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## The Courts in Action: Functions, Resources, Case Flow and Characterization of Litigation

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### Introduction

#### *The Functions of the Court in Contemporary Societies*

In contemporary societies courts have different types of functions. Three main functions may be distinguished: instrumental, political and symbolic. In complex and functionally differentiated societies, the instrumental functions are those which are specifically attributed to a given sphere of social action and which are said to be fulfilled when the said sphere operates effectively within its own functional limits. The political functions are those through which the sector-based spheres of social action contribute towards maintaining the political system. Finally, the symbolic functions are the set of social orientations which the different spheres of social action use to contribute towards the maintenance or destruction of the social system, as a whole.

The instrumental functions of the courts are as follows: the resolution of conflict, social control, administrative acts and the creation of law. Resolution of individual or collective conflicts is the aim of court activity. Social control is the set of measures – internalized or imposed – that are adopted within a given society in order to prevent individual actions from deviating significantly from the overall pattern of sociability, which, for this reason, is called the social order. The social control function of the courts relates to their specific contribution in maintaining the social order and restoring it when it is violated (Santos *et al.*, 1996: 51-52).

The administrative functions refer to a series of actions which involve neither the resolution of conflict nor social control (processes which merely involve certification in situations in which there is no litigation or non-judicial functions are carried out by magistrates).

An analysis of the performance of the courts in terms of penal justice corresponds therefore to an analysis of the effectiveness of the judicial system within the area of social control. This becomes more problematic when the pace of social change becomes increasingly rapid. The judicial system – with its institutional, normative and bureaucratic weight – has always experienced difficulties in adapting to new situations involving deviant behavior. Control of corruption and transnational crime are good examples of the difficulties in adaptation faced by judicial systems.

Political systems can live with high levels of so-called common criminality, but not with organized crime, political crime and crimes committed by politicians during or as a result of the exercise of their functions, as in the case of corruption. The impunity of this type of criminality, beyond certain limits, threatens the system's own conditions for reproduction. In exercising social control, the courts – as sovereign bodies – are also exercising an eminently political function, either through repression or through the selective way in which they act.

Besides being instrumental and political, the control function is also symbolic, since it acts on values recognized as being particularly important to the normal reproduction of a society (the values of life, physical integrity, honor, ownership, etc.). Effective action in this domain has the effect of confirming the values that have been violated. Since citizens' rights, when internalized, tend to become the basis for concepts of retributive and distributive justice, the guarantee that the courts protect these rights usually tends to have the powerful effect of a symbolic confirmation (Santos *et al.*, 1996: 52 and ff.).

The political functions of the courts do not only extend to social control. Recourse to the courts by citizens for civil, labor, administrative matters, etc. always implies exercising an awareness of rights and, in this sense, it is a means of exercising citizenship and political participation. In democratic societies the extent of the legitimacy of the political system also depends on the quality of the courts' performance and, consequently, whether they function independently and are accessible, quick and effective.

In this, and the following chapter, our analysis of the human, material and financial resources of the judicial system, litigation (*i.e.* the conflicts that are brought before the courts) and the main constraints on the system will enable us to assess the performance of the courts in exercising their functions and in relation to the exercise of citizenship in Mozambique.

## 1. A Characterization of the Resources of the Judicial System

### *Human Resources in the Courts*

It is generally accepted that human resources – the judges, state attorneys, functionaries and justice officials – are insufficient and that they are not adequately qualified. In addition, the staffing is inappropriate for the situation in Mozambique, with an ‘unrealistic’ number of professional posts and categories. With the exception of those commanded by the Supreme Court Justices, salaries are demoralizingly low, and frequently are not paid on time. In addition, elected judges spend long periods of time without receiving any compensation and their fees are very low.

According to Dagnino *et al.* (1996), in 1996 the Supreme Court considered that Mozambique needed more than 200 judges with academic training to get the judicial organization into good working order. In 1996 there were scarcely more than 120 judges in existence; in 2003 this number had risen to 159.<sup>1</sup> Of these (including the eight Justices in the Supreme Court), only a small number (27) were law graduates in 1996; in 2003 the figure had doubled (56).<sup>2</sup>

**Table 7.1: Provisional Analysis of Judges (from official courts)**

Courts	Estimate
<i>Supreme Court</i> (6 Court Registry Offices: 2 Civil, 2 Criminal, 1 Labor, 1 Military)	14
<i>Provincial Courts</i> (Civil, Criminal, Juvenile, Police and Criminal Instruction)	56
<i>Provincial Labor Courts</i>	12
<i>District Courts</i> (160 Court Registry Offices, Civil and Criminal)	160
<i>District Courts</i> (147 sections, Criminal Instruction)	147
Total	389

**Source:** Decree no. 40/93 of 31/12; Law no.18/92 of 14 October and Dagnino *et al.*, 1996.

The first question we should pose in relation to the provincial courts is whether at this stage in the development of the Mozambican judicial system it is necessary to have a criminal instruction judge (*i.e.*, a judge in charge of pre-sentence investigation) and a labor judge in all the provincial judicial courts. In light of the analysis of the

movement of cases which we are about to present, it is certainly not a priority that all these positions should be filled.

In the mid 1990s, of the 39 provincial judges appointed, only 20 were law graduates. This number includes those who had finished the academic part of their course in the Law Faculty at Eduardo Mondlane University and were waiting to defend their final dissertation. Of the rest, some had only attended a one- or two-year course, whilst the others were judges who had had no higher education but had attended *ad hoc* courses organized by the district magistrate training program.

As far as the district magistrates were concerned, they supplied around 47% of the total number needed. This figure is reached by considering that 147 district courts should have been in existence, with a total of 160 court offices or sections. It does not take into account the labor courts and criminal instruction judges at district level (Dagnino *et al.*, 1996). A strict application of Decree no. 40/93 of 31 December and Law no. 18/92 of 14 October would imply a labor court and criminal instruction section in each district court, which would mean that 454 judges would be needed to serve in the total number of existing and planned district courts. Direct observations from our case study revealed, on the one hand, a conviction that this number of judges was not necessary and was even absurd and, on the other hand, that we are not sure of the needs of the district courts in all districts.<sup>3</sup>

In fact, from the point of view of training, the picture has changed over the last decade. In 1996 most judges had only had an *ad hoc* training, acquired through courses organized either at a central or provincial level, with some having benefited from additional training programs. More recently, after the Centre for Legal and Judicial Training was created, many district judges benefited from more specific training. In 1996, in addition to the existing 76 district judges, there were also eight substitute judges who carried out their duties without possessing the status of a magistrate and without any specific legal training. They were very experienced elected judges or court clerks. In 2003, the data available suggested that the number of judges with *ad hoc* training had been reduced to about one hundred.

The number of judges trained in law is still far from ideal to ensure the functioning of the judicial sector under the terms envisaged by the law, with citizens' rights guaranteed and defended. It is therefore imperative to establish a plan for recruiting or contracting judicial magistrates in accordance with particular priorities, which will have to be defined.<sup>4</sup>

This aspect will have to merit special attention, since it will have to be balanced against many other factors such as the availability of funds to pay the magistrates and justice officials who have been contracted, the availability of the officials themselves, and the existence of premises for courts and residences for magistrates, court clerks and other court officials (Dagnino *et al.*, 1996).

