

REPUBLIC OF SOUTH AFRICA

EXTRADITION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 54453
of 2 April 2026)*
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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 insofar as it relates to extradition; 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 justice, 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 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,

BE IT 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— 5
- (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); 10
- “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); 15
- “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— 20
- (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); or
- (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 purpose 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; 25
- “extradition agreement”** means an international agreement referred to in section 13, including any international agreement concluded in terms of section 231 of the Constitution, between the Republic and one or more foreign States or international organisations, to regulate extradition matters; 30
- “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; 35
- “International Criminal Court”** means the International Criminal Court established in terms of Article 1 of the Rome Statute of the International Criminal Court;
- “INTERPOL”** means the International Criminal Police Organisation;
- “magistrate”** means a magistrate appointed under section 9(1)(a) of the Magistrates’ Courts Act; 40
- “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 of Correctional Services contemplated in section 3(3) of the Correctional Services Act, 1998 (Act No. 111 of 1998); 45
- “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 member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 50
- “prescribed”** means prescribed by regulation;
- “Red Notice”** means a notice, published by 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; 55
- “Republic”** means the Republic of South Africa;
- “this Act”** includes any regulations made in terms of this Act; and
- “unlisted foreign State”** means a foreign State other than a foreign State referred to in section 15.

Application of Act

2. (1) This Act applies to—
- (a) any person accused or convicted of an extraditable offence that 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—
 - (i) the commencement of this Act;
 - (ii) the coming into operation of an extradition agreement; or
 - (iii) the designation of an extradition partner in terms of this Act;
 - (b) any person who 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; and
 - (c) any property that is required as evidence or was acquired as a result of the commission of the offence in question, which may be transferred in accordance with this Act or an extradition agreement, at the request of an extradition partner or an unlisted foreign State.
- (2) In the event of any inconsistency between this Act and any other legislation, this Act prevails.

CHAPTER 2 GENERAL PRINCIPLES

Extraditable offence

3. (1) Subject to section 6, a person may be extradited from the Republic, upon request from the appropriate authority of a requesting foreign State, for the extradition of that person for purposes 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 of the foreign State in question, punishable with a sentence of imprisonment or other form of deprivation of liberty, for a period not less than 12 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 law of the Republic.
- (2) An offence is an extraditable offence for the purpose of subsection (1), whether or not the law of the Republic places the acts or omissions constituting the offence within the same category of offence or denominates 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): Provided that a person may not be—
- (a) prosecuted;
 - (b) sentenced; or
 - (c) forced to serve a sentence,
- in the requesting foreign 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 section 53, a person may be extradited to a requesting foreign State, irrespective of whether—
- (a) the offence in question occurred within the jurisdiction of the requesting foreign State; or 5
 - (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 foreign State if the Director of Public Prosecutions, in writing, declines to prosecute that person. 10

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 an offence under the ordinary criminal law of both the Republic and the requesting foreign State. 15
- (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 purpose of subsection (2), but subject to an extradition agreement— 20
- (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; 25
 - (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),
- does not constitute a political offence or an offence of a political nature. 30
- (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. 35
- (5) Subsection (4) does not 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 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. 40

Lapse of time, pardon or amnesty

- 8.** A person may not be extradited if that person has, under the law of the requesting foreign State, become immune from prosecution or from the enforcement of a sentence as a result of the lapse of time, pardon or amnesty. 45

Discharge for previous 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.

Unlawful order no ground for refusal 50

- 10.** Despite any other law to the contrary, including 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 foreign State.

Subsequent request for extradition

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. 5

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— 10

- (a) South African citizen;
- (b) person ordinarily resident in the Republic; or
- (c) citizen of any foreign State,

the person who carries out the arrest, must inform the arrested person of that person's rights, and must allow that person— 15

- (i) to communicate, without delay, with the nearest appropriate authority of—
 - (aa) the foreign State of which the person is a citizen;
 - (bb) if the person is not a citizen of any foreign State, the foreign State in whose territory the person ordinarily resides; or
 - (cc) the foreign State, if any, that is otherwise entitled to protect the person's rights; and
- (ii) to be visited by such an authority. 20

CHAPTER 3

EXTRADITION AGREEMENT, EXTRADITION PARTNERS AND PRESIDENTIAL CONSENT 25

Extradition agreement

13. (1) The President may, subject to section 231 of the Constitution and this Act—
 (a) enter into an international agreement, which provides for the extradition, on a reciprocal basis, of persons accused or convicted of the commission of an extraditable offence, and may agree to an amendment or revocation of that agreement; and 30

(b) designate, in writing, a foreign State, which is a member of the Commonwealth, for the purpose 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. 35

