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# ANNUAL PROGRESS REPORT

## 29 March 2011

PHASE II OF A GRASSROOTS BASED HUMAN RIGHTS  
INTERVENTION FOR THE PROTECTION OF PLHIV IN THE  
GREAT LAKES, EAST AND SOUTHERN AFRICAN REGIONS

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*REGIONAL HUMAN RIGHTS LAW CLINIC*

*to increase*

*ACCESS to JUSTICE for VULNERABLE GROUPS*

*in*

*AFRICA*

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## INTRODUCTION

2010 was a year where the mistakes and shortcomings from the first phase were consciously looked at and addressed. Consequently, it was a year that was outcomes driven. We focused attention on both the small steps that need to be taken now and the overall goals that these small steps will ultimately lead to.

It is not surprising then that our team remains serious about making ourselves redundant. We are driven by ensuring that come 2014/2015 we will all be out of a job. As scary as that reality is, it is remarkable that we are all still here, still working toward that without being distracted or worried about what will happen to us as persons when HRDI closes down. In our earlier documents and in the most recent strategic plan, we reflected on the extent to which non-governmental organisations are reinvented to ensure that the staff have jobs. This is certainly not our way and definitely not why we all work with HRDI. Instead we are here to make a difference and to ensure sustainable change.

During 2010, the team lost one member, Tebello Thabane, to academia and was unable to replace him and to recruit a deputy executive director despite a major effort toward that. This did not deter us from working hard toward achieving what we set out to and thinking creatively about strategies that will enable us to achieve our ultimate goal. We have worked efficiently and together.

As this is an important juncture in HRDI's life span and as we have surpassed our expectations and certainly the expectations others had of us, particularly with respect to the African Commission for Human and Peoples' Rights (ACHPR's) appointment of the special mechanism for the protection of the rights of people living with HIV, we find ourselves in the happy position of looking creatively at how we can ensure that these bold steps mean something in the lives of ordinary people.

Our proposals and plans for 2011, read together with our plans and actual outcomes for 2010, bear testament to this driving force. We are determined to ensure that the ACHPR reaches the most vulnerable groups and these vulnerable groups can access the ACHPR. This, among other things, was our motivation in 2003-2004 and is now even stronger as we get closer to that and our other goals.

Many people who run long marathons describe specific sections of the road as being particularly difficult. Although I do not run marathons, when the finish line is in sight I can have the reaction of suddenly getting really tired, recognising that exhaustion and then slowly building up the strength to reach that finish line. I cannot imagine that for us it will be that victorious sprint but instead a slow and steady getting there, probably more like the people in the Comrades marathon that lean on each other and finally get there. For HRDI this will in itself be victory enough to say we ran a good race and as we crossed the finish line we were supported by and in turn we supported many others.

With that brief introduction, we present a picture of our plans and actual achievements for 2010. Alongside that lie our plans for 2011. Thereafter we analyse in a bit more detail what progress has been made with respect to the five specific outcomes contained in our project proposal. The next section presents a results-based budget analyse. We thereafter present relevant information regarding management and administrative issues. In the concluding section the specific points for decisions are summarised.



Objectives	Planned Outcomes 2010	Achieved Outcomes 2010	Plans for 2011
Build a cadre of 15 social justice lawyers from the 5 target countries	15 new students from 5 countries	11 new students from 5 countries	17/18 new students from 9 countries
	Trained for five months	6 past students from 4 countries	Trained for five months
	All students from past years return for one month	Total 17 trained for one month	Training leads to LLM
			At least 15 past students return for one month
Develop a network of 15 accountable law clinics that provide legal services to poor and vulnerable groups in the 15 target countries	Operationalise Discussion Forum	Working but not effective yet	1 Partnership Forum
	Work on Cases Across Countries	Added Strategy - use of Facebook	3 Electronic Newsletters
	Host 2 Partnership Forums	Hosted 1 Partnership Forum	Discussion Forum and Facebook
	Study Visits to Each Other	1 Visit – Zimbabwe to Namibia <i>Forced Sterilisation Case</i>	2 Study Visits Finalisation of 7 new partners
Develop three centres of excellence within African university based law clinics	Clarify Concept and Framework	Developed framework and concept	Build on Moi as anchor, while working with UDSM and NUR
	Identify potential centres	Identified three potentials	Receive one lawyer/teacher per year to work with us in Pretoria
	Share ideas with potential centres	Explored Idea	Joint regional visit to partners
	Lay Foundation with 3 partners viz. UDSM, NUR, Moz	Found great potential in Moi Three potentials working on idea	Produce training manual
Contribute to the development of human rights jurisprudence and conduct community based strategic litigation at a domestic, regional and international level	Build case of unlawful clinical trials	Building the case for litigation	File Case in Tanzania
	25 Routine Cases	Feedback on 4 routine cases	Follow Case sent to ACHPR Com
	Define Concept in EAT Case	ACHPR appoints HIV Committee	6 New Cases to ACHPR Com
	Advocate for Appointment of Special Mechanism at ACHPR	Dialogue bet ACHPR and UN HIV Screening Case-ACHPR Com	Build Capacity ACHPR Com - <i>Leg. Office, Website and Pamphlet</i>
			UN SR and ACHPR work together
Grassroots involvement in regional debates	One Debate at EAC	One debate at EAC	Assist 5 partners to obtain observer status with ACHPR
	One Debate SADC	12 people to ACHPR 47 <sup>th</sup> Session	Take 2 new CBO's to 49 <sup>th</sup> Session
	One Debate – ACHPR	34 people, including CBO representatives at Dialogue between ACHPR and UN SR in Pretoria	One SADC Debate, One EAC Debate
	Sharing info with CBOs		Ensure ACHPR consults CBOs



