

# CRIMINAL LAW AMENDMENT ACT NO. 105 OF 1997

[\[View Regulation\]](#)

[ASSENTED TO 27 NOVEMBER, 1997]  
[DATE OF COMMENCEMENT: 13 NOVEMBER, 1998]

(Unless otherwise indicated)

*(English text signed by the President)*

This Act has been updated to *Government Gazette* 41018 dated 2 August, 2017.

## as amended by

Judicial Matters Amendment Act, [No. 34 of 1998](#)  
[with effect from 19 December, 1997]

Judicial Matters Amendment Act, [No. 62 of 2000](#)  
[with effect from 23 March, 2001, unless otherwise indicated]

Judicial Matters Amendment Act, [No. 42 of 2001](#)  
[with effect from 7 December, 2001, unless otherwise indicated]

Defence Act, [No. 42 of 2002](#)  
[with effect from 23 May, 2003]

Prevention and Combating of Corrupt Activities Act, [No. 12 of 2004](#)

Protection of Constitutional Democracy against Terrorist and Related Activities Act, [No. 33 of 2004](#)

Criminal Law (Sexual Offences and Related Matters) Amendment Act, [No. 32 of 2007](#)

Criminal Law (Sentencing) Amendment Act, [No. 38 of 2007](#)

Judicial Matters Amendment Act, [No. 66 of 2008](#)  
[with effect from 17 February, 2009]

Judicial Matters Amendment Act, [No. 42 of 2013](#)  
[with effect from 22 January, 2014, unless otherwise indicated]

Prevention and Combating of Trafficking in Persons Act, [No. 7 of 2013](#)

Criminal Matters Amendment Act, [No. 18 of 2015](#)  
[with effect from 1 June, 2016]

Judicial Matters Amendment Act, [No. 8 of 2017](#)  
[with effect from 2 August, 2017, unless otherwise indicated]

## pending amendment by

Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, [No. 27 of 2006](#)  
(provisions not yet proclaimed)

## ACT

**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:-

**1. Substitution of sentence of death.**-(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-

(i) shall consider the written arguments and the evidence led at the trial; and

(ii) may, if necessary, hear oral argument on such written arguments,

and shall advise the President, with full reasons therefor, on the appropriate sentence to be substituted in the place of the sentence of death and, if applicable, on the date to which the sentence shall be antedated.

[[Para. \(b\)](#) substituted by [s. 25 \(a\)](#) of [Act No. 34 of 1998](#).]

#### Wording of Sections

(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 not disposed of by the Supreme Court of Appeal shall be disposed of by that Court: Provided that the said Court shall, if the Court confirms the conviction, set aside the sentence of death and impose such punishment as it considers to be proper.

[[Sub-s. \(10\)](#) substituted by [s. 25 \(b\)](#) of [Act No. 34 of 1998](#).]

#### Wording of Sections

(11) A sentence of imprisonment substituted for the sentence of death in terms of this section, may be antedated by the court to a specified date, which shall not be earlier than the date on which the sentence of death was imposed.

(12) 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.

Wording of Sections

25. Amends section 30 of the Mental Health Act, No. 18 of 1973, as follows:-paragraph (a) substitutes subsections (1) and (2); and paragraph (b) deletes subsection (7).
26. Repeals [section 3](#) of the Second General Law Amendment Act, [No. 94 of 1974](#).
27. Substitutes [section 18](#) of the Criminal Procedure Act, [No. 51 of 1977](#) (date of commencement 27 April, 1994).
28. Amends [section 79 \(1\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), as follows:-paragraph (a) substitutes paragraph (a); and paragraph (b) substitutes the words preceding paragraph (b) (i).
29. Amends [section 121 \(5\) \(b\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by deleting the proviso.
30. Amends [section 140 \(2\) \(b\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by deleting the proviso.
31. Amends [section 145 \(2\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by deleting the proviso.
32. Amends section 255 (1) of the Criminal Procedure Act, [No. 51 of 1977](#), by substituting paragraph (a).
33. Amends [section 257](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by deleting the second proviso.
34. Amends [section 276 \(1\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by deleting paragraph (a).
35. Repeals [sections 277, 278 and 279](#) of the Criminal Procedure Act, [No. 51 of 1977](#).
36. Substitutes [section 282](#) of the Criminal Procedure Act, [No. 51 of 1977](#).
37. Amends [section 286 \(2\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by substituting paragraph (c).
38. Amends [section 309 \(3\)](#) of the Criminal Procedure Act, [No. 51 of 1977](#), by substituting the words preceding the proviso.
39. Amends [section 315](#) of the Criminal Procedure Act, [No. 51 of 1977](#), as follows:-paragraph (a) substitutes subsection (2) (a); and paragraph (b) substitutes subsection (4).
40. Repeals [section 316A](#) of the Criminal Procedure Act, [No. 51 of 1977](#).

