

# GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

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## *LGBTI Civil Society Organizations Around the Globe:*

### *Challenges, Successes, and Lessons Learned*

#### ***Introduction***

Despite a number of historic legal successes in recent years, organizations advocating for the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals continue to face monumental challenges in their attempts to exercise their fundamental rights to assemble, associate and express themselves.<sup>1</sup> Such challenges are particularly formidable when they come in the form of legislation, regulations and official policy prescriptions, many of which continue not only to prevent LGBTI individuals from achieving full equality, but also prevent civil society organizations (CSOs) from advocating on their behalf.

In May 2015, two hundred civil society activists from around the world gathered at the International Center for Not-for-Profit Law's (ICNL) Global Forum in Stockholm, Sweden to focus on ways to improve the legal environment for civil society activists and organizations of all varieties around the globe. One session at the Global Forum specifically focused on the recent wave of legal constraints aimed at

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<sup>1</sup> E.g., UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Arts. 19, 21 and 22, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> (accessed 21 April 2016)].

restricting the ability of organizations and activists involved in LGBTI advocacy to fully exercise their internationally guaranteed rights to associate, peacefully assemble and express their opinions. One of the group's primary objectives was to identify successful strategies used to protect civic space for LGBTI groups to operate and flourish in hopes that similar tactics could be applied in other contexts where such space is currently lacking or under attack.

The group's discussions reflected a shared appreciation for the complexities and idiosyncrasies of national context, and an understanding that what works in one country, or even one city, may fail in another. Participants were also sensitive to the fact that many successes in the field of LGBTI equality come from countries that are considered Westernized. However, since many governments around the world use the same or similar types of legal methods to restrict the rights of LGBTI organizations and activists, the group determined that it would nevertheless be instructive to look at examples where these same restrictions have been successfully challenged regardless of national context.

In this issue of *Global Trends*, we spotlight some of the legal challenges to the rights of association, assembly and expression faced by CSOs that advocate on behalf of the LGBTI community. After examining specific examples of key challenges, we highlight some of the legal successes achieved by LGBTI organizations, including the repeal of restrictive laws and the judicial reversals of decisions against LGBTI organizations. We conclude by briefly discussing some specific advocacy strategies used by CSOs with success, and the key lessons learned as a result of the fruitful dialogue among the Global Forum participants.

### ***Legal Challenges to CSOs Advocating for LGBTI Rights***

In certain states, the law has proven to be a significant hurdle for CSOs engaged in LGBTI advocacy. In some cases, it is used to directly proscribe their existence or to narrow their scope of activities; and in other cases, it is manipulated and distorted to refuse registration status, restrict their ability to freely express themselves, and prohibit activities that are considered lawful when conducted by other CSOs. Our global review of state practice and discussions held at the Global Forum reveal that certain domestic laws have imposed formidable obstacles to organizations' abilities to exercise their fundamental rights if they are involved in promoting the rights of the LGBTI community.

The detrimental effects of laws that restrict the existence and activities of LGBTI organizations are not an abstract fear. One study found that in the wake of an anti-LGBTI law's passage the rates of homophobic incidents, including violence, increased exponentially -- by somewhere between 750% and 1,900%.<sup>2</sup> Indeed, the use of legislation to restrict association around LGBTI issues must be understood in the context of widespread discrimination against, and failure to protect, LGBTI individuals, who in many contexts face demonization by the broader society, as well as lengthy prison sentences and even death sentences based

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<sup>2</sup> Owen Bowcott, "Uganda anti-gay law led to tenfold rise in attacks on LGBTI people, report says," *Guardian*, May 11, 2014 (the report notes that this enormous increase "can only be explained by the passage of the AHA [Anti-Homosexuality Act] and the virulently homophobic atmosphere this has engendered.")

on their sexual or gender identity. Homosexuality is illegal in 76 countries, and punishable by death in ten.<sup>3</sup> LGBTI individuals are in many countries denied basic civil rights, including the rights to marry, adopt children, immigrate, and openly express their support for LGBTI rights. Due in part to the lack of legal protections, LGBTI individuals additionally face widespread employment discrimination, housing restrictions, bullying, and acts of violence, which in far too many cases are supported or condoned by the State itself.<sup>4</sup> While progress is being made for the rights of LGBTI individuals in many areas of the world - from Columbia to Mozambique to the United States – in others their plight remains dire, and their battle for equality an uphill battle.<sup>5</sup>

This battle is all the more difficult when the law is used and manipulated to restrict the ability of CSOs to advocate on behalf of LGBTI rights. The key ways that this is done around the world are presented and illustrated by the examples below.

### *Laws Prohibiting the Formation or Registration of LGBTI-advocating CSOs.*

In certain countries, the law directly prohibits LGBTI people or their allies from forming associations or even informally assembling. In other cases, the social and political atmosphere is so unaccepting of LGBTI individuals that not a single LGBTI-advocating organization exists. Though Africa is by no means the only region witnessing a wave of anti-LGBTI legislation, the proposal and adoption of laws discriminating against, or restricting the rights of, LGBTI individuals and organizations have been particularly visible throughout the African continent in recent years.

