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Observance of the Rule of Law in Mozambique

Introduction

One of the greatest challenges confronting Africa's democratic reform process is ensuring the rule of law: that is, where political leaders subject themselves to the law and do not bend it to their interests, or ignore it with impunity. This is especially true where the government is run by a political party that once subscribed to the basic tenets of Marxism-Leninism, which saw the law merely as an instrument of the ruling party. Thus, Mozambique's political reform process has focused as much on rule of law and accountability procedures, as on civil, political and social rights and liberties, or political competition. The rule of law is a necessary (though not sufficient) condition for democracy. The rule of law is subverted when politicians use the law as a "political weapon" against their political and civic adversaries. Subversions of the rule of law, in turn, subvert other democratic procedures such as participation and accountability.¹

The potential for the subversion of the rule of law is greater in societies that are characterized, like Mozambique, by the excessive control of all state institutions by a single institution, the Head of State, who, in Mozambique, is both the Head of State and the Head of Government. The Head of Government does not, in practice, account to the legislature since the standing orders allow him to delegate responsibility to the Prime Minister. In addition, the Head of State appoints and dismisses all chairpersons from the judiciary. This excessive power may enable state officials to break the law with impunity.

This Briefing Paper analyses the extent to which ordinary Mozambicans feel the rule of law actually exists in their country. It employs 2005 and 2008 data from the Mozambique Afrobarometer public opinion survey to understand people's perceptions of the extent to which ordinary people are treated equally by the state, whether the state enforces the law equally against both state officials and ordinary people, and the extent to which the president ignores the constitution.

¹ Larry Diamond and Leonardo Morlino. 2005. Introduction, in *Assessing the Quality of Democracy*, stress that "when the rule of law is weak, participation of the poor and marginalized is suppressed; individual freedoms are tenuous and fleeting; civic groups may be unable to organize and advocate; the resourceful and well connected have vastly more access to justice and power; corruption and abuse of power run rampant, as agencies of horizontal accountability are unable to function properly; political competition is distorted and unfair; voters have a hard time holding rulers to account; and thus, linkages vital to securing democratic responsiveness are disrupted and severed".

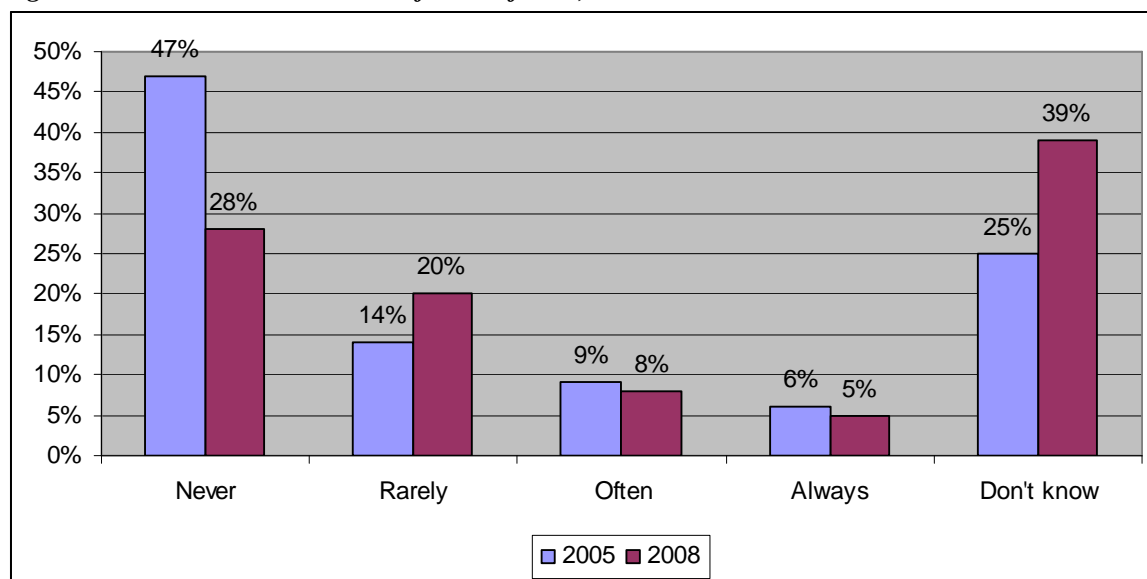
The Survey

Afrobarometer surveys are now conducted in 20 countries in Africa, using a common survey instrument and methodology. The recent survey in Mozambique was the third in a series conducted in the country. The first two rounds were conducted in 2002 and 2005 respectively. The Round 4 survey was carried out from 6 to 24 December 2008. The Centre for Policy Analysis conducted face-to-face interviews with a nationally representative probability sample of 1200 adult Mozambicans, selected from across all 10 provinces plus Maputo City. Each province was sampled in proportion to its share of the national population. A sample of this size gives an overall margin of sampling error of +/-3 percent at a 95 percent confidence level.² Interviews were conducted in the language of the respondents' choice, and were done in Portuguese, Macua, Sena, Ndaou or Changana.

