

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, JOHANNESBURG)**

Case No:

In the matter between:

**FORUM DE MONITORIA  
DO ORÇAMENTO**

Applicant

and

**MANUEL CHANG**

First Respondent

**MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

Second Respondent

**DIRECTOR OF PUBLIC PROSECUTIONS,  
GAUTENG, JOHANNESBURG**

Third Respondent

**HELEN SUZMAN FOUNDATION**

Fourth Respondent

**DIRECTOR GENERAL: DEPARTMENT  
OF HOME AFFAIRS**

Fifth Respondent

**MINISTER OF HOME AFFAIRS**

Sixth Respondent

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**NOTICE OF MOTION**

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**PART A**

**TAKE NOTICE THAT** the applicant intends to make application for the hearing of this application before the above Honourable Court on Wednesday, 25 August 2021 for an order in the following terms:

1. The rules relating to forms and service be dispensed with and that this application be heard as a matter of urgency.

2. Failing an undertaking being provided by the second respondent that he will not cause the first respondent to be extradited to the Republic of Mozambique pending the finalisation of the relief sought in Part B:
  - 2.1. The first respondent is prohibited from leaving the Republic of South Africa until a final order is made in Part B;
  - 2.2. The respondents are directed to take all necessary steps to prevent him from doing so.
3. The fifth respondent, the Director General of Home Affairs, is ordered to:
  - 3.1. effect service of this order on the official in charge of each and every point of entry into, and exit from, the Republic; and
  - 3.2. once he has done so, to provide the applicant with proof of such service, identifying the name of the person on whom the order was served at each point of entry and exit.
4. The second respondent is directed in terms of rule 53(1)(b) of the Uniform Rules of Court by Friday, 27 August 2021, to despatch to the Registrar the record of all documents and all electronic records that relate to the making of the decision referred to in paragraph 1, together with such reasons as the respondents by law are required to give or make (or may give or make), and to notify the applicant's attorney that it has done so.
5. Any further and / or alternative relief.

**TAKE FURTHER NOTICE** that if the respondent opposes the Part A relief sought it shall:

- (a) Deliver by 08h00 on Wednesday, 25 August 2021 any affidavits they may desire in answer to the allegations made by and behalf of the applicant.

## **PART B**

**TAKE NOTICE** that an application will be made to this Honourable Court for an order that:

- 5.1. The decision by the second respondent on or around 23 August 2021 to extradite the first respondent to the Republic of Mozambique is declared to be inconsistent with the Constitution of the Republic of South Africa, 1996, invalid, and is set aside.
- 5.2. The decision of the second respondent on 21 May 2019 is substituted with the following:  
“Mr Manuel Chang is to be surrendered and extradited to the United States of America to stand trial for his alleged offences in the United States of America as contained in the extradition request dated 28 January 2019.”
- 5.3. In the alternative to prayer 2, the decision is remitted to the second respondent.
- 5.4. There is no order as to costs.
- 5.5. Further and / or alternative relief.

**TAKE NOTICE FURTHER** that the respondents are called upon, in terms of rule 53(1)(a) of the Uniform Rules of Court to show cause why the abovementioned relief should not be granted.

**TAKE NOTICE FURTHER** that in terms of rule 53(4) of the Uniform Rules of Court, the applicant may by Wednesday, 1 September 2021, amend, add to, or vary the terms of their Notice of Motion and supplement their founding affidavit by delivery of a notice and accompanying affidavit.

**TAKE NOTICE FURTHER** that if any of the respondents wish to oppose the relief sought in this notice of motion, they are required by Monday, 6 September 2021 to deliver such affidavits as the respondents may desire in answer to the allegations made by the applicants.

**TAKE FURTHER NOTICE** that the applicant may by Wednesday, 8 September 2021 reply to the opposing affidavits, if any, filed by the respondents.

**TAKE NOTICE FURTHER** that the affidavit of **NICOLE VAN DEVENTER** together with all of its annexures, which accompanies this Notice of Motion, will be used in support of this application.

**TAKE NOTICE FURTHER** that the applicant has appointed Ian Levitt Attorneys, Floor 19, Sandton City Office Towers, Corner of Rivonia Road and 5th Street, Sandton, 2196, 011 784 3310, at which it will accept notice and service of all process in these proceedings.

**KINDLY PLACE THE MATTER FOR PART A RELIEF** on the roll for hearing accordingly.

DATED and SIGNED at JOHANNESBURG on this 24 day of August 2021



**IAN LEVITT ATTORNEYS**

THE LEONARDO

75 MAUDE STREET

SANDOWN

SANDTON

REF: I LEVITT/NVD

EMAIL: [Nicole@ianlevitt.co.za](mailto:Nicole@ianlevitt.co.za)

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**TO: THE REGISTRAR, HIGH COURT OF SOUTH AFRICA,  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**AND TO: BDK ATTORNEYS**

Attorneys for the First Respondent  
Ground Floor, Oxford Terrace  
3 9<sup>th</sup> Street  
Houghton Estate

**JOHANNESBURG**

Tel: 011 838 1214 / 082 572 4550  
Fax: 011 836 8740  
Email: thefirm@bdk.co.za  
Ref: Mr C F Krause/Chang/Urgent

**AND TO: THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

Second Respondent  
SALU Building  
316 c/o Thabo Sehume and Francis Baard Street

**PRETORIA**

Tel: 012 406 4669 / 012 406 4696  
Fax: 012 406 4680

**AND TO: DIRECTOR OF PUBLIC PROSECUTIONS, JOHANNESBURG**

Third Respondent  
Innes Chambers Building  
C/o Pritchard and Kruis Streets

**JOHANNESBURG**

Tel: 011 220 4000  
Fax: 011 220 4057  
Email: achauke@npa.gov.za

**AND TO: MAGISTRATES' COURT FOR  
THE DISTRICT OF EKURHULENI NORTH**

Fourth Respondent  
17 Monument Road  
Kempton Park

**JOHANNESBURG**

Tel: 011 395 6300  
Fax: 011 394 2507  
Ref: Magistrate WJJ Schutte

**AND TO: UNITED STATES EMBASSY, SOUTH AFRICA**

877 Pretorius Street

Arcadia

**PRETORIA**

Tel: 012 431 4000

Fax: 012 342 2299

**AND TO: MOZAMBICAN HIGH COMMISSION, PRETORIA**

529 Edmond Street

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Tel: 012 401 0300 / 5

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**FOUNDING AFFIDAVIT**

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I the undersigned

**NICOLE VAN DEVENTER**

do hereby make oath and say:

1. I am an adult, female attorney practising at Ian Levitt Attorneys, situated at Floor 19, Sandton City Office Towers, Corner of Rivonia Road and 5th Street, Sandton Johannesburg, South Africa. I am the applicant's attorney of record in this application. I am authorised to depose to this affidavit on its behalf.

2. The facts described in this affidavit fall within my personal knowledge, unless I state otherwise or the context makes it clear that they do not. I confirm that those facts are to the best of my knowledge, true and correct.
3. Some of the averments I make herein deal with matters of law. To the extent that I do so, I rely on the legal advice obtained from my legal representatives during consultation and in the preparation of this affidavit. I accept the correctness of that legal advice.
4. I am advised that I will be entitled to supplement this affidavit and amend its accompanying notice of motion once the records of decision are filed. I expressly reserve my right to do so.
5. The applicant is the Forum de Monitoria do Orçamento (**FMO**). As I explain in detail below, FMO is an umbrella organisation of various Mozambican civil society organisations. I depose to this affidavit on behalf of FMO because its General Coordinator, Professor Adriano Nuvunga, was unavailable to depose to this affidavit in time for this application to be launched. The General Coordinator is in Mozambique and would not have gotten a signed affidavit in time. He will depose to a confirmatory affidavit relating to this application as soon as possible.

#### *Introduction*

6. This is an urgent application to:
  - a. **PART A:** Interdict the Minister of Justice and Correctional Services' (**Minister**) from extraditing Mr Manual Chang pending the final determination of the relief in **PART B**.
  - b. **PART B:** Review a decision by the Minister to extradite Mr Chang to the Republic of Mozambique.
7. Mr Chang is cited as the first respondent; the Minister is cited as the second respondent. We have also cited the Director of Public Prosecutions, Gauteng Local



Division, Johannesburg, for any interest they might have in this matter. We have done the same for the Helen Suzman Foundation (**HSF**).

8. We also join the Director General and Minister of Home Affairs. The relief sought against them is limited: it is to serve this Court's order on all ports of entry in South Africa, to prevent Mr Chang's exit. This was done, I am advised, in the *Al-Bashir* litigation.
9. The relief sought in Part A of this application is of extreme urgency. The Minister made his decision, according to a media release by the Minister (**NVD1**) and to media reports (**NVD2**), sometime between 21 and 23 August 2021. FMO wrote to the Minister on 23 August 2021, asking the Minister to delay extraditing Mr Chang to allow FMO to bring a review of the decision. Today, on 24 August 2021, the Minister refused to do so. The Minister explains that the extradition has been referred to Interpol and will go ahead. I attach this correspondence as **NVD3**.
10. FMO applies urgently to prevent this extradition. FMO also applies to require the Minister to file the record of his decision urgently. That way, FMO will be placed to bring the case for **PART B** urgently and within short deadlines.
11. Ultimately, FMO seeks to create some breathing room to review a decision that is prima facie unlawful. The Minister's decision, as he accepts, is one of international and regional importance. It involves significant allegations of corruption against Mr Chang. It is made against the backdrop of this Court previously reviewing the Minister's predecessor's decision to extradite Mr Chang to Mozambique. Various parties have a significant interest in the decision, especially the Mozambican victims of the alleged corruption. Other parties include South African NGOs committed to combatting corruption and ensuring that South Africa complies with its international legal duties. One such party is the HSF, who was admitted as an amicus curia before this Court in the previous Chang litigation (discussed below).
12. The Minister, however, has frustrated these parties' ability to consider their rights and review his decision. He took almost two years to decide to extradite Mr Chang to Mozambique. Now suddenly there is an inexplicable rush to surrender Mr Chang.

Despite disclosing no proper reasons for his decision, and notwithstanding prima facie evidence of unlawfulness, the Minister insists that he implement his decision without providing parties an opportunity to consider their rights.

13. Hence, the FMO applies to suspend the Minister's decision to allow it to bring a review.
14. As for **PART B**, the Minister's decision, I am advised, is unlawful and unconstitutional. It falls to be set aside. I am advised that this Court can substitute the decision by the Minister with the decision specified in the notice of motion, alternatively remit the decision to the Minister.
15. I have caused this application to be served on the American and Mozambican Embassies. No relief is sought against these entities, but this application is brought to their attention for any interest they might have in this application.
16. Ultimately, this application is about corruption and accountability. Corruption is a pandemic that scourges the African continent. Like South Africa, Mozambique is no stranger to corrupt officials, abuses of public power, and the greedy diversion of monies intended for public good to the pockets of unsavoury politicians. Mr Chang stands accused of corruption of the highest order. He is charged by both the United States of America *and* the Republic of Mozambique for various counts of corruption and fraud committed while he was Minister of Finance in Mozambique. He allegedly abused his public office to funnel foreign funds intended for community upliftment programs to his cronies and bribers. Many of the foreign funds were from American investors. As far as Mozambique is concerned, Mr Chang is at the heart of an unprecedented corruption scandal of international proportions.
17. Mr Chang has not yet faced the music. In 2018, at the insistence of American authorities, he was arrested while he was in South Africa. He has been incarcerated here since. The US requested that Mr Chang be extradited to the US to stand trial for his alleged misdeeds. Shortly after, Mozambique also requested that Mr Chang be extradited to Mozambique to stand trial. Mozambique made its request

*notwithstanding* that Chang enjoyed immunity from prosecution under Mozambican law; Chang at the time was still a member of Parliament who could not be prosecuted.

18. The then Minister, Mr Michael Masutha, was faced with a choice: extradite Mr Chang to stand trial in the US or send him to Mozambique where Mr Chang would walk away with impunity. Unbelievably, Mr Masutha choose the latter. The decision was unfathomable even to Mr Masutha's successor, the current Minister, Mr Ronald Lamola. The incumbent Minister applied to set aside his predecessor's decision. That application was lauded and supported by various parties, including the FMO.
19. Predictably, this Court, in its judgment in *Chang v Minister of Justice and Correctional Services; Forum de Monitoria do Orcamento v Chang* [2019] ZAGPJHC 396; [2020] 1 All SA 747 (GJ); 2020 (2) SACR 70 (GJ) (**Chang I**), set aside the decision. It held that it was irrational, unlawful, and unconstitutional to extradite a sought person to a country where that person enjoys immunity from criminal prosecution. I attach this Court's judgment as **NVD4**.
20. This Court remitted the decision concerning Mr Chang's extradition to the Minister. After almost two years, the Minister has made his decision. Unfortunately, once again, the decision is made in favour of impunity, not accountability. Hence Part B of this application, which seeks to set aside the Minister's decision.
21. More specifically, the grounds on which the FMO relies to review the Minister's decision are:
  - a. The Minister decided to extradite Mr Chang to Mozambique notwithstanding the absence of an arrest warrant for Mr Chang in Mozambique.
  - b. The Minister failed to consider or consider appropriately the fact that the US was the first country to request the extradition of Mr Chang.
  - c. The Minister failed to consider that the Mozambican request was made in bad faith.
  - d. The Minister failed to consider South Africa's international legal duties to combat corruption and ensure accountability for corruption.
  - e. The Minister failed to consider the interests of justice when deciding to extradite Mr Chang to Mozambique.

