**Maria Paula G. Meneses**

Centro de Estudos Sociais

# Toward Interlegality?
# Traditional Healers and the Law in Postcolonial Mozambique[1]

## 1. Mozambique: a landscape of plural legal orders

Mozambique is an African state, lying in the southern hemisphere. It is a large country, with a population of approximately 19 million, almost all native Africans, belonging to several ethnic or linguistic groups. Until the onset of Portuguese colonization toward the end of the 19th century, the various peoples that made up Mozambique did not live under a single political authority. They existed as independent entities, with various forms of political and social organization: some were kingdoms with centralized governments; others existed mainly as headless units, the largest political units being the tribes or chieftaincies.[2]

The transition to the 20th century became synonymous with the implantation of colonial rule, symbolizing a critical period of radical changes that brought about the Mozambican political reality. The different economic and political strategies applied by the colonial state in Mozambique resulted in important changes to the organization of power (where and for whom this power operated). The forms of colonial domination and resistance in different spaces and locations are a reaction to the systems of exploitation that depended on slave and free labor, a situation that explains the colonial regime that existed in Mozambique, as well as the different stages that succeeded it (O'Laughlin, 2000: 11). The *Indigenato* regime[3] was the political system which subordinated Mozambicans to leaders of communities described as tribes. The

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[1] This article develops some ideas initially discussed in a chapter co-written by the author, published in a two volume book co-edited by Boaventura de Sousa Santos and João Carlos Trindade, titled *Conflito e Transformação Social: uma paisagem das justiças em Moçambique* (2003).

[2] Both terms were used under the assumption of the presence of a common history, language and culture shared by specific self-contained collectives. Customary law provided the prescriptive rules binding such units.

[3] This lasted until the early 1960s. However, as I shall discuss further on, the end of this regime did not extend the rights of citizenship to most Mozambicans, nor lead to important reforms of the local administration, nor contribute to the strength of the legitimacy of the colonial regime. It was more of a cosmetic reform, at a time when the struggles for national liberation were already spreading in the Portuguese colonial territories.

construction of traditional/common law therefore arose as an integral part of this process of subordination and domination out of which the colonial state emerged (Young, 1994; Gentili, 1999). Under the colonial state, political control was highly concentrated, while the administrative control was much more selective and decentralized. Thus, in rural settings, the colonial state agreed that the administration would be carried out by local, traditional authorities, applying a private, customary law for the resolution of problems in local societies, whereas in urban areas civilians (mostly Portuguese colonists) operated under the rule of law.

In ideological terms, the colonial system was a dualistic system which attempted to oppose the different forms of governance, legal systems, land possession, and labor regulation (Mamdani, 1996; Newitt, 1997). The colonial state guaranteed the existence of an official, modern legal system for citizens (i.e., for the colonists and the "assimilated"). The state would issue birth certificates and identity cards to citizens. Citizens could use these documents to register goods (e.g., land) under their names, and could appeal to state courts to resolve legal conflicts. Civil identity was, therefore, the identity of the civilized citizen, the only one who retained political and civil rights. On the other hand, indigenous rights were defended by traditional authorities through traditional law. Because indigenous identity was outlined along regional ancestral lines, it was defined mainly on the basis of ethnic criteria.

By attributing a political identity to Africans through local (indigenous) authorities, Portuguese colonialism sowed the seeds of a wide array of ethnic and racial identities which characterized Mozambique in the post-independence period (Santos, 2001).

After independence, political-legal cultures as diverse as the Eurocentric socialist revolutionary culture or the Eurocentric capitalist democratic culture have been added to the extant mix of legal orders (Santos, 2003: 65). These "new" cultures added new elements to the resources available locally, which were remnant structures from earlier periods in the life of the state. Although legally suspended for a while, some of them had continued to survive sociologically – such being the case of the so-called traditional authorities. (Geffray, 1990; Cuahela, 1996; Dinerman, 1999).

As Santos points out (2003a: 55), if during colonial times it was relatively easy to distinguish, in terms of legal pluralism, between the main legal orders concerned – colonial law on one hand and native or indigenous common law on the other –, this distinction becomes blurry in a postcolonial context. Indeed, the contemporary landscape of Mozambique can be described as a mosaic of legal hybridization, in which there is a mixture of elements of different legal orders (official/state law, common law, various religious laws, etc.). At the

same time, in the field of conflict resolution, innovative legal entities are created out of such mixtures.

In sum, and as I shall discuss further, Mozambique represents a world of legal hybridizations, a condition present not only at the structural level of the relationship between the different legal orders, but also at the level of the legal behavior, experiences and representations of citizens and social groups. This legal phenomenon has been described as *interlegality* (Santos, 1995),[4] as a way of describing the multiplicity of legal orders and the combinations between them that characterize contemporary Mozambique.

In this paper I seek to explore some of the conflicts in the administration of justice in Mozambique. My reason for adopting global-national-local perspectives derives from the need to interrogate the reasons for the mismatch between traditional and modern law, between the official and unofficial settings of conflict resolution. Here this is done in several ways. I begin by examining the debates around the emergence of the colonial state as an analytical category with respect to Mozambique, to Africa and in the broader context of modern law. I then discuss some of the specifics of what we generally refer to as "traditional authorities" and ask whether, if the term itself proves to have salience, we should not speak instead of other modern and hybrid situations. Problems related to witchcraft continue to be one of the most visible areas of activity of the traditional institutions, where culture and power are continuously contested and recreated.[5] Using witchcraft practices as a window into this broad subject, I try to show some possible ways of approaching the question of law and justice in Mozambique as a problem-solving tool.

As a starting point, the analysis of this plurality of legal systems is made through the cautious use of the variables official/non-official, traditional/modern. However, caution is necessary owing precisely to the context of *interlegality*, of constant mixing and crossover of decisions, which result in a multiplicity of hybrid situations.

