



REPUBLIC OF ZAMBIA

**REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN
AFFAIRS**

ON THE

**ANTI-TERRORISM AND NON-PROLIFERATION (AMENDMENT) BILL, N.A.B. NO.
32 OF 2022**

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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FOREWORD

Honourable Madam Speaker, the Committee on National Security and Foreign Affairs has the honour to present its Report on the consideration of the Anti-Terrorism and Non-Proliferation (Amendment) Bill, N.A.B. No 32 of 2022, for the Second Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House as per Standing Order No 198(j) of the National Assembly of Zambia Standing Orders, 2021.

The Committee held ten meetings to consider the Anti-Terrorism and Non-Proliferation (Amendment) Bill, N.A.B. No 32 of 2022. In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from various relevant stakeholders. The stakeholders who appeared before the Committee are listed at Appendix II.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it an opportunity to scrutinise the Anti-Terrorism and Non-Proliferation (Amendment) Bill, N.A.B. No 32 of 2022. Further, appreciation is extended to the Clerk of the National Assembly and his staff for the support and guidance throughout the Committee's deliberations.

Brig Gen Morgan Sitwala, MP
CHAIRPERSON

March, 2023
LUSAKA

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1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of: Brig Gen Morgan Sitwala (Rtd), MP, (Chairperson); Ms Sibongile Mwamba, MP (Vice-Chairperson); Mr Lusala John Simbao, MP; Mr Philemon Twasa, MP; Mr Walusa Mulaliki, MP; Mr Sunday Chanda, MP; Mr Mweemba Malambo, MP; Mr Siphso Hlazo, MP; Mr Christopher Chibuye, MP; and Mr Cliff Mpundu, MP.

2.0 BACKGROUND

This Bill sought to amend the *Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018*, so as to strengthen the offences relating to terrorism, terrorism financing, proliferation and proliferation financing and to conform to the regional standards in combating terrorism, terrorism financing, proliferation and proliferation financing and address the recommendations of the Eastern and Southern African Anti- Money Laundering Group.

Zambia was a member country of the Financial Action Task Force (FATF) styled group called the Eastern and Southern Africa Anti Money Laundering Group (ESMAAMLG). In this regard, all ESMAAMLG member countries were subjected to regular reviews of different pieces of legislation for technical compliance and effectiveness. Member countries, therefore, convened twice every year to discuss matters pertaining to assessments conducted and reviews thereon were given.

As such, in March 2022, Zambia received a follow up report in which additional deficiencies in the *Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018* were identified as well as other deficiencies noted during the operations and investigations conducted by the National Anti-Terrorism Centre. It was this outcome which necessitated the review and amendment of some provisions now contained in the Anti-Terrorism and Non-Proliferation Bill, N.A.B No. 32 of 2022.

3.0 OBJECT OF THE BILL

The object of the bill was to amend the *Anti Terrorism and Non Proliferation Act, No. 6 of 2018*, so as to: -

- (a) revise some existing definitions and introduce new definitions in line with regional and international obligations;
- (b) revise the provisions relating to the administration of the Centre;
- (c) revise some of the offences in order to enhance implementation of the Act; and
- (d) provide for matters connected with, or incidental to, the foregoing.

4.0 SALIENT PROVISIONS OF THE BILL

The salient provisions of the Bill were as set out below.

Clause 1 Short Title

The clause provided for the short title of the Bill.

Clause 2 Amendment of section 2

Clause 2 sought to amend section 2 of the principal Act, by the revision of definitions such as "article" and "authorised officer" and the insertion of new definitions such as "designation" and "entity" in order to make the law easier to understand by citizens and those tasked to implement the law.

Clause 3 Amendment of section 5

Clause 3 sought to repeal and replace section 5 in order to provide for the continuation of the Anti-Terrorism Centre. The clause further, provided for designation of the Centre as a department under the Ministry responsible for internal security.

Clause 4 Amendment of section 7

Clause 4 sought to amend section 7 of the principal Act so as to revise the composition of the National Anti-Terrorism and Proliferation Committee by including in the composition of the committee, among others, representatives from Zambia Army, Zambia Air Force, Zambia National Service, Zambia Correctional Service and the Department of Immigration.

Clause 5 Insertion of section 9A

Clause 5 sought to insert a new section 9A immediately after section 9 of the principal Act so as to empower the Emoluments Commission, on the recommendation of the Minister, to determine the allowances that shall be paid to members of the National Anti-Terrorism Committee and sub-committees.

Clause 6 Amendment of section 11

Clause 6 sought to amend section 11(6) of the principal Act by the deletion of the words "and proliferation" immediately after the word "anti-terrorism".

Clause 7 Repeal and replacement of section 12

Clause 7 sought to repeal and replace section 12 of the principal Act so as to empower the Director to appoint an anti-terrorism officer in order to ensure compliance with the provisions of the Act. The clause further mandated an appointed anti-terrorism officer to be in possession of a certificate of appointment and an identity card when performing the officer's functions.

Clause 8 Amendment of section 14

Clause 8 sought to amend section 14(2) of the principal Act by deleting the words "and proliferation" immediately after the word "anti-terrorism".

Clause 9 Amendment of section 18

Clause 9 sought to mandate a reporting entity that had been notified of an entity declared as a terrorist or a terrorist organisation under section 40(1), to freeze any funds held by that reporting entity for, or on behalf of, the entity.

