

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
JUDICIAL MATTERS AMENDMENT
BILL**

[B 63—2000]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*

[B 63A—2000]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP OP
GEREGTELIKE AANGELEENTHEDE**

[W 63—2000]

*(Soos goedgekeur deur die Portefeuljekomitee oor Justisie en Staatkundige Ontwikkeling
(Nasionale Vergadering))*

[W 63A—2000]

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AMENDMENTS AGREED TO

JUDICIAL MATTERS AMENDMENT BILL
[B 63-2000]

CLAUSE 3

Clause rejected.

NEW CLAUSE

1, That the following be a new Clause:

Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979, section 37 of Act 122 of 1991, section 1 of Act 75 of 1995, section 1 of Act 85 of 1997 and section 3 of Act 34 of 1998

8. (1) Section 50 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of [subsections (6) and (7)] subsection (6), nothing in this section shall be construed as modifying the provisions of this Act or any other law whereby a person under detention may be released on bail or on warning or on a written notice to appear in court.”;

(b) by the substitution in subsection (6) for paragraph (c) of the following paragraph:

“(c) ~~the application~~ the application of a person who is charged with an offence referred to in Schedule 6 [shall] must be considered by a [regional] magistrate's court: Provided that [an attorney-general] the Director of Public Prosecutions concerned, or a prosecutor authorised thereto in writing by him or her may, [where such court is, due to exceptional circumstances, not available, whether in general or in any particular case, direct that such bail application shall be considered by any other available lower court within the area of jurisdiction of such regional court] if he or she deems it expedient or necessary for the administration of justice in a particular case, direct in writing that the application must be considered by a regional court.”; and

(c) by the deletion of subsection (6)(d)(iii).

(2) Any bail proceedings in respect of a person who is charged with an offence referred to in Schedule 6 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which have commenced prior to the date of commencement of this Act in a regional court or any other lower court within the area of jurisdiction of such regional court in terms of section 50(6)(c) of that Act and which proceedings have not been concluded at that date, must be continued in, and concluded by, that court as if this Act had not been passed.

CLAUSE 9

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997 and section 5 of Act 34 of 1998

9. Section 60 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6) [and (7)], be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, [unless] if the court [finds that it is in the interests of justice that he or she be detained in custody] is satisfied that the interests of justice so permit.”; and

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“The [refusal to grant bail and the] interests of justice do not permit the release from detention of an accused [in custody shall be in the interests of justice] where one or more of the following grounds are established.”.

CLAUSE 17

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989, section 1 of Act 102 of 1991 and section 1 of **Act 115** of 1993

17. Section 1 of the Attorneys Act, 1979, is hereby amended—

(a) by the insertion after the definition of “articles of clerkship” of the following definition:

“ ‘attend’, for purposes of Chapter I, includes participation in a distance education course approved by the provincial law societies, and ‘attended’ and ‘attending’ have a corresponding meaning;”; and

(b) by the substitution for the definition of “law clinic” of the following definition:

“ ‘law clinic’ means—

(a) a centre for the practical legal education of students in the faculty of law at a university in the Republic [, and includes] ; or

(b) a law centre controlled by, or which is, a non-profit making organization, which, subject to section 79A, provides legal services to the public free of charge;”.

NEW CLAUSES

1. That the following be new Clauses:

Insertion of section 79A in Act 53 of 1979

20. The following section is hereby inserted in the Attorneys Act, 1979, after section 79:

“Recovery of costs by law clinics

79A. (1) Notwithstanding the provisions of section 83(6) of this Act and section 9(2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), whenever in any legal proceedings or any dispute in respect of which legal services are rendered to a litigant or other person by a law clinic, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement, or otherwise, it shall be deemed that such litigant or other person has ceded his or her rights to such costs to the law clinic.

(2) (a) A litigant or person referred to in subsection (1) or the law clinic rendering legal services to such litigant or person may, at any time before payment of the costs referred to in subsection (1), give notice in writing to—

(i) the person liable for such costs; and
(ii) the registrar or clerk of the court concerned,
that the legal services concerned are being or have been rendered by that law clinic.

(b) Where notice has been given as contemplated in paragraph (a), the law clinic concerned may proceed in its own name to have such costs taxed, where appropriate, and to recover them, without being substituted on the record of the legal proceedings concerned, if any, for the litigant or person referred to in subsection (1).

