

STATE PRESIDENT'S OFFICE

No. 1914.
10 July 1992

It is hereby notified that the State President has assented to the following Act which is hereby published for general information: -

NO. 126 OF 1992: CRIMINAL LAW SECOND AMENDMENT ACT, 1992

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Criminal Procedure Act, 1977, so as to delete certain obsolete expressions; and to extend Part III of Schedule 2; to amend the Intimidation Act, 1982, so as to provide that an act or conduct which inspires fear in the observer thereof constitutes the offence of intimidation if proved that fear was inspired; and to create an additional offence; to amend the Internal Security Act, 1982, so as to delete the attorney-general's power to prohibit release on bail or on warning; to delete the detention of witnesses under warrant issued by the attorney-general; and to further regulate a certain offence; to provide that the organizing, training, equipping or arming of members or supporters of organizations is prohibited in certain cases; to provide that an attorney-general may issue a certificate in respect of certain offences to the effect that a special criminal procedure be followed in respect of the trial of such offences; to grant special powers to a court of law with regard to the hearing of such offences; to provide for a special plea procedure in respect of such offences; to provide that a person who has been arrested on account of the alleged commission of such an offence, may only on the written authorization of the attorney-general be released on bail or warning; to provide for the imposition of a prescribed sentence for the unlawful possession of weaponry in specified instances; and to provide for the detention of persons in certain cases for interrogation in respect of certain weaponry; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 2 July 1992.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

CHAPTER 1

Amendment of Criminal Procedure Act, 1977

Amendment of section 59 of Act 51 of 1977, as amended by section 3 of Act 26 of 1987

1. Section 59 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) An accused who is in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2 or in Schedule 3 to the Internal Security Act, 1982 (Act 74 of 1982),

may, before his first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, if the accused deposits at a police station the sum of money determined by such police official."

Amendment of section 72 of Act 51 of 1977, as amended by section 7 of Act 33 of 1986 and section 5 of Act 26 of 1987

2. Section 72 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) If an accused is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II or Part III of Schedule 2 or in Schedule 3 to the Internal Security Act, 1982 (Act 74 of 1982)-"

Amendment of section 184 of Act 51 of 1977

3. Section 184 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

"Whenever any person is likely to give material evidence in criminal proceedings with reference to any offence, other than an offence referred to in Part III of Schedule 2 or in the Schedule to the Internal Security Act, 1950 (Act 44 of 1950), any magistrate, regional magistrate or judge of the court before which the relevant proceedings are pending may, upon information in writing and on oath that such person is about to abscond, issue a warrant for his arrest."

Amendment of section 189 of Act 51 of 1977, as amended by section 20 of Act 59 of 1983

4. Section 189 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If any person present at criminal proceedings is required to give evidence at such proceedings and refuses to be sworn or to make an affirmation as a witness, or, having been sworn or having made an affirmation as a witness, refuses to answer any question put to him or refuses or fails to produce any book, paper or document required to be produced by him, the court may in a summary manner enquire into such refusal or failure and, unless the person so refusing or failing has a just excuse for his refusal or failure, sentence him to imprisonment for a period not exceeding two years or, where the criminal proceedings in question relate to an offence referred to in Part III of Schedule 2 or in Schedule 3 to the Internal Security Act, 1982 (Act No. 74 of 1982), to imprisonment for a period not exceeding five years."

Substitution of Part III of Schedule 2 to Act 51 of 1977

5. The following Part is hereby substituted for Part III of Schedule 2 to the Criminal Procedure Act, 1977:

"PART III

(Sections 59, 61, 72, 184, 185, 189)

Sediti on .

Public violence.

Arson.

Murder.

Kidnapping.

Child stealing.

Robbery.

Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.

Contravention of the provisions of section 1 and 1A of the Intimidation Act, 1982 (Act No. 72 of 1982).

Any conspiracy, incitement or attempt to commit any offence referred to in this Part of the above-mentioned offences.

Treason."

CHAPTER 2

Amendment of Intimidation Act, 1982

Amendment of section 1 of Act 72 of 1982, as amended by section 32 of Act 138 of 1991

6. Section 1 of the Intimidation Act, 1982, is hereby amended by the deletion in subsection (1) of subparagraph (ii) of paragraph (b).

Insertion of section 1A in Act 72 of 1982

7. The following section is hereby inserted in the Intimidation Act, 1982, after section 1:

"Intimidation of general public, particular section of population or inhabitants of particular area

1A. (1) Any person who with intent to put in fear or to demoralize or to induce the general public, a particular section of the population or the inhabitants of a particular area in the Republic to do or to abstain from doing any act, in the Republic or elsewhere-

- (a) commits an act of violence or threatens or attempts to do so;
- (b) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;
- (c) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (a) or act referred to in paragraph (b), or to aid in the commission, bringing about or performance thereof; or
- (d) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of an offence and liable on conviction to a fine which the court may in its discretion deem fit or to imprisonment for a

period not exceeding 25 years or to both such fine and such imprisonment.

