THE WEB OF LEGAL PLURALISM AND TRADITIONAL AUTHORITIES IN MOZAMBIQUE

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Introduction

Legal pluralism is seen as a theory that supports the coexistence of several legal systems within the same society. This is due to the existence of efficient legal systems, simultaneously in the same environment and space-time. This coexistence of several legal systems in the same space and time has gained historical relevance due to several factors, such as the rupture of the Roman Empire, which resulted in the forced cultural exchange resulting from the barbarian invasions. Colonization also caused a situation in which several rules and customs of different peoples had to coexist, namely between colonized and colonizers. With decolonization, legal systems were created based on the rules of the colonizers, but with specificities and differences of their own. Globalization has also influenced the diversification of legal pluralisms, weakening the role of the state as the sole holder and creator of legal systems.

Legal pluralism, although it always exists in human society, is sometimes invisible to the holders of political power. Therefore, in the process of elaborating norms for the functioning of the State, political and administrative meanings of many cultures existing in the same space have been relegated to the background. In the Mozambican case, the traditional authority that, for a long time, was subordinated to colonial power, began to function in parallel to the legal power of the modern state until today, although it was relegated in the past immediately after independence, in 1975, and replaced by groups

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dynamizers, neighborhood secretaries and other structures, according to their alliances with the then party-state.

The first years of independence, traditional leaders were abandoned under the following arguments: they were puppets of the colonial regime chosen according to their willingness to collaborate; because they were placed on the basis of political confidence and their commitment to the current and oppressive regime, they were not original and, at that time, it was difficult to distinguish legitimate traditional authorities; all of them were usually chosen by old people against a society with a young majority; they were not elected, which was contrary to the popular democracy of the modern state under construction; they had their interests and agendas contrary to socialism under construction. The destruction of traditional authority created a conflict between modern power and so-called traditional power, which was only minimized with the approval of the 1990 Constitution. At that point, the post-colonial government would begin to recognize the role of traditional authorities, but with great caution and, some fundamental changes would happen ten years later, through the decree 15/2000, which institutionalized a series of local actors, although it had removed from the traditional chiefs the exclusivity of mediation between the state and the population at the local level.

The development of this article included a bibliographic review, consultation of legislation and the search for primary information in archives on the subject. In this context, the work provides information on legal pluralism and traditional authority in Mozambique, seeking to show the space occupied by traditional authorities and their role in articulation with political power in the colonial and post-independence periods.

Legal pluralism and its identities

Sabadell (2005, 125) defines "legal pluralism as the theory that supports the coexistence of several legal systems within the same society"[2]. It is observed that when it comes to legal pluralism, it appears that it is due to two or more legal systems, endowed with effectiveness, existing in the same space-time environment, that is, legal systems that are used at the same time in a determined geographic space.

Legal pluralism has always existed in societies. Social dynamics has always produced norms or procedures for social regulation, regardless of

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2 In the original: "o pluralismo jurídico como a teoria que sustenta a coexistência de vários sistemas jurídicos no seio da mesma sociedade" (Sabadell 2005, 125).

who is drafting state laws or norms. According to Tamanaha (2007, 375), "legal pluralism is everywhere"[3]. In each social arena, the apparent plurality of legal orders is examined from the lowest local level to the broadest global level. There are several types of laws: municipal, state, district, regional, national, transnational and international. In addition to family laws, many societies have more exotic forms of law, such as customary Law, indigenous Law, religious Law, or Law associated with various ethnic or cultural groups in society. There is also an obvious increase in quasi-legal activity, from the private police and the judiciary to private prisons, until the continued creation of a new *lex mercatoria*, a combination of transnational commercial law that is almost entirely a product of private law.

What makes this pluralism worthy of attention is not only the existence of many inconsistent, coexisting or overlapping legal actors, but also the diversity between them. They can claim credibility; they can impose conflicting requirements or standards; they can have different styles and orientations. This potential conflict can create uncertainty or threat to individuals and groups in society who cannot know in advance which legal regime will apply to their situation. This state of conflict also creates opportunities for individuals and groups in society that can opportunely choose between the coexisting legal bodies to achieve their goals. Furthermore, this state of conflict is a problem for the judicial bodies themselves, as this means that they have competitors. The law normally claims to govern everything to which it refers, but the fact of legal pluralism disputes that claim. Thus, it is because the law is seen as an ideological phenomenon, full of contradictions in constant conflict.

The Science of Law cannot overcome its own contradiction, because as a dogmatic "Science" it also becomes an ideology of concealment. This ideological character of Legal Science is linked to the assertion that it is committed to an illusory conception of the world that emerges from the concrete and antagonistic relations of the social. Law is the normative projection that instrumentalizes the ideological principles (certainty, security, completeness) and the forms of control of the power of a determined social group, (Wolkmer 2001, 151).

