

# MOZAMBIQUE News reports & clippings

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## Also in this issue:

**Chang will be sent home**

**Attacks in Cabo Delgado hit Anadarko**

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## Mozambique can now refuse to pay the secret debt, say analysts, and would gain by it

Arrests and new evidence of bribery have totally changed the situation around the \$2 bn secret debt. Analysts are increasingly saying that Mozambique should simply say the debt is illegal and will not be paid - and that there were be significant benefits, in particularly improving relations with the IMF.

The US indictment of former finance minister Manuel Chang has changed the position dramatically. Three aspects are important:

- + Evidence that the loan was promoted through bribes makes it unlikely that a court would force Mozambique to pay.
- + The government was dragging its feet while it tried to protect the reputations of senior figures, but the arrest of Chang in Johannesburg and then eight people close to former president Armando Guebuza in Maputo means that there are few reputations left to protect.
- + The IMF has made clear it would accept a refusal to pay. That would reduce the official and unsustainable debt level which would allow a new IMF programme to be negotiated, which would release more aid and possible other loans, reducing the financial squeeze on Mozambique.

Below, we first recap the history of the secret debt. Next, we look at the IMF, and how Mozambique would benefit from a public refusal to pay. Third we look at what analysts are saying. Finally, we note that any legal action to enforce payment of the debt will take place in the London High Court, and we explain why the position has changed completely since the Mozambique government was first given legal advice by London lawyers several years ago.

### **\$2 bn in secret loans**

The \$2 bn loans were made to three new security service controlled companies - Ematum, MAM and Proíndicus - but the money went directly to an Abu Dhabi company, Privinvest. Highly unusually, not one penny went to Mozambique. Government guarantees were signed by Finance Minister Manuel Chang and National Budget Director, Isaltina Lucas, who later was promoted to Vice-Minister and was recently dismissed.

In 2016 and again in 2017 the Tribunal Administrativo (TA, audit court) ruled that the guarantees and the debts were illegal, violating both the constitution and the budget law, which require

guarantees of that size to be approved by parliament. These two syndicated loans, and some limited payments, have never appeared as part of government accounts. A special parliamentary commission on 30 November 2016 made a similar ruling, also noting that the loans were largely for military purposes, that the limited amount of military and fishing equipment delivered by Privinvest was unsuitable, and that the three companies would never be viable and could not repay the loans.

The structure of the loans is different, which causes confusion. The \$622 mn Proíndicus and \$535 mn MAM loans are what are called syndicated loans - the two banks, VTB and Credit Suisse, organised groups of lenders ("syndicates"). The loans were arranged in secret and Mozambique does not know who are the lenders; it only deals with the two organising banks.

The \$850 mn Ematum loan was different. It had the form of bonds, also organised by Credit Suisse and VTB, but was public and the bondholders are known. The TA in its 2017 report notes that Ematum could not pay those bonds, so the state nationalised the debt in 2016 and issued new government bonds. Parliament approved the new bonds before it knew about the \$1157 mn MAM and Proíndicus loans, which only became public later that year.

The TA does not include the MAM and Proíndicus loans in any table, has been careful to ensure that Mozambique can argue that the debt was "illegitimate" or "odious" - that it should not be repaid and is the liability of the two banks which committed misconduct when they organised the loans, Credit Suisse and VTB. Two important requirements are that the government never accept the legality of the debts and that they do not go into the state accounts (see below).

However, the \$850 mn Ematum debt to Credit Suisse is listed as a bilateral debt. This led the Ematum bondholders to argue that the MAM and Proíndicus loans are illegitimate and should not be repaid, and that the original Ematum bonds were also illegitimate, but that the new government bonds are legitimate because they were approved by parliament and must be repaid. Others, however, have argued that the illegitimacy and taint of bribery carries forward to the new bonds, and that the parliamentary approval is not valid because parliament only know of the \$850 mn bonds and not the \$1157 mn syndicated loans.

Key points of Mozambique parliament November 2016 report and the 2016 TA report are on - <http://bit.ly/MozAR-debt-En> The full Parliamentary Report on the Secret Debt (in Portuguese) is one [bit.ly/MozAR-debt](http://bit.ly/MozAR-debt) The 2017 TA report is in chapter XI of <http://www.ta.gov.mz/Pages/RelatoriosPareceresCGE.aspx>

## **Refusing to pay should make it easier to access IMF loans and donor aid**

In April and May 2016 when the secret debt became public, the IMF halted its loan to Mozambique and donors stopped budget support, triggering an economic crisis and increased poverty. Donors and the IMF blamed a greedy Mozambican elite. But over time, and especially in the last two months, it has become clear that Credit Suisse and VTB are equally - or more - guilty. With offers of bribes, they pushed the Mozambicans to take the secret loans.