(2) If in any prosecution for an offence in terms of subsection (1) it is proved that the accused has committed any act alleged in the charge, and if such act resulted or was likely to have resulted in the achievement of any of the objects specified in subsection (1), it shall be presumed, unless the contrary is proved, that the accused has committed that act with intent to achieve such object.

(3) If in any prosecution for an offence in terms of subsection (1) the act with which the accused is charged, consists thereof, and it is proved, that he unlawfully had in his possession any automatic or semi-automatic rifle, machine gun, sub-machine gun, machine pistol, rocket launcher, recoilless gun or mortar, or any ammunition for or component part of such weaponry, or any grenade, mine, bomb or explosive, it shall be presumed, unless the contrary is proved, that the accused had the said weaponry, ammunition, component part, grenade, mine, bomb or explosive in his possession with intent to commit therewith or in connection therewith in the Republic, in order to achieve any of the objects specified in subsection (1), any of the acts contemplated in paragraphs (a) to (d) inclusive.

(4) For the purposes of this section 'violence' includes the inflicting of bodily harm upon or killing of, or the endangering of the safety of, any person, or the damaging, destruction or endangering of property."

CHAPTER 3

Amendment of Internal Security Act, 1982

Repeal of sections 30, 31 and 32 of Act 74 of 1982

8. Sections 30, 31 and 32 of the Internal Security Act, 1982, are hereby repealed.

Amendment of section 54 of Act 74 of 1982

9. Section 54 of the Internal Security Act, 1982, is hereby amended-

- (a) by the deletion of paragraph (d) of subsection (1); and
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"Any person who with intent to achieve any of the objects specified in paragraphs (a) to (d) (c), inclusive, of subsection (1)"

Amendment of section 69 of Act 74 of 1982

10. Section 69 of the Internal Security Act, 1982, is hereby amended by the substitution for subsections (5) and (6) of the following subsections, respectively:

"(5) If in any prosecution for an offence in terms of section 54(1) or (2) it is proved that the accused has committed any act alleged in the charge, and if such act resulted or was likely to have resulted in the achievement of any of the objects specified in section 54(1)(a) to (d) (c), inclusive, it shall be presumed, unless the contrary is proved, that the accused has committed that act with intent to achieve such object.

(6) (a) If in any prosecution for an offence in terms of section 54(1) the act with which the accused is charged, consists thereof, and it is proved, that he unlawfully had in his possession any automatic or semi-automatic rifle, machine gun, sub-machine gun, machine pistol, rocket launcher, recoilless gun or mortar, or any ammunition for or component part of such weaponry, or any grenade, mine, bomb or explosive, it shall be presumed, unless the contrary is proved, that the accused had the said weaponry, ammunition, component part, grenade, mine, bomb or explosive in his possession with intent to commit therewith or in connection therewith in the Republic, in order to achieve any of the objects specified in section 54(1)(a) to (d) (c), inclusive, any of the acts contemplated in section 54(1)(i) to (iv), inclusive.

(b) If in any prosecution for an offence in terms of section 54(1) the act with which the accused is charged consists thereof, and it is proved, that he unlawfully had in his possession any firearm or ammunition other than any firearm or ammunition referred to in paragraph (a), or so unlawfully had in his possession more than one such other firearm, and if in the opinion of the court the nature of that other firearm or firearms or of that ammunition or the circumstances in which the accused so had such other firearm, firearms or ammunition in his possession or the quantity thereof which the accused so had in his possession can justify the inference that the accused so had possession thereof with intent to commit therewith or in connection therewith in the Republic any of the acts contemplated in section 54(1)(i) to (iv), inclusive, it shall be presumed, unless the contrary is proved, that the accused had the said other firearm, firearms or ammunition in his possession with intent to commit therewith or in connection therewith in the Republic, in order to achieve any of the objects specified in section 54(1)(a) to (d) (c), inclusive, any of the acts contemplated in section 54(1)(i) to (iv), inclusive. "

Repeal of Schedule 3 to Act 74 of 1982

11. Schedule 3 to the Internal Security Act, 1982, is hereby repealed.

CHAPTER 4

Offences in respect of organizations with military or similar character

Definitions

12. In this Chapter, unless the context otherwise indicates, "organization" means any association of persons, incorporated or unincorporated and regardless of whether or not it has been registered in terms of a statute, and also any branch, section or committee of such an organization or any local, regional or subsidiary body which forms part of such an organization.