- In **Nigeria**, the Same Sex Marriage (Prohibition) Act enacted in 2014 bans “gay clubs, societies, and organizations” as well as their “sustenance, processions and meetings.”<sup>6</sup> Under this law, an individual who “registers, operates or participates in gay clubs, societies and organizations” commits a criminal offense subject to up to ten years in prison.<sup>7</sup>

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<sup>3</sup> “79 countries where homosexuality is illegal,” Erasing 76 Crimes, last updated April 22, 2016, <https://76crimes.com/76-countries-where-homosexuality-is-illegal/> (last accessed April 23, 2016). Note that other estimates exist for these numbers. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), for example, cites the number of countries criminalizing homosexuality as 75, and the number of countries that inflict the death penalty as 8. See Carroll, A. & Itaborahy, L.P. “State Sponsored Homophobia 2015: A world survey of laws: criminalization, protection and recognition of same-sex love,” ILGA, (Geneva: Switzerland, May 2015), p. 28.

<sup>4</sup> For many examples, see the International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A. & Itaborahy, L.P. State Sponsored Homophobia 2015: A world survey of laws: criminalization, protection and recognition of same-sex love (Geneva; ILGA, May 2015).

<sup>5</sup> For a detailed report on the progress made for LGBTI individuals among the 53 Commonwealth Countries see: Lewis Brooks and Felicity Daly, “A Commonwealth Toolkit for Policy Progress on LGBTI Rights,” The Royal Commonwealth Society (London: UK, April 2016). See also Rachel Banning-Lover and Joe Sandler, “Six countries making progress on LGBT rights,” Guardian, February 10, 2016. In the US, same-sex marriage was declared a constitutional right by the US Supreme Court in June 2015, capping a decade of major progress for the American LGBTI community. See Susan Milligan, “Supreme Victories,” U.S. News, June 26, 2015.

<sup>6</sup> Same Sex Marriage (Prohibition) Bill, 2011, §4(1), available at <http://www.scribd.com/doc/74807203/f-Same-Sex-Marriage-Bill-final> (last accessed April 21, 2016).

<sup>7</sup> Id. at § 4(2).

- In **Malawi**, the government threatened to close CSOs, such as the Center for Development of People and the Center for Human Rights Relief and Rehabilitation, because of their advocacy of LGBTI rights.<sup>8</sup>
- In **Uganda**, on October 29, 2014, Parliament re-introduced a bill, The Prohibition of Promotion of Unnatural Sexual Practices Bill, which was pending at the time of this article’s publication. Under the bill, the promotion of all “unnatural sexual practices,” which is defined to include sexual acts between “persons of the same sex, or with or between [a] transsexual person...,” is subject to conviction and up to seven years in prison. If passed, this law could severely restrict the ability of CSOs to advocate on behalf of LGBTI individuals given that “promotion” is broadly defined. The law could, for example, be interpreted as criminalizing provision of information on safe same-sex sexual activity, renting a room to a LGBTI person, or raising money for LGBTI organizations.<sup>9</sup> Organizations promoting LGBTI rights in Uganda already faced many challenges to their existence. In June 2012, for example, the government banned 38 NGOs after accusing them of undermining the national culture by promoting homosexuality.<sup>10</sup>
- In **Saudi Arabia**, which is one of ten countries in the world that imposes the death penalty for same-sex relations, not a single LGBTI-rights organization exists. NGOs, such as clubs, charities and political associations, require government permission to exist; such permission has never been given to any organization that supports LGBTI rights or that self-identifies as LGBTI. In certain cases where homosexual individuals have attempted to coalesce together for social gatherings, such gatherings have been raided and attendees have been arrested by police officers associated with the Commission on the Promotion of Virtue and the Prevention of Vice.<sup>11</sup>
- As in Saudi Arabia, there are no registered LGTBI organizations in **Kuwait**,<sup>12</sup> **Bahrain**,<sup>13</sup> **Oman**,<sup>14</sup> **Yemen**,<sup>15</sup> **Syria**,<sup>16</sup> or **Qatar**.<sup>17</sup>

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<sup>8</sup> USAID, “CSO Sustainability Index for Sub-Saharan Africa,” Malawi (forthcoming report).

<sup>9</sup> “Ugandan Prohibition of Promotion of Unnatural Sexual Practices Bill Clearly Violates International Law,” *Equal Rights Trust*, December 12, 2014, <http://www.equalrightstrust.org/news/ugandan-prohibition-promotion-unnatural-sexual-practices-bill-clearly-violates-international> (last accessed April 21, 2016).

<sup>10</sup> David Smith, “Uganda bans 38 organizations accused of ‘promoting homosexuality,’” *Guardian*, June 20, 2012, <http://www.theguardian.com/world/2012/jun/20/uganda-bans-organisations-promoting-homosexuality> (last accessed April 21, 2016).

<sup>11</sup> Lora Mofta, “‘Gay Parties’ Raided in Saudi Arabia; Religious Police Arrest Several People on Suspicion of Homosexuality,” *International Business Times*, June 15, 2015, <http://www.ibtimes.com/gay-parties-raided-saudi-arabia-religious-police-arrest-several-people-suspicion-1968038> (last accessed April 21, 2016).

<sup>12</sup> United States State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices for 2015: Kuwait,” <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last accessed May 2, 2016);

<sup>13</sup> Id., Bahrain, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last accessed May 2, 2016).

