RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

Year V, v.1, n.1, Jan/July 2025. | submission: 28/04/2025 | accepted: 30/04/2025 | publication: 02/05/2025

Analysis of national case law and gaps in Mozambican law in relation to information and communications technologies

Analysis of national jurisprudence and gaps in Mozambican law in relation to information and communications technologies

Analysis of national jurisprudence and loopholes in Mozambican law in relation to information technologies and communications

Raul de Miguel Benjamin Jofrisse Nhamitambo1

1. SUMMARY

The word jurisprudence means “the science of law”. With the aim of standardizing the judgments that occurred in the different regions of the country, the Roman king sent judges who did not live in the area to judge disputes important based on a single code of law, which went beyond the customs of that place. The cases were judged based on these common laws and cases similar to those judged, which were used as a basis by judges, with the aim of applying similar sentences, preserving the equity of the judicial system of the time. The From then on, the analysis of judges' decisions by their peers became an important tool, so that judicial decisions are made based on a broader and more homogeneous interpretation of the laws, ensuring a more consistent applicability with the time and with similar cases. The case law is enshrined in the article 4 of the Constitution of the Republic of Mozambique. The research aims to study the jurisprudence and gaps in Mozambican law regarding ICTs. The choice of the theme is an interesting and justified bet. if in the tendency to understand more about the functioning of Mozambican law, not only with regard to technologies information and communication (ICTs).

Keywords: Jurisprudence, gaps in the law, Information and Communication Technologies.

[1] PhD in Legal Sciences; Lawyer; Assistant Professor of Information and Communications Technology Law – Joaquim Chissano University (UJC), in the Degree Course in Information Technology and Systems Engineering; Assistant Professor of Commercial Law, Administrative Law and Notions of Administrative Law - Pedagogical University of Maputo (UP - Maputo), in the Degree Courses in Human Resources Management and Public and Educational Management; Senior Legal Assistance Technician – Legal Office (UP - Maputo); University Professor of Introduction to Law, Administrative Law I and II and, Labor Law, in the Degree Courses in Law, Accounting and Auditing and, Public and Local Administration – Instituto Superior Maria Mãe de África (ISMMA); Author, Reviewer, External Evaluator and Peer in the Multidisciplinary Scientific Journal O Saber (since II Semester 2024); Author, Evaluator and Reviewer in the Multidisciplinary Journal RECIMA21 (since the 1st Semester of 2025), Organizer of the Digital Scientific Publisher (since the 1st Semester of 2025). Matola – Maputo.

ORCID: 0009-0006-4118-1970. rnhamitambo@gmail.com.(+258) 872058783/847417800.

1. ABSTRACT

The word jurisprudence means “the science of law”. In order to standardize the trials that took place in the different regions of the country, the Roman king sent judges who did not live in the area to judge important disputes based on a single code of law, which went beyond the customs of that place. The cases were judged based on these common laws and similar cases to those judged, which were used as a basis by the judges, with the aim of applying similar sentences, preserving the equity of the judicial system of the time. From then on, the analysis of judges' decisions by their peers became an important tool, so that judicial decisions are made based on a broader and more homogeneous interpretation of the laws, ensuring a more consistent applicability with the time and with similar cases. The case law is enshrined in article 4 of the Constitution of the Republic of Mozambique. The research aims to study the jurisprudence and gaps in Mozambican law, with regard to ICTs. The choice of theme is an interesting bet and is justified by the tendency to understand more about the functioning of Mozambican law, not only with regard to information and communication technologies (ICTs).

Keywords: jurisprudence, gaps in the law, Information and Communication Technologies.

1. SUMMARY

The word jurisprudence means "science of law". To standardize the juicios that were celebrated in different regions of the country, the Roman king sent foreign jueces to judge important disputes based on a single legal code, which transcended local customs. Cases were judged based on these laws communities and similar cases, which the judges used as a basis to apply similar sentences, preserving there equity of the judicial system of the time. From then on, the analysis of the decisions of the jueces by part of his peers became an important tool, so that judicial decisions were based on a broader and more homogeneous interpretation of leyes, guaranteeing a more coherent applicability over time y in similar cases. Jurisprudence is enshrined in article 4 of the Constitution of the Republic of Mozambique. The investigation has the objective of studying jurisprudence and the lagunas in the law Mozambiqueño in terms of ICT. The selection of the theme is an interesting question and is justified by the trend to understand more about the functioning of the Mozambican law, not only in terms of technologies of information and communication (TIC).

Keywords: jurisprudence, legal gaps, Information Technologies and Communication.

