EXTRADITION BILL [B14 – 2026]

PRESENTATION TO THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(10 November 2026)

CELEBRATING 30 YEARS OF THE CONSTITUTION

the doj & cd
Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

ACCESS TO JUSTICE FOR ALL,
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Purpose

The purpose of the presentation is to brief the Portfolio Committee on Justice and Constitutional Development on the Extradition Bill, 2026 (“the Bill”).

Reasons for the review of Extradition Act, 1962

The Extradition Act, 1957 (Act No. 67 of 1962) (the Act) is outdated and–

- ✔ Has gaps leading to a lack of clarity when having to comply with RSA international obligations (e.g. requirement regarding jurisdiction, extra-territorial jurisdiction, provisional arrest);
- ✔ Has no explicit provision for the surrender of persons to international entities;
- ✔ Has no provisions regulating consent to extradition;
- ✔ Leads to confusion about the role of Magistrates in extradition enquiries and that of Minister on whether persons are to be extradited; and
- ✔ Requires alignment with the Constitutional Court judgments (the Smit and Schultz judgments).

Drafting history

- The review of the Act started some time ago.
- The Bill was drafted in close consultation with relevant Government role-players (Task Team established).
- Evaluated different interpretations regarding the authority of South Africa to surrender persons sought by International Tribunals.
- Considered the issue of lack of authority to prosecute perpetrators in RSA who committed murder in, for instance, Botswana, but could not be extradited to Botswana due to lack of constitutional guarantees required.
- To give effect to the Jason Smit judgment regarding the role of Magistrates in extradition inquiries.
- To clarify the roles of the Minister and the National Prosecuting Authority (NPA) regarding the request for extradition in line with the Schultz judgment.

Important changes introduced by the Bill

- Persons only extraditable if punishable with imprisonment for 12 months or more – Act provides for 6 months.
- Person can be extradited to requesting State even if the offence was not committed within that State's jurisdiction.
- Extends the list of offences in respect of which persons may not be extradited to cater for LGTBQI+ groups.
- Provision made for defences which may not be raised by members of security or armed forces and relating to unlawful orders.
- Clarifies the effect of Presidential consent in absence of extradition agreement.
- Sets out the information and documents to accompany a request for extradition to RSA.
- Provision is made for the situation where an extradition request is received and is accompanied by a request for the transfer of property.

Important changes introduced by the Bill

- The Bill regulates the situation where more than one request for the extradition is received in respect of the same person.
- Confirms the power of the Magistrate to issue a warrant for the search and seizure of certain property together with a warrant of arrest.
- Provisional arrest is regulated in detail.
- Provision is made for the arrest of a person for an offence committed outside the Republic on the basis of a Red Notice provided by INTERPOL pending the submission of a formal request for extradition.
- Only designated (experienced/trained) Magistrates to conduct extradition hearings.
- Determination/limitation of the factors to be taken into account by the Magistrate when dealing with an extradition enquiry. The concern was that extradition enquiries were handled in a similar way to trials.

Important changes introduced by the Bill

- Simplification of requirements relating to evidence through the submission of a certificate issued by a competent authority containing certain particulars.
- Provision is made that the Minister may under certain circumstances and conditions order the temporary extradition of a person to a requesting State.
- The Bill regulates the situation where the person sought gives consent to be extradited, however, certain safeguards are built in.
- Chapter 6 deals with the surrender of persons to entities namely international tribunals having jurisdiction to deal with international crimes.
- The Bill provides for the transfer of property to entities.
- Provisional arrest is also possible pending a formal extradition request from an entity.
- Under certain conditions our courts may deal with extraditable cases committed outside the RSA with the NDPP's written permission.

Discussion on the Bill

- **Chapter 1** of the Bill, which contains the introductory provisions, provides for the definitions and a clause on the application of the Act, including a reference to the applicability of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

- **Chapter 2** of the Bill deals with the general principles applicable to extradition, including what constitutes an extraditable offence, the enforcement of sentences and aspects relating to defences.

- **Chapter 3** of the Bill regulates the basis upon which the RSA incurs extradition obligations and the relationship between the Act and extradition agreements.

- **Chapter 4** of the Bill regulates aspects relating to the extradition of a person to the RSA.

Discussion on the Bill

Chapter 5 of the Bill deals with extradition from RSA and contains various parts:

- **Part 1** deals with the request from a foreign State for the extradition of a person sought;
- **Part 2** deals with provisional arrest, pending the receipt by RSA of a request from a foreign State for the extradition of a person sought;
- **Part 3** deals with extradition proceedings after the arrest of a person sought without a warrant;
- **Part 4** regulates the extradition enquiry;
- **Part 5** deals with appeal procedures;
- **Part 6** regulates the powers of the Minister relating to the extradition to the foreign State of the person sought after the finalisation of the extradition enquiry;
- **Part 7** provides for consent by the person sought, to be extradited; and
- **Part 8** deals with the removal of the person sought to the foreign State.

Discussion on the Bill

- **Chapter 6** of the Bill regulates aspects relating to the surrender of a person sought by an international entity (international tribunal) in respect of international crimes (such as genocide, war crimes and crimes against humanity).

- **Chapter 7** of the Bill contains the general provisions, including the granting of extra-territorial jurisdiction under certain circumstances to the courts in the RSA and the conducting of the extradition inquiries by trained and designated magistrates.

- The Bill repeals the Extradition Act, 1962.

New Constitutional Court Judgment

- During certification process for introduction of the Bill, the Constitutional Court, on 23 December 2025, issued a judgment in the matter of **Wares v Additional Magistrates Simonstown and Others [2025] ZACC 29** in which section 10(1) of the Act was declared to be unconstitutional to the extent that it does not make provision for magistrates to extend or grant bail after issuing a committal order.

- With the Committee's indulgence, the amendments (to clause 48 of the Bill) in order to comply with the judgment, may be dealt with during the clause-by-clause deliberations on the Bill.

New developments on extradition request

- Government has noted a new trend where fugitives who are subject of incoming request for extradition proceedings apply for asylum status in the country.

- On 5 October 2026, the Department met with the Department of Home Affairs and the National Prosecuting Authority (NPA) to discuss these challenges.

- The meetings resolved that there is need to further strengthen the Bill in respect of:

✔ information (identity and status of a person in RSA) that must be provided with the request to the Minister for consideration;
✔ making provision for representations to the Minister; and
✔ clarifying the role of the Department of Home Affairs.

- The Department also advised the NPA to provide written submissions to the Portfolio Committee (during consultation stage) on the proposals for consideration.

- With the Committee's indulgence, the amendments to the Bill may also be dealt with during the clause-by-clause deliberations on the Bill.

The End

Thank you

