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Toward Interlegality? Traditional Healers and the Law

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Introduction

Mozambique is a large country, with a population of approximately 19 million, almost all native Africans, belonging to several ethnic or linguistic groups. Until the onset of Portuguese colonization, toward the end of the nineteenth century, the various peoples that made up Mozambique did not live under a single political authority. They existed as independent entities, with various forms of political and social organization: some were kingdoms with centralized governments; others existed mainly as headless units, the largest political units being the tribes or chieftaincies.¹

The transition to the twentieth century became synonymous with the implantation of colonial rule, introducing a critical period of radical changes that brought about the Mozambican political reality. The different economic and political strategies applied by the colonial state in Mozambique resulted in important changes to the organization of power (where and for whom this power operated). The forms of colonial domination and resistance in different spaces and locations are a reaction to the systems of exploitation that depended on slave and free labor – a situation that explains the colonial regime that existed in Mozambique, as well as the different stages that succeeded it (O’Laughlin, 2000: 11). The *Indigenato* regime² was the political system that subordinated Mozambicans to leaders of communities described as tribes. The construction of traditional or common law therefore arose as an integral part of this process of subordination and domination out of which the colonial state emerged (Young, 1994; Gentili, 1999). Political control was highly concentrated under the colonial state, while administrative control was much more selective and decentralized. Thus, in rural settings, the colonial state agreed that the administra-

tion would be carried out by local, traditional authorities, applying a private, customary law for the resolution of problems in local societies, whereas in urban areas civilians (mostly Portuguese colonials) operated under the rule of law.

In ideological terms, the colonial system was a dualistic system which attempted to oppose the different forms of governance, legal systems, land possession, and labor regulation (Mamdani, 1996a; Newitt, 1995). The colonial state guaranteed the existence of an official, modern legal system for citizens (i.e., for the colonials and *assimilados*). The state would issue birth certificates and identity cards to citizens. Citizens could use these documents to register goods (e.g., land) under their names, and could appeal to state courts to resolve legal conflicts. Civil identity was, therefore, the identity of the civilized citizen; the only one who retained political and civil rights. On the other hand, indigenous rights were defended by traditional authorities through traditional law. Because indigenous identity was drawn along regional ancestral lines, it was mainly defined according to ethnic criteria.

By attributing a political identity to Africans through local (indigenous) authorities, Portuguese colonialism sowed the seeds of the ethnic, racial and identity-based, widespread opposition that characterized Mozambique in the post-independence period.

As Santos claims in chapter 1, after independence, from 1975 on, diverse eurocentric political-legal cultures were added to the extant mix of legal orders. These 'new' cultures added new elements to the resources available locally. These previous resources were remnant structures from earlier periods in the life of the state, some of which, although legally suspended for a while, had continued to survive sociologically (such being the case of the so-called traditional authorities). As a result, the contemporary landscape of Mozambique can be described as a mosaic of legal hybridization, in which there is a mixture of elements of different legal orders (official/state law, common law, various religious laws, etc.). At the same time, in the field of conflict resolution, innovative legal entities are created out of such mixtures.³ This legal phenomenon has been described as *interlegality* (Santos, 1995).⁴

In this chapter I seek to explore some of the conflicts in the realm of justice administration in Mozambique. My reason for adopting the global-national-local perspectives derives from the need to interrogate the reasons for the mismatch between traditional and modern law, between the official and unofficial settings of conflict resolution.

The 'traditional' sphere – the institutions which take on the protection of the welfare of the local communities – are simultaneously political, curative, juridical and religious; they cover an extensive field of competencies and functions which place the efficacy of problem-solving within a more enveloping context, bringing into play institutions of authority, normative and symbolic structures, and relations of force, knowledge and power. Nonetheless, until 2004 – when the new Constitution recognized the plurality of legal orders in Mozambique (Article 4), only the judicial instances recognized as official have been the object of support by the state; the other legal structures not recognized as official are tolerated but, most frequently, ignored.

Problems related to witchcraft continue to be one of the most visible areas of activity of the traditional institutions, where culture and power are continuously contested and recreated.⁵ In the modern view, the qualifier ‘traditional’ – when applied to conflict resolution or social integration – refers to practices and knowledge that are perceived as opposing and/or complementing the official conflict resolution system. Using witchcraft practices as a window onto the broad subject of ‘other authorities’, I try to show some possible ways of approaching the question of law and justice in Mozambique as a problem-solving tool.

Having set the analytical framework, it should be said that the analysis studied in this text is mostly based on the practices and discourses found in Maputo city and its environs, as well as in distinct areas of the Maputo province, in southern Mozambique, where the research has been carried out. Also, I gathered information from libraries and from several research organizations. The major sources of information, however, are interviews and participant observation, since little research has been produced in the country on this subject.

1. The Colonial and the Postcolonial State

In 1975, with Independence,⁶ the country adopted a Westernized constitution, with a parliamentary system of government. It also provided for an independent judiciary with the power to review acts of both the legislature and the executive. However, since the Frelimo⁷ government’s goal was to achieve the level of development to be found in the West, recognition of the ethno-cultural differences was seen as a wrong political move, as a path that would advance internal regional fractions; at the same time, many of the local African traditions were regarded as backward and at odds with the road towards development. During the first decade after independence, it became practically impossible to speak of social differences other than the obvious differences between colonialists and the oppressed, between rich and poor. Reference to other forms of difference – be they cultural or even ethnic — would be condemned as pandering to regional divisions in the country. Literate people became an almost inevitable part of Frelimo’s effort to extend the modern state⁸ into rural surroundings. Their power came from a form of knowledge that denigrated the ‘traditionalism’ of the tribal chiefs and the ‘obscurantism’ of their rural culture (Machel, 1981: 38; Roesch, 1992: 472; Geffray, 1990: 34-44, 78-80). Frelimo had won the struggle against colonialism and, on its ruins, was to transform the mentality of native society. Literacy would bring about a transformation from metaphysical reasoning, typical of a traditional society, to scientific and materialist reasoning. Characteristic of the dominant ideology of that time was the fact that scholars ignored some of the main questions that people were posing in legal terms, such as the theme of witchcraft. Instead, witchcraft was described as an impediment to national unity and to the project of liberation: pernicious evidence of the ‘traditional’, obscure past (Castanheira, 1979: 12).

The Creation of the Customary

The ‘invention of tradition’, the ‘making of customary law’ has become a symbol of ‘the traditional’ in Africa, a product of the colonial past. In other contexts, tradition has become a symbol of a pre-colonial past.

Despite the fact that the *Indigenato* Code was only adopted in the late 1920s, it was preceded by a complete series of codes and sanction regimes, which demarcated the distinction between ‘the civilized’ and ‘the natives’. The essence of the colonial system, thus, was based on the existence of a ‘traditional’ ruling system, upon which the colonial administrative and judicial system exerted its action. In colonial Mozambique, local, traditional chiefs were closely linked to the colonial system. Although some of the local chiefs (*regulos*) were of ‘noble’ lineages,⁹ several other people appointed by the colonial authorities often lacked traditional legitimacy.¹⁰ At the same time, the positions to which they were appointed were either created by the colonial administration or had been so corrupted by its demands to collect the hut tax, raise the labor force and regulate the forced production of agricultural products that they no longer legitimately represented autochthonous patterns of authority, but rather the co-optation of complex ruling mechanisms.

In its essence, the *Indigenato* regime symbolized the ‘making of customary law’ from above, with the support of the colonial administration. Modern law – brought about by the colonial state – regulated relations among the non-indigenous as well as relations between non-indigenous and indigenous. It should therefore be evident that political inequality emerged side-by-side with civil inequality, as both were based on the instituted legal pluralism: the colonial/state law and customary rights. The analysis of this process has shown how a web of actors (including colonial authorities, missionaries and African notables/elders) cobbled together local customs, giving it the form of colonial law. While indigenous law was more like a legal claim than a legal code, contrary to the dominant pattern seen elsewhere in colonial Africa, in Mozambique the attempts to codify the customary (Gonçalves Cota, 1944, 1946) were never given the force of law.

