



THE FALL-OUT FROM THE MOZAMBICAN ‘SECRET LOANS’ SCANDAL

**UNDERSTANDING THE PROMISES AND PERILS OF
INTERNATIONAL RESPONSES TO GRAND
CORRUPTION**

Simone Haysom

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Author

Simone Haysom is a Senior Analyst with the Global Initiative (GI) with expertise in corruption and organized crime, and almost a decade of experience conducting qualitative fieldwork in challenging environments. Between 2010 and 2013, she worked for the Overseas Development Institute in London, researching urban displacement in the Middle East, Central Asia, and Africa, and humanitarian policy in conflict zones. Before joining the GI, she worked as a freelance consultant, researching issues related to conflict, development and organized crime for organizations including Médecins Sans Frontières, the Institute for Security Studies, and the University of Cape Town. She has a Mphil in Geography (Environment and Development) from the University of Cambridge, where she was a Gates Scholar and was a Visiting Academic at the School of African Studies, at the University of Oxford.

Introduction

In the wake of the financial crisis in the West in the late 2000s, international banks faced huge pressure to find clients to which to lend money at higher interest rates than those in developed world. During this time a large number of loans were contracted with entities in Africa, which began riding a boom brought on by high commodities prices, which peaked in 2014. Africa was “rising” and investors wanted exposure to the high returns these risky markets could generate. Mozambique, which had discovered enormous offshore natural gas deposits in 2010, was an enticing market.

In Mozambique, decades of economic liberalization and pressure to attract foreign direct investment had led to the creation of a predatory and unaccountable political and economic elite. An entrenched ruling party, Frelimo, operated with weak constraints on its use of power and government was characterised by systemic corruption.

In 2011 a Lebanese shipbuilding conglomerate saw the perfect opportunity in this combination of conditions and worked with bankers at one of the world’s largest banks, Credit Suisse, to make use of it. Between 2013 and 2014, senior officials in the Mozambican government contracted a number of non-concessionary loans, ostensibly to create and finance three state-owned companies which would carry out maritime activities. These loans were taken out in secret and illegally and amounted to over \$2 billion dollars – almost 13 % of the country’s Gross Domestic Product (GDP) at time they were discovered in 2016.¹ Their discovery precipitated an economic disaster for the country, one of the world’s poorest: donor aid was cut off, the currency devalued and rating agencies downgraded the country’s investment status. Almost immediately, Mozambique began to default on the loans.²

In the two years that followed the discovery of the loans, several enquiries discovered that the state-owned companies were not, had never been and were never likely to be, viable commercial entities. Other justifications – such as that the loans had been used for military spending

1. “A \$2bn loan scandal sank Mozambique’s economy”, *The Economist*, 22 August 2019. www.economist.com

2. T. Coloma & L. Fauvel, “La crise financière du Mozambique : Un pays modèle remis en cause”, *Notes de l’Ifri*, July 2017.

on sensitive issues of national security – wore increasingly thin. The chances that the individuals responsible would be held accountable looked slim. The Mozambican government had made no arrests, donors were preparing to resume more or less normal financial relations with the government, and the United Kingdom (UK) Financial Conduct Authority (FCA), the most appropriate regulator to take on violations by banks and their employees, had downgraded its own investigation into the loans into regulatory, rather than criminal, matter. Moves were afoot to restructure loans in way Mozambique could begin the Sisyphean task of repayment of all loans, including the illegal ones, which would likely see creditors be repaid in gas revenues. Citizens of one the poorest countries in the world were paying the price for a loan scam created by an entrepreneurial team of corrupt bankers and businessmen and entered into illegally by politicians who hadn't even told them the debts existed.

But, the tantalizing, if extremely precarious prospect, of some form of accountability arose when former Mozambican Finance Minister Chang was arrested by South African authorities on the request of the United States (US) government, who wanted to extradite him to face charges in the New York Southern District Court. Days later, under the same indictment, British authorities arrested three former Credit Suisse bankers: Andrew Pearse, Surjan Singh and Detelina Subeva. In New York, Jean Boustani, an executive at the holding company Privinvest, was also arrested.

The arrests have had acute political fall-out in Mozambique, and have triggered a wave of domestic arrests. They also energized civil society activism on the subject, and propelled the issue further into the international limelight. In South Africa, it ignited hope of a more progressive regional role in supporting accountability and democracy, or at least, transactional international co-operation on tackling its own corruption problems. Pressure once again began to build on other jurisdictions implicated in the loans – such as the UK, and United Arab Emirates (UAE) – taking action.

But as of today, Jean Boustani has been acquitted on the grounds of lack of jurisdiction, and Chang remains in South Africa. As such, prospects for full disclosure of the way the loans came about, complete identification of the parties responsible and accountability for their actions, remains in doubt. The fall-out from the Mozambican Secret Loans scandals exposes the many difficult and shifting political calculations that affect the international collaboration against grand corruption.

Background: The Loans and the Discovery

This paper comes after the IFRI report from July 2017 covering the discovery of the loans, and focuses on revelation made from mid-2017. The Secret Loans scandal involves a complex mix of separately contracted loans and three companies established to justify their existence. The three Mozambican companies are (in order of creation):

- **ProIndicus**, established in January 2013, under the pretext of being a maritime security project. Mozambican officials later said they thought it would turn a profit providing security to international oil and gas companies who would be operating in gas fields in the north, though these plans were never broached (or negotiated) with the international companies. ProIndicus was co-owned by the Ministry of Defense and the Mozambican Intelligence Service, SISE (Serviço de Informação e Segurança do Estado), and it was the front for a syndicated loan between Credit Suisse and VTB which amounted to \$662 million.
- **Ematum** (Empresa Moçambicana de Atum), established in August 2013, under the pretext of being a tuna fishing enterprise. This was co-owned by the state holding company (IGEPE), the state fishing company (Emopesca), and, again, the Intelligence agency, SISE. Eurobonds – publicly traded bonds – were issued to raise the finance for this loan, which was arranged by Credit Suisse, VTB and BNP Paribas. This was the largest loan, of \$850 million.
- **MAM** (Mozambique Asset Management), established in May 2014, under pretext of building and providing shipyard services, in particular to companies operating in the northern gas fields. This was almost entirely owned by the intelligence service, but the other companies each had a 1 % stake. This was again financed through a syndicated loan, arranged by VTB, for \$535 million.

António Carlos do Rosário, a senior SISE official, was made the CEO of all three companies. Information about these companies and their loans first began to leak in 2013. In August 2013, President Armando Guebuza, French President François Hollande and French-Lebanese billionaire, Iskandar Safa, who is the owner of Prinvest, the shipbuilding

conglomerate which was the sole-supplier for the loans, attended a ceremony which celebrated the contract with a shipyard in Normandy, to supply some of the ships that would later be delivered to Maputo – this was hailed as a coup for French industry. And while parliamentary approval was never secured for the Ematum loan, the bonds were publicly issued – which is how the press and IMF first got wind of them.

The EMATUM bond issue immediately raised red flags for the IMF and key donors to Mozambique, who began to demand more information. The IMF put an ongoing loan negotiation on pause. At this time, and until 2016, the MAM and ProIndicus loans remained entirely secret. For three years it looked like the Ematum bonds were an isolated incident that could be resolved, and renegotiated under more favorable re-payment terms for the Mozambican government in exchange for some limited disclosures. In November 2013, the Mozambican duly admitted that \$500 million of the Ematum bond had never been for fishing, and claimed it for military purchases. \$500 million was duly transferred to the state budget, with \$350 million remaining with the private company, Ematum.

