SWEDISH AND KENYAN SECTIONS OF THE INTERNATIONAL COMMISSION OF JURISTS

ANNUAL REPORT

AFRICAN HUMAN RIGHTS AND ACCESS TO JUSTICE PROGRAMME

OCTOBER 2005 – DECEMBER 2006

Prepared and submitted jointly by ICJ Kenya and ICJ Sweden

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BACKGROUND INFORMATION

AGREEMENTS

In accordance with the Framework agreement between the Swedish International Development Cooperation Agency (Sida) and the Swedish Section of the International Commission of Jurists (ICJ-Sweden), ref: A7260429 signed in June 2005, and the Programme agreement between Sida and the The African Human Rights and Access to Justice Consortium represented by ICJ-Sweden, ref. 7260066601 signed in March 2006, ICJ-Sweden and the Kenyan Section of the International Commission of Jurists (ICJ-Kenya) jointly submit the October 2005 – December 2006 Annual Report on the implementation of the African Human Rights and Access to Justice Programme (AHRAJ), referred to as the reporting period below.

BACKGROUND

In June 2001 Sida, ICJ-Kenya and ICJ-Sweden signed an agreement regarding support to the AHRAJ programme for the period 2001 - 2003. The agreement remained valid until June 30, 2004 but was extended in three steps, initially until December 31, 2004; thereafter until June 31, 2005 and finally until September 30, 2005. A Framework agreement was signed in June 2005 between Sida and ICJ-Sweden on support to legal sector reforms and access to justice programmes during 2005 – 2007. ICJ-Kenya and ICJ-Sweden presented Sida with a renewed and revised application for the continued support of the AHRAJ Programme from 31st October 2005 until 31st March 2008, in October 2005. A new Programme agreement was signed between Sida and the AHRAJ Consortium represented by ICJ-Sweden on March 2006 on the support to the AHRAJ programme during October 2005 – March 2008. The period starting from 1st October 2005 is phase II of the programme implementation.

PROGRAMME OVERVIEW

THE PROGRAMME OBJECTIVE

The overall objective of the AHRAJ Programme is to achieve a strengthened legal protection and enforcement of human rights in sub-Saharan Africa, by developing national laws and practices which comply with international human rights standards in the areas of labour law, the right to health, women's rights, the right to a fair trial and access to justice. The Programme thus focuses on strengthening legal institutions and structures that will guarantee the impartial and effective protection and enforcement of human rights in the long term. More specifically, the AHRAJ Programme aims at improving the implementation of international human rights standards in 18 African States through human rights litigation, capacity building and access to justice support.

PROGRAMME ACTIVITIES

The AHRAJ Programme seeks to ensure the implementation of international human rights on the national level, by providing legal expertise and financial support to lawyers litigating human rights cases on behalf of NGO's, trade unions, law clinics and private law firms. The primary activity within the programme is therefore case support. National lawyers can, after submitting an application to the AHRAJ Secretariat, receive funding to cover litigation costs and court fees in a specific case. In addition to this financial support the AHRAJ Programme also offers the possibility to finance a legal opinion on the application of international human rights standards in the specific case drafted by a legal expert in the area.

The nature of human rights strategic litigation, which the programme caters for by providing case support, is to redress injustice and make the available legal system accessible to each individual. Strategic litigation will also facilitate the clarification of the law of relevance to the implementation of human rights at the national level through the development of jurisprudence. Consequently, the programme enhance the pos-

sibilities of holding a government accountable for human rights violations not exclusively at an international or regional level but also at the national level through the exhaustion of national remedies.

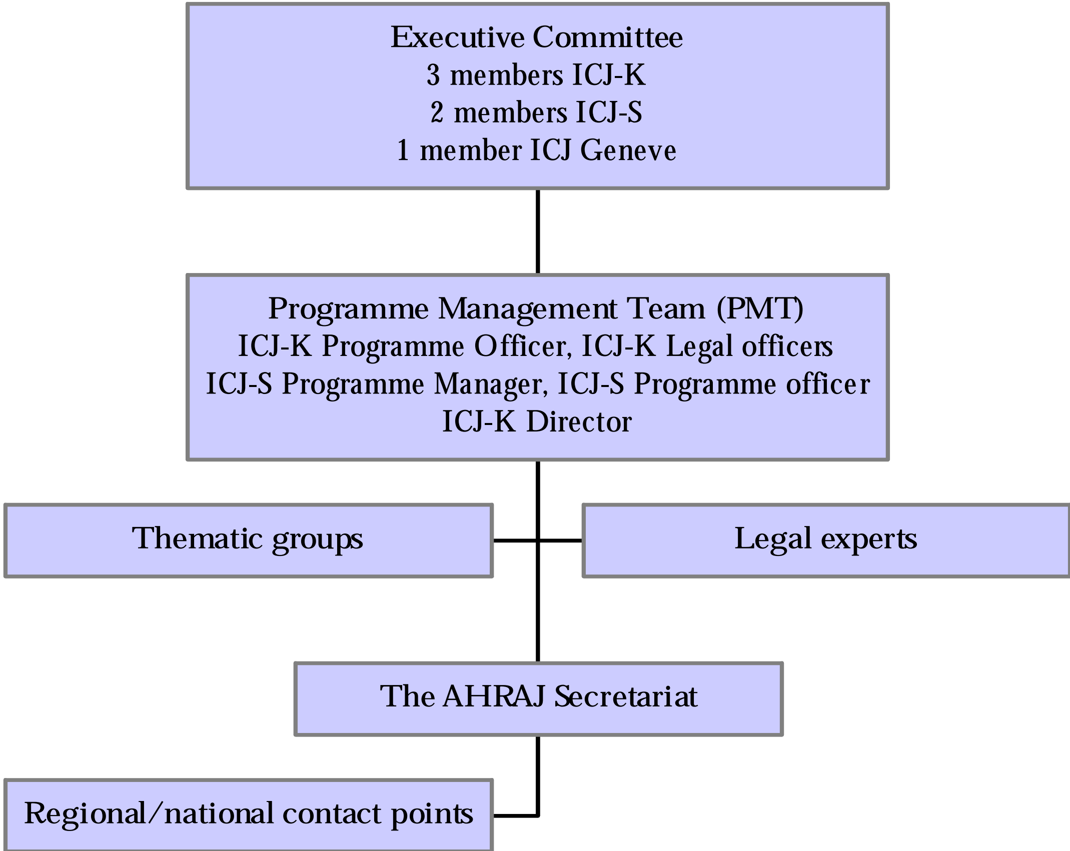
The AHRAJ Programme also supports experience sharing and training of lawyers in different African countries under the auspices of case related support. Organising human rights litigation workshops as well as, regional thematic workshops, the AHRAJ Programme offers national lawyers and other representatives from human rights NGOs involved in litigating human rights cases, capacity building in the area of human rights and national and regional litigation and a possibility to exchange experience.

The AHRAJ Programme covered 18 countries in sub-Saharan Africa.

Botswana	Ghana	Namibia	Tanzania
Burkina Faso	Kenya	Nigeria	Uganda
Cote d'Ivoire	Malawi	Senegal	Zambia
Gambia	Mozambique	South Africa[1]	Zimbabwe
Angola	Ethiopia		

As a third area of activities, complementary to case support and capacity building, the AHRAJ Programme also foresaw the possibility to carry out trial monitoring of especially sensitive human rights cases.

PROGRAMME STRUCTURE



[1] South Africa was later removed as one of the programme countries due to a decision taken at the EXCO meeting in Stockholm in May 2006.

PROGRAMME ADMINISTRATION

AHRAJ is implemented by ICJ-Kenya and coordinated by ICJ-Kenya and ICJ-Sweden jointly. The programme team consist of a Programme Manager and a programme officer/legal officer in ICJ-Sweden and a secretariat in ICJ-Kenya consisting of one programme officer, two legal officers and a legal researcher. Furthermore, the AHRAJ programme partially funds the salary of the Finance Manager, a secretary and the Executive Director of ICJ-Kenya. During the reporting period the AHRAJ secretariat in Nairobi has continued to implement the programme with guidance taken from the policy decisions made by the Executive Committee (EXCO) of AHRAJ. The task has been undertaken with support by the PMT and programme staff.

Phase II of the programme commenced in October 2005, with a draft proposal being submitted to Sida, which was not approved until March 2006. The funds were not transferred until June 2006 when scheduled activities commenced. The lengthy negotiation period to be able to confirm programme support largely affected the first part of the programme implementation, as there were cases pending approval for support from the previous phase I as the new phase II was awaiting approval. During this period there was a movement of staff at ICJ-Kenya, with an intern left to run the programme in the interim period between phase I and II, giving feedback to those seeking case support and reply to mails until April 2006 when a new Programme officer was appointed followed by two legal officers in July 2006.

The rollout of programme activities commenced in May 2006, with the EXCO meeting-taking place in Stockholm on 29th to 1st June where the Plan of Activities was approved as well as budgetary allocations. Within the reporting period key decisions were taken by EXCO and the PMT, with an intense programme promotion period commencing which embraced all the 18 programme countries.

In the ICJ-Sweden office the programme officer/legal officer left her position in May 2006 and the post was vacant during the summer 2006. This has not affected the programme implementation phase much since funds from Sida were received around the same time and the planning process had already been undertaken with the collaboration of the ICJ-Sweden Programme Manager and ICJ-Kenya. Since September 2006 a programme officer/legal officer was recruited by ICJ-Sweden. This person is responsible for the programme coordination at the secretariat level in Sweden.

The AHRAJ Secretariat

The AHRAJ Secretariat is located in the office of ICJ-Kenya in Nairobi. It is the programme administration centre. All programme activities are implemented here with case support and case related support coordination. All case support applications received during the reporting period are processed, shared in PMT and decisions communicated to the applicants through the Secretariat. Each application is assigned a number chronologically. In the event of a positive decision to support, the application retains the same number but is referred to as a 'case.' All cases are registered in the AHRAJ case database.

A decision to support is immediately followed up with a written notification to the applicant requesting financial and other details for disbursement purposes. If the information is received timely, disbursements are generally made within 14 days. If the decision is a rejection, a notification is sent out to the unsuccessful applicant.

In August 2006, the AHRAJ programme officer became the ICJ-Kenya Acting Director. This affected the already overstretched programme staff as most work fell within the hands of the legal officers. The late implementation of the programme required the entire team to be fully occupied in the programme implementation to ensure all the planned activities were running according to schedule.

The programme management team (PMT)

The programme team has coordinated all the activities of the programme. Applications for case support has been received and shared in a database and then analyzed with background research for sharing at the

PMT normally held at a monthly basis, as a telephone conference. During the reporting period 14 PMT teleconferences were held between ICJ-Sweden (programme manager and programme officer) and ICJ-Kenya (programme manager and two legal officers) and 3 roundtable meetings when the PMT members had the chance to meet physically. Based on PMT decisions all case applicants were notified and the successful ones were followed up for case related support. The case related support was modified to target the needs of the national organisation and/or litigation lawyer.

All applications received were assessed within the AHRAJ Secretariat in Kenya upon which they were all shared with ICJ Sweden who shares within the steering group of Swedish experts that issue their recommendations on the cases submitted. The final decision on case support was made by the PMT. The AHRAJ Secretariat continue to run a database of all the cases application received, with current status details, which has helped in the documentation and follow up of legal opinions, progress reports and financial reports as well as, impact assessments which now run periodically.

The PMT meetings have been conducted through the telephone line, which has not always operated satisfactory. The meeting has been interrupted during several occasion due to a bad landline. Problems with the telephone lines when connecting several lines together in a telephone conference has delayed certain decisions or resulted in the fact that all the participants did not participate; especially from the Swedish team since the programme officer and the programme manager were not situated in the same premises.

In addition the role of PMT was to conceptualise other programme activities, especially the regional workshops that took place in Ethiopia in July 2006, Namibia in September 2006 and Accra Ghana in October 2006. The PMT was also involved in developing the programme and concept paper for the International Litigation Workshop, in November in Banjul which was running parallel to the 40th session of the African Commission on Human and Peoples' Rights.

EXCO meetings

During the reporting period, EXCO held two meeting on 29th May to 1st June 2006 in Stockholm, Sweden and on 27th to 29th November 2006 in Mombasa, Kenya.

Stockholm meeting

The initial meeting in Stockholm set the phase of the programme after delays in submission of funds by Sida, and also after a programme lapse upon departure of the previous programme officer in ICJ-Kenya and appointment of new staff members. ICJ-Kenya also had new Council members seated at EXCO for the first time and sharing their input into the programme, as Chair of EXCO. It was therefore an inaugural meeting to give directions to the programme based on previous work done under the programme phase I.

Due to high costs of holding the meeting in Sweden and the additional costs in regard to participation from ICJ-Geneva the meeting exceeded the set budget. The reason behind holding the meeting in Sweden was to facilitate for an exchange of experience and knowledge between ICJ-S members and board members and the ICJ-K board. It also gave ICJ-K board members the possibility to meet Sida and other institutions of relevance to the programme. A request made to Sida for an approval in advance should have been made regarding the circumstance that the EXCO budget was exceeded.

Another reason behind the high costs is that prior to the meeting of EXCO in May 2006, a partners meeting of ICJ-Sweden AHRAJ staff members and ICJ-Kenya Council was held in Nairobi, to largely inform the ICJ-Kenya Council on the policy framework of the programme, how to interface between phase I and Phase II of the programme and the content of the agreement between ICJ-S and ICJ-K. The programme manager costs for the travel to Nairobi were put on the EXCO budget since the reason behind the visit was to finalise essential administrative issues of great relevance for the performance of the programme.

EXCO discussed the role of the International Commission of Jurist in Génèva (ICJ-Geneva), in the AHRAJ programme, since it has not been clear. There is a general understanding within the programme that it should to a greater extent use the knowledge and regional information that the ICJ-Geneva office has and more actively make use of its networks. However, it is not clear to what extent ICJ-Sweden should cover the costs of ICJ-Geneva participation in EXCO. The higher costs of EXCO was partly

referable to the fact that it was decided quite close to the meeting that ICJ-Geneva should participate which inflicted higher cost on the programme.

The EXCO meeting focused on the problems arising from previous delays in the receiving of the majority of the case support legal opinions developed during phase I. Additionally, in most cases the opinion was not directly related to the case filed in court. The meeting reviewed the current process with the aim of highlighting the role of the litigation lawyer in the procedure, who should be the one identifying areas of concern for the legal opinion. The case application documents, the selection criteria as well as case related support documentation, were critically revised to ensure strict compliance with the objectives of the programme. Furthermore, EXCO decided to abolish the thematic groups both in Sweden and Kenya and instead focus should be on networking within the programme's already existing thematic areas. For further information about the abolishment of the thematic groups please see on page 17 below.

The programme work plan was also shared with some amendments and directions into effective implementation strategies. Below is a table of EXCO decisions taken during the EXCO meeting in Stockholm and remarks in regard to respective decision taken.

EXCO decisions	Activity/issue	Remarks
Focus countries	18 countries	EXCO approved the removal of South Africa, and Bukina Faso but also included Ethiopia and Cameroon. Initially cases were supported from non-focus countries spreading to Sierra Leone and Eritrea.
Case support	50 cases	This was reduced from 75 as the previous phase had not achieved this target
Legal opinion	50 opinions	Dependent on the needs of each litigation lawyer, a legal expert was to be engaged to produce a opinion[2]
ILSBU	Sharing of materials	It was decided that AHRAJ will use the ICJ-Kenya website to disseminate its legal opinions. There was no renewal of the contract with ILSBU.
Thematic groups	5 thematic groups	The activity was cancelled.

<u>Mombasa meeting</u>
EXCO had its second meeting during the reporting period in November 2006, in Mombasa, Kenya. Key policy decisions were taken especially in regard to the continued work of updating and revising the existing programme working documents. The list of experts was also scrutinized for use in case support in undertaking legal opinions. EXCO was also able to look through the programme budget, plan of activities and approve a new approach to case support by accepting 'Focus Cases' with an enhanced budget looking at various components.

EXCO commenced the programme evaluation process with the identification of two consultants. This activity has been due since the programme inception. The areas of focus for the evaluation was agreed on by EXCO and the terms of reference were developed by the PMT. Below is a table of EXCO decisions taken during the EXCO meeting in Mombasa and remarks in regard to respective decision taken.

EXCO decision	Activity/issue	Remarks
Evaluation approved	Two consultants to be identified	The process of identifying the consultants was not achieved during the year and had to move to 2007. The consultants were finally approved by EXCO per capsulam in February 2007.

[2] The List of experts was however not agreed at this meeting, which was eventually done in a subsequent meeting. This largely delayed allocation of cases to any legal experts.

List of experts approved	Look at the credentials	The list was approved per capsulam during February 2007.
Programme documents reviewed	All programme documents were reviewed	A compendium of the programme documents was approved.
Finance adjustments and proposals made for Sida approval	Financial adjustments and budgetary allocations	ICJ-Sweden was given the responsibility to approach Sida with suggestions of financial adjustments in the budget 2006 and 2007. Furthermore ICJ-Sweden was to approach Sida with a request to transfer the balance of 2006 into 2007 activities since several of the activities had not been finalised during 2006 such as the casebook and the evaluation.
Work plan review	Programme activities review	It was concluded that due to late commencement of the programme activities, the majority of activities scheduled for the first quarter were not implemented
Case support	Focus cases	The need for focus cases was reviewed and approved by EXCO to be able to target a wide and urgent issue for litigation. Focus cases would enable litigation strategies and support to be developed under any forum including lobbying and working with other partners. EXCO has to approve the budget for such cases.
Case book	Case book one	There was a delay in finalising the casebook one and programme staff had to add chapters and have it completed. Due to the delay there was an urgent need to approach Sida to be able to transfer the balance of the casebook budget to the activities for 2007 since the 2007 budget for the casebook exclusively covered the expenses for producing casebook II.

ACHIEVEMENTS AND DEVIATIONS IN ACTIVITIES

The development of human rights in Africa has been marked by both dramatic positive changes and alarming reversals. In many countries, constitutional reforms have been achieved. Many new constitutions, now formally guarantee economic, cultural, social and environmental rights in addition to the traditional civil and political rights.

Various national and international human rights actors have been engaged in cooperative activities. Within the regions, various sub-regional networks exist to foster AHRAJ cooperation and contact building.

