



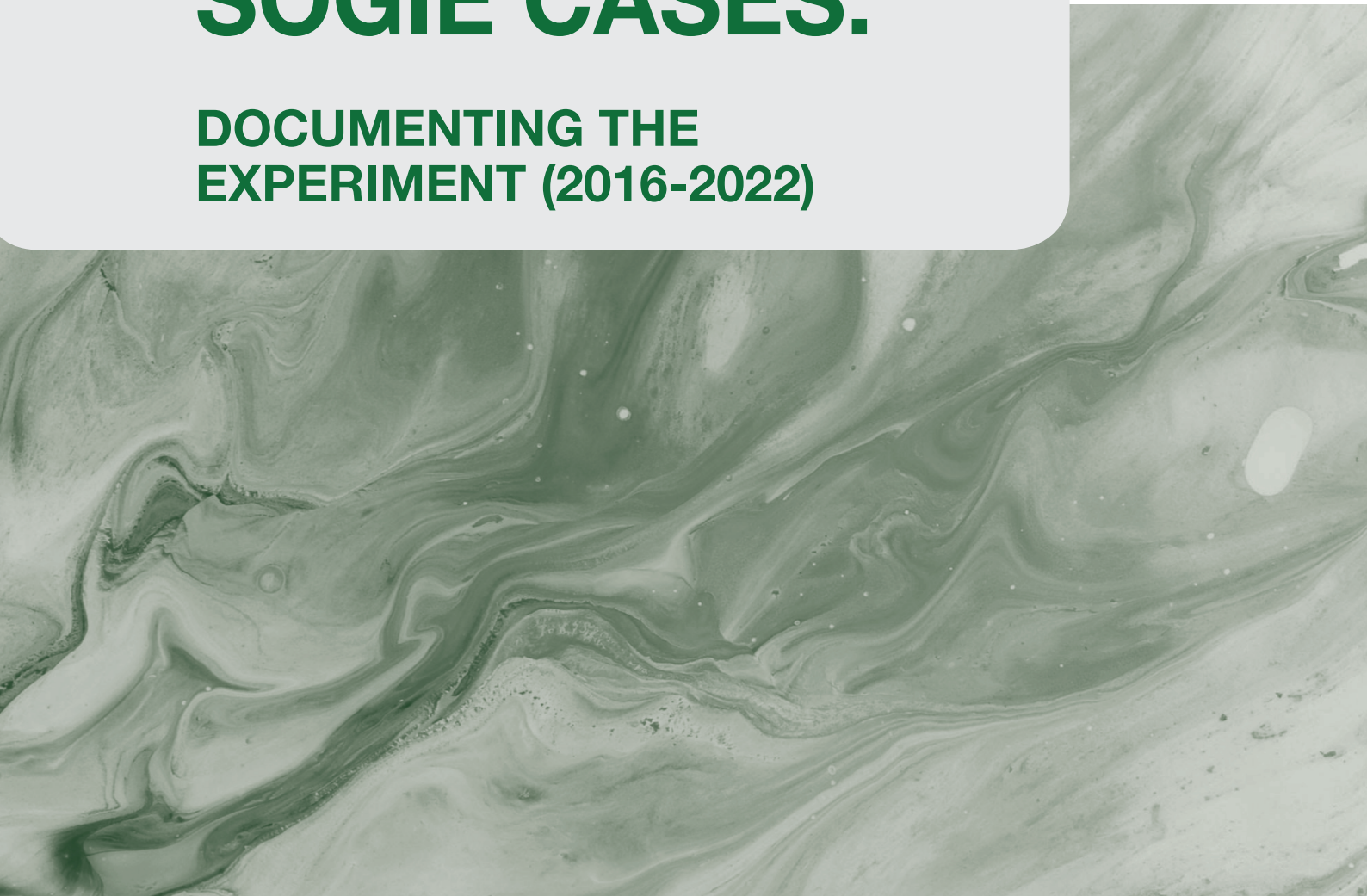
INITIATIVE FOR STRATEGIC  
LITIGATION IN AFRICA

**ISLA INSIGHTS**

ISSUE  
**5**

# **LEGAL EMPOWERMENT TO LITIGATE SOGIE CASES:**

**DOCUMENTING THE  
EXPERIMENT (2016-2022)**





LEGAL EMPOWERMENT TO LITIGATE SOGIE CASES:

Documenting the Experiment (2016-2022)

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# Abbreviations and Acronyms \_\_\_\_\_.

|          |                                                    |
|----------|----------------------------------------------------|
| ACHPR    | African Commission on Human and Peoples' Rights    |
| CHESA    | Community Health Education Services and Advocacy   |
| CSO      | Civil society organisation                         |
| FLN      | Feminist legal network                             |
| ISLA     | Initiative for Strategic Litigation in Africa      |
| LEGABIBO | Lesbian, Gays & Bisexuals of Botswana              |
| LEGAL    | Lesbian and Gay Association of Liberia             |
| LGBTIQ+  | Lesbian/gay/bisexual/transgender/ intersex/queer   |
| MoU      | Memorandum of Understanding                        |
| NCM      | New Citizens Movement                              |
| NGO      | Non-governmental organisation                      |
| SERAP    | Socio-Economic Rights and Accountability Project   |
| SOGIE    | Sexual orientation, gender identity and expression |
| SRHR     | Sexual and reproductive health and rights          |
| SSMPA    | Same Sex Marriage (Prohibition) Act of 2013        |
| SXLN     | Sexual rights litigation network                   |
| TIERs    | The Initiative for Equal Rights                    |

# Foreword

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Capacity strengthening for lawyers to help them litigate in hostile contexts and support movements that live and work outside of the margins of the law is already an ambitious task. Doing this while also running a parallel project to empower the same social movements who want to use the law as a tool for social change to enable them to make decisions on how, when and what to litigate is a daunting task. These were the modest ambitions of ISLA's sexual rights litigation network.

This report documents the process of setting up chapters that combine learning for lawyers and social movements in Tanzania and Nigeria and exploratory work in Malawi and Liberia. It details the work of conceptualising and developing the curriculum that responds to local contexts whilst remaining alert to the evolving regional and international human rights challenges and threats that face lesbian/gay/bisexual/transgender/ intersex/queer (LGBTIQ+) people.

Aware of the inherent tensions that arise when movements are not political in nature and lack a shared analysis of how social change comes about, the curriculum sets out a goal of (re) politicising movements. It asserts that it will be a mistake to engage in this type of advocacy while insisting on not engaging in politics. It is a rallying call for certain kinds of activists who are willing and able to be the face of movements. It recognises that movement work that is about claiming rights of a marginalised group and which seeks to confront the state for human rights violations must have a face. While individual leaders are important, it also seeks to emphasise the importance of plural leadership and developing consensus in movements. The knowledge on how the processes of strategic litigation has fractured social movements creates a responsibility to those who want to pursue the strategy to pre-empt potential pitfalls and take steps that eliminate or minimise those challenges. The model wanted to understand how effective learning can take place when the participants come from varied backgrounds with uneven understanding of human rights advocacy. It also wanted to understand how participants went back to implement the lessons in their organisations to establish or strengthen the strategic litigation work. There were tensions that were inevitable when participants were selected from organisations that were already in some form of relationship with state institutions, particularly those who were doing HIV prevention related advocacy. The desire to preserve the relationship with governments often collided with the new found knowledge of the state as a duty-bearer that must be held accountable.

In some countries, legal services for LGBTIQ+ people had little to do with providing legal representation in court but an industry that serves to negotiate 'bail' in police stations. A curriculum needed to be designed that not only focused on international human rights standards and comparative law but called upon lawyers to change what they believe

is the role of the lawyer in social movements. The work necessitated removing lawyers from the centre of the cases and asking them to prioritise understanding the long-term goals of the movements and supporting them to achieve their political goals. In contexts where the dominant perceptions of the rule of law were such that the justice delivery system was not the place to test the might of the state, the reluctance of some lawyers to confront the state for human rights violations had to be challenged using the curriculum. Understanding why some lawyers chose to do this work and support nascent movements became a study because value clarification became important along the way.

This is another contribution to understanding what it takes to teach strategic litigation to different groups. It is a foundation to those who care about developing the infrastructure that is required to develop movements for change that use strategic litigation to advance rights of LGBTIQ+ people in Africa. It offers insights on considerations that are often taken for granted by actors who do not have to engage with the complexities of trying to do advocacy in hostile contexts. It makes a case for the investments that are needed to take the work forward and to realise queer liberation.

# General Introduction ---

In 2016, the Initiative for Strategic Litigation in Africa (ISLA) began implementing a project to develop a sexual rights litigation network (SXLN or 'the network') to strengthen movements in African countries by empowering them to litigate on sexual orientation, gender identity and expression (SOGIE) cases.

The project aimed to build a body of actors that can hold states accountable for violations against persons based on their gender and/or sexuality by nurturing partnerships between movements and lawyers working together on social change through strategic litigation at national, regional and international levels.

This document is a review and analysis of the implementation of the pilot phase with the purpose of guiding future implementation and also to document the experiment highlighting the parts of the project conceptualisation that worked and did not work out in reality; why these did not work as we had initially expected; and what can be learned from the challenges encountered during the pilot phase.

This document is divided into five sections. The first section provides a background detailing the context of LGBTIQ+ movements in Africa prior to the formation of the SXLN and the challenges that the SXLN sought to address. In the second section, this report considers the origins of the network and the process of identifying partners by ISLA. The third section reviews the first phase of implementation and the issues that arose from this, leading to the evolution of different aspects of the model. Section 4 follows up on this by reviewing how different aspects of the model were rethought and the current conceptualisation of the 'four pillars' of the SXLN. In the final part, this report provides an evaluation and sets out recommendations on future implementation of the SXLN project.

## Methodology

This document was prepared through a qualitative approach that included a review of the project documents and reports by the consultants as well as interviews with project officers and coordinating partners who conducted country visits and oversaw the implementation of the network in Nigeria and Tanzania.

