

# **STRENGTHENING JUDICIAL COOPERATION IN THE GREAT LAKES REGION**

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# **National Legal Framework relating to Extradition law and Mutual Legal Assistance**

**Monist or Dualist System - Dualist System.**

**Status of international treaties in the national legislative framework – International treaties are only enforceable if they are ratified and domesticated so that they become part of the domestic or municipal law.**

# **National legislation implementing regional judicial cooperation treaties**

- The Constitution of Zambia,
- The Extradition Act,
- The Transfer of Convicted Persons Act,
- The Mutual Legal Assistance in Criminal Matters Act,
- The Forfeiture of Proceeds of Crime Act,
- The Anti-Money Laundering Act; and
- The Anti –Human Trafficking Act.

# **Bilateral Agreements between States of the Region and other States**

- Extradition Treaty with the Republic of Angola;
- Transfer of Convicted Persons Treaty with the Republic of Angola; and
- Mutual Legal Assistance in Criminal Matters Treaty with the Republic of Angola.
- Extradition treaty with the Republic of Tanzania.
- Draft Extradition treaty with the Republic of Rwanda and with Kenya.

# National laws on the basis of which regional cooperation can be sought?

- Cooperation is on the basis of national laws because Zambia follows dualist legal tradition. Most national laws are based on international treaties or conventions.
- The national laws on the basis of which cooperation can be sought are -

The Constitution of Zambia, The Extradition Act, The Transfer of Convicted Persons Act No.26 of 1998, The Mutual Legal Assistance in Criminal Matters Act. The Forfeiture of Proceeds of Crimes Act, The Anti Money-laundering Act, The Anti Human –trafficking Act. The Penal Code and The Criminal Procedure Code

# **Procedures applicable to Extradition and MLA requests**

## **Extraditable offence**

- Section 4 Extradition Act - offence punishable under both laws by imprisonment for a maximum period of not less than one year or by a more severe penalty or for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than four months or a more severe penalty has been imposed.

# Extraditable offences

- Schedule 1 Extradition Act.  
murder, manslaughter, rape, indecent assault,  
bigamy, kidnapping, abduction, arson,  
counterfeit currency, forgery, theft, fraudulent  
false accounting, obtaining property by false  
pretences, receiving stolen property, fraud,  
burglary and robbery etc.

# Extraditable offences cont'd

Double criminality –Double criminality is a requirement under the law and extradition can be granted only in respect of an offence which is punishable under the laws of the requesting country and of the Republic by imprisonment for a maximum period of not less than one year or by a more severe penalty . (S.4 Extradition Act)



# Evidentiary Test

- The evidence adduced should establish a prima facie case. S.10 (1)(a) of the Extradition Act – there should be adduced before a magistrate such evidence as would, in the opinion of the magistrate, according to the law, justify the committal for trial of the person.

# Existence of a treaty

Existence of a treaty is a requirement for extradition. However, where there is no treaty the minister responsible for Home affairs may, with the agreement of the Minister of Justice, enter into an administrative arrangement with the requesting state to provide for legal assistance with respect to the specified request. S.7 MLA Act.

The necessary undertakings should be made by requesting state.

# Grounds for Refusal

## **Political Offences S.31(6)(b) –Extradition Act.**

If alleged offence is a political offence or an offence connected with a political offence, the Attorney-General shall refuse extradition

**Military offences** - Extradition shall not be granted for offences under military law which are not offences under ordinary criminal law.

S. 33

- **Extradition of national** - s.34 Extradition Act

Extradition shall not be granted where a person claimed is a citizen of the Republic.

# Grounds for refusal cont'd

- **Rule of speciality**-Extradition shall not be granted unless provision is made that the person claimed shall not be proceeded against, sentenced or detained for any offence committed other than that for which his extradition is requested. S.42
- Extradition shall not be granted in respect of an offence if final judgment has been passed and the person claimed has undergone the punishment under either state.

# Multiple Extradition Requests

- S. 44 - The Attorney-General shall decide which, if any, of the requests is to be proceeded with, having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the citizenship or nationality, and the ordinary place of residence of the person claimed and the possibility of subsequent surrender to another country.

# MLA Procedure -Search and seizure

- The magistrate may issue a search warrant for the search and seizure of any item or property which is considered necessary to help with the investigation and prosecution of the case.
- The Criminal Procedure Code shall apply, with the necessary modifications, in respect of a search or a seizure under the MLA Act, except where the CPC is inconsistent with the MLA Act.

# MLA - Production of documents

- Once documents have been obtained, they are submitted to the Attorney-General for authentication before they are sent to the requesting state for production in evidence.
- Where Zambia is requesting documents, only properly authenticated documents by the competent authority may be admitted in evidence.

# Judicial cooperation requests?

- Which entity should submit the request? The Attorney-General. The Act designates the Attorney-General as the competent Authority.
- Which entity should the requesting State address the request to? The Attorney-General.  
s.6 Extradition Act
- Extradition warrants should be signed by which authority? The Attorney-General.



# PROCEDRES CONT'D

- What should the extradition request include?
- Original or an authenticated copy of the conviction and sentence or external warrant or other order,
- statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law

# PROCEDURES CONT'D

- What supporting documents should be submitted?
- copy of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law; and
- as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality. S.7 Extradition Act

# Procedures cont'd

- Differences in procedure between requests for extradition requests for extradition and MLA
- The procedures are basically the same – Requests addressed to the competent authority who is the Attorney-General, search and seizure done in accordance with the provisions of the Criminal Procedure Code, etc

# PROCEDURES CONT'D

- What happens once a request has been successfully received?
- The Attorney-General notifies a magistrate to issue a warrant of arrest.
- Warrant may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed. (s.8 Extradition Act)

# PROCEDURES CONT'D

Time limits – A person shall not be surrendered to the requesting country until the expiration of **fifteen days** from the date of his committal or until the conclusion of any *habeas corpus* proceedings brought by him or on his behalf or the determination of any request made.

- Is there a central authority? Which entity in practice is preparing the requests for assistance?
- The Central authority is the Office of the Attorney-General. Entities responsible are Ministry of Home Affairs and Ministry of Justice.

# Challenges

- **Most common (legal and practical) obstacles encountered by national authorities.**
- Insufficient information due to failure to submit required supporting documents.
- Legal – differences in legal regimes and extraditable offences.
- Bureaucracy in the processes which leads to a very long turn around time.

- Examples of successful cases of judicial cooperation with another country, preferably one in the region. Angola - Extradition and Tanzania (investigations on theft cases)
- There have been few unsuccessful cases mainly due to differences in categorisation of extraditable offences.