

“IF WE JUST KEEP WORKING, HOW CAN THEY WIN?”

Adrian Jjuuko & Linette du Toit

- *Strategies to resist shrinking civic space* •
- from a Ugandan minority rights organisation*

ABSTRACT

Human Rights Awareness and Promotion Forum (HRAPF) is a human rights advocacy organisation based in Kampala, Uganda. The organisation faces opposition from some sections of the state and the public due to its advocacy and legal work on behalf of marginalised minority groups including Lesbian, Gay, Bisexual and Intersex (LGBTI) persons, sex workers and People Who Use Drugs (PWUDs). Furthermore, it operates within an environment that is becoming increasingly hostile toward civil society, with the introduction of new and more restrictive legislation, and organisations facing attacks. This short institutional reflection shares strategies that HRAPF has employed in order to continue operations despite the many challenges faced. These strategies include: registering under alternative laws to avoid restrictions in the NGO laws; joining forces with organisations fighting for similar issues; and simply continuing to work despite the challenges faced.

KEYWORDS

Civil Society | Uganda | LGBTI | Strategic Litigation | Non-governmental Organisations Act | 2016-Anti-Homosexuality Bill 2014 | Attacks | Resilience

Introduction

The Ugandan state largely sees civil society organisations (CSOs), especially those involved in advocacy, research and direct engagement with the people, as threats, rather than as partners.¹ Organisations working on politically sensitive issues such as: constitutionalism, oil and gas, land justice, and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, are particularly at risk.² Such organisations are targeted by restrictive laws,³ are threatened with closure,⁴ have their activities stopped,⁵ and a number have even had their offices broken into without a single case being resolved by the police.⁶ In addition, they can expect little or no support from the public as the majority of Ugandans oppose homosexuality and believe that these organisations promote it.⁷

Throughout the nine years of its existence, Human Rights Awareness and Promotion Forum (HRAPF) has faced these challenges and has had to persevere and strive to sustain the work that it believes in. This institutional reflection offers insight into the strategies employed by HRAPF in its day-to-day struggle to keep its vision and mission alive. The strategies that HRAPF has adopted to respond to the difficult environment in which it operates can be categorised under three broad headings: 1) registering under multiple laws to avoid restrictions within Uganda's NGO laws; 2) working with coalitions to advocate against restrictive bills and to challenge existing laws; 3) facilitating a culture of resilience in the face of hardship. These strategies are discussed in more detail below.

1 • Registering under multiple laws to avoid the restrictions within Uganda's NGO laws

HRAPF has learnt to take advantage of the multiplicity of laws in the country to continue operating in a repressive context. In 2006, Uganda amended the 1989 Non-governmental Organisations Registration Act Chapter 113 of the Laws of Uganda (2006 NGO Act).⁸ It also passed the Non-governmental Organisations Registration Regulations in 2009,⁹ which operationalised the 2006 amendment. The amendment introduced restrictions for NGOs including mandatory registration of NGOs; dual liability of the NGO and its directors for committing an offence under the Act;¹⁰ the need for recommendations from security agencies when applying for registration as an NGO; restrictions against making direct contact with the people;¹¹ and compulsory cooperation with local authorities.

There was, however, an avenue for escaping some of these restrictions. Section 2(1)(a) of the Non-Governmental Organisations Registration (Amendment) Act, 2006 stated that the requirement to be registered by the NGO Board and to have a permit issued by the NGO Board did not apply to organisations that elected to register under the Companies Act or the Trustees Incorporation Act.¹² Consequently, HRAPF, just like many other organisations, also incorporated under the Companies Act as a company limited by guarantee. HRAPF also helped close to 30 LGBTI organisations incorporate in the same way.

Unfortunately, however, this option is no longer available. The Non-governmental Organisations Act 2016 (discussed further below) requires all organisations, even those incorporated under the Companies Act or the Trustees Incorporation Act, to register with the NGO Bureau and obtain an NGO permit.¹³ CSOs now have no option but to comply with all the stringent registration and operational requirements introduced by the 2016 NGO Act. This change in the law presents an obstacle for organisations working on unpopular issues. While the previous avenue for registration allowed organisations a measure of freedom in their operation, all organisations will now be subjected to the scrutiny of the authorities overseeing civil society. Consequently, we must use other strategies to resist the attempts being made to restrict our operations – including those listed below. However, we will continue to look for legislative loopholes from which we might be able to benefit.

