



Lessons Learned

**As The Court Pleases: An Assessment Of Advocacy
Strategies For Strategic Litigation.**

SUMMARY

In March 2013, LEGABIBO put a case before the courts to challenge refusal to register the organisation. In November 2014 LEGABIBO won the case at the High Court, the government of Botswana appealed, and in March 2016 at the Court of Appeal a full bench of judges ruled unanimously in favour of LEGABIBO. In the 4 years of the matter being before the courts, LEGABIBO implemented extensive and innovative advocacy strategies alongside the court processes with the aim to garner support, communicate positive and accurate messaging about the case. This document assesses these advocacy strategies focusing on:

1. Identifying the strategies: What were the advocacy strategies used to do the following
 - Mobilise litigants
 - Mobilise lawyers to represent LEGABIBO in Court
 - Mobilise support from partners
 - Ensure LGBT community involvement throughout the process
2. What were the safety and security issues and what strategies were employed to address them?
3. What did we do wrong and what could we have changed?
4. The external and internal threats, risks (media, decriminalisation push from donors and other interest groups) and mitigation
5. What were the challenges and successes?

These ideas were used as the basis for documenting the important steps taken during the litigation process and reflect on what happened, why did it happen, what did we do, and whether those strategies worked and contributed to the success of the case. Information was gathered through:

1. Desk review of all the documents that capture information on LEGABIBO registration case:
 - Activity report,
 - Media coverage (press statements, opinion papers, commentary, position papers)
 - Video documentation on the case (contains experiences of partners, litigants, members of the LGBT community, lawyers)
 - Advocacy Strategy on the LEGABIBO Registration case
2. Focus group discussions with litigants, staff and members of the LGBT community who are familiar with the case.

CONTEXT

In 2007, LEGABIBO applied to the Registrar of Societies seeking registration as a society aiming to defend the human rights of LGBT persons. The application was rejected. In 2012, LEGABIBO submitted yet another application, which was equally refused based on the reasons that homosexuality is illegal, and that the objectives will promote illegal practices.

In an effort to explore other solutions, LEGABIBO wrote a letter to the Minister of Labour and Home Affairs to intervene and reverse the decision of the Registrar. However the Minister supported that decision. LEGABIBO covered all grounds of appeal before seeking the court's intervention. This included, engaging in consultative meetings with senior government officers in the Ministry of Labour and Home Affairs to identify ways in which the organisation can package its objectives.

Having exhausted all channels of appeal within government structures. LEGABIBO approached the Southern African Litigation Centre (SALC) for support to litigate challenging refusal to register LEGABIBO. As a first step, SALC conducted a situational analysis of the legal environment to identify the options that LEGABIBO has, the chances of succeeding if we go to court^I.

In a memorandum on registration, SALC suggested two registration options available for LEGABIBO, being:

- i) Registration under the common law as a Deed of Trust. However there was a possibility that if LEGABIBO registered as a Trust, the Ministry of Labour and Home Affairs might, at some stage, require that it be registered formally under the Department of Civil and National Registration^{II}
- ii) Register as a company limited by guarantee
- iii) Challenge refusal to register in court.
- iv) Register using a different name and different objectives

Following this advice, LEGABIBO conducted consultation meetings with Board, members, and LGBT community to determine the next steps. Members of the community chose the litigation route.

LEGAL CONTEXT

Legal Context – Botswana criminalizes same-sex-sexual activities through Section 164, 165 and 167 of the Penal Code^{III}. It is through this section of the law that the Registrar of Societies refused to register LEGABIBO. In 2003 an individual was found guilty of Section 164 in the case of *Kanane v the State*^{IV} and was sentenced to 3 years imprisonment. This case has set precedence and granted future litigation on discrimination based on sexual orientation difficult. In the same case, the judge ruled that “gay men and women do not represent a group or class which at this stage has been shown to require protection under the Constitution. Commenting on the criminal prohibition of same-sex sexual conduct, the court did note that it did not think this meant that gays and lesbians were hindered from associating – *“there is nothing to prevent them still so associating, subject to the law.”*

SOCIAL CONTEXT

During the time of the project, the Botswana society was either apathetic or reluctant to respond to LGBT issues. To date, although LEGABIBO is getting more support from individual members of the community, the Botswana society remains discriminatory towards LGBT. These attitudes are expressed openly in the media and cultural social spaces such as Kgotla (A traditional Tswana Court). The expression of homophobia is subtle and usually carries no violent threats. However, in social media it is not uncommon to find a very homophobic response to an LGBT article. Given this animosity towards LGBT persons, LEGABIBO was under pressure to go to court because failure to appeal the decision to refuse registration, and failure to register as a different entity, put the staff and board of LEGABIBO at risk of fines. At the time LEGABIBO was housed under BONELA as an LGBT program, so identifying LEGABIBO as an organisation placed BONELA at risk of being seen as an organization hosting an illegal society.

