



# Combating Business Participation in Corruption in Mozambique

A Discussion Paper

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## 1. EXECUTIVE SUMMARY

Sofala Commercial and Industrial Association (ACIS) has identified corruption as one of the major issues affecting its members and, consequently, economic and business development in Mozambique. In partnership with the Center for International Private Enterprise (CIPE), ACIS has embarked on a 12-month project which aims to find ways to combat business participation in corruption in Mozambique.

This report is the first phase of the project and this initial version has been developed as a discussion document. It provides background on corruption in business in Mozambique, as well as reviewing a number of recent anti-corruption surveys and key areas of the relevant legal framework. The report also contains the summary of interviews with businesspeople along with some case studies. We expect that this area of the report will be expanded as the project moves through its public discussion phase.

This report is designed to initiate debate and is not a final document. We expect the outcome of the discussion based on this report to yield a final report containing a set of tools and ideas developed through participation and discussion among those interested in the subject. The report is also designed to respond to the Government's hope, expressed in its recently published anti-corruption strategy (see 5.1, below), that the private sector will be an active partner in the fight against corruption.

The report also describes some elements of best practice in anti-corruption as developed in other countries. This will help us develop anti-corruption tools for use by the private sector in Mozambique. Once again, this area of the report is one which will be built upon during the public discussion phase.

Based on the outcome of surveys and discussions, the report identifies two key types of corruption, that between the private sector and the government, also called "public-private corruption," and that within the private sector itself, called "private-private corruption." Also prevalent throughout the report is the issue of illegal trade. The report is careful to

differentiate illegal trade from informal trade, stressing that illegal trade takes place in both the formal and informal sectors, and that legal informal trade is an essential part of the economy. Illegal trade in both the formal and informal sector results principally from public-private corruption and is facilitated by payment of bribes to customs and tax officials. Private-private corruption is a practice that draws attention to the vulnerability of companies to fraud, among other issues.

The report focuses on finding ways to combat both types of corruption identified, as well as on the effects corruption has on the companies involved. It also considers potential incentives needed to encourage those companies currently involved in any form of corruption or illegality to “clean up their act”. ACIS notes that in discussions with the government they are often told that “it takes two to tango” and that without a corrupt private sector the public sector itself would not be corrupt. The report explores this premise.

We note at the outset that the report reflects the desire of the private sector in Sofala to prove itself a transparent and candid interlocutor on the subject. ACIS strongly believes that in demanding that the government fight corruption and in holding the government to its strategy, the private sector must prove that it too is prepared to commit to that fight.

The report identifies a series of key areas which need to be addressed in order to defeat corruption. These are:

- Application of existing legislation
- Dissemination of clear information
- Simplification of administrative processes
- Professionalization of the public service
- Removal of opportunities for discretionary decision-making
- Radical overhaul of the justice system
- Provision of independent alternatives
- Building trust
- A demonstrable commitment to legality
- Enforcement and accountability

- Protection and support for victims

The report notes that some of these areas require direct intervention by the Government. Other areas can be addressed in part by civil society, including the private sector. The report therefore requests that the Government take a strong lead in the enforcement of its strategic goals particularly in areas such as the application of existing legislation and professionalization of the public service. At the same time, the report begins an examination of how the private sector itself can deal with areas such as dissemination of information and building trust. ACIS anticipates that the public discussion phase of this project will enrich the ideas and recommendations put forward in the report.

The ideas and examples identified as ways for the private sector to contribute to the fight against corruption are categorized as follows:

- Information – mass media, theatre, national campaigns, observatories, information guides;
- Training – workshops, ethics programs, education;
- Enforcement – booklets, websites, process mapping;
- Trust building – auditing and certification; and
- Provision of independent alternatives – integrity pacts, whistleblower schemes.

The applicability and relevance of these ideas in Mozambique will be discussed as part of the public debate around this report.

The report concludes that change requires clear leadership and commitment from the top. It is important that company directors take the lead in combating business participation in corruption and provide both personal and professional moral leadership for their peers and subordinates.

Corruption is a process involving individuals. Therefore individual company employees, from the top to the bottom, must be encouraged to take personal responsibility for avoiding

corrupt acts. The decision to avoid corruption depends on a process of education, information and determined leadership.

The fight against corruption in Mozambique can also be facilitated by a number of additional actions. ACIS therefore continues to advocate the following:

- Enforcement of existing legislation;
- Enactment of key new laws such as freedom of information legislation;
- Ratification by the National Assembly of anti-corruption conventions and protocols to which Mozambique is a signatory; and
- Development of an inclusive, representative forum to discuss policy and legislative changes as well as the economic development of the country.

The fight against corruption is one which requires everyone's best efforts and commitment. Winning the fight is critical to ensuring that we move forward together in peace and prosperity.

This report is designed as a basis for discussion and is presented in good faith. We trust that you will find it useful and thought-provoking. We welcome any comments and suggestions. We will continue to make additions to the report as we move through the discussion process. The final report will integrate the tools we propose as well as summaries of the comments and reactions we have received.

## 2. INTRODUCTION

### 2.1 STRUCTURE AND PURPOSE OF THE REPORT

This report is designed as a basis for discussion on the issue of corruption and business in Mozambique. It is also a first step towards the private sector proving itself to be the strong and honest partner the government envisages in its anti-corruption strategy (see 5.1 below). The report considers the participation and involvement of business in corruption and aims to examine ways to promote improvement in the current business environment in respect of corruption, illegal trade and fraud. The report is part of a broader project (see 2.3 below) which aims to explore ways in which the private sector in Mozambique can combat its own participation in corruption.

The report is designed as a starting point for discussion, rather than as a definitive statement of what should be done. After the report is published there will be a series of roundtable discussions which will help develop tools for business to use.

The report is divided into nine sections. It begins with an introduction and background to the situation in Mozambique and a brief overview of corruption and its impact on business. It also defines corruption.

The report then focuses on interviews undertaken with companies and provides brief case studies as examples to guide discussion.

It moves on to look at recent analyses of the situation in Mozambique and the government's recently released anti-corruption strategy before considering international conventions and the potential applicability of a variety of tools and initiatives. The report concludes with a broad framework of ideas, proposals and recommendations which will be used as the basis for the development of an agenda for discussion at roundtables and to guide public contribution to the debate.

The report also includes annexes which look at key areas of legislation and their impacts on business, and provide a comprehensive definition of corruption as well as including the text of the Government's anti-corruption strategy and a sample of what constitutes a legal VAT invoice.

The report is based on several key premises which merit mention here:

- a) People do not want to pay bribes. If they are given the tools to avoid doing so (i.e. the knowledge to defend themselves or a valid reason why they cannot pay – threat of prosecution, for example) they will make use of these tools;
- b) The benefits of legal operation must exceed the costs if firms are to choose to operate legally;
- c) A company that acts corruptly at any level (payment of bribes, commissions etc.) is an unhealthy company. Risk assessors note that companies that participate in corruption are more likely to be exposed to the threat of theft, fraud and extortion;
- d) There is a direct correlation between corruption and illegal trade;
- e) Business can and should adopt a position of moral education and leadership.

These premises will inform the direction and outcome of this report.

## 2.2 CORRUPTION IN MOZAMBIQUE

The World Bank cites Mozambique as one of the most corrupt countries in southern Africa, exceeded only by Angola and Zimbabwe.<sup>1</sup> General weakness in the rule of law contributes to an overall perception of lack of control. According to the World Bank's governance rankings on issues such as voice & accountability and political stability, Mozambique has experienced a percentage decline in terms of control of corruption between the periods 1996-2004.

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<sup>1</sup> World Bank, *World Bank Governance Research Indicators 1996-2004*, available at [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance) (last visited 15 September 2005).

Corruption and crime often dominate the headlines in Mozambique. The high profile murder of investigative journalist Carlos Cardoso and the trial that followed, as well as the murder of central banker Siba Siba Macuacua and the ongoing failure to discover and prosecute the perpetrators, reveal the prevalence of high-level corruption and the impunity attached to corrupt acts.

Ética Moçambique's 2001 survey (see 5.5 below) shows that 45% of those surveyed at that time had been victims of corruption in the past six months. Of those, 31% had made an 'unofficial payment' to a civil servant of up to US\$ 6 while 45% made a payment between US\$ 6 and US\$ 60, and 22% made a payment between US\$ 60 and US\$ 600 – this is in a country with an average annual GDP of US\$ 300.

The government's own recent study on corruption and governance (see 5.2 below) indicates that the situation has changed little since 2001. The government's recent public statements on corruption and publication of an anti-corruption strategy may have raised public awareness of the issue. It is still questionable whether there is a widespread understanding of what corruption is and of its impact on the development of the country.

According to a 2004 report by leading journalist Marcelo Mosse, "transparency, integrity, handling of conflicts of interest etc., are underdeveloped institutions in Mozambique. Clientelism, nepotism, favoritism, and the use of influence are deeply rooted institutions. Corruption has much space to develop."

Mozambique has recently published an anti-corruption law and regulation. The general outline of an anti-corruption strategy was passed by the Council of Ministers on 6<sup>th</sup> September this year (see 5.1 below). Whatever the concerns about shortcomings in the anti-corruption legislation (see Annex III (a) below), it is clear that changing the system and the mind frame that has made corruption so pervasive in Mozambique will require more than laws. It will require, among other things, sustained public debate and a growing demand by civil society to stop corruption. This report is ACIS's contribution to that debate.

## 2.3 THE PROJECT

ACIS has been dealing with issues of corruption and illegal trade at all government and private sector levels since the organization's inception in 2000. Through its contact with CIPE, ACIS has had access to the activities of other associations dealing with corruption in other parts of the world. A recent report by Russian think-tank Information Science for Democracy (INDEM) Foundation<sup>2</sup> inspired ACIS to seek the support of its members and of CIPE to undertake a project called "Combating Business Participation in Corruption in Mozambique." The project is jointly funded by ACIS members and by CIPE. This report is part of the project. Other parts of the project include:

- A series of roundtable discussions based on this report. These discussions will bring together interested parties from the private sector, government and civil society aimed at developing practical solutions to existing problems of corruption;
- One-on-one interviews, and closed door discussions with the private sector to discuss real responses to individual and collective problems;
- Development of a toolkit and a series of "next steps" the private sector can use in the fight against corruption;
- Contribution to national dialogue about corruption, particularly as it involves the private sector, and heightening awareness of corruption issues with government, civil society and international cooperation partners.

Questions we would like to see answered as part of the discussion process include:

- If in the past a company has had to pay commissions and resort to corruption in order to compete, how can that company change practice without hurting its bottom line?
- How can companies protect themselves from corrupt practice by employees?
- How can companies wishing to operate legally compete in a marketplace where corruption and illegal trade are commonplace?

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<sup>2</sup> INDEM Foundation, *Business and Corruption: How to Combat Business Participation in Corruption in Russia*, (2004).

The project is a point of departure for discussion rather than a final and defined solution to a problem. ACIS welcomes debate and contributions from any person or organization interested in the project. Contributions can take the form of comments, case studies, or suggestions for improvement. Contributions may be sent to:

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All correspondence will be treated as confidential.

## 2.4 ACIS

The Associação Comercial e Industrial de Sofala (ACIS – Commercial and Industrial Association of Sofala) is a private, voluntary, apolitical business association representing commercial and industrial enterprises in Sofala Province. Founded in 2000, ACIS has a membership of 35 companies employing some 12,500 workers. The association advocates for members' rights at provincial and national levels and has become a leader in the campaign for transparency and good governance in the private sector and to create a positive enabling environment for businesses of all sizes.

ACIS is a business association that is built on a platform of ethical business practice. The association has established a business code of conduct. As a condition of membership ACIS also requires that members are fully tax compliant and are regularly audited. ACIS members strongly believe that compliance with the law and with a business code of conduct is an essential element for the success of their businesses and for the development of Mozambique as a whole. Their message to the rest of the business community is that the private sector needs to put its house in order as a prerequisite to dialogue with the government on issues of corruption, illegal trade, or any other policy issue.

In order to demonstrate its commitment to transparency and quality performance ACIS has recently undertaken ISO 9001:2004 certification and is now fully certified under this international quality management standard.

ACIS members also understand their responsibility to their employees and to society as a whole. This report explores ways in which the private sector can use its voice as a motivator for change for issues affecting not just the business community but also civil society.

For further details about the association and its advocacy initiatives please visit [www.acisofala.com](http://www.acisofala.com).

## 2.5 CIPE

The Center for International Private Enterprise (CIPE) is a non-profit affiliate of the U.S. Chamber of Commerce and one of the National Endowment for Democracy's four core institutes. CIPE has supported more than 800 local initiatives in 95 developing countries, involving the private sector in policy advocacy and institutional reform, improving governance, and building understanding of market-based democratic systems. The United States Agency for International Development (USAID) also supports CIPE programs. Key themes of CIPE's work include:

- Business associations
- Private sector advocacy
- Combating corruption
- Corporate governance
- Access to information
- Property rights
- Informal sector
- Democratic governance
- Women and youth participation

CIPE partners with business associations, think tanks, and other private sector organizations in countries where there is a need for progress and an opportunity for reform. CIPE's

institutional approach to development recognizes that change will not occur overnight and long-term commitment is required for reforms to succeed.

In sub-Saharan Africa, CIPE partners with local business associations, think tanks, and other private sector organizations to advocate for reforms that create a business friendly environment, to work towards the effective implementation and enforcement of existing rules and regulations, and to increase business understanding of and compliance with those rules and regulations. CIPE's efforts are contributing to democratic decision-making that build a strong sense of ownership in the laws that govern economic activity.

### 3. TYPES OF CORRUPTION

#### 3.1 TRADITIONAL DEFINITIONS

The World Bank estimates that US\$ 1 trillion, or 3% of the world's GDP is spent on corruption every year.<sup>3</sup> The World Bank's excellent "Helping Countries Combat Corruption" report published in 1997<sup>4</sup> provides the most comprehensive description of corruption that we have found. We therefore felt it more valuable to use something so well-considered than to develop another definition. The full text of the World Bank's description is included at Annex I. It is hoped that the inclusion of this will assist with the standardization of what is understood as corruption. Although the World Bank places the public sector at the centre of its definition it also makes clear reference to ways in which the private sector can be involved in corruption.

The core of the World Bank definition is as follows:

*"Corruption is the abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to*

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<sup>3</sup> Helping Countries Combat Corruption – The Role of the World Bank, Poverty Reduction and Economic Management – The World Bank, 1997

<sup>4</sup> *ibid.*

*circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues”<sup>5</sup>.*

It goes on to discuss corruption involving the private sector:

*“Fraud and bribery can and do take place in the private sector, often with costly results. Unregulated financial systems permeated with fraud can undermine savings and deter foreign investment. They also make a country vulnerable to financial crises and macroeconomic instability. Entire banks or savings and loan institutions may be taken over by criminals for the purpose of wholesale fraud. Popular support for privatization or the deepening of financial markets can be eroded if poor regulation leads to small shareholders or savers withdrawing when confronted by insider dealings and the enrichment of managers. And a strong corporate focus on profitability may not prevent individual employees soliciting bribes from suppliers. Furthermore, when corruption is systemic in the public sector, firms that do business with government agencies can seldom escape participating in bribery.”<sup>6</sup>*

Many of the types of corruption defined in Annex I can be recognized in Mozambique, and were identified by those participating in the surveys mentioned in Section 4 below. As noted in Section 4 there is a need for improvement of the business environment, but also for an improvement in business culture and ethics. Examining ways to work towards that improvement is a key focus of this report.

### 3.2 MOZAMBIQUE-SPECIFIC DEFINITIONS

Corruption is currently a major theme in Mozambique invoked by government officials and citizens alike. The President of the Republic of Mozambique, Armando Guebuza, stated in his inaugural address to the nation (*Comunicação à Nação e ao Mundo por Ocasão da sua Investidura como Presidente da República de Moçambique*)<sup>7</sup> that bureaucracy, the spirit of “*deixa andar*” (literally “letting things go”) and corruption are the great obstacles to development.

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<sup>5</sup> *ibid.*

<sup>6</sup> *Helping Countries Combat Corruption – The Role of the World Bank, Poverty Reduction and Economic Management – The World Bank, 1997*

<sup>7</sup> Available on [www.frelimo.org.mz/candidato.html](http://www.frelimo.org.mz/candidato.html). Consulted on 10/6/05.

He further stated that the fight against corruption is one of the central aims of the new government. The recently published anti-corruption strategy is concrete proof of this.

In Mozambique, corruption is so common that it has inspired its own, colorful vocabulary.

Best known of all is the saying “*o cabrito come onde está amarrado*” a goat eats where it is tethered. This term expresses the idea that an individual seeks corrupt gains at the place where he works.

The great variety of euphemisms testifies to the prevalence of corruption in daily life. Hence:

*Molhar a mão* – to wet the hand;

*Descascar amendoins* - to shell peanuts;

*Bater na mesa* - to beat on the table;

*Falar como homem* – to talk like a man;

*Olear / lubrificar a engrenagem* – to oil the gears;

*Pagar o girinho* – to buy a small pre-paid phone card;

*Pagar refresco* – to buy a soft drink;

*Alimentar o cabrito* – to feed the goat;

*Regar o capinzal* – to water the lawn;

*Imposto de facilitação* - facilitation tax;

*Selos adicionais* - extra stamps (which refers to the need - no longer part of the law - to purchase stamps to stick on official documents);

*Pagar a taxa de andamento* – to pay facilitation fees;

*Falar alto* – to speak up;

*Fazer um connection* – to make a connection.

All these phrases are all used to express the need to bribe (*subornar*) or pay a gratuity (*gratificação*) in exchange for a service in addition to legally scheduled fees.

Taking into consideration the environment in which companies are operating, the following Mozambique-specific definitions inform the content of this report:

## **Corruption**

As per the World Bank definition cited at Section 3.1 above corruption is the abuse of public power for private gain. However this report understands that not only the public sector is engaged in corrupt practice. In Mozambique, aside from the usual definitions of grand and petty corruption, there is also a clear distinction between public-private corruption and private-private corruption.

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

## **Illegal trade**

Illegal trade includes any form of illegal operation such as the non-charging and non-payment of VAT, non-payment of workers' personal income tax (*imposto sobre rendimento de pessoas singulares*, or IRPS) withheld, social security (*segurança social*) contribution withheld, corporate income tax (*imposto sobre rendimento de pessoas colectivas*, or IRPC), withholding tax (*taxa liberatória*), the sale of counterfeit or grey products, importation of goods without payment of duties and taxes and export of goods with under-declaration of their true value, among others. Corruption is one of the main factors that promote illegal trade. Conversely illegal trade is one of the main contributors to corruption.

Both the formal and informal sectors participate in illegal trade which is very prevalent in Mozambique. There is an apparent lack of understanding of what illegal trade is, and few people know what constitutes a legal VAT invoice (see Annex IV). Anyone making a purchase of goods or services in the formal sector has the right to receive a legal VAT invoice. If a non-registered service provider is unable to provide a VAT invoice then the individual or organization purchasing the services is obliged to deduct withholding tax from

the value of the services and pay this tax to the government. If a VAT invoice cannot be provided, or withholding tax is not deducted, the transaction is illegal.