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

(a) the procedural requirements listed under section 231(2) or (3) of the Constitution have been complied with; and

(b) 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— 40

(i) for an offence committed prior to that person's extradition, other than the offence in respect of which extradition is sought; or 45

(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 foreign State for an offence which was committed prior to that person's extradition to such foreign State and to which the extradition agreement relates. 50

(4) The Minister must, within 60 days after the date of entry into force, revocation or amendment of an extradition agreement, or after the designation of a foreign State referred to in subsection (1)(b), 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. 5

Extradition partners and publication in *Gazette*

15. (1) Any foreign State—

- (a) that has acceded to, ratified or concluded an extradition agreement which the Republic has also acceded to, ratified or concluded with such foreign State; or 10
- (b) that is a member of the Commonwealth and has been designated by the President in terms of section 13(1)(b),

is an extradition partner.

(2) The Minister must, from time to time, after the date of commencement of this Act, publish a notice in the *Gazette* listing— 15

- (a) the extradition agreements, which the Republic has acceded to, ratified or is a signatory to, and include the date of entry into force; and
- (b) every foreign State that was designated by the President before the commencement of this Act, the relevant law that conferred this power to 20 designate and the date of entry into force of that designation.

Presidential consent

16. (1) The President may, subject to the provisions of the Constitution, consent, in writing, for the Minister to consider a request by an appropriate authority of an unlisted foreign State for the extradition of a person accused or convicted of an extraditable offence. 25

(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 30

Person extradited to Republic may not 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. 35

(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. 40

Extradited person may be returned to foreign State

18. The Minister may, at the written request of a person, return such person to the 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; 45
- (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 50

- (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 in the Republic for the extradition of a person to the Republic must be transmitted by the Minister. 5

(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 the appropriate authority in the foreign State. 10

CHAPTER 5 EXTRADITION FROM REPUBLIC

Part 1

Request for extradition

Request for extradition 15

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

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

- (a) state whether extradition is requested for purposes of— 25
- (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 purpose of prosecution of 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; 30
- (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 35
- (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 purpose of imposing a sentence, the request must, subject to an extradition agreement— 40

- (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; 45
- (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 provisions, if applicable; and
- (d) be supported by the original record of conviction which reflects the charge, conviction and date of conviction or similar order issued in the foreign State, or an authenticated or certified copy of the record of conviction. 50

- (6) Where extradition is requested for the purpose 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; 5
 - (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 provisions, if applicable; 10
 - (d) be supported by the original record of conviction which reflects the charge, conviction, 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. 15
- (7) A document containing the information referred to in this section may be accompanied by a certificate referred to in section 44(3), 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; 20
 - (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 subsection (7)(a) to (d) 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. 25
- (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. 30
- (b) Upon receipt of the additional information from the requesting foreign State, the Minister 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— 35
- (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 the diplomatic channel to the Minister, in writing, or by any other means constituting a record in writing. 40
- (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— 45
- (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. 50

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 foreign States, if any, the person must be extradited and the Minister must, in writing, inform the requesting foreign States of the Minister's decision. 55

- (2) In determining to which requesting foreign State a 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; 5
 - (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 foreign States;
 - (e) the possibility of any subsequent extradition between the respective requesting foreign States; 10
 - (f) the nationality of the person to be extradited and that of the victim of the offence, if any;
 - (g) the interests of the requesting foreign States and the Republic; and
 - (h) the ordinary place of residence of the person to be extradited. 15
- (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. 20

Language

23. Subject to an extradition agreement, documents submitted in terms of the Act must be in the English language or be accompanied by a certified translation of such documents into the English language. 25

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— 30
- (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. 35
- (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 terms of section 16, for the request for extradition to be considered by the Minister in terms of this Act; and
 - (b) on perusal of the documents submitted in terms of sections 20 and 21, the 40 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; 45 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 50 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 in terms of this Act. 55
- (4)(a) The Minister must issue a notice, in the prescribed form, to the National Director of Public Prosecutions to proceed with an extradition enquiry, and such notice constitutes the authority for a Director of Public Prosecutions to appear on behalf of a

requesting foreign 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. 5

(c) The National Director of Public Prosecutions must, after liaising with INTERPOL in terms of paragraph (b), refer the matter to the Director of Public Prosecutions in whose area of jurisdiction the person sought is likely to be found.

(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. 10

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

Warrant of arrest on notice to proceed with extradition enquiry 15

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) after consideration of an application by a Director of Public Prosecutions and production of the notice to proceed with an extradition enquiry referred to in section 24; and 20

(b) if there are sufficient grounds for the issuing 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 that person— 25

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

(ii) if the magistrate is satisfied that there are sufficient grounds to endorse the warrant of arrest. 30

(b) A warrant of arrest endorsed in terms of paragraph (a) is sufficient authority for the arrest of the person mentioned in the warrant.