41. Substitutes [section 320](#) of the Criminal Procedure Act, [No. 51 of 1977](#).

42. Amends [section 322](#) of the Criminal Procedure Act, [No. 51 of 1977](#), as follows:-paragraph (a) deletes subsection (2A); and paragraph (b) substitutes subsection (6).

43. Repeals [section 323](#) of the Criminal Procedure Act, [No. 51 of 1977](#).

44. Repeals [sections 325A](#) and [326](#) of the Criminal Procedure Act, [No. 51 of 1977](#).

45. Amends [section 327](#) of the Criminal Procedure Act, [No. 51 of 1977](#), as follows:-paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsections (3) and (4); and paragraph (c) deletes subsection (6) (a) (iii).

46. Amends [section 1](#) of the Criminal Law Amendment Act, [No. 1 of 1988](#), by substituting subsection (1).

47. Repeals [sections 19](#) and [20](#) of the Criminal Law Amendment Act, [No. 107 of 1990](#).

48. Substitutes [section 3](#) of the Corruption Act, [No. 94 of 1992](#).

49. Repeals [section 19](#) of the General Law Amendment Act, [No. 139 of 1992](#).

**50. Amendment of laws.**-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.

**51. Discretionary minimum sentences for certain serious offences.**-(1) Notwithstanding any other law, but subject to [subsections \(3\)](#) and [\(6\)](#), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of [Schedule 2](#) to imprisonment for life.

(2) Notwithstanding any other law but subject to [subsections \(3\)](#) and [\(6\)](#), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in-

(a) [Part II](#) of [Schedule 2](#), 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) [Part III](#) of [Schedule 2](#), 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;

[[Sub-para. \(iii\)](#) amended by [s. 5 \(a\)](#) of [Act No. 18 of 2015](#).]

**Wording of Sections**

(c) [Part IV](#) of [Schedule 2](#), 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; and

[[Sub-para. \(iii\)](#) amended by [s. 5 \(b\)](#) of [Act No. 18 of 2015](#).]

Wording of Sections

- (d) Part V of [Schedule 2](#), in the case of-

- (i) a first offender, to imprisonment for a period not less than 3 years;
- (ii) a second offender of any such offence, to imprisonment for a period not less than 5 years; and
- (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 7 years.

[[Para. \(d\)](#) added by [s. 5 \(c\)](#) of [Act No. 18 of 2015](#).]

Provided that the maximum term of imprisonment that a regional court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than five years.

(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 must thereupon impose such lesser sentence: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of [Schedule 2](#), it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years.

(aA) When imposing a sentence in respect of the offence of rape the following shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence:

- (i) The complainant's previous sexual history;
- (ii) an apparent lack of physical injury to the complainant;
- (iii) an accused person's cultural or religious beliefs about rape; or
- (iv) any relationship between the accused person and the complainant prior to the offence being committed.

(4) . . . . .

(5) The operation of a minimum 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](#)).

[[Sub-s. \(5\)](#) substituted by [s. 26](#) of [Act No. 42 of 2013](#).]

Wording of Sections

(6) This section does not apply in respect of an accused person who was under the age of 18 years at the time of the commission of an offence contemplated in [subsection \(1\)](#) or [\(2\)](#).

[[Sub-s. \(6\)](#) substituted by [s. 26](#) of [Act No. 42 of 2013](#).]

Wording of Sections

(7) If in the application of this section the age of an accused person is placed in issue, the onus shall be on the State to prove the age of that person 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 referred to in [section 3](#) of the Intelligence Services Act, 2002 ([Act No. 65 of 2002](#)); and
- (b) a correctional official of the Department of Correctional Services or a person authorised under the Correctional Services Act, 1998 ([Act No. 111 of 1998](#)).

