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Analysing African advances against homophobia in Mozambique: how decriminalisation and anti-discrimination reforms proceed without LGBT identities.

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Abstract: Mozambique experienced a ground-breaking decriminalisation of same-sex sexual acts in 2015, of importance across Africa, and this article provides the first critical analysis to situate that event in colonial and wider socio-political contexts. The struggles of peoples outside heterosexual sexuality and gender norms in the "Global South" generally occur in the tension between transnational discourses of sexual orientation and gender identity or Lesbian, Gay, Bisexual, Trans and Intersex (LGBT) human rights, and the renewal of pre-colonial forms of sexuality and gender. In sub-Saharan Africa, state homophobia has increased in many countries, but has often been analysed in former British or French colonies, making Mozambique a rare and significant case of decriminalisation in the Lusophone context shaped by Portuguese colonialism. Drawing on new data, the article investigates apparently contradictory contestations, where legislation favourable to LGBT populations (including an anti-discriminatory Labour Law) coexists with the State's refusal to legally recognise the only LGBT association: Lambda. The Mozambique case distinctively reveals both decriminalisation and repression, partly explained by a history of relatively loose regulation of sexuality by Portuguese colonial authorities, with Christian renewals moderated by the Maoist Marxist-Leninism ideological heritage of the Frelimo party, favouring social equality without discreet political identities. This has yielded a government strategy of discursive silence accompanied by quiet reforms that avoid explicit recognition of LGBT identities. The study demonstrates insights that can be drawn from analysis concerning gender and sexuality to attending to specific colonialities and political discourses in African societies.

Keywords: Portuguese colonialism; homosexuality; decriminalisation; colonialities; Africa;

1. Introduction

In the last two decades, the struggle for social equality of people outside heterosexual sexuality and gender norms has intensified in many formerly colonized countries of the so-called "Global South". Expressions of sexuality not conforming to heterosexuality are often still subject to intense moral condemnation and political repression. According to the annual report of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 67 states still outlaw same-sex sexual practices, 6 of them with the death penalty (ILGA World 2020). In many countries in Africa, for example, there has been an upsurge in the repression of the LGBT³ population over the past two decades, including the harassment of individuals, groups and associations that advocate for LGBT human rights or equality.

The political mobilization of Lesbian, Gay, Bisexual, Trans and Intersex (henceforth LGBT) movements has become more visible in many social and cultural contexts. In Latin America, there have been important gains in terms of legislation and policies to guarantee forms of citizenship (Serrano-Amaya and Gomes da Costa Santos 2016). Many Latin American countries have antidiscrimination laws or recognize rights of same-sex couples to some degree, although LGBT people still experiences high rates of homophobic and transphobic lethal violence and extreme poverty (Corrêa and Parker 2011). On the African continent by contrast, particularly in sub-Saharan Africa, there has been an overall increase in State homophobia.

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³ In this article we often use the acronym 'LGBT' which echoes the self-definition of the national association, Lambda (2018), though these terms originate in the West and we consider them in a complex relationship to African cultural meanings.

Contexts in Africa have been widely discussed in existing regional and global literatures (Tamale 2011; Ekine and Abbas 2013; Nyeck and Epprecht 2013; Author 2013; Matebeni et al. 2018). Important interventions such as Awondo, Geschiere and Reid's (2012) have challenged homogenising characterisations of the African continent. Others, such as Kaoma (2013), have highlighted US-based transnational evangelical Christianity as a source of prejudice in Africa, also showing how specific national political projects have deployed anti-homosexual discourses, as in Uganda. We approach different contexts within Africa in this light, with the emphasis on diverse cultures and colonial histories, varying religious influences and complex socio-political dynamics.

Many countries in the region have inherited punitive laws for same-sex practices from former colonial powers. In many of them (as in Cameroon, Gambia, Nigeria, Uganda, and Zimbabwe), post-independence political leaders have proposed changes in existing legislation, to increasing the punishment for those who engaged in "sodomy" and other sexual practices supposedly "against nature". The case that gained most visibility in international public opinion was that of Uganda, where in 2009 an Anti-Homosexuality Bill was proposed to punish individuals who had consensual same-sex intercourse – originally with the death penalty, then with life imprisonment (Asiimwe 2013). In Nigeria, the Same Sex Marriage (Prohibition) Act of 2014 included a disguised clampdown on LGBT civil society, and the implementation of Islamic *Sha'ria* law in the northern states led to homoerotic practices becoming punishable, in some cases, with the death penalty. Initiatives for stronger anti-homosexuality laws have resulted in widespread international condemnation, especially since due to the intense work of LGBT advocacy engaging internationally, the rights of the LGBT population are now widely interpreted as human rights—particularly by the United Nations and in associated human rights law-making (Author 2013).

The present article aims at analysing Mozambique, where some progress has been observed in the legal and social agenda of queer politics, as one of the cases in Africa that contrasts with tendencies towards recrudescence of state homophobia. The country was, along with South Africa and the Seychelles, one of the first African nations to prohibit discrimination based on sexual orientation in the labour market—with the approval of the Labour Law in 2007 (Author 2013, p.21). In contrast to other African nations, Mozambique revised its penal code in 2015 (replacing the 1886 Portuguese Penal Code inherited from the colonial era), removing references to sexual practices "against the order of nature" that criminalised certain same-sex sexual acts (Smith 2015). The new code also decriminalised the termination of pregnancy until 12 weeks of gestation, making Mozambique the second African nation to guarantee the right of choice to women (Bazzo 2015).