(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 there are sufficient grounds for granting the issuing of a warrant. 35

(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 law of the Republic relating to criminal procedure. 40

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. 45

(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. 50

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 foreign State is an extradition partner. 55

- (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 foreign 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— 5
- (a) through the diplomatic channel;
 - (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— 10
- (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; 15
 - (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 20
 - (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 25

- 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 in terms of section 3;
 - (b) the request complies with the provisions of section 27(4); 30
 - (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 are sufficient grounds for issuing a warrant for provisional arrest.
- (2) A magistrate who refuses to issue a warrant for the provisional arrest of a person must, within five days of the refusal, in the prescribed form and manner, give notice of the refusal to the Minister. 35
- (3) The Minister must, in writing, inform the requesting foreign State of the decision of the magistrate and the reasons for that decision.

Extradition proceedings after provisional arrest 40

- 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— 45
- (a) postpone the matter to a later date to obtain the formal request for extradition from the relevant foreign State, together with the notice to proceed with an extradition enquiry, from the Minister; and
 - (b) within five days after the person's first appearance, in writing, give notice to the Minister of the arrest of that person. 50
- (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

- 30.** The notice to the Minister referred to in section 29(2)(b) must be in the prescribed form. 55

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 foreign 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. 5

(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 foreign State has indicated that it will not request the extradition of the person; 10
- (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 foreign State— 15

- (a) that the person was arrested;
- (b) that the person was discharged; and
- (c) of the reasons for the discharge.

Issue of notice to proceed with extradition enquiry 20

32. On receipt of a request for extradition as contemplated in section 20, the Minister may issue a notice to proceed with an extradition enquiry in terms of section 24 of this Act.

Part 3***Extradition proceedings after arrest without warrant*** 25**Arrest without 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). 30

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. 35

(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 40
- (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 45

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 foreign State in question, of the arrest 50

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 must, at any time after being notified in terms of section 34(2)(b) that a person has been arrested, direct that the person who has been arrested, be discharged immediately— 5

- (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). 10

(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 15
- (c) of the reasons for the discharge.

Notice to proceed with extradition enquiry after arrest without warrant

37. On receipt of a request for extradition as contemplated in section 20, the Minister may issue a notice to proceed with an extradition enquiry in terms of section 24 of this Act. 20

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 purpose of holding that enquiry, the magistrate has the same powers that magistrate has at a preparatory examination, including the power to— 25

- (a) commit a person for further examination;
- (b) release the person detained on bail; 30
- (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 foreign State in accordance with section 40 or 41. 35

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— 40

- (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— 45

- (a) the person appearing before such magistrate is the person whose extradition is requested; 50
- (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 sentencing

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; 5
- (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. 10

(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; 15
- (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. 20

(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. 25

(2) The designated magistrate must, for the purpose of submitting a report to the Minister in terms of section 45(5), receive evidence regarding the matters 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. 30

(3) If any evidence is adduced in terms of subsection (2), the designated magistrate may include, in the report to the Minister, such 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. 35

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 or a copy of the notice referred to in section 24(6), must be handed in at the extradition enquiry and serves as conclusive proof— 40

- (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 foreign State. 45

(2) A copy of an extradition agreement contemplated in section 13(1) 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 foreign State;
- (c) authenticated by officials from the requesting foreign State as appears from the document; or 5
- (d) admissible under the law 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 to the contrary, a document referred to in subsection (3) is admissible as evidence whether or not it is solemnly affirmed or taken under oath. 10
- (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 purpose of this section, a document includes electronic representations of information in any form. 15
- (8) A translation of a document into the English language must be admitted as evidence without further formality.
- (9) For the purpose of satisfying themselves that the person before the magistrate is the person whose extradition is requested, the designated magistrate may rely on the fact that— 20
- (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 purpose of satisfying themselves that there is evidence to justify a prosecution by the requesting foreign State, the designated magistrate must consider the evidence admissible under this Act as if the offence had been committed in the Republic. 25
- (11) For the purpose of satisfying themselves that there is evidence to justify a prosecution by the requesting foreign 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 foreign State in question, stating that— 30
- (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 foreign State; and 35
- (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 foreign State. 40
- (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 them is liable to be extradited to the requesting foreign 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. 45 50
- (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. 55
- (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), to allow that person to obtain legal representation for the purpose of lodging and 60

finalising 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

(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. 10

Order in respect of property seized

46. (1) A designated magistrate may, irrespective of whether or not an order of committal referred to in section 45(1) is made or a person is discharged, order that property seized in terms of this Act, be transferred to the requesting foreign State or otherwise be dealt with as deemed appropriate. 15

