



### COUNTRIES AT THE CROSSROADS 2011:

#### MOZAMBIQUE

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#### INTRODUCTION

Mozambique has now enjoyed nearly two decades of peace following a bloody 16-year civil war between the ruling party, the Front for the Liberation of Mozambique (FRELIMO), and the Mozambique Resistance Movement (RENAMO). The government jettisoned its Marxist political system and transitioned in the 1990s to capitalism. Over two decades, the country introduced a democratic constitution, permitted competitive elections with its erstwhile enemies, rebuilt from the war, reintegrated Mozambicans displaced by the war, sought closer ties in Africa and the West, and instituted far-reaching economic reforms. These policies set Mozambique on a trajectory of rapid economic growth, averaging about 7 percent per year—although that growth has done little to improve the country's overall level of development.

Within this context, the presidential, legislative, and provincial elections on October 28, 2009, represented less change and more continuity in Mozambique's political life. President Armando Guebuza, a wealthy businessman with a hardline Marxist past, was reelected overwhelmingly to a second term, defeating RENAMO candidate and leader Afonso Dhlakama. A guerilla fighter for Mozambique's independence from Portugal, Guebuza was the government's chief negotiator with the RENAMO rebel movement, and oversaw the negotiations that eventually led to the 1992 peace accord that ended the civil war.

Guebuza's reelection cemented FRELIMO's overwhelming control of the country. Mozambique has become a single party state as the influence of RENAMO, which transformed after the war from a rebel group into an opposition political party, has waned in each of the four national elections since 1994, especially as a new opposition group has splintered RENAMO into two groups, with many progressives joining the new party. Throughout his time in office, President Guebuza has emphasized an anticorruption platform, harkening back to FRELIMO's early days in power when it was viewed as not corrupt. Economic growth, strong state involvement in the private sector, inadequate administrative and judicial oversight, and FRELIMO's control of the government since independence have created ample opportunity for private gain at public expense. Despite the anticorruption rhetoric and high-profile corruption

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convictions of government officials, foreign donors have expressed increasing concern at persistent graft. This led in 2010 to a temporary suspension of aid by a number of international donors and a subsequent freeze on increases in official development aid.

Mozambique remains a country in transition. A poor country deeply damaged by its colonial heritage, authoritarian excesses after independence, and decades of civil strife, its great achievement has been stability amidst deeply disruptive political and economic liberalization. Mozambique's political and economic transformation must continue to be supported by checks on the power of the executive branch, strengthening of the judiciary, professionalization of the police forces, and reductions in opportunities for corruption.

### ACCOUNTABILITY AND PUBLIC VOICE

Mozambique's 1990 constitution introduced a multiparty system with universal suffrage, but the country's democratic process has been marred by flawed elections and enduring single-party rule. The constitution formed the basis for the historic 1994 national and provincial elections that marked the first multiparty democratic vote in Mozambique's history. The country subsequently held presidential and legislative elections in 1994, 1999, 2004, and 2009, as prescribed by law. In 2009, elections were also held for newly created and directly elected provincial assemblies developed as part of a general decentralization reform plan.

Elections are supervised by the National Election Commission (CNE), which is intended to be independent. Both foreign and domestic election observers regularly monitor the elections without government interference, but they have stated that the CNE is disorganized in its handling of elections.

The CNE did not permit the upstart Democratic Movement of Mozambique (MDM) to contest the 2009 legislative elections in 9 of the 13 provinces based on allegedly improper filing procedures. The party's attempt to contest that decision was unsuccessful, but its presidential candidate, Daviz Simango, was permitted to run. While international election observers criticized the CNE with respect to the exclusion of the MDM from contesting elections in most provinces as well as weaknesses during the vote tabulation process, they stated that the elections overall reflected the will of the Mozambican people.<sup>1</sup> Nevertheless, there were isolated reports of intimidation by supporters of both RENAMO and FRELIMO, and opposition candidates were more frequently affected. In addition, the European Union Observation Mission noted deficiencies in the election process related to a legal framework that is unclear and contradictory, does not provide adequately for complaints and appeals, and under which institutions such as the CNE are subject to undue political influence. The mission also expressed concern over voter registration, particularly with respect to lack of public review of the voter registry and failure to eliminate ineligible voters from the list.<sup>2</sup>

