



MOZAMBIQUE

CAPITAL: Maputo

POPULATION: 19.2 million

GNI PER CAPITA: \$200

SCORES

ACCOUNTABILITY AND PUBLIC VOICE: 4.13

CIVIL LIBERTIES: 4.49

RULE OF LAW: 3.39

ANTICORRUPTION AND TRANSPARENCY: 2.78

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Robert B. Lloyd

INTRODUCTION

In the space of 15 years, Mozambique has undergone rapid change toward political and economic liberalization. The year 2004 marks the 10th anniversary of Mozambique's first multiparty democratic elections under a 1990 constitution that guarantees a broad array of political and civil rights. The nation's political life is in transition as President Joaquim Chissano prepares to leave office in December 2004 after 18 years in power. Chissano is the leader of the ruling Front for the Liberation of Mozambique party (known by its Portuguese acronym FRELIMO), which came to power when the nation gained independence 1975, and he maintained his rule through the 1994 and 1999 presidential elections.

While the country he has led has changed greatly, deep distrust remains between FRELIMO and the opposition Mozambican National Resistance (known by its Portuguese acronym RENAMO). RENAMO

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is composed of politically disenchanted rebels, drawn largely from the central part of the country, who were supported by Rhodesia and later South Africa in their fight against the FRELIMO government. The two sides fought one another in a bloody civil war that began in 1977 and formally ended at the signing of the General Peace Accord in Rome in October 1992.

The outcome of the negotiation process between the two parties led to a number of surprising developments, especially given the country's violent past. The habit of negotiations forced by the dynamics of a stalemated and traumatic civil war, the adoption of a new and democratic constitution in 1990, and the eventual emergence of RENAMO as a viable political party have combined to create a fragile democracy with a competitive two-party system. Representation in the 250-member National Assembly, where FRELIMO maintains a slight majority, has fostered debate and accountability that reflect the broader interests of the citizens. Within this new political dispensation, the media and civil society have actively participated in spirited public debates on issues facing the country. However, neither political party has consistently been tolerant of the freedom of expression guaranteed by law.

Mozambique's constitution and legal framework establish safeguards for all citizens' civil rights and liberties, but the treatment of individuals who are arrested or detained remains a concern. In addition, prison conditions are substandard, and trafficking of children and women has increased.

Developing the legal and judicial capacity of the state has been a major challenge for the government. Accusations that the judiciary is poorly trained and incompetent are common. The government has been moving toward reform of the judiciary but has been hampered by lack of resources and disputes between FRELIMO and RENAMO over the details of such reforms. Judicial shortcomings undermine property rights in the country, negatively affecting a generally favorable investment climate for domestic and foreign businesses.

Corruption, well covered by the media, remains the major challenge for the country. While the state has been dismantling the state-control legacy of its Marxist-Leninist years, ample opportunities still exist for private gain at public expense. The government has responded by introducing new taxation and customs systems, divesting state-owned com-

panies, and developing more thorough government auditing systems, but further reforms are still needed.

Mozambique's economic and political transformation needs to be supported by a strengthening of the judiciary, the professionalizing of the police and security forces, and a reduction in the opportunities for corruption. While Mozambique has made rapid progress since 1990, its future growth and stability will be undermined if it does not address these challenges.

ACCOUNTABILITY AND PUBLIC VOICE – 4.13

Mozambique's constitution was ratified by the Mozambican parliament in October 1990. This replaced a 1975 constitution based on Marxist-Leninist principles, which FRELIMO wrote and approved just five days before officially assuming power from the departing Portuguese colonial government. The 1990 constitution—widely circulated throughout the country for debate—introduced a multiparty system, universal suffrage, an independent judiciary, and freedom of assembly, religion, and speech. Although FRELIMO, which has exercised power continuously since 1975, had pointedly not included RENAMO in constitutional talks, the document reflected many of the latter's demands.

The new constitution guided the historic 1994 national and provincial elections that marked the first multiparty democratic vote in Mozambique's history. Importantly, the elections included RENAMO. The 1994 and subsequent elections in 1998, 1999, and 2003 were conducted by secret ballot, monitored by independent electoral authorities, and generally considered by independent observers to broadly reflect voter will. RENAMO, however, has made consistent allegations of electoral irregularity at each election and in fact boycotted the 1998 local elections. Since then the country's electoral law has been periodically revised in response to opposition objections as well as the experiences of each election. FRELIMO won the presidential elections in 1994 and 1999. Despite its concerns over the integrity of the electoral process, RENAMO regularly receives about 40 percent of the national vote, making it the only viable opposition party.