Clause 10 Repeal and replacement of section 20

Clause 10 sought to repeal and replace section 20 of the principal Act so as prohibit a person from committing an act of terrorism financing or proliferation financing. The clause further

prohibited a person from carrying out an act which is an offence within the scope of the *United Nations Security Council Resolution 1540 of 2004* or any other applicable United Nations Security Council Resolutions on proliferation financing. In addition, the clause also provided a penalty for contravention of the provision.

Clause 11 Repeal of section 22

Clause 11 sought to repeal section 22 of the principal Act.

Clause 12 Repeal and replacement of section 23

Clause 12 sought to repeal and replace section 23 of the principal Act so as to prohibit a person from providing instruction or training for terrorism or proliferation purposes when that person knows or ought to have known at the time of offering the instruction or training, that the person receiving that instruction or training intends to use that training or instruction for terrorism or proliferation purposes. The clause also stated that any person who contravened the provisions contained therein, was liable to imprisonment for life.

Clause 13 Amendment of section 30

Clause 13 sought to amend section 30 of the principal Act by the insertion of a new subsection immediately after subsection (2) so as to provide for a defence to a person charged with an offence of harbouring, concealing or providing a safe haven to a terrorist, a terrorist organisation or person who finances or supports a terrorist or a terrorist organisation.

Clause 14 Amendment of section 32

Clause 14 sought to amend section 32(1) by the deletion of paragraph (a) and the substitution therefore of a new paragraph (a) which sought to criminalise the act of participation in terrorism financing or proliferation financing, irrespective of an occurrence of a terrorist act or proliferation whether or not the funds had been used to commit that act.

Clause 15 Amendment of section 36

Clause 15 sought to amend section 36 by the deletion of subsection (3) and the renumbering of subsection (4) as subsection (3).

Clause 16 Insertion of section 39A

Clause 16 sought to insert a new section 39A immediately after section 39 of the principal Act so as to make the offence under Part III of the Act, non-bailable offences.

Clause 17 Amendment of section 41

Clause 17 sought to amend section 41 by the deletion of subsection (2).

Clause 18 Repeal and replacement of section 42

Clause 18 sought to repeal and replace section 42 of the principal Act so as to provide for offences for a person who among others, knowingly arranges, manages or assists in arranging or managing or participates in a meeting or an activity, which that person knows was connected with an act of terrorism, terrorism financing, proliferation and proliferation financing or provides logistics, equipment or facilities for a meeting, or an activity which that person knows was connected with an act of terrorism, terrorism financing, proliferation and proliferation financing.

The clause further provided that a person convicted of an offence under this section was liable to imprisonment for life.

Clause 19 Repeal and replacement of section 43

Clause 19 sought to repeal and replace section 43 of the principal Act so as empower the Minister on the recommendation of the Centre, to nationally list persons or entities who were involved in the commission of acts of terrorism, terrorism financing, proliferation or proliferation financing.

Clause 20 Insertion of sections 43A and 43B

Clause 20 sought to insert a new section 43A immediately after section 43 so as to empower the Centre on receipt of the national list from the Minister, to direct all reporting entities without delay, to freeze all funds and financial assets suspected or belonging to a listed or designated person or entity.

Clause 20 further sought to insert a new section 43B immediately after section 43A so as to empower the Minister on the recommendation of the Centre to de-list a person or entity if that person or entity meets the conditions for de-listing as prescribed. This clause further empowered the Centre where a person or entity was inadvertently affected by an asset freeze, to direct a relevant reporting entity to unfreeze the frozen funds or other assets on verification that the person or entity involved was not a designated or listed person or entity.

Clause 21 Amendment of section 44

Clause 21 sought to amend section 44 by the deletion of subsection (1) and the substitution therefore of a new subsection (1) which prohibited a person from dealing with funds or economic resources which that person knows or reasonably suspects were owned, held or controlled by a designated or nationally listed person, terrorist, terrorist organisation or proliferation related entity.

Clause 22 Amendment of section 47

Clause 22 sought to amend section 47 by the deletion of subsection (1) and the substitution therefore of a new subsection (1) which prohibited a person or entity from making economic resources available directly or indirectly, without express authority from the Centre to a designated or nationally listed person, terrorist organisation or proliferation related entity if that person or entity knows, or reasonably suspects that the person or entity was making the economic resources available to the designated or nationally listed person, terrorist organisation or proliferation related entity or the nationally listed person, terrorist organisation or proliferation related entity would likely exchange the economic resources, or use the economic resources in exchange, for funds, goods, services or arms.

Clause 23 Amendment of section 48

Clause 23 sought to amend section 48(7) by the deletion of paragraph (a) and the substitution therefore of a new paragraph which allowed an officer of customs or an authorised officer to search and inspect all cargo to and from a designated country, including cargo on an aircraft or a vessel, where reasonable grounds exist to suspect a violation of applicable United Nations

Security Council Resolutions and sanctions related to terrorism, terrorism financing, proliferation or proliferation financing.

Clause 23 further sought to delete paragraph (c) and the substitution therefor of a new paragraph which provided for an officer of customs or an authorised officer subject to the *Forfeiture of Proceeds of Crime Act, No. 19 of 2010*, to cause the disposal of any items subject to sanctions, arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and their spare parts, where reasonable grounds existed to suspect a violation of applicable United Nations Security Council Resolutions and Sanctions relating to terrorism, terrorism financing, proliferation or proliferation financing.

