



# Combating Business Participation in Corruption in Mozambique

## Toolkit

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## 7. Comment form

## 1. INTRODUCTION

In 2004 following a survey of members, Sofala Commercial and Industrial Association (ACIS) identified corruption as one of the major issues affecting its members and, consequently, economic and business development in Mozambique. In partnership with the Center for International Private Enterprise (CIPE), in August 2005, ACIS embarked on a 12-month project which aims to find ways to combat business participation in corruption in Mozambique.

The project was carried out in three phases. Phase one was included research and development of a detailed discussion document. Phase two was extensive discussion based on the document prepared and on the experiences of the private sector throughout the country. Phase three culminates with the release of this toolkit, which is designed to support the private sector in its fight against corruption.

The fight against corruption is an ongoing one. In order for it to succeed there is a need for ongoing discussion and debate, as well as for concrete action. In order to continue to contribute to this debate the paper on which ACIS' discussions with the private sector were based, and a summary of the minutes of the discussions are included as part of this toolkit. The toolkit also contains the Government's anti-corruption law and strategy.

ACIS, as always, welcomes the comments and thoughts of those who read this report, and hopes that you will pass it along to anyone else that may be interested.

ACIS takes this opportunity to note that the opinions given in the discussion documents developed as part of the project are not necessarily those of the association or its individual members. This project reflects the desire of the private sector in Sofala to prove itself a transparent and candid interlocutor on the subject. ACIS strongly

believes that in demanding that the government fight corruption and in holding the government to its strategy, the private sector must prove that it too is prepared to commit to that fight.

ACIS would like to thank the following organisations and individuals without whom this project would not have been possible:

- CIPE for its ongoing support and encouragement during this project;
- SAL&Caldeira Public Administration Observatory;
- All those from the private and public sectors, as well as from Mozambique's international cooperation partners who actively participated in the dialogue and debate;
- ACIS members for their commitment, interest and support.

All documentation is available on CD ROM, to download off the internet and in hard copy on request. Tools are copyright free. If you choose to use them we would like to hear about your experience, to enable us to update and upgrade them if necessary.

We hope you find this toolkit useful. Please send comments, either on the comment form at the end of this document or via email or fax to:

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All correspondence will be treated as confidential.

## 2. TOOLS

### TOOL 1 – WAYS TO USE THE EXISTING LEGISLATION TO COMBAT CORRUPTION

Law 6/2004 of 17th June introduces a number of mechanisms for those outside the government to participate in the fight against corruption. These include:

- **Indemnity for damages**

Law 6/2004 Article 3 paragraph 2 establishes that indemnity should be made for damages to public or private property or interests resulting from acts or omissions made by government functionaries.

The request for indemnity is made against government managers or functionaries who, for corrupt or illicit financial motives have undertaken acts or made omissions which have materially damaged public or private property or interests. The Constitution of the Republic allows that a claim may be awarded against the State if it is found liable to answer for the manager or functionary in question (Article 58, paragraph 2 of the 2004 Constitution).

Action may be taken by the party feeling himself injured. Action is taken before the Administrative Court (Law 9/2001 of 7<sup>th</sup> July, the Administrative Litigation Law Article 98 paragraph b) in conjunction with Article 99 and 102). The time taken for a process depends on how busy the court is, and costs are calculated according to a table of costs published in Decree 28/96 of 9<sup>th</sup> July. Costs may be awarded, though the winning party is also subject to up to 10,000MTn in costs.

- **Presentation of declarations**

All those with decision-making roles in the state apparatus are required to present declarations of assets (which include fixed and non-fixed assets both within and outside the country). These must be submitted before taking office and must be regularly updated. (Law 6/2004 article 4, Decree 22/2005 of 22nd June, article 3). Such declarations are to be regularly reviewed and may be used as evidence in anti-corruption investigations.

- **Recourse against administrative acts**

Administrative acts and decisions must be justified. The legislation requires that any administrative act which; either wholly or partially negates, restricts or otherwise affects rights; increases obligations, responsibilities or sanctions; affects legally protected interests; gives a decision on complaints or appeals; decides in any way

against what the applicant has requested; decides contrary to the standard interpretation and application of legal precepts; or implies the revoking, modification or suspension of a previous administrative act must be justified with a clear indication of the motivation for the decision and include clear legal support for the decision taken. Any verbal decision of this nature given must be reduced to writing and presented within 7 days (Law 6/2004 Article 5).

As above complaints on this type of issue are taken before the Administrative Court. The time taken for a process depends on how busy the court is and costs are calculated according to a table of costs published in Decree 28/96 of 9<sup>th</sup> July. Costs may be awarded, though the winning party is also subject to up to 10,000MTn in costs.

- **Administrative or criminal process**

An administrative or criminal process may be brought by any person. To begin the process a document containing all supporting information (facts of the case, proof) should be prepared. The document may be signed or may be anonymous. The complaint should be directed to the relevant administrative authority (in practice, the Anti-Corruption Office at national or provincial level, or the department in which the functionary being complained against is employed), the police or the Attorney General's office (Law 6/2004, article 12).

In a criminal process the injured party may have his legal representation designated as an “observer” so that counsel can actively participate in the investigation and prosecution process. A criminal process can be brought alongside an administrative process, the conclusion of the criminal process also serving as a conclusion to the administrative process (Decree Law 35007, article 4, paragraph 5).

The time taken for a criminal process depends on how full the court is. Costs may be awarded, though the cost of taking the process to court is with the complainant until the case is concluded.

- **Petition to the National Assembly**

In accordance with Article 79 of the Constitution of the Republic any citizen can take a petition before the Assembly. This included petitioning on cases of corruption. A petition is cost-free, the only stipulation being that it must be presented in writing. There are a number of requirements about the actual complaint – it must have a sound basis for example. The complaint then passes through a number of stages including discussion by committee, at which time further evidence or information may be gathered. The petition may be upheld, filed for consideration at a later date or turned down.

## TOOL 2 – USEFUL CONTACTS

### ANTI-CORRUPTION OFFICE (*GABINETE CENTRAL DE COMBATE À CORRUPÇÃO*)

- Maputo, Av. Ahmed Sekou Tore, n.º 2318  
Tel.: 21 310396; Fax:
- Beira, Av. Eduardo Mondlane, n.º 474  
Tel.: 23 324183; Fax: 23 324183
- Nampula, Rua das Transmissões, n.º 5  
Tel.: 26 212925; Fax: 26 212925

### ATTORNEY GENERAL'S OFFICE (*PROCURADORIA PROVINCIAL DA REPÚBLICA*)

- Inhambane, Av. da Independência  
Tel.: 20396/ 20500/ 20589 20641
- Gaza, Rua do Hospital  
Tel.: 25546; Fax: 25772  
E-mail.: [procprovgaza@teledata.mz](mailto:procprovgaza@teledata.mz)
- Cabo Delgado, Av. 16 de Junho  
Tel.: 20631/ 20448/ 21199
- Manica, Av. 25 de Setembro  
Tel.: 23508/ 24603
- Niassa, Rua Mabalane e Rua Tunduro  
Tel.: 21355/ 20549
- Tete, Av. Liberdade  
Tel.: 24441/ 23142/ 22566
- Zambézia, Av. Josina Machel  
Tel.: 212473/ 215380; Fax: 212473

### POLICE (*POLÍCIA DA REPÚBLICA DE MOÇAMBIQUE*)

- Maputo – 21 325031

- Matola – 21 780279
- Inhambane – 199 / 30017 / 20830
- Gaza – 25364 / 25310
- Sofala – 199 / 23 324705
- Manica – 22213 / 62049
- Zambézia – 119 / 213131/ 212737/ 212130/212547
- Tete – 119 / 23468/ 24207/ 82090
- Nampula – 199 / 213759 / 526845
- Cabo Delgado – 197 / 20223
- Niassa – 119 / 20829

CRIMINAL INVESTIGATION POLICE (*Polícia de Investigação Criminal – PIC*)

- Maputo – 21 322914\21322916\21322918\21322920
- Sofala – 23 329770
- Zambézia – 212588
- Tete – 24123
- Niassa – 20330

GREEN LINES (Hotlines)

- Interior Ministry 800 000 119
- Attorney General’s Office 82 76 54920
- Sofala Attorney General’s Office 23 324444
- Customs Service 800 000 800

## PRIVATE ANTI-CORRUPTION ENTITIES

- **Ética Moçambique**  
Maputo, Av. Vlademir Lenine, n.º 2984, CP 559  
Tel.: 21 418200 \ 21415061  
e-mail: [etica-mocambique@tvacbo.co.mz](mailto:etica-mocambique@tvacbo.co.mz)  
Linha Verde da Ética Moçambique – 800 800 900
  
- **Public Integrity Centre (*Centro de Integridade Pública – CIP*)**  
Maputo Av. Vlademir Lenine, 1447 2º andar E  
Tel.: 823003329  
Email: [cipmoz@tvacbo.co.mz](mailto:cipmoz@tvacbo.co.mz)

## ASSOCIATIONS

- **Associação Comercial e Industrial de Sofala – ACIS**  
Av. Poder Popular 264, Prédio de AMI, 5º Andar, Beira  
CP 07  
Tel.: 23 325997  
E-mail: [acisofala@tdm.co.mz](mailto:acisofala@tdm.co.mz)
  
- **Confederação das Associações Económicas de Moçambique – CTA**  
Rua da Castanheda, n.º 120, Maputo  
Tel: 21 491964/14/ 21 493089;  
Fax: 21493094  
E-mail: [info@cta.org.mz](mailto:info@cta.org.mz)

## TOOL 3 – EMPLOYEE CODE OF ETHICS

This Code of Ethics may be included as part of the company’s internal regulation.

Company Name

### CÓDIGO DE ÉTICA PARA TRABALHADORES

### CODE OF ETHICS FOR EMPLOYEES

Sofala, \_\_\_\_ de Junho de 2006

Sofala, \_\_\_\_ June 2006

#### **Introdução**

*Com o presente Código de Ética para Trabalhadores (abreviadamente, designado apenas de o “Código”), \_\_\_\_\_ (inserir nome da empresa) (daqui em diante a “Empresa”) pretende garantir que os seus trabalhadores adiram a um comportamento ético e responsável no desenvolvimento das suas actividades, em especial, nas relações mantidas com os seus clientes, fornecedores, Administração Pública, colegas de trabalhos, superiores e a sociedade em geral, tendo sempre presente que das suas acções depende a reputação da Empresa. Portanto, pretende-se que os trabalhadores desenvolvam um comportamento que tenha em conta não apenas o que é legal, mas também, o que é eticamente certo ou correcto.*

*O presente Código não poderá abarcar todas as situações onde é exigido um comportamento transparente, ético e profissional de cada trabalhador, mas deixa a ideia geral dos princípios ou política que a empresa pretende que sejam seguidos e respeitados.*

#### **Introduction**

Through this Code of Ethics for Employees (the “Code”) \_\_\_\_\_ (insert company name), (hereafter the “Company”) aims to guarantee that its workers behave ethically and responsibly when carrying out their duties, in particular in their relations with clients, suppliers, the public administration, work colleagues, superiors and society in general and take into consideration at all times the fact that the reputation of the Company depends on their actions. The Company expects that its employees take into account not only what is legal but also what is ethically correct.

While this Code does not seek to cover every situation where the transparent, ethical and professional behavior of every worker is required, it serves to provide a general idea of the principles and policies which the Company expects employees to follow.

## 1. Finalidade

*O presente Código tem por finalidade realçar os valores e princípios defendidos pela empresa, de forma a conquistar a confiança nas relações que esta desenvolve, através dos seus trabalhadores, zelando por uma imagem e reputação íntegra na sua actuação.*

## 2. Âmbito

*O presente Código aplica-se e é vinculativo aos trabalhadores e colaboradores da empresa, incluindo, os consultores, pessoal suplementar e todos os outros que se relacionam com a empresa numa relação laboral ou de prestação de serviços (todos designados apenas de “trabalhadores”).*

## 3. Princípios Gerais

*Os trabalhadores comprometem-se a respeitar, na sua actuação, os seguintes princípios gerais:*

- a) Transparência: manter um fluxo de informações completas, claras e verdadeira em todos os negócios, transacções ou revelações;*
- b) Integridade: zelar por uma concorrência justa;*
- c) Profissionalismo: comportamento e postura digna, igualitária e dentro das suas funções;*
- d) Imparcialidade: não discriminação ou preferências, seja por que motivo for que não sejam os critérios lógicos determinados pela empresa na selecção dos seus fornecedores, entre*

## 1. Purpose

This Code serves to highlight the values and principles of the Company and its employees. These values and principles are followed to build trust and support the Company’s reputation of integrity.

## 2. Scope

This Code is applicable to and binding on all those working in or for the Company, including part-time workers and service providers (hereafter the “Workers”).

## 3. General Principles

The Workers hereby agree to respect the following general principles:

- a) Transparency: maintain a complete, clear and truthful flow of information in all business, transactions and statements;
- b) Integrity: Work hard for fair-play and fair competition;
- c) Professionalism: Behave in a dignified, egalitarian manner;
- d) Impartiality: Not discriminate or make preference in the selection of suppliers and others, for any reason other than a the logical criteria provided by the Company;
- e) Honesty: Ensure that all business and

- outros;
- e) *Honestidade: assegurar que todo o negócio ou transacção seja claro, com registos que transmitam confiança a outra parte;*
  - f) *Respeito: desenvolver um comportamento justo, sensível e com consideração dos direitos individuais e colectivos em causa.*
- transactions are clear and are registered in such a way as to create trust for both parties;
- f) **Respect:** Behave justly and sensitively when considering the collective or individual rights in question

#### 4. Obrigações dos Trabalhadores:

#### 4. Obligations of the Workers

Os trabalhadores encontram-se obrigados a:

The Workers are obliged to:

- a) *Cumprir a legislação em vigor, bem como, a política e normas internas da empresa;*
  - b) *Respeitar a confidencialidade das informações e proteger os dados fornecidos pelos clientes contra usos não acordados ou ilegais;*
  - c) *Não promover junto aos clientes publicidade ilícita ou enganosa na comercialização dos produtos ou serviços da empresa;*
  - d) *Proporcionar informação verdadeira, clara, precisa e completa, dentro das suas funções e responsabilidades;*
  - e) *Conservar e usar eficientemente os activos, instalações, equipamentos e serviços da empresa, não os desviando para benefício ou uso pessoal;*
  - f) *Manter a transparência e integridade em todos os negócios ou transacções da empresa;*
  - g) *Zelar por um bom ambiente de trabalho, evitando desrespeito, discriminação e descortesia entre colegas de trabalho, ameaças ou coacções de qualquer espécie;*
  - h) *Não promover ou praticar assédio sexual de qualquer natureza;*
  - i) *Não aceitar ou oferecer subornos, incluindo presentes que pelo seu valor*
- a) Obey the legislation in force, as well as the policies and internal norms of the Company;
  - b) Respect the confidentiality of information to which they have access and protect client information and details against illegal or unapproved use;
  - c) Not provide clients with illicit or erroneous information when marketing the products and services of the Company;
  - d) Provide clear, precise, complete and truthful information within their roles and responsibilities;
  - e) Conserve and efficiently use the stock, assets, equipment and services of the Company, and not divert it for personal gain or use;
  - f) Maintain transparency and integrity in all business and transactions of the Company;
  - g) Work hard for a good working environment, avoiding disrespect, discrimination, lack of courtesy, threats or coercion of other Workers;
  - h) Not promote or practice any form of sexual harassment;
  - i) Not accept or offer bribes including

- possam dar lugar ao surgimento de obrigações posteriores;
- j) Não usar ou divulgar informações da empresa para fins não autorizados por esta;
  - k) Não usar os equipamentos informáticos da empresa para divulgação de mensagens de índole política ou comercial, alheios às actividades da empresa, nem para troca de mensagens pornográficas, vírus, cópias com violação dos direitos de autores, difamação de quaisquer personalidades; entre outros actos ilícitos, ilegais ou considerados imorais pela empresa;
  - l) Informar as entidades responsáveis na empresa ou aos gestores/directores desta sobre actos incorrectos ou anti-éticos, sejam em clara violação do presente Código ou não;
  - m) Zelar pelo cumprimento integral do presente Código, socorrendo-se da empresa para o esclarecimento de quaisquer dúvidas que este suscitar, ou de actos que julgue que possam se enquadrar em alguma conduta anti-ética aqui tratada.
- gifts which by their value may give rise to suggestions of impropriety;
- j) Not use or divulge Company information without authorization;
  - k) Not use Company information technology to: communicate political or commercial messages which do not correspond to Company activities; exchange pornographic material; make copies which violate copyright regulations; defame anyone; or to undertake any other illicit or illegal acts or acts considered immoral by the Company;
  - l) Inform the management or directors of the Company of any incorrect or unethical behaviour which is in clear violation of this Code;
  - m) Zealously comply with the Code, supporting the Company by providing any clarification requested about activities which may be considered to be anti-ethical.

## 5. Interesses Conflitantes

- 5.1. Os trabalhadores têm o dever de evitar as situações de conflitos de interesse, sejam reais ou eventuais, ou, caso estes se mostrem inevitáveis, comunicar à gerência sobre a situação, devendo esta por escrito declarar se permite ao trabalhador prosseguir com o negócio, transacção ou o acto que estiver em causa, ou tomar outra medida que achar mais adequada.
- 5.2. Existirá interesse conflituante, sempre que existir um interesse pessoal do

## 5. Conflicts of Interest

- 5.1 Workers must avoid situations of conflict of interest, both current and potential, and should such conflicts be unavoidable inform the management of the situation. The management will then communicate in writing whether or not it permits the Worker to proceed with the business, transaction or act in question, or take any other measure deemed to be adequate.
- 5.2 A conflict of interest is considered to exist whenever the Worker has a

*trabalhador, seja de natureza directa ou indirecta, que possa interferir na objectividade do desempenho ou cumprimento das suas funções ou que possam interferir nos interesses da empresa.*

- 5.3. *Inclui-se na situação de conflito de interesses, o uso de consultores ou outros prestadores de serviços que consultam ou prestam serviços para empresas concorrentes, devendo esta situação ser devidamente comunicada nos termos no número anterior para se evitar ou prevenir a divulgação de informações confidenciais da empresa.*

## **6. Pagamentos de Favor, Subornos e Comissões**

- 6.1. *Os trabalhadores não devem oferecer ou receber pagamentos, subornos ou comissões, de qualquer natureza ou forma, em troca de obtenção ou prestação de favores, seja em relação a funcionários da Administração Pública ou a membros do Governo, seja em relação a quaisquer outros terceiros de quem a empresa necessita de receber ou oferecer algum serviço ou produto.*
- 6.2. *Não se consideram pagamentos de favor ou subornos, nos termos referidos no número anterior, as ofertas/pagamentos por comemoração de dias festivos ou outros em que tal procedimento seja claramente justificado, devendo sempre, a oferta ou pagamento em causa, ser feito em conformidade com os procedimentos da empresa e com autorização expressa e por escrito do responsável ou do*

direct or indirect personal interest which may interfere with his objectivity when undertaking his work, or which could interfere with the interests of the Company.

- 5.3 Conflict of interest includes the use of consultants or service providers that work for competitors. This situation must be communicated to management immediately to avoid divulging confidential Company information.

## **6. Facilitation payments, Bribes and Commissions (kick-backs)**

- 6.1 Workers may not offer or receive any form of payment, bribe or commission in exchange for favours, whether this be in relation to the public administration, government or any other third parties from whom the Company needs to receive or offer any service or product.
- 6.2 Payments for favours or bribes as mentioned above are not considered to be gifts or payments for commemorations or festive occasions when these are clearly justified as such. Any gift or payment must be given or received in such away as to conform with the Company procedures and with specific written authorization from a member of the management or directorate of the Company.

- 6.3 When accepting a justified gift as

*gestor/director da mesma.*

- 6.3. *Na aceitação de presentes/ofertas, justificais nos mesmos termos descrito no número anterior, os trabalhadores deverão considerar se os mesmos poderão ou não interferir indevidamente em alguma relação ou decisão comercial, seja real ou eventual. Na possibilidade de ocorrência de alguma interferência, a gerência ou entidade responsável da empresa deve ser comunicada para dar o seu parecer.*

mentioned above the Worker must always take into consideration whether or not the gift could interfere inappropriately with any current or future commercial relationship or decision. If there is any possibility of this then Management opinion must be requested.

## **7. Responsabilidades dos Trabalhadores**

- 7.1. *Todos os trabalhadores assumem a responsabilidade de actuar de acordo com a conduta ética desenvolvida no presente Código, comprometendo-se desde já a responder por quaisquer violações ao mesmo, seja disciplinar ou, se tal se aplicar e se justificar, civil e/ou criminalmente.*
- 7.2. *Todos os trabalhadores concordam que, o respeito do estipulado no presente Código é uma condição imposta para a manutenção do posto de trabalho.*

## **7. Employee Responsibilities**

- 7.1 All Workers assume responsibility for behaving in accordance with this Code, and commit to henceforward answering for any violations either in a disciplinary proceeding or, should the situation warrant in a criminal or civil proceeding
- 7.2 All Workers agree that the respecting that which is stipulated in this Code is a condition for retaining their employment

## **8. Responsabilidade da Empresa**

- 8.1. *A empresa, através dos seus gestores, directores ou quem para tal tiver sido indicado, é responsável em fiscalizar o cumprimento do presente Código, devendo igualmente promover um adequado e completo conhecimento do mesmo por parte de todos os seus trabalhadores.*

## **8. Company Responsibilities**

- 8.1 The Company, through its managers, directors or others indicated for the purpose, is responsible for ensuring that this Code is followed, and for ensuring an adequate and complete knowledge of the same on the part of all Workers.

