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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 10c Prys
Overseas 15c Oorsee
POST FREE—POSVRY

Vol. 46.]

CAPE TOWN, 9TH APRIL, 1969.

[No. 2350.

KAAPSTAD, 9 APRIL 1969.

DEPARTMENT OF THE PRIME MINISTER.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 560.

9th April, 1969.

No. 560.

9 April 1969.

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

No. 34 of 1969: Abolition of Juries Act, 1969.

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

No. 34 van 1969: Wet op die Afskaffing van Juries, 1969.

Act No. 34, 1969

ABOLITION OF JURIES ACT, 1969.

ACT

To provide for the repeal of the laws relating to trial by jury in criminal proceedings and for other incidental matters.

*(English text signed by the State President.)
(Assented to 26th March, 1969.)*

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

Amendment of superscription immediately following long title of Act 56 of 1955.

1. The superscription "ARRANGEMENT OF SECTIONS" immediately following the long title of the Criminal Procedure Act, 1955 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion in the item "CHAPTER VIII" of the words "without a Jury"; and
(b) by the deletion of the item "CHAPTER IX".

Amendment of section 2 of Act 56 of 1955.

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The provisions of every Chapter of this Act, except Chapters VI, VIII and XX, shall, unless any such provision is clearly applicable only to proceedings in a superior court, apply to all criminal proceedings in an inferior court."

Substitution of superscription before section 109 of Act 56 of 1955.

3. The following superscription is hereby substituted for the superscription before section 109 of the principal Act:

"TRIAL BEFORE SUPERIOR COURT."

Substitution of section 109 of Act 56 of 1955, as amended by section 2 of Act 9 of 1958, section 5 of Act 75 of 1959 and section 10 of Act 37 of 1963.

4. The following section is hereby substituted for section 109 of the principal Act:

"Criminal cases to be tried by a judge.
109. (1) In any criminal case pending before a superior court the accused shall, subject to the provisions of section 112 be tried by a judge of the Supreme Court as hereinafter in this section provided.

(2) The judge presiding at the trial may summon to his assistance any person who has, or any two persons who have, in the opinion of the judge, experience in the administration of justice, or skill in any matter which may have to be considered at the trial, to sit with him at the trial, as assessor or assessors.

(3) Before the trial the said judge shall administer an oath to the person or persons whom he has so called to his assistance that he or they will give a true verdict, according to the evidence upon the issues to be tried, and thereupon he or they shall be a member or members of the court subject to the following provisions:

- (a) any matter of law arising for decision at such trial, and any question arising thereat as to whether a matter for decision is a matter of fact

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- or a matter of law, shall be decided by the presiding judge and no assessor shall have a voice in any such decision;
- (b) the presiding judge may adjourn the argument upon any such matter or question as is mentioned in paragraph (a) and may sit alone for the hearing of such argument and the decision of such matter or question;
- (c) whenever the presiding judge shall give a decision in terms of paragraph (a) he shall give his reasons for that decision;
- (d) upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court, except when only one assessor sits with the presiding judge, in which case the decision or finding of such judge shall be the decision or finding of the court if there is a difference of opinion;
- (e) it shall not be incumbent on the court to give any reasons for its decision or finding on any matter under paragraph (d).

(4) If any such assessor is not a person in the full-time employment of the State he shall be entitled to a refund of any reasonable expenditure which he may have necessarily incurred in connection with his attendance at the trial and to such remuneration for his services as assessor as the Minister, in consultation with the Minister of Finance, may determine.”.

Substitution of section 110 of Act 56 of 1955, as amended by section 9 of Act 92 of 1963.

5. The following section is hereby substituted for section 110 of the principal Act:

“Incapacity of assessor. **110.** (1) If at any time during a trial an assessor dies or becomes in the opinion of the judge incapable of continuing to act as assessor, the judge may, if he thinks fit, direct that the trial shall proceed without such assessor.

(2) Where the judge has given a direction in terms of subsection (1) the trial shall proceed as if the said assessor had not been called by the judge to his assistance.

(3) If the judge does not direct as provided in subsection (1) the accused, unless already released on bail, shall remain in custody and may be tried again, but he shall have the same rights to be released on bail as upon an original committal for trial for the offence with which he is charged, and the court or the magistrate may in a proper case, as provided by Chapter VII, release him on bail accordingly.”.

