



CENTRO DE INTEGRIDADE PÚBLICA  
Boa Governação Transparência Integridade



# **Business**

## INTEGRITY COUNTRY AGENDA [BICA]

### ASSESSMENT REPORT MOZAMBIQUE

FEBRUARY  
2016

# Business

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# MAP OF MOZAMBIQUE



# EXECUTIVE SUMMARY

## THE BUSINESS INTEGRITY COUNTRY AGENDA (BICA) Initiative

The Business Integrity Country Agenda (BICA) is a new initiative developed by Transparency International (TI) that seeks to reduce corruption in the business environment. The BICA initiative comprises two stages: first, an assessment of the business integrity environment in the country, resulting in the BICA Assessment Report and, second, the translation of the assessment's key findings into an operational reform agenda to be implemented through collective action. BICA is based on the idea that collective action, involving government, the business sector and civil society is more effective in promoting business integrity than actions by individual stakeholders or stakeholder groups acting alone. The involvement of these three stakeholder groups is thus crucial in both stages.

The BICA Assessment, the focus of this report, is organised according to the three main stakeholder areas that form a country's business integrity environment: the public sector, the business sector and civil society. These are divided into 15 thematic areas, comprising a total of 51 indicators. The assessment involves scoring and attributing a colour code to each indicator, based on compliance with the requirements of the questions. The score range is as follows: 0 or red for no positive answer; 25 or orange when few requirements are met; 50 or yellow when half of the answers are positive; 75 or yellow-green when most of the requirements are present; and 100 or green when all requirements are met.

**The BICA Assessment Report Mozambique** is the first of its kind. It was carried out by the TI national chapter, the Centre for Public Integrity (CIP). The assessment is based on evidence gathered from multiple sources: legislation, official documents, studies, primary data, stakeholders and interviews with experts. The process included the selection of a National Advisory Group (NAG), comprising representatives of all the stakeholder groups and donors, who were responsible for validating the research findings and presenting recommendations on collective action.





## RESULTS of the BICA

### Assessment Report Mozambique

#### Public Sector

Mozambique has signed and ratified the main international and regional anti-corruption conventions: the United Nations Convention Against Corruption (UNCAC), the African Union Convention on Preventing and Combating Corruption and the Southern Africa Development Community (SADC) Protocol Against Corruption, and has made a considerable effort to incorporate these instruments into its legal framework. However, enforcement is still problematic, due to weak implementation capacity and weak incentives for the promotion of business integrity.

Public sector thematic areas related to business integrity cover issues such as bribing public officials, commercial bribery, money laundering, economic competition, accounting and audit, undue influence, public tendering, and tax administration. In most of these areas the country has a legal framework in line with international standards.

Scores are represented graphically below.



Public sector **legislation prohibits the bribery of national public officials** and use of their position for undue advantage (e.g. Public Ethics Law – 16/2012), but it is not explicit about foreign public officials dealing with the country. **Commercial bribery is also prohibited**, and goes beyond financial transactions to include economic participation in businesses. In both cases, there is no evidence of effectiveness. The perception that corruption is high in the country has remained stable over the last two years, and the justice system's performance with regard to corruption cases has not improved, despite the fact that the capacity of the central and provincial Anti-Corruption Offices has improved, with rising human resources and budget allocation over the last four years. Thus, between 2010 and 2014, the ratio of cases per public attorney in the Anti-Corruption Offices was 6 to 10 times fewer than those of the ordinary public prosecutors. Nevertheless, the number of corruption cases taken to court is still low: only 11% of the cases disclosed in 2014. These data could suggest three things: i) that resources in the Anti-Corruption Offices are not being used efficiently; ii) that the backlog of cases in the judicial system might be affecting the number of corruption cases taken to court; iii) that despite the increased resources allocated to anti-corruption agencies, political will could hinder the enforcement of corruption legislation. An additional element is that, although the information on corruption cases has improved, the data presented in the Attorney General's Reports do not differentiate between the types of corruption defined in the legislation, making it difficult to identify the kind of cases being heard.

Mozambique has enacted strong legislation **prohibiting laundering of the proceeds of crime** (Laws 14/2007; 14/2013), and international conventions have also informed enactment of the anti-corruption legislative package, which includes the **Victims and Whistle-blowers Protection Law** (Law 15/2012).

Legislation on capital laundering includes the creation of the Office for Financial Information (GIFIM), which is an investigative body, and a multi-sectoral commission, comprising the Central Bank and the Ministries of Finance, Justice and Interior, among others. Whilst GIFIM has good investigative capacity, follow-up of its work is hampered by the weakness of other bodies, namely the Criminal Investigation Police.

The whistle-blower protection legislation only focuses on protecting victims and witnesses in a broad sense, and does not address situations that can occur in the business environment. For example, it does not provide guidance or instructions on organizing an effective system of whistle-blower protection within the organizational environment. The law includes the creation of a Central Office for Victim Protection, not yet established, which is responsible for enforcing and controlling the implementation of measures to protect victims and whistle-blowers, and prepare implementation reports.

Thus, the absence of regulations for the above-mentioned laws and the weak capacity of enforcing agencies, such as the judicial system, limit their effectiveness.

The country **adheres to international accounting and auditing standards**, and the related legislation (Decree 70/2009) is in line with the International Financial Reporting Standards (IFRS). However, their application is still limited to a few companies, among them those listed in the stock market, financial sector companies and public enterprises. The Mozambique Tax Authority (ATM) is responsible for licensing and the professional oversight of companies and individual professionals. The regulatory environment in this area has benefitted from the recent creation of the Accountants and Auditors Association (OCAM), which certifies and exerts some oversight over professional conduct in this field. This is helping to improve the professionalism of auditors and accountants. Nevertheless, the Tax Authority does not have the necessary capacity to audit and inspect companies and to carry out its professional oversight role. With its limited capacity, the Tax Authority's inspection and audit activities have to date focussed more on finding violations of tax legislation to improve tax collection, than checking compliance with accounting and audit regulations. Consequently, despite their mandate in this area, public entities are not contributing to creating incentives for companies to comply with international accounting and audit standards.

**Procurement** (Decree 15/2010) and **competition legislation** (Law 10/2013) **prohibits and creates restrictions on collusion**, with the objective of promoting fair competition in public tendering and the efficient use of public resources, as well as the development of a sound market economy. Legislation on procurement specifically prohibits collusion and the competition law prohibits the concentration of companies through mergers and acquisitions to influence prices and outputs artificially in specific economic areas. It also makes mandatory the inclusion of an anti-corruption clause in public contracts, includes heavy sanctions, such as banning contracts with public companies, and incentives for companies to disclose cases of violation of procurement rules, such as reduced penalties.

The Functional Unit for the Supervision of Acquisitions (UFSA), the oversight body for this area, publishes on its website a blacklist of companies involved in wrongdoing. However, its weak capacity in general, and supervisory capacity in particular, allow for abusive recourse to direct contracting in the overall public sector and non-transparent practices.

Contracting units in public agencies involve officials who are also engaged in planning and even decision-making on public expenditure, and there are deficiencies in the drafting of sound bidding documents, such as technical specifications for the procurement of goods and services. This setting undermines transparency and the efficient functioning of public procurement. Business associations, among them the Building Contractors Association (which did so publicly in a meeting with the government), acknowledge that corruption in public procurement is high. Combined with the delay in setting up the Competition Authority to supervise economic competition, this means that enforcement of this legislation is weak.

Regarding **undue influence through political funding, sponsorships, lobbying and conflict of interest**, political contributions are regulated through the political parties (Law 7/91) and the electoral laws. This legislation includes the obligation of public disclosure and reporting on political contributions by the public and private sectors. Nevertheless, the monitoring of political funding has been limited to reporting on the public funds allocated to electoral campaigns. The Public Ethics Law defines and places restrictions on conflicts of interest for public servants in their relation with the business sector, such as quarantine or “cooling-off” periods. Nevertheless, enforcement has been weak, and examples of public officials involved in businesses that imply conflict of interest have not been punished. Public Ethics Commissions, entities responsible for overseeing conflict of interest in the public sector have been created, but are not yet operational. As about one third of public officials who should present their Declaration of Assets have not yet done so, this reduces the possibility of verifying, preventing or imposing sanctions on potential cases of conflict of interest. Lobbying activities are not regulated in Mozambican legislation.

Finally, **taxes and customs** were merged into the Mozambique Tax Authority (ATM) in 2006 as part of reforms in this area (Law 2/2006), in line with the international trend of centralizing tax administration for efficiency purposes. ATM is an autonomous agency and has a set of internal control mechanisms and channels

for the public to denounce corruption cases, and its external checks and balances are those of the public administration, such as the Administrative Court, whose oversight capacity is relatively weak. ATM annual reports show that internal control entities have been active in investigating internal corruption and tax evasion cases, some of which have been referred

to the judiciary for follow-up. However, this does not prevent customs from being considered an area prone to corruption. Thus, despite internal control mechanisms, given that public administration external control mechanisms like the Administrative Court are relatively weak, this entity still operates without effective checks and balances and safeguards.

Mozambique's legal framework is in line with international good practices. However, its ineffectiveness derives from a combination of multiple factors, among them: no regulatory framework to make the laws operational, weak capacity to enforce regulations, due to inadequate mandates, poor checks and balances/safeguards for autonomous institutions, weak or absent administrative structures for implementation and lack of resources (financial and human), and in some cases lack of political will to deal with sensitive issues, like combating corruption.

Moreover, given the country's relatively recent socialist past, the Mozambican business sector has very strong and historical linkages with the public sector. Political connections play an important role, and state-owned enterprises are still important in the economy, in a context of a very narrow production base. This means that there is limited incentive for companies to promote public integrity through restrictions on conflict of interest, transparent public procurement and the adoption of sound disclosure and reporting standards. However, there is growing awareness that corruption harms business. In this regard, business associations are adopting business integrity codes of conduct, although still with low adherence by companies. The dialogue between the government and civil society is also resonating this increasing awareness of the need to fight corruption, and in August 2015 both sides agreed to include in the private sector action plan a set of activities related to this area, among them the commitment of the business sector to denounce corruption cases and companies that abandon public works. This context provides entry points for the recommendations below.

#### **In the short term:**

- Public Attorney Offices should improve the information on corruption in their annual reporting, identifying the type of corruption cases presented and taken to court, according to the typology presented in legislation. This will allow for a better understanding of the type of corruption subject to sanctions and the challenges lying ahead, for further action;





- In the context of the ongoing public and private sector dialogue, identify critical areas and include in annual plans measures to improve public integrity, particularly in areas of interface with business. Examples of these areas are: public procurement (especially direct contracting) and conflict of interest (monitoring of cooling-off periods for public servants);
- Public Ethics Commissions include in their monitoring and reporting priorities cases of conflict of interest involving the interface between public sector and business, initially to raise awareness about this problem, and subsequently for sanctions.

#### In the medium term:

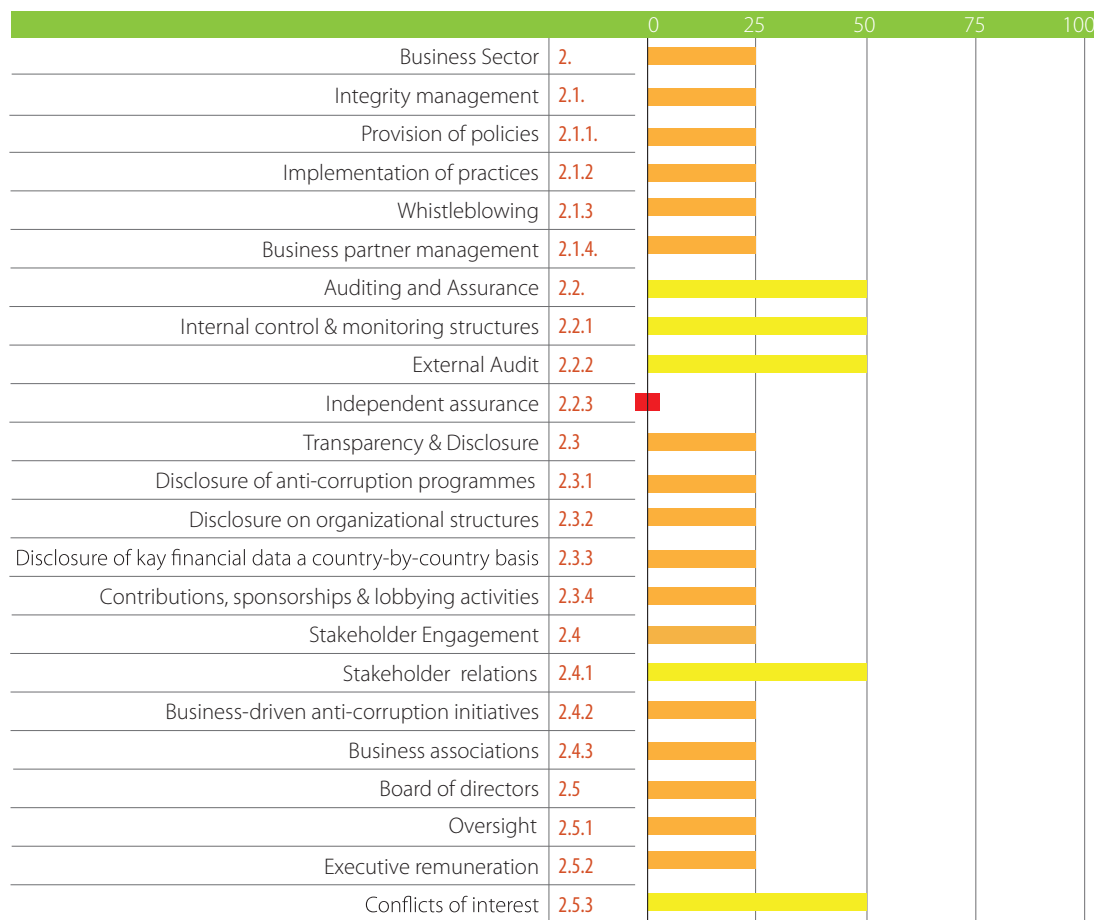
- Regulate the Public Ethics and the Whistle-blower Protection laws, to allow for more clarity in the enforcement of conflict of interest and whistle-blower protection in the public and business sectors;
- Revise procurement legislation to improve the existing framework for internal checks and balances and include external checks and balances (e.g. civil society participation in oversight and monitoring public procurement);
- Improve the organizational capacity of business and public integrity enforcement agencies in the areas of procurement (UFSA), contracting units in public agencies, conflict of interest (Public Ethics Commissions), protection of whistle-blowers (Central Office for Whistle-blower Protection), application of the IFRSs (Tax Authority), and punishing illicit business practices (the Public Attorney Offices and the judicial system);
- Improve the capacity of the Criminal Investigation Police, the Public Attorney Offices and the Judicial System to follow up GIFIM investigations;
- Government, civil society and donor support for specialist training for judges and the creation (implying legal revision) of specific sub-sections in criminal courts to deal with corruption cases.

## Business Sector

Unlike the public sector, local enterprises do not have the same exposure, stimulus and ability to adopt policies and practices in line with international standards. Some factors that have played a role in fostering poor standards of business integrity, include: i) the concentration of exports and the few opportunities for linkages with multinationals and megaprojects in a few enterprises; ii) a weak market with limited business-to-business relations; and iii) weak enforcement of integrity standards in the public sector in Mozambique. In this context, relatively few companies operate in an environment that creates positive incentives for good management standards and the promotion of business integrity.

This stakeholder area assesses business integrity based on the following: integrity management, auditing and assurance, transparency and disclosure, stakeholder engagement, and the role of the Board of Directors.

The scores are represented graphically below.







**Business integrity management mechanisms** are more frequent in subsidiaries of multinational companies, which are exposed to a more demanding and rigorous environment that includes operating in diverse markets, accountability to shareholders and the availability of reliable and attractive information for potential investors. Some companies in this group have the most visible and sound set of anti-corruption policies and programmes that are applicable also to their suppliers and business partners. IGEPE, the State Shareholders Management Institute, in its documents stimulates state-owned companies to adopt business codes of conduct and sound corporate governance practices.

However, in practice IGEPE's recommendations are not adopted by the publicly-owned companies. Some business associations and organizations have adopted and promote business integrity tools, but still with low adherence by their membership. Whistle-blowing mechanisms are not explicit in most of the companies with integrity programmes, for example, how to handle information on illicit practices and protect whistle-blowers. Broadly, business integrity management is weak. Where it exists, as in multinational subsidiaries, attempts to extend its application to business partners and suppliers is not contributing to disseminating these practices, as its adoption is limited to direct transactions between both parties. Moreover, in the same cases, follow-up on implementation is also very weak and there is no publicly available reporting on integrity management.

**Audit and certification practices** in Mozambican companies follow international standards (IFRS), not necessarily because firms choose to do so, but because regulations are aligned with international practices. Public Limited companies (those whose shares are traded in the stock market), should have their financial reporting checked by external auditors. Under Law 6/2012 publicly-owned companies, must have their financial statements checked by their Audit Boards, as well as by internal and external auditors. On the whole, all the published annual and financial statements of public and big private companies are checked by external audits. The available financial reports of multinationals usually cover their global operations, and information on their national subsidiaries is very limited. The banking sector is probably the area with the most consolidated financial reporting practices, and with easily accessible documents. Weak enforcement capacity in the public sector constrains the widespread application of these practices in the business sector and a contribution to business integrity.

**Transparency and disclosure** on anti-corruption programmes contribute to making companies more accountable. Reports on the implementation of anti-corruption programmes are not available or easily accessible to the public. None of the sample companies had a report on the implementation of their integrity programmes on their websites. Charitable contributions and sponsorships are not included in most financial reports. Some multinationals present this type of contribution in their “sustainability reports”, but without details. In Mozambique it is mandatory for companies to present all relevant information to their shareholders (Commercial Code, Law 2/2009). They are also supposed to provide financial information to the employee representatives, to be used in the annual tripartite (government-trade union-business sector) annual salary negotiations. In some cases, the annual general meetings of companies can include employee representatives. Nevertheless, this does not guarantee that the company information is made available to the employees, as employee representatives are co-opted and hide information from their peers. Under the Right to Information Law (34/2014), public entities, including publicly-owned enterprises or companies where the state is a shareholder and private entities contracted by the state or benefitting from public resources, must publish information considered of public interest or make it available when requested. However, the regulations of this law were only approved in December 2015. This legislation broadens the range of companies that can come under public scrutiny, such as those involved in public-private partnerships, public concessions and contracts. Taking into account the historical close relation between the public sector and national companies, this is a big opportunity still to be (and worth being) explored.

There is some **stakeholder engagement in anti-corruption initiatives**, driven by members of business associations. No stakeholders outside the business sector are involved. The two main business associations in the country have different situations. The Commercial, Industrial and Services Association (ACIS) has a Code of Business Conduct, with some members signed up, whereas the Confederation of Business/Trade Associations (CTA), is still in the process of approving this instrument. The Institute of Directors of Mozambique (IoDmz) a business entity concerned with corporate governance and business integrity issues, has developed a Business Code of Conduct, and a Business Pact Against Corruption (BIPAC) for Public Procurement and Political Financing, but still with very low adherence by its members.

According to the Commercial Code, the **Board of Directors** of public companies and of private and public limited companies are accountable to the Annual General Meeting or, in the case of the former, to the Audit Board and to the relevant state entities. Salaries of managers are established on an individual basis, resulting from negotiations with the company. This means that in most companies neither the salaries nor the criteria for establishing them are public. Companies with a Code of Conduct usually have **conflicts of interest** defined and regulated. Publicly-owned enterprises are theoretically governed by the Guide on Good Practices of the Corporate Governance Code, adopted by IGEPE and the Public Ethics Law (16/2012), which include provisions on conflict of interest. This guide recommends the definition of clear criteria for the remuneration of executive and non-executive members of the Board of Directors. It also recommends the publication, at least in aggregate terms, of the board members' remuneration. However, in the public sector the enforcement of these instruments is weak. Disclosure of salaries of managers in the private sector is also not common.

Generally, companies have many gaps in business integrity indicators. The situation is more critical among national companies. Publicly-owned companies have better transparency and disclosure practices than private ones, although this does not mean



that they are better in terms of business integrity. Actually, it is important to bear in mind that disclosure of these companies' financial reports is mandatory. The points presented here lead to two insights. The first is that the tendency of multinational enterprises and their subsidiaries to perform better is due to the more heavily scrutinized context in which they operate. The second insight is that the relatively better performance of public-owned companies stems from the legal obligations, and the country's history, when these enterprises were dominant, and the national business class is still new, undercapitalized, and still succumbs to the woes of the market, including competing to participate in the state's supply chain, with a weak record of integrity management. Despite the relative better performance of public-owned enterprises in some aspects, they still perform poorly with regard to accountability to citizens, their main shareholders. Political influence and a culture of lack of transparency in the public sector play a role in this performance, but weak enforcement of existing legislation also has considerable influence. For example, publicly-owned companies are supposed to report to Parliament through the inclusion of their accounts in the annual General State Accounts that are formally approved by the legislature. Their accounts are subject to external audit by the Administrative Court and, by law, audit reports must be published.

Thus, these insights lead to the following recommendations for this stakeholder area:

### **In the short term:**

- Business associations should work with companies with business integrity management mechanisms to encourage them to report and share publicly their experiences of implementing anti-corruption policies and programmes;
- As there is a widespread understanding among business associations that local companies do not have strong incentives to have integrity management programmes, donors, government and civil society should support the business sector in general, and associations in particular, in identifying opportunities and risks for companies and promoting business integrity principles. This exercise will inform the definition of further and more sector-specific interventions in this area.

### **In the medium term:**

- Support and strengthen the role of business associations in promoting integrity, transparency, reporting and disclosure standards among their members, by really implementing existing anti-corruption instruments and adopting IFRSs;
- Improve the responsiveness and accountability of public-owned enterprises to



citizens through stronger intervention by the Administrative Court and Parliament to guarantee compliance with the existing legal framework;

- Support the development of national companies' capacity for general and integrity management. This implies supporting the adoption of management and reporting standards (accounting and auditing) by a broader set of companies, in line with existing legislation;
- Civil society and government should identify and list companies and entities (public and private) subject to the disclosure of information obligation under the Right to Information Act.

## Civil Society

Civil Society can contribute to preventing, reducing and responding to corruption in the business sector providing broad societal checks and balances, such as the existence and effectiveness of independent media and the engagement of civil society in promoting and monitoring business integrity-related issues in companies. Historically, civil society in Mozambique has played the role of oversight and watchdog in relation to the public sector, and not so much the business sector.



The scores of this stakeholder’s area are presented below.

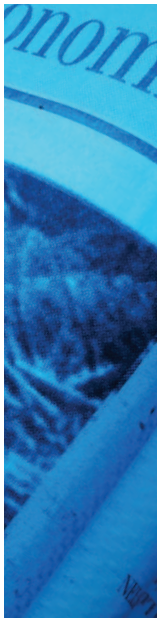
		0	25	50	75	100
Civil Society	3.					
Civil Society broad checks and balances	3.1.					
Independent media	3.1.1.					
Civil society engagement on business integrity	3.1.2					
Civil Society monitoring of business integrity	3.1.3					

Mozambique combines small vibrant **privately-owned independent media** and a public media sector with a wide coverage (mostly radio and television) throughout the country, but subject to strong political control, which reduces its autonomy. In the case of the private media, in an economy heavily dependent on the state and controlled by political elites, independent media face serious challenges of financial sustainability and professionalization. There is no consistent and systematic reporting on corruption in the private sector by the media that, allied with their weak professionalism, limits their capacity to report highly technically demanding issues that they sometimes do not fully understand.

Civil society involvement in business integrity is more visible in the procurement area and the extractive industries. In the procurement business, professional associations (Association of Procurement Professionals) and NGOs have taken some initiatives. For example, business associations include the revision of procurement regulations in their dialogue with the government. CIP has a research line on procurement and has researched and written on public-private partnerships. Civil society participates in the Extractive Industries Transparency Initiative (EITI) and does research. Organizations such as the Institute of Economic and Social Studies (IESE), CIP, Centro Terra Viva (CTV) work on extractive industry fiscal issues and resettlement processes, and have been able to influence government and company decisions. The media have recently reported on sporadic cases of corruption in public enterprises, although not necessarily combined with a systematic follow-up.

If civil society is to play a broader role in checks and balances in the business field, two substantial changes should occur:

- Train journalists to report on business integrity issues, to increase the frequency and technical quality of media coverage;
- Promote a more systematic and informed monitoring of the business sector by civil society organizations. This can be done by improving their capacity to deal with business issues and by fostering strategic alliances or coalition-building among relevant actors, civil society organizations with experience in governance monitoring and trade unions, which have more experience in dealing with the business sector.



## ACRONYMS AND ABBREVIATIONS

ACIS	Commercial, Industrial and Services Association/Associação Comercial, Industrial e de Serviços
AEMC	Association of Mozambican Consulting Companies/Associação das Empresas Moçambicanas de Consultoria
AIMO	Mozambique Industrial Association/Associação Industrial de Moçambique
APRM	African Peer Review Mechanism
TA	Administrative Court/Tribunal Administrativo
ATM	Mozambique Tax Authority/Autoridade Tributária de Moçambique
AU	African Union
BCI	Bank of Commerce and Investments/Banco Comercial e de Investimentos
BIM	International Bank of Mozambique/Banco Internacional de Moçambique
BIPAC	Business Integrity Pact Against Corruption
BM	Bank of Mozambique/Banco de Moçambique
CIP	Centre for Public Integrity/Centro de Integridade Pública
CMH	Mozambique Hydrocarbons Company/ Companhia Moçambicana de Hidrocarbonetos
CPI	Investment Promotion Centre
CPI	Corruption Perception Index
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
CTA	Confederation of Trade/Business Associations
CTV	Centro Terra Viva
EDM	Mozambique Electricity Company
EITI	Extractive Industries Transparency Initiative
EMATUM	Mozambique Tuna Company/Empresa Moçambicana de Atum
EMOSE	Mozambique Insurance Company/Empresa Moçambicana de Seguros
Frelimo	Mozambique Liberation Front/Frente de Libertação de Moçambique
GCCC	Central Anti-Corruption Office/Gabinete Central de Combate a Corrupção
GIFIM	Mozambique Office for Financial Information /Gabinete da Informação Financeira de Moçambique
GITR	Global Information Technology Report
GPA	General Peace Agreement
GPCC	Provincial Anti-Corruption Office/ Gabinete Provincial de Combate a Corrupção
HCB	Hidroeléctrica de Cahora Bassa
HDI	Human Development Index



IESE	Institute of Economic and Social Studies/Instituto de Estudos Económicos e Sociais
IGEPE	State Shareholder Management Institute/Instituto de Gestão de Participações do Estado
IMF	International Monetary Fund
INE	National Statistics Institute/Instituto Nacional de Estatística
IoDMoz	Institute of Directors of Mozambique
IREX	International Research and Exchanges Board
ISAE	International Standard on Assurance Engagements
MCell	Moçambique Cellular
MDM	Movimento Democrático de Moçambique/Mozambique Democratic Movement
MPD	Ministry of Planning and Development/Ministério de Planificação e Desenvolvimento
OCAM	Mozambique Accountants and Auditors Association/Ordem dos Contabilistas e Auditores de Moçambique
PIC	Criminal Investigation Police/Polícia de Investigação Criminal
PPP	Public-Private- Partnership
Renamo	Mozambique National Resistance/Resistência Nacional de Moçambique
SADC	Southern Africa Development Community
SME	Small and medium enterprises
STV	Soico Television
TDM	Mozambique Telecommunications /Telecomunicações de Moçambique
TI	Transparency International
TRAC	Transparency Reporting on Anti-corruption
UFSA	Functional Unit for the Supervision of Acquisitions/Unidade Funcional de Supervisão das Aquisições
UGEA	Procurement Management Unit/Unidade de Gestão das Aquisições
UNCAC	United Nations Convention Against Corruption
VAT	Value Added Tax

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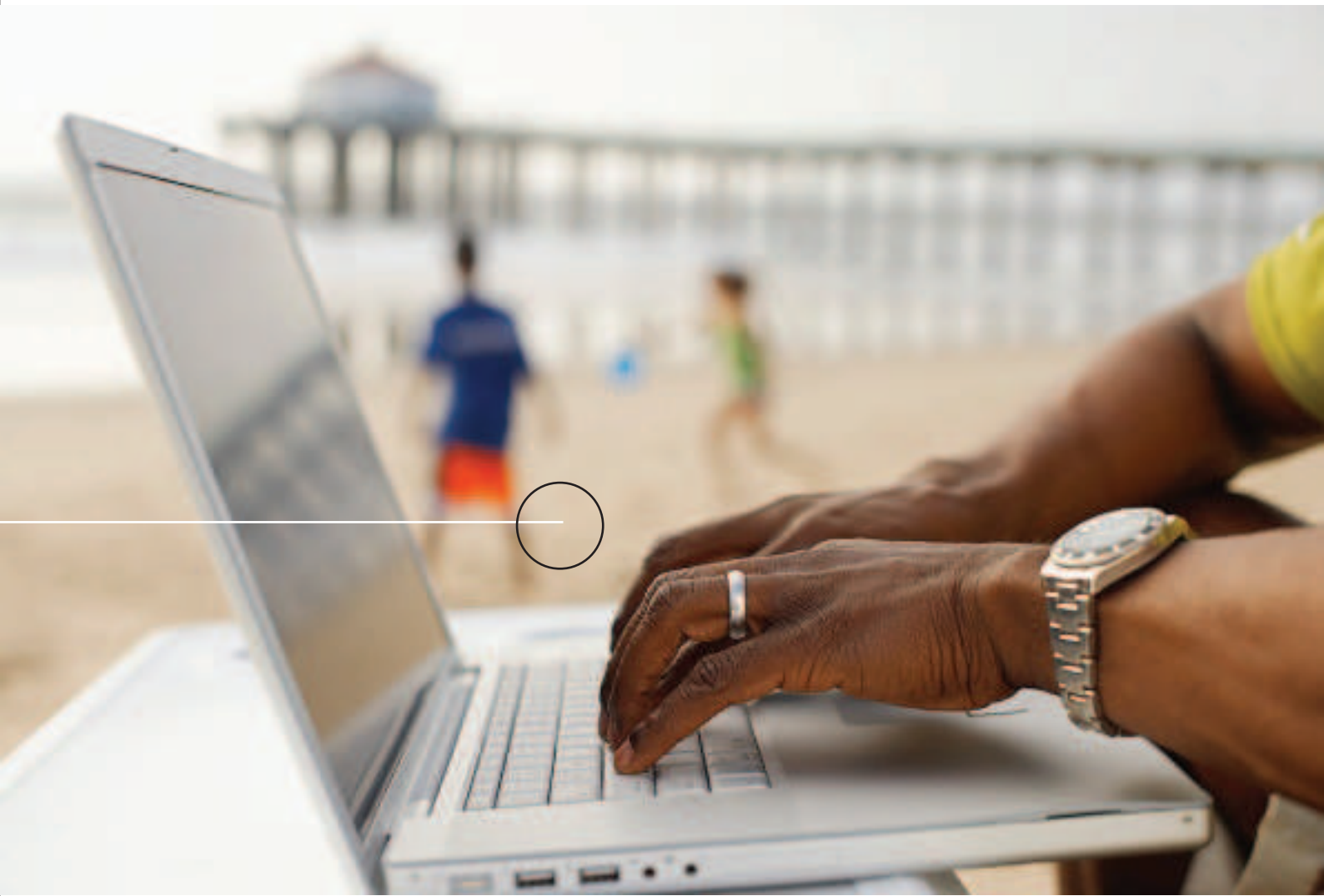
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# THE BICA ASSESSMENT PROCESS

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# I.

## THE BICA ASSESSMENT PROCESS

### I.1. THE ROLE OF BUSINESS INTEGRITY IN FIGHTING CORRUPTION

Companies are often regarded as the supply side of corruption, using corrupt payments to gain undue advantages (e.g. in public tenders). But companies can also be victims; victims of weak governance in an environment where doing business with integrity may result in losing contracts to corrupt competitors, and victims of extortion requests by corrupt public officials or other business partners. Thus, countering corruption in and from the business sector must target both perspectives: the demand side (i.e. public sector) but also the supply side (i.e. business sector). To this end, the various influencing factors need to be understood.