The Discovery

All of this occurred under the administration of President Armando Guebuza. After President Filipe Nyusi took office in January 2015, relations with the IMF were normalizing again and stand-by credit was agreed. In March 2016, the Eurobonds were replaced by a new issue of Mozambique government bonds. The documents on which the consent of shareholders for this swop did not mention the ProIndicus and MAM loans, and so presented a misleading picture of Mozambique's foreign debt situation. A month later, the Wall Street Journal revealed³ the existence of over a \$1billion in loans - the MAM and ProIndicus loans - which had been hidden and the Secret Loans scandals was revealed to Mozambican citizens and the world.

In reaction to these revelations, the IMF and the “G14”, a coalition of donors that provides budget support⁴, united in cutting off financial aid to the government and demanded independent inquiries into the debts. The Mozambican Parliament began its own commission and the Attorney General's Office (Procuradora-Geral da República, PGR) agreed to appoint

3. J. Wernau. “IMF Suspends Lending to Mozambique”, *Wall Street Journal*, 15 April 2016. www.wsj.com

4. The G14 is composed of Austria, the African Development Bank, the World Bank, Canada, Spain, Finland, France, Ireland, Italy, Portugal, United Kingdom, Sweden, Switzerland and the European Union.

American auditors Kroll, to be paid for the Swedish government, to conduct a forensic analysis.

The Parliamentary Commission of Inquiry into the Situation of the Public Debt (hereafter: Parliamentary Commission) was the first to find that the three companies had never been viable. Though there had been feasibility studies, these used unreasonable or unsustainable assumption and ignore risks and limits imposed by basic facts about operating in Mozambique, in order to project high future profits for the three companies - profits which would allow them to amortize their respective debts in a handful of years.⁵ Yet in 2016, three years after the debt had been contracted and the ships delivered, they spent most of the year docked. Do Rosario told the state auditor that the companies were “technically bankrupt”.⁶ Though it was projected to catch 20,000 tons of tuna by the feasibility studies (prepared by the lender), Ematum never caught more than 200 tons.⁷

Former Finance Minister Manuel Chang and former SISE senior official António Carlos do Rosário admitted the main purpose of the Ematum loan had never been fishing. In the Parliamentary Commission, he and do Rosário both maintained that \$500 million was destined for the Ministry of Defense in order to respond to “urgent threats”. These urgent threats were a matter of “national security” that meant that the loans had to be kept secret. The Ministry of Defense, for its part, denied that it was consulted or said it did not know how all the money had been spent, and that the equipment it had received was inappropriate for its needs.⁸

The Kroll audit, which began work in November 2016 to attempt to conduct a forensic analysis, was not able to get to the bottom of this mystery either. In June 2017, Kroll’s audit identified the individuals responsible for the loan’s mismanagement and confessed violation of the law, but identified people only as individual A, B or C, without names. The Kroll enquiry confirmed, and deepened finding made by the Mozambican parliament. The enquiry claimed bad guarantees were knowingly given, that the businesses had never had business plans or any hope of turning over revenue to pay interest, and that even on paper companies were

5. English summary of the Parliamentary Commission provided in Mozambique News Reports & Clippings, number 359. 13 February 2017, bit.ly/mozamb

6. Translated from Portuguese from the report of the Administrative Tribunal (Tribunal Administrativo - state auditor). See Mozambique News Reports & Clippings, number 359. 13 February 2017, bit.ly/mozamb

7. English summary of the Parliamentary Commission provided in Mozambique News Reports & Clippings, number 359. 13 February 2017, bit.ly/mozamb

8. English summary of the Parliamentary Commission provided in Mozambique News Reports & Clippings, number 359. 13 February 2017, bit.ly/mozamb

overcharged by \$700 million. Furthermore, even now that all this had been revealed, senior management officials still did not appear to have any plans to ensure they were operational in the future.⁹ The Mozambican government was also still refusing to account for how \$500 million diverted to the Ministry of Defense had been spent, and co-operation with the Kroll audit had been weak at best.¹⁰

By this time, Kroll and the parliamentary commission had already established that the loans were illegal: they had violated the ceiling on loan guarantees in the budget law, and a clause in the Mozambican constitution which states that only the country's parliament, the Assembly of the Republic, could authorize such debt.

Despite these findings, there were a distinct lack of consequences for any of the people who had been involved. The international parties, Credit Suisse and financial consulting firm Palomar, both denied the finding the Kroll enquiry. (Palomar was set up by bankers formerly of Credit Suisse, who had been involved in structuring the loans and is owned by the Prinvest Group). Credit Suisse said the findings were “incorrect and misleading” and Palomar that the report “has flaws, is incomplete, and contains a number of misleading and wrong statements”.¹¹ Although a case was opened by Mozambique’s attorney general when these findings were revealed, none of the Mozambican individuals identified as culpable were arrested then.

The economic cost of the scandal was born by local population. In 2014 Maputo had been chosen by the International Monetary Fund (IMF) to host its “Africa Rising conference” in recognition of Mozambique’s economic growth of over 7 % percent per year over the previous two decades.¹² In 2016, already hit by the commodities prices crash¹³, the

9. The Kroll executive summary states: “Kroll’s work has not identified a coherent business plan to bring the assets for the Mozambique Companies to an operational status which would enable them to generate revenue in the foreseeable future. Further, meetings with senior management from the Mozambique Companies did not provide any further understanding about future plans to make the assets operational.” Kroll. 2017. Independent audit related to loans contracted by ProIndicus S.A., EMATUM S.A. and Mozambique Asset Management S.A. Report prepared for The Office of the Public Prosecutor of the Republic of Mozambique. www.open.ac.uk

10. Do Rosario told the media that he had kicked the Kroll auditors out of this office because they had wanted to question him about “matter of national security”. B. Namhire and M. Hill, 2017, “Mozambique Hidden-Debt Companies' Head Defiant After Audit”, *Bloomberg*, 30 June 2017, www.bloomberg.com

11. Club of Mozambique, 2017, Kroll did not request information to Palomar, resulting in a misleading and incomplete Report: Spokesperson – Unabridged, clubofmozambique.com

12. “Mozambique’s dramatic economic reversal”, *World Finance*, 11 July 2018, www.worldfinance.com

13. World Bank, “Africa: Low Commodity Prices Continue to Impede Growth”, 2016, www.worldbank.org

discovery of the loans generated an unprecedented economic crisis. The value of the loans was equal to 13 % of the country's GDP in 2016 (\$14,5 billion), and three Mozambican companies at the center of the scandal began to default almost immediately after their discovery.¹⁴ Soon after discovering the hidden loans, the IMF halted loan disbursement and a group of shocked donors cut off their direct budget support which had an impact on delivery of public services by the government.

The metical, Mozambique's currency, lost more than a third of its value against the dollar. The government is still maintaining that it should honor the debts and is in negotiations to restructure them.¹⁵ The public debt ratio is expected to reach 130.3 % of GDP in 2022.¹⁶ Nothing threw the tragedy of this economic reversal into relief like the devastation of Cyclone Idai in 2018 (and later, Kenneth), which devastated coastal communities near the large city of Beira, killing over 600, destroying crops and infrastructure and ultimately causing huge damage to the tune of \$2,2 billion¹⁷ – almost the cost of the Secret Loans Debt – about which the government said it is no position to fund recovery.¹⁸

The arrests cometh

The US indictment decisively changed the domestic discourse about Mozambique loans. Since 2016, the US DoJ and other US agencies had been investigating the Secret Loans scandal, and the investigation culminated in the indictment and arrest of several figures in late 2018 and early 2019. The indictment triggered other legal processes in other jurisdictions, which were able to rely on this information contained in it to substantiate their claims. This is fundamentally altered the international momentum towards accountability for the injustice of Mozambique's economic ruin, a momentum that continues as revelations from the ongoing trial disseminate to legal teams around the world.

