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CHAPTER 6 – “TRADITIONAL” AUTHORITIES, LEGAL PLURALISM AND DECENTRALIZATION

Before starting historical and ethnographic description and analysis, it is useful to give some introduction to the topics of the “revitalization of traditional authorities”, legal pluralism and (what is supposed to be) administrative decentralization in Mozambique. I wish to start with the remark that Frelimo’s replacement of chiefs and other hereditary leaders (say, “traditional” leaders) by party secretaries at the time of independence was quite profound, though not total, in what is now Barue District. It is also clear that reinstallation of chiefs (“revitalization of traditional authority”) was a policy item of Renamo, although Renamo was not friendly to all chiefs and Frelimo eventually came to carry out the policy item on its own, through issuing Decree 15/2000 in 2000. This was confirmed in Barue as well. In the 1970s, Frelimo had good relations with certain spirit mediums, and also rain rituals continued, but that does not change the situation with the hereditary leaders as *political* agents. That means that, in this respect, I do not share Dinerman’s (2006: 23-24, ch. 1) qualification of Frelimo’s “revolutionary rupture” as a “myth”, even if chiefs’ disappearance from the political scene was not total. See also Lourenço (2004/2005).

Revitalization of hereditary leadership

“Revitalization of traditional authority” is not a new phenomenon.²³ We will see below how a Makombe, probably Hanga, was responsible for installing chiefs in Barue in 1892 after the defeat of Portuguese Captain-Major M.A. de Sousa, who had had subordinates of his own. Probably many of Hanga’s chiefly personnel were not related to pre-Gouveia lineages, but structurally the political situation in the 1890s will not have differed much from that in the 1860s. What is new in the present era is that chiefs and other hereditary leaders are subordinated to leaders who are not themselves part of any so-called “traditional” system of national leadership, but to leaders whose origins lie in party politics. One can say that Renamo had its own programme of “revitalization of traditional authority” before the state-embedded one that is now being carried out by the Frelimo-government. But often Renamo’s revitalization was just as much dependent on that organization’s initiative as

²³ Nor is it unique to Mozambique. See e.g. Karlström (1996) on the reinstallation of the Buganda Kingdom under the Museveni government in Uganda, and ideas concerning competition and hierarchy.

Frelimo's revitalization. For instance *Sabhuku* (headman) Musosonora was identified by Renamo in the way Frelimo later identified some of its current community leaders: getting into a neighbourhood or area and ask around who is the leader (cf. West and Kloeck-Jenson 1999: 477, although they also mention a case of "the population consider[ing] the issue"). West and Kloeck-Jenson (1999: 460) indicate that certain leaders cooperated with Renamo on the basis of *Realpolitik* during the war rather than due to an intrinsic affiliation with it.

Frelimo's political embracement of hereditary leaders does not mean that party secretaries have become less important. There has not been a complete reversal of the revolutionary rupture of the 1970s, but a rather complex situation has arisen that raises questions about legal pluralism and related themes. In the 1990s the Mozambican (Frelimo) government commissioned a pilot research project about "traditional" authorities which was carried out by Iraê Baptista Lundin. In (1995), Lundin explains how certain chiefs have maintained social cohesion in areas that were much disturbed by the (Frelimo/Renamo) war. On the other hand she points out that during colonial times non-legitimate chiefs were installed. We might possibly agree that there may have been cases that could be interpreted that way. But then she follows with a quite stereotypical example of chiefhood in Barue. Referring to Barue's anticolonial resistance, she comments that "any child is capable of telling who the real chiefs are" (1995: 14-16). We will see that this is problematic, since within Barue people can have discussions about who is or should be chief. Moreover, the kingdom of Barue, within which the "real" precolonial chiefs should be supposed to have functioned, no longer exists and it was also not to be resurrected at the time of the research project. By using Barue as an example, Lundin inadvertently shows how the project's approach to chiefdoms was characterized by a considerable degree of historical simplification and artificiality (see also discussion by West 1998: 143, 157-60; West and Kloeck-Jenson 1999: 473-474). This, however, is only analytically problematic when one is of the opinion that institutions cannot simultaneously be artificial *and* authentic. "[T]he authenticity of these new structures [i.e. recognized traditional ones] [...] comes not from their age but rather from their autonomous adoption" (Meneses 2011: 177; cf. 170) in situations where the state is not the only legal or political actor.