In order to address the demand side factors, we must consider two aspects:

- the environment created by the public sector for companies to do business, as well as
- the public sector's interaction with the business sector.

The typical starting point for such an assessment is to evaluate whether the public sector is adequately regulated through (anti-corruption) laws and regulations and how well the legal framework is designed, communicated and enforced by different government agencies. But this is not enough; companies also engage with the public sector in their day-to-day operations, such as obtaining operating licenses and other public services (e.g. electricity, communication), paying taxes, enforcing contracts, etc. These processes also impact on the way companies (have to) conduct business. For example, strong discretionary power in granting operating licenses to companies can result in extortion requests by public servants.

But the business sector (i.e. **supply side**) has its own responsibility to act. In line with the notion of corporate social responsibility, companies do not only need to comply with laws and regulations; it is increasingly expected that they also adhere to globally-recognized ethical standards, expectations from society (which may even go beyond the law) as part of their business activities. Assessing whether companies implement anti-corruption ethics and compliance programs within their own operations, promote integrity in their supply chain, whether they publically report on their anti-corruption endeavours, or whether they engage in collective action initiatives with their peers or other stakeholders is equally important to understanding where a country stands on business integrity.

To state the obvious, there is a strong interdependence between these two perspectives. While it has been shown that most business managers disapprove of corrupt practices, the perception often prevails that acting against corruption will either result in a short-term loss of opportunity or that corruption is seen as a necessity in doing business. When faced with winning an important contract, obtaining permission to open a new store or renewing an operating license, existing environmental factors may challenge companies to conduct their operations with integrity or even voluntarily adhere to good practice standards.<sup>1</sup> It is therefore important to look at both stakeholder groups simultaneously, the public sector and the business sector, and understand<sup>1</sup> what each of them is contributing to an environment where companies can do business in a clean and fair manner.

These two perspectives are also often captured in definitions of business integrity. For example, Transparency International defines business integrity as *"adherence to globally-recognised ethical standards, compliance with both the spirit and letter of*



*the law and regulations, and promotion of responsible core values (e.g. honesty, fairness and trustworthiness).*<sup>2</sup> This shows that business integrity, in the broadest sense, encompasses the full range of good business practices commonly associated with corporate social responsibility. More narrowly, it reflects a commitment to abide by minimum legal requirements and norms of ethical business conduct. Organizations that act with integrity obey the law and ethical norms; they treat their employees, customers and business partners fairly and respectfully; they abide by their commitments, and they generally conduct their affairs in a socially responsible manner.

In an anti-corruption context, business integrity means conducting business in a manner that avoids bribery and other corrupt acts that undermine the operation of and public confidence in the marketplace.<sup>3</sup>

In short, assessing business integrity from a country's perspective has to go beyond the traditional focus of laws and regulations 'on paper' and their application 'in practice'; it also includes actions by companies themselves that demonstrate their willingness to share responsibility for countering corruption (e.g. through participation in collective action initiatives or public reporting of their anti-corruption programme). Without such a comprehensive understanding, reform agendas to improve the environment in which companies operate and how they operate will not be successful.



<sup>1</sup>Adopted from HUMBOLDT-VIADRINA School of Governance, *Motivating Business to Counter Corruption: A Practitioner Handbook on Anti-Corruption Incentives and Sanctions*, 2013.

<sup>2</sup>Transparency International, *Policy Position, Building Corporate Integrity Systems to Address Corruption Risks*, #4/2009.

<sup>3</sup>Adopted from United Nations Office on Drugs and Crime, *A Resource Guide on State Measures for Strengthening Corporate Integrity*, 2013

## I.2. WHY A NEW BUSINESS ASSESSMENT TOOL?

Traditionally, assessment efforts on a country level have focussed primarily on understanding the major corruption-related factors within the public sector. Well known comprehensive analytical frameworks include Transparency International's National Integrity Studies or Global Integrity Country Scorecards (among others). These frameworks are in-depth assessments of the current status of integrity and anti-corruption in the public sector or society at large (also involving other stakeholders).

In addition, a variety of ratings and indexes – measuring the (perceived) level of corruption in the public sector – exists, including

- Transparency International Corruption Perceptions Index,
- Transparency International UK Defence Anti-Corruption Index Government
- Worldwide Governance Indicators
- World Bank Doing Business Index, etc.

These public-sector oriented in-depth assessments as well as ratings/indexes have been proven to be very helpful in stimulating peer pressure and competition between countries and governments. They raise awareness and interest in the topic among a broader audience because they translate corruption in the public sector into concrete and tangible information – and make them comparable with others.

But these sources of information typically do not include sufficient information on the country's business sector.

As of today, there is no comprehensive framework targeted at reducing corruption in the business sector.<sup>4</sup> **Transparency International's (TI) Business Integrity Country Agenda (BICA)** seeks to fill this gap.

BICA is the first comprehensive analysis framework that specifically assesses efforts by all stakeholders to reduce corruption in and from the business sector at a country level.

BICA seeks to create a relevant body of evidence on business integrity in a given country<sup>5</sup>, a widely-shared agenda for reform and a collective momentum for change towards more business integrity among key stakeholders.

Transparency International envisages that the BICAs will become an important reference point for fighting corruption in business practices within countries and around the globe.

<sup>4</sup>In the BICA context the business sector is understood in a broader sense, including public and state-owned enterprises. The reason for including the entrepreneurial branch of the state is because of its importance in some economies, depending on the country's history.

<sup>5</sup>BICAs will look at the environment in which national and international companies operate within a country (inward perspective). BICAs will not assess how companies from this particular country conduct business abroad.

## I.3. BICA IN MOZAMBIQUE

The current BICA report is the first pilot exercise of this instrument in a specific country, in this case Mozambique.

The BICA assessment process in Mozambique began in February 2015 with a workshop at the TI Secretariat in Berlin with the director of the Centre for Public Integrity (CIP), TI's National Chapter in Mozambique and the leader of the research team.

After the Berlin Workshop, CIP created a research team and started the process of identifying members of the National Advisory Group (NAG). Work then started on gathering data for the assessment. This included sampling enterprises and an extensive documental and bibliographic research that permitted the production of evidence, an assessment of BICA indicators and writing the report. After its creation, between July 2015 and February 2016, the BICA NAG had three meetings with the research team and the national chapter to present the assessment methodology, present the preliminary results and for the final validation of the findings and produce recommendations for future collective action.

## I.4. METHODOLOGY

The BICA assessment framework recognizes that three key stakeholder groups, i.e. public sector, business sector and civil society, contribute to an environment that enables the business sector to act with integrity and accountability. Each of these three groups is broken down into thematic areas and each thematic area is then further broken down and assessed using key indicators. The BICA indicator assessment process consisted of the following elements: a desk study of relevant existing information, an analysis of corporate anti-corruption measures, related disclosure practices adapted from TI's Transparency in Reporting on Anticorruption (TRAC) tool and expert interviews to supplement and/or validate information obtained through the desk study.

The assessment of indicators, thematic areas and stakeholder groups was conducted in stages. First, primary data were collected through a review of documents and bibliography and the information obtained was further supplemented and validated using interviews with experts. The BICA assessment exercise was not a mere aggregation and calculation exercise but a combination of individual indicators and an analysis of how different elements interplay to contribute to business integrity.

One of the thematic areas in the business sector stakeholder group evaluated the extent of transparency and disclosure practices within the business sector. The level of transparency and disclosure was assessed across three key areas of corporate reporting:

- Anticorruption policies and programmes
- Organizational transparency including information on ownership of subsidiary companies
- Country by country reporting

In order to assess the level of transparency across the above categories, a sample of 50 representative companies in Mozambique was chosen. This included both private and public companies, and initially the sample of 50 big companies was drawn from two sources: the KPMG 2014 biggest 100 companies in Mozambique and the Enterprise Map of Mozambique.<sup>6</sup> The list of companies (see annex) represents different sectors, namely agriculture and fisheries (7), finance and insurance (4), information and communication services (3), commerce (12), construction (3), hospitality and catering (2), extractive industries and manufacturing (6), services (9), and transport and warehousing (4). Of the initial sample of companies 3 were no longer operational.

The information for assessing transparency indicators was gathered from the companies' websites. Once the data were collected, the indicator scores were shared with the companies for review and comment by them. At this stage, a questionnaire was also sent to the companies to gather additional data. However, only 4 companies responded to this request: one correcting/updating the information gathered from its website, one stating that it was not available to provide further information and the other two sent the requested information.<sup>7</sup>

The data on the other thematic areas in the business sector stakeholder group were obtained mainly through interviews with business associations, trade union representatives, auditing and accounting professionals to complement, verify and validate the available information. Additionally, National Advisory Group (NAG) members in the business sector were important in discussing the validity and plausibility of the main findings, although final responsibility for the results lies with the report's authors.

The BICA assessment indicators comprise a general question and a set of follow-up guiding criteria to be answered with information and evidence to obtain the final scoring. The assessment also includes a colour code for each score.

- A numerical scale of a 0 to 100 score. The minimum value indicates the absence of the elements assessed and the highest number all elements, based on the follow-up questions.

<sup>6</sup> See Sutton, 2014.

<sup>7</sup> Low feedback from companies is common in Mozambique. For example, the ranking of the 100 biggest companies is based on a survey of 1,000 companies and normally about 200 companies respond to the survey. To some extent, this informs the disclosure and transparency practices of the country's enterprises.

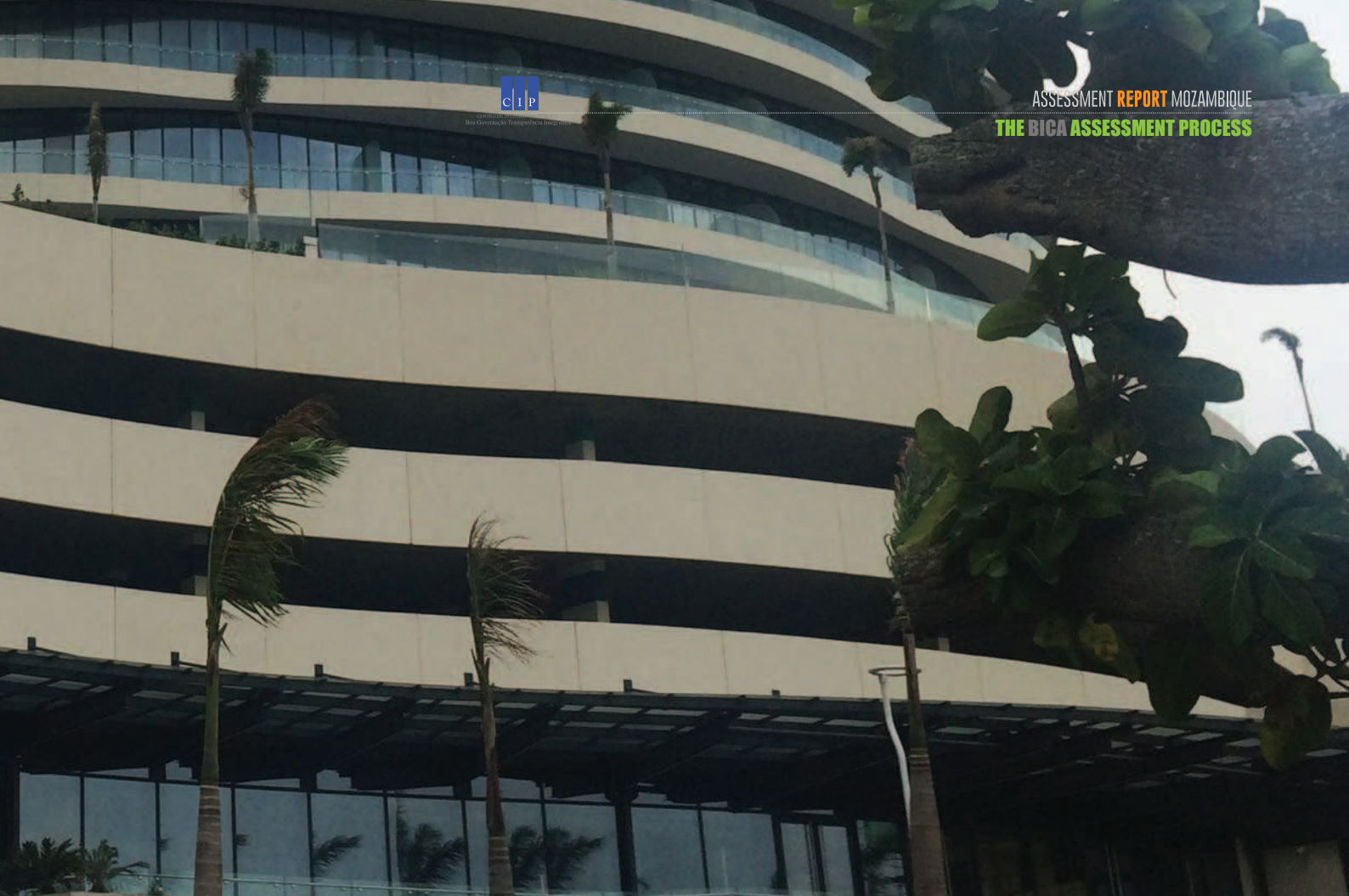


- In the same vein, red indicates a 0 score, orange stands for 25, yellow for 50, yellow-green for a score of 75 and green for a 100 score.

Figure 1 shows the representation of the scores and colour codes according to compliance with requirements or response to all the questions for each indicator.

Figure 1: BICA Scoring and Colour Codes (meeting requirements)





In line with its approach to promoting business integrity, the BICA assessment covers three stakeholder areas: public sector, business sector and civil society, disaggregated into 15 thematic areas and 51 indicators (31 for the public sector, 17 for business and 3 for civil society).

## 1.5. STRUCTURE OF THE REPORT

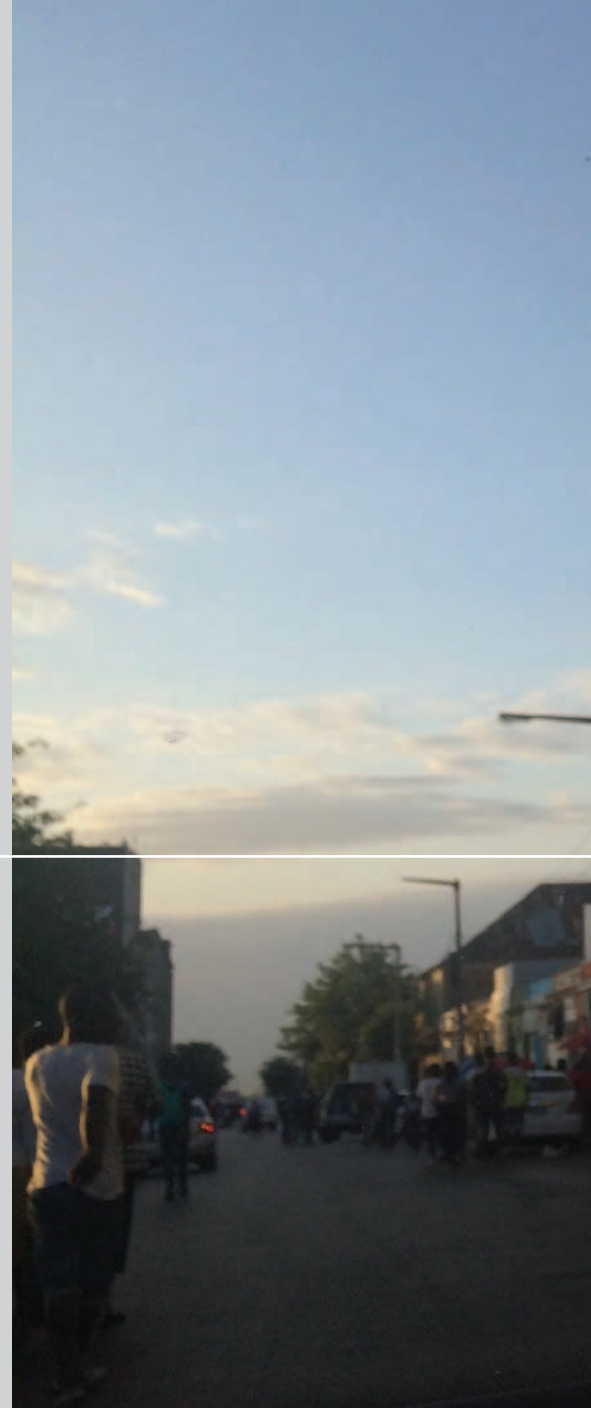
The remainder of the report comprises four sections: the second section presents the country context, the third presents summaries of the 3 stakeholders areas: public sector, business sector and civil society. The fourth section presents a detailed assessment of the indicators for the different thematic areas. Finally, the last section summarises the main recommendations.

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survey. To some extent, this informs the disclosure and transparency practices of the country's enterprises.

# COUNTRY CONTEXT

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## II.

# COUNTRY CONTEXT

## II.1. POPULATION AND POLITICAL CONTEXT

Mozambique had an estimated population of 25.04 million people in 2014, spread over a surface area of 799,380 square kilometres. Of its population, some 51.3% (12.8 million) is between 15 and 59 years of age i.e. the economically active population (National Statistics Institute, 2015).

Politically, the country is a unitary state, with a semi-presidential system that comprises a President who is the head of government and state, but also a Prime Minister with very limited formal powers. Its unicameral legislature has 250 Members of Parliament, elected in a proportional representation system, whose electoral districts are the eleven provinces of the country – 10 provinces plus the capital city Maputo, that has the status of a province. Currently the Mozambican Parliament comprises three parties: Frente de Libertação de Moçambique<sup>8</sup> (Frelimo), Resistência Nacional

de Moçambique (Renamo) and Movimento Democrático de Moçambique<sup>9</sup>(MDM), with 144, 89 and 17 seats respectively. Despite being a unitary state, Mozambique has 53 municipalities with administrative, asset and financial autonomy, whose mayors and members of the local legislatures are elected directly for a five-year term.

Since the introduction of multiparty democracy in the 1990 Constitution (subsequently reformed in 2004), the country has held five general (1994, 1999, 2004, 2009 and 2014) and four municipal (1998, 2003, 2008 and 2013) elections. To date, the ruling party since independence from the colonial power, Portugal, in 1975, Frelimo, has won all the general elections, winning the presidency as well as a legislative majority. The main opposition party is Renamo, a former guerrilla movement that conducted a civil war against the Government from 1976 to 1992, when the General Peace Agreement (GPA) was signed. MDM was created in 2008 in the municipality of Beira as a Renamo spin-off, after the party incumbent was refused candidature for the municipal elections. Successive contested elections coupled with deficient post-war disarmament and social and economic integration of Renamo forces has been a source of political tension in the country.

## II.2. ECONOMIC SITUATION

Over the last ten-years Mozambique has had steady economic growth averaging 7% a year. The government anticipated economic growth of 7.5% in 2015. However, the International Monetary Fund (2016) projections are 6.3% and 6.5% for 2015 and 2016 respectively. Between 2006 and 2014, foreign direct investment inflows reached US\$ 23 billion. GDP was estimated at US\$ 17 billion in 2014 (Standard Bank, 2015), and the country's per capita income rose from US\$ 466.2 to US\$ 696.6 between 2009 and 2014 (National Statistics Institute, 2015) (International Monetary Fund, 2016a). Despite this remarkable economic growth, poverty remains high and according to the latest available poverty impact assessment data (2009)<sup>11</sup>, the poverty rate is 54% (DNEAP, 2010). In 2015 Mozambique ranked 180th out of 188 countries and territories in the Human Development Index (HDI) (United Nations Development Programme, 2015),

Agriculture, the main activity in the Mozambican economy, accounted for 21.6% of GDP in 2014 and employs around 70% of the labour force. The second most significant sector is commerce and car repair (11%), manufacturing (8.80%), followed by transport, storage and communications (8.1%). The overall service sector accounts for more than 46% of GDP (see Table 1).

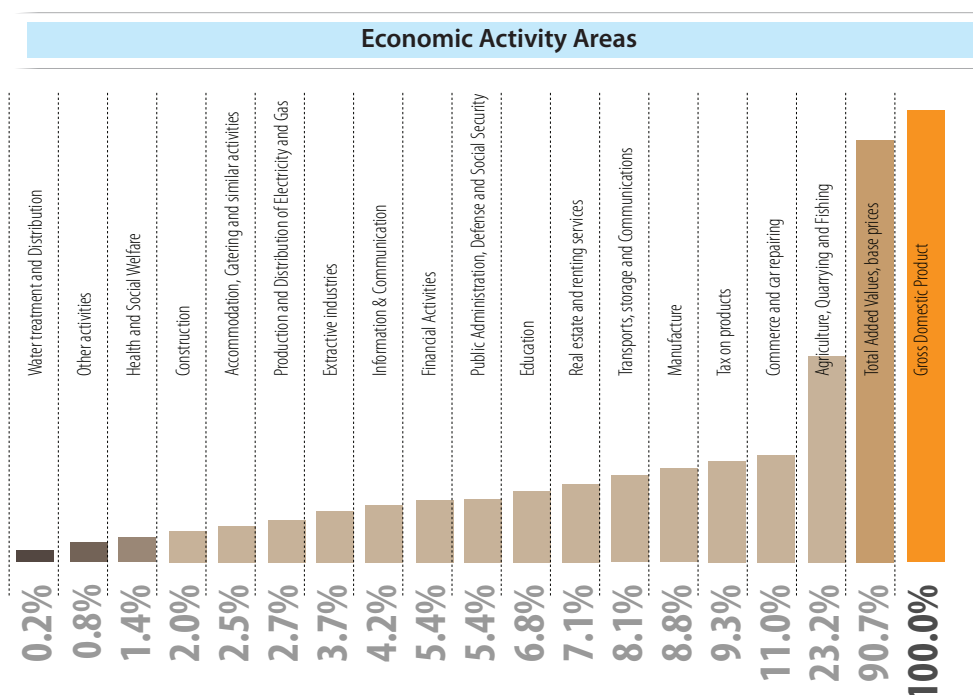
<sup>9</sup>Mozambique National Resistance. This political force was founded in 1976 and waged a civil war against the Frelimo-led regime up to 1992, when a general peace agreement was signed. In 1994 Renamo participated in the first general elections and since then has been the main opposition party.

<sup>10</sup>Mozambique Democratic Movement.

<sup>11</sup>Preliminary data of the latest Household Budget Survey, the instrument used to assess poverty impact, completed in 2015, do not include the poverty rate.



**Table 1: Mozambique's GDP Structure at Constant prices, 2014 (2009=100)**



Source: National Statistics Institute

Mozambique recently started to exploit its massive coal reserves and made world-class gas discoveries, which have contributed to foreign direct investment inflows and stimulated economic growth. In 2013, the extractive industry was the fastest growing area in the economy, with a rate of 38.2%. However, despite the grow-

ing importance of natural resources in the economy, this area only accounts for less than 3.7% of GDP; together with the distribution of electricity and gas it reaches 6.4% (see Table 1). Although coal exploitation has begun, falling commodity prices in the international market have reduced the inflow of foreign direct investment. Combined with a reduction in development aid this has resulted in the devaluation of the local currency, the Metical (MZN). It lost 30% of its value against the US Dollar in November 2015 alone, and accumulated a loss of 75% for the year (Standard Bank, 2015) (DAI and Nathan Associates, 2014).



This situation is likely to change with the development of the gas projects in the Rovuma Basin, the Final Investment Decisions (FID) of which are expected in mid-2016. The Rovuma Basin has estimated gas reserves of 180 trillion cubic feet, equivalent to the total reserves of Nigeria. Investments in the development of gas projects are estimated at US\$ 100 billion - the biggest investment ever in Sub-Saharan Africa. Production and exports of gas will start in 2021. From 2021 to 2025, when liquefied natural gas (LNG) production starts, GDP growth is expected to average 24% a year and this resource will be responsible for more than 50% of the country's nominal output in the mid-2020s. By 2028, when the last LNG plant (train) is expected to operate, and production will reach 89 million tons per year, projected economic growth could average

between 3 and 4%. Mozambique is poised to become the world's third largest producer of LNG, after Qatar and Australia, and fiscal revenues are expected to reach US\$ 500 billion. Fiscal revenue from gas is expected to reach 50% of total fiscal revenue by the late 2020s (International Monetary Fund, 2016b).



## II.2.1. EMPLOYMENT

The Five-year Government Programme 2015-2019 has the target of creating 1.5 million jobs. This is a considerable challenge given that the number of jobs created per annum has been less than the number of new entrants to the labour market. Information on the unemployment rate in Mozambique is generally considered inaccurate. According to AfDB and OECD (2014), it is estimated that on average 300,000 people enter the work force every year in Mozambique. Jones and Tarp argue that new entrants to the labour market will increase from 300,000 to 500,000 per year by 2040

(Jones & Tarp, 2012). However, in 2012 only 280,000 jobs were created, including formal private and public sector jobs, self-employed people, hiring foreigners and mining jobs in South Africa (DAI and Nathan Associates, 2014), a historical employer of Mozambican labour. According to the 2014 Statistical Yearbook, there were 157,925 unemployed people registered in the country. Of these, 28,670 unemployed people were registered in employment centres and only 18,175 jobs were offered through formal channels (mostly employment centres) (National Statistics Institute, 2015). Moreover, according to the Government report on the first year of its 2015-2019 programme, 213,546 new jobs were created up to September 2015, which was 72% of the projected 296,713 jobs for 2015.<sup>12</sup> The 2016 Annual Government Plan projects the creation of 297,152 jobs. This reinforces the idea of a persistent deficit in job creation in Mozambique, and poses challenges in order to reach the government's goal of creating 1.5 million jobs in five years.

## II.2.2. CURRENT ECONOMIC REFORMS

The country is implementing a set of economic reforms agreed with the IMF, private sector and donors. They include continuous improvements in mining and hydrocarbons legislation to facilitate further investments in natural gas, improving the Value Added Tax (VAT) administration, strengthening capacity for transparent public investment management and financial sector and public financial management reforms.

Another reform area is improving the management of natural resources, which includes measures to channel the respective revenue to high priority public investment (and improving selection criteria and processes), as well as improving linkages between local companies and extractive industry megaprojects through a local content policy. In the business sector, the "Doing Business Ranking" (currently Mozambique ranks 133rd out of 189 economies) has been a major influence on government policies. The government has adopted specific strategies to improve the business environment in coordination with the private sector. Some of the reforms introduced are: reduction of red tape in business licensing, creation of a credit risk database and improving the legal framework for bankruptcy and insolvency.

Privatization efforts began in the late 1980s as part of the structural adjustment programmes and the transition from a planned to a market economy. A significant number of public companies were privatised, mostly to people from the political elite, as part of the accumulation process and to ensure the loyalty of part of the elite to the ruling party (Castel-Branco, 2015). However, a lack of capital and managerial skills has limited the development of a strong local business class and most of the former public enterprises have collapsed. The creation of a national business class did not gain

<sup>12</sup><http://noticias.sapo.mz/aim/artigo/10900126112015164717.html>, accessed on 13 January 2016.

traction either. Recently, public-private partnerships (PPPs) have been adopted as a halfway between public ownership and privatisation, buttressed by legislation and regulations approved since the last decade, initially as part of the public procurement laws and eventually with its own laws and regulations. However, some of these partnerships are still plagued by serious transparency problems, and are cited as favouring the businesses of the political elite rather than the public interest (Nhamire, 2015).



### II.2.3. INFORMAL ECONOMY

Although there are no official data, the informal economy is strong in Mozambique, with only around one million people registered in the national social security system in 2012 (DAI and Nathan Associates, 2014). The Government Five-Year Programme 2015-2019 indicates the existence of 429,412 employees registered in the social security system (República de Moçambique, 2015a). The public sector employs slightly less than 300,000 people. Given that the labour force (the population between 15 and 59 years) is estimated at 12.8 million people (Statistical Yearbook 2014), this means that most employable people are either unemployed or are in the informal sector. Despite



their lack of formal registration, informal companies and vendors are charged taxes and fees by the government. The Association of Informal Sector Workers has been an active and recognized interlocutor with the government. Banks are also increasingly attentive to this sector, with some such as Mozabanco creating special products for this market segment.

## II.3. BUSINESS-SECTOR COMPOSITION

### II.3.1. DOMINANT INDUSTRIES

According to the latest enterprise survey, single-person owned companies in Mozambique account for 84% of enterprises, but shared-ownership companies employ 56% of all persons employed and contribute 84% of the turnover in the overall business sector. Small and medium enterprises (SMEs) continue to make up the majority of for-profit entities in Mozambique, accounting for 96% of all business sector units. SMEs employ 51% of the corporate labour force but contribute only 16% of the total business turnover. The largest number of companies is concentrated in trade (56%); accommodation, catering and similar activities (22%) and manufacturing industries (9%). The biggest employers are also the companies in areas with the highest number of enterprises. Thus, 31% of jobs are in the trade area, followed by manufacturing industries with 17% and 16% in accommodation and catering-related activities. Trade and manufacturing companies also had the largest share of total business turnover, 44% and 22% respectively. Geographically, the city of Maputo, the country's capital, has the highest concentration of for-profit entities - 143 employees per 1000 inhabitants, and concentrates 59% of total company investment (Instituto Nacional de Estatística, 2015).

There is also heavy concentration in the export sector, where 13 companies accounted for three-quarters of the country's export revenue. A few companies dominate the main Mozambican export industries, namely, aluminium, electricity, ores and gas, which account for about 63% of exports. The following companies account for over 50% of this group of exports: Mozal (aluminium), HCB (electricity), Kenmare resources (ore) and Sasol Petrol Mozambique (gas). The remaining 37% of exports come from a variety of areas, with six industries (tobacco, wood, sugar, cashew, flour and prawns) accounting for 40% of this group. Even here concentration is high, as nine companies dominate exports in five industries (Sutton, 2014).



The development of gas projects will impact on the patterns of industry dominance, their regional location and in particular the export share of the current dominant industries.

Most of the study's interviewees acknowledged that Mozambican companies face serious management capacity problems. This is confirmed by a survey carried out in 2014 to assess management quality in Mozambican firms compared to 32 country cases. It concluded that: i) Mozambican companies were ranked at the bottom of the management index, with limited monitoring of production processes, infrequent, short-term and narrow targets, and ineffective human-resource management; ii) Mozambican companies lagged behind other companies in Africa and in other emerging economies in sound management practices; iii) although some companies had high quality management practices, around 80% of those surveyed were considered badly managed, dragging down the country's average management scores; iv) two factors were pointed out as determining the low management quality of Mozambican firms: informational barriers (lack of managers' perception of the quality of their management as a starting point for improvement) and workforce skills (Lemos & Scur, 2014).

This situation is not at odds with the history of the country as the emergence of entrepreneurs in the post-independence period is relatively recent, initiated in the late 1980s with the privatization process. This occurred in a context of dominance by state-owned enterprises in a centrally-planned economy, which did not stimulate the development of business management skills. This suggests that revenue and man-

agement capacity are concentrated in a few companies, with potential implications for business integrity, as will be developed later in this report.

### II.3.2. RELATIONSHIP BETWEEN MULTINATIONAL ENTERPRISES (MNES) AND NATIONAL ENTERPRISES

The post-independence Mozambican business sector has a relatively recent history. After independence in 1975, the state nationalized most of the enterprises inherited from the Portuguese and had to play an entrepreneurial role, in a difficult economic context and with virtually no qualified managers. The privatization process aimed at creating a new business class, carried out under the structural adjustment programme that began in 1987, benefitted political elites. However, lack of capital and management skills among these elites did not favour the creation of a strong business class. The survival of most local enterprises, new and privatised, was still heavily dependent on linkages with the state.



