

Mozambique political process bulletin



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Editor: Joseph Hanlon (j.hanlon@open.ac.uk)
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CIP, Centro de Integridade Pública
Rua Frente de Libertação de Moçambique (ex-Pereira do Lago), 354, r/c
(CP 3266) Maputo www.cip.org.mz cip@cip.org.mz
Tel: +258 21 492 335, 82 300 33 29 Fax: +258 21 492 340

AWEPA, the European Parliamentarians with Africa
Rua Licenciado Coutinho 77 (CP 2648) Maputo
Tel: +258 21 418 603, 21 418 608, 21 418 626
Fax: +258 21 418 604 e-mail: awepa@aweпа.org.mz

Conflict over conflict of interest

Anti-corruption legislation has become a hot potato, as self interest combines with difficult legal issues to create a confused debate. A proposed code of ethics for public servants is being seen as a key test of political will, because members of parliament (AR, *Assembleia da República*) are being asked to reduce their own incomes. But that is not the only issue.

In June 2011 the Council of Ministers submitted to parliament a package of anti-corruption legislation, thus meeting one of the governance benchmarks of the G19 budget support donors. The package contains five components:

- **REVISED PENAL CODE** which contains a complete updating of crimes of corruption. (See page 5 for more details.)
- **REVISED PENAL PROCESSES CODE** which includes changes to investigation methods, including allowing telephone tapping and undercover actions and making material obtained that way admissible in court. It also includes new alternatives to prison.
- Revisions to the law governing the **PUBLIC PROSECUTORS OFFICE** (*Ministério Público*) to make it easier to prosecute corruption as well as to cover new appeal courts. This was approved last year and came into force as Lei nº 14/2012 de 8 de Fevereiro. (See page 4)
- A **WITNESS PROTECTION LAW** which will be approved in the current parliamentary session. (See page 6)
- A **PUBLIC SERVANTS CODE OF ETHICS** which includes conflict of interest and declaration of

Transparency An overlooked dimension See page 9

assets, which has proved most controversial. Committee hearings have begun, although a vote may be deferred to the October session or beyond. (See page 3)

There is broad agreement that Mozambique must update its corruption legislation, in part to meet United Nations, African Union, and SADC (Southern African Development Community) conventions and protocols it has signed. There has also been strong civil society and donor pressure.

First proposals came from CIP (Centro de Integridade Pública, Centre for Public Integrity) in 2009 and were then taken on and expanded by UTREL (Unidade Técnica da Reforma Legal, Technical Unit for Legal Reform), which is part of the Justice Ministry. The package was approved by the Council of Ministers in 2011 and went to the October 2011 AR session.

AR says: "we need time and calmness"

"We need time and calmness to see if we can find the best solutions from the historic, anthropological, sociological and juridical points of view", Margarida Talapa, head of the Frelimo bench, told the AR on 12 March, with respect to the anti-corruption package.

She noted that Portugal took 50 years to consolidate its penal code and the Portuguese parliament took five years to approve it, so the Mozambican parliament should be should not be expected to do it in less than a year.

And she continued: "I want to make it clear to those inside and those outside that parliament must feel an immunity from pressure from interest groups and from group interests."

But this was challenged at a meeting on the anti-corruption laws in Maputo 28 March organized by CEDE (Centro de Estudos de Democracia e Desenvolvimento). Retired Supreme Court Judge João Trindade agreed that "parliament cannot just be a Frelimo postbox" that simply approves what is sent to it by government. "There must be a balance. Yes, study the law, but parliament must approve this essential packet of laws" before the next election. He underlined the slowness of the AR by noting that he had been commissioned by the AR itself to draft a law on class actions which it considered to be very important, and he submitted it a decade ago, "and this very important law has been waiting 10 years for approval."

CEDE chair and former university rector Brazão Mazula said no one had immunity from public pressure, and considered it "positive" that there is pressure from civil society on the AR to approve the anti-corruption laws. *Magazine Independente* editor and meeting chair Salomão Moyana said the law was urgent and the AR should be pressured to approve it.