A careful study of the customary clearly shows a call for the preservation of the social fabric, through the social construction of tradition, law and ethnicity, throughout the impositions of the colonial system. For Mamdani, this system of ‘indirect rule’ – a characteristic of the British colonial administration in Africa – established a “decentralized despotism” as the British learned to marshal authoritarian possibilities in the native culture (1996a: 23). However, at the same time, in a game of mirrors, one has to pay attention to the role played by local actors, as people continually reinterpreted and reconstructed tradition in the context of broader socio-economic changes. As Spear notes, “far from being created by alien rulers, tradition was reinterpreted, reformed and reconstructed by subjects and rulers alike” (2003: 4). Thus, ‘tradition’ emerged as a multi-dimensional landscape, an interactive historical process that was the antithesis of the ‘static’ colonial state.

Despite being ‘punished’ by the colonial state, the chieftaincy and related institutions – specifically in the Mozambican colonial context – were an important factor in terms of cohesion and cultural identity, which legitimized authority and regulated relations among the population by administering any occurrences of local conflict. Far from conveying an unchanging past, tradition undergoes continual renewal as new concepts are brought in or old concepts readjusted according to changing realities. Tradition is then composed of fixed principles and fluid processes of adaptation that regulate societies. In colonial times, the *régulos* represented the consolidation of judicial, legislative and administrative authority at the center of the state. In order to keep their position, these traditional chiefs depended on the support of colonial power. But simultaneously, colonial authorities depended on traditional authorities to make their rule effective and legitimate.

Under the Portuguese, the *régulos*¹¹ were the repositories, administrators and judges of ‘customary law’, the rules that governed colonial social, political and economic relations. In short, from a political tool for re-negotiating the social status and access to resources, the customary was transformed into a set of enforceable rules that froze its status and restricted access to it.

In a situation where ‘traditional’ problems were, by law, to be resolved under the ‘customary’ rules (but where no codification of these rules was ever officially accepted), both the Portuguese administrators and the *régulos* retained the possibility of adjusting the ‘traditional’ to respond to different situations. As a result, “Africans [chiefs] determined the content of the law in the course of individual decisions in which they provided a more nuanced interpretation of the law than colonial constructions allowed” (Spear, 2003: 16).

In sum, the administrative and judicial power of the colonial state was quite limited, and it became subject to local discourses of power that state neither fully understood nor controlled, as was the case of witchcraft.

The history of colonization and modernization (both in its European and African guises) has been a history of suppression of the demands for justice in the face of witchcraft. In Africa, colonial authorities dismissed customs found to be ‘repugnant’ to civilized standards. However, as will be further discussed, from the perspective of Mozambicans, the modern, ‘enlightened’ and rational legislation came sometimes as a perversion of justice. In pre-colonial and even in colonial times witches were frequently expelled from the community, or killed, or forced to pay compensation for the damage caused. Under the colonial state, in neighboring British colonies, witchcraft practices became outlawed, accused of reflecting ‘a retrograde past’ (Melland, 1935; Roberts, 1935).¹² The nineteenth and early twentieth centuries witnessed the enactment of ‘suppression of witchcraft’ legislation, designed less to suppress the practice of evil, as understood by locals (which the colonial authorities took for superstition), than to suppress anti-witch activities (which the colonials deemed barbarism); as a result, sanctions against witches were declared offensive and threatened with long prison sentences (Krige, 1936: 252; Chanock, 1998). In a colonial context, witchcraft

victims got the impression that they were rendered powerless in the face of the pursuits of witches. From their point of view it was completely incomprehensible why the colonial administration was particularly eager to protect the most dangerous villains. In a colonial context, as we will discuss further on, the state, while not protecting people from witchcraft spells, emerged as the protector of witches, thus making itself illegitimate in the eyes of the native populations. In what was a slightly distinct approach, probably due to its weakness, the colonial administrators in Mozambique, in order to avoid being portrayed as sponsors of witchcraft, never formally accepted the inexistence of witchcraft practices, and allowed 'traditional' courts to conduct trials against avowed witches (Meneses, 2000). Traditional authorities were even allowed to deal with charges of witchcraft, as long as they did not involve accusations of murder (Meneses, 2000; Honwana, 2002).

What gives tradition, custom and ethnicity their coherence and power is the fact that they lay deep in people's popular consciousness, informing them of who they are and how they should act. Yet, as discourses, traditions, customs and ethnicities are continually reinterpreted and reconstructed as 'regulated improvisations' subject to their continued intelligibility and legitimacy. Thus the postcolonial state, in order to be recognized as a legitimate authority, knew the new 'judicial structure' had to be anchored, at least to some extent, in the everyday life of both rulers and subjects alike. In order to be accepted as legitimate, a new 'legal framework' must bear a semblance to the legal corpus upon which it has been built. This is the challenge that, since 1975, has been posed to the state. Inevitably, when addressing the question of analyzing the socio-legal cultures present in the country, the question of witchcraft emerges as probably one of the major *loci* of conflict between the traditional and the modern.

The Traditional Side of Modernity

Over the last two centuries, the dominant discourse in Mozambique has made constant appeals to 'native' peoples based on the colonial drive to modernize by acquiring the 'right' values and knowledges (Meneses, 2003). Progress towards modernity has been defined as good and desirable, understood in a linear, historical progressive fashion: the indigenous must evolve into modern, civilized citizens. As for the former colonies, they were required to evolve from the time of 'tradition', in which they were still living, to an era of civilization, progress and modernity, where the 'most advanced' countries in the world stood (Santos, 2002a: 243-245).

In the political-legal sphere, the dominant discourse, seen as a means of contributing to development, mirrors the kind of peripheral postcolonial states aspiring to modernization. Both the 'native' and the 'civilized' are given fixed ideological meanings, resulting in the impossibility, in terms of socio-legal theory, of connecting different legal systems from the perspective of *interlegality*. This became particularly notorious during the last stage of the colonial presence in Mozambique. The result of the attempt to apply indirect rule to a colonial process where the colonizing power was –

in terms of social, economic and political intervention – quite fragile, produced a hybrid system of traditional authorities. On the one hand, these chiefdoms – whether ‘original’ or adapted – represented a guarantee of continuity for the functioning of the communities; on the other hand, they constituted the bases of colonial administration within the local setting. In this sense, the customary represented a safety cushion between the communities and the agents of the colonial administration, who were entrusted with resolving various administrative, economic and legal problems, and allowed for a more or less harmonious relationship between the two. Despite being modified under pressure from the colonial entity, in a certain sense the actions of the traditional authorities continued to be seen as local in origin and as the result of a profound familiarity with the feelings, existing norms and language of the communities. These were the factors that permitted and legitimated their actions.

But the ideological campaign of Frelimo during the period of nationalist struggle for independence, as well as throughout the postcolonial setting, was aimed at reinforcing the dualist nature of the system: the citizens as oppressors and the natives as the true Mozambicans. Yet, the socio-political and legal fabric appears much more complex at the height of independence in Mozambique. Despite the continued importance of coercion and colonial administrative control, there was no binary structure in the country as advocated by Frelimo. In the post-independence period, this policy has prevented the recognition of the existence of a plurality of interactions among distinct socio-legal fields, since the dominant discourse (and praxis) only allowed this interaction to occur either as a confrontation of legal orders, or as competing, rival legal systems. In both cases, one legal order would emerge as the dominant, the remaining ones being classified as subaltern or peripheral. However, as Santos suggests (2002c, 2003), complementarity, cooptation, convergence, assimilation, suppression and junctions, are just some of the many possibilities under which interlegal interactions may take place. Hence, how much of the discussion regarding the modernization of the legal structure indeed allowed for a successful empowerment of Mozambicans? Aren’t they, instead, through the recourse to the fixity of the traditional vis-à-vis the modern, promoting the impossibility of contacts between distinct systems of social regulation?

