GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NOTICE 3869 OF 2026

PUBLICATION OF EXPLANATORY SUMMARY OF THE EXTRADITION BILL, 2026

1. Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Justice and Constitutional Development intend to introduce the Extradition Bill, 2025 (the Bill), in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

3. The Bill seeks to address the deficiencies and outdated provisions of the Extradition Act, 1962 (Act No. 67 of 1962), in order to align it with South Africa's constitutional framework, international obligations and contemporary legal standards.

4. The purpose of the Bill is amongst others to:
   (a) provide clarity on jurisdiction, extra-territorial jurisdiction, and provisional arrest to ensure compliance with international treaties and obligations;
   (b) introduce explicit provisions for surrendering individuals to international entities, such as tribunals handling crimes like genocide, war crimes and crimes against humanity;
   (c) expand the list of offenses for which extradition may not be granted, including protections for LGBTQI+ individuals;
   (d) clarify the role of Magistrates in extradition inquiries and the Minister's authority in making extradition decisions, which addresses the confusion raised by prior legal interpretations, including the Constitutional Court's judgment in the *Jason Smit* case.The Bill also updates punishable thresholds for extraditable offenses from six months to twelve months of imprisonment;
   (d) simplify evidentiary requirements through certificates issued by competent authorities;
   (e) provide detailed regulations on provisional arrests, including arrests based on INTERPOL Red Notices pending formal extradition requests;
   (f) establish the criteria for handling multiple extradition requests for the same individual;
   (g) introduce provisions for individuals to consent to extradition under certain safeguards and allows temporary extradition under specific circumstances as determined by the Minister;
   (h) regulate situations where extradition requests are accompanied by requests for the transfer of property related to the offense and enables courts to issue search and seizure warrants alongside arrest warrants; and
   (i) require extradition inquiries to be conducted only by designated Magistrates with relevant training and experience and limits factors considered during extradition inquiries to avoid treating them as criminal trials.

5. A copy of the Bill can be found on the websites of the Parliamentary Monitoring Group at http://www.pmg.org.za and the Department of Justice and Constitutional Development at www.justice.gov.za and, after introduction, may also be obtained from the Government Printers: Cape Town (Telephone number: (021) 465-7531).

NDZAWULO YA VULULAMI NA NHLUVUKISO WA VUMBIWA

KU HUMELERISIWA KA NKOMISO WA NHLAMUSELO WA NAWUMBISI WA EKISITIRADIXINI, 2026

1. Xitivi hi lexi xi nyikiweke hi ku landzelela Nawu wa 276(1)(b) wa Milawu ya Huvo ya Tiko lexi Holobye wa Vululami na Nhluvukiso wa Vumbiwa a lavaka ku tivisa Nawumbisi wa Ekisitiradixini, 2025 (Nawumbisi), eka Huvo ya Tiko ku nga ri khale.

2. Nkomiso wa nhlamuselo wa Nawumbisi hi lowu wu humelerisiweke hi ku landzelela Nawu wa 276(1)(c) wa Milawu ya Huvo ya Tiko.

3. Nawumbisi wu lava ku lulamisa ku kayivela na ku hundzeliwa ka malulamiselo ya Nawu wa Ekisitiradixini, 1962 (Nawu wa No. 67 lembe ra 1962), ku kota ku endla leswaku wu fambisana na rimba ra vumbiwa ra Afrika-Dzonga, leswi swi fanelaka ku landzeleriwa eka matiko ya misava na mimpimo ya swa nawu ya ximanguvalawa.

4. Xikongomelo xa Nawumbisi exikarhi ka swin'wana:
   (a) ku lulamisela ku veka erivaleni eka ndzhawu leyi ku nga na matimba ya ku tirha, matimba yak u tirha eka tindhawu tin'wana leti ku nga vun'winyi, na ku khoma swa xikarhana ku tiyisisa ku landzelela na mitwanano ya matiko ya le handla na leswi swi bohiweke;
   (b) tivisa malulamiselo lawa ya twisisekeke eka munhu loyi a nyikeriweke eka mitwanano ya matiko ya misava, kufana na tihuvo leti ti tirhanaka na vugevenga byofana na dlaya nhlayo ya le henhla ya vanhu, vugevenga bya tinyipi na vugevenga mayelana na ximunhu;
   (c) engetela nongonoko wa milandzu laha eka wona ekisitiradixini yi nga taka yi nga nyikiwi, ku katsa na vusirheleli eka vanhu va LGBTQI+;
   (d) veka erivaleni ntirho wa Majisitarata eka mindzavisiso ya swa ekisitiradixini na matimba ya Holobye eka ku endla swiboho swa ekisitiradixini, leswi swi tirhanaka na ku ka ku nga ri na ku twisiseka loku ku vikiweke hi mihlahluvo ya milawu ya nkarhi lowu wu taka, ku katsa na xiboho xa Khoto ya Vululami eka *Jason Smit* case. Nawumbisi wu tlela antswisa mitshinyo leyi yi pimiweke eka milandzu ya ekisitiradixini ku suka eka tsevu wa tin'hweti kufika eka makumembirhi ekhotsweni;
   (d) ku olovisa swilaveko swa vumbhoni hi swtifikheti leswi swi nyikiweke hi matimba lawa ya ringaneleke;
   (e) lulamisela swinawana leswi swi eteke eka vukhomi bya nkarhinyana, ku katasa na ku khoma eka switiviso swa INTERPOL Red Notices loko ka ha yimeliwi swikombelo swa ximfumo xa ekisitiradixini;
   (f) tumbuluxa ndlela yak u khoma swikombelo swo hlaya swa ekisitiradixini eka munhu un'we;
   (g) tivisa malulamiselo eka vanhu ku v ava nyika pfumelelo eka ekisitiradixini ehansi ka vuhlayisi byo karhi na ku pfumelela ekisitiradixini ya nkarhinyana eka swiyimo swo karhi tani hi loko swi vekiwile hi Holobya;
   (h) lawula xiyimo laha swikombelo swa ekisitiradixini swi heleketiweke hi swikombelo eka ku hundziseriwa ka nhundzu mayelana na nandzu na ku endla leswaku khoto yi nyika pfumelela wa ku secha xikan'we na pfumelelo wa ku khoma; na
   (i) lava mindzavisiso ya ekisitiradixini leswaku yi endliwa ntsena hi voMajisitarata lava va nga na vuleteri na vuswikoti na swihlawulekisi swo hlawuleka leswi swi

tekeleliwaka enhlokweni eka mindzaivisiso ya ekisitiradixini ku endlela leswaku swi nga tekiwi tani hi vutengisi bya swa vugevenga.

5. Nkandziyiso wa Nawumbisi wu nga kumeka eka webusayiti ya Ntlawa wa Vulandzelerisi wa Palamende ka http://www.pmg.org.za na Ndzawulo ya Vululami na Nhluvukiso wa Vumbiwa ka www.justice.gov.za na, endzhaku ka ku tivisiwa, wu nga kueka eka Mikandziyiso ya Mfumo: Cape Town (Nomboro ya riqingho: (021) 465-7531).

REPUBLIC OF SOUTH AFRICA

EXTRADITION BILL, 2025

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette N. … of 2025) (The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B - 2025]

BILL

To provide for the extradition of persons accused or convicted of certain offences in the Republic of South Africa and foreign States; to provide for the surrender of persons accused or convicted of certain crimes to international entities; to provide for measures to ensure compliance with the international obligations of the Republic of South Africa in terms of resolutions and other international instruments and agreements; and to provide for matters incidental thereto.

PREAMBLE

RECOGNISING THAT—

- extradition constitutes the basis for fighting criminality in national jurisdictions across the world, especially transnational crimes such as organised crime and corruption, which know no borders;
- international crimes have an adverse effect on socio-economic development;
- the Extradition Act, 1962 (Act No. 67 of 1962) is not in line with modern extradition trends and is not in all respects compatible with the international obligations of the Republic of South Africa relating to extradition and surrender; and
- a constitutional State requires that offenders must be brought to book, irrespective of their whereabouts;

WHEREAS—

- the Republic of South Africa is committed to ensuring that it is not a safe haven for fugitives;
- the Republic of South Africa is committed to bringing persons who commit these crimes to justice and to facilitate and expedite the extradition of fugitives through its court processes; and
- the Republic of South Africa is committed to protecting the safety and security of its people.

THEREFORE, Enacted by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise—

"**appropriate authority**" means—

(a) in respect of a foreign State, an authority responsible for the administration of justice, prosecutions, foreign affairs, correctional services and safety or security in that foreign state; or

(b) in respect of the Republic of South Africa, the National Prosecuting Authority established in terms of section 179(1) of the Constitution or the South African Police Service established in terms of section 5(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995);

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Criminal Procedure Act**" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"**day**" means every day of the week, excluding Saturdays, Sundays and public holidays;

"**designated magistrate**" means a magistrate designated in terms of section 73;

"**designated State**" means a foreign State designated by the President in terms of section 13(1)*(b)*;

"**Director of Public Prosecutions**" means—

(a) a Director of Public Prosecutions appointed in terms of section 13(1)*(a)* of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998); and

(b) a person designated in writing by the National Director of Public Prosecutions or a Director of Public Prosecutions;

"**extradite**" means the handing over of a person who is sought by a foreign State or the Republic for the purposes of a criminal prosecution in respect of an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence and "**extradition**" has a corresponding meaning;

"**extradition agreement**" means an agreement in force under section 13(1)*(a)* or *(b)* or deemed to be in force under section 13(5), including a multilateral convention to

which the Republic is a signatory or to which the Republic has acceded and which has the same effect as an agreement;

"**extradition partner**" means a foreign State referred to in section 15;

"**foreign State**" includes any foreign territory;

"**head of an administrative region**" means the head of an administrative region defined in section 1 of the Magistrates' Courts Act;

"**International Criminal Court**" means the International Criminal Court as defined in section 1 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002);

"**INTERPOL**" means the International Criminal Police Organisation;

"**magistrate**" means a judicial officer appointed under section 9 of the Magistrates' Courts Act;

"**Magistrates Courts Act**" means the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

"**Minister**" means the Cabinet member responsible for the administration of justice;

"**National Commissioner of Correctional Services**" means the National Commissioner contemplated in section 3(3) of the Correctional Services Act, 1998 (Act No. 111 of 1998);

"**National Director of Public Prosecutions**" means the National Director of Public Prosecutions appointed in terms of section 179(1)*(a)* of the Constitution;

"**police official**" means a person who is a member of the South African Police Service as envisaged in section 1 of the South African Police Service Act;

"**prescribed**" means prescribed by regulation under section 77;

"**Red Notice**" means a notice, published by the INTERPOL on its secure system, identifying a person wanted internationally as a result of a warrant of arrest or court order issued by a foreign State;

"**Republic**" means the Republic of South Africa;

"**this Act**" includes the regulations made under section 77; and

"**unlisted foreign State**" means a foreign State other than a State referred to in section 15.

Application of Act

2. (1) A person accused or convicted of an extraditable offence may, subject to the laws of the Republic and any extradition agreement to which the Republic is a party, on request, be extradited from the Republic, whether or not that offence was committed before the date of—

(a) the commencement of this Act;

(b) the coming into operation of an extradition agreement; or

(c) the designation of an extradition partner in terms of this Act.

(2) A person may be extradited from the Republic in accordance with this Act and an extradition agreement, at the request of an extradition partner or an unlisted foreign State, for the purpose of prosecuting the person, imposing a sentence on the person or enforcing a sentence imposed on the person.

(3) In addition to the extradition of a person, property that is required as evidence or was acquired as a result of the commission of the offence in question, may be transferred in accordance with this Act or an extradition agreement, at the request of an extradition partner or an unlisted foreign State.

(4) The Criminal Procedure Act applies with the necessary changes as may be required by the context, except in so far as this Act provides for amended, additional or different provisions or procedures.

CHAPTER 2
GENERAL PRINCIPLES

Extraditable offence

3. (1) A person may be extradited from the Republic on request for the extradition of that person for the purpose of prosecuting the person, imposing a sentence on that person or enforcing a sentence imposed on that person, if the offence in question—

(a) is, in terms of the law of the Republic and the foreign State in question, punishable with a sentence of imprisonment or other form of deprivation of liberty, for a period not less than twelve months, unless the extradition agreement in question provides for a longer period; and

(b) if committed within the jurisdiction of the Republic, constitutes an offence in terms of the domestic law of the Republic.

(2) An offence is an extraditable offence for the purposes of subsection (1), whether or not the laws of the Republic place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology.