The desk review involved the review of internal documentation pertaining to the SXLN such as concepts, strategy documents, curricula and reports among others. These have informed most of the descriptive elements of the report on the conceptualisation and nature of the SXLN project.

Interviews with staff, partner organisations and activists were conducted with the aim of understanding the approach to implementing the interventions and the practical

implications of this work on ISLA as well as the movements and organisations it collaborated with in this first phase. These have mostly informed the discussion in the report on process, implementation and outcomes. All interview data have been used anonymously in this report.

# 1: Background – Context of the LGBTIQ+ Movement in Africa \_\_\_\_\_.

## 1.1 Introduction

To understand why the SXLN was conceptualised, it is important to understand the context of the LGBTIQ+ movement in Africa in the early to mid-2010s, prior to the formation of the SXLN, and the challenges that the SXLN sought to address. In the following subsections, we proceed by reviewing the nature of LGBTIQ+ criminalisation and resistance in Africa broadly and the impact this has had on the lived realities of people who identify or are perceived to be sexual and gender minorities. We then review the movements in the countries that ISLA considered for the SXLN and the level of sexual rights litigation in those countries. We then consider the issues that ISLA identified as hindering the effective use of strategic litigation in the context of LGBTIQ+ movements and why these necessitated the conceptualisation of the SXLN.

## 1.2 LGBTIQ+ criminalisation in Africa

Towards the mid-2000s into the early 2010s, visibility of the LGBTIQ+ advocacy and a new wave of homophobic social attitudes on the African continent resulted in increasing reports of people in Africa being harassed, discriminated against and even violently attacked because of their real or perceived sexual orientation or gender identity.<sup>1</sup> This was notably occurring in countries where legal systems, inherited from colonial times, still enacted the criminalisation of consensual same-sex behaviours including the formation of same-sex intimate relationships and sexual intimacy.

In this legal context, people who are non-conforming to wider heteronormative values in terms of their sexual orientation, gender identity and expression have to live in environments and under conditions that are deeply hostile to them, resulting often in the denial of and de-legitimisation of their rights. This hostility is reflected in the rhetoric of political and social actors such as politicians and policymakers, religious leaders and traditional institutions. Homophobic rhetoric reinforces negative social attitudes and permeates through all sectors within which LGBTIQ+ communities have to survive, and in their daily lives, they have to navigate or face threats, risks and attacks specific to their realities as LGBTIQ+ persons.

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<sup>1</sup> Amnesty International 'Africa: Making love a crime: Criminalization of same-sex conduct in Sub-Saharan Africa' (2013) <<https://www.amnesty.org/en/documents/afr01/001/2013/en/>>.

The mid-2010s saw a spate of attempts to deepen hostilities and further criminalise LGBTIQ+ individuals by imposing steeper penalties or broadening the scope of criminalising laws. Two of the most egregious of these were the 'anti-gay' bills introduced in Nigeria and Uganda around the same time. This onslaught of a new wave of homophobia was propelled by global, well-resourced, persuasive and highly organised far-right networks playing into the fears and ignorance of everyday people on the African continent.<sup>2</sup> The level of organising and access to resources gave these far-right networks disproportionate access to decision-making spaces both publicly and behind closed doors. In the last decade and as part of the backlash against sexual and reproductive health and rights (SRHR), these networks have been actively working to discredit the ideas and work of sexual rights and women's rights movements/activism and those who defend the rights of women and gender non-conforming people. The symbiotic relationship between a broad base of actors within the religious right and conservative and undemocratic, dictatorial states has had implications for the pace at which rights related to bodily autonomy and freedom are advanced on the continent. These include the negative impact that a normalised anti-SRHR regime has on democratic principles, the rule of law and wider human rights protections.

This danger is evident in how development and human rights agencies, organisations and institutions at a national, regional and international level started avoiding articulating or aligning with the rights of LGBTIQ+ people out of worry that this would pose a risk to other struggles, communities and issues. In this manner, human rights issues became a contest of hierarchy. In the end, and despite the growing violence and discrimination against them, this contestation meant that LGBTIQ+ communities often had to compete for recognition as a valid movement and for organising space, particularly in policy spaces.

Even within activists and progressive movements and spaces, there is outright hostility informed by homophobia and transphobia. Some activists and organisations are at times overtly or covertly against rights claims by LGBTIQ+ people and their movements. A significant number of otherwise progressive activists and human rights defenders including feminists have been co-opted to resist the rights of LGBTIQ+ people. Consequently, even the advancement of women's rights issues on the African continent has not yielded an empathetic advancement of sexual orientation and gender identity and expression issues, despite the intersections in both movements.

Within this overall context of a criminalised environment backlash from an organised far-right; donor funding priorities that exclude SOGIE rights; and avoidance of solidarity by mainstream civil society, LGBTIQ+ movements and organisations working to advance SOGIE in Africa have tended to work within the shadows and

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<sup>2</sup> A Jjuuko 'The protection and promotion of LGBTI rights in the African regional human rights system: opportunities and challenges' in S Namwase & A Jjuuko (eds) *Protecting the human rights of sexual minorities in contemporary Africa* (2017) 264.

margins of civil society or present their advocacy as public health work – which is viewed by society and government as more tolerable. In this guise, SOGIE activism has tended to align with the work of multilateral agencies such as the United Nations Development Programme and the Joint United Nations Programme on HIV/AIDS as well as foundations and trusts under their 'AIDS budgets'. While this strategic partnership has its advantages, it has pathologized SOGIE advocacy, leading to LGBTIQ+ people being viewed as vectors of diseases and locating them in the role of 'target groups' and 'beneficiaries' of public health work. It is only in this role of helplessness that LGBTIQ+ communities were recognised in hostile legal contexts. Governments in these societies were happy to support work targeting 'key populations' within HIV/AIDS, sexually transmitted infection prevention and other public health policy, in service of protecting other citizens from being infected by them. Consequently, SOGIE advocacy presented in this way was (and still is) often depoliticised, with limited attention given to challenging the state and claiming and demanding rights.

### 1.3 Litigation and the movements in Nigeria, Tanzania, Liberia, Botswana, Malawi and Ghana

Despite the prevailing hostile contexts, LGBTIQ+ activists interested in the articulation and claiming of their rights began to emerge and coalesce into movements. In the following paragraphs, we examine the litigating environment in some of the contexts where ISLA explored opportunities for setting up the sexual rights network. Although ISLA started its work with a focus on East and West Africa, with Nigeria, Liberia, Ghana and Tanzania as areas of interest, the change in donor focus countries of one of our key donors led to a refocus on Southern Africa, particularly in Botswana and Malawi.

**Nigeria:** Nigeria has a plethora of federal and state laws criminalising same-sex relationships. These range from the colonially introduced Penal and Criminal Codes criminalising 'carnal knowledge of a person against the order of nature' to the most recently legislated Same Sex Marriage (Prohibition) Act of 2013 (SSMPA) which criminalises not just same-sex unions but also advocacy, expression and assembly for same-sex sexual relationships. Attitudinal variations between the predominantly Christian south and the predominantly Muslim north also reflect in state laws: for example, homosexuality is punishable with the death sentence under Sharia criminal laws in the northern states. This means that organisations have concentrated in the urban centres in the south of the country, particularly in Lagos and Port Harcourt, with a few others also working in the centrally located Federal Capital Territory, Abuja. According to a series of polls conducted by the Lagos-based organisation, The Initiative for Equal Rights, public attitude has widely favoured criminalisation – although a growing number of people are also

against this.<sup>3</sup> Meanwhile, the LGBTIQ+ movement in Nigeria emerged through a coalition of individuals and organisations, many of whom started work as sexual health organisations before re-strategizing to focus on human rights advocacy. Despite the health and social work of the movements, there was no strategic movement litigation on SOGIE issues. Strategic litigation as a tool of social change was not common in Nigeria and only very few organisations such as the Socio-Economic Rights and Accountability Project (SERAP) and individual lawyers used the courts as a venue for contesting rights and advancing jurisprudence, usually on non-controversial areas such as basic education, public healthcare and electoral rights. Within less-accepted areas such as gender equality or the rights of sexual and gender minorities, strategic litigation was practically non-existent despite the presence of various civil society organisations. As far back as 2007 when 18 men were arrested at a private party in Bauchi, Nigeria (and charged initially with sodomy and, when that failed, with vagrancy cross-dressing, and conducting an unlawful society under the Sharia criminal law),<sup>4</sup> it had become clear that members of the community lacked sufficient legal representation. In late 2013, as cases multiplied and the SSMPA was being considered by parliament for the third time, a meeting by various organisations and individuals led to the creation of a coalition that, amongst other issues, would focus on strategic litigation for social change. However, friction within the coalition led to a setback and it was not until 2015 that a renewed attempt at challenging the SSMPA would recommence, spearheaded by the Initiative for Equal Rights (TIERs). A couple of cases were also initiated between 2014 and 2015 following the enactment of the SSMPA, but these were by private individuals with little or no involvement by the movement activists. ISLA's focus on Nigeria was based on the fact that by 2016, a vibrant movement was in existence, but it lacked sufficient capacity and engagement with law and using litigation for social change.

**Tanzania:** The LGBTIQ+ community in Tanzania is criminalised under a colonial Penal Code which specifies imprisonment for up to 30 years for anyone convicted of 'carnal knowledge of any person against the order of nature' amongst other provisions. In addition to the criminalising laws and negative social attitudes, the community in Tanzania has also had to work within the shadow of autocratic governments that have found LGBTIQ+ persons to be easy targets for scapegoating through political homophobia.