The Mozambican postcolonial state emerged in a context where both chronological and territorial differentiation were achieved by a unitary compulsion that tended to underplay differences, insisting upon the homogeneity of the future, and failing to acknowledge the existing socio-legal heterogeneity. Thus, to be part of the ‘present’ required freezing everything that represented an obstacle in the historical path to modernity, thus seen as part of the ‘old’ past, as traditional. The other cultures, viewed as inferior under the colonial order, (re)emerged again now in a post-colonial setting, as backward in the dominant legal discourse. The extremely complex cultural mosaic of socio-legal cultures in Mozambique, with their own characteristics and structures, kept being routinely described as a homogeneous entity, which resulted in the general reference to a single traditional judicial structure (Carrilho, 1995; Nilsson, 1995; Lundin,

1998). In terms of legal systems, this approach justified the dominant presence of an official legal system, built upon the principles of Western rationality.¹³

The initial process of incorporating the newly independent postcolonial states into 'the family of nations' resulted in a process of reinforcement of the differentiation between the universal legal framework and the local, traditional legal frameworks. Indeed, the continuity of the principles of Western rationality in the social ordering of Mozambique resulted in a sequence of attempts (Santos, 2003) to integrate the other, the traditional indigenous, under a dominant legal rationale, without acknowledging the fact that the existing differentiation in terms of rights is the result of specific historical and contemporary experiences. This sort of amnesia regarding the other enables the Western-based legal narrative to remain ever-present, without ever being questioned for the bias provoked against the plural arena of socio-legal orders. As before, during the post-independence period the native peoples were viewed as uncivilized, lacking sufficient legal sophistication for their normative systems to be part and parcel of the new national legal order. The stimulating results of a research project on the heterogeneous nature of the Mozambican state pointed out that one of its main characteristics was the fact that only a very narrow segment of the population would appeal to the official, state-oriented judicial system to try to solve their problems. The presence of a Westernized approach to the judicial culture is an example of the bequeathed suppression of other knowledge and practices in the construction of the legal landscape of the country. The international legal framework became the normative episteme other cultures and countries had to accept in order to be recognized as a state. Instead of building a new legal order based on the realities present in the country, the contemporary Mozambican legal framework may be described as one that establishes overall supremacy over other competing modes of rationality, which are either silenced or appropriated according to the interests of the dominant model. In contrast, we maintain that an autocratic approach to consolidating national unity only results in the amplification of the cultural differences and identities, as we have been observing. These observations require a deeper evaluation of the very character of modernization, since the intransigence of the dominant legal model towards the other socio-legal structures (resulting in their subordination or invisibility) indicates the presence of an inflexible modern state, frozen in its past. As the study led by Santos and Trindade (2003) clearly indicates, it has been possible to detect the development of dynamic legal hybridizations in Mozambique – hybridizations that accept the modern model of law, even creating the space for its action. Seen from this angle, the vitality of traditional normative systems reflects the difficulties of a state legal body, which appears unable to achieve its objectives. The hybridization of legal orders reflects the diversity of knowledges present, which are by no means fixed in space and time, as so often is imputed to traditional values.

Because other political, judicial and administrative entities have been developing and adjusting to contemporary situations, the result is an innumerable array of metamorphoses in the socio-legal field. The fundamental question to be posed is

how the dynamics of hybridization of these legal orders have developed, and which forms they have acquired. Contemporary Mozambique is a mosaic of traditional (i.e., non-official) authorities whose role, functions and performances are quite difficult to fit under a common canon.

Conflicts of Power, Conflicts of Knowledge

Imbued with colonial standards, most of the studies conducted on the subject tend to insist on the role of the *régulos*, thus forgetting the enormous array of entities present, who are legitimized from below by the communities that recognize their authority. Such personages as traditional healers (*tinyànga*¹⁴) are also part of the concept of traditional, local authorities, despite the fact that their political importance seems to be less visible. Another aspect to bear in mind is the fact that the traditional authorities and their means of dealing with social problems are not confined to the strict ambit of law; on the contrary, they cover several other sectors of social life.

In this sense, they require a reshaping of the concept of 'conflict', which includes the notion of misfortune, and which translates the cognitive, symbolic and institutional order of society itself. The universe under study is a good example of the coexistence of several institutions, which aim at welfare and social integration.

In a community for which the cosmological apparatus is perceived as representing a closed environment, and where the concept of disease is perceived as a shared 'problem',¹⁵ the source of the problem has to be detected and expelled on time, for the problem poses the risk of spreading to everyone. However, the search for the source of the disease becomes broader, including the treatment of the social and the physical ailments.¹⁶ Indeed, society is seen as being threatened by a 'disease' whose etiology has to be discovered and combated: traditional healers treat people at the same time as they treat society itself, whether such treatment is to ensure the reproduction and maintenance of the existing order (norms, representations) or its perturbation (tensions, conflicts, collective misfortunes). The disease results in an ailing body, but the source of trouble can be found in a spell or wrongdoing produced by a witch. To cure someone means to eradicate the source of troubles, including the identification and neutralization of a witch. This task can only be accomplished using 'local' medicines, local knowledge. In this process lies the heart of the internal resilience of the traditional in Mozambique.

2. The Ambiguous Nature of Witches and Healers

In Mozambique, as is the case in many African countries, the threat of witchcraft is very difficult to tackle, as one feels exposed to intangible forces, not knowing exactly how they work and where they originate. This feeling of insecurity helps to explain the desperate attempts to expose the culprits, forcing them to confess what nobody could have observed directly. Witches are considered to be inhuman and not fit to live; thus, they have to be removed from the community or destroyed. But official law seems unfit to deal with this problem.

A sociological analysis of this phenomena provides an understanding of the nature of witchcraft as a regulatory element of dissonant social pressures (Meneses, 2000; Santos, 2003: 85-86). In the context under analysis, witchcraft suggests the manipulation by malicious individuals of powers inherent in persons, spiritual entities, and substances to cause harm to others (Asforth, 1998b). Those who have a lot of money or power are perceived to have obtained or gained it because they have taken 'power' from, and thus have been helped, by someone else. Those who die, who suffer misfortunes, do so because they are sick, have problems with success, or there is someone who dislikes the fact that they are different or that they are trying to be different; it may also be somebody trying to tear apart the micro-network of social belonging in which he/she has emerged.

This short introduction to the subject of witchcraft unambiguously indicates the presence of two sides to the matter: beliefs and action. Accusations are made and action is taken; thus, beliefs and action reinforce one another. In a sense, witchcraft is a sort of occult wisdom (Geschiere, 1997), used to rule over a group or a community. However, witchcraft can also be used by its practitioners to harm others or to obtain various types of benefits, as when they sell their services. It may be used with malicious motives for acts of vengeance, forming a wide web that holds villagers and urban dwellers together through discourses and images that continually explore the moral dimensions of poverty and prosperity. Because witchcraft is just as likely to be a matter of the wealthy attacking the poor as the poor harassing the well off, it is the prerogative of neither.

Among the Changana and Rhonga people of southern Mozambique, for example, perceived victims of witchcraft took, as they continue to do, the law into their own hands to rid the community of the peddlers of this evil craft. It is this latter component that is crucial for a broader understanding of the nature of conflicts and the processes of dispute resolution in Mozambique.

The Nature of the Accusations of Witchcraft

The Changana apply the term *nòy*¹⁷ to all 'supernatural' attacks. The term is used to refer to attacks or to the power to kill or injure people by means of spells, including also the use of 'medicines', often generally referred to as *murhì*.

Both men and women, old and young, have been accused or have been the object of gossip relating to witchcraft practices, although more generally one would find older (and often widowed) women to be targets of anti-witchcraft action.