The recent legal gains do not necessarily mean the explicit commitment of the Mozambican state to promoting rights of the LGBT population. Mozambican Family Law⁴, approved in 2004, still expressly prohibits the recognition of same-sex unions (Lopes 2017). Besides, the main organisation that advocates sexual and gender minority rights in the country, the Lambda Association (2018) has been struggling since 2008 to obtain State recognition as a civil society organisation. The lack of State recognition hampers Lambda's ability to raise funds and to advocate for the interests of LGBT people in the country (Smith 2015). In this sense, Mozambique is a unique case to understand the limits and possibilities of forging human rights and equality for sexuality and gender minorities in the African context. While existing literatures have often focused on countries that emerged from the British Empire, Mozambique is interesting because it was formerly a Portuguese colony (Author 2013).

To understand the particularities of the Mozambican case, we propose an analysis of the regulation of same-sex sexualities and gender diversity, focusing on the legacies of Portuguese colonialism and the changes brought in by Frelimo—The Mozambique Liberation Front (*Frente de Libertação de Moçambique*)—after independence in 1975. The analysis will draw on new interview data together with documentary and archival sources. Recent legal changes consistent with human rights related to sexual orientation—specifically the Labour Law of 2007 and the Penal Code of 2015—will be contrasted with the refusal of State recognition to Lambda, to comprehend the challenges and possibilities to forge sexual and gender rights and equality agendas in African contexts.

In the article as it proceeds, section 2 reviews existing literature on sexualities, genders and colonialism in Africa and Mozambique, focusing on the specific character of Portuguese colonialism. Section 3 explains why the Portuguese criminalisation of same-sex sexual acts only occurred from 1954

⁴ Law 10 of 2014.

and was rarely enforced. Section 4 discusses Mozambique after formal decolonization from 1975, focusing on the ideology of the liberating Frelimo party that remains in power, with reference to sources including interview data. Section 5 discusses recent legal advances including decriminalisation, alongside defeats for LGBT people. Section 6 focuses closely on the organisation Lambda to better understand the present situation, prior to a concluding analysis.

2. Colonialism and the regulation of dissident sexualities in Africa: the historical and theoretical debate

The escalation of state homophobia in several African countries has raised academic debates about the consequences of colonialism in the continent, and the struggle around sexual orientation and gender identity in non-Western contexts. Decolonial feminist analysis is an essential reference point. Lugones' (2008) groundbreaking essay 'The Coloniality of Gender' has drawn on research by Oyewumi (1997) arguing that biological sex differences were not mapped onto a gender dichotomy in the Yorùbá ethnic group in pre-colonial west Africa; hence Lugones maps how European colonialism introduced social structures of heterosexuality and gender dimorphism. Such an approach contrasts with Afrocentric thought that has repudiated homosexuality (Bussotti and Tembe, 2014).

The dissident sexualities of the heteronormative model have been classified by various political leaders of African countries as an expression of eminently "white/Western" sexual behaviours that were introduced in the continent by European settlers in the 19th century (Phillips 2009). For these leaderships, so-called "African culture" would be based exclusively on the consanguineous patriarchal family, in which sexuality's main aim is procreation. Any expression of sexuality that did not fit this pattern has been considered *unAfrican*. This rhetoric has been used to persecute local LGBT populations, as well as individuals and institutions engaged in HIV-AIDS prevention and sexual rights advocacy. The effects of such persecution are harmful given the high incidence of AIDS, particularly among 'men who have sex with men' (MSM) (UNAIDS 2006)

The repression of the LGBT population in several African countries incited a fruitful debate in the field of historiography and social sciences on the existence of homosexual practices before European settlers arrived. Authors such as Evan-Pritchard (1940), Murray and Roscoe (2001), Epprecht (2013) and Phillips (2009) have shown that same-sex sexual practices did exist in many African societies before colonialism, yet need analytically distinguishing from identities. In many such societies, same-sex sexual acts were commonly practiced and did not necessarily arouse moral reproach.

Unfortunately, there is a lack of literature in English focused on sexual and gender diversity in the cultures of pre-colonial Mozambique. In important collections on African sexualities, the contributions on Mozambique do not discuss the pre-colonial context (Gune and Manuel 2011). In the recent collections *Sexual Diversity in Africa*, the *Queer African Reader* and *Queer in Africa* there is nothing specific on Mozambique (Nyeck and Epprecht 2013; Ekine and Abbas 2013; Matebeni et al. 2018).

What existing researches clearly indicate is that the moral condemnation and political persecution of homosexuality in sub-Saharan Africa seems to have resulted from the penetration of monotheistic religions, particularly Islam (predominant in the north and east of the continent) and Christianity (predominant in the centre and the south), brought by Arab and European colonizers since the 9th century. Yet sex acts between men were generally tolerated in earlier Muslim cultures, so it was certain European colonialisms that were primarily responsible for criminalisation from the late nineteenth century (Author 2013). Religious missions (Catholic and Protestant) were central to the European colonial enterprise, insofar as they promoted values of "civilisation" for the native population (such as chastity, obedience to authority, valorisation of work, etc.), "preparing them" for life in a modern society (Dores 2015). The expansion of Christianity was closely tied to racist views in Europe, which saw native populations as "inferior", "primitive", "infantile souls" who depended on the white man for progress and development. Religion thus played a central role in the spread of homophobic rhetoric (Tamale 2014).

