

# U4 Expert Answer



## Mozambique: Overview of corruption and anti-corruption

### Query

Can you provide an overview of corruption and anti-corruption in Mozambique? A special question that merits review and assessment are the differences in response by Mozambique's development partners to the hidden debts revealed in the spring of 2016.

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### Caveat

This paper draws on a [2014 U4 Helpdesk Answer: Overview of Corruption and Anti-Corruption in Mozambique](#).

### Summary

Until a few years ago, Mozambique was touted as one of sub-Saharan Africa's leading success stories, with consistently high year-on-year GDP growth. In 2016, however, the country was hit by a "perfect storm" of unfavourable fluctuations in exchange rates, runaway inflation and a growing inability to service its debt burden. Observers believe Mozambique would have been able to ride this out, had it not been compounded by a scandal in which senior officials secretly provided government guarantees on several billion dollars' worth of loans. Riding roughshod over constitutional and legal requirements, the money was then reportedly used to purchase a range of maritime goods, including military equipment for the state security services. Breaking in April 2016, the scandal crippled the government's credibility just as it needed to demonstrate financial prudence to its donors and creditors.

Alongside enduring political instability between two rival parties, corruption is a major underlying cause of the country's malaise, and has been recently estimated to have cost the country nearly US\$5 billion between 2002 and 2014. Blighted by endemic corruption, Mozambique presents a textbook case of a country whose legal and

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institutional framework has been brought into line with international good practice, but whose good governance window dressing is unable to compensate for blatant abuses of power.

## 1. Overview of corruption

### Background

The recent history of Mozambique starts with the country's independence from Portugal in 1975, after a decade of violent conflict which ended 500 years of colonial rule. With independence came a new violent struggle for power, in the form of civil war between the current ruling party Frelimo (Frente de Libertação de Moçambique) and their opponents Renamo (Resistência Nacional Moçambicana). While the 1992 Rome General Peace Accords formally ended the conflict between the warring parties, skirmishing continues and spikes in violence remain common.

Mozambique experienced consistently high annual GDP growth rates above 6% from 2008 until 2015, making the country one of the five fastest-growing African economies (World Bank 2015). However, recent discoveries of undisclosed debt in the order of \$1.4 billion (Hanlon 2016a) and related allegations of grand corruption have led to a downgrading of this positive economic outlook. The World Bank (2016a) currently projects growth for 2016 "at 3.6%, with significant downward risk", underlining the serious implications of the scandal for the country's relationship with international donors. This is of particular concern in a country in which around a quarter of public expenditure is still financed by overseas development assistance despite recent efforts to [reduce the country's dependence on foreign aid \(Club of Mozambique 2015; Vollmer 2013\)](#). The problem of uncertainty in aid flows has been compounded by recent unfavourable fluctuations in exchange rates and high inflation, which further reduce the country's ability to service its high debt burden, much of which is held in US dollars (Jones 2016).

Mozambique's recent record of economic success has been largely driven by extractive industries, particularly forestry and coal mining, as well as the exploitation of large natural gas reserves off the northern coast, discovered in 2012 (Helman 2013). These discoveries, in combination with the country's significant coal reserves, have the potential to accelerate Mozambique's economic development and position it as a major exporter of natural resources. However, there has been a

marked failure to secure inclusive growth; an estimated 70.2% of Mozambicans continue to live in multi-dimensional poverty, reflecting deprivations in health, education and standard of living (UNDP 2015a). In rural Mozambique, the main source of income continues to be the agricultural sector, while in urban areas people generally rely on the informal economy for subsistence (Jones & Tarp 2013; World Bank 2015). According to the latest UNDP figures, Mozambique has a human development index value of 0.416 (where 0 = poor human development and 1 = strong human development), which positions it at 180 of the 188 countries and territories assessed by the HDI (UNDP 2015b).

### Extent and forms of corruption

#### Extent of corruption

Pervasive corruption, alongside the lack of transparency or accountability of state institutions present serious challenges to the country's governance and the equitable distribution of resources. A recent estimate of the cost of corruption to Mozambique in the period from 2002 to 2014 put it at a staggering US\$4.9 billion (Centro de Integridade Publica & Chr. Michelsen Institute 2016). Unfortunately, these problems seem to be getting worse, not better. Over the past decade, corruption indicators have consistently demonstrated a declining control of corruption in Mozambique, and concomitantly lower levels of citizen trust in public institutions.

Mozambique fares poorly on all six dimensions of governance measured by the World Bank's Worldwide Governance Indicators (WGI), and has been progressively deteriorating. While the country still fares better than the sub-Saharan African regional average on two indicators (voice & accountability and regulatory quality), there is a widening gap between Mozambique and neighbours in terms of control of corruption, government effectiveness and the rule of law, all of which are at all-time lows in Mozambique since the WGI were launched in 1996. The discrepancy between Mozambique's percentile ranking for control of corruption (21) and the regional average (31) is particularly glaring, and represents an alarming drop from 2010, when the country was in the 41st percentile (World Bank 2016b).

These findings are corroborated by other indexes. In the 2015 Corruption Perception Index (CPI), Mozambique received a score of 31 on a scale that ranges from 0 (most corrupt) to 100 (least

corrupt), and was ranked 112 out of 168 worldwide (Transparency International 2015).

