

# Mozambique News Agency

## AIM Reports

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## Constitutional Council rules Ematum debt guarantee null and void

Mozambique's Constitutional Council, the country's highest body in matters of constitutional and electoral law, on 4 June declared null and void all acts concerning the loan of US\$850 million contracted by the Mozambique Tuna Company (Ematum) in 2013. Also null and void "with all the legal consequences" is the loan guarantee issued by the government of the time, headed by President Armando Guebuza.

The Constitutional Council was responding to requests from various Mozambican NGOs including the Budgetary Monitoring Forum, from the Ombudsman, Isaque Chande, and from a petition of 2,000 citizens all asking the Council to declare as unconstitutional and illegal the Ematum guarantee.

The Ematum loan entered the General State Account (CGE) of 2014, which was approved by a resolution of the country's parliament, the Assembly of the Republic, in 2016. It was the article in this resolution covering the Ematum loan that the petitioners wanted the Council to declare illegal.

Opposition parties and much of civil society have argued consistently that by approving the 2014 CGE, the Assembly legalised the Ematum loan and its guarantee. The government retorted that the CGE merely stated a fact, that the loan guarantee existed. The Constitutional Council has now come down decisively against the government on this issue.

The loan took the form of the issue of US\$850 million worth of bonds, issued by the banks Credit Suisse and VTB of Russia, on the European market. The proceeds were supposed to go towards purchasing fishing boats and other equipment for Ematum, and for coastal protection. But the petitioners noted that this was not authorised by the Budget Law of 2013. That law set a ceiling of 183.5 million meticaís (equivalent at the time to about five million dollars) on the loan guarantees that the government could legally issue. A guarantee for a loan of US\$850 million smashed through that ceiling.

The CGE did not mention this ceiling and bypassing the resolution on the CGE, the petitioners argued, the Assembly was trying to validate acts that had always been null and void.

When the Constitutional Council asked the Assembly for its reaction to these charges, it claimed that the resolution approving the CGE was not a law but was "a political act", and so lay outside the powers of the Council. The Council rejected this attempt to limit its powers and pointed out that the Assembly had already admitted that the government broke the 2013 budget law by guaranteeing a loan much higher than that covered by the ceiling on guarantees.

That meant the government had "a special duty" to request authorisation for the guarantee. This is because Article 179 of the Mozambican constitution states that such loans, covering a period of more than one financial year, can only be authorised by the Assembly. The Council thought it "indisputable" that the government had violated this article of the Constitution.

Furthermore, the Ematum loan and its guarantee were not mentioned in the 2013 budget, thus violating a basic principle of the law on state financial management which states that no expenditure can be authorised unless it is duly included in the

budget. (The guaranteed loan counts as state expenditure because, if the company does not repay – as has happened – then the state becomes liable, and the guarantee adds to the state's foreign debt).

The government, the Constitutional Council said, had "completely disrespected" both the Constitution and the law by contracting the Ematum debt. The loan and guarantee were thus null and void.

It is now clear that the Ministry of Economy and Finance acted precipitously by entering into negotiations with the Ematum bondholders before the Constitutional Council had given a ruling on the legality of the debt. The latest agreement between the government and the bondholders is only five days old, but in the light of the Council's ruling, it too could be regarded as invalid.

A statement from the Ministry on 31 May said it is anticipated that the Ematum bondholders will be invited to exchange their existing bonds for new bonds, for US\$900 million, with an accrual date of 15 July this year, and maturing on 15 September 2031. Annual interest will be five per cent up until 1 September 2023, and an extraordinary nine per cent from 2023 to 2031.

Under this agreement, Mozambique will pay the interest in arrears every six months, in March and September, starting in March 2020. The capital will be paid in eight equal six monthly instalments of US\$112.5 million on 15 March and 15 September of the years 2028, 2029, 2030 and 2031.

But since the Constitutional Council has now declared the debt and its guarantee null and void "with all the legal consequences", this agreement may be invalid.

Furthermore, the loans to Ematum, and to two other fraudulent companies, Proindicus and MAM (Mozambique Asset Management), are now the subject of lawsuits both in Maputo and in the United States. Key figures in the debts are under arrest, including Guebuza's Finance Minister, Manuel Chang, who is under South African police custody, three former Credit Suisse directors and Jean Boustani, of the Abu Dhabi based company, Prinvest, which became the sole contractor for the three fake companies.

The US indictment, based on a million pages of bank statements, e-mails, transcripts of phone calls and other documents, makes it clear that Ematum was a fraud right from the start. The indictment argues that the fraud was cooked up by senior figures in Prinvest and Credit Suisse and had nothing to do with Mozambique's legitimate fishing needs. Instead, the project, according to the US indictment, was "a pretext to justify the maximum possible loan amount".