The response came in an editorial on 1 April in the Sunday newspaper *Domingo*, with a strong attack on the proposed anti-corruption package. It is, the newspaper said, "not just a package, but a huge shipping container," and if MPs are to consider it seriously and understand it, it cannot be approved by this legislature – that is, before 2014 elections.

The law contains "dangerous confusions" between ethics, morality and law, thrown together as if they were the same thing, it argues.

Domingo continues that the package has been written by experts and highly paid consultants locked in their offices without taking account of Mozambican reality, is much too complex, and

Overloaded?

Government has used the anti-corruption umbrella to bring forward a whole set of urgent legal changes, including updating the penal code, introducing alternatives to prison, and implementing new appeals courts. This has overwhelmed the AR, which considers itself incapable to dealing quickly with complex legislation. Indeed, this session of parliament has already voted to not deal with a new bankruptcy law because it is highly technical and complex, and passed it back to government to introduce by decree.

Panic over the workload involved led the AR to split the anti-corruption package into parts, to be approved over several years. This is creating other problems. Because it was designed as a unit with extensive interlinkages, breaking up the package and approving the laws one at a time without revising the links has created serious confusion.

For example, the new Ministério Público law (14/2012) revokes decree 22/2005 which contained some of the requirements to declare assets and these were not replaced. And in some places procedures have been introduced contradicting other laws which were not withdrawn.

And the Ministério Público can investigate acts of corruption which have not yet been made crimes, because they are in the penal code which is not yet approved.

would be impossible to implement. It is based on international conventions – which the government signed and the AR approved without ever seriously considering.

"We believe that the grand majority of MPs have voted, and continue to vote, without having understood each part of the laws they are being asked to decide on. We continue to live by slogans."

Public servants ethics code would break new ground & restrict MPs

The proposed Public Servants Code of Ethics breaks new ground in several ways, most importantly by defining the concept of "public servant" (*Servidor Público*) to include anyone in a "public entity". The definition is very broad, covering the President, ministers, judges, and members of parliament and municipal assemblies though normal civil servants and the military and police, and even staff of private contractors carrying out public functions.

The law would bar any public servant from using their power or influence to provide any special help to themselves, their family, friends or anyone else – whether or not they are being paid for the help. And there a wide range of specific bans. Public servants would not be able to:

- use privileged financial information;
- do any outside work, paid or unpaid, that "cast doubts about their impartiality in taking decisions";
- solicit or collect any type of donation during working hours;
- give presents to superiors.
- accept payments to go to conferences or give talks in an official capacity.
- direct, work for, or profit from companies that have contracts with their administrative unit.
- participate in religious, civic or political activity during working hours.

Judges and MPs would face additional restrictions. Judges and prosecutors would not be able to undertake "any other public or private functions" except teaching, research or literary or artistic endeavors, and would be barred from active roles in political parties. They would also be prohibited from making public comments about other judges' decisions, except as part of a formal ruling.

Deputies in the AR would be barred from participating in any debate or vote on any issue in which they had an interest, including any professional activities (such as by lawyers) relating to third parties. The most contentious issue in the whole law is that MPs would be prohibited from receiving any money from state companies or institutions, except for teaching or pensions. Furthermore, neither the MP nor close family could have a contract with any public agency, municipality, or company which has any state shareholdings.

It is agreed by both Frelimo and civil society that this is the most contentious aspect of the law. Many senior Frelimo people in the AR also have well paid posts on state company boards or in state agencies. UTREL included the ban in the law because it argued that the AR has a responsibility to oversee state institutions, and that an MP cannot oversee an institution if he or she is part of the management. Some in Frelimo argue just the opposite – that the

Can morality be legislated?

The public servants code proposes to establish "a juridical regime for public morality". Twenty articles try to define and legislate moral conduct of public servants, including loyalty and efficiency. Judges would not be allowed to go to bars and kiosks which are frequented by people whose moral or social conduct is unacceptable or beneath the dignity of a judge.