However, recruiting magistrates is not easy, bearing in mind the unattractive salaries.<sup>5</sup> In 1998, magistrates' salaries varied from between a maximum of 8 to 10 million *meticaís* at the top of the scale, to around 1,700,0.00 *meticaís* for first class

judges and a minimum of 650,000,00 *meticals* for district judges. To this basic salary were added the emoluments derived from the income of the courts (on average a few hundred thousand *meticals*) and the extra benefits established in the Statute of Judicial Magistrates: housing, water, electricity, telephone (up to a certain limit) and a vehicle. However, due to the scarcity of resources, these benefits very often did not materialize, which prevented judges from being assured of a standard of living which, if not equal to, was at least sufficiently competitive with what they could obtain in other professions with the same or equivalent training.

Although by 2004 the picture had significantly improved, much more still needs to be done. It would not be an exaggeration to state that if decent conditions are not created for judicial magistrates at all levels of the profession – as well as for the magistrates in the General Attorney's Office – the country runs the risk of having weaker magistrates and jurists who are less well prepared academically, intellectually and culturally and who lack the solid moral training that will prevent them from incorrectly exercising the immense power they wield.

The number of judicial employees is still clearly insufficient and they are not adequately trained.

According to statements made by the Chief Judges and the court clerks in the respective provincial courts, the main bottlenecks in terms of personnel concern bailiffs and court clerks or assistant court clerks — the posts which demand greater knowledge of civil and criminal proceedings in general.

Moreover, the staff requirements established in Decree no. 40/93 of 31 December impose levels of specialization and specific qualifications that are unrealistic considering the overall administrative situation in the country.

The salaries, privileges and general working conditions established by law for justice officials and functionaries are clearly inadequate to guarantee quality professional work and, consequently, the correct, effective and transparent implementation of justice.

### ***Material Resources in the Judicial System (Infrastructures and Equipment)***

In addition to the aforementioned problems pertaining to the human resources allocated to justice in Mozambique, there are other serious problems related to the infrastructure, support equipment and materials needed for the work of magistrates and justice officials.

The management of justice administration premises is an issue that has been resolved in various ways over time. From the proclamation of independence in 1975 until the end of the 1980s, the courts and attorneyships were subordinate to the Ministry of Justice. When these institutions were declared independent of the Government in 1989, it was subsequently decided that assets should be shared. In practice, and with the exception of some residences belonging to the Courts' Fund (the revenue from the courts) which were retained by some magistrates from the General Attorney's Office, all assets went to the courts (the working premises) and to

the respective magistrates (the housing). It is, however, important to mention that, with the nationalization of real estate in 1976, the Courts' Fund lost many residences which were transferred to APIE<sup>6</sup> management. Some of these have already been recovered, while others are still in the process of being reclaimed.

The Supreme Court is installed in the state building where the highest body of judicial power in Mozambique has always functioned – including the former Courts of Appeals from the colonial period and, in the immediate post-independence era, the Appeals High Court (from 1979 to 1988).<sup>7</sup> In the 1990s, with financing from the General State Budget (GSB), a new building was constructed next to the old one, where the Supreme Court now operates. In the provinces, the courts usually operate in premises separate from the attorneyships, although at the district level the two institutions quite often share the same building. Of the eleven provincial courts, only the Zambézia Provincial Court has its own premises, rented from the *Banco Comercial de Moçambique*.<sup>8</sup> Similarly, in the late 1990s, of the 92 district judicial courts, 50 rented premises from the APIE, which serve as courts and magistrates' residences.

The management of property assets relating to the Supreme Court and the other courts is undertaken by the Courts' Fund, which also manages the revenue from judicial services. It should be mentioned, however, that the creation of a Property Assets Management Office is envisaged within the structure of the Supreme Court, which we feel is laudable. This structure is to be entrusted with managing investments established as part of a project financed by DANIDA,<sup>9</sup> which basically consisted of building courts and residences for judges in 20 districts in the country. It remains to be seen whether the management of the current assets will continue to be the responsibility of the Courts' Fund or whether this will also be transferred to the Office that is to be created.<sup>10</sup>

It is also important to look at property that is connected to the services, either at central or peripheral level. Although in 1996 there was no Supreme Court inventory (Dagnino *et al.*, 1996), the Court does possess, in addition to furniture, reasonable office equipment, including a certain number of computers which are used by the Justices, among others, for writing up their decisions. The provincial courts possess at least one computer, a printer and a fax machine, whilst the district courts do not possess any of this type of equipment, apart from some ancient manual typewriters.<sup>11</sup> The most distant courts are centrally supplied with cars and office equipment. However, in general, resources are bought locally.

### ***The Financial Resources of the Judicial System***

The judicial system is financed by the current and investment budgets of the Supreme Court and the Ministry of Justice (GSB), revenue from the courts (the Courts' Fund) and foreign aid (DANIDA,<sup>12</sup> UNDP,<sup>13</sup> the World Bank,<sup>14</sup> USAID,<sup>15</sup> etc.).<sup>16</sup>

With the 1990 Constitution – establishing the separation of powers and the independence of the courts – the judicial system started to attract substantial attention from external donors. The subsequent peace process and its consolidation through the first multiparty elections made it clear that the stability desired by the country also

required the strengthening of public institutions, including the justice institutions. 'Good governance' and 'strengthening democratic institutions' became the new banners for international assistance, which considered them a prerequisite and guarantee of the success of other initiatives carried out in the more traditional development aid sectors. Consequently, the 1980s tendency to see the state and its institutions as an obstacle to the liberalization of the economy began to change, and the 1990s were generally characterized by the incorporation of international aid measures aimed at institutional capacity building, since institutions had seen a consistent reduction in their operating capacity during the previous period.

Additionally, at the same time the judicial institutions themselves became more open to international cooperation. One of the reasons for this lies in the serious crisis the sector was experiencing during the 1990s. Human resources in the provincial courts had become increasingly weaker, both in terms of numbers and quality and the district courts were largely paralyzed or left to their own devices as a consequence of the war. There was a situation of almost total collapse that the State budget could not resolve on its own.

In recent years, despite a gradual rise in public expenditure on the justice sector, it is still an open question whether the judiciary is a high priority for the state. In fact, in real terms, GSB funding for the sector has remained almost unaltered, thus blocking any real perspectives for the growth and expansion of the judicial network in the country.

In 1996, the Salaries and Operational Fund which the GSB attributed to the Supreme Court and the General Attorney's Office amounted to 1.9% and 1.3% respectively of the total state budget. In relation to the provinces, the percentage of the provincial budget attributed to the courts (including the district courts) ranged from a minimum of 1.1% in the Zambézia province to a maximum of 2.9% in the Manica province, while that of the Attorney's Offices varied from between 0.6% in Zambézia to 1.7% in the Cabo Delgado province.

In 1996, 26.2% of the Supreme Court's budget was for salaries and 73.8% for expenses such as equipment and services. In the same year, the investments budget amounted to 23,728,000,000,000 *meticals*, designated for the renovation of the Maputo City Court, equipment for the Supreme Court, renovation of the old Supreme Court building and the beginning of construction work on the new provincial courts of Maputo, Inhambane, Zambézia and Niassa, with the construction of a district court also envisaged (Dagnino *et al.*, 1996).

Between 1996 and 1998, the allocation of public funds established by the GSB for the Supreme Court continued to grow, especially the funds designated for salaries, which increased by approximately 100% between 1996 and 1997. Between 1996 and 1997 there was also a significant increase in funds for the acquisition of goods and services, amounting to nearly 30%.

