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PROGRESSIVE LEGISLATION IN THE CONTEXT OF GENERALISED CONSERVATIVE PUBLIC OPINION: THE CASE OF LGBT RIGHTS IN MOZAMBIQUE

Carmeliza Rosário & Camila Gianella***

'Xhi esse mundo djon, ja n está prestar'¹

1 **A ceremony and the thin line between public and private worlds**

In June 2016, pictures of a purported 'gay wedding' ceremony in the coastal town of Quelimane, Mozambique, appeared on the social media platforms Facebook and WhatsApp. In them, what was perceived as two cisgender gay men (but were, in fact, a cisgender gay man and a transgender woman) stood before friends and family, exchanging vows, rings and kisses. The majority's disparaging reaction stood in contrast to the positive light cast over Mozambique for having decriminalised anti-gay laws just the year before. We knew the transgender woman in the ceremony, so we looked her up to ask her first-hand how she had experienced the public exposure of their private moment.

For the most part, she was indifferent to the reactions. She did not believe that those who took and shared the pictures did it in bad faith. The couple had friends and family who lived far away and could not make it to the ceremony. The image shared on social media was a way for them to be a part of that particular moment. She is aware that there was some expectation regarding the event. She hails from Spain, and her husband is Mozambican. Some of the guests were curious and had never participated in anything similar. Overall, guests respected both their identities and sexualities.

* Chr Michelsen Institute/Centre for Law and Social Transformation, University of Bergen.

** Pontificia Universidad Católica del Perú/Centre for Law and Social Transformation, University of Bergen.

1 This expression was taken out of a Facebook post, posted on 20 June 2016. The text, which is written (and largely misspelt), in vernacular Portuguese from Mozambique roughly translates to something like: 'Man, this world is lost!'

She had arrived in Zambezia ten years before to work on sexual and reproductive health issues. Before moving to Quelimane, the provincial capital, she first lived in a rural town.

Contrary to her fear of negative public reactions about her transgender identity (having been born a male and now identifying as a woman), she had a generally positive experience. She claimed that she is respected professionally and has never been shunned. Overall, she felt welcome and accepted within the Zambezian society (she does not want to generalise to the rest of Mozambique), which she considered open and accepting of difference. Her husband also confirmed that he was in no way discriminated against or treated differently by friends and family after ‘formalising their relationship’.

The event, which they called the ‘formalisation’, was primarily for the benefit of the family to publicly acknowledge their relationship, which was three years in existence. This was an informal ceremony, somewhat above an engagement, since they were already living together but did not have the option of marriage. Same-sex unions do not have legal recognition in Mozambique and cannot be formalised in any formal venue. Same-sex couples who wish to formalise their unions tend to do it in countries where it is legal, such as South Africa. In this case, because the woman is a Spanish national, and same-sex unions are legal in Spain, she thought they could formalise it in the Spanish consulate.² This was denied, allegedly because the Mozambican government did not approve.³ As such, at least for the time being, they were left only with the intimate and informal ‘formalisation’.

Thanks to social media, news of the ceremony travelled far. She claimed that she received both positive and negative criticism from her homeland Spain and even as far as the United States of America (USA). She got upset only when she received what appeared to be the front page of a local newspaper equating their ceremony to the apocalypse. For her, theirs was a private affair that could not be exposed publicly without

2 It must be stressed that same-sex couples around the world have achieved major gains in making their marriages recognised in their state or country of residence, even when these same-sex marriages were not legal. One milestone case was that of *Obergefell v Hodges*, *Director, Ohio Department of Health* 576 US (2015), where the Supreme Court of the United States of America held that all states must recognise same-sex marriages validly performed in other jurisdictions.

3 According to the *Resolución-circular de 29 julio de 2005, de la Dirección General de los Registros y del Notariado, sobre matrimonios civiles entre personas del mismo sexo*, Spanish consulates are not allowed to perform same-sex marriages (consulate marriages) when the host country does not recognise same-sex marriages.

their consent. Social media fell under the realm of gossip, but a formal newspaper should be upheld to different ethics and standards. According to her, they had no permission to make a private matter public. She looked for the newspaper and was willing to sue for defamation. However, after some research, she realised it was a montage produced by a conservative individual bent on giving an appearance of credibility to a false narrative.

This case exemplifies the contradictory attitudes towards sexual minorities in Mozambique. On the one hand, same-sex acts are not criminalised, and the public is generally tolerant of LGBT people. On the other hand, private events such as the one described above can receive the most vicious attacks, linking same-sex relations to the world's end. In such instances, LGBT people still feel discriminated against and are thought of as (mentally) ill, misguided, immoral and even criminal. A study conducted by the main LGBT organisation in the country, LAMBDA (Mozambican Association for the Defense of Sexual Minorities) found that a reasonable number of people if confronted with a person being assaulted for their sexual orientation, would join in the assault.⁴ And although most people surveyed said they would do nothing if they found their child to be homosexual, a reasonable number would try to convince them to 'change their mind' or even have them committed to a mental institution. Moreover, seemingly progressive political institutions have refused to legalise the LGBT organisation.⁵ This social pact where society tolerates lesbian, gay, bisexual and trans people as long as their true nature remains invisible has successfully protected them from the levels of violence that they face in other corners of the world, including neighbouring countries.⁶ However, it has a high cost of denying them their human rights, as *every lesbian, gay, bisexual and trans person is entitled to live free and equal, openly and proudly.*⁷

4 E Brás, C Rehana & M Baltazar *Atitudes Perante a Homossexualidade nas cidades de Maputo, Beira e Nampula* (2013). B Muianga *Attitudes towards homosexuality in Maputo, Beira and Nampula* (2017) <https://express.adobe.com/page/1whcHk1ZoykJO/> (accessed 20 July 2022).

