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# ANNUAL PROGRESS REPORT

## 22 March 2012

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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HUMAN RIGHTS DEVELOPMENT INITIATIVE NPC

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## INTRODUCTION

This report is the culmination of a year that began with both optimism and determination to meet the goals and fulfil the mission of HRDI. It is relatively brief but hidden in tables, stories, short accounts and analysis is a sense that we are indeed slowly working ourselves out of a job. The five objectives that we set in 2010 remain the driving force within the team. The objectives work together and depend upon each other for an overall successful outcome and the consequent closing down of HRDI in 2014/2015.

The team held together through extremely difficult times and ends the year with a feeling of accomplishment and anticipation for the plans that are underway for 2012. This despite not having achieved certain projected outcomes such as past student participation in Southern African Development Community (SADC) and East African Community (EAC) debates. Neither were we able to produce the three newsletters that were planned and instead only produced one. We did not facilitate two study visits nor did we submit six new cases to the ACHPR's HIV Committee. We do also regret not having filed the case regarding unlawful clinical trials in Tanzania.

These are not failings that we mourn as we realise that in the year of the first LLM, it was more than overly ambitious to expect that all such outcomes would be achieved. They will be explained more fully in the body of the report.

The report begins with a quick snap shot in the form of a table depicting HRDI's five specific objectives, the planned outcomes for 2011, what was actually achieved and plans for 2012. Thereafter it moves into a detailed description and analysis of outcomes achieved (or not) under each specific objective. This analysis includes specific strategic lessons learned and a reflections on the processes undertaken and why some have succeeded as planned, some have surpassed the plans and others have not gone as planned.

A brief narrative describing management and administrative matters follows which leads to the budget analysis.

We conclude thereafter with a rare feeling in HRDI, a feeling of having accomplished something. We have often described what we have not done and despite accolades from colleagues and peers, students and development co-operation partners, we ended the year feeling like we could have done so much more, achieved so much more.

In 2011 though, we end the year confident that we gave everything we had. And even though we did not achieve everything we set out to, what we did achieve was way beyond any of our expectations and even more, beyond our imagination. We hope that the narrative that follows does justice to the year 2011, HRDI's seventh year and three and half years before it closes its doors.



Objectives	Planned Outcomes for 2011	Achieved Outcomes 2011	Plans for 2012
Build a cadre of 15 social justice lawyers from the 5 target countries	17 new students from 8 countries	18 new students from 10 countries	15 new students from 7 countries
	Trained for five months	Improved five month training	Supervise 18 dissertations
	Training leads to LLM	LLM approved	33 students from 10 countries return for 10-14 days
	15 past students return for 1 month	15 past students from 8 countries	18 students graduate with LLM
		25 guest teachers, 45kg materials each	
Develop a network of 15 accountable law clinics that provide legal services to poor and vulnerable groups in the 15 target countries	1 Partnership Forum	Hosted PF with 10 partners	1 Partnership Forum
	3 Electronic Newsletters	Produced 1 newsletter	Replace Bot with two from Univ of Lubumbashi and Goma in DRC
	Discussion Forum and Facebook	Facebook and yahoo group used	Build on Facebook and yahoo
	2 Study Visits	No study visits undertaken	1 Study Visits
	Finalisation of 7 new partners	10 partners finalised	Finalisation of 6 new partnerships
Develop three centres of excellence within African university based law clinics	Build on Moi as anchor	Strategy revised - no firm decisions	Work on Moi, Makerere & Malawi
	Receive one lawyer/teacher per year to work with us in Pretoria	Moi taken steps to develop LLM	Possibly receive Phd fellow from Makerere
	Conclude MoU and agreement	UDSM, NUR no longer options	Strengthen other partners
	Joint regional visit to partners	Moi, Makerere and Malawi are now possible options	
Contribute to the development of human rights jurisprudence and conduct community based strategic litigation at a domestic, regional and international level	File Case in Tanzania	Access to information process initiated in SA, case not yet filed Tanzania	File clinical trials case in Tanzania
	Follow Case sent to ACHPR Com	ACHPR wrote signed to company	Ensure letter is sent to company
	6 New Cases to ACHPR Com	Agreement concluded, Sylvestre appointed and assisted in developing internal operations.	Build EAT case & Adv Op AfCrt
	Build Capacity ACHPR Com <i>Leg. Office, Website and Pamphlet</i>		Second legal officer in Cameroon Submission on underlying determinants of health to ACHPR
Grassroots involvement in regional debates	Assist 5 partners to obtain observer status with ACHPR	Partners were not ready	Assist Mak, Moi and LAC Obs Stat
	Take 2 new CBO's to 49 <sup>th</sup> Session	Consulted CBOs and included issues raised in statement	2 LLM st and 2 CBOs 51 <sup>st</sup> Session
	One SADC Debate	Not done, ACHPR session	Consult CBOs before 51 <sup>st</sup> Session
			Focus: ACHPR, ACrtHPR & UNSR



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

A well trained cadre of social justice lawyers who are driven to change the status quo and who are steeped within grassroots communities working with people in an egalitarian manner has great potential to bring about change. HRDI set out to build this type of cadre who will “be the change they want to see”.