## **SPECIFIC OBJECTIVE 1: BUILDING A CADRE OF 30 SOCIAL JUSTICE ACTIVISTS FROM 15 COUNTRIES IN AFRICA**

Our training programme has been described as the flagship of our organisation. We began 2010 determined to build upon the successes of the past and present the five month training to 15 new students from 5 countries. During the first quarter of 2010, in our determination to address proposals made by the external evaluator and the partners, we began a discussion with the Centre for Human Rights at the University of Pretoria regarding the accreditation of our training programme as an LLM degree. We consequently decided to postpone the five-month training programme for 2010 and instead, we will increase the number of students in 2011 and 2012 to ensure that all those trained during this second phase obtain an LLM qualification. We planned on presenting a one-month training programme to all students from the past years. Some of our partners decided to send both new and old students. In the end we trained a total of 17 students, 11 of whom were new and 6 were past students.

### **2010 TRAINING PROGRAMME**

The theme for 2010 was ***“Social Change, Social Dialogue and Special Human Rights Mechanisms for the Protection of the Rights of PLHIV in Africa”***. We used role plays, case studies and other interactive methods to ensure that our students are able to work relevantly and effectively with the community they seek to serve. In addition, we dedicated a few intense days to fundraising skills to ensure our partners’ sustainability. The HRDI team was supported by three highly skilled guest teachers.

We began with a high-level dialogue between the UN Special Rapporteur on Health (abbrev) and the ACHPR special committee for the protection of the rights of PLHIV (abbrev). This landmark event cemented our relationship with these two institutions and laid a solid foundation for our partners to engage with both of them. Consequently the first phase of the training programme was dedicated to looking more closely at this very important regional mechanism within the African human rights landscape. Mindful of the fact that its success is not only dependent on the determination of the ACHPR but also on the willingness of organisations such as our partners and their community based organisations to use the mechanism, we looked at how we could do exactly that.

Each country team looked at the work that they are doing and how this new mechanism could assist them and their clients achieve the human rights goals that they seek.

The next phase of the training focused on using the strategy of community conversations and dialogue to achieve social change. Bearing in mind that ordinary people in our target countries would not easily take to the streets to achieve transformation, and that it might not always be the best strategy, we examined a way that is more resonant with the cultural context. This session was facilitated by two highly skilled guest teachers.

The next session led naturally into a more personal inquiry into how each individual and the group can move from being dissatisfied about social injustice to concrete strategic intervention. We learned about how each of us are able to surpass our own ideas of ourselves and our own fears and not turn away from injustice but to rather find a way to do something about it.



Finally, we spent time as a group and then in country teams on fundraising strategies. The highlights of this phase were the innovative ways in which each team were already developing cost saving strategies to ensure that they spent money prudently. In addition, the practical work done on writing strategic plans for their institutions that would lead ultimately to funding proposals demonstrated their insights and understanding of the situation in their individual countries, the region as a whole and importantly their determination to engage in strategic activity geared at social change. The year ended with us receiving the great news that one of our partners, Justice Aids Trust in Zimbabwe, successfully secured a new funding partner thus taking one further step toward their sustainability.

## LLM IN INTERNATIONAL HUMAN RIGHTS AND HIV IN AFRICA

This LLM will be the first of its kind. While it focuses on HIV, in essence the framework is geared at training social justice activists. We are excited at the prospects that this presents. It is designed in such a manner that the essence of the training programme is preserved. While we will have to do such things as grade assignments and supervise a dissertation, the rest of the fundamental aspects remain the same, including the voluntary manual work.

Our focus on what takes place before, during and after the training is integrated into the LLM. Students will still be required to consult community based organisations before participating in the training, engage in voluntary manual work with PLHIV during the training, and work with our partner organisations upon completion of the training. All the topics covered in the past will continue and the same calibre of guest teachers will participate. The course outline is found below.

It is currently through many of the administrative processes at the law faculty of the University of Pretoria. We have a signed MoU with the Centre for Human Rights (CHR) and as part of that they have appointed me an extra ordinary (unpaid) lecturer who will be responsible for this LLM. The Senate will meet in May 2011 where final approval will be determined. Prof. Frans Viljoen, the director of CHR expects that it will all go through smoothly.

## CURRICULUM

It should be noted that the modules and the topics covered under each module are essentially taken from HRDI's five month training programme. They are as follows:

### *Module One: Theory and practice of international, regional and domestic human rights law*

The topics covered include:

- Historical, philosophical and political aspects of human rights in Africa.
- Basic concepts in international human rights law.
- The standards and institutions of the human rights system under the United Nations; Council of Europe, Organisation of American States, African Union, Southern African Development Community; East African Community and selected national law systems are analysed.



