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## ABSTRACT

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This article deals with the issue whether human rights are still an effective language for promoting social change. In this article, the author begins with a brief analysis on the main developments in the human rights field all over the world, later focusing on the trajectory of the human rights movement in Mozambique, in order to identify the movement's impacts on the legal and institutional level and on governance. The author concludes that while the human rights movement in Mozambique has made several advances, especially in legal and institutional spheres, the main challenge it faces today in the country is in the area of governance. The challenge lies in how to apply the human rights language contained in the spirit of the laws approved and the institutions created to the day-to-day activities of all levels of public administration, from top to bottom.

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## KEYWORDS

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# THE STRUGGLE FOR THE RECOGNITION OF HUMAN RIGHTS IN MOZAMBIQUE: ADVANCES AND SETBACKS

Salvador Nkamate

## 1 Introduction

As we make major strides towards the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights and the 40<sup>th</sup> anniversary of the African Charter of Human and Peoples' Rights – instruments that have left an indelible mark on the recognition of human rights in the international context and African regional context – we are confronted with great turmoil. This turmoil is composed of various forms of systematic human rights violations, and raises the following question: *Are human rights still an efficient language for generating social change?*

The answer to this question is undoubtedly yes. Even though the efficiency of the human rights language is constantly being questioned – as it is measured according to whether or not one has obtained a given result in a short period of time, using the least amount of resources possible – the force of the human rights language cannot be denied. This is true even if systematic violations of human rights continue to be committed all over the world.

Ever since the initial attempts were made to systematise and internationalise human rights, they have produced important social changes focused on improving human dignity.

Nonetheless, the process of incorporating international human rights standards at the national level and adapting governance practices to the directives of these norms has gone back and forth between advances and setbacks. This had led to questioning the efficiency of the human rights language and to growing scepticism on the social change it is able to generate.

In the Mozambican context, an analysis of the impacts of the main human rights organisations' activities on the country's existing legal and institutional framework confirms that the human rights language continues to be effective in bringing about social change. However, in terms of the implementation of public

policies and measures to combat institutional violence, a noticeable and justifiable scepticism remains, on the impact of civil society organisations' (CSOs) advocacy work vis-à-vis the entities responsible for the promotion and protection of human rights.

In this article, we begin with a brief analysis on the main developments in the human rights field all over the world (1). We then focus on the trajectory of the human rights movement in Mozambique (2), addressing the movement's impacts on the legal (3.a) and institutional levels (3.b), and on governance (3.c), in order to respond whether or not human rights are still an efficient language for generating social change.

Our findings show that substantial progress has been made in terms of the impacts of the human rights movement's actions on legal and institution change in Mozambique. However, we do not see equally important advances being made in relation to the human rights movement's impact on government practices in the country. Nonetheless, the overall balance is still positive.

## 2 The human rights context around the world

The recognition of human rights through the creation of the United Nations (UN) in 1945 and the subsequent approval of the Universal Declaration of Human Rights in 1948 led to a significant decline in human rights violations, which had reached catastrophic levels during the Second World War.

These important international events gave impetus to the decolonisation process around the globe, and in Africa, in particular. They made memorable contributions to the emergence of a regional human rights system on the African continent. The landmarks of this system were the creation of the Organisation of African Unity in 1965 and the approval of the African Charter of Human and Peoples' Rights in 1981. The latter is the main instrument for promoting human rights in Africa.

International and regional conventions – both general and specific ones – came later, together with their respective mechanisms for evaluating States' fulfilment of their human rights obligations. The contribution of these instruments to the recognition of the human rights language is undeniable.

Yet, even today, in the 21<sup>st</sup> century, one can “identify the fragility of human rights as a grammar of human dignity” (SOUSA, 2013, p. 13). Indeed, systematic human rights violations persist on the global scale in both the field of civil and political rights and the field of economic, social and cultural rights. As a result, a large part of the world population continues to live in an undignified manner, far from the aspirations that led to the institutionalisation of international and regional human rights systems.