The continued funding by Sida has ensured that the programme activities are running. However, the funds from SIDA were only received on 22 June 2006, which caused a long delay to case support and other programme related activities, which could not be implemented according to the set agenda. This has had a great impact on the level of expenditure of funds during the reporting period. The delay of activities as well as, a reduction of activities in total will be accounted for below in more detail.

CASE SUPPORT

Case targets for the reporting period was 62,5[3] cases inclusive of legal opinions. This target was not achieved.

66 applications were received with 29 cases receiving support during the reporting period. These cases cover applications made between May to December 2006 when intensive promotions were carried out. The cases are referred to as No. 188 to 244 in the case database, inclusive of 4 cases that were approved but not supported in 2005, when phase I came to an end. The applicants were kept pending waiting for renewal of contract.[4]

The number of applications pending for decision during the reporting period is 14 applications as of 31st December 2006, mostly due to unclear information and seeking to verify some of the details in the application.

The level of case support has been increased to add the amount of financial assistance from 4000 USD per case to 6000 USD per case. The higher amount of support is to enable the national lawyer or NGO to cover the costs in relation to the case such as registration fees and lawyer fees. The increase of support is also referable to changes in the exchange rates for USD. The financial support is made into 3 instalments, spread out to ensure continued follow up and periodic reports from the applicants.

Cases falling outside the thematic areas of the programme are also addressed, if relevant from a human rights perspective and in accordance with the programme guidelines.

Case applications per theme

	Theme	Cases 2005/6
1	Access to justice	13
2	Fair trial	14
3	Women rights	9
4	Labour rights	10
5	Health rights	9
6	Misc.	11[5]
	Total	66

[3] 12,5 cases for October to December 2005 and 50 cases for January to December 2006
[4] The 4 cases carried forward had been contracted under the old allocation of $4000 per case and inclusion in the new phase did not change the case agreement and the balances have been treated according to the same. All other old ongoing cases seeking more funds have been treated as new cases.
[5] This sub-theme has taken cognisance of mixed issues, like right to association, land rights within access to justice or women right or property rights of orphans, child rights, refugee rights, right to vote, etc.

Case applications per country
The focus countries where promotions were carried out in this period have added to the case applications received.

Country	Cases in 2007	Country	Cases in 2007
Botswana	0	Senegal	0
Gambia	3	Tanzania	2
Ghana	1	Uganda	8
Kenya	10	Zimbabwe	4
Namibia	4	Malawi	5
Nigeria	11	Zambia	7
Ethiopia	1	• Sierra Leone[6]	3

CASE-BASED FACT FINDING MISSION, "FOCUS CASES"

During the EXCO meeting in November 2006 the meeting approved a new approach to case support by accepting 'Focus Cases'. The purpose behind supporting "Focus Cases" is that the programme has identified a need to be able to accept cases with a broader target and an increased public interest aspect to it, where there is a need to litigate at an international level in cooperation with other actors. Therefore there is also a need to allocate a larger budget to the focus cases upon compulsory approval by the EXCO meeting.

During the reporting period one focus case has been approved by EXCO as a pilot focus case, case no. 242 that has been scheduled for a fact-finding mission relating to child soldiers in Northern Uganda. A Communication has already been filed before the Child Rights Committees in Addis Ababa challenging the application of the Child Rights Convention and the African Charter on the Rights and Welfare of the Child (ACRWC) pursuant to Article 44. The Committee has not yet rules of procedure and has therefore put the Communication on hold to develop the same. In the interim, the applicants in conjunction with AHRAJ, Save the Child Uganda and United Kingdom will undertake a fact-finding mission to verify the details attached to the communication before the Committee. This is necessary as the applicants are non-Ugandans, a condition that allows them to file a communication but they require ground reports and confirmations from victims of violation. The Communication has been filed relying on violation of Articles 5 on survival and protection, 11 on education, 22 on child participation in armed conflict, 27 on sexual exploitation, 29 on abduction, 14 on health, 16 on child abuse and torture based on the provisions of the ACRWC.

Fact-finding will facilitate getting actual victims of violation, who will comprise the persons being represented in the Communication. The partnership created between various civil society organisations on the ground in Northern Uganda and Save the Children have made it possible to get access to reports, materials and the children undergoing the stated violations or survivors of the same. This Communication is one of its kind, it has generated a 'secrete' mission by the Committee to verify the cited violation in Northern Uganda, the Ugandan Parliaments has asked for a comprehensive report on what measure the government has undertaken to protect the rights of the child in the rebel held areas.

The programme will evaluate the results of supporting "Focus Cases", through the impact of case 242.

[6] not a focus country and EXCO decided that cases from non-focus countries will not be supported in this phase to strengthen the countries so far identified.

LEGAL OPINIONS

During the reporting 5 legal opinions have been produced which amounts to only 8 percent[7] of the predicted outcome. The lack of produced legal opinions is much due to the unclear position of the opinion in the case procedure and the lack of an expressed need for an opinion from the litigating lawyer. It has also been reported that the legal opinion is produced too late in relation to the commencement of the court procedure. The national lawyer did in some cases access the legal opinion when the court proceedings were already finalised. Consequently, the legal opinion did exclusively have an academic value and did not add anything to the litigation strategy of the lawyer. Since the programme sign agreements with the experts engaged to write legal opinions, if they breach their contract it is not likely that the programme will engage that expert in future cases. A general problem in this regard is that most national litigation lawyers are not conversant with international human rights standards and the process of identifying applicable human rights standards with the appointed expert has flown back and forth requiring a lot of information sharing to ensure that the litigation lawyers have the capacity to appreciate the generated opinion.

At the secretariat level in ICJ-Kenya, the Legal Officers are following specific thematic areas to ensure legal opinions are generated according to the needs and interests of the applicant's case. The secretariat does follow-up on all the approved cases together with identifying issues to be addressed by the expert. The legal officers are also involved in writing legal opinions within their area of expertise. The job-sharing between the legal officers and programme manager at the ICJ-Kenya office is accounted for in the table below

Thematic areas	Legal Officer	Number of cases
Access to justice	Programme manager	Case shared according to thematic areas as well as joint assessments within the team. Access to justice 10 cases Fair trial 5 cases Health rights 2 cases Labour rights 5 cases Women rights 4 cases
Fair trial	Legal officer	
Health	Programme manager	
Labour Rights	Legal officer	
Women rights	Legal officer	
Others	All the above	

Since the activities commenced late in the project implementation, the contracting of experts has been delayed.

The EXCO has now finalized on the recruitment guidelines for experts and once the team of experts is expanded, more cases will be supported. However, some of the supported litigation lawyers and organizations are willing to proceed without the expert opinion as they are well versed with the issues or they are addressing their core areas of interest.

The level of support for legal opinions is up to 4000 USD.

In the EXCO meeting in May 2006, a decision was made that all cases should receive a legal opinion unlike the previous position where legal opinions were made to and for those applicants who made a specific request or indicated the need to have one. Based on the objectives of the programme, it was found necessary to build the capacity of the programme by ensuring that all the standards being set in each case supported were given the technical/expert support.

LEGISLATIVE REVIEW EXPERTS

Within the reporting period no law from any of the programme countries has been reviewed.

The objective behind including this activity in the programme is the failure by judiciaries in Africa to use international human rights standards, which arise from continued violations as an effect of a deficient

[7] The expected outcome as expressed in the programme application to Sida was 62,5 legal opinions to be produced during the whole reporting period.

normative base and a disregard of constitutional and legislative guarantees. AHRAJ seeks to ensure that standards, guidelines and principles covered under international instruments are incorporated in a constitutional and legislative framework reflective of each programme country having ratified these conventions as part of their national law.

A legislative review opinion's purpose is mainly to scrutinize the legislative process of relevance for the case supported. This could mean to suggest any amendments but also how to promote any such suggestions made in the legislative review opinion. The need for legislative review expertise is based on an expressed need for such assistance from the national lawyer or NGO. Such requests have been scarce. It has been observed that, in some cases, the national lawyer do not know how and to what extent he shall use the legislative review opinion in his work.

CASEBOOK

The work with the casebook has been heavily delayed and could not be finalised during the reporting period, but has been finalised during January 2007. The reasons behind the delay are mainly four. The first reason is that it is a challenge to produce qualitative results in the field of litigation since a court proceeding can be quite lengthy in time. The second reason is that the Secretariat has been subject to a turnover in personnel and during lengthy periods a lack of several personnel. This has delayed the administrative work in relation to the casebook. The third reason is that the programme took a long time to produce a permanent expert list approved by EXCO. The experts on the list are those involved in the producing of legal opinions that will be included in the casebook. The final reason is that the editor who commenced work on the casebook did not complete the required task in good time, and getting soft copy of the same was a challenge for the AHRAJ secretariat.

The objective of the casebook is to look at cases supported under AHRAJ and to make a comparative analysis with other cases decided by regional and international bodies. The aim of the casebook is that it should demonstrate how international standards have been tested out and why. Much of this "why" also has to do with the context in which a case is litigated, for example when national pressure combines with the emergence of a social movement, or cases involving indigenous groups just when international conventions are being ratified on the same. The challenge to death penalty similarly applies here given the growing emergence on an African consensus for its abolition, manifested by use of moratoria, if not actual abolitions are achieved.

Topics covered in the casebook I that was recently finalized include;

1. General principles: judicial implementation of international human rights norms
2. Using international human rights to confront discrimination: the case of Nigeria, Tanzania, Kenya and South Africa
3. Analysis of labour rights
4. Right to land – right to housing and adequate standards of living
5. Freedom of expression
6. Abolition of the death penalty in Africa
7. Relevance of ratification on domestic human rights practices regarding human rights to fair trial and right to access to justice in Africa

While AHRAJ covers five standing subject areas, the cases covered in the casebook are only a part of those supported in these subject areas. In addition, there is a miscellaneous category that covers rights not specifically assigned in the subject areas. Hence there is a chapter addressing minority and indigenous group rights, with emphasis on their native title to land, and another chapter on freedom of expression.

CASE RELATED SUPPORT

International Human Rights Litigation Workshop

The two international human rights litigation workshops that were scheduled for the first half-year of the reporting period, one in October/November 2005 and one in April/May 2006 could not be held due to

late receipt of funds and the Legal Officer in charge at the time commenced work not until April 2006 and could therefore not commence the coordination of the event in time.

The first International Litigation Workshop during phase II was held in November 2006 in the Gambia during the 40th session of the African Commission on Human and People' Rights. The theme of the workshop was based on 'A critical assessment of Public Interest litigation strategies in Africa' which brought together 25 of the programme partners from NGOs, litigation lawyers, experts, and the AHRAJ programme team.

As AHRAJ continues to grow in Africa, different strategies for litigation and domestication of international human rights standards was incorporated based on feedback received during the international litigation workshops. At this forum, the tier of litigation before the African Court (Court) was discussed as a strategy and the participants await the development of rules of procedure for the operationalisation of the Court. The Court will create an opportunity to jurisprudence on human rights in the continent. It also offers AHRAJ and partners another forum to address human rights violation. However advocacy is still required on member states of the AU who have ratified the Protocol of the Court to allow direct access to the African Court.[8]

The workshop was evaluated by the participants as having offered:

1. A working knowledge of the African Court on Human and People's Rights;
2. Provided participants with an opportunity to build their strategic litigation skills as a tool for the domestication of international human rights standards;
3. Provided information on the latest developments in the field of women, labour, health, fair trial rights and access to justice.

Regional Litigation Workshops

3 regional litigation workshops were conducted during the reporting period,

1. East Africa, in Addis Ababa, Ethiopia in July 2006 on access to justice
2. Southern Africa, in Windhoek, Namibia in September 2006 on health rights
3. West Africa, in Accra, Ghana in October 2006 on fair trial.

These forums continue to serve each region with an opportunity to build on linkages and share knowledge on regional issues of common interest and strategies to be able to use the available mechanisms to address human rights concerns in their home countries. The Economic Community of West African States (ECOWAS) court in West Africa has in recent years offered some very good jurisprudence on socio-economic rights as well as made decisions on civil and political rights, which can be, replicated in the member countries. The presence of the Special Court for Sierra Leone in the Western Africa region, continue to offer a resource base to legal and human rights experts. Though not a programme country, the issues being dealt with by this international tribunal relate to use of international human rights standards.

To ensure the existence of an actual case for which support has been sought, pre-trial preparatory work is made within the litigation workshops. In Ethiopia the AHRAJ team was able to meet with a case applicant and criticize the litigation strategy used and then seek clarity on the expected outcomes of the case.[9] This strategy ensured that the programme reduced the risks of the litigation lawyer being supported over matters outside the target programme objectives and that the focus taken would add value to the thematic area. The regional workshop in East Africa identified that only one case has been filed before the East African Court of Justice.

East Africa

The East Africa regional workshop targeted lawyers and human rights organisations receiving case support within the theme of access to justice and was strategically held in Ethiopia where only one case application has been made, due to the fact that the legal system and the justice system require a lot of support

[8] So far only Bukina Faso has deposited a Declaration according to Article 34 (6) of the Protocol of the Court allowing NGOs direct access. All AHRAJ focus countries require specific advocacy strategies to engage in negotiations to facilitate similar deposits to ensure the continued engagement of the court noting that most litigation in Africa and especially before the African Commission on Human and Peoples' Rights is undertaken by NGOs.

[9] Application No. 199 by APAP on health rights thematic areas.

as litigation on human rights has been conceived by the current regime to be a challenge to the state. There is only one organisation that is ready to take the challenge of litigation here "Action for Professional for the People" (APAP) and the environmental issue they have commenced is the first public interest litigation so far in Ethiopia. The workshop provided the opportunity to strengthen contact points for the programme and use the same for promotional activities.

Southern Africa

The Southern Africa regional workshop in Namibia targeted health rights. This was the first of its kind and the programme staff worked hard to ensure that this thematic area was well conceptualised. Being the first regional workshop on health rights the following input was found necessary to ensure,

- a concept paper on the right to health
- legal experts from outside the region targeting the right to health, strategies in litigating on the right to health, reproductive health rights expert, and case development. Strategic litigation was shared from legal experts who have engaged in litigation especially in the United States and the Centre for Reproductive Health Rights. Also the case of South Africa was brought up that has progressively been able to interpret socio-economic rights based on the constitution.
- analysis of country situations looking at HIV/AIDS and how litigation can be developed
- incorporation of persons with disabilities in litigation of health rights.[10] Examples were shared as to how countries have ignored the plight of persons with disabilities, some forced abortions, sterilisation and medical negligence resulting in disability.
- discussions on creative litigation of socio-economic rights, with an audit of African States constitutions and legislations.

The workshop brought in experts from Sweden, the United States, South Africa as well as programme staff from the AHRAJ Secretariat to develop this thematic area. Since there was no international litigation workshop held in the first quarter of the programme period as planned, which should have taken the right to health as the area of focus, this regional workshop was hoped to fill in that gap and achieve the same objective. In Namibia where the workshop was being held, AHRAJ has supported four 4 cases on the right to health litigated on by the Legal Aid Centre, the only public interest litigation organisation in Namibia. They offered good study cases to use during the workshop especially on medical negligence and the law as well as mental health and legislative challenges.

West Africa

The West African regional workshop, held in Ghana in October 2006, concerned fair trial. Participants were drawn from Nigeria, Ghana, Cote d'Ivoire, Senegal and the Gambia. The Centre for Public Interest Litigation Ghana (CEPIL), which the programme has supported in several cases, facilitated and coordinated the planning of the workshop.

The issues for discussion at the workshop included

- Practical Relevance of the right to Fair Trial and Criminal Justice Rights in Africa
- Legal Practitioner's Guide to International, Regional and National litigation Strategies
- Comparative/Constitutional and Other Legal Protections of the right to Fair Trail and Criminal Justice Rights
- Special Courts and Military Tribunal and the State of Emergency and Armed Conflict
- Pre-trial process: Freedom and Security of the person
- Special cases and applicable international Human Rights Standards (Death Penalty, Children) and Constitutional Guarantees

During the final day of the workshop, the participants had the occasion to visit a local prison in Accra, facilitated by the judges attending the workshop as well as CEPIL the local coordinating organisation. This was a practical example of the state of prisons in the region over which litigation strategies to ease the congestion were developed and a test case was filed in Nigeria over the same. In Ghana, the Legal Aid

[10] We had a legal expert from the African Decade on Persons with Disabilities, an African union body coordinating disability Action Plans in all member countries, especially legislation

Board that deals with criminal cases[11] did undertake to coordinate the activities of granting of bail and release of most of those in custody.

The participants agreed to make follow up on the following issues;
1. Prolonged detention without trial
2. Delay in trials
3. Test case in dealing with the issues of prolonged detention and trial

So far the programme has received numerous applications from Nigeria on the above, and cases are under development from Ghana as well as from the Gambia.

Table on regional workshops target issue and target countries

Target issue	Region	Target countries
Access to justice	Eastern Africa	Ethiopia, Uganda, Tanzania and Kenya. This included expert presenters on the target issues and the programme staff
Right to health	Southern Africa	Swaziland, Namibia, Zimbabwe, Zambia, Malawi, Angola, Mozambique. The programme included Botswana as a good study case with a policy on HIV/AIDS as well as legal experts from South Africa with regional focus.
Fair trial	West Africa	Nigeria, Cote d'Ivoire, Senegal, Gambia, Ghana.

Programme Promotion

The programme promotion during the reporting period has prioritised the kind of cases supported under AHRAJ with quality applications coming in big numbers. The activity has generated a relatively high level of case applications from the case promotion target countries. This period has also witnesses a very high receipt of applications, as there was a deliberate effort to focus on particular countries by particular programme staff based on previous promotions already undertaken and contact building.

The AHRAJ staff has received case application through their informal networks from countries outside the programme countries during the reporting period. However, EXCO decided in November 2006 that the programme should not support cases from countries not included in the programme.

