

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CRIMINAL LAW
AMENDMENT BILL**

[B 46—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 46A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
STRAFREGWYSIGINGS-
WETSONTWERP**

[W 46—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 46A—97]

ISBN 0 621 27504 2

AMENDMENTS AGREED TO

CRIMINAL LAW AMENDMENT BILL [B 46—97]

PREAMBLE

1. On page 2, after the eighth line, to insert:

AND WHEREAS it is necessary to make provision for the setting aside of all such sentences in accordance with law and their substitution by lawful punishments,

CLAUSE 1

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause 1:

Substitution of sentence of death

1. (1) The Minister of Justice shall, as soon as practicable after the commencement of this Act, refer the case of every person who has been sentenced to death and has in respect of that sentence exhausted all the recognised legal procedures pertaining to appeal or review, or no longer has such procedures at his or her disposal, to the court in which the sentence of death was imposed.

(2) The court shall consist of the judge who imposed the sentence in question or, if it cannot be so constituted, the Judge President of the court in question shall designate any other judge of that court to deal with the matter in terms of subsection (3).

(3) (a) The court shall be furnished with written argument on behalf of the person sentenced to death and the prosecuting authority.

(b) The court shall consider the written arguments and the evidence led at the trial and advise the President, with full reasons therefor, of the need to set aside the sentence of death and of the appropriate sentence to be substituted in its place.

(4) The President shall set aside the sentence of death and substitute for the sentence of death the punishment advised by the court.

(5) No appeal shall lie in respect of any aspect of the proceedings, finding or advice of the court in terms of subsection (3).

(6) (a) Pending the commencement of the Legal Aid Guide as contemplated in section 3A of the Legal Aid Act, 1969 (Act No. 18 of 1969), and to the extent that the Legal Aid Guide as it exists at the commencement of this Act does not regulate the position of the granting of legal aid or legal representation in respect of the proceedings referred to in subsections (1) to (5), the Legal Aid Board may issue directives, in consultation with the Minister of Justice, in terms of which legal aid or legal representation may be rendered or made available for purposes of subsections (1) to (5).

(b) (i) The directives contemplated in paragraph (a) shall be published in the *Gazette* by the Minister of Justice.

(ii) Before the directives are published in the *Gazette*, they shall be submitted to Parliament and tabled as soon as possible.

(7) The appeal of every person who has been sentenced to death and who has appealed to the Supreme Court of Appeal against that sentence and not against conviction, shall be heard by the full court of the division which would have heard such an appeal if a direction in terms of section 315(2)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), had, at the time the appeal was noted, been competent and been made by the trial court.

(8) The registrar of the Supreme Court of Appeal shall, as soon as practicable after the commencement of this Act, remit the record of every appeal referred to in subsection (7) to the registrar of the court which will hear such appeal.

(9) The full court shall, in hearing an appeal referred to it in terms of subsection (7), set aside the sentence of death and thereafter have the same powers it would have had if the appeal had been referred to it in terms of section 315(2)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(10) All other appeals in cases where the sentence of death was imposed and which are either part heard or pending before the Supreme Court of Appeal shall be disposed of by that court, which for that purpose shall have the powers set forth in section 322(2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(11) For the purposes of this section, any provision of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), amended or repealed by this Act, shall be deemed not to be so amended or repealed.

CLAUSE 26

Clause rejected.

CLAUSE 28

1. On page 14, in line 20, to omit “6 June 1995” and to substitute “27 April 1994”.

CLAUSE 52

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 51:

Minimum sentences for certain serious offences

52. (1) Notwithstanding any other law but subject to subsections (3) and (6), a High Court shall, if it has convicted a person of an offence referred to in Part I of Schedule 2, sentence the person to imprisonment for life.