8.2. *A empresa deve comunicar a todas as entidades com as quais mantém relações no âmbito das suas actividades, a vinculação dos trabalhadores ao presente Código e, incentivar aquelas a colaborarem denunciando os comportamentos anti-éticos ou ilegais que detectem, garantindo o máximo de sigilo, quando tal for solicitado pelo denunciante.*

8.2 The Company must communicate the fact that its employees are bound by the Code to all entities with which it has relationships, and encourage such entities to support the Company by denouncing non-ethical or illegal activities, guaranteeing confidentiality as necessary.

<b>ANEXO</b>	<b>ANNEX</b>
<b>DECLARAÇÃO DE ACEITAÇÃO E COMPROMISSO COM O CÓDIGO DE ÉTICA DOS TRABALHADORES</b>	<b>DECLARATION OF RECEIPT AND COMPLIANCE WITH CODE OF ETHICS FOR EMPLOYEES</b>
Nome: _____	Name: _____
Cargo: _____	Title: _____
<i>Eu, _____, declaro que li, me foi explicado e entendi o conteúdo e o significado do Código de Ética para os Trabalhadores da empresa _____.</i>	I _____, hereby declare that I have read, had explained, and understand the content and meaning of the Code of Ethics for Employees for the Workers of _____ (insert company name).
<i>Eu me comprometo por este meio, a assumir e cumprir com a política e normas de ética estipuladas no referido Código.</i>	I hereby accept and agree to comply with the policy and ethical norms as laid out in the same Code.
_____ <i>(assinatura do trabalhador)</i>	_____ <i>(signature of employee)</i>
_____ <i>(data da assinatura)</i>	_____ <i>(date of signature)</i>

## TOOL 4 – SUPPLIER CODE OF ETHICS

### CÓDIGO DE ÉTICA PARA FORNECEDORES

Sofala, \_\_\_\_ de Junho de 2006

### CODE OF ETHICS FOR SUPPLIERS

Sofala, \_\_\_\_ June 2006

#### Introdução

*Com o presente Código de Ética para Fornecedores (abreviadamente, designado apenas de o “Código”), a \_\_\_\_\_ (inserir nome da empresa) (daqui em diante a “Empresa”) pretende garantir que os seus fornecedores, parte importante dos negócios da empresa, adiram a um comportamento ético e responsável no desenvolvimento das suas actividades, garantindo o cumprimento íntegro e honesto dos contratos firmados, dos pactos de confidencialidade e das demais condições comerciais acordadas, considerando sempre a influencia determinantemente que terão na reputação da empresa.*

*O presente Código não poderá abarcar todas as situações onde é exigido um comportamento transparente, ético e profissional de cada fornecedor, mas deixa a ideia geral dos princípios ou política que a empresa pretende que sejam seguidos e respeitados.*

#### 1. Finalidade

*O presente Código tem por finalidade realçar os valores e princípios defendidos*

#### Introduction

Through this Code of Ethics for Suppliers (the “Code”) \_\_\_\_\_ (insert company name) (hereafter the “Company”) seeks to guarantee that the suppliers, an important part of the Company’s business, behave ethically and responsibly in their activities, guaranteeing integrity and honesty in contracts agreed, in confidentiality agreements and in other commercial agreements, always taking into account the impact of their activities on the Company.

While this Code does not seek to cover every situation where the transparent, ethical and professional behavior of every supplier is required, it serves to provide a general idea of the principles and policies which the Company expects employees to follow.

#### 1. Purpose

This Code serves to highlight the values and principles followed by the Company

*pela empresa nas relações que desenvolve com os seus fornecedores, procurando zelar pelo cumprimento, não apenas do que é legal, mas também do que é eticamente certo ou correcto.*

in its relationship with suppliers, and seeks to ensure compliance not only with what is legally but also with what is ethically correct.

## **2. Âmbito**

## **2. Scope**

*O presente Código aplica-se e é vinculativo a todos os fornecedores de serviços ou produtos à empresa.*

The Code applies to and is binding on all suppliers of goods and services to the Company

## **3. Princípios Gerais**

## **3. General Principles**

*Os fornecedores comprometem-se a respeitar, nas suas relações comerciais com a empresa, os seguintes princípios gerais:*

The suppliers guarantee in their commercial relationships with the Company to respect the following general principles:

- a) Transparência: manter um fluxo de informações completas, claras e verdadeira em todos os negócios, transacções ou revelações;*
- b) Integridade: zelar por uma concorrência justa;*
- c) Honestidade: assegurar que todo o negócio ou transacção seja claro, com registos que transmitam confiança a outra parte;*
- d) Respeito: desenvolver um comportamento justo, sensível e com consideração dos direitos individuais e colectivos em causa;*
- e) Qualidade: zelar pela máxima qualidade tanto dos produtos e serviços prestados, como também, pela melhor qualidade no relacionamento com a empresa e seus trabalhadores e colaboradores*

- a) Transparency: maintain a complete, clear and truthful flow of information in all business, transactions and statements;
- b) Integrity: Work hard for fair-play and fair competition;
- c) Honesty: Ensure that all business and transactions are clear and are registered in such a way as to create trust for both parties;
- d) Respect: Behave justly and sensitively when considering the collective or individual rights in question;
- e) Quality: Work hard to provide the maximum quality in products and services supplied, and in the relationship between the Company and the supplier«s workers.

## **4. Obrigações dos Fornecedores**

## **4. Supplier's Obligations**

*Os fornecedores encontram-se obrigados a:*

Suppliers are obliged to:

- a) *Cumprir a legislação em vigor, bem como, a política e normas internas da empresa que a eles se aplicam;*
  - b) *Respeitar a confidencialidade das informações e proteger os dados fornecidos pela empresa contra usos não acordados ou ilegais;*
  - c) *Não promover publicidade ilícita ou enganosa na comercialização dos seus produtos ou serviços junto da empresa;*
  - d) *Proporcionar informação verdadeira, clara, precisa e completa, no âmbito dos negócios e transacções com a empresa;*
  - e) *Zelar por um bom ambiente de trabalho, evitando desrespeito, discriminação e descortesia com os trabalhadores, colaboradores, gestores e demais pessoal da empresa;*
  - f) *Não aceitar ou oferecer subornos, incluindo presentes que pelo seu valor possam dar lugar ao surgimento de obrigações posteriores;*
  - g) *Não usar ou divulgar informações da empresa para fins não autorizados por esta;*
  - h) *Informar as entidades responsáveis da empresa ou aos gestores/directores desta sobre a prática ou tentativa de prática de actos incorrectos ou anti-éticos pelos trabalhadores ou colaboradores da mesma;*
  - i) *Zelar pelo cumprimento integral do presente Código, socorrendo-se da empresa para o esclarecimento de quaisquer dúvidas que este suscitar, ou de actos que julgue que possam se enquadrar em alguma conduta anti-ética aqui tratada.*
- a) Obey the legislation in force, as well as those policies and internal norms of the Company which apply to them;
  - b) Respect the confidentiality of information which they have been provided with by the Company against illegal or unapproved use;
  - c) Not use illicit or erroneous information when marketing their products and services to the Company;
  - d) Provide clear, precise, complete and truthful information within their business and transaction with the Company;
  - e) Work hard for a good working environment, avoiding disrespect, discrimination, lack of courtesy, to workers, managers and other Company staff;
  - f) Not accept or offer bribes including gifts which by their value may give rise to suggestions of impropriety;
  - g) Not use or divulge Company information without authorization;
  - h) Inform the management or directors of the Company of any incorrect or unethical behaviour which is in clear violation of this Code;
  - i) Zealously comply with the Code, supporting the Company by providing any clarification requested about activities which may be considered to be anti-ethical.

## 5. Interesses Conflitantes

### 5.1 Existirá interesse conflituante, sempre

*que existir um interesse pessoal do fornecedor, devido a existência de laços de parentescos ou de afinidades com os trabalhadores ou colaboradores da empresa, que possa interferir na objectividade da contratação ou do desempenho ou cumprimento das obrigações contratuais firmadas.*

5.2 *A situação descrita no número anterior deverá ser comunicada a gerência ou a entidade responsável na empresa, competindo a esta consentir por escrito no prosseguimento ou manutenção da relação comercial em causa.*

5.3 *Inclui-se na situação de conflito de interesses, o uso de fornecedores que prestam serviços ou fornecem produtos para empresas concorrentes, devendo esta situação ser devidamente comunicada nos termos no número anterior para se evitar ou prevenir qualquer possibilidade de divulgação de informações confidenciais da empresa.*

## **6. Pagamentos de Favor, Subornos e Comissões**

6.1 *Os fornecedores não devem oferecer ou receber pagamentos, subornos ou comissões, de qualquer natureza ou forma, em troca de obtenção ou prestação de favores ou serviços, seja directamente através dos trabalhadores e colaboradores da empresa, seja através de quaisquer outros terceiros.*

6.2 *Não se consideram pagamentos de favor ou subornos, nos termos referidos no número anterior, as ofertas/pagamentos por comemoração de dias festivos ou outros em que tal procedimento seja claramente*

## **5. Conflicts of Interest**

5.1 A conflict of interest exists whenever the personal interests of a supplier, through family relationships with the Company's employees any interfere with objectivity in contracting or complying with contractual obligations.

5.2 Any conflict of interest situation must be communicated to Company management so that a written decision may be taken as to whether to proceed with, or maintain the commercial relationship in question.

5.3 Conflict of interest includes the use of suppliers that provide products or services to competitors. This situation must be communicated to management immediately to avoid divulging confidential Company information.

## **6. Facilitation Payments, Bribes and Commissions (kickbacks)**

7.1 Suppliers may not offer or receive any form of payment, bribe or commission in exchange for favours or service, either directly from Company Workers or through a third party.

7.2 Payments for favours or bribes as mentioned above are not considered to be gifts or payments for commemorations or festive occasions

*justificado, devendo sempre, a oferta ou pagamento em causa, ser feito em conformidade com os procedimentos da empresa e com autorização expressa e por escrito do responsável ou do gestor/director da mesma.*

## **7. Responsabilidades dos Fornecedores**

7.1 *O fornecedor assume a responsabilidade de actuar de acordo com a conduta ética desenvolvida no presente Código, comprometendo-se desde já a responder por quaisquer violações ao mesmo, incluindo, se tal se aplicar e se justificar, a responsabilidade civil e/ou criminalmente.*

7.2 *O fornecedor concorda que, o respeito do estipulado no presente Código é uma condição imposta para a manutenção das relações comerciais desenvolvidas com a empresa.*

## **8. Responsabilidade da Empresa**

8.1 *A empresa, através dos seus gestores, directores ou quem para tal tiver sido indicado, é responsável em fiscalizar o cumprimento do presente Código, devendo igualmente promover um adequado e completo conhecimento do mesmo por parte de todos os seus fornecedores.*

8.2 *A empresa deve comunicar aos seus trabalhadores, colaboradores e a todas as entidades que achar relevantes e com as quais mantém relações no âmbito das suas actividades, a vinculação dos seus fornecedores ao presente Código e, incentivar aqueles a colaborarem denunciando os comportamentos anti-*

when these are clearly justified as such. Any gift or payment must be given or received in such away as to conform with the Company procedures and with written authorization from a member of the management or directorate of the Company.

## **7. Suppliers Responsibilities**

7.1 Suppliers assume responsibility for behaving in accordance with this Code, and commit to henceforward answering for any violations either in a disciplinary proceeding or, should the situation warrant in a criminal or civil proceeding

7.2 Suppliers agree that respecting that which is stipulated in this Code is a condition for maintaining a commercial relationship with the Company.

## **8. Company Responsibility**

8.1 The Company, through its managers, directors or others indicated for the purpose, is responsible for ensuring that this Code is followed, and for ensuring an adequate and complete knowledge of the same on the part of all Suppliers.

8.2 The Company must communicate the fact that its suppliers are bound by the Code to all entities with which it has relationships, and encourage such entities to support the Company by denouncing non-ethical or illegal

*éticos ou ilegais que detectem por parte dos seus fornecedores, garantindo o máximo de sigilo, quando tal for solicitado pelo denunciante.*

activities, guaranteeing confidentiality as necessary.

**ANEXO**

**ANNEX**

**DECLARAÇÃO DE ACEITAÇÃO E  
COMPROMISSO COM O CÓDIGO  
DE ÉTICA DOS FORNECEDORES**

**DECLARATION OF RECEIPT AND  
COMPLIANCE WITH CODE OF  
ETHICS FOR SUPPLIERS**

*Denominação social do fornecedor:*

\_\_\_\_\_

Supplier:

\_\_\_\_\_

*Nome do representante legal do fornecedor:*

\_\_\_\_\_

Supplier's legal representative:

\_\_\_\_\_

*Eu, \_\_\_\_\_, que actuo na  
qualidade de \_\_\_\_\_ da  
empresa/sociedade \_\_\_\_\_, e com  
poderes bastantes para o presente acto,  
declaro que li, me foi explicado e entendi o  
conteúdo e o significado do Código de Ética  
para os Fornecedores da empresa  
\_\_\_\_\_.*

*Eu, em nome da empresa/sociedade que  
represento, me comprometo por este meio, a  
assumir e cumprir com a política e normas  
de ética estipuladas no referido Código.*

\_\_\_\_\_  
*(assinatura do representante da  
empresa/sociedade)*

\_\_\_\_\_  
*(data da assinatura)*

I, \_\_\_\_\_, acting in my  
capacity as \_\_\_\_\_ for company  
\_\_\_\_\_, and with the necessary  
powers to do so, hereby declare that  
hereby declare that I have read, had  
explained, and understand the content and  
meaning of the Code of Ethics for  
Employees for the Suppliers of  
\_\_\_\_\_(insert company name)

I, in the name of the organization that I  
represent, hereby accept and agree to  
comply with the policy and ethical norms  
as laid out in the same Code.

\_\_\_\_\_  
*(signature of supplier representative)*

\_\_\_\_\_  
*(date)*

## TOOL 5 – CODE OF BUSINESS PRINCIPLES

This code is designed for use by groupings or associations of companies.

### Código de Conduta nos Negócios

Os membros de \_\_\_\_\_, desenvolveu e subscrevemo ao Código de Conduta nos Negócios a seguir:

### Code of Business Principles

The members of \_\_\_\_\_ developed and subscribe to the following Code of Business Principles:

*Nós, as Empresas signatárias, legalmente registada em Moçambique concordamos em:*

We, the undersigned companies, legally registered in Mozambique hereby agree to:

- *Efectuar as nossas actividades de uma forma ética e transparente, com abertura e honestidade.*
  - *Respeitar a Constituição e as Leis em vigor em Moçambique.*
  - *Defender os princípios fundamentais dos direitos humanos e zelar pelos interesses dos nossos trabalhadores.*
  - *Respeitar os interesses legítimos dos nossos fornecedores, contratantes, parceiros e outros com os quais temos relações profissionais.*
  - *Somos membros duma associação formal, devidamente reconhecida e dedicada a boa governação empresarial.*
- Conduct our business ethically and transparently, with openness and honesty.
  - Respect the Constitution and Laws of Mozambique
  - Uphold the fundamental principles of human rights in dealing with the interests of our employees
  - Respect the legitimate interests of our suppliers, contractors, partners and others with whom we have professional relationships.
  - Be members of an association dedicated to good corporate governance.

#### 1. Emprego

#### 1. Employment

- i. *Consignamo-nos aos princípios de justiça, respeito e confiança mútua, acreditamos que todos aqueles que estão envolvidos no nosso local de trabalho devem contribuir positivamente para o desempenho da Empresa e para a protecção e intensificação da sua reputação.*
  - ii. *Acreditamos que a chave para esta relação é uma boa comunicação. Mantemos um canal de comunicação aberto com os trabalhadores.*
- i. We are committed to the principles of mutual fairness, respect and trust, and believe that all those involved in our workplace should contribute to the positive performance of the company, and to the protection and enhancement of its' reputation.
  - ii. We believe that the key to this relationship is good communication. We maintain an open channel of communication with employees.
  - iii. The recruitment, employment, and

- iii. *O recrutamento, emprego e a promoção de todos aqueles que trabalham para nós é efectuada apenas na base das qualificações, e aptidões necessárias para a posição em questão.*
  - iv. *O nosso trabalhador tem o direito a condições de trabalho que são seguras e que não colocam a sua saúde em perigo.*
  - v. *Não promovemos o uso de mão-de-obra infantil nem do trabalho coercivo.*
  - vi. *Respeitamos os direitos individuais dos nossos trabalhadores bem como a sua dignidade e em conformidade com a Leis de Moçambique, atribuímo-lhes o direito de livre associação.*
- iv. Our employees have the right to working conditions that are safe, and which do not endanger their health.
  - v. We do not promote the use of, nor do we use coerced or child labour.
  - vi. We respect our employees individual rights and dignity, and in accordance with the Law of Mozambique accord them the right to free association,

## 2. Responsabilidade

*Consignamo-nos a respeitar os requisitos financeiros estabelecidos na lei Moçambican Daí que:*

- i. *Estamos registados como uma companhia que paga o IVA*
- ii. *Apresentamos recibos completos do IVA a todos nossos clientes*
- iii. *Pagamos os impostos dívidas pela empresa*
- iv. *Importamos os nossos produtos utilizando os canais legais correctos e pagamos os direitos alfandegários e as outras obrigações conforme exigido por lei*
- v. *Respeitamos os direitos de propriedade intelectual*
- vi. *Providenciamos consistência na qualidade dos nossos produtos e/ou serviços*
- vii. *Providenciamos produtos e serviços com descrição, etiqueta e publicidade correctas*
- viii. *Respeitamos os direitos dos nossos clientes e sócios*

## 3. A Comunidade

- i. *Consignamo-nos a ser bons cidadãos empresariais e a operar como parte integrante da sociedade. Empenhamo-nos em cumprir com as nossas*

## 2. Accountability

We are committed to respecting the financial requirements established under the Mozambican law.

We therefore:

- i. Are registered a VAT paying company
- ii. Provide full VAT invoices to all customers
- iii. Pay company taxes
- iv. Import our goods using the correct legal channels and paying duties and obligations as required
- v. Respect intellectual property rights
- vi. Provide consistent quality of products or services
- vii. Provide accurately described, labeled and advertised goods and services
- viii. Respect the rights of our clients and our shareholders

## 3. The Community

- i. We are committed to being good corporate citizens and operating as an integral part of society. We strive to fulfill our responsibilities to the societies

- responsabilidades para com as sociedades e comunidades onde operamos.*
- ii. *Cooperamos com o governo através de associações empresariais e outras e empenhamo-nos através desta cooperação em promover o desenvolvimento da legislação e regulamentos que podem afectar os interesses legítimos de negócio.*
  - iii. *Acreditamos que os nossos contactos e relações profissionais com clientes, fornecedores e parceiros devem ser mutuamente benéficos. Esperamos que todos aqueles com quem mantemos tais relações, operem de acordo com princípios idênticos aos desta Empresa.*

#### 4. O Ambiente

- i. *Consignamo-nos a efectuar as melhorias necessárias na gestão do meio ambiente, com vista a desenvolvermos negócios que sejam ambientalmente sustentáveis.*

#### 5. Integridade

- i. *Consignamo-nos a realizar os nossos negócios baseados nos princípios de concorrência justa.*
- ii. *Consignamo-nos ao desenvolvimento de uma legislação que promova ou permita uma concorrência justa e vigorosa.*
- iii. *Respeitamos o direito e apoiamos as iniciativas do Governo Nacional para desenvolver as indústrias nacionais chave, através de instrumentos transparentes da política do comércio.*
- iv. *Consignamo-nos à transparência, não oferecendo nem recebendo subornos, pagamentos impróprios, comissões ou outras ofertas que possam resultar em vantagem imprópria, para a empresa ou qualquer pessoa que nela trabalha.*
- v. *Esperamos que os nossos trabalhadores não se envolvam em qualquer actividade pessoal ou de interesse financeiro, que possa entrar*

and communities in which we operate.

- ii. We cooperate with the Government through business and other associations and strive through this cooperation to promote the development of legislation and regulations which may affect legitimate business interests
- iii. We believe that our contacts and professional relationships with clients, suppliers and partners should be mutually beneficial. Those with whom we develop such relationships are expected to operate according to principles which coincide with those of this company

#### 4. The Environment

- i. We are committed to making the necessary improvements in our environmental management in the interests of developing environmentally sustainable business.

#### 5. Integrity

- i. We are committed to, and conduct our business based on the principles of fair competition.
- ii. We are committed to the development of legislation which promotes or permits fair and vigorous competition.
- iii. We respect the right and support the National Government's initiatives to develop key national industries through transparent trade policy instruments.
- iv. We are committed to transparency do not give or receive bribes, improper payments, commissions or any other gift which may result in this company or any individual in this company obtaining an improper advantage.
- v. We expect our employees to avoid any personal activity or financial interest which could conflict with their responsibilities to the company.
- vi. Our employees must not seek gain for themselves or others by misusing their

- em conflito com as responsabilidades deles na empresa.*
- vi. *Os nossos trabalhadores não devem procurar ganhos através do uso da sua posição na empresa para benefício próprio ou de outras pessoas.*

*Acreditamos que o cumprimento deste código é um elemento essencial para o sucesso da nossa actividade e para o desenvolvimento de Moçambique no seu todo. Daí que somos todos responsáveis por assegurar que estes princípios são comunicados aos nossos trabalhadores, clientes e parceiros e que estes sejam observados no dia a dia das nossas operações*

We believe that compliance with this code is an essential element for the success of our business and for the development of Mozambique as a whole. We therefore are responsible for ensuring that these principles are communicated to our employees, clients and partners, and that they are upheld in our daily operations.