Lundin elaborates:

The orientations of the post-independence period primarily fitted in with the legitimacy that the Frelimo party had as representative of all of the Mozambican people, which was, in principle, real. [...] Beyond this basic presupposition, valid and real, there was [...] a thinking [...] that perceived Local African Authority as, on the one hand, a backward social expression, and, on the

other, an instrument of colonial power. (1995: 16)

This formulation glosses over the situation in the 1974-1975 transitional period in Mozambique when not all Mozambicans were convinced that Frelimo was representative of all of them. In this way Lundin's text, which is dealing with characteristics of hereditary leadership, communicates the thought that it may be admitted that errors were made at the time of independence, but concerning the treatment of Local African Authority, and not concerning multiparty politics. This quote confirms Dinerman's (2006: 283-288) comment that discussion about chiefs can serve to avoid talking about other policies of Frelimo.

The discussion about and implementation of the revalorization of hereditary leaders in Mozambique had other, more positively formulated, aspects as well. Lundin elaborates two: the "decentralizing character" in the exercise of authority; and the choice of chiefs being a "democratic performance". About the latter aspect Lundin elaborates that an electoral college of elders can choose a chief from a pool of candidates. Here connections can be made with my field work data; indeed we will see that not only elders but in principle all adults in a chiefdom can participate in the selection of a new chief. Thus if "democracy" is to be understood as "possibility for the populace to choose from several options", we can follow Lundin; that is, in certain cases, because not all the hereditary leaders are selected in the same way. For "decentralization" it is more difficult to follow Lundin. The association between "chiefdoms" and "decentralization" is not an automatic one, for precolonial Barue was pretty much a centralized state, at least for such aspects as defence, international relations and social security. To what extent the association between "chiefdoms" and "decentralization" is more than an assumption will be discussed below.

Before Decree 15/2000 was issued, the recognition of "traditional leaders" was viewed as having the potential to contribute to "democracy" in local government (Fry 1997: 3, 16). West and Kloeck-Jenson (1999: 461) report that most (international) donors were interested in such local leadership by "traditional leaders" especially when Frelimo refused to share power with Renamo after the 1994 elections. (This indeed does not hold universally for all donors, because in the Netherlands "traditional authority" was hardly an issue.) One can say that recognition has expanded the use of different "languages of power" within the Mozambican political scene (West 2008: 99-100), where these languages had been obscured by Frelimo's unitarian project (Meneses 2007: 22). Whether all such languages could or should be equally strong has been a moot point. Dava, Macia and Dove (2003: 18-20) remind us that the issue of formally reintroducing "traditional authority" was controversial in the

1990s (for a summary of the discussions see Kyed 2007: 87-93; also Forquilha 2010: 51-54). Concerning the actual implementation of Decree 15/2000, Dava e.a. indicate that the Decree is problematic when it does not stipulate who of the “traditional” leaders and *secretários* should have superiority over the other categories or what should be the division of tasks between them (2003: 22-26, 38-39). Arizcurinaga Zeballos (2008: 92-96) analyses that the task list for community authorities (given in Decree 15/2000’s regulation) may contain conflicting elements.

