

Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
MOZ 2/2016:

25 August 2016

Excellency,

We have the honour to address you in our capacity as Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 25/16, 26/22, 26/12, 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **state-owned entities in Mozambique having received previously undisclosed Government guaranteed loans amounting to \$1.4 billion USD pushing the public debt stock of the country to levels exceeding 85% of GDP, a level of debt that might be considered unsustainable for a low income country. The volume of debt gives rise to concern that insufficient public funds will be available for ensuring the use of maximum available resources for the realization of economic, social and cultural rights. Information also refers to the alleged intimidation, death threats, abduction and shooting of human rights defenders, who have demanded transparency and accountability after the disclosure of the secret loans.**

As the debt crisis in Mozambique raises the issue of co-responsibility of lenders and borrowers, the Independent Expert on the effects of foreign debt on the enjoyment of human rights and the Working Group on the issue of human rights and transnational corporations and other business enterprises have also sent letters to the London Offices of Credit Suisse, the VTB Group and the International Monetary Fund (IMF). These letters raise concern about the impact of their business behavior and lending decisions and on the enjoyment of economic, social and cultural rights in Mozambique.

According to information we have received:

In April 2016, during the International Monetary Fund Spring meetings it was made public that state-owned entities in Mozambique had received previously undisclosed Government guaranteed loans amounting to \$1.4 billion USD to purchase naval vessels and military equipment and invest in port development. These loans had pushed the public debt stock of the country to levels that might be considered unsustainable, exceeding 85% of GDP. A portion of the borrowed funds was reportedly suspected to have been used for unintended and non-transparent purposes.

Reportedly the London branches of Credit Suisse and VTB Group facilitated three sovereign guaranteed loan packages amounting to 2.3 billion USD during the years 2013-2014. Recipients of these loans were three state-owned enterprises, Empresa Moçambicana de Atum (Ematum), Proindicus and Mozambique Asset Management (MAM). Until April 2016, only loans to the majority state-owned tuna fishing company Ematum, amounting 850 million USD, were publicly known. All three loans were sold as “government guaranteed loans” to investors without receiving the required parliamentary approval as specified by national legislation. The borrowing also reportedly exceeded official public debt ceilings set by national law. The size of the loans contracted without parliamentary approval is substantial and has been estimated to amount to more than two thirds of the annual tax income of the country.

Following the disclosure of these ‘secret lending’ to the state owned entities, the International Monetary Fund suspended its stand-by funding to Mozambique on 15 April 2016. Since then, 14 partner countries as well as the World Bank have also stopped providing to Mozambique budgetary support amounting to about \$250 million USD per year. The International Monetary Fund has furthermore demanded from the Government a “substantial fiscal tightening” and reportedly the Government announced initial plans to put in place an austerity programme which would reduce the overall Government expenditure for 2016 by a minimum of 10 per cent.

A revised budget for 2016 was presented to Parliament in mid-July 2016 reflecting a much more modest budget cut of 1.1 per cent for this financial year, but including higher reductions on education, justice, social action, and water provision, while spending on public health and debt service was increased.

On 8 June 2016, the Parliament of Mozambique agreed unanimously to create a parliamentary commission of inquiry into the country’s public debt. On 14 July the Attorney-General of the Republic announced that his Office will seek international assistance to investigate the previously undeclared sovereign

borrowing, and that the Office will request the appointment of national and international experts to investigate the facts. In addition, the Financial Conduct Authority in the United Kingdom and the Swiss Financial Market Supervisory Authority (FINMA) have reportedly also started to assess the role played by Credit Suisse and the VTB Group in the lending to state-owned entities in Mozambique.

On 8 July 2016 the credit rating agency Moody's downgraded the country's sovereign rating to Caa3¹, as the rating agency believed that it is likely that the government will default on debt payments in the foreseeable future, and especially, on liabilities in the form of debt guarantees.

As most external debt of the country is denominated in US dollars, the strong devaluation of the Metical against the US dollar of about 49 per cent since mid-January 2016 is reported to result in a significant increase of debt service costs.

Regrettably, the debt crisis is hitting Mozambique at a time when the country is facing a severe drought with an estimated number of 1.5 million people in need of humanitarian assistance, including food aid. It should also be noted that despite overall economic growth over the last few years, income inequalities in the country have significantly increased and according to most recent available United Nations Development Programme data more than half of its population live in poverty, surviving on less than 1.25 USD per day. There is already a large percentage of the population in a vulnerable situation within Mozambique that may be seriously affected by the combined effects of the debt crisis and planned fiscal consolidation measures.

Furthermore it has also been reported that human rights defenders and members of opposition parties who demanded public transparency and accountability in relation to these 'secret loans' and expressed concern about the debt crisis have been subjected to attacks, death threats and intimidation following the disclosure of the loans.

On 20 May 2016 a leader of an opposition party who wanted to organize a public demonstration following the disclosure of the secret loans, was reportedly severely beaten by unknown assailants after a failed attempt to abduct him.

