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The Judicial System: Structure, Legal Education and Legal Training

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Introduction

A characterization of the judicial system and the so-called 'Mozambican legal sector' is necessary in order to contextualize the litigation patterns and the performance of the official courts in Mozambique. This chapter presents a brief, purely descriptive account of the Mozambican judicial system. We do not propose an exhaustive approach to the subject but instead prefer to focus on the organization of the courts, their constitutional framework, their powers, etc. It is impossible, however, to avoid other questions relevant to the characterization of the judicial system of the country and the work of the courts. Special attention will be paid to the Supreme Court, the General Attorney's Office[1] and the particular institutions involved in legal education and training.[2]

1. The Evolution of the Judiciary (1975-1999)

The evolution of the organization of the judicial system from independence to the present is a reflection of the development of the political system and the legal-constitutional order of Mozambique. It is therefore possible to identify three periods in the evolution of the organization of the judicial system, which can be defined as:

a) post-independence (1975-1978);
b) the judicial organization of the 'new legality' (1978-1992);
c) the new judicial organization within the context of peace, political pluralism and a market economy, following the 1990 Constitution in which the separation

of powers and the independence of the judicial system are enshrined (since 1992).[3]

The Period from 1975 to 1978

The first period identified (from 1975 to 1978) represents the evolution of the colonial system into the construction of a new legal order. On 25 June 1975 the Constitution of the People's Republic of Mozambique was published, as the almost natural consequence of the declaration of independence. In it a new (political, economic, social, etc.) national order was proclaimed – popular power – which aimed to break with all the old operational frameworks of the colonial state. Expressly enshrined in the Constitution as one of the fundamental objectives of the Republic was "the elimination of structures of oppression and colonial exploitation […] and the mentality which underlies them" (Article 4 of the Constitution). Based on this political line, the 1975 Constitution envisaged, in abstract, the fundamental rules for the organization of the judicial system, referring them to statutory law for concretization.[4] In general terms, it consigned the basis of the judicial function to the courts (Article 62), with the Supreme Popular Court as the highest organ in the hierarchy of the system, responsible for promoting the uniform application of the law by all the courts and ensuring that the Constitution and all the legal norms of the Republic (Article 63) were implemented. In addition to this, particular attention was paid to the principle of the independence of courts in the exercise of their functions (Article 65).

The building of a new 'legal order' and a new judicial system was one of the objectives to be fulfilled. The Directive of the Third Frelimo Congress on Justice is particularly illustrative in this context, emphasizing urgency in the "destruction of the existing judicial structure, as part of the destruction of the colonial-capitalist apparatus" (*Justiça Popular,* 1980: 3). The goal was to construct a system of popular justice inspired by the experiences of the people, especially those in the liberated zones,[5] since "they show just how profoundly incompatible colonial and capitalist legislation is with the traditions, way of life and characteristics of our society and our people." It was in this context that the draft bill of the Law on the Organization of the Judiciary was discussed widely, at a national level. This experience constituted a high point in the history of Mozambican justice, with the establishment of a legal and judicial system that was intended to be unitary and based on the country's very reality.

The Judicial Organization of the New Legal Order (1978-1992)[6]

Three years after independence, the Law on the Organization of the Judiciary of Mozambique (Law no. 12/78 of 2 December) was approved.

After establishing some general principles to guide the activity of the courts (such as the guarantee and defense of the legal order and constitutional principles, the equal right of all citizens to have recourse to the courts, the independence of the courts, etc.), the law defined the division of the judicial system. This had "whenever

possible, and bearing in mind the needs of the system of judicial organization, to coincide with the division of the administration, with any alteration to the latter implying corresponding changes to the division of the judicial system" (Article 9). As a rule, a court was to be in operation in each administrative division. Therefore, in descending order of the hierarchy of the courts, the functions of the judiciary would be exercised by the Supreme Popular Court, the provincial popular courts, the district popular courts, and the local popular courts. Neighborhood popular courts could also be created "in cities where this was justified by the density of the population or by other circumstances" (Article 10). The fundamental right to have verdicts reconsidered – wherein each of the courts had to review, on appeal, the decision of the court immediately below them – was guaranteed.

In accordance with the Law on the Organization of the Judiciary of Mozambique, popular courts began to be created at all levels of the country's administrative divisions: locality, community village, neighborhood, district, province, right up to the Supreme Court.

The popular courts (with the exception of the local ones – the community village, locality and neighborhood courts, which functioned only with elected judges[7]) were composed of professional judges appointed by the Ministry of Justice and judges elected by the Popular Assemblies at the appropriate level.[8] Although Law no. 12/78 envisaged the creation of the Supreme Popular Court, the former Court of Appeals of the Portuguese judicial system remained in operation until 1979, when it was replaced by the High Court of Appeals. The Supreme Court only began to function after 1988, when the Chief Justice, the Deputy Chief Justice and the Justices were appointed.

One of the most striking characteristics of the Mozambican judicial system is that at all levels, including the Supreme Court, the exercise of judicial activity is not the sole prerogative of professional judges. Up to the new Constitutional reforms (2004), the law also required that elected judges should take part in judicial proceedings alongside them (see below).

Elected judges were lay citizens who were presented as candidates to the popular assemblies and elected by them to carry out judicial duties. Elected judges who had the confidence of citizens and the Frelimo party sat alongside professional judges and applied official law.

Elected judges, who still serve today, exercise authentic jurisdictional functions and intervene in decisions on matters of fact and matters of law in criminal cases.[9] They work in shifts, ensuring that there is a certain amount of circulation among them. During the time they are involved in working for the courts, they are given leave of absence from their regular employment.[10]

The Locality and Neighborhood Popular Courts

The locality and neighborhood popular courts formed the base of the judicial system. These courts were the only ones made up exclusively of elected judges and had to

number a minimum of three and a maximum of five judges (Articles 36 and 37 of Law no. 12/78).

In criminal matters, these courts only dealt with minor infractions liable to lead to sanctions such as a public warning, community service for no more than thirty days, payment of a fine not exceeding $ 1,000 or even compensation for the injured party. In terms of civil litigation, they could deal with cases involving amounts not exceeding $10,000.[11]

At local and neighborhood level all judges were elected and resolved the cases presented to them by reconciling the parties concerned. When this was not possible they made decisions on the basis of common sense and justice (Article 38) and could only apply measures that did not entail deprivation of liberty (such as fines, temporary suspension of a right, and community service).[12]

The District Popular Courts

In addition to the elected judges, the district popular courts included a judge appointed by the Ministry of Justice, on the advice of the Governor of the Province (Article 30). Both the appointed and the elected judges (a minimum of two and a maximum of four) had to participate in decisions (no. 1 of Article 31).

In terms of civil jurisdiction, they dealt with cases pertaining to family matters and all others in which the financial sum involved did not exceed $50,000 (Article 32, no. 1, a). If there was no special law delegating powers to any other court, they also dealt with all criminal cases liable to a prison sentence of no more than two years and with infractions committed by judges from the locality, community village and neighborhood popular courts involving criminal acts committed during the exercise of their duties (Article 32, no. 2, a and b). Finally, they also functioned as an appeals court for all decisions made by the locality, community village and neighborhood popular courts, which represented the base of the court system (Article 33, no. 2, c).

The Provincial Popular Courts[13]

The provincial popular courts consisted of a judge appointed by the Ministry of Justice (who acted as the chief judge of the court) and four elected judges. The presence of the appointed judge and at least two of the elected judges was required for the court to hear any case or trial (Article 22, no. 1).

These judicial courts had residual powers both in civil and in criminal matters. They heard all the cases which had not been previously attributed to other courts (Article 23, no. 1, a and no. 2, a). They also judged magistrates from the district courts for crimes committed during the exercise of their duties. In addition, they were empowered to reconsider, as appeals, all the decisions of the district courts (Article 23, no. 1, b and no. 2, b). However, in relation to civil jurisdiction, the law only allowed appeals on decisions made by the district courts in which the amount involved was in excess of $5,000 (Article 34 to the contrary). By decree the Ministry of Justice, special sections (civil, criminal, labor, etc.) could be created in the provincial courts

when justified by the amount of work. In this case, judges were nominated to preside over the various sections.

The Supreme Popular Court

The Supreme Popular Court was the highest body of the judicial system and had jurisdiction over the entire country. It was responsible for directing the entire organization of the judicial system, and could "issue instructions or directives of a general and mandatory nature" to the various courts, "in order to ensure uniformity in the application of the law." These directives assumed the status of laws.

The court had to consist of at least six justices appointed by the Ministry of Justice and a minimum of eighteen elected judges, nine of whom were substitutes. The appointed justices had to have a law degree and be over 25 years of age.

