

POLICY BRIEF

CHALLENGING CRIMINALISATION OF ABORTION IN AFRICA

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SIMAMA!

Summary

For women and girls', access to abortion is key for their enjoyment of reproductive rights and to ensure their universal access to sexual and reproductive health and rights. Across the African continent, abortion is criminalised in varying degrees from complete criminalisation to granted access in only certain cases under certain provisions. This confines the right to abortion across the continent to a framing focused on public health, legal restrictions as opposed to a rights-based approach or an affirmation of bodily autonomy.

The premise of criminalisation has meant that, even where abortion is allowed, deep rooted stigma continues to hinder access. This demonstrates the structural drivers which allow, nurture and affirm the default setting to deny abortion rights. These complex drivers rooted in cultural and religious and affirmed by patriarchal norms illustrate the limitations that criminalisation places on those seeking their rights to abortion. For example, even where abortion is guaranteed within the law, misinformation and misrepresentation deeply hinders dissemination of this information.

Often because the framing focuses on criminalisation rather than the allowable parameters. For example, abortion in Kenya is regulated through Article 26(IV) of the constitution, which states that: ***Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the of the life of health of the mother is in danger, or if permitted by any other written law.***

Further to this, women and girls who would otherwise seek care in health settings, self-stigmatise and/or hold back due to service providers attitudes. Finally, service providers who would provide the service, hold back due to fear of prosecution or profiling. In many instances, this makes abortion inaccessible, unaffordable, compromises quality of care and interferes with efforts to create an evidence base to inform proper planning, programming and policy making.

The above paints the picture of how criminalisation creates an enabling environment for structural barriers, institutionalised violence, denial of rights and reinforcement of bias and harm. This compound existing socio-economic inequalities where due to criminalisation, women and girls across the continent must contend with access to abortion as a 'premium right' rather than reproductive health care.

Key to note is that despite criminalisation, incidence and prevalence of unsafe abortion does not always lessen. Instead, injury, death and harm from unsafe abortion increases. In this kind of context, as documented across the continent, policy making rather focuses on mitigating harm rather than providing safe choices and quality care. Across the continent, due to a pervasive and deep-rooted focus on denial of abortion rights, the focus shifts to 'harm reduction' rather than upholding rights or guaranteeing access to health care. This is seen through



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the 'preventing unsafe abortions' approach through post abortion care. In retrospect though intended to address the problem, this rather affirms harm, injury and death as a reality that African women and girls' must content with as part of seeking abortion rights.

Background

Across Africa, women and girls still face discrimination and violation of their sexual and reproductive health and rights persists despite progressive normative frameworks. The right to safe abortion would be a reality and achievable if related commitments and instruments are implemented.

While some African nations have loosened abortion restrictions, 10¹ countries still prohibit it under all circumstances – even to save the pregnant woman's life. 25 years after the adoption of the International Conference on population and Development (ICPD)² program of action (PoA) and the Beijing Platform for Action (BPfA), it behooves on us to rethink the implications of criminalising abortion. The Beijing Platform for Action, outlines Women's health including sexual and reproductive health and rights as one of the 12 critical areas of concern for realisation of gender equality, women and girls' empowerment.

The ICPD, program for Action, adopted 25 years ago, was the first intergovernmental global policy affirming reproductive rights as human rights. The 2006 Continental Policy Framework on SRHR³ provides guidance on policy formulation and implementation by African states in relation to the ICPD Program of Action. The 8 priority areas that have been outlined include; contraceptive use, HIV and AIDS, adolescent reproductive health, unsafe abortion, FGM and GVAW.

The Maputo Protocol,⁴ also known as the Protocol to the African Charter on Human and People's rights, guarantees access to reproductive rights for women and girls in Africa. Article 14 (2) (c) obligates state parties to *protect the rights of women by allowing medical abortion in cases of sexual assault, rape, incest and where and where the continued pregnancy endangers the mental and physical health of the mother.*



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In January 2016 at the African Union summit, the African Commission on Human and People's Rights (ACHPR) through the mechanism of the Special Rapporteur on the Rights of Women in Africa, in line with its Resolution on the Health and Reproductive Rights of Women in Africa, 2007, launched a continental Campaign for the Decriminalisation of Abortion in Africa.⁵

Importance of Issue

Ensuring universal access to sexual and reproductive health is essential not only in achieving sustainable development but also on promoting gender equality, combating HIV/AIDS and other diseases as well as a human right issue. Reproductive rights are the hallmark for realisation of gender equality, women and girls' empowerment. These rights are enshrined across various policy commitments and instruments, reproductive rights especially access to safe abortion protect bodily autonomy as a fundamental human right.