2 • Building coalitions to oppose bills and laws

As an organisation that advocates for the rights of LGBTI persons, HRAPF has often been at the forefront of fighting restrictive legislation by joining other likeminded groups in coalitions. The biggest struggles were against the Anti Homosexuality Bill (AHB) and the Non-Governmental Organisations Bill 2015 (NGO Bill) respectively.

2.1 - Coalition success against the Anti-Homosexuality Bill

The AHB was introduced in 2009 and besides expanding the criminal law on homosexuality, it also criminalised “aiding and abetting” and “the promotion of” homosexuality. These concepts were widely defined and could affect all aspects of HRAPF’s work, including legal aid service provision, advocacy, research and awareness campaigns. HRAPF thus joined the Civil Society Coalition on Human Rights and Constitutional Law (The Coalition), a 50 member civil society coalition established to oppose the Bill.¹⁴ HRAPF’s Executive Director, Adrian Jjuuko became the second coordinator of the Coalition (2010-2012), HRAPF chaired the Legal Committee of the Coalition and also sat on the Steering Committee.

Working with other civil society organisations to oppose the law served two purposes. Firstly, it helped to shield HRAPF from being singled out and attacked for opposing the law, since all members were working in tandem. Secondly, it helped to galvanise international support for the cause, and thus enabled HRAPF and other organisations to gain political capital, which further protected the organisations from attack. The Coalition’s efforts prevented the passing of the hugely popular bill – from the perspective of the majority of Ugandan society – for four years. It was only passed in December 2013. However, by August 2014, the Constitutional Court repealed the Act for having been passed unconstitutionally.¹⁵

Despite the success, the actions of the coalition did not go unopposed by the state, due to the divisive nature of LGBTI rights in Uganda. Consequently, we learnt important lessons about how to deal with this reaction. CSOs within the Coalition were threatened

with deregistration by the Minister of Ethics and Integrity, including HRAFP. Soon after the Anti-Homosexuality Act came into force, the Coalition's then host organisation, the Refugee Law Project of the School of Law at Makerere University was ordered to suspend its activities in refugee camps and later at its Kampala office because of claims that it was promoting homosexuality. The Coalition responded to this opposition by deliberately avoiding having a single identifiable host organisation which could be targeted. This strategy proved successful – no other member of the Coalition suffered such direct threats to their continued operation while the case was before the Constitutional Court.

The Coalition brought together the wisdom of seasoned activists as well as the energy and enthusiasm of a younger generation. Its strength lay in the varied contributions made in the form of legal expertise, advocacy experience and proper representation of the LGBTI community itself. This allowed for a balanced and carefully crafted strategy to be developed. Decisions made first and foremost aimed to represent the views of the LGBTI community and furthermore raised awareness of the situation created by the adoption of the Act while treading carefully to avoid direct attacks on the authorities. The Coalition operated through various committees, such as the legal committee, the media committee, the security committee, and the steering committee. The entire Coalition met every month, while the groundwork was effectively carried out by the coordinators. A well-coordinated and dedicated team ensured that the Bill's passing was greatly delayed, was passed without the most severe provisions originally proposed and that the resultant Act was eventually repealed through a constitutional challenge. Through its involvement in this case, HRAFP learnt that the strength of momentum built up within a coalition can resist even the most popular laws within society, and that working in numbers brings huge strength and safety.

HRAFP continued the struggle against the Anti-Homosexuality Act to the regional East African Court of Justice (EACJ).¹⁶ It was argued that the merits of the case ought to be heard by the EACJ, despite the nullification of the Act by the Constitutional Court of Uganda, since it raises a matter of considerable public importance. The Court held that the matter was moot and that the public interest exception (that allows a court to hear a case which is otherwise moot) did not apply since the issues raised did not concern "a sufficiently large segment of the public". It is regrettable that the Court did not consider the plight of an ostracised community of great importance to a society based on the principles of democracy and human rights. Although ultimately the case was dismissed, this was the first time that issues of restriction of civic space through laws ostensibly targeting homosexuals had been taken to the regional courts in Africa. The petition to the EACJ was also supported by affidavits from human rights activists in Rwanda, Kenya and Tanzania, recognising the effect of the Act on the rights of LGBT people across the region. Also four organisations, operating in Kenya,¹⁷ Rwanda,¹⁸ South Africa¹⁹ and at the United Nations level,²⁰ applied to join the case as *amici curiae*. Approaching the EACJ was an important step in opening the way for the regional machinery to be used in the fight against restrictive legislation. Furthermore, the collaboration strengthened cohesion across borders between the CSOs involved.