The court functioned in sections, as a higher court (reconsidering the decisions of the provincial courts), and as a lower court to – amongst other cases – judge magistrates from the provincial courts who had committed criminal acts during the exercise of their duties. In this case, each section could only deliberate if two elected judges and one appointed judge (the sentencing magistrate) were present.

Decisions made by sections, when operating as a lower judicial court, were heard as appeals at a Plenary Sitting of the Supreme Court. The Court was also authorized to standardize jurisprudence, settle disputes relating to jurisdiction between the courts and other authorities, judge criminal proceedings in which the accused were particular categories of people with an important position in the state or the Frelimo party (for example, the President of the Republic, the Popular Assembly deputies and the members of the Central Committee of Frelimo party),[14] etc. In order for the Plenary Sitting to deliberate on questions concerning its own powers, at least three appointed Justices and five elected judges had to be present, in addition to the Chief Justice.

In general, the popular court system as a whole (including the prosecutors who were an integral part of the system) played a double role: the courts contributed to the countrywide presence of the new independent state institutions, whilst promoting the transition from one legal system to another. Popular courts were perceived as part of a social laboratory where the 'old' and the 'new' characteristics of Mozambican society could find forms of coexistence and compromise that could be reflected in the creation of a new legal framework. However, a note of caution is required. In fact, genuine popular participation in the administration of justice did not really suit the centralized, authoritarian nature of the single party state of the time, meaning that, in many instances, the people's courts became vehicles for the imposition of state power, thus delegitimizing their own essence.

The New Judicial Organization in a Period of Peace, Pluralism and Market Economy

The political and economic reforms introduced in the country at the end of the eighties, following the change from a single party socialist regime to a multiparty

regime defending a market economy, had immediate repercussions on the judicial system.

The 1990 Constitution gave ample recognition to political and human rights, such as equality (Article 66), freedom of expression and information (Article 74) and the right to freedom of movement, as well as the right to reside in any part of the country or abroad (Article 83). It established the right to strike – except in the essential services – (Article 91) and freedom of religion and worship (Article 78). It also established the principle of strict legality to be observed in detentions and trials, the principle of the presumption of innocence (Article 98), the principle of non-retroactivity in penal law (Article 99), the right to resort to *habeas corpus* (Article 102) and the right to defense and to legal assistance and aid, regardless of financial status (Article 100).

This new Fundamental Law gave the country access to the global economy and established various types of ownership: state, cooperative, private-state joint ownership, and private (Article 41). While the land remained the exclusive property of the state, the Constitution established conditions for using and benefiting from the land which could be conferred upon individuals or collectives (Articles 46 and 47).

The 1990 Constitution, in proclaiming that "the courts shall penalize violations of the legal order and shall adjudicate disputes in accordance with the law" (Article161, no. 3) came, in the opinion of many, to reinforce a state monopoly over the production and application of the law and, consequently, the professionalization of the judicial function. Subsequent regulatory legislation, by producing a significant turnabout in the principles and practice of previous judicial practices – which had attributed great importance to the participation of citizens and communities in the entire process of the administration of justice – managed, among other things, to define the disintegration of the courts that had constituted the base of the judicial system (and which subsequently became known as the Community Courts).[15] In the same way, it altered the hierarchy of the judicial courts[16] by creating new courts with special powers[17] and established the Institute for Legal Assistance and Representation [18] and the Bar Association.[19] It became necessary, therefore, to formulate certain new rules for the organization of the judicial system. In addition to those laid down by the former 1975 Constitution, some general principles were announced which, in modern constitutions, are enshrined in the democratic rule of law. These include the principles of the general obligation to comply with judicial rulings (Article 162), the impartiality and independence of judges (Article 164), exclusivity in the exercise of judicial functions (Article 166), etc. The creation of special courts was also forbidden: "Other than the courts specified in the Constitution, no other court may be established with jurisdiction over specific categories of crimes" (no. 2 of Article 167).[20]

The new Law on the Organization of the Judiciary – or Organic Law of the Judicial Courts (Law no. 10/92 of 6 May) introduced profound alterations to the judicial system, in compliance with the political and constitutional philosophy which had been adopted, based on the separation of powers and the principles of independence, impartiality and autonomy of judges and their exclusive obedience to

the law. The elected judges became eligible to participate only in decisions on matters of fact, assisting the professional judges (Article 71 of the 1990 Constitution).

The 1990 Constitution defined the courts as sovereign bodies which guaranteed and reinforced the legal order, securing the rights and freedoms of citizens and the legal interests of the different bodies and entities officially in existence (Article 169 and 161). This constitutional innovation made judicial, executive and legislative powers independent, with the Minister of Justice no longer directing the judicial system.[21] The courts were no longer accountable to the Popular Assembly.[22] Since then, judges have had their own statutes, which establish basic principles such as their independence and tenure, define their career structure and establish their rights and duties (Law no. 10/91 of 30 July). The autonomy of the judicial system also had budgetary repercussions: the national budget has separate sections for the Supreme Court and the courts at provincial level.[23]

The Organic Law of the Judicial Courts establishes that "the courts are sovereign organs which administer justice in the name of the people" and regulates the organization, competence and functioning of the courts in the light of the new constitutional principles. The same law also stipulates new general principles (for example, citizens' access to justice guaranteed by the state, the presumption of the innocence of the accused, public hearings), thus complementing the constitutional guarantees.

One of the important changes in the new judicial organization was to limit formal jurisdiction to district level, by adopting the then-dominant interpretation of Article 161, no. 3 of the Constitution. As they did not apply purely legal criteria (written law), the grassroots (locality and neighborhood) courts created under the previous judicial organization were excluded from the official judicial system. At the same time, a new law was passed (Law no. 4/92) creating the Community Courts as bodies for conciliation and the resolution of minor conflicts under what could be defined as the informal administration of justice. The Community Courts continued to be ruled by the principles previously applied to the local and neighborhood courts and remained under the direction of the Ministry of Justice.

The separation of the executive, a fundamental step towards the construction of the rule of law, was established to the extent that the government had no responsibility for the management of the judicial system. This had collateral effects, for which the system was not prepared. Executive and management tasks increased substantially, without a corresponding increase in human resources. On the one hand, the courts, namely the Supreme Court, are currently responsible for the effective functioning and management of all levels of the official judicial system. On the other hand, the autonomy of the courts and the General Attorney's Office has had the parallel effect of making the attorneys 'guests' of the judicial courts, since they are now no longer an integral part of them. Consequently, the organization of the judicial system is no longer dependent on the Ministry of Justice,[24] the courts no longer use the term

'popular' and the elected judges can now only take part in lower court trials and deliberate only in matters of fact.

The Composition, Powers and Structure of the Courts

As had been the case under the previous systems, the current court structure was intended to make the organization of the judicial system correspond, as closely as possible, to the administrative divisions in the country.[25]

The system included the Supreme Court and the provincial and district courts (Article 19, no. 1), with the potential to create specialist courts and district judicial courts in the capitals of the provinces whenever justified by circumstances (Article 19, no. 2). In its internal order, the power of a court is established in terms of subject matter, hierarchy, value and territory (Article 22, no. 1). Whenever the circumstances justify it, specialist judicial courts and district judicial courts can be established in the provincial capitals. Some specialist courts have already been created – such as the Juvenile Court in Maputo city,[26] the Police Court in Maputo city and the Labor Courts. Although created by law in 1992 with competence in labor matters and constituting a specialist court system, the Labor Courts have not yet been formally established.

The hierarchical structure of the courts guarantees the right to appeal the court's decision. Appeals are allowed on matters of law and matters of fact, although in the latter case this is allowed only once. This means that, as far as matters of law are concerned, there can be two levels of appeal (from the district court to the provincial court and from there to the Supreme Court), depending on the requirements established in the Civil Procedure Code.