I Memorandum on Registration of LEGABIBO, 28th November 2012

II Memorandum on Registration of LEGABIBO, 28th November 2012

III Botswana Penal Code

IV *Kanane v the State* 2003 (2) BLR 67 (CA)

RELIGIOUS & SOCIAL CONTEXT

Religion and culture are often cited as reasons for rejection of members of the LGBT community, with church and traditional leaders often being heard describing homosexuality as “un-African, “sinful”, “un-godly”. Such perceptions have perpetuated stigma and discrimination, violence, and homophobia. Policies and other interventions have done very little to address these rights violations and protect LGBTI.

In the initial stages of the litigation process while planning possible strategies, there was a lot of uncertainty around the impact litigation will have on people working for LEGABIBO. LEGABIBO had existed since 1998 and was already a partner to government and NGOs. LEGABIBO received its own grants from donors. With litigation, it means that attention is drawn to LEGABIBO’s unregistered status. This meant that LEGABIBO had to hide its identity and operations under BONELA and make it clear that LEGABIBO staff are BONELA employees and that the Board members are individuals who seek to be LEGABIBO members once it gets registered. In the same context, consideration had to be made of the fact that the LEGABIBO Coordinator, a position used to refer to the individual leading LEGABIBO, could not be identified as such anymore. This was a way of protecting LEGABIBO employees, as well as preventing jeopardizing the case.

The Societies Act states clear that ‘any office-bearer who collects money on behalf of an illegal society shall, be guilty of an offence and liable to a fine not exceeding P1000 and/or imprisonment not exceeding 7 years.’^V In addition members of an illegal society or those who attend meetings of an illegal society shall also be guilty of an offence and liable to a fine of P500 and/or imprisonment not exceeding 3 years. The staff and Board members of LEGABIBO were at risk of fines. BONELA was also at risk as the organisation for hosting an illegal society.

On the positive side, challenging refusal to register LEGABIBO came at the right time. There were pieces of legislature that pointed to evidence that Botswana does not seek to discriminate LGBT persons and that sexual orientation is recognized by law. For example, the Botswana HIV/AIDS National Strategic Framework 2010-2016 stated that “*The national response upholds individual and human rights by promoting the dignity, non-discrimination and welfare of all people, whether infected or affected by HIV and AIDS and ensuring equal access to health and social support services regardless of race, creed, religious or political affiliation, sexual orientation or socio-economic status.*”^{VI} The Employment

Act of 2010 prohibits sexual orientation as grounds for discrimination. These pieces of law and others created a strong background to challenge the discussion to refuse registration.

The members and LEGABIBO staff were however concerned about the earlier decriminalization litigation efforts by LEGABIBO. The first was in 2008 where two individuals submitted an intention to sue government over Section 164 of the Penal Code. This was later withdrawn. The second attempt in 2011, which was also withdrawn challenged the same section. Although both matters did not see the light of day, the stories were well publicised in the media and the possibility of the media picking that up and misconstruing the Freedom of Association case with decriminalization was likely to compromise messaging and create backlash. In addition, decriminalization discourses were very prevalent among donors and partners. The international and regional communities were pushing the decriminalisation agenda. LEGABIBO registration case was about freedoms of association, expression and assembly, a subtly different agenda and an indirect move towards decriminalization.

These and other issues were what surrounded the LEGABIBO registration case at the time of going to court. These and other matters had to be considered while developing strategies for advocacy

PAST ACTIVITIES AROUND THIS PROBLEM

First in 2008 – two individuals together submitted an intention to sue government over Section 164 of the Penal Code. However, the matter was withdrawn for several reasons i) one of the litigants withdrew from the matter ii) ten years ago LEGABIBO as an organization was not strong enough to lead its own litigation process, could not make its own decisions with proper strategic direction, there were too many interests from various stakeholders that made it difficult for the organization to pull this through.

Second March 2011 – The second attempt to challenge Section 164. LEGABIBO employed the strategy of seeking strong affidavit from influential leadership who would present strong arguments why decriminalization is better for addressing HIV in Botswana. The supporting affidavit were sourced and we only got 3. These did not render our position strong enough for the case to go forward, consequently in August 2011, a decision was made to withdraw the matter.

