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GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

No. 1624.

27 Julie 1990

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

No. 107 van 1990: Strafregwysigingswet, 1990.

STATE PRESIDENT'S OFFICE

No. 1624.

27 July 1990

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

No. 107 of 1990: Criminal Law Amendment Act, 1990.

Wet No. 107, 1990**STRAFREGWYSIGINGSWET, 1990****ALGEMENE VERDUIDELIKENDE NOTA:**

I Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordnings aan.

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

WET

Tot wysiging van die Strafproseswet, 1977, ten einde die verpligte oplegging van die doodvonnis af te skaf; sekere veranderings aan te bring aan die lys misdrywe waarvoor die doodvonnis opgelê kan word; verdere voorsiening te maak met betrekking tot die oplegging van die doodvonnis waar dit 'n geoorloofde vennis is; te bepaal dat 'n jeugdige onder 'n sekere ouderdom nie ter dood veroordeel mag word nie; voorsiening te maak dat die prokureur-generaal teen die vennis wat 'n beskuldigde in 'n strafsaak opgelê is, kan appelleer; aan 'n persoon wat ter dood veroordeel is, 'n reg van appèl te verleen; 'n hof van appèl te verbied om die doodvonnis op te lê in die plek van of benewens 'n straf deur die verhoorhof opgelê; die bevoegdhede van die Appèlafdeling van die Hooggereghof by die oorweging van 'n appèl teen die doodvonnis te heromskryf; 'n ander bevoegdheid aan die Minister van Justisie te verleen waar hy twyfel aangaande die juistheid van die skuldigbevinding van 'n persoon wat ter dood veroordeel is; voorsiening te maak dat 'n versoekskrif om begenadiging deur of ten behoeve van 'n ter dood veroordeelde persoon aan die Staatspresident voorgelê word; en 'n bevoegdheid van die Staatspresident met betrekking tot die oorweging van sekere versoekskrifte aan genoemde Minister oor te dra; tot wysiging van die Wet op Landdroshowe, 1944, ten einde aan 'n hof van 'n streekafdeling jurisdiksie ten opsigte van moord te verleen; tot wysiging van die Wet op Gevangenis, 1959, ten einde ander voorsiening te maak met betrekking tot die vrylating van 'n gevangene wat lewenslange gevangenisstraf uittien; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 28 Junie 1990.)*

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

Wysiging van artikel 1 van Wet 51 van 1977

1. Artikel 1 van die Strafproseswet, 1977 (hieronder die Hoofwet genoem), word hierby gewysig deur in subartikel (1) paragraaf (a) van die omskrywing yan "verswarende omstandighede" te skrap. 5

Wysiging van artikel 145 van Wet 51 van 1977, soos gewysig deur artikel 4 van Wet 64 van 1982

2. Artikel 145 van die Hoofwet word hierby gewysig deur die voorbehoudsbepaling by subartikel (2) deur die volgende voorbehoudsbepaling te vervang: 10

"Met dien verstande dat waar die misdryf ten opsigte waarvan die beskuldigde verhoor word, 'n misdryf is ten opsigte waarvan die doodvonnis 'n geoorloofde

CRIMINAL LAW AMENDMENT ACT, 1990

Act No. 107, 1990

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 amend the Criminal Procedure Act, 1977, so as to abolish the compulsory imposition of the sentence of death; to effect certain changes to the list of offences for which the sentence of death may be imposed; to make further provision in relation to the imposition of the sentence of death where it is a competent sentence; to lay down that a juvenile under a certain age may not be sentenced to death; to make provision for the attorney-general to appeal against the sentence imposed upon an accused in a criminal case; to vest a person sentenced to death with the right of appeal; to prohibit a court of appeal from imposing the sentence of death in lieu of or in addition to a punishment imposed by the trial court; to redefine the powers of the Appellate Division of the Supreme Court in considering an appeal against the sentence of death; to grant a different power to the Minister of Justice where he doubts the correctness of the conviction of a person sentenced to death; to make provision that a petition for mercy be submitted to the State President by or on behalf of a person under sentence of death; and to transfer to the said Minister a power of the State President in relation to the consideration of certain petitions; to amend the Magistrates' Courts Act, 1944, so as to confer jurisdiction in respect of murder upon a court of a regional division; to amend the Prisons Act, 1959, so as to make different provision in relation to the release of a prisoner serving a life sentence; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 28 June 1990.)*

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

Amendment of section 1 of Act 51 of 1977

1. Section 1 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the deletion in subsection (1) of paragraph (a) of the definition of "aggravating circumstances".

Amendment of section 145 of Act 51 of 1977, as amended by section 4 of Act 64 of 1982

2. Section 145 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:
- 10 "Provided that where the offence in respect of which the accused is on trial is an offence for which the sentence of death is a competent sentence, the presiding

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vonnis is, die voorsittende regter, indien hy van oordeel is dat, in die geval van 'n skuldigbevinding en met inagneming van die omstandighede van die geval, die doodvonnis opgelê kan word [**of opgelê moet word**], twee assessore moet ooproep om hom by te staan.”.

Wysiging van artikel 276 van Wet 51 van 1977

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3. Artikel 276 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

“(b) gevangenisstraf, met inbegrip van levenslange gevangenisstraf;”.

Vervanging van artikel 277 van Wet 51 van 1977

4. Artikel 277 van die Hoofwet word hierby deur die volgende artikel vervang: 10

“Doodvonnis

277. (1) Die doodvonnis kan opgelê word slegs deur 'n hoër hof en slegs in die geval van 'n skuldigbevinding weens—

- (a) moord; 15
- (b) hoogverraad gepleeg wanneer die Republiek in 'n staat van oorlog verkeer;
- (c) roof of poging tot roof, indien die hof bevind dat verswarende omstandighede aanwesig was;
- (d) menseroof; 20
- (e) kinderdiefstal;
- (f) verkrating.

(2) Die doodvonnis word opgelê—

- (a) nadat die voorsittende regter tesame met die assessor (as daar is), behoudens die bepalings van artikel 145 (4) (a), of, in die geval van 'n verhoor deur 'n spesiale hoër hof, daardie hof, met inagneming van enige getuenis en betoë oor vonnis ingevolge artikel 274, 'n bevinding uitgebring het oor die aan- of afwesigheid van enige strafversagtende of -verswarende faktore; en 25
- (b) indien die voorsittende regter of hof, na gelang van die geval, met inagneming van daardie bevinding, oortuig is dat die doodvonnis die gepaste vonnis is. 30

(3) (a) Die doodvonnis word nie opgelê nie aan 'n beskuldigde wat ten tyde van die verrigting van die handeling wat die betrokke misdryf uitgemaak het, onder die ouderdom van 18 jaar was.