## TOOL 6 – CASE STUDIES FOR TRAINING & DISCUSSION

The following case studies are based on the experiences of a number of companies operating in Mozambique. Details of names and products have been excluded to prevent reprisals or other repercussions. ACIS would like to thank the companies that contributed to these case studies. Each case study is followed by some generic questions. These questions can be used to guide discussion or as part of training courses and role-play activities.

### **Company A**

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

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

Company A also reports receiving requests for commissions from the procurement officers of other private sector companies and from donor organisations. Once again the company refuses to pay, but so far the company has been reluctant to report these approaches to the relevant company directors or project managers. The company also receives requests from private individuals to pay without invoices and without

payment of VAT. Once again the company refuses these requests. However Company A reports that there is a general lack of understanding of the VAT system among individual consumers, who generally do not expect to have to pay VAT. They see VAT as a 17% discount from which they should benefit. According to the company, many of these consumers say “why do we have to pay it here when we don’t have to pay it anywhere else?”

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

Company A has signed a code of business principles which is displayed in the company’s main office. The director says that if anyone asks him for a commission he will point to the code and ask them to read it. The director admits that stopping employees from taking commissions is a constant battle, and says that employees have told him that the company is seen as “strange” for refusing to be involved in corruption. However he feels that his decision to keep the company out of any form of illegality has proven beneficial in the long term. He says, “we may have lost some sales along the way. I know of government contracts where someone has bought from us at our standard price and then re-sold to the government for a higher price and charged commission. But I also have a clear conscience, and now we are starting to see that some government departments and companies preferentially buy from us because

they know exactly what they are getting and that the price they are charged doesn't include 'hidden extras.' We also find that we are getting more and more respect within the business community and in government circles, which can only benefit our reputation in the long run.” The company is focusing on building its brand based on this reputation.

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company's reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

## **Company B**

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

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

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

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

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

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?

- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company's reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

### Company C

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

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

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

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

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company’s reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

**Company D**

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

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

The company has recently made a major investment in a new manufacturing facility in the south of the country. However the north of the country has recently been flooded by an influx of the company's own product brought in from another market. The imported product is retailing at a selling price that the local manufacturing plant can not compete with. Sales of the locally made product have almost ceased. Even if Company D were to purchase the product at inter-company prices from the other market, it would not be able to compete with the imports. Company D holds the case up as a clear instance of under-invoicing. On the basis of this and other fraudulent activities the company has decided to suspend plans for further expansion of manufacturing in Mozambique at this stage.

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

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company’s reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

### **Company E**

Company E is a small company specializing in small-scale public works, such as building health posts, classrooms and other buildings, and sinking wells in rural areas. Company E’s largest potential client is the government.

Company E regularly bids on small-scale public works tenders. It has spent time and money on training its personnel and has a good team of qualified and reliable staff. The company has a good idea of how much public works in rural areas cost and tries to bid as competitively as possible. However the company does not often win on competitive tenders.

Recently the company submitted a tender for a project and the director went to the opening of the bids to see if they had won. At the tender opening meeting Company E's director was surprised to discover that his tender documents were not opened. The bid was awarded to a competitor company which was more expensive than the bid submitted by Company E. The director publicly asked to know what had happened to his tender and was told that several bids had been excluded because they had not correctly filled the tender criteria. The director was surprised by this since he had spent a lot of time on preparing the tender documents and had taken care to ensure that they corresponded exactly to the terms of reference provided.

After the meeting, outside the building the director of Company E was approached by a man who said that he would be able to assist Company E in winning tenders in future. The director was interested to hear this and decided to go along with the conversation to see what he could find out, so he invited the man to go for coffee.

Over coffee the man, who described himself as a “fixer” said that for a small fee he would be able to ensure that Company E's bids would regularly win tenders. He went on to explain “there is a lot more to the tender process than just submitting the documents, you have to do some preparation before, prepare the ground so to speak”. He said that it was important to have contacts within the government departments awarding the tenders so that these contacts would support your proposal. Continuing with the farming analogy he said “all contacts must be regularly fed and watered so that when the time comes they will produce for you”. “Producing” he went on to explain could include providing the tender documents before they were officially published, providing information on competitors bids, and on occasion disqualifying bids submitted by companies not involved in this “system”. The Fixer said that Company E was naïve to believe that the actual tender process was relevant in anything other than an opportunity for the different contacts within the department to negotiate with the companies they “work for”.

The director of Company E had long suspected that the public procurement process in his sector was not transparent. However as he listened he realized that there was in fact a well-structured system in place involving many of his competitors. The Fixer went on to explain that many of the companies would discuss tenders before competing and would then agree amongst themselves who would win. The companies that had opted not to compete would submit bids above that of their colleague who they had chosen to allow to win. He explained that companies could then choose jobs according to how occupied their staff are, or choose jobs located close to each other to save costs.

What he was being told explained many of the things Company E had experienced and the director felt that he was being told the truth. He therefore asked a question that had long been on his mind. “How is it” he asked, “that companies can make a profit when sometimes they are charging far less than me and when I calculate my prices based on cost of inputs such as cement, piping etc. to me?” The Fixer explained that the government has a standard cost per square metre for construction of different types of building, per kilometer for roads and per meter for wells. In the case of wells the government also has a standard depth which they pay for.

The Fixer continued by saying that small-scale public works in rural areas are not often inspected. If they are then sometimes the inspector may be one of the company’s “contacts” from within the government department that awarded the tender. During the works project the company would have saved time by using less raw materials or not building to the specification they were given. Often, even if the inspectors were not part of the system, they would not have the training or equipment necessary to inspect the construction effectively the Fixer explained. In the case of wells, he continued, if the government specifies a standard depth of for example 30 metres and the company finds water after 25 metres, it will still charge for having drilled 30 metres. “It is very difficult,” he said with a smile, “to check the depth of a narrow

well!” Sometimes companies could lose money this way because they would have to drill more than 30 metres, but this was rare he explained, because usually the government standard prices were established at the upper limit of what is required, giving companies flexibility.

Having explained all this to the director, the Fixer then discussed his fee, and explained that in addition to the fee there would be “gifts” which the Fixer would need to give to certain people in order for Company E to get into and stay within the system. “But,” he said “I can guarantee you that you will win more work and the work you win will be more profitable for you”. The director of Company E agreed to think about the proposal.

The director of Company E now finds himself in a difficult position. His company has been winning less and less public tenders. He has been offered a way to keep operating, and to keep his workers employed. Even though the Fixer told him that the system is very fair and democratic with everyone winning - the companies by effectively choosing the jobs they prefer, and the government employees by being paid a little extra for work they do in managing tenders, the director of Company E does not feel comfortable becoming involved with the Fixer, and buying in to a system which he feels is corrupt. He feels that while those in the system may feel they are winning the system would also lead to people in rural areas receiving poor-quality construction and the government paying more for low-quality work that could be done better and for less money.

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company’s reaction to its problems?

- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

### **Company F**

Company F is a small company supplying specialized equipment and services to a number of large investors. Many of the investors that Company F supplies to, have a VAT exemption. This means that while Company F pays VAT on the items it imports for its clients, and on other costs it incurs, it cannot charge VAT to some of its major clients. Because of the “give and take” system used for VAT collection Company F pays much more VAT to the government than it receives from its customers. It is therefore owed VAT rebates.

Company F is a “Group A” registered tax payer and therefore submits VAT returns on a monthly basis and is regularly audited. The company works closely with its accountant in order to ensure that its financial documentation is in order.

Submitting a request for a VAT rebate is a lengthy and complicated process. As a result Company F usually submits a request every three months. Despite having been in operation for four years the company has never yet received a rebate. Company F is now owed more money in rebates than the company is officially worth. Company F’s customers have offered the company more business if it will invest in further specialized equipment and training. However all the company’s expansion capital is tied up in VAT rebates. Because the company has to pay for the goods it imports in foreign currency and will receive its rebates in meticaís, during the course of the time it has been waiting for rebates Company F has also lost a significant amount of money through exchange rate differential.

The director of Company F notes “we have been given every possible reason for not being paid the money the government owes us. They say we signed some documents in the wrong place, they say that the money we invested in buying all the equipment, and our initial stock when we were starting up the company is not eligible for rebate because we hadn’t sold anything when we made the original claim, they demanded that we have an official audit which we had to pay for, with auditors from Maputo – we passed the audit and still we can’t get our money back”.

Recently Company F paid for its director to travel to Maputo to try to find a solution to this issue. While in Maputo the director was approached by an official in the Finance department and told that for a payment of 20% of the value Company F is owed, the rebates would all be paid immediately, “You can leave here with the cheque in your hand” the official said.

The director of Company F was shocked by this and having made no further progress through official channels, returned home. He decided to discuss the matter with some other companies that he knew had similar problems. Some companies were owed hundreds of thousands, and one or two were owed millions of dollars. Company F initiated a meeting to discuss the issue. He discovered that all the companies at the meeting have been owed rebates for more than six months, many for more than one or two years. All the companies complained that they were not investing more because either their capital was tied up in the Finance department or because their parent companies refused to pay more money when such large amounts were outstanding. But what was particularly surprising to the director of Company F was that almost every company present had at some point or other been told that for between 15 and 20% of the value owed they could have their rebates immediately.

Deciding to explore this further the director asked if anyone had actually paid. Several companies indicated that they had paid and that they had then received the rebates

they had paid for. Doing a quick mental calculation based on how much companies had said they were owed, the director realised that many hundreds of thousands of dollars had been paid over in this way. However the director felt that if he made the payment once, he would always have to pay. Several of the companies at the meeting agreed that they would not ever make a payment, but others said that they found themselves in a financial position where it was becoming increasingly likely that they would have to pay.

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company’s reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

## **Company G**

Company G is a local manufacturer. The company is aiming to grow and feels it is important that as they grow they increasingly purchase their inputs locally. As a result Company G has spent time on investigating what goods are available locally and on meeting with suppliers. The company has even gone as far as negotiating with some suppliers to import specialist inputs that they require. Company G has several employees who are responsible for procuring the goods that the company needs on a day to day basis.

Having spent the time on developing relationships the company was surprised to hear one day from one of its employees that one of the inputs the company needed was not available from a supplier with whom the company thought it had a good relationship.

The employee said that he had found a similar product in another shop, albeit at a higher price. Having no choice Company G purchased the more expensive product.

However the director of Company G felt annoyed that he had been let down by a supplier after investing time in meetings and developing what he believed to be a good working relationship. He therefore made a telephone call to the supplier in question, to explain the situation and ask what had gone wrong. The director was surprised and confused to learn from the supplier that they did in fact have the goods Company G required in stock at the usual price. He was also told that his employee had not been to the supplier's shop for some weeks.

The director of Company G then began an investigation. He selected a number of items which the company regularly bought. These included inputs for the manufacturing process as well as safety equipment, and stationery. He asked the accounts department to prepare an average cost for certain specific items based on what had been spent over the past 12 months and at the same time he personally visited a number of suppliers and made a note of their prices for these same items.

When the director compared what Company G was paying with the prices he had found in the shops he noted that they were regularly paying between 5 and 15% more for their purchases than the average price he had found during his shopping expedition. Perplexed the director phoned several colleagues who managed supply businesses and asked why this was the case. They explained that many suppliers pay commissions to the buyers working for other companies. These buyers will receive a percentage value of the purchase (usually between 2 and 5% though sometimes up to 10% depending on the item in question). This commission serves to secure loyalty from the buyers, though sometimes they would change suppliers if someone else offered better commission rates the director's colleagues explained. Understanding

this, the director of Company G was able to detect a pattern in even the smallest purchases the company made.

Company G was clearly prejudiced by this system since it led to the company paying significantly more for its inputs. The director therefore decided to begin again in the development of his relationships with suppliers. He developed a list of authorized suppliers and personally visited each one. He met with the heads of each supply company and explained that he would not accept them paying his employees commissions. He requested that they supply him with a regularly updated price list so that he could monitor prices. He then met with Company G's buyers and explained the new system to them. He explained that what they had been doing was prejudicing the company by increasing its costs. Now Company G has an improved relationship with its suppliers. These suppliers understand that if they pay Company G's buyers, they will lose the right to supply the company.

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company's reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

## **Company H**

Company H is a labour-intensive industry and has a number of workers of different levels of skills. Recently Company H's human resource manager was walking around the company premises at the end of the month and noticed a line of employees apparently standing in a queue outside the company premises. The human resource manager approached the employees and asked what they were doing. The employees

were reluctant to speak to him but as he investigated further he discovered one of the members of his department at the front of the queue collecting sums of money from each worker.

The human resource manager assumed that what he had discovered was some form of money-lending scheme and he decided to investigate some more. What he discovered in fact was that several members of his department were charging employees a percentage of their wage in order to remain employed. He found that workers wishing to be employed would first make contact with someone in the company. They would then be introduced to someone within the human resource department and would negotiate the “entry fee” in order for them to be employed. After that the employee would pay a fixed percentage of the monthly salary in order to keep the job they had secured.

The human resource manager was concerned about the consequences of such activity in the company. He felt that, aside from such behaviour being inappropriate, it would mean that the company was not necessarily hiring the best people for the job. He also felt that if it was known outside the company that this procedure was being used it would damage the reputation of the company.

Having discussed the matter the senior managers at Company H consulted their lawyers about taking disciplinary measures against the members of the human resource department involved. However they discovered that it would not a clear-cut case since no payments had been made on company property and no employees were prepared to come forward as witnesses. Company H therefore decided to implement an employee code of ethics which would explicitly ban this type of behaviour, and to embark on a programme of discussion with their employees about their rights and responsibilities. As the programme got underway and Company H introduced the code of ethics the human resource manager was interested to learn from the

discussions that he had with employees, that what had happened in his company was also happening in many other companies, and that many employees felt that this transactional approach to employment was normal.

*Discussion questions:*

- What do you think about this case?
- What problems does the company face?
- Do these problems pose a risk to the company? If “yes” what are the risks?
- How could the company overcome the problems it is facing?
- Can you see any problems inherent in the company’s reaction to its problems?
- What would you do if you were the owner/manager of this company?
- Can you think of any similar situations you have experienced? If so how did you deal with them?

### 3. REPORT SUMMARIZING ROUND TABLES DISCUSSING THE PARTICIPATION OF BUSINESS IN CORRUPTION

#### INTRODUCTION

Sofala Commercial and Industrial Association (ACIS) identified corruption as one of the major issues affecting its members and, consequently, economic and business development in Mozambique. In partnership with the Center for International Private Enterprise (CIPE), in August 2005, ACIS embarked on a 12-month project which aims to find ways to combat business participation in corruption in Mozambique.

As the first phase of the project ACIS developed a discussion document which provided background on corruption in business in Mozambique, and reviewed recent anti-corruption surveys. The report also contained a summary of interviews with businesspeople along with some case studies.

The discussion document was designed to initiate debate and was released to coincide with the release of the Government's draft anti-corruption strategy and was designed to respond to the hope, expressed in the strategy that the private sector will be an active partner in the fight against corruption. Copies of the ACIS discussion document were widely distributed in Maputo, Sofala and Nampula as well as via the internet. Copies were delivered to individual ministers and sent to Mozambique's international cooperation partners, as well as being widely circulated among the private sector.

Following release of the report ACIS initiated the public discussion phase of its project. This included giving public presentations and holding individual meetings with interested parties. It also included 6 round table discussions which were held in Maputo, Beira and Nampula. This report provides a summary of the public discussion phase.

The final phase of the project, currently underway, is the development of a toolkit based on the outcomes of the discussions held.

When preparing for the round tables ACIS decided to hold them based on language, with participants being invited to participate in either Portuguese or English. A total of six round tables were held, four in Maputo, two in Beira and two in Nampula. A maximum of 15 participants were invited to each meeting to ensure that an open discussion could be held. Participation of the private sector was encouraged by ensuring that the meetings were relatively short (maximum 2 hours) and were held at times that would not interfere with the normal working day. In general the meetings were well attended and ACIS was pleased to welcome a number of high-level

participants. Participants were selected based on their knowledge of, and interest in anti-corruption and private sector issues.

Prior to the meeting participants received a copy of the discussion document and a set of questions for consideration. These questions were used as a basis for the discussions that followed and were as follows:

- What should the role of business be in the fight against corruption?
- What type of tools do you think business could use in the fight against corruption?
- What can be done to support and assist business in its fight against corruption?

Overall the round table format proved successful with all participants being actively involved in the discussions and everyone having an opportunity to speak. ACIS was pleased with the outcomes which were frank and provided an excellent insight into current thinking on the subject of the private sector and corruption. Some participants were skeptical about the capacity of the private sector to impact the problem of corruption, and one of ACIS' challenges will be to develop tools and to demonstrate that the private sector can achieve success in this area.

A number of invitees expressed concern about attending. ACIS found that it needed to assure potential participants that their input would not be directly recorded, that their photographs would not be taken, no press would be present and that no list of presences would be circulated. The outcome of the round tables is detailed below. ACIS has respected participants wishes, and not attributed comments, or included a photographic record or list of attendees with this report. We do not feel that this information not being available diminishes from the impact of what was said. The minutes below are presented in a direct and forthright manner the better to reflect the intensity of the discussions that took place.

ACIS takes this opportunity to note that the opinions given are not necessarily those of the association or its individual members. This project reflects the desire of the private sector in Sofala to prove itself a transparent and candid interlocutor on the subject. ACIS strongly believes that in demanding that the government fight corruption and in holding the government to its strategy, the private sector must prove that it too is prepared to commit to that fight.

Though the ACIS anti-corruption project is now moving on to developing tools to support the private sector this does not mean that the time for discussion is over. ACIS, as always, welcomes the comments and thoughts of those who read this report, and hopes that you will pass it along to anyone else that may be interested. Your inputs can be sent to us at

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All correspondence will be treated as confidential.

## A. KEY THEMES

The following themes arose from the discussions throughout the preparation of this project, and were particularly emphasized in the roundtables.

These are the themes that ACIS will use to inform future actions in its efforts to support the private sector in combating corruption.

### i) THE PRIVATE SECTOR HAS A ROLE TO PLAY IN COMBATING CORRUPTION

While the parameters of this role were hotly debated the fact that both the private sector itself and other stakeholders consider there is a role to play is important. This role includes combating both private – private and public – private corruption. Many of the private sector participants at the round tables said they were willing to adopt a position of moral leadership and to work towards improvements within the private sector.

### ii) ASSOCIATIONS HAVE A ROLE TO PLAY IN COMBATING CORRUPTION

Associations were seen as potentially being key actors in representing their members, providing a buffer between members and the public sector in cases of whistle-blowing, providing information and support to members and leading the way in using transparent practice. While some members of civil society and the international community felt that the role of representing the private sector should fall solely to CTA, in general participants in the round tables welcomed ACIS' initiative and encouraged the organization to carry on developing activities and motivating members to act against corruption.

### iii) INFORMATION IS KEY

One of the principle areas in which both the private sector and civil society can combat corruption is through the dissemination of information. The need for access to quality information was raised repeatedly throughout the project. While it is likely to take time for the Government's anti-corruption strategy to take effect, the private sector can begin acting immediately to obtain and disseminate information. Associations can be used as a conduit to channel information to members, and individual companies can be used to channel information to workers, as has been done in the fight against HIV/AIDS.

### iv) ACTIONS SPEAK LOUDER THAN WORDS

A number of round table participants said that while they welcomed the opportunity to discuss the issue, and to hear a fresh perspective, the time for talking is now over and action should follow. ACIS found the round tables, interviews and discussions a valuable way to get to know more about their members and private sector colleagues.

However the skeptical response of some participants showed that successes are needed to demonstrate that the private sector can make a difference and to empower and encourage companies to take further action.

- v) THE IMPLEMENTATION OF THE NEW PROCUREMENT REGULATIONS WILL BE AN IMPORTANT TEST

The implementation and monitoring of the new procurement regulations will be a test for the public and private sectors alike. The private sector will need to educate itself on how the procurement regulations will work and to demonstrate its commitment to participate as an honest partner in tender processes. It will also need to develop independent monitoring of the implementation of the regulations to highlight any weaknesses.

- vi) AT PRESENT THE COSTS OF DEMONSTRATING TRANSPARENCY OUTWEIGH THE OBVIOUS FINANCIAL BENEFITS

While a number of companies are in the process of undertaking quality certification and transparency measures, at present the costs continue to outweigh the benefits for those that are not multi-nationals or operating in the external market. It will be an ongoing challenge for the private sector to prove itself transparent and to lobby major procurers to encourage them to prioritize procurement, even at a cost disadvantage, from companies that can prove themselves clean. The burden of proof remains with the companies a number of which expressed interest in exploring options such as certification, and supplier and employee codes of conduct as well as the formation of islands of integrity.

- vii) THERE ARE CERTAIN AREAS REQUIRING IMMEDIATE ATTENTION

A number of issues have arisen consistently during the project, and therefore merit attention here. These are areas where public-private corruption is alleged to be at its worst and where, while the private sector can advocate for change, direct action is required from the Government and its international cooperation partners:

- Tax system (particularly VAT rebates);
- Customs (particularly Beira and Frigo);
- Public works (particularly small-scale works undertaken at provincial level);

- Justice system.

