

New Authoritarianism, Civic Space and Human Rights Defending¹

Summary

In Southern Africa, as is the case across the world, women and men human rights defenders (W/HRDs) are under siege. In our analysis and based on applications for help in protection that we receive as the Southern Africa Human Rights Defenders Network (SAHRDN), we can summarise that attacks on W/HRDs in the region include, inter alia, state and nonstate sponsored actions that range from assassinations and extrajudicial killings; arbitrary arrests and detention; online and physical attacks, threats and harassment; abductions and enforced disappearances; as well as politicization of W/HRD work and demonization and scandalization of activists as terrorists, criminals or agents of the west or regime change and people pursuing foreign interests or opposition causes. Criminalisation and Institutionalization of repression through the introduction and selective application of repressive laws such as cyber laws, public order laws, freedom of information laws; financial intelligence laws which had the effect of closing down operational space for HRDs in several countries in the region is also a problem on the increase.

Introductory Remarks

It gives me great pleasure to get this opportunity to give this important lecture in Maputo Mozambique, a great city with a strong history of leadership in the struggles of the people of Southern Africa to get freedom from the yoke of oppression, colonialism and racial domination.

It is Maputo and Dar e Salaam that housed the Frontline states whose mission was the total eradication of colonialism. It is here that after the colonialist were defeated in 1975, the new leadership of Mozambique lead by President Samora Machel took the risky but necessary decision that the quest for the liberation of Southern Africa will be laun-



¹Seminal lecture by **Arnold Tsunga**, Chairperson of the Southern Africa Human Rights Defenders Network (SAHRDN or the Defenders Network) currently working as the Africa Director for the International Commission of Jurists. He gave this lecture as the guest of the Center for Democracy and Development (CDD) at the Polytechnic in Maputo on 6 March 2020.

ched from Mozambique at great cost to the people of Mozambique. By providing a safe haven for the Southern Africa liberation movements to launch the wars for the total liberation of all countries in Southern Africa, you paid with your blood and sacrificed your development for Africa to be free from oppression.

Your illustrious sons and daughters inspired us in Southern Africa as we grew. The names of Eduardo Mondlane, Samora Machel, mama Gracia Machel, President Joaquim Chissano are household names and always invoke the spirit of the rise of Africa after hundreds of years of domination by the West during the pre-independence era. They gave the human face to a core objective of the Organisation of African Unity under article 2 (d) of the OAU Charter of 1963 "to eradicate all forms of colonialism from Africa".

Many of our relatives including mine personally, sons and daughters of Southern Africa are buried in unknown graves and places in Mozambique, murdered by the colonial regimes of Rhodesia and South Africa that saw Mozambique as a legitimate frontier of attack for housing, equipping, training and providing logistical support for the wars of liberation. The souls of the sons and daughters of Southern Africa who perished and whose bones lie in Mozambique will not rest in eternal peace until Southern Africans

can be totally free from dictatorship and oppression and the full aspiration of the freedom fighters are achieved.

This rich history and legacy and significance of Mozambique in the struggles of Southern African people against oppression and dictatorship makes this city such a significant city for us to take stock of where we are as a continent in terms of the democratisation and freedom agenda.

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The wars of liberation could not have been in vain! Mozambicans sacrifice for the freedom of Southern Africans from the yoke of dictatorship and oppression could not have been in vain! Maputo as the twin capital city with Dar es Salaam of Tanzania of such a rich history should be the epicentre of interrogating the gains and losses made in the post colonial Southern African state. This should be the city of evaluating the growth or decline of democracy in the post-independent African state.

Liberation and freedom thought leadership should be generated here and reverberate throughout the region from here. This is why the SAHRDN and the CDD are choosing Maputo to host the Southern Africa Annual Youth Human Rights Defenders Camp, a short university certificated course for human rights defenders between the ages of 18 and 35 years.

The Rise of New Authoritarianism

After the World War 2, the most influential world leaders then, conceptualized and tried to implement a new world order anchored on human rights values and respect for the rule of law. The Universal Declaration Of Human Rights (UDHR), the United Nations Charter and the United Nations took increasing importance in guaranteeing global peace and security based on an aspiration of respect for a world order underpinned by an international rule of law. The human rights values inspired the rise of the liberation and democracy movements in Africa.

