

Ex-Mozambique Official Nears Extradition For \$2B Fraud Case

By **Stewart Bishop**

Law360, New York (June 26, 2023, 7:49 PM EDT) -- A former Mozambican government minister is expected to soon face fraud and money laundering charges, a New York federal prosecutor said Monday, in the long-dormant "tuna bonds" case arising out of alleged bribery and investor fraud that marred \$2 billion in Mozambican government-backed debt transactions.

In the same case that led to the **bombshell 2019 acquittal** of Jean Boustani, an executive with shipbuilder Privinvest Group, prosecutors now say they are close to extraditing Manual Chang, 67 — who was the minister of finance for Mozambique from 2005 to 2015 — from South Africa.

Prosecutors contend Chang, Boustani, former Credit Suisse bankers and other allegedly corrupt politicians conspired to defraud investors in \$2 billion worth of Mozambican government-guaranteed bonds made and securitized by the Swiss lender and Russian bank VTB, which were purportedly intended to finance maritime projects in the East African nation.

However, over \$200 million was diverted from the loan funds for bribes and kickbacks to Credit Suisse bankers and Mozambican government officials, according to prosecutors, to ensure the projects went forward. Three state-backed special-purpose vehicles that contracted with Privinvest to build tuna fishing, coastal surveillance and shipyard projects ended up defaulting on their debt and missed more than \$700 million in loan payments.

During a conference before U.S. District Judge Nicholas Garaufis in Brooklyn, Assistant U.S. Attorney Hiral Mehta said the government expects Chang to arrive in the U.S. sometime in mid- to late July.

Chang has been jailed in South Africa since his December 2018 arrest on U.S. charges in what his attorneys say are appalling conditions, as extradition proceedings dragged on amid a feud between the U.S. and Mozambique over which country gets to prosecute Chang first.

An attorney for Chang, Adam Ford of Ford O'Brien Landy LLP, told Judge Garaufis that it's not certain Chang will indeed be in the U.S. by next month.

In May, the Constitutional Court of South Africa refused to hear appeals from Chang and Mozambique, which both sought to extradite him back home, according to the Associated Press, but Ford said Chang's extradition to the U.S. still requires the approval of a South African government minister — and it's unclear whether that is forthcoming and when.

Chang and another co-defendant located abroad who has yet to appear in a U.S. court, Privinvest chief financial officer Najib Allam, are both aiming to get the charges against them dismissed on speedy trial grounds. Unlike Chang, Allam has remained free in his native Lebanon, which lacks an extradition treaty with the U.S., since the charges were unveiled in January 2019.

An attorney for Allam, Samidh Guha of Guha PLLC, said his client's Sixth Amendment right to a speedy and public trial has been violated. Allam has never set foot in the U.S., Guha said, but has

been unable to leave Lebanon out of fear of arrest, even as socioeconomic and security conditions in that country have been deteriorating rapidly in recent years.

Judge Garaufis put the question to Mehta.

"For years, no action as a practical matter ... the defendant hasn't ever been to the United States," the judge said. "And everything that happened in this fact pattern happened somewhere else, so why [continue to] pursue this litigation against Mr. Allam?"

Mehta said there's always a chance of arresting Allam if he leaves Lebanon, and it's possible that diplomatic relations between that country and the U.S. could change in the future that could allow Allam's extradition.

"The evidence is still fresh," Mehta told Judge Garaufis. "The government could prosecute the case today if we [had to]."

Guha said Allam's situation easily passes the four-part test for determining whether someone has been denied a speedy trial that the U.S. Supreme Court laid out in its 1972 decision in **Barker v. Wingo** , which considers the length of delay, the reason for the delay, a person's assertion of the speedy trial right and whether the delay has prejudiced the defendant.

The one real question concerns the consideration of the reason for the delay, Guha said, which clearly lies with prosecutors. The government has taken no affirmative steps to prosecute Allam since the indictment was handed up, the defense argues, and all Allam has done is stay in his home country, which as the Second Circuit recently made clear in **U.S. v. Bescond**  doesn't make him a fugitive.

"The government today confirmed that it has taken no steps for over four and a half years to prosecute its allegations against our client," Guha told Law360 after the court conference. "The law does not permit this, and we will accordingly seek dismissal."

Chang's attorneys similarly contend that apart from filing an extradition request with South African authorities two weeks after the charges were unveiled, U.S. prosecutors have done nothing in over four years of various South African administrative and judicial proceedings, during which time Chang has been languishing in horrible prison conditions, including years spent in solitary confinement and without access to proper medical care.

Ford told Judge Garaufis that even if Chang is extradited to the U.S., they'll still go forward with the dismissal motion, since it's based on the constitutional violations "as of this day."

Judge Garaufis set a briefing schedule for motions to dismiss from both Chang and Allam. The parties are slated to be back in court for oral arguments in October.

Boustani, a Lebanese national who was arrested en route to the Dominican Republic in early 2019, is the only defendant in the case thus far to stand trial. Held without bail until his acquittal in December of that year, he took the witness stand in his own defense and admitted to making payments to certain officials and bankers, but declined to call them bribes or kickbacks and denied ever defrauding investors.

Credit Suisse in 2021 **agreed to pay \$475 million** to U.S. and U.K. authorities for its role in the scandal, and its U.K. subsidiary pled guilty to wire fraud conspiracy. The lender also agreed to forgive \$200 million in Mozambican debt.

Three former bankers in Credit Suisse's Global Financing Group — Andrew Pearse, Detelina Subeva and Surjan Singh — pled guilty in the case. Pearse and Singh both **testified for the government** at Boustani's trial, saying they accepted millions of dollars in kickbacks for pushing for the Mozambican loans to go through.

Prosecutors say the bankers hid "red flags" from Credit Suisse's compliance department pointing to the possibility of corruption related to the loans.

Former Mozambican government officials Teofilo Nhangumele and Antonio Do Rosario are also charged but have not appeared in a U.S. court.

The government is represented by Hiral Mehta and Jonathan Siegel of the U.S. Attorney's Office for the Eastern District of New York and Peter Cooch of the Department of Justice's Fraud Section.

Chang is represented by Adam Ford and Arthur Kutoroff of Ford O'Brien Landy LLP.

Allam is represented by Samidh Guha of Guha PLLC.

The case is U.S. v. Boustani et al., case number 1:18-cr-00681, in the U.S. District Court for the Eastern District of New York.

--Editing by Philip Shea.

Correction: A previous version of this article misidentified one of the attorneys. The error has been corrected.