



CENTRE FOR PUBLIC INTEGRITY
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PUBLIC PRIVATE PARTNERSHIPS: A NECESSARY BUT PROBLEMATIC INVESTMENT IN MOZAMBIQUE

**THE CASE OF MOZAMBIQUE'S NACALA PORT AND
NORTH LINE CONCESSION**

Borges Nhamire and Jorge Matine

Maputo, December 2015



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In Mozambique - The case of Mozambique's Nacala Port and North
Line Concession

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ABBREVIATIONS

BR	Government Gazette (<i>Boletim da República</i>)
CCD	<i>Consórcio Cabo Delgado</i>
CDN	<i>Corredor de Desenvolvimento do Norte</i>
CE	Business Concessions
CEAR	Central East Africa Railways
CFM	<i>Caminhos de Ferro de Moçambique</i>
CIP	Centre for Public Integrity
DP World	Dubai Port World
EDPM	<i>Empresa de Dragagem do Porto de Maputo</i>
EDR	Edlows Resources
EN4	National Road 4
GEDENA	<i>Gestão e Desenvolvimento de Nampula</i>
GESTRA	<i>Gestão e Transportes</i>
JICA	Japan International Cooperation Agency
MG	<i>Moçambique Gestores</i>
MPDC	Maputo Port Development Company
NCI	<i>Nacala Comércio e Investimentos</i>
OPIC	Overseas Private Investment Corporation
PCA	Chairman of the Administrative Board
PN	<i>Portos do Norte</i>
PPP	Public Private Partnership
RDC	Railroad Development Corporation
RTG	Rubber Tyre Gantry Crane
S.A	Limited Liability Company
S.A.R.L	Sociedades Anónimas de Responsabilidade Limitada
SDCN	<i>Sociedade de Desenvolvimento do Corredor de Norte</i>
SOMOESTIVA	<i>Sociedade Moçambicana de Estiva</i>

STP

Sociedade de Tecnologias Portuárias

TEU

Twenty-foot Equivalent Unit

TRAC

Trans African Concession

INTRODUCTION

In January 2005¹, the Mozambican State awarded a concession - without a public tender - for the management of the Nacala Port and North Line, to the private company CDN – *Corredor de Desenvolvimento do Norte* -, issuing Decrees 20/2000 and 21/2000, both of the 25th of July, for the purpose. In addition to significant international capital, CDN's shareholder structure also included strong participation of politicians and high-ranking State and Frelimo party officials, as well as staff of the national railway company *Caminhos de Ferro de Moçambique* (CFM) – a problematic alliance resulting from inherent conflicts of interest.

The State has suffered enormous losses over the 10 years of the concession's management under CDN, due to a lack of maintenance of the infrastructures, and an accumulation of debt owed both to the State and to CFM, in violation of the contractual clauses of the concession. By 2009, the accumulated losses incurred by CDN reached over 25 million [US] Dollars. Social services, such as the operation of passenger and cargo transport trains along the North Line, which were hugely important to the populations in the provinces of Nampula and Niassa, were also discontinued.

The Government was contractually obligated to intervene, in order to enforce contractual compliance, but it failed to do so. Only a few of CFM's leaders, particularly the former Chairman, Eng. Rui Fonseca, protested against the non-compliance of the terms of the concession².

After approximately two decades of use, with no maintenance, Mozambique's Nacala Port and North Line are in an advanced state of degradation. Meanwhile, JICA (Japan International Cooperation Agency) provided the Mozambican

1 Although negotiations began in 1998 and the agreement signed in 2000, the concession agreements only came into force on 10 January 2005.

2 Rui Fonseca, Chairman of CFM during most of the duration of the concession, often expressed, in the Press, his discontent with the terms of CDN's Nacala Port and North Line concession. Meanwhile, Rui Fonseca is one of the founders of GESTRA – *Gestão e Transportes*, a limited liability company which includes other CFM staff and is a shareholder in CDN, through SDCN – *Sociedade de Desenvolvimento do Corredor de Norte*. In an interview with CIP, Rui Fonseca explained that he participated in the founding of GESTRA representing a third party, who provided him with a power-of-attorney for such. He said that GESTRA's shareholding in CDN was so insignificant that it did not have the power to force a change in the events.

State with 350 million Dollars³, in the form of a soft loan, to rehabilitate the Nacala Port, an infrastructure that was supposed to be rehabilitated by CDN.

The Nacala Port and North Line concessions are not isolated cases. They fall within a context of Public Private Partnership (PPP) and Business Concession (BC) type businesses, initiated in the late 1990s, and used as a means to expropriate the State by transferring the management of large State undertakings to private companies and to the elite with business interests, always anchored to large international capital.

Generally speaking, the State always loses out in these concessions, with the elite and the large international capitals reaping the benefits. Such was the case in the concession of Mozambique's Nacala Port and North Line to CDN, where dozens of high-ranking State officials benefited or expected to benefit.

Prominent State and Frelimo Party leaders, high-ranking State officials, members of the successive Frelimo Governments (from Chissano, Guebuza and Nyusi), to members of parliament, Constitutional Council judges and provincial governors are included among the beneficiaries of the Nacala Port and North Line.

This document presents a case study of the concession of Mozambique's Nacala Port and North Line. The document aims to ascertain who benefited from the Northern rail and port system and, in this way, contribute to an informed public debate on the governance of the State's concessions in Mozambique.

Methodologically, the study is the result of bibliographic research and non-participatory observation. The information collection techniques used included interviews and questionnaires. Different documents were analysed, including official CFM, as well as Government and Concession holder Company reports. Interviews were held with individuals linked to the concession, Government and private concession companies. The field work was carried out in Nacala, both inside and outside the port facilities.

3 The total amount disbursed by the Japanese Agency up to 2015, for the rehabilitation of Nacala Port, is 350 million Dollars. 30 million were allocated to the Port's emergency rehabilitation plan, in the form of a grant. 70 million were disbursed for phase I of the rehabilitation of Nacala Port and 250 million were disbursed for phase II. There is still a third stage, but the total amount is unknown. More on this news from *Rádio Moçambique* through the following link <http://www.rm.co.mz/index.php/outras-noticias/item/11320-japao-financia-ii-fase-de-reabilitacao-do-porto-de-nacala> [consulted on 15 June 2015]

The document is presented in 4 parts, comprising: Presentation and characterisation of PPPs in Mozambique; History of the concession of Nacala Port and analysis of the concession holder's shareholder profile; Assessment of the State's benefits and losses from the concession; and the Concession holders' perspective on the business.

1. PUBLIC PRIVATE PARTNERSHIPS: A NECESSARY BUT PROBLEMATIC INVESTMENT IN MOZAMBIQUE

PPPs are a form of investment in which public and private resources are combined to simultaneously meet public needs and generate profits for the private [operator]. Many countries are using PPPs with increasing frequency as a response to scarce State resources, and are directed essentially at large public utility infrastructures. There are many forms of PPPs, however, the most commonly used cover the design, construction, concession and management of public undertakings by private entities.

The underlying principle understood in a PPP is that both parties – public and private – share in the benefits, investment risks and obligations in the undertaking. The private entity normally profits from the management of the public undertaking, charging for services or receiving a direct payment from the State, while the public entity (State) gains as a result of the public service provided, taxes and other fees inherent to the concession.

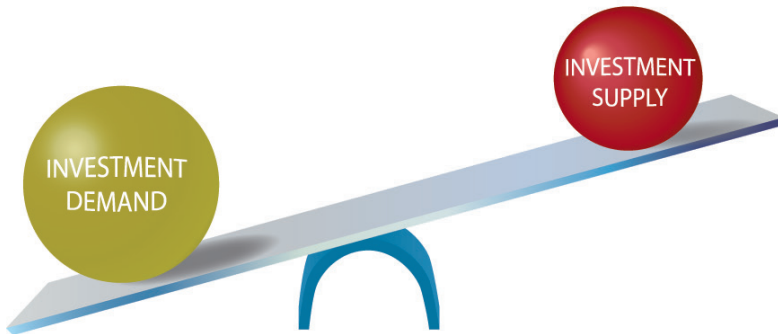
The public sector's contribution to a PPP may take on the form of the transfer of assets or undertakings (ports, railway lines, State Owned Enterprises (SOE)), local knowledge or mobilisation of political support for the project.

The role of the private sector in the partnership, in turn, is fundamentally to mobilise investment capital, make use of its business experience, management, operations and innovation to execute the services efficiently.

1.1 Why are PPPs necessary?

There are many reasons to justify public investments through a PPP. Firstly, because it is believed that by using PPPs to undertake large public works, the State can focus its available resources on traditional public services, such as education, health, justice and security. Thus, PPPs are seen as a way to attract private investment based on their profitability aspect, while at the same time satisfying the needs of the population.

Fig. 1. The need for investment is always greater than investment availability



It is also believed that the available resources are used more efficiently in PPPs, since the private sector will manage the resources better.

Lastly, PPPs help to reform public administration by redistributing roles, incentives and accountability. In this respect, the private sector becomes responsible for managing the technical issues, while the State entities are responsible for formulating policies and regulations.

The main weakness generally reported of PPPs is the fact that private management privileges profits while neglecting to maintain and conserve infrastructures and defend public interests. In many cases, once the concession ends, the infrastructures handed back to the State are degraded, requiring substantial investment to make them useful once again.

Another weakness of this type of investment is the lack of transparency in managing PPPs, since they are perceived to be private undertakings – when in fact they are public.

However, when well-designed and implemented, PPPs offer an opportunity for the private sector to participate in providing public services without immediate investment costs for the State.

1.2 Mozambique: PPPs at the service of society's elite

PPPs were formally introduced into Mozambique for the first time in 2011, through Law 15/2011, of the 10th of August (Public-Private Partnership, Mega Projects and Business Concessions Act, commonly known as the PPP Act). However, business ventures of this nature – which, for all intents and purposes, were PPPs – were already being implemented in Mozambique long before the legal provisions came into force.

In the second half of the 1990s, Mozambican politicians rushed to establish public investment and management corporations, based on the strategic information they were privy to regarding changes occurring within the national economy. These corporations were established to do business with the State, within the context of the country's economic liberalisation.

Although not using PPP terminology, political businessmen raced to win concessions for the management of public undertakings, which were, essentially, PPPs.

While society's elite, privy to privileged information on the political and economic direction of the country, established companies in the form of public limited companies (PLC) so as to win State concessions, the Government, ruled by the same elite, approved legal instruments to allow these newly-established companies to enter into business transactions with the State.

The Government then approved the first official public policy document, with material reference to PPPs – Resolution 5/96, of the 2nd of April – approving the Transport Policy. The document from the Council of Ministers acknowledges the need for “private capital participation in creating and rehabilitating infrastructures, through partial or total management agreements or concessions of ports, railways and airports, and in incorporating and operating airline (carriers) and maritime shipping companies”⁴

The Legal Regime for the Concession of Toll Roads and Bridges was approved immediately following the approval of the Transport Policy, through Decree 31/96, of the 9th of July.

The first contracts awarding the concession of public interest undertakings began to be signed in the late 1990s, between the Government and national and foreign private entities. Maputo Port Development Company (MPDC)

4 BR no. 13, Series I, 2nd April 1996.

was awarded a concession to operate the Maputo Port, and Trans African Concession (TRAC) was awarded a concession to operate the N4 National Road.

