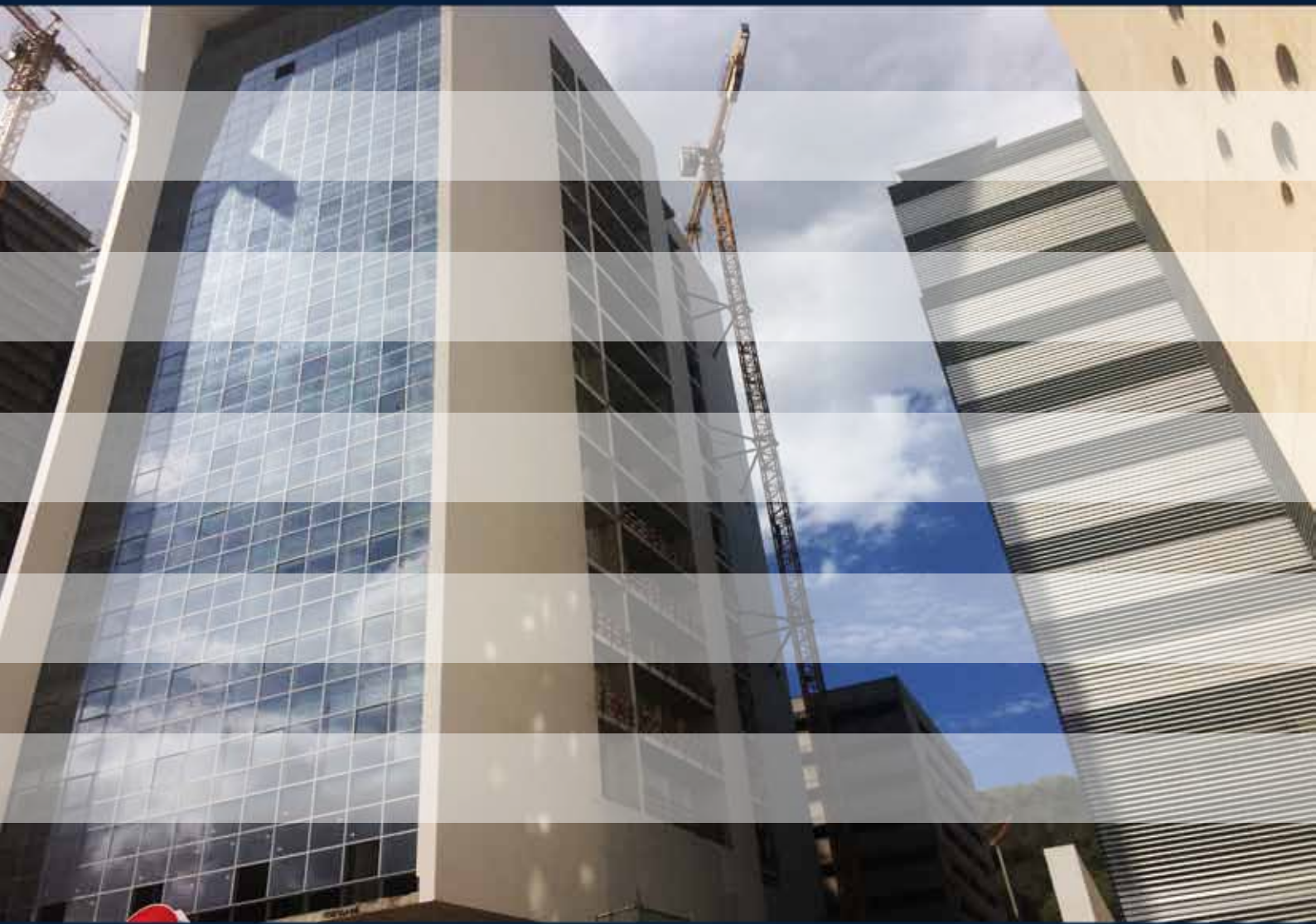


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CENTRO DE INTEGRIDADE PÚBLICA
Boa Governação Transparência Integridade