Amendment of section 112 of Act 56 of 1955, as amended by section 27 of Act 50 of 1956, section 1 of Act 18 of 1958 and section 10 of Act 92 of 1963.

6. Section 112 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) Such special criminal court shall have jurisdiction to try any charge for an offence referred to in subsection (1) which may be made in the indictment lodged by the attorney-general in respect of the accused, and to sentence the accused, if convicted of such an offence, to any punishment that may by law be imposed therefor.”.

Amendment of section 154 of Act 56 of 1955.

7. Section 154 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If on the trial of a person charged with any offence before any superior or inferior court it appears that he is not

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properly triable by that court, the court may, at the request of the accused, direct that he be tried before some proper court and may remand him for trial accordingly.”

Substitution of section 155 of Act 56 of 1955.

8. The following section is hereby substituted for section 155 of the principal Act:

“Separate trials.

155. When two or more persons are charged jointly, whether with the same offence or with different offences, the court may, at any time during the trial on the application of the prosecutor or of any of the accused, direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them, and the court may abstain from giving a judgment as to any of such accused.”

Amendment of section 156bis of Act 56 of 1955, as inserted by section 51 of Act 68 of 1957 and amended by section 24 of Act 80 of 1964 and section 10 of Act 9 of 1968.

9. Section 156bis of the principal Act is hereby amended by the substitution for all the words preceding paragraph (a) of the following words:

“If two or more accused are charged jointly at a trial before a court established under section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), or at a trial before a superior court, with any offence, whether the same or different offences, and the court is, at any time after the commencement of the trial, satisfied upon application made in person by any such accused or his representative—”

Amendment of section 157 of Act 56 of 1955.

10. Section 157 of the principal Act is hereby amended—

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

“(1) The prosecutor may at any trial, before any evidence is adduced, address the court for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution but without comment thereon.”;

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

“(3) If, at the close of the case for the prosecution, the court considers that there is no evidence that the accused committed the offence charged in the charge, or any other offence of which he might be convicted thereon, it may return a verdict of not guilty.”; and

(c) by the substitution for subsection (4) of the following subsection:

“(4) At the close of the evidence for the prosecution the proper officer of the court shall ask the accused, or each of the accused if there are more than one, or his legal representative whether he intends to adduce evidence in his defence and, if he answers in the affirmative, he may by himself or his legal representative address the court for the purpose of opening the evidence intended to be adduced for the defence but without comment thereon, and thereafter he or his legal representative shall examine his witnesses and put in and read any documentary evidence which may be admissible.”

Substitution of section 161 of Act 56 of 1955.

11. The following section is hereby substituted for section 161 of the principal Act:

“Adjournment of trial.

161. A trial may, if it is necessary or expedient, be adjourned at any time of the trial whether evidence has or has not been given.”

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Amendment of section 164 of Act 56 of 1955.

12. Section 164 of the principal Act is hereby amended—

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

“(2) If the court finds that he is so capable, the trial shall proceed as in other cases.”; and

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

“(3) If the court finds that he is not so capable, the accused shall be dealt with in accordance with the provisions of section 28 of the Mental Disorders Act, 1916.”.

Amendment of section 165 of Act 56 of 1955.

13. Section 165 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every objection to an indictment for any formal defect apparent on the face thereof shall be taken by exception or by motion to quash such indictment before the accused has pleaded but not afterwards.”.

Substitution of section 172 of Act 56 of 1955.

14. The following section is hereby substituted for section 172 of the principal Act:

“Trial on plea to the jurisdiction. 172. Upon a plea to the jurisdiction of the court, the court shall proceed to satisfy itself, in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not.”.

Substitution of section 173 of Act 56 of 1955.

15. The following section is hereby substituted for section 173 of the principal Act:

“Issues raised by plea to be tried. 173. If the accused pleads any plea, other than the plea of guilty or a plea to the jurisdiction of the court, he is, by such plea and without any further form, deemed to have demanded that the issues raised by such plea shall be tried by the court.”.

Amendment of section 176 of Act 56 of 1955.