V Botswana Societies Act

VI Botswana HIV/AIDS National Strategic Framework 2010-2016

HOW IT WAS DONE AND WHAT WAS ACHIEVED

- **Phase 1:** Situational Analysis – LEGABIBO approached Southern African Litigation Centre (SALC), to support LEGABIBO in first of all analysing the legal situation in Botswana to see if the legal environment is conducive for litigation case. To explore what registration options are available for LEGABIBO under Botswana laws and advice on possible procedural steps and arguments that can be made for. This was a detailed document that analysis the legal context in country and global, makes advance arguments and strategies to used,
- **Phase 2:** Identification of a lawyer - Dr Unity Dow, a former Judge; Human rights lawyer & activist, now Member of Parliament & Minister of Education was identified to be our lawyer. She had in the early years challenged government on Citizenship Case where her children were denied Botswana citizenship because their father was not Motswana (someone from Botswana). She won the case. She is a woman, credible and an experienced judge and also a local.
- **Phase 3:** Community engagements and conversations – Following these steps the Board and secretariat held meetings, dialogues and conversations to inform members of the community their findings so far, communicate options and potential risks. The earlier meetings were focused on communicating the findings of the situational analysis and aimed to seek buy-in from the members and bring everyone along. The subsequent meetings were aimed at giving feedback and progress on the court proceedings. These platforms were also used to identify litigants and allow members of the community to volunteer as litigants. The briefing meetings went along the court proceedings, the pre-and-post hearing meetings to give feedback and plan new strategies if need be.
- **Phase 4:** Identify Litigants – LEGABIBO embarked on a process of mobilising litigants who will submit affidavit to accompany founding affidavit. These were identified as individuals, NGOs, allies, church leaders, researchers and doctors. These were identified as “people who want to be members of LEGABIBO once the organisation is registered”. In governments’ records the organisation LEGABIBO did not exist, therefore LEGABIBO could not sue government in its own name. Therefore potential members, partners and friends were the ones legitimate to take the government to court. There is power in numbers.
- **Phase 5:** Develop Advocacy Strategy – The strategy was developed in collaboration with litigants, members, LGBT community, partners. The strategy was intended to guide agreed upon advocacy interventions. The strategy focused on using the case to mobilise and empower the community, to keep positive messaging in the media to harness support from the general public and partners. The strategy also had a clear position about persuading partners to be subtle in their advocacy for decriminalisation so that messaging is not confusing. Key to the advocacy strategy was:
 - Messaging**
 - i). Depicting LEGABIBO – not as an organisation & litigants as people who wish to be members of LEGABIBO if registered and Being cautious about how people are identified e.g. Coordinator
 - ii) No focus on laws that criminalize same sex sexual activity.
 - iii) Clarify difference between Freedom of association & Decriminalisation of same-sex sexual activities.
- **Phase 6:** Source Supporting affidavit – LEGABIBO also mobilised supporting affidavit from organisations that do human rights work, service provision organisations and those that support LEGABIBO mandate either local, regional and international organisations. These were intended to show the courts that registration of LEGABIBO is necessary for human rights and freedoms of the people it intends to represent.
- **Stakeholder Support:** LEGABIBO built allies who supported the organisation during these three years of litigation. Southern African Litigation Centre offered legal and technical Support. BONELA provided safety and security in housing LEGABIBO staff and programming. The Embassies provided financial support to run programming that enabled public education and bilateral lobbying.
- **Public Engagements** – LEGABIBO conducted national Human Rights Dialogues “Human Rights Pitso” to raise awareness on the case so that we clarify what the case is about and further seek support for the public, traditional leaders (Dikgosi) and church leaders. The judgement from the High Court was used as a tool to clarify misconceptions about homosexuality being illegal. We held engagements with service providers including police and healthcare workers. At the beginning of the case, a local church, Evangelical Fellowship of Botswana (EFB) expressed interest to support government, as an Amicus Curie,

to refuse to register the organisation.

There was backlash:

"we are the prophetic voices of the church, our no should be no and our yes should be yes" Church leader 2012 Dialogue

"The law should emphasise more on the restriction of homosexuality" Kgosi, 2015 dialogue

i) **Media engagement** – This was strictly controlled and press conferences only came from LEGABIBO and SALC. This was so that there was no mixed messaging. The press conferences were held pre-and-post court hearings.

ii) **Messaging and framing** – It was critical that the case is not understood as a challenge of laws that criminalise same-sex sexual activities as prescribed in the Penal Code Section 164,165, and 167.

STRATEGY

- **Community Briefing Meetings** – Information sharing with members of the community through monthly briefing meetings and on social media.
- **Fact Sheets** – Through the support of SALC we developed a fact sheet, which was availed to the media and members of the community and litigants so that they use it to educate. Each result and stage at the high court had its own fact sheet.
- **Personalising the campaign** – Members of the community shared their positive stories in the media. Some of the stories were of members of the family whose brothers, sisters and cousins are gay, bisexual and lesbian and showed the public how they were supporting them.
- **Dissemination of the case** through support groups– The dissemination was done through various platforms. The focal persons and peer educators were trained on facts on the case, they used the information to educate members of their support groups in various regions. Feedback to support groups was done through monthly support group meetings.
- **Litigants training** – At the start of this campaign, the lawyer Unity Dow met with the litigants to speak to them about what the case means and the impact is likely to have on them. The purpose of the training was to assure the litigants that what they had volunteered to do was important work for a good course.

