POLICY BRIEF
CHALLENGING CRIMINALISATION OF ZINA IN AFRICA
Accountability International
Introduction

The central theme of this policy brief is to highlight the need to reform the impact of criminalisation of zina. This is because the ‘revival’ and ‘restoration’ of zina laws violates the attainment of basic human rights of individuals. Also, denies them the ability to freely decide on their bodies and sexuality, and ultimately preventing access to fair justice and health services when punished.

Zina is a legal Islamic term that describes illicit sexual relations that specifically refer to sex outside marriage (i.e. adultery and fornication). The term zina is derived from the Koran and the documented words and acts of the Prophet Muhammed found in the hadith. Even with the reduced conservativeness of Islam in many states and societies, there has been an “unprecedented revival, or in some cases an introduction, of laws, regulations and customs based on the notion of zina.”

The zina laws have also been practiced and implemented in several Africa states and societies including Nigeria, Egypt, Mauritania, Burundi, Libya, Mali, Morocco, Somalia, Sudan and Tunisia. Despite zina laws broadly affecting both men and women, the laws severely disadvantage women who face extreme forms of gender-based violence and discrimination. By so doing, zina laws affect the attainment gender equality and women’s ability to fully achieve their bodily autonomy.

For this reason, countries in Africa and beyond must ensure that there is legal reform that aims at repealing penal codes that criminalise consensual sex relations and respect women’s bodily autonomy choices including zina.

Zina (the act of committing adultery or sex outside marriage) is perceived in many states and societies that practice Islam as being illegal. “Islam is very strict in prohibiting zina, for zina leads to confusion of lineage, child abuse, the breaking-up of families, bitterness in relationships, the spread of venerable[sic] diseases, and a general laxity in morals: moreover, it opens the door to a flood of lusts and self-gratifications”. Zina laws have inevitably found themselves used in state laws by various countries including those found in Africa.

Further, zina laws driven from religion and culture have been used “as an excuse to deny women’s human rights through the invocation or reference to laws, practices and customs driven from ‘Islamic’ writings. This is grounded in the fact that zina laws have been widely influenced by: patriarchy, colonialism, culture, and religion.”

Moreover, zina offenses have predominately assumed that under Islam there has been homogeny in terms of social, cultural and legal norms. This strongly ignores that differences that currently prevail in societies and the diversity with the majority of states that practice zina laws as it relates to people’s sexual relations and gender roles.

The punishment for Zina has varied through place and time from detention, imprisonment and/or stoning to death. Given that zina laws transcend between religious laws and state laws, often time the enforcement is done by both state and none-state actors such as communities and even family members in the case of ‘honor’ killings.

Persons that have been found guilty of zina have been “stoned to death for adultery (extra-marital sex, when the offender is married or a widow(er) or divorcee) and 100 lashes for fornication (pre-marital sex)” by either state or none state actors.

Historically, the growing colonisation across the global in the 19th century meant that several countries began to mimic the criminal laws of their coloniser that predominately embraced European statutes while pushing back on Islamic laws such as zina laws. During the post-colonial era, there has been the ‘revival’ of zina laws as most countries revert to Islamic rule that was practiced before colonisation.

End the use of virginity testing and other humiliating forensic exams in all circumstances, including where purportedly used to investigate premarital sex, adultery or sexual violence.

The increased ‘revival and restoration’ of zina laws has been met with lots of push back from various sectors in society. The majority of protest and push back to zina laws has come from women’s movement and human rights defenders. This is been partly due to the overt gender bias that zina laws systematically favours men in its application and exposes women to more severe punishment.

To elaborate, women found guilty of zina have faced imprisonment and in other cases detention even while being pregnant, as their counterparts rarely face the same punishment. In other cases, zina laws have been enforced outside the legal system on women and paved way for religious institutions and communities including family members lashing and in other cases performing honour killings by stoning.

However, the impact of resistance of zina by women’s movement in Africa has not had the same impact on fighting zina laws as in other regions. This has been due to a flood of lusts and self-gratifications.
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to the fact the prevailing patriarchal societies in Africa have been led by the political, religious and military elite who the use zina laws justify the crimes and human rights violations committed towards women, girls and sexually diverse persons to benefit their own political or moral agenda.12

Given this biased approach to dealing with zina offences, it can be suggested that there is loss of bodily autonomy choices based on religious fundamentalism which is rather concerned with upholding morality at population level and overlooking the individual liberties and rights of the most vulnerable including women, girls, and sexually diverse individuals such as lesbian, gay, bi-sexual and transgender and intersex (LGBTI) persons.13