<sup>3</sup> Polls commissioned by The Initiative for Equal Rights from 2013 to 2019. NOI Polls 'About 9 in 10 Nigerians support the proposed Anti-Same-Sex Marriage bill' (2013) <<https://theinitiativeforequalrights.org/wp-content/uploads/2019/04/2013-Social-Perception-Survey-NOI.pdf>>; The Initiative for Equal Rights, NOI Polls and Bisi Alimi Foundation 'Gay rights: Perception of Nigerians on LGB rights' (2015) <<https://theinitiativeforequalrights.org/wp-content/uploads/2019/04/Perception-Survey-2015.pdf>>; The Initiative for Equal Rights and NOI Polls 'Social perception survey on lesbian, gay and bisexual rights' (2017) <<https://theinitiativeforequalrights.org/wp-content/uploads/2017/05/Social-Perception-Survey-On-LGB-Rights-Report-in-Nigeria3.pdf>>; The Initiative for Equal Rights and NOI Polls 'Social perception survey on lesbian, gay, bisexual and transgender person rights in Nigeria' (2019) <<https://theinitiativeforequalrights.org/wp-content/uploads/2019/08/2019-Social-Perception-Survey.pdf>>.

<sup>4</sup> BBC News 'Clash over Nigeria cross-dressing' (2007) <<http://news.bbc.co.uk/2/hi/africa/6956848.stm>>.

Strategic litigation has been a prominent tool within Tanzanian social and human rights movements since independence and the courts have long affirmed the rights of citizens to seek the court's intervention against legislation and actions that pervert the constitution.<sup>5</sup> However, the tool has rarely (if ever) been used in the defence of sexual rights and at the time when ISLA arrived in Tanzania, the movement for sexual rights was emerging, with a few individual activists and organisations using the health rights focused approach to advocate for inclusion of LGBTIQ Tanzanians within government policy.

ISLA's work in Tanzania began in 2015 when it conducted introductory strategic litigation workshops for sexual and gender minorities and key populations, in partnership with Community Health Education Services and Advocacy (CHESA).<sup>6</sup> These meetings were followed up by meetings with lawyers interested in litigating on sexual rights as well as movement actors in August 2016, during which ISLA introduced the lawyers to the sexual rights network where they would discuss the cases, seek advice from peers and receive information on developments around sexual rights litigation across the continent.<sup>7</sup>

Later in 2016, the government of Tanzania sought to ban the importation of lubricants into Tanzania on grounds that such commodities 'promoted the spread of HIV and encouraged homosexuality'<sup>8</sup> and the Regional Commissioner for Dar es Salaam announced a crackdown on homosexuals and set up a hotline encouraging citizens to report those they suspected of engaging in homosexuality.<sup>9</sup> This ban and state sanctioned overt hostility against LGBTIQ Tanzanians led to several activists and organisations taking a more direct human rights focused approach in condemning the government's actions and informed ISLA's initial strategic efforts in working with Tanzanian organisations and activists to hold the government accountable in court. In fact, it was at a meeting to discuss the possibility of Tanzanian organisations and activists bringing a legal challenge against this ban in October 2017 that several activists and members of ISLA staff were arrested in Tanzania, stalling the work of the SXLN there.

**Liberia:** The advocacy in Liberia has been heavily impeded by the concerted efforts of an indigenous, internally resourced anti-gay rights organisation named the New Citizens Movement (NCM).<sup>10</sup> This organisation primarily consists of Christian leaders with some involvement from the Muslim community. The organisation endeavoured to stop lawmakers from passing a rumoured gay rights legislation. The NCM has strategically deployed a campaign targeted at deterring would-

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<sup>5</sup> Reverend Christopher Mtikila v Attorney General 1995 TLR 31 HC.

<sup>6</sup> ISLA 'Final report: CHESA Tanzania' (2018) 3.

<sup>7</sup> Ibid.

<sup>8</sup> Independent 'Tanzania bans lubricant in bid to "curb homosexuality"' (2016) <<https://www.independent.co.uk/news/tanzania-lubricant-ban-to-curb-homosexuality-lgbt-rights-east-africa-a7152656.html>>.

<sup>9</sup> Ibid.

<sup>10</sup> A Currier & JM Cruz 'The politics of pre-emption: mobilisation against LGBT rights in Liberia' (2020) 19(1) Social Movement Studies 82.

be LGBTIQ+ activists from launching a local rights movement. This counter-movement activities resulted in the introduction of a new bill in 2012 to stiffen penalties for same-sex conduct. Till date, Liberia is yet to have a coordinated movement-building process needed to support a strategic litigation network. In September 2016 and April 2018, ISLA made exploratory visits to Liberia to engage with activists and lawyers. The meetings indicated that the LGBTIQ+ community in Liberia was very divided at the time and organising was happening in silos as opposed to a cohesive movement. Relatedly, there were only a few safe spaces for community members to convene. ISLA concluded that it could not make progress in this context as the kind of movement building required for the SXLN was still non-existent. Despite these challenges, Liberia had the potential for developing a thriving movement including participating in the SXLN and ISLA was able to identify an organisation called Lesbian and Gay Association of Liberia (LEGAL) as a potential coordinating partner.

**Botswana:** Botswana society is highly conservative, particularly towards LGBTIQ+ persons and sex workers as well.<sup>11</sup> There is a primarily medical focus in the aversion to LGBTIQ+ community in Botswana as the HIV/AIDS epidemic was largely perceived to have spread due to same sex sexual activities between men. The existing legislation at the time which criminalised LGBTIQ+ Botswana citizens stemmed from the colonial Penal Code prohibiting 'carnal knowledge of any person against the order of nature'. In 1998, a legal reform process to review laws that discriminated against women had the effect of criminalising same-sex sexual acts between women. In recent years, the LGBTIQ+ community has become more visible and accepted among Botswana's population. The Botswana Centre for Human Rights, 'Ditshwanelo', supported the Lesbian, Gays & Bisexuals of Botswana (LEGABIBO) at its inception to coordinate movement building for gays and lesbians in Botswana. BONELA (Botswana Network of Ethics, Law, and HIV) was also instrumental in providing support as it provided the organisation support for its legal struggles when attempting to register in 2005 and office space to coordinate activities. Early attempts to challenge registration and legitimacy of the interpretation of carnal knowledge to apply to same-sex conduct were unsuccessful but in recent times, Botswana's movement has been able to successfully bring strategic litigation on registering an association. The context within Botswana was quite different from what ISLA had encountered in countries like Nigeria and Tanzania (for example) in that litigation before courts of law had been successfully deployed in several cases concerning the rights of sexual and gender minorities prior to ISLA's entry into the space. When ISLA conducted exploratory visits to Botswana (in line with donor goals) in October 2018, it found a thriving, though under-funded, movement that was better established and well-versed in the use of

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<sup>11</sup> M Tabengwa & NE Nicol 'Sexual Rights and the LGBTI movement in Botswana' in C Lennox & M Waites (eds) Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change (2013) <[https://www.researchgate.net/publication/315657698\\_Sexual\\_Rights\\_and\\_the\\_LGBTI\\_movement\\_in\\_Botswana](https://www.researchgate.net/publication/315657698_Sexual_Rights_and_the_LGBTI_movement_in_Botswana)>.

litigation to hold the government accountable and vindicate the victims of human rights violations on the basis of sexual orientation and gender identity.

**Malawi:** The Malawian Penal Code, under colonial legacy provisions, criminalises 'carnal knowledge against the order of nature' and 'gross indecency' with up to 14 years' imprisonment. In 2014, a moratorium on arrests under the criminalising provisions was implemented by the government. Although this moratorium has effectively paused prosecutions, LGBTIQ+ persons still continue to face arbitrary arrests and detention as well as other forms of violence from state and non-state actors. Malawi, however, has established associations and non-governmental organisations, such as the Malawi Law Society and the Centre for Development of the People (CEDEP) that are invested in repealing the criminalising provisions. ISLA conducted an exploratory visit to Malawi in September 2018 and met a thriving and coordinated movement of activists and organisations who had already started using strategic litigation to hold the government accountable but who were also interested in building their capacity in this area and becoming part of the SXLN.

**Ghana:** LGBTIQ+ people in Ghana are criminalised under the Ghanaian Criminal Code through the penalisation of same-sex acts. In 2017, the Inspector General of Police committed to protecting sexual and gender minorities according to the dictates of the Ghanaian Constitution and to make the police stations of Ghana 'a safe environment or haven for LGBT persons'.<sup>12</sup> Nevertheless, the social and legal environment has continued to remain hostile. ISLA conducted exploratory visits to Ghana in 2017 and May 2018. However, the litigation scene in Ghana was difficult for the activist movement to engage because lawyers there often acted in a predatory or condescending way towards the movement and did not consider sexual rights as part of human rights.

In July 2017, ISLA had a consultation with the executive directors and coordinators of network partner organisations in Ghana, Nigeria, Tanzania and Zanzibar. The key objective was to identify institutional strengthening support required by network partners that will support the work of coordinating the strategic litigation work in partner organisations. This included, but was not limited to, operational areas of finance, fundraising, human resources, communications, case development (documenting for litigation), and safety and security. The meeting prioritised and agreed on the most urgent support required by partners. Network partners reflected on their strengths and identified areas for institutional strengthening that would, as a next step, contribute to the development of a Memorandum of Understanding (MoU) between ISLA and each of the local partners and a work plan with activities addressing the strengthening of institutional capacity and coordination of the network.<sup>13</sup> Despite the advocacy efforts ongoing in Ghana, there was no active litigation scene in Ghana. For instance, a principal organisation

<sup>12</sup> 3 News 'Police will provide you safe havens; homosexuals told' (2018) <<https://3news.com/police-will-provide-safe-havens-homosexuals-told/>>.

<sup>13</sup> ISLA (note 6 above) 4.

at the time – Solace – was focused on socio-economic rights, including issues such as access to services, human rights education and building assertiveness. The extent of their human rights work was principally around paralegal training and setting up a hotline to report cases. As such, ISLA considered that a lot more needs to be done to get the movement in Ghana to the point at which they can effectively use strategic litigation in advancing their rights.

## **1.4 The context of LGBTIQ+ movements and strategic litigation**

Building a strategic litigation movement for the protection of sexual minorities in Africa has proven challenging due to various factors. Some of these are discussed below.

