The Dynamics of Legal Pluralism in Mozambique

Edited by

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PREFACE

This book project emerged from a series of papers that were presented and discussed at a three-day international conference held in Maputo from 28-30 April 2010, with the title *State and Non-State Public Safety and Justice Provision – The Dynamics of Legal Pluralism in Mozambique.* The conference was co-organised by the Aquino de Braganca Social Studies Centre (CESAB) and the Danish Institute for International Studies (DIIS), with support from and in collaboration with the Royal Danish Embassy (Danida), the Friedrich Ebert Stiftung and IPAD-Portugal. It represented the first attempt to both invigorate a comprehensive policy-debate on legal pluralism and to bring together empirical research done on the topic since legal pluralism was recognised in the 2004 Mozambican constitution.

A key aim of the conference was therefore to fill a void in accumulated knowledge on (a) how legal pluralism is actually practiced on the ground in different regions of Mozambique; and (b) what implications the constitutional recognition of legal pluralism has had for the interactions between different state and non-state providers at the local level (e.g. the state police, the formal courts, community courts, traditional leaders, traditional healers, and community policing forums). Another core aim was to discuss potential future legislation on legal pluralism and the different pros, cons and challenges of such legislation for different kinds of providers and for citizens' access to justice and public safety. In doing so, the conference also aimed to contribute with knowledge to the different international development partners supporting justice and police reform in Mozambique. To achieve these aims, the conference organisers brought together academics, policy-makers and practitioners such as representatives from relevant ministries, courts and organisations as well as from various international development organisations (such as the UNDP, EC, Danida, and Sida).

Although the conference did not result in any definitive answers to future policy developments or programming, it did certainly deepen the knowledge of legal pluralism and highlight the need for the Mozambican state and its international development partners to take the legal pluralistic reality seriously when considering policies and programs on justice and security. It also contributed to identifying a set of core dilemmas and challenges that can lay the grounds for further discussions in smaller policy and academic circles. Some of these included:

- Legal pluralism – the plurality of norms, procedures and institutions that provide social ordering – is a reality that cannot be ignored in legal reform processes and in efforts to improve citizens' access to justice and public safety. However, it should be realised that state recognition of legal pluralism may not only be inclusive of socio-legal diversity, but can also be used by local and national elites to enhance control and exclude some groups of citizens.

CHAPTER 6

Sorcery Trials, Cultural Relativism and Local Hegemonies

Paulo Granjo

Introduction

To state that sorcery exists in Mozambique is a mere declaration of an obvious and recurring fact. People use it to obtain effective results, or protection against them, and in pursuit of legitimate or illegitimate, beneficial or malevolent goals. Nonetheless, the potential effectiveness of this practice is an issue that tends to divide readers into outspoken scepticism, attitudes of plausible doubt, elaborate discourses about its symbolic efficacy, and somewhat ashamed fear or concurrence.[1]

However, the focus of this chapter is not so much the actual practice of sorcery and related rituals. My purpose is to analyse something that invariably leads to serious and sometimes tragic consequences – whether or not it may affect the real practitioners of such crafts – and is interlinked with the issue of 'legal pluralism', the subject of this book. I am referring to accusations of practice or ordering of spells by individuals, and the trials of such accusations.

I will begin by stressing that sorcery is an essential element of the system of 'domestication of uncertainty' that is dominant in Mozambique, and of social efforts to give meaning to, and try to overcome, unexpected or aleatory events. However, as I

[1] Indeed, the belief in the effectiveness of sorcery is unassailable, as it holds a strong 'protective belt', to use the expression coined by Lakatos (1989) for scientific theories. The occurrence of an unsuccessful empirical case could be due to a technical error in the execution of the spell, to a more powerful counter spell, to the sorcerer's insufficient power or even to the fact that s/he is a charlatan, without jeopardising the presumed effectiveness of sorcery in general.

will subsequently discuss, allegations of sorcery are also an important instrument of social control used against particular kinds of victims. They tend to reproduce and reinforce existing relationships of inequality and domination within society, more often than not in a particularly violent manner.

I will provide an account of such violence, and of the dynamics of accusation and trial, by describing the typical course of an accusation, the production of evidence and trial procedures, and by examining two specific cases. The reader will then be able to appreciate that sorcery trials are seen as an institutionalised form of justice by those concerned, that accusations and trials usually interact with other non-state actors and institutions that are also considered 'justice providers', and that the basic rights of defendants are often violated in the course of events.

I then argue that the acceptance and legitimacy of sorcery trials (and, ultimately, of the overall idea of legal pluralism) are based on the projection of 'cultural relativism' principles upon individual and collective rights. Hence, I will discuss, in scientific, ethical and political terms, the harmful effects of that projection and its abusive nature. In so doing, I will consider an alternative to the common, and misleading, dichotomous dilemma between, on the one hand, accepting 'cultural' rules as an impediment to the rights of certain groups or, on the other, imposing compliance with general and abstract rules, regardless of the meanings that the people assign to the practices in question. I then suggest that whenever 'cultural' practices and human rights clash, the primacy should be given to the perspective and will of those individuals and groups that are dominated in such cases.