Issues of illegal trade and unfair competition which were also raised consistently during the project could be at least partially addressed by the uniform and effective implementation of the VAT and Customs legislation.

viii) INDEPENDENT ALTERNATIVES CAN AND SHOULD BE SOUGHT

This includes independent protection for whistleblowers, and alternative dispute resolution mechanisms. Many people felt that private sector associations should use their position to act as a buffer between complainants and those they are complaining against be they other companies, or Government functionaries. The idea of associations acting as whistleblower protection for individual company workers was also raised. Many participants complained about the justice system, though few if any had used arbitration, which is an option in all except labor disputes.

ix) ENFORCEMENT IS CRUCIAL

Many of the issues raised by participants could be addressed by enforcing existing legislation. This includes enforcement of the anti-corruption legislation and of the legislation governing the behavior of Government functionaries (including requirements to declare assets and conflicts of interest etc.). It was particularly clear that many people believe that high-profile anti-corruption cases brought transparently and in the public eye, as allowed for in the anti-corruption law, will contribute greatly to the fight against corruption in all sectors. While the private sector itself cannot enforce legislation it can advocate for enforcement and can actively encourage the international community and civil society to join it in this advocacy.

## B. CASE STUDIES

As part of its toolkit, in addition to the four currently contained in the initial report, ACIS will develop a further four case studies on the following themes:

- Small-scale public works tendering
- VAT rebates
- Employee participation in corruption
- Corruption in human resource management

These nine case studies have been chosen as representing the key issues raised during the project. They will be presented in the toolkit with questions and will be designed to be used as the basis for discussion and training.

## C. TOOLS

The final phase of the ACIS combating business participation in corruption project is the preparation of a series of tools for use by companies, private sector associations and other organizations. On the basis of discussions throughout the project the following tools have been identified as being most likely to be of use for companies:

- i) Case studies for training and discussion
- ii) Model employee ethics code
- iii) Model supplier ethics code
- iv) Model company code of business principles
- v) List of contacts for support and information
- vi) Outline of ways to use existing legislation to support anti-corruption activities

These tools will be developed and included in a final toolkit to be published and distributed later this year.

## D. NEXT STEPS

ACIS aims to undertake the following activities to continue with its corruption combating activities:

Within the scope of the project:

1. Development of tools
2. Publication and dissemination of the toolkit

Outside the scope of the project:

- a. Support and encourage members to seek quality certification, to form islands of integrity and to use the tools in the kit;
- b. Provision of information to members;
- c. Develop further booklets on key areas in the ACIS “Legal Framework” series;
- d. Work with civil society organizations to develop appropriate information for dissemination to company workers (areas such as education, health and the police);
- e. Train members in the use of the new procurement regulations;
- f. Develop an independent monitoring capacity to monitor procurement activities in Sofala Province;
- g. Advocate for preferential purchasing from companies that can demonstrate transparency;
- h. Advocate for enforcement of existing legislation;
- i. Advocate for freedom of information, consumer and class-action legislation;
- j. Advocate for overall simplification in the drafting of legislation, beginning with the new labor law;
- k. Encourage the use of independent alternatives such as arbitration, use of ombudsman, associations as buffers for members complaints, or as whistleblower protectors;
- l. Advocate for a representative dialogue forum including a cross-section of civil society and private sector interests.

## E. DETAILED MINUTES

The following minutes are based on the transcripts of conversations taking place during the six round tables held. As such they contain the views and opinions of the individuals who participated. The views expressed should not be considered to represent those of ACIS or of all participants. The minutes have been developed with the aim of conveying the intensity of the debates which took place.

### **Nampula Round Tables**

Participants agreed that it is difficult for companies to operate in Mozambique. One participant said that he felt that the complexity of the law added to the levels of corruption. He said it is so difficult to get money out of the country or to disinvest that foreign investors are trapped here and therefore have no option but to continue investing. Participants went on to say that existing investors may have an advantage if they have contacts at provincial director level or above because they can use these to remove blocks in the system. However they pointed out that this is not an option for new investors.

Several participants cited examples of the need to pay commissions to secure contracts with the government. Public works was perceived to be the most corrupt sector in this respect. Participants noted that in some cases payment for work done depended on inspectors who could be paid to say that the work was complete, or to say that more work had been done than had been done in reality. Participants explained that this was the way that companies were able to compete on price, because they were not in fact completing the job they were being paid for.

Participants went on to discuss the tax system and in particular the system of VAT rebates. This was generally accepted as being a corrupt system and participants noted that 20% of the amount owed by the government was the standard fee for obtaining the rebate.

Participants then considered solutions to some of these problems. In respect of corruption in public works they agreed that improving the inspection system, or maybe privatizing it would reduce corruption. In the case of VAT rebates participants said that companies should refuse to pay and should hold the amount owed on their books as debt so that they would not be liable for large amounts of company tax.

Participants then discussed the involvement of company employees in corruption. All agreed that the lead must come from the top and that company directors should take a moral lead. One participant noted that when he had dismissed a worker for paying a bribe to a government representative the Labour Department had overruled the dismissal saying that corruption was not one of the offences in the labour law which merited dismissal. The case has been appealed but the court system has required that

the employer put up a large deposit in order to take the case forward. Participants agreed that the labour law and justice system were major factors which prevented them from firing employees caught involved in corrupt practice.

Another participant noted that he also had problems with corruption among his workers. These employees were required to deliver free goods to farmers but a number of them had been caught charging for the goods and otherwise behaving in a manner which prejudiced the company's relationship with the farmers. Participants agreed that this was a difficult situation owing to the physical distance between the company and its employees. A number of ideas were given such as broadcasting on local radio to let people know that the company's goods were for free. However the participant maintained that until such time as it is possible to dismiss workers for corruption it would remain difficult to control this.

Participants then discussed how they could assist new investors and support each other. They all agreed that direct support was not viable since many of the companies were in competition. They lamented the general weakness, or the perceived political bias of business associations and the resulting lack of collective action. The feeling was that associations would be the most appropriate vehicles for addressing the issue of corruption. Participants noted that the more information they had access to the more comfortable they felt and they were convinced that providing information would also be of major assistance to new investors.

Customs in Beira was singled out for particular discussion by participants. Most of those at the round table import goods via Beira and each had tales to recount about instances of rent-seeking and abuse of power. The conversation then moved on to public works. Those participants involved in the sector felt that the procurement system was a form of organized corruption. They provided instances where they felt that tenders had been specifically tailored to meet the capacities of one company and that different companies would take it in turns to bid on jobs tailored to their needs.

A number of participants also noted that tenders issued using donor funds which required the purchase of goods and services from the donor's home country should be considered unacceptable. They went on to say that in their experience government departments are keen to maintain procurement processes which use donor rules and donor funds because this gives them more leeway to extort bribes, since prices can be inflated to include commissions and the products or services supplied are rarely audited by the donor in question. Participants cited instances of people who make their careers as "fixers" assisting companies in winning tenders, and noted that a good fixer should be able to obtain the tender documents well before they are released to the public.

Participants then embarked on a lengthy discussion of what constitutes corruption. They touched on the difference between lobby, gift giving, incentive payments and

corruption. They concluded by agreeing that if any doubt existed about the motivation of the action it should be considered dubious, and that in fact corruption is “the oldest profession”.

Participants generally agreed that the private sector has a role to play in fighting corruption, but said that the problem is something that could be treated rather than cured. Making corruption less attractive by holding people responsible and enforcing punishments was felt to be one good solution. However participants generally also felt that fighting the system was a “no-win” situation and that change could only truly be affected from the top of the system. They expressed concern that young people are learning early that corruption is the way to get on and that this being the case the situation is likely to worsen before it improves.

One participant noted that he had seen posters at Customs inviting people to report corruption but he said the posters did not explain how you would be protected if you did report someone and what would happen to the person you reported.

Bureaucracy was seen by participants as the key issue facilitating corruption. They felt that associations have a major role to play in reducing bureaucracy, and in educating companies on their rights. Participants agreed that illegal trade is a major threat to business and is dependent on corruption. One participant proposed the meeting adopt the slogan “Burocratismo – é a SIDA do sector privado”. He said this would demonstrate the slow death that bureaucracy and corruption were subjecting the country to.

Participants felt that the only protection available to them is the law, and that they must find ways to advocate for equal enforcement of the law. It was felt that a policy of zero-tolerance should be adopted for corruption and illegal operation. It was felt that the investment climate is generally not good in Mozambique and that investors are discouraged by the corruption they experience when they begin investigating investment opportunities. Because corruption is strangling investment there are few operators in the market which enables illegal trade and “the system”<sup>1</sup> to prevail, they said.

Several participants gave examples of both local and international investors expressing an interest in an area and then withdrawing because of the levels of bureaucracy and corruption. They felt that as a result of this many of those who do invest are not “the best” investors, but rather those that know how to or are prepared to work within the system. They gave examples of those they felt are known as great African businessmen being those who use their connections and influence to achieve economic success. Such

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<sup>1</sup> Participants said that “the system” is how most of them refer to corruption. When asked how they would differentiate between the public administration system and “the system” when speaking they said that they did not perceive a difference

people they said ran companies that thrived in chaos but would find it hard to compete in a transparent environment. Participants felt that those businesses involved in corrupt practice have a particularly strong lobby because of their close ties to members of the government, at different levels. Asked how this could be overcome participants agreed that collective action and strong associations would be a place to begin.

Several participants questioned the focus often given to multi-nationals and mega-projects. They felt that while these organizations may demonstrate their corporate social responsibility the importance of SMEs that cannot afford to build schools and hospitals should not be overlooked. They noted that large companies can take their concerns and their lobbies straight to the top, while SMEs require more protection and support. It was felt to be important that the legal private sector of all sizes work together.

One idea that was raised was a “declare what you pay” campaign where companies declare how much tax they pay, and how much they spend on corporate social responsibility so that the public can see how much the private sector does in fact contribute. It was felt that by improving the private sector’s image as a contributor to growth and as a moral leader more could be achieved in terms of advocacy for an improved business environment. One participant noted that for as long as the majority of the budget is made up by donations rather than by taxes, the voice of the private sector will remain weak.

The meeting concluded with participants agreeing to keep in touch and to try to work together to support each other where possible.

### **Beira round tables**

Participants began the discussion by reflecting on a well-known local corruption case, that of a motor launch allegedly purchased by the provincial directorate of finance. The lack of apparent conclusion to this case, which began some four years ago was seen as an indication of the level of impunity which government employees have. It was noted by one participant that in many countries businessmen take risks and therefore make more money, while civil servants have job security and don’t take risks and therefore earn less, however in Mozambique he said, it is the opposite. Participants agreed that until such time as corruption was seen to be being dealt with at all levels of the administration little would change. They agreed that punishment should be “efectiva, pronta e divulgada”.

Participants discussed local instances of functionaries being reported for corruption and then being promoted to remove them from their previous position. They felt that at the moment the signal is given that “crime pays” and that without a strong and direct signal from the top, things would not change.

One participant noted that it is almost impossible to obtain a government contract without paying commission. He said that he had tried to institute a system of honesty and non-payment of commissions in the sector in which he works but that there is always one company that is prepared to undermine the process. He said he strongly believes in collective action and in building trust within the private sector. He said he felt associations should be key players and that publicity should be used to promote transparency and legality. He also said that people often say to him that they wouldn't mind paying their taxes if they thought they were being used transparently.

Other participants agreed. They felt it was important to support associations that could prove that their members operate transparently, and to encourage associations to take the lead in promoting transparency within the private sector. Several participants were particularly outspoken on the importance of the role of the private sector and civil society. They noted cases of perceived corruption by donor agencies, and of agency representatives becoming, as they put it “corrupted by the easy life of per diems and short working hours” and said that the private sector should not wait for donors to take the lead, but must make a stand on principles of morality and legality. They noted that donors were in their experience not always paying withholding tax for foreign specialists working in the country for example, and felt that this was unfair competition.

The discussion then turned towards “the system” with several participants providing explicit examples of highly organized corruption systems operating in different departments. They noted that when one director is removed the incoming one would be briefed on how the “system” in the department works and would be told how much he could expect to make from it. It was felt that undertaking means evaluations and requiring declaration of assets would be one way to begin to manage the problem.

Participants then turned to the issue of corruption within the private sector. Here again they agreed that publicity and information about those who had been caught would serve as a deterrent. They also noted that tax evasion becoming a crime, as it has recently, is an important step if correctly enforced. They expressed concern about denunciations which they said could be used as a witch-hunt, both within the private and public sectors. Certification and audits were seen as important tools but participants noted that they are also expensive and do not as yet have any commercial benefit for companies.

The concept of codes of principles was discussed, but participants felt that enforcement and management were major constraints but that they should be introduced and experimented with. One of the ways that this could work, participants decided, was if large companies got together and worked with their suppliers to ensure transparency in their value chain. It was proposed that large companies could form “buyers clubs” which would require suppliers to sign a code which would then be monitored. The

code and resulting supply contract could then be used as supporting documentation to help the supplier obtain access to credit.

It was felt that corruption arises as the result of opportunity and also from family pressure on people to achieve more.

Participants noted that Beira Customs department is the most corrupt department that they deal with. Several participants gave graphic descriptions of how the internal “system” within Customs works and how it affects their companies and clients. One participant recounted the story of a sting operation on an individual Customs officer who had regularly solicited bribes. However he noted that despite tape recorded evidence (which is not admissible in court) the officer in question was transferred. Other participants noted that it may be easier to target corruption at lower levels such as this but that as they saw it in reality the major problem is higher up, and therefore much harder to deal with.

The discussion then moved on to the anti-corruption legislation and the possibility of using it. Participants felt that at the moment it could not be used because there is no form of protection provided for a person that denounces corruption. However they felt that collective action through associations could not only provide protection for individuals and companies but could also pressurize the government to enforce the law and begin exploring practical measures to fight corruption.

On the issue of other methods to fight corruption one participant said “there is no magic formula”. The consensus was rather that all the different methods proposed in the discussion document should be used. Participants said that corruption is an attitude of mind and that fighting it is not impossible or hopeless if people think positively. They felt that education is particularly important, and they showed particular concern about the exposure children in the education system have to corruption. They felt that companies could be a useful conduit to provide information and moral leadership for their employees, who would then take this message home. It was agreed that associations should take a lead in developing collective action and in providing information and support to members.

Participants went on to discuss education and morality. On the subject of education they expressed regret at the apparent decrease in ethical values down the generations. They partly attributed this to role models, noting that many black role models are gangster rappers for example. Several participants provided examples of how corruption and moral questions had affected their children and families.

Participants then discussed the issue of corruption in business in other countries. Several noted their initial surprise when they had dealt with colleagues in other countries who had been unable to accept gifts or entertainment, or had been required to declare the value of these things. They agreed that this was a good system and could

be implemented in Mozambique. They were interested to explore the idea of employee codes of ethics. However they then agreed that while firing corrupt employees may be advantageous in reality change at the top is essential first. Several participants noted examples of government ministers in Europe who had resigned as the result of wrongdoing not by themselves but by members of their team. They noted, with much humor that in Mozambique it is more likely that the person you denounce will become your boss!

Participants then said that they do not feel the situation to be hopeless. They said that they thought associations should work on helping their members to become and prove that they have become transparent. They said associations could usefully provide a confidential environment for the discussion of difficult and complex moral and legal issues. They said that everyone should be realistic and that the process would take time and be a long series of very small steps. However participants agreed that if each person did one thing each day, and if each person spoke out, even in a confidential environment then things would change.

One participant then raised the issue of donor conditionality. Other participants agreed that the donors are a powerful force and suggested that they should use that force for the good of Mozambique by requiring detailed transparent justification for the use of the funds they give. Participants agreed that donors should be encouraged to use audit trails to find their way through the complex mazes used to hide the non-transparent use of funds. They also proposed that without decentralization so that for example provincial governors are elected, civil society's voice would remain weak for some time to come. They proposed that the private sector is in a strong situation relative to the rest of civil society in that it is to some extent organized and cohesive, and that the responsibility therefore rests with the private sector to encourage the donors to enforce their conditionality.

The conversation then returned to the enforcement of private sector codes of conduct. Participants discussed whether taking a very harsh interpretation of the law and using minimum risk rather than presumption of innocence would be an option. However it was agreed that in the early stages of the fight against corruption this could be counter-productive. It was felt that it might be better to have more companies involved in associations where they could openly and confidentially discuss their moral dilemmas, rather than excluding companies for small infringements and creating disaffection and building the idea that transparency is only for the few. It was suggested that if policing of a code was to be done then requiring that the company prove its transparency rather than requiring that the association prove it otherwise would be a reasonable approach.

In respect of offering advantages for companies to become transparent participants found it difficult to find any immediate incentives. They acknowledged the difficulties faced by companies caught in a cycle of corruption or involved in a traditionally

corrupt sector. Being unable to come up with a solution the group then discussed the impact of corruption. They expressed themselves particularly concerned about the impact corruption is having on younger generations and on those looking at Mozambique from outside. One participant noted “history will judge us on this and we will all be marked down as having been involved”. They gave examples of countries where they believe corruption is considered part of the social fabric. They were all very clear on the fact that this should not be allowed to happen here, the fact that this discussion was taking place proved, one participant said, that the situation is not irredeemable. It was agreed to be important for people to understand the damage corruption does and how it prejudices companies and the country in general.

The group then agreed that they would assume the responsibility to remind at least one person each day that corruption is wrong.

The second Beira round table began with a discussion of what constitutes corruption. After an extensive discussion two of the participants said that they had not previously perceived many of the acts described by their peers as corruption, but had considered them necessities in order to conduct business in Mozambique. It was agreed by everyone that bureaucracy and road-blocks created by the public sector contributed significantly to the regular requests for bribes that many participants reported having encountered.

However several of the participants stated that they and their companies refused to participate in corruption or to be part of the problem and that they had implemented systems to prevent themselves from becoming involved. Several participants provided specific examples of having refused to pay bribes demanded or of having denounced the corruptor and as a result having lost business.

Participants agreed that only dealing with approved and legal suppliers was preferable and gave the company more control over transactions. However the weakness of the market, lack of choice and competition meant that many companies did not have a choice over who they deal with. Several companies had reportedly reverted to directly importing key inputs in order to be sure of quality and legality.

Companies which actively pursue a transparency policy cited top-level decision-making as being key in the success of their policies. Participants from these companies proposed that given the current size of the market dealing director to director would be viable and would reduce the possibility for corruption lower down the company structure. All those present felt that their peers should feel free to report any inconsistencies to them personally. Overall the direct involvement of senior management in the day to day operations and in relationships with suppliers and other external company contacts was felt to be essential. It was felt by participants that strong clear leadership and example-setting were required.

Several participants proposed that associations could be used as an avenue for protecting whistle-blowers whereby companies could report examples of corruption which they encounter confidentially to the association and the association could then take the issue up with the other company.

Companies on the supply side stated that they preferred to supply to companies with a clear and transparent procurement policy. They felt that this gave them an advantage when behaving transparently themselves and enabled them to deal with the purchaser in a clear cut manner.

Participants agreed that through the association they could consider developing a charter. They envisaged that pressure could be applied from both suppliers and purchasers for each side of the relationship to operate in a more transparent manner. However it was agreed that the functioning of such a system would be wholly dependent on commitment from the top and on the right of anyone noting problems in the system to contact their peers at senior management level.

In respect of corruption involving the public sector representatives expressed themselves tired of hearing that the private sector is wholly to blame. Participants noted the example of Customs in Beira and Frigo in Maputo both of which were considered by those present to be highly corrupt. Several participants noted that they felt that the government's anti-corruption unit is not yet equipped to deal with these matters but that they would welcome information on how to bring issues to the unit and how to protect their anonymity in doing so. They felt that the Government's policy needed to be clarified and that they would need to see concrete actions being undertaken. It was felt that in the interim an association could provide the protection needed by companies to enable them to expose corrupt practice.

The conversation then moved back to the idea of having a code of practice for association members. It was agreed that this could be policed by exposing those that did not comply. However participants were unable to resolve the issue of how an association depending solely on the fees of members for its income could be required to expel members for not complying with a code of conduct. They did however point out that some associations do not depend on members' fees, but on donations, and could therefore be expected to take a lead in this area. Some participants expressed themselves as highly pessimistic about the possibility of enforcing non-corrupt behavior. They noted that signing a code of conduct and living and working in Mozambique would be like being in two parallel worlds, the ideal and the actual. Some participants noted that they were under more pressure to hit targets and keep customers happy than to behave in a non-corrupt manner. Overall it was felt that lack of accountability, lack of professional services (such as lawyers and accountants) and lack of information contributed to the problem.

Some participants reiterated the fact that signing a code would only be worthwhile until such time as one of their customers instructed them to make a corrupt payment in order to bring down an administrative barrier and complete a job. At that point they noted, the debate passes from philosophy to reality. However another participant provided an example of another country which had been gripped by corruption but where high level decisions had been made to stop corrupt practice. The participant noted that it had taken a long time but that the entire national psyche had been changed and now corruption was so unusual as to be notable. The participant said that while corruption itself is an individual decision government and the private sector (and society as a whole) can take a collective decision to ostracize those act corruptly and to take the steps necessary to reduce the opportunities for corruption to take place.

Participants agreed that simplification of systems and provision of clear information are key in the fight against corruption. Changes made need to be substantive and part of a clear policy.

