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**Law reform strategies – a critical analysis of the ZWLA  
lobbying and advocacy programme for marriage law  
reform**

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*In loving memory of my mother Mrs Irene Mumba*

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## CHAPTER ONE

### **Introduction**

Some confusion usually arises from the use of the terms ‘lobbying’ and ‘advocacy’ so it is important that I define these terms as they are used in this dissertation from the outset.

#### **What is advocacy?**

Advocacy is defined as the sustained effort organized by civil society organizations in co-operation with other like-minded groups or individuals, for systematic peaceful change to policy or other conditions which affect people’s lives. It seeks to involve citizens in the process of change especially through their participation in policy-making processes. Advocacy is a tool for empowerment and education. As a key for empowerment it seeks to entrench democracy by creating a just and equitable society in which citizens participate actively and effectively in their own governance. It focuses on the needs of the disadvantaged and disempowered and gives them the knowledge and skills to make their voices heard.

Lobbying on the other hand is defined as an organized attempt by members of the public to influence legislators on behalf of a particular interest group or to seek the support of an influential person. It is an important part of the advocacy campaign but it is not equal to advocacy because advocacy is a broader and more sustained approach to influencing change.<sup>1</sup>

#### **Statement of the problem**

There are many organizations in Zimbabwe that are seeking the reform of laws affecting key areas of women’s lives. Some of these organizations are Zimbabwe Women Lawyers Association (ZWLA) which is seeking marriage law reform, Musasa Project which is lobbying for the enactment of the Domestic Violence Act and the National Association for the Care of the Handicapped (NASCOH) which is lobbying for the better protection of the rights of people with disabilities, particularly women who are discriminated against firstly because they are women and secondly because they have disabilities.

The problem for these and other organizations is that there is no systematic process for the formulation of law reform. Instead, law reform is ad hoc and haphazard. Organizations tend to play a reactionary role to situations that arise instead of being proactive. There are no advocacy plans and so no different strategies to be used to achieve the plan. What happens is that once organizations have secured funding they plunge into activities without carefully and thoroughly mapping out their plans, the practical steps to implementing their plans, mobilization, motivation, efficacy of the strategies and their contingency plans in case the chosen ones fail.

As a result there are inexplicable delays when the advocacy issue reaches parliament, or no legislation is passed at all. In most cases, when organizations confront the hurdle of lack of political will they falter because they have not planned adequately for that eventuality. This is what is happening in Mozambique where the Mozambique Women Lawyers Association

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<sup>1</sup> Phiroshaw Camay and Anne J.Gordon *Advocacy in Southern Africa: Lessons for the future* CORE

(MWLA) has been pushing for marriage law reform since 1996. The Mozambican government has raised one excuse after another for its failure to bring the proposed law before parliament. Similarly, the Musasa Project in Zimbabwe has been lobbying for the enactment of the Domestic Violence Act since 2000. To date this law has not been put before parliament in spite of the fact that it is long overdue in Zimbabwe. Likewise, for ZWLA there was every indication from the Minister of Justice, Legal and Parliamentary Affairs and the government in general that marriage law reform would be effected without undue delays. But in his speech on the opening of the second session of the Fifth Parliament of the Republic of Zimbabwe, President Mugabe announced a list of laws that would be passed before the next general elections in 2005. Marriage law reform was not among them.

Clearly the lobbying and advocacy efforts are missing the mark and this dissertation is an enquiry into those processes to determine where organizations in general and ZWLA in particular are going wrong.

### **Objectives of the research**

This research aims to facilitate or model effective ways to ensure the passage, appropriateness and feasibility of law reform activities that are intended to benefit women. Based on my investigation of what went wrong in the ZWLA marriage law reform process I will draw up a lobbying and advocacy model which will serve as a guide to organizations wishing to engage in law reform so that they can avoid common pitfalls whilst ensuring that their efforts bear fruit.

### **Background to the marriage law reform programme**

Zimbabwe Women Lawyers Association is a non-governmental organization made up of women lawyers drawn from the public sector, private practice, academics, non-governmental organizations and the commercial sector. It was formed in 1992 with the objective of protecting the legal rights of women in Zimbabwe. In 1997 the first full-time secretariat was hired to implement the different activities that ZWLA had identified to achieve their goals. The programme activities are legal aid, legal education, a children's desk and the advocacy programme. To date ZWLA has a secretariat of nine lawyers, six legal assistants, three secretaries and support staff.

In 2000 ZWLA embarked on its first advocacy issue – the reform of marriage laws in Zimbabwe. Before this ZWLA had been a partner in other advocacy initiatives by other players in the women's rights field. The marriage law reform was, however, ZWLA's first in-house advocacy programme. It is necessary that I shed light on the advocacy issue itself so that what exactly ZWLA was seeking to address becomes clear.

### **Marriage laws in Zimbabwe – what is the problem?**

Zimbabwe has a dual legal system that allows customary law to apply side by side with general law. In terms of marriages this means that there are customary and general law marriages.

General law marriage is governed by the Marriages Act Chapter 5:11. This marriage is strictly monogamous and can only be solemnized before a marriage officer designated as such by the Minister of Justice, Legal and Parliamentary Affairs. Only the High Court has the jurisdiction to

grant divorce for this marriage and there are only two High Courts in Zimbabwe. The determination of whether or not the marriage has irretrievably broken down is done in an elaborate manner and parties are usually required to have legal representation to help them in the proceedings. If a party cannot afford a lawyer the Registrar of the High Court will appoint one on an *in forma pauperis* basis.<sup>2</sup>

When deciding on the division of the matrimonial property the court is guided by the provisions of the Matrimonial Causes Act Chapter 5:13 which provides for the just and equitable distribution of property.

Customary marriages on the other hand are governed by the Customary Marriages Act Chapter 5:07. This marriage type is potentially polygamous in that a man is allowed to marry more than one wife. It is not a requirement in terms of the law that a man notifies or gets the consent of his first wife before he takes another wife. *Lobola* or bride price is a requirement for this marriage type. Like general law marriage this marriage is only solemnized before a designated marriage officer. The magistrate's court has the jurisdiction to determine whether or not this marriage has broken down irretrievably. The procedure for such determination is usually not thorough and the party who has legal representation stands a better chance of winning their case.

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<sup>2</sup> This means that the party will not be paying for the services of a lawyer. The lawyer gets paid a token fee by the government

There is yet another form of customary marriage commonly known as unregistered customary law unions. This is a marriage that satisfies all the requirements of the registered customary marriage described above except that it is not registered. It is estimated that 70 per cent of marriages in Zimbabwe are unregistered customary law unions.<sup>3</sup> This marriage is not valid at law and is only recognized for purposes of maintenance of children and inheritance. There is no formal determination of whether or not a marriage has broken down because there was never a marriage in the first place. At separation each party only takes what he or she brought into the marriage.

### **Problems arising out of the multiple marriage types above**

As a result of the multiplicity of marriage types men have a tendency to bring confusion into the whole system by marrying women under the different forms of marriages even though the marriage types may be incompatible with each other. For example, a man may even marry one or more women under the monogamous marriage type and still get away with it because the official marriage registry is not computerized. There is no way of telling whether or not he has been married before. It is upon divorce or death that a woman becomes aware that her marriage is a nullity at law and the loss that she suffers as a result of the husband's misdeeds is often great. In response ZWLA decided to lobby for the reform of marriage laws to protect the rights of women. The following are the areas of law in which ZWLA is seeking reform:

#### **Multiplicity of marriages**

The ideal for ZWLA would be to have only one marriage type in Zimbabwe, namely the Marriage Act Chapter 5:11. This would mean that the law would not recognize polygamy because the practice vitiates against women's right to equality within marriage.

Article 16 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) provides for equality within marriage. In interpreting this right, Special Recommendation 20 of CEDAW provides that polygamy is a practice that discriminates against women in that only men are allowed to have more than one spouse but the same right is not extended to women. To the extent that a man can have more than one woman fighting for his attention, polygamy negates equality within marriage and state parties are urged to take all appropriate measures, including legislation, to abolish it. The Protocol to the African Charter on Human and People's Rights under Article 6 provides that monogamy should be encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marriages, should be protected.

ZWLA, however, realizes that to simply abolish polygamy will have serious repercussions for women who are already in polygamous marriages, thus its strategy is to have it gradually phased out whilst preparing people for its total abolition. The other challenge that ZWLA will face in trying to have polygamy abolished on the grounds that it discriminates against women's right to equality is that Section 23 of the Constitution of Zimbabwe outlaws discrimination on the grounds of gender, colour, nationality, creed, religious beliefs, and so on, but allows discrimination in the area of personal and customary laws. Empirical data or evidence has shown that women's rights are dealt the most severe blows in the private arena of their lives, which are

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<sup>3</sup> ZWLA concept paper on marriage law reform 2000 (unpublished)



the areas that are protected by section 23 of the constitution. This provision contradicts Article 16 of CEDAW discussed above. This means that without constitutional amendment to Section 23, ZWLA cannot rely on the issue of discrimination as the basis for the abolition of polygamy.