But there is serious opposition to trying to legislate morality. Will courts be asked to rule on whether or not a civil servant is acting with "pride" or if a kiosk is beneath the "dignity" of judge?

There is some argument that the AR should remove these issues of general morality from the draft, and only keep the parts which define precisely what can and cannot be done.

best way for the AR to control state institutions is to have MPs on their boards.

Both within Frelimo and in civil society, there is a complaint that a few senior people in the Party are collecting multiple salaries and keeping all the privileges for themselves. The new law would be explicitly redistributive, forcing seats on boards to be given to other people, which could lead to support for the law within Frelimo.

Both donors and civil society would accept a clause saying that the new rules would not take effect until after the 2014 AR elections, which would allow those who want to keep the other jobs to simply not stand for parliament. Some in Frelimo will try to use this dispute to block the whole law, or at least to remove the section which applies specifically to MPs.

Conflict of interest & asset declaration

Conflict of interest and declaration of assets are also covered in the proposed Public Servants Code of Ethics. Conflict is detailed in 22 articles and defined broadly as occurring when a public servant is in a situation in which personal interests interfere, or

Teodoro Waty exemplifies ethics debate

Teodoro Waty is being asked to give an opinion on a proposed law which would force him to choose between parliament and business and reduce his salary. His position exemplifies the debate around the proposed Public Servants Code of Ethics.

Waty is chair of the parliamentary Commission on Constitutional Matters, Human Rights and Legality (Comissão dos Assuntos Constitucionais, Direitos Humanos e de Legalidade) which will give a key opinion on the proposed new law. He is also a member of the Frelimo Political Commission, the party's key decision making body.

But Waty is also a prominent businessman. He is chairman of the board (PCA - Presidente do Conselho de Administração) of the state airline LAM (Linha Aérea de Moçambique), a post which would be explicitly prohibited under the new law. He was also PCA of Fundação Universitária, Universidade Eduardo Mondlane's (UEM's) investment arm, which has investments in mining and carbon credits developments, among other areas. UEM is a state body and universities, mining and carbon credits are issues which will be debated by parliament and his commission.

A report issued on 26 March by the Centro de Integridade Pública (CIP) points to a number of positions he holds as a private businessman, including non-executive director of Barclays Bank and a shareholder in SPI, the Frelimo party holding company, which in turn has interests in areas such as mobile telephones, which are regulated by parliament.

Some in Frelimo would argue that it is particularly important to have someone of Waty's prominence as chair of LAM. Waty's integrity is not questioned, but can anyone be impartial in weighing up their own position? And the proposed law says that MPs should not be in a position that "could create the impression of lack of integrity".

The CIP report gained extensive press coverage. The 28 March CEDE meeting on the proposed laws had been set with Waty's agreement and he was to be a speaker; he promised to attend, confirming on the day. But he did not appear.

Waty is not alone, Margarida Talapa, head of the Frelimo bench who said the AR could not be pressured, is a non-executive director of Mcel, the state-owned mobile telephone company. Others in senior AR posts are also directors and chairs of state companies and agencies.

"could interfere", with them acting with impartiality – or "could create the impression of lack of integrity".

Under the proposed law, a public servant cannot take decisions or sign contracts relating to close family or have professional or commercial links with people or companies which have contracts with their administrative unit. Gifts must be less than one-third of their monthly salary and can never be accepted from someone who has an interest in a decision.

After a public servant leaves the government, they would be barred for two years from having any link to people or companies having contracts with their former department.

A Special Ethics Commission (Comissão Central de Ética Pública) would be created and all government departments and state companies would have their own Ethics Commissions (Comissões de Ética Pública). All members would serve without pay.

MPs would have to declare any possible conflict of interest during a debate.

Anyone elected or nominated and anyone with responsibility for money at national or local level would be required to make an annual declaration of assets and income for their entire household.

In a mixed proposal, declarations would be partly open to inspection, but a person wanting to read a declaration would need to make a formal request with reasons, and it would be illegal to publish the declaration. Most countries allow publication of such declarations, but some, including Canada, follow this more restrictive model. In SADC, South Africa, Mauritius and Botswana publish asset declarations.

