Sex on trial: The moralisation and criminalisation of sexuality in Zimbabwe

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In the last few years, the public discourse surrounding sex and sexuality in Zimbabwe has been dominated by morality, religion and culture rather than, as one might expect, issues of HIV and AIDS or public health. Although there has been some very recent and limited exploration of sexual rights in the media, the main areas of concern have been alternative sexuality destroying the ‘moral fibre’ of Zimbabwean society. Issues of same-sex sexual relationships have been linked to issues of sovereignty and the West and a Christian religion and culture that is being threatened by human rights that seek to ‘dehumanise us’. Sex work has been blamed for denigrating the morality of Zimbabwean society, while the debate on abortion has been muted by accusations of human rights gone too far.

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This article will examine the context in Zimbabwe, reflect on the impact that this has had on women and women’s realisation of ‘sexual citizenship’ and analyse the power and resistance that is enabling women to challenge perceptions of ‘sexual citizenship’ and what this could mean for women in the future. Finally, this article will argue that the struggle of the lesbian, gay, bisexual, transgender and intersex (LGBTI) and sex worker movements in Zimbabwe is more than just a struggle for individual rights, but a call for everyone to demand, and exercise, their sexual rights.

What are the current laws and legislation?

Same-sex sexual conduct: The sodomy law in Zimbabwe does not account for consent: acts of sodomy are criminalised whether they are consensual or not. In July 2006, the government of Zimbabwe expanded the definition of ‘sodomy’ to include any physical contact between two male individuals ‘that would be regarded by a reasonable person to be an indecent act’. The ‘sexual deviancy’ law sought to criminalise any act that was perceived to be homosexual as well as women having sex with women.

Sex work: Sex work is not officially criminalised in Zimbabwe but criminalised acts include running a brothel and profiting from ‘prostitution’. However, it is difficult to prove guilt under the more
specific legislation governing ‘prostitution’ and, therefore, miscellaneous criminal and local laws are applied to act as a deterrent and a punishment to sex workers. Sex workers are often arrested and detained under the following provisions:

- Soliciting;
- Blocking the pavement;
- Tarnishing the image of the local area (this is often referred to as ‘clean-up operations’ and is used to justify raids); and
- Possession of, or dealing in, drugs.

Related to debates about sex, sexuality and reproductive health rights in Zimbabwe as elsewhere in the region – is the issue of abortion. The termination of pregnancy is permitted under certain circumstances – danger to the life of the mother; physical health, physical or mental deformities of the unborn child; and unlawful intercourse (rape, incest but excluding marital rape). Termination may take place only at a designated hospital with the written permission of the hospital superintendent. In cases of suspected birth defects, or life and death situations, the authority of two medical practitioners is also required. For rape, a certificate by a magistrate is needed, and is issued only after consideration of a police report and an interview with the rape survivor.7 People who perform and women who undergo illegal abortions face strict criminal sanctions.

**What is the impact of these laws on lesbian, bisexual and transgender (LBT) women and female sex workers?**

Broadly, the immediate impact of the law on women is that it harms and violates their right to sexuality. Given their fear of being ostracised and criminalised, LBT women and female sex workers often remain undocumented and are therefore ignored in terms of both policy and programmes.8 LBT women and female sex workers experience extensive violence including verbal, physical and sexual abuse. Many sex workers have been detained and forced to engage in sexual activities with police officers to ensure their release. There is a continued stream of reports of police officers offering sex workers protection for free sex. The number of incidences of police raping sex workers is very high, although cases are never officially reported for fear of repercussions. The experiences shared by sex workers range from being picked up by police and dumped far out of town at night, being raped by plain clothes officers at their places of work, being arrested and raped by multiple officers, being detained in cells with police dogs and being tortured, as indicated in recent research findings by ASWA.9 The criminalisation of sex work dehumanises sex workers and makes them an invisible group – marginalised and excluded from society.

Zimbabwean laws are no different from those of most countries in the region with regards to criminalising sex work, same-sex relationships and abortion.10 However, the law, in itself, is not the real culprit in the politics of sex and sexuality, and there is very little evidence to indicate how powerful the law is in acting as a deterrent. This is because the laws are founded on a moral code, but they equally seek to impose a concept of morality on all citizens, not just so-called minority groups. Although many organisations, institutions and NGOs have cited the law as one of the reasons that makes it difficult to work on sexual rights, I would argue the hate speech and the didactic morality of the leadership are the real reasons why individuals are not realising their potential as sexual citizens, and are instead being actively prevented from accessing their rights. This hateful behaviour is born of patriarchal values and social systems that are propped up by laws, policy, the media and other institutions.