22. This founding affidavit serves to canvass the factual and legal basis for the relief sought. To this end, it is structured as follows:
- a. FMO's objectives and substantial interest in this matter are explained.
  - b. The factual background to this matter is provided.
  - c. The invalidity of the Minister's decision is briefly demonstrated.
  - d. The relief sought and the relative urgency of this application is explicated.

*FMO's interest and intervention in this matter*

23. I am advised that anyone may bring an application to review the exercise of public power, either under the Promotion of Administrative Justice Act 3 of 2000 (**PAJA**) or the principle of legality. Nonetheless, below I explained FMO's interest in this matter and why it has chosen to launch this application.
24. The FMO is an umbrella organisation of which nineteen Mozambican non-government organisations are a part. For example, the General Coordinator is the director of Centro Para Democracia E Desenvolimento, a non-profit, non-governmental organization organized under the laws of Mozambique. Its main objective is to deepen democracy and Development in Mozambique.. FMO has the capacity to sue and be sued.
25. The overarching purpose of the FMO is to coordinate civil society efforts to monitor and influence Mozambican fiscal and financial policy for the benefit of disadvantaged groups. FMO is dedicated to strengthening the fiscal and financial policies of the government of Mozambique by among other measures improving government accountability. As part of this work, it is committed to seeing that those responsible for the corrupt, fraudulent debts incurred or guaranteed by the Mozambique government, collectively known as "the hidden debt scandal", are held to account. Mr Chang is allegedly one of those involved in this debt scandal.
26. FMO's activities are governed by its memorandum of understanding, which I attach marked **NVD5**, and a translation of the memorandum, marked **NVD6**. As the memorandum explains, the members of FMO, which are civil society organizations

focused and interested in the area of public financial management, formed FMO to strengthen their collective action to monitor and influence fiscal and financial policies. As clause one of the memorandum provides, FMO's activities are implemented by a four-member coordination group, one of which serves as the coordinator general for a three-year period (*A Iniciativa é implementada por um Grupo de Coordenação (GC) composto por 4 organizações, dentre as quais haverá um coordenador geral, obedecendo a uma rotatividade de três em três anos*).

27. FMO was given standing by this Court in *Chang I*. This Court recognised FMO's standing to review the previous decision to extradite Chang to Mozambique at para 40.
28. FMO's interest in this matter is obvious. FMO was formed against the backdrop of widespread government corruption and maladministration in Mozambique. Its affiliates represent vulnerable members of Mozambican society who are impacted by poor governance, political grafting and bribery. FMO, on behalf civil society, oversees and monitors government financial activity to ensure that the funding the Mozambican government receives reaches its intended targets. Unfortunately, all too often such funding does not do so, but finds its way to the bank accounts of unscrupulous politicians.
29. While this case raises technical legal issues concerning the law of extradition, it is at its heart about corruption. This matter concerns the diversion of foreign investment, intended for the benefit and development of Mozambican society, to the pockets of powerful politicians and businessmen. FMO has played and continues to play an active role in combatting such cronyism and neo-patrimonialism in Mozambique.
30. FMO's role and interest in combatting the sort of corruption of which Mr Chang stands accused prompts this application. FMO has a direct and substantial interest in whether the Minister is extradited to Mozambique and ultimately held to account for allegedly corrupt activities. Mozambican civil society believes that the interests of Mozambique citizens would not be served by Mr Chang's extradition to Mozambique.

31. FMO has been following and commenting on Mr Chang's extradition since its genesis. FMO was one of the applicants in *Chang I*. After the Minister decided to extradite Chang this time, the FMO has been in contact with its lawyers in South Africa, seeking counsel on whether it should bring a challenge to the Minister's decision. On Monday, 23 August 2021, FMO through its legal representative wrote to the Minister's office, asking that the Minister delay extraditing Mr Chang to allow FMO to bring this review. The FMO was then informed, later that same day, of the Minister's decision to surrender Mr Chang to Mozambique. FMO was not given an undertaking that the Minister would delay the implementation of his decision to allow FMO to launch this review. When FMO was denied this undertaking, FMO urgently sought legal advice and caused these papers to be drafted overnight.

*Factual background*

32. Mr Chang was the Minister of Finance of Mozambique from 2005 to 2015. Mr Chang is currently a member of the Mozambican Parliament. At the time of *Chang I*, he enjoyed parliamentary privilege against criminal prosecution in Mozambique.
33. Mr Chang was indicted by a Grand Jury in the United States District Court, Eastern District of New York, United States of America on 19 December 2018. The indictment accuses Mr Chang of conspiring to defraud foreign investors to the tune of US\$ 2.2 billion during his tenure as Minister of Finance. According to the indictment, investigations conducted internationally have revealed that Mr Chang and his co-conspirators took part in schemes of securities fraud during approximately 2013 to 2015. The schemes involved large loans by banks, companies, and persons based in the USA, France, Switzerland, Holland, Britain, and the United Arab Emirates (UAE) to companies under the control of the Mozambican Government. The loans were meant to fund maritime projects that would benefit Mozambique but, it is alleged that funds were diverted to government officials in Mozambique in the form of kickbacks and bribes.
34. Two days later, on 21 December 2018, the United States sent an urgent request to South Africa for the provisional arrest of Mr Chang. On 27 December 2018, the request was put before a Magistrate, who issued the warrant of arrest. On 29

December 2018, Mr Chang was arrested at OR Tambo International Airport, Johannesburg.

35. Mr Chang was brought before a Magistrate on 31 December 2018 for a bail hearing, which was postponed to 8 January 2019. On 28 January 2019, the United States formally requested the extradition of Mr Chang from South Africa. Its extradition request, which includes the indictment discussed above, is attached and marked as **NVD7**. The bundle includes the indictment and various other relevant materials, including an affidavit from a special agent of the Federal Bureau of Investigation detailing the alleged offences of Mr Chang.
36. On 15 February 2019, Mr Chang was denied bail. He was deemed a flight risk.
37. On 5 February 2019, the National Prosecuting Authority (NPA) initiated the extradition enquiry as envisaged in section 10 of the Extradition Act 67 of 1962 (**Extradition Act**) before the Magistrates' Court in relation to the American request.
38. On 26 February 2019, Mr Chang and the NPA appeared before the Magistrate to determine the issue of committal under section 10 of the Extradition Act. The proceedings before the Magistrate became complicated when, at the hearing before the Magistrate on 26 February 2019, Mr Chang raised the fact that Mozambique had also requested his extradition from South Africa. On 21 February 2019, Mozambique had indeed sent South Africa a request to extradite Mr Chang to Mozambique.
39. The Mozambican request explains that Mr Chang is purportedly accused of crimes like those in the indictment from the United States. I say "purportedly" because the request does not attach an indictment or charge sheet from Mozambican prosecutorial authorities. I return to the significance this has for the legality of the Minister's decision later. I attach the Mozambican request to this affidavit as **NVD8**.
40. The hearing was adjourned and the Magistrate directed parties to file submissions on how the matter should proceed given the two, competing extradition requests. On 7 March 2019, the Magistrate ruled that the section 10 enquiry into the United States

extradition request will be finalised first. Thereafter, a separate enquiry into the Mozambican request will be conducted.

41. On 11 March 2019, Mr Chang launched an application in the Magistrates' Court to compel the NPA to place both extradition requests before the Minister. The gist of the application, according to Mr Chang, was that the Magistrate did not have the jurisdiction to decide on competing extradition requests. Instead, only the Minister can decide which extradition request to accept.
42. The Magistrate dismissed the application in a written judgment dated 26 March 2019. This judgment is attached as **NVD9**. The Magistrate found, in essence, that the Magistrates' Court had the jurisdiction to hear the section 10 enquiry even though the first respondent was the subject of two competing extradition requests. The Magistrate explained that the respective extradition treaties between South Africa and the requesting states must be implemented in terms of South Africa's domestic laws, namely the Extradition Act. Moreover, the Extradition Act empowers the Magistrates' Court to hear each of the section 10 enquiries relating to each competing extradition request individually. The Magistrate concluded that the enquiry for each request must be completed before the Minister can decide which request to accept. Mr Chang's application was consequently dismissed, as it sought to place the United States and Mozambican extradition requests before the Minister without the section 10 enquiries running their course.
43. The Magistrate proceeded to preside over the section 10 enquiry for the United States extradition request. In a written judgment dated 8 April 2018, the Magistrate ordered the committal of Mr Chang pending the Minister's decision to extradite him to the United States. The judgment is attached as **NVD10**. The Magistrate's judgment deals extensively with the issue of liability for extradition, the authenticity of the document and the existence of sufficient evidence to prosecute Mr Chang in the United States. The judgment was accompanied by an order committing Mr Chang, also dated 8 April 2018.



44. On the same day, 8 April 2019, the Magistrate also issued an order committing Mr Chang to imprisonment pending the Minister's decision to extradite him to *Mozambique*.
45. Pursuant to the two orders of 8 April 2019, the Magistrate forwarded a report to the Minister under section 10 of the Extradition Act. The covering letter to the report, which I have attached as **NVD11**, explains that the "application" concerning the Mozambican extradition request was entertained immediately after the enquiry into the United States request.
46. On 21 May 2019, the decision was taken by the then Minister to extradite Mr Chang to Mozambique. Mr Chang then contacted an official in the Minister's office, expressing his consent to be extradited to Mozambique.
47. On 27 May 2019, representatives from the United States wrote to the Minister threatening to review his decision and requesting that the Minister hold off on the extradition while the United States took legal advice. Mr Chang then wrote to the Minister several times requesting that he be extradited and that a copy of the official decision to extradite him be made available. Mr Chang received no replies and subsequently launched his application of 25 June 2019 to compel the Minister to extradite him.
48. What followed was the litigation and judgment in *Chang I*. This Court set aside the Minister's decision and remitted it to him for reconsideration. The Court held that the proceedings before the Magistrate were lawful. But it held that the Minister's decision was unlawful for the following reasons:
- a. International law prevented South Africa from extraditing Mr Chang to Mozambique, where he enjoyed immunity from prosecution.
  - b. South Africa's constitutional duties to combat corruption prevented the Minister from extraditing Mr Chang to Mozambique while Mr Chang enjoyed immunity.

- c. It is irrational, given the purpose of extraditions, to extradite someone to a country where they are immune from criminal prosecution.

49. Accordingly, the Court held at paragraph 80: “In reality, there was no choice to make between the USA and Mozambique. The Minister did not have the option to extradite Mr Chang to Mozambique. He was faced with only one valid request - that of the USA”.

*The basis and grounds for reviewing the Minister’s decision*

50. I have been advised that the Minister’s decision constitutes administrative action. FMO therefore primarily brings this application under PAJA. In the alternative, I have been advised that the decision is clearly public power, and so the review can also be and is brought under the principle of legality. In either event, since the grounds of review pertain to lawfulness and rationality, the basis of the review is immaterial to the outcome of this case.

51. The first ground for reviewing the Minister’s decision is that there is no warrant for Mr Chang’s arrest in Mozambique. A sought person cannot be extradited to a country where there is no warrant for their arrest, especially where they were found to be a flight risk in the requested state. Extradition in that context would be irrational. The sought person could escape the jurisdiction of the requesting state as they did previously. The sought person would not stand trial, which is the whole point of extradition.

52. In Mr Chang’s case, he was denied bail in South Africa. The implication is that he was a flight risk. The proof is in the pudding: he was able to leave Mozambique, notwithstanding mounting evidence of criminal activity (at that time, Chang had not been charged in Mozambique because he was immune). Accordingly, it is irrational to extradite Mr Chang to Mozambique, where he is at liberty to once again flee the country,

53. The Minister, in his media release, says that Mozambique has “duly indicted” Mr Chang. It anticipates seeing the indictment in the record to be filed by the Minister.

But even if Mozambique has duly indicted Mr Chang, that cannot be enough. There is no point to indicting an accused, who is a flight risk, without issuing a warrant for their arrest.

54. The second ground for reviewing the decision is that the Minister failed to consider or consider appropriately the fact that the US was the first country to request the extradition of Mr Chang. I am advised that the relevant extradition treaties require the Minister to consider the sequence of requests sent to him when multiple requests are sent. The country to request first enjoys priority unless there are exceptional circumstances saying otherwise. The Minister, in his media release, does not explain why the US, which was first in time, was not granted the extradition request. The only implication is that he failed to consider the US' temporal priority.
55. The third ground is that the Minister failed to consider that the Mozambican request was made in bad faith or acceded to the request notwithstanding its bad faith. The Extradition Act provides that the Minister may refuse to surrender a sought person if the request is not required in good faith. Mozambique's request cannot be said to have been made in good faith. The initial request was made notwithstanding Mr Chang's immunity. Now, Mozambique claims that Mr Chang has been duly indicted and will stand trial. However, no warrant has been issued for his arrest. Mozambique and the Minister have not explained the details of Mozambique's withdrawing of Mr Chang's immunity, including whether he is still a member of Parliament.
56. The fourth ground is that the Minister failed to consider or violated South Africa's international legal duties to combat corruption and ensure accountability for corruption. The Minister was faced with (a) a request for Mr Chang's extradition by a country that has only ever demonstrated commitment to prosecute Mr Chang for his corruption and (b) a country that has at best been recalcitrant in prosecuting Mr Chang. In fact the US has been trial ready for Mr Chang for years. It has all the evidence it needs and is ready to proceed. In that context, South Africa's international duties demand that the Minister accede to the former country's request, barring exceptional circumstances. No exceptional circumstances exist here or have been disclosed by the Minister.