Recent results from the Afrobarometer are likewise disheartening. In 2015, only 20% of respondents believed corruption had decreased in the previous year, while 48% were of the opinion that corruption had increased (Afrobarometer 2016). This constitutes a marked increase from the previous round in 2013, when significantly fewer people (32%) believed that levels of corruption had increased in the preceding 12 months (Transparency International 2013). Despite this, only 5% of those surveyed mentioned corruption as one of the most pressing challenges facing the country, lagging far behind healthcare which was identified by 38% of respondents (Afrobarometer 2016).

In the latest Ibrahim Index of African Governance (IIAG) from 2015, Mozambique scores 52.3 out of 100 across the four governance pillars considered (safety & rule of law, participation & human rights, sustainable economic opportunity, and human development). This score places it 21st of the 54 African countries surveyed (IIAG 2016). However, Mozambique performs significantly worse on the IIAG accountability indicators, for which it is ranked 36 with a score of 28.4, down from 41.9 in 2006. Indeed, its scores for corruption-related indicators have been in freefall over the last decade, declining by 15.5 points for public sector accountability and transparency, 20 points for control of corruption in government, 23.9 points for corruption in the bureaucracy, 5.5 points for diversion of public funds and 10.7 points for investigation of corruption (IIAG 2016).

Such pervasive corruption is also damaging for the private sector; according to a survey of business leaders by the World Economic Forum (2016), corruption is the most frequently identified obstacle to doing business (15.5%), ahead of all other factors such as “policy instability” or “access to financing”. Mozambique is ranked as the 133rd most competitive country out of 138 countries surveyed, and is judged to suffer from a high risk of diversion of public funds, low public trust in politicians, high risks of irregular payments and bribes and extensive favouritism in the decisions of government officials.

## Forms of corruption

Some scholars suggest that large-scale corruption in Mozambique is a relatively recent phenomenon which arose after the 1980s, became normalised during the civil war and has been subsequently

exacerbated by donor policies (Hanlon 2016b). Today, corruption in Mozambique has become deeply entrenched in a variety of guises, from grand and political corruption, via bureaucratic corruption, to small-scale corruption and bribery, as well as rampant cronyism and nepotism.

### Grand corruption

The fight against corruption in Mozambique has become a common touchstone of political rhetoric, with speeches and official statements frequently acknowledging the gravity of the issue, and anti-corruption was a central plank of current President Filipe Nyusi’s manifesto in the 2014 elections. In his inauguration speech and at several occasions afterwards, he promised zero tolerance on corruption in government, although observers have noticed little in terms of tangible action and this could be interpreted as a signal to his Frelimo associates (Hanlon 2016a). Recently, Nyusi recognised that corruption “persists ... across practically all sectors of government, in both the public and private sectors” (Hanlon 2016c).

Central obstacles hampering the promised progress in the fight against grand corruption are the continued impunity of public officials involved, the lack of coherent strategic approach, as well as the inability to recover stolen state funds (Hanlon 2016d). As a response to the continued pressure on the government by civil society and external actors, a new anti-corruption plan was adopted in November 2016, seeking to “reinvigorate [the] government’s commitment to implement concrete [anti-corruption] measures”, such as enforcing compliance with existing asset declaration regulations for leading figures in the public administration (allAfrica 2016a).

Nonetheless, according to the Centro de Integridade Publica (CIP) “incessant interference by political elites in the conduct of the economy ... [and] a permanent lack of transparency” is the norm in state bodies and creates conditions in which high-level officials enjoy great discretionary power (Hanlon 2016c). A good example of this was the news that the chairman of the state-owned enterprise Mozambique Airlines, Jose Viegas, had demanded a bribe of US\$1 million in return for his support for the purchase of two aircraft from Brazilian manufacturer Embraer (allAfrica 2016b).

### Hidden debts scandal

An even greater scandal illustrates the scale of political and economic power concentrated in the hands of the Frelimo party elite, the corruption

risks this poses and the apparent impunity they continue to enjoy.

Earlier this year, a scandal came to light which involved undisclosed loans of US\$ 1.4 billion, approximately 10% of Mozambique's GDP (Rumney 2016). These secret loans provided by Credit Suisse and the Russian state bank VTB – ostensibly to acquire fishing vessels – went to three maritime companies controlled by the state security services (SISE), which instead used the money to purchase arms with which to protect gas supplies discovered off the coast (Hanlon 2016b). According to De Renzio and Nuvunga (2016), some of the finance raised through the loans was intended as “kickbacks” for personal enrichment and political patronage rather than the stated purpose. Moreover, the loans dispersed to the three state-owned enterprises were illegally issued government guarantees by Minister of Finance Chang, who would have needed to gain parliamentary approval (Hanlon 2016c).<sup>1</sup>

On learning of the scale of the scandal, the IMF suspended its financial disbursements to the country in April, citing the country's [breach of obligation to report \(IMF 201a\)](#), with IMF Managing Director Christine Lagarde going so far as to say that the Mozambican government was “clearly concealing corruption” (Hanlon 2016a). This was followed by the G14 group of international donors, who likewise suspended their budgetary support to the government in May 2016. The G14 issued a series of demands as prerequisites for recommencing budgetary support, including an exhaustive list of government debts, a complete registry of state-owned enterprises, as well as a comprehensive report on “extra-budgetary expenditure” and a forensic audit of the secret loan arrangements (Hanlon 2016a). Norad, the Norwegian aid agency, has spoken of a “confidence crisis” which has been “in the making” for a long time, and concludes that the current juncture is a “good time for a profound reassessment of aid to Mozambique” (Norad 2016; allAfrica 2016c). In the face of aid dependency, high inflation, low domestic tax base and low foreign exchange reserves, the suspension of aid flows poses a serious problem for the country.