(9) The amounts mentioned in respect of the offences referred to in [Part II](#) of [Schedule 2](#) to the Act, may be adjusted by the Minister from time to time by notice in the *Gazette*.

[[S. 51](#) substituted by [s. 1](#) of [Act No. 38 of 2007](#).]

Wording of Sections

**52.** . . . . .

[[S. 52](#) repealed by [s. 2](#) of [Act No. 38 of 2007](#).]

Wording of Sections

**52A.** . . . . .

[[S. 52A](#) repealed by [s. 2](#) of [Act No. 38 of 2007](#).]

Wording of Sections

**52B.** . . . . .

[[S. 52B](#) repealed by [s. 2](#) of [Act No. 38 of 2007](#).]

Wording of Sections

**53. Saving.**-(1) . . . . .

[[Sub-s. \(1\)](#) substituted by [s. 16 \(a\)](#) of [Act No. 42 of 2001](#) and deleted by [s. 3 \(a\)](#) of [Act No. 38 of 2007](#).]

Wording of Sections

(2) . . . . .

[[Sub-s. \(2\)](#) deleted by [s. 3 \(a\)](#) of [Act No. 38 of 2007](#).]

Wording of Sections

(2A) . . . . .

[[Sub-s. \(2A\)](#) inserted by [s. 16 \(b\)](#) of [Act No. 42 of 2001](#) and deleted by [s. 3 \(b\)](#) of [Act No. 38 of 2007](#).]

Wording of Sections

(3) Any appeal against-

(a) a conviction of an offence-

(i) referred to in [Schedule 2](#) of this Act and a resultant sentence imposed in terms of [section 51](#); or

(ii) not referred to in the said [Schedule 2](#) and a resultant sentence imposed in terms of [section 52A](#);  
or

(b) a sentence imposed in terms of [section 51](#) or [52A](#), as the case may be,

shall be continued and concluded as if [sections 51](#) and [52A](#) had at all relevant times been in operation.

(4) [Sections 51](#) and [52](#) shall not derogate from the provisions of [section 89 \(2\)](#) of the Magistrates' Courts Act, 1944 ([Act No. 32 of 1944](#)).

(5) If a regional court has convicted an accused of an offence referred to in [Schedule 2](#) as well as an offence not referred to in that Schedule, and the court has, prior to the commencement of the Judicial Matters Amendment Act, 2000, committed the accused under section 52 (1) for sentence by a High Court in respect of the offence referred to in the said [Schedule 2](#), but has not committed the accused for sentence by the High Court in question in respect of the offence not referred to in that Schedule, the regional court must sentence the accused in respect of the last-mentioned offence as if the Judicial Matters Amendment Act, 2000, had not been passed.

[[S. 53](#) substituted by [s. 36](#) of [Act No. 62 of 2000](#).]

Wording of Sections

**53A. Transitional provision.**-If a regional court has, prior to the date of the commencement of the Criminal Law (Sentencing) Amendment Act, 2007-

(a) committed an accused for sentence by a High Court under this Act, the High Court must dispose of the matter as if the Criminal Law (Sentencing) Amendment Act, 2007, had not been passed; or

(b) not committed an accused for sentence by a High Court under this Act, then the regional court must dispose of the matter in terms of this Act, as amended by the Criminal Law (Sentencing) Amendment Act, 2007.

[[S. 53A](#) inserted by [s. 4](#) of [Act No. 38 of 2007](#).]

**54. Short title.**-This Act shall be called the Criminal Law Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**Schedule 1**

LAWS AMENDED BY [SECTION 50](#)

| <i>Number and year of law</i>    | <i>Short title</i>          | <i>Extent of amendment</i>   |
|----------------------------------|-----------------------------|--|
| Act No. 71 of 1968<br>(Transkei) | Dangerous Weapons Act, 1968 | Amendment of <a href="#">section 4</a> by the substitution for subsection (1) of the following subsection: |

