

# **National Integrity Systems**



## **Transparency International**

### **Country Study Report**

#### **FINAL REPORT**

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## Acronyms and Abbreviations

ACIPOL:	Police Science Academy
AIM:	Mozambican News Agency
APNAC:	African Parliamentarians Against Corruption
AR/NA:	National Assembly
AT:	Administrative Tribunal
CDE:	District Electoral Commission
CFM:	Ports and Railways of Mozambique
CIP:	Centre for Public Integrity
CNE:	National Electoral Commission
COM:	Constitution of Mozambique
CPE:	Provincial Electoral Commission
CSMJ:	Superior Council of the Judicial Magistrature
CSO:	Civil Society Organizations
DFID:	Department for International Development (UK)
DNEP:	National Directorate of Roads and Bridges
EDM:	Mozambique Electricity Company
IFM:	International Monetary Fund
GDP:	Gross Domestic Product
GoM:	Government of Mozambique
GPA:	General Peace Agreement
GTZ:	German Technical Cooperation
IMF:	International Monetary Fund
ISS:	Institute for Securities Studies
MISA:	Media Institute for Southern Africa
MoU:	Memorandum of Understanding
MP:	Member of Parliament
MSI:	Management International System
MMZ:	Former Mozambican Currency
NA:	National Assembly
NEC:	National Electoral Commission
NGOs:	Non Governmental Organizations
NIS:	National Integrity System
NORAD:	Norwegian Cooperation for Development
ODM:	Mass Democratic Organizations
PAP:	Program Aid Partners
PIC:	Criminal Investigation Police
PIUs:	Project Implementation Units
PR:	President of the Republic
PRM:	Mozambican Republic's Police
ROCS:	Roads and Coastal Shipping Program
SDC:	Swiss Development Cooperation
SISTAFI:	Public Finance Management System

## About the National Integrity System [NIS] Country Studies

### Executive Summary

Over a period of 15 years of democratization, the Republic of Mozambique (herein referred to as Mozambique) has made considerable progress in creating and establishing a sound National Integrity System (NIS). This has taken place through the implementation of a regulatory framework of policies and practices designed specifically to curb corruption in both the public and private sectors. Mozambique has since introduced laws and regulations prompted by international demand. The general public is also increasingly becoming aware of the importance of good governance, integrity and anti-corruption measures.

Mozambique is one of the best experiences of democratization and economic growth. However, the country still ranks low in terms of integrity and anti-corruption activities, failing to do justice to its positive economic growth. Legal provisions in Mozambique concerning the governance and integrity of public institutions are still weak. The Anti-Corruption Act which was established in 2004, does not give full prosecution powers to the Gabinete Central de Combate à Corrupção (GCCC), thus impacting negatively on its general performance.

While the introduction of the Anti-Corruption Act was regarded as a milestone in the anti-corruption movement in Mozambique, increasing concern remains over the lack of investigative authority of the GCCC, its limited authority and the ineffective nature of whistle blowing mechanisms, raising doubt over the applicability and efficiency of the Act.

There are no codes of conduct for all public institutions. The law does not allow any public official to report acts of corruption against their counterparts and members of the public cannot request audits and inspections of public institutions. The whistle blowing framework is also weak while public and conflict of interest rules to prevent high-ranking public officials from enjoying ill-gotten financial gains related to their duties during and after their time of employment needs to be improved.

The Declaration of Assets Act requires high-ranking officials to register their assets but the declarations are made against the Constitutional Council which does not have legal powers to monitor and investigate issues of illegal enrichment. Generally speaking, central public institutions still need to improve their governance and integrity systems. As a top priority in the current reform agenda, the president has shown eagerness to address corruption and promote the good governance and integrity amongst public officials. Fighting corruption and fostering good governance and integrity is one and the same thing but little has been done on the ground in terms of trying to curb corruption.

However, to date, some achievements have been made within the Executive. Since 2004, the Internal Audit Department (IGF) has its own budget line and therefore material and logistics conditions are expected to improve in the next few years. Also, the GoM has made some progress in improving the transparency of public procurement system. For example, in April 2004, a procurement law enacted in 1996 which permitted bidders to make payments to procurement officers was abolished

An Anti-Corruption Strategic Plan for 5 sectors (Health, Education, Finance, Police and Justice) was launched in March 2006, as well as the National Anti-Corruption Forum, which is composed by elements from the executive, private sector and civil society. Constitutionally, independent

institutions such as the legislative and the judicial branches have not shown a strong commitment in addressing corruption although they have a mandate to establish plans and programs to guarantee the integrity of their organizations.

Judiciary and legislature are the worst institutions in terms of integrity. Courts are refusing to prosecute corruption cases that are investigated by the GCCC. The legislatures (NA) have progressive powers in the region, though not in practice. There are a number of factors which undermine the capacity of the NA to fulfill its scrutiny role: i) capacity of MPs is weak. They are often without training or political preparation – or intellectual/academic capacities – commensurate with their legislative responsibilities; ii) the main political parties seek only to oppose each other and seem rarely to engage in well-informed, citizen-focused policy debates.

The political leadership is failing to send strong signals to the judicial sector in order to embark on an anti-corruption drive and bring sanity to this sector. On the other hand, the legislature is failing to act as an oversight institution over the Executive. The country has gone for three years now without an Ombudsperson. The problem is that the Ombudsperson must be elected by parliament, by a two-thirds majority, which means that both Frelimo and Renamo must vote in favour. No such consensual figure has yet been found.

There are two strong institutions: the Administrative Tribunal (AT), which acts as the Supreme Audit Institution, and the Constitutional Council.

Meanwhile, on the regional level, local autonomous institutions reveal serious problems in their governance and integrity, with significant increases in corruption. As for the public service, the provisions regarding assets registration and post-employment fail to provide clear guidelines, rules and standards that would discourage and ultimately prohibit officials from enjoying unfair financial gains. Current legislation regarding anti-corruption mechanisms remains focused on the public sector, while legislative and voluntary efforts are increasingly concentrating on the private sector as well.

## Country Profile

From the beginning of the liberation war in 1964, Mozambicans experienced nearly 30 years of violent strife, social and political disruption and economic crisis. Portuguese colonial rule ceased in 1975, ending a system of subjugation and colonial-capitalism. The new head of state, Samora Machel, immediately transformed the country into a one-party socialist system with a centrally planned economy.

Within months of independence (in March 1976), Mozambique applied United Nations sanctions against the illegal and racist regime of Ian Smith in what was then Rhodesia. The Smith regime retaliated with direct military incursions into Mozambique and by organizing a rebel movement that called itself the Mozambique National Resistance. With the transition from Rhodesia to Zimbabwe looming, in 1980, this movement was shifted into South Africa where it was run by the apartheid regime's Directorate of Military Intelligence, and adopted the acronym Renamo. With massive South African support, Renamo attacks spread across much of the country.

Under pressure of the war, the government infrastructure disintegrated. In many parts of rural Mozambique, schools and health posts were destroyed and teachers and nurses evacuated. Around 37% of the population lost their homes, were displaced or became refugees.

The debilitating conflict, which lasted for 16 years, resulted in a devastated countryside, the destruction of infrastructure and the displacement of millions of rural people. In 1985 Mozambique joined the IMF and World Bank, and in January 1987 adopted its first structural adjustment package, aimed at transforming the planned economy into a market economy.

The ruling Frelimo Party abandoned Marxism-Leninism in 1989 and piloted a shift to political pluralism. This took shape in the liberal constitution of 1990, which abolished the "People's Republic" and embraced multi-party democracy.

Under the 1990 constitution, modified but not substantially altered by amendments passed in 2004, the executive branch comprises a President, Prime Minister, and Council of Ministers. There is an elected National Assembly and elected mayors and municipal assemblies. The judiciary consists of a Supreme Court, an Administrative Tribunal that oversees the legality of public expenditure, the Constitutional Council, which rules on matters of constitutional and electoral law, provincial, city and district law courts. All citizens over the age of 18 may vote (except those who are imprisoned, certified insane or legally deprived of voting rights).

In 1994 the country held its first democratic elections. Joaquim Chissano was elected President with 53% of the vote. The 250-member National Assembly was elected with 129 FRELIMO deputies, 112 RENAMO deputies, and 9 deputies from three small parties that formed the Democratic Union (UD) coalition. Since its formation in 1994, the National Assembly has made progress in becoming a body increasingly independent of the executive.

After some delays, in 1998 the country held its first local elections to provide for local representation and some budgetary authority at municipal level. Renamo and most of the smaller opposition parties boycotted the local elections, alleging flaws in the registration process. Independent slates contested the elections and won seats in municipal assemblies. Turnout was very low.

In the aftermath of the 1998 local elections, the government resolved to accommodate opposition's procedural concerns for the second multiparty national elections in 1999. Working

through the National Assembly, the electoral law was rewritten and passed by consensus in December 1998. Financed largely by international donors, a very successful voter registration was conducted from July to September 1999, providing voter registration cards to 85% of the potential electorate (more than 7 million voters).

The second general elections were held from 3 - 5 December 1999, with high voter turnout (albeit lower than in 1994). International and domestic observers agreed that the voting process was well organized and went smoothly. Both the opposition and observers subsequently cited flaws in the tabulation process that might have changed the outcome. In the end, however, international and domestic observers concluded that the close result of the vote reflected the will of the people.

President Chissano won the presidency with a margin of 4 percentage points over the RENAMO leader, Afonso Dhlakama (now backed by a coalition of Renamo and ten minor parties, known as the Renamo-Electoral Union), and began his second 5 year term in January 2000. FRELIMO increased its majority in the National Assembly with 133 out of 250 seats. RENAMO-UE coalition won 117 seats, and no third parties were represented. The opposition coalition did not accept the results declared by the National Election Commission' (CNE) and filed a formal complaint to the Supreme Court. One month after the voting, the court dismissed the opposition's challenge and validated the election results.

The second local elections, involving 33 municipalities with some 2.4 million registered voters, took place in November 2003. This was the first time that FRELIMO, RENAMO-UE, and independents competed without significant boycotts. The 24% turnout was well above the 15% turnout in the first municipal elections. FRELIMO won 28 mayoral positions and the majority in 29 municipal assemblies, while RENAMO won 5 mayoral positions and the majority in 4 municipal assemblies. The voting was conducted in an orderly fashion without violent incidents. However, the period immediately after the elections was marked by objections about voter and candidate registration and vote tabulation, as well as calls for greater transparency.

Under Joaquim Chissano, particularly during his second democratic term (1999-2004), the GoM was seen as subservient to donors. There was evident reluctance from senior office bearers to say 'no' to donors; policy dialogue was predominantly dominated by marginal issues related to process, rather than content. International development paradigms were predominant. Many factors seem to have contributed to this, including poor capacity; the dependence on aid with its underlying conditionalities; and to some extent, the existence of a rent-seeking elite ready to rubber-stamp any draft coming from Washington.

In May 2004, the government approved a new electoral law that contained innovations based on the experience of the 2003 municipal elections. Presidential and parliamentary elections took place from 1 - 2 December 2004. FRELIMO candidate Armando Guebuza won with 64% of the popular vote – but on a turnout of only 34%. His opponent, Afonso Dhlakama of RENAMO, running for the third time, received 32% of the votes. FRELIMO won 160 seats in Parliament. RENAMO and its Electoral Unions allies won the remaining 90 seats. Armando Guebuza was inaugurated as the President of Mozambique on February 2, 2005.

## Corruption Profile

Mozambique is still scoring badly on corruption according to Transparency International (TI) which ranked Mozambique number 111 out of 180 countries in its latest corruption perception index (CPI). The score allocated by TI to Mozambique is the same in both 2006 and 2007. In fact, corruption continues to flourish in Mozambique, not only at the highest political levels, through rent seeking practices and manipulation of procurement, but also in the shape of so-called “petty corruption”, through small bribes demanded by traffic police and hospital staff.

There are also very serious cases of sexual extortion at schools. In the last 2 years, several cases of corruption related to aid money and mismanagement of public funds have been exposed in the media, uncovering scandals both at central and municipal levels. For example, the former mayor, in the municipality of Beira, Chivavive Muchangage, had been using state facilities for his personal enrichment, according to the newspaper Noticias<sup>1</sup>.

Some allegations of corruption come from foreign companies trying to invest in the country. For example, in the area of public procurement, despite the fact that the Government approved in 2006 the new Procurement Code (Law, 54/2005), very recently a French company running scanners that control merchandise at international ports and airports complained of the results of a public tender held by Mozambique Customs declaring that it was manipulated. The name of the company is Smiths Detection and the allegations were made in Embondeiro Newspaper in 2005.

Although the Customs Authorities claimed there was no manipulation in the case<sup>2</sup>, the explanation was not convincing and the image transmitted to the foreign investors was that of shameless lack of transparency in this area. The perception has stuck that in Mozambique contracts are not awarded according to the normal rules of competitiveness and quality, but are instead manipulated by political elite. If there is no manipulation, foreign investors often find it necessary to give shares or partnerships to ministers or other political figures in order to gain the necessary approvals and certificates. This affects domestic as well as foreign investors and has tended to limit commercial development to larger schemes (Vaux et al, 2006).

In recent years, two studies on corruption perceptions have been conducted. The first, by *Ética Mozambique* (2001), revealed negative corruption perceptions: the study showed it is widely perceived that corruption is rooted in the State and society. Undertaken in Maputo, Sofala and Nampula provinces, with a sample size of 1200 individual respondents, the study brought to the public the first consistent picture of corruption in Mozambique. This picture was dominated by petty corruption: 21% of the respondents had paid between 20 - 100% of per capita GDP in bribes, affecting all fundamental areas connected to citizens' rights, such as education, health, and employment.

In 2005, another study, with a larger sample, showed that perceptions of corruption were still negative. Indeed, the National Research on Governance and Corruption (UTRESP/Mozambique Government, 2005)<sup>3</sup> indicated that 27.5% of public workers considered the level of corruption in Mozambique's Government to be “very high”.

According to the study, the Traffic Police is the most dishonest institution. In fact, every day citizens of Mozambique are stopped by Traffic Police who, instead of asking them to drive better, ask for money. One can pay a bribe of as much as USD50 to avoid fines. Taking the health sector as an example, Ferrinho argued that corruption, ranging from the mere petty deviation of medicine to requests for illicit payments, took off after the country adhered to democracy and to the neo-liberal model of economic management (Ferrinho et al, Paulo, 2004).

### **Why do people become corrupt?**

In Mozambique, lawyers bribe clerks of the courts to make a case advance; bribe court officials not to notify witnesses, thus slowing matters down; bribe judges to give particular decisions and prosecutors to distort the course of an investigation. José Caldeira, one of Mozambique's most prominent lawyers, lamented that the credibility of the justice system is seriously affected because of corruption. In the Education sector, there is evidence that both students and teachers participate in corrupt dealings<sup>4</sup>.

In the Health sector in Mozambique, corruption is also attributed to doctors. Some of them use public facilities for their own benefit; for example, doctors give preference to patients coming from their private clinics. Petty corruption is also widespread in the Justice and Education sectors. In the legal system, corruption involves judges, lawyers, attorneys, and court officials. Situations of extortion are reported at the criminal investigation level and judges are paid to hand down particular verdicts.

There are various opportunities for grand corruption in Mozambique, particularly in the financial system and public finances. It is admitted that more than USD400 million disappeared from the banking system in the 1990s. And the State had to repay the money: USD100 million cash injections to Banco Comercial de Moçambique (BCM) during 1992-96; USD162 million BCM bad debt provisions between 2000 and 2001, and USD150 million needed for Austral Bank recapitalization.

The history of how the enrichment of the political elites took place has been amply documented. It was essentially based on the privatization, most of which was calamitous, and the squandering of bank resources that the State had to repay. One of the top stories of appropriation of aid funds can be traced back to 1992-94. About USD17 million in loans from the Treasury, originating as aid from several donors, was given to a Portuguese businessman, Antonio Simões, allegedly to import equipment to modernize two engineering companies, the Mozambique Steel Company (CSM) and the wire drawing company Trefil.

But the former only operated a few months after its privatization. It did not take long to realise that Simões had no money to import the raw material and to cater for staff wages. The public authorities never explained this funding. Additionally, there is evidence that, according to the Administrative Tribunal in its 2004 report to the National Assembly, grants from Japan and USAID and credits from the African Development Bank and the IDA (World Bank) were provided in the past to Mozambican companies without either public tender or guarantees of repayment.

Ética Mozambique (an anti-corruption CSO) finished a project where the organization's role was to collect denunciations of corruption from ordinary citizens. During the project, Etica received 28 allegations of corruption, transferred them to the Justice sector but only one case subsequently came to trial. According to Alice Mabote, leader of the Humans Rights League, the problem in Mozambique is that there is no accountability. This lack of accountability, according to her, is an incentive to corruption.

With political liberalization in the 1990s, some steps have been taken aimed at redesigning the institutional framework which could enhance the capacity of the State for controlling corruption. The following are examples of efforts aimed at enhancing the institutional framework.

Laws have been approved with a view to guarding against the use of state assets and official posts for personal benefit. They also contain some basic rules for transparency and for the declaration of personal assets. But by 2006 none of the above laws were being enforced. This year, the Government approved an Anti-Corruption Strategy but there are no signs that show it will be implemented.

Corruption practices are made possible by the very nature of the Mozambican State: the overlap between the dominant ruling party and the state machinery. Despite massive fraud, especially in privatisation, no senior government representative has been convicted and corruption continues with impunity. In this setup, concerns over transparency and integrity tend to be better said than done. Clientelism, nepotism and trafficking of influence are deeply rooted. The problem is not lack of laws, but that the laws are not applied.

Mozambique's dependence on aid peaked during the war at 87% of gross national income (GNI) in 1992 – the year of the Peace Agreement. By the late 1990s it had fallen to below 30%, but in 2001 donor support still accounted for more than half of total public spending and about two-thirds of public investment. Official aid disbursements stabilized at about USD1,000 million a year during the period 1992–2004 (Batley et al, 2006).

Mozambique remains heavily dependent<sup>5</sup> on foreign aid. Since 1986, Mozambique has received about \$8 billion in external aid, or almost \$600 million a year, which represents about 17 percent of GDP. In recent years, foreign aid has financed half of government expenditure and 75 percent of public investment. This assistance was delivered in various ways, including project-based aid and Budget Support (BS). In recent years, there has been growing criticism of project-based aid arguably because it is not conducive to far-reaching development objectives in the recipient countries; therefore BS is increasingly becoming the core instrument for aid delivery.

There are also concerns regarding government capacity to address better policies. The issue of capacity is a key factor for open dialogue with the donors. The GoM did not seem well prepared for the level of donor intrusion on its internal processes that accompanied the BS. However, the capacity constraints were not only on the side of the GoM; donors also have their own difficulties in substantively engaging in policy dialogue. The BS arrangement requires from the donor staff, different skills from those involved in project-based aid; some of the skills include policy analysis and development; facilitation; public financial management.

The corruption profile in Mozambique can be mapped based on a few studies undertaken on the subject. The first study on corruption in Mozambique was undertaken by *Ética Mozambique* (2001). This study revealed negative corruption perceptions in Mozambique; it showed that corruption was entrenched both in the State machinery and in society. Undertaken in Maputo, Sofala and Nampula provinces with a sample of 1,200 individual respondents and 300 institutional respondents, the document sort of an initial picture of the state of corruption in Mozambique, showing that:

- ✓ Corruption in Mozambique was dominated by petty or administrative corruption, where more than 21% of correspondents had paid an amount ranging between 20 to 100% of the GDP *per capita* on bribes, notably in areas linked to the citizens' rights, such as Education, Health and Employment;
- ✓ Grand corruption was very limited (0.4%). However, it had a huge impact on the economy not only because of the large amounts but also because of its capacity to vitiate the State

machinery, including the decision-making process both from the administrative and judicial domains;

- ✓ 41% of the sample was said to have been involved in bribery during the twelve months prior the survey;
- ✓ Concerning the reputation of institutions, 1 in 2.2 people said that “many” state institutions were involved in corruption, including the Police; Judicial staff; teachers; and the health personnel.

In 2005, the Technical Unit for Public Sector Reform conducted a similar study, based on the perceptions of the people and institutions and came up with similar conclusions. The study, the National Research on Governance and Corruption (UTRESP/Governo de Moçambique, 2005) interestingly showed that state personnel share the opinion that corruption has worsened in recent years. 27.5% of the state personnel said that “now, corruption is very high”, this is higher than the 21.9% who said that corruption was “higher a year ago compared to now”. From the perspective of state employees, the most salient causes of corruption are low wages; (58%); lack of incentives (38%); absence of an efficient system of denunciation (50%); and absence of an efficient and independent judicial system (39%).

The above study was based on a sample of 2,447 households; 992 state employees and 486 companies all over the country. The corruption perception study revealed that the police are the most dishonest institution. More specifically 30.3 % of the companies; 23.6% of the households and 22.6% of the state employees said that policemen are the most corrupt state agents. 14.3% of the companies; 15.3% of the households and 14.2% of the state personnel said “the police are the second most corrupt institution”.

Surprisingly, other government institutions had a rather positive score. Only 3.6% of the households, 0.9 % of the companies and 0.7% of the state employees said that the “government was the most dishonest institution” in the country. As for the political parties, 9.4% of the households, 4.8% of the state employees and 3.8 % of the companies said that the “political parties were the worst institutions in Mozambique in terms of corruption”.

The most enlightening data came where the respondents were asked to rank the institutions in terms of “levels of honest”. Again, the police was considered the most dishonest institution. On the good side, “very honest” institutions were religious organizations, the NGOs and the mass media. The opinion on the judiciary was more balanced: on the one hand, the companies said that the judicial institutions were not honest and on the other hand, the households said that the judiciary was a credible institution.

## Anti-Corruption Activities

In March 2007, the government launched its Anti-Corruption Strategy which contains operational plans for five sectors. The actions and outcomes undertaken by those sectors will be closely monitored by dedicated committees within the reform umbrella. In the context of implementing the Anti-Money Laundering Law, the Government is also committed to creating a financial intelligence unit as soon as the law is passed by the National Assembly.

Since 2000, particularly after the murder of Carlos Cardoso and Siba-Siba Macuacua, donors started to demand realistic changes from the government in the fight against corruption. It was not enough, so donors engaged in concrete action aiming at improving the level of transparency in state machinery: for example, USAID funded a study conducted by Ética in 2001 and the study concluded that corruption was a major issue and was generalized in all sectors of the state bureaucracy. USAID also funded the establishment and initial activities of the former Anti-Corruption Unit set up in 2003.

The Swedish government has been funding the Supreme Audit Institution, the Administrative Tribunal. The Swedish government is also engaged in the reform of state financial management through SISTAFE (state financial management system). For its part, the World Bank is engaged with Public Sector Reform, which includes the fight against corruption. In the mid 1990s, the British government funded the Customs reform, which had a strong anti-corruption component. This year, the government approved the Anti-Corruption Strategy, which is seen as reflecting increasing pressure from the donor community on the government to change the incentive structures.

Despite the ubiquitous negative impression that the government is less committed to the fight against corruption, the government has taken some measures. The Anti-Corruption Law was approved in 2004 but its regulations have not yet been written. Also the High Authority for the Fight against Corruption has been created (formally known as the Central Office for Combating Corruption). The above progress was seen as key steps but it should be borne in mind that the reason why the former Anti-Corruption Unit established under the Attorney General's Office was not successful was because of the lack of human resources on the one hand and because of the poor judicial system that did not complement in a meaningful manner the work of the Anti-Corruption Unit on the other. There is therefore need to address these factors.