Representatives then raised the matter of corruption prevalent among employees, especially those operating outside the direct control of head office for example. A number of cases of fraud and extortion were noted. Representatives concluded that until such time as there were clear repercussions which could be upheld in law and until corruption itself was seen as a shameful thing to be involved in it would be difficult to manage all these individual issues. Participants noted that in some circles corruption and fraud are apparently not perceived as shameful but are seen as legitimate ways to progress oneself. There is therefore, it was noted, a great deal of vested interest in not changing the existing systems. Once again participants reiterated the need for a major and obvious change at senior levels of the government, and a clear commitment from the top down to change the situation. Participants agreed that public trials such as those of the senior managers of Enron were useful and that making public examples of people would serve to make people ashamed of corruption.

In respect of how the private sector could promote corruption participants agreed that until such time as the government is required to answer to the private sector for tax expenditure the private sector's voice will be limited. A number of representatives said that they felt the donors are a significant part of the problem since they do not enforce conditionality and do not require the government to have meaningful two-way dialogue with a representative cross-section of civil society. It was agreed that a strong, competent and independent audit function is required to oversee the public administration. It was felt that there would be no significant change in public sector attitudes until such time as the donors enforced conditionality and that therefore this should be one of the things the private sector actively advocates for both in and outside Mozambique.

Representatives were divided on the issue of how effective private sector action could be in forcing change at national level. However participants did agree that internally

the private sector could focus on improving its image and promoting legality and that this should include the passing of information on corruption to the workforce. It was reiterated that change should come from the top and that senior level commitment is essential for anti-corruption initiatives to succeed.

The meeting concluded with representatives agreeing that the “it takes two to tango” argument given by the government is an easy way of justifying something that cannot be justified and that the private sector must take concrete action to improve the situation. It was agreed that participants would like to have access to employee and supplier codes of ethics, with information on how to enforce them. They also proposed gathering information on how the anti-corruption unit should work and disseminating it as well as considering options for using associations in a whistleblower protection role. Dissemination of information to ensure that companies have the information needed to operate legally and to defend their rights was also agreed to be essential.

### **Maputo round tables**

Some larger companies noted that they have an employees’ and a suppliers’ code of conduct. Such companies also use recognized auditing firms to audit their procurement processes annually. The companies have internal penalization mechanisms to support the implementation of codes of conduct.

Participants noted that the government inspects their organization’s premises (labour department and industry & commerce department) and that they would welcome being advised of the inspections beforehand to allow them to prepare documents, and to see the reports resulting from the inspections giving them ideas on how to improve.

Participants said that they believed the problem of corruption is worse for smaller companies and that the private sector should consider developing a strategy to improve business ethics and support SMEs. It was agreed that any strategy should not be based on the wholesale importation of ideas from outside but should recognize the peculiarities of the Mozambican context. It was also agreed that the dissemination of information both to companies and through companies to workers and their families is very important. The proposed CTA ombudsman service would be one way to address protection for those denouncing abuses. Problems with the justice system were highlighted and participants agreed that alternative and creative solutions should be sought.

Participants noted that there is a high incidence of organized crime which they felt to be supporting corruption. Several participants noted that their companies have taken a stand against corruption, for example in the customs service, and have as a result got a name for being non-corrupt. This leadership has impacted the actions of company employees and resulted in the company being left alone. It was agreed that a

disorganized organization is more likely to be trapped in a cycle of corruption. Corruption should however not be combated by more organizations however, it should be fought by honest individuals who are supported by other honest individuals and who can get the message out to others to join them.

Consumer protection was discussed and it was agreed that this is an area that should be developed, along with regulators for public utilities such as electricity, water and telephones. Participants discussed examples of uncontrolled price rises and poor levels of service in utility companies.

Participants proposed that associations should be managed as companies are in terms of codes of conduct and should not be considered as vehicles for personal aggrandizement and enrichment.

The discussion turned to auditing companies and government auditors. It was proposed that both state and private auditors should follow the same rules and should sign declarations of independence and good practice, and that their employees should make declarations of assets and conflict of interest.

The conversation then turned to dealing with corruption. Several participants felt that prevention was more likely to be effective than targeting existing corruption. Others felt that those that are corrupt should be stigmatized while respect should be given to those who are not corrupt. Others disagreed saying that there is a need for overall social change and that everyone should be given the chance to participate. Participants proposed the need for education in moral values throughout society.

Corruption was seen to be linked with power. Participants discussed the role of the police and of the courts and the attitudes adopted by those in power. Reduction of corruption is seen by many as a reduction of power. Therefore issues of common good should be addressed and people should be educated to understand that their actions impact others and that power is not synonymous with corruption.

Several participants said that while the private sector could create internal conditions to reduce corruption genuine change was required from the public sector. One participant noted that public sector reform is expected to take at least 10 years and that the rest of society could not wait that long. The role of the private sector was therefore envisaged as supporting companies to develop codes of conduct and to develop internal systems to combat corruption while advocating public sector reform and providing information to companies and their workforces. Participants said that the private sector should be encouraged to demand information and advocate for simple, practical, objective and transparent legislation as well as developing watchdogs.

The issue of advantages of not participating in corruption was discussed but participants did not come to a conclusion on this. They instead moved on to discuss the role of the private sector as educator. It was proposed that the government and

civil society should have a role in moral education but that this did not necessarily involve the private sector. It was agreed that the private sector needed to clean up and that corruption and illegality should be dealt with. Much of the responsibility, it was felt, rested with company directors and senior managers who should set an example and who could establish company policy in respect of corruption. Trading of influences particularly in procurement of goods and services to the state was noted as a major area requiring attention and in which the private sector could make a strong stand. Participants also noted that public sector officials may promote the creation of investments and companies in which they have shares or from which they are guaranteed a private salary.

Participants agreed that there was a need to improve market conditions and the business environment to give companies, particularly new investors and SMEs a chance to develop. The tax system and particularly the customs system were noted as being corrupt and it was felt that these and customs were major costs or barriers to entry for non-corrupt operators.

Participants agreed to disagree on the issue of improved public service salaries as a way to reduce corruption. Several participants felt that moral education was necessary and that some people, no matter how much they were paid would always behave corruptly while others no matter how little they were paid would make a good moral choice. Participants did agree that poverty and corruption should not be seen in direct correlation, noting that among the richest one may sometimes find the most corrupt.

Simplification of the language used in drafting legislation was noted as one of the keys to empowering both companies and individuals to know their rights. Dissemination of laws in simple language is essential participants agreed.

Several participants said it was all very well to discuss philosophy but that the meeting lacked practical solutions. They proposed that solutions would follow actions, giving the example that whistleblower protection would follow on from having whistleblowers to protect. Other participants vehemently disagreed with this saying that people would act when they see people being punished for corruption and see improvements taking place. Participants agreed that associations should adopt best practice and encourage members to do the same. It was hoped that CTA would take the lead and that the private sector could move the anti-corruption issue from discussion to action. It was proposed that the private sector should sponsor civil society anti-corruption campaigns. One representative provided examples of small actions undertaken in Maputo Central Hospital (putting up timetables, names of the persons responsible for departments, prices of services, waiting times for things and how complaints could be made) which had made a major difference.

Participants discussed ACIS activities around commissions paid in procurement processes. They noted that there is a perception that someone else will always pay so

we might as well all pay, but that it was necessary for companies that do not pay to take a stand on this issue. Independent monitoring systems for the new procurement regulations were felt to be essential and participants agreed that the private sector has a role to play here.

One participant objected to ACIS having taken the lead on this issue. He felt that the government's national anti-corruption project should be the rallying point for everyone and that CTA would be the appropriate route for the private sector to use to advocate for change. He said that it was a concern that one association in one region of the country could take it upon itself to speak out and try to influence national policy. He added that the ACIS study had no academic foundation and therefore should not be a subject of discussion.

Other participants strongly disagreed saying that the more initiatives and voices that joined the call for reform the better. Another participant noted that it was positive that the private sector was doing something and reacting in this important area.

The discussion then moved on to procurement and whether or not the donor community could be a positive influence on the transparent application of the new procurement regulations. Generally it was felt that both the donor community and the private sector should monitor implementation and use of the regulations. However in order for this to be effective participants agreed, the private sector would need information and training in the use of the new regulations. Participants were divided on whether in a procurement situation those tendering should agree an arbiter from the government or whether they would be free to select one from a renowned civil society organization for example.

One participant noted that the law, and particularly the new Constitution provides for a number of figures such as a national ombudsman, and class action legislation which would support both the private sector and civil society though neither figure is legislated yet. Participants discussed the role of the GCCC (Anti-Corruption Office) and how it would operate and would operate. It was agreed that there was a need for a clear understanding of how this organization would function. Participants also discussed alternative methods that could be used to limit corruption. For example it was suggested that when donors contract auditors they could include in the terms of reference for the auditor the requirement to ensure that key aspects contained in the anti-corruption law (such as declaration of assets) were being complied with. While the proposed ombudsman has a limited role the person of the "observer" provides a chance for civil society to oversee legal cases and could be used effectively in conjunction with class action legislation.

Participants hoped that ACIS would continue to take a lead and would encourage the government to put its anti-corruption strategy into operation. One way would be to begin creating islands of integrity with modest expectations, focusing on sectors or

industries, or geographical locations. Behavior change should be encouraged through training and information. It was proposed that CTA be encouraged to take on the role of collectively representing the private sector and receiving denunciations and taking them forward on behalf of their members and members' members. Participants also expressed the hope that the private sector would begin to more actively use arbitration, as well as transparency audits and certification.

### **Comments from comment forms**

Participants were asked to comment on confidential comment forms. Outcomes are summarized as follows:

- **DID YOU FIND THE ACIS REPORT USEFUL AND WHY?**

The report provided a useful synopsis of information about Mozambique but also about other countries. Participants found the comparison and ideas for tools useful. They noted that the summary of Mozambican corruption issues was very useful. It was also noted that the report helped to close the gap between theory and reality when dealing with corruption, by including case studies and practical examples. Participants noted that the report illustrated that the private sector does have a role to play and that given examples from other countries this role can actually make a difference. Practical suggestions included in the report were welcomed. It was noted that the report gave clear indications of areas in which cooperation partners could work with the private sector.

- **DID YOU FIND THE ROUND TABLE USEFUL AND WHY?**

Participants felt the round tables were a useful chance to exchange ideas and to speak openly. They said that they felt that the round table structure made discussion easier than in a seminar or in an individual interview situation. They felt that the round tables and the report were indicative of a clear will to make change and to provide practical solutions to the problem. It was noted that both the report and the meetings highlighted the need for sharing and disseminating of information, which is in itself a relatively simple problem to solve. Participants also noted that the round tables helped to make the issues “come alive” and to provide an outlet for ideas which could be used as a basis for concrete action.

- **HOW DOES CORRUPTION AFFECT YOUR ORGANIZATION?**

Most participants noted fraud, delays, additional costs and perceived lack of control in this section of the comments form. Participants also noted that corruption contributes significantly to an overall breakdown in the moral fabric of society. Companies involved in the public tender process noted that this was in their opinion the most corrupt area and one where they struggled to deal with the issue. Those participants that had experienced fraud noted that they had not been equipped to manage it when

it happened, and had not been able to provide the necessary incentives to prevent fraud taking place. Participants noted that they were not necessarily clear on what incentives would be required to prevent fraud in fact. Several participants also noted that corruption results in a significant cost increase to both public and private sectors.

- WHAT TYPES OF TOOLS WOULD BE USEFUL FOR YOU?

Suggestions for tools included enforceable codes of conduct for employees and suppliers, more information on existing recourses against corruption and recognized high-quality auditing available at reasonable prices. Advocacy to simplify bureaucratic processes and to reduce the cost of operation were also identified. Participants also noted that improved legislation responding to the reality of the country (simply drafted and easy to use) is required. Practical methods for protecting whistle-blowers were requested by a number of participants. Several participants noted that donors have a role to play and should find a way of collectively using their leverage to make the government more transparent, requiring disclosure of assets among other aspects. Information was identified as being the most necessary and the easiest thing in theory to provide.

- WHAT ARE THE MAIN PROBLEMS AFFECTING YOUR ORGANIZATION?

Principle problems were bureaucracy, lack of infrastructure and service provision, and non-functioning of the court system. Participants also noted that there are not currently enough opportunities to discuss the matter openly and confidentially and that many associations are reluctant to raise this issue with members. Participants also noted that in many cases refusing to participate in corruption schemes particularly on public tenders cost them business. Illegal trade and tax evasion were directly linked by companies to issues of corruption and both were seen to have a major negative effect on the business environment. Participants noted that lack of management skills and a regular turnover of senior staff contribute to lack of management time focused on human resource management and internal control, as well as on creating an environment in which fraud and corruption are more difficult to undertake.

#### 4. ANTI CORRUPTION LAW

The following free translation of the Anti-Corruption Law was provided by SAL&Caldeira Advogados e Consultores Lda.

**Free translation**

**21.02.05**

#### **Law n° 6/2004 of 17 June**

It being necessary to introduce complementary mechanisms to combat corruption, under the terms of paragraph 1 of Article 135 of the Constitution, the Assembly of the Republic determines:

#### **Chapter I General principles**

#### **Article 1 (Objective)**

The objective of this law is to strengthen the existing legal framework for combating the crimes of corruption and illicit economic advantage.

#### **Article 2 (Scope of application)**

1. This law applies to those who carry out the crimes referred to in Article 1 and who are managers, workers or employees of the State or of municipal authorities, public companies, private companies with State-held shareholding or companies holding public service concessions.
2. A civil servant or public employee is considered, under this law, to be anyone who exercises or participates in public functions or functions equivalent thereto, and who was for this purpose named or invested either by law, by election or by decision of the empowered entity.
3. The law is further applicable to those who, even if they are not included in the categories referred to in the preceding paragraph, induce or contribute to the practice of the crimes set forth in Article 1, or derive benefit from them.

#### **Article 3 (General principles)**

1. The entities referred to in the previous article, are subject to the principles of legality, equality, non-discrimination, impartiality, ethics, publicity and justice in the exercise of their functions.
2. In the case of damage to property or public or private interest resulting from the action or omission of State managers or workers, indemnity shall be made for damage caused.
3. Those entities referred to in the preceding article that are illicitly enriched as a result of the actions or omissions referred to in paragraph 2 of this article, forfeit to the State the goods or amounts added to their property.

#### **Article 4 (Declaration of assets)**

1. The holding and exercise of public office with decision making powers, within the State apparatus, in municipal administration, in public companies and institutions as well as in the position of State representatives in private companies with State shareholdings, is conditional on the presentation of a declaration of the goods and monetary values comprising the property of the officeholder, which declaration is to be filed with the archive of the relevant agency.
2. The declaration shall include realty, personalty and intermediate forms of property, money, securities and shares both within and outside the country. Specific laws and regulations may extend the coverage of this declaration to the assets of spouses or partners, children or other people who are economically dependent on the person making the declaration. Only objects and utensils for domestic use are excluded from the declaration.
3. The declaration of assets shall be updated annually and on the date when the office-holder leaves office.
4. The declaration filed as per paragraph 1 may be requested at any time for disciplinary or criminal proceedings.

#### **Article 5 (Justifications of administrative acts)**

1. In addition to those cases in which the law specifically requires it, the following administrative acts must be justified either fully or partially:

- a) negating, canceling, restricting or in any way affecting the rights or imposing or aggravating duties, charges, penalties or sanctions;
  - b) affecting by the same means and through the use of discretionary powers, legally protected interests;
  - c) deciding on complaints or appeals;
  - d) deciding contrary to the claim or opposition formulated by the interested party, or an official opinion, information or proposal;
  - e) deciding differently or in the interpretation and application of the same legal precepts;
  - f) implying the repeal modification or suspension of a previous administrative act.
2. The justification must be expressed by way of a succinct presentation of the facts and the law underlying the decision, and may constitute a mere declaration of agreement with the justification for a previous opinion, piece of information or proposal, which in this case constitutes an integral part of the respective act and must be transcribed.
  3. The adoption of justifications which, through lack of clarity, contradiction or insufficiency do not concretely clarify the motivation of the act are equivalent to lack of justification.
  4. The justification of oral acts covered by paragraph 1 which are not minuted, shall at the request of interested parties and for the purpose of being challenged, be reduced to writing and communicated to these parties by registered post within seven days, or by personal notification within forty-eight hours.
  5. The non-exercise of the right conferred in the preceding paragraph, by the interested parties does not prejudice the eventual effects of lack of justification for the act.

## **Article 6** **(Contractual anti-corruption clause)**

1. All contracts to which the State, municipal authorities or other public law collective persons are party must contain an anti-corruption clause in which the parties promise not to offer, either directly or indirectly, advantages to third parties, and not to solicit, promise or accept, for their own benefit or for the

benefit of others, gifts with the purpose of receiving favorable treatment in respect of the services to be provided.

2. The omission of the clause referred to in the previous number renders the contract invalid and without legal effect.

**Article 7**  
**(Passive corruption in illicit acts)**

1. Those entities defined in Article 2, which by themselves or through an intermediary, with their consent or ratification solicit or receive money or promises of money or any material advantage, which is not owing to them, to practice or to not practice an act that implies violation of the duties of their office shall be punished with the penalty of imprisonment of two to eight years and a fine of up to one year.
2. The penalties envisaged in Article 318 of the Penal Code shall also be applied to the entities set forth in Article 2.
3. The same penalty shall be applied when the advantage solicited or received by those agents defined in Article 2 is of a non-material nature as long as it is for the practice of an act that entails violation of duties of office or omission of an act which they had a duty to practice, which consists of, namely:
  - a) the favored treatment of a determined person, company or organization;
  - b) the intervention in a process, the taking or participation in a decision which implies obtaining benefits, recompense, subsidy, loan, awarding or celebration of contracts in general, recognition or registration of rights and exclusion or cancellation of obligations in violation of the law;
  - c) the provision of information on public tenders prejudicial to fair competition;
  - d) the fraudulent provision of information on exams.
4. If the act is not actually carried out the penalty is imprisonment for up to a year and a fine of up to two months.
5. In the case of mere omission or delay in the undertaking of an act related to their job, but with violation of the duties of office, the penalty shall be respectively in the cases of paragraphs 1 and 2, imprisonment for up to two

years and the corresponding fine and in the case of paragraph 3 imprisonment for up to one year and a fine of up to six months.

6. If the gift or promise accepted is voluntary repudiated or the money or value of the material advantage is returned before the practice, omission or delay of the act, the provisions of this article cease.

### **Article 8 (Passive corruption in licit acts)**

Those entities defined in Article 2, which by themselves or through an intermediary, with their consent or ratification solicit or receive money or the promise of money or any material or non-material advantage, which is not owing to them, to practice acts that are not contrary to their duties of office, and which are covered by their job shall be punished with imprisonment of up to one year and a fine of up to two months.

### **Article 9 (Active corruption)**

1. Whosoever gives or promises the entities set forth in Article 2 either personally or through an intermediary, money or other material or non-material advantage not owing to them, with any of the purposes indicated in article 8 shall be punished as per that article.
2. If however the crime is carried out to avoid the agent, his relatives or in-laws to the third degree of consanguinity being exposed to the danger of being punished or being subject to criminal sanction, the judge may extraordinarily extenuate the penalty.
3. The provision of paragraph 6 of article 7 shall only apply to the actively corrupting agent if he voluntarily accepts the repudiation of the promise or the return of the money or material advantage made or given.
4. The agent is also exempt from punishment in cases where the crime committed is the result of the solicitation or demand by the functionary as a condition for the practice of acts within his respective area of responsibility and the agent reports the crime to the authorities.

### **Article 10 (Economic advantage in business)**

1. The entities laid out in Article 2 which with the intention of obtaining for themselves or for third parties illicit economic advantage, violate in legal transactions the material interests which they, in whole or in part, as a result of

- their position administer, inspect, defend or transact, shall be punished with two to eight years imprisonment and a fine of up to one year.
2. The same penalty shall be applied to those entities set forth in Article 2 which, in any way, receive material advantage by way of a legal act relative to the interests which they hold as a result of their position, at the time of the act, and which interests are totally or partially under their control, administration or inspection, even if no damage is caused.
  3. Those entities as set forth in Article 2 shall be punished in the same way for receiving, in whatever form, economic advantage by way of charging, collection, settling or payment which as a result of their jobs, either totally or partially, they are required to carry out, even if no economic harm to the Public Treasury or the interests thereby served occurs.

## **Chapter II Penalties and procedures**

### **Article 11 (Sanctions)**

Independent of other penal, civil or administrative sanctions foreseen in this law and other applicable legislation, the authors of the crimes laid out in the foregoing articles are subject to the following accessory measures:

- a) loss of goods or amounts illicitly added to their assets;
- b) full indemnity for the damage caused;
- c) expulsion from their profession;
- d) preclusion from contracting with the State or public companies or from receiving tax or credit benefits or incentives.

### **Article 12 (Starting a case)**

1. Any person may request the competent administrative or police authority and the Public Magistrature to begin an investigation to determine the facts regarding crimes covered by this law.

2. The complaint or denunciation shall be made in writing or taken down as a statement and signed, or submitted anonymously, and shall contain information on the facts, the perpetrator and any evidence which is known.
3. The complaint or denunciation shall be rejected in a duly justified order if the requirements of the preceding paragraph are not met, without prejudice to the ability of the Public Magistrature to take other initiatives to investigate and prosecute matters reported.
4. The Public Magistrature may order the investigation of crimes covered by this law whenever it has knowledge of them from any other source.

**Article 13**  
**(Protection of the informant)**

1. No complainant or informant shall be subject to disciplinary measures or prejudiced in their professional career, or in any way be persecuted as a result of his complaint against or denunciation of crimes covered by this law.
2. Any violation of the provision of the preceding paragraph shall be punished by imprisonment of up to six months and a fine of one month.