Law has always been seen as a set of legal rules developed by state agencies. However, legal sociology began to contradict this classic view. Some studies prove that the state is not the only source of the law in force, which makes it recognized that it no longer has a monopoly on creating legal norms that dictate life in society. Legal sociology has aroused interest in legal reality,

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3 In the original: "o pluralismo jurídico está em toda parte" (Tamanaha 2007, 375).

extending its object of study to other forms of regulation of social behavior that bind people, even though they are not official. From this point of view, it has been called legal pluralism or legal polycentrism, and it is a matter of debate to know whether there is a legal order in society or whether many systems of law operate in parallel, observing the existence of a multiple law. There may be not only contradictory legal systems (which lead to different solutions for the same situation), but also complementary systems, applicable to different situations (Sabadell 2005, 120-121).

The emergence of legal pluralism in modern societies precedes the Medieval State, in which pluralism (juridical-political) and monism (juridi-cal-theological) were possible realities without a doubt and without the need to decide which would be more determining between them. Currently, the relationship between pluralism and legal monism is procedural, explained according to the effective degrees of modernity in society. It is clear that the state continues with its mission to restructure relations in society as a whole. However, its primacy over what is public does not give it exclusive recognition as a single entity to conceive normative principles, and there may be other actors capable of conceiving them in more integrating and generalizing ways in terms of legal and political achievement.

In peripheral societies, legal pluralism consists of two contradictory movements, one arising from secular endogenous factors that structurally impede and inhibit the realization of legal modernization and another that arises from the pressure of exogenous factors that, although autonomous, are collectivities that compel society to adopt new legalities. For example, law in colonized countries has suffered the same fate as culture in general. Thus, "the law as the culture of these countries, as a whole, was not the result of the gradual and millenary evolution of a group experience, as occurs with the law of the ancient peoples, such as the Greek, the Assyrian, the Germanic, the Celtic and the Slavic"[4], (Wolkmer 2001, 333). Legal pluralism is not born as a negation of modernity, but as a necessary declaration of complementarity.

Legal pluralism emerges socially as a result of structural processes that are difficult to converge towards a legal rationalization in the modern terms that results from colonialism, dependence, and marginalization. We call this first characteristic of legal pluralism an example of pre-modernity in late capitalist modernization (Júnior 1997, 126-127). In the example given

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4 In the original: "o Direito como a cultura destes países, em seu conjunto, não foi obra da evolução gradual e milenária de uma experiência grupal, como ocorre com o Direito dos povos antigos, tais como o grego, o assírio, o germânico, o celta e o eslavo" (Wolkmer 2001, 333)

before, in the colonies, the condition of the colonizers made everything seem imposed and not contracted in the day-to-day of social relations, in the late and constructive confrontation of divergent positions and thoughts, in short, the play of forces between the different segments formed from the social group.

The idea of legal pluralism, although it existed even before the formation of the modern state, was only taken up from the end of the 19th century and beginning of the 20th century, as a reaction to the dogma of state legal centralism. In the 19th century and the first decades of our century, the problem of legal pluralism was widely addressed in philosophy and law theory. It was then progressively suppressed by the action of a set of factors in which it must be distinguished: the transformations in the articulation of the modes of production within the central capitalist formations, which resulted in the increasing domination of the capitalist mode of production over the mode of pre-capitalist production; the consolidation of the political domination of the bourgeois state, namely through the progressive politicization of civil society; the concomitant advance of positivist jus-philosophical conceptions (Santos 1993, 16).

Subsequently, the theme of legal pluralism was taken up by the anthropology of Law. Boaventura de Sousa Santos identifies two possible origins for the emergence of pluralism: a colonial and a non-colonial origin. In the first case, pluralism developed in countries that were dominated economically and politically and where, therefore, the legal system of the colonizing state was in force alongside traditional law, as in the Mozambican case. In the second case, the author identifies three different situations: the case of countries with their own culture and legal tradition, but which adopted European law as a way of modernizing and consolidating the power of the State (Turkey, Thailand and Ethiopia), and which eliminated, on the sociological level, traditional law; the case of countries that, after undergoing a social revolution, continued to maintain traditional law, even though it came into conflict with revolutionary law (republics of Central Asia, of Islamic tradition, incorporated by the former USSR); and, finally, the case of indigenous or native populations that have been dominated by a metropolis, but have permission, implicit or explicit, in certain areas, to maintain their traditional rights (indigenous peoples of North America, Oceania, etc.), (Santos 1993, 42-45).