14.. "A \$2bn loan scandal sank Mozambique's economy", *The Economist*, 22 August 2019, www.economist.com

15. M. Wirz, "Mozambique and Bondholders Near \$900 Million Restructuring", *Wall Street Journal*, 2019, www.wsj.com

16. P. O Orosa, "Mozambique, entre la desazón por el escándalo de las deudas ocultas y las dudas sobre el proceso de paz", *Publico*. 14 October 2019, www.publico.es

17. This includes damage in Zimbabwe and Malawi, which were also affected, though to a lesser extent than Mozambique. Global Catastrophe Recap, First Half of 2019, thoughtleadership.aonbenfield.com

18. The Mozambican government has requested aid and taken out more debt to fund recovery programmes. For example, see UNDP and Mozambique Government launch post disaster recovery facility for Cyclones Idai and Kenneth, 2019: www.undp.org ; as well as reporting on the consequences of further indebtedness related to post-disaster recovery: "Mozambique faces climate debt trap as Cyclone Kenneth follows Idai", *Climate Change News*, 2019, www.climatechangenews.com

The US Indictment also turned away more decisively from the idea that the companies were intended to succeed, or that the secret nature of the loans was related to national security concerns, and paints a picture of enterprise established with primary purpose of personal and corrupt gain by various individuals, within the Mozambican government, international banks, and multinational corporations.

The indictment alleged that the three state-owned companies were never intended to undertake maritime projects (military or commercial) but were created to act as “fronts” for Chang, Boustani and the three bankers to enrich themselves. They said the defendants concealed the misuse of the funds and misled investors in the United States and elsewhere about Mozambique’s creditworthiness, leading them to buying government backed bonds without understanding the risks. Many of the bribe monies and fraudulent profits paid to Boustani and the Credit Suisse bankers passed through accounts in the United States, and specifically those in New York. The indictment “alleges a brazen international criminal scheme in which the accused conspired to steal approximately \$200 million in loan proceeds that were meant to benefit the people of Mozambique”.¹⁹ Of that, \$150 million went to Mozambican officials and \$50 million to the three Credit Suisse staff.²⁰

The indictment named eight individuals (see below) who were, or were formerly, Credit Suisse employers (all three of whom were employed by Credit Suisse in its London office at the time of the loans), senior Mozambican state officials (and their middleman), or employers of the sole supplier, Prinvest, based in Abu Dhabi. It paints a picture of substantially international scam: the accused are citizens of Mozambique, Great Britain, New Zealand, Bulgaria and Lebanon, and criminal offences are alleged to have taken place in London, the UAE and Maputo. Of the eight, five were arrested in various locations: South Africa (Chang), London (the bankers) and in New York (Boustani).

Boustani was acquitted in December 2019 by a jury who were not convinced that the US court had jurisdiction over his activities, but the charges still rest against the other accused.²¹

19. US Department of Justice. 2019. Mozambique’s Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme that Victimized U.S. Investors: www.justice.gov

20. US Department of Justice. 2019. Mozambique’s Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme that Victimized U.S. Investors: www.justice.gov

21. “Salesman Cleared in \$2 Billion African Scam in Blow to U.S.”, *Bloomberg*, 2 December 2019, www.bloomberg.com

The accused:

- ▀ Manuel Chang, the former Minister of Finance of Mozambique. Chang is said to have personally received \$5 million.
- ▀ Antonio Rosario, the SISE official who headed the three companies, who allegedly received more than \$12 million from the scheme.
- ▀ Teofilo Nhangumele, who acted as fixer between the bankers and Prinvest, and the Mozambican officials.
- ▀ Jean Boustani, from Lebanon, Senior Executive at Prinvest, an international shipping conglomerate in Abu Dhabi, who allegedly personally received at least \$15 million.
- ▀ Najib Allam, from Lebanon, Chief Financial Officer of Prinvest.
- ▀ Andrew Pearse, from New Zealand, formerly a Credit Suisse managing director who orchestrated the secret loan deal and received the largest personal payment, \$45 million.
- ▀ Surjan Singh, from Great Britain, formerly managing director in the Global Financing Group, a division in the Credit Suisse London office which dealt with global markets.
- ▀ Detelina Subeva, from Bulgaria, formerly Deputy Director of the Global Financing Group at Credit Suisse.

Three of the accused are not in US custody. Antonio do Rosário and Teofilo Nhangumele have been arrested by the Mozambican prosecuting authority and will not be extradited to the US. Najib Allam has not been arrested. Three are also “Mozambican co-conspirators” who are not charged, presumably because they cooperated with the US Department of Justice. Neither Credit Suisse nor VTB, a Russian bank which was party to the syndicated loans, are named, nor is BNP Paribas, a French bank which appears to have been involved in restructuring the EMATUM bonds. The indictment appears to take at face value Credit Suisse’s claim that the bankers deliberately evaded controls put in place to avoid corruption and fraud, and this why the employees are being charged individually. It is likely that the US was not able to establish jurisdiction related to the role VTB’s employees, as VTB was substantially involved in the MAM loan. BNP Paribas, on the other hand, has never been accused of having a direct role

in bribery and very little has been revealed about their role, even to the Kroll auditors.²²

The four suspects in custody were charged with conspiracy to commit wire fraud, conspiracy to commit money laundering and conspiracy to commit securities fraud. The former Credit Suisse bankers were also charged with conspiracy to violate the Foreign Corrupt Practices Act (FCPA) Anti-Bribery and Internal Controls Provisions, due to the use of Credit Suisse accounts in New York to pay out bribes. In the months following their arrest, the three former Credit Suisse bankers all plead guilty to some of the charges they faced, leaving only Jean Boustani, the Prinvest executive, to defend himself in the trial that took place in the Southern District Court of New York over October and November 2019 (hereafter: The Boustani trial).

Mozambican Fall Out

The Secret Loans have, unsurprisingly, turned into a key political issue in Mozambique. Though - with a breakaway Renamo military cell operating in the center, and an armed insurgency in Cabo Delgado - they are not the only issue plaguing his time as President, the Secret Loans present a liability for President Nyusi.

As mentioned above, the United States has charged Mozambicans in the case, and the indictment also mentions three other co-conspirators who have likely already cooperated with the DOJ. But Chang and do Rosario could not have acted alone and likely had accomplices and “protectors” in the country’s top hierarchy at the time of the loan operation. The actions taken by the Mozambican authorities can so be described as “damage control” rather than full investigation.

Shortly after US indictment, in February 2019, the Mozambican Attorney General’s office (PGR) indicted Manuel Chang, Deputy Minister of Finance, and indicted and preventatively arrested four others. In August 2019, the PGR finalized charges against a total of 20 individuals, ten of whom have been arrested.²³ These twenty include people close to, or holding, extremely senior positions in former President Armando Guebuza’s government: Ndambi Guebuza, the son of former President Guebuza; Ines Moiane, the personal secretary to former President

22. See 5.3.7 “Role of BNP Paribas” in Independent audit related to loans contracted by ProIndicus S.A., EMATUM S.A. and Mozambique Asset Management S.A. Report prepared for The Office of the Public Prosecutor of the Republic of Mozambique, Kroll, 2017.