|  |                   |  |
|--|-------------------|--|
|  |                   | <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 he or she is in terms of <a href="#">section 286</a> of the Criminal Procedure Act, 1977 (<a href="#">Act No. 51 of 1977</a>), 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: 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, such lighter sentence shall not exceed a fine of R40 000 or imprisonment for a period of two years."</p> |
| <a href="#">Act No. 34 of 1978</a><br>(Transkei) | Defence Act, 1978 | (a) Amendment of <a href="#">section 45</a> by the substitution for paragraph (c) of subsection (3) of the following paragraph:  |
|  |                   | "(c) The commission of an officer shall be deemed to have been cancelled on the date on which any cashiering or dismissal from the Defence Force, which may have been imposed on him or her, is confirmed under <a href="#">Schedule 1</a> ."  |
|  |                   | (b) Amendment of <a href="#">section 1</a> of the <a href="#">First Schedule</a> by the deletion of the definition of "capital offence".   |
|  |                   | (c) Amendment of <a href="#">section 4</a> of the <a href="#">First Schedule</a> -   |
|  |                   | (i) by the substitution for the heading of the following heading:  |
|  |                   | <b>"OFFENCES ENDANGERING SAFETY OF FORCES";</b> and  |
|  |                   | (ii) by the substitution for the words following upon paragraph (h) of the following words:  |
|  |                   | "shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding 30 years."  |
|  |                   | (d) The following section is hereby substituted for <a href="#">section 52</a> of the <a href="#">First Schedule</a> :   |
|  |                   | <b>"ALTERNATIVE PUNISHMENTS</b>  |
|  |                   | <b>52.</b> The court convicting any  |

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|  |  | <p>person of any 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 <a href="#">section 53</a> of the <a href="#">First Schedule</a> by the substitution in subsection (2) for the words preceding the proviso of the following words:</p>   |
|  |  | <p>"Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits treason, murder, rape or culpable homicide or any offence under <a href="#">section 4</a> 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 <a href="#">First Schedule</a>:</p>  |
|  |  | <p><b>"CIVIL OFFENCE MAY BE TRIED UNDER CODE</b></p>   |
|  |  | <p><b>57.</b> 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 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 <a href="#">First Schedule</a> by the substitution for the proviso of the following proviso:</p>   |
|  |  | <p>"Provided that a person charged with treason, murder, rape or culpable homicide or an offence under <a href="#">section 4</a> or <a href="#">13</a> 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 <a href="#">First Schedule</a> by the substitution for the words preceding the proviso of the following words:</p>   |
|  |  | <p>"A court martial shall consist of not less than three or (in the case of a trial for 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</p>   |



|  |                         |  |
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|  |                         | and convened as may be prescribed".  |
|  |                         | (i) Amendment of section 83 of the <a href="#">First Schedule</a> -  |
|  |                         | (i) by the deletion of the proviso to subsection (1); and  |
|  |                         | (ii) by the deletion of the proviso to subsection (2).   |
|  |                         | (j) Amendment of section 85 of the <a href="#">First Schedule</a> by the deletion of paragraph (a) of subsection (1).  |
|  |                         | (k) Amendment of section 87 of the <a href="#">First Schedule</a> by the deletion of subsection (1).   |
|  |                         | (l) Repeal of sections 96 and 97 of the <a href="#">First Schedule</a> .   |
|  |                         | (m) The following section is hereby substituted for section 98 of the <a href="#">First Schedule</a> :   |
|  |                         | <b>"WHEN SENTENCE TO BE EXECUTED</b>   |
|  |                         | <b>98.</b> Subject to the provisions of section 95, any sentence shall be executed as soon as possible after it has been confirmed."   |
|  |                         | (n) The following section is hereby substituted for section 103 of the <a href="#">First Schedule</a> :  |
|  |                         | <b>"COUNCIL OF REVIEW TO HEAR ARGUMENT IN CERTAIN CASES</b>  |
|  |                         | <b>103.</b> In any case in which 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." |
|  |                         | (o) Amendment of section 135 of the <a href="#">First Schedule</a> 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 imprisonment or detention imposed by a military court".  |
| <a href="#">Act No. 19 of 1981</a> ,<br>(Transkei) | Mental Health Act, 1981 | Amendment of <a href="#">section 29</a> -  |
|  |                         | (a) by the substitution for  |