16. Section 176 of the principal Act is hereby amended by the substitution for paragraph (b) of the proviso to subsection (2) of the following paragraph:

“(b) if the court considers that the accused is likely to be prejudiced thereby in his defence upon the merits, it shall reject such proof and the accused shall be deemed not to have pleaded to the charge.”.

Amendment of section 180 of Act 56 of 1955, as amended by section 16 of Act 16 of 1959.

17. Section 180 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The amendment may be made on such terms (if any) as to postponing the trial as the court thinks reasonable.”.

Amendment of section 183 of Act 56 of 1955.

18. Section 183 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) After all the evidence has been adduced, the prosecutor may address the court and thereafter the accused, or each of the accused if there are more than one, may by himself or his legal representative address the court.”.

Amendment of section 190 of Act 56 of 1955.

19. Section 190 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If the accused makes such a demand, the court shall record it and inform the attorney-general thereof, who shall thereupon deal with the case under the powers conferred upon him by section 79 (1), other than the powers conferred by paragraphs (d), (e) and (f) thereof and if he indicts the

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accused for trial on a charge of any offence disclosed by the evidence taken at the preparatory examination, the accused shall be tried before a superior court having jurisdiction.”.

Amendment of section 205 of Act 56 of 1955.

20. Section 205 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person who has been tried on a charge of having committed such an offence shall not thereafter be prosecuted for the offence so proved by the evidence.”.

Substitution of section 248 of Act 56 of 1955.

21. The following section is hereby substituted for section 248 of the principal Act:

“Evidence of genuineness of disputed writings. 248. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine may be made by witnesses, and such writings and the evidence of any witness with respect thereto may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.”.

Substitution of section 256 of Act 56 of 1955.

22. The following section is hereby substituted for section 256 of the principal Act:

“Sufficiency of one witness in all cases, except perjury and treason. 256. Any court may convict any accused of any offence alleged against him in the charge, on the single evidence of any competent and credible witness: Provided that no court shall—
(a) convict any accused of perjury on the evidence of any one witness, unless in addition to and independent of the evidence of such witness, some other competent and credible evidence as to the falsity of the statement which forms the subject of the charge is given to such court; or
(b) convict any accused of treason except upon the evidence of two witnesses where one overt act is charged, or where two or more overt acts are so charged, upon the evidence of one witness to each such overt act.”.

Substitution of section 257 of Act 56 of 1955.

23. The following section is hereby substituted for section 257 of the principal Act:

“Conviction on single evidence of accomplice if the offence is proved *aliunde*. 257. Any court may convict any accused of any offence alleged against him in the charge on the single evidence of any accomplice, provided the offence has, by competent evidence, other than the single and unconfirmed evidence of the accomplice, been proved to the satisfaction of such court to have been actually committed.”.

Amendment of section 258 of Act 56 of 1955, as amended by section 15 of Act 9 of 1968.

24. Section 258 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any court may convict an accused of any offence alleged against him in the charge by reason of any confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence, provided the offence has, by competent evidence other than such confession, been proved to have been actually committed.”.

Amendment of section 279 of Act 56 of 1955.

25. Section 279 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) It shall not, on the trial of a person charged with an offence referred to in subsection (1), be necessary to prove the theft by the accused of any specific sum of money or specific goods or articles if, on the examination of the books of account or entries kept or made by him or kept or made

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in, under, or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the court is satisfied that the accused stole the money so deficient or any part of it or the deficient goods or articles or any part thereof.”

Substitution of section 280 of Act 56 of 1955, as substituted by section 27 of Act 92 of 1963.

26. The following section is hereby substituted for section 280 of the principal Act:

“Evidence on charges relating to seals and stamps.

280. On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the post office in any foreign country, a despatch from the officer administering the government of such country, transmitting to the State President any stamp, mark or impression, and stating it to be a genuine stamp, mark or impression of a die plate or other instrument provided, made or used by or under the direction of the proper authority of such country, for the purpose of denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the despatch, and the stamp, mark or impression so transmitted may be used by the court or witnesses for the purposes of comparison.”

Amendment of section 303 of Act 56 of 1955.

27. Section 303 of the principal Act is hereby amended—

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

“(2) If such person does not admit that he has been so convicted and has not admitted it at the preparatory examination in the manner prescribed in section 69, the court shall determine the truth as to the alleged previous convictions which the accused has not admitted in the manner aforesaid.”; and

(b) by the deletion of subsection (3).