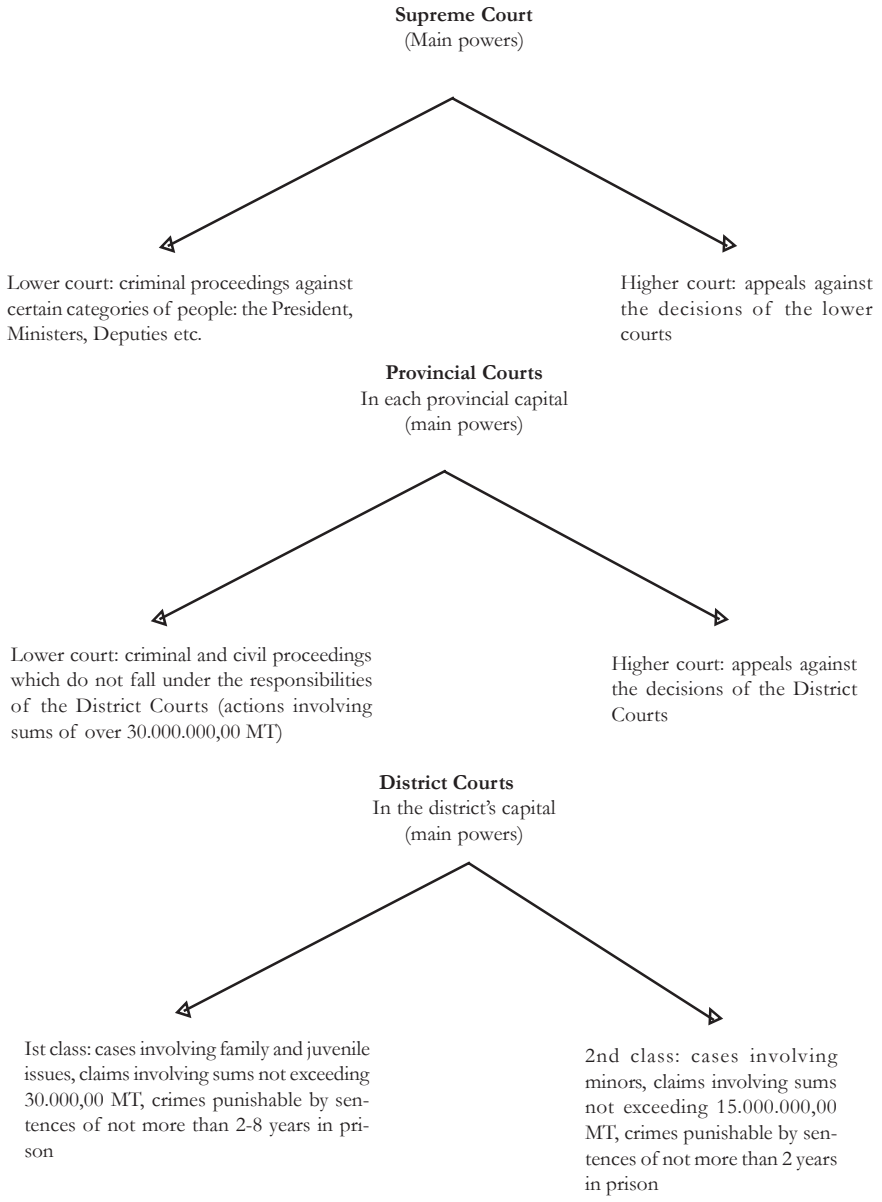
In accordance with the changes brought about by the Organic Law of the Judicial Courts under Decree no. 24/98 of 2 June, the first and second class district courts hear cases in which the sums involved do not exceed 30,000,000 *meticais* and 15,000,000 *meticais*, respectively.[27] The provincial courts are responsible for judging cases involving amounts of over 30,000,000 *meticais*. In criminal matters, the district courts are responsible for judging crimes punishable by sentences of not more than eight years in prison. The provincial courts, as lower courts, judge civil and criminal cases which do not fall within the responsibility of the district courts (see figure 6.1).

The District Judicial Courts: The Country, the Courts Created and the Courts in Operation

Given the exclusion of the base courts from the judicial system, the district judicial courts act as lower judicial courts. The law envisages the existence of first and second class district courts and establishes the powers of each. In practice, however, this distinction is not preserved.

Each of these courts is composed of a Chief Judge, who is a professional judge, and elected judges (Article 57).[28] If justified by the volume of work, they can be organized into sections, which must, in this case, include a Chief Judge. They function as a collective and at least two elected judges must be present, in addition to the Chief Judge when a case is to be decided (Article 58).

Figure 6.1: The Organization of the Judicial System



Source: Law no. 10/92 of 6 May and Decree no. 24/98 of 2 June.

Law no. 10/92 of 6 May presents a map of the judicial organization in which the administration of justice covers the whole country. As we have already indicated, this objective is far from having been achieved.

District judicial courts have limited competence in both criminal matters (crimes punishable by up to two years in prison) and civil matters. In civil matters, in addition to cases involving the aforementioned sums, they also hear cases involving the jurisdiction of minors (Article 60, no. 1, a). In relation to criminal litigation, they deal initially with infractions punishable with a prison sentence of not more than two years, but their powers were widened by Decree no. 24/98 2 June so as to include crimes punishable by a prison sentence of up to eight years.

In terms of the administrative division of Mozambique, the district courts must be created by legislation, but this has not happened in the case of 35 of the 143 district courts.[29]

An analysis of the districts where the district judicial courts have not been created by legal decree enables us to detect two kinds of rationale underlying their selection. The first is that they correspond to the districts which are farthest away from the capital and have increasingly smaller populations, which the state and the official administration have difficulty in reaching, or do not reach at all. The second logic is that of not creating district courts in cities in which provincial judicial courts are functioning or where other municipal district courts exist, as in the case of Maputo city.[30]

Among the courts that have been created, there are six municipal district courts in operation: three in the city of Maputo (six court offices), two in the province of Maputo (the city of Matola and Machava) and one in Gaza (the city of Xai-Xai). Of the 128 rural districts which exist in Mozambique, according to Dagnino *et al.* (1996) the appropriate judicial courts are only in operation in 80 of them. According to the Ministry of Justice, there were about 90 district courts functioning in rural districts in 2000.[31]

The situation observed in the field enables us to state that, of the 90 courts officially understood to be in operation according to the table above, at least four had not yet been legally created in 2000 (Chemba and Chibabava, in Sofala, and Mabote and Funhalouro, in Inhambane). In relation to Chibabava, the research team visited the district at the time of the first project (1996-2000) and found that the administration of justice was carried out by a 'Municipal Court' from the colonial period which was still in operation and was directed by an assistant district administrator and three 'elected' judges.[32] Also, the more recently created districts are not expected to have district judicial courts, this being the case in the Macossa district, in this Manica province.[33]

As we have already stated, in Mozambique the total number of both rural district and municipal district (urban) judicial courts with powers at district level is 143.[34] With only about 90 in operation, this means that over 50 districts still lack a judicial court. Thus, the judicial system ends at district level and barely covers 62% of the districts in existence.

Table 6.1: Judicial Courts in 'Rural' Districts

CABO DELGADO
1. Ancuabe
2. Chiúre
3. Macomia
4. Mocímboa da Praia
5. Montepe
6. Mueda
7. Namuno
8. Palma

NIASSA
1. Cuamba
2. Madimba
3. Maúa
4. Marrupa
5. Mecanhelas
6. Metangula
7. Unango
8. Mavago

NAMPULA
1. angoshe
2. Eráti (Namapa)
3. Malema
4. Meconta
5. Mecuburi
6. Moma
7. Monapo
8. Mossuril
9. Murrupula
10. Nacala (Porto)
11. Ribáuè
12. Ilha de Mocambique
13. Rapale
14. Muecate
15. Nametil
16. Liupo (Mogincual)
17. Memba

ZAMBEZIA
1. Chinde
2. Gurué
3. Ile
4. Alto--Molócuè
5. Mocuba
6. Pebane
7. Milange
8. Maganja da Costa
9. Morrumbala (to open)

MAPUTO
1. Boane
2. Manhica
3. Namaacha
4. Marracuene
5. Magude
6. Matutuine (Bela Vista)
7. Moamba

MANICA
1. Gondola
2. Guro
3. Machaze
4. Manica
5. Espungabera
6. Catandica

SOFALA
1. Buzi
2. Caia
3. Dondo
4. Gorongoza
5. Marromeu
6. Nhamatanda
7. Chibabava
8. Chemba
9. Inhaminga

Table 6.1: Judicial Courts in 'Rural' Districts (contd.)

INHAMBANE
1. Maxixe
2. Massinga
3. Morrumbene
4. Homoíne
5. Vilankulo
6. Zavala (Quissico)
7. Inharrime
8. Funhalouro
9. Panda
10. Inhassoro
11. Mabote
12. Nova Mambone
13. Langano (proposed)

GAZA
1. Bilene-Macia
2. Chibuto
3. Chicualacuala
4. Chokwé
5. Guijá
6. Mabalane
7. Mandlakazi
8. Massingir

TETE
1. Angónia
2. Chnagara
3. Marávia (to open)
4. Moatiza
5. Mutarara
6. Cahora Bassa
7. Magoé
8. Macanga (to open)
9. Zumbo (to open)

Total 90+5 (to open)

Source: Information from the Supreme Court 11/07/2000

The Provincial Courts

Provincial courts exist in all of the country's eleven provinces (including the city of Maputo, which has the status of a province), with one or more court offices. They are presided over by a Chief Judge and are divided into criminal sections and civil sections. All the provincial judges have a law degree. They can function as lower or higher courts. In the case of the former, they are competent to hear all civil or penal cases which are not the responsibility of the other courts, while still retaining their own residual powers. The provincial court also considers all crimes or illicit civil acts practiced by lower-ranking magistrates which are related to the exercise of their duties (Article 51). When it functions as a lower court, there must be a minimum of two elected judges and one professional judge present for it to be able to deliberate.