The IMF stresses it cannot intervene in negotiations over what is a commercial credit. However a 22 February report from Jubilee Debt Campaign shows that in private the IMF has become more open in saying it would accept a refusal to pay. IMF insiders point to a paper agreed by the IMF's Board in 1984 which states "in situations where a debtor disputes the validity of an external financial obligation ... the Fund has taken the view that a member's representation that the debtor disputes the validity of an obligation should be taken as being made bona fide and accepted on that basis." Therefore, if the Mozambique government were to declare that it disputes that it owes the \$2 billion debt, the secret debt would be removed from calculations, and the debt comes closer to sustainability and there would be no barrier to a new IMF loan and thus donor aid.

<https://jubileedebt.org.uk/blog/can-mozambique-declare-the-2-billion-secret-debts-illegal>

Of course, the IMF would want other things relating to governance and fiscal control. But Jubilee notes that declaring the debts illegal would not be a barrier to IMF loans and donor aid, and should actually help.

IMF insiders stress they cannot be seen to be encouraging a member state to dispute a commercial debt, and note that Mozambique has never presented the debts as illegitimate. But there are hints that the IMF has at least reminded senior Mozambicans that they can label the debts as disputed and thus take them out of estimates of total debt.

One issue that is surely worrying the Mozambicans is that Mozambican banks hold some of the syndicated loans. Would they become worthless if Mozambique said it would not pay? In practice, the creditors would probably join together to sue Credit Suisse and VTB, and could win a high proportion of the loan on the grounds that the loans were syndicated on false premises. The Mozambique's bank regulators could allow the syndicated loans to be kept on the books. And the IMF tends to accept the judgement of local regulators. So refusing to pay would not create a domestic banking crisis in Mozambique.

## Experts say indictment shows debt illegitimate

Even though Credit Suisse (CS) is not formally charged in the United States indictment on the \$2 bn secret debt, both financial news agency Bloomberg and the *Financial Times* (FT) say that information in the indictment makes CS vulnerable to fines and claims.

Bloomberg (7 Jan) cites two experts. Mitu Gulati, a law professor at Duke University in the US and a debt expert, who says "the debtor [Mozambique] probably has a good case to make that these were loans infected with corruption (by the agents who contracted the loans) and, therefore, voidable." Matthias Goldmann of the Max Planck Institute in Germany says "under international law, in my view, the government does not need to pay back anything. Investment tribunals would not grant protection if corruption was involved in the conclusion of the deal. So corruption charges are an independent reason to reject repayment." <https://www.bloomberg.com/news/articles/2019-01-07/mozambique-loan-bribe-claims-may-void-debts-law-professor-says>

It seems likely that CS will be held responsible. Brooke Masters writing in the *Financial Times* (8 Jan) notes that the indictment shows that "the defendants were allegedly able to ignore, lie to or circumvent the bank's compliance department." She continues, "if prosecutors conclude that the bank had shoddy controls or put business interests ahead of compliance," then this would cause problems for CS. <https://www.ft.com/content/b497aff4-1280-11e9-a581-4ff78404524e>

Both Bloomberg and the *FT* note that the indictment says that the three CS people were "acting within the scope of their employment ... with the intent, as least in part, to benefit" CS. They were senior CS staff working for the bank and for the benefit of the bank - and organising a loan that could not be repaid, based on bribes.

Finally a recent academic paper by law professors Margot Salomon (London School of Economics) and Robert Howse (New York University) argue that debt can be considered odious "where democracy is thwarted in a sovereign [debt] crisis because a democratic government is threatened with economic and social collapse if it does not follow the prescriptions of external actors, such as creditors, for exit from the crisis. Despite the will of the people being otherwise, the government is in effect commandeered by the external actors, and imposes policies that do actual substantial harm to the social and economic rights of the people." <http://www.lse.ac.uk/collections/law/wps/wps.htm> That would seem to apply to the secret debt in Mozambique.

## Would it go to court, and how would the London court rule?

Most international agreements specify which court must rule on a dispute, usually in New York or London, where there are special courts and arbitrators. The \$2 bn secret debt specifies the London High Court.