### **1.4.1 Lack of a harmonised ideological framework**

Because of the disparate and often individualistic ways in which the LGBTIQ+ movement emerged in various parts of the continent, there were no pre-established criteria to assess eligibility for LGBTIQ+ movement leadership roles. While this situation in itself is not peculiar to LGBTIQ+ movements in Africa and is, arguably, an unavoidable stage for young movements in hostile contexts, the situation often led to ideological incompatibility amongst activists at the forefront of advocating for the promotion of SOGIE rights. This incompatibility essentially frustrated attempts to build long-term strategies to support legal change. For instance, while structuring and implementing the strategic litigation network, ISLA came into contact with movement leaders who did not believe in using law as a tool for social change, while others played into respectability politics – focusing on teaching the community how to 'blend' into society to avoid persecution, and still others preferred to pay bribes to the police rather than pursue litigation in systems they believed were irretrievably broken down. Strategic litigation often depends on the existence of an ideologically cohesive movement – but within these disparate ideological perspectives, opportunities for engaging the law were often lost. To mitigate this situation, it became important that a network of movement activists with shared values on using law for social change was developed and empowered to conduct strategic litigation.

### **1.4.2 Hostile and predatory legal profession**

While there are a number of lawyers who are allies of LGBTIQ+ communities or even LGBTIQ+ persons themselves, the overall context of the legal profession in Africa has been generally hostile to the community. For instance, in the West African countries, it was often difficult for ISLA to engage lawyers for the movement. In several instances, even lawyers who work for the community were often eager to express their ignorance and apathy, emphasising their role as professionals

only, without any sympathy for or interest in the larger goals of the movement. In Tanzania, one lawyer at the meeting in August 2016 expressed complete ignorance of LGBTIQ and other sexual rights issues despite what he termed as 'active' participation within the field of human rights law. Since strategic litigation goes beyond court victories for individuals and seeks to achieve social change, such lawyers were unsuitable for the needs of the movement. In other instances, lawyers enter the community as predators, intent on charging exorbitant costs for providing legal services based on their assumptions of unlimited funding from foreign donors and limited domestic opportunities for legal representation. These lawyers take on these cases for self-serving purposes and not with the intention to ensure rigorous interrogation of human rights violations against LGBTIQ folks. In view of this prevalent situation, it was important that movements themselves begin to capacitate their members to produce 'community-bred' lawyers who share the vision of the community and who see law as a tool to be used to advance the cause of the community rather than merely as a professional role.

### 1.4.3 Global North decriminalisation goals

The LGBTIQ+ movement in African contexts developed by relying on the terminology, resources and even the direction of the recently successful movements in the Global North. This dependency has allowed the Global North movements to take a significant role in guiding advocacy in the African contexts, principally in the prioritisation of decriminalisation initiatives through donor funding specifically for that kind of litigation over and above litigating on other issues affecting the community. Globally, decriminalisation is generally perceived as a magic bullet that will end all violence and discrimination facing the LGBTIQ+ community and this is the focus of many well-intentioned international donor and advocacy groups. Resources are injected into decriminalisation efforts ignoring other glaring and equally dehumanising violations. Yet, the direct pursuit of this goal has yielded little result in the African context in the courtrooms. Decriminalisation has mostly happened in the legislatures. Meanwhile, it is locally understood that activists in several countries across the world have pursued an incremental approach that begins by testing the courts to see their openness to using the courts as a site of protection of the human rights of LGBTIQ+ people. However, dependency on donor-funding and donor-driven goals has deprived African movements of autonomy in choosing what to litigate on and which issues are most pertinent to social change, as much of the donor funding originates in the global north and is disbursed in accordance with their terms and priorities. In conceiving the SXLN, ISLA sought to enable movements that had an understanding of constitutional rights litigation and could initiate litigation on various issues without waiting only for conditions to ripen for a decriminalisation case.

#### 1.4.4 Public health work v human rights interests

Considering that the movement in Africa evolved under the shadow of criminalisation and lack of legal recognition, LGBTIQ+ organisations have often found social relevance and even partnerships with government bodies through the provision of health services. This activism engaged more with the adverse public health effects of criminalising laws and focused on a pathological rather than a human rights approach to sexual rights issues. A consequence of the popularity of this type of activism is that there has been lessened focus on using law as a tool of social change and more focus on working within existing governmental policies or working with, usually Ministry of Health, officials to create policies that address the health concerns of the LGBTIQ+ community without impacting the homophobic hegemony of the state. This partnership could be advantageous to the activists as they gained personal access to government officials and could also include government logos on their training manuals and other documents. However, this kind of partnership with the government also had the effect of diminishing interest in engaging in strategic litigation as activists would want to avoid upsetting the public health arrangements or losing their privileged access to government officials. At best, organisations conducted sensitivity and human rights training for law enforcement officials without actually taking steps to hold them accountable for violations. In conceptualising membership of the sexual rights network, ISLA tried to draw a distinction between LGBTIQ+ organisations that were merely service providers or government partners and organisations that were interested in changing the legal environment and holding government accountable.

#### 1.5 Towards a sexual rights litigation network

With a view to addressing the challenges faced by the movement and despite the prevailing environmental circumstances, ISLA began the work of conceptualising and then implementing the SXLN. The process and challenges with the conceptualisation and implementation of the project are discussed in the following sections.

## 2: Origins of the Network \_\_\_\_\_.

### 2.1 Introduction

In this section, we review the origins of the SXLN and the process of identifying partners by ISLA. We commence with a description of ISLA's interests in and vision and rationale for conceptualising the SXLN, we then review the steps undertaken by ISLA to materialise the concept, particularly in identifying and choosing partners for the network.

### 2.2 Vision and rationale behind SXLN

ISLA was founded in 2014, as a feminist and Pan-African organisation that uses the law, particularly strategic litigation, as a tool for social change. Its commitment to strategic litigation is based on an understanding of its capability to work in multidimensional ways, both within a given context and, critically, across contexts. ISLA believes that strategic litigation can reframe social understandings of legal entitlements, challenge legal discourse on human rights violations, hold state and non-state actors accountable for violations of human rights and develop new norms. ISLA understands strategic litigation to be a tool alongside others – such as lobbying, direct action, advocacy, learning and development, research and service provision, amongst others – that can be used in advancing social justice for all, with a focus on women and people who are marginalised based on sexual orientation, gender identity and expression.

In view of the challenges facing the use of law as a tool for social change by LGBTIQ+ activists in Africa, it became clear to ISLA that an intervention to address this need was required. ISLA had previously implemented, successfully, a similar intervention in the women's rights movements through a feminist litigation network (FLN). It was, therefore, within its competence and capacity to initiate a similar project for the LGBTIQ+ rights movement. Fortunately, in 2014, the African Commission on Human and Peoples' Rights (ACHPR) adopted Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.<sup>14</sup> This resolution condemns increasing violence and other human rights violations (including rape, assault, arbitrary imprisonment and other forms of persecution) of persons on the basis of their imputed or real sexual orientation or gender identity. The adoption of this resolution created an opening for litigation before the African human rights systems, and ISLA proposed a strategy to exhaust local remedies by

<sup>14</sup> ACHPR/Res.275(LV)2014, adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014 <<https://www.achpr.org/sessions/resolutions?id=322>>.

starting with 'low hanging fruit' where violations are glaring and not contentious.

ISLA's work on the continent had revealed an underutilisation of strategic litigation as a tool in the advancement of human rights of LGBTIQ+ individuals both in national courts and before regional and international human rights mechanisms. As discussed in the previous section, it also revealed that in cases where LGBTIQ+ individuals did attempt to utilise strategic litigation as a tool they came up against various challenges, prominent among them being the dearth of lawyers who were willing or able to make arguments in favour of sexual rights in court, let alone take on LGBTIQ+ individuals as clients. These challenges in access to justice meant that strategic litigation was mainly utilised in cases leading towards decriminalisation of homosexuality which have dominated most progressive jurisdictions on the continent such as Kenya and Botswana, among others.

## 2.3 ISLA and the SXLN

On the premise that improved capacity of lawyers would lead to more engagement with the law, ISLA sought to respond to the legal challenges of the LGBTIQ+ movement in Africa by initiating the SXLN with the following objectives:

- ♦ developing jurisprudence before the African human rights system, specifically the African Court on Human and Peoples' Rights and the ACHPR through litigation;
- ♦ providing capacity strengthening on strategic litigation for lawyers and social movements involved in SOGIE advocacy by developing curriculum, working with social movements, providing long-term support to specific lawyers who can be available to support local actors when they require assistance; and
- ♦ becoming a resource for conducting strategic litigation on SOGIE issues.

Essentially, the SXLN was conceived as a platform for lawyers and activists to come together and make decisions and plans regarding the use of strategic litigation in domestic and international courts in the advancement of sexual rights on the continent.

The work to establish the SXLN began in 2016, with Nigeria and Tanzania as pilot jurisdictions. In Tanzania, the LGBTIQ+ movement was at early stages of activism and advocacy, with very limited legal expertise, quite different from its neighbours within the East African Region. The then leading organisation working with sexual and gender minorities, CHESA, maintained a focus on public health service provision for key populations. There was a shortage of information related to the connection of sexual rights and the violation of other rights, and so human rights violations were not being identified as such. In Nigeria, a broad coalition of individuals and organisations working on LGBTIQ+ rights had emerged by the time ISLA started implementing the SXLN in 2016. However, there was still some disconnect between the activists in the movement and lawyers. For instance,

there had been two attempts to litigate on the constitutionality of the SSMPA by lawyers bringing the action in their own capacity without community involvement. While these attempts were not successful, they indicated a ready stage for the development of a strategic litigation network. The contexts of an unfriendly legal regime, an emerging LGBTIQ+ advocacy movement and the knowledge gap on strategic litigation made Nigeria and Tanzania countries of interest for ISLA's work.

ISLA also had its own challenges. For instance, it was initially difficult to access funding for the SXLN from donors or receive cooperation from organisations that perceived ISLA as a feminist non-governmental organisation (NGO) that could not make an impact within the LGBTIQ+ movement, including a mistaken assumption that the SXLN was similar to the work already being done by other litigating organisation on the continent. Also, in 2018, one of ISLA's major donors changed its focus and stopped funding initiatives in West Africa. This change set back the implementation of the project. Meanwhile, in Southern Africa where funding was available, there was limited scope for network building, thus creating a gap between opportunities for implementation of the SXLN and the funding available to ISLA.

