



**Republic of Namibia**

**MINISTERIAL MOTIVATION**

**ON THE**

**EXTRADITION AMENDMENT BILL**

**IN THE NATIONAL ASSEMBLY**

**BY**

**THE MINISTER OF JUSTICE**

**MS. YVONNE DAUSAB, MP**

**21 JUNE 2023**

**– To be checked against delivery –**

**Honourable Speaker,**  
**Honourable Members,**  
**Members of the Public,**

1. I rise to motivate the passing of the Extradition Amendment Bill, in accordance with article 63 (2)(e) of the Namibian Constitution read together with Article 32(3)(e) of same.
2. The Mutual Evaluation Report (MER) of the Republic of Namibia was discussed and adopted during the Financial Action Task Force (FATF) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) 22<sup>nd</sup> Council of Ministers (CoM) meeting held on the 2<sup>nd</sup> of September 2022 at Livingston, Zambia.
3. Section 5 (2) (a) of the Extradition Act, 1996 (Act No. 11 of 1996) currently provides that there will be no return of a person who is alleged to be unlawfully at large if his/her conviction was obtained in absentia.
4. The ESAAMLG reviewers found the said provision of the Extradition Act to pose a challenge in practice as it does not allow for a person to be extradited to a foreign country/requesting state if the conviction was obtained in the absence of that person.
5. This scenario usually presents itself in a situation where a person has attended the pretrial and trial proceedings in the requesting state but absconded before the conviction and/or sentence could be imposed.
6. Amending the said provision will enable Namibia to extradite a person to a requesting state even if the conviction of that person was obtained in his/her absence without the right of the accused to a fair trial being impaired. This amendment will ensure alignment of the Namibian domestic legislation with the United Nations Convention on Transnational Organised Crime and the United Nations Convention Against Corruption – both of which were ratified by Namibia,

and which requires Namibia to expedite extradition proceedings and to simplify evidentiary requirements in respect of offences to which these Conventions apply.

**Honourable Speaker,**  
**Honourable Members,**  
**Members of the Public,**

7. Namibia has previously experienced challenges in this regard and a case in point is the case of *Ayoub v Minister of Justice and Others*<sup>1</sup> where the appellant challenged the decision of the High Court to extradite him to France for the following reasons:
  - (a) That the appellant’s conviction was obtained in his absence and his extradition was precluded by the Act which requires the his presence in terms of section 5(2)(a); and
  - (b) The grounds that the offence for which extradition was being sought had become prescribed through lapse of time in terms of section 5(1)(e) of the Extradition Act, 1996.
8. Mr Ayoub’s case was dismissed by the Supreme Court and the court in its judgment stated that “*This is a matter that ought to engage the attention of the Legislature*”. The court further stated that “there is a need to streamline and modernise the Act to make it responsive to the growing demands for mutual legal assistance and to ensure expeditious fulfilment of Namibia’s international obligations around extradition.”
9. The legislature is accordingly requested to heed to the call to amend the existing legislation to align it as per the Supreme Court judgment and to enhance international cooperation by Namibia with the international community in respect of extradition matters. This is particularly important, where countries adhere to the

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<sup>1</sup> (SA 26-2012) [2012] NASC 16.

principles of reciprocity, and given that transnational crimes have become adaptable, fast-paced and has no boundaries, Namibia has to be conscious and responsive. The way to ensure that is to continuously review your policy, legal and institutional arrangements which must be adaptable, provided Namibia and its people's interests are central.

I thank you and so submit.