So if Mozambique declares that it will not pay, the syndicated loan holders, or Credit Suisse and VTB as their agents, would have to sue Mozambique in the London High Court. At the time that the secret debt was revealed, there had never been a sovereign debt case in the London High Court, and Mozambique would probably have been advised that the court would only consider English law and not the Mozambican constitution and law. All that changed with a ruling in the High Court on 29 March 2017 by Sir William Blair, brother of former prime minister Tony Blair, about Ukraine debt, which effectively set the guidelines about when a debt could be seen as illegitimate. It appears that Mozambique's debt fits these criteria

The case involved Ukraine's refusal to pay a \$3 bn Eurobond organised by the Russian bank VTB, in which Russia bought all the bonds. The bonds, as with Mozambique, are covered by English law. In an identical situation to Mozambique, Ukraine argued that the Finance Minister agreed the loan without it being approved by parliament as required by the constitution. Mr Justice Blair noted that there are no precedents, that this seems to be the first case of its kind, and that domestic law as well as English law had to be taken into account.

Mr Justice Blair ruled against Ukraine on five grounds: the loan was to the government and was approved by the cabinet, there has been many similar loans, the government of Ukraine received the money and it was included in foreign currency accounts of the Treasury as posted on its website, interest payments were made, and it was never stated that the loan was improper.

The direct opposite of these conditions apply to Mozambique, at least to the \$1.2 bn syndicated loans. The loans were to private companies and not the state, were not approved by the Council of Ministers, there were no similar previous loans, none of the money entered Mozambique, it was never included in any state accounts, and all statements by public authorities (parliament, Tribunal Administrativo) said the loans were illegal and unconstitutional. The secrecy of the loan meant that lenders had no public statements to believe in the legality and should have done their own investigation. The syndicated loans, at least, satisfy all of Mr Justice Blair's criteria for illegitimacy.

The full text of the ruling is on <https://www.judiciary.gov.uk/judgments/law-debenture-v-ukraine/>

The illegitimacy is compounded because the New York indictment details the way that bribes were offered to Mozambicans as an explicit inducement to take the loans. A London court would be very reluctant to enforce a contract signed because of bribery.

It is interesting that neither Credit Suisse and VTB, nor loan and bond holders, have taken any legal action against Mozambique, even though no payments are being made. This probably reflects two things. First is the judgement by banks and lenders that they have a high chance of losing in court. But second is that High Court hearings in London are open and all documents are public. Banks are expected to do what are called "due diligence" investigations, to show that the loans are reasonable, legal, and can be repaid. Credit Suisse and VTB would be forced to reveal how little due diligence was done, and that it was they, not the Mozambicans, who misled the lenders. In part, this is already shown in the very detailed New York indictment, available on [bit.ly/ChangIndict](http://bit.ly/ChangIndict) and summarised in <http://bit.ly/Moz429>.

It seems likely, then, that any legal action would be directed at the banks and not Mozambique.

*Joseph Hanlon*

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## Other news

### Chang going home

Although the hearing on the US extradition request will resume tomorrow in Kempton Park, it has already been decided at a political level that Manuel Chang will be sent back to Mozambique. The respected South African investigative website *Daily Maverick* (21 Feb) published a long interview with International Relations and Cooperation Minister Lindiwe Sisulu. She said it had already been decided to accept Mozambique's request to send Chang to Mozambique.

“We have agreed that this will be expedited. As soon as we are done with the Interpol case [the US extradition request] we will allow Mozambique to have their former minister back. We're sending him to Mozambique to be tried....And we believe that is the easiest thing for everybody,” she said. <http://bit.ly/2T0Ojxm>

Official spokespeople have stressed that the extradition hearing continues, but unofficial briefings confirm Sisulu's comments.

### Four more arrests, including Guebuza son

Four more people close to former President Armando Guebuza have been arrested in relation to the secret loans. Only one has been given bail. Those arrested are:

- + Ndambi Guebuza, eldest son of Armando Guebuza;
- + Sérgio Namburete, businessman and lobbyist with links to the security services, SISE
- + Elias Moiane, nephew of Guebuza's personal secretary Inês Moiane, and the only person released on bail.
- + Sidónio Siteo.

Bank accounts of the last two are alleged to have been used to channel illegal money.