Programme staff	Target countries	Contact organisations
Monica Mbaru	Gambia	-Association of Gambian Women Lawyers (FLAG) -Private practitioners
	Ghana	CEPIL, COHRE, FIDA, Legal Aid Board, Ghana Human Rights Commission, Legal Resources Centre
	Nigeria	LRC, HURI-Laws, PJ,
	Uganda	HURINET, LAP, ULS

[11] This comprises majority of those in custody

Grace Maingi	Zimbabwe Zambia Botswana	ZLHR, LRF, ZLF ZLS, Dishwanelo
Benson Ngugi	Tanzania Zanzibar Malawi	TAWA, TLA, ZLS WLS

National contact points[12]

There have been no activities reported in regard to national contact points in countries participating in the AHRAJ programme, even though there was a need for such an activity as specified in the final report regarding phase I. The reason behind such a need was to overcome the language barriers prevalent in certain programme countries such as the Portuguese and French speaking countries. The national contact point would then facilitate a more efficient follow up of the cases supported. However, during phase II national contact points have not been prioritised. This is because it takes a lot of resources to engage people on a voluntary basis as national contact points. The programme already has a well functioning network of experts that could facilitate the follow up of cases in programme countries. It has not been necessary to label their already voluntary engagement as national contact points. Such a formalisation of their engagement might create a risk of disengagement from their side due to additional responsibilities without remuneration.

Annual Jurist Forum

1 Annual Forums was undertaken within this reporting period, in November 2006. The EXCO decided during its meeting in May 2006 to change the name of the activity to Annual Forum. A selected group from ICJ, beneficiaries, Commissioners, partners and AHRAJ meet to evaluate AHRAJ objective and audit them vis-à-vis current human rights situations in Africa. A general concern for the Annual Forum is that it should seek to invite lawyers and NGO representatives directly involved in the programme, to keep it at a more local level instead of a high policy level. Unfortunately, the invited ICJ Commissioner could not participate.

The Annual forum has achieved success in the following areas;

1. Being able to map out the human rights situation in Africa and setting possible legal intervention strategies, out of which 'focus cases' were agreed as a possible and needed intervention.
2. Setting standards for public interest litigation and what strategies to use in different regions
3. Creation of a network of partners in the region undertaking similar initiatives, international NGO:s such as Interrights, the Bar Associations, women organisations, and regional partner contacts have been strengthened.

Electronic newsletters

ICJ-Kenya has electronically issued newsletters on a quarterly basis. In the first quarter, there were no programme staff and there were only an intern at the secretariat. Activities were not able to commence until May 2006. During the reporting period 2 newsletters were published. The newsletters have been shared within the ICJ networks including partners and ICJ members. The newsletter enables the sharing of updates on cases supported as well as case-related support with briefs on the impact of cases that have been received.

Evaluation

For the period October – December 2005 there was not reserved any amount to cover costs for evaluation. For the budget 2006 there was an allocation made of 6000 USD to cover costs for an evaluation. However, the evaluation was postponed and as a consequence did not take place during the reporting period. The activity was commenced during the beginning of 2007. The evaluators were identified during December 2006. ICJ-Sweden and ICJ-Kenya nominated one evaluator respectively.[13] The evaluators were approved by EXCO. It was important that the evaluators were independent.

[12] There is no budget line for this activity within the programme budget for 2005-2008

[13] The Swedish embassy in Kenya did recommend several evaluators to the programme. The list was forwarded from ICJ-Sweden to ICJ-Kenya. ICJ-Sweden recommended ICJ-Kenya to engage one of the experts on the list to be the

The PMT prepared the terms of reference that were approved by EXCO. Various methodologies were adopted to ensure all the components of the terms were achieved by undertaking desk research, in the Secretariat, with beneficiaries and partners as well as reports filed by other organisations and on the internet. ICJ-Sweden provided ICJ-Kenya with the evaluation manual used and provided for by Sida.

The evaluation has been a very useful activity to AHRAJ, as the evaluation will give guidance to the challenges as perceived by beneficiaries and partners. The successes will also give motivation to be more creative and innovative as the programme secretariat undertakes future plans and activities.

There was a need to approach Sida to approve a budget for the evaluation for two reasons. Firstly to approve a larger budget than 6000 USD for the independent evaluation and secondly, to approve the larger budget under 2007 budget year since the evaluation budget for 2006 could not be used during 2007. A budget of 25 600 USD was approved in the beginning of 2007 by Sida.

Quality assessment of the programme has been carried out by EXCO. ICJ-Kenya has carried out an annual financial audit for 2005, 2006 and a financial audit for the AHRAJ programme for the period 2001-Sept 2005. ICJ-Kenya does not carry out mid-term evaluations. The programme has not previously been subject to an independent and objective evaluation.

TRIAL MONITORING

The Programme Officer at ICJ-Kenya in conjunction with ICJ-Geneva, has been undertaking trial observation in Uganda, in the case of Dr. Kizza Besigye and 22 others, which has been ongoing since 2005. The trial commenced with ICJ Commissioner Kathurima M'Innoti attending but due to a government appointment with the Kenya Law Reform Commission, he had to withdraw.

The trial observation relate to the arrest and charge of the lead opposition leader in Uganda, Dr. Kizza Besigye prior to the National General elections against incumbent president Yoweri Museveni. The charges range from terrorism, treason and misprision of treason as well as rape, which has since been dismissed by the High Court. During the trial several press releases were issued jointly with other national, regional and international organization regarding fair trial standards, which have been put to test severally during the trial. In 2005, there was a siege on the High Court by government soldiers and prompted the Chief Justice together with the entire judiciary to go on strike calling for respect of the rule of law and independence of the judiciary. During the siege, the accused and their lawyers were beaten and injured and those attending the trial together with AHRAJ Programme Officer, had to take refuge within the High Court Premises.

There have been violence and world concerns about events taking place in Zimbabwe and the arrest and trial of the opposition leader of FDC, Mr. Morgan Shangirai. However, AHRAJ personnel has not been able to conduct a trial observation there due to limited resources allocated to the same. Organizations on the ground, such as the Zimbabwe Lawyers for Human Rights have shared periodic updates.

Gambia and Ethiopia remains a concern regarding the trial of civilians and military persons in a court Martial and the protection of practicing lawyers, but a trial observation per se was not possible.

The activity will facilitate for AHRAJ to be continuously engaged in human rights issues.

CAPACITY BUILDING

ICJ-Kenya website

The ICJ-Kenya website has been up running during the reporting period, advertising and highlighting the programme as well as providing for updates and material related to AHRAJ. Furthermore, the case application sheet is made available on the website as well as other relevant documentation in regard to the case support activities. Case related activities such as the International Litigation Workshops and the thematic Regional Litigation Workshops are continuously advertised on the ICJ-Kenya website.

Swedish candidate. Unfortunately, the chosen candidate was not available. ICJ-Sweden nominated Stephane Jeannet, an expert evaluator based in Génèva.

ILSBU

The website ILSBU (www.ilsbu.org) was initially involved by the AHRAJ programme to provide storage for legal opinions, cases, legislative opinions, national law texts, country impact reports and other documents. However, in May 2006 EXCO decided to terminate the at the time prevailing contract with ILSBU in regard to hosting a case database and search engine on the Internet. The database and search engine is now based on the ICJ-Kenya homepage. As a consequence the programme no longer engages ILSBU. However, old legal opinions shared prior to May 2006 can still be accessed through the ILSBU website.

Thematic groups

As has been pointed out above, EXCO decided to abolish the thematic groups, both in Sweden and Kenya and instead focus should be on networking within the programme's already existing thematic areas. The reason behind the abolishment is that the maintenance of this activity has required quite a lot of resources from the Secretariat in ICJ-Kenya, because it has been a challenge to engage qualified persons on a voluntary basis for a longer period of time. It takes time to coordinate the activity and that time is valuable for the staff. They could instead use that time to administer the work related to case support and its impact, which is the core activity of the programme.

The programme already has a well functioning network of African and European experts within human rights. The logic is to build on the existing network and not put a lot of resources on creating a new activity that will duplicate already existing structures. During the reporting period ICJ-Sweden has had a functioning reference group of members, who are practising lawyers and judges of which some have an experience of international human rights law. The group is not specialised on a specific thematic area but instead covers several thematic areas within one group. The group normally meets once a month to assess the cases applications received by ICJ-Kenya prior to PMT meeting. A similar reference group has not been established in ICJ-Kenya. However, the Kenyan expert team have been very active in the regional workshops where members with relevant professional backgrounds have made presentations on the various thematic areas sharing practical litigation strategies with workshop participants from different regional contexts.

However, as the programme is coming to an end of phase II, the thematic groups could facilitate the initial objectives of sharing and evaluating key human rights issues arising from every aspect of the programme so that the monitoring is upheld.

SWEDISH INPUT

ICJ-Sweden continuously contributes to the implementation of the programme in several ways. This close cooperation greatly comes into effect in ICJ-Sweden's participation in the EXCO as well as in the PMT in regard to taking part in and overlooking the case decision procedure, the execution of the activity plan and budgetary follow-up. This is in addition to the daily contact between the ICJ-Kenya office and the ICJ-Sweden office in regard to the supporting role of ICJ-Sweden. The supporting role consists of ICJ-Sweden continuously providing the programme with legal expertise and other contact points and networking in regard to the implementation of major activities of the programme. ICJ-Sweden has mainly provided for legal expertise through its network and members but also through the programme manager with expertise on international labour law and the programme officer having a specialisation in human right law. Furthermore ICJ-Sweden provides feedback on the structuring of case related activities such as concept papers and agendas for the regional as well as international litigation workshops, monitors and issues recommendation on follow up and evaluation, budgetary procedures, allocations and routines and gives feedback and recommendations from the Swedish reference group on case applications. In addition ICJ-Sweden has been given the responsibility of the reporting procedure to Sida meaning that the programme officer together with the programme manager at ICJ-Sweden evaluate and assess the draft report submitted by ICJ-Kenya in regard to the programme objectives and plan of activities as well as the budgetary allocations. The reports are submitted by ICJ-Kenya twice a year, one half-year report and one annual report. ICJ-Sweden submits the final version of the report to Sida on behalf of the AHRAJ Consortium.

PROGRAMME INDICATORS

The overall objective of the AHRAJ Programme is to achieve a strengthened legal protection and enforcement of human rights in sub-Saharan Africa, by developing national laws and practices which comply with international human rights standards in the areas of labour law, the right to health, women's rights, the right to a fair trial and access to justice. In relation to the overall objective it can be noted that the programme has not been able to meet up with the set target number of cases to be supported during the reporting period. The set target was 12,5 case for the period October-December 2005 and 50 cases for January-December 2006, in total 62,5 cases for the reporting period. The actual outcome is support given to 29 cases out of 66 case applications received. The number of legal opinions produced during the reporting period is 5. No legislative review opinion has been produced.

The most successful activities of the programme have been the case related support activities, even though the activities of regional litigation workshops and international litigation workshop could not commence until 2006. The set targets of 3 regional litigation workshops for 2006 have been met. Due to delay of funds 1 International Litigation Workshop was held instead of the planned two during 2006. Programme promotion has been ongoing, successful and intense since the midyear of 2006 when the AHRAJ Secretariat was on board in full capacity. This activity together with the litigation workshops has generated the case applications received by the programme.

The geographical target of the programme is 18 countries in the Sub-Saharan region. During the reporting period 11 countries generated case support. Angola, Mozambique, Cameroon and Cote d`Ivoire have been difficult to infiltrate due to language barriers.

The qualitative results of the programme have been scarce at the beginning of the programme period. Considering the operation of the programme, which is to focus on strengthening legal institutions, and structures that will guarantee the impartial and effective protection and enforcement of human rights in the long term, the qualitative results are produced over a period of time. The planned activity of producing a casebook has not been achieved during the reporting period. Furthermore the evaluation has not taken place. Both these activities were finalised in the beginning of 2007. On 6th October 2006 a separate case impact report covering specifically 18 cases supported through the programme was sent to Sida. The report is attached as annexure 1. An additional case impact report was sent to Sida on 9th February 2007 covering additional 9 cases. The report is attached as annexure 2.

CASE IMPACT ANALYSIS[14]

Access to justice as a theme has grown within the reporting period based on the fact that several regional workshops have now been conducted with a set focus on the matter. The theme on health was the least litigated on during the reporting period. However, applications from Namibia, Ethiopia and Ghana have been received within the area of health rights. For example, the only Namibian organisation dealing with human rights and public interest litigation, Legal Aid Centre (LAC), is challenging the Mental Health Act, which discriminates on those, held for treatment over health related concerns. Another example is Ethiopia, where environmental degradation by the pollution of a major river that supplies water to several towns has been used to challenge the health conditions and the state compliance to international obligations set for preserving safe drinking water.

[14] The programme has shown some difficulties in producing qualitative results. There are two main reasons for that. The first reason is that the programme proposal was not based on any specific initial values as a point of departure when analysing qualitative achievements. The second reasons is that the AHRAJ Secretariat did suffer greatly from the fact that Sida was not able to guarantee any financial sustainability during phase I of the programme period. Furthermore, Sida delayed the disbursement of funds for phase II of the programme as accounted for on page 8. Consequently, the Secretariat could not make any financial long-term engagements with employees. As a result it has been under staffed during a long period.

Many of the case applications received from Zambia seeking to challenge the death sentence[15] have been held in abeyance as the AHRAJ secretariat investigate and conduct in-house research as to the possibility of challenging the death penalty. However, the death sentence is entrenched in the Constitution of Zambia and a lot of public debate supports the death penalty. There are many death row convicts waiting in prison for their execution. Due to a moratorium lasting for over 10 years now the death penalty sentences cannot be executed.

Treason related cases are on the increase in many of the African countries that are having national elections with incumbent presidents seeking to remain in power through the muzzling of free media as well as any opposition. This has resulted in a number of applications from the Gambia, Zambia and Malawi based on constitutional interpretations or separation of powers, where the executive power interferes with the judiciary.

Following is a comparative analysis of the cases that AHRAJ has supported. The analysis is divided into the 5 thematic areas of the programme. For further reference about the impact of each specific case please see annexure 1 and 2 attached to this report.

Comparative analysis

AHRAJ has supported a majority of cases on access to justice covering mostly civil and political rights, which are entrenched in many constitution in the majority of African countries and in particular in the programme countries. Looking at civil law countries, such as Senegal, Cote d'Ivoire and Cameroon, these being dualist countries, they incorporate international instruments into domestic law. However, the development of socio-economic rights is still not well achieved. The example of comparing the constitution of Senegal and Namibia is a good case where both constitutions recognises and affirms the application of the various international human rights instruments as well as a '…guarantee to socio, economic and cultural rights'[16]. But, litigants in those two countries face different problems; in Senegal litigation on socio-economic rights is virtually non-existent while in Namibia, it is with ease.[17]

Right to health

In Africa the regional instruments that address the right to health is the African Charter on Human and Peoples' Rights which unlike the International Convention on Economic, Social and Cultural Rights (ICESCR), avoids the incremental language of progressive realisation in guaranteeing economic, social and cultural rights, except the right relating to health. States assume the responsibility of immediate application of the rights. As cited in the UNAIDS report in regard to Namibia;

'[The Legal Assistance Centre in Namibia… addresses discrimination issues on the basis of HIV-positive status and provides an avenue for redress for people living with HIV who have been discriminated against on the basis of their zero positive status.[18]

Above quotation comprises the basis under which cases no. 180 to 184 were supported relating to health concerns. Case 180 challenged the Namibian legislation relating to detention of the criminally insane and a declaration was made that the said law is unconstitutional, archaic and a violation of the right to liberty

[15] Sites established to track the detention conditions for those on death row at various prisons in Zambia. Available at <http://www.ccadp.org/zambia.htm> (last accessed on 15 September 2006). Also a report undertaken by Amnesty International give critical data of the prison conditions in Zambia prison as inhumane, degrading and torture as those on death row have been waiting for as long as 20 years. Available at < http://web.amnesty.org/library/Index/ENGAFR630042001?open&of=ENG-ZMB > (last accessed on 13th September 2006).

[16] Article 8 of the Senegal Constitution.

[17] AHRAJ has suppoted several cases on mental health in Namibia with success. So far, the Namobian constitution can be likened to that of South Africa for being responsive to socio-economic rights in a progressive way.

[18] The UNAIDS report is Available at < http://data.unaids.org/publications/irc-pub06/JC999-HumRightsViol_en.pdf > (accessed on 18/06/07)

and human dignity as well as being discriminatory to this category of citizens. In case 184 a challenge was made against the Minister of Health over negligent treatment given to a victim in a state hospital.

While in Senegal '…Health professionals have been slowly discovering the clinical relevance of a human rights approach to sexual and reproductive health.'[19] This is despite a clear constitutional reference to the right, however, rarely litigated on.

Above cases can be contrasted to other cases supported from Ethiopia and Ghana, which relate to environmental impact on health where in the two counties, the pollution of river water had divers effects on the residents who use these waters and hence has formed the basis of public interest case in both countries. In Ethiopia, this was the first case filed by Action for Professional for the People (APAP), seeking the government to control the pollution and use of two rivers leading to health problems among the residents. In the case of Ghana, the Centre for Public Interest Litigation (CEPIL) together with Centre for Housing Rights (COHRE),[20] commenced a health rights case where the cause of action arose out of the pollution of river water and the effect on members of the public and aquatic life affecting the food source of the residents.

Labour rights

The right to work and to gain a living is a fundamental right, which is grossly violated in most of the programme countries. Lack of proper organized labor markets and abuse on the right to association has created a market economy where collective bargaining is not present.

In the Kenyan case of Rashid Odhiambo Allogoh et al versus Haco Industries Ltd,[21] the definition of 'casual workers' was challenged where statutory provisions were not followed and collective bargaining not allowed due to undefined status of such workers. Even with the national laws being very clear that casual workers are '…those people who work for periods not exceeding 24 hours and are paid at the end of the day.'[22] This also contravenes various ILO conventions of workers rights especially formation of trade unions and collective bargaining which those particular workers have been denied to avoid having joint action to demand their rights. As reported by the Law and Business Daily paper, judicial officers have not received the progress of the case in a positive or progressive way and they still treat the workers as persons bearing no rights over their employers.

'…The seventh judge to hear the matter, Mr Justice Alnashir Visram, had a parting shot for them: "So, then, it is with a heavy heart and much sympathy, that I have to decline the application before me. But keeping in mind the nature of this case, and the unfortunate situation the applicants have found themselves in, I will not make any order of costs against them. Each party shall bear their own costs."'[23]

In contrast, in the case of Uganda, progressive realization of workers rights has been achieved through litigation. In Case 192 on discriminatory labor practices against female workers, the case has facilitated engagement with stakeholder through legislative reviews on discriminatory laws. It has led to the insertion of the provision that '… the unfair discrimination, either directly or indirectly, against an employee on the grounds of race, colour, gender, sex, religion, conscience, belief, culture, language, family responsibility or marital status or any other arbitrary ground … the unfair conduct by an employer relating to the promotion, demotion or training of an employee or the provision of benefits to an employee".

