



Republic of Namibia

MINISTERIAL MOTIVATION

ON THE

**INTERNATIONAL COOPERATION IN CRIMINAL MATTERS
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 International Cooperation in Criminal Matters Amendment Bill, in accordance with article 63 (2)(e) of the Namibian Constitution read together with Article 32(3)(e) of same.
2. The amendments to the International Cooperation in Criminal Matters Act, Act 75 of 1996 are necessary to ensure the forfeiture or confiscation of instrumentality of an offence or intended instrumentality of an offence from foreign states. The Prevention of Organised Crime Act, Act 29 of 2004 (POCA) as amended defines Instrumentality of an offence as follows:

“Any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of POCA, whether committed within Namibia or elsewhere”.
3. Intended Instrumentality of an offence is “any property which is intended to be used in the commission of an offence”.
4. The legal proceedings in respect of the enforcement of a foreign confiscation order, preservation order, or forfeiture order that emanates from Instrumentality or Intended Instrumentality of an offence will be initiated by the Prosecutor General in terms of POCA, if it emanates from Namibia. When the case comes from a foreign state, the legal proceedings will be initiated by that foreign state and the foreign state will request Namibia to enforce the order.
5. In order for Namibia to be able to render legal assistance to a requesting state in this regard, the proposed amendments to the International Cooperation in Criminal Matters Act are necessary.

6. Finally, there is a need to expand the grounds for refusal of a request for Mutual Legal Assistance under Section 7A to include that (d) the request relates to a political offence or an offence of a political character; or (e) the request relates to an offence under military law which would not be an offence under ordinary criminal law.

Honourable Speaker,
Honourable Members,
Members of the Public,

7. The amendments reflect international best practices, and the additional grounds are also included in Article 6 (1) (a) and (b) of SADC Protocol on Mutual Legal Assistance in Criminal Matter and Article 14 (1) of The London Scheme for Extradition within the Commonwealth of which Namibia is a party.
8. The same grounds are also included in our domestic legislation which is section 5 (1) (a) and (b) of the Extradition Act, 1996 (Act No. 11 of 1996).
9. In conclusion I plead and urge this August house, to consider passing the International Cooperation in Criminal Matters Amendment Bill, as a reflection of our domestic response to improving our criminal justice system in our fight against the increasing and changing profile of financial crimes.

I thank you and so submit.