The general outline of the anti-corruption strategy was approved by the Council of Ministers in March 2006. Whatever the concerns about shortcomings in the anti-corruption legislation, it is clear that changing the system and the frame of mind that has made corruption so pervasive in Mozambique will require more than laws. It will require, among other things, sustained public debate, public education and a growing demand by civil society to stop corruption. The Government has signed and ratified the AU Convention and the SADC protocol on anti-corruption but not the UN Convention presented for signature in December 2003.

Some donors have taken serious measures against mismanagement of their funds by the political elite. In 2003, the Swedish government commissioned an audit of the Eduardo Mondlane University after suspicion that Swedish funds had been corruptly used. Later, in 2004, the Swedish government publicly revealed that their funds were being misused (through arbitrary attribution of scholarships) by the Ministry of Education and they directly implicated the former Minister of Education, Alcido Ngwenha.

In 2006, the Danish Embassy withdrew its funding for education in Zambézia province after disclosure that Danish funds were being misused. However, not all donors are very aggressive towards corruption. For instance, the World Bank's reaction to the scandals related to the murders of Cardoso and Siba-Siba show that to some degree donors are not willing to go beyond rhetorical demands for investigation and for fighting impunity. In 2004, when Michael Baxter, the World Bank director for Angola and Mozambique came for the first time to Mozambique, he declared that "the World Bank is no longer concerned with the scandals of the past", when asked about the bank scandals related to the two murders.

Baxter was reminded by a journalist about the near-collapse of the BCM and Austral under mountains of bad loans and of how the interim chairman of Austral, Antonio Siba-Siba Macuacua, had been murdered in August 2001. At the time, donors demanded thorough investigation of the Siba-Siba murder. Baxter's predecessor, Darius Mans, declared that it was "critically important to show that no man can act beyond the law with impunity", and demanded "accountability for past bad lending practices". There were demands for a vigorous debt recovery programme, to force those who had looted the banks to return the money. There were donor calls that those responsible for the Austral collapse should face charges of fraud or malfeasance.

# Assessment of The National Integrity Systems Pillars

## Executive

### Role of Institution as a Pillar

Mozambique is a multiparty democracy with separation of powers. Mozambique has a presidential political system; the head of the state is an Executive President. The principle is that the President of the Republic symbolizes national unity, acts on behalf of the nation internally and externally and also safeguards and guarantees the proper functioning of the State apparatus, according to article 146 of the Constitution. The President of the Republic is the guarantor of the Constitution. The powers of the President of the Republic include dissolving Parliament, appointing the Presidents of the Supreme Court, Constitutional Council, Administrative Tribunal and the Deputy-president of the Supreme Court. It also entails appointing and dismissing the Attorney General and the Deputy Attorney General, as well as appointing and dismissing the prime-minister, ministers, deputy ministers, provincial governors, and vice-chancellors of public universities.

It is difficult to assess the role of the President regarding issues of integrity in Mozambique. There have been mixed signals. On the one hand, Armando Guebuza has a strong pro-integrity discourse, which is seen as a great effort towards transparency. On the other hand, Guebuza has business interests in all areas of economic activity. The issue of conflict of interest regarding him is a recurrent theme in the Mozambican press.

### Structures/Resources

Although the recruitment of staff in the public sector is governed by the “Sistema de Carreiras e Remuneração” (Career and Remuneration System), a diploma approved by the Council of Ministers, ministers and senior officials can appoint advisors and can promote some officials within the system. The executive in Mozambique is the Council of Ministers and the constitution states that its members are the President of the Republic, as the chair; the prime-minister and the ministers, appointed by the President.

The Executive in Mozambique must also be seen in the context of aid dependence and therefore its relationship with donors is crucial for integrity. Aid dependence has strengthened the donor position towards the GoM and on the other hand it has excluded the National Assembly from the **policy dialogue**. There are in fact two actors in the policy dialogue in Mozambique, namely the GoM and the G-19 (the group of donors that gives direct support to the budget). The problem is that, according to several analyses, there should be more capacity from the government side regarding the policy dialogue with donors. In practice it seems that donors have more commitment to the dialogue than the government. There is a sense that the government does not want to improve its capacity of policy analysis. The power relation in the dialogue is still skewed towards donors “...capabilities and power relations between donors and government are clearly asymmetrical in favour of donors; thus, negotiations are not taking place on a level playing field” (Killick et al. 2005).

In 2005 some changes were put in place with the decision to split the Ministry of Planning and Finance into a Ministry of Finance and a Ministry of Planning and Development. Donors were very opposed to this and unsuccessfully fought against it; they favoured the previous set up, whereby planning and budgeting were combined in one institution. The new structure means that planning is separated from the budget preparation process (Hanlon and de Renzio 2006). Not less important is the second change: under the previous government, ministers and senior officials were particularly available to see donors; they were prepared to change meetings, even on very short notice, to meet with key agency officers. This has been sharply cut; meetings need to be

planned much longer in advance and donors are expected to meet more with lower level officials (op.cit).

An analysis of some of the main administrative units reveals interesting patterns. According to Renzio (2006) over the past three years the Presidency and the Ministry of Foreign Affairs have seen their actual expenditure figures end up well beyond original budgeted estimates. On the other hand, the Ministry of Health has consistently under-spent against approved budgets. The picture is mixed for the Ministries of Planning and Finance and Agriculture, but with large variances that are difficult to interpret. In part, these patterns of under-spending may be explained by the fungibility between budget allocations and off budget financing. For Renzio, if off-budget external aid resources are procured for an item previously provided for in the budget (such as the purchase of medicines), then a reallocation of budget provisions is likely. It may also be that, in other areas, externally financed project expenditures are lower than expected, with consequent under-spending on project counterpart funds and on related recurrent costs.

The President is elected directly by the voters from the political parties for a five year term of office and may be re-elected once. To be elected, a presidential candidate must receive over 50% of the popular vote. If no candidate receives 50%, a second round should be held between the two most voted candidates. The President answers to the Supreme Court for crimes committed in the exercise of his duties and to the ordinary law courts for crimes committed while in office but outside of his duties.

### **Accountability**

The executive in Mozambique is the Council of Ministers and the constitution states that its members are the President of the Republic, as the chair; the prime-minister and the ministers, appointed by the President. It is important to note that the prime-minister is the first amongst equals. However, the functioning of the Council of Ministers is ruled by presidential decisions and the deliberations of Parliament. Its meetings are called and often chaired by the prime-minister on the President's instructions. The Council of Ministers is responsible, before the President and Parliament, for implementation of domestic and foreign policy and also accountable for its activities, according to the law. The Executive therefore is accountable to the whole populace through parliament.

### **Integrity Mechanisms**

The law also regulates some incompatibilities, such as the exercise of paid activity without authorization; being a member of the board or a manager of any company unless by decision or in representation of the State; carrying out activities of a professional nature related to his or her sphere of decision for third parties, even when unpaid. However, in the case of the officeholder being a shareholder, board member or owner of any company, the management of the asset and its bodies must be entrusted to others. Thus, clarity came after the law had been regulated, with the decision that the declaration of assets must be deposited with the Constitutional Council. This is confirmed by Law 7/98, which is essentially a revision of Law 4/90. It can be seen that this Law also tries to take steps regarding the splitting of public and private sectors. However, it does not establish effective control mechanisms.

Thus, these laws cover conflict of interest at the highest levels of governance; forbid completely any kind of involvement of senior civil servants from taking on other paid activities within their spheres of duties, and also demand the declaration of assets and sources of income. Law 4/90 also establishes that senior public leaders "must not use the influence or power conferred by their posts to obtain personal advantages, or provide or receive inappropriate favours and benefits from third parties".

## **Transparency**

In order to safeguard the uses of State assets in Mozambique and prevent officeholders from using their posts for personal benefit, some steps have been taken towards reshaping institutions. For instance, in 1990 a law was approved (Law 4/90, of 26 September), which introduced new norms of conduct, rights and duties for top public leaders. However, the respective regulations were only approved in 2000 (Decree 55/2000, of 27 December). Thus a law passed in 1990 only took full effect 10 years later. However, relevant efforts have been made to overcome the gaps. In 1998, a new law (Law 7/98, of 15 June) with similar objectives covered the holders of government posts (regulated by Decree 48/2000, of 5 December). The two laws contain some basic rules in the exercise of transparency in a democratic society. They contain calls for the declaration of personal assets and annual updates by ministers.

Moreover, article 3 of the same Law states that it is compulsory for the President of the Republic; Prime-Minister; Ministers; members of the Standing Committee of the National Assembly; Deputy Ministers; State Inspectors and Provincial Governors; Permanent Secretaries; Ambassadors and District Administrators to declare their assets, liabilities, current or past functions in public and private companies, indicate gross complementary income for tax purposes, declare the assets of their spouses, and update this list of assets every year. The major limiting factor is the total lack of clarity as to which body is responsible for enforcing this Law and the respective penalties.

## **Complaints/ Enforcement Mechanisms**

The main problem in Mozambique is that none of these laws are enforced due to lack of political will to promote transparency and accountability. The fact that the disclosure of assets must be deposited with the Constitutional Council is one of the weaknesses because the Council does not have a mandate to investigate malpractices. Mozambique is regarded as a country that has managed to make some institutional redesign in order to be compliant with key democratic values, such as transparency and integrity, but the regulatory framework in place is not enforced. As Macamo noted, “while the commitment of Frelimo and its members to democracy and attendant accountability may be present, it is hard to imagine that the course political developments are taking in the country will be good for the health of transparency, the rule of law and accountability”(Macamo, 2006).

For example, there are administrative checks and balances on decisions of individual members of the executive. According to the article 58 of the Constitution, citizens can sue the government for infringement of their civil rights. But in practice there is little evidence that this is happening yet according to the article 215 of the constitution, the judiciary can review the actions of the executive.

Members of the executive are obliged by law to give reasons for their decisions via Parliament and via the Supreme Audit Institution (the Administrative Tribunal). Sometimes they do, sometimes they do not. The reason is that the executive does not give some much importance to Parliament. The fact is that the Government is more accountable to the donors than to Mozambican citizens, via parliament.

## **Relationship to Other Pillars**

In terms of relations to other pillars, there is a clear supremacy of Executive power over the Legislative power and the Executive is increasingly indistinguishable from the Frelimo Party. The executive also dominates the Judiciary which is seen as an institution controlled by the ruling party. To illustrate this, one can recall several corruption scandals involving senior

Frelimo members (such as the case of the former Minister of Education, Alcido Ngwenha); none of them have come to trial, despite being presented to the Attorney General.

In conclusion, the pillar is undermined by the overlap between the ruling party and the state, which has increased with the rule of Guebuza.

Executive role in legislative process has become particularly important with the increasing use of decree-laws, a new form of legislation introduced by the 2004 Constitution that allows the Council of Minister to request Parliament to delegate legislative authority for defined purposes. A decree-law adopted by the Council of Ministers enters into force automatically if Parliament does not challenge it during the session held after the decree-law's publication. This power has been used by the government to pass significant legislation, including the newly revised civil Procedure Code. Unless Parliament exercises its oversight, the trend will be for decree-laws to be tacitly approved without a proper debate.

### **Recommendations**

- Decentralise power – the current status leaves too much power in the hands of one person – The President.
- There is a political unwillingness to implement laws. Laws must be implemented without fear or favour.
- There must be a clear distinction between party and state interests and no undermining overlap should exist.
- The Executive should serve interests of the citizenry first (through Parliament) ahead of those of the donor community.

## Legislature

### Role of Institution as a Pillar

The National Assembly of the Republic (NA) is the supreme ruler of the state; therefore, according to the Constitution, the organ drafts, debates, approves legislation; ensures executive accountability and exercises oversight duties over organs of state, stated in the article 179 of the CoM, parliament has more specifically powers to the following issues:

- ✓ To concede the legislative power to the government
- ✓ To deliberate on the national plan and budget and respective implementation reports
- ✓ To deliberate on the administrative division of the nation;
- ✓ To delimit national borders;
- ✓ To approve the electoral bill and referendums;
- ✓ To set sanctions and suspension of constitutional guarantees and declare a state of emergency;
- ✓ To ratify nomination of the President of the Supreme Court, the President of the Constitutional Council, the President of the Administrative Court and the Deputy-president of the Supreme Court;
- ✓ To elect the ombudsman;
- ✓ To define the basis of tax policies;
- ✓ To create parliament commissions and regulate their activities;
- ✓ To authorize presidential visits to other countries;
- ✓ To give amnesty and pardon to convicted citizens;
- ✓ To authorize the Executive to run into debt or to concede credits;
- ✓ To ratify the decree-laws; etc.

The powers of parliament shall, in principle, only be over-ridden by the President of the Republic. This occurs in the cases when parliamentary deliberation rejects the governmental program for a given mandate - the president can exercise his power through dissolving the parliament and call for new elections, even though in a strong presidential system with an executive president, the prerogative to dissolve parliament can only be exercised once.

### *The legislative process*

Bills may be proposed by MPs, Political party parliamentary groups, Parliamentary Commissions, President of the Republic and the Council of Ministers. The bills are sent to the speaker of the parliament, and he reads them together with the two deputy speakers. Shortly after their deliberations, the speaker presents the bill to the Standing Committee, which puts it on the agenda for the following parliamentary sitting. The bill is then forwarded to the appropriate working committee after which it is distributed to all MPs in the committee. The bill should be presented with the following guidelines:

- i) The draft with relevant analysis and explanations that justify it;
- ii) Its legal framework and insertion within the government program;
- iii) Its likely implications for public expenditure, and hence the budget.

Thus, no bills should be sent for debate in plenary session without first having been analyzed and commented on by the relevant working committee. As mentioned above, the NA can initiate legislation but in practice, it rarely does and the bulk of bills debated by the Assembly originate from the government. The general impression given is that the legislative activities of the NA consist largely of rubberstamping legislation proposed by the government.

## **Structures/Resources**

### ***Parliamentarian committees***

Regarding committees of MPs, based on Parliamentary Law No. 6/2001, dated on April, 30 this committee has got three organs structured as follows; The plenary, The Permanent Committee and The working committees. The plenary comprises 250 MPs and has the superior decision-making power. There are two types of committees, i.e. permanent and working. As such, the first is the main structure of parliament and comprises 15 members: the speaker of the National Assembly who chairs it; the deputy presidents; and MPs elected by the plenary these being proposed by the respective parliamentary groups, acting upon the proportion of representation. Below is the list of responsibilities of this committee:

- ✓ To define the number and composition of parliamentary delegations to visit foreign countries, taking into account the proportionality in parliament.
- ✓ To elaborate and submit to the plenary an annual program proposal and budget for parliament;
- ✓ To follow the implementation of parliament's budgets and answer to the plenary;
- ✓ Manage relations between parliament and other similar institutions outside of the country;
- ✓ To prepare the daily agenda;
- ✓ To set working groups, define their duties, duration and nominate the chairpersons and secretaries; To support the speaker of parliament in his/her duties
- ✓ To coordinate activities carried out by the parliament committees;
- ✓ To create working groups that include parliamentarians from interested committees whenever a matter is related to more than one committee;

The second type of working committees can request a budget from the Standing Committees for the formation of working groups. The committees have a minimum of five and a maximum of fifteen members elected by the plenary for the duration of the term of the legislature. Working committees have the following duties:

- ✓ To submit proposals, laws, resolutions and motions for approval;
- ✓ To comment on proposed laws, resolutions and motions that relate to their issues;
- ✓ To design and produce inquiries, studies and proposals that are field related;
- ✓ To evaluate and control the actions of state institutions related to their area of specialization, ensuring that the law is respected and that public opinion is catered for; and
- ✓ To approve data and reports to be forwarded to the plenary and Standing Committee.

These committees in light of their competencies can summon government members, State representatives, military, public and private services have access to classified documentation and recourse to specialists to carry out their duties. Indeed, the number of working committees in a given legislature depends upon the parliament's needs, while Ad-Hoc Committees and commissions of inquiry are created only to address particular issues. Currently, there are working committees for the following areas:

- ✓ Legal Affairs, Human Rights and Legality;
- ✓ International Relations ;
- ✓ Defense and Public Order;
- ✓ Petitions;
- ✓ Plan and Budget;
- ✓ Agriculture, Rural Development, Public Administration and Local Power;
- ✓ Social issues, Gender and Environment;
- ✓ Economic Issues and Services;

The Plan and Budget Committee comes closest to fitting the description of a public accounts committee in Mozambique. The majority party, FRELIMO, chairs the Plan and Budget Committee. The Mozambican system uses the Planning and Budget committee to oversee the approval of the Budget and the Administrative Tribunal investigates the financial statements submitted by government departments. Regarding the oversight role of the committee, the process is as follows: the Ministry of Finance prepares a budget proposal known as the Plano Económico e Social (PES) (Economic and Social Plan) by the end of September of each year and tables this, along with the state budget required to implement it to Parliament. This budget proposal is debated and approved by Parliament during its end-of-year sitting, normally in December.

During the budget drafting process, before September, the Plan and Budget Committee conducts oversight visits of the various Provinces. Their focus is to evaluate the execution of the first semester's budget. Provinces discuss with the Plan and Budget Committee proposals they have for the new budget, problems that they have experienced and issues that need addressing. This preparatory work allows this committee to analyze the budget proposal submitted by the Ministry of Finance at the end of September. During this period of oversight visits, the other committees in Parliament conduct similar visits in order to address the budget proposals in their areas of competence.

During the second semester deliberations from October to December, the Plan and Budget Committee can call Ministers to discuss the proposals made. Each Committee, including the Plan and Budget Committee, will revise the proposal in its respective area. The reports on the budget proposal are tabled and discussed in the plenary session of Parliament. It must be noted that the Plan and Budget Committee does not interrogate each department's audited financial statements or accounts. According to the law, it is the Administrative Tribunal that performs this function. The Plan and Budget Committee's main focus is the overall picture of the general state of the accounts, produced by the Ministry of Finance.

It is worth mentioning that parliament has no ethics committee. However, there is a petitions committee which is endowed with the responsibility to investigate claims by individuals and organizations whose rights would have been violated. In accordance with Article 79 of the Constitution, any citizen can take a petition before the Assembly. This includes petitioning on cases of corruption. A petition is cost-free, the only stipulation being that it must be presented in writing. There are a number of requirements about the actual complaint – it must have a sound basis for example. The complaint then passes through a number of stages including discussion by committee, at which time further evidence or information may be gathered. The petition may be upheld, filed for consideration at a later date or turned down.

But parliament is clearly nervous about the work of the petition committee, for in the last two years, whenever the Petitions Commission has submitted a report, parliament has gone into closed session, excluding the press and the public. Thus, the public has no access to the information produced; this is a clear case of the parliament violating the constitutionally established right of citizens to information. Furthermore, it seems that there is no enabling political environment for the involvement of parliament in fighting against corruption. This is exacerbated by the lack of vibrancy of the African Parliamentarians against Corruption (APNAC), which has been highly supported by the Parliamentary Centre from Canada. The Mozambican chapter is one of the obvious examples and the initiatives aimed at making it possible for parliamentarians to fight corruption. The Mozambican chapter has not been operational because it is beleaguered by partisan obstacles.

Parliament is lacking the technical capacity to adequately and in a reasonable time analyse and decide on the legislative initiative submitted by the executive. The Strategic Plan of the Assembly of the Republic recognizes these limitations, particularly in terms of qualified technical staff and the low level of education of the majority of the MPs. The parliament has also complained of lacking the adequate financial resource for the functioning of its specialized and *ad hoc* commissions and the decision on this matter is of Government responsibility.

### **Accountability**

In Mozambique, the National Assembly is central to internal accountability through budgetary power, oversight and acting as a *public forum*. For approval, the government submits its 5-year plan, the annual plan and the annual state budget to the AR. Marking the commencement of its 5-year term, in 2005, the government submitted its 5 year programme to the AR. Very positive was the significant debate held on it, mainly concerning the means of verification and output indicators. The fact is that the plan lacked means of verification and indicators. The episode fuelled heated debate outside the AR, where some people argued that the lack of means of verification and indicators was a sign that the GoM undermined the NA therefore it was confident that any document sent there would be unquestionably rubberstamped.

Despite all interpretations, the demand for means of verification and indicators is a robust step towards greater internal accountability since any monitoring and evaluation exercise is made against predetermined means of verification and indicators. After the approval of the 5-year programme, the NA each year approves the annual plan and the respective state budget.

Budgetary power does not end with budget approval. Its oversight should be rigorously enforced. The contention is that the NA has to monitor budget execution through the existing legal mechanism which is the key step towards greater internal accountability. Some clarification is needed here: the approval of both the annual plan and the state budget is mandatory by law but the oversight of the annual plan and budget execution is not; the oversight of budget execution is part of the NA powers but not part of its constitutional obligations.

The implication is that from the MPs' side, there is no legal sanction for not exercising oversight apart from the possibility for *political sanction* in the next elections - which in the case of Mozambique is a very remote possibility. Relevant to the accountability equation is the rising role of the Administrative tribunal: it oversees the legality of public expenditure and it comments on the annual General State Account before it is sent to the NA. After holding the government accountable, the NA accounts for its actions to the public. The internal accountability chain continues with the MPs being held accountable for their actions by their constituencies. In a feed-back loop process, the constituencies burden the MPs with new demands which might be transformed into legislative initiatives.

For his part, the President addresses the NA to deliver the briefing on the State of the Nation address once a year. Through the MPs, the public hears the justifications of governmental choices. However, the Standing Orders of the NA were amended to deny parliamentarians the chance to debate the President's State of the Nation speech. This was a substantial amputation of democracy. From 1995 to 2001, the State of the Nation address delivered by then President Joaquim Chissano was debated for two days in one of the high points of the parliamentary calendar. The abolition of the debate was explained in terms of international comparisons and the dignity owing to the office of the head of state. Since the President's answers to questions usually provided more information than was in the formal address, the end result was to deprive

the public of information. However, the Constitution does make provision for the President addressing the public in other ways.

The general impression people have is that the legislative activities of the NA consist overwhelmingly of rubberstamping legislation proposed by the government. Far-reaching debate on content is the exception and not the rule and the quality of debate has deteriorated over the years (possibly because some of the most outspoken deputies from both Frelimo and Renamo were not re-elected in 2004). When it comes to the state budget, while the Assembly can theoretically rewrite it, we could not find any amendment to the last 5 budget bills. The time available for discussing the budget is so brief that there is no *time* for substantive debate in the plenary, even if there was human capacity for in-depth debate. The budget bill is debated for 3 days, starting from 8 hours and 30 minutes to 13 hours, according to the standing orders, amounting to a budget time of only 13 hours and 30 minutes (in reality intervals cut the time still further).

Due to supposed lack of resources and information, parliamentary budget control is limited and sporadic "...the NA has and always had legal conditions to ask for whatever information it wanted from government but there are operational problems: capacity of the NA to digest the information (...) also it has to be borne in mind that MPs are politicians and not technicians (...) but there are also non plausible excuses, like of lack of information"<sup>6</sup>. Lack of information does not seem a plausible reason for poor exercise of budgetary powers: the state budget is fully detailed; it has reached down to district level and by institution in every district. This includes the transfers to local governments. This information is approved by the MPs and it is available to the public through the Government Gazette.

The availability of information is a good start towards internal accountability and the debate on the means of verification and indicators held in 2005 in the NA can be taken as an example to substantiate that the internal accountability process is evolving. Although still limited, the role of parliament, combined with other initiatives taking place in the wider context within the machinery of government: the launch of the GoM website, which can be dynamically exploited by the media offer complete machinery for accountability and transparency. Also on the government side, office bearers such as provincial governors and district administrators are required to present quarterly progress reports, where they report on achievements; non-compliance is exposed and publicly criticized.