<sup>1</sup> The Mozambican Assembly has since authorised a parliamentary inquiry commission (CPI) to investigate the opaque deals. CPI delivered a damning report at the start of December, declaring the loans to be illegal, unconstitutional, poorly substantiated, probably corrupt and intentionally withheld from donors and creditors. The commission called for criminal investigations into

In response to a request from the Mozambican authorities to recommence financial support, in September 2016 the IMF insisted on an independent international audit of the three companies involved and a tightening of the country's monetary and macroeconomic policies (IMF 2016a). These initial conditions were met, paving the way for an IMF delegation to conduct a country visit in December 2016 (IMF 2016b). The IMF mission statement has nonetheless made a renewed IMF-supported programme to Mozambique conditional on restricting the public sector wage bill and gradually eliminating price subsidies (IMF 2016c), which observers have noted has the potential to hurt vulnerable sections of the population (Rhula Intelligent Solutions 2016a; World Bank 2016c).<sup>2</sup>

In light of the conditions being set by the IMF to get public finances under control, Hanlon reports that there is a general, though not universal, consensus among G14 donors that they may need to shelve additional demands for high-profile prosecutions and the return of stolen money (Hanlon 2016f). At present, it appears most donors are awaiting the outcome of the forensic audit, assuming it will substantiate suspicions of gross misconduct and illegality, and that the government will be compelled to act on the findings in the face of public anger and donor displeasure (Hanlon 2016f). This “wait-and-see” posture also reflects a certain lack of unanimity among donors about what proposals they want to see from the Frelimo government and how it could restore trust (Hanlon 2016a).

A particularly vexing question for donors is whether to encourage Mozambique to repudiate the three loans, rather than simply default on the debt. In light of the fact that the two banks clearly failed to exercise sufficient due diligence, which would have shown that the loans were not government guaranteed, prices had been inflated, projected revenue was unrealistic and that the IMF was not informed, many observers feel there are strong grounds for Mozambique to repudiate the debt. In private, some donors are expressing support for this course of action, which would be unprecedented (Rhula Intelligent Solutions 2016b). Tellingly, resistance to such a move

suspected incidents of public funds being illicitly used by private individuals or entities during the contracting of the debts (Hanlon 2016e).

<sup>2</sup> The World Bank (2016c) has noted that the debt crisis has already compelled the government to introduce a revised budget for this year, which cut spending on social and economic sectors by 4.7%.



comes instead from senior Frelimo figures, as repudiating the debt would necessitate admitting that the loans were at best improper and at worst outright corrupt, which could in turn pave the way for criminal prosecutions.

The independent audit of the three state-owned enterprises is being conducted by Kroll, following an agreement between the general prosecutor's office and the Embassy of Sweden on the audit's terms of reference (IMF 2016c). The audit is being conducted under the auspices of the attorney general's office, which ensures that its findings can be fed into the criminal investigation the public prosecutor has launched into the secret debts (Hanlon 2016f). Initial reports suggested that the security services and senior Frelimo figures were attempting to restrict the audit's scope (Rhula Intelligent Solutions 2016c), but donors made it clear to the Mozambican government that it must cooperate fully with Kroll if external financing is to resume (Hanlon 2016g). Africa Confidential claims that around half of the secret loans remain unaccounted for (Rhula Intelligent Solutions 2016c). Kroll is expected to investigate these claims to establish not only on how the loans were acquired and authorised, but also how the money was actually spent, given the three companies' connections to other private enterprises owned by the Frelimo elite, and the real possibility that they used the money from state-guaranteed loans as collateral in yet further murky deals (Rhula Intelligent Solutions 2016c).

The latter seems increasingly probable, as CIP's recent scrutiny of government accounts for 2015 uncovered a further external payment of \$1.1 billion from 2015 which is unaccounted for, but potentially relates to the on-lending of the secret borrowing. CIP notes that the national accounts office (DNCP) has refused to provide information on the nature of the payment (Hanlon 2016c). In addition, CIP found that the government had credited itself with an additional \$950 million, which the CIP claims is effectively printing money (Hanlon 2016c) potentially exacerbating a situation in which the country's inflation is already around 26% (Trading Economics 2016).

In the meantime, there are indications that the Mozambican government is turning away from traditional donors towards partners less stringent about probity in public financial management. In May 2016, 11 days after the G14 announced they were suspending US\$300 million of budget support, President Nyusi flew to Beijing on a high-level state visit observers interpreted as an attempt to secure financial assistance to circumvent the G14. Indeed, Chinese funding in

Mozambique has increased 160% since 2012, and China is now the country's leading bilateral creditor. The Chinese are making huge investments in Mozambican infrastructure, including the Zimpeto stadium, Africa's longest suspension bridge and new port facilities. Such funds have become even more important to Frelimo given that the debt crisis has impaired the country's access to international financing (Figueiredo 2016).

