

# THE POLITICS OF LEGAL PLURALISM: STATE POLICIES ON LEGAL PLURALISM AND THEIR LOCAL DYNAMICS IN MOZAMBIQUE<sup>1</sup>

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## Introduction

What happens when legal pluralism becomes a policy concept? Or put differently: what are the consequences when legal pluralism enters national laws and policies and thereby ceases to be solely an analytical concept used by scholars to address the plurality of normative orders and institutions that enforce order within a political organisation? The exact meaning of the concept of legal pluralism is still debated, and not all agree on its normative value, with some arguing for the superiority of state law and others for the equality of legal orders.<sup>2</sup> Despite this, legal pluralism is today increasingly accepted as an empirical 'fact' not only by a

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<sup>1</sup> An earlier draft version of this article was presented at the international workshop, *Customary Justice and Legal Pluralism in Post-Conflict and Fragile Societies*, George Washington University, November 17-18, 2009.

<sup>2</sup> Legal pluralism as an analytical concept has been debated extensively by socio-legal scholars, and it is not the purpose of this article to rehash this debate here (see Griffiths 1986; Tamanaha 2000, 2008; Woodman 1998; Benda-Beckmann et al. 2009). This article is confined to a discussion of the implications of legal pluralism as a 'policy concept', which to my knowledge has been much less addressed.

wide range of socio-legal disciplines, but also by some governments in the South and by international organisations engaged with justice and security issues in developing countries. State law and its institutions, it is acknowledged, do not have monopoly on ordering society, but co-exist with other institutions and normative orders, whether referred to as 'informal', 'customary', 'religious', or 'non-state'.

Legal pluralism as a *policy concept* is reflected in state laws and constitutions that recognise legal pluralism as a principle describing the justice system of the country.<sup>3</sup> It is also present in many current development donor programs and strategies that now focus on the significance of non-state justice and security providers (OECD/DAC 2007; World Bank 2008; Danida 2009; UNDP/Wojkowska 2006; DFID 2004). This marks a shift from their earlier exclusive focus on support for state-legal institutions. International human rights documents also increasingly embrace legal pluralism, and a number of NGOs, national and international, are now engaging with non-state actors who solve conflicts and provide justice.<sup>4</sup>

As a policy concept, legal pluralism tends in official discourse to convey recognition of the socio-cultural diversity of the legal domain within a nation state. This is exemplified by the import of non-state 'law' into state law and by the recognition of the role in providing justice or handling disputes, of existing non-state authorities such as traditional leaders or chiefs, clan elders, and religious institutions.<sup>5</sup> It may also take the form of state or international support for the establishment of new hybrid, community-based mediation and conflict resolution mechanisms that draw on local norms and procedures while also being informed by state and international legal standards such as human rights. Inclusion and recognition of non-state legal orders and justice mechanisms differs from the

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<sup>3</sup> Legal pluralism as a policy principle describing the entire justice system of a nation-state differs from a situation in which the state recognises selected non-state, customary or informal justice providers or 'laws', which has occurred for a long time, including during colonial rule (see Mommsen and de Moor 1991).

<sup>4</sup> On the recognition of legal pluralism in Human Rights Declarations, General Comments and Covenants, especially those relating to indigenous people and minorities, see ICHRP (2009: 27-31).

<sup>5</sup> On a discussion of the term non-state law, and to what extent the term 'law' can be used to refer to non-state normative orders (see Woodman 1998; Tamanaha 2008; Moore 1978).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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previous dominance of state-legal centralism in national frameworks and in international support for justice and security sector reform.<sup>6</sup>

This article explores the consequences of legal pluralism as a 'policy concept', using the example of post-war Mozambique, where legal pluralism has gained constitutional recognition since 2004. It engages in a discussion of what I term 'the politics of legal pluralism'. This 'politics' denotes the, often covert, political interests behind legal pluralism policies and the political implications of how such policies are put into effect. Despite official discourse, I argue, legal pluralism as a 'policy field' seldom implies only a simple or benign recognition of the empirical manifestations of socio-cultural diversity. It also implies a framework for state intervention, regulation and reform, and so has political implications.

Drawing on extensive fieldwork in rural and urban Mozambique, I argue for the need to critically scrutinize the official policy claims that underpin legal pluralism, and which tend to mask key political aspects. Such claims often posit legal pluralism as reflecting the peaceful coexistence of distinct normative orders or legal 'systems'. The recognition by the state of such plurality is presented in official discourse as an unproblematic, apolitical embracing of socio-cultural diversity and even as a win-win situation for state and non-state 'legal systems'. This overlooks a reality of competing, partly overlapping jurisdictions and diverse claims to authority.<sup>7</sup> As a result of this reality, legal pluralism often becomes not a pure recognition of 'what already exists' empirically, but a means by which the state attempts to establish what policy claims posit: distinct 'legal systems'. This translates into state efforts to regulate non-state justice providers, (re)define their areas of jurisdiction, and establish a hierarchical boundary between 'legal systems'.<sup>8</sup> Central to such boundary-making are efforts to assert the superior

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<sup>6</sup> The concept of state-legal centralism refers to the ideologically informed claim that "[...] law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions" (Griffiths 1986: 3).

<sup>7</sup> On the need to view legal pluralism as describing a situation of various layers of merger and intermix of justice systems, see for example Santos (2006), who usefully introduces the concept of inter-legality to describe such a situation. Inter-legality has come about as the result of long histories of interaction in which justice systems have evolved together. On a similar point, see Tamanaha (2008).

<sup>8</sup> I place quotation marks around the concept of 'legal systems', because, while

authority of the state, its laws and institutions.

State recognition of non-state legal orders is therefore not a technical, neutral process, but an inherently political one. The state legitimises the authority of non-state justice providers, but also assumes the authority to define what counts as legitimate non-state justice institutions and rules. The result is restrictions on how non-state justice providers can operate, which has implications for how they assert authority. Thus while recognition of legal pluralism can be an instance of state law adapting to local socio-cultural norms, it also involves a re-ordering of authority and power. Recognition can also be appropriated to boost the popular legitimacy of state institutions or to avoid conflicts in contested, post-war contexts, through alliances with non-state authorities. It can also become an instrument of the political party in power to consolidate its local power base and to mobilise votes in the context of transitions to multiparty democracy. Similar political objectives may where legal pluralism policies involve the establishment of 'new' hybrid institutions defined as 'community-based', 'informal' or 'non-state', such as in the case of community policing councils and community courts in Mozambique. The difference is that here we are not speaking about state recognition of already existing non-state legal orders, but of an institutional expansion of the non-state domain in the name of accommodating local 'community' norms or customs.

The *politics of legal pluralism* is not, however, the exclusive purview of state officials and party politicians. Non-state providers can also use state recognition as a source of authority to enforce decisions or to assert power vis-à-vis other non-state authorities. In fact, local state efforts to apply legal pluralism policy may further invigorate competition between state and non-state providers over authority and 'clients'.

The core argument of this article is therefore that legal pluralism as a policy concept easily becomes the subject of political manipulation or itself is a political

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official discourse and policies on legal pluralism tend to speak of 'systems', this claim does not necessarily correspond to the empirical reality of often more loosely structured mechanisms of justice, overlapping jurisdictions and clusters of rules or institutions. The term 'system' rather denotes structured and relatively comprehensive bodies of law (see Woodman 1998). Or as held by Griffiths, who prefers the term 'legal order', a 'system' has "overtones of completeness, orderliness, institutionalization, and static equilibrium" (Griffiths 1986: 12).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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tool to assert authority and manifest power. This, I argue, is intimately related to the politics of justice provision itself, and by extension of social ordering: providing justice or policing order is a key source of authority, and often an avenue to income and resources.

