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# ANNUAL PROGRESS REPORT

For Year End

December 2008

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*REGIONAL HUMAN RIGHTS LAW CLINIC*

*to increase*

*ACCESS to JUSTICE for VULNERABLE GROUPS*

*in*

*AFRICA*

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## PREAMBLE

The Human Rights Development Initiative (HRDI) is a politically non-partisan, regional non-governmental, non-profit, secular human rights organisation, with an international board. It is based in Pretoria and registered as a non-profit, tax exempt company and a public benefit organisation according to the laws of South Africa.

## VISION

HRDI's *vision* is an Africa where universally accepted standards of human rights are applied to everybody and where all people's value and dignity is respected.

## MISSION

HRDI's *mission* is to challenge political, economic and social elitism and promote equality of people regardless of race, place of origin, gender, social status, class, religion, sexual orientation, belief, ethnicity, HIV status or any other quality or trait that might be used as a basis for unfair discrimination, using international and regional human rights standards as the barometer. ***Constantly bearing in mind that human rights is not about what we write or say, but what we do.***

## VALUES

Every person contributes in a meaningful and significant manner to the overall growth and development of society. Hence all forms of work should be respected and valued.

Every person has the inherent capacity to contribute meaningfully to society especially in a nurturing and safe environment. Hence the environment should be nurturing, respectful and appreciative of the contributions of each person.

Every person working within HRDI has a responsibility and obligation to work in a service orientated manner with efficiency and commitment to the mission and vision of the organisation.

Every person, family, society and state are interdependent – each upon the other. Individuals and families form the building blocks for a healthy society and a strong state that takes care of the needs of its citizens and residents.

Human rights and development are concepts that are interdependent.



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## LIST OF ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
ARASA	Aids and Rights Alliance of Southern Africa
AU	African Union
CHRR	Centre for Human Rights and Rehabilitation
CLAN	Children's Legal Action Network
CPC	Country Project Co-ordinator
CRIDHAC	Centre de Recherche Interdisciplinaire pour la promotion et la protection des Droits de l'Homme en Afrique Centrale
DART	Development of Antiretroviral Therapy in Africa
DRC	Democratic Republic of Congo
EAC	East African Community
HIV	Human Immunodeficiency Virus
IOM	International Organisation for Migration
JAT	Justice Aids Trust
LAC	Legal Aid Committee
LRC	Legal Resources Centre
LADA	Law and Development Association
MSF	Médecins Sans Frontières
NIMR	National Institute for Medical Research
OSISA	Open Society Initiative for Southern Africa
PMC	Project Management Committee
PLWA	People Living with HIV/AIDS
SADC	Southern African Development Community
ULC	University Law Clinic
UN	United Nations



# 1 EXECUTIVE SUMMARY

At the beginning of 2008, one of the founders, Dan Bengtsson, knew that he would reach the end of his contract with HRDI in December 2008 and decided to return to his home country, Sweden in January 2009. In a sense this is a symbolic move as it marks the end of an important phase and concomitantly the beginning of another.

Having survived through a period of great uncertainty at the beginning (2003) HRDI has now emerged as an organisation at its peak. The transition from founders as leaders and executive directors to new blood marks an important transition. We begin this report by acknowledging the indescribably important role played by Dan and appreciating that in the true spirit and commitment toward the organisation, Dan gave HRDI the opportunity to plan for this transition for at least one year.

With that in mind, HRDI faced substantial challenges at all levels during this, its third year of operation. While it has indeed achieved much of what it set out to within a third of the budget for the year, it remains self critical and continues to focus on how it could improve. This report provides the reader with as much information as is practical for a report such as this to criticise further and to help HRDI grow and develop as it strives to contribute toward the renewal of the African Continent.

The third year of actual operations of HRDI involved growth in several areas of our work.

- The *staff compliment* of three was enhanced by the employment of a lawyer to coordinate and develop the Legal Services component, and an administrator to deal with the day-to-day needs of a small organisation.
- The *training schedule* was supplemented by sections on Human Trafficking; Witchcraft, HIV and Human Rights; Climate Change; Common law and Civil law contexts as well as Minority Rights and Indigenous People's Rights.
- *Two new countries* joined the programme, namely the Democratic Republic of Congo and Zambia. This now gives us a total of ten countries in which we have influence – five in the Great Lakes Region and five in the SADC region.
- The *legal services component* has been further developed, and cases and issues have been identified, together with teams to ensure that cases are taken forward to their conclusions.
- We now have a total of *18 students* who have been through our course, all back home working for our ten partner organisations, throughout the two regions.
- Three of the students trained at HRDI have decided to further their formal education and embark on Master's studies in the field of human rights. These qualifications will enable them to teach at their institutions.
- Two Zimbabwean students who moved away from the original partnership with their academic institution, and started an organisation of their own from which to carry on the work, Justice Aids Trust (JAT) is on the verge of being the first partner to embark on the process of having their systems and books audited by an external firm of auditors.



HRDI takes pride in its ability to be self-critical, and to use this information to improve our performance and efficiency in the future. It is true that we faced many challenges during 2008, which are dealt with comprehensively in the relevant chapters of this report.

The major challenges that we faced are somewhat less predictable than the successes, and involved the loss of three students who left the programme as they were unwilling to abide by the exacting standards imposed on them at HRDI. Challenges also involved the inability or unwillingness of some partners to sufficiently support the students who they have sent for the training, or to manage the funding that is given to them by HRDI in a responsible and ethical manner, or indeed to make sufficient effort to raise funds to make their own projects sustainable when the funding from HRDI ceases.

A further challenge was the difficulty experienced in integrating the students within their own organisations, or in the regional groupings which would assist and support them in their work. Fortunately, the enlarged HRDI team supports the vision and mission of HRDI, in its quest to grow the skills base in human rights in our region, and is committed to overcoming all these challenges through a strategic approach and good planning and communication.

We have again received a financial report which is squeaky clean and we are proud to have kept within budgets, which has pleased our funders. There was overspending on some secondary areas within the budget, but the main items were well within the restrictions we imposed on ourselves. HRDI's budget for 2009 and the first half of 2010 will be met with its current funding.

The questions that are addressed in this report are essentially: What did we do well? What could we improve upon? Have we remained true to our values? Have we been consistent? Where have we failed? What can we learn from those failures?

Very importantly, the question that emerged at the beginning of 2008: Where do we go to from here? What is HRDI's next step? This question was answered by each member of the HRDI team, board and the wider partnership that together constitute the HRDI family. As a result, 2008 laid the foundation for the new phase of HRDI's operations. We talked of the consolidation phase beginning in 2009, but once we started the discussion we began the process in 2008 already. The report will outline what we did in 2008 to lay that foundation and some of the ideas we have going forward.

We invite the reader to join us in this important reflective process of looking deeply and looking back to enable us to find the way forward.

## 2 OVERVIEW

2008, the third year of HRDI's operations can be characterised as a year of holding the HRDI vision and mission and firmly maintaining boundaries. There have been many difficult decisions and situations throughout the year. The team held together through it all and ensured that the guiding principles and a long term outlook assisted in clearing the path. This report presents a brief insight into some of the issues that the team confronted and some of the highlights that the team celebrated.

To begin with the dilemmas faced, HRDI planned on working in Zambia, Malawi, Burundi and the DRC in 2008. The team was pleasantly surprised at the ease of entering into a partnership with the University of Kinshasa despite the structural challenges of the DRC. The two students recruited are legal assistants in the faculty and were the ideal candidates for our programme. In Zambia, however, it proved to be more difficult to recruit two lawyers. Eventually (after two visits) one final year law student and one lawyer (who would work on a part time basis) were recruited.

In Malawi, as described more fully below, it was more difficult. This was the first of those decisions based on a long term view. The team reflected deeply and when it became clear that we were not convinced that the two people suggested would return and implement we decided that it was now too late to begin the process again and consequently made the difficult decision to not work in Malawi during this phase. With Burundi it was primarily the political instability that resulted in us not being able to travel there.

The training programme began in mid July. As has become the HRDI tradition, the team endeavoured to improve on the programme from 2007, with respect to the guest teachers invited, the content of the sessions, its organisation and the reading materials provided. Gaps identified in previous years were addressed, such as the civil law/common law differences. Reading materials were provided for each session in advance. Time frames were adhered to by the team despite the personal difficulties they resulted in. The foundation having been laid earlier, in 2008 the programme was now being built from a solid base and held together by the whole team.

Mindful of the need to be disciplined, the serious approach to the work during the training programme and that a thorough and in-depth analysis of issues in Pretoria would lay a similar foundation for the students when they returned to their home countries to implement the programme, the team was called upon on several occasions to ensure that the standard of work required was achieved. This was done through one on one feedback sessions in some instances, and group sessions on other occasions.

However, as will be described more fully below, some students were not prepared to put in the effort required. HRDI has expressed strongly that if adequate effort is made and the goal is still not reached, the team will gladly assist the students to get there. However, in circumstances where the effort is not put in, HRDI will not spoon feed the students. Under these circumstances, three students opted to leave the programme rather than to rise to the occasion. They left disgruntled and unhappy but unwilling to take responsibility and to accept the consequences of their own actions. HRDI again in its work with the relevant partners emphasised the need to ensure that the individuals bear



the consequences of their own actions as this is the lesson that appears most important for the present.

The team had occasion to mourn and celebrate. We celebrated the fact that one of our students returned to their home country and within less than a year was travelling to Geneva as part of the non-governmental organisation (NGO) delegation, to present their shadow report to the ECOSOC Committee. And later in the year, we celebrated the fact that HRDI was granted observer status before the African Commission on Human and Peoples' Rights.

Despite HRDI's generous contributions toward the partners and its commitment to a mutually beneficial partnership some individuals attempted to push the boundaries and seek more money. Once again, it was a time to be firm and clear and take the risk of a failed partnership. The team chose to maintain the boundaries which in this circumstance meant keeping the letter and spirit of the co-operation agreement and ensuring that the team did not make undertakings that would compromise HRDI's stability. It is also important to note that despite this firm and clear approach, the partnership with the students who remain and the partner institutions is becoming more reciprocal and evolving to being more balanced.

The Project Management Committee (PMC) as a partnership forum has proved to be a good foundation for the structured network and important in the development of the type of equal partnership HRDI is working toward.

While HRDI's partners provide legal services the team have been concerned that this has not yet evolved to a situation where cases are undertaken jointly, among partners and with HRDI. A special effort was made in 2008 which has resulted in five potential impact cases. Multi-country teams have been established with HRDI and it is expected that at least two of these cases will be filed in 2009. The details are described below.

Plans are afoot to ensure that the external evaluation will commence in mid 2009 and be completed by the end of August 2009 at the latest. These time frames were adjusted due to practical realities such as the availability of the evaluator. HRDI's focus on consolidation rather than expansion has begun in 2008 and is expected to bear fruit in 2009 and 2010. At this stage, it is important for HRDI to reflect and begin to consider what its role ought to be post 2010. With that in mind the team suggests the holding of a stakeholder workshop in October 2009 to assist in laying a foundation for the development of a strategic plan for HRDI post 2010, using the finding of the external evaluation.

Within that backdrop, what follows is a brief progress report on all the areas of activities undertaken by HRDI during 2008 namely training, manual work, legal services and community outreach. A discussion on the management, administration and finances of HRDI conclude this brief report.



## **3 PROGRESS REPORT**

### **3.1 TRAINING PROGRAMME**

#### **GOALS OF THE TRAINING PROGRAMME**

The goal of this training programme remains to build a cadre of lawyers who:

- have sufficient knowledge, information and skills to integrate the use of international and regional human rights norms and standards in their law clinics;
- are committed and able to challenge elitism and social, economic and political injustices generally, and more specifically unfair discrimination against people living with HIV/AIDS, and enable them to better secure the socio-economic rights of people living with HIV/AIDS, using international and regional human rights norms and standards as the barometer;
- are part of a formal or informal network of social justice lawyers within their region and develop regional strategies in collaboration with each other where appropriate; and
- are not solely motivated by earning lots of money.

#### **METHODOLOGY**

We use a multi-disciplinary approach and clinical legal education methodology as far as possible. To this end, the trainers comprise political scientists, social scientists, medical doctors, practicing lawyers, law teachers and journalists.

Guest teachers are encouraged to ensure active participation, interactive methods, debate and enquiry in the class. We aim to achieve a balance between philosophical discourse and application of theory to pragmatic circumstances. Further, since egalitarianism is a core value for the HRDI team, we try to ensure that the power relations within the classroom environment are flattened.

Particular emphasis was placed on ensuring that writing assignments were regularly handed out, reviewed after which group level and individual feedback was given to ensure that students learned from their own mistakes and from those of others.

Students received a full set of reading material each week for the forthcoming week. Great emphasis was placed on reading in advance and ensuring that adequate time was set aside for this. The reading material purchased was in most cases current work on the relevant subject.



## STRUCTURE

The programme is structured such that we move from the broader to the narrow and focus more deeply as the programme develops. We begin with broad contextual issues and end the programme with students working on two specific cases/issues that we have jointly selected. A brief summary of each phase of the training follows.

*Phase One – Weeks 1 and 2 “Human Rights is not about what we write or say, but what we do.”*

The training programme begins with a deep values based discussion aimed at understanding what is meant by “*human rights is not about what we write or say, but what we do*”.

Students explore ideas about human rights careerism, problems with development aid, and other current human rights challenges associated with the changing political landscape in Africa. The idea of this phase is for students to develop a broad understanding of the social, economic and political context, particularly within the Great Lakes and Southern Africa Regions. Reflection takes place through guided group discussions, debates, role plays and other interactive processes on pertinent issues within their countries and regions such as democracy, human rights, development, peace, reconciliation and economic and social justice. This is done through discussion that is triggered by simple questions geared at probing and provoking students to enquire deeply into their own background, experience and knowledge.

*Phase Two – Weeks 3, 4 and 5 “International, Regional, Sub Regional and Domestic Human Rights Law – Instruments, Standards, Mechanisms and Usefulness”*

The second phase is geared toward developing a strong foundation and consequently a deep understanding of the basic concepts and vocabulary associated with human rights, the philosophical and historical base upon which much of the current human rights discourse is founded, and basic standards of international and regional human rights as enshrined in the key covenants and interpreted by the various bodies enforcing international and regional human rights norms and standards.

The last two weeks of this phase are spent on developing a deep understanding of human rights mechanisms at an international, regional and sub-regional level. Consequently, the UN system, the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights, the East African Court of Justice and the SADC Tribunal, the European Court of Human Rights and the Inter-American Court were studied.