### **Integrity Mechanisms**

There is no legal provision requiring the MPs to file an asset disclosure form, nor any provisions restricting MPs from entering the private sector after leaving parliament. There are also no regulations governing gifts and hospitality offered to MPs.

At present, the NA seems to be in the middle of two sets of problems: technical capacity deficit and institutional capacity deficit. The technical capacity deficit is associated with the barriers posed by the complexity and technical nature of budgetary questions combined with lack of technical assistance to MP's (here it is a question of human expertise). The institutional capacity deficit is related with the barriers posed by contextual factors. Some of the key contextual factors include the overwhelming dominance of the ruling party which makes the *de facto* separation of powers somewhat blurred, the presidential system with the president as the key actor of the political system and party discipline. The result is that existing rights are not yet satisfactorily used and hence the budget process is not yet used as an internal accountability instrument.

Also, the NA does not have technical support staff that could enhance the political debate. MPs in Mozambique frequently blame the lack of resources for not doing a better job. In Mozambique, the NA does not have staff in the constituencies and so MPs' work is very difficult in terms of logistics. Another complaint from the MPs is that they do not have enough information to do a better job in terms of oversight.

### **Transparency**

The Constitution stipulates that the MPs and Parliamentary groups cannot submit bills that directly or indirectly increase state expenditure or reduce state revenues. However, this does not address the conflict of interest between the MPs and the private sector. The study done by *Ética Mocambique* in 2001 showed that an MP with shares in a specific company can pass Laws that affect the area where that company operates. As a result the MPs can serve their own interests without constraints.

Moreover, the same study stated that this permissiveness embodies a serious risk for MPs may be members of committees with the responsibility to draft a bill which impact on a company in which he/she is a member of the management board or even CEO. This may have particular serious implications if the company is dominated by foreign capital. Further, the study affirms that the "...Law does not prevent MPs from lobbying to postpone or prevent the approval of particular bills or change the spirit of the bill so that the future Law will not affect the protected company" (*Ética Moçambique*, 2003).

The permissiveness mentioned above is somewhat attenuated by the constitutional assurance that MPs are subject to criminal proceedings, stated in article 174 of the CoM. However, there is no legal provision requiring the MPs to file an asset disclosure form, nor any provisions restricting MPs from entering the private sector after leaving parliament and as mentioned before, there are also no regulations governing gifts and hospitality offered to MPs.

The Standing Commission wants the speedy adoption of a code of conduct for parliamentary deputies in an attempt to end the torrent of insults that sometimes characterizes parliamentary debates. The spokesperson for the Standing Commission, Mateus Katupha, said that the Commission wanted to end scenes such as those that took place during an early 2007 debate on crime and public security. That debate degenerated into a shouting match in which deputies from Frelimo and Renamo accused each other of being responsible for crime. Particularly ugly were the claims by some Renamo deputies that Frelimo had always been a criminal organization ever since it was founded in 1962. Such accusations imply that the war Frelimo waged for the country's independence was somehow a criminal enterprise.

Conceptually, parliaments are the institutions where citizens' interests and preferences are expressed and transformed into policy. Parliaments fulfill a number of important functions in a democracy: they are the voice of the people and aggregate interests, they make laws and they practice oversight, ensuring that laws, programs and budgets are effective and legally implemented. This depiction suggests that Parliaments are the pillars of democratic regimes. However, in practice, they have a propensity to be weaker than the executive branch, which is the case of Mozambique.

### **Complaints/ Enforcement Mechanisms**

In Mozambique there isn't a programme that orients public debates and public hearing for participation of CSOs in parliament decision making process. For instance, the existence of spaces for petitions does not translate into its effectiveness. Most of the Mozambicans CSOs never exercised petition right or contacted the parliament. This weakness leads also to the

weakness of representation role. At certain points, the NA is not transparent. This year, parliament discussed a report from its Petitions Commission behind closed doors. The ruling Frelimo Party used its majority to ensure a closed session while the opposition argued, unsuccessfully that since there was nothing to hide, the press should be allowed to cover the debate<sup>7</sup>.

### **Relationship to Other Pillars**

The NA is the *public forum* of the young Mozambican democracy; this function can be seen through looking at the Parliament in its relation with the media and civil society. In principle, the functions of a Parliament include publicity about its substantive work. In Mozambique the impression people have is that this publicity about parliamentary work is very limited. The recurrent justification is financial<sup>8</sup> constraints. The same justification is applied for the apparent limited flow of information from MPs to their constituencies. Representation is a key role in democratic polities. Parliaments can make laws and do reasonable oversight, but without effective mechanisms of representation, they can rarely be seen as democratic institutions. Similar observations can be made regarding the link with civil society the NA has inadequate institutional exchange with civil society.

In general, parliaments have both a legislative function and an oversight function. They are intended to scrutinise the policies and actions of a government and normally have an important role in overseeing the use of public funds (and approving how revenues are raised). In Mozambique, there are a number of factors which undermine the capacity of the National Assembly to fulfil its oversight role:

- ✓ MPs' capacity is weak. They are often without training or political preparation – or intellectual/academic capacities – commensurate with their legislative responsibilities
- ✓ There is little technical capacity within the parliamentary Secretariat – especially for analysing complex issues such as the State Budget;
- ✓ The NA does not approve tax rates;
- ✓ The NA has no budgetary autonomy and has insufficient resources to travel in order to carry out their inspection and supervision responsibilities – and no internal financial accountability mechanisms;
- ✓ The main political parties seek only to oppose each other and seem rarely to engage in well-informed, citizen focused policy debate;
- ✓ The electoral laws and Party List system are such that MPs have little direct relationship with the citizens they are supposed to represent;
- ✓ In all three general elections held so far, there was a minimum national threshold of votes (5%) for a Party to gain any seats in the NA; however, this provision was swept away in the amended electoral laws passed in December 2006, so in principle the next parliament will be chosen in a more genuinely proportional manner, which might allow a couple of the minor parties to (160 seats to 90 for Renamo).

In conclusion, Parliament is not contributing to building the NIS in Mozambique. Many reasons have been given for this.

## Recommendations

- Since the anti-corruption regulatory framework is still fragile, parliament should be more active in improving the legislation;
- In an international context where most parliaments in Africa have their own anti-corruption Forums, the National Assembly in Mozambique failed to establish one of its own, due to political disputes between the majority and the opposition. Efforts of setting up the APNAC or of creating a relationship with SADC PF must be resuscitated;
- There is a need for technical capacity within the Secretariat – especially for analyzing complex issues such as the State Budget;
- The NA should have budgetary autonomy in order to have enough resources to travel to carry out their inspection and supervision responsibilities;
- There should be internal financial accountability mechanisms in the NA;
- The NA must have a stronger commitment in approval of tax rates;
- Although the Constitution approved in 2004 enshrines the office of Ombudsperson, no Ombudsperson has yet been appointed because of squabbles between the two main parties in parliament. Civil society must advocate for this impasse to be overcome in the national interest;
- Stronger, more robust collaboration between parliament and civil society must be encouraged.

## **Political Parties**

### **Role of Institution as a Pillar**

Mozambique is a multi-party democracy under the 1990 Constitution. The Law on political parties was passed in 1991 before the first democratic elections that were held in 1994 won by Joaquim Chissano and FRELIMO. Political parties proliferated after the 1991 law but just three forces won seats in the Assembly in the 1994 elections: Frelimo, Renamo and the Democratic Union (a coalition of three small parties). Since the start of the Mozambican political transition, Frelimo has always secured a majority in parliament and the former rebel movement, Renamo, has always been the second most voted party.

In another development and According to Speck (2004), the existing parties in Mozambique are widely divergent in their organizational profile, managerial capacity and resources (including public and private donations, income-generating investments, equipment and other assets). “The party system unfolds clearly into two groups. The two main players, Frelimo and Renamo are in the first group. They have both a historical record of participating regularly in national elections, can count on continuous voter support and have an organizational structure that reaches most parts of the country” (Speck, 2004).

Political parties are there to enforce good governance and transparency emanating from the debates they hold against each other, especially the opposition parties versus the ruling party.

### **Structures/Resources**

There are a number of differences between these parties but compared to the rest of the political landscape, they are clearly distinguishable from the second group of small parties; ten of whom opted for a coalition with Renamo, since the threshold for entrance into the Legislature (5% of votes nationwide) proved too high for most of the players. The new Electoral Law, approved in December 2006, removed this barrier such that most of those small parties are preparing to contest the next elections on their own. On the other hand, a number of incentives (including the question of public funding) resulted in an increased number of parties in the pre-electoral period.

The 1991 law (no. 7/91) deals with the creation of political parties and establishes mechanisms for their funding. Article 17 states that funding for the parties shall include member’s subscriptions, donations, legacies and a subsidy from the general state budget. Article 20 states that ‘the amounts from the general state budget are proportionally distributed to political parties according to their number of MPs’, meaning that only parties with parliamentary representation are entitled to money from the state budget. These funds are exclusively disbursed by the government.

State funds are also provided for parties to contest elections. This funding mechanism was inherited from the UN mission in Mozambique which, in 1993-94, established two political Trust funds – one for the transformation of Renamo from a military force into a political party and the second to provide funds for all registered political parties contesting the 1994 elections.

According to the then UN special Representative in Mozambique, Aldo Ajello, the first Trust Fund provided Renamo with 17 million US dollars. Renamo did not account for a cent of this. Ajello was quite open that the UN was buying peace in Mozambique: it was a huge bribe and he considered it money well spent.

The second fund was less lavish: each registered political party was entitled to 150,000 US dollars, paid in three instalments of 50,000 US dollars. This time there were minimum demands of accountability - before receiving the second instalment, parties had to provide documentary

evidence that they had used the first instalment legitimately. Several minor parties failed to do so and so did not receive the second or third instalments but so lax was the UN that it even funded what was widely regarded as a joke party, the PPLM (Mozambican Popular Liberal Party). The leader of this “party”, Neves Serrano received the first 50,000 dollars – and then did not even stand any candidates in the election! No attempt was made to recoup the money, or to impose any sanction on Serrano.

Thus, huge amounts of money were made available allowing political parties and candidates to contest the elections even though the accountability mechanism was extraordinarily weak. The Electoral Law which governed the 2004 general elections stipulated the following mechanisms of political party funding for election campaigns:

- i) Contributions from candidates and political party members;
- ii) Voluntary contributions by Mozambican and foreign citizens;
- iii) Proceeds from activities related to the campaign (such as the selling of electoral materials);
- iv) Contributions from national and international fraternal parties; and
- v) Contributions from national and international NGOs.

### **Accountability**

There are no specific and stated rules that require political parties to be accountable to anyone apart from the general laws of the country. Political parties abide by the rules, laws and principles that govern their specific parties in line with their supporters. However, it is a requirement for them to account for all the funds.

Law 7/91 also states that accountability for the above funds is identical to that used in the Public Administration. Article 19 states that the accounts of the political parties must be published in the Government Gazette and in one of the largest circulation newspapers in the country.

Since the first democratic elections of 1994, the parties and coalitions represented in Parliament had been funded through the state budget but none of them have ever publicly accounted for the funds. Nor has any party – not Frelimo, not Renamo, not any of the by now literally dozens of minor parties - ever published their accounts as required by the 1991 Law. The Public Prosecutor’s Office has turned a blind eye to this flagrant violation of the law. Some people argue that the lack of accountability of political parties seems to be the price of Mozambican political stability, following the end of the war in 1992. At the end of the day, the ironic consequences of such a lack of accountability include the government helping officials from RENAMO, particularly its leader Afonso Dhlakama to undertake the accumulation of capital.

### **Integrity Mechanisms**

There are no limits on individual donations to candidates and political parties; there are no limits on the corporate donations to candidates and political parties; there are no limits on total candidate and political parties’ expenditure in electoral campaigns and, more importantly, there are no requirements for independent auditing of the finances of political parties and candidates.

The law also stated that “the state shall allocate amounts to fund election campaigns”. Parties are banned from taking money from “foreign governments and government organizations or national publicly-owned institutions and companies”, though these bodies “may fund election campaigns through contributions to the general state budget”. The law gives the National Election Commission (CNE) the power to approve the criteria for the distribution of public funds for presidential and legislative elections.

In the 2004 general elections, the government allocated MZM billion (over USD2 million) to election campaigns, while no donor money was available for the parties. One-third of this total

was distributed to presidential candidates, one-third to parties with representation in parliament (i.e. Frelimo and the Renamo-electoral Union) in proportion to the number of seats held, and one-third to all parties running for parliament based on the number of candidates each was fielding. The funds were allocated in three instalments, of: 50%, 25% and 25%, with the second and third instalments released after justification of expenditure from the previous instalments.

This time sanctions were envisaged. Those who violated the funding rule were to be fined by an amount varying between 25 and 50 times the statutory minimum wage. Repeat offenders would be completely excluded from the subsequent elections. In order to avoid punishment, political parties and candidates did account for their funds even though such accounting was often faked, especially when it came to the smaller parties. This was possible because of complicity with, for example, printing companies over-invoicing for campaign material.

There are several other concerns over party funding in Mozambique. Apart from lack of enforcement of the law, the use of state vehicles and other state resources for electoral campaigns by the ruling party have been reported in the media, even though this is now explicitly prohibited by law. The opposition parties are also criticized because of their failure to be compliant with the law. According to Speck (2004,) the small parties' are lacklustre, lack organizational structure, have poor management capacities and do not possess funds other than the resources allocated by the state for candidates. In addition, the minor parties lack a programmatic profile or a historical record (most of these parties only come to life in the pre-electoral period). They collect very few votes (most of them in 2004 picked up less than 1% of the vote) and disappear after the polls.

### **Transparency**

Currently, about 50 political parties have registered with the Ministry of Justice. Two of them (Frelimo and Renamo) are big, two might be described as medium sized while the rest barely exist beyond a handful of party leaders. They have no premises, no publications and the lists of supporters they needed for registration in the first place were faked. It has been hard to access their records to verify if they in fact have any members at all. The state, however, only subsidizes serious parties if they have genuine popular support judged by the number of seats they win in national elections.

### **Complaints/ Enforcement Mechanisms**

Complaints are mainly aired in parliament with each party fighting to have its views and complaints. There is therefore no clear channel of complaint enforcement mechanism and this has led to the continuously tense relationship between Frelimo and Renamo. This 'undeclared war' situation has not been conducive to the development of a civic culture and democracy *within* the parties<sup>9</sup>.

### **Relationship to Other Pillars**

Political parties in Mozambique cannot be regarded as pillars of integrity. Except during election campaigns, they are not close to the people, they do not undertake any public awareness work on anti-corruption and integrity and because they lack accountability, they do not have the moral profile to demand for transparency.

Graça Machel, prominent Frelimo member, was reported to have said she was concerned with the increasing clientelism within the FRELIMO governmental party, with members trying by all means to get to relevant posts in the party, including by buying votes as a bridge to government posts and so to prosperity and wealth<sup>10</sup>. There is a growing sense that Frelimo is trying to jeopardize the opposition. Prominent Frelimo leaders are advocating for the idea that the country can be better with a one-party state.

## **Recommendations**

- Political parties should be more accountable with donor funds.
- State equipment and machinery should not be abused to run party business.
- Smaller parties should comply with regulations and keep proper member registers.
- The idea of a one-party state should never be mooted again.

## **Electoral Commission**

### **Role of Institution as a Pillar**

The Constitution provides for the establishment of an independent body to supervise elections and voter registration, which is the role of Electoral Commission as National Integrity pillar.

### **Structures/Resources**

This body is the National Election Commission (CNE) represented at lower levels by the 11 provincial election commissions (CPEs) and the 141 district and city election commissions (CDEs). Successive CNEs have always been dominated by political parties. The origin of this was a clause in the 1992 peace agreement which gave Renamo the right to appoint a third of the members of the first CNE which organized the 1994 elections. That CNE consisted of 10 members appointed by the government, seven by Renamo, three by minor opposition parties, and an independent chairman<sup>11</sup> agreed by the other 20 members.

The members of the 1997 and 1999 CNEs, were chosen by the parties in proportion to the number of seats they held in Parliament, thus assuring a Frelimo majority. The CNE that ran the 2003 municipal and 2004 general election was slightly different<sup>12</sup>. This composition culminated into a CNE that is unwieldy, deeply politicized, unprofessional and bitterly divided. The CPEs and CDEs are likewise politicized. Beneath each election commission (CNE, CPE and CDEs) is a branch of the Electoral Administration Technical Secretariat (STAE), which actually does the work. Although STAE is supposed to be a non-partisan branch of the state apparatus, at all elections up until now, it too has been politicized with the appointment of not only deputy directors, but also of technical staff (running the computers) nominated by FRELIMO and RENAMO at all levels.

At one point the CNE became a miniature version of the Mozambican parliament, where the target of the political parties is to defend their own interests. Meetings were frequently interrupted because the Renamo CNE members wanted to consult their party leadership (the Frelimo members say they never needed such consultations). For Carrasco, the CNE should be a small body consisting of competent, honest professionals who put the national interest first. "In Mozambique there are people who, even if they have party political affinities, are professionals and could lead the CNE perfectly well", he said.<sup>13</sup> As for STAE, Carrasco points out that it is no longer an ad-hoc institution set up on the eve of elections; it has qualified personnel at least at the provincial level, and no longer needs a high level of foreign assistance.

### **Accountability**

The Electoral Commission is answerable to the state though this is hardly the case since it has serious political inclinations. FRELIMO and RENAMO are both represented and members from both parties tend to serve and be answerable to their respective parties than they are to the state.

### **Integrity Mechanisms**

At every election, STAE recruits thousands of polling station staff (usually five per polling station). These people must be at least 21 years old with a standard 7 of general education system (even though in some rural districts it is difficult to find people with this qualification). But the major issue is to guarantee the integrity of the electoral process. The STAE training is generally effective, and observers have always praised the performance of polling station staff. Although there are exceptions, it is generally agreed that they are trying to do an honest job under difficult circumstance (usually counting votes by candlelight or oil lamps, given the lack of electricity in most polling stations). The most serious problems with Mozambican elections are not in the polling stations.

## **Transparency**

The politicized nature of the CNE is widely regarded as the major obstacle to transparent elections in Mozambique. STAE general director Antonio Carrasco even declared "...it is impossible to have transparent elections unless the CNE is not governed by political parties acting in their own interests"<sup>14</sup>. The impact of the lack of transparency of the CNE is that most Mozambicans distrust the institution. A study must to be done to assess if the declining turnout in Mozambican elections has to do with the way the CNE was managed. But in theory the political party domination of the CNE is now over. After almost two years of acrimonious debate in parliamentary commissions, amended electoral legislation was passed in December 2006, establishing a CNE where the majority of members are from civil society. (At one point, in early 2006, Frelimo even proposed the total elimination of political party nominees from the CNE – but Renamo refused even to discuss such an idea).

In December 2006, the FRELIMO majority in the National Assembly passed three new electoral laws dealing with the CNE, voter registration and procedures for provincial and national elections. RENAMO boycotted the vote in protest. The new CNE will have 13 members (three from FRELIMO, two from RENAMO and eight from civil society), down from 19 during the 2004 national elections. It is not yet clear whether this formulation will improve confidence in the CNE, but it is a clear shift towards more transparency and integrity in Mozambican elections. The main task of the CNE is to formulate a new voter registration roll in time for provincial elections in 2007.

The new voter registration law requires voters to re-register once every five years and eliminates the multiplicity of voter registers that characterized the 2004 elections. The third law set guidelines for provincial elections in 2007, municipal elections in 2008 and national elections in 2009. While almost all observers ever since 1994 have praised the voting and the polling station count as highly transparent, they have criticized the later stages of the count – the tabulation of the polling station results sheets into district, provincial and finally national results. Much of this has taken place behind closed doors, with press and observers excluded. Sessions of the CNE itself have been closed, as if the CNE were the personal property of Frelimo and Renamo. In both the 1999 and 2004 general elections, a sizeable minority of polling stations were excluded from the final results. There may have been good reasons for doing so (such as illegibility of the results sheets due to spilt ink, unacceptable erasures, or mathematical blunders that proved impossible to correct) – but the CNE never explained precisely why so many votes were, to all intents and purposes, dumped in the trash can. One worrying phenomenon in 2004 was that a large number of polling stations results sheets simply disappeared, presumably stolen by either Frelimo or Renamo polling station monitors. No proper investigation of this scandal was undertaken, and nobody was ever charged.

Widespread fraud and misconduct in the 2004 national elections is confirmed by detailed results released on CD in August 2007 by the STAE. Data is included for each polling station, which is much more detailed than information released about the 1999 election<sup>15</sup>. According to AWEPA Bulletin, of the 12,807 polling stations, we estimate that more than 2000 (16%) had problems.

National observers from the Electoral Observatory (a coalition of Mozambican religious bodies and NGOs) and international observers from the European Union and the Carter Centre also highlighted the irregularities. They were critical of the electoral administration due to its partisan nature, its shoddy work and the tendency to leave things until the last minute. All stressed that these shortcomings and irregularities undermined the credibility of the electoral authorities. One source at STAE headquarters (who asked for anonymity) said that the computer problems in elections date from 1994 and are thus a longstanding, not a new issue. There are political

problems, i.e. the STAE professionals have been obliged to implement the decisions from the CNE politicians, and there is no appeal against such decisions, most of which are based on political rather than technical motivations.

Nonetheless, there are technical problems and there certainly are incompetent people who have held office in the electoral bodies. There is a general perception that much of the misconduct or lack of transparency and accountability of election staff has been a defensive reaction to hide blunders, last minute planning and incompetence. These have been the same people who in previous elections (1999 general and 2003 local elections) made the same mistakes and have never been expelled. Thus, the next question is related to the lack of technical capacity: the availability of skills, methods, systems and technology or a question of institutional capacity deficit (capacity utilization)?

In its report validating the results of the 2004 general elections, the Constitutional Council criticized the lack of transparency of the final computerized tabulation. The Council said that even if problems during the tabulation had been overcome, it was important to stress that “the principle of the transparency of the electoral process is an essential element for its national and international credibility”. Implicitly, the Constitutional Council believed that without endangering “the security and good conduct of tabulation procedures”, the electoral bodies should have ensured that adequate conditions were established so that no doubts remained about the impartiality, fitness and strict legality of these operations at local, provincial and central levels.

### **Complaints/ Enforcement Mechanisms**

In its 19 January 2005 ruling accepting the election, the Constitutional Council was highly critical of the National Election Commission which it said violated the law in various ways. It attacked the CNE’s secrecy and it was highly critical of the CNE’s failure to investigate and prosecute apparent violations of the electoral law. “If violations of the election law remain unpunished, they will multiply and threaten the entire fundamental principals of our state. This is a real threat,” the Council said, quoted in Awepa Bulletin. The CNE totally rejected the Council’s criticisms and took no action. Its spokesman said that if the Council had wanted actions, it would have rejected the election results submitted by the CNE; since it did not, nothing need be done<sup>16</sup>.

Complaints therefore, are taken in context of which political party will be complaining, making the whole process politically inclined.

### **Relationship to Other Pillars**

The relationship with other pillars is fragile. Because of its nature, the CNE was widely regarded as a governmental institution. Therefore other pillars were not capable of demanding more transparency from the commission. The fact that some of its funds came from the state led to a situation in which members of the CNE were keen to accept government interference. One might have expected better collaboration between the CNE and the Judiciary, in order to address political party abuses of state funds and offences committed during electoral campaigns. For example, the commission should have sent to the judiciary evidence of wrongdoing (e.g. the use of state funds; press freedom violations) in order that those issues should be investigated and prosecuted. This would strengthen accountability and integrity. But to date nothing has been done.