- (b) Indien by die toepassing van paragraaf (a) die ouderdom van 'n beskuldigde in geskil geplaas word, rus die bewyslas op die Staat om bo redelike twyfel te bewys dat die beskuldigde op die relevante tydstip 18 jaar oud of ouer was.”. 35

Wysiging van artikel 279 van Wet 51 van 1977

5. Artikel 279 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang: 40

“(b) Bedoelde lasbrief word nie uitgevoer nie totdat die Minister in 'n deur hom

ondertekende geskrif aan die balju of sy adjunk kennis gegee het dat—

“(i) die Appelaafdeling van die Hooggereghof die doodvonnis bekrugtig het; en 45

(ii) die Staatspresident besluit het om nie die ter dood veroordeelde persoon te begenadig nie.”.

Wysiging van artikel 286 van Wet 51 van 1977

6. Artikel 286 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (2) te skrap. 50

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judge shall, if he is of the opinion that, in the event of a conviction and having regard to the circumstances of the case, the sentence of death may be imposed **[or may have to be imposed]**, summon two assessors to his assistance.”.

Amendment of section 276 of Act 51 of 1977

- 5 3. Section 276 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) imprisonment, including imprisonment for life;”.

Substitution of section 277 of Act 51 of 1977

4. The following section is hereby substituted for section 277 of the principal Act:

- 10 **“Sentence of death**
277. (1) The sentence of death may be passed by a superior court only, and only in the case of a conviction for—
- (a) murder;
- 15 (b) treason committed when the Republic is in a state of war;
- (c) robbery or attempted robbery, if the court finds aggravating circumstances to have been present;
- (d) kidnapping;
- (e) child-stealing;
- (f) rape.
- 20 (2) The sentence of death shall be imposed—
- (a) after the presiding judge conjointly with the assessors (if any), subject to the provisions of section 145 (4) (a), or, in the case of a trial by a special superior court, that court, with due regard to any evidence and argument on sentence in terms of section 274, has made a finding on the presence or absence of any mitigating or aggravating factors; and
- 25 (b) if the presiding judge or court, as the case may be, with due regard to that finding, is satisfied that the sentence of death is the proper sentence.
- 30 (3) (a) The sentence of death shall not be imposed upon an accused who was under the age of 18 years at the time of the commission of the act which constituted the offence concerned.
- (b) If in the application of paragraph (a) the age of an accused is placed in issue, the onus shall be on the State to show beyond reasonable doubt that the accused was 18 years of age or older at the relevant time.”.

Amendment of section 279 of Act 51 of 1977

5. Section 279 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- 40 “(b) The said warrant shall not be executed until the Minister has in writing signed by himself given notice to the sheriff or his deputy that—
- (i) the Appellate Division of the Supreme Court has confirmed the sentence of death; and
- (ii) the State President has decided not to extend mercy to the person under sentence of death.”.

Amendment of section 286 of Act 51 of 1977

6. Section 286 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2).

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Wysiging van artikel 290 van Wet 51 van 1977, soos gewysig deur artikel 9 van Wet 26 van 1987

7. Artikel 290 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) 'n Hof waarin iemand van of bo die ouderdom van 18 jaar maar onder die ouderdom van 21 jaar skuldig bevind word aan 'n misdryf **[behalwe moord met betrekking waartoe—**

(a) die betrokke persoon nie 'n vrou is wat aan moord op haar pasgebore kind skuldig bevind is nie; of

(b) daar, na die oordeel van die hof, nie versagtende omstandighede is nie] 10
kan, in plaas van hom straf vir daardie misdryf op te lê, beveel dat hy onder toesig van 'n proefbeampte geplaas word of dat hy verwys word na 'n verbeteringskool soos in artikel 1 van die Wet op Kindersorg, 1983, omskryf.”.

Wysiging van artikel 309 van Wet 51 van 1977, soos gewysig deur artikel 17 van Wet 105 van 1982

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8. Artikel 309 van die Hoofwet word hierby gewysig deur in subartikel (3) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“Die betrokke provinsiale of plaaslike afdeling het daarop die in artikel 304 (2) bedoelde bevoegdhede, en, tensy die appèl uitsluitlik om 'n regsvraag gaan, het 20 die provinsiale of plaaslike afdeling, benewens bedoelde bevoegdhede, die bevoegdheid om 'n aan die appellant opgelegde vonnis te verswaar of om 'n ander vorm van vonnis, uitgesonderd die doodvonnis, in die plek van of benewens daardie vonnis op te lê.”.

Invoeging van artikel 310A in Wet 51 van 1977

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9. Die volgende artikel word hierby in die Hoofwet na artikel 310 ingevoeg:

“Appèl deur prokureur-generaal teen vonnis van laer hof

310A. (1) Die prokureur-generaal kan teen 'n vonnis wat 'n beskuldigde in 'n strafsaak in 'n laer hof opgelê is, na die provinsiale of plaaslike afdeling wat regsvroegdheid het, appelleer mits 'n aansoek om verlof om te appelleer deur 'n regter in kamers toegestaan is.

(2) (a) 'n Skriftelike kennisgewing van so 'n aansoek moet binne 'n tydperk van 30 dae vanaf die oplegging van vonnis of binne die langer tydperk wat op aansoek om gegronde redes toegelaat word, deur die prokureur-generaal by die griffier van die betrokke provinsiale of plaaslike afdeling ingedien word.

(b) Die kennisgewing moet kortlik die gronde vir die aansoek vermeld.

(3) Die prokureur-generaal moet minstens 14 dae voor die dag vir die aanhoor van die aansoek bepaal, 'n afskrif van die kennisgewing, tesame met 'n skriftelike uiteensetting van die beskuldigde se regte ingevolge subartikel (4), deur die adjunk-balju op die beskuldigde persoonlik laat beteken: Met dien verstande dat as die adjunk-balju nie in staat is om die afskrif van die kennisgewing aldus te beteken nie, dit beteken kan word op enige ander wyse wat op aansoek toegelaat word.

(4) 'n Beskuldigde kan binne 'n tydperk van 10 dae nadat so 'n kennisgewing op hom beteken is, 'n skriftelike voorlegging by die betrokke griffier indien, en die griffier moet dit voorlê aan die regter wat die aansoek gaan aanhoor en 'n afskrif daarvan aan die prokureur-generaal stuur.

(5) Behoudens die bepalings van hierdie artikel, is artikel 309 *mutatis mutandis* van toepassing met betrekking tot 'n appèl ingevolge hierdie artikel.

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Amendment of section 290 of Act 51 of 1977, as amended by section 9 of Act 26 of 1987

7. Section 290 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- 5 “(3) Any court in which a person of or over the age of 18 years but under the age of 21 years is convicted of any offence [other than murder with reference to which—
- 10 (a) the person concerned is not a woman convicted of the murder of her newly born child; or
 (b) there are, in the opinion of the court, no extenuating circumstances] may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or that he be sent to a reform school as defined in section 1 of the Child Care Act, 1983.”.

