



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE,
GENDER MATTERS AND GOVERNANCE**

ON THE

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) BILL,
N.A.B. NO. 14 OF 2020**

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE ON THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) BILL, N.A.B. NO. 14 OF 2020 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice-Chairperson); Mr C Nanjuwa, MP; Evg H Shabula, MP; Mr E Sing'ombe, MP; Mr R Bulaya, MP; Ms M P Langa, MP; Mr S Banda, MP; Mr S Chungu, MP and Mr M F Fube, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the Mutual Legal Assistance in Criminal Matters (Amendment) Bill, N.A.B No. 14 of 2020 for the Fifth Session of the Twelfth National Assembly referred to it by the House on 20th October, 2020.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are as set out under Standing Order 157(2). Among other functions, the Committee is mandated to consider Bills that may be referred to it by the House.

3.0 MEETINGS OF THE COMMITTEE

The Committee held seven meetings to consider the Mutual Legal Assistance in Criminal Matters (Amendment) Bill, N.A.B No. 14 of 2020.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

5.0 OBJECT OF THE BILL

The object of the Bill is to amend the *Mutual Legal Assistance in Criminal Matters Act, Chapter 98 of the Laws of Zambia*, so as to provide for measures for monitoring of a request made to a competent authority.

6.0 BACKGROUND

As a member of the Financial Action Task Force (FATF), through her membership to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Zambia was recently assessed in 2018/2019 on her anti-money laundering and counter-terrorist and proliferation financing (AML/CFT) system.

Following this assessment, a Mutual Evaluation Report (MER) of June, 2019, under recommendation 37, observed, *inter alia*, that the principal Act did not cover all forms of assistance under the international standards. Further, it was observed that there was no information on the kind of mutual legal assistance offered, and the extent to such assistance was offered. Furthermore, the report highlighted that there were no mechanisms in place to administer exchange of information relating to terrorist financing, and no timeframe given in which to handle such requests. Lastly, it was observed that the ability to provide such assistance in a timely and effective manner could not be verified.

In view of the foregoing, the Government introduced the Mutual Legal Assistance in Criminal Matters (Amendment) Bill, N.A.B No. 14 of 2020 (hereinafter referred to as the Bill) to amend the *Mutual Legal Assistance in Criminal Matters Act, Chapter 98 of the Laws of Zambia* (hereinafter referred to as the “principal Act”) to provide for monitoring the execution of a request made to a competent authority. The amendment was also aimed at facilitating compliance with FATF recommendations on anti-money laundering, financing of terrorism, proliferation or any other serious offences.

7.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill are set out below.

7.1 Clause 1: Short title

Clause 1 provided for the short title of the Act and that the Act was to be read as one with the principal Act.

7.2 Clause 2: Amendment of section 10

Clause 2 sought to amend section 10 of the principal Act by including a subsection which would empower the Minister to prescribe measures for monitoring the execution of a request by a foreign state for international assistance in a criminal matter.

8.0 STAKEHOLDERS’ SUBMISSIONS AND CONCERNS

While supporting the Bill, stakeholders raised the concerns set out hereunder.

8.1 Clause 1: Short title

Stakeholders were concerned that Clause 1 did not provide for a commencement date for the Bill, meaning that it would come into force immediately it was published in the *Gazette*.

8.2 Clause 2: Amendment of section 10

Stakeholders welcomed clause 2 of the Bill, which sought to amend section 10 of the principal Act by inserting a new subsection immediately after subsection (4) so as to provide for prescription of measures by the Minister, for monitoring the execution of a request made under this section. Stakeholders noted that section 10 of the principal Act provided for requests by foreign states for international assistance to be made to the Attorney-General, but did not provide for measures for monitoring the request.

Stakeholders were of the view that this amendment would ensure full implementation of requests for legal assistance in criminal matters and enhance transparency, efficiency, and effectiveness. The amendment would also ensure compliance with the recommendation made by the

ESAAMLG assessors for mechanisms to administer exchange of information relating to money laundering, terrorist financing, as well as a timeframe in which to handle such requests. Stakeholders also submitted that the amendment represented a very effective tool that was necessary in heightening international co-operation between the Republic of Zambia and other foreign states. Stakeholders were of the view that monitoring the execution of a request by a foreign state that required assistance would enhance the fight against transnational or cross border crimes such as money laundering, financing of terrorism, proliferation or any other serious offences.

Some stakeholders submitted that it was important for measures for monitoring a request to be developed after receiving recommendations from the Zambia Police Service, the Anti-Corruption Commission (ACC), the Drug Enforcement Commission (DEC) and the National Prosecutions Authority (NPA) since extradition dealt with criminal matters. This was because the law enforcement agencies were well-versed in determining and handling credibility evidence. Stakeholders were also of the view that a timeframe for receiving these recommendations should be stipulated as without it, the whole exercise would be futile.