(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 20

Appeal by person

47. (1) A person against whom an order has been issued under section 45 may, within 15 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 against an order of committal in terms of section 45(1) must be heard as soon as practically possible. 25

(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. 30

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 the 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. 35

(2) If a 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— 40

- (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 45
- (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. 50

(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. 5

Limitation of execution of order for extradition of person

50. (1) 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); 10

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

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

(2) If the Minister has made an order in terms of section 51, the order for extradition may not be executed within 30 days after— 15

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

(b) an appeal under section 47 has been dismissed.

Part 6

20

Powers of Minister

Minister may order extradition of person

51. The Minister may, subject to the international obligations of the Republic and the respective extradition agreements, order that a person committed to prison under section 45 be extradited to the requesting foreign State. 25

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; 30

(b) where the person is serving a term of imprisonment, until the sentence has been served; 35

(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 foreign State provides an assurance to the satisfaction of the Minister that the person will have the right to a retrial; or 40

(e) where the requesting foreign 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. 50

Circumstances in which Minister must refuse to order that person be extradited

53. The Minister must refuse to 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; 5
- (e) the person has been convicted or acquitted in the requesting foreign 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 foreign State, unless the requesting foreign 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. 10

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— 15

- (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 20
- (c) on the basis of any of the grounds referred to in section 52 or 53.

Minister must inform foreign State of extradition 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 foreign State, in writing, of the order and the reasons for the order. 25

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

Temporary or deferred extradition 30

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 foreign State, order the temporary extradition of a person referred to in that subsection to the requesting foreign State, for the purpose of prosecution.

(2) The Minister may refuse the temporary extradition of a person, unless the requesting foreign State gives an assurance, in writing, that the person will remain in custody while being extradited temporarily to the requesting foreign State and will be returned to the Republic within 30 days after the conclusion of the person's trial in the requesting foreign State. 35

(3) A period of imprisonment served in the custody of the requesting foreign 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. 40

(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 foreign State, is due to expire or the person may be due for parole while that person is in the custody of the requesting foreign 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 expires or of the possible date of parole. 45

(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 foreign State, the extradition is regarded as a final order. 50

Part 7***Consent to extradition, effect of consent and proceedings in court*****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 foreign State. 5

(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. 10

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

Person to be brought before magistrate for recording of consent

59. (1) A person who consents to extradition must be brought before a magistrate as soon as practically possible for the recording of consent. 15

(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 20
- (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 foreign State, the magistrate may order the immediate extradition of that person to that State. 25

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

(4) If the magistrate is not satisfied that the person freely and voluntarily consents to their extradition to the requesting foreign State, extradition proceedings against the person must proceed in terms of this Act. 30

(5) The Minister must, in writing, inform the requesting foreign State of the order that the person be extradited.

Part 8***Removal of person from Republic and escape from custody*****Removal of person extradited** 35

60. A person ordered to be extradited under this Act may be removed from the Republic and placed in the custody of the person authorised by the requesting foreign 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 40

61. A person who—

- (a) while being removed from the Republic in terms of section 60, escapes or attempts to escape from custody; or
- (b) frees or attempts to free from custody a person so being removed, whilst in the Republic, 45

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 purpose 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; 5
- “**entity**” means an international organisation, international tribunal, international court, or similar body, which has jurisdiction in respect of 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 an offence or for the imposition or enforcement of a sentence in respect of such offence, and “surrendering” has a corresponding meaning. 10

Application of Chapter

- 63.** (1) A person accused or convicted of an offence 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— 15
- (a) the offence 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. 20
- (2) A person may be surrendered by the Republic in accordance with this Act, upon the request, in writing, 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 an offence.
- (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 offence in question may, at the request of a competent authority, be transferred in accordance with this Act. 25

Legal obligation to obey unlawful order no ground for refusal of surrender request

- 64.** Despite any other law to the contrary, including 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 offence to an entity. 30