(3) The costs referred to in subsection (1) shall be calculated and the bill of costs concerned, if any, shall be taxed as if the litigant or person to whom legal services were rendered by the law clinic, actually incurred the costs of obtaining the services of the attorney or advocate acting on his or her behalf in the proceedings or dispute concerned.”.

Amendment of section 1 of Act 107 of 1985, as amended by section 1 of Act 77 of 1989

21. Section 1 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the deletion of the definition of “Supreme Court”.

Amendment of section 3 of Act 107 of 1985, as amended by section 2 of Act 77 of 1989

22. Section 3 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

- “(a) a judge of the Supreme Court of Appeal or a High Court, whom the Minister designates as the [chairman] chairperson;
 (b) a judge or retired judge of the Supreme Court of Appeal or a High Court, whom the Minister designates as the [vice-chairman] vice-chairperson;”.

Amendment of section 6 of Act 107 of 1985, as amended by section 4 of Act 77 of 1989 and section 24 of Act 139 of 1992

23. Section 6 of the Rules Board for Courts of Law Act, 1985, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the High Courts and the lower courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the High Courts and the lower courts regulating—”;
- (b) by the substitution in subsection (1) for paragraph (p) of the following paragraph:
 “(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the High Courts;”;
- (c) by the substitution in subsection (1) for paragraph (t) of the following paragraph:
 “(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the High Courts and the lower courts in civil as well as in criminal proceedings.”; and
- (d) by the substitution for subsection (2) of the following subsection:
 “(2) (a) Different rules may be made in respect of the Supreme Court of Appeal, the High Courts and the lower courts and in respect of different kinds of proceedings.
 (b) The Board may, with the approval of the Minister, make different rules in respect of—
 (i) [different divisions of] the Supreme Court of Appeal and the High Courts;
 (ii) the different High Courts; or
 (iii) the lower courts in different magisterial districts,
 which shall be of force for the period or periods determined by the Board. ”

Amendment of section 8 of Act 107 of 1985, as amended by section 4 of Act 18 of 1996

24. Section 8 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A member of the Board who is a judge of the Supreme Court of Appeal or a High Court shall be entitled to such allowance for traveling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister with the concurrence of the Minister of Finance may determine.”.

Substitution of long title of Act 107 of 1985

25. The following long title is hereby substituted for the long title of the Rules Board for Courts of Law Act, 1985:

“To provide for the making of rules for the efficient, expeditious and uniform administration of justice in the **Supreme Court of Appeal, High Courts** and lower courts; for that purpose to make provision for the establishment of the Rules Board for Courts of Law; and to provide for matters connected therewith.”.

Substitution of certain words in Act 107 of 1985

26. The Rules Board for Courts of Law Act, 1985. is hereby amended—

- (a) by the substitution for the word “chairman”, wherever it occurs in sections 4(1) and (3), 5(3) and 5A(1) and (2), of the word “chairperson”;
- (b) by the substitution for the word “vice-chairman”, wherever it occurs in sections 4(1) and (3), 5(3) and 5A(I), of the word “vice-chairperson”;
- (c) by the substitution for the word “he”, wherever it occurs in sections 3(1A) and 4(1), of the expression “he or she”;
- (d) by the substitution for the word “his”, wherever it occurs in sections 3(2), 5(2), 5A(4) and 8(2), of the expression “his or her”; and
- (e) by the substitution for the word “him”, wherever it occurs in sections 5(1) and (2) and 8(2), of the expression “him or her”.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 5 of Act 74 of 1996

31. Section 5 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the addition of the following subsection:

“(9) Any member of a Special Investigating Unit who is qualified and admitted as an advocate or an attorney, may perform such work in any court of law on behalf of a Special Investigating Unit as is by law, custom or practice performed by advocates and attorneys.”.

Amendment of section 8 of Act 74 of 1996

32. Section 8 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A Special Tribunal shall have jurisdiction to adjudicate upon any civil dispute brought before it by a Special Investigating Unit or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to—

- (a) issue suspension orders, interlocutory orders or interdicts on application by such Unit or party; [and]
- (b) make any order which it deems appropriate so as to give effect to any ruling or decision given or made by it; and

(c) make any order which it deems appropriate as to costs.”.