Megaproject investments, especially the emblematic Mozal aluminium factory in the late 1990s, expressed interest in involving local SMEs in their supply chain during the construction phase. In line with this objective, in 2001, with the support of the International Finance Corporation the company established the Small and Medium Enterprise Empowerment Linkages Programme. The programme was successful and Mozal decided to extend it in 2003 and renamed it MozLinks. The new programme objective was to create capacity in local SMEs to be competitive and qualified to bid for work with Mozal and other large companies. MozLinks developed the capacity of 45 local companies and Mozal increased the number of its local suppliers from 40 to 250. Other companies also joined the initiative – such as Sasol, Coca Cola and Cervejas de Moçambique<sup>13</sup> (Sutton, 2014).

<sup>13</sup> The main brewery in the country.

The natural resources boom that began in the last decade with coal projects in Tete province initiated by the multinationals Vale and Rio Tinto and the extraction of mineral sands in Nampula province by Kenmare, stimulated the inflow of foreign direct investment to the country, and represented another business opportunity for local companies outside the sphere of the state. However, the inability of local businesses to meet the high standards demanded in the provision of goods and services to these companies continued to be a serious obstacle. In order to address this problem, mining companies championed programmes to create capacity in companies in their supply chains, which also included adopting quality and integrity standards.<sup>14</sup>

So the shift of local companies from dependence on the state supply chain to private companies' supply chains was stimulated mainly by the megaprojects and multinational enterprises. According to Castel-Branco, Langa and Mandlate (2015), only a small portion of local companies, mainly those with institutional connections, access to information, and capital to match the required standards were able to establish links with megaprojects. In this regard, companies with previous access to the state supply chain and which were also owned by people with political connections and access to privileged information, improved their standards in order to participate in the megaproject supply chains.

### II.3.3. ROLE OF STATE-OWNED ENTERPRISES

In June 2015<sup>15</sup>, the state had shares in 114 enterprises, 6 of which were about to be sold. There were 14 fully state-owned enterprises. All are supervised or managed by the State Shareholding Management Institute (IGEPE).

Public enterprises play an important role in public utilities: water supply, electricity, oil and gas, and telecommunications. In the telecommunications sector, one of the three mobile phone operators in the country, Mozambique Cellular (MCel), is a publicly-owned company (through the state and the public enterprise Telecomunicações de Moçambique) and a leader in this sector.

State-owned companies are also important in the transport sector, controlling the country's main airline, and the biggest railway and port company, Caminhos de Ferro de Moçambique (CFM).

Despite the privatisation process, the presence of these enterprises in the economy is still significant. Of the 10 biggest companies in Mozambique in 2014, five were state-owned enterprises and the state was a shareholder in two of them.

<sup>14</sup>Vale suppliers must confirm compliance with the company's Code of Conduct when they are granted a contract.

<sup>15</sup>[http://www.igepe.org.mz/index.php?option=com\\_content&view=article&id=76&Itemid=72&lang=pt](http://www.igepe.org.mz/index.php?option=com_content&view=article&id=76&Itemid=72&lang=pt), accessed on 15 January 2016.

State-owned enterprises are not only key players in the economy but also have an important social role. For example, continuous rural electrification is not profitable and is only possible because there is a political and social stimulus to foster it. From a purely economic point of view, rural electrification would be unviable, as the number of consumers does not yield a turnover that guarantees the sustainability of operations. Public companies have recently come under strong criticism for their growing inefficiency. This stems from their social role, undoubtedly, but also their politicization. A study of the public company Electricidade de Moçambique showed that in some cases the considerable investments made to electrify some districts capitals only benefitted a handful of clients (Nhamire & Mosca, 2014).



## II.4. CORRUPTION PROFILE

Mozambique has ratified and adopted a considerable number of instruments to fight corruption, among them the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption and the Southern Africa Development Community (SADC) Protocol Against Corruption. In the context

of the natural resources boom, and concerns related to transparency in the use of revenue, in 2008 Mozambique adhered to the Extractive Industries Transparency Initiative and has been a compliant member ever since.

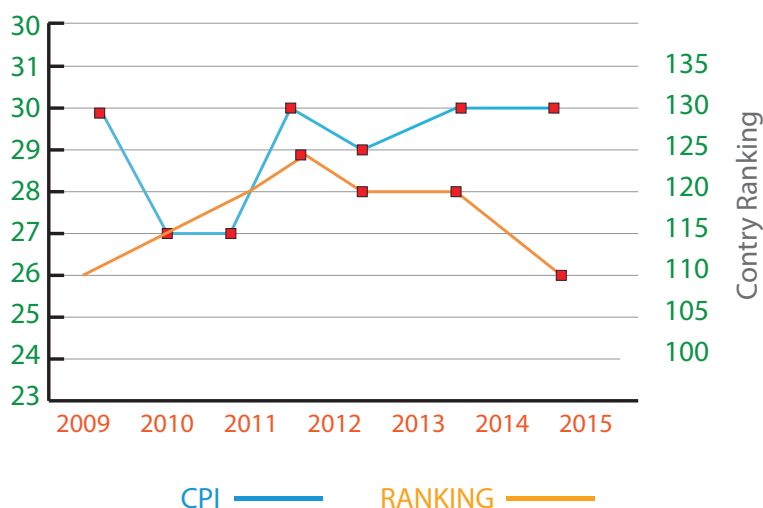
Most of these instruments were transposed through enactment of national legislation, namely the Public Ethics Act (16/2012), the Whistle-blower' Protection Act (15/2012), the Money Laundering and Terrorism Financing Act (14/2013) and revision of the Penal Code, to include a better definition of corrupt practices as well as the related sanctions.

The fight against corruption was one of the components of the Public Sector Global Reform Strategy 2001-2011 and it is still defined as a strategic area in public sector reform. It warranted special mention during the 2014 general election campaign and the inaugural speech of the elected president in January 2015.

However, despite the apparent political will to fight corruption, practice and results have been far from the rhetoric.

Between 2009 and 2015 Mozambique's corruption perception index (CPI) rose from 26 to 31. The country position in the CPI improved from 130th to 112th. However, this trend has not been linear, as the fight against corruption faced challenges throughout the period (see Figure 2), and still faces them today.

Figure 2: Mozambique Corruption Perception Index (CPI) and Ranking (2009-15)

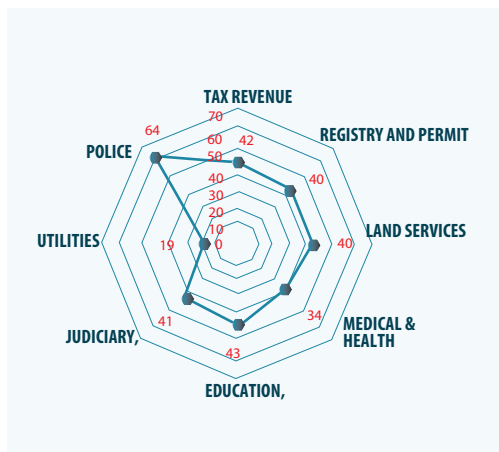


Source: Transparency International

Mozambique's corruption profile comprises both petty or administrative corruption, which is more pervasive, and also political and grand corruption.

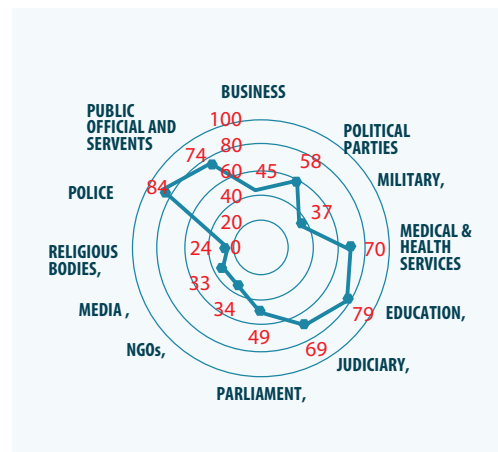
According to the 2013 Global Corruption Barometer survey, institutions such as the police, education, medical and health services, and the judiciary are still considered corrupt or extremely corrupt. As an illustration of the pervasiveness of administrative corruption, individual respondents to this survey pointed out that they had paid bribes to public servants in the police, education, land services, registry and permits, public utilities and the judiciary (see Figure 3 and Figure 4).

**Figure 3:** % of respondents who paid bribes in the last 12 months (2013)



Source: Global Corruption Barometer 2013

**Figure 4:** % of respondents considering institutions corrupt/extremely corrupt (2013)



Source: Global Corruption Barometer 2013

There is empirical evidence that administrative corruption affects business too. In this regard, the 2012 manufacturing firms survey, with a sample containing only small and medium enterprises (SMEs), showed that 45.2% of the firms interviewed cited corruption as a constraint on their growth. Tete province, that experienced a boom in the number of companies following investments in the mining sector, has the highest rate of companies citing general corruption as the main constraint in the country, with 68.8% of companies reporting corruption to be the main constraint. Of the firms interviewed 54% admitted that an average company pays bribes. The firms that said they had paid bribes in 2012 used 10.6% of their revenue on average for this purpose, a considerable cost to their business (National Directorate of Studies and Policy Analysis, 2013).

As regards political corruption, the critical point is the historical dominance of the ruling party Frelimo over the state machinery and the overall financing of political



parties. Concerning Frelimo's dominance, patronage politics, manifested through the politicization of public administration, has been used as a tool to strengthen party loyalty and mobilize new members. Despite Frelimo's claims that there is no evidence that its party members have been favoured in public administration, the African Peer Review Mechanism (APRM) report, based on extensive consultations, cited this problem as being one of the critical areas of Political Governance. Use of state resources for party purposes is another recurrent practice. As regards the financing of political parties, the laws governing these entities (Law 7/91) and electoral legislation (Law 12/2014 for general elections and Law 7/2013 for municipal elections) have provisions for this through the state budget – when parties have parliamentary representation or are participating in elections, and indirectly, through tax exemptions. However, parties have been using tax exemptions to import goods and vehicles for the commercial or individual use of people not entitled to these benefits.<sup>16</sup> Parties also do not report on their funding, in a clear breach of the law, which makes public financial reporting of party funding mandatory.

Grand corruption has not been systematically documented. However, there is evidence of state power being used by political elites to reap economic benefits. Granting the digitalization of radio and television to a company linked to the former president's daughter, Valentina Guebuza, is one example.<sup>17</sup> A recent study commissioned by the Centre for Public Integrity (CIP), based on a sample of cases involving public funds, revealed that over the last 10 years corruption may have diverted about US\$ 4.9 billion, about 30% of GDP.<sup>18</sup> Undoubtedly the biggest case of misuse of public funds to date is the US\$ 850 million loan obtained to fund EMATUM, a tuna fishing company, and to purchase military equipment allegedly for maritime security, to protect the

<sup>16</sup>CIP has reported extensively on these practices. See <http://www.cip.org.mz/article.asp?lang=&sub=iafl&docno=303>, and [http://www.cip.org.mz/cipdoc/316\\_CIP-a\\_transparencia\\_07.pdf](http://www.cip.org.mz/cipdoc/316_CIP-a_transparencia_07.pdf), accessed on 14 January 2016.

<sup>17</sup>See <http://www.clubofmozambique.com/solutions1/sectionnews.php?secao=business&id=21569&tipo=one>, accessed on 02 February 2016.

<sup>18</sup>See <http://confidencial.co.mz/2015/12/10/corrupcao-custou-cerca-de-49-mil-milhoes-de-dolares-nos-ultimos-10-anos/>, accessed on 13 January 2016.





strategic and sizeable oil and gas projects. The loan has a very high interest rate of 8%, and the fishing company has not succeeded in operating in a viable manner, even after the delivery of its fishing fleet. There is still also no sign that the military equipment will provide value for money. The EMATUM loan is a huge burden on the country's finances and contributed to the exchange rate crisis that led to the depreciation of the metical. It represents a difficult legacy by the former president to the current incumbent. The latter's recognition that he found the Treasury empty, is considered a sign that public resources might have been embezzled during the former presidency on a scale never before seen in the country's history.

According to a report by Global Financial Integrity, trade misinvoicing – exports and imports over- and under-invoiced – is an established practice in Mozambique, impacting on illicit capital inflows and outflows. The under-invoicing of imports to reduce or circumvent the payment of custom duties and VAT to the government is a particularly significant problem in Mozambique. The same source estimates that between 2002 and 2011 the country's gross illicit financial flows reached US\$ 585 million (US\$ 259 million in outflows and US\$ 326 million in inflows). Average tax revenue losses due to misinvoicing amount to US\$ 187 million, equivalent to 10.4% of government revenue (Baker, Clough, Kar, Leblanc, & Simmons, 2014). In the 2004-2013 period, illicit financial flows averaged US\$ 243 million, with a cumulative value of US\$ 2.42 billion. Cumulative trade misinvoicing outflows in the same period reached US\$ 2.33 billion, with an annual average of US\$ 233 million. Illicit hot money outflows amounted to US\$ 92 million. Gross trade invoicing in the above-mentioned period was US\$ 7.46 billion (Kar & Spanjers, 2015).

## II.5. BUSINESS INTEGRITY ACTIVITIES

Business integrity initiatives are few in Mozambique, and are being promoted essentially by business associations, civil society organizations and some multinational companies in their bilateral relations with local stakeholders, with little government involvement.

During a dialogue with the private sector, in August 2015 the president launched a challenge to the Confederation of Business Associations (CTA), to participate in the fight against corruption and include this activity in its annual plan. In the agreement signed in the context of dialogue with the government, CTA undertook to denounce its associates involved in corruption, tax evasion or abandoning construction work, a recurrent problem in public procurement. The idea behind the agreement is that CTA should be a government partner in law enforcement in key business areas. CTA is also preparing a Business Code of Conduct that will include monitoring, a set of sanctions for violations, as well as an enforcement mechanism.<sup>19</sup> Implementing integrity initiatives will be particularly challenging for CTA, due to the intermingling of politics and business in Mozambique. In 2014 CTA was in an embarrassing situation when it offered a Mercedes Benz to the then President Guebuza, a gift that was formally refused, as it violated the restrictions on public servants receiving this kind of gift under the Public Ethics Law.

The Institute of Directors of Mozambique (IoDmz) is the organization that has been championing the coordinated implementation of corporate governance in Mozambique, following on from the findings and recommendations of the African Peer Review Mechanism on critical points in this area. IoDmz is promoting other business integrity initiatives, among them the adoption of a Business Code of Ethics and a Business Pact Against Corruption (BIPAC) in procurement and political funding. The latter, funded by the Embassy of Sweden, is currently being disseminated and aims to promote integrity in public procurement, involving the business and public sectors, as well as civil society in monitoring public procurement and political funding. These actors were also involved in designing the instruments.<sup>20</sup>

The Commercial, Industrial and Services Association (ACIS) has a Code of Business Principles that members are supposed to adhere to, although only part of its 200 membership has signed up.

Finally, the organization Ethics South Africa is working with Mozambican companies

<sup>19</sup>Interview with CTA Deputy Executive Director, Eduardo Macuácuá, 28 October 2015.

<sup>20</sup>The BIPAC templates are available on the organization's website.

on capacity development in business ethics. The initiative is funded by the Siemens Integrity Initiative and will include a baseline study to assess business ethics in a set of local companies, followed by capacity development activities and monitoring implementation to assess the changes and results in selected enterprises.

The above-mentioned initiatives are either in an embryonic phase or their implementation is still slow. As will be detailed in the assessment, some companies are concerned with business integrity and have adopted related instruments that have been applied in their operations, including their suppliers and partners. Multinationals are the main champions of business integrity initiatives and so far, due to their leverage over their suppliers, they are partially influencing the adoption of some ethical principles. However, without the commitment of companies, this effort has had limited impact in terms of increasing the number of enterprises implementing business integrity initiatives.

According to interviewees, despite acknowledging the problems brought by corruption, in a context of very limited economic opportunities and considerable politicization of the economic sphere, local companies do not have strong incentives to embark on business integrity. In a context where the state is still the main economic agent and big players usually have links with the political elites and small players strive to stay afloat, incentives to promote or adhere to business integrity are considered low. Moreover, weak commitment to business integrity, despite the perceived costs that corruption brings, has been stimulated by the isolated way companies engage in this matter. Hence, collective action has strong potential to change this trend.

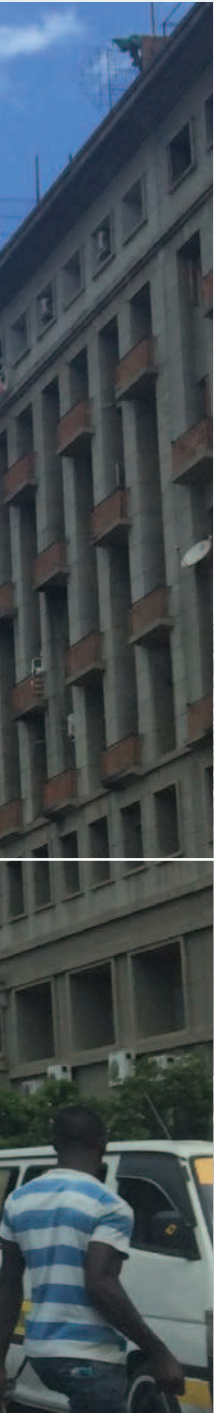


# OVERALL BICA

# ASSESSMENT

This section presents a summary assessment of the three main stakeholder groups covered by the BICA assessment: **Public** Sector, **Business** Sector and Civil **Society**, with an overall score for each stakeholder group and key recommendations highlighting spaces for improvement in these areas. The next section presents a more detailed analysis, comprising an overall assessment of each thematic area within the three stakeholders, complemented by a short description of the findings of each indicator.







III.

# OVERALL BICA ASSESSMENT

## III.1. PUBLIC SECTOR

SCORE

50

The public sector thematic area covers business integrity issues such as bribery of public officials, commercial bribery, money laundering, economic competition, undue influence, public tendering, and tax administration. In most of these areas Mozambique has developed legal frameworks that are in line with international standards. Mozambique has signed and ratified the main

international and regional anti-corruption conventions and has made a considerable effort to incorporate these instruments into its legal framework. However, despite fairly robust legal standards and regulations, our analysis shows that public sector performance in promoting business integrity in Mozambique is still relatively weak. Agencies entrusted with implementing the laws are often resource strapped with poor to low operational capacity and a lot of interference from the political establishment, such that they are unable to enforce the stipulated standards. The following paragraphs summarise the various thematic areas covered in the public sector stakeholder group.

Public sector regulations prohibit bribery of national public officials and the use of their position for undue advantage, but these regulations do not explicitly cover foreign public officials. Commercial bribery is also prohibited and goes beyond financial benefits or direct bribery (including economic participation in businesses and in-kind benefits), thereby providing a sound legal foundation to curb this practice. In both cases, there is no evidence of effectiveness, and the perception that corruption is high in the country has remained stable over the last two years. The justice system's performance in imposing sanctions has not improved, even though the capacity of the central and provincial Anti-Corruption Offices has improved, with increased human resources and budget allocation over the last four years. Moreover, reports on the corruption cases handled do not identify the types of corruption taken to court and handled by other enforcement agencies, making it difficult to understand real progress in law enforcement in this area.

Stemming from its adaptation of international conventions, especially the United Nations Convention against Corruption (UNCAC), Mozambique has enacted strong legislation prohibiting the laundering of the proceeds of crime, and has created a specific technical body, the Mozambique Financial Information Office (GIFIM in its Portuguese acronym) and an intersectoral mechanism responsible for the investigation of illicit financial flows. Although GIFIM, which produces technical information on the illicit flow of funds has adequate capacity and resources to carry out its tasks, the agencies entrusted with subsequent processes such as further investigation, trial and sanctions suffer from weak capacity.

The adaptation of international legal instruments such as the UNCAC has also informed the enactment of the anti-corruption package, which includes Whistle-blower Protection and Public Ethics laws, and the reform of the Criminal Code that introduced articles codifying corrupt practices. The Whistle-blower Protection Law only covers protecting victims and witnesses in a broad sense, and does not address situations that can occur in the business environment, such as instructions on organizing an effective system of whistle-blower protection within the organizational context. The law includes the creation of a Central Office for Victim Protection, not yet established, responsible for enforcing and controlling the implementation of measures to protect victims and whistle-blowers, and prepare implementation reports.

Mozambique adheres to international accounting and auditing standards and the related legislation is in line with International Financial Reporting Standards (IFRS). However, their application is still limited to a few companies, especially those traded on the stock market, companies in the financial sector and public enterprises. The Mozambique Tax Authority (ATM) that is responsible for monitoring the application of these standards has limited capacity and needs development. In reality, ATM limits its inspections to tax collection issues, not enforcing financial reporting standards.

According to Law 6/2012, external auditing of public enterprises in Mozambique is the responsibility of the Administrative Court. However, it has not yet started to do this. The regulatory environment in this area has benefitted from the 2012 creation of the Accountants and Auditors Association (OCAM), which certifies and exerts some oversight of professional conduct in this field. This is helping to improve the professionalism of auditors and accountants.

Procurement and competition legislation prohibits and restricts collusion, with the aim of promoting fair competition in public tendering and the efficient use of public resources for the development of a sound market economy. The procurement regulations (Decree 15/2010) specifically prohibit collusion and the Competition Law (Law 10/2013) prohibits the concentration of companies through mergers and acquisitions to influence prices and outputs artificially in specific economic areas. The Functional Unit for the Supervision of Acquisitions (UFSA), the oversight body for this area, publishes on its website a blacklist of companies involved in wrongdoing. However, its weak capacity in general and its ability to supervise contracting entities in public agencies (Procurement Management Units - UGEAs) in particular, allows for systematic violations of public procurement rules. This setting undermines transparency and the efficient functioning of public procurement. Business associations acknowledge that corruption in public procurement is high.

Political contributions in Mozambique are governed by laws on political parties and elections. This legislation includes the obligation of public disclosure and reporting on political contributions by both the public and private sectors. Nevertheless, the monitoring of political funds is limited to reporting on the amount of public funds allocated for election campaigns. In order to avoid undue influence in the public sector, conflict of interest regulations are included in the Public Ethics Law and in procurement legislation. However, the entities responsible for enforcing these laws are still in their embryonic phase. There is no coordination among the various units created by the law and with existing entities such as internal and external control mechanisms. Moreover, Mozambique does not have any legislation regulating lobbying, although this practice is increasing in policy-making. High profile recent examples are civil society participation in reform of the Criminal Code, as well as in the enactment of the Law on Domestic Violence against Women. In a country where political influence is a key element in economic success, there is still a lot to be uncovered about the role of specific actors in policy-making. Thus, the lack of regulation covering lobbying leaves a big gap in preventing undue influence in public decision-making.

Finally, since the 1990s there has been an intensive reform process targeting taxes and customs, and the current framework regulating this sector is in line with international standards. Customs and taxes were merged into the Mozambique Tax Authority (ATM) in 2006, in line with the international trend of centralizing tax administration



for efficiency purposes. ATM is an autonomous agency with a set of internal control mechanisms and channels for the public to denounce corruption cases, thereby serving as an external mechanism for checks and balance in public administration. Nevertheless, the tax and customs authority is perceived to be corrupt and is considered to be amongst the most critical areas lacking integrity.

In short, on the whole, except for a few gaps, Mozambique's legal framework is in line with international good practices. However, the formal adoption of international standards does not result in high levels of public or business integrity. As already shown, public perceptions of the integrity of public institutions are still predominantly negative<sup>21</sup> and illicit financial flows and tax evasion pose serious risks to the business integrity environment in Mozambique.<sup>22</sup>

As will be explained in detail later in this report, the ineffectiveness of the existing legal framework stems from a combination of factors, including: no regulatory framework to operationalize the laws, weak capacity to enforce regulations due to inadequate mandates (e.g. UFSA), poor checks and balances/safeguards for autonomous institutions such as the Central Bank and the Tax Authority, weak or non-existent administrative structures for implementation, lack of resources (financial and human) and, in some cases, lack of political will to deal with sensitive issues like combating corruption.

There are several examples of laws that are aligned with international standards but lack implementation. These include: i) the Public Ethics Law, with an ineffective Public Ethics Committee, created three years ago, that has only focused on educational campaigns instead of monitoring conflict of interests in the public sector; ii) the procurement regulations, with good standards for promoting transparent public tendering but with weak capacity in its supervisory and contracting bodies resulting in high levels of corruption in public bidding; iii) No regulations for the Victim and Whistle-blower Law and delays in the creation of a Central Office for Victim and Whistle-blower Protection, which discourages people from disclosing corrupt practices to public authorities.

The Mozambican business sector has historically had strong links with the public sector. A substantial number of successful companies today have enjoyed privileged access to the public sector supply chain, due to their political connections, in an economy with a very narrow production base.<sup>23</sup> As a result, incentives to promote public integrity, through the more effective application of laws pertaining to practices such as conflict of interest or transparency in public procurement, are fairly limited. However, examples of collective action against corruption and the recent agreement between the private sector and the government to include anti-corruption activities in their action plans reveal growing recognition within the business sector that corrup-

<sup>21</sup> See Figures 3 and 4.

<sup>22</sup> See Global Finance reports (Baker et al, 2014; Kar & Spanjers, 2015).

<sup>23</sup> Castel-Branco, Langa, & Mandlate (2015).

tion is harmful, and measures taken to reduce the risk of corruption for businesses will benefit the sector in the long run.

This provides entry points for short and medium term actions.<sup>24</sup>

### In the short term:

- Public Attorney's Offices should improve the information on corruption in their annual reports, identifying the type of corruption cases presented and taken to court, according to the typology presented in the legislation. This will allow for a better understanding of the type of corruption being punished and the challenges lying ahead, for further action;
- In the context of the ongoing public and private sector dialogue, identify critical areas and include in annual plans measures to improve public integrity, particularly in areas of interface with business. Examples of these areas are: public procurement (especially direct contracting) and conflict of interests (monitoring cooling-off periods for public servants);
- Public Ethics Commissions include in their monitoring and reporting priorities cases of conflict of interest involving the interface between public sector and business, initially to raise awareness about this problem, and subsequently for sanctions;
- The business sector priorities must focus on ensuring stronger adherence to existing collective action initiatives, such as the IoDmz's Business Integrity Pact against Corruption (BIPAC).

### In the medium term:

- Regulate and review existing legislation to improve its effectiveness in promoting business integrity, especially
  - o The Public Ethics Law, particularly issues related to enforcement of conflict of interest rules
  - o The Victim and Whistle-blower Protection law, adapting it to the business environment
- Revise procurement legislation to improve the current framework for internal checks and balances and include external checks and balances (e.g. civil society participation in oversight and monitoring public procurement);

<sup>24</sup>As the BICA assessment will be conducted on a regular basis it is more appropriate to limit interventions to the medium term, as the critical points could change over time. Subsequent assessment rounds will provide an updated vision of critical areas that can inform the definition of more relevant interventions.

- Improve the organizational capacity of business and public integrity enforcement agencies in the areas of procurement (UFSA), contracting units in public agencies, conflict of interest (Public Ethics Commissions), protection of whistle-blowers (Central Office for Whistle-blower Protection), application of the IFRS (Tax Authority), and sanctions for illicit business practices (the Public Attorney's Offices and the judicial system);
- Improve the capacity of the Criminal Investigation Police, the Public Attorney's Offices and the judicial system to follow up GIFIM's investigations;
- Government, civil society and donor support for specialist training for judges and the creation (implying legal revision) of specific sub-sections in criminal courts to deal with corruption cases.

## III.2 BUSINESS SECTOR

SCORE

25

Unlike the public sector that has a relatively well-developed legal framework, aligned with international practices and incentives, the business sector in Mozambique has not adopted international corporate integrity standards. An export-focused environment with limited opportunities for linkages between multinationals and local companies, limited business-to-business relations

and weak enforcement of integrity standards in the public sector are just some of the key elements impacting business integrity in Mozambique. Our analysis also found that only a few politically connected firms enjoy relations with the state or the public sector as suppliers, and these relations are fraught with unethical practices in public procurement. Thus, only a few companies are operating in an environment that fosters positive incentives for good management practices and business integrity.



This stakeholder group assesses business integrity based on the following areas: integrity management, auditing and assurance, transparency and disclosure, stakeholder engagement, and the role of the Board of Directors. The transparency and disclosure thematic area was assessed using a TRAC<sup>25</sup> assessment that involved evaluating the transparency and disclosure practices of a sample of 50 Mozambican companies representing prominent industry groups and sectors in Mozambique.



Most of the Mozambican companies sampled for this study cite integrity as one of their core values. However, only a few have an explicit and structured integrity management system, comprising clear and visible anti-corruption policies, applicable within and outside the company, operationalized in concrete programmes and with mechanisms to channel information about corruption and to ensure protection of employees or other actors who report malpractice.

Apart from a few individual local enterprises, business integrity management mechanisms are more frequent in multinational companies, which are exposed to a more demanding environment that includes operating in diverse markets, accountability to shareholders and/or providing reliable and attractive information to potential investors. It is not surprising that multinational companies are more likely to have integrity management systems that are applied to their subsidiaries and also to their

suppliers in Mozambique. In the Mozambican business sector, the multinationals' subsidiaries have the most visible and sound set of anti-corruption policies and programmes. Some business associations have policies or instruments to promote business integrity, although currently only a small subset of their members have adopted these policies or instruments into their business practices. IGEPE, the State Shareholding Management Institute has also been directing state-owned companies to adopt business codes of conduct and sound corporate governance practices. However, of the state-owned enterprises analysed in this study, only one declared that it had an anti-corruption policy. Nevertheless, it does not publicly report on the anticorruption policy or standards practiced.

Accounting and assurance practices of Mozambican companies follow international standards not necessarily because firms choose to do so, but because regulations are aligned with international practices. The Mozambican Commercial Code states that companies must have an Audit Board responsible for overseeing overall management procedures, especially analysing financial reports. Limited liability shareholding companies (those whose shares are traded in the stock market), should have their accounts checked by external auditors. Under Law 6/2012, state-owned companies must have their financial statements checked by the Audit Board, as well as by internal and external auditors. Generally, all companies, public and private, that publish their annual financial statements must have these documents checked by external auditors. The financial reports of multinational companies that are available online usually cover their global operations, and information pertaining to their national subsidiaries is very limited. The banking sector is probably the one area with the most consolidated financial reporting practices, and with easily accessible documents. Public companies sampled in this study also publish their financial reports,<sup>26</sup> although some of the reports available on their websites are outdated.

The overall accounting and audit situation in the business sector remains weak. According to experts consulted for this report, enforcement of standards is still low in most companies and only voluntary. Even in cases where it is mandatory, such as in the public sector, weak enforcement capacity limits these practices, affecting the quality of business integrity.

Transparency and disclosure on anti-corruption programmes is crucial for integrity because it allows for informed monitoring by stakeholders and the general public of the companies' operations and practices, and helps to make companies more accountable (Transparency International, 2014a). In Mozambique, reporting on the implementation of anti-corruption programmes is generally not available to the public through company websites. None of the sampled companies had a report on the implementation of their integrity programmes on their websites. Even multinational corporations that have relatively strong anti-corruption programmes, such as BHP Bil-

<sup>26</sup>Almost all the public companies sampled for this study had reports available in their homepages. The gas companies' reports were updated.

lition, the parent holding company of Mozal, do not provide details on their organizational structure, including their subsidiaries.<sup>27</sup>The multinationals usually report on their global operations and the information on a national subsidiary is often included under their regional operations (Examples of Mozambique Leaf Tobacco and BHP Billiton). Charitable contributions and sponsorships are not part of most financial reports. Some multinationals present such contributions in their “sustainability reports”, albeit with minimum details. It is mandatory for companies to present all relevant information to their shareholders. They are also supposed to provide financial information to employee representatives, to be used in the annual tripartite discussions between the public sector, trade unions and the business sector to negotiate annual salary increases. In some cases, the Annual General Meetings of companies might include employee representatives. However, this does not guarantee that company information is made available to them. According to a central trade union manager, it is not uncommon for employee representatives to be co-opted in order to hide information from their peers. Under the Right to Information Law (34/2014) public entities, including publicly-owned enterprises or companies where the state is a shareholder, and private entities contracted by the state or benefitting from public resources, must publish information considered of public interest or make it available when requested. However, the regulations of this law were only approved in December 2015. This legislation broadens the scope of companies that can be under the public scrutiny, such as those involved in public-private partnerships, public concessions and contracts. Given the historical close relations between the public sector and national companies, this is a big opportunity still to be (and worth being) explored.