Amendment of section 309 of Act 51 of 1977, as amended by section 17 of Act 105 of 1982

15 8. Section 309 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

- 20 “The provincial or local division concerned shall thereupon have the powers referred to in section 304 (2), and, unless the appeal is based solely upon a question of law, the provincial or local division shall, in addition to such powers, have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence, excluding the sentence of death, in lieu of or in addition to such sentence.”.

Insertion of section 310A in Act 51 of 1977

9. The following section is hereby inserted in the principal Act after section 310:

“Appeal by attorney-general against sentence of lower court

- 30 **310A.** (1) The attorney-general may appeal against a sentence imposed upon an accused in a criminal case in a lower court, to the provincial or local division having jurisdiction, provided that an application for leave to appeal has been granted by a judge in chambers.
- 35 (2) (a) A written notice of such an application shall be lodged with the registrar of the provincial or local division concerned by the attorney-general, within a period of 30 days of the passing of sentence or within such extended period as may on application on good cause be allowed.
- 40 (b) The notice shall state briefly the grounds for the application.
- 45 (3) The attorney-general shall, at least 14 days before the day appointed for the hearing of the application, cause to be served by the deputy sheriff upon the accused in person a copy of the notice, together with a written statement of the rights of the accused in terms of subsection (4): Provided that if the deputy sheriff is not able so to serve a copy of the notice, it may be served in any other manner that may on application be allowed.
- 45 (4) An accused may, within a period of 10 days of the serving of such a notice upon him, lodge a written submission with the registrar concerned, and the registrar shall submit it to the judge who is to hear the application, and shall send a copy thereof to the attorney-general.
- 45 (5) Subject to the provisions of this section, section 309 shall apply *mutatis mutandis* with reference to an appeal in terms of this section.

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(6) By 'n aansoek om verlof om te appelleer bedoel in subartikel (1) of 'n appèl ingevolge hierdie artikel, kan die regter of die hof, na gelang van die geval, gelas dat die Staat aan die betrokke beskuldigde die geheel of 'n gedeelte van die koste betaal wat teen die beskuldigde by bestryding van die aansoek of appèl opgeloop het, getakseer volgens die tarief in 5 siviele sake van die betrokke provinsiale of plaaslike afdeling.”.

Wysiging van artikel 315 van Wet 51 van 1977, soos vervang deur artikel 20 van Wet 105 van 1982

10. Artikel 315 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) 'n Appèl ingevolge hierdie Hoofstuk kan slegs soos bepaal in artikels 316 tot en met 319 aangegeteken word, en, behoudens die bepalings van artikel 316A, nie op grond van 'n reg van appèl nie.”.

Invoeging van artikels 316A en 316B in Wet 51 van 1977

11. Die volgende artikels word hierby in die Hoofwet na artikel 316 ingevoeg: 15

“Appèl teen doodvonnis

316A. (1) Ondanks die bepalings van artikel 316, kan 'n beskuldigde wat ter dood veroordeel is teen sy skuldigbevinding of vonnis na die Appèlafdeling appelleer sonder om aansoek te doen om verlof om te appelleer, indien kennis van appèl binne 'n tydperk van 21 dae na die oplegging van die vonnis of binne die langer tydperk wat om gegronde rede toegelaat word, gegee is aan die griffier van die Appèlafdeling en aan die griffier van die betrokke provinsiale of plaaslike afdeling.

(2) Die griffier van 'n hof wat die doodvonnis opgelê het, moet onverwyld aan die griffier van die Appèlafdeling kennis gee van die oplegging van daardie vonnis en 'n gewaarmerkte afskrif van die oorkonde, met inbegrip van afskrifte van die getuienis, hetsy dit mondeling of dokumentêr is, wat by die verhoor afgeneem of toegelaat is, en 'n afskrif van die kennisgewing van appèl, indien so 'n kennisgewing ingedien is, aan bedoelde griffier deurstuur: Met dien verstande dat, in plaas van die oorkonde in die geheel, afskrifte (waarvan een gewaarmerk moet wees) van die gedeeltes van die oorkonde wat die prokureur-generaal en die beskuldigde by ooreenkoms as voldoende bepaal, met die toestemming van die beskuldigde en die prokureur-generaal deurgestuur kan word, in welke geval die Appèlafdeling nogtans kan gelas dat die oorkonde in die geheel voorgelê word.

(3) Ondanks die bepalings van subartikel (1) van hierdie artikel, kan 'n beskuldigde wat ter dood veroordeel is binne die tydperk en by 'n hof of regter in artikel 316 (1) bedoel, aansoek doen om verlof om verdere getuienis aan te voer, en die bepalings van subartikels (3), (4), (6), (7), (8) en (9) van artikel 316 is *mutatis mutandis* van toepassing met betrekking tot so 'n aansoek asof die beskuldigde aansoek gedoen het om verlof om te appelleer.

- (4) (a) Wanneer 'n beskuldigde wat ter dood veroordeel is, nie kennis van appèl gegee het soos beoog in subartikel (1) nie, of nie die appèl voortgesit het nadat sodanige kennis gegee is nie, verval sy regte ingevolge daardie subartikel, en stel die Hoofregter, of 'n ander regter van die Appèlafdeling deur die Hoofregter aangewys, 'n advokaat aan om namens die beskuldigde 'n skriftelike beotoog aan die Appèlafdeling voor te lê waarin hy die juistheid van die betrokke skuldigbevinding en die gepastheid van die doodvonnis beredeneer.
- (b) Die griffier van die Appèlafdeling stel die beskuldigde en die betrokke prokureur-generaal in kennis van so 'n aanstelling.
- (c) Die prokureur-generaal kan ook 'n skriftelike beotoog aangaande die juistheid van die betrokke skuldigbevinding en die gepastheid van die doodvonnis aan die Appèlafdeling voorlê.

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(6) Upon an application for leave to appeal referred to in subsection (1) or an appeal in terms of this section, the judge or the court, as the case may be, may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the application or appeal, taxed according to the scale in civil cases of the provincial or local division concerned.”.

Amendment of section 315 of Act 51 of 1977, as substituted by section 20 of Act 105 of 1982

10. Section 315 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) An appeal in terms of this Chapter shall lie only as provided in sections 316 to 319 inclusive, and, subject to the provisions of section 316A, not as of right.”.

Insertion of sections 316A and 316B in Act 51 of 1977

15 11. The following sections are hereby inserted in the principal Act after section 316:

“Appeal against sentence of death

20 **316A.** (1) Notwithstanding the provisions of section 316, an accused who has been sentenced to death may appeal against his conviction or sentence to the Appellate Division without applying for leave to appeal, if notice of appeal was given within a period of 21 days of the passing of the sentence or within such extended period as may on good cause be allowed, to the registrar of the Appellate Division and to the registrar of the provincial or local division concerned.