RENAMO's representation in the 250-seat legislature (Assembly of the Republic) fell from 90 to 51 seats in the most recent election, while FRELIMO increased its share from 160 to 191 seats. This electoral success permits FRELIMO to change the constitution since the party now meets the two-thirds threshold required to do so. Starting in October 2010 and proceeding into 2011, FRELIMO parliamentarians took steps to establish an ad hoc committee to draw up constitutional amendments. FRELIMO's vagueness about the intended content of the amendments led to fears among the opposition that the ruling party's intention was to allow President Guebuza to run for a third term.<sup>3</sup>

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The poor performance of all the opposition parties, and FRELIMO's control of the levers of power, means that it is unlikely to lose power for some time. Opposition political parties in Mozambique often reflect personalities rather than platforms. For example, Afonso Dhlakama, who has received a diminishing share of the presidential vote since 1999, dominates RENAMO. Daviz Simango, a former member of RENAMO, leads the MDM; while observers hope the MDM will prove more vibrant, it remains an upstart. These parties are poorly funded, lack national reach, and in the case of the MDM face government obstacles in contesting provincial elections.

Equal campaigning opportunities exist for all parties seeking local, provincial, and national office, although the EU reported that opposition candidates were sometimes barred from campaign stops. The law permits private and public funding of campaigns, and recognized parties received campaign funds from the government.<sup>4</sup> The process of disbursing funds, however, hindered smaller parties' ability to campaign, as funds were released very late in the electoral process.<sup>5</sup> In practice, FRELIMO as the incumbent enjoys a decided advantage in campaigning across the large country, as well as in the state-dominated media. Laws requiring political parties to publish where they get their funds and how they use them are not enforced, making it impossible to determine the scope of economically influential interests on campaigns.<sup>6</sup>

Opportunities theoretically exist for rotation of power among competing political parties, but FRELIMO has in practice continued to dominate the electoral system since independence. In the 2009 legislative and presidential elections, for example, 19 parties competed, but FRELIMO, RENAMO, and the MDM were the only three parties to garner more than 5 percent of the total vote. In the 2009 presidential elections, RENAMO's Afonso Dhlakama received 16.4 percent of the vote, compared with 37.7 percent in 2004. President Armando Guebuza, the FRELIMO candidate, received 75 percent of the vote, up from 63.7 percent in 2004. MDM presidential candidate Daviz Simango received 8.6 percent of the vote.

The 1990 constitution provides for the separation of the executive, legislative, and judicial branches, but the system of institutional checks and balances is weak. FRELIMO rarely differentiates between the various branches of government, or even between party and state. Meanwhile, the constitution establishes a strong presidency, and FRELIMO increasingly dominates the legislative branch. Although the executive and the parliament can initiate bills, in practice the executive almost always initiates legislation. A two-thirds legislative majority can override a presidential veto of legislation, which in practice has not been necessary to use.

The constitution requires that political parties are national in scope and uphold national interests; parties based on religion or ethnicity and those that advocate the use of violence are prohibited.<sup>7</sup> In practice, however, political parties have tended to reflect regional and ethnic interests. Foreign interests, largely those of European and American nongovernmental organizations (NGOs) influence the political process through grants and technical assistance to parties.

The civil service is supposed to be selected on the basis of open competition and merit. In practice, however, relatively low pay, inadequate resources, and a lack of trained personnel undermine its efficiency and professionalism. Opposition groups claim that membership in FRELIMO is a requirement for obtaining a government job; FRELIMO denies the charge, but has argued that it is natural that individuals committed to the party that won the election would comprise the top leadership of the civil service.<sup>8</sup>

Civic groups, both domestic and foreign, are able to discuss pending policy with government officials. This consultation is formalized through the Council of State, a presidential

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advisory body that also includes representatives of civil society. There are no reports of foreign or domestic NGOs being denied registration, although registration may be time consuming. While civil society groups are engaged in the political process, civil society overall is perceived as fairly weak and generally lacking the ability to effect real policy pressure on the government.

Mozambique is heavily dependent on foreign aid, largely from European and North American sources. Foreign aid donors can directly affect domestic policy through aid to the government. China's increasing foreign direct investment in Mozambique, however, is seen as a counterweight to Western aid that comes with strings attached.

