. Responsibility for implementation is shared.

The two sections are represented within the EXCO of the programme.

The two sections have the responsibility for management oversight and have joint planning meetings during the year.

The Programme Management Team (PMT) was formed during 2004, comprising the programme manager in ICJ-S, the programme officer in ICJ-K and the legal officers. ICJ-S and ICJ-K are jointly responsible for the decisions in regard to each application for case support. The PMT is meeting in monthly meetings/teleconferences where lawyers in Kenya and Sweden participate.

Before the PMT meetings the legal officers in Kenya write an assessment of the case application and evaluate if the applications are in accordance with the case criteria. The discussion at PMT is based on this assessment.

Within ICJ-S a contact person for each theme is appointed. Each contact person has contact with a network of lawyers for legal discussions within the respective thematic area. These lawyers have acted as reference groups in the application process and been active at African conferences as speakers and participants. ICJ-K aims to appoint contact lawyers among its members and has as well been represented by its board members at African conferences as speakers and participants. Both Swedish and Kenyan legal experts are proposed to develop legal opinions in the approved cases.

Grant funds are disbursed from Sida to a jointly operated US\$ account held in Nairobi by ICJ-K and ICJ-S. The operations funds are transferred in tranches to ICJ-K for implementation of activities in Africa and to ICJ-S for activities in Sweden.

Disbursements to cases are executed by ICJ-K through case support agreements with the national organisation/lawyer.

ICJ-K maintains an Excel database tracking disbursements, applications, case progress and legal opinions development.

ICJ-K dispatches newsletters in an email format each month.

During 2004 Swedish lawyers were involved as follows:

During the first three months of 2004 a legal officer was hired in Stockholm. Due to the lack of agreement with Sida during the second half of the year this position was not filled.

One Legal opinion was produced by the Swedish lawyer Erica Neiglick. The Swedish lawyers Mattias Landgren, Tor Nitzelius and Stellan Gärde have been appointed as experts but have not yet delivered opinions. The Swedish programme manager Gärde participated in two EXCO meetings, one in Nakuru Kenya and one in Berlin, and in three PMT telephonic meetings. At the litigation workshop in Uganda labour lawyer Mattias Landgren participated. Berenike Alfvén and Stellan Gärde participated in the litigation workshop in Senegal. Representatives from the ICJ-K board have participated in the litigation workshops.

ICJ-S has formed the following thematic groups. Labour thematic group – chaired by Mattias Landgren with network (5 -6 people). Health thematic group – chaired by Therese Björk with network. Criminal Justice Fair Trial thematic group – chaired by Urban Nyström with network. Women thematic group – chaired by Berenike Alfvén. She has resigned and Cecilia Asklöf is proposed to cover this thematic group with her network. Access to Justice – chaired by Stellan Gärde with network.

The group activities have been quite low the last six months of 2004 when the future of the programme has not been clear. ICJ-K aims to develop their part in each group.

During 2004 Swedish lawyers were responsible for the publication of opinions on the Internet. ([www.ilsbu.com](http://www.ilsbu.com))

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## **IMPLEMENTATION ANALYSIS**

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ICJ-S and ICJ-K were without a funding agreement for the programme between July to November, which hampered the promotion of the programme, and the promotion of lawyers in Sweden and in Kenya. Lack of promotion meant that the knowledge among lawyers in African countries about the programme was still low during 2004. Therefore the number of applications was less than was expected. 61 applications were received during 2004. Only 42 cases were assisted.

Legal opinions also continued to lag behind, mostly due to information sharing challenges, which delayed formulation of the opinions.

In a joint planning meeting held in Nakuru, Kenya in March 2004, the Executive Committee (ExCo) comprising representatives of the two sections, the problem was discussed and the sections jointly resolved that the programme should have an additional part time assistant to the programme officer, and 2 legal officers should be recruited to develop opinions and undertake programme and case promotion in the targeted countries.

In April 2004, a part time programme assistant was recruited to the programme by ICJ Kenya. A legal officer was recruited by ICJ-K in September 2004. The second legal officer has not been recruited. The delayed formulation of legal opinions has now been tackled by the additional staff, which has made it possible to do additional case research. During the first three months of the year a legal officer was employed in Stockholm.

The additional staff that has been recruited during the year has made it possible to promote the programme in a number of countries and in a more effective way. These measures have given the result that 48 applications have already been received during the first half of 2005.

As the number of cases supported continues to rise, and in terms of the objectives development aid support, AHRAJ administration will have to commit more resources to communications, financial and narrative reporting and the impact of legal opinions. In addition, AHRAJ will prioritize the dissemination of knowledge about successful cases, opinions and the enforcement of good judgements to ensure their positive use across countries and regions.

Disbursement implementation was reviewed by the sections in March 2004. Consequently, grant funds were disbursed from Sida to a jointly operated US\$ account held in Nairobi. Operational funds were then transferred in tranches to ICJ-K accounts for implementation of activities in Africa and to ICJ-S for activities in Sweden. There is need for an even more streamlined disbursement during the next year.

AHRAJ met its reporting obligations throughout 2004.

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## **FUTURE CHANGES**

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The recruitment of legal officers and thematic groups is still incomplete and will be completed in 2005. An additional legal officer will be hired by ICJ-K. A research assistant will also be hired to assist experts obtain information needed to formulate their opinions.