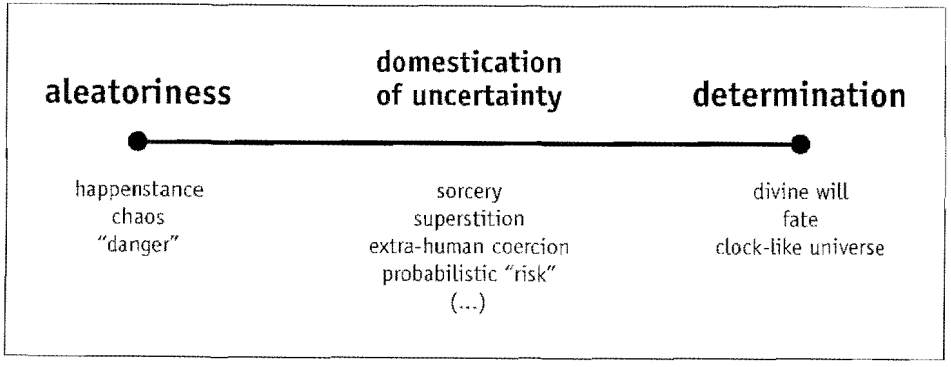
Lastly, I will suggest, for the reader's consideration, a set of questions of a scientific, ethical and political nature which should not at this point be concealed when discussing legal pluralities. These questions are based on the perspective that sorcery trials are not an unusual and extreme 'deviation' in the practical application of legal pluralism, but rather an expression of this concept in which the inherent harmful effects are easier to perceive.

Sorcery and the Domestication of Uncertainty

When studying the social role of sorcery in Mozambique, the first aspect to take into account is that sorcery is not an isolated belief, but rather a vital part of a wider (and largely collective) system of interpretation of, and action on, misfortune and other uncertain events. This fact is far from irrelevant. As George Murdock (1945) emphasised last century in a statement that has not been disputed, divination systems exist in every culture known to history or ethnography. However, those systems are not isolated from wider conceptual frameworks. Their rationale is based on interpretation systems intended to give meaning to contingency and to guide human intervention in the uncertain and unfamiliar. Since such interpretation systems also exist

in every culture, it is plausible that they meet a human need of a universal nature, thereby demonstrating the cross-cultural importance of the human struggle against the humiliation of uncertainty, against the lack of meaning and against human dependency as regards anything that appears uncertain and random.

The resulting systems may originate from different principles. When investigating the logical possibilities of understanding uncertainty and threat, we quickly realise that the possible alternatives may vary between two extremes: on one side, the absolute assumption that aleatoriness is 'real' and is the principle underlying uncertain events (thereby acknowledging contingency or happenstance); on the other side, the assumption that uncertain events are fully determined by extra-human logic or entities, such as divine will, fate or the mechanistic laws of a clock-like universe. Between these two extremes there is a continuum of conceptual possibilities that share the attempt to ascribe meaning and causality to uncertainty and aleatoriness, which enables the latter to be perceived as cognoscible, regulated or even dominated by humans. This represents what I describe as forms of 'domestication of uncertainty' (see Granjo 2004).



It is quite common for different systems of domestication of uncertainty to co-exist within the same society. Depending on the specificities of each occasion, people may decide to use only one of those systems, mixing them in a syncretic way, applying them alternately to various aspects of reality (Granjo 2008), or using them complementarily – even if their rationales may seem contradictory.

Mozambique is no exception in this regard. Here, too, there is a co-existence of materialistic, religious, magical, technological, and spiritualistic systems of reasoning and interpretation. We may nevertheless affirm that there is one particular system of domestication of uncertainty in use throughout most of the country which, though co-existing with other systems, predominates in the interpretation of events that disrupt normality. This is based on the notion that chance and coincidence do not exist. Thus, events that markedly harm (or benefit) someone require the existence of underlying causes, particularly if such events are recurrent.

These underlying causes do not replace and are not opposed to material causality. Indeed, they do not attempt to explain how a specific dangerous event occurs, but rather why such an event has harmed the person in question. According to this point of view, the world is full of material and natural threats, ruled by material causes; however, while undesired events follow material causality relations, they may only harm a specific person due to social causes which make both the victim and the source of danger coincide in time and space. These social causes need to be identified when misfortune strikes, in order to explain it and to prevent its recurrence in a similar or more serious form.

In such an event, however, the first hypothesis to verify is the victim's possible ignorance or negligence. The reason for what happened to the victim may reside in her/his own inadequacy in situations where the victim was unaware of the danger or unfamiliar with the right way of performing some action; the victim lacked the experience to perform the action; or the victim was not used to taking the necessary precautions. Other social causes, of a spiritual or a magical nature, will only be sought if the victim was struck or harmed by the undesirable event despite being competent and careful, or if her/his failure to take the normal precautions may be deemed exceptional.[2]

In such situations, one of the likely causes is the suspension of protection by the victim's ancestors. Since the latter maintain a relationship with their descendants similar to that of elder relatives, it is their duty to guide them, protect them and keep them away from danger – which they probably did not do in the event in question. If that happened, it was not a punishment, but rather the result of normal constraints faced by the ancestors: since they are the spiritual remains of the living person they used to be, they have lost certain human capabilities, among them the ability to communicate directly with the living. As such, the only way the ancestors can let their descendents know that they have a grievance they wish to communicate (through divination or the trance of a specialist) is to allow undesirable events that may alert the latter to the need to seek communication. The next step for the living would be to try to find out the causes of the ancestors' dissatisfaction and what can be done to appease them.