Wolkmer (2001, 11) understands legal pluralism as the "multiplicity of manifestations or normative practices in the same socio-political space, interacted by conflicts or consensus, which may or may not be official and

have their *raison d'être* in material existential needs"[5]. Joaquim de Arruda Falcão (1984, 80), when carrying out an empirical study on urban conflicts over housing in the city of Recife, concluded that the direct cause of legal pluralism lies in the legality crisis that political power is going through. Arnaldo Vasconcelos (2006, 258), when discussing pluralism, emphasizes the aptitude that this doctrine has to satisfactorily address the problem of justice and legality.

Although sociology shows the existence of legal pluralism in today's societies, for legal science itself, the existence of this pluralism presupposes an understanding of the concept of law. Thus, positivism denies the existence of legal pluralism, as it understands, among other things, that the difference between legal norms and social norms lies in the fact that they are imposed by the state, which also has a monopoly on sanctions in case of non-compliance. In turn, social norms come from uses and customs and sometimes conflict with legal norms. As the individual is both a product and a producer of culture, the legal norms issued by the state are poorly understood by society. Thus, in representative democratic regimes, it would be the mission of deputies to present the legal norms to the people. This conflict is due to the fact that in the same state several social norms can exist due, in part, to the existence of many cultures within the same territorial borders.

Traditional Authority

Traditional authorities are entities that incorporate and exercise power within their traditional political-community organization, in accordance with customary values and norms and with respect for the Constitution and the law. They receive competence, organization, control regime, responsibility and patrimony from the institutions of traditional power.

The term "traditional authorities" includes a group of individuals and institutions of political power that regulate the organization of the social production model of traditional societies (Florêncio 1998, 2). Thus, the concept does not include individuals who have power or influence mainly informal in political power, as are the cases of diviners, rainmakers, healers and others, since they do not participate in the formal and institutional structure, in the

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5 In the original: "multiplicidade de manifestações ou práticas normativas no mesmo espaço sociopolítico, interagidas por conflitos ou consensos, que podem ou não ser oficiais e ter sua razão de ser em necessidades existenciais materiais" (Wolkmer 2001, 11).

formulation of rules and decisions about the social life of the community and its members. In analyzing this statement:

> I agree that those we designate as "Traditional Authorities" should have received more respect and support from the modern state a long time ago [...]. Being able to be privileged interlocutors for the knowledge of the societies that preceded us and of which we are heirs, they are also holders of a symbolic capital that could well be better invested in the consolidation of our national unity. And in many cases, especially where the state is inoperative or almost non-existent, many or some of them are still the respected and considered legitimate authority, with a capacity for intervention and social organization that cannot be neglected or ignored (Neto 2002, 16)[6].

This statement leads to the conclusion that the recognition of these by the state is not made by the individual, but by the institution it represents, that is, from the perspective of the administrative organization, the state recognizes the institution as "traditional authority".

Local government and local government bodies

Local power

From an early age, it is essential to underline the consecration of Local Power in the Constitution of the Republic of Mozambique (Title XIV of the Constitution), stating that it aims to organize the participation of citizens in solving the problems inherent in their community and promoting local development, deepening and the consolidation of democracy, within the framework of the unity of the Mozambican State. The constitution also states that Local Power is supported by the initiative and the capacity of the populations and works in close collaboration with citizen participation organizations (CRM 2004, Art. 271, paragraphs 1 and 2).

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6 In the original: Concordo que aqueles que designamos "Autoridades Tradicionais" há muito deveriam ter recebido mais respeito e apoio do moderno Estado [...]. Podendo ser interlocutores privilegiados para o conhecimento das sociedades que nos precederam e de que somos herdeiros, são também detentores de um capital simbólico que bem poderia ser melhor investido na consolidação da nossa unidade nacional. E em muitos casos, sobretudo lá onde o Estado é inoperante ou quase inexistente, muitos ou alguns deles são ainda a autoridade respeitada e considerada legítima, detendo uma capacidade de intervenção e organização social que não pode ser desprezada nem ignorada (Neto 2002, 16).

It is of great relevance that these principles are established in the Mozambican constitution, because it is the great law that governs the entire functioning of the country. The way in which citizens will use and benefit from laws will have a lot to do with the legislation that they will regulate and make them enforceable. In territorial terms, the practical consequence of applying the principle of administrative decentralization is the recognition of local power and according to Art. 272, paragraph 1, of CRM 2004, local power includes the existence of local authorities.

