

CRIMINAL LAW AMENDMENT, 1997¹
(ACT NO. 105 OF 1997)

[ASSENTED TO 27 NOVEMBER 1997]

[DATE OF COMMENCEMENT: 13 NOVEMBER 1998 (Unless otherwise indicated)]

(English text signed by the President)

published in GG 18519 of 19 December 1997

Commencements (see s. 54 of this Act)

provisions	date	refer to
ss. 51–53	1 May 1998	Proc R43 in GG 18879 of 1 May 1998
ss. 1–50	13 November 1998	Proc R116 in GG 19475 of 13 November 1998

as amended

by	with effect from	refer to
Judicial Matters Amendment Act 34 of 1998	19 December 1997	s. 26(2)(g) of Act 34 of 1998
Judicial Matters Amendment Act 62 of 2000	23 March 2001	s. 38 of Act 62 of 2000; Proc R21 in GG 22159 of 23 March 2001
	21 June 2002	Proc R54 in GG 23548 of 21 June 2002
Judicial Matters Amendment Act 42 of 2001	7 December 2001	s. 48(1) of Act 42 of 2001
Defence Act 42 of 2002	23 May 2003	s. 107 of Act 42 of 2002; Proc R47 in GG 24904 of 23 May 2003
Prevention and Combating of Corrupt Activities Act 12 of 2004	27 April 2004	s. 37 (1) of Act 12 of 2004
Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004	20 May 2005	s. 28 of Act 33 of 2004; Proc R18 in GG 27502 of 15 April 2005
Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	16 December 2007	s. 72 (1) of Act 32 of 2007
Criminal Law (Sentencing) Amendment Act 38 of 2007	31 December 2007	s. 9 of Act 38 of 2007
Judicial Matters Amendment Act 66 of 2008	17 February 2009	s. 40 (1) of Act 66 of 2008
Prevention and Combating of Trafficking in Persons Act 7 of 2013	9 August 2015	s. 50 of Act 7 of 2013; Proc R32 in GG 39078 of 7 August 2015
Judicial Matters Amendment Act 42 of 2013	22 January 2014	s. 43 (1) of Act 42 of 2013
Criminal Matters Amendment Act 18 of 2015	1 June 2016	s. 10 of Act 18 of 2015; Proc R33 in GG 40010 of 24 May 2016
Judicial Matters Amendment Act 8 of 2017	2 August 2017	s. 43 (1) of Act 8 of 2017
Cybercrimes Act 19 of 2020	1 December 2021	s. 60 of Act 19 of 2020; Proc R42 in GG 45562 of 30 November 2021
Criminal and Related Matters Amendment Act 12 of 2021	5 August 2022	s. 19 of Act 12 of 2021; Proc R75 in GG 47198 of 4 August 2022

also amended

by	with effect from	refer to
Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006	a date to be proclaimed - see PENDLEX	s. 16 of Act 27 of 2006
Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023	a date to be proclaimed - see PENDLEX	s. 11 of Act 16 of 2023

¹ This Act has been updated to include all available historical commencement details

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 (wef 19 December 1997).]

(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 22 of 1969),² 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 Board³ 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.

² The Legal Aid South Africa Act 39 of 2014 – see s. 25 (2) of that Act

³ The Board established under s. 2 of the Legal Aid South Africa Act 39 of 2014 – see s. 25 (3) of that Act
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(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 (wef 19 December 1997).]

(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 (wef 23 May 2003).]

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;

(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
- (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 18 of 2015 (wef 1 June 2016).]

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) ...

[Sub-s. (4) omitted by s. 1 of Act 38 of 2007 (wef 31 December 2007).]

(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 51 of 1977).

[Sub-s. (5) substituted by s. 26 of Act 42 of 2013 (wef 22 January 2014).]

(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 42 of 2013 (wef 22 January 2014).]

(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 (wef 23 March 2001) and by s. 36 (1) of Act 12 of 2004 (wef 27 April 2004) and substituted by s. 1 of Act 38 of 2007 (wef 31 December 2007).]

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

52 ...

[S. 52 amended by s. 34 of Act 62 of 2000 (wef 23 March 2001) and repealed by s. 2 of Act 38 of 2007 (wef 31 December 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 (wef 21 June 2002) and repealed by s. 2 of Act 38 of 2007 (wef 31 December 2007).]

53 Saving

(1) ...