The other likely cause or reason could be sorcery. Mostly attributed to envy or other objectives that may be considered negative, such as greed or selfishness, sorcery is normally regarded as functioning in an inverse order to the actions of ancestors when they attempt to protect their descendents. In fact, while it is believed that powerful spells may directly manipulate material factors and create their own dangers, such diagnoses are relatively rare and largely limited to exceptionally tense situations

[2] According to this reasoning, if, for example, a person was infected by HIV because s/he didn't know about AIDS, forms of transmission or care required to prevent it, or if, knowing these things, s/he didn't use condoms regularly, no other explanation is required for such illness. On the other hand, if that person used to wear a condom regularly but did not on the occasion in question, thus becoming infected, an explanation for such fact will be required.

of social strain. What is more common is for sorcery to act upon people or beings – attracting them to danger, distracting them from its existence and imminence, influencing their behaviour, or even hiding from them some aspects of reality or creating illusions and imaginary situations.[3]

However, regardless of the variations in its performance and objectives, sorcery plays a central role within a system of domestication of uncertainty, here as in other regions of Africa.[4] Yet, contrary to common assumptions, it does not regard people as being restrained by the principles it advances, helplessly moving towards a predestined or irreversible future. The acknowledgement of social complexity, including the interaction of individual and collective volitions and actions – from the living and from the dead, of a material, spiritual or magical nature – turns sorcery, and each particular spell, into a factor that interacts with many others, in a framework of multiple attempts to mould an uncertain future (Granjo 2008a).

Sorcery provides, therefore, a means to give logic to uncertainty and aleatoriness by making them explainable, and by enabling the reintegration of misfortune as both a cognoscible phenomenon and a result of human action and, as such, liable to manipulation by such action. Thus, sorcery – along with the other aforementioned causal relations – is a means to understand something that otherwise would not make any sense. It is also a way of acting on reality, provoking or avoiding the undesirable. Yet the roles of sorcery and, particularly, accusations of the practice of sorcery (the main focus of this discussion), are not limited to the domestication of uncertainty.

The Accused and Social Control

To accuse someone of practicing or ordering spells is not just an attempt to explain misfortune, or to incorporate into normality something that is deemed abnormal. Accusing someone of sorcery (or even the implicit threat of such an accusation) is also a powerful instrument of social control, and the pursuit of economic and political strategies. Here again, this is not exclusive to Mozambique. Works such as *Schism and Continuity*, by Victor Turner (1957), or *Witchcraft, Power and Politics*, by Isac Niehaus (2001), expressively demonstrate this in quite different historical and geographical contexts. Nevertheless, one should bear in mind that such potential for social control and collective manipulation may take on distinctive meanings and have diverse consequences. There are also important regional disparities within Mozambique.

[3] Health and illness are a variant of this general system of domestication of uncertainty. Being healthy is the normal state of people, but one that requires harmony between the living, ancestors and the social and ecological environment (Honwana 2002). Health is also threatened by the lack of care, by sorcery performed by the living and by the disapproval of ancestors – but in parallel with the ecological dangers and the demands of the spirits to work as traditional healers.

[4] To be sure, despite the central role that spirits and ancestors assume here, the general principles are similar, for example, to the classic interpretation of Evans-Pritchard on Azande witchcraft (1978 [1937]). For even more similar systems see, for example, Janzen (1992); Campbel (1998); Dijk et al. (2000); and Binsbergen (2003).

In his book *Kupilikula*, Harry West (2009) draws a scenario in the Mueda plateau (in Cabo Delgado Province, Mozambique) where sorcery occurs in an invisible world that interacts with ours, and into which infamous sorcerers project their spirit in order to carry out their evil doings. Such doings may only be counteracted or reversed by a similar projection of righteous sorcerers to act on whatever was motivated by the infamous ones. Such action, through a spiritual, shamanic voyage into an invisible world detached from ours, contrasts with the beliefs that prevail in the southern and central regions of the country. Here the active spiritual force is not the living person's, but rather that of the spirits of the dead which possess her/him or which s/he is able to dominate and put to her/his service.[5] It is the spirits who act on the perceptible reality in forms we term magical. They do not do it in an invisible world (although they are themselves invisible), but in ours, which they also inhabit.

This formal difference identified in Mueda does not render the moral references of the practice (and accusations) of sorcery dissimilar to those in the rest of the country – even if they are perhaps more explicit in their logical consequences. Thus, any person who is more powerful or wealthier than those around her/him may in principle be deemed to be a sorcerer, either because s/he needed magical support to achieve that exceptional status or because that status demands that s/he provide protection to her/his subordinates – which is only possible if s/he knows how to fight malevolent sorcerers with benevolent uses of sorcery.

This assertion of the ambiguous nature of power finds another expression here, one of a more general character. Malevolent sorcerers are selfish and use their power and knowledge exclusively for their personal benefit. As such, those who enjoy the advantages of power without fulfilling the obligations of protection such power commands, or those who become wealthy without sharing part of their wealth with those they lead, by 'eating alone', prove, through such behaviour, to be malevolent sorcerers.