Gouveia (2015) maintains that the constitutional principle that governs this sector of public administration is the principle of local autonomy, which also receives protection in terms of the material limits of constitutional review. The constitutional revision laws must respect: according to art. 292ffl, nffl 1, CRM 2004, "the autonomy of local authorities". The author adds that, from an institutional point of view, constitutionally defined local power is carried out by local authorities and also mentions that CRM has established a monist model of local power, which means that other types of institutions can not be established by law that they come from the nature of local power, albeit limited, because they cannot devitalize the essential organizational and functional nucleus reserved for these typical modalities of local power. He concludes that the constitutional consecration of the principle of local autonomy - which as a main guideline has a strong normative elasticity - does not fail to contemplate a political-participatory dimension, insofar as the country's autarchization appears in a context of participatory democracy (Gouveia 2015, 613-614).

The satisfaction and participation of local communities, in the context mentioned above, are guaranteed at the popular level, as a way of putting participatory democracy into practice and also of solving local needs through the use of local power, but without interfering with the resulting legal limitations of the Constitution of the Republic.

Local state agencies

Local state bodies have the role of representing the state at the local level for the administration and development of the respective territory and contribute to national integration and unity (CRM 2004, Art. 262).

The organization and functioning of state organs at the local level obey the principles of decentralization and deconcentration, without prejudice to the unity of action and the powers of the Government to direct. In its operation, the local organs of the state, promoting the use of available resources,

guarantee the active participation of citizens and encourage local initiative in solving the problems of communities, in their performance, respect the attributions, competences and autonomy of local authorities. For the fulfillment of its own attributions, the state guarantees its representation in each municipal district and the law determines the institutional mechanisms of articulation with the local communities, being able to delegate certain functions specific to the state's attributions (CRM 2004, Art. 263°, n° 1-5).

State Power and Traditional Authority in Mozambique: Historical Construction

After the occupation of the territory that today is Mozambique, in a process that extended from 1498 until the 1890s, Portugal sought to impose a new administrative structure with the objective of transforming the territory conquered in its domain. This imposition was almost always in conflict, because it challenged pre-existing local structures and African leaders, in fear of losing their privileges and agendas, showed resistance.

After the military conquest and the installation of the Portuguese administration, regulates - later regency offices - were created, initially conceived to coincide with the old kingdoms. Subsequently, according to the needs of the colonial administration, the regulated ones were subdivided into smaller and smaller ones. In the beginning, it was sought to make the *régulo*[7] at the same time Mwene[8], who was the territorial chief and gave his name to the lands (Rosário, Cafuquiza and Ivala 2011, 156).

This new administrative order created changes within the territories and made the old Mwene coincide with the new position instituted by the new administration and had to play a dual role: the first constituted by customary Law and the second based on European norms considered to be norms of modern power. In the past, Mwene owned the land and performed political-administrative and religious functions, serving as an intermediary between the living and the dead. But the new figure created by the colonial regime had been stripped of so much power and served only as an intermediary between colonial power and the population. The Mwene of the dominant family, if he was also a *régulo*, was subject to fulfilling the functions inherent

7 A new figure conferred by the colonial administration to play the role of Mwene destitute and he did not have absolute powers, he was only a mandate of the regime.

8 Mwene was the name given to the head of the traditional community in the local language Emacua (meaning owner of the land), he had all the powers in the community.

in both roles and, for this reason, his situation was very delicate. On the one hand, he was forced to impose the orders and decisions of the colonial authorities on the populations; on the other hand, he had to maintain the traditional ties that related him to the populations of his community and the norms that maintained the functioning of social life there. The *régulos* that did not play the role of Mwene were limited to fulfill the orders of the colonial administration and had to articulate with the Mwenes of the land and with the different Mwenes of the lineage families, because, otherwise, they could run the risk of orders that they transmitted not being respected by the populations (Rosário, Cafuquiza and Ivala 2011, 158).

The integration of African chiefs into local governance under a modern state modeled on European standards began with colonialism. In many national contexts, chiefs have been reduced to quasi-state puppets, allowing themselves to be used as administrative tools, weakening their traditional legitimacy. Thus, the institution itself could not continue to exhibit durability and flexibility, because, otherwise, it would not be in the interest of the state to instrumentalize it, if it were not for other roles assumed by chiefs of greater value for local populations on the periphery of the reach of the power of the state. For all intents and purposes, chiefs recognized as traditional authorities are intermediaries (Orre 2009, 4-5).