A casebook will also be developed and published twice a year regarding successful cases and opinions and how they can be used for greater impact.

Assessments of access to justice will also be undertaken to determine the successes of litigation strategies in domestication and legal protection.

Disbursements will be streamlined in all cases under support agreements, and the financial procedures will also be reviewed.

## TIMELINES

### Implementation January 1, up to March 30, 2004

Activity	Implementation	Timelines	Comments
Case Support	2 <sup>nd</sup> Disbursements for up to 29 cases	Jan. 30	Financial annexure
	Disbursements for up to 29 legal opinions	Mar. 30	Financial annexure
Case Related Support	Regional Workshop	Feb.	
	Websites and communication.	Mar.30	<a href="http://www.icj-kenya.org">www.icj-kenya.org</a> <a href="http://www.ilsbu.com">www.ilsbu.com</a>
Case Support	1 <sup>st</sup> Disbursement up to 17 cases	Mar.30	\$10,000
	Development of up to 17 opinions	April 30	\$10,000
	Case promotions		Application Form 2004; criteria; e-newsletter
Admin Costs	Planning Meeting	Jan.	Lake Nakuru Report

### Implementation April 1, up to June 30, 2004

Activity	Implementation	Timelines	Comments
Case Support	2 <sup>nd</sup> Disbursements for up to 29 cases	July 30.	Financial annexure
	Development of legal opinions		Excel database annex
Case Related Support	1 International litigation workshop regarding ACmHPR.	May. 5-10	Held in Dakar
	Regional workshop		
	AHRAJ EXCO		Moved to August.
Case Support	1 <sup>st</sup> disbursement up to 17 cases	Ongoing	Excel database annex
	Development of legal opinions	Ongoing	Excel database annex
	Case promotion visits		Completed for Uganda, Ethiopia
Admin Costs	PMT telecom;		.

### Implementation July 1, up to September 30, 2004

Activity	Implementation	Timelines	Comments
Case Support	2 <sup>nd</sup> Disbursements for ongoing cases	Dec. 30.	Excel database annex
	Development and completion of pending legal opinions	Jul-Sep	Excel database annex
Case Related Support	Regional Workshop for Southern Africa	Aug. 5-10	
	ICJ Biennial Conference, Berlin, Germany (concluded)	Aug. 27-30	AHRAJ Workshop minutes
	AHRAJ EXCO, Berlin, Germany	Aug. 30	EXCO Minutes
Case Support	Access to Justice 'Case' for Kenya (Oct.)	Jul. 20-24	Progressing. LSK cooperation.
	Access to Justice 'Case' for Malawi (See reg. workshop)	Sep.10-15	
	Access to Justice 'Case' for Bukina Faso (Oct.)	Sep.25-29	
Admin Costs			.

**Implementation October 1, up to December 31, 2004**

Activity	Implementation	Timelines	Budget
Case Support	Disbursements for up to 35 cases	July – Dec.	Excel database annex
	Disbursements for up to 35 legislative case opinions	July – Dec.	Excel database annex
Case Related Support	International Litigation Workshop	Nov.	Held in Dakar, Senegal
	Regional Workshop for Eastern Africa	Nov.	Partnership with PRI in Malawi
	ExCo Meeting		Moved to Jan. 2005
	Websites and communication		Ongoing
Admin costs	PMT Case decisions	Aug. 6	

The activities were implemented according to two 6-month activity plans decided in February and July 2004.

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## ECONOMIC OVERVIEW

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Statement per December 31, 2004.

All figures are in SEK and USD (Average exchange rate 7:5 SEK /USD)

<b>Income</b>	<b>Budget 2004</b>	<b>SEK</b>	<b>USD</b>
Allocation from Sida 2003/2004	7 623 500	7 623 500	1 059 915
Sida funds from 2003	355 000	355 240	49 390
<b>Total income</b>	<b>7 978 500</b>	<b>7 978 740</b>	<b>1 109 305</b>
<b>Project related costs</b>			
Administration ICJ-Kenya	536 000	547 233	72 964
<b>Sub-total</b>	<b>536 000</b>	<b>547 233</b>	<b>72 964</b>
<b>Case support</b>			
Case related support- Paid	1 300 000	613 238	81 765
Case related support- Committed	2 500 000	2 099 340	279 912
<b>Sub-total</b>	<b>3 800 000</b>	<b>2 712 578</b>	<b>361 677</b>
<b>Case related cost</b>			
Programme manager, expert work	300 000	283 452	37 794
EXCO/ Decision committee	100 000	57 843	7 712
HR Litigation workshops- Paid	1 000 000	958 451	127 793
HR Litigation workshops- Committed	300 000	272 415	36 322
Expert task teams meeting	350 000	12 690	1 692
Trial observation	230 000	68 229	9 097
Regional contact point	200 000	118 856	15 847
Capacity building	100 000	96 705	12 894
Travels	400 000	175 671	23 423
<b>Sub-total</b>	<b>2 980 000</b>	<b>2 044 312</b>	<b>272 574</b>
<b>Total project related costs</b>	<b>7 316 000</b>	<b>5 304 123</b>	<b>707 215</b>
Administration surcharge 9%	662 500	<b>662 500</b>	<b>88 333</b>
<b>Total costs</b>	<b>7 978 500</b>	<b>5 966 623</b>	<b>795 550</b>
<b>Balance carried forward to 2005, to be used for the first half year 2005.</b>		<b>2 012 118</b>	<b>313 755</b>
<b>Interest 2004</b>			
Interest to be repaid to Sida		7 200	960

