

# *From Developmentalism to the HIV/AIDS Crisis*

THE AMPLIFICATION OF WOMEN'S RIGHTS IN LESOTHO

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## Abstract

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Contrasting the socio-political contexts of large-scale development and the HIV/AIDS crisis in Lesotho, our analysis captures important historical conjunctures that expanded opportunities for the mobilization of women's rights as human rights. Local women's rights organizations, such as Women and Law in Southern Africa (WLSA), found greater support and resonance for women's rights claims amid the socio-political context of the AIDS crisis, in marked contrast to the stifling of those same claims during a period of neoliberal, nationalist development initiatives in Lesotho. The AIDS crisis in particular introduced new international actors that helped support a 'frame bridging' strategy whereby women's rights were characterized as health rights, rooted in a critique of the AIDS crisis that identified the role of gender inequality as an important driver of the epidemic. These links to transnational feminist networks as well as to international health agencies bolstered the critiques of gender inequality articulated by WLSA and other women's rights advocates, helping usher in a series of legal changes in Lesotho in 2003 and 2006.

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## Keywords

women's rights, human rights, Lesotho, gender politics of HIV/AIDS, gender politics of development

## INTRODUCTION

The HIV/AIDS prevalence in Lesotho ranks third highest in the world, wreaking social and economic havoc. Lesotho, unfortunately, offers us the chance to see how crises like HIV/AIDS, similar to the 2004 tsunami in Southeast Asia

and Hurricane Katrina in the United States, render visible existing inequalities, marginalization and vulnerability, particularly when local and transnational advocacy networks become involved. In what follows, we contrast two contexts for the mobilization of women's rights claims in Lesotho, centered around, firstly, a large, multi-decade, dam development project and, secondly, an international health response arising from the HIV/AIDS crisis in the region. The succession of these initiatives exposed an historical conjuncture, we argue, at which the cultural and political terrain for human rights claims-making shifted positively toward a broader conception of women's rights as human rights and away from the stifling, economic language of development and human rights. Rights-based claims failed in one context but achieved modest success in the devastating context of HIV/AIDS. To give some explanation for this puzzle, we offer a historical narrative of the two periods, beginning with the large, World Bank-sponsored dam project, and culminating in legal changes in Lesotho in 2006, in order to unveil the intersections of large-scale social changes with shifting terms of contestation over women's rights in the region.

Lesotho is a small, mountainous country, which is landlocked and surrounded by South Africa on all its borders. Historically, Lesotho conforms to a classic model of a dual economy, with a primary subsistence sector in the rural regions of the country and a migratory labor reserve economy dependent on South Africa's mining and industrial sectors. The persistence of labor market dependency on South Africa, which increasingly pulls displaced women to South Africa's textile and domestic service economies, is also reflected in the developmentalist promise that Lesotho must market its 'white gold' (i.e. water) to South Africa as a pathway to socio-economic development. As one tragic result of the contradictions in this long history of dependency, displacement and the promises of development, the oscillating migration pattern contributed to the rise and spread of sexually transmitted infections (STIs) and diseases in Lesotho, including HIV/AIDS (Colvin and Sharp 2000).

We argue that the peak of the HIV/AIDS crisis in Lesotho (from the mid-1990s through to the mid-2000s) – in conjunction with changing socio-political alliances and feminist discourses in Lesotho and Southern Africa – offered a political opportunity for those long working to change the gendered laws of Lesotho that deemed women second class citizens. Mobilizing around universal claims about all people's right to health, activists in Lesotho, and Southern Africa more generally, were able to successfully employ human rights language in the context of the HIV/AIDS epidemic to challenge laws that codified gender inequality. This hard-won achievement is all the more striking considering that similar challenges failed throughout the 1980s and 1990s, in the context of the international development programs pursued prior to and at the outset of the sharp rise of HIV/AIDS in Lesotho. Both national elites and international development agencies, bound to a discourse about the promises of neoliberal development, consistently

resisted and easily subsumed legal challenges that promoted women's rights during this developmentalist period.

And, despite the *stated* progressive goals of these international and national development plans, the *actual* policies and programs implemented by development authorities served to entrench and exacerbate gender inequality in the project areas. In contrast, the HIV/AIDS epidemic offered a political opportunity for women's rights advocates in Lesotho and Southern Africa to successfully use discourses based in international health rights to push through legal advances on behalf of women.

## CONSTRUCTING WOMEN'S RIGHTS AS HUMAN RIGHTS IN LESOTHO: FRAMING, TRANSNATIONAL FEMINIST NETWORKS AND POLITICAL OPPORTUNITIES

Our approach to understanding changes to, as well as struggles over, women's rights claims in Lesotho builds on a range of literature that identifies human rights as an ideology and 'master frame' – a flexible and inclusive interpretive schema by which groups may articulate grievances (Benford and Snow 2000) – bound to global power structures of the North and shaped, contested and appropriated by transnational feminist networks (TFNs) as well as local movements in the postcolonial South. As such, human rights discourses are constructed and contested. Efforts by feminists over the last several decades to specify and concretize a gendered understanding and implementation of human rights offer rich insights into this constructed quality of human rights' discourses (Friedman 2003; Ferree and Tripp 2006).