2. INTRODUCTION

In this work I analyzed national jurisprudence and gaps in Mozambican law applied Information and Communication Technologies. As we saw previously, case law is

important because it helps to fill gaps left by Mozambican law in all areas. In this scientific article I will focus on explaining the gaps left by Mozambican Law regarding Information and Communication Technologies (ICTs). It is important to note that this
This topic still needs a lot of debate, since ICTs evolve every day and very quickly. As we can see there is a substantial growth in the number of citizens Mozambicans who use electronic devices to communicate. For example: The the spread of the coronavirus pandemic (covid-19 if you prefer), has reinforced our tendency to manage services from home, this would not be possible without Information and Communication Technologies Communications. Still in this context we have online classes, which would also not be possible, without these electronic devices. However, it is necessary to be aware of the conduct of citizens in the use of these electronic devices.
With the advancement of technologies, the need arose to govern this field of society, as technology is part of the daily lives of the Mozambican people and is an indispensable tool for what are the citizen's tasks. There are those who use this asset illegally to commit crimes and other acts, not suitable for society. With the existence of these behaviors, it is necessary to take measures to punish or prevent such unlawful acts are perpetrated. As we know, Mozambican law applied to IT (or law Mozambican computer scientist), it is still a new scenario.

The choice of theme is an interesting bet and is justified by the tendency to understand more about functioning of Mozambican law, not only with regard to information technologies and communication (ICTs). As in other areas of knowledge. This topic is very important for society, as it allows us to understand the gaps that exist in our law and how these cases are resolved. It is important to emphasize that the use of case law is applied in many everyday scenarios to fill in the gaps left by our law at times, because, is enshrined in article 4 of the Constitution of the Republic of Mozambique.

3. THEORETICAL FRAMEWORK

3.1 Case Law and Legal Gaps in Mozambican Law

Law is a precept or set of precepts that emanate from the legislative power. Dictionary Universal (2002).

A gap is the lack of something. Universal Dictionary (2002).

With this, it is fair to define a gap in the law as being the lack of one or more precepts that emanate the legislative power.

Mozambique uses a Roman-Germanic law system (of which we are a part), in which the source main source of law, is the immediate source with general binding force. Here the laws are written, fixed and abstract, in comparison with the Anglo-Saxon system. The Constitution of the Republic of Mozambique of 2004, in its article 2, no. 3, states that ÿThe State is subordinate to the Constitution {...}ÿ. Because we are human beings, and our behavior is unpredictable, it is It is normal that our law cannot meet all cases, for this we use case law.
The use of case law is permitted by Article 4, which speaks of legal pluralism.

Universal dictionary (2002), jurisprudence is the science of law and laws.

Case law is the set of guidelines that result from the decision of specific cases by courts. The way in which courts decide, the rules used and the basis for their decisions tences may allow the identification of legal norms that do not exist in the legal system, namely, because they are not included in a law or because they do not result from custom.

For BASTOS (2019), jurisprudence is the set of decisions that reflect the interpretation majority of a single court and thus establish an understanding that has been used repeatedly. It is the legal term that designates the set of decisions on interpretations of laws made by the courts of a given jurisdiction.

Looking at the above definitions, I understand that, jurisprudence is a form, based on precedents, to standardize the understanding of laws among judges, so that there is a guarantee

Revista Ibero-Americana Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

of legal certainty. Case law is widely used in English law and seeks to identify, among the legal norms based on jurisprudence, which is the legal norm, perhaps new, that should be applied in the case, using, for this purpose, a strict observation of the facts and a analysis of the conformity or distinction of the specific case in relation to past cases. In our legal system jurisprudence being an indirect source of law does not have much relevance as happens in countries where the common law system is in force (e.g. England). Here the judge must judge solely in accordance with the law and his conscience, so much so that his decision may contradict the decision that has been taken by another court. Therefore, the Jurisprudence is not an immediate source of Mozambican law but contributes to the formation of true legal standards.

As in Mozambique, court rulings do not have general binding force and only produce effects on the case under trial, this means that the courts are not obliged to decide in accordance with previous decisions, unlike, for example, in the Anglo-Saxon judicial system where a precedent model prevails. As no court is bound by previous decisions, it can decide freely what, within the limits of the law, it may even decide differently, which makes regularity and identification of a pattern of decisions with the strength to impose itself in the decisional judgment. In any- in any case, previous decisions, namely those produced by higher courts, may always influence the way the courts will decide in the future, although they will not are obliged to decide in the same way.

3.2 Gaps in Mozambican Computer Law in the Face of Cybercrime

Before talking about the gaps in Mozambican law regarding cybercrime, it is necessary understand what a crime is. According to the penal code in its article 1, Crime or offense is the act voluntary declared punishable by criminal law.