New law allows challenge to illicit wealth

Anti-corruption officers have gained significantly more power, and new concepts of "illicit enrichment" (enriquecimento ilícito) and influence trafficking (tráfico de influências) have been created, as part of the new law on the Public Prosecutor's Office (Ministério Público) – the only part of the anti-corruption package approved by the AR last year.

In particular, they can request a court order which would require a person to provide written details of their assets in Mozambique and abroad, when they were acquired, and how money was obtained to pay for them. They are also allowed access to a wide range of records; telephone tapping is permitted.

Anti-corruption officials are, for the first time, allowed to prosecute those they accuse – changing a position that had made anti-corruption prosecutions difficult. Under the new law, national and provincial anti-corruption offices (Gabinetes de Combate à Corrupção) become part of the Ministério Público,

The law was passed under pressure from Attorney-General (Procurador-Geral) Augusto Paulino, who was also anxious to gain approval for other changes contained in the law, notably changes in the prosecutors office needed to relate to the new appeals courts (Tribunais Superiores de Recurso).

But splitting up the anti-corruption package continues to cause problems. Anti-corruption

officials can investigate illicit enrichment and tap telephones, but illicit enrichment is still not a crime and recordings of telephone conversations cannot be used in court, yet, because these aspects are only covered in the new penal and penal processes codes, which have not yet even been considered by the AR.

Corruption can be private as well as public

Under present law, corruption in the private sector and certain types of corruption in the public sector are not actually illegal. This issue was raised strongly in public consultations on the new anti-corruption law in 2010.

In particular, in the private sector, to be corrupt an action must harm a company financially. Suppose a person selling tickets says to the queue, "I have only one ticket left and I will sell it to the person who pays me the most money". So long as the ticket is paid for, the company does not lose money, and giving additional money to the ticket seller is apparently not a crime.

The proposed anti-corruption law, now included as part of the penal code, makes clear that a range of corruption crimes apply in both the public and private sector. In particular, all forms of bribes and illicit payments would become illegal. The law also sets out a range of crimes relating to public servants, including abuse of power.

The proposed law also gives the definitions of illicit enrichment and influence trafficking. These concepts were included in the Ministério Público law passed last year without definitions. If a person cannot give a "reasonable justification" of how property was obtained from "legitimate income", then it is seen as "illegitimate enrichment" and the property is taken by the state. A key point is that this is not limited to public servants, and thus could also be used against suspected drug dealers.

"Influence trafficking" is a public servant soliciting or receiving money, or someone giving money to a public servant, in the hope that the public servant will use their influence, "real or supposed", to obtain a job or business advantage.

But will the corruption law be approved?

Mozambique's penal code largely dates back to the colonial area, and in some parts to 1929 and even 1854. Post-independence changes have been made through individual laws and not by revising the code, and the new laws often did not link to the Penal Code or even contradicted other laws. This means judges must use a pile of separate laws and try to interpret their inconsistencies. Instead of presenting a new anti-corruption law, UTREL included it in a partial modernisation of the penal code, presented to

the Council of Ministers and AR as part of the anti-corruption package.

Much of what is being presented was in a 2006 draft of a partial modernisation of the penal code, which was shot down at the time by civil society. The biggest problem was precisely that it was only a partial modernisation. In particular the 19th century section on sexual crimes was left in tact, with language and concepts far out of date. Women's groups objected strongly at the time, saying the code would leave women and children worse off than they are now.

Any debate about the penal code is likely to be around sex and other issues not related to corruption, thus delaying anti-corruption legislation, perhaps for many years. Thus, rather than speeding up the code revision, as hoped, it appears to be slowing down approval of the anti-corruption law.

The Law Observatory (Observatório de Direito), one of several new observatories of government actions recently established, said that the Penal Code is not the priority. If it is too large to be considered quickly, in this parliament session, then the anti-corruption part should be considered as a single law, not as part of a code.