Request for surrender and transfer of property

- 65.** (1) Section 20 applies, with the necessary changes as may be required by the context, to a request by a competent authority of an entity for the surrender of a person. 35
- (2) Where the surrender of a person is requested for the purpose of prosecuting an offence, the request must—
- (a) identify the offence with which the person is charged, including the particulars surrounding the commission of the offence, such as the date, time and place where the offence was committed; 40
- (b) identify the territory where the commission of the offence 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. 45
- (3) Where the surrender of a person is requested for the purpose of imposing a sentence, the request must—
- (a) identify the offence in respect of which the person is to be sentenced, including particulars surrounding the commission of the offence, such as the date, time and place where the offence was committed; 50
- (b) identify the territory where the commission of the offence 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 purpose of serving the remaining term of a sentence, the request must—
 - (a) identify the offence in respect of which the person is to serve the remaining term of a sentence, including particulars surrounding the commission of the offence, such as the date, time and place where the offence was committed; 5
 - (b) identify the territory where the commission of the offence 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; 10
 - (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— 15
 - (a) is required as evidence; or
 - (b) was acquired as a result of the commission of the offence in question.
- (6) Section 21 applies, 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 offence in question. 20

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 any other requests by an entity for the surrender of the same person, in terms of this Chapter. 25
- (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 surrender enquiry on request for surrender of person to entity 30

- 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 a surrender 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 an offence in respect of which the entity has jurisdiction; 35
 - (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 applies, with the necessary changes as may be required by the context, to a notice to proceed with a surrender enquiry issued in terms of subsection (1). 40
- (3) A notice to proceed with a surrender enquiry must be in the prescribed form.

Warrant of arrest and detention following issue of notice to proceed with surrender enquiry

- 68.** Sections 25 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 purpose of surrendering the person to an entity. 45

Request for provisional arrest by entity

- 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 provisional arrest the person in question is urgent; 50
 - (c) the offence in respect of which the provisional arrest is to be effected, is within the 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. 55

- (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; 5
 - (ii) that the competent authority intends making a request for the surrender of the person in question; 10
 - (iii) that the offence in respect of which the person is to be arrested is an offence for which the entity in question has jurisdiction; and
 - (iv) the offence in respect of which the surrender will be requested, including the date and place of commission of the offence; and 15
 - (b) contain, as far as possible, a description of the person whose arrest is sought.

Magistrate may issue warrant for provisional arrest for surrender

- 70.** (1) A magistrate may, on application by an appropriate authority in the Republic, issue a warrant for the provisional arrest of a person for the purpose of a request for surrender, if the magistrate is satisfied that— 20
- (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 the 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, in writing, in the prescribed form and manner, give notice, to the Minister of the refusal. 25
- (3) 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).
- (4) Section 28 applies, with the necessary changes as may be required by the context, to a provisional warrant of arrest issued in terms of subsection (1). 30
- (5) Sections 30 and 31 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 35

- 71.** (1) The provisions of Part 4 of Chapter 5 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 provisions referred to in subsection (1), the requirement in those provisions that the offence in question must be an extraditable offence referred to in section 3, must be read as a requirement that the offence in question is within the jurisdiction of the entity. 40

CHAPTER 7 GENERAL PROVISIONS

Director of Public Prosecutions may appear at extradition and surrender proceedings 45

72. A Director of Public Prosecutions may appear in court at any extradition and surrender 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. 50
- (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 contents 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. 5

(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. 10

(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. 15

Extra-territorial jurisdiction

74. (1)(a) Despite any other law to the contrary—

(i) a person whose extradition to a requesting foreign State is refused on a ground provided for in this Act and who is, at the date on which that decision is made, a South African citizen; or 20

(ii) a person whose extradition to a requesting foreign State or entity is refused as a result of the failure of that foreign State or entity 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. 25

(2) A person referred to in subsection (1), may only be tried upon the instruction, in writing, of the National Director of Public Prosecutions.

(3) Despite any other law, a person whose surrender to an entity is refused on a ground provided for in this Act, may, if the person is in the Republic, be tried in the Republic for the offence for which the person's surrender was sought, despite the fact that the offence was committed outside the area of jurisdiction of the courts in the Republic. 30

(4) The President may, for the purpose of a prosecution in terms of this section, enter into an agreement, as contemplated in section 27(1) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), with the requesting foreign State, relating to the investigation and prosecution of criminal matters. 35

Transfer of extradition and surrender proceedings

75. (1) Subject to subsection (2), a magistrate may, 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— 40

(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. 45

(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 foreign 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 that person's property and seize any article of property— 50

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

(b) which may afford evidence of the commission or suspected commission of the offence; 55