3.3 Cybercrime

According to Marques and Martins (2000, p.493), "computer crime is any act in which the computer serves as a means to achieve a criminal objective or in which the computer is the target of this act."

MORRAIS (2015) states that:

> "Information and communication technologies, in addition to enabling the exchange of information, data and information that materialize from interpersonal relationships to agreements commercial transactions involving large financial transactions, created new types of crimes, which are cyber crimes. However, using conceptual analysis, we bring common aspects in relation to the concept of cybercrime. In this corollary, we can refute that cybercrimes behave like an action or typical, unlawful, culpable and punishable omission under criminal law and characterized by use of the computer (typical instrument of crime) and the internet to commit criminal acts, such as Pornography of minors (article 211), Use of minors in pornography (article 212), Distribution or possession of pornography of minors (article 213), Invasion of private life (article 252), Violation of correspondence or communications (article 253), Automated database (article 254), Unlawful access (article 256), Illegal recordings (article 257), Theft of fluids (article 276), Fraud information technology and communications (article 289), Frauds relating to instruments and electronic payment channels (article 294), Abuse of means of payment electronic data (article 295), Computer fraud (article 336), Data interference (article 337), Interference in systems (article 338), Abusive use of devices (article 339), Public incitement to a crime (article 345), Public apology for a crime (article 346), Publicity of the conviction decision (article 448), all provided for in the Code Criminal."

The same author also states that To discuss the essence of these crimes in the legal system-criminal, it is essential to take into account some elements of the crime itself: authorship and materialization of the crime criminal act itself.

RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

3.4 Authorship of the Crime

For ZACARIAS (2016), the first problem to be faced in cybercrimes is the determination of authorship. It is very difficult for a person who intends to commit a criminal offense uses your real personal identification. There are cases where the criminal pretends to be someone else person, through the improper use of their personal passwords. And in computer networks, it is not possible to identify the user visually or through documents, but it is possible to identify the address of the machine that sends the information to the network. Breaking the confidentiality of data user connection, it is only the provision by companies, in a first, what IP would have been used and the time of a certain criminal action carried out on an Internet service is postulated in the Penal Code Revision Law approved by Parliament in July 2019.

3.5 Materialization of cybercrime

Overall, it can be said that the evidence of cybercrimes is extremely volatile. They can be erased in seconds or easily lost. In addition, they have complex format and are often mixed with a large amount of legitimate data, requiring a thorough analysis by technicians and experts involved in the prosecution.

According to COSTA (2016), evidence of cybercrimes on a computer can be classified as user evidence and system evidence." The author explains that user evidence is that produced by the active subject himself, in text files, image or any other type. System evidence is produced by the system operational, depending on the action of the active subject.

For MORRAIS (2015), "the practice of cybercrimes is not synonymous with impunity, a since the two elements that make up the crime, authorship and materialization, are liable to verification through criminal investigation". And, it also says that the central issue will be look at the capacity of the Mozambican criminal sphere, with the impacts of advances technological, can face these crimes, that is, the ability to investigate these crimes that are becoming more and more frequent, in order to reduce or even mitigate them.

RCMOS - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

3.6 The researcher, his objectives and motivations

Science is a highly dynamic process, in which discoveries occur uninterruptedly, always emerging new results and new research, so their results are almost always provisional and transitory. In this way, science is configured as a continuous system of research, which relies on the dynamic participation of researchers, who, in part with the use of accumulated knowledge, they can produce and continue this cycle. Therefore, scientists, as producers of science, must record all their efforts, which will possibly generate new knowledge. These records, in turn, are subjected to careful analysis by the scientific community, which will accept or reject these new ideas. Therefore, scientific advancement occurs as scientists' ideas arouse the interest of their peers and are endorsed by them. The scientific community, made up of peers, is the one who judges the validity of the questions posed, who rewards scientists who are successful and repressed (discrediting their publications, not disclosing their works) those who, in some way, violate the norms and hierarchies (DEUS, 1979, p. 17).

The pressure for wide dissemination of results is reinforced by institutional objectives of expand the limits of knowledge and also by encouraging notoriety, which is closely linked to advertising. According to Hagstrom (1979, p. 87), "the organization of science consists in an exchange of information for social recognition". The sharing of wealth scientific, in addition to being fundamental to the recognition of the researcher's talent, is considered as a moral obligation, in order to condemn the concealment of scientific discoveries. All This thought comes from the understanding that scientific advancement depends on collaboration between past and present generations, as new knowledge is always originating from previous knowledge (MERTON, 1979).

