

“State and Non-State Public Safety and Justice Provision The dynamics of legal pluralism in Mozambique”

**International Conference organised by CESAB and DIIS,
Maputo, Mozambique April 28-30, 2010**

Summary of the conference

In Mozambique and many other developing countries, the state – its laws and institutions – lacks both capacity and authority to ensure justice and security its citizens. At the same time a range of different non-state actors - religious, customary, community-based etc. - play a vital role in providing justice and public safety to the majority of the rural and urban population. Sometimes these non-state actors collaborate with formal state institutions, such as the courts and the police, and at times they act entirely outside the purview of the state. Different norms, procedures and conceptions of what counts as adequate justice and order enforcement co-exist, overlap and at times compete. This situation of legal pluralism is highly dynamic: it is in constant change, varies between and within regions, is infused by political and economic interests, and permeates both state and non-state institutions in practice.

The dynamics of legal pluralism poses key challenges to national policies and international development programs that seek to improve justice and public safety. Although such policies and programmes now give more recognition of non-state providers, they are still based on a Western model of the state as the overriding authority and framework for law, order and justice enforcement.

A core question is how policies and programs can better respond to the empirical reality of legal pluralism in ways that improve ordinary citizens’ access to better justice and public safety. In doing so, is it possible to develop a set of shared principles that draw on and are shared across the plurality of legal orders, and what role could international human rights principles play? Moreover, can the state’s formal sovereign authority - its responsibility to define the overriding order and its monopoly on force - be *de jure* shared with non-state authorities? Another key question is to what extent it is necessary, and indeed desirable, to substitute the dominant, Western model of the state with alternatives that better reflect the diverse socio-cultural realities and the available resources and capacities for providing justice and public safety. If so, how is it possible to ensure that the development of alternatives is based on broad-based participation of different stakeholders in society, rather than alone by powerful elites or international actors?

These questions, among others, were raised at a ***three-day international conference in Maputo***, Mozambique, which had as its main topic the dynamics of legal pluralism and the relationship between state and non-state provision of justice and public safety. The conference was co-organised by the ***Aquino de Braganca Social Studies Centre (CESAB-Mozambique)*** and the ***Danish Institute for International Studies (DIIS)*** with support from ***Danida*** and ***Friedrich Ebert Stiftung***.

The conference hosted a little over 100 participants, including international and national scholars, Mozambican policy-makers and practitioners, NGOs, non-state providers, and representatives from the different international development partners to Mozambique. The Danish Centre for International Studies and Human Rights (DCISM) was also represented by four participants (Fergus

Kerrigan and Anne Louise Piel, DIHR) and Peter Albrecht and Helene Maria Kyed (co-organiser), DIIS).

A total of 26 papers were presented at the conference. Eight of these included case studies from outside of Mozambique to bring a comparative perspective to the conference and to improve the exchange of experiences especially within Sub-Saharan Africa. The papers covered a range of themes that highlighted different aspects of legal pluralism, including: legal reform and constitution building in the context of legal pluralism; human rights and informal justice; non-state policing and state-police reform; mob-justice and community solutions; religious and spiritual aspects of justice and policing, and; natural resources and family law in the context of legal pluralism. The vast majority of the papers were based on in-depth empirical research, while others attended to the principles and challenges of legal reform and policies.

Three internationally recognised keynote speakers contributed enormously to deepening the conceptual and historical understanding of legal pluralism (Professor Anne Griffiths), highlighting the significant role of non-state policing actors in Africa (Professor Bruce Baker), and bringing to the fore key constitutional challenges to legal pluralism (Markus Böekenförde). Each of the keynote presentations helped provoke the debates following each panel and they highlighted serious challenges facing state-building, law-making and inclusive citizenship in the context of legal pluralism. Working group sessions in the afternoon of the second day of the conference served further to deepen the debates that had been invigorated by the paper presentations.

The conference represented the first attempt to both invigorate a comprehensive policy-debate on legal pluralism and to bring together empirical research done on the topic since legal pluralism was recognised in the 2004 Mozambican constitution. A key aim of the conference was thus to fill a void in accumulated knowledge on a) how legal pluralism is actually practiced on the ground and; b) what implications the constitutional recognition of legal pluralism has had for the interactions between different state and non-state providers at the local level. Another core aim was to discuss potential future legislation on legal pluralism and the different pros, cons and challenges of such legislation for different kinds of providers and for citizens' access to justice and public safety.

The high participation of different stakeholders contributed to a broad-based and critical debate of legal pluralism from both an empirical and a policy perspective. The strong representation of Mozambican authorities and international development partners also testified to a high interest in the conference topic. Not least did they express that the papers presented at the conference had helped to improve their understanding of legal pluralism 'on the ground' and especially the varied roles played by distinct non-state actors. It also contributed to highlighting more profoundly the challenges and possibilities such plurality in practice poses for policy-developments and for the operations of formal-state institutions.