### *Division of property*

Whilst having one marriage type is the ultimate solution, ZWLA is proposing that while we wait for that to happen, all women should be beneficiaries of an equitable property-sharing system regardless of which type of marriage they are in. This would mean that the provisions of the Matrimonial Causes Act that provide for equitable distribution of property at divorce would also apply to unregistered customary law unions. This Act has been associated with problems in its use in the courts because it provides only guidelines on what is just and equitable, leaving room for inconsistency and uncertainty. In other words the interpretation of 'just and equitable' is left to the individual judge and magistrate presiding over a case. For example, in a divorce case involving the division of matrimonial property, given similar circumstances one woman may be awarded 10 per cent of the value of the matrimonial house while another is awarded 50 per cent. In some cases the magistrate takes fully into account the indirect contributions a woman has made to the acquisition of the matrimonial property and proceeds to award the woman a 50 per cent share. With the same set of facts, another magistrate or judge will refuse to consider the woman's indirect contribution to the acquisition of the matrimonial property and award the woman only a token share.

ZWLA is thus lobbying for a definite property regime that will ensure that justice is done in sharing the property of married persons and at the same time maintaining certainty and consistency in the law. This is in line with Article 7 of the Protocol to the African Charter on Human and People's Rights<sup>4</sup> which provides that in the event of divorce, separation or annulment of marriage men and women shall have the right to an equitable sharing of the joint property deriving from the marriage.

### *Compulsory registration of marriages*

ZWLA is lobbying for the compulsory registration of marriages in order to do away with the confusion that arises when determining whether or not parties were married to each other. This question often arises, for example, a man may spend ten years in an unregistered customary law marriage with a woman and they may or may not have children but when the marriage breaks down the man will claim in court that he cannot share his property with her because they were not married, only cohabiting. In that case the woman has to prove that they were indeed married under customary law by producing evidence of the customary law marriage transaction, usually the payment of *lobola*. The problem of proving the existence of a customary law marriage is also faced by widows whose husbands die without having registered their customary law marriages. In that case the relatives of the deceased husband will be trying to disown the widow so that they can benefit from the deceased estate themselves.

To this end ZWLA is proposing that the powers of traditional chiefs be extended to include registration of marriages. It is also proposing that before solemnizing a marriage, the marriage officer fully explains the implications of the marriage type to the parties. This is in view of the

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<sup>4</sup> As adopted by the conference of heads of state and government Maputo, Mozambique July 2003

misconceptions that can arise when people have inadequate information. ZWLA is further proposing that the marriage registry be computerized in order to access information on married, divorced and widowed people instantly. It also seeks to have the jurisdiction of the magistrate's court extended to be able to hear divorce cases in civil marriages. This would make the process easier for those people who may wish to divorce but do not have the means to do so because they are located far from the two High Courts in Zimbabwe. Ultimately the ideal would be to have specialized family law courts situated in the different magistrate's courts throughout the country. The family law courts would be staffed by specially trained personnel and would hear all the disputes related to family law in a gender sensitive way. ZWLA is working on this project together with the Legal Resources Foundation, another non-governmental organization that works on human rights.

### *Guardianship*

Currently the law provides that the guardian of children born within wedlock is the father. Although theoretically the father is supposed to exercise his powers in consultation with the mother, this does not happen in practice. Usually the guardian exercises his powers arbitrarily and frequently not in the best interests of the children but to 'fix' the mother. ZWLA is proposing that both parents of minor children be guardians of their children to bring the law into line with Article 16 of CEDAW which provides for the right to equality within marriage as follows:

State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on the basis of equality of women and men:

(b) The same right and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the best interests of the children shall be paramount.

(f) The same rights for both parents in respect of guardianship, wardship, trusteeship and adoption of children or similar institutions where these concepts exist.

### *Minimum age of marriage*

Currently the minimum age of marriage for girls is sixteen years and that for boys is eighteen. This is premised on the stereotypical idea of girls maturing faster than boys but ZWLA believes it promotes and condones girls dropping out of school to get married at a tender age and abandoning their only hope of making a better future for themselves. It also makes the young girls vulnerable to sexually transmitted diseases and infections that include HIV/AIDS.

Article 16 (2) of CEDAW provides against child betrothal and encourages state parties to set minimum ages for marriage. Article 6 of the Protocol to the African Charter on Human and People's Rights reiterates this provision on marrying off young girls by providing that the minimum age of marriage for girls should be set at eighteen.

## **Conclusion**

The stage was set for ZWLA to engage in marriage law reform. All the necessary ingredients for an advocacy campaign were present, namely:

- 1 The fact that undoubtedly the current marriage laws treated women as an underclass and therefore they were in need of change.
- 2 Research had been carried out to determine the magnitude of the problem, its causes and the possibility of reform based on the lessons that ZWLA had learnt from other jurisdictions in the region. As a result a concept paper had been developed on the issues.
- 3 ZWLA had the organizational capacity in terms of human and financial resources to carry out the advocacy campaign.

How did ZWLA try to achieve to achieve its agenda? Where did it go wrong?

### *Structure of dissertation*

This dissertation is divided into five parts of which this introduction is the first. The second part is the methodology chapter in which I describe and analyze the processes that I went through in conducting this research. In chapter three I look at the research findings on what went wrong at organizational level. In chapter four I analyze other findings made in relation to advocacy strategies that are not necessarily to do with the internal ZWLA processes. In chapter five I conclude by suggesting a lobbying and advocacy model.

## CHAPTER TWO

### **Methodology**

To help me interrogate what went wrong in the ZWLA marriage law reform process I had the following research assumptions and questions that I believed explained where the marriage law reform went wrong:

#### **Research assumptions**

- 1 The ZWLA marriage law reform process did not build a constituency through a proper consultative process.
- 2 The ZWLA style of advocacy does not empower the communities to speak for themselves in future advocacy processes.
- 3 The ZWLA marriage law reform process was a purely legal profession affair which did not incorporate the views of other non-legal professionals
- 4 The ZWLA marriage law reform issue was not introduced at the right time.
- 5 The ZWLA marriage law process did not use multi-media to educate and get feedback from as many Zimbabweans as possible.
- 6 The ZWLA marriage law reform process did not make use of lessons from the region on lobbying and advocacy processes.

#### **Research questions**

- 1 Did the ZWLA marriage law reform process build a constituency through effective consultation? If so, how? If not, why?
- 2 Does the ZWLA advocacy style empower communities to speak for themselves? If so, how? If not, why?
- 3 Did ZWLA include other professionals from other disciplines in the process? If so, how? If not, why?
- 4 Was the ZWLA advocacy issue timely? If so, how? If not, why?
- 5 Did ZWLA use multi media to educate people on the issue and seek the views of as many people as possible? If so, how? If not, why?
- 6 Did ZWLA incorporate all the lessons learnt from similar programmes in the region? If so, how? If not, why?

In the field some of my assumptions were challenged so much that I had to go back to the drawing board to redirect the focus of my interrogation. For example, originally my first assumption was that ZWLA had not built a constituency for its marriage law reform and that is why it failed to generate the required volume of support from ordinary citizens. It emerged in the field that in fact ZWLA had consulted widely on the marriage law reform. This meant that I had

to revisit my assumption and investigate why, even after wide consultations, people are still not as involved as they should be in pushing for the law reform.

### **What informed my area of research?**

My choice of research topic was influenced mainly by the fact that the organization in which I have spent five years working as a legal officer embarked on its first advocacy programme in 2000. My concern was that ZWLA's efforts should result in the passing of the desired law and not just die a quiet death like so many other advocacy efforts by civil society organizations. I therefore decided to do an audit of our processes and, using the benefit of hindsight, make suggestions on how we could have done things better. My topic was also influenced by one of the lecturers on research methodologies who indicated that this area of work had not been done before in the women's law course. I decided to take up the challenge, especially considering that my organization was working on that very area already.

### **Area of study**

I decided to research in Harare and Norton, an urban settlement forty kilometres outside Harare. This choice was influenced by the fact that ZWLA had programmes in both these areas so it would not be difficult to meet with respondents. I also researched two rural areas, namely Murehwa and Murombedzi. In these two areas ZWLA runs the peer educators programme. As I wanted to find out if the peer educators had added value to the ZWLA programme it was necessary that I went to two other rural areas where the peer educators programme did not run. There was no specific formula on how to choose where I went in the rural areas. I simply liaised with the political leaders of the rural areas and those from Shamva and Mhondoro readily agreed to assist me so I went into their areas.

### **Where to start?**

Since my research was not on the content of the law reform but on the process or road to the law reform, I initially believed that I was not required to research the law. That had already been thoroughly exhausted by the researchers who had come up with a concept paper on what ZWLA wanted changed in the marriage laws of Zimbabwe. I discovered, however, that it was impossible to skirt around the investigation into the law and do justice to my thesis. I needed to audit the process of law reform in terms of compliance by the government with the national constitution and the internationally set standards of women's human rights. This inevitably resulted in the analysis of some recently passed constitutional judgements on freedom of expression and the right to impart and receive information in relation to my findings that civil society organizations were not allowed access to the sole broadcaster for their various education campaigns. In the analysis I used the legal centralist approach in collaboration with other approaches to come to the conclusions that I made which are discussed later in the findings chapters.

### **No immediate literature on the subject**

Being an insider on the topic that I was researching, I had no problems in finding the information that I wanted but I had problems in accessing literature around my topic. The Women's Law Centre library did not have any literature on law reform and strategies.