(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;
 - (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
 - (f) which may be used to cause bodily harm to that person, or to others. 5
- (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 10
 - (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. 15
- (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 provided under 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. 20
- (4) A search warrant issued under subsection (3)—
- (a) must require a police official to seize the property in question and must, for that purpose, 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; 25
 - (b) must be executed by day, unless the magistrate issuing the warrant, in writing, authorises the execution of the warrant by night; and
 - (c) remains in force until it is executed or 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. 30
- (6) A police official, when arresting a person under any other law, for an offence 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; 35
 - (b) seize any property which was acquired or is, on reasonable grounds, believed to have been acquired as a result of that offence; 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. 40
- (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— 45
- (a) the form of notices, warrants, orders and other forms to be used for the purpose of this Act;
 - (b) any matter which is required or permitted by this Act to be prescribed;
 - (c) any matter that the Minister considers necessary or expedient to prescribe in order to give effect to the objects of this Act; and 50
 - (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 imprisonment for a period not exceeding 12 months for any contravention of, or failure to comply with, the regulations made in terms of this section. 55

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 5
 - (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; and 10
 - (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 subsections (1) and (2) must be paid as a direct charge against the National Revenue Fund. 15
- (4) An extradition partner, unlisted foreign State or entity must pay all the expenses incurred by the Republic in the translation of any document pertaining to the request for extradition or surrender and the conveyance of the person extradited.

Entry and passage through Republic of person in custody 20

- 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 entry and passage through the Republic. 25
- (2) A certificate by the Minister that a warrant or order referred to in subsection (1) was lawfully issued, is 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. 30

Repeal of laws

- 81.** The Extradition Act, 1962 (Act No. 67 of 1962) is hereby repealed.

Transitional provisions 35

- 82.** (1) Anything done or deemed to have been done in terms of any 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, prior to the commencement of this Act, must be concluded as if this Act has not come into operation. 40
- (3) For the purpose of subsection (2), an enquiry is deemed to be pending if the person sought by a requesting foreign State has already appeared before a magistrate.

Short title and commencement

- 83.** This Act is called the Extradition Act, 2026, and commences on a date determined by the President by proclamation in the *Gazette*. 45

MEMORANDUM ON OBJECTS OF THE EXTRADITION BILL, 2026

1. PURPOSE OF BILL

- 1.1 The Extradition Bill, 2026 (the “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 No. 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) the Act 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

The objects of the Bill are—

- (a) to make provision for modern extradition trends;
- (b) to ensure that the provisions of the Bill meet the international law obligations of the Republic of South Africa (the “Republic”) and are consistent with the Constitution of the Republic of South Africa, 1996 (the “Constitution”) and Constitutional Court judgments;
- (c) to put in place procedures and mechanisms to simplify and expedite extradition requests;
- (d) to ensure that the legislative framework covers all necessary practical arrangements; and
- (e) 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

- 3.1.1 The Bill is divided into seven 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 terms of the International Co-operation in Criminal Matters Act, 1996 (Act No. 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, 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

Provision has been made in the Bill for a preamble.

3.2.1 Chapter 1: Introductory provisions

Clause 1 contains the definitions. The only definition which requires discussion is the following: For purposes of clause 33, 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.

The application of the Act is dealt with in clause 2 of the Bill which, amongst other things, 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 foreign 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.

3.2.2 Chapter 2: General principles

Clause 3 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.

Clause 4 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 four months. This period is consistent with the European Convention on Extradition.

Clause 5 deals with jurisdiction.

- (a) 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 foreign State.
- (b) Clause 5 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 foreign State. 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.
- (c) 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 is consistent with the Canadian Model.
- (d) Despite the above, in terms of clause 5 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.

Clause 6 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 laws of some other jurisdictions.

Clause 7 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.

In terms of **clause 8**, 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.

Clause 9 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.

Clause 10 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 foreign State. The Act is silent on this matter.

Clause 11 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.

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

3.2.3 **Chapter 3: Extradition agreement, extradition partners and Presidential consent**

Clause 13 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 further designate foreign States which are members of the Commonwealth. (Some of them have not yet been designated.) This clause further sets out the procedure to be followed for the agreements to be of force and 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.

Clause 14 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.

In terms of **clause 15**, 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.

In terms of **clause 16**, 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).

3.2.4 **Chapter 4: Extradition to the Republic**

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

Clause 17 provides for the circumstances under which a person may not 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.

In terms of **clause 18**, the Minister may, under certain circumstances, return a person to the requested foreign State. The Act contains a similar provision.

In terms of **clause 19**, a request for extradition must be transmitted to the requested foreign 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.

3.2.5 **Chapter 5: Extradition from the Republic**

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

3.2.5.2 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.

3.2.5.3 **Part 1: Request for extradition**

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** sets out the requirements for the different requests and the factors to be considered by the Minister on receipt of a request.

Clause 21 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.

Clause 22 regulates the situation where more than one request for the extradition of the same person is received from different

foreign States or from a foreign State and the International Criminal Court as contemplated in the Implementation Act.

In terms of **clause 23**, 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.

Clause 24 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.

Clause 25 provides for the—

- (a) 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
- (b) 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.