I would like to clarify the understanding of the term ‘sexual citizenship’ used in this article. This article draws on Waite’s understanding of sexual citizenship to describe ‘the ways in which individuals are included and excluded from communities on the grounds of their assumed or real ‘sexual’ identities, thoughts, feelings and/or behaviours’.11 Although the notion of citizenship as a broad category that defines who should acquire status as full and equal members of their society is highly contentious in Zimbabwe,12 it remains a site of struggle. And with the advent of the discourse and framework of sexual rights in Zimbabwe, the notion of ‘sexual citizenry’ will become more important. As the debate around sexuality moves beyond ‘identity politics’ to explore the realm of sexual behaviour and sexual practice, then it becomes imperative to reflect on the importance of choice and freedoms. Sexual rights are not ‘new’ rights and the realisation of sexual rights is integral to affirming all human rights.13

**Hate speech – unique to Zimbabwe?**

‘Homosexuality degrades human dignity. It’s unnatural and there is no question of allowing these people to behave worse than dogs and pigs...if you see people parading themselves as lesbians and gays arrest them and hand them over to the police.’ (President Mugabe, 1995)14

President Mugabe’s infamous speech against homophobia, which marked the opening of the Harare International Book Fair (whose theme was, ironically, human rights and justice), set the tone for similar expressions throughout the region and particularly in Zimbabwe over the next fifteen years.15 Zimbabwe’s President has become synonymous with homophobic hate speech that has defined a particular ‘moral’ code that oppresses open and honest discourse about the topic of sex and sexuality, not just for the LGBTI community in Zimbabwe but also, I would argue, for every individual Zimbabwean.

The legislation appears to reflect ‘the morals and [sic] religious beliefs espoused by our (Zimbabwean) society’.16 The criminalisation of same-sex and sex work denies the
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broad LGBTI community and sex workers the same rights accorded to other Zimbabwean citizens. The criminalisation of the conduct of a particular group of people ‘has the effect of marking individuals as criminal on the basis of their sexual orientation’. Although same-sex sexual activity between women is not criminalised, the laws regarding ‘sodomy’ and sexual deviancy have a serious impact on lesbian, bisexual and transgendered women in that they are also regarded as engaging in ‘deviant behaviour’ and are often harassed by both police and communities.

I believe that the hate speech uttered by the leadership in Zimbabwe has created an environment of permissible homophobia, which was demonstrated regularly during the people-driven constitutional reform process in 2010.14 This process created a platform for conservative and oppressive opinions and views on sex and sexuality to come to the fore. The process was notable for the homophobic and protectionist discourse around same-sex sexual relations as well as views on abortion that sought to undermine the democratic process. There were frequent statements from the government, leadership, media, Christian Church and traditional Chiefs condemning attempts to include recognition of, and protection for, sexual minorities in the constitution.19 At the time of writing the outcome is unclear, but it is widely accepted that sexual minorities, including LGBTI, will not be protected in the new Zimbabwean constitution.

It is important to analyse the language that was used by the political parties as they commented on, interfered with and attempted to manipulate the constitution-making process. The rhetoric of the process was ‘people-centred’ and participatory. However, the messages of democracy and human rights were juxtaposed with outrage that acts ‘which offend human and public morality’,20 such as abortion and homosexuality, were being recommended for inclusion in the new constitution. Obviously, the moral, religious and cultural outrage expressed by rural communities, religious figures, politicians and political commentators was an attempt to polarise the process and to force participants, parties and politicians to take a position on these contentious ‘moral’ issues, while diverting attention away from issues such as presidential term limits and governance. Nelson Chamisa of the Movement for Democratic Change (MDC-T) acknowledged the strategy and stated “They (ZANU-PF) are going around telling people that our party supports homosexuality and abortion. These are all lies meant to disturb the masses attention on the new constitution process.”