As an intermediary, there is an obvious conclusion, but one that has nevertheless remained hidden due to the incorrect application of a conceptual label: traditional authorities and modern power. Traditional authorities are also modern in the sense that they are recognized by the central state and, in many cases, lead administrative processes based on modern legal norms. They are not just traditional authorities whose legitimacy has been conferred by tradition or custom. They also enjoy the legitimacy that is granted to them by the people as intermediaries recognized by the state and, therefore, in Weberian terms - of the rational legal authority that administrative instrumentalization confers on them. What may interest us is to realize that the legitimacy of these authorities in this period of colonial domination has often been guaranteed by the state, a situation that continues to this day.

The modern colonial administration in Mozambique gradually imposed a unique view of history, in which modern science and bureaucracy came to have a character to explain and organize the world. This colonial intervention brought with it new conflicts that marked the relationship between different experiences, knowledge and cultures.

> The relations between colonial authority and other sources of political power, not being symmetrical - because they are marked by an unequal power relationship -, point, in fact, to the presence of mutual dialogues, interferences and appropriations, which marked and structured the specificity of contemporary Mozambique. [...] The striking trend of the colonial period sought to build an administrative structure that ideologically justified colonial intervention in Mozambique (Meneses 2009, 11-13)[9].

Similar to what happened in other African colonies, the divisions established by the Portuguese colonizers were based not only on what existed, but also on the interests of domination and economic exploitation, having been configured according to these. Larger chiefs, for example, were divided so as to be less threatening, chiefs less willing to collaborate were removed or killed and replaced by more malleable ones. "Also like other places, traditional authorities sought to balance the demands of the colonial government with the need to maintain legitimacy in the community, finding forms of passive or active resistance"[10] (Araújo 2010, 5).

From 1975, with the end of the colonial state, the construction of a new state was observed in a socialist model in Mozambique, which was not identified by the traditional authorities. It is clear that, above all, after the III FRELIMO Congress (Mozambique Liberation Front), held in February 1977 and established as a vanguard party, adopting for this purpose the ideological references of Marxism-Leninism, the party's political guidelines regarding the participation of traditional authorities in the political arena in rural areas of the country has changed drastically, becoming very radical in this regard. The party accused the traditional authorities of having collaborated with the colonial regime and, therefore, a dissatisfied group with the independence achieved (Lourenço 2009, 19).

However, even with changes in relation to the traditional authorities, it did not remove their legitimacy from the populations. Specifically, this political crisis, which corresponds to FRELIMO crisis of legitimacy, reflects

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9 In the original: As relações entre a autoridade colonial e as outras fontes de poder político, não sendo simétricas - porque marcadas por uma relação de poder desigual -, apontam, de fato, para a presença de diálogos mútuos, interferências e apropriações, que marcaram e estruturaram a especificidade do Moçambique contemporâneo. [...] A tendência marcante do período colonial procurou construir uma estrutura administrativa que justificasse ideologicamente a intervenção colonial em Moçambique (Meneses 2009, 11-13).

10 In the original: "Também à semelhança de outros lugares, as autoridades tradicionais procuraram equilibrar as exigências do governo colonial com a necessidade de manter a legitimidade na comunidade, encontrando formas de resistência passiva ou ativa" (Araújo 2010, 5).

the implicit recognition that the homogenization of the political game in rural areas had not made the social position and political legitimacy of traditional authorities disappear for its population - as carriers of social knowledge and rituals about local traditions and as carriers of political relations established within these rural communities.

Some authors such as Newitt (1997), Geffray (1991), Lundin (2002) and others, approach that this posture imposed by FRELİMO made the traditional authorities seek to ally themselves with other actors to continue to exercise their functions "[...] the traditional authorities survived, maintained their legitimacy and came to fill a void so often left by the state, often working together with popular courts and even with the dynamic groups and finding in RENAMO (Mozambican National Resistance) an alternative to the recovery of their prestige"[11] (Araújo 2010, 18). While the ruling party "rejected" the traditional authorities, RENAMO tried to accommodate them (José 2005, 17).

There are reports that during the period of the civil war both RENAMO and FRELİMO soldiers turned to traditional institutions to exercise their religious power, recognize their problems and the need to protect themselves against the enemy. Thus, it is possible to verify their importance for the sovereignty of the state that rejected them. However, RENAMO had discovered that the once respected traditional authorities of rural communities spread across Mozambique were often pre-available for this new military revolt against FRELİMO, which had marginalized and committed a series of political, cultural and social abuses on them (Lourenço 2009, 4).

Meanwhile, Geffray (1991) considered the post-independence Mozambican state to be an authoritarian, alien (deeply alienating) political force and unable to understand the social, ritual and cultural customs of its rural constituents. FRELİMO did not know how to take advantage of traditional power to establish itself in peace. For the marginalized traditional elites, the civil war induced by RENAMO was expressed as a political opportunity to recover the basic right to the free exercise of social life, here interpreted as a resumption of traditional culture and institutions against FRELİMO's modernizing policies.

