

REPUBLIC OF SOUTH AFRICA

INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS AMENDMENT 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. 52968 of
11 July 2025)*
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the International Co-operation in Criminal Matters Act, 1996, so as to insert certain definitions; to facilitate the provision of evidence to an entity in order to ensure that South Africa complies with its international obligations; to provide for evidence by means of audio-visual link; and to provide for matters incidental thereto.

Amendment of section 1 of Act 75 of 1996, as amended by section 79 of Act 121 of 1998

(a) by the insertion after the definition of “appropriate government body” of the following definition:

“**‘audio-visual link’** means an electronic link between the court point and the remote point;”

(b) by the insertion after the definition of “confiscation order” of the following definition:

“ **‘court point’** means the courtroom or other place from where the letter of request referred to in section 2(1) was issued;” and

(c) by the insertion after the definition of “regulation” of the following definition: 15

“ ‘**remote point**’ means the room or place where the person who is to give evidence in terms of a letter of request is located;”.

2. The following section is hereby inserted after section 2 of the principal Act:

“Evidence by means of audio-visual link 20

2A. (1) Subject to subsections (2) and (3), evidence to be obtained in terms of this Act, may be given by means of an audio-visual link.

(2) A court or presiding officer, on own initiative or on application by the prosecutor or the accused, may make an order that evidence referred to in subsection (1) be given by means of an audio-visual link.

(3) A court or presiding officer may only make an order referred to in subsection (2), if the audio-visual link—

- (a) is equipped with facilities which enable appropriate persons—
 - (i) who are at the court point to see and hear the person giving the evidence; and
 - (ii) at the remote point to see and hear the appropriate persons at the court point; and
 - (b) is readily available or obtainable.
- (4) A court or presiding officer who makes an order referred to in subsection (2)—
- (a) may, in order to ensure a fair and just trial, make the giving of evidence in terms of subsection (1) subject to such conditions as the court or presiding officer may deem necessary; and
 - (b) must ensure that the examination of a person giving evidence by means of an audio-visual link is consistent with the interests of justice.
- (5) The prosecutor and the accused have the right to question a witness who gives evidence by means of an audio-visual link and to observe his or her reaction.
- (6) A person who is outside the Republic and who gives evidence in terms of subsection (1) is regarded as a person who was subpoenaed to give evidence in the court in question.”.

Insertion of Chapter 2A in Act 75 of 1996

3. The following Chapter is hereby inserted after section 12 of the principal Act:

“CHAPTER 2A

CO-OPERATION WITH AND JUDICIAL ASSISTANCE TO ENTITIES

Definitions

12A. For the purposes of this Chapter, unless the context otherwise indicates—

‘**competent authority**’ means a relevant organ or authority responsible for the investigation and prosecution of international crime, and international liaison on behalf of an entity;

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

‘**international crime**’ means a crime in respect of which an entity has the power to prosecute a person;

‘**proceedings**’ means criminal proceedings and any other proceedings before an entity, instituted for the purpose of determining whether any act, omission or conduct involves or amounts to an international crime by any person, and includes an investigation for purposes of a prosecution;

‘**request**’ means a request for assistance made by an entity in terms of this Chapter; and

‘**specific agreement**’ means an agreement provided for in section 27(1A).

Requests for assistance in obtaining evidence

12B. (1) A request by an entity for assistance in obtaining evidence in the Republic for use by the entity must be in writing and be submitted to the Director-General.

(2) Upon receipt of the request, the Director-General must satisfy himself or herself that—

- (a) proceedings have been instituted by the entity which made the request;
- (b) there are reasonable grounds for believing that an international crime has been committed which falls within the jurisdiction of the entity; or
- (c) it is necessary to determine whether an international crime has been committed which falls within the jurisdiction of the entity and that an investigation in respect thereof is being conducted by the entity.

(3) For purposes of subsection (2), the Director-General may rely on a certificate purported to be issued by the competent authority of the entity concerned, stating the facts referred to in paragraph (a), (b) or (c) of that subsection.

(4) If the Director-General is, as envisaged in subsection (2), satisfied, the request must be submitted to the Minister for approval.

(5) Upon being notified of the Minister's approval the Director-General must forward the request to the magistrate within whose area of jurisdiction the witness resides.

Examination of witnesses

12C. (1) The magistrate to whom a request has been forwarded in terms of section 12B(5) must cause the person whose evidence is required, to be subpoenaed to appear before him or her to give evidence or to produce any book, document or object.

