

REPUBLIC OF SOUTH AFRICA

**CRIMINAL LAW AMENDMENT
BILL**

(As amended by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 46B—97]

REPUBLIEK VAN SUID-AFRIKA

**STRAFREGWYSIGINGS-
WETSONTWERP**

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

(MINISTER VAN JUSTISIE)

[W 46B—97]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To make provision for the setting aside of all sentences of death in accordance with law and their substitution by lawful punishments; to amend certain laws so as to repeal provisions relating to capital punishment; to provide for minimum sentences for certain serious offences; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that everyone has the right to life;

AND WHEREAS the Constitutional Court has ruled that the sentence of death is unconstitutional and therefore invalid;

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,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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. 5

(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). 10

(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

(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). 10

(b) (i) The directives contemplated in paragraph (a) shall be published in the *Gazette* by the Minister of Justice. 15

(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. 20

(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. 25

(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). 30

(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). 35

(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.

Amendment of section 83 of Act 44 of 1957, as substituted by section 39 of Act 87 of 1984 and amended by section 25 of Act 132 of 1992 40

2. Section 83 of the Defence Act, 1957, is hereby amended—

- (a) by the deletion in subsection (3) of subparagraph (i) of paragraph (c); and
(b) by the substitution in subsection (3) for the proviso to paragraph (c) of the following proviso:

“Provided that if any such sentence has been imposed by a military court, such commission shall not terminate and shall not be deemed to have been cancelled unless such sentence is confirmed under the First Schedule and, if under any law it may not be carried into effect or be executed (as the case may be), although it has thus been confirmed, unless and until it has been reviewed and endorsed by a board or council of review or, unless and until the finding in question as well as the sentence has been endorsed by a council of review as being in accordance with real and substantial justice **[and has been approved by the State President]**, it has after such confirmation been thus reviewed and endorsed or been thus endorsed **[and approved]**, as the case may be.”. 45
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Amendment of section 1 of First Schedule to Act 44 of 1957

3. Section 1 of the First Schedule to the Defence Act, 1957, is hereby amended by the deletion of the definition of “capital offence”.

Amendment of section 4 of First Schedule to Act 44 of 1957

4. Section 4 of the First Schedule to the Defence Act, 1957, is hereby amended—
- (a) by the substitution for the heading of the following heading:
“**Offences endangering safety of forces**”; and
- (b) by the substitution for the words following upon paragraph (h) of the following words: 5
“shall be guilty of an offence and liable on conviction to **[be sentenced to death]** imprisonment for a period not exceeding 30 years.”.

Substitution of section 51 of First Schedule to Act 44 of 1957

5. The following section is hereby substituted for section 51 of the First Schedule to the Defence Act, 1957: 10

“Alternative punishments

51. The court convicting any person [—
- (a) **of an offence under section four may, instead of imposing sentence of death on that person, impose upon him any other punishment within the jurisdiction of that court;** 15
- (b) of any **[other]** offence under this Code may, instead of imposing upon that person any penalty prescribed herein in respect of such offence, impose upon him or her any other penalty within the court’s jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.”. 20

Amendment of section 52 of First Schedule to Act 44 of 1957

6. Section 52 of the First Schedule to the Defence Act, 1957, is hereby amended by the substitution in subsection (2) for the words preceding the proviso of the following words: 25
- “Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits **[a capital civil offence]** treason, murder, rape or culpable homicide or any offence under section 4 of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he or she is so engaged or commits any such offence”. 30

Amendment of section 58 of First Schedule to Act 44 of 1957

7. Section 58 of the First Schedule to the Defence Act, 1957, is hereby amended by the substitution for the proviso of the following proviso: 35
- “Provided that a person charged with **[a capital civil offence]** treason, murder, rape or culpable homicide committed by him or her outside the Republic or an offence under section 4, 10, 13 or 29 of this Code may be tried by a military court at any time after the commission of the offence.”.

Amendment of section 59 of First Schedule to Act 44 of 1957

8. Section 59 of the First Schedule to the Defence Act, 1957, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 40
- “(a) in the case where that offence is **[a capital civil offence]** treason, murder, rape or culpable homicide committed outside the Republic or an offence under section 4, 10, 13 or 29, be tried and punished for that offence by that military court at any time after he or she has ceased to be so subject; and”. 45

Substitution of section 71 of First Schedule to Act 44 of 1957

9. The following section is hereby substituted for section 71 of the First Schedule to the Defence Act, 1957:

“Jurisdiction of ordinary court martial

71. An ordinary court martial shall have jurisdiction to try any person 5
subject to this Code, not being an officer, for any offence, other than [a
capital civil offence] treason, murder, rape or culpable homicide committed
by him or her within the Republic or an offence under section 4 or 5, and
may in respect of any such offence impose any penalty which could be
imposed in respect thereof by a general court martial, except imprisonment 10
for a period exceeding two years.”.

Amendment of section 72 of First Schedule to Act 44 of 1957

10. Section 72 of the First Schedule to the Defence Act, 1957, is hereby amended by
the substitution in subsection (1) for the words preceding the proviso of the following 15
words:

“A general court martial shall, subject to the provisions of subsection (2), consist
of not less than three or (in the case of a trial for [a **capital offence**] treason, murder,
rape or culpable homicide) not less than five members, all of whom shall be officers
of the South African National Defence Force who have held commissioned rank
other than temporary commissioned rank for not less than three years, and shall be 20
constituted and convened as may be prescribed”.