Clause 24 Repeal and replacement of section 49

Clause 24 sought to repeal and replace section 49 of the principal Act so as to prohibit a road, water or air transportation provider or any transportation agent operating within the Republic or whose transportation carried persons or goods within or outside the Republic from permitting or facilitating the transportation of a designated or nationally listed person or restricted goods. The clause further provided for the penalty for any person convicted of the offence under this section.

Clause 25 Amendment of section 50

Clause 25 sought to amend section 50 by the deletion of subsection (1) and the substitution therefore of a new subsection (1) which prohibited a designated or nationally listed person from entering or transiting through the Republic if the entry or transit would be contrary to a determination of the United Nations Security Council.

Clause 26 Amendment of section 52

Clause 26 sought to amend section 52 by the deletion of subsection (5) and the substitution therefore of a new subsection (1) which sought to define the word "frozen account" as an account with a reporting entity which had been restricted from transfer, conversion, disposition or movement of any funds or other assets by a reporting entity.

Clause 26 further sought to amend subsection (6) by the deletion of paragraph (b) and the renumbering of paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively. The clause also sought to amend subsection (7) by the deletion of the words "subsection (6)(a), (b), (c) and (e)" and the substitution therefore of the words "subsection (6) (a), (b) and (d)".

Clause 27 Repeal and replacement of sections 54, 55, 56, 57 and 58

Clause 27 sought to repeal and replace sections 54, 55, 56, 57 and 58 of the principal Act: Clause 54 empowered an anti-terrorism officer or an authorised officer to arrest a person, without a warrant, where that officer had reasonable grounds to believe that the person had committed or was about to commit an offence under the Act;

Clause 55 empowered an anti-terrorism officer or an authorised officer to detain a person for a period not exceeding forty-eight hours, where that officer had reasonable grounds to believe that the person had committed, or was about to commit, an offence under the Act;

Clause 56 empowered a judge or magistrate to issue a warrant authorising an anti-terrorism officer or an authorised officer to enter any premises specified in the warrant, search any premises, any person and inspect any document, record or thing, found in the premises;

Clause 57 empowered an anti-terrorism officer or an authorised officer in a case of urgency to make an application before a judge or magistrate to enter and search any premises or place, if the anti-terrorism officer or an authorised officer had reason to suspect, among others, that within those premises or at that place an offence under this Act was being committed or was likely to be committed; and

Clause 58 empowered an anti-terrorism officer or an authorised officer, for the purpose of obtaining evidence of the commission of an offence under the Act, to apply to a judge to intercept communication in accordance with Part VI of the Cyber Security and Cyber Crimes Act, 2021.

Clause 28 Amendment of section 62

Clause 28 sought to amend section 62(1) by the insertion of the words "in consultation with the Centre," immediately after the word "may". The clause further provided for deletion of subsection (5) of section 62 and renumbers subsection (6) as subsection (5).

Clause 29 Amendment of section 66

Clause 29 sought to amend section 66 (1) by the insertion of the following new paragraph immediately after paragraph (b) which allowed the Attorney General to make a request to a foreign State without delay, to freeze all property, funds and other assets belonging to, or suspected to belong to, a listed or designated person or entity including funds derived from property owned or controlled directly or indirectly by listed or designated persons.

Clause 30 Amendment of section 70

Clause 30 sought to amend section 14(2) of the principal Act by deleting the word "Agency" and the substitution therefore of the word "Centre".

Clause 31 Insertion of section 72A

Clause 31 sought to insert a new section 72A immediately after section 72 of the principal Act so as to empower the Centre where a reporting entity was in breach of a provision of this Act which was not a criminal offence, to impose one or more administrative sanctions such as a caution not to repeat the conduct which led to the non-compliance with a provision of this Act or a reprimand, among others. The clause further provided the factors to consider by the Centre before an administrative sanction was imposed.

Clause 32 Repeal and replacement of First and Second Schedules

Clause 32 sought to repeal and replace the First and Second schedules of the principal Act so as to provide for exclusion orders and the list of counter terrorism conventions referred to under the interpretation section.

5.0 STAKEHOLDERS' SUBMISSIONS AND CONCERNS

Many stakeholders who appeared before the Committee supported the Bill, and expressed their concerns as listed hereunder.

5.1 Clause 2 Amendment of section 2

The Committee was informed that the definition of the word "article" in the Bill had been broadened to include "any other implement" used to commit or attempt to commit an act of terrorism or proliferation. The Committee was informed that the proposed amendment was progressive as it created a wider scope of implements that may be considered as articles. It was submitted that the non-exhaustive or non-restrictive definition was a positive one especially in modern times where there were sophisticated and innovative implements in circulation.

Notwithstanding the above statement, the Committee was, however, informed that the addition of the term "or any other implement" to the definition of the term article, would provide for introduction of a new definition in line with international obligations as stated in the object of this Bill. In this regard, it was noted that both the resolution list in section 2 (applicable United Nations Security Council Resolutions) and the list in the second schedule (counter terrorism conventions), did not have any new addition from the existing list. The Committee was informed that there was need to highlight which convention or resolution the new definition was generated from, and what mischief was being cured by the proposed expansive definition of the term article.