According to Bourdieu (1983), the scientific field is the place of competitive disputes, in whose main objective is to achieve scientific authority, that is, technical capacity and social power, also known as scientific competence. Therefore, it is possible to state

that the scientific field gives rise to various forms of interests. Considering that scientific practices entities, in addition to caring about the advancement of science, also focus on gaining scientific authority (prestige, recognition, celebrity, etc.), commonly known by interest; it is possible to affirm that what drives scientific activities always has more than a type of intention, as well as the strategies used to ensure the satisfaction of that interest. interest. However, it is useless to try to separate scientific motivations from social ones, both must be my together, since what is important to a given researcher must also be so. well for others.

Meadows (1999) conducted a study, aiming to verify what leads people to research. He noted that most of the respondents were motivated by the desire to grow intellectually. currently. The other answers that appeared most frequently, in sequence, were: (a) the desire to contribute to science; (b) intrinsic interest in the field; (c) a way to enter the career academic; (d) possibility of better pay; and (e) desire to be useful to the community.

In the same line of thought, Le Coadic (1996) points out two types of motivations present in scientists. The first comes from the scientific nature itself, the love of science; and it is represented by professional awareness as a researcher, by the desire to provoke debates in which he puts his ideas to the test, out of sincere concern for the advancement of science and for the possibility of collaborating with the decision-making process. The other type of motivation refers to personal desires, such as professional growth, the possibility of recognition and success, as well as academic and institutional pressure.

What is observed is that, regardless of the type of motivation, whether personal or scientific, the researcher takes into account that what is truly important and interesting is what has chances of being perceived by others. This, in turn, is what will make the author appear of what is important and interesting in the perception of others. In this way, researchers res tend to focus on the problems considered to be the most important, given that that a contribution related to these issues generates greater symbolic profit, according to Bourdieu (1983). As already noted by Hagstrom (1979), the desire to be recognized not only makes with which the scientist communicates his research and also influences the choice of problems and methods employed. The tendency is for the scientist to give preference to questions whose resolution can generate greater recognition. Likewise, the tendency is for him to opt for

use, in an attempt to solve the proposed issue, methods that help to ensure that work is accepted by your colleagues. In this way, so that they arouse interest and are valuable, literate, scientists must bring some benefit to the community; thus, one of the factors that most influence the credibility and relevance of the scientist is the social contribution (PETROI-ANU, 2002).

In this sense, scientific authority, considered as a kind of social capital, finds the essence of its characteristics is that knowledge producers only expect the recognition of the value of what they produce (reputation, prestige, authority, competence, etc.) when this gratitude comes from other knowledge producers, who, being also its competitors, they are the least likely to recognize it without analysis or discussion (BOURDIEU, 1983). Therefore, recognition occurs, above all, through peer review. Merton (1979) had already warned that researchers' activities are subject to rigorous judgment, perhaps the greatest among the most varied fields of activity.

It is understood, then, that the objective of scientists, as members of the scientific field, is seek acceptance for what they have produced as well as assert their own authority in the role of scientific producer. To this end, scientists need to know how to choose the problems, the issues that interest not only them, but their peers and find, for that given problem, the most appropriate definition or solution. According to Bourdieu (1983, p. 128), the best solution to be found by the scientist will be that which allows him to "legitimately occupy the position dominant and which ensures the scientific talents that he holds personally or institutional, the highest position in the hierarchy of scientific values".

Another important point for the researcher is his reputation among his peers. In addition to being essential for obtaining research funds, scholarships, invitations, prizes and other distinctions; It is recognition by peers that guarantees the recognition of the scientist. Recognition, in turn, is the sum of the distinctive value of everything it produced and its originality. The originality is achieved by the one who was the first to achieve or, at least, to make a certain discovery is known. The distinctive value is related to the concept of visibility, in which "accumulating capital is making a 'name', a proper name, a known name acid and recognized, a mark that immediately distinguishes its bearer, tearing it out as a form

visible from the undifferentiated, unnoticed, obscure background in which the common man is lost." (BOURDIEU, 1983, p. 132).

Merton (1979) had already postulated that, considering the influence of gratitude and esteem within academic as the author's only right over what he produces, the commitment to prioritization scientific reality, originality, is absolutely understandable.