We regrettably have seen lately the serious shifts

that have undermined multilateralism anchored on human rights values. Increasingly the most powerful nations militarily and economically have actively undermined the United Nations and a world order underpinned by the respect for international rule of law. The examples are endless, President Trump in the USA with his America first policy and unilateralistic driven foreign policy agenda, President Putin in Russia who does not hesitate to use military might to pursue narrow nationalistic interest, President Jing Ping of China who uses ruthless debt diplomacy as some new form of complex and frightening con-

quest and recolonisation agenda, and Prime Minister Boris Johnson who is fanatical about British splendid isolation and who rose to power on the self inflicted injury or own goal of Brexit. These are just examples of major powers, some of who have traditionally claimed to be paragons of democracy and have in fact turned democracy on its head. Their conduct allows for the development of a culture of lack of respect for human rights as a global culture in the governance matrix.

The working definition of New Authoritarianism adopted by a group of civil society organisations globally under the banner of HRCNet² worried about it are that these are governments that are right wing economically, culturally conservative, driven by demoralisation of human rights and institutions, and largely nationalist in outlook. Many of them are voted in, not always through fair elections but through manipulating the democratic process. So they can claim to have popular support as a result of elections.

One worrisome factor about new authoritarianism

is the manipulation and undermining of democratic elections. Increasingly the mentality is that power is an end in itself. Power is not seen as a national resource that has to be deliberately deployed to achieve progressive and developmental objectives for the country. The central thesis of getting power at any cost means even the elections are seen as an enterprise for power acquisition as opposed to an opportunity to give people a chance to hold leaders to account.

In such situations, institutions and systems of democratic governance are instrumentalised to acquire and retain power. Separation of powers and checks and balances are undermined. Elections become more chronological rituals devoid of substantive meaning in terms of people participation in their own governance. The belief in the usefulness of elections for accountable governance is systematically degraded creating a sense of powerlessness and uselessness of the electoral process as an instrument of periodic change for transformation of our societies.

The nature of the State in New Authoritarianism

In my view usually there is a very small group of people who control the state. There is conflation between political office and economic opportunity. Usually the security sector and the economic sector is totally under the control of a small cabal that also usually captures the ruling party. In Zimbabwe for example Jabusile M. Shumba (2018) who has studied the political party, military and business relations in the post independent Zimbabwe calls it an undemocratic predatory state that "exhibits more predatory characteristics than it does other forms of state conceptualization". This is a state where control of state power is used for private enterprise by the few controlling the levers of state power while the state's coercive apparatus is used to suppress any dissent. It is an undemocratic government sitting over a state that is facing developmental reversal. It is usually a weak state in terms of bureaucratic, developmental and economic organization capacity but it is strong enough to target human rights champions and oppositional forces and voices for repression.

Shumba (2018/viii) summarises the nature of the

undemocratic predatory state in Zimbabwe as characterized by "(1) party and military dominance of the state (2) state-business relations shaped by domination and capture, and (3) state-society relations shaped by violence and patronage." He ends by arguing that "Zimbabwe's power elite extracts high levels of rents from the state and the economy towards personal ends, and in doing so undermines developmental potential."

I posit that countries like Eswatini, Zambia, Tanzania, the DRC and Mozambique in Southern Africa depict some of these predatory characteristics to different levels of intensity. Certainly Angola was like that before President Dos Santos left power ushering in his daughter as the richest woman in Africa and his son looting the sovereign wealth fund. Malawi is like that under President Mutharika but there has been a rise of grassroots driven human rights activism that has put tremendous pressure on the ruling cabal and their corrupt and predatory practices that change may be imminent.

² HRCNet is a network of organisations from across the globe that was created in Geneva in order to improve the participation and impact of civil society at the UN Human Rights Council. The SAHRDN coordinates HRCNet working group on New Authoritarianism and is a member of the working group on civic space.

An undemocratic predatory state with developmental regression is different from the Rwanda model, which depicts signs of an undemocratic developmental state. In an undemocratic developmental state, there is dictatorship but limited impact of corruption and laundering of state resources for personal gain. One can argue that an undemocratic developmental state derives its inspiration from the Singaporean or Chinese or Tiger economy models where there is usually a "benevolent" dictator who is palpably intolerant to opposition and criticism from human rights groups. They often argue that human rights realisations are outcomes of development.