(3) Where the extradition of a person is sought in respect of more than one offence, it is sufficient for the purpose of extraditing that person, if any one offence is an extraditable offence referred to in subsection (1), but a person may not be—

(a) prosecuted;

(b) sentenced; or

(c) forced to serve a sentence,

in the requesting State for an offence for which that person would not have been extradited in terms of the Act.

Enforcement of sentence

4. A person whose extradition is requested for the purpose of enforcing a sentence of imprisonment or other form of deprivation of liberty, may only be extradited from the Republic if—

(a) the sentence imposed was in respect of an extraditable offence referred to in section 3; and

(b) the remaining term of the sentence to be served is not less than four months, unless the extradition agreement in question provides for a longer period.

Jurisdiction

5. (1) Subject to an extradition agreement, a person may be extradited to a requesting State irrespective of whether—

(a) the offence in question occurred within the jurisdiction of the requesting State; or

(b) the law of the Republic provides for jurisdiction over the same type of offence when committed outside the territory of the Republic.

(2) Except as otherwise provided for in an Act which deals with specific extraditable offences and subject to any other extradition agreement, where a

competent court in the Republic could exercise jurisdiction in respect of an extraditable offence for which the extradition of a person is sought, that person may only be extradited to the requesting State if the Director of Public Prosecutions, in writing, declines to prosecute that person.

Offences excluded

6. (1) A person may not be extradited if the offence for which extradition is requested is an offence under military law which is not also an offence under the ordinary criminal law of both the Republic and the requesting State.

(2) A person may not be extradited if the offence for which extradition is requested is regarded as a political offence or an offence of a political nature.

(3) For the purposes of subsection (2), but subject to an extradition agreement—

(a) murder or attempted murder;

(b) assault with the intent to cause grievous bodily harm;

(c) an offence under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

(d) abduction or kidnapping;

(e) corruption or extortion; and

(f) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs *(a)* to *(e)*,

do not constitute a political offence or an offence of a political nature.

(4) Despite subsection (2), a request for extradition based on an offence referred to in section 4 or 5 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), may not be refused on the sole ground that the offence constitutes a political offence, or an offence connected with a political offence or an offence inspired by political motives.

(5) Subsection (4) does not in any way affect the application of sections 7 and 52.

Invalid purpose of request

7. A person may not be extradited if, in the opinion of the Minister, there are substantial grounds for believing that the request for extradition has been made for the purposes of prosecuting, punishing or prejudicing that person on account of that person's race, religion, nationality, ethnic origin, political opinion, sex, status, sexual orientation or gender identity.

Lapse of time, pardon or amnesty

8. A person may not be extradited if that person has, under the law of the requesting State, become immune from prosecution or from the enforcement of a sentence as a result of the lapse of time, pardon or amnesty.

Final acquittal or conviction

9. A person may not be extradited if that person would be entitled, if prosecuted in the Republic, to be discharged because of a previous acquittal or conviction.

No grounds for refusal of extradition to requesting State

10. Despite any other law to the contrary, including customary and conventional international law, the fact that a person, being a member of a security service or armed force, was under a legal obligation to obey an unlawful order of a government or superior, does not constitute a ground for refusing the extradition of that person to a requesting State.

11. The discharge of a person in terms of this Act does not preclude proceedings under this Act, based on a subsequent request for extradition of the same person in respect of the same offence, unless there are grounds for believing that such proceedings would constitute an abuse of process.

Rights of arrested person

12. Upon the arrest, with or without a warrant, in terms of this Act, of a person who is not a—

(a) South African citizen;

(b) person ordinarily resident in the Republic; or

(c) citizen of any State,

the person who carries out the arrest, must inform the arrested person of the entitlement, and must be permitted—

(i) to communicate without delay with the nearest appropriate representative of—

(aa) the State of which the person is a citizen;

(bb) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides; or

(cc) the State, if any, that is otherwise entitled to protect the person's rights; and

(ii) to be visited by such a representative.

CHAPTER 3
EXTRADITION AGREEMENT, EXTRADITION PARTNER AND PRESIDENTIAL CONSENT

Extradition agreement

13. (1) The President may, subject to the provisions of the Constitution and this Act—

(a) on the conditions that the President may deem fit, enter into an agreement with a foreign State, which provides for the extradition, on a reciprocal basis, of persons accused or convicted of the commission of an extraditable offence and may likewise agree to an amendment or revocation of that agreement; and

(b) designate a foreign State, which is a member of the Commonwealth, for the purposes of extraditing persons accused or convicted of the commission of an extraditable offence and may at any time amend the conditions for, or revoke, that designation.

(2) An extradition agreement or designation or an amendment or revocation of an agreement or designation is of no force or effect—

(a) before its ratification, accession to, or amendment or revocation, is approved by Parliament in terms of section 231 of the Constitution; and

(b) unless provision is made by the laws of a foreign State or by the agreement, that a person who is to be extradited to that State will not, until that person has been returned or has had an opportunity of returning to the Republic, be detained or tried in a foreign State—

(i) for an offence committed prior to that person's extradition, other than the offence in respect of which extradition is sought; or

(ii) for an offence of which that person may lawfully be convicted in respect of which offence extradition is sought,

or that such person will not be so detained or tried without that person's consent or that of the Minister.

(3) Despite subsection (2)*(b)*, an extradition agreement may provide that a person extradited to a foreign State may, with the consent of the Minister and with a view to that person's extradition to another foreign State, be detained in the first-mentioned State for an offence which was committed prior to that person's extradition to such State and to which the extradition agreement relates.

(4) The Minister must, within 60 days after the date of entry into force or revocation of, or amendment to, an extradition agreement or after the designation of a foreign State, give notice thereof in the *Gazette*.

Relationship between Act and extradition agreement

14. Where a provision of this Act is inconsistent with a provision of an extradition agreement to which the Republic is a party, the provision of this Act prevails to the extent of that inconsistency.

Extradition partners

15. (1) All foreign States—

(a) that have ratified a Convention or similar multilateral agreement referred to in the definition of "extradition agreement";

(b) with which the Republic has concluded a bilateral agreement, providing for the extradition of persons; or

(c) that have been designated by the President in terms of section 13(1)*(b)*,

and which are listed in the notice provided for in subsection (2) and all foreign States with which arrangements referred to in section 13(5) have been made, are extradition partners.

(2) The Minister must, on the date of commencement of the Act, publish a notice in the *Gazette* listing—

(a) every Convention or similar multilateral agreement ratified or acceded to under a prior law and the date of entry into force of that Convention or agreement;

(b) every foreign State with which a bilateral agreement providing for the extradition of persons had been concluded under a prior law, as well as the date of entry into force of that agreement; and

(c) every foreign State designated under a prior law, as well as the date of entry into force of that designation.

(3) The Minister must amend the notice referred to in subsection (2), within 60 days after—

(a) the ratification of, or accession to, a Convention or similar multilateral agreement, by adding that Convention or similar multilateral agreement, as well as the date of entry into force of that Convention or agreement;

(b) the date of conclusion or entry into force of a bilateral agreement providing for the extradition of persons, by adding the foreign State with which the agreement was concluded, as well as the date of entry into force of that agreement; and

(c) the designation of a foreign State, by adding the foreign State designated, as well as the date of entry into force of the designation.

(4) The Minister must amend the notice referred to in subsection (2), within 60 days after—

(a) the obligations of the Republic in terms of a Convention or similar multilateral agreement or bilateral agreement providing for the extradition of persons, have ceased; or

(b) the obligations of the Republic in respect of a designated State have ceased,

by removing the Convention or similar multilateral or bilateral agreement or designation of the foreign State from the notice.

Presidential consent

16. (1) The President may, subject to the provisions of the Constitution, give written consent that a request by an appropriate authority of an unlisted foreign State for the extradition of a person accused or convicted of an extraditable offence, be considered in terms of this Act.

(2) The Minister must, after the President has so consented, deal with the request for extradition in terms of section 24.

CHAPTER 4
EXTRADITION TO REPUBLIC

Person extradited to Republic not to be detained or tried for certain offences

17. (1) Subject to subsection (2), a person who is to be extradited to the Republic by a foreign State may not, until that person has been returned or has had an opportunity of returning to the jurisdiction of that foreign State, be detained or tried in the Republic for an offence committed prior to the extradition of that person other than the offence in respect of which extradition is sought, unless that foreign State or that person, in writing, consents to the detention or trial.

(2) The person referred to in subsection (1) must, within 45 days after having been offered the opportunity of returning or within the period indicated in an extradition agreement, return to the jurisdiction of the foreign State in question.

Extradited person may be returned to foreign State

18. The Minister may, at the written request of a person, return such person to the extradition partner or unlisted foreign State which extradited the person to the Republic, if—

(a) in the case of a person accused of an extraditable offence, criminal proceedings against such person are not instituted within 90 days after such person's arrival in the Republic;

(b) the person was extradited for the purpose of enforcing a sentence imposed on that person in respect of an extraditable offence and that person is not brought before the authority responsible for correctional services within 10 days after such person's arrival in the Republic; or

(c) the person was extradited for the purpose of imposing a sentence on that person in respect of an extraditable offence and that person is not brought before a magistrate within 10 days after such person's arrival in the Republic.

Transmission of request for extradition and provisional arrest

19. (1) Subject to an extradition agreement, a request by the appropriate authority for the extradition of a person to the Republic must be transmitted by the Minister.

(2) Subject to an extradition agreement, a request for the provisional arrest of a person must be made by an appropriate authority in the Republic to an appropriate authority in the foreign State.

CHAPTER 5
EXTRADITION FROM REPUBLIC
Part 1
Request for extradition

Request for extradition

20. (1) A request by an appropriate authority for the extradition of a person must, subject to an extradition agreement, be made through diplomatic channels to the Minister, in writing or any other means constituting a record in writing.

(2) A person receiving a request for extradition must, within a reasonable period after receipt thereof, submit the request to the Minister.

(3) A request for extradition must, subject to an extradition agreement—

(a) state whether extradition is requested for the purposes of—

(i) the prosecution of an offence;

(ii) the imposition of a sentence; or

(iii) the serving of a remaining term of a sentence; and

(b) contain a description of the person concerned and sufficient information to establish the identity of the person.

(4) Where extradition is requested for the purposes of prosecuting an offence, the request must, subject to an extradition agreement—

(a) provide particulars surrounding the commission of the offence in respect of which the person is to be prosecuted, including the date, time and place of the commission of the offence;

(b) state the law and legal definition of the offence in question and be accompanied by a copy of the relevant legal provisions, if applicable;

(c) state the maximum penalty that may be imposed on the person in respect of the offence in question and be accompanied by a copy of the relevant legal provision, if applicable; and

(d) be supported by the original warrant of arrest or similar order issued in the foreign State, or an authenticated or certified copy of the warrant or order.

(5) Where extradition is requested for the purposes of imposing a sentence, the request must, subject to an extradition agreement—

(a) provide particulars surrounding the commission of the offence in respect of which the person is to be sentenced, including the date, time and place of the commission of the offence;

(b) state the law and legal definition of the offence in question and be accompanied by a copy of the relevant legal provisions, if applicable;

(c) state the maximum penalty that may be imposed on the person in respect of the offence in question and be accompanied by a copy of the relevant legal provision, if applicable; and

(d) be supported by the original record of conviction which reflects the charge and conviction and date of conviction or similar order issued in the foreign State, or an authenticated or certified copy of the record of conviction.

(6) Where extradition is requested for the purposes of serving the remaining term of a sentence, the request must, subject to an extradition agreement—

(a) provide particulars surrounding the commission of the offence in respect of which the person is to serve the remainder of a term of a sentence, including the date, time and place of the commission of the offence;

(b) state the law and legal definition of the offence in question and be accompanied by a copy of the relevant legal provisions, if applicable;

(c) state the maximum penalty that may be imposed on the person in respect of the offence in question and be accompanied by a copy of the relevant legal provision, if applicable;

(d) be supported by the original record of conviction which reflects the charge, conviction, and date of conviction and sentence or similar order issued in the foreign State, or an authenticated or certified copy of the record of conviction; and

(e) state the length of the remaining term of the sentence to be served.

(7) A document referred to in this section may be accompanied by a certificate referred to in section 44(3), as prescribed, which must at least—

(a) state the extradition partner or foreign State requesting the extradition of a person;

(b) state the name of the person who signed the document in question;

(c) state the capacity of the person who signed the document in question; and

(d) identify the person, office or authority whose seal or stamp appears on the document in question.

(8) Where the information referred to in paragraphs *(a)* to *(d)* of subsection (7) is applicable to a number of documents referred to in this section, the documents may be accompanied by only one certificate, provided that the certificate identifies the documents to which it applies.

