South African Law Reform Commission

DISCUSSION PAPER 179

EXPUNGEMENT OF CRIMINAL RECORDS

PROJECT 151: THE REVIEW OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 (A SUB-PROJECT OF THE REVIEW OF THE CRIMINAL JUSTICE SYSTEM)

Closing date for comments: 02 October 2026

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SOUTH AFRICAN LAW REFORM COMMISSION

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There is no sub-committee for this thematic area. In the absence of a sub-committee, the issues discussed and highlighted in this paper consist largely of a contribution by the Department of Justice and Constitutional Development (DoJ&CD), authored by Ms Liana Nieuwoudt. The Secretary for the SALRC is Mr Nelson Matibe. The researcher assigned to this part of the investigation is Ms Joleen Richter.

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REQUEST FOR COMMENTS

This discussion paper has been prepared to elicit responses from various stakeholders and interested members of the public, and to serve as a basis for the Commission's deliberations during its consultative process. Following an evaluation of the responses and any final deliberations on the matter, the SALRC will issue a report on this subject, which will be submitted to the Minister of Justice and Constitutional Development.

The views, conclusions and recommendations in this paper are not the final views of the Commission. The paper is published in full to provide persons and bodies wishing to comment or to make suggestions for the reform of this particular area of the law with sufficient background information to enable them to place focused submissions before the SALRC.

The SALRC will assume that respondents agree to the SALRC quoting from or referring to comments and attributing comments to respondents unless representations are marked "Confidential". Respondents should be aware that the SALRC may, in any event, be required, under the Promotion of Access to Information Act 2 of 2000, to release information contained in representations.

Respondents are requested to submit written comments or representations on the Discussion Paper to the SALRC by no later than 02 October 2026. Comments can be sent by email or post. However, comments by email are preferred to CPAreform@justice.gov.za

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ABBREVIATIONS

	Abbreviation	Explanation
1.	CJS	Criminal Justice System
2.	CPA	Criminal Procedure Act 51 of 1977
3.	CRC	Criminal Record Centre
4.	DoJ&CD	Department of Justice and Constitutional Development
5.	ICJS	Integrated Criminal Justice System
6.	SALRC	South African Law Reform Commission
7.	SAPS	South African Police Service

EXECUTIVE SUMMARY

1. This paper is narrow in scope and invites comments on certain challenges and proposals regarding the expungement of a person's criminal record after a prescribed period has elapsed since the date of conviction. The challenges identified include the following:

a) The volume of applications received in respect of expungements has increased dramatically;
b) No discretion exists on the part of the department to expunge or to refuse an expungement as Section 271B of the CPA is prescriptive; and
c) The current process is time consuming and may have an impact on a person who qualified for expungement of his or her criminal record.

2. The following measures are proposed in order to address the challenges:

a) Automatic expungement of qualifying criminal records upon meeting the criteria for same;
b) Legislative provision and enabling legislative provisions for certain categories of offences that will qualify for automatic expungement;
c) Expansion of the scope of sentences and shortening of the time period for expungement (including a list of proposed sentences and the proposed lapse of time before expungement); and
d) The delegation of duties assigned to the Director-General in this respect in order to lessen the administrative burden and shorten the process.

CHAPTER 1: BACKGROUND

A Context of the Investigation

1.1 Since 1996, several programmes and initiatives have been developed to ensure the establishment and maintenance of a transformed, efficient, effective, victim-friendly and modernised criminal justice system (CJS) for South Africa. Key among these initiatives are the National Crime Prevention Strategy of 1996,[1] as a vehicle to transform and align the CJS to the new democratic dispensation; the Seven Point Plan of 2008, which listed seven fundamental transformative measures in recognition that the CJS in South Africa was performing sub-optimally and needed to change;[2] the National Development Plan: Vision 2030 of 2012 that outlines a roadmap for the transformation of society;[3] and the adoption of Outcome 3 of the Medium Term Strategic Framework (2014-2019), "All People in South Africa are, and feel safe".[4]

1.2 In 2017, Cabinet approved a broad framework for the development of an Integrated Criminal Justice Strategy to promote a transformed, efficient, effective and modernised integrated CJS,[5] the result of which was the Integrated Criminal Justice System (ICJS) Strategic Framework for South Africa.[6] The Implementation Plan for the ICJS proposes that the overhaul of the Criminal Procedure Act 51 of 1977 (CPA) be implemented in a phased manner.[7] However, the immediate focus should be on determining the critical weaknesses of the CPA and its Regulations.