|  |                             |  |
|--|-----------------------------|--|
|  |                             | subsections (1) and (2) of the following subsections, respectively:  |
|  |                             | "(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, 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. |
|  |                             | (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), 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).   |
| <a href="#">Act No. 9 of 1983</a><br>(Transkei)        | Transkeian Penal Code, 1983 | (a) Amendment of <a href="#">section 49</a> by the deletion of paragraph (i).  |
|  |                             | (b) Amendment of section 148 by the substitution for subsection (3) of the following subsection:   |
|  |                             | "(3) Any person convicted of any offence under subsection (1) shall be liable on conviction to be sentenced to such sentence as the court may deem fit."   |
|  |                             | (c) Amendment of section 153 by the substitution for subsection (6) of the following subsection:   |
|  |                             | "(6) Any person who, with aggravating circumstances as defined in <a href="#">section 8</a> of this Code, commits house-breaking or attempted house-breaking with intent to commit an offence in contravention of this section shall be liable on conviction to be sentenced to such sentence as the court may deem fit."  |
|  |                             | (d) Amendment of section 155 by the substitution for subsection (2) of the following subsection:   |
|  |                             | "(2) Any person who commits robbery or attempted robbery with aggravating circumstances as defined in <a href="#">section 8</a> of this Code shall be liable on conviction to be sentenced to such sentence as the court may deem fit."  |
| <a href="#">Act No. 26 of 1985</a><br>(Bophuthatswana) | Mental Health Act, 1985     | Amendment of <a href="#">section 30</a> by the deletion of subsection (7).   |
| <a href="#">Act No. 13 of 1991</a><br>(Bophuthatswana) | National Defence Act, 1991  | Amendment of <a href="#">section 41</a> by the deletion of paragraph (a) of subsection (4).  |
| Act No. 71 of 1968<br>(Venda)                          | Dangerous Weapons Act, 1968 | Amendment of <a href="#">section 4</a> by the substitution for subsection (1) of the following subsection:   |

|  |                         |  |
|--|-------------------------|--|
|  |                         | <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 he or she is in terms of <a href="#">section 286</a> of the Criminal Procedure Act, 1977 (<a href="#">Act No. 51 of 1977</a>), 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: 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, such lighter sentence shall not exceed a fine of R40 000 or imprisonment for a period of two years."</p> |
| Act No. 18 of 1973 (Venda)                 | Mental Health Act, 1973 | Amendment of <a href="#">section 30</a> -  |
|  |                         | (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:  |
|  |                         | <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, 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) he or she shall report the matter to the magistrate of the district in which the prison is situated.";</p> <p>and</p>  |
|  |                         | (b) by the deletion of subsection (7).   |
| <a href="#">Act No. 15 of 1982</a> (Venda) | Defence Act, 1982       | (a) Amendment of <a href="#">section 1</a> by the deletion of the definition of "capital offence".   |
|  |                         | (b) Amendment of <a href="#">section 6</a> by the substitution for paragraph (c) of subsection (3) of the following paragraph:   |
|  |                         | "(c) The commission of any offence shall be deemed to have been cancelled on the   |

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|  |  | date on which any sentence of cashiering or dismissal from the Defence Force, which may have been imposed on him or her, is confirmed under the Code.".  |
|  |  | (c) Amendment of section 82-   |
|  |  | (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 treason, murder, rape or culpable homicide of not less than five members"; and  |
|  |  | (ii) by the deletion of paragraph (a) of the proviso to subsection (2).  |
|  |  | (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 treason, murder, rape or culpable homicide and may subject to the provisions of the Code, impose in respect of any such offence-". |
|  |  | (e) Amendment of section 86-   |
|  |  | (i) by the deletion of subparagraph (i) of paragraph (a) of subsection (1);  |
|  |  | (ii) by the deletion of subparagraph (i) of paragraph (b) of subsection (1); and   |
|  |  | (iii) by the deletion of subparagraph (i) of paragraph (c) of subsection (1).  |
|  |  | ( f )Amendment of <a href="#">section 4</a> of the <a href="#">First Schedule</a> -  |
|  |  | (i) by the substitution for the heading of the following heading:  |
|  |  | <b>"OFFENCES ENDANGERING SAFETY OF FORCES"</b> ; and   |
|  |  | (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 imprisonment for a period not exceeding 30 years.".  |
|  |  | (g) The following section is substituted for <a href="#">section 51</a> of the <a href="#">First Schedule</a> :  |

