

---

## Traditional Authorities

Maria Paula Meneses, Joaquim Fumo,  
Guilherme Mbilana and Conceição Gomes

### Introduction

As argued earlier in this book, the landscape of justices in Mozambique is heavily defined by legal plurality. In addition to the community courts, our study also analyzed, although in less detail, traditional authorities as entities involved in the resolution of conflicts.<sup>1</sup> The subject of tradition and traditional authorities, widely discussed today within the context of the social sciences and politics in Africa, is extremely complex and diverse (Ranger, 1988). Although the practices and content of these concepts vary from one setting to another, in Mozambique they are both, in general, meant to connote autochthony and authenticity. By invoking local/regional cultural practices vis-à-vis the modern state, groups create and reinforce legitimacy and authority through their own cultural constructs. However, the transformations that these entities have experienced and been subject to have imbued the content and nature of both with ambivalence.

The Mozambican state is not strongly established and has a weak ability to intervene in large parts of the country, especially rural areas. This power vacuum was filled in the colonial era by co-opting the local authorities through a system of 'indirect rule' (Mamdani, 1996a). This explains the presence of traditional authorities (tribal leaders, chieftains, *régulos*, etc.) and their subordinates,<sup>2</sup> whose authority, in the countryside and often in periurban areas, is legitimately recognized. Since the colonial period, therefore, traditional authorities have been a subaltern power, a form of subordinate power by which a subordinated people were ruled. Being a subordinate power, their ability to resist the interference of the dominant powers was limited.

### 1. The Traditional Authorities in a Postcolonial Context

In the post-independence era, the attempt by the Frelimo government to institute a modern state free from any ties to the colonial state led to the distancing of the traditional authorities as local administrative bodies. Their formal ban resulted in the need to create new local organizations, such as the *grupos dinamizadores*.<sup>3</sup> However, as some of the case studies show, the hostile politics of Frelimo were felt more strongly in the urban areas or areas close to the centers of power, where the state was more firmly established. This explains the fact that traditional authorities (and the other bodies of local power)<sup>4</sup> managed to keep functioning on the margins of official discourses and practices, by developing their own mechanisms for social reproduction. If the opposition of the Frelimo government toward traditional authorities had already weakened the penetration of the state into the rural communities, the civil war made its presence militarily unviable. Another structuring factor of the armed conflict was the party affiliations of the traditional authorities (Geffray and Pederson, 1986: 316-318; Clarence-Smith, 1989).<sup>5</sup>

The non-acceptance, from below, of a state structure mirroring the colonial one, together with the ongoing persistence of traditional authorities in the political landscape, led to increased resistance and opposition – on the part of community members – to the excesses of power demonstrated by the new ‘modern’ leadership in the country (Geffray, 1990; Lundin, 1998; Dinerman, 1999). This fact, combined with the state’s docile compliance with neo-liberal impositions from the mid-1980s onwards, fuelled the process by which the traditional became a way of claiming an alternative modernity.

During our fieldwork<sup>6</sup> we identified the presence of a complex blend of local ancestral authorities and those imposed by the colonial state (tribal headmen, ‘elders’, *régulos*), which has produced an intricate fabric with distinct cross-threads in terms of actors, functions, etc. In terms of cooperation with the political-administrative local state, the present situation is extraordinarily heterogeneous. Some authorities collaborate constructively with local state administrative structures, as is the case with the Luís and Mafambisse *régulados* (both in the Sofala province) and the Cumbana *régulado*, in the Inhambane province.<sup>7</sup>

At the same time, there are *régulos* who have stopped working and await institutional ‘integration’, *i.e.* from above. This was the case of the *régulo* Salgado (Tete city) and *cabo de terra* Jorge in the Zavala district of Inhambane. Others functioned almost ‘independently’ of the official administrative structures, either because they did not exist or because they felt themselves in competition with them (as was the case with some of the *régulados* in the district of Matutuíne, in the extreme south of Mozambique, or the *régulo* Zintambila in the province of Tete).

Since the early 1990s, the Frelimo government has been trying to neutralize the hostility of traditional authorities,<sup>8</sup> co-opting them by granting them some kind of subordinate recognition and participation in local administration, both in rural and

periurban areas.<sup>9</sup> This process was most evident in Decree no. 15/2000, which recognized local community authorities.