The *official/non-official* dichotomy is defined by the state, which establishes by law – among the wide variety of conflict resolution procedures – a more or less explicit distinction between what is legal and what is illicit, if not illegal. Everything recognized as official

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[4] Santos argues that *interlegality* is a dominant characteristic of our times: "We live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing. Our legal life is constituted by an intersection of different legal orders, that is, by *interlegality*" (1995: 473).
[5] I am aware of the unsatisfactory nature of "witchcraft" as an analytical term. A detailed discussion of the concept and distinct definitions proposed in distinct contexts in Africa, as well as of the ambiguities of a transfer of westernized concepts of magic and witchcraft in African societies, can be seen in Douglas (1977: xiii-xxxviii; 1988: 102-104); Last and Chavunduka (1986); Geschiere (1997: 12-15, 215-224); and Horton (1993).

medicine is the object of support by the state. The legal structures not recognized as official are tolerated and, quite frequently, ignored. The most visible expression of the state's formalization through the bureaucratization and normalization of knowledge can be seen in the reduction of the extreme complexity of ways of dealing with social problems and conflict situations to a list of scientific areas (Santos, 2003: 61-62). The "traditional" sphere, the institutions which take on the protection of the welfare of the local communities are simultaneously political, curative, juridical and religious; they cover an extensive field of competencies and functions which place the efficacy of problem solving within a more enveloping efficacy, bringing into play institutions of authority, normative and symbolic structures, and relations of force, knowledge and power. This matter requires a careful evaluation of the *traditional/modern* regarding the emergence and development of the extreme heterogeneous landscape of judicial orders existing in Mozambique (Santos, 2003: 62). In the modern view, the qualifier "traditional" in terms of conflict resolution, of social integration, is used to make reference to practices and knowledge that have "always" existed, as opposed to the modern judiciary; the former does not have an equal footing with the new legal structure which began to be introduced into Mozambique only in the late 19th century. In terms of the social support for each part of the dichotomy, the traditional can be analyzed just as an invention of the modern and the modern a creation of the traditional.

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

## 2. The colonial and the postcolonial state

In 1975, with Independence, the country adopted a westernized constitution,[6] with a parliamentary system of government. It also provided for an independent judiciary with the power to review acts of both the legislature and the executive. However, as Frelimo's[7] government goal was to achieve the level of development presented by the West, ethno-cultural differences were seen as a wrong political move, as a path to the advance of internal regional fractions; at the same time, many of the local African traditions were regarded as backward, opposing the route towards development. During the first decade after independence, it became practically impossible to speak of social differences other than the obvious differences between colonial-colonialists and oppressed, between rich and poor. Reference to other forms of difference – be they cultural or even ethnic – would be condemned as pandering to spread regional divisions in the country. Literate people were almost inevitably part of Frelimo's attempt to extend the modern state[8] into the rural environments. Their power came from a form of knowledge that denigrated the "traditionalism" of the tribal chiefs and the "obscurantism" of their rural culture (Machel, 1981: 38; Roesch, 1992: 472; Geffray, 1990: 34-44, 78-80). Literacy was not just a skill to be learned, it was an instrument aimed at eradicating the related evils of illiteracy and obscurantism. Frelimo had won the struggle against colonialism and, on its ruins, would transform the mentality of native society. Learning to read and write would bring about a transformation from metaphysical reasoning, typical of a traditional society, to scientific and materialist reasoning. Characteristic of the dominant ideology at that time was the fact that scholars ignored some of the main questions that, in the legal terms, people were posing, such as the theme of witchcraft. Rather, witchcraft was described as an impediment to national unity and to the project of liberation: pernicious evidence of the "traditional," obscure past (Castanheira, 1979: 12).

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[6] Even though the nationalist movement (Frelimo) was predominantly composed of "natives" of Mozambique. In 1990 a new constitution was approved, establishing in the country a multi-party system, the separation of executive, legislative and judiciary powers, and the introduction of a market economy.

[7] Frelimo stands for *Frente de Libertação de Moçambique* (Front for the Liberation of Mozambique), the movement that conducted the struggle for national liberation. After Mozambique's Independence from Portugal, in 1975, Frelimo underwent a process of political transformation, and was established as a party in the late 1970s. After the introduction of a multi-party system, in the early 1990s, Frelimo won the first two presidential and legislative elections, thus being the party in power now (in 2003).

### 2.1. The creation of the customary

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

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

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

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[8] That is, the assumption of free and equal citizens in the country.

[9] The *régulo* (chieftain) was institutionalized, in colonial times, as the lowest component of the administrative colonial system, working under the control of the local administrator. The *régulo*'s position was passed down from generation to generation, according to a hereditary system. Thus, where such a position still exists, its legitimacy derives from family lineages going back to pre-colonial times. The *régulo* embodies different functions of power: legislative, judicial, executive and administrative.

[10] Indeed, whenever these traditional chiefs opposed the colonial authorities in one way or another, they were replaced with more prudent individuals.

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

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

Under the Portuguese, the *régulos*[11] were the repositories, administrators and judges of "customary law," the rules that governed colonial social, political and economic relations. In sum, from a political resource for renegotiating social status and access to resources, the customary was transformed into a set of enforceable rules that froze its status and restricted access to it.

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[11] And their assistants, the "*cabos de terra.*" To exercise their political power, traditional authorities had their own small police forces (and resorted to physical punishment). Yet, the *régulo* did not act individually, but rather as a type of catalyst of opinions, such that a case was presented not only to the chief, but also to his counselors. The sentence was produced after hearing the opinion of the *b'andlha'*, i.e. the assembly of prominent members of the local community. Indeed, physical force was insufficient to guarantee the legitimacy of their actions. To that end, traditional authorities had to appeal to the support of the local lineages (to which they frequently did not belong, as mentioned above) to negotiate the demands of the colonial administration and find solutions to emerging conflicts.

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

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

The history of colonization and modernization (both in its European and African guises) has been a history of suppression of the demands for justice in the face of witchcraft. In Africa, colonial authorities dismissed customs found to be "repugnant" to civilized standards. However, as will be further discussed, from the perspective of Mozambicans, the modern, "enlightened" and rational legislation presented itself sometimes as a perversion of justice. In pre-colonial and even in colonial times witches were frequently expelled from the community, or killed, or still forced to pay compensation for the damage caused. Under the colonial state, in neighbouring British colonies, witchcraft practices became outlawed, accused of reflecting "a retrograde past" (Melland, 1935; Roberts, 1935).[12] Throughout, the 19th and early 20th centuries witnessed the enactment of "suppression of Witchcraft" legislation, designed less to suppress the practice of evil, as understood by locals (which the colonial authorities took for superstition), than to suppress these activities (which the colonials deemed barbarism); as a result, sanctions against witches were declared offensive and threatened with long prison sentences (Krige, 1936: 252; Chanock, 1985). In a colonial context, the witchcraft victims got the impression they were defenselessly subjected to the pursuit of witches. From their point of view it was completely incomprehensible why the colonial administration was particularly eager to protect the most dangerous villains. In a colonial context, as we will be discussing further on, the state, while not protecting people from witchcraft spells, emerged as the protector of witches, thus making itself illegitimate in the eyes of the native populations. However, in order to avoid being portrayed as sponsors of witchcraft, the Portuguese colonial authorities never formally accepted and allowed "traditional" courts to conduct trials against

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[12] This law criminalized both those who were regarded as practicing witchcraft and those who accused them of doing so, but "witchcraft" itself was neither described nor defined. There was therefore considerable fluidity and room for interpretation as to what, exactly, constituted "witchcraft," thus becoming an ambivalent answer of the colonial state about the nature of witchcraft.

witches (Meneses, 2000). Traditional authorities were even allowed to deal with charges of witchcraft, if they did not involve accusations of murder (Meneses, 2000; Honwana, 2002).