<sup>14</sup> Id., Oman, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last accessed May 2, 2016).

<sup>15</sup> Id., Yemen, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last accessed May 2, 2016).

<sup>16</sup> Id., Syria, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last accessed May 2, 2016).

<sup>17</sup> Id., Qatar, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last accessed May 2, 2016).

## *Refusals or Delays of Registration for LGBTI Organizations.*

In another tactic used to limit the freedom of LGBTI people to associate, registration authorities deny LGBTI CSOs the ability to formally register as legal entities under the CSO framework laws even though the law does not explicitly prohibit their registration. This not only prevents them from receiving the various benefits that accompany formal legal status, such as tax exemptions, limited liability of their officers, and the right to open bank accounts and own real estate in their organizational names, but it can deter the formation of such associations in the first place by sending a loud and visible message that such organizations are not valued.

- In **Belarus**, the few LGBTI-advocacy organizations that have applied for legal entity status have been denied. The LGBTI rights group Gay Belarus was refused registration status because, according to its denial letter, “the organization does not have in its charter any clauses on supporting social maturity and comprehensive development of the Belarusian youth.” In apparent retaliation against the group’s attempt to register, the government launched a widespread campaign to harass the LGBTI community. Various gay clubs were raided and many LGBTI individuals were questioned and/or detained.<sup>18</sup> The head of Gay Belarus, fearing for his personal safety, was forced to flee from the country with his family in 2013.<sup>19</sup>
- In **Bolivia**, a CSO that works on LGBTI matters reported delays in its request to register due to a discretionary determination by a civil servant who argued that the organization’s name was discriminatory because it contained the word “maricas” [queers]. According to the CSO representative, the civil servant asserted that the State only granted legal personality to “serious institutions.”<sup>20</sup>
- In **China**, an activist sued the government in 2014 after his application for registration of his LGBTI-focused organization was denied by the Hunan Province Civil Affairs Department. The denial statement cited as grounds that homosexuality had no place in Chinese traditional culture and “the building of spiritual civilization.” The activist sued for violations relating to his guaranteed freedom of expression, but the case was dismissed on grounds that the government had not defamed homosexuals as claimed in the complaint.<sup>21</sup>
- In **Mongolia**, the country’s first LGBTI rights organization, The Lesbian, Gay, Bisexual, and Transgender Centre (the LGBT Centre), had its registration application refused more than ten

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<sup>18</sup> Attempt to register a LGBT organisation in Belarus provokes Police Raids, *Belarus Digest*, February 6, 2013, <http://belarusdigest.com/story/attempt-register-lgbt-organisation-belarus-provokes-police-raids-12972> (last accessed May 2, 2013).

<sup>19</sup> Vital Tsyhankou and Aleh Hruzdilovich, “Pressure Mounts on Belarusian LGBT Community,” *Radio Free Europe, Radio Liberty*, December 10, 2013, <http://www.rferl.org/content/belarus-pressure-gay-rights/25196260.html> (last accessed April 21, 2016).

<sup>20</sup> *Challenges and Opportunities to Promote More Enabling Legal Environments for Civil Society Organizations: A Look at Six Latin American Countries* (ICNL, 2015), p. 19, <http://www.icnl.org/programs/lac/index.html> (last accessed April 23, 2016).

<sup>21</sup> “World Report 2015: China, Events of 2014,” *Human Rights Watch*, <https://www.hrw.org/world-report/2015/country-chapters/china-and-tibet> (last accessed April 21, 2016).

times over a three-year period. The Legal Entities Registration Agency stated in its rejection letter to the LGBT Centre that “the name, LGBT, is against the Mongolian traditions and customs and has potential to set the wrong example for the youth and adolescents of Mongolia.”<sup>22</sup>

- In **Mozambique**, the government has failed to register the country’s only LGBTI organization, Lambda, for over eight years.<sup>23</sup> This is despite the fact that the legislation detailing the registration process allows any group of ten or more Mozambican citizens over the age of 18 to form an organization, and specifies that the registration period should take no more than 45 days. Despite this, Lambda has never received a decision from the government in response to its repeated applications.<sup>24</sup>
- In **Panama**, a CSO dedicated to LGBTI rights reported that the process for requesting its legal personality took nine years because the “entity responsible for approving the by-laws claimed that its focus was contrary to public morality [and] to the moral and Christian values of Panamanian society.” This CSO and another that works with the same community reported that “they didn’t receive explanations or determinations they could appeal.”<sup>25</sup>

### *Prohibiting Activities Considered Lawful when Done by Other CSOs.*

Certain states have banned routine and otherwise acceptable organizational activities, such as holding workshops or organizing rallies, when done by CSOs involved in LGBTI advocacy. When these bans have been challenged in court, particularly in countries where LGBTI rights are generally not accepted, the courts have tended to agree with state officials, equating otherwise lawful activities with unlawful, even criminal, acts if involving LGBTI advocacy.