Yet a gendered conception of human rights poses a challenge for both scholars and activists in making use of otherwise universalistic and often decontextualized cultural forms. How and why a particular conception of 'rights' is invoked in a struggle is not necessarily a matter of strict preference by activists. The language of rights, like any effort to express grievances, is varied, and the responsiveness and resonance (Benford and Snow 2000) of a particular image of rights is determined not only by those who use it, but by those to whom the appeals are made (Capek 1993). Feminists must do the symbolic work of making visible otherwise invisible assumptions about the universal and androcentric notions of human rights, usually in a patriarchal context, while at the same time crafting a culturally-specific and, at times, a woman-specific expression of rights. Finding a 'frame' that resonates is sometimes a gift of tragedy or chance. The idea that human rights frames are simultaneously constructed within and bound by a socio-political context is directly applicable to our attempts to better understand how in one setting women's grievances made no headway in Lesotho and, in changing circumstances, found resonance in a new form.

Three important regional and global dynamics helped usher in a more expansive and inclusive notion of human rights during the 1990s, especially

pertinent for women's rights advocates in Lesotho. First, as much of the literature notes, there arose a relatively successful fusion of human rights discourse with a transnational campaign around violence against women (Keck and Sikkink 1999; True and Mintrom 2001; Walby 2005). This fusion, as well as numerous health and development campaigns, demonstrated the capacity of proponents of human rights ideology to work with 'frame bridging' strategies, whereby activists link 'two or more ideologically congruent but structurally unconnected frames regarding a particular issue or problem' (Benford and Snow 2000: 624). Originally conceptualized as a 'frame extension' concept in the social movement literature, frame bridging tells us something about the importance of the symbolic work of professionals and activists as they engage in strategies to forge both institutional and cultural impacts. Preparations for various United Nations conferences in the 1990s, and follow-up work associated with them, led to a series of extensions to the basic human rights narrative that declared the gendered nature of numerous worldwide problems: that environment, human rights, employment, citizenship and health are all women's issues and that addressing them requires attention to underlying gendered realities (Friedman 2003; Moghadam 2005). Frame extension via the bridging of congruent frames proved successful, particularly in terms of the linkage of violence against women to the public/private divide that worked to conceal and legitimize rights violations (Kaplan 1997). Overall, women's rights claims had an important impact on the discursive constructs of human rights during the 1990s and early years of the 2000s (Hodgson 2003; Kelly 2005).

Second, the relatively successful framing of women's rights as human rights was further impacted on by the diffusion of these framing strategies via TFNs. These substantially enlarged prior to and following the 1993 UN World Conference on Human Rights in Vienna and the 1995 UN Fourth World Conference on Women in Beijing (Moghadam 2005). Further, as Moghadam argues, the proliferation and expansion of TFNs helped soften the

North–South divide among women activists and transcended the earlier political and ideological differences through the adoption of broader feminist agenda that included a critique of neoliberalism and structural adjustment policies as well as an insistence on women's reproductive rights, bodily integrity and autonomy.

(Moghadam 2005: 9)

Research on transnational advocacy networks has illustrated their important role in challenging elements of neoliberal globalization. In the case of Lesotho, such networks proved critical to substantiating a link between the emerging HIV/AIDS crisis and a language of women's rights aimed at combating that crisis and the patriarchal patterns that exacerbated it.

Third, what Keck and Sikkink (1999) refer to as a 'boomerang' pattern – which occurs when transnational allies help boost local demands – is visible in the southern African context. Transnational advocacy networks, in sync

with local groups in the world's political and economic periphery, like Lesotho, rather than reproducing global system inequalities, may, as Smith and Wiest (2005: 621) conclude, 'help sow the seeds for its transformation'. The primary group in our case study, Women and Law in Southern Africa (WLSA), for example, not only worked as a regional women's legal advocacy group, but sustained growing ties to wider African and global TFNs. This group's adoption of the human rights 'master frame' also coincided with a shift from a discourse of needs to one of rights, akin to what Hodgson (2003) observed with another NGO, Women in Law and Development in Africa (WILDAF). With support from transnational networks and international agencies, the re-framing of women's grievances into a human rights language occurred as the HIV/AIDS crisis peaked, as we explore further below. As Keck and Sikkink (1999: 93) point out, 'Where governments are unresponsive to groups whose claims may none the less resonate elsewhere, international contacts can "amplify" the demands of domestic groups, pry open space for new issues, and then echo these demands back into the domestic arena'. Supportive links between local women's rights groups, like WLSA, and TFNs created an emerging opportunity for frame diffusion, transformation and amplification, connecting local struggles to the global expression of women's rights as human rights. Further, local and regional women's rights activists forged a wider set of alliances with development, anti-violence and health rights NGOs, expanding their voice while international health agencies simultaneously, and in sharp contrast to the economic development discourse of the World Bank and Lesotho national government, sought regional cooperation to tackle gender inequality and improve women's rights as a strategy to confront HIV/AIDS.