Amendment of section 312 of Act 56 of 1955, as amended by section 34 of Act 92 of 1963.

28. Section 312 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) An order under paragraph (a) may be made either before or in the course of any trial.”

Amendment of section 330 of Act 56 of 1955, as amended by section 25 of Act 16 of 1959 and section 10 of Act 96 of 1965.

29. Section 330 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that where a woman is convicted of the murder of her newly born child, or where a person under eighteen years of age is convicted of murder or where the court, in convicting the accused of murder, is of opinion that there are extenuating circumstances, the court may impose any sentence other than the death sentence.”

Amendment of section 363 of Act 56 of 1955, as substituted by section 24 of Act 9 of 1968.

30. Section 363 of the principal Act is hereby amended by the substitution in subsection (1) for all the words preceding paragraph (a) of the following words:

“An accused convicted of any offence before a superior court may, within a period of fourteen days of the passing of any sentence as a result of such conviction, or within such extended period as may on application (in this section referred to as an application for condonation) on good cause be allowed, apply—”

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Amendment of section 364 of Act 56 of 1955, as substituted by section 25 of Act 9 of 1968.

31. Section 364 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If an accused thinks that any of the proceedings in connection with or during his trial before a superior court are irregular or not according to law, he may, either during his trial or within a period of fourteen days after his conviction, or within such extended period as may upon application (in this section referred to as an application for condonation) on good cause be allowed, apply for a special entry to be made on the record (in this section referred to as an application for a special entry) stating in what respect the proceedings are alleged to be irregular or not according to law and such a special entry shall, upon such application for a special entry, be made unless the court to which or the judge to whom the application for a special entry is made is of opinion that the application is not made *bona fide*, or that it is frivolous or absurd, or that the granting of the application would be an abuse of the process of the Court.”.

Amendment of section 370 of Act 56 of 1955.

32. Section 370 of the principal Act is hereby amended by the substitution for the proviso to the said section of the following proviso:

“Provided that no judge or judicial officer before whom the original trial took place shall take part in such proceedings.”.

Amendment of section 21 of Act 76 of 1962, as amended by section 19 of Act 62 of 1966.

33. Section 21 of the General Law Amendment Act, 1962, is hereby amended—

(a) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) any person accused of having committed the offence of sabotage shall be tried before a superior court;”; and

(b) by the substitution for paragraph (f) of the said subsection of the following paragraph:

“(f) no person shall on conviction of the offence of sabotage be dealt with under section 342, 345 or 352 of the Criminal Procedure Act, 1955 (Act No. 56 of 1955);”.

Amendment of section 5 of Act 83 of 1967.

34. Section 5 of the Terrorism Act, 1967, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) any person charged in the Republic with having committed an offence under this Act, shall be tried before a superior court;”.

Repeal of laws and savings.

35. (1) The laws specified in the Schedule are hereby repealed to the extent set forth in the third column thereof.

(2) Notwithstanding the repeal or amendment of any provision of any law by this Act, such provision shall, for the purpose of the disposal of any criminal proceedings in which any person has, before the commencement of this Act, been committed for trial, remain in force as if such provision had not been repealed or amended.

Short title.

36. This Act shall be called the Abolition of Juries Act, 1969.

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Schedule.

LAWS REPEALED.

No. and year of Law.	Title.	Extent of Repeal.
Act No. 20 of 1931	Female Jurors Act, 1931 ..	The whole.
Act No. 32 of 1952	General Law Amendment Act, 1952.	Section 10.
Act No. 21 of 1954	Criminal Procedure and Jurors Amendment Act, 1954.	Section 17.
Act No. 56 of 1955	Criminal Procedure Act, 1955..	Section 111, Chapter IX and section 184 .
Act No. 50 of 1956	General Law Amendment Act, 1956.	Section 26.
Act No. 16 of 1959	Criminal Law Amendment Act, 1959.	Sections 12, 13 and 14.
Act No. 39 of 1961	General Law Amendment Act, 1961.	Section 5.
Act No. 92 of 1963	Criminal Procedure Amendment Act, 1963.	Sections 11 and 12.