This is what led, for instance, to the lynching of several persons accused of owning, or transforming themselves into, the lions that terrorised the population of Muidumbe in 2002 and 2003. The persons lynched were relatively rich and powerful and, as pointed out by Harry West (2008) and Paolo Israel (2009), the case was an expression of political criticism of the post-socialist appropriation of wealth and power, to the detriment of and with disregard to the ordinary population.

The same was observed, albeit in a more subtle way, after the popular uprising of February 2008 in Maputo. It was said at the time that 'the people came out of the

[5] This second allegation, which pertains exclusively to the practice of sorcery, is infrequent – unlike spirit possession, which is common among 'traditional healers' and even ordinary persons.

bottle'. This eloquent expression, which travelled quickly from the outskirts to the centre of the city, also translated the political and socio-economic criticism into the language of sorcery, through a reference to the belief that many women illegitimately dominate their husbands, making them apathetic and abusing them through a spell that 'puts them inside the bottle'. This spell can only be broken by a stronger counter-spell – in this case the uprising (Granjo 2008b; Granjo 2010). However, the accusation of sorcery is ever-present in daily life in events far less spectacular than these larger public convulsions.

As already mentioned, unexpected misfortunes, and particularly an unusual sequence of disease and death, require a logical explanation that may allow people to make sense of them, to control and overcome them, and thence restore normality. Sorcery is but one of many possible explanations for such events, and yet the sorcery spell is a possibility that can easily gather consensus, including about the probable instigator. This may take place, for instance, in the absence of obvious social causes on the side of the victim, or someone close to the victim, which could give rise to the suspension of protection by the ancestors. It might also occur in the event of social conflicts or tensions, or of behaviour considered strange or envious – which is always very likely. However, considering that the suspicion of the practice of sorcery is justified by specific types of relations and social status, the resulting accusations also tend to be considerably typified. In consonance with the findings of the study led by Carlos Serra (2009) on the lynching of people accused of sorcery in rural areas, my data also indicate that these accusations tend to be focused on specific, socially disadvantaged individuals. Above all, while the most feared and famous sorcerers (though not the most confronted or challenged ones) are usually men, the overwhelming majority of people accused of sorcery are women.

Exceptions usually occur when a male individual has particularly serious conflicts with the affected group, shows exaggerated and hasty micro-political ambitions, or possesses a substantial amount of property at an age that is considered too advanced for him not to have begun to redistribute the estate among his heirs. Another situation that involves men, and where the accusation is socially equivalent to that of sorcery (although strictly speaking it is not), is when a woman has a complicated sexual relationship with her husband, expressed by violent or 'mad' behaviour. These cases usually entail the suspicion that the woman had already been offered in marriage to a spirit by her father, whether as compensation for a family debt to the spirit or with the objective of enriching himself through such a pact.

Thus, the accusation of men – accounting, as mentioned above, for the minority of instances – tends to be linked to the resolution of family conflicts and to the punishment of greedy political and economic behaviour, with male vulnerability increasing with age. However, not just any woman is accused of sorcery either, despite the vulnerability rendered by their gender.

The dominant images surrounding the effectiveness of sorcery are associated with distance. In other words, only the most powerful specialists will be able to cast a

spell from remote locations, whereas the average sorcerer has to be close to the victim to do so. Whether or not this image of proximity is originally the reason or the ideological formalisation of what I am going to say next, the practical outcome is that the sorcerer should be physically close to the victim, but at the same time keep a social or behavioural distance from her/him so as to give reason for the evildoing and the desire to do it. Therefore, relatives by marriage have an inevitable structural position as primary suspects – particularly women living with the husband's family. If such women demonstrate behaviour deemed undesirable they will automatically become suspects. This could for instance, include situations where the women are quarrelsome or defiant of their mother-in-law and sisters-in-law, are not respectful of or zealous enough toward their husbands and elders, or are envious of the assets or children of other women.

Widows are also more vulnerable to possible accusation, particularly if they own locally significant assets and if, upon being widowed, they begin to behave too independently. Widowed women are affected by a convergence of factors, including a limited defence capacity, an image of economic greed, a life experience that may have given them access to magic secrets, the economic expectations of the possible beneficiaries of the accusation, and gender power tensions. These factors will, in turn, add to the already existing and common suspicion about the widow's likely responsibility for her husband's death, which may be revived and work as complementary 'evidence' in the presence of new suspicions.

Furthermore, behaviours that diverge from the local role models of femininity and gender power may become sufficient reason for suspicion and consequent accusation.[6] There are degrees to this, of course, which are certainly not immune to the particular backgrounds and dynamics of the negotiation of gender roles that may have taken place in each case and context. However, a woman does not necessarily have to be 'a very strong woman that can beat up any man' – as various newspapers described a woman who was impaled in 2008 during a surge of lynchings in Chimoio – in order for consensus to be gathered about her condition as a sorcerer. As we will see below, suspicion of sorcery could simply result from a woman standing up against her husband following a long history of violent domestic aggression on his part.