Regarding civil and political rights, one still witnesses the indiscriminate killing of civilians, of which Syria and Southern Sudan are dramatic examples. Discrimination on the grounds of sexual orientation is starting to reach alarming levels in Africa. Nigeria and Uganda have approved very severe “anti-gay” laws, showing unacceptable levels of intolerance for States that claim to be egalitarian and to respect the rights of all their citizens.

Concerning economic, social and cultural rights, “neoliberal globalisation as the new face of socioeconomic injustice, cognitive (including epistemic injustice), sexual and racial injustice, and historical injustice” (SANTOS, 2013, p. 13) prevents important advances from being made in regions of the Global South. As a result, the fulfilment of economic, social and cultural rights is incipient, as extremely high levels of illiteracy, undernourishment and infant mortality continue to exist in this part of the world (FUNDO DE POPULAÇÃO DAS NAÇÕES UNIDAS, 2013), among other evils.

Even so, since it is opposed to all of these ills, the human rights grammar has fuelled the existence of a perseverant movement that demands changes so as to elevate humanity – a demand that is undoubtedly bearing fruit. Despite the extremely slow pace of advances in some cases, one can affirm that it is indeed worth insisting and continuing to work on human rights issues.

### 3 The impact of the human rights movement’s activities in Mozambique

The human rights movement in Mozambique arose at the time when the country was opening up to a multi-party system, marked by the introduction of the Constitution of the Republic in 1990. The Mozambican Human Rights League (*Liga Moçambicana dos Direitos Humanos*) was a forerunner of the movement. The democratisation process in Mozambique – of which key moments were the approval of the Constitution of 1990, the signing of the General Peace Agreements in 1992, and the holding of the first legislative and presidential elections in 1994 – coincided with an important moment on the global scene. In the human rights field, the Vienna Declaration and Programme of Action were approved in 1993.

On July 25<sup>th</sup>, 1993, in Vienna, a Declaration and Programme of Action were adopted by consensus and therefore, with no vote and no reservations. In its preamble, the Declaration reaffirms “the commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights”. It also emphasizes:

*that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.*

(NAÇÕES UNIDAS, 1993)

Through their participation in the Vienna Conference, a group of Mozambicans became more aware of the need to promote the human rights language in Mozambique as a way of fostering change in a society deeply marked by the effects of nearly 16 years of civil war. The war resulted in approximately one million deaths, the destruction of economic and social infrastructure, and a series of

disruptions that are typical of countries in conflict. In 1993, part of that group founded the Mozambican Human Rights League. The organisation obtained legal recognition in 1994, under the 1991 Law of Association,<sup>1</sup> becoming the first organisation for promotion and defence of human rights in Mozambique.

Today, one can affirm that the nearly 5,000 civil society organizations (CSOs) in the country – many of which belong to the human rights movement in Mozambique – have already fostered numerous changes on the legal (a) and institutional (b) levels, and in the area of governance (c). These changes, which have undoubtedly contributed to raising the level of respect for human rights in the country, are analysed below.

### *3.1 The role of the human rights movement in changes to the legal system*

Civil society organisations' activities in Mozambique have already led to numerous improvements of the State's legislative action in relation to both the ratification of international human rights instruments and the approval of national legislation in this area. Here, one can highlight the interventions of journalists in the approval of the National Press Law in 1991 and the role of the feminist movement in the adoption of the Law on Domestic Violence against Women in 2009.<sup>2</sup> The Mozambican Human Rights League's interventions in the passing of the Law against Trafficking in Persons in 2008, and more recently, in 2012, the Centre for Public Integrity's role in the approval of the Law on Public Probity should also be noted.

While it is recognised that the existing legal framework in Mozambique for the protection of human rights must continue to evolve, one can clearly affirm that significant advances have been made since the institutionalisation of democracy in the country. CSOs can rightly claim an active role in this process of improving the legal framework.