*Phase Three – Week 6 “Site Visits to SA Law Clinics and Public Interest NGOs”*

The goals of the site visits are to:

- Expose lawyers to effectively run South African university based law clinics;
- Share teaching materials, methodology and resources;



- Share experiences with outreach programmes;
- Share experiences regarding client and case management systems and procedures;
- Share litigation experiences, both within the general practice sphere and within the specialist units and impact litigation where it is carried out; and
- Lay the foundation for partnerships between South African ULCs and ULCs and NGOs from other countries within the SADC and the Great Lakes Region.

### **STRUCTURE OF THE SITE VISITS**

Students were exposed to as much of the clinic operations as was possible within the time constraints of the clinic. They engaged in the following:

- Discussions with clinic/organisational staff about how the clinic functions, sharing materials etc;
- Observation of the classroom teaching component if it fits in with the clinic curriculum and schedule, including sharing of teaching materials;
- Observation of client intake followed by discussions with the interviewers about the cases and how they would be handled;
- Review of certain case files if possible, including sharing the filing and case management system;
- Observation of supervision sessions with students;
- Observation of the outreach programme and back-up legal service programme where applicable, including a discussion on how it is managed;
- Observation of court work/negotiations/mediations in cases;
- Observation of impact litigation if this takes place.

### **PLACEMENT OF STUDENTS WITH APPROPRIATE INSTITUTIONS**

Students were placed with institutions bearing in mind the challenges faced by their home institutions and themselves as lawyers.

Those from Botswana and Zambia were placed at the University of the North West, Mafikeng Campus because of the location, structure and functioning of the clinic and its outreach programme and work with paralegal organisations on the one hand and to share experiences of classroom teaching, client management and outreach programmes and for the long term goal of a natural partnership between the two due to its close physical location.

Those from DRC were placed with the Wits University to learn about the involvement of law faculty staff in the management, teaching and client representation dimensions of the law clinic.

Tebello and Ibrahim from CLAN in Kenya were with the Legal Resources Centre to learn specifically about public interest litigation strategies and tactics to assist them in their work.



## TOOLS TO ASSIST WITH THE LEARNING PROCESS DURING SITE VISITS

Students were asked to write a reflective journal during their site visits. They were asked to write at least 1-2 pages daily. This tool was necessary to enable them to process their experiences and enhance the learning dimension of it for themselves. In view of the fact that the time was limited, they were encouraged to reflect each day upon what they learned – about themselves, their organisation, the organisation they were allocated to and its strengths and weaknesses. Ultimately, this process leads to the student being more likely to learn even more, observe even more deeply and develop plans to improve themselves and their institutions.

### *Phase Four – Weeks 7, 8, 9, 10 and 11 “HIV and Human Rights – Global Perspectives, Rights Based Approaches, Current Development and Specific Intersection between Key Human Rights Guarantees and HIV”*

During this phase, students begin to focus more deeply on HIV and Human Rights. Starting with global perspectives and moving on to current developments within this fast moving and highly evolving sector. Medico-legal, socio-psychological and rights based approaches to stigma, discrimination and ostracisation were facilitated by medical doctors, psychologists, practicing lawyers and law teachers.

In view of our focus on the two sub-regions and on non-discrimination and equality, we look at international standards regarding HIV, equality and non-discrimination and thereafter, specific challenges within the Great Lakes and SADC regions.

Each year the team has made an effort to ensure that this phase of the training programme improves upon the previous year and that the topics covered are as comprehensive as possible. Consequently, topics such as Witchcraft, Human Rights and HIV; Climate Change, Human Rights and HIV; and a more in-depth focus on Human Trafficking and HIV were included in 2008. For the full list of topics, see the section below.

### *Phase Five – Week 12 “The Retreat – to Select Cases/Issues”*

The proactive approach to legal services is discussed more fully below. The selection of issues/cases after consultation with community based organisations at this retreat forms an important stage in that broad strategy.

During the retreat, students report to each other regarding their findings during the consultative process undertaken before they began the training programme. They are also given feedback on the issues/cases selected in previous years. Thereafter they recap on the classes that were offered by guest teachers during the preceding phase (phase 4) focusing specifically on the possible areas of intervention that emerged from those sessions. They then develop a set of criteria to use when making their choices. In the final stages, they break up into the sub regions and apply the criteria to issues raised during their consultations and by the guest teachers. The whole group then reaches agreement on the issues/cases to be dealt with.



The selection criteria agreed upon was as follows:

1. Consultative Process – What communities said;
2. It should affect a cross section of countries;
3. It poses a grave threat to society even though communities might not have raised it;
4. Avoid duplication – with other organisations and with issues chosen previously;
5. Affects a large number of people within society mostly the vulnerable groups – poor, women, children, prisoners etc;
6. Circumstances where lawyers can be helpful;
7. Realistic and achievable within the context;
8. Balance regional issues but do not neglect burning issues that might affect only a few countries;
9. HRDI's objectives and partner organisation's objectives;
10. Passion/interest for issues;
11. Potential impact should be far reaching; and
12. Skills and knowledge base of the implementing team.

After due consideration and careful application of the criteria the following issues were selected:

- Effective Access to Treatment (including medication, food, water, sanitation)
- Human Trafficking in the build up to the 2010 World Cup
- Access to Justice for PLWA in the DRC

These issues formed the basis for the work that was done during the next phase.

*Phase Six – Weeks 13, 14, 15, 16 and 17 “Developing Comprehensive Strategies to Address Root Causes of Problems and Proactively Develop Legal Services Dimension”*

During this phase, students worked in three teams. Each team worked on one of the issues selected above.

They are guided through a process during which they at first define, analyse and identify the root causes of the issue, and contextualise their case/issue within the socio-economic, political and human rights landscape. In addition they look at how other stakeholders affect the problem or are affected by it. Thereafter they determine what social, political, economic and human rights impact is sought, and develop appropriate intervention strategies. Further in-depth discussions are held regarding the application of litigation, negotiation, media and legislative advocacy as it applies to the specific case/issue. Ultimately, they develop an implementation plan that would guide them in their work when they return to their home countries.



## **Returning Students join the New Students – Building the Network and Collaborative Models**

In November 2008, the students from previous years joined those from 2008 for five weeks. Their schedule was structured as follows:

1. Each country implementation team briefed the whole group on the progress made against the implementation plan that was developed the previous year. They reported on challenges encountered, successes and failures and lessons learned;
2. The issue teams reported to the group regarding progress made on each issue on similar basis as the session above. Each country team reviewed this session and chose the issues that they would work on in their countries;
3. Each country team then discussed the litigation capacity at their home institution and what is required to enable them to adequately meet client needs;
4. New topics were covered such as Witchcraft, Human Rights and HIV; Climate Change and HIV; and Minority Rights, Indigenous Peoples' Rights and HIV;
5. New skills were covered such as Public Interest Litigation within the Legal Resources Centre (LRC) context and the Children's Rights Context;
6. A list of cases was developed from their reports discussed above, the group then selected five cases from the list to work on together (this was done after the group reached agreement on the selection criteria to be applied);
7. The group divided itself into teams to work on each of the five cases. A member of the HRDI team joined three of the case groups in analysing the issues that arise and developing a strategic approach and implementation plan for each case. These are discussed more fully below under legal services.
8. The group then focused on integration challenges to prepare themselves for what they ought to expect when they return to their home countries.

The programme ended with each country team preparing a country implementation plan which included work on the issues they would address and integration of their ideas and strategies into the partner institution's work plan.



## SPECIFIC TOPICS COVERED

The logic and structure of the training programme was largely maintained. A few new topics were included in 2008 and are written in italics below.

### Understanding the Terrain - Social, Economic and Political Context

The Changing Political Landscape in Africa  
Africa and Human Rights in a Global Context  
Analysis of the Social, Economic and Political Context in each Participating Country  
Analysis of the SADC and Great Lakes Regions  
*Common Law and Civil Law Systems (New for 2008)*

### International, Regional and Domestic Human Rights System

Basic Concepts in International Human Rights Law  
Inter-American System  
European System  
African Regional System – African Commission and African Court  
Community Systems – East African Court of Justice  
Community Systems – SADC Tribunal, *including a session with a lawyer involved in the Zimbabwe Farmers Case (New for 2008)*  
Domestication of International Human Rights Standards  
UN System

### Global Perspectives on HIV/AIDS

Medical  
Social Psychological  
Current Developments

### Rights Based Approach to HIV/AIDS

#### Key Issues

HIV in the Work Place  
HIV and the Refugee Rights  
HIV and Migration  
*HIV and Human Trafficking (more in-depth in 2008)*  
HIV and Socio-Economic Rights – Water, Food, Education, Housing and Education  
HIV and the Right to the Highest Attainable Standard of Health  
HIV and Children's Rights  
HIV and Women's Rights  
Customary Law, Traditional Practices and Values and HIV  
Politics, Governance and HIV  
Prisons, Penal Reform and HIV  
Sexual Orientation and HIV  
Human Rights Obligations of States to Regulate the Conduct of Big Corporations and HIV



Human Rights Obligations of Big Corporations

*HIV and Witchcraft (New for 2008)*

*Climate Change, Human Rights and HIV (New for 2008)*

*Minority Rights and Indigenous Peoples' Rights (New for 2008)*



## **SKILLS TAUGHT**

This programme is geared at enabling participants to integrate what they have learned in the law clinic when they return to their home countries.

The following skills have been taught through role plays, simulations and other appropriate means.

### **Computer Network and Internet Usage**

Students were taught how to use their computers efficiently and how to access sections of the HRDI server where information is placed on a regular basis.

Additionally, they were taught internet research skills, including methods to verify sources and to scrutinise both the data and the source.

### **Interviewing**

Students were taught how to interview in general and particularly how to interview people living with HIV/AIDS. Simulation sessions were organised and every student had a chance to be the interviewer (lawyer). These sessions were recorded on video, played back to the whole group and discussed. Students were able to reflect on themselves and observe common mistakes as well as getting feedback from the whole group.

### **Negotiation**

Basic negotiation skills were taught although the role plays and simulations of past years were replaced with intense case discussions.

### **Legal Drafting**

In 2008, there was greater emphasis on drafting skills. Writing assignments were reviewed and individual and group feedback sessions were held. These proved to be very useful. Amicus briefs on a recent South African case of recognition of customary law marriages, legislative review on the Criminalisation of HIV Transmission, opinions of the rights of women and children in the context of female genital mutilation and writing letters to funders were some of the exercises that students undertook.

### **Public Interest Litigation and Advocacy**

Students were guided by experienced public interest advocates on the skills required to identify and select cases through to developing the litigation or other strategy to address root causes of problems. As will be noted below, this year they had two guest teachers from Legal Resources Centre and one from a children's right organisation that specialises in impact litigation for children.

### **Analytical Skills**

Students were taught methods to analyse issues to determine root causes.



## Teachers

HRDI is privileged to work with specialists within our field from a vast geographical spread. Particular effort was made to ensure that more guest teachers from Africa were invited.

In many cases the guest teachers included representatives of tribunals and others who have worked closely with the tribunals. In keeping with our commitment to a multi-disciplinary approach, they included lawyers, political scientists, psychologists, medical doctors, and other social scientists and practitioners.

We have maintained a balance between academic analysis and practical application. What follows is the complete list of guest teachers who participated in 2008. It is important to acknowledge that none of the guest teachers of 2008 charged for their services. HRDI paid for the travel, accommodation and meals only. Their generosity of spirit has contributed to a dynamic training programme.

<b>List of Guest Teachers 2008</b>			
<b>Name</b>	<b>Institution</b>	<b>Email Address</b>	<b>Country</b>
Alan Whiteside	HEARD, UKZN	a.whiteside@onetel.net	South Africa
Amanda Dissel	Centre for the Study of Violence and Reconciliation	adissel@csvr.org.za	South Africa
Ann Skelton	Centre for Child Law, University of Pretoria	Ann.Skelton@up.ac.za	South Africa
Anneke Meerkotte	Tshwaranang Legal Advocacy Centre (TLAC)	anneke@tlac.org.za	South Africa
Charles Mkandawire	SADC Tribunal	kamkandawire@yahoo.co.uk	Malawi
Chris Peter Maina	University of Dar Es Salaam	peter1404@gmail.com	Tanzania
Christopher Mbazira	Makerere University	bazzira@yahoo.co.uk	Uganda
David Johnson	UN Office of the High Commission for Human Rights in South Africa	djohnson@un.org.za	USA
Diego Rodriguez Pinzon	American University of Washington DC	drodrig@wcl.american.edu	Colombia/USA
Elize Ndjavera Angula	Attorney	elize.angula@lorenzangula	Namibia
Evelyn Serima	International Labour Organisation	serima@ilo.org	Zimbabwe
Frans Viljoen	Centre for Human Rights, University of Pretoria	frans.viljoen@up.ac.za	South Africa
Gerrie ter Haar	Institute of Social Studies	terhaar@iss.nl	Netherlands
Gloria Puertas	UNHRC SADC/East and Central Africa	PUERTAS@unhcr.org	Spain
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## VOLUNTARY MANUAL WORK

In 2008 again, this aspect of our programme has come to define HRDI and gives expression to the idea that *“human rights is not about what we write or say, but about what we do”*. In 2008 our work was characterised by demanding physical labour. We planted a huge vegetable garden on land that was at first hard and infertile at a school in a township outside Pretoria. This year we tried to work as labourers do when they are at work. Start early and work with a few breaks in between. It really taught us all the value of manual work and to truly respect, understand and empathise with those that perform such work every day and for a living.

Our visits to patients this year ultimately resulted in us taking in one further very important step. We visited a family of nine children who lived in a very small shack. They did not have a toilet and used a 20 litre container instead. One of the children is both HIV positive and disabled. She spends most of her time indoors in a circumstance where there is little cross ventilation and it is extremely hot.

We discussed what they would like us to do to help. They asked for an extra window, for a door to be fitted as they slept without a door. They did not ask for a toilet out of sheer embarrassment. But as we walked around to work out what we would do, we realised that there was no proper toilet and decided to then add that to our list. This work began four weeks before the students were to leave.

All of us were clear that if we did not complete that toilet all of our work to date would have been meaningless. Gideon supervises this aspect of the work and he too felt the urgency and need to complete this work. We set out to start once we obtained all the materials through a small donation from part of staff and external sources.

At the end, we built a pit toilet, fitted the door, made a new window and repaired a broken one, painted the toilet and house inside and out, replaced the entire fence with a new and safer one and put new linoleum flooring in the house.

Interestingly many students, upon their return to their home countries, decided to include an aspect of this kind of work in their institutions.