Reliance on Chinese capital is no panacea, however; media reports suggest that there may be further undisclosed state-backed loans to Mozambique originating in China, and that the sheer scale and complexity of the country's loans may have led the Ministry of Finance to lose track of its total debts (Africa Confidential 2016). Moreover, Africa Confidential (2016) reports that the Frelimo elite is aware of the risks of sidelining traditional donors in favour of Chinese investments; since the Ematum scandal first came to light in 2015, five countries have left what was previously the G19 group of donors and more may conceivably follow.

#### **Role of external actors**

A recent U4 publication assesses what action external actors (donors, regulatory bodies, private sector lenders, multilateral financing institutions, civil society and domestic law enforcement) could take to tackle the issue and prevent such incidents from occurring in the future (Isaksen & Williams 2016). The authors make a series of recommendations to be considered both domestically and internationally.

Domestically, Isaksen and Williams (2016) suggest that external stakeholders:

1. Monitor the auditing process. Publication of Kroll's terms of reference would be helpful for external stakeholders, as it is difficult to evaluate the process and implement its recommendations unless it is clear what the audit should achieve.
2. Develop a joint donor assessment of, and response to, the audit findings. Disagreements between donors in responding to the audit findings would undermine their ability to hold the government to account. Some commentators have noted that the Frelimo elite have already been seeking to exploit differing donor priorities by stressing that the security situation could worsen if criminal or administrative sanctions were to be targeted at members of the regime (Isaksen & Williams 2016). The U4 analysis recommends that donors begin "jointly mapping-out various

scenarios of the outcome of the audit process and develop proposed responses for each envisaged scenario”.

3. Improve transparency in Mozambique’s public financial management. Failures in monitoring and oversight aggravated the hidden debt scandal, and donors could support measures to increase transparency of public budgeting and borrowing in cooperation with organisations like the International Budget Partnership or local CSOs. Such measures are particularly pressing given the anticipated influx of oil and gas revenues in the coming years. The authors note, however, the sheer impunity enjoyed by the Frelimo elite in riding roughshod over constitutional stipulations and legislation casts doubt on the efficacy of good governance measures without consideration of the country’s political economy.

Internationally, the study recommends

1. Sanctioning the banks involved. Given that the debts were incurred by Swiss and Russian banks under English law, investigations have been launched by the Swiss and British financial authorities into possible misconduct on the part of the banks, although as of December 2016 the results of the inquiries are not yet known (Meager 2016).
2. Sanctioning corrupt politically exposed persons (PEPs). The authors of the U4 study propose that international donors and their law enforcement counterparts could consider pursuing targeted sanctions (such as travel and visa bans) against specific individuals or groups implicated in corruption in Mozambique’s hidden debt scandal. A precedent was set in November 2015 when 10 countries imposed travel restrictions on Kenyan officials linked to corrupt activities.
3. Pursuing asset recovery. Based on the results of the audit findings, the Mozambican attorney general could seek to pursue a joint criminal investigation in collaboration with the British authorities and attempt to recover money illicitly transferred into foreign bank accounts. Such an approach reportedly enjoys some support among G14 donors (Hanlon 2016g).

### **Petty and bureaucratic corruption**

Petty and bureaucratic corruption is a serious and widespread concern across the civil service. Hanlon suggests that petty corruption became rampant in the context of the Structural Adjustment Programmes in Mozambique during the 1990s, which imposed severe wage cuts on civil servants, threatening to push them below the

poverty line and leading them to look for alternative revenue streams. Over time, Hanlon argues such behaviour became normalised, so that although salaries have subsequently risen, rent-seeking has become an embedded feature of public service delivery (Hanlon 2016c). This situation is exacerbated by complex bureaucratic processes which feature significant bottlenecks where a few public servants have significant discretion and can delay processes. While government regulations in recent years have been eased for large-scale investment projects, small and medium businesses still suffer significantly from red tape (Martini & Ardigò 2014).

According to the most recent GCB results, 34% of respondents who had used a public service in the past 12 months had paid a bribe to a public official (Afrobarometer 2016). Certain sectors are particularly susceptible to corruption risks; 40% of all encounters with police, courts, or public water and electricity services resulted in a bribe being paid, while 26% of all service users paid a bribe to public schools and 23% of interactions with public clinics involved bribery (Afrobarometer 2016). In light of this, citizens’ widespread cynicism with government services is hardly surprising; 32% of survey respondents felt that “most or all” government officials are corrupt (Afrobarometer 2016).

Petty and bureaucratic corruption also acts as a series impediment to business in Mozambique. According to the World Bank’s Doing Business Mozambique report (World Bank 2016d), which looks at business regulation and the protection of property rights in different countries, Mozambique’s regulatory framework make operating a business in accordance with the law an arduous task. This is particularly the case when filing tax returns; an estimated 37 tax payments and approximately 200 hours of work are needed per year in order to pay business taxes in Mozambique. In addition to this, tax inspections are said to be characterised by corruption due to limited oversight (Business Anti-Corruption Portal 2014).

### **Patronage and favouritism**

Patronage networks and favouritism continue to exert a strong influence in Mozambique. The latest report on Southern Africa by the Bertelsmann Stiftung (2016) emphasises the country’s growing democratic deficit, partly due to the on-going conflict between Frelimo and Renamo. This has resulted in an on-going exclusion of non-Frelimo elites from state

institutions and economic opportunities, such as government contracts.