- **Community mobilisation** – Litigation is a great opportunity and strategy for mobilising the LGBT community as well as building an inclusive movement. Campaigning and action around the case brought the LGBT community together and created new alliances with members of the community who are not LGBT.
- **Public Debates** – We had public debates in Universities where students debated the merits of registering an LGBT organisations. Despite the negative comments we got, these were great platforms to educate.
- **Communication** – briefing of national, regional and international partners through various sources including, email and social media.
- **Representation and visibility** of LGBT community during court hearings was key to showing the judges that there are many people who would like LEGABIBO to be registered so that they could become members of the organisation. At each hearing there were more than 100 people who attended wearing branded merchandise on freedom of association.

THEORY OF CHANGE AND OPERATIONAL ASSUMPTIONS

The key to our strategy was to communicate correct and clear messages that will support the court process which is why all the intervention ran along with the hearings at the both the High Court and the Court of Appeal. The positive depiction of LGBT stories was intended to garner public support, shift public perceptions and possibly influence opinions of decision makers. The media is an influential tool of public opinion, so control of what goes out in the public and working closely with the media would likely soften messages and sway the public to supporting LEGABIBO to be registered.

Essential Resources

- **Technical Support** – This was in the form of (an) experienced advocate(s) with credibility and extensive experience in not only human rights litigation but also knowledge on LGBT issues. These we found in the form of Unity Dow at the High Court and Attorney Dick Bayford who represented LEGABIBO at the Court of Appeal. SALC provided technical support in writing summaries of judgements and bringing down to the layman's language so that it is easy to understand. Both LEGABIBO and SALC collaboratively wrote press statements, fact sheets and disseminated these broadly.

- **Financial Support** – The case took 3 years before the final judgement was passed at the court of Appeal. In those 3 years LEGABIBO needed resources to do advocacy work continuously so that the case is well publicised. This support came from OSISA and supported the personnel who implemented the project as well as support interventions relating to the project. It was also critical for LEGABIBO to continue implementing other programs relating to health and use the evidence gathered from these as evidence that registering LEGABIBO is important so that it can support the health needs of its community members. Such support came from our donors such as COC, AJWS, HIVOS and others.
- **Human Resources** – LEGABIBO needed strong leadership in both the Executive and the Secretariat. To address this, the Board had employed the Coordinator whose role was to drive the registration strategy. In addition an advocacy officer was employed to lead the day-to-day implementation of the project. However the case took longer in the courts than expected, there was change in leadership at secretariat level and that disrupted advocacy efforts and created instability in the organisation. Litigation requires stable leadership at both Board and Secretariat levels.
- **Strategic Leadership** – LEGABIBO needed stability within its governance structures and a strong Board to make decisions about engaging in a strategic litigation process. A new Board was elected in 2014, the change though constitutional caused disruption because the new Board varying approaches to packaging of the messages and dissemination.
- **Competencies or knowledge** – Strategic litigation requires skills that relate to lobbying interest groups, civil society, members of parliament, counsellors and traditional leaders. Our lobbying enabled us to get support from a member of the city counsel who was present in court and also educated his colleagues. There are critical skills needed to develop and implement a communication strategy. At the same time the strategy has to be flexible to allow for change in strategy when need be. There is need for experienced personnel to implement the strategies. Lack of experience can render the strategies useless.
- **Evidence** – Although LEGABIBO didn't need to provide extensive evidence to support the case, there was need to show the court that there are many members of the LGBT community in Botswana who would like LEGABIBO to be registered so that they can become its members. This evidence was in the form of many litigants, presence and visibility of LGBT in court, and support from the local organisations.

Adaptations To Overcome Previous Difficulties And Challenges

The LEGABIBO registration case was before the courts for 3 years. After the High Court win, the Government of Botswana Appealed and the date anticipated for the matter to end was pushed further. Although we had expected the government to appeal, the change affected the litigants' moral because this meant that their names would stay in the public eye longer than expected. Some litigants wanted to be removed from the list, however, it was too late to do so because the matter was at advanced stages in court.

Major Turning Points

- **Working with the media** – We have been able to build good relationships with journalists who documented our stories and published them thereby giving mileage on positive messaging.
- **High Court Judgement** – The positive ruling at the High Court LEGABIBO highlighted many key points including clarifying that i) LEGABIBO objectives are harmless and promote good values such as human rights and public health. ii) It is not unlawful to lobby for law reform to decriminalise iii) It is not a crime to be attracted to a person of the same sex therefore sexual orientation in itself does not make one a criminal. These key points gave members of the community hope to win at the Court of Appeal
- **LGBT presence in Court** - The community was very supportive through their presence at the High Court of Appeal. High presence showed the Court that LGBT are there and need LEGABIBO to be legal. This provided evidence that refusal to register is denying a large number of people freedom to associate. The judge was also able to see that we are talking about real people. Though the judge is conservative; he did very well and applied the law.
- **Congratulatory compliments** – After the High Court ruling, Botswana was complimented by human rights defenders abroad for upholding human rights. This included United Nations and African independent human rights experts; the UN Special Rapporteur on the situation of human rights defenders, Michel Forst and the UN Special Rapporteur on the right to freedom of opinion and expression, David Kaye. With the case having drawn international attention, Botswana was under scrutiny to uphold rights.
- **Changing attorney/representation** – After the High Court ruling, Unity Dow left legal practice to join politics. This created uncertainty among litigants and members of the community, we had to go back