In Rwanda, law faculty members have already begun to do this work with associations working with People Living with Aids (PLWA). They all garden together at first and then they provide legal advice.

## Participants

In 2008, HRDI planned on adding partner institutions from Burundi, DRC, Zambia and Malawi. However, in the end we only work with CRIDHAC at the law faculty at the University of Kinshasa and the Law and Development Association (LADA) in Zambia.

Our contact with the national university in Burundi was sporadic. Emails were not responded to on time and just as we began to explore working with another university, the national university started to make contact. We reached a point where we made preparations to travel and explore working with both institutions, but the local conflict



made travel there dangerous and they advised us not to come to Bujumbura at that time the militia were preparing to enter the city. Reluctantly, we then decided that work in Burundi would just not be possible.

In Malawi, the university was on strike with the faculty of law leading the strikers. We reached a point where we began discussion with the Centre for Human Rights and Rehabilitation (CHRR). They at first wanted to send two paralegals for training. We were clear that we could not accept that as the whole programme would then have to be adjusted to suit them and that would then affect the other students who were participating. We insisted on two lawyers instead. The two lawyers interviewed realised that ours was not only a training programme but one which required that they return and work with the institution. On that basis they decided not to participate. CHRR then recruited (at the last minute) two other lawyers who worked for the state legal aid system. The preparations for their travel to South Africa led us to doubt the situation with the two new lawyers. After a team discussion we decided not to take the risk to invest resources where we had serious doubts about whether they would return and implement.

In DRC and Zambia, we have entered into agreements and have trained two legal assistants from the faculty of law at Kinshasa, one soon to graduate law student from Zambia and the executive director of LADA (who is not a lawyer but has completed many law courses)

The following participants have been trained and *still remain in the programme*.

<b>Rwanda</b>	<b>Tom Mulisa (2006)</b>
<b>Uganda</b>	<b>Evelyn Aero (2006)</b> <b>Catherine Peace Tumusiime (2006)</b>
<b>Mozambique</b>	<b>Farida Mamad (2006)</b> <b>Armando Cuamba (2006)</b>
<b>Zimbabwe</b>	<b>Thoughts Deme (2006)</b> <b>Albert Chambati (2006)</b>
<b>Kenya</b>	<b>Collins Omondi (2007)</b> <b>Milka Kuria (2007)</b> <b>Ibrahim Alubala (2008)</b>
<b>Tanzania</b>	<b>Fortunata Kitokesya (2007)</b> <b>Daniel Lema (2007)</b>
<b>Namibia</b>	<b>Johannes Frans (2007)</b>
<b>Botswana</b>	<b>Nthabiseng Merafe (2008)</b>
<b>DRC</b>	<b>Sylvestre Pakabomba (2008)</b> <b>Patricia Pindi (2008)</b>
<b>Zambia</b>	<b>Charles Dinda (2008)</b> <b>Inutu Akolwa (2008)</b>



## **One Student from 2007 Participated in the Presentation of a Shadow Report**

Milka Kuria and Collins Omondi from Kenya completed their five month programme in December 2007. When they returned to Kenya and reported to partner organisations, they were invited to participate in the drafting of the shadow report to the ECOSOC Committee. Their main contribution to the report was on issues of HIV/AIDS and human rights. HRDI supported one of them, Milka to travel with the team and make oral submissions. She returned to Pretoria in November and shared her experiences with her colleagues and animatedly described the impact of the report as they then observed how the government were being questioned based on information provided by the NGO's.

This international experience inspired the students as they saw what is possible even within a short time and despite their youth and limited experience and exposure. The full text of the shadow report is available.

## **Three Students Leaving the Programme in 2008**

On 8 October 2008, three students, Mackline Ingabire (Rwanda), Kagiso Jani (Botswana) and Salome Chomba (Namibia/Zambia) left the programme. The brief version of the circumstances is as follows:

- All of the nine current students were given work to do. The day before the presentations were due, they asked for an extension, and were given a six hour extension, and the opportunity to complete the work. Two of the students stayed in the office after hours and completed their work, but the others took the assignment home.
- The two students who had remained behind gave excellent well considered presentations, but the other students presented work which was inadequate and did not meet the required standards. It is important to note that these aspects of the training build on each other and completing each step properly, is necessary to gain maximum benefit from the programme.
- When confronted on their levels of commitment and quality of the work presented, the students were arrogant and defensive. They had a meeting and the seven students who had presented shoddy work decided to leave the programme.
- On being told that they would need to return their books, computers and allowances for the balance of the month (9<sup>th</sup> to 31<sup>st</sup> October) they confirmed that they wished to leave the programme, and would comply with this requirement.
- After several of the students contacted HRDI, individual meetings were held with each student on 9 October, and some of the students decided to remain on the programme and complete the course.
- Kagiso Jani from Botswana had left early in the morning of 9 October, and did not communicate with HRDI again. It was felt that he had political ambitions which he had previously expressed, and that he was looking for an excuse to return home to he could stand for political office.



- Mackline Ingabire and Salome Chomba decided to return to their home countries, and signed promissory notes to refund the allowances that HRDI had paid to them for the months of October.
- Mackline Ingabire has since left the clinic in Rwanda. Although the clinic does not accept responsibility for the return of the money, (and HRDI does not hold them responsible) they are willing to try and recover it on our behalf.
- Salome Chomba returned to Zambia from Namibia. The Namibian law clinic is also willing to assist with recovery of the money for which a promissory note was signed.
- It appeared clear that the three students who had left the programme were not committed to the ideals of HRDI, nor were they prepared to return to carry out the implementation plans that are prepared at the end of the programme. The lesson to be learned from this is that the selection process needs to be refined.



## 3.2 LEGAL SERVICES

### BACKGROUND

“One of the failures that bother us greatly is the fact that we still have not taken up any cases as a team. We intend to do so this year. The students have cases that they would like us to assist in and spend time with them. The main constraint has been the absence of the specialised HIV/AIDS lawyer and the resulting time constraints that our small team is then faced with. In 2008, we will ensure that this is remedied. While none of the cases are ready to be taken to an international or regional tribunal, our intention is to assist in the domestic forums with a view to ultimately taking the case further if needs be.”  
*(Extract from Annual Report 2007, page 47)*

After advertising the position three times and even head hunting, in May 2008 we recruited a full time lawyer, Mr Tebello Thabane, to take charge of the legal services component. The focussed attention on this component for the following months resulted in great strides being made within this sphere of our work.

One of the specific objectives of HRDI is to contribute towards the development of human rights jurisprudence particularly within the domestic, regional, community and eventually international human rights enforcement machinery. The legal services component of HRDI is dedicated towards the achievement of this objective. The legal services component also has to look into issues of research and follow developments on HIV/AIDS and human rights in the region and internationally.

Although we have not yet filed a case jointly with our partners, we are now in the process of building five cases. We expect that three of these will be filed in 2009.



## **PUBLIC INTEREST LITIGATION CASES TO BE UNDERTAKEN JOINTLY**

We develop our public interest cases both proactively and reactively. We work closely with the legal officers while they are in their respective countries and pay them visits wherein we develop cases that they have already identified. We also work on cases proactively where we develop impact/strategic cases out of issues that we identify with our partners. Before the training programme, legal officers consult their communities with the aim of identifying pressing HIV/AIDS and human rights issues that the communities would like to be addressed. The issues currently being tackled are:

- 1) The rights of prisoners and HIV/AIDS
- 2) Discrimination within the life insurance industry against people living with HIV/AIDS
- 3) Discrimination against widows and orphans with respect to their inheritance rights
- 4) HIV in the Workplace
- 5) HIV and the Right to Education
- 6) Human Trafficking in the build up to 2010 FIFA World Cup
- 7) Effective Access to Treatment (Access to medicines, food and water)
- 8) Access to Justice for People Living with Aids (PLWA) in the DRC

Research on these issues is carried out in Pretoria and in their respective countries and it is out of deeper understanding of these issues that we identify systemic human rights violations and then use litigation to address some of them. We then provide technical legal assistance, for example, identifying legal issues and cause(s) of action, drafting and reviewing court documents, researching regional and international human rights law and providing opinions, providing funding for cases and assisting partners in the development of proposals for further funding.

In developing these cases reactively and proactively we follow our in-house case selection criteria which essentially builds upon the selection criteria applied during the retreat as discussed above and further it looks at whether the case represents a systemic human rights abuse/violation, an unconstitutional legislation that violates the rights of the vulnerable in society or any other law, policy or practice that is antithetical to human rights. We also assess what human rights, political, social and economic impact the case will have.

In addition, in 2008 when the students from previous years returned from partner institutions in November, time was created within the programme for strategic discussions on specific cases. Ten potential cases were identified but after discussion and an inclusive selection process, five potential cases were agreed upon. What follows are synopses of these five cases.



## SYNOPSIS OF PUBLIC INTEREST CASES FOR 2009/2010

Case teams consisting of HRDI staff and groups of students have been established, to address the various cases. Appropriate but differing strategies and forums will be utilised in the various countries and the HRDI team will work closely with case teams to ensure that these cases are successfully litigated within the agreed time-frames. Clients have already been identified in some instances while in others they will be actively/proactively identified in due course. Below are summaries of the identified cases:

### **A Case on Discrimination in Life Insurance Industry – Zambia, Zimbabwe, Mozambique and Rwanda**

HIV positive citizens have been denied access to life insurance in Zambia, Zimbabwe, Rwanda and Mozambique on the basis of their HIV status. Insurance companies have compulsory pre-approval testing policies which require all their prospective clients to test for HIV before they can be covered. If they test negative for HIV, they are issued with policies that have the so-called exclusionary clauses exempting the insurance companies from paying out in the event of an HIV/AIDS related death. Legal issues in this case inter alia include unfair discrimination and issues of confidentiality. It is hoped that the case will address these issues from a human rights perspective and will augment the current efforts to protect the rights of PLWAs. The legal officers are going to carry out meticulous investigations in this area and gather all the necessary information and then profile and proactively identify a client or clients in 2009. Thereafter a case will be developed and will hopefully be lodged before the courts in 2010.

### **A Case on Discriminatory Pre-Employment Testing by Private Companies (e.g. Celtel) Tanzania**

Fortunata Kitokesya and Daniel Lema of the clinic in Tanzania were informed of a practice within Celtel Tanzania by a certain lady who applied for a job with that company. She was required to undergo some blood tests but did not know why. She received an envelope from Celtel human resource personnel who asked her to take it to the company doctor. She only got to know the contents of the envelope after she handed it over to the doctor. Before the doctor could take blood samples from her, she requested to know what she was being tested for but the doctor did not disclose. The tests were done and when the results were out, the doctor returned a sealed envelope stamped confidential, but told her that she had tested negative for HIV. She took the envelope to the Celtel human resource division and was later offered the position.

Some of the issues that arise from this case are whether compulsory pre-employment testing violates human rights in this particular case and whether there are any inherent job requirements in Celtel warranting HIV testing. The other issue is whether the disclosure of test results by a medical doctor to third parties violates the right to privacy. It is hoped that this case will set a precedent in that the court will declare the practice of mandatory pre-employment HIV testing unlawful and unconstitutional where there are no inherent job requirements warranting it. It is also hoped that favourable laws will be enacted and that companies will develop their human resources policies in line with human rights standards.



It must be noted that this is a situation where there currently is no client. The team from Tanzania identified this potential public interest case as a result of the proactive approach described above as they were involved in the issue of HIV in the workplace.

CelTel is a company that operates in many different countries within East Africa. The team working on this case is in the process of profiling the appropriate type of client and developing strategies that include negotiation and litigation. The team is mindful of the power imbalance between any potential client and the large company on the one hand; and between the law clinic and the legal representatives of that big company on the other. However, the team finds comfort in the fact that similar cases were won against big companies in Kenya, South Africa, Namibia and Botswana. Cases from these jurisdictions will therefore provide valuable persuasive jurisprudence in our case.

### **The Virodene Clinical Trials Case – Tanzania**

Virodene is an anti-Aids drug that has been developed in South Africa since 1995. The Virodene researchers allegedly tested the drug on 11 patients in South Africa without approval of the South African drug Agency and the Medicines Control Council (MCC). The latter body found that the drug had a potentially harmful toxic substance and that there was no evidence that it would work. Having established that the drug was potentially harmful, MCC intervened to stop continued human trials in South Africa. Having been stopped in South Africa, the Virodene team sought to test their drug in other countries, notably the United Kingdom, Germany and Tanzania. It is important to note that the drug failed safety standards in the UK and Germany.

Reports show that the Virodene team tested an HIV/AIDS treatment made from burnt coal on Tanzanian soldiers without the approval of the Tanzanian authorities. Reports further show that the proposal to conduct the trials was rejected by the Tanzanian Health Agency, the NIMR. Having failed to get permission from the NIMR, the Virodene team then approached the military hospital, which agreed to conduct the trials. The trials were then carried out at two locations on the outskirts of Dar es Salaam, namely Lugalo military hospital and the Chadibwa health centre but were later halted by Andrew Kitua of the Tanzanian National Institute for Medical Research in 2001 because correct scientific and ethical guidelines were not followed.

As a result of the trials, some of the 64 subjects who took part in them have lost their lives while others are suffering from a variety of diseases. This case has been declared a case of “a series of serious or massive human rights violations of PLWAs” thus warranting public interest litigation.

Some of the legal issues arising out of it are whether the trials were conducted in accordance with the Tanzanian laws and international guidelines on clinical trials; whether the subjects of the trials furnished informed consent; whether the government took the necessary measures to protect its citizens from human rights violations by a non-state actor; whether the trials violated the subjects right to life, bodily integrity and whether the trials amounted to cruel, inhuman or degrading treatment.

A number of strategies including galvanising all interested parties in and beyond Tanzania; building a constituency around the case, building a hype around the cases and



alerting the public on violations of the human rights of the subjects will be utilised in 2009 with the hope of lodging the case before the courts by the end of 2009.

It is hoped that this case will have far reaching impact both on the human rights and political fronts. It is hoped further that the jurisprudence that will come out of it will ensure that the rights of PLWAs are observed when conducting clinical trials and that they are informed subjects and not objects of these kinds of trials.