As a higher court hearing appeals against the decisions of the district courts, it consists of three professional judges, two of whom are required for any deliberations. As previously mentioned, the Constitution limits the elected judges to hearing cases in the lower court.

In the provincial courts sections can be created as required to deal with the demands of the workload.

In the city of Maputo, the provincial court has four criminal sections, three civil sections, two labor sections and one criminal instruction section. There are also two courts with special jurisdiction, the Juvenile Court (two sections) and the Police Court.

Between 30 December 1978 and 19 December 1979, legislation was produced to create today's provincial judicial courts (then known as the provincial popular courts). Later on, the Judicial Court of Maputo city (2 November 1983), the city of Maputo Juvenile Court (13 November 1980) and the city of Maputo Police Court were created. This meant separate jurisdiction for the city and the province of Maputo and an answer to the concentration, quantity and specific nature of litigation in the capital of the country.

Between independence and the creation of these courts, the former area judicial courts (*tribunais de comarca*) – dating from colonial times – remained in operation.

The process of specialization in the provincial judicial courts took place in two complementary ways. On the one hand, this occurred through the creation of courts with special jurisdiction (the Juvenile Court and the Police Court in Maputo) and, on the other hand, through the creation of both civil and criminal specialized sections and, in recent years, the creation of labor sections (in the city of Maputo, the province of Maputo and Sofala) and criminal instruction sections (the Court of Maputo city).[35]

2. The Supreme Court: The Guardian of the Judicial System

Judicial and Administrative Structure

In accordance with Law no. 10/92, the Supreme Court is the highest judicial court and is composed of the Chief Justice, Deputy Chief Justice, Justices and elected judges. It consists of a minimum of seven Justices and 17 elected judges, eight of whom are substitutes (Article 30).[36] As already noted, since 1992 the judiciary is no longer dependent on the Ministry of Justice and the personnel within it have become dependent on the Supreme Court.[37]

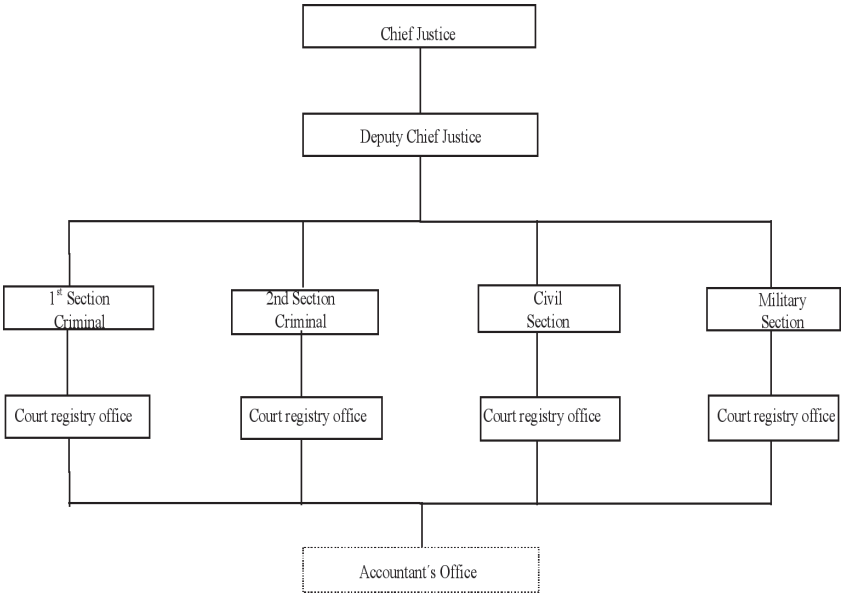
The Justices are nominated by the President of the Republic, on the advice of the Superior Council of the Judicial System (Article 226, no. 2 and 3 of the 2004 Constitution).

The Supreme Court is organized both as a plenary and in sections. Specializations are established by the internal regulations of the Supreme Court. The Chief Justice presides over the plenary sittings. He or she can also preside, when necessary, over the sectional closed sessions. In this case, the Chief Justice does not have the right to vote, unless there is a hung verdict (Article 41, no. 1, d and 36, no. 4). The Deputy Chief Justice replaces the Chief Justice whenever the latter is absent or sick. A plenary sitting can function as a lower or higher court. In the former case, it consists of the Chief Justice, Deputy Chief Justice, Justices and elected judges. To deliberate, the presence of at least two thirds of its members is required (Article 32). Just like the other attributes which may be conferred, by law, upon the plenary sittings as a unique body, it can judge crimes and illicit civil acts practiced by a particular category of

people (for example, the President of the Republic, the President of the Assembly of the Republic, the Prime Minister and the Justices of the Supreme Court – Article 34).

As a higher court, amongst its other duties, the plenary sitting is responsible for standardizing jurisprudence, hearing conflicts of jurisdiction between the courts and other authorities, judge (as the highest body and in matters of law) appeals against rulings made by the various jurisdictions and reconsidering (on appeal) the decisions of the sections of the Supreme Court as lower courts (Article 33). With regard to the sections, when they function as higher courts they are composed of a minimum of two professional judges. When they rule as a lower court, they also include two elected judges. The sections, as lower courts, are responsible for judging criminal cases in which the accused are deputies of the Assembly of the Republic, members of the Council of Ministers, magistrates and professional judges from the provincial judicial courts, etc. As higher courts, they judge appeals on matters of fact and matters of law against decisions which – under the terms of the law on civil proceedings – must be brought before the Supreme Court; rule on conflicts of duty in the provincial district courts, hear requests for *habeas corpus*, etc.

Figure 6.2: The Supreme Court – Judicial Structure



Source: Law n.o 10/92 and adapted from Dagnino *et al*., 1996.

The Supreme Court still assumes the powers of a higher appeals court in labor and military matters. The Constitution envisages the creation of labor and military jurisdiction, but this has not yet been implemented.[38] In fact, since 1992 – the year in which the justice and labor commissions were abolished and before the labor courts

were created – jurisdiction has been exercised on a lower level by the civil sections of the provincial courts and in appeal by the Supreme Court. The Supreme Court also rules – as a higher court – in military cases, with the provincial military courts acting as the lower court. Additionally, it acts as a lower court when dealing with the trials of higher-ranking officers. Finally, as established by the 1990 Constitution, the Constitutional Council was formed in 2003. Since then, the responsibilities previously assumed by the Supreme Court in relation to constitutional and electoral matters have ended.[39]

At present (2005), the Supreme Court has a Chief Justice, a Deputy Chief Justice and six Justices.[40] It has two criminal sections, one civil (and labor) section and a military section, each possessing its own court offices. The court also has an accountant's office (see figure 6.2).

In addition to its jurisdictional function, the Supreme Court is responsible for the general administration of the court system, including its human, financial and patrimonial resources. Thus, the Supreme Court is internally organized with the aim of carrying out various managerial and technical support functions for the judicial apparatus: the Department of Administration, Patrimony and Finance (DAPF), the Department of Human Resources (DHR), the Department of Information and Legal Statistics (DILS) and the Library.[41]

The Supreme Court: Functions, Independence and the Credibility of the Courts

The political and symbolic functions of the Supreme Court are of particular importance in Mozambique, because it is responsible for directing and supervising the organization of the judicial system. This encompasses internal control and discipline, management of the system, litigation resolution and social control, as well as jurisdictional functions, through its decisions. When it exercises its competence to judge cases of major social and political interest or those of a political nature, the Supreme Court also takes on the function of guaranteeing the stability and maintenance of the political system.

We will pay particular attention, in this chapter, to some of the decisions relating to the functioning of the political system. When the Supreme Court was entitled to exercise constitutional competence (up to the introduction of the Constitutional Council in 2003), its decisions (such as the decision on the unconstitutionality of the law that decided that Muslim holy days were to be national holidays, as well as its decisions on electoral matters) functioned as a guarantee of the stability and independence of the court system.

South Africa, Russia, Hungary or Colombia also provide examples of constitutional courts (or courts carrying out such functions) which can judicialize politics whilst maintaining (or constructing) their independence in relation to other bodies of political power, thus providing credibility for the judicial system. Heinz Klug (1996, 2000),

however, notes that in the construction of the South African judicial system, there is a gap between the credibility of justice and the credibility of the Constitutional Court.