### ***The Courts' Fund***

In addition to the revenue from the GSB, the biggest source of income for the courts is from judicial costs and from the fines levied in civil cases (court costs) and infringements of the law (punished by fines), respectively. Of these, 40% of the respective amount goes to the state (via the Ministry of Finance), while the remaining 60% is allocated to the payment of functionaries and to cover other costs related to building maintenance and the current expenses of the courts, since the GSB funds are not sufficient to cover this. This income is managed by the Courts' Fund,<sup>17</sup> an institution considered a self-governing body of the judiciary, although its independence has proved damaging to the sector, as the majority of its income came from court registry offices. Housed in a small office in the Maputo City Court, the Courts' Fund is managed by an Administrative Council which should consist of two Justices from the Supreme Court (one acting as President and the other as First Spokesperson) and one representative from the General Attorney's Office, acting as Second Spokesperson. In reality, since 1992 the Administrative Council has functioned solely with a President, who is a Justice from the Supreme Court. Outside the Supreme Court, each duly constituted Court has a Treasury delegation that functions under the same criteria.

In 1994, the total revenue of the Courts' Fund was around 391 million *meticaís*, whilst in 1995 it was close to 400 million *meticaís*. Due to the fact that the amounts charged in the Code of Courts' Costs are completely out of date, this income cannot approach the levels which in previous times had enabled the Justice Treasury to make important investments, even if productivity increased in the courts.<sup>18</sup>

It is therefore through the income of the Courts' Fund that the magistrates and functionaries supplement their (meager) salaries. In the Supreme Court, as there is a common fund the magistrates received a fixed emolument of 100,000 *meticaís* per month in the late 1990s. In the provinces, on the contrary, emoluments are linked to the income of each section and magistrates and functionaries therefore receive an 'addition' to their salary according to their productivity. Additionally, current expenses are always covered by this income when GSB funding runs out (Dagnino *et al.*, 1996).

Under these circumstances, external aid and loans are one of the conditions that allow for a more rapid development of the judicial system.

### **2. The Case Flow: Cases filed and closed by the courts**

Case flow is understood to mean the variation in the number of cases filed, pending and closed. The cases filed correspond to the effective demand for the judicial system. The cases closed show the supply of judicial protection. The pending cases are a measure of unsatisfied judicial demand. An analysis of the evolution of the case flow must take into account two sets of factors: endogenous and exogenous factors. Endogenous factors are those inherent to the system, namely legislative, substantive or procedural legal changes, and institutional or technical changes. Exogenous factors are those outside the system, such as social, economic, political and cultural changes

and their impact on the administration of justice in general and on the case flow in particular.

Due to a variety of statistical incoherencies and inconsistencies, the statistics on justice prepared by the Supreme Court initially only allowed for an indicative analysis of the period between 1992 and 1998. Later, more recent data was obtained (extending up to 2003), which is used here for the purposes of comparison. In addition, the data is limited to case flows in the Supreme Court and in the provincial courts (cases filed, pending and closed).

### ***An Overview of the Procedural Case Flow in the Provincial Courts***

Between 1992 and 1998 there was a reduction in the number of cases brought before the provincial courts. A rise in cases filed since 1994 occurred in the provincial courts of Tete, Manica, Sofala, Gaza and the city of Maputo, particularly in the Maputo Juvenile and Police courts, with the latter having been in operation since 1996. Between 2002 and 2003 we observed a decrease of 7.3% in the number of cases filed in provincial courts, from 23,618 cases in 2002, to 21,884 cases filed the following year.

Between 1992 and 1998 there was a significant rise in the number of cases pending, from 83,932 to 115,369. This increase occurred both in civil and criminal litigation, and reveals the declining efficiency of the provincial courts, where, in 1992, 14,451 cases were closed, as opposed to 12,368 in 1998. This situation is particularly evident in the Maputo City Court, where the cases pending accounted for over half the total number of cases pending in the provincial courts.<sup>19</sup> By contrast, in 2002 and 2003 the situation had changed radically, with the vast majority of cases pending being from the Police Court (about 26%). The next provincial courts with significant percentages of cases pending were Zambézia (14.3%) and Maputo city (14.1%).

It should also be noted in this context that there are qualitative differences in court performance in relation to cases pending, filed and closed, with some courts closing relatively larger numbers of cases than others.

### ***The Case Flow of Criminal Jurisdiction in the Provincial Courts***

More than half of the litigation handled by the provincial courts involves criminal complaints. For example, in 1998, 18,981 criminal proceedings were brought before these courts, corresponding to 80.9% of the total number of cases filed in the judicial system. In 2003 this figure dropped to 57%, due to a marked increase in civil and labor actions brought before the courts.

Between 1992 and 1998, the number of criminal proceedings filed decreased (from 20,210 to 18,981) but an increase was registered in cases pending (from 70,249 to 92,130). The amount of cases closed varied, in some instances registering a significant increase and sometimes a reduction.

Between 1992 and 1996 the amount of criminal proceedings filed decreased markedly and only approached the initial (1992) level in 1998. The period between 2002 and 2003 witnessed a continuing reduction in the number of criminal proceedings

filed, with 13,560 cases filed in 2002 and 12,637 the following year. One possible explanation is the deteriorating performance of the Police and the General Attorney's Office following changes to the state and in society (the peace process, the market economy, the destabilization of the administration), as it is highly unlikely that crime fell sharply during this period.

Between 1992 and 1998 an increase was registered in the number of proceedings involving serious crimes,<sup>20</sup> which became more marked after 1996. The largest number of cases filed was at the Maputo City Court. However, the numbers were also significant in the provinces of Nampula, Manica, Zambézia and Tete which, in 1998, together represented 40.9% of the total number of cases filed. The data available indicates that in 2003 the situation remained the same.

In general, the number of felony cases<sup>21</sup> filed and closed decreased, whilst pending cases increased significantly. In fact, in 1992, there were around 2,453 cases pending and in 1998 this figure had almost doubled to 4,065. Contrary to the other forms of criminal litigation, relatively few cases were brought before the Maputo City Court, with the Provincial Court of Sofala having the largest number of cases. Ten years later the picture was quite different: in 2002 there were 1,026 cases pending and, a year later, the figure had fallen to 1,161 cases, the heaviest concentrations occurring with the provincial courts of Manica, Zambézia, Niassa and Nampula.<sup>22</sup>

#### ***The Case Flow for Civil Jurisdiction in the Provincial Courts***

Civil jurisdiction, which includes civil litigation *per se* together with labor litigation, also accounts for a substantial proportion of the cases heard in the Maputo City Court. Together with Maputo, the provinces witnessing a rise in the general movement of cases filed were Sofala and Nampula.

In short, an analysis of case flows reveals an increase in civil demand between 1992 and 1998 and the rise in this type of litigation is, in itself, enough to explain the huge increase in the number of cases pending. It means that procedural delay has become one of the problems affecting the legitimacy of the judicial system in Mozambique today, in addition to the other problems that have intensified during the same period of time.

The ratio between the number of cases closed and the number of cases pending and filed provides an index of the system's efficiency. Thus, in 1992, the index was 7.49, and in 1998, 11.22, although in 2003 the index had lowered to 6.50. This suggests that whilst inefficiency was on the rise in the provincial courts in the late 1990s, it seems to be improving in the early twenty-first century.

#### ***The Case Flow of the Supreme Court***

The performance of the Supreme Court has been characterized by a singular inability to respond to solicitations. Less than 300 cases are brought before the Supreme Court every year. Although the cases filed have registered varying figures – 102 in 1992, 213 in 1996, 218 in 2002 and 171 in 2003 – over the same period the number of cases

pending has increased steadily (524 in 1992, 934 in 1998, 1,121 in 2002 and 1,013 in 2003). The number of cases closed is quite low, even insignificant. In 1996 only 52 cases were closed, although this figure rose to 123 in 2002, only to drop dramatically to 43 in 2003. The number of cases pending has risen in all areas of litigation.