Civil society in the lead, while donors set 11 indicators

Donors are taking a lower key role in the governance discussion, leaving the running increasingly to civil society. For donors, approval of some form of the public servants ethics code this year is seen as a benchmark; some ambassadors now say openly that they believe no code will be passed because senior AR people are more interested in their own multiple salaries.

Some donors would be satisfied with a law that only took effect for the new AR in 2015. But they would also like to see the anti-corruption law taken out of the penal code and passed separately – both preferably in the October session this year.

The G19 budget support donors agreed with government at the beginning of March a complex new set of indicators for the implementation of the

anti-corruption package – which assumes laws will be passed this year and government must start planning now for implementation. There are 11 agreed indicators, including:

- An implementation plan by 31 July.
- A restructuring for the Central Corruption Control Office now that it is part of the Ministério Público, and the assurance that there is funding available.
- Creating a new witness protection office, with staff and budget.
- Creating a new Central Commission for Public Ethics.
- Publication of regulations within 90 days of the approval of the Public Servants Ethics Code.

Among the indicators is that the 2013 budget must have:

- Resources to enforce the Public Servants Code of Ethics.
- Staff and training for the new commissions.
- Resources for telephone tapping and other investigative tools.

Witness protection to be approved

A law on witness protection is expected to be approved at the current parliamentary session. At the 2002 trial of the killers of Carlos Cardoso, a witness was publicly threatened, and nothing could be done.

Under the proposed law, if a witness or victim of crime has a well founded fear for life, liberty or property, the identity of the witness could be concealed at a trial, there could be special protection, and in extreme cases the witness could become part of a witness protection programme with a new identity.

Such a programme will be expensive, so it is unlikely to be used very often. Thus it is seen as uncontroversial and is being approved quickly by the AR, which wants to show it is acting on the anti-corruption package. The AR has already approved the first two readings by consensus.

Background documents

CIP (Centro de Integridade Pública) has on its website, in Portuguese only, several anti-corruption background documents. On the Home Page, www.cip.org.mz:

- Incompatibilidades e Conflito de Interesses_Os Casos Teodoro Waty & Luísa Diogo
- Como acelerar a reforma anti-corrupção
- Níveis de corrupção permanecem bastante preocupantes - CIP_Newsletter14.pdf
- Segunda Pesquisa Nacional Sobre Governação e Corrupção

And on the archive page, <http://www.cip.org.mz/index.asp?sub=archive>, there are useful summaries of four of the laws:

- Guia para apresentacao pública_Lei de Protecção das Vítimas, Denunciantes
- Guia para apresentacao pública_Lei do Ministério Público
- Guia para apresentação pública_crimes de corrupção e conexos_Secção VI Código Penal
- Guia para apresentação pública_Código de Ética do Servidor Público

Also on the CIP website are a set of interesting analyses of district spending, various mining reports, and:

- "Índice de Percepção da Corrupção 2011: Moçambique continua um dos países mais corruptos do mundo" http://www.cip.org.mz/cipdoc/107_TI_CPI_2011_report_view.pdf
- "EITI Implementation, natural resources management and urgency of renegotiating and publishing the contracts with mega-projects" http://www.cip.org.mz/cipdoc/84_ANALISE%20ITIE%20MO%C3%87AMBIQUE_English.pdf

Finally, CIP is creating a data base of business interests of public figures. Only in operation on an experimental basis, it is on <http://www.cip.org.mz/cipsrddb/index.asp>

The World Bank has a useful new report (in English): "Public Office, Private Interests - Accountability through Income and Asset Disclosure"

http://www1.worldbank.org/finance/star_site/documents/PublicPrivateInterests/Public-Office-Private-Interests.pdf

On the debate about the close business and political links of the elite, Carlos Nuno Castel-Branco, director of the Instituto de Estudos Sociais e Económicos (IESE), has done some thoughtful writing (www.iese.ac.mz) and there is an interesting new paper by Lars Buur, Obede Baloi and Carlota Mondlane Tembe, in English: "Mozambique Synthesis Analysis: Between Pockets of Efficiency and Elite Capture"

<http://www.diis.dk/sw112686.asp>

Survey shows

Public sees economic problems as most serious, but says corruption is widespread

Cost of living, unemployment, and inflation are the three most serious problems for the country, according to a secret government survey. But corruption remains widespread, with half the population forced to pay bribes. Media scores very high marks for integrity.