In this context of dispute for scientific recognition, Bourdieu (1983) identifies two acts-res: the dominant ones, occupying the highest positions in the capital distribution structure scientific; and the novices, or dominated. Bourdieu (1983) argues that each of these groups adopts different strategies. The dominant ones use conservation strategies, with the aim of aim of preserving the scientific order with which they agree in order to maintain themselves in their posts. This strategy relies on the cooperation of academies and social magazines, which strive, with the help of dominant criteria, to consecrate productions. In this way, way, they censor all productions that do not meet their criteria, rejecting them or simply discouraging work that goes against the definitions they impose.
In contrast, newcomers can adopt succession strategies or sub-strategies. version. The first strategy takes advantage of the profits promised to those who, despite following standards of scientific excellence, had their careers interrupted. In this case, it is enough that innovations are created, within the authorized limits, that enable continuity to this line of thought. In the case of subversion strategies, Bourdieu (1983) recalls that investments are riskier and higher, since it requires a complete redefinition of the which until then was considered dominant. Bourdieu (1983, p. 139), when discussing the strategies subversion strategies, states that scientists who use it and carry out the initial accumulation through a break with "the credit that the former dominant powers benefited from, without grant them the counterpart of the recognition offered to them by those who accept insert into the continuity of a lineage".

In this sense, the scientist, as he sets out to produce answers to questions of interest not only his, but also important to others, he is faced with competitors each increasingly prepared to produce the same products. Likewise, their peers are also are increasingly equipped with instruments to criticize him and put his discoveries to the test. Therefore, the dominant ones are also the most competent, those who "manage to impose a

definition of science according to which the most perfect achievement consists in having, being and doing that that they have, are and do" (BOURDIEU, 1983, p. 128).

Therefore, scientific publications can be considered as the main means by which in which researchers stand out academically, that is, they become visible to the community academic. From these publications, scientists receive incentives such as grants and other financial aid, highlighting "the interest of the government and of several institutions of promotion of research in scientific development" (PETROIANU, 2002, p. 60). It can be con- thus considering professional prominence as one of the main incentives for scientific publication. remains. Furthermore, it is worth pointing out that egocentrism, financial incentive and recognition before society are factors that greatly influence scientific production, encouraging researcher to publish more. According to Petroianu (2002, p. 60), in the academic career, "the vanity represented by the love of fame is one of the factors that most drives the process intellectual".

It is clear that authorship has great importance in the academic environment. Foucault (2006) states that, in the Middle Ages, scientific texts were only considered true if they were marked by the name of their author. "'Hippocrates said', 'Pliny tells' were not precisely the formulas of an argument from authority; they were the indexes with which the dis- courses intended to be accepted as proven". As noted by Antonio (1998), this situation changed during the 17th and 18th centuries, when scientific works began to receive recognition from their peers on the condition that they were the result of "ver- already established and systematically demonstrated, or even when they were inserted into systems organized theoretical and methodological themes." (FOUCAULT, 2006, p. 275). In science, the text is already the product of research teamwork, "in which authorship and citations have the function of allow the genealogy of the text itself and its authors to be traced, that is, they allow the verification and validation of the methods employed and the results achieved" (ANTONIO, 1998, p. 190).

In this way, the indication of the author represents more than the origin of a work, more than that the idea of ownership, it gives credibility to the techniques and experiences used carried out. Furthermore, Antonio (1998, p. 189) points out that the author's name guarantees a certain status to the

work, granting it "authenticity (the speech is real, true), distinction (the speech has value, is special, important) and permanence (the discourse is preserved, fixed for eternity) ity)". Another aspect related to authorship is the classificatory function, making it possible to regroup a certain amount of texts, delimit them, select them by excluding some and opposing them to other texts (FOUCAULT, 2006, p. 272).

The researcher/Investigator (PhD in Law or Master with a specialization in Law) of Communication Technologies and Technologies), has a crucial role to play in the analysis analysis of the problems related to the area under study and the attention of the Government of the day is drawn to include specialist researchers in the preparation of legal standards relating to the subject matter of search.

4. METHODOLOGY

According to Lakatos and Marconi (2003, p.55), methodology is the set of activities systematic and rational, which allows the objective to be achieved with greater safety and economy, tracing the path to be followed, detecting errors and assisting the scientist in his decisions.

For Gil (2013, p.34), methodology is a set of instruments that must be used in an investigation and aims to find the most rational way to achieve the proposed objectives.

This scientific article aims to carry out a work in which the following were adopted: following research methodologies in light of the suggested theme and the problem raised:

4.1 Search Type

To carry out this research work, qualitative research will be used and quantitative, thus being a mixed research.

ROMEO - Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. Sao Paulo-SP.