*Module Two: International, regional and domestic human rights law pertaining to people living with HIV and those at risk in Africa*

In this module a multidisciplinary approach is adopted and the topics include the following:

- Global perspectives on HIV/AIDS, including the current medical and socio-psychological perspective and rights-based approaches to HIV in Africa
- HIV/AIDS in the workplace, including an analysis of ILO standards and practice
- Women's rights, including the reproductive rights of women and HIV
- Children's rights and HIV
- Customary law, traditional practices and values and HIV
- Refugee rights and HIV
- The rights of migrants and HIV
- Prisons, penal reform and HIV
- Politics, governance and HIV
- HIV and the right to health
- HIV and the right to food, shelter, water and education
- Climate change, human rights and HIV
- Witchcraft and HIV
- The rights of specific groups at risk such as men having sex with men, sex workers and intravenous drug users

*Module Three: Strategic human rights lawyering for the protection of the rights of people living with HIV and those at risk in Africa*

In this module, specific aspects of the practice of international, regional and domestic human rights law pertaining to people living with HIV and those at risk are discussed.

Specific topics include:

- An analysis of the development of grassroots based public interest litigation strategies that address root causes of issues
- Analysing root causes
- Defining the impact sought and the possibilities of social transformation through law and litigation
- Developing strategic partnerships
- Deciding on the appropriate strategy including negotiation, mediation, litigation and media advocacy
- Selecting the appropriate forum
- Conducting interviews
- Investigating facts and gathering evidence
- Advanced legal reasoning and legal writing
- Working with social movements

In addition to the above three modules, students will be taught research methodology and how to develop research proposals. They will also write a dissertation. However, unlike in traditional programmes, the dissertation topic will be based on the community consultations held earlier. We will consequently ensure that the academic dimension is always driven by real community needs.



## **SPECIFIC OBJECTIVE 2: DEVELOPING A NETWORK OF 15 ACCOUNTABLE LAW CLINICS THAT PROVIDE FREE LEGAL SERVICES TO THE POOR AND VULNERABLE GROUPS FROM 15 COUNTRIES**

The basis of all of our work is the partnerships. Over the years this objective has been deepened and clarified to focus on the following aspects:

- Effective partnerships, accountable partners; and
- Partners working together in a network.

### *Effective Partnerships, Accountable Partners*

When asked about HRDI's sustainability, we are clear that while HRDI will close shop and should not be an organisation that reinvents itself over and over again, our partners need to be relevant, sustainable and stable institutions that serve their communities.

2010 marked a distinct and clear drive toward working with partners in a way that we are getting closer to achieving the outcomes anticipated. For us it meant being very open, clear and direct about who we are and how we work. It also meant that we are clear about accountability with respect to us, each other and most importantly the beneficiaries (communities whom they serve). This is about both financial and programmatic accountability.

We began 2010 with a closer look at all of our partners and as suggested by the evaluator we needed to decide at what point certain partnerships should end. We also decided on an even more intense process regarding new partners. As a result of this approach, the partnerships that we now have are based on deeper synergy, shared values and a mutual understanding of what has become a joint mission.

By the end of 2010, we deepened our partnership with Justice Aids Trust of Zimbabwe, University of Dar es Salaam in Tanzania, National University of Rwanda, and Eduardo Mondlane University in Mozambique. We commenced new partnerships in Kenya with Moi University, in Namibia with the Legal Assistance Centre, in Malawi with the University of Malawi. Our partnership with the University of Kinshasa in DRC is at a critical stage as depending on what has been done (or not) in the last quarter of 2010, we might continue this partnership or identify a new partner in the DRC.

We have been concerned at the types of reports received from some of our partners and as a result of our dissatisfaction with the veracity of the information, ended the partnership in Kenya with CLAN, in Uganda with the Legal Aid Clinic, with the University of Gabarone in Botswana and in Namibia with the university. We refer here not only to information regarding financial expenditure but more importantly relating to the role of the institution in the project. Unfortunately we realised that one of them misrepresented the situation to secure further financial support from HRDI despite repeatedly undertaking to ensure that the project is integrated within their institution. In view of the fact that our partnerships have moved so far from this point we would rather not dwell on these aspects but instead celebrate the fact that in creating space to find new partners who share our values, vision and mission and with whom there is such deep



synergy, we now have frank, open and respectful conversation and are working tangibly together toward achieving the outcomes we all seek.

### *Partners Working Together in a Network*

The external evaluator wrote much about the structure of a network and the complexities involved in working within a network. We began the year with the knowledge that by and large, our partners worked with us but not so much with each other. We were therefore determined to ensure that our strategies are geared at ensuring that they work more closely with each other.

Our strategies are primarily within two categories:

- Traditional face to face processes – this includes study visits, the partnership forum and meetings to work on cases together; and
- More modern and up to date web-based processes – which includes the discussion forum on HRDI's website, the yahoo group and the use of Facebook.

There is often no substitute to a simple and straightforward face to face meeting. Very little can compare with the impact of a group from DRC for example, visiting the legal aid clinic in Rwanda-seeing how they organise their clinic, their outreach to associations, the gardening and the actual provision of legal advice. We have consequently retained these strategies and during 2010 we recognised that in developing strategic litigation approaches, it would help our partners a great deal if they were able to be immersed in a case that is being argued in court. When we realised the cases of forced sterilisation of women in Namibia was going to court, we sent one of our strongest partners, Albert Chambati from Justice Aids Trust in Zimbabwe on a *study visit*. A brief look at his report will demonstrate the extent to which he learned as a result of that exposure.

The *partnership forum* of 2010 marked a distinct turn for us and our partners. It was held over three days at our offices in Pretoria. We have detailed reports on the whole process. In summary however, we spent this time on sharing mutual values and discovering the synergies among us. In addition, the interaction among the partners themselves was extremely productive with them volunteering to find ways to visit each other, collaborate in projects and assist the partners that were having difficulties with implementation where they can. Interestingly the strong and robust traditional face to face process resulted in the evolution of more modern strategies that could be used in-between.