In certain cases yet, a woman could be accused not because of any characteristic of her own, but because of her husband's behaviour. Even in urban areas, both in popular and more elitist circles, when a man 'obeys' his wife or has habits deemed atypical – such as leaving most of his salary at home, not going out with friends, not showing interest in other women, cooking or openly doing house chores – this tends to be considered by his relatives and neighbours as against his nature or choice, and as the result of a spell cast or ordered by his wife to illegitimately keep him under

[6] This aspect, too, is far from being a Mozambican peculiarity. Not only is it often mentioned in the European context, but it is also found, for instance, in Brazil (Maluf 1992).

her grip. And although the accusation of such a spell has less serious physical consequences than others, it may nevertheless lead to counter-spell actions and divorce (Granjo 2011).

Therefore, although an accusation of sorcery could be based on different sets of leads that may give rise to social consensus about its validity, it tends to be marked by two characteristics: (1) a focus on socially disadvantaged persons with limited defence capacity – mostly women and elderly women – and; (2) a justification based on the ascription to such persons of behaviours and actions which are not compliant with the models imposed by the power relations that are in force locally. Thus, accusations of sorcery are powerful tools of social control that both punish deviations to the dominant norms which govern behaviour and power relations, and coerce compliance – either through the accusation itself or through a latent threat of accusation upon the first occurrence of misfortune.

However, reiterating in part what has already been mentioned above, we should also note that there are special instances where the practice of sorcery is tolerated or even considered legitimate, even if publicly admitted and openly practised by women. A good example of this is the case of a gardener employed by the general manager of a large company. To the astonishment of the employer, the gardener was taking for granted the fact that his mother had put a spell on him – which made him sad, but not angry. It turned out that the man was the genealogic successor to a 'traditional' chieftaincy, but had refused to take up that position because he had a stable and relatively well-paid job. Moreover, he was investing all the money he was able to save in the ongoing construction of a new home, regardless of the alleged financial difficulties experienced his mother, siblings and uncles. He was, therefore, in a relatively serious situation of double default before his family, his community and his ancestors – a situation which, even in his own estimation, justified or excused his mother's use of such violent means of coercion.

Sorcery may thus be implicitly authorised or even respected by the community, as long as it is not concealed and it adopts a social control and coercion role, as a means to compel individuals to adopt a more socially desirable conduct. In other words, the practice of sorcery is accepted as long as it fulfils the social role that is expected of it in accusations of sorcery.

How Sorcery is Judged and How People Get Accused

This potential ambiguity regarding the acceptance of practices of sorcery is also valid – at least in abstract terms – in what concerns the dynamics and possible outcomes of accusations of sorcery. Indeed, an accusation of sorcery, even if confessed by the accused or deemed proven by the accusers, does not necessarily lead to punishment and marginalisation.

This dominant system of domestication of uncertainty and the local phenomenology of possession create an opportunity which, on the contrary, enables and facilitates social reintegration. To that effect, it would 'suffice' for the accused to acknowledge her/his fault and agree to have been possessed by an abusive spirit that forced her/him to act and behave against her/his own will – and that such allegation be consensually accepted by the accusers and confirmed by experts.

Such confessions do not have to be calculated or a hoax to be rational, according to anthropological criteria. After all, if the possibility is accepted that a person may commit an act under possession without being aware of it, and if everyone – including the experts in the matter – is sure that this has been done, then it becomes plausible to the accused that s/he might in fact have done it.[7]

However, if a person commits an act under the domination of a spirit, the responsibility rests on the symbiotic entity that is the person possessed. As such, the person in question is also responsible – even if, strictly speaking, s/he is not guilty. More importantly, as soon as the spirit is removed from the body and prevented from returning by means of arduous but innocuous ritualistic procedures (Granjo 2007), the person returns to her/his former state. S/he is no longer considered a threat and, therefore, nothing prevents her/his full social reintegration.

Nonetheless, the exceptional nature of this outcome – which has always been recounted to me along the lines of 'as it once happened...' – is a further indication that accusations of sorcery do not have the explanation and justification of misfortune as the sole objective. They may also be essentially motivated by a quest for social control and punishment. Indeed, the creation of scapegoats and the collective pressure leading to their economic exploitation, banishment, mutilation, insanity, and even death are far more frequent. Ultimately crucial to the outcome is the level of consensus established about the person to blame, her/his guilt, and the benefits of removing her/him from society or even from the world of the living.

Such accusations often end up not leading to any formal trial, whether performed by non-state political entities or by healers' associations. Particularly in more remote areas away from state authorities, a confirmation of the collective suspicion through divination by a specialist is usually enough to expel, injure or kill the accused – in principle, but not necessarily, with the prior consent of a 'traditional authority'. In more densely populated areas or even in cities, however, the gathering and analysis

[7] In fact, the person in question will not only be submitting social pressure, but also complying with a combination of factors that Dan Sperber (1992) notes as a rational reasoning to adopt beliefs which are apparently irrational: the person will be believing that something which s/he can only conceive in an incomplete and approximate way (sorcery under possession) is possible, based on the assumptions and consensus that there are people with complete and precise knowledge of this phenomenon and that, if s/he were to have that same knowledge, s/he could confirm it as true – in a process similar to what, for example, makes it rational for a person who is not an expert in astrophysics to believe in the existence of black holes.

of evidence, as well as the political promulgation of the punishment tend to be formalised. Unless the accused confesses immediately, the first divination that confirms the suspicions by the accusers usually has to be confirmed by a group of experts appointed by the respective professional association,[8] in a previously arranged meeting that takes place within a tense and solemn environment. Although the details of the case – including possible material evidence of sorcery – are explained at length by the complainants, and possibly challenged on behalf of the defendant, the formal means of proof is joint divination by the appointed experts. In the southern region of the country this is done by casting the *tinhlolo* (Granjo 2007a),[9] whose reading, which allows for different lines of interpretation, is almost always influenced by the allegations. However, even if the 'sorcery judges' have the authority and the competence – acknowledged by the parties by their mere attendance at the trial – to confirm or deny the guilt of the accused, the only tools the judges have that may help to lead to a confession and/or a settlement agreement are their rhetoric and performance skills, associated with the fear and respect they evoke. Sometimes such tools are not enough and it is necessary to convene more restricted sessions that take place in the bush, which I will describe below.