There is some stakeholder engagement in anti-corruption initiatives, driven by members of business associations, in which actors outside the business sector are not involved. The two main business associations in the country have different situations. While ACIS already has a Code of Business Conduct with some members signed up, CTA, the biggest confederation of business associations is still in the process of approving this instrument. Specific industry associations, such as the Industrial Association of Mozambique (AIMO), occasionally conduct surveys among their associates that include questions on business integrity, but there is no consistent follow-up. AIMO usually intervenes when there are specific corruption cases affecting its members seriously. The Institute of Directors of Mozambique (IoDmz) a business entity concerned with corporate governance and business integrity issues has developed a Code of Business Conduct. It has developed a Business Pact Against Corruption (BIPAC) for Public Procurement and Political Financing, which is still in an early phase of gathering signatories. Thus, business integrity mechanisms, apart from those of some multinationals, have either low adherence by companies or are in an initial phase. Nevertheless, business associations are championing these initiatives.

According to the Commercial Code, the Board of Directors of public companies and of

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<sup>27</sup>This is not mandatory under Mozambican legislation.

limited liability shareholding companies are accountable to the Annual General Meeting or, in the case of the former, to the Audit Board and the relevant state entities.<sup>28</sup> Salaries of managers are established on an individual basis, based on negotiations with the company. This means that neither the salaries nor the criteria for establishing them are public. However, some sectors such as banking, have a salary system with pre-defined positions and related remuneration. But as this is only a reference for the negotiation, real salaries are often different from what is formally defined. Thus, information about the remuneration of managers is not public. Companies with a Code of Conduct normally have defined and regulated conflict of interest provisions. Public enterprises are theoretically governed by the Guide on Good Practices of the Corporate Governance Code, adopted by IGEPE in 2009 (Instituto de Gestão das Participações do Estado) and the Public Ethics Law (16/2012), which includes provisions on conflict of interest. This guide recommends the definition of clear criteria for the remuneration of executive and non-executive members of the Board of Directors. It also recommends the publication, at least in aggregate terms, of the Board members' remuneration. However, at least in the public sector, the enforcement of these instruments is weak. For example, a former Minister of Education was appointed director of a private university less than two years after he left his position, clearly contrary to the "cooling-off period" prescribed in the Public Ethics Law. Remuneration of the Board of Directors is not clearly presented in the annual financial reports of private or public companies.

In short, companies have many gaps in business integrity indicators. The situation is more critical among national companies, with public ones presenting better transparency and disclosure practices than private ones, although this does not mean that they are better in terms of business integrity. The points presented here lead to two insights. The first is that the tendency of multinational enterprises and their subsidiaries to perform relatively better is due to the heavily scrutinised context in which they operate. Their pressure and incentives stem from the fact that they operate in global markets, competitive environments and have to be responsive and accountable to their shareholders. This pressure has some spill-over effect on national companies too, especially those that participate in the multinationals' supply chains. However, this does not necessarily mean that national companies fully embrace the principles adopted by multinationals, as they operate in a market that demands much less accountability. The second insight is that the relatively better performance of public companies dates back to the country's history, when these enterprises were dominant. A national business class is still in the making. They do not have the financial capacity to match the size and economic importance of the multinational corporations, and still succumb to the woes of the market. These include competition for the state's supply chain and a weak record of integrity management. Thus, business integrity is not a priority for most national companies, unless a special incentive, such as participating in the supply chain, is involved.

<sup>28</sup> In Mozambique, under Law 6/2012, public companies are accountable to the Ministry of Finance and also to the sector ministry of their business areas.

New business integrity initiatives are gradually being developed in Mozambique to bring the business sector in line with accepted and recognized international standards. As mentioned earlier, national business associations are designing instruments to address problems in this area. Collective action should build on this. In the case of public enterprises, it is important to bear in mind that, despite the relatively better performance in some aspects, these entities still perform poorly with regard to accountability to citizens, their main shareholders. Political influence and a culture of lack of transparency in the public sector have a role in this performance, but the weak enforcement of existing legislation also has considerable influence. For example, publicly-owned companies are supposed to report to Parliament through the inclusion of their accounts in the annual General State Accounts that are formally approved by the legislature. Their accounts are subject to an external audit by the Administrative Court and by law, audit reports must be published (Law 14/2014, article 95).

Thus, recommendations for this stakeholder group are:

### In the short-term:

- Business associations should work with companies with business integrity management mechanisms to encourage them to report and share publicly their experiences of implementing anti-corruption policies and programmes;
- As there is a widespread understanding among business associations that local companies do not have strong incentives to have integrity management programmes, donors, government and civil society should support the business sector generally and associations in particular in identifying opportunities and risks and promoting business integrity principles. This exercise will inform the definition of further and more sector-specific interventions in this area.

### In the medium term:

- Support and strengthen the role of business associations in promoting integrity, transparency, reporting and disclosure standards among their members, through the operationalization of existing anti-corruption instruments and the adoption of IFRS;
- Improve the responsiveness and accountability to citizens of public-owned enterprises through more intervention by the Administrative Court and Parliament to guarantee compliance with the existing legal framework;
- Support the development of national companies' capacity for general and in-



egrity management. This means supporting the adoption of management and reporting standards (accounting and auditing) among a broader set of companies, in line with existing legislation;

- Civil society and government should identify and list companies and entities (public and private) subject to the disclosure of information obligation under the Right to Information Act.

### III.3. CIVIL SOCIETY

SCORE

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Civil society participation in business integrity initiatives is limited to a few areas, such as procurement, extractive industries and the sporadic uncovering of corruption cases in public enterprises. The most visible results are in the extractive industries. In other areas, interventions are unsystematic, with little follow-up and isolated outcomes, with no visible contribution to promoting

business integrity. Civil society can contribute to business integrity by providing checks and balances and as a mechanism for social accountability, scrutinizing the public and the business sectors. Historically, civil society in Mozambique has had the role of oversight and watchdog of the public sector and less of the business sector.

This section assesses civil society's efforts in preventing, reducing and responding to corruption in the business sector, based on existing checks and balances, such as the existence and effectiveness of an independent media and the engagement of civil society in promoting and monitoring business integrity-related issues in companies.



**Independent media** provide checks and balances for the business sector. Mozambique combines vibrant privately-owned independent media and a public media sector with a wide coverage (mostly radio and television) throughout the country, but with strong political control that reduces its autonomy. In an economy heavily dependent on the state and controlled by political elites, independent media face serious challenges of financial sustainability. According to the IREX Media Sustainability Index (IREX, 2015), Mozambican media companies are only “quasi-sustainable”, and their financial sustainability is low. Media coverage of anti-corruption cases is mostly through investigative journalism, not always linked to media companies, as is the case of CIP. The focus of the coverage has been proportionally stronger on the public sector and/or public enterprises.

There is no consistent and systematic reporting by the media on corruption in the private sector. The professionalization of the Mozambican media is still weak, which limits its capacity to report on technically demanding issues.

Civil society involvement in business integrity is more visible in the procurement area, where business and professional associations (Association of Procurement Professionals) and NGOs have taken some initiatives. For example, business associations include the revision of procurement regulations in their dialogue with the government. CIP has a research line on procurement and has researched and written on public-private partnerships. The Association of Procurement Professionals is lobbying to advise the Procurement Supervisory Body (UFSA) on good practices. Civil society participates in the Extractive Industries Transparency Initiative (EITI) and does research. Civil society organizations such as the Institute of Economic and Social Studies (IESE), CIP, Centro Terra Viva (CTV) work on extractive industry fiscal issues and resettlement processes have been able to influence on government and company decisions. These include improvements to consultation processes in the Rovuma Basin gas projects, the publication of contracts and better information on revenue from natural resources. But these initiatives are isolated and are not sufficiently articulated to be considered a civil society agenda to promote business integrity, apart from the specific interventions by business associations already mentioned.

The most significant and systematic civil society monitoring of business integrity is the EITI. There are also examples of civil society participation in the resettlement processes in the mining sector, as in Tete, and in the area of oil and gas in the Rovuma basin, more specifically in Palma district. The media recently reported on sporadic cases of corruption in public sector enterprises, but not necessarily combined with any systematic follow-up. In 2015 the media reported corruption cases in the Mozambique Assurance Company (EMOSE) that elicited a follow-up visit by the Prime Minister. However, these isolated cases cannot be considered monitoring, but rather sporadic and random reporting of business corruption cases, whose outcome is not tangible.

<sup>28</sup>In Mozambique, under Law 6/2012, public companies are accountable to the Ministry of Finance and also to the sector ministry of their business areas.

If civil society is to play a broader role in checks and balances in the businesses field, two substantial changes must occur:

- Improve the way the media cover business integrity issues, implying more frequency and technical expertise. For this to happen, the recommendation is to promote capacity in business integrity through specialist (short-term) training in the media sector and scholarships for academic training (medium term);
- Promote a more systematic and informed monitoring of the business sector by civil society organizations. This can be done by improving their capacity to deal with business issues and by fostering strategic alliances or coalition-building among relevant actors, civil society organizations with experience in governance monitoring and trade unions, with more experience in dealing with the business sector.

## IV.

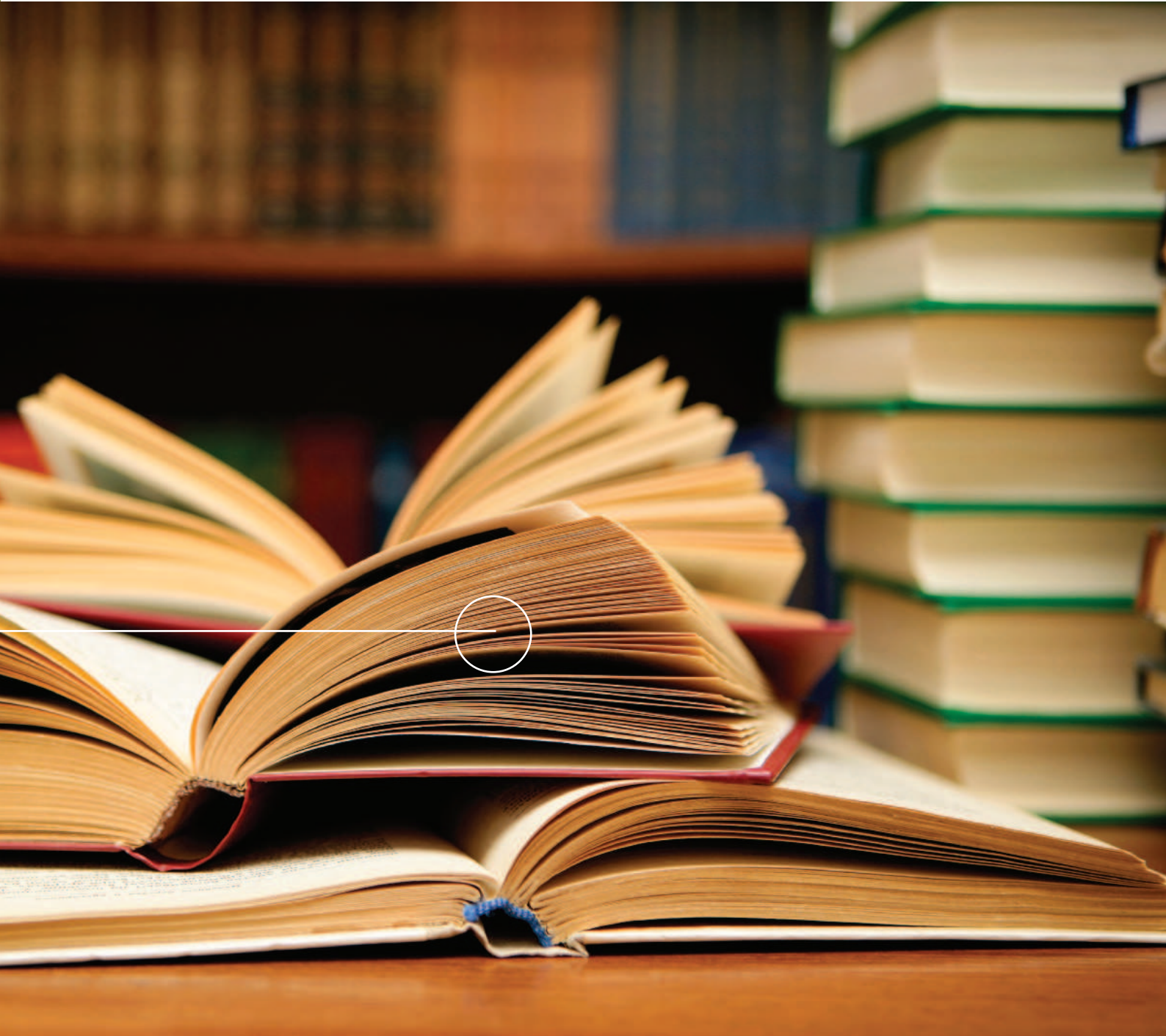
# DETAILED INDICATOR ASSESSMENT

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The following sections cover the detailed assessments of the BICA assessment indicators for the three stakeholder groups including detailed thematic summaries and indicator assessments.

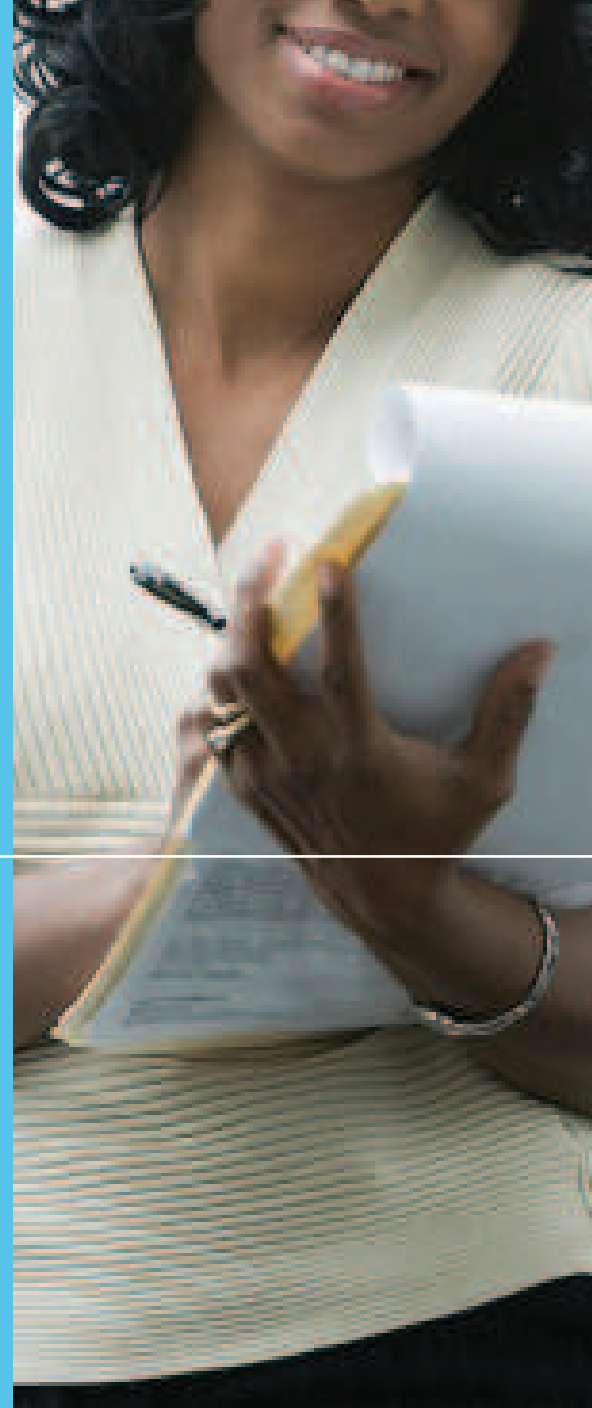
The assessment of the indicators is presented in the remainder of this section.





# PUBLIC SECTOR

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# 1. PUBLIC SECTOR

## 1.1. PROHIBITING BRIBERY OF PUBLIC OFFICIALS

SCORE

25

The country's anti-corruption legislation prohibits passive and active bribery of public officials, facilitation payments and undue advantages. This prohibition was included in the recent reform of the Criminal Code (Law 35/2014 of 31 December), which formally increases the potential for its effectiveness.

In reality, however, enforcement of this legislation is weak. Part of the problem is that although the enactment of the anti-corruption package, whose laws – The Public Ethics Law (16/2012) and the Witness Protection Law (15/2012) – was approved in 2012, certain entities responsible for enforcement are not yet in place. The Attorney General's Report on the State of Justice in 2015 shows that only 27% of the corruption cases presented to the Central Anti-Corruption Office (GCCC) were brought to court. Sanctions are being applied against public officials, and a substantial part of these cases involve petty corruption.

Organizations responsible for enforcing the law have serious capacity constraints. The judiciary's budget is set by the executive, which reduces its autonomy. The police lack basic working conditions such as remuneration, equipment and staff. Overall, as the institutions responsible for enforcing the law are not autonomous this reduces considerably the effectiveness of anti-bribery legislation. Recent legislation clearly prohibits the bribery of public officials, in the private sector and involving expatriates.



## 1.1.1. LAWS PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Scoring Question:	Score
Do the country's laws prohibit bribery of national and foreign public officials?	75

The legislation prohibits the bribery of national public officials (Law 6/2004) and also people in the private sector (Criminal Code, Law n. 35/2014 of 31 December). Article 508 of the Criminal Code states that giving or promising to give money in order to influence (influence trafficking) national and foreign public officials is a felony with penalties of up to two years in prison. Article 508 refers to influence trafficking and punishes the person that gives or asks for money or any other undue asset or non-asset benefits to influence a decision by a national and foreign public official. In this case, the person punished is only the intermediary, not necessarily the national or foreign public official. This is the closest the legislation goes in this respect. The Criminal Code is not clear about whether foreign public officials are those working for the public sector or anyone working for a foreign or international agency/government.

The Public Probity/Ethics Law (Law 16/2012 of 14 August) prohibits bribery in general, illicit economic participation by public officials; it establishes restrictions on conflict of interest, sets rules on declarations of assets and creates a set of organizations for its implementation, including the Central Public Ethics Commission, and Public Ethics Commissions in all central and local public agencies.

Fiscal legislation on income and corporate tax (Laws 33 and 33/2007 of 31 December) requires the declaration of illicit funds to the revenue authorities and the payment of taxes on this type of funds. However, this is only to enable revenue authorities to collect taxes; it does not exempt individuals and organizations from criminal proceedings. Illicit funds and other proceeds of crime cannot be included as losses and costs in financial statements for tax purposes.

Enforcement of anti-bribery legislation is weak.

One general aspect of the enforcement of legislation do deter bribery of public officials is that it recently became more consolidated following approval of the Public Ethics Law, the Witness, Whistle-blower and Victim Protection Law and the Criminal Code. This legislation was part of the so-called anti-corruption package approved by the Government in 2011, aimed at improving the country's legislation in keeping with the current context and also to incorporate relevant aspects of international anti-cor-

## 1.1.2. ENFORCEMENT OF LAWS PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Scoring Question:	Score
Are sanctions and incentives applied in practice to deter bribery of public officials?	0

ruption instruments, such as the UN Convention, the African Union Convention and the Southern Africa Development Community (SADC) Protocol.

This legislation is recent and work is ongoing to create conditions for its application. The Witness Protection Law (Law 15/2012) and the Public Probity Law (Law 16/2012), came into force in October and November 2012. However, the organizational set-up for implementing them has not yet been created. The Criminal Code entered into force on 1 July 2015. However, some aspects, such as investigation procedures, will be limited owing to delays in approving the revised Criminal Procedure Code. This and other aspects presented below affect the enforcement of anti-corruption legislation.

According to the 2015 Attorney General’s (PGR) Report on the State of Justice in Mozambique, between 2007 and 2013 only 27% of the corruption cases presented to the Central Anti-Corruption Office (GCCC) proceeded to the accusation phase and of these only 39% were brought to court. (See Table 6 in the 2015 Attorney General/PGR report annexes, page 136).<sup>29</sup>

The Criminal Code establishes a deadline of 5 years for corruption cases, after which these cases benefit from the statute of limitations.

Penalties for corruption are being applied mainly to public officials. However, even here, only a few high profile cases have gone to court. The most prominent example was embezzlement in the public company Mozambique Airports when the Board Chairman and the Minister of Transport and Communications (to which the company was subordinate) were convicted. The former Minister of Home Affairs during the mandate of President Chissano was also accused of misuse of funds, tried and acquitted. All these cases are not specifically related to bribery. Most cases presented in the Attorney General’s Report involve petty corruption and provide only an anecdotal and inconsistent picture of the enforcement of legislation. In the Mozambique Airports case, a financial manager actively involved in the scandal was acquitted due to his collaboration with the authorities. This is an example of the scant evidence of the ap-

<sup>29</sup>The low rate of corruption cases going to court is due to many factors, including lack of evidence, weak capacity in anti-corruption agencies, the institutional organization of the judiciary and the absence of specific sections in courts to deal with corruption cases. Perception Surveys, including the last one conducted by the Government in 2010, reveal a widespread perception that the fight against corruption is still weak and justice system only punishes the poor.

plication of mitigation incentives. One legal omission identified in this respect is the absence of the relevant regulations (and also of incentives) on the status of people denouncing corruption cases in which they are involved.

### 1.1.3. CAPACITY TO ENFORCE LAWS PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Scoring Question:	Score
Do relevant public authorities possess adequate capacity to enforce laws prohibiting bribery of public officials?	50

Capacity to enforce legislation prohibiting bribery of public officials is generally weak, due to relations between the relevant institutions, lack of autonomy and poor working conditions.

One of the weaknesses of the judiciary is that its budget is not set by itself or by Parliament; as the funding system is dominated by the executive, this reduces its autonomy. The police claim that they do not have the necessary resources – material, equipment, staff – to carry out their roles. The public attorney offices and the judicial power face the same problem.

Enforcement authorities are not independent.

Cooperation between the various institutions depends on the interests of the parties involved. Formally, there is potential for cooperation, but in reality this does not happen as fully intended. Organizations in Mozambique tend to operate within their mandates and their organizational structures. If no specific body is created for such, inter-organizational work to achieve common objectives is rare. And as an organisation's performance is not a key element in obtaining additional resources, rewards for managers, the incentive for cooperation, is weak. The Attorney General's report states that there is a good cooperation at the police level with Interpol and other governments. However, it could be argued that this cooperation has not contributed to solving the frequent kidnapping cases, which involve financial transactions and networks that extend beyond the national level.

## 1.2. PROHIBITING COMMERCIAL BRIBERY

SCORE

50

Deterring commercial bribery depends on the existence of sound and effective legislation and the relevant institutional capacity to enforce the law. Although legislation in Mozambique has improved lately, enforcement remains weak. Articles 501 and 502 of the Criminal Code prohibit active and passive bribery in a gen

eral sense, and also apply to the business sector. The prohibition of undue advantages goes beyond financial benefits, covering others, such as economic participation in business. Fiscal regulations – the Corporate and the Personal Income Tax Codes (Laws 34/2007 and 33/2007) state that illicit assets and income must be declared for tax purposes. In addition, Article 33 of the Personal Income Tax Code and Article 23 of the Corporate Income Tax Code stipulate that illicit expenses are not tax deductible. Requiring the declaration of illicit assets and income for tax purposes is a double-edged sword and ambiguous from an integrity perspective: illicit revenue is accepted for tax payment purposes, but at the same time illicit expenses are not accepted for tax deduction.

The enforcement of laws pertaining to corruption in general is weak, despite improvements in the capacity of some enforcing agencies. The weak effectiveness of anti-corruption laws is due to a mix of organizational capacity and political and institutional constraints.

Some problems, such as limited budgets, persist but others, such as a shortage of human resources, are being mitigated. The Attorney Generals' Report on the State of Justice presented to Parliament in April 2015, refers to a significant improvement in the human resources capacity of the Central Anti-Corruption Office, where staff rose from 29 in 2014 to 48 in 2015, 13 of whom were public prosecutors/attorneys and 4 were auditors.

There is a political and institutional dimension to the problem, which also has dual aspects. The political aspect is that the enforcement authorities are not independent of the ruling party and particularly the President of the Republic, who appoints the Chief Justice, the Presidents of the Administrative Court and the Constitutional Court, and the Attorney General, who appoints the director of the Central Anti-Corruption Central Office (GCCC). The institutional aspect is the cooperation and coordination between enforcing agencies, cited as a problem in the 2011-2014 GCCC Strategic

Plan. According to the above mentioned report, inter-institutional cooperation has improved, including relations with international partners. For example, in 2014 the GCCC received 38 audit reports from the Administrative Court, 34 from the General Finance Inspectorate, 3 internal audit reports of on public agencies and 3 from GIFIM, a body created to monitor suspect financial transactions. There is also good cooperation between the police and Interpol and with other governments, although its effectiveness in solving cross-border crimes is questionable.

In short, organizational capacity and the institutional setting are still considered critical problems, albeit with some improvement, but this is not yet reflected in a reduction of overall corruption. This suggests that the main problem is principally political will, as the data presented below demonstrate.

### 1.2.1. LAWS PROHIBITING COMMERCIAL BRIBERY

Scoring Question:	Score
Do the country's laws prohibit commercial bribery?	75

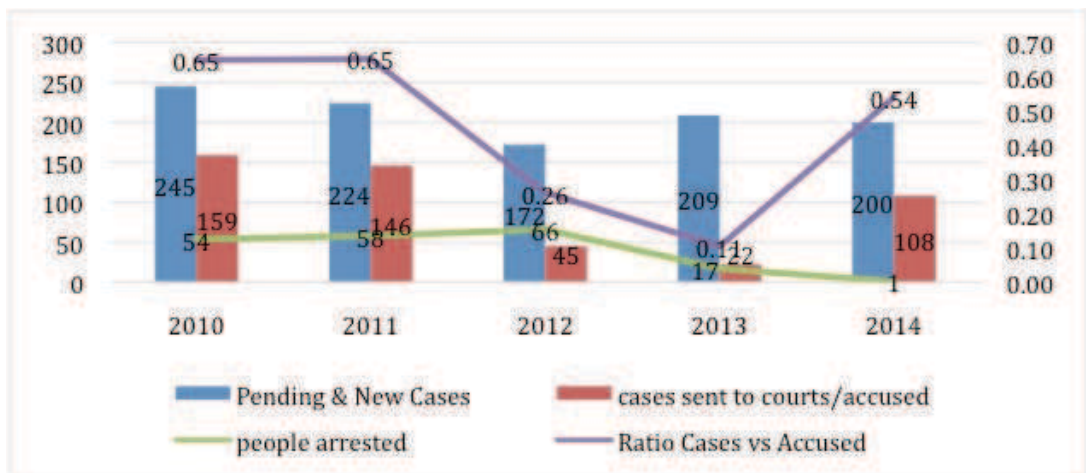
The country's laws prohibit commercial bribery, but the way fiscal legislation addresses illicit funds is ambiguous.

Articles 501 and 502 of the Criminal Code prohibit active and passive bribery in a general sense, which in principle means that they also apply to commercial bribery or any operation involving business sector entities and the public sector. Fiscal regulations state that illicit assets must be declared for tax purposes (see Article 1 of the Corporate Tax Code and Personal Income Tax Code, approved by Laws 34/2007 and 33/2007, of 31 December). However, Article 33 of the Personal Income Tax Code stipulates that illicit expenses are not tax deductible. In the case of business sector entities, Article 23 of the Corporate Tax Code stipulates that illicit expenses are not tax deductible (illicit being understood as actions that violate criminal legislation in Mozambique), as part of corporate costs and losses. From an integrity perspective, the deductibility of bribes for tax purposes is thus inconsistent, as the legislation allows the tax authorities to deduct taxes from illicit revenue (including bribes), but does not allow individuals and businesses or organizations in general to deduct illicit expenses as costs and losses for tax purposes.

As the data available on the enforcement of anti-corruption laws do not break down cases by specific types of offense it is not possible to identify accurately the effective-

ness of commercial bribery legislation, only all cases of corruption. The Attorney General's Annual Reports show that from 2010 to 2014 only an average of 44% of cases presented to the Central Anti-Corruption Office ended up in court (see Figure 5 ).

Figure 5: Corruption cases and enforcement 2010-2014



Sources: Report by the Attorney General's Office 2011, 2012, 2013, 2014, 2015

As regards commercial or business-related bribery, a Survey of Manufacturing Firms carried out in 2012 showed that over 50% of the companies had paid bribes. This suggests that the effectiveness of anti-corruption measures is low.

## 1.2.2. ENFORCEMENT OF LAWS PROHIBITING COMMERCIAL BRIBERY

Scoring Question:	Score
Are sanctions and incentives applied in practice to deter commercial bribery?	25

There is no evidence that commercial bribery is being deterred. Studies in specific industries show that commercial bribery is common practice.

The Attorney Generals' Annual Report is the only official and regular source of reporting on the progress of the fight against corruption. Data from the 2011 to 2015

reports show that the ratio of cases presented to the Central Anti-Corruption Office (GCCC), a branch of the Attorney General's Office, and the cases taken to court or charged was 0.44, which means that less than 50% of cases went to court. The number of people arrested is also falling (see figure 5). The quantitative data presented in the Attorney General's Report are inconsistent when cross-checked in different years and when using different methods of systematization (e.g., if broken down by each anti-corruption office or by province) and they do not refer specifically to bribery but to corruption in general. This raises doubts about the reliability of the data. However, at least according to perception studies, corruption is still high in Mozambique. The 2012 Survey of Manufacturing Firms found that 54% of the companies surveyed admitted that they paid bribes regularly, and they accounted on average for 10.6% of their revenue (MPD, 2013). This shows, to some extent, that there is weak enforcement of commercial bribery laws.

Active and passive bribery are crimes carrying custodial sentences of up to 2 years (Criminal Code, Articles 501 and 502). According to the Criminal Code (Article 151, #3), crimes punished with sentences of up to 2 years of imprisonment are subject to a statute of limitations after 5 years, as in the case of active and passive bribery. The law does not provide any weighting criteria for penalties according to the size of the bribe, i.e. the punishment is the same regardless of the amount involved. This leads to equal treatment for different degrees of corruption, in terms of the amount involved. In other words, the law does not have proportionate measures to punish corruption. In practice, grand corruption cases are rare and almost non-existent in the cases presented and taken to court. Moreover, there are no cases of commercial bribery in the Attorney General's Report.

Articles 13 and 17 of Law 15/2012 of 14 August establish special measures to protect witnesses, victims and whistle-blowers, and incentives such as protection, plastic surgery, change of identity, a house in the country or abroad and allocation of a monthly subsidy for individual and family maintenance, among others. This law is applicable to all potential criminal situations and is not specific to commercial bribery. In practice, there have been no examples of the application of this protection mechanism since the approval of the above-mentioned law. Moreover, it is applicable to natural persons and not legal persons.

### 1.2.3. CAPACITY TO ENFORCE LAWS PROHIBITING COMMERCIAL BRIBERY

Scoring Question:	Score
Capacity to enforce laws prohibiting commercial bribery	50

As in other areas of the rule of law, capacity to enforce anti-corruption laws may be low. However, one dimension is clearly improving, namely, human and financial resources and inter-institutional coordination. So the ineffectiveness of laws prohibiting commercial bribery is predominantly a political will problem as is shown below.

The response on capacity related to bribery of public officials is also applicable to commercial bribery, as there is no specific set of agencies for this type of bribery.

Between 2011 and 2014 funding for the central (GCCC) and provincial Anti-Corruption offices (GPC) rose; the trend was only reversed in 2015 with a slight decline, probably reflecting the overall reduction of the state budget that year (see figure 6).