**African Human Rights and Access to Justice Programme (AHRAJ)  
Case List by Country and Theme January 1 - December 31, 2004**

Country	Theme	Applicant	Appn No.	Approved	Case No.
Cameroon	Access to Justice	Interights	<b>Appn 79</b>	<b>A06.08.04</b>	<b>Case 79</b>
Gambia	Misc.	Gambia Press Union & IHRDA	Appn 115	<b>A06.08.04</b>	<b>Case 115</b>
Gambia	Misc.	IHRDA	Appn 117	<b>PENDING</b>	
Kenya	Access to Justice	ICJ Kenya	<b>Appn 80</b>	<b>PENDING</b>	<b>defA06.08</b>
Kenya	Labour rights	Mwalimu Mati/Labour Awareness R P	<b>Appn 99</b>	<b>A06.08.04</b>	<b>Case 99</b>
Kenya	Health Rights	Mr. Tom Ojienda	Appn 107		
Kenya	Misc.		Appn 116	<b>A18.01.05</b>	<b>Case 116</b>
Kenya/Tanzania	Misc.	Judy Thongori	<b>Appn 86</b>	<b>A06.08.04</b>	<b>Case 86</b>
Naimibia	Fair Trial		Appn 92	A14:04:04	<b>Case 92</b>
Namibia	Access to Justice	Legal Assistance Centre	Appn 82	A14:04:04	<b>Case 82</b>
Namibia	Fair Trial	Legal Assistance Centre	Appn 89	A14:04:04	<b>Case 89</b>
Namibia	Fair Trial	Legal Assistance Centre	Appn 90	A14:04:04	<b>Case 90</b>
Namibia	Fair Trial	Legal Assistance Centre	Appn 91	A14:04:04	<b>Case 91</b>
Nigeria	Health rights	Centre to Right to Health	Appn 83	A14:04:04	<b>Case 83</b>
Nigeria	Health rights		<b>Appn 84</b>	<b>PENDING</b>	<b>Case 84/A06</b>
Nigeria	Labour rights	Centre for Human Rights and Empowerment	Appn 85	A14:04:04	<b>Case 85</b>
Nigeria		Centre for Human Rights and Empowerment	Appn 87	A14:04:04	<b>Case 87</b>
Nigeria		Centre for Human Rights and Empowerment	Appn 88	<b>R18.01.05</b>	
Nigeria	Fair Trial	-	Appn 93	D14:04:04	N/a
Nigeria	Fair trial	Legal Defence & Assistance Project (Ledap)	<b>Appn 101</b>	<b>PENDING</b>	
South Africa	Access to Justice	Chennels Albertyn	Appn 81	A06.08.04	<b>Case 81</b>
South Africa	Misc.	Chennels Albertyn	<b>Appn 114</b>	<b>R18.01.05</b>	
Swaziland	Fair trial	Swaziland Lawyers for Human Rights	Appn 119	<b>A18.01.05</b>	<b>Case 119</b>
Tanzania	Health Rights	National organization for legal assistance (Nola)	<b>Appn 104</b>	<b>A06.08.04</b>	<b>Case 104</b>
Tanzania	Womens Rights	National organization for legal assistance (Nola)	<b>Appn 105</b>	<b>A06.08.04</b>	<b>Case 105</b>
Tanzania	Health Rights	Prof. Chris Maina	Appn 108		
Tanzania	Misc.	Legal and Human Rights centre	<b>Appn 109</b>	<b>P110</b>	
Tanzania	Misc.	Legal and Human Rights centre	<b>Appn 110</b>	<b>A06.08.04</b>	<b>Case 110</b>
Tanzania	Misc.	Legal and Human Rights centre	<b>Appn 111</b>	<b>P110</b>	
Tanzania	Womens Rights	Legal and Human Rights centre	<b>Appn 112</b>	<b>A06.08.04</b>	<b>Case 112</b>
Tanzania	Criminal Justice	Legal and Human Rights centre	<b>Appn 113</b>	<b>A06.08.04</b>	<b>Case 113</b>
Uganda	Labour Rights	Platform for Labour Action	Appn 94	A14:04:04	<b>Case 94</b>
Uganda	Labour Rights	Platform for Labour Action	Appn 95	A14:04:04	<b>Case 95</b>
Uganda	Labour Rights	Platform for Labour Action	Appn 96	A14:04:04	<b>Case 96</b>
Uganda	Labour Rights	Platform for Labour Action	Appn 97	A14:04:04	<b>Case 97</b>
Uganda	Labour rights	-	Appn 98		N/a
Uganda	Labour rights	Dr. Onoria	Appn 103		
Uganda	Labour rights	HURINET Ug.	<b>Appn 106</b>	<b>A06.08.04</b>	<b>Case 106</b>
<b>Zambia</b>	<b>Women's Rights</b>	<b>Women for Change</b>	<b>Appn 102</b>	<b>PENDING</b>	
Zambia	Womens Rights	WLSA/JWOP	Appn 118	<b>PENDING</b>	
Zimbabwe	Trial Observer	ICJ & LRF	Appn 100		<b>Case 100</b>
Zimbabwe	Fair trial	Zimbabwe Human Rights Org.	Appn 120	<b>PENDING</b>	