Unlike the provincial courts, where most proceedings are criminal, most of the appeals heard in the Supreme Court are related to civil and labor matters. Thus, in 1998, 25 criminal appeals and 160 civil and labor appeals were filed in the Supreme Court, with 450 criminal proceedings and 477 civil and labor proceedings pending. In 2003, the pattern remained similar: the majority of appeals were civil (368 proceedings, corresponding to 32.8%) and labor (327 proceedings, corresponding to 29.2%) cases.

This is obviously due to a demand for the Supreme Court by litigants with economic interests who lodge appeals against civil and labor actions of significant economic status. Despite a few highly publicized cases of social, economic and political significance, on the whole criminal litigation involves crimes committed by ordinary citizens, or situations of social or virtual exclusion. The Supreme Court is unable to satisfy the demand – more than 50% of which comes from the Maputo City Court. The increase in the number of cases pending is in line with the general opinion amongst judges and lawyers that the Supreme Court is a ‘burial ground for cases’.

### 3. The Characterization of Judicial Litigation in Mozambique

As mentioned earlier in chapter 5, the research team created a form for gathering data that was used to categorize the conflicts brought before the courts, as well as the people who used the courts. This form was used for the Supreme Court and the provincial and district courts in order to gather a sample of the cases, whose analysis helped to characterize the litigation and the litigants who made use of the courts.

#### *Civil Justice in the Provincial Courts*

Civil justice in Mozambique, together with other systems of justice, benefits from great structural stability. Despite differences in procedural and substantive law and in levels of development, the different systems of civil justice tend to present very similar configurations in relation to their essential features, both in terms of the types of users and most frequent types of litigation, and in their operational problems.<sup>23</sup>

This relative homogeneity, however, masks important differences in degree which reveal themselves in almost all the variables usually used to characterize civil justice and which can be detected in a more detailed analysis of the litigation and the organization of the judicial system in its proper context.

In the vast majority of civil judicial systems the major types of litigation consist of payment of debts, family litigation (particularly divorce cases), labor litigation and litigation involving property. However, the relative weight of each of these types of litigation varies greatly and the extent of this variation can significantly modify the characterization of civil justice.

If the payment of debts is dominant, justice serves regular, collective users, whereas if family or leasing issues predominate – as is the case in Mozambique – the majority

of litigants are individual and occasional users. Although in all systems, lawyers prefer civil cases or drafting contracts to being involved in criminal cases, the results of this preference can be very different: either the latter cases are usually not defended by professionals or they are dealt with by the least well-known or experienced lawyers.<sup>24</sup>

### *Civil Justice and Economic Development*

The true profile of civil justice in each country is also marked by differences in degree which are registered in other problems – usually considered common to almost all systems – such as excessive slowness and delays in proceedings, the frequency and magnitude of corruption cases, the lack of resources or the high cost of access to justice. The greater or lesser availability of either formal or informal alternative means of resolving litigation is another relevant factor in the analysis of similarities and differences and, above all, in the study of reforms which could improve the resolution of litigation in the different areas in which they occur.

Only a study of this type enables us to accurately define the common and specific problems in each system and find adequate solutions for them, which may combine those already used in other countries – with all the necessary adjustments – with solutions of our own, forged out of local experiences and resources, or purposely designed in response to very specific problems.

The table which follows (table 7.2) is the result of an exercise comparing the main characteristics of civil justice in the more developed market economies and consumer societies with market economies in a phase of consolidation (including any possible reforms which may be aimed at them), known respectively as cases A and B. For case B, we have taken civil justice in Mozambique as our example.<sup>25</sup>

Some differences are enduring and difficult to overcome in the short term, which confers a structural quality on them. Others are only transitory and evidence shows that they will diminish or disappear in the short or medium term.

Among the structural differences, the context of the judicial system should be singled out. In the first example (case A), this context is characterized by weak legal plurality (Santos, 1995; Castrillo, 1997), since the official judicial system clearly predominates in the resolution of litigation. In the second example (case B), legal plurality is strong, with different laws and means of resolution – particularly those of an informal nature – competing with each other.

Equally hard to overcome in the short term is the difficulty in increasing resources, particularly financial, for public service. This problem is common to both cases, but is much more serious in the second. The persistent lack of resources will make it difficult to extend access to justice, particularly in terms of the potential rural demand in case B.

Above all, these two differences – the context of the legal system and its resources – end up by consolidating the merely formal centrality of the judicial system in B, which is valued more from the top-down (in the organization of political power, in the constitutional text and in the hierarchy of the state) than from the bottom-up (in

the culture and experience of the majority of the population). However, we cannot ignore the fact that the development of a market economy tends to favor greater affirmation of the system of civil justice.

**Table 7.2: Characteristics of Civil Justice in Relation to Economic Development**

<b>Characteristics of civil justice</b>	<b>More developed market economies and consumer societies</b>	<b>Market economies in consolidation (e.g. Mozambique)</b>
<b>Context of judicial system</b>	Weak plurality	Strong plurality
<b>Resources for the official system</b>	Substantial but always subject to limits	Insubstantial and insufficient
<b>Magistrates</b>	High pay, average legitimization	Low pay, legitimization badly affected
<b>Legal services market</b>	Excess supply / corporate organization	Incipient supply / corporate organization
<b>Cost of access</b>	Variable	Generally high
<b>Access</b>	Differentiated	Very limited and selective
<b>Origin of effective demand</b>	Urban/ rural	Urban
<b>Main type of use in most common types of litigation</b>	Collective and frequent (consumer and production)	Individual and sporadic (family, property, employment)
<b>Large-scale economic litigation</b>	Absent	Absent
<b>Official defense by professionals</b>	Usual / poor quality	Rare / poor quality

**Table 7.2: Characteristics of Civil Justice in Relation to Economic Development (contd.)**

<b>Private legal defense</b>	Usual/quality average-high /costs high	Rare/ quality very variable / costs very high
<b>Delays</b>	High, in general	High
<b>Type of resolution</b>	Low intensity, in general	High intensity/ withdrawals
<b>Quality of decision</b>	Average/good	Very variable/ unpredictable
<b>Weight of judicial system</b>	Substantive centrality for non-self-composed litigation	Formal centrality for non self-composed litigation
<b>Perspectives</b>	Lowering of ability to respond to continued rise in demand	Lowering of quality and ability to respond, even to very moderate rise in demand
<b>Consequences and possible reforms</b>	<ul style="list-style-type: none"> <li>• Development of new ADRM<sup>26</sup> procedures for different litigation and litigants</li> <li>• Procedural reforms and reforms to judiciary</li> <li>• Modernization of the management of the courts</li> </ul>	<ul style="list-style-type: none"> <li>• Development of new ADRM procedures and reinforcement of formal and informal types</li> <li>• Resources for the base of the judicial system</li> <li>• Procedural reforms and reforms to the judiciary</li> <li>• Modernization of the management of the courts</li> </ul>

With regard to the transitory differences, the one which stands out most is the situation in the legal services market, where the offer which is at the moment incipient in case B will tend to increase when new law graduates enter the market. The predictable consequences of this increase will be a lowering of fees and an increase both in the number of cases involving private legal defense and those in which the official defense

is undertaken by professionals (although the quality will remain low). In addition, depending on the type of legal education and supplementary training given, this increasing number of professionals may contribute towards an increase in the quality of judicial decisions. The differences between the dominant type of users in the system and the means of resolving litigation in the courts are equally transitory, although these differences will decrease much more slowly than those previously discussed. The time that this takes will depend on the process of consolidating the market economy and the rate of expansion of consumer society. These are the changes that will most influence the increase in demand by frequent litigants as well as demand relating to minor disputes such as the payment of debts, which will tend to superimpose themselves onto inter-individual litigation.