to the drawing board and look for new lawyer

INTERNAL AND EXTERNAL FACTORS, WHICH SHAPED THE DEVELOPMENT OF ADVOCACY

Internal Factors

- **Participation** – LGBT willingness and readiness to participate the advocacy through availing and contributing stories to be published in the newspapers as a form of influencing and swaying public opinion.
- **Ownership** – the LGBT community and not only the litigants owned the case and were involved in dissemination of the information provided to them. They used various platforms in social media to share with friends and families. Owning the case, Communicating fears, concerns, Engaging the lawyer
- **Briefing the litigants and community** – At very early stages of the hearings, LEGABIBO conducted meetings with members of the community where they were briefed on progress on the case and provided with facts on the judgements. Throughout these meetings a lawyer from SALC took the community through the facts. The LGBT community felt defended and protected.
- **Protecting membership, staff and host organisation** - Clarifying that LEGABIBO is not a separate society but only part of BONELA, then failure to obtain registration should not automatically mean that the programme is illegal.
- **Education** - Clarifying and framing the grounds for legal action and ensure that everyone involved understands the position and reasons for going to court. Clarifying the what, when and how of litigation steps to all involved

External Factors

- **Support from allies** – There was a lot of support particularly from parents of litigants who came to court to support their children and members of their families. The support also came from members of the LGBT community in the region in their individual and organisational capacities. There were calls from regional and international donors and NGOs for the government of Botswana to register LEGABIBO.
- **KP Coalition** – A group of organisations working on

human rights and LGBT issues formed a coalition that ensured access to health services for the community. This Coalition was one of the platforms that we used to advocate and build solidarity.

- **Partnership with SALC** – SALC supported LEGABIBO from the beginning of the case to the end through technical support. SALC drafted all the arguments and researched to build evidence. They provided the lawyers with evidence. In this way they were able to cut the fees paid to the lawyers.
- **Fiscal Hosting** – For years BONELA played an important role in hosting and housing LEGABIBO. This partnership became particularly crucial during this litigation because LEGABIBO could not operate while the case was in court. Therefore being housed as an LGBT program within BONELA provided a safe space to continue to operate while in court.

RESULTS

- **Stakeholder Involvement and Mobilizing for support:** LEGABIBO built support and mobilised allies for support: Some of the support we got was from:

Southern African Litigation Centre – Technical Support

BONELA – housing & consulting partner

Embassies – US, British, French – Underground lobbying

Media (National & International)

- **Founding and supporting affidavits** – 20 litigants gave supporting affidavit for the case. These were all locals. The idea was to disprove the myth that homosexuality is un-African.
- **Allies** – Some of the litigants were none LGBT. This strengthened support from allies. This was seen as a strong approach that ensured community involvement and participation.
- **Media Engagements** – We conducted press conferences at every stage of court appearances where we explained the grounds for litigation so that the public gets the right information. Despite these efforts, The media reports also presented positions from the religious sect that did not aid our case, instead negatively influenced public opinion and framed homosexuality as ungodly, immoral, misguided and incompatible with cultural ideals.
- **Judgement** – LEGABIBO got a positive judgement at both the high court and the court of appeal. For

those working in the organisation they felt that this was the greatest achievement.

- **Building Solidarity** - The initiation of the litigation process was done consultatively with members of the LGBT community. Members felt they were part of decision making on whether to go to court. This brought together individual members of the community, litigants and human rights organisations. This built a movement in support of the LGBT.
- **Linkages of judgement to democracy** – The case was not just about registration of LEGABIBO, but an act of exercising democratic principles of claiming constitutional rights accorded to all Botswana nationals accorded constitutional right to associate and form and assemble. The judgement showed that denying LGBT to form an association undermines democratic principles.
- **The Judge ignored the Kanane Case** – Within Botswana case law there is jurisprudence where an individual was arrested and found guilty based on the law that criminalise same sex sexual activities. For a long time we held the view that this case sealed our fate, that we could not possibly challenge and win any other case for as long as jurisprudence created in Kanane vs the State existed. As it turned out both the High court and court of appeal decided that things have changed since the Kanane case.
- **Improved access to services** – Because of registration we experienced improved partnership with service providers who in the past had been under the impression that it was illegal to be homosexual, therefore if they provide services to LGBT they would be breaking the law.
- **Increase in the number of LGBT accessing and engaging with the organisation and accessing services** – Before the positive judgement, a large number of members of the community found it difficult to associate with the organisation for fear of stigma and discrimination. After winning the case, we saw a lot of LGBT persons being free to participate in organisational events.
- **Claiming rights** – Members of the LGBT community are confident to claim their rights because the judgement confirmed that sexual orientation cannot be used as a reason to deny access to services.