(9) *(a)* A request by an appropriate authority for extradition may, at any stage after it has been made but before the conclusion of the extradition enquiry, be supplemented by additional information, which must be made available to the Director of Public Prosecutions.

(b) Upon receipt of the additional information from the requesting State, the requested State must consider the request on the basis of the additional information.

Request for transfer of property

21. (1) A request for extradition may, subject to an extradition agreement, contain or be accompanied by a request for the transfer of any property that—

(a) is required as evidence; or

(b) was acquired as a result of the commission of the offence in question.

(2) A request for the transfer of property must, subject to an extradition agreement, be made through diplomatic channels to the Minister, in writing or by any other means constituting a record in writing.

(3) A person receiving a request for the transfer of property must, within a reasonable period after receipt of the request, submit the request to the Minister.

(4) A request for the transfer of property must, subject to an extradition agreement—

(a) contain a description of the property;

(b) state the location of the property, if known;

(c) provide all available information which may be of assistance in identifying and locating or tracing the property; and

(d) indicate whether the property is required as evidence or whether it was acquired as a result of the commission of the offence in question.

Concurrent requests for extradition

22. (1) If concurrent requests are received, from two or more extradition partners or unlisted foreign States, for the extradition of the same person, either for the same offence or for different offences, the Minister must determine to which of those requesting States, if any, the person must be extradited and the Minister must, in writing, inform the requesting States of the Minister's decision.

(2) In determining to which requesting State the person must be extradited, the Minister must consider all relevant factors, including—

(a) whether or not a request was made in accordance with an extradition agreement;

(b) the seriousness of the offences, should those requests relate to different offences;

(c) the date and place of the commission of each offence;

(d) the respective dates on which the requests were received from the respective requesting States;

(e) the possibility of any subsequent extradition between the respective requesting States;

(f) the nationality of the person to be extradited and the victim;

(g) the interests of the requesting States and the Republic; and

(h) the ordinary place of residence of the person to be extradited.

(3) If concurrent requests are received from an extradition partner and an unlisted foreign State, for the extradition of the same person, either for the same offence or for different offences, the request of the extradition partner receives preference unless there are compelling grounds for the Minister to decide otherwise.

(4) Despite subsections (1), (2) and (3), a request by the International Criminal Court or an entity defined in section 62 for the surrender of a person to that Court or entity receives preference over a request for extradition in terms of this Act.

Language

23. Subject to an extradition agreement, documents submitted in terms of the Act, must be in English or be accompanied by a certified translation of such documents into English.

Notice to proceed with extradition enquiry

24. (1) On receipt of a request for extradition by an extradition partner, the Minister may issue a notice to proceed with an extradition enquiry if, on perusal of the documents submitted in terms of sections 20 and 21, the Minister is satisfied that the request—

(a) is made by an appropriate authority of the extradition partner;

(b) is in respect of an extraditable offence referred to in section 3;

(c) contains sufficient information regarding the identity and liability of the person to be extradited or of the property to be transferred, if applicable; and

(d) is otherwise made in accordance with an extradition agreement or this Act.

(2) On receipt of a request for extradition of a person by an unlisted foreign State, the Minister may issue a notice to proceed with an extradition enquiry if—

(a) the President has consented, in writing, in terms of section 16, that the request be considered in terms of this Act; and

(b) on perusal of the documents submitted in terms of sections 20 and 21, the Minister is satisfied that the request—

(i) is made by an appropriate authority of the unlisted foreign State;

(ii) is in respect of an extraditable offence referred to in section 3;

(iii) contains sufficient information regarding the identity and liability of the person to be extradited or the property to be transferred, if applicable; and

(iv) is otherwise made in accordance with this Act.

(3) *(a)* The Minister may, if not satisfied as provided for in subsection (1) or (2), request the extradition partner or unlisted foreign State to provide such further information or documents as the Minister may consider appropriate within the period determined by the Minister, having regard to any period determined in an extradition agreement.

(b) The Minister may confirm in writing and with reasons, if it appears, on perusal of the request or accompanying documents, that the person will not be extradited because section 53 is of application, the state of affairs with the extradition partner or unlisted foreign State.

(4) A notice to proceed with an extradition enquiry must be in the prescribed form.

(5) The Minister may, at any time before the commencement of an extradition enquiry, amend a notice to proceed with an extradition enquiry by issuing a subsequent notice.

(6) *(a)* A notice to proceed with an extradition enquiry must be submitted to the National Director of Public Prosecutions and constitutes the authority for a Director of Public Prosecutions to appear on behalf of a requesting State in an extradition enquiry referred to in Part 4 of this Chapter and any extradition proceedings in terms of this Act.

(b) The National Director of Public Prosecutions must, on receipt of the notice to proceed with an extradition enquiry, where necessary, liaise with INTERPOL in order to establish the whereabouts of the person sought for extradition.

(c) The National Director of Public Prosecutions must thereafter refer the matter to the Director of Public Prosecutions in whose area of jurisdiction the person sought is likely to be found.

(7) A copy of a notice to proceed, produced by any means which allows for a written record, is considered to be an original notice for the purposes of this Act.

Warrant of arrest on notice to proceed with extradition enquiry

25. (1) A magistrate may, irrespective of the whereabouts or suspected whereabouts of the person to be arrested, issue a warrant for the arrest of that person—

(a) on application by a Director of Public Prosecutions and production of a notice to proceed with an extradition enquiry referred to in section 24; and

(b) if satisfied that the notice to proceed with an extradition enquiry complies with the provisions of section 24(1) and that there is a basis for the issuing of a warrant of arrest.

(2) *(a)* A magistrate to whom a warrant of arrest, issued in a foreign State designated in terms of section 13(1)*(b)* is produced, may, irrespective of the whereabouts or suspected whereabouts of the person to be arrested, endorse the warrant for the arrest of the person—

(i) on application by a Director of Public Prosecutions and production of a notice to proceed with an extradition enquiry as envisaged in section 24; and

(ii) if the magistrate is satisfied that the notice to proceed with an extradition enquiry complies with the provisions of section 24(1) and that there is a basis for the issuing of a warrant of arrest.

(b) A warrant of arrest endorsed in terms of paragraph *(a)*, is sufficient authority for the arrest of the person mentioned in the warrant and must be executed in the same manner as a warrant issued in terms of subsection (1).

(3) A magistrate who—

(a) issues a warrant for the arrest of a person in terms of subsection (1); or

(b) endorses a warrant for the arrest of a person in terms of subsection (2)*(a)*,

may, at the request of the Director of Public Prosecutions, issue a warrant for the search and seizure of any property, if the magistrate is satisfied that the notice to proceed with an extradition enquiry complies with the provisions of section 24(4).

(4) A warrant of arrest issued in terms of subsection (1) and a warrant for search and seizure issued in terms of subsection (3), must be in the form, and must

be executed in the manner, as near as may be prescribed in respect of warrants in general by, or in terms of, the domestic law of the Republic relating to criminal procedure.

Person detained under warrant to be brought before magistrate

26. (1) A person detained under a warrant of arrest referred to in section 25, must, within 48 hours after the arrest, be brought before a magistrate in whose area of jurisdiction the person has been arrested, whereupon that magistrate must, subject to subsection (2), cause the matter to be placed on the court roll for an extradition enquiry to be held before a designated magistrate.

(2) The magistrate may transfer the extradition proceedings in terms of section 75.

(3) The magistrate may, when postponing the matter, pending the holding or finalisation of an extradition enquiry, release the person in question on bail.

Part 2

Provisional arrest and extradition proceedings

Request for provisional arrest

27. (1) A request for the provisional arrest of a person may only be considered if the requesting State is an extradition partner.

(2) A request for the provisional arrest of a person must,

subject to an extradition agreement, be made by an appropriate authority of the requesting State to an appropriate authority in the Republic in writing, or by any other means constituting a record in writing.

(3) A request for the provisional arrest of a person may be made—

(a) through diplomatic channels;

(b) directly to an appropriate authority in the Republic; or

(c) through INTERPOL.

(4) A request for the provisional arrest of a person must, subject to an extradition agreement—

(a) state—

(i) either that there is a conviction in respect of the person referred to in subsection (1), that a sentence has been imposed on the person in question or that a warrant of arrest or a detention order, or an order having a similar effect, as the case may be, exists in respect of that person;

(ii) that the intention is to make a request for extradition;

(iii) that the offence in respect of which extradition will be requested is an extraditable offence; and

(iv) the nature of the offence in respect of which extradition will be requested, including the date and place of commission of the offence; and

(b) contain a description of the person, as provided for in section 20(3)*(b)*, whose arrest is sought.

Magistrate may issue warrant for provisional arrest

28. (1) A magistrate may, on application by an appropriate authority in the Republic, issue a warrant for the provisional arrest of a person, if satisfied that—

(a) the offence in respect of which the provisional arrest is requested is an extraditable offence as provided in section 3;

(b) the request complies with the provisions of section 27(4);

(c) the person to be arrested is either ordinarily resident in the Republic, is in the Republic, or is on the way to the Republic;

(d) the request has been made on the grounds of urgency; and

(e) there is a basis for the issuing of a warrant for provisional arrest.

(2) A provisional warrant of arrest issued under this section must be executed in the same manner as a warrant of arrest issued under section 25(1).

(3) A magistrate who refuses to issue a warrant for the provisional arrest of a person must, within five days of the refusal, in writing, give notice of the refusal to the Minister.

(4) The notice to the Minister referred to in subsection (3), must be in the prescribed form.

(5) The Minister must, in writing, inform the requesting State of the decision of the magistrate and the reasons for that decision.

Extradition proceedings after provisional arrest

29. (1) A person who has been arrested on a provisional warrant of arrest, must, within 48 hours after the arrest, be brought before a magistrate in whose area of jurisdiction the person was arrested.

(2) A magistrate, before whom a person arrested on a provisional warrant of arrest is brought, must—

(a) postpone the matter to a later date to obtain the formal request for extradition and the notice to proceed with an extradition enquiry, from the Minister; and

(b) within five days after the person's first appearance before him or her, in writing, give notice to the Minister of the arrest of that person.

(3) The magistrate may, when postponing the matter as provided for in subsection (2)*(a)*, release the person arrested on bail.

Notice of arrest of person

30. The notice to the Minister referred to in section 29(2)*(b)* must be in the prescribed form.

Powers and duties of Minister on receipt of notice of provisional arrest

31. (1) On receipt of a notice of provisional arrest referred to in section 29(2)*(b)*, the Minister must, if the discharge of the person in terms of subsection (2) is not directed, notify, subject to an extradition agreement, the requesting State of the arrest of the person and inform that State that it must submit a request for extradition within 40 days from the date of arrest of that person.

(2) The Minister must, at any time after being notified in terms of section 29(2) that a person has been arrested, direct that the person who has been arrested be discharged immediately—

(a) if the requesting State has indicated that it will not request the extradition of the person;

(b) on any of the grounds referred to in section 53; or

(c) if the request for the extradition is not submitted within 40 days of the arrest of the person.

(3) The Minister must, after having discharged the person who has been arrested, notify the requesting State—

(a) that the person was arrested;

(b) that the person was discharged; and

(c) of the reasons for discharge.

Issue of notice to proceed with extradition enquiry

32. (1) On receipt of a request for extradition as envisaged in section 27(4)*(a)*(ii) which must comply with the requirements set out in section 20, the Minister may issue a notice to proceed with an extradition enquiry in terms of section 24 of this Act.

(2) Once the requirements in subsection (1) have been complied with, a designated magistrate must hold an extradition enquiry in terms of Part 4 of this Chapter.

Part 3

Extradition proceedings after arrest without warrant

Arrest without a warrant

33. In addition to any law in the Republic providing for the arrest of a person without a warrant for an offence committed outside the Republic, the arrest of a person is considered lawful if it is effected on the basis of written information, including a Red Notice, in possession of INTERPOL indicating that a warrant for the arrest or detention of that person, or a similar order, has been issued in a foreign State which is an extradition partner contemplated in section 15(1).

Extradition proceedings where person is arrested without warrant

34. (1) A person who has been arrested without a warrant of arrest in terms of any law in the Republic for an offence committed outside the Republic, must, within 48 hours after the arrest, be brought before a magistrate in whose area of jurisdiction the person was arrested.

(2) A magistrate before whom the arrested person is brought must—

(a) postpone the matter to a later date to obtain the formal request for extradition and the notice to proceed with an extradition enquiry from the Minister; and

(b) within five days after the person's first appearance before the magistrate, in writing, give notice to the Minister of the arrest of that person.