5 'Governo "recusa-se" a legalizar associação das minorias sexuais' *Verdade*. 24 July 2014 <https://verdade.co.mz/governo-recusa-se-a-legalizar-associacao-das-minorias-sexuais/> (accessed 20 July 2022); LUSA. 'Minorias sexuais acusam governo de estigma' *Sapo Lifestyle* 3 November 2014, 2-3 <http://lifestyle.sapo.mz/glamour/celebridades/artigos/minorias-sexuais-acusam-governo-de-discriminacao-e-estigma> (accessed 20 July 2022).

6 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity *Visit to Mozambique Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* (2019) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/140/82/PDF/G1914082.pdf?OpenElement> (accessed 20 July 2022).

7 As above.

Through the analysis of 25 interviews⁸ with key actors involved in the debates regarding sexual and reproductive rights in Mozambique; three rounds of surveys done between 2019, and 2021; and selected media content, this article presents the possibilities and limitations of promoting legal changes to protect the rights of marginalised groups such as LGBT people, in a context with weak legal institutions, and consequently a civil society with the limited capacity to reinforce laws. The analysis also addresses the limits of foreign aid on LGBT activism in these contexts.

In this chapter, we attempt to make sense of how influential critical conservative stakeholders, such as politicians and religious leaders, have not been able to prevent this more progressive legislation from being approved. We hypothesise that given a diverse religious and socio-linguistic context, no prominent political or religious actor has been able to monopolise issues for or against LGBT rights. Instead, the government holds the most political power⁹ and has instrumentalised the case differently from other countries in the region. Due to its dependency on foreign aid, it has accommodated LGBT issues in some instances, particularly related to healthcare. However, it does not allow for a more open debate to avoid political backlash from the public or influential conservative actors.

2 Mozambique in the region

Mozambique does not fit the profile of most Southern or even Eastern African countries concerning the criminalisation of same-sex relations. In these regions only Angola, Lesotho, Madagascar, Mozambique and South Africa do not have punitive laws toward homosexuality.¹⁰ It is understood

8 Twenty-four interviews were conducted between November and December 2016 in Maputo and one in Quelimane, Mozambique. The interviews were conducted in Portuguese. The study received approval from the Norwegian Center for Research Data (NSD).

9 The ruling party, FRELIMO, has been in power before and the introduction of multiparty elections in 1994 has allowed it to establish significant control over state institutions. Power remains generally centralised in the executive branch, which dominates parliament and all other branches of government. Judicial independence is hampered by the dominance of the executive branch. The Attorney General is directly appointed by the president, with no legislative confirmation process. Besides, state-run outlets dominate the Mozambican media sector and often provide coverage favourable to the government. Freedom House 'Freedom in the World: Mozambique 2021' (2021) <https://freedomhouse.org/country/mozambique/freedom-world/2021> (accessed 20 July 2022).

10 The most recent reform that has been adopted by Angola is the new Penal Code, approved in 2019, which offers protection based on sexual orientation. Botswana is another country that is on the process of recognising LGBT rights. Like LAMBDA, Botswana's LGBT association LEGABIBO also fought a long battle for their right to assembly, which was eventually successful in 2016.

that evangelical influence is a significant factor in helping to curtail the rights of LGBT minorities.¹¹ In Mozambique, Catholicism, Protestantism, and Islamism are the most influential, even though Neo-Pentecostal and Evangelical churches are on the rise.

According to Grossman,¹² competitive democratic processes have negatively impacted LGBT rights elsewhere in Africa, where actors have utilised political leverage to mobilise anti-gay sentiments. In the case of Mozambique, the issue has not been capitalised on by political actors because it appears to be a matter that most would prefer to keep unmentioned, and discussing it does not yield any particular political advantage. Political actors in Mozambique need to carefully balance progressive and conservative actors. Dependence on foreign aid, particularly regarding social issues such as education and health, may favour some openness regarding health issues such as those concerning HIV/AIDS, traditionally linked by international aid to LGBT people.

Similar to what has been described in Asian authoritarian regimes,¹³ in the case of Mozambique, foreign aid, related to health (and response to HIV), has been instrumental in bringing LGBT issues to the table and, consequently, recognising the group's specific needs and formal improvements of their civil rights. Yet, even as extreme conservative sentiments do not seem to be able to gain traction, overt sexual expressions and identity remain taboo. This means that when speaking about family, marriage or adoption have not become an option for sexual minorities, even if they are relatively common albeit privately condoned practice. The judiciary is highly co-opted by the political elites and hence unlikely to decide progressively.