This article follows the insight of McClintock (1995), that it is not possible to understand European colonialism without regard to the importance of gender and sexuality. The restriction of sexual contacts between European white people and so-called 'native' people was central to colonizing

strategies, particularly for the British. The Victorian obsession with controlling sexual relations between racialised populations, and with creating "docile", "work-focused" and racially "healthy" workforces, resulted in the emergence of an intricate complex of laws and regulations which prohibited a myriad of sexual behaviours that questioned racial purity. These laws and regulations were imposed on African societies, turning them into legal experimentation laboratories for colonial administrations. Nevertheless, it is important to recognise that most empires, including the British and Portuguese, institutionalised forms of customary law, which allowed indigenous people autonomy on many sexual matters. Penal code offences concerning acts 'against nature' initially did not apply to acts between indigenous people, since these offences were not part of customary law, thus applying only to non-indigenous people or when sex crossed racialised boundaries (Authors 2019).

Despite the legal control of sexuality in African and Asian colonies, Aldrich (2003) has suggested that colonialism opened opportunities for European White men including non-heterosexual men to experience a freer sexual life, including through same-sex sexual encounters; indigenous sexual mores were more flexible than the stricter Victorian/Christian sexual morality. The interrelations between the ideas of race, gender and (homo)sexuality in nineteenth-century European colonialism have been extensively explored in the Anglophone postcolonial literature on British colonialism (Aldrich 2003; Hyam 1991; McClintock 1995; Young 1995). However, for Portuguese colonialism there are few studies that deal with gender and sexuality within Africa, except by Arnfred (2011). When it comes to analysis of homosexuality in Portuguese colonialism in Africa, there are few works, such as an article by Mott (2005) analysing cases of the Holy Inquisition against individuals accused of sodomy in Angola during the 17th and 18th centuries; and works of Miguel (2014; 2019) which addressed homosexuality in Cape Verde and Mozambique in the last decades of empire.

Accounts of the Portuguese approach to regulation of sexuality are present in some works on British colonialism. They suggest a relative permissiveness of the Portuguese in relation to regulation of sexuality in Africa and Asia⁵. Hyam points out the Portuguese colonies located near British territories (like Mozambique, Goa, and Macao) were "escape valves" for British settlers to flee the strict Victorian legal and moral norms (Hyam 1991:108).

According to several British travellers, missionaries and bureaucrats, the "permissiveness" of Portuguese sexual morality was a demonstration of "inaptitude" to the task of "civilising" native populations. Forman (2002) explores this by analysing the secret report produced by the British colonial administration in South Africa on homoerotic practices among workers from the then East African Portuguese (present-day Mozambique), in Witwatersrand mine compounds. The report suggests that the practice of "unnatural vice" among Shangani miners was a result of the pernicious moral influence of Islamic and Portuguese populations long engaged in coastal trade (Forman 2002). The Portuguese and Islamic peoples would occupy the so-called "Sotadic Zone", identified by the British orientalist and explorer Sir Richard Francis Burton (1821-1890), where pederasty was supposedly disseminated (Philips 2007). The idea of the Sotadic Zone is one example of how homosexuality was used in British colonial discourse to erect superiority (cultural, moral, and racial) compared to an "Other" (Saïd 2003) described as an amorphous, morally and racially perverted degenerate (such as the Portuguese), thus legitimizing the British crown's domination of territories.

In contrast to the British orientalist view of supposed Portuguese sexual permissiveness, we propose that Portugal's relative "laxity" in regulating the indigenous population's sexuality, especially same-sex sexualities, was the result of two major reasons. The first concerns the sparse control that the Portuguese colonial bureaucracy had over territories. Direct control by Portuguese colonial administration was restricted to the main cities and the coast. In the interior prevailed a logic similar to British indirect rule based on agreements between the colonial bureaucracy and local traditional authorities (the so-called *régulos*). The colonial administration "turned a blind eye" on some indigenous traditions like polygamy and lobolo, seen by European bureaucrats and missionaries as "primitive" and "barbarian", to avoid a reaction of African populations. The main aim of the Portuguese colonial officers was to ensure the supply of cheap and disciplined native labour (Authors 2019).

⁵ This was also emphasized by Freyre (1986), when analysing Portuguese colonialism in Brazil in the sixteenth and seventeenth centuries, for whom the looseness of moral values related to sexuality made possible "miscegenation" between the colonizers and the Amerindian and African populations, resulting in the hybrid and mixed-race Brazilian culture.

The second possible reason lies in the fact that homosexuality was perceived by a predominant Portuguese intellectuals and administrative officials as a particularly urban and “civilised/European” “problem” (Authors 2019). Based on racialised assumptions in Portuguese sexology, African sexualities were supposedly determined by basic (hetero)sexual instincts. Homosexual behaviour was seen as less likely to be found among indigenous people, explaining the silence of colonial bureaucracies and missionaries about same-sex sexualities.

In this sense, the exceptionality of the Portuguese colonialism in regulating same-sex sexualities is not to be found in Portugal’s supposed “relaxed sexual mores”, but in the historical trajectory of its colonial enterprise in Africa. Focusing on the Mozambican case, we intend to unravel reasons that explain the absence of legally enforced prosecution of same-sex sexualities by Portuguese colonial authorities and the relatively higher toleration of same-sex sexualities, when compared with former British colonies. Identifying Portuguese exceptionality will also help us understand the challenges posed to the current struggles for legal and social recognition for Mozambique’s LGBT population.