(3) The magistrate may, when postponing the matter as provided for in subsection (2)*(a)*, release the arrested person on bail.

Notice of arrest of person

35. The notice to the Minister referred to in section 34(2)*(b)* must be in the prescribed form.

Powers and duties of Minister on receipt of notice of arrest

36. (1) On receipt of a notice of arrest referred to in section 34(2)*(b)*, the Minister must, if the discharge of the person is not directed in terms of subsection (2), notify, subject to an extradition agreement, the requesting State of the arrest of the person and inform that State that it must submit a request for extradition within the period determined by the Minister, having regard to any period determined in an extradition agreement.

(2) The Minister, at any time after being notified in terms of this section that a person has been arrested, must direct that the person who has been arrested be discharged immediately—

(a) if the foreign State in question has indicated that it will not request the extradition of the person;

(b) on any of the grounds referred to in section 53; or

(c) if the request for the extradition is not submitted within the period indicated by the Minister as provided for in subsection (1).

(3) The Minister must, after having discharged the person who has been arrested, notify the foreign State in question—

(a) that the person was arrested;

(b) that the person was discharged; and

(c) of the reasons for discharge.

Notice to proceed with extradition enquiry after arrest without warrant

37. (1) On receipt of a request for extradition as envisaged in section 34(2)*(a)* which must comply with the requirements set out in section 20, the Minister may issue a notice to proceed with an extradition enquiry in terms of section 24 of this Act.

(2) Once the requirements in subsection (1) have been complied with, a designated magistrate must hold an extradition enquiry in terms of Part 4 of this Chapter.

Part 4

Extradition enquiry

Nature of extradition enquiry

38. The designated magistrate holding the extradition enquiry must proceed in the manner in which a preparatory examination is to be held under Chapter 20 of the Criminal Procedure Act and, for the purposes of holding that enquiry, the magistrate has the same powers that magistrate had at a preparatory examination, including the power to—

(a) commit a person for further examination;

(b) release the person detained on bail;

(c) postpone the enquiry to a later date, but for the shortest possible period; and

(d) transfer the extradition proceedings in terms of section 75.

Extradition enquiry

39. In an extradition enquiry, the designated magistrate must determine whether a person is liable to be extradited to a requesting State in accordance with section 40 or 41.

Enquiry where extradition is sought for prosecution of offence

40. (1) Where the request for extradition is made by an extradition partner for the prosecution of an offence and the extradition agreement does not require that the request must contain information regarding evidence available to prove the commission of the offence, a person is liable to be extradited if the designated magistrate is satisfied that—

(a) the person appearing before such magistrate is the person whose extradition is requested; and

(b) the offence in question is an extraditable offence referred to in section 3.

(2) Where the request for extradition is made for the prosecution of an offence by an unlisted foreign State or by an extradition partner in respect of which the extradition agreement requires that the request must contain information regarding evidence available to prove the commission of the offence, a person is liable to be extradited if the designated magistrate is satisfied that—

(a) the person appearing before such magistrate is the person whose extradition is requested;

(b) the offence in question is an extraditable offence referred to in section 3; and

(c) there is evidence to justify a prosecution by the unlisted foreign State or extradition partner.

Enquiry where extradition is sought for purposes of sentence

41. (1) Where the request for extradition is made by an extradition partner for the imposition or enforcement of a sentence, a person is liable to be extradited if the designated magistrate is satisfied that—

(a) the person appearing before such magistrate is the person whose extradition is requested;

(b) the person appearing before such magistrate was convicted of and, if applicable, sentenced for the offence set out in the notice to proceed with an extradition enquiry referred to in section 24; and

(c) the requirements referred to in section 4 have been complied with.

(2) Where the request for extradition is made by an unlisted foreign State for the imposition or enforcement of a sentence, a person is, subject to subsection (3), liable to be extradited if the designated magistrate is satisfied that—

(a) the person appearing before such magistrate is the person whose extradition is requested; and

(b) the person appearing before such magistrate was convicted of and, if applicable, sentenced for the offence set out in the notice to proceed with an extradition enquiry referred to in section 24; and

(c) the requirements referred to in section 4 have been complied with.

(3) Where a person referred to in subsection (2) was tried in their absence, the person is only liable to be extradited if the designated magistrate is satisfied that there is evidence to justify a prosecution by the unlisted foreign State for the offence in question.

Designated magistrate not to enquire into other matters

42. (1) In order to determine whether a person is liable to be extradited, a designated magistrate may not, subject to subsection (2), enquire into any other matter other than those provided for in section 40 or 41.

(2) The designated magistrate must, for the purposes of submitting a report to the Minister in terms of section 45(5), receive evidence regarding the matters falling within the powers and responsibilities of the Minister referred to in section 52 or 53, if the person whose extradition is sought elects to present that evidence.

(3) The designated magistrate may, if any evidence is adduced in terms of subsection (2), include, in the report to the Minister, that evidence in the recommendations.

Postponement of enquiry if person is being prosecuted or is serving sentence

43. A designated magistrate may, if the person whose extradition is sought is being prosecuted or is serving a sentence of imprisonment in the Republic, postpone the extradition enquiry until the prosecution has been concluded or the sentence of imprisonment has been served.

Evidentiary matters relating to extradition enquiry

44. (1) The notice to proceed with an extradition enquiry issued by the Minister in terms of section 24(1) or (2) or a copy of the notice referred to in section 24(7), must be handed in at the extradition enquiry and serves as conclusive proof—

(a) that a request for extradition has been received in terms of this Act or an extradition agreement; and

(b) of the authority of the Director of Public Prosecutions to act on behalf of the requesting State.

(2) A copy of an extradition agreement published in the *Gazette* in terms of section 13(4) and certified by an officer employed in the Department of Justice and Constitutional Development, must be handed in as conclusive proof of the conclusion of that agreement and the contents of the agreement.

(3) A deposition or other statement or declaration, whether taken in the presence of the accused person or not, a record of a conviction or certificate confirming the conviction or a warrant issued in a foreign State or a copy or translation thereof, may be received in evidence if that document is—

(a) accompanied by a certificate referred to in section 20(7) and (8);

(b) authenticated or certified in the manner provided for in the extradition agreement, or in the absence of the agreement, in the manner provided for under the law of the requesting State;

(c) authenticated by officials from the requesting State as appears from the document; or

(d) admissible under the laws of the Republic relating to evidence.

(4) No authentication of documents is required unless an extradition agreement or this Act provides otherwise.

(5) Despite any other law, a document referred to in subsection (3) is admissible as evidence whether or not it is solemnly affirmed or taken under oath.

(6) A document required to be certified or authenticated in terms of this Act or an extradition agreement, is admissible as evidence if it purports to be certified or authenticated, as required.

(7) For the purposes of this section, a document includes electronic representations of information in any form.

(8) A translation of a document into English must be admitted as evidence without further formality.

(9) For the purposes of satisfying himself or herself that the person before the magistrate is the person whose extradition is requested, the designated magistrate may rely on the fact that—

(a) the name of the person before the court is similar to the name that is in the documents submitted with the extradition request; and

(b) the physical characteristics of the person before the court correspond to those reflected in a photograph, fingerprint or other description of the person.

(10) For the purposes of satisfying themselves that there is evidence to justify a prosecution by the requesting State, the designated magistrate must consider the evidence admissible under this Act as if the offence had been committed in the Republic.

(11) For the purposes of satisfying himself or herself that there is evidence to justify a prosecution by the requesting State, the designated magistrate must accept as conclusive proof a certificate which appears to the magistrate to be issued by an appropriate authority in charge of the prosecution in the requesting State in question, stating that—

(a) it has evidence at its disposal to justify the prosecution of the person in question;

(b) the evidence was obtained in accordance with the law of the requesting State; and

(c) the evidence is available for trial.

(12) A designated magistrate must apply the criteria applicable in the Republic in respect of the institution of a prosecution, as if the offence had been committed in the Republic, in order to ensure that there is evidence to justify a prosecution by the requesting State.

(13) A designated magistrate must consider any supplementary information made available in terms of section 20(9) before the conclusion of the extradition enquiry.

Order of committal or discharge

45. (1) If the designated magistrate finds that the person brought before him or her is liable to be extradited to the requesting State, the designated magistrate must issue a prescribed order committing the person to prison, pending the Minister's decision with regard to that person’s extradition, and at the same time inform the

person that such person may, within 15 days after the issuing of the order of committal, appeal against such order to a Division of the High Court of South Africa having jurisdiction, against the finding that the person is liable to be extradited.

(2) If a person referred to in subsection (1) was not legally represented at the time when the order was made, the designated magistrate issuing the order must, at the same time, inform that person of their rights in respect of appeal, legal representation and of the correct procedures to be followed in order to give effect to those rights.

(3) If a person indicates to the designated magistrate that they intend to lodge an appeal against the finding that the person is liable to be extradited, the designated magistrate must, in the prescribed form, refer the person to Legal Aid South Africa, established in terms of section 2 of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), for the purposes of allowing that person to request legal representation in the application for appeal and finalisation of the appeal, in the event that the person is unable to fund their own legal representation.

(4) If the designated magistrate finds that the evidence adduced in terms of section 44 does not warrant the issue of an order of committal or that the required evidence is not forthcoming within a reasonable time, the magistrate must discharge the person.

(5) The designated magistrate issuing an order of committal must, after the issuing of the order of committal, furnish the Minister with a copy of the record of the proceedings, together with a written report.

(6) The designated magistrate discharging a person must, in writing, furnish the Minister with the reasons for the discharge.

Order in respect of property seized

46. (1) A designated magistrate, irrespective of whether or not an order of committal referred to in section 45(1) is made or a person is discharged, may order that property seized in terms of this Act, be transferred to the requesting State or otherwise be dealt with as deemed appropriate.

(2) The designated magistrate may include in the order any condition that the magistrate deems fit, including conditions regarding the preservation and return to the Republic of the property and the protection of the interests of third parties.

Part 5
Appeal

Appeal by person

47. (1) A person against whom an order has been issued under section 45 may within fifteen days after the issue thereof, appeal against such order to the provincial or local division of the High Court of South Africa having jurisdiction.

(2) An appeal by a person in terms of section 45(1) must be heard as soon as practically possible.

(3) On appeal, the Division of the High Court of South Africa having jurisdiction, may make such an order in the matter as it deems fit.

(4) A person referred to in subsection (1) who does not wish to appeal against an order may, in writing to the Minister, waive their right of appeal.

Bail pending appeal

48. (1) The designated magistrate who issues an order referred to in section 45, may at any time before the finalisation of an appeal, order the person to be released on bail on condition that the person deposits with the clerk of court, a member of the Department of Correctional Services, or a police official at the place where the person is in custody, the sum of money determined by the designated magistrate who issued the order.

(2) If the person is released on bail in terms of subsection (1), the provisions of sections 60, 66, 67, 68 and 307(3), (3A), (4) and (5) of the Criminal Procedure Act, apply to the bail so granted, with the necessary changes required by the context and, any reference in those sections to—

(a) the accused, is deemed to be a reference to the person released on bail in terms of subsection (1);

(b) the court, is deemed to be a reference to the magistrate who releases the person on bail; and

(c) the trial or sentence, is deemed to be a reference to the magistrate's order in terms of section 45.

Appeal by Director of Public Prosecutions

49. (1) A Director of Public Prosecutions may, subject to leave to appeal being granted, appeal to the Division of the High Court having jurisdiction against an order of discharge issued by a designated magistrate in terms of section 45, on any question of law.

(2) Sections 309(1)*(b)*, (2), (3) and (5), 309B and 309C of the Criminal Procedure Act apply, with the necessary changes as may be required by the context, to an appeal by the Director of Public Prosecutions in terms of subsection (1).

(3) An appeal in terms of subsection (1) must be heard as soon as practically possible.

(4) On appeal, the Division of the High Court may make an order in the matter, as it deems fit.

Limitation of execution of order for extradition of person

50. An order for the extradition of a person may not be executed—

(a) before the period allowed for an appeal under section 47 has expired, unless the person has waived their right of appeal, in terms of section 47(4), or the person's extradition has been ordered by a magistrate in terms of section 59(3);

(b) before all remedies on appeal have been exhausted;

(c) if upon appeal the person's discharge from custody is ordered;

(d) in the case of an order by the Minister issued in terms of section 51, 30 days—

(i) after the issue of an order of committal under section 45, where no appeal has been or is to be heard under section 47; or

(ii) after an appeal under section 47 has been dismissed.

