



**FINAL REPORT BY THE SWEDISH AND KENYAN  
SECTIONS OF THE INTERNATIONAL COMMISSION  
OF JURISTS.**

**THE AFRICAN HUMAN RIGHTS AND ACCESS TO JUSTICE PROGRAMME  
(AHRA).**

**PERIOD:** 1<sup>ST</sup> OCTOBER 2005 TO 30<sup>TH</sup> JUNE 2009

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ICJ Kenya and ICJ Sweden

**Submitted to:**

The Swedish International Development Cooperation Agency (Sida)

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**Contents (this should come before the ES)**

- 1.0 BACKGROUND .....5**
- 1.1 Agreements.....5
- 1.2 Context Analysis.....5
- 2.0 HIGHLIGHTS & ACCOMPLISHMENTS.....8**
- 2.1 Case support .....8
- 2.1.1. Select favorable decisions.....11
- 2.2 Case Related Support.....13
- 2.2.1 Promotional Visits.....14
- 2.2.2 Trial Observations and fact finding Missions.....14
- 2.2.3 Workshops .....15
- 2.2.5 Baseline Survey .....20
- 2.2.6 Organizational Capacity Building (2008-2009) .....21
- 2.2.7 Programme Management.....23
- 3.0 OUR IMPACT.....23**
- 4.0 CHALLENGES.....24**
- 5.0 LESSONS LEARNT .....27**
- 6.0 ECONOMIC OVERVIEW .....28**
- 7.0 ANNEXURE .....37**

## EXECUTIVE SUMMARY

The period under review covers October 2005 to June 2009 also known as AHRAJ phase II. The phase has not run entirely without interruptions, initial plans were for the phase to run from October 2005 to March 2008, when funding for a new phase would be considered by Sida. The proposal for a new phase was not approved and Sida allowed a non cost extension running from April 2008 to June 2009 to be undertaken utilizing the balance of funds amounting to \$1,047,950 which had remained unutilized by the end of the phase in March 2008. The objectives of this extension period, however deviated from the traditional objectives of AHRAJ substantially as case support was to be a small component of the activities in this period. The extension phase main objective was to concentrate on an ICJ Sweden phase out process and undertake skills transfer, and support intensive capacity building activities for ICJ Kenya in order to actualise the objectives of the phase out and ownership of AHRAJ by ICJ Kenya. Therefore the objectives set out for the extension period focused on the, phase out of ICJ-Sweden, capacity building of ICJ-Kenya, case support, case related support. As the extension period comes to an end, AHRAJ reports on the last one year to have been a very intensive period where efforts geared towards skills transfer and building the capacity of ICJ Kenya have been very successful. ICJ Kenya as an organization is now prepared to take up the responsibility of being the sole implementing arm of Phase III of AHRAJ.

The report that follows sets out the journey that AHRAJ has travelled for the last three years and eight months. During this period it will be seen that the concerted efforts to ensure the programme was adequately staffed bore fruit as the programme was able to achieve the set targets in case support and case related support. In addition the burn rate for the programme improved especially in 2006 and 2007 when the programme was adequately staffed as the sharing of roles to ensure the effective implementation of the project was maximized on. More importantly the programme has also successfully influenced the domestication of international human rights standards during this period through the cases that were successfully litigated and in some instances where they were not the raising of awareness on the issues has led to governments checking on the human rights violations which in turn results in a decline in human rights violations.

**AHRAJ** is grateful to the Swedish International Development Cooperation Agency (Sida) who have generously supported the AHRAJ Programme since its inception in 2001. We appreciate all the advice given with a view of improving the impact of the programme and ensuring the funds are utilized in the best possible way. We are also grateful to AHRAJ partners and beneficiaries without whom the successful implementation of AHRAJ

phase II would not have been possible, your support is greatly appreciated. Finally AHRAJ thanks all the staff members of ICJ Kenya and ICJ Sweden who have worked tirelessly with the programme during this period.

## 1.0 BACKGROUND

### 1.1 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 African Human Rights and Access to Justice Consortium represented by ICJ-Sweden, ref: 7260066601 signed in March 2006, and following the approval for the request for a non cost Extension of Phase II of the African Human Rights and Access to Justice programme between the Swedish international development cooperation agency (Sida) and the Swedish Section of the International Commission of Jurists (ICJ-Sweden), ref:7260066901 signed in September 2008, and further the programme agreement between Sida and the African Human Rights and Access to Justice programme (AHRAJ) consortium represented by ICJ-Sweden, signed on 11<sup>th</sup> December 2008, ICJ Sweden and ICJ Kenya, jointly submit the October 2005 – June 2009 **Final Report** on the implementation of the African Human Rights and Access to Justice Programme (AHRAJ), referred to as the reporting period below. The **final report** therefore covers the entire period of the Phase II activities from October 2005<sup>1</sup> to March 2008, and also looks at the no cost extension period covering April 2008<sup>2</sup> to June 2009.

### 1.2 Context Analysis

The human rights landscape in sub-Saharan Africa has experienced both advancements and retrogressions over the period between 2005 and 2009. New horizons for the adjudication of human rights have emerged at the regional level with progressive case law arising from the ECOWAS Community Court of Justice and the SADC Tribunal. Through the innovative use of universal jurisdiction, remedies for past violations of human rights have also been secured.

In *Hadijatou Mani Korua vs Niger* the ECOWAS CCJ<sup>3</sup> the state of Niger was found in violation of its international obligations to protect Hadijatou Mani from slavery. This marked one of the first ever slavery cases to be won at the international level. The applicable definition of slavery in this case was derived from the decision in the case of *Prosecutor v Kunarac & Others* at the International Criminal Tribunal for the former

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<sup>1</sup> The agreement was signed in June 2005 but funds were received in October 2005.

<sup>2</sup> The approval for utilizing the funds was received in October 2008 and therefore most of the activities were conducted between October 2008 and May 2009.

<sup>3</sup> ECW/CCJ/JUD/06/08

Yugoslavia (ICTY), which denotes a transfer of international human rights norms and standards developed at the international level to the regional and national levels.

In addition the successful application of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on the Rights and Welfare of the Child and the African Charter on Human and People's Rights denotes the importance of international treaties human rights protection at the regional level.

In *Mike Campbell, William Campbell and 77 Others vs Zimbabwe*<sup>4</sup> a challenge to the Zimbabwe Government's land acquisition policy, the SADC Tribunal held that the Zimbabwe government's land acquisition policy violated article 6 of the SADC Treaty on non-discrimination and article 4 of the SADC treaty which requires member states to act in accordance with the principles of human rights, democracy and the rule of law. Following this decision agents of Robert Mugabe's government criticized the decision in public but ceased the occupation of the land in question. This displays the effectiveness of litigation at the regional level.

A number of elections have taken place on the continent over the last five years resulting in a reduction of the democratic space in Africa, with the exception of Ghana which experienced a smooth power transition in 2008 with a clean bill of health from an election monitoring team under the auspices of the European Union. In Zimbabwe, an impending first round defeat for Robert Mugabe's ZANU- PF by the then opposition Movement for Democratic Change (MDC) was thwarted by calls for a run-off by the Mugabe ZANU PF administration. The run-off election took place amidst state sponsored violence, including torture against the MDC, making it impossible for the opposition to mount a vigorous campaign.

In Kenya, the 2007 election results were disputed resulting in widespread violence characterized by gross violations of human rights. The situation took the intervention of the African Union's Panel of Eminent African Personalities led by former United Nations Secretary General Kofi Annan which negotiated a peace settlement known as the National Accord. The power sharing agreement within the national accord yielded peace and a long term reform agenda but has resulted in an all inclusive executive without the necessary check on the executive which an effective opposition provides. Elections in South Africa yielded a smooth transfer of power and were characterized by an increase in political competition with opposition parties such as the Democratic Alliance (DA) and the Congress of the People (COPE) offering a challenge to the dominant African National Congress.

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<sup>4</sup> SADCT 11/08

In May 2009, Malawi held its fourth post independence multi party elections. According to the Commonwealth Observer Group, the elections, though peaceful were fraught with bias of state media and exploitation of state machinery by the incumbency which created an uneven playing field. The independence of the Malawi Electoral Commission was also questionable given the unilateral appointments by the President.

The African Commission on Human and People's Rights continues to be progressive towards the protection of human rights and provides civil society with a platform for engagement on national and regional human rights situations. The African Court of Human and People's Rights is in its gestation stages and will offer another avenue for the adjudication of human rights disputes. The limiting factors remain the issue of declarations which state parties have issue in order for their nationals to access the Court and the slow pace of cooperation between the African Commission and the African Court with regard to referral of cases.

At the national level, human rights transgressions by states on citizens have been on the rise. In the Gambia, the National Intelligence Agency has clamped down on journalists thus violating the right to freedom of expression. In June 2009, seven members of the Gambian Press Union were arrested and detained without trial for allegedly making critical comments about President Yahya Jammeh. The crackdowns continue causing media workers and those advocating free expression continue to live in fear.

In Ethiopia, the fate of 35 people held by security forces for political dissent remains unclear and are considered to have disappeared. Arrests continue to be enforced against persons perceived to be critical of the government. Family members of opposition personalities continue to be harassed and in some cases tortured. In Nigeria, the impact of military operations in the Niger Delta continue to erode human rights. The ruthless military crackdown on rebel movements have caused massive displacements of women, children and the elderly. In the North, the application of Sharia law has resulted in cruel, inhuman and degrading executions. In Tanzania, the rate of disappearances of persons with albinism is alarming and the response by government to take steps to curb abuses against this minority group has been slow and ineffective.

Thus, opportunities for human rights protection have opened up at the regional and sub regional levels through the REC's, the African Commission and the African Court. At the national level, states continue to clamp down on human rights defenders and activists where they are seen to challenge incumbent governments. Continued vigilance is therefore required for human rights protection at the national level while maximizing the emerging opportunities for protection at the regional level.