**Article 14**  
**(Denunciation in bad faith)**

1. It is a crime to accuse or complain in bad faith against the entities set forth in article 2, when the complainant knows the subject of the complaint to be innocent.
2. The crime of denunciation in bad faith referred to in this article shall be punished by imprisonment for up to six months and a fine of one month, and the complainant or informant shall be liable to indemnify the subject of the denunciation for the material and moral damage caused.

**Article 15**  
**(Suspension of a functionary)**

The empowered hierarchical superior or as a result of a proposal from the Public Magistrature [sic], may decide to suspend those entities set forth in article 2, for a maximum of ninety days, from their job or role, without loss of pay, if this measure is considered necessary for the good conduct of the case.

**Chapter III**  
**Organization and powers**

**Article 16**  
**(Prevention and combat)**

The Public Magistrature is responsible for actions for the prevention and combat of the crimes set forth in this law.

**Article 17**  
**(Powers of the Public Magistrature)**

The Public Magistrature shall undertake in the exercise of its functions, and supported by the relevant police authority, the following preventative actions among others:

- a) collection of information relative to facts which could be the basis for suspicion of the practice of crimes of corruption;
- b) requesting of inquiries, investigations, inspections and other diligences necessary in order to investigate the conformity of certain acts or administrative procedures in the scope of relationships between the Public Administration and private entities;
- c) proposal of measures likely to lead to a reduction of the crimes foreseen in this law.

**Article 18**  
**(Legality of procedures)**

1. The procedures to be adopted by the Public Magistrature under the scope of the powers conferred by this law, shall always be documented and may not violate the rights, liberties and guarantees of citizens.
2. The Attorney-General shall be regularly informed of the procedures initiated in the scope of prevention of the crimes defined in this Law.

**Article 19**  
**(Central Office for the Combat of Corruption)**

1. The Central Office for the Combat of Corruption is created within the Attorney-General's Office and subordinate to the Public Magistrature.
2. The Central Office for the Combat of Corruption has the following powers, among others:
  - a) conduct inquiries and investigations into complaints and denunciations where there is some indication of the crime of corruption;
  - b) cause, through the judicial authorities, the summoning of people to present in writing information about assets they have, either in the country or abroad, specifying the dates when those assets were acquired and how they were acquired;
  - c) make preparations for indictment, requisitioning documents, information, bank statements, registers and other data from the person suspected of having committed the crimes set forth in this law;
  - d) order the detention of indicted persons and under the terms of the law hand them over to the criminal indictment judge;
  - e) cause the undertaking of searches in any place in order to obtain incriminating proof;
  - f) have free access, without prior notice, to Public Administration institutions, government bodies, and municipal administrative services in order to investigate.
3. To ensure speed in the preceding provisions of this article there will be a judge on duty.
4. In addition to magistrates from the Public Magistrature, the Central Office for the Combat of Corruption may include named or contracted persons for fixed periods or for specific cases, who satisfy the requirements of integrity, impartiality and experience required.
5. The Attorney-General may, if necessary, request the requisition or detachment of the relevant police department.
6. Whenever conditions are shown to have been created, provincial offices for the combat of corruption shall be established for the effects of this law.

**Article 20**  
**(Powers of judicial authority)**

The persons named or contracted under paragraph 3 [sic] of the preceding article are invested with the powers of judicial authority.

**Article 21**  
**(Obligations of auditors)**

1. Whenever a public or private audit discovers indications of the practice of the crimes covered by this Law, the fact must be communicated in writing to the Central Office for the Combat of Corruption.
2. The auditor who is a public law legal person and who violates the provision of the preceding paragraph shall be subject to the following sanctions:
  - a) suspension from the exercise of office for thirty days and a fine of one to ten minimum wages in the first instance;
  - b) suspension from exercise of office for three months and a fine of eleven to thirty minimum wages in the second instance;
  - c) dismissal from public service, in the third instance.
3. The auditor who is a private law legal person and who violates the provision paragraph 1 of this article shall be subject to the following sanctions:
  - a) suspension of operating license for thirty days and a fine of 500 to 1,000 minimum wages, in the first instance;
  - b) Suspension of operating license for three months and a fine of 1,001 to 2000 minimum wages, in the second instance;
  - c) Cancellation of operating license, in the third instance.
4. It is the responsibility of the entities referred to in paragraph 4 of article 19 to institute the relevant action against the auditors mentioned in paragraph 1 of this article.
5. It is the responsibility of the judicial court of the area where the infraction occurred to take jurisdiction over the action referred to in the preceding paragraph.

**Article 22**

**(Obligation of secrecy)**

1. Whosoever undertakes any activity within the scope of the powers of the Central Office for the Combat of Corruption is bound by the obligation of secrecy in relation to facts of which they have knowledge through their work.
2. The obligation of secrecy extends to the identity of citizens who provide any information relevant to the activities of the Central Office for the Combat of Corruption.
3. The provision of the preceding paragraph ceases when criminal procedures begin.

**Article 23  
(Regulation)**

The Council of Ministers is responsible for regulating this Law within six months.

**Article 24  
(Repeal)**

Any provisions contrary to the present Law are repealed.

**Article 25  
(Entry into force)**

This law comes into force on the date of its publication.

Approved by the Assembly of the Republic on 12 May 2004.

Promulgated on 31 May 2004.

Be it published.

The President of the Republic, Joaquim Alberto Chissano

## 5. GOVERNMENT’S ANTI-CORRUPTION STRATEGY

free translation

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

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

#### Executive Summary

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

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

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

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

Though the nature of corruption varies from country to country, after a review of the concerns and problems afflicting the public sector and governance, in general, it was possible to identify some major causes. Thus, the common causes that pave the way to corruption are nepotism and favouritism, frailty of the mechanisms of control and supervision, lack of enforcement of laws and regulations, lack of institutional accountability, lack of commitment on the part of the public administration leadership to the combat against corruption and lack of participation of the civil society in the combat against corruption.

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

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

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

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

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

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

and efficiency of service provision and, consequently, the establishment of transparency and the combat against corruption as an ongoing action.

## **1. Introduction**

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

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

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

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

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

According to the results of the National Baseline Survey on Governance and Corruption carried out in 2004, corruption in the public sector was considered one of the major obstacles to the country's economic development, together with a host

of other problems such as unemployment, the cost of living, inflation, the difficult access to water, hunger, the condition of roads and crime.

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

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

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

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

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

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

The Anti-corruption Strategy will be based on the Logical Framework Matrix of the Public Sector Reform Overall Strategy. The Matrix is, in practical terms, a programme management tool that defines the purpose to be achieved after 10 years of

implementation, the overall and the specific objectives, the target population, the outcomes, the activities, the indicators, the assumptions and the resource requirements, based on a logical and hierarchical relationship. Within this framework, for the development of the strategy's general guidelines, the following was taken into consideration: the Public Sector Reform Overall Strategy, the mid-term Reports on the implementation of the Public sector Reform in the period 2001-2004, the five-year government programme (2005-2009), the suggestions and proposals resulting from the consultations with the civil society, the private sector, international partners, the judicial and the legislative sectors as well as the report of the National Baseline Study on Governance and Corruption.

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

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

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

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

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

- illicit isolated transactions/activities by public officials who abuse of their office (for example, demanding bribes, embezzling public funds or dispensing favours) for their own personal gain/benefit;
- extortion or theft of large sums from public resources by senior State officials, usually, members of and/or associated with the political or administrative elite; and
- collusion between the private and public sectors officials or politicians for

mutual or private gain. This means that the private sector has "seized" the legislative, executive and judicial power to further its own interests.

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

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

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

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

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

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

It is worth pointing out that corruption in the public sector in Mozambique is also fostered by the officials negative behaviour at various levels, which leads to poor service provision, characterized by inept decisions, protracted solutions; absence of a culture of individual and collective accountability; inability to exercise power in line

with one's responsibilities. This attitude of the state agents is manifested in the following fashion at the leadership, managerial and supervisory levels in public administration:

#### At the Leadership level

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

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

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

#### At the Managerial level

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

#### At the Supervisory level

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

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

## The work environment

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

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

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

*Bureaucratism*, on the contrary, is a dysfunction of the essence of bureaucracy in its classic sense, as described above: consists of excessive domination and abusive influence of the bureaucracy, typical of an organisation, sector or department where the volume of paper documentation multiplies and increases hampering speedy and/or efficient solutions. The manifestations of bureaucratism are, among others:

- *Excess of formalisms* - the inflexible adherence to regulations and routines by officials causing inefficiency to the organization;
- *Too many steps and players* - in the procedures for document handling (between the submission of an application and the decision);
- *Resistance to change* - refusal and lack of interest in the alternatives aimed at improving provision service through the rationalization of the procedures;
- *Categorisation of decisions* - service provision favours to the customers
- with whom officials have personal, ethnic, regional ties or other affinity types, and those who can afford to pay bribes;
- *Authoritarianism* - cling to the inefficient routines, the public official

exercises excessive authority over the public, which has not other alternative but to be conform or bribe;

- *Depersonalisation of the relationship* - the bureaucratized organization, establishes a distance between the civil servant and the customer through non-interactive form of space organisation, the service culture (sometimes the customer is just a number) lacks courtesy and tolerance for the specific needs of each citizen.

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

### 3. The governance and corruption diagnostic

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

**a. Public service provision structures and processes:** the aspects identified as problematic are still the existence of an inadequate public sector dimension vis-à-vis the nature and scale of the services to be provided. According to the households enquired, particularly, the rural households, in the 2004 Survey, it was found that these had little contact with most of the basic services such as: water, electricity, postal and telecommunications. Only two services, Health and Education show a relatively higher percentage of use, 50% and 39%, respectively. This rate of use illustrates the paucity of the public service and the divide between the State and the large majority of ordinary citizens, particularly, in the rural areas.

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

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

accountability in public services.

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

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

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

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

There is a significant number of public officials interviewed (37 %) who found the budgeted expenditure control and monitoring mechanisms inadequate, a perception that is reinforced by the fact that only 55% of those interviewed stated that the decisions in the area of *procurement* were subject to regular auditing by the Administrative Court. These mechanisms of procedure are open to corruption.

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

civil society and the private sector in decision making, monitoring and evaluation of its implementation.

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

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

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

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

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

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

Corruption.

#### 4. Causes of Corruption

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

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

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

and that we also have to learn to live with it - ultimately contributes towards the prevalence and spread of corruption in the country. The citizens reveal a low level of confidence regarding the denunciation of corrupt acts and the corrupt.

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

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

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

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

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

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

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

The strategy must be centred on measures geared towards combating bureaucratism

and corruption in public institutions that thwart any effort aimed at improving the quality of the services provided to the citizens.

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

## 6. The Overall Aim

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

## 7. What are the strategic principles?

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

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

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

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

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

**Participation:** The efforts in the combat against corruption will be centred on the citizens. It does not just a matter of involving them, but of making active players in this process. Therefore, the Government is committed to facilitating the creation of an

environment in which a well informed civil society will be able to monitor the action of the Government itself and call for responsibility and accountability. This type of institutional approach, complements the government action and the action of the public sector organisations and equally facilitates the building of the citizens' trust on towards the State institutions, which effectively must act with impartiality. This way, the alliance between the State, the Civil Society and the Private Sector is strengthened and, consequently, the collaboration, joint action and sharing of information between the Government, the citizens and the business community is consolidated.

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

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

Cognisant of the complexity, cross-cutting nature and plurality of the dimensions of corruption, given that it impinges on the human dignity, affects the social relations, distorts the economy, weakens the State and creates a counterculture, the Anti-

corruption Strategy will comprise three basic moments: prevention, administrative action and judicial action.

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

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

The prevention function also entails the review of the laws, policies, functions, regulations, structures, management practices of public finances and procurement, as well as the control systems to identify the conditions that fuel or facilitate corruption as well as devise reforms in order to curtail the opportunities, wherever and whenever possible, and eliminate or alleviate the problems. Thus, the measures aimed at eradicating bureaucratism, discretionary power and secrecy that is implicit in relationship between the corrupt and the corruptor are fundamental and effective instruments in the combat against corruption.

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

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

The establishment of direct channels of communication between the Government and

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

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

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

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

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

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

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

The extent of impunity that is witnessed at present calls for the adoption of far reaching measures that require the strengthening of the operational capacity of the

judicial system, it also requires a review of the code that governs the labour relations between the State and the officials as well as the implementation of judicial and extra judicial mechanisms that inflict severe punishment to proven cases of corruption. The stronger the judicial system the more efficient and effective the tracking down and punishment of offenders will be.

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

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

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

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

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

## **10. Objectives, outcomes and indicators**

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

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

**Outcomes:**

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

**Indicators:**

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

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

**Outcomes:**

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

**Indicators:**

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

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

**Outcomes:**

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

**Indicators:**

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

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

**Outcomes:**

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

**Indicators**

- ♦ Timely and quality financial statements;
- ♦ Significant reduction in the level of misapplication of budget funds;
- ♦ % of public institutions with satisfactory budgetary execution on average;
- ♦ % of public institutions with aligned financial planning and control processes;

- ♦ Perception of the citizens and the private sector regarding the level of corruption in the State's procurement processes.

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

**Outcomes:**

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

**Indicators:**

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

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

**Outcomes:**

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

**Indicators**

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

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

**Outcomes:**

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

**Indicators:**

- ♦ Perception of the level of corruption in the Public Sector
- ♦ Appropriate reporting to the Cabinet on the implementation of the Strategy.

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

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

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

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

6. ORIGINAL DISCUSSION DOCUMENT

**Combating Business Participation  
in Corruption  
in Mozambique**

**A Discussion Paper**

10<sup>th</sup> October 2005

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# Combating Business Participation in Corruption in Mozambique

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**EXECUTIVE SUMMARY**

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

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

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

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

Based on the outcome of surveys and discussions, the report identifies two key areas of corruption, that between the private sector and the government, also called “public-

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

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

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

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

- Application of existing legislation
- Dissemination of clear information
- Simplification of administrative processes

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

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

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

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

The applicability and relevance of these ideas to the Mozambican context will be discussed as part of the public debate around this report.

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

Corruption is a process involving individuals. Therefore individual company employees, from the top to the bottom, should be encouraged to take personal responsibility for avoiding corrupt acts. The decision to avoid corruption depends on a process of education, information and clear leadership.

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

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

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

This report is designed as a basis for discussion and is presented in good faith. We trust that you will find it useful and thought-provoking. We welcome any comments and

suggestions. We will continue to make additions to the report as we move through the discussion process. The final report will integrate the tools we propose as well as summaries of the comments and reactions we have received.

## INTRODUCTION

### STRUCTURE AND PURPOSE OF THE REPORT

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

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

The report is divided into ten sections. It begins with an introduction and background to the situation in Mozambique and a brief overview of corruption and its impact on business. Section 3 of the report considers the definitions of corruption.

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

It moves on to look at recent analyses of the situation in Mozambique and the government's recently released anti-corruption strategy before considering international conventions and the potential applicability of a variety of tools and initiatives. The report concludes with a broad framework of ideas, proposals and

recommendations which will be used as the basis for the development of an agenda for discussion at roundtables and to guide public contribution to the debate.

The report also includes annexes which look at key areas of legislation and their impacts on business, and provide a comprehensive definition of corruption.

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

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

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

## CORRUPTION IN MOZAMBIQUE

The World Bank cites Mozambique as one of the most corrupt countries in southern Africa, exceeded only by Angola and Zimbabwe.<sup>2</sup> General weakness in the rule of law contributes to an overall perception of lack of control. According to the World Bank's governance rankings on issues such as voice & accountability and political

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<sup>2</sup> World Bank, *World Bank Governance Research Indicators 1996-2004*, available at [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance) (last visited 15 September 2005).

stability, Mozambique has experienced a percentage decline in terms of control of corruption between the periods 1996 – 2004.

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

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

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

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

Mozambique has recently published an anti-corruption law and regulation. The general outline of an anti-corruption strategy was passed by the Council of Ministers

on 6<sup>th</sup> September this year (see 5.1 below). However there are concerns about the efficacy of the anti-corruption legislation (see Annex III a) below). It is clear that changing the system and the mind frame that has made corruption so pervasive in Mozambique in the past two to three decades will require more than a law. It will require sustained public debate and a growing demand by civil society to stop corruption. This report is the legal formal private sector’s contribution to that debate.

## THE PROJECT

ACIS has been dealing with issues of corruption and illegal trade at all government and private sector levels since the organization’s inception in 2000. Through its contact with CIPE, ACIS has had access to the activities of other associations dealing with the same issues of corruption in other parts of the world. A recent report by Russian think-tank Information Science for Democracy (INDEM) Foundation<sup>3</sup> inspired ACIS to seek the support of its members and of CIPE to undertake a project called “Combating Business Participation in Corruption in Mozambique.” The project is jointly funded by ACIS members, and by CIPE. This report is part of the project. Other parts of the project include:

- A series of roundtable discussions based on this report. These discussions will bring together interested parties from the private sector, government and civil society aimed at developing practical solutions to existing problems;
- One-on-one interviews, and closed door discussions with the private sector to discuss real responses to individual and collective problems;
- Development of a toolkit and a series of “next steps” the private sector will use in the fight against corruption;

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<sup>3</sup> INDEM Foundation, *Business and Corruption: How to Combat Business Participation in Corruption in Russia*, (2004).

- Contribution to national dialogue around corruption, particularly as it involves the private sector and heightening awareness of corruption issues with government, civil society and international cooperation partners.

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

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

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

Caixa Postal 07

Beira

Fax: (258) 23 325997

Tel: (258) 23 320335

Mail: [acisofala@teledata.mz](mailto:acisofala@teledata.mz)

All correspondence will be treated as confidential.

## ACIS

The Associação Comercial e Industrial de Sofala (ACIS – Commercial and Industrial Association of Sofala) is a private, voluntary, apolitical business association

representing commercial and industrial enterprises in Sofala Province. Founded in 2000, ACIS has a membership of 35 companies employing some 12,500 workers. The association advocates for members' rights at provincial and national levels and has become a front-runner in the campaign for transparency and good governance in the private sector, as well as in the campaign to create a positive enabling environment for businesses of all sizes.

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

In order to demonstrate its commitment to transparency and quality performance ACIS has recently undergone an audit for ISO 9001:2004 certification.

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

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

CIPE

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

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

CIPE partners with business associations, think tanks, and other private sector organizations in countries where there is a need for progress and an opportunity for reform. CIPE's institutional approach to development recognizes that change will not occur overnight and long-term commitment is required for reforms to succeed.

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

democratic decision-making that build a strong sense of ownership in the laws that govern economic activity.

## TYPES OF CORRUPTION

### TRADITIONAL DEFINITIONS

The World Bank estimates that US\$ 1 trillion, or 3% of the world's GDP is spent on corruption every year.<sup>4</sup> The World Bank's excellent "Helping Countries Combat Corruption" report published in 1997<sup>5</sup> provides the most comprehensive description of corruption that we have found. We therefore felt it more valuable to use something so well-considered than to develop another definition. The full text of the World Bank's description is included at Annex I. It is hoped that the inclusion of this will assist with the standardization of what is understood as corruption. Although the World Bank places the public sector at the centre of its definition it also makes clear reference to ways in which the private sector can be involved in corruption.

The core of the World Bank definition is as follows:

*"Corruption is the abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues"*<sup>6</sup>.

It goes on to say the following about corruption involving the private sector:

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<sup>4</sup> Helping Countries Combat Corruption – The Role of the World Bank, Poverty Reduction and Economic Management – The World Bank, 1997

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

<sup>6</sup> *ibid.*

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

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

*While noting the existence of fraud and corruption in the private sector and the importance of controlling it, public sector corruption is arguably a more serious problem in developing countries, and controlling it may be a prerequisite for controlling private sector corruption. Still, ... activities can also promote the control of bribery and fraud in the private sector by helping countries strengthen the legal framework to support a market economy and by encouraging the growth of professional bodies that set standards in areas like accounting and auditing. In the long run, controlling corruption in the private sector may require improvements in business culture and ethics.”<sup>7</sup>*

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

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<sup>7</sup> Helping Countries Combat Corruption – The Role of the World Bank, Poverty Reduction and Economic Management – The World Bank, 1997

## MOZAMBIQUE-SPECIFIC DEFINITIONS

Corruption is currently a major theme in Mozambique invoked by government officials and citizens alike. The President of the Republic of Mozambique, Armando Guebuza, stated in his inauguration address to the nation (*Comunicação à Nação e ao Mundo por Ocasão da sua Investidura como Presidente da República de Moçambique*)<sup>8</sup> that bureaucracy, the spirit of “*deixa andar*” (literally “letting things go”) and corruption are the great obstacles to development. He further stated that the fight against corruption is one of the central aims of the new government. The recently published anti-corruption strategy is concrete proof of this.

In Mozambique the corruption process is so common that individuals, both government officials and public service users, have adopted a vocabulary recognized by all.

For example - *O cabrito come onde está amarrado* - the goat eats where it is tied. This term usually expresses the opportunity an individual has for corrupt gains at the place where he works.

Terms such as - *Molhar a mão* - wet the hand; *Descascar amendoins* - to peel peanuts; *Bater na mesa* - to beat on the table; *Falar como homem* - speak like a man; *Olear / lubrificar a engrenagem* - oil the gears; *Pagar o girinho* - buy a small pre-paid phone card; *Pagar refresco* - buy a soft drink; *Alimentar o cabrito* - feed the goat; *Regar o capinzal* - water the lawn; *Imposto de facilitação* - facilitation tax; *Selos adicionais* - additional stamps (which refers to the need - no longer part of the law - to purchase stamps to stick on official documents); *Pagar a taxa de andamento* - pay the tax to get things moving along; *falar alto* - speak loudly; *fazer um connection* - make a connection; are all used to express the need to bribe (subornar) or pay a gratuity (gratificação) in exchange for a service.