- In **Indonesia**, an activist group that supports the LGBTI community was prevented from staging a rally calling for greater protection for LGBTI individuals in February 2016 at one of the most popular sites in a key tourist destination, the Tugu Monument in Yogyakarta. The police officials who shut down the rally alleged that the group had submitted its rally request letter too late, and therefore its permit request was rejected.<sup>26</sup>

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<sup>22</sup> Anna Leach, “Coming out for LGBT Rights in Outer Mongolia,” *Gay Star News*, April 26, 2013, <http://www.gaystarnews.com/article/coming-out-lgbt-rights-outer-mongolia260413/#gs.P3FCHYU> (last accessed April 21, 2016).

<sup>23</sup> “Mozambique accused of “double speak” on LGBTI Rights,” *Mamba*, January 28, 2016, <http://www.mambaonline.com/2016/01/28/mozambique-accused-double-speak-lgbti-rights/> (last accessed April 21, 2016).

<sup>24</sup> Mozambique: Gay Mozambicans Demand Recognition, All Africa, November 2014.

<sup>25</sup> *Challenges and Opportunities to Promote More Enabling Legal Environments for Civil Society Organizations: A Look at Six Latin American Countries* (ICNL, 2015), p. 18-19, <http://www.icnl.org/programs/lac/index.html> (last accessed April 23, 2016).

<sup>26</sup> Bambang Muryanto, “LGBT supporters in Yogyakarta prohibited from staging a rally,” *Jakarta Post*, February 25, 2015, <http://www.thejakartapost.com/news/2016/02/25/lgbt-supporters-yogyakarta-prohibited-staging-rally.html> (last accessed April 21, 2016).

- In **Russia**, a Gay Pride march in Moscow was banned by local authorities in May 2015 for the tenth year in a row. There was no specific reason cited for the ban, but the organizers were warned that they faced “risks” if they proceeded without authorization.<sup>27</sup>
- In **Uganda** in 2012 the Minister of Ethics and Integrity forcibly shut down a workshop focused on providing human rights training on LGBTI rights conducted by the NGO Freedom and Roam Uganda (FARUG). The Minister accompanied the police when they raided the facility where the conference was being held, confiscated materials and threatened to arrest the participants. After a lengthy court battle, members of FARUG were convicted of participating in activities that were tantamount to inciting or promoting same-sex practices, illegal under Uganda’s penal code. The court’s holding noted that the rights to freedom of expression and assembly can be limited for reasons related to “the public interest” or on grounds of “morality” under both Uganda’s Constitution and the African Charter on Human and Peoples’ Rights.<sup>28</sup>

### ***Anti-Propaganda and Protection of Minors Laws.***

Various countries around the world have adopted laws banning propaganda denigrating traditional family values, often in the name of protecting children. These laws threaten to undermine the ability of CSOs to advocate for the rights of the LGBTI community, and thus to exercise their internationally guaranteed right to freedom of expression.

- In **Russia**, in June 2013, a law was passed banning dissemination of “propaganda for nontraditional sexual relationships,” broadly understood to include lesbian, gay, and bisexual relationships, to minors. Since its passage, the law has been used to prosecute individual activists, narrow the space for CSOs to operate, and has fuelled anti-LGBTI abuse and discrimination throughout the country. For example, the law was used to prosecute and convict LGBTI activist Elena Klimova, founder of a Facebook page dedicated to providing psychological and community support to LGBTI children,<sup>29</sup> and to fine individuals standing in public places with signs declaring support for LGBTI rights.<sup>30</sup> This law has had a copycat effect throughout the region and beyond, as the examples cited below reveal.<sup>31</sup>

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<sup>27</sup> Thomas Barrabi, “Moscow Gay Pride March Banned for 10<sup>th</sup> Straight Year, But Organizers Plan to ‘Hold Some Kind of Action,’” *International Business Times*, May 21, 2015, <http://www.ibtimes.com/moscow-gay-pride-march-banned-10th-straight-year-organizers-plan-hold-some-kind-1934101> (last accessed April 21, 2016).

<sup>28</sup> “Uganda: Ruling Against LGBT Activists Violates Rights,” *Human Rights Watch*, July 11, 2014, <https://www.hrw.org/news/2014/07/11/uganda-ruling-against-lgbt-activists-violates-rights> (last accessed April 21, 2016).

<sup>29</sup> “Russia: Anti-LGBT Law a Tool for Discrimination,” *Human Rights Watch*, June 29, 2014, <https://www.hrw.org/news/2014/06/29/russia-anti-lgbt-law-tool-discrimination> (last accessed April 21, 2016).

<sup>30</sup> “LGBT website founder fined under Russia’s gay propaganda laws,” *Guardian*, July 29, 2015, <http://www.theguardian.com/world/2015/jul/29/lgbt-yelena-klimova-fined-russia-gay-propaganda-laws> (last accessed April 21, 2016).

<sup>31</sup> “Russia’s Newest Export: Anti-“Propaganda” Laws,” *Human Rights First*, March 2014.