The 2nd National Survey on Governance and Corruption (2^a Pesquisa Nacional Sobre Governança e Corrupção, PNSGC) was carried out by a private agency for government in 2010 and has never been published, but it is now available on the CIP website. The survey covered 3497 ordinary families, 1761 government functionaries, and 437 businesses.

When asked what are the most serious problems for Mozambique, all three groups cited the same top three problems: Cost of living, unemployment, and inflation. For ordinary families, the next four were water, bad roads, lack of food, and then corruption (ranked 7th). For companies, corruption and lack of food were ranked joint 4th. But for civil servants corruption was only ranked 10th, after lack of housing, criminality, environment, and lack of water, sanitation, and food.

However, 74% of the families considered corruption to be a "serious" or "very serious" problem. The problem was seen as worst in Maputo city, at 89%.

More than half (52%) of the families interviewed admitted to paying bribes in order to obtain basic public services. Only 10% had used the court system, but half of those admitted paying bribes.

Greatest payment of bribes was in education (23%) and health (22%). Compared to the first survey in 2006, the rate of bribe payment in education had dropped dramatically, from 41%, but health bribery had risen equally dramatically.

Of those surveyed, 47% blamed corruption at least partly on low salaries of civil servants, while 29% cited the lack of a system to denounce corruption and 24% pointed to lack of transparency. (In these questions, respondents could cite more than one cause.)

Asked to rank honesty, families ranked the police as most dishonest, followed by the transit police. However companies reported a significant fall in bribes to the transit police, from 38% in 2006 to 12% in 2010. (However this continues to be a problem. The editor of this *Bulletin* was asked for a bribe by the transit police on 30 March on Av Mao Tse Tung in Maputo. He refused to pay.)

Asked to rank the most honest institutions, religious institutions came first, immediately followed by the media (both 28%), then the Ministry of Health, then NGOs. Asked to say which institutions did most to combat corruption, media came first, cited by 78% of families; courts and prosecutors came next, following by NGOs.

Personal view

Governance – or keeping buses on the road

Joseph Hanlon

"The economic and political elite are becoming more and more intertwined. Mozambique is becoming a country in which only a small elite profits," an ambassador told me. "Don't look to the state to promote development," a donor representative told me. "The present small elite is only interested in rent seeking".

It is a growing attitude among donors which leads them to push "governance" and anti-corruption legislation. Budget support is decreasing and aid increasingly goes to projects controlled by the donors.

Civil society is concerned about the concentration of economic and political power in a few hands, and there have been articles about Frelimo party and parliamentary leaders accumulating posts as chairs and directors of state companies, as well as having private business interests.

Some in Frelimo are also concerned, partly because the concentration of power in a few hands

– at local as well as national level – means the patronage network is too small and too few people benefit.

A recent incident which seemed to sum up the concerns, at least in Maputo, was the import last year of 150 buses from Tata in India. *Canal de Moçambique* reported that 50 were already off the road due to lack spare parts. Tata Moçambique which imported the buses is a subsidiary of Tata in India, but local shareholders include President Armando Guebuza and António Sumbana, Minister in the President's Office (Ministro na Presidência para Assuntos da Casa Civil), who is also an old

comrade of the President – in the colonial era they were jailed together by the Portuguese secret police – and brother of Tourism Minister Fernando Sumbana. For *Canal*, the problem is that "the acquisition of the buses did not follow the procurement law, because there was no public tender".

The *Canal* response is interesting, because in highlighting issues around procurement law, they are situating the discussion directly within the "good governance" agenda, which emerged from the World Bank in the 1990s to make the market more efficient and open developing countries to foreign companies.

