

THE DYNAMICS OF LEGAL PLURALISM IN MOZAMBIQUE

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CESAB

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Toward an Ecology of Justices: An Urban and Rural Study of Mozambican Plurality

Sara Araújo

Introduction

Even though the liberal state has assumed itself as the sole maker and administrator of law, the plurality of justice is a reality widely documented by the anthropology and sociology of law. In recent decades, the states themselves, grappling with the inefficiency and inaccessibility of its courts, have been promoting judicial reforms which include a trend towards recognising, encouraging and creating non-judicial dispute resolution bodies. In this sense, the discussion on the role of different forms of extra-judicial justice is today globally relevant and should occupy more than just a marginal place in the debate on access to justice. Focusing on the Mozambican society, I discuss in this chapter the relationship between access to law and justice, and what I refer to as 'community justices'.

Community justices refer to organic dispute resolution bodies that use an impartial third party and favour forms of dispute settlements and models of action that differ from and tend to be more flexible than those traditionally proposed by the judicial courts. Whereas the option to define the concept in the negative can be perceived as a limitation, this specificity, in my view, bestows it with its greatest virtue – elasticity of boundaries. The category of community justices does not reflect homogeneity of norms, practices and actors. It "presupposes that the liberal model of justice administration – state centralised, bureaucratic, hierarchic, professionalised formal-law ruled justice – is not the only model in force in society" (Santos 1992:

137). Community justices take on different configurations and diverse social and political meanings. In this sense, they constitute an almost endless research object.

If it is easy to find consensus, among scholars of judicial and legal plurality, on the idea of the heterogeneity of extra-judicial bodies, the same cannot be said for the terminology that joins them. There are multiple names that have been chosen to classify plurality. The discussion remains open and there is no final consensus in sight. I reject the concept of 'alternative dispute resolution', inasmuch as these forms of justice tend to be complementary and not alternatives to judicial or formal state justice. I refuse to use the concepts of informal or non-state justice, because many of the bodies that fall within the sphere of community justices are part of state institutions or enjoy state recognition.

The concept of community is polysemic, but is almost always associated with positive undertones (Bauman 2003). The community justices category remains dissociated from a romantic interpretation of the plurality of justice. It is also distant from the colonial anthropological interpretation that associated communities with homogeneous groups, frozen institutions and customary laws. This concept has grown from Santos' (2000; 2002) analytical proposal about three principles of regulation in modern societies: the principle of state, the principle of market and the principle of community. The principle of state includes a vertical political obligation between citizens and the state, with the relationship being guaranteed by coercion and by legitimacy. The principle of market consists in the established horizontal obligation, based on mutual-self interest between market agents. The principle of community includes a horizontal political obligation which binds individuals to each other according to non-state and non-market criteria of belonging (Santos 2000; 2002). Building a community is, to a large extent, its regulation and the self-management of conflicts is a way of building communities (Amaya 2004).

State justice and community justices are not expected to always operate in isolated spheres. Rather, the trend is increasingly toward an interception between the principles of regulation in the provision of justice. Community structures import state logic and principles or invade the structures of states. On the other hand, the state imports community logic and principles, while at the same time imposing limits on them. Thus, community justices may or may not be linked to state institutions, and may be more or less permeable to the direct influence and mechanisms of the State.

Underlying my research is Santos' 'sociology of absences and emergencies', an epistemological proposal conceived against the waste of experience, i.e. the invisibility of diversity. The sociology of absences is based on the idea that "what does not exist is, in fact, actively produced as non-existent, i.e. as a non-credible alternative to what does exist" (Santos 2003a: 743). It is a research that tries to demonstrate this fact by studying and giving credibility to the variety of worldwide social practices that coexist with the hegemonic ones. In this sense, the author suggests an 'ecology of knowledge', whose objective is to challenge the monoculture of modern science by acknowledging the diversity of knowledge that exists in the world (Santos 2003a; 2006b).

Based on the concept of 'ecology of knowledge', I seek to promote an 'ecology of justices', confronting the liberal conception of law and justice with the diversity of law and justice that exists in the world. The objective is to contribute towards the knowledge of the large and complex reality that fits into the notion of legal pluralism. This explains the flexibility of the concept of community justices. I sought a broad category and definition in order to promote an approach to the field that is as free from prejudices as possible. It is imperative to avoid excluding forms of justice solely because they fail to fit in a previously established, closed definition. I want to acknowledge and investigate an often unforeseeable mobile and diverse reality (Santos 2003a).

This chapter is divided into three parts. In the first, I very briefly present the theoretical development of the concept of legal pluralism. To this end, I attempt to show how it has grown from a static concept of law to dynamic approaches of legal plurality, as well as introduce the concept of 'interlegality'.

In the second part, I focus on the Mozambican historical context and present the strategies that have been used by the state to include or exclude plurality, as well as the manner in which community justice selectively complied with or resisted external impositions. I also address some of the issues that have been included in the important discussion on the relationship between legal pluralism and the democratisation of access to justice in the African context, particularly in Mozambique.

