

**Law and Justice in
a Multicultural Society**



In memoriam of José Guilherme Negrão



LAW AND JUSTICE IN
A MULTICULTURAL SOCIETY
THE CASE OF MOZAMBIQUE

Edited by
Boaventura de Sousa Santos,
João Carlos Trindade
& Maria Paula Meneses



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About the authors

André Cristiano José is a lecturer and researcher at the Centre for Legal and Judicial Training, Maputo, Mozambique.

António Alberto da Silva Francisco is Professor of Economics at the Eduardo Mondlane University, Maputo, Mozambique.

Boaventura de Sousa Santos is Professor of Sociology and the Director of Center for Social Studies at the School of Economics, Coimbra University, Portugal; he is also a ILS Distinguished scholar at the University of Wisconsin, Madison, USA.

Conceição Gomes is a researcher and the Executive Director of the Permanent Observatory of Justice at the Center for Social Studies, Faculty of Economics, Coimbra University, Portugal.

Guilherme Mbilana is a researcher at the Center for Studies on Democracy and Development, Maputo, Mozambique.

João Carlos Trindade is a Supreme Court Justice in Mozambique. He is also the Director of the Centre for Legal and Judicial Training, Maputo, Mozambique.

João Pedroso is a lecturer at the Faculty of Economics, Coimbra University and a researcher at the Center for Social Studies of the same university.

José Guilherme Negrão was Professor of Development Studies and associate Dean at the Faculty of Agronomics and Forestry Engineer at Eduardo Mondlane University, Maputo, Mozambique.

Maria Manuel Leitão Marques is Professor at the School of Economics, and a senior researcher at the Center for Social Studies, Coimbra University, Portugal.

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Law and Justice in a Multicultural Society: The Case of Mozambique

Maria Paula Meneses, a Mozambican anthropologist, is a senior researcher at the Center for Social Studies, Coimbra University, Portugal.

Joaquim Fumo is a lecturer and researcher at the Centre for Legal and Judicial Training, Maputo, Mozambique.

Teresa Cruz e Silva is a researcher and Professor at the Center for African Studies, Eduardo Mondlane University, Maputo, Mozambique.

Terezinha da Silva is a lecturer and researcher at the Centre for Legal and Judicial Training, Maputo, Mozambique.

Preface

**Boaventura de Sousa Santos, João Carlos Trindade
and Maria Paula Meneses**

In this book we present the main results of a research project on the systems of justice in Mozambique, conducted between 1996 and 2000.¹ The study was undertaken under the auspices of the Supreme Court through an academic partnership between the Center for African Studies (CEA), Eduardo Mondlane University, Mozambique and the Center for Social Studies (CES) at the School of Economics, Coimbra University, Portugal.

The project was carried out by a research team from two countries directed by two coordinators, one from Mozambique – João Carlos Trindade – and one from Portugal – Boaventura de Sousa Santos. The Mozambican research team consisted of 15 researchers, five of whom were part of the core research team. The Portuguese team included five researchers.

This monograph analyzes the complex network which represents the judicial system in Mozambique by interrogating the role of the multiple entities intervening in the system, both in a colonial and a post-colonial context.²

Until the onset of Portuguese colonization toward the end of the nineteenth century, the various peoples of Mozambique did not live under a single political authority; they existed as independent entities, with various forms of political and social organization. The transition to the twentieth century became synonymous with the establishment of colonial rule, symbolizing a critical period of radical change that led to the creation of the Mozambican political scenario. The different economic and political strategies implemented by the colonial state in Mozambique resulted in important changes in the organization of power.

After independence, political-legal cultures as diverse as the Eurocentric, socialist revolutionary culture or the Eurocentric, capitalist democratic culture have been added to the existing mix of legal orders. These *new* cultures added new elements to the

resources available locally. The previous resources were structures remaining from earlier periods in the life of the state, some of which, although legally suspended for a while, had continued to survive sociologically (as was the case with the so-called *traditional authorities*).

If, during colonial times it was relatively easy to distinguish, in terms of legal pluralism, between the main legal orders concerned – colonial law on the one hand and native or indigenous customary law on the other – this distinction became increasingly blurred in a postcolonial context. In fact, Mozambique constitutes a heterogeneous state, composed of a mosaic of legal hybrids, reflecting a mixture of elements of different legal orders (official/state law, customary law, various religious laws, etc.). For this reason, the working concept of the project – an understanding of the Mozambican state as a heterogeneous state – incorporates a broad view of law which includes local/indigenous customary practices and religious law as well as state civil law and enforcement institutions and procedures, in order to create an innovative view of human rights that draws on local, cultural and legal norms and institutions and the priorities set by local, national and international structures.