RESULTS NOT REACHED

Supporting affidavit from partners – We were not able to get supporting affidavit from partners as expected. These were sought but mostly the leadership of the organisations refused to commit through an affidavit.

DIFFICULTIES FACED

- **Timelines** – The initial plan was that the High Court hearing would be in August 2013, however that did not happen because the judge who was presiding on our case was on leave. Consequently the hearing was delayed until 2014. This slowed things and required shifting of plans. This also affected donor timelines and reporting.
- **Impact of litigants** – The litigants are the most important partners in litigation. Some of them were facing challenges from families and work once it was found out that they were part of the LEGABIBO case, it was assumed that they were gay resulting in marginal differential treatment.
- **Advocacy on Decriminalisation** – For those directly involved in the advocacy, they found it really hard to set aside talking about criminalisation and take the incremental approach. This was especially difficult when talking to the media because their interest was mainly on sexual activities and same-sex marriage.

“Not addressing decriminalisation sometimes felt like we were betraying the struggle, like we were cowards and taking the easy way out.” Focus group discussion

“What is LEGABIBO doing in relation to criminalisation of same sexual acts, is LEGABIBO saying they will never address this matter?” Participant in one of the workshops

- **Evangelical/Religious opposition** – An umbrella body of evangelical churches in Botswana Evangelical Fellowship in Botswana (EFB) appeared in court expressing interest to submit an Amicus Curie in support of government. This presented a threat of many religious organisations opposing LEGABIBO registration.
- **Staff retention** – LEGABIBO underwent staff changes during this time. Staff members who initiated the project left and new ones came in. This affected a flow of information and retention of institutional memory.
- **Board Leadership** – A new Board was elected soon after the case went to court. This created a gap in strategic leadership especially that the incumbent

were not directly involved in the initial stages.

- **Lack of partners support** – Some organisations felt that they could not commit to fully supporting LEGABIBO without approval of their boards. People are nervous about challenging government and openly supporting LGBT litigation
- **Bilateral advocacy by embassies** – It was very difficult to measure the impact of lobbying at high level because we were not privy to these conversations. However some participants felt that at some point, especially as the case dragged in court the litigants were neglected and their needs were not met.

ANALYSIS AND LESSONS LEARNED

To which extent has the activity worked as intended?

A combination of strategies used during LEGABIBO registration case complemented each other and resulted in implementation of multiple activities that led to reaching multiple stakeholders. The case was well publicised, information on the case was controlled and came from one source, the litigants and the community had correct information on the case, there were regular meetings that ensured that members were briefed. The case was well documented in the media and in internal documentation.

- The court case had bigger results than intended. Through the case we were able to build a strong movement
- The judgement both at the High Court and the Court of Appeal became part of our curriculum in awareness raising within support groups and educating the public

To which extent did actual practice follow your theory of change, and were your operational assumptions valid?

The strategies were implemented as planned. The target groups identified in the strategy such as media, partners and most importantly the LGBT community were involved in the case. We were able to provide the media with facts on the case, these in return informed the public and framed part of the public opinion. As expected the media was an ally and a potential enemy that can frame the messages depicting LEGABIBO in a negative light. But such negativity was tainted by the constantly present positive messages from members of the community.

Some strategies were implemented more than others. For example, one of the strategies we had planned to use was document the story of the case in a book. This was not possible because of limited resources. However we were able to collect newspaper articles on the case to be analysed when resources are available.

Key factors for success or failure

- Negative framing by the media
- Negative declarations by church leaders in the media. We frequently saw headlines such as "*Homosexuality is a sin*" However the media was a good way of documenting the case
- There were no strategies on how litigants would be supported before and after the judgement is passed. This resulted in litigants expressing dissatisfaction that their contribution was not acknowledged nor celebrated.

LESSONS LEARNED

The following lessons were learned from implementing the strategy

- **Communication:** It is important to timeously give information to all stakeholders involved so that they know facts about the case. Clarify the what, when and how of litigation steps to all involved
- **Support** – When engaging in litigation do not always expect support from partners to provide support in the form of affidavit. Instead build the strongest support within the community that the case is for. Even if partners do not give affidavit, it is important to bring them closer, provide them with facts so that they do not work against your course.
- **Incremental approaches towards decriminalisation** – the LEGABIBO registration case is not a separate agenda from decriminalisation. Instead it is a step towards the main goal. It is an incremental approach towards decriminalization.
- **Multipronged approaches** – In strategic litigation it is essential to adopt many approaches and consider many possibilities. Before we decided to go to court, we explored and exhausted all legally available and accessible options as stipulated in Botswana laws. This included appealing to the Minister, consulting with public officers and considering options of registering as a Trust.
- **Safety and security** – for every strategy it is crucial to consider possible risks and put in place safety

and security measures so that we are able to protect staff, members and organisations that support us.