(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall—

- (a) if it has convicted a person of an offence referred to in Part II of Schedule 2, sentence the person, in the case of—
 - (i) a first offender, to imprisonment for a period not less than 15 years;
 - (ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and
 - (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years;
- (b) if it has convicted a person of an offence referred to in Part III of Schedule 2, sentence the person, in the case of—
 - (i) a first offender, to imprisonment for a period not less than 10 years;
 - (ii) a second offender of any such offence, to imprisonment for a period not less than 15 years; and
 - (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 20 years; and
- (c) if it has convicted a person of an offence referred to in Part IV of Schedule 2, sentence the person, in the case of—
 - (i) a first offender, to imprisonment for a period not less than 5 years;
 - (ii) a second offender of any such offence, to imprisonment for a period not less than 7 years; and
 - (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 10 years;

Provided that the maximum sentence that a regional court may impose in terms of this subsection shall not be more than five years longer than the minimum sentence that it may impose in terms of this subsection.

(3) (a) If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.

(b) If any court referred to in subsection (1) or (2) decides to impose a sentence prescribed in those subsections upon a child who was 16 years of age or older, but under the age of 18 years, at the time of the commission of the act which constituted the offence in question, it shall enter the reasons for its decision on the record of the proceedings.

(4) Any sentence contemplated in this section shall be calculated from the date of sentence.

(5) The operation of a sentence imposed in terms of this section shall not be suspended as contemplated in section 297(4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(6) The provisions of this section shall not be applicable in respect of a child who was under the age of 16 years at the time of the commission of the act which constituted the offence in question.

(7) If in the application of this section the age of a child is placed in issue, the onus shall be on the State to prove the age of the child beyond reasonable doubt.

(8) For the purposes of this section and Schedule 2, “law enforcement officer” includes—

- (a) a member of the National Intelligence Agency or the South African Secret Service established under the Intelligence Services Act, 1994 (Act No. 38 of 1994); and
- (b) a correctional official of the Department of Correctional Services or a person authorised under the Correctional Services Act, 1959 (Act No. 8 of 1959).

NEW CLAUSE

1. That the following be a new Clause to follow Clause 52:

Committal of accused for sentence by High Court after plea of guilty or trial in regional court

53. (1) If a regional court, after it has convicted an accused of an offence referred to in Schedule 2 following on—

- (a) a plea of guilty; or
(b) a plea of not guilty,

but before sentence, is of the opinion that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a regional court in terms of section 52, the court shall stop the proceedings and commit the accused for sentence by a High Court having jurisdiction.

(2) (a) Where an accused is committed under subsection (1)(a) for sentence by a High Court, the record of the proceedings in the regional court shall upon proof thereof in the High Court be received by the High Court and form part of the record of that Court, and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the Court that such plea or such admission was incorrectly recorded.

(b) Unless the High Court in question—

- (i) is satisfied that a plea of guilty or an admission by the accused which is material to his or her guilt was incorrectly recorded; or
(ii) is not satisfied that the accused is guilty of the offence of which he or she has been convicted and in respect of which he or she has been committed for sentence,

the Court shall make a formal finding of guilty and sentence the accused as contemplated in section 52.

(c) If the Court is satisfied that a plea of guilty or any admission by the accused which is material to his or her guilt was incorrectly recorded, or if the Court is not satisfied that the accused is guilty of the offence of which he or she has been convicted and in respect of which he or she has been committed for sentence or that he or she has no valid defence to the charge, the Court shall enter a plea of not guilty and proceed with the trial as a summary trial in that Court: Provided that any admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(d) The provisions of section 112(3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply with reference to the proceedings under this subsection.

(3) (a) Where an accused is committed under subsection (1)(b) for sentence by a High Court, the record of the proceedings in the regional court shall upon proof thereof in the High Court be received by the High Court and form part of the record of that Court.

(b) The High Court shall, after considering the record of the proceedings in the regional court, sentence the accused, and the judgment of the regional court shall stand for this purpose and be sufficient for the High Court to pass sentence as contemplated in section 52: Provided that if the judge is of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he or she shall, without sentencing the accused, obtain from the regional magistrate who presided at the trial a statement setting forth his or her reasons for convicting the accused.

(c) If a judge acts under the proviso to paragraph (b), he or she shall inform the accused accordingly and postpone the case for

judgment, and, if the accused is in custody, the judge may make such order with regard to the detention or release of the accused as he or she may deem fit.