Part 6

Powers of Minister

Minister may order extradition of person

51. The Minister may order that a person committed to prison under section 45 be handed over to a person authorised by the requesting State to receive such person.

Circumstances in which Minister may order that person not be extradited

52. The Minister may, with due regard to the international obligations of the Republic, order that a person committed to prison in terms of section 45 not be extradited—

(a) where criminal proceedings against the person are pending in the Republic, until those proceedings have been concluded and where those proceedings result in a sentence of a term of imprisonment, until the sentence has been served;

(b) where the person is serving a term of imprisonment, until the sentence has been served;

(c) at all, or before the expiry of a period fixed by the Minister, if the Minister is satisfied that the non-extradition of the person is justified by reason of the trivial nature of the offence or by reason of the extradition not being in the interests of justice;

(d) subject to an extradition agreement, where the person has, in their absence, been tried or convicted of the offence for which extradition is requested, unless the requesting State provides an assurance to the satisfaction of the Minister that the person will have the right to a retrial; or

(e) where the requesting State is an unlisted foreign State and it appears to the Minister that the person in question may be detained or tried in that unlisted foreign State for an offence committed prior to the person's extradition, other than the offence in respect of which extradition is sought or for an offence for which the person may lawfully be convicted, unless the unlisted foreign State provides an assurance to the satisfaction of the Minister that the person will not be detained or tried for any other offence.

Circumstances in which Minister may not order that person be extradited

53. The Minister may not order that a person committed to prison under section 45 be extradited if the Minister is satisfied that—

(a) the offence is an offence under military law referred to in section 6(1);

(b) the offence is a political offence referred to in section 6(2);

(c) the person will be prosecuted, punished or prejudiced as provided for in section 7;

(d) the person is immune from prosecution or from the enforcement of a sentence as a result of the lapse of time, a pardon or amnesty as provided for in section 8;

(e) the person has been convicted or acquitted in the requesting State of the offence as provided for in section 9; or

(f) the offence is punishable by death or any other inhumane or degrading punishment under the laws of the requesting State, unless the requesting State provides assurances, to the satisfaction of the Minister, that the death penalty or other inhumane or degrading punishment will not be imposed, or if imposed, will not be carried out.

Minister may order cancellation of warrant or discharge of person

54. The Minister may, at any time, order the cancellation of a warrant for search and seizure or a warrant for the arrest of a person issued under this Act, or order the discharge from custody of a person detained under this Act—

(a) if the Minister is satisfied that the extradition of the person will not be requested or is no longer being requested;

(b) if the Minister is satisfied that there are grounds for believing that extradition proceedings would constitute an abuse of process; or

(c) on the basis of any of the grounds referred to in section 52 or 53.

Minister must inform extradition partner or unlisted foreign State about order

55. (1) The Minister must, if it has been ordered that the person committed to prison under section 45 may not be extradited, inform the requesting State of the order and the reasons for the order, in writing.

(2) The Minister must, if it has been ordered that a person committed to prison under section 45 must be extradited, inform the requesting State of the order, in writing.

Temporary or deferred extradition

56. (1) Despite section 52*(a)* and *(b)*, the Minister may, subject to subsection (2), on any condition determined by mutual agreement between the Republic and the requesting State, order the temporary extradition of a person referred to in that subsection to the requesting State for the purpose of prosecution.

(2) The Minister may not order the temporary extradition of a person unless the requesting State gives an assurance that the person will remain in custody while being extradited temporarily to the requesting State and will be returned to the Republic within 30 days after the conclusion of the person's trial in the requesting State.

(3) A period of imprisonment served in the custody of the requesting State by a person extradited under this section, must be regarded as a period of imprisonment served in the Republic for purposes of calculating the remaining term of imprisonment to be served in the Republic.

(4) If the term of imprisonment of a person, who is still in the Republic but who is to be extradited on a temporary basis to the requesting State, will expire or the person may be due for parole while that person will be in the custody of the requesting State, the National Commissioner of Correctional Services must, in writing, inform the Minister, before the person is so extradited, of the date on which that term of imprisonment will expire or of the possible date of parole.

(5) If the term of imprisonment that a person was ordered to serve in the Republic expires during the period in which the person is extradited on a temporary basis to a requesting State, the extradition is regarded as a final order as provided for in section 51.

Part 7

Consent to extradition

Consent to extradition

57. (1) A person whose extradition is sought may, at any time after such person's arrest or appearance in court, consent to their extradition to the requesting State.

(2) The person may only give their consent to be extradited before a magistrate if the person is represented by a legal practitioner as defined in section 1 of the Legal Practice Act, 2014 (Act No. 28 of 2014).

Effect of consent

58. (1) A person who consents to extradition in terms of section 57(1) waives all rights that the person may have in terms of this Act, including the right to an extradition enquiry in terms of Part 4 of this Chapter and the right to appeal in terms of section 47.

(2) Consent to extradition given in terms of section 57(1) is irrevocable and final.

Person to be brought before magistrate

59. (1) A person who consents to extradition must be brought before a magistrate as soon as practically possible.

(2) The magistrate before whom a person referred to in subsection (1) is brought, must—

(a) inform the person of the provisions of sections 57(2) and 58;

(b) enquire from the person whether such person freely and voluntarily consents to extradition; and

(c) record the consent of the person in writing on a form as prescribed.

(3) *(a)* If the magistrate is satisfied that the person freely and voluntarily consents to their extradition to the requesting State, the magistrate may order the immediate extradition of that person to that State.

(b) A magistrate who orders the immediate extradition of a person, must inform the Minister accordingly.

(4) If the magistrate is not satisfied that the person freely and voluntarily consents to their extradition to the requesting State, extradition proceedings against the person must proceed in terms of this Act.

(5) The Minister must, in writing, inform the extradition partner or unlisted State of the order by the magistrate that the person be extradited.

Part 8
Extradition of person

Removal of person extradited

60. A person ordered to be extradited under this Act may be removed from the Republic in the custody of the person authorised by the requesting State to receive the extradited person and if the person escapes while being so removed, the person may be arrested without a warrant of arrest.

Escape from custody

61. A person who—

(a) while being so removed, escapes or attempts to escape from custody; or

(b) frees or attempts to free from custody a person being so removed,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

CHAPTER 6
SURRENDER OF PERSON TO ENTITY

Definitions

62. For the purposes of this Chapter, unless the context indicates otherwise—

"**competent authority**" means an authority responsible for the administration of justice, prosecutions or international liaison on behalf of an entity;

"**entity**" means an international organisation, international tribunal, international court, or similar body which has jurisdiction in respect of an international crime, excluding the International Criminal Court; and

"**surrender**" means the handing over of a person who is sought by an entity for criminal prosecution for a crime or for the imposition or enforcement of a sentence in respect of such crime and "**surrendering**" has a corresponding meaning.

Application of Chapter

63. (1) A person accused or convicted of a crime over which an entity has jurisdiction may, subject to this Act, or any other law of the Republic, on request, be surrendered by the Republic to the entity whether or not—

(a) the crime was committed before the date of—

(i) the commencement of this Act; or

(ii) the establishment of an entity; and

(b) a court in the Republic has jurisdiction to try that person for that offence.

(2) A person may be surrendered by the Republic in accordance with this Act, on the request of a competent authority for the purpose of prosecuting the person, imposing a sentence on the person, or enforcing a sentence imposed on the person in respect of a crime.

(3) In addition to the surrender of a person, property that is required as evidence or was acquired as a result of the commission of the crime in question may, at the request of a competent authority, be transferred in accordance with this Act.

(4) The Criminal Procedure Act applies, with the necessary changes as may be required by the context, except in so far as this Chapter provides for amended, additional or different provisions or procedures.

No grounds for refusal of extradition to entity

64. Despite any other law to the contrary, including customary and conventional international law, the fact that a person being a member of a security service or armed force, was under a legal obligation to obey an unlawful order of a

government or superior, does not constitute a ground for refusing the surrender of that person for an alleged crime to an entity.

Request for surrender and transfer of property

65. (1) Section 20(1), (2), (3), (7), (8) and (9) applies, with the necessary changes as may be required by the context, to a request by a competent authority for the surrender of a person to an entity.

(2) Where the surrender of a person is requested for the purposes of prosecuting a crime, the request must—

(a) identify the crime with which the person is charged, including the particulars surrounding the commission of the crime, such as the date, time and place where the crime was committed;

(b) identify the territory where the commission of the crime took place;

(c) be supported by the original warrant of arrest or similar order issued by the entity or an authenticated or certified copy of the warrant or order; and

(d) make provision for any other particulars or information as may be prescribed by the Minister.

(3) Where the surrender of a person is requested for the purposes of imposing a sentence, the request must—

(a) identify the crime in respect of which the person is to be sentenced, including particulars surrounding the commission of the crime, such as the date, time and place where the crime was committed;

(b) identify the territory where the commission of the crime took place;

(c) be supported by the original record of conviction which reflects the charge and conviction, or similar order issued by the entity, or an authenticated or certified copy of the record of conviction or order; and

(d) make provision for any other particulars or information as may be prescribed by the Minister.

(4) Where the surrender of a person is requested for the purposes of serving the remaining term of a sentence, the request must—

(a) identify the crime in respect of which the person is to serve the remaining term of a sentence, contain particulars surrounding the commission of the crime, such as the date, time and place where the crime was committed;

(b) identify the territory where the commission of the crime took place;

(c) be supported by the original record of conviction which reflects the charge and conviction and sentence or similar order issued by the entity, or an authenticated or certified copy of the record of conviction or order;

(d) state the length of the remaining term of the sentence to be served; and

(e) make provision for any other particulars or information as may be prescribed by the Minister.

(5) A request for the surrender of a person by a competent authority may contain or be accompanied by a request for the transfer of any property that—

(a) is required as evidence; or

(b) was acquired as a result of the commission of the crime in question.

(6) Sections 21 and 23 apply, with the necessary changes as may be required by the context, to a request by a competent authority for the transfer of property that is required as evidence or was acquired as a result of the commission of the crime in question.

Concurrent requests for extradition and surrender

66. (1) A request by the International Criminal Court for the surrender of a person to that Court takes preference over a request for the surrender of the same person, in terms of this Chapter.

(2) A request in terms of this Chapter by an entity for the surrender of a person to that entity takes preference over a request in terms of Chapter 5 of this Act for the extradition of the same person.

Notice to proceed with extradition enquiry on request for surrender of person to entity

67. (1) On receipt of a request for the surrender of a person by an entity, the Minister may issue a notice to proceed with an extradition enquiry if the Minister, on perusal of the documents submitted in terms of section 65, is satisfied that the request—

(a) is a request by a competent authority of the entity;

(b) is for a crime in respect of which the entity has jurisdiction;

(c) contains sufficient information regarding the identity and liability of the person to be surrendered or of the property to be transferred, if applicable; and

(d) is otherwise made in accordance with this Act.

(2) Section 24(3), (5), (6) and (7) applies, with the necessary changes as may be required by the context, to a notice to proceed with an extradition enquiry issued in terms of subsection (1).

(3) A notice to proceed with an extradition enquiry must be in the prescribed form.

Warrant of arrest and detention

68. Sections 25(1), (3) and (4) and 26 apply, with the necessary changes as may be required by the context, to the issuing of a warrant of arrest and detention of a person for the purposes of surrendering the person to an entity.

Provisional arrest of person to be surrendered

69. (1) A request for the provisional arrest of a person may only be considered if—

(a) the request emanates from an entity;

(b) a request for the surrender of the person in question is imminent;

(c) the crime in respect of which the provisional arrest is to be effected, falls within the jurisdiction, including the territorial jurisdiction, of the entity; and

(d) the request was made by a competent authority to an appropriate authority in the Republic, in writing, or by any other means constituting a record in writing.

(2) Section 27(3) applies, with the necessary changes as may be required by the context, to a request for the provisional arrest of a person in terms of subsection (1).

(3) A request for the provisional arrest of a person must—

(a) state—

(i) that there is a conviction in respect of the person referred to in subsection (1), that a sentence has been imposed on the person in question, or that a warrant of arrest or detention order, or an order having a similar effect, as the case may be, exists in respect of that person;

(ii) that the competent authority intends making a request for the surrender of the person in question;

(iii) that the crime in respect of which the person is to be arrested is one over which the entity in question has jurisdiction; and

(iv) the crime in respect of which the surrender will be requested, including the date and place of commission of the crime; and

(b) contain, as far as possible, a description of the person whose arrest is sought.