(2) A person referred to in subsection (1) must be subpoenaed in the same manner as a person who is subpoenaed to appear as a witness in proceedings in a magistrate's court.

(3) Upon the appearance of the person, the magistrate must administer an oath to, or accept an affirmation from, him or her and take the evidence of the person upon interrogatories or otherwise as requested, as if the person was a witness in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required: Provided that—

(a) a person who from lack of knowledge arising from youth, defective education or other cause, is found to be unable to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in the proceedings without taking the oath or making the affirmation; and

(b) the person must, in lieu of the oath or affirmation, be called upon by the magistrate to speak the truth, the whole truth and nothing but the truth.

(4) Upon completion of the examination of the witness, the magistrate taking the evidence must certify the evidence to be correct and transmit the record to the Director-General, together with a certificate setting out the costs incurred in connection with the examination of the witness, including any extraordinary costs which emanated from the examination of the witness.

(5) If the services of an interpreter were used at the examination of the witness, the interpreter must certify that he or she has translated truthfully and to the best of his or her ability, and such certificate must accompany the documents transmitted by the magistrate to the Director-General.

Rights and privileges of witnesses

12D. (1) In respect of the giving of evidence or the production of any book, document or object at an examination in terms of section 12C, the laws of the Republic relating to privilege as applicable to a witness giving evidence or subpoenaed to produce a book, document or object in a magistrate's court in similar proceedings apply.

(2) Where a witness at an examination claims privilege on the ground that he or she could not have been compelled to give the particular evidence in proceedings before the entity, the magistrate must record the witness' objection and may postpone the proceedings in order to obtain from the competent authority of the entity an intimation as to whether or not the witness could in proceedings before the entity be compelled to give the evidence in question.

(3) Where a witness' claim to privilege is not recognised by the competent authority of the entity, the magistrate must reject his or her objection and proceed to take the evidence.

(4) Any person required to give evidence at an examination under section 12C is entitled to payment of such expenses and fees as are payable to witnesses in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required.

Offences by witnesses

- 12E.** (1) Any person subpoenaed to appear to give evidence or produce any book, document or object before a magistrate conducting an examination who, without sufficient cause—
- (a) fails to attend at the time and place specified or to remain in attendance until the conclusion of the examination or until he or she is excused from further attendance by the magistrate conducting the examination; 5
 - (b) refuses to be sworn or to make affirmation as a witness;
 - (c) having been sworn or having made affirmation or having been admonished, fails to answer satisfactorily any question put to him or her; or 10
 - (d) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was subpoenaed to produce, 15
- is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.
- (2) Any person who, after having been sworn or having made an affirmation or having been admonished as referred to in section 12C(3), gives false evidence before the person taking an examination, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalty prescribed by law for perjury. 20

Attendance of witnesses before entity

- 12F.** (1) A subpoena issued by the competent authority of an entity for the attendance of a person in any proceedings before that entity must be transmitted to the Director-General by the person receiving it in the Republic. 25
- (2) Upon receipt of the subpoena, the Director-General must immediately transmit it to the magistrate within whose area of jurisdiction the person resides or is present. 30
- (3) Upon receipt of the subpoena the magistrate must, if satisfied that the subpoena was lawfully issued, endorse it for service upon the person.
- (4) The subpoena may be served as if it was a subpoena issued in the court of such magistrate in proceedings similar to those in connection with which it was issued. 35
- (5) Upon service of the subpoena on the witness, an amount sufficient to cover reasonable expenses in connection with his or her attendance of the proceedings, must be tendered to him or her.
- (6) Any person subpoenaed under this section who, without sufficient cause, fails to attend at the time and place specified in the subpoena, is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months. 40
- (7) Any magistrate's court within whose area of jurisdiction the subpoena has been served or the person subpoenaed resides, has jurisdiction to try such person for a contravention of subsection (6). 45
- (8) For the purposes of subsection (6), a return of service indicating that the subpoena was properly served on the person concerned, together with a certificate by the presiding officer of the court where the person was to appear, to the effect that the person failed to appear at the time and place specified in the subpoena, is *prima facie* proof that the person failed to appear as contemplated in that subsection. 50

Service of process and documents

- 12G.** (1) A request by an entity for assistance to serve a process or document, except a subpoena referred to in section 12F(1), in connection with any proceedings before the entity, to a person in the Republic, must be transmitted to the Director-General. 55
- (2) Upon receipt of the request referred to in subsection (1), the Director-General must immediately transmit it, together with the process or

document, to the Provincial Commissioner of the South African Police Service within whose area of jurisdiction the person resides, for service on the person concerned.