We set specific targets that we sought to achieve. The numbers are easy to work out, we planned on training 17 new students from 18 countries but in fact trained 18 new students from 10 countries. We planned on having the training accredited as an LLM degree and that was achieved as is described more fully below. But how do we work out whether we have indeed trained lawyers who are now social justice activists? To answer this question we take a small peek into 2012 and see what these students are doing now. Each one of them have returned to their home countries and are either building a legal aid clinic from scratch or working to improve and enhance the functioning of existing institutions. Although they have been trained to serve PLHIV, they are also able to identify other social injustices and address them. A notable example is one of the trainees in Malawi who is working with a young girl who is disabled and not adequately accommodated in high school. In DRC one of the trained lawyers spends a day every week with the trade union. In 2011, a student trained during 2006-2010 who was once extremely homophobic is reported to be the lead representative of a lesbian couple who were badly treated by the police. The complete answer to the question as to the extent to which the 18 students trained in 2011 are in fact functioning as social justice activists can only be answered in the 2012 report as it will be their actions that will count.

Turning now to a more in-depth exploration of what was achieved, what was not achieved and lessons learned in 2011 under this specific objective the main focus is on the LLM in International Human Rights and HIV in Africa. It is the first of its kind in the world and no small undertaking. It occupied the creative energy of the HRDI team to the exclusion of many other important personal matters. However, the team was determined to ensure that this LLM was a resounding success. Below is a brief narrative analysis of the process.

### ***LLM in International Human Rights and HIV in Africa***

Running a five month training programme is very different from running an LLM. The year began with effort to ensure that the LLM is approved. With the assistance of Prof. Frans Viljoen of the Centre for Human Rights of the University of Pretoria, it was. The next battle was to ensure that in converting the programme to an LLM, we did not lose the fundamental values and foundational basis of our work so far. Challenging elitism is a core feature of the programme. Grading could compromise this mission. We took this battle and in the end were given approval to assess on a Pass or Fail basis.

Next, the team needed to ensure that the programme met a high standard. To that end we looked closely at the past programmes, guest teachers, methods, materials and preparation processes and ensured that each aspect was improved upon. In the end it was five months and one week of intense work from 18 students who come from 10 countries.



The course work is structured in three modules namely: 1) Theory and practice of international, regional and domestic human rights law; 2) International, regional and domestic human rights law pertaining to people living with HIV and those at risk in Africa; and 3) Strategic human rights lawyering for the protection of the rights of people living with HIV and those at risk in Africa. Students had four modes of assessment within each module, some that required group work and some that required individual work. The notion of *going back to the drawing board* is very important in this training. Consequently students were given feedback and an opportunity to redo assignments and as expected second and third drafts and attempts demonstrated that they really understood the concepts and issues. As part of the university requirements, external examiners will review the assignments. We will see whether they agree with our assessments or not.

As can be seen from the table above, 25 guest teachers participated from all parts of the globe and each of them had nothing but praise for the students, the programme, its structure and content. The telling moment however was when research proposals were being reviewed. It is at this point that the nervousness, anxiety and uncertainty emerged most strongly. The first step was to defend topics and then the research proposals. These are areas we had no experience in supervising. We were clear however, that topics needed to be formulated through a community based process. As part of their preparation, before commencing the training in South Africa, students were required to consult community based organisations and specific vulnerable groups to determine their needs. At a retreat it became evident that some students undertook this task more diligently than others. It was our responsibility to ensure that the voice of the community is heard and so even if someone had a brilliant idea but it did not emerge from this consultation, those issues were not given priority. In the end once issues were selected students returned to the office and another more intense analytical process was facilitated.

It is through this process that ultimately research topics emerged. On the designated day, Prof. Viljoen supervised a session where students defended their topics. He remarked at the clarity, analysis and relevance. Later, the students prepared research proposals that were reviewed thoroughly and then presented to Prof. Viljoen and a Fulbright Prof. Hannah Britton, a social scientist. They both remarked on the relevance of the topics and provided feedback on how to improve the research methods and planning once they returned home.

For HRDI this marked a subtle but distinct moment representing a meeting of social justice activism within the academic framework. It remains to be seen how the dissertations themselves evolve, but from this foundation we expect to continue to ensure research that is relevant.

The main areas of community based research for LLM dissertations and deeper engagement are:

- Trade unions as pressure groups and in liberation struggles and their current role in protecting and promoting the rights of PLHIV – both as a means to strengthen trade unions generally and their work with PLHIV;
- Focus on the underlying social determinants of health such as food, water, sanitation, housing, health education and healthy working environment as essential components of the right to health;



- A range of issues that focus on children such as reproductive health rights of mature minors, inheritance legislation, social protection and legal aid; and
- Claimed cures for HIV by traditional healers and religious leaders.