Figure 6: Evolution of Budgets for Anti-Corruption Offices, 2011-2015 (MZN 10<sup>^3</sup>)

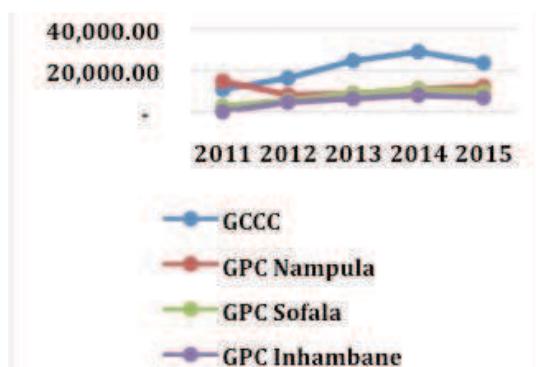


Table 2: Ratio of criminal and corruption cases x number of public attorneys 2010-2014

	2010	2011	2012	2013	2014
# Criminal cases presented to PP Office	45185	48902	53670	57706	61075
# of corruption cases	245	224	172	209	200
# Public Attorneys	278	302	316	356	374
# Public Attorneys A-C Office	12	10	12	13	13
Ratio PA A-C offices x A-C Cases	20.4	22.4	14.3	16.1	15.4
Ratio PA x PP Criminal Cases	162.5	161.9	169.8	162.1	163.3

Source: Attorney General's Office Reports 2011, 2012, 2103, 2014 and 2015



Between 2011 and 2014 the ratio of criminal cases per public attorney was 163 cases. In the case of public attorneys in the Anti-Corruption Office, the average case (strictly corruption, excluding embezzlement) per public prosecutor was 17.7 cases. The ratio judge x population was 100 thousand people. The number of court cases allocated in 2014 was 898 cases per judge. The average concluded cases per judge the same year was 338 cases. These trends show that although public prosecutors in the anti-corruption offices have a manageable ratio of cases, there is a bottleneck in the system stemming from the backlog of cases in the judicial system, and there is no provision for prioritising corruption cases in courts. There are currently no specific court sections for corruption cases.

On the whole, the budget of the judiciary rose between 2011 and 2015. There are only a few cases of a lower budget, but this does not reflect a trend, as they are only changes from one year to another, (e.g. Manica and Sofala from 2013 to 2014; Nampula from 2014 to 2015) as is shown in table 3.

**Table 3:** Budget of the Judiciary (Central and Provincial), 2011-2015, in 10<sup>3</sup>

	2011	2012	2013	2014	2014
<b>Central Level</b>					
Supreme Court	60,622	113,664	109,031	129.329	129.329
<b>Provincial Level</b>					
Maputo-City	87.660	96,769	104,774	98.756	98.756
Maputo-Province	45,396	58,654	66,195	74.658	74.658
Gaza	27,432	37,190.	49,940	48.123	48.123
Inhambane	29,757	46,109	52,110	55.958	55.958
Manica	27,886	41,232	45,270	35.834	35.834
Sofala	41,535	53,045	76,329	68.893	68.893
Tete	26,952	40,979	51,036	54.483	54.483
Zambézia	41,016	49,629	55,030	58.699	58.699
Nampula	52,059	73,544	90,861	95.049	95.049
Niassa	27,251	39,243	56,185	57.610	57.610
Cabo Delgado	26,744	28.072	53,005	N/a	N/a

Source: State Budget 2011, 2012, 2013, 2014, 2014

The institutional setting, the appointment and dismissal of the Attorney General by the President, potentially reduces the former’s autonomy. To complicate matters, the Attorney General appoints the Director of the Central Anti-Corruption Office. On the positive side, although inter-institutional cooperation among enforcement agencies was cited as a critical element in past, the 2015 Attorney General’s Report mentioned substantial improvements, including in relations with international partners such as Interpol and other governments.

In short, there is some improvement in terms of capacity, although structural challenges, such as the very low judge/population ratio, can delay the treatment of corruption cases. However, there are more public attorneys/prosecutors in the anti-corruption offices and they have less workload than attorneys of other areas, yet they still take fewer cases to court. The reasons for this are unclear. While, on one hand, there is room for more efficiency by prosecutors, on the other hand, the backlog of cases in the judiciary might contribute to delaying the trial of corruption cases. In a context of visible increasing capacity, which would be reflected in more effective enforcement, unblocking the problems that prevent this from happening is a matter of political will. An additional element is that although information on corruption cases has improved, the data presented in the Attorney General’s Reports does not differentiate between the types of corruption defined in the legislation, which makes it difficult to identify the kinds of cases being tried.

### 1.3. PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

SCORE

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Prohibiting the laundering of proceeds of crime is a key element in promoting business integrity. The assessment of this thematic area follows the same logic as the previous one: the combination of a good legal framework and adequate capacity in enforcing agencies can make legislation more effective.

Mozambique has a specific law, the Law on Capital Laundering (14/2013 of 12 August), that prohibits laundering the proceeds of crime. The Public Ethics Law (16/2012) also complements Law 14/2013, as it makes requires senior public officials to present a Declaration of Assets. These two instruments formally lay a consistent foundation for deterring the laundering of the proceeds of crime.

Information about the enforcement of the laws on laundering the proceeds of crime

is scattered in the Attorney General's reports between 2011 and 2014. Only the 2011 and 2012 reports contain some information on cases taken to court or channelled to fiscal authorities and courts.

The Mozambique Financial Information Office (GIFIM) was created as a technical body to enforce this legislation in 2007, but it only became operational in 2011. GIFIM is responsible for investigating suspect or illicit financial transactions. Before GIFIM became operational, the Attorney General's Office was responsible for handling investigations related to money laundering. In 2011 the Government created a multi-sector task force, chaired by the Ministry of Finance and comprising the ministries of Justice, Interior, the Attorney General's Office, the Central Bank and GIFIM.

The technical capacity of GIFIM is considered good by its management,<sup>30</sup> with sufficient and well-trained staff. However, its role is only one part of the whole enforcement chain, which includes other agencies that may have serious weaknesses. Among these is the Investigation Unit of the Criminal Investigation Police, which lacks capacity to carry out its role. There are also considerations about the GIFIM's autonomy, currently under the Ministry of Finance and the Prime-Minister, and it does not have the power to freeze/block bank accounts to facilitate investigations, which requires a court order.

### 1.3.1. LAWS PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

Scoring Question:	Score
Do the country's laws prohibit laundering of proceeds of crime?	100

Mozambique has a Law on Capital Laundering, Law 14/2013 of 12 August. Article 4 of this law explicitly prohibits the conversion or transfer of property or any attempt to disguise or conceal its illicit origin, true nature, source, location, acquisition, possession or use of the property knowing that it is the proceeds of crime. Article 7 includes in its list of related crimes criminal association, which is dealt with independently of the main crime of capital laundering.

The Public Ethics Law (Law 16/2012 of 14 August) states that public officials must present a Declaration of Assets, which must be updated every year. This is deposited with the central and provincial Public Attorney's Offices, and with the Administrative Court. Each of these entities has a Reception and Verification Committee to check the compliance and evolution of the Declaration of Assets with the law.

<sup>30</sup>Interview with the Director of GIFIM, Armindo Ubisse, 06 November 2015.

1.3.2.

**ENFORCEMENT OF LAWS PROHIBITING  
LAUNDERING OF PROCEEDS OF CRIME**

Scoring Question:	Score
Are sanctions and incentives applied in practice to deter the laundering of proceeds of crime?	25

From 2011 to 2014 information about the enforcement of laws relating to laundering proceeds of crime is scattered. The main source of information is the Attorney Generals’ Report. In 2011 six cases were taken to court. The 2012 report only refers to the existence of “some cases, some of them not ending necessarily in criminal penalties, but channelled to the proper jurisdiction, Customs or Fiscal Courts, ending in heavy fines” (Attorney Generals’ Report, 2013, page 279). Subsequent reports in 2013 and 2014 do not contain data on the enforcement of these laws.

Since 2011 GIFIM has received information that allowed the detection of illicit or suspect transactions. In 2013 the agency identified 34 transactions amounting to US\$ 35 million; in 2014 it investigated 30 cases of suspect transaction totalling US\$ 259 million and in 2015, up to June, GIFIM investigated cases involving US\$ 100 million.<sup>31</sup>

These figures show that GIFIM is operational and is doing its part in the money laundering legislation enforcement chain. Other institutions, mainly justice administration institutions, including the judiciary and the police, are responsible for using this information for follow-up, and possibly for penalties, wherever applicable.

The effectiveness of this legislation depends on the information produced by GIFIM being followed up by the relevant authorities, incentives for people to cooperate, as well as the statutory time available for prosecuting the offenders. The law on capital laundering (Article 63) refers to the law on the protection of witnesses, whistle-blowers and victims for mitigation incentives, mostly protecting witnesses and concealing identities. Its Article 72 refers to the Criminal Code for statute of limitation periods. This is a good incentive for people to cooperate. As the penalty for laundering proceeds of crimes is 8 to 12 years’ imprisonment, i.e. considered a long-term prison sentence, the crime has a statute of limitations of 15 years. This provides a reasonable time frame for authorities to prosecute and take to court people involved in money laundering.

Therefore, the legal framework and the work of GIFIM establish solid grounds for enforcement of the law. Nevertheless, although GIFIM’s investigative work is uncovering illicit practices, this does not necessarily lead to penalisation, which is the responsibility

<sup>31</sup>Interview with Armindo Ubisse (GIFIM Director) and Paulo Munguambe, National Director for Studies, Cooperation, Internal and External Linkages.

ity of other institutions. Of these institutions, the Attorney General reports annually to Parliament on the State of Justice. As already mentioned, his latest reports give no indication of strong enforcement of money laundering laws.

Another sign of poor enforcement is related to the Public Ethics Law. In December 2015 the Attorney General announced that about 2,028 public managers, out of a group of 6,211 eligible public officials,<sup>32</sup> had not presented their Declaration of Assets, and were breaking the Public Probity Law. This makes the control of their income and assets, and consequently of the potential laundering of proceeds of crime, more difficult. Even more critical, this shows weak enforcement of the law.

### 1.3.3. CAPACITY TO ENFORCE LAWS PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

Scoring Question:	Score
Are adequate enforcement capacities available for enforcing laws prohibiting laundering of proceeds of crime?	25

Enforcement of the law prohibiting laundering of proceeds of crime based on the two laws identified in this area, Public Ethics and Capital Laundering, depends on the capacity of the related administrative and judicial institutions.

As regards money laundering, enforcement depends on investigation capacity, the responsibility of the Criminal Investigation Police, the Public Attorney's Office, which takes the case to court, and the judicial system. GIFIM is an important actor in providing the relevant financial information, in particular that circulating in the financial system. Thus, enforcement capacity depends on capacity in the first three entities and in GIFIM.

GIFIM's capacity is considered by its managers to be good and compatible with existing demand. The capacity of the Criminal Investigation Police and delays in trying cases in court are constraints on enforcement.

GIFIM was formally created by Law 14/2007 of 27 June, but only became operational in the 2011 fiscal year. Before then, suspicious operations were communicated to the Attorney General's Office and since 2012 they are reported directly to GIFIM, which is responsible for analysing and channelling the relevant information to the appropriate agencies for further investigations, including the Criminal Investigation Police. GIFIM also has the duty to inform the Central Bank about suspicious financial transactions.

<sup>32</sup>See at: <http://www.portaldogoverno.gov.mz/index.php/por/Imprensa/Noticias/PGR-atras-dos-gestores-que-nao-declaram-bens>. Accessed on 18 January 2016.

In 2011 the Government created a Multi-Sectoral Task force for Preventing and Fighting Money Laundering, chaired by the Ministry of Finance and comprising representatives of the Ministry of Justice, Ministry of the Interior, the Attorney General’s Office and the Central Bank.

Regarding the Criminal Investigation Police (PIC), the Attorney General’s reports on 2010, 2011 and 2014 (reports presented in 2011, 2012, 2015) reiterated the need to strengthen this branch of the police, whose capacity has remained weak in terms of material conditions, financial and human resources. Another point of debate has been the functional subordination of PIC to the Ministry of Interior, which is considered problematic for conducting investigations that feed into the Public Attorney’s work, and recommendations have been made to subordinate PIC to the latter, which has not yet been done.

Public officials’ Asset Declarations under the Public Probity Law are updated on a yearly basis for monitoring purposes. The entities responsible for this monitoring are the Public Attorney’s Offices and the Administrative Court. These entities must have the necessary capacity to cross-check information and it should be possible to combine responsibilities under the Money Laundering Law and under the Public Probity Law. The late presentation of the Declaration of Assets by 2,028 (32.6%) by public managers without proper penalties can be considered a capacity weakness, which stimulates the prevalence of a culture of impunity. The Attorney General’s Office announced in December 2015 that it is working to improve capacity to monitor the situation of public managers who must present the declaration.

For these measures to be effective, it will be necessary to challenge the aforementioned culture of impunity.

## 1.4. PROHIBITING COLLUSION

SCORE

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The public procurement regulations and the Competition Law (and its regulations) are the two main instruments that prohibit collusion in Mozambique. In the procurement regulations the definition of collusion includes fixing prices and rigging bids. The Competition Law establishes restrictions on agreements between companies to hinder, fake or restrict competition.

The same legal instrument imposes restriction on the market dominance of companies through mergers and acquisitions that can hinder competition.

From a formal perspective, the legislation has enforcement agencies, and some dissuasive penalties and persuasive mechanisms. In the case of public procurement, these include suspension or barring from public tendering and reduced fines for companies that voluntarily provide evidences on illicit acts, including collusion. However, the effectiveness of these mechanisms is still low. Enforcement agencies under procurement and competition legislation – the Functional Unit for Procurement Supervision (UFSA) and the Competition Regulatory Agency (CRA) respectively – are generally ineffective, for different reasons. CRA only exists formally, but has not yet been established. In the procurement case, UFSA publishes on its website a blacklist of companies involved in illicit practices generally, not just collusion. The deterrent effect of this disclosure is questionable, as complaints about public procurement are mounting, and are still an issue of heated debate in dialogue between the private sector and the government. Moreover, UFSA’s capacity has constantly been challenged due to the demand for procurement professionals by big investment projects, international development organizations and NGOs, in a field where few professionals are internationally certified. Thus, the agency faces the chronic problem of staff retention that plagues the public sector in general. The competition agency was formally created in 2014 but has not yet been set up.

Both enforcing agencies have a reasonable level of formal operational independence under their mandates. Cooperation between units and relevant bodies, such as the Anti-corruption Office, public prosecution entities and tax authorities on collusion matters is weak, if it exists at all. The administrative subordination of UFSA to the Ministry of Economy and Finance limits its autonomy to establish direct linkages with some of these agencies, but also structurally, as it is merely a sub-directorate under the Directorate of Public Assets, and so not an autonomous budget unit. This is per se an obstacle to the existence of a proactive body. Obviously, delays in setting up the CRA limit the enforcement of anti-collusion legislation.

### 1.4.1. LAWS PROHIBITING COLLUSION

Scoring Question:	Score
Do the country’s laws prohibit collusion?	100

Article 145, nr. 2, bullet c) of the public procurement regulations (Decree 15/2010 of 24 May) explicitly lists collusion among the anti-ethical practices in public procurement. The definition of collusion in the regulations includes fixing prices artificially and making rigged bids to prevent the contracting authority from reaping the benefits of free and open competition.

Articles 17 and 18 of the Competition Law (10/2013 of 11 April), place restrictions on agreements between companies to impede, fake or restrict competition in parts of or in the entire country. The law’s regulation, approved by Decree 97/2014 of 31 December, place restriction on the concentration of companies (through mergers and acquisitions) that can create or strengthen a company’s dominant position (50% or more of the market share in the relevant area) thereby reducing competition in the national market and a substantial part of it. A Competition Regulatory Authority is responsible for determining the effects of concentration, among them the selection of suppliers, users and costumers (Article 18, #3, e), access by different companies to sources of supply and channels of delivery, barriers to entry in the relevant markets (Article 18, #3, line d) and effects in a specific sector or region.

### 1.4.2. ENFORCEMENT OF LAWS PROHIBITING COLLUSION

Scoring Question:	Score
Are sanctions and incentives applied in practice to deter collusive practices?	25

Collusion is regulated in the public procurement regulations (Decree 15/2010, of 24 May) and in the Competition Law (10/2013, of 11 April), as well as its regulations (Decree 97/2014 of 31 December). Under the public procurement regulations, the entity responsible for enforcing regulations related to collusion is the contracting authority and UFSA (Functional Unity for Procurement Supervision) (Articles 145, 146 and 147). According to the Competition Law, the Competition Regulatory Agency (CRA) has this responsibility. UFSA has been under strong criticism for being heavily dependent on the Ministry of Finance (it is under the National Directorate of Public Assets), which reduces the effectiveness of its supervisory role (see Decree 141/2006, of 5 September). It has limited power to act, due to high staff turnover and poorly equipped staff to deal with public procurement. Mozambique has only three procurement professionals who are internationally certified as procurement specialists. Most professionals in this area are only exposed to training and most are enticed by the higher salaries in the private sector, NGOs or development projects. This contributes to the constant weakening of UFSA and hence its reduced effectiveness in enforcing regulations.<sup>33</sup> However, on its webpage ([www.ufsa.gov.mz](http://www.ufsa.gov.mz)), UFSA publishes a list of companies that have been banned from procuring with public entities. As per 19 August 2015, 37 companies were blacklisted, but no details were provided about the restrictions on these companies.

<sup>33</sup>Source: Interview with a member of the Procurement Professionals Association.



The Competition Regulatory Authority (CRA) was created in 2014, through Decree 37/2014, of 1 August, but it is not yet operational so is not performing its role in enforcing competition regulations.

Companies that violate procurement regulations, among them those involved in collusion, can be barred for one year and if they are repeat offenders they can be barred from providing services and goods to public entities for up to five-years. The procurement regulations do not have mitigation incentives, but Article 26 of the Competition Law regulations, establishes incentives for companies and individuals to provide information that results in the identification of parties involved in illicit acts and that can prove the occurrence of the act under investigation. Incentives for this kind of cooperation are: 50% to 70% reduction in the related fine for the first company providing evidence, and 30% to 50% for the second company providing proof and information about the case. There is no information on the application and effects of these incentives, which could be due to the fact that the Competition Regulatory Authority is not operational.

### 1.4.3. ENFORCEMENT OF LAWS PROHIBITING COLLUSION

Scoring Question:	Score
Are sanctions and incentives applied in practice to deter collusive practices?	25

UFSA is not an autonomous entity. It is a substructure of the National Directorate of Public Assets in the Ministry of Finance, and its director is its Deputy Director. Not being an autonomous entity means that it does not have budgetary autonomy. Although it may have some operational independence under the strict scope of its mandate, as already mentioned, UFSA faces staffing problems and staff turn-over, which reduces its operational effectiveness.

The Competition Regulatory Authority (CRA) has not become operational. It is formally an autonomous entity, with administrative, asset, financial and technical autonomy (see Article 1 of Decree 37/2014 of 1 August). In theory, this ensures that it has operational independence. However, as it has not been active so far, it is impossible to ascertain its operational independence in practice.

Cooperation between UFSA and the national anti-corruption agencies, prosecution offices, tax authorities and financial regulators is weak. The reason is twofold: first, the

weak capacity and pro-activeness of UFSA and its functional subordination to the Ministry of Finance. Second, CRA is not yet fully operational. Therefore, there is no track record of cooperation with any entity.

Cooperation with foreign investigation and law enforcement authorities is virtually non-existent.

## 1.5. WHISTLE-BLOWING

SCORE

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As part of the anti-corruption legislative package, in 2012 Mozambique approved the Witness and Whistle-blower Protection Law, whose scope of application covers a wide range of organizations, including businesses, as well as crimes carrying a sentence of more than two years. As the set of protection mechanisms defined in the law only relate to state institutions, this means that its applicability does not include business or other types of organizations.

The absence of a bylaw to operationalize practical aspects of the law leaves some key aspects uncovered, such as solutions for whistle-blowers who suffer detrimental actions, and penalties for people who retaliate whistle-blowing.

As in other cases, the legislation includes the creation of an enforcing agency – the Central Office for Victim Protection, which still has to be established, and potentially allows for links with existing institutions, such as the Central Anti-Corruption Office, to investigate whistle-blowers' disclosures. However, the absence of regulations for this law limits its effectiveness.

### 1.5.1. WHISTLE-BLOWER LAWS

Scoring Question:	Score
Do the country's laws provide for protection for public and business sector whistle-blowers regarding corruption?	50

The Victim, Witness and Whistle-blower Protection Law (15/2012, of 14 August) covers

all situations protecting whistle-blowers, involving a comprehensive range of organizations, including those involved in business. The definition is reasonably broad, covering a wide array of whistle-blowers. In its Article 2, the law states that it regulates protection of the rights and legitimate interests of whistle-blowers, witnesses, testifiers and experts or any vulnerable individual in any penal process, when his/her life, physical and psychological integrity, personal and asset liberty are under threat due to their contribution, or willingness to do so, in a criminal investigation or the production of proof in court cases.

Moreover, protection for whistle-blowers is applicable to any criminal situation carrying a sentence of more than two-years (Article 3 of the 15/2012 Law). Therefore, protection is contingent on the existence of illicit acts that are liable to the above-mentioned penalty. This can cover many situations that are difficult to foresee in advance and can only be ascertained on a case-by-case basis.

Dispositions for protecting whistle-blowers are only regulated broadly and there are no specific legal tools whereby organizations must have disclosure procedures. The law only legislates on the state protection of entities and people in the situation of whistle-blowers and witnesses. It does not cover regulation of the internal processes and procedures of whistle-blower protection outside state institutions. In short, it is not applicable to processes in non-state institutions, but provides protection for any person and entity, public, private or non-profit, under threat because of their involvement in cases under investigation, criminal ones or on trial.

Solutions for whistle-blowers who suffer detrimental actions are not included in the law. This might be a result of the absence of a bylaw where these details could be regulated.

The legislation does not have specific provisions for sanctions against those responsible for retaliation. Article 341 of the Penal Code applies sanctions on those who retaliate against people who have contributed to the enforcement of the law. In short, its application is much broader and not specific to retaliation against whistle-blowers.

## 1.5.2. ENFORCEMENT OF WHISTLE-BLOWER LAWS

Scoring Question:	Score
To what extent does the public sector enforce the laws protecting whistle-blowers in the public and business sector?	25

The whistle-blower protection and public probity laws are part of the anti-corruption legislative package. However, implementation of the overall package has been

slow. In particular, there is no visible reporting on the implementation of the Whistle-blower Protection Law. As the Central Office for Victim Protection has not yet been established, there is no organizational setting for implementation and reporting on whistle-blower protection, or functioning enforcement mechanisms.

As mentioned in the assessment of indicator 1.5.1, the law is not regulated and for this reason key elements for making it operational are missing, such as internal disclosure procedures in organizations to protect employees who report wrongdoing. The law broadly defines measures for protection, such as preserving identity, concealing the image, use of teleconference to transmit information and the protection of places where disclosure of information occurs (See Articles 13, 14, 15), among other measures. These measures are too broad to be considered anonymous channels for reporting sensitive information. They are mechanisms to protect whistle-blowers physically during the information disclosure process rather than “safe channels” per se.

There is a set of organizations that can investigate a whistle-blower’s disclosures, among them the Central Anti-Corruption Office and the Central Office for Victim Protection.

The latter is an implementation entity, responsible for enforcing and controlling the implementation of measures related to protection for victims and whistle-blowers, and preparing reports on the implementation of related measures, which is sent to the Ministry of Justice and the judicial authorities (Article 22). Its role does not explicitly include investigating complaints about the enforcement of the Whistle-blower Law.

1.6.

## ACCOUNTING, AUDITING AND DISCLOSURE

SCORE

75

Auditing and accounting standards in Mozambique follow international standards, more specifically International Financial Reporting Standards (IFRS). New legislation on the accounting system for the business sector in line with IFRS was approved in 2009 and came into force in 2010.

Thus, companies are supposed to submit their annual financial reports to the tax authorities and keep documentary records of their financial transactions for up to 10 years.

Under the Public Enterprise Law, companies must adopt adequate internal and external audit procedures. This is mandatory for private enterprises listed on the Mozam-

bique Stock Exchange and commercial banks, which must also publish their financial reports. Publication of financial reports is also mandatory for public companies.

The enforcement of accounting and auditing standards in Mozambique is a recent phenomenon, as the Tax Authority only trained staff to monitor implementation of the new regulations in 2012. Auditing of companies by the Tax Authority started in 2013 and only covered those that had already adopted IFRS. In general, since 2012 the number of tax audits and inspections of companies has remained stable. According to audit and accounting specialists, there is no reporting, at least publicly available, on the implementation of IFRS in Mozambique. The Tax Authority has focussed on detecting tax evasion rather than compliance with accounting and audit standards, and this is reflected in the absence of reporting on public entities on the latter area.

Professional service providers in Mozambique – accountants and auditors - have to be licensed through a formal authorization by the Ministry of Finance. Audit and accountant professionals must be members of the Accountants and Auditors Association of Mozambique (*Ordem dos Auditores e Contabilistas de Moçambique/OCAM*) to carry out their profession.

One element that has been debated in business integrity practice all over the world - disclosure of beneficial ownership – is not clearly defined in Mozambican legislation. Rather, there is a group of legal instruments in the financial sector - including the Law on Credit Institutions and Financial Shareholding Companies and its revision (Law 15/99 of 1 November, and Law 9/2009 of 21 July); the creation of the Stock Centre (Decree 25/2006 of 23 August), the Stock Market Code (Decree-Law 4/2009) – that require the authorities to be informed of any changes in the shareholder structure above 5%, and the identification of shareholders in companies quoted on the Stock Exchange.

The supervisor of the financial system (in this case the Central Bank) must be informed of whoever has a share of more than 10% in any financial company, and the supervising entity must be informed about the owners of a financial enterprise when it is created. While these conditions allow for the identification of formal shareholders, they do not necessarily capture the idea of beneficial ownership, which could remain unknown. Hence, despite the existing legal framework, companies do not have an obligation to disclose who benefits from the gains of companies. As the information on this indicator remains ambiguous in the context of the Mozambican legal framework, it will not be assessed for the time being.

## 1.6.1. ACCOUNTING AND AUDITING STANDARDS

Scoring Question:	Score
Does the country's accounting & auditing regulatory framework adhere to internationally recognized standards (e.g. IFRS)?	75

Companies are required to prepare regular financial statements that comply with internationally recognised accounting standards, particularly the IFRS. This became mandatory with the enactment of Decree 70/2009 of 22 December that approved the Accounting System for the Business Sector in Mozambique, covering the adoption of a chart of accounts based on IFRS. The decree made it mandatory for all public companies or companies with majority public capital to adopt the standards as of 1 January 2010. IFRS have been mandatory for the banking sector since 01 January 2007, when the Bank of Mozambique issued Notice 4/GBM/2007, targeting all financial institutions supervised by the Central Bank.

Under these standards, entities are required to provide annual financial reports in IFRS and this period can be less if stipulated in the entity's statutory rules. Standards prohibit inappropriate accounting acts and fiscal legislation punishes this practice through taxation by indirect methods as laid down in Article 92 of Law 2/2006 of 22 March (General Taxation Law). In addition, as already mentioned, fiscal legislation taxes illicit acts and punishes them. Moreover, companies are required to keep accurate books and records that properly and fairly document all financial transactions, available for inspection, filed in good order, for at least 10 subsequent years, as stipulated in Article 54 of Decree 7/2008 of 16 April (Regulations on the Value Added Code) and to maintain a tax dossier for the same period as stipulated in no.1 of Article 46 of Decree 9/2008 of 16 April (Corporate Tax Code Regulations).

Companies are required to maintain an effective internal control system based on good management practices and organisation. This is required by the Institute for The Management of State Shareholdings (*Instituto de Gestão de Participações do Estado – IGEPE*), the partner entity of public companies with state participation<sup>34</sup>. Under Article 33 of the Public Companies Law (Law 6/2012 of 8 February), public companies must adopt adequate internal control and audit procedures to ensure the reliability of their accounts and other financial information, with particular emphasis on the recommendations made by the external audit of their accounts, the Audit Board and the Finance Inspectorate-General. In addition, work is underway on a proposal for approval of a Corporate Governance Code prepared by the Institute of Directors of Mozambique<sup>35</sup> that

<sup>34</sup>Through its website ([www.igepe.org.mz](http://www.igepe.org.mz)) IGEPE has published its "Guide to Good Corporate Governance Practices in Companies with State Participation" and chapters IV.4 "Specialist Commissions" and IV.5 "Inspection Structure" require participated companies to have effective internal control systems.

<sup>35</sup>Available for download at: <http://www.iodmz.com/downloads-e-recursos.html>

will include more effective internal control measures applied to a larger universe of companies.

Companies that are publicly traded, as well as large unlisted or privately held companies with substantial international business, are required to have their accounts externally audited and published annually, in accordance with internationally recognised auditing standards, such as the International Standards on Auditing (ISA).

The following are required to have audited accounts, (i) Companies told by the Tax Authority to present audited accounts, (ii) companies implementing projects that involve foreign direct investments authorised under the Investment Law, (iii) commercial representatives of foreign companies, (iv) companies operating under a special tax or foreign exchange system<sup>36</sup>, and (vi) other companies in a specific supervision system that requires independent auditing, some examples are companies quoted on the Mozambique Stock Exchange and banking supervision.

The accounts of commercial banks, companies quoted on the Mozambique Stock Exchange and companies with state participation must be published.

## 1.6.2. ENFORCEMENT OF ACCOUNTING AND AUDITING STANDARDS

Scoring Question:	Score
Is the adherence of the country's accounting and auditing regulatory framework enforced in practice?	50

The process of implementing the IFRS in Mozambican companies began recently. In 2012 the Tax Authority was training staff for the implementation of IFRS in Mozambique. In 2013 audits only covered companies that had already adopted IFRS. However, the Mozambique Tax Authority, through its Audit and Tax Inspection Division, usually verifies company accounts, and also checks that they were audited and certified by an independent auditor.

In the event of non-compliance with this requirement, penalties are applied for the absence of the books required by law, with a variable fine ranging from 3,000.00MT to 300,000.00MT, and also taxation by indirect methods. It should be noted that the requirement of having organised and audited accounts has an impact for the state when assessing tax and the respective compliance with tax legislation. It does not have an im-

<sup>36</sup>These requirements are based on Article 1 of Decree 32/2009 of 7 December that creates the external audit activity in Mozambique, and Decree 65/2011 that regulates the activity of external auditors of credit and financial institutions.

pact on commercial aspects, which fall under the jurisdiction of the Commercial Code (Decree Law 2/2009 of 24 April).

However, there are no data on the analysis and verification of company compliance with accounting and auditing standards other than the fiscal component (verification of payment of taxes due). This only happens in the case of complaints of various kinds, with occasional and indirect verification of standards, as the aim of visits to companies by the Tax Authority is to confirm data, crosscheck invoices taken from the suppliers' statement, confirm data in requests for reimbursement of VAT and income tax. There are also visits to check the computerised invoicing system, in order to authorise the printing of electronic invoices and general audits and complaints. The following table shows the number of tax audit and inspection visits to companies by the Tax Authority, by year, over the period 2011 - 2014. The official reports of the MTA do not contain available data on general audits.

**Table 3:** Tax Authority Company's tax audits and inspections 2011-2014

Year	Nº audits/inspections
2011	1446
2012	1.097
2013	1.174
2014	1.101

Source: Activity Reports of the MTA 2011, 2012, 2013, 2014

The country's institutional oversight system only partially contributes to the effective enforcement of accounting and auditing standards. This matter is the responsibility of the Ministry of Finance/Mozambique Tax Authority that has played an active role as, in addition to programmes to train and support the taxpayer, it has quite a strong inspection role.

Materially, these measures have been strengthened by the latest tax reform that began in 2005, with approval of the regulations on Tax Inspection Procedures (Decree 19/2005 of 22 June), followed by approval of the Organisational Statutes of the Mozambique Tax Authority (Decree 29/2006 of 30 August), and the General Tax Law (Law 2/2006 of 22 March). There was a subsequent reform of tax codes to improve them.

However, based on interviews with specialists in the tax field, who prefer to remain anonymous, there are no reports showing the effective application of accounting and audit standards, and an Internet search on these reports and information found no evidence proving the application of these requirements.