In terms of similarities, the absence of large-scale economic litigation and the increasing delays in providing the protection of the law should be emphasized as two characteristics that still persist in most civil systems.

When we consider the evolutionary perspectives of cases A and B, we can observe a common difficulty in responding to the increase in effective demand for civil judicial protection, which enables us to anticipate common points in the reforms that need to be adopted. These concern what will happen in terms of procedural material, of modernizing the managements of courts and of developing new procedures for the resolution of litigation (for example, 'arbitration'). Nevertheless, the aforementioned structural differences between cases A and B should demand that specific responses be found which make use of the potential characteristics of the local context.<sup>27</sup> For example, in case B, the context of strong legal plurality is a recommendation for strengthening interaction between the official judicial system and the traditional and alternative means of resolving litigation already in existence, without precluding the incorporation of new forms. In fact, alternative means of resolving litigation are being sought out and even reinvented today in all judicial systems, as these systems find themselves unable to deal with the large-scale demand in particular areas of litigation.

It is equally admissible that, in situations in which resources are scarce, the base of the system, rather than the top, should be favored in order to increase access and influence.

In spite of the existing differences that are liable to remain in the coming years – namely those which require the large-scale mobilization of qualified human resources and increased financial resources – there may be points in common in terms of the strategic orientation of some reforms. This is the case with the management of the courts, the increasing transparency of procedures, the development of a justice of proximity (a very fashionable concept in the reform of judicial systems) and the diversification of the means of resolving litigation by making it proportional to the seriousness of the litigation involved.

### ***An Overview of Civil Justice in Mozambique***

#### *Main Litigation*

A closer analysis of civil justice in Mozambique confirms that, like the economy and the civil society of which it is a part, civil justice in Mozambique is going through a period of transition.<sup>28</sup> In addition to divorce cases, in recent years civil justice has, above all, been used to manage the privatization of the housing market<sup>29</sup> and the loss of jobs resulting from the restructuring of businesses in the wake of structural adjustment policies.

An overview of the profile of plaintiffs and defendants shows that inter-individual litigation still predominates, with a particularly heavy emphasis on family and labor conflicts and those associated with housing (possession or ownership). The complexity and variety of the latter reflect the difficulties encountered as part of the shift from a publicly administrated system to one based on private interests.

In fact, in recent years, we have observed an increase in the relative weight of civil cases in the judicial system. For example, between 2002 and 2003, the number of civil cases filed rose by 6.3% (whilst the criminal cases filed fell by 6.8%)

There was very little economic litigation up to the mid 1990s, but this has been rising steadily since then. This situation encompasses not only large-scale litigation, which is common to most market economies, but also debt collection, the most frequent litigation in these economies. What we are witnessing is a moderate increase in demand, to which, nevertheless, the civil court system has great difficulty in responding. As mentioned earlier, between 2002 and 2003 the provincial courts witnessed an increase in economic cases especially in the Maputo City Court and the Maputo, Sofala and Nampula provincial courts.

#### *The Users*

The users of the system reside in the most developed urban areas, particularly Maputo city, which clearly stands out from the rest of the provinces in terms of the number of cases filed, closed and pending, even taking into account their smaller population.

Rural areas are virtually beyond the reach of the civil judicial system, partly because they use a different type of law and partly because there is no court or it is geographically, financially and culturally removed from them. The predominantly urban nature of civil justice, which is restricted to the main urban centers, means that it is less affected by the inter-penetration of the various different legalities than the other forms of justice analyzed in this book. Even so, some local cultural practices and habits do stand out in the litigation brought before the judicial court, above all in family conflicts.<sup>30</sup>

In urban centers it is mainly people with low and/or moderate incomes who resort to the courts. Access remains very difficult for the poorest, and the wealthiest exclude themselves from the courts because they distrust the quality of the court's decision and its independence. For these reasons they try at all cost to prevent conflict or else resort to various forms of negotiation to resolve it.

Those who do resort to the justice system often find themselves 'unprotected' in terms of legal defense and sometimes in a very unfair position, due to the high cost of the services of a lawyer.<sup>31</sup>

In order to reach a final verdict, most civil actions have to go through all the phases of the judicial proceedings. Cases are usually decided in court, and an increasing number of appeals are being brought before the Supreme Court. In recent years, the Supreme Court has heard an increasing number of economic cases in appeal, thus reflecting the structural changes that the society is experiencing.

#### *Criminal Justice in the Provincial Courts*

Social control through criminal justice is a specific contribution towards maintaining the social order. However, it becomes difficult and complex to exercise this control when the communities' culture is based on reconciliation within the community and not on the application of punishments and sanctions.<sup>32</sup>

In Mozambique, it is not possible, at the moment, to determine the volume of undenounced crimes<sup>33</sup> and therefore only denounced, accused and sentenced cases of criminality have been analyzed.

The number of cases denounced has not increased (in the period between 1997 and 1999) in the attorneyships and for this reason it has to be accepted that there is an accumulation of cases at the Criminal Investigation Police (PIC).

The rate of accusations is very high. Only 12.2% of the cases have been shelved or ordered free by acquittal. According to the General Attorney's Office, 50% of cases involving accusations that are brought to trial fill the lists of cases pending. Denounced and accused crimes concentrate on crimes against property (in its broadest sense), followed by crimes against people. With the privatization of state companies there has been a reduction in embezzlement. In the mid 1990s, the almost total absence of crimes involving the use and trafficking of drugs was explained by the inability of the police to tackle such crimes; an image that has seen some changes over the years. The reduction in car thefts may signify better coordination between the regional police forces (both at national and international level, especially in relation to South Africa).

There was a reduction in the average number of defendants held in custody, which may have been caused by various factors: increased awareness of the law on the part of law enforcement agents and a consequent increase in compliance with the law with respect to the regulatory norms for custody; a decrease in crimes against assets not subject to bail; the action of the judges in charge of pre-sentence investigation; possible leniency on the part of law enforcement agents as a result of being bribed by delinquents. Consequently, there was also a reduction in the number of suspects held in custody by order of the court.

According to a report by the Attorney General (1999), the judicial system's capacity for investigation has been reduced. In 1998, the PIC handled 42,106 cases, but only 9,637 of these reached the General Attorney's Office.

### ***The Characterization of Serious Crimes and Felonies***

The proceedings for serious crimes and felonies analyzed in the courts indicate that denunciations made by the victims (predominantly male) are, as a rule, made through the police.

In general, cases that are denounced, presented to court and sentenced relate to crimes against property and physical integrity (bodily harm and attempts on life). In 1987 there were still many crimes of embezzlement. The defendants are usually men, as are the victims, which gives criminal justice a predominately masculine character. The defendants are either salaried employees or unemployed, with little education or illiterate and are not members of the victims' families. As a rule, the defendant is immediately detained and awaits trial in custody. The intervention of the criminal instruction judges in the first hearings and in the validation of preventive detention has increased in recent years (70%, in 1997). Sometimes the legal validation of detention is very slow.

There is also a very high rate of conviction (78%, in 1997), with the courts usually opting for imprisonment. Fact-finding procedures for this 'common criminality' usually involve gathering evidence on how the crime was committed. The Provincial Attorney's Office does not appear at the trials and the defense is normally undertaken by a public defender without a law degree (a legal technician or legal assistant).

Due to the extent of the burden facing the courts, most trials have been delayed at least once. However, from the time when a case reaches the court until the sentence is pronounced, the case proceeds rapidly, due to the fact that 80% of the defendants await trial in custody.