Amendment of section 51 of Act 105 of 1997

33. Section 51 of the Criminal Law Amendment Act, 1997, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Notwithstanding any other law but subject to subsections (3) and (6), a High Court shall—
 (a) if it has convicted a person of an offence referred to in Part I of Schedule 2; or
 (b) if the matter has been referred to it under section 52(1) for sentence after the person concerned has been convicted of an offence referred to in Part I of Schedule 2,
 sentence the person to imprisonment for life.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court, including a High Court to which a matter has been referred under section 52(1) for sentence, shall in respect of a person who has been convicted of an offence referred to in—”;
- (c) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:
 “[if it has convicted a person of an **offence** referred to in] Part II of Schedule 2, sentence the person, in the case of—”;
- (d) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:
 “[if it has convicted a person of an **offence** referred to in] Part III of Schedule 2, sentence the person, in the case of—” ;
- (e) by the substitution in subsection (2)(c) for the words preceding subparagraph (i) of the following words:
 “[if it has convicted a person of an **offence** referred to in] Part IV of Schedule 2, sentence the person, in the case of—” ; and
- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:
 “(b) a correctional official of the Department of Correctional Services or a person authorised under the Correctional Services Act, [1959 (Act No. 8 of 1959)] 1956 (Act No. 111 of 1998).”.

Amendment of section 52 of Act 105 of 1997

34. Section 52 of the Criminal Law Amendment Act, 1997, is hereby amended—

- (a) by the substitution for the heading of the following heading:
 “Committal of **accused** for sentence by High Court after [plea of guilty or trial] conviction in regional court of offence referred to in Schedule 2”;
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) If a regional court, [after it has convicted an accused of an **offence** referred to in Schedule 2] following on—

(a) a plea of guilty; or

(b) a plea of not guilty.

has convicted an accused of an offence referred to in-

(i) Part I of Schedule 2: or

(ii) Part H, III or IV of Schedule 2 and the court [but before sentence,] is of the opinion that the offence [in respect of which the accused has been convicted] concerned merits punishment in excess of the jurisdiction of a regional court in terms of section 51(2),

the court shall stop the proceedings and commit the accused for sentence as contemplated in section 51 (1) or (2), as the case may be, by a High Court having jurisdiction.”;

(c) by the substitution in subsection (2)(b) for the words following upon subparagraph (ii) of the following words:

“the Court shall make a formal finding of guilty and sentence the accused as contemplated in section 51 (1) or (2), as the case may be.”;

(d) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) If the Court—

(i) is satisfied that a plea of guilty or any admission by the accused which is material to his or her guilt was incorrectly recorded; or

(ii) [if the Court] is not satisfied that the accused is guilty of the offence of which he or she has been convicted and in respect of which he or she has been committed for sentence or that he or she has no valid defence to the charge,

the Court shall enter a plea of not guilty and proceed with the trial as a summary trial in that Court: Provided that any admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.”;

(e) by the substitution in subsection (3)(b) for the words preceding the proviso of the following words:

“The High Court shall, after considering the record of the proceedings in the regional court, sentence the accused as contemplated in section 51 (1) or (2), as the case may be, and the judgment of the regional court shall stand for this purpose and be sufficient for the High Court to pass such sentence[as contemplated in section 51].”;

(f) by the substitution in subsection (3)(e) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

“(i) confirm the conviction and thereupon impose a sentence as contemplated in section 51(1) or (2), as the case may be;

(ii) alter the conviction to a conviction of another offence referred to in Schedule 2 and thereupon impose a sentence as contemplated in section 51(1) or (2), as the case may be;”.

Insertion of sections 52A and 52B in Act 105 of 1997

35. The following sections are hereby inserted in the Criminal Law Amendment Act, 1997, after section 52:

“Committal of accused for sentence by High Court after conviction in regional court of offence not referred to in Schedule 2

52A. (1) If a regional court, following on—

(a) a plea of guilty; or
 (b) a plea of not guilty,
 has convicted an accused of an offence referred to in Schedule 2 as well as an offence not referred to in that Schedule, the court shall—

- (i) where it stops the proceedings as contemplated in section 52(1) for purposes of committing the accused for sentence by a High Court, simultaneously stop the proceedings in respect of the offence not referred to in that Schedule; and
- (ii) when it commits the accused for sentence under section 52(1) by a High Court, simultaneously commit the accused for sentence by the High Court in question in respect of the offence not referred to in that Schedule in accordance with subsection (2) or (3).

(2) (a) Where an accused is committed under subsection (1)(a) for sentence by a High Court, the record of the proceedings in the regional court shall upon proof thereof in the High Court be received by the High Court and form part of the record of that Court, and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the Court that such plea or such admission was incorrectly recorded.