Amendment of section 81 of First Schedule to Act 44 of 1957

11. Section 81 of the First Schedule to the Defence Act, 1957, is hereby amended by
the deletion of the proviso to subsection (1).

Amendment of section 89 of First Schedule to Act 44 of 1957 25

12. Section 89 of the First Schedule to the Defence Act, 1957, is hereby amended—
(a) by the deletion of the proviso to subsection (1); and
(b) by the deletion of the proviso to subsection (2).

Amendment of section 91 of First Schedule to Act 44 of 1957

13. Section 91 of the First Schedule to the Defence Act, 1957, is hereby amended— 30
(a) by the deletion of subparagraph (i) of paragraph (a) of subsection (1);
(b) by the deletion of subparagraph (i) of paragraph (b) of subsection (1); and
(c) by the deletion of subparagraph (i) of paragraph (c) of subsection (1).

Amendment of section 93 of First Schedule to Act 44 of 1957

14. Section 93 of the First Schedule to the Defence Act, 1957, is hereby amended by 35
the deletion of subsection (1).

Repeal of sections 104 and 105 of First Schedule to Act 44 of 1957

15. Sections 104 and 105 of the First Schedule to the Defence Act, 1957, are hereby
repealed.

Substitution of section 106 of First Schedule to Act 44 of 1957 40

16. The following section is hereby substituted for section 106 of the First Schedule
to the Defence Act, 1957:

“When sentence to be executed

106. Subject to the provisions of [sections *one hundred and three and one hundred and four*] section 103, any sentence shall be executed as soon as possible after it has been confirmed.”.

Substitution of section 114 of First Schedule to Act 44 of 1957

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17. The following section is hereby substituted for section 114 of the First Schedule to the Defence Act, 1957:

“Council of review to hear argument in certain cases

114. In any case in which [sentence of death or] a sentence of 12 months imprisonment or more or of cashiering has been imposed, or where application has been made by the offender in terms of section 112 for the review of the proceedings of his or her case, the council of review shall, at the request of the offender, allow the offender or his or her counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Adjutant-General in his or her stead, to appear before it and hear argument on the issues in the case.”.

Amendment of section 145 of First Schedule to Act 44 of 1957

18. Section 145 of the First Schedule to the Defence Act, 1957, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) in matters where [**a capital offence**] treason, murder, rape or culpable homicide is involved, of three judges or retired judges of [**the Supreme**] any High Court [of South Africa] (one of whom shall be appointed as [**chairman**] chairperson by the Minister), one officer of the Permanent Force and one person who has had experience in the field on service; and”.

Amendment of section 147 of First Schedule to Act 44 of 1957

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19. Section 147 of the First Schedule to the Defence Act, 1957, is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

“The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as may be prescribed for the execution of any sentence of [**death**] imprisonment, detention or field punishment imposed by a military court”.

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985, section 1 of Act 92 of 1990, section 1 of Act 122 of 1991, section 5 of Act 135 of 1991, section 1 of Act 68 of 1993, section 1 of Act 116 of 1993, section 1 of Act 135 of 1993 and section 1 of Act 79 of 1996

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20. Section 1 of the Correctional Services Act, 1959, is hereby amended by the deletion of subparagraph (ii) of paragraph (a) of the definition of “prisoner”.

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Repeal of section 35 of Act 8 of 1959

21. Section 35 of the Correctional Services Act, 1959, is hereby repealed.

Amendment of section 44 of Act 8 of 1959, as substituted by section 6 of Act 88 of 1977 and amended by section 10 of Act 104 of 1983, section 16 of Act 92 of 1990, section 2 of Act 80 of 1992 and section 27 of Act 79 of 1996

22. Section 44 of the Correctional Services Act, 1959, is hereby amended—
- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph: 5
- “(ii) is found loitering within one hundred metres of any prison on or any other place where prisoners may be for the purpose of imprisonment or labour [**or within one hundred metres of any burial referred to in section 35(4)(b)**] and who fails to depart therefrom upon being ordered so to do by any correctional official or a member of the South African Police Service;”; and 10
- (b) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (e) of the following subparagraphs, respectively:
- “(i) makes a sketch or takes a photograph of any prison or portion of a prison [**or any burial referred to in section 35(4)(b)**]; 15
- (ii) publishes or causes to be published in any manner whatsoever any sketch or photograph of any prison or portion of a prison [**or any burial referred to in section 35(4)(b)**];”.

Amendment of section 86 of Act 8 of 1959, as amended by section 18 of Act 104 of 1983 20

23. Section 86 of the Correctional Services Act, 1959, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) The Commissioner shall [**save where death has occurred pursuant to a judicial sentence**] also cause an enquiry to be held as to any death in any prison from other than natural causes, and report thereon to the Minister.”. 25

Amendment of section 94 of Act 8 of 1959, as amended by section 37 of Act 80 of 1964, section 24 of Act 75 of 1965, section 17 of Act 101 of 1969, section 8 of Act 92 of 1970, section 17 of Act 62 of 1973, section 6 of Act 43 of 1981, section 20 of Act 104 of 1983, section 46 of Act 97 of 1986, section 28 of Act 92 of 1990, section 31 of Act 122 of 1991, section 26 of Act 68 of 1993 and section 15 of Act 135 of 1993 30

24. Section 94 of the Correctional Services Act, 1959, is hereby amended—
- (a) by the substitution for paragraph (q) of subsection (1) of the following paragraph: 35
- “(q) the application of approved means of mechanical restraint to any prisoner [**under sentence of death or**] in the course of removal or while temporarily outside the precincts of a prison;”; and
- (b) by the substitution for paragraph (s) of subsection (1) of the following paragraph: 40
- “(s) [**the treatment of persons condemned to death; and**] the disposal of the bodies of prisoners who have died in prison;”.

