

**CRIMINAL LAW AMENDMENT ACT 105 OF 1997**

[ASSENTED TO 27 NOVEMBER 1997] [DATE OF COMMENCEMENT: 13 NOVEMBER 1998]  
(Unless otherwise indicated)

*(English text signed by the President)*

**as amended by**

Judicial Matters Amendment Act 34 of 1998  
Judicial Matters Amendment Act 62 of 2000  
Judicial Matters Amendment Act 42 of 2001  
Defence Act 42 of 2002  
Prevention and Combating of Corrupt Activities Act 12 of 2004  
Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004  
Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007  
Criminal Law (Sentencing) Amendment Act 38 of 2007  
Judicial Matters Amendment Act 66 of 2008

**also amended by**

Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006  
[with effect from a date to be proclaimed - see PENDLEX ]

**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, 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:-

**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 34 of 1998.]

(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 3 of the Legal Aid Act, 1969 ( Act 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 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 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 34 of 1998.]

(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 51 of 1977 ), amended or repealed by this Act, shall be deemed not to be so amended or repealed.

**2 to 24 inclusive** .....

[Ss. 2 to 24 inclusive repealed by s. 106 (1) of Act 42 of 2002.]

**25** Amends section 30 of the Mental Health Act 18 of 1973 , as follows: paragraph (a) substitutes subsections (1) and (2) respectively; and paragraph (b) deletes subsection (7).

**26** Repeals section 3 of the Second General Law Amendment Act 94 of 1974 .

**27** (1) Substitutes section 18 of the Criminal Procedure Act 51 of 1977 .

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

**28** Amends section 79 (1) of the Criminal Procedure Act 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 51 of 1977 by deleting the proviso.

**30** Amends section 140 (2) (b) of the Criminal Procedure Act 51 of 1977 by deleting the proviso.

**31** Amends section 145 (2) of the Criminal Procedure Act 51 of 1977 by deleting the proviso.

**32** Amends section 255 (1) of the Criminal Procedure Act 51 of 1977 by substituting paragraph (a) .

**33** Amends section 257 of the Criminal Procedure Act 51 of 1977 by deleting the second proviso.

**34** Amends section 276 (1) of the Criminal Procedure Act 51 of 1977 by deleting paragraph (a) .

**35** Repeals sections 277, 278 and 279 of the Criminal Procedure Act 51 of 1977 .

**36** Substitutes section 282 of the Criminal Procedure Act 51 of 1977 .

**37** Amends section 286 (2) of the Criminal Procedure Act 51 of 1977 by substituting paragraph (c) .

**38** Amends section 309 (3) of the Criminal Procedure Act 51 of 1977 by substituting the words preceding the proviso.

**39** Amends section 315 of the Criminal Procedure Act 51 of 1977 , as follows: paragraph (a) substitutes subsection (2) (a) ; and paragraph (b) substitutes subsection (4).

**40** Repeals section 316 of the Criminal Procedure Act 51 of 1977 .

**41** Substitutes section 320 of the Criminal Procedure Act 51 of 1977 .

**42** Amends section 322 of the Criminal Procedure Act 51 of 1977 , as follows: paragraph (a) deletes subsection (2A); and paragraph (b) substitutes subsection (6).

**43 and 44** Repeal respectively sections 323 and 325A and 326 of the Criminal Procedure Act 51 of 1977 .

**45** Amends section 327 of the Criminal Procedure Act 51 of 1977 , as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsections (3) and (4); and subsection (c) deletes subsection (6) (a) (iii).

**46** Amends section 1 of the Criminal Law Amendment Act 1 of 1988 by substituting subsection (1).

**47** Repeals sections 19 and 20 of the Criminal Law Amendment Act 107 of 1990 .

**48** Substitutes section 3 of the Corruption Act 94 of 1992.

**49** Repeals section 19 of the General Law Amendment Act 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; and

(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:

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.

(a A ) 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) .....

[Sub-s. (4) omitted by s. 1 of Act 38 of 2007.]

(5) (a) Subject to paragraph (b) , 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 51 of 1977 ).

(b) Not more than half of a minimum sentence imposed in terms of subsection (2) may be suspended as contemplated in section 297 (4) of the Criminal Procedure Act, 1977, if the accused person was 16 years of age or older, but under the age of 18 years, at the time of the commission of the offence in question.

(6) This section does not apply in respect of an accused person who was under the age of 16 years at the time of the commission of an offence contemplated in subsection (1) or (2).

(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 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 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 amended by s. 33 of Act 62 of 2000 and by s. 36 (1) of Act 12 of 2004 and substituted by s. 1 of Act 38 of 2007.]

[Date of commencement of s. 51: 1 May 1998.]

## 52 .....

[S. 52 amended by s. 34 (a) , (b) , (c) , (d) , (e) and (f) of Act 62 of 2000 and repealed by s. 2 of Act 38 of 2007.]

[Date of commencement of s. 52: 1 May 1998.]

## 52A and 52B .....

[Ss. 52A and 52B inserted by s. 35 of Act 62 of 2000 and repealed by s. 2 of Act 38 of 2007.]

## 53 Saving

(1) .....

[Sub-s. (1) substituted by s. 16 (a) of Act 42 of 2001 and deleted by s. 3 (a) of Act 38 of 2007.]

(2) .....

[Sub-s. (2) deleted by s. 3 (a) of Act 38 of 2007.]

(2A) .....

[Sub-s. (2A) inserted by s. 16 (b) of Act 42 of 2001 and deleted by s. 3 (b) of Act 38 of 2007.]

(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 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 62 of 2000.]

[Date of commencement of s. 53: 1 May 1998.]