## NEOLIBERAL DEVELOPMENT, HIV/AIDS AND POSTCOLONIAL LESOTHO: CONJUNCTURAL CRISES AND OPPORTUNITIES

The HIV/AIDS crisis coincided with changing political opportunities<sup>1</sup> on three fronts in Lesotho, opening the door for political initiatives by women's rights advocates. As discussed further in our narrative below, the conjuncture of a changing national government in Lesotho, the rise of post-Apartheid South African political movements, and the increased presence of international health agencies, i.e. the World Health Organization and UNAIDS,<sup>2</sup> all helped introduce possibilities for linking women's rights claims to human and health rights<sup>3</sup> – something that was barely feasible in the previous World Bank-dominated era of neoliberal development discourse.

During the early-to-mid 1980s, the development priorities of international agencies, particularly the World Bank, no doubt cast a shadow over the government of Lesotho. The rise of a neoliberal vision of markets and development initiated a wave of structural adjustment policies by the International Monetary Fund as well as national and regional development agendas that

stressed export-oriented development models. In Lesotho, this neoliberal, export-oriented vision was articulated as marketing 'white gold', or water, to South Africa through the Lesotho Highlands Water Project (LHWP). World Bank and regional development agencies worked with the postcolonial, military regime of Lesotho to implement this agenda. Because neoliberalism promotes an extension of markets, the valorization of property rights and a privatization of public resources, political rights are diminished while rights in the market are elevated. With an emphasis on Gross Domestic Product (GDP) growth and large-scale infrastructure development to export water to South Africa, the military government of Lesotho fused nationalistic and traditional patriarchal idioms with neoliberalism. Despite feminist critiques of neoliberal development that helped expose the rift between the promises of market-led development, the retrenching of state social policies, and the gendered processes behind both, women's rights claims were treated as an affront to the principles of development.

The expansion of alliances among women's rights groups and TFNs, particularly in the late 1990s, coincided with another important regional political shift – the expansion of health rights campaigns in post-apartheid South Africa. A vibrant AIDS activist movement developed in South Africa in the years following the transition from Apartheid (Schneider 2002; Nattrass 2004; Johnson 2006). By the late 1990s, this movement initiated a number of legal, educational and direct action campaigns, challenging the pharmaceutical industry and the government of South Africa.<sup>4</sup> Over the course of this struggle, the movement 'contributed to the reshaping and expansion of international rights discourse to include a serious consideration of socioeconomic rights' (Johnson 2006: 668). Even the South African government,<sup>5</sup> as was especially evident in the contentious Medicines Control Act,<sup>6</sup> attempted to frame the epidemic of AIDS in ways that helped link socioeconomic conditions, such as poverty and gender inequality, to the spread of the epidemic (Johnson 2006). Resonating increasingly with the evaluations by international health agencies, AIDS activists and the South African government helped open alternative framings for activists working for women's rights in the midst of the HIV/AIDS crisis in neighboring Lesotho.

Further, the tragedy of the HIV/AIDS pandemic exposed the contradictions of neoliberal-inspired development. With nearly one-quarter of the adult population affected, or one in four adults aged between 15 and 49, HIV/AIDS rates in Lesotho are the third highest in the world behind Swaziland and Botswana. As health officials acknowledged, gender inequalities proved to be a major driver of the extent and severity of the HIV/AIDS epidemic in the region. Development driven by neoliberal prescriptions undermined public health and social and civil rights that might have been mobilized to offset the crisis. Thus, women's rights struggles in the context of this tragedy have not only posed new challenges to patriarchally structured social life, but also brought together women's rights claims with health

rights claims, in sharp contrast to the developmentalist discourse and neoliberalism.<sup>7</sup>

Our conjunctural analysis – examining the ‘intersection point of two or more separately determined sequences’ (Mahoney 2004: 92) – builds from the aforementioned literature and the empirical evidence to highlight the historical processes that made possible changes to the legal status of women in Lesotho, however moderate. Specifically, the framing of ‘women’s rights as human rights’, coupled with the diffusion of that discourse via TFNs and local women’s rights allies and NGOs, occurred amid emerging political opportunities stemming from the succession of a quasi-democratic regime in Lesotho; the rise of critiques of neoliberal development and of civil and political rights movements in neighboring South Africa; a push by international bodies (the UN and the African Union) for the inclusion of women in government; and the simultaneous *amplifying* and *gendering* of health rights around HIV/AIDS crisis. These contributed to a conjunctural shift, opening avenues for the limited institutionalization of women’s legal rights in Lesotho. This historical analysis, buttressed by extensive field work (involving participant observation, interviews and surveys conducted in Lesotho by the first author, Braun), reveals the impact of feminist agency over many years on the discourse and structures of an intensely patriarchal environment. These outcomes, though, were bound by shifting structures, and of course tragic events, that made the confluence of feminist work and institutional change possible.

