



PAROLE AND THE RIGHTS OF VICTIMS

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Introduction

The issue of parole in South Africa is fraught with controversy and in some cases confusion, especially for victims of violent crime or their families. These victims are usually unsure of the rather complex parole process (there are many parties involved). In some cases, parole boards released offenders who then committed hideous crimes while on parole. Following a protest march by thousands of people against violent crimes against women and children, President Cyril Ramaphosa promised that “life means life” for those who are sentenced to life imprisonment for violent crimes against women and children. This is not the reality, however. What is even more shocking is that it seems that victims are in many cases not even consulted during the parole hearings of their perpetrators.¹

As will be explained in this report, crime victims are entitled to object in person or in writing at the parole hearings of their offenders, but there seems to be a significant flaw in this process. Prison authorities are supposed to inform victims if prisoners are given parole hearings – but in many cases, this does not happen. The onus seems to be on the victim to find out at which facility their perpetrator is held and to provide that facility with their contact details. However, even if victims do this, they are never notified in some cases. During an interview on *Carte Blanche*, Judge Siraj Desai, Head of the Correctional Supervision and Parole Review Board (CSPRB), confirmed that a criminal cannot be released without victim/offender dialogue taking place.²

The consequences of granting parole to convicted murderers and rapists without consulting with victims and their families and without ensuring that these offenders have been properly rehabilitated are often heart-breaking.

The definition of parole and the scope of this report

Parole can be defined as a period during which an offender, who has served the prescribed minimum detention period of his or her sentence in a correctional centre, is conditionally released to serve the remaining sentence in the community under the supervision and control of the Department of Correctional Services.³ Offenders can only be granted parole if certain conditions are met before the offender’s release. These offenders are referred to as parolees while they are on parole in the system of community corrections.⁴ A non-parole period is a term that the court can impose, which may not exceed two-thirds of the sentence imposed by the court.⁵ A determinate sentence refers to a definite period of imprisonment that a court can impose, with or without the option of a fine.⁶

The provisions of the Correctional Services Act 111 of 1998 (the CSA) are only applicable to new admissions from 1 October 2004. Section 136 of the CSA stipulates that all offenders in the system prior to the enactment of the Act must be dealt with in accordance with the release policy applicable before the enactment of the CSA.⁷ The Constitutional Court ruled that the date of the commission of the crime rather than the date of sentencing should apply to prisoners who were sentenced to life after 1 October 2004 for crimes they had committed before this date.⁸ This is because it would be unconstitutional for the CSA to be applied retrospectively – the Act was not in force when the offenders committed the crimes for which they were sentenced. Before 1 October 2004, prisoners sentenced to life imprisonment had to serve at least 20 years of their sentence before they could be considered for parole.

This report will therefore focus mostly on offenders who were sentenced after 1 October 2004.

When do criminals qualify for parole?

Minimum sentences and the duration of life sentence

According to the CSA, South African life imprisonment has an undetermined length.⁹ This could last as long as the offender’s

¹ *Carte Blanche*. 2020. *Parole boards under scrutiny*. YouTube video, 27 May. Available at <https://www.youtube.com/watch?v=6zmD0mqVNhA>. Accessed on 1 June 2020.

² *Carte Blanche*. 2020. *Parole boards under scrutiny*. YouTube video, 27 May. Available at <https://www.youtube.com/watch?v=6zmD0mqVNhA>. Accessed on 1 June 2020.

³ Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

⁴ Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

⁵ Section 276B of the Criminal Procedure Act 51 of 1977.

⁶ Curlewis L.G. 2016. *Understanding parole – an in-depth discussion continued*. De Rebus, 22 July. Available at <http://www.derebus.org.za/understanding-parole-depth-discussion-continued/>. Accessed on 28 April 2020.