(b) Unless the High Court in question—

- (i) is satisfied that a plea of guilty or an admission by the accused which is material to his or her guilt was incorrectly recorded; or
 - (ii) is not satisfied that the accused is guilty of the offence of which he or she has been convicted ‘and in respect of which he or she has been committed for sentence,
- the Court shall make a formal finding of guilty and thereupon impose the sentence that the Court may deem fit.

(c) If the Court—

- (i) is satisfied that a plea of guilty or any admission by the accused which is material to his or her guilt was incorrectly recorded; or
- (ii) is not satisfied that the accused is guilty of the offence of which he or she has been convicted and in respect of which he or she has been committed for sentence or that he or she has no valid defence to the charge,

the Court shall enter a plea of not guilty and proceed with the trial as a summary trial in that Court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(d) The provisions of section 112(3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply with reference to the proceedings under this subsection.

(3) (a) Where an accused is committed under subsection (1)(b) for sentence by a High Court, the record of the proceedings in the regional court shall upon proof thereof in the High Court be received by the High Court and form part of the record of that Court.

(b) The High Court shall, after considering the record of the proceedings in the regional court, impose the sentence that the

Court may deem fit, and the judgment of the regional court shall stand for this purpose and be sufficient for the High Court to pass such sentence: Provided that if the judge is of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he or she shall, without sentencing the accused, obtain from the regional magistrate who presided at the trial a statement setting forth his or her reasons for convicting the accused.

(c) If a judge acts under the proviso to paragraph (b), he or she shall inform the accused accordingly and subject to section 52(3)(c) postpone the case for judgment.

(d) The Court in question may at any sitting thereof hear any evidence and for that purpose summon any person to appear to give evidence or to produce any document or other article.

(e) Such Court, whether or not it has heard evidence and after it has obtained and considered a statement referred to in paragraph (b), may—

- (i) confirm, alter or quash the conviction, and in the event of the conviction being quashed where the accused was convicted on one of two or more alternative charges, convict the accused on the other alternative charge or on one or other of the alternative charges and thereupon impose the sentence that the Court may deem fit;
- (ii) set aside the conviction;
- (iii) remit the case to the regional court with instruction to deal with any matter in such manner as the High Court may deem fit; or
- (iv) make any such order in regard to any matter or thing connected with such person or the proceedings in regard to such person as the High Court deems likely to promote the ends of justice.

Simultaneous imposition of sentence by High Court for offence referred to in Schedule 2 and offence not referred to in that Schedule

52B. If a regional court has committed an accused under sections 52(1) and 52A(1) for sentence by a High Court, the High Court in question shall, when sentencing the accused as contemplated in section 51(1) or (2) in respect of the matter referred to it under section 52(1), simultaneously sentence the accused as contemplated in section 52A(2) or (3) in respect of the matter referred to it under section 52A(1).”.

CLAUSE 24

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Substitution of section 53 of Act 105 of 1997

36. The following section is hereby substituted for section 53 of the Criminal Law Amendment Act, 1997:

“Saving

53. (1) Sections 51. [~~and~~] 52, 52A and 52B shall. subject to subsections (2) and (3). cease to have effect after the expiry of two years from the commencement of this Act.

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

(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 [section] sections 51 and 52A had at all relevant times been in operation.

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

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

Amendment of Schedule 2 to Act 105 of 1997

37. Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the substitution in Part I for subparagraph (ii) of paragraph (c) of the first offence of the following subparagraph:

“(ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or”.

CLAUSE 25

Clause rejected.

LONG TITLE

1. On page 2, from the third line, to omit “to amend the Interpretation Act, 1957, so as to substitute a definition;”.
2. On page 2, in the eleventh line, after “definition” to insert:

and to substitute another; to provide for the recovery of costs by law clinics;

3. On page 2, in the twelfth line, after “Control;” to insert:

to amend the Rules Board for Courts of Law Act, 1985, so as to delete a certain definition; to further regulate the powers of the Rules Board for Courts of Law; and to effect certain technical changes;
4. On page 2, in the seventeenth line, after “provision;” to insert:

to amend the Special Investigating Units and Special Tribunals Act, 1996, so as to further regulate legal representation on behalf of a Special Investigating Unit; and to further regulate the powers and functions of a Special Tribunal;
5. On page 2, in the eighteenth line, after the first “to” to insert:

further regulate the imposition of minimum sentences for certain serious offences; so as to further regulate the committal of an accused for the imposition of sentence by a High Court after conviction in a regional court; and to
6. On page 2, from the nineteenth line, to omit “to amend the National Prosecuting Authority Act, 1998, so as to further regulate the engagement of persons to perform services in specific cases;”.