From the beginning, the companies belonging to Mozambican politicians, almost all of whom linked to the highest-ranking State officials and Frelimo party members, benefited from concessions for public undertakings, with Mozambique's Nacala Port and North Line, our case study, being an example of such benefits.

2. NACALA PORT AND NORTH LINE: HISTORY OF A CONCESSION

“(…), in my personal opinion, CFM has its share of blame in this process, it was very negligent. It was too negligent. I don’t know whether that negligence had to do with a certain influence on the Mozambican side of the concession. Mozambican interests in SDCN… I don’t know if it was that or not, but I think that there was in fact a lot of negligence in that concession…) – Subashandra Bhatt, 2010⁵

In January 2005, the Nacala Port and North Line concession took effect with transfer of the management of CFM’s undertakings to the consortium CDN. The concession contracts had already been signed five years previously.

Just like the concession of Beira Port to Cornelder Moçambique, once again the concession company was selected without a public tender, however, this time without the positive experience in terms of contractual compliance. CDN, the concession holder awarded the management of Nacala Port and the North Line, is made up of *Caminhos de Ferro de Moçambique* (CFM), with 49%, and *Sociedade para o Desenvolvimento do Corredor de Nacala* (SDCN), with a majority holding of 51%.

It is immediately clear that there is a conflict of interest in this concession. CFM is at the same time grantor and concession holder. However, this is not the only problem. SDCN has other shareholders that, on the date of awarding the concession and in subsequent years, were members of Government and senior staff at CFM, including the Chairman of CFM at the time, Eng. Rui Fonseca, and the President of the Republic at the time, Armando Guebuza.

CDN was incorporated in August 2001, as a limited liability company, with its main objective being to “operate, manage, rehabilitate, maintain and develop Mozambique’s Nacala Port and North Line system, as per the terms of the concession agreement”.

5 Subashandra Bhatt was general director of CFM. Cfr. Saúte, Nelson (2010) *Chronicles of an Imperfect Integration: The case of the privatisation of Portos e Caminhos de Ferro in Mozambique (Crónica de Uma Integração Imperfeita: O caso da privatização da gestão dos Portos e Caminhos de Ferro em Moçambique)* (2000-2005), USP, São Paulo, Brazil

The alliance between the national elite and the significant international capital of CDN would eventually lead to differences resulting from internal disagreements in the concession's management and, particularly, in the failure to distribute income.

2.1 CFM's opposition to the choice of concession holder

The choice of CDN as concession holder for the Nacala Port and North Line was not well received by CFM's management body. The State-owned enterprise's management body, which lost the management of these undertakings to CDN, was against the concession, claiming that CDN did not have the technical or financial capacity to manage the Nacala Port and North Line.

Not only did the Government ignore the concerns of CFM, it also forced the company to sign the concession agreements, through the line ministry responsible for CFM, the Ministry of Transport and Communication.

"...Numerous times, both prior and subsequent to the concession of Mozambique's port and railway system being awarded, CFM expressed its strong reservations in relation to the capacity of the shareholders of the majority shareholding in CDN (SDCN, directly accountable for the company's management, and whose majority shareholder is now INSITEC, having acquired the shares of the American companies RDC and Edlows Resources in 2008), as well as to the viability of the Project, bearing in mind the terms of the Financing Agreement entered into with OPIC" – CFM, 2010:48⁶

CFM (*optcit*) argued their objection to the choice of CDN to manage the rail and port system of the North, based on the experience that CDN had in managing the Malawi Railways, also under concession to CDN. CFM participated in the same concession in Malawi, with the 49% it held in CEAR – Central East Africa Railways.

The arguments presented to the Government as objection to the concession of the Nacala Port and North Line alleged that CDN proved to have "a deficient or non-existent management in the railways in Malawi; total lack of maintenance of the railway infrastructure (in Malawi); and a loss-making financial situation, including financial embezzlement".

⁶ Report of the Board of Directors of CFM, submitted to the Government in 2010 but which was never made public.

Despite these warnings from CFM, the Government insisted on going ahead with the concession.

The concession contracts for Mozambique's Northern rail and port system were signed by Tomaz Salomão, Minister of Transport and Communication, representing the Government of Mozambique; Rui Fonseca, Chairman of CFM, representing this company; Domingos Bainha, Executive Director of CFM; Alberto Chipande, Chairman of CDN; Fernando Amado Couto, Director of CDN.

2.2 About the Nacala Port and Rail Project

Nacala Port is the third largest port in Mozambique, in terms cargo volume handled. It is, according to CFM, the largest natural deep-water port on the east coast of Africa. This characteristic allows for unrestricted entry and exit of vessels, regardless of draught, 24 hours a day, and requires no dredging, according to CFM.

The port was inherited from the colonial administration. In October 1951, the port was opened to vessel traffic. Just like many infrastructures built in the colonial period, Nacala Port suffered continued degradation over the years. Meanwhile, owing to its strategic location, it continued to play an important role in the import and export of goods for hinterland countries, with its main clients being Malawi and the north of the country.

According to CFM data, the port was rehabilitated between 1984 and 1996, with financing from Finland, budgeted at 196 million Finnish markkas⁷. Nacala Port has three terminals, two of which are under CDN concession. The General Cargo Terminal, which is 631 meters in length, with a draught of 9.7 meters, and equipped to handle 2 400 000 tons annually, also has 8 warehouses with a 50 000 ton capacity. This terminal is under CDN concession.

The Container Terminal, which is 372 meters in length, has a draught of 14 meters, and is equipped to handle 75 000 TEUs annually, capable of holding 4982 containers and has 21 electrical outlet points for refrigerated containers, is also under concession.

⁷ See description of CFM at <http://www.cfm.co.mz/index.php/pt/infraestruturas/cfm-norte/porto-de-nacala> [Consulted on 15 June 2015]

The Liquid Bulk Terminal, on quay 4 of the General Cargo Terminal, with a length of 9.7 meters, remained under the direct management of CFM. This is connected to fuel depots by means of a 3.5 km long pipeline, and connected to depots for vegetable oils, with a total capacity of 2400 tons.

North Line (Railway)

The North Line is made up of three railway lines located in the provinces of Nampula and Niassa, linking different districts of these two provinces to neighbouring Malawi. The first is the Nacala-Cuamba line, starting at Nacala Port (Nampula) and reaching Cuamba district (Niassa), covering a distance of 533 km. The second is the Cuamba-Entre Lagos line, covering 77 km. The two lines make up the Nacala corridor – like the Beira and the Maputo Corridors, in the central and southern regions, respectively.

The third is the Cuamba-Lichinga line, covering 262 km. This enables passenger and cargo trains to circulate between the capital of Niassa (Lichinga) and Cuamba, playing a vital role in the province's development. The three lines are under CDN concession.

The evident conflict of interests of high-ranking State officials and CFM management

Just to give an idea: from 16 January to 14 June 2010, this included the president of the Republic, Armindo Emílio Guebuza; the Prime Minister, Aires Bonifácio Baptista Ali; and the Chairman of *Empresa Portos e Caminhos de Ferro de Moçambique*, Rui Cirne Plácido de Carvalho Fonseca. The defence of public interests in the concession of the Nacala Port and North Line was entrusted to these three leaders/ executives. However, these three were, theoretically, involved in the concession of the Nacala Port and North Line, through the companies in which they held shares.

Armando Guebuza and Aires Ali are the founders of the company MG – *Moçambique Gestores*. Rui Fonseca is the founder of another company, GESTRA – *Gestão e Transportes*. Both MG and GESTRA are part of the shareholder structure of SDCN, which holds 51% of CDN, the concession holder of the Nacala Port and North Line (Nacala Port and Rail Project).

In an interview with CIP, Rui Fonseca explained that he participated in founding GESTRA on behalf of a third party, Eng. Fernandes Ferreira Mendes.

During that same period (16 January to 14 June 2010), CDN failed to pay the fees relating to the use of the infrastructures under concession, thereby accumulating significant debt owed to the State and to CFM.

Both the Government and CFM – CFM owns the infrastructures under concession – were responsible for demanding that the debt be paid and enforcing recovery procedures, if necessary. This did not happen.

On 15 June 2010, Rui Fonseca was exonerated from the position of Chairman of CFM. Fonseca had occupied the position since August 1997, two years after its transformation from State-owned enterprise to public company⁸.

Aires Ali remained in office as Prime Minister until 8 October 2012, and Armando Guebuza only left the Presidency of the Republic in January 2015.

The figures mentioned above are only a sample of the huge participation of politicians and CFM managers in the Nacala Port and North Line concession, which may have negatively influenced the management of the public undertaking, although Fernando Couto, the non-political Mozambican and shareholder of the Nacala Port concession holder, claims that “he was never pressured by the politicians in the management of the port”.

2.3 SDCN behind CDN

CDN is a limited liability company, formed by SDCN and CFM, but the true beneficiaries of the concession are SDCN’s shareholders, since CFM owned and managed the Nacala Port even prior to the concession. With the concession, CFM lost 51% of Nacala Port and North Line.

According to the CFM Board of Directors’ report, submitted to the Government in 2010, neither CDN nor SDCN have audited reports and accounts available

⁸ Nhamirre, Borges (2010) *Rui Fonseca and his cast terminate their duties, in Canalmoz on 15.06.10*

to the public: “the audit on the accounts [of CDN] for the years 2001 to 2009 (9 years) had yet to be concluded”.

This means that the companies’ accounts were not audited for at least 9 years.

Preparations for the concession of these undertakings had begun years before. National politicians with strong influence within the Government and the Frelimo party established these limited liability companies during the late 1990s, and would come to benefit from the concession of the Nacala Port and the North Line.

The placement of companies belonging to national politicians in the Nacala Port and North Line concession was guaranteed as a result of their participation in the shareholder structure of SDCN, which held 33% of the total company capital.

SDCN was incorporated on 22 January 1998, in Maputo, in the form of a Public Limited Company. In the terminology of the current Commercial Code (approved in 2005), this is a Limited Liability Company (LLC).

SDCN’s share capital, at the time of its incorporation, was of one million two hundred thousand Meticaís. The amount invested by national investors was never revealed, but each held a share of approximately 5% in the company structure.

SDCN’s corporate purpose was to “Conduct a feasibility study on the Port’s railway and on Nacala bay, negotiate the concession contract for Nacala Port and the Nacala corridor railway system and incorporate companies whose objective was to manage and develop Nacala’s Port and Railway system as well as the Nacala Development Corridor”.

At the time of the concession, SDCN’s shareholder structure included almost a dozen companies. Since it is a limited liability company, SDCN’s shareholding companies were never revealed. The names of the companies were omitted from the Government Gazette issue containing the publication of SDCN’s articles of association⁹.

However, this research made it possible to determine the names of the main shareholding companies in SDCN, from the time of its incorporation to the present date. The companies that benefited from the Nacala Port concession are worth mentioning here.

⁹ BR no. 28, Series III of 15 July 1998 – page 707

Nine companies were important shareholders in SDCN at the crucial time of the concession. Two (2) were foreign (North American); five (5) belonged to Mozambicans with significant political influence and two (2) were linked to the businessman Fernando Amado Leite Couto.

The companies belonging to Mozambican politicians and CFM management were referred to as “national investors”. The names of the companies are rarely mentioned. There are almost no public records in the press or in public reports mentioning these companies.

Every time the shareholders of SDCN were mentioned, only the North American companies Edlows Resources and Railroad Development Corporation, which were directly involved in the Port’s management, were referred to, along with NCI, which belongs to the businessman Fernando Couto, who is considered one of the “fathers” of the “SDCN” consortium and of the concession.