The path that leads a person to a sorcery trial can, however, be more complex and unexpected. It may pass, for example, through a community court (*tribunal comunitário*) which, considering itself incompetent to judge what has been brought before it as a sorcery case, or itself suspecting that a given case involves sorcery, refers the matter to a sorcery court. This is what happened in the first of the two examples that I will recount below. (I will do so in the most neutral and unbiased way I can, so as to limit the impact on the reader and avoid any possible legal consequences arising from these events.[10])

The case began, as mentioned, at a community court. The complainant was a married woman, applying for divorce due to continuous aggression by her husband over the years they had spent together. The last time she had been beaten she had been able to run away and seek refuge with her family of origin, whence she filed the claim. However, the detailed description of the events revealed that, on that last occasion, the woman had stood up to the husband and hit him on the head with a frying pan in order to escape. The mood changed instantly upon this disclosure. The 'judge' was astonished, and both he and the people representing the husband set about questioning whether such an unusual reaction from the woman could not be explained only by the fact that she had become a sorcerer. The judge, feeling incompetent to try such matters, immediately summoned a 'sorcery court'. The new trial, albeit *ad hoc*, began in accordance with the usual procedures mentioned earlier. However, given that the (now accused) woman insisted on denying her guilt, one of the judges gave her a mirror and asked her what she saw in it. As expected, the woman said she saw her image reflected in it. 'That is the proof,' said the judge. 'This is a magic mirror that only shows sorcerers!' I do not know what happened to this woman, who continued to deny the accusation, but that extraordinary piece of evidence did convince most of those present.

[8] Usually AMETRAMO, the Mozambican Association of Traditional Healers.

[9] A divination set including bones, shells, stones, coins and other objects chosen by the diviners and their masters, complemented by six half-nuts of *nulu* (*tiakata*) and six dorsal crocodile scales (*tinguenha*). It should be cast and interpreted in the presence of an appropriate spirit in the body of the diviner, and the reading and interpretation of the combined cast items is elaborated and discussed with the persons present.

[10] Due to possible legal consequences, I will also not disclose whether these cases (or any of them) were attended by me or narrated by third parties.

The next case I am presenting, however, illustrates a common course of events when someone consensually found guilty insists on denying the accusations of sorcery against them. The new trial does not take place in an urban or peri-urban area, but deep in the bush, in an isolated location that can only be reached on foot, but preferably close to a crossroads. Moreover, it is no longer, strictly speaking, a public trial. Although some representatives of the parties may be present, the proceedings are strictly confidential, with the exception of the final outcome.

In this case, the defendant was also a woman, who appeared to be around 50 years old. Although the procedures also involved a relatively long session of questions and allegations, it was clear that the defendant's guilt – reconfirmed by casting the *tinhlolo* – was taken for granted. Therefore, the issue was not about investigating the defendant's guilt, or even proving it, but about forcing her to confess.

Following a long phase of reprimands, pleas and threats, a series of tests were initiated whereby the defendant, under constant pressure, had to find objects, animals or plants, or had to demonstrate her confidence and courage, in order to prove her innocence. A string of failed or virtual impossible tests (such as finding the rare and elusive pangolin) gradually increased her insecurity and emotional tension. Although exhausted and disoriented after many hours of physical and psychological coercion, the woman kept on denying the accusation. Then they administered the *mondzo*.

This is a liquid concoction of plant origin that induces a state of absent-mindedness and lack of control. The person who drinks the liquid ends up confessing everything s/he did wrong (whether or not it was sorcery) in conversation with an imaginary person. Nevertheless, as in stories of espionage involving the 'truth serum,' it is presumed that some people are able to control its effects, and never confess. Such exceptional instances may result in a second administration of the product, which is likely to result in an overdose that renders permanent the state of absent-mindedness and hallucination – as happened to the woman in this case.

Finally, cases of extremely high social tension and unanimity about the guilt of the person accused may end up with a submission of the accused to an ordeal whereby a toxic substance is administered which is supposedly harmless to the innocent, but should kill the guilty or drive her/him mad.

I cannot disclose how this particular case was concluded.

Good Intentions, Cultural Relativism and Rights

I presume that cases such as these will not leave the reader indifferent, even if the reader is the most enthusiastic supporter of 'legal pluralism', or someone who has learned – as I have – to consider local divination and healing practices in their own terms and within their own conceptual framework. However, the reflection these cases elicit should not be limited to the means of evidence used, the degree of coercion and violence, or even the violation of rights deemed fundamental and safeguarded by the state – beginning with the exclusion of the death penalty. All these questions are unavoidable. But since we are in the presence of something that is intended, and accepted by all involved, as a specialised method of providing justice that articulates with other instances of 'legal pluralism', the concerns that make us question this system of judgment should lead us to question the legitimating principles of legal pluralism as well.

