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STATE PRESIDENT'S OFFICE

No. 648.

12 April 1989

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

No. 39 of 1989: Criminal Law and Criminal Procedure Act Amendment Act, 1989.

KANTOOR VAN DIE STAATSPRESIDENT

No. 648.

12 April 1989

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 39 van 1989: Wysigingswet op die Strafreë en die Strafprosedewet, 1989.

Act No. 39, 1989

CRIMINAL LAW AND CRIMINAL PROCEDURE ACT
AMENDMENT ACT, 1989

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To make provision that the court shall regard the fact that a husband could, but for the existence of the marriage relationship between him and his wife, have been convicted of rape, as an aggravating circumstance whenever he has been convicted of assault in respect of his wife; to amend the Criminal Procedure Act, 1977, so as to further regulate the adducing of evidence relating to the character of a female or male against or in connection with whom any offence of a sexual or indecent nature is alleged to have been committed; and to provide for matters incidental thereto.

*(English text signed by the State President.)
(Assented to 21 March 1989.)*

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

Assault of wife by her husband

1. Whenever a man has been convicted of assault in any form on his lawful wife and could, but for the existence of the marriage relationship between them at the time of the commission of the crime, have been convicted of rape, the fact that he could have been convicted of rape had he not been married to his wife, shall be regarded by the court as an aggravating circumstance at the passing of sentence. 5

Substitution of section 227 of Act 51 of 1977

2. The following section is hereby substituted for section 227 of the Criminal 10 Procedure Act, 1977:

“Evidence of character

227. (1) Evidence as to the character of an accused or as to the character of any **[woman upon or with regard to]** female against or in connection with whom any offence of an indecent nature **[has]** is alleged 15 to have been committed, shall, subject to the provisions of subsection (2), be admissible or inadmissible if such evidence would have been admissible or inadmissible on the thirtieth day of May, 1961.

(2) Evidence as to sexual intercourse by, or any sexual experience of, any female against or in connection with whom any offence of a sexual 20 nature is alleged to have been committed, shall not be adduced, and such female shall not be questioned regarding such sexual intercourse or sexual experience, except with the leave of the court, which leave shall not be granted unless the court is satisfied that such evidence or questioning is relevant: Provided that such evidence may be adduced and 25

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Om voorsiening te maak dat die hof die feit dat 'n man aan verkragting skuldig bevind kon gewees het indien dit nie vir die bestaan van die huweliksverhouding tussen hom en sy vrou was nie, as 'n verswarende omstandigheid moet beskou wanneer hy weens aanranding ten opsigte van sy vrou skuldig bevind is; tot wysiging van die Strafproseswet, 1977, ten einde die aanbieding van getuienis betreffende die karakter van 'n vrouspersoon of manspersoon teenoor of in verband met wie daar beweer word dat 'n misdryf van 'n seksuele of onsedelike aard gepleeg is, verder te reël; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 21 Maart 1989.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Aanranding van vrou deur haar man

1. Wanneer 'n man weens aanranding, in watter vorm ook al, op sy wettige vrou skuldig bevind is, en aan verkragting skuldig bevind kon gewees het indien dit nie vir die bestaan van die huweliksverhouding tussen hulle tydens die pleging van die misdaad was nie, word die feit dat hy aan verkragting skuldig bevind kon gewees het indien hy nie met sy vrou getroud was nie, deur die hof by die oplegging van vonnis as 'n verswarende omstandigheid beskou.

10 Vervanging van artikel 227 van Wet 51 van 1977

2. Artikel 227 van die Strafproseswet, 1977, word hierby deur die volgende artikel vervang:

“Getuienis van karakter

227. (1) Getuienis betreffende die karakter van 'n beskuldigde of betreffende die karakter van 'n vrouspersoon **[op of ten opsigte van]** teenoor of in verband met wie daar beweer word dat 'n misdryf van 'n onsedelike aard gepleeg is, is, behoudens die bepalings van subartikel (2), toelaatbaar of ontoelaatbaar indien sodanige getuienis op die dertigste dag van Mei 1961 toelaatbaar of ontoelaatbaar sou gewees het.

- (2) Getuienis betreffende geslagsgemeenskap deur of enige seksuele ervaring van 'n vrouspersoon teenoor of in verband met wie daar beweer word dat 'n misdryf van 'n seksuele aard gepleeg is, word nie aangevoer nie en so 'n vrouspersoon word nie aangaande sodanige gemeenskap of seksuele ervaring ondervra nie, behalwe met verlof van die hof, welke verlof nie verleen word nie tensy die hof oortuig is dat sodanige getuienis of ondervraging relevant is: Met dien verstande dat sodanige getuienis

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such female may be so questioned in respect of the offence which is being tried.

(3) Before an application for leave contemplated in subsection (2) is heard, the court shall direct that any person whose presence is not necessary may not be present at the proceedings, and the court may direct that a female referred to in subsection (2) may not be present. 5

(4) The provisions of this section are *mutatis mutandis* applicable in respect of a male against or in connection with whom any offence of an indecent nature is alleged to have been committed.”.

Short title and commencement

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3. This Act shall be called the Criminal Law and the Criminal Procedure Act Amendment Act, 1989, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

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aangevoer kan word en sodanige vrouspersoon aldus ondervra kan word ten opsigte van die misdryf wat verhoor word.

5 (3) Voordat 'n aansoek om verlof beoog in subartikel (2) aangehoor word, gelas die hof dat iemand wie se teenwoordigheid nie noodsaaklik is nie, nie by die verrigtinge teenwoordig mag wees nie, en kan die hof
gelas dat 'n vrouspersoon in subartikel (2) bedoel, nie teenwoordig mag wees nie.

10 (4) Die bepalinge van hierdie artikel is *mutatis mutandis* van toepassing ten opsigte van 'n manspersoon teenoor of in verband met wie daar beweer word dat 'n misdryf van 'n onsedelike aard gepleeg is."

Kort titel en inwerkingtreding

3. Hierdie Wet heet die Wysigingswet op die Strafreë en die Strafproseswet, 1989, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