We began the training by looking deeply at internal prejudices and committing to working on them. Issues that were controversial to begin with such as the rights of lesbians, gays, bisexuals, transgendered and intersex (LGBTI) at the beginning were no longer so. We have every confidence that students will return and seek organisations that work with LGBTI issues and provide assistance, legal advice and services.

There are areas that still need to be improved upon and the team will ensure that this happens in 2012. For example the preparation phase will be more closely monitored to ensure that all students engage in meaningful community consultations. The manual work will be organised more effectively to ensure a balance between the *hard labour* dimension and working with PLHIV and children living with HIV.

HRDI owes a great deal to Prof. Frans Viljoen and the Centre for Human Rights for their confidence and faith in our team, our organisation and our strategic approach.

### ***Lessons Learned***

Upon reflection, one of the primary lessons learned and one reason for our success in obtaining this extreme form of accreditation is that we agreed that neither our organisation's name nor its logo will be mentioned in the degree certificates obtained. We agreed to do the work, pay the tuition fees, bring the guest teachers, teach and supervise but in the end to not officially take any credit for it. At first when this was proposed certain members on the team were not happy that HRDI does all the work and the University of Pretoria takes all the credit. But in the end the team was unanimous that credit, while important in some contexts, is not the most important factor here. If we want the programme to be sustainable and the students and partner institutions to truly benefit from the University of Pretoria's international recognition and reputation this is a small sacrifice to make.

We had to compromise when it came to the issue of who takes credit. However, as was seen from the narrative above when it came to grading we did not compromise. Our team were and still are mindful that we are operating within the auspices of an academic institution that is accustomed to certain modes of operation, where language, writing, style and format are extremely important. To the extent that we could we worked harder with the students, spending longer hours and going back to the drawing board to ensure that we met a high standard. However, we did not budge on the grading issue. Instead, we met with faculty members and administrators to find a way to avoid classifying our students as "summa cum laude", "cum laude" and "mediocre". We had to concede on the basic limit of a pass and fail. Students agreed with this after understanding the rationale and in the end it became clear to the HRDI team that had the classroom been a competitive environment, it is highly unlikely that the outcome would have been as good as it eventually was. Students helped each other with research, with analysis and at every level. This is the foundation upon which everything else was built and the HRDI team learned the lesson that compromise on certain issues like who takes credit for something, while not compromising on issues that go to the foundational values of HRDI place it in a strong position to achieve the outcome and remain true to itself.



## **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**

At the outset, this specific objective needs to be broken down into its component parts which are as follows:

- building 15 accountable law clinics;
- the law clinics provide free legal services to the poor and vulnerable from 15 countries; and
- the law clinics work together in a network.

### ***Building 15 Accountable Law Clinics***

To begin with we chose to be clear that we are not only seeking to build law clinics, but rather to build accountable law clinics. In our experience some institutions had law clinics, but they misused funds, did not provide professional legal services to clients and got by doing the bare minimum. We were looking to build law clinics that were vibrant parts of the communities they sought to serve. Institutions that provided a professional service to the poor and vulnerable who often needed legal experts who are even more innovative than commercial lawyers as the problems of the poor are often extremely complex. In addition, we sought to build law clinics who were accountable financially as well.

One of the guest teachers said during his presentation that human rights are ultimately about the national budget. Regardless of how good a constitution or set of law are, if the government does not allocate sufficient funds toward these important areas such as health, education and so forth, fundamental rights will remain a “teasing illusion”.

Careful and prudent budgeting and spending and meticulous accounting and reporting can make or break an organisation. Good intentions are not enough. Consequently we teach the skills necessary for this and at the same time emphasise the importance of these values in our partnership with the institutions

We planned on developing five partnerships per year. But in 2011 we finalised 10 partnerships. Based on projections as at the time of writing this report it appears that we will enter into eight new partnerships in 2012. Our partnerships with institutions in Rwanda and Mozambique do not include the annual financial contribution towards implementation of the project but is limited to the training of their lawyers and participation within the HRDI network. A table with a list of partners may be found at the end of this section of the report.

### ***Law clinics provide free legal services to the poor and vulnerable from 15 countries***

The institutions in Rwanda, Namibia, Tanzania and Mozambique are established legal aid clinics that both teach law students and provide free legal services to the poor. Our work has been to improve the services provided and assist with ensuring more effective and



efficient systems. In addition, we initiated a more effective community outreach programme thus ensuring that the institutions are rooted within the grassroots.

In Zimbabwe, Malawi, Zambia, DRC, Kenya and Uganda the institutions established new legal aid clinics with HRDI's financial, technical and organisational assistance. In the 2012 report more details will be provided regarding the types of clients, cases and communities that are being served in each country. It remains early days as the lawyers only just returned home in December 2011.