Finally, I introduce part of the results from the empirical work carried out in Mozambique, including one rural case study and three urban case studies. I attempt, above all, to illustrate the multiple configurations that legal pluralism may take, as a result of the presence of the state (present and past), local dynamics and international initiatives. Very briefly, I address how community justice acts on the ground, what its role is in promoting access to justice and how litigants selectively seek it. In that sense, I intend to show how the separation between formal and informal justice, and state law and community law, is not always clear. In doing so, I also show the relevance of the concept of interlegality as a fundamental component in analysing the legal reality in Mozambique.¹

Legal Pluralism and Interlegality

The idea of 'legal pluralism' dates back to the European anti-positivist legal philosophy of the 19th Century. It emerged as a reaction against the process of reducing law to the state which was undertaken by the codification movement and elaborated by

¹ This chapter is based on empirical work which has been developed since 2003 as part of a research Project in which I participated, and which involved a partnership between the *Centro de Estudos Sociais da Universidade de Coimbra* (CES) and the *Centro de Formação Jurídica e Judiciária* (CFJJ) in Mozambique. The central objective was reform of the justice system in Mozambique. Since 2008

legal positivism. It was based on the claim that state law was far from exclusive and, in a number of cases, was not even central in the normative order of social life (Santos 2002: 89-90).

The empirical acknowledgement of the concept originates in the ethnographies on colonial and post-colonial societies in the early 20th Century. Merry (1988) catalogued these works as the first period of the production of studies on legal pluralism, and termed it 'classic legal pluralism'. In Africa, some of these initial studies were led by anthropologists and ethnographers at the service of the colonial power who collaborated in the process of acknowledging and differentiating tribes and coding customary law. When the Europeans arrived on the African continent, tradition was treated as immutable and the colonisers attempted to define and solidify it. Closed tribes were designed, with inflexible legal systems that could fit into descriptions and categories defined on the basis of selected testimonies (Oomen 2005). Max Gluckman was one of the scholars who marked the turning point in the approach used by the anthropology of law in Africa. With this author came the realisation that the study of customary law needed to go beyond discussions with groups of elders and move toward an analysis of the adjudication processes and the context of their occurrence (Gluckman 1955; Moore 2000).²

In the second period of studies defined by Merry (1988), the 'new legal pluralism' expands the field of analysis to Northern industrialised societies. Apart from this geographical expansion, there was an evolution related to the increasingly dynamic way in which legal pluralism was beginning to be designed, moving beyond a static perception of a coexistence of different legal orders. The development of the concept was largely due to an article by John Griffiths, published in 1986. This author introduced a dynamic aspect to the theoretical positions, defining law as the regulation of a semi-autonomous social field and legal pluralism as the normative heterogeneity resulting from the fact that social action occurs in a context of multiple and overlapping semi-autonomous social fields (Griffiths 1986). Borrowed from Sally Falk Moore (2000 [1978]), the concept of semi-autonomous social fields relates to the idea that the small field that can be observed by the anthropologist should be studied in terms of its semi-autonomy, i.e. taking into account that, internally, the field can generate rules, customs and symbols, but it is also vulnerable to the rules, decisions and other forces emanating from the wider surrounding world. This semi-autonomous social field, in Moore's definition, is capable of producing rules and the means to induce or

I have been developing the idea of 'ecology of justices' as part of my PhD project, applying this concept in the city of Maputo.

² Note also that some jurists at the beginning of the 20th Century made important contributions to the discussion. One example is Ehrlich (1926), who was responsible for developing the concept of 'living law'.

coerce enforcement. However, it is set within a broader social matrix that both affects and invades it.

Santos (2003b) added a third period to these first two, where, in addition to local and sub-state legal orders, the analysis includes transnational and supra-state orders. In the current reality, where national and international legal pluralisms are combined, Santos highlights the notion of 'porosity of legal orders'. The author argues that the higher density of relationships brought about by globalisation fosters the porosity of legal orders, which are now more open and permeable to reciprocal influences. In his words, we live "in a world of legal hybridisations, a condition which even state national law cannot escape" (Santos 2003b: 49). This hybridisation also occurs at micro level, inasmuch as citizens and social groups organise their experiences according to official state law, customary law, community or local law, or global law and, in most cases, according to complex combinations of these different legal orders. Santos termed this legal phenomenology 'interlegality' (Santos 2003b: 49-50).

At the end of the 1980s, Merry (1988: 879) was already claiming that there was "a general agreement that [legal] pluralism does not describe a type of society, but is a condition found to a greater or lesser extent in most societies". Although this is a widely studied phenomenon, the discussion is not closed yet. Ten years later, in a literature review, Woodman (1998) accepted the lack of substantial criticism of the concept. However, he admitted that informal discussion on the topic shows that legal pluralism is far from being recognised in legal and academic circles. In the same article, the author also calls attention to the lack of consensus on the meaning of 'law' and 'legal pluralism'.