- **Kyrgyzstan** is considering passage of an even harsher version of the Russian law.<sup>32</sup> If passed, the law would prohibit dissemination of all types of communication (not just statements made in the presence of minors) that convey positive information on same-sex relations. Violators would be guilty of a crime punishable by both fines and prison time. This law also criminalizes “the organization of and participation in peaceful gatherings that aim to make available to society any information regarding positions on any form of nontraditional sexual relations.” If passed, this law will intensify an already repressive environment for CSOs engaged in LGBTI issues. The law would, for example, make it even harder for organizations that have been involved in advocating for the rights and health of the LGBTI community, such as Reproductive Health Alliance in Kyrgyzstan (RHAK), Kyrgyz Indigo, and Freedom House, to operate; such groups have already faced attacks, acts of intimidation and threats by individuals and groups for their advocacy work.<sup>33</sup>
- In **Belarus** in 2015, the “Bill on the Protection of Children from Information Harmful to their Health and Development,” which prohibits the dissemination of information “discrediting the institution of the family” to children, passed its first reading in the legislature. While LGBTI activists convinced the MPs responsible for its drafting to ensure that the law does not impose administrative or criminal liability on those with alternative views on sexuality or gender identity, activists remain deeply concerned that the law will be interpreted in ways that are harmful to the LGBTI community and those advocating for their rights, as it is very similar to the Russian law.<sup>34</sup>
- In Lithuania, a proposed amendment to the Code of Administrative Violations that is very similar to Russia’s anti-propaganda law would introduce administrative liability for public denigration of “constitutional family values.” More specifically, the amendment would impose fines for any “public display” that defies “constitutional family values,” which is left undefined. “Public display” is defined broadly as including public speeches, goods, posters, slogans, audio-visual materials, and public events. Many activists and CSOs fear that, as in Russia, the amendment would be used to suppress the advocacy of LGBTI rights.<sup>35</sup>

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<sup>32</sup> Kerry Brodie, “Kyrgyzstan National Assembly Passes Draft anti-LGBT ‘Propaganda’ Bill That’s worse than Russia’s Law,” *Human Rights Campaign*, June 24, 2015, <http://www.hrc.org/blog/kyrgyzstan-passes-draft-anti-lgbt-propaganda-bill-thats-worse-than-russias> (last accessed April 21, 2016).

<sup>33</sup> “Kyrgyzstan on the verge of adopting harsh anti-gay law,” *Erasing 76 Crimes*, June 27, 2014, <https://76crimes.com/2014/06/27/kyrgyzstan-on-the-verge-of-adopting-harsh-anti-gay-law/> (last accessed April 21, 2016).

<sup>34</sup> “Belarus weighs Russia-style anti-‘gay propaganda’ law,” *Erasing 76 Crimes*, January 27, 2016, <https://76crimes.com/2016/01/27/belarus-weighs-russia-style-anti-gay-propaganda-law/> (last accessed April 21, 2016).

<sup>35</sup> Lithuania postpones vote on anti-gay amendment, *Human Rights First*, November 12, 2015, <http://www.humanrightsfirst.org/press-release/lithuania-postpones-vote-anti-gay-amendment> (last accessed April 21, 2016)

## Successes by CSOs Advocating for LGBTI Rights

Many successes can also be seen in the tumultuous march towards greater LGBTI rights, including in countries known for their hostility toward such rights. From the first unchallenged pro-LGBTI publication and media site in Uganda,<sup>36</sup> to Ukraine's banning of LGBTI-discrimination in employment, to the decision by the Girl Guides of Canada (the Canadian version of Girls Scouts) to allow transgender girls to join their organization,<sup>37</sup> to the Indian Supreme Court's historic decision to revisit the constitutionality of its colonial-era anti-LGBTI law,<sup>38</sup> to the first openly transgender candidate for public office in Bangladesh,<sup>39</sup> individual success stories are increasingly common throughout the world.

Progress toward LGBTI equality requires, at a minimum, the rescission of anti-LGBTI legislation, the adoption and enforcement of pro-LGBTI laws, and the ability of CSOs to openly and freely advocate on behalf of the LGBTI community. As the following illustrative examples reveal, a number of countries around the globe are making these necessary changes and creating an enabling environment necessary for LGBTI rights CSOs to succeed.

## Declaring Anti-LGBTI Laws Unconstitutional

In a number of countries, activists have succeeded in convincing courts to overturn anti-LGBTI laws, which in many cases have been on the books for many decades, if not centuries. In addition to discriminating against LGBTI individuals, such laws have handicapped or even prohibited entirely the ability of CSOs to advocate on their behalf.

- In **Kazakhstan**, the Constitutional Court rejected a law passed by the parliament in February 2015 that would have banned "propaganda of homosexuality among minors." The court voided the law for its vague language and stated that it was "not in line with" the country's constitution.<sup>40</sup>
- In **Mozambique**, in May 2015, homosexuality was decriminalized, opening the door to more visible and robust advocacy and organizational activity by the LGBTI community. Under the rescinded law, homosexuality was punishable by up to three years of hard labor; following the law's overhaul, Mozambique joined the 20 other African countries that either allow

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<sup>36</sup> The magazine is *Bombastic* and its online media site is [Kuchu Times](#). See "Bombastic magazine moves Uganda another step forward," *Erasing 76 Crimes*, March 31, 2016, <https://76crimes.com/2016/03/31/bombastic-magazine-moves-uganda-another-step-forward/> (last accessed April 21, 2016).

<sup>37</sup> "Transgender girls now officially welcome to become Girl Guides in Canada," *CBC News*, October 15, 2015, <http://www.cbc.ca/news/trending/transgender-girls-now-officially-welcome-to-become-girl-guides-in-canada-1.3273129> (last accessed April 21, 2016).