The Supreme Court in Mozambique has given credibility to the courts by deciding, in an impartial and independent manner, to acquit a general accused by the party in power of treason and attempting a coup d'etat, as well as by penalizing and even dismissing judges involved in illegal activities.

In an analysis of the Mozambican judicial system, it may be seen that its credibility can be evaluated from four perspectives: 1) its distance from citizens, *i.e.* in relation to citizen access to the law and to justice; 2) the excessive length of cases; 3) the civil and criminal alegality and illegality of certain corrupt practices; 4) the independence of the judicial system.

In terms of the Supreme Court, we have to take into account that, at the moment, one source to its discredit is the excessive slowness of the proceedings, which requires us to analyze whether this is attenuated, compensated for or even overcome by the level of political independence which its decisions reveal.

The ability of the judicial courts to judge and sentence crimes of corruption committed by those who exercise political, economic and social power and/or by members of the judicial system is also a challenge to their own external and internal independence. On the one hand, there is an almost total absence in the courts of cases of corrupt practices imputed to citizens who exercise political, economic and social power. On the other hand, in cases of corruption practiced by magistrates and state officials who stand trial, the defendants are usually condemned.

Like the courts in the countries previously mentioned, an analysis of the Supreme Court's performance shows that it has been a guarantor of the consolidation of independent judicial power in this transitional period in the political system and that, through its supervisory and managerial functions, it has also established the credibility of the legal system. Nevertheless, in the opinion of many people we interviewed, the Supreme Court should be more active in tackling the evils of the system, namely delays, corruption, inadequate legislation and the poor qualifications of its human resources.

3. The Organization and Recent Activities of the General Attorney's Office

Since 1975, the Constitutions have defined the General Attorney's Office (the body of state attorneys) as a hierarchical magistracy that functions in parallel with the court judges, under the Attorney General.[42] As stated by the 1978 Law on the Organization of the Judiciary, its functions essentially consist of inspecting and controlling legality, promoting compliance with the law and participating in the defense of the established legal order. Together with the courts, it is its mission to file cases, that is, to present the state's case against the defendant in a criminal prosecution, to supervise criminal investigation, to control legality and periods of detention, to guarantee the protection of minors, absentees and the disabled, and to defend and represent the interests of the state.

However, in spite of the new functional model, the General Attorney's Office as an institution continued to operate, to a large extent, under colonial legislation.

Law no. 6/89 – approved on 19 September – created the General Attorney's Office as a central body of the state. The General Attorney's Office enjoys autonomy in relation to both the Ministry of Justice and the official court system and is bound only by the criteria of legality, objectivity and exemplary behavior. As this law – granting the General Attorney's Office a much wider range of powers than before – was only passed one year before the 1990 Constitution, it does not completely embody contemporary constitutional principles. For example, it states that the body of state attorneys represents and defends the property of the Frelimo party, that the Superior Council of the General Attorney's Office studies party and state decisions on the law, justice and legality with a view to their implementation and that the General Attorney's Office presents an annual report on its activities to the People's Assembly.

Both the 1990 and 2004 Constitutions did not include the General Attorney's Office among its sovereign bodies.

The General Attorney's Office has a dual nature. On the one hand, it is a central body of the state for controlling legality, promoting observance of the law and defending the legal order. As such, the Attorney-General and the Deputy Attorneys-General are appointed, released and dismissed by the President of the Republic. On the other hand it is the highest body of attorneyship in the country, being independent and accountable exclusively to the law. The General Attorney's Office therefore constitutes a parallel body to the judicial magistracy and has as its primary function the defense and control of legality. The attorneys are bound by the criteria of legality, objectivity, impartiality and subjection to the law. However, the current Organic Law of the General Attorney's Office – which was the first sign of a change in the judicial system – although advanced for its time, now needs to be adapted to the *status quo* created by the new constitutions.

The provincial and district attorney offices are peripheral bodies of the General Attorneys' Office. At a central level there is the Consultative Council (a counseling body comprising the Attorney-General, the Deputy Attorney-General and the Assistant Attorneys General) and the Superior Council of the General Attorney's Office, a management body comprising the leadership of the institution and the Provincial State Attorneys (still inactive).

The law envisages the creation of specialized departments and a secretariat with technical and administrative duties. The General Attorney's Office consists of specialized departments (the Department of Legal Control; the Department of Criminal Affairs; the Department of Civil Affairs, Juveniles, Labor and the Family and the Department of Administrative Affairs), a General Secretariat, a Judicial Registry Office, and the Library and technical infrastructure.

In recent years some of the functions attributed to the Attorney-General have been carried out by entities within civil society, as is the case with actions aimed at raising the legal awareness of citizens. Others, such as the control of legality, the

issuing of legal opinions and the inspection of prison establishments, have been partially attributed to them, or else are being exercised by other institutions, namely the Administrative Court, the Constitutional Council and the Ministry of Justice.

According to the annual report of the General Attorney's Office for the year 1999,[43] the Consultative Council issued legal opinions and analyzed enquiries arising out of denunciations against deputies in the Assembly of the Republic and the non-governmental organizations (NGOs). The same document stated that, in the period under analysis, the Department of Legal Control received and acted on denunciations through public institutions and bodies of the state in order to achieve legality. The departments of Criminal Affairs and Civil Affairs, Juveniles, Labor and the Family helped meet needs and fill internal gaps, working together with civil society and other state bodies in order to fulfill their mission. The Department of Administrative Affairs took charge of personnel problems – particularly training – and oversaw actions brought against the Mozambican state. The General Secretary initiated a process of administrative and financial restructuring, replacement of personnel, the computerization of services and the standardization of statistics from judicial proceedings.[44]

The General Attorney's Office: Problems, Crises and Opportunities

The General Attorney's Office, like the Mozambican courts, has serious shortcomings in relation to human resources (in terms of recruitment, selection and training), insufficient financial resources, inadequate premises (offices and housing for state attorneys) and equipment. This situation is made worse,, on the one hand, by the autonomy of the General Attorney's Office and its separation from the judicial courts, which has made the state attorneys tolerated 'guests' of the court system, and on the other hand because 15 years after the autonomy of the General Attorney's Office was legally established (Law no. 6/89), legislation has still not been issued to approve the statutes of its magistrates.

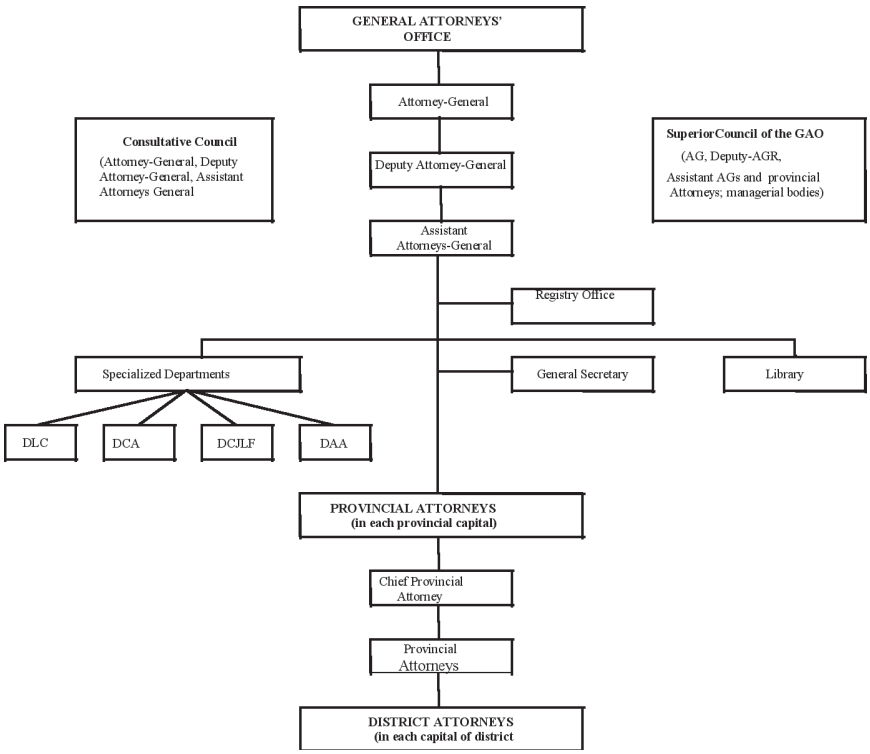
Since the early nineties the rise in non-legal, illegal and criminal corruption, violent crime and urban insecurity have placed the General Attorney's Office at the center of controversy in Mozambican society.

Paradoxically, rather than increased support for the idea of consolidating the General Attorney's Office, support has frequently been given to the creation of new bodies to carry out functions within the areas of responsibility of the General Attorney's Office.