The ILO conducted a fact-finding mission to Tanzania on labor related issues and established that;

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[19] Report on problems facing human rights litigation on health rights available at < http://www.rho.org/html/gsh_special_focus-rights.htm >. Accessed on 18/06/07.

[20] Case 164.

[21] AHRAJ case No. 222

[22] Employment Act, Chapter 226 Laws of Kenya.

[23] Available at < http://www.cabinetoffice.go.ke/index2.php?option=com_content&do_pdf=1&id=85 >. Accessed n 18/06/07.

"…the legal framework on labour practices in the construction industry is generally adequate. However, there is a serious lack of monitoring and enforcement. The government and its agencies have been weak in monitoring labour practices on construction sites and enforcing the laws and regulations designed to protect the workers. At the same time, workers are generally not aware of their rights and entitlements under the law and the contract."[24]

Unlike the other East African Countries, Tanzania, has not lodged any application on labour rights to AHRAJ, as Tanzanian laws are very comprehensive towards protection of workers rights. For example there is no law that prescribes the amount of wages payable to different categories of employees. However, there are mechanisms under the Regulations of Wages and Terms of Employment Ordinance-Cap 300 for setting minimum wages in the private sector. The prevailing minimum wages were set in June 2002. Wages for public servants in all sectors and categories, including those in the construction industry, are fixed by way of circulars issued by the President's Office – Public Service Management. The current rates were proclaimed in August 2002.

The experience of Tanzania needs to be shared with the other countries to replicate the same modalities, which will seek to protect 'casual workers'. This is especially needed for in the case of Kenya.

Based on the outcomes form the regional litigation workshops so far held, there is urgent need to review labour laws within East Africa based on target cases. This is a process that incorporates government-reviewing policy on labour rights to set the motion in place to review laws. This component of the programme has been slow, as expertise within the region requires more capacity building.

Women rights

Since coming into force, the Protocol to the African Charter on Human and Peoples' Rights on the rights of Women in Africa (the Protocol),[25] has set the pace and framework within which women rights can be claimed. The Protocol was a rationalisation of the rights enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW), which set the framework within which protection of women rights can be achieved. Even though the Protocol does not provide a separate structure where litigation on women rights can be lodged, it does set out, under the African Union, a Directorate for Women Affairs, which has been used to disseminate the issues and especially education on the rights enshrined in the Protocol.

Using the rights set out in the Protocol several cases have been supported under AHRAJ to protect women rights;

In Nigeria, the federal states have separate civil and criminal law practices to incorporate religious, cultural and social differences. This has created a myriad of issues, as the codification of women rights has not been positive in all the states. AHRAJ has supported case 152 from Nigeria, where a woman was denied the right to inherit her husband's property.

AHRAJ has received an application 178 from Uganda which related to women rights in marriage and upon divorce, where a woman has not allowed to use adultery as an only ground for divorce which is a condition not needed by a man.

In case 205 from Kenya a woman was denied maternity leave and lost her job for taking the same when she was due for delivery and the arising complication cause her to have stillbirth.

AHRAJ has supports case 204 from Nigeria where a woman had no right to have a passport in her own name without the consent from her husband or male member of her family. This is a concern in most countries so far an audit done indicate that there is no legislation to protect women in Kenya over similar

[24] ILO, Baseline study of labour practices on large construction sites in the United Republic of Tanzania

[25] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005.

condition but this has been successfully been litigated and achieved in Botswana in the case of Unity Dow versus the Attorney General of the Republic of Botswana.[26]

The plaintiff was a citizen of Botswana, married to a non-citizen, whose children had been denied citizenship under a provision of the Citizenship Act 1984 that conferred citizenship on a child born in Botswana only if "a) his father was a citizen of Botswana; or b) in the case of a person born out-of-wedlock, his mother was a citizen of Botswana." The plaintiff claimed that this provision violated guarantees of the Botswana Constitution. The High Court agreed, holding that the provision infringed the right to liberty, the right not to be expelled from Botswana, the right not to be subjected to degrading treatment, and the right not to be discriminated against on the basis of sex. It concluded that the right to liberty had been infringed because the provision hampered a woman's free choice to marry a non-citizen and, in fact, undermined marriage; that the right not to be expelled from Botswana was infringed because, if the plaintiff's resident permit was not renewed she would be forced to leave Botswana if she desired to stay with her family; and that the right not to be subjected to degrading treatment was infringed because any law discriminating against women constitutes an offense against human dignity. The Botswana Court of Appeal subsequently upheld this decision.

In Malawi AHRAJ supports case 221 on the right of women to marry as police officers without requiring the 'permission' of their employer, which men do not require, and therefore a discriminatory requirement.

These cases have been enhanced by the various regional and international litigation workshops held under the programme within the reporting period. Also the various lobby groups in the programme countries have used advocacy for legislative amendments and therefore achieved a great force of law in litigating women rights. However, litigating on women rights as well as capacity building on the same is a huge challenge for the programme mainly influenced by the still prevailing traditionalist approach by lawyers, judges, politician as well as the ordinary man to the enhancement of women rights? The customary and traditionalist view in the legal context could be perceived as often prevailing over the legal enhancement of women rights.

Access to Justice and fair trial

The thematic areas of access to justice and fair trial are covered in most programme countries as civil and political right under which AHRAJ has received a huge number of applications for support. The bulk of the cases relate to access to justice and fair trial closely related to the same theme as a sub-section of access to justice.

Case 209 from the Gambia on access to justice and fair trial did bring to light the rights of lawyers while representing their clients, where a woman lawyer had been arrested after a raid to her office by security agencies over a treason case where she was the legal representative. The judge hearing the case, in making the judgement noted that;

The applicant avers that she is a Legal Practitioner, a widow and the mother of two children. These averments fall squarely under Paragraph 1 of African Charter on Human and Peoples' Rights. Article 15 of the Charter provides that every individual shall have the right among others, to work. Article 18 (1) of the Charter recognizes the family as the natural unit and basis of society, which shall be protected by the State, and enjoins the State to take care of its physical health and moral. Article 29 requires the individual to preserve the harmonious development of the family and to work for the cohesion and respect of the family. Article 18 (2) enjoins the State to assist the family, which is the custodian of morals and traditional values recognized by the community. To me, these provisions go a long way in restating and reinforcing the Applicant's expectation for this Court to positively consider her relieves, and are not mere fanciful restatements of her social life, which does not concern the Court, and I daresay should be taken seriously by the State, in the context of the State's responsibilities and obligations under the Charter. [27]

Fair trial standards are well documented under international human rights treaties and the Human Rights Committee has made various decisions on the rights giving the basis upon which states can provide the same. Under the African Charter on human and Peoples' Rights (Charter), article 7 give the guidelines

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[27] Mariam Denton versus The Gambia, HC 241/06/MF/087/F1

under which fair trial should be measured. Most constitutions in the programme countries have also the provision of fair trial as a basic right in criminal provisions.

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In the application of the Charter the African Commission gave the parameters to be covered by states in Recountre Africaine our la Defense des Droits de l'Homme versus Zambia, in Communication No. 27 of 1996.[28] The theme also covers the role of military tribunals in the administration of justice as contended in cases 210 and 211 from the Gambia, in seeking the independence and the qualities of the persons seating in such jurisdiction, their very existence constitutes a violation of the principles of impartiality and independence of the judiciary. As a fundamental breach, the trials as conducted by senior military personnel, lack independence and the same coming in the wake of a general presidential election, were seen as an attempt to silence any possible opposition and an intimidation to members of the public seeking alternative leadership in the Gambia.

In the Kenyan case No. 200, concerning administrative action requiring all persons seeking bail from a particular court and region of Nairobi City to seek a 'civil servant' as a surety to bail, was challenged as being unconstitutional and an illegal requirement, making bail terms unachievable and could not be met by most people. This led to congestion of prisons, and thus a further violation of the rights of persons who in ordinary sense would be out on bail.

The Zambian case No. 219 has been a novelty in the region as it challenges the death penalty whereas in Nigeria several cases on long pre-trial detention have been challenged. Comparatively, these are civil and political rights, which touch on access to justice, and in most focus countries these are precedent setting cases.

TARGET COUNTRIES

The EXCO meeting in November 2006 gave strategic directions in which countries the programme activities should focus on. It was decided that focus should be on countries that have already generated case support. There was a deliberate exemption made in regard to countries that were difficult to infiltrate such as Angola and Mozambique, Cameroon and Cote d´Ivoire due to the language barrier and Ethiopia, due to the state of access to justice and the non-receptiveness of the necessary standards that AHRAJ seeks to domesticate. Ethiopia's legal system and the entire justice sector require an in-depth assessment and understanding to cope with all the issues AHRAJ hope to achieve as its objectives. The time within which this can be reasonably achieved thus requires a new phase unlike this programme period where consolidation of gains is necessary. Cote d'Ivoire justice sector has been in turmoil with the country having been in conflicts for the last decade and whatever engagement the programme can have is to facilitate the building of a vibrant civil society to address basic rights unlike in other countries where this already exists. The decision of EXCO was based on the review of programme activities within the remaining contractual period and if new frontiers are to be achieved basic groundwork has not begun in these countries and more effort are needed in another phase to ensure these countries are at per with the rest. AHRAJ continued engagement in these countries require more contact building than there already exists and a structural framework within which programme activities can run unlike the current position. This is a challenge the programme foresaw and took the opportune time during the EXCO meeting to address. Therefore, programme promotions; case support and regional workshops have largely targeted the following countries,

a. West Africa – the Gambia, Senegal, Ghana, Nigeria
b. Southern Africa – Namibia, Zimbabwe, Botswana, Swaziland, Zambia, Malawi
c. East Africa – Uganda, Tanzania and Kenya.

Contacts have been established with Mozambique and Cote d'Ivoire where case support applications have been received and supported before in phase one, but other components of the programme activities are still very slow and non moving at the pace of the other countries.

It was agreed that the programme would not add additional target countries.

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[28] Report covered in the Eleventh Activity Report 1997-1998, of the African Commission on Human and Peoples' Rights.

IMPLEMENTATION CHALLENGES

The correlation between poverty and lack of implementation of human rights is essential to the AHRAJ programme and is characterised by poor governance, the denial of basic rights and indigence. Many Sub-Saharan African countries have a poor record on the domestication of ratified international human rights treaties. AHRAJ was conceptualised on the premise that Africa is faced with these huge challenge to initiate an effort to deal with this correlation from a legal perspective with a focus on the domestication of international human rights standards through strategic litigation at national level. However, the programme has been faced with some great challenges. One of them being the degree of political interference with judicial functions, which influences the legal environment, and the independence of judges in many African countries. The challenges have not abetted as most states have been slow in the national implementation of human rights standards and litigation strategies seeking to apply the same is slow and expertise is lacking in many countries.

The programme has taken over a backlog of cases pending from phase 1 of the programme. Most cases supported take a long time to be finalized in court and the challenge remains being able to track the issue raised at the initial stage of the case support application. Tracing cases as well as seeking judicial records in other matters is difficult due to the records being manually stored and to gain access to court registries from countries outside of Kenya requires special clearance, a procedure which takes time. Consequently, the only means of verification of cases is through reports submitted by the litigating lawyer/organisation

Communication

Insufficient and unreliable communication channels have been problems affecting the implementation of the Programme at all levels. Poor and unreliable internet connections with our beneficiaries constituted a severe problem as it hindered promotion of the Programme, limited the case follow up, reduced information sharing and restricted the communication between the national lawyers and the legal expert.

Sharing of material on cases as well as follow up and impact is done through email contacts. The email network is not always operational which has stalled the cases support decision for lack of research to be able to verify data provided. Some lawyers do not have email addresses or accessing email accounts take a long time.

AHRAJ material is to a large extent made available through the Internet such as the application form regarding case support. However, there is a general lack of knowledge among lawyers on the usage of Internet.

Lack of knowledge on international human rights standards

A high number of lawyers and even a greater number of members of the judiciary are not conversant with or aware of international human rights standards. This means that there is a lack of conformity when approaching an issue that needs interpretation of international legal standards.

Geographical dispersion

Due to language barriers promotions have never been conducted to Angola, Mozambique and Cameroon during the reporting period. To reach out to these countries, a programme profile was developed in French, but when assessed it was seen as not reflective of the English version shared for translation and therefore it has not been used. This will be targeted in the next phase of the programme by having quality information in English, French and Portuguese.

One big challenge for the Secretariat in ICJ-Kenya has been to identify reliable organisations within the target countries, national contact points, to complement the work of ICJ-Kenya, meaning to act as moni-

tor of the cases supported and a facilitator. This has effected the verification of applicant's details, the supervision of the quality of the work undertaken and the financial reporting of funds distributed.

The programme is covering 18 countries on the African continent. The capacity to handle the monitoring, promotion and follow-up in those 18 countries has been complicated and expensive due to high travel costs but also because there is a difference between the legal method, practice and culture between civil and common law countries. The programme covers both and has not specifically dealt with this challenge in the programme implementation which could be seen as an outfall from the fact that a baseline study was not conducted prior to the formulation of the programme application, which could have indicated the challenge beforehand.

Case support –filing

The backlog of cases from the programme phase I have created two main challenges for the implementation of programme in phase II. Firstly, several cases were not finalised when the funding of phase I ended. Secondly, the previous programme management has not kept record and filing to the professional level needed. This has resulted in ongoing cases as well as finalised case without any records either in soft copy or electronically. Consequently, the current AHRAJ Secretariat has put a lot of effort on getting into contact with lawyers and NGOs supported in cases from phase I still ongoing where the first disbursement report has been submitted but not the second.

Casebook

The casebook has been due since last year in September. The editor who commenced work on the casebook did not complete the required task in good time and getting a soft copy of the same was a challenge.

Evaluation

The AHRAJ evaluation was approved to commence in September 2006 but the process was delayed until March 2007. The procedure of identifying consultant got very slow and eventually time, was lost. The evaluation is now completed.

This report will also be used towards the end of the phase in addressing key areas of concern for the programme that have been identified as challenges and tailor the next face in consideration of these aspects.

Politics and administration

The political situation in a country being the environment, in which the court is functioning, as well as the thematic area of the case, has an impact on the conditions set for strategic litigation, as for example within the thematic area of gender rights and/or discrimination, bringing the case before a court through support by AHRAJ have a significant value since it might be the first time for the court to consider a case within that area, whereas in regard to cases on the right to a fair trial, supporting a precedent case could be of greater value.

However, the political and administrative situation in the region constituted a problem that lies beyond the reach of the Programme but that affects its implementation. During this reporting period there were national elections held in several focus countries, which had a big impact on programme activities. The national presidential and parliamentary elections in the Gambia created a surge of politically motivated arrests of opposition candidates, journalists, human rights defenders and lawyers representing their clients. Several access to justice cases were supported from the Gambia.

National judiciaries remain slow, prejudiced and unpredictable, some focus on elections as the key political agenda at the time especially in Nigeria.

Uganda faced a strike of all judicial officers countrywide for a week followed by another week from the lawyers in support of their counterparts. This has created a backlog affecting the conditions set for strate-

gic litigation that may never be resolved. Some subordinate courts are currently forced to seat in prisons as criminal offenders were on the rise in the two weeks, cases coming up in court were not addressed and this will lead to injustice to those in custody.

Events taking place in Zimbabwe could not be ignored as the beating in public of those being arrested, has traumatised those seeking for justice with the president castigating human rights defenders.

RISK MANAGEMENT

Case commitments

The frameworks set for the reporting of results both narrative and financial to Sida is not flexible towards the special needs of the programme in the sense that financial commitments made to lawyers and NGOs supported is in some cases prolonged and delayed and therefore not reported on as expenditure until more than a year after the case was approved for financial support. Since the programme submit annual financial reports to Sida, the case commitments referable to one year needs to be covered in the budget for the next coming year, with the result that the budget for the next coming year, for new cases to be approved, is lesser than initially planned for. The programme management has previously approach Sida concerning this problem but no solution has yet been found. Since the programme is a public interest litigation programme focused on court proceedings, it is desirable that the financial reporting procedure acknowledges these facts on the ground being lengthy court procedures and inefficient administrative routines.

New communications lines

To improve the communications channels a dedicated leased line was installed to ensure full- time Internet and mail connectivity. This solution has increased the administrative costs but will improve the communication throughout the Programme.

There have been some problems with the telephone line when conducting PMT meetings on a monthly basis. Problems with the telephone lines when connecting several lines together in a telephone conference has delayed certain decisions or resulted in the fact that all the participants could not participate. As a consequence the PMT team has decided to start using skype as a complement to try to overcome this technical problem.

The internet connection in some of the programme countries has not been working in a reliable manner which makes it much more difficult for the beneficiaries of the programme to access information about applying for case funds as well as accessing the case application sheet. The case promotion activity has facilitated the dissemination of information about case support and the AHRAJ programme. The legal officers at the Secretariat conducting the promotional visits has sat down with the participants of the promotional meeting and guided them through the case application procedure on the internet and how to access ICJ-Kenya website where the case application sheet is available.

Reduced target number for supported cases and legal opinions

As stated previously, when supporting strategic litigation the specific aspects of a case is more decisive on the impact of the programme than the shear number of cases. As the experience during the reporting period has shown that the programme promotion, selection process and case follow up requires more time and efforts then initially foreseen, a reduction of the target number of supported cases was deemed necessary from 70 to 50 cases. Similarly the number of legal opinions has also been reduced from 70 to 50.

Case support from phase I

ICJ-Sweden, EXCO member, Louise Bjurwill, spent a week at the ICJ-Kenya office on a voluntary basis in November 2006, to go through all the files of cases supported during the previous programme period as well as the current. Louise Bjurwill was able to evaluate the available documents of case document and her testimony clearly indicates that there is a lack of case files from the previous programme period. How-

ever, she also pointed out that with the new AHRAJ team on board the filing and documentation of each case supported has improved with the mandatory inclusion of cases in the AHRAJ case database. The case database ensures an efficient follow up of case results both narrative and financial as well as making the system less vulnerable to turnover in staff.