One of the few and long-lasting legal disputes has been around the legal registration of the only LGBT association, LAMBDA. As will be explored below, this case started in 2008 and has played out outside the courts. LAMBDA has filed petitions to the Ministry of Justice, the Ombudsman,

11 G Grossman 'Renewalist Christianity and the political saliency of LGBTs: Theory and evidence from Sub-Saharan Africa' (2015) 77 *The Journal of Politics* 337 <https://doi.org/10.1086/679596> (accessed 20 July 2022); PR Ireland 'A macro-level analysis of the scope, causes, and consequences of homophobia in Africa' (2013) 56 *African Studies Review* 47 <https://doi.org/10.1017/asr.2013.41> (accessed 20 July 2022); RR Thoreson 'Troubling the waters of a "wave of homophobia": Political economies of anti-queer animus in sub-Saharan Africa' (2014) 17 *Sexualities* 23 <https://doi.org/10.1177/1363460713511098> e (accessed 20 July 2022).

12 Grossman (n 11).

13 T Hildebrandt 'NGOs and the success paradox: Gay activism 'after' HIV/AIDS in China' LSE Social Policy Working Paper 01-18 (December 2018).

and the National Human Rights Commission of Mozambique, decrying the unconstitutionality of not legalising the association. LAMBDA bases its arguments on article 52 of the Mozambican Constitution, which provides the right to freedom of association. In 2011, the UN Human Rights Council recommended that Mozambique should register the organisation.¹⁴ The country did not take any action. The association remains unregistered, even after the Mozambican Constitutional Council confirmed, in 2017, the unconstitutionality of blocking its registration.¹⁵

Ultimately, we must ask what this contradictory context means for the aspirations of the Mozambican LGBT community. How safe do they feel that they will continue to be protected by law and their rights will not eventually be curtailed? Is the increasing evangelical influence likely to increase the ability of religious actors to impact the LGBT cause negatively? In the absence of an effective judiciary, should the conversation about the LGBT community focus on existing social practices rather than human rights?

3 Chronology and content of LGBT rights discussion in Mozambique

Like most of its neighbours, Mozambique inherited a colonial penal code from the 19th century that included clauses against ‘those who habitually engage in vices against nature’, which could lead to imprisonment from 6 months to 3 years with forced labour. For this reason, when the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) published its survey, *State-Sponsored Homophobia*, in 2013,¹⁶ Mozambique was still among the countries that criminalised same-sex relations. Since its independence in 1975, there was no evidence that any case had been brought to court where the clauses were invoked. However, internment and physical abuse of members of the LGBT community occurred, at least according to the coordinator of the LGBT Group in Amnesty International Portugal.¹⁷

14 Z Machado ‘Dispatches: Mozambique’s double speak on LGBT rights’ *Human Rights Watch* 25 January 2016 <https://www.hrw.org/news/2016/01/25/dispatches-mozambiques-double-speak-lgbt-rights> (accessed 20 July 2022).

15 República de Mocambique ‘Acórdão nº 07/CC/2017 de 31 de Outubro’ Concelho Institucional.

16 LP Itaborahy & J Zhu ‘State-sponsored homophobia: A world survey of laws – Criminalisation, protection and recognition of same-sex love’ ILGA (2013) <https://www.refworld.org/docid/519b6c2f4.html> (accessed 20 July 2022).

17 ‘Em Angola, S Tomé e Moçambique são vulgares as práticas de internamento e de abusos físicos’ *Dezanove* 27 May 2010 <http://dezanove.pt/36421.html> (accessed 20 July 2022).

Before Mozambique's independence, a Customs Brigade (*Brigada de Costumes*) operating in Portugal from 1964 to 1974, when a coup toppled the dictatorship and liberated the remaining Portuguese colonies, planted undercover police agents posed as homosexuals to infiltrate locations frequented by the LGBT community. Many members of the community were arrested, physically and psychologically abused. Many lived in fear of their sexuality being exposed.¹⁸ The same brigade likely operated in the colonies particularly policing the sexuality of settlers. Imprisonment and torture for political dissent were already commonplace. The same measures were used to repress homosexuality. Legislation against homosexuality for settlers and indigenous people differed in one important point. For the latter only 'those who engaged in the practice of vices against nature *for financial gain*' were criminalised.¹⁹

In 2014, former president Chissano made headlines by appealing to African heads of state to fight homophobia. He stated in an open letter to African leaders:²⁰

We can no longer afford to discriminate against people based on age, sex, ethnicity, migrant status, sexual orientation and gender identity, or any other basis – we need to unleash the full potential of everyone.

The same year, parliament approved a new Criminal Code and it was signed into law by the then sitting president, Armando Guebuza, sweeping away mention of 'vices against nature'. As a result, Mozambique received international recognition for decriminalising same-sex relations. After the legal waiting period of six months, the new code came into force in June 2015.

Though happy with some of the changes, civil society organisations noted that the new code was still marred with what they considered 'grave' human rights violations, lacked a gender approach and allowed gender-based violence. The code exempts perpetrators' relatives (parents, spouses

18 AC Correia 'O Estado Novo e a repressão da homossexualidade, 1933-1943' (2017) 70 *Ler História* 161.

19 GG da Costa 'Reflexões sobre o legado colonial português na regulação das práticas sexuais entre pessoas do mesmo sexo em Moçambique' (2021) 46 *Anuário Antropológico* 152.