## US hopes to overturn Chang decision

The United States Embassy in Pretoria has formally asked the South African government not to extradite former Mozambican Finance Minister Manuel Chang to Mozambique before there is a legal review of the extradition decision, reports the South African publication the "Daily Maverick".

After Chang was detained on 29 December at Johannesburg airport, on the basis of an international arrest warrant issued by the US authorities, both the United States and Mozambique requested his extradition, to face charges in connection with the largest financial scandal ever to hit Mozambique.

Chang was Finance Minister in the previous government, under President Armando Guebuza, and he signed guarantees in 2013 and 2014 for loans of over US\$2 billion from the banks Credit Suisse and VTB of Russia.

The US investigation found that Chang's role went beyond the guarantees and that he was part of a web of corruption that diverted at least US\$200 million of the loan money into bribes and kickbacks. His partners in crime, according to the US indictment, included former directors at Credit Suisse, and senior figures in the Abu Dhabi-based group Privinvest, which became the sole contractor for the three companies.

US prosecutors have charged Chang with conspiracy to commit money laundering, wire fraud and securities fraud, and want him to face trial in New York.

The US extradition request reached the South African authorities weeks before the Mozambican Attorney-General's Office (PGR) put in its own belated request for extradition. It was only after the US indictment that the PGR began arresting people suspected of involvement in the fraud – including the oldest son of President Guebuza, Ndambi Guebuza, and the former head of the intelligence service (SISE), Gregorio Leao.

US Embassy spokesperson Robert Mearkle told the "Daily Maverick" that US law allows Chang to be tried first in the US and then Mozambique. But he cannot be tried first in Mozambique and then in the US, largely because the Mozambican Constitution does not allow the extradition of Mozambican citizens.

Chang fought a legal battle in the Kempton Park Magistrates' Court in Johannesburg against extradition to the US but said he accepted extradition to Mozambique. The Court ruled that both the American and the Mozambican requests met the South African criteria for extradition, and it would be up to the Justice Minister Michael Masupha to decide which country to send him to.

On 21 May, Masupha declared that Chang will be extradited to Mozambique. This was one of the final acts of Masupha as Minister before he lost his position in the government appointed by President Cyril Ramaphosa.

There is now a new Justice Minister, Ronald Lamola, and it is not known whether he agrees with his predecessor's ruling on Chang. According to Mearkle, the US is now seeking "reconsideration of the Minister of Justice's May 21 decision through relevant legal mechanisms".

## President Nyusi calls for speedy distribution of reconstruction funds

President Filipe Nyusi on 1 June asked donors and funding agencies to urgently disburse funds promised at the international post-cyclone pledging conference in Beira.

The President was speaking on the second day of the conference at which donors pledged US\$1.2 billion for reconstruction in the wake of cyclones Idai and Kenneth which struck Mozambique in March and April.

An assessment validated by experts from the World Bank, the African Development Bank (ADB), the United Nations and the European Union put the total requirements at US\$3.2 billion - but it was never expected that this entire sum would be raised at the conference. According to the head of the Mozambican government's post-cyclone reconstruction office, Francisco Pereira, the reconstruction programme covers a period of five years.

Nonetheless, President Nyusi stressed the urgency of putting the promised financing to work "so that the cornerstones of macro-economic stability are not excessively affected". He also said it is crucial to simplify the methods of disbursing the funds, "because the value could be larger, but when the modalities of delivering it are difficult, the intended objectives could be compromised".

"As a government", he continued, "we promise to work with the development partners so that together we can identify more ways of financing reconstruction programmes. Here, today, a third has been promised, and we believe that over time the other two thirds will be obtained". "With each light switched on, with every house that is rebuilt, with every child that returns to school, the hope of the people is reborn, and the certainty that Mozambique will pick itself up from the cyclones", declared the President.

He stressed the need for "inclusion" so that the recovery can occur "in record time", as well as improving transparency which should play an important role in the fight against corruption.

President Nyusi said it was indisputable that the two cyclones had set back the country's social and economic development in many sectors. "Before Idai and Kenneth, the country was slowly but surely emerging from the financial crisis", he added. "But with these two disasters, the growth of our economy, in the coming period, will slow by over half of what was predicted. The 2019 budget law envisaged growth of 4.7 per cent, but the forecasts after Idai and Kenneth point to a growth rate of only two per cent".

The increased budget deficit would have "serious implications for poverty and production", continued the President. "Once again our governance is being put to the test. But we are determined to confront all the adversities".

President Nyusi estimated that 1.5 million people will need food aid from September this year to March 2020 (next year's harvest will start coming in as from April). He warned of "serious situations of thousands of children and pregnant women suffering from acute malnutrition. As for our infrastructure, stretches of road equivalent to 39 per cent of the national road network have been affected, limiting the mobility of over eight million people".

The President stressed that "all we say and decide here is conditional on stability and peace".