The Committee was informed that under clause 2 section 2(e) the term "intelligence officer" must carry the same meaning as defined by section 2 of the *Zambia State Security Intelligence Service Act, Chapter 109 of the Laws of Zambia*. The Committee was informed that defining the term "intelligence officer" as contained under section 2 of the *Zambia State Security Intelligence Service Act, Chapter 109 of the Laws of Zambia*, would provide clarity to which intelligence officer the Bill was referring to, and this would allay any doubt in such definition as far as interpretation and application of the law was concerned.

Under clause 2 section 2(i), the Committee was informed that the words "any other person appointed in writing as authorised by the committee" would potentially create a challenge and would require such appointments to be done judiciously by way of a statutory instrument. This was so because the other persons that were part of the definition of "authorised officer" were in the substantive Act, and the committee under the Bill or the current Act did not have the power to promulgate a statutory instrument. Therefore, there was need for the Bill to be clear on the process; procedure and the manner in which the committee would exercise the power to appoint any other person as an authorised officer.

The Committee was also informed that there was no procedure on revocation of such appointment by the committee.

Stakeholders noted that the definition of "terrorist Act" in the Bill was similar to the definition of the term "terrorism" in the principal Act - the *Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018*. In the principal Act the word "terrorism" was defined in part as follows:

“an act or omission in or outside Zambia that is intended, or by its nature and context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public or compel a government or an international organisation to do, or refrain from doing, any act, and is made for the purpose of advancing a political, ideological or religious cause and which...”

The Committee was informed that, in the Bill, the term terrorism was not defined, but what was defined is *terrorist act* which meant the following:

- (a) any criminal act that may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, group of persons, or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce the Government, a body, an institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular view, or to act according to certain principles;
 - (ii) disrupt any public service, the delivery of an essential service to the public, or to create a public emergency; or (iii) create general insurrection in the Republic.

In this regard, the Committee was informed that, in order to prevent possible conflict in the definitions of the terms *terrorist act* and *terrorism*, the word terrorism needed to provide more clarity on what amounted to a terrorist Act, and consequently, the definition of the term terrorist act needed to be deleted.

Also, under clause 2, stakeholders made the following proposed amendments:

- a) the definition of *terrorist act* should be expanded to encompass acts that constituted offences within the scope of, and as defined in the international treaties listed in the definition of *terrorist act* under the glossary to the FATF recommendations so that the definition would meet the minimum international standard; and
- b) the definitions of *supervisory authority* and *competent authority* should be in conformity with the definitions contained in the *Financial Intelligence Centre Act, No. 11 of 2022*. The definitions would be useful for purposes of dissemination and implementation of targeted financial sanctions under Part V of the Act and would align with the proposed changes put forward under clause 19 of the Anti-Terrorism and Non-Proliferation (Amendment) Bill, N.A.B. No. 32 of 2022.

5.2 Clause 4 Amendment of section 7

Stakeholders stated that clause 4 which sought to amend section 7 of the principal Act and list representation to the National Anti-Terrorism Centre, did not include a representative from the Anti-Corruption Commission. Stakeholders submitted that while paragraph (e) made provision for inclusion of any *other relevant institution to be considered necessary*, it was left to the discretion of the Minister responsible to decide which institutions would be included.

Stakeholders, therefore, submitted that there was need to include the Anti-Corruption Commission considering the nexus that existed between corruption and terrorism. They stated that while effective measures to combat terrorism and its proliferation could be established, corruption may erode these through compromised officials who would receive bribes and allow terrorists to have access to financing sources to support their activities.

Other stakeholders however, were of the view that there was no need to permanently include the Anti-Corruption Commission on the National Anti-Terrorism Centre Committee, since all matters of terrorism were related or linked to corruption. They informed the Committee that, should there be cases which the National Anti-Terrorist Centre Committee suspected to have involved some corrupt activities, the Centre may recommend to the Minister of Home Affairs and Internal Security, to appoint the Anti-Corruption Commission to be part of the National Anti-Terrorism Centre Committee, for such particular cases.

The Committee was informed that clause 2 sought to amend subsection 7 (1) by introducing a qualification that a representative from the Defence and Security Wing required to have for such an officer to be a representative. The qualification was that such a representative required to be *'responsible for operations'*.

Stakeholders also submitted that while the National Anti-Terrorism and Non Proliferation Centre sought particular expertise from these representatives, it would provide clarity if such qualifications were included in section 7(3) of the principal Act, which provided for qualifications.. Moreover, such qualifications needed to be outlined in a regulation or an instruction to the Service, rather than a statutory provision that was restrictive in nature.

5.3 Clause 7 Repeal and replacement of section 12

Some stakeholders noted that while clause 7(4) stated that an anti-terrorism officer may, on production of the identity card or a certificate of appointment issued under subsection 2 , demand the production of, and inspect or make copies of any documents or accounts kept by a person, pursuant to the provisions of this Act, it was worth noting that production of an identity card as the premise upon which a demand for the production of and inspection of any documents or accounts kept by a person would lead to an abuse of such power. In this regard, sufficient mechanisms needed to be put in place to ensure that such power was regulated.