The same political party that once banned all traditional authorities, rituals and beliefs under the auspices of ‘anti obscurantist’ socialist modernization reintroduced the possibility of incorporating – as legitimate, decentralized local government – those same ‘traditional’ chiefs once held to be the instruments of the colonial State. In fact, according to Article 1 of this Decree, “community authorities are understood to be the traditional chiefs, the neighborhood or village secretaries and the other legitimate leaders recognized as such by their respective communities or social groups”. At the same time, this prepared the way for a broader understanding of the figure of the local, community leader.<sup>10</sup> Prompted by the Mozambican Ministry of State Administration, a two-stage process has taken place: initial recognition – by local communities – of their local leaders, followed by official recognition – by the state – of these leaders. By mid-2003 this process had resulted in more than 13,500 legitimately identified leaders from rural and urban communities. Of these, about one and a half thousand (roughly 10.7%) had by then been recognized by the state as official community leaders.<sup>11</sup>

## 2. The Traditional Authorities in Action

In the cases analyzed it can be seen that, in terms of customary law, traditional authorities act mainly to prevent conflicts from emerging, whilst the object of modern state law is to resolve situations of open dispute.

As dispute resolution mechanisms, traditional authorities are particularly important in issues involving access to land, the family (including adultery and, in some cases, divorce), debt, bodily harm, damage to property, health/sickness, witchcraft and petty theft – in fact, a very broad range of issues (Alexander, 1994; Carrilho, 1995; Cuahela, 1996; Dinerman, 1999). In all these matters the traditional authorities are the key node in a network of institutions that may include the district or even the provincial courts, the police and the local political and administrative agencies. Sometimes they are the first ones sought out by the parties, at other times they function as appeal institutions, and in yet other cases they provide advice or evidence in cases being dealt with by other institutions.

As mentioned above, the sample we used shows the extreme heterogeneity of current proceedings, although it is possible to detect some common aspects (Meneses *et al.*, 2003).

In terms of ‘traditional justice’, it can be seen that the *régulo* does not function as the lower instance in the resolution of conflicts.<sup>12</sup> Cases are normally brought before subordinates (*cabos de terra*, *tinduna*, etc.) and are only sent to the *régulo* if the latter are incapable of dealing with them.

From the cases studied, we observed that one of the great strengths of the justice provided by traditional authorities is its immediate, public, collective, face-to-face, and relatively transparent character.

The hearings normally take place in the house of the traditional authority<sup>13</sup> or near it, on the porch or in the garden. The frequency of these hearings varies. Certain days might be selected for the hearing, or hearings might occur when people solicit the help of the *régulo* to solve a difficult and unexpected situation. In the cases we observed, most of the *régulos* tended to hold the hearings on the weekends, particularly on Sundays. Conflict resolution is dominated by rhetoric and orality, as in the community courts. Additionally, like the community courts, the language used is, by and large, the local language of the parties involved and there is no need for interpreters. The participation of the *régulo* and his associates is essential. The *régulo* (and occasionally the *madoda* – his counselors) sit at a raised table. The parties are seated below, either in front or to the side of them. The audience sits on benches or mats. The *régulo* leads the hearing. After the session has been opened, the person leveling the complaint and the person accused normally make their case. Because the sessions are open to the public, members of the audience are usually invited to participate by presenting their explanations of the problem. This is a very important part of the process of conflict resolution and adults are, in fact, allowed to question witnesses and give their opinion on the case.

The *régulo*'s counselors also offer their appraisal of the conflict. In the regions surveyed, no example was found of a woman being a *régulo*. However, among the counselors of the *régulo* there are normally one or two women and a significant number of women are also traditional healers.

When the case involves accusations of witchcraft, the opinions of the *madodas* pertaining to the decision to appeal to healers or to Ametramo,<sup>14</sup> the Mozambican Association of Traditional Healers, are important.<sup>15</sup> At times the healers intervene and give a deposition.

After hearing and considering the problem, the *régulo* deliberates. In most cases, he attempts to obtain acceptance of the sentence from both sides in order to maintain the social equilibrium.

The main forms of sentencing, when that is the case, translate into fines, community service or physical punishment (for example, head shaving and *chambocadas* – a beating with a wooden stick). Despite being forbidden by law, corporal punishment still seems to be practiced. Several *régulos* expressed a nostalgia for these sanctions: “in the old days the authority could take action. The person was tied up and beaten. Now the authority can't beat people any more”.<sup>16</sup> In the case of the *regulado* Luís (Sofala province), there was a cell in his headquarters. In Inhambane we also saw that sentencing involving physical punishment still exists, although usually the sentence also mentions the fact that the punishment can be replaced by a fine.

