
Mozambique: law and justice – a luxury?

*Richard Gerster**

Just as we turn in to the parking lot, a police man is stopping our vehicle. We supposedly moved into the wrong lane and should therefore pay a fine to the equivalent of 10 US dollars. However, there is no driving mistake to be punished. Rather the policeman tries to fatten his wallet which is very meagre towards the end of the month. Those who have connections get away with it, those who are in a hurry are disadvantaged and pay. We chat a little and he lets us go.

Dissatisfactory access to the legal system

It is estimated that “over half the Mozambican population has no access to courts or to lawyers, and has no information about the country’s laws. This is a situation that makes people extremely vulnerable to abuse of their rights.” This open verdict can be found in a bulletin of the official news agency AIM (2.3.2009). Insufficient capacities on the side of the police and justice are mostly visible in rural Mozambique. Many take the law into their own hands – in 2008 50 people were lynched. José dos Santos Antonio, Permanent Secretary of Nacaroa District in Nampula province situated in the north of the country says: “There is a plan which foresees a court for the district of Nacaroa. The fact that we don’t have judges presents a huge problem for us. We have to send offenders to the next court in Namapa, which is more than 75 km away.”

Installing law and justice, however, is about much more than merely the access of poor regions and groups to the legal system. It is also about enforcing the rule of law as a public good. This is a technical, economic and political problem. The idea of an independent justice is located in between the poles of power, influence and control. In 1999 the prominent journalist Carlos Cardoso was shot by a killer commando in broad daylight in Maputo, when he was tra-

cing entanglements of the political elite in dubious affairs. As a consequence, the hit man Anibal dos Santos Junior (“Anibalzinho”) was sentenced to 30 years in prison. However, he escaped several times from the high security institution, the last time in December 2008. Rumours about helping hands within police circles could never been silenced.



The ministry of justice holds a key role when it comes to the trust that the population can show towards the legal system.

The police and courts do not enjoy a positive reputation in the public. The legal system’s structure is highly complex and nobody can speak in the name of everyone. Formally, the Ministry of Justice, of which the attorney general is a part, is the coordinator. The police is a part of the Ministry of Interior. Courts on all levels (from the district to supreme court), the constitutional council responsible for elections as well as the audit authority are institutions independent of the executive. Due to their independence and professional manner particularly the constitutional council (“Conselho constitucional”) and the audit authority (“Tribunal administrativo”) are well renowned by the people. “The report by the audit authority is an important basis for us, in order to hold the government accountable”, says the oppositional parliamentarian Eduardo Namburete.

A priority for donors?

The poverty reduction strategy which was adopted by the council of ministers in 2006 recognizes the significance of justice: Poverty also means “greater exposure to abuses by civil servants (including corruption), less protection from crime.” On the basis of this strategy, 19 donors including Switzerland co-finance Mozambique’s state budget with some 448 million US dollars (2008). By doing so, budget support aims at strengthening reforms in key economic and social areas. A performance assessment framework is an integral part of budget support and defines the aims and reforms which the government aims at fulfilling and implementing. In this context regular dialogues in working groups and at high level take place.

This assessment framework includes, for example, also the number of convictions in the past year, the number of functioning district branches of the Mozambican Legal Aid Institute (IPAJ) which should facilitate free access to justice for the poor and the number of corruption cases under examination, prosecution or their convictions. In 2007 and 2008 only two out of the five aims

were fulfilled. At the annual meeting of 2008 the donors openly expressed their dissatisfaction. However, the indicators are only a weak reflection of the reform progress. For example, the significance of an increase in the number of anti corruption prosecutions is not evident: Is corruption being pursued more consequently or is simply the number of cases increasing? That is why the framework is also an important basis for an in depth analysis. The government has ordered a performance audit of the justice sector which facilitates to identify the strengths and weaknesses in view of future reforms.