Article 105 of the constitution guarantees "freedom of the press, and the independence of the media." There is little direct censorship of the media, and journalists report a generally open environment for press freedom—except when the topic relates to corruption of government officials. Reports of party and government officials threatening and detaining journalists occasionally surface.<sup>9</sup> Further, the state does use economic censorship in the form of an advertising requirement for state businesses that effectively limits the financial viability of independent media, and journalists report that they practice self-censorship. There are no shield laws, which makes the environment still less conducive to press freedom.

Defamation of the president is illegal and libel remains criminalized, though this law is infrequently applied. In June 2010 the Nampula City Court found journalist José Da Gama guilty of libel against Lucia Afate, a RENAMO member of parliament. Afate subsequently sued for damages from Da Gama. Because Da Gama refused to reveal his sources for the article, the judge charged him with "lack of collaboration with the court." However, Article 74.3 of the constitution states "Freedom of the press shall include ... protection of professional independence and confidentiality...." Da Gama, who appealed the decision, received a hefty fine from the court in lieu of prison time.<sup>10</sup>

There have been incidents of harassment, unlawful detention, and violence against members of the press, mostly occurring in rural areas at the community level.<sup>11</sup> The Mozambique chapter of the Media Institute of Southern Africa charged in September 2009 that some politicians hindered the work of journalists, noting that journalists with community radio stations had experienced "physical or psychological violence."<sup>12</sup> In May 2010, Reporters without Borders stated that the editor of the weekly *Magazine Independente* had received death threats following articles about RENAMO leader Afonso Dhlakama.<sup>13</sup> Amnesty International reported that in September 2009 three newspaper reporters in Zambezia province were convicted of defamation and undermining state security after raising questions about the nationality of the Prime Minister. They were sentenced to six months in prison, a sentence that was later converted to a small fine.<sup>14</sup> In March 2007, Maputo police detained reporter Celso Manguana for three days after he criticized police as "incompetent" in responding to his inquiries regarding the arrests of Mozambicans demonstrating against a senior government official after explosions at a military arsenal that killed over a hundred people.<sup>15</sup> Furthermore, the assassination of investigative journalist Carlos Cardoza still figures prominently in the lives of journalists and is frequently cited by journalists as continuing to have a chilling effect on the press.

The government refrains from direct censorship of the media but engages in indirect censorship through economic and advertising manipulation; moreover, a degree of self-censorship occurs because of libel laws and concerns over personal safety. The government owns and operates much of the print, radio, and television media, and roughly a third of Portuguese-speaking Mozambicans receive news from the state-owned Radio Moçambique via its country-wide network, Antena Nacional. State-owned Televisão de Moçambique similarly operates the

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only national network, and *Notícias*, the major newspaper in the capital, is effectively state owned. The Agência de Informação de Moçambique (AIM) is an important source of news and may be accessed via the internet. Mozambique also has private media, and a number of privately owned newspapers are available. Private and foreign television stations are also available in urban areas, and private radio stations, including religious ones, operate freely.

Although state-run media do at times offer critical coverage of the government, progovernment bias is sometimes evident. The EU did an extensive study of media coverage of the 2009 elections and found that, overall, coverage of the larger political parties was balanced and neutral, although FRELIMO candidates received more airtime. In particular, both private and state-run media airtime favored the FRELIMO presidential candidate over the RENAMO candidate.<sup>16</sup> While the state-owned media are the major sources of information, the Committee to Protect Journalists has stated that they do have editorial freedom. RENAMO, however, argues that some media coverage is biased in favor of the ruling party.

Mozambique does not hinder access to the internet in any manner.<sup>17</sup> However, although Mozambique has been linked internationally via the internet through two new undersea cables since 2009, internet users as of June 2010 comprise just 2.8 percent of the population, or approximately one-third of the African average.<sup>18</sup> In response to deadly riots in Maputo in September 2010 (see below), the government announced that all pre-paid cell phones would need to be registered with the government, ending any user anonymity. The government stated it was for protection of citizens against criminals, but some media noted that texting had been used to coordinate the demonstrations, and that scams involving extortion and blackmail via text message were of real concern.<sup>19</sup>

### CIVIL LIBERTIES

Article 70 of the constitution prohibits torture and cruel or inhumane treatment, and the death penalty is illegal. However, in each of its recent annual reports on Mozambique, Amnesty International cites cases of extrajudicial killings by police. Few cases have been investigated and most police officers are not prosecuted for such illegal actions.<sup>20</sup> In its 2008 report, Amnesty International reported an increase in the number of extrajudicial killings over the prior year. In one April 2007 case, police in Maputo transported three individuals from a police station to a nearby sports field, where the three were shot and killed. Police claimed that the prisoners had attempted to escape.