**African Human Rights and Access to Justice Programme (AHRAJ)  
Case Support By Country and Thematic Area in 2005**

Country	Theme	Applicant	Appn No.	Approved	Case No.	Background	
Tanzania	Misc	National Organization for legal Assistance (NOLA)	Appln 142	PENDING		inheritance premises sold illegally Fatuma Hussein	Preliminary hearing stage
Tanzania	Misc	National Organization for legal Assistance (NOLA)	Appln 143	PENDING		resistance to revision for land ownership Saada Mkoko	Case Filed pending hearing
Tanzania	Misc.	National Organization for legal Assistance (NOLA)	Appln 144	11.03.05	Case 144	imprisonment for contractual violation	Case Filed pending hearing
Tanzania	Misc.	National Organization for legal Assistance (NOLA)	Appln 145	R11.03.05		trespass on premises Bukuku	Case Filed pending hearing
Tanzania	Misc.	National Organization for legal Assistance (NOLA)	Appln 146	R11.03.05		bank mortgaging only residential home Kambi	Case Filed pending hearing
Tanzania	Misc.	National Organization for legal Assistance (NOLA)	Appln 147	R11.03.05		commission of land nullified occupancy Hatibu	Case Filed pending hearing
Kenya	Misc.	Transparency International	Appln 148	11.03.05	Case 148	whistleblower protection - Munyai vs Central Bank	
Uganda	Acc/Justice	Centre for Human Rights and Empowerment	Appln 149	PENDING			
Nigeria	Acc/Justice	Centre for Human Rights and Empowerment	Appln 150	PENDING			.
Kenya	Fair trial	Private attorney Charles khamalla	Appln 151	PENDING		Charles Khamalla	
Botswana	Fair trial	Ditshwanelo	Appn 121	A18.01.05	Case 121	Challenge to death penalty	Pre-trial; accused in custody on murder charge
Uganda	Labour rights	Uganda hotels, food & allied workers	Appn 122	A18.01.05	Case 122	Right to form trade union	preliminary stage
South Africa	Women's Right	Chennells Albertyn	Appn 123	A18.01.05	Case 123		Preliminary hearing stage
Zimbabwe	Misc.	Zimbabwe Human Rights Lawyers	Appn 124	A18.01.05	Case 124	information protection and privacy	ACmHPR
Zimbabwe	Misc.	Zimbabwe Human Rights Lawyers	Appn 125	A18.01.05	Case 125	compulsory media registration	ACmHPR
Zimbabwe	Fair trial	Zimbabwe Human Rights Lawyers	Appn 126	A18.01.05	Case 126	parliament imprisoned MP/separation of powers	ACmHPR
Zimbabwe	Access to Jus	Zimbabwe Human Rights Lawyers	Appn 127	A18.01.05	Case 127	matabeland violations	ACmHPR
Zimbabwe	Misc.	Zimbabwe Human Rights Lawyers	Appn 128	A18.01.05	Case 128	citizenship rights	ACmHPR
Zimbabwe	Access to Jus	Zimbabwe Human Rights Lawyers	Appn 129	A18.01.05	Case 129	length of election petition	ACmHPR
Zimbabwe	Access to Justice		Appn 130	A18.01.05	Case 130	deportation order of US journalist	ACmHPR
Zimbabwe	Access to Jus	Zimbabwe Lawyers for HR	Appn 131	A18.01.05	Case 131	legislative audit	ICJ Geneva expertise
Ghana	Labour rights	Center for Human Rights and Empowerment	Appn 132	A18.01.05	Case 132	demolition of houses	Pre-trial High Court Ghana
Ghana	Labour rights	Center for Human Rights and Empowerment	Appn 133	A18.01.05	Case 133	obligation re. right to housing	Pre-trial High Court Ghana
Ghana	Labour rights	Center for Human Rights and Empowerment	Appn 134	A18.01.05	Case 134	compensation, decent stds of living	Pre-trial
Ghana	Labour rights	Center for Human Rights and Empowerment	Appn 135	PENDING		chicken farmers case/more details needed	judt Marc 2005 upset by new law so Sup ct. appeal
Ghana	Labour rights	Center for Human Rights and Empowerment	Appn 136	A18.01.05	Case 136	sacked for participating in strike	Pre-trial
Ghana	Labour rights	Center for Human Rights and Empowerment	Appn 137	A18.01.05	Case 137	commission for hr case for unfair dismissal	Pre-trial
Nigeria	Misc.	Center for Human Rights and Empowerment	Appn 138	A18.01.05	Case 138	lipstick case and immigration	Pre-trial
Nigeria	Misc.		Appn 139	A18.01.05	Case 139	constructive dismissal	Pre-trial
Cameroon	AAJ		Appn 141	A18.01.05		assessment of access to justice A Jonsson	Discussion with Bots Cam Assn 05/05
Nigeria	women	WARDC	Appn 152	PENDING			
Nigeria	women	WARDC	Appn 153	PENDING			
Zambia	Acc/J	Legal Resources Foundation	Appn 154	PENDING		LAZ barring attorneys from LRF and legal aid orgs.	Case to be filed
Zambia	Misc.	Legal Resources Foundation	Appn 155	PENDING		Refugee children claim for citizenship	
Zambia	women	Legal Resources Foundation	Appn 156	PENDING		Spouse based claim for citizenship	
Mozambique	Acc/J	Mozambican League for Human Rights	Appn 157	PENDING		Acm on ex E Germany workers. Reminder 18/05	Comm to be filedACmHPR after research
Nigeria	Acc/J	Ledap	Appn 158	PENDING			
Nigeria	Fair trial		Appn 159	PENDING		Ledap	
Nigeria	Fair trial		Appn 160	PENDING		Ledap	
Nigeria	Fair trial		Appn 161	PENDING		Ledap	
Kenya	AAJ		Appn 162*	A18.01.05			LSK agreed 04/05. Forming committee
Ghana	A/J	CEPIL	Appn 163	PENDING			
Ghana	A/J	CEPIL	Appn 164	PENDING			
Nigeria		John Oziegbe	Appn 165	PENDING			
Nigeria		John Oziegbe	Appn 166	PENDING			