### **A Case on Forced Sterilisation of HIV+ Mothers – Uganda**

The National Community of Women Living with HIV/AIDS (NACOWLA) contacted the LDC Legal Aid Clinic in Uganda in September 2007 in respect of a case involving forced sterilisation of HIV positive mothers in an IDP camp in Kiryandongo. Three women interviewed at the IDP camp stated that the practice was rampant and that most of them discovered it after failing to conceive. These women are HIV positive, one is a Sudanese refugee and the other two are IDPs affected by the war in Northern Uganda. The IDPs are aged below 30 years, married and have one and three children respectfully. They were subjected to these procedures at the time they gave birth in 2007. During an interview with the doctor, he allegedly confessed that he actually sterilised the women without their consent since he was “fed up with people spreading HIV/AIDS and so he had to stop them from giving birth”. Subsequently, at a meeting with the district medical officer, it was discovered that these cases had been reported to the district and no action had been taken in respect of sterilisation and instead the doctor had been interdicted for professional negligence resulting in the death of a mother at his private clinic.

Some of the legal issues arising out of this case are whether the doctor’s conduct violated the following rights: The right to sexual and reproductive health; the right to dignity and integrity of person; the right to freedom from discrimination; women’s rights in general; the right to health; the right to found a family; the doctor’s duty of care and whether his conduct amounts to breach of this duty; the government’s duty to regulate public officials; the hospital’s duty to regulate surgical and medical procedures. In addition it would be important to assess the causal damage that the plaintiff suffered.

This is a test case that challenges the validity of the practice of forced sterilisation of HIV positive mothers and it is hoped that it will have an impact of stopping forced sterilisation of HIV positive mothers and that it will ensure that government monitors the implementation of health policies especially in relationship to informed consent and how people living with HIV are treated.

Preparations for this case are afoot and hopefully it will be lodged before the Ugandan courts in August 2009. One of the strategies that we hope to employ is to conduct a thorough research and publicise our findings as widely as possible using the media and international partners. This strategy is proving useful in Namibia where a similar case is being pursued by a domestic NGO with its international partners. We are exploring ways of engaging the same international organisations with the hope of sharing experiences.



## **A Test Case on Access to Effective Treatment for PLWAs (Children) – Kenya and Zambia**

This is a further example of the proactive approach to public interest litigation that emerged out of the work done by the team mentioned above that dealt with the issue: “Effective Access to Treatment”.

In this case, a client has not been identified; however there is evidence that children in Kenya, Zambia and other African countries lack access to effective paediatric ARV formulations. Statistics show that the governments progressively realise the right to access to treatment for HIV positive adults disproportionately compared to the way it realises the same right for HIV positive children. Differently put, there are more adults on treatment compared to children and reasons cited by governments range from inadequate financial resources to unavailability of these formulations.

This state of affairs presents the following legal issues: whether there is a compromise on the principle of the best interests of the child as captured by domestic legislation and international legal instruments; whether the right to life, which broadly construed can encompass second generation rights including the right to highest attainable standard of physical and mental health is violated; whether there is discrimination against children in light of the fact that there is no demonstrable will by government to come up with programmes targeting effective treatment for children; and whether effective access to treatment is not only limited to supply of medication but also supply of food and water.

The main strategy for this case will be to institute an *actio popularis*. This will entail identifying a civil society organisation (CSO) that has the capacity to institute the suit in the countries engaging in the case. The counties will thus conduct research, create a social movement and raise awareness around the issue before instituting the suit in 2010. It is hoped that the case will not only generate jurisprudence but will result in the government being forced to progressively realise the right to effective HIV treatment for children in Kenya and Zambia.



## **ASSESSING THE LEGAL SERVICES TERRAIN WITHIN OUR PARTNER INSTITUTIONS**

In assessing the terrain, we looked at the challenges inhibiting the provision of comprehensive legal services in our partner institutions and then suggested strategies that can be employed to achieve the objective. We also investigated how research is done by our partners and suggested ways of improving it to ensure that it benefits the work that we do.

We noted that our partner institutions have challenges that are cross-cutting and they include:

- Institutions not operating optimally because they do not have a “non-profit law firm outlook” and this leads to a situation where they are unable to offer comprehensive legal services. Thus some may be characterised as advice centres which, in itself would not be a problem if they had partners who could take the logical step of litigation as and when need arose.
- Some institutions are not managed by legal practitioners and do not have practitioners amongst their ranks. Consequently, they are unable to represent clients in court. Legal officers have no supervision and mentorship on litigation and this impact on their choice of strategies to deal with cases.
- When the HRDI programme was conceived, it was hoped that two lawyers already employed by university based law clinics would be trained on how to utilise human rights norms, standards and enforcement machinery to protect vulnerable people in their communities. In reality, HRDI has not found the type of lawyers it had envisaged. Most of the legal officers who come for training are fresh from law school; most are not admitted to practice in their respective countries.
- Some of our partners do not have any other sources of funding apart from the contribution from HRDI. They have not rigorously engaged in fundraising and consequently have limited funds. It is due to this lack of funds that many cannot instruct private practitioners to take up cases on their behalf.

Although these challenges are grim, they are not insurmountable. For HRDI to succeed in its legal services programme, the legal officers have to operate within enabling environments where the ambiance is conducive for them to implement what they learned during the training programme. To this end, we identified a number of interventions which will inform our plans and budget for 2009. Amongst the things that we intend to implement in 2009 are:

- To address the issue of non-representation of clients in court and lack of mentorship for legal officers we have recommended that our partners employ a qualified legal practitioner who can work with the clinic on specific days if it would be too costly to fully incorporate them within the institutions’ ranks. Alternatively, to ensure that some of the academic staff members who work with the clinic are admitted to practice so that litigation can take place. These



recommendations were fortunately embraced by the partners during the PMC meeting.

- We will assist our partners to set up systems that will enable them to move from the current client advice centre outlook to a non-profit law firm outlook.
- In order to ensure that we take up cases and represent clients in courts within the available resources, we, together with our partners will, as a short term solution, identify human rights lawyers or organisations that undertake domestic human rights litigation and create rapport. Our partners will then have a memorandum of understanding (MoU) with them that will allow them to work together. The MoU will also require the domestic partner to provide *pro bono* services, litigation mentorship and other forms of assistance to the partners. Once this rapport is created, the parties will work on cases on a tripartite arrangement (HRDI, partners and domestic lawyers). This arrangement will entail the three partners dissecting case facts, identifying legal issues, causes of action, drafting and generally strategising together.
- We will also assist our partners to raise funds for impact litigation by identifying possible funders and reviewing their funding proposals. Impact litigation can be defined as litigation which can affect future legislative decisions in the region, for the promotion of specific cases related to human rights.

Despite the challenges identified above, there are positive aspects in as far as provision of legal services is concerned. Most of our partners have been able to employ ADR mechanisms as an integral strategy of dealing with cases. This is really commendable because more often than not matters are put to rest using these methods of dispute resolution. What is lacking, however, is the fact that in some institutions records of what clients' issues were, and records of how those issues were resolved are not adequately kept.



## LEGAL SERVICES IN PARTNER ORGANISATIONS

Notwithstanding myriad challenges on provision of legal services, our partners have made inroads to render legal services to their communities.

### PARTNERS FROM 2006

#### Uganda

The clinic sees walk-in-clients in Kampala and surrounding areas. These walk-in-clients are indigent and mainly present cases of custody, maintenance, child neglect, property grabbing and other related matters. Some cases were referred to court by the clinic but there is a challenge of logistics to ensure that clients and legal officers have transport to reach the courts.

From 18<sup>th</sup> to the 22<sup>nd</sup> August 2008 the clinic was among eleven institutions that participated in the National Legal Aid week. The theme of the week was “*Recognizing and supporting the right to Legal Aid in the Justice System*”. The week was divided into a number of events and activities, all geared at pronouncing the relevance and importance of legal aid in ensuring access to justice for all those unable to afford the legal fees of the conventional private practice system.; the provision of a platform for civil society to evaluate the legal policy regime governing legal aid service provision in Uganda; and highlighting the responsibility and obligation of the state to take up and effectively administer legal aid across the country. During this week, the legal officers from LAC gave legal advice on 53 cases some of which had an HIV/AIDS component.

Although the clinic’s preferred method of dispute resolution is mediation and conciliation it represented some clients in court on cases that were deserving and could not be resolved by mediation. The following are worth mentioning:

- **Kirabo Jane Case**

This case was reported in the last annual report when it was still being mediated. It involves minor children whose parents allegedly died of HIV/AIDS and whose bequeathed property was sold by an unscrupulous soldier who was in a relationship with the elder child. After mediation efforts failed, the legal officers filed court papers in October and an unfavourable judgment was delivered soon thereafter. HRDI assisted the clinic in this case and it is now being appealed.

- **Case involving three AIDS orphans with property situated at Kireka in Kampala**

This case involved three AIDS orphans who lost their parents to HIV/AIDS. Their father died in 1992 and bequeathed their family property to their mother. However, their mother also succumbed to HIV/AIDS and died in 1994. Following the death of their mother, the property was bequeathed to the children and a maternal aunt was appointed as the administrator of the estate. It was agreed that the rental income from the property be used to provide school fees and upkeep for the orphans. Subsequently, it was discovered that the orphans were not attending school and instead the administrator of the said estate was using the rental income for personal gain. The children had failed to



sit for their final exams. Following these developments, a relative to the orphans reported the matter to the Legal Aid Clinic (LAC) in July 2008.

The parties were invited to LAC for a meeting to discuss the matter. At the meeting it was realized that the administrator had failed to fulfill the conditions stated in the will and had in fact used the proceeds from the rental income for personal gain, denying the orphans access to education. LAC filed a case at the Administrator General's chambers requesting that letters of administration be granted to the second administrator mentioned in the will. The Administrator General handled the matter and letters of administration in respect of the said property was granted to the second administrator on 30<sup>th</sup> October 2008. In addition, the AIDS orphans are no longer staying with the first administrator and have since moved to the home of the second administrator and will be commencing their studies in 2009.

- **Case involving five AIDS orphans with property situated at Kisaasi, Kanisa Zone in Kampala.**

This case involved AIDS orphans who had lost their parents to HIV/AIDS. The orphans through their elder sister and aunt reported a case at the Legal Aid Clinic (LAC) in which they alleged that their step mother and two male relatives had sold their family property without their consent.

The stepmother and the two male relatives involved were summoned to LAC for a meeting. At the meeting it was discovered that the stepmother had forged a document which enabled her to sell the said property. She was informed that the document was not valid and subsequently the two male relatives decided to contact their personal lawyer. The matter is still pending.

- **Case of refugee infected with HIV/AIDS.**

In this case, a female refugee from the Democratic Republic of Congo reported a case in which she alleged that staff at the United Nations High Commission for Refugees (UNHCR) had denied her access to Anti-Retroviral Treatment (ART) and basic needs on the grounds that she was an asylum seeker and that she had been granted asylum to Canada. The team at the Legal Aid Clinic called the officer responsible for the welfare of refugees at UNHCR and informed them of the case. Following consultations with the officials involved, the complainant was granted access to ART and basic needs.

## **Rwanda**

The Human Rights and HIV/AIDS unit of the legal clinic uses different tools for dispute resolution, mediation being the preferred method. Provision of legal advice and mediation constitutes 70% of the clinic's activities. Litigation is only resorted to in public interest cases and where mediation has failed.

The clinic also drafts court documents for clients (In Rwanda, all legal complaints referred to the courts have to be in the form of written submissions). Since most clients do not know how to read and write, the students with the supervision of the clinic staff and lecturers prepare written submissions for those clients taking cases to court. Currently about 30 clients living with HIV/AIDS have taken their case to court and will



plead on their own because the clinic's staff and faculty members are not admitted to appear in court and the clinic cannot afford to pay lawyers all of them. It prioritises cases involving children and people living with HIV/AIDS who are terminally ill and cannot move long distances going to court.

The clinic also does administrative follow up which, involves accompanying clients before administrative authorities.

## **Advocacy Victories**

Clinic representatives held discussions with local authorities on how to handle people living with HIV/AIDS within their cells and sectors. Those living with HIV/AIDS in the district of Huye and whose CD-4 count is below 200 and are weak are exempt from compulsory community activities like community night security participation and monthly community cleaning work. In conjunction with Tumba sector authorities the members of Ministry of Hope Association of people living with HIV/AIDS through their representatives do not carry out the above mentioned compulsory community activities.

## **Cases**

Some of the cases presented before courts by the clinic through private practitioners are:

- **A case involving an HIV/AIDS orphan's right to succession**

In this case, an orphan was bequeathed a house by her mother who allegedly died of HIV/AIDS. Upon her death, the orphan's grandmother who was her guardian sought to sell the property alleging that the orphan was also going to die of HIV/AIDS. This matter was reported to the clinic. It could not be resolved using mediation and therefore the clinic instructed a private practitioner to pursue the case in court. HRDI funded this case. During the country visits HRDI staff discussed the case with the private practitioner and the clinic's staff and agreed on the possible ways of litigating the case. It is now pending in court.

- **A case involving a trafficked woman from Kenya into Rwanda by a UNICEF employee**

In this case, a woman was trafficked from Kenya by a Rwandese man in the employ of UNICEF. A private practitioner was engaged by the clinic to represent the woman. HRDI met with him and the clinic staff during country visits and discussed possible ways of pursuing the case. It emerged during discussions that in terms of Rwandese law a criminal investigation undertaken by the police should first be finalised before a civil suit could be instituted. Once the investigation and criminal case is disposed of, the clinic will engage another lawyer to pursue a civil suit as the current one seems to be unavailable to pursue the case.



## Zimbabwe

Through its network of stakeholders and partners Justice AIDS Trust (JAT) receives cases from clients living with and affected by HIV/AIDS. The volume of its cases involves inheritance and property disputes. The cases received were mostly referred from Zimbabwe Widows and Orphans Trust. JAT currently has 7 cases pending in court and one was successfully finalized which was an eviction matter, received from the Zimbabwe Network of People Living With HIV and AIDS (ZNNP+).

- **Tichafa Ticharwa's case**

This matter involves sharing of property after the dissolution of an unregistered customary law union. The client is living positively with HIV/AIDS. After she tested HIV positive she was exposed to abuse and domestic violence until they separated in October 2006. After the divorce she attempted to apply to court for sharing of the matrimonial property at the magistrates court but the husband advised her there was no need for that, as he would share the property with her voluntarily and she withdrew her claim. The husband failed to meet his promise. The client fell ill immediately after this, and could not pursue the matter further. She then went on ART treatment, began to recover and approached JAT's office to pursue her claim for the sharing of the property. The client also instructed JAT to write her a will, and claim maintenance at the magistrates' court. She was also employed by the Ministry of Education as a teacher before she fell ill, but after she recovered from her illness she applied to return to work, and was redeployed to an area outside Harare and she instructed JAT to request the Ministry of Education to deploy her to an area within Harare so that this does not interrupt her ART treatment as travelling to and from her workplace to Harare would be difficult and she might miss her ART treatment.