### ***Lessons Learned***

At this stage, it is important to pause and take stock of the lessons learned during this part of HRDI's work in 2011. Since this part of the work is really centred on building partnerships – the bedrock upon which HRDI rests – the team reflected deeply on lessons learned during the first phase. In 2011 very honest, frank and respectful conversations were held with partners from the outset. Difficult issues such as financial management matters were discussed up front. We emphasised the need for synergy of values and ideas and quite remarkably all of the new partners were already thinking along the same wavelength and were planning on to establish legal aid clinics. Our contact and work with them was often described as “the right thing coming at the right time”. For us the lesson was about not rushing into things, listening to our instinct and taking steps when it felt right. In the end the partnership established in 2011 are based on strong foundations.

### ***The law clinics work together in a network***

A network of institutions working together can be a huge undertaking. It is often difficult enough within one country and is consequently an even bigger challenge when the institutions operate across different countries.

HRDI has been successful in establishing this network and the success lies in the emphasis on people. Ultimately institutions are made up of people; if the people find each other and gel then they are more likely to ensure that the institutions they come from work together.

We, the HRDI team and partners reflected deeply upon why the network developed is working and came to the conclusion that it is mainly because the individuals within the organisations really know each other. We spend a great deal of time during the training, during partnership forums and in between such formal events connecting with each other as human beings. Consequently, when one individual (who is also a lawyer from a partner university based law clinic) gave birth to a baby in December 2011, this joy was shared with the whole group of lawyers across the continent. On the other hand, when another person experienced the loss of his mom, he too shared that with all of us and each of us held the celebration and mourning together.

Within such a context how likely is it that there will be competition among these organisations and more particularly the individuals working within the organisation? Furthermore, how much easier is it for individuals to reach out to each other on strategic organisational issues if they are already connected in this way?



The network among the students trained in Pretoria and who spend five months together requires very little to keep it going. Facebook and other social networking platforms have eased this process considerably. The network among the deans and leadership of the institutions is not as tight. It is not a fair comparison to make, but it must be noted that even though they spend a much shorter time together during the annual partnership forums, they too connect with each other and continue working together.

2011 saw the use of Facebook more effectively. It was new territory for some within the team but in the end it was very clear that this tool is one through which regular communication was possible. The Arab spring and the impact of social networks gave the HRDI team the jump start it needed to work out how this tool could be used and actually use it. Conversations about issues such as the International Criminal Court prosecutions, shared successes in litigation on HIV issues, the crisis in Libya and so forth dominated. This forum was and still is also used to share momentous developments in the lives of the individuals. It is both a complex and simple forum; for us the key is to find the balance between the interpersonal and strategic organisational. In fact when the bedrock is the interpersonal the rest does flow.

2011 also saw HRDI partners facilitating sessions among the network on their own initiative. Our partner in Mozambique has successfully convened two sessions on social security and HIV in Maputo as a result of which partners from other countries and institutions participated, presented and shared their experiences.

It must be noted though that each individual within the network is different and some individuals are closer personally than others. During the five month process it is even more evident. However, regardless of the depth of the personal relationship the connection between the individuals is made.

This way of working permeates all of HRDI's activities, including its work with the African Commission on Human and Peoples' Rights which will be discussed more fully later the report.

Country	Name of Institution
<b>List of Partners as at 2011</b>	
Rwanda	National University of Rwanda, Legal Clinic
Zimbabwe	Justice Aids Trust
Mozambique	Eduordo Mondlane University, Centre for Human Rights and Legal Aid Clinic
Uganda	Makerere University, Human Rights and Peace Centre
Namibia	Legal Assistance Centre
Tanzania	University of Dar es Salaam, Legal Aid Committee
Kenya	Moi University, Legal Aid Clinic
Malawi	University of Malawi, Legal Aid Clinic
Zambia	University of Zambia, Legal Aid Clinic
DRC	University of Kinshasa, CRIDHAC
<b>Partnerships planned for 2012</b>	
Rwanda	Universite Libre de Kigali and Intango Y'amahoro Foundation's Legal Aid Clinic
Burundi	Lumière University, Bujumbura
DRC	University of Lubumbashi and University of Goma
Angola	Catholic University of Angola
Swaziland	University of Swaziland
Lesotho	University of Lesotho



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

HRDI is working toward a situation where each of the partners mentioned above could be described as “centres of excellence”. With that in mind we decided in 2011 not to limit ourselves to a few potential institutions but to rather be open as the evolution of one or two or three institutions will depend mostly on what happens in 2012 once the trained lawyers return to their home countries.

Consequently the table that summarises planned outcomes against actual outcomes reflects this shift in strategy. Instead of holding stubbornly to the notion that the named three institutions will be the centres of excellence, we decided to work with them and others in a less pressured way, removing competition and expectations and letting events and developments evolve.<sup>1</sup>

What is true about the partnerships described above is also true about this aspect because here again ultimately we are dealing with institutions that are made of individuals. Synergy, timing and joint visions just as important and is in fact even more important in this context. A partner institution might be keen on developing all aspects of its legal aid clinic i.e. the provision of legal services, the training of law students and the community outreach. However, they might not really be keen on expanding their programme into a regional programme. However, if an institution already has such plans and is already working toward it then it is more likely for such an institution to take on this role.