## 2.0 HIGHLIGHTS & ACCOMPLISHMENTS.

*"I would like to thank ICJ-Kenya for their continued efforts and concern both in Kenya and outside where they perceive injustices to occur. At this particular time, it would be a great consolation for me particularly in a situation where I consider my fundamental rights are under attack"*

*Mrs. A. Schofield, UK.*

As captured above during the period that AHRAJ has been implementing the phase II of the programme the human rights situation in sub Sahara Africa has changed almost unrecognizably. AHRAJ has endeavored to increase democratic space and also to foster a culture of respect for human rights at the highest possible standards. This is has done through case support where funds have been provided to litigating lawyers or organizations to support the strategic impact litigation of human rights violations using international standards. The programme has also undertaken activities to further its main objective of case support, this case related supportive activities have ensured the improvement in strategic impact litigation and the sharing of best practices which has led to the replication of these best practices. Some of the accomplishments in this regard are reported on below;

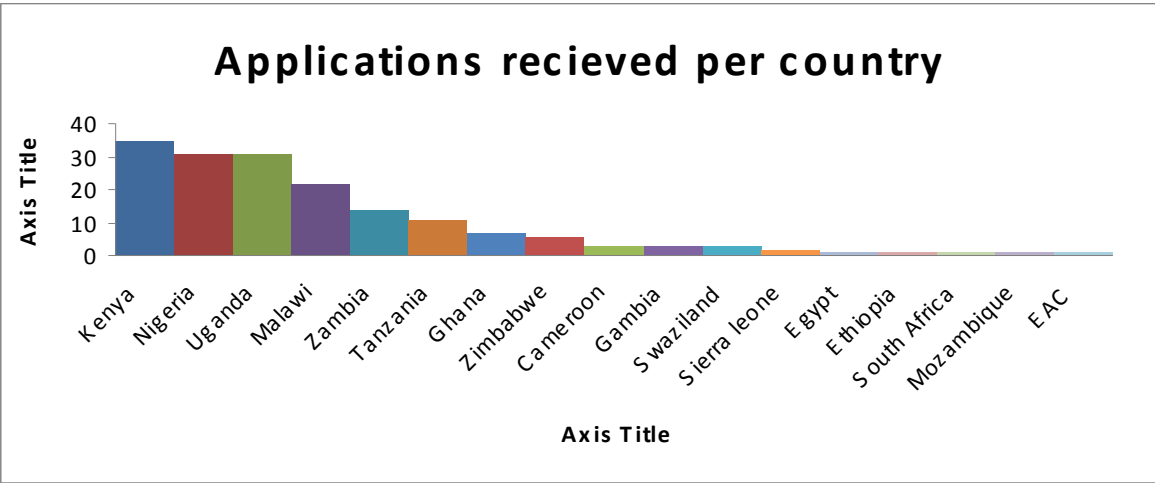
### 2.1 Case support

During the period covered by this report AHRAJ continued to support innovative litigation using national and international mechanisms to tackle entrenched human rights violations in sub Sahara Africa. This support was offered in the form of funding to applicants whose cases qualified the selection criteria set out by the programme.

The support offered encompassed activities such as background researches, pre-trial activities, litigation before national courts, subsidiary or adjunct actions such as trial monitoring, Litigation of the case at the regional level such as the African Commission on human and peoples' rights and other regional tribunals.

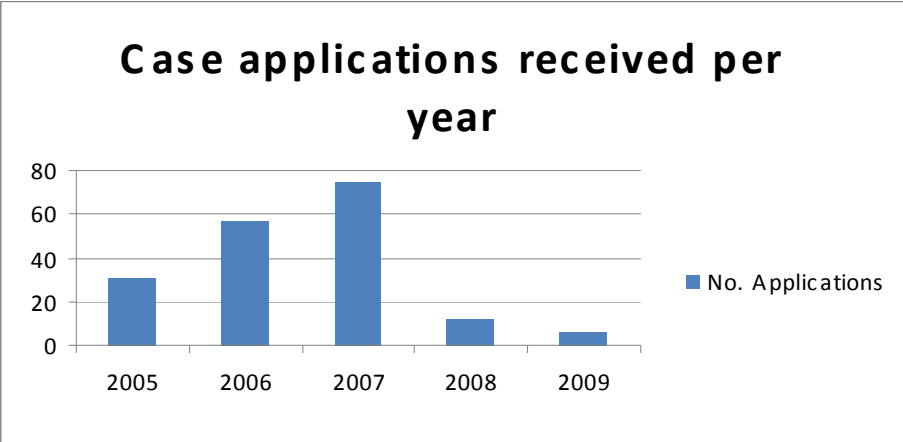
The strategic litigation allowed us not only to secure redress for victims and their families but also to create a culture of compliance among the authorities and awareness among communities of their human rights under international law.

During the period under review AHRAJ received a total of **180 applications** for case support and the graph below represents the number of applications received during the period under review per country.



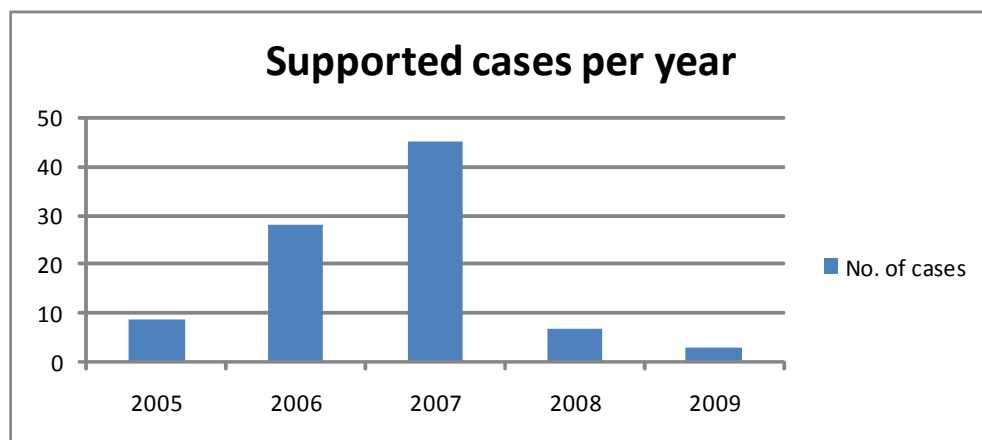
From the preceding paragraphs it is evident that most applications were received from Kenya, this can be attributed to the fact that AHRAJ was implemented from the ICJ Kenya secretariat, promotional activities to raise awareness about the programme were carried out on a continuous basis during the phase as this required minimal funds as opposed to other countries where a budgetary component was required as and when promoting the programme. Nigeria came in a close second and this can also be attributed to the frequent holding of workshops in the country by the programme and also the promotional visits that were made to the country. With regard to Egypt, and South Africa these were not focus countries during the period under review and the minimal engagement is apparent from the number of applications for case support received from them. The East African Law Society (EALS) also made an application for support for a case it was instituting in the fairly new East African Court of Justice (EACJ), this was a great achievement as the evolution of Regional Economic Communities (REC's) has given room for a new impetus for achieving regional justice. AHRAJ therefore foresees further engagement with the various organs of REC's and the organizations that work towards making REC's more effective.

The graph below shows the number of cases received annually during the period under review;



From the above graph it is evident that there was a drastic increase on the number of applications received in 2005, 2006 and 2007. The sharp increase is attributable to the availability of funds without any interruptions as funds were received in October 2005 and the phase came to an end in March 2008. During this two and a half year period the programme was fully staffed with a programme officer, two legal officers and a research assistant. In addition promotional activities to raise awareness about the programme were conducted as planned. The promotion was also complemented by the effective implementation of all activities as per the schedule of activities. This then saw an increase in the number of applications received for case support. The drastic decline in the number of applications received in 2008 can be attributed to the notification to AHRMJ beneficiaries of the impending closure of the phase and the suspension in considering case applications. The programme resumed operation in November 2008 for an extension period of nine months and the funds for case support were limited to 10 cases. The programme implementing team deliberately scaled down on promoting the programme and this then is the reason why there is a further decline in the number of applications received in the year 2009.

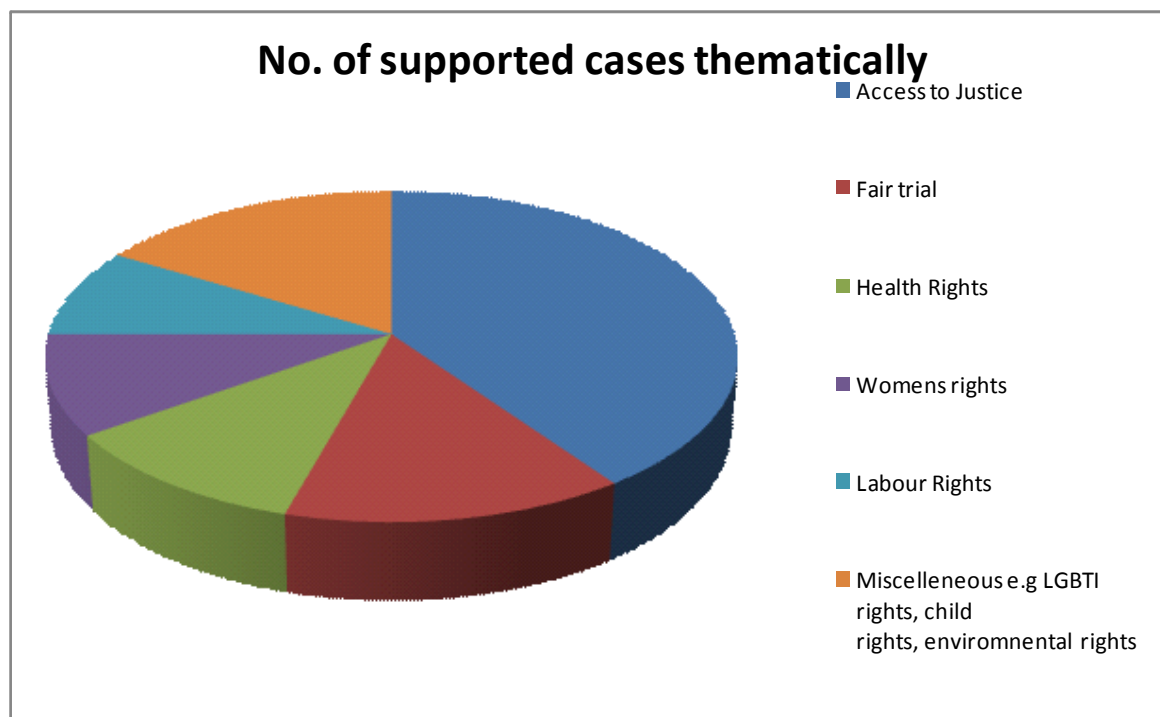
Out of the 180 case applications received **91 cases were approved for support**. The statistical representation of the cases supported per year during the period under review is as below:



The information above also indicates that there was a gradual increase in the number of cases supported in 2006 as compared to 2005 and in 2007 as compared to 2006. In 2007 the programme fell short of meeting the target of supporting 50 cases just by 5 cases. The improved efficiency in case support is attributable to the programme performing at its optimal due to uninterrupted availability of funds and adequate staffing. In 2008 and 2009 the funding was uncertain and the funding was interrupted. The target of cases to be supported was also reduced in 2008-2009 to 10 cases.