Prohibition regarding certain organization, training, equipment or armament of members or supporters of organizations

13. No person shall -

- (a) take part in the control, administration or management of any organization;
- (b) organize, train, equip or arm the members or supporters of any organization;

- (c) undergo training in any organization, if the members or supporters of that organization are organized, trained, equipped or armed in order to usurp some or all of the functions-
 - (i) of the South African Police as contemplated in section 5 of the Police Act, 1958 (Act No. 7 of 1958);
 - (ii) for which the South African Defence Force may be employed as contemplated in section 3(2) of the Defence Act, 1957 (Act No. 44 of 1957), for themselves or such organization.

Presumption

14. If in criminal proceedings under section 13 it is proved that-

- (a) any person holds a position of leadership in or holds a position in any executive structure of the organization concerned; and
- (b) the members or supporters of the organization concerned are organized, trained, equipped or armed as contemplated in section 13, it shall be presumed, unless the contrary is proved, that such person participated in the control, administration or management of the organization concerned and that such person was aware of the fact that the members or supporters of the organization concerned are so organized, trained, equipped or armed.

Offences and penalties

15. Any person who contravenes or fails to comply with a provision of section 13, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

Authority of attorney-general required for prosecution

16. No prosecution for an offence contemplated in section 15 shall be instituted without the written authority of the attorney-general.

CHAPTER 5

Trial of special offences

Definitions

17. In this Chapter, unless the context otherwise indicates-

"certificate" means a certificate issued by the attorney-general in terms of section 18(1);

"special offence" means an offence referred to in section 18(1) in respect of which the attorney-general has issued a certificate.

Identification of special offences by attorney-general

18. (1) If the attorney-general is of the opinion that an offence with which any person is charged or is to be charged, is an offence in which murder, robbery with aggravating circumstances, violence or intimidation is involved, that attorney-general may, irrespective of what the actual charge is, at any time before such person pleads to the charge issue a certificate to the effect that such an offence is a special offence.

(2) The certificate shall be handed in at the court by the state prosecutor and forms part of the record of that court.

(3) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply at the trial of a special offence, except in so far as is otherwise provided in this Chapter.

Powers of court in respect of trial of special offences

19. (1) Notwithstanding anything to the contrary in any law contained, a court that tries a special offence shall, in order to ensure that that trial be concluded as soon as possible, sit on any day of the week.

(2) If the State is not ready to commence with the presentation of its case within 60 days of the date of the issue of the certificate, and if the court is satisfied that the State has failed to take all reasonable steps to commence with the presentation of its case, the court shall -

- (a) strike the case from the roll and release the accused; or
- (b) if the accused has already pleaded to the charge, release the accused on bail or on warning.

(3) If the State is ready to commence with the presentation of its case within 60 days of the date of the issue of the certificate, but the accused is not ready to commence, the court shall order that the trial be proceeded with at the earliest opportunity, but on a date not later than 90 days after the issue of the said certificate.

Plea at trial of special offences

20. (1) If an accused stands trial on a special offence, the charge sheet or indictment, as the case may be, shall be accompanied by a summary of the substantial facts on which the State relies.

(2) Where an accused at a trial of a special offence in any court pleads guilty to a special offence, or to an offence on which he may be convicted on the charge, and the public prosecutor accepts the plea, the presiding judge, regional magistrate or magistrate shall enquire from the accused whether he accepts the summary of the substantial facts and question the accused with reference to the alleged facts of the case in order to ascertain whether he admits the allegations in the charge to which he has pleaded guilty and, if satisfied that the accused is guilty of the offence to which he has pleaded guilty, convict the accused on his plea of guilty of that offence and impose any competent sentence.

(3) If the court at any stage of the proceedings under subsection (2) and before sentence is passed, is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty or is satisfied that a plea of guilty should not have been tendered by the accused, the court shall record a plea of not guilty, after which the procedure contemplated in subsection (4) shall apply: Provided that any allegation legally admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.

(4) (a) Where an accused at a trial of a special offence in any court pleads not guilty, the presiding judge, regional magistrate or magistrate shall request the accused to indicate-

- (i) what the basis of his defence to the charge is;
- (ii) to what extent he disputes or does not dispute the facts as set out in the summary of substantial facts referred to in subsection (1).

(b) If the accused fails to indicate as contemplated in paragraph (a)-

- (i) the court may at will, in respect of his credibility or conduct, draw an unfavourable inference regarding such failure if it is of the opinion that such an inference is justified in the light of all the evidence that was adduced at the trial; and
- (ii) the court shall inform the accused that it may draw such an inference.