Accusations of witchcraft and witch attacks are not rare events. Almost every person in southern Mozambique knows that witches have the power to make lightning strike to injure or kill people; to damage property; to destroy crops, and to cause calamities or accidents. As a victim of a witch affirmed in an interview, "it is not a question of believing or disbelieving. It's difficult for outsiders to understand, but our daily life relies heavily on the world of spirits, for good or evil."¹⁸

The people afflicted with acts of witchcraft are usually in more or less intimate relationships with the perpetrators – relatives, neighbors, lovers, schoolmates and workmates top the list of the usual suspects. Witchcraft may be motivated by jealousy, or by unsolved conflicts between or among community members. People are particularly scared of the latter possibilities, since they may occur at random inside the community.

One of the motives for witchcraft is usually said to be jealousy, in situations of envy of emerging wealth. This is the reason why the ambiguity of witchcraft is often referred to as an “occult economy” (Geschiere, 1997). People say that someone desiring to become rich might go and ask for support from a ‘bad’ *nyàngà*, who would collect the support of all the ancestors, thus leaving the rest of the family unprotected by them.¹⁹ Worse still, several medications can also be applied to protect and preserve wealth, while sometimes requiring the sacrifice of a relative or of non-kin.²⁰ People seek in witchcraft an explanation for events and circumstances for which they would otherwise have none. Thus witchcraft is believed to be at the root of many misfortunes, thanks to the actions of one's neighbors or kin. In this the inhabitants of Maputo city are no different from the inhabitants of urban and rural communities elsewhere in Africa. The examples available suggest a number of explanations for accusations of witchcraft in general, focusing on hardship and circumstances that cause tension, conflict, suffering, anxiety and uncertainty. As a person struggles to get by in a world where livelihoods depend almost entirely on earning an income, competition for jobs and other income-earning opportunities becomes intense. Those who succeed are prone to become the object of suspicion by those who do not. Suspicion may degenerate into actual accusations or even in an appointment with the traditional healer, so as to garner protection against a witch attack produced by a potentially envious or jealous community member.

In addition to being a malevolent force, witchcraft is also, paradoxically, believed to be a source of good fortune. There are reported cases in which political success is seen as the outcome of the possession of or an alliance with the powers of ancestors. In Cameroon, for example, as Geschiere and Nyamnjoh show (2000), rumors link witchcraft to the rich and powerful; here, witchcraft emerges as a central piece in the electoral process, since several of the powerful are described as allegedly owing their success to the use of varied occult sources and forces. In Maputo city, as we observed, the situation is similar. Businessmen and politicians, who have become wealthy in the urban centers, are easily suspected of having pursued their careers with the help of obscure methods, including the use of traditional medicine. The state elite is deeply rooted in these cultural practices, and resorts to this kind of protection whenever in need of access to special promotions, wealth, etc. The elite need special powers to fight off potential rivals, and vice versa: their impoverished relatives or neighbors, who have stayed in the villages, are also accused of witchcraft. Since they have not amounted to anything, one assumes that they watch the success of their affluent relatives with an evil eye, and – driven by envy and resentment – try to destroy them.

This explains the ambivalent relationship to witchcraft. Witchcraft is ambivalent in the sense that it is hard to establish a decision/action as being totally good or totally bad.

Research in urban and rural areas of Mozambique shows that social and economic inequality is firmly entrenched, and that communities, deep down, are socially heterogeneous. Wide gaps between the better-off and the worse-off cause social tensions, as the former try to avoid excessive demands by worse-off neighbors and kin, and as poorer members of the community increasingly perceive the better-off as selfish. As the better-off suspect deprived neighbors and as deprived neighbors gossip about and accuse the well-to-do of having prospered through witchcraft, the tensions erupt into suspicion and accusations of witchcraft.

The constant demand for traditional medicine is more visible today because there are many more individuals on whom fortune has not shone, and who are searching for success – through promotion, wealth, and social opportunities. Current means of coping with uncertainty involve seeking protection. As the Comaroffs have described for neighboring South Africa (1999: 283), in Mozambique the violence and insecurity that accompanied the rapid political and social transformations the country underwent over the last 10-15 years – under historical conditions that yielded an ambiguous mix of possibility and powerlessness, of desire and despair, of mass joblessness and hunger amidst the accumulation, by some, of great amounts of wealth associated with the introduction of a new liberal economic strategy – greatly exacerbated the fear of witchcraft, for people felt unprotected. Thus the appeal to traditional healers was an anticipated response in the search for protective and supportive actions against witchcraft and crime.

With time, the outcome of a clash of values leads to strains and tensions in social relationships and eventually to suspicion and accusations of witchcraft.

Accusations of witchcraft are a form of social control. Witchcraft acts as a 'leveling force' (Geschiere, 1999: 213) in that it undermines inequalities in wealth and power. It happens when, given the fear of attack by jealous mates, people desist from accumulating or displaying amounts of wealth that might elicit envy and jealousy from potential witches. It acts as a pacemaker, a means of setting and limiting the rhythm of social change. If this argument is to be accepted, then by arresting social differentiation, witchcraft prevents the growth of social tensions that might arise from it. Also, accusations are said to discourage socially unacceptable behavior, as sometimes it is people who behave in unusual or eccentric ways that become the target of accusations.²¹

As Santos points out (2003: 86), although culturally witchcraft affirms itself as being at the opposite pole of modernity, witchcraft is essentially an example of an alternative modernity, in which social change takes place without serious ruptures in the networks of social security and identity fixtures.

In sum, witchcraft and accusations of evil-doing may correspond to various situations of social unease, such as divine retribution or punishment by ancestors for

breaking taboos or committing sins, or even as a spell cast by another person who caused harm under hypnosis, as we shall see further on. So the question that those afflicted must address in relation to this sort of misfortune is less what has caused this suffering than who is responsible for the suffering. To treat the malaise of witchcraft is to struggle with the witch by mystical or social means, or both. That is, either the malevolent powers are combated by occult or spiritual means or the individual deemed responsible is identified, induced to retract the evil powers, and punished (or cleansed and redeemed). Because the official means made available by the Mozambican state are usually unwholesome in situations of accusations of witchcraft, people believing themselves to be under attack at any one time may visit a traditional healer, seeking to establish the cause of their troubles, as well as who is behind them and how to take counter-measures (Green, 1994: 30).

The Tinyàngá and the Struggle against Social Illnesses

As we have just explained, witchcraft has a dual nature: on the one hand it seeks new means – apparently beyond human control – to achieve goals that would otherwise be impossible (such as the ‘betterment of life’ in situations of extreme social exclusion, which is a current reality in Mozambique); on the other hand it functions as a way to voice a desire for punishment of those who one envies and those who, for whatever reason, stand out. Since witchcraft deals with the ‘occult’, it becomes quite difficult to identify the ‘modern’ means, the sources and evidence to prove the presence of acts of witchcraft. The detection of the traces of witchcraft activity is normally left to the *tinyàngá*.²²

Under the scientific model of rationality, the processes of fact-finding, guilt determination, the ritualized expressions of remorse and the demand for immediate, though often symbolic, reparation strike Western sensibilities as weak, irrational and unjust (Seidman, 1965; Horton, 1993; Nsereko, 1996).

The hegemony of modern science results in the local confinement of ‘other’ knowledges, which can be both the cause of its discrimination and the basis for its resistance to the singularity of knowledge. The finding of a *tinyàngá* appears both as a form of security and an affirmation of what is specific to them, of ways of knowing what belongs to them and which thus enables them to acquire room to maneuver, *i.e.* spaces of empowerment. The process of negation of knowledge and strength of the ‘traditional field’ of knowledge equated the image of this action with that of witchcraft. But these are in fact entirely different personages, as both patients and practitioners of traditional medicine attest. “There is a difference between a healer and a witch doctor. A healer cures and a witch doctor kills. A witch doctor knows potions that kill. But healers cure.”²³

In southern Mozambique, good health is a broad concept, requiring inner equilibrium within one’s self, peace with one’s ancestors, with one’s neighbors, and with one’s own body; adequate food (which in the present context includes having a job and therefore an income) and protection from evil – whether natural or ‘sent’ by

a witch. If this situation is altered, either by the individual's failure to carry out necessary rituals or by greater forces at play, then the individual and/or the group become ill and everything must be done to identify not only the symptoms of social disorder, but moreover the origins of the evil and the contamination that results from it.