## President Nyusi expects definitive peace agreement in August

President Filipe Nyusi and the leader of opposition party Renamo, Ossufo Momade, on 2 June announced in the central city of Chimoio that they have agreed to sign a definitive peace agreement by early August.

The announcement came at the end of a meeting between the two leaders held to assess the implementation of decisions taken at their two previous meetings, held in Maputo on 27 February and 7 March.

The signing of an agreement will not mean the end of dialogue between the government and Renamo. President Nyusi and Momade agreed that dialogue should continue as a confidence-building measure.

Speaking at a press conference at the end of the meeting, President Nyusi said the most important result from their talks “is that we decided that a definitive cessation of hostilities, or the definitive peace agreement, must be signed by early August at the latest”.

The long-awaited demobilisation and disarmament of the Renamo militia (referred to delicately as the Renamo “residual forces”) should begin in June, alongside the integration of the militia members into the defence and security forces, or back into civilian life. Renamo has never revealed how many men it has under arms or the location of their various camps. But they will now have to be brought together in order for the demobilisation to run smoothly.

President Nyusi said legal aspects must be taken into consideration, especially a new Amnesty Law. Such a law must be passed, he warned, “because when people are disarmed, they must be certain that they will not be harassed”.

Disarmament, demobilisation and particularly reintegration will involve heavy costs, President Nyusi said, which the Mozambican government is in no condition to pay. The debt-burdened Mozambican economy was struck another heavy blow when two major cyclones hit the country in March and April. The government and Renamo have thus agreed to organise an international conference to mobilise resources to ensure the reinsertion and livelihoods for Renamo’s “residual forces”.

This would be the second donor conference within the space of a few months. The first was held on 31 May and 1 June in Beira to raise money for reconstruction in the wake of the two cyclones. US\$1.2 billion was pledged – but reconstruction needs, over a five year period, are put at US\$3.2 billion.

As for Momade himself, President Nyusi said the Renamo leader could not live indefinitely in the Renamo military headquarters in Gorongosa district. The government and Renamo would discuss this issue in June and July, the President continued, to ensure that Momade can leave the Gorongosa bush and undertake normal political activity.

Momade echoed President Nyusi’s words, declaring “we reached a consensus that we have to advance, and we have to integrate the Renamo residual forces”. The government and Renamo have already set up a group to deal with demobilisation, disarmament and reintegration “and it will have to start its work”, said Momade.

But would the Renamo forces be demobilised before the general elections scheduled for 15 October? Momade

replied that this all depends on the political will of the two sides. “It’s enough to have the will on both sides for us to hold the elections without having the forces of Renamo in the bush”, he said. “We shall demobilise, and part of our forces will go into the police”.

Currently there is a truce between the government forces and Renamo. Momade’s predecessor, Afonso Dhlakama, declared the truce in late December 2016. It has held since then with no serious violations. There have been no further Renamo attacks on military or civilian targets and no more Renamo ambushes on the roads of central Mozambique.

## Chinese construction project suspended

The Maputo branch of the General Inspectorate of Labour (IGT) has embargoed construction work by the Chinese company China Jiangsu International on a complex in the Costa do Sol neighbourhood.

A press release from the Maputo City Directorate of Labour says the IGT took this measure due to the lack of basic safety precautions on the building site which could have resulted in fatal accidents. During the inspection, the IGT found 50 workers on the site who were working “without the minimum safety conditions. They lacked safety harnesses, and proper working clothes, including protective boots, goggles and gloves. Furthermore, the workers’ toilets were in an appalling condition”.

The Chinese company was violating the regulations on safety and hygiene on building sites. “Given the seriousness of the offences, it was decided to suspend activities on this site”, said the release.

Mozambican legislation states that “in case of serious and imminent danger to the lives, physical integrity and health of the workers, IGT agents may take measures for immediate implementation, intended to prevent this danger, and submitting them for higher confirmation within 24 hours”.

Apart from the embargo on the site, three Chinese workers were suspended, with immediate effect, since they were found to be working illegally in Mozambique.

China Jiangsu International has been given 30 days to clean up its act and ensure that the site is safe. It must then inform the authorities so that there can be a further inspection of the site, on which will depend the lifting of the embargo.

## MDM and PODEMOS register for elections

The Mozambique Democratic Movement (MDM), the country’s second-largest opposition party, and the newly formed PODEMOS (Party of Optimists of Mozambique) on 3 June became the first political parties to register to take part in the general elections scheduled for 15 October.

Any party that wishes to take part in the presidential, parliamentary and provincial elections must register with the National Elections Commission (CNE) between 1 and 15 June. This is a precondition for the later presentation of nomination papers for the parties’ candidates.

The registration consists of delivering copies of the party’s statutes, its name, acronym and symbol, and a list of members of the party leadership. The party must also provide the name of its election agent, with a copy of the party document appointing him, and proof that he or she is a registered voter with no criminal record.