In August 2008, police killed Abrantes Afonso Penicela north of Maputo. Before he died, Penicela stated that police had beaten, shot, and burned him.<sup>21</sup> Arnaldo Chefu, a police spokesman from Maputo, acknowledged some cases of severe police misconduct, including involvement in torture and unlawful killing. Police convicted of such crimes face prison terms of up to 24 years.<sup>22</sup> The police officers responsible for killing the three men in the sports field, for example, were later convicted and sentenced to 21 years in prison. In 2008, a presidential guard official received an 18-year prison term for killing a man in Maputo two years earlier.<sup>23</sup> In 2007, 10 police officers were sentenced to three to five years in prison for unlawful killing.<sup>24</sup> However, Amnesty International reports that, in general, killers are rarely brought to justice, a claim the police dispute.<sup>25</sup>

Prison conditions remain a concern. Reports continue to highlight delays in bringing criminal cases to trial, severe overcrowding, poor physical infrastructure, and a lack of sanitary

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conditions and healthcare access. The government acknowledged prison overcrowding in 2010. Deputy Justice Minister Alberto Nkutumula stated that prisons were under renovation but additional prisons needed to be built to alleviate overcrowding and separate women from men and adults from children. In one prison in the capital, for example, a facility constructed to hold 800 inmates actually held 2,311 as of June 2010.<sup>26</sup> Also in 2010, the Justice Ministry announced it had uncovered evidence of torture by seven prison guards against two prisoners in Nampula province. Justice Minister Benvinda Levi has publicly spoken out against torture in Mozambican prisons.<sup>27</sup> In the first half of 2008, 22 prisoners died at the Chimoio Agricultural Penitentiary because of diseases and lack of treatment. The Mozambican Human Rights League has argued, however, that prison conditions are improving.<sup>28</sup>

There are no effective protections against arbitrary arrest, and the majority of such incidents are not investigated. Article 101 of the constitution limits detention, and details of the length and condition of such detention are set by law: the Criminal Procedure Code allows a suspect to be held for up to six months without being formally charged. Detainees also have the right to judicial review of their detention, but understaffing has led to many accused being held in prison without such review. There have been a number of reports where those charged are detained indefinitely while evidence is gathered to prove their alleged guilt. Human rights groups argue that police and judicial unfamiliarity with the penal code governing detentions has led to the abridgement of citizens' constitutional rights. In addition, many of those detained may lack the funds necessary to post bond. Eduardo Mussanhane, director of Mozambique's National Prison Service, stated in 2010 that there were approximately 15,000 Mozambicans incarcerated. There were some indications, however, that the number of individuals in jail awaiting trial had dropped in recent years from half the prison population to slightly more than a third.<sup>29</sup>

There are no reports of terrorism in the country. However, police forces remain poorly paid and inadequately trained, and in-force readiness is reduced due to AIDS-related deaths.<sup>30</sup> The weakness of the police force and its failure to respond to crime, which is a serious and ever-present problem in daily life, has led at times to vigilantism, including lynching. In the provinces of Manica, Maputo, and Sofala, for example, between February and April 2008, 14 suspected criminals were lynched. In one of these cases, three individuals were convicted and sentenced to six months in prison for the lynching.<sup>31</sup>

The constitution prohibits forced labor, and prostitution is illegal. In addition, Mozambique is a signatory to the International Labor Organization Convention on the Abolition of Forced Labor and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. Despite these legal safeguards, the country is a source and transit area for human trafficking, with destinations both within the country and internationally. In late 2010, Mozambican police interdicted in the northern coastal province of Cabo Delgado a boat crewed by Tanzanians that was transporting 96 illegal Somali immigrants. The province reportedly is used as a transit port for illegal immigrants coming from conflict-ridden areas in the Horn of Africa and the Great Lakes region.<sup>32</sup> In the run-up to the 2010 World Cup in neighboring South Africa, Mozambique initiated "Open Your Eyes," a drive to combat human trafficking of children to South Africa for sex and labor.<sup>33</sup>

Article 97 of the constitution permits citizens to seek redress for damages caused by illegal state acts. Article 82 allows citizens the right of recourse for any act that violates constitutional guarantees. The slow judicial process, however, means delays for individuals seeking justice. Article 256 of the 2004 constitution establishes an ombudsman, but at present

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neither this office nor the National Human Rights Commission established by law in May 2009 is operational.