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1 Department: Safety and Security *National Crime Prevention Strategy: Summary* (May 1996, South African Government).

2 Department: Justice and Constitutional Development *Annual Report 2008/09* at 7.

3 National Planning Commission National Development Plan 2030: Our Future – make it work (August 2012).

4 Department: Government Communication and Information System *Medium-Term Strategic Framework 2014-2019* (September 2014) at 19–20.

5 Department: Government Communication and Information System "Justice and Correctional Services" *South Africa Yearbook 2019-2020* at 2.

6 Integrated Justice System "Profile" accessed 24 August 2026 ijs.gov.za/profile.

7 Ronald Lamola, Minister of Justice and Correctional Services "Opening and welcome address" Strengthening the Integrated Criminal Justice System and Reviewing the Criminal Procedure Act, 1977 to keep our people safe and secure Conference (27 February 2024) www.gov.za/news/speeches/minister-ronald-lamola-strengthening-integrated-criminal-justice-system-and-reviewing.

1.3 On 26 August 2020, the then Minister of Justice and Correctional Services, Mr Ronald Lamola (MP), requested the Chairperson of the SALRC to include, on an urgent basis, the review of the CJS in the SALRC's research programme. Under the cover of a letter dated 31 March 2021, the Minister submitted the terms of reference for the review to the Commission. The review was included in the SALRC's research programme under Project 151. In view of the urgency to reform the CPA, the SALRC is following a two-pronged approach in executing the review. First, the reform of the CPA is being dealt with in terms of an accelerated process under the Criminal Procedure Reform (CPR) Project, a sub-project of the broader Criminal Justice System Reform (CJSR) Project. Both of these processes are part of Project 151.

1.4 As part of the accelerated process, DoJ&CD and the SALRC hosted consultative stakeholder workshops on 23 June 2023 and 21 – 22 September 2023. The purpose of the workshops was to gather insights from stakeholders on the problems experienced in the CJS and the challenges and inadequacies that need to be addressed, as these relate to the CPA. The workshops provided an important platform for conversation and debate among the Departments and institutions in the criminal justice value chain. The outcome of the workshops assisted the SALRC in developing a framework for the scope of the review of the CJS and conceptualising the issues to be addressed. The framework outlines several thematic areas related to the pre-trial, trial and post-trial phases. These thematic areas have been identified as they relate to areas of our criminal law, particularly the CPA, that need reform.[8] This discussion paper stems from the thematic area Expungements, under the post-trial phase.

B Scope of the Paper

1.5 The scope of the paper is narrow**,** and it is limited to reform of expungement of criminal records in terms of the CPA, as suggested by the DoJ&CD.[9] The paper shortly outlines the challenges experienced by members of the public under the current prescribed process and considers practical solutions on which commentary is sought.

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8 See also Chapter 1 of SALRC Discussion Paper 171 on Project 151: The Review of the Criminal Procedure Act 51 of 1977 (a sub-project of the Review of the Criminal Justice System) – Ensuring the Continuity of Criminal Trials: Reforming the "De Novo" Rule and Court Record Management in South Africa (February 2026).

9 Liana Nieuwoudt, Director: Legal Process, DoJ&CD *Attachment* "Expungements – Inputs SALRC v for Subcom 06032026" to email forwarded to SALRC researcher from SALRC Assistant Secretary (15 April 2026).