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

### 2.2. The "traditional" side of modernity

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

In the political-legal sphere, the dominant discourse, seen as a means of contributing to development, mirrors the genre of peripheral postcolonial states aspiring to modernization. Both the "native" and the "civilized" are given fixed ideological meanings, resulting in an impossibility, in terms of socio-legal theory, of connecting different legal systems from the perspective of *interlegality*. This became particularly notorious during the last stage of the colonial presence in Mozambique. The result of the attempt to apply indirect rule to a colonial process where the colonizing power was – in terms of social, economic and political intervention – quite fragile, produced a hybrid system of traditional authorities. On the one hand, these chiefdoms – whether "original" or adapted – represented a guarantee of continuity for the functioning of the communities; on the other hand, they constituted the bases of colonial administration within the local setting. In this sense, the customary represented a

safety cushion between the communities and the agents of the colonial administration, who were entrusted with resolving various administrative, economic and legal problems, and allowed for a more or less harmonious relationship between the two. Despite being modified under pressure from the colonial entity, in a certain sense the actions of the traditional authorities continued to be seen as local in origin and as the result of a profound familiarity with the feelings, existing norms and language of the communities. These were the factors that permitted and legitimated their actions.

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

The Mozambican postcolonial state emerged in a context where both chronological and territorial differentiation were achieved by a unitary compulsion that whitewashed differences, insisting upon the homogeneity of the future, and not assuming the existing socio-legal heterogeneity. Thus, to be part of the "present" required freezing everything else that represented an obstacle in the historical path to modernity, as part of the "old" past, as traditional. The "other" cultures, viewed as "inferior" under the colonial order, now, in a postcolonial setting, (re)emerged again as "backward" in the dominant legal discourse. The extremely complex cultural mosaic of socio-legal cultures in Mozambique, with their own characteristics and structures, kept being normally described as a homogeneous entity,

resulting in general reference to a single traditional judicial structure (Carilho, 1995; Nilsson, 1995; Lundin, 1998). In terms of legal systems, this approach justified the dominant presence of an official legal system, built upon the principles of Western rationality.[13]

The initial process of incorporating the newly independent postcolonial states into "the family of nations" resulted in a process of reinforcement of the differentiation between the "universal" legal framework and the local, traditional legal frameworks. Indeed, the continuity of the principles of western rationality in the social ordering of Mozambique resulted in a sequence of attempts (Santos, 2003) to integrate the "other," the traditional indigenous, under a dominant legal rationale, without acknowledging the fact that the existing differentiation in terms of rights is the result of specific historical and contemporary experiences. This sort of "amnesia" regarding the "other" enabled the Western-based legal narrative to remain ever-present, without ever being questioned for the bias provoked against the plural arena of socio-legal orders. As before, during the post-independence period the native peoples were viewed as uncivilized, without sufficient legal sophistication for their normative systems to be part and parcel of the new national legal order. The stimulating results of a research project on the heterogeneous nature of the Mozambican state, as one of its main characteristics, pointed out the fact that only a very narrow group of the population would appeal to the official, state-oriented judicial system to try to solve their problems (Santos and Trindade, 2003). The presence of a Westernized approach to the judicial culture is the example of bequeathed suppression of other knowledge and practices in the construction of the legal landscape in the country. The "international" legal framework became the normative episteme other cultures and countries had to accept in order to be recognized as a state. Instead of building a new legal order based on the realities present in the country, the contemporary Mozambican legal framework may be described as one that establishes an overall supremacy over other competing modes of rationality, which are either silenced or appropriated as a subaltern means the dominant model can use. Instead, we defend that an autocratic approach to consolidating "national" unity only results in the amplification of the cultural differences and identities, as we have been observing. These observations require a deeper evaluation of the character of modernization, since the intransigence of the

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[13] The absence of "recognition" of the aims of local communities by the "modern" state was one of the main reasons that led *Renamo* (the National Movement of Resistance of Mozambique) to carry out a long civil war that ravished the country for more than a decade. In 1992, Frelimo's government and Renamo signed a peace agreement, a fact that allowed for political and social stability in the country. Meanwhile, Renamo transformed itself from a movement of resistance into a political party, thus becoming the second main party in the political landscape of Mozambique.

dominant legal model towards the other socio-legal structures (resulting in their subordination or invisibility) indicates the presence of an inflexible modern state, frozen in its past. As the study supervised by Santos and Trindade (2003) clearly indicates, it has been possible to detect the development of dynamic legal hybridizations in Mozambique – hybridizations that accept the modern model of law, even creating space for its action. Seen from this angle, the vitality of traditional normative systems reflects the difficulties of a state legal body, which appears unable to achieve its objectives. The hybridization of legal orders reflects the diversity of knowledge present, by no means fixed in space and time, as so often is imputed to "traditional values."

Because "other" political, judicial and administrative instances have been developing and adjusting to contemporary situations, they result is a wide array of metamorphoses in the socio-legal field. The fundamental question to be posed is how the dynamics of hybridization of these legal orders have developed, and what forms they have acquired. Contemporary Mozambique is composed of a mosaic of "traditional authorities" (i.e., non-official), whose role, functions and performances are quite difficult to fit under a common canon.

## 2.3. Conflicts of power, conflicts of knowledge

Following the colonial standards, most of the studies conducted on the subject tend to insist on the role of the *régulos*, forgetting the enormous array of entities present, who are, as I will discuss further on, considered legitimate and legitimised from below by the communities that recognize their authority. Personages such as traditional healers (*tinyàngà*[14]) are also part of the concept of "local authorities," despite the fact that their political importance seems to be less visible. Another aspect to bear in mind is the fact that the "traditional" authorities and their means of dealing with social problems are not confined to the strict ambit of law; rather, they embrace several other sectors of social life.

In this sense, they require a reshaping of the concept of "problem," of "conflict," which includes the notion of misfortune, and which translates the cognitive, symbolic and

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[14] Plural of *nyàngà*. Although there are various designations for traditional therapists, this is the most commonly used designation in southern Mozambique. As we shall see below, the *nyàngà* is the person who can smell out the evil person among the neighbors, who aims to bring disaster onto the community. The *nyàngà* has the knowledge and power to heal, counting upon the help of ancestral spirits to protect the local community. Hence, the doctor is one of the pivots upon which the welfare of society rests and he is for this reason most highly respected (Krige, 1988: 297 ff). The *nyàngàrùme* only know about plants, having learned from members of his family how to apply them, without reference to spiritual forces, to help to resolve misfortunes.

institutional order of society itself. The universe under study is a good example of the coexistence of several institutions, which aim at welfare and social integration.