So in such undemocratic developmental states, while there is development, there is no proactive promotion, protection and enjoyment of human rights especially civil and political rights that may be seen as sowing seeds of conflict and instability in societies desperate for development. The classification of rights into first generation (civil and political) and second generation (Economic, social and cultural) has not been helpful especially with the west as main donors of NGOs focusing more or seen as focusing more on civil and political rights. Questions are often asked on the sustainability of this model

but the proponents of this model argue the rise of Tiger economies and China as economic forces as evidence that this model produces tangible results. China has taken hundreds of millions of people out of poverty using this model. It may need more research and academic interrogation.

The central feature of new authoritarian states in Africa is that the state becomes intolerant to opposition, human rights activists and oriented civil society. The legal system and the judiciary's ability to offer legal protection to all and protect human rights and offer real and effective remedies for human rights violations is undermined. State security institutions are coopted and militarised to serve narrow interests. Groups emerge calling themselves civil society groups that use the traditional civil society methods to propagate and support certain rights while attacking the enjoyment of others in the process undermining the universality of human rights. A climate of impunity pervades society with a strong notion that might is right and not right is might established as the national order. The role of the powerful non-state Actor takes prominence in the affairs of such states.

Role of The Powerful Non-State Actor, and Geo-Political and Geo-Economic Contestations for Africa in the New-Authoritarian State

The role of the powerful non-state actor in an authoritarian state takes prominence. The desire and objective to use control of the levers of state power to get economic opportunity and loot national resources has made the authoritarian state susceptible to the influence of the economically powerful and who want to access investment opportunities. Weak economic governance and bureaucratic capacity results in a strong man syndrome substituting the bureaucratic process.

Unscrupulous business people mainly with extractive and exploitative intent become the main business players. The nature of their business activities make them dislike human rights activists as they equally dislike accountability for business complicity in violations of human rights. Such business people beco-

me critical enablers of state power acquisition and retention through supply of resources to the small cabal controlling the state while looting the state. In South Africa we have heard of the contestations between Guptas Family, the Rupert family and the Openheimer family for the control of the hearts and soul of the South Africa political class, while in Zimbabwe we have heard of the Kudakwashe Tagwirei, Nicholas Van Hoogstraten³, Billy Rautenbach, John Bredeenkamp, the Meikles family among others who have had a role in propping up the ruling class while acquiring business opportunities including large tracts of land. I posit that every other country in Southern Africa will have such well known business people whose role in propping up autocratic practices and extractive relations between countries and investors is yet to be fully studied.

³ Nicholas van Hoogstraten has [previously] said he "[does not] believe in democracy, I believe in rule by the fittest" https://en.wikipedia.org/wiki/Nicholas_van_Hoogstraten

Closely linked to the role of the non-state actor in terms of investment decisions that put a wage between the autocratic regimes and their people is the role of the geo-political and geo-economic contestation for Africa that is akin to a new scramble for Africa regrettably with the same neo-colonial if not colonial outcomes as happened with the first scramble for Africa that culminated in the Berlin conference for the partitioning of Africa more than 100 years ago.

The United States and China have a near open competition for influence in Africa. Such competition according to Otto Saki (unpublished paper 2018) "has implications for our efforts to disrupt the drivers of inequality on the continent and demands our attention." Otto's caution arose after the then U.S National Security Advisor, John Bolton, on 6 December 2018 at the Heritage Foundation, announced that a new financing instrument to replace the Overseas Private Investment Corporation (OPIC) was adopted through Better Utilization of Investments Leading to Development (BUILD) Act with a lending ceiling of \$60 billion. OPIC was renamed the United States International Development Finance Corporation (IDFC).

"Historically, OPIC was the main institution in promoting investment in Africa, complemented by Africa Growth Opportunities Act (AGOA), whose life span has been extended until 2025" Otto said.

Since earlier in the year, China had also made a \$60 billion pledge to aid and investment in Africa during the 2018 Forum on China African Cooperation (FOCAC) Otto argued that "the \$60 billion coincidence between U.S and China aid/loans is striking" and "left many shell shocked and wondering if the new U.S policy was directed at supporting Africa or at competing with China in Africa".