The constitution guarantees equal civil and political rights for men and women, and Article 67 states that “Men and women shall be equal before the law in all spheres of political, economic, social, and cultural affairs.” These provisions are not always upheld, although government officials such as President Guebuza publicly stress their importance.<sup>34</sup> Discrimination based on sex is prohibited, and in recent years the government has undertaken major revisions of legislation to lessen discrimination against women, such as the Domestic Violence Act passed in September 2009. Mozambique has also ratified the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.

The state makes reasonable efforts to protect against gender discrimination in employment and occupation. Women represent between one-quarter and one-third of membership in various elected government bodies. In late 2010, President Guebuza publicly launched a campaign against discrimination against women, especially with respect to domestic violence.<sup>35</sup> In 2009, Mozambique was awarded the African Gender Award by the Femmes Africa Solidarité for the efforts the country made to advance the status of women.<sup>36</sup> In addition, the World Economic Forum ranked Mozambique first among low-income countries in its Gender Gap Index, which is designed to measure the gap between men and women. Overall, Mozambique ranked 22 out of 134 countries.<sup>37</sup>

There are 43 languages spoken in Mozambique among a total population of approximately 22 million people,<sup>38</sup> and ethnolinguistic diversity has been one source of tension in the country. Addressing this issue, the constitution guarantees equal rights before the law, regardless of ethnic origin or religion, and outlaws discrimination based on these criteria. While Portuguese is the official language, the government actively promotes the development of Mozambique’s other languages. Ethnic tension is lower in Mozambique relative to other countries in Africa, but there nonetheless remains a regional divide between ethnolinguistic groups residing in the southern and the central and northern regions. These regions also correspond roughly to areas of support for FRELIMO and RENAMO, and party affiliation tends to cause more tension than ethnicity. With the introduction of the 1990 constitution, the government made major efforts to abolish laws and practices that discriminate against ethnic and religious groups. However, while laws protect against discrimination based on ethnicity, as in other parts of Africa, tribal affiliation acts as a powerful factor in employment decisions.

In 2010, President Guebuza publicly received the chairperson of the Association in Defense of Our Rights, an organization designed to support the rights of albinos, who face strong discrimination in Africa. The chairperson noted that a recent agreement between the government and the organization had facilitated greater access for albinos to doctors who specialize in the condition.<sup>39</sup> However, although the constitution guarantees the right to assistance in the case of disability, in practice, given the number of disabled individuals—many as a result of the civil war—combined with the poverty in the country, addressing this issue has not been a high priority for the government.

The constitution guarantees the freedom of religion and does not place restrictions on religious observance and education. The majority of the population adheres to some form of Christian belief, but Mozambique’s complex religious landscape also includes a Muslim community comprising nearly 20 percent of the population. There has been relatively little political tension between Christians and Muslims, who reside in the north, largely along the coast. Meanwhile, many Mozambicans, including those who call themselves Muslims and

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Christians, follow traditional African religious beliefs and practices to varying degrees.<sup>40</sup> The state restricts religious groups from organizing political parties, and the state does not observe any religious holidays as national holidays. The government permits Christian and Muslim schools, has sought good relations with religious groups, and refrains from interference in appointments within religious organizations, although religious institutions are required to register with the government.