### *3.2 The role of the human rights movement on institutional change*

The activities of civil society organisations in Mozambique have also produced important institutional changes in the country. One can highlight the struggle for the institutionalisation of the Ombudsman's Office and the National Human Rights Commission. To get these institutions up and operating, civil society organisations had to engage in intense advocacy and lobbying efforts. Their target included the United Nations' Universal Periodic Review, a mechanism used to assess the human rights situation in all UN member states. This helped to launch the operations of these two institutions.<sup>3</sup>

CSOs also played a decisive role in the process of institutionalising the National Human Rights Commission. They worked to ensure that the institution was established according to the standards set by the Paris Principles. Adopted by the UN in 1992, these principles seek to guarantee the independence of national human rights institutions.

### *3.3 The impact of human rights movement on government action*

In this area, despite the important changes CSOs can claim an active role in – whether in the fight against institutional violence or the enforcement of economic, social and cultural rights – one can affirm that their activities have not produced the desired effects, or at least not as quickly as one would hope.

In fact, in spite of all the changes made on the legal and institutional levels, the practices and behaviour of government agents have remained the same, or are changing at a very slow pace.

For instance, phenomena like torture, summary executions and arbitrary arrests still exist in the country. While human rights organisations have already fought and continue to fight against these violations, they persist as unstable cyclical behaviour. Between October 2013 and April 2014, the Mozambican League received denunciations of four summary executions in the province of Nampula and five executions in the city of Maputo. The number of this kind of incident had declined considerably since 2008, after the first police officers had been convicted for summary executions in the “Costa do Sol” case, in which three people had been killed by armed officers.

The Law on Domestic Violence against Women provides another example. Even though the law was approved and has come into effect, the problem of domestic violence against women continues to be a challenge for Mozambican society, due to the complicity of the institutions responsible for combatting this violence – including the Support Centres for Women and Children – with this phenomena. Domestic violence continues to be tolerated by criminal justice institutions; many of them establish reconciliation processes to resolve the cases submitted to them, which is contrary to the law. The law stipulates that crimes of domestic violence are public in nature.

The territorial expansion of the National Human Rights Commission and the Ombudsman’s Office is also a challenge, since these institutions are only present in the country’s capital. Many Mozambicans are not aware of their existence or their mandate, which is why they do not resort to them.

The biggest concern, however, is how to produce changes that lead the country to become a truly democratic State within the rule of law, in which compliance with the law is mandatory. Indeed, the ‘Achilles heel’ of the enforcement of human rights in Mozambique are the attitudes of government agents whose actions are often contrary to national and international standards of respect for human dignity.

Therefore, political, economic and social reforms of the democratic governance model that Mozambique has been adopting are needed – ones that guarantee the existence of an effective and efficient public administration based on the rule of law.

## **4 Conclusion**

The human rights language is a language that produces results and changes normally at a very slow pace. Sometimes, these transformations may not even take place. Even so, looking back on all that has been won by demanding human

rights on the global level, and more concretely, in the African and Mozambican contexts, one can safely say that the human rights language is still an efficient language for generating social change.

Despite difficulties in obtaining immediate results from social measures implemented to enforce economic, social and cultural rights, and although governments of various States' persistently act against civil and political rights, important gains have been won by human rights movements.

The major challenge for the human rights movement today – especially in Mozambique – is how to apply the human rights language contained in the spirit of the approved laws and the created institutions to the day-to-day activities of all levels of public administration, from top to bottom.

This is the struggle that is needed today – one that reaffirms that human rights are an efficient language, as they allow for the expression of constant outrage against all kinds of atrocities committed against the human person.

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## NOTES

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1. The approval of Law n° 8/91 of May 11th (the Law on Association) concretised the 1990 Constitution, which enshrines the freedom of association.

2. In 2008, the draft for the Law on Domestic Violence against Women was presented to the Assembly of the Republic by Fórum Mulher, a

network of organisations working on women's human rights issues.

3. Details on the Universal Periodic Review for Mozambique are available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/MZSession10.aspx>. Last accessed on: 25 July 2014.