## BACKGROUND ON LESOTHO

With a population of 1.9 million people, 80 per cent of the Basotho<sup>8</sup> population lives in rural areas and patches together a livelihood through gendered strategies that involve agriculture, livestock farming, wage labor and informal economic activities (Ferguson 1990; Epprecht 2000). As a traditionally patrilineal and patrilocal society, most households and inheritance are organized around the lineage of men (Epprecht 2000). Until recently, the customary and legal policies in Lesotho marked women and girls as legal minors throughout their adult lives. Women of any age needed men to access the full rights of adulthood in Lesotho – land ownership, bank accounts, loans and so on (Braun 2005). Women’s rights advocates long pointed to how women’s legalized secondary status contributed to a culture of violence; undermined the rights of women and girls in multiple ways (WLSA 2001); had significant impacts on their education, career, income, health, nutrition, sexual and reproductive rights, and safety from violence; and served to legitimate other customary relations of gender discrimination (UNICEF 1994; Letuka et al. 1997).

Attempts to de-naturalize this masculinist order in Lesotho have been met persistently by an intense effort to protect legal statutes that privilege men in all aspects of Basotho society and reinforce patriarchal norms that naturalize

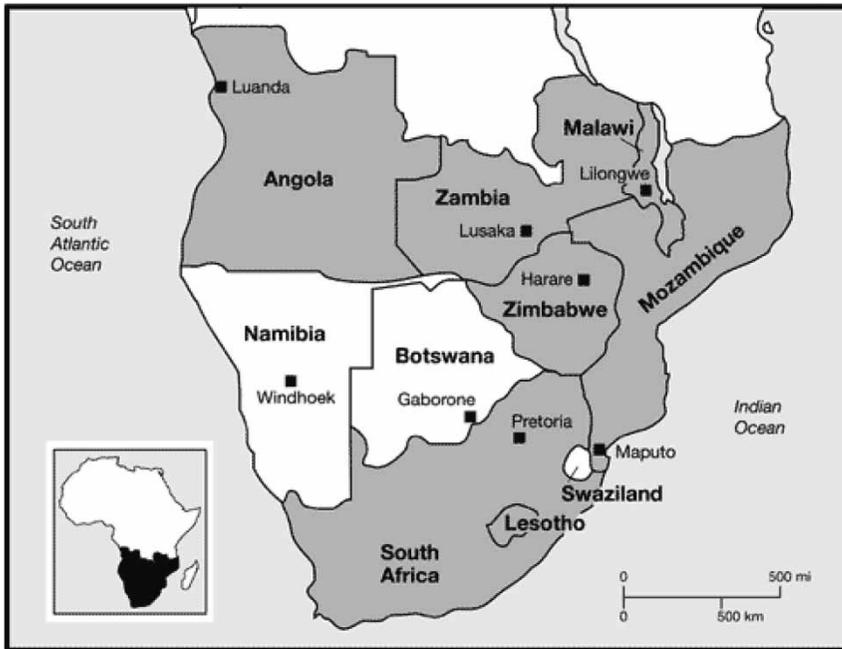


Figure 1 Map of Southern Africa  
 Source: Christian Aid (2005)

and reify women and children as second class citizens (Letuka et al. 1997). In such a starkly patriarchal climate, the claims of women’s rights advocates in the past were effectively marginalized by those in decision-making positions as challenging the entrenched investments in these masculinist institutions and practices and the male privilege they uphold.<sup>9</sup>

However, women’s *de facto* status as main providers of the household, often the primary farmers, and at times the heads of household, as well as consistent legal challenges to women’s limited *de jure* rights by women’s rights advocates locally and regionally, challenge any static notions of women’s roles in everyday life. This discrepancy between *de jure* and *de facto* visions of women’s lived realities emerged as central to a critical frame put forward by activists to challenge women’s secondary status, and it became increasingly significant in the developmentalist period of the 1980s and 1990s as the policies of the LHWP further constricted women’s rights.

Below, we contrast this developmentalist period with the era of the HIV/AIDS crisis in order to understand how challenges to the masculinist order in Lesotho were waged with different results. This exercise reveals the failure of both developmentalist and nationalist regimes to respond to women’s needs and their tendency instead to defend a patriarchal order. The contrast between the two time periods also reveals the importance of historical

conjunctures in creating spaces that punctuate and amplify the decades-long efforts of women's rights advocates in Lesotho. Additionally, it reveals the ease with which neoliberalism as an economic ideology subordinates all political and moral claims to property and economic rights and constrains broader human rights claims.

## DEVELOPMENT AND THE LESOTHO HIGHLANDS WATER PROJECT

The LHWP is a water delivery scheme between the governments of South Africa and Lesotho that will eventually include five dams linked to cross-national tunnels constructed in four phases over a period of thirty years (1987–2017). Based on a 1986 agreement called the 'Treaty on the LHWP between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa', the primary objective of this \$8 billion World Bank project is to sell, transfer and deliver water from rural Lesotho to urban South Africa. In the mid-1980s the LHWP mega-project became the symbol of Lesotho's long-term national development plans for economic growth and human development and, according to the economic visions of World Bank consultants, the best path to the much-needed promise of neoliberal development in Lesotho.

Development authorities are required to have in place compensation policies to mitigate the material losses caused by their activities as well as rural development programs to address the socio-economic dislocations that result (Tilt et al. 2009). The design and implementation of the LHWP's compensation and rural development components largely disadvantaged rural women (Braun 2005). For instance, only men, automatically deemed the head of household regardless of the household's situation, could receive resources from the development authorities, unless authorized otherwise by a village chief. The Rural Development Plan (RDP) was, by design, gender-segregated, with the provision of credit and job training drawing on rigid, stereotypical expectations about men and women in the labor market.