On the one hand, regarding the explicit political reference made at the VI FRELIMO Congress (1991) in the sense of valuing the socio-cultural

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11 In the original: "[...] as autoridades tradicionais sobreviveram, mantiveram a legitimidade e vieram a colmatar um vazio tantas vezes deixado pelo Estado, trabalhando frequentemente junto aos tribunais populares e até com os grupos dinamizadores e encontrando na RENAMO (Resistência Nacional Moçambicana) uma alternativa à recuperação do seu prestígio" (Araújo 2010, 18).

management that traditional authorities exercised with rural communities, and on the other, the multiplicity of political-legal diplomas that the power formal legislation in the following years, with the objective of institutionalizing openness to the political game to the various agents - traditional or not - formal and constitutional recognition would take place years later, within the scope of the administrative decentralization process, with the tacit decree-law nffl 15/2000, and with the consequent constitutional review of 2004 (Lourenço 2009, 19). Decree 15/2000 of June 20, which establishes the forms of articulation between local state bodies and community authorities, underlines in its introduction: "Within the scope of the process of administrative decentralization, enhancement of the social organization of local communities and improvement of conditions of their participation in public administration for the country's socioeconomic and cultural development, it becomes necessary to establish the forms of articulation"[12] (Forquilha 2009, 1).

Traditional authorities are called upon to fulfill a dual role in relation to these state bodies and rural populations. In a way, they have to act as representatives of both sides, or rather, as intermediaries. On the other hand, the state requires the services of traditional authorities, recognizing their difficulty in reaching rural populations with their bureaucracy, and has set up for the administrative instrumentalization of traditional authorities, recognized as community authorities under the law (Orre 2009).

Gradually, both FRELIMO and RENAMO sought more support during the electoral processes with the traditional authorities. Both political parties and traditional authorities took administrative control only as a means of exercising political control. For the large Mozambican parties - RENAMO and FRELİMO - the traditional authorities were and continue to be perceived as extensions of the state, in order to increase their administrative competence and their presence at the local level (Meneses 2009, 31).

In another point of view, Forquilha (2009, 13) makes the following conclusion: the electoral campaign for the 2004 general elections was marked by an active participation of the community authorities, that is, of the traditional chiefs, with whom the presidential candidates, each in his own way, sought to establish alliances. The presence of traditional chiefs at all rallies of the ruling party candidate was visible. On the RENAMO side, it was also possible to see a certain rapprochement between the presidential candidate

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12 In the original: "No âmbito do processo da descentralização administrativa, valorização da organização social das comunidades locais e aperfeiçoamento das condições da sua participação na administração pública para o desenvolvimento socioeconômico e cultural do país, torna-se necessário estabelecer as formas de articulação" (Forquilha 2009, 1).

and some traditional chiefs. In a context marked by political pluralism and political competition, the institution of traditional leaders emerges as an important political resource, capable of being mobilized by parties and traditional leaders themselves.

Traditional Authority and Local Governance, before and after Decree 15/2000

With the conquest of independence in 1975, in view of the need to rapidly expand the presence of the government throughout the territory, FRELIMO did not seek to restore the local administrative apparatus using the old structures. Instead, it established new structures drawn from mass popular organizations, with an emphasis on dynamic groups, neighborhood secretaries, secret police officers (National Popular Security Service - SNASP, in portuguese) and other structures that suited them, given their political confidence, ignoring the legitimacy of traditional leaders who enjoyed a lot of trust in their communities.

The government that emerged from the independence process, in theory, did not want to identify with any of the colonial practices in the construction of the new state. He tried to pretend that he could break away from the colonial structures that traditional authorities would be part of. FRELIMO considered the traditional authorities to be obscurantists and exploiters of the people, who collected taxes in the name of the colonial regime, imposed mandatory harvests and recruited men to carry out forced labor on large plantations. For FRELIMO leaders at the time, it was the role of traditional authorities, as intermediaries, to oppress populations, so it was necessary to break with them.

Art. 4 of the Constitution of the People's Republic of Mozambique, 1975, defines as fundamental objectives the elimination of oppressive colonial and traditional structures and the underlying mentalities, the extension and reinforcement of democratic popular power, the building of an independent economy and the promotion of cultural and social progress, and the building of popular democracy and the construction of the material and ideological bases of socialist society.