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

The emancipation of interlegality derives from being "under construction" at a stage in which both "traditional" and "modern" legal orders are experiencing turbulent processes of transition, resolving tensions and ensuring the reproduction of the social fabric. The dominant legal order does not reflect this array of diversity. The case of witchcraft is an ominous reminder of the dangers of steamrolling and compartmentalizing human societies into a static formulation that recurrently produces the condition of subordination of the same groups by those who hold power. Thus, the plea for a legal landscape composed of compromises with several orders is a challenge to the ready assumption that the postcolonial state is untouchable and the "universal" legal system is the essential regulatory option.

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[15] In the sense that it will affect the entire community.
[16] African healing traditions are generally described as holistic and do not recognize the Western distinction between medicine, justice and religion or spirituality.

### 3. The ambiguous nature of witches and healers

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

> Since crimes of this nature are not resolved by the authorities or the courts because of lack of material evidence […] people die, fall sick, and remain paralyzed as a result of these barbarities perpetrated by witches who predominate and proliferate in our settlements. The law ignores, and thus even defends it. What is the difference between an assassination through witchcraft and that through stabbing or shooting? Is it not the same crime? Just because the former is done furtively and through the spirits? Or is there fear on the part of the authorities when they distance themselves from the serious problem of tradition that they may discover that witch doctors operate even with the judicial system? (Phaindanne, 2000)

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

This short introduction to the subject of witchcraft unambiguously indicates the presence of two parts: beliefs and action. Accusations are made and action is taken; thus, beliefs and action reinforce one another. In a sense, witchcraft is a sort of occult wisdom (Geschiere, 1997), used to rule a group, a community; however, witchcraft can also be used by its practitioners to harm others or to obtain various types of benefits, as when they sell their services. It may be used with malicious motives for acts of vengeance, forming a wide web that holds villagers and urban dwellers together through discourses and images that continually explore the moral dimensions of poverty and prosperity. Because witchcraft is just

as likely to be a matter of the wealthy attacking the poor as of the poor harassing the well-off, it is the prerogative of neither.

Among the Changana and Rhonga people of southern Mozambique, for example, the *valòyì*[17] were often killed in the past. Throughout the country and elsewhere in Africa, perceived victims of witchcraft took, as they continue to do, the law in their hands to rid the community of the peddlers of this evil craft. It is this latter component that is crucial for a broader understanding of the nature of conflicts and the processes of dispute resolution in Mozambique.

### 3.1. The nature of accusations of witchcraft

The Changana apply the term *nòyì*[18] to all 'supernatural'' attacks. The term is used to refer to attacks or to the power to kill or injure people by means of spells, including also the use of "medicines," often referred to collectively as *murhì*.

Both men and women, old and not so old, have been accused or have been the object of gossip relating to witchcraft practices, although more generally one would find older (and often widowed women) to fall among the casualties of anti-witchcraft action.

Accusations of witchcraft and witch attacks are not rare events. Almost every person in southern Mozambique knows that witches have the power to make lightning strike to injure or kill people; to damage property; to destroy crops, and to cause calamities or accidents. As a victim of a witch affirmed in an interview, "it is not a question of believing or disbelieving. It's difficult for outsiders to understand, but our daily life relies heavily on the world of spirits, for good or evil."[19]

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

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[17] Plural of *nòyì*. The *nòyì* is a spirit with evil power, that can even provoke trouble from a distance, through the help of somebody whose body he/she uses.

[18] Usually the *valòyì* act at night, through the introduction of foreign pieces (bones, blood) into someone's body; as a consequence, the person is poisoned, and risks dying. During the day the evil spirit can act through elements he/she has previously contaminated. The *nòyì* can also use a person whose body he/she "opened" and occupied, making that person his/her slave. These people can be transformed into animals, such as leopards, hyenas, serpents, or still be forced to work in the fields for the spirit, or to steal goods to feed the spirit (Muthemba, 1970; Honwana, 2002).

One of the motives for witchcraft is usually said to be "jealousy," in situations of envy of emerging wealth. This is the reason why the ambiguity of witchcraft is often referred to as "occult economy" (Geschiere, 1997). People affirm that someone desiring to become rich might go and appeal for support from a "bad" *nyàngà*, who would collect the support of all the ancestors, thus leaving the rest of the family unprotected by them.[20] Worse still, several medications can also be applied to protect and preserve wealth, medications that sometimes require the sacrifice of a relative or sometimes of non-kin.[21] People seek in witchcraft an explanation for events and circumstances for which they would otherwise have none. Thus, it is believed to be at the root of many misfortunes, thanks to the actions of their neighbours or kin. In this the inhabitants of Maputo are no different from inhabitants of communities, urban and rural, elsewhere in Africa. The examples available suggest a number of explanations for accusations of witchcraft in general, focusing on hardship and circumstances that cause tension, conflict, suffering, anxiety and uncertainty. As a person struggles to get by in a world where livelihoods depend almost entirely on earning an income, competition for jobs and other income-earning opportunities becomes intense. Those that succeed easily become the object of suspicion by those who do not. Suspicions may degenerate into actual accusations or even lead to a consultation with the traditional healer to garner protection against a witch attack produced by a potential envious or jealous community member.

One of the women interviewed in Maputo[22] pointed to the departure of the more affluent members of the community to the city as evidence of her fear of possible witchcraft performed by her former envious villagers. Consequently, she would resist visiting their kin, fearful of witchcraft.

Another elderly woman,[23] from the southern district of Manjacaze, told us that she would not return to live in her village. She complained that problems of the body (disease) had long haunted her and her children in the village. She had several children, but many of them died young before her husband divorced her and she moved to Maputo. In the city, none of her children have died, which proves in her view that she has found in the town superior protection against the witches of her village. Although she has been careful not to sever her

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[19] P. Xavier. Personal interview. July 2000.

[20] The crucial point is that the knowledge used by traditional healers is in itself ambivalent. It can heal or kill. The distinction between good and evil in this struggle of knowledge powers is mainly a question of perspective. Everybody involved has to protect him/herself from the aggression of others, and, if possible, gain influence over the opponents, in order to weaken and ultimately destroy them. Since this knowledge can be used for the most different purposes, it becomes almost impossible to draw a clear line between healers and witches.

[21] It is not surprising that the Mozambican press has reported several cases of human organs trafficking.

[22] Joana Matsinhe. Personal interview. February 2001.