While the RDP programs were not fully implemented, the design of both the compensation and rural development elements signals how women's access to resources was re-configured in this developmentalist period to reflect the *de jure* status of women's rights as opposed to the common *de facto* status of women in households. In fact, patriarchally structured policies such as these worked to intensify women's inability to access to resources (Braun 2010a), creating the conditions that increased women's vulnerability to poverty, food insecurity and HIV/AIDS, and further entrenching gender inequality in Lesotho (Braun 2010b).

Local and regional women's rights advocates and allies challenged the gendered laws of Lesotho during the years of the LHWP. One of the primary organizations to do so was WLSA, a powerful non-profit legal research and advocacy organization working for women's rights regionally and in each of

its seven program countries, including Lesotho (through WLSA Lesotho). Bridging local and nationally bounded struggles, WLSA uses action research and lobbying to question and challenge laws, policies, and practices that disadvantage women and children. According to its regional website (WLSA 2009a):

WLSA takes the perspective that the official customary law of Southern African states is a rigid, skewed and sometimes distorted version of the actual customary law at the time when it developed, which often has little to do with the lives of the people in whose name it has been applied. We believe that the historical roots of customary law must be uncovered and a fresh analysis of women's rights must be made.

Despite the progressive statements about the LHWP from international and national authorities, women's rights advocates like WLSA met persistent resistance during the late 1980s and 1990s. Using evidence from across the region, they pointed to the contradictions of the promises of development under the LHWP for the rural poor and particularly for women, arguing that developmentalist agendas did not necessarily equate or lead to social and economic rights for women. In its challenges to the Lesotho government on behalf of women's rights, WLSA's advocacy continually invoked notions of human rights and human rights language that mirrored the language of Vienna and Beijing as well as that of international institutions that promote human development as part of projects like the LHWP. Arguing women's rights are human rights, WLSA and others advanced the rights of women as integral to the ideological project of development as well as congruent with the contemporary material realities of rural Basotho life (WLSA 1994, 1997).

At this time, women's rights advocates such as WLSA fluctuated between asserting that many Basotho women were already living with these rights – such that legal changes would only be codification, as opposed to radical change – and asserting that legalizing women's rights was necessary in order to remove the possibility of the pervasive discrimination and violence women face in contemporary Basotho society (WLSA 1994, 2001). In either scenario, these legal changes were seen as providing a clearer sense of socio-cultural expectations regarding women's rights and, for women, legal recourse for rights violations (WLSA 2000). Development authorities and the government of Lesotho consistently resisted and dismissed legal challenges that aimed to promote women's rights, however. The neoliberal notion that economic development via such extractive projects as the LHWP will subsequently generate socio-economic and human development – and alleviate social inequalities along the way – dominated the nationalist discourse on development during this period. Challenges to this ideology, such as questions about the impacts on women and women's rights, were effectively stifled as unpatriotic and anti-development. Such nationalistic claims and threats were serious business in the years following the end of the repressive military regime of Justin Metsing Lekhanya (1986–91). In the mid-1990s, the tenuous

new democracy that reframed the LHWP as its nationalist project was vigilant in protecting its claim to a new democratic and neoliberal era in which Lesotho would develop and flourish, despite the country's past reputation as hopelessly poor in some circles of the international development community. And, despite the LHWP's progressive goals, the actual policies and programs served to entrench and exacerbate codified gender inequality in the project areas.

By the late 1990s, Southern African Development Community (SADC)<sup>10</sup> coordination around development, security and gender began to coalesce in response to earlier international commitments. The 1997 SADC Declaration on Gender and Development and the 1998 amendment on violence against women connected gender discrimination, inequality and violence to the lack of women's social, economic, political and legal rights. There was no mention of HIV/AIDS in either document and, importantly, no mechanisms for enforcement.

Like other SADC member countries, the government of Lesotho had made a commitment to combating gender inequality but did not implement measures to do so. During this time, the denial and dismissal of challenges to gender inequality, or the promises of development as a remedy to these inequalities more generally, were subsumed under the national investment in selling the LHWP as the development panacea that would benefit all Basotho, despite the gendered and class evidence to the contrary. In contrast, the HIV/AIDS crisis that was quickly becoming a global epidemic tragically offered a political opportunity for women's rights advocates in Lesotho to successfully use discourses based in international health rights to push through legal advances on behalf of women. We turn now to this changed socio-political context.

## HIV/AIDS IN LESOTHO

As the government of Lesotho and international interests were implementing the massive neoliberal developmentalist LHWP, the global HIV/AIDS health crisis was taking hold in Southern Africa. Lesotho was hit quickly and hard, with devastating impacts on life expectancy and human development. In 2007, the adult prevalence rate was 23.2 per cent, up from just 4 per cent in 1993, and 18,000 Basotho died from AIDS. Women aged 14 to 24 had a prevalence rate (14.3 per cent) more than two and a half times higher than that of men of the same age (5.6 per cent) (USAID 2009).