JAT filed summons for sharing of property, drafted a will and maintenance summons on the client's behalf and wrote a letter to her employer requesting her redeployment within Harare and it is awaiting a response from the Ministry.

- **The case of Zimbabwe National Network of People Living with HIV/AIDS (ZNNP+)**

ZNNP+ is one of JAT's stakeholders and partners. They instructed JAT to file eviction papers against a group of people who had unlawfully occupied their offices. All attempts to remove the individuals from the premises had failed and their occupation of the ZNNP+ offices had disrupted activities and operations of the organization. JAT filed an eviction application at the magistrates court on behalf of ZNNP+ and successfully obtained an eviction order against the individuals. The case strengthened relations between JAT and ZNNP+, and showed that their collaboration added to effectiveness in protecting and upholding the interest of PLWHAs living with HIV and AIDS in Zimbabwe.

- **The HIV/AIDS multi award winning documentary case**

In this case JAT's client was approached by a journalist to participate in a documentary to raise awareness on HIV/AIDS matters. The documentary was titled "The pain in my



heart” and can be accessed on the internet. The other participant was a lady who later died.

The documentary was screened on Zimbabwe television (ZTV), E-TV and SABC of South Africa as well as in Japan and Australia. The documentary won the CNN African Journalist Award 2008, the Desmond Tutu Award and another award in Japan.

When the journalist asked the client to participate in the documentary, he was too sick and he thought that the journalist wanted to help him to access treatment. During the shooting, the journalist asked the client why he chose to appear on television and he replied that he wanted to help others by disclosing his status. However, he had no knowledge that the documentary would be used for financial gain. He claims that the journalist sold the documentary and realised huge profits and gave him nothing. The client feels used by the journalist. This is because the journalist registered a Trust in the name of the other person who took part in the documentary so that her children and other vulnerable children affected by HIV/AIDS could benefit. JAT’s client would also want to benefit from the proceeds of this multi award winning documentary. HRDI is working closely with JAT in this case and will provide both technical and financial support.

- **Mobile clinics**

Other than litigation JAT use mobile clinics to reach as many PLWHAs as possible. An agreement has since been entered into between JAT and ZNNP+ in terms of which JAT will setup mobile clinics at ZNNP+ centres around the country and provide legal services to ZNNP+ membership in matters affecting their status.

- **The UZ-DART project**

Through its network of partners JAT has been requested to look into the issues surrounding the closure of the DART-UZ ARV research project based at Parirenyatwa Hospital Harare, which had seen approximately 1000 people living with HIV/AIDS put on second line ARV treatment-which to date is not available in the public sector. The research project was being carried out by the University of Zimbabwe in collaboration with DART. The question which has now remained is what is going to happen to all the research subjects that had been put on second line ART treatment by the project which is non-existent in the public sector hospitals? The closure of the research project without measures being taken to ensure that the 1000 people put on treatment are catered for will be catastrophic in the sense that if they are to be put back to the first line regiment of ART the virus will be resistant hence their immune systems will be drastically compromised.

JAT aims to ensure that there is compliance with the World Medical Association Declaration of Helsinki *which provides at Paragraph 30 that, “At the conclusion of the study, every patient entered into the study should be assured of access to the best proven prophylactic diagnostic and therapeutic methods identified by the study”*. JAT is currently in the process of consulting with the people living with HIV/AIDS that were part of the research project, on a strategy to address the issue vis-à-vis ethical standards and the human rights implications involved. JAT aims to ensure that even after the project closes all the research subjects are catered for and continue to obtain same high quality treatment, instead of being used, abused and then dumped.



## Mozambique

The students we trained were placed with the Centre for Practical Legal Studies of the Eduardo Mondlane University but due to integration challenges discussed more fully below they moved to the Centre for Human Rights within the same university. Unlike most of their colleagues they have right of appearance in courts consequently they have been able to render legal advice and represent clients in courts. They have mostly handled labour, family and domestic violence cases. They provide legal services to inmates at a prison where they do their regular community outreach. Among the important cases that they hope to develop is a case involving trafficking of women and girls from Mozambique into South Africa. They have also noted that there is intra-country trafficking where young boys are trafficked from the country side into the city under the guise that they are going to engage in religious studies. There is also a case of discrimination in the life insurance industry. They have already conducted some research for the latter case and have found that the practice is rampant. More information on this case is under synopses of public interest cases above.

## PARTNERS FROM 2007

### Namibia

The University of Namibia (UNAM) legal aid clinic faces a number of challenges as far as provision of legal services is concerned. The person who was trained by HRDI only completed his LLB recently. Consequently, he needs a lot of support from an experienced lawyer which, unfortunately the clinic does not have at the moment. He sees clients from the clinic's partner community organisations and some of them instruct him with fairly complex legal matters that require guidance from an experienced domestic lawyer. Be that as it may, he has been forwarding his cases to HRDI for guidance where we review his work and give him feedback on a case by case basis. We are presently working together on a case of unfair dismissal due to HIV/AIDS status:

- **The Namib Mills unfair dismissal case**

In this case, a client who worked for the Namib Mills for 19 years was allegedly dismissed because of his HIV status on 31 January 2007. He started feeling ill in 2005 and was taken to a company doctor by Namib Mills at the end of 2006. After his visit to the doctor, he was given a sealed envelope to give to his supervisor by the doctor and thereafter he was dismissed in January 2007. He believes the company doctor disclosed his HIV status that appears in his medical passport which has his medical history because after he handed in the envelope he was told that he was no longer fit to work for the company yet he was still physically able to do his work.

This case seems to be out of time under the Namibian labour laws which provide that an unfair dismissal case has to be instituted within 6 months of the date of dismissal. This can be attributed to the fact that there is no experienced lawyer in the clinic to see to it that cases are instituted timeously. We are however exploring ways of applying for condonation for late institution of the case.



## **Kenya**

Due to the challenges of cooperation with the University of Nairobi, we were forced to partner with another organisation called Children Legal Action Network (CLAN). While we were still exploring cooperation issues the two people trained by HRDI did not have a structure that could be used to render legal services at the University of Nairobi where they were based. Thus they resorted to holding mobile clinics outside the university. For example, on the 11<sup>th</sup> – 13<sup>th</sup> November 2008, the Kenya AIDS NGOs Consortium in conjunction with Student Association for Legal Aid and Research (SALAR), whose two members were trained by HRDI, held joint legal aid clinics in two slums in Nairobi; namely Kiambiu and Korogocho. During that time, SALAR gave legal advice to 36 clients. These mobile clinics were intended to address HIV/AIDS legal issues but a large number of clients raised other general legal issues. Some clients had HIV specific issues and a few of them declared their HIV status which was essentially the basis of their cases.

Our new partner CLAN has a functional legal services programme with both client advice and court representation services. We hope the people we trained will work together to not only offer advice on HIV/AIDS cases but to take them to court as well. One of the public interest cases that HRDI and CLAN are developing together appears under item 4.5 below.

## **Tanzania**

The legal aid committee of the faculty of law at the University of Dar es Salam runs an advice centre where clients visit the clinic every Friday. The legal officers offer clients advice on various legal matters including matrimonial, land contract, labour and other civil matters. They also draft court papers for clients although they are unable to represent them in courts because they have not yet been admitted to practice. Amongst the cases that the legal aid committee received in 2008 are the two public interest cases; the Celtel case and the Virodene clinical trials case reported under the synopses of public interest cases above. The legal officers and HRDI are working together on these two cases.

## **PARTNERS FROM 2008**

### **Botswana, Zambia and DR Congo**

Legal services in the University of Botswana legal aid clinic, in particular the HRDI programme never really took off due to the fact that the person we trained decided to leave the project and this matter has been adequately reported in the past reports. We trained a new person in 2008 and have been informed that the clinic will hire a qualified lawyer to work with her. We hope this will enhance the clinic's capacity and will result in it offering both legal advice and court representation services to its clients.

Zambia and DR Congo are countries new to our programme. In 2008 they sent students for training therefore there were no legal services rendered during that year, and services will begin during 2009.



## **ONGOING PREPARATION OF BRIEFS, OPINIONS AND REVIEW OF LEGAL DOCUMENTS FOR PARTNERS**

In 2008, we received requests for legal opinions from partners on various human rights cases that they are handling and these are not necessarily impact cases. Our opinions mainly focused on international and regional human rights issues and provided comparative jurisprudence. We also received court documents for review where we honed human rights arguments while our partners focused mainly on applicable domestic law and arguments based thereon.

We hope to acquire legal resources for our own library in 2009 and have made arrangements to get access to the University of Pretoria law library so as to improve the quality of our briefs and opinions.

## **OTHER INITIATIVES TO ASSIST IN THE DEVELOPMENT OF THE LEGAL SERVICES MANDATE**

### **RESEARCH AND PUBLICATIONS**

The issue teams recognised the need for focused research to understand the problems, their root causes and to develop strategies. Consequently, many of our partner institutions have already conducted research into their issues as listed above. In addition, a number of institutions are already doing a lot of research on HIV/AIDS and human rights. We therefore felt it was imperative to identify gaps in their research with the aim of filling them and avoiding duplication but at the same time doing research that will benefit both HRDI and its partners. HRDI noted that the research done by the partners should be used to influence change in policy and legislation in their respective countries and to that end we agreed to publish their research papers and use them as advocacy tools to ensure that stakeholders are sensitised. HRDI will therefore coordinate the research and ensure that the papers are edited and published in 2009. Research has been conducted by the teams during their training in Pretoria. In addition, some groups have completed research on the issues in their home countries. This will be expanded upon below in the part of the report dealing with progress made in each partner institution.

### **Application for observer status with the African Commission**

We applied for observer status with the African Commission on Human and Peoples' Rights in June 2008 and our application was considered during the 44<sup>th</sup> ordinary session in November in Abuja Nigeria where the Commission approved our application. This status will enable us to have access to non-confidential documents of the Commission and be invited to attend its sessions.

We hope to use it to advocate for the creation of the mandate of a special rapporteur on HIV/AIDS, Tuberculosis and other related infectious diseases in Africa.



## **SADC Tribunal**

We were invited to attend the hearing of the Zimbabwe farmers' case at the SADC Tribunal in Windhoek Namibia by its Registrar Justice Mkandawire who is a guest teacher in our training programme. During the hearing, we interacted with a Namibian lawyer who represented the farmers and invited her to share her experience with our students. This visit to the Tribunal did not only allow us to network with people who have actually used the Tribunal but also allowed us to observe how it functions. This insight will help us in future if we decide to litigate before the Tribunal with our partners.

## **Other Partners Involved in HIV/AIDS and Human Rights**

We were also invited to a partners meeting by AIDS and Rights Alliance for Southern Africa (ARASA) where we interacted with some of its partners who are also working in the same countries as us. We realised when they were reporting on their activities that they were working on cases that are similar to ours. We hope to interact and share ideas with some of them during our country visits in 2009.



### **3.3 COMMUNITY OUTREACH**

The objectives of the outreach programme are to:

- Ensure that real community needs are addressed in the design and implementation of the project;
- Provide legal advice to organisations and potential clients;
- Make the community aware of the services that our partners are providing so that they can utilise them;
- Reach the most vulnerable within society; and
- Ensure that despite being lawyers, our team of staff and students are grounded in the realities of hard manual work that the majority are compelled to endure.

HRDI's approach is to assist our partners to identify appropriate community based organisations with whom they would work to achieve the above objectives. What follows is a brief account of the work undertaken by our partners in this regard. A detailed analysis of each country will be presented to the face to face board meeting in 2009.

#### **PARTNERS FROM 2006**

##### **Mozambique**

The Country Project Co-ordinators (CPCs), our former students, conduct regular visits to prisons where they see clients and conduct research on prison conditions. In 2008, one prison authority granted them space within the premises to conduct consultations with clients.

In addition and under the umbrella of the Centre for Human Rights of their university, they have been going to certain markets and public schools to sensitise the public on human rights. A large part of their outreach is focused on the paralegals that work with the Human Rights League of Mozambique. They attend to clients at the paralegal advice centre Matola Boane two days per week. They use pamphlets and brochures but have not yet included voluntary manual work in their outreach programme.

##### **Rwanda**

Thus far, the outreach programme in Rwanda is the most comprehensive, organised and sustainable programme among our partners. The university contributes toward the programme by providing transport to the venues, and staff of the faculty share the supervision responsibilities as students also participate in the programme. The programme is structured such that staff and students first do gardening with the PLWA (as experienced in the HRDI voluntary work example) and thereafter offer legal advice. The organisations that they work with are organisations that offer direct services to PLWA.



## **Uganda**

In Uganda the outreach includes both prisons and community based organisations as in Mozambique. As a result of the work with the National Community of Women Living with AIDS (NACWOLA) on human rights and HIV AIDS, our partners have been providing legal advice and have identified a test case for 2009. Although the major bulk of their work has been limited to Kampala, they have also been prisons in the countryside where they have seen the conditions in which inmates are kept. Together with NACOWLA, they have been to the IDP camps in the war torn Northern Uganda where they provided legal services. They make use of brochures during their visits to the communities but no manual work is done.

## **Zimbabwe**

Justice Aids Trust (JAT) is a young organisation established by the CPCs. Although they are still in the early stages of operations they have started to provide free legal services to people within organisations such as the Zimbabwe Widows and Orphans Trust and Zimbabwe National Network of People Living with HIV and AIDS (ZNNP+).

## **PARTNERS FROM 2007**

### **Botswana**

The formal implementation of the project has not yet taken place as the CPC from Botswana training in 2007 has not continued to implement. The person trained in 2008 will return and work with Hope World Wide, an organisation that has a branch out of Gaborone, in Molepolole (Kweneng District). In addition, since the CPC has chosen to work on the issue of human trafficking her outreach programme has been restructured to ensure that she works with relevant community organisations that can assist in this work.

### **Kenya**

Due to the integration challenges within the university, the CPCs couldn't start their outreach programme as planned. However, they have been conducting research and working in Kibera particularly at schools. Through this work they identified a potential test case on free primary education in view of the fact that they noticed that children were required to pay certain fees. They are currently working with Children's Legal Action Network (CLAN) an organisation based on the outskirts of Kibera which makes outreach to Kibera much easier.

### **Tanzania**

In Tanzania, the CPC's have not been actively involved in outreach activities as the clinic itself receives as many as thirty new clients each week. However, they do co-operate with other NGO's. This situation is mainly due to inadequate assistance and support from the Legal Aid Committee (LAC) itself. It is expected that in 2009 this situation will improve.