## Terrorist attack in Macomia

At least eleven people died in an attack on 28 May against a passenger vehicle in Macomia district, in the northern province of Cabo Delgado. The independent newsheet “Carta de Mocambique” puts the death toll at eleven, but the television station STV said that 15 people had been killed, three of them Mozambican soldiers.

Eye-witnesses told STV that the attackers, believed to be Islamic fundamentalists, shot at the vehicle, bringing it to a standstill. Eight people were then beheaded, and their bodies burnt inside the pick-up truck. The other seven victims died while medical staff were trying to save them, some in the Quiterajo health centre, and some in the hospital in the provincial capital, Pemba.

A child was abandoned at the scene. It is feared that her parents are among the dead. A woman is missing, believed kidnapped by the insurgents. Her husband, a local teacher, was one of those murdered.

The driver, Abdala Faque, escaped unharmed, but his assistant suffered serious injuries to his right arm and is currently hospitalised in Pemba. It is not clear exactly how many people were on board the truck.

## EDM to sell electricity to Botswana

The publicly-owned electricity company EDM will sell 70 megawatts of power to Botswana under a five-month contract running from May to September, with the Botswana Power Corporation (BPC) paying US\$5 million a month. Botswana is also looking to purchase 150 megawatts for two years starting in April 2020 whilst it rehabilitates its power stations.

In recent years an additional 500 megawatts has come on stream in Mozambique allowing EDM to meet international commitments without compromising Mozambican clients. EDM already has an agreement to sell between 10 and 30 megawatts to Lesotho.

The main buyer of Mozambican power remains the South African electricity company, Eskom. But it obtains the electricity, not from EDM, but from the company Hidroelectrica de Cahora Bassa (HCB), which operates the Cahora Bassa dam on the Zambezi in Tete province.

According to EDM, 32 per cent of the Mozambican population now has access to electricity from the national grid. The government’s target is universal access by 2030.

## Cholera vaccination considered a success

The cholera vaccination campaign that ran from 16 to 21 May in the northern province of Cabo Delgado vaccinated 248,000 people against the disease, according to a report in the daily newspaper “O Pais”. This is just above the target figure of 247,440.

The campaign was launched by the Ministry of Health,

after a cholera outbreak that followed cyclone Kenneth, which hit the province on 25 April. It covered areas where cholera was reported – the provincial capital, Pemba, and the districts of Mecufi and Metuge. The first case was diagnosed on 1 May, and since then 225 cases have been reported. None of the patients have died.

“We consider the campaign a success”, said the Cabo Delgado provincial director of health, Anastacia Lidimba. “Now we are preparing to vaccinate people with the second dose, and that will happen from 17 to 21 June”.

## Former Transport Minister detained

On the instruction of the Central Office for the Fight against Corruption (GCCC), former Transport Minister Paulo Zucula was detained on 4 June according to a report in the news sheet, “Carta de Mocambique”.

Zucula is under investigation on suspicion of taking bribes from the Brazilian construction company Odebrecht in connection with the construction of the international airport in the northern city of Nacala.

Mozambican prosecutors allege that Odebrecht paid a bribe of US\$315,000 to Zucula, who was Transport Minister in the government headed by President Armando Guebuza. A bribe of US\$250,000 was supposedly paid to the then Finance Minister Manuel Chang.

A businessman and architect of Italian descent Emiliano Finocchi was also detained in Maputo, apparently in connection with the same case.

Odebrecht admitted in 2016 that it had paid bribes equivalent to US\$439 million in 11 countries including Mozambique. In a case brought in New York, Odebrecht and a Brazilian petrochemical company Braskem pleaded guilty to paying bribes to officials all over the world. The charges were brought by the United States, Brazilian and Swiss authorities, and the two companies settled the case by agreeing to pay a combined fine of US\$3.5 billion.

Odebrecht admitted to paying bribes of US\$900,000 in Mozambique. Only last year did the names of Zucula and Chang emerge. The alleged bribes paid to the two former Ministers amount to US\$565,000, leaving US\$335,000 unaccounted for. The persons or institutions to whom this part of the bribe went have not yet been named.

Nacala International Airport is the most modern airport in Mozambique but is hardly used. When inaugurated in 2014 the forecast was that it would handle 500,000 passengers and 5,000 tonnes of cargo a year. There were dreams of Nacala becoming a hub linking southern Africa to the Middle East and South Asia. But no foreign airline has expressed any interest in using Nacala. The only scheduled flights are twice weekly flights by Mozambique Airlines (LAM) to and from Maputo. Charter flights of the Brazilian mining company Vale also use the airport. With so little traffic, there is no way that Nacala airport can repay the debt incurred (at least US\$125 million) in building it.

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