HRDI has consequently set up a *Facebook* profile and almost all of the students and much of the management of partner organisations participate in this forum. We will have shorter more succinct and pointed conversations on Facebook and more intense conversations on the *discussion forum on HRDI's website*. They will work with each other rather than act as two competitive forums. This process began in 2010 and will be deepened in 2011. We will produce a *newsletter* every four months which will at first be limited to our partners and will later expand. While we will produce the first edition the partners have taken responsibility for the forthcoming editions.



### **SPECIFIC OBJECTIVE 3: DEVELOPING THREE CENTRES OF EXCELLENCE WITH AFRICAN UNIVERSITY BASED LAW CLINICS (ABBREV)**

The whole team at HRDI and its board are mindful of the fact that this objective marks a clear path towards our own redundancy. It is therefore crucial that it works and that it works well. To that end, we began 2010 with a very distinct focus on defining in more clear terms the conceptual framework for the establishment of centres of excellence or rather regional centres as we have come to refer to them.

As a team we held protracted discussions regarding which of our current partners are most likely to play this role going forward. In the end we acknowledged that none of them had all of what it would take now but that there were sufficient building blocks from which to work toward that goal. We began discussions with the National University of Rwanda and University of Dar es Salaam, Tanzania. During a scoping meeting with the faculty of law of Moi University, Kenya, we realised that we might have found in them a partner with great potential to ultimately operate as a regional centre. We expand more on this below.

On 3 October 2010 we hosted a meeting of all the potential regional centres. The theme for this meeting was ***“Exploring the Possibility of Sustainable Regional Centres”***. This meeting was convened to enable all the potential institutions to meet and brainstorm the idea together. More particularly, the aim was to develop a common vision, set of values and a skeleton plan which outlines shared responsibilities going forward.

The following people attended the meeting:

- Emmanuel Ugirashebuja (Dean of the Faculty of Law, National University of Rwanda);
- Kennedy Gastorn (Assistant Dean, Faculty of Law, University of Dar es Salaam, Tanzania);
- Maurice Oduori (Senior Lecturer responsible for the Legal Aid Clinic, Moi University, Kenya)
- Asha Ramgobin (Executive Director, HRDI)
- Dan Bengtsson (Co-founder and board member, HRDI)
- Christian Tshimbalanga Mwata (Lawyer, Community outreach and partnerships, HRDI)
- Carita Teien (Social Scientist, HRDI)

The partners engaged in intense and constructive discussion. Each partner conducted a self-analysis and was looked at by the others to establish the strengths, weaknesses, opportunities and threats presented by each. What emerged through this process was quite fascinating as all three partners realised that while each had potential, a champion for the idea was necessary within the institution. In this respect Moi had three potential champions who were committed to this. The most interesting aspect was the suggestion that while the anchor of the regional centre for East Africa and the Great Lakes region should be located at Moi, the other two in Rwanda and Tanzania would work collaboratively thus resulting in a partnership among themselves.



## MOI UNIVERSITY LAW CLINIC AS THE ANCHOR REGIONAL CENTRE

It might appear strange that Moi was proposed as an anchor regional centre – but nothing can fully describe the level of synergy between our organisations. We met them in Eldoret and then three of their clinic staff participated in our one month training. Their input during the partnership forum, discussion on regional centres and the training are all strong indicators that this will work. Significantly, it is an idea proposed by the team from East Africa and the Great Lakes region as described above and not only a proposal from the HRDI team.

For HRDI, the regional centre is a critical factor for the future. An African university where social justice lawyering is offered in a context driven by breaking down elitist stereotypes and models is critical for the ongoing work that needs to be done. Moi both in its underlying philosophy and in the work that we saw being done echo our ideas of doing more with less for those most in need.

We continue working on this idea and are discussing the memorandum of understanding and agreements with them.

### **OUTLOOK FOR THE FUTURE**

In 2010 what first appeared to be a major setback turned out to be an opportunity beyond anything our team would imagine. When one of our colleagues, Tebello Thabane relinquished his position as a lawyer on our team to pursue his academic studies it seemed to present a major set of challenges mainly around recruiting a new person in the midst of all that still needed to be achieved.

However, upon reflection it presented a major opportunity for us in that we have now worked with three lawyers from Moi University all of whom were imminently qualified for the position with respect to skills, knowledge, values and commitment. We decided not to look for a full time lawyer who will work with us for the four year period to 2014; instead we would reach an agreement with Moi University that they send one lawyer per year for three years. Consequently three people from the law faculty who are both lawyers and law teachers will work with us for a year at a time and be immersed in our work with partners, the LLM, the network, the cases and regional work and all aspects of our grassroots approach.

We saw this as achieving two objectives at once – firstly we will have the support and assistance of a lawyer in our team and they will learn and share methods and strategies thus preparing them for their role, come 2014.

We ended 2010 with tangible steps taken toward this outcome and look forward to April 2011 when the first of the lawyers will begin to work with us.

With this foundation we see that at least one of the regional centres will stand on a solid ground. During 2011 we will explore the location of the regional centre for Southern Africa.