57. Finally, the interests of justice and reasonableness were not considered by the Minister. Alternatively, the Minister acted unreasonably by deciding to extradite Mr Chang to Mozambique. For the reasons given above, the interests of justice and the balance of reason demanded that Mr Chang be extradited to the US, not Mozambique.
58. These grounds, cumulatively or respectively, demand that the Minister's decision be declared inconsistent with the Constitution and invalid.

*The relief sought and urgency*

59. With respect to **PART A**, FMO has applied for an urgent interdict restraining the Minister from surrendering Mr Chang. The Minister has insisted that he will go ahead with extraditing Mr Chang, despite our stated intention to review his decision.
60. Most importantly: if the Minister goes ahead with his decision, the relief in Part B is moot. Mr Chang will be in Mozambique. There will be no way to ensure his return. There will be no point in declaring the Minister's decision as unlawful. As the old Afrikaans adage goes, the bullet will have gone through the church.
61. FMO has provided for truncated timelines in its notice of motion and has brought this application to be heard on an extremely urgent basis. I am advised that for a matter to be heard contrary to the ordinary rules of court, an applicant must show an absence of substantial redress if the application is not heard as a matter of urgency. Once an absence of substantial redress is established, other factors come into play. These include—
- (a) whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing;
  - (b) other prejudice to the respondents and the administration of justice;
  - (c) the strength of the case made by the applicant;
  - (d) any self-created delay by the applicant in asserting its rights;
  - (e) the consequences of not granting the relief sought; and
  - (d) whether the relief would become irrelevant if it is not immediately granted.

62. An application of these factors to the facts of this case demonstrates the urgency of this application. As already explained, the Minister has not undertaken to delay his decision. Mr Chang is about to leave the country. Once he does, there will be no relief for FMO and other interested parties.
63. Mr Chang has been in custody since 31 December 2018—a total of 967 days at the date to which I deposed to this affidavit. I am advised that the Constitutional Court has repeatedly recognised the importance of the right to freedom, especially against the backdrop of arbitrary detentions during apartheid, and how that right guarantees detention that is not arbitrary and is based on just cause. I am also advised that this Court has recently decided a matter urgently because of ongoing violations to a constitutional right. As the Court put it in *Manuel v Economic Freedom Fighters and Others* (13349/2019) [2019] ZAGPJHC 157 at para 17:
- “There is no reason why [the applicant] ought to submit himself to further indignities and assaults on his dignity before this matter can be determined. Dignity is not only a value fundamental to the Constitution, but it is also a justiciable and enforceable right that must be respected and protected.
64. The potential ongoing infringement of Mr Chang’s right to freedom enjoins this Court to resolve this matter as quickly as possible. At the same time, FMO asks for a few more days. It will finalise its PART B application within a week, four days after seeing the Minister’s record of decision.
65. There is a multi-national interest in having Mr Chang’s extradition resolved as quickly as possible. Both requesting states are eager to prosecute Mr Chang, while the Minister hopes to surrender Mr Chang as soon as possible and honour South Africa’s international legal duties to accede to an extradition request without undue delay. I am advised that this international legal duty to ensure that extraditions happen as expeditiously as possible is also a significant factor that should guide this Court in permitting the matter to be heard urgently. The proceedings have dragged on for far too long, despite quick action by both the United States and the NPA initially. FMO does not wish to delay these proceedings any longer. But FMO also submits that the constitutionality of the Minister’s decision must be pronounced on by this

Court before a decision to surrender Mr Chang is taken, especially since the prospects of success are so high. This should be done as expeditiously as possible.

66. FMO has not delayed at all in bringing this application. It learned of the Minister's decision three days ago (22 August 2021), drafted papers overnight, and filed by today, Tuesday 24 August 2021—two court days later. It filed on the same day that I learned of the Minister's refusal to delay his decision. The matter is ripe for hearing and the parties have been given, as explained below, sufficient time to answer to this application. No discernible legal prejudice has been caused to anyone by these timelines and delaying the matter further will only cause more prejudice to Mr Chang.
67. The deadlines put forward in the notice of motion are as follows. The record is to be filed by Friday, 27 August 2021. FMO will then have by Wednesday, 1 September 2021 to amend its notice of motion or supplement its founding affidavit. Answering papers, if any, should then be filed by Monday, 6 September 2021. The FMO may then reply to those papers, if any, by Wednesday, 8 September 2021. The matter can then be set down.
68. As for **PART B**, I have been advised that if the Minister's decision is invalid, there is no reason why this Court should not set them aside. No imminent harm or inequities would result from setting it aside.
69. As for the requested remedy of substitution, the Court has been placed in as good a position as the Minister to make the decision either regarding the surrender or committal of Mr Chang in relation to the Mozambican request. It has all the evidence it needs regarding the two extradition requests. It is clear that the decision is and should have been a foregone conclusion. Any further delay in remittal will also prejudice Mr Chang (who has been in detention since 31 December 2018) and there is a multi-national imperative to finalise this matter as quickly as possible.
70. This Court refused to grant a remedy of substitution in *Chang I*. But now that the Minister has, once again, refused to make the lawful decision, this case is different. To avoid further delays, this Court should grant an order substituting the Minister's

decision with one extraditing Mr Chang to the US. This aspect will be addressed in greater detail in legal argument.

### *Conclusion*

71. By way of conclusion, I can only quote what this Court held in *Chang I* at para 77:

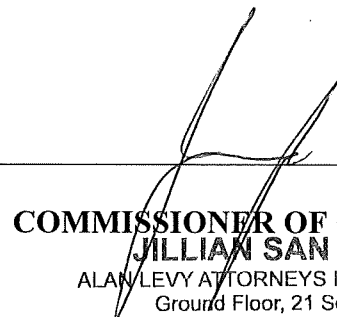
“The underlying crimes of which Mr Chang is accused involve corruption. Corruption takes place with no regard to national boundaries. Thus the effective eradication of corruption requires concerted and coordinated efforts internationally. This need has brought about various international treaties against corruption of which South Africa is a signatory. South Africa is thus part of a global effort to eradicate corruption and has bound itself internationally and domestically to taking effective steps to investigate and prosecute corruption wherever it occurs. It acknowledges as part of this participation that corruption and organised crime undermines the rights enshrined in the Bill of Rights, endangers the stability and security of society and jeopardises sustainable development and the Rule of Law.”

72. For these reasons, I pray for the order set out in the notice of motion.



**NICOLE VAN DEVENTER**

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at Johannesburg on this the 24 day of August 2021, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.



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## MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES

Republic of South Africa

**Media Release  
For Immediate Release  
23 August 2021**

### **Ministry of Justice and Correctional Services confirms Extradition of Mr Manuel Chang**

On 27 December 2018, the Pretoria Magistrate's Court authorised the arrest of Mr Manuel Chang in accordance with the Extradition Act No. 67 of 1962. He was intercepted and arrested at OR Tambo International where he was on bound for Dubai.

After his arrest, the USA submitted an extradition request on 29 January 2019 for the extradition of Mr Chang. On 01 February 2019, the Mozambican government submitted its request.

On 8 April 2019, the Magistrate's Court ruled that the accused was extraditable to the Republic of Mozambique and the United States of America.

On 21 May 2019, the Minister at the time (Michael Masutha) exercised his discretion in terms of section 11(a) of the Extradition Act and decided that the accused should be extradited to Mozambique. Interpol was to facilitate the process.

NVD JSR



Before the accused's surrender could be finalized, the accused brought an application in the High Court of South Africa, against the Minister of Justice and Correctional Services, Ronald Lamola, seeking his immediate transfer from South Africa to Mozambique, alternatively that he be released on his own cognizance.

Upon studying the application against him, a question arose whether the accused still enjoyed immunity from prosecution in Mozambique at the time that Minister Masutha made his decision to surrender him to Mozambique.

This question arose in light of the fact that at the time when Minister Masutha made his decision, the accused was still a Member of Parliament, as such the accused was immune from prosecution in terms of Mozambican law.

Minister Ronald Lamola sought an intervention from the courts to settle this question in the application against him by the accused.

The case was heard on 16 and 17 October 2019 before a full bench in the High Court of South Africa. The Court found that the decision to extradite the accused to Mozambique was ultra vires (invalid) since the accused still enjoyed immunity in Mozambique. The Court stated that **"it would make no sense to extradite a person to a place where he cannot be prosecuted."** As such, the case was remitted back to the Minister for his consideration.

It was understood that the Mozambican government sought to appeal the judgment, however after several months, the Mozambican government made representations to the Minister of Justice and Correctional Services. The effect of the representations by the Mozambican authorities changed the facts of the matter particularly on the question of immunity from prosecution.

As the facts stand now, the accused is not immune from prosecution and has been duly indicted by the Mozambican government.

The Ministry of Justice and Correctional Services therefore confirms that a decision has been taken to extradite the accused to Mozambique.

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After considering representations and new facts, the accused in question is found to be extraditable in terms of section 10 (1) of the Extradition Act.

The accused will therefore be handed over to Mozambican authorities to stand trial on the following charges in Mozambican law:

Abuse of position and function;

Violation of budget laws;

Fraud by deception;

Embezzlement;

Passive corruption for unlawful;

Money Laundering; and

Criminal Association

ENDS

**Mr. Chrispin Phiri**

**Spokesperson: Ministry of Justice and Correctional Services**

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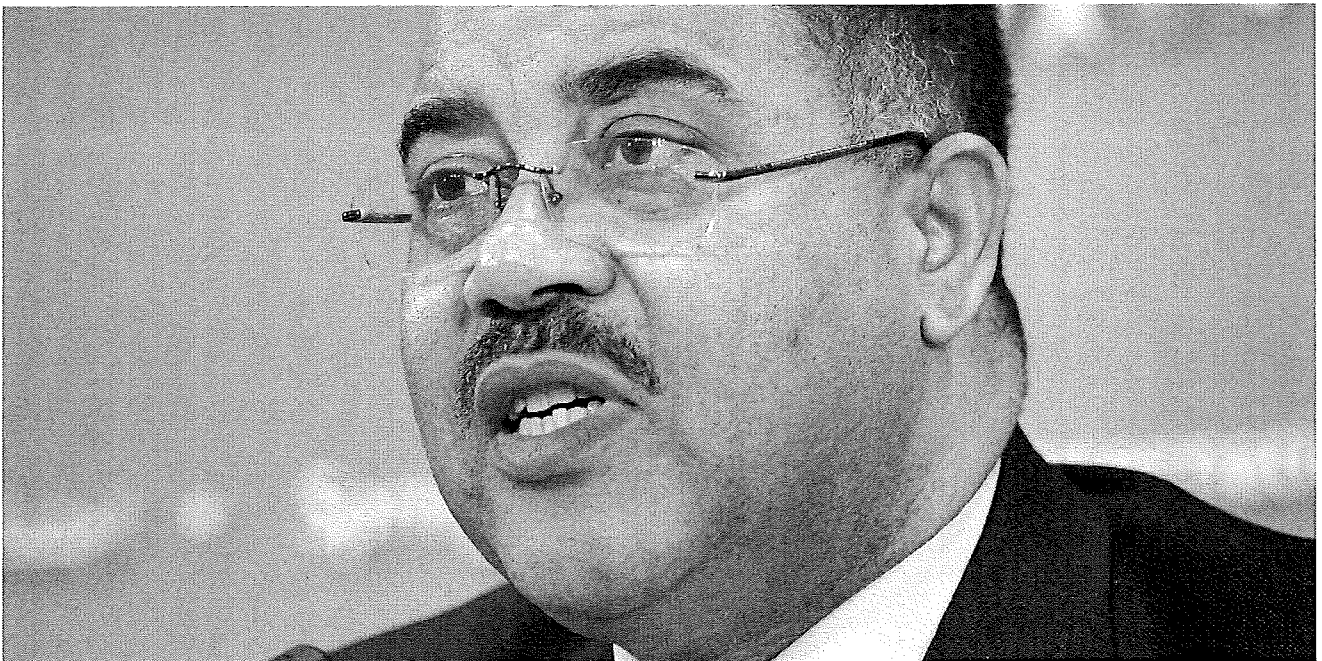
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"NVD2"

INTERNATIONAL RELATIONS

# Mozambique's ex-finance minister Manuel Chang to be extradited back home not US, Pretoria decides

By Peter Fabricius • 21 August 2021



📷 Mozambique's former finance minister Manuel Chang. (Photo: IMF / Ryan Rayburn)

**Washington is 'disappointed' by Pretoria's apparent turnaround.**


**Peter Fabricius**

X

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South Africa is expected to extradite former Mozambican finance minister Manuel Chang to Mozambique and not to the US, having accepted assurances from Maputo that he will eventually stand trial for allegedly taking bribes in a U\$2 billion “hidden debts” scandal in 2013.