The conference was also seen as unique, because it brought together the justice and public safety or the policing aspects of legal pluralism. Commonly there is a strong tendency to separate the justice and security sectors - both in studies, policy debates and development programs - but this separation does not hold water from an empirical perspective. Actors and institutions that solve conflicts, dispense justice and police society interact with each other and may even overlap or be the same persons. Several papers presentations at the conference for example pointed out that both state and non-state policing actors often act as judges when they resolve crimes or social conflicts.

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

- **The dichotomy between state and non-state legal orders fails to capture the complexity of legal pluralism** – many papers presented at the conference pointed to the multiple inter-linkages and overlaps between different providers of justice and public safety, whether defined formally as state or as non-state, informal, customary or community-based. This regards both the procedures and norms they apply, and it can be seen in light of longer historical developments. The blurred boundary between state and non-state becomes apparent once we consider legal pluralism outside of the framework of state law and look at the actual practices of different providers. One paper for example addressed how police officers adjudicate social conflicts and civil cases by adjusting to local beliefs in spiritual forces. Another paper illustrated how local community policing actors copy state police ways of reporting, hearing and investigating crimes. Other paper presenters also highlighted the need to go beyond a monolithic understanding of both the state and ‘traditional justice. Rather than viewing legal pluralism as manifested by separate state and non-state legal ‘systems’, as is the case in many national policies, one paper presenter proposed to think in terms of networks and overlapping layers of justice and public safety provision. A number of scholars at the conference highlighted the importance of in-depth empirical studies of legal pluralism that do not take their point of departure in stereotypical or pre-defined notions of state and non-state providers, but which begin by a mapping in each local context of the different forums that citizens’ actually use to access justice.
- **State recognition of legal pluralism can be inclusive of socio-cultural diversity, but it can also be used to enhance control and exclude some groups of citizens** – legal pluralism was used in the latter way by the colonial state, and is today reproduced through some post-colonial state’s recognition of customary or other non-state institutions. Referred to as ‘weak legal pluralism’, this implies that non-state legal orders are subordinated to state law, resulting in a hierarchy of separate legal systems. Alternatively state’s can recognise legal pluralism in the ‘strong’ sense, implying that definitions of legal pluralism are informed by empirical realities and involve broad-based participation and inclusion of ordinary citizens. According to some of the papers presented at the conference, the Mozambican government seems to have appropriated a ‘weak’ version of legal pluralism. For example one paper asked the question of whether the community courts, established by state law to build on local customs and norms, were actually intended as a political tool to assert power and control society by the ruling party rather than to provide better justice close to the people. Another paper presenter highlighted that a strong version of legal pluralism requires empowerment from below and engagements of social movements or local activists. Drawing on the case of the land law, a Mozambican scholar proposed a greater involvement of local stakeholders in defining ‘community norms and values’ in land ownership and allocation, as well as a better integration of such norms and values into state law. The land law itself is an attempt to do so, but is weak in defining what kind of constituency the concept of ‘local community’ is meant to imply.

- **Justice and security provision are politically contested fields** – they are not neutral and technical fields that can be changed or improved alone by ‘laws’ or by ‘training’ done by ‘outsiders’. Several papers at the conference pointed out that there are not only different layers of collaboration between state and different non-state providers, but also of competition and negotiations over the authority and power to define and enforce order. Any policies and programs that support the role of non-state actors should take such political contestations into account. This seems to be lacking in international donor support to informal justice systems in Mozambique, as suggested by a paper at the conference. International support has so far focused alone on the training of community judges and traditional authorities in state law and human rights. No considerations are made of local beliefs and conceptions of justice, such as the role of spirits, which underpin the authority of informal justice providers and which make them distinct from the state-legal system.
- **Divided views of the role of the state** - the participants of the conference had very different views of who has or rather who ought to have the ultimate authority to enforce and define public order and justice within the context of legal pluralism. The role of the state was particularly debated. Some argued that the state ought to have not only monopoly on the legitimate use of force, but also the overriding authority to provide justice and public safety. Non-state actors should collaborate with the state in living up to this responsibility, but not substitute state institutions. In some contexts this also reflects poor citizens’ political vision of state responsibility, even if this is seldom the case in practice and even when citizens use non-state, rather than state institutions. Other participants held that in Africa, where state institutions are weak, it is more realistic and appropriate to have a minimalistic state that allows for locally owned solutions to justice provision and policing. The state could provide the framework for a set of shared principles, to be developed through collaboration between state institutions and local constituencies. One such principle could for example be a condemnation of the use of physical force in justice provision. A minimalistic state would also imply that the power to define and enforce order is shared by the state and different community-based institutions, rather than under the overriding authority of the state. This would require rethinking the traditional, largely Western conception of state sovereignty. One participant at the conference however highlighted that it is important to take serious that citizens within a nation-state may have very different expectations of the state and that such expectations will also vary according to the specific context under consideration. A paper on Sierra Leone for example highlighted that the state in the rural areas matter little to rural citizens and there is a low national political will to expanding state control. In Mozambique the situations seems to be contrary, according to other participants.