The answer to 'what is law' has given rise to intense controversies. Aware of the incompleteness of any definition, Santos refers to the work associated with it as the 'Sisyphean task'. In that sense, the author assumes the instrumentality of the concept and gives it a broad definition, which allows for an empirical analysis of the differences. Law is, then, a "body of regularised procedures and normative standards, based on which a third party prevents or resolves disputes within a social group" (Santos 2003b: 50).³

In my research, I have adopted Santos' concepts of law and 'interlegality'. My aim is not to describe norms, but to observe the diversity of conflict resolution institutions, understand how they are accessed by citizens, the way the different laws circulating in the communities are used and negotiated, and how decisions are reached. In order

³ This definition is not exempt from criticism. Brian Tamanaha (2000), for example, accuses Santos' approach of being functionalist and essentialist, and prefers to follow the theory of autopoiesis, understanding legal pluralism not as a set of norms in conflict with a given social field, but as a multiplicity of different communicative processes that observe social action in light of the legal/illegal binary code. In Araújo (2008), I present a more detailed critical analysis of this discussion.

to study the reality and the impact of legal pluralism on the promotion – or inhibition – of access to justice, it is necessary to apply a dynamic perspective, that is, one which does not try to forcefully identify unalterable, inflexible legal orders and immobile community bodies, but rather addresses the reconfiguration of local laws and recognises the flexibility of local justice.

The Mozambican State, Community Justices and Access to Justice

Between the colonial period and the present, the Mozambican state has gone through a sequence of political models that have never entirely succeeded in their attempts to radically break with the previous ones. There have been several radical transformations since 1975, with the end of the colonial model, the creation of the socialist state, and the creation of a neoliberal capitalist economy and a multiparty democracy. In each of these periods, under different forms and in view of various internal and external pressures, the state assumed different relationships with different community bodies, sometimes excluding or ignoring them, and at other times including them and appropriating their legitimacy.

In global terms, there is a wide discussion of the role of community justices and the way in which the states have dealt with them historically. Usually, community justices are culturally and geographically closer to citizens, less expensive and quicker. In that sense, they may promote the democratisation of access to justice. However, these bodies are associated with a series of concerns that include, among others, their colonisation by the state and the expansion of state power over the population through them; the creation of an inferior citizenship; and the tendency to reproduce existing inequalities in societies, given the lack of mechanisms to neutralise their powers.

Supporters of legal pluralism in Africa are frequently accused of romanticising the past, ignoring that it was marked by the distortion and crystallisation of laws by the colonisers and by the creation of a second class citizenship (Mamdani 1996). It is evident today that traditional justice and customary laws did not survive unchanged alongside the colonial institutions and laws. In that sense, some authors see them as a colonial imposition aimed at controlling and exploiting the population, and consider them a legal fiction (Wilson 2000), a vestige of the colonial nightmare. The idea of a tradition that does not date back to immemorial times, but that was recreated, is scarcely contested. However, it is accepted that the process of inventing tradition did not comprise an exclusively top-down movement, i.e. that tradition and customary laws were created through a permanent struggle between the colonisers and the colonised. The readings vary from the ones that tend to recognise the processes of

struggle (Santos 2003b, 2006b; Moore 1992) to the ones that emphasise a movement of imposition (Mamdani, 1996).⁴

In the history of Mozambique, the reconfiguration of traditional justice and its association with second class justice dates back to the *Indigenato* regime, formally introduced in the 1920s during the period of Portuguese domination. This was based on a division between citizens and indigenous people, which was translated into two administrative models and two forms of law and of justice. The settler areas followed the Portuguese metropolitan administrative model, with *municípios* (municipalities) and *freguesias* (parishes), and were regulated by the law and civil institutions of the Portuguese state. The indigenous areas were divided into *regedorias* (chieftaincies), alleged reincarnations of the pre-colonial tribes, and were ruled by customary law (Gentili 1998; Meneses et al. 2003; Araújo and José 2007). Traditional authorities, headed by the so-called *régulos*, were responsible for administering the *regedorias*. They were, however, subordinate to the *circunscrições* (constituencies), which were under the responsibility of the colonial administrators. Private Indigenous Courts were established to regulate matters relating to the native population and, in theory, the *régulos* only resolved minor disputes. These courts were a structure outside the Portuguese legal organisation and were headed by the administrator, albeit advised on customary matters by traditional chiefs or other indigenous representatives. In practice, the role of the *régulos* could go beyond that stipulated in law and they ended up solving a large part of the disputes between the indigenous people (see Fernando Florêncio's contribution to this volume). The *assimilados* (assimilated) were a small minority of citizens of lower status. They had identity cards, which differentiated them from the indigenous population and granted them access to certain spaces and rights forbidden to the indigenous people (Gentili 1998; Meneses et al. 2003; Araújo and José 2007).

Similar to what happened in other African colonies, the divisions established by the Portuguese were not only based on what existed, but were reconfigured to serve the interests of the colonialist domination and exploitation. For example, the larger chieftaincies were divided so as to be less threatening, and the chiefs who were less inclined to collaborate were pushed aside or killed and replaced with other, more malleable ones (O'Laughlin 2000; Dinerman 1999). Also similar to the history of other places, traditional authorities sought to balance the colonial government's demands with the need to maintain legitimacy in the community, finding forms of passive or active resistance (Moore 1992; Gonçalves 2005).