The decision has “disappointed” the US government because it US investors had lost millions in the scam and it believes the US would be the best place for Chang to face a proper trial.

The apparent decision by Pretoria to send him home instead emerges as the long-delayed trial of 19 others implicated in the 2013 alleged loan scam is due to start in a Maputo court on Monday. Chang was not originally among the defendants or apparently on the list of 70 witnesses, but it is possible he might now be added.

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Chang faces charges of fraud and corruption for allegedly receiving millions of dollars in bribes to sign off on about \$2.2 billion in loans from Credit Suisse and the Russian VTB bank to Mozambique government agencies to buy fishing trawlers and military patrol vessels in 2013 and 2014.

Pretoria arrested Chang in December 2018 in transit through Johannesburg’s OR Tambo International Airport and has held him in jail since then, while it considers rival extradition requests from Mozambique and the United States. Justice Minister Ronald Lamola was in favour of extraditing him to the US on the grounds that he would not face real justice in Mozambique.

But Lamola has now either changed his mind or he has been overruled by pro-Frelimo advisers in President Ramaphosa’s inner circle. Government sources are saying the start on Monday of the trial in Maputo of 19 suspects in the corruption case seems to have persuaded Ramaphosa that Chang will face justice in Mozambique after all.

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Ramaphosa also seems to have been swayed by Mozambican President Filipe Nyusi's complaint that the US acted "in bad faith" in the case from the start by ignoring a Mozambique request for legal assistance in its investigation against Chang – and then by indicting him itself.

And Ramaphosa may also have been persuaded by a recent application by Mozambique to the Johannesburg High Court for an order compelling the SA government to release Chang "without further delay".

Maputo's Attorney-General Beatriz Buchili complained that South Africa was violating Chang's right to justice by detaining him for so long and that this was "having negative implications on various cases in Mozambique".

The current Islamist insurgency in Mozambique's Cabo Delgado province might also have been a factor in Ramaphosa's decision. For a long time Mozambique President Nyusi resisted entreaties from South Africa and other regional governments to allow a Southern African Development Community (SADC) military force to enter Mozambique to combat the insurgents. He eventually agreed in June and it is possible that South Africa handing over Chang was the quid pro quo, some analysts speculate.

Nyusi himself and his predecessor Armando Guebuza have been called to testify in the case starting in Maputo on Monday by lawyers for some of the accused. The defendants include Guebuza's son Armando Ndambi Guebuza, and ex-president Guebuza's former private secretary Inês Moiane and political adviser Renato Matusse as well as former director-general of the State Information and Security Service (SISE), Gregório Leão, and former director of economic intelligence of the institution António Carlos do Rosário.

South Africa arrested Chang on 29 December 2018 on an arrest warrant sought by the US which had charged him with fraud and corruption because it said many US investors had lost money in what it characterised as a US\$2 billion loan scam as the debt had been passed on to investors.

The US then applied to South Africa to extradite him. Only after that did Mozambique apply to Pretoria to extradite him to Mozambique instead. At that time – more than five years after the alleged offence – it had not yet even charged him and he still enjoyed immunity from prosecution as a member of Parliament.



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Despite this, former justice minister Michael Masutha ordered Chang's extradition to Maputo just before leaving office in May 2019. When he came into office later that month Lamola challenged Masutha's decision in the Johannesburg High Court which annulled the decision in November.

Since then Mozambique has lifted Chang's immunity and charged him but this is unlikely to convince some Mozambican watchdogs.

The Mozambican Forum de Monitoria do Orçamento (FMO), an NGO which monitors government finances, joined Lamola's 2019 legal action to rescind Masutha's decision to extradite Chang to Mozambique. It said it believed that if Chang were returned to Mozambique, Maputo would bury the case, whereas if he were extradited to the US, the courts there would reveal the full complicity of Chang and other Mozambican government officials in the loan scam. So extraditing him to the US would better serve the interests of the Mozambican people.

On Saturday a senior US government official expressed "disappointment" that Chang would apparently not now be facing justice in the US as US investors had lost much of the money that was stolen in the loan scam.

"We believe the United States would have been the best place for Mr Chang to receive a proper trial," this official said.

Former Unisa international law professor and Mozambique expert Andre Thomashausen has expressed strong doubts about the court case which is due to start on Monday.

He told the Portuguese news agency Lusa that the case was "premature" as the Mozambican prosecutors had gathered so little evidence against the accused.

He also noted that Chang, the key witness, was not available – but he was talking before it emerged that Chang was likely now to be extradited to Mozambique soon.

Thomashausen thought the lack of evidence would almost inevitably force the court to acquit the defendants. "It is even likely that this is the strategy," he added. **DM**



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**Jane Crankshaw** 21 August 2021 at 22:53 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3980063>)

His disappointing – looks like that old saying “as thick as thieves” is true. African justice with a hint of Chinese influence is what we see here...in my opinion. I wonder what the quid pro quo is? Too many others implicated if this was settled in the US. Just like here – Justice will never be served because so many that are politically connected are involved. Does anyone know where Zuma actually is? What “operation” did he have last week? And in what hospital...in what country? The silence on this is deafening!

**Charles Parr** 22 August 2021 at 06:04 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3980323>)

It seems that the ANC is in solidarity with the Mozambique government to bury this case. I wonder why.

**Charles Parr** 22 August 2021 at 05:59 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3980300>)

The latest news from Escort is that JZ is holding political meetings in the operating theatre because the guards can't follow him in there.

**Tony Reilly** 22 August 2021 at 08:05 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3980911>)

Very disturbing trend .... continually giving the US the middle finger. The cretins in Government obviously do not appreciate the importance of cordial relations with a



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**Johan Buys** 22 August 2021 at 11:07 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3981821>)

it will be interesting to see how the US banks that facilitated Chang's fraud express their gratitude to SA Treasury.

**Charles Parr** 23 August 2021 at 09:56 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3985933>)

Exactly. It's time for them to think these things through before acting emotionally in support of fellow skelms.

**Ion Williams** 23 August 2021 at 07:24 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3985173>)

And we expect the west to support our search for justice wrt state capture... and we do this....

**Carsten Rasch** 23 August 2021 at 07:57 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3985291>)

This government disgraces itself at almost every decision it makes. This unhealthy solidarity between the liberator-governments of the region is the cornerstone of the problems each one of them suffers, whilst normalising failure. The bar here in Southern Africa is indeed very low.

**André Van Niekerk** 23 August 2021 at 08:44 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3985291>)

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“...assurances from Maputo that he will eventually stand trial..” Yeah, right.

Despite all the words and commissions and assurances, with redeployments for questionable comrades, etc., it seems it is all just a smokescreen and South Africa is just another corrupt country.

Why don't we just legalise corruption? It will save billions lost in trying to prevent corruption.

**Simon D** 23 August 2021 at 11:48 (<https://www.dailymaverick.co.za/article/2021-08-21-mozambiques-ex-finance-minister-manuel-chang-to-be-extradited-to-mozambique-not-us-pretoria-decides/#comment-3986516>)

DIRCO and the ANC always choosing the worst option. It's like they take a million months to come up to their already pre-determined conclusion and it's always for the worst.

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By Stephen Grootes

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"NVD3"

## Nicole van Deventer

---

**From:** Lujiza Tandeka <TLujiza@justice.gov.za>  
**Sent:** Tuesday, 24 August 2021 10:48  
**To:** Nicole van Deventer; e3792@discoverymail.co.za; 'Samuel Modiba'; 'Rudi Krause'  
**Cc:** Ian Levitt; Busani Mabunda (Gov); Strauss Elzana; rudi@bdk.co.za; Botes Edgar; 'Stiaan Krause'; Ian Levitt; 'vlad.movshovich@webberwentzel.com'; 'Pooja Dela'; 'Michael Gradidge'; 'Busani Mabunda (Gov)'; Greybe Karen; 'Chuma Bubu'; 'pooja.dela@webberwentzel.com'; 'daniel.rafferty@webberwentzel.com'; 'daniel.rafferty@webberwentzel.com'; 'dylan.cron@webberwentzel.com'  
**Subject:** RE: MANUEL CHANG - EXTRADICTION  
**Importance:** High

Dear Ms Van Deventer

We refer to your email dated 23 August 2021 requesting the Department to delay the process for the handing over of Mr Emmanuel Chang to the Mozambique authorities. The Minister has sought the consent of the Head of the National Executive in terms of section 3 (2) of the Extradition Act 67 of 1962, given the significance of the matter and its wide regional implications including the commitment to the fight against corruption not only in our country but also globally, therefore it was decided that Mr Emmanuel Chang be extradited to Mozambique. Given the number of years that Mr Chang has already been in detention it will be unfair to further keep him in detention.

We therefore would not accede to your request. The matter is already in the hands of Interpol.

Regards,  
Adv. Lujiza

**From:** Nicole van Deventer [mailto:nicole@ianlevitt.co.za]  
**Sent:** 23 August 2021 11:36 AM  
**To:** e3792@discoverymail.co.za; 'Samuel Modiba'; 'Rudi Krause'; Lujiza Tandeka  
**Cc:** Ian Levitt; Busani Mabunda (Gov); Strauss Elzana; rudi@bdk.co.za; Botes Edgar; 'Stiaan Krause'; Ian Levitt; 'vlad.movshovich@webberwentzel.com'; 'Pooja Dela'; 'Michael Gradidge'; 'Busani Mabunda (Gov)'; Greybe Karen; 'Chuma Bubu'; 'pooja.dela@webberwentzel.com'; 'daniel.rafferty@webberwentzel.com'; 'daniel.rafferty@webberwentzel.com'; 'dylan.cron@webberwentzel.com'  
**Subject:** RE: MANUEL CHANG - EXTRADICTION

Dear Sirs

1. The above matter refers.
2. We refer to the letter dated 22 August 2021 and the order mentioned therein, which we are yet to receive.
3. It is our understanding that the Minister of Justice and Correctional Services has issued an order to extradite Mr Manuel Chang to the Republic of Mozambique and not to the United States of America.
4. We are in process of consulting with our client as to whether they intend to pursue any legal remedies in response to the decision made by the Minister.
5. There is a distinct possibility that our client will bring a review of the decision to extradite Mr Chang to Mozambique. Should Mr Chang be extradited before our client's possible review is launched, any review proceedings brought by our client would be moot.
6. We accordingly request an undertaking from the Minister of Justice and Correctional Services that Mr Chang will not be extradited until next week Monday 30<sup>th</sup> of August 2021.

NICOLE VAN DEVENTER  
ATTORNEY

NVD  
JP



IAN LEVITT ATTORNEYS

THE LEONARDO

OFFICE LEVEL 12

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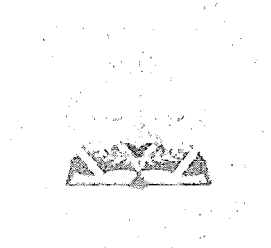
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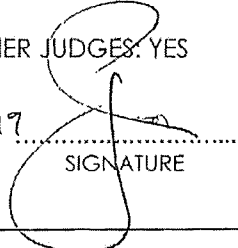
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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 22157/2019

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
01 November 2019	
DATE	SIGNATURE

In the matter between:

**MANUEL CHANG**

Applicant

And

**MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

Respondent

**FORUM DE MONITORIA  
DO ORÇAMENTO**

First Intervening Party

**THE REPUBLIC OF MOZAMBIQUE**

Second Intervening Party

**HELEN SUZMAN FOUNDATION**

*Amicus Curiae*

Case Number: 24217/2019

In the matter between

**FORUM DE MONITORIA  
DO ORÇAMENTO**

Applicant

**MANUEL CHANG**

First Respondent

**MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

Second Respondent

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DIRECTOR OF PUBLIC PROSECUTIONS,  
GAUTENG LOCAL DIVISION,  
JOHANNESBURG

Third Respondent

ADDITIONAL MAGISTRATE,  
EKURHULENI NORTH: KEMPTON PARK

Fourth Respondent

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## JUDGMENT

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**FISHER J, (LAMONT J AND MOLAHLEHI J CONCURRING):**

### INTRODUCTION

[1] This is a tale of two Treaties. On the one hand the SADC Protocol on Extradition ("the Protocol") and on the other the Extradition Treaty between South Africa and the United States of America (*"the US Treaty"*).

[2] The treaties are similar. Both allow for the surrender and extradition of persons accused of crimes, between their Member states. Their operation and the fact that Mr Chang has been implicated in crimes perpetrated on an international scale, has led to an unusual situation: competing claims for Mr Chang's extradition from South Africa - one from the USA and the other from Mozambique.

[3] The former Minister<sup>1</sup> of Justice, Mr Michael Masutha in dealing with the competing requests opted to extradite Mr Chang to Mozambique, South Africa's co-member in the Protocol, thus, by implication, rejecting the request of the USA.