Three distinct groups stand out when we attempt to qualify SDCN’s shareholders using the criterion of origin of capital, namely:

Foreign shareholders (51% of the capital)

- Edlows Resources (EDR) – North American
- Railroad Development Corporation (RDC) – North American

National Investors (33% of the capital)

- *Consórcio Cabo Delgado*
- *Gestra – Gestão e Transportes*
- *Gedena – Gestão e Desenvolvimento de Nampula*
- *MG – Moçambique Gestores*
- *Niassa Desenvolvimento*
- *STP – Sociedade de Tecnologias Portuárias*¹⁰.

Company linked to Fernando Amado Couto/MANICA

- NCI – *Nacala Comércio e Investimentos* (16% of the capital)

¹⁰ STP is also a company belonging to Fernando Amado Couto. Its treatment is different from the now-dissolved NCI, since this company was initially incorporated by Rennies, a South African investor and, later one, when it pulled out of the consortium, the company became part of Manica group, where the same businessman Fernando Amado Couto is Chairman. NCI was later dissolved and its share in SDCN sold to the Brazilian company Vale.

With the exception of STP, the six national companies included in SDCN's shareholder structure belong to political figures of the national elite and CFM senior staff.

All of the national companies included in SDCN's shareholder structure were incorporated in the latter half of the 1990s, as limited liability companies, therefore concealing their shareholders.

Despite significant efforts to conceal the identities of the true beneficiaries of the Nacala Port and North Line concession, by incorporating limited liability companies, it was possible to determine the shareholders and beneficiaries of some of these, by consulting the archives of legal deposit institutions. There are, however, some companies that have no records or whose records were removed from the registry offices' archives.

SDCN's structure was not always the same. Over the 17 years of its existence, shareholders came and went, in keeping with the purchase and sale of shareholdings, however, the main terms of business and the names of purchasers were never disclosed.

All of these businesses were based entirely on the Nacala Port and North Line, the only assets held by SDCN in Mozambique.

The sale of the shares from the two North American companies Edlows Resources and Railroad Corporation to Insitec, belonging to Celso Correia, and the subsequent re-sale of Insitec's shares to Vale, is worth mentioning in the coming and going of SDCN shareholders.

The specifics of these business deals are detailed further on, when the benefits of the concession and the lack of transparency in its management are discussed.

Figure 2 shows the more noteworthy entry and exit of shareholders from SDCN, from the beginning of the Nacala Port and North Line concession. Since this information was obtained from alternative sources, there may be some margin of error, particularly in the years where there was a change of shareholders, but there is certainty regarding the names of the shareholders.

While conducting this research, CIP formally contacted CFM, CDN, *Portos do Norte*, Insitec, the former Chairman of CFM, Rui Fonseca, as well as the Minister of Transport and Communication to obtain precise information on the concession. Only *Portos do Norte* and the former Chairman of CFM, Rui Fonseca, agreed to an interview to discuss the concession.

Figure 2: CDN shareholders over time (true beneficiaries of the concession)



Source: Interviews with entities linked to the project

Limited liability companies: The “legal” hiding place of senior officials in conflict of interest

Mozambican commercial legislation provides space for investors who do not wish to see their real names associated with a business to incorporate limited liability companies.

The rule is that, in the company’s contracts, the “partners and those who authorise the act on their behalf must be identified¹¹”. However, the Mozambican legislator opened an exception so that, in limited liability companies, the identification of shareholders is overlooked, according to what is understood from article 333 of the Commercial Code.

This legal permission to conceal the names of shareholders in limited liability companies was, and continues to be, widely used by national politicians as a hiding place to conceal - from the public - their companies, which are incorporated to do business with the State - the same State they run.

The situation leads, on the one hand, to a prevalent conflict of interests on the part of public directors who are, at the same time, defenders of public interests and of their own interests in the companies, that very often do business with the State.

On the other hand, the situation reveals a true obstacle in accessing relevant information by the public to assess the conduct of the leaders, who are at the same time businessmen.

¹¹ Cfr. article 92, paragraph a, of the Commercial Code

2.4 CDN/SDCN Shareholder profile

2.4.1 *Moçambique Gestores*: The Company of high-ranking State officials

A group of politicians from among the elite State leaders joined forces to establish a limited liability company called *Moçambique Gestores* (MG), two months after the publication of Resolution 5/96, of the 2nd of April, which approves the Transport Policy, opening space for “private capital to participate in the creation and rehabilitation of infrastructures, through total or partial management agreements or concessions of ports, railways and airports, and to incorporate and operate airlines (carriers) and maritime shipping companies”.

With its mission being to carry out “business management and shareholdings; operate industrial units; Investments; Research and projects; Financial participations”, *Moçambique Gestores* was incorporated on 3 June 1996, by individuals who occupied leadership positions within the State, their wives and some “anonymous persons”.

Included among the shareholders are persons who occupied the position of President of the Republic, Prime Minister, Members of Parliament, Chief Justice of the Constitutional Council, just to mention a few.

MG was incorporated as a limited liability company and, therefore, the names of its shareholders/parties were concealed in the Government Gazette¹² where the company’s articles of association were published.

The only document where the shareholders/parties of MG are identified is in the hand-written ledger held at the notary public office where the company was registered. This is book c-24, of the 3rd Notary Public Office in the City of Maputo.

12 BR no. 35, Series III, 27 August 1997

Table 1. List of shareholders/parties of *Moçambique Gestores*, beneficiary of the Nacala Port and North Line concession

Order	Name	Comments
1	Armando Emílio Guebuza	Among various positions occupied, was that of President of the Republic and Minister of Transport and Communication, the supervisory body of Mozambique's Ports and Railways (Portos e Caminhos de Ferro de Moçambique)
2	Maria da Luz Dai Guebuza	Wife of Armando Guebuza
3	Mário António Dimande	Was General Director of CFM up to 1997
4	Nora Vicente Maculuve	
5	Teodato Mondim da Silva Hunguana	Was Minister, Chief Justice of the Constitutional Council
6	António Américo Amaral Magaia	Partner of SOMOESTIVA, the only company in which Filipe Nyusi has shares.
7	Argentina da Conceição Nhantumbo Magaia	
8	Benjamim Alfredo	
9	Isabel Luís Chauque Alfredo	
10	Manuel Alexandre Panguene	
11	Mário da Graça Fernando Machungo	Former Prime Minister
12	Augusto Joaquim Cândido	
13	Raimundo Manuel Bila	
14	Cadmiel Filiane Muthemba	Former Minister
15	Maria Helena Paulo	

Order	Name	Comments
16	Gabriel Mabunda	Senior CFM member
17	Miguel José Matabel	
18	Armando Francisco Cossa	
19	Bartolomeu Augusto Guiliche	
20	Moisés Rafael Massinga	
21	Filor Nassone	
22	Venâncio Jaime Matusse	
23	Fernanda Carolina Betrufe Manave Matsinha	
24	Mariano de Araújo Matsinhe	Former Fighter, was Minister and Governor
25	Rosário <u>Mualeia</u>	Former Governor of several provinces and former Chairman of CFM
26	Eduardo Silva Nihia	Former Fighter and Advisor to President Guebuza
27	Bonifácio Gruveta Massamba	Former fighter, was Governor
28	Orlando Pedro Conde	
29	Abel Ernesto Safrão	Member of Parliament – Frelimo bench
30	Eugénio Numaio	Former Governor and MP
31	Arnaldo Tembe	
32	Flora Manuel Arnaldo Tembe	
33	Feliciano Salomão Gundana	Former fighter and Minister of different offices and Governor of several provinces. Is a founding member of Frelimo
34	Aires Bonifácio Baptista Ali	Was Prime Minister, Governor and Minister

Order	Name	Comments
35	António Correia Fernando Sumbana	Minister of different offices
36	Pires Daniel Manuel Sengo	
37	Alfredo Fontes Selemane Namtete	Deputy Minister

Source: Book c-24 of the 3rd Notary Public Office of the City of Maputo and interviews

2.4.2 GESTRA: the Company of CFM members

The company GESTRA (*Gestão e Transportes*) was incorporated on 15 May 1997, by a group of 10 high-ranking CFM members, including Rui Cirne Plácido de Carvalho Fonseca – Chairman of CFM from 1997 to 2010. The creation of SDCN was already being negotiated at the time, with a view to benefiting from the Nacala Port and North Line concession. Three years later the concession agreements were signed, thereby introducing GESTRA into the concession for the operation of Nacala Port and the North Line, through its participation in SDCN.

Judging by its company purpose, GESTRA was founded focusing specifically on the port and railway concession, since it involved:

- Handling goods and providing services to ships, in the port terminals under concession in national ports, including stowage activities and supply of consumer goods to ships and maintenance of the respective resources;
- Rail transport of goods and passengers along railway lines under concession within the national territory, and maintenance of the respective resources;
- Agent for goods in transit within the national territory, as well as domestic goods shipped nationwide, including the storage of such goods;
- Shipping agent at national ports;
- Road freight and passenger transport and maintenance of the respective means;

- Shifting freight loads between different means of transport (intermodal terminals).

Having been incorporated as a limited liability company, GESTRA also omitted its shareholders/parties from the Government Gazette¹³ in which the respective articles of association were published. However, it was possible to discover the names by consulting page 196 of book c-24, of the Third Notary Public Office in Maputo, as indicated in Table 2.

Table 2. List of shareholders/parties in Gestra

Order	Name	Comment
1	Francisco Ilídio de Rocha Dinis	
2	João de Passos Fonseca Vieira	Occupied the positions of Director of Maputo Port and Commercial Director of CFM
3	Manuel Henriques Teixeira	
4	Júlio Dias Lopes Hingá	
5	Rui Cirne Plácido de Carvalho Fonseca	Chairman of CFM from 1997 to 2010
6	Gabriel Mabunda	Director of Human Resources at CFM from 1976 to 1978
7	Carlos Fernando Bambo Nhangou	Former Director at CFM-Norte and partner in SOMOESTIVA, the only company officially registered in Nyusi's name
8	Eunice Maria António Carneiro	
9	Maria António Rothenberger	
10	Rui Ferreira dos Santos	

Source: Book C-24 of the 3rd Notary Public Office in the City of Maputo

13 BR no. 33, Series III, 13 August 1997

2.4.3 *Gedena, Consórcio Cabo Delgado and Niassa Desenvolvimento:*

The companies of the generals of the north

At the same time – second half of the 1990s, - that *Moçambique Gestores* was being incorporated in Maputo, representing the interests of senior State officials predominantly in the South and Central Regions of the country, three limited liability companies were also being incorporated in the North, belonging to the generals of the north.

Gestão e Desenvolvimento de Nampula (GEDENA), *Niassa Desenvolvimento* and *Consórcio Cabo Delgado* are the three companies present within SDCN, representing the interests of the generals of the north. All of these are beneficiaries of the Nacala Port and North Line concession.

GEDENA was registered at the Notary Public Office in Nampula on 17 February 1998, with its corporate purpose being to “invest in agriculture, fisheries and industry, as well as to manage transport infrastructures, particularly rail and port; ensure commercial management, including imports and exports; agricultural, industrial and transport infrastructures through social participation in companies to be incorporated, the acquisition of shares in already existing companies and entering into business association agreements and partnerships”¹⁴.