Unfortunately, in their eagerness to expose the lies, the MDC-T also denied the importance of these issues and dismissed them as attempts to ‘disturb’ rather than crucial issues that needed to be addressed. The discourse and the language was divisive and advanced the perspective of ‘them’ and ‘us’, positioning human rights in direct opposition to the sacred cows of religion and culture.

What emerged in the discourse was the perception that human rights, culture and religion are ultimately irreconcilable in Zimbabwe. In a clearly patriarchal discourse and mindset, the same sentiments that chastised homosexuality were unleashed on dress code and women. As Pastor Chikoshlana publicly proclaimed, “We must address the issue of a dress code through the enactment of laws that bar certain types of dresses, especially those that leave some parts of women’s bodies uncovered. People should also be empowered to bring to book lesbians or gays and all found dressed indecently”.21 The conflation of issues demonstrated that conservative patriarchal forces wanted to use the threat of homosexuality as an opportunity to reverse many of the gains made by the women’s movement in Zimbabwe. This has resulted in a backlash, not only on sexual minorities and sex workers, but also on women rights activists on issues of abortion and sexual reproductive health rights in general. It would appear that there is nothing more alarming in Zimbabwe to the government and other institutions that prop up patriarchy, than citizens who have the freedom of choice, especially about their own bodies.

**LBT women, female sex workers and sexual citizenship**

LBT women regard themselves as part of a broader LGBTI movement, which is directly affected by the laws that protect a particular morality (buttressed by religion and culture) and create fear and stigma around freedom of sexual expression. The law is often used to justify mistreatment of, or discriminatory treatment towards, women. For example, a woman in a same-sex relationship was charged with sexual assault and sentenced to a period of community service.22 One of the conditions of her bail was that she had to be accompanied by a man when in the company of another woman: which is a clear violation of her right to association, in addition to exposing her to the danger of ‘corrective rape’. In this kind of case, the law that protects citizens against sexual assault ends up exposing citizens to the very dangers that the law is purported to be safeguarding them against. In addition, the law also becomes an instrument to instil fear in the citizens it is expected to protect.
Although very few cases of ‘sodomy’ actually reach the courts, the mere existence of the law – compounded by the environment created by the comments of the leadership – prevents the LGBTI community from freely exercising their right to choose a sexual partner. There is always the possibility of being arrested and charged under one law or another. This does not affect just the LGBTI communities, but even those organisations that are working to support their rights and welfare. For instance, many organisations and individuals in the LGBTI movement are not free to openly support LGBTI communities for fear of criminalisation, and in some cases have resorted to couching their work within the broader ambit of HIV and AIDS.

The laws governing sex work are equally premised on a moral and religious code that purports to protect women’s chastity and purity. Where morality and religion are used as arguments, those who are seen to be deviant are often subject to stigmatisation. For instance, sex work is highly stigmatised in Zimbabwe and considered a ‘moral issue’, which results in social, religious and cultural ostracisation and discrimination. Female sex workers are doubly discriminated against – because they are women and because they are sex workers. The Zimbabwean State report 2010 to the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW explains that the law has changed to ‘ensure a higher degree of reasonable suspicion is applied before one is arrested for prostitution.’ In reality, this law is persistently misapplied and sex workers still report being arrested for loitering. However, this speaks to a deeper problem about perceptions of female sexuality and sexual expression. Despite the fact that the law specifically targets sex workers and the LGBTI community, these single pieces of legislation result in not only multiple human rights violations in relation to these particular groups, but also in a subtle game of power and control over the rights of all Zimbabweans as ‘sexual citizens’.

Sexual violence against lesbian and bisexual women on the basis of their sexual orientation or gender expression or ‘corrective’ rape of lesbian and bisexual women is a serious problem. Due to fear of criminalisation, cases of violation of LGBTI communities’ and sex workers rights mostly go unreported in Zimbabwe. This makes it challenging for organisations and researchers to collect and access accurate data about their experiences. There is need for advocacy to ‘decriminalise’ these groups to enable them to freely enjoy their rights and access services in the country. For instance, in seeking HIV and AIDS services, LBT women cite the problems of disclosing their sexual orientation as a major barrier to getting accurate, appropriate and relevant treatment. The hetero-normative model of healthcare delivery that assumes that all clients are heterosexual is very restrictive in relation to providing healthcare but also in relation to gathering accurate data about sexual practices and behaviours.