20 J Chissano 'An open letter to Africa's Leaders – Joaquim Chissano, former President of Mozambique' *The African Report* 14 January 2014 <https://www.theafricareport.com/4886/an-open-letter-to-africas-leaders-joaquim-chissano-former-president-of-mozambique/> (accessed 20 July 2022). 'Joaquim Chissano envia carta a líderes africanos e pede respeito para gays e lésbicas' *Dezanove* 15 January 2014 <https://dezanove.pt/joaquim-chissano-envia-carta-a-lideres-598295> (accessed 20 July 2022).

and family members up to the third degree of kinship) from responsibility, even when they alter, or destroy evidence of the crime. This can decisively interfere with police investigations, increasing criminals' impunity, in cases of gender violence, including sexual violence. Article 218, excludes oral penetration and the use of objects as instances of rape. The view that the law was lacking was also shared with some of the key informants interviewed as part of this study, as is the case of one LGBT activist²¹ who considers that the withdrawal of the homophobic clauses was not a real victory because this only reflected an already common practice, as they had not been used since independence; that is, there was no record of anyone being charged under those clauses.

This opinion is shared by the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, for him, there

is no evidence of a connection between the process of decriminalisation and a State vision aimed at combating violence and discrimination based on sexual orientation and gender identity or a concerted public policy to that effect.²²

Another concern is the effect of international agendas and actors on the approval of legal reforms without the participation of local civil society. While there are no laws protecting against hate crimes based on sexual or gender identity in the country, nor legislation on gender recognition, in 2007 the Labour Law was reformed. It included the criminalisation of discrimination based on sexual orientation in employment. In article 4(1), this law states that the interpretation and application of the norms in the law adhere to

among other [things], to the principle of the right to work, stability of employment and in the work post, of change in circumstances and non-discrimination due to sexual orientation, race or HIV status.²³

In article 108(3), the law further states about remuneration:²⁴

21 Interview 16/25, in Maputo in November 2016.

22 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (n 6).

23 In Portuguese: 'A interpretação e aplicação das normas da presente lei obedece, entre outros, ao princípio do direito ao trabalho, da estabilidade no emprego e no posto de trabalho, da alteração das circunstâncias e da não discriminação em razão da orientação sexual, raça ou de se ser portador de HIV/SIDA.'

24 In Portuguese: 'Todo o trabalhador, nacional ou estrangeiro, sem distinção de sexo, orientação sexual, raça, cor, religião, convicção política ou ideológica, ascendência

Every worker, national or foreigner, without distinction of sex, sexual orientation, race, colour, religion, political conviction or ideology, ethnic descent or origin, has the right to receive the same salary and benefits for equal work.

The 2007 reform happened just before LGBT rights first started emerging as an issue in development programmes in Mozambique and without the participation of national LGBT organisations. According to some of our interviewees (that were not directly involved in the reform), this reform could have been related to HIV programmes and advocacy work linked to HIV. A new labour law reform has been under discussion since 2019. At least one proposal submitted to Parliament sought to do away with the protection against discrimination based on sexual orientation.

In Mozambique, LGBT issues emerged first as a health concern related to the HIV pandemic. In 2008, with Norwegian support, Pathfinder funded LGBT rights through advocacy and health promotion activities. HIV policies and poverty reduction strategies included from 2009 men having sex with men as vulnerable groups, but have kept silent on women who have sex with women and the transgender population. The latter were finally included in the latest HIV policy (PEN V), valid from 2021-2025.²⁵

The inclusion of men having sex with men in policies as vulnerable groups (and targeted groups) shows that, despite the formal criminalisation of same-sex relations in the criminal code, this was not an obstacle to the approval of laws and policies (such as the National Strategic Plan for HIV/AIDS from 2010 which included men having sex with men (MSM) as a priority for prevention). Moreover, the labour law was not legally contested.

However, despite the inclusion of gay men, and now transgender women in policies, studies have found that this population still suffers from stigma and discrimination in their access to healthcare services which prevents them from using the services and limit their access to counselling, information and supplies such as condoms.²⁶ A study conducted by LAMBDA found that despite the anti-discrimination provision in the

ou origem étnica, tem direito a receber salário e a usufruir regalias iguais por trabalho igual.'

25 Conselho Nacional de Combate ao HIV e SIDA. (2020). *Plano Estratégico Nacional de Combate ao HIV e SIDA (PEN V), 2021-2025*.

26 R Nalá et al 'Men who have sex with men in Mozambique: identifying a hidden population at high-risk for HIV' (2015) 19 *AIDS and Behavior* 393 <https://doi.org/10.1007/s10461-014-0895-8> (accessed 20 July 2022).

labour law, the LGBT community still feels at risk of being fired for their sexual orientation and as a result prefer not to disclose it.²⁷

Additionally, as mentioned above, LAMBDA faces an uphill battle to register formally (see Figure 1 LAMBDA registration request timeline below). The association was formed in 2006 but first applied for formal registration in 2008. Almost 15 years after the application, it is not yet registered. For some, article 1 of Law No 8/91, Law on Association, which regulates the registration and operation of associations, is one of the reasons behind this. For this law, in order to be legally recognised, an organisation has to not ‘offend public morals’. This provision has been often used to deny registration of LAMBDA.²⁸ In 2017, the Constitutional Council declared article 1 of Law No 8/91 unconstitutional, not only on the grounds that it broadens the limits of association set by the Constitution (namely, by extending it to limitations based on moral grounds) but also because it runs contrary to the principles of equality and non-discrimination.²⁹