Such strong reliance on personal relationships and cronyism is particularly apparent at central government level, where the executive is responsible for appointment of public officials in most government agencies and bodies, as well as provincial governors (Norad 2016; Jones & Tarp 2013). Indeed, the emphasis on Frelimo party unity above all else means that some fear that sheer extent of cronyism in the state apparatus render Mozambique “incapable of pursuing the generals, spies, and party cadres who won the equivalent of lottery jackpots (Africa Confidential 2016). Indeed, based on sources close to the former head of the revenue authority (Autoridade Tributária de Moçambique), Africa Confidential (2016) reports that in the final years of former president Guebuza’s term in office (2009-2014) tax revenues were systematically diverted into private accounts of the Frelimo elite to prop up his patronage network.

The World Economic Forum’s (2016) Global Competitiveness Report further underlines the prevalence of favouritism in Mozambique: the country scores 3 out of 7, putting the country on rank 110 out of 138 (7 being no government favouritism, 1 being significant government favouritism).

## 2. Legal and institutional anti-corruption framework

While Mozambique has a range of statutes which meet the *de jure* requirements of international anti-corruption conventions, there are considerable deficiencies in the enforcement of these provisions due to a lack of capacity (limited budget, under-staffing), corruption in the legal branch itself and insufficient autonomy of the judiciary.

### International conventions and initiatives

Mozambique has ratified the United Nations Convention against Corruption and the African Union Convention against Corruption, as well as the Southern African Development Community Protocol against Corruption, although the latter is not legally binding. Mozambique has yet to ratify the OECD Anti-Bribery Convention (Centro de Integridade Pública & Chr. Michelsen Institute 2016).

### Domestic legal framework

Mozambique’s domestic anti-corruption legislation has significantly improved since the Legislative Anti-Corruption package (PLAC) was approved by parliament in 2012 (Centro de Integridade Pública 2016). Since then, the parliament has passed the public ethics law, the witness, whistleblower and victim protection law and revised the criminal code.

#### Anti-corruption law

The anti-corruption law from 2004 (Law no. 6/2004) criminalises both passive and active corruption, but practices such as embezzlement of public funds, traffic of influence and illicit enrichment are not included (Bertelsmann Stiftung 2016).

#### Penal code

In addition to the anti-corruption law, the new Mozambican penal code (Law 35/2014 of 31 December 2014), which entered into force on 1 July 2015, defines active and passive bribery, graft, embezzlement, deviation of public funds and assets, illicit enrichment, influence-trading and fraud as criminal acts (Centro de Integridade Pública 2016). The prohibition of active bribery and trading of influence also apply to private parties (Fael & Cortez 2014). Although the new penal code now supersedes the anti-corruption law from 2004, the latter is still in force and needs to be revoked (Centro de Integridade Pública and Chr. Michelsen Institute 2016).

#### Public probity law

The public probity law (Law no. 16/2012) came into force in October 2012 and covers all public officials, including elected and appointed individuals. It does not, however, cover members of the judiciary. The law establishes a set of incompatibilities with public office; for instance, among other provisions, public officials are prohibited from taking up paid activities in their areas of responsibility, making decisions that work in their personal favour or using confidential information for private gain. They are forbidden from receiving wages or fees from more than one public institution or company (Article 25) and from using the state property for private purposes. The law also defines and regulates conflicts of interest (including a “cooling-off” period of at least two years), gifts and hospitalities and illicit enrichment.

The law established that public officials should declare any incompatibility or conflict of interest within 30 days of taking office and led to the creation in December 2012 of a special ethics

body, the Central Public Ethics Commission, to regulate, prevent and analyse potential conflicts of interest (Portal do Governo de Moçambique 2013). After its founding, approximately 30 members of the assembly were found to be in conflict of interest for holding more than one position in the public administration. They had to choose between resigning from the assembly and giving up their positions (allAfrica 2013).

In addition, the probity law establishes rules on asset declaration for elected officials, public prosecutors, senior officials of the Mozambican state bank and managers of public enterprises, among others (Article 58). The annual declarations should include information on income, properties, liabilities, current or past functions in public and private companies, as well as information on the assets and liabilities of spouses and children. The Office of the Public Prosecutor is responsible for receiving and overseeing the declarations, with the exception of their own, which is reviewed by the Administrative Tribunal. Asset declarations are not made publicly available, although they can be accessed by law enforcement bodies at any time or upon request by any interested party, including members of the public.

In practice, compliance with the obligations under the probity law seems to be poor. In the first year after its enactment, several public officials were still acting in conflict of interest according to Centre of Public Integrity (Agencia Angola Press 2013). In November 2015, a great majority of officials in the northern province of Nampula were found to be contravening the law, when of around 700 officials covered by the law in this province only 63 had submitted their declarations of assets as legally required (allAfrica 2015). Another recent investigation by the attorney general found that only 60% of the senior state officials who should declare on their assets and income did so (allAfrica 2016d).

Moreover, the Central Public Ethics Commission is not yet fully operational (Centro de Integridade Pública & Chr. Michelsen Institute 2016), which renders it unable to rigorously monitor potential conflicts of interest. The result is that many cases slip through the net. A prominent recent example is the case of the former Minister of Education Augusto Jone, who accepted a managerial position in a university shortly after leaving office. These situations only came to light after an investigation by journalists (Centro de Integridade Pública 2016; allAfrica 2015).