The criminalisation of same-sex sexual conduct results in the invisibility of this group. A good example of this is the most recent draft of the National HIV and AIDS Country Strategy, which includes men who have sex with men (MSM) and sex workers. However, women who have sex with women (WSW) are excluded and the plan does not acknowledge the need to decriminalise in order to ensure that MSM groups can freely access HIV and AIDS services. Arising from recent research by the National AIDS Council in Zimbabwe was a recommendation that ‘homosexuality and prostitution (must be dealt with) in a pragmatic way.’ However, the research has not been widely circulated. In an interview about the research, Gays and Lesbians of Zimbabwe (GALZ) said that “decriminalising consensual same sex practice will reduce fear, stigma and discrimination as it has to be accompanied by education, trainings and sensitisation of all stakeholders including the police.”

The criminal laws and resulting stigma prevents sex workers from participating in professional bodies and organised associations that protect the rights of other professions. This has made it difficult for them to organise themselves as a profession that monitors and promotes their professional rights. This is part of the reason why there is not reliable data even on the numbers of women and men involved in this profession. In most cases, the only available data is that which has been collected in the context of access to HIV and AIDS services. And although this is not complicated research, even this data is limited in the region. Indeed, only 6 countries out of 21 in East and southern Africa reported HIV rates amongst sex workers to UNAIDS in 2010.

In addition to issues of violence, which increases sex workers vulnerability to HIV, there are numerous barriers to sex workers accessing healthcare services. Many sex workers report problems in seeking health services from government hospitals because
medical staff refuse to treat sex workers unless they bring their sexual partner for similar treatment. The criminalisation of sex work prevents sex workers from full disclosure about their profession and their specific health needs. Limited access to sexual reproductive health services available in Zimbabwe has a detrimental impact on the ability of sex workers to seek and access treatment, including pap smears and breast screening. Evidence has suggested that there are clear linkages between the decriminalisation of sex work and increased access to sexual reproductive health services for sex workers.

If sex workers are a high-risk group, as society largely believes, what then is the impact of excluding them from policy formation, development and implementation? The criminal law and resulting stigma prevents sex workers from participating in law and policy formulation and implementation, let alone service provision programmes. As such, their voices are silenced and they often struggle in silence, out of fear of being arrested and victimised.

**Impact on all human rights**

Laws based on protecting a moral code that targets the conduct of particular groups have a serious impact on wider human rights. In Zimbabwe, these laws have resulted in the exclusion of issues affecting LBT women and female sex workers from civil society work and from the ‘mainstream’ women’s and human rights movements. In a recent civil society shadow report to the Universal Periodic Review, for example, broader human rights issues affecting LBT women and sex workers were not mentioned. The criminalisation of abortion was not highlighted in the report as an issue of concern in relation to attempts by Zimbabwe to meet the Millennium Development Goals or fulfil state obligations under various treaties to which Zimbabwe is a signatory. During the Sixteen Days of Activism in 2010, female sex workers and LBT women were not permitted to make statements about ‘corrective rape’ or violence perpetrated by the police. The police cited the law as one of the reasons, but the other reason given was that the police ‘do not agree with these people.’ This illustrates that there are many factors at play in the game of cat and mouse between the state and citizens regarding the sexual rights of the latter.

But activism around these issues is slowly making an impression. During the Sixteen Days of Activism, media coverage analysed the extent to which LBT women and female sex workers were excluded from commemorating violence against women and questioned why the Sixteen Days of Activism was not for everyone to participate in. Thabitha Khumalo, who is an MP, also stated that sex workers were ‘pleasure engineers’ and should not be persecuted. Meanwhile, we are beginning to see more visibility of organised movements of LBT and sex worker communities in some parts of the country. For instance, the informal networks of sex workers and LBT women in Bulawayo participated in the constitution-making process and placed key demands around sexual rights, which they submitted to the committee. There are also organisations in Zimbabwe working to put the ‘sexual’ and the ‘rights’ back into sexual reproductive health rights.