In 1975, after the country's independence, the Mozambican socialist project to dismantle (*escangalhar*) all colonial vestiges and build a new society also implied the demolition of customary law and traditional chiefs. *Régulos* were seen as allies of the

⁴ On this topic, see Araújo (2008).

colonial power and a symbol of humiliation and inferiority. Hall and Young (1997) state that, after independence, the Frelimo elite and the social group it addressed were deeply convinced of the superiority of modern civilisation and of the need to place themselves at the same level. However, this position did not result in the direct import of a western model of justice. The state's discourse was filled with the idea of replacing the dualist system of justice and traditional authorities with a justice system intended to be indigenous, but not tribal (Sachs and Welch 1990).

Thus, in 1978, the Organic Law of the Popular Courts (*Lei Orgânica dos Tribunais Populares*) was approved.⁵ This law provided for the creation of popular courts (*tribunais populares*) at different territorial levels, where appointed professional judges worked alongside judges elected by the population. At the base of the pyramid, the local, or neighbourhood popular courts were competent to deal with minor infractions and operated exclusively with elected judges with no formal training. Where it was not possible to reconcile the parties in conflict, these courts were supposed to decide according to principles of good sense and justice, and taking into consideration the presiding principles on which the socialist society was built (Sachs and Welch 1990; Gundersen 1992; Trindade 2003; Gomes et al. 2003; Araújo and José 2007).

Local popular courts were supposed to replace traditional authorities (TAs) in terms of their legal functions. The administrative tasks that TAs had also performed became, in the new structure established by the Mozambican state, the responsibility of the *Grupos Dinamizadores* (dynamising groups – GDs). This did not mean, however, that the TAs disappeared. Traditional authorities are cunning (José 2005) and elastic (van Nieuwaal 1996) and very often they were able to find spaces for autonomous action and to maintain their active legitimacy. In the post-independence era, the TAs continued to act in various contexts and came to fill a void so often left by the state (Dinnerman 1999).

Already in the 1980s, Frelimo was forced to acknowledge the economic failure of its socialist project. Within a context of liberal democracy, the 1990 Constitution established the bases for substantial changes of the judicial organisation, and the Law of the Popular Courts was replaced by the 1992 Organic Law of Judicial Courts (*Lei Orgânica dos Tribunais Judiciais*).⁶ Following a restrictive interpretation of the constitutional provision stipulating that 'the courts decide cases in accordance with the law', local courts were erased from the judiciary organisation, with the district courts taking on the functions of first level trials. In the same year, the community courts (*tribunais comunitários*) were created through a specific law.⁷ Excluded from the judicial organisation, these would continue to operate with judges elected by the community and perform the role of the previous local popular courts. However, community

⁵ Law 12/78, of 12 December.

⁶ Law 10/92, of 6 May.

⁷ Law 4/92, of 6 May.

courts have never been regulated by law (Trindade 2003; Gomes et al. 2003; Araújo and José 2007). Santos (2003b) classifies them as a legal hybrid institution par excellence, since they are in an institutional limbo – in that they are recognised by law, but remain outside of the judicial system and, to date, have not been regulated.⁸

The new democratic framework also opened space for decentralisation. Under this process, supported by the World Bank, the role of traditional authorities was once again subjected to discussion. In 2000, a decree was approved establishing the forms of articulation of local State bodies with community authorities, including the traditional authorities (Meneses et al. 2003; Meneses 2005; Santos 2006b).⁹

Over the past few years, a series of documents and state and international initiatives have pointed toward a formal recognition of legal pluralism, as also discussed in the Introduction to this volume. In 2004, it was acknowledged in the Constitution (art. 4); the PARPA II – 2006-2009 (Absolute Poverty Reduction Strategy Plan) insists on the regulation and importance of community courts as one of the key elements to implement a fair and prompt justice system, namely through their articulation with the judicial courts (articles 227, 294 and 310); the Integrated Strategic Plan for the Justice Sector (PEI) for 2002-2006 establishes the review and regulation of the community courts law as a priority, while the 2009-2014 PEI identifies the proper operation of the community courts and other conflict resolution bodies as a target. However, to date, discussions have not always been translated into an effective recognition of community justices.¹⁰ The most evident example of this is the procrastination in regulating the community courts. The lack of support, recognition and monitoring measures that may include them in a global project promoting access to justice tends to consign them to a position of second class justice, which exists to serve those who are unable to access the modern State institutions.

The plurality of justice continues to divide positions in Mozambique, as is the case in the rest of the continent. Moreover, the discussion concerning the reproduction of inequalities, particularly with regard to discrimination against women, is still very much alive and relevant. Some research indicates that women are moving beyond their role as victims of patriarchy, identifying the use of legal strategies that enable them to challenge the inequalities in different ways. Other observations point to the difficulties in inverting the female position of inferiority (Hellum 2004; Griffiths 1997; Khadiagala 2001; Osório and Temba 2003). The criticism and challenges are not enough to wholly discredit non-hegemonic forms of justice, but should serve to keep us vigilant (Pedroso et al. 2002). And vigilance, I suggest, can only be maintained through a profound knowledge of how local justice bodies operate, rather than by looking in from the outside in a generalist way.

⁸ On this issue, see also the Introduction to this volume.

⁹ This was Decree 15/2000, of 20 June.

¹⁰ See also the Introduction to this volume on a discussion of this topic.