In the end, HRDI does not see a regional centre of excellence replicating what it has done thus far, but to rather take on ideas, strategies, certain core foundational values and make it their own. In addition, the options for regional centres expanded during 2011 as two partners (Moi University and Makerere University) were in the process of developing LLM programmes similar to the one run by HRDI. However, for HRDI a regional centre needs to do more than run an LLM. It needs to be a model of legal service provision, excel at teaching, be rooted within the community and be robust in its advocacy.

With that idea, time will tell and HRDI is taking an engaged but patient approach to the issue as it is important not to rush into this aspect. Instead HRDI is working with all the partners to ensure that four aspects are developed and strengthened. In 2012 and 2013 it will become clearer once partners have really had a chance to get their institutions going.

This specific objective is directly related to the ultimate closure of HRDI and to the sustainability of the programme beyond the lifespan of HRDI. The narrative detailed in the paragraphs might lead a reader to the opposite conclusion. However, we at HRDI are determined to ensure that this dimension is achieved in a sustainable manner and the optimistically cautious strategic approach is reflective of the importance attached to it.

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<sup>1</sup> This was decided upon after in-depth visits to the three proposed centres of excellence in Kenya, Rwanda and Tanzania and discussions during the HRDI board meeting held in April 2011.



The main lesson learned is to be patient and to accept that the team does not have control over everything. It needs, at times, to wait and see, and act when the time is right.



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

Jurisprudence is a complex term with many notions attached to it. Some believe that developing jurisprudence requires the filing of a court case and the representation of a very clearly defined and visible client. Others view the development of jurisprudence as including addressing human rights issues without necessarily representing a specific client, but rather the interests of a group or category of people, for example PLHIV who apply for jobs. In addition, some view the development of jurisprudence as being accomplished through the use of mechanisms such as special rapporteurs.

HRDI has indeed used these mechanisms at the UN and African Regional level to obtain assistance for vulnerable people whose human rights have been violated. However, it cannot report on the details thereof as it will compromise the effectiveness of the mechanisms in the future. *(Please note that this information is presented here but if this report is circulated beyond HRDI's board and partners, this paragraph should and will be deleted)*

HRDI adopts the wider definition of developing jurisprudence and presents its work within that context.

### ***HRDI's Work with ACHPR's Special Committee for the Protection of the Rights of PLHIV, Those Affected by Vulnerable to and At Risk – A Committee for ALL***

During 2010, HRDI successfully advocated for the establishment of this Committee. Through the process of advocating for the mechanism and once the mechanism was in fact established, HRDI learned about a practice within the regional system whereby the organisation that advocates for the mechanism almost becomes the gate-keeper. HRDI did not and does not function that way. Instead, once the mechanism was established we informed as many as possible so that they could access the Committee directly.

Upon engagement with members of the Committee it was evident that they needed institutional support. To that end, HRDI appointed a lawyer from the DRC who was trained in 2008 to work full time with the then chairperson of the committee and ACHPR, Mme Alapini-Gansou. His role at the ACHPR has been appreciated by the secretariat and the chairperson as is discussed below.

The ACHPR has been criticised as being a slow moving vehicle clogging up the fast lane of human rights developments on the continent. Our engagement with the Commission has been very different. As stated in previous reports, the resolution we proposed was adopted at the first session, the HIV Committee was also appointed at this session. At the next session, the Commission appointed a group of experts to support their work and at the third session we attended in April/May last year, the ACHPR pioneered new territory within the international human rights framework by writing a letter addressed to a non-state actor. In the final paragraphs of this section we will detail the lessons learned and our analysis of why we achieved these successes.



At the 50<sup>th</sup> Session of the ACHPR, a new chairperson was appointed to the HIV Committee, Mme Asuagbor from Cameroon. Mme Alapini Gansou and Mme Maiga remain members of the Committee. As mentioned above, Mr. Sylvestre Pakabomba (an HRDI trainee from 2008) was appointed legal officer and assistant to Mme Alapini Gansou in March 2011. Mme Alapini-Gansou has expressed gratitude to HRDI for this and requested that despite the fact that she is no longer the chairperson, she would like Mr. Pakabomba to continue assisting her.

He is a very rare type of legal officer who is both humble and highly skilled. From our experience at the ACHPR, we concluded that the commissioners' effectiveness is compromised by the secretariat, deliberate or not, it is clear to us that this is what is taking place. Our strategy of providing support to the commissioners has helped in that commissioners are then able to respond.

As described above, the LLM students and others trained by HRDI intend to make submissions to the HIV Committee on such issues as state obligations with respect to the underlying social determinants on the right to health and thereby expand on the normative content of general comment 14.

To effectively discharge such roles the HIV Committee needs further assistance which HRDI will provide in 2012 in the form of a second legal officer to assist Mme Asuagbor based in Cameroon.