(3) Upon receipt of the request, the Provincial Commissioner of the South African Police Service must cause the process or document to be served on the person concerned in the manner specified in the request.

(4) The Provincial Commissioner of the South African Police Service must send the return of service to the Director-General for transmission to the entity.

Enforcement of order of entity

12H. (1) When the Director-General receives a request from the entity for assistance in enforcing an order issued against a person who has been served with a subpoena in terms of section 12F or a process or document in terms of section 12G, with which he or she has failed to comply, the Director-General must transmit the request together with a certified copy of the order to the magistrate within whose area of jurisdiction the person resides or is present.

(2) Upon receipt of the request together with a certified copy of the order, a magistrate may, if he or she is satisfied that the order was issued by the competent authority of the entity, and is not subject to any review or appeal, issue a warrant for the arrest of the person named in the order.

(3) A person arrested in terms of the warrant referred to in subsection (2) must be brought before a magistrate in whose area of jurisdiction the person was arrested, within 48 hours of the arrest.

(4) The magistrate must order that the person be delivered to the custody of the entity, if he or she is satisfied that—

- (a) the person arrested is the person named in the order by the competent authority of the entity;
- (b) he or she was served with a subpoena or a process or document in terms of section 12F or 12G; and
- (c) he or she failed to comply with the process.

Designation of Republic as State in which sentence may be served and enforcement of sentence

12I. Sections 31 and 32 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, apply, with the necessary changes required by the context, to the designation of the Republic and enforcement of sentence.”.

Amendment of section 26 of Act 75 of 1996

4. Section 26 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The registration of a foreign restraint order in terms of section 24 shall, on the application of the person against whom the order has been made or who has an interest in the property concerned, be set aside if the court at which the order was registered is satisfied—”; and

- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) that the order **[is subject to review or appeal]** has been set aside in the requesting State;”.

Amendment of section 27 of Act 75 of 1996

5. Section 27 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The President may, on such conditions as deemed fit, enter into any agreement to provide for co-operation and judicial assistance to an entity, or for the enforcement of any order or sentence, and may agree to any amendment of the agreement.”. 5

Insertion of section 31A in Act 75 of 1966

6. The following section is hereby inserted after section 31 of the principal Act:

“**Application for legal aid** 10

31A. Any person called upon to give evidence at an examination in terms of this Act may apply for legal aid in terms of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014).”.

Substitution of long title of Act 75 of 1996

7. The following long title is hereby substituted for the long title of the principal Act: 15

“**To facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of international crime between the Republic and foreign States; to facilitate the provision of evidence, the service of process and the enforcement of orders at the request of an entity in respect of an international crime; and to provide for matters connected therewith.**” 20

Short title and commencement

8. This Act is called the International Co-operation in Criminal Matters Amendment Act, 2025, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 25

MEMORANDUM ON THE OBJECTS OF THE INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS AMENDMENT BILL, 2025

1. PURPOSE OF BILL

The primary aim of the International Co-operation in Criminal Matters Amendment Bill (“the Bill”) is to amend the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996) (“the Act”), in order to facilitate the provision of evidence, the execution of sentences and the confiscation and transfer of proceeds of crime between the Republic and the international criminal Tribunals (*entities*) to ensure that South Africa complies with its international obligations.

2. OBJECTS OF BILL

2.1 Chapter 2 of the Act provides for the mutual provision of evidence between the Republic and foreign States. Sections 2 to 6 of the Act deal with requests from the Republic to foreign States to obtain information or evidence. Sections 7 to 11 deal with requests from foreign States to the Republic to obtain information or evidence. In order to provide for evidence to be obtained by way of audio-visual link, Chapter 2 of the Act is amended by the insertion of a new section 2A. The proposed section 2A contains new expressions relating to giving evidence by means of audio-visual link, which needs to be defined.

Clause 1 amends section 1 of the Act to include new definitions, namely, “court point”; “remote point”; and “audio-visual link”. These definitions were prepared using the definitions in section 159A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (“the CPA”) as a point of departure.