The state attempts to ensure that citizens' political choices are not dominated by parochial interests. The constitution requires that political

parties be national in scope, uphold national interests, and refrain from advocating violence (Articles 31–43). The large size of the country, whose length is equivalent to that of the east coast of the United States, combined with the lack of efficient transportation and communication links, makes it difficult for parties to expand beyond regional bases. Although both RENAMO and FRELIMO draw voters from every province in the country, the political parties still tend to reflect regional and ethnic interests. RENAMO's leadership and constituency is pulled from the Ndau and Sena groups in the central part of the country. FRELIMO's leadership and base is among the Shangaan in the far south.

In theory all parties seeking local, provincial, and national office have equal campaigning opportunities. In practice, FRELIMO enjoys a decided advantage because it has access to state resources not available to opposition parties. RENAMO has an advantage over smaller opposition parties because of its size, resources, and national reach. Recognized political parties are small, vary in number from election to election (at latest count 25), and are able to receive campaign funds from the government.¹ Given the relative poverty of Mozambique, broad voter support for individuals and parties is limited. Thus, economic elites have a financial advantage over other participants in the political process. Foreign interests, largely European and American nongovernmental organizations (NGOs)—often with their government's financial support—influence the political process through grants and technical assistance to parties.

In the most recent legislative elections, in 1999, 12 parties competed on a party-list system. The parties represented a range of political interests and policy options. FRELIMO and RENAMO, however, were the only two parties to garner more than 5 percent of the vote. FRELIMO and RENAMO accuse each other of physically harassing one another's supporters in political strongholds, with some evidence to support their claims.

Democratic competition is strong in Mozambique. In the 1999 presidential elections the RENAMO candidate, Afonso Dhlakama, received 47.71 percent of the vote compared to 52.29 percent for the FRELIMO candidate, President Joaquim Chissano. In the November 19, 2003, local elections, RENAMO took control of the northern cities of Beira, Nacala, Angoche, and Ilha. This was the first time that any elected body was not controlled by FRELIMO. In another city, Marromeu, the

elected mayor is a member of RENAMO but the majority of the elected municipal assembly are FRELIMO party members.²

[*Editor's note:* As of February 2005, the results of the third democratic elections held in early December 2004 show the FRELIMO presidential candidate Armando Guebuza won the election with 63.74 percent of the vote. His rival, RENAMO candidate Afonso Dhlakama, came in second with 31.74 percent of the vote. RENAMO challenged the election results, citing evidence of voter fraud. The Constitutional Council subsequently turned down the appeal on the grounds that it was filed after the official deadline. Independent observers noted serious irregularities in the vote, particularly the vote tabulation process, but stated that these would not have altered the outcome. In the parliamentary elections, FRELIMO won 160 seats and RENAMO won 90 seats. RENAMO initially contested these results, but eventually seated its 90 deputies.]

The 1990 constitution provides for the separation of the executive, legislative, and judicial branches. However, FRELIMO has not always distinguished between the various branches of government, or even between party and state. The constitution establishes a strong presidency, but the legislative branch—which is nearly evenly split between RENAMO and FRELIMO—has acted to influence executive policy. The executive branch tends to dominate the judicial branch, in part due to its ability to select judges. Thus, a system of checks and balances is as yet incomplete.

The civil service is selected on the basis of open competition and merit. In practice, however, relatively low pay, inadequate resources, and a lack of training undermine its efficiency and professionalism. Reports of corruption are common.³ The government is currently undertaking reforms of the civil service system. The long-term plan is to double the number of civil servants, place an increasing number at the district level, and place many of the new employees in the education and health sectors.⁴

Civic groups are able to discuss pending policy with government officials but are not major players in the policy-making process. Beginning in the early 1990s, the government began to encourage the development of NGOs, both domestic and international. This policy led to a rapid proliferation of NGOs. While some NGOs have complained about the length of time required for registration with the government, none have

reported being denied registration. Foreign-based NGOs, such as the Summer Institute of Linguistics, operate freely throughout the country. There are no reports of state pressure on financial patrons of civic organizations and public policy institutes, even when they are involved in politically sensitive issues.