Two months later, i.e., on the 4th of August 1998, at the Notary Public Office in Lichinga, another limited liability company was incorporated by members of the political elite, with the objective of participating in the Nacala Port and North Line concession.

This was *Niassa Desenvolvimento*, whose company purpose was described as “to manage transport infrastructures, particularly rail and port; ensure the commercial management of agricultural, industrial and transport infrastructures, through the social participation in companies to be incorporated, the acquisition of shares in already existing companies, and entering into business association agreements and partnerships”.

The company *Consórcio Cabo Delgado* (CCD) closes the group of Mozambican company shareholders in SDCN. It represents the interests of the generals of the north, headed by Alberto Chipande. It was registered with the Notary Public Office in Pemba on the 2nd of July 1998, with a share capital of 200

14 BR no. 11, Series III, of 18 March 1998

million Meticaís (200 thousand Meticaís currently)¹⁵.

CCD established as its corporate purpose “to invest in agriculture, fisheries and industry; manage transport infrastructures, particularly rail and port; commercial management of agricultural, industrial and transport infrastructures, through the social participation in companies to be incorporated, the acquisition of shares in already existing companies, and entering into business association agreements and partnerships”.

Half of the “founders” of Frelimo party are involved in the concession

Alberto Chipande is among the 12 figures who, on the 26th of August 1991, signed the Constitution of the Frelimo Party at a Notary Public Office, with the sole purpose of “continuing to consolidate national independence, the people’s democratic order and build socialism”.

Building socialism aside, at least half of the 12 “comrades” who came together in 1991 to form the Frelimo Party are beneficiaries of the Nacala Port and North Line concession.

In addition to Chipande, the following constituent members of Frelimo are, theoretically, beneficiaries of the concession: Armando Emílio Guebuza, Mário da Graça Machungo, Feliciano Gundana, Eduardo Nihia, Mariano de Araújo Matsinhe¹⁶.

Chipande is described as the leader of the group of “national investor” beneficiaries of the Nacala Port and North Line concession. In fact, he was Chairman of the Board of Directors of CDN up to

15 BR no. 32, Series III, of 12 August 1998

16 The full list of persons who registered the constitution of the Frelimo Party in 1991, comprises: Joaquim Alberto Chissano, Marcelino dos Santos, Alberto Joaquim Chipande, Armando Emílio Guebuza, Jorge Rebelo, Mariano de Araújo Matsinhe, Jacinto Soares Veloso, Mário Fernandes da Graça Machungo, Pascoal Manuel Mocumbi, Eduardo Silva Nihia, Feliciano Salomão Gundana, Rafael Benedito Maguni. This is published in the Government Gazette (*Boletim da República*) no. 43, Series III, of 23 October 1991

the time Insitec joined the consortium. He was replaced by the current Minister for Land, Environment and Rural Development, Celso Correia.

Just like other Mozambican companies that make up SDCN, GENEDA, *Niassa Desenvolvimento* and *Consórcio Cabo Delgado* were incorporated as limited liability companies. Their shareholders and the percentage of shares held by each have not been revealed.

2.4.4 STP and NCI: The companies of the “father” of the concession, Fernando Couto

Of the group of companies making up *Sociedade de Desenvolvimento do Corredor de Nacala*, two were associated with a single figure: Fernando Couto. Couto is a true “playmaker” of the Mozambican team in SDCN. Now executive director of CDN, or presented as Managing Director of CDN, Couto was the face of CDN while the Nacala Port was under the management of this company. When the company *Portos do Norte* (PN) took over the management of Nacala Port from CDN, Couto became Chairman of the Executive Committee (of PN) and continued to be the face of Nacala Port.

When the North American shareholders “abandoned” the concession, Couto claims: “they left me holding the baby”. “I am not the father of the concession. I am one of the fathers of the concession”¹⁷.

Former staff member of the Ministry of Transport and Communication (worked in the legal office), Couto is a journalist, jurist and, most of all, businessman. He is vastly knowledgeable in the field of rail and port transport and logistics.

His name is linked to many companies in the rail and port sector: in addition to *Corredor de Desenvolvimento do Norte* and *Sociedade de Desenvolvimento do Corredor de Nacala*, the name Couto is also linked to *Manica*, *Terminais do Norte*, *Sociedade de Tecnologia Portuária* (STP), the now-dissolved *Nacala Comércio e Investimentos* (NCI), and the recently-created *Portos do Norte* (PN).

¹⁷ Interview held on 22 September 2015, in Maputo, within the scope of this research

Portos do Norte has been managing Nacala Port since the 15th of March 2013. It is through these companies (STP and NCI) that Fernando Couto enters SDCN and, consequently, CDN.

It is known that Fernando Couto extended the invitation to national politicians to participate in SDCN and to establish the CDN consortium, which was subsequently awarded the operation and management of the Nacala Port and North Line.

“...When the consortium was established, at the same time as Mr. Edlows was building the consortium on the foreign side, I felt that because I knew how the tender for the Maputo corridor was playing out, and I had seen how the issue of the Beira port had been dealt with, I saw the need for strong national participation within the project itself. And at that time I invited General Chipande, who had just stepped down from office as Minister of Defence, to extend the invitation for nationals to be present with strong participation in the corridor” – **Fernando Couto**¹⁸

In the words of Fernando Couto, it was, therefore, through him that the senior State leaders were introduced into the Nacala Port and North Line concession.

In an interview with CIP, he explained that he wanted to see influential figures from the North of the country participating in a consortium which aimed to develop their own region. He guarantees that the political businessmen were invited by him and that they had to mobilise the money to invest.

Later on it was noted that the participation of influential politicians in the concession made for a difficult relationship between the Government and the concession holder, with the concession holder failing to abide by the decisions of the concession provider.

Fernando Couto alleges that the problems relating to the concession were not caused by the many politicians who benefited from the concession and admits that if he had to go back and design a consortium to win the concession, he would again invite politicians to be a part of it, but he would do it in a different way (stock exchange).

18 Extract from an interview with Fernando Couto taken from the dissertation of Nelson Saúte titled “*Crónica de Uma Integração Imperfeita: O caso da privatização da gestão dos Portos e Caminhos de Ferro em Moçambique 2000-2005*”, presented for his Master’s Degree in Sociology from the University of São Paulo, Brazil, in 2010.

3. CONCESSION WITH HUGE LOSSES FOR THE STATE

“We believe that the case of the Nacala Port and North Line concession require particular attention, given their current status which is characterised, in short, by poor conservation of the infrastructures, a galloping rise in Concession holder’s debt to the State and CFM, disregard for the governing bodies and for the Company’s Statutes” (CFM, 2011:24)

The Nacala Port and North Line concession agreements were signed in 2000, and CDN took over the effective management of the undertakings in January 2005. Therefore, it has already been a decade since the State handed over the operation of these infrastructures to a private entity.

3.1 Main obligations of the concession holder

The main obligations of the Concession holder are set out in clause 2.2 and following of the North Railway Line Concession Agreement which, in short, are to “manage, operate, finance, rehabilitate, maintain, develop and optimise” the infrastructure under concession.

These obligations are, in contractual terms, carried out by the concession holder “at its own risk and without recourse to loans and guarantees from the Awarding Authority (Ministry of Transport and Communication) or from CFM”.

In addition to these obligations, article 2.5 and following establish the remunerations that the concession holder must pay the awarding authority for the concession, which are:

Initial Consideration in the amount of one million five hundred thousand Dollars (USD 1,500,000.00), payable to the awarding authority on the date of taking over (10 January 2005);

Performance Consideration to be paid annually as from the date of concession up to the end of the concession agreement (contract). This consideration is subdivided into:

Fixed Income, in the value of one million five hundred thousand Dollars, from the second to the fifth year of the concession; the amount shall be increased to two million five hundred thousand dollars per year, from the sixth to the tenth year of the concession; from the eleventh to the fifteenth year (last of the concession), the fixed income shall be increased to three million dollars. The Performance Consideration is adjustable based on the United States of America (USA) Price Index and based on the inflation published by the US Bureau of Labour Statistics and has a “grace period which will be the first year of operation”¹⁹.

Variable Income. This is provided for in article 2.3.5. It is charged based on the company’s annual turnover (CDN) and increases over time. It is 5% of gross revenues from the first to the fifth year; 7.5% from the sixth to the tenth year; and, 10% of gross revenues from the eleventh to the fifteenth year.

It has not yet been possible to obtain the contract governing the Nacala Port concession, held by the same company. From the terms of the concession published in Decree 20/2000, of 24th July, the general terms of the concession are similar, both for the Railway Line and for the Port, with some differences in the value of the remuneration to the State.

3.2 Losses of the concession

Ten years later, very little of what was expected has been achieved, although the concession holder feels that there were some benefits, such as securing thousands of jobs and fulfilling social functions along the North Line, by guaranteeing the operation of trains between the provinces of Nampula and Niassa, thereby linking these two provinces.

In a presentation given at a concession assessment workshop, organised by the Ministry of Transport and Communication, in Maputo on the 19th of November 2015, the Executive Director of CDN said that the company has already paid sixty-three million, two hundred thousand Dollars to the Government, as a result of this concession. However, this payment, in addition to coming too late, is way below the State’s investment in the concession.

The Mozambican State has assumed a debt, in the form of a soft loan, of 350 million Dollars from JICA, for the rehabilitation and modernisation of Nacala

¹⁹ Article 2.5.2.1 of the North Railway Line Concession Contract

Port, an activity that should be carried out by the concession holder.

There are no guarantees that the concession holder will sign the on-lending agreement for the debt incurred by the State, since it did not contribute in mobilising the financing for the rehabilitation of the Port.

Since this is a politically very influential concession holder, the problems relating to the concession took some time to be made public, but some managers at CFM, dissatisfied with the course being taken by the private management of the undertakings, began to speak out and complain. One of the visible faces contesting the concession was the Chairman of CFM at the time, Rui Fonseca.

3.2.1. Millions of Dollars in accumulated debt owed to the State

As we saw above, no consensus was reached regarding the North Rail and Port Concession being awarded to CDN, and the losses resulting therefrom began to appear in the first few years of the business. CFM's official reports, the public ones and those prepared exclusively for the Government, indicated the concession's losses.

While the information on the losses resulting from CDN's non-compliance was not provided in a clearly perceptible way in CFM's annual reports, which are public, this information was expressed very clearly in CFM's reports submitted exclusively to the Government.

When the mandate ended in June 2010, the Board of Directors of CFM, headed by Rui Fonseca, prepared a report containing very detailed information on the losses CDN was causing the State. This report was sent exclusively to the Government, and although the Government had the powers to do so, no decision was made to review situation.

It must be remembered that when Rui Fonseca submitted the report to the Government, explaining losses of millions of Dollars to the State caused by CDN, Armando Emílio Guebuza, was at the same time Head of State and a shareholder in CDN, through *Moçambique Gestores* which held approximately 5% of SDCN. Also, the majority shareholder in SDCN was Insitec, a company that has always been associated with Armando Guebuza.

The report of CFM's Board of Directors, sent to the Government in 2010, indicated that in that year, CDN had been characterised by:

- An accumulated loss of 25.7 million Dollars;
- Failure to audit the company's accounts from 2001 to 2009;
- Use of financing (loan from OPIC) without any approved plans or budgets, with no regard for several aspects of the exchange legislation.
- Failure to present, by the concession holder, updated insurance policies for the infrastructures under concession;
- Lack of investments in and maintenance of the Railway Line [and the Port] under concession;
- Drastic reduction in the workforce assigned to the railroad, against the will of CFM;
- Non-compliance with the agreement signed between SDCN and CFM and ratified by the Government, to reverse the situation of bad management and settle the company's liability to the State.