Africa's desire and insatiable appetite for foreign

direct investment (FDI) coupled with not so well thought through short-term oriented investment and economic policies and weak economic regulatory frameworks has exposed Africa to opportunistic investors who are in a hurry to make the quick dollar and to extract value without concern to the environment and the economic and social rights of communities from where such value is extracted.

This is one of the reasons that the African Commission has established a Working Group on Extractive Industries, Environment and Human Rights Violations under leadership of The Chairperson of the ACHPR, Commissioner Dersso of Ethiopia who had this to say about our current global context

"Ours is a time of globalization...the era of corporations, the single most dominant force and beneficiary of globalization. ... 'the 20th century has been characterized by three developments of great political importance: The growth of democracy, the growth of corporate power, and the growth of corporate propaganda as a means of protecting corporate power against democracy... The perils of corporate power for people [for the environment] and for human rights are even bigger in Africa and other economically weak regions of the world."⁴

It is in this context of globalization and the emergence of corporate power in a weak governance sphere that Africa loses over \$60 billion annually through illicit financial flows and other corruption related practices. Infact researchers show that in 30 years between 1980 and 2009 "between \$1.2 trillion and \$1.4 trillion..left Africa in illicit financial flows."⁵ This gives credence to the argument that is increasing in volume that Africa does not need aid but trade coupled with stemming corruption and illicit financial flows.

Civic Space in Southern Africa

As I said earlier civil society organisations played an important part in the struggles against colonialism and apartheid, and for democracy. They, with liberation war icons created a vision of a democratic, just, peaceful and prosperous Africa that is yet to be achieved in many parts of Africa. The vision for a just, peaceful and

democratic Africa has found meaning in the important human rights instruments that the AU member states have developed and adopted such as the AU Constitutive Act, the African Charter on Human and Peoples Rights, The Maputo Protocol and the AU Charter on Democracy Elections and Good Governance among

⁴ <http://www.achpr.org/news/2016/07/d226>

⁵ <https://www.un.org/africarenewal/magazine/december-2013/illicit-financial-flows-africa-track-it-stop-it-get-it>

others. Virtually all AU members states have also adopted the International Covenant on Civil and Political Rights as well as the Covenant on Economic Social and Cultural Rights. On 9 December 1998 all AU members states were part of the UN General Assembly that unanimously adopted the UN Declaration on Human Rights Defending that codifies the duties and responsibilities as well as duty of everyone to promote and protect human rights. For this to be achieved, it needs an enabling civic space and a conscious effort to bridge the gap between human rights standards and human rights practices in Africa.

Mark Heywood (2019: unpublished) argues that civil society

has a vital role to play in struggles for sustainable development, against corruption, for equality in health and education systems, and for women's and children's rights. Yet in recent years ... a perfect storm, is shrinking civic space at local, district, national and regional levels. Digital technologies such as the internet and social media, which have aided organisation by human rights defenders, have proved equally capable of being turned against them.

In a survey of civic space and HRDs Mark Heywood and I did for the OHCHR in 14 Southern African countries (Angola, Botswana, Comoros, Eswatini, Lesotho, Namibia, Madagascar, Malawi, Mauritius, Mozambique, Seychelles, South Africa, Zambia and Zimbabwe) in 2019 with over 200 human rights organisations participating the survey as summarized by Mark showed that;

Significantly the majority of participants, 46%, expressed their view that civic space has become 'less free';

while 42% said it has stayed relatively the same. But despite a majority of organisations (53%) having faced attacks, most participants noted that they are still able to operate freely (51%) or partly freely (42%). However, 25% of respondents – mainly from Zimbabwe, Zambia and Malawi – noted that in the last 12 months, there has been a significant clampdown on their operations.

On 4 March 2020, at the Oxfam learning event on civic space, a solid research findings presented showed the issue of the systematic and sustained character assassination and delegitimisation narratives for HRDS as a matter of grave concern. It is common in most countries including in Southern Africa. Human rights activists are often described as agents of the West, members of the opposition, urban elite, insurgence and terrorists, foreign agents, and in some instances anti-growth and anti-development agents. In many countries the legislative and constitutional framework, the legal and security system as well as administrative practices are used to clamp down on both legal existence and or operational functionality of NGOs and civil society organisations.