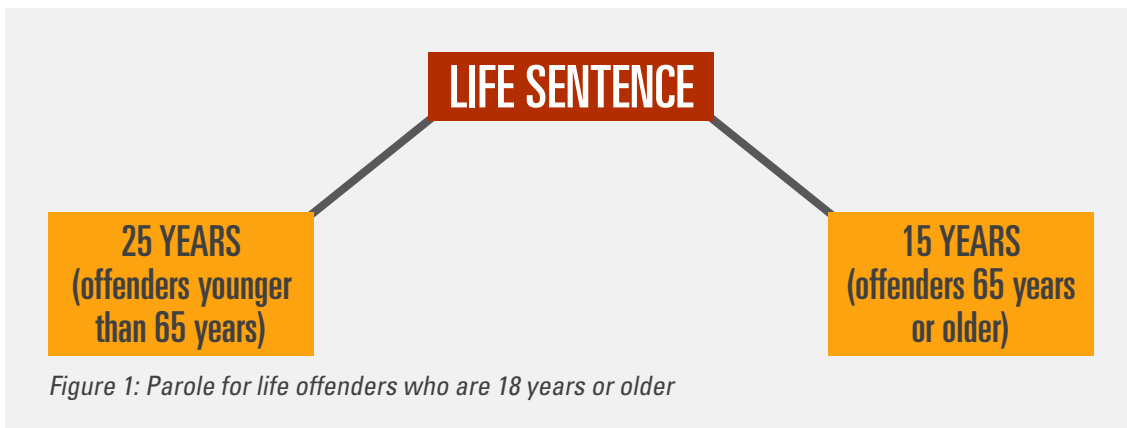
⁷ Muntigh, L. 2006. *Prisons in a democratic South Africa – A guide to the rights of prisoners as described in the Correctional Services Act and Regulations*, p 3. Cape Town: University of Western Cape.

⁸ *Phaahla v Minister of Justice and Correctional Services and Another (Thakanye Intervening)* [2019] ZACC 18.

⁹ Section 73(1)(b) of the Correctional Services Act, 111 of 1998.

life. Offences for which life imprisonment carries the minimum sentence include aggravated murder, aggravated rape, aggravated compelled rape and trafficking in persons for sexual reasons.¹⁰ However, this minimum sentence applies only to offenders who are 18 years or older, and to offenders who are not mentally incapacitated.

A judge or magistrate may also refrain from imposing a prescribed minimum sentence if substantial and compelling circumstances exist to justify this deviation. When exercising its discretion during sentencing, a court has to consider the so-called triad of Zinn (following the 1969 case of *S v Zinn*).¹¹ This case led to the development of three factors that courts



must consider equally when sentencing offenders, namely the seriousness of the offense, the personal circumstances of the offender and the interests of society. According to the CSA, persons who are sentenced to life imprisonment must serve at least 25 years of their sentence; however, prisoners who are 65 years or older may be placed on parole when they have served at least 15 years of the sentence.¹²

No right to parole

It is important to note that, although criminals may technically qualify for parole, they are not automatically entitled to it and their applications for parole may still be denied. According to the CSA, all offenders qualify for consideration of parole once they have served the prescribed minimum detention period of their sentence.¹³ That does not mean that the offender will indeed receive parole, however. Each case is evaluated and considered according to its merits. Offenders have no right to parole, although it remains an important factor of the penal system.¹⁴ It may serve as an incentivising factor for rehabilitation and reform, for example: If offenders demonstrate during their incarceration that they are rehabilitated, are fully aware of the crime which they have committed and show remorse for these crimes, and are unlikely to be a danger to society, the case management committee may recommend that they be released on certain conditions.¹⁵

The court may also during sentencing determine a non-parole period, which means that offenders may not be considered for parole before a certain period of their sentence has been served. This period may not exceed two-thirds of the sentence, however.¹⁶

Dangerous and habitual criminals

Section 286(1) of the Criminal Procedures Act (CPA) 51 of 1977 states that:

[A] superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person habitually commits offences and that the community should be protected against him, declare him an habitual criminal, in lieu of the imposition of any other punishment for the offence or offences of which he is convicted.

Someone who is declared a habitual offender by the court in terms of this section must serve at least seven years before parole can be considered, but must be released after completion of 15 years of the sentence.