<sup>38</sup> Aditya Kalra and Andrew MacAskill, "India's Supreme Court is Set to Review Anti-Gay Law," *Huffington Post*, February 2, 2016.

<sup>39</sup> Mohammad Al-Masum Molla, "The first third gender person to contest polls," *Dhaka Times*, December 15, 2015, <http://www.dhakatribune.com/banglade> (last accessed April 21, 2016).

<sup>40</sup> "Kazakhstan Strikes Down 'Gay Propaganda' Law After Olympics," *Eurasianet*, May 27, 2015, <http://www.eurasianet.org/node/73606> (last accessed April 21, 2016).

homosexuality or do not legislate against it. However, in the remaining 35 African countries, homosexuality remains illegal.<sup>41</sup>

- In **Uganda**, the Anti-Homosexuality Act of 2013, which would have criminalized the “promotion” of homosexuality and effectively proscribed CSOs from advocating for the rights of sexual and gender minorities, was annulled by the Constitutional Court in August 2014. Despite the fact that the decision was made on procedural, rather than substantive, grounds (the court held that the bill was passed without the requisite parliamentary quorum), the result was celebrated as a huge victory by the LGBTI community.<sup>42</sup> However, the Prohibition of Promotion of Unnatural Sexual Practices Bill, discussed earlier, was reintroduced shortly thereafter.

### *Reversal of Registration (and Other) Denials for LGBTI CSOs.*

An increasing number of organizations involved in LGBTI advocacy that had struggled, in some cases for years, to receive official legal status with the state, are seeing their registration denials reversed, or their registration applications finally considered and approved. In some cases, this achievement is the result of courts recognizing that such organizations were being deprived of their fundamental rights, notably including the rights to freedom of association, peaceful assembly and expression.

- In **Botswana** in 2016, the Court of Appeals issued a “landmark” decision when it ordered the government to register the organization Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), which had unsuccessfully attempted to achieve registration status for eleven “long and exhausting” years. The court determined that denying the organization the ability to register violated its guaranteed rights to freedom of association and expression, as well as equal protection under the law.<sup>43</sup>
- In **Kenya** in 2015, the High Court ruled that the Kenyan Non-Governmental Organizations (NGO) Board must register the National Gay and Lesbian Human Rights Commission (NGLHRC), an LGBTI advocacy group.<sup>44</sup> The NGO Board had refused to register NGLHRC on the grounds that Kenya’s penal code criminalizes “gay and lesbian liaisons.” The High Court found that the Kenyan Constitution applies to every person, regardless of sexual orientation and that the NGO Board violated the right to freedom of association, as protected under Kenya’s constitution, by denying NGLHRC the right to register. Similarly, the High Court ordered the NGO Coordination Board in February 2014 to register a transgender advocacy group, holding that the refusal to register the

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<sup>41</sup> James McDonald, Mozambique decriminalizes homosexuality, *Out*, May 31, 2015, <http://www.out.com/news-opinion/2015/5/31/mozambique-decriminalizes-homosexuality> (last accessed May 2, 2016).

<sup>42</sup> Jeffery Gettleman, “Uganda Anti-Gay Law Struck Down by Court,” *New York Times*, August 1, 2014, [http://www.nytimes.com/2014/08/02/world/africa/uganda-anti-gay-law-struck-down-by-court.html?\\_r=0](http://www.nytimes.com/2014/08/02/world/africa/uganda-anti-gay-law-struck-down-by-court.html?_r=0) (last accessed April 21, 2016).

<sup>43</sup> “Botswana gay activists applaud court judgment,” *StarAfrica*, March 16, 2016, <http://en.starafrika.com/news/botswana-gay-activists-applaud-court-judgement.html> (last accessed April 21, 2016).

<sup>44</sup> Court orders Kenya to register LGBTI activist group, *Erasing 76 Crimes*, April 27, 2015, <http://76crimes.com/2015/04/27/court-orders-kenya-to-register-lgbti-activist-group/> (last accessed April 21, 2016).

group amounted to discrimination on the basis of gender or sexual orientation, and thus, was an unlawful exercise in government discretion.<sup>45</sup>

- In **Zimbabwe** in 2014, the gay rights organization Gays and Lesbians of Zimbabwe (GLZ), won a critical court victory when the Zimbabwean High Court ruled that it did not violate the Private Voluntary Organisation Act by not formally registering with the state, derailing the government's attempt to declare GLZ's operations illegal for lack of formal registration.<sup>46</sup>
- **The African Commission on Human and Peoples Rights** refused to grant observer status for five years to the Coalition of African Lesbians, an international NGO composed of more than 30 organizations in 19 African countries committed to advancing justice for lesbian, bisexual and transverse individuals. The Commission reversed its stance and granted observer status in April 2015.<sup>47</sup>

### *Other Legal Victories for LGBTI Civil Society Organizations.*

In a variety of other cases, courts have similarly recognized the rights of LGBTI groups to associate, assemble, and express their opinions in the ways they desire.