Amendment of section 30 of Act 18 of 1973, as amended by section 2 of Act 38 of 1981, section 10 of Act 116 of 1993 and section 8 of Act 204 of 1993

25. Section 30 of the Mental Health Act, 1973, is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively: 45
- “(1) Whenever it appears to the Minister of Correctional Services that a convicted prisoner in a prison is mentally ill to such a degree that he or she should be detained in an institution [**and the prisoner is not under the sentence of death**], he or she may order the magistrate of the district in which the prison is situated to cause the mental condition of the prisoner to be enquired into. 50
- (2) Whenever it appears to the officer in charge of the prison in which a convicted prisoner is in custody that the prisoner is mentally ill to the degree referred to in subsection (1) [**and the prisoner is not under** 55

sentence of death], he or she shall report the matter to the magistrate of the district in which the prison is situated.”; and
 (b) by the deletion of subsection (7).

Repeal of section 3 of Act 94 of 1974

26. Section 3 of the Second General Law Amendment Act, 1974, is hereby repealed. 5

Substitution of section 18 of Act 51 of 1977

27. (1) The following section is hereby substituted for section 18 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act):

“Prescription of right to institute prosecution

18. [(1)] The right to institute a prosecution for any offence, other than **[an offence in respect of which the sentence of death may be imposed]** the offences of— 10

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|---|----|
| (a) murder; | 15 |
| (b) treason committed when the Republic is in a state of war; | |
| (c) robbery, if aggravating circumstances were present; | |
| (d) kidnapping; | |
| (e) child-stealing; or | |
| (f) rape, | |

shall, unless some other period is expressly provided by law, lapse after the expiration of a period of 20 years from the time when the offence was committed. 20

[(2) The right to institute a prosecution for an offence in respect of which the sentence of death may be imposed, shall not be barred by lapse of time.]”.

(2) This section shall be deemed to have come into operation on 27 April 1994. 25

Amendment of section 79 of Act 51 of 1977, as amended by section 4 of Act 4 of 1992, section 17 of Act 116 of 1993 and section 44 of Act 129 of 1993

28. Section 79 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 30

“(a) **[where the accused is charged with an offence for which the sentence of death may not be imposed]** by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court; or”; and 35

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the following words:

“[where the accused is charged with an offence for which the sentence of death may be imposed or] where the court in any particular case so directs—”. 40

Amendment of section 121 of Act 51 of 1977, as amended by section 6 of Act 56 of 1979 and section 17 of Act 59 of 1983

29. Section 121 of the principal Act is hereby amended by the deletion of the proviso to paragraph (b) of subsection (5).

Amendment of section 140 of Act 51 of 1977 45

30. Section 140 of the principal Act is hereby amended by the deletion of the proviso to paragraph (b) of subsection (2).

Amendment of section 145 of Act 51 of 1977, as amended by section 4 of Act 64 of 1982 and section 2 of Act 107 of 1990

31. Section 145 of the principal Act is hereby amended by the deletion of the proviso to subsection (2).

Amendment of section 255 of Act 51 of 1977, as substituted by section 50 of Act 20 of 1992 5

32. Section 255 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) If in any court during the trial of a person who is charged with an offence, other than an offence **[in respect of which the sentence of death may be passed]** 10 referred to in section 18, it appears to the judge or judicial officer presiding at the trial that such person is probably a person as is described in section 21(1) of the Prevention and Treatment of Drug Dependency Act, 1992 (in this section referred to as the said Act), the judge or judicial officer, may, with the consent of the prosecutor given after consultation with a social worker as defined in section 1 of 15 the said Act, stop the trial and order that an enquiry be held in terms of section 22 of the said Act in respect of the person concerned by a magistrate as defined in section 1 of the said Act and indicated in the order.”.

Amendment of section 257 of Act 51 of 1977

33. Section 257 of the principal Act is hereby amended by the deletion of the second 20 proviso.

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990, section 41 of Act 122 of 1991, section 18 of Act 139 of 1992 and section 20 of Act 116 of 1993

34. Section 276 of the principal Act is hereby amended by the deletion of paragraph 25 (a) of subsection (1).

Repeal of sections 277, 278 and 279 of Act 51 of 1977

35. Sections 277, 278 and 279 of the principal Act are hereby repealed.

Substitution of section 282 of Act 51 of 1977, as substituted by section 13 of Act 5 of 1991 and amended by section 48 of Act 129 of 1993 30

36. The following section is hereby substituted for section 282 of the principal Act:

“Antedating sentence of imprisonment

282. Whenever[—
(a) a sentence of death; or
(b)] any sentence of imprisonment, 35
imposed on any person on conviction for an offence, is set aside on appeal or review and any sentence of imprisonment or other sentence of imprisonment is thereafter imposed on such person in respect of such offence in place of the **[sentences referred to in paragraph (a) or (b), respectively]** sentence of imprisonment imposed on conviction, or any 40
other offence which is substituted for that offence on appeal or review, the sentence which was later imposed may, if the court imposing it is satisfied that the person concerned has **[spent a period of time in prison awaiting the execution of the sentence referred to in paragraph (a) or has]** served any part of the sentence **[referred to in paragraph (b)]** of imprisonment 45
imposed on conviction, be antedated by the court to a specified date, which shall not be earlier than the date on which the **[sentences referred to in paragraphs (a) and (b) were]** sentence of imprisonment imposed on

conviction was imposed, and thereupon the sentence which was later imposed shall be deemed to have been imposed on the date so specified.”.