In terms of relations with other pillars, the CNE was able to open a space for civil society to monitor elections in Mozambique through the Electoral Observatory (EO). In fact, the EO

monitored the process from voter registration to the polling station operations, contributing as an oversight entity. Also, CNE civil education campaigns are always complemented with civil society activities in the same field. The relationship with the media is generally good in terms of allowing journalists to cover all the phases of the process – except the final stages of vote tabulation.

### **Recommendations**

- A study must to be done to assess if the declining turnout in Mozambican elections has to do with the way the CNE is managed.
- CNE must start to enforce the law on electoral funding, obliging political parties to present their financial statements.
- Polling stations must be electrified to make vote counting easier for polling officers and make the whole process transparent.
- Members of the press and election observers must be allowed to witness vote counting. Vote counting must not be done behind closed doors.
- Integrity of the electoral system must be guaranteed, avoiding disappearance of results sheets from polling stations and effectively communicating nature and extent of spoilt voting material.
- CNE must follow the recommendations made by the Constitutional Council regarding the 2004 electoral process.

## **Auditor General**

### **Role of Institution as a Pillar**

The Administrative Tribunal (AT) is the supreme, independent body responsible for external control over the legality of **public revenue and expenditure**, the appraisal of accounts submitted to it by law and the enforcement of financial liability for financial offences. The examination of financial legality includes examining compliance with the law, regularity and correctness or management in accordance with criteria of economy, efficacy and efficiency.

In terms of a law of 1997, the following are subject to the financial jurisdiction and control of the Administrative Tribunal: the state and all its services; autonomous services and organizations; local representative state bodies; local authorities (municipalities), public enterprises and companies whose capital is exclusively or mostly publicly owned; collectors, treasurers, receivers and other persons responsible for the safekeeping or administration of public funds; those responsible for accounts in respect of material or equipment and any person who manages or receives revenue or funding originating from international organizations or the entities referred to in the preceding paragraphs or obtains such funding (subsidies, loans or guarantees, etc) through their intervention.

All public and private entities have a duty to provide information and files requested by the AT, which may also order inspection and auditing services from internal financial control bodies and may also engage specialized firms to the same purpose. Furthermore, public bodies are obliged to notify the Administrative Tribunal of any irregularities that come to their notice during the performance of their duties. The basic Law of the Administrative Tribunal (Law 5/92) regulates the powers, duties, functions and jurisdictions of the AT. In terms of Article 1, administrative jurisdiction and inspection of the legality of public expenditure are exercised by the AT. The AT also exercises fiscal and customs jurisdictions, both as a single level and as a second level court. The AT may, among others, inspect the legality of public expenditure and examine the accounts of tax collectors and treasurers of the public administration. The AT can judge a case regardless of the amount involved.

### **Structures/Resources**

The TA only exists in the capital city, Maputo, but has jurisdiction for the entire territory. Legally, it is independent from the government and also enjoys juridical and administrative autonomies; the president is designated by the government and approved by the Parliament for a five year mandate and cannot be dismissed from office unless by proven behaviour which violates his/her duties. The AC has 335 personnel of whom only 9 are judges. The AT comprises three sections, namely:

- i) The First Section – administrative litigation;
- ii) The Second section – tax and customs litigation; and
- iii) The Third section – public expenditure inspection and approvals.

Judges are appointed to a section. The President of the TA is appointed by the Head of the State and the Assembly of the Republic ratifies his appointment. The plenary of the TA has, among others, the power to examine: appeals against administrative acts or administrative matters that are decided by sovereign bodies or their heads; appeals against acts of the Council of Ministers or its members concerning tax and customs issues; Jurisdictional conflicts between sections of the Tribunal and other administrative, tax and customs authorities.

The Tax and Customs Litigation Section has power to, among others, take cognizance of: appeals against the acts of any authorities related to tax or customs issues; Suspension of

implementation of the acts referred to above; Appeals against decisions of the first level tax and customs courts.

The Public Expenditure Inspection and Approvals Section has, among others, the following powers: to examine the State accounts; to make a judgment on the accounts of institutions, services and entities subject to the tribunal's jurisdiction; to check that contracts of any nature, drafts of certain contracts, decrees, and decisions relating to admissions at entry level in the central public administration, decrees and decisions relating to promotions, advances, reclassifications, transfers and others, which give rise to salary changes, decrees and decisions relating to retirements and pensions conform with the legislation in force.

The following bodies are subject to judgment on their public expenditures: Central State organs and State Services personified or not, endowed with administrative and financial autonomy, including the autonomous funds; Tax collectors of the public treasury; Funds of whatever nature of all public bodies and services, whatever may be the origin and the destination of the revenue; Mozambican public services abroad; Local bodies that represent the state; Municipal councils; Administrative councils or administrative commissions and administrators or managers or those responsible for money and other State assets; Entities that are allocated State funds, in whatever form.

Even though the AT requires technical competence, it is still dependent on political trust in the case of Mozambique. In fact, the legal aspect cannot be seen as guarantee for independence, since Parliamentary ratification of the President of the Tribunal is a mere ritual, given FRELIMO's absolute majority in Parliament.

Due to the severe lack of human resource capacity in the AT for the independent auditing of government accounts and financial statements, the audited financial statement is only available about 20 months after the end of fiscal year. The AT actually has the power, not only to investigate and report financial misconduct, but also to apply sanctions and impose punishment.

Parallel to the AT, there is other audit body, the General Inspectorate of Finance (which is responsible for internal auditing). According to a presidential decree of June 1999, this Inspectorate is the body responsible for State financial control and supports the Ministry of Finance in the management of public finances and assets. IGF applies INTOSAI auditing standards, and has a detailed Manual of Auditing Procedures for the Public Service, which describes in detail such matters as: concepts and types of audits; objectives of financial auditing; auditing standards; INTOSAI auditing standards; planning and execution of an audit; review of internal control; risks and materiality, evidence; audit reporting; as well as a detailed audit program. It also has a manual for the audit of state enterprises. IGF does not systematically feed results of its audits into the external audit, but only provides the Administrative Tribunal with such information as it requests.

### **Accountability**

The General Inspector of Finance is appointed by the Minister of Finance based on merit, namely competence, professionalism and integrity but subject to the Prime Minister's approval. IGF suffers from a lack of qualified staff and a dearth of financial resources, transportation equipment and computers that undermine its proper functioning. Staff at IGF, analyzed by qualification and department, comprises: The Inspectorate with 103 staff – 16 with only primary education; 73 technical staff (mid-level education); and 14 with higher education. None of these hold an internationally recognized qualification, such as Chartered Accountant (ACA), or Certified Public Accountant (CPA).

### **Integrity Mechanisms**

The internal auditing control system functions independently in each ministry or entity and its main purpose is to conduct financial audits of budgetary execution. The General Inspectorate of Finance coordinates, issues auditing standards and procedures and provides comprehensive training for inspectors. The General Inspectorate of Finance conducts audits of public enterprises, the provinces and projects financed with external funds.

There is an auditing schedule that covers public enterprises (an average of four audits per year) and the 33 municipalities, which are visited at least twice during each municipal council's term of office. The Inspectorate also oversees tax and customs collections. Currently, about 40 audits per year are being performed and the reports are sent to the ministries of the respective areas, which are expected to carry out the recommendations.

### **Transparency**

Despite the strong mandates and power, external auditing suffers from serious delays. As a result, audited financial statements have lost relevance and importance to serve as an accountability mechanism. The government's annual financial statement (the General State Account) is supposed to be lodged with the AT by 31 December of the following fiscal year. The TA is required to submit a report and opinion on the statements to the NA by 30 August the following year, i.e., 20 months after the end of the fiscal year. The NA needs then an extension of a further 4 months to study the report, extending the overall period to 24 months. For instance, the General State Account for 1999, 2000, and 2001 became available to the public respectively, in early 2001, 2002, and 2003.

This delay is largely due to the serious lack of human resource in the AT. As of March 2001, the AC had only 13 staff assigned to the post-auditing function, of who only eight had a formal accountancy or auditing qualifications. The staff is not only small and under-qualified, but also underpaid, with salaries being below those of internal auditors of the government department, the Finance General Inspectorate, in the Ministry of Finance.

An IMF report (2001) recommended that the AT give more emphasis on the ex-post sanctioning and control and that the working framework should be in consonance with the procedures recommended by the International Organization of Supreme Audit Institutions (INTOSAI). It also recommended that the period of 20 months should be reduced to 12 months.

### **Complaints/ Enforcement Mechanisms**

If compliance is not satisfactory in the view of the inspector general, these recommendations will be sent to the office of the attorney general (FMI 2004). Renzio (2006) points that, although some measures were settled, internal control system remains very ineffective and changes in its procedures (formal and ex-ante control) will take some time to show effective results. In fact, the IGF is not able to cover all entities and the results of its audits are not transformed in criminal prosecutions.

Since 2004, the internal audit department has its own budget line and therefore material and logistical conditions are expected to be better in a few years. Recently, IGF was strengthened with 30 new hires. To improve the quality of internal control system, IGF is currently receiving technical assistance from the Swedish Development Agency (SIDA), and an action plan that seeks to enhance IGF capacity and to assert its role is now being designed and implemented (Renzio, 2006).

### **Relationship to Other Pillars**

The AT is part of the integrity system and has very important roles in relation to auditing the General State Accounts (CGE) and through auditing government ministries. It has recently expanded its activities to include limited performance audit as well as financial audit. According to Nuvunga and Mosse (2006), one of the pillars of major success in Mozambique is the General Supreme Audit. In recent years, the AT has managed to exercise its role of oversight of government finances, at least with regard to its analysis of the General State Account. But it still faces many difficulties in external oversight, for example it experiences problems in supervising the municipalities' accounts, where cases of corruption and mismanagement of state funds have been verified.

### **Recommendations**

- The conflict of interest in TA as approval body for public sector contracting and as auditor of public procurement practice should be removed;
- TA should initiate court actions in relation to any alleged fraudulent or criminal acts that encounter while analysing the state budget execution;
- TA have to improve its technical capacity, recruiting more qualified staff ahead of political trust;
- TA should increase its audit coverage – currently the TA's aim is to audit 25% of government entities each year (the international standard recommends 75%-100%).

## Judiciary

### Role of Institution as a Pillar

Mozambique's justice system has undergone major changes since independence in 1975, reflected in changes in the country's Constitution. The 1975 Constitution established a one-party socialist state led by FRELIMO (Frente de Libertação de Moçambique), in which there was no separation of powers between executive and judiciary. The 1990 Constitution entrenched a multiparty system, widened the recognition of citizens' rights, and recognized the independence of the courts from the executive and party control.

Article 120(h) of the Constitution of the Republic says the President has the power to appoint, exonerate and dismiss the Attorney-General and Deputy Attorney-General of the Republic. Furthermore, in terms of article 122(d) of the constitution, the President has the power to appoint, exonerate and dismiss, among others, the General Commander of the Police. The Supreme Court is the highest organ in the hierarchy of the law courts and should ensure the uniform application of the Law within its jurisdiction.

### Structures/Resources

The judicial system is dramatically short of staff for a variety of reasons including relatively low pay and the relatively diminished social standing of judges. The number of law students interested in joining the judiciary has recently been limited – there are far richer pickings available for those who choose to become defense lawyers.

#### *Distribution of judges:*

Supreme Court:	12
Provincial Courts:	45
District Courts:	106

#### *Distribution of support staff in the law courts:*

Supreme Court:	268
Provincial Courts:	1001
District Courts:	4352

Approximately 112 of the 128 districts have functional courts. The lack of judges and qualified personnel is serious. Mozambique has approximately 190 judges (about 1 judge per 1000 habitants); of this figure, only 75 have a university degree. Of the about 1.065 support staff in the courts, only 3 % had higher education and 53% had not even completed secondary education. Alongside this flagrant lack of qualified staff, there are a range of other various problems in the court system, such as chronic absenteeism, unequal treatment, deliberate delays and omissions in criminal proceedings (US Embassy in Maputo, 2005).

The provincial courts opened the 2007 judicial year on March 1, with an enormous backlog of 68,433 cases, an improvement in comparison to the 102,452 pending cases of the previous year. Of the 221 judges in the entire country, only 189 are working in the courts. According to the President of the Supreme Court, Mario Mangaze, this covers just 36 per cent of the country's needs<sup>17</sup>. The shortage of judges is the main reason why more than a quarter of Mozambique's 128 districts still possess no court. According to the Supreme Court, there still are 35 districts that lack a court (which means that courts are operating in 93 districts)<sup>18</sup>.

Constitutionally, the Courts have the main objective of enforcing legality as factor of judicial stability, ensure the respect for the laws and ensure the rights and freedoms of the people. The courts punish violations of legality in accordance with the law. In the exercise of their duties,

judges are independent and owe obedience only to the law. Judges are irremovable, meaning that they cannot be transferred, suspended or expelled other than in cases explicitly provided for by law. The constitution states that the CSMJ (which is chaired by the President of the Supreme Court) is the body that appoints transfers, promotes, exonerates and disciplines judges in the system of law courts. Such appointments should be based on merit but there have been claims that this criterion is not always observed. Thus one experienced lawyer, Salim Omar, has argued that some judicial appointments are based on political trust.

### **Accountability**

The President, Deputy President and all other judges on both the Supreme Court and the Administrative Tribunal are appointed by the President of the Republic – but he does not have a free hand. In the case of the President and Deputy President of the Supreme Court, the President of the Republic must consult with the Supreme Council of the Judicial Magistrature (CSMJ). The other judges are proposed to the President by the CSMJ. After public recruitment among magistrates and other citizens with law degrees who are over 35 years of age and have exercised judicial activities or have taught law, for at least 10 years, recruitment is done in earnest. Likewise, the President of the Republic should appoint the President and Deputy President of the TA after consultations with the Supreme Council of the Administrative Judiciary and appoints the other TS judges on the proposal of this Council. These two councils are the disciplinary and management bodies for the judiciary.

In view of the fact that the offices of the Attorney-General and the General Commander of the Police play a crucial role in the fight against corruption, there is a widespread opinion that the untrammelled right to appoint and dismiss these two figures gives the President too much power. This power may be utilized to remove an Attorney General or General Commander of the police who investigates high level government officials or even the President (though none of the Attorney-Generals to date has shown such zeal). A dismissal procedure in terms of a Parliamentary investigation and hearing process would be preferable

### **Integrity Mechanisms**

The CSMJ directs the judicial inspection service to investigate cases or other actions of judges or court staff. Inspectors are few, and the CSMJ has in the past not identified fighting corruption as a main priority. In 2005, the CSMJ dealt with disciplinary cases involving 8 judges and 17 court officers; most were disciplined, but the charges in almost every case had to do with alcoholism, not corruption or other misdirection of justice. Last year, CSMJ started its investigations of Cabo Delgado judges Carlos Niquice and Hironcina Pumule for the alleged extortion of one million dollars (25 million Meticaís) in exchange for releasing from prison Portuguese businessman Amadeu Costa Oliveira in September 2005.

The Constitution establishes the independence and impartiality of the judges and the principle that they can only be removed from office in cases explicitly envisaged by law. There are signs that some judges abuse these privileges and act as though independence means they are above all criticism. The media, particularly the independent media, has denounced several cases of bribery in the judiciary affecting the way magistrates handle certain cases.

### **Transparency**

This year, Mozambican National Assembly approved the Act on reorganizing the country's law courts which ban on cameras and microphones in courtrooms. One article of the bill states "to safeguard the material truth and the legally protected interests and rights of those involved in cases, the production and public transmission of images and sound of trials is prohibited".

Under the former system, judges made their own minds up as to whether trials may be broadcast. Thus in the case of the six men charged with the murder of Mozambican journalist Carlos Cardoso, judge Augusto Paulino decided to allow live transmission of the entire trial which lasted from November 2002 to January 2003. His decision was widely praised within Mozambique and abroad although it scandalized more conservative sectors of the judiciary. But the new bill takes away judges' discretion in this matter, and ensures that never again will a Mozambican trial be broadcast.

The current president of the Supreme Court was appointed in 1988 and his term of office was renewed by former president Chissano just weeks before the 2004 elections. He is regarded as a Frelimo stalwart and considered a key interlocutor for political leaders when important interests are at stake in court cases. Most interviewees laid a significant portion of the blame for slow reform at his feet. With political considerations dominating the highest level of the court system, the hierarchical nature of the Mozambican judiciary makes it difficult for judges at lower levels to avoid political interference or operate in a more transparent manner. Nonetheless, the Supreme Court has struck significant blows in defense of judicial integrity and independence, most notably when it acquitted the then chief of staff of the armed forces Gen. Sebastiao Mabote, who was facing trumped-up charges of trying to overthrow the government.

The Supreme Court exercises formal control over lower-level judges through its ability to overturn cases on appeal. But since the Supreme Court is still the only appeal court from decisions of the provincial courts, a huge backlog of appeals (both civil and criminal) has built up and it can take literally years for an appeal to be held. This runs two risks – first that poor decisions by provincial courts may land innocent people in jail for years before the Supreme Court frees them and (more likely) that real criminals enjoy years of freedom, with their sentences suspended, while their appeals are in the Supreme Court queue. Smart lawyers thus always advise their clients to appeal.

According to Afrimap (2006) the capacity of members of Parliament (MPs) to comment or to provide input on bills (usually submitted by the government) urgently needs strengthening. MPs do not have the technical skills needed to properly fulfill their responsibilities of initiating legislation and providing input to laws proposed by the executive, yet oversight of the legislative process is one of their key functions. There is a serious risk of Parliament becoming a bottleneck in the process for legislative reform; the Family Law Bill for instance, remained with Parliament for several years before it was enacted.

### **Complaints/ Enforcement Mechanisms**

Complaints enforcement mechanisms are hard to follow because senior members of the Judiciary are appointed and demoted by the state President. Ideally, complaints should be channelled through the Ministry of Justice but because judicial officers are political appointees, redress is hardly evidenced.

### **Relationship to Other Pillars**

The judiciary, like parliament, should be independent of the Executive. However, this is not the case in Mozambique – and it is probably less independent than the National Assembly. Much work needs to be done in order to improve the role of the judiciary as an integrity institution.

## Recommendations

- The Judicial system is dominated by personnel whose appointments date back to the era where Frelimo membership was a prerequisite, like the President of the Supreme Court, Mario Mangaze; this needs to be overhauled by setting new criteria for recruitment;
- The Court system is dysfunctional and judgements are perceived as going in favour of the highest bidder; judges need to be governed by a punitive code of conduct that shall serve to strengthen accountability, transparency and integrity. This could be managed by the establishment of an independent judicial services commission;
- There are simply too few lawyers who understand the complexity of the judicial and legal codes and who are in a position to try to uphold the law. Ideally lawyers should be properly trained and only admitted to practice when they hold nationally and internationally acceptable legal qualifications that include the ability to draft and interpret the law;
- The legal aid system does not function – so the poor are largely excluded. The Legal Aid System must be resuscitated so that the idea of justice becomes a reality to all citizens.

## **Civil Service/Public Sector Agencies**

### **Role of Institution as a Pillar**

According to the Constitution, the Public Administration serves the public interest and its actions respect the fundamental rights and freedom of citizens. The bodies of the Public Administration should obey the Constitution and other Laws and observe the principles of equity, impartiality, ethics and justice. The article 5(1) provides the justification of administrative measures. This Article provides that besides those cases in respect of which Law expressly so require, justification is required for administrative measures totally or partially.

### **Structures/Resources**

Entry into the Public Administration and career progression in the public service cannot be prejudiced by race, skin colour, sex, religion, ethnic or social origin or political options. Vacant posts are advertised through public media and career progression is based on merit and qualifications. Normally qualified prospects will be interviewed by a panel of at least 3 people and the job will be given based on interview assessment. It is not clear however, how many civil servants there are in Mozambique as three conflicting figures from the three keys institutions are given. The three are, the Ministry of State Administration (whose powers in this area have now been transferred to the National Civil Service Authority, ANFP), the Administrative Tribunal and the Ministry of Finance. The three figures are as follows; Ministry of State Administration (10 000); Administrative Tribunal (90 000); and Ministry of Finance (200 000)

The lack of accurate information on the true number of civil servants is an indicator of the disorganization within the civil service. There civil service does not have an evaluation system; no clear job descriptions for staff and chances are there are ghost-workers (which might be why the figure from the Ministry of Finance is much higher than the other two). There is also lack of staff supervision and thus most civil servants spend more time out of their offices doing part time jobs in the private sector and NGOs. Civil servants are deployed through the central government (ministries), based in Maputo; the provincial governments (11 provinces); the district governments (128 districts) and the autonomous institutions such as the public universities; institutes and public companies.

In September 2006, the government established the ANPF which manages the civil service human resources. As part of its initial tasks, the ANFP is now carrying out a census of all civil servants to clean up the database and arrive at an accurate number of civil servants and identify “ghost workers”. This census will provide a unique biometric identification number for each public employee and will be used to develop an integrated payroll database that will be compatible with e-SISTAFE.

### **Accountability**

Mozambique does not have any law ruling on the political independence of the civil service, apart from the constitutional article which states that recruitment and promotion shall be solely on merit. The only Law governing the civil service in Mozambique is the Public Service Regulation, Decree 30/2001, dated October 15 which was approved by the Council of Ministers. This Decree does not only apply to the civil service, but also to the 33 municipalities; and to autonomous public institutions.

The law provides that no informant or complainant may be subjected to disciplinary procedures or prejudiced in his or her professional career or be harassed in any way as a result of the complaint or accusation concerning crimes pursuant to the law. It is unknown whether Mozambique has any witness protection programmes. If not, it is recommended that legislation

should provide for the establishment of such programmes in order to effectively protect whistleblowers.

### **Integrity Mechanisms**

The anti-corruption law (6/2004) provides a clause which states that bribery is a crime in Mozambique. Article 7 of the Law says that public servants and officials who, on their own or acting through another person, receive money or any other assets not due to them in return for performing an action that implies the violation of their duties, shall be punished with a prison sentence of between two and eight years.

Civil servants do not have clear job descriptions. Government does not publish the number of authorized civil service positions, neither do they publish the number of positions actually filled. In practice, the independent redress mechanism for the civil service is not effective. Civil servants charged of corruption are not prohibited from future government employment. To some extent, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Administrative acts and decisions must be justified. The legislation requires that any administrative act which; either wholly or partially negates, restricts or otherwise affects rights; increases obligations, responsibilities or sanctions; affects legally protected interests; gives a decision on complaints or appeals; decides in any way against what the applicant has requested; decides contrary to the standard interpretation and application of legal precepts; or implies the revoking, modification or suspension of a previous administrative act, must be justified with a clear indication of the motivation for the decision and includes clear legal support for the decision taken.

Decree 30/2001 codifies the Operational Rules of the Public Administration and regulates the processes by which administrative appeals are conducted. Law 6/2004 goes further to ensure that a record is created on the basis of which citizens can exercise their rights to direct administrative appeals and appeals in subsequent administrative litigation. Importantly, it provides that a citizen can legally require an official who has given an only oral answer to reduce that answer to writing. And of course, unlike Decree 30/2001, Law 6/2004 is a criminal statute with sanctions for its violation. However, Law 6/2004 does not clarify the citizen's recourse if a verbal response is not handed down in writing within the stated time period. Perhaps the nullity of the decision, or a right of direct appeal to the administrative court under simplified procedures, would be useful. This is a technical question that requires further study.

Any verbal decision of this nature given must be put into writing and presented within 7 days. Complaints on this type of issue are taken before the Administrative Tribunal. The time taken for a case depends on how busy the Tribunal is and costs are calculated according to a table of costs published in accordance with the 1996 Decree 28/96 of 9<sup>th</sup> July). Costs may be awarded, though the winning party is also subject to up to 10,000MTn in costs.