23. “Mozambique launches legal action over \$2bn debt scandal”, *The Citizen*, 9 August 2019, citizen.co.za

Guebuza; and the two former directors at SISE, Gregorio Leao Jose de Barros and Antonio Carlos do Rosario (who was chief executive of the three state companies for which the debt was contracted). The charges against them include corruption, money laundering, criminal association, possession of prohibited weapons, blackmail, abuse of office and the falsification of documents.

It is not clear if the list of suspects who will be charged is closed. The February arrests were largely seen as damage control - an attempt to strengthen the government's case that Chang should not be extradited to the US but should face charges in Mozambique. The timing of the later tranche of arrests came close to the run-up for general elections in mid-October. It does suggest that Frelimo perceives the Secret Loans scandal to be bad for its legitimacy and is trying to pacify critics who complain that the party has not acted against its own.

It is not clear how convincing these actions have been - some claim that the involvement of senior Frelimo officials and the punishing economic consequences have cost Nyusi support among the traditional Frelimo electorate. Certainly, to the urban media and civil society actors they are seen as being unconvincing in light of the long time lag between the disclosure of the loans and the arrests. The February arrests came 18 months after the findings of the Kroll Report, and were read as an act of self-preservation (to forestall the Chang extradition) rather than as a credible pursuit of justice. Courts in Mozambique are not considered to be fully autonomous from the interests of the ruling party. Questions remain over whether they will pursue their role impartially, if indeed the process is allowed to proceed even further.

It is worth pausing on this note to consider how slim the prospects for accountability from senior political figures are in general. Frelimo, the ruling party, has been in power for 42 years. This very long rule is tarnished by a lack of accountability for corruption and repeated accusations of electoral fraud. While the administration of Chissano was also marked by some corruption scandals, it was during the Guebuza administration (2005 to 2015) the boundary between state, party, and the private sector (licit and illicit) truly eroded.²⁴

A 2008 USAID study pointed to a small, tightly interconnected group of business and ruling party elites as recipients of concessionary loans from former state banks (privatized into the hands of Frelimo officials) and given preferential access to state investment deals. During this time,

24. M. Carrie. "Mozambique Slide into One Party Rule", *Journal of Democracy*, Vol 21, Number 2, p151-165.

business ties were said to shape the party's selection of candidates for municipal offices.²⁵ In 2013, the year when the loans were being contracted, a survey by Afrobarometer found that 63 % of respondents saw no difference between the ruling party and the state. At the same time, 66 % agreed or agreed strongly that state resources should only be used for state business and should not be used for political party business.

For years the Mozambican government has promised to take action against corruption and money laundering and to implement its own existing laws, yet it has consistently failed to do so. Financial Action Task Force's (FATF)²⁶ most recent progress report shows Mozambique to be Non-Compliant on most recommendation from its 2011 Mutual Evaluation, or 2015 Progress report. While the repeated excuse has been that relevant legislation is making its way through the system, people close to government has also suggested that the people responsible for enacting the legislation do not want it in place for use against criminals for fear that it might also be used against MPs.²⁷ In April 2019, the Basel Institute of Governance ranked Mozambique the worst out of 125 countries assessed for the vulnerability to money laundering and terrorist financing.²⁸

In August 2019, a government report, completed under pressure from the IMF and published by them, admitted that despite "legislative and institutional efforts, governance and corruption challenges in Mozambique remain of a systemic nature".²⁹ The IMF "defines "systemic corruption" as circumstances where 'corruption is no longer a deviation from the norm but is manifested in a pattern of behavior so pervasive and ingrained that it becomes the norm."³⁰

While, as demonstrated by the parliamentary commission and auditor general reports, Nyusi's administration has made some efforts to unravel the corruption of his predecessors, his position on following up findings with judicial action has been ambiguous. In the run up to general elections in October 2019, it appeared as if the involvement of senior party officials and the cuts forced by the economic crisis might weigh on his support

25. *Ibid.*

26. An inter-governmental body established in 1989 to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

27. S. Haysom, "Where Crime Compounds Conflict: understanding Northern Mozambique's vulnerabilities", Global Initiative against Transnational Organised Crime, 2018, globalinitiative.net

28. Basel Institute of Governance, "Basel AML Index", www.baselgovernance.org

29. IMF, "Report on Transparency, Governance and Corruption". 23 August 2019.

30. *Ibid.*

among Frelimo's traditional electorate.³¹ However, while the elections returned Frelimo to power with a landslide victory, it is difficult to assess to what extent this reflects true support. There have been credible allegations that the victory was substantially inflated by voter fraud and ballot manipulation, as well as violent attacks on election monitors and threats of withholding investment to populations who have voted for the opposition in the past.³²

It is also crucial to understand that the government has not had a unified set of interests in regard to the Secret Loans since Nyusi took power. A comprehensive and impartial investigation in Mozambique is highly likely to implicate former President Guebuza in direct involvement in contracting the loans and the corruption surrounding them - he has already been implicated by the emails included in the US indictment. These include people who Nyusi has, not always successfully, tried to sideline from power since he took control of the party, as such they form a rival internal faction. Nyusi's current position as leader of Frelimo could be strengthened by neutralizing Guebuza and his allies inside and outside the party.

But this could have had two forms of blowback. The first was damage to Frelimo's performance in elections. While this does appear to have been a consideration in the run up to the general elections in October 2019, Frelimo has been returned to power with a large margin, and Nyusi effectively has, on paper, a strong mandate to lead the country, and to sideline rivals in the party. This might allow him to take strong action against the 20 who have been indicted, and perhaps also the former, President Guebuza, against whom there is reportedly a strong case. Recent testimony in the trial of Jean Boustani in New York argued that \$50 million bribe given to Ndambi Guebuza was to get access to his father, the President.³³ However, the second form of blowback has not gone away: further investigations may reveal the involvement of Nyusi or his allies. The factions of Frelimo cannot be so neatly delineated. Several of the Mozambicans who have been indicted by the PGR have ongoing links to Frelimo and may provide important funding which Nyusi cannot afford to lose or hold information which he does not want aired. To go after Guebuza

31. P. O Orosa. "Mozambique, entre la desazón por el escándalo de las deudas ocultas y las dudas sobre el proceso de paz", *Publico*, 14 October 2019, www.publico.es

32. "Mozambique opposition files suit against "massive electoral fraud"", *France 24*, 30 October 2019, www.france24.com ; See also coverage of the murder of election observer Matavele, which an EU observer mission referred to Matavele's assassination as a key event 'exacerbating an already existing climate of fear': EEAS, MOE UE Mozambique 2019 preliminary statement, "Well-organized voting preceded by a campaign marred by violence, limitations to fundamental freedoms and doubts about the quality of the voter register", 17 October 2019, eeas.europa.eu.