In conjunction with Associação do Forum de Investidores de Moçambique (The Mozambique Investors Forum, or AFIM), ACIS has developed an extensive position paper on illegal trade including a series of proposals for how to combat it. The paper is available to download from [www.acisofala.com](http://www.acisofala.com)

### **Informal trade**

There is often a misconception that the legal formal private sector is against the informal market. This is not the case. Many nationally manufactured products such as sugar, beer, cigarettes, soaps and soft drinks are retailed through the informal market. The informal market is an essential aspect of economic life, particularly outside urban areas.

What the legal formal private sector does object to, however, is the illegal informal market. This market trades in illegally imported, smuggled or stolen goods, and which serves as a side outlet for those operating in the illegal formal sector. For example, street vendors selling electrical goods and pirated DVDs and CDs will often be informally “employed” to walk the streets with stock inventory illegally imported by large semi-legal formal operators. This widespread trade is extremely detrimental to the legal formal sector and those who wish to operate legitimately in the informal sector.

## **4. THE PRIVATE SECTOR EXPERIENCE**

This section of the report is based on informal recorded discussions with a number of legal, formal operators throughout Mozambique. See Annex II for an outline of the questions used to structure the interviews. The interviews focused on:

- Experiences of corruption;
- Impact of corruption; and
- Ways of combating corruption.

A number of statistical surveys have already been undertaken (see Section 5 below). By contrast, the interviews we undertook focused on collecting anecdotal information to form the basis of case studies.

#### 4.1 EXPERIENCES OF CORRUPTION

Businesses interviewed divided corruption into the following broad categories:

- Fraud
- Facilitation payments & bribes to avoid fines
- Commissions
- Tax evasion
- Illegal trade (counterfeits, smuggling etc.)

These issues are dealt with briefly here and explored in greater depth in the case studies.

##### **a) Fraud**

All those interviewed were in some way affected by corrupt practice. Many of the companies interviewed had also been subjected to some form of fraud involving internal and in some cases external elements.

Internal frauds often involved syndicates and the creation of complex false trails and in some cases false transport companies and clients. In one case the fraud involved a syndicate which extended outside the borders of Mozambique. In several cases incidences of fraud and theft apparently involved the connivance of local banking staff. Very few of the cases mentioned were successfully prosecuted through the court system and companies felt that this impunity contributed to the prevalence of fraud.

Particularly where it involves the staff of other commercial companies such as banks, fraud is a clear example of the incidence of private-private corruption. In theory, private-private corruption should be easier for the private sector to control. We will discuss tools that could be used to do so below at Section 7.

## **b) Facilitation payments & bribes to avoid fines**

Companies cited Customs, the Finance Ministry and Municipal Councils as being the most likely to affect their day-to-day business in terms of requesting facilitation payments and bribes to avoid fines. Companies also found it difficult to differentiate between lack of competence and professionalism, on the one hand, and corruption, on the other. When processes were delayed or obstructed and the company challenged the person involved in the delay or obstruction about seeking facilitation payments, the response was usually one of “*falta de condições*” (lack of conditions), “*falta de meios*” (lack of means) or “*falta de conhecimento*” (lack of knowledge). The difficulty of differentiating between corruption and lack of competence often created loopholes to protect those seeking payments from actually being caught by those who challenged them.

Companies felt that simplification and standardization across the country of Government systems and procedures and their implementation, as well as dissemination of information about those systems and procedures, would help reduce opportunities for extortion.

## **c) Commissions, tax evasion and illegal trade**

Illegal trade and unfair practices such as the payment of commissions to those responsible for both government and private procurement were major issues cited by companies. Once again, those interviewed cited lack of accountability as a major reason why corruption and illegal trade continues to flourish.

We asked people to provide their personal experiences with corruption. Those interviewed cited examples such as having to pay commissions to secure personal bank loans and mortgages and to purchase property through estate agents. They also reported being subjected to requests for bribes from the police, transit police and municipal council. Some of those interviewed also referred to incidences and experiences of nepotism and payment of bribes to secure employment in private companies.

Once again, private-private corruption was cited as a problem for both individuals and companies.

#### **d) Summary**

Companies felt that in most cases corruption was able to take place because of:

- Ignorance and lack of information;
- Fear of reprisals; and
- Lack of effective enforcement of existing legislation.

The incidence of private-private corruption was relatively high. In theory, this area is the easiest for the private sector to respond to since it falls within the direct control of company directors and managers. The general view of those interviewed was that although corruption within the private sector is a problem, corruption in the public sector is a greater problem and degrades the business environment. Still, curbing private-private corruption may provide some motivational “quick-wins”. Making use of some of the tools described in Section 7 below the private sector can begin tackling corruption within companies as a precursor to tackling public-private corruption.

## 4.2 IMPACT OF CORRUPTION

Corruption has a major direct and indirect impact on companies. Directly it affects those companies that pay bribes and commissions. Indirectly it affects all business since corruption raises costs generally and creates an atmosphere of illegality which permits illegal trade and fraud to flourish.

Some companies admitted to factoring in the costs of corruption, particularly in the form of commission payments, when calculating their price of doing business. Interestingly commission payments to procurement representatives from private companies are also prevalent.

Most companies cited corruption and illegal trade as the main factors hampering their development. A number of those interviewed admitted that they were concerned by the impact that corruption or perceived corruption could have on the reputation of their companies. They also believed that there is a negative perception of Mozambique as a destination for investment, especially for SMEs, and that this results in part from the perceived prevalence of corruption and illegal trade. Many also averred that they had or would advise prospective investors of the risks corruption creates for investors in Mozambique.

#### 4.3 WAYS OF COMBATING CORRUPTION

Some companies have codes of business principles and codes of conduct which they use to motivate non-corrupt behavior within their organizations. Companies also combat illegal trade through information-gathering systems that record information being passed on to government authorities.

Companies use association membership and collective lobbying to seek improvements in the business environment. Associations were also seen as vehicles for mutual protection. Companies interviewed were eager to learn about other methods of combating corruption but many felt that it would be difficult to change their business practice without a prospect of improvement to their bottom-line.

A number of issues prevented the companies interviewed from effectively combating corruption. These issues included lack of information about legislation and regulatory requirements, lack of incentives to change, lack of resources to effectively manage and audit the company, lack of legal accountability including difficulties in firing those found to be involved in corrupt practice, and inability to compete against companies gaining advantage through corrupt practice. These are reflected in the case studies set forth in the section that follows.

#### 4.4 CASE STUDIES

The following case studies are based on the experiences of a number of companies operating in Mozambique. Details of names and products have been excluded to prevent reprisals or other repercussions. ACIS would like to thank the companies that contributed to these case studies. These cases will contribute to the anti-corruption toolkit.

##### **Company A**

Company A supplies locally manufactured goods to the government, the private sector and to individual clients. The company has a strong anti-corruption policy and does not pay commissions. This policy is known and understood by staff throughout the company. The company is regularly approached by government officials for commission payments. In some cases, refusal results in loss of sales. However, the company reports that, increasingly, its reputation as a company that charges the same price for everyone and does not pay commissions has resulted in government departments specifically purchasing from it.

Recently a government employee approached the company's sales director and requested a commission. The sales director noted his details and then contacted the employee's hierarchical superior and informed him. While the company did not receive any feedback as to what happened to the employee, they did receive an order for their product from the government department concerned.

Company A also reports receiving requests for commissions from the procurement officers of other private sector companies. Once again the company refuses to pay, but so far the company has been reluctant to report these approaches to the relevant company directors. The company also receives requests from private individuals to pay without invoices and without payment of VAT. Once again the company refuses these requests. However Company A reports that there is a general lack of understanding of the VAT system among individual consumers, who generally do not expect to have to pay VAT. They see VAT as a 17% discount from which they should benefit. According to the company, many of these consumers say "why do we have to pay it here when we don't have to pay it anywhere else?"

Company A complains that other companies are not so scrupulous in the payment of commissions. The company has caught employees preferentially purchasing from certain shops as a result of receiving commissions from those outlets. The company now has a list of preferred suppliers. The director has contacted the directors of each of the suppliers and advised them that if they pay commissions to Company A's employees, the company will no longer purchase from them. However, given the specialized nature of certain items Company A has no other choice but to purchase from these suppliers. And considering the lack of variety of suppliers it has not always been possible to prevent employees receiving commissions for purchasing from these suppliers.

Company A has signed a code of business principles which is displayed in the company's main office. The director says that if anyone asks him for a commission he will point to the code and ask them to read it. The director admits that stopping employees from taking commissions is a constant battle, and says that employees have told him that the company is seen as "strange" for refusing to be involved in corruption. However he feels that his decision to keep the company out of any form of illegality has proven beneficial in the long term. He says, "we may have lost some sales along the way. I know of government contracts where someone has bought from us at our standard price and then re-sold to the government for a higher price and charged commission. But I also have a clear conscience, and now we are starting to see that some government departments and companies preferentially buy from us because they know exactly what they are getting and that the price they are charged doesn't include 'hidden extras.' We also find that we are getting more and more respect within the business community and in government circles, which can only benefit our reputation in the long run." The company is focusing on building its brand based on this reputation.

### **Company B**

Company B supplies a high-value, low-volume product to the government, the private sector and private individuals. The company is regularly approached for commissions by both public and private sector representatives. The company's competitors pay commissions. In fact, the percentage value of commissions is openly discussed within the sector in which Company B operates. The company reports that all companies in the sector include the

value of commissions in the sales price of the product. As a standard, sales negotiations include negotiations of percentage commission.

Company B notes that the value paid in commissions is factored into the company's accounts, and is a specific line item. The director reports that this is normal in the sector, and that while the line item name may differ from company to company, the fact that it is budgeted and accounted for is standard practice.

Company B would very much like to stop paying commissions. The director feels that it is immoral, it makes him feel uncomfortable and he feels that it makes it difficult for him to require his staff to avoid corruption when they know that the company makes these payments. Even though the payments are considered "standard" and are part of the company's accounting system, the director strongly feels that it is wrong to pay commissions. He says "the main person suffering is the person paying the bill. I don't reduce my price because of commissions. I include the likely commission in the price I quote the client. If that is the government or a company, then they end up paying a higher price so that I can pay their employee what he asks for."

The director of Company B knows that if he stops paying commissions he will not win tenders or secure more sales. In fact he is likely to be victimized for standing up against the practice. Even if his prices are lower those responsible for procurement will find a reason not to buy from him so that they can continue receiving their commissions. He goes on to say that "some of the fault lies with the companies buying our product, the people they employ in procurement are so low-paid and poorly supervised that it's hardly surprising that they take commissions. Mind you that's not always the case. I have had cases where senior managers or officials have asked for commissions too."

Company B would like to find a way to overcome the payment of commissions. They would like to compete on a level playing field with other companies in their sector. However they are afraid to take the first step and stop payments because the company will undoubtedly suffer a loss of sales.

## **Company C**

Company C has a number of wholesale and retail outlets. The company is keen to differentiate itself from its competitors not only on price but also on transparency. The company works hard to ensure that it is fully legally compliant. This is often difficult since it must comply with many bureaucratic processes. The difficulty is increased by the fact that the company's staff receives regular and ongoing requests for commission payments and for non-payment of taxes, especially VAT.

Company C watches its competitors very closely. It operates in a highly competitive sector. The company reports that through payment of commissions, non-payment of duties and other illegal practices competitor companies are gradually squeezing Company C out of its market. The director says "we have already withdrawn from dealing in some products. It's just not possible to compete." While competitors are able to transact goods through illegal practice he is audited by the Ministry of Finance at least once per year. While he does not receive fines because his business operates within the law, audits take several days and cause disruption to his operations. Company C's competitors are sometimes audited too and sometimes receive fines. However according to the director the fines are much lower than the competitors' illegally-gained profits. It is therefore beneficial for the competitor companies to either pay the fine, or pay a bribe to avoid the fine. In either case the cost is less than the profit made from illegal operation. He says "under-invoicing, non-payment of duties and the charging of VAT which is then not passed along to the government are all ways that our competitors are able to sell products cheaper than we can."

Company C is in a difficult situation. The company has to ensure that none of its staff are engaged in corrupt or illegal practices. Competitors watch them as closely as they watch the competitors and the opportunity to catch them out and damage their reputation would not be missed. The director concedes, "We pay commissions for government tenders. That is standard practice. Sometimes we pay commissions to company employees too, unless the company asks us not to. But I don't see in this environment that commissions can be classed as illegal. My biggest problem is the non-payment of tax and duties by my competitors."

Company C is keen to prove that it operates legally. It would like to get credit for the fact that it pays its taxes. The company would give up commission payments if it thought that its competitors were doing the same: “There’s nothing I’d like better than to compete on a level playing field,” says the director. “We offer better quality genuine products, our prices are fair and we provide decent quality employment. Unfortunately we are not competing against people doing the same.” Company C would like to explore ways to differentiate itself and to ensure that being legal does not cost the company its market share.

### **Company D**

Company D is a local manufacturer and distributor. The company is affected by counterfeits and illegal trade. Recently the company had a case where a counterfeit product was produced in China, imported by Chinese traders and distributed by a Nigerian distributor. Company D reported the problem to the Ministry of Industry and Commerce, the ministry responsible for coordinating efforts against counterfeit and illegal goods. It took over four months for the counterfeit product to be impounded.

During the months in which the counterfeit product was available Company D estimates that total sales of its own branded product declined to 40% of its normal monthly sales rates. This equates to a loss of turnover of some US\$ 1.4 million. Of that value Company D estimates that the government lost VAT (17% = US\$ 238,000), duties (25% = US\$ 350,000) and corporate tax. Company D also paid legal fees of more than US\$60,000 to fight the case and operational follow-up costs which amounted to US\$25,000. According to Company D the inordinate complexity of the process of reporting, seizing the contraband and then following up has led senior management to spend more than 30% of their time pursuing the case and compromising its focus on the day-to-day operations.

The company has recently made a major investment in a new manufacturing facility in the south of the country. However the north of the country has recently been flooded by an influx of the company’s own product brought in from another market. The imported product is retailing at a selling price that the local manufacturing plant can not compete with. Sales of the locally made product have almost ceased. Even if Company D were to purchase

the product at inter-company prices from the other market, it would not be able to compete with the imports. Company D holds the case up as a clear instance of under-invoicing. On the basis of this and other fraudulent activities the company has decided to suspend plans for further expansion of manufacturing in Mozambique at this stage.

Company D is seeking solutions to the issues of counterfeits and illegal trade and advocating simplification of the existing processes used to seize illegal goods and prosecute their owners. Companies wishing to fight the problem incur huge legal fees. Other companies or their representatives in similar situations have received threats. Company D's director says, "Counterfeits and illegal trade can lead to disinvestment or a slowdown on planned investment. The loss of revenue resulting from illegal trade is significant."

### **Summary**

These case studies have a number of common denominators. The main one is the difficulty of overcoming collective action problems. Companies say that they only pay commissions because their competitors do, and that they would like to stop. In the right industry this collective action problem could potentially be overcome by using an "islands of integrity" approach (see 7.5 below).

Companies facing problems with illegal trade could consider some of the ways provided by the anti-corruption law (see Annex III (a)) to prosecute crime by deputation under the Central Office for the Combat of Corruption. Alternatively they could explore other avenues within the existing legal framework to ensure the delegation of enforcement powers so that apprehension of illegal goods and prosecution fall more directly within the scope of their initiative.

The issue of payment of bribes, facilitation fees and commissions is one which involves both public-private and private-private corruption. Companies could begin from the employee-side by incorporating well-structured employee codes of ethics within their companies' internal regulations. By defining unethical behavior and calibrating the applicable sanctions,

an employer can use the existing labor legislation to permit him confidently to apply his ethics code as a basis for labor discipline.

Fraud, payment of commissions and corruption resulting from ignorance of rules and procedures can all be overcome by sharing information. Either individually or through associations, companies can share information about their experience, and develop pools of knowledge. As part of their moral leadership role company directors should inform their peers if employees request commissions. Companies can share knowledge about how procedures and systems operate. Information about how frauds were undertaken and, where legally permissible, who was involved, can also be shared to prevent others from having the same experience.

A further discussion of the type of tools that companies could consider using to protect themselves is included at Section 7 below.

## 5. ANALYSIS OF THE PRIVATE SECTOR AND CORRUPTION IN MOZAMBIQUE

Much has been said and written about corruption in Mozambique and its impact on the private sector. This section of the report looks at a number of key documents and studies and assesses their findings and the impact of these findings on how business can combat corruption.

### 5.1 GOVERNMENT ANTI-CORRUPTION STRATEGY<sup>8</sup>

The government's anti-corruption strategy was approved by the Council of Ministers on 6<sup>th</sup> September 2005 (see Annex V below). It is a concise, direct and plain-spoken document. It contains a comprehensive definition of the various facets of corruption, which coincides with that chosen as the basis for this report.

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<sup>8</sup> Government of Mozambique, *Linhas gerais de estratégia anti-corrupção 2005 – 2009*, (approved 6<sup>th</sup> September 2005)

The strategy foresees a role for the private sector in fighting corruption. It also envisages a detailed action plan which will be developed to ensure that the strategy is fulfilled. The strategy promises profound change, and defines a number of broad ways in which such change will be brought about. These include:

- Simplification of administrative processes
- Reduction of discretionary power
- Development of a results-oriented public service culture
- Strengthening of the public audit mechanism
- Establishment of participative mechanisms to include the private sector and civil society in governance

The strategy identifies leadership as being crucial in the fight against corruption. It also identifies comprehensive coverage of the public service, zero tolerance, prevention, sanction and public involvement as key aspects. It identifies the need for concrete actions which impact the lives of the citizen as well as the need for civil society to participate in the governance process. Indeed, the strategy is particularly clear on the need for the private and public sectors to work together along with civil society to ensure an integrated and coordinated response.

The objectives, results and indicators of the strategy are broad and it is unknown yet clear how they will be achieved. However, it is likely that this section of the strategy will be further elaborated in the action plan.

The strategy is a welcome declaration of commitment from the government. This report will be submitted to the debate that the government's strategy promotes. It is anticipated that the proposals and suggestions herein will prove useful in determining how the private sector's own fight against corruption can link effectively with and support the government's strategy.

## 5.2 NATIONAL STUDY ON GOVERNANCE AND CORRUPTION<sup>9</sup>

This study was undertaken for and on behalf of the government and consists of three parallel studies of family, business and government officials, involving 2,447 family units, 486 companies and 992 government officials throughout the country.

There has been some criticism of the methodology used in the survey since government representatives often accompanied interviewers to their interviews. Nonetheless, it remains the most comprehensive study to date of the public's attitude towards the government and provides an interesting indication of the problems of corruption that people face throughout the country. Although the report only deals with public-private corruption its outcomes are important for an understanding of the overall environment in Mozambique.

Those interviewed noted an increase in corruption since 1999, a conclusion that agrees with World Bank findings. 37% of those interviewed felt that corruption had increased since last year and 70% considered it a "very serious problem." Each of the sectors interviewed identified unemployment and cost of living as having the greatest impact on corruption. The private sector indicated crime as the number one problem affecting the country. Crime was seen as much less of an issue to both families and government officials.

According to government officials, nepotism and business ties were major factors in decision-making. They also believed business ties had a greater influence in the south – including the capital - while family and colleagues held more influence in the centre and north. This indicates an unhealthy relationship between the public and private sectors particularly at the central level, as indicated by prevalence in the south of the country where the capital is located. High levels of centralization make this tendency of greater concern.