3. The Portuguese colonial legacy for the regulation of sexualities and genders in Mozambique

Although the Portuguese presence on the East African coast dates from the 16th century, effective Portuguese control of current Mozambique territories was only achieved around the beginning of 20th Century. At that time, Portugal considered all its African colonies as an integral part of a pluricontinental Portuguese Nation. To comprehend regulation of same-sex sexualities in Mozambique, one must look at how sexualities were regulated in Portugal. The country witnessed fluctuating approaches to regulating homosexuality. Between 1536 and 1821, sodomy was criminalised following the canonical law enforced by the Inquisition (Mott 2005). Inspired by Napoleonic code, the 1852 Penal Code (and its 1886 revised version) excluded sodomy from the roll of criminal offences (Cascais 2016). However, in 1912, the Portuguese Parliament passed a new law criminalising, alongside idleness, those engaged in the “practice of the vice against nature”⁶. Despite apparent vagueness, the section was specifically designed to criminalise homosexuality, since the homosexual as an individual (not the sexual act) was the target of repression (Cascais 2016).

The extension of criminalisation of same-sex sexualities to Africa happened only in 1954, in a revision of the 1886 Penal Code⁷. However, according to the 1930 Colonial Act and 1953 Indigenous Statute, Portuguese legislation only applied to European/white citizens and the Assimilated citizens (*assimilados*)⁸. Indigenous populations were subjected to a complex and sometimes *ad hoc* application of Portuguese legislation in consonance with so-called usages and customs (*usos e costumes*). There is no record of criminalisation of same-sex sexualities being enforced in Mozambique by colonial authorities; original archival research at the Overseas Historical Archive and Portugal’s National Library, in Lisbon, established there are no crime statistics or other evidence (Authors 2019).

One possible explanation for the later adoption of provisions regarding the “vice against nature” in the African colonies lies in the increasing influx of white migrants to Angola and Mozambique. After the 1940s⁹, the authoritarian Salazar administration turned the colonisation of Portuguese African territories into a top priority. Most white migrants settled in the cities, resulting in acceleration of urbanisation in Angola and Mozambique. In Lourenço Marques (currently Maputo), the population doubled between 1960s and 1970s (Medeiros 1985). In a recent interview, Mozambican/Portuguese writer Eduardo Pitta mentioned the existence of a bubbling (although almost exclusively upper/middle class and white) lesbian and gay scene in Lourenço Marques in late 1960s and beginning of 1970s, despite the strict Catholic morality of the Salazar New State (Author 2017). Pitta and other authors (eg

⁶ Item 1, Section 3, Law on Vagrancy, 30th of July 1912.

⁷ In the same year, Portugal prohibited prostitution in overseas territories.

⁸ According to a 1927 Law, *assimilado* was a status granted to those Africans who fulfilled some prerequisites: to speak and write in Portuguese, have good character and be regularly employed (Hall and Young, 1997).

⁹ Thomaz (2002) identifies the 1940 “Portuguese World Exhibition” in Lisbon as a “turning point” in the Salazar approach regarding the colonies. Rhetoric of empire and the historical rights of Portugal in Africa became central to the New State’s legitimisation.

Cascais 2016; Almeida 2009) acknowledge a context of less repression of homosexuality in the African colonies compared to mainland Portugal. There is no record of State persecution or systematic police harassment of homosexuals in Angola and Mozambique, as there was in Portugal (Correia 2017). Although the lesbian and gay life happened mainly in private parties and through friendship networks, Pitta remarked that there were some bars and discos, as well as transvestite shows in downtown Lourenço Marques, where lesbian and gay presence was widely noted (Author 2017).

According to Pitta, the relatively relaxed atmosphere around same-sex sexualities abruptly finished with the turbulent process of independence. The end of Portuguese colonialism in Africa started with the Carnation Revolution in 1974 in Portugal, which brought down the 40-years fascist regime of the New State (Oliveira 2014). This resulted in a relatively disorganised political transition in Mozambique (Newitt 2018), with power passing to Frelimo, a national liberation movement founded in 1962. Frelimo officially took control of the country in June 1975 and, due to fears of possible repression, most of the white elite left Mozambique between 1974 and 1975. Pitta mentions an episode in October 1975 when he - together with other regulars of downtown (*Baixa*) bars and nightclubs - was subject to a raid by Frelimo agents. According to Pitta, one of those agents said that “men with long hair and women with short skirts” must follow him to the police station, suggesting that men and women not-conforming to traditional gender roles were particularly targets of repression.

This episode is very similar to the so-called Cleaning Operation (*Operação Limpeza*) conducted by Frelimo agents and Portuguese troops in November 1974 (Thomaz 2008). With the aim of arresting “criminals and agitators”, they blocked Araújo Street (the main bohemian street in *Baixa*) and the surrounding area, arresting almost 300 people. Most of those arrested were women and sex workers who ended up being transported to re-education camps in far rural areas.

In recent research on the Frelimo re-education camps¹⁰, Machava (2018) explores the historical backgrounds of Frelimo reformist ideology, showing the centrality of a moral crusade committed to creation of a “new man”. According to Machava, Frelimo ideology was a hybrid of a nativism grown among Protestant “mission-educated revolutionaries from southern Mozambique” (Machava 2018:78) combined with Maoism, resulting “in a markedly messianic and salvationist quest to build a new social order and create a new man” (Machava 2018: 79). The author also identifies a draft legislation on the re-education program, secretly distributed among Frelimo leaderships, in which individuals engaged in the so-called “vices against nature” figured in “a long list of social ills and categories of people who should be subjected to re-education” (Machava 2018: 96). Although the legislation did not pass, (Machava 2018: 96-97), it shows that the persecution of individuals with same-sex sexual practices was on the radar of Frelimo’s leaderships¹¹ and sheds light on the current refusal of the party to recognise the Lambda Association, the only LGBT advocacy group in Mozambique, as a civil association.