33. U.S. v. Boustani, 18-cr-681, U.S District Court, Eastern District of New York (Brooklyn).

safely, Nyusi would have to have been relatively uninvolved in the Secret Loans. But between 2008 and 2014, Nyusi himself was the Minister of Defense in Guebuza administration, a high-ranking position which would have given him a seat at the table in important negotiations – not to mention the fact that Frelimo officials later claimed the loans were contracted for military purposes. Again, testimony in the Boustani trial, has presented evidence that Frelimo – as a political party – was given \$10 million of the bribe monies. Boustani has admitted that \$4 million was given by Privinvest as a “donation” to Nyusi’s 2014 campaign for presidency, and \$1 million to Nyusi himself.³⁴ Ultimately it is becoming harder and harder for Nyusi to carve out a way to punish some of those involved inside Mozambique without any liability to himself. The other moving puzzle piece is Chang’s extradition. If Chang is extradited to the U.S., he will almost certainly strike a deal with American prosecutors in exchange for a lighter sentence. If Chang is finally extradited, Frelimo will have to pursue a different strategy depending on what evidence is extracted from him and put in the public domain. At present, Boustani or Pearse’s testimony can be spun by Frelimo officials as the testimony of a fraudster who may be trying to protect himself, or his own company and associates by blaming Mozambican officials. However, if evidence comes directly from someone who held a very senior government post, like Chang, it will be harder to deflect. Unfortunately, if there is to be full disclosure and accountability, it will likely only come through sustained and organized civil society pressure. Yet again the domestic political environment also constrains civil society activism. In recent years, repressive measures against civil society actors and state critics have also become more frequent and overt. At least 31 people have been assassinated or suffered violent attacks since 2014 - many of these have been members of Renamo, and the assassination took place in the context of renewed military hostilities between the two main parties, but a significant portion of the victims have been judges, lawyers, journalists and academics.³⁵ Assassination, as both a criminal and political tool, is used not just to eliminate individuals but to broadcast a message to a broader audience, dampening other people’s resolve to do what these individuals had done - described power relations and abuse of power clearly, and tried to enforce the rules.³⁶

34. U.S. v. Boustani, 18-cr-681, U.S District Court, Eastern District of New York (Brooklyn). See also “Boustani says Privinvest contributed to 2014 presidential campaign, also to Chang’s “campaign for parliament””, *Club of Mozambique*, 21 November 2019, clubofmozambique.com

35. Civil Society Observatory of Illicit Economies in Southern and East Africa, Global Initiative against Transnational Crime, Risk Bulletin Issue 2, 2019,

36. S. Haysom and H. Rupert, “Mozambique’s quiet assassination epidemic”, Global Initiative against Transnational Crime, 2018, globalinitiative.net

Activists agitating for disclosure and justice around the Secret Loans offences are effectively calling for some of the most powerful politicians in Mozambique to stand trial. It is a fraught and dangerous space to occupy. This can be seen even in petty reactions on the part of the state: when the Centre for Public Integrity (CIP) printed 10,000 T-shirt with "I'm not paying hidden debts" on them, police camped outside their offices, harassed and searched people entering and leaving, and tried to confiscate the shirt. Civil society has still achieved some victories: their advocacy was important in getting the Mozambican parliament to rule that the debt was illegal, and the Budget Monitoring Forum (FMO, Forum de Monitoria do Orçamento), a civil society coalition of 21 NGOs, brought a case to court in South Africa to prevent Manuel Chang's extradition to Mozambique (rather than the US). Outside the region, they have petitioned financial regulators to investigate Credit Suisse and the other banks.

In addition to establishing sanctions - like jail time - for individuals who have been implicated, there is still a considerably amount at stake, in terms of whether the Mozambican people should accept liability for loans which were entered into illegally and without their knowledge.

Much of the Mozambican advocacy around the Secret Loans has come through the FMO. The FMO was established in 2009 by a group of civil society organizations to do technical analysis of the national budget and provide public budget monitoring. Since then its membership has grown and it has become the platform for advocacy around the Secret Loans crisis. The FMO has been advocating since 2016 that Mozambique should not repay the illegal loans. In 2017, Joseph Hanlon argued, for the FMO: "The Mozambican government should not pay \$1157 million in 2013-4 hidden loans to MAM and ProIndicus. In this paper we argue that these loans are to private companies, with no liability to the government. Loan guarantees given by the finance minister violated Mozambican law and the constitution."³⁷ In regard to the \$850 EMATUM loan, Hanlon argues this "is more complex because the government has accepted responsibility. It nationalized the bonds - converting bonds issued by a private company, Ematum, into bonds issued by the government. Nevertheless, the original Eurobonds also were illegal and were misrepresented by the banks. Mozambique cannot refuse to pay, but the bondholders could agree to reduce the size of the debt."³⁸

The US indictment has been game-changing for the activist work – including litigation – that can be done around the Secret Loans. There was

37. English version of Portuguese article published in *Savana*, Maputo, 28 July 2017 by the *Budget Monitoring Forum* (Forum de Monitoria do Orçamento)

38. *Ibid.*

clearly early organizing amongst civil society organization on the scandal - in June 2016, hundreds of people marched in Maputo against the political and economic situation, demanding accountability from the perpetrators of hidden debts and an end to the military confrontations between the government and Renamo. But since Chang's arrest, local activists have felt more free to organize on the issue.

Local activists explain that prior to the indictment, various groups in Frelimo were united in wanting to suppress debate about the loans. Since the indictment, some individuals have changed their position and a faction has formed within Frelimo which wants information about the Secret Loans to come out. The threat of harassment and retaliation has not, however, gone away and activists report finding evidence they are under surveillance.

Since Chang's arrest, Mozambican civil society have been visible in the South African courtrooms hearing the cases related to his extradition. Also since the arrests - not just of Chang, but of bankers at one of the most important global banks - there appears to have been a relative increase in coverage of Mozambican efforts to spread awareness of the situation internationally, and petition legal bodies in various jurisdiction to take action, or perhaps in increase in international organizations and media taking note of Mozambican activities. The US charges strengthened the position of local actors, who can refer to facts established by the DoJ - such as that corruption was key element of the loans. A statement from the FMO said that the indictment "reinforces our view that the Mozambican illegal debt crisis is a consequence of criminal activity spanning various jurisdictions including the UK, Norway, Netherlands, Switzerland and the UAE".³⁹

39. FMO, Media Statement On The Recent Arrests Of The Former Minister Of Finance Of Mozambique, Mr. Manuel Chang In Johannesburg And Three Former Credit Suisse Bankers In London In Connection With The \$2.3 Billion Illegal Mozambican Debt, 5 January 2019, clubofmozambique.com

The International Implications of the Secret Loans Scandal

This scandal has important international implications. It shows the complex web of diverging and converging interests of the international stakeholders and tells a lot about the intricacies and pitfalls of the international fight against grand corruption.

Regional Politics: South Africa's Dilemma

Through its arrest of Manual Chang, South Africa has become a “middleman” and a vital leverage point in this case. Chang was arrested by South African authorities as he transited through Johannesburg *en route* to Dubai in December 2018, and US formally requested extradition in January 2019. Only then did Mozambican authorities express a desire to question and try Chang in their own courts and submit a competing extradition claim. This in turns put some element of accountability in the Secret Loans at the whim of South African politics: according to South African law, the decision to accede to an extradition request ultimately lies with the Minister of Justice, and is, essentially, political. As such, the back and forth on the Chang question, says more about the ANC's factional differences than it does about the case itself.

Tellingly, former Minister of International Relations and Cooperation Lindiwe Sisulu announced in February 2019 that Chang would not be extradited to the US, before South African courts had ruled on the legality of the move. In April 2019, the Kempton Park Magistrate's Court ruled that Chang could legally be extradited to either Mozambique or the US. The National Prosecuting Authority (NPA) had “gullibly” accepted the Mozambique prosecuting authority chief's assurances that Chang's immunity from prosecution had been lifted, so he could and would be

prosecuted on returning to Mozambique.⁴⁰ In fact, Mozambique's National Assembly had only lifted immunity for Chang's detention and questioning by police, not his arrest and prosecution.