25 (2) The registrar of a court which has imposed the sentence of death shall forthwith notify the registrar of the Appellate Division of the passing of that sentence and shall transmit to the said registrar a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a copy of the notice of appeal, if such notice has been filed: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the Appellate Division may nevertheless call for the production of the whole record.

30 (3) Notwithstanding the provisions of subsection (1) of this section, an accused who has been sentenced to death may apply, within the period and to a court or judge referred to in section 316 (1), for leave to lead further evidence, and the provisions of subsections (3), (4), (6), (7), (8) and (9) of section 316 shall apply *mutatis mutandis* with reference to such an application as if the convicted person had applied for leave to appeal.

35 (4) (a) When an accused who has been sentenced to death has not given notice of appeal as contemplated in subsection (1) or has not prosecuted the appeal after such notice has been given, his rights in terms of that subsection shall lapse, and the Chief Justice or any other judge of the Appellate Division designated by the Chief Justice shall appoint counsel to submit a written address to the Appellate Division on behalf of the accused, in which he shall argue the correctness of the conviction concerned and the propriety of the sentence of death.

40 (b) The registrar of the Appellate Division shall notify the accused and the attorney-general concerned of such an appointment.

45 (c) The attorney-general may also submit a written address to the Appellate Division regarding the correctness of the conviction and the propriety of the sentence of death.

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- (5) (a) By ontvangs van die betoë in subartikel (4) beoog, word die saak in kamers hersien deur twee regters van die Appèlafdeling deur die Hoofregter aangewys.
 (b) Indien die regters van mening verskil, word die saak ook deur die Hoofregter of 'n ander regter van die Appèlafdeling na wie dit deur die Hoofregter verwys word, in kamers hersien.
 (c) Die beslissing van die meerderheid van die regters wat die saak hersien, word geag die beslissing van al drie te wees.
- (6) Die regters wat 'n saak hersien, kan—
 (a) gelas dat die saak op 'n vasgestelde tyd en plek voor hulle beredeneer word;
 (b) die aangeleentheid na die Appèlafdeling verwys vir oorweging, hetby na beredenering of andersins.
- (7) Die bepalings van artikel 322 is *mutatis mutandis* met betrekking tot 'n hersiening ingevolge hierdie artikel van toepassing asof die hersiening 'n appèl is: Met dien verstande dat die betrokke skuldigbevinding nie tersyde gestel word nie tensy die saak voor die regters wat die saak hersien of voor die Appèlafdeling, na gelang van die geval, beredeneer is asof die hersiening 'n appèl is.
- (8) Die beslissing van die regters wat 'n saak hersien, word geag die beslissing van die Appèlafdeling te wees.
- Appèl deur prokureur-generaal teen vonnis van hoër hof**
- 316B.** (1) Die prokureur-generaal kan, behoudens subartikel (2), teen 'n vonnis wat 'n beskuldigde in 'n strafsaak in 'n hoër hof opgelê is, na die Appèlafdeling appelleer.
 (2) Die bepalings van artikel 316 met betrekking tot 'n aansoek of appèl in daardie artikel bedoel deur 'n beskuldigde, is *mutatis mutandis* van toepassing met betrekking tot 'n saak waarin die prokureur-generaal ingevolge subartikel (1) van hierdie artikel appelleer.
 (3) By 'n appèl ingevolge subartikel (1) of 'n aansoek in subartikel (2) bedoel wat deur die prokureur-generaal aangebring is, kan die hof gelas dat die Staat aan die betrokke beskuldigde die geheel of 'n gedeelte van die koste betaal wat teen die beskuldigde by bestryding van die appèl of aansoek opgeloop het, getakseer volgens die tarief in siviele sake van daardie hof.”.

Vervanging van artikel 320 van Wet 51 van 1977

12. Artikel 320 van die Hoofwet word hierby deur die volgende artikel vervang:

“Verslag van verhoorregter moet in geval van appèl verstrek word

320. Die regter of regters, na gelang van die geval, van 'n hof voor wie iemand skuldig bevind word, moet, in die geval van 'n appèl ingevolge artikel 316, 316A of 316B of van 'n aansoek om 'n spesiale aantekening ingevolge artikel 317 of die voorbehoud van 'n regsvraag ingevolge artikel 319 of 'n aansoek by die appèlhof om verlof om te appelleer of dat 'n spesiale aantekening ingevolge hierdie Wet gedoen word, aan die griffier 'n verslag verstrek wat sy of hul sienswyse oor die saak of oor 'n vraag wat in die loop daarvan ontstaan het, aangee, en daardie verslag, wat deel van die oorkonde uitmaak, word sonder versuim deur die griffier aan die griffier van die appèlhof deurgestuur.”.

Wysiging van artikel 322 van Wet 51 van 1977

- 13. Artikel 322 van die Hoofwet word hierby gewysig—**
- (a) deur subartikel (2) deur die volgende subartikel te vervang:
 “(2) By 'n appèl ingevolge artikel 316 of 316B teen 'n vonnis, kan die appèlhof die vonnis bekratig of dit tersyde stel of wysig en die straf ople wat by die verhoor opgelê behoort te gewees het.”;
- (b) deur na subartikel (2) die volgende subartikel in te voeg:
 “(2A) By 'n appèl ingevolge artikel 316A teen die doodvonnis, kan die Appèlafdeling—

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- (5) (a) On receipt of the addresses contemplated in subsection (4), the case shall be reviewed in chambers by two judges of the Appellate Division designated by the Chief Justice.
- 5 (b) If the judges differ in opinion, the case shall also be reviewed in chambers by the Chief Justice or by any other judge of the Appellate Division to whom it has been referred by the Chief Justice.
- (c) The decision of the majority of the judges reviewing the case, shall be deemed to be the decision of all three.
- 10 (6) The judges reviewing a case may—
(a) order that the case be argued before them at a time and place appointed;
(b) refer the matter to the Appellate Division for consideration, whether upon argument or otherwise.
- 15 (7) The provisions of section 322 shall apply *mutatis mutandis* with reference to a review in terms of this section as if the review were an appeal: Provided that the conviction concerned shall not be set aside unless the case has been argued before the judges reviewing the case or before the Appellate Division, as the case may be, as if the review were an appeal.
- 20 (8) The decision of the judges reviewing a case shall be deemed to be the decision of the Appellate Division.
- Appeal by attorney-general against sentence of superior court**
- 25 **316B.** (1) Subject to subsection (2), the attorney-general may appeal to the Appellate Division against a sentence imposed upon an accused in a criminal case in a superior court.
- (2) The provisions of section 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of subsection (1) of this section.
- 30 (3) Upon an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the attorney-general, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.”.
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Substitution of section 320 of Act 51 of 1977