Consideration by magistrate of request for provisional arrest and subsequent proceedings

70. (1) A magistrate may, on application by an appropriate authority in the Republic, issue a warrant for the provisional arrest of a person, if the magistrate is satisfied that—

(a) the request complies with the provisions of section 69;

(b) the person to be arrested is ordinarily resident in the Republic, is in the Republic or is on the way to the Republic; and

(c) the request has been made on grounds of urgency.

(2) A magistrate who refuses to issue a warrant for the provisional arrest of a person must, within five days after the refusal, give notice, in writing, to the Minister of the refusal.

(3) The notice to the Minister, referred to in subsection (2), must be in the prescribed form.

(4) A provisional warrant of arrest issued under this section must be executed in the same manner as a warrant of arrest issued under section 25(1).

(5) Sections 28(5) and 29 apply, with the necessary changes as may be required by the context, to a provisional warrant of arrest issued in terms of subsection (1).

(6) Sections 31 and 32 apply, with the necessary changes as may be required by the context, to a consideration by a magistrate of a request for provisional arrest and subsequent proceedings held in terms of this Chapter.

Enquiry relating to surrender and subsequent proceedings

71. (1) Sections 37, 38, 39, 40(1), 41 to 51, 52 *(a)*, *(b)*, *(d)* and *(e)* and 53 to 61 apply, with the necessary changes as may be required by the context, to an enquiry relating to surrender and subsequent proceedings held in terms of this Chapter.

(2) In the application of the sections referred to in subsection (1), the requirement in the sections that the offence in question must be an extraditable offence referred to in section 3, must be read as a requirement that the crime in question falls within the jurisdiction of the entity.

CHAPTER 7
GENERAL PROVISIONS

Director of Public Prosecutions may appear at extradition and surrender proceedings

72. A Director of Public Prosecutions may appear in court at any proceedings under this Act.

Designation of magistrate to hold extradition enquiry

73. (1) The head of an administrative region must designate a number of magistrates in their region to hold enquiries, provided for in this Act, in that region.

(2) The designation of a magistrate by the head of an administrative region, must be done in writing.

(3) *(a)* A magistrate may, subject to paragraph *(b)*, only be designated if the magistrate has completed a training course developed by the Council of the South African Judicial Education Institute, established in terms of section 6 of the South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008).

(b) The head of an administrative region, may, pending the development of the content of the training course and the training of magistrates, designate a magistrate who, in the opinion of the head of an administrative region, is a fit and proper person, to conduct an enquiry.

(c) In determining whether a magistrate is a fit and proper person, the head of an administrative region must take into account the experience of

the magistrate in general, the magistrate's experience relating to extradition and the magistrate's knowledge of international law.

(4) A magistrate who has been designated in terms of subsection (1), may conduct an enquiry in any court which falls within the jurisdiction of the head of the administrative region who designated that magistrate.

Extra-territorial jurisdiction

74. (1) *(a)* Despite any other law—

(i) a person whose extradition to a requesting State is refused on a ground provided for in section 52 and who is, at the date on which that decision is made, a South African citizen; or

(ii) a person whose extradition to a requesting State is refused as a result of the failure of that State to give an assurance that the death penalty will not be imposed for the offence for which extradition is sought, or if imposed, will not be carried out,

may, if the person is found in the Republic, be tried in the Republic for the offence for which extradition was sought, despite the fact that the offence was committed outside the area of jurisdiction of the courts in the Republic.

(b) The court in whose area of jurisdiction a person referred to in paragraph *(a)* is found, has jurisdiction to try that person for the offence for which extradition was sought.

(c) A person referred to in paragraph *(a)* may only be tried upon the written instruction of the National Director of Public Prosecutions.

(2) *(a)* Despite any other law, a person whose surrender to an entity is refused on a ground provided for in section 52, may, if the person is in the Republic, be tried in the Republic for the crime for which the person's surrender was sought, despite the fact that the crime was committed outside the area of jurisdiction of the courts in the Republic.

(b) Subsection (1)*(b)* and *(c)* apply, with the necessary changes as may be required by the context, in respect of a person referred to in paragraph *(a)*.

(3) The President may, for the purposes of a prosecution in terms of this section, enter into an agreement, as envisaged in section 27(1) of the International

Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), with the requesting State, relating to the investigation and prosecution of criminal matters.

Transfer of extradition and surrender proceedings

75. (1) A magistrate may, subject to subsection (2), on application by a Director of Public Prosecutions and if the interests of justice, expediency or state security so require, order that proceedings in terms of this Act be transferred to—

(a) another specified court for a district in the Republic; or

(b) a specific magistrate of another court for a district in the Republic,

and that the person whose extradition or surrender is sought must appear before a magistrate or specific magistrate of that area.

(2) Proceedings in terms of this Act may not be transferred if the designated magistrate has commenced with the enquiry relating to the determination whether the person is liable to be extradited to a requesting State or surrendered to an entity.

Search and seizure

76. (1) A police official, when arresting a person under a warrant of arrest or provisional arrest issued in terms of this Act, may, without a search warrant, search the person arrested and seize any property—

(a) which has a bearing on or is, on reasonable grounds, believed to have a bearing on the commission or suspected commission of the offence or crime;

(b) which may afford evidence of the commission or suspected commission of the offence or crime;

(c) which may afford evidence of the identity of that person;

(d) which was acquired or is, on reasonable grounds, believed to have been acquired as a result of the offence or crime;

(e) which is intended to be used or is, on reasonable grounds, believed to be intended to be used in the commission of an offence or crime; or

(f) which may be used to cause bodily harm to that person, or to others.

(2) A police official may, without a search warrant, search any container or premises for the purpose of seizing any article referred to in subsection (1)—

(a) if the person in question consents to the search for, and the seizure of the article in question, or if the person who may consent to the search of the container or premises, consents to the search and the seizure of the article in question; or

(b) if the police official, on reasonable grounds, believes—

(i) that a search warrant will be issued to them under subsection (3) if such police official applies for such warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.

(3) A magistrate may, at any time during proceedings in terms of this Act, issue a search warrant, if it appears to the magistrate, from information on oath, that there are reasonable grounds for believing that a property referred to in subsection (1), is in the possession or under the control of, or upon, any person or at any premises in the Republic.

(4) A search warrant issued under subsection (3)—

(a) must require a police official to seize the property in question and must, to that end, authorise the police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on, or at, those premises;

(b) must be executed by day, unless the magistrate issuing the warrant, in writing, authorises the execution of the warrant by night; and

(c) is of force until it is executed or is cancelled by the magistrate who issued it or, if that magistrate is not available, by a magistrate with similar authority.

(5) A police official executing a warrant issued under subsection (3) must, after execution, upon demand by any person whose rights have been affected by the search or seizure of property under the warrant, hand to that person a copy of the warrant.

(6) A police official, when arresting a person under any other law, for an offence or crime committed or allegedly committed in a foreign State, may—

(a) in accordance with the provisions of that other law, search for and seize any property;

(b) seize any property which was acquired or is, on reasonable grounds, believed to have been acquired as a result of that offence or crime; or

(c) seize any property which may afford evidence of the identity of that person.

(7) A police official may retain any property seized under this section pending a direction from the magistrate as to the manner in which the property is to be dealt with.

(8) The powers conferred by this section are, in addition to, and not in derogation of, any other powers conferred by law.

Regulations

77. (1) The Minister may make regulations regarding—

(a) notices, warrants, orders and other forms to be used for the purposes of this Act;

(b) any matter which is required or permitted by this Act to be prescribed;

(c) any matter the Minister deems necessary or expedient to prescribe in order to give effect to the objects of this Act; and

(d) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty of a fine or a penalty of imprisonment for a period not exceeding 12 months for any contravention of, or failure to comply with the Act and its Regulations.

Representation and expenses

78. (1) Subject to the terms of an extradition agreement, the appropriate authority of the Republic must—

(a) make all necessary arrangements for, and meet the reasonable cost of, any proceedings arising from a request for the extradition or surrender of a person from the jurisdiction of the Republic;

(b) advise, assist and appear in a competent court in the Republic on behalf of an extradition partner, unlisted foreign State or entity; and

(c) otherwise represent the interests of an extradition partner, unlisted foreign State or entity.

(2) The Republic must bear the reasonable expenses incurred—

(a) within its jurisdiction relating to the arrest and detention of the person whose extradition or surrender is sought, until that person is handed over to a person duly authorised by an extradition partner, unlisted foreign State or entity to receive that person;

(b) in returning a person to an extradition partner or an unlisted foreign State as provided for in section 17.

(3) Any expense referred to in subsection (1) and (2) must be paid as a direct charge against the National Revenue Fund.

(4) An extradition partner, unlisted foreign State or entity must pay all expenses incurred in the translation of any document pertaining to its request for extradition or surrender and the conveyance of the person extradited to it.

Entry and passage through Republic of person in custody

79. (1) A person entering and passing through the Republic in custody by virtue of a warrant or order lawfully issued in a foreign State or by an entity, is, during that person's passage through the Republic, deemed to be in lawful custody if the Minister has, at the request of the foreign State or the entity by which the warrant or order was issued, authorised such passage in custody.

(2) A certificate by the Minister that such a warrant or order was lawfully issued, will be conclusive proof of that fact.

Rules regarding appeal

80. The Rules Board for Courts of Law established in terms of section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must, with the approval of the Minister, make rules of procedure which provide for the expeditious finalisation of an appeal provided for in this Act.

Repeal of laws

81. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

Transitional provisions

82. (1) Anything done or deemed to have been done in terms of any other provision of a law repealed by section 81 and which could have been done in terms of a provision of this Act, is deemed to have been done in terms of this Act.

(2) An enquiry pending before a magistrate in terms of section 9 of the Extradition Act, 1962 (Act No. 67 of 1962), prior to the commencement of this Act, must be concluded as if this Act has not come into operation.

(3) For the purposes of subsection (2), an enquiry is deemed to be pending if the person sought by a requesting State has already appeared before a magistrate.

Short title and commencement

83. This Act is called the Extradition Act, 2025, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

(Laws repealed by section 81)

No. and year of law	Short Title	Extent of repeal
Act No.67 of 1962	Extradition Act, 1962	The whole
Proclamation No. 26 of 1920	Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920 (South-West Africa)	Parts II and III
Act No. 27 of 1912	Administration of Justice Act, 1912	Section 28
Act No. 93 of 1963	General Law Further Amendment Act, 1963	Sections 18 to 20 inclusive
Act No. 70 of 1968	General Law Amendment Act, 1968	Section 53
Act No. 101 of 1969	General Law Amendment Act, 1969	Section 21
Act No. 29 of 1974	General Law Amendment Act, 1974	Section 15
Act No. 49 of 1996	General Law Amendment Act, 1996	To the extent that it amends the Extradition Act, 1962
Act No.42 of 2001	Judicial Matters Amendment Act, 2001	Section 3

MEMORANDUM ON THE OBJECTS OF THE EXTRADITION BILL

1. PURPOSE OF BILL

1.1 The Extradition Bill, 2024 (“Bill”) makes provision for the renewed consideration of the subject matter of extradition and is necessary, for the following reasons:

(a) the Extradition Act, 1962 (Act 67 of 1962) ("the Act") is outdated and not consistent with modern extradition trends;
(b) the Act does not provide for an adequate legislative framework to enable South Africa to carry out its international obligations;
(c) some of the procedures provided for in the Act cause delays in the finalisation of extradition requests;
(d) it does not cover procedures which need to be followed in practice;
(e) there is uncertainty in respect of some of the provisions in the Act regarding the roles and responsibilities of the functionaries involved in the extradition process; and
(f) section 5(1)*(a)* of the Act has been declared unconstitutional by the Constitutional Court.

2. OBJECTS OF BILL

2.1 To make provision for modern extradition trends.

2.2 To ensure that the provisions of the Bill meet the international law obligations of the Republic of South Africa ("Republic") and are consistent with the Constitution and Constitutional Court judgments.

2.3 To put in place procedures and mechanisms to simplify and expedite extradition requests.

2.4 To ensure that the legislative framework covers all necessary practical arrangements.

2.5 To clarify some of the roles and responsibilities of the functionaries involved in the extradition proceedings.

3. SUMMARY OF BILL

3.1 Discussion of Bill: General aspects:

3.1.1 The Bill is divided into 7 Chapters which are discussed hereunder. The Bill is much more comprehensive than the Act. The Bill provides in a separate Chapter for the arrest, detention and surrender of persons to an entity having jurisdiction in respect of international crimes (such as war crimes, crimes against humanity and genocide). The issue of rendering of other forms of legal assistance to these entities, such as the gathering of evidence, is not dealt with in the Bill because the view is held that the Bill should only deal with the handing over of persons and the transfer of property to entities and that provision for legal assistance to entities should rather be made in the International Co-operation in Criminal Matters Act, 1996 (Act 75 of 1996) ("the ICCM Act") which deals with matters of this nature in relation to foreign States. A separate draft Amendment Bill providing for the rendering of legal assistance to International Tribunals has been prepared and will be promoted together with the Bill.