## **Namibia**

The CPC working in Namibia is currently working alone. He works from Katatura, a low income township in Windhoek. Hence walk in clients are abundant. For most of the year he worked closely with Lironga Eparu, a support group for PLWA. However he recently found himself in conflict with their management over non-payment of a contractor. This has soured their relationship somewhat although he continues to work with the members.

## **PARTNERS FROM 2008**

### **DR Congo**

The students consulted with community based organisations before coming to Pretoria for training.. They will return and report back to these organisations, but their main focus in 2009 will be establishing the law clinic. They do however intend to ensure that they engage in both the manual and legal advice work of the outreach programme.

### **Zambia**

The organisation with which HRDI co-operates in Zambia is the Law and Development Association, an organisation that is firmly based within the community already. They are located in a small town outside Lusaka called Monze. They intend to return and include voluntary manual work in their work with communities as they already work with paralegal advice offices and community representatives.



# PROGRESS MADE IN EACH COUNTRY – INTEGRATION ISSUES

## INTEGRATION AND SUSTAINABILITY

HRDI reviews this dimension based on the following factors:

- Employment status of the trainees
- The partner's plans for the period after HRDI's financial contribution ends
- The partner's plans in the event that the trainees chose to leave and seek other employment
- Support, mentorship, and resources that the partner institution contributes towards the trainees and the implementation of the project

## PARTNERS FROM 2006

### Rwanda

The trainee, Tom Mulisa, is now employed on a full time permanent basis and is paid by the university. He is fully integrated into the institution and is treated in the same manner as other faculty members. To that end, the faculty encouraged him to obtain a master's degree so that he could undertake more intense teaching responsibilities. He is currently in Pretoria, studying for his Master's degree.

Other members of the faculty are involved in the implementation of the project and accompany the trainee during much of his work. Consequently, the institutional co-operation in Rwanda extends beyond the individuals trained but is now deeply ingrained within the faculty.

This is true at the level of community outreach as can be seen more clearly under the community outreach section above. Financially the institution is not dependent on HRDI support and can continue implementing the project with its own resources.

It must be noted however that the co-operation with this partner has been fraught with lengthy correspondence and communication regarding use of the financial contribution from HRDI.

In terms of the existing agreement, continued partnership with HRDI after 2009 is unlikely to have any financial component. However during 2009, HRDI intends to work more closely with the management of the institution on issues of budgeting and financial accountability.



## **Uganda**

The partner in Uganda has become wholly dependant on the services offered by the trainees, Catherine Tumusiime and Evelyn Aero. They are in fact the back bone of the institution. A clear indication of this was witnessed in November when they returned to South Africa for the one month training programme. During this period they received several phone calls from the clinic asking for guidance on cases and were preparing for a training workshop that they were to run when they returned in December.

While this is true, they remain dependant on HRDI for their salaries and they do not have secure contracts of employment. Our partner undertook to ensure that by June 2009, they would be fully integrated into the institution in this formal manner. In terms of the extension agreement with HRDI a clause has been inserted into their agreement making the completion of the integration a condition for continued financial support beyond June 2009.

## **Mozambique**

HRDI's co-operation with the Centre for Practical Legal Services (CPLS) became untenable due to several leadership changes and uncertain financial accountability. In 2008, the trainees Farida Mamad and Armando Cuamba obtained support from the Centre for Human Rights at the university and within the law faculty. After some discussion it was agreed that the parties to the agreement change to the Centre for Human Rights instead.

The Centre has subsequently employed both Farida and Armando and supported them in their decision to obtain a master's degree. This degree will enable them to remain within the institution and implement both the training of law students and the provision of legal services.

While integration at this institution was fraught with problems from the onset, this solution seems to move in the right direction. The Centre is contributing both financially and by providing mentorship consequently the sustainability and integration seem to no longer be a problem. Our visit in 2009 will present more clarity.

## **Zimbabwe**

While integration is not a challenge in Zimbabwe, financial sustainability is, as JAT (our partner) is wholly dependent on HRDI for financial support. However, they have begun earnest fundraising efforts which HRDI supports.



## **PARTNERS FROM 2007**

### **Kenya**

The co-operation with the university became impossible when they demanded to utilise 15% of HRDI funds for administrative fees and refused to provide a written undertaking that the funds will only be used for the project. HRDI consequently sought other options. Ultimately, an agreement was entered into between the Children's Legal Action Network (CLAN), an organisation that had been providing logistical, administrative and professional support to the trainees, Milka Kuria and Collins Omondi during the period of uncertainty. They have been employed by CLAN and work within the broad organisation structure of CLAN, however HRDI's concerns relate to the possibility of the students themselves leaving prematurely. It is fortunate though that HRDI trained a third person from CLAN.

### **Tanzania**

In Tanzania, the trainees, Daniel Lema and Fortunata Kitokesya remain in an extremely isolated circumstances. Unfortunately the partner institution does not provide the support originally promised.

They do not have contracts of employment and do not receive their salaries timeously either. Moreover, they are solely responsible for assisting the clients that attend the clinic each Friday (approximately 30 per day). This results in their inability to engage in much else. Despite this, two of the public interest cases have arisen from Tanzania.

HRDI will ensure that other partnership options are explored for Tanzania in 2009.

### **Namibia**

In Namibia, one student (Isabella Tjatjara) left the programme after three months in 2008 as the university did not provide the necessary support they had undertaken to do. The other student Johannes Frans still remains resilient. However, the partner institution is in the process of restructuring its clinic with the assistance of an outside professor from the global north. Unfortunately this has resulted in aspects of the outreach and legal service provision closer to communities being diluted.

Despite this, Frans continues to work with the clients without support locally. Instead he obtains support from HRDI's lawyer. HRDI agreed with the Dean of the law faculty that it would re-evaluate the situation in March 2009 and if the situation does not improve it was agreed that the agreement will be terminated.

The options contemplated for Namibia are:

- To co-operate with another partner, possibly the Legal Assistance Centre; and
- Support Frans to establish a community based law clinic.



## **Botswana**

Although the student trained in 2007 has not maintained contact with HRDI and implemented the plan, the institution is a strong partner that functions with a great deal of integrity. The current trainee, Nthabiseng Merafe Tladi has the full support of her institution. In addition, with HRDI's support the institution has decided to employ a part time lawyer to supplement their legal services capacity and provide greater mentorship to Nthabiseng. HRDI is confident that this partnership is strong and secure.

## **PARTNERS FROM 2008**

### **Democratic Republic of Congo**

The students (Sylvestre Pakabomba and Patricia Pindi Mayisosa) recruited from CRIDHAC conformed to the profile originally contemplated in that they were already employed by the university on a full time basis. In December 2008, at the PMC meeting many integration issues were addressed with this partner to pre-empt any possible problem. The commitment of the institution to providing the necessary support to the students appears secure. The Vice Chancellor of the University has also undertaken to assist where necessary. Consequently, HRDI is confident that this partnership will grow into the future.

### **Zambia**

Despite several attempts, HRDI was unable to enter into a partnership with the university. Instead, it ultimately identified the Law and Development Association (LADA) as a partner. There are challenges associated with this partnership namely:

- It is situated in Monze, a very small town half the distance between Lusaka and Livingston that lawyers are reluctant to serve; and
- The organisation does not operate as a legal clinic but instead as a paralegal advice office.

However, the partnership was built at an appropriate time, as LADA was moving toward providing legal services through a lawyer. Further, after a difficult search, we ultimately found a student (Inutu Akolwa) who will soon graduate with a law degree to work with LADA. Both the executive director of LADA (Charles Dinda) and Inutu were trained and have developed realistic implementation plans.

LADA is an NGO that is not wholly reliant on HRDI financial support and has a strong fundraising capability. HRDI is confident in this partnership despite the challenges.



## 4 COMPLIANCE WITH CONDITIONS AND RESTRICTIONS

### PROCUREMENT

“All development cooperation activities shall be characterised by efficient use of resources, the promotion of good administrative practices and transparency in the management of funds and the hindrance of corruption.” (Sida: Procurement Guidelines for Foreign Non-Governmental Partners)

HRDI has taken utmost care to ensure that it complies with the procurement policy. During this reporting period it maintained the standards set in preceding years and continues to follow the principles laid down in the policy document.

### CORRUPTION

“Sida and HRDI agree to co-operate on preventing corruption within and through the programme and undertake to take rapid legal measures to stop, investigate and charge any party suspected on good grounds of corruption or other wilful misuse of resources.” (Article 5 Co-operation Agreement between Sida and HRDI, 2005)

HRDI is committed to fighting corruption in all forms and challenging it wherever it may occur. While experiences with partner organisations might not amount to corruption, HRDI has been vigilant in ensuring that funds are properly utilised and accounted for and that no kick backs are paid in any form. These issues are discussed within the context of classes in the training programme to ensure that principles of financial accountability permeate each aspect of the organisation.



## 5 ORGANISATION AND ADMINISTRATION

### MANAGEMENT

#### *RECRUITMENT*

#### **Media Advocate/Social Scientist**

We did not advertise this position in 2008. We intended starting this process shortly after the board meeting. However due to other pressures of teaching and co-ordinating the students in the latter months of the year, this was not done.

#### **Transition from Dan Bengtsson to a New Person**

Dan Bengtsson has been instrumental in establishing HRDI, developing systems and in the strategic direction of HRDI. After intense discussions, reflection and thought, our team realised that we will not find one person to replace him.

With that in mind we have considered several options – the most important of which is looking for someone who shares the values, vision and mission of HRDI and has a certain skill and experience level. Very importantly, a person who is trustworthy and has demonstrated a level of fiscal prudence and management that is reliable.

The candidate whom we believed would have been perfect for this position, is currently in the UK and while he is very interested, his family commitment preclude him from returning to South Africa within the next few months. Toward the end of 2008 we began discussions with two potential candidates. Eventually, based on the issues outlined above, we offered the position to Wendy Watson. She worked within the NGO sector for several years, ultimately managing the joint KwaZulu Natal/Free State office of the Truth and Reconciliation Commission and more recently working with the Department of Transport (at first in KwaZulu Natal, thereafter as Chief Director in the National Department based in Pretoria). She takes up office in February 2009.

To ensure a smooth transition in 2009, Dan has agreed to return to complete the audit, and orientate Wendy regarding systems and procedures in February 2009. Dan is also working with the rest of the team to ensure that other aspects of the work that he undertook would also be taken care of in his absence.

Unfortunately, the gap that he leaves with respect to the insight he has offered during strategic aspects of the organisational development and direction, cannot be filled. However, we are working to minimise any negative impact on the organisation.

#### **ROLE OF TEAM MEMBERS IN ASSISTING TO REALISE HRDI'S VISION**

The HRDI team expanded in 2008 to include Hester Rossouw and Tebello Thabane. Our culture of team work, participation and mutual accountability remain central to smooth functioning of our organisation. It is remarkable that once again, we can talk of a year without any staff complaints or disgruntlement, but rather a team of people working toward the same goal and rising to the occasion as the demands emerge.



Within that context what follows are a few brief notes on each team members:

### **Dan Bengtsson**

In 2008, Dan has focussed on ensuring that the transition in 2009 will be smooth. He has developed systems that are simple, clear to follow and logical. His work with our partners has also been clear, consistent and firm yet also fair. This has laid the foundation for integration conversations in countries where we have had problems. His role has become clearer as multifaceted in that he has been taking care of the informational technology side of matters, engaged in strategic discussions and decisions regarding integration, partners, legal services, training, community outreach and manual work in addition to developing, maintaining and keeping efficient financial controls. Clearly, he will be very difficult to replace as he has played both a strategic and programmatic role at the same time.

### **Christian Tshimbalanga**

In view of the fact that the partner in Zambia was a community based organisation, Christian's focus in 2008 has been on community outreach in DRC as the new partner. He also continued to work with the other partners to sharpen their outreach programme.

In 2008, he has helped in several different aspects of the programme. He researched and taught some topics, helped with various aspects of the training programme such as supporting the group working on human trafficking and the CelTel case. He is also key to assisting with the development of a structured network.

### **Gideon Mphako**

In 2008, Gideon blossomed in his role as supervisor of the voluntary work. He thought it through, established and allocated teams to certain tasks and monitored the work. During the renovation of the shack, due to the limited time within which a lot had to be done he took a very firm stance regarding work ethic. Under his supervision the work was completed within the time frames and moreover, his role is now understood and respected both by the students and directors of their institutions. People sat at the edge of their seats at the PMC meeting as he described the work that was done and how it was done. He has also maintained and taken good care of the office premises.

### **Tebello Thabane**

Tebello joined the team in May 2008 and has been a key component. He has been welcomed and embraced. He has worked with a level of efficiency and professionalism that has enhanced many aspects of the programme. On his second day in office we travelled to Namibia together and he was already speaking of OUR vision and OUR plans. He has contributed to all aspects of the programme as has almost every member of the team. To the training programme, he ensured that he identified relevant books and materials and that they were purchased and circulated timeously. He ensured that guest teachers provided reading material in advance and every Friday provided the students with the materials for the following week.

With respect to legal services he assessed the task and has had many fresh ideas regarding how to improve this component of our work.



## **Hester Rossouw**

Hester joined the team in January 2008. She has assisted students with medical aid queries among other things and been very accommodating in her demeanour. She's taken much of the logistical responsibilities and carried them out with efficiency and attention to detail.

She has been innovative and ensured that during quiet times she learns about all aspects of our work, the partners, the people we work with and the countries we work in. She too has augmented and complemented the team.

## **BOARD**

Prof. Thandabantu Nhlapo was appointed as board chairperson in 2008. The board met twice in 2008. Apart from the governance function, the certain board members have participated in HRDI training programmes.

## **FUNDRAISING**

Our plans for 2009 and 2010 require a scaling down on some aspects and scaling up on other aspects for example a scaling down on training and scaling up on legal services. We planned on scaling down with respect to direct contributions to partner institutions but realised that with some partners we needed to maintain the contribution for another year to ensure the integration process.

Funding for 2009 is secured, with agreements to concentrate on building the legal services and integration aspects of the programme, and strengthen relationships between the five current partners in each region. The funders have agreed to this strategy.

Further discussions with our funding partners have led to a request for a concept document, followed by a five year plan from 2010 to 2015, and a funding proposal from 2010 to 2012. A meeting with funders is to be held on 27 March 2009, where this can be further explored.

With that in mind, we plan on completing the evaluation process by September 2009 and thereafter holding a stakeholder workshop to engage in dialogue with various role players, including beneficiaries, partner institutions, students, teachers, community based organisations, policy makers, donors and others.