As I illustrate with the Mozambican case, the politics of legal pluralism can cover at least three layers of politics. The first is the politics of asserting the superior authority of state institutions and law over other legal orders. This is exemplified by the use of legal pluralism by the state to regulate non-state providers and redefine their areas of jurisdiction. It can also take the form of the state outsourcing functions to non-state actors, but in a way that supports state authority. The second layer is the political party interests in non-state justice and security providers, which can emerge as a result of transitions to multiparty democracy. This is exemplified by the use of legal pluralism to boost the power of politicians or the regime in power by ways of creating alliances with non-state authorities or by using them to hit at the political opposition. Finally, the politics of legal pluralism is also expressed in local-level contestations over power and 'clients' to sustain the authority of a given institution or personal power positions, including those of local state officials, such as the police. This aspect often predates legal pluralism policies, and may even be one of its causes, but can be exacerbated by or take new forms as a result of legal pluralism policies.

In the remainder of this article I address first the national politics behind the state recognition of legal pluralism in Mozambique. I then explore the politics of legal pluralism in practice in a rural district, particularly focusing on the state recognition of traditional authority since 2002. Thirdly, I examine community policing in an urban setting, and show how, as a new model of non-state involvement in security provision, it is politically instrumentalized by the state police and the ruling party. Finally, I conclude with some reflections on what I consider important political aspects to be considered in international support for and studies of legal pluralism policies.

### The Politics behind State Recognition of Legal Pluralism

In Mozambique legal pluralism was officially recognised in the 2004 revised Constitution:

the state recognises the various normative and dispute resolution

systems that co-exist in Mozambican society, insofar as they are not contrary to the fundamental principles and values of the Constitution (Republic of Mozambique 2004: art. 4).

The Constitution also calls for institutional and procedural mechanisms that link formal-state courts with other, non-state mechanisms of justice (*ibid.*: art. 212). This official commitment to legal pluralism is reiterated in the Government's Integrated Strategic Plan for the Justice Sector (PEI II, 2008-2012), which should be the framework for any government initiatives and donor-supported programs on the justice sector. This marks a clear shift in policy.

The constitutional recognition of legal pluralism can be seen as the cumulative effect of an increased shift from state legal centralism towards state recognition of non-state, community-based and customary authorities since the 16-year civil war ended in 1992 and the country embarked on a democratic transition. Until 2000 donor support to justice sector reform focused exclusively on reforming formal state institutions in accordance with 'the rule of law' and 'human rights'. The village-level popular courts established by the socialist regime in the 1980s, and comprising lay judges using procedures based on local customs, were delinked from the formal court system, renamed 'community courts' and downgraded to informal conflict resolution bodies. Village secretaries and popular vigilantes, who formed part of the Frelimo-state structures to resolve conflicts and maintain order at the local level, were also excluded in post-war legislation. Reform of the justice sector further ignored those non-state justice providers such as chiefs, traditional healers and religious leaders who, outside state law, played a significant role in justice enforcement on the ground (Kyed 2009a).<sup>9</sup> Overall justice sector reform focused on not only democratising the formal system and making it more effective, but also on re-extending state institutions and law to the vast territories of the country where these had been weakened or had disappeared because of the protracted war. Non-state institutions were seen as an impediment to this development. Implicitly it was assumed that they would no longer be significant once the state legal system was in place.

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<sup>9</sup> After independence in 1975, chiefs and traditional healers were officially banned by the Frelimo government. With regard to chiefs, this marked a clear break from colonial indirect rule, which had relied on chiefs. However, in practice many chiefs continued to perform significant roles in justice enforcement and policing. Some also supported the rebel movement Renamo during the war (Kyed 2007a).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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The drive towards recognition of legal pluralism in 2004 resulted partly from changes in donor trends and partly from the meagre results of initial reform efforts. Formal state institutions were still not able to provide adequate justice and security, were corrupt and lacked popular legitimacy. This was confirmed by a number of studies in the 1990s, which provided evidence of the continued significance of traditional authority and other forms of non-state justice providers. One particularly influential donor-funded study argued that the formal system ignored the needs of the poor, who preferred restorative to punitive justice (Trindade and Santos 2003). It held that the judicial system ought to be adjusted to this reality through legal and functional linkages between the formal courts, community justice and traditional authorities, thus establishing a *de jure* system of legal pluralism. This would make the justice system more efficient and better adjusted to local socio-cultural notions of justice (Trindade and Santos 2003: 581-582).

There were also clear political interests behind the recognition of legal pluralism. Studies arguing for the role of traditional authority in administration, conflict resolution and national identity formation instigated intensive media and parliamentary debates between the ruling party, Frelimo and the opposition, Renamo. While Frelimo was split on the issue, Renamo wanted full recognition of traditional authority. However, after the 1999 elections, the Frelimo government became convinced that Renamo had a strong voter-base in many rural areas because it had aligned itself with chiefs during the war. On the ground this was matched by conflicts between traditional authorities and former Frelimo village secretaries, as well as by pockets of resistance by chiefs to the state police and administrators. Simultaneously, local state officials began to depend on informal collaboration with traditional authorities to re-establish state institutional outreach in the rural areas. The Frelimo party structures also benefited from such alliances (see Kyed 2007a).

Thus in 2000 the Frelimo government passed a ministerial decree, Decree 15/2000, which conceded recognition of both traditional authorities and the (former Frelimo) village secretaries as 'community authorities'.<sup>10</sup> Aside from a range of state administrative tasks, these authorities were obligated to assist the

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<sup>10</sup> It is important to note that the recognition of traditional authority is based on a decree and not a law, which means that it was approved not by Parliament, but by the Council of Ministers. This reflects, I suggest, the Frelimo government's desire to decide itself the terms of this recognition.

police and courts in order enforcement and conflict resolution. In return they received uniforms and subsidies from the state. The Frelimo government also committed itself to strengthening the role of the community courts, by measures which included improving the election procedures and establishing links to the formal courts.<sup>11</sup> However, this was a less politically controversial area for the government, because existing community court judges were already associated with the ruling party, these courts having been substituted for the former popular courts. The recognition of village secretaries under the same title as traditional authorities was also seen by Renamo as a means to ensure that some 'community authorities' came from Frelimo ranks.

These political interests lying behind state recognition of non-state institutions, and merging party politics with the extension of state administrative powers, have, unsurprisingly, been masked in the official policy claims that have underpinned the subsequent constitutional recognition of legal pluralism. Officially legal pluralism policies have been cast as state recognition of 'what already exists', namely traditional and community-based forms of justice that draw on the socio-cultural norms of the variety of local communities across the country. The 1992 law on community courts and Decree 15/2000 also posit the unproblematic co-existence of state and non-state institutions, as representing distinct domains of justice enforcement which handle different issues and which can mutually benefit from collaboration. In short, non-state institutions have been portrayed as institutions that do not compete with the state police and courts in the types of problems they solve or in their claims to authority.

While this policy claim has little resonance in practice, as I argue below, it may help to explain why the recognition of legal pluralism has not been supported by any clear legal framework outlining the respective roles, mandates and jurisdictions of the patchwork of non-state institutions that co-exist within the same geographical areas (i.e. community courts, traditional leaders, village secretaries, traditional healers). Nor has any substantial legislation specified how these

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<sup>11</sup> In 1998 associations of traditional healers were also officially recognized. However, since official law denies the existence of sorcery, recognition of the authority and scope of action of healers only extends to traditional medical treatment of illnesses, and not to any role of healers in conflict resolution (West 2005).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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institutions should interact with the formal justice system, despite the clear constitutional requirement. Whereas the 2005 draft legislation on judicial reform envisioned an integrated judicial system with legal and functional interaction between the formal courts and non-state justice providers, the actual legislation passed in 2007, the Organic Law of the Judicial Courts (Law 24/2007), merely notes that judicial courts "may articulate with other existing conflict resolution instances" (Republic of Mozambique 2007: art. 6). There is no mention of what 'instances' this may include or how such articulation may be put into effect. The law does introduce the possibility of an appeal system between community courts and district courts, but it is unclear exactly how this should work (*ibid.*: art. 5). Thus, what exists is a set of dispersed laws and decrees that recognize different non-state authorities' role in conflict resolution.