The supported cases fell on four thematic areas; fair trial, access to justice, women rights, labour rights, health rights and the miscellaneous category that catered for rights such as child rights LGBTI rights and

environmental rights. Most of the cases were related to access to justice issues. The chart below represents the distribution of supported cases in the thematic areas;



Most the supported cases were accompanied by a well researched legal opinion prepared by an expert on behalf of the litigating advocate and the advocate used it to prepare their submissions for the case.

Of these cases several favorable decisions were received and even where the decisions were not favourable the AHRAJ team was successful in raising awareness in the countries and within the affected communities of the human rights available to them.

### 2.1.1. Select favorable decisions

Some of the favourable decisions are captured below in brief;

#### ***Uganda: Enforcement of right to privacy for LGBTI activists. (Yvonne Oyoo and Juliet Mukasa v. the Attorney General).*<sup>5</sup>**

In 2007 AHRAJ received an application to support the case of two LGBTI activists in Uganda. The case arose out of Illegal search of the home of Juliet Mukasa (the activist under the Sexual Minorities of Uganda-SMUG) without a search warrant and unauthorized seizure of items from the house amounting to trespass and theft, the Illegal arrest of Yvonne Oyoo, guest found in the home at the time of the raid, and inhuman and degrading treatment amounting to sexual harassment and indecent assault. The case was filed as a civil case for

<sup>5</sup> This case attracted immense attention from the media and the proceedings were constantly being followed by the media.

enforcement of rights guaranteed in the Bill of Rights. The High Court rendered a judgment in December 2008 declaring the acts of the security forces to be illegal and in contravention of the rights of the two LGBTI activists. This judgment was well celebrated by the Ugandan LGBTI community who are constantly facing ridicule and harassment especially from the government. The government has appealed the decision and it is hoped that the court of appeal will be as courageous as the High court judge in rendering their judgment.

***Malawi: Mandatory Death Penalty provisions declared unconstitutional (The Francis Kafantayeni vs. Attorney General)***

The advocates challenged the accused's conviction by instituting a constitutional reference in the Constitutional court challenging the constitutionality of the mandatory death penalty as it interfered with judicial discretion in deciding cases and it interfered with an accused person's right to fair trial. The court was of the opinion that the mandatory death sentence denies the accused as a convicted person his or her right to have the sentence reviewed by a higher court other than the court that imposed the sentence and they held this was a violation of the right to a fair trial which in its opinion extended to sentencing. The effects of this judgment have been that murder convicts can now mitigate before their sentencing. This decision was celebrated in the Sub Saharan region and as a result of it advocates from other countries have filed similar cases to try and achieve this milestone, such countries include Zambia and Nigeria.

***Kenya: The court declared the dismissal of a HIV positive employee was an unfair dismissal and compensation was awarded (JAO v Home park caterers).***

A widow instituted a case in 2003 demanding compensation from her former employer- Home park caterers and the hospital that had conducted the tests without her consent, alleging that she had been dismissed due to her HIV status. Though this case was settled out of court the court made declaratory orders that testing an employee or a prospective employee without their informed consent is unlawful and constitutes invasion of privacy. In addition that termination of employment only on grounds of employees HIV status is unlawful. This case set a precedent in Kenya's history as no one had ever approached the courts for unfair dismissal on grounds of their HIV status. The case also attracted a lot of media attention especially during the hearings<sup>6</sup>.

***Kenya: Extraordinary renditions held to be in violation of victim's constitutional rights (Mohamed Abdul Malik vs the Attorney General).***

In 2007 Abdul Malik a Kenyan citizen was arrested by Kenya security agencies on suspicion of terrorism and later rendered to Guantanamo Bay (Cuba) and placed under the custody of the United States Government. On

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<sup>6</sup> See, Annex 2 for a newspaper cutting on the same.

26<sup>th</sup> March 2007 the US Department of Defence issued a statement acknowledging the presence of Abdul Malik in Guantanamo Bay.

A Habeas Corpus application was made in the High court of Kenya requesting the court to order that the Kenyan Government authorities produce the body of Abdul Malik or show cause why he should not be released forthwith. The court in considering the application observed that the Kenyan government had placed themselves in a position that made it impossible for them to produce the accused before the court, having rendered him to another jurisdiction. The judge therefore observed that a Habeas Corpus order would be in vain and the court could not make such an order. However the court went further and considered the issue of fidelity of the constitution and observed that by taking the subject out of the jurisdiction of the Kenyan courts without observing due process in the transfer, the subjects constitutional rights had been violated and indeed the government had committed a constitutional and legal wrong against him, the judge then recommended that the applicants make a suitable constitutional application in the High Court.

***African Commission: Zimbabwe Human Rights NGO Forum vs. Communication 295/04***

This case filed with the African Commission on Human and Peoples' Rights addressing torture by military police in Zimbabwe. Since the advent of the decade human rights violations in Zimbabwe have caught world attention and various human rights organizations (including ICJ Kenya) have visited and made fact-finding missions to assess the degenerating situation. These intensified further during the campaign period and before the March 2008 elections and was widely captured in the media. The African Commission was deeply disturbed by the developments and in its decision ordered the government of Zimbabwe to stop the violations.

***East Africa Court of Justice: East Africa Law Society & 4 others v AG of Kenya & 3 others***

This case was instituted with the East Africa Court of Justice challenging the manner in which amendments had been made to the East African Treaty to suit the needs of Kenya in its judgment the Court;

1. Agreed with us that the amendments violated the Treaty, in procedural terms, and also infringed several provisions of the Treaty substantively;
2. BUT, they applied the principle of prospective annulment to preserve all the amendments;
3. Then went ahead to criticize the contents (the substantive effect) of the amendments, but instead of nullifying them, made a plea to the States Parties to consider "re-re-amend" them in (any) future Treaty reform exercises.

**2.2 Case Related Support.**

During the period under review AHRAJ continued implementing activities that complemented its core objective of case support. These activities included Promotional visits aimed at raising awareness about the

programme and spurring case applications for support, Trial observation and monitoring, Fact finding missions, Capacity building workshops and Research and documentation. In 2008es that was to be conducted when phase II of the programme was extended one of the main activities that was to be conducted was a baseline survey that would inform the interventions of the next phase. In addition this extension was to serve as a period where the programme would phase out the role of ICJ Sweden in order to have the programme run solely by ICJ Kenya in the next phase. In preparation for this a lot of organizational capacity building was planned targeting both the programme staff at the secretariat and the organization as a whole.

### **2.2.1 Promotional Visits**

#### ***In 2006:***

Promotional visits were conducted all through the year by the programme staff with different countries being visited. The staff targeted institutions that they had not worked with but also the ones they had worked with to encourage them to research on human rights violations in their countries that could be remedied through strategic impact litigation.

#### ***In 2007:***

The programme begun in earnest in with promotional visits being conducted in February in all focus countries in the three regions that is, East, West and Southern Africa. The Programme Officer and the two legal officers took a region each and the country visits were conducted consecutively in order to cut down on costs especially for the travel. As a result of the strategic raising of awareness about the programme early in the year there was a sharp increase in the case applications received in 2007 as shown earlier in this report.

#### ***In 2008 & 2009:***

In both years the programme has begun the year with anticipation of the phase coming to an end therefore no promotional visits were deemed necessary as case support was suspended until there was certainty in the future about availability of funds especially for case support.

### **2.2.2 Trial Observations and fact finding Missions**

ICJ Kenya's successes across its various fields of activity reflect an understanding of the need for an independent and comprehensive capacity for monitoring human rights abuses in the regions. During the period under review, several expert fact-finding missions were conducted in sub Saharan Africa and we also pioneered trial observations in the region. These underpin our litigation work, especially in the promotion of fair trial standards.

The fact finding missions targeted countries with poor human rights record and where the prevailing circumstances required an immediate action for verification of facts on the ground which will inform on the best strategy to be adopted in addressing the same. Where cases had been supported and there was poor implementation of court decisions, such missions were used to engage policy makers as an alternative strategy. AHRAJ undertook the fact finding missions in conjunction with local and International partners. Trail

monitoring for human rights cases was also carried out and these were used to ensure that sensitive human rights cases were highlighted.

***In 2007 AHRAJ:***

- ❑ In conjunction with the International Commission Jurists (ICJ Geneva) the executive director conducted a fact finding mission in June 2007 in Zimbabwe following the persecution of human rights defenders in the country and recommendations were made in a communiqué to the government for the observance of human rights.
- ❑ Conducted two case based fact finding missions one relating to the human rights situation of child soldiers in Northern Uganda and the other on environmental degradation and violation of labour and health rights at the Kenyan Coast by salt manufacturing companies. Both Missions were subject to cases being supported by ICJ Kenya.
- ❑ Conducted 3 trial observations. These included cases with a mandatory death sentence especially treason cases from the Gambia, and Uganda. The Uganda trial observation was conducted in conjunction with the International Commission of Jurists (ICJ), in the case of Dr. Kizza Besigye and 22 others, the hearing was temporarily stopped after the paramilitary/security agencies held a siege of the High Court, which act was largely condemned in Uganda and internationally. Also in November ICJ Kenya observed a case challenging the Statutes establishing the East African Community brought before the East African Court of Justice.