After a search, I finally discovered that the Zimbabwe Women's Resource Centre and Network (ZWRCN), a local non-governmental organization, that specializes in documenting women's experiences, had some papers that had been presented at various workshops for non-governmental organizations working on law reform in partnership with ZADF, a United States donor agency in Zimbabwe. Apparently the donor had also realised that most of its partners were working on law reform in different areas of the law but there was not much that was written on the topic. It therefore decided to hold capacity-building workshops for its partners in order to give them some basic guidelines on how to do advocacy work. These papers gave me direction on who to interview and how to do a preliminary test on my assumptions.

### **Learning visit to the Legal Assistance Centre in Namibia**

One of my assumptions was that for this kind of work experience is the best teacher. It was therefore necessary that I should gather the experiences of other non-governmental organizations in the SADC region that have done work around the reform of laws affecting the rights of women. I would have liked to hold discussions with the Mozambican Women Lawyers Association because they have worked and are still working on the reform of marriage laws in Mozambique. I however realized that language would be a hindrance and I did not have the resources to engage the services of an interpreter, so I eventually settled for the Legal Assistance Centre in Namibia. The centre, started over fifteen years ago, is a non-governmental organization that works around the protection of human rights in Namibia. I managed to get some very useful information from their Gender and Research Unit especially on constituency and coalition building. I also had an opportunity to interview some of their coalition members (the Namibian Non-Governmental Organization Forum – NANGOF) on what they perceived as their exact roles in taking up issues of women's human rights even though they have their own different mandates as separate organizations.

### **Going through office reports and documents**

As some of my questions were on constituency-building, consultations with various stakeholders, initial concept papers and project proposals, it was necessary to go through the ZWLA office programme files and determine how these were done. I was looking at the whole period between 2000, when the advocacy issue started at ZWLA, and the time of the research. Notable is the fact that although the advocacy office had seen the highest rate of staff turnover, this did not at all affect records of what had been done. Furthermore, since the current advocacy officer was fairly new and could not answer some of my questions fully, I contacted the previous officers via e-mail and they sent me their responses via the same route. Their contributions were invaluable to this work.

I however noted that prior to the advocacy issue no formal documentation had been done on the cases that gave rise to the realization that there was need to reform the marriage laws. In other words although the women lawyers knew exactly what they were talking about when they spoke of the need for change, it is not immediately obvious to an outsider what the basis for such change is. There are cases that go through the legal aid office but the files are not readily accessible. Where they are accessible they are written in a way that is user-friendly only to the person who is litigating on them. To a person outside legal aid the files do not readily tell a story

for law reform. What could be useful is to properly and systematically document the cases in a way that highlights the need for law reform at a glance.

### **Consultative workshops**

With regard to the consultative workshops on marriage law reform, I tried to liaise with the Director of Youth at head office in Harare for clearance but he was always out of the office and I could not secure an appointment to meet him.

The second option was to ask the field workers of some of our networking members, namely, Women Action Group, Padare or Men's Forum on Gender and the Association of Women's Clubs, to send invitations to grassroots leaders in their areas. This worked perfectly; it was less bureaucratic and we got the people whom we really wanted to attend. Some of my findings, especially about participants failing to understand the issues, complaints about the manner and stage of consultations and on their relationships with their members of parliament, were made at this workshop.

During the 16 days of activism against violence I conducted another workshop with ZWLA peer educators and other participants from Murombedzi and Murehwa at Murehwa Centre at Chibhanguza Hotel. The workshop was made possible with funding from the Women's Coalition. I had the opportunity to hold group discussions with the general participants and focus group discussions with the ZWLA peer educators.

### **Research via legal aid**

Whilst interviewing my clients during the course of my regular legal aid work, I asked them if they knew of the proposed marriage law reform as something that our organization was doing to alleviate some of their suffering under the current laws. Most of them knew because while they wait to be attended to at ZWLA, they are given pamphlets that have been produced on the topic. I did not use any criteria in choosing which clients to ask but simply interviewed two clients per day for two weeks. I had problems reaching my targeted number of male respondents, however, especially in town, because they do not ordinarily come to ZWLA for help. In some cases I would interview my client's husband after a pre-trial conference or trial but not without his lawyer's permission and much to the displeasure and mistrust of my client!

### **Comparisons**

It became imperative that I investigate whether or not the use of community peer educators added value to the spreading of awareness and knowledge of the marriage law reform. This would help in devising the action plan and recommendations based on what worked best. To that end I compared awareness of the issue in two rural areas where ZWLA has some peer educators, Murombedzi and Murehwa, with two other rural areas where ZWLA does not have peer educators, Mhondoro and Shamva. I also needed to ascertain if information on the marriage law reform programme was reaching rural and urban areas equally. To that end I carried out snap surveys in Harare and Norton and I compared the results with the two rural areas that I had surveyed earlier on.

### **Interview questions**

Although I had come up with structured questions for each of my assumptions these were mostly adhered to where I was interviewing professionals and other office bearers because they managed to answer my questions with minimum deviations. The story was different when I was interviewing community men and women. When they confessed that they did not know about the programme, they then demanded that I explain in full what it was about. As I explained a group would start gathering and in some cases I would end up with a group of ten to fifteen people where initially it was an interview with two people.

### **Priorities**

In an environment like the current one in Zimbabwe where people are preoccupied with issues of bread and butter, experience has proved that it is not easy to lure people from their daily preoccupations for purposes of research. Furthermore, most communities are unhappy with researchers whom they perceive as likely to use them to gain access to donor funds. The way I worked around this was to piggyback on existing community programmes that people were involved in. This worked particularly well in Norton where people gather at an HIV/AIDS service centre every Tuesday and Thursday. After their normal programmes I would be allocated time to talk to the people either in groups or with individuals.

### **Informal consultations with a friend**

Although she was not on my list of respondents, my friend and classmate would discuss processes and progress with me and give suggestions on how best to proceed under given circumstances. I would also share with her some information that I had gained on her research and it was refreshing to talk about topics other than my own for a change.

### **Presentation in class**

I got an opportunity to present my findings, research methods and methodology and emerging issues to members of my class and some visiting lecturers from the region. Their contributions on how I could improve my work were most helpful.

### **Challenges**

During the research process I met some challenges which had the effect of either slowing down my progress or redirecting my focus in a way I had not planned. These could have been easily avoided had I properly planned and managed my time. A calm political environment would also have enabled me to freely access all the rural areas that I wanted to research.

### **Balancing work with research**

I made the mistake of believing that I could do my research whilst at work but this proved impossible as my work was very demanding. As a result my research was delayed in starting as I had to negotiate for time off with my employers.



Where my respondents were not aware of the advocacy issue I ended up educating them about it at length and answering their questions, and sometimes unknowingly starting a debate which cost me precious time.

If I had carried out a strengths, weaknesses, opportunities and threats (SWOT) analysis of myself before embarking on my research I would have been able to critically analyze and assess myself as a researcher and I would have been more alert to my prejudices and interests. For example, sometimes I would get into debates with interviewees when explaining a position. The activist in me could not keep quiet while someone rambled on about the whole marriage law reform programme being merely an attempt by women's non-governmental organizations to destabilize happy families.

Because of the politically tense environment in some parts of Zimbabwe where parliamentary elections that were held in 2000 were won by the opposition, I was constantly afraid of being beaten up by villagers, as had happened to some researchers before.

Overall I was able to do my research successfully mainly because I was working on an area that I was familiar with. It also helped that I had material support from my organization as they believed they had something to benefit from the research. Finally, the combination of the different research approaches namely the legal centralist approach and the grounded approach based on the reality of people made my research more thorough in terms of analysis.

## CHAPTER THREE

### Findings

In this chapter I describe and discuss my findings on what I perceive as the issues that went wrong in the ZWLA marriage law reform process. I make the observation that ZWLA did not sit down at organizational level to draw up a thorough lobbying and advocacy plan and the appropriate strategies that it would need to employ to achieve their goal. The following are areas or activities which could have been done better with adequate planning and strategizing:

#### Constituency building

ZWLA had clearly identified who their constituency would be for the marriage law reform. These were:

- The Women's Coalition – the body that represents most women's organizations in Zimbabwe. The coalition was easily the structure through which the phrase 'strength in numbers' would become a reality for ZWLA as it would be used as a lobbying force for the advocacy issue.
- Padare/ Men's Forum on Gender – ZWLA needed a collaborator from the men's non-governmental organization working on gender equality and Padare was the perfect partner. Its role would be to work with and convince men on the need for marriage law reform.
- Traditional leaders – this group was important to consult and work with throughout the process because of the need by ZWLA to cater for the traditional and cultural concerns that this group was likely to raise. They would also be useful in that a law that took their fears into consideration would reflect a balance between the positive African values and the progressive protection and promotion of women's rights.
- Religious leaders – like the traditional leaders these were needed to strike a balance between religion and the protection of women's rights. Furthermore, given the numbers of followers they command it was wise to involve them for the popularization of the advocacy issue.
- Youth groups – since marriage affects almost everyone in one way or another it was important to hear the voices of the youths in the proposed law reform.
- Grassroots women's groups – these were important stakeholders because without them there would be no marriage law reform to talk about. They were also the entry points into the different rural and urban communities.
- Representatives from the office of the Registrar General – these were required for their grounded experiences of the difficulties of working without a central registry of marriage. They were also targeted as the important stakeholders for the implementation of the new law when it is eventually passed.
- Judges and magistrates – their views on the nature and extent of the problem helped enrich the lobbying document. They also gave their perspectives on what would achieve justice for women and how they have been going ahead of the law by making judicial pronouncements on the injustices arising from the current marriage laws in Zimbabwe.