3.1.2 In preparing the Bill, consideration was given to the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the laws of other jurisdictions regulating extradition, the international obligations of the Republic as set out in some of the bilateral and multilateral agreements and the ICCM Act and the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002) ("Implementation Act").

3.2 CLAUSE BY CLAUSE ANALYSIS

3.2.1 Provision has been made in the Bill for a preamble.

3.2.2 Chapter 1: Introductory Provisions

(a) **Clause 1** of the Bill contains the definitions. The only definition which requires discussion is the following: For purposes of clause 33 of the Bill, which provides for the arrest of a person on the basis of written information, including a Red Notice, in possession of the International Criminal Police Organisation (INTERPOL), a definition of "Red Notice" has been included.

(b) The application of the Act is dealt with in **Clause 2** of the Bill which, among others, provides that a person may be extradited if the offence concerned was committed before the commencement of the Act, before the conclusion of an extradition agreement and before the designation of any State. This clause

seeks to make it clear that a person may be extradited for prosecution purposes, for sentencing or for the enforcement of a sentence and for the search, seizure and transfer of property. (This clause is consistent with similar provisions of other jurisdictions and section 3(1) of the Act.) Clause 2 of the Bill also regulates the relationship between the Act and the Criminal Procedure Act, 1977 (Act 51 of 1977) ("the CPA"). The current Act does not deal with this aspect and hence, the need was identified to make provision for this aspect in the Bill.

3.2.3 Chapter 2: General Principles

(a) **Clause 3** of the Bill contains a description of an extraditable offence. The description is almost the same as the definition of "extraditable offence" in the Act except that the Act provides that the period of imprisonment to be imposed for the offence must be at least six months before a person can be extradited whereas this clause requires a 12 month period. It is deemed necessary to increase the period, having regard to the lengthy period of time required to finalise an extradition request, which is, from the date of arrest of the person sought, until the date of handing over of a person. The period has been determined by taking into account the periods provided for in extradition treaties.

(b) **Clause 4** of the Bill deals with the enforcement of a sentence. The remaining period of imprisonment to be served before a person can be extradited in terms of this clause, has been determined at 4 months. This period is consistent with the European Convention on Extradition.

(c) **Clause 5** of the Bill deals with jurisdiction.

(i) The Act requires that a person may only be extradited in the event of an extraditable offence being committed within the jurisdiction of either the Republic or the requesting State.

(ii) Clause 5 of the Bill does not contain this requirement. Extradition in terms of this clause is allowed even if the offence has not been committed within the jurisdiction of the requesting State. (However, see paragraph (iv) below). This is because it appears that there is a tendency towards the granting of extra-territorial or, even universal, jurisdiction to

courts, in particular in respect of serious crimes such as corruption and international crimes.

(iii) Clause 5 will ensure compliance with the international obligations of the Republic, amongst others, in terms of the extradition agreements (for example Article 7 of the European Convention on Extradition and article 5 of the treaty between the Republic and Bangladesh) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Combating of Bribery Convention) which provides in Article 4, for jurisdiction beyond the territory of the Parties. Clause 5 of the Bill is consistent with the Canadian Model.

(iv) Despite the above, in terms of Clause 5 of the Bill, an extradition agreement may provide for the reciprocal handing over of a person, only if the offence for which the person is sought, has been committed within the jurisdiction of the extradition partner.

(d) **Clause 6** of the Bill sets out the offences in respect of which extradition is precluded, such as military and political offences. It also indicates which offences will not be regarded as political offences. This provision is consistent with the Act and the domestic laws of some other jurisdictions.

(e) **Clause 7** of the Bill makes it clear that a person will not be extradited if the person is prosecuted on account of their race, religion, nationality, ethnic origin, political opinion, sex, status, sexual orientation and gender identity. The Act contains a similar clause. Similar provisions are found in the extradition laws of other jurisdictions.

(f) In terms of **Clause 8** of the Bill, a person will not be extradited if that person has become immune from prosecution due to pardon, lapse of time or amnesty. The Act does not contain a provision in this regard. This provision is consistent with current international best practices.

(g) **Clause 9** of the Bill gives effect to the constitutional principle that a person may not be prosecuted if previously acquitted or convicted on the same facts. The Act does not contain a provision in this regard. This provision is based on an important and well-established legal principle which applies in respect of criminal proceedings.

(h) **Clause 10** of the Bill provides that the fact that a person was a member of a security service or armed force and acted under a legal obligation to obey an unlawful order of a government or superior, does not constitute a ground for refusing the extradition of the person to the requesting State. The Act is silent on this matter.

(i) **Clause 11** of the Bill regulates the position in respect of subsequent requests for extradition. This clause provides that the discharge of a person in terms of the Act does not preclude future proceedings against the same person unless there are grounds for believing that such proceedings would constitute an abuse of process. The Act is silent on this matter.

(j) **Clause 12** of the Bill confers an obligation on the person who carries out an arrest, to notify an arrested non-citizen of their right relating to communication and visits by a legal representative. The Act does not contain any provision in this regard.

3.2.4 Chapter 3: Extradition Agreement, Extradition Partner and Presidential Consent

(a) **Clause 13** of the Bill is based on section 2 of the Act. Clause 13 provides that the President may conclude extradition agreements (multilateral and bilateral agreements) with foreign States. The President may also designate foreign States which are members of the Commonwealth. (Some of them have not yet been designated.) This clause also determines when the agreements and the designations will take effect. In terms of this clause, the Minister has a duty of giving notice in the *Gazette* of the entry into force of any agreement or designation.

(b) **Clause 14** of the Bill regulates the relationship between the Bill and extradition agreements. This clause provides that where a provision of the Act is inconsistent with a provision of an extradition agreement to which the Republic is a party, the provision of the Act will prevail to the extent of that inconsistency. The Act does not regulate this matter.

(c) In terms of **Clause 15** of the Bill, any foreign State with which the Republic has concluded an agreement and any foreign State designated by the Republic, are extradition partners. In terms of this clause, the Minister must by notice in the *Gazette* list the extradition partners and amend it from time to time.

(d) In terms of **Clause 16** of the Bill, the President may give consent that a request, by an appropriate authority of an unlisted foreign State, for the extradition of a person may be considered in terms of the Act, in the absence of an extradition agreement. The Act contains a similar principle in section 3(2).

3.2.5 Chapter 4: Extradition to the Republic

3.2.5.1 Any request by the Republic for extradition will mainly be regulated by the law of the requested State, hence this Chapter contains only three clauses:

(a) **Clause 17** of the Bill provides for the circumstances under which a person may be detained or tried in the Republic for an offence other than the offence in respect of which such person' s extradition is sought and which was committed prior to that person's extradition. The Act contains a similar provision.

(b) In terms of **Clause 18** of the Bill, the Minister may, under certain circumstances, return a person to the requested State. The Act contains a similar provision.

(c) In terms of **Clause 19** of the Bill, a request for extradition must be transmitted to the requested State by the Minister. A request for the provisional arrest of a person sought must, in terms of this provision, be transmitted by the appropriate authority in the Republic, which is the National Prosecuting Authority ("the NPA") or the South African Police Service ("the SAPS"), to the appropriate authority in the foreign State.

3.2.6 Chapter 5: Extradition from the Republic

(a) This Chapter consists of eight (8) Parts, all dealing with different matters, including requests for extradition, provisional arrest, the extradition enquiry, appeals and consent to extradition.

(b) It appears that many of the delays experienced in the finalisation of extradition matters, are caused by evidentiary problems experienced during the extradition enquiry and the hearing of appeals do not always receive priority.

(c) Part 1: Requests for extradition

(i) As has already been indicated, a request for extradition can be made in respect of a prosecution, the imposition of a sentence or the enforcement of a sentence. **Clause 20** of the Bill sets out the requirements for the

different requests and the factors to be considered by the Minister on receipt of a request.

(ii) **Clause 21** of the Bill regulates the situation where an extradition request is received and is accompanied by a request for the transfer of property, where it is alleged that the property is required as evidence or was acquired as a result of the commission of the offence in question. This clause indicates how the request for the transfer of the property should be dealt with. The Act is silent on this issue.

(iii) **Clause 22** of the Bill regulates the situation where more than one request for the extradition of the same person is received from different States or from a State and the International Criminal Court as contemplated in the Implementation Act.

(iv) In terms of **Clause 23** of the Bill, all requests for extradition and the transfer of property must be in English or be accompanied by a certified translation thereof into English, unless an extradition agreement provides otherwise.

(v) **Clause 24** of the Bill mandates the Minister to issue a notice to proceed with an extradition enquiry if satisfied with a number of requirements. (The Act does not contain detailed information about the issuing of this notice.) This clause provides that the Minister must send the notice to the National Director of Public Prosecutions ("the NDPP") who will, where necessary, liaise with INTERPOL, and then submit the notice to the relevant Director of Public Prosecutions ("the DPP") who will approach the Magistrate to issue a warrant of arrest.

(vi) **Clause 25** of the Bill provides for the—

(aa) issuing of a warrant of arrest by a magistrate once the Minister has issued a notice to proceed with an extradition enquiry and is satisfied that there is a basis for the issuing of a warrant of arrest; and

(bb) endorsement of a warrant of arrest by a magistrate where the warrant has been issued in a designated foreign (Commonwealth) State. A magistrate is also empowered to issue a warrant for the search and seizure of certain property together

with the warrant of arrest. The endorsement of warrants of arrest will expedite the extradition process.

(vii) In terms of **Clause 26** of the Bill, a person detained under a warrant of arrest must, within 48 hours after the arrest, be brought before a magistrate who must place the matter on the court roll for an extradition enquiry. The magistrate may release the detained person on bail. Clause 26 is consistent with section 50 of the CPA. The Act provides that a detained person must be brought before a magistrate as soon as possible. The Act therefore allows for some form of flexibility but have in the past, led to unnecessary delays in bringing the person before the court.

(d) Part 2: Provisional arrest and extradition proceedings

(i) **Clause 27** of the Bill deals with a request for provisional arrest, an aspect not provided for in the Act but in many extradition agreements and treaties. In terms of clause 27, a request for provisional arrest may only be made by an extradition partner since there is, in respect of an extradition partner, already a basis underpinning reciprocity. Clause 27 also provides for the language of the request, the channels to be followed when the request is submitted and the content of the request.

(ii) **Clause 28** of the Bill grants a magistrate the power, in certain circumstances, to issue, upon request of the NPA or the SAPS, a warrant of arrest upon receipt of a request for the provisional arrest of a person. In terms of this clause, the magistrate must notify the Minister of a refusal to issue a warrant for provisional arrest so that the Minister can notify the requesting State of the refusal and the reasons therefor.

(iii) In terms of **clause 29** of the Bill, a person who has been arrested on a provisional warrant of arrest must, within 48 hours after the arrest, be brought before a magistrate who must postpone, for the purposes of holding of enquiry, the matter to a later date to obtain the formal request for extradition and a notice to proceed with an extradition enquiry issued by the Minister. The magistrate may release the person on bail and must notify the Minister of the arrest of the person.

(iv) The content of the notice referred to in paragraph (iii) above, is to be prescribed by regulation by the Minister in terms of **clause 30** of the Bill.

(v) **Clause 31** of the Bill deals with the powers and duties of the Minister on receipt of a notice of provisional arrest by a magistrate. In terms of this clause, the Minister may decide to discharge the person on certain grounds, including the grounds provided in Clause 53, as discussed below. This clause also obliges the Minister to inform the requesting State of the outcome of the request.

(vi) **Clause 32** of the Bill authorises the Minister to issue a notice to proceed with an extradition enquiry and a magistrate to hold an extradition enquiry where an extradition request is received, subsequent to the receipt of a request for the provisional arrest of a person.

(e) Part 3: Extradition proceedings after arrest without warrant

(i) **Clause 33** of the Bill provides that the arrest of any person for an offence committed outside the Republic on the basis of written information (Red Notice), provided by INTERPOL, indicating that a warrant for the arrest and detention of that person has been issued in the jurisdiction of an extradition partner is considered lawful.