***In 2009 AHRAJ:***

- ❑ Conducted a trial observation in April for case 242 an AHRAJ supported case that is before the committee of experts on the Rights of the Child. The AHRAJ programme officer attended the session of the committee of experts on the Rights of the Child. This was the first case to ever be referred to this committee and the legal team had to play the crucial role of developing the rules of operation for the committee which were nonexistent and the committee adopted the rules as developed by the legal team in this case.

### **2.2.3 Workshops**

During the period under review AHRAJ continued to bring together advocates supported under the programme with the aim of building their capacities in strategic impact litigation under the various thematic areas that the programme focused on. These activities also played a critical role not only in raising awareness about the programme but also in providing a platform for the successful sharing of best practices from different countries which led to replication. For example after the successful litigation in Uganda against the provisions for the mandatory death penalty, Malawi also instituted a similar case which was successful and

Nigeria has since instituted a similar case which is ongoing. Having learnt from its past experiences the programme also deliberately tried to pull resources with organizations sharing a common objective in order to pull a better diversity of participants and to enhance the synergy of expertise.

During the period under review AHRAJ organized the workshops detailed below either alone or in cooperation with other organizations.

**In 2006:**

□ ***June, AHRAJ held the East Africa Regional Workshop in Addis Ababa, Ethiopia.***

The workshop focused on the themes of access to Justice and fair trial. The participants concentrated on particular cases around specific issues that highlight the challenges of researching, pleading and prosecuting international standards in extension to or contradiction of domestic standards, and generating and enforcing remedies. In addition, the differences in legal system and culture from the common law, to civil law to others, allowed for rich discussion around how lawyers have responded to limitations or taken advantage of opportunities to plead, argue and enforce a particular standard. This exercise will also formulate a comparative law area, where participants can formulate and identify some key human rights principles and case projects to undertake.

□ ***October, AHRAJ organized the West Africa Regional Litigation Workshop held in Accra, Ghana.***

AHRAJ in conjunction with the Center for Public Interest Law (CEPIL) in held a three day workshop which involved an examination of substantive and procedure law relating to fair trails and criminal justice rights. It will draw on comparative regional and international experiences including an examination of the gaps that exist in fair trails and criminal justice rights in domestic law and international legal standards and the examination of comparative domestic judicial approaches to fair trial and criminal justice rights in the light of international legal standards.

□ ***August, convened the Southern Africa Regional Litigation Workshop on the Right to Health hosted in Windhoek, Namibia.***

The workshop was premised on state responsibility to **respect** and **ensure** the protection of human rights under the ICCPR while they have the obligation to **respect, protect** and **fulfil** human rights standards under the International Covenant on Economic Social and Cultural Rights (ICESCR). Key in the discussions was a communication at the African commission in the year 2002. The finding of the African Commission was that there was a violation of the right to enjoy the best attainable standard of physical and mental health by the Federal Republic of Nigeria, on account of violations against the Ogoni people in relation to the activities of oil companies in the Niger Delta. Strategies for the replication of this decision at the national level were discussed. In addition it was found that most African Constitutions have provisions that include the right to health or the right to health care, while others include health-related rights, such as the right to reproductive health care, the right of persons with disabilities to material assistance, and the right to a healthy

environment. Further, a large number of constitutions set out state duties in relation to health, such as the state duty to develop health services, from which it may be possible to infer health rights entitlements.

□ **November, the 9<sup>th</sup> International Litigation Workshop was convened in Banjul, Gambia.**

The workshop aim was to conduct a: *'A critical assessment of Public Interest litigation strategies in Africa'*. The workshop sought to equip participants with the knowledge and skills to effectively use strategic litigation as a tool for the domestication of international human rights standards especially at the African Court on Human and People's Rights. The workshop analyzed and assessed strategic litigation cases in the area of labour rights, access to justice, health and HIV Aids, women's rights and fair trial and developed best practice tips. Participants also reviewed the impact of strategic litigation in their various jurisdictions, and assessed whether strategic litigation has lead to legislative reform, behavioral change or domestication of international human rights standards and how the impact of strategic litigation be increased or improved. On the basis of best practices shared, participants were able to improve their capacity for litigation before regional tribunals.

**In 2007:**

*'Workshop is based on reality with a practical audience and academia'*

*Evaluation comment by an AHRAJ participant.*

□ **March, the East African Regional Litigation Workshop on Labour Rights was held in Dar es Salaam, Tanzania.**

At this workshop the theme of Labour Rights was addressed. At the time AHRAJ had supported a number of cases on labour rights in the East African region. Most of these cases had emanated from Kenya and Uganda. Cases on labour rights were yet to be supported in Tanzania. However, several case support applications on labour rights had been received from Tanzania. AHRAJ has also commissioned legislative opinions on labour rights in Kenya and Uganda. With this background, the strategic meeting sought to develop strategies for use by lawyers in litigating labour rights in East Africa by discussing three case studies of cases previously supported by AHRAJ, with participants discussing the rationale for supporting the said cases, the international human rights standards applicable in the said cases, the litigation strategy employed, and the impact, or possible impact on the said cases. The participants also discussed possible strategies in the ongoing cases.

□ **May, the 10<sup>th</sup> International Litigation Workshop was held in Nairobi, Kenya.**

The 10<sup>th</sup> International Litigation Workshop aimed at equipping participants with the knowledge and skills to effectively use strategic litigation as a tool for the domestication of international human rights standards especially at the tribunals available at the national, regional, sub-regional and international level. The workshop also gave participants an opportunity to review recent human rights jurisprudence from East, Western and Southern Africa and review case studies from the International arena.

The workshop was held at a time when human rights violations were rife in Zimbabwe especially targeting Lawyers and human rights defenders as a result of the government outlawing campaigns for the general elections that were approaching. At the same time the President Mugabe of Zimbabwe was attending a heads of States meeting in Nairobi and the participants at the ILW developed a communiqué setting out the issues and demanding action by other countries such as Kenya. The communiqué was presented at a press conference and aired in national and international media.

□ ***May, AHRAJ convened the Annual Forum was convened in Nairobi, Kenya.***

The annual forum was held immediately after the 10<sup>TH</sup> ILW and it sought to create an interface or entry point for the ICJ Secretariat and members in and outside Africa into AHRAJ's work and vice-versa, and the borrowing of the expertise and resource available in the ICJ global family to develop AHRAJ's own capacity and ICJ activities in Africa. The main outcome of the Annual forum was the evaluation of progress since the last forum and the continued consultations which led to the mapping the human rights issues in Africa and possible legal intervention strategies for AHRAJ.

□ ***June, Southern Africa Regional Women's Workshop was held in South Africa.***

The workshop titled 'Advancing Women's Rights in Africa – Consolidating Gains' gave women's rights defenders an opportunity to undertake a self-assessment of the gains achieved in the fight for women's rights in Southern Africa. The participants also undertook a comparative analysis of women's rights in Southern Africa and formulated comprehensive litigation strategies to enforce the right of women to access property, reproductive rights, freedom from discrimination and the right to equality. The workshop also doubled up as a capacity building initiative to assist in the propagation of women's rights throughout Africa.

□ ***November, West Africa Regional Litigation Workshop on the Death Penalty was held in Lagos, Nigeria.***

Discussions held on comparative approached to anti death penalty litigation in Africa showed that in order to successfully litigate against the death penalty in West Africa, particularly in Nigeria, there needs to be a refined creative approach by lawyers concentrating specifically on the mode of execution and the breach of judicial discretion. It was further noted that in Nigeria, total abolitionism is unrealistic and is considered political suicide. Therefore, the strategy is to systematically chip away at mode of execution and Judicial discretion. Strategic litigation efforts should be complemented by a separate activist strategy combining civil society lobbying in combination with the above legal strategies.

□ ***December, the 11<sup>th</sup> International Litigation Workshop on Access to Justice, was held in Accra Ghana.***

The workshop built on past themes and focused on assessing positive jurisprudence from the African Commission and regional courts with a view of developing strategies for the enforcement of positive human rights obligations placed on states as a result of regional and continental jurisprudence. Further, the workshop also helped the African lawyer to seek practical application of the jurisprudence generated for the advancement of human rights in Africa.

## In 2008:

*'I liked the sharing of case law and experiences of various Human Rights issues'*

*Evaluation comment by a participant.*

### □ **February, the 12th International Litigation Workshop was convened in Stockholm, Sweden.**

The workshop aimed at reviewing *'the Challenges and Opportunities for Human Rights Litigation in Africa'*. Participants including Uganda LGBTI activist, Victor Juliet Mukasa shared their experiences on human rights litigation and advocacy on LGBTI rights in Africa with participants from the Gambia, Zimbabwe and Swedish NGO representatives. Victor Mukasa's presentation was highlighted by the Swedish media.

### □ **March, the East Africa Regional Litigation Workshop was held in Arusha, Tanzania**

ICJ Kenya (AHRAJ) co-organized a roundtable two- day seminar together with the Foundation for Human Rights Initiative (Uganda) and the East Africa Law Society (Arusha) – as members of the Coalition for an effective African Court on Human and Peoples' Rights (The Coalition). The meeting brought together a select group of participants who desired to see the existence of a functional, effective and strengthened Court. The group brought together some of the elected judges to the Court, public interest litigation organizations and human rights organizations, members from the sub-regional courts, members from the African Union (A.U.) Commission and representatives from key diplomatic missions at the A.U. Commission.