2.2 **Clause 2** inserts a new section 2A. The clause empowers the court or presiding officers to order that evidence may be given by means of audio-visual link. The court may grant the order on its own initiative or on application by the prosecutor or accused, and may attach to the order any necessary condition. The court must ensure that the order to give evidence by means of an audio-visual link is consistent with the interests of justice. A prosecutor or an accused may question a witness who gives evidence by means of audio-visual link. The clause has been prepared having regard to sections 158, 159A and the ensuing provisions of the CPA. In addition, cognisance has been taken of the views expressed by the court in *S v Cwele* (a 2010 KZN High Court, Pietermaritzburg case). The proposed section 2A is also in line with international trends in embracing the advancement in technology and its benefits to legal processes. A similar provision is found in the Rules of Procedure and Evidence (made under the implementation of the Rome Statute of the International Criminal Court (“ICC”), and the ICTY Statute Rome Statute*.

2.3 **Clause 3** inserts Chapter 2A, providing for co-operation with and judicial assistance to entities. Chapter 2A contains proposed sections 12A– 12I, as briefly discussed below.

2.3.1 The proposed section 12A contains definitions of new concepts relating to entities, including “international crime”, “entity”, “competent authority”.

2.3.2 The proposed section 12B, deals with a request by an entity for assistance in obtaining evidence in the Republic. A request must be in writing and must be submitted to the Director-General of the Department of Justice and Constitutional Development. The Director-General must satisfy himself or herself that an investigation or

* Rule 67, ICTY- Rule 81

proceedings have been instituted by the entity, or may be instituted, and must then submit the request to the Minister for approval to obtain evidence. If approved by the Minister of Justice and Constitutional Development, the request is forwarded to a relevant magistrate to obtain the required evidence. This provision is in line with section 7 of the Act, which provides for a request by a court in a foreign State, and section 15 of the Rome Statute which provides for a similar request by the ICC.

- 2.3.3 The proposed section 12C deals with the examination of a witness in order to obtain the evidence requested in terms of the proposed section 12B. The witness must appear before a magistrate who must administer the oath or accept an affirmation from the person and take down his or her evidence. The magistrate must record and certify the evidence, and submit the record to the Director-General, together with a certificate of the costs incurred in connection with the examination of the witness. The proposed section 12C is based on section 8 of the Act and section 15 of the Rome Statute.
- 2.3.4 The proposed section 12D sets out the rights and privileges of a witness giving evidence. A witness giving evidence is entitled to the rights and privileges in terms of the applicable laws of the Republic. If a witness claims protection or privilege in terms of the laws applicable to an entity, the magistrate must postpone the proceedings to ascertain from the competent authority of the entity as to whether or not the witness could, in proceedings before the entity, be compelled to give the evidence in question. The proposed section 12D is in line with section 9 of the Act and section 17 of the Rome Statute.
- 2.3.5 The proposed section 12E deals with offences by persons who are called upon to give evidence. A witness subpoenaed in terms of the proposed section 12B, who fails to appear or to remain in attendance, refuses to take an oath or make an affirmation, fails to answer questions satisfactorily or fails to produce books, documents or objects, and a witness who gives false evidence, commits an offence. The provision is in line with section 10 of the Act and section 18 of the Rome Statute.
- 2.3.6 The proposed section 12F provides for the attendance of a witness before an entity. An entity or a competent authority of an entity that issues a subpoena for a person to attend proceedings must submit the subpoena to the Director-General. The Director-General must forward the subpoena to a relevant magistrate, who must endorse it in order to be served upon the person in question. The witness must be given sufficient funds to cover the costs of attending the proceedings. Failure to comply with the subpoena is an offence. The proposed section 12F is similar to section 11 of the Act and section 19 of the Rome Statute.
- 2.3.7 The proposed section 12G deals with the service of process or a document, other than a subpoena provided for in the proposed clause 12F. An entity must submit a request for service to the Director-General, who will in turn forward it to the Provincial Commissioner of the South African Police Service for service on the person concerned. The Provincial Commissioner must, upon service of the document or process, forward the return of service to the Director-General to be transmitted to the entity. This section is similar to section 23 of the Rome Statute.
- 2.3.8 The proposed section 12H provides for the enforcement of any order issued by an entity against a person who has been served with a subpoena in terms of section 12F, or a process or document in terms of the proposed section 12G and in respect of which he or she has failed to comply with. A request for the enforcement of such an order must be