Case Studies: Diversity and Interlegality

The different political and legal logics that make up part of the history of the state of Mozambique were not always fully replaced, and to a large extent they coexist and overlap in society today, giving shape to what Santos (2006b) terms a “palimpsest of political and legal cultures” (Santos 2006b: 47).¹¹

The legal landscape in Mozambique is variable, complex and surprising. In each space, and at every moment, the framework of community justices is the result of a local combination of the way the historical moments of the state, the local initiatives and the international dynamics are expressed. Citizens circulate among the available institutions, not only in accordance with the legal logic of these institutions, but also according to citizens’ own interests and individual expectations, thus applying the concept of ‘forum shopping’ (Benda-Beckmann 1988) in the different locations. In the community justices, the different laws that circulate in society tend to be used in an interconnected way, and litigants have space to negotiate their solutions to disputes. The margin for negotiation can vary significantly, depending on the individual circumstances of the litigant and the way in which the forum is managed by those in charge. Thus, each kind of dispute is not always resolved in the same forum, or using a single type of conflict resolution and decision-making procedure.

In the next pages, I outline some features of the frameworks of community justices’ in four Mozambican geographical areas. In so doing, I attempt to substantiate the arguments presented earlier, namely the ideas of diversity and interlegality, even though their evidence and intensity vary according to context. The first case study, Macossa, presents a rural reality where there is no judicial court, where local dynamics tend to overwrite the state logic and where a network of community justices assumes the responsibility for resolving local disputes. The remaining three cases are from the city of Maputo. They show that, even within the most urbanised area of the country, community bodies assume an important role and may take on very different forms, both on the outskirts of the city and in its centre.

District of Macossa

In Macossa, in the north of Manica Province, we discovered a network of community justices in which the *régulo* (traditional chief) was dominant and the police played a leading role.¹² Located in the interior of the central part of the country, in a geo-

¹¹ On this issue, see the Introduction to this volume.

¹² The case study was carried out jointly with André Cristiano José, Ambrósio Cuahela and Joaquim Fumo.

graphical area of difficult access, the district was marked by the war between Frelimo and Renamo up until the signing of the peace agreement, in 1992, and by a continued distance between citizens and the state.

Unlike what happened in the country’s capital, the *grupos dinamizadores* were not implemented and the traditional authorities maintained a strong presence, even while formally banned, retaining still today an unquestionable legitimacy, acknowledged by the citizens and by the district administrator himself.¹³ The network of local popular courts was not extended to Macossa, and the attempt after 2000 by the Records and Notary Delegation (*Delegação dos Registos e Notariado*) to establish community courts made use of the legitimacy of the traditional authorities, establishing the community courts over the traditional structure. Of the seven courts established, only one is actually viewed as a court, submitting its activity reports to the relevant authority (the Records and Notary Delegation). Most of the population is unaware of the existence of community courts and continue to acknowledge judges as the traditional authorities they have always been. With no judicial court, the district is, in theory, covered by the judicial court of the neighbouring district. However, the material and human difficulties of that court prevent it from performing that role.

Social cohesion is guaranteed by the combined work of the *régulos*, *sapandas* and *fumos*,¹⁴ churches, families, the association of traditional healers (*Associação de Médicos Tradicionais* – AMETRAMO) and the police. The latter, when dealing with so-called ‘social cases’, may hear and resolve them or refer them to the bodies considered most appropriate. Social cases are classified in opposition to criminal cases, and relate to conflicts within the domestic sphere or between neighbours. These are normally cases of adultery, verbal abuse and other types of disagreements which the police and other bodies resolve by promoting dialogue between the parties.

The main evidence from the Macossa field work pointed to the state’s weak role in regulating the local legal landscape, and also the integrated manner in which community justices operate, mutually acknowledging and referring cases to each other. The concept of forum shopping is clearly revealed in the practices of the population. Citizens decide between the different conflict resolution bodies based not only on the conflict to be resolved, but also on their physical proximity to the conflict resolution bodies, their relationship with them, the seriousness of the matter, and their expectations of outcomes.

The amount of litigation is low, and we were only able to follow a few conflict resolution processes directly during the period the empirical work was carried out. However, the cooperation between the police and other bodies in resolving cases shows how the separation between state law and justice and non-state law and justice is far from clear. In addition to playing the role of channelling disputes to the

¹³ On this issue, see José (2005).

¹⁴ The *sapandas* and the *fumos* are traditional authorities hierarchically under the *régulo*.

bodies comprising the local network, the police station is itself, oftentimes, hardly distinguishable from the community justices. According to statements by the Station Commander and local traditional healers, the police often offer their own facilities to AMETRAMO so that it can resolve cases of witchcraft.¹⁵

City of Maputo

The country's capital, Maputo, is divided into seven municipal districts, which are sub-divided into neighbourhoods and quarters. Municipal District 1 (DM1), recently renamed KaMpfumo, is frequently referred to as *cidade de cimento* (cement city) and is the most urbanised area in the country. When compared to other contexts, this district comprises a greater number of individuals belonging to the intimate civil society and the intermediate civil society.¹⁶ It is a place of political and economic elites and with a larger percentage of citizens who know how to read and write in Portuguese, the language used by the formal justice system. Despite being part of the city, adjacent districts are considered the periphery, and poverty-related problems are much more evident there. Among these is Municipal District 5 (DM5), or in its more recent designation, KaMubukwana. This area has a large number of sub-standard houses and serious sanitation problems. Presented below are two case studies in DM5 (Inhagoia 'B' and Jorge Dimitrov neighbourhoods), and a third one covering the entire DM1.

