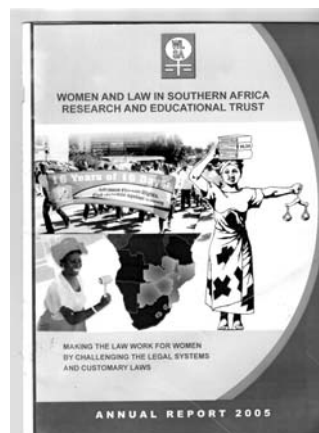


Integrating the Africa Women's Protocol in the Zambia National Legal Policy and Processes

Example from Women
and Law in Southern
Africa (WLSA)



Introduction

This paper illustrates one example of how Oxfam GB Southern Africa Region supports the efforts of women's-rights organisations to popularise and lobby for the ratification, domestication, and implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Africa Women's Protocol) in Zambia.

It highlights some of the key challenges and successes encountered by women's-rights organisations such as Women and Law in Southern Africa (WLSA – based in Lusaka, Zambia) that are related to drafting, popularising, domesticating, and implementing the Africa Women's Protocol.

It also highlights key strategies used by WLSA to popularise and lobby for improved legal and policy reforms. Some of the areas WLSA focuses on that are critical in the Africa Women's Protocol are: HIV and AIDS, food security, sexual and reproductive health rights for women, and gender-based violence.

The origin of the Africa Women's Protocol

The need for the Africa Women's Protocol was born out of the realisation that the African Charter on Human and People's Rights did not pay sufficient attention to women's rights. The protocol is a product of work by women activists in Africa. The exercise began in 1985. The transformation of the Organisation of African Unity (OAU) to the African Union provided the opportunity to address women's rights. The Special Rapporteur was appointed at the time of the change from the Organisation for African Unity (OAU) to the African Union (AU).

The first rapporteur of women in Africa, Ms. Julienne Ondziel-Gnelega of the Republic of Congo, seized the opportunity to mobilise women activists to draft the protocol and put it on the agenda of the African Union. Women's-rights organisations met for three years to elaborate the protocol. The process was riddled with delays caused mainly by lack of political will, but finally the protocol was finalised and sent to heads of state.

WLSA was one of the key organisations that participated in the drafting of the Africa Women's Protocol and negotiated for the contents that are contained in it.

WLSA effectively participated in preparations for the Women's Pre-Head of State and Government Summit which was held from 23–24 June 2003 in Maputo, Mozambique. The meeting discussed issues relating to the effective participation of women in the African Union

structures. It also made recommendations to the heads of state on how to translate commitments on gender equality into concrete reality. An open letter to the African heads of state was prepared and presented during their summit.

The protocol was adopted by the heads of state in Maputo in July 2003 and came into force in November 2005, after activism by a number of women's-rights organisations.

Zambia is a signatory to key international human-rights instruments such as the Universal Declaration on Human Rights (UNDHR), the United Nations Convention on the Political Rights of Women, and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). WLSA was involved in lobbying the government of Zambia to sign and ratify the African Women's Protocol. Zambia signed the protocol on 3 August 2005 and ratified it on 2 May 2006 following a protracted advocacy struggle by women's-rights activists. Now that the protocol has entered into force, sights should be set on domestication.

The domestication of international human-rights instruments is essential to ensuring that their beneficiaries enjoy the rights enshrined in such instruments. It is therefore critical that alongside ratification by national governments, development actors like Oxfam GB support civil-society organisations to popularise and lobby for the domestication and implementation of the African Women's Protocol. To promote sustainability, these efforts must also go hand in hand with building institutional capacity of women's-rights organisations. They must also focus on building strategic partnerships to maximise synergy. This rationale underpins Oxfam GB Southern Africa's support to key regional women's bodies such as WLSA.

Zambia

With its rich reserves of copper and an income of \$1200 per capita, Zambia was regarded as one of the richest and most promising countries in sub-Saharan Africa when it gained independence in 1964. Unfortunately, plummeting commodity prices and poor policy choices combined to drastically change the situation. Today, despite a turnaround in copper prices and several years of positive economic growth, Zambia is one of the poorest countries in the world.

Despite this, Zambia did not escape the wave of democratisation that swept over many countries on the continent in the post-Cold War era. The victory of Movement for Multi-party Democracy in the country's election of 1991 brought an end to the one-party rule by the United National Independence Party (UNIP). The change from a one-party

state to a multi-party state provided the opportunity for the women's movement to strengthen its effort to lobby for the realisation of women's rights.