The government owns and operates the primary print, radio, and television media. The vast majority of Mozambicans receive news from state-owned Radio Mozambique.⁵ *Notícias*, the major newspaper in the capital, is state managed. In recent years, however, private media have begun operating in urban areas. These include media owned by foreign television and radio corporations. The BBC World Service, for example, is available on the FM band in the major cities. In addition, a number of privately owned newspapers are available, although their circulation numbers are low and market area limited.

While the state-owned media are the major sources of information, the Committee to Protect Journalists states that they do have editorial freedom. The organization particularly commends Radio Mozambique, the only Mozambican station that broadcasts throughout the country, for its nonpartisan coverage.⁶ RENAMO, however, argues that some media coverage is biased in favor of the ruling party. A European Union Observer Mission study of the radio and print media for the 2003 elections concluded that Radio Mozambique showed no bias in reporting, but that print media indirectly controlled by the government did indeed have a pro-FRELIMO bias.⁷

Article 105 of the constitution guarantees “freedom of the press, and the independence of the media.” There have been no reports of government restriction on cultural expression, which is constitutionally guaranteed. There is no direct censorship of the media. Journalists report a generally open environment for press freedom, except for issues relating to corruption of government officials. The 2000 murder of the Mozambican journalist Carlos Cardoso, who was investigating a case of bank fraud, has caused greater caution in reporting on such cases (see “Anti-corruption and Transparency”). Journalists assert that they feel free to criticize the government or opposition policies but avoid investigative reporting regarding political corruption and organized crime.⁸ Reporters Without Borders ranks Mozambique 64th of 167 countries in its most recent press freedom index. This score, which lies midway between a

“good situation” and “very serious situation,” means that Mozambique has “noticeable problems.”⁹ There continue to be reports of party and government officials threatening and detaining journalists.¹⁰

Libel laws restrict some press freedoms. The constitution provides a fundamental right to defend one’s honor, good name, and reputation. In August 2004 the governor of Tete province and the director of the Zambezi Valley Planning Office threatened a libel suit against *Zambeze*, a weekly newspaper. The paper had printed an unsigned article based on an interview with a RENAMO member of parliament, Ossufo Momade, who claimed the two men were organizing death squads against RENAMO supporters.¹¹

In several instances journalists have been detained by the police. For example, the Media Institute of Southern Africa and the Niassa provincial branch of Mozambique’s journalists’ union charged that the provincial chief attorney had unlawfully ordered the arrest of correspondent Fabião Mondlane on May 15, 2004. Mondlane was released after 10 hours. The chief attorney claims Mondlane defamed him in an article on corruption in the attorney’s office that was published in the independent Niassa paper *Faisca*. The director of the prison released Mondlane, telling him his detention was illegal.¹²

The constitution guarantees free artistic expression and intellectual property rights. There have been no reports of government restriction on cultural expression.

Recommendations

- Mozambique should subject itself to a formal review under the newly developed African Peer Review Mechanism of the New Partnership for African Development (Nepad). This self-assessment questionnaire should serve as the basis for a public discussion on good governance, with representatives from civic groups and political parties included.
- The National Assembly should consider legislation that shields journalists from libel lawsuits arising from reporting on public officials.
- *Notícias* should be fully privatized. The government should have no editorial or financial stake in the paper. The government should also encourage the development of private broadcast radio stations that cover the entire country.

CIVIL LIBERTIES – 4.49

Article 82 of the constitution allows citizens the right of recourse for any act that violates constitutional guarantees. The constitution prohibits torture and cruel or inhumane treatment. The Mozambican Human Rights League, however, has accused the police of torture of prisoners. These allegations have not resulted in investigations, trials, or prosecution of wrongdoers.¹³

There are a number of reports of inhumane conditions in prisons. The Mozambican Human Rights League charges that prisons are overcrowded, health and sanitation conditions are poor, sick prisoners are left untreated, and children under the age of 16 are also incarcerated in these substandard facilities; under Mozambican law, children under 16 may not be accused of a crime.¹⁴ Amnesty International reported that six prisoners had been left in chains for four days. After inspecting the prisoners accompanied by a representative of the Mozambican Human Rights League, the attorney general, Joaquim Luis Madeira, ordered that the chains to be removed, stating there were no legal grounds for the restraints.¹⁵

The death penalty is illegal. However, there are reports of execution of individuals detained by the police. The Mozambican Human Rights League alleges that on November 1, 2003, the police took four detainees from a town outside the capital and shot them. The police state the four men were trying to escape.¹⁶ The media did not report any further investigation into this matter.