5.4 Clause 9 Amendment of section 18

Regarding clause 9, which amended section 18 of the principal Act by deleting subsection (1) and replacing it with a provision that allowed the freezing of funds for a terrorist organisation, stakeholders submitted that although the proposed amendment provided for freezing of funds, the reporting entity should do so upon an order of the court and not upon mere notification, so that the contravention of the order would then constitute an offence which would attract a penalty under section 18(2).

5.5 Clause 10 Repeal and replacement of section 20

Regarding clause 10 provided that a person shall not carry out an act which is an offence within the scope of the United Nations Security Council Resolution 1540 of 2004, or any other applicable United Nations Security Council Resolutions on proliferation financing, stakeholders

submitted that the United Nations Security Council Resolution 1540 of 2004 called upon Member States to take certain measures highlighted in the Resolution. However, the Resolution did not contain provisions for criminalising any conduct by individual citizens. In this regard, it was proposed that, in order to domesticate the resolution, there was need to specify conduct that was being criminalised by the provision, by highlighting elements that would constitute an offence under this provision.

Clause 10 of the Bill stated as follows:

“A person is considered to have committed an offence of terrorism financing or proliferation financing whether or not the funds or assets, belonging to that person, were used to commit a terrorist act or proliferation, or linked to a specific terrorist act.”

It was submitted that the subsection was couched in such a way that it would lead to an absurd situation where any person with funds or assets could be considered to have committed the offence of terrorism-financing or proliferation financing. It was therefore, proposed that the situation could be remedied by adding elements of intention or knowledge by the person that their funds or assets were to be used for terrorism financing or proliferation financing.

It was further submitted that the offence of terrorism financing or proliferation financing would then apply to the person who intended or knew that their funds or assets were to be used to commit a terrorist act or proliferation. Once the intention or knowledge was established, the person could then be found guilty of terrorism financing or proliferation financing, whether or not the funds or assets, belonging to that person, were actually used to commit a terrorist act or proliferation, or linked to a specific terrorist act.

The Committee was further informed that the proposed subsection 20(4) did not cover attempted acts. The wording of the subsection 20(4) required to be amended to include attempted acts, in line with the FATF Standards.

5.6 Clause 13 Amendment of section 30

Stakeholders submitted that clause 13 sought to amend section 30 by the insertion of a new subsection immediately after subsection (2) which would provide for a defence to the offences in section 30. It was further submitted that the proposed amendment was not necessary to make provision for a defence as an accused person still had to stand trial for them to be convicted since the burden of proof remained on the prosecution and not upon the accused.

It was also submitted that that under clause 13, the new subsection (3) needed to be deleted and replaced with the following amendment

30 (1) A person commits an offence if that person knowingly harbours, conceals or provides a safe haven to

- (a) a terrorist, a terrorist organisation, or person who finances or supports a terrorist, a terrorist organisation, or the commission of a terrorist act; or
- (b) a person who is involved in proliferation, proliferation financing or supports the commission of proliferation or proliferation financing.

5.7 Clause 16 Insertion of section 39A

Stakeholders were of the view that the introduction of a non-bailable provision by section 39A should not be absolute as the provision appeared to apply in respect of any offence in Part III of the principal Act. In this regard, it was proposed that consideration should be given to having this provision apply only to particular offences and not all offences under the Act. The proposal was made in view of Article 13(3) of the Constitution of Zambia, which provides for the Bill of Rights.

5.8 Clause 18 Repeal and replacement of section 42

Stakeholders observed that the proposed new section 42, created an offence which carried a punishment of imprisonment for life but was bailable. Meanwhile, Part II had offences which did not carry imprisonment for life but were proposed to be non-bailable due to the insertion of section 39A. In this regard, stakeholders were of the view that there was need to harmonise these offences in relation to the nature of offences and the issue of bail. It was further submitted that Part V of the Act, which also created an offence ought to be assessed in relation to bail.

5.9 Clause 19 Repeal and replacement of section 43

With regard to clause 19 section 43(1) which provided for the Minister on the recommendation of the Centre, to nationally list persons or entities who were involved in the commission of acts of terrorism, terrorism financing, proliferation or proliferation financing and for the Minister to propose persons or entities to the relevant United Nations Security Council Committee for designation.

Stakeholders submitted that there should be an inclusion of supervisory authorities and other competent authorities in subsections 43(3) (a) and (b) for dissemination of both the National List and the United Nations List. In this regard, it was submitted that these subsections should read as follows:

43 (3) (a) The Centre shall without delay circulate the National List to reporting entities, supervisory authorities and other competent authorities for implementation and enforcement.

43 (3) (b) On receipt of the relevant United Nations Security Council Committee Sanctions List, without delay, circulate to reporting entities, supervisory authorities and other competent authorities for implementation and enforcement.

5.10 Clause 20 Insertion of sections 43A and 43B

The Centre shall, on receipt of the national list from the Minister:

- (a) direct all reporting entities to
 - (i) without delay, freeze all funds and financial assets suspected or belonging to a listed or designated person or entity including funds derived from property owned or controlled directly or indirectly, by that nationally listed person or entity or by a person acting on that nationally listed person's or entity's behalf or at the direction of a nationally listed or designated person or entity.