[4] The issues before this Court involve a judicial review of these decisions. The applications relating to these reviews have been combined for one special hearing before this Full Court pursuant to an intensive judicial case management process. This

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<sup>1</sup> Then called the Minister of Justice and Correctional Services now called the Minister of Justice and Constitutional Development.

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has allowed for the applications to be dealt with on an expeditious basis, given that there is urgency in the matters, which is not least because Mr Chang has been incarcerated at Modderbee Correctional Facility since his arrest on 29 December 2018.

[5] Mr Chang was the Minister of Finance in Mozambique from 2005 to 2015. After his term in Cabinet ended, he became a member of the National Parliament. The parties, save Mr Chang, agree that investigations conducted internationally have revealed that Mr Chang and his co-conspirators took part in schemes of securities fraud during approximately 2013 to 2015. The schemes involved large loans by banks, companies, and persons based in the USA, France, Switzerland, Holland, Britain, and the United Arab Emirates (UAE) to companies under the control of the Mozambican Government. The loans were meant to fund maritime projects that would benefit Mozambique but, it is alleged that funds were diverted to government officials in Mozambique in the form of kickbacks and bribes. Amounts involved in the schemes are said to be in excess of US\$2 Billion (approximately R30 Billion).

[6] This corruption has had a profoundly negative effect on Mozambique and its people. For one thing, there has been a sharp reduction in essential donor funding in the wake of the scandal. For another, the loan repayments to which Mozambique is bound are onerous.

[7] The imbroglio began with the arrest of Mr Chang in South Africa in terms of the US Treaty. It had come to the attention of the US authorities that Mr Chang would be travelling via South Africa to the UAE on 29 December 2018. He was indicted in the Eastern District Court of New York on 19 December 2018 and on 21 December 2018 the USA requested South Africa to arrest him in terms of the US Treaty. On 27 December 2018 the Pretoria Magistrate's court authorised the arrest of Mr Chang in accordance with the Extradition Act<sup>2</sup> (*"the Act"*). He was then intercepted and arrested at O R Tambo International Airport where he was bound for a flight to Dubai.

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<sup>2</sup> Act 67 of 1962.

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[8] Mozambique is up in arms. It protests that it was unaware of the US investigations and the resultant indictment of Mr Chang in New York State until Mr Chang's arrest in South Africa was made public in December 2018. It says it had been led to believe that Mr Chang would be tried for his crimes in Mozambique with the cooperation and assistance of the USA when, all the while, the USA was covertly involved in its own investigations.

[9] It is claimed that Mozambique has not been serious or exacting in its attempts to bring Mr Chang to book in Mozambique. Understandably, Mozambique is embarrassed by these claims. It has sought some vindication in its attempts at extradition and now in these proceedings. It says that the appropriate place for Mr Chang to be brought to justice is Mozambique. It says that it is important to Mozambique to prosecute this case successfully to demonstrate its commitment, competency, and capacity in fighting corruption. It suggests that its credibility is at stake in relation to various international conventions to combat criminality to which it is signatory and which include the UN Convention against Corruption, UN Convention against Transnational Organized Crime, SADC Protocol against Corruption, AU Convention on Preventing and Combating Corruption.

[10] From the perspective of the USA, it appears that a majority of the investors who were affected by the scheme were from the USA. The USA thus seeks that Mr Chang and others involved in the schemes be prosecuted there. It is not in dispute that Mozambique has been investigating this case since 2015 and that Mr Chang has remained at large, even travelling freely beyond the borders of Mozambique. The USA has indicted that it is ready to prosecute Mr Chang. Mozambique concedes that it is still not ready to prosecute.

[11] As will be dealt with below, Mr Chang's immunity from prosecution in Mozambique qua Member of Parliament (MP) in Mozambique is central to this failure to prosecute him in Mozambique. It is also central to the legality of the former Minister's impugned decisions in this matter and thus of central importance to this case.

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[12] Article 4 (e)<sup>3</sup> of the Protocol provides that extradition shall be refused

*" if the person whose extradition is requested has, under the law of either State Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;"*

## PROCEDURAL HISTORY

[13] After his arrest and on 29 January 2019, the USA submitted a request to South Africa for the extradition of Mr Chang. Mozambique, a few days later (on 01 February 2019) submitted its own warrant and request for extradition.

[14] In terms of section 9 of the Act Mr Chang was required to be brought as soon possible after his arrest before a magistrate in whose area of jurisdiction he had been

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<sup>3</sup> Article 4 reads as follows:

" MANDATORY GROUNDS FOR REFUSAL TO EXTRADITE :Extradition shall be refused in any of the following circumstances:

(a) if the offence for which extradition is requested is of a political nature. An offence of a political nature shall not include any offence in respect of which the State Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition;

(b) if the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that the person's position may be prejudiced for any of those reasons;

(c) if the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law;

(d) if there has been a final judgment rendered against the person in the Requested State or a Third State in respect of the offence for which the person's extradition is requested;

(e) if the person whose extradition is requested has, under the law of either State Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

(f) if the person whose extradition is requested has been, or would be subjected in the Requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples Rights; and

(g) if the judgment of the Requesting State has been rendered in absentia and the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he or she has not had or will not have the opportunity to have the case retried in his or her presence."

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arrested, whereupon the Magistrate was obliged to hold an inquiry with a view to the surrender of such person to the foreign State concerned.<sup>4</sup>

[15] Inquiries were thus conducted in the Kempton Park Magistrate's Court in terms of s 10 of the Act in respect of both requests.

[16] On 8 April 2019, the Magistrate committed Mr Chang under section 10(l) of the Act to imprisonment in respect of both requests to await the decision of the Minister under section 11<sup>5</sup> as to whether and to whom Mr Chang should be surrendered in respect each of the requests.

[17] The Minister thus regarded himself as empowered to choose which, if either of the extradition requests he would accede to.

[18] In the normal course in relation to the decision to be taken in respect of a request for extradition, the Minister is advised by the staff of the International Relations Department. On 16 May 2019 the Principal State Law Advisor on International Relations, Advocate Herman van Heerden submitted a memorandum to the then Minister in relation to the competing requests( "the Memorandum").

[19] Part of the compiling of the Memorandum involved Mr van Heerden checking whether the requests were compliant with the requirements of South African law. As part of this process and on 06 February 2019, Mr Van Heerden addressed a letter to

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<sup>4</sup> Section 9 provides as follows:

" (1) Any person detained under a warrant of arrest or a warrant for his further detention, shall, as soon as possible be brought before a magistrate in whose area of jurisdiction he has been arrested, whereupon such magistrate shall hold an enquiry with a view to the surrender of such person to the foreign State concerned. "

<sup>5</sup> Section 11 provides as follows :

" The Minister may- (a) order any person committed to prison under section 10 to be surrendered to any person authorized by the foreign State to receive him or her; or

(b) order that a person shall not be surrendered-

(i) where criminal proceedings against such person are pending in the Republic, until such proceedings are concluded and where such proceedings result in a sentence of a term of imprisonment, until such sentence has been served;

(ii) where such person is serving, or is about to serve a sentence of a term of imprisonment, until such sentence has been completed;

(iii) at all, or before the expiration of a period fixed by the Minister, if he or she is satisfied that by reason of the trivial nature of the offence or by reason of the surrender not being required in good faith or in the

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the Attorney General of Mozambique, Ms Beatriz Buchili in relation to Mr Chang's immunity and its source as he understood it. He pointedly directed the following inquiry to the Attorney General:

*"Article 211 of the Constitution of Mozambique 2004, as amended, provides for the immunity from prosecution of members of government without the permission of the President of Mozambique. In this regard, it is not mentioned in the request for extradition whether the President has in fact lifted the immunity of Mr Chang, and we require clarity on this..."*

[20] Thus, it was clear that Mr van Heerden was aware that there was a relationship between Mr Chang's position in government and his possible immunity and that he required clarification as to whether Mr Chang indeed had such immunity.

[21] Ms Buchili responded to the request for clarification by explaining that Article 211 applied only to serving Government Members and thus did not apply to Mr Chang. She stated that his position was now that of MP and explained that, as such, the "consent for his detention" had to be given by the Mozambican National Parliament. She then stated that attached to the Mozambican extradition request *"...is the document issued by the National Parliament giving consent for the detention of Manuel Chang"*.

[22] Proper reference to this document shows that it merely records that the Standing Committee of National Parliament *"Approves the enforcement of maximum coercion measures against Mr Chang"*. It pertinently does not provide for the lifting of immunity from prosecution and, for that matter, also does not expressly consent to Mr Chang's arrest<sup>6</sup>.

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<sup>6</sup> The document reads as follows:

"Assembly of the Republic" Standing Committee Deliberation No. 17/2019 Of January 29 After the National Parliament received from the Supreme Court, a request for approval of enforcement of the maximum coercion measure against the MP Manuel Chang, the Standing Committee of the National Parliament, under provisions of number 1, of article 173 of the Constitution of the Republic, in conjunction with number 1, of article 13 of the Statutes for Members of Parliament, approved by the Law No. 32/2014 of December 30 and paragraph a) of number 1 of article 66 of the Rules of Procedure of the National Parliament, approved by law No.12/16 of December 30, has decided: Single: Approves the enforcement of maximum coercion measures against Manuel Chang. Maputo, January 29, 2019 (emphasis added).

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[23] Quite what "maximum coercion measures" would entail in light of Mr Chang's immunity is unclear. Presumably, this would mean the maximum that can be done subject to the Mozambican law.

[24] What Ms Buchili failed to explain to Mr van Heerden was the procedure for the lifting of immunity and that Mr Chang enjoyed immunity until it was lifted in Mozambique. Her somewhat oblique responses on the matter of Mr Chang's immunity led Mr van Heerden to the mistaken impression that Mr Chang's immunity from prosecution in Mozambique had been lifted. And thus this is what Mr van Heerden conveyed to the former Minister in the Memorandum. The Memorandum contained the following statement as to Mr Chang's immunity:

*"As a Member of Parliament, consent for his detention must be given by the National Parliament of Mozambique in terms of Article 174 of the Constitution of Mozambique as well as No.1 of Article 13 of the Statute of Members of the National Parliament. This has been done, and Mr Chang no longer enjoys immunity from prosecution by the Mozambican authorities." (emphasis added).*

Furthermore Article 4 of the protocol was duly referenced in the Memorandum and the Minister was assured (incorrectly) that its provisions were met.

[25] The Memorandum also served to inform the Minister of the various submissions made by Mozambique, the USA, Mr Chang, and civil society. It noted that civil society in Mozambique was frustrated by the apparent lack of progress in the investigations in Mozambique.

[26] Mr van Heerden ultimately made the recommendation to the Minister that Mr Chang be extradited to the USA rather than Mozambique. This recommendation was based, in large part, on the state of readiness of the respective prosecutions - the USA being ready to proceed with the prosecution and Mozambique being in a state of unreadiness to prosecute. Importantly, the recommendation did not engage at all with the question of immunity as it proceeded from the assumption that Mr Chang no longer enjoyed immunity.

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[27] The former Minister did not follow this recommendation. On 21 May 2019 he took the decision under section 11(a) of the Act to surrender Mr Chang to Mozambique rather than the USA.

[28] The decision of the former Minister and the basis therefor is penned in manuscript by him at the end of the Memorandum, reflecting that the Minister has considered its contents. It reads as follows:

*"Having considered the submission by the department regarding this matter following the decision of the Kempton Park Magistrate court regarding the extraditability of Mr Chang to both the USA and the Republic of Mozambique and having considered the following: That the accused is a citizen of Mozambique; That the alleged offence was committed whilst he was a Minister of State; The onerous debt for Mozambique as a result of the alleged fraud; The submission made by Mr Chang to be extradited to his home country; The interests of the States concerned; The request from the USA. I have noted that the request was submitted a few weeks prior to the Mozambican's, however having considered the matter in its full context, taking into account the criteria contained in both the treaty and protocol, I am satisfied that the interest of justice will be best served by acceding to the Mozambican request for extradition and thus it is my decision that the accused Mr Chang be extradited to stand trial for his alleged offences in Mozambique".*

[29] The true legal position as to the law of Mozambique relating to the immunity of MP's is to be found in Article 174 of the Mozambican Constitution<sup>7</sup> and Articles 13.1 and 17 of Law No 31/2014. Article 13.1 provides that MPs shall not be arrested or detained, unless caught in the act ("*flagrante delicto*") and that they shall not face trial without the consent of Parliament.<sup>8</sup> Article 17 deals with the lifting of Immunities by

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<sup>7</sup> Article 174 of the Mozambican Constitution reads as follows:

"Immunities

1. Members of Parliament shall not be detained or arrested, except when caught in the act of committing an offence ("*flagrante delicto*") nor will they face trial without the consent of the National Assembly.

2.If criminal proceedings are pending in which a MP is the accused, the MP shall be heard by a Counsellor Justice.

3.Members of Parliament are entitled to a special forum and shall be tried by the Supreme Court under provisions of the law."