## **African Human Rights and Access to Justice Programme**

### **Summary/Extract of Legal Opinions**

#### **Role of Legal Opinions:**

- Draw attention to availability of relevant international standards in each case.
  - Application – how to make the standards practical and realistic, rather than merely idealistic.
  - Focus on effective rules of international law, the impact of these rules as shared norms, the processes by which the rules are interpreted at the international level, what effect the interpretation has on state actions and policies.
  - Provision of references
  - Persuasion of national level actors – lawyers/judges/prosecutors.
  - Assessment of the national/domestic level of compliance.
- 

#### **(1) Legal Opinion Case No.7**

Legal Expert: Clara Polsinelli  
National lawyer: Mr. Rwakafuzi  
Date: 2002

The opinion considers the definition of torture under international law and concludes that the actions of the police/military investigators in Uganda amounted to torture. The opinion further considers the protection against torture in Ugandan criminal procedure code and concludes it is below international standards.

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#### **(2) Legal Opinion for Case No.9**

Legal expert: Winluck Wahiu  
National Lawyer: Ibrahima Doumbia  
Date: 2002

The opinion considers equal protection and access to justice in Cote d'Ivoire following constitutional bars on presidential candidates whose parents were non citizens and general amnesty clauses on state officials.

The opinion was developed for a communication before the African Commission on Human and Peoples' Rights and is largely premised on the international law treatment of amnesty laws and further, its rejection of blanket permissiveness for non prosecution of human rights violators, on the basis of the legitimate entitlements of the victims of the violations and their claimants.

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### **(3) Legal Opinion Case No. 16**

Legal Expert: Mr. Winluck Wahiu  
National lawyer: Mr. Mbugua Mureithi  
Date: 23 May 2003

Two questions: First, whether under international law, the application of the death penalty is prohibited on the grounds that it violates the right to life, human dignity or constitutes inhuman degrading treatment. If so, what is the implication for Kenya? The interpretation of international standards in this regard is premised on treaty provisions under a number of human rights treaties, specifically, the International Convention on Civil and Political Rights, the African Charter for Human and Peoples' Rights and the Convention Against Torture, Cruel or Inhuman or Degrading Treatment or Punishment.

Second, whether the Kenyan law conforms to prevailing international standards regarding the right to fair trial in the procedure and practice for prosecuting the offences of robbery with violence and attempted robbery with violence. If it does not, what is the implication for accused persons who face the death penalty as a mandatory sentence upon conviction for any of these offences?

Summary of opinion: Kenyan penal law for the offences of robbery with violence and attempted robbery with violence does not give procedural protections for the right to fair trial in accordance with international standards in so far as both are capital offences.

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### **(4) Legal Opinion in Case No. 20**

Legal Expert: Mr. Wachira Maina  
National Lawyer: Mrs Abiola Afolabi  
Date: 20 September 2004

Question on which opinion is sought: The core issue implicated in this case is the differential treatment of men and women under Nigerian Law. The 1999 Constitution of Nigeria allows men but not women to confer citizenship on their spouses through marriage. It also prohibits discrimination on the basis of sex, place of origin, religion or political opinion. There appears to be, on the face of it, a conflict between the anti-discrimination or equality provision and the citizenship provision. The issues for decision are 1) Does Nigeria's practice in this regard violate international human rights? 2) Is the 1999 Constitution of Nigeria at war with international human rights standards? 3) If the answer to (1) and (2) is yes, how can these problems be specifically resolved in terms of the relevant international human rights conventions to which Nigeria is party?