The Committee was, however, informed that clause 20 , section 43A(1) should read as follows:

“The Centre shall, on receipt of the national list from the Minister direct all reporting entities to, without delay, freeze all funds and financial assets suspected or belonging to a listed or designated person or entity including funds derived from property owned or controlled directly or indirectly, by that nationally listed person or entity or by a person acting on that nationally listed person’s or entity’s behalf or at the direction of a nationally listed or designated person or entity”.

It was the view of the stakeholders that broadening the statement to this extent would cover all possible funds connected to terrorism.

In this regard, the Committee was informed that the first element that addressed suspected funds and financial assets, was not complete, as such, it needed to include or have the words *“of belonging”* inserted immediately after *“suspected”* so that the alternate situations become *“suspected of belonging or belonging to a listed or designated person or entity”*

5.11 Clause 24 Repeal and replacement of section 49

The Committee was informed that clause 24 stated that a person shall not carry a designated or nationally listed person or transport restricted goods specified in the Gazette notice referred to under subsection (1) by road, water or air transportation within or outside the Republic, it was recommended by the stakeholders that unlike leaving nationally listed persons or restricted goods to be specified in a Gazette notice, there was need to list them in a schedule or a statutory instrument which was part of the subsidiary legislation.

5.12 Clause 25 Amendment of section 50

With regard to clause 25, which amended sections 50(2), it stated that a designated or nationally listed person shall not enter or transit through the Republic if the entry or transit would be contrary to a determination of the United Nations Security Council, it was proposed that a person’s entry or transit through the Republic of Zambia could not be determined as being contrary to the United Nations Security Council because each country exercised Sovereignty despite being a member of the United Nations. It was submitted that having such a provision would imply that before a person was allowed into or transit through Zambia, the United Nations should always be consulted.

5.13 Clause 27 Repeal and replacement of sections 54, 55, 56, 57 and 58

With respect to the proposed section 55(2) which conferred power on an anti terrorism officer or authorised officer to deal with the detention of persons, it was submitted that the power being referred to could only be exercised by a public prosecutor or State Advocate under the Director of Public Prosecutions. Therefore, giving such power to an anti-terrorism officer would be usurping powers of a public prosecutor or State Advocate.

Regarding section 58 of the Bill, which required an anti-terrorism officer or an authorised officer for the purpose of obtaining evidence of the commission of an offence under the Act, to apply to a judge to intercept communication in accordance with Part VI of the *Cyber Security and Cyber Crimes Act, No, 2 of 2021*, stakeholders submitted that the Bill should include an application

made to the Magistrate, as Judges were not found in all districts in the country. They further submitted that if applications were only to be made to the Judge, this would cause delay in intercepting vital communication and would be prejudicial to the maintenance of public safety or public order. It was proposed that the provision could read as follows: "Anti-Terrorism officer or an authorised officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply to a judge or to a magistrate to intercept communication."

6.0 SUBMISSION BY THE MINISTRY OF HOME AFFAIRS AND INTERNAL SECURITY

The Committee also interacted with the Permanent Secretary of the Ministry of Home Affairs and Internal Security in a quest to clarify concerns raised by various stakeholders. The Permanent Secretary responded as set out hereunder.

On whether the amendments being proposed in the Bill took into consideration the issue of domestic threats posed by street kids who might fall prey to terrorist groups, the Permanent Secretary stated that the issue of street kids was a matter of public concern which could not be overlooked. He stated that street kids were a potential group that could be susceptible to manipulation by ill-conceived persons, including terrorists, to champion their agenda.

Regarding the concern on omission of the Anti-Corruption Commission on the National Anti-Terrorism Centre Committee, the Permanent Secretary informed the Committee that there was no need to permanently include the Anti-Corruption Commission on the National Anti-Terrorism Centre Committee, since all matters of terrorism were marred by corruption. The Permanent Secretary however, informed the Committee that, should there be cases which the National Anti-Terrorist Centre Committee may suspect to have involved some corrupt activities, the Centre would recommend to the Minister of Home Affairs and Internal Security, to appoint the Anti-Corruption Commission to be part of the National Anti-Terrorism Centre Committee, for that particular matter.

Regarding the low number of staff at the National Anti-Terrorism Centre, the Permanent Secretary informed the Committee that the National Anti-Terrorism Centre drew its members of staff from various selected institutions. He however stated that plans were underway to increase the number of staff at the Centre.

When asked whether there were plans to make the National Anti-Terrorism Centre independent and operate autonomously, the Permanent Secretary stated that processes were underway to ensure that the operations and finances of the Centre were directly allocated to it, rather than operating under the Ministry of Home Affairs and Internal Security.

Regarding the aspect of making an application for obtaining evidence by an authorised officer to a judge only and not a magistrate, the Permanent Secretary stated that what was contained in the Bill regarding application to a judges was derived from the *Cyber Security and Cyber Crimes Act, No, 2 of 2021*. The Permanent Secretary however stated that extending the application to magistrates would provide for expeditious legal processes.

With regard to the non-bailable aspects of some offences vis a vis the infringement on accused persons' human rights, the Permanent Secretary stated that the National Anti-Terrorism Centre would endeavour to always uphold human rights, and ensure that only after thorough investigations, would the persons concerned be apprehended and subjected to the law.

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee observes that the amendment of the *Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018*, is consequential to the assessments and reviews which were made and the identified deficiencies to the *Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018*. The Committee observes that these outcomes are what have necessitated the introduction of Anti-Terrorism and Non-Proliferation (Amendment) Bill, N.A.B No. 32 of 2022.