Amendment of section 286 of Act 51 of 1977, as amended by section 6 of Act 107 of 1990

37. Section 286 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph: 5

“(c) if in the opinion of the court the offence warrants the imposition of **[the sentence of death or]** punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding 15 years.”. 10

Amendment of section 309 of Act 51 of 1977, as amended by section 17 of Act 105 of 1982, section 8 of Act 107 of 1990, section 51 of Act 129 of 1993 and section 13 of Act 75 of 1995

38. Section 309 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words: 15

“The provincial or local division concerned shall thereupon have the powers referred to in section 304(2), and, unless the appeal is based solely upon a question of law, the provincial or local division shall, in addition to such powers, have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence **[excluding the sentence of death]** in lieu of or in addition to such sentence”. 20

Amendment of section 315 of Act 51 of 1977, as substituted by section 20 of Act 105 of 1982 and amended by section 10 of Act 107 of 1990

39. Section 315 of the principal Act is hereby amended— 25

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) If an application **[(excluding an application of a person who has been sentenced to death)]** for leave to appeal in a criminal case heard by a single judge of a provincial or local division (irrespective of whether he or she sat with or without assessors) is granted under section 316, the court or judge or judges granting the application shall, if it, **[or]** he or she or, in the case of the judges referred to in subsection (8) of that section, they or the majority of them, is or are satisfied that the questions of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the **[Appellate Division] Supreme Court of Appeal**, direct that the appeal be heard by a full court.”; and 30

(b) by the substitution for subsection (4) of the following subsection: 35

“(4) An appeal in terms of this Chapter shall lie only as provided in sections 316 to 319 inclusive, and **[subject to the provisions of section 316A]** not as of right.”. 40

Repeal of section 316A of Act 51 of 1977

40. Section 316A of the principal Act is hereby repealed.

Substitution of section 320 of Act 51 of 1977, as substituted by section 12 of Act 107 of 1990 45

41. The following section is hereby substituted for section 320 of the principal Act:

“Report of trial judge to be furnished on appeal

320. The judge or judges, as the case may be, of any court before whom a person is convicted shall, in the case of an appeal under section 316 **[316A]** or 316B or of an application for a special entry under section 317 or 50

the reservation of a question of law under section 319 or an application to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his, her or their opinion upon the case or upon any point arising in the case, and such report, which shall form part of the record, shall without delay be forwarded by the registrar to the registrar of the court of appeal.”. 5

Amendment of section 322 of Act 51 of 1977, as amended by section 13 of Act 107 of 1990

42. Section 322 of the principal Act is hereby amended—
- (a) by the deletion of subsection (2A); and 10
 - (b) by the substitution for subsection (6) of the following subsection:
 - “(6) The powers conferred by this section upon the court of appeal in relation to the imposition of punishments, shall include the power to impose a punishment more severe than that imposed by the court below or to impose another punishment [**excluding the sentence of death**] in lieu of or in addition to such punishment.”. 15

Repeal of section 323 of Act 51 of 1977

43. Section 323 of the principal Act is hereby repealed.

Repeal of sections 325A and 326 of Act 51 of 1977

44. Sections 325A and 326 of the principal Act are hereby repealed. 20

Amendment of section 327 of Act 51 of 1977, as amended by section 16 of Act 107 of 1990

45. Section 327 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) If any person convicted of any offence in any court [**or sentenced to death in respect of any offence**] has in respect of the conviction [**or the sentence of death**] exhausted all the recognized legal procedures pertaining to appeal or review, or if such procedures are no longer available to him or her, and such person or his or her legal representative addresses the Minister by way of petition, supported by relevant affidavit, stating that further evidence has since become available which materially affects his or her conviction [**or the sentence of death imposed upon him**], the Minister may, if he or she considers that such further evidence, if true, might reasonably affect the conviction [**or the sentence of death**], direct that the petition and the relevant affidavits be referred to the court in which the conviction occurred [**or in which the sentence of death was imposed**].”; 25 30 35
 - (b) by the substitution for subsections (3) and (4) of the following subsections, respectively:
 - “(3) Unless the court directs otherwise, the presence of the convicted person [**or the person sentenced to death**] shall not be essential at the hearing of further evidence. 40
 - (4) (a) The court shall assess the value of the further evidence and advise the [**State**] President whether, and to what extent, such evidence affects the conviction [**or the sentence**] in question. 45
 - (b) The court shall not, as part of the proceedings of the court, announce its finding as to the further evidence or the effect thereof on the conviction [**or sentence**] in question.”; and
 - (c) by the deletion of subparagraph (iii) of paragraph (a) of subsection (6).

Amendment of section 1 of Act 1 of 1988

46. Section 1 of the Criminal Law Amendment Act, 1988, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who consumes or uses any substance which impairs his or her faculties to appreciate the wrongfulness of his or her acts or to act in accordance with that appreciation, while knowing that such substance has that effect, and who while such faculties are thus impaired commits any act prohibited by law under any penalty, but is not criminally liable because his or her faculties were impaired as aforesaid, shall be guilty of an offence and shall be liable on conviction to the penalty [except the death penalty] which may be imposed in respect of the commission of that act.”.