Municipal District 5 – Inhagoia 'B'

In Inhagoia 'B' we identified the *Grupo Dinamizador* (dynamising group) and the community court as the main conflict resolution bodies. They operate in the same building and work together in an environment of complementarity.¹⁷ However, the operating logics of the two bodies are different, varying according to their degree of similarity with formal judicial practices, their commitment to promoting reconciliation, and their level of authority, promptness and legitimacy. The type of conflicts they resolve do not differ significantly, and may be grouped into three main categories: housing disputes, marital disputes and witchcraft disputes.

The secretary of the *Grupo Dinamizador* (*secretário de bairro*) operates informally. His practices are very different from those of the judiciary and he is committed to

¹⁵ Interviews with the traditional healer Zeca Gemo, 3 May 2004; the President of AMETRAMO Ndzeque, 13 May 2004; and the Station Commander, 29 April 2004.

¹⁶ Santos states that African civil society is made up of three concentric rings: intimate civil society; intermediate civil society; and outside civil society. The first consists of the ring of citizens linked to state power, who therefore enjoy easier access to justice; the second is composed of the people with some access to formal justice; and the third is made up of groups and classes excluded from the state and from the services of the judicial system (Bidaguren and Nina 2002; Santos 2003b).

¹⁷ This case study was carried out jointly with André Cristiano José. On the same, see Araújo and José (2007).

promoting reconciliation, favouring reciprocal concessions and gains and granting margins of negotiation for both litigants. He acts promptly and is effective in his decisions as he seeks to resolve the real problem, going beyond the formal dispute itself.

The community court, on the other hand, is more formal and tends to be more similar to the routines of the judicial courts. Case resolution begins with a reconciliation phase, which almost always fails, and in which the judges hear the parties but without putting much effort into the task. If the process does not end there, then it goes to trial. The community court judge's bench includes instruments used in the judicial courts, such as codes and other legislation, which become relevant and during the trial phase. Written files mimic those of the judiciary and include multiple references to state legislation. In these references to state law, judges – who complain about the lack of state support and training – find a way of compensating for their lack of legitimacy. This is illustrated in the following excerpt from a file:

Sentence

Judgement

Agreed in conference at the court of Bairro de Inhagoia 'B', in Municipal District 5 of the City of Maputo.

The Court has jurisdiction, the case is appropriate, the parties are legitimate, and there is no void, exceptions or preliminary issues preventing knowledge of the substance of the case.

All in all, it should consider assessing the matter. [...]

(Case from the TC at Inhagoia 'B', 2003)

We also found, for instance, a reference to the Family Law even before its approval, while it was still in the discussion phase. The reference to state law, which was in fact incorrect, served to legitimise a practice accepted by community law, but which state law rejects, i.e. polygamy. This was the case of a marital conflict, in which the wife accused her husband of abandoning her. After the couple's admission of their love for each other, the defendant was ordered by the judge, allegedly in accordance with the Family Law, to assume a polygamous union:

Whereas the defendant pleaded guilty to the charge, he was ordered to return home, where he will enter into a polygamous union enshrined in terms of article 30 of the Family Law, therefore:

With all the factual matter having been appraised during the trial, the defendant's behaviour is sufficiently integrated and subsumed under the typical conditions of the crime of adultery and abuse of trust of his partner.

The defendant's infidelity toward the person with whom he cohabited was clear.

In these terms, this court of the Bairro de Inhagoia 'B', in urban district 5 in the city of Maputo, has unanimously, and in the name of the Republic of Mozambique, decided to sentence the defendant "xxxxx" to assume the responsibility of a polygamous union, with his decisions having to be shared equally with both.

(Case from the TC in Inhagoia 'B', 2002).

Even though the community court is the legal body with the acknowledged mandate to resolve disputes, forum shopping is an integral part of citizens' lives, and the more agile, effective and consensual neighbourhood secretary structure is generally preferred.

Municipal District 5 – Jorge Dimitrov Neighbourhood

In the Jorge Dimitrov neighbourhood we found a completely different legal configuration than in the previous case. Currently, there is no community court in operation. In the 1980s, a local popular court was established which, according to law, should have been transformed into a community court and still be operating today. However, this court closed, and in its place there is currently an office belonging to the NGO *Mulher Lei e Desenvolvimento* (Woman Law and Development – MULEIDE), which operates in the headquarters of the *Grupo Dinamizador*. The MULEIDE Legal Education Group (*Grupo de Educação Legal da MULEIDE*), which conducts conflict resolution sessions in the Jorge Dimitrov neighbourhood, is made up exclusively of community members. Among these we found the *Grupo Dinamizador's* Deputy Secretary and two former judges from the local popular court that closed down. They all refer to themselves as counsellors (*conselheiros*), in an attempt to distance themselves from the formalism associated with 'judges'.

The type of cases dealt with depends, to a large extent, on the demand. Any person may present a conflict at MULEIDE, but of the 16 cases seen, 14 were presented by women and two by men on behalf of their daughters (for acknowledgement of paternity). This is in line with the NGO's target group: women. Services are characterised, as a rule, by a more informal kind of procedure than those found in the community courts.