3.2.2. Lack of maintenance of infrastructures under concession

The concerns expressed by the awarding entity, CFM, related not only to CDN's mounting debt, but also to the lack of maintenance of the infrastructures under concession and the total contempt for the recommendations made by it:

“We feel that the case of the Nacala Port and North Railway Line concession requires careful attention, given its current status, which is characterised, in short, by poor maintenance of the infrastructures, galloping increase of the Concession holder's debt to the State and to CFM, disregard for the governing bodies and for the Company Statutes. Faced with the worrying reality in that which concerns the non-existent maintenance of the North railway line, we have on several occasions alerted to the need for urgent measures to be taken, under penalty of being faced with dramatic situations that could result in the loss of human lives and substantial material damages to important infrastructures vital to the development of the northern part of the country and to the hinterland countries served by Nacala Port.” – **CFM, 2009: 54**

The concession holder operated the infrastructures under concession for approximately one decade, without performing any significant maintenance on it. CFM itself had to invest money from its profits to maintain the North

Railway Line which was, at the time, under concession. This situation revealed a lack of risk sharing between the parties, misrepresenting the essence of a PPP.

“Another significant challenge relates to the North Rail and Port System, the infrastructures of which are in an advanced state of degradation due to a lack of necessary maintenance by the Concession holder (CDN). – **CFM, 2012:26**

CFM had to invest its own money to guarantee minimum maintenance of the North Line. The Government had to take out a soft loan from the Japan International Cooperation Agency (JICA) in order to rehabilitate Nacala Port.

Japan has significant interests in the North of Mozambique, with emphasis on the Pro-SAVANA project, which is dedicated to agricultural development in over 10 districts in the provinces of Nampula, Niassa and Zambézia. Nacala Port is a vital infrastructure for Pro-SAVANA, for both the import and export of goods.

Given the state of degradation of Nacala Port, the first financing was for emergency rehabilitation, followed by a credit line for the “Nacala Port Development Project”.

3.2.2.1. Resorting to public credit to rehabilitate a Port under concession

After almost a decade of the Nacala Port being under concession, without the concession holder performing any maintenance works, the Nacala Port was in an advanced state of degradation. The port operations were affected.

The degradation of the Nacala Port infrastructures was a topic discussed in almost all of the Press. The concession holder, CDN, was clearly incapable of or uninterested in intervening.

“Nacala Port requires urgent rehabilitation, investment in equipment, a young workforce and the establishment of a mechanism for the different entities operating in it - including cargo transport - to coordinate activities”. –**Domingo Newspaper, edition of 31 March 2013**²⁰

20 [Nacala Port recreates routes for efficiency in Domingo Newspaper, on 31/03/2015](#)

The degradation of the Port was such that “emergency rehabilitation²¹” works had to be carried out first.

JICA is the entity that made available millions of Dollars to the Government to undertake the rehabilitation and modernisation of the Nacala Port.

The total amount disbursed by the Japanese Agency, up to 2015, for the rehabilitation of the Nacala Port, was of 350 million Dollars. 30 million Dollars were disbursed in 2012, for the emergency rehabilitation of the Nacala Port. This amount took on the form of a grant. In 2013, JICA disbursed 70 million Dollars for Phase I of the Nacala Port rehabilitation, which was concluded in September 2015, approximately 2 months after the expected deadline. In 2015, JICA disbursed an additional 250 million Dollars for Phase II. There is still a third phase, for which the total amount is unknown.

Fig. 3. Notice board indicating the works in Phase I, for the rehabilitation of Nacala Port



Phase I consisted in repairing the pavement of the north quay, a new container area; purchase of 2 *Reach stackers*; 2 RTG; and the repair of the liquid bulk

²¹ Cfr. Activity Development Plan for the Republic of Mozambique, of the Embassy of Japan in Maputo, prepared on 15 April 2015

quay and the installation of firefighting equipment.

Phase II included the construction of a new access road to the port, pavement of the container yard, construction of a new rail transport container terminal, dredging, purchase of 3 RTG and the construction of a new entrance.

Phase III involves the reconstruction of the quay, pavement of the container terminal, dredging, pavement of the access road, purchase of 3 RTG and *tug-masters*²².

The Nacala Port Development Project is extremely important to the State, inasmuch as it creates the conditions for the port to become competitive, contributing to the country's development. The trouble with this is that the State is contracting public loans to apply an infrastructure that is under concession to a private entity, and this private entity is not contributing at all to the mobilisation of funds. The State is financing the private entity that was awarded the concession for the Port's management.

Understanding the Japanese financing

Japan, which is financing the Nacala Port Development Project, has significant interests in the Nacala Corridor, and their viability is dependent on the operability of the Nacala Port and North Line.

The ProSavana programme, which aims to develop industrial agriculture in 19 districts in Nampula, Zambézia and Niassa, is one of the largest Japanese projects in Africa. The import of equipment/machinery for ProSavana and the export of future production will be done through Nacala Port, using the North Line for internal logistics.

Considering the Japanese interests in ProSavana, in 2014, Mitsui, the largest corporate group in Japan, bought half of Vale's share (42.5% of the concession) in the Nacala Port and North Line.

With this deal, Vale's share in SDCN and CDN was transferred to a company that was held 50% by Vale and 50% by Mitsui. Mitsui committed to invest 313 million Dollars in that company²³. Vale and Mitsui, now jointly with 85% of SDCN, undertook to seek project financing for both the North Line and for Nacala Port. It is in these terms that JICA's loan for the development of Nacala Port is understood, aiming to safeguard Japanese

22 *Portos do Norte*; Nacala Port Development Project; 2014

23 Vale (2014) Annual Report; pg. 28

interests in ProSavana and in the Nacala Corridor. Also in 2014, Mitsui acquired 15% of Vale Moçambique's share in the Moatize mine. Until then, Vale held 95% of the Moatize Mine and the remaining 5% were held by the Mozambican State. With the entry of Mitsui (15%), Vale's share dropped to 80%. As a result of this operation, Mitsui agreed to invest US\$ 450 million, as an increase in capital of Vale Moçambique ²⁴.

The case of the dredging of the Maputo Port access channel

Maputo Port, also under private management, is under concession to the Maputo Port Development Company (MPDC). Between 2010 and 2011 three ships entering and leaving Maputo Port ran aground in the Port's access channel, resulting from difficulties in navigating that route. The Port concession holder was forced to perform dredging works, valued at 15 million Dollars, to deepen the channel. Since the port is under concession to a private entity, it was this entity, and not the Government, who was responsible for mobilising the funds for the works.

Empesa de Dragagem do Porto de Maputo (EDPM, SA), a unit whose purpose was to finance and manage the dredging works for that port, was created. This project was 30%-financed by EDPM, SA shareholders and the remaining 70% was financed through a bank loan. The shareholders in EDPM, SA are CFM (49%), Grindrod Mauritius (25.5%) and DP World (25.5%); these are also shareholders in MPDC, the Maputo Port concession holder, in the same proportion of the share capital²⁵.

The case of the Maputo Port clearly shows who is responsible for maintaining the infrastructures under concession.

It is evident that mobilising 15 million Dollars to dredge the port access channel is not the same as mobilising 350 million Dollars to rehabilitate and modernise the port. However, if the concession holder does not have the capacity for such, what was the use of having awarded the concession for the infrastructure if the same State that awarded the concession, has to contract a loan to maintain the infrastructures under concession?

24 Vale *optcit*

25 CFM Annual Report, 2012:15

3.2.3 Closing of train stations (platforms) and arbitrary interruption of railway services

Another significant loss caused by CDN, but which is difficult to quantify, is the closing of platforms (train stations considered makeshift and sparsely populated) and the multiple arbitrary interruptions of train services between Nampula and Cuamba.

Rail transport between Nampula and Cuamba plays an important social role in the distribution of agricultural produce and is vital for the populations from both provinces. It is a social service that was always guaranteed while the North Line was under the direct management of CFM.

Not seeing any profit in this service that transports, mainly, farmers with agricultural produce, the concession holder CDN decided unilaterally to close more than a dozen platforms (stations) along the Nampula-Cuamba stretch, leaving the local population stranded.

The closing of stations resulted in generalised discontent among the population using the trains, but the Government was not able to reverse the situation in their favour.

The generalised discontent, allied with the fact that the Government was not able to intervene to defend the populations, led to people who supposedly felt wronged, joining forces and vandalising the trains in operation. Unidentified persons, who, it is assumed, were users of the closed platforms, joined forces to place barricades along the railway line and stone the trains that crossed through their areas but that did not stop to load and offload passengers and cargo.

In response to this popular uprising, instead of addressing the plight of the populations desperate for trains to stop in their areas of residence, CDN decided to interrupt train services along the North Line for an indefinite period.

One of these interruptions occurred on 6 March 2014. CDN decided to stop train services along the entire Nampula-Cuamba line, allegedly due to a lack of security caused by the barricades along the tracks and the stoning of trains.

The population in Nampula demonstrated against the closing of the line in front of the main railway station in Nampula city, with a major popular demonstration taking place in an election year.

It was only after this that the trains started running again, one week later.

The users of these train services were not compensated for their losses, nor were the losses quantified. CDN was the one that then claimed it had suffered losses, calculated in 63 thousand Dollars²⁶, as a result 32 glass panes being broken in 11 stoned carriages.

Even after the crisis, CDN failed to reopen 12 platforms, which is thought to be the main cause of the stoning and placement of barricades along the railway tracks.

Even with the accumulated losses, the Government never intervened to force the concession holder to abide by the terms of the contract. During the 10 years of implementation of the Nacala Port and North Line concession, the Head of State was at the same time a shareholder of the operating company in the undertakings, as we have seen above.

3.2. Benefits for the elite: Sale of shares

While the concession resulted in losses for the State, there were those who benefited from it. These are some of the shareholders of SDCN that exploited the business of selling shares.

For a long time, CDN did not distribute dividends to its shareholders due to losses, as was seen above, in number 3.2.1; in 2010 the company's losses reached 25.7 million Dollars. However, the lack of audited company accounts, at least between 2001 and 2009, means that a true picture of the losses cannot be determined.

With no sharing of income, the shareholders in SDCN found a way of carrying out business by buying and selling shares, with the Nacala Port and North Line, the most important and lucrative infrastructure, being used as assets to attract buyers. Due to the social nature of the transport of farmers between Niassa and Nampula and vice-versa, the North Line was not attractive for the "rent seekers".

²⁶ Between Nampula and Cuamba: Train back in circulation in Notícias newspaper, 12 March 2014

3.3.1 Entry and Exit of Insitec, Celso Correia

INSITEC Group, headed by the current Minister for Land, Environment and Rural Development Celso Correia, was one of the beneficiaries of this type of business. INSITEC entered SDCN by purchasing the shares of EDR and RDC in 2008²⁷.

With the purchase of shares from the two American companies, Insitec became the majority shareholder in the SDCN consortium (51%) and, as a result, held a strong position in CDN. There is information that indicates that INSITEC never paid for the shares from RDC and EDR. It only acted as an intermediary between Vale and the two American companies. In other words, it used Vale's money to pay RDC and EDR.