**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 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**

Number and year of law	Short title	Extent of amendment
Act 71 of 1968 (Transkei)	Dangerous Weapons Act, 1968	Amendment of section 4 by the substitution for subsection (1) of the following subsection:  '(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 section 286 of the Criminal Procedure Act, 1977 ( Act 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: 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

Act 34 of 1978 (Transkei)

Defence Act, 1978

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.'

(a) Amendment of section 45 by the substitution for paragraph (c) of subsection (3) of the following paragraph:

' (c) The commission of an offence 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 Schedule 1.'

(b) Amendment of section 1 of the First Schedule by the deletion of the definition of 'capital offence'.

(c) Amendment of section 4 of the First Schedule

(i) by the substitution for the heading of the following heading:  
'OFFENCES  
ENDANGERING SAFETY  
OF FORCES';

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 section 52 of the First Schedule:

**'52 Alternative punishments**

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.'

- (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:

'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 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.'

- (f) The following section is hereby substituted for section 57 of the First Schedule:

**'57 Civil offence may be tried under code**

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.'

- (g) Amendment of section 59 of the First Schedule by the substitution for the proviso of the following proviso: 'Provided that a person charged with treason, murder, rape or culpable homicide 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.'

- (h) Amendment of section 68 of the First Schedule by the substitution for the words preceding the proviso of the following words:

'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 and convened as may be prescribed.'

(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).

(j) Amendment of section 85 of the First Schedule by the deletion of paragraph (a) of subsection (1).

(k) Amendment of section 87 of the First Schedule by the deletion of subsection (1).

(l) Repeal of sections 96 and 97 of the First Schedule.

(m) The following section is hereby substituted for section 98 of the First Schedule:

**' 98 When sentence to be executed**

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 First Schedule:

**' 103 Council of review to hear argument in certain cases**

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

Act 19 of 1981 (Transkei)	Mental Health Act, 1981	<p>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:</p> <p>'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.'</p> <p>Amendment of section 29</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, 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.'; and</p> <p>(b) by the deletion of subsection (7).</p>
Act 9 of 1983 (Transkei)	Transkeian Penal Code, 1983	<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 such 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 such sentence as the court may deem fit.'</p>
<p>Act 26 of 1985 (Bophuthatswana)</p>	<p>Mental Health Act, 1985</p>	<p>(d) Amendment of section 155 by the substitution for subsection (2) of the following sub section:</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 such sentence as the court may deem fit.'</p>
<p>Act 13 of 1991 (Bophuthatswana)</p>	<p>National Defence Act, 1991</p>	<p>Amendment of section 30 by the deletion of subsection (7).</p>
<p>Act 71 of 1968 (Venda)</p>	<p>Dangerous Weapons Act, 1968</p>	<p>Amendment of section 41 by the deletion of paragraph (a) of subsection (4).</p> <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 he or she is in terms of section 286 of the Criminal Procedure Act, 1977 ( Act 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: 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</p>

Act 18 of 1973 (Venda)	Mental Health Act, 1973	<p>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> <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, 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.'; and</p> <p>(b) by the deletion of subsection (7).</p>
Act 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:</p> <p>' (c) The commission of any offence shall be deemed to have been cancelled on the 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.'</p>

(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 section 4 of the First Schedule-

- (i) by the substitution for the heading of the following heading:

'Offences endangering safety of forces';

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 section 51 of the First Schedule:

**' 51 Alternative punishments**

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.'

- (h) Amendment of section 52 of the First Schedule by the substitution for subsection (2) of the following subsection:

'(2) Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits 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: Provided that an officer shall not be liable to arrest by any person other than an officer.'

- (i) Amendment of section 70 of the First Schedule

- (i) by the deletion of the proviso to subsection (1);

		<p>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><b>'82 Council of review to hear argument in certain cases</b></p> <p>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 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 imprisonment, detention or field punishment imposed by any court martial or military court, as the case may be.'</p>
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**Schedule 2**

**(Section 51)**

**[NB: The Schedule has been amended by s. 14 (1) of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006, a provision which will be put into operation by proclamation. See PENDLEX . ]**



[Part I amended by s. 37 of Act 62 of 2000 and by s. 27 (1) of Act 33 of 2004, substituted by s. 68 of Act 32 of 2007 and amended by s. 5 (a) of Act 38 of 2007 and by s. 22 of Act 66 of 2008.]

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 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 51 of 1977 );
- (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; or
 

[Para. (e) added by s. 5 (a) of Act 38 of 2007.]
- (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 3 of 1957 ).

[Para. (f) added by s. 5 (a) of Act 38 of 2007.]

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;
  - (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;
  - (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 for sexual purposes by a person contemplated in section 71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

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 27 of 2002 ).

**[NB: An item has been added by s. 14 (1) of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006, a provision which will be put into operation by proclamation. See PENDLEX . ]**

[Part II amended by s. 36 (1) of Act 12 of 2004 and by s. 27 (1) of Act 33 of 2004.]

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 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 Part 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.

**[NB:** An item has been added by s. 14 (1) of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006, a provision

which will be put into operation by proclamation. See PENDLEX . ]

### PART III

[Part III substituted by s. 68 of Act 32 of 2007.]

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 Ammunitions Act, 1969 (Act 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.

Any trafficking related offence by a commercial carrier as contemplated in section 71 (6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

### PART IV

[Part IV substituted by s. 5 (b) of Act 38 of 2007.]

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.

**PENDLEX: Criminal Law Amendment Act 105 of 1997 after amendment by the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006**

### **Schedule 2 - Part I**

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;

### **Schedule 2 - Part II**

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.

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