In terms of **clause 26**, 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 Criminal Procedure Act, 1977 (Act No. 51 of 1977) (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.

3.2.5.4 Part 2: Provisional arrest and extradition proceedings

Clause 27 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 further provides for the language of the request, the channel to be followed when the request is submitted and the content of the request.

Clause 28 grants a magistrate the power, in certain circumstances, to issue, on application by an appropriate authority, 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 foreign State of the refusal and the reasons therefor.

In terms of **clause 29**, 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 purpose 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.

Clause 30 provides for the form of the notice referred to in clause 29 to be prescribed.

Clause 31 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 further obliges the Minister to inform the requesting foreign State of the outcome of the request.

Clause 32 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.

3.2.5.5 **Part 3: Extradition proceedings after arrest without warrant**

Clause 33 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.

Clause 34 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(1)(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 further obliges the magistrate before whom the arrested person appears, to notify the Minister of the arrest of the person.

Clause 35 provides that the notice to the Minister referred to in clause 34, must be in the form prescribed by the Minister by regulation.

Clause 36 sets out the powers and duties of the Minister on receipt of the notice of arrest referred to clause 34. 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.

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

3.2.5.6 Part 4: Extradition enquiry

In terms of **clause 38**, 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.

Clause 39 provides for extradition enquiries and the powers of the magistrate in accordance with clauses 40 and 41.

Clause 40 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.

Clause 41 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 purpose of sentencing.

Clause 42 prohibits a magistrate holding an extradition enquiry from considering any other factors than those listed in clauses 40 and 41.

In terms of **clause 43**, 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.

Clause 44 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.

Clause 45 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.

Clause 46 regulates the powers of a magistrate relating to the issuing of an order in respect of property seized.

3.2.5.7 Part 5: Appeal

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 matter is dealt with in clause 47.

Clause 47 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.

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

Clause 49 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.

Clause 50 indicates when a person can be handed over to the requesting foreign State. The handing over can only happen when all processes, including an appeal, have been concluded.

3.2.5.8 **Part 6: Powers of Minister**

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

In terms of **clause 52**, the Minister may order that the person not be extradited 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.

Clause 53 sets out the circumstances when the Minister must not order that a person be extradited. These circumstances are linked to clauses 6, 7, 8 and 9. 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.

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

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

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

3.2.5.9 **Part 7: Consent to extradition, effect of consent and proceedings in Court**

The Act does not provide for a person to consent to their extradition. Since the European Union 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:

Clause 57 enables the person sought to consent to their extradition but only if such person is legally represented.

Clause 58 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.

In terms of **clause 59**, that provides for the recording of consent, a magistrate must ensure that consent is given freely and voluntarily and that the person is fully aware of the effect of their consent. Clause 59 further confers upon the magistrate other related duties and the duty on the Minister to inform the requesting foreign State of the order of committal made by the magistrate.

3.2.5.10 **Part 8: Extradition of person from Republic and escape from custody**

Clause 60 regulates the removal of the person and provides for the arrest of a person who is to be extradited and who escapes from custody, without a warrant of arrest.

Clause 61 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.

3.2.6 **Chapter 6: Surrender of person to entity**

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 foreign State have been made applicable to the surrender of persons to international entities.

Clause 62 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 the International Criminal Court which is regulated by the Implementation Act. These concepts are widely defined.

Clause 63 provides for the application of the Chapter and is similar to clause 2.

Clause 64 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 surrender of the person to the requesting foreign State.

Clause 65 deals with requests for the surrender of persons and the transfer of property. This clause is consistent with clauses 20 and 21 which relate to requests for extradition and the transfer of property.

Clause 66 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 foreign State.

In terms of **Clause 67**, 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 foreign State.

Clause 68 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 foreign State, are made applicable.

Clause 69 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 which deals with a request for the provisional arrest of a person in respect of whom a request for extradition to a foreign State is envisaged.

Clause 70 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 foreign States, have been made applicable.

Clause 71 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 foreign States.

3.2.7 Chapter 7: General provisions

Clause 72 empowers a DPP to appear at any proceedings on behalf of a requesting foreign State or entity.

Clause 73 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 73 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.

Clause 74 provides for extra-territorial jurisdiction. In the Southern African Development Community Protocol provision is made that an extradition partner may refuse to hand over to a requesting foreign State—

- (a) a national of the requested foreign State; or
- (b) a person, if the death penalty is still carried out by the requesting foreign 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.

Clause 75 provides for the transfer, in certain circumstances, of the extradition or surrender proceedings to another court.

Clause 76 regulates the search of persons and property and seizure of property. The Act does not contain any provision in this regard.