Another essential point is that culture and religion are identified as factors that have had a huge role to play in influencing zina laws. A majority of states that have implemented zina laws have been mostly influenced by the presence of religion as demonstrated in the over-representation of zina in predominately Islamic countries. Subsequently, patriarchal biases have within certain interpretations and practices of religion and culture, been used to justify the use of zina laws to effectively punish ‘offenders’ who have been mostly women and girls.14,15

Zina laws across Africa

The practice of zina on the African continent has been documented since the introduction of Islam but more apparent since the fall of colonialism and the rise of Islamic and Sharia law in some countries. Below are a few examples from both East, West and North Africa that have existing laws and practice on zina:

Nigeria

Historically, Islam was first introduced in present-day Nigeria in 1493 and its presence was characterised by numerous rises and fall of Muslim states in the region.

Its presence was only challenged by raise of Christianity due to the influence of European powers and Christian missionaries. In 1861, Nigeria became a colony of Britain and ultimately had full control of Nigeria by 1905. The indirect rule by Britain in the northern region of Nigeria allowed both Islam and sharia law to be practiced without people receiving consequences of zina law such as stoning. However, with the fall of colonial powers of the British in the mid 20th century, the revival and restoration of zina laws gained momentum in Nigeria.16

By 2000, a third of Nigerian states used Sharia law to govern and prescribed stoning for zina and some other sexual offences. Despite this harsh reality of sentencing, a majority of cases have been successfully appealed.17

Sudan

Evidence suggests that Sudan has practised Sharia law since 1989. The 1991 Penal code “Article 146 of the 1991 Penal Code provides capital punishment by stoning for married men and women who are found guilty of engaging in sexual relationships outside marriage.”18 From ongoing recent events and reports in Sudan, convictions against adultery have been ruled by religious courts to warrant death by stoning.

These cases include: a woman that had her sentence successfully appealed at Sudan’s supreme court in 2002; Ms L.I.E who was sentenced to death by stoning for zina in 2012. The Sudanese Parliament endorsed the stoning to death as punishment for adultery. This shows the stark reality of the zina laws in limiting an individual’s sexual choices.

Somalia

Zina laws have also prevailed in Somalia and demonstrate the denial of fundamental human rights for women. In the example of Asha Ibrahim Duhulow, the 13 year old was stoned to death in 2008 on the claim she had committed adultery and judged as a 20-year-old. Considering that this happened after she reported being raped by three men, who walked away with light sentences, demonstrates the widespread consequences of the revival of zina laws on violence on women and girls.19

Mauritania

In the case of Mauritania, evidence shows that many women including child inmates have found themselves in prison for being raped. “Often pregnant and unable to prove coercion, they find themselves branded criminals for having sex outside marriage.”20 This is due to women’s testimonies being ignored, owing to the inherent patriarchal nature of the revival of zina laws.

Importance of Issue

The importance of challenging criminalisation of zina laws should firstly be based on the premise that fundamental human rights must be fulfilled of all individuals.21 Zina laws are a direct violation against the attainment of the fundamental rights of individuals.

Additionally these violations would prevent the attainment of gender equality for woman and girls. Additionally, criminalisation of zina leads to further victimisation of the most vulnerable in societies. The vulnerable persons have usually been those most left behind due to their socio-economic status compounded by their sex, gender,
sexual orientation or gender identity. Specifically, “poor women and girls from rural areas with limited access to education; female migrant workers; and lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) individuals” are often victims of the revival and restoration of zina laws.

Equally, criminalisation of zina also places significant barriers in accessing justice and health services for human rights violations such as rape committed against women and girls including LGBTIQ individuals. In the case of seeking justice, victims of rape for fear of zina laws do not report cases. Where cases have been reported by women, they are usually subjected cross examination that requires them to have at several collaborating witnesses that can prove that rape happened. Persons that have been found guilty of zina have been “stoned to death for adultery (extra-marital sex, when the offender is married or a widow(er) or divorcee) and 100 lashes for fornication (pre-marital sex)” by either state or none state actors.”

The poor access to the justice system by victims of zina laws prevents access to legal information, aid or protection and effective responses to violence against women. Men have thus got away with rape in many cases due to this. Further, victims of rape have failed to access health services for fear of being charged for zina. Another important aspect of criminalisation of zina is that it prevents young people from seeking and/or accessing Comprehensive Sexuality Education (CSE). Particularly in the inherently patriarchal societies where zina laws happen, CSE has the potential to promote gender equality and the prevention of violence against women and girls.

Equally important, is the need to end zina laws that have been used to perpetuate violence against women and girls. This violence, in the form of: “honour murders, rape, physical and psychological torture, cruel and degrading treatment, domestic violence”, rob women and girls their fundamental human rights. According to the Beijing Declaration and Platform for Action, “Acts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the State, instill fear and insecurity in women’s lives and are obstacles to the achievement of equality and for development and peace.”