However, semantic precision, legal consistency and administrative efficiency were not the prime concerns of the Council of Ministers when it issued Decree 15/2000. The problem of potential conflict between recognized “traditional authorities” and party officials existed in 1997 (Fry 1997), but recognizing them both through Decree 15/2000 was not a perpetuation of that problem but its *solution*. The decree nowhere mentions « Frelimo », but just « *secretários* » and the Council of Ministers could subsume its decision on the decree under the reference to article 152 of the 1990 Constitution which endows it with the mandate to “secure the administration of the country” (cf. Meneses 2007: 30n54). Judging from my Barue data, the next decade was used to expand and consolidate, with the backing of the decree, the party network, especially in the rural areas, and introduce the *líderes comunitários* (community leaders), who are vaguely defined in the decree’s regulation but nonetheless mentioned. The decree’s vagueness only helps to achieve party consolidation; specific definitions of competences with respect to “traditional authorities” and *secretários* respectively would have pinned down the party in its fields of operation. In the current situation with the cell/circle system Frelimo can always claim that it is “local communities” which legitimized these leaders. It may be remarked that the decree mentions numerous objectives, but “building democracy” is not one of those, despite the assumption of the mentioned research project and the explicit occurrence of such a “fundamental principle” in earlier draft legislation (cf. Fry 1997: 20, point 5(e)). From a legal viewpoint Decree 15/2000 may be a vague and contradictory piece, from a party-political viewpoint it is a masterpiece of power politics. This is not to say that there is no pluralist effect of Decree 15/2000. At least in Barue the decree *does* secure that there are individuals with “leadership positions”, even if relatively minor ones, within the government who are not selected through a process subject to party discipline. This is a feat that the multiparty system has so far not been able to accomplish in Barue. As *Régulo Seguma* indicated, this can contribute to governmental effectiveness in communication with the population.

To conclude this section, and after all the doubts that have been levelled against the

authenticity of “revived” hereditary leadership in Mozambique, it may be remarked that in Barue at least four aspects of political life at precolonial times, apart from the pre-1902 origin of some local dynasties, *have* survived colonialism and independence. Although we know very little about local chiefs in precolonial Barue, there is little reason to assume that the four aspects did not at least sometimes apply to lower-level leaders as they did to Barue and Mutapa paramount leaders. One aspect is the principle of adelphic collateral succession (power rotation across chiefly lineages). Though not consistently applied, it is applied at least sometimes and is frequently invoked as an argument in disputes. Consequently the principle eliminates straightforward solutions for succession to an earlier leader like primogeniture and provides for multiple candidates to be considered. A second aspect is the possibility to depose leaders while they are still alive. A third, only encountered in the west of Barue District, is the interference by spirit mediums in political life. A fourth is the connection between political leaders and rain. Thus, it is not the case that hereditary leaders, as an institution, have no connection with the past. However, these items are rather circumscribed phenomena, and hereditary leaders have rather restricted tasks that did not exist in precolonial times, monitored by a party-dominated district government. It seems paradoxical that this is to a large extent *due to* the recognition procedures that supposedly were designed to revitalize “tradition”, but such paradoxicality is to be expected when it is considered that cultural entities can simultaneously be anthropological objects to be analysed *and* be actively used in cultural argumentation, as explained in chapter 2.

Legal pluralism and the heterogeneous state

Meneses (2007) reminds us that precolonial Mozambique was not monolegal, there existing Islamic law besides African indigenous law. Colonialism introduced one more legal system that was specifically linked to the subordination of the colonized peoples. Postcolonial practice (certainly as performed by Frelimo), but also theory have stressed legal homogeneity (Meneses 2007: 2, 5-6, 18-23). There appears to be a default analytical stance which maintains that there exists a homogeneous legal order in equally homogeneous states; a position which has been described as “legal centralism” (Griffiths 1986: 1, 3; cf. Von Benda-Beckmann 2002: 47). It is against such a perceived default analysis that authors like Griffiths and Von Benda Beckmann argue with the concept of “legal pluralism”. Griffiths (1986: 1) defines legal pluralism as “the presence in a social field of more than one legal order”. Kyed, Borges Coelho, Neves de Souto and Araújo (2012) give “the plurality of norms,