The strength of operating within a coalition could also be seen in the wake of the August 2016 police raid of a club where a gay pride beauty pageant was being held. During the course of the raid, some LGBTI persons found at the venue were groped and beaten by the police, the organisers of the event were arrested and all of the guests in the club were detained for over an hour.²¹ Drawing from lessons learnt in the later stages of the legal challenge to the Anti-Homosexuality Act, the various members of the Coalition ensured that they shared information with each other about the raid including the treatment of those injured, the release of arrested activists and the outcomes of meetings with the Minister of Ethics and Integrity. The centralisation of this information advised subsequent responses and helped the members decide whether or not further Pride activities should be held in protest. The Coalition decided to release a joint press statement²² in which the actions of the police were condemned and furthermore challenged these actions before the Uganda Human Rights Commission. An attempt was made to hold further celebrations on 24 September 2016, although the legal committee of the Coalition advised against it. Participants were prevented from entering the resort where the celebrations were to be held and were escorted back to the vehicles in which they had arrived by the Police. Members of the Coalition were on standby in order to handle any arrests or security threats during the course of the day.

Even though the coalition was not nearly as strong as it had been during the fight against the Anti-Homosexuality Bill, it was capable of reconvening when a direct attack was made on the freedom of association of LGBTI persons and was able to respond in a way which did not compromise the safety or longevity of any individual organisation.

2.2 - Coalition challenges against the NGO Bill

The Non-Governmental Organisations Bill 2015 (NGO Bill), eventually the Non-governmental Organisations Act 2016, was introduced to replace the 1989 Non-governmental Organisations Registration Act. The NGO Bill was aimed at addressing “subversive” work-methods and activities within the growing NGO sector.²³ The NGO Bill had various provisions which were of major concern to civil society as a whole.²⁴ For example, it proposed to criminalise the contravention of *any* provision of the Act and granted over-broad powers to the National NGO Board²⁵ to revoke the permit of an NGO if it was considered “in the public interest” to do so.²⁶

The attempts at coalition building which surrounded the adoption of the Act and the Regulations demonstrate the complex position of an organisation dealing with unpopular issues within the context of civil society as a whole, such as HRAPE. Although coalitions can bring huge gains, at times it is also important to know when this strategy is not necessarily the right one.

In this case, mainstream civil society, under the leadership of the Uganda National NGO Forum, decided to undertake consultation processes with various stakeholders

across the country in order to make a considered input into the NGO Bill, which the Minister of Internal Affairs intended to adopt.²⁷ However, HRAPF perceived that the NGO Forum and other mainstream CSO leaders prioritised collaboration with the Ministry of Internal Affairs over the unpopular task of ensuring that the issues which posed threats to minority groups in particular were raised and dealt with head-on. Rather than joining the mainstream coalition, we instead formed a loose coalition, consulting widely with the different groups that we serve, including LGBTI groups, sex work groups, and drug users, to gain their input into the proposed NGO Bill. We shared our position paper with mainstream organisations and supportive embassies and groups.²⁸ However, we received lukewarm reception from the mainstream organisations and it was clear they did not share the same level of concern as our constituents. Ultimately, and despite HRAPF's efforts, the NGO Bill was passed and contained many provisions which we had raised in our position paper as problematic.

Despite this set back, HRAPF continued to consult widely with the different groups that it served and which are most impacted by the Act in order to gain their input into a set of proposed regulations,²⁹ which we hoped might address the most restrictive parts of the Act. We produced another position paper and made submissions to the National NGO Forum.³⁰

One of the key lessons learnt from this experience is that organisations working on marginalised people's rights also remain largely marginalised themselves and their issues are rarely heard by mainstream organisations, sometimes preventing them from joining formal coalitions. There is thus a need to devise alternative ways of engagement, including building looser coalitions, rather than working with more traditional coalition partners.