Summary of Opinion:

Nigeria is bound by the UN Charter, the Convention on Elimination of Discrimination Against Women and the African Charter for Human and Peoples' Rights to eliminate discrimination against women. Freedom from discrimination is a peremptory norm of international human rights law. There is inconsistency between the equality provision of the Nigerian constitution and the provisions relating to citizenship as applied to women

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**(5) Legal Opinion Case No. 24**

Legal Expert: Mr. Winluck Wahiu  
National lawyer: Mr. Paul Sewanyana  
Date: 24 May 2003

Two questions: First, whether under international law, the application of the death penalty is prohibited on the grounds that it violates the right to life, human dignity or constitutes inhuman degrading treatment. If so, what is the implication for Uganda? The interpretation of international standards in this regard is premised on treaty provisions under a number of human rights treaties, specifically, the International Convention on Civil and Political Rights, the African Charter for Human and Peoples' Rights and the Convention Against Torture, Cruel or Inhuman or Degrading Treatment or Punishment.

Second, whether the Uganda criminal procedure secures protections in conformity to prevailing international standards regarding criminal responsibility and sentencing practice.

Summary of opinion: Ugandan law does not give procedural protections for the right to fair trial in accordance with international standards and the mandatory imposition of the death penalty for a broad range of criminal offences is a factor that worsens or aggravates the violations, independently and when imposed at the conclusion of unfair trials.

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**(6) Legal opinion for Case No. 30**

Legal expert: Prof. Michelo Hansungule  
National Lawyer: Abubacarr Tambadou

Issue: This case concerns the alleged violations of the fundamental and constitutional rights to fair trial and political participation of Ousman Dumo Saho by the Republic of the Gambia. The right to fair includes the prohibition against long pre-trial detention periods.

Mr. Saho was arrested and detained by plain-clothes state security officers. They refused to identify themselves and detained him for almost three weeks from June 2000. It was not until a writ of habeas corpus was filed at the High Court of the Gambia against the state that the latter

admitted having him in its custody. The High Court ruled that the arrest and detention was unconstitutional and amounted to an encroachment of his right to liberty. He was then charged by the state for treason at the High Court since July 2002 and the case is still in court. In the meantime, the state appealed against the decision of the High Court. This appeal is pending before the Court of Appeal.

Summary of opinion: The opinion considers the right to fair trial under international law, and binds The Gambia to adhere to its international obligations.

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### **(7) Legal Opinion (JOINT) Case Nos. 35 and 37**

Legal Expert: Mr. Nderitu Macharia

National lawyer: Mr. Rwakafuzi

Date: October 2004

Issue: Military personnel detained and tortured two Uganda citizens at a non gazetted holding house resulting in serious and permanent injury. The matter was taken before the Uganda Human Rights Commission and is still pending.

#### Summary of opinion:

Uganda has failed to comply with international standards in this regard, specifically, the International Convention on Civil and Political Rights, the African Charter for Human and Peoples' Rights and the Convention Against Torture, Cruel or Inhuman or Degrading Treatment or Punishment.

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### **(8) Legal Opinion No. 53**

Legal Expert: Mr. Wachira Maina

National Lawyer: Ms. Judy Thongori

Date: 20 September 2004

Question on which opinion is sought: In this case, the complainant was fired by the hotel company where she was employed in Nairobi, Kenya when she refused the unwelcome and persistent sexual advances of her supervisor. The case turns on three questions: 1) what are the international human rights standards applicable to cases of sexual harassment such as this; 2) Does section 82 of the Constitution and other laws of Kenya incorporate these standards?; 3) Whether Kenya law outlaws private sex discrimination and if so, is the hotel company liable for the actions of its Supervisor and what remedies may be available to the complainant under CEDAW and the laws of Kenya.

Summary of Opinion: Section 82(1) and (2) of the Kenyan Constitution are ambiguous since they appear to be narrowly focussed on discrimination by public authorities. In order to conform to international standards in the area of sex discrimination and sexual harassment against an

employee, the court should interpret this section broadly to include private discrimination. The national law should be developed so as not only to prohibit private hotels and related establishments from discriminating in the way they regulate physical access but, more generally, as barring sex discrimination in those establishments altogether.

The opinion defines sexual harassment in terms of UN declarations and comparative judicial practice. There is, indeed, a widely accepted definition of sexual harassment. The opinion reviews the scope of sex discrimination under international and Kenyan law. An important issue is whether Section 82 of the Constitution prohibits private discrimination. The opinion considers whether a hotel company be held responsible for the unlawful sexual harassment conduct of its supervision staff.

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**(9) Legal opinion for Case No.64**

Legal expert: Prof. Michelo Hansungule  
National lawyer: Fatou Jagne (Article 19).  
Date: 15 July 2004

Issue: Eritrean journalists were placed under detention without trial under security laws, without the possibility of trial, following the publication of information whose publication was prohibited by the state.

Summary of opinion: No effective remedy is available for the journalists in Eritrea and their relatives to secure their trial or release through operation of the security law. The law itself must be challenged for its validity in terms of permitted derogations of the right to fair trial under emergency and/or security conditions.

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**(10) Legal opinion for Case No. 66**

Legal Expert: Erica Neiglick  
National Lawyer: Cindano Gakuru

Challenge to the *Children's Act, 2001* of Kenya in relation to the assumption of legal responsibility by the father of a child born outside marriage.

Summary of Opinion: The Children's Act, 2001 of Kenya, which was enacted in order to incorporate the provisions of the Convention of the Rights of the Child into Kenyan law falls short of the positive duty imposed by the CRC and negates the legitimate expectation of the child of an unmarried couple to parental responsibility of both parents notwithstanding their marriage status. The provisions are arbitrary and discriminative of the rights of the child and the father in such cases. The court has an obligation to develop the Children's Act to comply fully with the

norms of parental responsibility and the best interests of any child, irrespective of the marriage status of its mother.