4.1.1 Qualitative research

The choice of this type of research is due to the need to provide the academic community greater understanding of the matter in a hurry, reaching the most as close as possible to the problem, trying to bring together different perceptions on the matter. As Dos Reis (2005, p.17) states:

> Qualitative research seeks to explain why things happen, expressing what should be done, but they do not quantify the values and symbolic exchanges nor do they subject to fact-checking, as the data analyzed are non-metric (elicited and interaction) and use different approaches.

4.1.2 Quantitative research

According to Silva (2015, p.53), quantitative research generally represents samples considered representative of the population, their results are taken as if they constituted a real portrait of the entire target population of the research.

In quantitative evaluation it is necessary to use a scientific method and the use of instruments and equipment designed to quantify risk.

4.2 Nature of research

The nature of the research is basic, objective, and seeks to generate new knowledge, useful for the advancement of science without any foreseen practical application. It involves universal truths and interests, and as for the objectives, it is an exploratory research as it aims to provide more subsidies on the matter.

As stated by Prodanov and Freitas (2013, p.52):

> Exploratory research has flexible planning, which allows the study of the theme from different angles and aspects. In general, it involves: survey bibliographic; analysis of examples that stimulate understanding.

To achieve the objectives set for this research, the researcher will necessarily use the procedures outlined above.

4.3 Regarding data collection techniques

To carry out the research, the following techniques were used: interview via presentation of a questionnaire containing mixed questions.

4.4 Bibliographic research

Bibliographic research is an exclusively theoretical procedure, understood as the junction, or gathering of what has been said by other scholars on a given topic.

As Fonseca (2002, p. 32) shows, bibliographic research is carried out based on the survey of theoretical references already analyzed, and published by written and electronic means, such as books, scientific articles, web pages.

Therefore, any scientific work must begin with a bibliographical research. This The initial step allows the researcher to know what has already been studied on the subject. To raise to the scientific degree of the study, the bibliographic survey is conceived from materials already published and is substantiated by the hermeneutic and comparative method.

4.5 Data Analysis Techniques and Instruments

To analyze the collected data, content analysis was used, which, according to BARDIN (2011), is a methodology that enables the categorization, interpretation and inference of information contained in textual materials, allowing the identification of patterns and underlying meanings in the speeches and documents analyzed. This technique was fundamental to organize and interpret data extracted from documents.

5. RESULTS AND DISCUSSION

5.1 Legal instruments for preventing cybercrimes in the virtual space Mozambican

To reduce, mitigate or penalize cybercrimes, Mozambique's legislative bodies instituted some laws, such as:

- ÿ The Penal Code approved by Law No. 24/2019, of December 24. ÿ Law No. 3/2017 of January 9 (Electronic Transactions Law) which "establishes principles, general rules and the legal regime of Electronic Transactions and general, of electronic commerce in particular, aiming to ensure the protection and use of technologies information and communication technologies". The Electronic Transactions Act establishes all the precepts that will allow the practice of acts, respecting freedoms and rights to all stakeholders, from domain registration, service provider, practice electronic commerce and consumer protection. It also covers the functioning of e-Government management, protection of personal electronic data, monitoring and establishes the digital certification and encryption system.
- ÿ Law No. 4/2016 of 3 June (Telecommunications Law) is foreseen, which defines the general bases of the telecommunications sector, in order to maintain the liberalized market in an environment of competition and convergence of networks and services. It also regulates ma- matters relating to confidentiality, Fraud, Legal Interception Systems and Gateway.
- ÿ Decree No. 18/2015, of 28 August (Regulation on the Registration and Activation of Mobile Phones) Mobile telephone subscriber identification modules (SIM cards).

However, despite the existence of some of these standards that deal with the matter and the application of existing legislation, the Mozambican legal system has not yet proven effective in protect people who use technological means, such as computers, the Internet, etc. by lack of a specific law regulating the matter. Likewise, the State does not have the means

to punish all criminal behavior that occurs in the virtual scenario. It is very important, take into account the fact that this type of crime is new in the Mozambican judicial sphere, and the lack of specific laws means that there is little application of penalties, because without law, there is no crime. And without crime there is no sentence. Thus, Mozambique remains a virtual space suitable for the practice of the most varied crimes.

5.2 The Role of Jurisprudence in Mozambican Computer Law

Regarding rulings on cybercrime, there are almost no such rulings. Because, many of these processes end up being referred to the appeal, taking into account that these legal types of crimes are new in the Mozambican legal system. Which, they appeared in 2014, with the implementation of Law No. 35/2014 of 31 December.

As we saw in the last chapter, complementing the quote above, cybercrime is a new scenario for Mozambican law, which does not have specific laws to judge crimes and conditions to determine who committed an unlawful act in the Mozambican virtual space. Therefore, jurisprudence in Mozambican computer law is a topic that needs to be much debate. Mozambican law still has a long way to go when it comes to this topic.