Procurement is one of the areas of highest risk for public-private corruption. The demand for, and payment of commissions is rife (see Annex II (b) below for further details). Only 62% of government officials questioned in the survey indicated that procurement decisions were regularly audited. Government officials openly stated that procurement rules were

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<sup>9</sup> Austral Consultoria e Projectos Lda., *Pesquisa Nacional sobre Governação e Corrupção*, (2005).

regularly disobeyed. 12% of those questioned averred that in over 50% of procurements the rules were not followed. Only 37% said they had never seen any irregularity in the procurement process.

The report identifies the police (both regular and traffic), customs, municipal governments and the electricity company (*Electricidade de Moçambique, E.P.*, or “EDM”), as the least honest organizations. The impact that corruption in these organizations, particularly customs, municipalities and EDM, has on the private sector is great. Families interviewed also indicated the health and education sectors as being particularly corrupt. People refrained from seeking services offered by these institutions simply because they could not afford to make the unofficial payments. These are issues the private sector may wish to consider when supporting civil society advocacy for the benefit of its workforce.

The report highlights the weaknesses of the justice system. Both families and businesses agree that the system is largely answerable to the will of the executive, is manipulated by economic interests, and does not merit trust. This is a concern of businesses seeking to operate legally and formally since there is little or no legal recourse against those who operate outside the law. The manipulation of justice also includes the threat of prosecution on trumped up charges with the consequent cost and time implications.

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

With regard to the family sector, families living in urban areas were more likely to be subjected to corruption – 60% as opposed to only 40% in rural areas. Bribes were most likely requested and paid for licensing and taxes.

The family sector and business agreed that political leaders followed by multinationals and drug dealers had the greatest influence on the functioning of the State.

90% of the families interviewed said they did not know how to denounce or complain against a corrupt act. Only 14% of those interviewed thought a complaint would be effective. 47% of families and 50% of business stated that the lack of protection from reprisals would influence their decision to report corruption.

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

The survey raises many questions and provides considerable material for debate and consideration. Areas such as availability of information and ways of providing protection for whistleblowers are areas where private sector and civil society can take an active and significant role.

### 5.3 BUSINESS ENVIRONMENT ASSESSMENT

The 2004 Business Environment Assessment (BEA)<sup>10</sup> undertaken by the Confederation of Economic Associations (CTA) was the largest of its kind in Mozambique. The survey interviewed 150 companies in 7 of Mozambique’s 10 provinces. The survey used one-on-one confidential interviews to examine a number of areas traditionally considered problematic for business. These areas were:

- Access to land;
- Registration of companies;
- Licensing of activities;
- Payment of debt by the government;
- Labor;

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<sup>10</sup> CTA, *Business Environment Assessment* (2004).

- Dispute resolution;
- Construction and works licensing;
- Immigration;
- Environmental licensing;
- Import and export processes;
- Taxes: Personal income, company and VAT;
- Companies in difficulties;
- Access to credit; and
- General development of the business environment over the last five years.

The report states that “While the dominant opinion was that in the last five years, with the exception of some areas which have become more problematic, significant improvements have taken place in terms of expectations created, major disillusionment was prevalent. It is evident therefore that Mozambique, in terms of its business environment, remains a long way from its international competitors, including its most direct competitors in the region.”

The report goes on to note that:

“Another interesting aspect to note was the reluctance of those interviewed to admit to making illicit payments. While the majority admitted to making such payments in order to obtain advantage or obtain concrete information, despite the anonymity of the survey and the guarantees of confidentiality given they systematically requested ‘don’t write that down, I didn’t say anything.’ Most admitted fear of reprisals.”

The report concludes that “it is not only that the regulations are so complex and require absurd processes and collections of documents and incomprehensible levels of decision-making, but also that the process of moving the documents from one place to another is a further factor which causes extraordinary increases in costs and time periods. This results in most cases from the lack of professional training of those involved as well as from a complete lack of understanding of what professional dignity and public service are. A revolution in understanding and attitude through systematic and aggressive training campaigns is vital.”

The BEA not only focused on problems; it also asked those interviewed to provide ideas for solutions to the problems they were encountering. These solutions can be summarized as follows:

- Application of existing legislation;
- Dissemination of clear and nationally applicable requirements regarding existing administrative processes (including complaint and appeal procedures);
- Simplification of the administrative process;
- Professionalization of the public service;
- Removal of opportunities for discretionary decision-making;
- Radical overhaul of the justice system; and
- Provision of independent alternatives – such as alternative dispute resolution.

The solutions business proposed through the BEA will inform proposals for dealing with public-private corruption in this report and will be addressed further in the frameworks in Section 9.

#### 5.4 INHAMBANE INVESTMENT CLIMATE SURVEY<sup>11</sup>

In this survey 100 companies were surveyed in Inhambane province located in southern Mozambique. The survey identifies corruption as the biggest single obstacle to economic development in the province. Other obstacles include inadequate business environment, complex and non-transparent bureaucratic procedures and crime. 63.8% of those interviewed reported being subjected to some form of corruption when engaging with the public sector. The police and finance departments (including customs) were considered to be particularly corrupt as were municipal authorities.

The survey indicates that companies in Inhambane province spend an average of 9.5% of their gross revenue on corruption, with Mozambican investors spending significantly more than their foreign counterparts. The majority of bribes paid (76.8%) were under 10,000,000 MT<sup>12</sup> and were therefore considered in the category of petty corruption. However as we noted above (Section 2.2), in Mozambique an average annual GDP is about US\$ 300. Corruption at this level cannot therefore be considered petty either in terms of its relative value or in terms of the impact it has on SMEs.

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<sup>11</sup> Inhambane Investment Climate Survey – BTU, GTZ, March 2004

<sup>12</sup> At the time of writing 10 million meticaís was equal to approximately US\$ 405.

In light of the premise of this report, the most interesting statistic in the Inhambane survey reveals that 64% of the companies interviewed in Inhambane indicated that they were involved in some form of tax evasion.

The survey also reveals that the practice of using heavy fines to punish transgressors, particularly with respect to tax evasion, results in an increase in corruption, since it is cheaper to pay a bribe than a fine. This concept is borne out in the interviews undertaken for the current report – see Section 4 above. The survey concludes that there is an urgent need for action from both the public and private sectors, and urges the private sector to improve its understanding of and compliance with the existing legal framework.

While the tax system is complex and onerous and the rates are high when compared with the value given in return, ACIS believes that the private sector would be best served at this stage by the consistent and uniform enforcement of existing tax legislation. Only by so doing can the playing field be leveled and an honest dialogue begun on the impact of the tax system on business.

## 5.5 ÉTICA STUDY ON CORRUPTION IN MOZAMBIQUE<sup>13</sup>

The Ética Study on Corruption was the first official study on corruption in Mozambique. The study was based on interviews with 1,500 individuals in the provinces of Maputo, Sofala and Nampula.

One in 2.2 persons had been a victim of corruption within the six months preceding the survey, and the values involved were among the highest in the world in relation to per capita GDP. Both grand and petty corruption were recorded, with petty corruption being the most prevalent.

Those surveyed felt that the police, municipal authorities and courts were the least trustworthy institutions and corruption was noted as touching most of the fundamental areas

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<sup>13</sup> Ética Moçambique, *Estudo Sobre Corrupção em Moçambique* (2001).

of a person's life, such as health, education, employment and general safety. The study was particularly interesting in that it noted people having less trust in the law, order and justice system than in other government institutions, a factor which is an indicator of instability.

The study notes a major lack of trust and proposes a number of solutions. Many of the solutions proposed have a direct bearing on the private sector as well as on civil society.

They include:

- Clear prohibition and punishment of corrupt acts;
- Victim / whistleblower protection;
- Legal assistance for victims / whistleblowers;
- Improving investigative journalism;
- Improving dissemination of laws to promote layman understanding of laws;
- Definition and dissemination of the type of behavior expected from public officials;
- Provision of information about recourse and the justice system; and
- Systematic prosecution of corruption cases and enforcement of accountability.

The report is clear in its proposal that efforts to end corruption must focus on the individual and the drive for change must come from civil society - including the private sector. Sadly, in the four years since this study was published there has been little or no evidence of progress with respect to the solutions proposed by *Ética*. Nevertheless, these proposals will inform proposals for dealing with both public-private and private-private corruption in this report.

### **Summary**

Studies and surveys of the public and private sectors and of civil society over the last five years indicate that corruption is a major problem in Mozambique and has a direct impact on national stability and economic development. A number of fundamental issues need to be addressed when developing tools for dealing with the problem.

These include:

- Application of existing legislation;
- Dissemination of clear information;
- Simplification of the administrative process;
- Professionalization of the public service;

- Removal of opportunities for discretionary decision-making;
- Radical overhaul of the justice system;
- Provision of independent alternatives;
- Building of trust;
- A demonstrable commitment to legality;
- Enforcement and accountability; and
- Protection and support for victims.

These issues and their integration into an overall private sector program for combating business participation in corruption will be further elaborated in Section 9 below.

All those involved in the fight against corruption must address these issues. The government has committed to the fight through its anti-corruption strategy and ACIS is presenting this report as its initial contribution to the debate. As Jennifer Windsor, Executive Director of Freedom House states, “A well-informed citizenry and a judiciary free of executive manipulation are indispensable checks on unlawful behavior.” The private sector has a major role to play particularly in information dissemination, trust-building, providing independent alternatives, and in taking the lead in providing a demonstrable commitment to legality.

The failure of all parties to engage in this fight will result in ongoing instability and a lack of economic development. This report seeks ways in which the private sector, especially business, can take an energetic and innovative lead in combating corruption, in Mozambique.

## 6. INTERNATIONAL CONVENTIONS

Over the last eight years bribery and corruption have become increasingly important issues to address, discuss and legislate against globally. Serious efforts to combat corruption are still in their infancy in many countries, and reliable information on the nature and extent of corruption is difficult to obtain. This is compounded by the broad nature of the problem

and the lack of consensus about legal or criminological definitions that could form the basis for comparative research.

This section will consider the work of some of the main organizations that have contributed to the development of an extensive body of conventions. Membership of such conventions can be useful to countries when developing and structuring an anti-corruption framework. Knowledge of the conventions a country has ratified can be used by the private sector to remind the country of the need to comply and of its legal obligations in respect of the convention.

## 6.1 OECD

In 1997 the OECD presented its landmark “Combating Bribery of Foreign Public Officials in International Business Transactions.” This convention captured international attention. It was the first global tool developed for fighting corruption in cross-border business deals.

Since its inception the OECD Anti-Bribery Convention, as it is known, has been ratified by all OECD countries and a number of others. Over 30 countries have enacted legislation based on the convention, meaning that in those countries bribery of a foreign official is a crime. Should a multi-national or an individual from one of those countries bribe an official in a third-party state, this offence is punishable by law in his home country.

However this is not the only reason for the success of the OECD Convention. Regular and systematic monitoring through a rigorous peer-review process ensures effective enforcement. Reports on the monitoring and review process are made publicly available. High standards and clear recommendations have assisted countries in amending legislation and have resulted in the leveling of the playing field for companies operating trans-nationally in the signatory countries.

Further details on the Convention can be found at [www.oecd.org/bribery](http://www.oecd.org/bribery).

If one is considering a stick and carrot approach to prevent business participation in corruption, the OECD Convention as it applies to multi-nationals and to individual passport

holders from signatory countries, is a powerful stick for those who pay bribes in Mozambique. However the OECD itself estimates that only one in five senior managers of international companies stationed in emerging markets is aware of the convention. Business associations could encourage enforcement by reminding foreign nationals working for member companies that corrupt practice undertaken in Mozambique puts them at legal risk in their home countries.

The following countries are among the OECD Convention signatories:

Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the UK, and the USA. Five non-members are also signatories - Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic.

## 6.2 UNITED NATIONS

The United Nations operates “The Global Program against Corruption” (GPAC) which was jointly developed by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the United Nations Secretariat and the United Nations Interregional Crime and Justice Research Institute.

GPAC has developed the UN Anti-Corruption Toolkit,<sup>14</sup> the 3rd edition of which was published in 2004. According to the toolkit’s introduction, “Some jurisdictions have developed successful anticorruption measures. The Anti-Corruption Toolkit is based on those and on lessons learned from the technical cooperation activities facilitated by the Global Program against Corruption. The toolkit provides, based on the recently adopted UN Convention against Corruption, an inventory of measures for assessing the nature and

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<sup>14</sup> United Nations Office on Drugs and Crime, *The Global Programme Against Corruption – UN Anti-Corruption Toolkit*, (3d ed. September 2004).

extent of corruption, for deterring, preventing and combating corruption, and for integrating the information and experience gained into successful national anti-corruption strategies.”

The toolkit contains a wide array of information and experience to support in areas as diverse as:

- institution building;
- disclosure of assets;
- integrity pacts;
- public awareness raising and empowerment; and
- methods of enforcement.

We would recommend a thorough reading of this toolkit to anyone wishing to engage in anti-corruption work.

The UN also has an Anti-Corruption Convention. The UN Convention was finalized on 30 September 2003 and adopted by the General Assembly in its resolution 58/4 of 31 October 2003. Mozambique has signed but not yet ratified the UN Convention. Full details of this convention and other useful UN anti-corruption documentation are available at [www.ODCCP.org/corruption](http://www.ODCCP.org/corruption).

### 6.3 AFRICAN UNION

On 11 July 2003 the African Union Heads of State adopted the Convention on Preventing and Combating Corruption. The African Union (AU) Convention was adopted in Maputo. Of the 53 AU member companies, to date 35 have signed the Convention and 9 have ratified it. The convention requires a minimum of 15 ratifications for it to come into force. Mozambique has signed but not yet ratified the AU Convention.

The objective of the AU Convention is to promote and strengthen measures to prevent and combat corruption in Africa. It includes the facilitation of co-operation in anti-corruption measures and harmonization of anti-corruption policies and legislation among the signatories. The convention covers both public and private sector corruption.

The convention includes a wide range of offences such as bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property. Measures used to deal with corruption are prevention, criminalization, regional cooperation and mutual legal assistance, and recovery of assets.

This is clearly legislation that should inform discussion and development of anti-corruption strategies and legislation throughout Africa. The success of the convention will strongly depend on each member state to develop the political will to ratify and implement the necessary changes and the willingness to open up for peer review.

#### 6.4 SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

The Southern African Development Community (SADC) anti-corruption protocol was adopted by heads of state and government in August 2001 at the Malawi Summit. The protocol covers a range of preventive measures including codes of conduct, access to information, and protection for whistleblowers. It also reflects the OECD Convention in that it requires governments to criminalize the bribery of foreign public servants, and makes corruption an extraditable offence.

Articles 2 and 11 of the Protocol set out four main objectives:

- a. To promote and strengthen the development, by each of the State Parties, of tools needed to prevent, detect, punish and eradicate corruption in the public and private sector.
- b. To promote, facilitate and regulate co-operation among the State Parties to ensure measures and actions to prevent, detect, punish and eradicate corruption in the public and private sector are effective.
- c. To foster the development and harmonization of policies and domestic legislation of the State Parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

- d. To set standards to measure the performance of Member States in combating corruption on a periodic basis.

Compliance will be measured by a committee set up by the Southern African Forum Against Corruption (SAFAC) which was established in June 2000.

The objectives of the AU Convention are almost identical to the objectives of the SADC Protocol. Once again this document provides a useful tool for the states that wish to ratify and implement it. Mozambique has ratified the SADC Protocol<sup>15</sup>.

## 6.5 TRANSPARENCY INTERNATIONAL

Transparency International (TI) developed a number of principle pacts and guidance documents, the most relevant of which in the current context is the “Business Principles for Countering Bribery.” Others include the TI Integrity Pact and Wolfsberg Anti-money-laundering principles.

TI’s business principles were developed alongside the OECD Convention. In the introduction to its guidance document on the business principles TI states that “Too few companies have effective systems and recognizing that companies need tools to help them break the cycle of corruption, the Business Principles provide for the first time a comprehensive approach to countering bribery by companies. The approach ranges from internal policies and practices to how to deal with business partners and the supply chain. The Business Principles have been tested widely through field-tests and workshops and have been endorsed or adopted by leading multinationals.”

TI’s business principles are therefore designed as a practical tool that can be used by companies to respond to the requirements made by the OECD, AU and SADC conventions and protocols. They are supported by the International Business Leaders Forum (IBLF) among other organizations and are seen as a key method of promoting responsible business practice.

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<sup>15</sup> Resolution 33/2004 of 9 June.

## 6.6 SUMMARY

We will take the various international conventions into consideration as we look at ways in which business in Mozambique can move forward. What is clear from these conventions and protocols is that quality tools exist to enable and encourage governments to develop anti-corruption policies, strategies and legislation. A strong anti-corruption framework is essential to provide structure for the private sector's and civil society's fight against corruption. Without adherence to these conventions and protocols the work of the private sector will have less impact. We therefore call on the Government to move forward with ratification of the AU Convention and implementation of the SADC Protocol.

## 7. INTERNATIONAL INITIATIVES

The private sector is faced with issues of corruption throughout the world, both in the form of private-private and private-public corruption. In all its work ACIS is a strong proponent of not repeating work that has already been done. Rather, we propose to learn from others' experiences. Of course, it is always necessary to adapt learning to the context in which we operate. This section of the report focuses on initiatives that we have found interesting and innovative and which we think would likely be applicable to the Mozambican context without major developmental cost.

In Section 5 above we noted that there were a number of fundamental aspects that needed to be taken into consideration when looking at tools to assist business in combating corruption. The initiatives that we look at in this section respond to those aspects.

### 7.1 TRANSPARENCY INTERNATIONAL-SUPPORTED INITIATIVES

Transparency International (TI) has supported a wide variety of innovative and interesting initiatives to combat corruption throughout the world. Not all of these are private sector specific. However many are informative and applicable in any context. The sample that we

have chosen below are taken from the TI Corruption Fighters Toolkit produced in 2002 and is available for download at [www.transparency.org](http://www.transparency.org).

The tools can be divided into three basic categories: information, training and enforcement. Each of the categories is linked since demanding enforcement is dependent on having knowledge of what needs to be enforced.

### **Information**

In Brazil, TI used local radio as a powerful tool to communicate information about corruption. The campaign was based on clear, simple radio spots including memorable skits and rhymes. These were made widely available on CD to radio stations throughout the country.

In South Korea TI set up a “Clean Korea” campaign which focused on high profile events on corruption and on getting information out to the public. TI in Nepal and Niger used television as a medium for communication, with simple sketches showing corrupt behavior, and targeting specific areas (health, education and customs) that were found to affect everyone.

TI in Bangladesh used roving theatre groups to disseminate information while TI in Thailand used radio phone-in shows to respond to people’s requests for information on corruption.

In other countries such as Morocco and Colombia, TI has established observatories to give oversight and information on anti-corruption issues.

In response to specific information needs TI in Bulgaria developed a “Guide to Municipal Administration” which was made available free of charge to all households to inform them of their rights, while in Kenya the focus was on gathering information and oversight. Here TI established an Urban Bribery Index and then provided rankings of which bodies, including national and municipal government and State-owned companies, were most and least corrupt.

## **Training**

In Slovakia TI developed a series of training tools which formed the basis for workshops to train participants from civil society and the media about corruption and its impact. The role plays developed as part of the training were then transformed into short TV programs and theatre pieces for schools. The outcome of the discussions was developed into a series of lectures for universities.