On 23 May 2016 Mr. **José Jaime Macuane**, an academic working on transparency issues and a public commentator on the television channel STV, was

The rating Caa3 is the lowest subcategory of the rating Caa which indicates that the rating agency believes that the obligations are judged to be speculative, of poor standing and subject to very high credit risk.

reportedly abducted by unknown persons on his way to work, driven to Marracuene outside of the city centre of Maputo, then dumped on a road, shot four times in his left leg and once in his right leg damaging his femur, and abandoned at the spot. He was found by local residents, who arranged with the support of local police, his transfer to the Marracuene Health Centre for first aid. Afterwards he was transferred by family members to a hospital. According to information received police investigations into the abduction and shooting of Mr. Macuane have not yet led to the identification of any suspects.

Concern is expressed that Mozambique's debt crisis and the suspension of emergency lending and budgetary support could cut the country off from funds that are critical to the delivery of essential public services. Disproportionate debt service obligations, including substantial non-transparent debt contracting and disproportionate debt contracting for security and defence materials, may displace funds urgently needed for the realization and protection of social and economic rights and the attainment of the Sustainable Development Goals (SDG). Increased income inequalities in Mozambique give also rise to concerns about equitable and non-discriminatory access to economic and social rights and the attainment of SDG 10 on reducing inequality within and among nations. We are particularly concerned that Mozambique cannot afford public spending cuts in fields critical to economic, social and cultural rights, such as nutrition security, education or water and sanitation.

We underline that accountability needs to be established, both for lenders and for borrowers. It is therefore important that the commission of inquiry established by Parliament carry out an independent debt audit in order to ensure transparency and accountability. Such an audit should include the three state-owned enterprises, Ematum, Proindicus and MAM, to which funds were provided. Investigations by the Attorney General of the Republic should be conducted with support of national and international experts with the required expertise.

In relation to the private financial institutions that facilitated the lending to state related entities in Mozambique, we express our concern that they may not have exercised due diligence to ensure that their lending respected the national law of Mozambique and international human rights standards. It is therefore important that the lending behavior of Credit Swiss and the VTB Group is also investigated by the responsible foreign national banking supervision authorities.

We express further concern that the alleged intimidation, death threats, attacks against human rights defenders and the abduction and shooting of Mr. Macuane appear to be in direct connection with the legitimate exercise of their right to freedom of expression through their demands for transparency. We are concerned that these incidents may be aimed at silencing voices that are critical of the debt deals, and may have a deterrent effect on a public debate on an issue of significant public concern.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the aforementioned allegations.
2. Could you kindly outline the efforts of the Government to avoid or mitigate potential adverse effects of the debt crisis and planned fiscal consolidation measures on economic and social rights, including the rights to food, social security, health, education, water and sanitation, and the right to an adequate standard of living? To what extent do the planned spending cuts demanded by international financial institutions or the revised budget of the Government comply with the principles established by the Committee on Economic, Social and Cultural Rights (E/C.12/2016/1) and the Guiding Principles on foreign debt and human rights (A/HRC/20/23)?
3. Have any social and human rights impact assessments of potential fiscal consolidation measures been undertaken by the Government or the International Monetary Fund? If so, please provide details.
4. Have any measures been taken by the International Monetary Fund, other international financial institutions or donors to ensure that the suspension of emergency stand-by-lending and budgetary support, including its wider economic effects on access to lending, does not result in undermining core economic, social and cultural rights of individuals and population groups within Mozambique, who bear no responsibility for the alleged irresponsible lending and borrowing?
5. Please indicate the mandate, timeframe and capacity available to the Parliamentary Commission of Inquiry and the Office of the Attorney General? Have any other investigations been undertaken in relation to the lending to Ematum, Proindicus and MAM by other state bodies? Has the participation of international experts in such investigations been considered to ensure maximum independence of the investigations? If so, please provide details.

6. Could you please provide full details about the efforts undertaken to investigate the alleged attacks, intimidation and abduction of human rights defenders and members of opposition parties that have voiced in public concern about the previously undisclosed loans? Have penal, disciplinary or administrative sanctions been imposed on any alleged perpetrators? Please also indicate any remedial action taken vis à vis the victim or his/her family.
7. Please indicate what measures have been taken to ensure that human rights defenders in Mozambique, including those working on issues related to financial transparency and debt, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment or threat of any sort.
8. To what extent have the UN Guiding Principles on Business and Human Rights (A/HRC/17/31, Annex) been considered by the Government in relation to this case? Please indicate if the Government of Mozambique has provided any guidance to business enterprises, including financial business enterprises, operating in Mozambique on their expected human rights due diligence process? Such a process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights, Principles 17-21).

We would be grateful to receive a response within sixty days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's and the IMF and the concerned private financial institutions to clarify the issues in question.

Please accept, Excellency, the assurances of our highest consideration.