Repeal of sections 19 and 20 of Act 107 of 1990

47. Sections 19 and 20 of the Criminal Law Amendment Act, 1990, are hereby repealed.

Substitution of section 3 of Act 94 of 1992

48. The following section is hereby substituted for section 3 of the Corruption Act, 1992:

“Penalties

3. [Subject to the provisions of section 277(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), any] Any person who is convicted of an offence referred to in section 1 shall be liable to any penalty within the punitive jurisdiction of the court concerned.”.

Repeal of section 19 of Act 139 of 1992

49. Section 19 of the General Law Amendment Act, 1992, is hereby repealed.

Amendment of laws

50. The laws mentioned in the second column of Schedule 1 are hereby amended to the extent set out in the third column of that Schedule.

Minimum sentences for certain serious offences

51. (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).

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

52. (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 51, 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 51.

(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. 5

(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. 10

(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 51: 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. 15 20

(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. 25

(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— 30

- (i) confirm the conviction and thereupon impose a sentence as contemplated in section 51;
- (ii) alter the conviction to a conviction of another offence referred to in Schedule 2 and thereupon impose a sentence as contemplated in section 51; 35
- (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 40
- (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.

Saving

53. (1) Sections 51 and 52 shall, subject to subsections (2) and (3), cease to have effect after the expiry of two years from the commencement of this Act. 45

(2) The period referred to in subsection (1) may be extended by the President, with the concurrence of Parliament, by proclamation in the *Gazette* for one year at a time.

(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 51; or 50

(b) a sentence imposed in terms of section 51,

shall be continued and concluded as if section 51 had at all relevant times been in operation.

Short title

54. This Act shall be called the Criminal Law Amendment Act, 1997.

SCHEDULE 1

LAWS AMENDED BY SECTION 50

Number and year of law	Short title	Extent of amendment
Act No. 71 of 1968 (Transkei)	Dangerous Weapons Act, 1968	<p>Amendment of section 4 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Whenever any person above the age of 18 years is convicted of an offence involving violence to any other person and it has been proved that he or she killed or injured such other person by using a dangerous weapon or a firearm, he or she shall, except when [the death sentence or the punishment prescribed by section 334ter or 334quat of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), is imposed or] he or she is in terms of section [335 of that Act] 286 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), declared an habitual criminal, notwithstanding anything to the contrary in any law contained, be sentenced to imprisonment for a period of not less than two years and, if he or she is so convicted by a magistrate’s court, not exceeding eight years [and may in addition to any such punishment be sentenced to a whipping not exceeding ten strokes]: Provided that if the court is of the opinion that there are circumstances which justify the imposition of a lighter sentence than the punishment prescribed by this section, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lighter sentence on the person so convicted: Provided further that in the case of a magistrate’s court [and without derogation from its powers to impose a whipping], such lighter sentence shall not exceed a fine of [four hundred rand] R40 000 or imprisonment for a period of two years.”.</p>
Act No. 34 of 1978 (Transkei)	Defence Act, 1978	<p>(a) Amendment of section 45 by the substitution for paragraph (c) of subsection (3) of the following paragraph:</p> <p>“(c) The commission of an officer shall be deemed to have been cancelled on the date on which any [sentence of death] cashiering or dismissal from the Defence Force, which may have been imposed on him or her, is confirmed under Schedule 1.”.</p> <p>(b) Amendment of section 1 of the First Schedule by the deletion of the definition of “capital offence”.</p> <p>(c) Amendment of section 4 of the First Schedule—</p> <p>(i) by the substitution for the heading of the following heading:</p> <p style="text-align: center;">“OFFENCES ENDANGERING SAFETY OF FORCES”; and</p> <p>(ii) by the substitution for the words following upon paragraph (h) of the following words:</p> <p>“shall be guilty of an offence and liable on conviction to [be sentenced to death] imprisonment for a period not exceeding 30 years.”.</p>

Number and year of law	Short title	Extent of amendment
		<p>(d) The following section is hereby substituted for section 52 of the First Schedule:</p> <p style="text-align: center;">“ALTERNATIVE PUNISHMENTS</p> <p>52. The court convicting any person [—</p> <p>(a) of an offence under section 4 may, instead of imposing sentence of death on that person, impose upon him any other punishment within the jurisdiction of that court;</p> <p>(b)] of any [other] offence under this Code may, instead of imposing upon that person any penalty prescribed herein in respect of such offence, impose upon him or her any other penalty within the court’s jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.”.</p> <p>(e) Amendment of section 53 of the First Schedule by the substitution in subsection (2) for the words preceding the proviso of the following words:</p> <p style="padding-left: 40px;">“Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits [a capital civil offence] <u>treason, murder, rape or culpable homicide</u> or any offence under section 4 of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he or she is so engaged or commits any such offence”.</p> <p>(f) The following section is hereby substituted for section 57 of the First Schedule:</p> <p style="text-align: center;">“CIVIL OFFENCE MAY BE TRIED UNDER CODE</p> <p>57. A person subject to this Code may be tried by a military court having jurisdiction for any civil offence (other than treason, murder, rape [or other capital offence] or culpable homicide committed by him or her within the Republic), and may in respect of such offence be sentenced to any penalty within the jurisdiction of the court convicting him or her .”.</p> <p>(g) Amendment of section 59 of the First Schedule by the substitution for the proviso of the following proviso:</p> <p style="padding-left: 40px;">“Provided that a person charged with [a capital civil offence] <u>treason, murder, rape or culpable homicide</u> or an offence under section 4 or 13 of this Code may be tried by a military court at any time after the commission of the offence.”.</p> <p>(h) Amendment of section 68 of the First Schedule by the substitution for the words preceding the proviso of the following words:</p>