Official Observance of the Rule of Law

Comparisons across the 2005 and 2008 Afrobarometer surveys reveal that ordinary Mozambicans perceived official violations of the rule of law as relatively infrequent. In 2005 just 15 percent of Mozambicans felt the president ignores the constitution of the country "often" or "always", and in 2008 just 13 percent said the same about the president's observance of the laws of the country. However, fully one quarter of respondents in 2005 (25 percent) told interviewers that they did not have enough information to have an opinion on this, increasing sharply to 39 percent in 2008. Is this a result of increase in political fear of saying something bad about the president, or of more ignorance about the president and what he is doing?

Figure 1: President's Observance of Rule of Law, 2005 and 2008



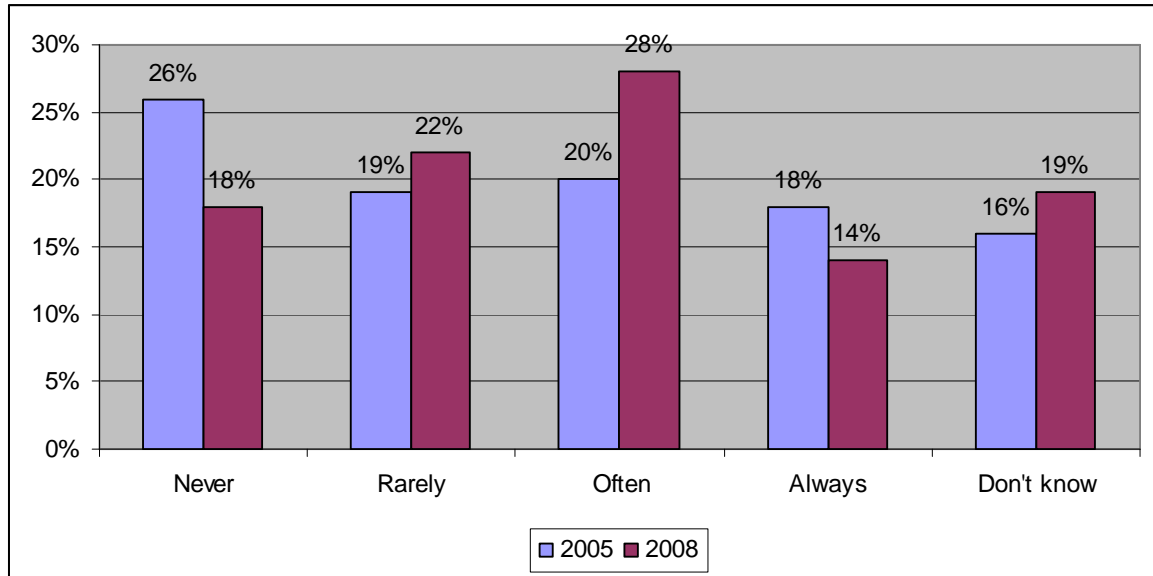
*Question: In 2008: In this country, how often does the president ignore the laws of this country?
In 2005: In this country, how often does the president ignore the constitution?*

² Thus, for an estimate of, say, 50 percent, there is a 95 percent chance that the actual percentage lies between 47 and 53 percent.

Equality Under the Law

Moving to another measure of public perceptions of the rule of law, in 2005 four out of ten (38 percent) Mozambicans felt that ordinary people were treated unequally under the law on a frequent basis (“often” or “always”), increasing slightly to 42 percent in 2008. Roughly similar numbers (45 percent in 2005, and 40 percent in 2008) think that citizens *do* receive relatively equal treatment at the hands of government. Thus, Mozambicans are about evenly divided on how good a job the government is doing of treating all individuals equally.

Figure 2: Officials Observance of Rule of Law, 2005 and 2008



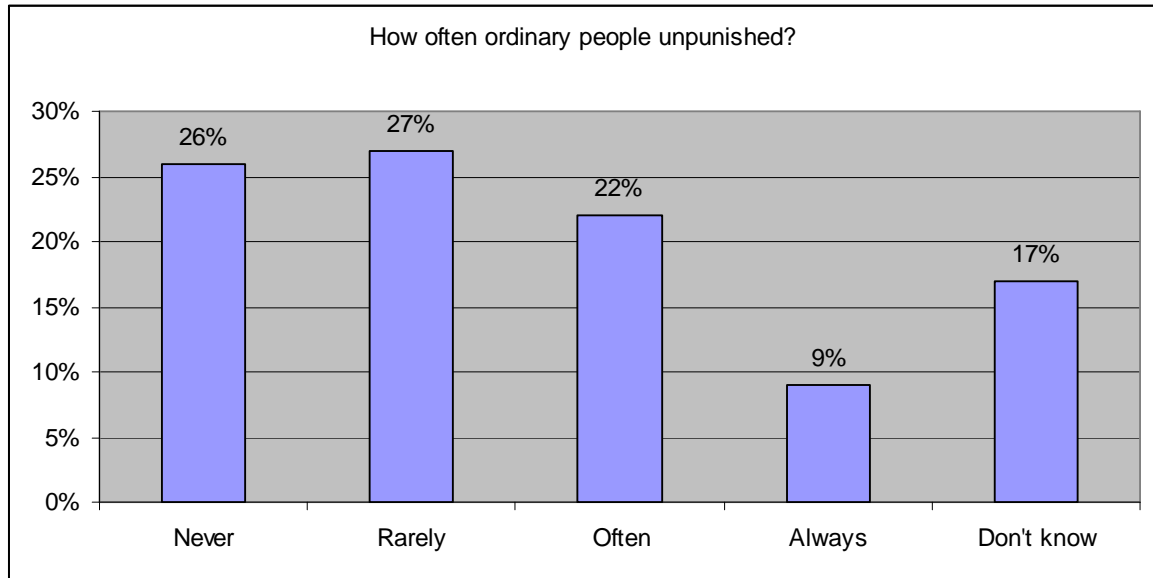
Question: How often are people treated unequally under the law?