## 6 BUDGET FOLLOW-UP AND COST EFFICIENCY

### OVERALL UNDER-SPENDING

There was, once again, an overall under-spending. We maintain the view that under-spending with respect to overheads, running costs, capital equipment and such items is in the organisations best interests. This was mainly due to prudent spending and holding a tight reign on finances.

While one might assume that the under-spending is due to the fact that HRDI did not achieve its goals and perform, the report read in its entirety will demonstrate differently. The budgets were prepared after careful consideration and reviewing previous year's expenditure. HRDI believes nonetheless that a clear explanation is required for the under-spending with regard to the main activities – legal services, training, outreach, direct contributions to partner law clinics, and salaries. As these line items go directly to the outputs of the organisations.

#### *LEGAL SERVICES*

Although more funds were spent on legal services in 2008 than 2007, we still have not undertaken any direct litigation. The research and preparation for cases has been done in house and not required any professional fees to be paid.

#### *TRAINING*

None of the visiting teachers charged for their time. All travel and accommodation arrangements were made by HRDI. Despite the fact that many recent text books were purchased and reading materials produced weekly, there remained under-spending on this line item. The three students that left in October and three students who were meant to return did not due to the fact that one was pregnant, the other was writing board exams and the third was representing NGO's in Geneva during the presentation of a shadow report.

#### *OUTREACH*

Visits to partner countries were streamlined to ensure that issues of community outreach, legal services and integration were addressed concurrently. Hence the cost incurred was reduced and there was an overall under-spending under this item.

#### *DIRECT CONTRIBUTIONS TO PARTNER LAW CLINICS*

The student who was trained in Botswana did not implement. The partner in that country hence decided to defer their request for the funds until 2009, when the new trainees would return.

#### *SALARIES*

As described above, it was not possible to finalise the appointment of the Social Scientist and the Lawyer took up office in May.



## **OVERSPENDING ON SPECIFIC LINE ITEMS**

### *STUDENT COSTS - TRAVEL AND TRANSPORT*

We budgeted R148 000 for travel and transport under student costs and spent R151 911.57. There was an overspending on this line item of R3 912. However, there was an overall under-spending under the main line item of student costs to the extent of R239 865.

The overspending under this sub line item was due to costs of travel to and from Mamelodi for the voluntary manual work.

### *REGIONAL GOVERNANCE – MEETING COSTS*

Under this line item, we budgeted R10 000 and spent R22 346.94. There was an overspending of R12 347. This line item refers to the cost of meals and refreshments during the PMC meeting. In 2008, the students asked to be present for most of the PMC process. This meant that there were fifteen extra people to cater for and was not originally budgeted for. It was important that they attended as it was a forum to discuss integration issues openly, and this is a pattern which will be followed in the future.

It should be noted however that there was an overall under-spending under the main line item training to the extent of R2 511.

### *OFFICE RUNNING COSTS – COMPUTER AND INTERNET*

We budgeted R38 400 for this line item and spent R47 478.12. This was due to the fact that when all the students were at the office the bandwidth purchased was inadequate. Further, there were many unexpected problems with the server and the student's computers which required the IT consultant to assist more than was expected.

There was an overall under-spending of R46 365 under this main line item.

### *OFFICE RUNNING COSTS – BANK CHARGES*

We budgeted R18 000 for the bank charges and spent R23 406. There was an overspending of R5 406. This was due to the fact that the charges associated with receiving deposits from donors were included under this line item and not originally budgeted for.

There was however an overall under-spending of R46 365 under this main line item.



## 7 ANALYSIS AND PROPOSALS

This section starts with tables and quantitative information and moves into a more detailed qualitative assessment with proposals to better address bottlenecks and improve the programme.

### TRAINING AND LEGAL SERVICES

	Target Per Year	2006	2007	2008	Current Total
No. of Countries	5	5	4	2	10
No. of Law Clinics	5	5	4	2	10
No. of Students Trained	10	10*	7	10	18
No. of Issues	2	3	2	3	8
<i>Project Management Committee:</i> No. of New Members (excluding HRDI staff)	5	4	4	2	10

### POST TRAINING CO-OPERATION WITH PARTNER LAW CLINICS – INSTITUTIONAL INTEGRATION OF STUDENT TRAINEES

	Target Per Year	2006	2007	2008	Current Total
No. of Countries	5	4	4	2	8
No. of Law Clinics with Co-operation Agreements	5	4	3	3	10
No. of Country Project Co-ordinators Employed by Partner ULCs	10	7	5	6	18
No. of Issues	2	3	2	3	7
<i>Project Management Committee:</i> No. of Member (excluding HRDI staff)	5	4	4	2	10



## PROGRESS MADE BY COUNTRY PROJECT CO-ORDINATORS (CPC)\*

	2006	2007	2008	Total
No. of CPCs Providing Training to Law Students based on HRDI Training	7	5	6	18
No. CPCs Providing Legal Services Based on HRDI Training	7	5	6	18
No. of Training Manuals on HIV and Human Rights developed based on HRDI Training	1	1	1	2
No. of Law Clinics that are engaged in outreach programmes targeted at community based organisations working with PLWAs	4	4	2	10
No. of CPCs following implementation plan on issues proactively identified	7	5	6	18
No. of CPCs remaining in close contact with HRDI staff	7	5	6	18

\* Country Project Co-ordinators are students who return to implement the project.

## HIV AND HUMAN RIGHTS ISSUES COVERED DURING TRAINING

Target	2006	2007	2008
Unfair discrimination in the workplace	Covered under Human Rights Obligations of Corporations: ILO standards, WTO, TRIPS, Work Place Policy, CSR	Covered	Covered
Compulsory testing and informed consent	Covered under AIDS and the Right to Health Care	Covered	Covered
Unfair discrimination with respect to insurance benefits and social security	Covered under Human Rights Obligations of Corporations: ILO standards, WTO, TRIPS, Work Place Policy, CSR	Covered	Covered
Unfair discrimination in housing allocation and testamentary issues	Not Covered	Covered	Covered
Unfair discrimination within the political framework	Not covered	Covered	Covered
Unfair discrimination in schools and within the education system broadly	Not Covered	Covered	Covered
Access to treatment, care and support	Covered under AIDS and the Right to Health Care	Covered	Covered
Unfair discrimination in respect of child headed households and AIDS orphans	Covered under Children's Rights and HIV/AIDS	Covered	Covered
Prevention of cruel, inhuman and degrading treatment due of AIDS	Covered moderately under Social Psychological	Covered	Covered



status	Perspective: Stigma, Discrimination and AIDS		
	<b>Additional Topics</b>		
	Women's Rights, Customary Law, Traditional Practices and HIV/AIDS	<b>See table above for additional topics covered</b>	Covered
	Social and Psychological Aspects: Women and HIV		Covered
	Medical Perspective		Covered
	Access to Justice for People Living with HIV: Interviewing and advising clients with HIV		Covered
	Rights Based Approach to HIV: International Standards and the Right to Equality		Covered
	Childrens' Rights and HIV/AIDS		Covered
	Report Back from International AIDS Conference		
	Criminal Justice and HIV/AIDS		
	Refugee Rights and HIV, Migrant Workers and HIV		Covered
	Socio-Economic Rights, Food Security and HIV/AIDS		Covered
			HIV and Human Trafficking
			HIV and Witchcraft
			Climate Change, Human Rights and HIV
			Minority Rights and Indigenous People's Rights
			Common Law and Civil Law Contexts



## CONTENT OF TRAINING PROGRAMME: MAIN MODULES AND SKILLS PLANNED AND ACTUALLY COVERED

Main Modules Planned	2006	2007	2008
Introduction to international human rights law	Yes	Yes	Yes
The international human rights system	Yes	Yes	Yes
The regional human rights system	Yes	Yes	Yes
The sub-regional human rights system		Yes	Yes
Interdependence in international human rights law	Yes	Yes	Yes
Internal functioning of enforcement mechanisms	Yes	Yes	Yes
How decisions are implemented	Yes	Yes	Yes
Role the ULC and other NGOs	Yes	Yes	Yes
Access to justice for people living with HIV/AIDS	Yes	Yes	Yes
Current HIV/AIDS issues within the international and regional context	Yes	Yes	Yes

Skills Planned	2006	2007	2008
Analytical skills to identify root causes of problems, distinguish root causes from symptoms and to identify systemic issues within situations	Yes	Yes	Yes
Writing skills – including skills required to: <ul style="list-style-type: none"> <li>• draft documents and correspondence for submission to relevant institutions</li> <li>• media and press releases,</li> <li>• information packages for advocacy purposes</li> <li>• make contributions to academic journals</li> </ul>	Moderately Yes Yes Yes	Yes Yes Yes Yes	Yes Yes Yes Yes
Advocacy Skills – including skills required to: <ul style="list-style-type: none"> <li>• make a decision on whether to litigate or not</li> <li>• determine which issues to litigate about</li> <li>• determine which forum to use within the domestic, regional or international judicial system</li> <li>• understand consequences of an adverse decision</li> <li>• engage in diplomatic negotiation</li> <li>• engage in legal negotiation</li> <li>• utilise media advocacy</li> <li>• engage legislative advocacy</li> <li>• conduct litigation</li> <li>• conduct actual representation before the forums listed above, including oral presentation skills to argue a case before a tribunal.</li> </ul>	Yes Yes Yes Yes Moderately Yes Yes Yes Yes No	Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes through mock trial	Yes Yes Yes Yes Yes Yes Yes Yes Yes No mock trial
Information technology (IT) skills for: <ul style="list-style-type: none"> <li>• networking</li> <li>• lobbying and advocacy purposes</li> <li>• generating discussion and activism around specific issues</li> <li>• conducting research and disseminating information.</li> </ul>	No No No Yes	Yes Yes Yes Yes	Yes Yes Yes Yes



## SUCCESSSES AND FAILURES

### FAILURES

#### THREE STUDENTS THAT LEFT

The major failure for 2008 was the fact that three students left the programme without completing the training. We see aspects of this as our failure at two levels:

- Selection
- Ability to work with challenging students

With respect to two of the students, those selecting from the HRDI team were not confident that the students would in fact return and implement. We were doubtful regarding the commitment of the students. This was borne out during the circumstance that arose that ultimately led to their departure. A mitigating factor was that the team did not have sufficient time or other options in one instance. However, the failure in selecting the right person remains an HRDI failure, one which HRDI will be careful of in the future and ensure that there is sufficient time, options and contingency plans.

With respect to one of the student, HRDI is uncertain whether it is a problem of commitment or simply youth and immaturity. In the event that it was inexperience, which the team suspects, HRDI considers itself to have failed to nurture the underlying passion that lay within the student.

#### THE INTEGRATION PROBLEMS EXPERIENCED IN NAMIBIA AND TANZANIA

Indications of the possibility of integration problems in these two countries existed from the onset. HRDI believed at the early stages that it was possible to resolve them and with sufficient goodwill they would be dealt with. However, it has become evident that despite the goodwill of some individuals within the partner institutions, without the necessary ability and determination to focus attention on the issues, they simply will not be resolved.

These problems have compromised committed students' ability to work effectively and serve their communities with the requisite level of professionalism.

HRDI accepts responsibility for not taking decisive corrective steps earlier on. In mitigation however, HRDI is committed to dialogue and amicable resolution.

#### FINANCIAL ACCOUNTABILITY OF PARTNERS

Despite HRDI's consistent and constant emphasis on the level of utmost good faith required of NGOs and particularly human rights NGO's to maintain a high level of integrity and accountability with respect to financial management and despite its emphasis on the ills of allowances and bonuses for paid staff, it has found that with certain partners this practice remains.



In its analysis, HRDI concluded that more time needs to be given to effective budgeting and financial management – both with the students and the PMC members in the future.

#### FINANCIAL DEPENDENCE OF CERTAIN PARTNERS

At least six of the ten partners are wholly dependant on HRDI for financial support despite the fact that the grant is intended to be a small contribution towards overall cost. The move toward sustainability is important and HRDI is committed to working with its partners to achieve this.

#### ABSENCE OF SOCIAL SCIENTIST

Consistent and scientific monitoring and evaluation methods are just one of the great losses that HRDI has suffered as a result of the absence of a social scientist on its team from its early days of operation.

Moreover, a proper multi-disciplinary approach has been difficult to achieve within the legal services component as none of the team members has that background and skill. HRDI is committed to ensuring that in 2009, the social scientist is appointed and integrated within the whole operations of the organisation.

#### WEBSITE

HRDI's failure to launch a website has resulted in potential partners being unable to access information about HRDI, but more importantly, the website was meant to be a tool to facilitate an online discussion forum that will ultimately result in a stronger network among the partners. Once again there are mitigating circumstances that related to the company who was appointed changing its line of business and not completing the work. However, HRDI accepts responsibility for not taking corrective steps sooner.

HRDI is committed to ensuring that the website and discussion forum is up and running in early 2009.

#### EVALUATION

The postponement of the evaluation due to the availability of the chosen evaluator is not entirely the responsibility of HRDI, however, it recognises the effect on the organisation's planning. It is committed to ensuring that a comprehensive, independent external evaluation is carried out in 2009 and that the findings are used to determine the future strategic direction of HRDI.



## STAFF DEVELOPMENT

Due to the pressures of work none of the staff were able to undertake any activities to improve their skills and knowledge and thereby improve the work of the HRDI. However, concerted effort will be made in 2009 to plan for this and ensure that staff obtain the necessary additional skills and knowledge to work more effectively.

## SUCCESSSES

### IMPROVED TRAINING PROGRAMME

In the first half of 2008, the team reviewed the training programme and looked at areas that need to be improved upon. The improvements were based on input received from partners, the team's assessment and ideas that evolved as the training programme was being run.

*Firstly*, we introduced a few new topics that we considered important such as a) civil and common law systems; b) Climate Change, Human Rights and HIV; c) Witchcraft, Human Rights and HIV; d) Minority Rights, Indigenous Peoples' Rights and HIV; e) a more in-depth look at Human Trafficking and HIV; f) a session with a lawyer involved in the SADC Tribunal Case of the Zimbabwean Farmers; and g) a session on fundraising skills and strategies.

*Secondly*, we ensured that reading material was sourced in advance and that the students received a reading pack each Friday for the following week. We also purchased several books that were donated to the institution and used by students while they were in Pretoria.

*Thirdly*, time keeping has been a major challenge in that in previous years it has been difficult to keep to the times allocated for sessions. In 2008 a concerted effort was made to ensure that we maintained time frames that were agreed upon. Although we did not always achieve this goal, we went a long way toward it.

*Fourthly*, we enlisted the participation of more guest teachers with greater expertise without increasing the costs involved substantially. The guest teachers were people from a wide range of backgrounds and experienced in their field.