This patchwork of non-state actors, recognised by the state, has more recently been expanded with the introduction of community policing councils (CPCs), the agents of which also engage in conflict resolution and, unofficially, act as judges (Kyed 2009b). While a decree on this area is not expected to be approved by the Council of Ministers until some time during 2010, CPCs have been implemented by the Ministry of Interior (MINT) since 2001 in a few selected urban areas, with initial support from the German bilateral donor GTZ, and since 2005 in the whole country. The CPCs are intended to be comprised of influential local citizens, who are elected by the local community. They are meant to discuss and gather information on local security problems and perform patrols with the state police. As envisioned by MINT, CPCs are expected to mediate conflicts, such as those involving land disputes, disagreements between neighbours and family disputes. However, they are not allowed to handle crimes, which are supposed to remain the exclusive purview of the state police (MINT 2005). So envisioned, the roles of CPCs overlap in significant ways with already existing non-state authorities, such as chiefs and community courts, but there are no formally established linkages between them.

Drawing first on the case of the rural district of Sussundenga, I tentatively suggest that what appears to be a reluctance to pass a law or develop a strategy on institutional linkages and mandates arises not only from questions of policy claims about non-state legal orders and their relationship to the state. It is also informed by the politics behind legal pluralism. Lack of clear mandates and of legal mechanisms for monitoring non-state institutions leaves ample room for political instrumentalization by local state officials and ruling party cadres. In fact, as I argue next, the stifled policy-making process at national level has been overtaken

by developments on the ground.

### Rural Politics of Legal Pluralism – the Case of Community Authorities

Despite the absence of a clear legal framework, official recognition of legal pluralism has in practice been appropriated by local state officials as a *de facto* 'framework for action' in the rural areas. It has been used not only to endorse, but also to regulate non-state justice providers and to (re)define their respective jurisdictions vis-à-vis the state. The result is that different kinds of articulation in essence take place *outside of* official law. While the framework for action brings somewhat more clarity to the plural legal landscape and aims to provide more effective case-handling, it is driven by local state and party political interests.

At least in some areas, the *de facto* framework for legal pluralism has been used to (re)expand the outreach of the state in areas where state authority is contested or weak. In such instances local state articulation with non-state institutions is often aimed at subjugating those who have competing sovereign claims, i.e. who, like the state, claim the ultimate authority to define and prosecute severe transgressions. This process has merged with efforts to re-vitalize or strengthen those non-state institutions that are loyal to the ruling party, Frelimo, such as the community courts and the village secretaries, and to create alliances with those who historically have not been, such as traditional healers and chiefs. Such efforts are, however, contested in everyday case-handling, and coexist with competition, as different actors defend their jurisdiction in order to protect power interests and to maintain their authority.

The initial ground for local state appropriation of legal pluralism was laid during the process of state recognition of traditional leaders or chiefs, which began in 2001-2. A good example of this process can be seen in the rural district of Sussundenga in Manica Province.<sup>12</sup>

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<sup>12</sup> The example of Sussundenga District is based on extensive fieldwork in 2002, 2004 and 2005, and updated field-visits in 2007 and 2009. For a more detailed discussion of the process of state recognition of chiefs, see Kyed and Buur 2006; Kyed 2007a.

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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*Asserting state authority and ruling party power*

Sussundenga district was a hotly contested area during the civil war. The rural areas outside the administrative capital were controlled by Renamo, and some chiefs, from the mid-1980s. The state institutions, including the police, popular courts and village secretaries, were essentially dissolved. Renamo's influence in this area continued to be strong after the end of the civil war. In the mid-1990s there were pockets of open resistance by Renamo and some chiefs towards state police and the administrative (re)establishment outside the district capital.

Decree 15/2000, allowing for the state recognition of chiefs, became an essential tool to reverse the situation of state weakness in Sussundenga. It gave local state officials a tool to establish alliances with chiefs in the contested territories, based on promises not only of official recognition, but also of development benefits and state subsidies. Such promises initially sparked conflicts among different candidates to chieftaincies, as war, migration and shifting alliances had considerably reshuffled traditional authority positions and territorial jurisdictions. While state officials accepted 'traditional' criteria of leadership selection, there were instances in which state officials intervened to support candidates that showed loyalty to the state and the ruling party.<sup>13</sup>

The alliances that recognition enabled became direct means of the territorial-institutional expansion of the state. In the most rural hinterlands recognition was followed by the re-establishment of police posts, administrative offices and Frelimo party cells. In one area, the recognition ceremony for a chief also marked the first visit of a post-colonial state administrator to the area. Such encounters allowed state administrators, always accompanied by police officers and Frelimo secretaries, to engage with and promulgate the government's program to the rural population. Later recognition has also facilitated everyday forms of state governance, as chiefs are obligated to collect personal tax, produce population registers, and denounce criminals to the police. While local state officials place emphasis on the value of the 'traditions' of which chiefs are custodians, the general message is that state recognition means that chiefs 'now have to obey the orders of the government'.<sup>14</sup> This has merged with party political requirements.

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<sup>13</sup> On this process of selection, see Kyed 2007a; Buur and Kyed 2006.

<sup>14</sup> For a discussion of tradition not as a fixed, but a mutable set of rules and practices, see West and Kloeck-Jenson 1999; Buur and Kyed 2007; Moore 1986; Oomen 2005; Handler and Linnekin 1984.

Chiefs are drawn into election campaigns, sometimes being obliged to mobilize votes for Frelimo and display its posters at their homesteads. Chiefs are also expected to hold Frelimo membership cards in order to draw their benefits from the state. While some chiefs still covertly support Renamo, and many of them stage compliance only at public state meetings, the message is that their state-recognized authority is conditional on their politics, i.e. loyalty to Frelimo.

From 2003 the local politics of legal pluralism were expanded with the revitalization of village secretaries and the establishment of community courts at the sub-district level. In contrast to legal requirements for community election, village secretaries and community court judges were appointed by a group consisting of the First Frelimo secretary, the local administrator, and the chief of the police. The history of the candidates shows that they had all had roles in the former Frelimo-state structures, with many having been in exile in the Frelimo-controlled areas during the war. Thus, while a criterion for appointment was knowledge of conflict resolution and local customs, the choice of Frelimo-loyal adjudicators can also be seen as part of the effort to consolidate party-state power.

The year 2004 also saw an increased effort by the state police, which still continues, in coordination with administrators, to regulate what in essence had become a rather complex and competitive field of justice enforcement and policing. These developments have continued since that year. The reason for this is that community courts and village secretaries claim jurisdictions that in effect overlap with chiefs' courts. They settle some of the same types of cases, apply similar justice procedures and outcomes, issue client fees and have a fixed weekly day for court sessions. More importantly, the chiefs also claim forms of authority that overlap with the criminal law jurisdiction of the state. This includes the right to settle severe crimes and enforce non-negotiable penalties akin to those prescribed by statutory law. For chiefs this covers homicide as in state courts, but also violation of sacred places and disrespect for authority. At times chiefs' courts also resort to physical punishment, which challenges the state's claim to a monopoly on the use of legitimate force.