Equal Enforcement of the Law?

What about the enforcement of the country’s laws against ordinary people versus government officials? How well does the government do in enforcing the law in general, and are officials getting preferential treatment, or do they face sanctions for their misbehavior just as often as ordinary citizens?

As shown in Figure 3, a slim majority (53 percent) believe that people do face punishment most of the time, but about one third (31 percent) of Mozambicans disagree. In this regard Mozambique compares relatively poorly with other countries: across 20 countries, an average of 68 percent of respondents said that it would be uncommon for ordinary people to go unpunished. Mozambique has the fourth lowest expected rate of enforcement.

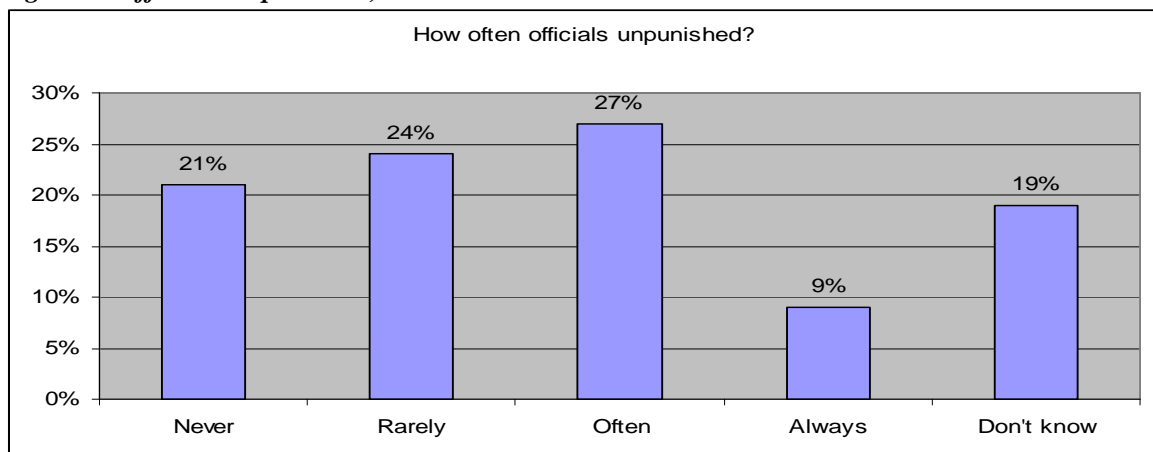
Figure 3: Ordinary People Unpunished, 2008



Question: How often, in this country, do ordinary people who break the law go unpunished?

Notably, a plurality (45 percent) think that state officials will also face punishment most of the time, compared to just over one-third (36 percent) who think they are likely to get away with their misdeeds. This represents a relatively small gap of just 8 percentage points between the perceived likelihood of punishment for state officials compared to ordinary citizens. Across 20 countries surveyed in Afrobarometer Round 4 (2008-2009), the average gap was a much higher 28 percentage points. But we must recognize that the gap is small because enforcement appears to be relatively *low* against both groups, not because it is relatively high against both. Roughly one-third of respondents think that *neither officials nor ordinary people* are likely to face punishment for their crimes, so while Mozambique may be more equal in its treatment of officials and ordinary people than many other countries, there is still some way to go in improving the enforcement of the rule of law in the country.

Figure 3: Officials Unpunished, 2008



Question: How often, in this country, do officials who commit crimes go unpunished?

Conclusions

This Briefing Paper analyzed the extent to which Mozambicans feel that state officials and ordinary citizens are punished when they break the law; and whether the president, and state officials ignore the country's constitution and/or its laws. We find that the president is less likely to ignore the constitution in 2008 than in 2005, but people are slightly more likely to perceive unequal treatment at the hands of government in 2008 than in 2005, so there is no consistent trend (and for the most part the differences are not statistically significant).

We also find that in comparison to other countries, government officials in Mozambique appear to benefit less from favoritism and a willingness on the part of government to look the other way. But at the same time, we find that the government is relatively ineffective in enforcing the law against *both* officials and ordinary people. It is re-assuring that people feel that the state is as likely to act against officials as against ordinary people, but it is worrying that so many feel that it is possible to get away with criminal acts. This suggests that Mozambique's struggles to implement a rule of law are far from over.

This Briefing Paper was prepared by Carlos Shenga, Centre for Policy Analysis, Eduardo Mondlane University

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