Number and year of law	Short title	Extent of amendment
Act No. 19 of 1981 (Transkei)	Mental Health Act, 1981	<p>“A court martial shall consist of not less than three or (in the case of a trial for [a capital offence] treason, murder, rape or culpable homicide) not less than five members, all of whom shall be officers of the Defence Force who have held commissioned rank for not less than two years, and shall be constituted and convened as may be prescribed”.</p> <p>(i) Amendment of section 83 of the First Schedule— (i) by the deletion of the proviso to subsection (1); and (ii) by the deletion of the proviso to subsection (2).</p> <p>(j) Amendment of section 85 of the First Schedule by the deletion of paragraph (a) of subsection (1).</p> <p>(k) Amendment of section 87 of the First Schedule by the deletion of subsection (1).</p> <p>(l) Repeal of sections 96 and 97 of the First Schedule.</p> <p>(m) The following section is hereby substituted for section 98 of the First Schedule:</p> <p style="text-align: center;">“WHEN SENTENCE TO BE EXECUTED</p> <p style="text-align: center;">98. Subject to the provisions of [sections 95 and 96] section 95, any sentence shall be executed as soon as possible after it has been confirmed.”.</p> <p>(n) The following section is hereby substituted for section 103 of the First Schedule:</p> <p style="text-align: center;">“COUNCIL OF REVIEW TO HEAR ARGUMENT IN CERTAIN CASES</p> <p style="text-align: center;">103. In any case in which [sentence of death or] a sentence of 12 months imprisonment or more or of cashiering has been imposed, or where application has been made by the offender in terms of section 101 for the review of the proceedings of his or her case, the council of review shall, at the request of the offender, allow the offender or his or her counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Commander of the Defence Force in his or her stead, to appear before it and hear argument on the issues in the case.”.</p> <p>(o) Amendment of section 135 of the First Schedule by the substitution in subsection (3) for the words preceding the proviso of the following words: “The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as may be prescribed for the execution of any sentence of [death] imprisonment or detention imposed by a military court”.</p> <p>Amendment of section 29— (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:</p>

Number and year of law	Short title	Extent of amendment
Act No. 9 of 1983 (Transkei)	Transkeian Penal Code, 1983	<p>“(1) Whenever it appears to the Minister that a convicted prisoner in a prison is mentally ill to such a degree that he <u>or she</u> should be detained in an institution or in a hospital prison for psychopaths [and the prisoner is not under sentence of death], he <u>or she</u> may order the magistrate of the district in which the prison is situated to cause the mental condition of the prisoner to be enquired into.</p> <p>(2) Whenever it appears to the officer in charge of the prison in which a convicted prisoner is in custody that the prisoner is mentally ill to the degree referred to in subsection (1) [and the prisoner is not under sentence of death], he <u>or she</u> shall report the matter to the magistrate of the district in which the prison is situated.”; and</p> <p>(b) by the deletion of subsection (7).</p> <p>(a) Amendment of section 49 by the deletion of paragraph (i).</p> <p>(b) Amendment of section 148 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Any person convicted of any offence under subsection (1) shall be liable on conviction to be sentenced to [death or to such lesser] <u>such</u> sentence as the court may deem fit.”.</p> <p>(c) Amendment of section 153 by the substitution for subsection (6) of the following subsection:</p> <p>“(6) Any person who, with aggravating circumstances as defined in section 8 of this Code, commits housebreaking or attempted housebreaking with intent to commit an offence in contravention of this section shall be liable on conviction to be sentenced to [death or to such lesser] <u>such</u> sentence as the court may deem fit.”.</p> <p>(d) Amendment of section 155 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any person who commits robbery or attempted robbery with aggravating circumstances as defined in section 8 of this Code shall be liable on conviction to be sentenced to [death, or to such lesser] <u>such</u> sentence as the court may deem fit.”.</p>
Act No. 26 of 1985 (Bophuthatswana)	Mental Health Act, 1985	Amendment of section 30 by the deletion of subsection (7).
Act No. 13 of 1991 (Bophuthatswana)	National Defence Act, 1991	Amendment of section 41 by the deletion of paragraph (a) of subsection (4).

Number and year of law	Short title	Extent of amendment
Act No. 71 of 1968 (Venda)	Dangerous Weapons Act, 1968	<p>Amendment of section 4 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Whenever any person above the age of 18 years is convicted of an offence involving violence to any other person and it has been proved that he or she killed or injured such other person by using a dangerous weapon or a firearm, he or she shall, except when [the death sentence or the punishment prescribed by section 334ter or 334quat of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), is imposed or] he or she is in terms of section [335 of that Act] 286 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), declared an habitual criminal, notwithstanding anything to the contrary in any law contained, be sentenced to imprisonment for a period of not less than two years and, if he or she is so convicted by a magistrate’s court, not exceeding eight years [and may in addition to any such punishment be sentenced to a whipping not exceeding ten strokes]: Provided that if the court is of the opinion that there are circumstances which justify the imposition of a lighter sentence than the punishment prescribed by this section, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lighter sentence on the person so convicted: Provided further that in the case of a magistrate’s court [and without derogation from its powers to impose a whipping], such lighter sentence shall not exceed a fine of [four hundred rand] R40 000 or imprisonment for a period of two years.”.</p>
Act No. 18 of 1973 (Venda)	Mental Health Act, 1973	<p>Amendment of section 30—</p> <p>(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:</p> <p>“(1) Whenever it appears to the Minister that a convicted prisoner in a prison is mentally ill to such a degree that he or she should be detained in an institution or in a hospital prison for psychopaths [and the prisoner is not under sentence of death], he or she may order the magistrate of the district in which the prison is situated to cause the mental condition of the prisoner to be enquired into.</p> <p>(2) Whenever it appears to the officer in charge of the prison in which a convicted prisoner is in custody that the prisoner is mentally ill to the degree referred to in subsection (1) [and the prisoner is not under sentence of death], he or she shall report the matter to the magistrate of the district in which the prison is situated.”; and</p> <p>(b) by the deletion of subsection (7).</p>