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Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Pavel Sulyandziga
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Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the lending to state-linked entities in Mozambique should be analyzed with due regard to the principles of legality, transparency, good faith, co-responsibility of lenders and borrowers, and debt sustainability, in line with the Basic Principles on Sovereign Debt Restructuring Processes (A/RES/69/321), the UNCTAD Principles on the promotion of responsible sovereign lending and borrowing² and the Guiding principles on foreign debt and human rights (A/HRC/20/23, Annex, Principles 23 and 28-32).

According to Article 2 (1) of the International Covenant on Economic and Social and Cultural Rights State parties are required to undertake steps to the maximum of their available resources to progressively achieve the full realization of the rights recognized in the Covenant. This article also includes an obligation on State parties to ensure the progressive realization of economic, social and cultural rights through international assistance and cooperation. It is submitted that secret lending and borrowing without parliamentary approval and the final use of the funds may not comply with this obligation. The Committee on Economic, Social and Cultural Rights has recently outlined in a public statement, in more detail the human rights obligations of States, lenders and international financial institutions in the context of a public debt crisis (E/C.12/2016/1).

The Guiding Principles on Foreign Debt and Human Rights, which were endorsed by the Human Rights Council in June 2012 (A/HRC/20/23, Annex), call upon States to, inter alia, analyze their policies and programmes, including those relating to external debt, macroeconomic stability, structural reform and investment, with respect to their impact on poverty and inequality, social development and the enjoyment of all human rights, as well as their gender implications, and adjust them as appropriate, to promote a more equitable and non-discriminatory distribution of the benefits of growth and services (paragraph 12). The Guiding Principles also underscore that the principles of transparency, participation and accountability should be observed in the lending and borrowing decisions by States (paragraph 28). This entails the full disclosure of all relevant information regarding loan agreements, debt repayments, debt management, outcomes of public debt audits and other related matters and require the effective and meaningful input from all stakeholders (including project beneficiaries) in loan policy and resource utilization decisions. The Guiding Principles further emphasize the need for oversight by relevant representative bodies and civil society organizations (paragraph 32).

² UNCTAD Principles on the promotion of responsible sovereign lending and borrowing, available at: http://unctadxiii.org/en/SessionDocument/gdsddf2012misc1_en.pdf.

In addition, the Guiding Principles call upon borrower States to conduct transparent and participatory needs assessments, as part of their annual debt strategy, in order to ascertain whether they have a genuine need to obtain new loans (paragraph 36). The Principles stress that debtor States should ensure that their level of debt servicing is not so excessive or disproportionate relative to their financial capacity and other resources as to amount to a diversion of their resources away from the provision of social services to all persons living in their territory and under their jurisdiction, including those pertaining to economic, social and cultural rights (paragraph 48). Moreover, debt sustainability assessments should not be limited to economic considerations (that is, the debtor State's economic growth prospects and ability to service its debt obligations) but should also consider the impact of debt burdens on a country's ability to achieve the Millennium Development Goals and to create the conditions for the realization of all human rights (paragraph 65).

According to the Guiding Principles on business and human rights (A/HRC/17/31, Annex), which are also applicable to commercial financial institutions, business enterprises need to respect human rights and should address adverse human rights impacts with which they are involved. Business enterprises should also exercise human rights due diligence and ensure remediation of adverse human rights impacts that they have caused or contributed to (Principles 11, 13, 17, 22). The Guiding Principles furthermore enjoin States to set out the expectation that business enterprises domiciled in their territory respect human rights throughout their operations (Principle 2). In addition, the Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate and peaceful activities of human rights defenders are not obstructed.

With respect to the attacks and intimidation of human rights defenders and members of opposition parties, we would like to refer your Excellency's Government to articles 6 (1), 7, 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Mozambique on 21 July 1993, guaranteeing the right to life and security and not to be arbitrarily deprived of life, the right to be free from cruel, inhuman or degrading treatment and punishment, the right to liberty and security of person, and the right to freedom of opinion and expression, respectively.

We would also like to recall that the right to freedom of expression in article 19 of the ICCPR includes a right to access to information. The right to freedom of expression imposes, as underlined by the Special Rapporteur on the right to freedom of expression, "a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems" (E/CN.4/1998/40).

We also would like to bring the attention of your Excellency's Government to Resolution 12/16 of the Human Rights Council and General Comment 31 of the Human Rights Committee, underlining the duty of states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, and to bring to justice those responsible to combat impunity. (CCPR/C/21/Rev.1/Add.13).

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;

We also wish to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts and by their own security forces. In its General Comment No. 31, the Committee also observed that there is a positive obligation on States to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and

to redress the harm caused by non-state actors. A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). We also want to recall that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 4) establish the obligation of States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions. We urge therefore the Government to carry out a thorough investigation of alleged incidents of attacks intimidation and death threats against human rights defenders following the disclosure of the secret lending, including the alleged abduction and shooting of Mr. Macuane. It is essential to ensure a comprehensive investigation of these alleged human rights violations to prevent impunity.