### **Whistleblower and witness protection**

The 2004 anti-corruption law states that “no complainant or whistleblowers may be subject to disciplinary proceedings or prejudiced in his professional career or be prosecuted in any form because of the complaint against or denunciation of the crimes envisaged in the present law” (Article 13, Law no. 6/2004). In 2012, as part of the anti-corruption package, a dedicated law on witness protection was approved (Law no. 15/2012) and came into force in November 2012. The law aims at protecting victims, plaintiffs, regular witnesses and expert witnesses who testify on, or flag, corrupt practices from physical, social and economic retaliation. The law also foresees the establishment of a High Authority on the Protection of Victims, though this is yet to be set up (Centro de Integridade Pública & Chr. Michelsen Institute 2016).

### **Access to public information**

In November 2014, a bill regulating access to public information was approved after passing the second hearing by the Mozambican assembly (All Africa 2014). The law is intended to provide citizens with broad access to administrative information, but according to the Global Right to Information Rating’s analysis it only achieves an overall score of 60 out of 150 (Centre for Law and Democracy 2016).

### **Political party funding**

With regard to political party funding, the law establishes rules on both public and private donations. Political parties receive regular public funding for their overall operations as well as additional funds for campaigning during elections. In addition, they receive in-kind donations from the state in the form of free airtime and free use of public premises during the campaign (International IDEA 2014).

Moreover, individual contributions from national or foreign citizens are permitted. There is, however, a ban on donations by national or foreign public enterprises (Article 19 of the Law on Political Parties, Article 137 of the Electoral Law). The law does not establish limits to donations from private individuals or spending limits to political parties and candidates (International IDEA 2013). Political parties and candidates are required to report public funding to the election commission, as well as to the Ministry of Finance on all funds raised and donated to their campaigns. However, the commission does not seem to have the necessary capacity to effectively audit these accounts, and very few irregularities have been found until now (International IDEA 2013). In



addition, reporting requirements are often flouted with apparent impunity; in the 2014 general elections, some parties did not comply with their duties to present their accounts and have yet to receive any sanctions, while reporting on private funding is not currently conducted by any party (Centro de Integridade Pública 2016).

### Institutional framework

There are several institutions responsible for preventing, detecting and curbing corruption in the country. Assessments, however, have pointed to the fact that, in spite of recent improvements, corruption-related crimes still go largely unpunished (Freedom House 2016), particularly crimes involving high-level government officials. Law enforcement and anti-corruption bodies in Mozambique still need more autonomy, including adequate human and financial resources and less political influence to be able to effectively curb corruption. Apart from these political impediments there are also institutional barriers such as the inadequate cooperation between the various agencies involved (Centro de Integridade Pública 2016).

#### **Central Office for Combating Corruption (Gabinete Central de Combate à Corrupção, GCCC)**

The Central Office for Combating Corruption (GCCC) was established within the Attorney General's Office in 2005, replacing the anti-corruption unit created in 2003. The agency is responsible for awareness-raising activities and for investigating corruption-related complaints *ex officio* or based on information from the public. The agency does not, however, have the mandate to prosecute corruption, and cases have to be referred to the public prosecutor's office.

As part of the anti-corruption package in 2012 new powers were given to the office (Freedom House 2016). In addition to its preventive and investigative mandate, the office now also has a coordinating function, as it is responsible for gathering all the intelligence and information on corruption-related cases investigated by other government bodies. Its institutional structure was also extended to the provincial level through the establishment of provincial offices for combatting corruption.

Initial doubts regarding the ability of the office to fulfil its remit (Pereira & Trindade 2011) appear to have been vindicated. Of all the corruption-related cases brought to the GCCC, about 27% of the corruption cases presented proceeded to the

accusation phase and, of these, only 39% went to court according to the Attorney General's Report on the State of Justice in 2015 (Centro de Integridade Pública 2016). According to the director of the GCCC, Ana Maria Gemo, corruption charges have been on the increase over the past two years; prosecutors brought charges in 437 cases of corruption in 2015, compared to 256 in 2012, 296 in 2013 and 239 in 2014 (Rhula Intelligent Solutions 2016a).

Despite this, to date, very few high profile cases of public officials have reached a courtroom. In 2015, for instance, the office did not investigate corruption allegations surrounding former president Guebuza and the Italian energy company ENI, despite evidence gathered by Italian authorities (Freedom House 2016). One prominent case which did result in a conviction was when the minister of transport and communications was found guilty of embezzlement (Centro de Integridade Pública 2016). Most recently, in November 2016, the GCCC investigated charges regarding a group of 27 people, including managers of the government's Agricultural Development Fund, relating to corruption, abuse of office and several other crimes (allAfrica 2016e).

In general, the office's effectiveness is weakened by its capacity deficits in terms of limited budgets and human resources, even though there has been some improvement regarding staffing, which rose from 29 in 2014 to 48 in 2015, 13 of whom were public prosecutors/attorneys and four were auditors (Centro de Integridade Pública 2016).

#### **Prosecutor General's Office (Procurador-General da República)**

The Prosecutor General's Office plays an important role in the fight against corruption. In addition to following up on the investigations of the GCCC and conducting its own, since 2013 the office has also been tasked with receiving and overseeing asset declarations submitted by senior public officials.