The Committee notes that in as much as the Bill has progressive amendments, it equally has some ramifications which need to be addressed. The Committee, therefore, makes its observations and recommendations outlined below.

- (i) Under clause 2, the Committee observes that the definitions therein do not include the definitions of 'supervisory authority' and 'competent authority' as contained in the *Financial Intelligence Centre Act, No. 11 of 2022*. The Committee observes that the definitions will be useful for purposes of dissemination and implementation of targeted financial sanctions under Part V of the Bill.

In this regard, the Committee recommends that the definitions of 'supervisory authority' and 'competent authority' should be inserted in line with the definitions under the *Financial Intelligence Centre Act, No. 11 of 2022*.

- (ii) In clause 2, the Committee, notes that the addition of the term 'or any other implement' to the definition of the term 'article' will require introduction of a new definition in line with international obligations as stated in the object of the Bill. In this regard, the Committee observes that the resolution list in section 2 (applicable United Nations Security Council Resolutions) and the list in the second schedule (counter terrorism conventions), do not have any new addition from the existing list.

In this regard, the Committee urges the Government to consider highlighting which convention or resolutions the new definition was generated from. The Committee also urges the Government to consider introducing a new definition of the expansive term 'article' in order to bring it in conformity with international obligations as stated in the object of the Bill.

- (iii) The Committee observes that under clause 2, the term 'intelligence officer' has not been defined as it is contained in section 2 of the *Zambia State Security Intelligence Service Act, Chapter 109 of the Laws of Zambia*. It is the view of the Committee that leaving it as it is will lead to multiple interpretations, thereby creating ambiguity in the application of the law.

The Committee, therefore, recommends that the Government should explicitly state which intelligence officer the Bill is referring to as this will allay any doubt in the definition of ‘intelligence officer’ when applying the law.

- (iv) Under clause 2, the Committee is concerned that the words ‘any other person appointed in writing as authorised by the committee’ will potentially create a challenge as such appointments require to be done by way of a statutory instrument.

The Committee, therefore, recommends that the Bill should be clear on the process; procedure and the manner in which the committee in question will exercise the power to appoint any other person as an authorised officer. The Committee further urges the Government to put in place procedure for revocation of such appointment by the Intelligence Committee.

- (v) The Committee observes that the Bill has defined ‘a terrorist Act’ while in the , *the Anti-Terrorism and Non-Proliferation Act, No. 6 of 2018*, the word ‘terrorism’ is defined, to mean the following:

“an act or omission in or outside Zambia that is intended, or by its nature and context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public or compel a government or an international organization to do, or refrain from doing, any act, and is made for the purpose of advancing a political, ideological or religious cause and which”.

In view of the above, the Committee notes that the word ‘terrorist act’ is extending the definition of terrorism which is already an act, and has already been explained in detail in the word ‘terrorism’

The Committee recommends that in order to prevent possible conflict in the definitions of the words ‘terrorist Act’ and ‘terrorism’ the word terrorism should provide more clarity on what amounts to a terrorist Act, and consequently, the definition of the word terrorist should be deleted from the definitions contained in the Bill.

- (vi) The Committee observes that clause 7(4) which states that an anti-terrorism officer may, on production of the identity card or a certificate of appointment issued under subsection (2), demand the production of, and inspect or make copies of any documents or accounts kept by a person, pursuant to the provisions of this Act, may result in abuse of power

In this regard, the Committee recommends that sufficient mechanisms should be put in place to ensure that such power is regulated in such a way that it highlights the circumstance that will require obtaining a warrant for such a search to avoid creating weaknesses in the law, which may lead to the loss of the documents or accounts in question.

- (vii) The Committee observes that the Bill under clause 9 seeks to amend section 18 of the principal Act by deleting subsection (1) and replacing it with a provision that allows the

freezing of funds for a terrorist organisation. The Committee is, however, of the view that, although the proposed amendment provide for freezing of funds, the reporting entity should do so upon a court order and not upon mere notification.

Further, the Committee recommends that the contravention of the Order should constitute an offence which should attract a penalty as contained under section 18(2).

(viii) The Committee observes that clause 10 of the Bill, states as follows:

“A person is considered to have committed an offence of terrorism financing or proliferation financing whether or not the funds or assets, belonging to that person, were used to commit a terrorist act or proliferation, or linked to a specific terrorist act.”

The Committee agrees with the stakeholders that the subsection is couched in such a way that it will lead to an absurdity where any person with funds or assets can be considered to have committed an offence of terrorism financing or proliferation financing.

The Committee, therefore, recommends that the subsection be amended by adding elements of intention or knowledge by the person that their funds or assets are to be used for terrorism financing or proliferation financing. In other words, the offence of terrorism financing or proliferation financing will apply to the person who intends or knows that their funds or assets are to be used to commit a terrorist act or proliferation.

(ix) With regard to clause 10, section 20(2), which states that “a person shall not carry out an act which is an offence within the scope of the United Nations Security Council Resolution 1540 of 2004, or any other applicable United Nations Security Council Resolutions on proliferation financing,” the Committee observes that the United Nations Security Council Resolution 1540 of 2004 calls upon Member States to take certain measures highlighted in the resolution. However, the United Nations resolutions, in themselves, are not binding on member States and do not contain provisions for criminalising any conduct by individual citizens.