Clause 77 is an empowering provision enabling the Minister to make regulations relating to a number of aspects.

Clause 78 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 foreign 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.

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

In terms of **clause 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), is obliged to make rules of procedure, providing for the expeditious finalisation of appeals.

Provision is made in **clause 81** for the repeal of the Act.

In **clause 82**, provision is made for transitional arrangements.

Clause 83 makes provision for the short title and commencement.

4. FINANCIAL IMPLICATIONS FOR STATE

- 4.1 The Bill does not create substantial financial implications. Clause 78 of the Bill deals with the expenses which will be incurred relating to the execution of extradition requests and the functionaries (requesting foreign State and requested foreign State), which will be responsible for payment thereof. These financial matters are dealt with in the extradition agreements concluded with foreign States.
- 4.2 The issue of payment of the expenses to be incurred relating to the execution of a request by an entity for the surrender of a person sought by it, is usually also dealt with in the legal instrument which establishes the entity. The number of requests from foreign States, and in particular, from entities for the extradition or surrender of persons sought is limited. Clause 13 enables the President to conclude a specific agreement with an international entity providing for conditions.

- 4.3 The provision relating to the granting, under certain circumstances, of extra-territorial jurisdiction to our courts to hear offences committed in other jurisdictions (clause 74), is an aspect already provided for in some legislation and in some extradition agreements. This aspect has financial implications, for example, some of the witnesses residing in the State where the offence was committed will have to be brought to South Africa to testify. However, invoking this provision requires the written instruction of the National Director of Public Prosecutions, appointed in terms of section 179(1)(a) of the Constitution of the Republic of South Africa, 1996.
- 4.4 Any international agreement to be concluded in future by the Republic with a foreign State or entity relating to the extradition or the surrender of a person is to be approved by Parliament in terms of section 231 of the Constitution, during which the financial implications of the agreement will have to be considered.
- 4.5 Financial implications will be catered for under existing budgets.

5. DEPARTMENTS/BODIES CONSULTED

- 5.1 The Bill was developed in conjunction with a Committee, consisting of representatives of relevant Government Departments who attend to operational issues relating to extradition requests and who are currently implementing the existing Act.
- 5.2 The Department of International Relations and Cooperation was consulted.
- 5.3 The Bill was published in the *Gazette* on 23 August 2022 for public comment.
- 5.4 The Justice, Crime Prevention and Security Directors-General Cluster and the International Cooperation, Trade and Security Directors-General Cluster were also consulted.

6. COMMUNICATION IMPLICATIONS

A communication plan will be developed in conjunction with GCIS to communicate on significant elements of the Bill.

7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution prescribes the procedure for the classification of Bills, therefore, a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 7.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 7.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule i.e. *Tongoane and Others v Minister for Agriculture and Land Affairs and Others Case CCT 100/09 [2010] ZACC 10*. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

- 7.4 Therefore, the issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.
- 7.5 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 7.6 In view of the above discussion and after scrutiny of the contents of the Bill, the State Law Advisers and the Department are of the opinion that the Bill deals primarily with the subject matter of extradition which includes, *inter alia*, at national level, requests for extradition, extradition inquiries, powers of the Minister, the right to appeal and surrender of a person to an entity. The provisions in the Bill place obligations on national departments and the National Prosecuting Authority, as appropriate authorities, to carry out the functions. As such, we are of the opinion that the Bill must be classified as a section 75 Bill.
- 7.7 The State Law Advisers and the Department are therefore of the opinion that, since this Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 7.8 With regard to the referral of the Bill to the National House of Traditional and Khoi-San Leaders by Parliament, section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), which commenced on 1 April 2021, provides as follows:
- “39. (1)(a) Any Parliamentary Bill—**
- (i) which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or
- (ii) pertaining to any matter referred to in section 154(2) of the Constitution,
- must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.
- (b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comments: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.
- (2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be.”
- 7.9. Section 39(1)(a) requires Bills pertaining to customary law or customs of traditional communities to be referred to the National House of Traditional and Khoi-San Leaders. Section 154(2) of the Constitution provides that “*draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation*”. Furthermore, the National House of Traditional and Khoi-San Leaders will have 60 days to provide the Secretary to Parliament with its comments on Bills referred to it.
- 7.10. This Bill is considered to be national legislation and does not contain any provisions that impact or effect traditional or Khoi-San communities, or

matters pertaining to customary law or the customs of traditional or Khoi-San communities, as contemplated in section 154(2) of the Constitution. In light of this, the State Law Advisers and the Department are of the view that the Bill does not have to be referred to the National House of Traditional and Khoi-San Leaders.

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