[23] Helena Macome. Personal interview. October 2003.

ties to the village completely, she never visits the village with her children, especially now that she had become pretty well-off, by her village standards. While showing the intention to return to live in her village, she had attempted to keep up the façade of amicable relations with the villagers left behind, sending gifts and keeping updated on village news.

Throughout the interviews, it is possible to detect that situations of misfortune were preceded by circumstances of open conflict or that begot lingering latent or low intensity conflict or ill feeling. For the victim, in her/his estimation the only plausible source of misfortune would be the person or persons with whom relations were strained. In the absence of conflict with relatives or people in one's region/community, suspicion might fall upon whoever might happen to be the subject of popular suspicion of being a witch in the same region/community.

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

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

Research in urban and rural areas of Mozambique shows that social and economic inequality is firmly entrenched and that communities are fundamentally socially heterogeneous. Wide gaps between the better-off and the worse-off cause social tensions, as the former try to avoid excessive demands by worse-off neighbors and kin, and as poorer members of the community increasingly perceive the better-off as selfish. As the better-off

suspect deprived neighbors and as deprived neighbors gossip about and accuse the well-to-do of having prospered through witchcraft, the tensions erupt into suspicion and accusations of witchcraft.

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

The outcome of a clash of values in time leads to strains and tensions in social relationships and eventually to suspicion and accusations of witchcraft; these situations are not new, and have been detected in distinct settings of the African continent. Marwick (1965: 51), while analyzing the impact of migration on urban settings, illuminates this point:

> [T]he experience that the migrant obtains does much to adjust him to the money-conscious, faster-moving, modern world with its higher standard of living for those who progress. […] by making it possible for young adults to raise their own standard of living instead of ploughing back their income into established relationships and, in general, by being the chief cause of economic differentiation, it [migration] imposes strains that sometimes find expression in beliefs in, and accusations of, sorcery.

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

unacceptable behaviour, as sometimes it is people who behave in unusual or eccentric ways that become the target of accusation.[24]

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

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

### 3.2. The *tinyàngà* and the struggle against social illnesses

As we have just explained, witchcraft has a dual nature: on the one hand it seeks new media – apparently beyond human control – to achieve goals that would otherwise be impossible (such as the "betterment of life" in situations of extreme social exclusion, which is a current reality in Mozambique); on the other hand it functions as a way to voice a desire for punishment of those whom one envies and those who, for whatever reason, stand out. Since witchcraft deals with the "occult," it becomes quite difficult to identify the "modern" means, the sources and evidence to prove acts of witchcraft. The detection of the traces of witchcraft activity is normally done by the *tynyàngà*.[25]

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[24] Also, fear of accusation may enforce conformity, thereby preventing what might be perceived as anti-social behaviour (Marwick, 1965: 282).

[25] Also known, since colonial times, as witchdoctors given their power to fight witchcraft.

Under the scientific model of rationality, the processes of fact-finding and guilt determination, the ritualized expressions of remorse and the demand for immediate, though often symbolic, reparation strike Western sensibilities as weak, irrational and unjust (Seidman, 1965; Horton, 1993; Nsereko, 1996). No wonder that the traditional healers that used to deal with these social situations were described as "witch doctors."

The hegemony of modern science results in the local confinement of "other" knowledge, which can be both the cause of its discrimination as well as the basis for its resistance against the singularity of knowledge. The localisation of a *tinyángá* appears both as a form of security and an affirmation of what is specific to them, of ways of knowing what belongs to them and which thus enables them to acquire space to manoeuvre, spaces of empowerment. The process of negation of knowledge and strength of the "traditional field" of knowledge identified the image of this action with that of witchcraft. But these are in fact entirely different personages, as both patients and practitioners of traditional medicine attest. "There is a difference between a healer and a witch doctor. A healer cures and a witch doctor kills. A witch doctor knows potions that kill. But healers cure."[26]

In southern Mozambique, good health is a wide concept, which requires inner equilibrium within one's self, peace with the ancestors, with one's neighbors, and with one's own body; adequate food (which in the present context includes having work which guarantees an income) and protection from evil – whether natural or "sent" by a witch. If this situation is altered, either by the individual's failure to carry out necessary rituals or by greater forces at play, then the individual and/or the group become ill and everything must be done to identify not only the symptoms of social disorder, but also the origins of the evil and the contamination that results from it.

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

The *nyàngà* plays a dual role – divinatory and curative – based on a broader concept of illness, understood at two levels: as a social phenomenon, resulting in a deep alteration of everyday life, and as a physical phenomenon – a manifestation of something happening

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[26] M. Suzana, Traditional healer. Personal interview. February 2000.

through pain in someone's body.[27] The divinatory function seeks to identify the sources of the illness, prescribing several means to solve it. The curative function seeks to eliminate the physical symptoms. These two functions complement one another, and both help to cure. Thus, the traditional healer knows best how to deal with these so-called "traditional" illnesses, i.e. disorders with a heavy emotional component, because they deal with the body and the spirits which "invade" the body and cause diverse problems to patients.

The healing process, aided by the *nyàgà,* is twofold: it fosters a return to physical equilibrium as well as a psychological and emotional balance by overcoming the sanctions that befell the individual as a result of not observing the established norms.

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

The *tinyàngà* hold the knowledge (and therefore power) to diagnose people's problems and to identify their causes; they claim to be able to counteract spells, find witches that are allegedly responsible for their clients' ills, and to find remedies for their supplicants' problems. In Maputo, the consultation of a traditional healer will result in a séance of divination, followed by the application of the *muavi* or ordeal. The ordeal is a form of divination, which simultaneously discovers wrongdoers and punishes them.[28]

As we will see further on, nowadays, in cases in which the *régulos* or community courts cannot find a culprit for the act of witchcraft, they send the parties involved to consult a *nyàngà* (Meneses, 2000; Gomes *et al*., 2003; Meneses *et al*., 2003). The selection of the *nyàngà* is normally carried out by AMETRAMO.[29] The association decides which *nyàngà* will carry out the divination and the application of the ordeal, to maintain the neutrality of the witch-finding process.

In the cases reported to us where the *muavi* was applied, suspects would be made to ingest a beverage. Once ingested, it runs through the body looking for *witchcraft*: if it does

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[27] Contemporary state institutions reproduce the segregated model of dealing with knowledge – the role of diagnosing/divining problems is separated from the healing function. Today, as in colonial times, one sees legislation leading to the legal recognition of traditional healers by biomedicine (today, traditional healers are allowed to practice medicine, but as private practitioners), but they are not legally recognized as legal advisors or counselors (Meneses, 2003; forthcoming).

[28] Ordeals by fire or the administration of poisonous beverages, for instance – widely reported in time and space –, burn the guilty or impure but leave the innocent or the genuine devotee unharmed. In other parts of Mozambique heated knives have been used as well.