One example of this kind of collaboration is when HRAPF's Executive Director, Adrian Jjuuko worked with Sexual Minorities Uganda to challenge Section 15(6)(d) of the Equal Opportunities Commission Act.³¹ The provision that was challenged prevented the Equal Opportunities Commission from investigating matters regarded as "immoral" or "socially unacceptable" by the majority of the cultural groupings in Uganda. This provision also limited the work of organisations like HRAPF and prevented the organisation from bringing complaints to the Commission. Although the case took eight years in the Constitutional Court, it was eventually found that the provision was against the right to a fair trial as it excluded groups from accessing the Commission.³²

Overall, HRAPF's work as part of various coalitions has taught us that collaboration with other organisations is most effective if the organisations involved in the particular advocacy effort have the same objectives and expected outcomes. It is challenging to work with other organisations in influencing the content of laws and policies where the organisations involved have differing priorities and do not share the same concerns. As an organisation representing minority groups, HRAPF is very aware that the organisation itself can easily be marginalised within broader civil society advocacy efforts and instead requires the support and collaboration of like-minded organisations who are not necessarily the "usual suspects".

3 • Resilience despite the restrictions: The crackdown on civil society directly hits HRAPF

On the morning of 22 May 2016, HRAPF's offices were attacked by at least four assailants who did little to cover their faces despite the obvious presence of CCTV cameras. They murdered the security guard on duty, Emmanuel Arituha, disabled part of the alarm system and the CCTV system and gained access to the main office building. They entered and ransacked the office of the Executive Director and that of the Deputy Executive Director of Programmes. The huge claw-bar used to break in was left lying on the Executive Director's chair. Nothing was taken except a TV and a DVD player. The four-hour ordeal was captured on CCTV cameras. The police initially blamed the attack on HRAPF management and dismissed the case as an ordinary break-in. The police did not use the evidence to conduct a thorough investigation. The case remains unresolved despite the clear evidence.³³

The impact of the attack on HRAPF was immense. It could not have been “just another break-in” since it had been preceded by break-ins at the homes of the Deputy Executive Director, Programmes as well as the Head of the Research and Advocacy Unit, and the theft of phones from the Executive Director, and laptops from the Deputy Executive Director, Finance and Administration and the Executive Officer. However, if the break in was intended to break HRAPF, it failed. HRAPF convened a press conference the next day; none of its activities was cancelled, including a skills training workshop for LGBTI persons. Immediately continuing with our work after the attack was the greatest act of resistance and resilience that we could muster.

HRAPF has also employed various strategies and methods in order to support the staff in processing the shock and the trauma and enabling them to continue with their work and lives following the incident. All staff members were given the opportunity to receive individual counselling. On two occasions, a group psycho-social support session was held which allowed staff members to share and reflect on their experiences of the events. A security training was also held in order to enable staff to have a greater level of awareness about risks and steps that can be taken to ensure greater security in their every day lives. The security at office, which had already been stringent prior to the attack, was further improved.

While the support of our partner organisations, development partners and security networks was truly valuable, alone it was not enough to pull us through the depths. As well as implementing the measures outlined above, each member of the HRAPF team has had to make the decision to resist fear and discouragement in their own minds and to honour the memory of the man who lost his life for the cause for which we fight.³⁴ We have learnt that resilience as an activist means flouting the enemy in his sphere of emotional control over your mind continuing after the physical attack. We have learnt that resilience means doing what you would have done if you were not afraid...it means going back to work. Immediately.

4 • Conclusion

In this short reflection, we have shared the tactics we use to face fierce opposition to the exercise of the freedom of association in Uganda. Firstly ambiguities in restrictive laws can and should be exploited for the sake of continued operations. Secondly, the nuanced battle that LGBTI organisations fight for have much better prospects of success when approached by a coalition rather than a single organisation. There is immense strength in opposing restrictive laws, even on politically and socially sensitive issues, through an alliance of organisations – provided that those other organisations have the same objectives. Our final and most important lesson is simple: no matter what happens, no matter the level of opposition and terror intended to derail the cause that you fight for, just keep going to work. Every day. If you keep going to work, how can they win?