## **What was ZWLA plan for working with the identified constituency?**

The idea was to elicit the views of the different groups on the advocacy issue. ZWLA would consult thoroughly with these groups to get comprehensive input into the definition of the problems and the proposed solutions. After taking their views into account, a more or less common stance or consensus would be achieved. The different leaders would then go back to their own communities and constituencies to sell the advocacy issue.

## **Process of consultation**

At each consultation workshop facilitators would take participants through the types of marriages that we have in Zimbabwe, what each type means in terms of rights to children and property during and after marriage and on the death of either party. The facilitators would explain the difficulties that women face with the law in each marriage type and even cite real-life cases of such problems that had come through ZWLA. The workshop would proceed with the facilitators giving suggestions on how the problems could be rectified based on the document that ZWLA's consultant had compiled. Thereafter the participants would be asked to give their views on these issues. All this would take place in a one and half to two day workshop.

## **What went wrong?**

Regrettably, the process of consultation was flawed. The people were not involved in the formulation of the problem or the solutions because ZWLA arrived in their constituencies with a prepackaged advocacy agenda which left no room for the participants to make any meaningful input. They were only consulted after the crucial part of the process and some participants complained that they were being asked to merely 'rubber-stamp' what had already been decided. To quote one traditional leader at one of the consultative workshops:

Saka kana makatosvika kare kwese ikoko pakugadzirisa nyaya iyi isu kuno mazotishevedzerei?

(If you have already gone that far in the process why have you invited us to this workshop? Surely you do not need our input or us?)

## **Why did this flawed consultative process happen?**

Even though ZWLA had identified constituency building as one of its advocacy strategies, they did not plan the consultative process systematically. ZWLA simply followed what had been done by other organizations, that is, define a problem, design solutions and take these to the people as 'the life-saving package'. In other words ZWLA did not take stock of what had been tried, tested and had either succeeded or failed in terms of community mobilization and participatory approaches to community development.

As a result of the passive role that ZWLA gave its constituency to play, the constituency assumed an indifferent attitude. The initial plan that the constituency would provide a broad base of support in the different communities failed to materialize. People did not own the process. It

remained a ZWLA advocacy issue. The power to exert pressure on the politicians for law reform was left to ZWLA alone and the vision of strength in numbers was never realized.

Describing one strategy through which communities can be empowered to speak for themselves, Robert Chambers<sup>5</sup> notes that there are various kinds of community participation in developmental projects. One is functional participation which is where people participate by forming groups to meet predetermined objectives related to the project; this can involve the development or promotion of externally initiated social organization. Such involvement tends not to be at the early stages of project cycles and planning but rather after major decisions have been made. He concludes that although there are many factors that militate against meaningful beneficiary participation, they are not insurmountable. The cost of restricting or rejecting participation is clearly shown to be too high for any nation in the long run.

According to a United Nations publication,<sup>6</sup> mass participation for development constitutes a critical element that differentiates between passive and interactive participation. There are four stages in the decision making process when people participate interactively:

#### *1 Defining the situation requiring a decision*

This is the most important stage because the way in which a problem is defined not only determines the possible alternative solutions but usually tends to restrict the number of relevant choices. If the people are not involved in the first place their participation becomes symbolic, manipulated or controlled, as it will only be limited to merely ratifying what has been predetermined for them.

#### *2 Choosing the preferred alternatives*

This would logically flow from how a problem has been defined. Furthermore, the alternatives that people come up with are those they can identify and live with in their own lives, instead of allowing a person with no or little first-hand experience of the problem to dominate the process of choosing the workable alternatives to the problem.

#### *3 Determining how best to implement the decision once it is made*

If the way forward is mapped out collectively it becomes easy to allocate duties and responsibilities because the population is clear on what action needs to be taken and why, in order to implement the new legislation when it is passed.

#### *4 Evaluating the consequences of the action taken*

Where the decision made continues to cause gender inequalities then the people are able (with the guidance of the steering organization, in this case, ZWLA) to start reviewing the new law with the aim of having the irregularities corrected.

According to Lisa VeneKlassen and Valerie Miller<sup>7</sup>, human rights work seeks to improve people's lives therefore a human rights approach that includes and encompasses people's perspectives is integral to any human rights campaign. The two authors define a citizen centred

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<sup>5</sup> *Factors that promote or deter popular participation* page 35

<sup>6</sup> *Popular participation in decision making for development*, UN Department of Economic and Social

<sup>7</sup> *A new wave of power, people and politics: The action guide for advocacy and citizen participation*, Oklahoma city; World Neighbors 2002 ([www.hrconnection.org/advocacy/comparing.html](http://www.hrconnection.org/advocacy/comparing.html))

advocacy as a set of organized actions aimed at influencing public policies, socio-political attitudes and processes that enable and empower the marginalized to speak for themselves.

In her paper entitled 'Women in the media', Prabha Krishnan<sup>8</sup> points out that in her organization's drive for the reform of pornography laws in India, it was imperative that they mobilized a mass base of enlightened women who would organize around the issue of the obscenity law to fight exploitation and women who would support and help implement the new law. To that extent they had to create awareness among many groups of people using various strategies like slide shows, targeted workshops for editors of newspapers and magazines, college students, school children, women's groups, and so on. If convinced of the need to change the image of women, group participants then organize themselves and provide the necessary support to change the laws and to pressure the government to enforce the new laws.

In another example Sarah Riojah of Argentina writes in her paper 'Changes in family law'<sup>9</sup> that the lobbyists managed to get fifty thousand signatures for a petition to the Ministry of Justice and to the Undersecretary of Youth and the Family to reform the family laws in Argentina. Although the then military government did not acknowledge the demands, the campaign incited the two major parties to agree to include these reforms in their political platforms.

In Botswana Emang Basadi,<sup>10</sup> a women's non-governmental organization, did advocacy work on the women's manifesto which was a comprehensive document identifying areas of law negatively affecting women's rights in Botswana and how they wanted them corrected. Keboitse Machangana points out that for Emang Basadi it was important that Botswana women owned the manifesto and agreed on the issues to be included in the manifesto as issues of common concern for Botswana women. It was also important that people who cared deeply about women's issues and concerns contributed to the production of this document. Involvement of the constituents in the process also ensured their support in the advocacy campaign. They would feel obliged to publicize and defend the manifesto where necessary because it would also be their document. It was very important for the document to be viewed as the women's manifesto rather than the Emang Basadi manifesto.

In her conclusion Machangana says that the women's manifesto campaign succeeded owing to the fact that they involved constituents in the process. The people did not feel that Emang Basadi was campaigning on their behalf but were empowered to wage the campaign on their own. The other factors that facilitated their success were good timing and a conducive political environment.

In conclusion what would have helped for ZWLA?

A well thought out plan for constituency building would have achieved better results for ZWLA. The plan would have taken the following into account:

- An acknowledgement that ZWLA needed to build a constituency to garner support for its marriage law reform.

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<sup>8</sup>Margaret Schuler *Empowerment and the law: Strategies for third world women*, OEF International USA, 1986.

<sup>9</sup>Margaret Schuler *Empowerment and the law: Strategies for third world women*, OEF International USA, 1986.

<sup>10</sup> Source Emang Basdi Women's Association and the Women's Manifesto: *Advocating for women's rights in Botswana*, CORE Johannesburg South Africa 2000

- Who should form the constituency and why should they be consulted?
- What should be the proper role of the identified constituency? (What do we expect of them?)
- How best do we ensure that their voices come out in the lobbying document? How do we instill in them a sense of ownership of the need for marriage law reform?
- How do we keep their interest throughout the process? How do we give and get feedback from them on a regular basis in order to keep the momentum going?
- Can we anticipate who our detractors will be and the thrust of their arguments? How do we target them during the constituency building process?

In answering these questions a plan would have been drawn up for each step of the constituency building process and the activities that needed to be done outlined systematically so that no gaps would be exposed during the process of implementation.

The second finding was on disseminating information on marriage law reform. My finding was that in spite of ZWLA's effort to raise awareness on marriage law reform, many people are still not aware of: (a) the types of marriages that exist in Zimbabwe, (b) the problems that arise from the different marriage types and (c) the attempts by ZWLA to have the marriage laws reformed. This happened because there was no legal education plan for ZWLA. Instead it was done randomly through the legal education programme in a manner that was not coordinated with the advocacy department. The legal education programme randomly held legal education workshops, mostly in high density areas, on inheritance laws, the children's convention and on marriage law reform. Very few workshops were held in the rural areas. In the advocacy department itself there were attempts to carry out education campaigns through pamphlets, radio programmes and workshops.

