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 and the Working Group on the issue of human rights and transnational corporations and other business enterprises

REFERENCE: AL
OTH 23/2016:

25 August 2016

Dear Mr. Segura-Ubiergo

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 and Working Group on the issue of human rights and transnational corporations and other business enterprises pursuant to Human Rights Council resolutions 25/16 and 26/22.

In this connection, we would like to bring to the attention of the International Monetary Fund that we have received information that **state-owned entities in Mozambique have been recipients of 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, we are also sending a letter to the London Offices of Credit Suisse and the VTB Group for their respective comments.

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 Caa3[1], 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.

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

---

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.

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.

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 efforts undertaken or considered by the International Monetary Fund 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 International Monetary Fund or the Government of Mozambique? 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?

We would be grateful to receive a response within 60 days. Your response will be made available in a report summarizing the exchange of communications by special procedures of the Human Rights Council with Governments and other entities. This report is presented regularly to the Human Rights Council for its consideration.

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.. The press release will indicate that we have been in contact with the International Monetary Fund, the Government of Mozambique, Credit Suisse and the VTB Group to clarify the issues in question.

Yours sincerely,

Juan Pablo Bohoslavsky
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
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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 borrowing[2] 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), expressing its view that international financial institutions are bound to comply in these contexts with human rights and that lenders should undertake human rights impact assessments of the conditionalities of their lending.

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), underline that International financial organizations have an obligation to respect international human rights. This implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights (paragraph 9). The Guidelines suggest that lenders should conduct due diligence or obtain assurances from Borrower States to ensure that the loans funds will not be wasted through corruption, or economic mismanagement or other unproductive uses in the Borrower State and recommend if this is reasonable foreseeable that lender may not continue with the disbursement of a loan (paragraph 38). However such decisions should not result in a situation in which the relevant State is not anymore able to ensure the progressive realization of economic, social and cultural rights or fails to ensure the satisfaction of, at the very least, the minimum essential levels of each economic, social and cultural (paragraphs 15 and 17). The Guiding Principles also underscore that the principles of transparency, participation and accountability should be

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

observed in the lending and borrowing decisions by States, international financial institutions and other actors (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).

In addition, the Guiding 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).

Finally, we would like to draw your attention to the Guiding Principles on business and human rights (A/HRC/17/31, Annex), which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/4) in 2011 and apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. Guiding Principle 10 says that States, when acting as members of multilateral institutions that deal with business related issues should take certain steps, including that they should "seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights" and "encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights". The Guiding Principles also state that business enterprises should 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).