The practices of the MULEIDE group can be situated in the intersection of different spheres, corresponding to different legal and political logics. It is close to the state sphere in that it occupies a place awarded to community courts by law and it articulates with the *Grupo Dinamizador* structure. Similar to what takes place in the community courts, the councillors of the group are community members, thereby acting within a logic of the local sphere and resorting to local law. Conversely, the councillors are bound to the global sphere and to international law due to team's association with an NGO that defends international human rights. The result is a kind of unique action which is full of strategies that aim to harmonise the contact between the different spheres and laws and to avoid conflict between them, often using them selectively according to the objectives of the councillors and the disputants.

Interlegality is very often used by the counsellors as an instrument to invert women's inferiority without coming into direct conflict with patriarchal laws, and to increase the parties' space for negotiation. This point is, for example, illustrated by the following excerpt from an interview in which one of the counsellors uses a type of discourse that awards women power, coming closer to the discourse on human rights, without challenging directly the patriarchal concept of the male role: "Man is as hard as a rock [...] Cannot build the country if they are at war at home. Being the head of the house, yes, it is right, but if you are the head, she is the owner."¹⁸ It is the same work"¹⁹

Municipal District 1

It is not very common for a social scientist, who uses ethnographic fieldwork, to choose Municipal District 1 as a case study. This is primarily the space for researchers, universities, bookstores and central decision-making bodies, and not the object of research. Unless the topic is something that is found specifically in the city (such as political and economic elites or judicial justice), the researcher would be expected to travel to surrounding districts and to provinces further away from the capital. Usually, the urban centre is where the results are appraised, discussions and debates held, and books launched. Community justices are discussed in the capital, but mainly seen as something that serves the citizens 'out there'. As Jason Sumich (2008) argues, the ideology of modernity continues to be important. Based on his work on Mozambican elites, the author concludes that "the capacity of elites to see themselves as 'modern' – within a nation that, according to these elites, is not 'modern' – allows them to affirm their difference, creating a sense of identity and cohesion. At the same time that it creates this link within a group, it allows for the affirmation of social inequality and differentiation" (Sumich 2008: 332). In the words of Sumich, "the assertion that, within the nation, some are more modern than others, is also a basis of social hierarchy, particularly in Maputo" (ibid.: 342).

This does not necessarily mean that community justices are non-existent or irrelevant. It is not difficult to find motives other than the lack of formal education, economic difficulties or geographic distances that may justify the preference for non-judicial forms of justice. Judicial justice has serious problems and, depending on the nature of the conflict or the type of relationship between the litigants, many disputes may be resolved in more appropriately by another type of conflict resolution body (Santos and Trindade 2003). I did not specifically seek "the traditional" or "the exotic". My concept allows me to include old and new forms of justice, in order to understand where and how people resolve conflicts.

The number of structures we found that fit into my concept of community justices is quite substantial. I identified five categories of community justices: those created by

¹⁸ Note that, in Portuguese, housewife translates as *dona de casa* (literally, house owner).

¹⁹ Interview with a Counsellor of MULEIDE Legal Education Group (27 January 2004).

the state, those created by NGOs, those created with private capital, traditional bodies, and religious bodies. These forms of justice may be more or less informal in their shape and actions, i.e. they may be more or less rigid in their procedures and use state law to a greater or lesser degree. As in other geographical spaces, citizens circulate between them, benefiting from the possibilities of forum shopping, opting for those they consider most appropriate to resolve their problems and, very often, resorting to several of them within the scope of the same conflict.

Due to the limited space available for this chapter, I will highlight only the dispute resolution body that represents the greatest discovery in my empirical work: police stations. Even though they are not legally recognised as conflict resolution bodies, at times they perform that role in ways that are similar to those of community conflict resolution bodies found outside DM1, such as the neighbourhood secretaries, *régulos* or community courts – namely, through non-judicial conflict resolution. There is a wide range of conflict situations that can result in a citizen going to the police. A great proportion of them are disputes related to non-payment of debts, whether formally or informally contracted.

A number of police stations share the jurisdiction of DM1 and it is relatively easy to reach one of them on foot from any place within the inner city. The case study chosen was of a police station located in a central area of the municipal district under analysis. According to the Station Commander, the Police of the Republic of Mozambique (*Polícia da República de Moçambique* – PRM) are the first conflict resolution body that citizens will look to:

[...] the police are, in terms of justice resolution or conflict resolution bodies, the closest to the citizens. In other words, the first thing that any person who has a case thinks, regardless of it being a criminal case or not, is 'I'm going to the Police [...]'! Because, for citizens, every case is a matter for the police to solve.²⁰

The same actor admits that the PRM oversteps its jurisdiction when it resolves what he refers to as social cases, which include both debts and minor disputes between neighbours. However, he advances formal arguments to justify the legitimacy of their decision to resolve social cases:

When we consider that there is a dispute, although no criminal fact is present, but that may result in a criminal fact, we notify the other party so that we can offer some sort of counselling to restore their relationship. I am referring to the principle of good neighbourliness, right?²¹

²⁰ Interview with the Commander of the Police Station of Maputo (24 February 2009).

