One Hundred and Twenty-Fifth Sovereign Debt News Update: The Republic of Mozambique v Credit Suisse International and others [2024]: The Responsibilities of Advisory Banks in Sovereign Debt Procurement Under English Law

By:

The African Sovereign Debt Justice Network

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Between 2013 and 2016, three Mozambican government-controlled enterprises discreetly borrowed $2 billion from major international banks to buy a tuna-fishing fleet and surveillance vessels. Mozambique's then finance minister, Manuel Chang, signed guarantees that the government would repay the loans, which were critical reassurance to lenders who would otherwise have avoided the brand-new enterprises. The companies defaulted on the loans, leaving

Mozambique with a $2 billion debt, about 12% of the nation's gross domestic product at the time. A country that the World Bank had designated one of the world's 10 fastest-growing economies for two decades was abruptly plunged into financial upheaval. The scandal was only uncovered in 2016 after Mozambique defaulted on these hidden debts, prompting the International Monetary Fund and international donors to halt funding and plunging the country into an economic crisis. The case of the *Republic of Mozambique v. Credit Suisse International and others [2024]* dated July 29, 2024 and heard in the High Court of England and Wales (Commercial Court) has reinvigorated the prospect of pursuing justice in foreign courts, especially in cases involving complex international financial misconduct and irresponsible lending practices.

Background

As reported in a 2020 AfSDJN Symposium on Sovereign Debt Under Domestic and Foreign Law: Lessons from the Mozambique Constitutional Council Decision of May 8, 2020, the Mozambique Constitutional Council had decided that non-concessional loans totalling 622 million USD borrowed from two London-based banks (Credit Suisse and Russian VTB) was illegal, null and void. In 2022, a Mozambican court gave a verdict on the $2bn "hidden debt" case and a wide range of financial crimes connected to illicit state-backed loans. The court found the loans to be illegal under Mozambique law due to several failures with the loan process, including the failure of parliamentary oversights that should have prevented the government from agreeing to this loan unilaterally and in secret, and the role of the banks in agreeing to loans for the companies regardless of the viability of the guarantees.

However, as is often the case, the loans were governed by UK law. Therefore, in 2019 the Mozambique Attorney General began legal action against Privinvest, Credit Suisse and other parties to the deals. Chang had been arrested in South Africa in 2018 and extradited to the US where he was convicted of fraud and money laundering in August 2024. The Mozambique hidden debt scandal continues to unfold, with ongoing legal proceedings, investigations into public finance management, and discussions about the implications for the country's economic recovery.

All the loans were found to be illegal under Mozambique law, because they did not get parliamentary approval. However, the loans were governed by UK law. In 2019 the Mozambique Attorney General began legal action against Privinvest, Credit Suisse and other parties to the deals in the United Kingdom. The decision in the English case of the Republic of Mozambique v. Credit Suisse International and others [2024] dated July 29, 2024 has been a major development in the debt landscape, and one that requires close analysis. According to Justice Robin Knowles, “The scale and nature of what was able to happen in this case presented systemic threat to Mozambique’s economy.” He ordered one of the creditors, Privinvest, to pay $825 million to Mozambique to cover debt payments the government had already made over the deals, and found Privinvest was liable for $1.5 billion of future debt payments arising from the contracts.

Given the international nature of the financial transactions and the wide-reaching impact of the scandal, the case has involved multiple jurisdictions, including Mozambique, the U.S., and the U.K. The court in New York heard that Chang had pocketed $7m in bribes from the shipbuilding firm Privinvest, but his lawyer said there was no evidence Chang had received "a single penny" and said the projects were approved former President Guebuza and other ministers.

To fully appreciate the significance of this case within the investment landscape, particularly regarding sovereign debt litigation for debt justice, it is imperative to delve into the substantive findings of the case and their implications of transparency and accountability.

Judicial Findings and Analysis

The 2024 UK High Court judgment sheds light on the legal ramifications of the hidden debt scandal. The court found that there was a lack of transparency in the financial transactions that led to the scandal, with significant implications for both the Mozambican government and the financial institutions involved. The judgment emphasizes that the debt was concealed from the Mozambican public and Parliament, a violation of domestic laws that require transparency in government borrowing. The court ruled that the fraudulent loans were not just a breach of legal obligations but amounted to a failure of governance, leading

to severe repercussions for Mozambique's economy and public trust in state institutions. Additionally, the judgment detailed the mechanisms through which the loans were structured, illustrating a complex web of financial arrangements that prioritized the interests of certain private entities over public accountability. The court criticized the lack of safeguards and oversight in these arrangements, noting that this environment contributed to the pervasive corruption that has plagued the country's governance.

One of the critical aspects of the judgment was the court's determination of the liability of Credit Suisse for its role in facilitating the loans. The court found that the bank had failed to conduct adequate due diligence and had not acted in the best interests of Mozambique when arranging the financing. This finding raises significant questions regarding the responsibilities of banks when dealing with sovereign clients, particularly in terms of compliance with anti-corruption laws and ethical lending practices.

As the nation grapples with the fallout from this scandal, both domestic and international stakeholders remain vigilant about such key legal developments.