Governments were more regulated (for example on procurement) and had their roles in the economy curtailed, and government spending was constrained, while private businesses were deregulated and could operate more freely. Over the past decade, donors have promoted the governance agenda, and a few have expanded "governance" to include political and social indicators. The anti-corruption package now being debated is seen as part of governance, as is the election law.

But the "governance" focus is still largely economic, and in Mozambique is implicitly seen as the means to limit the ability of the political elite to gain economic power.

However, this governance agenda ignores the history of how other countries developed. "No country achieved significant 'good governance' capabilities before they developed their economy," notes Professor Mushtaq Khan, a University of London (SOAS) expert on the economics of rent seeking and patron-client networks, in an article to be published later this year in the journal *New Political Economy*.

The reason is that the international good governance agenda focuses on making markets more efficient by reducing transaction costs, but markets "have rarely played a dominant role in driving" the economic transformations that are part of development. Instead, development has "required strong state capabilities for dealing with critical market failures" and in providing incentives to domestic entrepreneurs.

Mozambique is no different from other countries in going through a messy and highly political process of accumulation which involves an intertwined economic and political elite. Although every country is different, Mozambique is going through a process similar to that passed through by most of the developed countries 60 or 100 years ago, but now conveniently forgotten.

Non-market mechanisms for resource allocation are inevitable in Mozambique, and the challenge is to force the political elite to pursue strategies that are socially beneficial as well as privately profitable. Khan points to what he calls "growth-promoting governance" capabilities that are "very different from the capabilities identified by the dominant liberal good governance consensus."

A Mozambican "growth-promoting governance" strategy might accept that the elite will use their position in government for accumulation, but would persuade them to invest in the productive sectors of the economy in a way that creates jobs, reduces poverty, and creates sustainable development. Historically, this is what happened in many now-developed countries.

The next decade will see a huge increase in mining and gas revenues. There will be intense conflicts within the elite to share out some of that money, and traditional market-friendly good governance will not be a serious constraint.

Mozambican media and civil society, and some within Frelimo, are already pushing for resource allocations that are developmental as well as profitable. Can donors and civil society come together to promote a different "growth-promoting governance", using political and non-market mechanisms and a mix of incentives and pressure, to direct elite investment to productive areas that are job creating and poverty reducing?

Returning to the Maputo buses, perhaps we should not worry about formal procurement – the standard market-based governance question – and whether or not a Guebuza company won the contract. Instead, the developmental question might be: What can be done to ensure that the bus supplier creates sustainable maintenance systems?

Can we keep the buses on the road, without worrying about who sold them?

jh

Comment

Secrecy breeds rumours, transparency brings trust

Some years ago, a member of the National Elections Commission (CNE) explained to the *Bulletin* that he had been chosen for the post because he was a honourable and honest person who could be trusted to act in the best interests of the voters. Therefore he did not need journalists and civil society looking over his shoulder. Indeed, he would see it as an insult, impugning his integrity.

That era is past. There is a growing understanding that accountability is the basis of trust.

Power and authority are ever more widely distributed. Parliament (AR, *Assembleia da República*), the CNE, ministries such as mining and agriculture, provincial governors, district administrators and many others are making decisions which affect large numbers of people. There must be some check on the probity and correctness of these decisions.

Secrecy breeds discontent and rumours – that decisions have been taken to benefit individuals, families, parties – and because they cannot be checked and refuted, the rumours gain traction until they are widely believed.

Transparency remains the simplest and best way to keep decision-makers accountable. If there is a record of what has been done and why, malicious rumours are quashed but poor decisions can be challenged and corruption exposed.

Monitoring and inspection places a huge burden on government. If civil society is also watching, it reduces the costs for government while increasing the chance the misconduct will be noticed.

Transparency means anyone – individuals, media, and civil society – can attend meetings and see how decisions are taken, and can see the relevant documents. None of us like to be watched, but anyone who takes a position in government or in a public institution must understand that the citizen has a right to observe decisions being taken in their name.

The internet changes everything. Across the world governments are publishing documents and data bases on the web. They are acting quickly and making much more material available than in the past. Documents are now all electronic, and it is easier to put them on the web than to make hard copies and distribute. Webcams can be used to make meetings more accessible.