Case records are also variable. As this is an environment in which rhetoric predominates, we only observed one case where the sentences and the agreements reached were recorded in writing (*régulo* Luís, in Beira city). Although some *régulos* claimed that they lacked utensils (as in the community courts), it was clear that many did not know how to read or write. In some cases the notifications were written.

When the chieftains handed them out, they also explained the contents orally to the parties concerned; in other cases notification was only given orally.

All the traditional authorities levied taxes for their services. However, the amounts were extremely variable, a fact which was confirmed by some *régulos*.

The language of the hearings is vernacular and the national languages are mainly used. Portuguese seems to be used only rarely, although it is the official language of the country.

Throughout our research we found evidence that relations between the community courts and the traditional authorities in the same geographical location were sometimes conflictual and sometimes collaborative. The *social division of labor* usually ends up determining a certain 'specialization' for each of the entities, with traditional chiefs solely responsible for accusations of witchcraft and complex extended family issues and community courts solely left in charge of petty crime, whilst both share litigation linked to the demarcation of land and family conflicts.

The typology of these cases and the process of reaching a decision, based mainly on mediation and the reconciliation of the parties, are very similar. From what we could observe there seems to be a tendency toward compensation. Although in neighboring countries 'traditional justice' is normally described as being very 'cheap', this is not the case in Mozambique. Fines and the justice tax applied by traditional authorities tended to be higher than those in the community courts.

### ***Relationships with other Institutions***

In the field of conflict resolution, the relationships between traditional authorities and other local authorities are quite complex and not always free from conflicts or tensions. Forms of cooperation also exist: many *régulos* send divorce cases to the community courts and serious crimes – such as homicide – are sent to the police. In other situations, cases are presented to the *grupos dinamizadores* and the other community structures which compete and collaborate both with the community courts and the traditional bodies whenever conflicts break out.<sup>17</sup>

Although they have not been studied in detail in this research, mention should be made of the role of traditional medical practitioners as entities for resolving conflicts. In fact, countless cases are sent, both by the traditional authorities and the community courts, to Ametramo, especially those involving the identification of the guilty parties in cases of witchcraft. The *tinyàngà* (traditional healers) play a key role in producing proof in these cases, as they are central to the identification of the guilty party. They therefore constitute another entity within the set of traditional authorities which should be studied more closely in future.<sup>18</sup>

The power discourse relating to traditional authorities is currently extremely controversial in the country. Many of the *régulos* complain that there is no consultation on who should become the *régulo* of a particular area, or if there is, this often involves people who do not represent the community (although this is covered by the above-mentioned Decree no. 15/2000). It is essential that conditions be granted to the

traditional authorities to enable them to decide on these issues as they see fit and be able to do this independently of any political, or any other, tutelage.

### ***Political Parties and Traditional Authorities***

Within the main political parties, positions on the traditional authorities are also unclear. Opinions waver between a minimalist concept (which sees traditional authorities as a reactionary institution, enclosed within anti-democratic practices and barely represented in the local community) and a maximalist concept (which recognizes the specific nature of the traditional authorities as an expression of a social and religious power that transmits ancestral protection and rightly favors them over other local organizations).

This brings us back to the discussion on the party affiliations of the traditional authorities. Although they are normally identified with Renamo, this is not always the case, as with the *régulo* Phata, in Inhambane province, for example.

During the presidential and parliamentary election campaigns of 1999, both Renamo and Frelimo attempted to invoke the 'traditional authorities' and traditional values in their campaigns. A case in point was the political struggle between Frelimo and Renamo for control of the influential *régulo* Luís in Beira city. Both parties attempted to convince him to support their campaigns, but *régulo* Luís himself wavered to and fro. Nevertheless, the struggle triggered a dispute for the succession in which his nephew proclaimed himself the new *régulo*, and a clear supporter of Renamo, after his uncle finally refused to take sides. The struggle for the succession was only settled after the elections were over and *régulo* Luis is still in power in Bairro Manga-Loforte, in the city of Beira (2004). The current trend in politics at the national level of involving local and regional traditional authorities such as *régulo* Luis imbues tradition locally with a renewed ambivalence derived from (or at least strengthened by) national political practices. The move by both Renamo and Frelimo into the domains of tradition creates a tension between, on the one hand, the political reframing of and call to tradition, and the local situation in relation to development practices on the other.