- In **Tunisia**, a CSO that advocates for decriminalizing homosexuality and other LGBTI rights, Shams, won its legal challenge against a government order suspending its operations. In January 2016, Shams received a government notice ordering it to suspend all activities for 30 days, after which time the judiciary could order its dissolution. Shams was accused of violating Tunisia's association law by deviating from its stated aim and by not completing the registration process. In February of 2016, the trial court, finding no evidence to support the government's claims, issued an order allowing Shams to resume its normal activities.<sup>48</sup>
- In **South Korea**, organizers of the Queer Culture Festival challenged in court a ban on their yearly parade. The police declined to allow the parade in June 2015, claiming that the proposed route

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<sup>45</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A. & Itaborahy, L.P. State Sponsored Homophobia 2015: A world survey of laws: criminalization, protection and recognition of same-sex love (Geneva; ILGA, May 2015), at 104.

<sup>46</sup> "Zimbabwe: Two Victories for GALZ," *Erasing 76 Crimes*, February 27, 2014, <https://76crimes.com/2014/02/27/zimbabwe-two-victories-for-galz/> (last accessed April 21, 2016).

<sup>47</sup> "Coalition of African Lesbians Granted Observer Status by the African Commission on Human and Peoples' Rights," *Association for Progressive Communications*, <https://www.apc.org/en/blog/coalition-african-lesbians-granted-observer-status> (last accessed April 21, 2016).

<sup>48</sup> "Victory in Tunisia: Activist groups Shams wins in court," *Erasing 76 Crimes*, February 23, 2016, <https://76crimes.com/2016/02/23/victory-in-tunisia-activist-group-shams-wins-in-court/> (last accessed April 21, 2016).

violated the law on assemblies and protests.<sup>49</sup> The court ruled in favor of the festival organizers, ruling that the activity was protected by the right to freedom of assembly.<sup>50</sup>

- In **Hungary**, in 2012, organizers of a gay pride march in Budapest won their legal battle against the local police when the court overruled the police officers' decision to deny permission to hold the march on grounds that traffic would be adversely affected. The court claimed that the police had no legal grounds to deny the group the ability to hold a parade, as other organizations had been permitted to do, despite affecting traffic.<sup>51</sup>

## Lessons Learned

CSOs can be the vanguard of progress for the LGBTI community. When individuals coalesce together for common causes, particularly causes that represent minority views or challenge the status quo, their voices are louder, their actions stronger, and their shared resources more robust. In order for CSOs to be effective, however, they must operate within an enabling environment supportive of their efforts and protective of their rights, specifically including their rights to peaceful assembly, association and expression.<sup>52</sup> Consequently, it is crucial that domestic legal frameworks scrupulously protect these fundamental rights.

During ICNL's Global Forum, the group focused on LGBTI advocacy discussed various strategies that have been used with success in the past to overcome legislative and regulatory obstacles. The key lessons learned are briefly summarized below.

- **Messaging is Key.** The ways in which a particular cause is publicly presented and disseminated is critical to its success. With respect to the advancement of LGBTI rights, successful case studies suggest the benefits of framing LGBTI rights within a broader context: as part of the march toward achieving 'equal rights'; or as an effort to ensure that 'fundamental human rights' are afforded to all;<sup>53</sup> or in some national contexts, as part of a democratization campaign designed to eliminate

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<sup>49</sup> Elizabeth Shim, "South Korea LGBT activists protest ban on queer pride parade," *United Press International*, June 4, 2015, [http://www.upi.com/Top\\_News/World-News/2015/06/04/South-Korea-LGBT-activists-protest-ban-on-queer-pride-parade/7711433429531/](http://www.upi.com/Top_News/World-News/2015/06/04/South-Korea-LGBT-activists-protest-ban-on-queer-pride-parade/7711433429531/) (last accessed April 21, 2016).

<sup>50</sup> Ock Hyun-ju, "After long fight, LGBT activists parade in Seoul," *Live Journal*, July 28, 2015, <http://www.koreaherald.com/view.php?ud=20150628000246> (last accessed April 21, 2016).

<sup>51</sup> Stephen Gray, "Court overrules police to give go-ahead to Budapest Pride," *PinkNews*, April 16, 2012, <http://www.pinknews.co.uk/2012/04/16/court-overrules-police-to-give-go-ahead-to-budapest-pride/> (last accessed April 21, 2016).

<sup>52</sup> These rights are protected by a variety of international treaties and documents, including Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.

<sup>53</sup> This has done, for example, in Europe and in parts of Africa, such as Ghana. See Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter, 20 February 2015, see ¶¶159-165; and see Religion Dispatches, February 2016 (quoting the founder of the LGBT advocacy group Solace Brothers Foundation as stating that "We are not making it [the campaign for greater LGBT rights] about LGBT rights, we want it to be human rights....These are our rights, and as every other human being in Ghana we also have our rights").

all forms of discrimination.<sup>54</sup> Russian participants, for example, reflected that their messages were better received when they talked about how restrictions prevented LGBTI people from accessing their fundamental human rights.