So far, Mozambique has remained obsessed with secrecy, and makes little use of the internet.

In interviews, European diplomats admit that transparency has dropped off their agenda, as they promote investors from their countries who do not want contracts published. Both donors and civil society try to prevent specific kinds of misconduct, without looking at the means of exposing maladministration.

Transparency should be important in four areas now under debate:

LAND: The last *Bulletin* (number 48) was about claims of land grabs, land conflicts, and the swirl of rumours about huge concessions of land to big investors. At local level, there are constant rumours of Frelimo officials grabbing land. But the biggest problem is lack of information. All concessions over 10,000 ha are made by the Council of Ministers and published immediately. Land concessions between 1000 and 10,000 ha are made by the Minister of Agriculture, but it has proved impossible to obtain a list. In fact, the law requires that all land concessions must be published in *Boletim da República 3ª Série*, but few are. The first step is for the media and civil society to bring pressure on the Ministry of Agriculture and provincial governments to obey the law. But the next step is to push the Ministry and provincial governments to open their data bases.

ELECTIONS: It is widely believed by journalists and civil society that the CNE improperly prevented the Mozambique Democratic Movement (MDM) from standing in AR elections in some provinces in 2009. The truth is contained in a register of documents submitted by political parties, which the CNE gave to the Constitutional Council, but refused to show to political parties or the media. Nothing in the electoral law requires that the register be kept secret, but the CNE refused to release it, ensuring rumours that the CNE had something to hide. This has been repeated during 20 years of CNEs, which have kept decisions, minutes of meetings, and even instructions to polling stations secret – despite not being required to do so. The AR is now debating revisions to the electoral law, yet transparency is never mentioned. A single article in the CNE law could require that all meetings be open and that all documents be posted on the web – except obviously confidential matters relating to personnel. That single article would transform the climate of distrust that surrounds the CNE and convert it into a climate of trust. Elections are the heart of the democratic process – how can the agency running elections be allowed to act in secret?

ASSET DECLARATIONS: The proposed ethics code for public servants actually increases secrecy and seems designed to encourage rumours. It requires a broad range of people to file annual asset declarations, allows some people to see them, but makes it a crime to publish the information.

Inevitably people will spread rumours claiming to have seen asset declarations, which will be impossible to refute. Most countries now publish asset declarations, according to the World Bank, and Mozambique should join this group. However, an alternative used in some countries is to publish summaries. Thus the public part of the declaration would say that a minister has 3 houses worth \$1 million, but not identify the houses; this is still useful, because if the declaration a year later cited 4 houses worth \$2 million, it would show something that might be questioned.

MINING CONTRACTS: Contracts with foreign investors remain secret. It is impossible to find out what an agricultural investor actually promised to do with the land, or what pledges it made relating to local people, which makes it impossible to enforce those promises. It is impossible to find out how royalty and profit payments are calculated on gas and coal. Of course, private investors do not want this information published, especially if money under the table has led to an unusually good deal. Many countries already publish contracts. In a report last year, *EITI Implementation, natural resources management and urgency of renegotiating and publishing the contracts with mega-projects*, CIP noted the Liberia and East Timor both publish all contracts on a website. In Liberia, this includes Anadarko Petroleum (one of the main gas contractors in Mozambique) and BHP Billiton (owner of Mozal); in East Timor a contract with the Italian oil company ENI (also involved in gas in Mozambique) is posted. None of these companies withdrew when the contract was public. We doubt that any investor would turn their back on high quality coking coal, just because Mozambique wants to publish the contract. The land, gas and coal belong to all Mozambicans, who surely have a right to know how their resources are being exploited.

Mozambique remains obsessed with secrecy and not revealing how decisions are taken. This breeds rumours and distrust. The alternative is transparency. When nothing is hidden, the integrity of those who take decisions is demonstrated.

Donors have dropped the transparency issue, which means civil society must press ever harder. Transparency is the tool that allows civil society to monitor government, and allows government to demonstrate its probity to its citizens.

Joseph Hanlon