### □ **November, the 13<sup>th</sup> International Litigation Workshop was convened in Abuja, Nigeria**

This workshop was **held alongside the 44<sup>th</sup> Ordinary Session of the African Commission on Human and People's Rights**. The objective of the workshop was to interrogate the jurisprudence of the African Commission on Human and People's Rights and the judicial organs of the Regional Economic Blocs (including the ECOWAS Community Court of Justice, the SADC Tribunal and the East African Court of Justice) with the view to developing legal advocacy strategies for the enforcement of the human rights decisions of these tribunals.

Participants made various presentations to the on the related topics, triggering debate as to the most suitable strategies for regional human rights decision enforcement at the national level from the point of view of their jurisdiction or jurisdictions in which they have undertaken previous human rights work.

## In 2009:

*"I must say that I have benefited immensely from AHRAJ seminars since the days when Winluck was the coordinator and your last meeting in Abuja, last year was wonderful, the experience sharing and the materials given to us was simply great. I urge you to keep it up."*

*Mr. A. Akinbode, Nigeria*

### □ **January, Southern Africa Regional Litigation Workshop Cape town, South Africa**

Together with the International Gay and Lesbian Human Rights Commission (IGLHRC), Global Rights and the International Center for the Legal Protection of Human Rights (INTERRIGHTS), ICJ Kenya held a Legal Strategy

Meeting for Protecting LGBT Rights in Africa. The workshop brought together LGBT activists, lawyers, scholars and NGO's to share experiences on anti discrimination litigation. Strategies for engaging regional organs such as the African Commission on Human and People's Rights on LGBTI rights were discussed.

□ **May, 45<sup>th</sup> Ordinary Session of the African Commission on Human and People's Rights.**

AHRAJ staff followed up the recommendations of legal strategy meeting held in January during the 45<sup>th</sup> Ordinary Session of the African Commission on Human and People's Rights during which ICJ Kenya made a statement seeking the censure of Uganda and other African states for violating the rights of LGBTI human rights defenders. The report of the session culminated in the first ever discussion of LGBTI rights by an organ of the regional human rights protection system in Africa.

## **2.2.4 Research and publications**

AHRAJ has endeavoured to showcase its work and to provide resource materials to different stake holders. During the period under review the programme introduced the publication of a case book series which captured cases litigated on and the litigation strategies employed. In 2007 volume 1 of the case book was published, in 2008 volume 2 was also published and in 2009 Volume 3 is currently with the publishers and it will be launched in two weeks time. The programme also developed and disseminated the AHRAJ newsletter on a quarterly basis.

## **2.2.5 Baseline Survey**

As earlier indicated during the no cost Extension Phase (2008-2009), AHRAJ conducted a baseline survey of the eleven focus countries in which it intends to implement the next phase of the program. The phase three target countries which were the subject of the baseline survey were Tanzania, Uganda, Nigeria, Zimbabwe, Ghana, Ethiopia, Kenya, Rwanda, Malawi, Sierra Leone and Zambia.

### ***In 2008 & 2009:***

The baseline survey was conducted by a team of consultants backed up by the AHRAJ programme staff. The team collected data from the network partners in the target countries, compiled, analyzed and generated a baseline report to inform best practices for the implementation of Phase III of the AHRAJ programme. The baseline survey was rolled out in November 2008 and a draft report, on the basis of the research conducted was compiled May 2009. The report is currently being edited. The baseline survey was conducted on the basis of benchmark indicators, key evaluation questions to survey tools formulated by the consultants in conjunction with AHRAJ programme staff. Following this formulation, the baseline team and came up with an appropriate data collection methodology. The core objective of the baseline survey was to review and analyze the status of access to justice sector institutions vis- a- viz , the police, prison, prosecution and courts in terms of human resource capacity, infrastructure and perspective of the need to dispense justice to benefit the marginalized communities.

## ***Findings***

The key finding of the baseline survey was that marginalized people in all the countries in which the study was implemented feel seriously constrained with regard to access to justice. The experience/feeling was similar across marginalized groups and across countries.

The baseline survey also found that all the countries represented in the study do not take international conventions and treaties as seriously as they should. For some, it was failure to ratify the treaties but more critically failure of their respective legislatures to adopt them in the local laws. Even where local laws give provision for application or at least consideration of the treaties by courts of law once ratified (such as is the case in Ghana and Rwanda); the judiciary has not shown enough enthusiasm to apply. When a local law conflicts with an international instrument the local law prevails in the dualist states and can only effectively apply an international law only if domesticated through local laws.

Tanzania was the only exception where the reluctance by the legislature to formally adopt into national laws international human rights instruments has not deterred the courts from applying human rights principles in key judicial landmarks. Previously such a trend was confined to a few liberal justices, but increasingly the practice is becoming more prevalent with the highest courts in Tanzania demonstrating a respectful level of judicial activism with regards to the first generation rights but less so matters involving the rights of women, not just as individuals but as members of a group e.g. Muslim women and inheritance rights.

### **2.2.6 Organizational Capacity Building (2008-2009)**

One of the core activities planned for the extension phase was a deliberate organizational capacity building for ICJ Kenya, in order to equip it with the necessary capacity to run the programme independently in the next phase of the programme. In order to identify the weak capacity areas AHRAJ held a programme planning meeting in October 2008, where a number of capacity gaps were identified within the programme and the organization as a whole. The AHRAJ staff members have so far been able to attend and participate in the following training between November 2008 and June 2009.

1. Project Planning Monitoring and Evaluation
2. Information Management System
3. Electronic Data Recording
4. Training on Logical Framework Approaches
5. Finance training for non finance officers
6. Monitoring and Evaluation

## 7. Strategic Finance Management

## 8. Learning Excursion for the Governing Council.

The entire staff at ICJ Kenya have also benefited from training on Finance for non finance officers. The training was conducted by The Christian Organization for Research and Advisory Trust of Africa (CORAT Africa). Staff members appreciated the training which contributed in enhancing the day to day efforts in budgeting, budget tracking and reporting for the respective programmatic interventions at the organization level. It is worth noting that this training focused on the entire programme staff at the ICJ Kenya.

Gaps were also identified in Monitoring and Evaluation of project activities. Training on Project Planning Monitoring and Evaluation was facilitated by the Foundation for International Development for Africa (FIDA) where four staff members were trained. The training objective was to equip the programme staff with expertise on how to assess systematically and objectively the relevance, performance and success of ongoing and completed project activities. The training focused on areas and methods required in developing monitoring and evaluation systems. We have since the training adopted a number of monitoring tools for all our programmes.

In addition AHRAJ staffs were trained on Logical Framework Approach which was conducted by Kari Ortengren and was a great success. The programme staff members now appreciate the use of Logical Framework in all the applications. The LFA brought out the need to identify problems and gaps in a certain sector of society, enabling the selection and setting priorities between projects. Planning and implementing development projects effectively and follow up also came in very strongly.

The Finance Manager was also trained on Strategic Financial Management. The overall objective of the course was to build the capacity of the Finance Manager to manage for financial sustainability of the ICJ Kenya. The training went further to develop the skills and confidence of the staff to manage the strategic aspects of finance. The training focused on financial risk analysis, donor dependency versus diversification of funds, integrating financial management into operational management. The training was offered by the Management Accounting for NGOs (Mangos). It is hoped that the staff will be able to apply project costs centers in strategic financial management of the ICJ Kenya.

The Information Management System was undertaken by two staff members. The training focused more on management strategies and less on technical issues. The training has assisted the staff in understanding information challenges in the organization and working out solutions to enhanced information management at the organization level. The staffs are now able to continuously develop and maintain the various institutional databases. Work on the development of a user friendly database under the programme has

already begun which will make the retrieval of documents very easy. Since the training a policy on filing for the entire organization has been developed.

The governing council of ICJ Kenya being the policy making body of the organization, attended a five day Capacity Building Excursion that was organized in partnership with the International Crime in Africa Programme (ICAP) at the Institute of Security Studies (ISS) in South Africa. The Team was able to meet and borrow best practices in strategic management, policy direction and guidance in running the various programmes at the ICJ Kenya. Some of the organisations visited included Electoral Institute of South Africa (EISA), The South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC), Department of Justice and the National Prosecuting Authority (NPA), Special Investigation Unit (SIU) amongst others. The meetings were successful and we hope that the best practices obtained from these organizations will eventually translate in the growth of the ICJ Kenya.

ICJ Kenya has in place a staff development policy where staff members are encouraged to acquire and new skills whenever possible. The courses undertaken so far will greatly enhance the capacity of the staff to deliver efficiently. In future ICJ Kenya will endeavour to put aside funds for continued capacity building for the governing council and the entire staff.

### **2.2.7 Programme Management.**

During the period under review the programme continued being implemented by ICJ Kenya with ICJ Sweden offering technical assistance and guidance in the implementation. The Executive Committee (EXCO) continued to act as the oversight mechanism offering guidance on various issues that the programme management team was uncertain about in addition to approving the plan of activities. EXCO met bi-annually and during this period seven meetings were conducted. In addition to this, monthly PMT meetings via teleconference were held between the AHRAJ and ICJ-Sweden programme teams.

ICJ Kenya and ICJ Sweden have strived to ensure that during phase II the AHRAJ was adequately staffed but this was not always the case. High staff turnover has remained an ever present challenge especially in during the periods when the sustainability and availability of funds was uncertain. During the period ICJ Kenya has had five staff members dedicated to the programme leave especially in circumstances where the possibility of future funding was unclear and ICJ Sweden has also had a turnover of 3 staff working in AHRAJ.

## **3.0 OUR IMPACT**

During the period under review, case support offered by the programme increased exponentially especially in the first two years. The programme also diversified the thematic areas of support and got to support emergent human rights violations such as extra-ordinary renditions and LGBT rights.

Several cases supported were also finalized during the period under review and with favorable judgments. In Uganda and Malawi, the mandatory death penalty was declared unconstitutional and as a result of sharing this experience similar cases were instituted in Zambia and Nigeria and they are currently ongoing. In Kenya the court declared the practice of extra ordinary renditions to be unconstitutional.