NOTES

1 • One of the motivations for introducing a new NGO Act in Parliament in 2015 was to guard against “subversive methods of work and activities” resulting from “the rapid growth of Non-governmental organisations”. See “Memorandum to the Non-governmental Organisations Bill,” HRAFP, 2015, accessed October 27, 2017, http://hrapf.org/wp-content/uploads/2017/10/NGO-Bill_2015.pdf. See also “A Position Paper and Clause by Clause Analysis of the NGO Bill,” Uganda National NGO Forum, May 2015, accessed October 25, 2017, <http://ngoforum.or.ug/wp-content/uploads/downloads/2015/05/FinalCSO-Position-Paper-on-the-NGO-Bill-2015.pdf>.

2 • See for example “Curtailling Criticism: Intimidation and Obstruction of Civil Society in Uganda,” Human Rights Watch, August 21, 2012, accessed October 27, 2017, <https://www.hrw.org/report/2012/08/21/curtailling-criticism/intimidation-and-obstruction-civil-society-uganda>.

3 • For example, the Parliament of Uganda adopted the now annulled Anti-Homosexuality Act in 2014 which, in Section 2 of the Act created the offence

of “homosexuality” and made it punishable with imprisonment for life – a clear reflection of the opposition to homosexuality expressed by 93 per cent of Ugandans. See “Global Views on Morality,” Pew Research Centre, April 15, 2014, October 25, 2017, <http://www.pewglobal.org/2014/04/15/global-morality/country/uganda/>.

4 • Certain provisions of both the Non-governmental Organisations Act, 2016 are viewed as draconian and detrimental to the operations of organisations, see “Position Paper on the Non-Governmental Organisations Act, 2016,” HRAFP, March 20, 2016, accessed October 28, 2017, <http://hrapf.org/wp-content/uploads/2017/06/160320hrapfpositionpaperonthengoact2016.pdf>.

5 • David Smith, “Ugandan Minister Shuts Down Gay Rights Conference.” The Guardian, June 20, 2012, accessed October 28, 2017, <https://www.theguardian.com/world/2012/feb/15/ugandan-minister-gay-rights-conference>.

6 • Emmanuel Ainebyoona, “Police on the Spot as NGO Break-ins Remain Unresolved.” Daily Monitor,

March 11, 2017, accessed October 28, 2017, <http://www.monitor.co.ug/SpecialReports/Police-spot-break-ins-NGO-offices-remain-uninvestigated-ACCU/688342-3843648-11dydsi/index.html>.

7 · According to research conducted in 2013, 93 per cent of Ugandans believe that homosexuality is morally unacceptable. See Pew Research Centre, n 3 above.

8 · “The Amendment Act,” ULII, 2006, accessed October 25, 2017, <https://www.ulii.org/ug/legislation/act/2006/2006/N.G.O%20registration%20ammendment%20Act%202003.pdf>.

9 · “Statutory Instrument,” ULII, 2009, accessed October 25, 2017, <https://www.ulii.org/ug/legislation/statutory-instrument/19/si-19.pdf>.

10 · Section 2(5) of the Act was amended to provide that an offence is committed where an organisation contravenes any provision of the Act; operates contrary to the conditions of its permit or carries out any activity without a valid permit or certificate of incorporation.

11 · Regulation 13(1) provided that an organisation shall not make any direct contact with people as it carries out its operations unless it has given 7 days written notice of its intention to make such contact to the local council of the area.

12 · Section 2(1)(a) as amended by the 2006 NGO Act.

13 · Section 29 and 31 of the NGO Act, 2016.

14 · The details of this struggle are contained in A Jjuuko, “The Incremental Approach: Uganda’s Struggle for the Decriminalisation of Homosexuality,” in *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change*, eds. C. Lennox and M. Waites (London: Institute of Commonwealth Studies: School of Advanced Study, 2013): 381–408.

15 · The constitutionality of the Act was considered in the case of *Prof. J Oloka Onyango & 9 Others v Attorney General*, Constitutional Petition No. 8 of 2014. The petitioners argued the case on a number of issues including the absence of the constitutionally mandated quorum in Parliament on the day the Act was passed. The Constitutional

Court decided the case only on the quorum ground, and thus nullified the entire Act.