After a decade of political advancement in the guerrillas to expel Portuguese colonists, from 1977 onwards FRELİMO's leadership came to portray traditional authorities as corrupt political opportunists who had honored their administrative role as tax controllers, recruiters of labor and local

policing agents in the Portuguese colonial political structure (Lourenço 2009, 3). This break with traditional leaders was an element that the FRELIMO Government sought to implement a new structure from top to bottom in rural areas with the project of socializing the countryside. "In these terms, the traditional authorities by decree are replaced by local Party Committees, the dynamic groups"[13] (Lalá 2003, 4).

The new government was unable to distinguish the role of the traditional chief and that of the *régulo*, as the two concepts are different. But this function sometimes falls on the same individual. The role played by the first is that of community management and it is invested in the election of the community based on customary Law. On the other hand, *régulo* should serve as an instrument of the colonizer. If these elements were taken into account before making the decision, the relationship between the state and these leaders would not be disturbing and care would be taken to verify who actually collaborated with the colonial authorities.

FRELIMO, by dethroning all traditional authority, eliminated one of the sources of legitimacy and the condemnation of religious worship and superstition made traditional ceremonies illegal and, on the surface, this seemed to break the links also with the other source of legitimacy. However, for the population, the legitimacy of the *régulo*'s role as a bearer of knowledge about local traditions does not disappear. This legitimacy continues with a strong current in all population groups (Abrahamsson and Nilsson 1994, 256). But in its place, dynamic groups (DGs) were created, which constituted the administrative organization of the neighborhoods. "The DGs created after independence in order to mobilize the population to support the new government's policy undoubtedly performed administrative functions. In many areas DGs have created a new legal system"[14] (Newitt 1997, 467).

Lalá (2003, 5) argues that the application of the population recovery process, the almost inexistence of services provided by the state and the appreciation of traditional structures, eroded FRELIMO's social reach. The marginalization of traditional authority led the local population to disinterest in the communal village program, so that when it was found that RENAMO's war bands were in the region, entire sectors of the population, often led by the lineage chiefs, left villages moving to areas protected by RENAMO (Newitt 1997, 188).

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13 In the original: "Nestes termos as autoridades tradicionais por decreto são substituídas por Comitês locais do Partido, os grupos dinamizadores" (Lalá 2003, 4).

14 In the original: "Os GDs criados após a independência com intuito de mobilizar a população para apoiar a política do novo governo desempenharam, sem dúvida, funções administrativas. Em muitas zonas os GDs fizeram um novo sistema legal" (Newitt 1997, 467).

The political transformations in Mozambique from 1984 to 1990, in addition to the economic and social ones that reduced the centralism of the state, were also registered in the legal-constitutional framework marked with the approval of a new constitution in 1990 for the country. The possibility is introduced for the various actors to participate in political life and multipartyism. Neoliberal reforms were introduced to guarantee the granting of emergency aid due to hunger, and the aim was to end the war of destabilization, sparked by RENAMO with the support of South Africa, negotiate debt rescheduling and access to new credits and break through diplomatic isolation with Western countries (Matsinhe 2011, 34).

The rise of democracy in Mozambique has strengthened traditional authorities. Mozambique needed to break diplomatic isolation to get closer to influential countries like the USA, the European Economic Community (EEC) - today's European Union (EU) - subscribing to the Lomé treaty[15]. Giving up respecting traditional authorities was part of the demands of donors who defended more civil liberties as guarantees of the desired approach. "The approach to the West would allow the country to receive help to face the economic crisis, the war, (...) and to receive foreign direct private investments"[16] (Abrahamsson and Nilsson 1994, 18).

The FRELIMO Government's relationship with the Traditional Authorities has changed significantly, from a formal point of view, since the 5th FRELIMO congress in 1987. At that time, relations between the state and the previously divergent traditional authorities experienced a new reality and the FRELIMO's government began to realize the real importance of these traditional structures for the capitalization of the population's discontent in rural areas (Florêncio 1998).

Decree 15/2000 institutionalizes a considerable group of local actors and removes from the traditional chiefs the exclusive mediation between the state and the populations at the local level, since within the community authorities there are at least three different categories of actors: chiefs traditional, secretaries of neighborhoods or villages and other leaders legitimized as such by the respective communities or social group. This decree does not bring new elements, because its interest was to recover or legitimize the traditional leaderships that were previously marginalized in the local gover-

15 The Yaoundé and Lomé Conventions as the first cooperation agreements between the European and African continents. Center for Studies on Africa, Asia and Latin America, Lisbon. 2015.

16 In the original: "A aproximação ao ocidente permitiria ao país receber ajuda para enfrentar a crise econômica, a guerra, [...] e receber investimentos privados estrangeiros diretos" (Abrahamsson e Nilsson 1994, 18).

nance process, but it brings a new party political element for FRELIMO, as a party in power, as Orre says (2009, 8).