procedures and institutions that provide social ordering”. The idea is that a community may know legal regulations that somehow can be separated into more or less distinct clusters that show within them more cohesion than when taken conjoint (see discussion by Abbink and Van Dokkum 2008: 7). This aspect of clustering is one reason why “legal pluralism” is not identical with “legal inconsistency”, although it may sometimes overlap with it. I will argue in chapter 10 that Mozambican state law has been internally inconsistent since the 1990s with respect to local government. This does not make state law legally plural, since lawgiving that is different from the realized stipulations concerning local government, or the ratification of such stipulations, does not form a separate, clearly distinguishable cluster of regulations in this case.

The most recent Constitution formally recognized legal pluralism in Mozambique (2004: art. 4), but as we will see below in practice it can be said to have existed before that time. Santos (2006) adds the concept of the “heterogeneous state” when discussing legal pluralism. He argues that the current Mozambican state can be seen as heterogeneous at three levels: local, national and global. Local, because the state depends on locally available institutions that may date from earlier historical eras (the colonial and immediate post-independence periods). National, because state institutions, such as ministries, may operate quite autonomously. Global, because Mozambique has to comply with policies defined by international financial institutions and donor countries. As for local chiefs, Santos (2006: 65) adds:

The strategy of co-optation [of chiefs] relies on the disjunction between administrative and political control. Decree No. 15/2000 [...] illustrates the intention of the state to benefit from the administrative abilities of the traditional authorities and simultaneously to neutralize any centrifugal energy they might harness in terms of the political control of populations.

Thus, as Santos indicates, the “revitalization of traditional authorities” may not necessarily have been primarily for the interest of chiefs and their populations but for the consolidation of the (central) state. I would like to add that it is worthwhile to see if the co-optation of chiefs serves a purpose of party domination. For a judgement on this question it is necessary first to investigate the aspect of the legal pluralism of chiefs. Then the same reasoning can be applied to party secretaries, because Decree 15/2000 treats *autoridades tradicionais* and *secretários* on a par. (Note that in our critical realist approach, there is no necessity to rely only on what chiefs and party secretaries would consider themselves “legal pluralism”.)

To establish the existence of legal pluralism in the case of chiefs, a cluster of regulations

needs to be identified that is distinct from Mozambican state law. These may be: (a) definitions of geographical jurisdictions not defined in state laws; (b) hereditary leadership (e.g. *régulos*, *sabhukus*) alien to the republican character of the state; (c) selection procedures of individuals (from candidate chiefs) that are not always identical with the choice set type of elections or appointment procedures within the state; (d) elements of the task portfolio that are unknown to state law, such as “involvement with spirits”. Although state law (such as Decree 15/2000) may *imply* these items as existent (the “state recognition” aspect), it does not *describe*, let alone regulate them (the “legal pluralism” aspect). From the fieldwork data presented in this thesis it is clear that the mentioned items are interconnected, and it is also the case that they and state law each form clusters that are more coherent when taken separately than when considered conjoint. It also satisfies the definitions of legal pluralism given by Griffiths (1986) and Kyed et al. (2012) above. I thus conclude that one can speak of a situation of legal pluralism in Mozambique.

As indicated, an aspect not found in Mozambican state law is the “interference of spirits” in life. Spirits establish connections between the past and the present and enable people to deal with socially contentious issues (Meneses 2012). I will give empirical data about spirits and their mediums in the mountainous area of West-Barue District, specifically concerning spirits of which Mr. Ioanes Cativa and Mr. Caibossi SG (Magodo) said they were *mhondoro* (lion) spirit. In the latter case this claim was not generally accepted, showing the dependence of spirit mediums on popularity amongst the general populace.