[29] AMETRAMO stands for *Associação dos Médicos Tradicionais de Moçambique* (Mozambican Traditional Healers' Association). This association was formalized in the late 1990s.

not find any, it will "leave," excreted or vomited from the body. If it finds *witchcraft*, it will stop, and the accused will "fall down" and die. Thus, the "innocent(s)" would vomit, in which case the accusers would compensate them. The "guilty" would purge, in which case they might be removed from the community (even killed). Apparently whoever dabbled in witchcraft after undergoing the ordeal would fall under a "boomerang" effect with fatal consequences. I was told both that ordeals were forbidden since colonial times and that they could be licensed as part of the legal process nowadays (using dogs and roosters symbolizing people). These latter forms of ordeal were performed openly at the time of my fieldwork, in early 2000.

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

Witchcraft (either its practice or just a threat) helps produce social balance within communities, a balance that is always precarious and in need of reconstruction. Both in an individual's life and in the life of the community, a continuous movement is present, oscillating between the moral ideal of community and the embarrassing reality of individual assertion. This contradiction is controlled through witchcraft. Witchcraft holds the balance of power relations: forces over which they do not have power control the excessive success or power of a community leader – be it a traditional leader or a *nyàngà*. Witchcraft as a mechanism of power control is especially sensitive to changing patterns of social conflict, adapting rapidly to new situations.

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

### 4. The official judicial system and the problem of witchcraft

In a recognized plurality of systems of conflict prevention and resolution (Santos and Trindade, 2003), what does it mean to deal with witchcraft as part of this plurality?

In Mozambique, it is equivalent to saying that part of the normative, official system of justice rejects the possibility of witchcraft and, as a result, denies the potential for its practice. As noted by one *régulo*, "when they send cases of witchcraft to be resolved in the courts, they say that there is no basis [evidence]."[30] Consequently, witchcraft is not punishable as a crime. The failure to condemn witchcraft frequently leads to two paradoxical situations: on the one hand, the *nyàngà* can become a negative actor because he/she produces invisible evidence that results in the social or physical exclusion of the subject of the accusations; on the other hand, because the definitions of good and evil and the concept of evidence are evaluated quite differently at the local level, by using the current penal code to continually uphold the accusations against the healers while dismissing those against the witchdoctors due to lack of evidence, the Mozambican state risks turning away from being a defender of the community and turning into a defender of the evildoers – the *tinyàngà*.

After independence people expected the state to fight for them, to come closer and free them from the long period of colonial exploitation. Traditional doctors expected greater openness "now that the country was finally ours,"[31] but that did no happen. In Mozambique, postcolonial legislators, following an approach that was present also in neighboring countries,[32] regarded witchcraft as a merely imaginary offence and tried to impose this view on the majority of the population. Frelimo's ruling elite, owing to its Western education and political objectives, looked at these practices as a shameful phenomenon that had to be overcome by modernization. Rather than punishing the witches, all those who tried to defend themselves against witches were threatened with prison sentences: the traditional doctors, who can "smell out" culprits, as well as ordinary citizens, who accused others of witchcraft, in addition to everyone who used violence against alleged witches.[33] However, whereas in the colonial period some of the activities of traditional healers were tolerated, after independence and the prohibition of their trade, the healers were persecuted (even those who were able to

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[30] Régulo Santaca. Personal interview. May 1995.
[31] Zimba, M.F. Personal interview. March 2000.
[32] For example, in Tanzania, though revised in 1958 to take into account changes in local government structure, the Witchcraft Ordinance of 1928, "declares both the practice of witchcraft and the accusation of another as a witch, unless before a local authority or a court of law, to be illegal" (Green, 1994: 23). Prescribed punishment, though not always applied, includes fines, imprisonment and restricted residence under the supervision of district officials (*ibid.*:24).
[33] Zimba, M.F.; Tamele, C. Personal interviews. April 2000.

deal with witchcraft issues and cure people). The healers came to be seen as old-fashioned defenders of "obscure ideas" (Castanheira, 1979; Machel, 1981). In sum, in the postcolonial period, the presence of a plurality of legal systems continued to not be recognized by the formal court system; people remain barred by official law from acting against the threat of witches in an open, legal, official manner.

### 4.1. The absence of evidence and the testimony of the *nyàngà*

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

From the perspective of the modern state in an era of human rights and the rule of law, there are unsurpassable problems involved in the judicial management of witchcraft.[34] Under official law it is impossible to prove witchcraft offenses, since there is usually no physical or tangible evidence of what the witch does. Therefore, witches cannot easily be brought to court for prosecution. Accusations of witchcraft can be presented as sworn testimony in courts of law easily enough. Witnesses can present evidence of motives that might plausibly be read as inclining a person toward witchcraft. They may also testify precisely to the opportunities that a person so inclined might have exploited in pursuit of his/her evil deeds. Such witnesses might be cross-examined and their veracity tested. But the evidentiary essence of culpability, such as an eyewitness account of the criminal act in cases of suspected witchcraft, is forever occluded from view. With cases of witchcraft, silence and discretion are the norm.[35] The

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[34] As Ashforth notes (2001: 16), another problem of the complex relationship between official, state justice and witchcraft, which I will be tackling only superficially, is ontological. No matter how culturally sensitive legal codes are, from the point of view of someone imbued in the Western human rights tradition it is impossible to understand the type of social exclusion and punishment to which "traditional" communities subject witches. Thus, anyone accused of witchcraft in an era of human rights can call upon these doctrines to trump the claims of their accusers. For people who live in a world populated with witches, however, the willingness of a person to practice witchcraft automatically cancels his/her rights to membership in the human community. From this perspective, if witches are something other than human, they can hardly claim human rights to protect themselves from the righteous anger and justice of the community and of society.

[35] For many people, the identification and/or expulsion of an alleged witch represent the permanence, in the community, of a source of possible danger, since the witch may strike back, now that he/she was detected openly. Also, the "official" detection of very few witchcraft cases is due to the fact that people like policemen, judges, etc., do share the fears and beliefs that witches are a danger to well-being, and thus refuse to identify and accuse them.

forces at work are unseen, so an eyewitness is nowhere to be found, although when witchcraft is suspected herbs that might otherwise be acknowledged as innocent medicines can take on a harmful aspect (Ashforth, 2001: 15).

For the official court, it seems to be less difficult to make a fair judgment when judges do not have to deal with witches in a strict sense, but with evidence of witchcraft practices, that is, apparent evidence of the aggression: e.g. fetishes buried under someone's door or hidden in a house. However, what those objects could prove is still questionable. Is a bunch of herbs a love conjuration, aimed at regaining the affection of an unfaithful husband? Or is it intended to harm or kill him? (Schapera, 1975: 109) Ordinary judges would never be able to determine what power those fetishes possess; in cases of doubt, evidence is sought in different forms. Because the official court cannot deal with these questions, if a case reaches the court, the judge usually sends it to be debated before community courts or directly by the *tinyàngà* (Gomes *et al.*, 2003; Meneses *et al.*, 2003).