In terms of the resolution of conflicts, however, and faced with the complexity of the structures surrounding the struggle for power, it is worth emphasizing that fieldwork observations showed that positions can nevertheless be broken down, with traditional authorities being more inclined toward Renamo and the community courts while leading local groups are the favored arenas for Frelimo activity. In any case, the competition for power and the superimposition of the spheres of intervention of the different structures involved in the resolution of litigation are well known, since "people don't know how to resolve conflicts. Nobody's role is clearly defined", as many of the interviewees affirmed.

The struggle for recognition of the multicultural political and legal landscape that exists in Mozambique has led to recognition, in the new Constitution (2004), of the various normative and conflict resolution systems that coexist in Mozambique (as long as they do not contradict its values and fundamental principles – Article 4).

Together with recognition of traditional authorities (Article 118), this represents a significant departure from earlier ideas on the nature of the Mozambican state.

### Conclusion

The framework of justices in Mozambique consists of a series of institutions whose work depends on the fluidity of the interaction between them. The better defined their respective roles are, the better they can carry out the functions attributed to them by society in general and by local communities in particular, the more efficient their performance will be and the more fully citizens' rights will materialize and the state's interests be realized. In fact, although official discourse does not recognize them, the *régulos* and other instances of traditional leadership very often operate in close cooperation with the state. Many *régulos* are called upon to intervene in vaccination campaigns, civic education, etc.

The path of the various cases analyzed in our research demonstrates a simultaneous recourse to diverse mechanisms for the resolution of litigation, forming a complex network. This means that all are necessary, since their common denominator is offering perspectives for solving and/or preventing problems. They are proof that legal hybridization has been developing in Mozambique for a long time. It is a hybridization that accepts, inclusively, the official, modern, legal model and even makes room for its work. Seen from this perspective, the vitality of the types of justice into which traditional authorities are integrated is the mirror image of the difficulties of official justice, which seems unable to achieve its objectives.

Traditional authorities manipulate certain 'traditional' aspects as legitimizing marks of their authority while also using 'modern' elements – such as the political parties – to consolidate their power. It is this subtle dialectical relationship between tradition and modernity that animates traditional authorities and allows them to develop. Rather than personifying the fixedness of an imagined past rewritten in the present, this landscape of justices is the symbol of another modernity which is eminently complex and calls for further study.

Extending the community's participation in the resolution of its problems is one of the requirements of the process of democratization taking place in the country. It is vital to make the constitutional principles and administrative organization of the state compatible with the models of action, cultural presuppositions and normative structures of the traditional authorities.

Today, an ongoing legal reform is taking place in this complex, and even conflicting context. It recognizes a myriad of ways of settling informal disputes encompassing a large percentage of the country's population. Legal projects should seek to provide an integrating framework for these conflict resolution mechanisms, given that the absence of rules has negative implications, as this chapter has aimed to show.

### Notes

- 1 The issue of traditional authorities is also analysed in chapters 1 and 3.