## **2.4 Initial partner identification process**

The initial identification of partners for the SXLN was done through existing networks that ISLA team members were a part of through their work on the continent even prior to the formation of ISLA. Individuals and organisations in various countries already known to the team, and those recommended to the team, and directly identified through exploratory visits to Ghana, Malawi, Botswana, Nigeria, Tanzania and Liberia, were the initial local partners that were relied upon to do the work of mobilising and connecting activists, lawyers and other movement actors in their respective countries.

Prior to the exploratory visits, ISLA was in discussion with Synergía (formerly part of Heartland Alliance), particularly regarding the possibility for collaboration in Nigeria, Liberia and Ghana. Given Synergía's existing programming on movement building in the region, ISLA could leverage some of the groundwork they had been doing and also obtain insights into the organisations and movements to engage in the West African region. Local partners were also identified through previous projects with African Men for Sexual Health and Rights (AMSHER).

The exploratory visits were made to the countries to introduce the conversation around strategic litigation that embraces the agency and expertise of LGBTIQ+ communities and movements in the advancement of human rights. This was a process of experimental interactions and the relationships with local coordinating partners were based on mutual trust and understanding in accordance with the terms of the MoU which they signed with ISLA. This MoU has changed/improved over the years as ISLA learnt a few lessons from the various relationships they built on the continent in the initial implementation of the SXLN.

In Tanzania, ISLA made initial contact with CHESA, one of the only organisations working around LGBTIQ+ issues from the health rights perspective at the time, in 2015. Through CHESA, an initial meeting was organised in Tanzania in which the ISLA team met with a group of activists mobilised by CHESA and had a conversation about human rights and the possibilities of utilising strategic litigation to advance human rights in Tanzania. In Nigeria, the ISLA team worked with organisations such as AMSHR and TIERs, with TIERs acting as the local partner. Together with TIERs, ISLA had several meetings with local NGOs and conducted a series of training events for lawyers between 2016 and 2020. Although the first phase of implementing the network did not commence in all the other countries, ISLA was also able to identify potential local coordinating partners for the network such as Ivy Foundation in Malawi, LEGAL in Liberia, Solace in Ghana and LEGABIBO in Botswana.

The process and challenges in implementing this model in both Nigeria and Tanzania in the first phase of the project are discussed in the following sections.

## 3: Initial Implementation of the Network ---

### 3.1 Introduction

Starting in 2014 ISLA undertook the work of implementing the SXLN, sometimes having to restart the process in view of challenges. The entire scope of activities conducted between 2014 and 2020 is described as the first phase of the project implementation. In this section, we review the first phase of implementation and the issues that arose from the challenges encountered in trying to implement the activities and how the learnings from these challenges led to the evolution of the network model. We start by reviewing how ISLA conceptualised the stages of implementation before proceeding to the process for identifying movement lawyers and developing a curriculum for their training. We then discuss the challenges of movement building and how these challenges impacted the development of the network. We conclude this section with a review of the outcomes from the first phase.

### 3.2 Projected stages of implementation

In the initial conceptualisation, ISLA envisioned a three-stage model for the project as follows: **Stage one:** identify and work with existing social movements to identify lawyers with interest in participating in litigation concerning sexual rights. These lawyers were to be sourced from law firms, institutions of learning, as well as from legal NGOs and be given training. **Stage two:** identify circumstances in which there are grounds for initiating litigation and to develop cases that can be addressed through a strategic litigation campaign. The lawyers identified would then need to work with social movement partners to ensure that a national strategic litigation plan is developed. The plan would detail the aims and specify activities which will be conducted to support the litigation, identify a forum for litigation, involve the research needed for the development of legal arguments to be presented and envision suitable remedies. **Stage three:** provide ongoing support to the social movement and lawyers by giving advice on case briefs in the preparation stages, legal strategies used in court and providing access to any comparative and international law research related to the legal issues in the individual cases. This model had proven effective in ISLA's prior work developing the FLN and it was assumed that it could be similarly replicated for the LGBTIQ+ movement.

### 3.3 Identification of lawyers and curriculum development

The model for the development of the network focused on the need to train lawyers over a period of two to three years to use strategic litigation as a tool for bringing about social change. This plan required the identification and training of lawyers willing to work with social movements and understand their needs, who have a sound knowledge of international human rights law; and who have the capacity to use domestic laws and processes to pursue constitutional rights litigation. Lawyers would be given training on sexual rights, human rights and litigating before the African regional human rights system. This training would enable lawyers to provide support consistent with how the movements needed to engage with the law and courts. The intention was to develop a pool of lawyers, identified by the movement that were/would be willing and available to support the LGBTIQ+ movements in Nigeria and Tanzania and all over the continent.

The movement lawyers would have legal expertise to conduct human rights litigation on different issues affecting the community and understand what it means to be a lawyer for and on behalf of people who are on the margins of society. It was intended that lawyers who form part of the network would be able to discuss their cases, seek advice from peers, receive information on comparative and international law and get regular updates on legal developments, particularly developments in litigation.

To commence the process, ISLA asked the local coordinating partners to identify existing lawyers who already had some trust with or were already embedded in the movement. It was also important to identify (closeted or open) LGBTIQ+ lawyers and law students who could grow into the work. This request was met with varying success and there was a mix of both externally invited and existing movement lawyers in both Nigeria and Tanzania. Generally, and particularly in Ghana and Tanzania, there was some difficulty in finding lawyers who were willing to undertake the cases. In Nigeria, there were lawyers who had different ideas on the direction of the issues or their fees as well as having to deal with international lawyers in the country with their own litigation agenda. And in every instance, there were lawyers who only wanted to work as lawyers and not as movement partners.

A value clarifications module in the curriculum was also included to ensure that there were no homophobic lawyers in the network as the primary focus of the network is to ensure access to justice and legal representation for the movement.<sup>15</sup>

Initial conversations to introduce the work were undertaken in Nigeria in July 2014. However, frictions between organisation in the local movement in Nigeria stymied the process and it was not until 2016 that ISLA recommenced the project with trainings for lawyers in Nigeria and Tanzania on sexual and reproductive rights. Although the curriculum was not fully fleshed out before the work started

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<sup>15</sup> ISLA 'Report on the Consultative Meeting for the Sexual Rights Network 2 – 5 August 2016, Dar es Salaam, Tanzania' (2016).

in the first phase, the training for lawyers commenced in Nigeria with two capacity strengthening training sessions with the lawyers on 23 and 24 February 2016 under the coordination of TIERs, the local coordinating partner. At these sessions, ISLA project staff covered issues such as introduction to strategic litigation, litigating for social movements, local, regional and international human rights mechanisms, sexual health and reproductive health jurisprudence. The meeting brought together 12 lawyers from the six geopolitical zones of the country. Most of the lawyers showed an understanding of sexual rights and stated that they had some knowledge of the history and development of sexual rights internationally but were not aware of any foreign and international jurisprudence on sexual rights. This meeting was followed by a series of other training and capacity building workshops spanning a two-year period. The lawyers trained were to become part of the SXLN with the hope that the tools and skills gained will help in furthering strategic litigation in the countries. However, this was not the case for several reasons.

After the initial sessions, ISLA was able to identify a few issues that were hindering the effectiveness of the training plan. These include the following.

**Lack of membership clarity:** In the first place, there was an undefined cohort of lawyers and several of the first members of the class did not return for subsequent training sessions over the next couple of years. This turnover rate meant that there was no consistency and uniformity in the knowledge that was imparted. Nevertheless, a few lawyers remained throughout the course of the training and some of those who joined midway have also remained consistent.

**Ideological incompatibility and predatory interests:** Not all of the lawyers who joined the training sessions started out with the interests of the community at heart. Some lawyers still did not understand the rights claims of the LGBTIQ+ community.

There were several reasons for this. From one perspective, a lawyer in the Nigerian network noted in an interview for this report that some of the lawyers who joined the initial sessions were not interested in litigating for the movement but only interested in the financial gain. Other lawyers in the initial cohorts did not think there was a point in holding the state accountable as the criminal justice system was so broken down, and instead it was more convenient to bribe the police to release community members who were arbitrarily arrested.

From another perspective, lawyers often did not have sufficient personal engagement with human rights principles. For instance, lawyers in Tanzania confessed to a lack of understanding of issues surrounding the human rights of LGBTIQ+ people, with one advocate admitting that despite his long-time interest in human rights law right from his days in law school, the interaction with ISLA and CHESA was his first time receiving information about sexual rights.<sup>16</sup> In

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<sup>16</sup> Ibid 8.

Nigeria, even lawyers who had worked with the community admitted to having no prior concerns about anal exams and did not think of it as degrading treatment. Similarly, one of the lawyers noted that he came into the sessions without having thought about his personal values and how he would act towards a family member who comes out as gay. Despite these issues, the overall engagement of lawyers with the ideological framework of the project was encouraging and aligned with the network's objective.

**Unstructured curriculum:** Because there was no clearly defined curriculum at this initial phase of the project, the training sessions were not well-structured and there was no standard literature and materials made available to participants. Instead, every session started with fresh material. The absence of structure meant that curriculum progress could not be tracked effectively, and participants were not assessed in the initial year.

**Lack of synergy with the movement:** It was also becoming apparent that a predominant focus on lawyers without strengthening the capacity of the movement was not ideal if the two were to work together effectively on strategic litigation. Also, the lawyers who participated in the initial training sessions did not necessarily see themselves as part of the activist movement at the start of the trainings. Instead, they tended to take their training more as a personal career development rather than a process of being equipped to be part of a larger movement. Similarly, the movement partners did not often call on the lawyers to take on cases of violations. Thus, lawyers who participated were not using the learnings as a tool galvanised towards achieving an immediate goal for the network.