As we shall discuss later, the hybrid nature of the legal framework exists not only on the structural level of the relationships between the different legal orders but also on the level of the legal behavior, experiences and representations of citizens and social groups, a phenomenon Santos describes as *interlegality* (1995: 473). At the same time, in the field of conflict resolution innovative legal bodies, such as the community courts, are being created.

As we will discuss throughout this book, the ongoing legal reforms are aimed at recognizing the *alternative* mechanisms of conflict resolution taking place in a complex and conflictive context in which several distinct legal rationalities coexist: the remains of the Portuguese colonial legal codes, socialist orientated policies, customary law, various religious systems and Western constitutionalism.

The research data analyzed here was designed within the framework of a project on the situation of contemporary justice. The main objective of the project was to promote an empirically sound and dynamic understanding of the relationships between the multiple judicial entities present in the country within the context of cultural transformations in Africa. Therefore, the data analyzed here is the result of monitoring the particular entities involved in conflict resolution, such as the judicial courts, the community courts and other alternative bodies in Mozambique. This research included direct observation of court sessions, interviews, analysis of procedures (whenever possible) and analysis of archival data. This time-consuming research enabled us to access the rich information discussed in the text.

This monograph will hopefully represent a contribution to the current debates on the formation of the state in Mozambique since the nineteenth century. It consists of three parts. In Part I we describe the theoretical, analytical and methodological framework used to analyze the socio-political and legal structure of the multicultural Mozambican society. Part 2 is an intermezzo, aimed at describing the socio-economic

evolution of Mozambique over the last fifty years. In Part 3 we describe and analyze the information that was gathered on official justice and community justice. The chapters included in Part 3 present the main findings of the research into official justice (the Supreme Court, the provincial and district courts and the General Attorney's Office), access to the law and justice, and the informal, semi-official or non-official forms of justice that exist alongside the official judicial system in Mozambique and which the majority of citizens use to resolve disputes.

Throughout the research period we benefited from the support of many people and institutions, many more than we can remember. Above all, we would like to thank the Supreme Court, in the person of its Chief Justice, Dr. Mário Mangaze, for its continued support throughout the research period, a task which by its complexity and ambition, was bound to involve some delays. A special word of thanks is also due to Prof. Teresa Cruz e Silva, the Director of the CEA at Eduardo Mondlane University during the period in which the initial research was carried out, for the remarkable way in which she overcame bureaucratic difficulties, managed the complex relationships between researchers and provided the best possible working conditions. We owe her a very special debt of gratitude. We also wish to thank Dr. Isabel Casimiro, Director of the CEA at the time when the protocol between the CEA and the CES was established, for her important contribution towards getting the project started, Ms. Ana Koelhar, the ICEP delegate in Maputo, for her valuable help, Dr. Nina Berg from DANIDA, Dr. Francesca Dagnino, UNDP consultant and Dr. Fátima Fonseca of the Supreme Court. From 2002 onwards, our research into the Mozambican system of justice has been based at the CFJJ (Centre for Legal and Judicial Training). We would like to thank the staff there, whose work has been central to the development of our work.

In addition, on an institutional level, our thanks are due to two institutions that supported the research financially: the Danish Agency for International Development Assistance (DANIDA) and the *Instituto da Cooperação Portuguesa* (Portuguese Institute for Cooperation, now the Portuguese Institute for Development Assistance – IPAD). In an exemplary demonstration of international cooperation these two institutions worked together to make viable a project which, due to its size, would have been too burdensome for one institution alone.

While preparing the book, we relied on the support of several research assistants at the CES. We gratefully acknowledge all their assistance. A special thanks to Jorge Almeida who helped prepare the English version. A word of recognition to Sheena Jean Caldwell for the English translation.

Finally, our very special thanks to João Paulo Moreira, on whose generous time and competence we counted during the last phases of the preparation of the manuscript, and whose outstanding job as a copy-editor was invaluable.

We dedicate this book to the memory of José Negrão. Prematurely deceased, José Negrão was one of the best-known African economists, internationally respected for combining solid professional knowledge with the passionate dream of seeing

Mozambique develop according to the needs of its people, rather than the impositions of international donors and their orthodoxies. We were fortunate enough to have benefited from his collaboration in our project, and pay him homage by symbolically giving him the last word in this book. José Negrão authored the last chapter, dealing with the topic to which he dedicated his best energy in the last years of his life, the land question.

Notes

- 1 A second project, aimed at preparing the legal reform was initiated in 2003 and is still under way. The research team, coordinated by Boaventura de Sousa Santos and João Carlos Trindade, involves eight researchers both from CFJJ and CES. Several data and information gathered already during the second project found its way into this monograph.
- 2 Mozambique has a population of approximately 19 million, almost all native Africans, belonging to several ethnic or linguistic groups.