Section 286A(1) determines:

¹⁰ Criminal Procedure Act 51 of 1977; <http://www.tourism.gov.za/Pages/COVID19TOURISMRELIEFFUND.aspx>. Accessed on 7 April 2020.

¹¹ Library of Congress. 2020. *Sentencing guidelines: South Africa*. Available at <https://www.loc.gov/law/help/sentencing-guidelines/southafrica.php#Guidelines>. Accessed on 16 April.

¹² Section 73(6)(b)(iv) of the Correctional Services Act 111 of 1998.

¹³ Department of Correctional Services. 2005. *Social reintegration*. Available at <http://www.dcs.gov.za/wp-content/uploads/2019/01/Procedure-Manual.pdf>. Accessed on 1 May 2020. Page 29.

¹⁴ Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

¹⁵ Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

¹⁶ Section 276B of the Criminal Procedure Act 51 of 1977.

[A] superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person represents a danger to the physical or mental well-being of other persons and that the community should be protected against him, declare him a dangerous criminal.

Section 286B determines:

- (1) The court which declares a person a dangerous criminal shall-
 - (a) sentence such person to undergo imprisonment for an indefinite period; and
 - (b) direct that such person be brought before the court on the expiration of a period determined by it, which shall not exceed the jurisdiction of the court.
- (2) A person sentenced under subsection (1) to undergo imprisonment for an indefinite period shall, notwithstanding the provisions of subsection (1) (b) but subject to the provisions of subsection (3), within seven days after the expiration of the period contemplated in subsection (1) (b) be brought before the court which sentenced him in order to enable such court to reconsider the said sentence: Provided that in the absence of the judicial officer who sentenced the person any other judicial officer of that court may, after consideration of the evidence recorded and in the presence of the person, make such order as the judicial officer who is absent could lawfully have made in the proceedings in question if he had not been absent.

An offender who has been declared a dangerous criminal must be referred to court to be considered for parole within seven days after a period of incarceration determined by a court, or 25 years, whichever is the shortest.

When does a sentence commence?

According to Section 39 of the CSA, an incarceration sentence usually commences on the day on which sentence is passed. If the sentence is suspended under any law, however, or the sentenced person is released on bail pending decision by a higher court, the sentence will commence on the day on which the person submits to or is taken into custody.¹⁷

Offenders who receive more than one sentence of incarceration, or who receive additional sentences while serving a term of incarceration, must serve each such sentence. This means that, as soon as one sentence expires, is set aside or is reduced, the next sentence will commence. The order in which these sentences must be served, is determined by the National Commissioner or the court. The court can also determine that multiple sentences should be served at the same time (concurrently). Any sentence imposed together with a life sentence or a sentence to be served by someone who was declared a dangerous criminal, must run concurrently.¹⁸

If more than one period of incarceration is imposed by a court, the non-parole periods determined by that court must be served one after the other before the sentenced person becomes eligible for parole.¹⁹

Offenders who are sentenced to more than 24 months of incarceration may not receive day parole or parole until they have either served the stipulated non-parole period, or, if no parole period was stipulated, half of the sentence.²⁰ Day parole or parole must be considered whenever a sentenced offender has served 25 years of a sentence or cumulative sentences. However, this does not mean that the offender will qualify for parole. Offenders who received any term of incarceration – excluding dangerous criminals – may be granted day parole or parole on reaching the age of 65, provided that they served at least 15 years of their sentence.²¹

Different types of parole

Correctional supervision

Correctional supervision is not the same as parole, which is defined as a sentencing option imposed by the court where offenders must first serve a portion of their sentence in a correctional centre, or are admitted directly from court into the community corrections system. Examples include sentences such as house arrest or community service. These offenders are called “probationers”.²²

¹⁷ Section 39 of the Correctional Services Act 111 of 1998.

¹⁸ Section 280 of the Criminal Procedure Act 51 of 1977.

¹⁹ Section 276B of the Criminal Procedure Act 51 of 1977.

²⁰ Section 73(6) of the Correctional Services Act 111 of 1998.

²¹ Section 73 of the Correctional Services Act 111 of 1998.

²² Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

Presidential pardon

Similarly, a presidential pardon cannot be regarded as parole but is rather a prerogative of the President. The President can pardon certain offenders, which can be considered a sentence reduction, the terms and conditions of which are set by the President.²³

Parole supervision

Parole is that portion of imprisonment that is served in the community and under the control and supervision of correctional officials, subject to conditions that are set by the Commissioner of Correctional Services.²⁴

The conditions that usually apply to offenders who qualify for parole include:

1. Remaining under the supervision and control of the Department of Correctional Services until the offender's sentence expires;
2. Certain restrictions on offenders changing their place of residence or place of employment without prior approval of the Head of Community Corrections;
3. Offenders not committing any offence while under parole supervision;
4. Reporting at the Community Corrections Office at set intervals;
5. Engaging in certain programmes, if necessary; and
6. Home confinement, which refers to the portion of the day or night when the parole is not working and compelled to be at home.

Day parole

Day parole can be used as a mechanism to gradually release an offender into the community, and usually precedes full parole.²⁵ With day parole, offenders are released into the community during the day, but has to return to a correctional centre at a certain time every day and remain there for the night.²⁶

Medical parole

Offenders can be placed on medical parole if they suffer from a highly contagious disease or are terminally ill due to their physical condition. More than one medical practitioner or specialist physician, the Minister of Correctional Services, the Commissioner of Correctional Services, the Correctional Supervision and Parole Board (CSPB) and the relevant court must approve such an application before the offender can be put on medical parole. This is to allow the offender to die a dignified and consolatory death.²⁷

Sentenced offenders may be considered for medical parole if they suffer from a terminal illness or condition, or if they are rendered physically incapacitated as a result of injury, disease or illness, which severely limits daily activity or inmate self-care. For medical parole to be approved, the risk of re-offending must be low. Appropriate arrangements should also have been made for the offender's supervision care and treatment in the community.²⁸

Special remission of sentence

Section 80 of the CSA determines that the Commissioner of Correctional Services may allocate a special remission of sentence to offenders who acted highly meritoriously.²⁹ This can only be deducted from the parole period and does not affect the minimum detention period of the offender. If, however, special remission has no effect on the offender's term of imprisonment (in the case of life imprisonment, for example) a monetary reward may be allocated. The special remission may not exceed two years and can be either conditional or unconditional.³⁰

The parole process

Section 73(5) of the CPA determines that offenders may be placed under correctional supervision, day parole, parole or medical parole before the expiration of their term of incarceration. The date of this parole must be determined by the CSPB, but in the

²³ Department of Justice and Correctional Services. 2019. *Minister Ronald Lamola: remission of sentences*. Media Statement by the Minister of Justice and Correctional Services., 16 December. Available at <https://www.gov.za/speeches/minister-ronald-lamola-remission-sentences-16-dec-2019-0000>. Accessed on 4 August 2020.

²⁴ Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

²⁵ Joubert Scholtz Attorneys. 2019. *A brief overview of parole in South Africa*. 13 December. Available at <https://joubertscholtzinc.co.za/2019/12/13/a-brief-overview-of-parole-in-south-africa/>. Accessed on 28 April 2020.

²⁶ Joubert Scholtz Attorneys. 2019. *A brief overview of parole in South Africa*. 13 December. Available at <https://joubertscholtzinc.co.za/2019/12/13/a-brief-overview-of-parole-in-south-africa/>. Accessed on 28 April 2020.

²⁷ Curlewis L.G. 2016. *Understanding parole – an in-depth discussion continued*. De Rebus, 22 July. Available at <http://www.derebus.org.za/understanding-parole-depth-discussion-continued/>. Accessed on 28 April 2020.

²⁸ Civil Society Prison Reform Initiative. 2012. CSPRI Newsletter, 41, p. 5. Available at: <https://acjr.org.za/resource-centre/CSPRI-Newsletter%20IssueNo41.pdf>. Accessed on 11 August 2020.

²⁹ Section 80 of the Criminal Procedure Act 51 of 1977.

³⁰ Section 80 of the Criminal Procedure Act 51 of 1977.

case of offenders who have been sentenced to life in prison, the Minister of Correctional Services must determine the parole date.