The *nyàngã*'s power resides in his/her ability to identify existing social tensions, contradictions, and areas of distrust, as well as the latent antisocial grudges that could manifest themselves as an illness, or bad luck, or even bring death to the community. To expose a witch, to locate the person and lead her/him to confess is seen as a means of 'emptying themselves' of the burden of evil and restoring feelings of lightness and emptiness which signify balance, health and good relations.

The *nyàngã* plays a dual role – divinatory and curative – based on a broader concept of illness, understood at two levels: as a social phenomenon, resulting in a deep alteration of everyday life, and as a physical phenomenon – a manifestation of something happening through pain in someone's body. The divinatory function seeks to identify the sources of the illness, prescribing several means to solve it. The curative function seeks to eliminate the physical symptoms. These two functions complement one another, and both help to cure. Thus the traditional healer knows best how to deal with these so-called 'traditional' illnesses, *i.e.* disorders with a heavy emotional component, because they deal with the body and the spirits which 'invade' the body and cause diverse problems to patients.

The healing process, aided by the *nyàngã*, is two-fold: it fosters a return to physical equilibrium as well as a psychological and emotional balance by overcoming the sanctions that befell the individual as a result of his/her disregard for the established norms.

However, if in the past people accused of practicing witchcraft were condemned to death, expelled from the community, or ordered to seek a doctor to help him/her to 'remove' the evil, nowadays the problem is quite a bit more complex.

The *tinyàngã* hold the knowledge (and therefore the power) to diagnose people's problems and to identify their causes; they claim to be able to counter spells, find witches that are allegedly responsible for their clients' ills, and to find remedies to their supplicants' problems. In Maputo, consulting a traditional healer will result in a *séance* of divination, followed by the application of the *muavi* or ordeal. The ordeal is a form of divination that simultaneously exposes wrongdoers and punishes them.²⁴

As we will explain below, nowadays, in cases in which the *regulos* or community courts cannot find a culprit for the act of witchcraft, they send the parties involved to see a *nyàngã* (Meneses, 2000; Gomes *et al.*, 2003; Meneses *et al.*, 2003).²⁵ The selection of the *nyàngã* is normally carried out by Ametramo.²⁶ The association decides which *nyàngã* will carry out the divination and the application of the ordeal, so as to ensure the neutrality of the witch-finding process.

In the cases reported to us where the *muavi* was applied, suspects were made to ingest a beverage. Once ingested, it is supposed to run through the body looking for *witchcraft*: if it does not find any, it will be excreted or vomited, thus proving the

innocence of the person falsely accused; in that case the accusers will compensate him. If *muavi* locates *witchcraft*, it will stop, and the accused will ‘fall down’ and even die. In the past the ones found ‘guilty’ used to be left to die; nowadays they are removed from the community.

I was told both that ordeals were forbidden since colonial times and that they could be authorized as part of the legal process nowadays (using dogs or roosters to symbolize people). The latter forms of ordeal were performed openly when we were carrying out our fieldwork, in early 2000.

Ordeals can also be a last resort for those made to feel vulnerable, when someone chooses to undergo them in order to show he/she is not guilty of witchcraft (Tonkin, 2000: 377, 381). Thus to investigate judicial ordeals involves analyzing different notions of guilt, innocence and the scope of human judgment – all part of a sociology of knowledge.

Witchcraft helps produce social balance within communities, a balance that is always precarious and in need of reconstruction. Both in an individual’s life and in the life of the community, a continuous movement is present, oscillating between the moral ideal of community and the embarrassing reality of individual assertion. This contradiction is controlled through witchcraft. Witchcraft holds the balance of power relations: forces beyond one’s power control the excessive success or power of a community leader – be it a traditional leader or a *nyàngà*. As a mechanism for controlling power, witchcraft is especially sensitive to changing patterns of social conflict, adapting rapidly to new situations.

When the state seems unable to resolve the conflicts and envy which arise from profound exclusion and social instability, the legitimacy of other forms of administering justice is greatly amplified. Traditional healers establish a very clear distinction between the limits and application of the official legal system and their possibilities of action. The process of locating the agent of evil by the *tinyàngà*, followed by the process of compelling the witches to confess their actions, should be analyzed as a way in which these persons are cleansed of the burden of evil, thereby opening the door for the restoration of equilibrium and good health of the community.

3. The Official Judicial System and the Problem of Witchcraft

In a recognized plurality of systems of conflict prevention and resolution, what does it mean to deal with witchcraft as part of this plurality?

In Mozambique, it is tantamount to saying that part of the normative, official system of justice rejects the possibility of the existence of witchcraft and, as a result, denies the potential for its practice. As noted by one *régulo*, “when they send cases of witchcraft to be resolved in the courts, they say that there is no basis [evidence].”²⁷ Consequently, witchcraft is not punishable as a crime. The failure to condemn witchcraft frequently leads to two paradoxical situations: on the one hand, the *nyàngà* can become a pernicious actor because he produces invisible evidence that results in the social or physical exclusion of the subject of the accusations; on the other hand, because the

definitions of good and evil and the concept of evidence are evaluated quite differently at the local level, the Mozambican state, by using the current penal code to continually uphold the accusations against the healers while dismissing those against the witchdoctors due to lack of evidence, risks turning away from being a defender of the community and turning into a defender of the evildoers – the *tinyàngà*.

After independence people expected the state to fight for them, to stand by them and free them from the long period of colonial exploitation. Traditional doctors expected greater openness “now that the country was finally ours,”²⁸ but that did not happen. In Mozambique, postcolonial legislators, following an approach that was also present in neighboring countries,²⁹ regarded witchcraft as a merely imaginary offense and tried to impose this view on the majority of the population. Frelimo’s ruling elite looked at these practices as a shameful phenomenon that had to be overcome through modernization. Rather than punishing the witches, all those who tried to defend themselves against witches were threatened with prison sentences: the traditional doctors, who can ‘smell out’ culprits, as well as ordinary citizens, who accused others of witchcraft, in addition to everyone who used violence against alleged witches.³⁰ However, whereas in the colonial period some of the activities of traditional healers were tolerated, after independence and the prohibition of their trade, the healers were persecuted (even those who were able to deal with witchcraft issues and cure people). The healers came to be seen as old-fashioned defenders of ‘obscure ideas’ (Castanheira, 1979; Machel, 1981). In short, in the postcolonial period the presence of a plurality of legal systems continues to be ignored by the formal court system; people remain barred by official law from acting against the threat of witches in an open, legal, official manner.

The Absence of ‘Facts’ and the Testimony of the Nyàngà

As we have shown, the main available source for the analysis of witchcraft consists of accusations and rumors, which results in numerous problems in the evaluation of its efficacy. Thus, how can it be ascertained that it was exactly the accused person who caused the fatal lightning? And how does a plaintiff hope to prove that a malicious neighbor ‘sent’ him a disease or a serious accident? Given these difficulties, under the scope of official law it is basically impossible to prove witchcraft, since it cannot be witnessed by the naked eye.

From the perspective of the modern state in an era of human rights and the rule of law, there are unsurpassable problems involved in the judicial management of witchcraft.³¹ Under official law it is impossible to prove witchcraft offenses, since there is usually no physical or tangible evidence, facts that ‘prove’ what the witch does. Therefore, witches cannot easily be brought to court for prosecution. Accusations of witchcraft can be presented as sworn testimony in courts of law easily enough. Witnesses can present evidence of motives that might plausibly be read as inclining a person toward witchcraft. They may also give precise testimony as to the opportunities that a person so inclined might have exploited in pursuit of their evil deeds. Such

witnesses might be cross-examined and their veracity tested. But the evidentiary essence of culpability, such as an eyewitness account of the criminal act in cases of suspected witchcraft, is forever occluded from view. In cases of witchcraft, silence and discretion are the norm.³² The forces at work are unseen, so an eyewitness is nowhere to be found, although when witchcraft is suspected herbs that might otherwise be acknowledged as innocent medicine can take on a harmful aspect (Ashforth, 2001: 15).