The constitution guarantees freedom of association and the state allows civic groups to organize, mobilize, and advocate for peaceful purposes. Although the government permits public demonstrations and public protests, these rights are not always upheld in practice. For example, there have been many reports of the police using excessive and lethal force against public demonstrations. In February 2008, Mozambican riot police in Maputo used excessive force against citizens peacefully pressing the government to rescind price increases on fuel, which had raised the cost of transport fares.<sup>41</sup> The government fired rubber bullets and live ammunition at the demonstrators, killing three. Police also used live ammunition in Gaza province against demonstrators similarly protesting the fare increases.<sup>42</sup> In September 2010, the government also responded forcefully with teargas and rubber bullets when violent protests in the Maputo area and in Chimoio erupted in opposition to increases in food prices on items such as bread, causing hundreds of injuries and a reported 13 deaths.<sup>43</sup> There is no evidence that investigations were made of the shootings.

The government's Marxist past has heavily influenced government policy with respect to labor. The constitution guarantees work, just payment, safe working conditions, the right to form unions and strike, and paid holidays. The constitution specifically provides for the right to form and join a trade or labor union, although some problems have been reported with the formation of unions and their ability to engage in collective bargaining.<sup>44</sup> In 2010 Mozambique's largest trade federation (Organização dos Trabalhadores de Moçambique, OTM), spoke against legislation that would amend the 2007 Labor Law on the grounds that it would further erode workers' rights.<sup>45</sup>

### **RULE OF LAW**

The constitution states that judges should be dutiful to the law, impartial, and disinterested. The judiciary is charged with guaranteeing and strengthening the rule of law and promoting the rights and freedoms of citizens. The courts, whose decisions take precedence over decisions of other branches of government, may not act contrary to the constitution and are independent of any religious bodies. In practice, however, FRELIMO dominates all the branches of government, including the judiciary, as discussed below. There is also a strong perception that the judiciary is corrupt and partial toward the ruling elite and wealthy individuals.<sup>46</sup>

Mozambique has a Constitutional Council that assesses whether or not legislation is consistent with the constitution, resolves conflicts between branches of governments, and oversees elections. There is a lack of institutional clarity between this body, which is chosen by the president and assembly, and the Supreme Court (the highest judicial body). Since 1990, the Supreme Court has been responsible for some of the former duties of the council due to legal disputes over constitutional provisions governing the council.

It is not clear whether the government would comply if the court or the council ruled against the executive on any major legislative or executive decision, as this has not occurred to

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date. If one party controls both the assembly and the presidency, as has been the case, that party can exercise substantial political influence over the Supreme Court. In terms of judicial appointments, the president, who is currently from FRELIMO, chooses professional judges to the court, who must be confirmed by the Assembly. The Assembly elects elected judges to the court. Since FRELIMO has a majority of seats in the parliament, in practice these judges are generally sympathetic to FRELIMO policies as well. RENAMO argues that the government chooses incompetent and biased judges. Judges and other court personnel do not always have adequate or even required training, and judges also may lack legal reference materials, causing the accused to be deprived of legal rights. A shortage of trained personnel is often cited as one reason for the backlog of court cases.

Key international donors have argued that the FRELIMO government has not ensured in practice the complete independence and impartiality of the judiciary so as to avoid close judicial scrutiny of government corruption. In a well-publicized February 2010 court case, however, a judge in Maputo sentenced the former transport and communication minister, the former head of Airports of Mozambique, and several others to lengthy prison terms for embezzlement of public money related to the state airport company. The case was broadcast live on Mozambican television and radio, which was unusual both for the publicity and the fact that it involved a high-level official.<sup>47</sup>

A United Nations Special Rapporteur, who is an experienced Brazilian judge, visited Mozambique twice in 2010 at the invitation of the Mozambican government. After freely investigating the judicial system, she was encouraged by reforms in the prisons and by some anticorruption efforts, but noted in a September 2010 report that Mozambique was still challenged to achieve a truly independent judiciary without political influence.<sup>48</sup> Furthermore, allegations that political officials influence prosecutors reflect broader issues with judicial independence and checks and balances. The UN Special Rapporteur, for example, noted “undue interference” in the judicial process.<sup>49</sup>

Everyone charged with a crime is presumed innocent until proven guilty. Citizens have the right to independent counsel, and the constitution also guarantees legal counsel for those who lack financial resources for defense. However, although the government has increased its legal assistance through the Institute for Legal Aid, the UN Special Rapporteur report suggested that these rights are not guaranteed in practice.<sup>50</sup> Delays in accessing the judicial system undermine judicial due process. Military, security, and police forces fall under the jurisdiction of the president, and police, military, and internal security services refrain from interference and involvement in the political process. The assembly has the ability to review domestic and foreign policies, as well as budgetary considerations. Military and internal security services are free from the influence and direction of nonstate actors, but the control of the government over all aspects of the police is less certain, as seen in its acknowledgement of police involvement in crime rings.<sup>51</sup> In particular, fears have grown regarding security force involvement in Mozambique’s expanding drug trafficking industry.<sup>52</sup> As noted previously, security services have been involved in human rights violations, including indiscriminate firing with live ammunition on demonstrators, unlawful killings of suspects and detainees, and torture.