One result of the HIV/AIDS epidemic in Lesotho is the drastic drop in life expectancy, which is now one of the lowest in the world at 40 years of age (USAID 2009). Since 1990, Lesotho has had a 32.3 per cent drop in life expectancy (Dugger 2004) and previous gains in infant, under-5 and maternal mortality rates have all reversed. As in other Southern African nations, the HIV/AIDS epidemic in Lesotho has devastated the productive adult population aged between 15 and 49, a fact linked to decades of rural–urban migration

within Lesotho and migration to South Africa. With rising rates of retrenchment of male miners since the early 1990s, the face of migration in Lesotho has been changing. Many women now migrate from rural to urban areas in Lesotho to try to find work in the highly competitive markets for domestic service and the garment industry, in which estimates have indicated up to 50,000 Basotho are employed (Bennett 2006). Following similar global patterns, women make up the overwhelming majority of the workforce in these sectors. These historical and contemporary migration patterns, a direct result of persistently high rates of poverty and unemployment, have also proven to be a major factor in the spread of both HIV and STIs.

The impacts of the HIV/AIDS epidemic are deeply felt by individuals, families and increasingly at the national level. Considering that more than half of Lesotho's population lives in poverty, declining productivity as a result of HIV/AIDS contributes greatly to the increased vulnerability of the rural poor, depleting both skilled and unskilled labor. This factor, coupled with ongoing food insecurity related to the regional drought, threatens to prolong and intensify the epidemic as vulnerable women and children may choose – or are forced into – transactional sex in exchange for food and shelter, leaving them at greater risk of exposure to the disease as well as to violence and exploitation.

In Lesotho, the status of women and girls as second-class citizens with limited social, political and economic rights makes it difficult for them to protect themselves from HIV infection. There are extremely high rates of gendered violence in Lesotho and women have not had much recourse to legal assistance or customs in dealing with this (WLSA 2001). The gendered laws of Lesotho that deemed women as 'being under the guardianship of their husbands or senior male relatives' (WLSA 1994) have contributed to a culture where women are unable to resist demands for sex or negotiate for practices which would protect their health. These gender inequities led Dr. Thabelo Ramatlapeng, a women's rights activist, doctor and former director of Red Cross Lesotho, to assert that 'oppression of women has played an important role in the rapid spread of the epidemic' (paraphrased in Itano 2005).

For these reasons and more, the relationship between gender inequality and HIV/AIDS began to be a central aspect of the global response to HIV/AIDS, such that the World Health Organization (WHO) declared that 'gender inequalities are a key driver of the epidemic in several ways' (WHO 2009). In the late 1990s and early 2000s, other major international institutions and agencies also noted how the sociocultural and legal position of women and girls are fundamental in contributing to the spread of HIV. The *2001 Declaration of Commitment on HIV/AIDS* (the Abuja Declaration), signed by heads of state and other high-level dignitaries, sought to address the gender inequalities that fuel the epidemic (GCWA 2006), as did UNAIDS's initiatives to fund programs to transform women's legal status in African nations in 2002 and 2003, both demonstrating how international health institutions have pushed for

women's rights at the regional and national level to strategically address this tremendous public health crisis through gender inequality.

Women's rights advocates like WLSA have seized the political opportunity provided by the HIV/AIDS epidemic to turn tragedy into progress for women. According to the WLSA website, between 2003 and 2005, WLSA focused on 'dealing with laws, policies and practices that promote or curb the spread of HIV/AIDS in the seven WLSA countries' (WLSA 2009b). WLSA Lesotho, working with regional and international institutions such as WILDAF and UNAIDS, lobbied and campaigned locally for changes to the gendered laws of Lesotho, arguing that women's secondary status was not only gender inequality, but also rendered women vulnerable to violence and to HIV/AIDS and both were violations of their human rights.

Drawing strength from the rise of TFNs around the issue of violence against women during this time, WLSA and other regional NGOs, such as WILDAF, were able to push for the criminalization of gendered violence in Lesotho using a health rights discourse. In similar ways to the international women's movement, local women's rights advocates argued that gender inequality contributed to violence against women and that the state could not ignore these violations as either private (family) matters or as individual assaults (WLSA 2001; Personal communication 2001) – especially knowing the connection of gender inequality and gendered violence to the rise of HIV/AIDS.

Their success proved moderate: in 2003, the Parliament passed the Sexual Offences Act that repealed and consolidated old laws related to sexual offenses and effectively criminalized rape, incest and sexual relations with a child in Lesotho, including trafficking (Itano 2005). According to a new aspect of the bill, marriage was no longer a legitimate defense for committing rape or other sexual offences. Despite the significant limitations in the construction and reach of this law, many championed it as an important incremental victory in the challenge to women's secondary legal status. In criminalizing rape within marriage, the law refuted a deeply held cultural ideology that posited the state should not interfere with 'domestic' matters, largely seen as affairs of the family. For many years prior, women's rights advocates such as WLSA had pointed to the contradictions between this ideology and the ways in which the state had long regulated family life; when women's right to refuse sex was framed as central to the fight against HIV/AIDS, the state finally rendered illegal rape within marriage and other sexual offenses against children. The resonance of the framing of rape within marriage as a contributor to the HIV/AIDS epidemic positioned women's rights in a health rights discourse that was politically viable and ultimately successful in this socio-political context.