International Bank Accountability

Credit Suisse has faced ongoing scrutiny from both regulatory bodies and international watchdogs for its involvement in the scandal. In late 2021, UK authorities fined the investment bank $178m over the scandal. That fine was part of a $475m settlement with UK, Swiss and US regulators. In the case of the *Republic of Mozambique v. Credit Suisse International and others [2024]*, the UK High Court ruled that Mozambique is owed over $2 billion due to the fraudulent loans, which were issued without the necessary parliamentary approval and concealed from the public. This ruling emphasizes the legal obligations of both the Mozambican government and the financial institutions involved in these transactions. While Credit Suisse has agreed to pay a settlement related to its role in the arrangements that led to the hidden debt, critics argue that the penalties are insufficient given the scale of the misconduct. This case raises fundamental questions about the responsibility of international financial institutions in ensuring compliance with laws and ethical standards. This case demonstrates a growing emphasis on accountability for financial institutions involved in international lending, particularly in countries

with governance challenges as such lending often leads to cases of odious debt .

Reactions from Civil Society and International Stakeholders

The reaction from leading civil society organizations in Mozambique has been one of profound concern and demand for accountability. Groups such as the Forum de Monitoria do Orcamento (FMO) and other civil society advocates welcomed the commitment of the English Attorney General's Office to continue to combat corruption and hold all those involved in criminal practices accountable. However, they argue that *the victory does not close the chapter on criminal liability for those involved so that situations like these never happen again*. According to a statement released by the FMO, there is need for transparency in the reversal of the amounts that will be returned to the country, and these amounts should be used to reduce the burden of public debt.

Following former Mozambican Minister Chang's conviction in New York in August, 2024, the US attorney for the Eastern District of New York, Breon Peace, said "*[t]oday's verdict is an inspiring victory for justice and the people of Mozambique who were betrayed by the defendant, a corrupt, high-ranking government official whose greed and self-interest sold out one of the poorest countries in the world.*"

In a statement, Debt Justice UK highlighted that while the UK High Court ruling represents a significant step forward, it does not absolve the individuals and institutions involved from their criminal liabilities. They emphasized that further legal actions should be taken to hold those responsible accountable and to ensure that justice is served. Dr Helen Taylor, senior legal researcher at Spotlight on Corruption, said "*[w]hile the judgment is a significant victory for Mozambique, this case has brought only partial accountability and partial compensation for the devastating harms caused to the country's economy and its people. The court's scathing criticism of the bankers who pursued their own profit while enabling grand corruption should be a wake-up call about the need for stronger safeguards in public loans to high-risk countries.*"

While UK officials have highlighted their commitment to supporting Mozambique in recovering from the scandal and ensuring that such incidents

do not occur in the future, UK-based companies and banks have faced increasing pressure to evaluate their involvement in international lending practices, particularly in high-risk environments like Mozambique. There is, therefore, a growing recognition among financial institutions that robust due diligence and ethical considerations must be integral to their operations to prevent complicity in corruption and mismanagement.

Impact on Economy vis a vis 2024 Elections

The Mozambique hidden debt case remains a pivotal issue for the country's governance and economic stability. It is clear that the scandal has had a lasting impact on Mozambique's economy, contributing to a decline in GDP and increasing inflation rates. A 2021 report by the Chr. Michelsen Institute estimated that the loans could ultimately cost Mozambique around $11 billion (around 60% of its current GDP). The institute said the crisis also likely forced nearly 2 million Mozambicans into poverty as international investment and aid slowed drastically and the government cut services to raise money. As of 2023, Mozambique was among the 10 countries worldwide with the lowest GDP per capita according to the World Bank. As a result, the government’s ability to provide essential services has been severely compromised, prompting civil society organizations to call for greater accountability and reform in public finance management.

The economic consequences of the hidden debt have also led to significant social unrest, as citizens face rising living costs and diminished public services. Recent economic forecasts suggest a slow recovery, contingent on successful debt negotiations and the implementation of structural reforms. The longer the country remains in this economic limbo, the more challenging it will be to regain stability and foster growth.

Following the country’s general elections on the 9th of October 2024, the opposition has alleged the polls were rigged throwing the country into further uncertainty. The uncertainty arising from the election makes needs to be resolved expeditiously so that the incoming government prioritises the recovery of the economy and the restructuring of debt. Undoubtedly, there is need for the drafting of new legislation aimed at enhancing oversight of public borrowing and increasing transparency in financial transactions. These reforms and

legislative measures should prevent a recurrence of the hidden debt scandal and endeavour to restore public trust in government institutions. By enhancing the oversight mechanisms and promoting a culture of accountability, Mozambique stands a good chance to rebuild confidence among both citizens and international partners.

Conclusion

More than a decade after the creation of the fraudulent debt, the ruling marks a pivotal step in Mozambique's pursuit of justice and its dedication to strengthening governance for the benefit of its citizens. economic stability and international relations. The implications of the judgment extend beyond Mozambique, as it may set a precedent for how transaction advisors governed by English law are held accountable for their actions in developing countries. The case illustrates the need for enhanced regulatory frameworks that ensure transparency and accountability in sovereign lending practices.

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