Despite this, and the calls by several states and United Nations human rights mechanisms for Mozambique to process LAMBDA’s application for registration expeditiously,³⁰ LAMBDA continues without legal registration. Because of this, the association cannot get funding directly. Presently, LAMBDA activities are funded through a parent organisation, Forum Mulher – an umbrella association whose member organisations fight for women’s rights.³¹

27 D de Sousa & H Mafundza *Direitos e Cidadania LGBT* (2014).

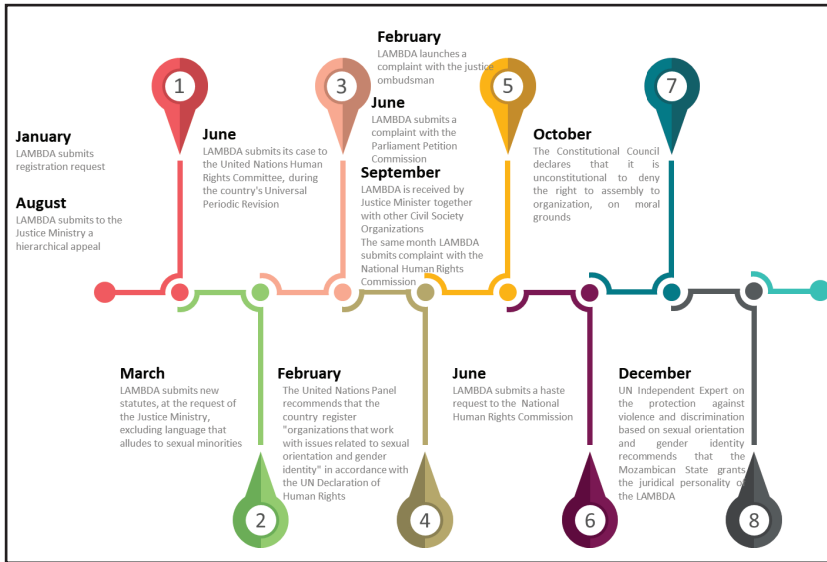
28 Human Rights Council Working Group on the Universal Periodic Review ‘Summary of stakeholders’ submissions on Mozambique. Report of the Office of the United Nations High Commissioner for Human Rights’ (2021) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/045/89/PDF/G2104589.pdf?OpenElement> (accessed 22 July 2022).

29 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (n 6). (2019).

30 For example Canada, during the universal periodic review in 2011 (A/HRC/17/16, para 89.67), the Human Rights Committee in 2013 (CCPR/C/MOZ/CO/1, para 22) and Norway, Canada and the United Kingdom of Great Britain and Northern Ireland during the universal periodic review in 2016 (A/HRC/32/6, paras 129.34 and 130.12-130.13).

31 Interview 20/25 in Maputo, December 2016.

Figure 1: LAMBDA registration request timeline



Source: LAMBDA, 2015; OHCHR

The discussion about the rights of sexual minorities has been largely absent from the national media discussion. Notable exceptions are an in-depth article from *Jornal a Verdade*³² accusing the Mozambican state of discriminating against the LGBT community in 2012,³³ again in 2014 exposing the state's refusal to legalise LAMBDA,³⁴ and the third article in 2015 denouncing the government's attempt to disguise discrimination in its Human Rights Report.³⁵ The latter articles were part of the newspaper's segment on democracy. Another online news outlet, *Folha de Maputo* conveyed the news about the alleged discrimination from the government faced by LAMBDA, as evidenced by statements of the justice minister

32 A free newspaper, which aims to expose controversial issues and through their discussion contribute to social and civic education.

33 R Lamarques 'O Estado discrimina' *Verdade* 4 October 2012 <http://www.verdade.co.mz/temadefundo/35themadefundo/30981oestadodiscrimina> (accessed 20 July 2022).

34 A Manjate 'Governo "recusase" a legalizar associaçao das minorias sexuais' *Verdade* 24 July 2014 <http://www.verdade.co.mz/destaques/democracia/47737> (accessed 20 July 2022).

35 E Sambo 'Governo de Moçambique "maquilha" relatório sobre direitos humanos para submetê-lo às Nações Unidas' *Verdade* 16 October 2015 <http://www.verdade.co.mz/destaques/democracia/55347> (accessed 20 July 2022).

about the association's registration. Otherwise, the discussion is 'hidden' under the guise of entertainment news, as is exemplified by articles on the web page *Sapo Moçambique's* lifestyle section, for example, one talking about the life and career of Labiba, a trans woman,³⁶ one commemorating the gay pride day,³⁷ or another on sexual minorities' complaint about discrimination.³⁸

In the print media, issues about homosexuality are featured in opinion pieces and are more conservative. The newspaper *Zambeze* is particularly prolific in conservative opinion pieces on homosexuality. On 12 January 2012 it ran an article on the international section with a title attributed to Pope Benedict XVI saying that gay marriage was a menace to humanity.³⁹ On 19 July 2012, the opinion column called *Muthetho* confounded violence and rape in prisons with homosexuality and claimed it as an unnatural act common to places where same sex people are forced to live together, without access to people of the other sex.⁴⁰ The author further alleged that it was necessary for the human species to protect itself against such menace to its existence. The same author offers his opinion in the same column on 26 July 2012, offering his take on homosexuality in the discussion for the new penal code. He seems to favour the criminalisation of homosexuality to account for the crime of rape of men. He alleged that the clauses on bodily harm were not enough, and rape clauses only referred to rape committed against women.⁴¹ These examples, and another dated 20 September 2012, the national public newspaper *Notícias*,⁴² were presented as instances of bias against the LGBT community in the media, at an international conference by the then director of LAMBDA, Danilo da Silva.