<sup>8</sup> Article 13.1 reads as follows:

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National Parliament and provides that this can only be done in Parliament in plenary session and by secret ballot.<sup>9</sup>

[30] The Mozambican Attorney General, in the main affidavit delivered on behalf of Mozambique, explains the law of Mozambique on the operation and lifting of immunities thus:

*"The law of Mozambique provides for the lifting of immunity in order to prosecute an offending Member of Parliament (hereafter "MP"). Before an MP can be arrested or detained, the National Parliament must first authorise the arrest or detention. This authorisation is granted in terms of Article 13 of Law No.31/2014. The MP will then appear before a judge of the Supreme Court, who will determine if the charges are not politically motivated or malicious. If the judge is satisfied that the MP has a case to answer, then the judge will request that immunity should be lifted. Article 16 of Law No.31 provides for the procedure to lift the immunity. The immunity will then be lifted in terms of Article 13 and 17 of Law No,31/2014. Therefore, before immunity can be lifted, the MP must appear in person at the Supreme Court inquiry to make his or her representations. It is not possible to lift immunity without this inquiry. The inquiry cannot take place in the absence of the defendant."*<sup>10</sup>

[31] The statement in the Memorandum to the effect that Mr Chang was not subject to immunity from prosecution because of the consent of Parliament was not correct. Parliament had given no such consent and neither was it able to do so in Mr Chang's absence.

[32] The current Minister contends that Mr van Heerden was deliberately misled. Ms Buchili denies this. She seeks to explain that this was the first extradition request

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"Members of Parliament shall not be detained nor arrested, except in cases of being caught in the act of committing an offence ("flagrante delicto"), or face trial without the consent of the National Parliament."

<sup>9</sup> Article 17 reads as follows in relevant part:

Lifting of Immunities:

1. the lifting of immunities and (sic) preceded by debate in plenary of the assembly of the Republic, the closed door.
2. the deliberations of the assembly of the Republic are taken by secret ballot.

<sup>10</sup> Record p 987 [72] of the Attorney General's combined Founding and Answering affidavits.

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made by her office involving a Member of Parliament, implying that there was a lack of experience at play. She states that she believed that South Africa was properly apprised of the immunity and its nature and extent. She puts any misunderstanding in relation to Mr Chang's immunity down to the different legal systems and different languages at play.

[33] Whatever the reason for the misinformation, Ms Buchili concedes that there was a failure to disclose that Mr Chang had immunity from arrest and prosecution in Mozambique.

[34] Mr Chang has, throughout all of these proceedings, resisted his extradition to the USA whilst actively seeking his extradition to Mozambique. He has recently, and after the fact of the impugned decisions gone as far as resigning from his position as Member of the National Government in order to relinquish the immunity. This he did on 29 July 2019. He thus argues, as does Mozambique, that to the extent that he enjoyed immunity at the time of the impugned decisions, he is no longer subject to such immunity as he is no longer an MP.

[35] This has no impact on the Minister's decisions, as they must be evaluated on the basis of the facts as they were at the date on which the decision was taken.

[36] Mr Chang has resigned as MP with the purpose of relinquishing his immunity in Mozambique. He says that this is because he wants to answer for the charges against him in his home country. The more cynical view, as suggested by the civil society litigants in this matter, is that he has the impression that in Mozambique he may be given a measure of protection due to cronyism or a largesse which harks back to his former positions in government.

#### RELIEF SOUGHT

[37] Mr Chang thus seeks an order directing the current Minister to surrender him to the Government of Mozambique, alternatively, that he be released from custody.

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[38] The current Minister has not only opposed the relief sought by Mr Chang but has also counter - applied for to set aside the decision of his predecessor in Office.

[39] The Director of Public Prosecutions ("DPP") makes submissions to aid us to decide whether or not the decision of the Kempton Park Magistrate should be interfered with.

[40] The Forum de Monitoria do Orcamento ("FMO") is a coalition of various Mozambican civil society organisations. It launched its own application to review the former Minister's decision to extradite Mr Chang to Mozambique. By this stage all parties were dealing with the matters in a consolidated manner due to the management of the matters with a view to them being heard together.

[41] The Helen Suzman Foundation ("HSF") was admitted as amicus to be heard from a South African and general perspective as to civil rights involved in the matter.

#### ISSUES TO BE DECIDED

[42] We are called on to decide whether the decision of the Magistrate in the section 10 proceedings in the Mozambican matter is assailable; whether the decision of the former Minister should be reviewed and set aside; and ,if so, what the remedy should be.

[43] The immunity of Mr Chang is central to the impugned determinations of the Magistrate and the Minister.

[44] Mr Chang was treated by the Magistrate as "*a person accused of...*" the offences enumerated in the Mozambican warrant, as contemplated in the Act for the purposes of the process under section 10. It is argued in this regard by FMO that the immunity means that Mr Chang cannot be subject to prosecution and that it follows that he cannot be a person accused for the purposes of the Act.

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[45] It is argued on behalf of the current Minister, FMO, FUL, and the DPP that Article 4(e) of the Protocol creates a prohibition on the extradition of Mr Chang to Mozambique in light of his immunity under Mozambican Law. It is further argued by these parties that, if the former Minister did not know of such immunity or if he did not consider it for other reasons, his decision falls to be set aside on the basis that it is irrational.

[46] Mr Chang makes a different submission as to the meaning and effect of these immunity provisions in terms of the Mozambican law and the manner in which they affect the application of Article 4(e) of the Protocol. He argues that, in terms of Mozambican law, the immunity does not subsist but is only constituted once the National Parliament is called on to consider charges against an MP. He argues also that, given the fact that the immunity can be lifted, it is not of the nature of immunity contemplated in Article 4(e) and thus is not hit by the prohibition therein.

[47] The reviews of the former Minister's decision are legality reviews and are not brought under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA")<sup>11</sup>. This is not in dispute.

[48] With all this in mind, I turn first to the challenge against the Magistrate's decision under the Act.

### **The Review of the Magistrates Section 10 Decisions**

[49] Section 3<sup>12</sup> of the Act deals with when a person is extraditable. It provides that such a person must be "*accused of*" an extraditable offence.

<sup>11</sup> See: State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited (CCT254/16) [2017] ZACC 40; 2018 (2) BCLR 240 (CC); 2018 (2) SA 23 (CC) at [37].

<sup>12</sup> Section 3(2) provides as follows:

"Any person accused or convicted of an extraditable offence committed within the jurisdiction of a foreign State which is not a party to an extradition agreement shall be liable to be surrendered to such foreign State, if the President has in writing consented to his or her being so surrendered."

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[50] It is not disputed that Mr Chang became a defendant in terms of Mozambique's domestic processes in that there were charges formulated against him along the same lines as those in the US indictment. He was, however, not yet indicted in Mozambique. The purpose of the Mozambican extradition request is stated to be to "*extradite the defendant Manuel Chang to Mozambique, for the purposes of criminal, administrative and civil liability*".

[51] FMO argues that while Mr Chang was immune from prosecution he could, axiomatically, not be "*a person accused*". It argues that it follows from this that the Magistrate could not entertain the inquiry as it is required as a jurisdictional fact for the inquiry that Mr Chang be a person accused of extraditable offences.

[52] The DPP counters that a person can be both immune from prosecution and a person accused for purposes of the Act.

[53] The judgment of Lord Steyn in the House of Lords decision of *In re: Ismail*<sup>13</sup> is instructive as to the proper approach to be adopted by a court determining whether a person is accused for the purposes of extradition. The question posed on the facts of *Ismail* was similar to the issue we deal with here: was Mr Ismail liable to be extradited under the UK Extradition Act as a person "*accused*" of extraditable offences in the Federal Republic of Germany? Mr Ismail contended that he was not an "*accused*" person because no formal criminal charge had yet been made against him in Germany.

[54] Lord Steyn held that it is a question of fact in each case whether the person passes the threshold test of being an "*accused*" person. He stated as follows as to the need to interpret extradition legislation and treaties in context<sup>14</sup> :

*"Next there is the reality that one is concerned with the contextual meaning of "accused" in a statute intended to serve the purpose of bringing to justice those accused of serious crimes. There is a transnational interest in the achievement of this*

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<sup>13</sup> *In Re Ismail* [1999] 1 AC 320 per Lord Steyn.

<sup>14</sup> *Id* at at 326F-327G.

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*aim. Extradition treaties, and extradition statutes, ought, therefore, to be accorded a broad and generous construction so far as the texts permit it in order to facilitate extradition."*

He went further to state:

*"All one can say with confidence is that a purposive interpretation of "accused" ought to be adopted in order to accommodate the differences between legal systems. In other words, it is necessary for our courts to adopt a cosmopolitan approach to the question whether as a matter of substance rather than form the requirement of there being an "accused".*

[55] This approach commends itself in this case. I am thus satisfied that Mr Chang's immunity from prosecution did not prevent him from being accused of the crimes set out in the warrant. The accusation and prosecution stand apart from one another. Indeed, in terms of the Mozambican law on this point, the very procedures which can bring about a lifting of his immunity pre-suppose that he is accused of the offences for which he will ultimately be charged and prosecuted if the immunity is lifted.

[56] It was argued by FMO that the Magistrate should have made inquiries related to establishing whether Mr Chang was immune from prosecution. On a simple reading of section 10, the magistrate's duties are confined to making certain preparatory findings, while the Minister makes substantive and political decisions under s 11.

[57] Section 10(1)<sup>15</sup> of the Extradition Act explains that a Magistrate, on the consideration of the evidence before her or him, must be satisfied that two conditions are fulfilled before a committal order can be made: first, the person must be liable to

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<sup>15</sup> Section 10(1) provides as follows:

"If upon consideration of the evidence adduced at the enquiry referred to in section 9 (4) (a) and (b) (i) the magistrate finds that the person brought before him or her is liable to be surrendered to the foreign State concerned and, in the case where such person is accused of an offence, that there is sufficient evidence to warrant a prosecution for the offence in the foreign State concerned, the magistrate shall issue an order committing such person to prison to await the Minister's decision with regard to his or her surrender, at the same time informing such person that he or she may within 15 days appeal against such order to the Supreme Court."

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be surrendered to the foreign State concerned; second, in the case where such person is accused of an offence, there must be sufficient evidence to warrant a prosecution for the offence in the foreign State.

[58] The section 10 decision of the Magistrate is only to commit or discharge. If the person is committed, then it is the Minister (under the executive phase under section 11) who decides if the person should be surrendered in extradition.

[59] The Magistrate is not a trier of fact. His function is to determine if the person is accused by the requesting state of the crimes for which his extradition is sought and satisfying himself that there is sufficient evidence to warrant a prosecution in the foreign State. This second inquiry does not involve a determination as to the veracity of the facts. The Magistrate in terms of section 10(2)<sup>16</sup> merely accepts as "*conclusive proof*" a certificate which appears to him or her to be issued by an appropriate authority in charge of the prosecution in the foreign State, stating that it has sufficient evidence at its disposal to warrant the prosecution of the person for the crimes of which he or she is accused.

[60] The determination of whether a person has immunity and how this should affect the decision as to whether he should be extradited or not is clearly within the realm of the substantive and the political. The very debate which has been had here as to the nature and effect of the immunity of Mr Chang on the Minister's decision shows that it is beyond the province of the Magistrate and his ken.

[61] In *Geuking v President of the Republic of South Africa and Others*<sup>17</sup> Goldstone J writing for a unanimous Court, explained the position thus:

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<sup>16</sup> Section 10(2) provides as follows:

"For purposes of satisfying himself or herself that there is sufficient evidence to warrant a prosecution in the foreign State the magistrate shall accept as conclusive proof a certificate which appears to him or her to be issued by an appropriate authority in charge of the prosecution in the foreign State concerned, stating that it has sufficient evidence at its disposal to warrant the prosecution of the person concerned."

<sup>17</sup> CCT35/02 [2002] ZACC 29; 2003 (3) SA 34 (CC); 2004 (9) BCLR 895 (CC) (12 December 2002).

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*"It is not inappropriate or unfair for the legislature to relieve the magistrate of the invidious task of deciding this narrow issue unrelated to South African law.*

*"As already mentioned, it is a question in respect of which South African lawyers and judicial officers will usually have no knowledge or expertise. The certificate from the appropriate authority in the foreign state to the effect that the conduct in question warrants prosecution in that state is sufficient for the purpose of extradition. Its conclusiveness is binding on the Magistrate only in relation to his consideration of the question whether the person concerned is extraditable. If the person concerned is extradited the foreign court will have to determine the issue covered by the certificate. Furthermore, in the exercise of his discretion under section 11 of the Act the Minister might well be obliged to consider an attack made in good faith against the conclusion of the foreign authority contained in the certificate."<sup>18</sup>*

[62] I thus find that the Magistrate conducted the inquiry in accordance with the Act. His decision does not fall to be set aside by this Court.

[63] It was contended on behalf of Mr Chang that the FMO had no standing to challenge the decision made in the section 10 inquiry by the Magistrate as it was not a party to the proceedings in the Magistrate's Court and had no other basis for its intervention in the matter. This point need not be dealt with in light of the finding that the proceedings in the Magistrate's Court were properly conducted and do not fall to be set aside in any event.

[64] FMO also sought to make something of an infelicitous mention by the magistrate in his reasons as Mozambique being an "associated State"<sup>19</sup>. There is no dispute that Mozambique is a foreign State and that, as a fact, the Magistrate and the Minister treated it as such. The procedure adopted can thus not be criticised.