The constitution guarantees the right to property ownership, but property rights are “weakly protected” in Mozambique overall and in comparison to the world average.<sup>53</sup> Reflecting its Marxist history, the state owns (with a few exceptions) the land and natural resources in or under the land and extending out into territorial waters. In lieu of actual ownership, Mozambique employs a system of land tenure/usage rights, which means that land cannot be used as collateral

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for loans, hindering development of the agricultural economy. Traditional law often views land as communal. The resettlement of internally displaced persons and the natural growth of the population will likely lead to future disputes over land titles. Under the current constitution the state may expropriate property only in accordance with law, for public interests, and with just compensation. Although Mozambique law states that mineral resources belong to the state, foreign companies have in recent years invested heavily and successfully in the mineral resource sector in the country.

The state promotes the private sector, encourages foreign investment, and guarantees the right of inheritance. In the past few years, foreign investment has increased substantially, indicating a generally favorable business climate. However, contract enforcement through courts is uncertain due to a lack of judicial capacity, so most commercial disputes are addressed privately.<sup>54</sup> There is also weak government enforcement of contracts in financial services.<sup>55</sup>

### ANTICORRUPTION AND TRANSPARENCY

Mozambique is a poor country that relies on external financial assistance for approximately half of its government budget, allowing foreign donor agencies to exert considerable influence on government administration and distribution of foreign assistance. While the government has pursued macroeconomic policies to create an environment conducive to economic growth and foreign assistance,<sup>56</sup> corruption and bureaucratic inefficiency are key impediments to foreign investment in Mozambique. The regulatory environment further hampers starting and operating a business,<sup>57</sup> and relatively high personal income, corporate, and VAT taxes often result in noncompliance. The government conducts internal audits but lacks the capacity to effectively audit government agencies. To help address some of these deficiencies, the government has introduced a number of reforms to ensure greater accountability of customs and tax collection in recent years, including the merger of previously separate revenue collection bodies.<sup>58</sup>

There are a number of state-owned firms, but the state has been pursuing a policy of privatization. Foreign direct investment has increased substantially, mainly in capital-intensive megaprojects such as the Mozal aluminum smelter. In 2007, the state gained majority ownership of the massive Cahora Bassa dam, which the government purchased from Portugal. While these projects have helped boost Mozambique's economic growth rate, the benefits have not trickled down to the broader population. Furthermore, the close relationship of the government with for-profit activities increases the opportunities for rent-seeking behavior by government officials.

Asset declarations of public officials are required but are not open to public and media scrutiny and verification. Meanwhile, while Mozambican law requires political parties to disclose their accounts regularly, no political party has ever done so. Petty corruption frequently experienced by citizens further undermines political legitimacy and economic growth.<sup>59</sup>

Mozambique has in the past few years created both enabling legislation and institutional mechanisms to combat corruption, including the anticorruption law (2004) and the establishment of the Central Office for Combating Corruption (GCCC, 2005) and an ombudsman (2005). Mozambique has also ratified the United Nations Convention against Corruption. After the 2005 election of President Guebuza, the new government approved an anticorruption strategy, which included the establishment of a new financial system.