Further, the revival of zina laws are an expression of the patriarchal nature of our societies. As above, this is evident through the violence against women which demonstrates the “unequal power relations between men and women, which have led to domination over and discrimination against women by men and the prevention of women’s full advancement.” Subsequently, as stated by the Sustainable Development Goal 3: “Ensuring healthy lives and promoting the well-being at all ages is essential to sustainable development.” The revival of zina laws not only jeopardises one’s wellbeing but also take away from people’s attainment of health on the full definition of the WHO standard of health, “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”

Conclusion

In conclusion, it is paramount for all including communities, civil society and states to challenge criminalisation of zina given its far reaching consequences on gender equality and overt attempt to control sexuality of women and girls and other sexuality diverse persons. The continued revival and restoration of zina is inherent of a legal environment that favours the religious and political elite to continue rule based on morality principles over the whole population and, in particular, over women and girls’ bodies and those of sexually diverse persons.

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Recommendations

This policy brief would like to use the recommendations from existing body of works such as the Beijing Declaration and its Platform for Action, Amnesty International’s Primer on criminalisation of sexuality and others that are appropriate for challenging criminalisation of zina:

- “Reform all penal codes to remove provisions that criminalise consensual sexual relations and women’s productive decisions, including zina and abortion. Ensure that all women criminally detained concerning zina or abortion are released, their charges dropped, and their criminal records expunged.”
- “End the use of virginity testing and other humiliating forensic exams in all circumstances, including where purportedly used to investigate premarital sex, adultery or sexual violence.
- “End the practice of removing children from the care of women just because they are unmarried and ensure unmarried women can register their children.”
- “Ensure that systematic action is taken to intervene to protect women where there is a credible risk of so-called “honour” killing or other form of gender-based violence, including by way of investigation and prosecution, and through the imposition and enforcement of protective orders.”
- “Involve centres for women’s studies and research organisations in developing and testing appropriate indicators and research methodologies to strengthen gender analysis, as well as in monitoring and evaluating the implementation of the goals of the Platform of Action in Beijing Declaration.”
As part of our work under the Challenging Criminalisation Globally project, Accountability International, in collaboration with regional partners in Africa, Asia and Latin America, launched regional-focused campaigns.

The Africa Regional Campaign – dubbed ‘Simama’ – aimed to raise awareness on criminalisation in Africa based on identity, sexuality, morality and bodily autonomy, and its impact on the attainment of the global commitments of ending AIDS by 2030 and the related sustainable development goals.

‘Simama’ is a Swahili word for 'stand up/rise up.' The campaign focused on criminalisation in 8 areas: adult sex work, abortion, adolescent sexuality, adultery/consensual sex outside of marriage, same-sex sexual activity, gender identity and expression, HIV non-disclosure, exposure, and transmission and personal possession and use of drugs. As part of ensuring the success of Simama, Accountability International assumes that it is important to start by informing and highlighting the importance of challenging criminalisation and its impact on individual lives and their access to social justice, health and human rights.

Further, it becomes it import to demonstrate how failure to challenge criminalisation will impact on the attainment of global commitments. Given the above, Simama put emphasis on providing background on criminalisation and the importance of challenging criminalisation across the continent.

#ChallengeCrim
References

References (continued)


Notes
Accountability International is an African-led civil society organisation that works to improve accountability to the most marginalised. From our head office in South Africa, we conduct research and advocacy that allows us to do our work as a watchdog and hold various leaders accountable.

We conceptualise and implement innovatively designed projects that are led by our collaboration with marginalised communities. We put huge emphasis on needs-based research and community-led advocacy. We have developed more than a dozen scorecards since we began in 2005, all as a means to contribute to the demand for accountability from all leaders, whether at global, regional, national or community level.

We provide technical advice in many spaces, and yet remain committed to ensuring that our spaces, communications and products are all highly accessible to all people. We play a watchdog role and work to enhance the capacity of other civil society actors to also take up their role as watchdogs, for sustainable, resilient and inclusive human rights for all.

We use the Participatory Action Research (PAR) model, a best practice in which communities co-develop and lead the methodology, development of research tools, conduct the research and produce the final analysis & context-specific and advocacy-focused reports.

Partnerships are a fundamental element in our work. Over the years, we have developed excellent partnerships with hundreds of organisations, from major implementing partners to community-based organisations with national or local bases.

Accountability International’s vision is a world where there is accountability for the lives, human rights and wellbeing of all persons, across all spheres of society.
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