(5) If an accused indicates in terms of subsection (4) that he does not dispute the allegations or some thereof as contained in the summary of the substantial facts, the presiding judge, regional magistrate or magistrate shall enquire from him whether he consents that the allegations that he does not dispute may be recorded as formal admissions, and if the accused so consents, such admissions shall be deemed to be admissions that have been recorded in terms of section 220 of the Criminal Procedure Act, 1977.

Bail in respect of special offences

21. (1) Subject to the provisions of section 19(2) and of subsection (3), an accused who is in custody and stands trial on a charge in respect of which the attorney-general has issued a certificate, shall not be released on bail or on warning as contemplated in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), without the written authorization of that attorney-general for a period of 120 days from the date on which such certificate was issued.

(2) Whenever any person who has been arrested, applies to be released on bail or on warning and the public prosecutor informs the court to which the application is made that the matter has been referred or is going to be referred to the attorney-general concerned with a view to the issuing of a certificate, such person shall, pending the decision of the attorney-general, not be released on bail or on warning: Provided that if no such certificate is issued within the period of 14 days immediately following upon the date on which such court is so informed, such person may again apply to be released on bail or on warning and may, subject to the provisions of any law, be so released.

(3) The attorney-general concerned may at any time before the expiration of the periods referred to in subsection (1) or (2), authorize that the prohibition on release be cancelled, after which the accused concerned may apply to be released on bail or on warning and, subject to the provisions of any law, be so released.

(4) An accused detained in terms of subsection (1) or (2), may at any stage of the proceedings submit representations in writing to the attorney-general concerned in which such attorney-general is requested to authorize that the prohibition on release be cancelled, and the court shall inform the accused of his right in this regard.

Matters relating to unlawful possession of weaponry

Prescribed sentence for unlawful possession of weaponry in certain cases

22. (1) If any person is convicted on a charge of contravening section 32 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), and it is proved that such person used the weaponry concerned in the commission of any other offence, such person shall, notwithstanding the provisions of that Act, be sentenced for that contravention to a period of imprisonment

of not less than five years, but not exceeding 25 years.

(2) The Minister of Justice may by notice in the Gazette, after consultation with the Minister of Law and Order, prescribe certain makes or classes of weaponry for the purposes of the provisions of subsection (1).

Detention of persons for interrogation in respect of the possession of certain weaponry

23. (1) Whenever it appears to a magistrate on the ground of information as submitted to him upon oath by the public prosecutor that there is reason to believe that any person is withholding from a policeman any information relating to his possession of any weaponry referred to in section 32 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), he may at the request of the public prosecutor issue a warrant for the arrest and detention of such person.

(2) Notwithstanding anything to the contrary in any law contained, any person arrested by virtue of a warrant under subsection (1), shall as soon as possible be taken to the place mentioned in the warrant, and detained there or at any other place and subject to such conditions as the magistrate may from time to time determine, in custody for interrogation until the magistrate orders his release when satisfied that the detainee has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention.

(3) (a) Any person arrested in terms of a warrant issued under subsection (1), shall be brought before a magistrate within 48 hours of such arrest and thereafter not less than once every 10 days.

(b) The magistrate shall at every such appearance of such person before him enquire whether such person has satisfactorily replied to all questions at his interrogation and whether it will serve any useful purpose to detain him further.

(c) Any person detained under subsection (1) may at any time make representation in writing to the magistrate relating to his detention or release.

(d) The attorney-general in whose area of jurisdiction any person is being detained under subsection (1) may at any time stop the interrogation of such person, and thereupon such person shall be released from custody immediately.

(4) No person shall in terms of this section be detained for a period in excess of 30 days.

(5) No person, other than an officer in the service of the State acting in the performance of his official duties, shall have access to a person detained under subsection (1), or shall be entitled to any official information relating to or obtained from such detainee: Provided that the legal representative of a person so detained shall have access to him.

CHAPTER 7

General provisions

Saving

24. (1) The provisions of Chapters 5 and 6 shall, subject to the provisions of subsections (2) and (3), cease to have effect after the expiry of one year from the commencement of those Chapters.

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

(3) Any prosecution of a special offence referred to in Chapter 5 which commenced before the date upon which the provisions of Chapter 5 ceased to have effect, and any appeal, application or proceedings in or in respect of such a prosecution, shall be continued and concluded as if Chapter 5 had at all relevant times been in operation.

Short title and commencement

25. (1) This Act shall be called the Criminal Law Second Amendment Act, 1992 and its provisions shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act and areas in the Republic.