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<sup>8</sup> Available on [www.frelimo.org.mz/candidato.html](http://www.frelimo.org.mz/candidato.html). Consulted on 10/6/05.

The variety of euphemisms testifies to the prevalence of the phenomenon of corruption – it is part of the fabric of daily life.

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

### **Corruption**

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

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

### **Illegal trade**

Illegal trade includes any form of illegal operation such as the non-charging and non-payment of VAT, non-payment of workers and company taxes, non-payment of withholding tax, the sale of counterfeit or grey products, importation of goods without payment of duties and taxes, export of goods with under-declaration of their

true value, etc. Corruption is one of the main factors that promote illegal trade. Conversely illegal trade is one of the main contributors to corruption.

Both the formal and informal sectors participate in illegal trade which is very prevalent in Mozambique. There is an apparent lack of understanding of what illegal trade is, and uncertainty about for example what constitutes a legal VAT invoice (see Annex IV). Anyone making a purchase of goods or services in the formal sector has the right to receive a legal VAT invoice. If a non-registered service provider is unable to provide a VAT invoice then the individual or organization purchasing the services is obliged to deduct withholding tax from the value of the services and pay this tax to the government. If a VAT invoice cannot be provided, or withholding tax is not deducted, the transaction is illegal.

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

### **Informal trade**

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

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

legal formal operators. This widespread trade is extremely detrimental to the legal formal sector and those who wish to operate legitimately in the informal sector.

## THE PRIVATE SECTOR EXPERIENCE

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

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

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

The case studies are included here. They will provide tools for discussion during the roundtables and will be part of the toolkit produced by this project.

## EXPERIENCES OF CORRUPTION

Businesses interviewed divided corruption into the following broad categories:

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

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

### **a) Fraud**

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

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

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

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

Companies cited Customs, the Finance Ministry and Municipal Councils as being the most likely to affect their day-to-day business in terms of requesting facilitation payments and bribes to avoid fines. Companies also found it difficult to differentiate between lack of competence and professionalism and corruption. When processes were delayed or obstructed and the company challenged the person involved in the

delay or obstruction about seeking facilitation payments, the response was usually one of “falta de condições” (lack of conditions), “falta de meios” (lack of means) or “falta de conhecimento” (lack of knowledge). The difficulty of differentiating between corruption and lack of competence often created loopholes to protect those seeking payments from actually being caught by those who challenged them.

Companies felt that simplification and standardization across the country of systems and procedures and their implementation, as well as dissemination of information would help with reducing opportunities for bribery to take place.

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

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

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

Once again private-private corruption was raised as being an issue for both individuals and companies. It is clear that this is an area which needs to be addressed by companies, and it is likely to be one which can be dealt with more immediately by the companies affected than issues of public-private corruption.

#### **d) Summary**

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

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

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

#### IMPACT OF CORRUPTION

Corruption has a major direct and indirect impact on companies. Directly it affects those companies that pay or are forced to pay bribes and commissions. Indirectly it affects all business since corruption creates a general atmosphere of illegality which permits illegal trade and fraud to take place and to remain unpunished.

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

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

#### WAYS OF COMBATING CORRUPTION

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

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

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

## CASE STUDIES

See toolkit Tool 6

### **Summary**

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

Companies facing problems with illegal trade could consider some of the ways provided by the anti-corruption law (see Annex III a)) to undertake private prosecution. Alternatively they could explore other avenues within the existing legal framework to ensure the delegation of enforcement powers so that apprehension of illegal goods and prosecution fall more directly within the scope of their control.

The issue of payment of bribes, facilitation fees and commissions is one which involves both public-private and private-private corruption. Companies could partially address the issue from the employee-side by incorporating well-structured employee codes of ethics within their company internal regulations. By defining unethical behavior and calibrating the sanctions applicable an employer can create a framework within the existing labor legislation to permit him to use the ethics code confidently as a basis for labor discipline.

Fraud, payment of commissions and corruption resulting from ignorance of rules and procedures can all be overcome by sharing information. Either individually or through associations companies can share information about their experience, and develop pools of knowledge. As part of their moral leadership role company directors should inform their peers if employees request commissions. Companies can share knowledge

about how procedures and systems operate. Information about how frauds were undertaken and, where legally permissible, who was involved can also be shared to prevent others from having the same experience.

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

## ANALYSIS OF THE PRIVATE SECTOR AND CORRUPTION IN MOZAMBIQUE

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

### GOVERNMENT ANTI-CORRUPTION STRATEGY<sup>9</sup>

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

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

- Simplification of administrative processes
- Reduction of discretionary power

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<sup>9</sup> Government of Mozambique, *Linhas gerais de estratégia anti-corrupção 2005 – 2009*, (approved 6th September 2005)

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

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

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

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

#### NATIONAL STUDY ON GOVERNANCE AND CORRUPTION<sup>10</sup>

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

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<sup>10</sup> Austral Consultoria e Projectos Lda., *Pesquisa Nacional sobre Governação e Corrupção*, (2005).  
Associação Comercial e Industrial de Sofala  
[www.acisofala.com](http://www.acisofala.com)

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

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

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

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

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

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

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

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

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

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

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

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

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

## BUSINESS ENVIRONMENT ASSESSMENT

The 2004 Business Environment Assessment (BEA)<sup>11</sup> undertaken by the Confederation of Economic Associations (CTA) was the largest of its kind in Mozambique. The

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<sup>11</sup> CTA, *Business Environment Assessment* (2004).

survey interviewed 150 companies in 7 of Mozambique’s 10 provinces. The survey used one-on-one confidential interviews to examine a number of areas traditionally considered problematic for business. These areas were:

- Access to land;
- Registration of companies;
- Licensing of activities;
- Payment of debt by the government;
- Labor;
- Dispute resolution;
- Construction and works licensing;
- Immigration;
- Environmental licensing;
- Import and export processes;
- Taxes: Personal income, company and VAT;
- Companies in difficulties;
- Access to credit; and
- General development of the business environment over the last 5 years.

The report states that “While the dominant opinion was that in the last 5 years, with the exception of some areas which have become more problematic, significant improvements have taken place in terms of expectations created. Major disillusionment was prevalent. It is evident therefore that Mozambique, in terms of its business environment, remains a long way from its international competitors, including its most direct competitors in the region.”

The report goes on to note that:

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

The report concludes that “it is not only that the regulations are so complex and require absurd processes and collections of documents and incomprehensible levels of

decision-making, but also that the process of moving the documents from one place to another is a further factor which causes extraordinary increases in costs and time periods. This results in most cases from the lack of professional training of those involved as well as from a complete lack of understanding of what professional dignity and public service are. A revolution in understanding and attitude through systematic and aggressive training campaigns is vital.”

The report illustrates the unhealthiness of the business environment and the levels of bureaucracy and lack of professionalism serve to compound this. Companies admit to being involved in public-private corruption of both a large and small scale, and in many cases find that the payment of bribes is all part of the cost of doing business in Mozambique.

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

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

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

#### INHAMBANE INVESTMENT CLIMATE SURVEY<sup>12</sup>

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

The survey indicates that companies in Inhambane province spend an average of 9.5% of their gross revenue on corruption, with Mozambican investors spending significantly more than their foreign counterparts. The majority of bribes paid (76.8%) were under 10,000,000 MT<sup>13</sup> and were therefore considered in the category of petty corruption. However as we noted above (Section 2.2) this is in a country with an average annual GDP of US\$ 300. Corruption at this level cannot therefore be considered petty either in terms of its relative value or in terms of the scale of impact it has on SMEs.

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

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<sup>12</sup> Inhambane Investment Climate Survey – BTU, GTZ, March 2004

<sup>13</sup> At the time of writing 10 million meticaís was equal to approximately US\$ 405.

The survey also reveals that the practice of using heavy fines to punish transgressors, particularly with respect to tax evasion, results in an increase in corruption, since it is cheaper to pay a bribe than a fine. This concept is borne out in the interviews undertaken for the current report – see Section 5 below. The survey concludes that there is an urgent need for action from both the public and private sectors, and urges the private sector to improve its understanding of and compliance with the existing legal framework.

While the tax system is complex and onerous and the rates are high when compared with the returns ACIS is of the opinion that the private sector would be best served at this stage by the consistent and uniform enforcement of existing legislation. Only by so doing can a fair assessment be made of the impact of the tax system on business.

#### ÉTICA STUDY ON CORRUPTION IN MOZAMBIQUE<sup>14</sup>

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

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

Those surveyed felt that the police, municipal authorities and courts were the least trustworthy institutions and corruption was noted as touching most of the fundamental areas of a person's life, such as health, education, employment and general safety. The study was particularly interesting in that it noted people having less trust

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<sup>14</sup> Ética Moçambique, *Estudo Sobre Corrupção em Moçambique* (2001).  
Associação Comercial e Industrial de Sofala  
[www.acisofala.com](http://www.acisofala.com)

in the law, order and justice system than in other government institutions, a factor which is an indicator of instability. Overall the study notes a major lack of trust and proposes a number of solutions. Many of the solutions proposed have a direct bearing on the private sector as well as on civil society. They include:

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

The report is clear in its proposal that efforts to end corruption must focus on the individual and the drive for change must come from civil society - including the private sector. Sadly, in the 4 years since this study was published there has been little or no evidence of progress with respect to the solutions proposed by *Ética*. Nevertheless, these proposals will inform proposals for dealing with both public-private and private-private corruption in this report.

### **Summary**

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

These include:

Application of existing legislation;

- Dissemination of clear information;
- Simplification of the administrative process;
- Professionalization of the public service;
- Removal of opportunities for discretionary decision-making;
- Radical overhaul of the justice system;
- Provision of independent alternatives;
- Building of trust;
- A demonstrable commitment to legality;
- Enforcement and accountability; and
- Protection and support for victims.

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

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

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

## INTERNATIONAL CONVENTIONS

Over the last eight years bribery and corruption have become increasingly important issues to address, discuss and legislate against globally. Serious efforts to combat corruption are still in their infancy in many countries, and reliable information on the nature and extent of corruption is difficult to obtain. This is compounded by the broad nature of the problem and the lack of consensus about legal or criminological definitions that could form the basis for comparative research.

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

## OECD

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

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

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

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

If one is considering a stick and carrot approach to prevent business participation in corruption, the OECD Convention as it applies to multi-nationals and to individual passport holders from signatory countries, is a powerful stick for those who pay bribes in Mozambique. However the OECD itself estimates that only 1 in 5 senior managers of international companies stationed in emerging markets is aware of the convention. Business associations could encourage enforcement by reminding foreign nationals working for member companies that corrupt practice undertaken in Mozambique puts them at legal risk in their home countries.

The following countries are among the OECD Convention signatories:

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

#### UNITED NATIONS

The United Nations operates “The Global Program against Corruption” (GPAC) which was jointly developed by the Centre for International Crime Prevention of the

Office for Drug Control and Crime Prevention of the United Nations Secretariat and the United Nations Interregional Crime and Justice Research Institute.

GPAC has developed the UN Anti-Corruption Toolkit,<sup>15</sup> the 3rd edition of which was published in 2004. According to the toolkit’s introduction, “Some jurisdictions have developed successful anticorruption measures. The Anti-Corruption Toolkit is based on those and on lessons learned from the technical cooperation activities facilitated by the Global Program against Corruption. The toolkit provides, based on the recently adopted UN Convention against Corruption, an inventory of measures for assessing the nature and extent of corruption, for deterring, preventing and combating corruption, and for integrating the information and experience gained into successful national anti-corruption strategies.”

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

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

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

The UN also has an Anti-Corruption Convention. The UN Convention was finalized on 30 September 2003 and adopted by the General Assembly in its resolution 58/4 of 31 October 2003. Mozambique has signed but not yet ratified the UN Convention.

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<sup>15</sup> United Nations Office on Drugs and Crime, *The Global Programme Against Corruption – UN Anti-Corruption Toolkit*, (3d ed. September 2004).

Full details of this convention and other useful UN anti-corruption documentation are available at [www.ODCCP.org/corruption](http://www.ODCCP.org/corruption).

## AFRICAN UNION

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

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

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

The convention can be divided into a number of key areas as follows:

### **Prevention**

Measures such as the establishment of anti-corruption bodies and enhanced transparency are addressed. The convention calls on countries to actively promote the involvement of civil society and the media and to raise public awareness of corruption.

### **Criminalization**

Countries are required to establish criminal and other offences to cover a wide range of acts of corruption. This includes basic forms of corruption, such as bribery, as well as the concealing and “laundering” of the proceeds of corruption.

### **International Cooperation**

Signatories agree to co-operate in the fight against corruption, including preventive and investigative activities and in the prosecution of offenders.

The convention also requires that countries render specific forms of mutual legal assistance in, for example, the gathering and transferring of evidence for use in court and in the extradition of offenders.

Countries also agree to undertake measures to support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

### **Implementation Mechanisms**

The convention needs 15 ratifications to come into force. An Advisory Board on Corruption will be established within the African Union to review implementation and facilitate activities under the convention.

### **Peer Review**

As shown above in the OECD Convention, review and monitoring mechanisms are essential to the successful enforcement of anti-corruption conventions and protocols.

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

#### SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

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

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

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

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

The objectives of the AU Convention are notably almost identical to the objectives of the SADC Protocol. Once again this document provides a useful tool for the states that wish to ratify and implement it. Mozambique has signed but not yet ratified the SADC Protocol.

#### TRANSPARENCY INTERNATIONAL

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

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

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

## SUMMARY

A number of other initiatives also deal with corruption. The UN's Global Compact has a Tenth Principle against Corruption. Following the Enron scandal the United States introduced the Sarbanes-Oxley Act of 2002 dealing with issues relating to auditing, fraud, and accountability. The World Economic Forum has a Global Corporate Citizenship Initiative. Overall, however, the key influencing documents for combating business participation in corruption in Mozambique are the OECD and the AU and SADC protocols and conventions. TI's business principles also provide a useful private sector perspective.

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

## INTERNATIONAL INITIATIVES

The private sector is faced with issues of corruption throughout the world, either in the form of private-private or private-public corruption. In all its work ACIS is a strong proponent of not repeating work that has already been done. We believe that many others have had the same experiences we and our members have had and that we can learn from these experiences. Of course it is always necessary to adapt learning to

the context in which we operate. This section of the report focuses on initiatives that we have found interesting and innovative and which we think would likely be applicable to the Mozambican context without requiring major developmental cost. Clearly each country is different and materials and responses must be adapted to the reality of the situation. However the wealth and quality of experience that we have discovered during our research leads us to conclude that we would do well to learn from work already undertaken and lessons already learned.

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

#### TRANSPARENCY INTERNATIONAL SUPPORTED INITIATIVES

Transparency International (TI) has supported a wide variety of innovative and interesting initiatives to combat corruption throughout the world. Not all of these are private sector specific. However many are informative and applicable in any context. The sample that we have chosen below are taken from the TI Corruption Fighters Toolkit produced in 2002 and is available for download at [www.transparency.org](http://www.transparency.org).

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

#### **Information**

In Brazil, TI used local radio as a powerful tool to communicate information about corruption. The campaign was based on clear, simple radio spots including memorable

skits and rhymes. These were made widely available on CD to radio stations throughout the country.

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

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

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

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

### **Training**

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

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

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

### **Monitoring & education**

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

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

In Romania and the former Yugoslavia TI promoted enforcement through access to information. As in Lebanon they found that people equipped with information are able to demand enforcement. They therefore developed a “Pocket Guide for Citizens” which dealt with how every day processes should run in accordance with the law.

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

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

### TRANSPARENCY AUDITS

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

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

A transparency audit and subsequent certification is likely to have a positive cost benefit for exporters. It may not have an immediate direct impact for companies operating in the local market since customers may not demand or understand certification. However in many countries companies signing codes of business principles are increasingly requiring that their suppliers prove they are also compliant with these codes. One of the most effective ways to prove compliance is through a certified audit. In some countries governments and international agencies also purchase preferentially from companies that can prove, through independent certification, compliance with certain standards.

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

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

#### CORRUPTION-PROOFING AUDITS

Another type of transparency audit is a “corruption-proofing” audit. While a traditional transparency audit can focus on all aspects of the company’s management,

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

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

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

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

#### CODES OF BUSINESS PRINCIPLES

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

The policing of these codes is usually undertaken informally. However in the case of some codes and systems companies may be required to prove their transparency as a

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

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

Another way companies have found to combat corruption is through employee codes of ethics and through whistleblower protection. As with an inter-company contract, an employee found to be in breach of a code of ethics which forms an integral part of the employment contract is, in most jurisdictions, also in breach of contract giving rise to disciplinary proceedings. If properly structured and managed an employee code of ethics can create calibrated sanctions for unethical behavior and can confidently be used as a basis for labor discipline.

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

In order for codes to work they need to be complied with, and if necessary should have some form of policing mechanism. However complying with a code should also have some form of benefit for a company. The code may be used as proof of

transparency which will help the company build reputation and market share or secure new clients. Codes are a useful tool when they are respected.

#### ISLANDS OF INTEGRITY

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

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

Integrity pacts in procurement can result in massive cost savings for companies that no longer have to pay costly bribes.

Islands of integrity provide a way for a group of companies to set themselves apart as being transparent and non-corrupt. However depending on the requirements for becoming part of the island, companies may wish to see a positive cost-benefit. For example auditing and certification have costs. If companies are required to be certified in order to join an island they are likely to expect the island to provide them with benefits. This could be done in the form of marketing or securing preferential purchasing agreements for members of the island.

## SUMMARY

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

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

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

## COMPARATIVE FRAMEWORKS

### GENERAL

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

We then include a list of possible ways in which the fundamental issues can be addressed.

Fundamental issue (see Section 5)	Possible response (see Section 7)	Type of corruption	Example of type of response
Application of existing legislation	Information Monitoring & education	Public-private	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping
Dissemination of clear information	Information	Public-private Private-private	Mass media, theatre, national campaigns, observatories, information guides
Simplification of administrative processes <sup>18</sup>	Information	Public-private	Mass media, theatre, national campaigns, observatories, information guides
Professionalisation of the public service <sup>19</sup>	Information	Public-Private	Mass media, theatre, national campaigns, observatories, information guides
Removal of opportunities for discretionary decision-making <sup>20</sup>	Information Monitoring & education	Public-private Private-private	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping
Radical overhaul of the justice system <sup>21</sup>			
Provision of independent alternatives <sup>22</sup>	Independent alternatives	Public-private Private-private	Integrity pacts, whistleblower schemes
Building of trust <sup>23</sup>	Trust building	Public-private Private-private	Auditing and certification

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

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

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

<sup>21</sup> Advocacy can lead to demand-driven reform. The private sector can also opt for Alternative Dispute Resolution in any non-labor-related case.

<sup>22</sup> Public Private Partnerships and privatization of public services can also provide effective independent alternatives. Independent oversight of key processes such as procurement and the enforcement of corruption legislation are also essential. The private sector is well-placed to create and participate in independent oversight bodies.

<sup>23</sup> The private sector must build trust both between private sector operators and between the private sector and government and civil society.

Fundamental issue (see Section 5)	Possible response (see Section 7)	Type of corruption	Example of type of response
A demonstrable commitment to legality <sup>24</sup>	Trust building	Public-private Private-private	Auditing and certification
Enforcement and accountability <sup>25</sup>	Information Monitoring & education Trust building	Public-private Private-private	Mass media, theatre, national campaigns, observatories, information guides Booklets, websites, process mapping Auditing and certification
Protection and support for victims	Independent alternatives	Public-private Private-private	Integrity pacts, whistleblower schemes

### 9.1 PRIVATE SECTOR SPECIFIC

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

Type of corruption (see Section 4)	World Bank definition (see Annex I)	Possible response (see Section 7)	Examples

<sup>24</sup> This is required from all parties, with clear commitment from the top. The private sector is well placed to use the tools available to it to make this commitment

<sup>25</sup> Accountability applies to all those involved in corruption. It requires the ability to enforce existing legislation to ensure those who are involved are held accountable.

Type of corruption (see Section 4)	World Bank definition (see Annex I)	Possible response (see Section 7)	Examples
Commissions	Systemic, bribery, theft, private sector	Information  Training Monitoring & education Trust building Independent alternatives	Mass media, theatre, national campaigns, observatories, information guides  Workshops, ethics programs, education Booklets, websites, process mapping  Auditing and certification Integrity pacts, whistleblower schemes
Bribes to avoid fines	Systemic, bribery	Information  Monitoring & education Trust building	Mass media, theatre, national campaigns, observatories, information guides  Booklets, websites, process mapping  Auditing and certification
Facilitation payments	Systemic, bribery	Information  Monitoring & education	Mass media, theatre, national campaigns, observatories, information guides  Booklets, websites, process mapping
Tax evasion	Systemic, bribery, theft	Information  Monitoring & education Trust building	Mass media, theatre, national campaigns, observatories, information guides  Booklets, websites, process mapping  Auditing and certification
Illegal trade	Systemic, bribery, private sector	Information  Monitoring & education Training Trust building	Mass media, theatre, national campaigns, observatories, information guides  Booklets, websites, process mapping  Workshops, ethics programs, education Auditing and certification
Fraud <sup>26</sup>	Systemic, theft, private sector	Information	Mass media, theatre, national campaigns, observatories, information guides

<sup>26</sup> This aspect does not generally involve the public sector

Type of corruption (see Section 4)	World Bank definition (see Annex I)	Possible response (see Section 7)	Examples
		Training Trust building	Workshops, ethics programs, education Auditing and certification

## 10 CONCLUSIONS & RECOMMENDATIONS

Corruption is a major factor impacting the lives of all those living and working in Mozambique. It not only affects the private sector, the impact it has on the private sector and on the viability of the economy is profound. Surveys have identified the private sector as a key participant in corruption. The private sector is also considered a major actor contributing to the direction of the country. The private sector therefore has a key role to play in combating corruption.