4. Frelimo rule and Mozambique’s political and social context after independence

The immediately post-independence period in Mozambique was dominated by the armed conflict between Frelimo and its main opposition, Mozambican National Resistance (*Resistência Nacional Moçambicana* – Renamo). Renamo was a coalition of anti-Frelimo groups (mainly from Northern and Central Mozambique) backed by Rhodesian and South African white minority governments. The conflict was connected to the Cold War confrontation between the socialist and capitalist blocs in Southern Africa, resulting in the destruction of Mozambique’s economy and infrastructure (Newitt 2018).

Frelimo tried to expand the experiences of the liberated areas in forging “the new man”. This resulted in a strong commitment of the party to “modernising” Mozambique, which meant stripping away anything that could resemble the old colonial and capitalist legacy. Women’s emancipation was an important part of Frelimo’s modernisation project. The party created a branch for women, the Mozambican Women Organisation (*Organização da Mulher Moçambicana* – OMM). It also implemented some policies to promote women’s empowerment in society. Some of those policies,

¹⁰ We thank Professor Colin Darch (University of Cape Town – South Africa) for suggestion of this research.

¹¹ Chipenembe (2018) also mentioned a rumour of a transgender person who has probably been sent to a re-education camp located in Niassa, Northern Mozambique in the 1980s.

based in Western, Christian, and patriarchal assumptions, clashed with local cultural traditions, especially of the matrilineal societies in Northern Mozambique (Arnfred 2011).

The downfall of the Socialist bloc after 1989 and the impossibility of military victory against Renamo, as well as changing World Bank economic policies, led Frelimo to abandon its Marxist-Leninist ideology and to negotiate a peace agreement (Newitt 2018). With the backing of United Nations and Western countries, Frelimo and Renamo signed the 1992 Roma General Peace Accords, setting up the two main conditions for the end of hostilities: Renamo's military demobilisation and conversion into a political party; and constitutional changes to establish multi-party democracy. The first democratic and multi-party election took place in 1994, with the victory of Frelimo and Renamo as the main opposition party.

The context of political transition in Mozambique was marked by the expansion of the AIDS epidemic in Southern Africa. As in other African countries, in Mozambique HIV transmission through unprotected sex among heterosexual accounts for 90% of the new infections (Taimo 2014). However, the lack of focussed data on AIDS prevalence among MSM, together with the absence of policies targeting this segment and widespread homophobia, results in a proportionally higher risk of HIV infection for MSM. A UNAIDS report (UNAIDS 2009) estimated that 5% of AIDS cases in Mozambique are among MSM, pointing out that this population is particularly exposed to HIV infection.

It was in the context of increasing concern with AIDS incidence among MSM that in 2006 a group formed the Lambda Association in Maputo, with the intention of bringing to light specific needs and demands of the LGBT population¹². Influenced by legal gains in South Africa, the Lambda Association wanted to open the debate on LGBT rights in Mozambique and question the deliberately silencing approach taken by political elites on issues of sexual orientation and gender ideology. In Mozambique, until 2009, there was not a specific AIDS policy directed to MSM individuals. Lambda's advocacy worked in articulation with gender and human rights organisations, managing in 2009 to include the MSM segment among the HIV prevention and control key-populations¹³ in the 2010-2014 National Strategic Plan for HIV and AIDS Response (known as PEN III) (Guambe 2017). Since then, Lambda has succeeded in working closely with the Mozambican Ministry of Health (*Ministério da Saúde* – MISAU), where it takes part in a Working Group on condom use. Lambda has also succeeded in guaranteeing that the Mozambican State imports lubricants to be distributed among the MSM population¹⁴. Furthermore, the organisation participated in the research "Biological and behavioural integrated inquiry among MSM" led by the National Health Institute (INS) (Taimo 2014).

Despite its close relation with MISAU and the strong ties with gender and human rights civil society organisations, Lambda is still struggling to be recognised by the Mozambican State as a civil association. It applied in 2008 to the Ministry of Justice (*Ministério da Justiça*) and since then it did not get any official reply. The lack of official recognition prevents Lambda from accessing State and international funds to promote its advocacy activities. Besides, it leaves Lambda (and, to some extent, other LGBT advocates) in a legal limbo, in which it cannot fully enjoy its right to association. This represents an important limitation to the exercise of basic human rights restricted exclusively to the LGBT population. We will later explore this topic more closely.

In 2007 Mozambique approved a new Labour Law, which established the principle of non-discrimination regarding sexual orientation, race or HIV/AIDS status. In analysing its innovations, Baltazar (2015) highlights the right to privacy as one of the main legal principles behind the protection of employee's HIV status. Although he ignores sexual orientation in his analysis, one can infer that its inclusion in the law followed the same rationale behind the recommendation of the International Labour Organisation (ILO) to protect the right of privacy and guaranteed a non-discrimination approach to HIV-positive employees. In this sense, the inclusion of sexual orientation—which also occurred in nearby Botswana alongside health discrimination provisions, in 2010 (Tabengwa and Nicol 2013)—might be an outcome of Mozambique's increasing concern with economic and social consequences of the HIV/AIDS epidemic and not necessarily with protection of LGBT people. Despite political limitations of this reasoning, the mere existence of this anti-discrimination clause was an important step

¹² Interview with Dário Silva, Lambda Association, Fortaleza (Brazil), November 30th, 2018.

¹³ Interview with Dário Silva, November 30th, 2018.

¹⁴ Ibidem.

towards protection of LGBT rights in Mozambique, signalling a non-discriminatory approach of the Mozambican State.