### ***HRDI Invokes the Committee's Mandate to "Engage Non-State Actors" in a Case of Pre-Employment Testing for HIV within a Large Cell Phone Company***

Turning away from institutional support and moving more directly to the broader definition of developing jurisprudence, what follows is a brief summary of our use of this new mechanism to address an old issue that first emerged in 2007.

HRDI has previously reported about practices of pre-employment testing within a major cell phone company that operates in 15 countries in Africa. One of HRDI's partners was informed about this practice, however the person who was the victim of it wanted to remain anonymous as she tested negative and was employed by the company. HRDI, the team of lawyers trained and representatives from partner institutions have all tried to develop a strategy to address this issue. The absence of a client willing to come forward rendered the use of litigation in that country extremely difficult.

Moreover, the company operates in 15 different countries. It was bought by a company with its head office in Bahrain and thereafter by a company based India.

In 2011, our team suggested to our partner, that we might be able to use a provision within the mandate of the ACHPR's HIV Committee to address this issue. We then drafted a submission regarding this practice, consulted the lawyer within our partner organisation and the client who wished to remain anonymous. Once they approved and were happy with the strategy and content, we submitted the document to the HIV Committee and requested it to invoke that part of its mandate which empowers it to "...engage non-state actors". Pursuant to our request the chairperson of the HIV Committee signed a letter addressed to both these companies. Unfortunately due to inefficiencies within the secretariat of the ACHPR the letter was not sent. HRDI has a



signed copy of the letter and intends following up on this in 2012. HRDI intends to follow this very closely and ensure that the letter is in fact mailed and used in advocacy with the relevant companies and at a wider level.

This first step marks a distinct moment that could impact on how the ACHPR engages with non-state actors in other aspects of its work. International and regional human rights mechanisms have rarely and to our knowledge not engaged directly with non-state actors. Instead they engage with states. In view of the fact that non-state actors are often perpetrators of human rights violations this marks a distinct victory in addressing human rights violations by big business in Africa.

### ***The Case of Unlawful Clinical Trials in Tanzania***

While we celebrate the successes described above, we do however mourn and regret not having filed the case regarding unlawful clinical trials in Tanzania. Our constraint was however quite extreme. He received opinions from leading advocates in South Africa that unless we are able to prove causality and damages we will simply not be able to tackle the case. We used the access to information legislation to try to obtain information from the company that will help with this gap. It proved fruitless in the end as the information is not reliable. The clients in this case were used as human subjects in a clinical trial of a claimed cure for HIV. The company is based in South Africa, the act was committed in Tanzania with a form of approval from a now deceased Minister of Health. These represent only one part of the challenge that the case presents. The clients seek financial compensation and in this case it is difficult to establish.

But after consulting a professor whose research area is clinical trials and participating in a class run by a leading social justice lawyer from India, the team has developed renewed strength and will try once more to file that case in Tanzania and simultaneously use the HIV Committee and the UN Special Rapporteur on the right to health (abbrev) which have thusfar worked.

### ***Lessons Learned***

Once again, we learned that often to achieve certain outcomes that are important to clients, who in the end are the people we exist to serve, we should be ready and willing to forgo publicity and credit for our intervention.

A further important lesson is that ACHPR and all other mechanisms are comprised of ordinary people, trained as lawyers, but also ultimately ordinary people. A guest professor on legal reasoning and the author of the seminal text on the subject taught us all to see through the mask and titles of people, both in court, quasi-judicial tribunals and outside court to really connect with the human being and tell the story or make the case. We believe that ultimately these two factors played a decisive role in the success of our work with ACHPR and the UN Special Mechanisms. This is a simple lesson of life, of work and of legal work. It is indeed a critical factor in our type of work as if we do not see the people – regardless of whether it is the vulnerable client, the institutional partner, or the judicial officer, either way, if the person is invisible to us we probably become invisible to them and communication becomes impossible. How in such a situation will it be possible to convince anyone of a case?

We also learned that there are no perfect cases. We have to work with what we have.



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

After witnessing the impact of the voice of a women living with HIV whom we took to the ACHPR session in 2010, we were determined to ensure that such voices are always heard at the sessions we attend.

To this end we planned on assisting partners obtain observer status with the ACHPR as they are the closest to the people. We also planned on taking CBO representatives with us to the session in 2011. However the partners were not ready to apply as they needed to get their documents together and neither were they able to secure the participation of CBO representatives.

Within that context we decided that in preparation for our participation at the session, we will get our trainees in partner institutions to consult with CBO's and specifically inform them of our planned participation in the session and seek their opinion on what they would like to have addressed. As a result of this consultation our statement was punctuated with such rooted information that PLHIV were unfairly excluded from the "one family one cow" poverty alleviation programme in Rwanda. This is not the same as a person from Rwanda who is a direct victim of this coming to the session but is the next best alternative. In the end it is important that we do not just articulate our own opinions but ensure that what we say at such forums has some roots within the realities and lives of ordinary people.