At sub-district level the local state police, who alone represent the formal justice system at the sub-district level, have played a vital role in trying to bring some semblance of order to this field of overlapping jurisdictions. This they have done by enforcing what in effect is a new form of *local police law* comprising *de facto* rules for articulation and jurisdiction. It is enforced in the name of 'state law', but clearly differs from it. In some ways the local police law even violates codified

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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law by allowing for the arbitration of sorcery and endorsing extra-legal sanctions against non-compliant chiefs and other non-state arbitrators.

The *local police law* recognizes three general categories of cases, namely, social, traditional and criminal, which serve as the basis for assigning jurisdiction. Non-state providers are strictly prohibited from handling any serious crimes, i.e. acts that violate the land and inflict violence on human bodies: homicides, fights in which blood is spilt, rapes, large thefts, armed robberies and arson. Community courts and village secretaries are only allowed to handle what the police refer to as 'social cases', such as adultery, physical assaults without bleeding, minor threats and insults, divorce cases, marriage payment disputes and land disputes between neighbours. Finally, so-called 'traditional cases' are reserved for chiefs. The local police law recognizes sorcery as a traditional case and requires that such cases are referred to chiefs. However, because the police prohibit chiefs from handling serious crimes, the police definition of 'traditional cases' excludes a whole series of offences – such as the taking of life – that chiefs, and many other local citizens, consider to have a 'traditional dimension'. As a result traditional rules are redefined by the police.

The local police law also sets out procedures for case-handling in social and traditional cases among the non-state institutions, including a prohibition on the use of expulsion and physical force. The police also require chiefs to arrest and report criminal suspects, and bring them to the police post. This in effect turns chiefs into an extension of the police, although it is still an offence if chiefs resolve crimes, or if they use force. The police do not hesitate to resort to extra-legal sanctions to enforce 'their' law. On several occasions chiefs have been punished with physical force, or through mandatory public work and/or days of incarceration for disobeying local police law. While recognizing local justice mechanisms and using chiefs to boost their enforcing power in the hinterlands, the police have thus criminalized significant justice enforcement practices of chiefs that underwrite their authority within local communities. Ultimately, even if enforced by formal law officials, this system of local police law operates largely apart from the formal court system.<sup>15</sup>

In the final analysis, the practice and structure of the local police law is driven by

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<sup>15</sup> 2004-5 formal court case settlement figures for Sussundenga shows that only 13% of the criminal cases and 3% of the civil cases were handled by the formal courts.

a variety of overlapping power interests. Foremost among these is the local police interest in consolidating the state's monopoly on the handling of crimes, the allocation of litigation, and the use of force. However, in practice, the personal power interests of local police officers and their interest in defending their authority vis-à-vis non-state authorities often merges with and is rather difficult to distinguish from broader interests in protecting state sovereignty. Partisan political power is also often at stake, and is an interest that plays an accentuated role in how local law plays out in practice. This is exemplified by random arrests of and excessive punishments of Renamo supporters (see more in Kyed 2007b). However, as I shall show next, the 'law' of the local police has not been without challenges in everyday case-handling.

*The politics of local contestations over authority*

The 'law' of the local police is frequently contested, even by state police officers themselves. Despite collaboration with the police, chiefs continue to settle crimes, some of them serious: in 2004-5 they resolved 21% of the crimes in Sussundenga.<sup>16</sup> Many community courts and village secretaries also fail to comply with the requirement to forward 'traditional cases' such as sorcery to chiefs. People frequently take their cases to the 'wrong' authorities or 'forum shop' between them. Interviews with citizens suggest that this occurs not because people are unaware of the local police law but because it can be a strategic means to gain desired outcomes (Kyed 2007a). It also has to do with a discrepancy between police categories of cases and local views of what constitutes justice. As a result the local police law has had a number of unintended consequences.

In Sussundenga it is common that a case of crime, such as theft, results in witchcraft accusations or that a crime, such as arson or homicide, is seen as also having an evil spiritual dimension. Rural citizens prefer to have such disputes resolved holistically as they have been in chiefs' courts. Settling crimes with chiefs or other non-state providers is also preferred because of the emphasis on compensation for the victim. By contrast, formal court resolutions are associated with imprisonment, which most rural citizens view as payment to the state, not to the victims. Thus victims themselves often beg chiefs to refrain from forwarding crimes to the police. For chiefs the continued practice of settling crimes can

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<sup>16</sup> Figures are based on fieldwork conducted in Sussundenga District (see Kyed 2007a).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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therefore be seen as a response to popular demands. At the same time it brings in important client fees. Much the same can be said for the handling of sorcery cases by village secretaries and community courts. Conversely, most chiefs also began in 2004, as a result of engagement with the state police, to make oral reference to state law and to highlight their status as state-recognized authorities when they, in opposition to the police's law, handled criminal cases. For example by threatening to send parties to the police, the chiefs manage to enforce sanctions better. The community courts and village secretaries avail themselves of similar kinds of references to state law, but as opposed to chiefs they seldom settle serious crimes.

Perhaps most intriguingly, the police themselves also began to handle sorcery and other non-criminal cases. Between 2004 and 2005 this increased from 1-2 cases per day to 3-5 cases per day. In such cases, the police use procedures that resemble those of chiefs, while also adding notifications with official stamps and threats of physical discipline to dissuade non-compliance. People thus increasingly take non-criminal cases to the police as a last resort when they fail to achieve resolution elsewhere. However, such recourse only makes sense because the police settle cases by applying principles that realize local notions of justice. Police officers are well aware that if they simply enforce the statutory law, and do not adjust to local requirements, they risk losing their status *vis-à-vis* chiefs.

In short, local police efforts to establish bounded jurisdictions between different 'systems' have resulted in new forms of procedural and jurisdictional overlap, without entirely replacing old practices. Ultimately, this result follows from contestations over authority by parties with different interests. The police face a dilemma: they depend on chiefs to enforce law and order, which underwrites police authority, yet they also feel threatened by the chiefs' capacity to draw upon locally legitimate mechanisms of enforcement that challenge state authority. For the chiefs, their authority is precarious, because local demands and criteria for justice are often at odds with state requirements. Chiefs must constantly balance their fear of punishment by the police and their own constituents' preferences.

For most rural citizens the plurality of available fora is a resource to negotiate strategically. However, it is usually the more resourceful and powerful people who can take most advantage of the plural terrain. Equal access to justice is compromised, and there are no real signs that a link to the formal courts will be forthcoming anytime soon (Kyed 2007b). From both rule of law and human rights perspectives, the practical forms of articulation pose serious challenges. Not only do the local police act as judges and law-makers, but the *de facto* situation also

sustains a culture of extra-legal police violence that is deployed to protect their monopoly on the use of violence – in particular against chiefs. When this *politics of legal pluralism* merges with ruling party political interests and loyalty – as is often the case, not least around elections – then the legitimate, state-availed spaces for diversity and pluralism seem to become even more closed.

Much the same can be said of how community policing has evolved in an urban suburb of Maputo. However, here the role of ruling party politics in monopolising legal pluralism is even more articulated, and seems to dominate over state efforts to control the domain of legal ordering.