## **SPECIFIC OBJECTIVE 4: CONTRIBUTING TO THE DEVELOPMENT OF HUMAN RIGHTS JURISPRUDENCE AND CONDUCT COMMUNITY BASED STRATEGIC LITIGATION AT A DOMESTIC, REGIONAL AND INTERNATIONAL LEVEL**

Developing jurisprudence is not only about taking up cases even though that might be a very important dimension, neither is it only about obtaining decisions from judicial and/or quasi-judicial tribunals. We take a broader approach to the matter as has been evident from all of our founding documents and proposals. With that in mind we begin this part of the report with a very exciting new development that has changed the African human rights landscape as it pertains to the rights of PLHIV, those at risk, affected by and vulnerable to HIV. We thereafter, focus on the work done on strategic litigation and routine cases with partners.

### **ACHPR SPECIAL COMMITTEE FOR THE PROTECTION OF PLHIV, THOSE AFFECTED BY, VULNERABLE TO, AND AT RISK**

This initiative began in 2008 with a question from one of our guest teachers, Prof Diego Rodrigues Penzon regarding whether the African regional human rights system has such a special mechanism. When we realised that it did not Tebello continued the discussion among the team, in class and with other partners. Eventually the team decided to embark on an advocacy strategy to get the ACHPR to appoint a Special Rapporteur.

It was an interesting strategy that began with a concept note that was geared at HIV, Malaria, TB and other infectious diseases. At first the focus was on the disease, it then evolved to focus on the right to health but eventually, looking more closely at the reality that ordinary people living with HIV in Africa are faced with, it was decided to focus on the vulnerable group and all the rights of this group that are regularly violated.

A new motivation and proactive mandate was drafted and in keeping with the grassroots approach our team decided to host a roundtable discussion on the side lines of the 47<sup>th</sup> Session of the ACHPR where our partners and a few community based representatives participated. In preparation, once the documents were completed, we obtained the support of two commissioners telephonically and emailed all eleven of them. Before the 47<sup>th</sup> session began we had email responses from nine of them expressing support.

Due to other commitments, only one Commissioner attended the roundtable but was so moved by the experience that he committed himself at the end to champion the passage of the resolution during the closed session. To bolster the strategy further, we arranged for the CBO representative to make the verbal presentation on behalf of HRDI during the public session. After the resounding applause died down, the chairperson committed the Commission to doing something concrete.

We later received an email in response to our query that the Commission had indeed passed the resolution and the only changes from our draft was that they appointed a three person committee instead of one Special Rapporteur and they removed the power to respond to urgent matters. The rest of the proactive mandate remained as we had drafted it. The next step that the ACHPR took was to call for nominations for independent experts to support the work of the Committee.



HRDI shared this ground breaking development for the protection of PLHIV with all of those with whom it has contact and the response has been resounding praise for the ACHPR. Several organisations (NGO's, UN based, CBOs, development co-operation agencies etc) have come forward to congratulate the Committee.

We hosted a dialogue between all three members of the Committee and the UN Special Rapporteur on Health (abbrev) to enable them to develop strategies to work together. It was a major accomplishment for HRDI and has led to a deep and strong relationship with the members of the Committee.

They are determined to make this Committee work and have asked us to assist them to ensure that this happens. They see us as a strong and essential partner and a driving force to ensure that the Committee and the ACHPR fulfil this mandate. Our strategy in this regard was to assist them to fine tune their work plan and to develop a comprehensive strategic plan. In addition, we have submitted what is the first issue they have been requested to address involving the engagement of a non-state actor regarding their practice of pre-employment testing. We intend following this closely and building from there to present other similar issues to them.

We nominated two people, Agnes Atim, the CBO representative who participated in the roundtable and Patrick Eba of UNAIDS. Both have been appointed to the committee of independent experts.

The Committee clearly acknowledged their shortcomings and informed us that although they are committed to ensuring that this Committee works, the limited human resources at the ACHPR makes it very difficult for them. During the dialogue, the UN Special Rapporteur also suggested that they will have great difficulty if they do not have at least one person dedicated to helping them deal with submissions. He has a *team* to help him.

Even the Secretariat of the ACHPR added its voice and all of them have simply asked for a legal officer to work with the Chairperson of the Committee.

Bearing that in mind and other ideas that we have based on our brief interaction with the ACHPR, HRDI will provide the services of one of our trainees who is both multi-lingual and has excellent skills to provide this much needed support to begin with. Further, we are exploring the development of a website for the Committee for easy access and the production of a simple pamphlet to enable people to access the Committee. We are determined to ensure that this Committee responds effectively to the call from ordinary people at the grassroots level thus reducing the gap between the regional level human rights mechanisms and the ordinary people in the community.

## STRATEGIC LITIGATION AND ROUTINE CASES WITH PARTNERS

### UNLAWFUL CLINICAL TRIALS IN TANZANIA

The case of unlawful clinical trials in Tanzania has gained momentum. In 2010 we enlisted the services of a special public interest litigation advocate from South Africa. In Tanzania, the team expanded to include a similar person. We then held an intense case analysis and review session outlining in detail the way forward. Access to important documentation to determine which of the clients were on the actual drug and which of



them were only given placebo was essential to quantify damages and assist the clients with the current medical care. We have enlisted the pro bono services of a local organisation and are using South African access to information legislation and processes to obtain the documents. This aspect is underway.

In Tanzania, work with the clients is continuing. The team are in the process of building a human rights case for direct access to the high court.