In order to be able to deal with cases from phase I in an adequate manner in regard to the reporting guidelines provided by Sida, the majority of cases from phase I that was not yet finalised where closed and the lawyer or NGO had to reapply for funds in the new programme phase. The case consequently received a new case number.

Casebook

To avoid future delays in producing the casebook and to be able to maintain a high quality of legal analysis included in the casebook, AHRAJ hope to have a panel of experts making written contributions with an editor separate from the paper writers. Most of the information to be used in the casebook will arise from the programme caseload.

In the future there will be a need to constitute a casebook panel to consider the different arguments, contexts, results that have been realised, even in an advisory capacity, in order to access people who have actually spent time thinking and sharing on the issues under consideration. This will form the advisory panel for the secretariat to advice on what to be included in the casebook and make it a quality product to be used and influence opinion in Africa and other areas where African case law is being considered.

Recruiting staff to have a fully staffed AHRAJ secretariat in ICJ-Kenya

Programme promotion, case follow up and the communications difficulties between the national lawyers and the legal experts have shown that the AHRAJ Secretariat needs to be strengthened and fully staffed according to the programme application. With employed legal officers in charge of writing some of the legal opinions the Secretariat can also ensure, not only the timely completion of the opinions but that these are written in close consultation with the national lawyers, taking into consideration the specific circumstances of each case. The programme officer and two legal officers were recruited to the AHRAJ Secretariat in ICJ-Kenya during the spring and summer of 2006. Furthermore, one research assistant has been recruited in the beginning of 2007. The AHRAJ Secretariat is finally fully staffed. Since the coming on board of the programme officer and the two legal officers the programme has really started to generate activities of high quality and the case support is now running according to well-established routines and follow-up mechanisms. It has contributed to the finalisation of the casebook I during beginning of 2007 and the completion of the evaluation in May 2007.

French speaking capacity

The AHRAJ Secretariat previously decided to engage a French speaking legal officer. However, this goal has not been met during the programme period. The language barrier is still a problem within the programme at the ICJ-Kenyan level.

Inefficient application of the law

The inefficient application of the law is mainly referable to the judiciary which in many cases is characterised by being dependent on political powers, bureaucratic, corrupt and lacking sufficient knowledge about international human rights standards. These circumstances amongst others could effect the length on court proceedings and access to a legal remedy to the distress of the individual being the victim of a human rights violation. In order to be able to deal with this risk from administrative point of view, the AHRAJ Secretariat is fully staffed with professionals within the legal field that are well vested in administrative routines, meaning that they are open to handling administrative task related to case support such as case follow-up with the national lawyer over a period of time. This task is time consuming. A well-equipped Secretariat will facilitate for the programme to be able to disseminate case related information on the delay of court proceedings which effect the litigating strategies adopted in each case.

As noted above all planned activities were not executed due to the delayed funding of the programme, which resulted in the starting of programme activities not until 2006. This can be noted in the financial report with the reduced spending on several posts concerning programme activities. Despite the low programme activity costs the administrative costs were mainly maintained on the estimated level. The reason for this is that big parts of these costs constitute salary and office cost, which have to be in place for the execution of the programme and is not directly dependent on the number of executed activities.

The period October – December 2005

Statement per 31 December 2005. All figures are in SEK at an exchange rate of 7,5 SEK = 1 USD.

	Budget Oct – Dec 2005	Outcome	Balance
Income			
Sida allocation	1 881 064	1 881 064[29]	0
Audit	40 000[30]	40 000	
Total income	1 921 064	1 921 064	0
Case support	1 102 500	1125	1 101 375
Case related costs	587 813	77 745	510 068
Project related costs	190 751	150 000	40 751
Audit	40 000[31]	40 000	-
Total costs	1 921 064	268 870	1 652 194
Balance to 1st of January, 2006			1 652 194[32]

SPECIFICATION OF THE CONTRIBUTION

	Budget	Expenditure
Project related costs		
Administration ICJ Kenya:		
Communication costs	20 625	20 625

[29] Sida allocated the funds to ICJ-S according to the programme agreement but the whole sum has not been transferred to the joint AHRAJ Programme account at ICJ-Sweden.
[30] Sida approved to cover the cost for audit at ICJ-Kenya of AHRAJ phase I.
[31] The budget of audit was approved by Sida and was not reported on in the half-year report submitted to Sida on 31st October 2006, hence the slight difference in balance.
[32] The balance is reflective of expenditure in relation to the budget according to the programme agreement. It is not reflective of the actual transfers made between Sida, ICJ-Sweden and ICJ-Kenya account since the whole budgeted amount has not been transferred from Sida to ICJ-Sweden and ICJ-Kenya joint account.

Office costs	33 750	33 750
Programme administrative assistant	27 000	27 000
Programme legal research assistant	12 375	12 375
Finance manager- Salary contribution	33 750	33 750
Executive director- Salary contribution	22 500	22 500
Sub-total	150 000	150 000

<u>Case support</u>		
Cases payments:		
Legal costs	562 500	-
Legal opinions	375 000	-
Research costs	112 500	-
Case book	52 500	1125
Sub-total	1 102 500	1125
<u>Case related cost</u>		
Case promotion costs	33 750	21 885
Programme manager, expert work	78 750	55 860
EXCO/ Executive committee	33 750	-
PMT meetings	11 250	-
Int. HR litigation workshops	181 875[33]	-
Regional litigation workshops	132 188	-
Trial observation	-	-
Capacity building	22 500	-
Evaluation	-	-
Annual forum	93 750	-
Sub-total	587 813	77 745
Total project related costs	1 840 313	228 870
ICJ-Sweden project related costs	40 751[34]	-
Audit	40 000	40 000

Total costs	1 921 064	268 870

[33] The International Litigation Workshop planned to take place in October/November 2005 did not take place due to late receipts of funds.

[34] Taking into consideration the delayed funding of the programme, the initiation of the programme activities did not take place until 2006. Consequently, there are no ICJ-Sweden project related costs during 2005.

The period January – December 2006

Statement per 31 December 2006. All figures are in SEK at the exchange rate of 7,38[35] SEK = 1 USD.

	Budget Jan-June 2006	Outcome	Balance
Income			
Sida allocation	7 368 613[36]	7 368 613[37]	0
Total income	7 368 613	7 368 613	0
Case support	4 199 220	764 526[38]	3 434 694
Case related costs	2 418 596	1 590 434	828 162
Project related costs	750 797	710 777	40 020
Audit	-	295	- 295
Total costs	7 368 613	3 066 032	4 302 581
Balance to 1st of July, 2006			4 302 581[39]

SPECIFICATION OF THE CONTRIBUTION

	Budget	Expenditure
Project related costs		
Administration ICJ Kenya:		
Communication	81 180	81 180
Office costs	132 840	119 590
Programme administrative assistant	106 272	106 272
Programme legal research assistant	48 708	30 750
Finance manager- Salary contribution	132 840	132 840
Executive director- Salary contribution	88 560	90 702
Sub-total	590 400	561 334
Case support		
Cases payments:		

[35] Its an average rate for 2006, calculated on the webpage oanda.com

[36] The exchange rate used in the report for 2006 is 7,38 USD per SEK, whereas in the programme application and agreement we used an exchange rate of 7,5 USD per SEK, hence the slight difference in budget.

[37] Sida has allocated this money to ICJ-S according to the programme agreement. However only parts of the sum has been transferred to the joint AHRAJ Programme account at ICJ-Sweden.

[38] If taking into account also the commitments made in legal costs for the cases supported but not yet disbursed the total would be 764 526 + 1 005 750 (committed but not yet disbursed under budget line legal costs) = 1 770 276 SEK

[39] The balance is reflective of expenditure in relation to the budget according to the programme agreement. It is not reflective of the actual transfers made between Sida, ICJ-Sweden and ICJ-Kenya account since the whole budgeted amount has not been transferred to from Sida to ICJ-Sweden and ICJ-Kenya joint account.

Legal costs	2 214 000	450 219[40]
Legal opinions	1 476 000	314 307
Legislative opinions research costs	442 800	-
Case book	66 420[41]	-
Sub-total	4 199 220	764 526[42]
Case related cost		
Case promotion costs	132 840	130 864
Programme manager, expert work	309 960	195 764
EXCO/ Executive committee	132 840	152 560[43]
PMT meetings	44 280	33 097
Int. HR litigation workshops	715 860[44]	363 736
Regional litigation workshops	551 456	575 158[45]
Trial observation	66 420	-
Capacity building	191 880[46]	30 647
Evaluation	88 560	-[47]
Annual forum	184 500	108 608
Sub-total	2 418 596	1 590 434

[40] The expenditure covers disbursement in 4 cases approved for support during 2005 and 22 cases approved for support during 2006. The outstanding balance in these cases is 1 005 750 SEK that has not yet been disbursed and is consequently not accounted for as expenditure.
[41] The finalisation of casebook I took place in the beginning of 2007 and will be reported on in the 2007 report to Sida. Consequently, this budget line was not used during 2006.
[42] If taking into account also the commitments made in legal costs for the cases supported but not yet disbursed the total would be 764 526 + 1 005 750 (committed but not yet disbursed under budget line legal costs) = 1 770 276 SEK.
[43] The budget line has been overspent with 19 720 SEK. The programme officer at ICJ-Sweden approach Sida about this over expenditure during 2006 and has explained the sources behind it. The over expenditure is referable to the high costs of holding one of the two meeting in Stockholm and there was an additional smaller meeting held in Nairobi to coordinate the beginning of the programme which inflicted additional unplanned costs under this budget line. Finally, the programme decided to cover the costs for the ICJ-Geneva participant, which was not foreseen in the budget. Due to this over expenditure ICJ-Sweden requested a report from ICJ-Kenya on their financial routines and how the responsibility is divided in regard to budget control and follow up. ICJ-Kenya has provided ICJ-Sweden with the report. There is a need to extend the budget for EXCO in a future programme period since the travel costs within Africa has increased. Furthermore, to avoid such over expenditures during 2007, the meeting was held in conjunction with other programme meetings to limit the travel and accommodation costs.
[44] The International Litigation Workshop planned to take place in April/May 2006 could not be held due to late receipts of funds from Sida.
[45] The budget line travel and accommodation for the regional workshop has been overspent with 67 002 SEK, even though Sida approved an extended budget of 31 208 SEK on 5 February 2007. The reason for that over expenditure is that the workshop held in Namibia did generate extremely high travel costs since people from outside the African continent were invited and participated since there was no international litigation workshop held during the beginning of year due to the delay of disbursement of funds from Sida, the programme wanted to take the opportunity to invite international experts within health rights to Namibia. The regional workshop in Namibia was the first held on health rights within the programme and experts from Sweden, the United States of America from the Centre for reproductive health rights, participated. Due to this over expenditure ICJ-Sweden requested a thorough report from ICJ-Kenya on their financial routines and how the responsibility is divided in regard to budget control and follow up. ICJ-Kenya has provided ICJ-Sweden with the report. The programme has chosen to report the Namibia workshop as a regional workshop even though it is also characterised as an international litigation workshop.
[46] The EXCO meeting in Mombasa in November 2006 decided to abolish the activity of thematic groups under capacity building, meaning also that the budget of 147 600 SEK for this activity has not been used.
[47] The evaluation was conducted during winter and spring 2007 and was finalised in May 2007. Consequently, the activity did not take place during 2006 but was delayed until 2007 and will be reported on to Sida in the 2007 report.

Audit	-	295[48]
Total project related costs	7 208 216	2 916 589
ICJ-Sweden project related costs	160 397	149 443
Total costs	7 368 613	3 066 032

[48] The audit was performed during 2005 for AHRAJ phase I and has been reported on under the period October-December 2005 above. However, a small amount of 295 SEK has been audit expenditure for 2006 for the audit of phase I.

ANNEXURE

Annexure 1: Impact report 2001 – 2006

Annexure 2: Impact report - Additional analysis requested by Sida in regard to cases reported on in the half-year report October 2005-June 2006

ANNEXURE 1

IMPACT REPORT

AFRICAN HUMAN RIGHTS AND ACCESS TO JUSTICE PROGRAMME

2001 - 2006

Prepared and submitted jointly by ICJ Kenya and ICJ Sweden

On behalf of ICJ Kenya and ICJ Sweden
Stockholm 6 October 2006

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PROGRAMME IMPACT

When evaluating the impact of the Programme an analysis of the quantitative indicators alone does not give a just picture of the programme.

When working with strategic litigation it lies within the nature of the work that the quality and strategic importance of the supported cases are more decisive factors in relation to the Programme's impact on the legal protection of human rights in the region than the number of cases. However, the challenge for the programme is the relation between litigation and landmark decisions taken by national courts or, in some cases, the African Commission on Human Rights, in regard to the actual number of cases supported, and how to assess the quality of those cases and the outcomes realised. The political situation in a country being the environment, in which the court is functioning, as well as the thematic area of the case, has an impact on the conditions set for strategic litigation.

In this aspect the African Human Rights and Access to Justice Programme (AHRAJ) is a unique programme offering financial help and legal support to cases that may not otherwise have been tried in court and thus participates in the creation of case law developing the legal protection of human rights in the region. The AHRAJ programme is innovative in the sense that it focus on the national implementation of international standards through supporting litigation processes but also through legal opinions coming to bear on the court decisions, not necessarily meaning to win the case but to have an education and awareness aspect on the human rights standards applicable. Consequently, there is an element of post litigation impact that should not be underestimated. Furthermore, if areas of legal reform can be identified through litigation, the follow up by national NGOs can be facilitated which will hopefully lead to an ameliorated human rights situation in the country and region.

The main thematic areas covered by the programme are access to justice, the right to a fair trial, women rights, labour rights, and health rights and miscellaneous.

Following are some of the cases that have been supported through the Programme which have great actual and potential impact. They have been divided according to thematic areas.

The Programme is still receiving cases seeking the abolishment of the death penalty. At present fair trial and access to justice cases still remain the bulk of the case support applications received at AHRAJ.

It is also important to point out that in some specific thematic areas such as for example gender rights and/or discrimination, bringing the case before a court through support by AHRAJ can have a significant value since it might be the first time for the court to consider a case within that area, whereas in regard to cases on the right to a fair trial, supporting a precedent case could be of greater value.

As of today, AHRAJ has received 239 case applications.

1. Principle cases regarding Access to Justice and Fair Trial

AHRAJ has during the period 2002 – 2006 received 90 applications regarding Access to Justice and Fair Trial and has approved support for 53 cases. Here we give the following examples regarding the impact of a case.

Gambia: case 31

Theme: The right to a fair trial

Parties: The State vs. Ousman Dumo Saho & ors/ Annika Rengberg vs. The Attorney General & ors

Background information
There has been a series of cases coming from the Gambia on gross human rights violations often in relation to presidential election, which despite some deficiencies actually takes place. This enables the citizens to practice their rights to change their government through periodic elections. However, the recently concluded Presidential election has contributed to a rough political climate where media personalities, opposition leaders and others have been charged for treason or/and sedition often subjected to forced disappearances. There are currently over five hundred prisoners in remand in the central prisons and half of them may be unlawfully detained.

Security forces often harass or otherwise mistreat journalists, detainees, prisoners, and opposition members. Prison conditions remains to be Spartan. Prolonged pre-trial detention has been a big problem. The Court system has been characterised by corruption and inefficiency. Detainees were often denied fair and expeditious trials.

According to the Gambian Constitution, the right to freedom and security of the person may not be deprived ‘arbitrarily or without a just cause’. Any cause of deprivation of freedom must be in accordance with the basic tenets of the legal system. The concept of ‘just cause’ must be grounded upon and in consonant with the values expressed in and gathered from the provisions of the Constitution as a whole.

The case

Case 31 contested the constitutionality of treason charges levelled by the government against Mr. Saho, which resulted in the High Court of Gambia granting orders against the government to release the person who had been arrested without adequate charges prescribed under the constitution.

Mr. Saho was arrested and detained by plain-clothes state security officers. They refused to identify themselves and proceeded to forcibly arrest him. The state denied having him in their custody. It was not until a writ of *Habeas Corpus* was filed in the High court of The Gambia against the state that the latter admitted to having him in custody. The High Court declared that his arrest and detention was unconstitutional and a violation of his right to liberty. The state has appealed against the decision of the High Court which is also still pending in the Court of Appeal.

Eventually he was charged with treason in the High court, however in July 2000.

Impact

This case is one of the major cases since the promulgation of the second Republican Constitution in 1997. It is a pilot case on fundamental freedoms in The Gambia. About eight persons are directly affected by the outcome of the case. There were reports carried out throughout the trial. AHRAJ supported the litigation especially on the theme of fair trial.[49]

Various media reports in the Gambia have expressed dismay on how this case was handled to muzzle any opposition to the incumbent president.[50] The Constitution provides for an independent judiciary; however, executive branch use pressure to influence its decisions. During the hearing of this case, High Court Justice Wallace Grante issued a writ of *habeas corpus* in support of the application lodged by the litigation lawyer but Parliament was urgently convened to apply the law retrospectively to seek detention longer than the 72 hours prescribed by the law.

As a genesis to this process the litigation lawyer Mr. Abubacarr Marie Tambadou has been appointed as Prosecution Council at the International Criminal Tribunal for Rwanda. This has also heightened other applicants to seize the opportunity in defence of human rights with more applications from AHRAJ seeking to consolidate the gains achieved in this case.

[49] more reports on < http://www.historycentral.com/NationbyNation/Gambia/Human.html
[50] http://www.state.gov/g/drl/rls/hrrpt/2003/27729.htm

Botswana: Case No. 121

Theme: fair trial and the Death penalty

Parties: TLHABOLOGANG MAAUWE AND GWARA BROWN

MOTSWETLWA v. state

The case

Two men were arrested in February 1995. In April 1997, they were convicted of a single count of murder and sentenced to hang. The two men were accused of steeling an Ox and when discovered by the owner, they killed him. In July 1997 the Court of Appeal confirmed the death sentences. In February 2000 a re-trial was ordered and the accused were relocated from Gaborone to Francis town and re-charged with murder. At the time of the case support application in 2004, the accused were still in remand. Case 121 was eventually supported through a human rights organisation in Botswana that applied for case support through the programme. The High Court of Botswana found that the government had failed to prosecute the victims who had been in custody for four years, which was considered as a violation of their constitutional right to a fair trial within a reasonable time and a violation of Botswana's international obligations to ensure the right to a fair trial.