The conditional placement of offenders who are sentenced to 12 months imprisonment or less is determined by the Area Manager and in accordance with the policy applicable to offenders who serve sentences less than 12 months. In the case of offenders who are sentenced to terms of longer than 12 months imprisonment, conditional placement is determined by the CSPB.³¹

The court takes decisions on parole for offenders who were sentenced to life imprisonment after October 2004 and offenders who were declared dangerous persons. Parole decisions for offenders who were sentenced before October 2004 must be referred to the Minister of Correctional Services.³²

If offenders are subjected to community corrections but fail to comply with any aspect of the conditions imposed on them, the Commissioner of Correctional Services may, depending on the nature and seriousness of non-compliance:³³

- » Reprimand the person;
- » Instruct the person to appear before the court or the CSPB;
- » Issue a warrant for the arrest of the offender;
- » Instruct that community corrections be resumed subject to the same conditions that were set for their parole if the offender has a valid excuse for not complying with any condition; or
- » Revoke the parole and detain the offender in a correctional centre to serve the unexpired part of the sentence.

The CSPB makes the final decision on parole and parole conditions, but under certain circumstances the Minister of Correctional Services or the Commissioner of Correctional Services may refer the matter to the CSPRB for reconsideration. The members of the CSPRB must comprise –

- » A judge (as chairperson);
- » A director or deputy director of Public Prosecutions;
- » A member of the Department of Correctional Services;
- » A person with special knowledge of the correctional system; and
- » Two representatives of the public.³⁴

A decision of the majority of the CSPRB present is considered a decision of the CSPRB. In the event of a draw on any matter, the Chairperson of the meeting has both a deliberative and casting vote.

The CSPB will examine a profile submission of the offender (only offenders who serve sentences of longer than two years). This submission must be drawn up by the Case Management Committee and submitted to the CSPB six months before the completion of the minimum detention date.³⁵

If a person who is sentenced to correctional supervision is granted parole, the correctional supervision must be served before the parole may commence. If an offender who is placed under community corrections is sentenced to incarceration for an offence committed before the commencement of the parole, the parole will be cancelled and referred to the CSPB for consideration.³⁶

There must be one or more Case Management Committee at each correctional centre, which comprises correctional officials. This Committee must ensure that every sentenced offender is assessed and that there is a plan for offenders who have to serve sentences of more than 24 months. The Committee may also make preliminary arrangements in consultation with the Head of Community Corrections for possible placement of the offender under community corrections.³⁷

The CSPB may place an offender under correctional supervision or day parole, or grant parole or medical parole and set the conditions for community corrections.

What are the rights of the victims or their families?

According to the *Service Charter for Victims of Crime in South Africa*,³⁸ victims or their close relatives have certain rights in terms of the parole hearings of offenders. These rights include the right to information and certain minimum standards of service.

³¹ Section 42 of the The Correctional Services Act 111 of 1998.

³² Mitchley A. 2017. Convicts sentenced to life before 2004 may serve less time. *News24*, 29 June. Available at <https://www.news24.com/SouthAfrica/News/convicts-sentenced-to-life-before-2004-may-serve-less-time-20170629>. Accessed on 11 April 2020.

³³ Department of Correctional Services. n.d. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 31 April 2020.

³⁴ Department of Correctional Services. 2015. *Correctional supervision and parole: Department of Correctional Services on its Parole and Offender Reintegration System*. Parliamentary Monitoring Group, 2 June. Available at <https://pmg.org.za/committee-meeting/21028/>. Accessed on 15 April 2020.

³⁵ Department of Correctional Services. 2015. *Correctional supervision and parole: Department of Correctional Services on its Parole and Offender Reintegration System*. Parliamentary Monitoring Group, 2 June. Available at <https://pmg.org.za/committee-meeting/21028/>. Accessed on 15 April 2020.

³⁶ Department of Correctional Services. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 15 April 2020.

³⁷ Department of Correctional Services. *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317. Accessed on 15 April 2020.