### Urban Politics of Legal Pluralism – the Case of Community Policing

As in rural areas, many urban crimes and conflicts are handled outside the official legal system, some by local state officials. This is done despite geographic proximity to police stations and formal courts. For example, in poor urban suburbs of the capital city Maputo, a range of local actors and organisations make up the plural landscape of justice and policing providers. Aside from the local tiers of the state, these may include: community policing agents, 'community' leaders or heads of sub-units (*chefes dos quarterões*), community courts, organisations of traditional healers and different local organisations, churches and human rights NGOs that in one way or the other resolve conflicts, police the area, or provide legal aid. However, there is great variety between the poor suburbs of Maputo in terms of who provides justice and perform policing. There is also variation in the bodies to which different people within a given suburb prefer to go with their cases. In addition, there has been an increase in mob-justice and lynching of criminals by groups of local residents in poor urban areas especially since the mid-2000s (see Serra 2008).<sup>17</sup>

The poor urban *bairro* (suburb) under consideration in this article, which I shall

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<sup>17</sup> This article will not engage in a thorough discussion of mob-justice, but it suffices to say that research in this area supports my own fieldwork findings, which conclude that mob-justice is largely a sign that people are not only dissatisfied with the formal justice system and the police, but that local, non-state institutions are also perceived by urban residents as inadequate in the punishment of criminals (see more in Serra 2008).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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call *bairro A*, is characterized by a case-settlement system in which informal forms of interaction between different actors, state and non-state, have evolved through local negotiations rather than through integration with the formal legal system.<sup>18</sup> Much happens outside official law, and here too disagreements occur between the different providers over jurisdiction. However, if we consider how decisions are taken and who predominantly take up positions in the organs that provide justice and police the area, we find that in the *bairro* there is a much more solidified integration with the local Frelimo structures than in Sussundenga.<sup>19</sup> In this 'system', the state police have only partial leverage over everyday crime control.

When actually present in the area, police officers collaborate with what *de facto* is a 'semi-autonomous field' (Moore 1978) of community policing, which is operated by a group of young men. Although these men do at times take orders from the police, they are *de facto* under the control of local Frelimo cadres and the local state administrator, the *secretário do bairro*. This system is not unchallenged, however. A number of self-organised groups of *bairro* residents as well as individuals discredit or simply do not recognise the present organisation of community policing, and regularly take matters into their own hands. Much less frequently people bypass the local system of community policing and bring their matters directly to the nearest police station.

That the state police have only partial control over everyday policing in the *bairro*

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<sup>18</sup> The insights presented here are based on fieldwork in a suburb of District 2 of Maputo city in May-December 2009. The *bairro* has a population of approximately 14,500 and lies on the frontier of the inner city and the area where the poor suburbs begin, which is reflected by a combination of apartment buildings on the frontier, associated with the inner city, and small houses and shacks, associated with poorer suburbs. The socio-economic make-up of the population is also relatively heterogeneous, ranging from extremely poor to people with medium incomes. The *bairro* is known as an area with high crime rates, which may be due to the fact that it has a large informal market, a zone with intensive drug-dealing and high unemployment among the youth.

<sup>19</sup> There may be different historical reasons for this difference between rural areas like Sussundenga and the Maputo *bairro A* under consideration. One apparent explanation could be that in *bairro A* the Frelimo leadership structures were never dissolved during the war and governance was not displaced by Renamo control as in Sussundenga district.

does not mean that they refrain from efforts to use legal pluralism to assert their superior authority within the field of law and order enforcement. However, in contrast to the tactics used in Sussundenga, in *bairro A* attempts to assert authority have been made by outsourcing functions to the young community policing actors rather than through efforts to domesticate existing non-state providers. Below, I first address this politics of outsourcing, and secondly consider how community policing has become an instrument of local ruling party politics.

*The politics of state police authority: outsourcing to young men*

In *bairro A* the state police are represented by a single sector police officer, who is usually present only 2-3 days a week, and by periodic patrols by uniformed officers, usually a few times a month. Since 2003 the state police have at least officially collaborated with the community policing council that was formed in the same year through an initiative taken by MINT, as in other urban *bairros* of the country.<sup>20</sup> According to MINT's policy, community policing councils are supposed to comprise "community leaders" and "other important social actors", who are elected by the population to debate crime solutions with the state police and assist its officers in patrolling the *bairro* (MINT 2005; Kyed 2009b). In practice, however, this council was short-lived in *bairro A*. Soon it was replaced by a *de facto* local police force made up of young men and a woman in her early fifties who acts as the coordinator. In late 2009 there were a total of eleven community policing agents between the ages of 22 and 33.

On a daily basis the young men perform a range of 'traditional' police functions, including *inter alia*: patrols, arrests of suspects and persons caught committing crimes or disturbing public order, control of people for IDs, search of persons in public spaces for drugs and stolen goods, investigations of thefts and recovery of stolen goods, and even hearings and resolution of cases. The eleven men are seldom all on duty at the same time, but at least two of them turn up every day to work from the *circulo* – the name for the central governance site of a *bairro*, which also houses the *secretário do bairro*, the sector police officer and the Frelimo party branch. Patrols and searches are often performed alone by the community policing agents and only at times with state police officers.

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<sup>20</sup> Community policing was first launched in 2001 in a few pilot project areas of Maputo and Manica province. Only in 2005 was it expanded to rural areas.

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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Resolution of cases by the community policing agents is carried out in a room of the *circulo* that has been granted to the community police by the *secretário do bairro*. It mainly covers crimes such as thefts, particularly of cell-phones, trade in stolen goods, fraud, physical assaults, drug-dealing and consumption, and burglaries. Some cases are forwarded to the police station, usually when the sector police officer is present or when the community policing agents give up hope of solving a case themselves. In the latter case it is usually the community policing agents who accompany the accused to the police station, either alone or together with the sector police officer. However, when case records made by the community police themselves between 2007 and 2009 are compared with the monthly statistics reported by the sector police, it becomes clear that the majority of criminal cases are settled or at least brought to an end within the walls of the *circulo*.<sup>21</sup> The types of resolutions used by the community policing agents include compensational justice, including return of stolen goods, reconciliation of disputing parties, and corporal punishment using batons. The community policing agents also frequently use physical force as an 'investigation' technique within the walls of the *circulo*.<sup>22</sup> Other investigation techniques include the seeking of information from other *bairro* residents, including criminals whom the community policing agents know because they are residents of the *bairro*.

These extensive crime resolution practices of the community police starkly contradict MINT's policy, which prohibits community policing from handling

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<sup>21</sup> When cases are concluded in the *circulo* rather than forwarded to the police station this is usually, according to interviews and observations of case settlements, either because the case is viewed as too minor to be handled by the official system, or because the victims prefer to refrain from going through the cumbersome process of a court case and/or because the victims lack confidence in the police to take their case seriously, or because of fear of corruption by the police (i.e. offenders paying the police to be released).

<sup>22</sup> Torture during investigations is done using batons (*chamboko* in Mozambican Portuguese): the suspect is told to lie down and 'sleep' or made to lie down and 'sleep' if he refuses to do so voluntarily, with head facing down, and is then hit in intervals of 3-5 strokes in his buttocks until he tells for example where the stolen goods are, who he works with or where he has acquired the drugs he is carrying. According to my observations of how the sector police officers operate this practice and the language used around it, the process is a clear imitation of the state police.

criminal cases and from using any kind of physical force: persons caught in the act of committing crimes are supposed to be immediately forwarded to the nearest police station or the officer present in the *bairro* (MINT 2005). Moreover, the principles of MINT's community policing policy starkly contradict the community policing agents' acquisition of handcuffs and batons. However, if this represents the official policy of the Ministry, practice is an entirely different matter. In fact, the state police have themselves partly contributed to the manner of local evolution of community policing.