12. The following section is hereby substituted for section 320 of the principal Act:

“Report of trial judge to be furnished on appeal

- 40 **320.** The judge or judges, as the case may be, of any court before whom a person is convicted shall, in the case of an appeal under section 316, 316A or 316B or of an application for a special entry under section 317 or the reservation of a question of law under section 319 or an application to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his or their opinion upon the case or upon any point arising in the case, and such report, which shall form part of the record, shall without delay be forwarded by the registrar to the registrar of the court of appeal.”.
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Amendment of section 322 of Act 51 of 1977

50 13. Section 322 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Upon an appeal under section 316 or 316B against any sentence, the court of appeal may confirm the sentence or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.”;

- 55 (b) by the insertion after subsection (2) of the following subsection:

“(2A) Upon an appeal under section 316A against the sentence of death, the Appellate Division may—

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- (a) die doodvonnis bekratig; of
 (b) indien die Appèlafdeling van oordeel is dat hy self nie die doodvonnis sou opgelê het nie, die vonnis tersyde stel en die straf oplê wat na sy oordeel gepas is.”; en
 (c) deur subartikel (6) deur die volgende subartikel te vervang:
 “(6) Die bevoegdhede wat by hierdie artikel aan die appèlhof met betrekking tot die oplegging van strawwe verleen word, sluit die bevoegdheid in om ‘n straf op te lê wat swaarder is as dié wat die hof benede opgelê het of om ‘n ander straf, uitgesondert die doodvonnis, in die plek van of benewens sodanige straf op te lê.”.

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Vervanging van artikel 323 van Wet 51 van 1977, soos gewysig deur artikel 25 van Wet 105 van 1982

14. Artikel 323 van die Hoofwet word hierby deur die volgende artikel vervang:

“Voorlegging deur Minister aan Appèlafdeling ten behoeve van persoon ter dood veroordeel”

323. Indien die Minister, in ‘n saak waarin iemand ter dood veroordeel is, twyfel aangaande die juistheid van die betrokke skuldigbevinding of die gepastheid van die doodvonnis het, kan die Minister, ten behoeve en sonder die toestemming van die veroordeelde persoon, ‘n verklaring van die grond vir sy twyfel aan die Appèlafdeling voorlê, en daardie hof oorweeg daardie verklaring by die appèl- of hersieningsverrigtinge in artikel 316A beoog.”.

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Invoeging van artikel 325A in Wet 51 van 1977

15. Die volgende artikel word hierby in die Hoofwet na artikel 325 ingevoeg:

“Versoekskrif aan Staatspresident om begenadiging van persoon ter dood veroordeel”

325A. Wanneer die Appèlafdeling van die Hooggereghof op appèl na hom of by hersieningsverrigtinge ingevolge artikel 316A die doodvonnis wat ‘n persoon opgelê is, bekratig het, en daardie persoon nie binne ‘n tydperk van 21 dae na daardie bekratiging van die vonnis ‘n versoekskrif om begenadiging aan die Staatspresident gerig het nie, stel die Minister of iemand deur hom aangewys ‘n advokaat aan om binne 21 dae of binne die langer tydperk wat die Minister na goedgunst toelaat, so ‘n versoekskrif ten behoeve van die ter dood veroordeelde persoon aan die Staatspresident voor te lê.”.

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Wysiging van artikel 327 van Wet 51 van 1977

16. Artikel 327 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Indien iemand wat aan ‘n misdryf in ‘n hof skuldig bevind is of ten opsigte van ‘n misdryf ter dood veroordeel is, ten opsigte van die skuldigbevinding of die doodvonnis al die erkende regssprosedures betrefende appèl of hersiening uitgeput het, of indien sodanige prosedures nie meer aan hom beskikbaar is nie, en so iemand of sy regsveteenwoordiger ‘n versoekskrif, gesteun deur toepaslike beëdigde verklarings, aan die [Staatspresident] Minister rig wat beweer dat verdere getuenis sedertdien beskikbaar geword het wat sy skuldigbevinding of die doodvonnis wat hom opgelê is wesenlik raak, kan die [Staatspresident] Minister, indien hy van oordeel is dat sodanige verdere getuenis, as dit waar is, die skuldigbevinding of die doodvonnis redelikerwys sou kon raak, [die Minister] gelas [om] dat die versoekskrif en die toepaslike beëdigde verklarings na die hof [te] verwys word waarin die skuldigbevinding geskied het of waarin die doodvonnis opgelê is.”; en

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(b) deur paragraaf (a) van subartikel (7) deur die volgende paragraaf te vervang:

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- 5 (a) confirm the sentence of death; or
 (b) if the Appellate Division is of the opinion that it would not itself have imposed the sentence of death, set aside the sentence and impose such punishment as it considers to be proper.”; and
 (c) by the substitution for subsection (6) of the following subsection:
 “(6) The powers conferred by this section upon the court of appeal in relation to the imposition of punishments, shall include the power to impose a punishment more severe than that imposed by the court below or to impose another punishment, excluding the sentence of death, in lieu of or in addition to such punishment.”.
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Substitution of section 323 of Act 51 of 1977, as amended by section 25 of Act 105 of 1982

14. The following section is hereby substituted for section 323 of the principal Act:

15 **“Submission by Minister to Appellate Division on behalf of person sentenced to death**

20 **323. If the Minister, in any case in which a person has been sentenced to death, has any doubt as to the correctness of the conviction in question or the propriety of the sentence of death, the Minister may, on behalf and without the consent of the convicted person, refer a statement of the ground for his doubt to the Appellate Division, and that court shall consider that statement at the appeal or review proceedings contemplated in section 316A.”.**

Insertion of section 325A in Act 51 of 1977

15. The following section is hereby inserted in the principal Act after section 325:

25 **“Petition to State President to extend mercy to person under sentence of death**

30 **325A. When the Appellate Division of the Supreme Court has, on appeal to it or at review proceedings in terms of section 316A, confirmed the sentence of death imposed upon any person, and that person has not within 21 days of such confirmation of the sentence submitted a petition for mercy to the State President, the Minister or someone designated by him shall appoint counsel to submit, within 21 days or within such extended period as the Minister may in his discretion allow, such a petition on behalf of the person sentenced to death to the State President.”.**

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Amendment of section 327 of Act 51 of 1977

16. Section 327 of the principal Act is hereby amended—

- 40 (a) by the substitution for subsection (1) of the following subsection:
 “(1) If any person convicted of any offence in any court or sentenced to death in respect of any offence, has in respect of the conviction or the sentence of death exhausted all the recognized legal procedures pertaining to appeal or review, or if such procedures are no longer available to him, and such person or his legal representative addresses the [State President] Minister by way of petition, supported by relevant affidavit, stating that further evidence has since become available which materially affects his conviction or the sentence of death imposed upon him, the [State President] Minister may, if he considers that such further evidence, if true, might reasonably affect the conviction or the sentence of death, direct [the Minister to refer] that the petition and the relevant affidavits be referred to the court in which the conviction occurred or in which the sentence of death was imposed.”; and
 (b) by the substitution for paragraph (a) of subsection (7) of the following paragraph:
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"(a) 'n weiering deur die [Staatspresident] Minister om 'n lasgwing ingevolge subartikel (1) uit te reik of deur die Staatspresident om op te tree as gevolg van die bevinding of advies van die hof ingevolge subartikel (4) (a) nie; of".