The former Justice Minister, Michael Masutha, took the decision to extradite Chang to Mozambique on 21 May 2019, on his last day in office. Masutha's stated rationale was that since the alleged crimes were committed in Mozambique, that was the logical place to try him. In doing so, he appears to have deliberately ignored a memorandum from the justice department's principal state law adviser on international law. This memo itself included concerns from South African legal scholars, Mozambican civil society, the US embassy, that Chang would not, in fact, face prosecution in Mozambique as his parliamentary immunity hadn't been lifted. Masutha was urged to order that Chang be extradited to the US instead - but took the opposite route. Sisulu's February statement reinforces the impression that this decision was made with greater emphasis on political concerns for the relationship with the government of Mozambique, rather than being guided by law. It was this decision that Mozambique's FMO launched a court application to overturn. For its part, the US government expressed "great disappointment" at the decision.⁴¹

The matter appeared to be settled, until the new Justice Minister, Ronald Lamola, made a surprising announcement. On 13 July Lamola announced that he had halted Chang's extradition to Mozambique and was seeking a high court order reversing Masutha's decision to extradite him to Mozambique. Lamola's grounds for this about-turn, his statement said, were that extraditing Chang to Mozambique would be "unlawful and unconstitutional".⁴² It would contravene South Africa's constitution and Extradition Act and the Southern African Development Community (SADC) extradition protocol, on the basis of which the extradition was sought.

The South African government's flip-flopping on the Chang issues potentially reveals something of the internal struggles in the ANC, and in of itself, how sensitive international co-operation on corruption is to political concerns. When Chang was first arrested and Mozambique launched its own extradition request, expert comment on the issue of where he would eventually go seemed split between optimistic Mozambican expectations

40. P. Fabricius, "Is South Africa finally putting the law above politics?", *ISS Today*, 18 July 2019, issafrica.org

41. E. Matwadia, "Former Mozambican finance minister avoids US extradition", *Mail and Guardian*, 23 May 2019, mg.co.za

42. P. Fabricius, "Is South Africa finally putting the law above politics?", *ISS Today*, 18 July 2019, issafrica.org

that South Africa would “do the right thing”, and much more pessimistic expectation from commentators who had more closely followed South African foreign policy since the democratic transition.

The idea that South Africa would abide by the status quo - an omertà for former liberation movement involved in corruption or human rights abuses, held considerable sway. After Masutha’s decision to send Chang to Mozambique, Peter Fabricius, a journalist, wrote: “Reading between the lines, perhaps Masutha – a holdover from the Jacob Zuma administration with all its problems with the law – made his decision in line with the African National Congress’s solidarity with a fellow former liberation movement, rather than the rule of law.”⁴³ Another political analyst wrote that South Africa would be considered by its peers “especially by those who do not usually show a strong stand against corruption, as being lapdogs of American imperialism, rather than pursuing a pan-Africanist agenda, regardless of what the case was about.”⁴⁴

But the new administration of President Cyril Ramaphosa has at least made public commitments to international law and the fight against corruption. Ramaphosa’s pick to the head the National Prosecuting Authority, Shamila Batohi, is a former ICC prosecutor and one of her statements has set aside Zuma-era rhetoric about leaving the court, and reiterated commitments to adherence to international treaties.⁴⁵

Ramaphosa’s may also have an entirely more direct interest in where Chang goes. He is battling a fightback by networks associated with his predecessor and is under considerable pressure to get back money stolen by Zuma, the Gupta and their associates. Ramaphosa recently valued their impact on the South African economy at between R500 billion and R1 trillion⁴⁶ and at least several hundred million is thought to be money which left the country and is stashed, most likely, in Dubai. It is highly unlikely that South Africa will recoup this money without support from US, which has much more far reaching legal jurisdiction and power to compel financial institutions around the world to cooperation with its investigations and sanctions. It is possible that has been a point of negotiation with the US Department of Justice, in which Chang’s fate has been an item on the agenda.

43. *Ibid.*

44. G. Fredson, “Why SA extradited Chang to Mozambique rather than the US”, *Mail and Guardian*, 10 June 2019, mg.co.za

45. “Your days of acting with impunity are numbered’ - Batohi's stern message on first day of NPA job”, *News24*, 1 February 2019, www.news24.com

46. “Ramaphosa says state capture cost SA more than R500bn, overseas criminals will be brought to book”, *Fin24*, 14 October 2019, www.fin24.com

Interestingly, in October 2019, three weeks for an important court ruling on Chang's extradition, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned Gupta family members Ajay, Atul and Rajesh, as well as their associate Salim Essa. Describing them as members of "a significant corruption network" in South Africa, OFAC sanctioned them under the Global Magnitsky Human Rights Accountability Act, which severely restricts their access to the global financial systems and their ability to travel.⁴⁷

South African officials have denied that the US sanctions were part of a quid pro quo which would see the South African justice minister, Ronald Lamola, agree to extradite Manuel Chang.⁴⁸ Three weeks later a South African court upheld Lamola's request for his predecessor's decision to be revoked and handed back the decision over the extradition to him. Chang's lawyers have indicated they will appeal, but it seems likely this bid will again fail. Key to the court decision has been the fact that Chang still enjoys parliamentary immunity, and the Mozambican government claims it is impossible to lift it without him returning to the country. Ultimately, Lamola seems likely to uphold the US request instead.

The Chang case raises a very important decision point for South Africa in this regard - allowing the US extradite him could have numerous benefits for accountability, justice and financial compensation for the victims of the Mozambicans Secret Loans scandal, as well as strengthening international avenues for addressing the odious debt situations which once again plague the developing world. But it could also increase tensions between the two neighboring countries and invite accusations that South Africa is indeed "a lapdog of American imperialism".

The International Culpability and Response to Grand Corruption

Domestic corruption - and the civil society response to it - is only one part of the picture in the Secret Loans scandal. The broader culpability of the international banks involved - namely Credit Suisse and VTB - and the international fight against corruption, is also crucial. The US case takes a stand on corruption through attempting to prosecute through the Foreign Corrupt Practices Act (FCPA). The importance of its economy, its currency and its financial institutions to global finance, also gives it unparalleled

47. US Department of Treasury, Treasury Sanctions Members of a Significant Corruption Network in South Africa, 10 October 2019, home.treasury.gov

48. P. Fabricius, "US Government slaps financial sanctions on Gupta network, SA welcomes US help in 'advancing justice'", *Daily Maverick*, 10 October 2019, www.dailymaverick.co.za

leverage for pursuing the culprits of grand corruption across the globe. But this case also has weaknesses - if other countries, like South Africa, the UK, and the UAE, do not cooperate it with the US, then the case will be limited to revelations that can be extracted from the bankers who have made pleas, which may let Prinvest staff, the banks, and high-ranking Mozambican politician off the hook. So far, the reaction from other powerful and implicated states has been disappointing. Analyzing the different strategies at play, reveals what a complex puzzle of political and financial interests that are brought to bear on Secret Loans scandal and attempts to pursue the parties responsible for it.

The United States' intervention was most likely triggered by an investor complaint, from US investors who had bought the bad Mozambican debt through Credit Suisse. This would also explain why their investigations, and perhaps also their arrests, have focused on Credit Suisse employers and does not seem to have touched VTB, the Russian bank that was also part of the syndicated loans. The US likely lacks a jurisdiction claim over VTB, and the shipbuilder, Prinvest - even its jurisdictional claim over Prinvest employee, Jean Boustani, was challenged by his legal team (though he lost this objection).