5. The New Penal Code and the decriminalisation of same-sex sexualities in Mozambique

Mozambique inherited the 1886 Portuguese Penal Code which, despite some punctual changes, remained in force after independence. This created a situation in which many of the provisions of the Penal Code came to be in contradiction with the democratic principles of the 2004 Mozambican Constitution, particularly on issues of gender and sexuality. The Ministry of Justice of the Frelimo government started a consultation process in July 2006 on a preliminary draft (*anteprojeto*) of a new Penal Code. The draft was criticised by women's rights advocates for keeping many terms of the old code, such as "honour", "honesty" and "provocation". These terms challenged gender equality established in the constitution by discriminating against women in cases of sexual violence (WLSA Moçambique et al. 2006). Besides, the draft kept articles 70 and 71 of the 1886 Penal Code, providing for security measures for a person who "surrenders him/herself to practice of the vice against nature" (WLSA Moçambique et al. 2006). The security measures included coerced admission in a mental hospital, imprisonment from one month to one year and the interdiction of professional practice.

After independence, there is no record of homosexuals, or any other individual who did not conform to the gender binary, being persecuted by Frelimo's socialist government under articles 70 and 71 of the 1886 Penal code¹⁵. The invisibility of African black lesbian, gay or trans people does not necessarily mean they had passed unnoticed by state authorities. As mentioned before, those engaged in the so-called "vices against nature" were among the main targets of the Frelimo re-education program. As suggested by Chipenembe (2018), it is possible that some individuals with homoerotic practices could have been forced into the re-education camps. But the secrecy kept by Frelimo leadership around the controversial topic of re-education camps prevents us from knowing more information about the social groups victimised. Machava (2018) states that most of the documents on the re-education camps are still not publicly available.

Further evidence assists in elaborating the status of homosexuality in contemporary Mozambican culture and society. The Afrobarometer survey project finds that compared to other African nations, Mozambique is a relatively tolerant place regarding homosexuality. In a poll conducted by Afro Barometer in 33 African countries (Dulani, Sambo and Dionne 2016), Mozambique is among the countries with the highest percentage (56%) of respondents saying they "accept" or "do not care" about having a homosexual neighbour. Responses published in 2019 were: strongly like 11.9%; somewhat like 9.5%; would not care 31.6%; somewhat dislike 10.8%; strongly dislike 36.2% (Afrobarometer, 2019). Thus, a majority (53%) have a neutral or positive attitude towards homosexuals. The Afrobarometer data shows Mozambique has much more positive responses to homosexuality than is usual for African countries.

A higher tolerance towards homosexuality does not necessarily mean a wide social acceptance. Recent researches by Mozambican and foreign scholars (Souza 2015; Saerte 2011; Timbana 2012; Manhice 2012; Miguel 2019) show that homosexuality is still seen as morally wrong in the country. Those who do not comply with social expectations of masculine and feminine gender roles still face high stigmatization.

The process of elaborating a new Penal Code extended for almost ten years. In February 2014, a poll of human rights, gender, and children rights organisations presented suggestions of changes to the *anteprojeto* (ROSC et al. 2014). They recommended not only the removal of articles 70 and 71 but also the inclusion of sexual orientation in the roll enlisted¹⁶ in section 247, which establishes up to one-year imprisonment for prejudice insults (ROSC et al. 2014). In March of the same year, the NGO *Fórum Mulher* organised a demonstration against the *anteprojeto*, in which Lambda members and other

¹⁵ Interview with Dário Silva, November 30th, 2018. Brazilian anthropologist Francisco Miguel conducted recent research (2019) at the Historical Archive of Mozambique in Maputo and did not find any record on the legal enforcement of sections 70 and 71 by the Portuguese or Frelimo authorities.

¹⁶ The draft included prejudice of race, colour, sex, religion, age, disability, social condition, ethnicity, and nationality.

gender and human rights organisations pressured the government to endorse their recommendations of change (Tsandzana 2014).

The final version of the Penal Code was approved in November 2014. It excluded the provisions of articles 70 and 71, officially decriminalising homosexuality in Mozambique. However, the final version did not include ‘sexual orientation’ in the provision of article 243 regarding the punishments in cases of discrimination.

6. Lambda’s struggle for recognition and the challenges for LGBT rights promotions in Mozambique

The new 2015 Penal Code was an important legal step towards the promotion of LGBT rights in Mozambique. With this legal change, Mozambique takes a different path compared with many of its African Neighbours, by decriminalising adult consensual same-sex sexual relations¹⁷. However, the decriminalisation of same-sex sexual acts, which directly applies only to men, does not mean the recognition of LGBT populations as subjects of unalienable rights. The final version of the new Penal Code did not include sexual orientation in the anti-discrimination clause (article 243). This suggests the unwillingness of the Frelimo-led Mozambican State to include LGBT rights as part of its human rights agenda, which could benefit a wider range of queer people including lesbian, and bisexual women, and transgender people. Another demonstration of State rejection regarding LGBT rights is the refusal of recognition of Lambda.

The Lambda association emerged in 2006. The group relied on partnerships with Mozambican human rights and gender organisations and international cooperation to structure its first activities. In January 2008, Lambda members applied for State recognition as a civil association under the terms of the 1991 Association Act¹⁸. Despite following the pre-conditions to gain legal personality, Lambda did not receive any formal reply from State officials¹⁹. After the refusal of the Mozambican State to answer Lambda’s formal requests, in June 2010 the organisation submitted a formal complaint to the UN Human Rights Council (HRC). In February 2011, the HRC panel recommended that the Mozambican State “ensure[s] the right to freedom of association and enable the registration of NGOs working on issues of sexual orientation and gender identity” (UNHRC 2011:23).