I carried out a survey to ascertain the efficacy of the information dissemination strategies in two urban settlements (Harare and Norton) and two rural settlements (Murehwa and Murombedzi) and I found out the following:

- (a) Of the 70 people that I interviewed 41 were aware that ZWLA was engaged in marriage law reform. Of these 41, 29 were from urban settlements and only 12 were from rural areas.
- (b) Of the 70 people that I interviewed 31 were men. Of these only 13 were aware of the marriage law reform programme.
- (c) Of the 70 people that I interviewed 39 were women. Of these 28 were aware of the marriage law reform.

The figures above showed that, in my sample, information on marriage law reform reached more people in the urban areas than in the rural areas, indicating that information is not being evenly distributed between rural and urban areas. It also showed that men and women are not getting the same level of information on marriage law reform. It also brings out the weakness of relying heavily on the electronic media to disseminate information at the expense of the other means more accessible to rural populations. The overall effect of the uneven distribution of information is a heavy blow to the concept of constituency building through legal awareness.

The importance of carrying people through the process of law reform is usually felt when it comes to implementation. If the people (men and women from rural and urban settlements) move together with the steering organization during the process, when the law is finally passed there will be minimal or no gaps in implementation. This is what happened on the Zimbabwean inheritance laws reform. The reform was passed in 1997 but education on the reform was only fully done five years later and meanwhile, deceased persons' relatives continued to grab property from widows and rightful beneficiaries. Five years after the enactment of the amendment, education on the new law took place but for some estates it was too late because greedy relatives had spent everything in the deceased estates and left the true beneficiaries with nothing.

### **Manner of information dissemination**

The research showed that the workshops were overloaded with messages therefore most of the participants confessed that they did not fully understand the issues. As a result they could not further communicate the message to their communities. This was especially true for the ZWLA peer educators who had been trained to train and educate others in their communities. At a workshop held at Murehwa centre to commemorate the sixteen days of activism against gender violence, I held a group discussion with twenty-one peer educators from Murehwa and Murombedzi. Responding to my question on whether their communities had benefited in terms of awareness of the marriage law reform, seventeen of them said the issues were too complex for them to fully comprehend especially given the short duration the workshops.

It is therefore important to ensure that the manner of disseminating the information and the content of the information package is consumer friendly. Those tasked with the dissemination need to avoid by all means interpreting the law in a way that alienates people, including the intended beneficiaries. This is what happened in Zimbabwe on the dissemination of the then newly promulgated Legal Age of Majority Act of 1982. Those tasked with educating about what it was ended up creating more enemies than allies because of the manner in which they went about taking the law to the people. This law had the effect of emancipating women from perpetual minority status. Instead of educating the nation on the benefits that had accrued to women, the educators went about teaching people that, for example, girls over eighteen years of age could run away with their boyfriends and marry if their parents refused to give their consent! The nation went into an uproar and to date some people (including the women who were the intended beneficiaries) still regard this law with suspicion.<sup>11</sup>

### **Education as an empowerment tool**

On investigating the style of ZWLA's advocacy my assumption was that it is one that largely speaks to law and policy makers on behalf of the people or communities. In the process ZWLA becomes the voice of the voiceless. As a result, the communities are left out in the whole process, they only wait to hear from ZWLA what progress was made, if and when ZWLA comes back to their communities. The advocacy officer explained that ZWLA adopted this style of advocacy because it was the customary way of doing things. They just did what has always been done by other civil society organizations working on lobbying and advocacy. In other words they did not consider it part of their mandate to ensure that the communities were clear on how they could use

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<sup>11</sup> Dr Amy Tsanga

the information gained from ZWLA to bring about change by taking up the role of lobbying their political leaders on their own.

The other ZWLA staff members whom I spoke to on this issue lamented the lack of documented experiences on lobbying and advocacy by other organizations that have walked the same path so that best practices could be copied and common pitfalls avoided.

When I interviewed women and men in Murehwa and Murombedzi about whether they felt empowered enough to take up the issue of marriage law reform with their political leaders as a result of their involvement with ZWLA, 70 per cent of them said no or only partially yes. Some of them actually laughed at the idea of standing up during meetings with their local members of parliament to talk about marriage law reform! To quote one woman who attended one of the consultative workshops held by ZWLA as a community leader:

Sisi muri kuti chiiko imi? Munoreva here kuti isu zvedu madzimai tingasimukawo pamusangano tichibvunza shefu kuti zvemariage zvava papi kuparamende? Isu chatinoziva ndechekuti MP vakanzi vari kuuya kumusangano hapana anofanira kurovha. Kana tavako kumusangano tinenge tangomirira chete kuti upere tichidzokera kudzimba dzedu zvakanaka.

(My sister, what are you saying? Do you mean that us ordinary women can have the audacity to stand up at a political meeting and ask the chiefs what progress has been made in parliament on marriage law reform? No. All we know is that when a meeting with the MP is called for everyone must attend. While we are at the meeting we will be praying for the meeting to end so we can return to the safety of our own homes.)

The other 30 per cent who said they could raise the matter with their political leaders were mainly the peer educators from Murehwa. These already enjoy a good working relationship with their traditional chief (Chief Mangwende ) who is also their member of parliament. They even have the privilege of sitting at the chief's court as assessors. They indicated that in their case engagement with their political leaders was not an issue because the chief is already known for his progressive thinking and support for the women's cause.

It is important that advocacy work be seen as a tool for the empowerment of people so that they can understand their own power in bringing about change and shaping their own destiny

In her paper presented to the implementing partners of USAID on advocacy, Everjoice Win<sup>12</sup> makes the observation that the popular trend among most civil society organizations working to reform laws in different areas of women's lives is to assume the true role of an advocate who 'represents the client in court'. The client may not know what the advocate is telling the judge or arguing about in court. All she knows is that the advocate will take care of her case. This style of advocacy, while it saves unnecessary delays by avoiding laywomen making unsophisticated representations, does not improve the capacity of the client to be a self actor in the future because all the knowledge is left with the advocate.

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<sup>12</sup> Paper presented to USAID implementing partners in Zimbabwe 2001 (unpublished)



There are various ways in which communities can be empowered to be advocates in their own right. In Zimbabwe for example there is currently an on-going initiative by the UNDP to empower communities to work more closely with their members of parliament. The initiative is called the 'Know your member of parliament' campaign. Under the campaign, information about members of parliament, their offices, their residential addresses and those of their personal assistants is published in the newspapers or stuck onto walls in their constituencies. The idea is to promote more dialogue and information exchange between the politicians and their electorate. If this strategy is used well then it can be one way of bridging the dialogue gap between people and their political leaders. The idea is however threatened by party politics, whereby people do not freely walk into their member of parliament's offices in the constituency because she or he belongs to the opposition. It is hoped that the Zimbabwean population will put party politics aside and work together on this and other political initiatives for its own benefit.

Closely linked to the UNDP initiative is the need to promote democratic governance through the empowerment of communities to demand accountability from their own political leaders. This is an integral part of advocacy but its fuller discussion is beyond the scope of this dissertation.

### **Conducive political environment**

As discussed earlier, the use of radio was one of the major ways in which ZWLA sought to reach out to as many Zimbabweans as possible but this did not fully materialize because half-way through the programme presentations the Minister of Information and Publicity gave a directive to the sole and state-owned Zimbabwe Broadcasting Corporation (ZBC) that all private and sponsored radio and television programs were to be removed from the air forthwith. This dealt a severe blow to the ZWLA information dissemination programme; this move had not been foreseen and therefore no alternative ways of reaching the people had been planned.

This move by the government brings out two important lessons on advocacy. The first is that for any advocacy work to be successful it is imperative that government policies are friendly and allow civil society to operate freely. The second one is the importance of planning alternatives on the part of organizations wishing to do advocacy work as well as the need for a press strategy to guide all publicity activities of the organization.

The termination of privately sponsored programmes by the government is a blatant violation of Zimbabweans' right to freedom of expression which is protected by the Zimbabwean constitution and the Universal Declaration of Human Rights. Article 19 of the Universal Declaration of Human Rights provides as follows:

Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Section 20 of the Zimbabwean constitution provides for the same right in more or less the same words. This right can only be enjoyed through liberal broadcasting laws that do not unjustifiably restrict the airwaves to one player who is favoured by the government of the day. Worse still if the sole player in the broadcasting field determines who can access it on purely political grounds it is the public that suffers through deprivation of this fundamental right. Women's rights education initiatives are also not spared by these harsh media laws. It is therefore hoped that this

issue of freeing the airwaves to enable Zimbabweans to receive and impart information without undue inhibitions will be taken up in greater detail in other studies and test cases in the near future.

In conclusion what could have helped in the ZWLA education programme?