(ii) **Clause 34** of the Bill regulates the position where a person has been arrested without a warrant of arrest in terms of any law in the Republic for an offence committed outside the Republic, an example of which is section 40(k) of the CPA. The Act contains a similar provision. The magistrate before whom the arrested person must appear within 48 hours after the arrest, must postpone the matter to a later date to obtain the formal request for extradition and the notice, to be issued by the Minister, to proceed with an extradition enquiry. This clause also obliges the magistrate before whom the arrested person appears, to notify the Minister of the arrest of the person.

(iii) **Clause 35** of the Bill provides that the notice to the Minister referred to in Clause 34, must be in the form prescribed by the Minister by regulation.

(iv) **Clause 36** of the Bill sets out the powers and duties of the Minister on receipt of the notice of arrest referred to in Clauses 34 and 35. In terms of Clause 36, the Minister must, in certain circumstances, discharge the person arrested and must subsequently notify the foreign State in question of the discharge.

(v) **Clause 37** of the Bill indicates what needs to be done after receipt of a request for the extradition of a person who was arrested without a warrant.

(f) Part 4: Extradition enquiry

(i) In terms of **clause 38** of the Bill, a magistrate holding an extradition enquiry must proceed in the manner in which a preparatory examination is held under Chapter 20 of the CPA. (A trial in the High Court is in some cases preceded by a preparatory examination held in a magistrate's court at the request of the NPA. The purpose of a preparatory examination is to enable the court to assess whether the prosecution has a case and, if it does, whether it is a case for the High Court and that, in respect of serious charges, the accused should be informed fully of the state's case.) In terms of this clause, a magistrate must, when postponing the enquiry, postpone it for the shortest possible period. The content of Clause 38 is substantially similar to the provisions in section 9(2) of the Act.

(ii) **Clause 39** of the Bill provides that the magistrate must determine whether a person is liable to be extradited in accordance with Clauses 40 and 41.

(iii) **Clause 40** of the Bill sets out the factors to be considered by a magistrate in determining whether or not the person is liable for extradition in the case of a person sought for purposes of prosecution. These factors are not as broad as those listed in section 12(2) of the Act. Clause 40 seeks to ensure that the thresholds which apply in criminal cases are not applied in respect of extradition enquiries and to clarify the role and responsibilities between the Judiciary and the Executive in relation to extradition requests.

(iv) **Clause 41** of the Bill sets out the factors to be considered by the magistrate in determining whether or not the person is liable for extradition in the case of a person sought for the purposes of sentencing.

(v) **Clause 42** of the Bill prohibits a magistrate holding an extradition enquiry from considering any other factors than those listed in Clauses 40 and 41.

(vi) In terms of **Clause 43** of the Bill, a magistrate may postpone the extradition enquiry, if the person sought is being prosecuted or is serving a sentence of imprisonment in the Republic, until these matters have been concluded.

(vii) **Clause 44** of the Bill regulates evidentiary matters relating to extradition enquiries and determines which documents must be handed in to a magistrate and under what conditions. Clause 44 seeks to simplify and expedite the extradition process and to address the shortcomings in section 9 of the Act, which is in some respects unclear and does not deal adequately with the handing in of certain documents.

(viii) **Clause 45** of the Bill deals with the order of committal or discharge to be issued by a magistrate after the conclusion of an extradition enquiry and matters relating to legal aid.

(ix) **Clause 46** of the Bill regulates the powers of a magistrate relating to the issuing of an order in respect of property seized.

(g) Part 5: Appeal

(i) Section 13 of the Act provides that a person who has been found liable to be extradited by a magistrate may within 15 days after the issue of an order to this extent, appeal against such order. This provision has been retained in the Bill. This mater is dealt with in **Clause 47.**

(ii) Clause 47 of the Bill provides that any person against whom an order has been issued under section 45, may appeal against such order to the provincial or local division of the High Court of South Africa having jurisdiction.

(iii) **Clause 48** of the Bill provides for the release of the person to be extradited on bail, pending the outcome of the appeal and related matters.

(iv) **Clause 49** of the Bill provides for an appeal by the DPP on questions of law only. This is consistent with the CPA and the same procedure is in essence retained.

(v) **Clause 50** of the Bill indicates when a person can be handed over to the Requesting State. The handing over can only happen when all processes, including an appeal, have been concluded.

(h) Part 6: Powers of Minister

(i) **Clause 51** of the Bill provides that the Minister may order the handing over to the requesting State of a person who has been committed to prison by order of a magistrate.

(ii) In terms of **Clause 52** of the Bill, the Minister may refuse the handing over to the requesting State of a person in certain circumstances. This

clause is based on section 11 of the Act which lists the circumstances under which the Minister may order that a person may not be surrendered.

(iii) **Clause 53** of the Bill sets out the circumstances when the Minister must refuse the handing over of a person to a requesting State. These circumstances are linked to clauses 6, 7, 8 and 9 of the Bill. Clause 53 ensures that persons are not handed over to countries where gross human rights violations are taking place and capital punishment is still executed unless satisfactory assurances are given by these countries. The giving of assurances of this nature is a standard provision in extradition agreements.

(iv) **Clause 54** of the Bill empowers the Minister, in certain circumstances, to order the cancellation of any warrant of arrest and warrant for search and seizure.

(v) **Clause 55** of the Bill obliges the Minister to inform the requesting State of the decision. In the event of a refusal to hand over the person, the Minister must also give reasons for the refusal.

(vi) In terms of **Clause 56** of the Bill, the Minister may, in certain circumstances and on certain conditions, order the temporary extradition of a person to a requesting State for the purpose of prosecution. The Act does not provide for this matter. This provision is consistent with some extradition agreements.

(i) Part 7: Consent to extradition

The Act does not provide for a person to consent to their extradition. Since the EU Convention provides for this aspect and there is a need in practice to regulate this aspect, provision is made for this aspect in Part 7 of the Chapter. The clauses can be summarised as follows:

(i) **Clause 57** of the Bill enables the person sought to consent to their extradition but only if such person is legally represented.

(ii) **Clause 58** of the Bill regulates the effect of consent and provides that the consent is irrevocable and that the person by so consenting, waives their rights to an extradition enquiry. This clause is consistent with the Canadian model.

(iii) In terms of **Clause 59** of the Bill, a magistrate is compelled to ensure that consent is given freely and voluntarily and that the person is fully aware of the effect of their consent. Clause 59 also confers upon the magistrate other related duties and the duty on the Minister to inform the Requesting State of the order of committal made by the magistrate.

(j) Part 8: Extradition of person

(i) **Clause 60** of the Bill regulates the removal of the person and provides authority to, without a warrant of arrest, arrest a person who is to be extradited and who escapes from custody.

(ii) **Clause 61** of the Bill criminalises the act of escape from custody or the rendering of assistance to escape and prescribes a penalty, a maximum prison term of five years. Section 16(2) of the Act contains similar provisions.

3.2.7 Chapter 6: Surrender of Person to Entity

3.2.7.1 This Chapter deals with all the aspects relating to the surrender of persons to international tribunals, such as the Rwanda Tribunal and the Yugoslavia Tribunal and any other international tribunal having jurisdiction in respect of international crimes. Where appropriate, the provisions of the Bill relating to extradition to a State have been made applicable to the surrender of persons to international entities.

(a) **Clause 62** of the Bill contains a definition of “entity” which means any international organisation, international tribunal, international court, or similar body which has jurisdiction in respect of an international crime, excluding International Criminal Court which is regulated by the Implementation Act. These concepts are widely defined.

(b) **Clause 63** of the Bill provides for the application of the Chapter and is similar to Clause 2 of the Bill.

(c) **Clause 64** of the Bill provides that the fact that a person was a member of a security service or armed force and acted under a legal obligation to obey an unlawful order of a government or superior, does not constitute a ground for refusing the extradition of the person to the Requesting State.

(e) **Clause 65** of the Bill deals with requests for the surrender of persons and the transfer of property. This clause is consistent with Clauses 20 and 21 of the Bill, which relate to requests for extradition and the transfer of property.

(f) **Clause 66** of the Bill deals with concurrent requests for extradition and surrender. In terms of this provision, a request for the surrender of a person to the International Criminal Court will take precedence over a request for the surrender of the same person to any other entity. In terms of this provision, a request for the surrender of a person to an entity will take precedence over a request for the extradition of the same person to a State.

(g) In terms of **Clause 67** of the Bill, the Minister must issue a notice to proceed with an extradition enquiry if the request for the surrender of a fugitive meets certain requirements. This provision is consistent with Clause 24, which has a bearing on a request for the extradition of a person to a State.

(h) **Clause 68** of the Bill deals with a warrant of arrest and detention. Certain provisions of the Bill, dealing with these aspects in relation to a person wanted by a State, are made applicable.

(i) **Clause 69** of the Bill deals with provisional arrest, in certain circumstances, of a person in respect of whom a request for surrender is to be issued by an entity. This provision is consistent with Part 2 of Chapter 5 of the Bill, which deals with a request for the provisional arrest of a person in respect of whom a request for extradition to a State is envisaged.

(j) **Clause 70** of the Bill which deals with the consideration of a request for the provisional arrest of a person by a magistrate, empowers a magistrate to issue a warrant for the provisional arrest of a person sought by an entity and obliges the magistrate to notify the Minister of the decision. Appropriate provisions of the Bill, dealing with the same subject matter in relation to States, have been made applicable.

(k) **Clause 71** of the Bill deals with the enquiry relating to the surrender of a person to an entity and subsequent proceedings and provides for the incorporation, by way of reference, of the relevant corresponding provisions of the Bill, relating to extradition to States.

3.2.8 Chapter 7: General Provisions

(a) **Clause 72** of the Bill empowers a DPP to appear at any proceedings on behalf of a requesting State or entity.

(b) **Clause 73** of the Bill deals with the designation of magistrates to conduct extradition enquiries. The need has been identified to ensure that only trained

magistrates deal with extradition enquiries. In terms of Clause 74 of the Bill, magistrates who have completed a training course developed by the Council of the South African Judicial Education Institute may be designated. The head of an administrative region must designate a number of the trained magistrates in their region to hold extradition enquiries. Pending the completion of the training courses, the head of an administrative region must, as an interim measure, designate magistrates who are deemed to be fit and proper persons, having regard to certain prescribed criteria.

(c) **Clause 74** of the Bill provides for extra-territorial jurisdiction. In the SADC Protocol provision is made that an extradition partner may refuse to hand over to a requesting State—

(i) a national of the requested State; or

(ii) a person, if the death penalty is still carried out by the requesting State and that State does not give certain assurances.

Should the handing over of the person concerned be refused on these grounds, provision is made in the above treaty that the case must be submitted to the South African authorities with a view to taking appropriate action against the person in respect of the offence for which extradition has been requested. Since South African law does not, as a general principle, provide for extra-territorial jurisdiction, provision has been made in Clause 74, for extra-territorial jurisdiction. This clause also makes provision for the entering into an agreement by the President with the foreign State in question relating to co-operation, similar to what is provided for in section 27 of the ICCM Act. The granting of extra-territorial jurisdiction must, however, be considered very carefully in view of the implications thereof, namely logistical arrangements since witnesses and exhibits from other countries will have to be transported to and from South Africa, which may be costly. Therefore, extra-territorial jurisdiction in terms of this clause is only conferred in limited circumstances and at the written instruction of the NDPP.

(d) **Clause 75** of the Bill provides for the transfer, in certain circumstances, of the extradition or surrender proceedings to another court.

(e) **Clause 76** of the Bill regulates the search and seizure of property. The Act does not contain any provision in this regard.

(f) **Clause 77** of the Bill is an empowering provision enabling the Minister to make regulations relating to a number of aspects.

(g) **Clause 78** of the Bill deals with representation and expenses. In terms of this clause, the Republic must bear all the expenses relating to any proceedings conducted in the Republic in terms of the Bill, relating to the extradition request and for the person's arrest and detention until handed over to the Requesting State and in respect of the return of a person to a foreign State referred to in Clause 17. The Act is silent on this aspect. Clause 78 is consistent with current practices. The expenses must be paid as a direct charge against the National Revenue Fund.

(h) **Clause 79** of the Bill deals with entry and passage through the Republic of a person in custody. This clause is consistent with section 21 of the Act.

(i) In **clause 80** of the Bill, the Rules Board for Courts of Law, established in terms of section 2 of the Rules Board for Courts of Law Act, 1985 (Act No.107 of 1985), is obliged to make rules of procedure, providing for the expeditious finalisation of appeals.

(j) Provision is made in **Clause 81** of the Bill for the repeal of certain laws reflected in the Schedule to the Bill.

(k) In **Clause 82** of the Bill provision is made for transitional arrangements.

(l) **Clause 83** of the Bill makes provision for the short title and commencement.