### ***Proceedings for Misdemeanor***

In criminal cases which follow the proceedings for misdemeanor<sup>34</sup> and are judged in the provincial courts, the victim is usually male. Usually it is the victim who files the complaint with the police (in most cases they are security agents or soldiers). In general, proceedings for misdemeanors involving bodily harm or car accidents predominate; they are committed by both salaried employees and unemployed people, not related to the family of the victim. A legal technician or assistant from the IPAJ<sup>35</sup> usually defends the defendant. Despite the growing presence of the Attorney's Office, it was still absent in about 40% of the cases; as a result, a citizen was usually appointed as an *ad-hoc* substitute for the attorney. In about 80% of the cases the defendant was convicted and fined or sent to prison, although the latter sentence was normally converted into a fine later. An analysis of the duration of the proceedings for misdemeanor indicates that they are normally quick, with only a small number lasting a long time.

### ***The Absence of Criminal Litigation in the Provincial Courts***

The absence of criminal litigation in the provincial courts is due in part to two factors: the 'refusal' of the judicial courts to judge certain crimes and the fact that there are institutional, social and economic structures which 'filter out' criminal litigation

involving political or judicial bodies, so that these ‘types of crime’ do not reach the formal institutions of control. In the case of the former, there are situations in which judicial courts do not accept certain cases, namely those relating to family matters, and refer them back to the family and the community (the community courts, traditional authorities, etc.). In the case of the latter, there are the crimes which harm the state and society, namely crimes against public health, speculation, the illegal exchange of currency, the illegal exportation of money, unauthorized foreign trade, corruption, theft of energy cables, vagrancy, prostitution, illegal hunting, environmental crimes, sexual crimes, domestic violence, international trafficking and money-laundering.

The General Attorney’s Office is an institutional means of addressing absent litigation, but in practice it takes very few proactive measures to enable this discourse to materialize.

#### **4. Justice in the District Courts**

The current Law on the Organization of the Judiciary establishes that the district courts are the first formal instance in the judicial system.<sup>36</sup> However, from the information gathered, it can be concluded that, as previously mentioned (see chapter 6), around one third of the districts in Mozambique still do not have a district court, and that the function of resolving litigation is undertaken by the community courts, the police and other formal or informal bodies.<sup>37</sup>

In addition, all the judicial courts face enormous difficulties in complying with the requirements of the Organic Law (Law no. 10/92) with regard to the *quorum* needed for them to function. There have been no elections for lay judges at any level in the court system since 1987. Many of the judges elected at that time have now given up, moved away or simply died. The few who remain are not motivated to continue with their activities, as they receive very little, and sometimes no, financial compensation for their work.

##### ***A Brief Characterization of the District Courts***

From the direct observation of 16 district courts<sup>38</sup> we can, in spite of their differences, establish a certain pattern in relation to human resources, material resources, the movement of cases and performance.

##### ***Resources and Working Conditions***

In the courts studied during the first research project (1996-2000), human resources were considered inadequate. However, given the volume of cases registered it appears to us that the fundamental issue is that of the training and technical upgrading of the functionaries, clerks, bailiffs and other justice officials already employed in the courts.

The level of professional training for justice officials is, as a rule, extremely low. Despite their great willingness to learn and improve the quality of their work, most officials never have access to adequate training programs and their links with the court administration are precarious, involving interim or provisional nominations.<sup>39</sup>

With the exception of the Maxixe District Court, whose premises had already been renovated by DANIDA at the time of our study, all the others were located in precarious premises and suffered from a lack of equipment and supplies.

In terms of the condition of the premises, most buildings used by the courts are rented from other entities and are, in general, severely run-down, with no electricity or mains water supply, sanitation, archives or adequate furniture. The courts also face enormous difficulties due to a lack of – or an insufficient amount of – transportation (even bicycles), equipment (typewriters, calculators, photocopiers, telephones and fax machines, etc.), paper and other consumables. Not infrequently, they receive assistance from private individuals or through the goodwill of entities outside the judicial system.

It is imperative that efforts to renovate district courts' premises should continue, so that dignified working conditions can be provided. The district courts need a courtroom, offices for the judge and the attorney and a room where court files can be kept.

The district courts do not have their own budget. They operate on the basis of funds made available to them by the provincial courts. Even paying salaries to the serving magistrates and justice officials (clerks, bailiffs, etc.) requires a courier to go to the provincial capital each month to withdraw the funds needed to pay the salaries of the judges, attorneys and other court staff. This creates serious problems with delayed payments and even embezzlement.

The efforts to renovate district courts and improve interaction with provincial courts with regard to budgets and the supply of materials must continue. In addition, it is necessary for the courts to stop being dependent in terms of premises, equipment and materials needed in order to implement the resolution of litigation and preserve their own legitimacy, independence and impartiality.

### ***The Self-Transformation of a Community Court into a District Court***

During our research, we encountered one district court (Pemba-Metuge, in the Cabo Delgado province) that is not official but acts as if it were, having built its own court headquarters with local materials. This court, which started off as a community court, is now recognized by the local inhabitants, local authorities and the provincial court as a district court and it aspires to formal recognition by the Supreme Court, which recognizes it *de facto*.

### ***Litigation in the District Courts***

#### *Civil Litigation*

As a rule, the 16 district judicial courts visited by our research team<sup>40</sup> and subjected to direct observation have witnessed a fall in the number of cases presented to them between 1987 and 1997 in eight courts, and an increase in only six.<sup>41</sup> With the exception of two of the district courts in which wide-ranging civil litigation is emerging and has been registered (payment of debts, alimony, leasing, etc.), the demand in the district courts centers on criminal litigation. From the interviews carried out during our research

we detected that many district courts frequently refuse to handle family litigation, claiming that the conflict should be solved by the community courts or even within the family.

From the data analyzed and in light of the current socio-economic development in the country, it seems likely to us that the demand for penal cases is on the rise and that civil cases are beginning to appear in the district courts. This being the case, these courts need to prepare themselves for the situation which is likely to occur in the coming years.

### *Criminal Litigation*

In the proceedings for serious crimes and for felonies that were analyzed,<sup>42</sup> offenses were reported to the police by the victims. Most cases filed concerned property (petty theft or medium-scale burglary – 49.5% in 1987 and 64.4% in 1997) or bodily harm.<sup>43</sup> Most of the plaintiffs were male (over 80% during 1987-1997). This information, together with the fact that most of them were also the victims of the crime, leads us to conclude that there is a gender bias in the criminal justice system, as men seem to be the ones who have been able to overcome the barriers that stand in their way when filing a case (both at the police headquarters or in court). Women remain the silent victims.<sup>44</sup> In terms of age, most of the plaintiffs are between 20 and 50 years of age, although we identified an increasing number of younger people (between 18 and 25) in the most recent years of our sample.

In terms of occupation, in the mid-1990s most of the plaintiffs were salaried employees, workers or unemployed (30.1%), as well as security agents and soldiers (26.5%). Towards the end of the 1990s we observed a wider variety of occupations, the majority being fishermen, peasants, (19.6%) housewives, self-employed citizens, security agents and soldiers (13% altogether). The greater 'democratization' of criminal justice can clearly be observed.

Finally, it should be pointed out that after a case was filed, in most situations the defendant did not hire a lawyer, either for financial reasons, a lack of awareness of their rights or a shortage of lawyers and legal technicians or assistants.