At the EAC level we cannot take credit for the fact that past students have indeed participated in such debates and some are working closely with the EAC, however such participation was not a result of our intervention.

### ***Lessons Learned***

A rooted voice resounds more loudly and certainly more convincingly than an articulate, refined and polished voice without its basis deep within those it seeks to represent. We learned that we have to be very careful not to fall into the trap of standing at the ACHPR to impress colleagues instead of fulfilling our responsibility to those whom we seek to serve.

One very important lesson here was the danger of setting targets that are unrealistic. We set out to engage in debates and ACHPR, EAC and SADC. Our colleagues in other organisations are engaging the EAC and SADC effectively.

However it is at the level of the East Africa Court of Justice, the SADC Tribunal (when it resumes) and the ACHPR where our skill and expertise could best be put to use. The UN special mechanisms present a further more direct terrain for our purpose. Consequently, although we continue to follow the developments within SADC and EAC, our effort and energy in 2012 will be directed more fully at ensuring that the voice of the grassroots is heard at the ACHPR and at the level of certain targeted UN special mechanisms such as the UNSR on Health (abbrev).



## MANAGEMENT AND ADMINISTRATION

In June 2011, Dan Bengtsson returned as deputy executive director, a moment that was celebrated by the team, partners and students. He intends to remain with HRDI until it closes. Christian Tshimbalanga Mwata was promoted to the lawyer responsible for partnerships and community outreach. He has excelled in this position. Carita Teien, the social scientist on our team decided to return to Norway. We celebrated the end of the first phase of the LLM before her departure. In the interim, a Phd student from Makerere University has asked to join the team on a fellowship. HRDI has received other such requests and has decided not to fill the position of social scientist in 2012 but instead to seriously consider the appointment of a Phd fellow and seek Fulbright scholars within the social science field.

During the first phase of the LLM, Hester Rossouw, our administrator fulfilled an unparalleled student support role. And Gideon Mpako, the person responsible for the maintenance of the office and garden but also in charge of the manual work with PLHIV, has come to be known as Professor Mpako by some of the students for his close supervision of the manual work sessions at Mamelodi, a low income township outside Pretoria.

Financial administration is done on a part time basis. We employ the services of two part time accountants, both highly skilled and qualified in this field. One assists with the weekly financial administration related to purchases, payments, payroll, submission of returns to the South Africa Receiver of Revenue and implementation of all the detailed systems for management of finances within HRDI. The second person captures all the transactions on a bi-monthly or quarterly basis as is feasible. This system has worked extremely well for HRDI in that both individuals are highly professional, capable and reputable. One was recommended by a senior partner in PricewaterhouseCoopers. And the other was recommended by a chartered accountant who specialises in training financial managers and administrators of NGOs. We have run our finances in this manner from 2004 and find that it is both cost effective and works well.



## RESULTS BASED BUDGET ANALYSIS

### BUDGET VS. ACTUAL FOR JANUARY – DECEMBER 2011

BUDGET CATEGORY	TOTAL BUDGET	ACTUALS	VARIANCE	% VARIANCE
		TOTAL		
<b><i>REGIONAL COSTS:</i></b>				
Developing Jurisprudence	370,000.00	150,560.46	219,439.54	59%
Building a Cadre of Activists	322,900.00	240,262.91	82,637.09	26%
Students Costs	1 052,900.00	1 108,658.34	- 55,758.34	-5%
Manual Work with PLHIV	47,884.00	42,200.00	5,684.00	12%
Direct Contributions to ULCs	542,000.00	504,566.74	37,433.26	7%
Building Partnerships and Community Outreach	124,000.00	61,266.01	62,733.99	51%
Developing Centres of Excellence	97,500.00	15,258.69	82,241.31	84%
Developing a Regional Network	268,000.00	205,098.57	62,901.43	23%
ACHPR, REC and other Meetings and Conferences	233,500.00	184,110.42	49,389.58	21%
<b><i>CORE COSTS:</i></b>				
Salaries and Related Costs	1,929,829.00	1,795,687.14	134,141.86	7%
Professional Fees	338,760.00	250,730.84	88,029.16	26%
Overheads	522,705.00	415,790.17	106,914.83	20%
Governance	45,350.00	19,014.56	26,335.44	58%
Furniture and Equipment	20,000.00	18,821.00	1,179.00	6%
	<b>5,915,329.00</b>	<b>4,772,870.88</b>	<b>903,302.15</b>	<b>15%</b>



## **BUDGET ANALYSIS – EXPLANATION OF UNDER-SPENDING, OVERSPENDING**

HRDI's financial management policy is steeped within a framework of accountability and is situated upon a bedrock of gratitude for the privilege of being able to do this work with the support of tax payers from elsewhere. Consequently we spend carefully and mindfully. We are prudent and account in detail. What follows is consequently a relatively detailed explanation of under-spending and over-spending within the context of the overall narrative report under the specific objectives.

In previous years the explanation commenced with the overall under-spending, however this year it will commence with an explanation of over-spending on certain line items.