Title IV of Law 2/2006 of 22 March (General Tax Law), which came into force in 2006, increased the penalties for tax offences, classifying tax offences as crimes, contraventions and infringements. Penalties range from fines, temporary suspension, expulsion, suspension of activity, license cancellation, and short and long-term imprisonment, and others depending on the severity of the offence.

Enforcement activities reported to the public are only related to tax evasion. No reporting of the application of standards has been recorded so far, apart from the activities of the Tax Authority to supervise the adoption of IFRS in some companies

### 1.6.3. PROFESSIONAL SERVICE PROVIDERS

Scoring Question:	Score
Are the country's professional service providers (for accounting, auditing, rating or other related advisory services) required to comply with internationally recognized standards?	75

Professional providers of audit services are subject to formal licensing by the Ministry of Finance in order to conduct their business. In other areas, companies and/or individuals must be registered members of a given association that requires the activity to be carried out exclusively, as in the case of accounting (the Mozambique Association of Accountants and Auditors/*Ordem dos Contabilistas e Auditores de Moçambique* (OCAM), law (Mozambique Bar Association/*Ordem dos Advogados de Moçambique* (OAM), customs brokers (Chamber of Customs Brokers/*Câmara dos Despachantes Aduaneiros*).

The audit companies' niche provides professional services autonomously in order to guarantee independence throughout their work, namely, between government agencies/services and companies, or between companies, and their employees and companies. However, according to an audit professional who wished to remain anonymous, there have been no initiatives by the Ministry of Finance to verify the independence of the work done by these companies. Also according to this professional, audits of audit companies are the result of international requirements by the governments where their parent companies have their head offices, rather than the Mozambican authorities.

Professional oversight is conducted by the Ministry of Economy and Finance, which is responsible for supervising and inspecting audit professionals as stipulated in no. 2 of Article 7 of Decree 32/90 of 7 December, and for imposing the respective sanc-

tions. However, according to Mozambique Tax Authority professionals, who wished to remain anonymous, they did not know of any audit or technical supervision of audit companies, so the respective sanctions have never been applied.

The Accountants and Auditors Association has a supervision and regulatory role too, including the imposition of sanctions.

## 1.7. PROHIBITING UNDUE INFLUENCE

SCORE

50

Undue influence on public entities can occur through political contributions from business and lobbying, lack of a clear definition of conflict of interest and when the combination of a strong legislative and regulatory framework and enforcement mechanisms are not in place. Mozambique has a Law on Political parties, approved

in 1991 that, combined with the electoral laws, define public and non-public funding modalities for political parties, electoral contributions and financing for parties in Parliament. This legislation is complemented by the Public Ethics Law, which sets restrictions on the use of public resources for political activities, regulates conflict of interest, sets quarantine periods for public official's involvement in businesses areas related to their previous jobs, and establishes related sanctions and enforcement mechanisms. Thus, from the legal point of view, the country has a sound framework to prevent undue influence arising from political funding.

The same is not valid in the case of lobbying, which is not regulated in Mozambique. Rather, what is regulated and penalised in the Criminal Code is influence peddling.

Monitoring undue influence in the form of political contributions by the business sector to political parties or to individual candidates is not well-monitored in Mozambique. The only monitoring is that covering public funding by the National Elections Commissions, based on the financial reports that parties have to present to this body and published in the Government Gazette. Even in the case of parties receiving public funds, reporting has been deficient. In the 2014 general elections, not all the parties presented their accounts, and so far no sanctions have been applied. Private funding for political parties or candidates is not reported by any party. Thus, monitoring of political contributions is weak.

Conflict of interest is clearly defined for public servants in the Public Ethics Law, but its enforcement is poor.

## 1.7.1. LAWS ON POLITICAL CONTRIBUTIONS

Scoring Question:	Score
Is undue influence in the form of political contributions from the business sector to political parties and/or individual candidates prohibited by law?	100

The Law on Political Parties (Law 7/91 of 23 January), defines the various funding modalities available to these entities, among them public funding. Only parties with legislative representation are entitled to receiving public funding, for which they must present accounts using standard public administration procedures (Article 20). The Electoral Law specifically establishes funding for election campaigns. Electoral laws have been changed systematically for every election since 1994.

The current law (12/2014, of 23 April) establishes the mechanisms for public funding of election campaigns. The National Elections Commission is responsible for setting the criteria for the distribution of funds for the public funding of election campaigns (Article 38). The process has usually been transparent and the funds allocated to each party are made public. The criteria are normally related to the number of candidates and electoral districts in which parties and coalitions are running for election.

Public entities are not allowed to finance political parties and any contribution must be channelled through the state budget. The Public Probity Law (16/2012 of 14 August) prohibits the use of state resources for purposes other than those pursued by public entities (Article 28). The law is not explicit about the use of state resources against political parties and candidates. However, Articles 432 and 433 of the Penal Code establish penalties for some electoral felonies, such as violation of the duty of impartiality and neutrality towards candidacies and use of public resources and assets, including those of public companies, for electoral purposes.

Political parties are obliged to declare to the Ministry of Justice all the funds raised and donated. All donations, contributions or other sources of resources must be declared. It can thus be inferred from this provision that anonymous contributions are not allowed, but are not explicitly banned.

Restrictions on corporate political contributions apply to national and foreign public enterprises. They are not allowed to make any direct contributions to political parties or candidates (Article 19 of the Law on Political Parties, Article 37 of the Electoral Law).

## 1.7.2. ENFORCEMENT AND PUBLIC DISCLOSURE OF POLITICAL CONTRIBUTIONS

Scoring Question:	Score
Is the prohibition of undue influence in the form of political contributions from the business sector to political parties and/or individual candidates monitored in practice?	25

Undue influence in the form of political contributions to political parties and candidates is not well monitored.

Despite the obligation of parties to account for public funds and publish reports, this does not happen in practice. Independent oversight can take place, in principle by the Administrative Court, as the supreme audit institution responsible for the external control of public administration, including oversight of any account involving public funds. However, there is no independent oversight authority to monitor political finance information. Monitoring can be done through existing public administration, such as external control over public accounts by the Administrative Court. Even in this regard, limitations could arise given the scope of the court's mandate when it comes to auditing and monitoring revenue that is not from public resources.

Parties must publish their financial reports in the Government Gazette (Boletim da República). Reports must include the sources of revenue and expenditure. In practice, parties neither disclose their sources of funding nor publish their financial reports in the Government Gazette, as required by law (Law on Political parties, Article 19).

In the last general elections in 2014, public funding for election campaign was provided in tranches; this forced parties to report on the funds received in order to obtain subsequent tranches. The National Elections Commission is responsible for analysing the accounts and publishing its final report in the national media with the widest coverage, and in the Government Gazette (Article 41). Most parties reported on the use of public funds, but some only used one tranche, did not report on it and renounced other tranches, and some did not report on spending under the last tranche. As far as is publicly known, no sanctions were applied to these parties.

A study on political funding by the Institute of Directors of Mozambique (MAP, 2015), revealed a lack of transparency on political funding, due to the reluctance of companies to disclose their funding for political parties. This is more critical in the case of companies willing to or funding opposition parties, out of fear of reprisals. Even

companies funding the ruling party sometimes are not interested in disclosing their support.

Since parties and candidates must report on public funds using public administration procedures (Article 20 of Law 7/91), their reports can be analysed and audited by the Administrative Court. Under Law 14/2014 of 14 August on the Organization, Functioning and Oversight Process for Public Accounts, audit reports by the Administrative Court must be published in the Government Gazette and on its website (Article 95). However, this obligation is not yet effective. To date there are no examples of investigations or audits of the political funding reports by the authorities.

### 1.7.3. LAWS ON LOBBYING

Scoring Question:	Score
Is undue influence in the form of lobbying by the business sector prohibited by law?	25

Despite the recognition that influence trafficking is a serious problem in business in Mozambique, and that political connections are important in business, Mozambique does not have any legislation on lobbying. The closest reference to this practice is in Article 508 of the Penal Code, which defines influence trafficking as a crime carrying a possible prison sentence of up to two years. There is neither an explicit prohibition of lobbying, nor mechanisms to avoid its occurrence, such as a lobbyist register, and obligation to disclose personal and employment information.

The Public Probity Law requires public officials must wait two years, before providing any service, doing business and accepting a position in the governing bodies of any entity that had a relationship with his/her former job during his/her tenure in office (Article 46).

### 1.7.5. LAWS ON CONFLICT OF INTEREST

Scoring Question:	Score
Is undue influence in the form of other conflicts of interest between the business and the public sector prohibited by law?	100

The Public Ethics Law regulates conflict of interests and requires public officials and senior civil servants, as well of their close relatives, such as spouse, underage children and persons under his/her direct responsibility or legal dependence to submit a Declaration of Assets. This must include rights, income, bonds, any type of assets and equities located in the country or abroad, which constitute his/her set of private assets (Article 57). Changes in assets must be updated throughout the mandate or office tenure (Article 20). The law establishes a set of conflict of interests and related restrictions for public officials in areas such as involvement in business and remunerated activities, and sets limits on receiving gifts when in office (Articles 36 to 41). Public officials and senior public servants are barred from contracting or taking decisions favouring relatives or people with whom they have close relations (Article 25). The law also establishes a “cooling-off” period of at least 2 years for involvement in business, the boards of organizations, the provision of liberal services or intermediation in businesses with other entities, or doing business with the public entity in which the public official and senior civil servant was employed (Article 46). The law does not have any provisions about restrictions on corporate executives occupying public office and positions in government.

### 1.7.6. ENFORCEMENT AND PUBLIC DISCLOSURE OF OTHER CONFLICTS OF INTEREST

Scoring Question:	Score
Is the prohibition of undue influence in the form of other conflicts of interest between the business and the public sector monitored in practice?	50

The Central Public Ethics Commission and Public Ethics Commissions in sectors at central and local levels are responsible for monitoring cases of conflict of interest and the Declaration of Assets. The Central Commission became operational in December 2012 with the appointment of its members, and sector commissions are being created but do not yet cover all the sectors.

The Declarations of Assets of senior civil servants and public officials include information of their relationships with businesses interests, which must be updated regularly. The central and local Public Attorney’s Offices are the depositories for the declarations. The declarations of Public Attorneys are deposited in the Administrative Court (Article 61 of the Public Probity Law). All these officials must update their declarations annually and communicate any change in their assets and business interests.

In its meeting with the President of the Republic in March, the central Public Ethics

Commission reported that it was already carrying out some activities, among them awareness raising campaigns, an analysis of Declarations on Assets, and of accusations received (Notícias newspaper, 15 March 2015).

Although the two-year cooling-off period should be monitored by the Public Ethics Commission, in practice it has only been monitored by the media and civil society. For example, the former Minister of Education, Mr. Augusto Jone, accepted a managerial position in the Polytechnic University (a private university) less than six months after he left office. During his tenure in office, Mr. Jone's ministry was responsible for supervising the education sector, including universities. This situation was disclosed by the media. A similar situation occurred with Mr. Jamisse Taimo, an Inspector in the Ministry of Science, Technology, Higher Education and Vocational Education, when he accepted a managerial position in the same university. These examples are only scattered cases of monitoring conflict of interests that do not offset the absence of effective enforcement of the legislation by the above-mentioned bodies.

In addition, in December 2015 the Attorney General announced that about 30% of the public servants with positions requiring the presentation of their Declaration of Assets had not done so.<sup>37</sup> This limits the capacity of public authorities to monitor the various interests of key public servants and control potential conflicts of interest.

## 1.8. PUBLIC PROCUREMENT

SCORE

25

Over the last decade public procurement has benefited from reforms that replaced regulations dating back to the 19th century. The first regulations were approved in 2005 and were later revised and replaced by other regulations in 2010.

The current procurement regulations are in line with international standards and were approved with World

Bank assistance. UFSA was created to supervise the system and ensure its compliance with the regulations.

The public sector system includes mechanisms to safeguard procurement, such as the General Finance Inspectorate, the external control of the Administrative Court and the normal process of executive accountability to the legislature that includes the production of the Annual General State Accounts detailing the government's budget execution operations. They are presented to and approved by Parliament.

<sup>37</sup>See <http://www.portaldogoverno.gov.mz/index.php/por/Imprensa/Noticias/PGR-atras-dos-gestores-que-nao-declaram-bens>.

Despite having international standards, among them the obligation to include an anti-corruption clause in contracts and mechanisms for checks and balances, the procurement regulations are vulnerable to manipulation. Conflict of interest is neither adequately defined in the legislation nor monitored in line with the spirit of the current regulations. The weaknesses detected include an omission in the legislation regarding separating the preparation of procurement plans and their execution, which provides access to privileged information and can skew the allocation of resources in favour of some interests. The oversight mechanisms through UFSA and TA are deficient too. TA only covers part of the budget. In its audit missions UFSA is under the Directorate of Assets in the Ministry of Finance and its mandate does not include imposing sanctions on companies and individuals that do not comply with the law. Its technical capacity is weak too. The legislation permits public entities to contract directly without a bid, if expenditure is below a certain threshold defined in the annual state budget. However, as there is no limit for contracting companies and this simplified modality, this legal provision has been used abusively. One of the methods used is to fragment procurement plans into smaller contracts with amounts that permit direct contracting.

Consequently, despite the international standards of current legislation, its loopholes, combined with the weak capacity of the procurement supervisory agency, makes the process vulnerable to manipulation and the weak effectiveness of the legal framework.

### 1.8.1. OPERATING ENVIRONMENT

Scoring Question:	Score
To what extent do the country’s public procurement processes ensure that contracts are awarded in a fair and impartial manner?	25

Over the last decade the procurement regulations in Mozambique have been reformed, with the approval of a Decree in December 2005 (54/2005 of 13 December) and subsequently the current Regulations, adopted in 2010 (Decree 15/2010 of 24 May).

The publication of bids and the announcement of the winners is standard procedure in public procurement that has also been common practice. UFSA also publishes a supplement on public bids and contracts adjudicated to bidders in the main newspapers. Thus, only part of the procurement process is made public. Contracts are implemented and monitored by specific contracting authorities, and in some instances civil society organizations involved in expenditures tracking monitor the implementation of certain projects.<sup>38</sup>

<sup>38</sup> The Budget Monitoring Forum, a coalition of civil society organizations, and CIP are doing some work in this area.



According to Decree 15/2010, public tendering involves standard steps such as preparation and launch, presentation and opening proposals, evaluation of proposals and pre-qualification of bidders, classification and recommendation by the jury, adjudication, complaints and appeals (Article 62). These steps provide a sound basis for limiting discretionary decision-making. Bidding documents must contain the tender details, including the evaluation and qualification of the proposals, which means that the rules of the game are defined beforehand. The complaints and appeal system allows bidders to contest the jury's decisions before the hierarchical superiors in the contracting authority or even to appeal to the Administrative Court (contentious appeal), if the decision is not satisfactory (Articles 140 and 144).

The procurement regulations have an anti-corruption clause that is also included in contracts and compliance with it is mandatory for procuring agencies, suppliers and service providers (Article 45).

The procurement regulations set thresholds for public contracts that are subject to competitive bidding and those that are eligible for direct contracting under specific conditions. The annual state budget also sets the maximum amount for direct contracting.

Integrity Pacts are not yet part of procurement practices, but IoDMz is in the process of mobilising private and public entities to adhere to a Business Pact Against Corruption (BIPAC) for Procurement.

The legal framework has its weaknesses, among them no limitations on direct contracting, no definitions of conflict of interest between the preparation of procurement plans and their execution, and a supervisory agency (UFSA) with limited competence, as it is under the National Directorate of Assets in the Ministry of Economy and Finance. There are no restrictions on potential conflict of interests. For example, contracting units in public agencies (UGEAs – Procurement Management Units) involve officials who are also engaged in procurement planning and even decision-making on public expenditure, and there are deficiencies in the drafting of sound bidding documents, such as technical specifications for the procurement of goods and services.

## 1.8.2. INTEGRITY OF CONTRACTING AUTHORITIES

Scoring Question:	Score
To what extent do the country's contracting authorities and their employees adhere to the internationally recognized standards of integrity and ethical behaviour?	50

The public procurement regulations (Decree 15/2010 of 24 May) include an anti-corruption provision that must also be included in public contracts. There is no code of conduct for public procurement, although the Public Probity Law establishes strict anti-corruption measures, some of which applicable to procurement (Article 32). Moreover, the Institute of Directors of Mozambique (IoDMz) has proposed a Business Integrity Pact against corruption in public procurement. This process is in an embryonic phase and has not been established as a practice in this area, nor has it been championed by public authorities.

Despite the existence of an anti-corruption clause in the procurement regulations (Article 45), employees do not receive regular training in anti-corruption policy. In reality, public procurement has been cited as one of the most corrupt areas in the public sector (In the 2010 National Governance and Anti-Corruption Survey, public procurement was considered the fifth area most prone to bribery in the public sector (Centro de Estudos Estratégicos e Internacionais - CEEI/ISRI, 2010).

Although most public sector organizations have inspection units, the internal control subsystem, part of the state financial administration system, is much less developed than external control. The Public Attorney's Office has a hotline to receive anonymous information on corrupt practices and the authority to initiate investigation. Law 15/2012, analysed above, provides mechanism to protect disclosure of information by witnesses and whistle-blowers, such as inclusion in a special protection programme, change of identity, change in physical features and the provision of housing in the country and abroad, among other measures (Article 17).

Under the Public Ethics Law, financial information in the Declaration of Assets of senior managers in contracting authorities can only be consulted with the authorization of the depositary authority - the Attorney General's Office and the Administrative Court, depending on the case. Should these entities refuse to grant access to this part of the declaration, there can be an appeal to the Court Council (Articles 67 and 68). Thus, access is limited or only allowed under certain conditions.

Penalties for contracting authorities and their employees involved in corruption are broad, and can be either administrative as defined in the Public Servants General Statutes (Law 14/2009 of 17 March), or criminal, as defined in the Penal Code (Articles 501 to 503) and not specific to procurement.

Procurement professionals are in high demand in the public sector, staff turnover is high, and good professionals are enticed by better-paid jobs in the private sector, NGOs and development projects. Public contracting authorities are not competitive enough to retain procurement professionals in a context of shortage of highly qualified professionals.

### 1.8.3. EXTERNAL SAFEGUARDS

Scoring Question:	Score
To what extent do the country's public procurement processes include external safeguards for detecting and reporting violations?	25

The Administrative Tribunal/Court (AT) is the Supreme Audit Institution responsible for the external control of public administration. As part of the judiciary, AT is an independent body that is responsible for the oversight, audit and judgement of public accounts. One of the functions of the AT is to analyse the General State Accounts, which report on the annual budget execution and must be presented to Parliament. This function has been performed regularly, and AT's analysis of the General State Accounts is a public document available on its webpage. It covers the analysis of procurement processes. AT also performs audits of the accounts of specific public sector organizations, at central and local level. Currently the AT audits cover 42% of the state budget.<sup>39</sup> And has mentioned above, the audit reports of the AT must be published in the Government Gazette and in its webpage, although this has not been effective yet.

The appeals process defined in the procurement regulations is twofold: i) within the public administration (comprising a direct complaint to the contracting authority and hierarchical appeal; when bidders do not agree with a decision at a certain level they can appeal to the immediate superior level of the contracting authority). For example, if it is at the provincial level, the next level would be the national); ii) the contentious appeal, which is to a higher body outside the public administration, in this case the Administrative Court (Procurement Regulations, Article 140 and 144). The system is formally robust, the problem lies in its effectiveness, which is still low.

The Anti-corruption Office is the body responsible for receiving corruption grievances, not specifically on procurement. There is a hotline for the anonymous disclosure of corruption cases. Contracting authorities and UFSA do not have a special mechanism for reporting corruption allegations. In addition to the above-mentioned ordinary complaint mechanisms, there is also the Financial Inspectorate (IGF), the entity responsible for coordinating the internal control subsystem in the state financial administration system. The IGF mandate includes inspecting public entities and conducting financial audits or investigations if complaints and denunciations arise. Mozambique is setting up the internal control subsystem in its public administration but this is in an embryonic phase and not effective yet. Evidence of this weakness has been the constant warnings by the Administrative Court about systematic violations of procurement regulations in public entities, which go unnoticed by their internal control mechanisms. According to the

<sup>39</sup> Source: Administrative Court.

Programme Aid Partners report, in 2014 68% of the budget and 50% of contracts were through direct contracting, a mechanism meant to be used exceptionally and under pre-determined ceiling amounts (Parceiros de Apoio Programático - PAPs , 2015).

Mitigation sanctions for voluntary disclosure of corruption are only applied broadly in the Penal Code (Article 501), and not specifically to procurement allegations of corruption. There is no specific programme in this area.

There is no programme to promote civil society monitoring of procurement processes.

### 1.8.4. REGULATIONS FOR THE BUSINESS SECTOR

Scoring Question:	Score
To what extent do the country's public procurement processes require integrity measures in bidding entities?	25

The procurement regulations oblige companies and contracting authorities to include an anti-corruption clause in contracts, where companies certify that they are not involved in any kind of corruption in the bidding process (Article 45). There is no obligation for companies to have an internal code of conduct.

Companies are not obliged to provide details of their ownership structure when they tender. Requirements are limited to formal registration and the regular payment of taxes and social security contributions.

The procurement regulations set penalties for companies violating the rules, ranging from monetary penalties and banning for a year, or five years if the company is a repeat offender (Article 147). As already mentioned, the UFSA webpage contains a list of 37 companies banned from contracting with the public sector, although there are no details as to why. The results of these measures are unclear, as procurement is still cited as a critical area of corruption in the public sector. The absence of systematic monitoring might be the reason for this lack of evidence on the effectiveness of these measures.

Contracts usually include a settlement clause that frequently refers to amicable settlement, arbitration (Article 45) and judicial courts. These mechanisms are publically available.

No incentives are given to companies with anti-corruption programmes.

## 1.9. TAXES AND CUSTOMS

SCORE

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Over the last two decades Mozambique has implemented profound tax administration reforms, including the unification of domestic taxes and customs under a single Tax Authority, and the modernization of revenue collection that includes the use of information and communication technologies (ICT).

These reforms have produced a sharp rise in revenue collection, helping to reduce the country's dependence on external resources to fund the state budget, from almost 50% in the previous decade to less than 25% in 2016 (República de Moçambique, 2015b).

ICT has been used to collect taxes and to present grievances, including to disclose corruption cases. The Tax Authority has improved its accountability to the general public, regularly reporting on revenue collection. However, tax deals are not publicized and a striking example of this has been the lack of transparency in the taxation of capital gains in transactions involving the gas industry in the Rovuma Basin. In some cases, this involved payment in kind, as in 2013 when the Italian international oil company *Ente Nazionale Idrocarburi* (ENI) paid part of its taxes from the sale of its 30% stake to the China National Petroleum Corporation, through an agreement, made directly between the company and former President Guebuza, to build a coal power plant. There has been no public explanation about the advantages of this deal. Internally, the Tax Authority has adopted control mechanisms to curb corruption, including the creation of Internal Control Agents and Supervisors appointed to some organic units to prevent irregularities within the organization. ATM has an anti-corruption policy and regularly trains its staff on integrity issues.

### 1.9.1. OPERATING ENVIRONMENT

Scoring Question:	Score
Are the country's tax and custom administrations utilizing processes in accordance with international recognized standards?	50

Mozambique as an extensive tax legal framework, which defines the taxes to be collected. So the system is generally transparent. Reforms in the tax system and administration

over the last decade have led to the enactment of extensive legislation applicable to central and local governments and to customs, and the creation of the Mozambique Tax Authority (Laws 1/2006 and 2/2006, both of 22 March, and 19/2009, of 10 September). The creation of the Tax Authority has improved revenue collection considerably and has helped to reduce dependence on external funds to finance the budget deficit, from more than 50% in the previous decade to around 25% in 2016 (República de Moçambique, 2015b). A recurrent complaint about the tax system is the excessive burden and high level of corruption, mainly in customs, which fuels tax evasion.

Under the tax reform there are plans to introduce electronic taxing (*e-Tributação/e-Taxation*) and there are initiatives on using technology in taxing, as is the case of the “*Janela Electronica*/Electronic Window”, a “one stop shop” for imports and exports that includes payment of customs duties through electronic banking. The Mozambique Tax Authority provides some forms in electronic format on its website, such as the income tax (IRPS) form. It also provides a simulator for tax payments that allows tax payers to input data on the goods to be imported and produce an estimate of the amount of taxes to be paid.

Simulators are already available for vehicles and other imported goods. Most of the tax and customs legislation can be easily accessed on the Tax Authority website.

The Tax Authority reports frequently on revenue collection, and in some special cases, such as the collection of capital gains on share transactions involving the Rovuma Basin gas over the last three years. It even published an announcement in the newspaper giving details of the operations.

Tax deals have not always been transparent. There is the case of the negotiation of the capital gains tax, estimated at US\$ 1.35 billion, owed by the oil and gas company *Entidade Nazionale Idrocarburi* (ENI), arising from the sale of a 30% stake in the Rovuma Basin gas project to the China National Petroleum Corporation. The amount was partially paid in kind: an agreement to build a thermal coal plant to generate energy, and the remainder, around 30% (US\$ 400 million), paid in cash.<sup>40</sup> Civil society organizations involved in the extractive industries strongly criticized the lack of transparency in this deal.

<sup>40</sup> See <http://www.bdlive.co.za/africa/africanbusiness/2013/08/14/mozambique-tax-deal-will-see-eni-build-power-plant>. Accessed on 03 February 2016.

## 1.9.2. INTEGRITY OF TAX ADMINISTRATION AUTHORITIES

Scoring Question:	Score
Are the country's tax and custom administrations and its employees committed to internationally recognized standards of integrity and ethical behaviour?	25

Tax and customs employees in Mozambique are part of the Tax Authority (TA), which has a strict anti-corruption policy embodied in its code of conduct. Employees receive regular training on anti-corruption matters. In 2014 the Authority held 88 awareness raising sessions on ethics and integrity in all its ten provincial branches in the country (See TA Report 2014, page 88).

The AT Internal Control Office is operational and in 2013 it decided to create Internal Control Agents and Supervisors. In 2014 it allocated 72 of them to certain organic units to prevent infractions and irregularities within the organization. The TA has a systematic Risk Analysis and Management Model; through which it collects information on various irregularities. In 2014, using this model, 42 intelligence packages were produced and sent to the General Directorate of Customs and General Directorate of Taxes (the two operational branches of the Tax Authority), the Attorney General's Office and the Anti-Corruption Unit for further follow-up, including criminal proceedings, where applicable. Irregularities include procurement in the TA involving companies, tax evasion, and falsification of documents, among others. According to the Internal Control Office, in 2014 the Tax Authority handled 34 enquiries (and concluded 15), and 33 disciplinary cases (and concluded 25) (TA Report 2014, page 89). Although the internal and audit control bodies may be efficient, their effectiveness has come under scrutiny due to the perceived high levels of corruption in customs.

Penalties in the customs and tax administration are embodied in the penalties for public servants involved in corruption and there is no specific system for this group. Penalties include expulsion, demotion, public reprimand, warning and fines (see TA Report 2013, page 94). In the case of companies, penalties are established in the Tax System Law (2/2006, of 2 March). Articles 193 and 194 of the law list penalties ranging from a ban on participating in public bids to the closure and dissolution of companies, in cases of tax felonies and irregularities. Article 473 of the Penal Code includes other penalties such as fines and a five-year prison sentence for smuggling.

The Tax Authority website has a link for users to disclose cases of corruption. However,



the link does not guarantee full anonymity, as users are requested to provide their name and address. Only the handing of the information can potentially ensure anonymity.

Although tax officials are part of the civil service their remuneration scheme is different to other civil servants, with higher salaries. In 2014 the authority reported a case of 3rd class Tax Assistants (Auxiliares Tributários) with salaries below comparable categories in the public service. It took swift measures to correct the situation, introducing a provisional bonus to compensate for this gap until the new salary scheme could be formalised (TA Report, 2014, page 44).

Despite these good formal ethical standards, there is a widespread impression in enterprises and among ordinary citizens that the tax authorities are corrupt. In addition to the information gathered for this study, according to the 2012 Afrobarometer report 012, based on a representative sample throughout the country, 34% of those surveyed stated that some tax officials are involved in corruption, 24% thought that most are and 10% all of them (Centre for Research on Governance and Development, 2012)

### 1.9.3. EXTERNAL SAFEGUARDS

Scoring Question:	Score
Are the country's tax and revenue collection processes integrating external safeguards for detecting and reporting violations?	25

A single NUIT is used to identify taxpayers in their relations with the Tax Authority, more specifically with the General Directorate of Customs in Mozambique.



This aspect is covered by Article 16 of the law establishing the principles for the organisation of the tax system, Law 15/2002 of 26 June and is regulated by Decree 52/2003 of 24 December, approving the NUIT regulations.

Recently, there was migration to a phase where the NUIT is also used in financial transactions, permitting improved connectivity when reconciling information on imports.

The Tax Authority's annual report provides information on the activity of the internal audit body. The external control body for public administration is the Administrative Court (AT). However, the Administrative Court's audit reports are not public. Recently approved legislation makes audit reports available (Law 14/2014, Article 95), but the AT is still in the process of setting up its procedure for making reports available and this initiative is one of the priority areas in its forthcoming Strategic Plan, to begin implementation in 2016.

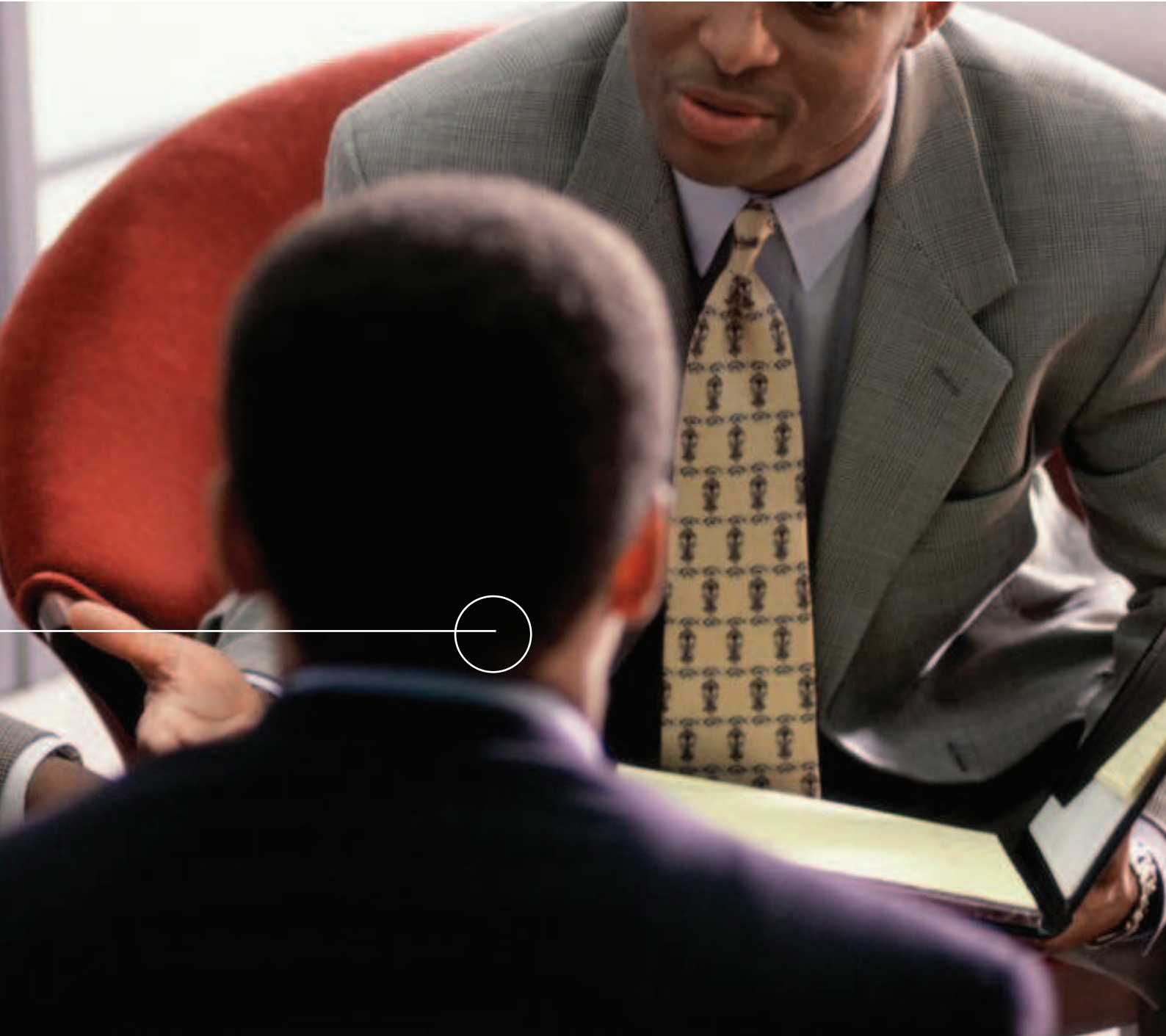
Mechanisms for reporting allegations of corruption are available (even online), but their effectiveness is questionable, as government surveys have found that the customs and taxes system are considered among the most corrupt organizations in the public sector. There is, however, the Central Anti-Corruption Office (GCCC) in the Attorney General's Office, under the respective Attorney General, that oversees matters related to corruption in public institutions.