In many cases, authorisation is required to access legal and safe abortion illustrating the depth of structural barriers women and girls must face across the continent. In many African countries, due to limited allowed grounds for accessing services, women under the age of 18⁶ need consent from at least one of their two parents (in some cases both parents), and/or the parents must be notified. For married women the spousal⁷ consent is required.

In Africa, the right to access safe abortion is situated in a context, where adolescent sexual health and reproductive health and rights is contested, harmful practices such as female child marriage and female genital mutilation are rife and sexual violence spread. According to Guttmacher institute, as of 2017, about 58 million women of reproductive age in Africa were faced with an unmet need for modern contraception—that is, they want to avoid a pregnancy but are either not practicing contraception or are using traditional methods, which are less effective than modern methods.

Key Findings

An estimated 93% of women of reproductive age in Africa⁸ live in countries with restrictive abortion laws. Abortion is totally banned and criminalised in 10 out of 55 African countries. 5⁹ countries in Africa have relatively liberal abortion laws; this shows the complexity of the legal status of accessing abortion which spills over and is linked to various aspects such as; service provision, programming and narratives as defined by socio cultural norms and attitudes.

From a service provision perspective, post abortion care is the frontier that has defined the framing and anchored abortion rights discussions across the continent. This has been deemed as the most pragmatic and strategic entry point to situate abortion rights in the continuum of quality of care and flagship for policy development and legislation on abortion rights in most African contexts.¹⁰

This is primarily guided by a harm reduction approach and recognition of the scale of injury and death from unsafe abortions across the continent.

According to the Guttmacher¹¹ Institute and WHO, there are 25 million unsafe abortions that take place each year (2010-2014) worldwide. Of these, an estimated 8.2 million induced abortions occurred each year in Africa. This is estimated to result in 29,000 deaths and countless serious injuries and disabilities every year for women and girls under the age of 25. In addition, it is important to note that across many African countries, nearly a third of maternal deaths across the continent are caused by unsafe abortions.

The findings illustrate the fact that criminalization does not prevent women from seeking abortion, it just serves to augment abortion stigma. Widespread criminalisation is due to;

- **Lack of accountability: This is embodied by a steep disconnect between policy and practice.** The AU has put in place policies and instruments to inform state accountability to reproductive health and rights of African women and girls. These instruments and policies are guided by the urgent need for member states to address the human rights and public health challenge of unsafe abortion. The Maputo Protocol is lauded as one of the most progressive and comprehensive instrument on advancing and realizing gender equality and women's rights and SRHR. However, despite 15 years of existence, challenges of ratification, signing and most importantly reporting persist. 52 countries have signed the protocol, 41 have ratified, 3 have not signed and 11 have not ratified. **Of the 11 that have not ratified, Tunisia is one of them, yet has one of the most liberal abortion laws. Of the 41 who have ratified, less than half have submitted periodic reports as expected. Those that have ratified with reservations, are mostly on clause on marriage, abortion and military spending.** This depicts the complexity of the nexus between policy harmonization, domestication and implementation.



Campaigns such as the challenging criminalisation, provide an opportunity to critique and question current narratives that continue to violate women's access to safe abortion. Subsequently, the campaign also provides an opportunity to shift narrative, contribute to existing body of knowledge and challenge the strong opposition to women and girls right to abortion.