[65] I now turn to deal with the Minister's decisions.

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<sup>18</sup> Id at [45] and [46].

<sup>19</sup> If it were an associated State this would attract a different process under the Act which would reside in the Magistrate acting in terms of s 12 instead of s 10.

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### The Review of the Minister's Decision to extradite to Mozambique

[66] There has been some debate spurred by FUL and the FMO as to whether the protocol has been "*domesticated*" - i.e. made part of our domestic law and thus whether the Minister in failing to comply with Article 4(e) committed directly a breach of the Protocol. It was stated that this Court should determine the question of whether the Protocol was part of our domestic law in order to determine the binding effect of the Protocol on the Minister. In light of the discussion below, I find that it is not necessary that we make this determination.

[67] Our Constitution reveals a clear and uncompromising commitment to ensure that the Constitution and South African law are interpreted to comply with international law and in particular international human rights law. Firstly, section 233 requires legislation to be interpreted in compliance with international law; secondly, section 39(1)(b) requires courts, when interpreting the Bill of Rights, to consider international law; finally, section 37(4)(b)(i) requires legislation that derogates from the Bill of Rights to be "*consistent with the Republic's obligations under international law applicable to states of emergency.*"

[68] The preamble to the Prevention and Combating of Corrupt Activities Act<sup>20</sup> ("PRECCA") is an example of the express recognition accorded by the

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<sup>20</sup> 12 of 2004. The preamble states:

"WHEREAS the Constitution enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;  
AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil all the rights as enshrined in the Bill of Rights;  
AND WHEREAS corruption and related corrupt activities undermine the said rights, endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of governments, and provide a breeding ground for organised crime;  
AND WHEREAS the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and the rule of law;  
AND WHEREAS there are links between corrupt activities and other forms of crime, in particular organised crime and economic crime, including money-laundering;  
AND WHEREAS corruption is a transnational phenomenon that crosses national borders and affects all societies and economies, and is equally destructive and reprehensible within both

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Legislature to the Executive's part in the global commitment to fighting corruption. it notes that corruption is a transnational phenomenon that crosses national borders and affects all societies and economies; that it is equally destructive within both the public and private spheres of life; and that regional and international co-operation is essential to prevent and control corruption and related crimes.

[69] in *Glenister v President of the Republic of South Africa*<sup>21</sup> the Constitutional Court underscored the importance of the recognition of international law obligations on the exercise of executive power as follows:

*"[O]ur Constitution takes into its very heart obligations to which the Republic, through the solemn resolution of Parliament, has acceded, and which are binding on the*

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the public and private spheres of life, so that regional and international cooperation is essential to prevent and control corruption and related corrupt activities;

AND WHEREAS a comprehensive, integrated and multidisciplinary approach is required to prevent and combat corruption and related corrupt activities efficiently and effectively;

AND WHEREAS the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption and related corrupt activities efficiently and effectively;

AND WHEREAS the prevention and combating of corruption and related corrupt activities is a responsibility of all States requiring mutual cooperation, with the support and involvement of individuals and groups outside the public sector, such as organs of civil society and non-governmental and community-based organizations, if their efforts in this area are to be efficient and effective;

AND WHEREAS the United Nations has adopted various resolutions condemning all corrupt practices, and urged member states to take effective and concrete action to combat all forms of corruption and related corrupt practices;

AND WHEREAS the *Southern African Development Community Protocol against Corruption*, adopted on 14 August 2001 in Malawi, reaffirmed the need to eliminate the scourges of corruption through the adoption of effective preventive and deterrent measures and by strictly enforcing legislation against all types of corruption;

AND WHEREAS the Republic of South Africa desires to be in compliance with and to become Party to the *United Nations Convention against Corruption* adopted by the General Assembly of the United Nations on 31 October 2003;

AND WHEREAS it is desirable to unbundle the crime of corruption in terms of which, in addition to the creation of a general, broad and all-encompassing offence of corruption, various specific corrupt activities are criminalized,

BE IT THEREFORE ENACTED . . . ."

<sup>21</sup> 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC).

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*Republic in international law, and makes them the measures of the State's conduct in fulfilling its obligations in relation to the Bill of Rights.*"<sup>22</sup>

[70] In this vein also our courts have been committed to exacting compliance with our obligations under International Law<sup>23</sup>.

[71] South Africa is a signatory and Member State of the Protocol and thus bound thereby. On this basis, it is sufficient that we examine whether the former Minister's failure to comply with Article 4(e) contravened sections 7(2) and 8 of the Constitution which require him to "*respect, protect, promote and fulfil*" South Africa's international law commitments to access to justice for its people.

[72] We thus need not enter into the complexity of examining how an international treaty becomes domesticated within South Africa and whether this can be said to have occurred in respect of the Protocol. It may be noted, as an aside, that in *President of the Republic of South Africa and Others v Quaglini and others*<sup>24</sup> the Constitutional Court found that the US Treaty had become domestic law because of the provisions of the Act.

[73] Mr Chang seeks to interpret Article 4(e) and the Mozambican law so as to suggest that his immunity does not affect his extradition. He raises three interpretative arguments:

- a. First, he argues that because this immunity is capable of being lifted, it is not absolute and thus is not hit by Article 4(e).
- b. Second, he argues that, in any event, the immunity does not subsist but is only constituted by the National Assembly when the accused is

<sup>22</sup>Id at [178].

<sup>23</sup> Recent examples which have unfolded on an international stage are: *DA v Minister of International Relations and Co-operation*<sup>23</sup> ("the Grace Mugabe case" ); *Minister of Justice and Constitutional Development v Southern Africa Litigation Centre* ("the Al Bashir case" ); *Law Society of South Africa and Others v President of the Republic of South Africa and Others* (CCT67/18) [2018] ZACC 51; 2019 (3) BCLR 329 (CC); 2019 (3) SA 30 (CC) (11 December 2018) ("the SADC Tribunal case"); *Commissioner of Police v Southern African Human Rights Litigation Centre* 2015 (1) SA 315 (CC) (the Torture Docket case).

<sup>24</sup> [2009] ZACC 1; 2009 (4) BCLR 345 (CC); 2009 (2) SA 466 (CC) (21 January 2009).

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charged. In this regard he says that the question whether the Member of Parliament is to be afforded an immunity depends upon the decision of Parliament, one way or the other, and that until Parliament decides the issue, the question as to the existence or otherwise of the immunity remains inchoate and thus it did not operate at the time of the impugned decisions.

- c. Third, he argues that a purposive interpretation of Article 4(e) should yield the meaning that it is there to protect immune persons from being sent to into the maws of unrelenting States. It should not, the argument goes, be seen as part of the obligation to achieve effective prosecution.

[74] As to the first argument, there is, to my mind, no scope whatsoever for a linguistic interpretation of either Mozambican Articles 13 or 17 or the two read in tandem which permits of such an interpretation. In any event, to the extent that there were uncertainty as to the meaning and operation of these provisions, it is put beyond question by the exposition of the Mozambican Attorney General as to the Mozambican law on this point, that the immunity subsists until lifted.

[75] The second argument is also put paid to by the clear language of Article 4 (e) which states that immunity "*for any reason*" triggers the mandatory refusal. If one needed fortification for this, interpretation, it is to be found in a comparison between Article 8 of the US Treaty and Article 4(e). Article 8 provides for just one reason for immunity i.e. that "*Extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws in the Requesting State.*" Article 4(e) on the other hand is broader - it encompasses "*any reason, including lapse of time or amnesty;*" Thus, on an application of the *expressio unius est exclusio alterius* principle, South Africa must be regarded as having specifically and consciously broadened the range of the types of immunity beyond that brought about by the lapse of time.

[76] As to the third argument, as to the purpose of Article 4 (e) – there is no doubt that it cuts both ways: it protects the person enjoying immunity from unlawful prosecution and, as in this case, it allows for the proper administration of international

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justice. Extradition has as its purpose the prosecution of the guilty. Thus it would make no sense to extradite a person to a place where he cannot be prosecuted.

[77] The underlying crimes of which Mr Chang is accused involve corruption. Corruption takes place with no regard to national boundaries. Thus the effective eradication of corruption requires concerted and coordinated efforts internationally. This need has brought about various international treaties against corruption of which South Africa is a signatory<sup>25</sup>. South Africa is thus part of a global effort to eradicate corruption and has bound itself internationally and domestically to taking effective steps to investigate and prosecute corruption wherever it occurs. It acknowledges as part of this participation that corruption and organised crime undermines the rights enshrined in the Bill of Rights, endangers the stability and security of society and jeopardises sustainable development and the Rule of Law.

[78] In *Geuking Goldstone J* encapsulated the position thus:

*"The need for extradition has increased because of the ever-growing frequency with which criminals take advantage of modern technology, both to perpetrate serious crime and to evade arrest by fleeing to other lands. The government of the country where the criminal conduct is perpetrated will wish the perpetrator to stand trial before its courts and will usually offer to reciprocate in respect of persons similarly wanted by the foreign State. Apart from reciprocity, governments accede to request for extradition from other friendly States on the basis of comity. Furthermore, governments do not wish their own countries to be, or be perceived as safe havens for the criminals of the world."*<sup>26</sup>

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<sup>25</sup> The UN Convention Against Corruption, AU Convention against Corruption OECD Anti-Bribery Convention. The SADC Protocol Against Corruption.

<sup>26</sup> At [2].

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[79] Under section 233 of the Constitution:

*"When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law."*

[80] Thus there can be no doubt that the Protocol must be interpreted so as to allow empowerment in terms of and compliance with South Africa's international obligations. As a starting point the former Minister did not have the power to extradite Mr Chang to Mozambique because this was prohibited by his immunity. Thus his decision was *ultra vires*. The Minister also did not take into account that Mr Chang had immunity because he did not know of it. It would furthermore be irrational for a person to be extradited so they could be prosecuted for their crimes if they were immune from prosecution for such crimes. In reality, there was no choice to make between the USA and Mozambique. The Minister did not have the option to extradite Mr Chang to Mozambique. He was faced with only one valid request - that of the USA.

[81] It was argued on behalf of Mozambique that, in the absence of having asked for reasons for the Minister's decision, it was not possible to determine whether the Minister had taken the immunity of Mr Chang into account. This argument is misplaced. Firstly, because properly construed, the Minister's manuscript order constitutes the Minister's decision and his reasons; secondly because the FMO did, in fact, ask for reasons in its notice of motion and no further reasons were forthcoming; and thirdly because any further reasons could not conceivably serve to change the illegality which exists in the contravention of Article 4(e), regardless of the former Minister's processes and considerations.

[82] Thus I find that the decision of the Minister to extradite Mr Chang to Mozambique should be set aside.

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## REMEDY

[83] Mozambique asks that we undertake an enquiry as to whether there are exceptional circumstances which merit a departure from the default position and substitute its own decision for that of the Minister.

[84] The basis for the departure it submits is that the former Minister has demonstrated bias by bringing these proceedings.

[85] It argues that that this Court has all the information that was submitted to the former Minister to make the decision, together with subsequent information that was not available at the time the former Minister made his decision and that it should thus substitute its decision for that of the current Minister.

[86] The accusation of bias is unfortunate, based as it is squarely on the fact that Minister brings the application to review his predecessor's decision.

[87] It is now well established that where an organ of State concludes that a decision taken by such organ fails to comply with constitutional prescripts, the organ of State is not only empowered but also obliged to take steps to "right the wrong" through the medium of judicial review<sup>27</sup>.

[88] An exceptional circumstances enquiry as to remedy must, in any event, take place in the context of what is just and equitable. Factors to be considered are whether the end result is in any event a foregone conclusion; where the tribunal or functionary has exhibited bias or incompetence to such a degree that it would be unfair to require

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<sup>27</sup> *Department of Transport v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) Member of the Executive Council for Health, *Eastern Cape v Kirland Investments (Pty) Limited t/a Eye and Lazar Institute* (3) SA 481 (CC).

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the applicant to submit again to the same jurisdiction, and whether the court was in as good a position as the administrator to make the decision<sup>28</sup>.

[89] A case in which an order of substitution is sought accordingly requires courts to be mindful of the need for judicial deference and their obligations under the Constitution.

[90] There can be no doubt that the Ministers impugned decisions here are of a policy-laden and polycentric nature as described by Prof. C Hoexter<sup>29</sup> in her succinct characterisation of judicial deference as accepted in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others*.<sup>30</sup>

[91] Thus, in my view, a substitution order would be untenable in these circumstances.

## COSTS

[92] Mr Chang is incarcerated and subject to an existing decision of the former Minister that he be extradited to Mozambique. He was thus entitled to attempt to enforce the decision in order to secure either his extradition or his release. Mozambique seeks here to vindicate its policies at an international level.

<sup>28</sup> *Trencon Construction v Industrial Development Corporation of South Africa (Pty) Ltd and another* [2015] ZACC 22; 2015 (5) SA 245 (CC) paras [44]- [55].