Article 101 of the constitution limits detention. Details concerning the length and conditions of such detention are set by law. Detainees have the right to judicial review of their detention. However, human rights groups argue that citizens' constitutional rights are restricted by the fact that police and judicial officials are unfamiliar with the penal process code governing detentions, and the accused are often held in detention for extended periods of time. Police reportedly randomly arrest citizens and foreigners on the street who fail to produce required identity documents and do not pay bribes.

Since the beginning of multiparty democracy in 1994, there has been no systematic and widespread abuse of citizens by private/non-state actors. The political tension and distrust between RENAMO and FRELIMO, however, remain as a legacy of a bloody civil war. In one

reported incident, RENAMO members and sympathizers seized and detained Salvador Januario, a journalist working with Radio Mozambique, in their offices in the city of Montepuez, in the northern province of Cabo Delgado, in November 2003. Januario had been investigating reports of RENAMO supporters removing election posters of competing political parties and intimidating market vendors.

Article 67 of the constitution states, "Men and women shall be equal before the law in all spheres of political, economic, social, and cultural affairs." The assembly approved a revision of the colonial-era civil code on August 24, 2003, such that it no longer assumes the husband is the head of household or representative of the family. One spouse may not restrict the right of the other to work, and the wife no longer needs permission to obtain business or contract debts.¹⁷ But these provisions are not always upheld. There are reports of the abuse of women and children, although detailed research into its extent is not available.¹⁸ Traditional African customs do not always hold the same views on the roles of men and women as state law or international norms. Thus, it is not clear, particularly in the rural areas, how much of an impact government laws have on practices such as polygamy.

The government mandates that at least 30 percent of the National Assembly and cabinet must be women. On February 17, 2004, President Joaquim Chissano appointed Finance Minister Luisa Diogo as prime minister; she is the highest-ranking woman in government and the first to hold this position.¹⁹

The constitution prohibits forced labor. Prostitution is illegal. Mozambique is also a signatory to the International Labor Organization Convention on the Abolition of Forced Labor, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the Convention Against Transnational Organized Crime. Despite these legal safeguards, Mozambique is a source country for human trafficking, both domestically and internationally. The South African National Prosecuting Authority task force and a group of NGOs called the War Against Trafficking Alliance stated that South African-based crime syndicates procure children from Mozambique for sexual exploitation or labor.²⁰

There is also evidence of organ trafficking. It is thought that organ trafficking is used both for medical transplants and for *muti* (traditional medicine). In one case, a Mozambican woman and her two-year-old son

were found murdered in Nampula province. The woman's genitals had been removed.²¹ The Human Rights League has presented evidence of organ trafficking as well, including in children.²² The European Commission recently promised €10 million to help investigate these allegations.

Mozambique's population of approximately 18 million people speak a total of 39 languages. Ethnolinguistic diversity has been a source of tension in the country. Addressing this issue, the constitution guarantees equal rights before the law, regardless of ethnic origin or religion, and outlaws discrimination based on these criteria. While Portuguese is the official language, the government actively promotes the development of Mozambique's nearly 40 indigenous languages.²³ Recently, for example, the government announced a major reform of the educational curriculum that would use mother tongue languages instead of Portuguese as the medium of instruction in primary schools.²⁴

Most Mozambicans practice some form of traditional religion. These modes of worship are headed by traditional religious leaders called *curandeiros*. About 30 percent of the population is Christian, with Catholics slightly more numerous than Protestants. Muslims—located in the north, largely along the coast—comprise about 20 percent of the population. Many Muslims and Christians also practice some form of traditional African religion.²⁵ The government, with the introduction of the 1990 constitution, made major efforts to abolish laws and practices that discriminate against ethnic and religious groups. Article 9 of the constitution, while proclaiming a secular state, nevertheless “recognizes and values” religious groups. In some cases, however, the government has passed legislation that is inconsistent with traditional ethnic or religious practices in the interest of supporting citizens' civil rights. For example, the recently approved Family Law allows a wife to work and incur debt without her husband's permission, places civil unions on the same level as religious ones, and changes existing law that assumed the male was head of household.²⁶