²¹ Interview with the Commander of the Police Station of Maputo (24 February 2009).

At the same time, he acknowledges that conflict resolution mechanisms are imported from the community and that the flexibility of procedures marks those situations in which a consensual solution is sought. This discourse reflects the practices directly observed during my several months of fieldwork at the police station.

Therefore, what [...] we end up doing is nothing more or nothing less than transferring that which would be the resolution at the level of the family – all those mechanisms, those questions that are asked – over to ourselves [...] And we haven't adopted a specific rule [...]. [W]e do nothing but seek a means of reconciliation. Therefore, we minimise the differences between the parties.²²

In many cases, especially in disputes involving money, the main role of the police officer, who acts as the third party, is similar to that of a mediator, intervening very little and seeking to help the parties reach an understanding. In other circumstances, which depend on the type of case and on the officer on duty, there may be more involvement. References to formal law are not infrequent, but advice based on community law (such as respect for the elders) is also included. Since this is a cosmopolitan urban centre, where people from various parts and religions come together, a situation may also call for respect for the rules of a specific community: "Officer on Duty [to plaintiff]: What happened was disrespectful. If I know that my bosses are Indian and that they follow those traditions, then they need to be respected."²³

The police present a paradigmatic case in the intersection between the principle of state and of community. In terms of resolving social cases, their proximity to the community bodies is clear, from the similarity in behaviours. However, their legitimacy does not stem solely from the simplicity of the language used, the opportunity they give to the parties to discuss the case, or the flexibility of their procedures. The fact that the police are located within the sphere of the state and are associated with the legitimate use of violence (this connection is latent in various discourses) also leads citizens to trust in the effective resolution of the cases and in the compliance with the decisions.

Conclusion

Legal plurality in Mozambique is complex and unpredictable, and cannot be analysed based solely on what was or is provided for in legislation or from a single narrative. As Santos showed with the metaphor of the palimpsest of political and legal cultures,

²² Interview with the Commander of the Police Station of Maputo (24 February 2009).

²³ Observation at the Police Station (22 February 2010).

history is made of ruptures and continuities whose effects gradually took on different shapes at the local level. The past and present strategies of the state intersect with local and global dynamics, virtually constituting specific configurations in every moment and space. It is not possible to show only one picture of reality, because it is composed of multiple images that assume diverse expressions and include different justice bodies.

As a rule, specific roles, which reflect rights and duties, are given to men and women in dispute resolution sessions. However, the normative orders tend to be used in an interlinked way and the parties are given some space for negotiation, although the scope of it may vary significantly. Some more authoritarian models of action tend to hamper the construction of collective, workable and flexible solutions and are detrimental to the access to justice.

The ecology of justices was the basis of the rural and urban case studies presented in this chapter and resulted in the identification of four legal landscapes. In the first, Macossa, I highlighted the integrated operation of the different bodies, the expressive materialisation of the concept of forum shopping, the predominant role of the traditional authorities, the importance of local dynamics, and the state's incapacity to impose its legal and judicial initiatives. In the second case, Inhagoia 'B', I called attention to the different roles of the neighbourhood secretary and the community court, the way in which the latter attempts to mimic the practices of the judiciary and the citizens' capacity to opt between the bodies so as to choose the one that is most effective in promoting consensual solutions. In the third case, Jorge Dimitrov, the main community justice is a result of the overlapping action of an NGO, former elected judges, and the *grupo dinamizador*. This community justice selectively and strategically uses different normative orders. In the last case, I emphasise that even in the most urban centre of the country community justices assume a relevant role, albeit presenting specificities such as higher proximity to the state. In this case, I highlight the surprising role of police stations in responding to citizens' needs for justice.

Based on the realities identified in this chapter, the most significant finding is that community justice bodies continue to play a key role in the access to justice, not only in rural areas characterised by a great distance between citizens and the state, but also in urban areas, where the state provides a wider range of services. In some cases, the origin of community justice bodies is based in the community, like in Macossa, and in others, the state pillar has a much stronger presence, as is the case in Maputo. Citizens move within these dispute resolution networks, circulating according to the proximity of the community justices; the type of conflict; their own strategies (which may vary according to gender, age or other factors); and the legitimacy attributed to each of the structures.

The experiences identified in this chapter may contribute to the discussion on access to justice. As we saw in the community court case in Inhangoia 'B', not all experiences follow a logic of serving the citizen and his or her rights. However, just as the judicial courts are not excluded from the core of the debate on the problems

and difficulties they face (such as inaccessibility, slowness, inefficiency or high costs), other forms of dispute resolution, although not perfect and still requiring monitoring, should also be a relevant part of it. It is important for the latter to occupy a space that does not place them in a subordinate position, but instead values the type of work they do, namely the resolution of problems that are important to the citizens but cannot be dealt with within a judicial court. In other words, community justices should not just be tolerated because they can reduce the excessive case-load of the judicial courts, but should be encouraged and supported in what makes them more appropriate to resolve certain types of disputes. It is essential to continue with empirically-grounded studies, so as to acknowledge legal diversity. There is need to identify both those practices that are detrimental to people's access to justice and those that citizens recognise as good justice.

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