[Sub-s. (1) substituted by s. 16(a) of Act 42 of 2001 (wef 7 December 2001) and deleted by s. 3(a) of Act 38 of 2007 (wef 31 December 2007).]

(2) ...

[Sub-s. (2) deleted by s. 3(a) of Act 38 of 2007 (wef 31 December 2007).]

(2A) ...

[Sub-s. (2A) inserted by s. 16(b) of Act 42 of 2001 (wef 7 December 2001) and deleted by s. 3 (b) of Act 38 of 2007 (wef 31 December 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 (wef 23 March 2001).]

[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 (wef 31 December 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	Amends section 4 by substituting subsection (1).
Act 34 of 1978 (Transkei)	Defence Act, 1978	(a) Amends section 45 (3) by substituting paragraph (c). (b) Amends section 1 of the First Schedule by deleting the definition of 'capital offence'. (c) Amends section 4 of the First Schedule, as follows: paragraph (i) substitutes the heading; and paragraph (ii) substitutes the words following upon paragraph (h). (d) Substitutes section 52 of the First Schedule. (e) Amends section 53 (2) of the First Schedule by substituting the words preceding the proviso. (f) Substitutes section 52 of the First Schedule. (g) Amends section 59 of the First Schedule by substituting the proviso. (h) Amends section 68 of the First Schedule by substituting the words preceding the proviso. (i) Amends section 83 of the First Schedule, as follows: paragraph (i) deletes the proviso to subsection (1); and paragraph (ii) deletes the proviso to subsection (2). (j) Amends section 85 (1) of the First Schedule by deleting paragraph (a). (k) Amends section 87 of the First Schedule by deleting subsection (1). (l) Repeals sections 96 and 97 of the First Schedule. (m) Substitutes section 98 of the First Schedule. (o) Amends section 135 (3) of the First Schedule by substituting the words preceding the proviso.
Act 19 of 1981 (Transkei)	Mental Health Act, 1981	Amends section 29, as follows: paragraph (a) substitutes subsections (1) and (2); and paragraph (b) deletes subsection (7).
Act 9 of 1983 (Transkei)	Transkeian Penal Code, 1983	(a) Amends section 49 by deleting paragraph (i). (b) Amends section 148 by substituting subsection (3). (c) Amends section 153 by substituting subsection (6). (d) Amends section 155 by substituting subsection (2).
Act 26 of 1985 (Bophuthatswana)	Mental Health Act, 1985	Amends section 30 by deleting subsection (7).
Act 13 of 1991 (Bophuthatswana)	National Defence Act, 1991	Amends section 41 (4) by deleting paragraph (a).
Act 71 of 1968 (Venda)	Dangerous Weapons Act, 1968	Amends section 4 by substituting subsection (1).
Act 18 of 1973 (Venda)	Mental Health Act, 1973	Amends section 30, as follows: paragraph (a) substitutes subsections (1) and (2); and paragraph (b) deletes subsection (7).

Act 15 of 1982 (Venda)	Defence Act, 1982	(a) Amends section 1 by deleting the definition of 'capital offence'. (b) Amends section 6 (3) by substituting paragraph (c). (c) Amends section 82, as follows: paragraph (i) substitutes in subsection (1) the words preceding the proviso; and paragraph (ii) deletes paragraph (a) of the proviso to subsection (2). (d) Amends section 85 by substituting the words preceding paragraph (a). (e) Amends section 86 (1), as follows: paragraph (i) deletes paragraph (a) (i); paragraph (ii) deletes paragraph (b) (i); and paragraph (iii) deletes paragraph (c) (i). (f) Amends section 4 of the First Schedule, as follows: paragraph (i) substitutes the heading; and paragraph (ii) substitutes the words following upon paragraph (h). (g) Substitutes section 51 of the First Schedule. (h) Amends section 52 of the First Schedule by substituting subsection (2). (i) Amends section 70 of the First Schedule; as follows: paragraph (i) deletes the proviso to subsection (1); and paragraph (ii) deletes the proviso to subsection (2). (j) Amends section 73 of the First Schedule by deleting subsection (1). (k) Repeals sections 77 and 78 of the First Schedule. (l) Substitutes section 82 of the First Schedule. (m) Amends section 102 (3) of the First Schedule by substituting the words preceding the proviso.
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Schedule 2 (Section 51)

[Schedule 2 amended by s. 58 of Act 19 of 2020 (wef 1 December 2021) and by ss. 15, 16 and 17 of Act 12 of 2021 (wef 5 August 2022).]