16 · *Human Rights Awareness and Promotion Forum (HRAPF) v Attorney General Uganda and The Secretariat of the Joint United Nations Programme on HIV/AIDS*, Reference No. 6 of 2014 (2014).

17 · UHA-The East African Sexual and Health Rights Initiative.

18 · Health Development Initiative.

19 · The Centre for Human Rights, University of Pretoria.

20 · Secretariat of the Joint United Nations Programme on HIV/AIDS (UNAIDS).

21 · “Uganda: Police Attack LGBTI Pride Event,” Human Rights Watch, August 5, 2017, accessed October 25, 2017, <https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbti-pride-event>.

22 · “Civil Society, Human Rights Activists Condemn Ugandan Police Attack on Lawful LGBTI Pride Celebration,” Chapter Four Uganda, August 5, 2016, accessed October 25, 2017, <http://chapterfouruganda.com/sites/default/files/downloads/Civil-Society-Human-Rights-Activists-Condemn-Ugandan-Police-Attack-On-Lawful-LGBTI-Pride-Celebrations.pdf>.

23 · The Memorandum to the NGO Bill, 2015 described the purpose of its introduction as addressing ‘subversive’ practices of civil society organisations, see n 1 above. The Non-Governmental Organisations Act, Cap 113 was adopted in 1989 and amended in 2006.

24 · “A Position Paper and Clause by Clause Analysis of the NGO Bill 2015,” Uganda National NGO Forum, 2015, accessed December 4, 2017, <http://ngoforum.or.ug/wp-content/uploads/downloads/2015/05/FinalCSO-Position-Paper-on-the-NGO-Bill-2015.pdf>.

25 · The NGO Bill, 2015 in Clause 5 provided for the establishment of a National NGO Board tasked with registering organisations, issuing permits and advising the Minister of Internal Affairs on policy guiding the operation of organisations. The NGO

Act which was adopted in 2016 made provision for an NGO Bureau to carry out these functions, rather than a Board.

26 • Non-governmental Organisations Bill, cl. 31(10) and cl. 33 (2015).

27 • "A Position Paper and Clause by Clause Analysis of the NGO Bill 2015," 2015.

28 • "The NGO Bill 2015 and its Practical and Human Rights Implications on Organisations Working on the Rights of Marginalised Persons," HRAPF, May 15, 2015, accessed December 4, 2017, <http://hrapf.org/?mdocs-file=1584&mdocs-url=false>.

29 • The Regulations which were eventually adopted did not address the key concerns raised by HRAPF and the consulted groups, available at: "The Non-governmental Organisations Regulation," HRAPF, May 5, 2017, accessed November 17, 2017, <http://hrapf.org/wp-content/uploads/2017/06/Regulations-to-the-NGO-Act-2016.pdf>.

30 • See HRAPF's Draft Regulations to the NGO Act, 2016 available at: "Proposals for Regulations to the Non-Governmental Organisations Act, 2016 to Address the Concerns of Minority and Marginalised Groups," HRAPF, September 16, 2016, accessed

October 25, 2017, <http://hrapf.org/wp-content/uploads/2017/06/HRAPF-Draft-Regulations-to-NGO-Act.pdf>.

31 • *Jjuuko Adrian v Attorney General, Constitutional Petition No. 1 of 2009*.

32 • The judgment in the case of *Jjuuko Adrian v Attorney General* was handed down on 10 November 2016 and is available at: "Constitutional Petition No. 1 of 2009," The Republic of Uganda, November 10, 2016, accessed November 17, 2017, <http://hrapf.org/?mdocs-file=9290&mdocs-url=false>.

33 • See Jalira Namyalo, "NGOs Petition IGP on Office Break-ins." Daily Monitor, June 6, 2016, accessed October 25, 2017, <http://mobile.monitor.co.ug/News/NGOs-petition-IGP-on-office-break-ins/2466686-3251454-format-xhtml-bnsws1z/index.html>.

34 • A small measure of solace was found for the family of Emmanuel Arituha in monetary support by HRAPF, and our partners Defend Defenders, Fund for Global Human Rights (FGHR) and American Jewish World Service (AJWS). DefendDefenders, the East and Horn of African Human Rights Defenders Project honoured Emmanuel as a human rights defender.

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