- **Seeking and taking advice** – Advocacy strategy must be informed by advice from the lawyer so as to avoid making statements that are in contempt of court thereby jeopardise the matter.
- **Seeking redress** – Communities should be given chance to seek redress because it is evident from our experience that LGBT communities are denied rights based on assumptions that it is illegal to be homosexual consequently have no right to associate.
- **Court decisions** – Court decisions are important because they clarify assumptions, and change the legal context of LGBT persons. This judgement reveals many human rights issues relating to democracy, the rule of law and justice.
- **Limiting rights** – From the judgement we also learn that rights are sometimes restricted based on public morality not law. The Director of Registrar of Societies and the Minister of Home Affairs refused to register LEGABIBO based on moral disapproval of its objectives not law.
- **Community involvement and ownership** – Involving the community in a litigation process has more far-reaching outcomes than intended. It has potential to empower the community and strengthen ownership. LGBT presence in court gave evidence to the number of people who would like LEGABIBO to register, it also depicted high levels of tolerance and acceptance for members of LGBT.
- **Appeal** – We were nervous about this about government appealing the High Court decision. But we learnt that appeal is good because it set precedence on a decision made by the highest court in the country. It renders case to have authority
- **Building leadership** – Some of the litigants who were members of staff grew to be strong leaders as they engaged with the case and claimed their rights. They used the information they learnt to build movements and mobilise members of the community.
- **Partnerships** – Partnership with Human rights organisations is important and can provide support to LGBT organisations struggling with registration and the law. LEGABIBO being housed by BONELA at the time of registration provided that safe space.

What would you do differently if you were to start over again?

- **Identification of litigants** – The litigants should be accessible and available. This makes communication and feedback easy
- **Mobilisation of CSO** – we could have worked harder to mobilise civil society so that the campaign could be owned by more CSOs
- **Fact sheet** – we developed a fact sheet on the case, but mostly it was in English and was difficult to understand by most communities. The fact sheet needed to be translated to Setswana.
- **Track**, monitor and evaluate the impact of the case on **public opinion** and change in attitude.
- **Documentation** of the case and collecting anecdotes and stories during the process

WAY FORWARD

Strategic litigation, though lengthy and complex can be an effective way of claiming LGBT rights. The plan therefore is to initiate conversations with members of the community on taking action on criminalisation of same sex sexual activities. This will give the community hope that LEGABIBO has not abandoned challenging this injustice.

Now that LEGABIBO is registered, the organisation is in a position to lead LGBT advocacy in the country and influence what the next advocacy agenda should be. We intend to use this position to shape change in a way that it brings everyone on board.

Examining the strategies we used has showed us that incremental approaches are not always favoured by the community therefore it is important to engage everyone before applying the lessons learnt. In addition allowing many people to participate in the case increases a high sense of community ownership of the matter thereby build trust. However where there are many people involved with different needs and expectations, it is important to have strategies to manage expectations.

ORGANIZATIONAL BACKGROUND

Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) is an LGBTI non-governmental membership organization, registered on the 29th April 2016 after winning freedom of association case at the Botswana Court of Appeal.

LEGABIBO was founded in 1998 with the purpose of defending the human rights of LGBTI in Botswana. LEGABIBO currently has 30 paid up registered members who are not only limited to members of the LGBTI community, but include friends and supporters of the LGBTI community (Pflag).

Vision

The vision of LEGABIBO is to create a tolerant social environment where diversity is appreciated and celebrated by building a strong organization with a critical mass of knowledgeable, articulate activists who effectively advocate and defend the rights of LGBTI in Botswana.

Mission

LEGABIBO is a national NGO that empowers the LGBTI community and the society on sexual diversity through awareness raising and building a critical mass to promote tolerance.

Purpose

LEGABIBO exists to facilitate the realization of human rights for LGBTI people in Botswana through monitoring human rights, raising awareness and building partnerships.

Strategic Goals

1. Raise awareness on sexual diversity amongst various stakeholders.
2. Build a critical mass of partnerships and networks.
3. Empower members of the LGBTI community through Community mobilization and movement building.
4. Ensure organizational efficiency and effectiveness.

Objectives

1. To ensure that human rights, legal and ethical principles are integrated while addressing the sexual, reproductive and health rights of LGBT without discrimination;
2. To ensure LGBT participation in policy fora at local, regional and international levels;
3. To build partnerships; to assist in promoting and encouraging networking amongst NGOs and individuals with similar goals and/or objectives so as to facilitate joint initiatives at solving problems;
4. To advocate for equal rights and decriminalization of same sex sexual relationships;
5. To act on behalf of and to represent LGBT;
6. To support public health interests by creating an enabling environment for LGBT;
7. To educate the public on issues of human rights within the context of sexuality and to facilitate the creation of stakeholder forums nationally to assist in the dissemination of information;
8. To provide evidence on the human rights situation of LGBT in Botswana