Some of the instruments of force, batons and handcuffs, were originally granted to the community policing council by the state police, whereas others have been acquired by the young agents themselves. According to the community policing agents, some of them were also trained in 2003 by the state police in the use of the instruments, being instructed, for example, such as where and how to hit criminals with the baton, namely in the buttocks "so that the person does not have any clear marks or start to bleed".<sup>23</sup> At a meeting in 2009 with the police commander of the nearest police station, the community policing agents were also promised that they would soon receive new training sessions in the use of the instruments. The local ranks of the state police also frequently engage the community policing agents in their daily work. When the sector police officer is on duty in the *circulo*, he takes charge of the hearing of cases and makes the decisions as to whether they should be forwarded to the police station. At the same time he relies on the agents to help arrest suspects, collect information, notify suspects to appear at the police station, and to assist him during hearings at the *circulo*. On several occasions in 2009 the community policing agents also received orders from the nearest police station to search for or issue summonses to suspects on their own. All the agents are well-known at the police station, because they often accompany suspects, handcuffed, to the station – sometimes with and sometimes without a police officer. In fact, when the sector police officer or community policing agents call the station for assistance, it is very seldom that a police vehicle or uniformed officers on foot come to collect criminals caught *in flagrante*.<sup>24</sup> Moreover, the police station has on different occasions required the community policing agents to assist the police in nocturnal patrols, both on foot and using vehicles. It has also happened twice that the agents have been required to participate in searches for suspects directed from the police station.

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<sup>23</sup> Interview, Community Policing Agent, Maputo, May 2009.

<sup>24</sup> During the entire period of my fieldwork in 2009 it only happened twice that a police vehicle came to pick up criminals at the *circulo*.

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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In short, the state police have come to rely extensively, yet unofficially, on the community policing agents in *bairro A* to do what officially are state police jobs. Importantly, they not only rely on them for assistance, but also quite extensively outsource police functions and instruments of force to them. In *bairro A* such outsourcing even includes the taking of measures that are now illegal for police officers. For example, on several occasions during 2009 the sector police officer ordered the community policing agents to beat suspects during investigations in the room of the *circulo*.

The relationship that has developed between the local state police and community policing in *bairro A* seems to be an inverted version of the rural situation described above: rather than using the legal plural situation to domesticate existing non-state institutions and thereby to reclaim a state monopoly on the handling of crimes and the use of force, the urban police officers outsource their functions and seem to share their monopoly with the 'new' community policing agents. However, from the perspective of the local police the practice of 'shared sovereignty' is acceptable only to the extent that the police are in control, and as long as it confirms the overriding authority of the state police. In other words, while the physical acts are outsourced, the monopoly to authorise them is not. In fact, outsourcing is not necessarily contradictory to, but can be seen as an element of police officers' efforts to boost their authority and improve the effectiveness of their work.

From the perspective of the sector police officer, the community policing agents have contributed significantly to his capacity to tackle cases and identify criminals, "because they [the community policing agents] are citizens of the *bairro* and they know the people there".<sup>25</sup> The manpower of the community policing agents is also important to him, because being only one officer to do patrols and arrest suspects in the *bairro* can be very risky for his personal security. Having a group of young men to escort him boosts his authority to act on crimes. For the police station the community policing agents are also considered to be the *de facto* extended arm of the state police and as contributing significantly to a reduction in crime levels.<sup>26</sup>

However, outsourcing is also a tricky business for the police, and the relationship between the state and the community police is ambiguous. One reason is that the

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<sup>25</sup> Interview, Sector Police Officer, Maputo, April 2009.

<sup>26</sup> Interview, Police Commander in Chief, Maputo, June 2009.

police are often absent from the *bairro*, and when they are the community policing agents continue to do police work. They do so by essentially mimicking the practices and language of state police officers. This includes the detailed practices around hearings and investigations (how they sit on the chair, how they speak to the parties in a case, how they jot down names and ID details of persons when recording cases, how they use the baton and so forth). It also covers the use of state police titles (e.g. 'commander', 'chief of operations', 'patrol officer'). Moreover the community police have their own separate book for case records, including both the cases that are concluded by them and those that end up being forwarded to the police station. Much like the chiefs in Sussundenga, the community police also make reference to state police authority as a means to enforce sanctions, usually in the form of a threat to take suspects or criminals caught *in flagrante* to the police station.

The community policing agents in other words often take matters into their own hands, *de facto* acting as a local police force, and, while they draw on state police authority, they often refrain from informing the police about the crimes they handle. On several occasions in 2009 this led to tense discussion with the sector police officer, but, although he told the agents off, he did not explicitly complain about the community police to his superior. The crux of the matter is that the police need the community policing agents to improve their work, but also recognise that their authority to control crime is weakened when they outsource functions to the community police. The community police agents also know things about the police officers that would harm them if made public or if they reached their superiors, such as frequent incidents of police corruption like the extraction of 'tributes' from arrested persons to avoid prosecution. These intricacies of the relationship inform ongoing negotiations over who has the authority to decide cases and distribute information. There are many covert games played around case-handling.

Ultimately, state police authority over community policing is highly precarious. This, I suggest, in turn reflects overlapping layers of authority in the *bairro*. When explicitly asked, the community policing agents say that they have to follow the orders of the sector police officer and ultimately the commander in chief. The authority they themselves derive from being related to the police, as noted above, is also important. However, on a daily basis, it is actually the so-called 'structure of the *bairro*' (*a estrutura do bairro*) or what sometimes is referred to locally as the 'community' (*a comunidade*), which tends to assume authority over the community policing agents. This 'structure' or 'community' encompasses not the

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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entire population, as envisioned by MINT's policy, but the *secretário do bairro* – the local state administrator – the Secretary of the Frelimo party branch in the *bairro*, and the group of people around these two figures: the *chefes dos quarterões* (the leaders of the different sub-sections of the *bairro*), the Frelimo women's organisation, and other members of the local Frelimo committee. In short, it is composed of the persons who represent and promote the interests of the ruling party, Frelimo. I now turn to consider how the specific politics of this structure have encompassed community policing.

*Community policing agents as 'security agents' and 'sons of Frelimo'*

The community policing organisation is integrated with the party-state structure of the *bairro* in various respects. In the area of conflict resolution and policing, it can be seen that there is a certain division of labour between the community policing agents, who handle crimes – at times with the state police – and the *secretário do bairro* who has charged himself to solve various 'social problems' (*problemas sociais*).<sup>27</sup> The cases defined locally as 'social problems' range from non-criminal cases such as sorcery, conflicts over household plots, marital disputes, and conflicts between neighbours, to actual criminal cases such as domestic violence and rape. The *secretário* hears such cases on a daily basis, when people come by with particular problems or when problems are brought to him by the community policing agents or by one of the *chefes das quarterões*. These *chefes* form part of a semi-official system of *bairro* leadership, which is a residue of the old party-state structures. While this system is fully authorized by the local levels of the state, it has no *de jure* place in current laws on local state administration. The *chefes das quarterões* are all members of Frelimo, as is the *secretário* himself. They perform administrative functions and solve minor disputes between residents of their respective *quarterões* and forward more difficult cases to the *circulo* (hosting the *secretário*, the community police, the state police and the Frelimo party). The *chefes das quarterões* are also active participants in ruling-party activities and have a number of administrative duties.

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<sup>27</sup> It should be noted that the *bairro* does not have a community court or any traditional authority to handle such conflicts. This absence cannot be generalized for the suburbs of Maputo. The neighboring *bairro* has for example recently set up a community court and some more semi-urban areas of Maputo also have traditional authorities.