Since Decree 15/2000 stipulates that *secretários* can be recognized by the state alongside *autoridades tradicionais*, it is possible to apply the same criteria for legal pluralism to the first as was just done for the latter. Thus we obtain: (a) definitions of geographical jurisdictions not defined in state laws (*círculos* etc.); (b) one-party leadership as opposed to the multiparty character of the state; (c) selection procedures of individuals (from candidate leaders) that are not always identical with popular elections or appointment procedures within the state; (d) elements of the task portfolio that are unknown to state law, such as demanding *declarações* (reference letters) issued by (Frelimo) *party* officials for events that *state* law considers constitutional rights of citizens, like moving home to where one wants or getting old-age support (Mozambique 2004: art. 55-1 resp. 95).

Having established that there is legal pluralism in Mozambique, it may be investigated what the character of that pluralism is. Griffiths (1986: 5) distinguishes between “weak” and “strong” legal pluralism. The first exists when “the sovereign [...] commands [...] different bodies of law for different groups in the population”; the latter when there is a situation “in

which not all law is state law nor administered by a single set of state legal institutions”. Concerning party secretaries, I would say that the demand for *declarações* is contradicting the Constitution, where the latter formulates certain things as *rights* of citizens without stipulating the necessity to obtain a document from a particular political party. Thus in Mozambique there is (in the dichotomy of Griffiths) strong legal pluralism at least in so far as secretaries issuing *declarações* are concerned. Consequently, the statement that “policies on legal pluralism can easily become subject to political manipulation” (Kyed and Trindade 2012: 24) is correct. In the case of the secretaries, the legal pluralism exists because of the imposition of rules outside state law, not the other way around. The Mozambican state never *created* institutions like chiefs or the Frelimo party (let alone Renamo); it interacted with such institutions. When the state “recognized” other institutions it became, as Santos (2006) reminds us, heterogeneous. This does not necessarily mean it became all-encompassing, or even dominant.

From this two conclusions can be drawn. The first is that present-day Mozambique is not a Weberian bureaucratic state in the sense that only an administrative staff monitors people’s behaviour and rights within the state. (One could argue that party secretaries are also state bureaucrats, but this is not what Weber seems to have intended.) Related to the first, the second conclusion is that thus far *the peace process has failed to subordinate the Frelimo party to the state* (see also De Brito 2010: 16).

Decentralization, “traditional” authorities, party officials and local government

In its introduction Decree 15/2000 explicitly states it has the aim to promote decentralization. Now Artur (2003: 34) warns that “decentralization” is often confused with “deconcentration”. The first is usually interpreted as devolution of governmental tasks from the central state to an independent lower-level government entity; the latter as the delegation of governmental tasks to branches of essentially the same central government in offices in provinces, districts, etc. (Otto in Van Dijk and Hesseling 2008: 99-100). According to Artur (2003: 34-36) advantages of decentralization are, amongst others, to utilize optimally alternative opinions, realize (developmental) programmes more efficiently, and increase responsiveness to the needs of the poorest people.²⁴

²⁴ For a study that deals with decentralization specifically through municipalities, see Machohe (2011); however that study does not look much at “traditional authorities” (2011: 27), who are more my concern here.

At first sight the governmental structure of Mozambique does not seem to be built on the premise that decentralization is good, because most of the population remains under the deconcentrated central government structures (predominantly the districts) rather than the self-standing *autarquias*. Recognizing “traditional authorities” might then be viewed as a possibility to realize decentralization within district structures (cf. Fumo 2007: 114; Gonçalves 2006). The idea makes sense when it is considered that those chiefs who were still functioning at the end of the war provided for functioning governmental and judicial functions that could be immediately incorporated by the state in the time of piece. A famous example is *Régulo* Luís in the Beira area (Meneses e.a. 2003: 359-371; 2006: 220; highlighted by Penvenne 2000: 199). Strong points of the way of operation of “traditional authorities” are summarized as being “immediate, public, collective, face-to-face, and relatively transparent” (Meneses 2006: 219). Thus from an administrative viewpoint recognizing local hereditary leaders can enhance state performance.