### **Over-Spending – Student Costs**

There was an overall over-spending on *Student Costs* line item to the extent of ZAR 55 758.34 which constituted a 5% over-spending on this line item. The reason for this is that the LLM fees payable to the University of Pretoria were not adequately budgeted for. The estimates received when the budget was prepared and the actual cost differed greatly.

Hence the sub line item that resulted in this over-spend is *Academic Allowances* where we budgeted ZAR 801 000 and spent ZAR 899 672.52 which resulted in over-spending of ZAR 98 672.52, which constitutes a 12% over-spending.

### **Over-Spending – Smaller Sub Line Items**

While the rest of the summary above reflects an under-spend, HRDI did over-spend on certain smaller sub line items and has cogent explanations in each case.

There was over-spending on the sub line item of *meeting costs* under Training. We budgeted ZAR 30 000 spent ZAR 31 492.96 resulting in over-spending of ZAR 1 492.86 (-5%). This was due to the incorrect allocation of a translator's fee to this line item. It would have cost HRDI more money to have the accountant make these changes and consequently it was decided to rather present this explanation than incur what to our team was an unnecessary expense.

Under the main line item of *Manual Work* we have a sub line item for travel to Mamelodi where the work is undertaken. There was over-spending of ZAR 100 due to the increase in transport costs.

Under the main line item of *Developing a Regional Network* we have a sub line item for *Partnership Forum*. We budgeted ZAR 146 000 spent ZAR 158 618.09 which resulted in over-spending of ZAR 12 618.09 (-9%). This was due to the fact that we planned on bringing one representative from each partner institution but decided to instead bring two from most of them. Our estimates on airfares and accommodation costs at the time demonstrated that there might be slight over-spending on this line item but programmatically we decided that it was important to conduct the partnership forum in this manner and to try to keep costs down as far as possible. In the end there was over-spending but programmatically a worthwhile investment.



It is extremely rare for HRDI to over-spend on sub line items under overheads. However as a result of certain accounting technicalities among other things we did over-spend on three sub-line items.

There was over-spending on *Rent* of ZAR 10 436.75 (-5%) as a result of a “rent smoothing” approach to accounting. We budgeted ZAR 13 200 on *Office Supplies* and spent ZAR 16 973.90 resulting in over-spending of ZAR 3 583.90 (-27%). This too was an allocation issue as all the expenses for the purchase of water for manual work were allocated to this line item by our administrator. Changes to the books would here too result in unnecessary expenditure. We have since clarified with our administrator that she needs to ensure the correct allocation of these purchases in 2012. This can easily be understood when the line item on *Refreshments for Manual Work* is looked at where there is a 100% underspend in other words there was no expenditure.

We over spent on *Cleaning* where we budgeted ZAR 18 424 and spent ZAR 20 044 resulting in an overspend of ZAR 1 620 (-9%). This was due to an unplanned need to clean the carpets in the office during December 2011.

### **Overall Under-spending**

Having dealt with the over-spending we turn now to the under-spending. There was an overall under-spending of 15%. This figure has reduced from previous years.

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

While HRDI consciously tries to save money where it can, for example, through piggy backing on trips and achieving many outcomes during one visit, it does acknowledge that the consistent under-spending might result in doubts about whether we are achieving what we set out, whether we need the funds allocated to us and so forth. Many outcomes have been achieved without extra costs. For example legal opinions were obtained on a pro bono basis. All but one guest lecturer taught without charging a fee. We only paid for their flights, meals and accommodation and did not provide per diems. Our team travels without per diems but instead pays actual costs and returns unspent funds from each trip. A review of these transactions will demonstrate that on every trip without fail, despite careful budgeting, unspent funds are returned. We have achieved much of what we set out to and in some instances, even more than planned.

While this is true it cannot be concluded that we do not need the funds allocated as savings might not always be possible particularly in the current financial climate and in a circumstance where the price of petrol and consequently flight tickets are likely to increase.

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

We continue to take pride in under-spending on core items as this is clear evidence of our prudence. As one of our team members recently stated, we use pens until there is no ink and pencils until there is no lead.

## CONCLUSION

We did not achieve all that we set out to yet what we have achieved remains unbelievable to our team, partners and students.

It was indeed a momentous year.

### HRDI TEAM AND CLASS OF 2011

#### *From left to right*

Carlos (Moz), Kassim (Mal), Irene (Ken), Dan (HRDI), Isaac (Ug), Ricardo (Nam), Carita (HRDI), Patrick (DRC), Hilda (Mal), Sharon (Zam), Dianah (Ug), Samira (Moz), Prisca (Tan), Susan (Tan), Paidamoyo (Zim), Gideon (HRDI).

#### *Back Row*

Dan (HRDI), Roger (DRC), Hester (HRDI)

#### *Front Row and Seated*

Helen (guest teacher), Frederik (Tan), Asha (HRDI), Laurent (Rwa), Desire (Ken)

#### *Photographer*

Christian (HRDI)