For the judicial court, it seems to be less difficult to make a fair judgment when judges do not have to deal with witches in a strict sense, but only with evidence of witchcraft practices, that is, apparent evidence of the aggression: *e.g.* fetishes buried under someone's door or hidden in a house. However, what those objects could prove is still questionable. Is a bunch of herbs a love incantation, aimed at regaining the affection of an unfaithful husband? Or is it intended to harm or kill him? (Schapera, 1975: 109) Ordinary judges would never be able to determine what power those fetishes possess; in case of doubt, evidence is sought in different forms. Because the official court cannot deal with these questions, if a case reaches the court, the judge usually sends it to be debated before community courts or directly by the *tinyàngà*.

As described above, traditional healers are called in since they do have the power to 'sniff out' the actions of a witch's craft; besides, their accounts of communication with ancestral spirits are taken as genuine forms of knowledge. But this knowledge is not open to direct corroboration in the manner typically required by modern jurisprudence (Peek, 1991; Meneses, 2000). The central proof provided by divination is directly accessible only by the *nyàngà*. Divination, especially when performed in a communal context where the 'predictions' of the diviner are legitimized by the response of an audience, can undoubtedly serve as a powerful means for unifying a community against a perception of internal threat. But such procedures are hardly consonant with the rituals of official court practice, due process, or doctrines of human rights. Within the witchcraft paradigm, it can be argued that requiring corroboration of accusations by independent *tinyàngà* can safeguard the veracity of divination as a form of evidence in judicial proceedings, as is the case in the procedures applied by Ametramo. By most accounts this was, and remains, the preferred practice in witch trials. But even independently corroborated narratives of the unseen worlds can leave questions of guilt unanswered. In order for justice to be perceived as being served in cases of witchcraft, the guilty party must ultimately confess. Given the inherent secrecy of the act, only the guilty can know what he/she has done.

Judicial Hybrids and Accusations of Witchcraft

According to Maciane Zimba,³³ in the first years after independence,³⁴ although *tinyàngà* were forbidden to carry out their medical activities, the popular courts would periodically turn to the *tinyàngà* to look for ways to resolve cases involving witchcraft. In vast areas of the country, rather than being persecuted by the state, they continued to perform their role as expert witnesses to help the judges solve the problem of how

to establish evidence against witches. The solution found by the judiciary, still officially not acknowledging witchcraft as a criminal offense, was, as before, to solve these issues by using the customary rules.

During the early revolutionary years, and while searching for a symbiosis of the 'progressive' forms of the customary with more democratic principles of justice, some of the traditional practices were translated into newer institutions of popular justice – the people's courts – which worked both in urban townships and rural settings (Sachs and Honwana Welch, 1990). The post-colonial state knew that in order to be recognized as a legitimate authority, the new judicial structure had to be anchored, at least to some extent, in the everyday life of both rulers and subjects alike. People's courts meted out a sort of popular justice, allowing for accusations of witchcraft to be brought to these courts. People's courts – later transformed into community courts, an embryonic form of hybrid justice between the official justice and common law – can prosecute witches and seek support from traditional doctors to detect the culprit (Gomes *et al.*, 2003, and chapter 10 in this volume). Hence, ancient practices were transformed into new forms of community justice, operating both in rural and urban environments.

Traditional healers keep their role in administering justice: as intermediaries between community courts or traditional authorities and the local population, they take control over the final decision. Indeed, because the detection of the 'witch' has to happen *post factum*, the figure of the traditional healer, whose power and knowledge legitimize his/her decision regarding the responsibility of the culprit, remained central. Therefore, a large hybrid fringe of legal bodies, such as community courts and traditional authorities – representing non-state bodies before which traditional healers are recognized as key elements in 'detecting' traces of evil presence – continue to be the entities that can act against and punish witches.

The analysis of several accusations of witchcraft, as well as of other conflict situations, leads one to understand that the absence of formality in these types of community justice has the advantage of fomenting community participation. Once both parties to the dispute are heard, the issue is discussed in an open debate, thereby permitting various views to be aired and allowing the community members to question the parties on any aspect that may be considered relevant to the dispute. Any final solution, however, depends ultimately on a consensus between the conflicting parties, as the ultimate objective is to restore harmony within the community by reaching a compromise. In general, the appropriate sentence is determined in accordance with a majority vote of the 'court' and sentences are applied in the spirit of reconciliation and re-education.

Locally, the sanctions applied by the *régulo* on those accused of practicing witchcraft – physical punishment (shaving their heads, *chambocadas*,³⁵ money fines and even expulsion from the group) and fines – are seen as forms of sentencing (Meneses *et al.*, 2003). Community courts normally apply fines (Gomes *et al.*, 2003).

One of the great strengths of these institutions of community justice is that justice is immediate, public, collective, face-to-face, and relatively transparent, and is based on local knowledge which is flexible and always re-worked in the context of a debated and contested reality.³⁶ That is why traditional notions of justice³⁷ should be viewed as one way of evaluating individuals through their own eyes, where the power to discredit and defame function within traditional codes of honor and dignity. The *nyàngà* is therefore feared by what could be considered evil – he/she controls and oversees irregular actions, assists the powerless, upholds morals and disciplines the group. The *nyàngà* powerless the individual in an interplay of interests based on solidarity, seeking to keep pressure on emerging conflicts while acting as the ‘knower’ – the possessor of a knowledge that is continually expanding and changing – to assure the stability of the group.

Traditional healers, as part of the customary judicial process, are consulted because they ‘talk’ the language of the local culture, they are speedy in their intervention, informal, not intimidating (since the applied customary law consists of rules and customs of that particular group or community), and accessible. Many of the people interviewed stated that they would rather appear before these entities of conflict resolution than before a magistrate. But the role they play in the contemporary state system remains unclear.

In short, among the aspects which distinguish the practices of community justice from those of official, codified law, the following are particularly critical: while the former is normally consensual and seeks to avoid the escalation of situations of conflict, the latter is based on the individual and seeks to resolve situations of open dispute. This situation is associated with another important phenomenon: traditional justice does not operate in a unilineal way. Because it deals with a system that attempts to regulate and avoid problematic situations within a certain group, the traditional chief and the community court members cannot risk losing the support of the social base, the community. Hence the prominent members of the community act as counselors and the population as evaluators of the appropriateness of the final decision.

These hybrid legal community bodies – traditional authorities or community courts – have shown a clear willingness to depart from a closed conception of the interpretation of law (either official or customary), in order to afford believers in witchcraft some defense. As a result of this attitude, some form of defendants have been saved from the gallows. This has been accomplished by (i) using these non-state bodies of conflict resolution to comply with the findings of the traditional healers, and (ii) allowing such bodies to address the questions accordingly.

4. Different Views on Legitimacy

Notoriously difficult to define, legitimacy implies an acceptance of the ‘right to rule’ of the authority concerned, and a compliance that is more or less voluntary.

An analysis of the privileged role the state wants to play in the field of justice permits a better understanding of the ruptures and continuities in terms of the legal framework from the colonial to postcolonial times. By looking at who is authorized and/or favored by the state, what knowledge is tolerated or suppressed, recognized and even left unknown, it is possible to get a stronger and more profound idea of the logic of the state's action.