The state protects the rights of nonbelievers and adherents of minority religious faiths and movements. The government has permitted the opening of Christian and Muslim schools, returned most religious property expropriated during the Marxist era, and sought good relations with religious groups. The government is continuing to negotiate the return of remaining church property seized by the state. Foreign missionaries are regularly granted residence visas. These policies are in marked con-

trast to those that prevailed in the Marxist era when religious groups were severely suppressed. Religious institutions are required to register with the government, but the government refrains from interference with religious organizations. The state prohibits religious groups from forming political parties, and political parties, for their part, may not sponsor religious groups. Current law forbids political campaigning at religious sites. FRELIMO has recently accused Muslim religious leaders of allowing mosques in the northern city of Angoche to be used for local campaigning for the RENAMO opposition.²⁷

Article 68 of the constitution states that people with disabilities have the same rights and responsibilities as other citizens. The constitution also guarantees the right to assistance in the case of disability. In practice, given the deep poverty in the country, addressing the issue of individuals with disabilities, including disabled veterans from the war, has not been a high priority for the government. A major study sponsored by the British Department for International Development noted that, as in many other developing nations, public transportation is generally inaccessible to the physically disabled, leading to unemployment, undereducation, and lack of access to government and private services that could help improve their lives.²⁸

The government's Marxist past has heavily influenced government policy with respect to work. The constitution guarantees work, just payment, safe working conditions, the right to form unions and strike, and paid holidays. Employment discrimination based on sex is prohibited.

The constitution guarantees freedom of association. There are a number of religious, business, human rights, and political groups in the country. Civic, business, and political organizations are permitted to organize, mobilize, and advocate for peaceful purposes, although there are some reports of their meetings being disrupted. Citizens are not compelled by the state to belong to any association, either directly or indirectly. During the Marxist era citizens had to belong to neighborhood political associations, but these have since been abolished. The constitution specifically provides for the right to form and join a trade or labor union, but in general, unions are not strong in Mozambique. There have been reports in recent years of the police using excessive and lethal force against RENAMO supporters and striking workers.²⁹

The police, in direct violation of the constitution, have banned street marches and demonstrations of *majermanes* (Mozambicans who used to

work in former East Germany) at an open area in central Maputo. The workers have demonstrated in public places to demand government compensation for pensions they argue had been transferred from East Germany to Mozambique.³⁰ The government has stated it was not at fault but has agreed to meet in part their demands for pensions.

Recommendations

- The prison system should be reformed, including mandatory posting of laws governing detention and prison conditions, expanded police training programs to increase professionalism and awareness of legal responsibilities, increased police pay so as to reduce the temptation for corruption, and the construction of additional prisons to alleviate overcrowding.
- Mozambique should ratify and begin active implementation of the provisions of the United Nations Convention Against Transnational Organized Crime and its related protocols. Specific priorities include implementing security and border controls to detect and prevent trafficking and securing technical assistance programs for law enforcement and judicial training.
- The government should develop a comprehensive public/private orphanage system to respond to the projected increase in the number of AIDS orphans. This will also help protect children from sexual exploitation and trafficking.
- Mozambique should mount an official and comprehensive investigation into reports of organ trafficking.
- The government should abolish the requirement that citizens and foreigners carry identification papers when in public.

RULE OF LAW – 3.39

The judiciary is charged with guaranteeing and strengthening the rule of law and promoting the rights and freedoms of citizens. The courts may not act contrary to the constitution. Their decisions take precedence over decisions of other branches of government. President Chissano noted in May 2004 that establishing the rule of law and a “healthier legal system” remained a challenge for the government. He also stated that foreign donors had faulted the government on this issue but were nevertheless supportive of government reform.³¹

If one party controls both the assembly and the presidency, that party can exercise substantial political influence over the Supreme Court, the highest judicial body. The president, who is from FRELIMO, chooses *professional* judges to the court. These must be ratified by the assembly. The assembly votes on *elective* judges to the court. As FRELIMO has a majority of the votes in the parliament, and given the political polarization between FRELIMO and RENAMO, these judges may be possibly perceived as more sympathetic to FRELIMO policies.