According to Forquilha (2009), with regard to traditional authorities, the law provides for their inclusion in the local administration process. In effect, Art. 8 establishes that the Ministry, which oversees the local administration in the civil service, will coordinate the policies of the framework of the traditional authorities and other forms of community organization by the municipal districts. In this way, the law aims to establish the mechanisms for their participation in the choice and implementation of policies aimed at satisfying the specific interests of the populations covered. For the author, it can be considered that Law 3/94 recognizes and formalizes the role of traditional authorities, within the scope of the decentralization reforms of the time. With these legal provisions, traditional leaders are called upon to fill a place in local governance and must act as representatives of the state in their communities.

According to Art. 118 of the CRM (2004), referring to the traditional authority in paragraph 1, it states that the state recognizes and values the traditional authority legitimized by the populations and according to customary Law and in paragraph 2, it stresses that the state defines the relationship of the traditional authority with the other institutions and frames their participation in the economic, social and cultural life of the country, under the terms of the law. For Orre (2009, 9), in a way, they have to act as representatives of both sides, or rather, as intermediaries. On the one hand, the state requires the services of traditional authorities, recognizing their difficulty in reaching rural populations with their bureaucracy, and has set up a system for the administrative instrumentalization of traditional authorities, recognized as community authorities under the terms of the Law. On the other hand, the state needs to treat traditional authorities as representatives of local populations, since other institutions of rural representation before the local government are fragile and non-existent.

Conclusion

The genesis of traditional authorities in Mozambique is embedded in the history of effective occupation and colonial administration that transformed the leaders of pre-existing political institutions, then with absolute powers, into simple figures on whom the so-called modern orders would be imposed. To this end, the colonial regime intended to take its legal norms to

the population and facilitate the understanding of local habits and customs, in order to better manage them. Local authorities have become traditional in the face of the new colonial governance structure that was thought to be modern.

The national liberation struggle carried out by Mozambicans, led by FRELIMO, led to the achievement of national independence in 1975. This independence was preceded by the transfer of political power to the new Mozambican elite, which had received its ideological formation during the colonial regime. It was this elite that prevented the return of political power to traditional authorities who felt marginalized. These were considered collaborators of the colonial regime, and their framing in the revolutionary and socialist state under construction was not debated. For the new political elite, traditional authorities were obscurantists and exploiters of the people, who collected taxes in the name of the colonial regime, who imposed mandatory harvests and recruited men to carry out forced labor on large plantations. For this reason, they were not an example for the Mozambican people and, in their place, dynamic groups (DGs) were created with powers parallel to those of the administrators and the heads of the neighborhoods.

In short, the first Mozambican constitution ignored legal pluralism based on the unity of constitutional and judicial rules, as well as a one-party regime based on centralized administrative management. Traditional authorities, once marginalized, found refuge in RENAMO, a rebel movement that led the 16-year war in Mozambique, and became a political party after the 1992 general peace agreements, accommodated by the opening of the 1990 constitution. This constitution started the process of liberal democracy in Mozambique, opening space for the creation of social movements independent of the party link and, later, through the decree 15/2000, the traditional authorities were allowed to exercise their power as a collaborative part of implementation of state administrative policies with other community structures. However, the two normative orders do not work in parallel. Customary Law is always subject to positive formal norms, because its materialization cannot contradict that of the latter. However, legal plurality is often overshadowed by not being legally effective, as traditional norms are not brought together in any written code that is not based solely on the interpretation of traditional chiefs.

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ABSTRACT

This article discusses legal pluralism and traditional authorities in Mozambique, their origin and operationalization, in relation to the customary norms linked to traditional authorities. It also seeks to analyze the origin of traditional authorities, their legitimacy and their framing in the various governance subsystems, from the colonial period to the present day. Traditional authorities, despite their usefulness, were often relegated to the background and rescued according to the needs of current government structures. Its existence has always depended on its importance for the community and in places where the materialization of state power was deficient. In this sense, three main moments of conflict between the traditional authorities and the administrative power of the state are identified: 1) the colonial period, when the traditional authorities are seen as an alternative to the materialization of the colonizer's objectives; 2) the post-independence period, marked by the conflict between traditional authorities and the Revolutionary State that decided to implement new structures at the local level; and 3) after decree 15/2000 that reestablishes the role of traditional authorities and, in addition, recognizes other actors as collaborators and facilitators in the implementation of state projects at the community level. The customary norms have always been considered subject to the formal norms imposed by the state, for this reason they are not binding and their interpretation is subject to the community that understands it.