From the people's point of view, the picture is somehow distinct. People do legitimize the experts they consult, whether they are trained in the official or in the so-called traditional arena. In fact, in terms of problem solving, normally traditional legitimacy is spontaneously associated with the *nyàngà* and rational legitimacy with the modern lawyer, the latter as a result of his or her degrees. The acceptance of traditional healers depends on the loyalty and confidence of those who recognize them as the inheritors of wisdom. The legitimacy, the recognition of their competence, of their merit in that profession, is attested to by those who constantly consult them.

The paradox which many insist constitutes an impediment to development – the persistence of traditional values – deserves careful analysis. Traditionalism can only be that to the extent that it is distinguished from Western modernity by virtue of their differences, but in fact traditionalism is continuously fed by modernity. The crossover of various roles occurs at several levels: the state ignores traditional doctors, while its functionaries have frequent recourse to them; the Law Faculties do not recognize their knowledge while many lawyers do not hesitate to consult, or to send their clients to the *tinyàngà*. This paradox is only an apparent contradiction: the norm established and imposed by the state is based on a legal and rational model of legitimacy. The agents that make up these institutions, however, dispense with these principles when they behave as patients, obeying only practical rules. This is a phenomenon that Santos (2002b) describes as reactionary multiculturalism, when differences crystallize knowledge, compartmentalizing them as a means of recreating the traditional as immutable in time and space. What one observes from below is an active hybridization, an active meshwork which recognizes cultural differences but aims to construct a democratic interrelationship among them.

However, the *tinyàngà* may constitute a source of the problem, because they may prey on the ignorance of the people to extort gain for themselves, to accuse other people falsely of being witches, and to lead their clients to commit dastardly crimes against innocent people, usually close relatives. Accusations of involvement in witchcraft have become a convenient way of getting rid of opponents, rivals or unpopular people in the community. In a highly communal social setting, eroded by neo-liberal economic moves, witch-hunts often reflect the jealousy felt toward others who succeeded inside the group, or the envy aroused by successful individuals in the community.

Even in the case of trials by community courts or customary law, given that witch trials encourage arbitrary judgments, there is a danger of misusing them for personal vengeance. To denounce people as witches and drag them before a court may turn

into a convenient means of intimidating one's political rivals or private foes. Also, due to the extreme ambiguity of witchcraft practices (in the sense that a person fighting to achieve a certain goal may leave the conflicting party totally unprotected by monopolizing, with the help of the traditional healer, the power of the spirits), in certain instances only plaintiffs who can gain the backing of a strong and influential witch-hunter (*i.e.*, someone who can fight a powerful traditional healer protecting the other party) will have a chance to succeed with their charges of witchcraft. Such backing, however, is not free. As a consequence, it is quite frequent for the wealthy to make use of witch trials to terrorize their opponents (Geschiere, 1997: 114, 170-72).

In any case, the competition for power and the overlapping of the spheres of intervention of the different structures in the resolution of conflicts on the ground is notorious. The landscape of justices in Mozambique is made up of a series of institutions whose performance depends on the fluidity of the connections between them. The better these relative roles are defined and the duties attributed to them by society in general and the communities in particular are fulfilled, the more efficient their performance will be and the more concrete citizens' rights and state interests will be.

The risk of involvement of traditional healers with the political and economic elite may lead to an increasing association of the state's representatives with traditional authorities, thus reinforcing the heterogeneous character of the state (Santos, in this volume).³⁸ In a context of increased demand for community participation in the resolution of its problems, there needs to be a harmonization between constitutional principles and the administrative organization of the state, in terms of styles of action, cultural assumptions and the normative structures of traditional authorities, regardless of the form or guise that may have developed. The analysis undertaken corroborates the fact that a legal hybridization has long been developing in Mozambique; such hybridization even accepts the official modern legal model while creating the very space for its application. Seen from this perspective, the vitality of the justices in which the traditional authorities are located mirrors (albeit inversely) the difficulties faced by an official justice that appears more and more unable to meet its objectives, given the distance from its subjects.

Conclusion: Challenges for a Greater Democratization of Justice

Unofficial dispute resolution has been the norm in the urban areas in Mozambique for as long as these areas have existed. Official legal institutions have been regarded as secondary in importance, seemingly because of the inability to satisfy the community's sense of justice.

However, as the study on accusations of witchcraft and the role of community justices at work in Mozambique demonstrates, the most notable defect of the existing system of justice is that the majority of Mozambicans were (and still are) alienated from the court system due to the alien nature of the courts, based on an exogenous cultural system. Judicial systems have to be understood primarily in terms of their

own dynamics, which are the product of the interplay of internal and external forces, whose legitimacy resides in the fact that they respond to the needs and perceptions of the local communities. Thus the reason for the presence of an immense display of alternative judicial systems is that “they are really ours, they are from here, and we see and know how they function [...] they understand the problems and know how to solve them.”³⁹

Witchcraft has not disappeared under the onslaught of modernity; instead, it has encroached itself in the very heart of modernity. In contemporary legal practice in Mozambique, witchcraft figures as a reality and as an actionable offense in its own right. In the region where this study took place, witchcraft operates as a privileged mirror which permits a greater manipulation of the traditional. Such a mirror suggests that one should perhaps be analyzing the mosaic of problems and solutions sought as examples of resistance towards the construction of another modernity, a situation which is not exclusive to Mozambique, or even to Africa.

Discourses concerning witchcraft do not express a resistance to modern development; rather they constitute reflections of a constant struggle for a better life. Because ‘community justice’ is an open system, formally delimited only in its practice, the possibilities to explain the problems of life are innumerable, allowing for an anthropophagic interaction with different elements and thus forming the cornerstone of projects of ‘other forms of modernity’, as several authors have pointed out. In this sense, accusations of witchcraft, far from reinforcing a radically different, alternative means of conflict resolution, constitute a discourse concerning the problems affecting the family, the community and society at large.

In Mozambique, as in most African countries, intellectuals, politicians and healers maintain that they, like all common citizens, share the belief that witchcraft is part of the cultural landscape, and that they act accordingly. Therefore there is a growing awareness that all efforts must be made to ensure that access to a broader conception of justice becomes a reality for the majority of the citizens. This is no small task, but the experience in Mozambique shows that it is possible to give established, distinct systems of dispute resolution the opportunity to be a part of this process. As with all alternative remedies for a problem, each should be carefully analyzed so as to formulate the best practical solution.

In short, the analysis of accusations of witchcraft and their trial constitutes a window that allows us to suggest that there are well-founded reasons for a ‘Mozambicanization’ of legislation. To the extent that the people’s personal sense of justice and their state-imposed law diverge, nobody can expect them to have confidence in the institutions of a democratic state. If state authorities continue to avoid dealing with legal aspects of such facts of daily life as witchcraft, people will surmise that this is the result of the witches manipulating the state (Ashforth, 1998a; Niehaus, 2002). This probably helps to explain the recognition, in the 2004 CCConstitution (with the

new Constitutional reforms), of Mozambican society as being characterized by legal plurality.⁴⁰

The strengthening of local power presupposes the search for cohesive partnerships between local forces that, from below, can pressure the higher levels of the state to favor these changes (Ngugi, 2002). It introduces a dimension which lies far beyond the question of the search for a new strategy to respond to fears of witchcraft. Here lies perhaps – in the midst of tension and dialogue between communities, civil society and the basic structures of the state – the beginning of the uphill path to what Santos (1998b: 34) calls the “the state as a new social movement,” a construct which envisages the building of a state in which the present emphasis on the Westernized approach to law and problems, and the lack of concern for the future, will be substituted with an emphasis on solidarity, social welfare and security for all Mozambicans.