There are no rules on gifts and hospitality that can be applied in the civil service. Civil Service bodies are obliged, according to the law to justify their administrative measures. The justification should take the form of a succinct description of facts and law which leads to a decision, and may consist of a mere agreement with the justification for a previous decision information or proposal, which in this case constitutes an integral part of the respective action that must be transcribed. The law also says that the adoption of justifications that, is obscure, contradictory, insufficient, or do not clearly state the justification for the action, shall be considered as a lack of justification. In law, there are regulations requiring an impartial, independent and fairly managed

civil service<sup>19</sup>. There are also regulations to prevent nepotism, cronyism, and patronage within the civil service<sup>20</sup>. Civil servants convicted of corruption are prohibited from future government employment.

Other laws, though not aimed specifically at fighting corruption, also provide ways to monitor the conduct of public officials. Decree n° 30/2001 of 15 October (below, the “Decree 30/2001”) which approves the working rules for public administration services, requires that all public administration activities be transparent and gives the public the right to make suggestions or complaints. In conclusion, the Civil Service in Mozambique has to solve its several constraints to be seen as an integrity pillar, namely to enforce the accountability of public officials in carrying out the tasks and assignments bestowed on them.

### **Transparency**

The Mozambican civil service is characterized by high levels of red tape; low wages that act as an excuse for poor performance of public officials; there are no codes of conduct except in the Customs department. Data announced by the ANFP showed that in 2006 a total of 1,076 disciplinary proceedings were initiated against state employees, a surprisingly high average of almost three a day. Of these cases, 827 have been concluded, while 249 are ongoing. 164 people were sacked from their jobs, and 194 received the more severe penalty of expulsion from the state apparatus. 191 were fined, 151 were demoted, 73 were publicly reprimanded, and 54 received a warning. This is somehow strange, because Mozambique has an anti-corruption law which states that corruption is a crime and therefore civil servants are subject of criminal charges. The authorities are not using this law to prosecute those involved in corruption practices. Instead, the government still uses administrative and disciplinary sanctions to deal with petty corruption.

Despite the reform of the customs service, where management was farmed out for ten years to the British company, the Crown Agents, and despite massive recruitment of new customs staff, customs remains, according to these figures, the most corruption-prone part of the state apparatus. 193 disciplinary proceedings were initiated against customs staff in 2006 (which compares with 49 in the police force, 40 in the judiciary, and 29 in the Ministry of Education). The main offences listed by the ANFP that gave rise to these proceedings included abandonment of one's position, theft, drunkenness at work, negligence, illicit user charges and falsification of documents.

### **Complaints/ Enforcement Mechanisms**

The law provides that no informant or complainant may be subjected to disciplinary procedures or prejudiced in his or her professional career or be harassed in any way as a result of the complaint or accusation concerning crimes pursuant to the law. It is unknown whether Mozambique has any witness protection programs.

This year Mozambique's Constitutional Council, the body that checks that official acts are in line with the constitution and the law, has ruled that the National Civil Service Authority (ANFP) exceeded its powers when it attempted to oblige all state bodies to end every item of correspondence with the words (“Decision Taken, Decision Complied with”). The ANFP approved this “uniform formula for closing official correspondence” in a resolution of 2 March, and informed other state bodies, including the Constitutional Council. Surprised at being told how it should sign off its letters, the Council investigated the legality of the ANFP instruction, and concluded that the ANFP has no power to impose any slogan at the end of correspondence<sup>21</sup>.

### **Relationship to Other Pillars**

The government of Mozambique, through the Civil Service source various products and services from the private sector, forming a client/supplier kind of relationship. Government also issues various operating licences and permits to the private sector. There is therefore, a significant interaction between the Civil Service and the private sector. The civil service is therefore an important pillar in as far as the country's good governance is concerned.

The Civil Service also interacts in different ways with International Institutions through capacity building.

### **Recommendations**

- There must be a statutory requirement for public disclosure of assets – to deal with the issue of conflicts of interest in terms of the overlap of public office, Party, personal and business interests;
- Civil society and parliament (NA) should advocate for a freedom of information act to expose the decision-making process;
- The relevant authority should devise legal and operational mechanisms dealing with hiring and firing, promotions etc that promote transparency while also addressing problems caused by patronage at the expense of meritorious recruitment policies
- There should be a more stringent public sector Code of Ethics/Conduct;
- Linked to the recruitment policy there should be tools devised by the relevant authority to deal establish performance management systems in the public sector;
- Civil society in collaboration with the relevant authorities should lobby the NA to draft a law that establishes an Ombudsperson or other watchdog bodies.

## **Law Enforcement Agencies**

### **Role of Institution as a Pillar**

#### **Mozambique Police Force**

The Police of the Republic of Mozambique (PRM), in collaboration with other institutions, have the responsibility to enforce law and order; safeguard the security of the people and their assets; and ensure respect for the rule of law and the strict observance of the fundamental rights and freedoms of the people. The General Commander of the police is appointed by the President of the Republic, based on political trust. The terms and references for the head of the police are not clear but at least he/she has to come from either a police or military background. The last general commander of the police was a policeman but the current one is a general from the army.

#### **Structures/Resources**

The jurisdiction of the police is nationwide and it is hierarchically deconcentrated to local level. Like other public institutions, it is not clear how many policemen exist (though the generally accepted number is 19,000). The Ministry of Interior is currently undertaking a census aimed at establishing the exact figure.

The Constitution states that the police force is non-partisan, and “impartially serves” the public. However, nomination of the Police chiefs is solely based on merit. In fact, the nomination of some of the higher level chiefs is based on political trust and it is believed that the majority are forced to join the ruling party.

Mozambique has one of the lowest policeman/citizen ratios: 1 policeman for 1,089 people; in South Africa, the ratio is 1 for 450 people; this ratio may even get worse since the Ministry of the Interior is losing hundreds of policemen a year to AIDS. There are efforts aimed at improving the recruitment and training of policemen, particularly with the opening of the Academy of Police Sciences (ACIPOL) (OSISA/AFRIMAP, 2006). In the Ministry of the Interior, there is no information on the budget for the Police.

In an effort to augment the force, the Minister of the Interior launched an initiative to create police community councils in 2001. By the end of 2005, more than 1 000 had been established across the country. These structures which are designed to promote dialogue between the police and citizens on problems of public security, and to involve citizens in crime prevention efforts, could in principle provide a useful mechanism in improving neighbourhood security. However, there have been problems with the actual program implementation (Osisa/Afrimap, 2006).

#### **Accountability**

The Minister of Interior controls the police forces and until recently part of the prison system. The Ministry also plays an important role in the administration of Justice, even if it is not conventionally included as part of the legal and judicial sector. The Ministry also responsible for the main police forces in Mozambique: these include protection police, traffic police and the Criminal Investigation Police (PIC), which are all part of the PRM.

Although the Public Prosecutor’s Office lays charges, it is PIC that must undertake criminal investigation. It is supposed to investigate criminal activity and prepare dossiers with respect to suspects for presentation to judges charged with preparing arraignment. If cases are badly prepared, or go missing (either deliberately or in error), a criminal suspect can either be freed or remain uncharged for long periods. According to a study commissioned by the World Bank in 2003, “...the fact that the PIC is subordinated to the Ministry of Interior rather than to the Office of the Attorney-General has been widely criticized among legal professionals. Indeed, the PIC,

the Office of the Attorney General and the courts has been accusing each other of undermining the fight against crime”.

### **Integrity Mechanisms**

Generally, the policemen are under paid, with the low level officers earning about USD80 per month and the superior officers earning around USD100 per month. Because of low remuneration, most police officers engage in Corrupt and extortion activities and there is generally an increase in such cases. The authorities frequently use violence and the arbitrary detentions to intimidate people and therefore prevent the denunciation of various abuses perpetrated by the police. The police impunity is still a problem; the Police for Criminal Investigation (PIC) was criticized for being inefficient and according to the Media reports, some PIC officers were transferred to other departments, preventing them from finalising investigations which could implicate high ranking government people. The Ministry of the Interior informed that annually about 750 policemen are subject to disciplinary proceedings, including 260 expelled (LDH, 2005).

A total of 34 irregular cases in the selection of candidates for basic police training have been detected this year in the Matalane Practical Police School. The situation was uncovered during a visit by Deputy Interior Minister Jose Mandra to the school to appraise the process through which candidates are admitted. Those found to have been illegally admitted will be expelled from the school and replaced by others whose applications had been turned down. The irregularities uncovered include candidates with marks lower than the minimum required in admission exams, falsified lists of candidates from the provinces, admission of candidates who had been turned down in previous years without the due authorization by the Police General Command, and candidates who were found to be unfit during medical inspection<sup>22</sup>.

### **Transparency**

PIC is subordinated to the Ministry of Interior and this fact has been widely criticized among legal professionals. PIC is often accused of not investigating alleged crimes properly. PIC is widely perceived as an institution with high rates of theft and embezzlement. PIC officers have frequently been accused of removing and destroying case files in order to frustrate their prosecution. When Attorney General Joaquim Madeira visited Maputo City PIC in January, he found that large numbers of warrants of arrest had never been served, allegedly because PIC could not locate the suspects, or did not have enough vehicles to serve the warrants.

According to the Constitution, the Public Prosecutor’s Office constitutes of a hierarchically organized magistracy under the Office of the Attorney General. In their duties, the magistrates (prosecutors) of the Public Prosecutor’s Office are subject to the criteria of legality, objectivity, neutrality and to strict norms provided in the law. The Public Prosecutor’s Office enjoys autonomy, as defined by the law; the attorneys are independent in their duties. However, the Media has been publishing articles that link the administration of Justice to political power.

The opposition political parties, notably Renamo, have also complained about the alleged politicization of the Justice system. There have been some serious incidents which indicate that, in particular, depoliticisation of the police force is not yet complete. In November 2000, up to 100 people, almost all opposition supporters died of asphyxiation in a grossly overcrowded police cell in Montepuez. The deaths followed a round-up after violence broke out during a demonstration by RENAMO-UE) against allegedly rigged elections.

The Montepuez incident raised serious questions about the extent of the police force’s impartiality, and, although a parliamentary committee and independent initiatives from civil

society groups were set up to investigate the events, none has publicly released any report. The role played by civil society groups such as the Mozambican League of Human Rights (LDH) is essential to record and monitor allegations of human rights abuse committed by the police. However, there is no government-funded independent external mechanism established by law to investigate complaints against the police, and implementation of such an oversight mechanism is urgently needed.

### **Complaints/ Enforcement Mechanisms**

In recent years, as a result of the chorus of protests against the abuse of power and corruption within the Police, a string of policemen have been dismissed, because of offences such as extortion and bribery. Occasionally officers have been successfully prosecuted for such serious offences as murder and drug trafficking, in a particularly spectacular case, several policemen, including the local commander of the riot police, were sentenced to long jail terms in Inhambane province in December 2006, for trafficking in hashish drug.

### **Relationship to Other Pillars**

The basic function of Police is to maintain law and order in the country. Their importance as one of the NIS pillars can therefore not be overemphasized. However, like many African countries, the Mozambique police fail to effectively execute their duties to a number of challenges, ranging from lack of financial as well as human resources. Consequently, most police officers compromise their duties and some end up engaging in corrupt activities. As the law enforcement agency, police interact more or less with all the NIS pillars.

### **Recommendations**

- For the police to effectively and diligently execute their duties, there is need to urgently look at way of improving their working conditions and remuneration.
- There is also an urgent need to put in place mechanisms aimed at curbing corrupt staff employment activities, thereby ensuring a competent police force.
- Corruption must be tackled from all ranks of the force to ensure fair delivery of justice and to re-gather public confidence.
- Mechanisms should be put in place to protect whistleblowers who normally report and unearth corrupt activities.

### **Director of Public Prosecutions (DPP) (non existent NIS Pillar)**

## **Public Contracting System**

### **Role of Institution as a Pillar**

This domain is enforced through a procurement Law approved in 2005 which states the requirements that have to be followed by public institutions when contracting external services and purchasing goods. The situation before the procurement Law (Law 54/2005 dated December, 13) was alarming. The procurement procedures were very weak and created an environment conducive to corruption. According to the law, the procurement procedure must be widely publicized and the final decisions must be written by the competent authority with appropriate explanation.

### **Structures/Resources**

Donors, for the most part, require goods and services to be procured following their own guidelines and under close supervision. At times, they procure the goods and services themselves. As a result, Mozambique has hardly developed a public procurement system of its own. Existing practices, to the extent that they have not fallen under the purview of procurement guidelines of donors, have tended to rely excessively on discretionary (and changing) powers of the public sector, making the process an easy prey to corruption and inefficiencies.

Given these circumstances, Mozambique has very limited experience with a modern and systematic procurement system. This has fostered a symbiotic and often corrupt relationship between the authorities and segments of the business sector in the award of contracts. Because of the breadth and complexity of procurement, there are many forms of fraud and corruption. Some of the most common corruption schemes are: bribes and kickbacks, conflicts of interest, collusive bidding, bid rigging, false statements and claims, avoiding competition requirements, manipulation of the bidding procedure by public officials, false or duplicate invoices by contractors, failure to meet contract specifications, and purchases for personal use or resale. Under this barrage of corruption, the Law becomes arbitrary; employees set their own law that interests them, according to one interview<sup>23</sup>.

### **Accountability**

It is not easy to establish the size of the procurement market in Mozambique. The information is very centralized and state institutions are reluctant to give data. It is however, important to bear in mind that in the context of Mozambique, external aid and Foreign Direct Investment have some impact on the size of the market and on the procedures. To ensure accountability, procurement agencies must present their reports to the Ministry of Finance. Also, the law provides the right for public consultation and states that all documentation must be in the public domain.

### **Integrity Mechanisms**

While companies may be involved in the payment of bribes to obtain information, facilitate processes or secure lucrative tenders with the government, they may also be engaged in the same type of practices between themselves. This is particularly true with respect to procurement and tax evasion, sale of counterfeit products and the use of informal markets by formal companies to distribute illicit goods. The private sector clearly has a role to play in combating both public-private and private-private corruption. In most cases the tools required to do so are identical.

The situation has changed somewhat with the procurement law; since there are now regulations addressing conflict of interest for public procurement officials. The Law 54/2005 states that the following are prohibited from representing the contracting entity; those that have an interest in the contract; those whose spouses or close relatives have an interest in the contract; those who have shares in the contractor; and those who have any other kind of tie with the contractor. To

prevent the risk of misinterpretation, there is also mandatory training for public procurement officials. However, there is no mechanism that monitors the assets, incomes and spending habits of the public procurement officials. These are important legal provisions for corruption prevention but have not yet produced noticeable results. In law, there are regulations addressing conflicts of interest for public procurement officials<sup>24</sup>. Conflicts of interest regulations for public procurement officials are also enforced. The law also requires that major procurements must be competitive<sup>25</sup>. Unsuccessful bidders can instigate an official review of procurement decisions<sup>26</sup> and challenge procurement decisions in a court of law<sup>27</sup>.

Companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids. Citizens can access public procurement regulations<sup>28</sup> but the government is not required to publicly announce the results of procurement decisions. The problems faced in procurement are not necessarily the result of limitations in legislation or regulations. Broadly speaking, legislation in Mozambique is modern, progressive, and investor-friendly. In most cases the problem lies in implementation or lack thereof. Accordingly, emphasis must be put on the institutional and incentive structures, which will affect the political will for implementation and enforcement.

Also, the 2004 anti-corruption law provides for the inclusion of an anti-corruption clause in all public contracts. The omission of such a clause will render the contract null and void. In practice, this is not applicable yet. As for integrity, according to the law, the winner of the tender is known at least amongst those participants in tendering, and these proceedings permit them to object in cases of disagreement. In theory, the Public Contracting System in Mozambique is part of the integrity system, as it enables an environment for clean investments, or at least attempts to do so. Any analysis of this pillar needs to take into account that the process itself is very new; the law was recently approved thus, it is still early to evaluate its effectiveness.

### **Transparency**

Some studies show weaknesses and limited transparency. A KPMG (2004) report commissioned by the now extinct Ministry of Plan and Finance showed that there was no procurement plan within the administration of the public finances, namely a plan that would contain the information on the type of equipment and services to be acquired/contracted; a codification of the public tenders and a timeframe on the execution of the tenders. The same report stated that the members of the contracting commissions were not signing any impartiality declarations.

### **Complaints/ Enforcement Mechanisms**

Despite the law, there are lots of complaints from Mozambican businesses that tenders are often manipulated. One such case was a bid to contract a company to provide non-intrusive inspection services (scanners) in the National Customs Authority. The tender occurred in early 2006 and one of the losers, the French company (Smiths), alleged that the process was not transparent and the authorities favoured a firm that has strong links with the Frelimo Party, thus an indicator that the procurement process is still far from being fully transparent in Mozambique. Currently enforcement mechanisms are still weak and there seem to be no provisions for whistleblowing.

### **Relationship to Other Pillars**

The pillar /institution is an integral part of the NIS and is central in the activities of procurement entities. It relates to almost all the other NIS pillars and specifically deals with donors, business sector public/private), and even the media which is very vital for information dissemination.

## **Recommendations**

- There is need to come up with solid procurement procedures that are in line with the anti-corruption drive initiatives
- Mozambique should develop its own public procurement system.
- There is also need to put mechanisms in place to curb rampant increases in bribery tendencies within the institution.
- Emphasis should be put more on institutional incentive structures to affect the political will for implementation and enforcement.

## Ombudsperson

### Role of Institution as a Pillar

The ombudsman is a new figure in the Mozambican institutional set up, first established by the 2004 Constitution. This states that the ombudsman “is a body that guarantees the rights of citizens, the defense of legality and of justice in the performance of the public administration”. The ombudsman is to be independent and impartial in the exercise of his/her duties, and must submit an annual report to parliament on his/her activities. .

In terms of competence,, article 259 (1) of the CoM states that the Ombudsperson deals with the issues handed to him/her and without decision making power, sets recommendations to the competent authorities to repair or prevent injustices or illegalities and 259 (2) of the CoM if the Ombudsperson, through an appropriate investigation, concludes that the Public Administration committed mistakes, illegalities or serious violations (including of the law), he/she must inform Parliament and the Attorney General who has to state clearly the necessary actions or measures to be taken.

**Three years have passed and there is still no Ombudsperson, so in practice, it is currently a non-existent pillar.** The problem is that the Ombudsperson must be elected by Parliament, by a two-thirds majority, which means that both Frelimo and Renamo must vote in favour. No such consensual figure has yet been found. Furthermore, when a detailed law on the Ombudsperson’s office was passed, Renamo tried to politicize the post by demanding the appointment of two deputy Ombudspersons, one from Frelimo and one from Renamo. When Frelimo rejected this, Renamo threatened to veto any candidate for Ombudsperson.

## **Anti-Corruption Agencies**

### **Anti-Corruption Commission (ACC)**

#### **Role of Institution as a Pillar**

Article 17 of the Anti-Corruption law establishes the powers of the Public Prosecutor's office, which, with the cooperation of the police, shall carry out the following preventive tasks:

- ✓ Collect information concerning facts that can support the suspicions that crimes of corruption have been committed;
- ✓ Request inquiries, probes, inspections and other procedures that may be deemed necessary to establish conformity of certain actions or administrative procedures in the scope of the relations between the Public Administration and private entities and
- ✓ Propose measures which will lead to a reduction in the crimes mentioned in this Law.

The Law provides for the establishment of the GCCC) under the Attorney-General's Office. The GCCC may:

- ✓ Carry out inquiries and investigations of complaints and accusations where crimes of corruption are suspected;
- ✓ Summon people to present information in writing on their assets in the country and abroad, specifying the dates on which such assets were acquired and how they were acquired;
- ✓ Conduct preliminary investigations, for which it may request documents, information, bank statements, and other details on the person suspected of having committed the crimes set out in the Law;
- ✓ Order the detention of people so summoned and ensure that they appear before the investigating magistrate;
- ✓ Carry out searches in any place to obtain incriminating evidence;
- ✓ Enjoy free access, without prior warning, to institutions of the Public Administration, government entities, and the administrative services of local authorities, for the purpose of conducting investigations;

The law also states that:

- ✓ in order to speed up procedures related to the functioning of the Office, the GCCC may contract or appoint persons for a specific period or a specific case, provided that such persons display the required integrity, impartiality and experience;
- ✓ whenever the conditions are suitable, provincial anti-corruption offices may be established for purposes of this Law.

#### **Structures/Resources**

The Central Office for the Fight against Corruption (GCCC) functions as an autonomous unit under the attorney general's office, but doesn't have an autonomous budget and has only few prosecutors working as a permanent full-time staff. The institution has reasonable funding which is typical of a new institution but its performance is still of very limited reach.

#### **Accountability**

The GCCC is answerable to the Attorney-General, who appoints its head. The GCCC has three delegations; in Maputo, Beira and Nampula. In the Central delegation in Maputo, there are 5 prosecutors, two researchers and 6 staff. The Beira and Nampula delegations have only one prosecutor and two staff each.

#### **Integrity Mechanisms**

In March (year), the GCCC published its first six monthly reports and the results were disappointing; it only undertook 9 legal actions implicating 16 people. Apparently, the most significant of these actions was the detention of a man suspected of stealing a goat and a DVD

player and five other people for stealing 5 million Meticaís which is equivalent to USD250. The profile of cases being investigated in this Office is petty corruption which leads to the conclusion that the Office is failing to address grand corruption.

According to the GCCC, from March to September 2006, prosecutors brought charges in 17 cases of corruption, in which the state was robbed of more than one million dollars (25 million Meticaís) and according to the Attorney General's 2006 annual report, between 2002 and June 2005 the Anti-Corruption Unit (the predecessor to the GCCC) received 128 corruption cases: 70 remained under investigation, 30 cases were in court, 15 were dropped, nine were sent to other institutions for consideration, and four were appended to other cases. Of those cases in court, none resulted in convictions by year's end. In July 2007, authorities under orders from the GCCC detained a former senior official of the Bank of Mozambique, Adelino Pimpao, and accused him of stealing \$50,000 (1.2 million Meticaís) in 2004 and using the money to make payments to a fictitious institution. There was no further update at year's end.

Despite the existence of the GCCC, over the past 5 years not a single case of corruption has come to trial in Mozambique. Some observers continue to blame the judiciary for hampering efforts by the attorney general's office to fight corruption, citing the low number of cases accepted by the court system. But the weaknesses of the GCCC lie in its investigative capacity, in its ability to engage other institutions necessary for the successful prosecution and trial of cases (lack of political clout) and in the lack of political will to fight corruption in Mozambique.

This lack of political will can be illustrated by the fact that some suspects have failed to appear before the GCCC despite receiving summons. Also, prosecutors dealing with sensitive cases seemed to be under surveillance by the criminals and have even been warned "about clandestine meetings involving some of the suspects and people linked to the world of violent crime, who are generally hired to commit crimes"<sup>29</sup>.

According to the GCCC, from March to September (year) prosecutors brought charges of 17 cases of corruption in which the state was robbed of more than one million dollars. In December the National Civil Service Authority reported that from January to October (year) authorities expelled 191 public servants for various irregularities. According to the attorney general's annual report, between 2002 and June 2005, the anti-corruption unit (the predecessor to the GCCC) received 128 corruption cases; 70 remained under investigation, 30 cases were in court, 15 were dropped, nine were sent to other institutions for consideration, and four were appended to other cases. Of those cases in court, none resulted in convictions by year end.