These issues prompted ISLA to start considering: (i) designing and developing a standardised curriculum for training the lawyers and (ii) strengthening the capacity of organisations in the movement. The movement partners were to support the work of the lawyers in the areas of non-litigious advocacy and ensure that the movement thrives. Consequently, the curriculum was reviewed to train the movement partners while the model was reviewed to include a capacity strengthening element for organisations in the movement.

### 3.4 Movement issues and capacity strengthening

ISLA's initial approach towards partner capacity strengthening entailed a process of exploration and getting to know the partners, bringing the partners together, doing value clarification and figuring if everyone can work together while understanding the different biases they held. This would be followed by educational capacity strengthening on human rights and litigation.

In choosing partners for this part of the work ISLA principally worked with local coordinating partners, TIERS in Nigeria and CHESA in Tanzania, to identify organisations that were already doing advocacy on sexual and reproductive rights. At the beginning, interest and commitment were low in both Nigeria and

Tanzania; some people were lost but new people came on board and because of the consistency of those who remained, interest grew. In Nigeria, by the third year, the network became more independent of TIERS and ISLA.

In 2017, ISLA held a meeting in Ghana with its local partners from the different countries, including Solace (Ghana), TIERS (Nigeria), CHESA (Tanzania) and BIO-Zanzibar (Tanzania) where, among other things, it was agreed that the network in Nigeria would need to be restarted to ensure that the right movement partners were identified and brought in. In 2018, the network in Nigeria restarted with new partners.

However, there were quite a number of challenges that ISLA had to deal with in working with the partners towards building the network. A few of these are considered below.

**Perception of the network as a donor relationship:** In both Nigeria and Tanzania, there was often misunderstanding by some partners on the nature of ISLA's role in the network, thereby resulting in a perception that ISLA was a donor organisation and was in the country to fund projects by the partners. While the SXLN concept entailed institutionalising the strategic litigation work in the partner organisation, a recurrent perception by some organisations was that these were ISLA projects and therefore should only be implemented with ISLA funds. In some cases, partners would request financial contributions or reimbursements from ISLA for travel and other expenses that betrayed more interest in funding than in the aims of the network. In some cases, in both Nigeria and Tanzania, there was some resentment by some partners that ISLA was seemingly demanding more output from the organisations than it was funding. In view of this challenge, ISLA focused on including organisations that wanted to strengthen their human rights work and who understood ISLA's role as a resource for strengthening their capacity to do strategic litigation. In such instances, ISLA was also able to assist partners, for example in Nigeria, to secure independent funding to support the network – with the risk that the funding also became used for purposes other than the network.

**Local politics and mistrust between partners:** The general inter-organisational politics and friction within the movement also created challenges to the development of the network, particularly in Nigeria. For instance, some organisations were unwilling to share information in order to maintain their territorial advantage. In some instances, organisations did not see the need to leave their existing comfort zones and engage the relatively unknown area of strategic litigation.

**Perception of the network as a one-party project:** Under the initial model, ISLA recognised one partner as the local coordinating partner and did not directly interact with the other partners. This created challenges for the local coordinating partner as other partners tended to perceive the local coordinating partner as significantly funded by ISLA or the implementing organisation for the network. For example, in Tanzania, a movement actor who was a member of the network and had participated in the institutes still asked ISLA if there were plans to partner

with her organisations or if they were partnering only with CHESA. Similarly, in Nigeria, some of the organisations were reluctant to fully engage with the network because they perceived it as a project by TIERs, the local coordinating partner. In this regard, some organisations thought TIERs had resources and funding for the network and that the activities were part of a TIERs project. Similarly, existing inter-organisational politics in Nigeria, unrelated to the network, interfered with collaborative relations. As a result, the other partners did not take ownership of the network as expected. The ISLA had an MOU with the local coordinating body but not with any others, this resulted in unclear partner relationships with some of the partners.

Although ISLA had signed initial MOUs with TIERs in Nigeria and CHESA in Tanzania and had also been able to secure the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ) funding for Tanzania for various activities, it became evident that MOUs would have to be signed with each movement partner rather than with the local coordinating partner only.

**Ideological differences:** As with the legal training, ideological incompatibility also dodged the social movements. There were people who did not believe in using law as a tool for social change and saw no real point in being part of a strategic litigation network.

The emergence of the above issues, particularly the need to clarify relationships and ensure that network members took full ownership of the project, resulted in a process by ISLA to reorganise the relationships and manage relationships more effectively within the network. These issues also meant that ISLA had to start taking into consideration the internal structures and accountability measures of partner organisations. The rethinking of the model around these issues is discussed in the next section.

### 3.5 Complications in Tanzania

In Nigeria, there were successes and instances of growth experienced within the network and strong leadership support from local organisations. This was not the case in Tanzania. The Tanzanian network was complicated by a few challenges including: (i) a reluctance by the movement in Tanzania to be seen as being critical of the government, particularly for those engaged with the government on HIV work; (ii) language barriers; (iii) a more hostile socio-political environment and lack of access to legal representation and (iv) a complicated relationship with the local coordinator following arrests in 2017. ISLA's efforts necessarily included educating the movement on what it means to engage the law and challenge state homophobia. Unlike in Nigeria, it took some time to get partners in Tanzania to understand the point of using law for social movements. A number of activists in Tanzania think of litigation as visibility with consequential negative media coverage and they did not think they had the capacity to deal with the effects of

strategic litigation. At best, some of the hesitant activists would have been more comfortable as witnesses in a case than as litigants.

As an illustration of the above issues, in October 2017, during a case development meeting in Dar es Salaam hosted by CHESA and ISLA, one of the participants allegedly sent the event agenda to the Tanzanian police who then came to disrupt the event. Nine participants and three ISLA lawyers were arrested and held in police custody for five days on allegations of 'promoting homosexuality'.<sup>17</sup> Although no charges were brought against the individuals, the three ISLA lawyers were declared prohibited immigrants and deported while CHESA was suspended by the NGO registrar and then later fully deregistered for 'activities contrary to Tanzanian law'. After some consultations in 2018, ISLA instituted a case in 2019 against the Tanzanian government. However, none of the Tanzanian partners wanted to be included as named parties in the suit, due to safety and other considerations. The case is currently ongoing before the High Court in Tanzania with the three ISLA staff members who were arrested as the only plaintiffs.

Following these events, there was a breakdown in the relationship between ISLA and CHESA revolving around a failure to account for resources provided for the welfare of the activists and ISLA staff arrested and detained. Other partners also began to be wary of ISLA and the perception that working with ISLA on strategic litigation was too big a risk pervaded the human rights space in Tanzania. Nevertheless, attempts to reboot the network in Tanzania are underway and consultations were conducted with the community in 2017 and 2018 towards this end.<sup>18</sup>

### 3.6 Litigation outcomes of Phase 1

As with the case of ISLA's feminist network, it had been expected that, by the end of the training cycle on sexual rights litigation, both the lawyers and the movement would be able to identify opportunities for strategic litigation and initiate cases based on their increased capacity. As such a measurement or indicator of the success of the model was the expected increase in the number of strategic litigation cases handled by the lawyers who had participated in the training sessions.

In Tanzania, the initial response to the possibility of utilising strategic litigation to hold the government accountable for human rights violations against LGBTIQ citizens was great, and several lawyers were mobilized to think through the legal and policy issues surrounding the lubricant ban and illegal shut down of drop-in centres catering to LGBTIQ+ community and sex workers. The response from both the movement and the lawyers was bolstered by the increasingly arbitrary acts of repression against the LGBTIQ community by populist politicians and their

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<sup>17</sup> ISLA (note 6 above) 20.

<sup>18</sup> ISLA 'Tanzania Strategy Meeting Sexual Rights Litigation Network, Johannesburg, South Africa 2 – 4 September 2019' (2019).

allies. On the day that the ISLA meeting in Tanzania was interrupted by police in 2017, eight organisations were in the room with organisational mandates to join as applicants in the case challenging the lubricant ban.<sup>19</sup> Lawyers who were part of the network were quite active in the legal response to these arrests, attempting to procure the release of those arrested and ensure their welfare. Beyond this, lawyers who were members of the network continued to work with ISLA in responding to the arrests at an alleged gay wedding in Zanzibar in 2018.

However, other than the litigation brought by ISLA for the unlawful arrest of its lawyers, there was no other litigation that came about from the activities of the network, and it does not appear that the lawyers who engaged with ISLA are interested in taking up strategic litigation on sexual rights issues or continue participation in the network if their silence so far is anything to go by.

In Nigeria, after a couple of false starts around decriminalisation, one case was eventually initiated in 2018 to challenge the refusal of Nigeria's Corporate Affairs Commission to register the organisation 'Lesbian Equality and Empowerment Initiative' (LEEI) on the grounds that the name was repugnant to public policy and was misleading. The claims by the organisation were denied at the High Court and an appeal has now been filed. Other than this case, there has been no other strategic litigation directly arising from the network. However, through ISLA's support, the local coordinating partner in Nigeria has also been able to access funding which it has been using to pursue other projects. In an unexpected turn of events, one of the lawyers who started out with the network and who represented the community on the LEEI case had a personal 'crisis of faith' and renounced membership of the network, while the case had to be taken up by another member of the network.

### 3.7 Further observations

The implementation of the SXLN model in Nigeria and Tanzania had a rocky start and an even more uncertain conclusion. From an activity perspective, the project was successful in the sense that meetings were held, training sessions were conducted, networks were developed and – eventually – people understood the aims of the network. However, from an outcomes perspective, the results are more subjective: there have been no series of cases initiated by the network; it does not seem that activists have fully leaned into using the law for social change in their programming or that lawyers in both countries have been using the tools provided. Even in terms of network development, the jury is still out on whether the networks are organic rather than externally directed and propelled by ISLA, whether they exist in reality and not just in principle, and whether or not the people in the networks are able to collaborate and work on strategic litigation in meaningful coalitions. These issues are further examined in Section 5.

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<sup>19</sup> ISLA 'Case Development Meeting Report, October 2017' (2017) 6 – 7.