5.3 Challenges for the Legislator in the Face of Mozambican Computer Law

As already mentioned, Mozambican law is a new topic with great repercussions in current affairs, mainly in Mozambican criminal law. As a result, cybercrimes cause virtual insecurity and this leads to the need for state protection, taking into account that these are new types in which the protected legal asset is information technology. Therefore, Mozambique has many challenges in dealing with cybercrime.

5.4 Creation of specific legislation to prevent illegal acts

Because there is no specific legislation to regulate these crimes, since the space virtual is the result of technological advances, the use of the internet and computer resources in day-to-day, and consequently the spread of crimes related to this scenario. Refer also that the legal instruments for preventing cybercrimes in the virtual space Mozambican, are not sufficient, considering the nature of the crimes, which could condition impunity for the practice of cybercrimes. Although certain measures have already been taken measures, such as the creation of rules that regulate some of these criminal behaviors that occur in the virtual environment, despite the application of the Penal Code for some crimes cybernetics, specific legislation is needed that efficiently encompasses all of these conduct, especially because we do not have a specific procedural procedure, provided for in our Penal Code relating to this type of crimes.

5.5 Adherence to international treaties on ICT matters

In addition to the need for specific relevant legislation, adherence to international treaties that regulate the matter, since there are countries that already deal with this situation for a long time, it would be a good opportunity to gather experiences in combating these unlawful acts. Still in the context of accession to international treaties we can mention the fact that cybercrimes occur all over the world and because they do not respect borders, a joint intervention of nations is necessary.

5.6 Strategies to improve lawmaking in the areas of ICTs

Mozambique is a country that has been ruled by the Frelimo Government since 1975 until current affairs.

In legislative and judicial matters, major events have been at the highest level, with Supreme Court and that this body cooperates with the Attorney General's Office of

Mozambique and finally these two bodies work with the Ministry of Justice, Affairs Constitutional and Religious.

As usual, the three bodies of the administration of justice mentioned above, to in addition to inviting the Mozambican Bar Association at the last minute to be able to join the mentioned retro classes, forget to analyze, and/or, do not pay attention that Legislating on the subject of ICTs is not an easy task without the presence of experts in the area of ICTs. It is not enough to legislate without first knowing the technical subject matter (whether in the software area or in the of networks, whether in the hardware area).

And not only that, Mozambique does not value researchers. Since the country is suffering from several problems in legal matters and should compensate in the first instance, intervention of researchers specializing in Law and ICT in order to be able to identify the problems that guide Mozambique in legal matters and then propose – if reliable solutions together with the bodies of the Administration of Justice for the good of justice and Mozambican society in general.

Since it is the duty of the Mozambican State, represented by the Government of the day, to satisfy the people, bringing to this end credible and practical solutions for resolving conflicts that guide our Society.

I think that the time has come for the Government to change the mentality (thinking) they have had since 1975 and which can include researchers specializing in Law and ICTs (Doctorates in Law and ICT) so that problems with white beards can be solved of the country, specifically in terms of ICTs.

6. CONCLUSION

After addressing this very interesting topic, as laws govern the life of a nation, that is, the laws dictate how a group of people in a given society should live. The study of the gaps in Mozambican law, made me realize that there is still a long way to go ahead, as far as Mozambican law is concerned, especially ICTs. The case of jurisprudence made me realize that there are scenarios in which the judge may sentence the defendant, influenced by customs or decisions from past cases. I also learned that it is not possible for the law to cover all crime scenarios.

Due to the fact that cybercrimes are a new reality in the legal environment of our country, we encounter several difficulties in dealing with this scenario. Although there are already laws that regulate computer law, they are not enough. That is why a specific law is needed.

As for the case law scenario in Mozambican computer law, there is not much to say. say, because we are facing a new type of crime. About the challenges of Mozambican law, in the face of cybercrime, I mentioned two that I found most relevant at the time, but I I believe that as we move forward it will be possible to control this type of crime.

7. REFERENCES

BOURDIEU, P. The scientific field. In: ORTIZ, R. (Org.). Pierre Bourdieu: sociology. São Paulo: Attica. 1983. p.122-155.

AMIN, M.; MABE, M. Impact factor: use and abuse. Perspectives and Publishing, n. 1, p. 1-6, 2000. Available at: <http://www3.ntu.edu.sg/home/MWTANG/ifuse.pdf>. Accessed on: 23 Nov. 2011.

ANTONIO, I. Authorship and culture in postmodernity. Information Science, Brasília, v. 27, n. 2, p. 189-192, May/Aug. 1998.