There is no structured programme for disclosing acts of corruption in exchange for mitigation sanctions. A general complaint about this authority is the absence of effective mechanism for citizens to defend themselves against its abuses.

# BUSINESS SECTOR

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## 2. BUSINESS SECTOR

### 2.1. INTEGRITY MANAGEMENT

SCORE

25

Most Mozambican companies do not have well-structured integrity management systems. Those who do have them, are predominantly subsidiaries of multinationals, with clear policies and programmes and also implementation mechanisms. Business associations are other actors with anti-corruption tools, but with no visible outcomes.

Although corruption is a main concern of most Mozambican companies and their associations, only a few have well-established and functioning integrity management systems. Sound integrity management comprises policies and the respective implementation programmes, whistle-blowing mechanisms, and the application of these instruments across the company's structures, subsidiaries and business partners.

Integrity is among the core values of many companies, but this is not necessarily translated into concrete anti-corruption policies. Most companies in Mozambique do not have visible policies to counter corruption. Some multinationals have more structured instruments that are applicable internally, across their subsidiaries and in some cases are applied to their business partners, including suppliers. These are the cases of BHP Billiton, Vodacom Mozambique and Vale Mozambique. National business associations have or are preparing business code of conduct.

The Commercial, Industrial and Services Association (ACIS) has had a Code of Business Conduct since 2005, but only 22 of its 400 member companies have signed up to it. It is not mandatory for ACIS' associates to be signatories to the code. As of October 2015, CTA was preparing a Code of Business Conduct to be approved by its board.

The Institute of Directors of Mozambique (IoDmz) has adopted a Code of Business Ethics which ten companies have signed, out of 89 registered members.<sup>41</sup> While acknowledging the severity of corruption, particularly in public procurement, interventions by important sector associations, such as the Building Contractors Federation and the Industrial Association of Mozambique (AIMO), have been limited to specific cases presented by their associates. These entities do not have specific instruments to deal with corruption, although in the dialogue with the government they include fighting corruption as a key element on the business agenda.

A common denominator in all cases is lack of publicity on the report on the implementation of anti-corruption policies and programmes and their outcomes, even in companies that have systems in place.

Whistle-blowing mechanisms are not explicit in all companies with integrity programmes, for example, how to handle information on illicit practices and protect whistle-blowers. One of the few exceptions is Vale Mozambique. Its Supplier Code of Ethics details the mechanisms for channelling concerns and reporting violations, as well as for protecting whistle-blowers.

Multinational companies are more likely to implement their programmes in their subsidiaries (e.g. Mozal, a subsidiary of BHP Billiton, Vale Mozambique and Vodacom Mozambique) and stimulate its use by its suppliers. The Mozambican Commercial Code determines that companies involved in mergers must prepare and publicize documents relevant to this operation, including financial reports.

A more detailed analysis of the above-mentioned indicators is presented in the following subsections.

## 2.1.1 PROVISION OF POLICIES

Scoring Question:	Score
To what extent do companies establish formal policies to counter corruption?	25

<sup>41</sup>See <http://www.iodymz.com/>.

Information about policies prohibiting corruption is scarce. Only a few companies have visible and accessible anti-corruption policies.

Some enterprises state in their general policies that integrity is a core value of their organization (e.g. TDM, Grupo Lalg, MCell). According to sources in the two main business associations – the Confederation of Business Associations (CTA) and the Services, Commercial and Industrial Association (ACIS), most Mozambican companies do not have formal policies prohibiting corruption

ACIS members are supposed to sign up the Code of Business Principles and abide by them as concerns business integrity. The code was originally signed by 22 companies, and more have since adhered to it, but this is not mandatory for its 400 members. Moreover, signing the code does not necessarily mean that companies have adopted the related policies and use them in their day-to-day work. A visit to the available websites of the 47 sample companies in this study reveals that only a few have an available, accessible and consistent system of integrity management. This is true of some international companies, for example, BHP Billiton, the holding company of the Mozambican company Mozal, Vale Mozambique (a subsidiary of Vale) and Vodacom Mozambique (not in the sample), a subsidiary of Vodacom. Vodacom Mozambique, is one of the few companies to have its anti-corruption policy displayed on its website, but it is too generic and the information available is intended to tell suppliers to comply with the company’s anti-corruption policy. Policies include a wide range of elements, such as conflict of interest, facilitation payments and bribes, but they do not mention political contributions. Its direct competitor, Mozambique Cellular (MCell), responding to this assessment, stated that it has a Code of Conduct that covers all the above-mentioned areas. However, the company’s policy is not available on its website.

The disclosure of policies is still limited. Where policies are explicitly defined and published, they are applied to the whole company.

## 2.1.2. IMPLEMENTATION OF PRACTICES

Scoring Question:	Score
To what extent do companies have anti-corruption programmes in place?	25

According to the previous response, such practices are rare. Only recently have business organizations such as the IoDmz, ACIS and CTA pushed for the integrity agenda

among their business associates, but its implementation is still limited and not systematically monitored. CTA is working on a Code of Business Conduct for its members. The code includes the creation of a committee that will be responsible for overseeing its enforcement. The committee will be responsible for finding and enforcing sanctions against CTA members that violate the Code of Conduct, according to the severity of the problem detected (according to a CTA source).

On 10 August 2015 CTA signed an agreement with the government on a yearly plan that includes an action plan with the organisation's commitment to fight corruption. In this regard, CTA should denounce associates that accept or give bribes, are involved in tax evasion, abandoning public works and other anti-ethical practices. The idea is that CTA should be a partner of the government in law enforcement in some key areas of business.

In general, this practice is still new; there are no well-established practices and routines to implement anti-corruption programmes in the country. As mentioned in the assessment of indicator 2.1.1, the implementation of anti-corruption practices is more systematized in international companies (BHP Billiton has one of the more detailed integrity programmes)<sup>42</sup> than in national enterprises. This is the only reason for the score to be more than zero (0).

### 2.1.3. WHISTLE-BLOWING

Scoring Question:	Score
To what extent do companies provide secure and accessible channels to raise concerns and report violations (whistle-blowing) in confidence and without risk of reprisal?	25

Secure and accessible channels for whistle-blowing do not exist as well-established mechanisms, in line with the weaknesses of the overall integrity management system in most companies. They exist in some international companies. For example, Vale Moçambique, with its Supplier Code of Ethics and Conduct, has a provision on whistle-blowing and provides mechanisms for channelling concerns and reporting violations, as well as protection for whistle-blowers. BHP Billiton's Code of Business Conduct is detailed and explicitly states its zero tolerance for retaliation.<sup>43</sup>

Among local companies, the website of the recently created enterprise MATAMA has a detailed Code of Business Conduct that includes procedures for channelling and

<sup>42</sup> <http://www.bhpbilliton.com/society/operatingwithintegrity/working-with-integrity>.

<sup>43</sup> See [http://www.bhpbilliton.com/~media/bhp/documents/aboutus/ourcompany/code-of-business-conduct/150513\\_bhpbilliton\\_codeofconduct\\_english.pdf?la=en](http://www.bhpbilliton.com/~media/bhp/documents/aboutus/ourcompany/code-of-business-conduct/150513_bhpbilliton_codeofconduct_english.pdf?la=en). The Code states that it is applicable to all entities and suppliers or contractors. It is thus assumed that Mozal implements it, as on its page 4 it presents an "Ethics Point Telephone" for Mozambique.

handling information, as well as guarantees protection for whistle-blowers (MATAMA SA, 2014).<sup>44</sup> Mcel has a non-reprisal policy in its Code of Conduct, but it does not have proper channels for employees to raise concerns about corruption anonymously. Vodacom’s anti-corruption and anti-bribery policy states that it is compliant with Mozambican anti-corruption legislation. While this should be a legal basis for protecting whistle-blowers, it is not explicitly expressed on the website.

Thus, whistle-blowing mechanisms do exist in companies with a well-structured anti-corruption programme. As these companies are few and most are subsidiaries of multinationals, this cannot be considered a common practice among Mozambican companies or the majority of those operating in Mozambique.

### 2.1.4. BUSINESS PARTNER MANAGEMENT

Scoring Question:	Score
To what extent do companies apply their anti-corruption programme to relevant business partners?	25

The application of anti-corruption policies to business partners is more frequent when the relationship involves effective control (subsidiaries) or purchasers and suppliers. Here again, international companies are leading the process and their subsidiaries are covered by the same rules and policies. For some international companies, the most significant examples are in the extractive industries, as part of their suppliers’ obligations they must sign up to their Codes of Conduct. However, this application is limited to the specific transactions with the company that has the anti-corruption programme. While some companies might end up adopting some standards in their daily business, it is not realistic to expect them to adopt fully these anti-corruption standards when dealing with other companies on a daily base.

Under the Commercial Code (Articles 151, 152 and 153), companies involved in mergers must prepare the documents and reports (including financial) for the merger project, which must be presented to the respective Audit Boards and to an independent fiscal or audit society for them to issue an opinion on the process. The merger project must be registered and published in the newspaper with the widest circulation in the country.

Some companies (e.g. Vale Mozambique) include the possibility of visiting their suppliers under their programme of monitoring the performance of contracted companies in their Supplier Code of Ethics and Conduct, but no details are provided on the

<sup>44</sup> See [http://www.matama.co.mz/pdf/codigo\\_conduta.pdf](http://www.matama.co.mz/pdf/codigo_conduta.pdf).



indicators that are assessed, whether they include the inspection of books and records. The right to inspect books and records is more applicable to relations between holding companies and subsidiaries.

The good practices of the above-mentioned companies and their relations with suppliers can be an incentive for promoting business integrity, but the spill-over effects are not automatic. Business associations' representatives were unanimous in acknowledging that most Mozambican companies do not have anti-corruption policies and programmes. In some cases, companies have reverse incentives. In a meeting of building contractors with the government on 29 October 2015, a company representative acknowledged that there is an institutionalized demand for a 10% kickback to win public contracts that is widely known, but nothing has been done so far to change this situation.<sup>45</sup> This suggests that firms might comply with the anti-corruption standards of companies when they are involved in a business transaction that demands that kind of compliance, but the same firms are still vulnerable to engaging in illicit transaction when they operate in a context where bribery is institutionalized.

## 2.2. AUDITING AND ASSURANCE

SCORE

50

Mozambique's legislation on auditing follows international standards (IFRS), which underpin the country's relatively sound legal framework for external and internal control of companies. This is not the case for assurance. This thematic area looks at the audit and assurance framework and practices, and how

they affect internal and external control and monitoring mechanisms that seek to detect and prevent corruption.

The creation of the Mozambique Accountants and Auditors Association (OCAM) in 2012 (through Law 8/2012, of 8 February) has helped to strengthen the oversight mechanism for audit activities. As a regulatory and supervisory body, OCAM carries out regular quality control interventions in audit companies and on the work of the auditors, to verify their compliance with international standards. These oversight interventions have found that, on the whole, Mozambican companies and auditors are compliant with international standards and local legislation.<sup>46</sup> According to OCAM, auditors must be rotated at least up to every four years<sup>47</sup> to avoid an excessive involvement in the company that can undermine their work. In practice, however, this requirement cannot be met as large companies have a very close track record with

<sup>45</sup> Available in the institutional Video of the Mozambican Federation of Building Contractors. See also: <http://noticias.tvm.co.mz/index.php/programas/item/6752-adjudica%C3%A7%C3%A3o-de-obras-p%C3%BAblicas-empreiteiros-denunciam-favorecimento-e-corrup%C3%A7%C3%A3o>. Accessed on 16 January 2016.

<sup>46</sup> Interview with OCAM president, 16 December 2015.

<sup>47</sup> Idem.

their external auditors in terms of method of work. With the new requirements on rotation, the audit process has become more complex, even though it is mandatory. Certification of auditors is another requirement made possible by the creation of OCAM.

At company level, the Mozambican Commercial Code requires the existence of internal oversight bodies for limited liability shareholding companies, among them an Audit Board. This body is responsible for supervising the company’s compliance with its procedures, policies and national legislation. Indeed, companies that regularly publish their financial reports also present a written statement by the Audit Board on the report’s compliance with applicable norms – internal and external to the company.

In the case of external audits, it is common practice for the Board of Directors to make signing the financial reports conditional on verification of the accounts by an external auditor. All the financial reports analysed contain a verification statement by an external auditor. Companies quoted on the Mozambique Stock Exchange, companies with state participation whose Articles of Association include publication and commercial banks, must publish their audited accounts. However, this requirement does not apply to other companies. In all the websites visited there is not any external audit report available.

As regards conflict of interest, one of the mandatory requirements for audit companies, and one fundamental for the activity, is the requirement that audit technicians sign a term of commitment stating that they have no relationship with the audited company. This aspect of the independence of Mozambican audit companies is highly sensitive and subject to verification by the parent companies.

Independent assurance of programmes and administrative procedures is not a common practice among Mozambican companies, but some subsidiaries of international companies are certified. A search in our sample of companies found that some international companies follow recognized standards for external assurance, including the International Standard on Assurance Engagements (ISAE 3000). All the companies in this situation are subsidiaries of multinationals.

### 2.2.1. INTERNAL CONTROL AND MONITORING STRUCTURES

Scoring Question:	Score
To what extent do companies have anti-corruption programmes in place?	50

According to the Commercial Code (Decree-law, 2/2009, of 24 April), article 54, the companies must present financial reports at the end of each fiscal year, to be submitted to the tax authorities.

From a legal point of view, companies must keep available for inspection accurate books and records for at least 10 years, as stipulated in article 54 of Decree 7/2008 of 16 April (the by-law of the VAT code) and to maintain the tax dossier for the same period as stipulated in no.1 of article 46 of Decree 9/2008 of 16 April (By-law of the Corporate Tax Code). Nonetheless, in practice, this depends on the importance attributed by the managers of each company.<sup>48</sup>The more demanding companies have information properly organised and comprehensible for any supervisory or inspection act. However, most companies do not care about these aspects, leaving it to the accountant or filing clerk to organise and supply information for the inspection process, and often, when this technician does not have the required files organised, it hampers the work of inspectors.

Corporations must have a Fiscal Council responsible for the oversight of the integrity of the Financial statements. This function can also be performed by an independent auditor (Commercial Code, article 342). In the case of the public companies its financial statements and reports must be checked by the fiscal council, internal and external auditors, and it is mandatory for these entities to have an internal audit body (Law 6/2012 of February, articles 33, 35 and 36).

The only independent internal audits are checks by the parent company or the group. However, as they are internal auditors subordinate to the company itself, there is a certain dependence or even conflict of interest as in this case the remuneration of the internal auditors is dependent on the very company being audited.

CEOs and the Financial Directors are responsible for the company's accounts and they have statutory responsibility for signing the financial statements. Before signing, most of the bodies responsible for signing and certifying the financial statements request certification by an external auditor, in order to feel more comfortable and share the risk in the event of omissions. In this regard, some of the companies sampled for this study in their annual financial reports present an opinion of an independent auditor and the company Fiscal Council certifying the accuracy and compliance (with existing rules) of the financial statements.<sup>49</sup>

## 2.2.2. EXTERNAL AUDIT

Scoring Question:	Score
To what extent do companies subject their financial reporting to external audits?	50

<sup>48</sup>Interview with accountants who demanded anonymity.

<sup>49</sup>Examples are the financial reports of the companies Emose (report 2014); Mcel (report 2011); CMH (report 2014/15); and BCI (report 2014).

The external audit provides the necessary checks and balances that ensure a company's compliance with good management and ethical standards. Thus, the existence of sound audit rules, mechanisms, practices and professionals is important for the effectiveness of this function. Most of the private and public companies with established management structures and processes, as defined in Mozambican legislation, comply with a significant number of standards in this area. Transparency performance is weaker, as the results of the external audit are not usually shared, even in the case of public enterprises.

Large companies, private and public, that regularly publish their financial reports also have them certified by external auditors. However, most companies do not publish their external audit reports, at least through the same channels they use to disseminate their annual reports.<sup>50</sup> Indeed, only public companies, banks and public limited companies must publish their externally audited accounts.

In the case of public enterprises, Law 6/2012 states that its financial accounts must be audited by an independent external audit, and audit services must be rotated frequently (Article 36). This is a standard practice that also extends to private companies as a golden rule for transparency and independence. Specific procedures for selecting and rotating external auditors are referred to in specific regulations still to be approved. According to the chair of the Accountants and Auditors Association, audit companies are rotated every four years, as normal practice.<sup>51</sup>

In the case of private companies, as conducting external audits in Mozambique requires licensing approved by the Ministry of Finance, all external auditors are duly licensed. Moreover, as an area requiring the company's credibility and repute, the license is conditional on establishing a company with participation by, or as part of, a group of recognised companies in the audit field<sup>52</sup> (e.g. parent companies of EY, KPMG, PWC, Deloitte, BDO, etc.).

Audit practice in Mozambique is reasonably well established by international audit companies that are aware of conflict of interest issues. However, not all companies have their consulting and audit services organized in order to avoid providing the same services to the same companies. In the past, in line with international practice, Ernst & Young separated its consulting functions from its audit functions. One of the mandatory requirements of audit companies, and fundamental for the activity, is the requirement that audit technicians sign a term of commitment stating that they have no relationship with the audited company. This aspect of the independence of Mozambican audit companies is highly sensitive and subject to verification by the parent companies.

All these standards, when applied, refer to the limited set of companies with the fea-

<sup>50</sup>Of the sampled companies with financial reports available on their respective websites (e.g. BCI, BIM, TDM, MCEL, CMH, Global Alliance, Petromoc, CFM) there are only statements by external auditors on compliance with existing norms and practices.

<sup>51</sup>Interview on 16 December 2015.

<sup>52</sup>Based on Article 3 of Decree 32/90 of 7 December, the licensing of audit companies requires a prior license by the Ministry of Finance "which will only be granted to professional companies of recognised repute and who show that they have experience and proven technical-professional qualifications".

tures described above. A considerable part of Mozambican companies does not submit their reports to an external audit.

### 2.2.3. INDEPENDENT ASSURANCE

Scoring Question:	Score
To what extent do companies undergo voluntary independent assurance on the design, implementation and/or effectiveness of the anti-corruption programme?	0

Research in our sample of companies found that some international companies follow recognized standards for external assurance, including the International Standard on Assurance Engagements (ISAE 3000). This is the case of Millennium BIM, Vale Mozambique, Vodacom Mozambique and *Cervejas de Moçambique*. However, these procedures are mentioned in the global reports of their respective holding companies namely, Millennium BCP, Vale, Vodacom South Africa and SAB Miller. There is no special mention of how these standards are applied specifically to their Mozambican companies, and none of the reports specifically mentions independent assurance of the implementation of anti-corruption programmes.

The disclosure of assurance opinions is unclear, as the report only refers to use of the above-mentioned international standards, not specific assurance opinions.

## 2.3. TRANSPARENCY & DISCLOSURE

SCORE

**25**

As already mentioned, international companies disclose their anti-corruption programmes and details. The levels of detail vary. The BHP Billiton integrity programme, also applicable in Mozambique, is the most comprehensive and detailed, with information on training activities and the updating of policies and programmes.

The Universal Corporation Anti-Corruption Compliance Manual (Universal Corporation, 2012), is applicable to its Mozambican subsidiary, Mozambique Leaf Tobacco, and Vodacom's summarized version of its anti-corruption policy explicitly refers to compliance with the country's legislation. As already mentioned, most of the national companies do

not have a business Code of Conduct and business sector associations confirmed that in the case of the few that have these instruments, there is no reporting.

Anti-corruption reporting, if it exists, is not publicized in the same sources as programmes, neither websites, nor annual reports.

The companies in the sample do not disclose much information on their organizational structures, such as lists and percentages owned in fully on non-fully consolidated subsidiaries, country of operations and the names of beneficial owners. In the sample of 47 companies analysed in this study, only 14 had accessible information, and only six of these provide information. The most frequent information is the list of the names of fully and non-fully consolidated companies. The names of beneficial owners are not provided by any company, but there is also no legal obligation to do so in Mozambique, apart from the legal provision mentioned in the 1.6 thematic area, in the public sector section.

In the case of companies with subsidiaries, disclosure of key financial data on a country-by-country basis, is low. Some companies provide information on community contributions/spending. Some of the public companies surveyed (CFM, CMH and Mcel) perform well in this item, as their reports include information on expenses on corporate social responsibility. They do not provide detailed information on their sponsorships. For example, Mcel is a great sponsor of cultural activities but this is not reflected in detail in its reports. Reporting by national subsidiaries of multinational companies is more blurred; only part of it is available in the consolidated reports of their respective holding companies.

### 2.3.1. DISCLOSURE OF ANTI-CORRUPTION PROGRAMMES

Scoring Question:	Score
To what extent do companies report publically on their anti-corruption programmes?	25

Some international companies disclose their anti-corruption programmes on their websites, such as Vodacom Mozambique, Vale (Code of Conduct) and BHP Billiton, Universal Corporation (Mozambique Leaf Tobacco) but at the global level.

Reporting on anti-corruption programmes is closely related to the existence of anti-corruption programmes, which, as already indicated, is limited to some companies.

So there is not much information on anti-corruption programme reporting by most companies. In the cases of Vale and Vodacom Mozambique, reporting on implementation is also not available on their website. One company, MCell, explicitly acknowledged that it does not monitor its anti-corruption programme.

In the case of international and national companies with explicit policies, details of the implementation of anti-corruption programmes are not provided in their annual reports.

Interviews with the main Mozambican business associations (CTA and ACIS) revealed that implementation and reporting on anti-corruption activities is not a common practice.

### 2.3.2. DISCLOSURE ON ORGANIZATIONAL STRUCTURES

Scoring Question:	Score
To what extent do companies report publically on their organizational structure?	25

The companies analysed do not have significant disclosure of organizational structures: list of subsidiaries, countries of operations and of incorporation, percentages owned and beneficial ownership.

Information for this indicator was based on the sample of 47 companies selected for the study, using the Transparency Reporting on Anti-corruption (TRAC) methodology. Only fourteen (14) companies have available downloadable information, and only seven provide information about the organisational structure of fully and non-fully consolidated companies.

Based on the information available, out of a maximum of 8 points, the score for the companies ranges from 2 to 6 points on the type of information provided on organizational structure. Most of the companies analysed display the full list with the names of fully consolidated subsidiaries and the full list with names of non-consolidated subsidiaries. Other types of information like country of incorporation, percentages owned and beneficial ownership are less frequent and were present in only two enterprises.

No beneficial owners are publicly reported for any of the companies. However, there is an omission or ambiguity in the legal framework on the existence of beneficial owners in the Mozambican context.

### 2.3.3. DISCLOSURE OF KEY FINANCIAL DATA ON A COUNTRY-BY-COUNTRY BASIS

Scoring Question:	Score
Do companies report publically on their countries of operation?	25

The standard reporting for tax purposes in Mozambique requires companies registered in the country to include information on revenue, capital expenditure, pre-tax income and income tax. The public availability of this information depends on the company's practices with regard to publishing reports. As seen before, only a few companies publish their financial reports, mainly public enterprises and banks.

Companies mention corporate social responsibility expenditure or work with communities. Some provide specific figures of such expenditure (e.g. CFM, CMH, MCEL, and BHP Billiton), while others only refer generically to corporate social responsibility (BCI), without specifying the amount involved.

In this respect, of the companies surveyed, public enterprises perform better than private ones in terms of publishing financial information, as they provide much more detailed information, including on community contributions.

Reporting on the national revenue of international companies is more blurred, as the reports on their websites only provide financial information on their main operations, and country specific information might be lumped together in a general regional category, for example, "Africa" or "other countries" in the case of Mozambique (OLAM, Mozambique Leaf Tobacco, with Universal Corporation as its holding company).

### 2.3.4. ADDITIONAL DISCLOSURES: CONTRIBUTIONS, SPONSORSHIPS AND LOBBYING ACTIVITIES BOTH DOMESTICALLY AND INTERNATIONALLY

Scoring Question:	Score
To what extent do companies publish information on charitable contributions, sponsorships and lobbying activities both domestically and internationally (e.g. corporate reporting or CSR reports)?	25



Law 4/94 of 13 September (Law on Patronage) requires the awarding of grants to follow certain procedures, including informing regulatory entities and publication, in the case of charity, so that costs are recognised for tax purposes. According to audit experts, some companies (usually large ones) that know about this procedure have followed it to the letter in order to avoid possible tax implications, namely, payment of tax.

It should be noted that, as charitable contributions or grants assume that the company has a surplus, few companies make these donations. Some have made such contributions without respecting these assumptions.

In practice, international and national companies publish information on their charitable contributions, either in their Annual General and Financial Reports (in the case of national companies), or in their Sustainability Reports (in the case of international companies that have adopted this expression for their CSR reporting; e.g. Vale, BHP Billiton).

The Law on Patronage regulates sponsorship and requires the same treatment; it is practised by niche companies and the same quantitative assumptions apply. The company reports consulted for this study do not provide detailed information on sponsorships. For example, MCell and Vodacom are among the main sponsors of cultural activities (e.g. music shows) in the country, but their many sponsorship activities are not included in their reports, at least those available on their website. In short, some companies report on their charitable contributions, but do not give sufficient detail to be considered full reporting.

Lobbying activities are not usually included in the companies' reports as they are usually confidential, or not explicitly acknowledged as such, as this type of activity is not regulated in Mozambique.

## 2.4. STAKEHOLDER ENGAGEMENT

SCORE

25

Stakeholder engagement refers to the way companies engage in initiatives with other actors to reduce corruption, business-driven anti-corruption initiatives and support by business associations for their associated companies in fighting corruption. To some extent, Mozambican companies involve stakeholders, like sharing information on their performance with employees

and shareholders, as part of observing legislation obligations and as part of participating in the tripartite dialogue with government and trade unions explained below. Business-

driven anti-corruption initiatives are still few and limited to adopting integrity tools with low adherence by associated companies. In a context of weak company pro-activeness in fighting corruption and weak initiatives by business associations, support by the latter is for occasional cases, not systematic and consistent interventions.

Mozambique has a tripartite negotiation mechanism involving the government, the business sector and trade unions, called “Comissão Consultiva do Trabalho/Consultative Labour Commission”. This forum discusses salary issues, including annual increases, and other economic issues of concern to the parties involved. In this forum companies have an incentive to (and really do) share financial information on their performance to aid the salary negotiation process. However, sharing information does not necessarily mean that it is reliable. One source reported that some companies present manipulated information that masks their performance, in order to avoid giving large salary increases and reducing their profits.

On anti-corruption issues, employees are encouraged to present cases of illegal and unethical practices to the company’s trade union committee<sup>53</sup> to avoid reprisals, with the committee presenting the issue to the company management for follow up, to avoid exposing individual employees. As long as a company’s governing bodies are in place and working, Mozambican legislation guarantees shareholders the right to participate in decision-making and to be informed about corporate changes. For example, the Commercial Code states that shareholders must be informed about mergers and acquisitions and documents made available to the public and shareholders. In practice, this is happening and some companies involve employee representatives in their decisions, as in the case of public enterprises where a representative sits on the management committee.

Business-driven anti-corruption initiatives occur through the adoption of business codes of conducts by associations, whose members are supposed to adhere to them. The ACIS, CTA and IoDmz codes are an example of this activism.

Some business associations help their associated companies to present grievances related to corruption. This has been merely a reactive exercise that does not necessarily mean support for the company’s initiatives. The main forms of support provided to companies by associations are discussion and pressure for measures to curb corruption in dialogue with the government, and the adoption of codes of business conduct. In short, there is not much support for proactive measures by companies or fighting corruption. The adoption of codes of conduct and other integrity instruments by business associations has not ensured that companies adhere to these initiatives, as shown by the limited number of signatories to most of these instruments.

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<sup>53</sup>In Mozambique trade unions have the right to set up a trade union committee in companies in their sector of work.

## 2.4.1. STAKEHOLDER RELATIONS

Scoring Question:	Score
To what extent do companies engage in multi-stakeholder initiatives aimed at reducing corruption?	50

Mozambique has adopted a government-business-trade union dialogue mechanism to negotiate salaries and other economic issues. Here, companies share information on performance to inform negotiations and decisions. The Commercial Code guarantees the participation of shareholders in decision-making.

Some enterprises strategically share information with trade unions about the company's performance and this is an important element for negotiation in moments of crisis. For example, companies such as Kenmare and Vale Mozambique have shared information on how falling international commodity prices have affected their turnover, and have been able to get trade union agreement for the elimination of some benefits. For example, Vale reached an agreement to reduce the remuneration package of its workers from 16 to 14 salaries and eliminated other benefits. This was important in helping the company to manage the falling commodity price crisis.<sup>54</sup>

According to a trade union source, employees communicate their concerns about illegal or unethical practices directly to the company management when it is open to such grievances. If not, this is done through the local trade union, which channels the concern, or simply through protests or strikes. In companies with trade unions (trade union committee) this process is much easier than in those without employee representation. Trade unions have mechanisms to protect employees who denounce wrongdoing. The existence of trade union committees in companies is a right protected by law and does not depend on the willingness of companies, although some may resist accepting their activities.<sup>55</sup> As already mentioned, companies with well-structured Codes of Conduct already have zero tolerance of retaliation.

However, this is not the rule, and depends on the quality of the company's corporate governance.

According to the Commercial Code, shareholders controlling at least 5% of a company's shares have the right to call for a session of the General Meeting to discuss issues related to the company's governance (Article 303, number 2; c). Article 309 of the Commercial Code states that any shareholder has the right to participate in the General Meeting, the body responsible for taking key corporate decisions, if that person can prove his/her shareholder status.

<sup>54</sup> Interview with a trade union representative.

<sup>55</sup> According to a trade union manager.

## 2.4.2. BUSINESS-DRIVEN ANTI-CORRUPTION INITIATIVES

Scoring Question:	Score
To what extent do companies engage in multi-stakeholder initiatives aimed at reducing corruption?	25

Multi-stakeholder initiatives aimed at reducing corruption in business are rare. One of the few examples is the Extractive Industries Transparency Initiative (EITI), aimed at monitoring the revenue of the extractive sector. EITI involves government, the private sector and extractive industry companies.

The Institute of Directors of Mozambique (IoDmz) has created a Business Pact Against Corruption (BIPAC) for Public Procurement and for political financing. This initiative will involve companies, the public sector and civil society. The last will have a monitoring role. The initiative is in an initial phase and mobilizing companies to adhere.

Apart from the codes of conduct of business associations, the Government recently suggested that CTA should contribute to fighting corruption in business and a set of activities were agreed and included in the CTA action Plan. This decision included anti-corruption initiatives in the regular government-business dialogue.

In general, company initiatives to publicly promote multi-stakeholder anti-corruption interventions are still few and in an initial phase in Mozambique.