In Kazakhstan TI developed a series of university lectures on corruption. These formed the basis for a short course on “The Basics for Preventing Corruption” delivered to all economics and law students. The lectures featured guest speakers and participating students received a certificate for participation. Research papers were also invited.

In Colombia TI developed a comprehensive ethics training program for Small and Medium Enterprises (SMEs) which focused on using ethical approaches to business management tools and showing how SMEs could increase competitiveness through transparent operation.

## **Monitoring & education**

Monitoring and education tie in closely with aspects of information and training. They are essential when advocating for enforcement of existing legislation. In Ecuador TI developed a procurement website which tracked all public procurement processes. In Paraguay TI held a workshop which focused on “mapping” public procurement processes and thereby giving those using and monitoring the public procurement system the tools and knowledge they needed to do so.

In Lebanon TI identified construction licensing as being one of the most corrupt areas. They developed a comprehensive Construction Permit Manual to provide information to those wanting a license and to ensure demand driven enforcement.

In Romania and the former Yugoslavia TI promoted enforcement through access to information. As in Lebanon they found that people equipped with information are able to

demand enforcement. They therefore developed a “Pocket Guide for Citizens” which dealt with how every day processes should run in accordance with the law.

In Armenia TI identified Customs as being a key problem area and developed a booklet on standard Customs rules and procedures to help those using the Customs service demand enforcement.

In Poland TI assisted with the setting up of a Citizens Legal Help Program, which gave ordinary people access to information and assistance in ensuring that legislation was correctly enforced.

## 7.2 TRANSPARENCY AUDITS

Another tool sometimes used by organizations, or by their customers or sponsors is a transparency audit. Transparency audits describe a number of types of auditing and certification and may include financial, management, and systems audits. In the case of companies, transparency audits can be useful tools not only to demonstrate publicly that the company is operating transparently but also as training processes to assist the company in developing appropriate internal systems.

There are a number of types of audits companies can use. These include the ISO group of standards, industry-specific audits, financial audits and audits focusing specifically on transparency. Increasingly companies wishing to export find that their customers want them to have some form of internationally recognized audit certification, such as ISO. This demonstrates that the exporter has complied with a certain standard. Since the certification is international the customer can also safely assume that he will receive the same standard of quality service from a company with ISO 9000 certification in Mozambique as from a company certified to the same standard in his home country.

A transparency audit and subsequent certification is likely to have real benefits for exporters. It may not have an immediate direct impact for companies operating in the local market, since customers may not demand or understand certification. However in many countries

companies signing codes of business principles are increasingly requiring that their suppliers prove they are also compliant with these codes. One of the most effective ways to prove compliance is through a certified audit. In some countries governments and international agencies also purchase preferentially from companies that can prove, through independent certification, compliance with certain standards.

Over and above the advantages in terms of sales, companies that have been audited and certified report that the process leading up to certification was also very beneficial for them. The process requires companies to take a good look at their internal processes and how they are managed. Audits provide an opportunity for companies to correct mistakes and the emphasis on regular audits means that companies are constantly striving for improvement in their products and processes. The audit process can and indeed should lead to ongoing development within the company itself.

SustainAbility, a UK-based think-tank, notes in its study of UK business that companies are aware of the risks of corruption and fraud but that the systems needed to manage that risk are not integrated.<sup>16</sup> Companies need to have strong internal controls in order to avoid the risks of corruption. They also need to understand the threat to assets brand and corrupt reputation may have on the company.

### 7.3 CORRUPTION-PROOFING AUDITS

Another type of transparency audit is a “corruption-proofing” audit. While a traditional transparency audit can focus on all aspects of the company’s management, systems or finances, corruption-proofing audit focuses specifically on the type of risks the company is open to in terms of corruption and illegality. It is a form of risk assessment for the company. One Southern Africa based corruption-proofing specialist estimates that in South Africa the hidden cost of fraud prevention in companies is equivalent to 6% of total revenue.<sup>17</sup>

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<sup>16</sup> SustainAbility Compass, available at [www.sustainability.com](http://www.sustainability.com) (last visited 15 September 2005).

<sup>17</sup> Copper Forensic Investigations, available at [www.forensicinvestigation.co.za](http://www.forensicinvestigation.co.za) (last visited 15 September 2005).

A corruption-proofing audit may involve a detailed examination of key areas of a company's systems such as finances and procurement – areas identified as being most likely to be open to fraud, corruption or illegality. The audit may involve “testing” the systems through secret visits, monitored offering of bribes to employees already suspected of corrupt practice, or attempts to “hack” into computer systems.

Corruption-proofing audits are becoming increasingly popular in the financial sector and in companies where industrial sabotage or fraud is suspected. The outcome of such an audit is likely to be a risk assessment of the company's current status as well as recommendations for ways in which the company can improve its systems to ensure that it is not a victim of fraud, sabotage or does not inadvertently become involved in corruption.

#### 7.4 CODES OF BUSINESS PRINCIPLES

Codes of principles, codes of conduct, employee ethics policies, and whistleblower policies are all ways in which companies strive to protect themselves from corruption, demonstrate that they are not corrupt and encourage employees to avoid corruption.

The policing of these codes is usually undertaken informally. However in the case of some codes and systems companies may be required to prove their transparency as a precursor to signing the code. Codes are also used by companies to require that their suppliers operate ethically, for example that they do not pay commissions to company employees to secure contracts. While a code may be difficult to police in and of itself, a contract between companies requiring that each complies with the code can be a useful form of control. If one of the contract signatories is found to be in breach of the code, he is then also in breach of contract. Proof that a company is in breach may require a legal framework which permits contractual penalties to be applied. In Mozambique the complexity of the company incorporation system does not facilitate due diligence.

Another way companies have found to combat corruption is through employee codes of ethics and through whistleblower protection. As with an inter-company contract, an

employee found to be in breach of a code of ethics which forms an integral part of the employment contract is, in most jurisdictions, also in breach of contract, giving rise to disciplinary proceedings. If properly structured and managed, an employee code of ethics can create calibrated sanctions for unethical behavior and can confidently be used as a basis for labor discipline.

Compliance with anti-corruption initiatives in companies can also be promoted by a whistleblower protection scheme. For multi-nationals this can be put in place more easily since, for example, employees can report corrupt acts through a hotline in another country. Small companies may respond to this issue by grouping together and forming an association which acts as the recipient of information on corrupt practices and provides protection for the whistleblower.

Complying with a code should also have some clear benefit for a company. The code may be used as proof of transparency which will help the company build reputation and market share or secure new clients. Codes are a useful tool when they are respected.

## 7.5 ISLANDS OF INTEGRITY

Islands of integrity are one of the various ways in which groups of companies work together to demonstrate their transparency. For example, members of an association may sign and uphold a common code of principles or participants in a tender may sign an integrity pact.

In countries where the procurement system is particularly subject to corruption, companies wishing to operate on a level playing field may institute a system of integrity pacts. This means that all those participating in a tender sign an agreement to ensure transparency and disclosure in the bidding process. The parties agree on a neutral independent third party – the local TI representative or a business association – and post a bond with this independent party. The independent party then oversees and monitors the entire process. Once the process is complete and is declared as transparent, the third party returns the bond to each company.

Integrity pacts in procurement can result in significant cost savings for companies that no longer have to pay costly bribes. Over time, the cost of procurement to the Government falls as well, and society as a whole benefits thereby.

Islands of integrity provide a way for a group of companies to set themselves apart as being transparent and non-corrupt. However, the islands of integrity approach also has costs including, for example, auditing and certification. If companies are required to be certified in order to join an island, they are likely to expect the island to provide them with benefits. This could be done in the form of marketing or securing preferential purchasing agreements for members of the island. Certification of a group of companies is also the sort of public good that could warrant financing by donors interested in the approach.

## 7.6 SUMMARY

The examples above illustrate a number of ways in which the private sector, and civil society in general, can fight against corruption. The tools fit into several categories. These include:

- Information – mass media, theatre, national campaigns, observatories, information guides;
- Training – workshops, ethics programs, education;
- Monitoring and education – booklets, websites, process mapping;
- Trust building – auditing and certification; and
- Provision of independent alternatives – integrity pacts, whistleblower schemes.

Over the coming months, through discussions and roundtables ACIS will explore how some of these tools can be adapted and used in Mozambique, and what the response to them might be. We will also explore ways in which Mozambique-specific tools such as the deputation of private parties for the prosecutions of corruption envisaged by the anti-corruption law (see Annex III (a) below) can be developed. We will consider how these tools can be tied in to the overall fight against corruption envisaged in the government's anti-corruption strategy.

## 8. COMPARATIVE FRAMEWORKS

### 8.1 GENERAL

In this section we examine the list of fundamental issues necessary for anti-corruption to be effective, as distilled from the surveys in Section 5. We compare these issues to the categories of responses we have found in the international initiatives in Section 7. We then include a list of possible ways in which the fundamental issues can be addressed.

Fundamental issue (see Section 5)	Possible response (see Section 7)	Type of corruption	Example of type of response
Application of existing legislation	Information Monitoring & education	Public-private	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping
Dissemination of clear information	Information	Public-private Private-private	Mass media, theatre, national campaigns, observatories, information guides
Simplification of administrative processes <sup>18</sup>	Information	Public-private	Mass media, theatre, national campaigns, observatories, information guides
Professionalisation of the public service <sup>19</sup>	Information	Public-Private	Mass media, theatre, national campaigns, observatories, information guides
Removal of opportunities for discretionary decision-making <sup>20</sup>	Information Monitoring & education	Public-private Private-private	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping
Radical overhaul of the justice system	Independent alternatives	Public-private	Integrity pacts, information guides, booklets, websites, process mapping, greater use of Alternative Dispute Resolution (ADR)
Provision of independent alternatives <sup>21</sup>	Independent alternatives	Public-private Private-private	Integrity pacts, whistleblower schemes greater use of Alternative Dispute Resolution (ADR)

<sup>18</sup> While simplification may require legislative change, awareness-raising is an important step for ensuring that changes are based on discussion and are understood and enforced.

<sup>19</sup> Professionalisation will require ongoing commitment from the government. However advocacy by the private sector and civil society can result in demand-driven reform.

<sup>20</sup> While removal of discretion may require legislative change, awareness-raising is an important step to ensuring that the changes are based on discussion and are understood and enforced.

<sup>21</sup> Public Private Partnerships and privatization of public services can also provide effective independent alternatives. Independent oversight of key processes such as procurement and the enforcement of corruption

<b>Fundamental issue (see Section 5)</b>	<b>Possible response (see Section 7)</b>	<b>Type of corruption</b>	<b>Example of type of response</b>
Building of trust <sup>22</sup>	Trust building	Public-private Private-private	Auditing and certification
A demonstrable commitment to legality <sup>23</sup>	Trust building	Public-private Private-private	Auditing and certification
Enforcement and accountability <sup>24</sup>	Information  Monitoring & education Trust building	Public-private Private-private	Mass media, theatre, national campaigns, observatories, information guides  Booklets, websites, process mapping Auditing and certification
Protection and support for victims	Independent alternatives	Public-private Private-private	Integrity pacts, whistleblower schemes

## 8.2 PRIVATE SECTOR SPECIFIC

In this Section we examine the types of corruption identified by companies in Mozambique in Section 4, compare it with World Bank definition in Annex I below and include a category of possible response as identified in Section 7. This framework will be used as part of the roundtable discussions and columns detailing response and viability will be added as a result of the discussion process.

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legislation are also essential. The private sector is well-placed to create and participate in independent oversight bodies

<sup>22</sup> The private sector must build trust both between private sector operators and between the private sector and government and civil society

<sup>23</sup> This is required from all parties, with clear commitment from the top. The private sector is well placed to use the tools available to it to make this commitment

<sup>24</sup> Accountability applies to all those involved in corruption. It requires the ability to enforce existing legislation to ensure those who are involved are held accountable.

Type of corruption (see Section 4)	World Bank definition (see Annex I)	Possible response (see Section 7)	Examples
Commissions	Systemic, bribery, theft, private sector	Information  Training Monitoring & education Trust building Independent alternatives	Mass media, theatre, national campaigns, observatories, information guides Workshops, ethics programs, education Booklets, websites, process mapping  Auditing and certification Integrity pacts, whistleblower schemes greater use of Alternative Dispute Resolution (ADR)
Bribes to avoid fines	Systemic, bribery	Information  Monitoring & education Trust building	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping  Auditing and certification
Facilitation payments	Systemic, bribery	Information  Monitoring & education	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping
Tax evasion	Systemic, bribery, theft	Information  Monitoring & education Trust building	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping  Auditing and certification
Illegal trade	Systemic, bribery, private sector	Information  Monitoring & education Training Trust building	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping  Workshops, ethics programs, education Auditing and certification
Fraud <sup>25</sup>	Systemic, theft, private sector	Information  Training Trust building	Mass media, theatre, national campaigns, observatories, information guides Workshops, ethics programs, education Auditing and certification

<sup>25</sup> This aspect does not generally involve the public sector

## 9 CONCLUSIONS & RECOMMENDATIONS

Corruption affects the lives of everyone in Mozambique. Surveys have identified the private sector as a key participant in corruption. The private sector is also looked to as the engine of growth for the national economy. Clearly, the private sector has a key role to play in combating corruption.

We have identified corruption within the private sector as a major problem. The private sector not only needs to combat corruption in its relationship with the public sector; it must also fight corruption in relationships within the private sector.

Change requires committed leadership. It is therefore critical that company directors take the lead in combating business participation in corruption and provide both personal and professional moral leadership for their peers and subordinates.

Corruption is a process involving individuals. One premise of this report, outlined in Section 2.1 above, is that people do not want to engage in corrupt behavior. Therefore, individual company employees, from the top to the bottom, should be encouraged to take personal responsibility for avoiding corrupt acts. This includes bribery, fraud and purchasing products sold without tax. The decision to avoid corruption depends on a process of education, information and leadership.

We have identified a number of tools the private sector could use to combat corruption. The project of which this report is a part of will proceed to examine these tools and others proposed by readers of the report. The project will evaluate their applicability and viability as tools for the private sector in Mozambique. ACIS encourages companies wishing to experiment with any of the tools discussed above to contact us for further information and for support.

We have examined a number of international and regional initiatives to encourage countries and companies to combat corruption. It is important that the private sector in Mozambique takes the initiative to combat corruption. It is equally important that Mozambique ratifies

the conventions it has signed and works towards implementing their terms. This will provide a strong framework for ensuring the private sector's anti-corruption activities are effective. It is also important that the countries signatories of the OECD, AU and SADC conventions and protocols discuss the implications of issues such as bribery of foreign officials with their citizens resident in Mozambique.

The combat of corruption in Mozambique can also be facilitated by a number of other actions such as the implementation of freedom of information legislation, development of independent oversight for the judiciary and anti-corruption bodies, and the development of an inclusive dialogue mechanism through which the Government can discuss proposed legislation and other information with representatives of the private sector and civil society on a systematic basis.

In parallel with the development of anti-corruption tools, we recommend that the private sector continues to advocate for the following:

- Enforcement of existing legislation;
- Enactment of key new legislation such as a freedom of information law;
- Ratification of anti-corruption conventions and protocols to which Mozambique is a signatory; and
- Development of an inclusive, representative forum to discuss policy and legislative changes as well as the economic development of the country.

The fight against corruption is one which requires our best efforts and commitment to ensure that we move forward together in peace and prosperity. This report is designed as a basis for discussion and presented in good faith. We trust that you have found it useful and thought-provoking. We welcome any comments and suggestions. We will continue to make additions to the report as we move through the discussion process. The final report will integrate the tools we propose as well as summaries of the comments and reactions we have received.

ANNEX I

**Definition of Corruption**

World Bank definition of corruption taken from “Helping Countries Combat Corruption – The Role of the World Bank, Poverty Reduction and Economic Management” published by The World Bank in 1997.

“The term corruption covers a broad range of human actions. To understand its effect on an economy or a political system, it helps to unbundle the term by identifying specific types of activities or transactions that might fall within it. In considering its strategy the Bank sought a usable definition of corruption and then developed a taxonomy of the different forms corruption could take consistent with that definition.

We settled on a straightforward definition—the abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit.

Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues.

Bribery occurs in the private sector, but bribery in the public sector, offered or extracted, should be the Bank’s main concern, since the Bank lends primarily to governments and supports government policies, programs, and projects.

**Bribery.** Bribes are one of the main tools of corruption. They can be used by private parties to “buy” many things provided by central or local governments, or officials may seek bribes in supplying those things.

- Government contracts. Bribes can influence the government’s choice of firms to supply goods, services, and works, as well as the terms of their contracts. Firms may bribe to win a contract or to ensure that contractual breaches are tolerated.
- Government benefits. Bribes can influence the allocation of government benefits, whether monetary benefits (such as subsidies to enterprises or individuals or access to pensions or

unemployment insurance) or in-kind benefits (such as access to certain schools, medical care, or stakes in enterprises being privatized).

- Lower taxes. Bribes can be used to reduce the amount of taxes or other fees collected by the government from private parties. Such bribes may be proposed by the tax collector or the taxpayer. In many countries the tax bill is negotiable.
- Licenses. Bribes may be demanded or offered for the issuance of a license that conveys an exclusive right, such as a land development concession or the exploitation of a natural resource. Sometimes politicians and bureaucrats deliberately put in place policies that create control rights which they profit from by selling.
- Time. Bribes may be offered to speed up the government's granting of permission to carry out legal activities, such as company registration or construction permits. Bribes can also be extorted by the threat of inaction or delay.
- Legal outcomes. Bribes can change the outcome of the legal process as it applies to private parties, by inducing the government either to ignore illegal activities (such as drug dealing or pollution) or to favor one party over another in court cases or other legal proceedings.

The government benefits purchased with bribes vary by type and size. Contracts and other benefits can be enormous (grand or wholesale corruption) or very small (petty or retail corruption), and the impact of misinterpretation of laws can be dramatic or minor. Grand corruption is often associated with international business transactions and usually involves politicians as well as bureaucrats. The bribery transaction may take place entirely outside the country.

Petty corruption may be pervasive throughout the public sector if firms and individuals regularly experience it when they seek a license or a service from government. The bribes may be retained by individual recipients or pooled in an elaborate sharing arrangement. The sums involved in grand corruption may make newspaper headlines around the world, but the aggregate costs of petty corruption, in terms of both money and economic distortions, may be as great if not greater.

**Theft.** Theft of state assets by officials charged with their stewardship is also corruption. An extreme form is the large-scale "spontaneous" privatization of state assets by enterprise managers and other officials in some transition economies. At the other end of the scale is petty theft of items such as office equipment and stationery, vehicles, and fuel. The perpetrators of petty theft are usually middle- and lower-level officials, compensating, in some cases, for inadequate salaries. Asset control systems are typically weak or nonexistent, as is the institutional capacity to identify and punish wrongdoers.

Theft of government financial resources is another form of corruption. Officials may pocket tax revenues or fees (often with the collusion of the payer, in effect combining theft with bribery), steal cash from treasuries, extend advances to themselves that are never repaid, or draw pay for fictitious “ghost” workers, a pattern well documented in the reports of audit authorities. In such cases financial control systems typically have broken down or are neglected by managers.

**Political and bureaucratic corruption.** Corruption within government can take place at both the political and the bureaucratic levels. The first may be independent of the second, or there may be collusion. At one level, controlling political corruption involves election laws, campaign finance regulations, and conflict of interest rules for parliamentarians. These types of laws and regulations lie beyond the mandate and expertise of the Bank but nevertheless are part of what a country needs to control corruption.