|  |  | <b>"ALTERNATIVE PUNISHMENTS</b>   |
|--|--|---|
|  |  | <p><b>51.</b> The court convicting any person of any 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>(h) Amendment of <a href="#">section 52</a> of the <a href="#">First Schedule</a> 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 any offence under <a href="#">section 4</a> 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: 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 <a href="#">First Schedule</a>-</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 <a href="#">First Schedule</a> by the deletion of subsection (1).</p>  |
|  |  | <p>(k) Repeal of sections 77 and 78 of the <a href="#">First Schedule</a>.</p>  |
|  |  | <p>(l) The following section is substituted for section 82 of the <a href="#">First Schedule</a>:</p>   |
|  |  | <p><b>"COUNCIL OF REVIEW TO HEAR ARGUMENT IN CERTAIN CASES</b></p>  |
|  |  | <p><b>82.</b> In any case in which 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 or her case, the Council of Review shall, at the request of the accused, allow the accused or his or her counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Convening Authority in his or her stead, to appear before it and hear argument on the issues in the case."</p> |
|  |  | <p>(m)Amendment of section 102 of</p>   |

|  |  |   |
|--|--|---|
|  |  | the <a href="#">First Schedule</a> 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 prescribed for the execution of any sentence of imprisonment, detention or field punishment imposed by any court martial or military court, as the case may be." |

**Schedule 2**  
([Section 51](#))

**PART I**

[Part I amended by [s. 37 of Act No. 62 of 2000](#) and by [s. 27 \(1\) of Act No. 33 of 2004](#), substituted by [s. 68 of Act No. 32 of 2007](#) and amended by [s. 5 \(a\) of Act No. 38 of 2007](#), by [s. 5 \(a\) of Act No. 38 of 2007](#), by [s. 22 of Act 66 of 2008](#), by [s. 48 of Act No. 7 of 2013](#) and by [s. 25 of Act No. 8 of 2017](#).]

(Pending amendment: Part I to be amended by [s. 14](#) read with [para. 1](#) of the Sch. of [Act No. 27 of 2006](#) with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not determined.)

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 compelled rape as contemplated in [section 3](#) or [4](#) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or
  - (ii) robbery with aggravating circumstances as defined in [section 1](#) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)); 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.
- (e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim;
- (f) the death of the victim resulted from, or is directly related to, any offence contemplated in [section 1 \(a\) to \(e\)](#) of the Witchcraft Suppression Act, 1957 ([Act No. 3 of 1957](#)).

Rape as contemplated in [section 3](#) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-

- (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 or compelled 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 person under the age of 16 years;
  - (iA) is an older person as defined in [section 1](#) of the Older Persons Act, 2006 ([Act No. 13 of 2006](#));  
[Sub-para. (iA) inserted by [s. 25 \(a\) of Act No. 8 of 2017](#).]

- (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or
  - (iii) is a person who is mentally disabled as contemplated in [section 1](#) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
- (c) involving the infliction of grievous bodily harm.

Compelled rape as contemplated in [section 4](#) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-

- (a) when committed-
  - (i) in circumstances where the victim was raped more than once by one or more than one person;
  - (ii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or
  - (iii) under circumstances where the accused knows that the person committing the rape has the acquired immune deficiency syndrome or the human immunodeficiency virus;
- (b) where the victim-
  - (i) is a person under the age of 16 years;
  - (iA) is an older person as defined in [section 1](#) of the Older Persons Act, 2006 ([Act No. 13 of 2006](#));  
[Sub-paragraph (iA) inserted by [s. 25 \(b\)](#) of [Act No. 8 of 2017](#).]
  - (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or
  - (iii) is a person who is mentally disabled as contemplated in [section 1](#) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
- (c) involving the infliction of grievous bodily harm.

Any offence referred to in [section 2, 5, 6, 7, 8, 9, 10](#) or [14](#) (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, when it is proved that the offence has-

- (a) endangered the life or caused serious bodily injury to or the death of, any person, or any number or group of persons;
- (b) caused serious risk to the health or safety of the public or any segment of the public; or
- (c) created a serious public emergency situation or a general insurrection.

Trafficking in persons as provided for in section 4 (1) and involvement in the offence as provided for in [section 10](#) of the Prevention and Combating of Trafficking in Persons Act, 2013.

Any offence referred to in Part I or Part II of [Schedule 1](#) to the Implementation of the Rome Statute of the International Criminal Court Act, 2002, ([Act No. 27 of 2002](#)).