Zambia has a plural legal system. Statutory law, which is based on English Common Law, is applied side by side with customary law and practice. Article 2 of the constitution embodies the principle of equality. Article 11 enshrines the right of Zambians to enjoy fundamental rights and freedoms without distinction due to race, place of origin, political opinion, colour, creed, sex, or marital status. Article 23 reinforces this. However, this protection is contradicted by the fact that the same constitution permits discrimination against women in terms of personal law in areas such as marriage, divorce, and property rights. The high court applies statutory law while the lower courts apply customary law. Customary law, which treats women as minors, applies to most cases on personal relations, property rights, and ownership. The situation is even worse in the villages where headmen or chiefs in local courts hear disputes. The net result is that, in terms of personal law, the constitution has defined a power relationship between women and men that disadvantages women – in terms of access to and control over productive resources and benefits in the private sphere of life. This translates into gender-based inequalities in the public sphere, in areas such as education, training employment, business enterprise, politics, and decision-making (Muyakwa 2005: 11-14).

Fortunately, the ongoing constitutional review process provides an opportunity to incorporate the various provisions contained in the Africa Women's Protocol in the draft constitution of Zambia.

Women and Law in Southern Africa (WLSA)

WLSA is an action-oriented research organisation working in seven countries of Southern Africa: Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia, and Zimbabwe. WLSA aims to improve the legal status of women and contribute to the well-being of women within families and societies.

WLSA undertakes research in the socio-legal field and lobbies for legal reforms and policy changes on laws and practices that disadvantage women. Its specific activities include:

- developing the research skills of women's law researchers in the network countries;
- conducting research on gender issues in Southern Africa, particularly those related to legal rights;

- providing information on gender and the law and influencing policy and law reform in each country;
- networking and exchanging information between the seven countries;
- conducting training and planning seminars on research and producing materials in the seven countries;
- exploring and developing new methodologies and new perspectives for the study of gender and the law in the seven countries;
- co-operating and liaising with other organisations interested in issues relevant to women and law in each country, in the region, and internationally.

WLSA undertakes research in phases, targeting current and emerging issues in Southern Africa. The research seeks to positively influence action to improve women's legal position and incorporates action by:

- educating women about their legal rights;
- providing legal advice;
- questioning and challenging the law; as well as
- instigating campaigns for changes in the law in the course of and after the research.

Research results are incorporated into the administration of law and court judgments. WLSA assists women with all kinds of legal problems, enabling them to claim and access their rights.

Key strategies and successes related to the popularisation and lobbying and advocacy for the domestication and implementation of the African Women's Protocol include the following:

Lobbying for new laws

Women activists have seized the opportunity created by the Africa Women's Protocol to lobby for legislation on specific issues affecting women. They have lobbied for legal reforms and new laws have been introduced. For example:

- **Domestic violence:** In July 2005, after years of advocating and lobbying for an act on domestic violence, the government responded by raising a bill to amend the penal code, thereby widening the scope of sexual offences. WLSA was requested to examine the bill and to make comments on it. WLSA made a written submission to the parliamentary select committee on gender and human rights. The comments ensured that the

relevant provisions of the African Women's Protocol were reflected in the amendment bill.

- **Matrimonial Causes Act:** WLSA participated in a stakeholder's workshop on the Matrimonial Causes Act by the Zambia Law Development Commission and was a member of the Committee of Experts to develop a Matrimonial Causes Act. In this exercise WLSA ensured that the provisions of the Africa Women's Protocol were incorporated in the Act.

Making use of the constitutional review process

WLSA used the opportunity of the constitutional review process in Zambia to reflect most of the provisions contained in the Africa Women's Protocol, in the draft constitution. The process is not yet finalised. From 2003 the WLSA office was one of the organisations leading the women's movement in Zambia to agitate for a constitutional process that would ensure that the issues and rights of women in international and regional instruments like the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Children (CRC), and the Africa Women's Protocol were integrated in the draft constitution.

WLSA made a submission to the Constitutional Review Commission on behalf of the women's movement, and all the recommendations are in the draft constitution that is being debated by the National Constitution Conference.

Some of the provisions from the Africa Women's Protocol that were incorporated in the draft constitution are;

- expansion of protection from discrimination to include the right not to be discriminated against on account of sex, pregnancy, health, marital status, race, ethnic, tribe, social, or economic status, origin, colour, disability, religion, conscience, belief, culture, language, or birth;
- a clause on the equality of women and men;
- the protection of economic, social, and cultural rights.

Using action-oriented research

WLSA has used action-oriented research as a key strategy to apply the law to support women in realising their rights. The research focuses on various issues that affect women, such as HIV and AIDS, widow inheritance, and land rights. The results of the research are then used to lobby for policy change and to create awareness on women's rights in the communities and provide free legal services to women.