[NB: Schedule 2 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. Schedule 2 has also been amended by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]

Part I

[Part I amended by s. 37 of Act 62 of 2000 (wef 23 March 2001) and by s. 27 (1) of Act 33 of 2004 (wef 20 May 2005), substituted by s. 68 of Act 32 of 2007 (wef 16 December 2007) and amended by s. 5(a) of Act 38 of 2007 (wef 31 December 2007), by s. 22 of Act 66 of 2008 (wef 17 February 2009), by s. 48 of Act 7 of 2013 (wef 9 August 2015), by s. 25 of Act 8 of 2017 (wef 2 August 2017) and by s. 15 of Act 12 of 2021 (wef 5 August 2022).]

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;
 - (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; or
 - (iii) a person under the age of eighteen years;

[NB: Para. (b) has been substituted by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]
- (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

[NB: Sub-para. (i) has been substituted by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]
 - (ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

[NB: Sub-para. (ii) has been substituted by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]
- (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 33 of 1957); or
- (g) the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs (a) and (b) of the definition of 'domestic violence' in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998), by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim.

[Item amended by s. 5 (a) of Act 38 of 2007 (wef 31 December 2007) and substituted by s. 15(a) of Act 12 of 2021 (wef 5 August 2022).]

Attempted murder, in circumstances referred to in paragraphs (a) to (g) of the offence of 'murder'.

[Item inserted by s. 15(b) of Act 12 of 2021 (wef 5 August 2022).]

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

(a) when committed –

- (i) in the circumstances where the accused is convicted of the offence of rape and evidence adduced at the trial of the accused proves that the victim was also raped by –
 - (aa) any co-perpetrator or accomplice; or
 - (bb) a person, who was compelled by any co-perpetrator or accomplice, to rape the victim, as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,

irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

- (ii) in the circumstances where the accused is convicted of the offence of rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial of the accused proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;
- (iii) by the accused who –
 - (aa) has previously been convicted of the offence of rape or compelled rape; or
 - (bb) has been convicted by the trial court of two or more offences of rape or the offences of rape and compelled rape,

irrespective of –

- (aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;
- (bbb) the date of the commission of any such offence of which the accused has so been convicted;
- (ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;
- (ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or
- (eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or
- (iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;

[Para. (a) substituted by s. 15 (c) of Act 12 of 2021 (wef 5 August 2022).]

(b) where the victim –

- (i) is a person under the age of 18 years;
- (iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act 13 of 2006);
- (ii) is a person with a disability who, due to his or her disability, is rendered vulnerable;

[NB: Sub-para. (ii) has been substituted by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]
- (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
- (iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or

[NB: Sub-para. (iv) has been added by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]

[Para. (b) amended by s. 25(a) of Act 8 of 2017 (wef 2 August 2017) and substituted by s. 15(c) of Act 12 of 2021 (wef 5 August 2022).]

(c) involving the infliction of grievous bodily harm.

[Para. (c) substituted by s. 15(c) of Act 12 of 2021 (wef 5 August 2022).]

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

(a) when committed –

- (i) in the circumstances where the accused is convicted of the offence of compelled rape and evidence adduced at the trial of the accused proves that the victim was also raped-
 - (aa) as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, by any co-perpetrator or accomplice; or
 - (bb) by a person, who was compelled by any co-perpetrator or accomplice, to rape the victim,

irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

- (ii) in the circumstances where the accused is convicted of the offence of compelled rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;
- (iii) by the accused who-
 - (aa) has previously been convicted of the offence of compelled rape or rape; or
 - (bb) has been convicted by the trial court of two or more offences of compelled rape or the offences of compelled rape and rape,

irrespective of –

- (aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;
- (bbb) the date of the commission of any such offence of which the accused has so been convicted;
- (ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;
- (ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or
- (eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or
- (iv) under circumstances where the accused knows that the person who is compelled to rape the victim has the acquired immune deficiency syndrome or the human immunodeficiency virus;

[Para. (a) substituted by s. 15(d) of Act 12 of 2021 (wef 5 August 2022).]

(b) where the victim –

- (i) is a person under the age of 18 years;
- (iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act 13 of 2006);
- (ii) is a person with a disability who, due to his or her disability, is rendered vulnerable;
- (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
- (iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or

[NB: Sub-para. (iv) has been added by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]

[Para. (b) amended by s. 25 (b) of Act 8 of 2017 (wef 2 August 2017) and substituted by s. 15 (d) of Act 12 of 2021 (wef 5 August 2022).]