Impact

The success of the case created new jurisprudence and precedence in Botswana and had the result of implementing international human rights standards on fair trial and access to justice into the legislation of Botswana. The case also served to challenge the death penalty, and although this aspect of the case was dismissed, the courts urged parliament to take note of the abolitionist trend internationally. Parliament however is yet to legislate against it.

A case legal opinion was developed for the case and used when litigating. This case also forms part of the upcoming AHRAJ casebook.

Swaziland: case 119

Theme: Fair trial

Parties: Swaziland Federation of Trade Unions, People's United Democratic Movement, Swaziland Federation of Labour, Ngwane National Liberatory Congress vs. Chairman: Constitutional Review Commission, Constitution Review Commission, Chairman: Constitutional Drafting Committee, Constitution Drafting Committee, Government of the Kingdom of Swaziland, Attorney - General

Background

The circumstances of this case relates to the activities of the National Constitutional Assembly in Swaziland, which comprises political organizations and labour unions namely the Swaziland Federation of Trade Unions (SFTU), People's United Democratic Movement (PUDEMO), Swaziland Federation of Labour (SFL), Ngwane National Liberatory Congress (NNLC) and the Swaziland National Association of Teachers and members of these organisations. The National Constitutional Assembly claims that it was unlawfully denied and refused the right to participate in the constitution making process in Swaziland by the Constitutional Review Commission. The Constitutional Review Commission's terms of reference were set out in Decree No. two of 1996 and did not expressly allow for group submissions[51].

The case

Case 119, was supported by the programme through Lawyers for Human Rights, Swaziland. They succeeded in finding a King's Decree banning political parties and multipartism in Swaziland unconstitutional. The organisations involved in the case claim that the Constitutional Review Commission excluded and prevented the participation and representation of organized groups in the constitutional review process and hence violated the victim's right to participate in the governance of the country by all citizens on equal basis as envisioned by the laws of Swaziland as well as in International Human Rights Laws. The organisations asked for a declaration that the making of the Swaziland Constitution is null and void, of no force or effect.

Impact

The programme support ensured the filing of a communication before the African Commission, which challenged the adoption of a Constitution that was not reflective of peoples' will

[51] International Bar Association – Striving for Democratic Governance: An analysis of the Draft Swaziland Constitution

as a violation of their fundamental human rights to governance.[52] As a result the advocacy work around the communication facilitated the visit to the Kingdom of Swaziland by Advocate Pansy Tlakula, who is a member of the African Commission, on a promotional mission to Swaziland on the 21 – 25 August 2006.[53]

Arising from the visit by the African Commission member to Swaziland, the Lawyers for Human Rights have applied seeking to implement the decision of the African Commission at the national level to ensure the Kingdom of Swaziland is in compliance with its obligations under the African Charter on human and Peoples' Rights.

The effect of the case will impact on other legislative framework especially;

1. The King's Proclamation to the Nation 1973;
2. The 1978 King's Order-in-Council;
3. Decree No. 2 of 1996;
4. Decree No. 1 of 2002.

This will entrench the right to vote within the Swaziland legal system to guarantee good democratic principles and the rule of law under.

Additional case impacts

Case 209 is the first of its kind in the Gambia where a lawyer was arrested for representing treason suspect and held in custody for 110 days without trial. Upon entry of AHRAH support, women lawyers in Gambia teamed together and filed proceedings before the Gambia High Court challenging the illegal detention whereupon the lawyer was released. Other issues arising are being followed.

Case 210 filed in the Gambia over habeas corpus application seeking to have the government account for 6-army officers held in custody over treason charges and then reported as having escaped while on transit to another detention center. A visit by the AHRAJ Legal Officer together with a team of Gambian lawyers has since established that such allegations of an 'escape' was not possible under the circumstance under which capital offenders/suspects are

[52] Lawyers for Human Rights in Swaziland had filed Communication No. 251/2002, before the African Commission. Under AHRAJ, this was case **No. 11.**

[53] Report available at < http://www.achpr.org/english/news/pree%20statement_Swaziland_en.htm > (last accessed on 15 September 2006).

held. The matter is ongoing on the background of the forthcoming national presidential elections in the Gambia.[54]

2. *Principle cases regarding Women's rights*

AHRAJ has during the period 2002 – 2006 received 25 applications regarding Womens´ rights and has approved support for 14 cases. Here we give the following example regarding the impact of a case.

Kenya: case 53

Theme: Women's rights

Parties: Beatrice Karanja vs Holiday Inn Nairobi & 2 ors.

Background information

A major instrument in transforming certain legislative, administrative and judiciary practices, which empower women to vindicate their rights, is the law. The transformation of women rights especially sexual harassment cannot be resolved if there are no laws to give backing and therefore by seeking to domesticate provisions of the Convention on the Elimination of All Forms of Discrimination (CEDAW) efforts must be geared through the courts as well as through Parliaments.

The case

The case concerns sexual harassment at a workplace in the agricultural sector, more precisely flower workers. In this sector seventy per cent of the workers are female. Surveys found that as many as 90 per cent of the female workers complained of sexual harassment. In addition, many women have reported that the harsh chemicals and insecticides, and long working hours caused illnesses, miscarriages and irregular menstrual cycles.

Impact

Case 53, supported by the programme, was the first lawsuit of its kind against sexual harassment at the work place in Kenya, where there are no formal rules that define and prohibit sexual harassment. The legal opinion that was developed for the national lawyer in this case was

[54] Reported by the *Point Newspapers* and *The Daily Observer* in the Gambia

also used as a basis for amending the Kenyan Employment Act in terms of including provisions defining and outlawing sexual harassment in the workplace. The said amended law is awaiting discussion in Parliament.

The novelty of this case can be seen on the effects is has created on all sectors of labour and women rights in Kenya. This can be a direct relation to the case being addressed at all possible forums and indicative of the fact that once the judiciary is able to address sexual harassment at the work place, even the very conservative people in society start understanding the implication.

> After investigations, Sher Agencies sacked the manager and 11 others in a sexual harassment crackdown that drew gasps from management offices and cheers from the greenhouses of Kenya's largest flower farm. It was an opening salvo in what has become a workplace revolution at Sher, which during the last four years has tried to transform itself from one of the industry's most reviled employers to one of its most progressive.[55][56]

Based on advocacy around this case various legislative moves have been realised in an effort to domesticate the CEDAW.[57] The enactment of the Children's Act 2003, which seeks to apply the Convention on the Right of the Child as well as the African Charter on the Rights and Welfare of the Child and also the Criminal (Amendment) Act, 2003, is indicative of how judicial pronouncements impact on the domestication process.

Also pending in Parliament based on advocacy work around similar issues is the *Family Protection Bill*, the *Equality Bill* as well as the *Draft Constitution* which incorporated women rights and even though not yet agreed on, it brought to the fore affirmative action as conceptualised in the CEDAW document.

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[55] http://allafrica.com/stories/200609190593.html
[56] Cited as above.
[57] Patricia Kameri-Mbote "Violence against women in Kenya: an analysis of law, policy and institutions," IELRC Working paper No. 2000-1.

The litigation layer, Ms Judy Thongori continues to use the gains made in this litigation to make series of public forum debates and also her articles on women rights carried weekly by the *Sunday Nation*.[58]

3. Principle cases regarding Health rights

AHRAJ has during the period 2002 – 2006 received 16 applications regarding Health rights and has approved support for 13 cases. Here we give the following example regarding the impact of a case.

South Africa: Case No. 68

Theme: Health rights and Access to Information

Parties: Ndhlovu and Ndhlovu v Tshibangu

Background

At the time of supporting the case, The South African access to information regime was new. Many people were unaware of the provisions of the new Act, and did not know that the Constitution provided a right to access information. The South African law went further than any other internationally similar provisions, and created rights to access privately held information.

The case

Case 68 enforced the right of a person living with HIV/Aids to access medical records in South Africa.

In this particular case, a doctor (gynaecologist) had refused to provide a woman with her medical records. That indicated she was HIV positive, a fact that had not been disclosed to her, in spite of her being pregnant. These records were needed to take the matter forward in a disciplinary hearing of the Medical Council.

[58] 19 of her articles are available at < http://www.indexkenya.org/search.asp?query=Thongori%2C+Judy.

Impact

This case served to enforce the right to access information in South Africa and the judiciary in this case noted that the freedom of information as encapsulated in the South African Constitution and other international human rights instruments included the right to access certain information.

The case support was meant to establish jurisprudence around freedom of information, personal requests, and the rights of patients to see their files in terms of the Act and international Human rights standards. The case also looked at the responsibility of a doctor to advise his patient around HIV status, which is very important given the high estimates of HIV infection.

The success of the case served to implement nationally, international Human rights standards on freedom of access to information.

Most African countries, including Kenya are currently redrafting and renegotiating their freedom of information Laws, and this case serves as a good guide as to the content of a model freedom of information legislation.

Kenya: Case No. 17

Theme: Health rights and Labour rights

Parties: R.A.O vs. Home park caterers, Dr. Ochieng & Metropolitan Hospital

Background

Case 17 sought to challenge discrimination in places of employment on the basis of health. The Victim who is HIV positive was dismissed from her place of employment after her employers colluded with a hospital and a doctor and tested her for HIV without her knowledge. She was not informed of the result and her employment was later terminated on the basis of her health status.

The case

Besides the labour issue and health issue, the case also sought to enforce the right to privacy as a result of the HIV test being conducted without the Victim´s consent. The right to privacy

has also been brought up in relation to the court proceedings by protecting the identity of the applicant and having the hearing in camera, and thereby forestalling any discrimination. The Victim claims that her constitutional rights have been infringed as a result of her dismissal, violating her human rights. She is demanding compensation from her former employer, the doctor and the hospital.

At the time of supporting the case through AHRAJ, there was no jurisprudence challenging discrimination on the basis of health in Kenya.

The case also brought up the issue on the responsibility of a doctor to advise his patient around HIV status, which is very important given the high estimates of HIV infection.

Impact

The case is still on going in the Kenyan courts and was last in court on the 26th of September 2006. It has drawn a lot of media attention locally, internationally and on the Internet. The High Court Judge Lady Justice Murugi Mugo, has declared through a ruling that the case is sufficiently reasonable to be heard which is a milestone in itself as concerns the recognition of international human rights obligation.

The High Court Judge Lady Justice Murugi Mugo noted that

> *"Given the nature of this case and the universality of the HIV/AIDS pandemic and the development of human rights jurisprudence together with the ongoing attempts at the harmonisation of the relevant conventions with domestic law, I would be hesitant to overlook the positive features of the application before me," she said. Lady Justice Mugo continued: "I choose to be guided by an English decision which held that it is not appropriate to strike out the claim in an area of developing jurisprudence, since in such areas decisions as to novel points of law should be based on actual findings of fact." She went on: "I find the decision useful as it relates to circumstances where the treatment of HIV/Aids patients by doctors, hospitals, employers and others has been put to legal scrutiny with a view to moulding attitudes and public policy, such the same should be free of discriminatory tendencies. And giving judgment. I find the case discloses a reasonable cause of action."*[59]

The case has generated a widespread advocacy by the civil society and if the judgement of the case will be positive, it will be a step in the right direction towards nationally implementing international human rights standards.

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[59] Ruling delivered on 2004/10/06: available on hard copy.

4. Principle cases regarding Labour Rights

AHRAJ has during the period 2002 – 2006 received 32 applications regarding, Labour rights and has approved support for 17 cases. Here we give the following example regarding the impact of a case.

Kenya: Case 54

Parties: undocumented workers

Background information

The right to a suitable working environment is increasingly important in an African context and it is one of the key issues in development process for four main reasons.

- Protection of workers' rights consistently falls below ILO Conventions and standards
- Trade unionism is under-developed and politicised
- The creation of employment is closely tied to national economic goals. However, the quality of employment and the protection and adequacy of wages are not given as much attention as they deserve
- Many employers retain workers on a casual basis that ensures their wages are not protected, that they remain un-unionised and that they have no job protection.

The case

Case 54 was a suit challenging private actions that violate human rights, namely the right to be protected from exploitative labour contracts. The case challenged a common labour practice in Kenya where workers are employed against standards set by the International Labour Organisation (ILO) in regard to casual workers. They very often do not receive benefits during several years, instead of a maximum period set at six months.

The issues brought by the case are of prominent importance for a number of Kenyans:

- The problem of casual labour as short-term employment is abused. Many workers have remained under these terms of employment for as many as ten years and more.

- This case is a test case in Kenya, where many workers (up to 300) have taken a leading manufacturer to court to protect their rights.

Impact

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. The applicant has reapplied for AHRAJ support to take the case to the High Court of Kenya.

The situation facing casual labourers who are employed on long contracts but do not enjoy any of those privileges is still a matter that is rampant in Kenya. More often than not the casual labourers lack resources to engage an advocate to file a case. I do believe that this case, once heard at the High Court will greatly deter employers from using such underhand tactics and will gain a lot of publicity.

5. Principle cases - Miscellaneous

AHRAJ has during the period 2002 – 2006 received 63 applications regarding Miscellaneous and has approved support for 29 cases. Here we give the following examples regarding the impact of a case within the area of freedom of expression, gender rights/discrimination and the right to housing.

5.1 Principle cases regarding Freedom of expression

Eritrea: Case 64

Background information

Eritrea was Africa's foremost jailer of journalists in 2002. The crackdown began in the summer of 2001 after a dozen senior officials and other members of the ruling elite signed public letters criticizing President Isaias Afewerki's dictatorial rule. The letters, which were leaked to the press, prompted a slew of editorials about human rights, democracy, and the border war with Ethiopia, which lasted from 1998 until 2000 and killed 19,000 Eritreans. On September 9, 2001, the weekly newspaper *Setit* printed an open letter to the president that sparked a full-

blown political crisis. Days later, Afewerki launched a devastating clampdown on dissent, arresting top officials, banning the press, and jailing journalists and other critics. The arrests of journalists continued in 2002, rising to 18 from 11 in 2001. To highlight this abysmal record, as well as the plight of Eritrea's journalists, Committee to Protect Journalists (CJP) honored imprisoned *Setit* editor Fesshaye "Joshua" Yohannes with a 2002 International Press Freedom Award.

The Case

Five years after Eritrea's brutal crackdown on the independent press[60], the Committee to Protect Journalists (CPJ) today called for the release of 13 journalists held incommunicado in secret jails and two other journalists forced into extended military service. Basic information about the jailed journalists—most of whom were swept up in a September 18, 2001, crackdown—has become nearly impossible to obtain from official sources in Africa's most repressive country. But a recent report circulated on several Web sites, and deemed by CPJ sources to be generally credible, paints a picture of brutal prison conditions.
Case 64, supported by the programme, involved the submission before the African Commission on Human and Peoples' Rights challenging the ban of the entire press and the continued detention of journalists and other since September 2001 in Eritrea. At least 18 journalists, 11 political dissidents and 2 others were held in secret communicado without charges. The applicants had supporting evidence that the courts in Eritrea were not functioning and also there was a general fear. At the time of filing the case the victims' families were not likely to seize the courts for habeas corpus and there was no longer an independent media to file class action for the violation of press freedom.

The government's monopoly on domestic media, the fear of reprisal among prisoners' families, and recently tightened restrictions on the movement of all foreigners have made it extremely difficult to verify information. That includes a recent, unbylined report that first appeared on a pro-Ethiopian government Web site, claiming that jailed opposition leaders and journalists were moved in 2003 to a secretly built desert prison, accessible only on foot and two hours from the nearest populated place. CPJ sources said they believed that the description of the place was credible but some of the report's details inaccurate. They could not verify its claim that at least three journalists had died in custody.
Impact

[60] Information as of 15th September 2006

This dire state of affairs has and still receives international coverage. Eritrea is not one of the AHRAJ's focus countries however the case was supported due to the grave nature of human rights violations in Eritrea and the resounding impact that would have in the region. AHRAJ has now received a case from Ethiopia[61] and it is hoped that more shall be received from this region. These cases have attracted international attention, many organisations, including ARTICLE 19 protested, sent appeals to the authorities but the situation remained the same.

Zimbabwe: Case 124-126

Theme: Press Freedom

Parties: Zimbabwe Lawyers for Human Rights Zimbabwe Lawyers for Human Rights, Associated Newspapers of Zimbabwe vs. The Republic of Zimbabwe:-Zimbabwe Lawyers for Human Rights, Media Institute of Southern Africa & Independent Journalists Association of Zimbabwe vs. The Republic of Zimbabwe.

The case
Cases 124-126 from Zimbabwe seek to enforce freedom of expression and media freedom in Zimbabwe through the African Commission of Human and People's Rights.

The core issue implicated in these cases is freedom of expression in particular the aspect of media freedom. The applicants contended that the Access to Information and Protection of Privacy Act (hereinafter referred to as AIPPA) is a repressive piece of legislation that was enacted primarily to undermine the right to freedom of expression and stifle the exchange of ideas and information by the people of Zimbabwe. The applicant's further allege that the AIPPA together with the Public Order and Security Act, the Broadcasting Services Act, the Miscellaneous Offences Act and the Labour Relations Act, amongst others, form an axis of repression in Zimbabwe, assaulting the epicentre of the freedom of expression.

The main issue under consideration in this case was the unconstitutionality of a law, the Access to Information and Protection of Privacy Act (AIPPA). The applicant's approached the Supreme Court of Zimbabwe for a constitutional interpretation over the validity of the Act,

[61] Case 199

and the Supreme Court denied them audience ruling that the Applicant's had approached the court with "dirty hands". Citing executive influence on the judiciary and dissatisfied with the Supreme Court decision, the applicants referred the matter to the African Commission for Human and People's Rights. The precise nature of the human rights abuse alleged is the violation of the applicants' freedom of expression. The Applicants' contend that various provisions of AIPPA, including the registration requirement, were inconsistent with the Declaration of Rights contained in the Constitution.

Impact

As a direct result of the decision on admissibility to the African Commission for Human and People's Rights, the government of Zimbabwe initiated the process of amending certain provisions of the Access to Information and Protection of Privacy Act that has provisions restricting the freedom of the press. The Government repealed parts of the offending legislation hence conceding that the legislation was not in accordance with international standards.