### **CASE OF PRE-EMPLOYMENT TESTING FOR HIV WITHIN A LARGE CELL PHONE COMPANY**

Our partners uncovered a practice within their countries of a large cell phone company that sends prospective employees for pre-employment testing for HIV. The prospective employee is not aware of this, not counselled before and is not given the results either. Instead all of the information is sent by the doctor directly to the human resources division. In view of the fact that the source of this information was a person who successfully obtained employment with the company and that she did not want to risk her job, she wanted to remain anonymous. We were consequently aware of a prevalent practice but had no client.

Once the ACHPR appointed the special committee described above, at the 48<sup>th</sup> Session, our team worked with our partners and presented a submission to this Committee. We suggested that they communicate with the company involved, alert them to the information, and inform them that it is not in keeping with universally accepted human rights standards. We are following this case closely and are hoping that through this type of intervention, strategies and methods will evolve that address human rights abuses by non-state actors such as this company in more tangible and concrete ways.

### **ROUTINE CASE WORK WITH PARTNERS**

While our partners are providing advice and legal services to many people in their home countries, we have only worked with them on four cases during 2010. This is due to the fact that they were able to resolve the cases on their own but also in part due to the fact that not all of the issues that they have dealt with lead to cases being opened. Our partners in Zimbabwe, Rwanda, Tanzania are providing legal services to clients on a daily basis. However many of the cases are resolved through alternate methods such as mediation and negotiation. While we applaud the fact that in the end the clients are being served and are happy with such outcomes, we recognised that some of our partners such as those in DRC and Mozambique are not yet working with clients as they intended to. In these instances we are working with the partners to develop the systems for legal services as that is the essential reason for their inability to do this.

The new partner in Namibia is already working closely with PLHIV and we expect that in 2011 we will work on more cases with them.

Despite this, it is something to celebrate when one of our partners, Justice Aids Trust informs us at the close of 2010 that they won a case against a person who insulted a person living with HIV. They needed help to execute the judgement of USD1500 which was awarded to their client for the insult.



## **SPECIFIC OBJECTIVE 5: GRASSROOTS INVOLVEMENT IN REGIONAL DEBATES (PARAPHRASED)**

HRDI has consistently been committed to ensuring that ours is a grassroots based programme that works to bridge the divide between what happens at the regional level and the reality of ordinary people on the ground. It is not an easy objective to achieve and by no means is it reached by one organisation on its own. However, it has been our singular pleasure to initiate processes and then participate in them where we have witnessed the power of the voice of ordinary people at the regional level.

In the preceding section we mentioned the establishment of the ACHPR Committee as a ground-breaking achievement and described the process undertaken to reach that outcome. We return to that moment once again to mention that we had been advised by several people who have many years of experience at the ACHPR that it would take many sessions before a resolution such as this is passed and even more before any concrete steps are taken such as the establishment of the mechanism. However, we achieved this objective at the first session. Why is that? There are indeed many factors that contributed to the outcome. But since we were there and observed the extent to which lawyers, academics and so many others go up to the podium and talk on behalf of different interest groups, we would suggest that the stark difference in our strategy was the resounding voice of a woman living with HIV. Very few other interest groups are present and none of them are usually given the chance to articulate their views. At the open session when the commissioners of the ACHPR and the audience heard the simple, authentic and clear voice of a person who herself lives with HIV and represents a large group of women living with HIV there was no option but to act.

We always believed, and remain firm in that belief, that it is necessary to ensure the participation of ordinary people in decisions that affect their lives. At a domestic level it has been seen time and time again how important it is to involve communities in development projects that affect them. We believed that that principle should also permeate at a regional and international level, but nothing prepared us for the tangible impact that it had at the forum itself.

When we included this objective in the second phase planning, we were cautious and mindful of how ambitious it was. We fought to ensure that the CBO representative spoke on HRDI's behalf at the ACHPR and eventually had to relinquish the opportunity for us to speak. But it was no sacrifice as that was the voice that needed to be heard at the ACHPR, not any of ours.

We built on this later in the year and instead of taking a large group of people to the UN Special Rapporteur or to Banjul to the ACHPR, we brought the Committee and the UN Special Rapporteur here where they met once again with the CBO representative, young lawyers whom we trained and who work with ordinary people and representatives of our partner institutions. This dialogue demystified the institutions for our partners who now feel more confident to approach them directly.

We cannot overemphasise the power of these small steps and continue to share it with other organisations so that more and more vulnerable groups get a chance to speak on their own behalf at the regional level. So far we have seen the LGBTI movement take this approach and hope that in the end they reap the benefits too.



At a sub-regional level the year began with a group of our trainees participating in a regional meeting at the EAC regarding the proposed HIV Bill. They raised issues professionally and from the reports we received they were vociferous and determined to impact upon the process and ensure that a rights based approach permeates the process and outcome.

Unfortunately, we have not had such an impact at the level of SADC but will make a concerted effort in 2011 to deepen this aspect of our work at the African regional level and at the EAC and SADC levels.



## **MANAGEMENT AND ADMINISTRATION**

### **OUR IMPLEMENTATION TEAM**

We are and remain a small but efficient team. HRDI has always believed and is now convinced that the flat structure it adopts and the team approach it takes is ultimately an approach that is not only in conformity with our principles but also results in what we saw last year – despite the loss of one member of staff we surpassed our expectations and achieved even more than we set out.