Number and year of law	Short title	Extent of amendment
Act No. 15 of 1982 (Venda)	Defence Act, 1982	<p>(a) Amendment of section 1 by the deletion of the definition of “capital offence”.</p> <p>(b) Amendment of section 6 by the substitution for paragraph (c) of subsection (3) of the following paragraph: “(c) The commission of any officer shall be deemed to have been cancelled on the date on which any sentence of [death] cashiering or dismissal from the Defence Force, which may have been imposed on him or <u>her</u>, is confirmed under the Code.”.</p> <p>(c) Amendment of section 82—</p> <p>(i) by the substitution in subsection (1) for the words preceding the proviso of the following words: “Any court martial shall consist of not less than three, or in the case of [any capital offence] <u>treason, murder, rape or culpable homicide</u> of not less than five members”; and</p> <p>(ii) by the deletion of paragraph (a) of the proviso to subsection (2).</p> <p>(d) Amendment of section 85 by the substitution for the words preceding paragraph (a) of the following words: “Any court martial shall have jurisdiction to try any person subject to the Code for any offence other than [a capital civil offence] <u>treason, murder, rape</u> or culpable homicide and may subject to the provisions of the Code, impose in respect of any such offence—”.</p> <p>(e) Amendment of section 86—</p> <p>(i) by the deletion of subparagraph (i) of paragraph (a) of subsection (1);</p> <p>(ii) by the deletion of subparagraph (i) of paragraph (b) of subsection (1); and</p> <p>(iii) by the deletion of subparagraph (i) of paragraph (c) of subsection (1).</p> <p>(f) Amendment of section 4 of the First Schedule—</p> <p>(i) by the substitution for the heading of the following heading: <p style="text-align: center;">“OFFENCES ENDANGERING SAFETY OF FORCES ””; and</p> <p>(ii) by the substitution for the words following upon paragraph (h) of the following words: “shall be guilty of an offence and shall be liable on conviction to [be sentenced to death] <u>imprisonment for a period not exceeding 30 years.</u>”.</p> <p>(g) The following section is substituted for section 51 of the First Schedule:</p> </p>

Number and year of law	Short title	Extent of amendment
		<p>“ALTERNATIVE PUNISHMENTS</p> <p>51. The court convicting any person [—</p> <p>(a) of an offence under section 4 may, instead of imposing sentence of death on that person, impose upon him any other punishment within the jurisdiction of that court;</p> <p>(b)] of any [other] offence under this Code may, instead of imposing upon that person any penalty prescribed herein in respect of such offence, impose upon him <u>or her</u> any other penalty within the court’s jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.”.</p> <p>(h) Amendment of section 52 of the First Schedule by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits [a capital civil offence or] any offence under section 4 of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he <u>or she</u> is so engaged or commits any such offence: Provided that an officer shall not be liable to arrest by any person other than an officer.”.</p> <p>(i) Amendment of section 70 of the First Schedule—</p> <p>(i) by the deletion of the proviso to subsection (1); and</p> <p>(ii) by the deletion of the proviso to subsection (2).</p> <p>(j) Amendment of section 73 of the First Schedule by the deletion of subsection (1).</p> <p>(k) Repeal of sections 77 and 78 of the First Schedule.</p> <p>(l) The following section is substituted for section 82 of the First Schedule:</p> <p>“COUNCIL OF REVIEW TO HEAR ARGUMENT IN CERTAIN CASES</p> <p>82. In any case in which [sentence of death or] a sentence of 12 months imprisonment or more or of cashiering has been imposed, or where application has been made by any accused under section 79 for the review of the proceedings of his <u>or her</u> case, the Council of Review shall, at the request of the accused, allow the accused or his <u>or her</u> counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Convening Authority in his <u>or her</u> stead, to appear before it and hear argument on the issues in the case.”.</p>

Number and year of law	Short title	Extent of amendment
		<p>(m) Amendment of section 102 of the First Schedule by the substitution in subsection (3) for the words preceding the proviso of the following words:</p> <p>“The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as prescribed for the execution of any sentence of [death] imprisonment, detention or field punishment imposed by any court martial or military court, as the case may be”.</p>

SCHEDULE 2
(Section 51)
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.

**MEMORANDUM ON THE OBJECTS OF THE CRIMINAL LAW
AMENDMENT BILL, 1997**

1. Section 276(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (“the Act”), authorises a court of law in principle to impose the sentence of death, whilst sections 277, 278 and 279 deal with the crimes for which and the circumstances under which the sentence of death can be imposed, the imposition of the sentence of death upon a pregnant woman and the execution of the sentence of death, respectively. Furthermore, the Defence Act, 1957 (Act No. 44 of 1957), authorises a court martial to impose the sentence of death for offences which endanger the safety of the Forces.

2. Section 11 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that everyone has the right to life, whilst section 12(1)(d) and (e) provides that everyone has the right not to be tortured in any way, and not to be treated or punished in a cruel, inhuman or degrading way.