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**(11) Legal opinion for Case No.69**

Legal expert: Wachira Maina

National Lawyer: Teboho Makalamele

Issue: This case, a civil action for the horizontal enforcement of provisions of the bill of rights against a private bank in South Africa, raises two questions: 1) What is the scope of the right of access to information under international law and the South African Constitution? In particular, can this right support a claim by a borrower for information held by a private bank? 2) What challenges can be mounted against a private bank's internal mortgage lending policies where those policies appear to erode the effective realization of the right to housing, a protected right? In this case, does the bank's policy of redlining – the designation of certain zones and areas as too risky for making housing loans - amount to a violation of the right to housing protected by both the international covenants and the South African Constitution?

This case presents situation, altogether too rare, where national law offers more protection for a right than international human rights instruments. The applicant's case is strongest under municipal law. The key legal propositions developed in this opinion are: 1) A borrower's right of access to information held by a bank is, subject to permissible exceptions, enforceable as such being information collected under contract; 2) in addition, and more instrumentally, the borrower may, in this case, be entitled to information because she needs it in order to effectively exercise the right to housing; 3) Similarly the right to housing is enforceable as such but the more compelling argument in this case would be that the bank's red-lining policy has a disproportionately impact on the poor and, perhaps also, on black people.

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**(12) Legal opinion for Case No.71**

Opinion writer: Cynthia Morel

National lawyer: Korir Singoei

Date: 1 July 2004

Issue: The Endorois community in Kenya were displaced from their communal lands following a compulsory acquisition and establishment of wildlife reserve in their former lands in 1973 and 1978 respectively. A new generation of the community has argued in a communication before the African Commission for Human and Peoples' Rights that the compulsory acquisition was illegitimate and violates Articles 8, 9(1), 14, 16, 17(2), 20(1), 21 and 22 of the African Charter. Their concept of land ownership is argued to be dramatically different from the concept of land rights that were surrendered in the compulsory acquisition.

Summary of opinion: National remedies available in Kenya for dispossessed minorities do not include restitution, and are therefore ineffective for a group that has a holistic, ancestral and cultural attachment to their land. Remedies that permit the preservation of the communal and traditional way of life need to be developed in terms of the African Charter for Human and Peoples' Rights.

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**(13) Legal opinion Case No. 73**

Opinion writer: Mr. James Gondi

National Lawyer: Mr. Duma Boko

Summary of Opinion: The constitution and penal law of Botswana criminalizing sexual orientation and sexual acts between consenting adults of the same sex do not accord to international standards on the right to sexual orientation and the right to privacy.

This opinion seeks to analyze the legality and constitutionality of the charges preferred on Mr. X of Botswana who was convicted for sodomy in 1995, by drawing independent and impartial wisdom from international human rights law. The arguments herein will be a projection of the balance between traditional approaches to issues of morality as promulgated by the Courts and modern advancements in the realm of fundamental freedoms as espoused by the international human rights philosophy.

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**(14) Legal opinion for Case No. 82**

Expert: Erica Neiglick

National lawyer: Toni Hancox

In the present case, the applicant, a Namibian citizen born out of wedlock, is suing his half-sister who is born within marriage, to claim half the inheritance from their father's estate. The applicant furthermore has sued the Republic of Namibia for discriminatory laws, as Namibian common law only gives a child born out of wedlock the right to intestate succession from his/her mother but not from the father. A child born within marriage though, has the right to intestate succession from both his/her mother and father. The applicant seeks a declaration from the High Court of Namibia that this is discriminatory. It is claimed that it is inconsistent with the Constitution of Namibia as well as with international law.

The opinion focuses on the differentiated treatment between children born out of wedlock and children born within marriage and concludes the differentiation is not in accordance with

international law protection on non discrimination and equality. The key question in this regard is: When is a difference of treatment that is discriminatory justified?

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**(15) Legal Opinion for Case No.83**

Legal expert: Wachira Maina

National lawyer:

Issue: What human rights claims exist under international human rights conventions and Nigerian law for an employee who has been dismissed from private employment on the basis of an erroneous diagnosis of HIV/AIDS arising from an employer's mandatory testing. There are three legal questions involved: 1) Are compulsory employer mandated HIV/AIDS tests permissible under human rights treaties to which Nigeria is a signatory and are these applicable to private companies as opposed to officials acting under colour of law? 2) Does the Nigerian Constitution implement or recognize those human rights standards? 3) What remedies exist for an employee who has been dismissed on the basis of a false HIV positive result?

Summary of opinion: The opinion argues that the victim's claim rests on at least two different rights both protected by international human rights conventions and by the Nigerian Constitution. These are: 1) the right to privacy and 2) the right not to be discriminated against. Scrutinizing the Conventions, this opinion argues that international human rights impose on states a dual obligation: *a negative duty* not to interfere with rights and *a positive duty* to enact laws that outlaw horizontal violations of rights by private individuals. What matters, legally speaking, is the gravity of the threat to liberty and integrity and not where the threat comes from - states or private individuals. The opinion analyses the relevant articles of the Nigerian Constitution and shows that these are, in words and obligations imposed, consistent with the relevant human rights conventions. The opinion considers the actions that the victim Johnson may raise in addition to the human rights claims discussed in parts 1 and 2 and makes recommendations.