Business

INTEGRITY COUNTRY AGENDA [BICA]
ASSESSMENT REPORT MOZAMBIQUE

EXECUTIVE SUMMARY

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EXECUTIVE SUMMARY

THE BUSINESS INTEGRITY COUNTRY AGENDA (BICA) Initiative

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

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

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



RESULTS of the BICA

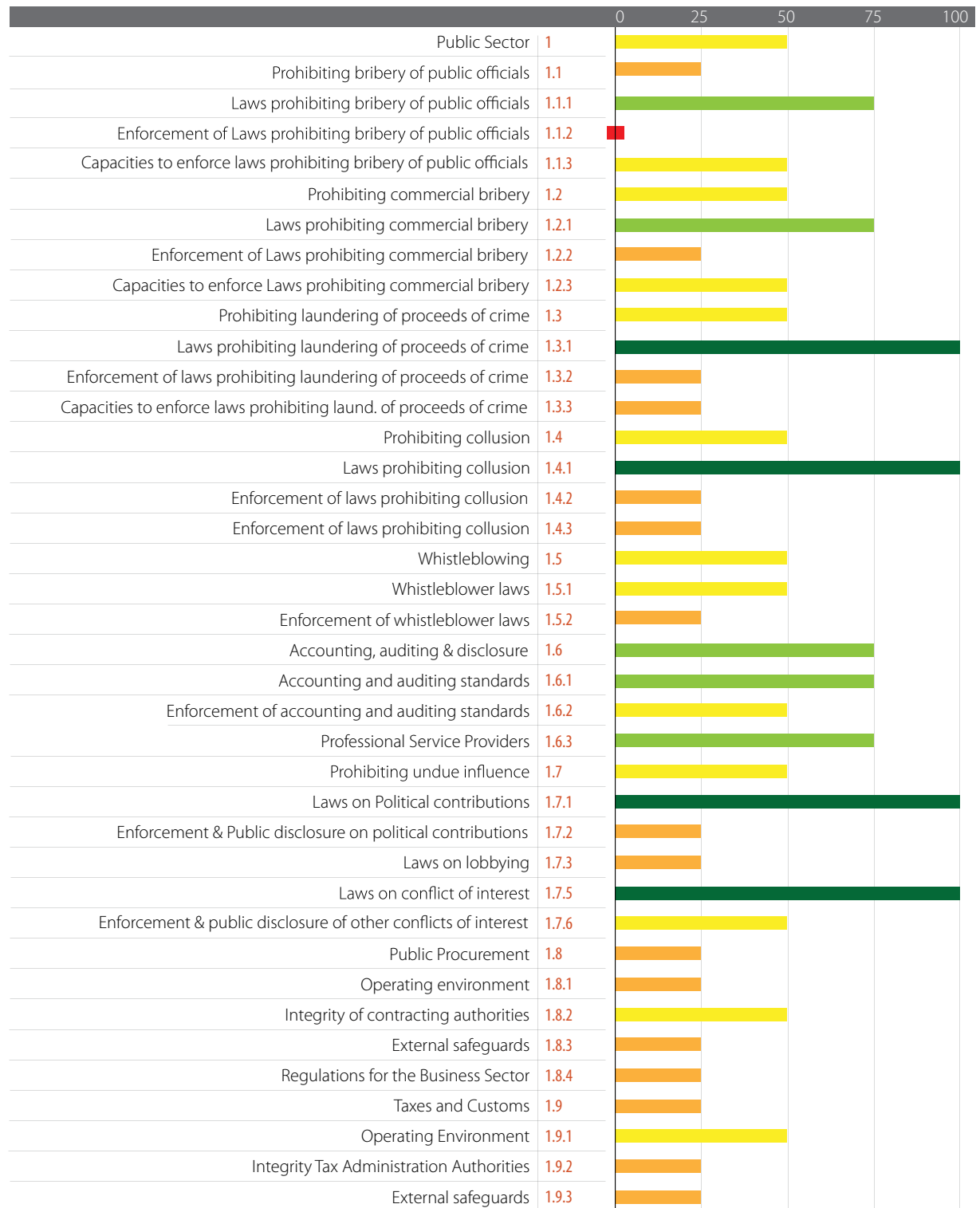
Assessment Report Mozambique

Public Sector

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

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

Scores are represented graphically below.



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

In the short term:

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



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

In the medium term:

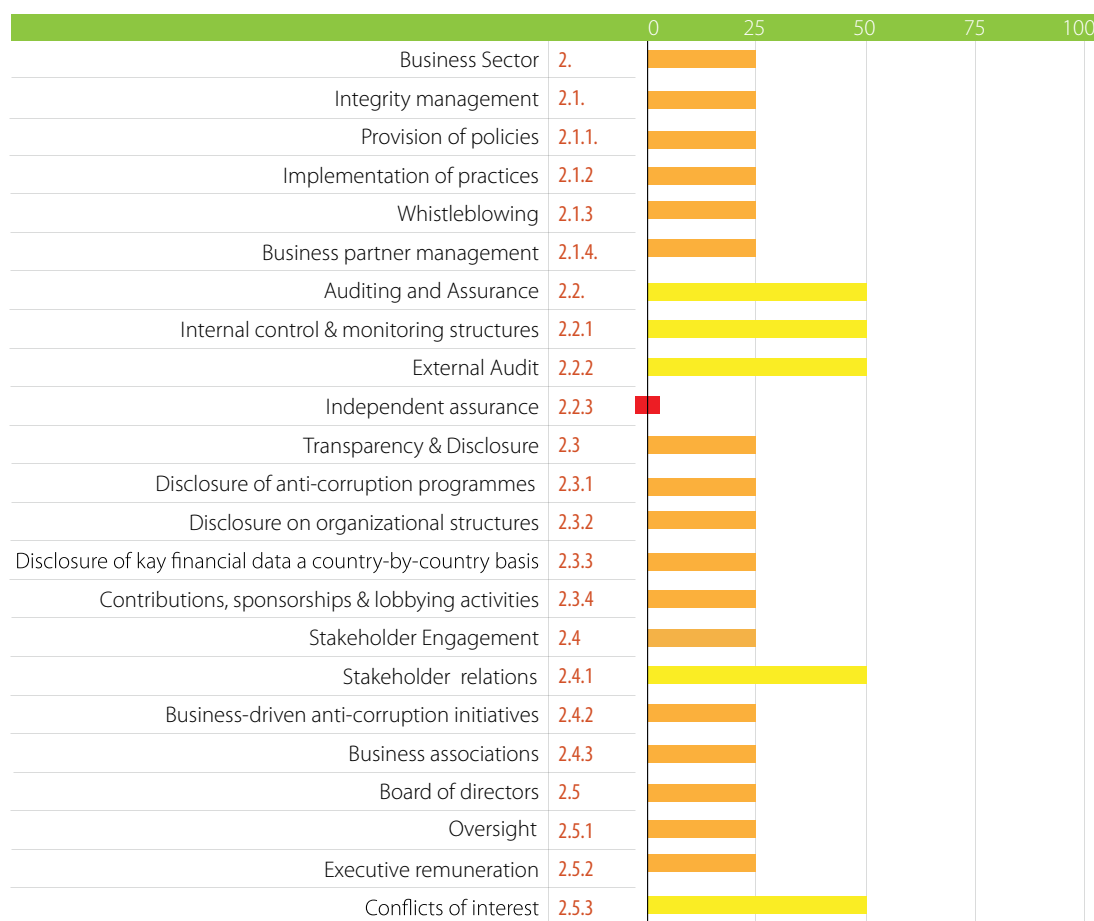
- Regulate the Public Ethics and the Whistle-blower Protection laws, to allow for more clarity in the enforcement of conflict of interest and whistle-blower protection in the public and business sectors;
- Revise procurement legislation to improve the existing framework for internal checks and balances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

Business Sector

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

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

The scores are represented graphically below.





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

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

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

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

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

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

Generally, companies have many gaps in business integrity indicators. The situation is more critical among national companies. Publicly-owned companies have



better transparency and disclosure practices than private ones, although this does not mean that they are better in terms of business integrity. Actually, it is important to bear in mind that disclosure of these companies' financial reports is mandatory. The points presented here lead to two insights. The first is that the tendency of multinational enterprises and their subsidiaries to perform better is due to the more heavily scrutinized context in which they operate. The second insight is that the relatively better performance of public-owned companies stems from the legal obligations, and the country's history, when these enterprises were dominant, and the national business class is still new, undercapitalized, and still succumbs to the woes of the market, including competing to participate in the state's supply chain, with a weak record of integrity management. Despite the relative better performance of public-owned enterprises in some aspects, they still perform poorly with regard to accountability to citizens, their main shareholders. Political influence and a culture of lack of transparency in the public sector play a role in this performance, but weak enforcement of existing legislation also has considerable influence. For example, publicly-owned companies are supposed to report to Parliament through the inclusion of their accounts in the annual General State Accounts that are formally approved by the legislature. Their accounts are subject to external audit by the Administrative Court and, by law, audit reports must be published.

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

In the short term:

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

In the medium term:

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



- Improve the responsiveness and accountability of public-owned enterprises to citizens through stronger intervention by the Administrative Court and Parliament to guarantee compliance with the existing legal framework;
- Support the development of national companies' capacity for general and integrity management. This implies supporting the adoption of management and reporting standards (accounting and auditing) by a broader set of companies, in line with existing legislation;
- Civil society and government should identify and list companies and entities (public and private) subject to the disclosure of information obligation under the Right to Information Act.

Civil Society

Civil Society can contribute to preventing, reducing and responding to corruption in the business sector providing broad societal checks and balances, such as the existence and effectiveness of independent media and the engagement of civil society in promoting and monitoring business integrity-related issues in companies.



Historically, civil society in Mozambique has played the role of oversight and watchdog in relation to the public sector, and not so much the business sector.

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

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

Mozambique combines small vibrant **privately-owned independent media** and a public media sector with a wide coverage (mostly radio and television) throughout the country, but subject to strong political control, which reduces its autonomy. In the case of the private media, in an economy heavily dependent on the state and controlled by political elites, independent media face serious challenges of

financial sustainability and professionalization. There is no consistent and systematic reporting on corruption in the private sector by the media that, allied with their weak professionalism, limits their capacity to report highly technically demanding issues that they sometimes do not fully understand.

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

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

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





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