While not everyone interviewed among the residents of *bairro A* stated that they in fact took their problems to their *chefe da quarterão* or to the *circulo* as a conflict resolution arena of first instance, there is a general agreement that this is the official procedure. It is then up to the *secretário* to decide where the case should be heard. The *secretário*'s role of distributing litigation is accepted by the community policing coordinator, Dona Sabina. The *secretário* also at times give a hand in solving those crimes that the community police are unsure about. However, disputes at times also arise between who should handle a case. Such was a case of domestic violence in mid-2009: the *secretário* first decided the case, but without his knowing the community policing agents then took over the case when the offender accused his wife of theft. In this case, the *secretário* intervened to assert his role as the final arbitrator, but there are also situations where the case ends with the police or remains disputed. When more serious disagreements over case-settlement responsibilities occur, including with the state police, the Frelimo secretary is also called in to discuss the matter. He takes the side of the '*bairro* structure'. This role of the local branch of the Frelimo party also extends beyond issues related to disagreements over jurisdictions, however.

The *secretário* and the Frelimo Secretary also have the role of approving new members of the community police, together with the *chefes das quarterões* and other key members of the ruling party. Moreover, if the coordinator fails to bring into line community policing agents who misbehave, it is this 'structure' that takes over. Given the strong role of the ruling party, it is therefore perhaps no coincidence that the coordinator herself, Dona Sabina, has a life-long history, in recent years as an active Frelimo *camarada* (comrade) in the women's league and before that in the popular vigilante organisation of the socialist regime. When not coordinating community policing she is also active in Frelimo party activities. Often she wears Frelimo t-shirts or caps when engaging in case-resolution at the *circulo*. Her right hand, the leader of the young agents below her, also happens to be a son of the Frelimo Secretary. Thus there is a strong overlap between the ruling party and the community policing organisation. This is reinforced by the fact that the *circulo* itself is the headquarters of the Frelimo party in the *bairro*. According to the *secretário*, the *circulo* is simply "lent out" to the community police and the state (the police and administration), because they lack their own venues. However, during the 2009 election campaign no one could doubt that the *circulo* was the 'house' of Frelimo: it was plastered with Frelimo election posters and blossomed with election-related activities.

The absorption of community policing, and one may say of 'legal pluralism' in

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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general, under the roof of the ruling party has historical reasons. It can be seen as a residue from the socialist party-state era prior to 1990 when all powers were legitimately under the same roof. In Dona Sabina's words community policing "is just a new name for popular vigilantes. We do the same things as we did then", that is, not only providing security, but also, as the vigilantes did, defending the interests of Frelimo against opposing forces in society, or 'internal enemies' as such forces were named in the past (including both criminals, disturbers of public order and political opponents). Nonetheless, while history certainly informs present appropriations of community policing, the shared official discourse among the community policing agents, the Frelimo secretary and the *secretário*, was that policing was apolitical and could not serve political interests. They also share the view that "any person from any political party can become a member of the community policing". At the same time community policing agents also hold that it will probably be problematic if an agent does not sympathize with Frelimo or, worse, shows sympathy for another party. Thus the *de facto* inclusion of community policing under the field of authority of the party, I suggest, has less to do with ignorance of the principles of the democratic transition than with efforts to consolidate local ruling-party power. This was all the more explicit during the 2009 election campaign.

Shortly before the official campaign began, the community policing agents were strongly encouraged by their coordinator to sign up as members of the party so that they could acquire Frelimo membership cards. They were also invited to campaign-planning meetings where they were given stickers, posters and, importantly, food and drink. During the campaign itself the community policing agents were used as the 'security guards' of the campaign brigades (*brigadas da campanha*), when these did door-to-door visits, set up posters and otherwise delivered their messages in public. This work was not voluntary, but based on orders received from the coordinator and the *secretário*. In exchange the agents received tea and a big lunch every day – not unimportant for otherwise non-salaried agents.<sup>28</sup> While the agents complained to me that their police work was

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<sup>28</sup> Membership of the community policing organisation is considered voluntary and carries no benefits such as subsidies, salary or contributions in kind. The issue of subsidies to community agents is a hot topic of discussion, also beyond *bairro A*, and lack of subsidies is widely considered one of the reasons why community policing has not been sustainable in many areas of the country. However, MINT strictly maintains the idea that community policing should be voluntary, based on the initiatives and communal interests of local citizens to improve the security

compromised by their role in the campaign, and some also subtly demonstrated reluctance when it was their turn to accompany the brigade, they felt that they had no choice but to be the 'security agents' of the party. They also repeated to me that "we are not involved in the politics of the party...we are just there to ensure security and order when the brigade walks around the *bairro*". When asked why they then did not accompany the brigades of the opposition parties, they were a bit unsure of what to answer, with one saying that "this *bairro* is all Frelimo so we do not do that" and another asserting that "we could do that but we were not asked to".<sup>29</sup>

The dilemma faced by the agents who claimed to be apolitical but found themselves being drawn into party politics was particularly felt during the last weekend of the campaign. Here the coordinator forced the agents to help to hang up Frelimo posters on private houses. While at first resisting the demand to participate, the son of the Frelimo Secretary later gave in and led a group of agents who ended up covering Renamo posters with Frelimo ones. This was accompanied by the chanting of Frelimo songs as they walked through the *bairro*. Having been initially reluctant, they suddenly were drawn into actively asserting a political role. While the association between Frelimo and the 'community' policing agents is only implicit during everyday police work, these overt political acts, bordering on the illegal, elicited overt criticism from local opposition party

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situation of their area (personal communication, MINT functionary, May 2009).

<sup>29</sup> The state police was also involved in providing security to the larger campaign meetings of the Frelimo party during the run-up to the 2009 elections, as also in past elections. So in a sense the community policing agents' involvement can be seen as another area where they mimic the state police at a lower scale. The state police officers that I spoke with also held on to their apolitical role. They claimed that they did not provide security to other parties because the opposition party leadership had declined assistance from the state police. This discourse was also echoed in the national media, but at the same time there were various instances reported where the state police was accused of turning a blind eye to situations where Frelimo youth violently destroyed opposition party materials or blocked opposition campaigns, while arresting opposition party members who did the same or who were innocent. The similarity between state police and community police involvement in the election campaign, I suggest, points to a strong, historically-embedded tendency for the politicisation of policing in Mozambique (see Kyed 2007b, 2007a).

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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supporters. A young opposition party member reacted immediately, and shouted aloud in public that the community policing agents had no right to cover the Renamo posters: "We are living in a democracy...the police has no right to destroy the campaign of other parties", he shouted. He then managed to mobilise a small group of men who turned up in front of the *circulo* shouting their opposition. However, no one at the *circulo* took them seriously. Instead the women of the Frelimo brigade began to sing party songs facing the Renamo members, and the men told the Renamo members to be quiet and leave. The *secretário* told me that he did not want to engage in any resolution of the conflict, because "these Renamo people are not serious...they are thieves and drunk people whom Renamo has mobilised to create problems...to disturb public order". Similarly, some of the community policing agents, while agreeing that it was wrong to provoke Renamo, claimed to me that "those Renamo people are just angry because they are thieves, whom we have punished before". One agent also warned that if the Renamo members did not stop creating confusion, they would eventually be arrested for "physical aggression".

What these comments suggest is not only that the community policing agents are defending their own (*de jure* illegal) acts against the opposition in the local arena by referring to the latter as criminals. They reflect a much deeper political discourse that equates the political opposition with crime and disorder, that is, a discourse that characterises the opposition as the significant other of the 'good' community and of public order (Mouffe 2006: 18-19). The implication for the notion of legal pluralism, officially signifying diversity, is not simply a party politicisation of the newer kinds of urban 'community' policing and justice enforcement, e.g. as a means to gain votes. It also means that the plurality pertaining to actors that engage in conflict resolution and the handling of crime is overridden by efforts to monopolise the whole realm of public order(ing) by the ruling party. In this sense the real sovereign here is not the state, represented by its executive arm, the police, but ultimately the ruling party, which tends to (still) absorb the state.