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**(16) Legal Opinion for Case No.110**

Legal Expert: Clara Polsinelli

National lawyer: John Kimwangana

Date: December 2004

Issue: Squatters (trespassers) settled on land owned by a governmental body were arbitrarily evicted without the government taking any measures to provide them with alternative settlement land.

Summary of opinion: Under international law, the obligation to provide adequate housing and shelter will include a responsibility of a government body to settle its citizens. That suggests that

when people are displaced by a governmental organ from state land, alternative settlement should be provided.

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**(17) Legal Opinion Case No. 113**

Legal Expert: Mr. Winluck Wahiu  
National lawyer: John Kimwangana  
Date: 23 May 2003

Issue: The case argues that the right to assembly was infringed, and that consequently, the police action was manifest discrimination against muslims as a religious community in Tanzania. A group of assembled to commemorate victims of police brutality in Mwembechai was violently dispersed by the police. Is the right to assemble qualified on religious grounds?

Does international law recognise monetary compensation in circumstances such as this one where police action against a group of protesters results in violation of rights?

Summary of opinion: Tanzania police violated the civil rights of peaceful protesters through wrongful arrest and illegal detention. The protesters have the possibility to claim for monetary compensation as remedy for the foresaid rights' violation. Amount of damages will be decided by municipal court upon examination of the evidence.

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**(18) Legal Opinion (JOINT) for Case Nos. 132 and 133 and 134**

Legal Expert: C. Polsinelli  
National Lawyers: A. Nieber – E. Yaansah – D. Ayine  
Date: February 2005

Legal Opinion developed for the Centre for Public Interest Law (CEPIL) on the cases no. 132 - Builsa Kakraba and 20 Ors v Goldfields Ghana Ltd (CS 68/1998); no. 133 - Paul Kwfie and 28 Ors v Goldfields Ghana Ltd (CS 15/1999); no. 134 - Nana Kofi Karikari and 44 Ors v Australian Goldfields Ltd (LS 34/97). The core issue implicated in these cases is the forced evictions of local peoples from their villages by a private multinational with the consent of the Government and the violation of the right to housing as spelt in the International Covenant on Economic Social Cultural Rights and other international conventions. The cases have been filed before the High Court in Tarkwa, Western Region, Ghana, and the hearings are pending. Eventually, after exhaustion of local remedies, a communication may be filed before the African Commission on Human and Peoples' Rights.

Question on which opinion is sought: The Plaintiffs are owners and residents in different villages in the Western Region of the State of Ghana. The Defendant, an Australian owned mining company, demolished houses belonging to the Plaintiffs situated on a track of land, which forms part of a mineral concession, granted by the Government. Up to today, the Government has not

provided plaintiffs and the other residents with alternative accommodation and compensation for the damage.

Summary of the opinion: The right to housing is protected in many international instruments, *in primis* the International Covenant on Economic, Social, Cultural Rights, a treaty to which the State of Ghana is party. Forced evictions are allowed only in exceptional circumstances, with due procedural forms and with the provision of compensation and alternative and adequate resettlements. Governments are responsible under the Covenant that there are no homeless as a result of the evictions.

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### **5 Legal Opinions Available on ILSBU.COM**

- Case 71 – Minority rights to control natural resources
- Case 20 – Discrimination against women
- Case 16 – Challenge to the death penalty and criminal justice rights
- Case 73 – Right to sexual orientation
- Case 53 – Sexual harassment at the workplace

### **9 Legal Opinions Available to be uploaded**

- Case 7 – Torture situation in Uganda
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- Case 30 – Right to fair trial in The Gambia
- Cases 35 and 37 – Right to fair trial in Uganda
- Case 66 – Right to recognition of father by child born out of wedlock
- Case 79 – Equal protection and access to justice in Cameroon
- Case 82 – Right of child born out of wedlock to claim father's estate in Namibia.
- Case 110 – Right to housing and protection from eviction in Tanzania

### **26 Incomplete Legal Opinions due by June 30, 2005.**

- Case 34 – Nigeria/Women's Rights
- Case 38 – Ghana/Housing rights
- Case 40 – Kenya/Child rights
- Case 54 – Kenya/Labour rights
- Case 72 – Uganda/Minority rights
- Case 79 – Cameroon/Property rights
- Case 85 – Nigeria/Child rights
- Case 86 – Tanzania/Women's rights
- Cases 89, 90, 91 and 92 – Namibia/Fair trial rights
- Case 96 – Uganda/Labour rights
- Case 115 – Gambia/Media rights
- Case 119 – Swaziland/Constitution
- Case 121 – Botswana/Death penalty
- Case 122 – Uganda/Labour rights
- Case 123 – South Africa/Housing rights
- Cases 124 & 125 – Zimbabwe/Media rights
- Case 126 – Zimbabwe/Fair trial rights
- Case 128 – Zimbabwe/Citizenship
- Cases 129 and 130 – Zimbabwe/Access to Justice
- Case 136 – Ghana/Labour rights
- Case 138 – Nigeria/Women's rights

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