- 2 Although the most common term is *régulo* (chieftain), the local expressions are extremely varied: for example, *mwene* in the Amakhuwa regions, *nyakwawa* in the provinces of Manica and Sofala, *samaswva* in Zambézia, *bosi* for the Machangana, etc.
- 3 See note 34 in chapter 1.
- 4 In this research, local notables, such as traditional healers, local religious authorities, heads of lineages or heads of production, are understood as part of the concept of 'local, traditional authorities', despite the fact that their political importance seems to be less visible.
- 5 In this regard, the plasticity of the traditional authorities is eloquently illustrated by the institutional innovation of the *régulo* of Mafambisse (Sofala province) during the civil war. During the course of the war, the *régulo*'s territory was torn apart by the conflict between Frelimo and Renamo. In order to preserve the traditional leadership in the zone, the territory was divided into two zones. The zone under the control of Renamo continued to be ruled by the titular *régulo*, Manuel Dique Mafambisse, who came from a prestigious family. In the zone under government control, traditional authority was represented by the then local political leader, José Dique Mafambisse, the younger brother of the titular *régulo*.
- 6 Field work for the first research project took place from 1997 to 2000. Complementary information from the second research project (since 2003) is also provided.
- 7 This climate of cooperation among the members of this web of legal and administrative entities does not prevent those intervening from remembering past grievances and from voicing them when deemed appropriate. *Régulos* and other notables were intimidated and humiliated by former subjects who came to occupy party secretary positions within Frelimo, or by other higher level state and party authorities (Geffray, 1990). During interviews several traditional authorities (*régulos*, healers, etc.) referred to the persecution they had suffered for political reasons and the climate of animosity towards them. As a result, many were arrested or even deported to the northern provinces during the infamous *Operação Produção* in the early 1980s, to be 're-educated through labor action' in order to become 'new human beings' (Meneses *et al.*, 2003).
- 8 See chapter 1. One must also be aware of the fact that the position of the main political parties toward the customary remains undefined. While traditional institutions were normally identified with the Renamo, nowadays this is not the case. For example, Frelimo and Renamo seem to share a common perspective of fear in relation to witchcraft, which results in non-recognition as part of the state system. Both parties resent the role of this leadership, since traditional authorities may stand in the way of their plan to enhance centralized political action.
- 9 What is particular to Mozambique is that these authorities are present both in rural and periurban contexts. In some areas covered by our field work, even in areas close to the urban centres – such as Jangamo and Inhambane (*régulos* Patha and

Nhampossa), Beira city (*régulo* Luís) and Dondo in Sofala province (*régulo* Mafambisse) – the traditional chiefs contacted were extremely active, either in collaboration with the political-administrative authorities or with their knowledge and agreement. See also note 18 in chapter 1.

- 10 Because they are not recognized as part of the state, however, these community authorities are not entitled to salaries paid by the state. Instead, the state allows them to retain up to 5% of the taxes collected by them from members of the community, as a means of supporting their activities.
- 11 The local authorities elected/chosen by communities include not only *régulos* and other *traditional* structures, but also neighborhood or village secretaries (*i.e.*, the former *grupo dinamizador* secretaries, the remains of a power structure introduced by Frelimo after independence to replace the customary institutions – Chichava, 1999). Today, due to their reputation for wise counsel, they are elected through a process whereby they compete with other local institutions. A very small proportion of these recognized leaders are women. After returning to the field in mid 2004, we observed that in several districts the process of recognition of these authorities had been fully implemented. Before then, however, no leaders from urban or periurban settings had been officially recognized. The leaders – upon formal recognition – have received national flags and personal badges.
- 12 Although the *régulo* and his counselors stand at the apex, various other assistants help him on a daily basis. In southern Mozambique, for example, in each area of the chiefdom there is usually a *cabo de terra* (*nduna*). He hears cases, solves problems, etc. and reports directly to the *régulo*. Several *tinduna* are also part of the *régulo's* council. Some people bring their problems directly to traditional counselors, who may intervene initially in a conflict in order to solve community problems.
- 13 *I.e.* the *régulo*, *cabo de terra*, etc.
- 14 *Associação Moçambicana de Médicos Tradicionais*, in Portuguese.
- 15 The power of the *nyángà* (traditional healer) lies in his or her ability to identify existing social tensions, contradictions, and areas of distrust, as well as possible anti-social hostilities that may manifest themselves as sickness, bad luck, or even death in the community (Meneses, 2004). The process of identifying the witchdoctor, locating the agent of evil and making him or her confess to their actions, is also the process by which the witchdoctors are cleansed of the burden of evil, thereby paving the way for the restoration of stability and good health in the community. Even in the revolutionary period the popular courts would often turn to traditional healers to solve cases involving accusations of witchcraft.
- 16 Interview with the *régulo* Phata, Inhambane province.
- 17 Ministerial Decree no. 107-A/2000 defines the interaction between community courts and the community chiefs. Article 5(b) outlines one of the tasks of these authorities as “interaction with the community courts, wherever they exist, in the resolution of minor conflicts of a civil nature, based upon local habits and

costumes, within the limits established by law”, clearly recognizing the existence of a complex network of interaction in local administrative areas.

- 18 Ametramo also has a fairly hierarchical structure, mirroring the pyramid of formal justice. Cases addressed to Ametramo can go to appeal from a ‘local’ to a ‘higher’ level (the district or provincial structure of the association), by requesting other more experienced and knowledgeable *tinyàngà* to ‘re-evaluate’ the case.