Most of the offenses reported were committed by single individuals, indicating the predominance of a small-scale, non-organized criminal activity. The defendants were also mostly men, confirming the male character of criminal justice in Mozambique (94.8% in 1997 and 95.1% in 1997). The age range of the defendants was quite wide, although most of them were between 25 and 35 years old (36.8% in 1987 and 32.6% in 1997).<sup>45</sup>

The defendants were either salaried employees (workers, service sector employees) or unemployed,<sup>46</sup> with little education or illiterate, and were not members of the victims' families. The defendants were usually held in custody – which, in the majority of cases in 1997 (75%) was authorized by one judge – and defended by legal assistants or legal technicians from the IPAJ or by a defender appointed on an *ad-hoc* basis. In 1997, in 35% of cases, the District Attorney's Office was not present at the trial or

was represented by an *ad-hoc* attorney. Cases were tried quickly, as the accused was held in custody.

In the proceedings for misdemeanors judged in the district courts the defendants shared the same characteristics previously described, except that in terms of occupation they were mainly farmers, fishermen or unemployed. In this type of case, the order of importance of the crimes practiced is reversed, with crimes involving bodily harm appearing first, followed by crimes against property.

The vast majority of the trials were postponed at least once (84.2% in 1997). This occurred both for reasons internal to the court (absence of the judge, court inspection) or because the parties had not been notified.

In a significant number of trials, the state attorney was absent (54.2% of the cases in 1987 and 36.9% in 1997). We also identified a significant number of cases in which a citizen was appointed as an *ad-hoc* substitute for the attorney.

Most of cases lasted less than a year (92.2% in 1987 and 82.3% in 1997). The sentence was either a fine or a prison sentence converted into a fine. Fines varied from 500,00 to 700,000,00 *meticais*.<sup>47</sup>

The main reason why criminal litigation reaches the court is that in cases of bodily harm a hospital or health center does not provide treatment unless the police are present, and when they intervene the case is subsequently sent to the district court. In addition, most plaintiffs report crimes against property directly to the police. In 90% of the cases analyzed in our sample, the police had initially filed the cases. The number of cases directly filed by the attorney's office or at court was extremely small.

### ***The District Courts: the Crossroads between Community Justice and the Judicial Courts***

The district courts face various constraints, amongst which the following should be emphasized: budgeting and finance to prevent dependency; motivation of the elected judges; the recruitment and training of magistrates and judicial functionaries; working conditions.

The district courts lie at the crossroads between community justice and the judicial courts, establishing both complementary and competitive relationships between them. On the one hand, the district courts make use of the community courts and the traditional authorities in order to ensure that court summons are complied with.<sup>48</sup> In addition, they establish a special relationship with these entities, by ruling that questions relating to family matters are their responsibility. In the district courts the police function as the distributor of litigation to the instances that can resolve it, sending the more serious cases to the district or the provincial courts.

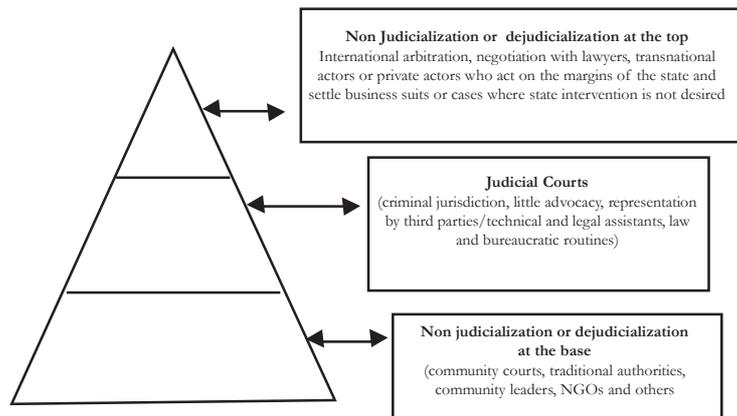
### **5. Courts: the Illusion of Centrality**

As already stated, the administration of official justice is not limited to the judicial courts. The community courts form the base of the system for the resolution of conflict and, in practice, continue informally to be the lower instance in the judicial

system. Simultaneously, new legislation on arbitration, conciliation and mediation as alternative means of resolving litigation (Law no. 10/99 of 7 June) aims to create 'new' means of resolving litigation to meet the demand that the judicial courts cannot satisfy. Mozambican state justice thus finds itself squeezed between two waves of non-judicial or de-judicial processes: one at the top of the social hierarchy (arbitration or negotiation with lawyers, transnational actors or private actors who act on the margins of the state and settle business suits or cases where state intervention is not desired), and another at the base (the community courts and the whole set of authorities who are designated traditional and who resolve local suits affecting the life of the society).

The judicial system therefore has an illusion of centrality, but the state and official justice penetrate neither the bottom nor the top. Moreover, public and private are merged so that, for the time being, justice follows the trend towards the 'privatization' of political power.

**Figure 7.3: The Resolution of Litigation in Mozambique and the Social Pyramid**



### Conclusion

Human resources – judges, state attorneys, functionaries and justice officials – are insufficient and not adequately qualified. In addition, the staffing is inappropriate for the situation in Mozambique, with an 'unrealistic' number of professional posts and categories. With the exception of those commanded by the Supreme Court Justices, in general salaries are demoralizingly low and are frequently not paid on time. In addition, elected judges spend long periods of time without receiving any compensation and their fees are very low.

The Government budget and Court's Fund are inadequate for the needs of the system and consequently external aid and loans are one way of securing the more rapid development of the judicial system.

More than half of the litigation handled by the provincial courts involves criminal complaints corresponding, in 1998, to 80.9% of the total number of cases filed in the judicial system. In 2003, however, this figure fell to 57%, due to a marked increase in civil and labor actions brought before courts.

To sum up, in Mozambique provincial criminal justice is characterized by litigation centering on crimes against property and involving bodily harm. The defendants are predominantly men, who are normally held in custody, have no lawyer and are, in almost all cases, found guilty. There are also some cases of misappropriation and several high profile cases of crimes against human life or economic crimes which have a great public impact and receive extensive media coverage. However, there are also types of litigation that are almost absent from the criminal justice system, such as most economic crimes, domestic violence and violence against children.

Civil justice in Mozambique is facing the problems inherent to an emerging judicial system operating under both new and old concepts of the rule of law. It suffers from a lack of resources and competences, which lowers its quality and makes the judicial system susceptible to corruption. At the same time, it is already experiencing the problems of the more structured judicial systems, such as high costs and excessive delays. The reforms that have been initiated seek to combine the successful measures tried out in other countries with a process of taking carefully measured advantage of the potential within its own mechanisms and specific local features.

The district courts lie at the crossroads between community justice and the judicial courts, establishing both complementary and competitive relationships between them. The judicial system therefore has an illusion of centrality, but the state and official justice penetrate neither the bottom nor the top (revealing an absence of judicial litigation). Justice is following the trend towards the 'privatization' of political power.

## Notes

- 1 This figure refers to judges both with and without a degree. It does not include, however, the judges temporarily transferred to other areas of the administration of justice (information kindly provided by the Supreme Court's Statistical Department).
- 2 All the 11 provincial chief judges have a law degree, while law graduates have gradually been appointed to several district courts over the last years. In mid 2002 the first district judges who were law graduates were appointed, for example, in the law courts of the districts of Chókwè and Macia, in the Gaza province. See also chapter 6 for an analysis of some of the changes in legal education and training in Mozambique over the last few years.