The official reply of the Mozambican State was that its constitution “makes no reference to sexual orientation” and that “the country is confronted with profoundly entrenched cultural and religious habits and such issues are recent and have only begun to be faced now” (UNHRC 2011, p.12). It also stated that homosexuality was not criminalised and that there was no restriction to the freedom of association. In 2013, Lambda submitted formal complaints to State Ombudsman to the Assembly of the Republic Petition Commission, and to the National Commission of Human Rights, receiving no formal response (Lambda Association 2015).

The systematic refusal of the Mozambican State even to answer Lambda applications and complaints makes it difficult to understand the reasons behind its unwillingness to recognise the organisation. In addition to the vague response to HRC recommendations, the only two statements of Mozambican state officials were made by the former and the current Ministers of Justice, Benvinda Levi and Abdurremane de Almeida, respectively. According to Danilo Silva, Lambda executive-director, Ms. Levi claims the recognition of Lambda as a civil association is an “extremely sensible and complicated issue” and “a decision on it must be taken with all the attention”, not to undermine supposed deep-rooted cultural values (Lusa 2012). In contrast to Ms Levi’s vagueness, Mr. Abdurremane de Almeida was explicit in saying that recognition of Lambda is “not among government priorities” (Sapo Notícias 2015). He claimed that in Mozambique homosexuals “can do whatever they want, as long as they do not ‘cross the red line’ and commit crimes”. According to Mr. Almeida, the government is not interesting in “looking after homosexuals’ lives”, since its fundamental priorities are to “provide all Mozambicans with food, employment, health, education and peace” (Sapo Notícias

¹⁷ Interview with Dário Silva, November 30th, 2018.

¹⁸ Act 8/1991

¹⁹ In section 5, item 1, the 1991 Association Act grants the government the prerogative of recognising (or not) new associations within 45 days. The refusal of recognition must be followed by reasoned opinion that can be legally challenged.

2015). Mr. Almeida went further to suggest that homosexuals in Mozambique are in a better position compared with Zimbabwe, where homosexuality is a criminal offence. For him, once homosexuality is legal in Mozambique, the lack of official recognition to Lambda does not represent a denial of its freedom of association (Sapo Notícias 2015).

Mr. Almeida's statements provide a good insight into the government's position. Apparently, the "red line" mentioned by him is represented by the public-private divide, tending to correspond to a distinction between sexual acts (in private) and identities (in public). Homosexuality is "fine" if it stays in the private/intimacy realm²⁰. This probably explains why the 2015 Penal Code decriminalised adult consensual same-sex relations, and has not included "sexual orientation" in the anti-discrimination clause (article 243). In doing so, the Mozambican government would have recognized identities outside heterosexual norms as legitimized social identities that could affront the supposed deep-rooted cultural values mentioned by Ms Levi.

Mr. Almeida's remarks sheds light on the reason for the inclusion of sexual orientation in the 2007 Labour Law. As suggested earlier based on Baltazar's (2015) findings, sexual orientation, as well as HIV-status, belong to the intimacy sphere; employers must not disclose them, under the penalty of infringing the principle of non-discrimination enshrined in the Law. This might also explain an apparent contradiction of Lambda working together with the Ministry of Health in HIV/AIDS prevention policies, without having been officially recognised by the State. These policies are focused on MSM, a category elaborated by epidemiologists to include all male persons who engage in same-sex sexual intercourse, regardless of how they identify themselves in the public realm. In this sense, Lambda would be, in the eyes of the State, a group of MSM and not necessarily a LGBT organisation. Dário Silva, senior research official of Lambda, also suggested that addressing LGBT issues only in the field of HIV/AIDS prevention policies limits the scope of LGBT rights, leaving out some segments of the LGBT population:

Because, as I said, in terms of health, other identities are left out. The general idea of identities is out, because MSM is a category of [sexual] practice and not [sexual] orientation, so we don't have lesbian women, we don't have the issue of transgender people and all that, we need to "press on" (Interview with Dário Silva, November 30th, 2018)

It is important to see the Frelimo approach in a wider context where the main opposition parties have also seemed silent on homosexuality. Renamo's website offers no comment on LGBT rights (Renamo 2021). The *Movimento Democrático de Moçambique* also appears to have had little to say (MDM, 2021). Former President Chissano has been the exception among Frelimo leaderships in speaking out (Chissano, 2014) against discrimination based on sexual orientation. Nevertheless, he was not able to change Frelimo's reserved position regarding the issue of sexual rights of the LGBT+ population.'

The confinement of homosexuality in the private/intimacy realm might also clarify Mozambique's higher tolerance towards same-sex sexualities relative to the African context, and the reproduction of silence about homosexuality in governmental discourse. In this sense, when it comes to same-sex sexualities, Mozambique seems to be closer to other former Portuguese colonies than to its English-speaking neighbours in Africa, where homosexuality is illegal even when performed consensually in private. Cape Verde and São Tomé e Príncipe have both decriminalized homosexuality in 2004 and 2011 respectively (Miguel 2014: 37-38). More recently, Angola has not only recognised the Rainbow Association, the first openly LGBT organisation in the country (DW 2018), but also decriminalised same-sex sexual practices and banned discrimination based in sexual orientation (Reid 2019).