In Uganda the court declared that the practice of illegal searches targeted at members of the LGBTI community amounted to a violation of fundamental rights and more specifically the right to privacy. During the 45<sup>th</sup> Ordinary Session of the African Commission on Human and People's Rights ICJ Kenya made statement concerning violations against LGBT human rights defenders in Uganda and other jurisdictions Africa. This statement led to the first ever recognition of LGBT rights by the official organs of the human rights protection system in Africa. Indeed, a paper titled *Sexual Orientation in Africa* was discussed during the Commissions private session. This is documented in the final communiqué of the 45<sup>th</sup> Ordinary Session of the ACHPR.

In The Gambia a lot of awareness was raised about the illegality of trying civilians in military courts (courts martial) and this made the government soften its stance over the issue and even though the cases were determined by the military court, the sentences were scaled down. In Kenya, discrimination by employers to employees who are HIV positive and the practice of compulsory medical examinations that were used to discriminate against HIV positive employees was declared unconstitutional. An employee who had been summarily dismissed after being found to be HIV positive through the compulsory testing system was awarded compensation in the AHRAJ supported case of JAO vs Home Park Caterers. This case received a lot of media coverage<sup>7</sup> as it was seen to go a long way in elevating the plight of workers.

The capacity building initiatives such as workshops have benefited a wide range of stakeholders such as judicial officers, advocates, human rights defenders, human rights organizations and in some instances government officials. The workshops have created a platform for spearheading the use of strategic impact litigation to address human rights violations. The workshops have also provided an opportunity for the sharing of best practices especially where litigation has been successful and spurring interest in other participants to try out the same approach in their countries if facing similar problems as those that were litigated on by their counterparts.

These meetings have also led to the creation of several networks that have been crucial pushing for access to justice issues collectively and strengthening national and regional judicial systems.

## 4.0 CHALLENGES

The effort to promote and protect human rights through strategic litigation has its challenges.

### *Interruptions of the funding phase*

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<sup>7</sup> See newspaper cut out in annex 2

The coming to an end of Phase II in March 2008 largely negatively impacted on AHRAJ failure to respond to the unfolding human rights situations in many of the focus countries. The AHRAJ contractual obligations with Sida dictated that no commitments for case support be made after the funding phase came to an end and no feedback was received until the request for extension was negotiated and approved in September 2008.

AHRAJ had a very productive year in 2007 having supported all the cases as undertaken in the consortium Agreement and the sudden stop in March made it impossible to improve of the momentum that had been gained over the phase. This was somewhat remedied during the extension phase when case support resumed albeit on a much smaller scale.

### ***Capacity building***

AHRAJ has had the history of not operating at its optimal level and the request for extension was indicative of this. The inability to adequately utilize the funds was attributed to the lack of adequate staffing which is usually influenced by different factors such as a high turnover in the ICJ Kenya and ICJ Sweden secretariats. However since the second half of 2006 to now there has been some stability in this respect and there has been remarkable improvement in the effective implementation of the planned activities with 2007 recording almost 100% implementation for planned activities. In addition in an effort to remedy this then ICJ Kenya in October 2008 undertook a programmatic capacity assessment together with ICJ Sweden where critical capacity gaps that need strengthening within the AHRAJ secretariat were identified. A detailed capacity building plan was then prepared to inform the necessary interventions such as trainings that would ensure proper planning, communication, human resource, governance and management skills were enhanced as well as addressing other factors relating to institutional strengthening of ICJ-K to be able to use all available resources effectively and timely. Towards this AHRAJ has undertaken a comprehensive capacity building through various trainings.

### ***Advocacy strategies***

Following the programme evaluation conducted within Phase II, the impact of the programme in terms of documentation and tracking of results is very weak largely due to a capacity gap in advocacy skills upon achieving successes in the various programme activities. There is little documentation and follow up of programme impact with the beneficiaries of the programme having scattered information and feedback without a centralized system of information management at the secretariat. This has delayed case support as well as case-related support and cost the programme good image and replication of best practices. To this end the programme and the organization as a whole have undergone training on Monitoring, Evaluations and Learning, and as a result the organization has begun institutionalizing processes and procedures that will ensure its impact is documented in an accessible way and where lessons learnt will be followed up to ensure the optimal impact of all its programmes.

### ***Media strategy***

AHRAJ has had a weak media strategy on how to engage and disseminate information generated within the programme. Several high impact activities have been undertaken within the programme but there seems to be very little concrete follow up after the event. The synergy losses are immense and the need to harmonise the various publicity initiatives has been wanting. The capacity development plan has identified this challenge which and incorporated it to ensure a media strategy is identified and followed up within every programme activity to ensure clear linkage with advocacy, communication and tracking of results.

### ***Sustainability***

Sustainability of AHRAJ within the larger ICJ-K sustainability continues to be a challenge that has to be addressed as capacity gaps are addressed. The institutional effectiveness will also impact on various aspects of how sustainability is addressed for all programmes being undertaken as well as the future engagement with various partners. Resource mobilization and implementation of various programmes require planning in advance to ensure all gaps are identified and adequately addressed. Within this challenge, AHRAJ has undertaken the initiative to invest in capacity building which will also factor in sustainability concerns within the short and long term agenda incorporated in the plan of activities as a programme and within ICJ-K Organizational Capacity Assessment.

### ***Judicial ineffectiveness and Government interference and lack of enforcement of decisions***

The essential role of judges and lawyers in safeguarding the rule of law and human rights in the region continue to be threatened by a wide, range to crises, including public emergencies, armed conflict, political instability, terrorism and social, economic or financial upheaval. This in most cases has threatened the independence of the judges and lawyers, and guarantees of fair administration of justice, including the right to a fair trial and effective remedy. The enforcement of decisions by regional tribunals at the national level has been fraught with challenges where incumbent governments are the subject of a decision by a regional tribunal. Governments still continue to ignore and refuse to enforce judicial decisions and the principles of separation of powers and the independence of the judiciary remain invulnerable in times of crisis. Ineffective national judiciaries also slow down the progress of cases where there is a lack of pressure from the public and media.

AHRAJ in collaboration with other partners especially the ICJ international secretariat, other peers like INTERIGHTS, the International Gay Lesbian Human Rights Commission (ILGHRC), beneficiaries and other civil society groups in a fostered campaign to seek the strengthening the integrity of the judicial system towards maintaining of a just and democratic society, and in times of crisis to have the legal fraternity taking particular responsibility to ensure its protection. The case of Zimbabwe remains our biggest challenge. However, these challenges have been managed effectively. Through the incorporation of media, lobbying and advocacy, pressure has been mounted upon judiciaries to make decisions in cases which would otherwise have been frustrated by inactive judiciaries.

### **Communication**

Internal and external communication has been a big challenge to AHRAJ, requiring both technological support and personal level capacity enhancement. Logistical and financial challenges have been witnessed in regional litigation where the complexity of getting litigation teams from different parts of the continent to the seat of the tribunal has been expensive and time consuming especially when adjournments occur. However, through continuous communication and engagement with the officials of the regional tribunals and NGO's based in the countries where these tribunals sit, a measure of predictability about the logistical challenges has emerged thus limiting the risks. AHRAJ has also developed a detailed communication policy with comprehensive Operational Guidelines to deal with internal communication challenges and also scheduled a clear information management system to ensure all external communication is handled from a centralized system and effectively handled as and when feedback is required. In addition ICJ Kenya envisages the employment of a communications officer to assist with the centralization of all communications this is one of the additional roles visualized in AHRAJ Phase III.

## **5.0 LESSONS LEARNT**

Through the process of case support and case related support, the AHRAJ programme has learned that developing synergies with likeminded human rights protection NGO's helps to maximize the reach, effectiveness and impact of human rights litigation and advocacy. By partnering with IGLHRC, Global Rights and INTERIGHTS on an issue of common concern such as LGBT, for example, the litigation strategy meeting helped bring on board all key actors, activists and lawyers included, to develop a common litigation strategy to advance the cause protecting LGBT human rights defenders.

The other key lesson learned is that additional strategies have to be employed in order to maximize the effect of strategic litigation. The additional components of lobbying and advocacy are equally important and have been incorporated into the AHRAJ strategy as key components of the project. The involvement of the media from the onset of human rights litigation is also important as it brings public attention to the rights violation being litigated and brings public pressure to bear upon institutions.

The process of engagement within human rights networks and coalitions such as the Coalition for an Effective African Court (CEAC) is critical to the process of synergizing human rights protection strategies which will aid the AHRAJ litigation approach. Through the process of advocating effective regional mechanisms for the protection of human rights, the AHRAJ team has been able to develop a better understanding of the human rights protection landscape at the regional level which informs the litigation strategy. The AHRAJ team has also benefitted from the process of organizing around 'litigation teams' which bring in board experts, lawyers and the AHRAJ project staff together towards a joint, inter-disciplinary approach to human rights protection.

## 6.0 ECONOMIC OVERVIEW

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		Balance
	Oct – Dec 2005	Outcome	
<b>Income</b>			
Sida allocation	1 881 064	1 881 064 <sup>8</sup>	0
Audit	<b>40 000<sup>9</sup></b>	40 000	
<b>Total income</b>	<b>1 921 064</b>	1 921 064	0
<b>Case support</b>	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 <sup>10</sup>	40 000	-
<b>Total costs</b>	<b>1 921 064</b>	<b>268 870</b>	<b>1 652 194</b>
<b>Balance to 1<sup>st</sup> of January, 2006</b>			<b>1 652 194<sup>11</sup></b>

### Specification of the contribution

	Budget	Expenditure
<b>Project related costs</b>		
<b>Administration ICJ Kenya:</b>		
Communication costs	20 625	20 625
Office costs	33 750	33 750
Programme administrative assistant	27 000	27 000
Programme legal research assistant	12 375	12 375

<sup>8</sup> 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.

<sup>9</sup> Sida approved to cover the cost for audit at ICJ-Kenya of AHRAJ phase I.

<sup>10</sup> The budget of audit was approved by Sida and was not reported on in the half-year report submitted to Sida on 31<sup>st</sup> October 2006, hence the slight difference in balance.