The announcement of the purchase of shares from the two American shareholders by Insitec in September 2008, was provided by RDC itself, in a note signed by the respective Chairman, Bod Pietrandrea²⁸, but the value of the transaction was never revealed by the American companies or by Insitec.

In press articles, mostly published in the South African newspaper "The Times", RDC claimed it had restructured the north railway line and had now handed it back "to African hands (Insitec) in much better conditions"²⁹. This information contradicted both the reality in the field and the information contained in CFM's reports, which had a very negative assessment of RDC and EDR, the foreign shareholders in SDCN.

The change in SDCN's shareholder structure and, consequently, that of CDN only happened, however, on the 10th of August 2009, approximately one

²⁷ The purchase of the shares belonging to the American shareholders by INSITEC was announced in August 2008, through a communiqué issued by RDC, and reproduced in the South African press, but the change in SDCN's shareholder structure and, consequently, of CDN, only took place on 10 August 2009, with Celso Correia stepping in as Chairman of CDN, replacing Alberto Chipande. INSITEC's entry into SDCN brought about major changes to CDN's administration, which changed to: Alberto Chipande – Chairman of the General Meeting; Leonilde Loide Bazar – Secretary of the General Meeting; the Board of Directors was made up by Fernando Amado Leite Couto (STP), Eduardo França Magaia and Givá Remtula (INSITEC); Osório Sales Lucas, Adelino Fortes Mesquita and Domingos Baina (CFM).

²⁸ RDC "Out of Africa"... for now

²⁹ Paul Ash (2008) *Railway back in African hands* in The Times; Published Sep 21, 2008

year after RDC's withdrawal. With this change, Celso Correia took over the Chairmanship of CDN.

Insitec's entry into SDCN brought about major changes in CDN's administration, with the most noteworthy being Celso Correia himself replacing Alberto Chipande as Chairman of CDN.

The leadership of CDN, with the entry of Insitec, became: Chairman: Celso Correia (representing Insitec); Directors: Eduardo França Magaia and Givá Remtula (Insitec); Fernando Couto (STP); Osório Lucas, Adelino Fortes Mesquita and Domingos Bainha were appointed Directors representing CFM, which held 49% of CDN.

During the time CDN was under the leadership of INSITEC, no significant investment was made in improving the infrastructures. This is why, up to 2011, CFM's reports always complained about the lack of maintenance to infrastructures.

INSITEC did not assume the leadership of CDN for long. It sold its share to Vale in 2010³⁰.

It is known that before INSITEC entered CDN, negotiations were well underway with Vale for the purchase of American companies' shares. Strangely, the deal was not finalised. It was only about one year after Vale had apparently given up on buying RDC's and EDR's shares in SDCN that it acquired them, but this time from Insitec.

The amounts involved in the two transactions carried out by INSITEC – purchase of shares from RDC and EDR and subsequent sale to Vale – were never made public in Mozambique. Concealing the amounts relating to business transactions on public undertakings is a huge show of the lack of transparency in the management of this PPP.

Meanwhile, in Vale's performance report, produced for investors, it appears that the Brazilian mining company disbursed 21 million Dollars in 2010, for the purchase of shares in SDCN.

30 A communiqué from Vale dated 21 September 2010 mentions that Vale S.A. (Vale) informs it exercised the option to purchase 51% of the shareholding in *Sociedade de Desenvolvimento do Corredor do Norte SA* (SDCN), held by the Mozambican company Insitec SGPS SA (Insitec). Available on <http://br.advfn.com/noticias/BOV/2010/artigo/44474564> [accessed on 23 June 2015]

“Investments in acquisitions over the year also included: (...) SDCN (*Sociedade de Desenvolvimento do Corredor Norte S.A.*) in Mozambique for US\$ 21 million”. – **Vale, 2011:17**

No mention has yet been made of any capital gains paid to the State as a result of the unexpected extraordinary revenue from these transactions.

3.3.2 Sale of 16% of NCI to Vale

The company *Nacala Comércio e Investimentos* (NCI), which took over Rennie’s shares in the SDCN consortium, also sold its share to Vale and was then liquidated. Likewise, the amounts involved in the business were not revealed, however, considering that 51% of INSITEC’s shares cost Vale 21 million Dollars, it is easy to reach a round average of 411 thousand Dollars per share.

When questioned whether any capital gains were paid to the State for this unexpected extraordinary income, Fernando Couto said that it was not possible to speak of capital gains if “there was no transfer of capital abroad”. Fernando Couto was the representative of NCI.

3.3.3.1 Separation of the Nacala Port management from the North Line and beginning of compliance

The separation of the management of the two infrastructures under concession – the Nacala Port and the North Line – was also negotiated as part of the deal for the sale of the national investors’ shares in SDCN to Vale.

Thus, the North Line was placed under the management of CDN. In the current structure, SDCN holds 51% of CDN and the remaining 49% are held by CFM. The changes took place in SDCN. Vale is the majority shareholder, with 85%. The remaining 15% are held by national investors.

The Nacala Port was placed under the management of *Portos do Norte*, a company created for the purpose in 2012, in which the interests of the so-called national investors, plus CFM, are brought together.

CFM holds 30% of *Portos do Norte*. The remaining 70% are distributed among the companies Gedena, GESTRA, MG, STP, *Niassa Desenvolvimento* and *Cabo*

Delgado. It was not possible to determine the percentage of shares held by each of the companies.

The separation of the management of the Nacala Port and the North Line was achieved on 15 March 2013. Once again, the amounts involved in the transaction were not revealed.

Meanwhile, with Vale holding 85% of CDN and the separation of the management of the Port from the Railway Line, there were some improvements in the management of the Port. The new Port management, under *Portos do Norte*, began to meet its obligations, paying the State taxes on time and also generating and distributing dividends to its shareholders. In two years, the Nacala Port generated over 167 million Meticaís in tax revenues for the State.

Table 1: Tax revenues paid to the State from the Nacala Port activity, for the 2013 and 2014 financial years

Period	2013	2014	Total
CIT 7	43,446,942.93	42,634,855.36	86,081.29
PIT	17,081,272.78	19,640,053.82	36,721,326.60
VAT	26,058,338.53	15,824,964.58	41,883,303.11
Social Security	1,268,842.57	1,812,510.77	3,081,353.34
Total Tax Base	87,855,396.81	79,912,384.53	167,767,781.34

Source: *Portos do Norte*

During that same period 2013/13, the dividends generated for the concession holder's shareholders reached over 117 million Meticaís, of which 30% were for CFM, the public company which was awarded 30% in the Nacala Port concession, as is shown in Table 2.

Table 2: Division of income generated by Nacala Port over the 2013 and 2014 financial years

Shareholders	2013	2014	% per Shareholder
National Shareholders	37,724,278.78	41,052,649.25	70%
CFM	16,167,548.05	17,593,992.54	30%
Total	53,891,826.83	58,648,841.79	100%

Source: *Portos do Norte*

3.3.4 Renewal of concession conditioned by credit on-lending agreement

The Nacala Port and North Line concession ends in 2020. The concession holder is very interested in guaranteeing the renewal of the concession for both undertakings and must, for such, express its interest to the Government at least 36 months (3 years) in advance.

It appears that a renewal is certain, since part of the North Line forms the *Corredor Logístico do Norte* (North Corridor Logistics – CLN), built by Vale and held by Vale, Mitsui and CFM. Vale intends to use the line to distribute the coal from Moatize to Nacala-a-Velha, via Malawi. This should guarantee the continuity of the North Line concession to CDN.

Some doubts may remain regarding the Nacala Port, since Vale does not need this port to distribute the coal from Moatize. However, Japan is interested in Nacala Port because it is indispensable to the ProSavana logistics. That is why Mitsui joined SDCN, buying half of Vale's shares.

And this is how, despite the State rehabilitating the Nacala Port with its own funds due to the concession holder's incapacity to intervene, it is certain that the concession will be renewed.

In order to recover the money (loan) invested in the rehabilitation of Nacala Port, the Government needs to sign a credit on-lending agreement with the Port concession holder (CDN). The terms of the agreement are not yet clear, however, in essence, there must be a guarantee that the money being paid to

JICA is from revenues generated by Nacala Port, under management of CDN. By 2020, the year in which the current concession agreements terminate, the amount invested in the rehabilitation of the Port will not have been paid back.

Thus, the renewal of the Nacala Corridor concession to CDN will be used as a guarantee to establish the credit on-lending agreement granted to the State by JICA. In these terms, the Government will not have much room to manoeuvre in negotiating new concession agreements that favour the interests of the State.

CFM is clearly interested in bringing the undertaking back under its own management, since the Nacala Port was the last undertaking awarded under concession, before the process was interrupted. It appears that the Government does not share the interests of CFM.

Another group concerned with the renewal of the concession is that of the political businessmen responsible for the management of Nacala Port from 2013 to 2020. Their interest is that the concession be renewed and that Nacala Port continues to be managed by *Portos do Norte*, as sub-concession holder.

A concession marked by lack of transparency and non-disclosure of relevant information

The lack of transparency is a dominant aspect in all of the business transactions carried out under the concession - beginning with the actual concession and sub-concession agreements. These were never made public, nor were the beneficiaries of the concession and the duration of the concession mentioned.

There were shareholders joining and leaving SDCN, which resulted in changes to the management of the public undertakings under concession. When SDCN's majority shareholders were North American companies, they were responsible for the management of both Nacala Port and the North Line. When the two North American companies withdrew from SDCN and Insitec joined it, the management of the public undertakings was handed over to Insitec, with Celso Correia as Chairman of CDN. When Insitec withdrew and Vale joined, the management of CDN passed over to Vale, together with the management of the Port and the North Line.

The remaining shareholders in SDCN and CDN were always kept a “State secret”. This document is the first document published in Mozambique presenting all of the beneficiary companies in the concession, and some of their important shareholders.

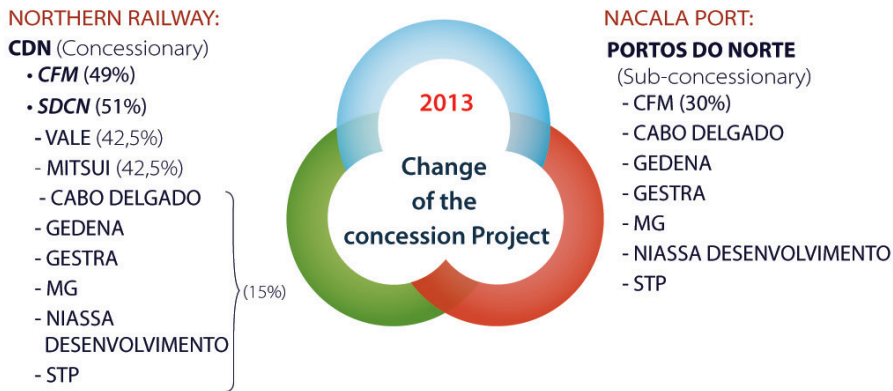
In 2013, there was a separation of the management of the two undertakings. CDN was responsible for managing the North Line, and *Portos do Norte* was responsible for managing Nacala Port, as is shown in figure 4. The details on this deal remain a secret of the Government and of the beneficiaries.

Nacala Port has been generating dividends since 2013, for its shareholders grouped in *Portos do Norte*, where CFM only holds 30% of the shares. Data presented by *Portos do Norte* in a private workshop held by the Ministry of Transport and Communication to assess the railway and port concessions showed that in 2013 and 2014, Nacala Port generated income which allowed for dividends totalling over 42 million Meticais to be distributed among its shareholders.