- **Increased fundamentalism:** Across the world including across Africa, the gains on sexual and reproductive rights are under attack. Anti-choice movements have declared access to abortion rights and LGBTIQ rights as their battleground. Augmented by declining resources, and shrinking civic space occasioned by emerging repressive regimes, this creates fodder for criminalisation of abortion. There is organised pushback from opposition/conservative/fundamentalist groups on the use of rights-based language in critical policy resolutions. At the African Union for example, the accepted political framing only recognises sexual and reproductive health and reproductive rights. This framing is meant to exclude sexual rights and poses a danger especially given the growing trend of governments to backtrack on already agreed commitments. This has resulted in shifting the language on abortion from a human rights and developmental priority to a moralist debate. Currently, there is much stronger and structured pushback against women's rights and especially sexual and reproductive rights. The pushback is anchored on the notion that sexual and reproductive rights are used as a tool to erode African identity, culture and morality. SRHR and more so access to safe abortion is seen as challenging 'the family' the basic unit of society, and thus not a priority for African countries.
- **Abortion stigma:** Due to stigma, even countries that have adopted national laws to legalise abortion, there are numerous cases of unsafe abortions resulting in cases of health complications, high rates of mortality, morbidity and disability especially amongst girls and young women and mainly among the lowest social-economic category. Comprehensive sexuality education and information is a huge gap even in countries where there are progressive SRHR policies and actions.
- **Relegation of responsibility by governments:** Addressing SRHR and access to safe abortion requires a broad-based, long-term. It is however key to note that, overall responsibility for action may lie with various stakeholders but primary accountability and duty bearer roles lie with African governments.

Governments have legal obligations to respect, protect and promote human rights, and should be held accountable for failing to fulfil these obligations. Accordingly, governments need to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to prevent these ills, to respond to its consequences, and to hold those who perpetrate it criminally responsible for inflicting harm on girls and women. Keeping in mind that the denial of a woman's independent choice to decide over her own body violates several human rights—the right to health, the right to non-discrimination and the right to equality. As abortion services are only required by women, the denial of health care services needed only by women is a discriminatory act and a gender inequality issue.

- **Divided approaches, weak consensus and complex landscapes:** It is important to note despite civil society, stakeholders and parties working on SRHR being united on the commitment to human rights, commitment to abortion rights is always wavering, lacking or widely speculated upon. For example, not all women's rights organisations or SRHR identifying organisations are supportive of abortion rights, LGBTIA rights or even certain elements of adolescent sexual and reproductive health rights. Therefore, the division within what should be the flagship movements working on abortion leads weak a context that is difficult to foster effective advocacy. This reflects the broader lack of consensus on strategies, narratives and fosters an impression where there is a silent hierarchy of sexual and reproductive health and rights where abortion is a 'tough right' that should only come after access to contraception

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Underpinning all the barriers named above are patriarchal systems that shape social norms, belief systems and attitudes towards women's rights. These systems are structural and are what drive criminalisation and need to be challenged at all levels of society.

As outlined, they shape narratives, legal systems, public health approaches and compromise human rights approaches to enabling access safe abortion. Efforts for accountability should therefore be rooted on this understanding!



ABORTION
=
HUMAN RIGHTS

SIMAMA!

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

¹Angola, Congo-Brazzaville, Congo-Kinshasa, Egypt, Gabon, GuineaBissau, Madagascar, Mauritania, São Tomé and Príncipe, Senegal

²https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf

³https://au.int/sites/default/files/documents/30921-doc-srhr_english_0.pdf

⁴http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

⁵<http://www.acdhrs.org/wp-content/uploads/2016/01/gimac-decrim-campaign-press-release.pdf>.

⁶Cape Verde, DRC, Ivory Coast, Mauritania, Morocco, Mozambique, Rwanda, São Tomé and Príncipe.

⁷Court authorizations are required in certain countries: Eritrea, Namibia, Rwanda, Zimbabwe, etc. and the filing of a complaint: Mauritius etc.

(WHO, 2017). No authorization of this type is required in Ethiopia.

⁸https://www.gutmacher.org/sites/default/files/factsheet/ib_www-africa.pdf

⁹Cape Verde, South Africa, Tunisia, Zambia and Mozambique

¹⁰Rocca Corinne H., Puri Mahesh, Dulal Bishnu, et al., 2013, "Unsafe abortion after legalisation in Nepal: A cross-sectional study of women presenting to hospitals", BJOG

¹¹Maputo Plan of Action on Sexual and Reproductive Health and Rights, Africa's Common Position on Ending Child and Early marriages, Resolution on Elimination of Female Genital Mutilation (FGM); campaigns such as the Campaign for Accelerated Reduction of Maternal Mortality in Africa (CARMMA)





**ACCOUNTABILITY
INTERNATIONAL**

holding leaders accountable

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.