<sup>29</sup> The Future of Judicial Review in South African Administrative Law" (2000) 117 SALJ 484 at 501-2. Passage defined judicial deference as follows:

"a judicial willingness to appreciate the legitimate and constitutionally-ordained province of administrative agencies; to admit the expertise of those agencies in policy-laden or polycentric issues; to accord their interpretations of fact and law due respect; and to be sensitive in general to the interests legitimately pursued by administrative bodies and the practical and financial constraints under which they operate. This type of deference is perfectly consistent with a concern for individual rights and a refusal to tolerate corruption and maladministration. It ought to be shaped not by an unwillingness to scrutinise administrative action, but by a careful weighing up of the need for – and the consequences of – judicial intervention. Above all, it ought to be shaped by a conscious determination not to usurp the functions of administrative agencies; not to cross over from review to appeal."

<sup>30</sup> [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004) at [46].

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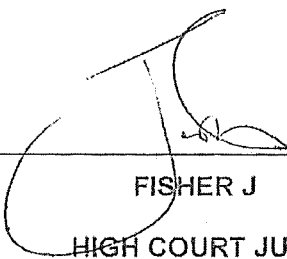
[93] In the circumstances, I am not disposed to order either of these parties to pay the costs of the successful applicants or any of them.

## ORDER

[94] I thus make the following order:

1. Mr Chang's application under case number 22157/2019 is dismissed.
2. The Minister's decision to extradite Mr Chang to Mozambique is set aside.
3. To the extent that the Minister's decision dismissed the US extradition request, it is set aside.
4. Both decisions are remitted to the current Minister for determination.
5. The parties are each to pay their own costs in these applications.

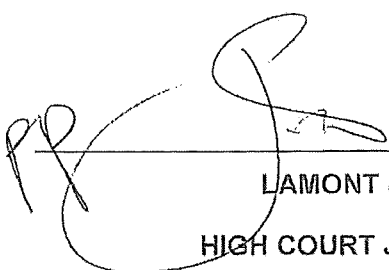
N.V.D



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FISHER J  
HIGH COURT JUDGE  
GAUTENG LOCAL DIVISION, JOHANNESBURG

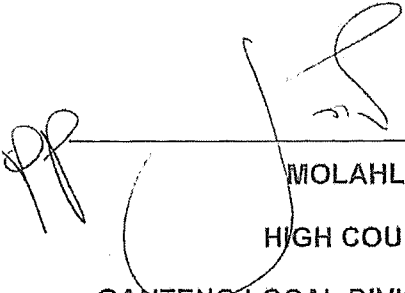
It is so ordered,



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LAMONT J  
HIGH COURT JUDGE  
GAUTENG LOCAL DIVISION, JOHANNESBURG

I concur,



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MOLAHLEHI J  
HIGH COURT JUDGE  
GAUTENG LOCAL DIVISION, JOHANNESBURG

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**Date of Hearing:** 16 -17 October 2019.

**Judgment Delivered:** 1<sup>st</sup> November 2019.

**APPEARANCES:**

**For the Applicant** : Adv W.J Vermeulen SC with Adv J.A Raizon.

**Instructed by** : BDK Attorneys.

**For the Respondent** : Adv V Maleka SC with Adv Kazee.  
**Instructed by** : State Attorney.

**For the 1<sup>st</sup> intervening Party** : Adv A. Katz SC with Adv E. Cohen.

**Instructed by** : Ian Levitt Attorneys.

**For the 2<sup>nd</sup> Intervening Party** : Adv W. Mokhare SC with Adv M. Ramabulana.

**Instructed by** : Mabunda Incorporated.

**For the *Amicus Curae*** : Adv Du Plessis SC with Adv S. Pudifin-Jones.

**Instructed by** : Webber Wentzel Attorneys.

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# **FORUM DE MONITORIA DO ORCAMENTO**

## **Memorandum de Entendimento**

**Entre**

**N'weti – Comunicação para a Saúde;  
Centro de Aprendizagem e Capacitação da Sociedade Civil (CESC);  
Centro de Integridade Pública (CIP);  
Fundação para o Desenvolvimento da Comunidade (FDC);  
HELVETAS Swiss Corporation;  
Fórum da Sociedade Civil para os Direitos das Crianças (ROSC);  
ActinAid Moçambique;  
Grupo Moçambicano da Dívida (GMD);  
Fórum das Rádios Comunitárias (FORCOM);  
Movimento de Educação para Todos (MEPT);  
Plataforma da Sociedade Civil Moçambicana para Protecção Social (PSCM-PS);  
NAIMA +  
Liga das ONG's (JOINT)  
WaterAid Moçambique  
Observatório do Meio Rural (OMR)  
Fórum Mulher  
Mulher, Lei e Desenvolvimento (MULEIDE)  
Instituto de Estudos Sociais e Económicos (IESE);  
Namati – Moçambique**

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## **Cláusula Primeira**

### **(Enquadramento, Princípios e Finalidade da Parceria)**

Os integrantes do Fórum de Monitoria do Orçamento – FMO – (plataforma de organizações da sociedade civil focalizadas e interessadas na área de gestão de finanças públicas), estabelecem este Memorandum de Entendimento (MdE) com o propósito de efectivar a iniciativa de fortalecer a sua acção colectiva para monitorar e influenciar as políticas fiscais e financeiras, tendo como base o Orçamento do Estado (OE), bem como influenciar a sua alocação equitativa aos sectores prioritários em benefício dos grupos menos favorecidos.

A iniciativa é implementada por um Grupo de Coordenação (GC) composto por 4 organizações, dentre as quais haverá um coordenador geral, obedecendo a uma rotatividade de três em três anos. O GC tem um mandato de 3 anos com possibilidade de renovação. A rotatividade do GC deve garantir a memória institucional, através da documentação dos processos.

### **Objectivos do FMO:**

**Geral:** Fortalecer a capacidade de acção colectiva das Organizações da Sociedade Civil (OSC) para monitorar e influenciar as políticas fiscais e financeiras, tendo como base o OE, em benefício dos grupos menos favorecidos.

### **Específicos:**

- Elevar o nível e a qualidade de participação das OSC na monitoria e influência do processo orçamental em benefício dos grupos mais marginalizados da sociedade;
- Contribuir para maior transparência dos processos de orçamentação através da disponibilidade e do acesso à informação (partilha de estudos, experiências, posicionamentos do FMO a nível nacional, regional e internacional);
- Colaborar na capacitação mútua e partilha de informação entre membros da sociedade civil e parlamentares em assuntos de planificação pública (OE e PES), Gestão da Dívida, Eficácia da Ajuda e Conta Geral do Estado;



- Influenciar a melhoria do sistema de prestação de contas do governo em relação à gestão das finanças públicas através de promoção de metodologias simplificadas que garantam maior envolvimento dos cidadãos;
- Colecta de evidência a nível dos círculos eleitorais, através de auscultação, para informar o trabalho dos parlamentares, de preferência antes da aprovação do OE e do Balanço da Execução do Governo na Assembleia da República.
- Criar sinergias entre organizações parceiras, desde as que trabalham nos sectores de pesquisa e capacitação até as que operam em áreas temáticas específicas de advocacia para influenciar o orçamento social em benefício dos grupos mais desfavorecidos, particularmente da criança e da mulher;

O FMO tem o seu foco na análise dos orçamentos (central, distritais e municipais), Conta Geral do Estado (CGE) e todas as acções ou leis que têm implicações no OE.

As organizações signatárias deste MdE acordam em assentar a sua ligação nos seguintes princípios:

- Transparência, responsabilidade e prestação de contas;
- Partilha ampla de informação não coberta por algum regime de confidencialidade;
- Cumprimento dos deveres por todos os membros, incluindo a contribuição para as actividades do Fórum;
- Consulta e troca permanente de informação;
- Direitos Humanos e boa-fé.

## **Cláusula Segunda**

### **(Papel e Responsabilidades dos Membros do Grupo de Coordenação)**

As 4 organizações que compõem o GC têm as seguintes responsabilidades e papéis:

- Supervisão geral da realização das actividades;
- Facilitar a elaboração da informação e intervenções técnicas e temáticas;
- Apoiar o desenvolvimento de estratégias de advocacia e disseminação;
- Cooperar amigável e profissionalmente com todos os parceiros;
- Respeitar as decisões tomadas pelos membros do Fórum;
- Participar das decisões do Fórum, como parte da estrutura de coordenação e de implementação;
- Garantir o sucesso da implementação segundo os resultados previstos.

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No Grupo de Coordenação elege-se o Parceiro Líder (PL) para a implementação diária das actividades do Fórum. O PL tem como tarefas as seguintes:

- Assegurar a implementação das actividades do Fórum;
- Gerir as actividades e os fundos em estreita colaboração com os membros do GC;
- Coordenar as acções de capacitação dos membros do Fórum;
- Coordenar o processo de selecção de consultores para a realização de estudos técnicos;
- Gerir a página de internet, incluindo o Facebook do Fórum;

### **Cláusulas Terceiro**

#### **(Colaboração Inter-Programática, Respeito Mútuo e Regras de Visibilidade)**

Os membros do FMO acordam em estabelecer uma forte colaboração entre si, tendo, como base os princípios reflectidos na Cláusula Primeira deste MdE. Corporizar, nesta fase, o espírito de colaboração inter-programática dos seguintes princípios adicionais:

- Respeitar a autonomia dos outros parceiros envolvidos na materialização das actividades do Fórum, sobretudo no que se refere ao relacionamento individual entre os diferentes membros e parceiros;
- Respeito mútuo entre os membros do Fórum no geral e no âmbito das iniciativas referidas na Cláusula Primeira;
- Cada interveniente-subscritor aplicará, em tudo o que se encaixar na sua esfera autónoma, as regras de visibilidade previstas nas suas próprias políticas, estratégias e ou planos de comunicação e as acordadas com os parceiros envolvidos nas iniciativas elencadas na Cláusula Primeira;
- Todas as declarações públicas referentes às actividades do Fórum devem estar em consonância com as posições do Grupo de Coordenação e submissão para aprovação antes do lançamento;
- Cada organização subscritora do Fórum, no acto de visualização de suas acções deverá incluir os logos dos parceiros constituintes com igual tamanho e destaque.

### **Cláusula Quarta**

#### **(Financiamento e Fundos do FMO)**

- O Fórum funciona com base nas contribuições dos seus membros, tendo como fundamento as actividades previstas no plano anual;

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- Cada organização subscritora compromete-se a contribuir com fundos para o FMO, sendo que as despesas do Fórum poderão ser repartidas de forma equitativa entre os membros;
- O Grupo de Coordenação do fórum e seus membros deverão angariar fundos de parceiros financiadores para cobrir os custos do Fórum.

#### **Cláusula Quinta**

##### **(Sobre Adesão)**

Pode ser membro do FMO toda e qualquer OSC que se identifique e comungue dos objectivos do Fórum e que se comprometa a cumprir o preceituado no presente Memorandum.

#### **Cláusula Sexta**

##### **(Retirada ou Expulsão de Membros)**

- Qualquer membro poderá renunciar o presente acordo mediante a notificação prévia de seis meses ao Grupo de Coordenação;
- Em casos aplicáveis, a retirada de um membro do Fórum poderá incluir o reembolso de todos os recursos financeiros não gastos. Poderá inclusivamente exigir a entrega de todos os bens (não utilizados) e equipamentos recebidos para a execução de determinada actividade, bem como toda a documentação formal que reporta a interacção entre os membros e parceiros;
- Um membro do FMO poderá ser expulso nas seguintes condições:
  1. Violação de quaisquer disposições do presente MdE ou reincidência em actos que prejudiquem a reputação do Fórum;
  2. O membro em causa receberá por escrito um aviso por parte do GC no qual estará expressa a intenção de expulsão. O membro poderá responder à notificação e a decisão final caberá ao GC;

#### **Cláusula Sétima**

##### **(Casos e Omissões)**

Todas as situações não previstas no presente MdE deverão ser integradas e harmonizadas por acordo entre as partes signatárias, o que deverá ser obrigatoriamente precedido de diálogo, com relevante consulta aos restantes membros. O princípio de boa-fé, previsto na Cláusula Primeira, deverá ser sempre convocada.

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#### **Cláusula Oitava**

JSP

**(Duração e Entrada em Vigor)**

O prazo deste acordo é de três anos, excepto se for denunciado mais cedo, de acordo com as suas disposições acima. O mesmo tem efeito a partir do ano 2017.

Assinaturas dos membros:

N'weti \_\_\_\_\_

CESC \_\_\_\_\_

CIP \_\_\_\_\_

FDC \_\_\_\_\_

HELVETAS Swiss Corporation \_\_\_\_\_

ROSC \_\_\_\_\_

Action Aid Moçambique \_\_\_\_\_

GMD \_\_\_\_\_

FORCOM \_\_\_\_\_

MEPT \_\_\_\_\_

PSCM-PS \_\_\_\_\_

NAIMA + \_\_\_\_\_

JOINT \_\_\_\_\_

OMR \_\_\_\_\_

WATERAID \_\_\_\_\_

FÓRUM MULHER \_\_\_\_\_

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MULEIDE \_\_\_\_\_

IESE \_\_\_\_\_

NAMATI \_\_\_\_\_

Maputo, aos \_\_\_\_ de Abril de 2017

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