Running the risk of generalising and simplifying, one might say that the lines of reasoning which try to legitimise legal pluralism – and their respective motivations and principles – follow two main vectors. On the one hand, they are based on a practical concern: the capacity of the state's to provide justice is and will be scarce. This could be addressed by mobilising and recognising locally legitimate conflict resolution entities, acting in accordance with locally accepted principles.[11] On the other hand, they are based on a concern for ideological equity: it is assumed that there is a 'Western' hegemony[12] which enforces institutional frameworks, principles and notions of rights that are alien to, and disrespectful of, all other cultures. Therefore, for such other cultures, resolving conflicts and administering justice in conformity with their own principles and means would constitute factors of emancipation and of fairer social functioning. This second vector, developed fundamentally within the academic context, finds its theoretical and moral legitimacy in the very anthropological and respected principle of cultural relativism.

I believe the case of accusations and trials of sorcery is an excellent starting point (as could be the inequalities in gender, age, or between any other social groups whose differences in status are culturally encoded) for assessing the extent to which the application of the concept of cultural relativism onto people's rights is problematic and potentially perverse.

[11] However, the type of entities which are locally acknowledged by the people as conflict resolution providers may vary significantly throughout the country, together with the level of authority and legitimacy attributed to each one of them. Compare, for instance, Farré (2008); Florêncio (2005); and West (2008).

[12] Hegemony is normally understood, within the framework of this type of rationale and discourse, in the more popular and vague sense of strong and imposing domination, and not in any of the Gramscian connotations that are at the origin of the word. I discuss these aspects later.

In truth, however, the concept is already tricky in abstract and theoretical terms, even before we confront it with empirical cases. This stems from the fact that the healthy assumptions that the various cultures are not superior to each other and that each culture should be understood in its own terms are not, in this case, applied to strictly cultural phenomena, but rather to political ones.

From the perspective of the more inclusive notions of 'culture' (to which I subscribe), we can of course state that the 'political' is also cultural. Indeed, if we understand 'culture' as a set of socially transmitted and shared forms of both perceiving, classifying and conceiving the world, and of feeling and acting, very little of what is human will not, broadly speaking, be culture. But only fallaciously could such a generalised statement conceal an essential and *sui generis* aspect of power relations, and particularly of the recognition or denial of certain rights or privileges of specific social groups: at any point in time, and in any culture with dominating and dominated people, the rights bestowed on the latter (just as, symmetrically, the privileges and grounds for inequality that benefit the former) are the result of the history and dynamics of power conflicts and negotiations. In other words, the rights of dominated groups are imposed on the dominating ones in an essentially political process of conflict and negotiation. Their encoding into cultural rules (as with the cultural encoding of the grounds for inequality, even when these are assumed to be natural or spiritual) is nothing more than the 'freezing' of an incidental and temporary correlation of forces, however long-lasting, within social norms and people's collective world view. This means that unless we maintain an essentialist image of 'cultures' that considers them static, homogenous, exclusive and isolated, the application of cultural relativism to people's rights is abusive and inappropriate. But there is a second problematic issue, which is simultaneously academic and practical.

If the most noble purpose of projecting cultural relativism on the provision of justice (through legal pluralism) is, as I presume, to promote the emancipation of cultures and societies which are subjected to the diktat of alien principles and criteria, such a purpose could only be achieved without perverse harmful effects if the dominated societies were homogenous, harmonious and devoid of power relations and strong conflicts of interest.

This homogeneity is obviously not the case in the Mozambican context – or, for that matter, in any other context that I am aware of. In tedious fashion, Rousseau's 'noble savage' (1978 [1750]) is able, after all, to combine his empirical inexistence with the ability to incite imaginary exoticists. What we are faced with, in practice, are strongly diversified and hierarchical communities, wherein (as almost everywhere else) inequality and relations of domination between groups are culturally codified.

This means, on the one hand, that regarding local cultural rules as homogeneously representative of the community as a whole is the same as regarding the values and interests of the dominating groups as general, or as interpreting the local relations of

power, inequality and domination on the basis of the reasoning offered by the dominating groups to legitimise such relations – similar, one might say, to the long anthropological error of interpreting the Indian castes system on the basis of classical texts written by Brahmans, thus reducing this system and the domination by the higher castes to the point of view presented by the latter (Perez 1994).

On the other hand, it means that, by disregarding the existence of endogenous processes of hegemony[13] in communities that are considered 'different', and by assuming that the dominant values in such communities are 'genuine' and representative of the 'entire' community (as if the community was homogeneous, and as if the acceptance of such values by the dominated members was not, itself, the result of a process of domination) contributes to the reproduction of the very discrimination and hegemony that exists within communities. In other words, by trying to counteract the abuse arising from the imposition of 'Western' values in a context of intercultural domination, one is validating the abuse arising from the imposition of values by local dominant groups and the type of dominating relationship employed by these groups upon the subaltern. By calling for the emancipation of an abstract and imaginary community, we are reinforcing the instruments of oppression of those – quite concrete – who are dominated within it.