Wysiging van artikel 89 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 75 van 1959 en gewysig deur artikel 7 van Wet 91 van 1977 5

17. Artikel 89 van die Wet op Landdroshewe, 1944, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"2) Die hof van 'n streekafdeling het jurisdiksie ten opsigte van alle misdrywe behalwe hoogverraad **[en moord]**.". 10

Vervanging van artikel 64 van Wet 8 van 1959, soos gewysig deur artikel 33 van Wet 97 van 1986

18. Artikel 64 van die Wet op Gevangenis, 1959, word hierby deur die volgende artikel vervang:

"Vrylating van gevangene wat lewenslange gevangenisstraf uitdien 15

64. (1) 'n Gevangene wat tot lewenslange gevangenisstraf gevonnis is, word nie vrygelaat nie tensy die vrylatingsadviesraad—

(a) nadat hy deur die Minister versoek is om hom met betrekking tot

daardie gevangene te adviseer; en

(b) na oorweging van 'n verslag van 'n vrylatingsraad,

met behoorlike inagneming van die belang van die gemeenskap 'n aanbeveling vir die vrylating van die gevangene aan die Minister gedoen het en die Minister daardie aanbeveling aanvaar het.

(2) Indien die Minister die aanbeveling vir die vrylating van so 'n

gevangene aanvaar, kan hy magtiging verleen vir die vrylating van die gevangene op die datum deur die vrylatingsadviesraad aanbeveel of op enige ander datum, of onvoorwaardelik of op proef of op parool soos hy mag gelas.". 25

Heroorweging van vonnisse van sekere ter dood veroordeelde persone

19. (1) (a) Die Minister van Justisie (hieronder in hierdie artikel die Minister genoem) moet so gou doenlik na die inwerkingtreding van hierdie artikel, na raadpleging van die Hoofregter, 'n paneel aanstel bestaande uit—

(i) ses regters of afgetrede regters van die Hooggereghof van Suid-Afrika, van wie minstens drie regters of afgetrede regters van die Appèlafdeling moet wees; en

(ii) drie ander persone wat na die oordeel van die Minister geskik is om in die paneel te dien op grond van hul kennis van en ondervinding in die regspleging,

om die werkzaamhede te verrig wat by hierdie artikel aan die paneel toegewys word. 35

(b) Die Minister wys 'n regter of afgetrede regter van die Appèlafdeling wat in die paneel dien, as voorsitter van die paneel aan.

(c) Behoudens paragrawe (a) en (b) kan die Minister van tyd tot tyd iemand aanwys om in die paneel te dien in die plek van 'n lid van die paneel wat om die een of ander rede nie meer in die paneel kan dien nie. 45

(2) (a) Die voorsitter van die paneel kan een of meer komitees aanstel, elk bestaande uit minstens drie lede van die paneel, van wie minstens een 'n regter of afgetrede regter van die Appèlafdeling moet wees, wat die voorsitter van die komitee is.

(b) 'n Komitee oorweeg enige geval beoog in subartikel (8) wat deur die voorsitter van die paneel na die komitee verwys word. 50

(c) By die oorweging van so 'n geval het 'n komitee al die bevoegdhede en pligte wat die paneel by hierdie artikel verleen of opgelê word, en enige bevinding van 'n komitee word vir alle doeleindes geag die bevinding van die paneel te wees. 55

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- "(a) a refusal by the [State President] Minister to issue a direction under subsection (1) or by the State President to act upon the finding or advice of the court under subsection (4) (a); or".

Amendment of section 89 of Act 32 of 1944, as substituted by section 1 of Act 75 of 5 1959 and amended by section 7 of Act 91 of 1977

17. Section 89 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The court of a regional division shall have jurisdiction over all offences except treason [and murder].".

10 Substitution of section 64 of Act 8 of 1959, as amended by section 33 of Act 97 of 1986

18. The following section is hereby substituted for section 64 of the Prisons Act, 1959:

"Release of prisoner serving a life sentence

- 15 **64.** (1) A prisoner upon whom a life sentence has been imposed, shall not be released unless the advisory release board—
 (a) after having been requested by the Minister to advise him in relation to that prisoner; and
 (b) after considering a report of a release board, with due regard to the interests of society, has made a recommendation to the Minister for the release of the prisoner and the Minister has accepted that recommendation.
 (2) If the Minister accepts the recommendation for the release of such a prisoner, he may authorize the release of the prisoner on the date recommended by the advisory release board or on any other date, either unconditionally or on probation or on parole as he may direct.".

Reconsideration of sentences of certain persons under sentence of death

- 30 **19.** (1) (a) The Minister of Justice (hereinafter in this section referred to as the Minister) shall as soon as practicable after the commencement of this section, and after consultation with the Chief Justice, appoint a panel consisting of—
 (i) six judges or retired judges of the Supreme Court of South Africa, of whom at least three shall be judges or retired judges of the Appellate Division; and
 (ii) three other persons who in the opinion of the Minister are fit to serve on the panel on account of their knowledge of and experience in the administration of justice,
 to perform the functions assigned to the panel by this section.
 (b) The Minister shall designate a judge or retired judge of the Appellate Division who serves on the panel as chairman of the panel.
 (c) Subject to paragraphs (a) and (b), the Minister may from time to time designate a person to serve on the panel in the place of a member of the panel who for any reason is no longer able to serve on the panel.
 (2) (a) The chairman of the panel may appoint one or more committees, each consisting of at least three members of the panel, of whom at least one shall be a judge or retired judge of the Appellate Division, who shall be the chairman of the committee.
 (b) A committee shall consider any case contemplated in subsection (8) which is referred to it by the chairman of the panel.
 (c) In considering any such case, a committee shall have all the powers and duties conferred or imposed upon the panel by this section, and any finding of a committee shall for all purposes be deemed to be the finding of the panel.

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(d) Die bepalings van subartikels (4) en (7) is *mutatis mutandis* met betrekking tot 'n komitee van toepassing.

(3) 'n Lid van die paneel wat nie in die heeltydse diens van die Staat is nie, word in verband met sy dienste as so 'n lid die vergoeding en toelaes betaal wat die Minister met die instemming van die Minister van Finansies bepaal. 5

(4) Die paneel sit agter geslotte deure, en behoudens die bepalings van hierdie artikel is niemand geregtig om voor die paneel te verskyn of om 'n voorlegging aan die paneel te doen nie.