(c) involving the infliction of grievous bodily harm.

[Para. (c) substituted by s. 15 (d) of Act 12 of 2021 (wef 5 August 2022).]

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.

[Item substituted by s. 48 of Act 7 of 2013 (wef 9 August 2015).]

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).

[Item added by s. 22 of Act 66 of 2008 (wef 17 February 2009).]

[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

[Part II amended by s. 36 (1) of Act 12 of 2004 (wef 27 April 2004), by s. 27 (1) of Act 33 of 2004 (wef 20 May 2005), by s. 6 of Act 18 of 2015 (wef 1 June 2016), by s. 58 of Act 19 of 2020 (wef 1 December 2021) and by s. 16 of Act 12 of 2021 (wef 5 August 2022).]

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.

[NB: Item substituted by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, a provision which will be put into operation by proclamation. See PENDLEX.]

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.

[Item amended by s. 36 (1) of Act 12 of 2004 (wef 27 April 2004).]

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.

[Item added by s. 27 (1) of Act 33 of 2004 (wef 20 May 2005).]

Any offence referred to in section 2, 4, 5 or 6 of the Prevention of Organised Crime Act, 1998 (Act 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.

[Item added by s. 6 of Act 18 of 2015 (wef 1 June 2016).]

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 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.

[Item added by s. 6 of Act 18 of 2015 (wef 1 June 2016).]

An offence referred to in section 3 of the Criminal Matters Amendment Act, 2015.

[Item added by s. 6 of Act 18 of 2015 (wef 1 June 2016).]

A contravention of section 8, 9 or 10 of the Cybercrimes Act, 2020-

- (a) involving amounts of more than R500 000,00;
- (b) involving amounts of more than R100 000,00, if it is proven that the offence was committed-
 - (i) by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or
 - (ii) by a person or with the collusion or assistance of another person, who as part of his or her duties, functions or lawful authority was in charge of, in control of, or had access to data, a computer program, a computer data storage medium or a computer system of another person in respect of which the offence in question was committed; or
- (c) if it is proven that the offence was committed by any law enforcement officer-
 - (i) involving amounts of more than R10 000; 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; or
 - (iii) with the collusion or assistance of another person, who as part of his or her duties, functions or lawful authority was in charge of, in control of, or had access to data, a computer program, a computer data storage medium or a computer system of another person in respect of which the offence in question was committed.

[Item added by s. 58 of Act 19 of 2020 (wef 1 December 2021).]

Attempted murder in circumstances other than those referred to in Part I.

[Item added by s. 16 of Act 12 of 2021 (wef 5 August 2022).]

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.

[Item added by s. 16 of Act 12 of 2021 (wef 5 August 2022).]

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.

[Item added by s. 16 of Act 12 of 2021 (wef 5 August 2022).]

[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. An item has also been added by s. 11 of the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023, 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 (wef 16 December 2007) and amended by s. 48 of Act 7 of 2013 (wef 9 August 2015) and by s. 17 of Act 12 of 2021 (wef 5 August 2022).]

Rape or compelled rape ...

[Item deleted by s. 17(a) of Act 12 of 2021 (wef 5 August 2022).]

Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled ...

[Item deleted by s. 17(a) of Act 12 of 2021 (wef 5 August 2022).]

Assault with intent to do grievous bodily harm on a child under the age of 16 years.

Assault with intent to do grievous bodily harm –

(a) on a child –

- (i) under the age of 16 years; or
- (ii) either 16 or 17 years of age and the age difference between the child and the person who has been convicted of the offence is more than four years; or

(b) where the victim is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused.

[Item inserted by s. 17 (b) of Act 12 of 2021 (wef 5 August 2022).]

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.

Trafficking ...

[Item deleted by s. 48 of Act 7 of 2013 (wef 9 August 2015).]

Part IV

[Part IV substituted by s. 5(b) of Act 38 of 2007 (wef 31 December 2007) and amended by s. 7 of Act 18 of 2015 (wef 1 June 2016).]

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 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 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.

[Item added by s. 7 of Act 18 of 2015 (wef 1 June 2016).]

Part V

[Part V added by s. 8 of Act 18 of 2015 (wef 1 June 2016).]

Any offence referred to in section 36 or 37 of the General Law Amendment Act, 1955 (Act 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.