Example 1: Situational analysis on the national response to HIV and AIDS and rights

Policy

WLSA Zambia carried out a situational analysis on the national response to HIV and AIDS and rights. The situational analysis was used to:

- increase awareness among individuals and other stakeholders on the rights-based approach to HIV and AIDS;
- develop and draft a Human Rights Charter on HIV and AIDS in Zambia; and
- build consensus nationally on what should constitute the Zambian Human Rights Charter on HIV and AIDS.

The provisions in the African Union Women's Rights Protocol were used in this process and are reflected in the Human Rights Charter on HIV and AIDS. The Charter was submitted to the National AIDS Council and awaits launching.

Grassroots

WLSA works with a range of stakeholders such as HIV and AIDS groups, faith-based organisations, and chiefs to disseminate results of the research. In Zambia, WLSA is working with chiefs to raise awareness of negative consequences of some cultural practices from a health perspective. As a result, traditional leaders have banned some negative cultural practices such as child marriages and sexual cleansing that contribute to the spread of HIV and AIDS.

Example 2: Translation of the gender, HIV and AIDS and law action research into policy

From 2002–2006 WLSA undertook action-oriented research on gender, HIV and AIDS and the law. The aim of the study was to help ensure that national laws, policies, and practices as well as regional legal instruments provided protection for women's and girls' rights by empowering them to exercise control over their sexual and reproductive rights.

From the study, it was found that cost-sharing and gender-based violence were an impediment to women's access to anti-retroviral medicines (ARVs), with 70 per cent of the beneficiaries being men. Through their lobbying, the government of Zambia has introduced free access to ARVs.

Application through litigation

WLSA is also using litigation by supporting women to have free legal services. Women are provided with legal advice and they are also represented in court.

Popularisation of the Africa Women's Protocol

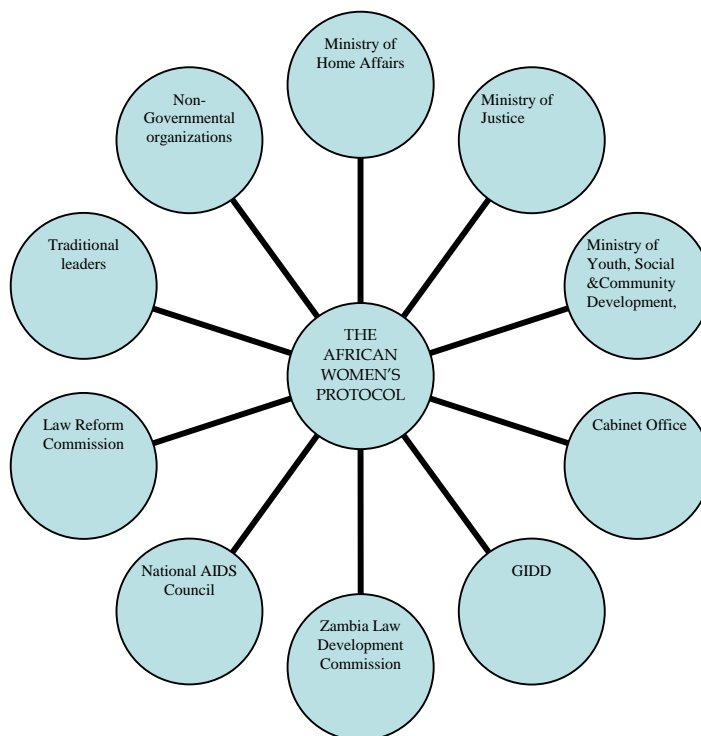
On 15 September 2005, WLSA held a national consultation workshop in Lusaka, Zambia to disseminate and verify research findings on the

implications of the African Women’s Protocol in the Zambian context. The workshop was also meant to popularise the Women’s Protocol in Zambia.

A number of organisations participated in the workshop, including: Zambia Law Development Commission, Women for Change, Young Women’s Christian Association (YMCA), Ministry of Justice, Zambia Victim Support, University of Zambia Media, Justice for Widows and Orphans Project, National Legal Aid for Women, Business Desk, Ministry of the Community Development and Social Welfare, Non Governmental Organisation Coordinating Council (NGOCC), National Council for Women (NCW), and National Council for Catholic Women.

One of the key outcomes of the consultative workshop was the formation of a task force to lobby and advocate for the ratification of the African Women’s Protocol in Zambia. Figure 1 illustrates key stakeholders in Zambia for the popularisation, domestication, and implementation of the African Women’s Protocol.