Donor dissatisfaction with various elements of governance, including the government's performance in implementing its anticorruption strategy, led 19 key foreign aid donors—

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collectively called Program Aid Partners—who provide financial support for the government budget, to freeze their pledges of financial assistance in a so-called “donor strike” in early 2010. The Mozambican government took strong exception to the G19 over conflict of interest, government corruption, and exclusion of opposition parties.<sup>60</sup> While the G19 later renewed financial aid, it subsequently froze aid for 2011 at 2010 levels. In response, Government Planning and Cooperation Minister Aiuba Cuereneia vowed new legislation regarding corruption, but little appears to have subsequently occurred.<sup>61</sup>

Corruption remains a major issue of debate in the country. Transparency International’s 2010 Corruption Perceptions Index, ranked Mozambique 116 out of 178 countries surveyed. The CPI score of 2.7 (where 10 is a clean score), was broadly unchanged from the previous four years despite previous government pledges to address corruption.<sup>62</sup> Effective legislative and administrative safeguards to prevent, detect, and punish corruption of public officials are weak. A presidential decree that established a government anticorruption initiative was declared unconstitutional by a court.<sup>63</sup>

The General Inspectorate of Finance audits state administrative units. Mozambique’s Administrative Tribunal, an independent auditing body that is administratively and financially independent from the executive, examines and certifies the government budget and its management, and is also responsible for examining the legality of state expenditures. One uncertainty is the effective auditing of the new provincial legislatures, which create added challenges to proper auditing and accountability.

The attorney general is tasked with investigating allegations of wrongdoing, including for cases referred to it by the GCCC, but it is not clear how free these bodies are from political influence. There is also legislative oversight, and parliamentarians do inquire as to the status of investigations. A number of cases in which allegations of corruption of officials at the local and national level have been prosecuted have received widespread media coverage.<sup>64</sup>

Although Mozambique has whistleblower protection, whistleblowers have not been guaranteed significant protections in practice.<sup>65</sup> The Media Institute of Southern Africa, a regional press freedom organization, stated that the Mozambican government’s Central Office for the Fight against Corruption did not have a website at the time when they conducted their research for a 2010 report titled “Government Secrecy in a Media Age.” They argued that this made anonymous reporting of instances of corruption by whistleblowers more difficult.<sup>66</sup>

The state provides mechanisms by which victims of corruption may pursue their rights, but these are not always effective. In the case of police corruption, proving a case may be difficult.

Public sector information is published regularly. For example, the annual Government General Accounts Report is published after the assembly approves it, and the budget—which the legislature must approve annually—and budgetary legislation are available on the internet. The Bulletin of the Republic also publishes government information, and the ministry of planning and finance makes available additional reports that relate to budgetary matters. However, the Open Budget Index gives Mozambique a weak score of 28 out of 100, signifying that the government provides minimal budget information to the public.<sup>67</sup>

Citizens have a legal right to government information, but in practice this right has been undermined by a lack of bureaucratic capacity, the cost of disseminating this information to the broader public, and media accusations of government stonewalling. In late 2010 a media-proposed draft Freedom of Information bill that would foster greater transparency through publication of government documents gained political momentum. As of April 2011, however,

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the proposal had been languishing for five years because of a lack of parliamentary support, despite vows to debate the measure.<sup>68</sup>

In recent years the country has enjoyed economic growth through so-called megaprojects in extractive industries. Given the importance of this sector to the country—and the great potential for corruption—in 2006 the government committed itself to following the Extractive Industries Transparency Initiative (EITI). After some delays, the EITI secretariat was created in March 2010.<sup>69</sup> Mozambique currently holds candidate status, which provides two years to meet the validation requirements and become EITI compliant.<sup>70</sup>

The state attempts to ensure transparency, open bidding, and effective competition in the awarding of contracts. This includes procurement and bidding rules for the purchases of goods and services, with those above a certain threshold requiring bids. The government also implemented a new software auditing system, which is gradually being extended to more districts and institutions, for more transparent and effective budget execution for the procurement of goods and services.<sup>71</sup> In previous years the IMF had encouraged procurement reforms to improve governance, and the 2010 G19 suspension of aid was in part due to concerns related to procurement. As part of the March 2010 agreement with donors, the government pledged to further improve procurement policies.<sup>72</sup>

### RECOMMENDATIONS

- Approve the proposed Freedom of Information law.
- Approve legislation defining libel and slander in terms of “actual malice and knowledge that the information was false” to help protect journalists from libel lawsuits arising from reporting on public officials and to ensure any penalties are civil, not criminal.
- Require all political parties and their leaders to publicly disclose their assets and sources of funds.
- To meet the critical need for qualified judges, increase salaries and judicial training programs and provide office-related materials.
- Require a mandatory and independent investigation of the police in all cases of demonstrations where rubber or live ammunition is used and results in the injury or death of citizens.

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