CHAPTER 2: EXPUNGEMENT IN SOUTH AFRICA

2.1 The Directorate Legal Process in the DoJ&CD is, *inter alia*, responsible for processing of applications for expungement of criminal records in terms of section 271B of the CPA and to consider applications for pardon in terms of section 84(2)(j) of the Constitution of the Republic of South Africa, 1996.

2.2 Section 271B of the Act came into operation during 2009. Prior to 2009, the only way a convicted person could clear a criminal record was to approach the President in terms of section 84(2)(j) of the Constitution[10] to be granted a pardon. The dramatic increase in these applications resulted in a great administrative burden on officials in various offices, the Minister and the President. In order to create a more efficient process and to reduce the workload substantially, section 271 of the CPA was amended to provide for a wider category of convictions to be removed from a person's criminal record, without intervention of the President (the pardon process). The majority of applications to clear a criminal record (which were previously considered by way of the pardon process) now fall within the ambit of section 271B of the CPA and may be expunged from criminal records by way of an application in terms of the Act. The Act, in short, regulates the expungement of certain convictions from a criminal record after a fixed period of time (10 years) has lapsed and provided that certain criteria as listed in section 271B are met.

2.3 In short, this process entails that if an applicant's conviction falls within the ambit of the provisions of the Act, such an applicant may approach the Director-General of the Department with a request to have his/her criminal record expunged. The Director-General then issues a certificate of expungement indicating that the applicant's criminal record should be expunged. The Director-General forwards the certificate of expungement to the head of the Criminal Record Centre (CRC) at the South African Police Service (SAPS) and the head of the CRC informs the applicant of the expungement of his/her criminal record. This process is administered by the Department and the SAPS. This process of expungement is more efficient and less time-consuming than the pardon process and effectively regulates the expungement of criminal records for offences that were not seen in a serious light.

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10 Constitution of the Republic of South Africa, 1996.

A Automatic expungement of criminal records

2.4 The number of applications received since 2009 has, however, increased dramatically over the years.

2.5 Currently, the process of the expungement of criminal records is regulated and provides for an administrative process to deal with such applications. It is a prerequisite that the applicant must submit the prescribed form[11] to enable the process to commence.

2.6 Section 271B is prescriptive and does not allow for any discretion on whether or not a record will qualify to be expunged. The current process does not allow for any form of rehabilitative overview and simply dictates what sentences can be expunged provided that the requirements are met.

2.7 Furthermore, the current administration process is long and cumbersome and a qualifying applicant has to wait for an extensive period of time to have the record expunged, despite the fact that he/she has already qualified in terms of the relevant section applicable. The impact of carrying a criminal record is tremendous and such a person is potentially unable to successfully apply for employment, promotions, etc. Qualifying applicants will carry the burden of having a criminal record irrespective of whether or not he/she qualifies until a successful application is made to have the relevant conviction expunged. The view is held that the current process does affect the constitutional rights of qualifying applicants negatively.

2.8 When the expungement of a criminal conviction which falls within the set criteria is delayed unreasonably, it affects the person in various ways. The right to equality in section 9 of the Constitution[12] may be adversely affected, as the criminal record which stands to be expunged may have an effect on, *inter alia,* employment opportunities, the obtaining of professional licenses, admission to certain professions, adoption or fostering of a child/children and the holding of firearm licenses.[13]

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11 Form J744 - Form A: Application for expungement of a criminal record (Section 271B(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) available at www.justice.gov.za/expungements.html.

12 Constitution of the Republic of South Africa, 1996.

13 Department: Justice and Constitutional Development "Expungement of a Criminal Record in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977)" accessed 24 August 2026 www.justice.gov.za/expungements.html.

2.9 Certain convictions that were imposed on religious activities (for example, the use of cannabis) (and for personal use) also infringe on a constitutional right, as pronounced on and legislated, and these convictions as well as Apartheid-Era political convictions fall in the category which stands to be automatically expunged without the 10 year waiting period, regardless of the length or nature of the sentence, due to the evolved and reformed law.[14]

2.10 The failure to expunge a criminal record in an expedited manner when it is due places a hold on a person's growth and ultimately rehabilitation and reintegration into society following a past mistake.