The situation in Zimbabwe as far as media freedom is concerned has however not improved dramatically.[62] This can be attributed just like in the Gambia to the oppressive regime obtaining there.

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The case is similar to case No. 115 (*infra*) and similarly received a lot of attention internationally. *Article 19*, and *Interights* did a review the case, which is available in there respective websites. A similar case application being application No. 218 has been received from Kenya in the new Funding cycle.

Gambia: Case No. 115

Theme: Freedom of the press

Parties: Assessment of an application by Gambia Press Union (GPU), Banjul, the Gambia

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[62] See www.iwmf.org/features/4240:

> "There is no clear solution for journalists in **Zimbabwe** because **press freedom** is inextricably tied to the general political situation in the country." **...**

Background

On 25 July 2002, the Gambian legislature approved a bill creating a National Media Commission. The bill announced the lack of independence of the Media Commission, it conferred quasi-judicial powers to the Media Commission and it imposed mandatory licensing conditions on individual journalists. The inauguration of the National Media Commission took place in June 2003.

The Commission main job was to rule on complaints against journalists and the media. It had powers to summon journalists to reply to accusations and order them to reveal their sources. It was meant to draw up a code of conduct for the media and accredit journalists and press organizations. No media outlet would have been allowed to operate without an annually renewable license, which the Commission could suspend or cancel. It could also close down media and impose fines of at least 10,000 dalais (€610).

The case

GPU and others vs. National Media Commission and others sought to challenge the constitutionality of the NMC Act 2002 No. 7 of 2002 before the Supreme Court of the Gambia.

Case No.115 was supported through the programme to challenge the new law for compulsory registration of journalists by the government.

This case took the form of a civil suit in the Supreme Court of the Gambia, for repeal of the National Media Commission Bill and for a declaration that it is partly or entirely incompatible with Gambia treaties obligations.

Impact

The case, which highlighted the need to revise the NMC Act in order for the legislation to meet international human rights standards and to ensure media freedom in The Gambia, was supported by AHRAJ and suffices it to note that even before conclusion of the case, the law was repealed on December 13, 2004.

The case is widely quoted in the Internet, is reported in the Interights and IFEX, open society and other websites[63], and was analyzed by *Article 19*[64] and the open society institute. It is a *locus classicus* on media regulation as far as comparative law is concerned.

The offending legislation was repealed and journalists are not subjected to mandatory licensing in the Gambia anymore. The support of this particular case impacted greatly on the press freedom of The Gambia. The programme has received another application on media freedom in the present funding cycle being application number 218, this time in Kenya. An opinion was developed for this case and submitted to the lawyers. Together with cases 124-126, this case forms part of the upcoming AHRAJ casebook.

5.2 Principle cases regarding Gender rights/discrimination

Botswana: Case 73

Theme: Right to Privacy and sexual orientation

Parties: Kanane v. State

Background information

In Botswana, the visibility of the gay rights movement has increased greatly. In 1998, a grouping of Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo) drafted a charter and began advocating for greater acceptance and rights for gay people. Fearing a constitutional challenge to laws against homosexual acts, the government amended the Penal Code in 1998 to criminalise both lesbian and gay male sex acts. Previously, only gay male acts had been prohibited and the government feared it would lose a constitutional challenge to the act based on its implicit sex discrimination against men.

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[63]See,www.justiceinitiative.org/db/resource2/fs/?file_id=15288,alsowww.ifex.org/fr/content/view/full/63285 where it is quoted that "*Consequently, the Gambia* Press Union (GPU), together with the Media Foundation for West Africa (MFWA) and **other international human rights organisations**, led a sustained campaign of protests and court challenges, for a repeal of the obnoxious Act. The GPU insisted that journalists should be allowed to constitute their own, self-regulatory, mechanism as envisaged by the 1997 Constitution of the country. On October 20, 2004, the Minister for Information and Communication, Dr. Amador Janneh, announced that the controversial NMC Act would "shortly" be repealed by parliament. '…On Monday, December 13, the National Assembly finally repealed the NMC Act.

[64] See www.**article19**.org

Pervasive hostility to gay men and women endures is a big problem. In February 2006, for example, Zoliswa Nkonyana, 19, was beaten to death by a mob with bricks and clubs near Cape Town because she went public about her lesbian identity. In Nigeria, the government recently put forward a bill that would prohibit any public display of a "same-sex amorous relationship" and proposes five years in prison for anyone who marries a person of the same sex and performs other related acts. Only one gay group in Nigeria spoke out in public protest.

Like most other countries, there is a broad gulf in Botswana between what is acceptable in urban areas and in rural. Across Africa, the fight for gay rights clashes with devoutly religious societies, either Christian or Muslim.

In its initial attempts to register as a society, Legabibo was told that a gay group would potentially be guilty of "aiding and abetting an illegal act." Without registration, the group cannot apply for donor funding. Homophobic government representatives use the lack of official paperwork as a way to keep Legabibo members from participating in public events. Interestingly, it is HIV-AIDS, almost entirely a heterosexual disease in Africa, which has spurred some openness on traditionally taboo topics. The public health imperative has obliged governments to deal frankly with prostitution (illegal but widely practised) and the sexual activities of marginalized communities in order to stop the spread of the disease.

At their most recent meeting, Legabibo members decided to try a petition, asking people if they were in favour of changing the law against gay relationships.

Homosexuality is a delicate issue in the greater parts of the African region. In February 2006, newspapers in Cameroon went on an "outing" spree; publishing pages of names of prominent people they said were gay. Homosexuality is punishable by up to five years in prison in Cameroon, and men suspected of having gay sex are sometimes forced to endure an "anus inspection" by police according to statements made by rights groups. The Zimbabwean President Robert Mugabe routinely denounces "vile" homosexuality as a Western cultural import, and his government blocked an attempt by a comparatively strong gay-rights lobby in the country to protect the rights of gays and lesbians in law. A radio show in Uganda was hit with a $1,200 fine (after first being threatened with being closed) when it interviewed three "self-

professed homosexuals" about their lives. A cabinet minister said the show contravened "God's moral values."[65]

The case

Case 73 concerns the recognition of the right to sexual orientation and the right to privacy in Botswana. The constitution and penal law of Botswana criminalize sexual orientation and sexual acts between consenting adults of the same sex and the two victims' were arrested and charged with the offence of homosexuality.

On 22 March 2002, the High Court (Judge Mwaikasu) upheld the constitutionality of Sections 164 and 167 of the Penal Code. The Court found that Sections 164 and 167 prevented harm to public morality due to "carnal knowledge against the order of nature." Additionally, it found that although lesbian intercourse was not considered to be any sort of carnal knowledge (i.e., neither natural nor unnatural), there was no gender discrimination in the penal code. The case was taken on Appeal before the Court of Appeal in July 2003. Judgement was passed in the case on 30 July 2003 by a full bench of 5 judges of the Court of Appeal, which is necessary regarding constitutional matters.

Their decision was composed of following interesting points:

1. Section 167 of the Penal Code as it stood when Mr Kanane was charged under it, was a violation of the Constitution. Therefore Mr Kanane could not be charged under this provision. Their decision was based on the fact that the law at the time discriminated on the basis of gender. However the penal code was amended in 1998, making the section applicable to both males and females.

2. Section 164 (c) did/does not discriminate on the basis of gender and is therefore not unconstitutional. The case relating to the charge under this section had been remitted to the Magistrate's Court at Maun. However, the Court of Appeal made a recommendation to the Attorney General to consider the fact that the case has been going on for 8 years and whether "it would be fair or constitutional to proceed with the prosecution".

3. Despite the "well researched and ably presented argument" of Mr Boko, regarding the discriminatory effect of section 164 against "gay men and lesbians", the court was of the opinion that it is not yet time to decriminalise homosexual practices between consenting adult male in private. Gay men and women as a group were not considered to require protection under the constitution. The Court stated that there was no evidence before them to show that public

[65] http://www.mask.org.za/article.php?cat=botswana&id=1029

opinion in Botswana has so changed or developed. They found that public interest must therefore always be a factor in the court's consideration of legislation particularly where such legislation reflects a public concern.

4. They found that the sections of the constitution did not hinder "gay men and lesbians" in their association with one another (as submitted by Mr Boko). They found nothing to prevent them from associating within the confines of and subject to the law.

5. However, the court dissociated itself completely from the views of Judge Mwaikasu of the High Court. Judge Mwaikasu upheld the constitutionality of the Penal Code, stating that discrimination against homosexuals was permitted by the Constitution on the grounds of public morality.

Impact

The *Kanane v. State* was the first case in Botswana to challenge laws pertaining to criminalisation of homosexuality. As a result of the publicity surrounding the Kanane case the Lesbians, gays and homosexuals in Botswana (Legabibo), which counts 30 members brave enough to sign up by name, has been trying since 2004 to become a registered organization in Botswana.

Legabibo is mounting a heightened public-awareness campaign, paying a local newspaper to run a weekly question-and-answer column (sample: are some people born gay just like some are born straight?) and members to appear on call-in radio shows. Legabibo is isolated in Botswana. Next door in South Africa, equality for people of all sexual orientations was enshrined in the post apartheid constitution, and these days every city has a Gay Pride parade. Last December the high court ruled that a ban on gay marriage was unconstitutional, giving the government a year to rewrite the marriage law.

This case has received international recognition and has set precedent in Botswana in terms of recognition of rights to sexual orientation.

5.3 Principle cases regarding the right to housing

Ghana - Cases 132 –134

Theme: Forced Evictions

Parties: Dudzorme Island community v. state of Ghana and Game and Wildlife Division

Background information

Prior to the forced evictions, many of the evictees had lived in the Digya National Park, Afram Plain District, Ghana for over 30 years. They are part of a community of approximately 7,000, and live mainly on fishing. There has been recent forced eviction of hundreds of residents from the Dudzorme Island within the Digya National Park in the Tapa-Abotoase area of Lake Volta, Ghana, and the planned forced eviction of thousands more. These forced evictions have deprived residents, including women and children, of their homes and, in most cases, of their means of earning a living.

The Game and Wildlife Division argue that the forced evictions are necessary because the land was set aside as a forest reserve. Amnesty International and COHRE have been informed that the forced evictions were carried out without adequate prior consultation, adequate notice and compensation or alternative accommodation. This is in violation of Ghana's regional and international human rights obligations, including the right to adequate housing, which includes the right not to be forcibly evicted.

The Dudzorme Island community were reportedly first threatened with evictions in June 2002.

The case

These cases challenged forced evictions of local people from their villages and the violation of the right to housing as set out in international human rights conventions.

The forced evictions are still on going. On 5 February 2006 the Government served an eviction notice on the community, with less than one month's notice. In late March and early

April, officials of the Forestry Commission forcibly evicted residents from Dudzorme Island.

Sources confirmed that there was inadequate prior consultation with the community. Furthermore, insufficient notice of less than one month was given to the residents, in contrast to the 90 days absolute minimum recommended by the United Nations Special Rapporteur on the Right to Housing as a component of the right to an adequate standard of living. Evictees reported that they were forced out of their houses, subsequently forced on to the boat, and in the process some of them were beaten with sticks. The authorities have reportedly neither provided alternative housing nor compensation, which violate the right to adequate housing including the right not to be forcibly evicted.

Victims report that, in the process of forcibly evicting those residents, the overloaded ferry, which was taking them from the island in the Afram Plains area to Abotoase in the eastern part of the region, capsized. 58 persons have been confirmed dead and 71 have been registered as survivors, although not all have been found. Initial official reports indicate that the number of deceased is considerably lower. There is deep concern about the manner in which these evictions appear to have been carried out, particularly about the use of excessive force, including the reported forcing of people onto the ferry without putting adequate safeguards for their safety in place.

Impact

In 2005 AHRAJ supported Centre for Public Interest Law (CEPIL) to litigate on these matters. The forced evictions and CEPIL have received much publicity on this matter[66].

This is a matter still affecting Ghana. AHRAJ first supported CEPIL on this matter in 2002 and then again in 2005. On the face of it the Government is still flouting the law however publicity on this matter has caused public international outcry and has at different times forced the Government to cease carrying out these illegal acts. In January 2003, as a result of a campaign by local and international non-governmental organisations, including COHRE and the CEPIL, against these planned forced evictions, the Minister for Land and Forestry decided to suspend the evictions. However, the situation still requires a solution and support from the international arena.

[66] http://www.amnestyusa.org/regions/africa/document.do?id=ENGAFR280012006

ANNEXURE 2

IMPACT REPORT

AFRICAN HUMAN RIGHTS AND ACCESS TO JUSTICE PROGRAMME

ADDITIONAL ANALYSIS REQUESTED BY SIDA IN REGARD TO CASES REPORTED ON IN THE HALF-YEAR REPORT OCTOBER 2005-JUNE 2006

Prepared and submitted jointly by ICJ Kenya and ICJ Sweden

9 February 2007

Uganda: Case no. 196

Case Name:	Uganda vs. Jean Paul Bizimana
Theme:	Fair trial and Access to Justice
National Lawyer:	N Maranga

Background information

The victim is a refugee in Uganda and has been charged with a capital offence carrying the death sentence in Uganda. He has been charged with murder for the killing of 9 tourists of British and American Nationality. At the hearing of the main suit, the advocates for the victim attacked the legality of the mandatory death sentence that was to be imposed on the victim on conviction.

Whilst the court convicted the victim on charges of murder, the court refused to apply the death sentence and instead sentenced him to serve a jail term of 15 years. The court in its judgement noted that,

"… I note with appreciation that some of the victims are from countries where the death penalty is regarded as harsh and inhuman. It would be a double tragedy if there spirits were disturbed by a sentence of death. The spirits of these victims need to be appeased by a sentence that the victims would have viewed as fair and civilized."

The state has appealed the case to the Supreme Court, seeking to have the high court judgement reversed, the result of which would be a confirmation of the legality of mandatory death sentence for particular crimes.

AHRAJ is supporting the victim in seeking to have the High court Judgement upheld.

So far, an appeal has been filed, and the Notice of appeal filed by the state is being challenged. The victim's advocate has applied to court for a certificate of correctness so as to be able to move to court to challenge the appeal made by the State.

Impact

The state on its hand is yet to file its memorandum of appeal. The failure by the state to file the memorandum of appeal means that as soon as the Victim's advocate obtains a certificate of correctness, they could move to the Supreme Court to have the appeal dismissed on technical grounds.

The effect of this judgment is that courts in Uganda do not perceive the imposition of a death penalty on capital offences as mandatory and have resorted to applying there discretion depending on the circumstances of the case.

Whilst international human rights standards frown upon any form of the death penalty, this would be a good start towards abolishment of the death penalty in Uganda. It should be noted that the judicial attitude in most African countries is bent on upholding the legality of the death penalty.

Ethiopia: Case no. 199

Case Name:	Action Professionals Association for the People vs. Ethiopian Protection Authority (APAP)
Theme:	Right to Health, Environmental Rights
National Lawyer:	Wongei Abate Abebe & Debebe Hailegabriel

Background information

The organization APAP is filing this public interest case on behalf of residents of the localities along Akaki and Mojo river basin in Ethiopia whose health has been affected by pollution from these rivers. These two rivers have been polluted by solid and liquid waste from factories in Addis Ababa and Mojo towns. These rivers are the major source of drinking water to the residents around these areas and the government has taken no steps to redress this situation.

The right to healthy environment is entrenched within the Ethiopian constitution as well as international instruments to which Ethiopia is party.

The applicant, APAP has instituted a public interest litigation case file with the Federal First Instance Court on February 21 2006. The first hearing of the case was scheduled for 2nd June 2006.

The case was heard and orders sought granted but implementation has been a challenge since the judicial system in Ethiopia does not allow citizens to obtain monetary compensation from their government. The orders granted recognized that the pollution of the two rivers feeding residents of Addis Ababa were being polluted and that the affected residents could seek compensation. The court however did not give directions as to who should provide compensation since the matter had been filed against the environmental board, which is a governmental body.

Impact

It is interesting to note that this is the first public interest litigation case against a government body filed in Ethiopia. Individuals, government agencies and non-governmental bodies in this case charge the government body with the responsibility of protecting the environment from acts of pollution.

By APAP taking this matter to court, several advocacy initiatives have commenced in Ethiopia to address water pollution in the whole country. As a consequence of the case going to court a research was commissioned by the World Health Organization (WHO) in conjunction with the Ministry of Health in Ethiopia, which recognized the following;

"The country economy is heavily dependent on agriculture, which is heavily dependent on rain-fed, small and subsistent farming. The intense industrial and agrochemical utilization resulted in environmental degradation and pollution, which in turn spoiled and affected the existence and quality of aquatic resources. The sources of major pollutants affecting Ethiopian lakes and rivers are erosion deposit, effluent discharged and agrochemicals. Currently the country inland water ecosystems suffer from anthropogenic impacts such as diversion of tributary rivers, pumping of water from lakes for irrigation, deforestation, erosion, farming

activities and town settlements around lakes and rivers. These impacts have resulted large amount of deposits, narrowing lakes areas and pollution of the water bodies."[67]

In January this year (2007) the Ethiopia Ministry of Environment has recognized the need to have Environmental Pollution Control Legislation passed and APAP has been invited as one of the stakeholders. This legislation will be based on Industrial effluent standards, Ambinet[68] environment quality standards.

What has been accounted for above are the basis upon which APAP received support and even though the orders granted by court cannot be enforced, the impact of the case has the success of a new legislation being introduced to address the concerns raised in the case.

Swaziland: Case no. 203

Case Name:	Upon being filed in the High Court it will be called National Constitutional Assembly and Others v The Government of Swaziland and Others
Theme:	Access to Justice, Constitutional Participation
National Lawyer:	Thulani Rudolf Maseko and Paul M. Shilubane
Contacts:	Lawyers for Human Rights (Swaziland) (LHR(S))

Background

The victim in this case is an organization called the National Constitutional Assembly, which comprises of political organizations and labour unions namely the Swaziland Federation of Trade Unions (SFTU), People's United Democratic Movement (PUDEMO), Swaziland Federation of Labour (SFL), Ngwane National Liberatory Congress (NNLC) and the Swaziland National Association of Teachers and members of these organisations. The National Constitutional Assembly claims that it was unlawfully denied and refused the right to participate in the constitution making process in Swaziland by the Constitutional Review Commission. The Constitutional Review Commission's terms of reference were set out in Decree No. 2 of 1996 and did not expressly allow for group submissions[69]. The victim claims that the Constitutional Review Commission excluded and prevented the participation and representation of organized groups in the review process and hence violated the victim's right to participate in the governance of the country by all citizens on equal basis as envisioned by the laws of Swaziland as well as International Human Rights Laws. The victim is seeking a declaration that the making of the Swaziland Constitution is null and void, of no force or effect.