(5) Die prosedure by sittings van die paneel en van 'n komitee bedoel in subartikel (2) word behoudens die bepalings van hierdie artikel deur die voorsitter van die paneel bepaal na oorlegpleging, waar nodig, met die Direkteur-generaal: Justisie. 10

(6) Die administratiewe werk verbonde aan die verrigting van die werksaamhede van die paneel word uitgevoer deur beampies van die Departement van Justisie wat vir die doel deur die Direkteur-generaal: Justisie aangewys is.

(7) Die bevinding van 'n meerderheid van die lede van die paneel is die bevinding van die paneel, en waar 'n meerderheid van die lede van die paneel nie 'n eenstemmige bevinding kan uitbring nie, word die betrokke geval na die Appèlafdeling van die Hooggereghof verwys soos beoog in subartikel (12), asof die paneel 'n bevinding bedoel in paragraaf (a) van daardie subartikel, uitgebring het. 15

(8) Die paneel oorweeg die geval van elke ter dood veroordeelde persoon— 20

(a) wat voor die datum van inwerkingtreding van artikel 4 die doodvonnis opgelê is; en

(b) wat ten opsigte van daardie vonnis al die erkende regssprosedures betrefende appèl en hersiening uitgeput het of nie meer sodanige procedures tot sy beskikking het nie, hetsy so 'n persoon 'n versoekskrif bedoel in artikel 25 327 van die Hoofwet ingedien het al dan nie,

uitgesonderd 'n ter dood veroordeelde persoon—

(i) wie se vonnis reeds ooreenkomsdig die bedoeling van artikel 20 deur die Appèlafdeling oorweeg is asof artikel 4 te alle tersaaklike tye in werking was; of 30

(ii) wie se vonnis deur die Staatspresident versag is.

(9) (a) Vir die doeleindes van subartikel (8) moet die Direkteur-generaal: Justisie alle hofoorkondes, ontvange versoekskrifte en ander stukke in sy besit met betrekking tot die verhoor, skuldigbevinding en vonnis van elke betrokke veroordeelde ter beskikking van die paneel stel. 35

(b) 'n Veroordeelde wie se geval deur die paneel oorweeg staan te word en die prokureur-generaal kan binne die tydperk deur die voorsitter van die paneel bepaal, skriftelike betoë aan die Direkteur-generaal: Justisie verstrek vir voorlegging aan die paneel.

(c) Vir die doeleindes van die voorbereiding van so 'n betoog, is die veroordeelde geregtig op *pro Deo*-verteenvoordiging asof die betoog opgestel word met die oog op 'n appèl teen die doodvonnis. 40

(10) Na oorweging van 'n geval moet die paneel—

(a) 'n bevinding uitbring oor die vraag of die doodvonnis na die paneel se oordeel waarskynlik deur die betrokke verhoorhof opgelê sou gewees het al dan nie indien artikel 277 van die Hoofwet, soos by artikel 4 van hierdie Wet vervang, ten tyde van vonnisoplegging in werking was; en 45

(b) die Minister skriftelik van sy bevinding in kennis stel.

(11) (a) Waar die paneel bevind dat die doodvonnis waarskynlik nie aldus opgelê sou gewees het nie, hanteer die Minister die geval verder ooreenkomsdig 50 die erkende prosedures wat gevolg word ten einde die geval met die oog op moontlike begenadiging van die veroordeelde aan die Staatspresident voor te lê.

(b) Ondanks so 'n bevinding van die paneel kan die Minister, indien hy dit wenslik ag, die geval na die Appèlafdeling van die Hooggereghof verwys, waarna die bepalings van subartikel (12) met betrekking tot die betrokke geval van toepassing is asof die paneel 'n bevinding bedoel in paragraaf (a) van daardie subartikel uitgebring het. 55

(12) (a) Waar die paneel bevind dat die doodvonnis waarskynlik opgelê sou gewees het onder die omstandighede beoog in subartikel (10) (a), moet die Direkteur-generaal: Justisie onverwyld die nodige aantal gewaarmerkte afskrifte van die betrokke hofoorkonde en -verrigtinge aan die griffier van die Appèlafdeling van die Hooggereghof stuur, waarop daardie hof, 60

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- (d) The provisions of subsections (4) and (7) shall apply *mutatis mutandis* with reference to a committee.
- (3) A member of the panel who is not in the full-time service of the State shall in respect of his services as such a member be paid such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of Finance.
- (4) The panel shall sit behind closed doors, and subject to the provisions of this section, no person shall be entitled to appear before the panel or to make a submission to the panel.
- (5) The procedure at sessions of the panel and of a committee referred to in subsection (2) shall, subject to the provisions of this section, be determined by the chairman of the panel after consultation, where necessary, with the Director-General: Justice.
- (6) The administrative work incidental to the performance of the functions of the panel shall be carried out by officials of the Department of Justice designated for that purpose by the Director-General: Justice.
- (7) The finding of the majority of the members of the panel shall be the finding of the panel, and where a majority of the members of the panel cannot bring out a unanimous finding, the case concerned shall be referred to the Appellate Division of the Supreme Court as contemplated in subsection (12), as if the panel had made a finding referred to in paragraph (a) of that subsection.
- (8) The panel shall consider the case of every person under sentence of death—
- (a) who was sentenced to death before the date of commencement of section 4; and
 - (b) who has in respect of that sentence exhausted all the recognized legal procedures pertaining to appeal or review or no longer has such procedures at his disposal, whether or not such a person has lodged a petition referred to in section 327 of the principal Act, excluding any person under sentence of death—
- (i) whose sentence has already been considered by the Appellate Division within the meaning of section 20 as if section 4 had at all relevant times been in operation; or
- (ii) whose sentence has been commuted by the State President.
- (9) (a) For the purposes of subsection (8), the Director-General: Justice shall place at the disposal of the panel all court records, petitions received and other documents in his possession in relation to the trial, conviction and sentence of every convicted person concerned.
- (b) A convicted person whose case is to be considered by the panel, and the attorney-general may within the period determined by the chairman of the panel furnish the Director-General: Justice with written arguments for submission to the panel.
- (c) For the purposes of preparing such an argument, a convicted person shall be entitled to *pro Deo* representation as if the argument were drawn up with a view to an appeal against the sentence of death.
- (10) After considering a case, the panel shall—
- (a) make a finding as to whether or not, in the opinion of the panel, the sentence of death would probably have been imposed by the trial court concerned had section 277 of the principal Act, as substituted by section 4 of this Act, been in operation at the time sentence was passed; and
 - (b) inform the Minister in writing of its finding.
- (11) (a) Where the panel finds that the sentence of death would probably not have been so imposed, the Minister shall further deal with the case in accordance with the known procedures which are followed in order to lay the case before the State President with a view to his possible extension of mercy to the convicted person.
- (b) Notwithstanding such a finding of the panel, the Minister may, if he considers it desirable, refer the case to the Appellate Division of the Supreme Court, whereupon the provisions of subsection (12) shall apply in relation to the case concerned as if the panel had made a finding referred to in paragraph (a) of that subsection.
- (12) (a) Where the panel finds that the sentence of death would probably have been imposed in the circumstances contemplated in subsection (10) (a), the Director-General: Justice shall forthwith transmit the requisite number of certified copies of the relevant court record and proceedings to the registrar

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ongeag of hy voorheen 'n beslissing op appèl in die betrokke saak gegee het, die saak op dieselfde wyse oorweeg asof—

- (i) hy 'n appèl deur die veroordeelde persoon teen sy vonnis oorweeg; en
- (ii) artikel 277 van die Hoofwet, soos vervang by artikel 4 van hierdie Wet, in werking was ten tyde van vonnisoplegging deur die verhoorhof.