At another level corruption may be intrinsic to the way power is exercised and may be impossible to reduce through lawmaking alone. In the extreme case state institutions may be infiltrated by criminal elements and turned into instruments of individual enrichment.

**Isolated and systemic corruption.** Corruption in a society can be rare or widespread. If it is rare, consisting of a few individual acts, it is straightforward (though seldom easy) to detect and punish. In such cases non-corrupt behavior is the norm, and institutions in both the public and private sectors support integrity in public life. Such institutions, both formal and informal, are sufficiently strong to return the system to a non-corrupt equilibrium.

In contrast, corruption is systemic (pervasive or entrenched) where bribery, on a large or small scale, is routine in dealings between the public sector and firms or individuals. Where systemic corruption exists, formal and informal rules are at odds with one another; bribery may be illegal but is understood by everyone to be routine in transactions with the government.

Another kind of equilibrium prevails, a systemic corruption “trap” in which the incentives are strong for firms, individuals, and officials to comply with and not fight the system. And there may be different degrees of coordination between those taking bribes, ranging from uncontrolled extortion by multiple officials to highly organized bribe collection and distribution systems.

Anti-bribery laws notwithstanding, there are many countries in which bribery characterizes the rules of the game in private-public interactions. Systemic corruption may occur uniformly across the public sector, or it may be confined to certain agencies—such as customs or tax authorities, public works or other ministries, or particular levels of government.

**Corruption in the private sector.** Fraud and bribery can and do take place in the private sector, often with costly results. Unregulated financial systems permeated with fraud can undermine savings and deter foreign investment. They also make a country vulnerable to financial crises and macroeconomic instability. Entire banks or savings and loan institutions may be taken over by criminals for the purpose of wholesale fraud. Popular support for privatization or the deepening of financial markets can be eroded if poor regulation leads to small shareholders or savers withdrawing when confronted by insider dealings and the enrichment of managers. And a strong corporate focus on profitability may not prevent individual employees soliciting bribes from suppliers.

Furthermore, when corruption is systemic in the public sector, firms that do business with government agencies can seldom escape participating in bribery.

While noting the existence of fraud and corruption in the private sector and the importance of controlling it, public sector corruption is arguably a more serious problem in developing countries, and controlling it may be a prerequisite for controlling private sector corruption.

Still, Bank activities can also promote the control of bribery and fraud in the private sector by helping countries strengthen the legal framework to support a market economy and by encouraging the growth of professional bodies that set standards in areas like accounting and auditing. In the long run, controlling corruption in the private sector may require improvements in business culture and ethics.”

## ANNEX II

### Informal Interview format

1. What do you understand as corruption? (Do you see commissions etc. as corruption?)
2. Does corruption directly affect you in your life and work?
3. How? Please give concrete answers if you can.
4. What do you think of the idea that corruption within the private sector is at least as much of an issue as corruption between the public and private sectors? Which affects you more?
5. What measures do you take to protect yourself or your company?
6. How much do you estimate corruption costs you? What about indirect costs such as to your company's reputation?
7. Do you detect regional differences within Mozambique? (and outside if you have that experience)
8. Thinking about existing legislation and regulations in your sector or in sectors you have knowledge of, which stand out as being vague, complex, or leaving too much discretionary power to government officials charged with their enforcement? Which sectors stand out for you as being "the most corrupt"?
9. Where do gray areas in understanding or interpretation of the laws and regulations result in corruption in your experience?
10. Do you know of or has your company participated in any local, regional, and international best practices in combating corruption, especially those that have been led by the private sector, and if so what?
11. What has been your impression of these initiatives?
12. If the private sector introduced or proposed tools (codes of business principles, forms of certification, publicity campaigns, audits etc.) would you be interested in participating?
13. What would be the principle issues you would consider when thinking about participating? (cost, benefits, impact on your company, need to prove transparency etc.)
14. What are the main issues that prevent you from stopping corruption within your company or between your company and others, or the State?
15. What else do you think we should take into consideration when looking at the issue of "combating business participation in corruption in Mozambique"?
16. Should your company stop all forms of corrupt practice (paying of commissions, tax avoidance etc) how do you expect to be compensated to mitigate against the loss of business?

## ANNEX III

### **Review of existing legislation**

In this annex we provide a summary overview of key areas of legislation which are relevant to the content of the report and provide the direct legal framework for our recommendations to operate in. Certain aspects of legislation for example discretion in decision making, lack of clarity in drafting and non-uniform application can permit the entry of corruption into any system. These are issues which face the private sector on a day-to-day basis, but it is important to note that new legislation is not always the answer. Mozambique has a wide-ranging legal framework. The uniform enforcement of the existing legislation would go a long way towards resolving problems such as illegal trade. One of the recommendations of this report is that existing legislation be widely disseminated and uniformly enforced.

We are grateful to the SAL Public Administration Observatory for its' support and assistance in developing the legal summaries outlined below.

#### a) ANTI-CORRUPTION LEGISLATION

##### **Basic Overview**

The primary source of law for anti-corruption is Law n° 6/2004 of 17 June (below, the “Law 6/2004”), which introduces complementary mechanisms for combating corruption. Decree n° 22/2005 of 22 June (below, the “Decree 22/2005”), which was only introduced this year, regulates Law 6/2004.

Other laws, although they are not aimed specifically at fighting corruption, also provide ways to monitor the conduct of public officials. Decree n° 30/2001 of 15 October (below, the “Decree 30/2001”) which approves the working rules for public administration services, requires that all public administration activities be transparent and gives the public the right to make suggestions or complaints. Law n° 7/98 of 15 June (below, the “Law 7/98”) establishes the rules of conduct applicable to those occupying Government positions, with details of their obligations and rights. It also identifies sanctions for crimes of corruption as indicated in articles 318, 321 and 322 of the Penal Code. Law n° 4/90 of 26 September (below, the “Law 4/90”) establishes the rules of conduct, obligations and rights of top State managers.

##### **Key Problems and Recommendations**

### *Liabilities*

Law 6/2004 provides that when public or private interests are harmed by persons in the direct or indirect employ of the State, damages must be paid.<sup>26</sup> However the law does not make clear who – the State, the civil servant or some other person – is obliged to indemnify the victim, and how the process for seeking indemnity shall be conducted. The law also provides for the forfeiture to the State of goods or money illicitly added by a corrupt official to his assets, but does not clarify how the amounts will be accounted for, including whether they enter into the General State Budget in their entirety or a portion thereof is awarded to the person who supplied information leading to the conviction of the official in question.<sup>27</sup>

We note that persons are liable not only for acts but for omissions.<sup>28</sup> This is a welcome inclusion, as deliberate omission by civil servants of their duties – such as timely signing a license or issuing a receipt – is a common means to extort bribes from the public.

### *Declaration of Assets*

Decision-makers in the State, municipalities and public companies and institutions, as well as the State's representatives on the boards of private companies, are obliged to present a declaration of their assets as a condition of assuming office.<sup>29</sup> That declaration is deposited in the “files of the institution” (lit. *em arquivo próprio do serviço*).<sup>30</sup> This declaration must be updated annually and at the time the person leaves office.<sup>31</sup> The declaration may also be requested at any time for disciplinary or criminal proceedings.<sup>32</sup>

While the obligation to file a declaration of assets is potentially useful for detecting corruption, it is nothing new. In fact, declarations of assets by senior State managers (variously defined in different statutes) prior to assuming office were already required under the terms of 4/90 and Law 7/98. The requirements in those instruments were much more specific and demanding than the general references to assets in the present law, stating clearly defined categories of assets. Moreover, unlike the requirements of Law 6/2004, the disclosure requirements of Law 4/90 and Law 7/98 required senior State managers to also declare their *liabilities*, including to banks, the State and private firms,

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<sup>26</sup> See Law n° 6/2004 of 17 June, Article 3, Paragraph 2.

<sup>27</sup> *Ibid.*, Paragraph 3.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, Article 4, Paragraph 1.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, Paragraph 3.

<sup>32</sup> *Ibid.*, Paragraph 4.

whether in Mozambique or abroad.<sup>33</sup> Law 7/98 refers to a specific form for the purpose, reportedly annexed to the law itself, but which we have never seen.<sup>34</sup> Decree 22/2005 does provide such forms though they are not detailed in their requirements.<sup>35</sup>

It bears further mention that those earlier laws – which remain good law for some purposes, but are superseded for others – apply not only to the senior State managers themselves but also to a broad range of family members by blood, marriage and de facto cohabitation.<sup>36</sup> By contrast, Law 6/2004 provides only that the obligation to declare assets may be extended to such persons by operation of other legislation.<sup>37</sup> And to the extent Law 6/2004 repeals other – again unspecified – provisions of law, it actually operates so as to cast doubt on whether the obligations as they extend to family members under the other two laws cited remain in force.

In at least one respect, that of declaration of assets, Law 6/2004 is consistent with Law 4/90 of and Law 7/98: the declarations required under it are not made public. Although Decree 22/2005 specifies that the Municipal President (mayor) and the President of the Administrative Council or similar public entity are responsible for guarding and maintaining the declarations, the declaration is still not made public.<sup>38</sup> As long as it is not public it will be of only limited use as a tool to monitor the amassing of wealth – and the potential relationship thereof to corruption – by senior State managers.

We note, however, that the fact that declarations of assets are not public does not mean that the requirement thereof cannot be made somewhat useful. As noted above, they can be requested (though it is not clear by whom) in a criminal or disciplinary proceeding.<sup>39</sup> The requirement can also be used in other ways, not foreseen in the law, that depend on the law of contract. For example, each donor with a bilateral agreement with the Government could insert in that agreement a provision that each ministry to which it contributes funds must certify that all senior managers so required by Mozambican law had filed a declaration of assets with that ministry, with the future

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<sup>33</sup> See Law n° 4/90 of 26 September, Article 3, paragraph 1, clause b, and Law n° 7/98 of 15 June, Article 3, paragraph 1, clause b.

<sup>34</sup> See Law n° 7/98 of 15 June, Article 3, paragraph 5.

<sup>35</sup> See Decree 22/2005, Article 2, Paragraph 3.

<sup>36</sup> See Law n° 4/90 of 26 September, Article 3, paragraph 2 and Law n° 7/98 of 15 June, Article 3, paragraph 2.

<sup>37</sup> See Law 6/2004, Article 4, paragraph 2.

<sup>38</sup> See Decree 22/2005, Article 1.

<sup>39</sup> Law 6/2004, Article 4, paragraph 4.

requirement that all annual updates shall be timely filed. Failure so to file would be grounds to oblige the Government to reimburse the funds disbursed.

Politically it would be rather difficult for the Government to resist the insertion of such a contractual clause. This is because all the clause does is to require the Government to certify that it is, in fact, in compliance with its own laws. It also makes the Government aware that the donor knows the laws of Mozambique and takes them seriously enough to hold the Government accountable under them.

Finally, a contractual requirement to encourage declarations of assets may also be useful because at some future date a freedom of information act in Mozambique might suddenly cause the information to become available. If and when it becomes so, having the historical record would be advantageous.

#### *Justification of Administrative Acts*

Law 6/2004 requires that administrative acts that affect people's rights and interests need to be justified, and that the justification needs to be clear and reduced to writing.<sup>40</sup>

While Decree 30/2001, which codifies the Operational Rules of the Public Administration, regulates the processes by which administrative appeals are conducted,<sup>41</sup> Law 6/2004 goes further by ensuring that a record is created on the basis of which the citizen can exercise her rights to direct administrative appeals and appeals in subsequent administrative litigation. Importantly, it provides that a citizen can legally require an official who has given an only oral answer to reduce that answer to writing. And of course, unlike Decree 30/2001, Law 6/2004 is a criminal statute with sanctions for its violation.

However, Law 6/2004 does not clarify the citizen's recourse if a verbal response is not handed down in writing within the stated time period. Perhaps the nullity of the decision, or a right of direct appeal to the administrative court under simplified procedures, would be useful. This is a technical question that requires further study.

#### *Acts of Corruption*

Law 6/2004 distinguishes between different types of corruption punishable by law such as passive corruption in an illegal act, passive corruption in a legal act, active corruption and illicit economic

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<sup>40</sup> Ibid, Article 5.

<sup>41</sup> See Decree n° 30/2001 of 15 October, Article 15.

gain.<sup>42</sup> In each of these cases Law 6/2004 fails to clarify what acts qualify as passive and active corruption. When it does list certain circumstances that could qualify as corrupt acts, as it does in paragraph 3 of Article 7, it fails to clarify if the list is inclusive or exhaustive. The net effect of this is to make it quite difficult, if not impossible, to prosecute someone for committing a corrupt act. Failure to clarify what are acts of corruption also makes the public's use of the statute problematic. An exemplificative list of corrupt acts could help citizens understand what acts are classified as corruption and can be criminally prosecuted. Such a list could be provided in a layman's guide to the laws of anti-corruption in Mozambique.

#### *Anti-Corruption Procedure*

Article 12 of Law 6/2004 summarizes the process by which a citizen can seek action for acts of corruption.

While the provisions are helpful, it is important that some time limits for these steps are established and clarification is given as to, to whom the duties are owed. It was hoped that this would be done as part of the regulation of Law 6/2004 but Decree 22/2005 does not contain this information. Neither the "competent administrative authority" (e.g., the internal auditor of the relevant ministry), nor the police, nor the Public Prosecutor should be allowed to avoid action on a complaint indefinitely.

Similarly, it should be made clear the complainant has a right to a copy of the reasoned order, in order to enable him or her to seek redress through other authorities. For example, if the local police decline to act, the reasoned order, submitted by the complainant, will enable the Public Prosecutor to evaluate the case and decide whether, in her opinion, an investigation is warranted.

It is in this context that the value of Decree Law 35 007 of 13 October 1945 (below, "DL 35 007") in connection with Law 6/2004 deserves mention. DL 35 007, which remains law in Mozambique despite its colonial origin and relative antiquity, contains rules of criminal procedure and, perhaps, supplies some opportunities to help make Law 6/2004, and the criminal prosecution of corruption in general, more dynamic. While full consideration of DL 35 007 is beyond the scope of this report, some of the more promising highlights are set forth below.

The first notable element of DL 35 007 is its provision that persons other than the Public Prosecutor can initiate a penal case before a court. In other words, the Public Prosecutor does not have a legal

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<sup>42</sup> See Law 6/2004, Articles 7 through 10.

monopoly on the initiation of a criminal case. In limited circumstances administrative authorities (not further defined) may do so, and in less limited circumstances, State bodies with the power to monitor certain activity or the execution of certain specific regulations may do so, in respect of such activities or such regulations.<sup>43</sup>

This can have very significant consequences: it means, as a strategic matter, that persons interested in quickening the pace of the criminal prosecution of corruption, need not put all their eggs in the single basket of the Public Prosecutor (or, more specifically, as we shall see below, the COCC – The Central Office for the Combat of Corruption). They can promote the criminal prosecution capacity of such institutions as the General Inspectorate of Finance (the *Inspecção Geral das Finanças*, or IGF) or other institutions empowered by DL 35 007, at least for limited purposes.

In this regard we note that this power may be construed, speculatively only, to extend to the Ombudsman (the *Provedor da Justiça*), foreseen in Articles 256 through 261 of the Constitution of 2004. This important constitutional provision has yet to be legislated. But imagine the effect of an Ombudsman who has the power to initiate a criminal action in court in the event that the Public Prosecutor did not act within a certain time. And recall that, unlike other organs of government, the Ombudsman is not chosen by the Executive; the Ombudsman is elected by a two-thirds majority of the Parliament, for the term of office that Parliament decides.<sup>44</sup>

This small opening in the direction of de-monopolizing the administration of justice in Mozambique is broadened further by the provisions of DL 35 007 that govern the role of the private participant (lit., the *assistente*, below a “Private Participant”) in a criminal trial.<sup>45</sup> Depending on the nature of the crime in question, different persons have the right to constitute themselves as Private Participants. In the case of corruption and related crimes, *any person* may take a role in the criminal process as a Private Participant.<sup>46</sup> By so providing, the legislator has completely removed the classic barrier of standing in connection with the prosecution of corruption, because the direct victim need not necessarily be the person who actively pursues the case.

Private Participants act as auxiliaries to the Public Prosecutor. Their role is substantial, not merely symbolic. The powers of the Private Participant include: to develop an indictment separate and

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<sup>43</sup> Decree Law 35 007 of 13 October 1945, Article 2, paragraphs 1 and 3.

<sup>44</sup> Constitution of 2004, Article 257.

<sup>45</sup> Normally “*assistente*” would be translated into English as “observer,” but that term suggests an only passive role. The scope of initiative of the *assistente* is, in fact, substantial.

<sup>46</sup> Decree Law 35 007 of 13 October 1945, Article 4, paragraph 5.

distinct from that prepared by the Public Prosecutor; participate directly in preliminary evidentiary hearings (*instrução contraditória*), submitting evidence and requesting the further pursuit thereof by the judge; and appealing a ruling by the judge closing the case, even if the Public Prosecutor does not do so.<sup>47</sup>

Finally, prospectively, the regulation of the individual class action suit – the so-called *ação popular* – provided for in Article 81 of the Constitution of 2004 also promises to open space for private citizens to sue for the redress of harms, including those to the “assets of the State and the local governments.” While the jurisdiction providing for these suits is likely to be civil rather than criminal, the ability of a private citizen to bring suit, for example, for violations of procurement regulations that harm the State can create great pressure for a matching criminal prosecution of the same acts.

In short, existing Mozambican law provides substantial means for interested persons to put pressure on the COCC, and on the Government generally, to deliver on their promises in respect of anti-corruption action. Getting some of the benefits of de-monopolization does not depend on the slow and uncertain process of legislative reform. And with good laws to govern the constitutional office of the Ombudsman and the individual or class action suit, even more instruments can be put at the citizen’s direct disposal for the fight against corruption.

#### *Protection of Whistleblowers*

Law 6/2004 provides protection for whistleblowers (i.e. people who report corruption and assume the risk of doing so) by stating that no one may be the object of a disciplinary measure, harmed in their professional career or in any way persecuted by virtue of having filed a complaint under Law 6/2004.<sup>48</sup> Persons who violate this provision shall be punished by up to six months’ imprisonment and a fine.<sup>49</sup>

While this legal protection is a welcome innovation in the law, it should also specify with which institution a whistleblower may file a complaint if he is persecuted, and that the whistleblower may be entitled to civil damages from his persecutor in addition to the jail time and fine. It would also have been useful to include penalties for persons who intentionally reveal the identity of a whistleblower.

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<sup>47</sup> Ibid., Article 4, paragraph 2, clauses 1-3.

<sup>48</sup> See Law 6/2004, Article 13, Paragraph 1.

<sup>49</sup> Ibid., Paragraph 2.

### *Denunciation in Bad Faith*

Law 6/2004 makes it a crime, with a punishment of up to six months' imprisonment and a fine, to file a complaint of corruption against a public employee if the complainant knows that those persons are innocent of the charge.<sup>50</sup> It further provides that the complainant in bad faith is subject to indemnify the person against whom he complained for material and moral damages (i.e. damage to one's good name).<sup>51</sup>

This article is useful insofar as it discourages the abuse of Law 6/2004. What it had been hoped that the regulations would do in this regard was to ensure that the standard of knowledge required before a complainant can be said to act in bad faith be high: the complainant must know affirmatively and beyond a doubt that the persons of whom he complains are innocent of the charge. A lower standard could operate to intimidate whistleblowers because of the risk of liability. Unfortunately Decree 22/2005 is silent on this matter.