The Centre for Public Integrity (*Centro de Integridade Pública*) formally requested the relevant information on the concession from the following entities: Ministry of Transport and Communication, *Empresa Portos e Caminhos de Ferro de Moçambique*, *Sociedade Corredor de Desenvolvimento do Norte*, *Sociedade Portos do Norte*, *Insitec*, former Chairman of CFM and one of the representatives for Gestra, Fonseca. Only *Portos do Norte* and Rui Fonseca agreed to provide relevant information on the concession in an interview. The Chairman of the Executive Committee of *Portos do Norte*, Fernando Couto, represented the aforementioned company. However, the interviewees did not make available relevant documents on the concession, such as the accounting reports and contracts.

The Government, through the Ministry of Transport and Communication, answered CIP’s questions on 12th December 2015, after the letter requesting information was received by the Ministry on 4th August of the same year. The answers provided by MTC are meagre. In many aspects the answers refer back to the contracts signed between the Government and the concession holders, without however making available the said contracts.

Fig. 4. The management of Nacala Port and the North Line was separated on 15 March 2013.



Source: Interviews and consultation of documents

4. THE VERSION OF THE CONCESSION'S BENEFICIARIES

The Centre for Public Integrity (CIP) undertook enormous efforts to gather the views of the entities involved in the Nacala Port and North Line concession. CDN, CFM, *Portos do Norte*, Ministry of Transport and Communication, INSITEC, and former Chairman of CFM are the entities who were formally contacted in the present research. Letters were sent to the companies and duly received and signed and stamped in acknowledgement of receipt. In most cases, six months later there was still no response. Only *Portos do Norte*, through the respective Chairman of the Executive Committee, Fernando Couto, and Eng. Rui Fonseca, consented to answer CIP's questions regarding the concession. The Ministry sent its answers four months after having received CIP's request.

4.1 “We had no money to invest”

Below we present the version of Fernando Couto, one of the “architects” of the concession and currently head of the company managing the Nacala Port. He speaks not only of *Portos do Norte*, but also a little of CDN's management, while head of the consortium. He said that the problems surrounding the concession resulted from the concession holder's lack of funds to invest in the undertakings awarded under the concession.

Fernando Couto explained the terms of the transfer of the management of Nacala Port from CDN to *Portos do Norte*. He said that it was a sub-concession. “The concession holder for the Nacala Port and North Line is *Corredor de Desenvolvimento do Norte*. *Portos do Norte* took over the management of Nacala Port through CDN, therefore, it is a contract entered into between CDN and *Portos do Norte* for the management of Nacala Port”.

Fernando Couto played a central role in the concession, having been the person responsible for mobilising national investors for the Nacala project. He explained the importance of these investors, using historical facts that dictated the privatisations.

We have to put things into context. In 1997, under pressure from the World Bank, the Government was forced to hand over the rail and port

infrastructures to private management, and for this launched a tender for the three railway lines in the south, Swazi, Limpopo, Salamanga, Ressano-Garcia and another which is the main one, which is over land, to the Maputo Port. And this was how the State directly awarded the Beira Port to Cornelder. There was practically no mention of the north of the country. At that time, there were North American businessmen who approached the Government to manage the Nacala Port. And at that moment the Government understood that it was not possible to separate the railway line from the Port, because the railway line had always been deficient and was extremely long, the longest in the country, and it links to a country with a poor economy, as is the case of Malawi. This was because the Port generated more cash flow, and could subsidise the operations of the railway line.

Therefore, when the consortium was being conceived, I was one of the people who understood that nationals with financial muscle and knowledge of management needed to be present in the investment in Mozambique's North Corridor. The process began in 1998.

A consortium was formed which included American, French, Portuguese and South African companies, which made up 77% of the consortium named SDCN, with the remaining 33% being held by Mozambican companies. SDCN began negotiations with CFM to establish CDN.

In 1999, the Government of Malawi launched a tender for the privatisation of its railway system and this consortium was awarded the tender; it began to operate in the country at the end of 1999, through a company called CEAR. – **Fernando Couto**

The Nacala Port concession agreements were negotiated between 1998 and 2000. The agreements were signed in 2000, but only began to be implemented in 2005. Fernando Couto explained why it took so long.

We could not find investors, first because of the complexity of the shareholder structure, and then because it was an investment in a railway line covering two countries and a port, with considerable financial risks, considering that the projected cargo volumes (the Moatize coal was never considered) were not considered feasible. We had meetings with several institutions such as the European Investment Bank, ADB,

etc. Meanwhile, the foreign part of the shareholder structure also underwent changes, beginning with the withdrawal of the French, followed by the Portuguese and then the South Africans, for different reasons.

In 2003, we were able to get OPIC (Overseas Private Investment Corporation), a finance organisation of the North American Government, to make available the funds to cover the investments, which was the condition required in order to take over the railway and port concessions.

Investment banks such as Nedbank and several international consultants were involved in this process. It was a lengthy process that resulted in a loan of 30 million Dollars, with 13 million being for Malawi and 17 million for Mozambique. This meant that the conditions were met so that on 5th January³¹ 2005, the Nacala Corridor operations could begin through private management, with it being determined, as required by OPIC, that the management of the Mozambican and Malawi railway services be handed over to RDC; the financial management of CDN and CEAR was to be handed over to EDR and the management of the port to NCI, the subsidiary of *Grupo Manica Moçambique*, which took over from Rennies Group, after the latter sold its interests (shares) in the country. – **Fernando Couto**

This information reveals that the Government awarded the concession of the Nacala Port and North Line to a private entity that had neither the resources nor the capacity to operate the infrastructures under concession. This distorts the very essence of a Private Public Partnership, inasmuch as the capacity of the private entity to mobilise investments is a determining factor in being chosen to partner with the Government.

Without the resources to apply in the management of Nacala Port and the North Line, CDN, essentially the right arm of SDCN, had to wait for an entity with money to purchase the company shares, and thereby carry out some investment in the Port, while it guaranteed that minimum services were maintained.

31 There is diverging information on the date on which the contract came into force. CFM's reports mention 10 January as the date the concession holder took over. This difference, however, does not change much in practical terms.

Fernando Couto explains how it all happened:

In 2007 we were approached by Vale, which intended to distribute coal via Nacala. There was a year-long negotiation process, all done in the USA, which came to nothing; the negotiations failed. Vale considered that Nacala was not an option and preferred to go to Beira. And at that time, with all the financial resources made available by OPIC now depleted, the Americans, majority shareholders, abandoned the project and left the “baby” alone in national hands, and I was left with that responsibility. It is important to mention that several meetings had been held in Washington with OPIC, at our request, because we were ignorant of where the funds for the foreseen investments were being placed and where we stressed that the amount of the loan was clearly insufficient to cover the needs, particularly in view of the degradation of the Malawi railway infrastructures.

I believe that, at the time, American interests in this Corridor covered Mozambique, Malawi and Zambia, and was linked to the problem of controlling Islamic radicalism. Because, fortunately, nothing happened, they lost interest. That is why they abandoned the project.

Couto showed some of the gains achieved during his management, after the North American shareholders withdrew from CDN.

With all of the costs this implied, and without recourse to any bank loan, we maintained the entire rail and port system of the North in operation: two (2) passenger trains per day; two (2) trains per month to Lichinga, which was something that had not been done in 5 years; we purchased 4 locomotives; we repaired approximately 70 wagons and 3 locomotives; we built, without money, the largest port silos in Mozambique. Built with the money we generated in everyday operations. There was never a delay in salary payments. We were the first company in the northern region of the country to sign collective labour agreements.

Maintaining minimum services, with our own means, finally, the long-awaited “buyer” for the shares appeared. It is Insitec, a company headed by Celso Correia and linked to the then Head of State, Armando Guebuza. Only Insitec did not come to invest in the infrastructures. It bought the shares and waited for these to increase in value, and then sold them to another company, bringing absolutely no benefits to the concession.

Fernando Couto:

I cannot say exactly when Insitec began negotiations with the Americans who had completely abandoned the project, and purchased the American shares. After this, Insitec sold them to Vale and NCI sold them to Vale. Therefore, I think as far as we are concerned, our position was that we could not stand in the way of a large project, since the only way to recover the entire line would be through the export of coal. And after this, negotiations began between Vale and the 33% of national capital. Those negotiations went on for nearly 2 years. It was decided that 18% would be sold to Vale, so that it would have the majority shareholding in SDCN, and it would hand over the management of the Nacala Port to a company controlled by nationals.

Fernando Couto explained that this was how the management of Nacala Port was transferred from CDN to *Portos do Norte*. This was decided within the scope of the sale of 18% of the national investors' shares in SDCN to Vale.

Coal is coal, and there is a difference between a coal project and a non-coal project. Vale could keep the coal, since this requires massive investments, which we were incapable of dealing with. The national business community did not have the capacity to go into a billion-Dollar business. I say this, and whoever says otherwise must come to me and tell me they have billions of Dollars to invest. I would like for a Mozambican to have that amount, perhaps there is someone, but they will have to explain where they got the money from, because I explain where mine comes from, the banks know.

It was the perception that we could not hand over everything to the Brazilians; we had to keep a part of it, so that national interests were maintained and the Mozambican and Malawian freight was handled. Therefore, after lengthy negotiations, on the 15th of March 2013 the Nacala Port was handed over to a legal entity called *Portos do Norte*, in which the majority shareholder is *Empresa Pública Portos e Caminhos de Ferro*, with 30%.

Couto, the Chairman of the company responsible for the management of Nacala Port defends, not surprisingly, that this was the best decision and shows with numbers that there are already benefits from this transfer of management.

Fernando Couto:

I can say it was positive since Nacala Port had never before reached the levels of cargo it achieved since *Portos do Norte* took over management. This is positive.

- We broke records that even colonial times didn't have. We reached maximum capacity of Nacala Port.
- The money generated by Nacala Port remained in Mozambique, in the Mozambican economy as an economic generator and multiplier. Money makes money!
- We proved that private Mozambican management is capable of managing infrastructures.
- We earned the trust of not only the Government, but also of the financiers regarding the transformation of Nacala Port.

Fernando Couto admits that the Nacala Port concession to CDN, in the terms in which it was awarded, went wrong. And he says the cause of the failure of the concession was a lack of money for investment. The issue that remains unanswered is how a private partner without money to invest or the capacity to mobilise financing was chosen to receive the concession of public undertakings and, even worse, without a public tender having taken place.

It went wrong because we did not have the money to plug the hole in the railway, and it was the same concession holder. We had to use the money generated by the port to plug the hole. It comes back to that old saying: if your sheet is smaller than your mattress, you either cover your face or you cover your feet. We made money with the Port, but that money was to plug the hole in the railway and, I repeat, it was not possible for us to resort to financing, because the terms of the OPIC contract did not allow it. – **Fernando Couto**

CDN was always made from the dichotomy national investors (political businessmen) versus foreigners (American companies RDC and EDR). When time came to determine who was responsible for the failure of the concession, the blame was also distributed following this logic “nationals vs. foreigners”.

Couto says that the foreign investors did not bring in any technical knowledge. “They only brought in one technician”, he stated.