We have already reported the arrests of Gregório Leão, António Carlos Rosário, Inês Moiane, Teófilo Nhangumele and Bruno Tandane

(*Carta de Moçambique*, 16 Feb)

### 7 dead in Cabo Delgado attacks; Anadarko halts work

On Thursday 21 Feb there were two related attacks on the road from Mocimboa da Praia to Afungi at around 5 pm about 20 kilometres from the construction site for the future liquefied natural gas plant. One was a group of Anadarko vehicles in which six workers were injured, and the other a group of vehicles from the contractor Gabriel Couto in which one of its workers was killed.

Gabriel Couto is constructing the airstrip at Afungi which will allow Anadarko to fly its workers to the site avoiding the dangerous area, and has said it will continue work. But Anadarko in a statement said it had suspended all construction work at the site.

This is the first attack on Anadarko traffic.

And on Saturday 23 Feb six people were killed when a vehicle carrying passengers was attacked on the road between Macomia inland and Mucojo on the coast, about 100 km south of the earlier attacks.

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## Background reading

### Special reports

#### Mozambique heroin transit trade

English - LSE - <http://bit.ly/Moz-heroin>

Portuguese - Pt - CIP - <http://bit.ly/Moz-heroina>

#### Gas for development?

Gas\_for\_development\_or\_just\_for\_money?\_2015 [bit.ly/MozGasEng](http://bit.ly/MozGasEng)

Gás\_para\_desenvolvimento\_ou\_apenas\_dinheiro?\_2015 [bit.ly/MozGasPt](http://bit.ly/MozGasPt)

Social protection report - 2017 Mozambique - <http://bit.ly/MozSocPro>

Special report on four poverty surveys: [bit.ly/MozPoverty](http://bit.ly/MozPoverty)

2018 Constitution - <http://bit.ly/2KF588T>

Minimum wage and exchange rates 1996-2018 -- <http://bit.ly/MinWage18>

#### \$2bn secret debt - in English

Kroll - Full report on \$2bn debt - <http://bit.ly/Kroll-Moz-full>

Kroll report summary - <http://bit.ly/Kroll-sum>

Key points of Mozambique parliament report - Nov 2016 - <http://bit.ly/MozAR-debt-En>

Following the donor-designed path to Mozambique's \$2.2 bn debt - <http://bit.ly/3WQ-hanlon>

#### In Portuguese:

Parliamentary Report on the Secret Debt (complete) [bit.ly/MozAR-debt](http://bit.ly/MozAR-debt)

**Election study collaboration:** We have detailed election data from 1999 through 2014 and are inviting scholars to use this data collaboratively. <http://bit.ly/MozEIData>

Election newsletters are on <http://bit.ly/2H066Kg>

**Eight books by Joseph Hanlon can be downloaded, free:** <http://bit.ly/Hanlon-books>

Bangladesh confronts climate change (2016)

Chickens and beer: A recipe for agricultural growth in Mozambique (2014)

Há Mais Bicicletas – mas há desenvolvimento? (2008)

Moçambique e as grandes cheias de 2000 (2001)

Paz Sem Benefício: Como o FMI Bloqueia a Reconstrução (1997)

Peace Without Profit: How the IMF Blocks Rebuilding (1996)

Mozambique: Who Calls the Shots (1991)

Mozambique: The Revolution Under Fire (1984)

#### Two more will be available shortly to download:

Apartheid's 2nd Front (1986)

Mozambique and the Great Flood of 2000

#### These are still available for sale:

Galinhas e cerveja: uma receita para o crescimento (2014) (free in English)

Zimbabwe takes back its land (2013)

Just Give Money to the Poor: The Development Revolution from the Global South (2010)

Do bicycles equal development in Mozambique? (2008) (free in Portuguese)

Beggar Your Neighbours: Apartheid Power in Southern Africa (1986)

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#### Mozambique media websites, Portuguese:

Notícias: [www.jornalnoticias.co.mz](http://www.jornalnoticias.co.mz)

O País: [www.opais.co.mz](http://www.opais.co.mz)

@Verdade: <http://www.verdade.co.mz>

Carlos Serra Diário de um sociologo: <http://oficinadesociologia.blogspot.com>

**Mozambique media websites, English:**

Club of Mozambique: <http://clubofmozambique.com/>

Zitamar: <http://zitamar.com/>

Macauhub English: <http://www.macauhub.com.mo/en/>

AIM Reports: [www.poptel.org.uk/mozambique-news](http://www.poptel.org.uk/mozambique-news)

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