³⁸ Department of Justice and Constitutional Development. 2004. *Service Charter for victims of crimes in South Africa*. Available at <https://www.justice.gov.za/VC/docs/vc/vc-eng.pdf>. Accessed on 4 August 2020.

The right to offer information

The police, prosecutor and correctional services official must take measures to ensure that any contribution that a victim or the family of a victim wishes to make to the parole hearing is heard and considered when deciding on whether to proceed with the CSPB hearing.³⁹

When a court sentences a person to imprisonment for one of the crimes listed below, the court must inform the complainant or (in the case of murder) any immediate relative of the deceased that they have a right to make representations when the placement of the prisoner on parole is considered, or to attend any relevant meeting of the CSPB.⁴⁰ These crimes (as well as any conspiracy, incitement or attempt to commit these crimes) include:

- » Murder or any offence that involves the intentional killing of a person;
- » Rape or compelled rape;
- » Robbery where the wielding of a firearm or any other dangerous weapon, or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;
- » Sexual assault, compelled sexual assault or compelled self-sexual assault; or
- » Kidnapping.

Victims or close relatives (in case of murder) may submit a written request to attend the CSPB hearings. If they wish to attend, they will be informed of the date of the hearing and the CSPB will take their concerns into account when considering the offender's release on parole.⁴¹ The Department of Correctional Services must also inform the victim or family in writing of any changes to hearing dates or postponements, the outcome of the hearing and all of the conditions imposed. Victims or families can apply in writing to the Chairperson of the CSPB to attend the parole hearing and the Chairperson will inform them of the date and venue of the hearing. If they attend the hearing, they will also be allowed to give verbal or written input at the hearing.⁴²

Minimum standards of service for victims of crime

Crime victims may request support or counselling services during the CSPB hearing. At these hearings victims are also allowed to be informed in a language that they understand of the proceedings of the hearing and what will be expected of them.⁴³ The Department of Correctional Services may also (with the consent of the offenders) inform the victims of any developmental programmes the offenders underwent or are undergoing to improve their behaviour.⁴⁴

Whenever offenders are released on parole, the CSPB will attach conditions to their release if it is deemed to be in the victim's best interest. If offenders behave in a way that suggests that they may present a risk to public safety or contravenes any conditions attached to their release, they may be arrested to serve the remainder of their sentence in prison.⁴⁵

Duties of victims or their relatives

If victims want to exercise their rights of making representations at or attending a meeting of the CSPB, they must inform the Commissioner of the Correctional Services in writing of their undertaking. They must also provide their postal and physical address in writing to the Commissioner and inform the Commissioner of any change of address.⁴⁶ The Commissioner must then inform the applicable CSPB accordingly, who must inform the complainant or relative in writing when and to whom they may make representations and when a meeting of the CSPB will take place.⁴⁷

³⁹ Section 299A of the Criminal Procedure Act 51 of 1977.

⁴⁰ Section 299A of the Criminal Procedure Act 51 of 1977.

⁴¹ Department of Justice and Constitutional Development. 2004. *Service Charter for victims of crimes in South Africa*. Pretoria: The DOJ & CD. Available at <https://www.justice.gov.za/VC/docs/vc/vc-eng.pdf>. Accessed on 4 August 2020.

⁴² Section 299A of the Criminal Procedure Act 51 of 1977.

⁴³ Department of Justice and Constitutional Development. 2004. *Service Charter for victims of crimes in South Africa*. Pretoria: The DOJ & CD. Available at <https://www.justice.gov.za/VC/docs/vc/vc-eng.pdf>. Accessed on 4 August 2020.

⁴⁴ Department of Justice and Constitutional Development. 2004. *Service Charter for victims of crimes in South Africa*. Pretoria: The DOJ & CD. Available at <https://www.justice.gov.za/VC/docs/vc/vc-eng.pdf>. Accessed on 4 August 2020.

⁴⁵ Section 75 of the Correctional Supervision Act 111 of 1998.

⁴⁶ Section 299A of the Criminal Procedure Act 51 of 1977.

⁴⁷ Section 299A of the Criminal Procedure Act 51 of 1977.