<sup>11</sup> 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.

Finance manager- Salary contribution	33 750	33 750
Executive director- Salary contribution	22 500	22 500
<b>Sub-total</b>	<b>150 000</b>	<b>150 000</b>
<hr/>		
<b><u>Case support</u></b>		
<b>Cases payments:</b>		
Legal costs	562 500	-
Legal opinions	375 000	-
Research costs	112 500	-
Case book	52 500	1125
<b>Sub-total</b>	<b>1 102 500</b>	<b>1125</b>
<b><u>Case related cost</u></b>		
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 <sup>12</sup>	-
Regional litigation workshops	132 188	-
Trial observation	-	-
Capacity building	22 500	-
Evaluation	-	-
Annual forum	93 750	-
<b>Sub-total</b>	<b>587 813</b>	<b>77 745</b>
<b>Total project related costs</b>	<b>1 840 313</b>	<b>228 870</b>
<b>ICJ-Sweden project related costs</b>	<b>40 751<sup>13</sup></b>	<b>-</b>
<b>Audit</b>	<b>40 000</b>	<b>40 000</b>
<hr/>		
<b>Total costs</b>	<b>1 921 064</b>	<b>268 870</b>

<sup>12</sup> The International Litigation Workshop planned to take place in October/November 2005 did not take place due to late receipts of funds.

<sup>13</sup> 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<sup>14</sup> SEK = 1 USD.

	Budget		
	Jan-June 2006	Outcome	Balance
<b>Income</b>			
Sida allocation	7 368 613 <sup>15</sup>	7 368 613 <sup>16</sup>	0
<b>Total income</b>	<b>7 368 613</b>	<b>7 368 613</b>	0
<b>Case support</b>	4 199 220	764 526 <sup>17</sup>	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
<b>Total costs</b>	<b>7 368 613</b>	<b>3 066 032</b>	<b>4 302 581</b>
<b>Balance to 1<sup>st</sup> of July, 2006</b>			<b>4 302 581<sup>18</sup></b>

### *Specification of the contribution*

	Budget	Expenditure
<b>Project related costs</b>		
<b>Administration ICJ Kenya:</b>		
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
<b>Sub-total</b>	<b>590 400</b>	<b>561 334</b>

<sup>14</sup> Its an average rate for 2006, calculated on the webpage oanda.com

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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

<sup>18</sup> 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.

<b>Case support</b>		
<b>Cases payments:</b>		
<b>Legal costs</b>	2 214 000	450 219 <sup>19</sup>
<b>Legal opinions</b>	1 476 000	314 307
<b>Legislative opinions research costs</b>	442 800	-
<b>Case book</b>	66 420 <sup>20</sup>	-
<b>Sub-total</b>	<b>4 199 220</b>	<b>764 526<sup>21</sup></b>
<b>Case related cost</b>		
<b>Case promotion costs</b>	132 840	130 864
<b>Programme manager, expert work</b>	309 960	195 764
<b>EXCO/ Executive committee</b>	132 840	152 560 <sup>22</sup>
<b>PMT meetings</b>	44 280	33 097
<b>Int. HR litigation workshops</b>	715 860 <sup>23</sup>	363 736

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> The International Litigation Workshop planned to take place in April/May 2006 could not be held due to late receipts of funds from Sida.

<b>Regional litigation workshops</b>	551 456	575 158 <sup>24</sup>
<b>Trial observation</b>	66 420	-
<b>Capacity building</b>	191 880 <sup>25</sup>	30 647
<b>Evaluation</b>	88 560	<sup>26</sup>
<b>Annual forum</b>	184 500	108 608
<b>Sub-total</b>	<b>2 418 596</b>	<b>1 590 434</b>
<b>Audit</b>	-	<b>295<sup>27</sup></b>
<b>Total project related costs</b>	<b>7 208 216</b>	<b>2 916 589</b>
<b>ICJ-Sweden project related costs</b>	160 397	149 443
<b>Total costs</b>	<b>7 368 613</b>	<b>3 066 032</b>

<sup>24</sup> 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.

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> 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.

The period January 2007 to March 2008

	Budget	Expenditure
<b><u>Project related costs</u></b>		
<b>Administration ICJ Kenya:</b>		
<b>Communication costs</b>	103 125	101 915
<b>Office costs</b>	168 750	166 770
<b>Programme administrative assistant</b>	135 000	144 390
<b>Programme legal research assistant</b>	61 875	32 873
<b>Finance manager- Salary contribution</b>	168 750	170 439 <sup>28</sup>
<b>Executive director- Salary contribution</b>	112 500	112 578 <sup>29</sup>
<b>Sub-total</b>	<b>750 000</b>	<b>728 965</b>

<b><u>Case support</u></b>		
<b>Cases payments:</b>		
<b>Legal costs</b>	3 255 750	1 500 806 <sup>30</sup>
<b>Legal opinions</b>	1 590 000	1 031 959 <sup>31</sup>
<b>Legislative Opinions</b>	90 000	21 727 <sup>32</sup>
<b>Case book</b>	245 385	241 159
<b>Sub-total</b>	<b>5 181 135</b>	<b>2 795 651</b>
<b><u>Case related cost</u></b>		
<b>Case promotion costs</b>	168 750	130 872
<b>Programme manager, expert work</b>	393 750	366 096
<b>EXCO/ Executive committee</b>	168 750	128 887 <sup>33</sup>
<b>PMT meetings</b>	56 250	54 638
<b>Int. HR litigation workshops</b>	909 375	850 841
<b>Regional litigation workshops</b>	661 875	624 226
<b>Trial observation</b>	135 000	26 794 <sup>34</sup>
<b>Capacity building</b>	33 750	3 223

<sup>28</sup> Difference due to exchange rate differences as the position is paid in the local currency

<sup>29</sup> Difference due to exchange rate differences as the position is paid in the local currency

<sup>30</sup> The variance represents outstanding case commitments. These are paid in installments upon receipt of progress reports for cases supported. Outstanding commitments were forwarded to the extension period.

<sup>31</sup> Legal opinions are allocated by PMT on need basis while some are done by the legal officers.

<sup>32</sup> Due to the stringent requirements for approving a legislative opinion only one legislative opinion was approved

<sup>33</sup> EXCO meetings were organised and held successively with the international litigation workshops and this assisted in making savings

<sup>34</sup> Only two trial observations were carried out at a minimum cost as they were both in East Africa and travel for the AHRAJ team in East Africa is cheaper as compared to the other two regions.

<b>Evaluation</b>	<b>192 000</b>	<b>182 010</b>
<b>Annual forum</b>	<b>187 500</b>	<b>105 569<sup>35</sup></b>
<b>Sub-total</b>	<b>587 813</b>	<b>2 473 158</b>
<b>Total project related costs</b>	<b>1 840 313</b>	<b>228 870</b>
<b>ICJ-Sweden project related costs</b>	<b>203 756</b>	<b>112 579</b>

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<sup>35</sup> This meeting was held immediately after the International litigation workshop therefore some of the costs were shared as some participants travel costs were catered for under the ILW budget line

The period April 2008 to June 2009

	Budget	Expenditure
<b><u>Accrued Cost B/F</u></b>		
2005-2007 financial Audit	41 000	34 018
Institutional Audit	298 375	241 603
<b>Sub-total</b>	<b>339 375</b>	<b>275 621</b>
<b><u>Project related costs</u></b>		
<b>Administration ICJ Kenya:</b>		
Communication costs	85 560	85 560
Office costs	153 450	153 450
	111 600	111 600
Programme administrative assistant Finance manager- Salary contribution	139 500	139 500
Executive director- Salary contribution	93 000	93 000
<b>Sub-total</b>	<b>583 110</b>	<b>583 110</b>
<hr/>		
<b><u>Case support</u></b>		
<b>Cases payments:</b>		
	962 125	867 556
Legal costs		
Case book	161 200	148 800
<b>Sub-total</b>	<b>1 123 325</b>	<b>1 016 376</b>
<b><u>Case related cost</u></b>		
Programme manager, expert work	325 500	291 118
Legal Officers	558 000	527 955
EXCO/ Executive committee	422 840	203 487
PMT meetings	46 500	46 500
Int. HR litigation workshops	294 500	280 532

<b>Regional litigation workshops</b>	201 500	205 672
<b>Baseline Survey</b>	1 056 266	1 013 158
<b>ICJ Kenya Website</b>	18 600	2 191
<b>Capacity building</b>	769 178	758 016 <sup>36</sup>
<b>ICJ Sweden Costs</b>		
<b>ICJ S project related costs</b>	65 664	26 090
<b>ICJ S Admin costs</b>	360 000	242 743
<b>ICJ S Audit</b>	40 300	40 300 <sup>37</sup>
<b>Sub-total</b>	<b>465 964</b>	<b>309 133</b>
<b>Total project related costs</b>	<b>6 204 659</b>	<b>5 512 867</b>
<b>Provision for Exchange Loss</b>	<b>309 395</b>	<b>1 048 721<sup>38</sup></b>
<b>Total project related costs</b>	<b>6 514 054</b>	<b>6 561 588<sup>39</sup></b>

<sup>36</sup> This figure includes an accrued figure SEK 44 305 for financial audit

<sup>37</sup> This is a provision of ICJ Sweden audit

<sup>38</sup> The programme funds were held in a joint account in Swedish Kroner. This figure represents the difference of the budget figure versus the amount received into ICJ Kenya AHRAJ account which is a USD account.

<sup>39</sup> The overall total has a variance due to exchange loss

Thursday July 10, 2008 / The Standard

CASE SUPPORTED BY A HRAJ/13

# HIV-positive widow paid Sh2.25 million

Former Home Park Caterers Ltd employee ends court battle in landmark settlement

BY JUDY OGUTU

A five-year battle pitting a HIV-positive widow against her former employer, Home Park Caterers Ltd, has ended.

She has been paid Sh2.25 million in an out-of-court settlement. The widow had sued Home Park Caterers, Metropolitan Hospital and Dr Primus Ochieng, for unfair dismissal from work.