As far as the national investors are concerned:

I think that, at the time, it was necessary to offer an opportunity to

the people from the North of Mozambique, in terms of ironing out regional asymmetries. Give them an opportunity to be the owners of their own project, in their own region. Therefore, regardless of whether they are politicians or not, people from the same region, linked to a project of this dimension, sustains the project. If the train travelled to Lichinga, it was because of the partners that we had in Niassa province. Now, if you ask me, is it the ideal model? I would say, perhaps not. Not today; today we have other mechanisms, a stock exchange, which would allow us to say there is x% of capital open to Mozambican investors, and whoever was interested could buy in.

At the time, however, there were no alternatives and all of the national companies that invested in the project came in with money, both as capital, and as shareholder loans. – **Fernando Couto**

Just like the names of the companies of the so-called national investors, the capital with which they entered the company was never revealed. However, it is known that an attempt was made for the division to be as equal as possible. Each of the six shareholders held about 5% in SDCN, totalling 33%. The balance in the distribution of shares between national investors is maintained in *Portos do Norte*. Five of the six companies each hold a little over 11%. GEDENA holds approximately 13%, totalling 70%. The remaining 30% are held by CFM.

Did the presence of important State figures as beneficiaries of the concession condition the Government's action in the management of the concession agreement? Couto answered that he never felt pressured by the political businessmen.

I was always in management and nothing ever happened to me. I made the decisions I thought were right; on the contrary, the reason I stayed in the project was exactly the support I received from the national investors. I never had political interference, at project level, while I was the manager. – **Fernando Couto**

It is undeniable that the concession failed up to now. Fernando Couto believes, however, that the separation of the management of Nacala Port from the North Line will bring positive results, even while maintaining the political businessmen in the management of the Port. And he explains why it will not fail this time:

Fernando Couto:

Portos do Norte has many things that are different from CDN. Firstly, it is an entirely national company, at this moment, with an obligation to meet the Country's challenges. It cannot hide behind excuses for not accomplishing its objectives, which are to serve the Nacala Port efficiently; to serve the North region and the hinterland countries.

And in 2 years of operation we saw considerable growth, of approximately 20% each year. And this at a time when there was a global recession. We paid our taxes to the State; we are probably the largest fiscal contributor in the north of the country; and we guarantee, directly or indirectly, employment for approximately 5000 people in Nacala Port.

The Government is rehabilitating infrastructures which are under concession to a private entity, without the private entity contributing to the investment. The private entity in question is *Portos do Norte*, and the Chairman is Fernando Couto. He admits that the concession holder of Nacala Port did not invest money to rehabilitate the port and shows concern with the possibility that the Government may want to increase the amounts paid for the concession, once the rehabilitation and modernisation of the port is completed.

Couto makes it clear that, in addition to not having contributed financially to the rehabilitation of Nacala Port, the concession holder is not willing to pay more (increase in variable rates) for the concession, even for a rehabilitated and modernised port.

(...) We are seriously concerned because in a concession, regardless of the nature, there must always be a balancing of the costs of the concession, so that any increase in costs does not reflect on the users and make us uncompetitive internationally. We need to be competitive. We are still in the study phase and are working very seriously with the Government. Thus, there is a different attitude within the new Government regarding the treatment of this matter in order to address and assess these issues. – **Fernando Couto**

The Nacala Port concession will end in the year 2020. Only after this period will the Government renegotiate the terms of the concession or else decide to return the management of the undertaking to CFM, the state-owned enterprise.

Fernando Couto refused to make any comment regarding the sale of the capital of national companies, saying that this matter concerns the companies at

that this is justified and portrayed in their respective accounts; he also stated that *Portos do Norte*'s accounts are audited, and it complies with all of its tax obligations; there is also no capital flight from Mozambique to other countries, and that there are benefits both for the company, and for its shareholders.

However, the accounts of *Portos do Norte* are not available to the public. They are not published. They cannot be consulted in a public domain document.

4.2 GESTRA was swallowed and I was slaughtered

Rui Fonseca was the Chairman of the Board of Directors of CFM at the key moment of the concession. He took office in 1997, after having spent almost his entire career in CFM, in different relevant positions. Negotiations for the Nacala Port and the North Line concession began shortly after Fonseca took over the position of Chairman of CFM. The agreements for the concession were reached and the contracts signed in 2000; the effective transfer of the management from CFM to CDN took place in 2005. In the following years, Rui Fonseca began to complain, through the press, of the concession holder's non-compliance.

He alleged, however, that when GESTRA was created "it had positive objectives". It was not to participate exclusively in the North Line and Nacala Port concession. He mentions the corporate purpose of the company to show that its mission goes far beyond participating in SDCN.

He says that when it entered the SDCN shareholder structure, GESTRA – a company made up of CFM staff – aimed to protect Mozambique's railways and ports from bad management, but that mission failed.

"We were swallowed. GESTRA held a small share in CDN. We were given a very small share and we were swallowed. That is what happens when you are the little fish and you are among sharks". – **Rui Fonseca**

Without being able to change things from within, through GESTRA, Rui Fonseca began a public battle, very often through *Chitimela*, CFM's magazine, and in statements to the press. In his stance, CFM's Chairman was opposed to the "master lease"³² model used in the Nacala Port concession. He defended

³² *Master lease* is the technical term used to designate the Port's concession as a whole, as opposed to a terminal-to-terminal concession.

that the concession should have been from terminal to terminal, and not global. But this was not his only, or his main, concern. What he complained the most about was the non-payment of the fees owed by the concession holder to CFM and to the State, as well as the lack of maintenance of the infrastructures under concession.

“I think that the *master lease* is wrong. But this is only one position. There are those who think this is the best model. I do not own the truth. The big problem here is that they never paid! They only paid upon entry and then never paid again! They never paid the various fees. Many letters were sent demanding payment....and nothing! That was my major concern. I fought against this so hard that I became sick. I was slaughtered. Not physically, but I was shot down. I became sick because of this”. – **Rui Fonseca**

Rui Fonseca says it was a very bad time in his life, and that he wants to forget it forever. He indicates that he knows why CDN did not pay the concession fees, but will not agree to discuss it. In relation to the Government's apathy in removing the concession from CDN, if it was in default, Rui Fonseca only asks that the main shareholders in CDN be verified, making it understood that these were very influential companies. It must be remembered that the so-called national investors held over 1/3 (33%) of SDCN.

Just like Fernando Couto, Rui Fonseca considers that the problem of CDN's non-compliance was not due to the political influence of the national shareholders.

“It is much more complex than that. I fought hard against this (non-payment). It was not the Mozambicans (who did not want to pay). That is on record. The minutes of the meetings are public. There was a position taken by the little ones”. – **Rui Fonseca**

Despite mentioning that the minutes of the meetings of CFM's Board of Directors are public, these are not available for consultation anywhere. CIP tried every which way to contact both CFM and the Government to obtain relevant information regarding this concession, but there was no answer.

Rui Fonseca stepped down as Chairman of CFM in 2010, five years after the concession began. When he left, the problems relating to the non-payment of fees owed had still not been resolved. And he says that the situation continued like that, and even worsened after he stepped down as Chairman of CFM.

In effect, CFM's annual reports for 2012 still contained complaints of the CDN's defaults. This was after Insitec entered and withdrew, which in part shows that this company did not come in to resolve the concession's problems.

There was, then, the separation of the management of Nacala Port and the North Line. The Port was entrusted to the management of *Portos do Norte*, a 100% Mozambican company with shareholders who were part of SDCN and CDN. The expectation is that now none of the problems that were attributed to foreign shareholders will be repeated in the management of Nacala Port.

Rui Fonseca finds it odd, however, that 350 million Dollars, in the form of a soft loan, are to be invested in the rehabilitation of Nacala Port, for two reasons:

Firstly, he considers that amount to be very high. He recalls that at the end of 1980s and beginning of 1990s, under his management, the Beira Port was totally rebuilt and says that the reconstruction cost approximately 90 million Dollars.

Secondly, he feels that if the Port is under private concession, it does not make sense to use a soft loan, fully paid by the State.

“It does not make sense (that the loan is paid by the State). In these cases subsidiary agreements for public credit are done. Another alternative is for the State to invest, which can be offset by variable and fixed rates”. – **Rui Fonseca**

5. CONCLUDING REMARKS

The Government awarded the concession for the management of Nacala Port and the North Line to the company CDN, held by CFM (49%) and SDCN (51%), without a public tender. SDCN is a company that represents, in addition to weighty international capital, companies belonging to the political elite and high-ranking staff of CFM, forming an alliance that, meanwhile, began to crumble over time, due to internal differences between the national and foreign partners in the concession.

During a significant part of the Nacala Port and North Line 10-year concession, CDN, dominated by SDCN, failed to meet its obligations. It allowed the infrastructures awarded to it under concession to become degraded, without any maintenance interventions and became heavily indebted to the State and to CFM.

During this time, the Government never intervened in the concession to force the concession holder to meet its obligations.

Many Government members, whose role it was to intervene and hold CDN, the concession holder, accountable had, at the same time, direct interests in the concession. This is the case of the former President of the Republic, Armando Guebuza, and the former Prime Minister, Aires Ali who, through the company *Moçambique Gestores*, of which they are the founders/representatives, participated in the shareholder structure of SDCN.

Rui Fonseca was Chairman of CFM during most of the time of the concession of the Nacala Port and North Line, and is at the same time founder of GESTRA, a company which has shares in the concession holder's shareholder structure. Fonseca states that he fought hard against this concession, but was "slaughtered and swallowed".

There were other influential figures in SDCN, from judges of the Constitutional Court, to Generals in the Armed Forces and Defence of Mozambique (FADM), Members of Parliament and high-ranking Frelimo party leaders.

It is believed that the presence of high-ranking members of State and of the Frelimo party, in power, in the shareholder structure of the company that was awarded the Nacala Port management concession, contributed negatively to this company and prevented the Government from taking action.

While the State accumulated losses with the concession, the elites who benefited from the concession carried on doing business with a total lack of transparency, selling shares in SDCN, whose only asset within the national territory was the Nacala Port and the North Line. These deals did not result in the payment of capital gains to the State, despite the windfall revenues.

Now with the infrastructures under concession totally degraded, the Government had to resort to public credit to “save” Nacala Port, which was in an advanced stage of degradation. A soft loan in the amount of 350 million Dollars, which will be fully paid by the State, was obtained from Japan International Cooperation Agency (JICA).

The entry of Vale into SDCN did contribute to the rehabilitation of the North Line.

This concession represents a clear case of how the political elites use PPPs to expropriate the State in their own benefit or in expectation of obtaining benefits, using their position of power within the State to do so.

PPPs almost always occur as alliances between national elite and large international capital. In the case of the rail and port system of the North, something went wrong with the alliance, with the North American partners becoming angry with the Mozambican partners. However, the withdrawal of the American partners and the entry of Vale allowed the alliance to produce effects. Nacala Port has been generating dividends since 2013 for its shareholders, grouped in *Portos do Norte*, where CFM has a shareholding of only 30%. During this period, *Portos do Norte* was also making its fiscal revenue payments to the State, on time.

The concession will come to an end in 2020, with the Government having to decide whether or not it will renew the concession to the same entity. Negotiations for the renewal of the concession should begin three years prior to the end of the concession.

Meanwhile, the State appears to be tied to soft loan agreements with JICA, which does not leave it much room to negotiate the renewal of the concession or decide to rescue the undertakings under concession, or even to award the concessions to other entities. Everything points to CDN continuing to manage the Nacala Port and North Line for another 15 years, at least, after 2020.

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