Notes

- 1 Both terms were used, under the assumption of the presence of a common history, language and culture shared by specific, self-contained collectives. Customary law provided the prescriptive rules binding such units.
- 2 On this subject, see chapters 1 and 2.
- 3 The theme of legal pluralism and community justice in Mozambique is analysed in more detail in chapters 10 and 11.
- 4 Santos describes *inter-legality* as a dominant characteristic of our times. “We live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing. Our legal life is constituted by an intersection of different legal orders, that is, by *inter-legality*” (1995: 473).
- 5 I am aware of the unsatisfactory nature of ‘witchcraft’ as an analytical term. A detailed discussion of the concept and distinct definitions proposed in distinct contexts in Africa, as well as on the ambiguities of a transfer of Westernized concepts of magic and witchcraft in African societies can be seen in Douglas (1977: xiii-xxviii); Last and Chavunduka (1986); Horton (1993); Geschiere (1997: 12-15, 215-24).
- 6 Even though the nationalist movement – Frelimo – was predominantly composed of natives of Mozambique.
- 7 See note 23 in chapter 1.
- 8 That is, the assumption of a country made of free and equal citizens.
- 9 In southern Mozambique, among the machangana, they were called *bosi*. In other parts of the country the designations differ – for example, they are called *mmene* in the northern, amakhuwa regions.
- 10 Indeed, whenever these traditional chiefs opposed the colonial authorities in one way or another, they were replaced with more prudent individuals.
- 11 And their assistants, the *cabos de terra*. To exercise their political power, traditional authorities had their own small police forces (and resorted to physical punishment).

Yet, the *regulo* did not act individually, but rather as a type of catalyst of opinions, such that a case was presented not only to the chief, but also to his counselors. The sentence was produced after hearing the opinion of the *b'andlha'*, i.e. the assembly of prominent members of the local community. Indeed, physical force was insufficient to guarantee the legitimacy of their actions. To that end, traditional authorities had to appeal to the support of the local lineages (to which they frequently did not belong, as mentioned above) to negotiate the demands of the colonial administration and find solutions to emerging conflicts.

- 12 This law criminalized both those who were regarded as practicing witchcraft and those who accused them of doing so, but 'witchcraft' itself was neither described nor defined. There was therefore considerable fluidity and room for interpretation as to what, exactly, constituted 'witchcraft', thus generating an ambivalent answer of the colonial state about the nature of witchcraft.
- 13 The failure of 'recognition' of the aims of local communities by the modern state was one of the main reasons that led Renamo (the National Movement of Resistance of Mozambique) to carry out a long civil war that ravaged the country for more than a decade. In 1992, Frelimo's government and Renamo signed a peace agreement, a fact that allowed for political and social stability in the country. Meanwhile Renamo transformed itself from a movement of resistance into a political party, thus becoming the second political force in the political landscape of Mozambique.
- 14 Plural of *nyàngà*. Although there are various designations for traditional therapists, this is the most commonly used designation in southern Mozambique. The *nyàngà* is the person who can smell out the evil person among the neighbors, who aims to bring disaster onto the community. The *nyàngà* has the knowledge and power to heal, counting on the help of ancestral spirits to protect the local community. Hence the healer is one of the pillars upon which the welfare of society rests and for this reason he is most highly respected (Krige, 1936: 297 ff).
- 15 In the sense that it will affect the entire community.
- 16 African healing traditions are generally described as holistic and do not recognize the Western distinction between medicine, justice and spirituality.
- 17 The *nòyì* is a spirit with evil powers that can provoke trouble even from a distance, through the help of somebody whose body he/she uses. Usually the *valòyì* act at night, through the introduction of foreign pieces (bones, blood) into somebody's body; as a consequence, the person is poisoned and risks dying. During the day the evil spirit can act through elements he has previously contaminated. The *nòyì* can still use a person whose body he/she 'opened' and occupied, making that person his slave. These people can be transformed into animals, such as leopards, hyenas, serpents, as well as be forced to work in the fields for the spirit, or to steal goods to feed the spirit (Muthemba, 1970; Honwana, 2002).
- 18 P. Xavier. Personal interview. July 2000.

- 19 The crucial point is that the knowledge used by traditional healers is itself ambivalent. They can heal or kill. The distinction between good and evil in this struggle of knowledge powers is mainly a question of perspective. Everybody involved has to protect him/herself from the aggression of others, and, if possible, gain influence over the opponents, that is, to weaken and ultimately destroy them. Since this knowledge can be used for the most disparate purposes, it becomes almost impossible to draw a clear line between healers and witches.
- 20 This issue has been reported by the local and international media, and is usually described as cases of ‘human organs trafficking’.
- 21 Besides, fear of accusation may enforce conformity, thereby preventing what might be perceived as anti-social behaviour (Marwick, 1965: 282).
- 22 Also known since colonial times as witchdoctors, given their power to fight witchcraft.
- 23 M. Suzana, traditional healer. Personal interview. February 2000.
- 24 Ordeals by fire or the administration of poisonous beverages, for instance – widely reported in time and space – burn the guilty or impure but leave the innocent or the genuine devotee unharmed. In other parts of Mozambique heated knives have been used as well.
- 25 The role of Ametramo in community courts is briefly addressed in chapter 11.
- 26 Ametramo stands for *Associação dos Médicos Tradicionais de Moçambique* (Mozambican Association of Traditional Healers). This association was formalized in the late 1990s.
- 27 Régulo Santaca. Personal interview. May 1995.
- 28 Zimba, M.F. Personal interview. March 2000.
- 29 In Tanzania, for example – though revised in 1958 to take into account changes in local government structure – the Witchcraft Ordinance of 1928, “declares both the practice of witchcraft and the accusation of another as a witch, unless before a local authority or a court of law, to be illegal” (Green, 1994: 23). Prescribed punishment, though not always applied, includes fines, imprisonment and house arrest under the supervision of district officials (*ibid.*: 24).
- 30 Zimba, M.F.; Tamele, C. Personal interviews. April 2000.
- 31 As Ashforth notes (2001: 16), another problem with the complex relationship between official, state justice and witchcraft, which we will be tackling only superficially, is of an ontological nature. No matter how culturally sensitive legal codes are, from the point of view of someone imbued with the Western human rights tradition it is impossible to understand the type of social exclusion and punishment to which traditional communities subject witches. Thus, anyone accused of witchcraft in an era of human rights can call upon these doctrines to trump the claims of their accusers. For people who live in a world populated with witches, however, the willingness of a person to practice witchcraft automatically cancels out his/her rights to membership in the ‘human’ community. From this perspective, if witches are something other than human, they can hardly claim

human rights to protect themselves from the righteous anger and justice of the community and of the society.

- 32 For many people, the identification and/or expulsion of an alleged witch represent the permanence, in the community, of a source of possible danger, since the witch may strike back, now that he/she has been exposed. Also, the 'official' detection of very few witchcraft cases is due to the fact that people like policemen, judges, etc. share the fears and beliefs that witches are a danger to well-being, and thus refuse to point them out and accuse them.
- 33 Personal interview with *nyàngà* F. Maciane Zimba. April 2001. See also Meneses, 2004.
- 34 In the early revolutionary years, when the *nyanga*'s therapeutic role was prohibited.
- 35 A form of physical punishment consisting of blows administered by a heavy wooden object, called *chamboco*.
- 36 In contrast to official, formal justice. Formal justice is extremely slow and removed from most of the population due to the hermetic nature of its design (Santos and Trindade, 2003). The language of the official courts is Portuguese, although less than 40% of the population is fluent in it; together with the 'foreign' court procedures, official justice is hardly accessible, user-friendly, or even fair to most people in the country.
- 37 Of course this, too, has many negative implications (including flagrant discrimination against and diminishment of women, physical punishment, etc., which are unconstitutional).
- 38 However, it may also have the opposite result, when important decisions are made in exclusive circles, to which one would only gain access by being a member of a restricted group or by possessing a specific knowledge, thus bringing up the question of legitimacy in a democratic state. Whoever rises to the highest political offices and knows how to defend himself against his rivals seems to have the necessary spiritual protection at his disposal.
- 39 V. Banze. Personal Interview. July 2000.
- 40 Article 4 of the Constitution states: "The State recognizes the various normative and conflict resolution systems that coexist in Mozambique, as far as they do not contradict the values and fundamental principles granted by the Constitution".