Conclusion: Dilemmas and (Possible) Solutions

For the reasons outlined above, I argue that we must hold that 'culture' and 'tradition' (although central to a contextual framework) are not valid impediments to equity and individual rights, let alone the protection of those who, by virtue of their situation or status, are the most vulnerable. However, embracing this is one thing; quite another is to assume that, when a practice includes formal elements that appear abusive in light of internationally dominant values of equity and human rights, such values should overrule the meanings people attach to such practices, and the social consequences they ascribe to them. I doubt that the dilemma between these two poles – which tend to be considered as the only possible ones – has a definite solution, or even a totally satisfactory one. However, it seems to me that there is a third alternative, which is also relativist and continuously renegotiated. This alternative has the advantage of neither imposing foreign values nor denying human rights or reproducing inequalities.

I suggest that, in the case of a conflict between 'cultural' principles/practices and human/citizenship rights, the criteria applied should not be the dominating rules,

[13] I am now using 'hegemony' in both Gramscian senses of domination of a group achieved and validated by convincing the subaltern trough ideological means, and of acceptance and partial integration of the dominant ideology by the subaltern (Gramsci 1971).

whether international or local, but rather the will and perspective expressed by the dominated individuals and groups in regard to the case in question. This is certainly not an easy solution. It requires, first of all, knowledge, participation and transfer of the decision-making power to the dominated and vulnerable, with the state assuming responsibility for challenging local relations of power and domination.

But there is an additional problem, which derives from the more reinforcing meaning that Gramsci (1971) attributed to the word 'hegemony', when he coined it: that of the acceptance and integration into their own ideology, on the part of the dominated, of the principles of the dominant ideology, which were conceived precisely in order to legitimise the domination to which they are subjected.[14] As a result of this process, there is always the risk that the dominated will reproduce the locally dominant ideology by supporting the very practices and principles that oppress them.

Nonetheless, the solution proposed above seems to me to represent the smallest and fairest among possible risks – and, most importantly, one that transfers any external expectations of emancipation from the domain of external imposition of power to the field of political debate and symbolic and ideological negotiation.

Having reached this level of generalisation, it would now be appropriate to revert it on the theme that served as the starting point and empirical basis of this chapter: accusations and trials of sorcery as variations of 'legal pluralism' which are capable of clarifying the tensions and limitations of the latter. When doing so, one could always argue that sorcery trials are an extreme case within the diverse framework of 'legal pluralism' practices and, as such, should not jeopardise harmless and socially useful mechanisms of conflict resolution and justice provision that are accepted by all parties involved. Indeed, since they involve the resort to spiritual or magical means of evidence, and because they may lead to the economic despoilment, ostracism, mutilation, insanity, or death of the defendants, sorcery trials contrast significantly with, for instance, the mediation of family quarrels at a police station or a community court.

However, we often learn about verdicts from those 'harmless' non-state instances of conflict resolution that clearly abuse the legal, constitutional and human rights of accused citizens, or even their family members – as in cases where the accused are forced to give their daughters, even when only minors, to the accusers as compensation. Furthermore, the abuse of dominated and vulnerable individuals and groups may vary in degree depending on the type of non-state 'justice provision' institution and on the local context, but such abuses derive from the same principle of cultural legitimacy (and, consequently, from the same legitimating principle of culturally codified inequalities). Besides, as we have seen, sorcery trials and other non-state instances of justice provision may often maintain links and interactions to each other.

[14] It is this type of process, for example, that leads mainly women to pressurise and teach other women to submit to male domination, or makes individuals from socially dominated classes to assume that 'there have always been rich and poor' and that this is a 'fact of life'.

Thus, one may argue that sorcery trials are the extreme pole on a continuum of possibilities of abuse and domination; but all those possibilities are, ultimately, inherent to the logic of 'legal pluralism' itself.

As previously mentioned, when we analyse specific examples of accusations and trials of sorcery, it is clear that, regardless of the degree of refinement, exotism and/or violence involved, they are not exclusively explanations for misfortune or mechanisms of conflict resolution and social control. They are also powerful instruments of reaffirmation and reinforcement of the local principles and relations of domination and inequality, to which those who are dominated may adhere either due to the effect of hegemony or because they themselves are potential victims of similar accusations.

This phenomenon gives rise to uncomfortable questions of a scientific, ethical and political nature which should not be avoided when we examine legal pluralism: Is it correct to use cultural relativism as an assumption for discussion when people's culturally recognised rights are not, strictly speaking, a cultural but a political phenomenon, i.e. a codified result of mutable correlations of forces and domination? Is it reasonable to stimulate practices and principles of legal pluralism when these do not merely weaken modernist hegemonies and ideological domination at the global level, but also strengthen relations of domination and hegemony at the local level? Should state legal and judicial action protect local and historically imposed inequalities, or should it strive for equity amongst citizens? Should legal practices and decisions that breach the constitutional and human rights of citizens, against their will, be socially and politically accepted (and endorsed)? What can and should be done in order to prevent them?

The answers I would give to the above questions are hopefully evident throughout this chapter. However, as a foreigner with no decision-making power whatsoever over such matters, I believe it is more important for me to formulate these questions and encourage their careful consideration than to try to answer them myself.

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