Currently, the High Court hearing has commenced on 19th December 2006 and is ongoing.

Impact

AHRAJ has supported this organization previously in case no. 11[70].

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[67] Report available at < http://www.epa.gov.et/Pollution_water.htm > (accessed 22/01/07)

[68] lists all the pollutants considered harmful to human health and also does a comparative analysis of harmful levels.

[69] International Bar Association – Striving for Democratic Governance: An analysis of the Draft Swaziland Constitution

[70] The case concerned a complaint filed against the Kingdom of Swaziland challenging the King's proclamation as being inconsistent with the African Charter[70]. The case was taken before the African Commission, which determined it in favour of the applicants. The African Commission stated that by not taking appropriate steps to bring its laws in conformity with the provisions of the African Charter, Swaziland violated article 1 thereof and

The victim filed an urgent application in 2004 in the High Court in this case. The High Court dismissed the application on among other reasons that the debate in Parliament could not be interfered with as it would undermine the principle of separation of powers and that the applicants had not shown that they were entitled to interdict. Further presentations and demands continued to be made on the Constitution Drafting Committee to no avail.

It has been argued that in order for a constitution to be legitimate, and therefore constitutional, it must involve all stakeholders. The African Charter clearly spells out in Article 13 that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

All sectors of the Swazi nations are anxiously awaiting the outcome of this case and all media focus is targeting the issues as the outcome will affect the procedure and issuance of the King Decrees which have been random and not based on any democratic principles.

The majority of Swaziland's politicians and influential figures, with the exception of members of the House of Assembly and a handful of Senators in Parliament, are appointees of the King by virtue of the latter being a repository of all legislative, executive and judicial powers bestowed upon him by the contentious King's Proclamation of 1973. The latter Decree that facilitated the abrogation of the independence constitution, 10 banned political parties and infringed on other fundamental human freedoms that are the cornerstone of democratic political systems throughout the world. Therefore the case pending in court is a direct challenge to the King's role and also seeking the judicial arm of government to show its independence as required under international standards.

Kenya: Case no. 205[71]

Case Name:	Felistas Wanjeri Waweru versus Board of Governors, Kairi Secondary School
Theme:	Labour and Women's Rights
Expert Instructed:	Grace Maingi-Kimani
National Lawyer:	Jesse Githinji Kariuki

Background information

The victim in this case is a 36 year-old lady who had been employed as the school bursar at Kariri Secondary School for fourteen years. In late February 2005 she was hospitalized at Memorial Hospital, Thika till April 2005. On the 14th of April 2005 she applied for maternity leave, which would run until the 12th of July 2005. On the 14th of May 2005 she was denied maternity leave. On The 25th of May 2005 her employer summarily dismissed her. The employer cited gross misconduct as a ground for termination. The victim claims that her termination was unlawful and discriminatory against her on the grounds of her maternity.

The victim is seeking the following remedies;

- Reinstatement to her previous employment with full pay,
- Declarations that termination of her employment was a gross abuse of her human rights, illegal, null and void ab initio,

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that the prohibition on the establishment of political parties under the Proclamation consequently restricted the enjoyment of the right to freedom of association and assembly.

[71] This case was previously wrongfully referred to as case 204.

- General and punitive damages for wrongful dismissal, for abuse of her human rights and compensation for her loss,
- Compliance by the employer of the Convention on the Elimination of All Forms of Discrimination against Women.

Impact

Despite legislation in force against discrimination of women, this is still rampant in Kenya. Employers violate women's rights with impunity and little or no attention is drawn to the same. Section 82 of the Kenyan Constitution clearly outlaws discrimination on the basis of sex and the Employment Act of Kenya entitles female employees to maternity leave with full pay.

The African Charter stipulates that States shall ensure the elimination of discrimination against women. Kenya has ratified the Convention on the Elimination of All forms of Discrimination Against Women, which states at Article 11 (2) that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status. In its Third and Fourth Country report to the CEDAW Committee, the Government of Kenya stated that women's job security was not affected by pregnancy as each woman is entitled to two month's paid maternity leave.

The facts of this case are very common in Kenya.

The case has been filed in the High Court at Nairobi. This case will mostly likely succeed if the applicant successfully argues the point that the victim was dismissed because she applied for maternity leave. This is because Kenya's Employment Law clearly states that women are entitled to maternity leave and the court will be further compelled to uphold the law in light of international standards.

Gambia: Case no. 209

Case Name:	Mariam Dentod vs The Director General of the National Intelligence Agency, Inspector General of Police, the Chief of defence Force Gambia Armed Forces, the Director General of Prisons & the Attorney-General of the Gambia
Theme:	Fair trial
National Lawyer:	Ida Danise Drameh

Background information

The Applicant has lodged this application for and on behalf of the Association of Gambia Women Lawyers,[72] representing Lawyer Mariam Denton, a female legal practitioner who spent more than 100 days in custody without any charge being preferred against her. She is a know opposition supporter and most of her clients are currently in custody over treason charges and while she was in detention she was asked to surrender up the cases. She was also threatened that if she continued to give representation to opposition members, her certificate would be cancelled. She is the most senior woman lawyer in the Gambia.

[72] The association is in formation.

Her office was ransacked and documents and files taken over by government security agencies and her family was put to risk. The lawyers in the Gambia were concerned about her security. The fact that she was not charged in court made it impossible to make special application for her medical care and attention or to seek her removal from the prison. She was placed in one remote prison, with a wing for women, which has never been used before and she was the first woman occupant. Male prisoners had to be removed from the cell that she occupied.

The Applicant was later granted conditional release by the court, but one of the respondents insisted on her re-arrest. In the meantime, the Applicant was able to sneak away from the court premises and could not be re-arrested. In a bid to have her surrender, her son and sister were arrested until her whereabouts could be established.

The case has been completed with judgment being granted.

Impact

The programme officer at ICJ-Kenya personally attended court session during the application to have the lawyer released from detention and also visited the prison where she was held. The case presents very fundamental concerns to right to counsel, representation, and the rights of lawyers as laid down by the UN Guidelines on the Treatment of Judicial Officers, the victim being an Advocate of the High Court of the Gambia. Her arrest and demand that she should not represent certain clients is an abuse of her professional duty as a lawyer and the detention is an abuse of the rule of law and rules of fair trial. Various media houses and international press have shared on this case and ICJ-Kenya presence in court during the hearing was highlighted.

The Court granted the application and made an order for the victims release from unlawful detention. Lawyer Mariam Denton was released from prison after a spirited campaign by all the women lawyers in the Gambia and by the support of AHRAJ. She has been able to resume her practice as lawyer.

This is now a celebrated case in the Gambia and every other case coming before the court is making reference to this judicial breakthrough.

Unfortunately, the judgement in this case also brought about a trend where all the other treason cases that were awaiting hearing in the Gambia High Court were withdrawn and referred to the Court Martial, which essentially does not appreciate personal liberties, and the trials are characterised by a general denial of the fundamental right to a fair trial. [73]

The government of Gambia has used the judgement of the Mariam Denton case, which was issued by an expatriate judge (Commonwealth judge from Botswana) to intimate that the decision was not based on Gambian law. The government justified the removal of the other cases to the Court Martial by this fact.

Gambia: Case no. 210

Case Name: Coalition for Human Rights Defenders (application for habeas corpus) versus;

[73] Aftermath of election available at http://www.blackwell-synergy.com/doi/abs/10.1111/j.1467-825X.2006.00546.x > Accessed on 23/01/07

	1. The Director General of the National Intelligence Agency, 2. Inspector General of Police, 3. The Chief of Defence Force Gambia Armed Forces, 4. The Director General of Prisons & 5. The Attorney General of the Gambia
Theme:	Access to justice
National Lawyer:	Neneh Cham Chongan

Background information

The Applicants are a human rights organisation who has been conducting human rights awareness and litigation in the Gambia. The case is based on the arrest of six-army officer for treason and or concealment of treason in March 2006. The six are;

- Captain Bunja Darboe
- Captain Yaya Darboe
- Captain Wassa Camara
- 2nd Lt. Pharing Sangang
- Tamsir Jasseh
- Hon. Demba Dem.

On 21st March 2006 the Gambian Security arrested and detained the officers at Mile Two prison. It was announced that due to security concerns and to avoid them mixing with other petty offender, the officers would be transferred to another prison, in the South of the Gambia near the Senegal border. On 30th the security agency announced on national radio that the detainees had 'escaped'.

Chances of the officers escaping were very low and it is feared they were murdered on the way to the prison.

The ICJ-K program officer visited the prison. According to other remand prisoners, the officers had been tortured and held without food and therefore even if they were to escape, they were not in a fit condition to run away for long distance. It is also standard practice and according to procedure to have all capital offenders chained while being transported to court or outside the detention facility.

Therefore, if the officers were chained enrout to the transfer prison, then running away would have been very difficult.

The applicants are making habeas corpus application for and on behalf of the officers as their families have been terrorised by the security agencies. Several searches have been conducted in their homes under the guise that they are hiding the officer.

The recent development in the case is that the organisation that was handling the case, the Human Rights Defenders, received information that some of the suspects were still alive and being held in undisclosed places until elections were held and they agreed to remain silent.

Also getting relatives to be the representatives of the suspects has been a challenge to the lawyers taking up this case, as illiteracy levels in the Gambia are very high and most common people are not willing to challenge the government.

Impact

The applicant organisation has been holding civic education forums as they engage the lawyers on alternative ideas on how to proceed with the case. Sharing with the lawyers on this case, the personal security fears for lawyers is apparent and therefore even for the relatives of the suspects especially the wives or parents.
Considering the background of the case and the current status of the case it may be required that another strategy is adopted on how to deal with the proceeding of the case.

Malawi: Case no. 217

Case Name:	Francis Kafantayeni, Edson Khwalala, Faison Maomba Gama, et al vs. Attorney General
Constitutional case No. 25 of 2005	
Theme:	Access to justice (death penalty)
Expert Instructed:	Benson
National Lawyer:	Yambani Mulemba & Noel Chalamanda Knight & Knight Advocates

Background information

The plaintiffs in the case are persons serving capital punishments from murder convictions based on various cases but placed within the same prison as they await execution. The death sentence is provided for under Malawi Penal Code Cap 7:01 under section 210. The first plaintiff commenced proceedings in the High Court of Malawi challenging the mandatory death sentence on 4 different grounds;

- Cruel, inhuman and degrading contrary to Section 19(3) of the Malawi Constitution,
- Deprivation of the right to life contrary to Section 16 of the Constitution,
- Denial of fair trial contrary to section 42 of the Constitution,
- Deprivation of the judiciary of an essential judicial function contrary to the principle of separation of powers enshrined in the Constitution.

The other plaintiffs have now been enjoined to the suit in support of the first plaintiff.

This case has already been canvassed in court and the parties are awaiting judgment. Judgment is expected to be sometime in February, the court will give a notice of the judgment when the judgment is ready.

Impact

It is important to note that the case was not challenging the death penalty wholesome, but was rather challenging the legality of a mandatory death sentence for certain crimes in Malawi, principally, murder, treason, and robbery with violence.

In the suit, it was submitted on behalf of the Plaintiff that the application of a mandatory Death Sentence under S. 209 of the Penal code which deals with murder is unconstitutional, on the grounds that;

- It constitutes inhuman and degrading punishment in breach of section 19(3) of the Constitution,
- It amounts to arbitrary deprivation of life in breach of section 16 of the Constitution,
- It gives rise to a denial of a fair trial in breach of section 42 of the Constitution,
- Its application deprives the judiciary of an essential judicial function, thus violating the principle of separation of powers implicit in the Constitution.

The effect of the court giving a favorable judgment would be that a mandatory death penalty would be declared unconstitutional, and in every case, a proportional sentence, commensurate to the circumstances of the crime would have to be applied.

There is a very high chance of success in this case. This is because at the hearing of the case, the state which had filed objections to the suit withdrew the objections did not make any reply to the plaintiff's case and sought to rely on the courts discretion for Judgment.

Kenya: Case no. 218

Case Name: David Ochami & Omollo Onyango
Constitutional case No. 25 of 2005
Theme: Media freedom
National Lawyer: Alfred Njeru Ndambiri
A.N. Ndambiri & Co. Advocates

Background information

The first applicant is a media reporter with Kenya Times Newspapers while the second is an editor with the same media house. They have been working in the media centre for the last 10 years.

On 25 September 2005 Ochami wrote an article titled 'Coups in Africa do not occur for nothing,' which was published. The article gives a personal opinion on military coups and governments with special emphasis on Kenya. At this time, a constitutional referendum was scheduled for the 21 November 2005, focused on constitutional reforms.

On 27 September 2005, the applicants were arrested and charged with publishing *'alarming publication'* under Section 66(1) of the Penal Code, that the contents of the article were rumours and that a military coup was going to take place in Kenya. Following this, the Applicants filed a constitutional reference seeking to protect their right to expression, which relates to media freedom. The Attorney general sought to have the criminal charges withdrawn.

The criminal charges have now been withdrawn but the constitutional reference still stand as it addresses fundamental human rights concerns on media freedom. The matter is pending for ruling in court on the 15th February 2007.

Impact

The Petition seeks declaratory orders on fundamental rights and freedoms, which directly relate to media freedom. The petition seeks to challenge the provisions under the Penal Code that violate fundamental freedom on opinion and expression. The need for a constitutional interpretation of the legislative provisions on these fundamental rights will affect the entire media network in the country.

The case touches on the various components of the right to;
- Information
- Expression
- Free media.

Freedom of expression is essential to the functioning of a democratic state, and for people to make political choices they must have access to information. To criticize state policies enables people to contribute to peaceful progress and change in the society

The government of Kenya has initiated the Media Bill in parliament, which incorporates freedom of the press and protects journalists and media houses who run information that reflect public information. There are very progressive sections especially Part II which recognises Media Freedom as a fundamental right as envisaged under Article 19 of ICCPR.

The UN Special Rappoteur on Freedom of Information was in Kenya in December 2006 and in a public statement noted;

"Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[74]

ICJ Kenya has been working on the Freedom of Information Bill, which was also presented, to parliament as a Private Members Bill in October 2007. As a result the government has also published a government Bill of Freedom of Information. There are efforts to meet and agree on one Bill between ICJ Kenya and the government. The Permanent Secretary has called for a stakeholders meeting to develop a Policy Paper towards addressing Freedom of Information and a merger of the two Bills.

Article 19 has also engaged with ICJ Kenya, Members of Parliament and media houses on advocacy over freedom of expression and information. They have published a Memorandum.[75]

Malawi: Case no 221

Case Name:	Wezzie Matecheta vs. Malawi Police Service and the Attorney General
Theme:	Women's Rights
National Lawyer:	Wapona Kita
Contacts	Equal Opportunities Watch

Background information

The victim is a police sub inspector with the Malawi Police service who intends to marry an army officer. Under police regulations every police officer that wants to get married is supposed to get permission from the Police Commissioner. The victim was denied permission to marry on the pretext that her fiancé is already married, a fact that is being denied. This is an urgent case as the Police are intending to transfer the victim to a distant district in order to keep her away from her fiancé and frustrate her intention to marry.

Impact

[74] UN Special Rapporteur report titled, Promotion and protection of the right to freedom of opinion and expression.
[75] Memorandum on Kenya Freedom of Information Bill 2005. available at <http://www.article19.org/pdfs/analysis/kenya-foi.pdf > (accessed 24/01/07)

The victim seeks a declaration that the police regulation that orders officers to seek approval of marriage from the Police Commissioner is unconstitutional. According to the application the Police regulation that states that all officers wishing to marry must first seek the approval of the Police Commissioner is unconstitutional as the Malawi Constitution recognises the right of all men and women to marry and form a family.[76] Section 22(6) of the Malawi Constitution states that 'no person over the age of eighteen years shall be prevented from entering into marriage.' Malawi's combined second, third, fourth and fifth report to the Committee on the Elimination of Discrimination against Women explains that all international standards, such as the Convention, must first be incorporated into the Malawi legal system before any provisions can be directly invoked. However, that restriction is mitigated by a rule that states that courts are allowed to "have regard to current norms of public international law" when interpreting the Constitution. In addition, the Constitution allows two possible courses of action for human rights infringements: protection or enforcement of those rights through the court, or application for advice or assistance from the Ombudsman or Human Rights Commission. The country report discusses the legal embodiment of the principle of equality between men and women, including the adoption of the first piece of legislation that addresses discrimination -- the Employment Act of 2000, which adds "family responsibilities" as "a prohibited factor in the treatment of employees". The adoption of anti-discrimination measures, State restraint from engaging in discrimination, and ways of institutionalizing the concept of "protection of women and men" in Malawi are also discussed.[77] Introducing her country report to the Committee, Joyce Banda, Minister of Gender, Child Welfare and Community Services of Malawi, said that, although there was neither "a legislative nor judicial definition" of discrimination in the country's Constitution, it nevertheless prohibited discrimination against persons in any form (Section 20 (1)), including discrimination against women (Section 24 (1)).[78]

The applicant in this case applied for leave to file a judicial review case however leave was denied as the application was out of time. The applicant was advised by the court to ask for permission to marry again and on receipt of the denial of permission to file an application for leave to file a judicial review matter.

The likelihood of success of this case is high. Following the court's ruling on the application for leave to file a judicial review the judge made the following statements;

" It would seem that the main purpose for the requirement is the fact that the policewoman will be joining her husband. If this was the only purpose I would have had no problems. The said exhibit would appear that there are other ulterior motives for requiring women to put in the said application."

" It was further learnt that a copy of the said regulation has never been made available to the applicant…one cannot expect people to be bound by regulations that have not been made available to them..."

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[76] Section 22(3) of the Malawi Constitution.
[77] Document CEDAW/C/MWI/2-5
[78] http://www.un.org/News/Press/docs/2006/wom1560.doc.htm