**Conclusion**

I would argue that although the language of morality, religion and culture dominates the space for discussion about sex and sexuality, the constant references to sexuality are at least raising the profile of this issue. Ultimately, sexual rights are the ‘last frontier of rights’. At a recent meeting of LBT women, one lesbian woman stood up and said, “we have to challenge our thinking and then gradually we will be able to challenge the thinking of our society in Zimbabwe.” This is real resistance. The government can put laws in place that seek to silence LBT women and sex workers, but gradually, women are pushing back against oppressive forces that seek to dictate to them what they should do with their bodies. Women are gradually reclaiming their bodies through the language of rights and LBT women and sex workers are leading the way. But they have a long way to go – so there is an urgent need for solidarity and support from other social justice and human rights movements.

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1. President Robert Mugabe at Official Opening of Zimbabwe International Book Fair, whose theme was Human Rights and Justice, August 2, 1995.
2. African Centre for Law and Justice pamphlet called for constitutional prohibitions on both abortion, by defining life as ‘beginning at conception’, Pat Robertson’s Women Warriors Leading Spiritual Warfare In Zimbabwe. Sokwanele Article: August 2nd, 2010
3. We are Zimbabweans and have a culture for Zimbabweans to preserve... Human rights should not be allowed to dehumanize us. ZANU-PF’s Women’s League in support of the President following responses from international and some local human rights groups on the president official opening speech at the Book Fair, August 18, 1995
4. In a raid on brothels in Beitbridge a local man commented: “I would like to commend the police for launching a blitz on brothels as they are also a haven for criminals and again morally it is wrong as it undermines the human values. This practice is destroying the moral fibre of our town and therefore we hope such raids will address this challenge in which our children are exposed to such immorality,” The Chronicle, 3 December 2010.
5. We cannot recognise homosexuality in Zimbabwe: ZANU-PF’s Women’s League in support of the President following responses from international and some local human rights groups on the president official opening speech at the Book Fair, August 18, 1995
7. ZIMBABWE: Abortion figures underscore need for more reproductive health education, 30 March 2005
9. “I expect to be abused and I have fear”: Sex workers’ experiences of human rights violations and barriers to accessing healthcare in four African countries, ASWA, 2011.
10. IGLHRC report – how HIV/AIDS programmes are failing sexual minorities.
12. Amendments to the current Constitution limited the rights attributed to citizens and tightened the criteria required for people to be recognised as citizens of Zimbabwe. One of the important issues for ZANU-PF was to oppose dual citizenship in the new Constitution.
14. President Robert Mugabe at Official Opening of Zimbabwe International Book Fair, whose theme was Human Rights and Justice, August 2, 1995.
16. President Robert Mugabe at Official Opening of Zimbabwe International Book Fair whose theme was Human Rights and Justice August 2, 1995
18. The new Constitution is currently being drafted.
19. ‘Allowing gays to run free would see Zimbabwe, a Third World country, fighting a losing battle against diseases that emanate from homosexuality. It is well established that there are high rates of psychiatric illnesses, including depression, drug abuse, and suicide attempts, among gays and lesbians.’ Attempts to sneak homosexuality into constitution exposed, S.Chiwenga, Sunday News, September 2010.
21. Include dress code in constitution say pastors. Sokwanele Article: July 9th, 2010
22. In a recent case in Bulawayo a woman in a same-sex relationship was charged with sexual assault when the mother of her girlfriend reported her to the police. One of the conditions of her bail was that she had to be accompanied by a man when in the company of another woman.
24. Ibid.
26. Ibid.
27. Interviews with Sexual Rights Centre coordinators who reported that, ‘we were walking home from the bar in the early evening. Police drove past in a truck. The truck stopped and the police jumped out and demanded to search us. We asked what they were searching for and they said condoms because we think you are prostitutes. Luckily we didn’t have any condoms.’
28. “I expect to be abused and I have fear”: Sex workers’ experiences of human rights violations and barriers to accessing healthcare in four African countries. ASWA, 2011.
29. Informal questionnaire-based research conducted by the Sexual Rights Centre in 2010.
31. Ibid.
33. I expect to be abused and I have fear”: Sex workers’ experiences of human rights violations and barriers to accessing healthcare in four African countries. ASWA, 2011.
34. Sex work and the law: The case for decriminalisation, Sex Work Factsheets, World AIDS Campaign, 2010.
35. Interview with Mojalifa Ndlovu, LGBT Officer at the Sexual Rights Centre.
37. Workshop hosted by Sexual Rights Centre.