The indicted Credit Suisse bankers have all been charged with multiple offences,⁴⁹ including conspiracy to commit wire fraud, conspiracy to commit securities fraud, conspiracy to violate the Foreign Corrupt Practices Act (FCPA) anti-bribery and internal controls provisions, and conspiracy to commit money laundering. They have all negotiated pleas with the US Department of Justice. Tellingly, they have only plead guilty to some of these charges. Detelina Subeva and Surjan Singh have only pled guilty to conspiracy to launder money. Andrew Pearse has only plead guilty to conspiracy to commit wire fraud. Notably absent - from the charges the bankers face - are the violations of the FCPA. This may be a condition of the plea, or because the US strategy for proving state corruption and political abuse of power relies on having access to information that would be extracted from Chang, through a plea or his defense. If Chang remains in South Africa, though delay, or Mozambique, the prosecutors may be limited to pursuing a somewhat narrower case, focused on commercial violations.

49. In full these are: Count One: Conspiracy to commit wire fraud in violation of Title 18 of the United States Code, Section 1349; Count Two: Conspiracy to commit securities fraud in violation of Title 18 of the United States Code, Section 371; Count Three: Conspiracy to violate the Foreign Corrupt Practices Act anti-bribery and internal controls provisions in violation of Title 18 United States Code, Section 371; Count Four: Conspiracy to commit money laundering in violation of Title 18, United States Code, Section 1956(h).

The United Kingdom and the Banks

Perhaps the most revealing symptom of the difficulties of pursuing international cases of corruption is the lack of action by the government of the United Kingdom. Both the offices of Credit Suisse and VTB that were involved in the offences related to the Secret Loans were based in London, yet the United Kingdom does not appear to be undertaking any criminal investigation itself. The Kroll audit itself pointed out the liabilities Credit Suisse had under the UK law it was bound by:

Credit Suisse, as a UK financial institution, has an obligation under the UK Money Laundering regulations to undertake enhanced due diligence where there is the prospect of Politically Exposed Persons ("PEPs") being a party to the financial transaction - in this instance the Mozambican Companies are recognized as state-owned companies and consequently those *responsible officers* i.e., Person A, should be regarded as PEPs. Further, Credit Suisse has an obligation under the UK Money Laundering regulations to establish the Ultimate Beneficial Owner(s) of the Mozambique Companies".⁵⁰

By not providing the extra-scrutiny needed in cases where PEPs are beneficial owners, Credit Suisse might have fallen afoul of UK anti-money laundering legislation. While the Financial Conduct Authority (FCA), Britain's financial watchdog, did launch an investigation in Credit Suisse's activities in 2016, it downgraded the probe to a regulatory investigation in late 2018, saying it did not have the powers to prosecute criminal offences under the UK's anti-bribery legislation. The Financial Times commented that "the U-turn is a boon to the bank as the FCA was previously looking to use its criminal money-laundering powers in what would have been one of the first cases of its kind."⁵¹

The FCA says it is still investigating the bank and individuals for any breaches of conduct rules, and that fines may still be issued. The Jubilee Debt Committee, an advocacy organization that works on global debt issues, called this decision "deeply disappointing".⁵² The UK's attention to the case has certainly been lackluster. While the FCA may be correct in the limitations of its ability to pursue a criminal case, this could be taken up by

50. Independent audit related to loans contracted by ProIndicus S.A., EMATUM S.A. and Mozambique Asset Management S.A. Report prepared for The Office of the Public Prosecutor of the Republic of Mozambique, Kroll, 2017.

51. "Credit Suisse escapes criminal action over \$2bn Mozambique scandal", *Financial Times*, 11 November 2018.

52. Jubilee Debt Committee, "FCA decision to drop Mozambique investigation 'deeply disappointing'", 12 November 2018.

either the Serious Fraud Office or the National Crime Agency. But, in response to enquiries by Jubilee Debt Committee, the Serious Fraud Office has refused to confirm or deny that it is investigating the case, and the NCA has stated that they have no ongoing investigation.

The Swiss financial regulator also reportedly opened a probe into the involvement of Credit Suisse, but has deferred to the UK and US investigations.

The UK however cannot argue that it is allowing the US to do the heavy lifting: though it is not clear why, the US case only names individuals not banks, and does not implicate VTB employees, so the UK is likely the only avenue through which full disclosure of the culpability of these banks will come. Why might the UK be so weak on upholding its stated commitments to fight corruption at home and abroad, and enforce international law? London is already a primary money laundering destination⁵³, and one depressing conclusion is that pressures around Brexit are sapping any latent motivation to crack down on illicit practices. If the UK leave the European Union, London status as a major international finance hub might be at risk, and it will need to remain attractive to major global banks. It might be that the case that London fears pursuing such high profile cases will make it look “unfriendly” to global financial practices.

Credit Suisse

On its part, Credit Suisse has tread a line between cooperation and denial: the bank has cooperated with the US investigation (though it was criticized by the Kroll auditors for not handing over enhanced due diligence documents) but has denied that it shares any institutional responsibility with its former employees. Instead, the bank claims “that the former employees worked to defeat the bank's internal controls, acted out of a motive of personal profit, and sought to hide these activities from the bank.”⁵⁴

Debt advocates have argued that commercial pressure to lend, manifested in the banks internal culture, combined with flimsy internal checks and balances, encouraged the employers to commit the offences.⁵⁵ The US indictment paints a picture of the idea for the loans being proposed and

53. “London’s financial flows are polluted by laundered money”, *The Economist*, 11 October 2018.

54. Credit Suisse statement widely quoted in the press. See “4-Ex-Credit Suisse bankers arrested on U.S. charges over Mozambique loans”, *Reuters*, 3 January 2019.

55. Jubilee Debt Committee, “What we have learned from the US indictment on odious loans to Mozambique”, 2019.

pushed by Prinvest and the Credit Suisse employees, who had to persuade the Mozambican officials to accept proposals and encouraged the Mozambican officials to increase the size of the loans they were taking.

Indeed, the Kroll report provided damning evidence that Credit Suisse financed the loans when the businesses did not have credible business plans and never sought out proof that the Mozambican government had informed the IMF of the loan, which was ostensibly a condition requested by the bank. In the Boustani trial, Andrew Pearse testified that it not uncommon for staff at the bank to have “side deals”.

Russia and VTB

The Russian government has been putting pressure on the Mozambican government to repay the VTB for the \$535 million MAM loan. The VTB bank's loans are a core part of Russia's strategy to expand its influence in Africa,⁵⁶ which it has identified as a “priority international market” after sanction imposed in 2014 for its annexation of Crimea hurt Russian business prospects in Europe. Mozambique is a country where there is a long standing relationship, dating back to the Cold War, between the two countries and they have several military and economic co-operation deals in place. In September, Russia recently deployed – and then, following a disastrous engagement, in November, “strategically retreated” – private military company Wagner to the Cabo Delgado province to fight insurgents that have been attacking the local population and contesting state rule. The two countries are also discussing possible Russian investments in the energy sector.⁵⁷

The Mozambican government has been negotiating new repayment terms for the MAM loan. But in November 2019, in the Boustani trial, one of the Credit Suisse bankers alleged that VTB executive Makram Abboud took \$2 million in bribes.⁵⁸ Abboud is not charged in the US indictment and VTB have denied the allegations. This allegation may create an opportunity for Mozambican to challenge the MAM loan. According to *Bloomberg*, the country's Finance Ministry said in an August memo sent to bondholders that it was assessing whether to honour the state guarantee

