



DAY XXVIII OF THE "HIDDEN DEBT" SCANDAL TRIAL

## **António Carlos do Rosário is questioning the validity of the Kroll report, claiming that it failed to observe the adversarial principle**

- On the fourth day of his hearing, António Carlos do Rosário and his lawyer Alexandre Chivale argued that the report by Kroll, the British company hired by Sweden to audit the "hidden debts, should be considered null and void for not having considered the contradictory presented by the audited companies, namely ProIndicus, EMATUM and MAM. However, Judge Efigénio Baptista rejected the request and argued that the report is valid as circumstantial evidence.

- The Public Prosecutor confronted defendant Antonio Carlos do Rosário with documents that contradict his statements. Nevertheless, the defendant questioned the authenticity of the documents, denouncing several inconsistencies related to their form and content. Moreover, he came to the conclusion that the documents in the possession of the Public Prosecutor, including those submitted by the Prime Minister, are vitiated.



Alexandre Chivale, lawyer of António Carlos do Rosário

António Carlos do Rosário said he participated in the negotiations of the supply contract signed by ProIndicus and the Privinvest group. It was a turnkey contract. That is, ProIndicus handed over all the money to the Privinvest group, and the latter supplied goods and services without being obliged to provide price details. Asked why they preferred a turnkey contract, António Carlos do Rosário explained: “We did not have the expertise and capacity as a country to manage the purchase of the assets. We were starting everything from scratch and we preferred a solution of delivering a complete functional system. Going to a different contract model would have required having a team with the capacity to do evaluation. The Navy technicians were honest in saying that they did not have mastery of the means. What we were saying was that we wanted the best naval assets”.

The defendant admitted that no procurement was done to compare the prices charged by Privinvest and other suppliers. And the explanation was that they could not find another supplier, other than the Privinvest group, that would accept the proposal to provide an integrated system for the protection and monitoring of the Exclusive Economic Zone. The Public Prosecutor asked how they ascertained the transparency of the prices, to which the defendant explained: “We were not looking for individual elements, we wanted an integrated system. Regarding the asse-

ts that Privinvest could not produce, they consulted us to know if they could subcontract companies from a certain country. In addition, we had a Mozambican team that worked with the supplier. We had FADM officers in the places where the materials were being produced to ensure quality”.

The Public Prosecutor questioned whether the Mozambican team did not hypothesize that the Privinvest group would take advantage of the turnkey contract to make overbilling and improper payments. “We bought an integrated monitoring and protection system for the Exclusive Economic Zone and we received the solution. There was never any room for us to think about overbilling or undue payments”

When the Public Prosecutor wanted to ask questions related to Kroll report (a British company hired by Sweden to audit the “hidden debts”), the defendant protested saying that the Attorney General Office has always ignored the contradictory presented by ProIndicus, MAM and EMATUM companies. “Our contradictory has a stamp proving its submission to the Attorney General Office on 18 August 2017. We have been audited and we have the right to present our contradictory. As this is the Court of the Republic of Mozambique I would like you to at least allow us to read our contradictory for the Mozambican people to be informed of our position in relation to Kroll’s allegations.” The judge authorized the defendant’s lawyer to read the contradictory submitted to the Attorney General Office in August 2017 by

the representatives of the three audited companies.

After the reading of the contradictory, the Public Prosecutor questioned the defendant about the overbilling in the acquisition of assets, giving an example of 259 million dollars overpricing in two examples of purchase of boats for ProIndicus alone. Lawyer Alexandre Chivale asked for the floor to challenge Kroll report, arguing that it should not be validated for not having considered the adversarial principle. Nevertheless, the assistant (Mozambique Bar Association - OAM) said that Kroll report has no defect and, if there was a limitation to the exercise of the adversarial process, it was not imposed by the court. “There is no nullity in the process, there is no omission of steps and there is no situation that calls into question the validity of this document as an element of circumstantial evidence,” Vicente Manjate said on behalf of OAM.

Judge Efigénio Baptista also argued that there were no nullities and gave the floor to the Public Prosecutor. “Kroll report has always been in the process and during all this time no nullity was presented. Your lawyers were aware that that report is in the process.” The defendant said he would not answer questions relating to the content of Kroll report. Alexandre Chivale requested the hearing of an auditor to, as declarant explain to the court whether the Kroll report was prepared in compliance with auditing rules. The request was turned down by Judge Efigénio Baptista.

## The Defendant says some documents in the Public Prosecutor's possession were vitiated

Asked what the initial terms and conditions demanded by Credit Suisse to grant financing to ProIndicus were, António Carlos do Rosário replied that he could no longer remember, claiming that too much time had elapsed ever since. Confronted with information from the National Treasury Directorate indicating that Credit Suisse required the Administrative Court approval and Attorney General Office legal opinion to grant the financing, the defendant said he was never aware of that fact. "The law firm Couto Graça & Associados issued a legal opinion for ProIndicus and Credit Suisse to sign the financing contract."