2.11 There is a huge outcry from the public in general in favour of amending section 271B of the CPA to allow for the automatic expungement of all qualifying convictions and sentences, provided that the necessary criteria are met. Currently, only the National Office in Pretoria can process such applications and it is a manual process. The process currently takes 60 working days to be finalised.[15] Applicants wait for months to clear a record of convictions and sentences that qualify for expungement. The automatic expungement of criminal records will allow for a quick and fair administrative process.

2.12 Legislative provision was already made for the automatic expungement of COVID-19 related convictions and the SAPS CRC has successfully completed that project without the involvement of the DoJ&CD[16]. The Cannabis for Private Purposes Act[17] also provides for the automatic expungement of criminal records relating to the possession of cannabis. This Act is, however, not yet operational. Section 57D (1) of the CPA also provides for the automatic expungement of the criminal record of a person which contains the conviction and sentence of a person who has paid an admission of guilt fine at a police station or a local authority in respect of a specified offence. The category or class of offences that will qualify for the automatic expungement of such records has not been gazetted to date. The view is held that there is a clear legal shift to regulate the expungement of criminal records automatically without administrative intervention by way of submitting an application form.

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14 Supra.

15 Supra.

16 Section 10 of the Judicial Matters Amendment Act 15 of 2023.

17 Cannabis for Private Purposes Act 7 of 2024.

2.13 It is, however, imperative that the administrative burden on the SAPS CRC is also taken into consideration as they are responsible for the keeping and updating of all criminal records.

B Expansion of section 271B to allow for further categories of convictions and sentences to be expunged

2.14 The view is further held that section 271B should be further amended to widen the scope of sentences to be expunged by way of the current process and to provide for shorter periods of time before a conviction and sentence qualify for expungement.

2.15 The view is held that provision must be made for three categories of sentences to be expunged. Certain convictions should be expunged after three years, others after five years and others after 10 years since the date of conviction. This is in line with the approach that is taken by many other democratic countries.

2.16 The current fixed term, which should lapse before applying for expungement of a criminal record, is similar to the approach followed in New Zealand[18] and Australia,[19] with the length of time differing slightly. More serious offences are excluded from expungement. The tiered rehabilitation approach is also employed by European countries such as Germany.[20] In the United States of America,[21] the waiting period and criteria may vary from State to State. The process (application as opposed to automatic) also varies between the different jurisdictions, notably with exclusion of certain categories of convictions.

2.17 In the light of the above-mentioned, it is suggested that the expungement process

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18 Criminal Records (Clean Slate) Act 2004 (New Zealand); Ministry of Justice "Clean Slate Scheme" New Zealand Government (updated 20 December 2022).

19 Attorney-General's Department *Removing a conviction from your criminal record* (Government of South Australia) accessed 24 August 2026 agd.sa.gov.au/__data/assets/pdf_file/0009/909324/Removing-a-conviction-from-your-criminal-record-easy-read-factsheet.pdf.

20 S 46 of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz - Bzrg*).

21 Edward Gates "How to get criminal charges expunged: A 7-step guide" *American Judicial System* (6 August 2025) www.ajs.org/how-to-get-criminal-charges-expunged/.

be further expanded as follows:

Category 1: Sentences and orders to be expunged after 3 years:

2.18 It is proposed that section 271B be amended to allow for the following sentences to be expunged after a period of three years has lapsed:

(a) a sentence discharging a person with a caution or a reprimand in terms of section 297(1)(c);

(b) a sentence in the form of a fine only which is less than R10 000; and

(c) a sentence of whipping or corporal punishment in terms of section 294, before it was repealed by section 2 of the Abolition of Corporal Punishment Act, 1997 (Act No. 33 of 1997).