- 3 This also depends upon the future status of the community courts (see chapter 10). The new law of the community courts is currently being discussed.
- 4 Although the situation has changed significantly since 2000, as some of the figures in this chapter illustrate, the justice system still needs many more law graduates.
- 5 Recently (2004), the salaries of the Mozambican magistrates (judges and state attorneys) were increased.
- 6 See note 40 in chapter 2.
- 7 On this subject, see chapter 2.
- 8 Commercial Bank of Mozambique – CBM.
- 9 Danish Agency for International Development Assistance.
- 10 For further details, see Dagnino *et al.*, 1996, the source of the above information.
- 11 Information from the Supreme Court, obtained in July 2000.
- 12 DANIDA has been the most important donor in the justice sector. Over the 1990-1995 period DANIDA implemented a US\$ 2.8 million project involving the Eduardo Mondlane University Law Faculty, the INAJ and the Supreme Court; this project was followed by another (1996-2001) valued at US\$ 8.3 million that concentrated its support at the district level, rehabilitating and equipping 20 priority district courts and promoting training for their judges. To complement the rehabilitation of the district courts, support was also given for law reform, in particular the revision of the procedural codes, considered one of the reasons for the poor administration of justice. Toward the end of the project DANIDA provided support for the strategic planning process. A US\$ 8.5 million project was approved for the period 2002-2005, to be used to provide continuing support for integrated strategic planning, support for law reform through UTREL, training and research through the Centre for Legal and Judicial Training, access to justice and human rights through organisations in civil society and support for informal justice.
- 13 United Nations Development Program. The project ‘Support to the Justice Sector in Mozambique’ was initiated in 1999. Overall, this project received contributions from the UNDP itself, Norway, Ireland, Portugal and UNICEF of about US\$ 4.9 million in its final year of implementation. The project had two components: (a) support for the establishment of the Centre for Legal and Judicial Training, equipment, training courses for judges and technical assistance; (b) support for the reform of the prison system. In 2002 another initiative aimed at fighting corruption was added to the project. The available funds (US\$ 300,000) were used to organise a forum on corruption, train judicial inspectors and journalists and the first survey of the needs of the Criminal Investigation Police (PIC).
- 14 A financier through loans, the World Bank is one of the largest participants in the justice sector in Mozambique. Under its 1994-1999 US\$ 6.6 million ‘Capacity Building Program – Legal Component’, funds were provided for training initiatives, Masters degree courses and equipment for the Ministry of Justice, the Administrative Court, the General Attorney’s Office, the Supreme Court, the Law

Faculty of Eduardo Mondlane University, the Bar Association and some NGOs active in the sector.

- 15 The first USAID project in the justice sector (1997-2000, valued at US\$ 580,000) focused on the civil section in the Maputo City Court, where a computerized case management system was introduced and proposals were prepared for the reform of the Civil Procedure Code. More recently, USAID has been supporting the Anti-Corruption Unit in the General Attorney's Office.
- 16 The source of information in notes 12 to 15 is Dagnino, F. et al., (2003). *The Justice System: Past and Present*. Maputo.
- 17 Created by Decree no. 22/89, of 5 August.
- 18 In 1996, court costs were composed of: legal charges, part of which were sent to the state; additional costs, which, in turn, included a surcharge of 30% on the legal charges; stamps; postage costs (when necessary); the cost of paper and journeys, or, in other words, the monetary value of the distances which a bailiff had to cover in order to carry out his/her work. In civil cases, there was also the 'payment of costs' corresponding to the amounts the courts levied in advance from the individual involved in a claim, which were subsequently deducted from the sum of the legal costs when the case ended. Legal costs relating to civil cases depended on the amount of money involved, whilst in criminal cases they depended on the seriousness of the crime, the type of case and the financial means of the accused. In terms of amounts, in summary proceedings the charges varied between a minimum of 5,000 *meticaís* and a maximum of 40,000 *meticaís*, whereas in uncontested divorce cases they were around 50,000 *meticaís*.
- 19 However, in 2002 and 2003 there was a significant decrease in pending cases (a total of 90,153 for 2002 and 98,842 for 2003).
- 20 Proceedings which allow court to apply a mandatory prison term of over two years.
- 21 Proceedings which allow for the court to apply a short prison sentence (between one and two years).
- 22 There were no data available for Sofala Provincial Judicial Court for the 2002-2003 period.
- 23 For a comparison of different systems of civil justice and their problems, see Zuckerman, 1999.
- 24 On this subject, see chapter 9.
- 25 For the main characteristics of civil justice in Portugal, see Marques *et al.*, 1999:413.
- 26 ADRM – alternative dispute resolution mechanisms.
- 27 According to Bourmaud (1997: 84), "the transposition of administrative structures into very different cultural universes, in which a relationship with modernity is largely unknown" and "in which there exists a manifest dysfunction between the means which the administrative apparatus possesses and its official objectives" leads to serious dysfunctioning and an inability to adapt, on the part of the administration, to the human context in African countries.

- 28 See chapters 2, 4 and 6, for a better perspective on the current changes and challenges which the Mozambican society is facing.
- 29 Resulting from the abolition of the APIE, the state real estate management in charge of the real estate that was nationalized immediately after independence (see chapter 2).
- 30 The topic of family conflicts is also covered in chapters 10 to 13.
- 31 On this subject, see chapter 9.
- 32 On this subject, see chapters 2, 9 and 10.
- 33 Many criminal cases are solved through ‘informal’, unofficial channels of conflict resolution, as analysed in different chapters of this book.
- 34 A proceeding which allows for the court to apply a quite short prison sentence (from three days up to one year).
- 35 Institute for Legal Assistance and Representation.
- 36 On this subject, see chapter 2.
- 37 In 2003, 28 districts remained without formally established district courts and in the districts where they did formally exist, 17 were not operational at the time (Supreme Court Statistical Department, 2003).
- 38 The district courts studied were: Namaacha and Moamaba (Maputo province); Homoíne, Maxixe and Vilankulo (Inhambane province); Dondo (Sofala province); Pebane and Alto Molócuè (Zambézia province); Angónia, Cahora Bassa and Moatize (Tete province); Chiúre, Mueda, Mocímboa da Praia and Pemba-Metuge (Cabo Delgado province). During the first research project, the provinces of Niassa, Nampula and Manica were not included. The latter two provinces were studied in the second project.
- 39 As a result of this observation, and following the creation of the Center for Legal and Judicial Training (CFJJ), several justice officials from district judicial courts have undergone training in recent years (see chapter 6).
- 40 It was difficult to evaluate the court flow due to the fact that there was no statistical data for the district courts at the Supreme Court. The data analysed in the project and discussed here result from counting archived cases, the court claims register, etc.
- 41 This general recovery took place after a greater fall which occurred between 1987 and 1992 (corresponding to the period of civil war that ravaged the country). In 1992 the Rome Peace Agreement was signed. See chapters 1, 2 and 4 for a broader understanding of the socio-political scenario in Mozambique over the last three decades.
- 42 Overall, for the characterization of the ten-year period (1987-1997) 1,282 cases were analyzed. Of these, in 1987, 72 were proceedings for serious crimes and for felonies, and the vast majority – 1,002 – proceedings for misdemeanor. In 1997, we identified 72 proceedings for serious crimes and 68 proceedings for felony. The remaining proceedings did not refer the type of case.

- 43 In the early years of our sample, attempts on life were more significant (16.5% of cases in 1987, against 2.6% in 1997).
- 44 See also chapter 9, where the issue of domestic violence (including gendered violence) is analysed in more detail.
- 45 In 1997 we observed an increase in felonies committed by younger men between the ages of 18 and 25 (30.8% in 1987 against 36.1% in 1997).
- 46 Towards the late 1990s we identified a significant trend in the increase of unemployed people among the defendants. This figure confirms the opinions of several interviewees who associated the social and economic problems of Mozambican society with a strong increase in unemployment and criminal activity.
- 47 We also identified cases in which at least a sentence of flogging was given when Law no. 5/83 of 16 March was in force.
- 48 On the multiple forms this relationship may take, see also chapters 10 and 11.