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(b) Die Appèlafdeling kan—

- (i) die doodvonnis bekratig;
- (ii) indien die Appèlafdeling van oordeel is dat hy self nie die doodvonnis sou opgelê het nie, die vonnis tersyde stel en die straf oplê wat na sy oordeel gepas is; of

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- (iii) die doodvonnis tersyde stel en die saak na die verhoorhof terugverwys met die opdrag om met 'n aangeleentheid, met inbegrip van die aanhoor van getuienis, te handel op die wyse wat die Appèlafdeling goed ag, en om daarna die vonnis op te lê wat na die oordeel van die verhoorhof opgelê sou gewees het indien genoemde artikel 277 aldus 15 in werking was.

- (c) 'n Vonnis opgelê ingevolge paragraaf (b) (iii), word vir die doeleindes van enige verdere appèl en alle ander doeleindes geag die vonnis te wees wat die veroordeelde persoon by sy verhoor opgelê is.

- (d) 'n Regter neem nie sitting by die verhoor van 'n appèl beoog in paragraaf 20 (a) nie indien hy in die paneel gedien het toe die betrokke saak deur die paneel oorweeg is.

(13) Geen appèl-, hersienings- of ander verrigtinge van watter aard ook al is ontvanklik nie ten opsigte van—

- (a) enige verrigtinge, bevinding of aanbeveling van die paneel of 'n komitee 25 bedoel in subartikel (2); of
- (b) enige ander handeling wat heet deur die Minister of iemand anders ooreenkomsdig of ingevolge 'n bepaling van hierdie artikel verrig te wees.

Onafgehandelde sake

20. (1) Enige strafsaak wat voor die datum van inwerkingtreding van hierdie artikel 'n aanvang geneem het, en enige appèl, aansoek of verrigtinge in of in verband met so 'n saak—

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- (a) word voortgesit en afgehandel asof artikels 4 en 13 (b) te alle tersaaklike tye in werking was;

- (b) word, indien vonnis in die betrokke saak op of na daardie datum opgelê word, voortgesit en afgehandel asof artikel 11 ook aldus in werking was.

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(2) By die toepassing van subartikel (1) ten opsigte van enige saak, appèl, aansoek of verrigtinge in daardie subartikel bedoel, kan 'n hof, ondanks die bepalings van enige ander wet, die bevel ter reëling van die betrokke verrigtinge gee wat die omstandighede na die oordeel van die hof vereis.

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(3) By 'n appèl bedoel in subartikel (1) teen die doodvonnis het die Appèlafdeling van die Hooggereghof benewens enige ander bevoegdheid die bevoegdheid om die vonnis tersyde te stel en die saak na die verhoorhof terug te verwys met die opdrag om met 'n aangeleentheid, met inbegrip van die aanhoor van getuienis, te handel op die wyse wat die Appèlafdeling goed ag.

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Kort titel en inwerkingtreding

21. (1) Hierdie Wet heet die Strafregwysigingswet, 1990.

(2) Artikels 5, 16, 17 en 18 tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(3) Verskillende datums kan aldus ten opsigte van verskillende bepalings bepaal 50 word.

CRIMINAL LAW AMENDMENT ACT, 1990

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of the Appellate Division of the Supreme Court, whereupon that court shall, irrespective of whether it has previously given a decision on appeal in the case concerned, consider the case in the same manner as if—

- 5 (i) it were considering an appeal by the convicted person against his sentence; and
- (ii) section 277 of the principal Act, as substituted by section 4 of this Act, were in operation at the time sentence was passed by the trial court.
- 10 (b) The Appellate Division may—
 - (i) confirm the sentence of death;
 - (ii) if the Appellate Division is of the opinion that it would not itself have imposed the sentence of death, set aside the sentence and impose such punishment as it considers to be proper; or
 - (iii) set aside the sentence of death and remit the case to the trial court with instructions to deal with any matter, including the hearing of evidence, in such manner as the Appellate Division may think fit, and thereafter to impose the sentence which in the opinion of the trial court would have been imposed had the said section 277 been so in operation.
- 15 (c) A sentence imposed in terms of paragraph (b) (iii), shall for the purposes of any further appeal and all other purposes be deemed to be the sentence imposed upon the convicted person at his trial.
- 20 (d) No judge shall sit at the hearing of an appeal contemplated in paragraph (a) if he served on the panel when the case concerned was considered by the panel.
- (13) No appeal, review or other proceedings of whatever nature shall lie in respect
25 of—
 - (a) any proceedings, finding or recommendation of the panel or of a committee referred to in subsection (2); or
 - (b) any other act purported to have been performed by the Minister or anyone else in accordance with or in terms of a provision of this section.

30 Cases not yet finalized

- 20. (1) Any criminal case which commenced before the date of commencement of this section, and any appeal, application or proceedings in or in connection with such a case—
 - 35 (a) shall be continued and concluded as if sections 4 and 13 (b) had at all relevant times been in operation;
 - (b) shall, if sentence in the case concerned is passed on or after that date, be continued and concluded as if section 11 had also been so in operation.
- (2) In the application of subsection (1) in respect of any case, appeal, application or proceedings referred to in that subsection, a court may, notwithstanding the provisions of any other law, make such order for regulating the proceedings concerned as the circumstances may in the opinion of the court require.
- (3) In an appeal referred to in subsection (1) against the sentence of death, the Appellate Division of the Supreme Court shall, in addition to any other power, have the power to set aside the sentence and to remit the case to the trial court with instructions to deal with any matter, including the hearing of evidence, in such manner as the Appellate Division may think fit.

Short title and commencement

- 21. (1) This Act shall be called the Criminal Law Amendment Act, 1990.
- (2) Sections 5, 16, 17 and 18 shall come into operation on a date fixed by the State
50 President by proclamation in the *Gazette*.
- (3) Different dates may be so fixed in respect of different provisions.