ZWLA would have fared better in terms of taking the law to as many people as possible and eliciting as much feedback as possible if it had come up with a dissemination plan. The plan would have had the following features:

- (a) Different target groups would have been identified for the education campaign;
- (b) Specially designed information packages would have been developed for each different interest group. This would have avoided the danger of designing materials that are not understood by the different groups of people. It would also have enabled ZWLA to design special messages for its anticipated detractors.
- (c) ZWLA would have considered the best ways of targeting men and women, rural and urban populations in a way that does not neglect one category.
- (d) ZWLA would have come up with a press strategy to help handle its publicity drive. A communications officer could have been hired to deal with press relations instead of relying on the advocacy officer who is a lawyer by training and has no experience with press relations. This lack of a press strategy on the part of ZWLA was felt heavily because ZWLA had no press coverage on some of its most important events on the advocacy issue to inform the nation of its goal and progress made so far to achieve it.
- (e) It would also have helped the ZWLA dissemination campaign if the aspect of empowerment had been built into the process of education so that people would be aware right from the onset that the information that they were being given by ZWLA was actually their ammunition to transform their own lives. As Mahatma Ghandi once said: 'You must be the change that you want to see in the world'.<sup>13</sup>
- (f) ZWLA would have carefully considered the various media alternatives that were open to them and planned how else they would manoeuvre in the event that the favoured media failed. Choices would have included one on one discussions with the people, large public meetings, interviews with newspaper reporters, billboards, road shows, drama, theatre, music, video, school competitions, pens, T-shirts and caps.

### **Use of coalitions**

ZWLA had identified the use of coalitions as one of the ways of building constituencies. There was already a women's coalition made up of most non-governmental organizations working to protect and promote the different rights of women. The women's coalition had closely coordinated the women's voices throughout the country to reject the draft constitution that the government had proposed in 2000. The sweet taste of victory was still strong among the women's organizations and the ZWLA marriage law reform was going to be one more area in which the combined power of the women to bring about change or make things happen would be felt. The idea was that broader support would be achieved through the coalition's grassroots organizations. It would also be an important tool through which the multiplier effect would be achieved in terms

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<sup>13</sup> Source unknown

of raising awareness of the advocacy issue and getting feedback. Lastly the coalition would provide a strong lobbying force as ZWLA would not speak as a single voice but for all the women in Zimbabwe.

Unfortunately the idea was not fully carried through. The initial consultations that were held with the coalition members were very strong and characterized by powerful enthusiasm. Member organizations pledged their support in many ways. For example Women's Action Group (WAG) pledged to carry out education on the marriage law reform programme through its field workers in all the provinces. Padare/Men's Forum on Gender undertook to educate and convince its members on the need to reform the marriage laws in Zimbabwe. Musasa Project undertook to distribute pamphlets to people visiting their offices and their outreach sites.

Coalitions have been used with much success before in the region. The Legal Assistance Centre in Namibia uses this strategy very well to gain support of fellow non-governmental organizations under the banner of the Namibian Non Governmental Organizations Forum (NANGOF). The Zambian Civic Education Association (ZCEA) also used this strategy successfully in their lobbying for land rights in Zambia. They saw it as a way of dealing with the problem of limited financial and human resources as the ZCEA did not have enough resources to cover every place in Zambia in its awareness raising campaigns. It was also a way of diluting the pressure that was created by the government attacks on the ZCEA.<sup>14</sup>

Advantages also lie in building in the multiplier effect to the reach of the programme. With coalitions there is effective use of resources by civil society organizations so that the situation where everyone is working everywhere but do not know each other is avoided. Unnecessary competition and duplication amongst civil society organizations is also avoided. Instead they work to map out the possible areas of complementing each other for the ultimate good of their beneficiaries

Sadly very little or nothing materialized from the commitments made by the coalition members in the ZWLA case. Coalition members lost interest or were left behind in the process. ZWLA as the steering organization did not follow up on any of the commitments and the members got relaxed as ZWLA lost focus of its original idea of mobilizing through the coalition. ZWLA allowed the channels of communication between itself and the members to close slowly but surely.

### **Why did this happen?**

Like most of its advocacy strategies ZWLA had identified the issue (in this case use of the coalition to gather support for the advocacy issue) but failed to carry it through to systematically and chronologically plan, implement, monitor and evaluate the efficacy of the strategy of using the coalition. As a result ZWLA did not pause midway to take stock of what had happened to the coalition members in order to try to salvage the situation. Instead ZWLA realized that it was on its own with the marriage law reform agenda. Although here and there a coalition member can still be found talking to its grassroots members about the marriage law reform it is not under the drive of ZWLA as had been originally envisaged. This sad development thus calls for a discussion on how coalitions can be managed.

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14 Christine Munalula 'The Land Act and human rights issues in Zambia', Advocacy in Southern Africa, CORE

- (a) How do you determine who comes to your coalition or vet your coalition partners so that you do not invite them indiscriminately, even if they are not in your line of work? There is also need to assess what added value a coalition member can bring to the advocacy issue even before you engage them so that they do not become redundant in the coalition and bring about unnecessary divisions and disputes.
- (b) Where you already have a coalition how do you vet what each member can and cannot do? This assessment is important in that it brings out the reality of what each member can reasonably do and how much time they can give to the coalition business bearing in mind that they are also in full time employment at their own organizations.
- (c) Coalition members need to be aware from the onset that their concerted efforts are the major ingredient in bringing about the desired change. This is because some coalition members may lose interest during the process if they think that the benefit and credit for their efforts is not accruing to them but to other organizations. It is therefore important that the objectives of the programme be set out clearly and only those willing to go along with them remain in the coalition. That way unnecessary competition and jealousy is avoided among the members.
- (d) There is need to constantly follow up coalition members to ensure that they are doing what they undertook to do and also to get feedback on how the process is developing. All these activities require a sound budgetary allocation if they are to be carried out efficiently.

### **Use of peer educators as communication conduits**

The use of the ZWLA peer educators was one way that ZWLA had identified to facilitate communication between ZWLA and the communities. Twenty-nine women had been identified from Harare and the surrounding rural and urban areas to become community paralegals to help their communities with basic legal advice. These women were specially trained by ZWLA in different areas of family law for a period of about twelve months after which they were certified as competent to give basic legal advice in their communities. When the marriage law reform campaign started ZWLA decided to use them to disseminate information on the advocacy issue in their communities. Unfortunately their task was not as easy as ZWLA thought because of the following:

- (a) As discussed, most of the peer educators felt that they could not act as the communication conduits that ZWLA wanted them to be because they did not fully understand the issue.
- (b) Morale was very low among the peer educators because they felt that although they were doing voluntary work in their communities, they did not receive any form of support from ZWLA. In the case of the peer educators from Murehwa, some of them travelled on foot for long distances to talk to people in their communities about the marriage law reform. Some were even carrying babies on their back and they complained that hunger and exhaustion was their main enemy as they were trying to carry out their mandate. There is no allowance from ZWLA to cover their transport, stationery and food while they are in the field. ZWLA has no budget for the peer educators. As a result there is no motivation for the peer educators to do any of the work.
- (c) ZWLA had not fully considered what the proper role of the peer educators in the marriage law reform would be. Were they field workers for ZWLA working on all the activist

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15.Source: Branel Mwangala 'Advocating for a peaceful campaign and free and fair elections: The role of the Committee for a clean Campaign (CCC) in the November 1996 Elections in Zambia', CORE, Johannesburg South Africa 2000.

programmes even without the supervision of ZWLA? Or were they to be on stand-by for ZWLA's use when it needed their services?

This same question was asked of Women's Action Group (WAG) field workers in the evaluation done in 2001. The finding was made that peer educators were not being used to decentralize the services of WAG in an efficient way. Instead field workers were redundant during the periods when WAG did not have any on-going projects with their communities. This defeated the purpose of having them in the first place. Another example is the march that Women's Action Group called for against the rising incidents of rape in Zimbabwe on 10 February 2004. Instead of women activists staging these marches all over Zimbabwe or at least where there are peer educators, the march was attended by a handful of women from the Women's Coalition in Harare. This watered down the possible effect that it would have had if women all over Zimbabwe had risen in protest.

The emerging lesson from the issues discussed above is that the need to carefully plan all the moves and adequately budget for them cannot be overemphasized for any organization wishing to do advocacy work. If this had been done by ZWLA in the first place it would have avoided creating slaves of the community women who are already worn out by their other gender roles and responsibilities. It would also have ensured that the peer educators on whom it had spent so much money training would be used as true communication conduits for the empowerment and enrichment of their communities in an efficient way rather than only under ZWLA's tight control.

### **Involvement of non-legal professionals in the process**

The other factor that I perceived as going wrong in the ZWLA marriage law reform process was that even though the reform was about the law, it did not have to be confined to lawyers alone as if only the legal profession would use it.

'Law reform is too important a process to be left to lawyers alone,' (Joyce Kazembe a social scientist from SAPES TRUST).

It was generally felt by most groups of people that I interviewed that the ZWLA marriage law reform process was a purely legal affair. Although ZWLA maintained that they had involved non-lawyers it emerged that any women who were not members of the Women's Coalition were not involved at all unless they were lawyers. Social scientists like one of my informants Joyce Kazembe felt that such exclusions do not do justice to the process of law reform and should be avoided at all costs. Others felt that by monopolizing the process of law reform, lawyers behave as if the law operates in a legal vacuum and that it has no relation to the social, economic and cultural environment in which people live.

This points out to the need for other professional perspectives on a problem, particularly one like marriage law reform, so that it is approached in a holistic way.

