



The Supreme Court
Parliament Square
London SW1P 3BD

Wednesday, 04 August 2021

By email only to registry@supremecourt.uk

Your ref: UKSC 2021/0085
CoA Case No: A4/2020/1467

TO WHOM IT MAY CONCERN

Dear Sirs and Mesdames,

Re: Republic of Mozambique -v- Credit Suisse & Ors. (the “Prinvest Case”)

I am writing on behalf of two anti-corruption groups, Transparency International’s Mozambique chapter, Public Integrity Centre (Centro do Integridade Publica) (“**CIP**”), and Spotlight on Corruption, a UK based anti-corruption charity (charity no. 1185872) (“**Spotlight**”).

We understand that permission to appeal the Court of Appeal’s decision ([2021] EWCA Civ 329) is being sought by the Republic of Mozambique. The purpose of this letter is to put into writing our wish to have the opportunity to make representations on permission to appeal, and on the substantive appeal itself should permission be granted by the Court.

May I kindly ask that this letter is linked to the relevant file and put before the judges considering the application for permission. A copy of this letter has been sent to the parties’ legal representatives. May I also ask that the Court acknowledges safe receipt.

The Intended Interveners

(1) Public Integrity Centre (“**CIP**”)

CIP was founded in 2005, and is a Mozambican non-profit, non-partisan, and independent non-governmental organisation. In 2011, it was recognised as a chapter of Transparency International.

CIP has closely followed the circumstances which brought about the Prinvest Case with great interest. The fall-out has been the biggest financial scandal in Mozambique's existence. Its effects are too painful for ordinary Mozambicans. CIP decided to closely monitor all developments in the case and to raise awareness among Mozambican citizens. CIP releases publications related to all important events in the case of hidden debts that occur in foreign jurisdictions such as South Africa, United States of America, United Kingdom. The information is free of charge on CIP's website so that more Mozambicans can follow the events.¹ CIP also collaborates with the local and international press in the exchange of information.

(2) Spotlight on Corruption

Spotlight is a UK-based charity that works to end corruption in the UK and wherever the UK has influence.² Our work concerns *inter alia* monitoring and scrutinising corruption cases in the courts of England and Wales. This includes tracking the implementation and use of the law of England and Wales to ensure that it is working effectively to stave off corruption and identifying ways in which it can be improved. A central tenet of this work is promoting open justice and ensuring that interested parties – particularly those in developing countries – are able to understand and access information on corruption cases in the UK. We also coordinate with non-governmental organisations, journalists, individuals and charities from the countries in which corrupt conduct is said to have taken place. This is not only to keep them abreast of events in the UK but also to inform our analysis and work with textured views of those affected.

Spotlight has been closely following these proceedings and those related to it, of which there are several.³ We have been working closely with partners in Mozambique, such as CIP, and those groups with an interest in the outcome of the case or speak for those affected.

Why the Prinvest Case Matters

We have both become actively concerned about the use of arbitration proceedings as a means to place disputes and subject matter of considerable public importance behind closed doors. Often allegations of the most egregious abuse of trust by public officials, financial institutions, and multi-national companies

¹ See <https://www.cipmoz.org/pt/dividas-ocultas/>

² For more information, visit our website: www.spotlightcorruption.org

³ Our summary of the cases can be found here: <https://www.spotlightcorruption.org/mozambique-and-the-tuna-bond-scandal/>

are aired without wider scrutiny or attention. They involve elected officials, civil servants, and those given the opportunity to assist developing countries lift its people out of poverty. The consequences of these secret proceedings have a profound impact on the citizens of those countries. This case is of no exception.

The Republic has been saddled with an estimated \$2bn in debt for poorly performed contracts which Mozambique says were procured through bribery and corruption. The events at the centre of this case led to the suspension of aid to Mozambique totalling some \$265m per year. This sent an already fragile economy into turmoil from which it continues to limp. The proceedings are complex, with several key actors in the Mozambique government and executive in the frame, in addition to several Western financial institutions.

Any negative decision made against the Republic will be borne by its citizens, their children, and successive governments. The people of Mozambique should be entitled to the answers its elected officials and civil servants give to these allegations, and the findings of fact made by an independent adjudicator. Our preliminary view is that this case will also have a wide-ranging impact on similar cases. This appeal presents an opportunity for the UK's highest court to consider these issues.

Our View on Why Permission Should be Granted

We are in discussions with counsel to see how these issues can best be presented to the Court in a proportionate way that reflects the gravity of the issue. Without prejudice to the direction that advice may take our application, it is likely that we will assist the Court with submissions on:

- (i) The impact on ordinary Mozambican citizens of what has become the “*Tunabond Scandal*”

We have provided a brief *prévis* above on which we intend to expand. For Mozambique, the outcome of these proceedings is of huge significance to its citizens and their well-being which will be felt for generations. It is important detail and context which in our view should be presented to the Court in consideration of the issues.

- (ii) The Court should be slow to bring peripheral allegations of corruption within the ambit of arbitration clauses concerning sovereign states

Our preliminary view on this point is that additional considerations ought to exist when construing contracts concerning sovereign states. The most important is that officials who enter contract on behalf of states are accountable to its citizens. When considering arbitration clauses, it should be assumed and/or implied that allegations of misconduct in the procurement of those contracts should be considered in an open forum. This is to allow those to whom the official is accountable to understand and be informed of the nature and detail of the impropriety that is said to have taken place.

We will write again to the Court with respect to a formal application to intervene under r15 of the Court's rules. I appreciate that this matter is time-sensitive, and would be grateful for an indication of any time-frame within which we may work. If they are available, may we also seek the Court's directions as to how we might acquire the Applicant and Respondents' cases. We will also approach the parties individually seeking these documents. Thank you for considering this letter. Please do not hesitate to contact Joseph Sinclair on the details below if we can assist any further.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'JS', with a stylized flourish at the end.

Joseph Sinclair, Associate Researcher

Spotlight on Corruption

 | E: joseph@spotlightcorruption.org

cc: Messrs Peters & Peters LLP, Signature Litigation LLP, Messrs Slaughter and May