Mozambique also has a constitutional council, which assesses whether or not legislation is consistent with the constitution, resolves conflicts between branches of government, and oversees elections. This body, like the Supreme Court, is chosen by the president and assembly. Institutional clarity between these two bodies is lacking. Since 1990, the Supreme Court has been responsible for some of the duties of the council due to legal disputes over constitutional provisions governing the council.³²

As yet, the court has not ruled against the executive on any major legislative or executive decision. Thus, it is not clear whether the government would comply if and when a court does rule against it. In one case—the recent Family Law legislation—the president requested a revision from the assembly on the grounds that he thought it would be ruled unconstitutional by the court. This shows some sensitivity to the possible impact of court decisions on the legislation.³³

The constitution states that judges should be obedient to the law, impartial, and disinterested. However, the selection of judges from the executive and legislative branches reflects political considerations, and appointments are not for life. There is no evidence that judges are removed for not adhering to the views of politicians. Judges often do not have adequate training before assuming the bench. There are also allegations that prosecutors are influenced by political officials, although concrete evidence is not available to support these charges.

RENAMO claims that the FRELIMO government chooses incompetent judges. This, it states, leads to a public perception of a collapsed judicial system. RENAMO also asserts that the Supreme Court's unanimous rejection of RENAMO's appeal of the 1999 election results constitutes political bias against the party. One FRELIMO parliamentarian, reflecting the strong emotions still present from the civil war, argues that RENAMO itself is not interested in a strong judiciary for fear it would hold the party responsible for illegal actions.³⁴

Everyone charged with a crime is presumed innocent until proven guilty. There are a number of reports that the accused are often held in detention for extended periods of time. Furthermore, the judges presiding over the cases may lack proper training, causing the accused to be deprived of legal rights. Citizens do have a right to independent counsel. The constitution also guarantees legal counsel for those who lack financial resources for defense, although in practice funds are limited.

There is no evidence of widespread bias against ethnic, religious, or gender groups seeking equal treatment from the court. The administration of justice has been frequently criticized, but alleged lack of equal protection may relate more to the general incompetence of the courts than to any particular animus against individuals.

Military, security, and police forces fall under the jurisdiction of the president. The assembly has the ability to review domestic and foreign policies, as well as budgetary considerations. Police, military, and internal security services are generally free from the influence and direction of non-state actors. There have been a number of allegations, however, of organized crime rings in the country, and such groups could not function without at least some degree of influence on security forces.³⁵

In line with its tensions with and distrust of the government, the opposition RENAMO believes that the police interfere in the political process. It cites the death in November 2000 of scores of RENAMO supporters in the northern city of Montepuez who suffocated to death while in the custody of the police.³⁶ Showing the continuing tension, in September 2004 approximately 150 ex-rebel forces guarding RENAMO leader Afonso Dhlakama's house in the central Sofala province clashed with the police. The police argue that the bodyguards were in violation of the 1992 peace accord that required police and military forces of the two sides to be integrated. RENAMO argues that the police are not non-partisan. One reporter noted that after the December 2004 elections the police would withdraw from strategic parts of Sofala and RENAMO would control these areas.³⁷

The constitution guarantees the right to ownership of property. Reflecting its Marxist history, however, the state owns the land. Furthermore, the state owns natural resources in or under the land, and extending out into territorial waters. Property title is historically an important issue due to the expropriation of the property of Portuguese settlers and religious organizations during the Marxist era. Under the

current constitution the state may expropriate property only in accordance with law, for the public interest, and with just compensation. The state has been gradually returning property to religious groups in the country. The state promotes the private sector, encourages foreign investment, and guarantees the right of inheritance. The lack of judicial capacity is one issue that the government has acknowledged as a constraint on the enforcement of property rights.

Traditional law with respect to real estate property views the land as communal and allocated by the chief. Disputes over FRELIMO policies in the Marxist era regarding traditional land tenure were a source of dispute that RENAMO championed. The civil war led to widespread displacement of people into refugee camps in the country and abroad. Demand for land grew through post-war resettlement of the country by former refugees, the general growth of the population, and requests for land by farmers from neighboring South Africa and Zimbabwe led to a revision of land policies. The 1997 Land Law clarified land title, fostering greater access to land for farmers (including communities and women), permitting claims for title based on use of the land for ten years and allowing these claims to be made based on oral testimony rather than written documentation. The legislation was broad, reflecting compromises with NGOs seeking guaranteed access for all Mozambicans and those wanting clear and unrestricted property rights. This has led to a number of continued disagreements over the application of the law.³⁸

Recommendations

- The government should increase funding and continue judge-training programs to fill the critical need for qualified judges.
- The Constitutional Council must be fully staffed and institutionalized to address constitutional and election disputes and entrench the principle of judicial oversight. Efforts should be undertaken to clarify the relationship of these two bodies in terms of legal jurisdiction.
- All government officials should be required to disclose all land leases or allocations.
- Clearer guidelines for land tenure should be established for the 1997 Land Law.
- The government should also examine procedures for the possible future privatization of land title, longer-term leases of the land, and stronger property rights for urban areas.