Any offence referred to in [section 2](#) of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006;

(Pending amendment: Sch. 2, Part I to be amended by [s. 14](#) read with the [para. 1](#) of the Sch. of [Act No. 27 of 2006](#) with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not determined.)

(Date of commencement to be proclaimed)

## PART II

[[Part II](#) amended by [s. 36 \(1\)](#) of [Act No. 12 of 2004](#), by [s. 27 \(1\)](#) of [Act No. 33 of 2004](#) and by [s. 6](#) of [Act No. 18 of 2015](#).]

### Wording of Sections

(Pending amendment: [Part II](#) to be amended by [s. 14](#) read with [para. 2](#) of the Sch. of [Act No. 27 of 2006](#) with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not determined.)

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, extortion, fraud, forgery, uttering, theft, or an offence in Parts 1 to 4, or [section 17](#), [20](#) or [21](#) (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004-

- (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.

Any offence referred to in section-

- (a) 2, 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, in circumstances other than those referred to in Part I; or
- (b) 4 or 13.

Any offence referred to in [section 2](#), [4](#), [5](#) or [6](#) of the Prevention of Organised Crime Act, 1998 ([Act No. 121 of 1998](#)), which relates to an offence involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in [section 1](#) of the Criminal Matters Amendment Act, 2015.

Theft of ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in [section 1](#) of the Criminal Matters Amendment Act, 2015-

- (a) if it caused-
  - (i) interference with or disruption of any basic service, as defined in [section 1](#) of the aforementioned Act, to the public; or
  - (ii) damage to such essential infrastructure; or
- (b) if the offence was committed by or with the collusion or assistance of-
  - (i) a law enforcement officer as defined in [section 51 \(8\)](#);
  - (ii) a security officer, as defined in [section 1](#) of the Private Security Industry Regulation Act, 2001 ([Act No. 56 of 2001](#)), who was required to protect or safeguard such essential infrastructure;
  - (iii) an employee of, or contractor appointed by, the owner or the person in charge of such essential infrastructure; or
  - (iv) a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

An offence referred to in [section 3](#) of the Criminal Matters Amendment Act, 2015.

Any offence referred to in [section 3](#) of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006.

(Pending amendment: Sch. 2, [Part II](#) to be amended by [s. 14](#) read with the [para. 2](#) of Sch. of [Act No. 27 of 2006](#) with effect from a date to be fixed by the President by proclamation in the *Gazette* - date not determined.)

(Date of commencement to be proclaimed)

### PART III

[[Part III](#) substituted by [s. 68](#) of [Act No. 32 of 2007](#) and amended by [s. 48](#) of [Act No. 7 of 2013](#).]



### Wording of Sections

Rape or compelled rape as contemplated in [section 3](#) or [4](#) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I.

Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in [section 17](#) or [23](#) or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20 (1) or 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

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**

[[Part IV](#) substituted by [s. 5 \(b\)](#) of [Act No. 38 of 2007](#) and amended by [s. 7](#) of [Act No. 18 of 2015](#).]

### Wording of Sections

Any of the following offences, 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

Treason;

Sedition;

Public violence;

Robbery, other than a robbery referred to in Part I or [II](#) of this Schedule;

Kidnapping;

An offence involving an assault, when a dangerous wound is inflicted with

a firearm, other than an offence referred to in Part I, [II](#) or [III](#) of this

Schedule;

Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence;

Escaping from lawful custody.

Any offence referred to in-

- (a) [section 54 \(1\)](#) of the International Trade Administration Act, 2002 ([Act No. 71 of 2002](#)); or
- (b) section 32 (1) (a), (b), (c), (d), (k) in so far as that paragraph relates to [section 21 \(1\)](#), (l), (m) or (o) of the Second-Hand Goods Act, 2009 ([Act No. 6 of 2009](#)),

involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in [section 1](#) of the Criminal Matters Amendment Act, 2015.

### **PART V**

[Part V added by [s. 8](#) of [Act No. 18 of 2015](#).]

Any offence referred to in [section 36](#) or [37](#) of the General Law Amendment Act, 1955 ([Act No. 62 of 1955](#)), involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in [section 1](#) of the Criminal Matters Amendment Act, 2015.

Theft, involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in [section 1](#) of the Criminal Matters Amendment Act, 2015, which is not covered in [Part II](#) of this Schedule.