First of all there were the 'external' and 'internal' supporters of the Higher Authority to Combat Corruption within the state, which has not yet been created. The Superior Council of the General Attorney's Office was obviously, against the establishment of such an authority. Secondly, and more recently, the 2004 Constitution created the legal figure of an Ombudsman, "as an office established to guarantee the rights of citizens and to uphold legality and justice in the actions of the Public Administration" (Article 256). So far, however, the new bodies competing with the

Attorney-General have not begun to operate, although the latter has neither reinforced nor improved its performance.

Figure 6.3: The Organization of the General Attorney's Office



In short, the General Attorney's Office is repeatedly accused of a lack of action and of apathy. There have been several successive crises involving the Assembly of the Republic, which has echoed these criticisms, and which led to the President of the Republic, in 1997 and again in 2000, to relieve the General-Attorney from office. It is to be hoped that the solution to the crisis will open up a window of opportunity for the General Attorney's Office to establish itself within the landscape of justices in Mozambique.

4. The Institutional Structure of the Administration of Official Justice

The administration of official justice is not limited to the judicial courts, the community courts or even the various modes of legal representation (lawyers, legal technicians and legal assistants)[45] and their organizations (the Bar Association and the IPAJ). We therefore need to summarize the basic institutional structure of the administration of justice, with some notes on the following categories of institutions: a) the managerial and consultative institutions of the judicial courts; b) the Ministry of Justice; c) the Administrative Court; and d) the Constitutional Council.

Table 6.2: The Main Institutional Structures of the Administration of Justice

Ministry of Justice	Responsible for the Prison Services, Registries and Notary Public services, Religious Affairs, Investigation and Legislation, inter-institutional legal advice to the Government, technical supervision of legislation drafted by other Ministries, awarding legal recognition to associations, foundations and political parties, articulation between the State and religious organizations. Responsible for the Law Reform Commission recently transformed into a Technical Unit for Law Reform (UTREL), the Centre for Legal and Judicial Training (CFJJ), and the IPAJ.
Judicial Courts	Consisting of a Supreme Court based in Maputo which began operating after 1989, 11 provincial judicial courts – including the City of Maputo Court – and about 90 of the 147 district judicial courts throughout the country. The judicial magistrates are appointed, promoted, removed or dismissed by the Superior Council of the Judiciary – the self-governing body of the judges – under the direction of the Chief Justice of the Supreme Court.
Constitutional Council	Responsible for weighing the constitutionality of laws and the illegality of other normative acts of state offices, assessing electoral complaints and appeals in the last instance and validating and proclaiming electoral results.
Administrative Court	Responsible for judging actions which have, as their aim, litigation resulting from administrative fiscal and customs matters and controlling the legality of administrative acts, in addition to inspecting the legality of the State Budget and public expenditure (the Court of Accounts).

Table 6.2: The Main Institutional Structures of the Administration of Justice (contd.)

General Attorney's Office	Responsible for initiating and carrying out legal actions, especially criminal proceedings; controls the legality of detentions, guarantees the protection of minors, absentees and the disabled, and defends and represents the interests of the state at central, provincial and district level.
Institute of Legal Assistance and Representation (IPAJ)	Guarantees access to justice and free legal assistance and defense to economically disadvantaged citizens. Dependent on the Ministry of Justice.
Bar Association	Created in September 1996, consisting only of law graduates (around 300 lawyers, the vast majority of whom are based in the city of Maputo).
Faculties of Law[46]	Currently under the guardianship of the Ministry of Education and Culture. Since the early 1990s several private universities have been offering law courses. The main Law Faculty, however, remains the one at Eduardo Mondlane University. In 2002 it had 947 students enrolled in daytime and evening courses (the Faculty also has a branch in Beira city). The undergraduate course lasts 4 years. In October 2002 a Masters course was also introduced,
Community Courts	Fully integrated into the Judicial System (as the local popular courts) until 1992. Since then, considered bodies for the extra-judicial resolution of minor disputes. Although supervision of the Community Courts has been assigned to the Ministry of Justice, these courts remain separate from the official justice bodies.

Source: Dagnino *et al.*, 1996; 1990 and 2004 Constitution; CFJJ/CES, 2004

The Management and Consultative Institutions of the Judicial Courts

In accordance with Law no. 10/92 of 6 May, management of the judicial organization is exercised by the Chief Justice of the Supreme Court and by the Judicial Council. This body – which normally meets once a year or else extraordinarily, whenever justified by circumstances and convened by the Chief Justice – includes the Deputy Chief Justice, the Justices and General Secretary of the Supreme Court and the Chief Judges of the provincial courts. It is their responsibility, amongst other important matters, to establish the guiding principles of judicial activity, assess their efficiency and consider and approve the plans, programs, and annual budget proposals of the courts. In addition to this body, a Consultative Council also operates at the level of the Supreme Court, consisting of the Chief Justice, Deputy Chief Justice, General Secretary and four other senior judicial individuals appointed by the Chief Justice. Its function is to analyze and issue opinions on matters submitted for its consideration.

In turn, the statutes of the Judicial Magistrates instituted the Superior Council of the Judiciary as a self-governing magistrates' organization, responsible for nominating, appointing, transferring, promoting and dismissing members, as well as evaluating professional merit and exercising disciplinary action.[47] It is composed of the Supreme Court Chief Justice, the Deputy Chief Justice, two members appointed by the President of the Republic, five elected by the Assembly of the Republic and seven members of the judicial system elected by their peers.[48]

The Ministry of Justice

After the courts and the General Attorney's Office became autonomous, the Ministry of Justice suffered a substantial reduction of its powers. It is responsible for legal reform, the community courts, the Prison Services (a responsibility which it shares with the Ministry of the Interior), the IPAJ, the Registry and Notary Public services, the editing of legislative texts and the supervision of legislation from other Ministries. Recently the Centre for Legal and Judicial Training was created within the Ministry and put in charge of training for all the legal professions and for socio-legal research into law and justice in Mozambique.

The Ministry of Justice Department of Research and Legislation is responsible for developing research into legal matters as well as compiling and publishing the main legislation of the country. Nevertheless, this Department has been practically inoperative in this respect for some years.

The Administrative Court

After the new 1990 Constitution came into force, the Administrative Court was revitalized. It decides on administrative litigation in a single instance (conflicts arising from administrative acts, mainly between the citizen and the state) and decides on appeals in fiscal and customs litigation. In addition to its jurisdictional competence, the Administrative Court is responsible for controlling the legality of administrative acts and inspecting the legality of public expenditure, thereby assuming the function

of a Court of Accounts. This has, to date, been its main activity, giving the Administrative Court functions similar to those of the General State Auditor.

Having emerged from a period of stagnation and almost complete inaction, the Administrative Court is still in a phase of replenishing its human (magistrates and functionaries) and material resources. Some legislative measures have been taken in order to update its methods of operation and help it adjust to the new situation in the country. There still remains, however, an urgent need to reform the Administrative Code.[49]

The Administrative Court is not yet represented at provincial level, but three 'regional' administrative courts are planned (with competence for the provinces in the north, center and south of the country, respectively) when enough appropriately trained auditors are available.

5. University Law Education and Legal and Judicial Training Institutions

Universities Law Schools

An analysis of education and legal training is essential to an understanding of the performance of the courts and the reform agenda for the legal system. Having opened in 1975, shortly before independence, the Law Faculty at Eduardo Mondlane University was closed between 1983 and 1987, following a review of its academic curriculum. Now it offers daytime and evening law courses, the latter attended mainly by student-workers. Both courses last four years. In 2002, 947 students were enrolled in the Faculty of Law. The data available indicates that there is a growing demand for admission (in 2002 about 2,000 candidates applied for the 100 available daytime vacancies). Recently, this School – the oldest in the country – opened a branch in Beira city.

Whilst in the late 1990s one of the strongest criticisms of this Faculty was the low number of graduates (amounting to 32 in 1999), conditions have since improved, with a significant increase in the number of students graduating since 2002 (see below).

The curriculum, like others in the country, is very similar to the curricula of the European Law Faculties in the Roman-Germanic tradition. In other words, there is a strong emphasis on legal dogma and specialist legal-technical knowledge, with little emphasis on subjects or areas of study that provide an understanding of the plurality of legal orders in Mozambican society and the need for articulation between oral and written law, so that the social and cultural contexts in which each of these operates can be understood. The teaching of state criminal law is based on sanctions, yet the cultural practices of the people of Mozambique are based on reconciliation. The teaching of law must free itself from the strict formalist limits of a curriculum structure that is excessively dogmatic, reconciling expert legal knowledge with a general understanding of the production, function and conditions for the application of positive law. A multidisciplinary approach to the teaching of law which is able to reveal the social contexts underlying the norms and legal relations entails providing students with new working methods, encouraging active participation in teaching,

teamwork, seminars, applied research or legal aid wherever needed. It also requires the introduction of new subjects which focus more on areas such as the History of Law, the Sociology of Law, the Anthropology of Law or the Philosophy of Law.