In 2003, the HIV/AIDS epidemic reached devastating proportions in Southern Africa with a 28.9 per cent prevalence rate in Lesotho. Internationally, calls for greater resources and action included the establishment of a UNAIDS initiative, the Global Coalition on Women and AIDS (GCWA), in 2004. According to its 2006 progress report, as a 'loose alliance of civil

society groups, networks of women living with HIV, and UN agencies, the Coalition works at global, regional, and national levels to advocate for improved AIDS programming for women and girls' (GCWA 2006: cover). Following the 2001 commitment from national governments to address gender inequality in their fight against AIDS, the GCWA called on national governments and the international community to take concrete steps in three areas. The first is of most relevance here: 'governments and the international community must ensure that laws affirm and secure women's rights ... and that they are enforced effectively' (GCWA 2006: preface). Importantly, the GCWA specifically frames these imperatives as necessary to meet 'our shared objective of providing universal access to HIV prevention, treatment, care and support services' (GCWA 2006: preface), not solely on the basis of women deserving these rights.

The stated objectives of international coalitions and commitments to use gender inequality as a strategy to address AIDS was a frame that was then amplified by regional women's rights organizations to challenge gender inequality and campaign locally for women's rights. As a representative from WILDAF writes, 'NGOs in SADC have embraced law as [providing] important tools ... [for] measuring local provisions against international instruments then calling for municipal conformity with international norms' (Kayangarara 2005: 2–3). Here Kayangarara addresses the practice of using law and 'international instruments' to successfully create national pressure in the campaign against violence against women, as was the case with marital rape in Lesotho.

The coalescing of international and regional coalition campaigns to address gender inequality more broadly began to occur during this period, coinciding with the heightened activity of AIDS-specific organizations, like the GWCA, working at the grassroots level. This convergence of international AIDS advocacy work and grassroots initiatives added to the pressure on African states to address the gendered elements of the AIDS crisis. By 2003, the African Union adopted the 'Maputo Protocol' which covered a broad range of protections for women and women's rights. Lesotho signed and ratified the protocol, which went into effect in 2005, along with forty-four and twenty-four other member states, respectively. However, adult women at this point remained legal minors according to the law in Lesotho.

Responding to the new political opportunity arising from the conjuncture of the international and national mobilization response to the HIV/AIDS crisis and the expansion of TFNs using a rights discourse, WLSA and its allies adopted and amplified the framing practice of using the health rights discourse of HIV/AIDS to campaign for legal advances in women's rights in Lesotho. With the devastating economic impacts of HIV/AIDS becoming clear in Basotho and other Southern African economies, activists successfully amplified the health rights frame that gender inequality fueled the rise of the epidemic, and argued that, if HIV/AIDS was clearly an obstacle to development, gender inequality must also be an impediment to development. By

linking the eradication of gender inequality to development and fighting HIV/AIDS – the top two priorities of the government of Lesotho in the 1990s and 2000s – and by drawing on the rights-based discourse of powerful international allies, women's rights advocates were able to create a window of political opportunity in which to successfully advance women's rights in Lesotho. In 2006, the Parliament of Lesotho finally enacted a bill providing married women, who up to then were considered minors, with status equal to their spouses. The Married Persons Equality Bill also granted married women rights to own land and to inheritance, and the rights to have a bank account or to take out a loan without their husband's permission (Itano 2005). Notably, the government of Lesotho and international institutions framed this bill as a response to the HIV/AIDS crisis (USAID 2009). The limitations of the 2003 and 2006 bills remain, however, in terms of only protecting married women and reinforcing heteronormative patriarchal structures.

## CONCLUSION

Juxtaposing intersecting claims for women's rights in Lesotho amid a shifting terrain of human rights discourse, this analysis has captured an important conjuncture, exposing a rift between the economic language of development, exemplified in the official promises of the World Bank dam project in the Lesotho Highlands, and a public health discourse prompted by the AIDS epidemic in the region. In the wake of the reductionism of the neoliberal approach to development, with its emphasis on selling water to improve the GDP of Lesotho, women's rights were subsumed within market rights and within an economic and nationalistic discourse, ensuring not only new forms of subordination, but also a new invisibility for women's rights claims amid rural dislocation and patriarchal laws and traditions. With the HIV/AIDS crisis, opportunities shifted for activists seeking greater resonance between women's rights and the health consequences of AIDS and allowed for framing by activists that amplified the rhetoric and official goals of international health agencies and contributed to important legal shifts in the country.

On paper, the 2003 Sexual Offences Act and the 2006 Married Persons Equality Bill hold out the promise of helping many women gain rights previously unavailable or inconsistently accessible. These are significant steps in the promotion of human development and the fight against HIV/AIDS, as well as important victories in the struggle for women's rights in Lesotho. It is also necessary to note the serious limitations of these laws and, ultimately, the incremental nature of this iteration of women's rights. Both the 2003 and 2006 bills are based in a heteronormative and patriarchal vision of women gaining status and rights only through becoming wives in heterosexual marriage. The limited strategy of empowering women only through marriage and only empowering women that are married points to the entrenched patriarchal interests that relented in granting some advances in women's rights at the

same time as they ensured these rights were circumscribed in ways that regulate women's choices and minimize the impacts on men's privileged status.