We have already mentioned in the section under the regional centre what we intend doing regarding the position of specialist HIV/AIDS lawyer. HRDI's Board and its team are confident that it is a creative idea which achieves several outcomes in on.

The position of deputy executive director was held by the co-founder Dan Bengtsson and since he left to return to his home country Sweden, HRDI has been unable to successfully find a replacement. In 2010 the position was advertised again and a shortlist of three people went through the second round of interviews. We went through further processes with one of the three. However in the end, we realised that it simply would not work out. The Board and executive director eventually decided not to appoint anyone and instead focus on this strategy with Moi University. We will assess later in 2011 whether the team needs any additional staff.

Regarding financial management we appointed a part time financial manager. She is thorough, efficient and highly professional and has the same ideas regarding prudent spending, diligent and thorough accounting as we do.

### **REFLECTING, LEARNING AND IMPROVING**

Monitoring and evaluation has become a business enterprise and as a result the essence of the words has lost their meaning. For us it is about reflecting, learning and improving. We are mindful also that it begins with developing a good plan which includes clearly formulated objectives and indicators to help us and others determine whether those objectives have been reached.

We developed systems in 2010 for us and our partners to engage in this process consciously and document more thoroughly. Ours is a process that marries the dry and not necessarily most effective collection of data with a story telling approach as it is often in the stories that we can see some of the changes we are working towards.

Hence this report is not filled with tables and numbers, although there are numbers where it is necessary. We have adopted a more narrative, story-telling approach both within our organisation during internal processes and in relationship to others.

These processes are integrated within the team and are now part of the organisational culture of HRDI. It is also now becoming integrated within our partner organisations. However we need to do a little more with our partners to assist in developing internal systems.



## RESULTS BASED BUDGET ANALYSIS

### BUDGET VS. ACTUAL FOR THE PERIOD JANUARY – MARCH 2010 – END PHASE I

BUDGET CATEGORY	TOTAL BUDGET	ACTUALS	VARIANCE	% VARIANCE
		TOTAL		
<b><i>REGIONAL COSTS:</i></b>				
Result One: Legal Services	185,000.00	23,798.82	161,201.18	87%
Result Two: Training	0.00	0.00	0.00	0%
Students Costs	0.00	0.00	0.00	0%
Direct Contributions to ULCs	203,034.00	67 386.33	135,647.67	67%
Result Three: Community Outreach	115,000.00	0.00	115,000.00	100%
Developing a Structured Network	71,000.00	24,733.22	46,266.78	65%
<b><i>CORE COSTS:</i></b>				
Salaries and Related Costs	554,784.00	392,308.68	178,596.32	32%
Professional Fees	120,000.00	29,644.42	90,355.58	75%
Overheads	118,330.00	85,224.82	33,105.18	27.97%
Governance	92,600.00	562.29	92,037.71	99.39%
Conferences incl ACHPR Sessions	0.00	0.00	0.00	0%
Furniture and Equipment	0.00	0.00	0.00	0%
	<b>1,459,748.00</b>	<b>623,658.58</b>	<b>852,210.42</b>	<b>58%</b>



## BUDGET VS. ACTUAL FOR APRIL – DECEMBER 2010 – START PHASE II

BUDGET CATEGORY	TOTAL BUDGET	ACTUALS	VARIANCE	% VARIANCE
		TOTAL		
<b><i>REGIONAL COSTS:</i></b>				
Developing Jurisprudence	351,000.00	236,476.92	114,523.08	33%
Building a Cadre of Activists	252,450.00	108,584.69	143,865.31	57%
Students Costs	288,000.00	216,781.87	71,218.13	25%
Manual Work with PLHIV	11,660	7,089.35	4,570.65	39%
Direct Contributions to ULCs	726,965.00	234,613.38	492,351.62	68%
Building Partnerships and Community Outreach	231,000.00	200,839.26	30,160.74	13%
Developing Centres of Excellence	71,000.00	56,550.07	14,449.93	20%
Developing a Regional Network	216,000.00	117,618.46	98,381.54	46%
ACHPR, REC and other Meetings and Conferences	96,000.00	125,088.96	-29,088.96	-30%
<b><i>CORE COSTS:</i></b>				
Salaries and Related Costs	1,525,952.00	1,056,361.16	469,590.84	31%
Professional Fees	236,260.00	305,512.45	-69,252.45	-29%
Overheads	355,811.00	280,696.28	82,914.72	23%
Governance	107,700.00	62,562.90	45,137.10	42%
Furniture and Equipment	46,000.00	4,354.50	41,645.50	91%
	<b>4,523,598.00</b>	<b>3,013,130.25</b>	<b>1,510,467.75</b>	<b>33%</b>



## **BUDGET ANALYSIS – EXPLANATION OF UNDER-SPENDING, OVERSPENDING AND CHANGES RELATIVE TO PREVIOUS YEAR**

As can be seen from the variance reports above, in 2010 HRDI operated on one budget for the first quarter of 2010 (January-March) and another budget from the remaining three quarters (April-December). The reason for this is that the second phase of HRDI's programme officially only began in April. The first three months were to be spent finalising plans and laying a solid foundation for Phase II. In addition it was expected that the audit would be completed and the annual face to face board meeting would be held in the first quarter.

Some aspects that were planned for the first quarter only took place in the third quarter.

Consequently, the explanations for over-spending and under-spending below need to be read in light of the above.

### **Overall Under-spending**

During the first quarter, there was an overall under-spending **ZAR 852,210.42** and during the following three quarters (April-December), **ZAR 1,510,467.75**.