Other attacks in the media followed. On 16 January, 2014 Sheikh Aminuddin, in his opinion column called *Almadina*, referred to

36 'Entre a arte e a realidade' *LABIBA Sapo Life Style* 22 November 2010 <http://lifestyle.sapo.mz/vidaecarreira/emfoco/artigos/labiba?artigoCompleto=sim> (accessed 20 July 2022).

37 'Dia Internacional do Orgulho Gay' *Sapo Life Style* 29 June 2012 <http://lifestyle.sapo.mz/vidaecarreira/emfoco/artigos/diainternacionaldoorgulhogay> (accessed 20 July 2022).

38 'Minorias Sexuais acusam Governo de discriminação e estigma' *Sapo Life Style* 3 November 2014 <http://lifestyle.sapo.mz/glamour/celebridades/artigos/minoriassexuaisacusamgovernodediscriminacaoestigma> (accessed 20 July 2022).

39 'Casamento gay ameaça a humanidade' *Zambeze* 12 January 2012.

40 A Ngoyene 'Projecto do Código Penal: Homossexualismo' *Zambeze* 19 July 2012.

41 As above.

42 V Milhongo 'Reflectindo sobre a homossexualidade' *Notícia* 20 September 2012

homosexuals as being worse than animals,⁴³ and was strongly criticised for it.⁴⁴ On 14 August, the same year he penned another opinion piece in the same column under the title: ‘What rights ... and what humans?’⁴⁵ Additionally, and according to Danilo da Silva, there is a ‘self-censorship from journalists, when reporting issues related to sexual minorities’⁴⁶ stemming from their own preconceptions and prejudices.⁴⁷ The role of media in ‘forming and informing the public opinion in Mozambique’⁴⁸ has made it a crucial battleground where to gather allies for both camps.

4 Why decriminalisation does not ensure rights

From the above, it is evident that sexual orientation and gender identity in Mozambique are still complex issues that are neither discussed easily nor openly. Comparatively with most other countries in the region, same-sex relations in the country are not criminalised, there is no overt discrimination and despite some conservative voices, there is no organised movement to suppress sexual minorities’ rights. Yet, the same parliament and government officials who allowed a law that decriminalised ‘acts against nature’ to pass, are unable to guarantee the simple right to freedom of association. Moreover for some parliamentarians the decriminalisation did not have anything to do with ‘permitting’ homosexuality and therefore could not be equated with the ‘legalisation’ of homosexuality.⁴⁹

In response to the recommendations of the UN Human Rights Council’s Universal Periodic Review, prior to the amendment of the law, regarding the repeal of laws criminalising same-sex relations among consenting adults, the guarantee of the right to freedom of association of the LGBT community, Mozambique did not recognise that the existing

43 SA Mohamad ‘A importância do casamento’ *Zambeze* 16 January 2014.

44 C Capitine *Como Reportar Questões LGBT nos Mídia* (2014). *Manifestação de Repúdio ao Conteúdo do Artigo de Opinião do Ilustre Comissário Sheik Aminudin Mohamed, intitulado ‘A Importância do Casamento’ publicado no Jornal Zambeze, Edição do dia 16 de Janeiro de 2014* <http://www.oam.org.mz/wp-content/uploads/CARTA-CDH-SHEIK-CNDH.pdf> (accessed 20 July 2022).

45 SA Mohamad ‘Que direitos... e que humanos’ *Zambeze* 14 August 2014.

46 ‘Há autocensura dos jornalistas em reportar assuntos relacionados às minorias sexuais’.

47 IREX *Análise de Género na Mídia Moçambicana* (2012) https://pdf.usaid.gov/pdf_docs/PA00TRPG.pdf (accessed 20 July 2020).

48 E Lopes ‘The legal status of sexual minorities in Mozambique’ in S Namwase & A Jjuuko (eds) *Protecting the human rights of sexual minorities in contemporary Africa* (2017) 183.

49 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (n 6)

Penal Code criminalised homosexuality, and denied that there were restrictions regarding freedom of association. However, it did admit that cultural and religious customs prevented the issue of homosexuality from being addressed. It was considered to be a novelty and required time to be discussed openly.⁵⁰

Yet, it seems that social acceptance of same-sex sexuality is relatively widespread, albeit only to a certain degree. A study carried out by the Human Rights League (LDH) in 2006 found that 96 per cent of people surveyed in four of the biggest Mozambican towns knew a homosexual person and 80 per cent were friends with one. A follow-up study by LAMBDA, in 2013,⁵¹ found that fewer people admitted to knowing homosexual people (39 per cent). However, the majority (60 per cent) said they would defend a homosexual person if they were being assaulted for their sexual orientation. In 2017 the percentage was 84 per cent.⁵² In both studies, women were more accepting of homosexuality. Despite this apparent openness, homophobic attitudes are not uncommon. Discussing homosexuality openly seems to draw the greatest resistance. All the people we interviewed also claimed that attitudes towards homosexuality are more open in urban centres than in rural areas.