## 4: Phase 2 – Rethinking the Model\_\_\_\_\_.

### 4.1 Introduction

In implementing the SXLN, ISLA witnessed small wins, chief among which was the ability to mobilise and bring together movement actors in various countries on the continent and have conversations on the use of strategic litigation as a tool. Over the period from 2015 to 2018, ISLA was able to build relationships and initiate SXLN work mainly in Tanzania and Nigeria after the team conducted initial observatory/exploratory visits in which they made contact with actors on ground and attempted to understand their different contexts and the intervention that was necessary.

The pilot phase of implementation of the SXLN saw various challenges arise particularly in Tanzania and Nigeria where energy was initially focused. These challenges were experienced and responded to as they arose and over the years, ISLA has clarified the approach of the SXLN and its own role within the implementation of the network. In this section we review how different aspects of the model were rethought and the materialisation of the current conceptualisation of the 'four pillars' of the SXLN.

### 4.2 The need for adaptation and adjustments

Major adjustments to the model were influenced by issues discussed in the following subsections.

#### 4.2.1 Values clarification

During the process of partner identification and mobilisation in the pilot countries, some of the people mobilised did not share the vision of utilising strategic litigation as a tool for social change. Some had completely lost faith in the legal systems of their countries because of the prevailing challenges faced in accessing justice and the perceived bias of judicial actors, and many preferred to continue responding to crises and human rights violations through negotiations and paying bribes to police and state actors. Some still believed, particularly in Tanzania, that the time was not yet right to confront the government through courts of law. In Nigeria, there were lawyers who initially believed and participated in the training but had a change of heart (for religious and other reasons) and eventually abandoned the network. In Ghana, the movement was more focused on documentation of violations and providing legal education to their constituents that utilising strategic litigation. It was determined that a process of values clarification is necessary in order to weed out those who did not believe in the approach at all. This is reflected

in the changes made to the partnership identification process for SXLN which now includes an eligibility checklist for partners as well as an open call for expression of interest in participation in the network. It is important for those who believe in the cause to self-select and express interest in participating in the network not only to ensure shared values but also to ensure commitment to the network and strategic litigation work.

#### 4.2.2 Commitment and plural leadership

As stated earlier, initial partners within the network were selected on the basis of previously existing networks. However, in Nigeria, a situation arose in which some viewed the network as an ISLA and TIERs project, and this affected participation and cohesion within the network. In order to foster greater ownership of the network and the strategic litigation work beyond TIERs, ISLA adopted a system in which they signed MoU with each organisation participating in the network, and not just the network coordinating partner. This created a sense of shared ownership and responsibility and plural leadership within the network in Nigeria according to one interviewee. The MOU with each partner organisation is now an integral part of ISLA's relationship with SXLN partners and the details of the MOU have developed over the years to cover various aspects of the partners' relationships with ISLA.

#### 4.2.3 Institutional strengthening

During the pilot phase of implementation ISLA worked with network coordinating partners as well as other organisations that joined the network. The coordinating partners were responsible for the logistics of organising training sessions and meetings as well as mobilising participants. This entailed receiving and accounting for resources that ISLA received from donors and remitted to these organisations for this purpose. In Nigeria, TIERs was an already established organisation with working systems and there were minimal challenges in sharing and managing resources. In Tanzania however, the movement was still quite nascent, and organisations (including CHESA the coordinator) were facing challenges in registering and operating openly as organisations doing SOGIE work. As such, they did not always have the internal mechanisms to absorb and manage the resources in the manner agreed upon with ISLA. This challenge became glaring in 2017 after the arrest and detention of ISLA staff and Tanzania activists in Arusha, when funds which were disbursed to the local coordinator to facilitate the welfare of the detainees and efforts to release them were never accounted for. Although the confusion in that situation also arose from the actions of donor partners who got involved in the emergency response after the arrests, it made it clear to ISLA that it would be difficult/counterproductive to do capacity strengthening for the organisations they partnered with without doing any institutional strengthening. It was necessary to ensure that the organisations that participated in the SXLN

not only built their capacity to do strategic litigation but also strengthened their systems/internal operations in order to be able to effectively receive, manage and account for resources shared with them as part of the network, and ensure the greater success of the organisations and joint litigation efforts.

#### 4.2.4 Curriculum development

A key feature in the development of the SXLN was the synchronisation of activists and lawyers under one movement. ISLA believes strongly in the agency of LGBTIQ+ communities and individuals in determining the issues that are important to them and undertaking litigation on this and also aims to create a cohort of movement lawyers who are knowledgeable and accessible to the community. The initial training sessions involved both lawyers and activists in the same rooms learning from training manuals that were developed by ISLA staff and consultants as and when needed. In the early stages, the ISLA team was developing a training manual/curriculum for each individual training and as such the information being shared in the different countries was not always streamlined. Additionally, because of the different levels of knowledge and understanding of the legal concepts among activists and lawyers, some benefitted from the training more than others. Activists were more interested in issues of identification and documentation of violations while lawyers benefitted more from in-depth analysis of the various rights and legal issues surrounding violations. Furthermore, in some countries that ISLA began work in later such as Botswana and Malawi, litigation was already ongoing, and the movements were at a different stage requiring a different approach. The streamlining of the training materials and various modules to be covered has been done and resulted in two separate curricula, one a curriculum for social movements (activists) and the other a curriculum for lawyers. Whereas the two curricula cover similar issues, clarifying the various human rights and issues to consider in taking up strategic litigation, each curriculum places emphasis on the areas that are more relevant to each demographic.

### 4.3 The refined SXLN strategy

The strategy as it exists now is a dream based on a map of how the network was initially implemented. It has benefitted from the lessons ISLA has learned, conversations that have happened over the years and events that have occurred quite outside ISLA's control.

#### 4.3.1 The 'four pillars'

The SXLN now seeks to achieve its mission through four major areas of work or objectives that have been termed the network pillars. These are:

**Network development:** This aspect was designed to identify individuals, organisations who can be members of the network and countries where the network can be implemented. It is also intended to enable activists and movement lawyers and their organisations within the network to build strong relationships and a shared political orientation, collaborating and supporting each other on strategic litigation done in the name of social movements.

**Relationship management:** The SXLN aimed to contribute towards and invest in building and organising a movement culture which is collaborative and accountable, recognising and harnessing the knowledge, skills and experience of the plural leadership within an effective strategic litigation agenda.

**Institutional strengthening:** The SXLN sought to offer sustained support to local LGBTIQ+ partner organisations so that their institutional cultures, policies, systems and practices enable their own success, including an enabling internal environment for effective strategic litigation on sexual orientation, gender identity and expression.

**Strengthening capacity to litigate strategically:** To strengthen skills for lawyers and civil society organisations (CSOs) to use critical analysis and to engage in strategic litigation on sexual rights as an integral part of communities and movements.

#### 4.3.2 ISLA as the 'anchor-hub'

The SXLN operates within ISLA's anchor-hub model where ISLA serves as an external coordinator to facilitate these relationships, identify the right partners and overall program design. Within each network chapter, the SXLN works with social movements, human rights legal NGOs, human rights NGOs and individual lawyers in private practice to form formal partnerships that make up the SXLN. Using a hub model with ISLA as the anchor institution, the SXLN seeks to foster various types of partnerships with organisations: core partners (being full time participants in the network) including the local coordinating partners and associate partners/case development partners. In practice, ISLA's relationship with partners under the SXLN has been coloured by perceptions around resources. Because of ISLA's ability to access and share resources with the partners in various countries, a perception developed of ISLA as a 'funder'. It is therefore important that this relationship is clarified to potential partners before and during engagements with them.

#### 4.3.3 Re-categorisation of partners: Core network partners

Core partners to the network are social movement organisations, individual lawyers and legal services organisations which have identified an interest in areas falling within the scope of the SXLN. These are identified by the alignment of existing

goals and missions with that of the programme objectives to employ strategic litigation to hold states accountable for violations based on gender and sexuality by strengthening and defending human rights accountability mechanisms in Africa, surface gender bias in domestic legal systems, develop new human rights norms prioritising substantive equality for sexual rights and ultimately bring about social change.

Social movements active within the advocacy space and concerning themselves with matters relating to sexual and gender minorities, legal challenges for these groups and human rights violations stemming from lack of formal recognition for the protection of these groups are the intended targets for this aspect of the SXLN.

The cohort of lawyers was to comprise of individual attorneys or legal services organisations that were willing and able to provide legal representation to people whose rights have been violated on the basis of their SOGIE. The network does not require that the lawyers be experts in specific thematic areas, but rather are keen litigators who understand ISLA's vision and objectives and whose work is located within the social movements. These lawyers should see themselves as being a part of building a social movement by using strategic litigation as a tool for social change.

Of particular interest was the need for changing the way lawyers engaged in litigation, such as ensuring that lawyers were embedded among the people whose rights they sought to defend, so that they have a proper understanding of the issues faced by the community. The network would support the movement to clarify the role of cause lawyers, for example, to litigate, to negotiate, to counsel, to coordinate and to educate and mobilise movement resources.

#### 4.3.4 Re-categorisation of partners: Associate partners

These are partnerships where ISLA aims to collaborate with key individuals and organisations to develop strategies for litigation on sexual rights and identify cases to develop in places where the SXLN is not yet established.

The case development partnership with network lite partnerships would provide ISLA with the opportunity to work with social movement organisations to identify themes for strategic litigation and case opportunities. This partnership was aimed at developing a strategic litigation approach which is rooted within domestic, regional, and international human rights frameworks. Partnerships of this type are envisioned to be limited to case development and research of litigation themes. Other specific deliverables can be agreed upon provided there is a clear relationship to the development of strategic litigation cases falling within ISLA's scope of focus and lodging of these cases domestically or before a regional body.