This modest progress, of course, depends on the future implementation and enforcement of the new laws. However, that these limited gains in women's rights only became possible when constructed as a strategy to combat HIV/AIDS speaks to their likely tenuous nature and the uncertainty surrounding their ability to reduce gender discrimination and gendered violence without the passage of other strong measures promoting the rights of women. Denaturalizing and decoupling the link between neoliberalism and human rights, and promoting a broader vision of human rights discourse – one that includes a contextually specific interrogation of masculinist institutions and practices – remains an ongoing challenge for women's rights advocates in Lesotho.

This historical analysis raises important questions about the political feasibility of women's rights in Lesotho. Will women's rights only become significant when women's health risks threaten the economic order? Are women's rights only politically palatable when packaged in heteronormative increments rather than fully granted to all women, regardless of sexuality and status? Perhaps the most significant question we should consider is what would fully granted rights for women look like in Lesotho or, for that matter, anywhere else in the world? As feminist scholars, we find it painful to consider how many women might still be alive or more economically secure if women's rights had been more fully codified in Lesotho at an earlier stage. At the same time, the persistent courage and intellectual savvy of women's rights advocates in Lesotho and Southern Africa provides a fountain of inspiration for those interested in gender equity in the region and globally.

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## Notes

- 1 Political opportunity structures, as defined in the social movement literature, encompass elements of the socio-political context that encourage collective action as a means for addressing grievances (see Tarrow 2005). Changes in the political context may open or close opportunities (perceived or actual) for effective

- challenges to the status quo, including, among other things, political realignments among elites; the presence of new allies, domestically or internationally; or societal crises, such as war, famine, or a pandemic, like HIV/AIDS.
- 2 UNAIDS is the Joint United Nations Programme on HIV/AIDS, drawing resources from ten UN system organizations for a coordinated response to the HIV/AIDS epidemic in over 80 countries.
  - 3 While our narrative is focused on these distinct processes in Lesotho, we also locate these processes and Lesotho in the larger regional context of Southern African countries, sharing economic, political, legal, and cultural similarities in relation to both the substantive issues at hand – the status of women and girls and the crisis of HIV/AIDS – and the institutions and actors across the region that are central to shaping policies and practices.
  - 4 This movement, and the South African government's response to it, indicates how politics and institutional change *are* regional in Southern Africa. While the HIV/AIDS activist movement in South Africa did not guarantee any political change in Lesotho, it helped create a regional agenda rooted in shared problems, many stemming in part from the patriarchal sex norms that set the foundation for the unique magnitude of the AIDS crisis.
  - 5 South African President Thabo Mbeki took some controversial positions on HIV/AIDS and its treatment. He famously questioned whether HIV led to AIDS and if antiretroviral treatments (ARV) were safe and effective. AIDS activists were effective in pressuring the administration through highly publicized legal challenges and protests. Their legal success forced the government to distribute ARV medicines and, in 2006, Mbeki publicly committed to increased availability of ARVs.
  - 6 South Africa's Medicines Control Act, which attempted to reduce the costs of essential medicines, irked large pharmaceutical corporations, prompting a series of legal challenges at the national and transnational (e.g. World Trade Organization) levels. Protecting the market and property rights of large pharmaceutical corporations was the central rationale in the corporate challenge to the constitutionality of the amendments to the Act, reminding us that neoliberal principles enable corporate interests to be framed as human rights. The 1998 legal battle helped give rise to the kind of AIDS activism in South Africa that linked HIV/AIDS to socioeconomic conditions, effectively raising questions of power and rights (Johnson 2006).
  - 7 We do not suggest that neoliberalism is confined to this developmentalist period. We do emphasize, however, that the rise of neoliberal economic policies and developmentalist agendas in Lesotho in the late 1980s and 1990s contributed to the marginalization of claims by women's rights advocates. By the time of the increasing national acknowledgement of the HIV/AIDS epidemic in the late 1990s, neoliberal agendas were still very much in place in Lesotho but the public health crisis was enough of an economic disaster that women's rights advocates were able to capitalize on these political opportunities to make advances, however limited.
  - 8 'Basotho' refers to people of Sotho origin (singular, Mosotho) in Sesotho, the primary language of Lesotho. Where necessary, we use identifiers for an English audience that would be redundant in Sesotho (e.g., Basotho people).

- 9 Women's rights advocates in Lesotho have pointed to the contradictions of neoliberal development and gender inequality, particularly as they witnessed a 'rolling back' of their *de facto* rights during the LHWP. Regional feminist scholars and activists (personal communications 1997, 2001) have argued two main points: first, this developmentalist period could have been a moment to push progressive legal reform for women amidst the many other societal changes it involved; and second, women's rights were not on the agenda precisely because the economic ideology that undergirded the LHWP was elite driven, not relevant to the lives or needs of poor women, and not human centered or life affirming in ways that would most benefit women and, for that matter, all people.
- 10 The Southern African Development Community (SADC), formerly SADCC, is an economic community focused on regional cooperation and integration between the major countries and peoples of Southern Africa.

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