The Portuguese colonial legacy helps us to understand the social attitudes towards homosexuality in Mozambique and, in part, the government reluctance to protect LGBT rights explicitly. Yet, to comprehend the government's continuous refusal to answer Lambda's application for official recognition, one must look more closely to the role of Frelimo in power since independence. Frelimo's socialist project had a clearly moral and pedagogical dimension (Thomaz 2008; Machava 2019) and individuals who did not conform to the gender binary imbued by colonialism were targets of repression (Author 2017). Homosexuality was, in the Frelimo leadership's eyes, seen as a bourgeois European

²⁰ This point was also raised in Dário Silva's interview.

decadent behaviour, in line with most Marxist-Leninist understandings of same-sex sexualities at the time. This could be inferred from Barata's (2015) analysis of the Mozambican cartoon "Xiconhoca". Xiconhoca was a character elaborated by Frelimo's Propaganda officer to personify enemies of the socialist revolution in its pedagogical effort to create the socialist "new man". According to Barata, in one of the cartoons, Xiconhoca is represented in 1970s Western-styled clothes as the "corrupted" (*corrupto*) and the "male prostitute" (*prostituto*); this suggests he might be either someone who is selling himself to, or is corrupted by, the capitalist/colonial system, and/or a homosexual (Barata 2015: 71-2). In both senses, Barata goes on, these behaviours are condemned by Frelimo and must be eradicated to forge its ideal of the "new man". This analysis reinforces Machava's (2018) findings on the moral crusade forged by Frelimo with re-education camps.

7. Conclusion

This article aimed to analyse Mozambique's historical trajectory with respect to the regulation of gender and sexuality, to understand the current situation regarding LGBT rights in the country. Drawing on new interview and documentary data, the article demonstrated that the apparent contradictory trajectory of LGBT human rights in Mozambique results partly from a legacy from relatively loose regulation of gender and sexuality by Portuguese colonial authorities, but especially from the specific Maoist Marxist-Leninism of the Frelimo party, modified in current expressions to engage economic liberalism and African nationalism. Frelimo's socialist ideology has countered the Pentecostal Christian religious discourses often driving homophobia elsewhere in Africa; yet its preference for social equality combined with social integration, without distinct socio-political identities, has led to governmental silence rather than affirmation of LGBT human rights. Frelimo ideology articulates with local cultures which remain internally contested, with colonial morality and new forms of Christianity in tension with longer African traditions connecting to pre-colonial life, in which same-sex sexual practices (as distinct from identities) have been quietly and unremarkably occurring in the background of everyday life.

Our article has suggested that the Portuguese "indifference" in regulating same-sex behaviours was not the result of permissiveness, but the consequence of Portugal's weak control of African territories, combined with the 19th and 20th centuries racial approaches to homosexuality—which saw it as a mainly "European/Civilised" problem. Political independence and the seizure of power by Marxist-Leninist Frelimo in 1975 began a long war of destabilisation led by Renamo. The armed conflict undermined Frelimo's efforts to implement its socialist project of building the "new men", although the moral and pedagogical values of this project (particularly rejection of sexuality and gender roles challenging the gender binary) show signs of being still live among Frelimo's leadership.

It was in the context of the expansion of the HIV-AIDS epidemic in Mozambique that the Lambda Association emerged in 2006 to advocate LGBT rights. Since then, it has promoted the agenda of sexual rights in the country, obtaining some victories, such as the inclusion of MSM among control key-populations in the National Strategic Plan for HIV and AIDS Prevention (PEN III). Despite this, Lambda still struggles to gain legal recognition. Despite the lack of any official reply to Lambda's many applications to be recognised as a civil society association, it could be inferred from Frelimo officials' statements that to the party's leadership homosexuality is acceptable sexual behaviour if it stays in the private/intimacy realm. The conservation of the private/public divide explains why the 2015 Penal Code did decriminalise adult consensual same-sex relations and did not include "sexual orientation" in the anti-discrimination clause (article 243). Some forms of decolonial, Afrocentric and/or queer politics might question Lambda's LGBT politics of recognition (Bakshi et al, 2016) but even while some political organising and policy change can circumvent identities, that would not address inclusion for the minority who identify as LGBT in Mozambique.

Examining the case of Mozambique is revealing relative to other states in Africa. In neighbouring former British colonies including Tanzania, Malawi, Zambia and Zimbabwe (with the exception of South Africa), same-sex acts remain criminalised in law – as they also do in Kenya and Uganda. In the southern Africa region, among former British colonies apart from South Africa and Lesotho, only Botswana has decriminalised in 2019. Mozambique's present situation has some interesting similarities

with Botswana, which similarly gained non-discrimination laws related to employment from 2010 (Tabengwa with Nicol, 2013; Author 2013). Yet in other respects Botswana differs, since in 2016 the leading NGO LEGABIBO won a legal case requiring the government to formally register the NGO and give public recognition.

There seems also to be similarity between Mozambique and other Portuguese ex-colonies. Cape Verde, São Tomé and Príncipe, and Mozambique occupy a prominent position in the tolerance of homosexuality in Africa (Dulani, Sambo, Dionne, 2016). Recently, Angola has also decriminalised same-sex sexual acts. This under-scores the significance of both Portuguese colonial history and Marxist left parties in government for explanation, yet also the specificity of the Mozambique configuration. Studying the Mozambique case demonstrates that queer politics and sociology scholarship in Africa needs to adopt analytical frameworks attuned to the interplay of multiple social processes in specific societal contexts.

The State's refusal to recognise Lambda keeps homosexuality in a contextually specific closet, compromising the organisation's activities. Moreover, the absence of recognition also represents a clear obstacle to democracy in Mozambique. The refusal clearly shows that, despite the relative social tolerance of homosexuality in Mozambican society, Frelimo does not envisage LGBT sexual rights as part of the State's human rights agenda.

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