### **Transparency**

The removal of the head of the GCCC's predecessor, the Anti-Corruption Unit in the Attorney-General's Office, Isabel Rupia, who was perceived as genuinely keen to tackle corruption, was seen as a retrogressive step. It is not clear where the weaknesses of the GCCC lie whether in its investigative capacity, its ability to engage other institutions necessary for the successful prosecution and trial of cases (lack of political clout), or whether it is purely a lack of political will.

### **Complaints/Enforcement Mechanisms**

Although the Anti-Corruption law establishes mechanisms to protect whistle-blowers, in practice the atmosphere is not appropriate for trust between informants and the oversight entities. Nevertheless, the law states that "no informant or complainant may be subjected to disciplinary procedures or prejudiced as regards his professional career or be harassed in any way as a result of the complaint or accusation concerning crimes pursuant to this Law". The article adds that

“any person who acts against the provisions of the clause above shall be punished by a prison sentence of six months. But in a press conference, its Director, Rafael Sebastião<sup>30</sup>, said that he did not have statistics on the denunciations of corruption cases, but there were many. He also said that this institution depends on popular denunciations.

### **Relationship to Other Pillars**

Despite pressure from the media and civil society, there is a very modest improvement on the performance of GCCC. Looking at the ratio between cases investigated, cases prosecuted, and convictions, the result is disappointing. The Office is clearly addressing only the petty corruption, when grand corruption is one of the major problems in the country. The Office is closed to public opinion, which poses the risk of not receiving more information. It doesn't have any form of relationship with civil society and just gives press conferences twice a year.

There is supposed to be a strong relationship between the GCCC and the General Audit Institution, however, little has been done to strengthen this relationship.. The law establishes that an exchange of information must occur between the two institutions in order to strength the fight against corruption; article 21 of the anti-corruption law sets that suspicion of corruption detected in public and private audits has to be channelled to the GCCC but according to Rafael Sebastiao, the head of the GCCC, this exchange is not happening.

Much worse is the attitude of the judiciary, which is one of outright sabotage. In June 2007, the GCCC finally tried to bring a case of corruption to trial, only to be told by the Maputo city court, that the GCCC is not a prosecuting authority. The argument is absurd since the GCCC is staffed by prosecutors and its head is an Assistant Attorney-General.

The poor performance of the GCCC is an affirmation that setting it up was merely a cosmetic gesture on the part of the government; it has neither real interest nor political will to combat corruption. Hence as an integrity pillar, the GCCC is very weak.

### **Recommendations**

- The GCCC must be awarded an autonomous budget In order to effectively carry out its mandate.
- Enough prosecutors on a full-time basis must be appointed.
- The GCCC must receive full support from other organs of the NIS so that prosecutors tackle cases involving grand corruption without fear of reprisal from those found on the wrong side of the law.
- The GCCC must improve its communication with other organs of the NIS so that its functions are comprehensively known by all and sundry in the country.

## Media

### Role of Institution as a Pillar

The 1990 constitution, followed by the 1991 press law, established press freedom, outlawed censorship, and permitted a flourishing of privately-owned media alongside the public media. There is now a large number of private radio stations, private television stations and more than 40 community radio stations – although some are perceived as generating government propaganda. The press has similarly experienced a period of growth – both as businesses and in terms of editorial influence.

The 2004 Constitution guarantees access to sources of information and scraps the 1990 Constitution's demand (never implemented) that the media had to respect "the imperatives of foreign policy and national defense". The constitutional provision on access to sources is very general, which enables officials to evade it, and make up claims about "state secrecy". The constitution needs to be backed up by a specific law on freedom of information – the Mozambican chapter of the regional press freedom body MISA (Media Institute of Southern Africa) drafted just such a law, after a wide-ranging public debate and delivered it to parliament, where it has been gathering dust for the past three years.

Freedom of the press has become a reality in Mozambique (such that the 2006 report from the Paris-based NGO "Reporters sans Frontieres" ranked Mozambique as having greater press freedom than the United States). The government does not create barriers to the establishment of new media, though some of the registration requirements are burdensome (part of the general problem of excessive red tape in the civil service). Media bodies' entities can freely organize with little or no interference from the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

### Structures/Resources

The government supplies 80 percent of the operating budget for Televisao de Mozambique (TVM), which certainly used to be the most widely watched television station. Over the past couple of years, however, TVM has been losing market share to STV, a TV station owned by the private company SOICO, which often contains more aggressive news coverage than TVM. While TVM has provided more balanced news coverage than in previous years, it is perceived as still retaining a strong government and FRELIMO party bias. In April and May 2007, TVM provided little coverage to a controversial parliamentary debate on government accounts in which the administrative court, in an unprecedented move, ruled that state funds had been widely misused.

According to Government Press Office (Gabinfo), the print media sector has approximately 117 private newspapers, all of which are at least nominally owned by private businesses. Based in Maputo, *Noticiais* is the major national daily newspaper with an average print run of 12 800 copies (2003 data) for a population of about 19 million people (i.e. one copy per 1,400 people). *Noticias*, and the Sunday paper *Domingo* are owned by the company Noticias SARL, which is theoretically private, but where the Bank of Mozambique is the major shareholder. *Diário de Moçambique*, which is based in Beira, the second city of the country, has a print run of 5,000 copies per day. *Diario de Mocambique* used to be state run, and when it was privatized, the company that took a majority stake had close connections to Frelimo.

Radio Mozambique (RM) is a state broadcaster that obtains a substantial part of its funding from government. RM is the only broadcaster licensed to transmit countrywide. It broadcasts in 21 languages, 18 of which are local dialects, Portuguese and English<sup>31</sup>. There are 5 operational

Television Stations in Mozambique, all based in Maputo. Televisao de Mocambique (public) is the major national TV station, covering the entire national territory. The Media Institute of Southern Africa (MISA) again noted that the process for obtaining a radio operating license was often long, convoluted, and politically biased. According to MISA, the country requires a new law clearly delineating the difference between commercial and public radio.

### **Accountability**

The media licensing is done by a government institution operating under the Prime-Minister's Office, the Information Office. It has the statute of a National Directorate, and there are no complaints of lack of transparency. The major criticism concerns a provision in the Press Law which restricts foreign capital to just 20% of the equity in Mozambican media companies. This supposedly patriotic provision makes it difficult for the media to raise much needed capital. The licensing for radio and television frequencies is in the hands of the National Communications Institute, which is subordinate to the Ministry of Transport and Communications. This Institute has a statute of public company. In all scenarios for Print Media, Radios and Television, there must be consent from the Council of Ministers.

In Mozambique, there is no common Code of Conduct for journalists. Section 8 of the Press Law 32 requires every media company to have its own editorial policy that defines its orientation and objectives. Such editorial policy needs specifically to declare that it respects the professional ethics of journalists. Some newspapers have their codes of conduct, other do not have any internal ethic framework.

The body that governs media ethics is the Superior Council of Media (SCM)<sup>33</sup>. The objectives of SCM are the following:

- ✓ To ensure the exercises of the right to information and the freedom of the press;
- ✓ To guarantee the independence and impartiality of the media organizations of the public sector, as well as the autonomy of professionals;
- ✓ To observe the objectivity of the press freedom;
- ✓ To ensure the right of access to broadcasting by political parties and the right to replay referred to in the Section 12 and 33 in the Press Law;
- ✓ To act against corruption in the media sector;
- ✓ To act in defense of public interest; and
- ✓ To respect ethical norms.

Although SCM have these powers, the body is criticized for ignoring some attacks against the press. For example, on February 2007, the independent weekly newspaper Savana reprinted eight of the 12 Danish cartoons that had sparked world controversy and widespread condemnation by Islamic groups. In a violent protest staged by approximately 120 Muslims in front of the newspaper's office building, protesters damaged property, and a Muslim journalist reported that the mob attacked black Muslims advocating for peaceful demonstrations and dialogue. The government issued a statement condemning the paper's decision to reprint the cartoons and underscored the state's commitment to secular principles and religious freedom.

But SCM did not issue a single statement in defense of public interest. Savana editor-in-chief issued an apology on television and stated that the publication of the cartoons was aimed only at showing people the object of the controversy. In Mozambique, there is neither rule on conflict of interest for journalists nor rules on gift and hospitality. The issue of self censorship is very important in Mozambique. Although opinion articles and televised debates about polemic themes are commonplace, there is still self-censorship from the state linked media which restrict the debate on certain issues and are thus less open to divergent opinions when compared to the

private media. This means to a certain extent, there is no institutionalized censorship in the state funded media, but very little criticism is expected from them.

### **Integrity Mechanisms**

A public debate on proposed amendments to Mozambique's 1991 press law was launched by GABINFO in November, 2006. The amendments were not drawn up by GABINFO on its own; a working group was formed which included representatives of the National Journalists Union (SNJ), the Mozambican Editors' Association (EDITMOZ) and the Mozambican chapter of MISA. But the SNJ, EDITMOZ and Misa-Mozambique representatives did not discuss the content of the amendments with the members of these organizations. In fact, there has been no grassroots pressure for changing the law and no mandate from journalists to do so.

The most startling change proposed in the amendments is the introduction of a licensing system for journalists. This amendment declared "the exercise of the profession of journalism requires the prior obtaining of the professional license, in terms of the regulations to be approved by the government, on the proposal of the socio-professional bodies in the mass media area".

In other words, should this amendment be passed, nobody can be a journalist without acquiring a license (known in Portuguese as a "carteira profissional"). This flies in the face of the general principle upheld by press freedom bodies that there should be no official licensing of journalists. No doubt it can be argued that the current government, with its proven track record of respecting press freedom, would never prevent any journalist from obtaining a license. But laws should not be written with just the present government in mind.

Nonetheless, the SNJ and MISA-Mozambique are in favour of the "*carteira profissional*". Indeed, back in 2004, MISA-Mozambique drew up draft regulations for this licensing system, and an associated bill on a "Statute for Journalists". The indications are that most Mozambican journalists favour this licensing system. Indeed, during the debate only one speaker opposed, as a matter of principle, the introduction of the "*carteira profissional*". Everyone else argued that a professional license was needed to identify journalists properly, and prevent charlatans from passing themselves off as journalists.

It was argued that just as entry into the legal and medical professions is strictly regulated, so the exercise of journalism should be licensed. "Bad doctors can kill, and so can bad journalists", argued one participant. A professional license would "dignify" Mozambican journalism. Logically enough, some of those who favour licensing also demanded that journalists who offend against the principles of the profession should be stripped of their licenses.

The draft amendments avoided taking a position on the issue of decriminalizing libel. Lawyers in the audience pointed out that defamation is not specifically a press crime. It is covered by the penal code, and it would thus probably be unconstitutional to make journalists exempt from criminal libel, when citizens who are not journalists could still face such charges. The position argued by some was that the penalty code itself should be changed, eliminating the very concept of criminal libel, and making all forms of defamation matters of civil law. Also criticized by some speakers was an article in the draft which would ban trade unions, socio-professional organizations and political parties from owning their own media. Taken literally, this would mean that even the SNJ would be unable to publish a paper or magazine of its own.

According to the Media Institute of Southern Africa (MISA) the Law which protects the journalist's right to accessing information has never been observed by the public entities, which declines the provision of the requested information to journalists, probably, for protection of the

justice, military and the State secret. As a result, MISA-Mozambique has started a process of drafting a Law aimed at promoting access to information by journalists and the proposal has been sent to the NA, and is at the moment waiting for the pronouncement of the Parliament.

Mozambique has one of the most democratic media laws in Africa where journalists can criticize the government, the president and other government officials without harassment or fear of being detained. Nonetheless, criminal libel laws remain on the statute book and are a deterrent to total freedom of expression. Opposition parties continue to complain sporadically that they do not receive enough coverage in the state media.

### **Transparency**

Defamation is a crime in Mozambique and journalists can carry a jail term of up to two years, though in the few cases that have come to trial, the courts generally impose fines and suspended sentences.

From time to time, the media deals with corruption issues, but, since the murder of the country's foremost corruption investigative journalist, Carlos Cardoso in November 2000, there has been little in the way of true investigative journalism. Nonetheless, the media has pursued certain cases quite tenaciously, notably the allegations of abuse of Swedish aid money by former education minister Alcido Nguenha. The debate about corruption issues is not censored given the abundance of private media which plays a major role in voicing diversified and divergent opinions.

### **Complaints/ Enforcement Mechanisms**

Complaints are mainly to do with harassment of journalists from the independent media. These complaints are hardly followed through as law enforcement agents are nearly always inclined in favour of the state machinery.

In Mozambique, the law (Press Law) provides that media organizations can withhold disclosure of their sources of information. There is little evidence that the government is prosecuting media for withholding sources. However, in 2006, police harassed and detained local journalists<sup>34</sup>. On May 2006, Police in Manica Province, under orders from Deputy Prosecutor Jose Abede, detained without charge journalists Sebastião Canjera, Joao Mascarenhas and Patreque Francisco of the privately-owned newspaper Mabarwe. Abede ordered the arrest after an influential local businessman accused the Mabarwe of libel. On week after, local authorities released the three journalists without charge. Misa Mozambique reported that the detentions were unlawful because the law does not allow pretrial detention of individuals accused of libel<sup>35</sup>.

This year, a Maputo court harassed Soico, a media company, insisting that it should pay back wages to a person who was never a SOICO employee. In December 2006, this dispute led the court to seize all the computer equipment belonging to SOICO, thus endangering the continued operations of the company's flagship, the independent television station, STV. The action by Judge Pedro Chambal was viewed in some quarters as an attempt to silence STV, especially as the seizure took place just before the New Year holiday. The equipment was returned to SOICO after expressions of outrage from many civil society bodies<sup>36</sup>.

Another case was the seizure of computer equipment by court officials from paper "Faisca", published in the northern Mozambican province of Niassa. Twice in the space of a month - on 20 March and 12 April - court officials descended on the "Faisca" offices in the provincial capital, Lichinga and seized equipment, supposedly to pay for damages in two libel suits. According to

AIM, in all, these judicial raids cost "Faisca" four computers, four printers, a photocopier, a generator and a fax machine. The provincial branch of the regional press freedom body MISA has come to the rescue, and articles for "Faisca" were being processed on MISA equipment<sup>37</sup>.

Unlike in the previous year, there were no developments in 2005 of harassment of reporters covering the return to the country of Anibal dos Santos Junior, murder of investigative journalist Carlos Cardoso who was sentenced to 30 years imprisonment. In 2006, the public prosecutor's office charged businessman Nyimpine Chissano, oldest son of former President Joaquim Chissano, with "joint moral authorship" in the killing of Cardoso but the trial has not begun yet.

### **Relationship to Other Pillars**

The media continues to be one of the main forces fighting corruption, reporting numerous corruption cases. From time to time, the media deals with corruption issues but despite that fact it would not be safe to say that there is investigative journalism in Mozambique. The debate about corruption issues is not censored given the plurality of media, namely the abundance of private media which play a great role in voicing diversified and divergent opinions.

Increasingly, private newspapers are denouncing scandals related to economic crimes, where the focus is the reports on the cases filed in the judiciary. There is a larger volume of scandals being reported now than in the past, but there is very little investigation of those scandals; there is a kind of denunciation journalism which doesn't do any follow up of the denounced scandals. Some examples are the murder of economist Siba Siba Macuacua, and the allegations of misconduct involving a former Minister of Education.

The most vibrant media organization in the country is the Mozambican chapter of the regional press freedom body MISA. MISA Mozambique is advocating for establishment of an act to deal with access to information. In 2005, MISA Mozambique submitted to the parliament a draft bill on access to Official Sources of Information. The purpose of the Bill is to implement the right of access to official sources of information, as well as the right to information held by relevant private entities as provided for in the Constitution.

Apart from advocate in media issues, MISA Mozambique is performing as a watchdog organization. More recently, MISA has condemned the decision by the country's parliament, Assembly of the Republic, to discuss a report from its Petitions Commission behind closed doors. MISA argued the Assembly's decision was unconstitutional since it flagrantly violates a fundamental right of citizens - the right to information, enshrined in article 48 of the Constitution. "Once again, the Assembly of the Republic has closed its doors on those who elected its deputies: the Mozambican people"; "Once again the representatives of the people are keeping their own electorate in silence and in ignorance", declared a statement from MISA Mozambique<sup>38</sup>.

Due to the nature and role it plays in society, media interacts literally with all the other NIS pillars. Public media in particular interacts with the Executive to a great extent, mainly because it is Government-owned. Normally, public media must toe the line of Government, otherwise individual journalists/staff risk being disciplined. The negative aspect of this is that public media does not normally give a balanced picture of the information and this has major implications on the governance of the country. There is therefore a tendency among the public to want to get more access to the private media in order to have a balanced picture.

Private media in particular covers both Government and opposition political parties. Civil Society and Donors who are pressing for a particular cause are widely covered by the private media.

### **Recommendations**

- Authorising ministries must make registration requirement less burdensome.
- Some public owned media do not report in depth on corruptions issues and there is a reluctance to expose the government, particularly members of the ruling party.
- Training of journalists must be improved to raise the bar of journalistic standards, especially training in investigative journalism.

## Civil Society

### Role of Institution as a Pillar

Mozambique's colonial legacy and the post Independence one party state, followed by over a decade of destructive war mean that Mozambican citizens do not expect to play an active role in governance and holding the Government to account. Pre-Independence civil society organizations were predominantly sports and cultural associations. Some of these organizations have played key roles in conflict mediation and peace negotiations. The expansion and diversification of structured civil society organizations began in the early 1990s and a rapid expansion in the number of CSOs occurred in response to funding available from the external community for various emergency activities and reconstruction of the country after the war.

The first major internal factor for emergence of national CSOs was the need for quick reconstruction of infrastructure for basic services such as education, health, roads, food security, shelter, human rights, pacification and democratization processes. The second major internal factor was the privatisation policy forced on the public sector in the early 1990s by the International Monetary Fund (IMF) and World Bank which, according to Wuyts (1995), created deficiency in the social services sector and enormous human needs. Civil society itself has a relatively short history of operating through a diverse range of organizations and institutions and most Mozambicans report that they are not members of any form of CSO, beyond a religious group.

The Constitution of the Republic in its article 52 (1) states that citizens enjoy freedom of association. In its article 52 (2), it states that social organizations and associations enjoy the right to create organizations aimed at meeting their specific objectives and also can have the necessary assets. To rule associational life, the Assembly approved the Associations Law: Law 6/91 dated 28th of July (year). Under this law emerged civil society organizations, mainly non-governmental organizations (NGOs). For this purpose, civil society will be dealt with as synonymous with associations, particularly the non-governmental organizations (NGOs).

Currently there are about 5,000 Civil Society Organisations (CSOs), covering all manner of groups and subjects. There are CSOs focusing on health; education; rural or urban development; elderly or child support; trade unions, governance and democracy, peace, more recently HIV/AIDS and poverty alleviation, economic justice, foreign debt, environmental issues and sustainable development and so on. Many CSOs combine activities in several areas, arguably to meet the people's needs. The majority of CSOs are funded by donors and international NGOs. Therefore, one can argue that domestic CSOs have to comply with the agendas of the donors and international organizations if they want to get funding. The contention is that domestic CSOs are subject to the agendas and priorities of those who fund their activities. There are few organizations involved in anti-corruption activities. The two most prominent are Etica Mozambique and Center for Public Integrity. These CSOs are funded by international donor agencies, namely USAID, DFID, Danida, SIDA, and SDC among others. CIP is now implementing a 3 years strategic plan with a budget of almost 2 million USD. It has less than 10 people manning its office.

The relationship between the GoM and the CSOs has positively changed, particularly once the GoM perceived that the CSOs were instrumental in its relations with the donor community. On the one hand, the existence of CSOs is *per se* an indicator of liberal democracy and this is important for legitimacy before donors commit themselves and on the other hand the government perceived that it could *use* the CSO to advance its own agendas. While the GoM cannot stand for certain issues in its relations with the donor community, the CSO can do so and the campaign for debt relief is the most emblematic example. CSOs are weak institutions when it comes to

relations with other pillars. Few national CSOs have taken on a strong advocacy role. This is largely because basic service delivery has been a priority but there are also issues arising from limited capacity including the technical capacity to challenge the government machinery; there is also the issue of co-option.

### **Structures/Resources**

Mozambican NGOs face several problems, foremost of which is the omnipresent fear of the flight of the donor community, leaving with its financial support when CSOs have not developed enough to be self sustaining or developed internal sources of funding. Even the simple renting of premises is paid for by donors. In particular, CSOs face the following problems: limited human, financial and material resources; lack of domestic fund-raising opportunities; organizational, management, and leadership skills concentrated in a few individuals; lack of access to information, communications and networks; little experience and few resources for monitoring and advocacy; narrow constituency or lack of well functioning mechanisms for representation and feedback and often responding to donors' interests rather than those of the communities they serve. But much of the funding for CSOs comes from donors and international CSOs, leading to the fear that domestic CSOs are subject to the agendas and priorities of those who fund their activities.

Some CSOs' weaknesses, however, also include lack of coordination (sometimes resulting from disputes about who should do what and sometimes a consequence of their limited financial resources), which leads to duplication of efforts. Some, too, may have insufficient members, weak roots in society, weak organization or weak organizational capacities. Some may also be too dependent on donor funding or may lack lobbying skills.

In law, citizens have a right to form civil society organizations (CSO's) focused on anti-corruption or good governance (law 6/91 dated of 18/07). The same law establishes that CSO's are free to accept funding from any foreign or domestic sources but the law does not require CSO's to disclose their sources of funding.

### **Accountability**

In general, Mozambican CSOs have weak levels of and systems for accountability to their members or constituency, lack adequate internal governance mechanisms and are more preoccupied with securing continuity of funding. They also face limitations in capacity – in technical areas relevant to their remit, in institutional and organizational capability and/or in the physical environment within which they operate. There is also growing concern that CSOs have been co-opted into the Frelimo ruling party. For instance, many CSO heads are former government/party people and their contacts with government are close.

### **Integrity Mechanisms**

The law that governs CSOs doesn't provide for conflict of interest and gifts and hospitably. When it comes to accountability, integrity and transparency the law is too fragile. The issue of integrity is being discussed now that civil society organizations have more seats in the CNE (the electoral commission), after the new CNE laws were approved in December 2007. The new CNE is composed by 13 members (three from FRELIMO, two from RENAMO, and eight from civil society organizations). This composition was considered a great move towards more transparent, independent and professional body.

The law creating the CNE (art 20) says the CNE members work "exclusively" for the CNE. It was pointed in the press that CNE President João Leopoldo da Costa continues in his post as rector of ISCTM (Instituto Superior de Ciência e Tecnologia de Moçambique), and other CNE

members have also retained their own posts<sup>39</sup>. CNE members defend this in two ways. First, they argue that “exclusively” only means there should be no conflict of interest and that Dr Leopoldo can continue as a university rector so long as he also puts in a normal working week at the CNE<sup>40</sup>.

The other argument is that many election commission members held key posts in civil society, and to abruptly leave those posts could seriously damage many civil society organizations. But the counter argument is that in writing the law, parliament wanted CNE members to put all their time and energy, and any extra working time, on preparing and running elections. Some complain that despite the urgency of this rushed election process, this remains a part-time CNE and key issues have not even been discussed yet<sup>41</sup>.

### **Transparency**

Despite the fact that most CSOs do not have transparency mechanisms, there are few cases of corruption charges against civil society organizations. One case was reported this year. Six NGOs linked to the fight against AIDS in the central Mozambican province of Sofala were charged of misappropriating funds intended for the battle against the epidemic<sup>42</sup>. According to Maria Semedo, the coordinator of the Sofala nucleus for the fight against HIV/AIDS, the nucleus provided these six organizations with 176 million meticaïs (about 7,000 US dollars) for activities connected with AIDS. Semedo said that they had used the money for other purposes, which had nothing to do with the fight against AIDS<sup>43</sup>.