This report has been prepared against the budget approved by the HRDI's board of directors and Sida in August 2010.

### **Under-Spending on Items Relating to the Specific Outcomes**

It is a normally a cause of concern when an organisation under-spends on areas that directly impact on the outcomes planned for the year. Interestingly, in 2010 HRDI reported under-spending on such line items as:

- *Developing Jurisprudence*
- *Building a Cadre of Social Justice Lawyers*
- *Developing Centres of Excellence*
- *Developing a Regional Network*

However, despite the under-spending, HRDI has achieved more than it set out in respect of the same outcomes as can be seen in the narrative report attached. The main reason for under-spending despite achieving the outcomes is prudent spending.

### **Under-Spending on Operational Costs and other Core Line Items**

Under-spending on *salaries* was as a result of the lawyer, Tebello Thabane, leaving HRDI in August 2010 and despite efforts at that time it was not feasible to replace him. In addition, despite several attempts and having short-listed a potential candidate for the position of Deputy Executive Director, the board and management decided not to employ the person concerned. Despite this, it is remarkable that with a depleted team, we were still able to achieve all that is described above in the narrative. With respect to *Overheads* it is purely prudent spending and a team effort to utilise HRDI resources carefully. With respect to *Governance*, HRDI held two face to face board meetings and meetings by conference call, however, once again, obtaining cheap airfares and



accommodation and staff cooking meals instead of hiring caterers cut costs down drastically.

### Over-Spending

To over-spend on professional fees can on the face of it be a major concern. However the explanation for this is very clear and simple. The budget against which the over-spending is recorded is from April-December 2010. The over-spend on this line item is made up as follows:

Line Item	Total Budget	Total Actual	Variance
Audit	25 000.00	86 689.00	-61 689.00
Financial Management	144 000.00	158 790.95	-14 790.95
Management and Operations	60 000.00	60 032.50	-32.50
Legal	7 260.00	-	7 260.00
<b>TOTAL</b>			<b>-69 252.45</b>

The budget amount of R25 000 for the *audit* was meant for the additional audit required and not the total audit cost for the 2009 audit. The latter was budgeted for the first quarter period. However the invoice was received and paid in April.

The same is true for the over-spending on *financial management*. The financial administrator and accountant who captures HRDI books on Pastel were paid in April for the March fees.

The over-spending with respect to *management and operations* relates to payments made with respect to enlisting Dan Bengtsson's services to assist HRDI during its transitional period.

### Over-Spending on Smaller Sub-Line Items under Overheads

In 2010 we over-spent on *Cleaning and Telephone*.

On *cleaning* there was over-spending of ZAR 1 523.67. In preparation for the dialogue on 2 October, the full HRDI team spent one evening cleaning the office. It is then that we realised that one person cleaning the office one day a week is asking too much. Consequently, we decided to pay two people to clean the office once a week thus increasing the costs. For 2011 the budget has been adjusted accordingly.

There was an over-spend on *telephone* costs of ZAR 2 153.13. Normally the telephone costs average around ZAR 4 500 per month. However, in March/April and October/November they were a bit higher (ZAR 6 829.15 and ZAR 6 798.71 respectively). The March/April bill was due to several international calls to our board member in Sweden (who is one of the co-founders and assisted with the Phase II processes) regarding the Phase II planning and the conclusion of processes with Sida and Danida. The October/November figure was due to several international telephone calls to Sweden regarding the possibility of Dan Bengtsson returning as Deputy Executive Director.



## **Over-spending on ACHPR Meetings**

There was an over-spend in 2010 of ZAR 29 088.96. While we have in every other instance ensured that when we travel we do not stay at expensive hotels, during the trip to Banjul in November we found ourselves in a situation where we simply had to. The session was being held at the Sheraton hotel and cheaper rates were negotiated for all participants. However, we were only able to stay there for three nights as they were fully booked thereafter. After many attempts at obtaining other accommodation for the remaining seven nights we eventually made reservations with the assistance of a travel agent. The day before we were scheduled to check into the new place from the Sheraton, we drove to the hotel to see what it was like. What we observed was the absence of mosquito nets, the absence of vegetarian food for the two vegetarians on our team, the presence of frogs in the room, and a lot more that need not be fully explored unless required. Our taxi driver promptly drove us to his first recommendation, the Coco Ocean Hotel. Unfortunately the cost was higher than planned. However in the circumstance the team discussed it and felt strongly that since we have seven nights left in Banjul and a lot of work to do, we needed a place of comfort and safety.

We spent time at the end of this journey to ensure that the next time we travel to Banjul we have options. Consequently we do not foresee being in this situation ever again



## CONCLUSION

HRDI is driven by a set of objectives and a determination to make itself redundant. It is made up of a small, lean team. In the past we have been quite self-critical and spent much time in our reports on what went wrong. We dwelled in an atmosphere of what we often described as failure. Our failure to affect the change we so desperately worked towards.

2010 is a year characterised by an important divergence from that norm. We remain self-critical, we remain a learning organisation that is constantly looking at how it can improve the most simple and complicated tasks. However, we are a team that acknowledge that all we can do as a team is give 100%. In the end the outcomes are not entirely in our hands. Interestingly this approach frees us from the despairing notions of failure and success and instead give way to deeply engaged effort in each step, every step of the way.

One focussed, determined and clear step at a time - this is now the HRDI's hallmark.