(d) The Court in question may at any sitting thereof hear any evidence and for that purpose summon any person to appear to give evidence or to produce any document or other article.

(e) Such Court, whether or not it has heard evidence and after it has obtained and considered a statement referred to in paragraph (b), may—

- (i) confirm the conviction and thereupon impose a sentence as contemplated in section 52;
- (ii) alter the conviction to a conviction of another offence referred to in Schedule 2 and thereupon impose a sentence as contemplated in section 52;
- (iii) alter the conviction to a conviction of an offence other than an offence referred to in Schedule 2 and thereupon impose the sentence the Court may deem fit;
- (iv) set aside the conviction;
- (v) remit the case to the regional court with instruction to deal with any matter in such manner as the High Court may deem fit; or
- (vi) make any such order in regard to any matter or thing connected with such person or the proceedings in regard to such person as the High Court deems likely to promote the ends of justice.

CLAUSE 53

1. On page 22, in line 46, to omit “Section 52” and to substitute “Sections 52 and 53”.
2. On page 24, from line 3, to omit subsection (3) and to substitute:
 - (3) Any appeal against—
 - (a) a conviction of an offence referred to in Schedule 2 of this Act and a resultant sentence imposed in terms of section 52; or
 - (b) a sentence imposed in terms of section 52,
 shall be continued and concluded as if section 52 had at all relevant times been in operation.

LONG TITLE

1. On page 2, in the first line, to omit all the words after “a” up to and including “death” in the second line and to substitute:

for the setting aside of all sentences of death in accordance with law and their substitution by lawful punishments

SCHEDULE 1

1. On page 32, to omit the reference to “Act No. 14 of 1977 (Bophuthatswana)” in all three columns.
2. On page 34, from line 51, to omit the reference to “Act No. 4 of 1979 (Venda)” in all three columns.

SCHEDULE 2

1. On page 42, from line 1, to omit Schedule 2 and to substitute:

SCHEDULE 2
(Section 52)

PART I

Murder, when—

- (a) it was planned or premeditated;
- (b) the victim was—
 - (i) a law enforcement officer performing his or her functions as such, whether on duty or not; or
 - (ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at criminal proceedings in any court;
- (c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:
 - (i) Rape; or
 - (ii) robbery with aggravating circumstances; or
- (d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy.

Rape—

- (a) when committed—
 - (i) in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice;
 - (ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;
 - (iii) by a person who has been convicted of two or more offences of rape, but has not yet been sentenced in respect of such convictions; or
 - (iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;
- (b) where the victim—
 - (i) is a girl under the age of 16 years;
 - (ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or
 - (iii) is a mentally ill woman as contemplated in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
- (c) involving the infliction of grievous bodily harm.

PART II

Murder in circumstances other than those referred to in Part I.

Robbery—

- (a) when there are aggravating circumstances; or
- (b) involving the taking of a motor vehicle.

Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), if it is proved that—

- (a) the value of the dependence-producing substance in question is more than R50 000,00;
- (b) the value of the dependence-producing substance in question is

more than R10 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) the offence was committed by any law enforcement officer.

Any offence relating to—

(a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or

(b) the possession of an automatic or semi-automatic firearm, explosives or armament.

Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft—

(a) involving amounts of more than R500 000,00;

(b) involving amounts of more than R100 000,00, if it is proved that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) if it is proved that the offence was committed by any law enforcement officer—

(i) involving amounts of more than R10 000,00; or

(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

PART III

Rape in circumstances other than those referred to in Part I.

Indecent assault on a child under the age of 16 years, involving the infliction of bodily harm.

Assault with intent to do grievous bodily harm on a child under the age of 16 years.

Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), on account of being in possession of more than 1000 rounds of ammunition intended for firing in an arm contemplated in section 39(2)(a) (i) of that Act.

PART IV

Any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), other than an offence referred to in Part I, II or III of this Schedule, if the accused had with him or her at the time a firearm, which was intended for use as such, in the commission of such offence.