3. The Constitutional Court, in *S v Makwanyane and Another* 1995(3) SA 391 (CC), had to decide whether the death penalty is consistent with the provisions of the previous Constitution. Such provisions were similar to the provisions mentioned in paragraph 2 *supra*. The President of the Constitutional Court, Mr Justice A Chaskalson, stated *inter alia* the following (at 451 G-I):

“Taking these factors into account, as well as the elements of arbitrariness and the possibility of error in enforcing the death penalty, the clear and convincing case that is required to justify the death sentence as a penalty for murder has not been made out. The requirements of section 33(1) have accordingly not been satisfied, and it follows that the provisions of section 277(1)(a) of the Criminal Procedure Act 51 of 1977 must be held to be inconsistent with section 11(2) of the Constitution.”

The following order was made by the Court at 455A-C:

“1. In terms of section 98(5) of the Constitution, and with effect from the date of this order, the provisions of paragraphs (a), (c), (d), (e) and (f) of section 277(1) of the Criminal Procedure Act, and all corresponding provisions of other legislation sanctioning capital punishment which are in force in any part of the national territory in terms of section 229, are declared to be inconsistent with the Constitution and, accordingly, to be invalid.

2. In terms of section 98(7) of the Constitution, and with effect from the date of this order:

- (a) the State is and all its organs are forbidden to execute any person already sentenced to death under any of the provisions thus declared to be invalid; and
- (b) all such persons will remain in custody under the sentences imposed on them until such sentences have been set aside in accordance with law and substituted by lawful punishment.”

Consequently the main objects of the Bill are to repeal or amend all statutory provisions in terms of which the sentence of death may be imposed and to effect the necessary consequential amendments to related provisions.

4. Clause 1 of the Bill seeks to create a mechanism in terms of which the sentences of all persons under the sentence of death can be substituted. Provision is made for the cases of such persons to be remitted to the trial courts for the imposition of appropriate sentences in lieu of the sentence of death. Any sentence so imposed shall be deemed, for the purpose of any further appeal and all other purposes, to be the sentence imposed on the convicted person at his or her trial. Clause 1 furthermore provides for the powers of, and the procedure to be followed by, the trial courts.

5. Clauses 2 to 19 seek to amend or repeal provisions of the Defence Act, 1957, which, *inter alia*, provide for the imposition of the sentence of death by a court martial and matters related thereto.

6. The Correctional Services Act, 1959 (Act No. 8 of 1959), also contains provisions in which reference to the sentence of death is made. Clauses 20 to 24 purport to repeal or amend those provisions.

7. References to the sentence of death are contained in—

- (i) the Mental Health Act, 1973 (Act No. 18 of 1973);
- (ii) the Government Service Pension Act, 1973 (Act No. 57 of 1973); and
- (iii) the Criminal Law Amendment Act, 1988 (Act No. 1 of 1988).

Clauses 25, 26 and 47 seek to amend these Acts by the deletion of such references.

8. Substantive provisions pertaining to the sentence of death are also found in the following Acts:

- (a) Section 3 of the Second General Law Amendment Act, 1974 (Act No. 94 of 1974), which provides for the carrying out of death sentences passed by certain courts.
- (b) Sections 19 and 20 of the Criminal Law Amendment Act, 1990 (Act No. 107 of 1990), providing, *inter alia*, for the reconsideration of sentences of certain persons under the sentence of death.
- (c) Section 19 of the General Law Amendment Act, 1992 (Act No. 139 of 1992), providing for an appeal by the Minister of Justice on behalf of certain persons sentenced to death.

Clauses 27, 48 and 50 purport to repeal the above sections.

9. Clause 28 proposes an amendment of section 18 of the Act in order to provide that the right to institute a prosecution in respect of an offence for which the sentence of death could previously have been imposed, shall not be barred by lapse of time.

10. Clauses 29 to 46 purport to either repeal or amend provisions of the Act pertaining to the sentence of death and related matters. Provisions which are repealed relate to, *inter alia*, the imposition of the sentence of death, the crimes for and the circumstances under which the sentence of death may be imposed, the imposition of the sentence of death on pregnant women, the execution of the sentence of death, appeal against a sentence of death, submissions by the Minister of Justice to the Supreme Court of Appeal on behalf of certain persons sentenced to death, petitions to the President to extend mercy to a person under the sentence of death and the President's power to commute sentences of death.

11. Clause 51 seeks to repeal or amend provisions similar to the above-mentioned which, in terms of the Constitution, 1996, are still in force in the areas of the former Republics of Transkei, Bophuthatswana and Venda.

12. In clause 52 it is proposed that a regional court or a High Court, on convicting a person of certain proposed offences, must impose a compulsory minimum sentence. The proposed offences are categorised in two parts according to the seriousness thereof. Provision is, however, made for the imposition of lighter sentences in which case the presiding officer must note the reasons for not imposing the prescribed sentence. In clause 53 it is proposed that clause 52 shall cease to be of force after the expiry of two years. However, the President, with the concurrence of Parliament, may extend it for one year at a time.

13. OTHER DEPARTMENTS/BODIES CONSULTED

- * The Chief Justice
- * The Judges President of the High Courts
- * The Attorneys-General
- * Black Lawyers Association
- * The Association of Law Societies of the RSA
- * National Association of Democratic Lawyers
- * General Council of the Bar of South Africa
- * South African Police Service
- * South African National Defence Force
- * Department of Correctional Services
- * Department of Health
- * Department of Finance