- **Choose the Right Messenger.** Who is chosen to promote a message is decisive in whether and how that message is received. Well-known media personalities, clergy members, and the friends and family members of LGBTI individuals have, in certain contexts, proven to be highly effective messengers.<sup>55</sup> In India, for example, popular talk show host Asmir Khan was credited with changing public opinion of LGBTI people when he featured the stories of LGBTI people.<sup>56</sup> And in Texas, respected religious leaders, in coalition with others, have called for an end to discrimination based on sexual orientation in response to a spate of bills that would limit the rights of the LGBTI community.<sup>57</sup>
- **Communicate the Message Carefully.** Participants discussed the importance of adopting the right approach to messaging. In particular, starting a ‘conversation rather than a conversion’ was identified as a successful strategy for LGBTI rights advocacy. Participants from the Czech Republic, Uganda, and Germany all relayed successful experiences of engaging in respectful debate on LGBTI issues with others who held opposing views in a manner that allowed both sides to be fairly represented and heard. These debates and discussions, they claimed, have been a powerful tool in moving the discussion of LGBTI issues forward. When people feel that their side has been genuinely heard, they are more likely to listen with an open mind to an opposing perspective.
- **Coalition Building is Essential.** Coalition building, which entails bringing friends and allies (and their resources and efforts) together in support of a particular cause, is critical in amassing the support necessary to influence public opinion. Coalitions can and should include groups and individuals with overlapping, but not always identical, interests. For example, in parts of California, LGBTI advocacy groups teamed up with women’s rights groups after realizing their common interest in lobbying for safe, gender-neutral bathrooms.<sup>58</sup> In building coalitions, effective leaders responsible for creating and maintaining connections with other partners, including international partners, must be chosen; and such leaders must understand and appreciate the

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<sup>54</sup> A key example here is South Africa, which as part of its democratization efforts in the 1990s, included sexual orientation in the non-discrimination provision contained within its new constitution. Those involved in the constitution’s drafting acknowledged this provision was included because it was seen as part of a “very comprehensive equality provision.” See Albie Sachs, “LGBT rights were integrated into the vision of a new South Africa,” *Global: The International Briefing* (no date listed), <http://www.global-briefing.org/2012/10/lgbt-rights-were-integrated-into-the-vision-of-a-new-south-africa-in-which-people-were-respected-for-who-they-were/> (last accessed April 21, 2016).

<sup>55</sup> In the United States, the organization known as PFLAG began as a resource for parents and family members of LGBTI people and has since taken on a wider scope of equality-driven activism. See PFLAG’s website at: <http://community.pflag.org/getinspired>.

<sup>56</sup> “Indian night talk show changes people’s view of LGBT people,” *Glaad*, October 2014.

<sup>57</sup> Religious leaders have publically advocated for LGBTI rights in Texas. See “Faith leaders rally at Texas Capital to promote gay rights,” *Statesman*, February 2015, <http://www.statesman.com/news/news/state-regional/faith-leaders-rally-at-texas-capitol-to-promote-ga/nkC2s/> (last accessed April 21, 2016).

<sup>58</sup> “The gender neutral bathroom revolution is growing,” *Time*, January 2016.

complexities involved in working alongside a broad array of differently-situated actors. This leader must also understand the complexities and political implications involved in working with certain coalition partners in each particular national context.

- **Use Strategic Litigation Carefully.** Strategic litigation involves bringing carefully selected cases to court in order to challenge a specific law or regulation. There are both benefits and risks involved in this approach, and it is generally only viable in countries where the legal system is fair and impartial. If successful, a decision can result in the complete overhaul or the narrowing of restrictive legislation, irrespective of public opinion.<sup>59</sup> However, in some contexts, participants noted that even where strategic litigation is successful, there is no discernible improvement in the lives of LGBTI individuals. As such, it is important that strategic litigation be accompanied by other advocacy strategies, including messaging and coalition building (as previously discussed) to ensure that successes are not purely symbolic. Moreover, choosing the right case, the specific court, and timing are all key; if brought too early, if the case's fact pattern does not represent the key issues, or if the court is not impartial or influential, then the attempt will likely fail, and depending on the court, the result could be irreversible.<sup>60</sup>

## Conclusion

In recent years we have witnessed both “extreme violence and rapid progress” in the tumultuous, piecemeal, and ever evolving march toward LGBTI equality around the globe, a march that has a long road ahead.<sup>61</sup> This stark global divide has created learning opportunities, which the participants in ICNL's 2015 Global Forum had the opportunity to discuss and debate. Many of the examples and advocacy strategies discussed above reflect and build upon the discussions, lessons learned, and experiences exchanged among the participants during this event. It is hoped that these reflections and examples will serve as a resource for activists on the front lines of the fight for LGBTI equality, and as a reminder of just how much there is to gain from continuing this important battle.

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<sup>59</sup> One example is the repeal of Uganda's Anti-Homosexuality Act by the Constitutional Court in August 2014, discussed above. See “Ugandan court overturns anti-gay law,” *Erasing 76 Crimes*, August 1, 2014, <https://76crimes.com/2014/08/01/ugandan-court-overturns-anti-gay-law/> (last accessed April 21, 2016).

<sup>60</sup> For example, in the Kenya and Botswana cases described above, strategic litigation not only enabled LGBTI groups to register, but also began to chip away at discriminatory laws. Specifically, in Kenya, the High Court's ruling affirmed that a LGBTI person's constitutional rights cannot be curtailed because of sexual orientation.

<sup>61</sup> Graeme Reid, “Between Equality and Brutality: Global Trends in LGBT Rights,” *Huffington Post*, January 7, 2016, <https://www.hrw.org/news/2016/01/07/equality-brutality-global-trends-lgbt-rights> (last accessed April 21, 2016).