### **Timeliness of advocacy issue**

On investigating whether or not the marriage law reform issue had been introduced at the right time there were two different schools of thought. The first one to which ZWLA vehemently adhered was that the issue was timely because of the following:

- (a) The fact that the Ministry of Justice had come up with a white paper on reform of marriage laws in Zimbabwe shows that the government was ready for the advocacy issue. ZWLA simply partnered with an already willing ministry and the collaboration so far between the Minister and ZWLA shows that marriage law reform is the issue of the moment.
- (b) The fact that the Law Development Commission was at one time gathering views on the status of unregistered customary law unions also indicates that the area of marriage law is one that is fraught with problems thus badly in need of reform.
- (c) The fact that the office of the Registrar General is working on resource mobilization for the establishment of a central marriage registry indicates that even the Registrar General is convinced that the current system is not working well.

Three members of parliament that I spoke to shared the view that the time is perfect to debate something politically neutral like marriage law reform. As it is (they said) parliament is almost always debating on legislation that is politically motivated or legislation that brings out the political divisions in the House.

They also pointed out that there are some developments in the House of Parliament that point to the commitment by the current parliament to address the concerns of women. These are:

- (a) For the first time there is a Women's Parliamentary Caucus that brings together women Members of Parliament from both ZANU (PF) and the MDC parties to address women's concerns in Zimbabwe.
- (b) Organizations like Women in Politics Support Unit have come out in full support of women members of parliament and to help build their capacities of understanding gender as well as exposing them to regional and international bodies that help sharpen their understanding of gender.

The coordinator of the Women's Coalition believed that this was an opportune time to bring up the marriage law reform issue because with a House that is seriously divided along political lines as ours, ZWLA needs only to go to each party with their demands and simply say that these are our demands as women, support us and we will vote for you.

The majority of ordinary women and men whom I interviewed however were of the view that the timing of the marriage law reform programme was atrocious. The following is an extract of one interview that I held with a group of men and women at Murehwa Centre:

**Question:** This issue that we were talking about, do you think that it is the right time to talk about it among ourselves and take it to Parliament to debate on?

**Answer:** Surely you can't say that at a time like this we allow Parliament to spend precious time debating about this issue.

**Question:** What do you mean "at a time like this?"

**Answer:** You know what we mean. Here we are grappling with ever-rising cost of living, food shortages, no medicines in the hospitals; the doctors have been on strike for over a month now demanding salaries of 30 million dollars per month, where will it come from? Some of us lost our jobs in the city because our companies had closed down, now we don't know how our families will survive or go to school. Perhaps if

you were like Christian Care that is really assisting people with food then you could be useful, but not this.

Others (including some women) who echoed this sentiment asked why the issue was coming in now and not earlier or later since marriage is not a new thing but one that has always been there.

One analyst in the Women's Movement had this to say on this issue:

'I am not sure if our government is really willing to address women's concerns, either now or later. Look at what the President has just done with the Cabinet. Does he strike you as someone who has been listening to us at all?'

This was in reference to the Cabinet reshuffle that had just taken place (February 2004). In the reshuffle ALL the new Ministers and their deputies were male. The reshuffle did not see any new women being ushered into Cabinet.

It is therefore important that a good advocacy programme be considered in the light of the economic, social, and political climate of the day. Lisa VeneKlassen and Valerie Miller<sup>16</sup> on timing of advocacy point out that developing effective strategies requires careful political analysis of ever-changing opportunities and constraints such as international events like UN conferences, World Trade Organization and G15 meetings. These meetings provide opportunities for transnational advocacy and high level dialogue with policy makers that boost national advocacy.

But given the political, economic and social turbulence of most African states will the time ever be right to introduce marriage law reform or talk about women's rights? I do not think so. In my view the challenge is how to mainstream gender issues in all the challenges that the nation is facing so that it makes the necessary connection between gender inequality and those issues that it perceives as paramount. For example, how the unjust matrimonial property laws affect women's rights to benefit under the on-going land reform process.

### **Lessons from the region**

When the marriage law reform was being conceptualized ZWLA convened a workshop of women's organizations from southern Africa to come and share their experiences on marriage laws. The participants gave detailed accounts of what the legal positions were in their countries regarding areas of family law like polygamy, unregistered customary law unions, guardianship, division of property upon divorce, and so on. The participants also shared their experiences on the road to family law reform. To this extent the experiences of South Africa and Mozambique were particularly useful. South Africa mainly shared experiences on the mobilization process and the preparations for the implementation of the new law. They also shared how they had dealt with detractors and people with divergent views.

Mozambique's experiences were mainly on the lack of political will by their government to enact the law reform.

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<sup>16</sup> *A new wave of power, people and politics: The action guide for advocacy and citizen participation*, Oklahoma city; World Neighbors 2002 ([www.hrconnection.org/advocacy/comparing.html](http://www.hrconnection.org/advocacy/comparing.html))

The above lessons learnt from the region became the guidelines for the formulation of the ZWLA marriage law reform, particularly the content of such reform. However lessons learnt at that workshop and on visits to South Africa that ZWLA undertook *on the processes* (my emphasis) do not seem to have been incorporated into the ZWLA marriage law reform process. This is evidenced by the fact that for the past ten years or so Mozambique has been grappling with reform of marriage laws but to date the issue has not been addressed. Although ZWLA knew from the Mozambican experience that the government could stall on the issue like they did with the Musasa Project- driven Domestic Violence Bill, it nevertheless has no alternative strategies in place to avoid the same pitfalls as Mozambique and the Musasa Project. An analysis of the ZWLA proposal for funding for the advocacy issue, the annual work plans for 2003 and 2004 reveals that the possibility government stalling has not been planned for.

Drawing lessons locally and from the region ensures that an organization is alert to factors that might become stumbling blocks and so maps out alternative strategies for all eventualities. As activist organizations it is also important that delays that may be caused by the law and policy makers do not cause us to fall into a deep slumber whilst we wait for things to happen. We need to be continuously active, for example, issuing public statements whenever violations of women's rights occur even though they may not be related to our current advocacy issue. Civil society organizations also need to join hands with other players in the human rights arena and avoid the mistake of taking an observer's stance when human rights violations occur. Most women's organizations lose their activism by confining themselves to their current advocacy issue, for example, marriage law reform for ZWLA, and 'ghettoizing' women's concerns by divorcing them from the overall human rights arena. This is how the Legal Assistance Centre (LAC) in Namibia keeps up its activism and is always talk of town when it comes to advocating for the protection of human rights. LAC is also heavily involved in test case litigation as an alternative to lobbying for law reform. Documentation of the whole lobbying and advocacy process is also essential to preserve institutional memory.

It is also important that lobbying efforts should target **ALL** members of parliament and politicians and not only the special parliamentary portfolios. For example, ZWLA has been working closely with the parliamentary portfolio on gender and the Parliamentary Women's Caucus. The rest of the members of parliament do not fall into these categories so do not know much about the proposed reforms. They complained that sometimes they learn of these reforms from their constituencies who may have been targeted by ZWLA and they look stupid before their constituencies because they are supposed to know what is happening or what's going to happen in parliament.

In concluding this chapter I refer to the factors that I observed as having gone wrong in the ZWLA marriage law reform process, namely, the process of consultation and constituency building, the information dissemination process, the use of coalitions, the use of peer educators, timing of the advocacy issue and inability to draw lessons from the region on advocacy. In my view all these setbacks are easily surmountable with proper planning and strategizing and a politically-friendly environment. I however conclude that it is possible that an organization may do all the above activities properly but still meet the hurdle that for various reasons the government is not willing to make the legal reforms. What can the steering organization do in that case? This issue is fully discussed in Chapter Four.



## CHAPTER FOUR

### **Other factors shaping advocacy**

In this Chapter I discuss factors that are important to advocacy work but are not necessarily related to how an organization has organized itself. These factors are the role of lawyers in law reform and the management of public participation; the importance of keeping professional contacts with the government (at what cost?); how to handle compromises and lack of political will driven by patriarchal beliefs on the part of the government; and pursuing a realizable agenda.

#### **Management of public participation**

For this kind of work (reform of marriage law) it is mandatory to have a constituency in order to counter the argument that ‘it is only a few disgruntled elite women who are trying to impose Western ideologies on the population and trying to confuse our women’ which patriarchy often throw at women’s organizations that try to raise awareness on women’s rights. Furthermore, because this kind of law affects almost everyone in one way or another – unlike, for example, banking law – it follows that people should be allowed to talk and have their views heard, their fears allayed and their misunderstandings thrashed out.

It is important to remember that an organization seeking law reform through its constituency-building efforts can never get consensus on everything. In that case whose voice is heard at the end of the day? Whose views reach parliament? What do you do when the people speak but what they want is retrogressive to the goal that your organization seeks to advance? An example is the Zimbabwean Constitutional Reform Process of 2000 where over 60 per cent of the people interviewed said they wanted the death penalty to be retained in spite of the fact that the human rights trend the world over is to move away from it? If the organization proceeds to draft what is progressive in contrast to what the people have said is that not deceiving the people? It may prove costly and dangerous to the organization as people start to mistrust your organization and believe they were used and that the process of consultation was merely window dressing.

Clearly the issue becomes one of managing popular participation in the law reform process. The steering organization needs to be aware that progress can be significantly slowed down because the public gets too romantic about their power to make law reform fail or succeed. In other words there comes a point in the law reform process when lawyers have to be frank enough and say that after a certain point in the consultations they will drive the process of law reform. This is in order to avoid the chaos that may result from each member of the public trying to exercise the powers vested in him or her to reform the law. If the process of consultation is done properly then lawyers can be justified in becoming the sole negotiators in the lobbying process so that they ensure order and progress.