Very recently, the Eduardo Mondlane University's Law Faculty initiated a pilot legal clinic (the Law Practice Centre) in Maputo, so that students could put the knowledge they had acquired into practice, whilst granting legal aid to the more needy citizens.

Since the mid-nineties new Law Schools have opened, all in private universities. For example, the ISPU,[50] ISCTEM[51] and the Catholic University of Mozambique[52] – in various regions of the country – all offer law degrees. Therefore, in addition to students graduating in foreign countries, there has been a substantial increase in the number of law graduates in recent years, generating a wealth of lawyers for the private sector and a greater possibility of integrating law graduates into all levels of the state apparatus, namely the courts and state attorney offices.

As a result, there has been a dramatic increase in the number of law graduates. In 2003, 353 students graduated from the various Law Schools, 42% (147) of whom were from the Eduardo Mondlane University. In the same year over 2,300 students were enrolled in Law Schools (Ministério do Ensino Superior, Ciência e Tecnologia, 2004: 5-6, 10).[53]

The Center for Legal and Judicial Training

The scarcity, quality and fragmented nature of legal training created the need to establish a central entity responsible for the legal training of magistrates: the Centre for Legal and Judicial Training (CFJJ).[54] With the CFJJ, the coordination of training activities – previously undertaken separately by each judicial institution – was achieved, thereby contributing to the creation of a common legal culture for the various actors in the justice sector.

Created by Decree no. 34/97 of 21 October, the CFJJ provides initial, continuous and specific training for judges, prosecutors, justice officials, public defenders and other sector employees (for example, court registry office and public notary staff).

In order to complement the professional training that should be adapted to the country's circumstances, the CFJJ seeks to create a new profile for the magistrate, in which the normative and technical-bureaucratic culture is replaced with a legal, political and democratic culture – a culture that has justice as its strategy and, on this basis, makes it possible to handle legal cases and legal judicial activity advantageously. Justice is, therefore, strategically in the service of social cohesion and the deepening of democracy, which means effective respect for human rights.

The general principles behind this new training, selection and recruitment correspond, first and foremost, to an initial training that cannot be obtained within the Law Faculties alone.

The CFJJ also provides for the possibility of having magistrates whose initial training is not in law. This will be tried out in pilot projects, for example in the area of

family, juvenile or labor law, and the profile of the judge must emerge from this intervention.

In short, this means that in-service and complementary training are becoming increasingly important.

Training must also be specialized, or contain periods of specialization within it. The number and quality of trained judges is inadequate. Whilst almost all the judges and prosecutors at provincial level are law graduates and have entered their professions after a period of specific training at the Centre for Judicial Studies in Lisbon or, more recently, at the CFJJ, there are very few graduate judges at district level; the rest have only received basic training. Hence, the CFJJ also offers improvement courses, moving away from the dogmatic and formalistic legal education provided by the Law Faculties and seeking to discuss with the trainees the real problems faced by citizens, for which they demand justice.

Increasingly, courts with specialized competence must also have specific forms of training, with specific entry conditions and specific exams – which is the case in the criminal instruction courts, the sentencing courts and the administrative, maritime, commercial, arbitration and fiscal courts.

The Centre was therefore designed to serve a new judicial, political and democratic culture. It is structured according to the following principles:

a) the CFJJ teachers are, as far as possible, people with a wide range of professional experience – internship should not just take place in the courts;
b) with regard to formal law, the judicial courts are not the only instances for settling conflicts in Mozambique; it is deemed important to acknowledge the complex legal reality that characterizes Mozambican society;
c) the computerization of the judicial system is a crucial process and it is therefore necessary to acquire some basic knowledge of information technology;
d) recruitment and selection have to be pluralistic;
e) evaluation and disciplinary systems must be strict, but always contain two phases: firstly, pedagogical evaluation, followed by corrective evaluation.

In addition, in order to complement a professional training that should reflect the country's circumstances, the Centre also undertakes research into the administration of formal and informal justice. Although it is one of the most recent institutions in the justice sector, the Centre already enjoys considerable prestige, has held many courses and training activities for a variety of judicial actors (including criminal investigation officers) and has assembled a group of highly qualified Mozambican trainers and researchers (including lawyers, anthropologists and sociologists).

Conclusion

The evolution of the organization of the judicial system from independence to the present mirrors the development of the political system and the legal-constitutional order of Mozambique. It is therefore possible to identify three periods in the evolution

of the organization of the judicial system which can be defined as: a) post-independence (1975-1978); b) the judicial organization of the 'new legality' (1978-1992); c) the new judicial organization within the context of peace, political pluralism and a market economy, following the 1990 Constitution in which the separation of powers and the independence of the judicial system are enshrined (since 1992). After 2004 a new period began, based on the new constitutional principle of recognizing legal pluralism (Article 4).

In contemporary Mozambique, the Supreme Court manages the administration of the court system, including the lower district courts, as well as the provincial courts. The district courts suffer from a lack of human resources, as well as from insufficient financial and material resources. In addition, not all districts have a formally established and/or functioning official court.

The intermediate-level or provincial courts also suffer from a serious lack of both human and financial resources, although the judges who serve in them do have law degrees. Nonetheless, some of these courts are already operating with general and more specialized sections (civil, labor, and criminal instruction). Specialized courts also operate in Maputo city (Police and Juvenile courts).

The administration of official justice is not limited to the judicial courts, the community courts or even the various forms of legal representation (lawyers, legal technicians and legal assistants) and their organizations (the Bar Association and the IPAJ). The main institutional structure of the administration of justice is divided into the following categories of institutions: a) the managerial and consultative institutions of the judicial courts; b) the Ministry of Justice; c) the Administrative Court; d) the Constitutional Council.

In conclusion, it should also be noted that two important changes have taken place in recent years that are central to the development of the justice system in Mozambique. Firstly, new private and state Law Faculties have been opened (in Maputo, Beira, Quelimane and Nampula). Secondly, the Centre for Legal and Judicial Training has been established and is responsible for training judges and state attorneys, as well as other judicial officials. In the near future, this will provide more and better qualified human resources for the courts.

Notes

1 *Procuradoria Geral da República*, in Portuguese.
2 See also chapter 2, which presents an overview of the main political and legal changes in Mozambique.
3 Recently a new period was initiated, following the approval of new constitutional reforms (2004) which led to the recognition of legal pluralism in the country. Since the necessary – and long-awaited – reform of the judiciary is still in progress, this period will not be analyzed in this chapter.
4 The option was to build a unitary legal system within a unitary state, prompting a transitional process in which the new Law had to be constructed from the concrete

experience of conflict resolution at the local level. Although the 1975 Constitution did not contain any specific reference to customary law, several Frelimo directives on law reform pointed to the need to gather and study local customs for conflict resolution, as well as to the experience of the liberated areas during the struggle for independence.

5 Regions of Mozambique controlled by Frelimo during the struggle for independence. There, the nationalist leaders devised the entire strategy for future political and social development of the country.

6 On this period of popular justice, see Sachs and Welsh (1990); Gundersen and Berg (1991); Gundersen (1992).

7 These judges were elected directly, by the community.

8 See also note 27 in chapter 2.

9 This situation was to change with the 1990 Constitution and with the present Organic Law of the Judicial Courts (Law no. 10/92 of 6 May), as we shall see later. After the constitutional reforms of the early 1990s, elected judges could only intervene in decisions on matters of fact and lower court trials. The 2004 Constitution reaffirms, in Article 216, the principle of the participation of elected judges in court, maintaining their intervention in lower court hearings and decisions on matters of fact (no. 2). This article imposes some conditions on their participation, by affirming that their presence will "be compulsory in cases where procedural law requires it, or when the trial judge so decides, when the Attorney's office recommends it or when the parties request it" (no. 3).

10 This system of using lay judges elected by assemblies representing the people to exercise judicial functions is not unique to the Republic of Mozambique. There is also, for example, the case of the former Soviet Union, in Terebilov (1978), or even the social judges which Portuguese legislation admits in jurisdiction relating to Labor, the Family and Minors; in the latter case, the jury can intervene, at the request of the interested parties, in penal judgments.

11 The colonial *escudo* was replaced by the *metical* – the new Mozambican currency – in 1980.

12 In this section of the chapter, legal references without further specification belong to Law no. 12/78 of 2 December.

13 The equivalent of the High Court.

14 Until the beginning of the 1990s, Mozambique had a single party political system.

15 See Law no. 4/92 of 6 May, which created the community courts. This topic is analyzed in detail in chapter 10.

16 The base of the formal judicial system became the district courts, with the creation of 1st and 2nd class district courts envisaged, in addition to the provincial courts and the Supreme Court (Law no. 10/92 of 6 May).