#### **Judiciary**

Experts and citizens alike point to Mozambique's judiciary as being a highly corrupt or, at the least, a highly inefficient institution (Transparency International 2015; Freedom House 2016). A weak judiciary has impeded Mozambique from enforcing anti-corruption legislation and has led to a sense of impunity for crimes related to corruption.

Corruption manifests itself within the judiciary in many ways. Trials for minor crimes can often be undermined by bribing judges or court employees to look favourably on the accused. Even those accused of major crimes, including those related to grand corruption and homicide, have reportedly been released due to defendants' personal connections with judges or through the payment of bribes (IRIN 2006). According to the latest data from the Global Corruption Barometer, 40% of all citizen interactions with the judicial system end with a bribe being paid (Afrobarometer 2016).

Corruption within the judiciary is exacerbated by a lack of capacity. In Mozambique, under-staffing and a lack of resources, particularly in district courts, combine to create high case loads and a judicial backlog that impede the timely resolution of cases (International Association of Judges 2015). Such backlogs also result in lengthy delays for corruption trials, thereby limiting the ability of the judicial system to enforce anti-corruption legislation (Centro de Integridade Pública 2016). Judges and judicial staff are not highly paid and, some claim, they must resort to bribery to make a living (Bertelsmann Stiftung 2016).

Furthermore, despite a constitutional provision that guarantees judicial independence, the judiciary in Mozambique is seen to lack autonomy from other branches of government (Bertelsmann Stiftung 2016). The executive branch in particular exercises significant power over the judiciary, including the appointment, demotion and transfer of judges (Global Integrity 2016).

### **The Administrative Tribunal**

The Administrative Tribunal (Tribunal Administrativo) is responsible for auditing government expenditure. It is formally an independent body, but according to recent assessments, the body lacks autonomy and its members may be influenced by personal relations and party loyalty (Global Integrity 2016).

Moreover, in spite of recent reforms and support from international donors, in the past years the agency has faced challenges with regard to technical capacity and resources, making the effective verification of companies' technical or financial data, particularly that related to the extractives sector, almost impossible (Oxford Policy Management 2012).

The Administrative Tribunal is financed by the government of Mozambique and by development agencies through a common fund. As part of the common fund agreement, the financial resources

received by the tribunal have to be audited, and an audit conducted in 2012 showed some irregularities on how the tribunal has been spending resources (Oxford Policy Management 2012).

According to the auditor, the tribunal has not always purchased goods and services following the country's procurement rules, and it has failed to present adequate invoices for the purchase of goods such as fuel, airline tickets and consultancy services, among others, raising questions as to whether these illegalities demonstrate the body's inability to enforce the law and effectively monitor how public resources are spent (Nuvunga 2013).

### **National Electoral Commission**

The National Electoral Commission is an independent body responsible for the management and oversight of elections in Mozambique, including the verification of whether rules on campaign financing are being followed. However, there have been questions regarding the politicisation of the electoral commission (Bertelsmann Stiftung 2016). In 2014, a new law on the composition of the commission proposed by the opposition party was approved. In accordance with this new law, the election commission will now be composed of 17 members, out of whom five are appointed by the ruling political party (Frelimo), four by the main opposition party (Renamo) and one by the Democratic Movement of Mozambique (MDM).

The other seven members are to be appointed by civil society. According to some experts, the new composition rule may prevent the body from favouring the ruling party and will bring more transparency and accountability to the electoral process. Others believe that the new rule does not ensure the professionalisation of the body (Matias 2014).

### **Other stakeholders**

#### **Media**

Article 48(1) of the 2004 Mozambican constitution guarantees the right to freedom of expression and freedom of the press. Despite these fundamental protections, some observers note that, in practice, press freedom has decreased over the last few years, particularly in light of recent attacks against journalists (Bertelsmann Stiftung 2016). As a consequence, the country has slipped down the rankings of countries assessed by Reporters Without Borders (2016) to position 87 out of 180 countries surveyed, down from 79 in 2014.

Freedom House (2016) highlights that despite the existence of independent media, the government enjoys substantial presence in and control over the media landscape. In addition, the government recently reduced telecommunications subsidies by 75%, which has meant a considerable rise in the cost of internet access, a move that critics argue was an attempt by the government to limit the public's access to information (Freedom House 2016).

Despite constitutional protections, journalists' rights are undermined by the 1991 press law and the revised penal code from 2014. In particular, articles 229, 231 and 235 of the penal code criminalise defamation and slander, while articles 46 and 47 of the press law prescribe two years custodial sentences and fines of 100,000 meticaís for people who slander or defame the president, members of the government, deputies of the national assembly, magistrates and other public authorities (CIVICUS & JOINT 2015). These criminal libel and defamation laws have reportedly led to self-censorship on the part of some journalists due to a fear of being sued by government officials (Reporters Without Borders 2016). Such was the case of journalists Nelson Mucandze and Anselmo Sengo, who faced a libel suit of 10 million meticaís (€256,000) in a case brought by the former general secretary (Reporters Without Borders 2016).

Journalists have also been exposed to more extreme forms of intimidation. According to CIVICUS these include "death threats, harassment, assassination attempts and arbitrary detention for criticising the governance system, corruption and human rights violations" (CIVICUS 2016a). A tragic example of this declining civic space was the 2015 murder of Paulo Machava, the editor at the online *Diário de Notícias* newspaper who was supporting other journalists being prosecuted for defamation (Reporters Without Borders 2016).