Regarding the document dated 26 February 2013 from the National Treasury Directorate where his signature appears, he said it was vitiated. "I have never signed documents in the capacity of another Ministry staff member. Another point is that the amount that is recorded is USD 327 million, while in fact the real amount is USD 372 million. I want to explain everything for the sake of the truth, but I want to do so based on reliable documents that are in the file." The said document was submitted by the then National Treasury Director, Maria Isaltina Lucas.

The Public Prosecutor insisted on the issue related to the legality of the financing contract of ProIndicus and the defendant said that "all contracts had the approval from the Administrative Court and the Bank of Mozambique". Confronted with the ProIndicus financing contract to show the Administrative Court approval, as he had previously defended, the defendant questioned the document. He explained: "On the page where there are the signatures by ProIndicus representatives (Eugénio Zitha Matlaba and António Carlos do Rosário), in the part reserved for Credit Suisse promoter there is neither name nor signature. Credit Suisse representatives appear on another page and the part reserved for the borrower (ProIndicus) is empty, i.e. there is no signature. But the contract was signed on the same day and in the same place, in the presence of both parties, in Maputo City".

The Public Prosecutor said the documents were officially obtained, through a letter addressed to the Government. "It was the Prime Minister who sent the documents." And the defendant reacted: "The Prime Minister did not have those documents, he asked for them from the Ministry of Finance. Moreover, this very same Ministry of Finance that in 2015 said it did not know about the guarantees issued in



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favour of the companies. I am not surprised to be confronted with these hammered documents. Bring me original and genuine documents, do not hand hammered documents to the Prime Minister".

When confronted with the EMATUM financing contract that the defendant had attached to the process to show the Administrative Court's approval, the defendant did not recognize the document either. "It has a signature similar to mine, but there is no date or place where it was drawn up. I do not know the document; it even seems that in my arrest someone got hammered. It was not me who handed this document to the Attorney General Office. I am getting scared".

Asked why it was the then SISE General Director, Gregório Leão, and not the ProIndicus representatives, who requested the issuance of the guarantee for the initial funding of USD 372 million, the defendant replied that the only thing he knows is that it was the then Minister of National Defence, Filipe Nyusi, who requested the issuance of the State guarantee. And he asked to see Gregório Leão's letter through which he requested the issuance of the State guarantee for the initial financing of ProIndicus. After a few minutes, the defendant began to smile: "That letter does not exist, honourable judge. I was the one preparing the drafts of the letters related to the project for SISE General Director". And the Public Prosecutor admitted that the document is not in the file allegedly because it was not provided by the defendant Gregório Leão.

Questioned about the amendment to the initial contract for the supply of goods and services to ProIndicus, the defendant said he could not remember. When confronted with the document containing the amendments of the contract for the supply of goods and services to ProIndicus, the defendant said that he would not answer questions related to documents extracted from other people's emails. The document in question was extracted from Armando Ndambi Guebuza's email.

António Carlos do Rosário said the amendments to the contract for the supply of goods and services to ProIndicus were made based on instructions from the Ministry of National Defence. "I received instructions from the Minister of National Defence to make amendments and he was receiving information from his staff at the Ministry".

On the amendments to the contract for the supply of goods and services, the Public Prosecutor cited as examples the introduction of boats and aircraft considered by experts to be less appropriate. However, the defendant denied this information and explained as follows: "These boats that the Public Prosecutor says are not capable of navigating in the Indian

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Ocean today are at sea in Cabo Delgado chasing terrorists. There was never a change from twin-engine aircraft to single-engine aircraft. In my project, we have always worked with single-engine aircraft depending on the mission. Those planes are not for people to walk around; they are not for transporting people; they are for surveillance and can be transformed into drones. They are listening to street

opinions and bringing them here".

It is stated in the records that there are goods and services, such as radar stations, that were left undelivered to ProIndicus, despite the contract with the Privinvest group having been paid for in full, but the defendant did not confirm the information. "For security reasons, we did not show all the radars to the Kroll auditors. We showed them those that are in more or less public places, like at Zalala beach. But those radars that are in military servitude zones, we did not show them to the Kroll auditors." When the Public Prosecutor asked whether in Metangula, Vilanculos and Ponta D'Ouro the process of installing radars had already started, António Carlos do Rosário asked for the radars precise locations not to be mentioned for security reasons. The court dismissed the defendant's request and the Public Prosecutor continued to cite the exact location of the radars.

On the amendment to the funding contract - which was initially USD372 million and later USD 250 million was added, the defendant said there was never an amendment. "They were different contracts, one for USD 372 million and another for USD250 million, totaling USD622 million.



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