### **Complaints/ Enforcement Mechanisms**

There are no cases of threats against civil society anti-corruption activists. But in March this year, the Mozambican police detained at least five people participating in a demonstration demanding the resignation of Defence Minister Tobias Dai, following the explosions at the military arsenal in the outer Maputo suburb of Malhazine in which 102 people died<sup>44</sup>. The demonstration was attended by just a few dozen people. The demonstrators protested in front of the Mozambican parliament, the Assembly of the Republic. Among the detainees was a man named Djo, who is the manager of the Mozambican rap group "G PRO Fam", which shot to fame thanks to lyrics sharply denouncing the government. The detainees were released a few days after.

### **Relationship to Other Pillars**

In the current context of budget support, since 2005, the CSOs have been invited to attend the Joint Review meetings between the Government and donor community. This means that public authorities co-operate with civil society groups. However, so far CSOs have been there as mere observers and not as active partners. So, the process of sharing this particular experience needs to go further, and for that stakeholders need to build trust among each other. The G20, a platform of Mozambican civil society organizations, was established to provide inputs to the Government's poverty reduction agenda but is not perceived as having real teeth.

A Poverty Observatory was formally set up by the Mozambican Government in April 2003 as a tool for both the Government and its international partners to follow-up the Implementation of the PRSP monitoring, evaluation and consultation processes. This Poverty Observatory is one of the relevant spaces that CSOs can use to advocate for poverty reduction and integrity. However, a recent study concluded that “the PO has not evolved into an effective participatory mechanism, not so much because of being informal and depending on ad hoc procedures, but chiefly because it has been restricted to a consultative body with no channels for feedback, social accountability, checks and balances and other forms of citizens' empowerment and participation”<sup>45</sup>.

It also can be mentioned that there isn't a strong relationship between CSOs and the parliament. CSOs and citizens groups are not using parliament to advocate in defense of their matters. Few CSOs are playing significant roles in holding the government to account. As for anti-corruption, recently, Etica Mozambique operated corruption reporting centres in major cities to provide citizens a mechanism to anonymously report incidences of corruption. However, management and resource constraints severely limited their capacity to receive reports. Etica Mozambique also operated a civic education campaign to help citizens identify and protect themselves against corrupt officials or activities.

Also, another anti-corruption organization, Center for Public Integrity, is a member of the National Anti-Corruption Forum, a body set up earlier this month by President Armando Guebuza to implement the government's anti-corruption strategy<sup>46</sup>.

### **Recommendations**

- CSOs must serve the interests of their intended beneficiaries and not necessarily donor interests
- CSOs must improve their capacity in order to challenge government machinery where it is found wanting.
- CSOs must improve their capacity – in technical areas relevant to them, in institutional and organizational capability.

## **Business Sector**

### **Role of Institution as a Pillar**

Mozambique has a comprehensive legislation that governs individual companies. Most of the laws are effective despite concerns that the judicial sector is not capable to protect companies when they are in conflict. Business licenses are available to all citizens. Anyone may apply for a business licenses<sup>47</sup>.

Money laundering is illegal in Mozambique and this year the parliament established an Act to set up a Financial Intelligence Office (GIFIM) that will help combat money-laundering. The Act states that GIFIM will be run by a Coordinating Council chaired by the Prime Minister. The Council's other members will be the Finance, Interior and Justice Ministers, the Attorney-General and the Governor of the Bank of Mozambique.

Private to private corruption is not punishable by anti-corruption legislation in Mozambique but Law 6/2004<sup>48</sup> provides that when public or private interests are harmed by persons in the direct or indirect employ of the State, damages must be paid<sup>49</sup>. However the law does not make clear who – the State, the civil servant or some other person – is obliged to indemnify the victim, and how the process for seeking indemnity shall be conducted.

The law also provides for the forfeiture to the State of goods or money illicitly added by a corrupt official to his assets, but does not clarify how the amounts will be accounted for, including whether they enter into the General State Budget in their entirety or a portion thereof is awarded to the person who supplied information leading to the conviction of the official in question<sup>50</sup>.

### **Structure/Resources**

The three main pillars of Mozambican economy are agriculture, industry (manufacturing and fishing) and commerce and services. Agriculture is the main economic activity in Mozambique and as a whole contributes 27.6 % of the GDP and with about 40% of bulk exports<sup>51</sup>. In recent years, production of cotton and cashews has increased, while citrus, tea, copra, and tobacco have remained stagnant. Significant investments have been made in sugar estates and large-scale irrigation schemes rehabilitation<sup>52</sup>.

Manufacturing and fishing represent more than 90% of the industrial sector and they contributed 13.4 % of the GDP and provided 8% of employment in 1998. Manufacturing has been the fastest growing sector since 1995, growing by 11% from 1995 to 1997 and 39% in 1998. This growth continued in 1999, although it was lower, influenced by the negative performance of a number of smaller sectors. Manufacturing growth is dominated by a few companies involved in the production of drinks, food, tobacco, textiles, clothing, furniture, construction materials and consumer goods and is mainly the result of increased capacity utilization and increased productivity in factories. This has not contributed to net increases in employment, as new employment could not offset massive layoffs of workers.

Fisheries, traditionally one of the major sources of foreign revenue for Mozambique, represented 25% of foreign merchandised exports in 1998, of which 90% was prawns (all this data was collected at Mozambique Nationals Statistics Institute).

The potential for mining in Mozambique is under-utilized and through out the 1990s it contributed less than 1% of GDP. Although exploration investment is rising, it still is low compared to the neighbouring countries.

While Mozambique is a net exporter of hydroelectric energy, primarily by the Cahora Bassa Dam, ongoing investments in the field of gas and oil are expected to bring significant growth in the energy sector.

The Mozambican manufacturing sector uses an unusually low level of external finance. In the sample, enterprises relied on their own funds for 90 percent of working capital requirements and almost two-thirds of their investment needs<sup>53</sup>. The main source of external credit, however limited, is locally-owned commercial banks, which provide only 7–8 percent of the sample firms' financing needs<sup>54</sup>. Trade credit and informal loans are negligible and informal funds from family and friends also appear to be insignificant<sup>55</sup>. It is clear that trade credit and formal external finance play only a limited role in financing firms' operations in the country.

### **Accountability**

The most important oversight mechanisms in the business sector are those that were set up for banking sector. Under Law 15/98<sup>56</sup>, failure of depository corporations to provide information (monthly balance sheets and other information on the position of the institution in formats approved by the BM. within the established time limits shall be punishable by a fine.

According to the articles 37 and 38 of the Organic Law of the Bank of Mozambique<sup>57</sup>, all credit institutions and others specified by law, with the exception of insurance companies and pension funds, shall be subject to supervision by the central bank; (b) It shall be the responsibility of the central bank to conduct inspections in institutions subject to its supervision pursuant to law.

Accordingly, all credit, leasing, and other financial institutions subject to supervision by the Bank of Mozambique must submit analytical balance sheets to the Bank of Mozambique on a monthly basis (Article 74 of Law 15/99 Law on Credit Institutions and Financial Corporations). In law, a complaint mechanism exists if a business license request is denied. Fraud, particularly where it involves the staff of other commercial companies such as banks, is a clear example of the incidence of private-private corruption. In theory, private-private corruption should be easier for the private sector to control but most companies are not complying with corporate governance laws. Few of the cases were successfully prosecuted through the court system and companies felt that this lack of accountability was one of the main issues contributing to the prevalence of fraud.

Article 21 of Law 6/2004 provides that whenever a public or private auditor, in the course of an audit, finds some indication of corruption, it must report those indications, in writing, to the GCCC. However, it is unclear who is empowered to initiate legal proceedings against auditors who violate these rules. Since the big audit firms are the natural suppliers for some of the forensic audit assistance needed by GCCC, one may expect that the persons empowered to monitor the auditors are also auditors themselves.

One way to solve this problem is to make sure that, (a) some person, not an auditor, is always named by the GCCC and indicated by it to be the monitor of the auditors; and (b) that that person has no conflict of interest vis-à-vis the country's public and private auditors. An area of active oversight, that encourages good corporate governance as it is interpreted in Mozambique, is the random audit by the Finance Ministry to ensure conformity with fiscal regulations.

### **Integrity Mechanisms**

But there aren't so much integrity mechanisms in place in Mozambique. There are no Codes of conduct in the business sector in Mozambique, neither rules on conflict of interest. Also rules on gifts, expenses and hospitality are not in place. The Commercial Code in Mozambique provides

guidelines and rules for corporate governance, but is not a corporate governance code. At the same time, a number of international audit firms are represented in Mozambique but there is lack of trained accountants and auditors in this area. Some companies have codes of business principles and codes of conduct which they use to motivate non-corrupt behaviour within their organizations. The Confederations of Business Associations is finalizing a corporate governance and corporate citizenship project to promote the concepts as well as create a code of conduct among other issues.

The increasing participation of Mozambique in the international economy due to the growing share of foreign owned companies is also beginning to bear influence on national strategies to improve the business climate, which has implications for corporate governance practices.

Probably, the most relevant initiative from the private sector involvement in anti-corruption and integrity came from ACIS (Sofala Commercial and Industrial Association), which launched in 2004, in partnership with the Center for International Private Enterprise (CIPE), a project which aimed at find ways to combat business participation in corruption in Mozambique. The project culminated with the release of this toolkit, which is designed to support the private sector in its fight against corruption<sup>58</sup>. According to ACIS, the project has been welcomed by both public and private sectors, with support coming from senior government figures and captains of industry as well as from civil society leaders and international donor organizations.

Despite these move towards integrity, there is a lot of complicity between business and politics in Mozambique. This year Inteltec Holding, a company in which President Armando Guebuza has a major shareholding, has taken a 5% share in Vodacom Mozambique, the private mobile telephone company which competes with the state-owned MCell. It must be remembered that Mozambique has no conflict of interest regulations.

Majority shareholder Vodacom International is quoted in the Mail & Guardian <sup>59</sup> saying it was "the norm" in Africa to have participation by governments and government officials. Many of the owners of Vodacom Mozambique are close to former president Chissano, and for Guebuza to take a holding is simply the entry of the "new nomenclatura"<sup>60</sup>. Shareholders in Vodacom Mozambique include Emotel (owned by Frelimo), Hermenegildo Gamito (prominent Frelimo businessman), Bruno Morgado (son of a former industry minister), and Antonio Malo and Apolinario Pateguana (who both have business links with ex-President Chissano's son Nhympine, now charged in connection with the murder of Carlos Cardoso).

In recent years, grand corruption in Mozambique occurred under the complicity between business and political heads and it had the following forms: the misappropriation of privatized firms in the 1980s; the theft of funds from state banks in the 1990s; assassinations associated with the banking thefts and crises; the penetration of politics by criminal networks in connection with drug trafficking and smuggling; misappropriation of public-sector and donor funding; poor procurement rules and procedures resulting in abuse and corruption.

With the privatization policy under the Structural Adjustment Program, the ruling party (Frelimo) had to create a national bourgeoisie. This bourgeoisie had to come from within the party and the strategy was to transform the former vanguards of the people's revolution into businessmen. The former state owned companies were 'sold' to the 'comrades' but they were in a technical bankruptcy and needed money. This policy was materialized with funds provided to Mozambique in a mix of aid and credit aimed at supporting the reconstruction process.

In consequence, there is a strong overlap between the ruling dominant party and the state machinery. In this set up, concerns over transparency and integrity have a tendency to be better said than done. Clientelism, nepotism and trafficking of influence are deeply rooted. The problem is not lack of laws, but that the laws are not applied. This gives an impression of hijacked state. According to Hanlon (2004), “we live in a kingdom where those who lead are gangsters” and that an elite is using power “in order to enrich itself (...) they do not think of Mozambique, they think of themselves”. Further he argues that “there is a lack of political will to fight organized crime and corruption” (idem) and that “the relative impunity with which some of the successful [drug] traffickers operate is often a result of their close connections with individuals at the highest levels of government or the Frelimo party”(idem).

In terms of institutional environment for business, World Bank (2005) acknowledges that Mozambique still has a highly unpropitious in many respects: a weak judicial system, antiquated business legislation, an inability to enforce contracts or retrieve collateral, outdated labour laws, inflexible labour markets, lack of a formalized accounting profession, a troubled financial sector, unclear land rights, nascent but still undeveloped civil society institutions, low levels of capacity in many government departments, a “red tape burden” for businesses and individuals so heavy that Mozambique scores near the poorest on several quality of governance indexes. Further, the report says that although subsequent improvements are raising Mozambique gradually to SADC<sup>61</sup> levels - roads were poor everywhere except in the major cities, the water supply was intermittent, and the electricity supply was subject to frequent blackouts (World Bank, 2005).

Mozambique government is doing efforts to improve business environment. In this year World Bank Report Doing Business 2008<sup>62</sup> Mozambique received various mentions on its efforts to ease barriers to business. “The country is reforming several aspects of its business environment, with the goal of reaching the top rank on the ease of doing business in southern Africa. The result: it rose by 6 places in the rankings”<sup>63</sup>. Following a disappointing 140 in the 2007 Doing Business Report, Mozambique now boasts a ranking of 134. With continued economic reforms, the country should only increase in ranking in the coming years.

But there are persistent problems in the business environment<sup>64</sup>; “some of them are: (i) access to credit; (ii) reimbursement of VAT; (iii) poor quality of national products; (iv) the Labour Law proposal; (v) with the exception of the Central Revenue Authority (ATM) and the Ministry of Industry and Commerce (MIC) no government body has undertaken any action aimed at eliminating the sharing of fines among the institutions and the inspectors”.

### **Transparency**

The concept of corporate governance was introduced in Mozambique in 2001 when a team of international consultants made an assessment of business practices in the country. The main focal point for corporate governance in Mozambique is the Confederation of Business Associations (CTA), which is an organization that has 64 associated members. Since the establishment of CTA back in 1997, the organization has been striving for proceeding into more of an umbrella organization that focuses on lobbying with the Government and providing services to the various private sector associations in the country.

In Mozambique, the Constitution does not establish any incompatibilities between the functions of President of the Republic and businessman. Not a single line of it says that the President, having companies in almost every sector of activity, should not take decisions on matters that affect economic interests in those areas. And nothing prohibits Guebuza from having companies. In fact, the Constitution defends the right to property and as a citizen, Guebuza can have as much property as he wants.

There is no law to manage conflicts of interest in a case when the President is also a businessman. This gap raises some questions in the light of two pieces of empirical evidence: firstly that Armando Guebuza had access to Treasury credits, through Mavimbe, in a less than transparent way, at concessional interest rates and with no guarantees given; and secondly that Guebuza has a vast range of interests in the every sector of economic activity in Mozambique, and in fisheries in particular, and that this is one of his main and visible sources of accumulation.

### **Complaints/ Enforcement Mechanisms**

In April, 2006, the Council of Ministers issued Decree Law no 10/2006 authorizing the introduction of non-intrusive customs inspections using modern scanning technology, through a concession to a private-sector operator. The Decree suggests that the concession arrangement was motivated by the high cost of procuring and operating the scanning equipment. The Decree also provided for the concessionaire to recover its costs by charging fees to the shippers.<sup>65</sup> The Government then awarded the concession to Kudumba, a new Mozambican company, which has strong links with Frelimo Party. The decision was seen as a corrupt scheme to benefit Frelimo Party. When the government released the schedule of fees for the scanning inspections, a wave of protests ensued. The Maputo Corridor Logistic Initiative (MCLI) called the charges “unprecedented and unacceptable,” and the Maputo Port Development Company (MPDC) labelled them as “entirely unrealistic and ridiculous.” These groups contend that the charges will divert traffic from Mozambican ports, undermine the competitiveness of local industries, impair international trade, and discourage investment.

### **Relationship to Other Pillars**

A study undertaken in 2005<sup>66</sup> found that 61% of businesses believed that the government “rarely” or “never” took their concerns into consideration. This negative perception concurs with the opinion of business that government reform of legislation was “unforeseeable.” While government officials believed that private sector corruption is a major issue, all groups interviewed believed that public sector corruption far outweighed that of the private sector. The study further illustrates that corruption is principally an issue which affects the relationship between public and private sectors.

Only 13% of those interviewed believed that corruption is principally promoted by the private sector as compared to 41% who believed it is promoted by politicians and government officials. Over 60% of government officials interviewed considered corruption in the civil service as “bad” or “really bad.” 34.9% of government officials stated that the payment of bribes is common and 32% of companies admitted to paying bribes to the public sector.

The private sector can be a powerful lobby in holding a government to account – though not always in the best interests of the poor. In Mozambique, these groups are better resourced than many CSOs, have higher levels of technical competence and speak out with more confidence. Companies use association membership and collective lobbying to seek improvements in the business environment. Associations are also seen as vehicles for mutual protection. In the recent years, Mozambican Confederation of Business Associations (CTA), has exerted strong pressure on the government to make access to credit cheaper and as a result Bank of Mozambique is deciding to lower its interest rates.

Some companies have codes of business principles and codes of conduct which they use to motivate non-corrupt behaviour within their organizations. Companies also combat illegal trade through information gathering systems that record information being passed on to government authorities. Despite the fact that it is required by law, audit firms are not sending to the GCCC allegations of corruption that they find in some audits of public and private institutions.

The government has undertaken numerous initiatives to create a friendlier operating environment for business. For example, the Public Administration Decree 30/2001 of 15 October requires government agencies to respond to requests for decisions in a fixed time and there are now provisions for export processing zones - called Industrial Free Zones (IFZ) in Mozambique - and investment and export incentives. But in the recent survey, managers reported that government officials retain so much discretion in implementing new laws and regulations that the laws are often rendered ineffective. Officials often obstruct implementation of new policies by delaying or even ignoring decrees. In some cases local officials have never even heard of legislated changes<sup>67</sup>.

### **Recommendations**

- Law enforcement must be made mandatory.
- Corruption goes unreported in both private and public institutions. This norm must be reversed; corruption must be reported on and eradicated forthwith.
- The culture of mistrust between business and government must be done away with.

## Local Government

### Role of Institution as a Pillar

There are municipalities in 33 cities and towns and in principle, more will be established. The constitution states that municipalities are collective public entities endowed with representative organs aimed at fulfilling the interests of those living in the municipal area, without prejudice to the national interest and participation of the State. A second category of local authority, the “povoacao” (settlement, or village) is envisaged for places smaller than towns, but none have yet been set up.

A survey undertaken in 2006<sup>68</sup> showed that corruption is a concern for all municipalities, except in Monapo where 92% of the citizens declared that there was none. The worst municipality in terms of corruption, according to the opinion of the citizens, is Chimoio (only 12% said that there was none and 39% said that there was a lot). The survey also showed that corruption seems to affect more those citizens involved in business than others.

### Structure/Resources

The municipalities consist of (i) a directly elected Municipal Assembly with decision making powers and, (ii) an executive branch, the Municipal Council, which answers to the Assembly. The Council is headed by a Mayor who is also directly elected. The relationship between the Mayor, the Municipal Council and the Municipal Assembly is analogous to that between the President of the Republic, the Council of Ministers and parliament. Municipalisation is supposed to be a gradual process in two ways; firstly, the creation of local authorities would be incremental; meaning that more municipalities (and povoacoes) would be created as more territories qualify for this form of governance; and secondly, the transfer of responsibilities from the central government to the new autonomous entities would also be gradual; meaning that the more the municipalities proved to have institutional capacity for service delivery to the population, the more power would be devolved to them from the central government.

The autarchies enjoy administrative, patrimonial and financial autonomies from the state, article 7 of Law 2/97 dated of 18th February. The autarchies have their own budgets, elaborated and managed in conformity with the State Budget principles, article 20 (1) of the above law. The autarchies are funded through own revenues (personal and housing taxes, market activities, etc.) and state transfers. State transfers consist of the Fund for Autarchic Compensation and the Fund for Local Investment. The Fund for Autarchic Compensation is a fund aimed at complementing the autarchic financial resources, article 40 (1) of Law 11/97 dated 31st May, and it ranges between 1.5% to 3% of the projected state fiscal revenue, article 40 (2), and the disbursed amounts can be allocated in any autarchic initiative/need, article 40 (3) of the above law. This fund is distributed amongst the existing 33 autarchies through a formula that includes the following aspects: i) number of habitants; ii) the territory; and iii) tributary performance index. According to article 42 (2) of the same law, the global amount to be transferred to each of the existing 33 autarchies will be registered in the State Budget and it will be disbursed in duodecimal *tranches* until 15th of each month.

The above criteria show that the existing 33 municipalities are entitled to different amounts of the Compensation Fund and also, because of the different levels of economic development, including their management performance, the amount of the Compensation Fund has different weights in the budget structure of the existing 33 municipality. It is about 50% of the majority of the 33 existing municipality (Sitoe and Hunguana, 2005). This figure shows how financially dependent local government is vis-à-vis central government.

### **Accountability**

Given their full financial autonomy, municipalities report directly only to the local assembly. Financial reports are sent for information to the Ministry of Finance, and for audit purposes to the Tribunal Administrativo. However, these are often late and incomplete. The Ministry of Finance compiles them in summary form in the Conta Geral do Estado, but only with general revenue and expenditure categories, which makes consolidation according to sectoral categories virtually impossible. Establishing and strengthening accountability at the municipal and district levels is essential. The municipalities are subject to State administrative tutelage, consisting of verification of the legality of the administrative act undertaken by the municipalities. During the first experience of local governance, this tutelage was exercised by the Ministers of State Administration and Finance.

### **Integrity Mechanisms**

The rehabilitation of infrastructures, chiefly municipal roads, is the area of major controversy concerning contracting procedures. In fact, construction has become a major industry in local governments and the most fertile field for the multiplication of corruption. Contracts are used to feed patronage networks (contracting one's own companies but which are registered in other people's names or simply nepotism); rent-seeking through payment of commissions also occurs. Corruption in public infrastructures damages the public purse in several ways: the quality of infrastructures is simply disappointing, e.g. roads that do not last more than a year; in other cases, budgets are inflated in order to compensate for the commissions paid and, if this is not possible, companies do less than what was initially projected, e.g. by altering the width of roads; or simply stopping the operation when the budget runs out.

### **Transparency**

Regarding transparency, the 1997 law on local authorities states that their budget must be published in the official gazette. The treasurer of the municipality has to present a daily financial report and post it in the main municipal building. At least three copies of the annual accounts have to be posted in the main municipal building for 60 days, starting on 1 March each year. The body responsible for auditing the municipalities' accounts is the Administrative Tribunal. By law, the municipalities' accounts have to be audited twice a year, but in practice they are at best audited once a year. The municipalities send their reports every six months to the Administrative Tribunal and only in the event that these contain something suspicious does the Tribunal send a team of auditors to a specific municipality. The General Inspectorate of Finance from the Ministry of Finance also undertakes financial auditing.

The first experience of local governance proved that transparency is tackled in abstract terms and more importantly, proved to be easier said than done. This is a crucial point as it is directly linked to the decentralization of corruption. Hardly ever have any municipalities met the above requirements on transparency. Some municipalities do at least post the annual accounts on their notice boards, usually located in the entrance to the main municipal building, but one needs at least three years of accounting education to understand what is written there. With several sources of revenue, including the state transfers and donor financial support, it has become complex to get a clear picture on the financial spectrum of local governments.