#### 4.4 Refined network development process

Under the current model, instead of merely identifying partners based on historical working relationships, a network eligibility checklist informs the decision on who qualifies as an ideal network partner. The SXLN now aims to recruit partners from three categories: network lawyers, social-movement CSOs and a local coordinating partner. The local coordinating partner is an institution with the capacity to lead the work of movement and legal mobilisation in the country by: (i) identifying potential movement partners and lawyers to participate in building the SXLN and (b) managing country visit logistics which include the following: arranging accommodation, transport and per diems for local lawyers and movement partners. The local coordinating partner will also support the development of the litigation fund by: (i) collaborating on identifying funding for the network chapter litigation fund and (ii) contributing to managing the litigation fund with the support and direction of ISLA and other social movement partners. Finally, the local coordinating partner will be responsible for leading communication about the network with the support and direction of ISLA and other social movement partners.

#### 4.5 Conclusion

While the development of the SXLN remains a work in progress, it is impossible to overlook the progress that has been made and major improvements to the model as a result of the experience from the implementation in pilot countries. While the work in Tanzania had stalled after the arrests, contact has been re-established with organisations on the ground and anecdotal evidence from Nigerian interviewees suggests that the SXLN is capable of surviving beyond the influence of ISLA and TIERS.

The SXLN strategy as it exists right provides a clear roadmap of how the network intends to operate and all that remains now is for it to be tested in implementation of a second phase. The model can only grow from more experience.

## 5: Legal Empowerment to Litigate SOGIE Cases

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### 5.1 Evaluation of the model

The SXLN started as an intervention to establish movement lawyers for the LGBTIQ+ community but grew into a more dynamic arrangement involving a continuous interaction between lawyers, organisations and the community. As this report has shown in the preceding sections, several issues impacted the smooth implementation of the network from the outset. The training curriculum was not fully fleshed out before the work started in the first phase and some legal discourses were only included in the curriculum after they came up in the course of the work; the three year cohort cycle meant that people came and left during the lifespan of the project; the partner relationships were not clearly defined with some organisations seeing ISLA as a donor rather than a partner; many of the organisations were too small or did not have accountability structures for some of the requirements of strategic litigation; and local movement politics and resentments often delayed or hindered network development.

Today, the network exists in Nigeria as a near-autonomous entity set to engage in strategic litigation independently of ISLA. The network in Nigeria has evolved beyond a limited understanding of sexual rights to more awareness of how constitutional and treaty rights can be litigated to protect sexual minorities. The challenges that beset the initial implementation of the network no longer exist and there is now better synergy between organisations and lawyers who are willing to work. In Tanzania, the network exists in a more rudimentary form, having been severely impacted by state hostility. Nevertheless, the continued existence of the network in both Nigeria and Tanzania is indicative of a measure of success of implementation. In the first place, ISLA was able to effectively tweak the model and adjust it to contextual realities, ultimately culminating in the 'four pillars' structure. In the second place, despite all the challenges, ISLA was still able to implement all of the project activities. In Nigeria, in contrast against predatory lawyering seeking to take advantage of the community, there is now a cohort of lawyers and movement partners who are engaged with one another on strategic litigation discussions as a direct outcome of the project. In Tanzania, even though the network has faltered, and the network structure is not as clear as it is in Nigeria, there are still some activists and organisations who are eager and able to continue with the aims of the network.

However, beyond the activities that were carried out, a more precise evaluation of the model and whether it has been successful will depend on weighing the

outcomes versus the assumptions that fed into the model. These assumptions include the following:

**Informed understanding of strategic litigation will lead to more litigation:** A strong assumption of the model is that if time is spent on capacity strengthening, a set of people who can use the legal context creatively can be developed and, over time, the confidence of lawyers in strategic litigation will lead to contextual impact. In reality, network driven litigation has been limited in Nigeria and non-existent in Tanzania. While there has been eagerness by lawyers and activists to receive the training, there has not been a corresponding uptick in litigation. However, as interviews with lawyers and movement partners in Nigeria indicate, it is too soon to decide that this assumption has failed. There is a general sense that this is still an early stage in evaluating the outcome and the process leading towards an increase in strategic litigation is still in progress.

**The LGBTIQ+ movement needs capacitated lawyers to see progress in strategic litigation:** Another strong assumption is that the challenges faced by the LGBTIQ+ community in relation to using law for social change is linked to the absence of informed movement lawyers and the unwillingness of mainstream lawyers to undertake cases for the community. However, in both Nigeria and Tanzania, some of the lawyers who attended the initial training seem to have done it for their own personal career advancement rather than for movement goals. In this regard, this does not necessarily mean that the model was unsuccessful, but that capacitated lawyers alone without a corresponding change in the environmental context may not achieve expected outcomes. This situation is aptly demonstrated in the case of Tanzania. In the Nigerian scenario, two factors may explain the different outcome despite the hostile society: (i) Nigeria's large population size gives a geographically spread community – including the LGBTIQ+ community – a numerical advantage that increases the number of outcomes (i.e. more cases filed) in relation to other countries and (ii) Nigeria is not evenly hostile and there are some liberal metropolitan centres where movement lawyers can operate more easily than in other areas.

## 5.2 The verdict

It is fair to conclude that the SXLN as conceived by ISLA was successfully implemented. The implementation process succeeded in: (i) convening and hosting meetings and trainings safely; (ii) producing consistent attendance at workshops with progress reports; (iii) getting lawyers to participate in growth assessments; (iv) realising some strategic litigation cases from the networks and (v) creating a body of network members who have a better understanding of and ability to use strategic litigation.

Despite these achievements, the work does not end with the successful implementation of the project only, but also requires that the expected outcomes

are realised. In the case of the SXLN, the principal expectation is the proliferation of strategic litigation on sexual rights arising from the network. This has not yet happened despite the tools provided to organisations and lawyers by ISLA. The main factor is the unwillingness, hesitancy or inability of movements to undertake strategic litigation, despite having access to lawyers and despite the lawyers having been capacitated. Given the current context on the continent, African movements do not seem to be in position to take up a network such as the SXLN. Capacitating lawyers does not change the environmental context, so even if the lawyers are all ready, their society may be too dangerous to engage through strategic litigation. For instance, in a context where society is actively hostile – to the extent of committing unlawful killings – it does not help just to be a more informed lawyer, as that will only result in the creation of an informed but, deceased, lawyer. To mitigate this, the model then needs to include an aspect that also focuses on changing social attitudes while legal capacity strengthening is ongoing, or the model should factor in more time for social attitudes to catch up with movement strength.

While ISLA has done the work of linking the movements with lawyers, other measures, particularly in terms of social attitudes, may need to be undertaken for the movements to be ready and willing to use strategic litigation in the advancement of sexual rights on the continent.

### **5.3 Considerations for future implementation**

As the SXLN continues to grow and learn from experiences in implementation, there are a few issues that remain to be addressed or improved upon as discussed below.

#### **5.2.1. Comparison with ISLA's FLN**

Although ISLA had more success with the FLN, it would be unfair to compare its outcomes with that of the SXLN. While women's rights activism has become more mainstream and therefore more readily accepted within legal circles, sexual rights activism is still very much taboo and often met with violence, making it more dangerous for legal professionals to openly associate with the community. Relatedly, women's movements have had more time on the African continent to gain traction before ISLA's creation of the FLN whereas the SXLN was introduced at the very infant stage of the LGBTIQ+ movement in Africa. In thinking around future implementation, this disparity between the two movements should be considered so that unfair expectations are not modelled into the project.

### 5.2.2 Security: The Tanzania case

As discussed in Section 3 of this report, in 2017, three members of the ISLA team as well as activists from Tanzania were arrested while attending a meeting at a hotel in Dar es Salaam. Following the arrests, there was an international campaign launched demanding the release of all detainees with the most prominent hashtags being #FreeSibongile #FreeThemAll. This campaign was spearheaded by the relatives and friends of ISLA staff and others detained, as well as activists and donors working on LGBTIQ rights issues on the continent. At the time of the arrests, it became clear to those who were detained that there was no plan in place or security protocol to be followed in case of the kind of incident that happened in Tanzania. As a result, those arrested were severely traumatised and the confusion and influx of different actors who got involved in the emergency response led to a situation in which some of the resources disbursed by ISLA have not been accounted for to-date. Going forward, the SXLN model has to integrate risk assessment and mitigation plans at every stage, and create a security protocol to prevent or mitigate situations like the one in Tanzania.

### 5.2.2 Conflict resolution/relationship maintenance

One of the main challenges within the pilot phase of implementation was relationship management. In Tanzania, the relationship between ISLA and the local coordinating partner broke down after the arrests in 2017 when they failed to account for funds that were disbursed to them to assist those who were detained in Arusha. It is our understanding that the organisation was since deregistered and the individuals behind it have regrouped under a different name which is now working with ISLA again as a local coordinator. It is unclear though, whether the misunderstanding around the money has been resolved or how this relationship will be managed going forward. It is important for ISLA to consider a mechanism of conflict management and resolution under the relationship management pillar in order to manage future conflict within the network whether around resources or other issues.

### 5.2.3 Adjusting timelines of expectations

As stressed by some interviewees, the kind of work that ISLA is attempting to do with the SXLN is not the kind of work whose impact and success can be measured on the basis of yearly outcomes as envisioned by donor reporting mechanisms. Strategic litigation is a marathon not a sprint, especially at the scale at which the SXLN is attempting to do it and considering the different contexts on the continent. Access to justice remains a challenge for LGBTIQ+ movements in many of the countries that ISLA is working in, not only in terms of accessing lawyers but also just how slowly litigation processes tend to move (for example in Uganda,

Adrian Jjuuko's case against the Equal Opportunities Commission<sup>20</sup> dragged on for eight years before the Constitutional Court finally pronounced itself on whether the commission could handle cases of human rights violations against LGBTIQ Ugandans). This is precisely the challenge that the SXLN was created to address. The work of mobilising, sharing knowledge, strategizing and litigating in various jurisdictions is a long process and it is important to give the idea and the network time to breathe and take root before trying to determine whether it has succeeded or failed.

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<sup>20</sup> Jjuuko Adrian v Attorney General Constitutional Petition No. 1 of 2009.

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