In this regard, the Committee recommends that, in order to domesticate this resolution, there is need to specify conduct that is being criminalised by this provision, by highlighting elements that will constitute an offence under this provision.

(x) The Committee observes that clause 39 A has created an offence which carries a punishment of imprisonment for life but is bailable. Meanwhile, Part II has offences which do not carry imprisonment for life but are proposed to be non-bailable.

The Committee recommends that there is need to harmonise these offences in relation to the nature of offences and the issue of bail.

(xi) The Committee observes that the principal Act is being amended by the repeal of section 43 and the substitution therefore of the following:

öThe Minister shall, on the recommendation of the Centre, nationally list persons or entities who are involved in the commission of acts of terrorism, terrorism financing, proliferation or proliferation financing. The Minister shall propose persons or entities to the relevant United Nations Security Council Committee for designationö.

- (xii) The Committee observes with great concern that the Minister of Home Affairs and Internal security does not have power to make such a proposal to a United Nations Security Council Committee which is a very high level engagement.

The Committee, therefore, recommends that there is need to recast the sentence by inserting the words ösubject to Cabinet approval between -shallø and -proposeø so that it reads öthe Minister shall, subject to Cabinet approval, propose persons or entities to the relevant United Nations Security Council Committee for designationö.

- (xiii) The Committee observes that clause 24 provides that a person shall not carry a designated or nationally listed person or transport restricted goods specified in the Gazette notice referred to under subsection (1) by road, water or air transportation within or outside the Republic.

The Committee recommends that, unlike leaving nationally listed persons or restricted goods specified in a Gazette notice, there is need to list these in a schedule or a statutory instrument which is part of the subsidiary legislation.

- (xiv) The Committee observes that clause 27 states that an anti terrorism officer or authorised officer who detains a person under subsection (1) shall, on the expiry of the forty eight hours-
 - (a) produce the person before a judge unless the forty eight hours ends outside ordinary court hours or on a day that is not an ordinary court day; and
 - (b) apply, in writing, to the judge or magistrate for an extension of time to detain that person in custody. The Committee is concerned that the power being referred to above can only be exercised by a public prosecutor or State Advocate under the Director of Public Prosecutions, therefore, giving such power to an anti-terrorism officer will be usurping powers of a public prosecutor or State Advocate.

The Committee recommends that the powers referred to in clause 27 of the Bill should be exercised by a public prosecutor or State Advocate under the Director of Public Prosecutions.

- (xv) The Committee observes that under clause 27 of the Bill, it is provided that an anti-terrorism officer or an authorised officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply to a judge to intercept communication in accordance with Part VI of the *Cyber Security and Cyber Crimes Act , No, 2 of 2021*.ö The Committee observes that while the Bill states that an application should be made to a judge, judges are not found in every district in the country. It is the view of the

Committee that doing so would cause delay in intercepting vital communication and this may be prejudicial to the maintenance of public safety or public order.

In this regard, the Committee recommends to the Government to consider extending such an application to magistrates who are found in every district in the country. The Committee therefore, proposes that the provision should read as follows: "Anti-Terrorism officer or an authorised officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply to a judge or to a magistrate to intercept communication".

8.0 CONCLUSION

The amendments contained in the Anti-Terrorism and Non-Proliferation, N.A.B Bill, No. 32 of 2022 are progressive and will contribute to building of capacity at the National Anti-Terrorism Centre in terms of the Centre's legal mandate, functions, operations and intelligence gathering. The Amendments contained in the Bill have a direct impact on the rating that the country constantly receives from the Eastern and Southern Africa Anti Money Laundering Group (ESMAAMLG), with regard to Terrorism and Proliferation.

In this regard, failure to criminalise the offences of Terrorism, Terrorist Financing and Proliferation Financing, in legislation can result in the Country being downgraded and being placed on the grey list by the International Cooperation Review Group as not properly criminalising the offence of terrorism.

We have the honour to be, Madam, the Committee on National Security and Foreign Affairs, mandated to scrutinise the Anti- Terrorism and Non- Proliferation (Amendment) Bill, N.A.B No 32 of 2022.

Brig Gen Morgan Sitwala, MP
CHAIRPERSON

March, 2023
LUSAKA

APPENDIX I– List of National Assembly Officials

Mr Francis Nabulyato, Principal Clerk of Committees (SC)
Mrs Chitalu K Mumba, Deputy Principal Clerk of Committees (SC)
Mrs Angela M Banda, Senior Committee Clerk (SC1)
Mr Geoffrey Zulu, Acting Senior Committee Clerk (SC2)
Mr Evans Chilongu, Committee Clerk
Mr Daniel Lupiya, Committee Assistant
Ms Anita Mulale, Administrative Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II– List of Witnesses

Anti-Corruption Commission
Bank of Zambia
Civil Aviation Authority
Department of Immigration
Drug Enforcement Commission
Financial Intelligence Service
Ministry of Defence
Ministry of Finance and National Planning
Ministry of Foreign Affairs and International Co-Operation
Ministry of Home Affairs and Internal Security
Ministry of Justice
Zambia Airforce
Zambia Communications and Technology Authority
Zambia Intelligence Service
Zambia National Service
Zambia Police Service