*Fifthly*, we utilised time during the training session to lay a solid foundation for the co-operative work on public interest cases that would be taken up together. The building of the case teams and assessment of the capacity of partner institutions to undertake litigation was an important new step in 2008.

### IMPROVED MANUAL/VOLUNTARY WORK

In the past, the time spent actually performing the work was limited due to the hospitality of our partner institution, Tateni. In 2008, we decided early on in the programme to leave the offices promptly at 08h30 and begin work immediately upon our arrival at Mamelodi. We purchased water ourselves to save time on such issues. This resulted in the work being more fruitful and the experience of manual labour being more realistic. As a result it was a much more effective learning tool for both the students and the HRDI team. In



addition, Gideon Mpako's role as supervisor of these sessions was asserted more strongly. The lessons learned by a group of lawyers being supervised firmly in this work was and remains extremely important in HRDI's goal of living its values.

#### IMPROVED LEGAL SERVICES COMPONENT

As described earlier, the legal services component has gained much momentum in 2008. HRDI began working on cases together with partners in 2008 in more proactive and sustained manner. A strong foundation has been laid for this aspect of the work to grow and develop in 2009.

#### OBSERVER STATUS AT THE AFRICAN COMMISSION

That HRDI has now been granted observer status with the African Commission on Human and Peoples' Rights lays a further foundation for representation before that institution of clients and the advocacy initiative for a Special Rapporteur on HIV/AIDS.

#### RECRUITMENT OF LAWYER AND DEPUTY EXECUTIVE DIRECTOR

After months and even years of searching for a lawyer to join our team and take charge of this aspect of the work, HRDI considers it an important success that it finally was able to find such a person in Tebello Thabane. Hindsight being the best teacher also demonstrates how important it was to wait for the right person for this position and for the team.

In addition, the lacuna left by Dan Bengtsson was going to be very hard to fill. Here again the dilemmas and challenges associated with recruiting a new Deputy Executive Director could have been much more difficult and could have resulted in the organisation being more vulnerable in very important respects. Head hunting Wendy Watson was and remains a success for the team with a smooth transition planned for 2009.

#### BUDGET EFFICIENCY AND CLEAN AUDIT

An area that the HRDI team is particularly proud to share is its budget efficiency. It maintains a tight purse and the team shares the values associated with this approach. A telling sign is that in 2008 the team spent R3 158.78 on stationery. The team as a whole is prudent in its approach. Further, HRDI has obtained a clean audit for the past three years.

#### INVOLVEMENT AND RETENTION OF BOARD

Board members remain interested and involved in the work and direction of HRDI. Participation at board meetings has been high with a maximum of one person tendering an apology. Board members have also gone the extra mile to understand the work and operations of the organisation and its partners.



## IDENTIFYING LAW AND DEVELOPMENT ASSOCIATION IN ZAMBIA AS A PARTNER

At the beginning of 2008 when the possibility of a partnership with the university law clinic became impossible, HRDI could have been in a very difficult situation. However the research and then the identification of a new partner in the Law and Development Association (LADA) averted a possible crisis. LADA is situated in Monze a small town between the capital Lusaka and Livingston. With this partnership, HRDI has also moved out of the cycle of investing resources and effort in capital cities while more remote and rural areas are neglected.

## ONE STUDENT WHO PRESENTED A SHADOW REPORT TO ECOSOC IN GENEVA

Finally, when the team visited Kenya in 2008 and encouraged the Kenya Human Rights Commission to involve the two students in the shadow report process, it was not envisaged that within months of their return from the training they would be invited to join a delegation to present the shadow report in Geneva. In October/November 2008, one of the students, Milka Wahu did in fact achieve this. She then joined the training programme for a short while to share her experiences with the whole group of students. This then demonstrated what is possible to the whole team.

## CONSENSUS APPROACH

Despite the time that such an approach to an organisation takes and despite the fact that extended consultation can delay important decisions, the commitment that HRDI has to ensuring that decisions are taken jointly and that the team is involved in all aspects of the work of HRDI results in an effort that is owned by each individual within the group and by the group as a whole. This dimension of the culture of HRDI is possible because of its size and its methods. It is hoped that this culture permeates even if it is to expand and grow.

## **MAJOR PROBLEMS, RISKS AND BOTTLENECKS**

### CAPACITY

In reading this report, it is evident that HRDI is a busy organisation, with limited personnel resources, totalling four people to run most of the programmes, supported by an administrator and a maintenance person. This has resulted in the development of an organisational ethos of working substantially longer hours than is usual, increasing the possibility of exhaustion and burn-out of staff, within a short period. It seems prudent for HRDI to increase its capacity over the next few years to enable staff to have a good work/home balance. This is particularly necessary in the light of the content of the work which is undertaken, and the exposure to human right violations on such a large scale. While the passion, commitment and dedicated of the team is noted and applauded, to ensure the sustainability and follow through, it is important to achieve the balance and continuity.



## LAWYER FROM ZAMBIA

As stated earlier the partner identified in Zambia is outside the capital, located in a remote area and run by paralegals. There are no lawyers currently working in Monze. HRDI, as part of its co-operation with LADA planned on training a lawyer that would work on a regular, structured but part time basis with LADA. HRDI was uncertain about the lawyer identified by the partner from the beginning as he expressed reservations at participating in the full training programme. A compromise was reached but turned out to be insufficient for the lawyer who decided to attend the training for only one week. This presents LADA with a challenge as the other student trained is still to graduate from law school and consequently does not have the right of appearance in court. However, the LADA has searched for other lawyers that it will work with in 2009 and hopefully this bottleneck will then be sorted out.

## NETWORKING AMONG PARTNERS AND STUDENTS

Despite concerted effort, HRDI has found that communication among partners and students without HRDI is not as regular as it could be. Working together on issues and cases is even more difficult for our partners to achieve. For 2009, HRDI has planned to invest resources and initiate processes that work toward greater collaborative work among our partners and students. Details of the proposed plans for 2009 to address this bottleneck are contained in the section below, titled "Proposals for Change".

## **DEVIATIONS FROM PLAN: HOW? WHY? WHAT?**

### THREE STUDENTS THAT LEFT THE PROGRAMME

A full description of this situation is found above under the section that deals with the training programme. HRDI is aware that it intended to train two students per partner and as a result of this situation in Rwanda, Namibia and Botswana, only one student remains. This presents a substantial challenge to the student that remains and to the partner institution. However, to mitigate the consequences, HRDI has guided these country teams to prepare implementation plans that are possible based on the limited capacity of the team.

### BURUNDI AND MALAWI

As explained above, it was not possible for HRDI to work in Burundi and Malawi despite the efforts made. This marked a substantial deviation from the original plan. The full explanation is detailed above. However, for the purposes of this section it is important to note that HRDI would rather not do something at all than do it half heartedly and unprofessionally. Consequently, when the team realised that the students from Malawi did not fit the requirements and that implementation going forward would likely have been difficult, it decided that it would be a potential waste of resources and could impact on the programme negatively.



In Burundi it was external factors that made the travel impossible, which meant that HRDI would not have been involved in the recruitment and assisting in the preparatory work.

#### RECRUITMENT OF A THIRD STUDENT FROM KENYA

This issue was addressed in an email to responsible officers in early 2008. However for the purposes of this report it is important to note that the new partner in Kenya, CLAN, requested HRDI to train a senior lawyer from its institution to enable that organisation to grow and develop and to better enable the lawyer to supervise the two students trained in 2007 who would work for CLAN. After discussion and obtaining approval from the responsible persons, HRDI agreed to include a third student from Kenya. In view of the situation with Burundi and Malawi, it did not cause any undue strain on the training process and in fact enhanced it.

#### TRAINING OF A PARALEGAL AS OPPOSED TO A LAWYER IN ZAMBIA

As stated above, in Zambia, the partner institution is run by a person with limited legal training. However, his organisation requested that he accompany the law student as a trainee on our programme. This situation clearly had the potential to change the nature of the training programme if it set a precedent for recruitment in other countries. It could have resulted in a lowering of standards. However, in view of the fact that the individual concerned had taken several years of legal training and had been on other human rights training programmes, we felt that it would help the partner. With the benefit of hindsight we recognise that there were certain challenges associated with this decision that required extra effort and time on the HRDI teams behalf, however, the participation of this individual added a dimension particularly to the interviewing session that the law students learned a great deal from. In the end, while it was a deviation, it worked out for the best.

### **IMPACT OF EXTERNAL FACTORS AND FUTURE RISKS**

#### DETERIORATING POLITICAL SITUATION IN DRC, ZIMBABWE AND KENYA

HRDI was unable to work in Burundi due to the violent political conflict that made travel to that country impossible for its team. The deteriorating political climate in the DRC raises concerns for the team, however at this stage travels are scheduled for 2009 and are likely to continue.

In all three circumstances, HRDI's main concern is how these situations would affect its ability to travel to the partner institutions. At this stage it is watching the situation and planning carefully to avoid times of major upheavals. However, it does acknowledge that despite the courage and commitment of its team, it will not place any individual in circumstances that risk their physical safety. No changes to the plans are anticipated however as our regular communication with our partners on the ground assures us that the risks have not reached that stage.



## GLOBAL FINANCIAL CRISIS, EXCHANGE RATE FLUCTUATIONS AND IMPACT ON HRDI AND ITS PARTNERS

The global financial crisis has ripple effects at the level of the financial stability of our partners and HRDI. In addition, the reverberations in the household economy and the consequential human rights abuses and challenges are likely to result in a greater demand for ours and our partner's services.

### IMPACT ON OBJECTIVES OF THE PROJECT

The objectives of this project are to:

- *Contribute to the development of an international and regional jurisprudence within the African Commission and the soon to be established African Court for Human and Peoples' Rights;*

HRDI ultimately planned to undertake cases jointly with its partners and bring such cases before the above institutions. It made a conscious decision not to simply engage in litigation in its own name before these tribunals and to rather ensure that the cases are solidly built at a local level and move steadily into the regional and international domain. While it has clearly not achieved this objective yet, after three years a solid foundation has been laid through the proactive approach to public interest litigation and the knowledge and skills base at a domestic level to ultimately take cases up to the regional and international level. The antennae of all of our partners are keenly tuned to pick up such cases. Consequently it can be said that awareness, willingness, knowledge and skill required to use these institutions has grown.

- *Contribute to the development of centres of excellence within African university based law clinics that will contribute toward discourse within the regional and international human rights institutions;*

HRDI's effort during the training programme and its emphasis on integrating those trained within the partner institutions both as lawyers and trainers again takes it some way toward achieving this goal. However, as can be seen above the challenges faced with integration particularly as the integration of new ideas and values into established institutions can be extremely difficult to navigate. It is however pleasing to note that instances where space is created that tangible changes can be seen.

It is also important to note that in some countries HRDI has opted to work with an NGO instead of a university. However, all of these NGOs work closely with university law faculties and/or law students directly. Hence some impact is made although not as deep as originally anticipated. More time is necessary in the long run for the changes to be felt and experienced.

- *Proactively address key socio-legal and ethical issues within the field of HIV/AIDS in the Southern African and Great Lakes region.*

HRDI can confidently state that many inroads have been made at this level. The guest teachers, the voluntary work, the proactive approach to legal services and the



Carefully planned community outreach programmes all work together to result in a more comprehensive understanding of HIV/AIDS and Human Rights and the socio-legal and ethical issues that arise. It remains to be seen as to what impact the strategies that are implemented have on the lives of PLWA.

## **PROPOSALS FOR CHANGES TO THE PROGRAMME**

### **ADOPTION OF THE STRATEGIC DIRECTION OF HRDI FOR 2009-2010 AS NEW PHASE OF ITS OPERATIONS**

HRDI developed a three-year plan. However, during 2008, in consultation with its board and partners, it developed a plan for the second phase of its operations. The over-arching theme that guides the plan is **CONSOLIDATION**. It was tempting to view some of the successes and decide to expand to other countries, or to expand to include countries that were originally planned for. However, the team, the board and partners all agree that before any form of expansion it is important to focus on consolidation and essentially finish what was started before doing anything new.

All aspects of the strategic direction basically move toward that goal. It is consequently proposed that the strategic direction be accepted as a modification of the current programme and the annual work plan and budget which details activities and costing geared at achieving that outcome be accepted.

### **TIMING OF EXTERNAL EVALUATION**

The external evaluation was planned to begin in March 2009. However, the evaluator chosen is not available until June/July 2009. Other evaluators sourced requested an increased budget. Since it is critical that the evaluator complete his/her report by the mid-September in time for the stakeholder workshop, it is proposed that the timing of the external evaluation be changed to start in June/July 2009 and be completed August/September.

### **STAKEHOLDER WORKSHOP**

To enable HRDI to plan for its future (2010 onwards) it proposes that it is now timely to host a stakeholder workshop (October 2009). It is expected that the findings of the external evaluation will be presented at this workshop and that through an externally facilitated process, the direction of HRDI will emerge. This is possible within the 2009 budget and it is consequently proposed that the change be accepted.



## 8 CONCLUSION

HRDI is at a very exciting stage of its existence, past the infancy and development stage, with sufficient experience of actual implementation to have learned important lessons which will be taken into account in future developments.

And now, after three years of implementing the programmes, with a proven track record we have ensured that we have credibility in the African and international human rights communities, including our partners and funders.

The self-critical approach to the development of the organisation has led to analysis which is aimed at improving functionality, efficiency and the effectiveness in passing on the values and implementation plans developed between HRDI and our partners, and espoused within HRDI.

The opportunity to spend 2009 in a phase which is aimed at consolidating the work, improving Legal Services and integration, and planning for the next phase from 2010 to 2015 is both exciting and challenging. It is a privilege to be able to move into another phase of development, strengthen our partnerships and the integration between them, in the knowledge that we have support from others in the community.

The team has shown its commitment to the values and mission of HRDI, and most of the partners have bought into every aspect of the concept.

We are very sad to have lost one of our founders, Dan Bengtsson, and are pleased that he will remain on the board so that his skills are not lost to the organisation. We are grateful that the team has been strengthened by the employment of Tebello Thabane and Hester Rossouw who have added their own dimensions to the team, and we look forward to working with the new Deputy Executive Director, Wendy Watson who will begin work in February 2009 and the Social Scientist who will come on board during mid 2009.

This “new blood” and extra capacity, and together with the original staff with their particular gifts, give us both the impetus and the resources to move towards the new phase with enthusiasm and continued commitment.

We thank the Board members, our partners and our funders for their sincere and well expressed commitment to HRDI. We value the assistance that we have been given. We also value their advice and support, and look forward to a future of even more impact in both the Great Lakes and SADC regions.