Although the state police do indeed play a role in *bairro A* and are regarded as a significant authority, the day-to-day regulation of policing is in the hands of the ruling party, and more importantly, the party is the ultimate reference point of law and order. This is materialised in the *circulo* itself – the house of Frelimo under which roof all other authorities are housed. The local branch of the Frelimo party furthermore lays claim to *the* community – the community being those people who are organised around the party. This claim remains subject only to the weakest

contestation in *bairro A*, as reflected by the opposition voiced by the Renamo members on the last weekend of the elections.

Having said this, I note that local contestations over the control of community policing have indeed occurred in *bairro A*, and there has been criticism of the ways in which community policing agents operate.<sup>30</sup> However, the role of the ruling party remains largely unquestioned in these contestations, which have mainly centred on individual leadership disputes. For example, when in 2007 the community policing council ceased to function, this was, according to various accounts, a result of internal leadership disputes among Frelimo members. Initially this led to the formation of parallel groupings of community policing agents, each performing patrols without being coordinated together from the *circulo*. By 2009 these agents had ceased to function, but one former member of the council was still trying to recapture his position against Dona Sabina who had won the internal dispute in 2007 by pitting the other members against the *secretário*. According to this former member, she had succeeded in doing this by spreading a rumour that he was secretly a supporter of Renamo. Thus party political discourse merges with the politics of local contestations over the control of community policing.

## Conclusion

Legal pluralism as a *policy concept* can easily become subject to political manipulation or be a political tool to assert authority and manifest power by local state officials, local party cadres and, by extension, the national government. As shown in this article, the *politics of legal pluralism* is not, however, within the exclusive purview of state institutions attempting to assert authority over the non-state domain, although this element is very important. Local appropriations of legal pluralism or reactions thereto can also spark new forms of local contestations over authority or exacerbate existing ones. This may particularly be the case if

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<sup>30</sup> For example in late 2009 one community policing agent was accused by a female resident of having beaten her son in public. This case is pending a court trial. In interviews with residents, frequent criticism was heard of the abuse of power by community policing agents, such as their arrests of innocent people and their extraction of money for their 'services'. This article does not address local residents' views of community policing in more detail because survey and qualitative data on these views have only recently been collected.

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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legal pluralism policies involve the setting up of new non-state institutions, such as community policing groups, or the revitalization of old forms of hybrid institutions, such as the community courts and village secretaries, alongside 'old' providers, such as chiefs. However, contestations may also occur because the reality often is that state and non-state institutions make competing claims to sovereignty, even though they at the same time may rely on conflicting norms and conceptions of justice. The histories of state engagement with non-state justice providers and their relationship to political configurations in the past, such as community court judges' relationship to the ruling party, equally affect the ways in which policies of legal pluralism are appropriated in practice.

It is of the utmost importance, I suggest, to consider the *politics of legal pluralism* in studies of legal pluralism policies, as well as in international efforts to support state recognition of non-state legal orders. At the heart of the issue is that justice enforcement, and by extension social ordering, are not neutral, apolitical activities, but political ones: they provide a route to authority and also often an income. For this reason, the different actors, state and non-state, referred to in policies as 'legal systems', seldom co-exist peacefully or without some degree of competition. The people who hold positions in them or whose interests are served by them will usually fight to maintain their power and positions. Thus, while policies on legal pluralism can be instances of state law adapting to local socio-cultural norms, they are bound also to involve elements of re-ordering of authority and power. This is partly fuelled by competing claims to authority:

Groups or actors who benefit from, have a stake in, represent, or give rise to, the institutional structures of competing normative systems ... will defend and exert the power of their particular system in situations of a clash, not only because of their genuine commitment to and belief in the system, but also because their interests, identities, status and livelihoods are linked to it.  
(Tamanaha 2008: 400)

Moreover, it is important to acknowledge the asymmetrical power relations that inhere in the coexistence and recognition, of multiple legal orders. This is not a new phenomenon, nor is its observation new, but harks back to pre-colonial, colonial and earlier post-colonial encounters. For historical reasons state and non-state legal orders are not inherently distinct 'systems' that cater for separate spheres of social ordering, but rather clusters of rules, norms and institutions that have evolved together, albeit through an often ambiguous relationship of

interdependence, competition and appropriation. At least as far as local level appropriations are concerned, current policies on legal pluralism can be expected to further create a situation of various degrees of merger and intermix.

As shown by the Mozambican case, new forms of plurality are, however, likely to co-exist with, and be reshaped by, state and regime efforts to monopolise the legal domain or to embrace pluralism, even to such an extent that the very notion of 'pluralism' itself comes under attack. This is reflected on the one hand in efforts to hierarchically subordinate non-state legal orders to state law and the overriding authority of state institutions, an objective often referred to in the literature as "weak legal pluralism" (Griffiths 1986). In Mozambique this is exemplified by state police attempts to reclaim sovereign authority by using state recognition to domesticate traditional authorities and by forms of controlled outsourcing of functions to young community policing agents. On the other hand, and a great deal more controversially, the notion of pluralism may be undermined by overt partisan political interests. In Mozambique this is exemplified by ruling party attempts to dominate 'old' non-state institutions, and to use 'new' non-state forms to expand and consolidate its power base. In the name of 'pluralism' the ruling party tries to monopolise the entire domain of public ordering and the notion of community. In everyday practice this not only considerably undermines the official state-authorised spaces for pluralism, but also seems to be much more difficult to contest than the claims to sovereign authority made in the name of the state.

The *politics of legal pluralism* described in this article may be more prevalent or explicit when there is no clear legal framework for interrelations between state and non-state providers or where no monitoring mechanisms are in place to ensure that local state officials adhere to an overriding set of rules on the manner of their engagement with non-state institutions. In fact, as I have suggested, the very lack of a clear legal framework may even be the product of political interests in the first place, as it more amply allows for political manipulation at the local level. However, even when we find a legal framework in place, it is still necessary to consider how this framework can be implemented and by whom. If implementation is left in the hands of local police officers, local court judges or local party-state actors, a range of manipulations can be expected to occur, precisely because of the inherent politics of justice provision and order enforcement. Representative councils or committees that include relevant state officials, non-state justice providers, civil society organizations and ordinary citizens could be a way to ensure check-and-balance mechanisms that would support equal access to justice and prevent political manipulation. Equally important are continued efforts to

THE POLITICS OF LEGAL PLURALISM IN MOZAMBIQUE  
Helene Maria Kyed

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reform politically partisan and under-resourced official law enforcers, such as the police, who with few exceptions are *the* representatives of the formal system outside of towns and semi-urban administrative capitals. However, any efforts to address legal pluralism policies must also go to the root of the political in a given context, namely the wider political contestations and forms of organisation that go far beyond the 'legal domain' or the justice and security sectors.

As I have suggested, the politics of legal pluralism can be studied from the viewpoint of at least three layers of politics, but this may be expanded depending on the context in question. Thus we may consider: the politics of asserting the superior authority of state institutions and law over other existing legal orders or through the establishment of new non-state institutions; the political party interests in controlling non-state legal orders to consolidate power; and the politics of local level contestations over power and 'clients' to sustain the authority of a given institution or of specific personal power positions. These layers of politics may be partly overlapping in concrete actions, and they may be pitted against each other, such as when attempts by state actors to assert sovereign authority are contested by non-state actors in everyday dispute resolution. Irrespective of the layers of politics identified, it is important to study the consequences of legal pluralism as a 'policy concept' from an empirical perspective, and to critically scrutinize official policy claims and the often stereotypical descriptions of non-state legal 'systems' that inform such claims. Policies are informed by political power interests, and this is no less the case when these are formulated in the name of 'plurality' or 'the legal'.

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Helene Maria Kyed

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