ANTICORRUPTION AND TRANSPARENCY – 2.78

The state has been pursuing a policy of privatization for several years. The South African Institute for International Affairs noted that, while the investment climate is generally favorable, corruption and bureaucratic inefficiency are key impediments to South African investment in Mozambique. Smaller businesses investing in the country reportedly face more red tape than larger companies.³⁹ Recently, the government has been seeking to reform the bureaucracy to reduce the time and simplify paperwork associated with the business registration process.⁴⁰

Mozambique has a number of state-owned firms. The state is a minority shareholder in some private enterprises as well, such as the new Maputo Port Development Company, which gained control of the port in 2003.⁴¹ The close relationship of the government with for-profit activities increases the opportunities for rent-seeking behavior by government officials. Allegations persist that high-level officials use public office to further personal interests. Assets declarations of public officials are not open to public and media scrutiny or verification.

The World Bank stressed in an October 2003 report that Mozambique needs to reform its legal system to foster transparency and effectiveness. This would assist enterprises in resolving disputes and reduce incentives for corruption. The report also called for the government to withdraw from the financial sector and assume a supervisory role to help avoid conflicts of interest with the private sector.⁴²

Transparency International's 2003 Corruption Perceptions Index score for Mozambique was 2.7, on a scale on which 10 is a clean score.⁴³ Legislative and administrative safeguards to prevent, detect, and punish corruption of public officials are weak. There are frequent allegations of high-level corruption among government officials but there have been no prominent prosecutions. In Maputo, the FRELIMO candidate for mayor in 2003 made an anticorruption stance a central plank of his platform. He stated that the municipal police had been squeezing money from informal traders and implied that some civil servants had been dishonest. His comments suggest that this had been the situation for the past five years.⁴⁴ The FRELIMO candidate later won 75 percent of the vote in the November 2003 municipal elections, trouncing RENAMO and other political party candidates. Maputo, however, is a

FRELIMO stronghold, so it is unclear the role that partisan loyalty or popular dissatisfaction with corruption played in his easy victory.⁴⁵

The state provides mechanisms by which victims of corruption may pursue their rights, but these are not always effective. For example, in the case of police corruption, proving a case would be extremely difficult. Lack of capacity in the judiciary can impede the ability to pursue a claim in a timely and effective manner.

In the period covered by this report, there were no specific media, government, or NGO reporting on the existence or pervasiveness of corruption in the primary, secondary, and tertiary educational sectors. However, given the relatively low level of salaries paid to teachers, it would not be surprising to discover the types of corrupt practices reported in some other African countries, including paying bribes or exchanging sexual favors to gain school admission or higher grades.

Government reforms of the administration of customs and tax (value added tax) have increased transparency. The Office of General Inspector of Finance, based in the Ministry of Planning and Finance, audits state-owned enterprises, provinces, and externally funded projects.⁴⁶ In December 2003, the assembly of the republic began considering reform on taxation that separates the body responsible for collecting taxes from the one hearing appeals to the taxes. The new finance minister, Luisa Diogo, appointed in February 2004, noted that this allows taxpayers to appeal administrative decisions on taxation to a separate and impartial tribunal.⁴⁷

Mozambique has an Administrative Tribunal, an independent auditing body administratively and financially independent from the executive. This body must examine and certify the government budget and its management. Departments must respond to questions posed by the tribunal. The long-term effectiveness of this auditing body is still to be determined. The government conducts internal audits but lacks capacity to audit government agencies effectively. The attorney general is tasked with investigating allegations of wrongdoing. It is not clear how free from political influence these bodies are, but there is legislative oversight, and parliamentarians do inquire as to the status of investigations.