## 2.4.3. BUSINESS ASSOCIATIONS

Scoring Question:	Score
To what extent do business associations support companies in fighting corruption?	25

In their dialogue with the government business associations frequently cite corruption as a critical barrier for business. The adoption of codes of business conduct by the main business associations (CTA, ACIS IoDmz) illustrates the importance of this issue to these entities. ACIS has a toolkit to operationalize anti-corruption measures in its

member companies. Weak adherence by companies is a barrier to the enforcement and effectiveness of these instruments.

There is no active and systematic support for members' anti-corruption efforts by associations in Mozambique. Some associations (e.g. AIMO) channel their members' grievances when cases are serious but the support is rather reactive and for specific situations.

## 2.5. BOARD OF DIRECTORS

SCORE

25

The Board of Directors is formally responsible for overseeing a company's anti-corruption programmes at the operational level, as the Mozambican Commercial Code establishes this as a standard function. The same is true for the Board of Directors of public companies, as defined in Law 6/2012.

However, the Audit Board is responsible for monitoring the company's governance practices.

### 2.5.1. OVERSIGHT

Scoring Question:	Score
To what extent is a Board of Directors responsible for the oversight of its company's anti-corruption programmes?	25

The formal responsibilities of the Board of Directors of private and public enterprises are defined in the respective laws and regulations.

According to the Law on Public Enterprises (Law 6/2012, of 8 February), the Board of Directors is responsible for approving and implementing the company's policies (Article 13). This means that formally the Board of Directors is responsible for approving, implementing and monitoring the company's governance practices. However, the Audit Board is responsible for monitoring the effectiveness of the company's governance practices (Article 16). The same body performs the same function in the case of limited liability shareholding companies, which are regulated by the Commercial Code (Article 344).

Formally, the Board of Directors has to be compliant with the company’s management policies. However, in practice, as only a few companies have anti-corruption policies, this compliance is not explicit, when viewing the overall business sector. Vodacom’s anti-corruption policy only specifies the obligations of suppliers’ employees and directors, and does not explicitly mention the obligations of its own directors, apart from the implementation of its Vodafone “Code of Procurement Ethics”. In public and private companies, the Board of Directors’ compliance with company policies is monitored by the Audit Board.

Training for the Board of Directors depends on the existence of the anti-corruption programmes, which, as already mentioned, only exist in some companies, mainly the international ones. The company websites contain no information or regular reporting on training for staff and the Board of Directors, even in the case of companies with anti-corruption programmes, such as Vodacom, Vale, BHP Billiton. The Billiton website has a reference to training on a new Code of Business Conduct during the fiscal year 2014-2015, but the beneficiaries of the training are not mentioned.

Nor is any information available on the regular status reporting of programme management, as the general reporting by the companies accessed does not provide substantial information on integrity programmes.

## 2.5.2. EXECUTIVE REMUNERATION

Scoring Question:	Score
To what extent are Board members and senior executive remuneration of companies determined according to good corporate governance standards?	25

In general, reporting on internal management practices is rare in Mozambique and is non-existent on remuneration practices.

Despite some provision in Law 6/2012, stating that the financial reports of public enterprises should be made available and be part of the General State Accounts presented annually to Parliament for approval, in practice only general figures on remuneration expenditure are provided in financial reports.

In the same vein, private companies do not provide much information to the general public on the remuneration of their senior executives. Concealing remuneration is

considered a tactic to avoid trade union pressure for pay rises. In some companies, trade unions have access to this information through other employees, and use it in negotiations. Thus, while access to remuneration information may eventually occur in the end, it is not the result of a deliberate practice.

In the case of the public sector, there is no record of a substantial change in remuneration based on performance, despite the recurrent performance problems of some of these companies. In 2015 the government visited some public companies, among them the assurance company EMOSE and the telecommunication giant Mozambique Telecommunications. In the former it found serious management problems, including unethical behaviour by the management. In the latter, which still has a monopoly in some telecommunications areas (such as ownership of the optic fibre that is the backbone of telecoms in the country), failure to adjust to changes in the market in recent years contributed to a substantial reduction in its revenue, affecting the company's viability, and requiring multimillion additional investments to stay afloat. Despite all these concerns, systematic attempts by opposition parties to create a Parliamentary Committee of Enquiry to investigate the performance of public enterprises have been systematically thwarted by the ruling party. In the case of the private sector, apart from examples in extractive industries – such as Kenmare and Vale – that renegotiated the remuneration package with their employees, no substantial information on remuneration is available. To some extent, the lack of a culture of transparency among senior executives inherited from the public companies (and also from the government, as the remuneration of the President and Ministers is not known) is influencing practices in the private sector too. In short, information on executive remuneration is one of the best kept secrets in Mozambican companies.

### 2.5.3. CONFLICTS OF INTEREST

Scoring Question:	Score
To what extent are safeguards in place to govern conflicts of interest of Board of Directors?	50

Conflicts of interest are specified in the company regulations and in the case of private companies depend on the quality of self-regulation, especially corporate governance. The banking sector is cited as an industry with good self-regulation on this issue.<sup>56</sup> The national and international companies with codes of conduct, which are few, include adequate safeguards.

<sup>56</sup>Trade union manager with experience in the sector.

Conflicts of interest are defined more explicitly in the public sector, mainly through the Public Ethics Law and IGEPE's Code of Conduct. The Board of Directors in public companies has executive functions, except in cases where its non-executive status is clearly defined in its Articles of Association. The Public Ethics Law (Law 16/2012) has provisions related to conflict of interest and is applicable to public officials and public company managers. The Guide of Good Practices of Corporate Governance developed by IGEPE includes conflict of interest and guidance on how to deal with it.



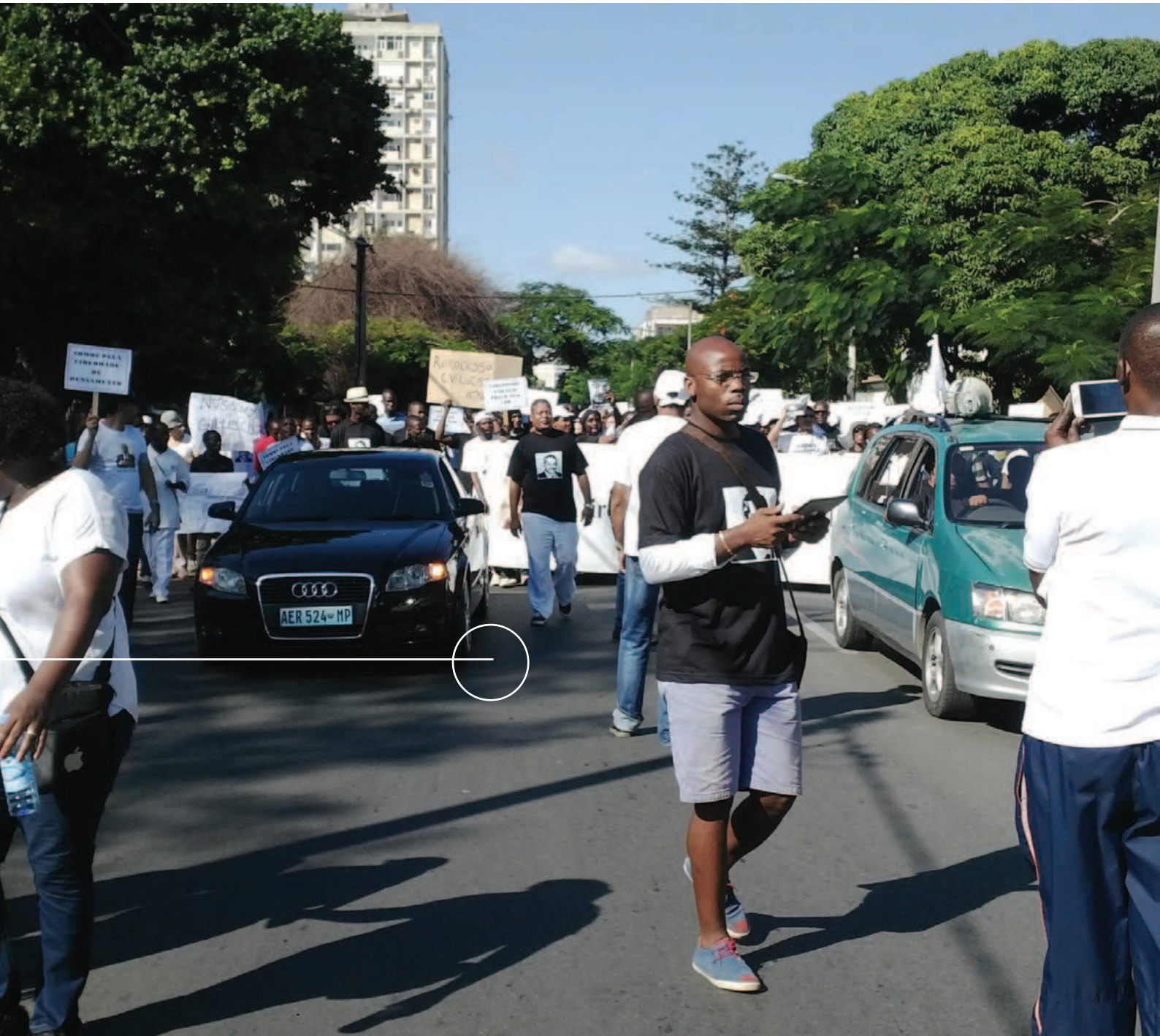
However, implementation of these instruments is doubtful. As one example, in 2015 the former Minister of Education Augusto John was appointed director of a private university – A Politécnica – less than six months after he left his ministerial job. Supervising and inspecting higher education was in the portfolio of Ministry of Education during Mr. John's term. He thus violated the two-year "cooling off period" defined in the Public Ethics Law. Neither the former minister nor the university were held accountable for this breach of the conflict of interest rule, despite criticism in the public sphere. This is a case involving a public institutions and private company where both failed to enforce rules on conflict of interest. This is an isolated case that does not allow for generalization, but offers an insight into the level of commitment to business and public integrity principles in the public and private sectors.





# CIVIL SOCIETY





# 3. CIVIL SOCIETY

SCORE
<b>50</b>

**ASSESSMENT OF BROADER CHECKS AND BALANCES (CIVIL SOCIETY INDICATORS)**

## 3.1.1 INDEPENDENT MEDIA

Scoring Question:	Score
To what extent is the country's media perceived as being free and independent?	50

Part of the Mozambican media, mostly private-owned, is relatively independent. However, excessive dependence on revenue from advertising by public entities or companies dominated by the political elites and weak professionalism undermine their sustainability.

According to the World Press Freedom Index and Freedom House's Press Freedom

index, the media in Mozambique are perceived as partly free, or their freedom has been decreasing over the last four years (from 2011 to 2014) (see figure 7). Media sustainability is also low. According to the IREX Media sustainability index, Mozambican media are quasi-sustainable, and particularly in the financial area, their sustainability is low (see figure 7). Public media get funding from government and this hampers their autonomy. A considerable part of private media revenue comes from advertising, including government advertisements, which have a big share of the market. Journalists who participated in the assessment of the Media Sustainability Index 2013 noted that a considerable part of the advertisement market is controlled by companies (even private) linked to the ruling party. Thus, advertisements can be used to put pressure on editorial independence, and companies seen as critical of government or business interests can be punished with the loss of advertising opportunities.

The Media Sustainability Report 2013 refers that political elites have the power to mobilize public and private companies to boycott media companies publishing information unfavourable to their interests, as in the case of Soico Television (STV), when it reported the popular demonstrations of 1 and 2 September 2010 (IREX, 2014).<sup>57</sup> After the boycott, advertising revenue dropped considerably, and in order to avoid bankruptcy the Soico group had to fire dozens of employees.

Mozambican media still face challenges of professionalism. Despite the rise in journalism training courses (including ethics) by local universities and other higher education institutions, panellists assessing the media sustainability index 2013, noted that the technical quality of the journalistic items was still low. One matter of concern is that although most journalists and editors know the ethical and deontological principles of their profession, even the editorial ethical codes of media companies are violated by the very same people who designed them – journalists and editors. One reason given for this state of affairs is the low salaries paid in the media field, which makes journalists vulnerable to corruption and conflict of interest. For example, some journalists are communications advisors in the business sector, public organisations and even in political parties and for individual politicians. Due to low salaries in the sector, journalists are usually regarded as vulnerable to economic, political and financial interests (IREX, 2015).

The media's exposure of corruption has depended primarily on investigative journalism not necessarily linked to media companies. For example, the Centre for Public Integrity's studies on specific sectors, such as the public electricity public company Electricidade de Moçambique or the public-private partnership for issuing identity cards and passports are usually disseminated in the media.

The denunciation of corruption by employees, mainly about public companies, is another source of information for the media. The focus has been principally on public

<sup>57</sup> Page 23.

companies and less on private ones, and the media tend to disseminate rather than produce or uncover information about corruption. However, in 2014, the Rapid Response Committee (CRR), a mechanism created by journalists (and sponsored by IREX), to protect journalists’ rights and provide assistance when they are violated, reported the case of a lawsuit brought against a journalist for denouncing the mismanagement of funds in the Beira Public Transportation Company (Comissão de Reposta Rápida, 2014). These cases are rare in the track record of journalists uncovering corruption in the business sector. Moreover, journalists rarely investigate denunciations of corruption in the business sector and tend to reproduce information without proper research, which makes them vulnerable to lawsuits from the accused entities or persons.

Figure 7: Media Independence



Sources: World Press Freedom Index 2011, 2012, 2013, 2014; Freedom of the Press 2011, 2012, 2013, 2014; Media Sustainability Index (Mozambique) 2012, 2013, 2014

The Freedom of the Press and World Press (WP) Freedom scores are on a scale of 0-100 (higher values mean more freedom). The media sustainability index range is 1-4 (higher values meaning more sustainability). Business management and professionalism are sub-indexes.

### 3.1.2. CIVIL SOCIETY ENGAGEMENT ON BUSINESS INTEGRITY

Scoring Question:	Score
To what extent are civil society organisations engaged with companies in order to strengthen their commitment towards integrity, accountability and transparency?	50

Civil society is engaged in few initiatives of business integrity, especially related to public procurement, mostly dominated by business-related associations. However, the outcomes of these interventions are not yet visible.

There are some interventions of civil society in public procurement, although not well-articulated, involving public sector, professional and business associations and NGOs. Among the most visible interventions are the following: the Association of Procurement Professionals lobbying to advise the Procurement Supervisory Body (UFSA) on good public procurement practices, the Association of Mozambican Consulting Companies (AEMC), Mozambican Contractors Federation, the Confederation of the Business Association (CTA), the Commercial, Industrial and Services Association (ACIS), the Institute of Directors of Mozambique (IoDMz) and the Centre for Public Integrity (CIP). The Centre for Public Integrity has a line of research and advocacy in public procurement and has recently concluded a study on this area and released a short paper<sup>58</sup> on the supervision of public works.

This year IoDMz has concluded a proposal of a Business Integrity Pact for procurement and it is in the process of gathering signatures in the private sector for the adhesion to this instrument. The private sector, through the Confederation of Business Associations, frequently includes public procurement in its agenda of policy dialogue with the government and it is also part of the July 2015-July 2016 action plan agreed with the Government, signed on 10 August 2015. ACIS has a Business Conduct Code, adopted in 2005, aimed at combating the participation of the private sector in corruption in Mozambique. AEMC defends integrity in business generally and particularly in public procurement, as a contribution to a better business environment, service quality, poverty reduction and economic growth.

As mentioned above, some of these initiatives involve explicit agreements and commitment between parties, such as private sector entities, as is the case of the IoDMz Business Integrity Pact Against Corruption (BIPAC) for procurement, which will include an action plan, and its monitoring mechanisms involve the business and public sec-

<sup>58</sup> (Center for Public Integrity, 2015).

tors and civil society. The agreement between CTA and the Government on the reform initiatives for the next year, which also includes an action plan with responsibilities for implementation assigned to both government and private sector. Among the responsibilities assigned to the private sector is the promotion of timely delivery of public works, services and goods by private companies to the public sector under the procurement roles, as well as denounce of corruption practices. The outcomes are not yet visible, due to the disarticulated nature of these initiatives and also because most of these activities have been initiated recently. Public procurement is still considered one of the less transparent areas of the public sector.

### 3.1.3. CIVIL SOCIETY MONITORING OF BUSINESS INTEGRITY

Scoring Question:	Score
To what extent does the country have an active and engaged civil society monitoring business sector corruption?	50

Civil society’s business integrity watchdog role is only relatively developed in some areas, such as public procurement and the extractive industries. In other areas there are only a few, isolated initiatives. Despite some isolated results, the overall impact of civil society activism on business integrity is still weak.

Civil society’s participation in promoting business integrity in public procurement was described in indicator 3.1.2. In the extractive industries field, the mining and gas boom in the country has stimulated the specialisation of some civil society organizations and the creation of platforms and networks, such as the Civil Society Platform on Natural Resources and Extractive Industries, studies on the fiscal impact of mining and its resettlement processes and the oil and gas sectors. There is considerable activism in promoting business integrity in these areas. Civil society participation in the Extractive Industries Transparency Initiative (EITI) has been a strong driving force in promoting corporate social responsibility in this area, sound resettlement practices





and transparency in natural resource contracts. Civil society activism has also been strong in combating illegal and unsustainable logging. Results in this area are still few, for example, the government decided to make the natural resource contracts public and fiscal information has been improving as a result of CSO advocacy under the EITI. As part of civil society activism in the extractive sector, namely, by the environmental organization Centro Terra Viva and the media organization Sekelekani, companies and government have improved the consultation process for resettlement practices in the Rovuma Basin gas projects. In 2015, the government and the oil and gas company Anadarko agreed on a budget of US\$ 180 million to resettle more than 5,000 families in the Afungi Peninsula in Palma District. This is a good example of a decision taken by the government and companies after a high profile advocacy campaign by CSOs to promote integrity in a specific industry area. However, similar examples are scanty. The media have been publishing cases of mismanagement and illicit practices in public companies, among them the Mozambique Assurance Company (EMOSE) and Mozambique Electricity (EDM). In the latter case there was a CIP study on the involvement of political elites in providing services to this public company without transparency, which warranted attention by the parliamentary opposition.

The MDM bench proposed the creation of a Parliamentary Committee of Inquiry to investigate EDM that was rejected by the Frelimo bench. Another area of civil society activism has been uncovering the participation of political elites in public-private partnerships, with conditions disadvantageous to the public sector. This area also warranted attention by the parliamentary opposition, but with the same fate as the EDM case. Lack of follow-up has been a general trend in civil society activism in this respect.

Most cases of civil society engagement in dealing with business sector corruption, such as sporadic news in the media, cannot be considered monitoring. They are rather scattered interventions in specific areas, sometimes based on denunciations, and without any systematic follow-up.

On the whole, these initiatives have produced isolated results and, apart from specific cases such as those mentioned above, there are no consistent results on business integrity or the reduction of corruption in the business sector that can be credited to civil society activism.



# RECOMMENDATIONS

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## V. RECOMMENDATIONS

For the Public Sector. The public sector faces challenges, but also has opportunities to promote business integrity. The most critical challenge is that improving business integrity requires political will, in the context of a country where economic and business interests are intermingled, and public integrity is still critical. Two points emerge from this issue. The first is the need to ensure the effectiveness of state institutions in law enforcement. Of particular importance is the enforcement of anti-corruption legislation and that related to economic crimes. The second is closely related to the first, but concerns a particular area where the relationship between business and politics has a prejudicial effect on business and public integrity: public procurement. There are opportunities in the recently approved anti-corruption legislation, the Criminal Code and a reasonably sound legal framework with potential to promote public and business integrity and based on international standards. An additional advantage is the existence of a set of institutions, some in place others not, responsible for promoting public integrity, among them the Central Anti-Corruption Office and its provincial branches, the Office for Financial Information, the Competition Authority, the Central and Local/Sector Public Ethics Commissions, among others. Although still deficient (in terms of reliability and accuracy in the type of crimes), reporting on implementation of the anti-corruption legislation provides a good starting point for identifying the main bottlenecks. The ratio of the number of cases initiated by the Public Prosecutor and taken to court, and the cases judged, can provide a good starting point for analysing the effectiveness of anti-corruption measures.

Thus, in line with the above, the recommended actions for this stakeholder area are:

### In the short term:

- Use the results of the BICA to identify a set of actions to address critical areas of business integrity to be included in the matrix of activities under the private and public sector dialogue;
- Create a procurement oversight mechanism comprising government, the business sector and civil society, building on the existing experience of the Business Integrity Pact Against Corruption for procurement;
- Improve information on economic crimes in the State of Justice Report, to encourage the judiciary to adopt more effective measures;

## In the medium term:

- Government, civil society and donors should support improvements to the judiciary's capacity to deal with business integrity cases and economic crimes through more specialization of judges;
- Revise legislation to create a specific subsection in the criminal courts to deal with corruption cases;
- Improve the organizational capacity of enforcement agencies, such as UFSA for procurement, the Central Public Ethics Commission for conflict of interest, the Central Agency for Victim and Whistle-blower Protection, ATM for monitoring the application of the IFRS;
- Regulate and review existing legislation to improve its effectiveness in promoting business integrity, especially
  - o The Public Ethics Law
  - o The Victim and Whistle-blower Protection Law
- Improve capacity to follow up GIFIM's investigations by the Criminal Investigation Police, the Public Attorney Offices and the judicial system;
- Revise procurement legislation to improve checks and balances, including the external monitoring of procurement processes, as proposed in the BIPAC.

For the business sector, one paramount element for business integrity is to cultivate a culture of transparency. Access to information on business is very low. Companies are reluctant to provide information for a sound analysis, this, per se, speaks for itself about business integrity. Opaque companies cannot be good drivers of business integrity and lack of transparency is in itself a sign of weak integrity. Thus, promoting a culture of transparency in companies means stimulating proper reporting on all areas defined in the legislation (operations, relations with stakeholders and financial), and making this information available to stakeholders and the general public. But, looking further, Mozambican business sector integrity must be seen in the historical perspective that influenced the existence of a relatively small entrepreneurial class, decapitalized, with weak management skills and with part of it heavily dependent on the state and political connections. This combination of elements poses challenges to the promotion of business integrity. So an appropriate starting point for sound interventions in this area is a profound understanding of the context and incentives for business integrity in Mozambique.

## In terms of short-term actions:

- Business associations stimulate and support companies to share and disseminate their experiences in business integrity management;
- In a joint effort, government, donors, business associations and civil society carry out an analysis of the drivers, constraints, actors, opportunities, incentives and risks for business integrity in Mozambique. This could be an ongoing exercise, to allow for a continuous update.

In the medium term:

- Promote growing adherence and the adoption of business integrity instruments by companies, and improve their monitoring and reporting by business associations;
- Improve the responsiveness and accountability of public enterprises to citizens through more interventions by the Administrative Court and Parliament to guarantee compliance with the existing legal framework;
- Business association and government support for the development of national companies' capacity for general and integrity management. This means supporting the adoption of management and reporting standards (accounting and auditing) in line with existing legislation, as well as disclosure;
- Civil society and government should identify and list companies and entities (public and private) subject to the disclosure of information obligation under the Right to Information Act.

For civil society, its activism has been geared towards the public sector and to certain areas with a higher negative social impact, such as extractive industries. The business sector as such has not been an area of action and interest for CSOs. At the same time, the media have weaknesses and sustainability challenges, including financial and technical/professional quality. These constraints pose challenges for the independence of the media, due to potential dependence on the business sector, and a lack of technical quality to report on business, thus weakening checks and balances in this area. If civil society is to have a greater role in checks and balances related to companies, to promote business integrity, it is necessary to strengthen the role and independence of the media in this area. This can be achieved through more technical training on business integrity issues for the media, for better reporting on this area. CSOs generally could include or aggregate business as part of their governance monitoring activism. The civil society entities that can better play this role are the trade unions,

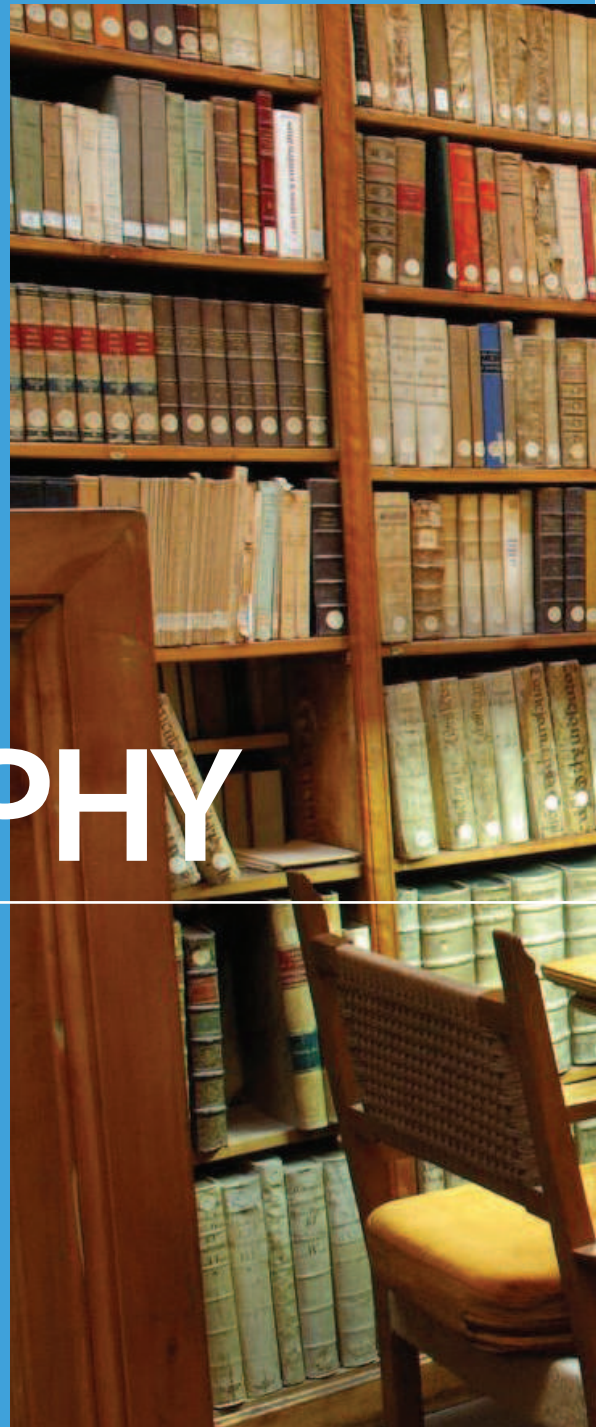
because of their direct interaction with companies and relative advantage in terms of their knowledge and experience in the sector.

In this area, concrete actions are:

- Capacity building in business integrity and promoting specialization in the media sector through training (short-term) and scholarships for academic training (medium term), to increase the frequency and technical quality of media coverage of the business sector;
- Build civil society capacity to monitor the business sector, through capacity development and strategic alliances or coalition-building between governance-oriented civil society organizations and trade unions.

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# ANNEXES

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## VII.1. LIST OF INTERVIEWEES

### ORGANIZATIONS' REPRESENTATIVES

- *Confederation of Business Associations (CTA)*, Interviewed on 28 October 2015.
- *Commercial, Industrial and Services Association (ACIS)*, Interviewed on 21 October 2015.
- *Procurement Professionals Association*, interviewed on 19 August 2015.
- *Mozambican Federation of Building Contractors*, interviewed on 13 November de 2015.
- *Confederation of Independent Trade Unions of Mozambique (CONSILMO)*, interviewed on 30 de December de 2015.
- *Mozambique Workers Organization (OTM-CS)*, interviewed on 5 January 2016.
- *Accountants and Auditors Association of Mozambique (OCAM)*, interviewed on 16 December de 2015.
- *Financial Information Office (GIFIM)*, interviewed on 13 November 2015.
- *KPMG*

### EXPERTS INTERVIEWED UNDER CONDITION OF ANONYMITY:

- **Expert 1** – professional of an international audit company
- **Expert 2** – professional of an international audit company
- **Expert 3** – professional of an international audit company
- **Expert 4** – professional of an international accounting and audit company
- **Expert 5** – professional of the Tax Authority
- **Expert 6** – professional of the Tax Authority
- **Expert 7** – member of the Accountants and Auditors Association of Mozambique (OCAM)
- **Expert 8** – official of the Anti-Corruption Central Office (GCCC)
- **Expert 9** – Tax consultant at an International Oil Company



## VII.2. LIST OF COMPANIES ORIGINALLY SAMPLED

Sector	Companies Sampled	Revenues - USD 10 <sup>^3</sup>	Source/	Total (%)
Agriculture and fisheries	Mozambique Leaf Tobacco	217,587	Observ.	7 (14%)
	SAN - Sociedade Algodoeira do Niassa	14,467	KPMG	
	OLAM Moçambique	100,000	KPMG	
	Pescamar	25,000.00	Ent. Map In 2011	
	MozFoods, SA	10,200	Ent. Map in 2011	
	Frutas Libombos	3,000	Ent. Map in 2009	
	Maragra Açúcar, SARL	21,000	Ent. Map	
Financial services and insurance	BIM - Banco Internacional de Moçambique, SA	268,791	KPMG	4 (8%)
	Banco Comercial e de Investimentos - BCI, SA	173,564	KPMG	
	Emose - Empresa Moçambicana de Seguros, SA	145,102	KPMG	
	Global Alliance, Seguros, SA	82,588	KPMG	
Information and communication services	Telecomunicações de Moçambique, SA	105,007	KPMG	3 (6%)
	Moçambique Celular	273,911	KPMG	
	TV Cabo, Comunicação e Multimedia	22,164	KPMG	
Commerce	Petromoc - Petróleos de Moçambique, SA	629,422	KPMG	12 (24%)
	Total Moçambique	201,727	KPMG	
	BP Moçambique	200,149	KPMG	
	Globe Musica	81,102	KPMG	
	Entrepoto Comercial de Moçambique, SARL	50,063	KPMG	
	Premier Group	35,199	KPMG	
	Técnica Industrial	34,969	KPMG	
	Hariche Group	28,537	KPMG	
	Ferro Moçambique	26,464	KPMG	
	Agrifocus	21,665	KPMG	
	Tropigalia	16,735	KPMG	
	Construa, Lda	58,059	KPMG	
Construction	Ceta, Engenharia e Construções	66,174	KPMG	3 (6%)
	Mota-Engil Constr. Africa	223,995	KPMG	
	CMC África Austral, Lda	121,474	KPMG	

Sector	Companies Sampled	Revenues - USD 10^3	Source/	Total (%)
Accommodation, Restaurants and similar activities	Salvor Hotéis Moçambique – SARL	8,933	KPMG	2 (4%)
	Avenida, Empreendimentos Turísticos Hoteleiros, Lda	7,990	KPMG	
Extractive industries and Transformation Industry	Cimentos de Moçambique	150,663	KPMG	6 (12%)
	Companhia Moçambicana de Hidrocarbonetos	74,807	KPMG	
	Mozal	1,227,063	KPMG	
	Cervejas de Moçambique	329,179	KPMG	
	Hidroeletrica de Cahora Bassa	304,606	KPMG	
	Vale Moçambique	383,179	KPMG	
Services	EDM - electricidade de Moçambique, EP	341,222	KPMG	9 (18%)
	MOTRACO, SARL	287,784	KPMG	
	Intelec Holdings	241,459	KPMG	
	G4S Secure Solutions, Lda	46,911	KPMG	
	Grindrod Mozambique, Lda	39,126	KPMG	
	Águas da Região de Maputo, SA	38,152	KPMG	
	Tecnel Service, Lda	17,500	KPMG	
	KPMG, Auditores e Consultores	16,830	KPMG	
	Business Connection Mozambique, Lda	9,400	KPMG	
Transports and warehousing	CFM - Portos e Caminhos de Ferro	276,590	KPMG	4 (8%)
	LAM – Linhas Aéreas de Moçambique	177,101	KPMG	
	Manica Freight Services	113,467	KPMG	
	Transportes Lalgy	58,695	KPMG	
<b>Total</b>				<b>50</b>





CENTRO DE INTEGRIDADE PÚBLICA  
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SUECIA

  
ROYAL NORWEGIAN EMBASSY



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