CONTACT DETAILS FOR THE ORGANISATION

P O Box 550430

Block 6, Plot 37823, Gaborone, Botswana

Tel: +267 3167425, Fax: +267 3167465, Cell: +267 71 340 794

Email: legabibo@legabibo.org

Facebook: LeGaBiBo; Twitter: [@legabiboadv](https://twitter.com/legabiboadv); Instagram: [@legabibo](https://www.instagram.com/legabibo)



Lessons Learned publications in this series:

46. An analysis of the engagement with and progress made at the African Commission on Human and Peoples' Rights: A Kenyan activist's perspective
45. Advocacy and Policy Engagement by Ishtar-MSM in Nairobi (Kenya)
44. Service Delivery and Uptake for MSM and MSW at the Ishtar-MSM Wellness Community Space in Nairobi (Kenya)
43. Raising awareness of stakeholders and mobilization of transgender and intersex communities
42. LGBTI refugee programme
41. Advocating against draft anti-LGBT legislation in Kyrgyzstan
40. Integrated Training for Health Care Providers in South Africa
39. A comparison of urban and rural LGBT support groups in Botswana
38. Identifying gaps to focus on in future work through community dialogues with law enforcement, healthcare workers, students and rural villages in Lesotho
37. Creating access to health services for LGBT Community in primary health care settings in the four regions of Swaziland.
36. Lessons learned at Equidad's HIV/STI testing centres for MSM in Ecuador
35. Raising awareness in the face of ignored deficiencies in the National Police Force of Panama
34. Safety for human rights advocates and defenders in the Central American context
33. Health Care Providers' sensitization and capacity development; and community mobilization through arts and theatre in Lusaka (Zambia)
32. Moving beyond individual counselling of LGBTI people to address central psychosocial issues on community level in Tshwane (Pretoria)
31. Bonela Challenging structural barriers through the Gender and Sexual Minority Rights Coalition in Gaborone (Botswana)
30. CEDEP Advocacy Approaches in Malawi
29. GALZ Lessons learnt amongst MSM in the uptake of Male Circumcision (Zimbabwe)
28. Uptake of Post-Exposure Prophylaxis (PEP) by Men who have Sex with Men in Tshwane (Pretoria).
27. OUT's Peer Education Programme for MSM / LGBT's in Tshwane, Pretoria
26. The Pink Ballot Agreement
25. Peer Education Programme (Malawi)
24. Schorer Monitor
23. Health, culture and network: Interventions with homosexuals living with HIV/AIDS at Rio de Janeiro polyclinics
22. Telling a story about sex, advocating for prevention activities – informational materials about safe sex and harm reduction for gay men and MSM from 14 to 24 years.
21. Mainstreaming of LGBTI/MSM/WSW issues in all areas of service provision: Empowering Service Providers and Policy Makers in Botswana through trainings
20. Now we are talking! – Developing skills and facing challenges.
19. Towards a Comprehensive Health Care Service Model for Transgender People in Ecuador
18. Comparative analysis and account of the outreach process to implement a method to change behaviors of youngsters with homo/lesbo erotic feelings in Costa Rica
17. Methodology for behavioral change in teenagers with same sex feelings, from the Greater Metropolitan Area, in Costa Rica
16. Breeding Ideas: building up a young peer educators' network.
15. Prevention Images: notes about a photography workshop with young MSM and people living with HIV/AIDS in Rio de Janeiro
14. Advocacy campaign to prohibit hate lyrics targeted at men having sex with men during a dance hall concert in Suriname.
13. Interactions between young multipliers and young gays and bisexuals in internal and external activities in Rio de Janeiro (Brazil).
12. Information Stands: Prevention Project aimed at young gay men from Tegucigalpa (Honduras)
11. Ndim'lo (This is me) Photovoice with lesbian and bisexual women in the Western Cape, South Africa
10. Me&3 Campaign for lesbian and gay individuals in Pretoria (South Africa)
9. Sensitization of the National Police by transgender organizations in Ecuador
8. Exercising 'Knowledges': Implementing training and prevention activities.
7. Public Incidence Activities: In search of public spaces accessible to teenagers with same sex feelings in the Greater Metropolitan area of Costa Rica. "Specific Case: Incidence with the National Institute for Women - INAMU - Costa Rica"
6. My body, your body, our sex: A Sexual Health Needs Assessment For Lesbians and Women Who Have Sex With Women, Durban, South Africa
5. Working with buddy groups in Zimbabwe
4. 'MAN TO MAN', a joint approach on sexual health of MSM in the Netherlands via the Internet
3. Lessons learned from project "Visual information on sexual health and the exercise of citizenship by the GLBTI beneficiaries of the Organization in Quito, Ecuador".
2. Coffee afternoons: Prevention Project aimed at young gay men from Tegucigalpa (Honduras)
1. Womyn2Womyn (W2W) quarterly open day, for lesbian and bisexual (LB) women at the Prism Lifestyle Centre in Hatfield, Pretoria (South Africa)