Citizens became increasingly aware of corruption at high levels of government through a highly publicized murder trial for the death of Carlos Cardoso, a Mozambican investigative journalist in November 2000.⁴⁸ At

the time of his death Cardoso had been investigating allegations of fraud at two banks: the state-owned Commercial Bank of Mozambique and the then-private Austral Bank. Shortly after Cardoso's death, Mozambique's central bank seized control of the troubled Austral Bank. The government appointed a central bank official, Antonio Siba-Siba Macacua, to oversee the sale of the bank. Siba-Siba, who had also been exposing cases of wrongdoing at the bank, was murdered in August 2001. At that time, President Chissano voiced his lack of confidence in the "impartiality and integrity of the Mozambican police."⁴⁹ After three years the case remains unsolved.⁵⁰

Six men, three of them linked with the Commercial Bank of Mozambique, were charged and convicted in January 2003 with Cardoso's murder. One, accused of being the leader of the hit squad, twice escaped prison—apparently with the assistance of the police and unnamed political officials. He was recaptured mostly recently on May 25, 2004, at the Toronto, Ontario, airport.⁵¹ During the trial three of the accused stated that the president's son, Nyimpine Chissano, had ordered and bankrolled the murder, citing evidence of checks signed by Chissano. This charge was strongly denied by the younger Chissano, who claimed the checks were for collateral on a loan to a business partner. Whether by design or incompetence, the investigation by the police of the Cardoso murder did not meet high standards of professional conduct in that the crime scene was not secured, leading to key evidence being compromised. The murder, investigation, and trial received widespread and extensive media attention. In the trial phase, the presiding judge, after some hesitation, allowed live broadcasts.⁵² The trial revealed evidence of government corruption, but there is insufficient evidence to state categorically that the murders were indeed ordered by high-level government officials to cover up bank fraud. The case clearly damaged FRELIMO's reputation among many in the public.

Other, smaller-scale allegations of police corruption appear in the media as well.⁵³ However, as a result of the Carlos Cardoso case, members of the media do not feel completely secure about investigative reporting. The murder of Antonio Siba-Siba Macacua has undoubtedly depressed the willingness of citizens to report wrongdoing as well.

The International Monetary Fund (IMF) reported in 2001 that Mozambique had made enormous strides in transparency in the budget-making process. They also stated that government involvement in

the banking and private sectors had been reduced. State and local management responsibilities are generally clear. The government's annual budget must be approved by the legislature. The IMF report expressed concern over the need for greater auditing detail, inclusion in government reports of central and provincial extra-budgetary items, and more timely reporting.⁵⁴ Since then the government has worked to continue the reform process.

Public sector information is published regularly. The annual Government General Accounts Report is published after its approval by the assembly. The budget and budgetary legislation are available on the internet. The *Bulletin of the Republic* also publishes government information. The Ministry of Planning and Finance makes available additional reports that relate to budgetary matters.

Citizens have a legal right to this information. In practice, however, this right has been undermined by a lack of bureaucratic capacity and cost-efficient methods of disseminating the information to the broader public. Government efforts focus on the broad and timely dissemination of information.

The state attempts to ensure transparency, open bidding, and effective competition in the awarding of contracts. The IMF reports that procurement and bidding rules for the purchases of goods and services are regulated by rules that set tendering procedures. Purchases of goods and services costing above a certain threshold require bids. However, the IMF notes that these rules are not always observed.⁵⁵

Mozambique is a poor country and the central government is heavily dependent on foreign assistance to meet its budget. This has allowed foreign donor agencies and intergovernmental agencies such as the World Bank and IMF to exert considerable influence on government administration and distribution of foreign assistance. The reporting requirements have required greater financial transparency for funding programs. Nevertheless, corruption is still present in the donor process.⁵⁶

Recommendations

- The government should continue privatization policies to reduce opportunities for private gain from public resources. This should be done in an open and transparent manner in order to avoid political elites using influence for personal gain. The new owners must be required to disclose financial assets for a period of time

after acquiring former government assets. Furthermore, any politician or civil servant should be ineligible to purchase state assets.

- Allegations of political corruption should be thoroughly investigated and punished.
- The government should establish an investigative unit, similar to South Africa's "Scorpions," that will look into high-level corruption and organized crime.
- Auditing standards of government transactions must be improved, particularly for transactions that involve cash.
- Police protection should be provided for journalists (and their families) investigating corruption.

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