Five out of forty framework indicators are focused on justice and public policy which therefore play an important role in the budget support dialogue. On one hand this signals engagement on behalf of the government. An effective dialogue about the legal system, however is very demanding both from a technical and a political perspective. The separation of powers between executive and judiciary as well as the complexity of the legal institutions contribute their share. In order to be a valid counterpart for the government in the discussions, one therefore, not only needs le-



In spite of training the police force, assaults still happen frequently.

gal but also in depth contextual knowledge. Apart from the multilateral institutions (UN Development Programme, World Bank, European Union) and Denmark the donor side is hardly prepared to make the most of the potential offered by a dialogue at this level. “The donors have their share of responsibility when it comes to the unsatisfactory progress in the legal field”, says a donor representative in a self-critical manner. The division of labour among the donors narrows the experiential basis. A few years ago some donors gave up their engagement in the legal sector due to frustration. “Some people in the legal system were happy about that”, says an observer. This way they have to be less revealing.

Switzerland’s role

Nicole Bezençon, a Swiss development cooperation worker fell victim to a murder with robbery. The police never found the anonymous culprits. This experience contributed to the positive reply which Switzerland gave the government when it asked for support for the development of police training. Under the lead of the UN Development Programme and together with Portugal and the Netherlands Switzerland

supported the police school over several years. “Switzerland’s contribution is a success story”, says Fontini Antonopoulou from the European Union openly. With its contribution, Switzerland shortened police training and thereby facilitated access for a larger number of policemen. An assessment by Swiss police experts influenced the entire educational strategy of Mozambique. Parallel to the educational contribution for the police school Switzerland also supported human rights organisations in order to enable them to demand that the police behaves in a manner which is within the law. Despite these efforts the behaviour of the police still is far from satisfactory.

“The government now has an overarching institutional strategy, covering the years 2009 – 2014 and the entire legal system. With this basis the government declares its willingness to take up legal reforms”, explains Gaspar Moniquela, leading secretary in the Ministry of Justice. The performance audit mentioned above and this strategy also serve as the basis to complete general budget support with focused projects in the legal system. The experiences made so far with the legal reform are very mixed. However, the government’s engagement for this new strategy, for example arresting a num-

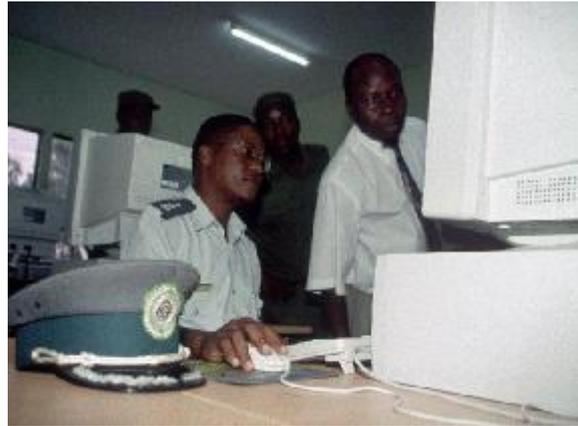


Also small enterprises such as this carpenter depend on a functioning legal system.

ber of people even in among high ranking officials and former ministers as well as the aims documented in the budget supports' performance assessment framework let one hope that a new area has started when it comes to reforms in the legal system.

Within the context of budget support dialogue, Switzerland is responsible for one of three areas, namely questions relating to governance. This includes police and justice. Marc de Tollenaere who is responsible for this area in the Swiss cooperation office hopes that law and justice will be increasingly expected by the population at large. Culturally, personal relationships and loyalties are often still considered to weigh more than the law, even within the legal and police force. "Justice has been neglected for a long time, because the ideology of the governing Frelimo party wanted to establish

voluntary discipline for respecting the law", says Marc de Tollenaere. However, this is not enough. The serious weaknesses in the legal system threaten to become the Achilles heel for the country's economic growth and poverty reduction at large.



Modernising the police's infrastructure increases their efficiency.

* The author, Dr. Richard Gerster, is an economist and works as independent consultant and publicist (www.gersterconsulting.ch). This article is part of a series commissioned by the State Secretariat for Economic Affairs (SECO) to take a closer look at budget support from various points of view. They reflect the author's personal opinion.