transmitted to the Director-General. The Director-General must submit the request to the relevant magistrate in whose area of jurisdiction the person resides or is present. A magistrate may issue a warrant for the arrest of the person if he or she is satisfied that the order was issued by a competent authority of the entity and that it is not subject to any review or appeal. On appearance before the magistrate, the magistrate may, if he or she is satisfied that the person is the person named in the order, that the person was served with a subpoena or document in terms of proposed section 12F or 12G and that he or she has failed to comply with the process, order that the person be handed to an entity. There is no similar provision in the Act or in the Rome Statute. However, the view is held that it is necessary to include a provision that will ensure that orders or subpoenas issued by the entity are complied with, notwithstanding the fact that failure to comply with an order or to appear when subpoenaed is an offence in terms of proposed section 12E.

2.3.9 The proposed section 12I provides for the designation of the Republic as a State in which a prisoner sentenced by an entity may serve his or her sentence. Sections 31 and 32 of the Rome Statute contain similar provisions in respect of the ICC and these sections are incorporated into the Act to apply in respect of a prisoner sentenced by an entity.

2.4 **Clause 4** amends section 26 of the Act, which determines that a foreign restraint order needs to remain in place despite litigation being conducted.

2.5 **Clause 5** amends section 27 of the Act, which empowers the President to enter into an agreement to provide for cooperation and judicial assistance to an entity, or for the enforcement of any order or sentence, and may agree to any amendment of the agreement.

2.6 **Clause 6** inserts a new section 31A in the Act in order to allow a person who has been called upon to give evidence in terms of the Act, to apply for legal aid in terms of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014).

2.7 **Clause 7** deals with the amendment of the long title of the Act which only refers to assistance to foreign States. As provision has now been made in the Bill for assistance to entities as well, the long title of the Act needs to refer to this aspect.

2.8 **Clause 8** deals with the short title and commencement of the Act.

3. CONSULTATION

3.1 The Bill was developed during the Sixth Administration, in conjunction with representatives of relevant government departments involved in operational issues relating to extradition and international co-operation in criminal matters (“the Extradition Committee”). The Extradition Committee also advised the then Minister of Justice and Correctional Services on policy issues relating to extradition. The Extradition Committee is an interdepartmental committee, consisting of representatives of critical Departments and agencies, including the South African Police Service, the National Prosecuting Authority and the Department of International Relations and Cooperation.

3.2 The Department recently presented the draft Bill to the Justice, Crime Prevention and Security Directors-General Cluster, which recommended that the Bill be further processed to Cabinet. The Bill was published in the *Gazette* and the public were invited to submit comments thereon.

3.3 In addition to the above-mentioned structures, the Bill was also presented to the Global and Continental Affairs Committee (“GCAC”) which gave its recommendation on 15 July 2022, for further processing of the Bill during the Sixth Administration.

4. IMPLICATIONS FOR PROVINCES

There are no implications for the provinces.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill does not create substantial and new financial implications. It is envisaged that costs relating to the attendance and examination of witnesses will be minimal.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill should be dealt with in accordance with procedure set out in section 75 of the Constitution, since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The Constitution distinguishes between four categories of Bills, as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged; otherwise it would be constitutionally invalid.

6.3 The crux of tagging has been explained by the courts, especially the Constitutional Court in the case of *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC). The court in its judgment stated as follows:

“[72] To summarise: any Bill whose provisions substantially affects the interest of the provinces must be enacted in accordance with the procedures stipulated in section 76 of the Constitution. This naturally includes proposed legislation over which the provinces themselves have concurrent legislative power, but it goes further. It includes Bills providing for legislation envisaged in the further provisions set out in section 76(3)(a)–(f), over which the provinces have no legislative competence, as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 remains relevant to all Bills that do not, in substantial measure, affect the provinces. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)–(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.”

6.4 In light of what the Constitutional Court stated in the abovementioned case, the test essentially entails that “any Bill whose provisions in substantial measure” affects the provinces must be classified to follow the section 76 procedure.

6.5 The Bill deals with administration of justice, specifically international cooperation in criminal matters, which is a residual area of national legislative competence. Consequently, this Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

7. REFERRAL TO NATIONAL HOUSE OF TRADITIONAL AND KHOI-SAN LEADERS

The opinion is held that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders, in terms of section 39(1)(a)(ii) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional and Khoi-San communities and does not pertain to matters referred to in section 154(2) of the Constitution.

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