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.



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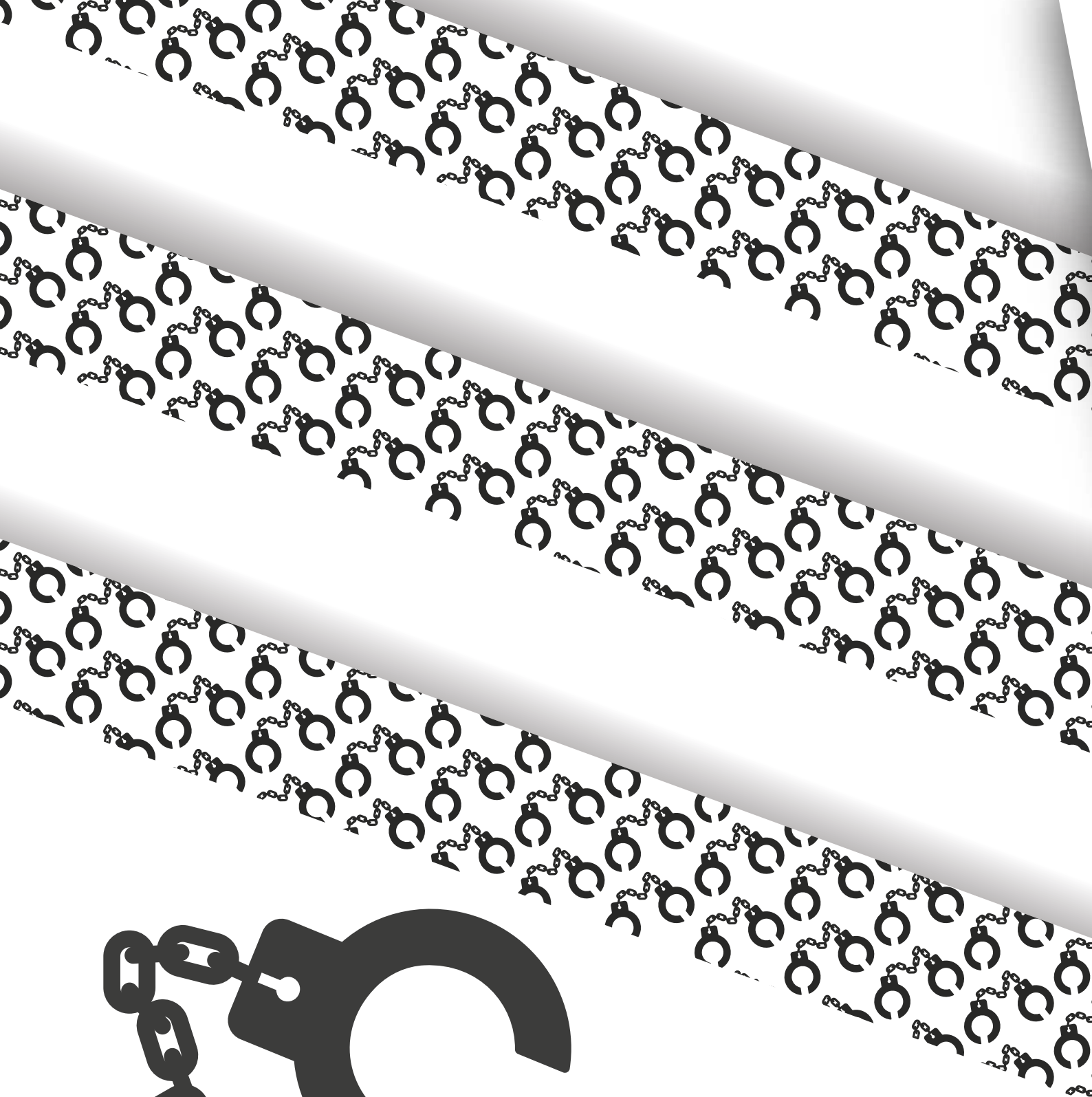
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