17 For example the labor courts, which replaced the former Labor Commissions of Justice (Law no. 18/92 of 14 October).

18 *Instituto de Patrocínio e Assistência Jurídica* – IPAJ, in Portuguese. On this subject see chapters 2 and 9.
19 See Laws no. 6 and 7/94 of 13 and 14 September, respectively.
20 This constitutional guarantee becomes extremely important when we look at the history of post-independence Mozambique. The 1975 Constitution, incomplete in terms of basic rights, allowed the creation of the Revolutionary Military Court. This aimed to combat crimes which threatened the political, social and economic order of the country. It is known that this Court, albeit in another political context, eventually threatened some guarantees which nowadays are considered inalienable (for example, the right to defense and protest, the right to a retrial by appeal, etc.) and sanctioned the death penalty.
21 The scenario of law and justice during the period from independence to the end of the eighties was dominated by extreme institutional simplicity and strong centrality. The Ministry of Justice was in control and was responsible for the courts, public prosecution, the defense and representation service and the prison system. There was a single line of command and a unitary policy on building justice, dominated by a concern to create popular courts as bodies for the administration of justice. The goal was both to resolve conflict and to educate citizens in the new values that needed to be affirmed and imposed.
22 Now the Assembly of the Republic.
23 Since then, the Supreme Court proposes a budget to the Ministry of Finance, which draws up the final budget.
24 But the President of the Republic appoints the Chief Justice and the Deputy-Chief Justice of the Supreme Court, and the Chief Justice of the Supreme Tribunal then proceeds with the investiture of the President of the Republic. The appointment of the Chief Justice and Deputy-Chief Justice is ratified by the Assembly of the Republic. The other professional Justices in the Supreme Court are appointed by the President of the Republic on the advice of the Superior Council of the Judiciary (which, apart from the automatic inclusion of the Chief Justice and Deputy-Chief Justice of the Supreme Court, also consists of two members designated by the President of the Republic, five elected by the Assembly of the Republic and seven members of the judiciary elected by their peers – Article 221 of the 2004 Constitution).
25 At this point, citations from legal norms which are otherwise unspeccified belong to Law no. 10/92 of 6 May.
26 The Juvenile Court only functions in Maputo city, with competence in civil matters (maintenance, attribution of paternal power, recognition of paternity, among other matters). In 2000, the criminal section, which was to deal with juveniles below the age of criminal responsibility (under 16 years of age), was not operating.
27 At the time, the exchange rate for 1 US$ was about 12,000 *meticais*. Nowadays, it is about 24,000 *meticais*.

28 Most of the district judges however, have only had an *ad hoc* training lasting six months to one year, initially organized by the Supreme Court and later by the Centre for Legal and Judicial Training (CFJJ). Only a few district courts have judges with a law degree, although the number is on the increase.

29 In 2000, the districts which did not have courts were: eight in the province of Cabo Delgado (Ibo, Mecúfi, Meluco, Quissanga, Balama, Muidumbe, Nangade and Pemba-Cidade); seven in Niassa (Majube, Mecula, Muembe, N'gauma, Metarica, Nipepe and Lichinga-cidade); one in Nampula (Nacaroa); three in Tete (Chiúta, Tsangano and Chifunda); three in Manica (Tambara, Macossa and Chimoio-cidade); four in Sofala (Chemba, Chibabava, Maringuè and Muanza); four in Inhambane (Mabote, Jangamo, Funhalouro and Inhambane city); three in Gaza (Xai-Xai, Chigubo and Massangena) and two in the city of Maputo (municipal districts 2 and 3).

30 The court in the city of Beira (with district powers) functions as the 3rd Criminal Section of the judicial court of the province of Sofala (Law no. 12/78). According to information provided by the Chief Judges of the judicial courts of Zambezi and Nampula provinces, the 2nd Criminal sections of the provincial judicial courts function as judicial courts with district powers (information from February 1998).

31 In 2003, besides the 11 provincial courts, the Supreme Court Statistics Department reported the existence of 105 district courts (including city courts). However, during the research carried out in 2004 we observed that some of the district courts were not operating.

32 These judges were not elected according to the principles established in the Organic Law of the Judicial Courts, but appointed from amongst worthy local candidates.

33 This information was obtained during the second part of the research project. See José *et al.*, 2004.

34 Dagnino *et al.*, (1996) refers to the existence of 147 district courts.

35 The creation of labor sections fulfills a legal requirement and is also part of Law no. 18/92, of 14 October. The criminal instruction sections derive from Law no. 2/93, of 24 June.

36 The 2004 Constitution does not refer to the possibility of incorporating elected judges into the Supreme Court (Article 226), as opposed to the earlier 1990 constitution. The latter specifically stated, in article 170 no. 1, that "the Supreme Court shall be composed of professional judges and elected judges". The participation of elected judges may occur in lower trial court hearings, and upon request, as determined by law.

37 Personnel from the Justice Department now come under the General Attorney's Office.

38 In addition to judicial courts, Article 167 of the 1990 Constitution envisaged administrative, military, customs, fiscal, maritime and labor courts, the majority of which are still not in operation. Article 223 of the 2004 Constitution defines the existence of several categories of courts: the Supreme Court, the Administrative

Court, and the courts of justice. It also recognizes the possibility of administrative, labor, fiscal, customs, admiralty, arbitration and community courts.

39 As the Council began operating in 2003, it was not included in our initial research and therefore we only comment briefly on its activities.

40 In August 2000, after one of the Judges was appointed Attorney-General, only six Justices remained in the Supreme Court. In 2003 two new Justices were nominated, including the first woman Justice in Mozambique.

41 Those responsible for the departments are ordinary-ranking functionaries but, in fact, up to 2000 only the DAPF had an appointed head. The organization of the Supreme Court establishes two more divisions, both under the DAPF: General Administration, and Patrimony and Finance, which, however, are still not in operation. The DHR is basically responsible for managing the non-specialist personnel working in the courts. In relation to magistrates, all matters are now the responsibility of the Superior Council of the Judiciary, which has its own individual procedures. As far as justice officials are concerned (notaries and bailiffs), responsibilities are shared between the Superior Council itself, which "evaluates professional merit and exercises disciplinary actions" over justice officials, and the DHR/DRH of the Supreme Court, which is responsible for appointing them. The DAPF has similar duties to those existing in other state departments, particularly in the Ministries. However, in the case of the Supreme Court, it shares some responsibilities with the Treasury. The DILS compiles the statistical data received from the provincial judicial courts and the sections of the Supreme Tribunal itself and publishes them annually as Legal Statistics. This department, however, operates under great difficulty, due to the fact that it has no specialized staff and there are no reliable controls on the trustworthiness of the data received from the provinces. It may be said that this has been a neglected area to date, which is only occasionally revitalized, usually around the beginning of the judicial year (Dagnino *et al.*, 1996).

42 The Provincial Attorney's Offices and the District Attorney's Offices are peripheral bodies of the General Attorney's Office.

43 The Attorney-General informs the Assembly of the Republic annually on the activities of the body of state attorneys, the crime situation in the country and initiatives to prevent and fight crime.

44 The report also stated that the registry office had received 525 cases and decided over 448 cases from the Supreme Court, provincial and district attorneys.

45 The bill for the Decree which will create a new system for access to justice and to the law recognizes paralegal staff – whether professionals or volunteers without a university degree – who will "be especially trained to work in the future 'Centers for access to justice"'.

46 This subject is covered in more detail below.

47 Articles 220 and 222 of the 2004 Constitution.

48 Article 221 of the 2004 Constitution.

49 It is not our intention here to go into the full details of the functions of the Ministry of Justice, since those that are of interest to this study (the IPAJ and the Community Courts) will be covered in greater detail elsewhere. Administrative justice is not the object of this study, and for this reason we have limited ourselves to a few brief observations.

50 The *Instituto Superior Politécnico e Universitário,* which offers a four-year law course. It awarded its first bachelor degrees in 2000.

51 The *Instituto Superior de Ciências e Tecnologia de Moçambique,* which offers a four-year law course.

52 The UCM law course lasts five years, including an introductory year of general studies. The UCM Law Faculty awarded its first bachelor degrees in 2000.

53 Early in 2002, Masters courses were also introduced into some of the Law Faculties, including at Eduardo Mondlane University.

54 *Centro de Formação Jurídica e Judiciária*, in Portuguese. The CFJJ depends on the Ministry of Justice, although it holds administrative autonomy. Most of its activities are funded by international organizations (on the subject of foreign aid to the justice system, see also chapter 7).