#### **Professional contacts with the government**

One aspect that I found in favour of the ZWLA marriage law reform is that it had professional contacts with the government not only on the marriage law issue but in other areas of women and law in Zimbabwe. For example ZWLA worked closely with the government on the formulation

of the Zimbabwe Gender Policy and on strategies for the eradication of gender based violence in Zimbabwe. As a result of this good working relationship the government has an open door policy with ZWLA on the marriage law reform programme making it easy for ZWLA to make appointments with the Minister of Justice to discuss developments on the programme.

It has however been argued that the government employs the tactic of divide and rule to weaken the voice of civil society organizations. By choosing whom it is ready to work with the government is sending out the message that unless an organization toes the government line it cannot be supported by the government in its law reform efforts. The co-ordinator of the Women's Coalition pointed out that the government's technique of having favourites among organizations seriously undermines their ability to speak up against abuses of rights by the government. They fear that if they do so they may jeopardize their chance of having their law reform agendas realized.

After all is said and done, it is still important to remember that a law reform agenda is greatly achievable if there is a good working relationship between the government and the organization seeking reform. The challenge for organizations is how to balance between being a partner of the government in development without necessarily losing its objectivity and autonomy.

### **Pursuing a realizable agenda**

My research revealed that the ZWLA marriage law reform programme has great potential to succeed very soon. This is because almost everywhere in the justice system there was talk of the marriage law reform. Firstly government itself was working on reforming marriage laws in Zimbabwe. Secondly the Law Development Commission was engaged in looking at ways in which women's rights can be protected in unregistered customary law unions. Thirdly the judiciary was running ahead of law reform by making judicial statements to the effect that the current marriage laws were unfair to women. Fourthly in the region South Africa had reformed its marriage laws and they are working well, apart from some administrative issues that are arising from its implementation. So the scene is set for marriage laws to be reformed in Zimbabwe and it is not overstating it to say that the issue will not remain on the ZWLA agenda for too long.

In contrast the National Constitutional Assembly (NCA) has been pushing for a new constitution since Zimbabwean's rejection of the government sponsored constitution in 2000. There is no doubt that there is need for a new constitution in Zimbabwe. However the government has made it clear that it will not consider the issue of constitutional reform any time soon. The NCA believes that it will force the government to revisit the issue of the constitution by any means necessary and this has included some bloody running battles with the police. This is a totally different push for law reform beyond the scope of this study. One of the essential components of advocacy as per the definition is that the process has to be a peaceful one.

### **Lack of political will by the government**

This is one hurdle that any organization may face at any stage during its law reform process. There comes a time when everything has been done properly and victory is in sight but government starts dragging its feet on the reform because there is simply no wish on its part to do so. This may be because the government is not prepared for the budgetary implications that the reforms will entail or simply because the patriarchal order that dominates the government feels

threatened by upsetting the status quo which gives them privileges that are derived from the continued subordination of women. Or the patriarchal order that speaks through the government may decide to compromise by only granting limited reforms but refusing others.

For example in the ZWLA marriage law reform process the government has clearly indicated that it is ready to consider some aspects of the proposed reforms but not equal rights of guardianship between the parents of a minor child. This is a typical patriarchal view that feels threatened by the idea of having power over subordinates shared with another person, in this case the mother!

**What can an organization do under these circumstances?**

Where the consultation process was done well – carrying the people along in the reform process – the negative effects of stalling, compromises and lack of political will can be minimized by going back to the people. By building stronger voices using all the strategies discussed elsewhere in this dissertation and making sure that everywhere people continue to clamour for change, the government may be forced to reconsider its position and grant the reforms.

In conclusion an organization can do well by preparing and planning for its advocacy issue in a logical fashion and avoid carrying out law reform work in an ad hoc and haphazard way. An organization can also do well by being able to read the political, economic and social environment on whether reform is possible or not. Patriarchy may be the last major drawback that may hamper the progress of a law reform agenda. Where patriarchy rears its ugly head like this it need not have a fatal impact on the law reform agenda, especially when the process of advocacy planning and strategizing has anticipated such a move by the government.

## CHAPTER FIVE

### Lobbying and advocacy model

In this last chapter I propose a lobbying and advocacy model which serves as a checklist in the process of advocacy, lobbying and information dissemination. The model is based on all the lessons that I drew from the ZWLA experiences and other relevant literature on the issue.

#### MARRIAGE LAW REFORM

Objective	Activities	Target	Methods	Problems	Results	Strategies	Efficacy measuring
Advocacy	Identify an advocacy issue. Carry out research to determine causes and magnitude. Carry out consultations for input by people into the issue. Draw up a lobbying document	Men and women of all ages, community leaders, academics civil society organization partners, rural and urban populations	Research, consultations with key players. Build coalitions	No advocacy plan. No drive from steering organization. Jealousy and mistrust among coalition members. Failure to use participatory approaches to consultation processes. People may feel inadequately consulted. Some groups may feel that issue does not need reform. Diversity of views may slow down process of	Broad consensus on the need for law reform. Although there might not be 100% consensus there is at least a basic agreement in principle	Involve people as much as possible and make their views count. However do not allow reform to be bogged down by unreasonable dissent. Use art of persuasion where necessary.	Use case law, lessons from the region, international human rights instruments and the bill of rights in the constitution to measure the efficacy of the desired reform.

				drawing up lobbying document. Issue may be badly timed, Government may not be willing to give the reforms.			
Dissemination of advocacy issue	<p>Use multi media for wider reach.</p> <p>Plan carefully for rural-urban, male-female variables.</p> <p>Build in a component of human rights and democratic governance to empower people to know how to use the knowledge gained to influence law reform.</p> <p>Build in strong feedback mechanisms.</p>	Men ,women, youths, traditional leaders, churches, rural and urban settlements and the Zimbabwean population at large.	Multi media ( includes radio, television talk shows, print media, newsletters, posters, pamphlets, T-shirts, caps, pens, billboards, school competitions, video drama, music, one on one meetings and workshops)	<p>Targets may fail to understand issues because they are too complex.</p> <p>Danger of inaccurate information circulating</p> <p>People may not know what to do with the information thus gained.</p> <p>Inadequate feedback mechanisms</p> <p>Inadequate resources to carry out multi-media campaign</p> <p>Unfriendly political environment and media laws.[</p>	<p>Population basically aware of marriage law reform</p> <p>People feel a sense of ownership of the marriage law reform programme</p> <p>When the law is passed there are minimum or no gaps in implementation</p> <p>Women benefit from an equitable justice system</p>	<p>Ensure that you make deliberate efforts to target women and men equally.</p> <p>Broad base coalitions to cover wider ground</p> <p>Use information conduits to bridge gaps between your organization and identified communities</p> <p>Design specific messages for specific target groups and avoid the one text fits all</p> <p>Anticipate who your detractors are and design messages specifically targeting their resistance.</p>	<p>Amount of feedback generated</p> <p>When the law is passed are the people using it?</p>

Objective	Activities	Methods	Target	Problems	Results	Strategies
Lobbying	<p>Encourage Parliament to pass the legislation</p> <p>Hold meetings with Parliamentary portfolios responsible for your area of work</p> <p>Meet with the Minister responsible</p> <p>Meet with selected female and male MPs</p>	<p>Lunch time meetings</p> <p>Attend Parliament to determine sources of resistance</p> <p>Workshops</p> <p>Flyers with simplified materials</p> <p>Multi media campaigns</p> <p>Press statements</p> <p>Put pressure on government through donor community and fellow governments</p> <p>Take advantage of highly publicized tragedy to push for reform agenda</p> <p>Use international forums e.g. the Commission on the status of Women (CSW) to point at lack of commitment by government to address your concerns</p> <p>Encourage your communities to take up issues with</p>	<p>Members of Parliament</p> <p>Minister responsible for your area of work</p> <p>Political parties</p> <p>Selected female and male MPs</p> <p>Parliamentary portfolios responsible for your work.</p>	<p>Lack of political will</p> <p>MPs may think they have more pressing issues to deal with</p> <p>No professional contacts on the part of the NGO with the government</p> <p>Unrealizable agenda</p> <p>No adequate budgets to carry out lobbying activities</p> <p>Insufficient research, data and evidence to back up need for law reform</p> <p>Inexplicable delays – Issue may be thrown back and forth for no clear reason</p> <p>Government only willing to award so much and not everything on the reform proposal</p>	<p>Passage of legislation or amendment for the benefit of your target group</p>	<p>In your planning include alternative lobbying strategies in case the obvious ones do not bear fruit</p> <p>Determine causes of delays and strategize accordingly</p> <p>Be ready to compromise and continue to push for further reforms.</p>

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The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

The African Charter on Human and People's Rights

The Universal Declaration of Human Rights

The Protocol to the African Charter on Human and People's Rights

**LIST OF STATUTES**

Marriage Act 5:11

Customary Marriages Act 5:07

Matrimonial Causes Act 5:13

Broadcasting Act

The Constitution of Zimbabwe