In his recommendations to the UN Mark Heywood concluded that

Coordinated action to protect civic space is desperately necessary. Building on the spaces that are still open (or opening) for human rights activism, consolidating the democratic reform that is opening spaces in countries such as Angola and assisting it to spread more evenly across the country, and preventing civic space being closed (again) in countries such as Zambia, Zimbabwe and Malawi should now be treated as a priority.

Persecution of Human Rights Defenders in Southern Africa

In Southern Africa, as is the case across the world, women and men human rights defenders (W/HRDs) are under siege. Frontline Defenders Global Analysis Key highlights that in 2018, 327 W/HRDS were killed on the line of duty while in 2019, 304 defenders were killed for their work as W/HRDS. Paying with your life for the rights of others is the ultimate price that W/HRDS can pay. Killing W/HRDs is such a waste to humanity. They are the least of problems that the world needs to deal with. Most killings were in Latin America.

South Africa in Southern Africa, has recorded killings of HRDs in the area of environment and land protection. Sadly this has happened largely with impu-

nity and the most shocking of the cases was in the Xolobeni area where leaders of the Amadiba Crisis Committee such as Bazooka were murdered in cold blood. The group Abahlali base Mjondolo has also reported extra-judicial killings of their leaders in the landless communities in Kwazulu Natal. The impunity for such killings is a significant dent on the otherwise good human rights record of the country save in the ESC area.

Zimbabwe and Mozambique have experienced killings of democracy activists in the context of electoral contestations with the Matavale killing in broad day light in Gaza, Mozambique sending shivers down the spines of W/HRDS. Significant conflict and



Crédito: VOA Portugues

killings are now happening in both countries in areas where there are natural resources ready for exploitation with the “matchete gangs” associated with the state security apparatus in Zimbabwe creating a climate of terror where there are rich natural resources such as precious minerals. In Mozambique the Cabo Delgado province is now a matter of sub-regional if not regional/global security concern with emergence of groups associating themselves with extremists terrorising entire communities resulting in mass displacements to pave way for extraction of natural gas and oil.

In Zambia a group of militia associated with the ruling party has been involved in gas attacks against perceived opposition forces and defenders resulting in some deaths. There is a strong sentiment that such attacks done with the seeming acquiescence of the state amount to targeted chemical attacks against legitimate political opponents and community leaders in a way that violates international human rights and humanitarian law.

In Malawi ever since the failure to hold credible elections in 2019 there has emerged grassroots driven human rights pressure for electoral accountability as well as good governance lead by the Malawi Human Rights Defenders Coalition (HRDC). One feature of this pressure has been popular demonstrations. The police failed on crowd control. They

approached the demonstrations with heavy handedness and the killing of some protesters or people who are close relatives of the protest leaders. This resulted in the police losing public credibility and putting the country in danger of serious conflict that resulted in the Malawi Defence Forces stepping in to offer protection to everyone including the protesters. The stability of the country is going to be largely dependent on how credible the fresh elections are managed.

In our analysis and based on applications for help in protection that we receive as the SAHRDN, we can summarise that attacks on W/HRDs in the region include, inter alia, state and nonstate sponsored actions that range from assassinations and extrajudicial killings; arbitrary arrests and detention; online and physical attacks, threats and harassment; abductions and enforced disappearances; as well as politicization of W/HRD work and demonization and scandalization of activists as terrorists, criminals or agents of the west or regime change and people pursuing foreign interests or opposition causes. Criminalisation and Institutionalization of repression through the introduction and selective application of repressive laws such as cyber laws, public order laws, freedom of information laws; financial intelligence laws which had the effect of closing down operational space for HRDs in several countries in the region is also a problem on the increase.

As Frontline Defenders (2007) has observed many W/HRDs “are uncomfortable with a focus on their own protection because their purpose is to defend the rights of others.” W/HRDs are quite comfortable defending other people’s rights and giving a voice to those who are marginalized and vulnerable and in the process often speak to power economic or political unsurprisingly finding themselves being targets

of retribution and persecution. “If there is no security for HRDs to undertake their legitimate work then there will be no effective protection for the rights of anyone” (Frontline Defenders 2007). This is where the SAHRDN comes in with its programme of rapid and practical support to W/HRDs facing persecution in Southern Africa in collaboration with numerous partners.