### *Powers of the Public Prosecutor*

The Public Prosecutor is empowered to prevent and combat the crimes foreseen in Law 6/2004<sup>52</sup> through the following acts of prevention: gathering information in order to evaluate whether a corrupt act has taken place; carrying out investigations of various kinds in respect of the conduct of relations between the Public Administration and private parties; and proposing measures to reduce the incidence of crime under Law 6/2004.<sup>53</sup>

This article returns us to a theme we have mentioned above. It is better that government bodies compete to act against corruption – whether in prevention or prosecution – than to have a single body with a legal monopoly over the activity. This is especially true because the Attorney-General serves at the pleasure of the President of the Republic, and, as we will see immediately below, the head of the COCC reports to the Attorney-General. In other words, the COCC is not effectively insulated from the exercise of political pressure by the Executive. Hence the importance of developing anti-corruption resources, including legal resources, outside the COCC even as the COCC is given more resources to do its job.

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<sup>50</sup> Ibid., Article 14, Paragraph 1.

<sup>51</sup> Ibid., Paragraph 2.

<sup>52</sup> It does not, however, operate to confine the initiative to prosecute acts under Law 6/2004 to the Public Prosecutor. Standing to do so continues to be defined by Decree Law 35 007 of 13 October 1945.

<sup>53</sup> See Law 6/2004, Articles 16 and 17.

### *Central Office for the Combat of Corruption*

As discussed above, the COCC is not an independent body; it is a department of the Attorney-General's Office and is subordinate to the Public Prosecutor.<sup>54</sup> In this regard, one idea to consider is a stakeholders' commission that meets from time to time to consult with the COCC and consider the results of its work. The stakeholders' commission ought to include people from outside Government, so as to ensure some window of participation for Mozambican civil society and foreign donors in the workings of the COCC. Such a commission should also have some direct means of periodically conveying the urgency of the mission to that institution. The stakeholders' commission is part of a wider anti-corruption strategy that goes beyond legislation and law enforcement per se, and engages society as a whole for the larger objective. Indeed, a stakeholders' commission would be consistent with the preventative measures that Mozambique undertook to pursue under the terms of the SADC Protocol against Corruption.<sup>55</sup>

### *Duties of Auditors*

Article 21 of Law 6/2004 provides that whenever a public or private auditor, in the course of an audit, finds some indication of corruption, it must report those indications, in writing, to the COCC.<sup>56</sup> However, it is unclear who is empowered to initiate legal proceedings against auditors who violate these rules. Since the big audit firms are the natural suppliers for some of the forensic audit assistance needed by COCC, one may expect that the persons empowered to monitor the auditors are also auditors themselves. One way to solve this problem is to make sure that, (a) some person, not an auditor, is always named by the COCC and indicated by it to be the monitor of the auditors; and (b) that that person has no conflict of interest vis-à-vis the country's public and private auditors.

Article 21 may also be extremely useful in fighting corruption if donors made audit obligations not merely statutory but contractual. The donor's contract with the auditor would require the auditor explicitly, (a) to follow the requirements of Article 21 and (b) to report to the donor any time that such a report has been filed. That very clause might also list – to exemplify and not to restrict -- some of the typical indicia of corrupt practice that auditors might be expected to come across (e.g. lack of receipts for expenditure; lack of evidence that assets purchased with project funds have been registered as the property of the ministry to which they were donated, among many others). From time to time the donor might get an outside audit firm to review the work of the auditor and, if that outside firm were to find that indicia of corruption were not made the object of a written report to

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<sup>54</sup> *Ibid.*, Article 19.

<sup>55</sup> See Resolution n° 33/2004 of 9 July, by which Mozambique ratified the Protocol.

<sup>56</sup> See Law 6/2004, Article 21.

the COCC, consequences would follow. Those consequences could include forfeiture by the auditor of payments from the donor, and referral of the matter for legal action under Article 21, paragraph 4.

We note from the above that the anti-corruption framework in Mozambique provides a number of possible ways for the private sector to deal with corruption. Some of the methods proposed will be explored further in discussions and, where possible developed as tools to support the private sector's fight against corruption.

#### b) PROCUREMENT

The area of public procurement has been one where ACIS has secured certain success through advocacy work on behalf of members. In March 2004 through Circular DNPE/DEP.APROV-CONC/04 the then Ministry of Plan and Finance revoked a 1995 dispatch permitting the explicit requesting of commission payments to government tender boards. While the payment of commissions continues, the explicit revocation of the 1995 dispatch was seen by the private sector as a major symbolic step towards the idea that commission payments are not an acceptable part of the tender process.

#### **Basic Overview**

The primary source of law governing procurement is Decree n° 42/89 of December 28 (below, "Decree 42/89") which approves the regulation of the purchase of goods and services by State organs and subordinate institutions and sets out the tendering procedures. Decree n° 29/97 of 23 September (below, "Decree 29/97") introduces changes to Decree 42/89. Both decrees will be discussed together below as the "Procurement Regulations." There is also a draft Procurement Law to be adopted which includes the regulation of procedures for procurement of goods and services and public works contracts.

#### **Key Problems and Recommendations**

##### *Scope of Application*

The Procurement Regulations apply to all State bodies and subordinate institutions that receive funds from the General State Budget (OGE).<sup>57</sup> The law may also apply to State enterprises when considered necessary by the Ministry of Finance.<sup>58</sup>

State organs may acquire goods and services either through tendering, quotation, or direct purchase.<sup>59</sup> These modes of acquisition do not apply to articles with fixed market prices.<sup>60</sup>

#### *Quotation and Direct Purchase*

Quotation is a mode of acquisition for goods and services that are frequently acquired and cannot be the object of a general or specific tender.<sup>61</sup> Quotation requests are made annually and through a circular directed to at least three registered firms that supply the intended goods.<sup>62</sup> Direct purchase is a mode of acquisition that may be undertaken to obtain “small amounts” of goods and services urgently. This method of acquisition does not require prior authorization as long as the value of the transaction does not exceed the limit of the management fund established for each institution.<sup>63</sup> Clearly both these methods permit a large degree of discretion, and the existence of the direct purchase method could be used to the exclusion of other, more transparent procedures.

#### *Tendering*

Tendering is the mode of acquisition used to obtain the best selection of goods and services at the best price, quality and condition.<sup>64</sup> There are two types of tender. The first is general tender for undetermined goods and services and which is authorized by the Ministry of Finance or the Provincial Governor.<sup>65</sup> The second is special tender for goods and services that require special specifications, details or construction plans.<sup>66</sup> This acquisition is requested by the relevant institution and undertaken by the Permanent Purchase Commission (below, the “Commission”).<sup>67</sup>

#### *The Permanent Purchase Commission*

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<sup>57</sup> See Decree n° 42/89 of December 28, Article 1, Paragraph 1.

<sup>58</sup> Ibid., Paragraph 2.

<sup>59</sup> Ibid., Article 3, Paragraph 1.

<sup>60</sup> Ibid., Article 4.

<sup>61</sup> Ibid., Article 3, Paragraph 4.

<sup>62</sup> Ibid., Article 63, Paragraph 1.

<sup>63</sup> Ibid., Article 3, Paragraph 5.

<sup>64</sup> Ibid., Article 3, Paragraph 2.

<sup>65</sup> Ibid., Article 3, Paragraph 3.

<sup>66</sup> Ibid., Article 3, Paragraph 3.

<sup>67</sup> Ibid., Article 12.

The Permanent Purchase Commission, which oversees the tendering process, functions within the Ministry of Finance.<sup>68</sup> The Commission is composed of the National Director or Vice-Director of State Assets and two Sector officers, one being the Chief of the Department of the Supply of Provisions and the other a representative from the relevant Ministry depending on the nature of the goods.<sup>69</sup> In the case of special tender, one or two representatives from the institution to which the goods are intended will also join the Commission.<sup>70</sup> Each province and each State organ or subordinate institution may also have their own purchase commission as detailed in a dispatch by their respective Minister, Secretary of State or Provincial Governor.<sup>71</sup>

The Commissions are responsible for announcing the launching of the tender, for assuring the principles of the Procurement Regulation are fulfilled, for receiving and judging the proposals for tender, and for receiving and informing of any submitted complaints.<sup>72</sup> Procedures for undertaking a complaint and for ensuring that questions arising from tender processes are dealt with transparently are not outlined in the regulations.

#### *Discretionary Power*

The procedures outlined in the Procurement Regulations may give the commissions and the Ministry of Finance too much discretionary power. According to the Procurement Regulations the Ministry may extend responsibility for the tendering process to other ministries and secretaries of state when it judges it convenient.<sup>73</sup> The Commission may also approve other rules of procedure outside of the Procurement Regulations.<sup>74</sup> Such discretion may encourage the awarding of contracts on the basis of subjective or unannounced criteria.

The criteria used for judging the acquired goods are vague and leave room for subjective observation. For example, the Procurement Regulations charge three officers with overseeing the fulfillment of the supply contracts, verifying the quality of the supplied goods and submitting them to any tests that they judge necessary, and approving the respective invoices.<sup>75</sup> Although the officers may request the participation of experts in this process, they are not obliged to do so.<sup>76</sup>

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<sup>68</sup> Ibid., Article 18, Paragraph 1, as revised by Decree 29/97.

<sup>69</sup> Ibid., Article 18, Paragraph 1, as revised by Decree 29/97.

<sup>70</sup> Ibid., Article 18, Paragraph 1, as revised by Decree 29/97.

<sup>71</sup> Ibid., Article 19

<sup>72</sup> Ibid., Article 21.

<sup>73</sup> Ibid., Article 22, Paragraph 3.

<sup>74</sup> Ibid., Article 25, Paragraph 4.

<sup>75</sup> Ibid., Article 24, Paragraph 1.

<sup>76</sup> Ibid., Article 24, Paragraph 2.

Lack of clarity in criteria used to judge tenders may also lead to abuse of discretion. Although the Procurement Regulations stipulate that the Purchase Commission is limited to judging tenders that offer the best prices, quality, entry and payment conditions, the wording of the regulations implies that other factors may also be used.<sup>77</sup> The criteria also indicate that preference will be given to national products and services provided by firms headquartered in the country, as long as the difference in prices is not over ten percent.<sup>78</sup> The Commission may request certification from the supplier of national products when it “judges it convenient,” but this is not an absolute requirement.<sup>79</sup>

#### *Tender Processes and the Registration Requirement*

The tender process is also burdensome and difficult to follow and this may have the effect of limiting the pool of potential tender applicants and decreasing competition for the supply of goods. Only national and foreign entities registered with the Ministry of Finance or the Provincial Directorates of Finance may be admitted to the tender process.<sup>80</sup> Registration requires submission of a request to the Ministry of Finance or the Provincial Governor, accompanied by among others, the following documents:

- a. Proof of commercial registration;
- b. Proof of regular payment of taxes for more than two years;
- c. Bank guarantee letter or proof of financial health.<sup>81</sup>

These requirements are currently not always followed. Newly formed companies often are unable to comply. Simplified procedures embodied in clear, easy-to-follow guidelines focusing on the proof of transparent operation of the company will make the process less burdensome for applicants and less vulnerable to abuse, minimizing costs and facilitating business.

The pool of potential tender applicants may also be limited since in theory only registered firms are informed of the launching of a tender<sup>82</sup>. Only when there are no firms registered for the supply of goods or the number of registered firms is too low, will the announcement be published in a widely-circulated newspaper.<sup>83</sup> This leads one to wonder if all tenders could be published in newspapers in order to inform potential suppliers that may not yet be registered, of the launching of a tender. It

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<sup>77</sup> Ibid., Article 38, Paragraph 2 as added by Decree 29/97.

<sup>78</sup> Ibid., Article 38, Paragraph 2 as added by Decree 29/97.

<sup>79</sup> Ibid., Article 38, Paragraph 3 as added by Decree 29/97.

<sup>80</sup> Ibid., Article 13.

<sup>81</sup> Ibid., Article 14, Paragraph 2.

<sup>82</sup> Ibid., Article 29, Paragraph 1.

<sup>83</sup> Ibid., Article 30.

also raises a doubt on the utility of having a registration requirement at all. Eliminating the registration requirement and increasing access to information on tenders may help to increase competition and improve the ability of government organs to obtain the best prices for goods and services.

#### *Bond Requirement*

The number of potential tender applicants is further limited by the bond requirement which requires suppliers participating in the tender process to provide a provisional bond corresponding to either 1% of the total value of goods to be supplied or to a value fixed by the Commission, and a definitive bond corresponding to 2% of the value of the tender or to a value fixed by the Commission.<sup>84</sup> Since some smaller firms and contractors may not have the capacity to raise credit, bonds and securities from local banks and insurance companies owing to high interest rates, they may be prevented from participating in the tender process.

If true competition is the aim, it is also questionable why the tender method of procurement exists at all, especially when the Procurement Regulations give the Ministry of Finance unlimited discretion with regard to the tender process. Article 54, paragraph 2 of Decree 42/89 provides that: “When the prices practiced in the market is less than that of the tender, the Ministry of Finance or Provincial Governor may cancel the respective tender.” A procurement process based primarily on objective market prices may help to limit discretion and the use of subjective criteria.

#### *Penalties*

The Procurement Regulations provide penalties for contractors as well as officers of State who violate regulations or contract terms. Contractors are penalized for late delivery of goods, for the systematic supply of goods or services different from those requested or that are of poor quality and for failure to fulfill their obligations.<sup>85</sup> Officers of State who acquire goods outside of the criteria established by the Procurement Regulations are disciplined and criminally punished and are responsible for paying the difference between the price of the goods purchased and those defined by a tender.<sup>86</sup> These requirements are difficult to enforce and are open to subjective interpretation.

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<sup>84</sup> Ibid., Article 74, Paragraph 1.

<sup>85</sup> Ibid., Article 81, Paragraph 1 as revised by Decree 29/97.

<sup>86</sup> Ibid., Article 84 as revised by Decree 29/97.

### *Whistleblowers*

Article 85 of the Procurement Regulation provides that officials of the Ministry of Finance that have knowledge of violation of the regulations will immediately inform the State organ regarding the violating official.<sup>87</sup> However, it is unclear from this article which State organ the official must report to. The article also fails to provide protection for whistleblowers who report such acts. As is clear from the statistics on this issue coming out of the National Study on Governance and Corruption State Officials perceive the procurement to be highly corrupt and many report being aware of incorrectly undertaken tender processes. Yet we have been unable to obtain information on punishments and prosecutions arising from the same. In order to promote whistle-blowing, and to build faith in the system one of the options that could usefully be considered is the public revelation of disciplinary processes, through publication in the Government Gazette for example. This concept exists in other legislation and could usefully be carried over into the procurement regulations.

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<sup>87</sup> Ibid., Article 85.

ANNEX IV

**SAMPLE OF LEGAL IVA INVOICE**

The design and layout of an invoice is dependent on the preference of each company. The sample below is a guide to what information must be included on all invoices. All invoices must be printed by a government approved printer.

ABC <sup>88</sup> , Lda <sup>89</sup> Av. Nelson Mandela 172 Chimoio Mozambique <sup>90</sup> Tel: (258-51) 22 369 Fax: (258-51) 22 370 <sup>91</sup>  <b>NUIT: 7000069871<sup>92</sup></b>		Nome <sup>93</sup> _____ Endereço <sup>94</sup> _____ _____ NUIT <sup>95</sup> : _____	
Data:	_____ de _____ de 200__ <sup>96</sup>	<b>FACTURA Nº:</b>	<b>2194<sup>97</sup></b>
Quant	Descrição	Preço Unitário	Total
<b>10</b>	<b>AAAAA</b>	<b>10.000</b>	<b>100.000<sup>98</sup></b>
Motivo justificativo de não aplicação do imposto <sup>99</sup> _____		Sub-Total	
		IVA 17%	
		Total	
Processado Por Computador <sup>100</sup>			
Steamline <sup>101</sup> -Rua XX nº YY Beira <sup>102</sup> /4000065213 <sup>103</sup> Aut No: 154/MPF/02 <sup>104</sup> 50 Liv. 3x50 2000 a 4500 <sup>105</sup>			

<sup>88</sup> Full name of company

<sup>89</sup> Type of company :- Lda, SARL

<sup>90</sup> Full address of company

<sup>91</sup> Whilst not a legal requirement all the company's details can be listed e.g email, web site etc.

<sup>92</sup> The company's VAT registration number (*NUIT*) must be recorded

<sup>93</sup> Full name of the customer

<sup>94</sup> Full address of the customer

<sup>95</sup> VAT registration number (*NUIT*) of the customer

<sup>96</sup> Date on which the invoice was issued.

<sup>97</sup> All invoices must be sequentially numbered

<sup>98</sup> Quantity, Full Description and individual net price before IVA

<sup>99</sup> Only included if the company is going to be selling goods or services to companies that are VAT exempt

<sup>100</sup> Invoices are often hand-written. If they are computer generated this fact must be included on the invoice. The system used to process the invoices must be inspected and approved by the Ministry of Finance.

<sup>101</sup> Name of the Government Authorized Printing Press which printed the invoices (only required for hand written invoices)

<sup>102</sup> Full Address of Printing Press (or headquarters)

<sup>103</sup> VAT registration number (*NUIT*) of the Government Authorized Printing Press which printed the invoices

<sup>104</sup> Government authorization number of the Government Authorized Printing Press which printed the invoices

<sup>105</sup> Number of invoice books printed, the format and the invoice numbers sequence. This sample shows 50 invoice books, 3 copies of each invoice, 50 invoices per book, invoice numbers 2000 to 4500. This is not always required – Some provincial Directorates of Finance require this and others do not.

## ANNEX V

Government's anti-corruption strategy – free translation

### **ANTI-CORRUPTION STRATEGY GENERAL GUIDELINES (2005-2009)**

Document approved by the Cabinet at the 24<sup>th</sup> Session on 6 September 2005

#### **Executive Summary**

The Anti-corruption Strategy General Guidelines is an integral part of the Public Sector Reform Overall Strategy which aims to improve public service provision to the citizens and create a conducive environment for the growth of the private sector. The Public Sector Reform Overall Strategy is a result of a review of the major problems affecting the public sector, which led to the identification of strategic activities to be implemented in the following components: rationalization of public service provision structures; human resources development policy; public policy management processes; financial management; and good governance and combat against corruption.

The Anti-corruption Strategy General Guidelines are based on the Logical Framework Matrix for the Public Sector Reform Overall Strategy, a programme management tool that defines the purpose to be achieved after 10 years of implementation, the overall and the specific objectives, the target population, the outcomes, the activities, the indicators, the assumptions and the resource requirements, based on a logical and hierarchical relationship. Therefore, for the development of the strategy's general guidelines, the following was taken into consideration: the Public Sector Reform Overall Strategy, the mid-term Reports on the implementation of the Public sector Reform in the period 2001-2004, the five-year government programme (2005-2009), the suggestions and proposals resulting from consultations with the civil society, the private sector, international partners, the justice and the legislative sectors as well as the report of the National Baseline Study on Governance and Corruption.

Corruption in the public sector can be defined as the use of public office for one's personal gain, or for the benefit of a group with which a given individual is associated. It is a behaviour that deviates from the formal duties of public office and is detrimental to the public interest.