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

### 4.2. Judicial hybrids and accusations of witchcraft

According to Maciane Zimba,[36] during the first years after independence,[37] although *tinyàngà* were forbidden to carry out their "medical" activity, the popular courts[38] would periodically turn to the *tinyàngà* to look for ways to resolve cases involving witchcraft. In vast areas of the country, rather then being persecuted by the state, they continued to perform their role as expert witnesses to help the judges solve the problem of how to establish evidence against witches. The solution found by the judiciary, still officially not acknowledging witchcraft as a criminal offense, was, as before, to solve these issues by using the customary rules.

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

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

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[36] Personal interview with *tinyàngà* F. Maciane Zimba. April 2001.

[37] And when the *nyanga's* therapeutic role was prohibited.

[38] Popular courts were transformed, in the 1990s, into "community courts" (Gomes *et al*., 1993). A legal project aiming at reorganizing the activity of community courts is currently underway.

The following case, which took place in Matutuíne, a district of Maputo province, in 2000, illustrates this point. A person was indicted for attempting to murder his father. The accused affirmed that the father had cast a spell on him which made him impotent. His marriage was a wreck and he had consulted a traditional healer who had pointed the finger at his father as the wrongdoer. They got into a heated discussion; afterwards the accused went to his father's house and tried to kill his father with a hoe. The father was able to run away and the son was taken to the *régulo*, who decided to try the case locally, since it did not involve anyone's death. The meeting to discuss the matter was attended by all the villagers,[39] the *régulo* himself headed the hearings, accompanied by his counselors.[40] The *régulo* did not act individually, but rather as a type of catalyst of opinions, because the case was presented not only to him, but also to the counselors and the community. After a long presentation of the facts, an advisor assisting the meeting suggested that the suspicions of wrongdoing had to be confirmed by a traditional doctor, since there were also suspicions of the involvement of witchcraft. After hearing the opinion of the *b'andlha'*, i.e. the assembly of prominent members of the local community, a decision was made to send for "good" traditional doctors,[41] which was done. The two parties left to visit the traditional healers, accompanied by one of the counselors of the *régulo*. After a couple of days the two parties returned with the opinion of the healers which confirmed the suspicion of the accused. The *régulo* then sentenced the father to pay a monetary fine and to apologize to his son and to the community.

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

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[39] At times including the entire community, which – given the opportunity to attend the hearing – would simultaneously act as audience and consulting body.

[40] These counselors also include some women, recognized for their wise judgments.

[41] As usual, none of the parties knew the chosen traditional doctors, who were supposed to be from remote areas, in order to avoid biases in the evaluation of the case.

Locally, the sanctions applied by the *régulo* to those accused of practicing witchcraft – physical punishment (shaving their heads, *chambocadas*,[42] and even expulsion from the group) and fines – are seen as forms of sentencing (Meneses *et* al., 2003). Community courts normally do apply fines (Gomes *et al.*, 2003).

One of the great strengths of these institutions of "community" justice is that justice is immediate, public, collective, face-to-face, and relatively transparent, and is based on local knowledge which is flexible and always re-worked in the context of a debated and contested reality.[43] That is why traditional notions of justice[44] should be viewed as one way of evaluating a person through their own eyes, where the power to discredit and defame function within traditional codes of honor and dignity. The *nyàngà* is therefore feared by what could be considered evil – he/she controls and oversees irregular actions, supports the unprotected, upholds morals and disciplines the group. The *nyàngà* reintegrates the individual in an interplay of interests based on solidarity, seeking to keep pressure on emerging conflicts while acting as the "knower" – the possessor of a knowledge that is continually growing and changing – to assure the stability of the group.

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

In short, among the aspects which distinguish the practices of community justice from those of official, codified law, are the following critical ones: while the former is normally consensual and seeks to avoid the escalation of situations of conflict, the latter is based on the individual and seeks to resolve situations of dispute. This situation is associated with another important phenomenon: traditional justice does not operate in an individual way. Because it deals with a system that attempts to regulate and avoid problematic situations within a certain

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[42] A form of physical punishment, consisting of blows administered by a heavy wooden object, called "*chamboco.*"

[43] In contrast to the official, formal justice. The formal justice is extremely slow and removed from most of the population due to the hermetic nature of its design (Santos and Trindade, 2003). Also, there are very few practicing lawyers. The language of the official courts is Portuguese, although less than 50% of the population is fluent in it; together with the "foreign" court procedures, the official justice is hardly accessible, user-friendly, or even fair to most people in the country.

[44] Although this, too, has many negative implications (including flagrant discrimination against and disqualification of women, physical punishment, etc., which are unconstitutional).

group, the traditional chief and the community court members cannot risk losing the support of the social base, the community. Hence, the prominent members of the community act as counselors and the population as evaluators of the appropriateness of the final decision.

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

### 5. Between legitimization and legitimacy

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

An analysis of the privileged role the state wants to play in the field of justice permits a better understanding of the ruptures and continuities in terms of the legal framework from colonial to postcolonial times. By looking at who is authorized and/or favored by the state, what knowledge is tolerated or suppressed, recognized and even left unknown, it is possible to get a stronger and more profound idea of the logic of the state's action. This implies analyzing the fields of force that are constituted as a function of the social recognition of different categories of health practitioners, in the complex interplay between competition and complementarity.

From the people's point of view, the picture is somehow distinct. People do legitimate the practitioners they consult, whether they are trained in the official or in the so-called traditional arena. In fact, in terms of problem solving, normally traditional legitimacy is spontaneously associated with the *nyàngà* and rational legitimacy with the modern lawyer, the latter as a function of his/her certificates. The acceptance of traditional practitioners depends on the loyalty and confidence of those who recognize them as the inheritors of wisdom. The legitimacy, the recognition of their competence, of their merit in that profession, is attested to by those who constantly consult them. The goal of curing a patient as well as the ethical behavior of the traditional doctor have an impact on his/her professional success: "When you have worked well, you get recognition […]. People talk about our work […]. That is how it

was known that I can heal properly."[45] The number of patients and the respect demonstrated by them exemplify the reality of the social recognition of a good healer. Indeed, a traditional doctor without clients has about as much legitimacy as a lawyer who cannot defend his/her causes.