The Afrobarometer on the other hand, has found that Mozambicans are less tolerant compared to the African average in most of the researched indicators: people of other ethnicities, religion, foreign origin and living with HIV.⁵³ However, they were among the most tolerant towards homosexuality (56 per cent claimed they would like or not mind living next to a homosexual person), only surpassed by South Africa and Cape Verde. In this survey, tolerance was higher in urban settings and among young, more educated and male respondents.

For the most part, the discussion of homosexuality and sexual minorities in Mozambique has centred around a human rights discourse. LAMBDA and its supporters argue that the Constitution grants sexual minorities equal rights to other Mozambican citizens and the right for protection from discrimination by the Mozambican state. They also

50 See HRC 'Report of the Working Group on the Universal Periodic Review: Mozambique' UN Doc A/HRC/17/16 (28 March 2011) para 85 <http://daccess-dds-nry.un.org/doc/UNDOC/GEN/G11/123/79/PDF/G1112379.pdf?OpenElement> (accessed 20 July 2022).

51 E Brás, C Rehana & M Baltazar *Atitudes Perante a Homossexualidade nas cidades de Maputo, Beira e Nampula* (2013) 4.

52 Muianga (n 4).

53 B Dulani; G Sambo & KY Dionne 'Good neighbours? Africans express high levels of tolerance for many, but not for all' *Afrobarometer Dispatch* 74 (2016).

argue that Mozambique has ratified international conventions for the protection of human rights, which must be upheld. This discourse is the same used by Mozambican women's rights organisations, such as *Fórum Mulher* and WLSA. Since LAMBDA is funded under, and is a member of a feminist umbrella organisation, which advocates for women's rights, it is only natural that they use similar strategies and arguments. Critics to this argument, chiefly within the government argue that all Mozambican citizens already benefit from equal rights, and by considering themselves a minority the LGBT community wants to set itself apart from the other citizens and benefit from special treatment. Notably, the Mozambican state does not recognise any minority, or minority rights.

The role of foreign aid cannot be ignored in the development of LGBT activism in Mozambique and elsewhere in the region. In the case of Mozambique it has been particularly important in introducing the LGBT population as a group with specific needs in health programmes. Even in a context where there is a level of tolerance, an over focus on targeted interventions, without addressing structural factors to explain for example the higher incidence of HIV among men having sex with men, could contribute to the stigmatisation of vulnerable and marginalised populations and the LGBT population in Mozambique. Jasbir Puar's seminal work on *homonationalism* has paved an understanding of the subtle ways in which a new development focus has shifted towards incorporating the protection of LGBT rights.⁵⁴ As a non-compliant non-western space, with generalised sodomy laws inherited from colonial laws and generalised homophobia, Africa has become a 'site of anti-gay sentiment in need of Western intervention'.⁵⁵ This has meant that Mozambique, a country highly dependent on foreign aid, would have to comply, at least partially, with protecting its LGBT population, beyond health issues.

This external support further exacerbates the perception that LGBT issues are foreign based. The rights discourse seems to reinforce this view, as the rights discourse calls on Mozambique to respect its Constitution and the international conventions ratified by the country. It has been argued, for example in the case of Ghana, that the rights frame can be appropriated by opponents of LGBT rights⁵⁶ as seems to be exemplified

54 JK Puar *Terrorist assemblages: Homonationalism in queer times* (2007).

55 C Biruk 'Aid for gays': The moral and the material in "African homophobia" in post-2009 Malawi' (2014) 52 *The Journal of Modern African Studies* 447 <https://doi.org/10.1017/S0022278X14000226> (accessed 20 July 2022).

56 E Baisley 'Framing the Ghanaian LGBT rights debate: competing decolonisation and human rights frames' (2015) 49 *Canadian Journal of African Studies / Revue canadienne des études africaines* 383 <https://doi.org/10.1080/00083968.2015.1032989> (accessed 20 July 2022).

by Sheikh Aminuddin's opinion pieces referred to above regarding same-sex marriage and discrimination. On the other hand, Mozambique's religious diversity seems to have prevented the ability of more extreme anti-homosexual influences that have been attributed to Evangelical churches in the increase of homophobia in Africa. The different religious groups have not been able to form a united front against homosexuality. For example, the Anglican Church in Southern Africa has accepted homosexuals as members of the church, although they stopped short of condoning same-sex marriage.⁵⁷

What is lacking from the discussion is social practice that exists and counters perception of deviance, namely, that which is accepted by immediate family and neighbours. This includes instances of *de facto* unions, informal adoptions, and identity expressions within the entertainment milieu, like the trans dance duo Labiba and Lasanta who were taken off a game show despite their popularity among contestants and viewers. If the anti-homosexual clauses were withdrawn from the law for lack of use, perhaps one should begin to argue for the inclusion of clauses that reflect actual practice. Such practice need not be grounded in past tradition. In a brilliant talk about Sexuality and Identity in Africa at the Bergen Exchanges 2016,⁵⁸ Charles Ngwena addressed the dangers of essentialising, indeed exoticising sexual practices by evoking traditional customs, as this could exclude present and common practices, identities and expressions that are not grounded on previously sanctioned behaviour. He favoured an approach that recognised new practices as deserving to be protected and accepted as much as African as other customary homosexual practices. Relying excessively on customary sexual practices to legitimise homosexuality could in fact be counterproductive, particularly in cases where they are no longer in practice or when evidence of them having existed cannot be found.