Some stakeholders were of the view that the “Minister” should be defined for avoidance of doubt. This was because mutual legal assistance, by nature, had the possibility of affecting the Ministers of Home Affairs, Foreign Affairs and Justice. There was, therefore, an eminent danger of the Ministers having a power struggle. It was, therefore, important to define “Minister” in the definitions section as the Minister of Justice, as was the case in the Tanzanian Mutual Legal Assistance in Criminal Matters Act of 1991. Tanzania had made significant progress in improving their AML/CTF regime and was therefore no longer subject to the FATF’s monitoring process.

Some stakeholders submitted that the word “may” gave discretion to the Minister to prescribe the measures for monitoring requests and, therefore, should be replaced with “shall” to make it mandatory for monitoring measures to be put in place. Other stakeholders submitted that “may” provided discretionary powers for the sake of checks and balances, and hence it was progressive.

9.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that all the witnesses who appeared before it were in support of the Bill. The Committee also supports the Bill. In supporting the Bill, the Committee makes the following observations and recommendations:

- (i) The Committee is of the view that for the avoidance of doubt, it is imperative to define the Minister in the definitions section of the Act. The Committee is aware that matters of mutual legal assistance are cross-cutting and can possibly affect the Ministries of Home Affairs, Foreign Affairs and Justice. The Committee, therefore, recommends that in order to avoid a power struggle, “Minister” should be defined as Minister responsible for Justice as is the case with Tanzania which has made significant progress in improving its anti-money laundering and counter terrorist regime and is therefore no longer subject to the FATF’s monitoring process.

- (ii) The Committee observes that since requests for mutual legal assistance deal with criminal matters, it is necessary that the measures for monitoring of a request are developed after receiving recommendations, within a stipulated timeframe, from the Zambia Police Service, ACC, DEC and NPA. The Committee, therefore, strongly urges the Government to make necessary provisions to ensure that the law enforcement agencies make recommendations since these institutions are well-versed in determining and handling credibility evidence.

In view of the foregoing, the Committee strongly urges the Government to ensure that the measures for monitoring of a request made to a competent authority are developed after receiving recommendations, within a stipulated timeframe, from all law enforcement agencies.

- (iii) The Committee observes that the *Mutual Legal Assistance in Criminal Matters Act, Chapter 98 of the Laws of Zambia* was enacted 1993; seven years before the United Nations Convention against Transnational Organised Crime came into being in December, 2000. In this regard, the Committee is of the view that there is need for a holistic review of the Act in order to align it with the UN Convention against Transnational Organised Crime, so as to answer a global challenge with a global response.

10.0 CONCLUSION

The Committee wishes to express its gratitude to all stakeholders who appeared before it and rendered both oral and written submissions. The Committee also wishes to thank you, Mr Speaker, for according it an opportunity to scrutinise the Bill. The Committee further appreciates the services rendered to it by the Office of the Clerk of the National Assembly and the permanent witnesses from the Ministry of Justice.

We have the Honour to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the Mutual Legal Assistance in Criminal Matters (Amendment) Bill, N.A.B. No. 14 of 2020 for the Fifth Session of the Twelfth National Assembly,

Mr M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice – Chairperson)

Mr C Nanjuwa, MP
(Member)

Evg H Shabula, MP
(Member)

Mr E Sing'ombe, MP
(Member)

Mr R Bulaya, MP
(Member)

Mr S Banda, MP
(Member)

Ms M P Langa, MP
(Member)

Mr S Chungu
(Member)

Mr M F Fube
(Member)

November, 2020
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees
Mr H Mulenga, Deputy Principal Clerk of Committees (FC)
Mrs C K Mumba, Senior Committee Clerk (FC)
Ms B P Zulu, Committee Clerk
Mrs R N Mwiinga, Typist
Mr M Kantumoya, Parliamentary Messenger

APPENDIX II–LIST OF WITNESSES

MINISTRY OF JUSTICE

Hon G Lubinda – Minister of Justice
Ms C Kaisala – Senior Parliamentary Counsel

UNIVERSITY OF ZAMBIA

Prof C Himoonga – Dean, School of Law
Dr M Lwatula – Assistant Dean (Undergraduate)

HUMAN RIGHTS COMMISSION

Mr K Banda – Chief Investigations and Legal Services

LAW ASSOCIATION OF ZAMBIA

Mr S Chisenga – Member

NATIONAL PROSECUTION AUTHORITY

G Zimba – Deputy Chief State Advocate, Taxation and Financial Crimes

ANTI-CORRUPTION COMMISSION

Mr S Muchula – Acting Director, Legal and Prosecutions
Ms G Chisambisha – Senior Legal and Prosecutions Officer

ZAMBIA CORRECTIONAL SERVICES

Dr C Chileshe – Commissioner General

ZAMBIA POLICE SERVICE

Mr B Kapeso – Deputy Inspector General of Police
Mr E S Sindandumuna (Assistant Commissioner) – Assistant Director, Legal
Mr G Msoni (Inspector) – Legal Officer and State Advocate
Mr W Mbula (Inspector) – Legal Officer

JUDICIARY

Mrs D Malama – Registrar, Constitutional Court
Mrs T Musonda – Registrar, Subordinate Courts