Decision-makers in the State, municipalities and public companies and institutions, as well as the State's representatives on the boards of private companies are obliged to present a declaration of their assets as a condition of assuming office<sup>69</sup>. That declaration is deposited in the "files of the institution". This declaration must be updated annually and at the time the person leaves office. The declaration may also be requested at any time for disciplinary or criminal proceedings<sup>70</sup>. While the obligation to file a declaration of assets is potentially useful for

detecting corruption, it is nothing new. In fact, declarations of assets by senior State managers (variously defined in different statutes) prior to assuming office were already required under the terms of 4/90 and Law 7/98.

The requirements in those instruments were much more specific and demanding than the general references to assets in the present law, stating clearly defined categories of assets. Moreover, unlike the requirements of Law 6/2004, the disclosure requirements of Law 4/90 and Law 7/98 required senior State managers to also declare their *liabilities*, including to banks, the State and private firms, whether in Mozambique or abroad. Decree 22/2005 specifies that the Municipal President (mayor) and the President of the Municipal Council or similar public entity are responsible for guarding and maintaining the declarations, but the declaration is still not made public. As long as it is not public it will be of only limited use as a tool to monitor the amassing of wealth and the potential relationship thereof to corruption by senior State managers.

### **Complaints/ Enforcement Mechanisms**

There are several major vulnerabilities to corruption in the municipalities. Despite the requirement for a land use plan, there exists much discretion for city officials on how to allocate land access permits; there are inadequate checks and balances on how these permits are granted; there are weak controls on public tenders, especially those to purchase construction services; procurement commissions are established to conduct procurements according to prescribed rules, but there is little oversight. The General Inspectorate of Finance (for internal audit) and the Administrative Tribunal (external audit) do not have the capacity to conduct public audits of the municipalities as often as intended. Municipalities generally do not maintain registers of their public assets. Citizens generally do not have sufficient information about the municipal services they are entitled to and the cost of such services.

### **Relationship to Other Pillars**

The first elections for mayors and municipal assemblies took place in 1998. According to Dr. Armenio Correia<sup>71</sup>, from the Department of Local Government in the Ministry of State Administration, there has been considerable progress since then. The municipalities are claiming more power which means that they are growing institutionally; they have created an Association of Municipalities as an instrument for dialogue with the government; the populace is also showing signs of more willingness to participate and the tutelage ministries are amending the two basic laws (on tutelage and on local finance), based on the suggestions from the ground, "so the process is on the right track and I can guarantee that new municipalities will be created in 2008"<sup>72</sup>.

The Mozambican parliament passed this year a minor amendment to legislation covering municipal office holders. The amendments make a slight change to the way in which municipal office holders are paid. The municipal assemblies still set their wages - but they cannot be higher than "the maximum limits set by the government". The amendments would only limit municipal powers if the municipal office holders wanted to award themselves wages higher than those in effect in the rest of the state apparatus – rather unlikely, given the shaky financial basis of most municipalities<sup>73</sup>. The amendments were a very important move towards integrity when it comes to office holder's remuneration. There were disparities

## **Recommendations**

- Yearly audits must be held as gazetted.
- Checks and balances must be put in place on land access permits granting.
- Registers showing public assets must be drawn up and displayed where the public can access them.
- Sufficient and accessible information on municipal services must be made available to the public.

## **International Institutions**

### **Role of Institution as a Pillar**

The GoM has been receiving Budget Support (BS) from the beginning of the 90s with the donors in question creating a framework for co-ordination in 2000. As the system became more institutionalized, a Memorandum of Understanding (MoU) between the GoM and the group of 15 donors then providing this form of support was signed in April 2004, agreeing to (i) have no conditionality outside the common performance assessment framework; (ii) strongly enhance predictability; (iii) align on the government cycle and documents.

Initially known by the G-15 acronym, the number of donors providing BS increased to 19 by 2007, therefore changing the acronym to G-19<sup>74</sup>. In the face of the damaging effect of unpredictability on macro financial management, the government asked that the conditions for disbursement should be set out more transparently. This led to the redesign of budget support in the 2004 Memorandum of Understanding (MOU) which set out the objectives, basic principles and commitments on the part of government and donors, processes for reporting, monitoring and dialogue, dispute resolution and disbursement procedures. With regard to policy conditionality, the agreement required the government to prioritize poverty reduction according to the PARPA. While direct budget support was the focus of the agreement, it also embraced other forms of aid programme and, specifically, sector support.

### **Structures/Resources**

It is quite clear that International Monetary Fund, the World Bank and bilateral donors are the main drivers of the economic policy formulations in Mozambique since they support more than 50% of the country's budget. In this sense, the Mozambican government, as a highly aid dependent country, is not free from the influence of external donors. This situation of external dependence has lasted since the introduction of the first Structural Adjustment Program (SAP) in 1987. Since then, the Bretton Woods institutions have been criticized for the neo-liberal approach in Mozambique that led, amongst others, to the destruction of the cashew processing industry in the late 1990s. Furthermore, structural adjustment was just concerned with macroeconomic stability, and did not take social issues into account.

### **Accountability**

In response to a banking crisis in 2001 and associated violations of human rights in 2002, some donors temporarily withheld disbursement. Donors also wanted to see an outcome to the case of the Austral Bank. This bank was privatized in 1997 and the Malaysian-Mozambican consortium that took it over brought Austral to the brink of ruin by early 2001. When the consortium handed its Austral shares back to the state, the Bank of Mozambique sent its head of banking supervision, Antonio Siba-Siba Macuacua, to head an interim board of directors. He began to pursue vigorously Austral's many bad loans and was murdered on 11 August 2001. No-one has been charged with the murder, and no-one has been charged with fraud or any other offence linked to the collapse of Austral.

A forensic audit of Austral was eventually ordered, and that audit report has been with the Attorney-General's Office for about a year. "We have heard that the report was sent to court, and we hope the court will do what has to be done", said Gaustadsaether. "We just need to see results. It is important that this should have an outcome". "We know that we cannot intervene directly in this since it is an internal Mozambican matter", he added.

### **Integrity Mechanisms**

Levels of support to Mozambique have continued unabated in spite of several scandals with political implications. The murders of investigative journalist Carlos Cardoso and banker

António Siba-Siba Macuácuá, the interim chairperson of the debt-ridden Austral Bank, as well as various allegations of embezzlement which the courts have failed to pursue in a sufficiently convincing manner come to mind. As Joseph Hanlon, one of the leader European writers on Mozambique pointedly asked: are donors promoting corruption in Mozambique? Significantly enough, a USAID commissioned study on Mozambique was published just a week before this study was undertaken with a shattering verdict on the commitment of the Mozambican ruling elite to fighting corruption, upholding the rule of law and leading its country towards sustainable development (Macamo, 2006).

Donor involvement in anti-corruption efforts in Mozambique started in 2000, after the murder of Carlos Cardoso. At that time they started to demand realistic changes in the fight against corruption from government. There was donor engagement in concrete actions aiming at improving the level of transparency in state machinery. For example, USAID funded a study conducted by Ética in 2001 and the study concluded that corruption was a critical issue and it was generalized in whole sectors of the state bureaucracy. USAID also funded the establishment and initial activities of the former Anti-Corruption Unit set up in 2003.

The Swedish government has been funding the Administrative Tribunal. Sweden is also engaged in the reform of state financial management through SISTAFE (state financial management system). In its turn, the World Bank is engaged with Public Sector Reform, which includes the fight against corruption. In the mid 90s, the British government funded the Customs reform, which had a strong anti-corruption component. Very recently, in this year, the government approved the Anti-Corruption Strategy, which is seen as reflecting increasing pressure from the donor community on to government to change the incentive structures. Among the anti-corruption activities in Mozambique over this period were the following:

- ✓ Customs Department Reform in Mozambique, Financial Aid 1997-1999 (DFID)
- ✓ Customs Department Reform in Mozambique, Technical Assistance 1998-1999 (DFID)
- ✓ Documentary, Carlos Cardoso Murder, 2001 (Norad)
- ✓ Intosai Training Programs for National Audit Offices in Africa, Administrative Tribunal, 2001-2004 (Netherlands Embassy)
- ✓ Fight against Corruption, Mozambique, Etica Mozambique, 2002, (NORAD and SDC)
- ✓ Fight against Corruption, Mozambique, Etica Mozambique, 2002 (Netherlands Embassy)
- ✓ Twinning Project between the Administrative Tribunal and Swedish National Audit Office, 2000-2005, (SIDA)
- ✓ Human Rights League, 2003-2006 (Norad)
- ✓ State Financial Management, 1989-2003 (SIDA)
- ✓ Creation of the Anti-Corruption Unit 2003 (USAID)
- ✓ Etica Mozambique, public awareness campaign, 2004-2005 (SDC, Ireland Embassy, Netherlands and Norad)
- ✓ Etica Mozambique, advisory houses project, 2004-2006 (USAID)
- ✓ Local governments as a testing ground for democratization, GTZ Decentralization and Municipal Development Project (PDDM). UNDP is supporting an accountability and transparency program 2002-2006

Mozambique has signed, ratified and adopted some of the main international instruments and standards on democracy and good governance. The following is the list of the instruments signed by Mozambique.

- ✓ *The International Covenant on Civil and Political Rights;*
- ✓ *The United Nations Charter;*
- ✓ *The Constitutive Act Convention of the African Union;*

- ✓ *The NEPAD Framework Documents;*
- ✓ *The African Charter on Human and People's Rights;*
- ✓ *The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;*
- ✓ *The UN Convention Against Corruption;*
- ✓ *The African Union Convention for the Prevention and Combating of Corruption and Related Crimes*
- ✓ *The SADC Protocol Against Corruption*
- ✓ *The International Convention on the Elimination of All forms of Racial Discrimination;*
- ✓ *The African Charter on the Rights and Welfare of the Child;*
- ✓ *The Convention Relating to the Status of Refugees;*
- ✓ *The OAU Refugee Convention.*

According to AfriMAP's report "Mozambique, Justice Sector and Rule of Law", the Government, through the Ministry of Foreign Affairs and Cooperation, has taken some measures to complete ratification and compliance with these codes and standards, including the approval of a priority list of international and regional instruments for signature and ratification in the next few years and the establishment of an *ad hoc* inter-ministerial committee on human rights, with responsibility for Mozambique's reporting obligations.

The priority list of international and regional instruments for signature and ratification in the next few years, includes the Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the Rome Statute on the International Criminal Court Status, the Convention for the Protection of Rights of Migrant Workers and their Family Members, the Protocol to the African Charter on Human and People's Rights on the African Human Rights Court; the SADC Protocol on Extradition; the SADC Protocol on Corruption; the SADC Protocol on Legal Affairs.

### **Transparency**

Some donors have taken serious measures against mismanagement of their funds by the political elite of the country. In 2003 the Swedish Government commissioned an audit of the Eduardo Mondlane University after suspicions that there was misuse of their funds. Later, in 2004, the Swedish Government publicly revealed that their funds were being misused (i.e. arbitrary attribution of scholarships) by the Ministry of Education and alleged ministerial involvement<sup>75</sup>.

In 2006, the Danish Embassy withdrew its funding to the Zambézia province after disclosure that their funds were being misused.<sup>76</sup> However, not all donors are aggressive towards corruption. For instance, the World Bank's reaction to the scandals related to the murder of Cardoso and Macuacua show that to a certain degree, donors are not willing to go beyond the rhetorical demand for investigation and combat against impunity. In 2004, when Michael Baxter, the World Bank director for Angola and Mozambique came for the first time to Mozambique, he declared that "the World Bank is no longer concerned at the scandals of the past", when asked about the bank scandals related to the murder of Cardoso and Macuacua<sup>77</sup>.

### **Complaints/ Enforcement Mechanisms**

Mozambique's former president, Joaquim Chissano, has admitted that the foreign aid granted to Mozambique when he was in power "came with the imposition of prescriptions and the questioning of the predominant development paradigm", an opinion largely in line with that of critics of IMF, World Bank, and bilateral donors<sup>78</sup>. The way in which aid was provided, said Chissano, undermined Mozambique's national sovereignty "and the possibility of freely choosing the policies to implement".

He did not cite specific examples, but it is more than likely that he had in mind such incidents as the 1995 diktat by the World Bank linking future loans to the dismantling of protection for the cashew processing industry, a demand which led to the closure of every large cashew plant by 2001, and the loss of around 10,000 jobs.

### **Relationship to Other Pillars**

In a study conducted in 2006, Vaux et al (2006) concluded that one of the ‘barriers’ hindering the actions towards improvement of the accountability and integrity system in Mozambique is the image donors have that Mozambique is a ‘success’. In fact, Mozambique is fashionable with donors. First, it is one of the few success stories in Africa.

When the World Bank wanted to justify increased aid and Bank policies in a report to the Monterrey UN Conference on Financing for Development, its report cited six successful countries where institutional reforms have sparked rapid development. Only two were in Africa: (Mozambique and Uganda). When some donors are under pressure to increase aid to meet international targets, others are under pressure from conservative governments to justify their aid budgets; they desperately need success stories. With so few successes in Africa, they do not want to rock the boat by questioning the image of Mozambique.<sup>79</sup>

For Vaux and his team, the ‘aid policy’ now reflects this assumption. For instance, donors have moved towards budget support and a flexible approach in order to accommodate government interests which, although is considered to be beneficial to the Government, makes it more difficult for donors to apply pressure in sensitive ways, like corruption.

In a country extremely dependent on foreign aid, the GoM has arguably evolved stronger mechanisms for answering to donors than to Mozambican citizens and to the civil society organizations that should represent citizens’ interests. If donors are serious about strengthening the Government’s accountability to its own people, it is incumbent upon them to: modify their demands on Government, and certainly ensure that their requirements do not override or undermine internal Mozambican accountability mechanisms and processes; seek to strengthen internal Mozambican accountability through their interventions and funding priorities.

Donors do not agree that the government is doing efforts to fight against corruption. Speaking for the G19 in press conference in September, Norwegian ambassador Thorbjorn Gaustadsaether stressed the need to investigate and prosecute cases of corruption. Then he made the threat: “We observe that in other countries the level of budget support was reduced following a failure to consistently pursue corruption cases and weak governance”. According to Awepa Bulletin, privately, some key donors are saying that the government’s credibility depends on it bringing a major prosecution on corruption or theft<sup>80</sup>.

Despite concerns that Mozambican government is not willing to fight corruption, “*budget support donors* again increased aid, again praised government’s macroeconomic successes, and again threatened cuts if the government continues to fail to act on corruption. Donors are angry that government seems totally passive and even resistant on corruption and the justice sector in general”<sup>81</sup>.

## **Recommendations**

- Donors must put more pressure on the Government so that corruption cases can be prosecuted;
- Donors should modify their demands on Government and ensure that their requirements do not undermine internal Mozambican accountability mechanisms and processes;
- Donors should seek to strengthen internal Mozambican accountability through their own interventions and funding priorities;
- Donor must support anti-corruptions activities within all the pillars

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## **Legislation**

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Decree 30/2001, dated 15th October

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Law 11/97 dated 31st May

Law 20/2002 dated 10th October

Law 5/92 dated 6th May

Law 54/2005 dated 13th December

Law 6 of 2004 dated 17th June

Law 6/2001 dated 30th April

Law 7/04 dated 17th June

## End Notes

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<sup>1</sup> Issue of 14th August, 2006.

<sup>2</sup> Interview with Danilo Nala, Senior Official of the Direcção Nacional das Alfândegas, Maputo, 3 July, 2006.

<sup>3</sup> This study, based in a sample of 2,447 households, 992 civil servants and 486 companies, distributed all over the country, was intended to had as purpose collect information on the perceptions of citizens about public services and their assessment of their degree of honesty.

<sup>4</sup> Centro de Integridade Pública (2005): A Corrupção no Sector da Educação em Moçambique. Maputo.

<sup>5</sup> Aid dependence can be defined as a situation in which a country cannot perform many of the core functions of government, such as operations and maintenance, or the delivery of basic public services, without foreign aid funding and expertise. As a proxy for this, we use a measure of "intensity" of aid: countries receiving aid at levels of 10 percent of GNP or above (Brautigam, 2000:2)

<sup>6</sup> Interview with Virginia Videira, chairperson of the parliamentary Plan and Budget Commission.

<sup>7</sup> Frelimo based its decision on article 41 of the Constitution, which states that citizens have the right to their "honour, good name, reputation, the defense of their public image, and their privacy".

<sup>8</sup> The NA has the second highest budget in the machinery of government, with USD10,750,602.47. The Office of the President of the Republic has the highest budget with USD13,333,694.58. The budget allocation may suggest a sort of subordination of the NA to the Office of the President of the Republic.

<sup>9</sup> See efforts by AWEPA and other international NGOs or organisations to contribute to this crucial, but often neglected role of the parties and their internal functioning in the democratisation process.

<sup>10</sup> See Savana weekly.

<sup>11</sup> He was Brazao Mazula, later the vice-chancellor of the country's largest university

<sup>12</sup> It had 10 members chosen by Frelimo, eight by Renamo and an independent chairperson drawn from a list of nominees from civil bodies

<sup>13</sup> Ibid.

<sup>14</sup> Interviewed in September 2006.

<sup>15</sup> AWEPA Mozambican Political Process Bulletin, issue 34.

<sup>16</sup> Ibid.

<sup>17</sup> President of the Supreme Court, Mario Mangaze, in the opening ceremony of the 2007 judicial year on 1 March.

<sup>18</sup> Ibid.

<sup>19</sup> Art. 249 of the CRM and Decree 30/10 dated of 15/01, from the Council of Ministers.

<sup>20</sup> Art. 17 of the Decree 30/01 dated 15/10 from the Council of Ministers.

<sup>21</sup> AIM, 20 April 2007. Constitutional Council Overrules Civil Service Authority.

<sup>22</sup> AIM, 6 April 2006, Irregularities in Recruitment for Police Training.

<sup>23</sup> Paulo Fumane, head of the Confederations of Business Association (CTA).

<sup>24</sup> Art. 13 of the law 54/2005, dated of 13/12.

<sup>25</sup> Art. 30 of the law 54/2005, dated of 13/12.

<sup>26</sup> Art. 135 of the law 54/2005, dated of 13/12.

<sup>27</sup> Art. 19 of the law 54/2005, dated of 13/12.

<sup>28</sup> Art. 30 of the law 54/2005, dated of 13/12.

<sup>29</sup> Mozambique's Attorney-General, Joaquim Madeira, Giving his annual report to the Mozambican parliament on 19 April.

<sup>30</sup> Press Conference held in Maputo, October 2006.

<sup>31</sup> Konrad Adenauer Stiftung (2006): SADC Media Law: Republic of Mozambique. Johannesburg.

<sup>32</sup> Law No 18/91 of 10 August.

<sup>33</sup> Ministerial Diploma No 86/98 of 15 July 1998 establishes the SCM.

<sup>34</sup> According to several newspapers in Mozambique

<sup>35</sup> State Department Report Country Reports on Human Rights Practices -Released by the Bureau of Democracy, Human Rights, and Labor March 6, 2007.

<sup>36</sup> AIM. Court Harassment of Soico Continues.

<sup>37</sup> AIM, 2 April – Niassa Paper Promises Continued Publication.

<sup>38</sup> AIM, 25 April 2007. MISA Condemns Parliamentary Secrecy.

<sup>39</sup> Interview with Paulo Cuinica, head of civil society platform G20 and CNE member.

<sup>40</sup> AWEPA Bulletin, issue 35.

<sup>41</sup> Ibid.

<sup>42</sup> AIM, 14 April, 2007. Six NGOs accused of stealing Aids Money.

<sup>43</sup> Ibid.

<sup>44</sup> AIM, 2 April. Explosions: Demonstrators detained.

<sup>45</sup> António Alberto da Silva Francisco and Konrad Matter (2007): Poverty Observatory in Mozambique - Final Report.

<sup>46</sup> The 78 member forum is chaired by Prime Minister Luisa Diogo, and the deputy chairperson is Attorney General Joaquim Ma. Other members include parliamentarians, religious leaders, representatives of business associations, trade unions, and other civil bodies (including anti-corruption NGOs).

<sup>47</sup> Art. 35 of the CRM and Decree 49/2004 dated of 17th of November.

<sup>48</sup> Anti-Corruption Law.

<sup>49</sup> Law n° 6/2004 of 17 June, Article 3.

<sup>50</sup> Ibid.

<sup>51</sup> Data collected from the Central Bank of Mozambique, [www.bancomoz.mz](http://www.bancomoz.mz).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Interview with Kekobad Patel, Deputy Manager at Enacomo.

<sup>56</sup> Law on Credit Institutions.

<sup>57</sup> Law 1/92.

<sup>58</sup> See ACIS Year End Progress Report, 2006.

<sup>59</sup> Issue of 13 to 19 April 2007.

<sup>60</sup> Savana Newspaper 9 March 2007.

<sup>61</sup> Southern Africa Development Community

<sup>62</sup> [www.doingbusiness.org](http://www.doingbusiness.org)

<sup>63</sup> Ibid.

<sup>64</sup> Joint Review between Government and donors, Aide Memoire, 2007. Maputo.

<sup>65</sup> The Decree also covered the inspection of baggage and passengers. These aspects are not addressed in the present note.

<sup>66</sup> Austral Consultoria e Projectos Lda (Maputo), *Pesquisa Nacional sobre Governação e Corrupção*, (2005).

<sup>67</sup> Nasir et al, John (2003): Mozambique Industrial Performance and Investment Climate. World Bank.

<sup>68</sup> Luis de Brito et al (2006): Municipal Survey for Baseline Data. Chimoio, Gurué, Nacala-Porto, Monapo and Vilankulo. Deloitte. Maputo.

<sup>69</sup> Law n° 6/2004 of 17 June.

<sup>70</sup> Law n° 6/2004 of 17 June.

<sup>71</sup> Interviewed in September 2006.

<sup>72</sup> Ibid.

<sup>73</sup> AIM, 26 April, Minor Amendments to Municipal Legislation Passed.

<sup>74</sup> The original 16 members were Belgium; Canada; Denmark; the European Commission; Finland; France; Germany; Ireland; Italy; Netherlands; Norway; Portugal; Sweden; Switzerland; the United Kingdom and the World Bank. They were subsequently joined by the African Development Bank, Austria, and Spain. There is a significant variance amongst donors in terms of the proportion of their funds being channeled directly into the government budget. The two other major donors, the USA and Japan, provide no direct budget support, but, like the UNDP and, the IMF, they attend meetings as observers

<sup>75</sup> See *Savana Weekly*, 2004, Maputo.

<sup>76</sup> See *Savana Weekly*, March 2006, Maputo.

<sup>77</sup> Paul Fauvet, AIM (Mozambique News Agency). World Bank No Longer Concerned with scandals from the past. August, 2004.

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<sup>78</sup> Joaquim Alberto Chissano, Former President of the Republic of Mozambique, at the Conference on “New Directions in Development Assistance”. Oxford University College, 10 June, 2007.

<sup>79</sup> Hanlon, J. (2002): **Are donors to Mozambique promoting corruption?** Paper submitted to the conference Towards a New Political Economy of Development Sheffield 3-4 July 2002.

<sup>80</sup> Ibid.

<sup>81</sup> Joseph Hanlon, in Awepa Bulletin, issue 35, commenting the mid-term review joint Aide Memoire between government and the G19 budget support donors (PAP, Programme Aid Partners) that was agreed and released on 21 September 2007. In the document, government and donors confirm that no corruption cases have been brought to trial in 2006 and so far in 2007, and that the government submitted its governance report so late that donors and government had to have a special meeting to consider it just four days before the final meeting. Even then, the government report was missing basic data. The late submission of the initial report meant there were no joint donor-government working group discussions on governance. The Aide Memoire notes that donors feel that dialogue on governance “always remains at the beginning”.