Corruption entails illicit activities such as payment or receipt of bribes, embezzlement, nepotism, favouritism, transactions for one's own benefit, fraud, extortion, abusive use of influence or use of public office or assets for political gain. Corruption takes three distinct forms: petty administrative or bureaucratic corruption, serious corruption and seizure of the state.

Though the nature of corruption varies from country to country, after a review of the concerns and problems afflicting the public sector and governance, in general, it was possible to identify some major causes. Thus, the common causes that pave the way to corruption are

nepotism and favouritism, frailty of the mechanisms of control and supervision, lack of enforcement of laws and regulations, lack of institutional accountability, lack of commitment on the part of the public administration leadership to the combat against corruption and lack of participation of the civil society in the combat against corruption.

The low salaries in the public sector and poverty that affects the majority of Mozambicans are not the direct causes of the proliferation of acts and practices of corruption. On the contrary, the promotion of acts of corruption is the purview of some public officials who know the norms, the laws and are privy to information but who, motivated by the desire to live in luxury, use their power and knowledge to extort the citizens and deplete the coffers of the State.

In Mozambique, corruption, promoted and reinforced by bureaucratism and the public officials negative behaviour, is a serious problem, which begins to take disturbing forms. Initially, it permeates the ethical and moral fabric and widespread tolerance to its practice looms large; then, it become the alternative route to the accumulation of wealth.

For the complex process of the combat against corruption to be successful, there is a need for a Strategy that must entail three interrelated and complementary stages, namely: prevention, administrative action and judicial action. It also calls for a strong political leadership and coordinated participation of all; i.e., between the State, the Civil Society and the Private Sector.

Participation and transparency are the key elements for administrative management's enhanced accountability and adaptability. These two elements contribute towards democratization, the development of professionalism and ethics within the government as well as towards curbing corruption in the public sector.

In order to operationalise the strategy, a Plan of Action will be developed integrating a set of short-, mid- and long-term actions for a five-year period. The short term actions planned for 2005 aim to ensure integrity and transparency, strengthen public sector leadership, further the Rule of Law, fight bureaucratism and promote accountability.

The mid- and long-term actions comprise measures with a much broader impact in the legal and judicial spheres; of an institutional and administrative nature; as well as measures geared towards the private sector and the civil society, which, duly implemented, will ultimately bring decision making closer to the beneficiaries, will subordinate more and more discretionary power to law, will substitute the monopoly of individual power for institutional power and, this way, enhance the level and efficiency of service provision and, consequently, the establishment of transparency and the combat against corruption as an ongoing action.

## 1. Introduction

The Anti-corruption Strategy General Guidelines is an integral part of the Public Sector Reform Overall Strategy whose scope ranges from the restructuring of the Central and Provincial Government units to enhance the provision of public services to the citizens; enhance the government and the administration's capacity in policy formulation and monitoring; improve the institutional framework for human resources training and management at the Central and Provincial levels; improve the financial and budgetary programming and management system as well as the accountability mechanisms; create a favourable environment to the growth of the private sector; to improving the quality of the governance systems and enhance the strategy and plan for the combat against corruption.

Within the context of the implementation of the Public Sector Reform Overall Strategy, the combat against corruption is a priority issue.

Corruption is ominous to the stability and security of the society, it undermines the values of democracy and morality, it has an effect on social, economic and political development, on free trade and on the credibility of governments and fosters organized crime.

The success in the combat against corruption calls for the strengthening of the governance and public management systems, eliminating facilitating factors such as: excessive civil servants discretionary power, administrative improvisation, excessive centralization, outdated management systems, inefficient public services, public misinformation, inadequate and inefficient legal framework, decline in ethical values and inadequate capacity of intervention by the civil society.

Corruption bears high social, political, economic and human costs. It drastically reduces the capacity of both private and public investment, it negatively affects the public finances and the development plans both at the national and the regional levels. It contributes towards bad governance for it strikes at the very foundations of the political leadership's legitimacy and stability; it discredits the political institutions because it corrodes the institutionalisation of democracy. The social services coverage is weakened, significantly reducing the opportunities for human development, fuelling and exacerbating poverty.

According to the results of the National Baseline Survey on Governance and Corruption carried out in 2004, corruption in the public sector was considered one of the major obstacles to the country's economic development, together with a host of other problems such as unemployment, the cost of living, inflation, the difficult access to water, hunger, the condition of roads and crime.

Corruption occurs in various forms and characteristics in different regions, depending on the type of economic activities and level of institutional development and it tends to be worse in areas of large concentration of economic activities, namely capital cities and towns. As for the prevalence of the phenomenon, the study points to its incidence in public services, in the justice administration sector, in the public sector's human resources management system, with emphasis on recruitment and promotion processes, procurement, the State's fiscal and financial management.

The devastating effects of corruption at the social, political and economic levels cause significant harm to the efforts of the country in the combat against poverty and constitute a major obstacle in the ongoing Mozambican nation building process.

It is within this framework that the *Anti-corruption Strategy General Guidelines* have been developed, with the objective of introducing profound changes in policy, structures, systems, functions, rules and procedures as well as contributing towards the development of a culture concomitant with a modernized, efficient and effective public sector, in tandem with the Public Sector Reform. The general guidelines focus on creating conditions for the change of attitudes, values and behaviours, in order to foster greater integrity, transparency, fairness, accountability and professionalism; and, thus, contribute towards the establishment and consolidation of a culture of excellence within Public Service.

The combat against corruption calls for concerted effort between the Government, the private sector and the civil society.

Participation and transparency are the key elements to administrative management accountability and adaptability. These elements contribute towards the democratization, the development of professionalism and ethics within the government as well as towards curbing corruption in the public sector.

The general guidelines are comprised of the following elements: the concept and types of corruption; the major problems affecting the public sector within the domain of service provision to the citizens; the causes of corruption in the country; the relevance of the strategy; the strategic principles; the strategic stages in the combat against corruption; the elements of the strategy; the objectives, indicators and outcomes; the management of the process and the activities schedule for the development of the Anti-corruption Strategy and the design of the anti-corruption plan of action.

The Anti-corruption Strategy will be based on the Logical Framework Matrix of the Public Sector Reform Overall Strategy. The Matrix is, in practical terms, a programme management tool that defines the purpose to be achieved after 10 years of implementation, the overall and the specific objectives, the target population, the outcomes, the activities, the indicators, the assumptions and the resource requirements, based on a logical and hierarchical relationship. Within this framework, for the development of the strategy's general guidelines, the following was taken into consideration: the Public Sector Reform Overall Strategy, the mid-term Reports on the implementation of the Public sector Reform in the period 2001-2004, the five-year government programme (2005-2009), the suggestions and proposals resulting from the consultations with the civil society, the private sector, international partners, the judicial and the legislative sectors as well as the report of the National Baseline Study on Governance and Corruption.

## 2. What is corruption in the public sector?

Corruption in the public sector is a symptom of the failure of governance in a country. Governance means the traditions and the institutions through which the authority of a country is exercised - including the process by which governments are selected, monitored and replaced; the capacity of the government to formulate and implement effective policies; and the citizens and the State's respect for the institutions that govern the economic and social interactions.

Corruption in the public sector can be defined as the use of public office for one's own personal gain, or for the benefit of a group with which a given individual is associated. It is a behaviour that deviates from the formal duties of public office and is harmful to the public interest.

Corruption entails illicit activities such as *bribery* (money, gratuities, tips, favours, enticement, reward, oiling the cogwheels); *embezzlement* (resource misappropriation, false receipts); *fraud* (scam, swindle, manipulation or distortion of information, facts or knowledge, smuggling, counterfeit, awarding of contracts to firms in which public officials have interests); *extortion* (resource extortion by means of coercion, violence or threat to use force, "protection" and security money; and *nepotism* (favouritism certain rulers give to their relatives, party of affiliation).

Corruption does not manifest itself in one single form. Generally, it is manifested in the form of:

- illicit isolated transactions/activities by public officials who abuse of their office (for example, demanding bribes, embezzling public funds or dispensing favours) for their own personal gain/benefit;
- extortion or theft of large sums from public resources by senior State officials, usually, members of and/or associated with the political or administrative elite; and
- collusion between the private and public sectors officials or politicians for mutual or private gain. This means that the private sector has "seized" the legislative, executive and judicial power to further its own interests.

Corruption is by no means a new phenomenon nor is it confined to any given region of the world. It is a reality both in industrialized countries as well as in developing countries or in countries that are in transition. Nor is it confined to the public sector.

Corruption is a phenomenon that transcends national boundaries and affects every society and economy in such a way that national, regional and international cooperation is critical in order to prevent and curb corruption and related offences.

The consequences of corruption are violent, disruptive/harmful and affect the most vulnerable segments of the population in the political, economic and social spheres in an unjust and disproportionate manner.

At the political level, corruption sets power in disarray, disregards institutions, discredits political agents and perverts the will, the options and the genuine choices of citizens. When corruption triumphs, the structures of power stop functioning in line with the set goals and objectives, and begin to function in the furtherance of concrete, individual interests of those involved in the corruption process.

At the economic level, corruption depletes the material resources, impoverishes the country, deepens the regional asymmetries and exacerbates the imbalances between the rural and the urban areas. As those involved in the corruption process get rich, the country gets poorer and poorer. The economy is lacerated because projects and public undertakings are not considered and developed in accordance with their public usefulness and the benefits that they bring to the populations, but in accordance with the commissions and financial gain accruing to the agents involved in the process, as well as the profits that they can derive from them.

At the social level, corruption exacerbates the inequalities between the citizens, deepens the chasm between the rich and the poor and degrades the moral, ethical and professional values. Corruption has the power to exacerbate the poverty in an already impoverished and deprived society. A society engages in corruption because it thinks that every citizen must engage in their own corrupt schemes to overcome difficulties and be able to make ends meet. Dignity is lost and, as a consequence, values are forgotten and lost, the soul is sold and the will is bought. The foundations of the society collapse and the moral and ethical values with them. Its effects are extremely insidious.

It is worth pointing out that corruption in the public sector in Mozambique is also fostered by the officials negative behaviour at various levels, which leads to poor service provision, characterized by inept decisions, protracted solutions; absence of a culture of individual and collective accountability; inability to exercise power in line with one's responsibilities. This attitude of the state agents is manifested in the following fashion at the leadership, managerial and supervisory levels in public administration:

#### At the Leadership level

The inability to generate a vision and disseminate it among the collaborators renders the leader or person in charge unfit to set a direction, the objectives and the strategic actions and ultimately, it shows inability to design a mid- and long term strategic plan.

The absence of these strategic instruments causes the organization to reactive, in place of being proactive; causes the organization to be unable of determine the priorities and the allocation of resources in accordance with these; it thwarts key actions that will enable effective management of their implementation, control, monitoring as well as accountability.

The absence of leadership takes away the responsibility from all the subsequent levels, given that there is not criterion against which performance can be demanded or measured. Thus, ineffectiveness and low productivity become an implicit culture within the organisation, and becomes apparent in the day-to-day language in the service to the public and in the

evaluation and accountability mechanisms and processes.

#### At the Managerial level

Management entails the development of operational plans, their execution and control, the human as well as financial resource complement. Poor managerial ability causes the organization to implement activities that are inconsistent with the strategic objective of the organization. Worthy of note is the absence of a course of action geared towards clearly defined outcomes, within set timelines, leading to difficulties in terms accountability. A manager incapable of planning and developing his/her team, and lacks skills to set goals for the collective action of his/her collaborators becomes unproductive and pernicious to the organization.

#### At the Supervisory level

The ineptitude of a supervisor who is unable to effectively direct, oversee, praise, coach the collaborators, is perceived by the collaborators who, becoming aware of his/her lack of interest, begin to emulate him/her.

In order for the to face up to public demand and pressure, civil servants, incapable of responding effectively, exacerbate the bureaucratic requirements, by introducing unnecessary hindrances that add no value in order to justify the inefficiency of their sectors: processes that should normally take a week are dragged for three months.

#### The work environment

Without adequate leadership, direction and supervision, the officials turned into an amorphous and inoperative mass spend business hours fuelling intrigues, rumours, because they are devoid of a sense of mission, thus, contributing towards undermining the action of the State. There is no respect for the public resources, and the opportunity to develop a class of professional civil servants is lost, as ultimately are the ethical and deontological values. A public sector thus rendered weak contributes to the loss of the authority and capacity of the State to become more active and decisive in the promotion of the country's social and economic development.

The officials incapable of responding effectively exacerbate the bureaucratic requirements creating conditions for illicit payments. The officials act with the conviction that the example comes from above and they feel that they can also practise the act and that they do not need to be responsible persons in their sectors, let alone informing their principals of the irregularities.

*Bureaucracy*, in its classic sense, means the efficient organisation par excellence. Efficiency is attained in this case through prior and thorough definition of what must be done and how it must be done. Understood this way, bureaucracy is a vital process for the functioning of the public sector.

*Bureaucratism*, on the contrary, is a dysfunction of the essence of bureaucracy in its classic sense, as described above: consists of excessive domination and abusive influence of the

bureaucracy, typical of an organisation, sector or department where the volume of paper documentation multiplies and increases hampering speedy and/or efficient solutions. The manifestations of bureaucratism are, among others:

- *Excess of formalisms* - the inflexible adherence to regulations and routines by officials causing inefficiency to the organization;
- *Too many steps and players* - in the procedures for document handling (between the submission of an application and the decision);
- *Resistance to change* - refusal and lack of interest in the alternatives aimed at improving provision service through the rationalization of the procedures;
- *Categorisation of decisions* - service provision favours to the customers with whom officials have personal, ethnic, regional ties or other affinity types, and those who can afford to pay bribes;
- *Authoritarianism* - cling to the inefficient routines, the public official exercises excessive authority over the public, which has not other alternative but to be conform or bribe;
- *Depersonalisation of the relationship* - the bureaucratized organization, establishes a distance between the civil servant and the customer through non-interactive form of space organisation, the service culture (sometimes the customer is just a number) lacks courtesy and tolerance for the specific needs of each citizen.

Thus, the existence of Bureaucratism creates a favourable culture, opportunities and an environment for corrupt practices to thrive. The *unpredictability* of service is the major characteristic of a system that is ailing bureaucratism.

### **3. The governance and corruption diagnostic**

In the design and implementation process of the Public Sector Reform Overall Strategy, consultations were undertaken with citizens, the Private Sector, the International Community and the Civil Society, as the base for the identification of the problems affecting the public sector. The review reports of the implementation of the Public Sector Reform as well as the outcomes of the National Baseline Study on Governance and Corruption carried out in 2004, allowed for a more in-depth diagnostic of the functioning of the public sector, whose identified problems were clustered in five areas, namely:

**a. Public service provision structures and processes:** the aspects identified as problematic are still the existence of an inadequate public sector dimension vis-à-vis the nature and scale of the services to be provided. According to the households enquired, particularly, the rural households, in the 2004 Survey, it was found that these had little contact with most of the basic services such as: water, electricity, postal and telecommunications. Only two services, Health and Education show a relatively higher percentage of use, 50%

and 39%, respectively. This rate of use illustrates the paucity of the public service and the divide between the State and the large majority of ordinary citizens, particularly, in the rural areas.

The poor performance of public utilities is, also, one of the problems affecting both households and businesses. According to public officials interviewed in the 2004 Survey, disaggregated by sector and region, one of the major causes of the public institutions poor performance has to do with personnel management, since it is regarded as being based on family ties or friendship, on groups of influence within the institution and on political affiliation or pressure.

In terms of the centralization of decisions, only 37% of public officials interviewed stated that the opinions of the collaborators were always taken into consideration by their superiors. This excessive centralization is an indication of inadequate accountability in public services.

In the public sector as a whole, according to the results of the 2004 Survey, the areas of the police and justice (General Attorneys offices and courts) stand out among the sectors that provide poor quality service to citizens.

**b. Public policies:** there is still excessive sectorisation and lack of coordination in the public policy design process, which contributes to poor definition of the mission, aims and functions of the public sector's organisations. Likewise, there is still an inadequate dissemination of the rules governing public bodies and their agents' activities and procedures.

**c. Human resources:** the data gathered from the interviews with public officials in the 2004 Survey revealed that, in order to improve institutional performance, the following measures should undertaken: improve the capacity to detect and punish corruption cases, provide better training to officials and more and better equipment. The salary issue was not considered as "very important" (coming in the fifth position on the list) by the majority of the officials interviewed.

**d. Financial management and accountability:** the data gathered from the interviews with public officials in the 2004 Survey indicates that the State budget and *procurement* management were the areas where the public sector shows a clear weakness. It is in the domain of acquisition of goods and services that the established rules are systematically disregarded, with 70% of the interviewees responding 'Yes'. In the case of salaries and investments only about 30% said 'Yes'. Likewise, the perceptions of those interviewed reveal that there were frequent instances of disregard for rules in public tenders, with 39% stating that such practice occurred sometimes to almost all the time. These findings are reinforced by the data from the Reports on the 2002 and 2003 State General Accounts prepared by the Administrative Court, which pointed to: "lack of strict adherence to standards for execution, with some ceilings exceeded, in some instances, when execution is analysed according to the functional classification".

There is a significant number of public officials interviewed (37 %) who found the budgeted expenditure control and monitoring mechanisms inadequate, a perception that is

reinforced by the fact that only 55% of those interviewed stated that the decisions in the area of *procurement* were subject to regular auditing by the Administrative Court. These mechanisms of procedure are open to corruption.

**e. Governance and corruption:** weakness in public organizations systems and mechanisms to demand the enforcement of the law; prevalence of inefficient and inadequate State accounts audit mechanisms; weakness of the defence, legality and protection of citizens' rights bodies in their relations with the State; lack of transparency in the management of the public assets; and little participation of the civil society and the private sector in decision making, monitoring and evaluation of its implementation.

In case of the justice system, both the households and the business managers interviewed in the 2004 Survey fully agree that "In Mozambique only vulnerable and poor people do not manage to escape the laws", i.e., that the Mozambican justice system is vulnerable to corruption.

Still within this context, the households interviewed (70%) consider corruption one of the most serious problems and that it has been on the increase both in the public and the private sector. In addition, the majority of those interviewed are of the opinion that corruption is mostly fostered by the politicians and public officials.

Corruption is particularly serious within the traffic police force, the police, the courts, the customs, inspections, permits issuance, taxes, contracts, service provision such as education, health, water and electricity, for instance. Similarly, the households and businesses interviewed thought the most serious forms of corruption were bribes paid to public officials and nepotism.

Finally, the households, the businesses and the public officials interviewed begin indicated that the major reason for not denouncing acts of corruption was the absence of protection mechanisms.

In summary, the following problems were identified as ailing the Public Sector:

- Inadequate dissemination of Rules and Procedures governing the Activities of the Public Bodies;
- Weakness of the Human and Financial Resources and Asset Management Systems;
- Disregard for Financial, *Procurement* and Asset Management Regulations;
- Excessive Bureaucratism within the Administrative Processes;
- Lack of Application of Administrative and Judicial Sanctions Against those who
- practise Corruption;
- Development of a Culture of Impunity due to the Judicial System's failure;
- Poor Capacity of the Municipal Assemblies and the Parliament to Monitor the
- Efficiency and Effectiveness Local, Provincial and Central Governments Programme;
- Absence of Protection Mechanisms in the Case of denunciation of Acts of
- Corruption;
- Inadequate Commitment on the of Public Administration Managers to the Combat

- against Corruption;
- Low Level of Ethical Awareness and Mobilisation on the Part of Citizens regarding their Individual and Collective Responsibility in the Combat against Corruption.