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

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

Even in the case of trials by community courts or customary law, given that witch trials encourage arbitrary judgments, there is a danger of misusing them for personal vengeance. To denounce people as witches and drag them before a court may turn into a convenient means of intimidating one's political rivals or private foes. Also, due to the extreme ambiguity of witchcraft practice (in the sense that a person fighting to achieve a certain goal may leave the

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[45] Zimba, M.F., Personal interview. April 2000.

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conflicting party totally unprotected by monopolizing, with the help of the traditional healer, the power of the spirits), in certain instances, only plaintiffs who can gain the backing of a strong and influential witch-hunter (i.e, someone who can fight a powerful traditional healer protecting the other party) will have a chance to succeed with their charges of witchcraft. Such backing, however, is not free. As a consequence, it is quite frequent for the wealthy to make use of witch trials to terrorize their opponents (Geschiere, 1997: 114, 170-172).

In Mozambique, the position of the main political parties regarding the "customary" is unclear. Opinions vary from a minimalist conception (which views traditional authorities as a retrograde institution poisoned by anti-democratic practices and with only a vestigial presence on the ground) to a maximalist conception (which recognizes the uniqueness of these authorities as an expression of a social and religious power bearing the guiding protection of ancestors, which confers on the customary a certain privilege with regard to other local organizations – on this subject, see Santos, 2003).

While traditional institutions are normally identified with Renamo, this is not always the case. Indeed, regarding witchcraft, Frelimo and Renamo seem to share a common perspective, of fear, but non-recognition. Both parties resent the role of *tinyàngà*, since these may stand in the way of their plan of enhancing centralized political action. Indeed, both Frelimo and Renamo are trying to reinforce their presence in rural and urban contexts where both seem to have doubtful support.[46] The t*inyàngà* restore somatic integrity to the community by reinstalling spiritual and social equilibrium – society is a continuum of life and death. As such, they also re-establish the claims of society upon the individual.

In any case, the competition for power and the overlapping of the different structures' spheres of intervention in the resolution of conflicts on the ground is notorious. As one of our informants said during an interview, "people don't know where to resolve conflicts. Each person's role is not clearly defined."[47] The landscape of justices in Mozambique is characterized as being made up by a series of institutions whose performance depends on the fluidity of the connections between them. The better these relative roles are defined and the duties attributed to them by society in general and the communities in particular are fulfilled, the more efficient their performance will be and the more concrete citizens' rights and state interests will be.

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[46] The recent election presented an astonishing low turnout: about 75% in the 33 municipalities where elections took place in November 2003.

[47] *Régulo* Santaca. Personal interview. May 1995. This problem was recurrently addressed by several "traditional authorities."

The risk of involvement of traditional doctors with the political and economic elite may lead to an increasing association of the state's representatives with traditional authorities, thus reinforcing the hybrid character of the state.[48] In the context of an increased demand for community participation in the resolution of its problems, there needs to be a harmonization between constitutional principles and the administrative organization of the state, in terms of styles of action, cultural assumptions and the normative structures of traditional authorities, regardless of the form or guise that may have developed. The analysis undertaken in this paper corroborates the fact that a legal hybridization has long been developing in Mozambique; a hybridization that even accepts the official modern legal model while creating the very space for its application (Santos, 2003). Seen from this perspective, the vitality of the justices in which the traditional authorities are located mirrors (albeit inversely) the difficulties faced by an official justice that appears more and more unable to meet its objectives, given the distance from its subjects.

## 6. Conclusion: challenges for a greater democratization of justice

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

Popular justice, community justice should be seen as an "embryonic" form of justice representing the system being fought for, from below (Santos 1982). People fought for the possibility of identifying themselves with a system of justice that would correspond to their cultural beliefs.

However, as the study on accusations of witchcraft and the role of community justices in Mozambique demonstrates, the most notable defect of the existing system of justice is that the majority of Mozambicans were (and still are) alienated from the court system due to the alien nature of the courts, based on an exogenous cultural system. Judicial systems have to be understood primarily in terms of their own dynamics, which are the product of the interplay of internal and external forces, whose legitimacy resides in the fact that they respond to the needs and perceptions of the local communities. Thus, the reason for the presence of an

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[48] However, it may also have the opposite result, when important decisions are made in exclusive circles, to which one would only gain access by being a member of a restricted association, by possessing a specific knowledge, thus bringing up the question of legitimacy of a democratic state. Whoever rises into high political offices and knows how to defend himself against his rivals seems to have the necessary spiritual protection at his/her disposal.

immense array of "alternative" judicial systems is that "they are really ours, they are from here, and we see and know how they function […] they understand the problems and know how to solve them."[49]

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

Discourses concerning witchcraft do not express a resistance to modern development; rather they constitute reflections of a constant struggle for a better life. Because "community justice" is an open system, formally delimited only in its practice, the possibilities for explaining the problems of life are innumerable, making possible an anthropophagic interaction with different elements, constituting the cornerstone of projects of "other [forms of] modernity" (Santos, 2003). In this sense, accusations of witchcraft, far from reinforcing a radically different alternative means of conflict resolution, constitute a discourse concerning the problems affecting the family, the community and society at large.

In Mozambique, as in most African countries, intellectuals, politicians, healers maintain that they, like all common citizens, share the belief that witchcraft is part of the cultural landscape, and that they act accordingly. Therefore, there is a growing awareness that all efforts must be made to ensure that access to a broader conception of justice becomes a reality for the majority of the citizens. This is no small task, but the experience in Mozambique shows that it is possible to give distinct established systems of dispute resolution the opportunity to be a part of this process.[50] As with all alternative remedies for a problem, each should be carefully analyzed so as to formulate the best practical solution.

The intricate nature of witchcraft and the "official" legal system's "misunderstanding" of it results, frequently, in situations where the processes of searching for evidence, formulating guilt, offering a ritualized expression of remorse and demanding immediate reparation have been appealed before the formal justice system because they produce unjust

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[49] V. Banze. Personal Interview. July 2000.
[50] Currently (2003-2004) the country is undergoing a process of legal reform aimed at democratizing the legal system.

and irrational outcomes. A possible solution would be, following Santos's suggestion, the application of a procedure of translation, capable of creating mutual intelligibility among possible and available experiences (2002a: 239). In the specific case of witchcraft, if Mozambique legally recognizes the possibility of convicting alleged witches, it would require an official law not only to introduce a new offense – that of witchcraft – but also to question long established principles of the present Western-based legal system, especially where the admission of evidence is concerned.

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

The application of the principles of decentralisation and coordination constitute a great challenge to the true nature of the existing Mozambican state. But emerging behind the discourse of state decentralisation and deregulation is another parallel discourse of "just do it." The tension between the transformation of the state and the reaction of communities demanding the state to do something has produced new forms of hybrid structures of social control that can be analysed as a continuity from the past: the (re)invention of a "modern" traditional power.

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

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