The 45-year-old widow named IAO has set a precedent in legal history in 2003. She had demanded compensation from the defendants on the ground she was sacked due to her HIV status.

She also sought reinstatement or payment for damages for unfair dismissal. The case saw lawyers, HIV/Aids activists, and human rights proponents jam court corridors to give moral support to the widow.

Home Park, Metropolitan and the doctor agreed to pay the money "to cover and settle any damages in re-

spect of the suit plus all legal costs."

Home Park will pay Sh750,000 while the hospital and the doctor will jointly pay Sh1.5 million.

The case was finalised after the parties recorded the settlement before High Court Judge, Justice Hatari Waweru in March.

It was also agreed that her former employer pays her terminal dues already deposited in court.

The widow's lawyer, Mr Otiende Amollo, confirmed to *The Standard* she had been paid and the matter settled.

#### NO LIABILITY

However, the case was settled without any of the three defendants admitting liability.

A declaration was made that testing of an employee or prospective employee for HIV without her informed consent is unlawful and constitutes invasion of privacy.

It was also declared that disclosing an employee's HIV status to an employer without the employee's consent is unlawful.

Further, it was declared that termination of employment only on grounds of employee's HIV status is unlawful.

The widow had accused the doctor at Metropolitan of disclosing her medical results to Home Park, saying it had been conducted without her consent.

This, she argued, violated her constitutional right to privacy.

Further, she claimed the doctor breached his professional and statutory duty to counsel and to disclose her HIV status to her.

IAO was sacked on April 30, 2002, after working for the catering firm for eight years.

#### IN DEFENCE

In its defence, Home Park had said her sacking did not include a medical report, and that they were not aware of it when they sacked her.

The company added that they had not requested a medical test on her, making the issue of consent irrelevant.

In his defence, the doctor said the widow was one of his patients and that he prepared the medical report dated May 2, 2002, upon her request.

## about for defiling Nyamira

cusod deserved a stiff sentence to deter others.

Elsewhere, a CID officer has been charged in a Nyeri court with forging an academic certificate.

Moses Mulala Simiyu allegedly forged a Bachelor of Law degree from the University of Nairobi, which he used to apply for a cadet course at Kenya Police College, Kiganjo.

Nyeri Senior Principal Magistrate Lucy Gitari was told that Simiyu presented the forged certificate to the course officer, Mr Paul Ndung'u, on November 29, 2002 in Nairobi.

# Hope against hope

Life in prison came hell, sometimes. This is the story of Evance Moyo who has spent years in jail and is not sure of his future.

by Akossa Mphipo

On August 1, 1997, 16-year-old Evance Moyo was arrested for suspected murder. Convicted in December, 2002, the High Court sent the then 20-year-old who had been on remand at Chichiri Prison for four years to Chikwa Approved School in Zomba.

But instead he was sent back to Chichiri where he has spent the last 10 years. Forgotten? Only time will tell. As he walks into the interview room, I could tell Evance Moyo is a man who has lived through enough atrocity to believe that there is no justice in this world, that life is meant to be tolerated and that men are only there to weary of, not loved and befriended.

The way he crossed the room told a sad story. His gait was quick and ungainly, humble as if he is a non-entity trying to plough through life without any pony that comes with contentedness and self-confidence.

He sat hunched into a corner, short legs crossed, hands constantly pulling at his tight, white shorts. It was as if he would rather disappear into the wall behind him and be anything, anywhere, not what he is, where he is right now. His eyes were glued to the dusty floor beneath him instead of my face. His hands kept flying to his head, clean shaven, as he answered some of my questions.

"I cut my hair when I heard you were coming to interview me," he said shyly. No smile, no glimmer in his eyes, just plain words, heavy and thick in his mouth as he begins to

tell his story.

Thursday July 31 1997: While at a party in Chiradzulu with three friends, an argument broke out between Evance and another boy, Moses Chibwawa. It quickly turned into a free-for-all fight as friends of both joined in to protect their friends.

And so, unknowingly, Evance enjoyed his few last moments of freedom. That was the last time he would ever be young, carefree and footloose; the last time he would let the throbbing beat of loud music take control and make him move his body in a joyful frenzy that shut the whole world out. The very last time he would truly be.

Friday, August 1: Someone told Evance that Moses had died.

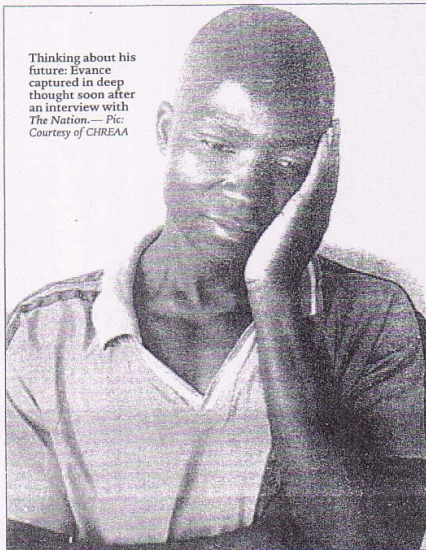
Not thinking he would be implicated in the messy murder case that ensued, only remembering that he had fought with the deceased the night before, Evance—escorted by his parents—went to report the incident to Chiradzulu Police.

"They arrested me and my friends. I honestly didn't know what was happening. I believed they would let me go. But they didn't. After initially arguing with me, they were released and I never saw them again," recalls Evance.

Even though Evance was a juvenile at the time he was taken to Chichiri Prison, he was thrown into Cell 2 where the detainees are kept with 200 scowling lustful men.

"I attracted a lot of attention because I was young. The inmates wanted to have sex with me and everyday they beat me up because I refused to give in to their demands. They tied me up and wouldn't stop beating me until the pain was sharp and I bled."

At night, I was forcedly put "pa shamba", a part of the room where I crouched all night long unable to lie down, unable to sleep. Seeing me there, inmates would kick me in frustration because I didn't



Thinking about his future: Evance captured in deep thought soon after an interview with The Nation.—Pic: Courtesy of CHIREAA

want to engage in sexual intercourse with them.

The kitchen was no different. Anyapala (prison headboys) serving food wanted to sleep with him, too. They would throw hot food in his face, give him little food, so that he could suffer for not wanting to indulge in homosexuality they demanded.

One day, after going hungry for four days, Evance sat down and cried. He didn't understand why all this was happening to him and had had more than his young mind could possibly handle.

"I just wanted to give up on life," he said.

But the gruesome story continues. The inmates were not about to accept that Evance was refusing to willingly give up his body, so they laboured

him hard. Everyday he swept up three and cleaned out the filthy toilets, chores that the 200 men were meant to share among themselves. He was too tired, too traumatised to do anything that required thinking.

"I enrolled for primary school [Standard Six] but couldn't keep up because of all the work and lack of sleep. I always fell asleep in class," said Evance.

He added that his mind couldn't process anything at the time for he was angry, frustrated, frightened and was living in a world full of nothing but torture. And so he lost out on getting a sound education.

Barely a month after he had turned 20, a friend who had slept next to him died in his sleep.

"As we slept, he told me he had a headache. He rested his head on my shoulder. The next morning when I tried to shake him awake, I realised he had died. I was shocked and traumatised. But this has become normal now. Cells are locked from 4 pm throughout the night to 7 am. When an inmate dies in his sleep, we roll him up in a blanket and leave him in the toilet till morning. That's just the way it is."

Asked what he has done to survive his ordeals and escape ending up rolled in blankets in the toilet, Evance told me his God keeps him alive. That and the hope to one day see his family as a free man—and he thinks this might happen soon.

In 2003 paralegals working for the Centre for Human Rights Education Advice and

Assistance (CHIREAA) under the paralegal advisory service programme came across Evance and, like an answered prayer, put out all effort to help the boy.

They have since engaged lawyer and Malawi Law Society executive director Mandala Mambulusa who has taken Evance's pleas to court. Through him, Evance wants a constitutional court to declare whether or not by remanding him at Chichiri Prison for 10 years, the State has not violated section 42 (7) (g) (ii) of the Constitution in line of Section 4 of Children and Young Persons Act.

The section reads (in part) that a juvenile be imprisoned only as a last resort and for the shortest period of time. He is also to be separated from adults when imprisoned and to be treated in a manner consistent with the promotion of his sense of dignity and worth.

The questions Evance, Mambulusa and CHIREAA are all asking are: Why was Evance detained (in the adult section) of Chichiri Prison instead of a juvenile reform centre? His experiences in that section have completely robbed him of his dignity, left him feeling dirty, used and useless.

The second question is: After his conviction, if a High Court judge ordered that he be sent to Chikwa Juvenile Reform Centre, then why was Evance still kept at Chichiri Prison?

Thirdly: Is 10 years the shortest period of time that he could have been imprisoned? Absolutely not.

More importantly, has the system forgotten him? Most likely, he says he has received no explanation from the prison authorities on why he was not transferred to Chikwa.

He simply waits. And his parents wait with him, coming to see him every month since he was imprisoned with the hope that he will tell them something good.

The case—set to be reviewed by three judges sitting as a constitutional bench at the High Court—has already been adjourned two times and Evance is fast losing hope. Whether or not this will mean the beginning of his long crawl to freedom is yet to be seen.

"Don't expect me to be positive about the whole thing. What's the point of hoping? I've done that for 10 years and am still here," he told me.

As he says this, his gaze shifts from the floor to a distant wall. He looks lifeless. Perhaps imagining the world he might never see again? A world he can hear, smell, touch but never taste. He sees the joyful laughter of pedestrians as they cross a busy street, their hands holding tight onto fat toothless babies.

"I don't even know what is beyond those walls anymore and if I was released, I wouldn't know where to start from. It's a whole new world."

For now, though, his world lies within the congested, squalid Cell 2, barren stretches of land and the marked boundaries of Chichiri Prison.

**A LIFETIME CELEBRATION** **BRIAN HARA: 1945–2008**

**Zabweka**

"I won't pay you now, girl - until parliament approves the budget!"