CIVICUS (2016b) has also stated that "several outspoken civil society organisations and media outlets have had their offices broken into with impunity in what appears to be a targeted crackdown on dissent". Such was the case of the newspaper *Malacha* and the radio stations *Dom Bosco* and *Cateme* in November 2016, all of which had been reporting on corruption (CIVICUS 2016a).

According to the latest *Afrobarometer* (2016), Mozambican citizens are evenly divided on the question of how effective the news media is in uncovering government mistakes and corruption,

with 41% of citizens stating the news media is "not at all" or "not very" effective, and 39% believing the media is "somewhat" or "very effective".

### Civil society

Freedom of association and the right to establish civil society organisations (CSOs) are guaranteed by Articles 34 and 52 of the Mozambican constitution (CIVICUS & JOINT 2015). Since democratisation, CSOs have grown in number and importance, though their operations are still regulated by the 1991 law of association (Topsøe-Jensen 2015). The 1991 law is currently in the process being revised and is in the drafting stage.

While there is no exhaustive directory of CSOs formally registered in the country, a recent mapping exercise of Mozambican civil society estimated that there are around 10,000 in operation (Topsøe-Jensen 2015), though many of these are believed to be religious associations (UNDP Mozambique 2011) or organisations which "descend directly from the erstwhile socialist mass organisations or are satellites of the party", which renders many CSOs rather dependent of government organs and connections (Bertelsmann Stiftung 2016). Despite these dependencies, external actors, such as international donors and international NGOs, continue to be the primary source of funding for most Mozambican CSOs (Topsøe-Jensen 2015).

Aside from the religious associations, the majority of the remaining CSOs work in the areas of humanitarian assistance and rural development, with only a few based in the capital working on governance and anti-corruption issues. Indeed, the same mapping exercise identified no more than 10 to 15 research and advocacy CSOs operating at national level, of which the Centre for Public Integrity (CIP), the Mozambican Debt Group (GMD), the Institute of Social and Economic Studies (IESE) and the Rural Observatory (OMR) are the most prominent (Topsøe-Jensen 2015).

The importance of CSOs working on governance issues has grown over the last decade since the creation in 2007 of a National Forum for Combating Corruption, and civil society pressure was crucial in getting the government to approve the anti-corruption package in 2012-2014 (Topsøe-Jensen 2015). Civil society also played a key role in the passage of the cooperative law (2009), the right to information law (2014), and the public probity law (2014).

Over the last few years, CSOs such as CIP, IESE, and OMR have played an increasing important role in monitoring the extractive industry value chain, advocating for better policies and rules in the sector as well as increased civil society participation. Their advocacy efforts have resulted in the government acknowledging the need to publish industry contracts and approving regulations for community resettlements (Topsøe-Jensen 2015). These efforts culminated in the mining law in 2014, which was approved partly thanks to pressure from the CIP and the Action Programme for an Inclusive and Accountable Governance, financed by the Embassies of Sweden, Denmark and the Netherlands.

The Budget Monitoring Forum (FMO), created in 2010, is a body comprised of several civil society organisations, including the CIP and the GMD. The FMO liaises with the parliamentary planning and budget committee in a systematic fashion, and has achieved notable successes, including the publishing of proposals for the state budget, the doubling of the basic social allowance in 2012 and the government's implementation of the "citizen budget" (Topsøe-Jensen 2015). In the fallout from the hidden debts scandal, the FMO has put considerable pressure on the government to launch a forensic audit of the country's debts and state guarantees issued to private enterprises, as well as calling on the GCCC to investigate criminal and civil liabilities related to the three loans (Fórum de Monitoria de Orçamento 2016).

### **Enabling environment**

Despite these achievements, civil society activists continue to face organisational obstacles as well as threats and intimidation. According to CIVICUS, the law that regulates the creation and functioning of associations creates needless barriers for CSOs. As an example, each association needs at least 10 founding members to register, each of them having to present criminal records. Although the process to obtain criminal records has become electronic and more transparent in the last two years, it can still become problematic at district level outside the major cities.

Selective compliance with the regulations on the part of public officials undermines the ability of civil society to function effectively. A good example of this is the 2014 access to information law. The detailed provisions it contains were a notable success and the culmination of 10 years of advocacy efforts on the part of anti-corruption activists. However, de facto implementation is an on-going struggle and obtaining information

continues to be problematic for civil society and the broader public (Topsøe-Jensen 2015).

Furthermore, authorities reserve themselves the right to deny registration if the association "offends public morals", as it was the case of the LGBTI association LAMBDA, which has been waiting for recognition for nine years (CIVICUS 2016b). As for the organisation of peaceful assemblies and protests, citizens continue to face obstacles from local authorities who can deny them approval to protest or intimidate activists (CIVICUS 2016b).

Finally, CIVICUS reports its concern about attacks carried out against CSOs and activists, which range from intimidation to death threats and murder attempts as a result of criticising the government for corruption and other human rights violations. An example of this was the robbery of documents from the offices of JOINT – League of NGOs in Mozambique – in October 2016. The League of Human Rights, another CSO, also suffered a similar incident in September 2016, which included a death threat to Alice Mabota, president of the organisation, who was demanding governmental accountability in relation to the public debt and the protection of freedom of expression (CIVICUS 2016a).

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