We have identified corruption within the private sector as a major problem. The private sector not only needs to work on combating corruption in its relationship with the public sector but also in its relationships within the private sector.

Change requires clear leadership and commitment from the top. It is therefore important that company directors take the lead in combating business participation in corruption and provide both personal and professional moral leadership for their peers and subordinates. The private sector is ideally placed to assist civil society by providing information and guidance on corruption.

This report operates on a number of premises outlined in Section 2.1. These premises particularly the fundamental one that people do now want to engage in corrupt behavior, inform the conclusions drawn in the report. Corruption is a process involving individuals. Therefore individual company employees, from the top to the

bottom, should be encouraged to take personal responsibility for avoiding corrupt acts. This includes bribery, fraud and purchasing products sold without tax. The decision to avoid corruption depends on a process of education, information and clear leadership.

We have identified a number of tools the private sector could use to combat corruption. The project of which this report is a part of will proceed to examine these tools and others proposed by readers of the report. The project will evaluate their applicability and viability as tools for the private sector in Mozambique. It is never too soon to begin and we would encourage companies wishing to experiment with any of the tools mentioned to contact us for further information and for support.

We have examined a number of international and regional initiatives to encourage countries and the companies based in these countries to combat corruption. It is important that the private sector in Mozambique takes the initiative to combat corruption. It is equally important that Mozambique ratifies the conventions it has signed and works towards implementing their requirements. This will provide a strong framework for ensuring the private sector's anti-corruption activities are effective. It is also important that the countries signatories of the OECD, AU and SADC conventions and protocols discuss the implications of issues such as bribery of foreign officials with their citizens resident in Mozambique.

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

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

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

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

## 11 ANNEXES

### ANNEX I

#### **Definition of Corruption**

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

“The term corruption covers a broad range of human actions. To understand its effect on an economy or a political system, it helps to unbundle the term by identifying specific types of activities or transactions that might fall within it. In considering its strategy the Bank sought a

usable definition of corruption and then developed a taxonomy of the different forms corruption could take consistent with that definition.

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

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

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

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

- **Government contracts.** Bribes can influence the government’s choice of firms to supply goods, services, and works, as well as the terms of their contracts. Firms may bribe to win a contract or to ensure that contractual breaches are tolerated.
- **Government benefits.** Bribes can influence the allocation of government benefits, whether monetary benefits (such as subsidies to enterprises or individuals or access to pensions or unemployment insurance) or in-kind benefits (such as access to certain schools, medical care, or stakes in enterprises being privatized).
- **Lower taxes.** Bribes can be used to reduce the amount of taxes or other fees collected by the government from private parties. Such bribes may be proposed by the tax collector or the taxpayer. In many countries the tax bill is negotiable.
- **Licenses.** Bribes may be demanded or offered for the issuance of a license that conveys an exclusive right, such as a land development concession or the exploitation of a natural resource. Sometimes politicians and bureaucrats deliberately put in place policies that create control rights which they profit from by selling.

- **Time.** Bribes may be offered to speed up the government’s granting of permission to carry out legal activities, such as company registration or construction permits. Bribes can also be extorted by the threat of inaction or delay.
- **Legal outcomes.** Bribes can change the outcome of the legal process as it applies to private parties, by inducing the government either to ignore illegal activities (such as drug dealing or pollution) or to favor one party over another in court cases or other legal proceedings.

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

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

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

Theft of government financial resources is another form of corruption. Officials may pocket tax revenues or fees (often with the collusion of the payer, in effect combining theft with bribery), steal cash from treasuries, extend advances to themselves that are never repaid, or

draw pay for fictitious “ghost” workers, a pattern well documented in the reports of audit authorities. In such cases financial control systems typically have broken down or are neglected by managers.

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

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

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

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

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

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

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

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

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

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

## ANNEX II

### **Informal Interview format**

What do you understand as corruption? (Do you see commissions etc. as corruption?)

Does corruption directly affect you in your life and work?

How? Please give concrete answers if you can.

What do you think of the idea that corruption within the private sector is at least as much of an issue as corruption between the public and private sectors? Which affects you more?

What measures do you take to protect yourself or your company?

How much do you estimate corruption costs you? What about indirect costs such as to your company's reputation?

Do you detect regional differences within Mozambique? (and outside if you have that experience)

Thinking about existing legislation and regulations in your sector or in sectors you have knowledge of, which stand out as being vague, complex, or leaving too much discretionary power to government officials charged with their enforcement? Which sectors stand out for you as being "the most corrupt"?

Where do gray areas in understanding or interpretation of the laws and regulations result in corruption in your experience?

Do you know of or has your company participated in any local, regional, and international best practices in combating corruption, especially those that have been led by the private sector, and if so what?

What has been your impression of these initiatives?

If the private sector introduced or proposed tools (codes of business principles, forms of certification, publicity campaigns, audits etc.) would you be interested in participating?

What would be the principle issues you would consider when thinking about participating? (cost, benefits, impact on your company, need to prove transparency etc.)

What are the main issues that prevent you from stopping corruption within your company or between your company and others, or the State?

What else do you think we should take into consideration when looking at the issue of "combating business participation in corruption in Mozambique"?

Should your company stop all forms of corrupt practice (paying of commissions, tax avoidance etc) how do you expect to be compensated to mitigate against the loss of business?

### ANNEX III

#### **Review of existing legislation**

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

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

#### ANTI-CORRUPTION LEGISLATION

##### **Basic Overview**

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

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

## Key Problems and Recommendations

### *Liabilities*

Law 6/2004 provides that when public or private interests are harmed by persons in the direct or indirect employ of the State, damages must be paid.<sup>27</sup> However the law does not make clear who – the State, the civil servant or some other person – is obliged to indemnify the victim, and how the process for seeking indemnity shall be conducted. The law also provides for the forfeiture to the State of goods or money illicitly added by a corrupt official to his assets, but does not clarify how the amounts will be accounted for, including whether they enter into the General State Budget in their entirety or a portion thereof is awarded to the person who supplied information leading to the conviction of the official in question.<sup>28</sup>

We note that persons are liable not only for acts but for omissions.<sup>29</sup> This is a welcome inclusion, as deliberate omission by civil servants of their duties – such as timely signing a license or issuing a receipt – is a common means to extort bribes from the public.

### *Declaration of Assets*

Decision-makers in the State, municipalities and public companies and institutions, as well as the State’s representatives on the boards of private companies, are obliged to present a declaration of their assets as a condition of assuming office.<sup>30</sup> That declaration is deposited in the “files of the institution” (lit. *em arquivo próprio do serviço*).<sup>31</sup> This declaration must be updated annually and at the time the person leaves office.<sup>32</sup> The declaration may also be requested at any time for disciplinary or criminal proceedings.<sup>33</sup>

While the obligation to file a declaration of assets is potentially useful for detecting corruption, it is nothing new. In fact, declarations of assets by senior State managers (variously defined in different statutes) prior to assuming office were already required under

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<sup>27</sup> See Law n° 6/2004 of 17 June, Article 3, Paragraph 2.

<sup>28</sup> Ibid., Paragraph 3.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., Article 4, Paragraph 1.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid., Paragraph 3.

<sup>33</sup> Ibid., Paragraph 4.

the terms of 4/90 and Law 7/98. The requirements in those instruments were much more specific and demanding than the general references to assets in the present law, stating clearly defined categories of assets. Moreover, unlike the requirements of Law 6/2004, the disclosure requirements of Law 4/90 and Law 7/98 required senior State managers to also declare their *liabilities*, including to banks, the State and private firms, whether in Mozambique or abroad.<sup>34</sup> Law 7/98 refers to a specific form for the purpose, reportedly annexed to the law itself, but which we have never seen.<sup>35</sup> Decree 22/2005 does provide such forms though they are not detailed in their requirements.<sup>36</sup>

It bears further mention that those earlier laws – which remain good law for some purposes, but are superseded for others – apply not only to the senior State managers themselves but also to a broad range of family members by blood, marriage and de facto cohabitation.<sup>37</sup> By contrast, Law 6/2004 provides only that the obligation to declare assets may be extended to such persons by operation of other legislation.<sup>38</sup> And to the extent Law 6/2004 repeals other – again unspecified – provisions of law, it actually operates so as to cast doubt on whether the obligations as they extend to family members under the other two laws cited remain in force.

In at least one respect, that of declaration of assets, Law 6/2004 is consistent with Law 4/90 and Law 7/98: the declarations required under it are not made public. Although Decree 22/2005 specifies that the Municipal President (mayor) and the President of the Administrative Council or similar public entity are responsible for guarding and maintaining the declarations, the declaration is still not made public.<sup>39</sup> As long as it is not public it will be

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<sup>34</sup> See Law n° 4/90 of 26 September, Article 3, paragraph 1, clause b, and Law n° 7/98 of 15 June, Article 3, paragraph 1, clause b.

<sup>35</sup> See Law n° 7/98 of 15 June, Article 3, paragraph 5.

<sup>36</sup> See Decree 22/2005, Article 2, Paragraph 3.

<sup>37</sup> See Law n° 4/90 of 26 September, Article 3, paragraph 2 and Law n° 7/98 of 15 June, Article 3, paragraph 2.

<sup>38</sup> See Law 6/2004, Article 4, paragraph 2.

<sup>39</sup> See Decree 22/2005, Article 1.

of only limited use as a tool to monitor the amassing of wealth – and the potential relationship thereof to corruption – by senior State managers.

We note, however, that the fact that declarations of assets are not public does not mean that the requirement thereof cannot be made somewhat useful. As noted above, they can be requested (though it is not clear by whom) in a criminal or disciplinary proceeding.<sup>40</sup> The requirement can also be used in other ways, not foreseen in the law, that depend on the law of contract. For example, each donor with a bilateral agreement with the Government could insert in that agreement a provision that each ministry to which it contributes funds must certify that all senior managers so required by Mozambican law had filed a declaration of assets with that ministry, with the future requirement that all annual updates shall be timely filed. Failure so to file would be grounds to oblige the Government to reimburse the funds disbursed.

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

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

### *Justification of Administrative Acts*

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<sup>40</sup> Law 6/2004, Article 4, paragraph 4.

Law 6/2004 requires that administrative acts that affect people's rights and interests need to be justified, and that the justification needs to be clear and reduced to writing.<sup>41</sup>

While Decree 30/2001, which codifies the Operational Rules of the Public Administration, regulates the processes by which administrative appeals are conducted,<sup>42</sup> Law 6/2004 goes further by ensuring that a record is created on the basis of which the citizen can exercise her rights to direct administrative appeals and appeals in subsequent administrative litigation. Importantly, it provides that a citizen can legally require an official who has given an only oral answer to reduce that answer to writing. And of course, unlike Decree 30/2001, Law 6/2004 is a criminal statute with sanctions for its violation.

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

### *Acts of Corruption*

Law 6/2004 distinguishes between different types of corruption punishable by law such as passive corruption in an illegal act, passive corruption in a legal act, active corruption and illicit economic gain.<sup>43</sup> In each of these cases Law 6/2004 fails to clarify what acts qualify as passive and active corruption. When it does list certain circumstances that could qualify as corrupt acts, as it does in paragraph 3 of Article 7, it fails to clarify if the list is inclusive or exhaustive. The net effect of this is to make it quite difficult, if not impossible, to prosecute someone for committing a corrupt act. Failure to clarify what are acts of corruption also makes the public's use of the statute problematic. An exemplificative list of corrupt acts could help citizens understand what acts are classified as corruption and can be criminally

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<sup>41</sup> Ibid, Article 5.

<sup>42</sup> See Decree n° 30/2001 of 15 October, Article 15.

<sup>43</sup> See Law 6/2004, Articles 7 through 10.

prosecuted. Such a list could be provided in a layman’s guide to the laws of anti-corruption in Mozambique.

*Anti-Corruption Procedure*

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

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

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

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

The first notable element of DL 35 007 is its provision that persons other than the Public Prosecutor can initiate a penal case before a court. In other words, the Public Prosecutor does not have a legal monopoly on the initiation of a criminal case. In limited circumstances administrative authorities (not further defined) may do so, and in less limited circumstances,

State bodies with the power to monitor certain activity or the execution of certain specific regulations may do so, in respect of such activities or such regulations.<sup>44</sup>

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

In this regard we note that this power may be construed, speculatively only, to extend to the Ombudsman (the *Provedor da Justiça*), foreseen in Articles 256 through 261 of the Constitution of 2004. This important constitutional provision has yet to be legislated. But imagine the effect of an Ombudsman who has the power to initiate a criminal action in court in the event that the Public Prosecutor did not act within a certain time. And recall that, unlike other organs of government, the Ombudsman is not chosen by the Executive; the Ombudsman is elected by a two-thirds majority of the Parliament, for the term of office that Parliament decides.<sup>45</sup>

This small opening in the direction of de-monopolizing the administration of justice in Mozambique is broadened further by the provisions of DL 35 007 that govern the role of the private participant (lit., the *assistente*, below a “Private Participant”) in a criminal trial.<sup>46</sup> Depending on the nature of the crime in question, different persons have the right to constitute themselves as Private Participants. In the case of corruption and related crimes, *any person* may take a role in the criminal process as a Private Participant.<sup>47</sup> By so providing, the legislator has completely removed the classic barrier of standing in connection with the

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<sup>44</sup> Decree Law 35 007 of 13 October 1945, Article 2, paragraphs 1 and 3.

<sup>45</sup> Constitution of 2004, Article 257.

<sup>46</sup> Normally “*assistente*” would be translated into English as “observer,” but that term suggests an only passive role. The scope of initiative of the *assistente* is, in fact, substantial.

<sup>47</sup> Decree Law 35 007 of 13 October 1945, Article 4, paragraph 5.

prosecution of corruption, because the direct victim need not necessarily be the person who actively pursues the case.

Private Participants act as auxiliaries to the Public Prosecutor. Their role is substantial, not merely symbolic. The powers of the Private Participant include: to develop an indictment separate and distinct from that prepared by the Public Prosecutor; participate directly in preliminary evidentiary hearings (*instrução contraditória*), submitting evidence and requesting the further pursuit thereof by the judge; and appealing a ruling by the judge closing the case, even if the Public Prosecutor does not do so.<sup>48</sup>

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

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

#### *Protection of Whistleblowers*

Law 6/2004 provides protection for whistleblowers (i.e. people who report corruption and assume the risk of doing so) by stating that no one may be the object of a disciplinary measure, harmed in their professional career or in any way persecuted by virtue of having filed a

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<sup>48</sup> Ibid., Article 4, paragraph 2, clauses 1-3.

complaint under Law 6/2004.<sup>49</sup> Persons who violate this provision shall be punished by up to six months' imprisonment and a fine.<sup>50</sup>

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

#### *Denunciation in Bad Faith*

Law 6/2004 makes it a crime, with a punishment of up to six months' imprisonment and a fine, to file a complaint of corruption against a public employee if the complainant knows that those persons are innocent of the charge.<sup>51</sup> It further provides that the complainant in bad faith is subject to indemnify the person against whom he complained for material and moral damages (i.e. damage to one's good name).<sup>52</sup>

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

#### *Powers of the Public Prosecutor*

The Public Prosecutor is empowered to prevent and combat the crimes foreseen in Law 6/2004<sup>53</sup> through the following acts of prevention: gathering information in order to evaluate whether a corrupt act has taken place; carrying out investigations of various kinds in respect of

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<sup>49</sup> See Law 6/2004, Article 13, Paragraph 1.

<sup>50</sup> Ibid., Paragraph 2.

<sup>51</sup> Ibid., Article 14, Paragraph 1.

<sup>52</sup> Ibid., Paragraph 2.

<sup>53</sup> It does not, however, operate to confine the initiative to prosecute acts under Law 6/2004 to the Public Prosecutor. Standing to do so continues to be defined by Decree Law 35 007 of 13 October 1945.

the conduct of relations between the Public Administration and private parties; and proposing measures to reduce the incidence of crime under Law 6/2004.<sup>54</sup>

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

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

As discussed above, the COCC is not an independent body; it is a department of the Attorney-General's Office and is subordinate to the Public Prosecutor.<sup>55</sup> In this regard, one idea to consider is a stakeholders' commission that meets from time to time to consult with the COCC and consider the results of its work. The stakeholders' commission ought to include people from outside Government, so as to ensure some window of participation for Mozambican civil society and foreign donors in the workings of the COCC. Such a commission should also have some direct means of periodically conveying the urgency of the mission to that institution. The stakeholders' commission is part of a wider anti-corruption strategy that goes beyond legislation and law enforcement per se, and engages society as a whole for the larger objective. Indeed, a stakeholders' commission would be consistent with the preventative measures that Mozambique undertook to pursue under the terms of the SADC Protocol against Corruption.<sup>56</sup>

#### *Duties of Auditors*

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<sup>54</sup> See Law 6/2004, Articles 16 and 17.

<sup>55</sup> *Ibid.*, Article 19.

<sup>56</sup> See Resolution n° 33/2004 of 9 July, by which Mozambique ratified the Protocol.

Article 21 of Law 6/2004 provides that whenever a public or private auditor, in the course of an audit, finds some indication of corruption, it must report those indications, in writing, to the COCC.<sup>57</sup> However, it is unclear who is empowered to initiate legal proceedings against auditors who violate these rules. Since the big audit firms are the natural suppliers for some of the forensic audit assistance needed by COCC, one may expect that the persons empowered to monitor the auditors are also auditors themselves. One way to solve this problem is to make sure that, (a) some person, not an auditor, is always named by the COCC and indicated by it to be the monitor of the auditors; and (b) that that person has no conflict of interest vis-à-vis the country's public and private auditors.

Article 21 may also be extremely useful in fighting corruption if donors made audit obligations not merely statutory but contractual. The donor's contract with the auditor would require the auditor explicitly, (a) to follow the requirements of Article 21 and (b) to report to the donor any time that such a report has been filed. That very clause might also list – to exemplify and not to restrict – some of the typical indicia of corrupt practice that auditors might be expected to come across (e.g. lack of receipts for expenditure; lack of evidence that assets purchased with project funds have been registered as the property of the ministry to which they were donated, among many others). From time to time the donor might get an outside audit firm to review the work of the auditor and, if that outside firm were to find that indicia of corruption were not made the object of a written report to the COCC, consequences would follow. Those consequences could include forfeiture by the auditor of payments from the donor, and referral of the matter for legal action under Article 21, paragraph 4.

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

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<sup>57</sup> See Law 6/2004, Article 21.



ANNEX IV

SAMPLE OF LEGAL IVA INVOICE

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

ABC <sup>58</sup> , Lda <sup>59</sup> Av. Nelson Mandela 172 Chimoio Mozambique <sup>60</sup> Tel: (258-51) 22 369 Fax: (258-51) 22 370 <sup>61</sup>  NUIT: 7000069871 <sup>62</sup>		Nome <sup>63</sup> _____  Endereço <sup>64</sup> _____  _____  NUIT <sup>65</sup> : _____	
Data:	de de 200	FACTURA N°: 2194 <sup>66</sup>	
Quant	Descrição	Preço Unitário	Total
Motivo justificativo de não aplicação do imposto <sup>67</sup>		Sub-Total	
		IVA 17%	
		Total	
Processado Por Computador <sup>68</sup>			
Steamline-Beira <sup>69</sup> /4000065213 <sup>70</sup> Aut No: 154/MPF/02 <sup>71</sup> 50 Liv. 3x50 2000 a 4500 <sup>72</sup>			

<sup>58</sup> Full name of company

<sup>59</sup> Type of company :- Lda, SARL

<sup>60</sup> Full address of company

<sup>61</sup> Whilst not a legal requirement all the company's details can be listed e.g email, web site etc.

<sup>62</sup> The company's VAT registration number (NUIT) must be recorded

<sup>63</sup> Full name of the customer

<sup>64</sup> Full address of the customer

<sup>65</sup> VAT registration number (NUIT) of the customer

<sup>66</sup> All invoices must be numbered

<sup>67</sup> Only included if the company is going to be selling goods or services to companies that are VAT exempt

<sup>68</sup> Invoices are often hand-written. If they are computer generated this fact must be included on the invoice

<sup>69</sup> Name of the Government Authorised Printing Press which printed the invoices

<sup>70</sup> VAT registration number (NUIT) of the Government Authorised Printing Press which printed the invoices

<sup>71</sup> Government authorisation number of the Government Authorised Printing Press which printed the invoices

<sup>72</sup> Number of invoice books printed, the format and the invoice numbers sequence. This sample shows 50 invoice books, 3 copies of each invoice, 50 invoices per book, invoice numbers 2000 to 4500

## 7. COMMENT FORM

Please return this form to ACIS. All information will be treated as confidential.

Name (optional)	
Contact details (optional)	
How did you hear of the toolkit?	
Did you find the toolkit helpful?	
If yes, why?	
If not, what improvements would you suggest?	
Have you used any of the tools? If so, which?	
What types of corruption most affect you?	
What types of corruption most affect your organization?	
Any other comments?	