The biggest fear of the LGBT community, however, is that exposing private practices that lack majoritarian acceptance are still not accepted, could trigger more violence against LGBT persons, and contribute to making LGBT rights an arena for political disputes as have been seen in neighbouring countries.

57 See C Stewart 'Southern African Anglicans to LGBT people: Welcome' 76 *Crimes* 26 February 2016 <https://76crimes.com/2016/02/26/southern-african-anglicans-to-lgbt-people-welcome/> (accessed 20 July 2022).

58 Workshop organised by the Centre of Law and Social Transformation in Bergen, Norway.

Legislation grounded in social movements stands a better chance to bridge the gap between rights and practice, and to address, from the beginning, the risk of backlash⁵⁹ (and poor implementation). In some Latin American contexts, debates on LGBT rights, including litigation in the courts, went progressively from defending individuals from state and/or private agencies' actions such as police brutality and/or discrimination, to discussion on more contested rights (such as same sex marriage and adoption). In contexts like Mozambique, with a general rejection of physical violence against the LGBT population, these debates could be a good point of departure.⁶⁰

5 Conclusion

Presently, the LGBT community in Mozambique seems to be at crossroads. Although Mozambique appears to the outside world, in particular in the western imagination, to have a liberal approach towards sexual minorities, in reality the change in the law has meant little for the community. The association LAMBDA is still not legally registered. Overall legislation does not overtly protect against discrimination on the grounds of sexual orientation. The labour law is still the notable exception. Even the Constitution does not mention sexual orientation specifically in its anti-discrimination clause, even though it does provide for equal treatment of all citizens in terms of schooling, equal pay for equal work and health.

In the meantime, there are multiple other issues that affect the LGBT community. One of them is the desire to constitute family and freedom to develop and express one's own identity, as illustrated by the story of the couple above. Several forms of spontaneous *de facto* family institutions exist that should allow for a conversation about the next step, such as allowing for the legalisation of same-sex relations and even adoptions. However, even as homosexual family organisations exist and are relatively common, social acceptance of the practice has not spread enough to influence protective legislation. The judiciary, which could drive the process of increasing equality for the LGBT community, is highly co-opted by a political elite that does not have a vested interest in furthering the LGBT agenda.⁶¹

59 C Gianella Malca & B Wilson *Rainbow revolution in Latin America: The battle for recognition* (2015).

60 As above.

61 Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (n 4).

Although LGBT communities do not suffer violence, their visibility risks backlash from conservative groups. Both conservative and some of the progressive voices consider that sexualities should be confined to the private realm. Particularly, conservative actors consider that there is no need for ‘special’ treatment if LGBT people truly hope for equality (an argument often used against women rights defenders too). In the meantime, unable to freely express their sexualities and identities, LGBT folk rightfully feel that they are second-class citizens.

An argument for having legislation that reflects social practice, also of LGBT people, would be that Mozambique would *finally* have legislation that truly reflects social practice. The danger is that there are several harmful social practices that legislators and civil society actors alike want to keep out of the law, for example polygamy. In the likely difficult conversation about normalising homosexual acts, in accordance with privately accepted social practice, conservative actors have started arguing for the right to legalise some practices hitherto considered harmful, evoking condoned social practice. In April 2022, Muslim women gathered in Quelimane voiced their support for polygamy, as long as the rules prescribed under the religion were followed. Feminist activists were naturally concerned.⁶² However, anticipating a difficult conversation should not equal avoiding it.

There was a general perception among our interviewees that Mozambicans, mostly politicians and the general population, are not ready for this conversation although members of the transgender community were of the contrary view that there has been openness from the government, and that African conservatism may at times be more of a perception than reality. A similar position is held by Awondo et al, in their piece about the nuanced undertones of African homophobia.⁶³ Perhaps it is time to test if such openness can begin to extend to Mozambican citizens.

The country has to its advantage occasional openness from the government, diversity of thought among potential conservative actors, and a population that despite resistance largely refrains from extreme forms of discrimination. This suggests that despite conservatism there is ample space to manoeuvre to overcome deep-seated prejudice of individuals and

62 STVJornaldaNoite 18 April 2022 <https://www.youtube.com/watch?v=T7GsVUd6GLs> (accessed 20 July 2022).

63 P Awondo, P Geschiere & G Reid ‘Homophobic Africa? toward a more nuanced view’ (2012) 55 *African Studies Review* 145 <https://doi.org/10.1017/S0002020600007241> (accessed 20 July 2022).

allow for further progress towards LGBT rights, beyond their sexuality and public health concerns, towards being able to participate in society on an equal footing with everyone else.

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