Figure 1: Key stakeholders identified



WLSA also published 13 articles in the *Zambia Daily Mail* gender page every week on different topics, and emphasised how the Africa Women’s Protocol related to each thematic area.

Making use of policy spaces at national and regional levels

WLSA serves on a number of national and regional policy mechanisms, which are used to promote the popularisation and domestication of the Africa Women's Protocol. For example, WLSA serves on the United Nations Secretary General's Task Force on Women and Girls and HIV/AIDS that was formed in June 2003.

The Task Force is operational in the nine countries of Southern Africa that are most affected by HIV and AIDS: Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe. WLSA was mandated by the Task Force to conduct the gender, HIV and AIDS and law research which focused on six thematic areas:

- 1 prevention of HIV infection among girls and young women
- 2 girls' education
- 3 violence against women and girls
- 4 property and inheritance rights of women and girls
- 5 the role of women and girls in caring for those infected by HIV
- 6 Access to HIV and AIDS care and treatment for women and girls

The Task Force developed consensus on a regional action agenda to tackle the issue of women, girls, and HIV and AIDS.

Key constraints related to the domestication and implementation of the Africa Women's Protocol include the following:

- 1 The new aid modalities promoted by developed countries, the International Monetary Fund, and the World Bank have reduced resources for women's organisations and gender work. The lack of funding has contributed to the weakening of the women's movement and to the reversal of the gains earlier achieved by the women's movement. In addition, funding is directed to international NGOs rather than local NGOs, which means that local NGOs have fewer resources.
- 2 Southern Africa is facing the emerging challenge of human trafficking, which is threatening to reverse the gains made in the fight against HIV and AIDS. South Africa is to host the World Cup in 2010 and the International Federation of Association Football (FIFA) is lobbying the South African government to legalise prostitution. A number of businesses are being set up in the region to accommodate this business. WLSA has developed a three-year programme to raise awareness about the dangers of human trafficking, particularly as it relates to the rights of women and children and HIV and AIDS; to lobby the various

governments in the region to put in place legislative and other measures on human trafficking; and to work with a number of organisations to implement various issues related to human trafficking.

- 3 There is ignorance among grassroots women about legal instruments and mechanisms. The majority of these women lack awareness about their rights and about the Africa Women's Protocol, and lack knowledge about how to claim their rights.
- 4 There are a number of challenges related to access to justice for ordinary women, such as the lack of courts in rural areas; women's illiteracy; the fact that court processes normally take a long time, which means visiting courts on more than one occasion; problems with getting money for transport to courts and fees for lawyers; social constraints such as the multiple roles of women in the context of HIV and AIDS; attitudes to women in access to justice; lack of time for women to follow up court cases; and lack of effective remedies for women who access justice.

Conclusion

The paper illustrates the origin of the Africa Women's Protocol, which is a product of hard work by a number of women in Africa. It shows that it was not an easy process but due to sustained efforts, the Protocol was adopted by African heads of state and government.

It also shows how development actors like Oxfam GB Southern Africa support women's-rights organisations to popularise and lobby for the ratification, domestication, and implementation of the Africa Women's Protocol.

The role played by WLSA illustrates how international and regional women's human-rights instruments can be translated into action at various levels: national, district, and grassroots.

More work is however needed for such women's human-rights instruments to translate into meaningful actions for ordinary women and girls at the grassroots level.

Recommendations

- Governments need to provide adequate resources, both human and financial, to implement frameworks related to gender and women's rights. These should be accompanied by a well-resourced monitoring and evaluation system of the budget and the deliverable outputs.
- Leading women's NGOs and other development and civil-rights NGOs should continuously lobby government to implement the Africa Women's Protocol and hold government accountable for its implementation. These should undertake programmatic initiatives that link work on violence against women, sexual and reproductive health services, and livelihoods to the Protocol.
- The government should popularise the Africa Women's Protocol. This will help strengthen the existing national legal and policy framework. Popularisation of the Protocol should be done through a joint effort amongst the major stakeholders which include Ministries of Justice and Foreign Affairs as well as the Ministry of Gender and other stakeholders like the Women's Movement, women's-rights organisations, and other civil-society organisations.
- Development actors should support efforts to popularise the Africa Women's Protocol.
- All the above actors need to work together to make the Africa Women's Protocol more accessible at the grassroots level. Some of the key strategies to adopt and/or strengthen can be:
 - translate the Africa Women's Protocol into local languages;
 - involve the media in the popularisation of the Protocol;
 - involve community drama groups as part of sensitisation;
 - unpack the financial implications of Zambia implementing or not implementing the Protocol. This could then be used as a lobby tool.

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