Category 2: Sentences and orders to be expunged after 5 years:

2.19 It is proposed that section 271B be amended to allow for the following sentences to be expunged after a period of five years has lapsed:

(a) a sentence postponing the passing of the sentence in terms of section 297(1)(a), where the person was discharged in terms of section 297(2) or (3);

(b) a sentence in the form of a fine only more than R10 000 but not exceeding R20 000;

(c) an order referred to in section 290(1), (2) or (3), before it was repealed by section 99 of this Act, where a person was sent to a child and youth care centre (previously referred to as a reform school), the period not exceeding twelve months;

(d) a sentence of correctional supervision, referred to in section 276(1)(h);

(e) a sentence of imprisonment for a period not exceeding twelve months, from which a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board in terms of section 276(1)(i);

(f) a sentence of imprisonment for a period not exceeding twelve months whether or not the operation of the whole sentence or part of the sentence is suspended in terms of section 297(1)(b);

(g) a sentence of imprisonment with the option of a fine not exceeding R20 000 whether the operation of the whole sentence or part of the sentence is suspended in terms of section 297(1)(b); and

(h) a sentence of periodical imprisonment referred to in section 276(1)(c) not exceeding twelve months.

Category 3: Sentences and orders to be expunged after 10 years:

2.20 It is proposed that section 271B be amended to allow for the following sentences to be expunged after a period of 10 years has lapsed:

(a) an order referred to in section 290(1)(d), (2) or (3), before it was repealed by section 99 of this Act where, in respect of a person sent to a reform school, the period exceeds twelve months;

(b) a sentence in the form of a fine only more than R20 000 but not exceeding R40 000;

(c) a sentence of imprisonment for a period exceeding twelve months but less than two years;

(d) a sentence of periodic imprisonment exceeding twelve months referred to in section 276(1)(c);

(e) a sentence of imprisonment with the option of a fine more than R20 000 but less than R40 000;

(f) a sentence of imprisonment for a period exceeding twelve months, from which a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board in terms of section 276(1)(i); and

(g) a sentence of imprisonment exceeding twelve months where the operation of the whole of the sentence is suspended in terms of section 297(1)(b).

C Discretionary power by Minister to expunge criminal record before required period of time has lapsed

2.21 The proposal that provision should be made for the Minister to be able to direct that a conviction be expunged before the suggested three, five and 10 years periods have lapsed where exceptional circumstances exist, or direct that a sentence be expunged which is currently not provided for in section 217B of the CPA, is not supported. These matters are currently dealt with by way of an application for pardon in terms of section 84(2)(j) of the Constitution[22] and the view is held that to give such discretion to the Minister can be viewed as usurping the powers of the President to grant a pardon.

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22 Constitution of the Republic of South Africa, 1996.

D Section 271DB: Delegation of powers or duties assigned to Director-General

2.22 In terms of section 271DB, the Director-General may delegate any power or assign any duty conferred on or assigned to him in terms of section 271B(2) or (3) or 271C(3) or (4) to an appropriately qualified official in the employ of the Department at the rank of Deputy Director-General. It is proposed that the possibility for the Director-General to delegate the duties to a person on the rank of Chief Director or even Director be investigated further. The current process or suggested amendments do not provide for a discretionary function and are merely a rubber-stamping process. A person either qualifies or does not and the processing of these matters creates a huge administrative burden for senior officials. To delegate the duties further will also allow for a shorter period of time for the finalisation of these applications.

2.23 Commentators are invited to make submissions on the issues and proposals mentioned above in order to assist the Commission in its attempt to produce a proper draft Bill for the legislative authority.

2.24 Comments are further invited on the categories of convictions which should not qualify for expungement. Consideration should be given to the seriousness of certain convictions, as well as where there is a conflict with related legislation where the consequence of the conviction has an impact on the capacity of a person to perform certain duties.

2.25 Finally, submissions are sought on whether judicial review should be applicable to any of the proposed categories of convictions or on the process of expungement as a whole.

LIST OF SOURCES

Table of legislation

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Cannabis for Private Purposes Act 7 of 2024
Constitution of the Republic of South Africa, 1996
Criminal Procedure Act 51 of 1977
Judicial Matters Amendment Act 15 of 2023

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