On the other hand, as Galli (2007) elaborates, when a central political entity (the state) leads a process of decentralization, “one can expect that rulers of solidary communities will listen more to their populations than to the administrators above them” (2007: 179; cf. Santos 2006: 44). Since the Mozambican state nonetheless persists in the exercise of its authority (Galli 2007: 191), there has emerged a contradiction: local leaders should represent their communities, but not with too much effect, in that they would be able to withstand external influence. The detention of *Régulo* Macufa in 2013, who acted against prospecting for precious stones in his area (Chekwa [N] 2013; see news section in bibliography), is a clear example of the limits that local leaders must respect in defending what they see as the interests of their jurisdictions. Incidents like this are indications that the definition of boundaries between the diverse legally recognized institutions is not an entirely settled matter yet and thus “legal pluralism [...] is fundamentally a political issue” (Meneses 2011: 176).

That the state is heterogeneous indicates for the hereditary leaders their persisting political relevance. That the Frelimo-government has recognized them shows Frelimo’s realism in accepting that the party is not alone in Mozambique’s political world. But just as with Frelimo’s formal recognition of other political parties, its recognition of “traditional authorities” implies reluctant recognition of them as political *competitors*. The latter’s impact is dampened, however, by the proliferation of Frelimo party officials (who, interestingly, have no *need* for state “recognition” ceremonies) down to the level of chiefs of five houses; a penetration amongst the population that the parallel “traditional” administrative set-up is not capable of emulating. With Frelimo also having the ultimate political trump card, the

monopolistic occupation of the central government ensuring smooth cooperation between lower-level government and local party officials, who in return undertake to mobilize the population to support Frelimo, the party's position is very well entrenched indeed.

CONCLUSION OF PART I AND INTRODUCTION OF PART II

In Part I it was established that people's practices and thoughts as they occur across humanity over space and time may be grouped together in entities called *cultures*, where such cultures may show differentiation as to the occurrence and correlation of said practices and thoughts. Such grouping together is not necessarily uncontested. Because cultures can have self-referential aspects, they cannot be seen as straightforward explanatory devices for practices and thoughts, but are better considered as loci for debate amongst people *about* the occurrence and correlation of practices and thought (including about who might be considered participant of a culture or not). As the present thesis deals with "democracy", it follows that the thesis occupies itself with distributional aspects of "democracy" across cultures. It does so by observing that concepts of "democracy" can be and have been formulated as composed of analytically more fundamental ideas that may combine with each other in different ways, leading to a cluster of concepts of "democracy" which show family resemblances with each other. The occurrence and correlation of constituting elements of conceptualizations of "democracy" may then be evaluated according to their association with self-referential cultures across humanity. It was concluded that the idea of "democracy" as embodied by procedures that determine collective preference orderings with a "choice set" is a rather Euro-American idea that, when stressed too much, introduces cultural bias in the study and practice of "democracy", neglecting other possible conceptualizations of "democracy" that have been formulated (also) in other parts of the world. Considerations about "state" "chiefdom" and "political party", necessary for the sequel of the thesis, were given. Comments were made relevant to recent discussions about legal pluralism, the revitalization of "traditional" authority, decentralization and the functioning of the multiparty system in Mozambique.

Part II introduces historical information about Mozambique and the Barue Kingdom in particular. The present-day situation in Mozambique and Barue District cannot be understood without such historical information as culturally self-referential debates about "democracy" presuppose the continued relevance of historically emerged cultural phenomena. Moreover, studying history is intrinsically relevant because it shows cultural variation in solving political problems in ways that show influence of subordinates over their leaders. The destructive and oppressive character of European colonialism is shown, the desire for self-determination as against European colonialism is studied, and the early development of Frelimo and the subsequent postcolonial problems of the war between Frelimo and Renamo and the establishment of a multiparty system, seen by many as embodying "democracy", are analysed.