Who is SAHRDN or the Defenders Network?

Initially founded as a loose network of women and men Human Rights Defenders (W/HRDs) in February 2013, the SAHRDN (or the Defenders Network) is now a firmly established, increasingly influential non-profit sub-regional network of W/HRDs from Southern Africa. It is registered as 211-513NPO in South Africa with a U.S. Equivalence Determination, making it the equivalent of a US public charity.

SAHRDN envisions empowered women and men human rights defenders (W/HRDs), operating in an enabling civic space, without fears of threats or attack.

SAHRDN’s mission is to provide and/or scale-up rapid, practical, holistic, collective and intersectional gender and diversity-sensitive prevention, protection and re-integration support to W/HRDs in Southern Africa, with a strategic priority on grassroots and most vulnerable W/HRDs.

SAHRDN’s core purpose is to coordinate regional efforts to provide rapid, practical, holistic and inclusive protection support to W/HRDs at high risk, defend civic space, and empower W/HRDs to mitigate

the effects of repression, enhance their access justice and more importantly to exercise their agency to Right to Defend Human Rights. To this end, the Network contributes to the respect and recognition of W/HRDs as legitimate actors and agents of social transformation with universally recognized and constitutionally guaranteed rights.

At the heart of SAHRDN’s approach is a strategic focus on the most vulnerable and marginalized W/HRDs operating mostly in remote communities, who are oblivious of protection mechanisms available and often left behind, -suffering in silence. SAHRDN’s inclusive, comprehensive support infrastruc-

ture and bottom-up, locals led approach ensures that W/HRDs in remote areas and at the margins are safe but not silent. At the core of SAHRDN’s approach is the Sustainable Development Goal’s (SDG’s) cross cutting and cardinal principle of “leaving no one behind”, with programming that directly or indirectly addresses a variety of the SDGs, especially SDG 16 (promoting Peaceful and Inclusive Societies), 5 (achieve Gender Equality) and 10 (reduce Inequality).

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Towards the Mozambique HRDs Network/Coalition

We have been working with colleagues in Mozambique, the CDD, Diakonia, Oxfam, for the establishment of a fully functional HRDs network in Mozambique that will make it possible to have an efficient project for the effective protection of HRDs. We are very happy of the close collaboration that is deve-

loping organically with the Mozambique National Human Rights Commission under the leadership of Dr Luis Bitone. The SAHRDN has a collaborative relationship with national human rights commissions that we see as the natural interface between HRDs and authorities in Southern Africa.

Way Forward for Africa

I have always argued that Africa's failure of development and democratic consolidation has largely been an organizational and leadership crisis as opposed to absence of a vision anchored around human rights and democratic governance values.

The African Charter on Human and Peoples Rights which has been ratified by all AU members states except the recently admitted Morocco has a status of customary international law in Africa. It probably is the best human rights instrument in the world which builds into one document, economic, social, cultural, civil and political as well as group rights such as sovereignty, development and environmental rights.

This instrument, like all the good constitutions that our countries have, that contain good bill of rights and establish constitutional institutions of democracy and governance is as good as the piece of paper on which it is written, unless it is implemented. The AU members states have also signed and ratified the most important international human rights instruments such as the ICCPR and ICESCR.

The address of the mismatch between human ri-

ghts standards and human rights practices in Africa is a matter of both grave urgency and importance. At the global level there is an urgent and important need to re-establish a multilateral system that is anchored on respect for international rule of law and respect for universal human rights values. This is why the AU Agenda 2063: The Africa We Want and the SDGs in particular SDG 16 and 5 are important for all of us to read and understand and try to push our governments to implement.

The AU says Agenda 2063 is meant "to prioritise inclusive social and economic development, continental and regional integration, democratic governance and peace and security amongst other issues aimed at repositioning Africa to becoming a dominant player in the global arena." This is urgent and important and needs all hands on the deck. An empowered W/HRDs in an open and democratic Southern Africa will contribute immensely to the attainment of these noble ideals.

Thank you for listening. Thanks once again my friend Professor Adriano Nuvunga and the Center for Democracy and Development (CDD) for this opportunity. Long live Mozambique, Long live Africa!



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