56. “VTB Capital May Hire for Asia, Africa in Emerging-Markets Push”, *Bloomberg*, 21 October 2015, www.bloomberg.com; “VTB Bribe Claim May Set Back Kremlin Bank's Africa Ambitions”, *Bloomberg*, 8 November 2019, www.bloomberg.com

57. G.York, “Russian mercenaries regroup after setback in Mozambique”, *The Globe and Mail*, 30 November 2019, www.theglobeandmail.com

58. See U.S. v. Boustani, 18-cr-681, U.S District Court, Eastern District of New York (Brooklyn).

for VTB given the ongoing criminal cases.⁵⁹ As the Mozambican government failed to reach an agreement with VTB to restructure the loan, in December 2019 VTB has launched a lawsuit against the Mozambican state and the MAM in Britain's High Court.⁶⁰

France and Prinvest

The other major company - and individual - who are yet to be charged are the Prinvest Group⁶¹ and its owner, Iskander Safa. Safa is a French Lebanese businessman who is one of the wealthiest people in France, with an estimate fortune of over a billion euros.⁶² He was implicated in several controversial deals and indicted by the French justice but never convicted.⁶³ He is politically connected in France and the Middle East and his business interests are quite diverse (real estate, media and shipyard). He is the owner of two shipyard companies in France and Germany and the majority shareholder of a Greek shipyard company. Safa was present with then Mozambican President Armando Guebuza, French President François Hollande for the 29 September 2013 ceremony at the Cherbourg, Normandy shipyard⁶⁴, where the EMATUM loans first came to light.

The contract to supply the Mozambican companies with ships and other material was given to Safa's company without a public tender, and the company also negotiated the financing arrangements. The Kroll audit found that "the Mozambique Companies, despite repeated requests, have not provided Kroll with any evidence that comprehensive due diligence was undertaken to assess the suitability of the Contractor(s) for the Mozambique Project." In fact, the Kroll audit noted that Prinvest, as well as Palomar had "an expanding role" in the project, which grew to include finding the finance and agreeing contractor fees, restructuring the loan agreement, and taking responsibility for generating revenues for Proindicus.⁶⁵

59. J. Rudnitsky, H. Meyer, and P. Hurtado, "VTB Bribe Claim May Set Back Kremlin Bank's Africa Ambitions", *Bloomberg*, 8 November 2019, www.bloomberg.com

60. E. Rumney, « Russia's VTB sues Mozambique over loan in \$2 bln debt scandal », *Reuters*, 7 January 2020, <https://af.reuters.com>

61. The Prinvest Group includes Prinvest Shipbuilding and Abu Dhabi Mar.

62. "Le 500 plus grande fortune de France : Iskandar Safa", *Challenges*, 2019, www.challenges.fr

63. H. Gattegno, "Iskandar Safa l'insaisissable", *Le Monde*, 7 October 2005, www.lemonde.fr

64. J. Hanlon, "Mozambique should not pay the hidden debt", English version of Portuguese article published in *Savana*, Maputo, 28 July 2017-07-30 by the *Budget Monitoring Forum* (Forum de Monitoria do Orçamento).

65. Independent audit related to loans contracted by ProIndicus S.A., EMATUM S.A. and Mozambique Asset Management S.A. Report prepared for The Office of the Public Prosecutor of the Republic of Mozambique, Kroll, 2017.

All the money raised for the investments - minus fees - went directly to the supplier without passing through the Mozambican government's accounts. Though these companies helped structure the projects and were responsible for generating revenues for ProIndicus, various auditors and commissions in Mozambique have found that there were never credible business plans for the companies. The filings of the US DoJ in its case against Boustani have sharpened a picture of deeply corrupt practices at the company, albeit tied to individual employees.⁶⁶ According to their filings, Boustani helped one co-conspirator open an account in a UAE bank to stash bribes, facilitated the travel of others to the UAE to further the bribery scheme, and secured UAE employment permits for three under false pretenses.⁶⁷

In February 2019, the Mozambique government started legal action in London against Privinvest and some of its units. Privinvest has counter-sued with legal proceedings against the Mozambique government, which included "arbitration to recover losses and damages arising from breach of contract"⁶⁸. Since then, Andrew Pearse's plea statement in his case with the US Department of Justice places culpability on Privinvest representatives, including Boustani, Allam and Iskandar Safa. Pearse alleges that Safa was among those who wired him "millions of dollars in unlawful kickbacks" for arranging financing for the project⁶⁹.

In August, the Mozambican government, in what was again seen as pre-election move, has also sued Safa directly in the High Court of Justice's commercial court in London.⁷⁰ A spokesman for Safa said the entrepreneur denies any wrongdoing and that the English courts have no jurisdiction over him. All other allegations against Privinvest and Safa have been denied.

UAE

The US DOJ case reveals that much of the bribery scheme was carried out in the UAE, and the country is a signatory to the United Nations

66. G. Benoit, "Nouvelles révélations dans le procès de la dette cachée du Mozambique", *Les Echos*, 26 November 2019, www.lesechos.fr

67. R. Messick, "Mozambicans Ask: Will the United Arab Emirates Enforce UNCAC?", *The Global Anti-Corruption Blog*, 3 April 2019.

68. "Mozambique sues French-Lebanese billionaire over debt scandal", *Business Day*, 4 August 2019.

69. United States of America v Andrew Pearse. Transcript of Criminal Cause for Pleading Before the Honorable William F. Kuntz, II United States District Judge. July 19, 2019: 4:00 p.m. United States Courthouse: Brooklyn, New York.

70. M. Hill, "Mozambique Sues Billionaire Safa for Fraud in \$2 Billion Scandal", *Bloomberg*, 1 August 2019.

Convention Against Corruption, which should compel it to open an investigation, with a view to prosecution, where there is evidence that bribes have been paid. The UAE's previous track record on international action against corruption suggests this will not happen.⁷¹

71. R. Messick, "Mozambicans Ask: Will the United Arab Emirates Enforce UNCAC?", *The Global Anti-Corruption Blog*, 3 April 2019.

Conclusion

The US investigation, arrest of key figures and trial of Jean Boustani in 2019 has significantly changed the stakes. Despite the fact that Boustani was acquitted, the legal process has brought a huge amount of information about the corrupt processes and people behind the contracting of loans to light. Many more of the individuals responsible have been identified and named, the profits they made from the deal isolated (and, in some cases, forfeited), and intense international media attention has been brought to the issue, adding pressure on various parties to act.

However, the prospects for further action - particularly action to contest the debts, negotiate better repayment terms, or sue for compensation from the banks or Prinvest - face some headwinds. The Nyusi administration's interests are aligned with those of Credit Suisse and VTB: they would all prefer to draw a line under the US indictment and move on. VTB and Prinvest have launched a legal counter-offensive against the Mozambican authorities in order to get their money back or at least some sort of compensation.

Credit Suisse would like to cauterize the reputational damage around the conduct of the individual bankers who have been charged in the US, and reduce the fines it is likely liable for. Nyusi, despite recently being directly linked to the US legal proceedings, is unlikely to be indicted while he is a sitting President, which gives him at least five years of grace. In the meantime, he is eager to secure access to international credit markets for investments in industries related his country's LNG deposits, and new donor finance. Both would stand his party, Frelimo, in better stead with the electorate, most of whom are poor and also eager to see the fruits of the LNG windfall that has been promised for a decade now. The interests of a "systemically corrupt" and repressive government are therefore aligned with those of key institutional actors in the world of global finance - and they are aligned against further investigation of the scandal and against petitions for debt cancellation, reduction or compensation.