BOURDIEU, P. The scientific field. In: ORTIZ, R. (Org.). Pierre Bourdieu: sociology. São Paulo: Attica. 1983. p.122-155.

DEUS, JD (Org.). The critique of science: sociology and ideology of science. 2nd ed. Rio de Janeiro: Zahar, 1979.

FIDALGO, A. Metaphor and reality or cooperation and competition in the network University of Beira Interior, 2001. Available at: <http://www.bocc.ubi.pt/pag/fidalgo-antonio-rede-metafora-realidade.pdf>. Accessed on: February 26, 2025.

FIGUEIREDO, NM de. Reference & Information Services São Paulo: Polis, 1992.

FOUCAULT, M. What is an author? In: SAYINGS and writings III: aesthetics: literature and painting, music and cinema. Rio de Janeiro: Forense Universitária, 2006. p. 264-298.

GARFIELD, E. Journal impact factor: a brief review. Canadian Medical Association Journal, v. 161, n. 8, p. 979-980, October 1999. Available at: <http://www.cma.ca/ cmaj/vol-161/issues-8/0979.htm>. Accessed on: November 23, 2014.

GARGOURI, Yassine; HARNAD, Stevan; HAJJEM, Chawki. Impact of open-access self-service mandate on citation advantage. 2009. Available:<http://users.ecs.soton.ac.uk/harnad/Temp/ selfarchdraft1.doc>. Accessed on: 20 Dec. 2014.

GLÄNZEL, W.; MOED, HF Journal impact measures in bibliometric research. Scientomet-rics, <http://www.springerlink.com/content/ v. 53, n. 2, p. 171-193, 2002. Available in: 0prnbd5xaxcwf7gt/fulltext.pdf>. Accessed on: 23 Nov. 2024.

GLEISER, M. A lover of science. UNESP Journal, São Paulo, n. 94, p.1-15, Nov. 2004.

HAGSTROM, WO The social control of scientists. In: DEUS, JD (Org.). The critique of science: sociology and ideology of science. 2nd ed. Rio de Janeiro: Zahar, 1979.

LATOUR, B.; WOOLGAR, S. Laboratory life: the production of scientific facts. Rio de Janeiro: Relume Dumará,1997.

LEGISLATION

MOZAMBIQUE, Law No. 1/2018, of June 12. Approves the Constitution of the Republic. National Press, Mozambique, MPT, June 12, 2018.

MOZAMBIQUE, Law No. 24/2019, of December 24. Approves the Law on the Revision of the Penal Code. National Press, Mozambique, MPT, December 24.

MOZAMBIQUE, Law No. 3/2017, of January 9. Establishes the principles, general rules and legal framework for Electronic Transactions and electronic government. National Press, Mozambique, MPT, January 9.

MOZAMBIQUE, Law No. 8/2004 of 21 July. Approves the Telecommunications Law. National Press, Mozambique, MPT, 21 July.

MOZAMBIQUE, Law No. 34/2015 of December 31. Approves the Law on the Right to Information. National Press, Mozambique, MPT, December 31.

MOZAMBIQUE, Decree No. 75/2014 of 12 December. Approves the Telecommunications Traffic Control Regulation. National Press, Mozambique, MPT, 12 December.

MOZAMBIQUE, Decree No. 18/2015, of August 28. Approves the Regulation for the registration and activation of Mobile Telephone Subscriber Identification Modules (SIM Cards). National Press, Mozambique, MPT, 12 December.

Books and articles

ÿ Universal Dictionary of the Portuguese Language, Moçambique Editora, LDA. Maputo, October 2002.

Internet articles and magazines

BASTOS, Athena, Jurisprudence: what it is, how to use it and its importance in law, available at https://blog.sajadv.com.br/jurisprudencia-e-advocacia/, published on 08/2019, accessed on 01/29/2025.

COSTA, Marcelo ASL forensic computing, P. 26, available at www.estantevir-tual.com.br/marcelo-sampaio-lemos-costa/computacao-forense/593469987, accessed on 01/30/2025.

MORRAIS Barbosa, The Mozambican criminal-legal reality in the face of cybercrimes, available at https://jus.com.br/artigos/67509/criminalidade-e-as-novas-tecnologias-de-informacao-e-comunicacao, published on 07/2018, accessed on 02/30/2025.

ZACARIAS, Inelas Gabriel César de. Crimes on the internet, 2nd edition available at https://www.estantevirtual.com.br/gabriel-cesar-zaccaria-de-inelas/crimes-na-inter-net/175000007, accessed on 03/09/2025.