#### 4. Causes of Corruption

After reviewing the problems identified in the National Baseline Study on Governance and Corruption, together with other concerns expressed in various studies carried out in the country - preliminary Diagnostic for the development of the Global Strategy, consultations with citizens, the Private Sector, the International Community and the Civil Society, the study on the Ethics in Mozambique, the UEM/Afrobarómetro study, the CEE-IRSRI/ECA study and the Reform of the Public Sector implementation review reports - the major causes of corruption in Mozambique, can be clustered as follows:

**Lack of enforcement of laws and regulations:** Corruption in the public sector Manifests itself/thrives where laws and regulations are not enforced, and where law enforcement is often used as an instrument to protect of private interests rather protect public interest.

- **Lack of institutional accountability:** due to inefficiency and weakness of accountability mechanisms and institutions in the public sector coupled with the tendency to abuse public power for personal gain.
- **The weakness of the control and oversight mechanisms:** the inadequate capacity of the public sector administrative, financial and technical inspections, including inspections in the legality and justice sector leads to the perpetuation of three basic factors of corruption: opportunity, impunity and secrecy.
- **Public administration managers' lack of commitment to fighting corruption:** not always is the action against corrupt practices decisive and timely. This can lead to the prevalence and intensification of corruption in the public sector.
- **The practice of nepotism and favouritism:** wherein the holders of public office provide services to groups of customers to whom they are related through ethnic, geographical, economic ties or other types of kinship. The divide between that which is "public" and that which is "private" is blurred/ murky and, therefore, the abuse of public service for personal gain is a routine occurrence. It is not recognized that the function of the State must be above private interests to safeguard the public interest, in general. Thus, the legitimacy of the State as a guarantor of the public interest is disputed by the citizens.
- **Inadequate civil society participation in the combat against corruption:** citizens with an ambiguous attitude towards corruption - an attitude of uncertainty expressed in terms of intolerance, indifference or acceptance, a perception that corruption is rampant and deep rooted, that nothing can be done and that we also have to learn to live with it - ultimately contributes towards the prevalence and spread of corruption in the country. The citizens reveal a low level of confidence regarding the denunciation of

corrupt acts and the corrupt.

It is common belief that corruption in the public sector is essentially a result of the low salaries in this sector, in comparison with the private sector or international and non-governmental organisations. According to this view point, corrupt practices and acts become the public officials' "survival strategy", through which they supplement their low income.

However, this can be a valid argument but it does not explain the significant number of honest officials who carry out their duties, with positive a attitude towards their work, cognisant of their role in the society and who do not take advantage of their position to derive personal benefit, even though they are in the lower bands in the remuneration scale.

The difficult living conditions of the majority of Mozambicans - poverty - may, initially give the erroneous perception that all evils of corruption are much more evident among and practised in a more extreme and violent form by the poor, for their survival can only be ensured through ruthless and widespread corruption. According to this point of view, the society engages in corruption because each and every citizen must engage in their own scheme to be able to survive.

In actual fact, people who are actively involved in the practice of acts of corruption in the public sector are the officials at various levels, with the knowledge of the norms, laws and access to information, but who motivated by the desire to live in luxury use their power and knowledge to extort citizens and deplete the coffers of the State.

This perspective has the merit to inform on the paper not determinative of the poverty in the promotion and development of Corruption in the public sector, and as a last resort to influence the taking decision on this sensitive issue the development of the country. In actual fact, the effects of corruption are borne by the poorest people, those who dependent most on public services loans, who are less able to pay bribes and engage in fraud and incapable of illegitimate appropriation of economic privileges.

## **5. Rationale for an Anti-corruption Strategy**

The Anti-corruption Strategy must be an instrument of political orientation and operationalisation of the Government's priority actions in the combat against corruption. The strategy defines the focus, the principles, the methods and the goals, and must be consistent with the implementation of the Public Sector Reform Overall Strategy.

The strategy must be centred on measures geared towards combating bureaucratism and corruption in public institutions that thwart any effort aimed at improving the quality of the services provided to the citizens.

The design of the Anti-corruption Strategy will take into account: the five-year Government programme (2005-2009), the Public Sector Reform Overall Strategy, the Public Sector Reform implementation mid-term Reports for the period 2001-2004, the suggestions and proposals resulting from consultations with the civil society, the private sector, the international partners, the justice and the legislative sector, as well as o report on the National Baseline Study on Governance and Corruption.

## 6. The Overall Aim

It is envisaged to enable the public sector to provide quality services and in a decentralized manner, act in a more participatory and transparent manner and be effective in the prevention and fight against corruption until such point, first, when it does not undermine what is being built in the country and, second, when the citizens regard corruption as a harmful threat, which they must guard against.

## 7. What are the strategic principles?

For the successful combat against corruption, the following principles will be systematically adhered to:

**A comprehensive approach.** The Anti-corruption Strategy is an integral part of the Public Sector Reform, but it contains distinct elements which will be reflected in sectoral plans of action. The effective implementation of the actions in each component of the Public Sector Reform Overall Strategy will contribute to the reduction of opportunities of illicit access to public resources.

**Intolerance or Zero Tolerance:** The Government shall always set the example by defining and complying with indisputable moral and ethical standards. Corrupt practice will be fought at every level or area of the Government.

**Prevention:** The strategy emphasizes prevention of corrupt practice rather than punishment, notwithstanding the fact that the State investigation institutions will be strengthened to carry out their mission and obligations efficiently and effectively.

**Sanctioning:** The Government will promote rigorous investigation of corruption cases, which will be referred to the institutions responsible for criminal proceedings to deal with confirmed cases of corruption.

**Participation:** The efforts in the combat against corruption will be centred on the citizens. It does not just a matter of involving them, but of making active players in this process. Therefore, the Government is committed to facilitating the creation of an environment in which a well informed civil society will be able to monitor the action of the Government itself and call for responsibility and accountability. This type of institutional approach, complements the government action and the action of the public sector organisations and equally facilitates the building of the citizens' trust on towards the State institutions, which effectively must act with impartiality. This way, the alliance between the State, the Civil Society and the Private Sector is strengthened and, consequently, the collaboration, joint action and sharing of information between the Government, the citizens and the business community is consolidated.

- Combine the "Combat against corruption" decisive discourse with impact actions: in the combat against corruption process, the exhortation to combat against corruption will be more effective when combined with measures such as the following:

- Effective service provision: it is a personalised service, provided with courtesy, patience and tolerance but with quality and compliance with deadlines.
- Economic policy reforms: call for the introduction of transparent financial and procurement systems, which do not allow officials to practise discretionary power and which also curtail the monopoly of the power of the public sector.
- Information dissemination: provide information on how the government spends the money, implements the programmes and how these programmes influence service provision to the citizens, which is the requisite for an honest and transparent government.
- Participation of the citizens in the governance process: through clear definition of policies on the participation of the civil society in decision making, monitoring and evaluation; clear definition of the policies of access to information; of open governance; of dissemination of the laws and information; and promotion of literacy, communication and education campaigns.
- An integrated strategy, coordinated with other partners: the success of the combat against corruption calls for joint participation State - civil society - private sector.

## 8. What are the three strategic moments in the combat against corruption?

Cognisant of the complexity, cross-cutting nature and plurality of the dimensions of corruption, given that it impinges on the human dignity, affects the social relations, distorts the economy, weakens the State and creates a counterculture, the Anti-corruption Strategy will comprise three basic moments: prevention, administrative action and judicial action.

These three stages of the strategy must unfold concurrently and complement one another for any success achieved in one will reinforce the other two. They are interdependent but with distinct tasks.

**First stage: Prevention** - the enforcement of the laws and regulations such as the codes of ethics, the laws pertaining to the organisation and conduction of public tenders for the provision of goods and services, the laws on the administrative procedures, the laws that prohibit the acceptance of certain donations, the laws on the freedom of press are a way of curtailing corrupt practices in the public sector institutions. The full realization of the basic functions of the government - implementation of the Public Sector Reform Overall Strategy - reduces opportunities of illicit access to public resources, given that the governance system is no longer vulnerable and embezzlement easily detected.

The prevention function also entails the review of the laws, policies, functions, regulations, structures, management practices of public finances and procurement, as well as the control systems to identify the conditions that fuel or facilitate corruption as well as devise reforms in order to curtail the opportunities, wherever and whenever possible, and eliminate or alleviate the problems. Thus, the measures aimed at eradicating bureaucratism, discretionary

power and secrecy that is implicit in relationship between the corrupt and the corruptor are fundamental and effective instruments in the combat against corruption.

Accountability and transparency are central pillars of good governance, enabling the State and other players to focus on the results, clear objectives and good strategies, including the effective monitoring and public sector performance reports. A culture of transparency and accountability in the public sector promotes improved consistency between public policy, its implementation and efficiency in resource allocation.

For prevention to be successful there is a need to educate MEN with a view to promoting a more profound change in the public opinion and create an environment in which corrupt practices are openly discussed and considered untenable. To this end, a comprehensive and sustained public relations campaign to educate the citizens on their right to public services, their right to refuse illicit demands by public officials and their right to organise themselves to stand firm against corruption at the grassroots level. The campaign also provides information on the meaning of corruption, the provisions of the Law on corruption and the praise of exemplary public officials in the combat against this evil. Active participation and ongoing vigilance by the society, in general, have been awarded the highest priority.

The establishment of direct channels of communication between the Government and the society to ensure the protection of and curb the threat of reprisal against citizens who, in the exercise of their legitimate right, denounce acts of corruption they have been victims of or which they know of, is an instrument that enables both the disclosure of actual cases of corruption as well as curtail the emergence of new cases.

Participation and transparency are the key elements for improved accountability and adaptability of the administrative management. They contribute towards the democratization, towards the development of professionalism and ethics within the government as well as towards preventing corruption in the public sector.

**Second stage: Administrative action / disciplinary process** – an action that occurs when the damage has been done, i.e., the act of corruption; when the corruptor has been detected, through the internal and external control and audit systems or through denunciation by the civil society or the business community, the institution/sector concerned proceeds with the disciplinary process and the application of administrative measures.

The administrative action involves an investigation and the start of a disciplinary and/or criminal process. For most people, this is the essence of a programme to fight corruption because rather than promoting opportunity and impunity for the practice of corrupt acts, it inflicts administrative punishment to the offender discouraging illicit practices that contaminate the healthy part of the public sector. This approach reinforces the preventive action and instills confidence in the citizens towards State institutions.

The lack of a serious perspective in the opening and closure of disciplinary processes in the sectors may create conditions for the perpetuation of corruption practices and for the public to give up on the whole programme to fight this phenomenon. This way, there is a need for a process of institutional capacity building and strengthening of the core organisations in the combat against corruption, namely, the administrative, financial and technical inspections

and public sector audits.

**Third stage: Sanctioning** - in the cases where corruption involves criminal offences, the public institution concerned will refer the matter to the bodies of justice, which will investigate, set criminal charges, try and punish the offenders.

The judicial system is important in the implementation of the required measures because it represses those who have committed the crime and prevents the development of a culture of impunity; i.e., the factor that sustains corruption. However, the judicial system shall not be an isolated panacea to the problem, but rather an integral part of the public sector that is ailing with corruption problems.

The extent of impunity that is witnessed at present calls for the adoption of far reaching measures that require the strengthening of the operational capacity of the judicial system, it also requires a review of the code that governs the labour relations between the State and the officials as well as the implementation of judicial and extra judicial mechanisms that inflict severe punishment to proven cases of corruption. The stronger the judicial system the more efficient and effective the tracking down and punishment of offenders will be.

Therefore, transparency and the combat against corruption in the public sector call for the coordination and integration of the various actions, all of which contribute towards an accountable public sector providing quality services to the citizens.

## **9. Elements of the Anti-corruption Strategy**

The various experiences in the combat against corruption, cognisant of the fact that this phenomenon is a reflection of the flaws and inadequacies in the governance of a country, reveal that the greater the incidence of corruption, the fewer the strategies that include actions aimed at addressing corrupt behaviour. Therefore, the focus must be on actions that recognize the broader institutional impact within each context and the methods adopted must be those that address the root causes of corruption.

Thus, taking into consideration the various experiences in the combat against this evil worldwide and in our country, in particular, the recommended actions will focus on the following:

- Rationalization and simplification of the administrative processes;
- Reduction of the public officials discretionary power in the discharge of their duties;
- Development of a management culture geared towards concrete results within the public administration;
- Strengthening of the accountability process and mechanisms in the management of public finances, assets and procurement;
- Putting in place mechanisms for the participation of the civil society and the private sector in the governance action;
- Increased criminal actions for the trial of corruption cases as a way of curtailing the development of a culture of impunity for, in effect, this phenomenon fuels corruption;
- Promotion and materialisation of the decentralization process of the governance action

so that government decisions are closer to the citizens.

## 10. Objectives, outcomes and indicators

The strategy is underpinned by the objectives, outcomes and specific indicators outlined below in accordance with the components of the Public Sector Reform Overall Strategy.

**Objective 1:** *Simplify and rationalize the administrative procedures to introduce efficiency in service provision to the citizens.*

### Outcomes:

- ♦ Preliminary inspection processes simplified (Approval);
- ♦ Decree 30/2001, of 15 October, on the rules governing the provision of public administration services, especially, Chapter VII on administrative procedure formalities effectively applied in all public institutions;
- ♦ One-Stop-Shop for the provision of services to the public and to business people in place and operational;
- ♦ QuickWins implemented;
- ♦ The functional analysis and restructuring of the Ministries carried out in accordance with the mission, objectives and functions;
- ♦ Processes for the commercial licensing simplified;
- ♦ The mechanisms of the new taxation system strengthened.

### Indicators:

- ♦ Number and % of the major processes simplified or rationalized;
- ♦ Number of the major services classified as effective;
- ♦ Number and % of Quick Wins implemented.

**Objective 2:** *Establish / develop a culture of transparency, impartiality, integrity and accountability public.*

### Outcomes:

- ♦ The Public Officials General By-laws (EGFE) reviewed, adopted and implemented;
- ♦ The leadership quality of public administration institutions and management strengthened;
- ♦ The quality of public institutions management strengthened;
- ♦ The professional skills of public officials in management and service provision in public institutions strengthened;
- ♦ The salary policy implemented;
- ♦ The Personnel Information System (SIP) reviewed;
- ♦ The legislation pertaining to transparency and integrity of the leadership improved and implemented;
- ♦ The public policy formulation capacity within the State bodies strengthened;

- ♦ The public policy management, monitoring and evaluation capacity of the agents of the State strengthened.

**Indicators:**

- ♦ Perception of the level of efficiency and efficacy in the functioning of each public institution;
- ♦ Perception of the level of ethics and corruption within each public institution;
- ♦ Appropriate public policies.

**Objective 3:** *Improve the efficiency and the quality of services in the justice system.*

**Outcomes:**

- ♦ The efficiency and integrity of the Anti-Corruption Unit strengthened;
- ♦ The legislation in force rationalized and updated;
- ♦ The efficacy and integrity of the Attorney General's Office (PGR) strengthened;
- ♦ The efficacy and integrity of the Courts strengthened;
- ♦ The efficacy and integrity of the Police strengthened.

**Indicators:**

- ♦ Perception of the society regarding the efficiency and quality of the judicial system;
- ♦ Significant reduction of the time taken to solve denounced cases;
- ♦ Perception of public officials and lawyers regarding the efficiency and quality of the justice system.

**Objective 4:** *Strengthen the State's Financial System with a view to introducing transparency, efficiency and efficacy in the State's financial, budgetary and asset management processes.*

**Outcomes:**

- ♦ SISTAFE working effectively;
- ♦ The public institutions internal and external auditing capacity strengthened;
- ♦ The management by objectives system strengthened;
- ♦ The State Procurement system strengthened;
- ♦ The public accounting capacity strengthened.

**Indicators**

- ♦ Timely and quality financial statements;
- ♦ Significant reduction in the level of misapplication of budget funds;
- ♦ % of public institutions with satisfactory budgetary execution on average;
- ♦ % of public institutions with aligned financial planning and control processes;
- ♦ Perception of the citizens and the private sector regarding the level of corruption in the State's procurement processes.

**Objective 5:** *Improve the level of awareness and participation of the civil society and the private sector in the combat against corruption.*

**Outcomes:**

- ♦ The capacity of the civil society and the private sector in the fight against corruption strengthened;
- ♦ The Code of principles of good governance in private businesses implemented;
- ♦ The capacity of the Media to denounce corruption cases strengthened.

**Indicators:**

- ♦ % of the civil society and private sector participants in the various mechanisms for the combat against corruption and promotion of good governance;
- ♦ Number of corruption cases reported by the Media;
- ♦ Perception of the citizens regarding the quality of the work of the Media and of the private sector in the combat against corruption.

**Objective 6:** Improve the mechanisms for local communities involvement in their participation in governance and monitoring so as to promote transparency and accountability.

**Outcomes:**

- ♦ Community participation mechanisms in local governance in place;
- ♦ The capacity of local Assemblies (province, district and local authority) to monitor the government actions and the legislative process strengthened.

**Indicators**

- ♦ Perception of the citizens regarding the efficiency and efficacy of local government in the provision of services and in the combat against corruption;
- ♦ Quality of debates and recommendations by counsellors;
- ♦ Perception of the citizens regarding the quality of monitoring of government actions and review of laws by the local government counsellors.

**Objective 7:** Ensure effective implementation of the Anti-corruption Strategy through the establishment and functioning of institutional mechanisms.

**Outcomes:**

- ♦ Institutional mechanisms for the coordination and implementation of the Anti-corruption Strategy in place;

**Indicators:**

- ♦ Perception of the level of corruption in the Public Sector

- ♦ Appropriate reporting to the Cabinet on the implementation of the Strategy.

## **11. Process management (Institutional Mechanism)**

The political leadership in the development, implementation and monitoring of the Anti-corruption Strategy is the direct responsibility of the Inter-ministerial Committee on the Public Sector Reform (CIRESF), which is chaired by the Prime Minister. CIRESF shall prepare annual reports on the implementation of the Anti-corruption Strategy General Guidelines for accountability purposes to the Government and to the Assembly of the Republic.

Because the Anti-corruption Strategy adopts a multisectoral and comprehensive approach, it is proposed not only to the Government, but also to other leadership bodies, as well as to the civil society, that an all encompassing and representative Technical Committee (CT) be established. Thus, the Technical Committee shall comprise representatives from the public sector, the civil society as well as the private sector.

The oversight and decision making role throughout all the phases of Strategy preparation and implementation is incumbent upon the Technical Committee, namely: to oversee, monitor and evaluate the implementation and propose measures or policies to enhance the strategy, fight corruption and improve governance. The Committee shall also prepare six-monthly reports on the implementation of the Strategy to be submitted to CIRESF. The appointment of the Technical Committee members and the Chairperson shall be object of a specific decision.

## **12. The Anti-corruption Strategy design process**

The Strategy design process will be participatory, with the general guidelines as the basic document. The Anti-corruption strategy will be the result of the general guidelines and the contributions gathered in the course of the consultations with the executive, the legislative, the judicial, the civil society, the private sector and the international partners.

The Strategy and the respective plan of action will be reviewed by CIRESF and approved by the government.