Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África

Indefinite imprisonment in South Africa

The difference between life and indefinite imprisonment

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Introduction

In May 2018, Pieter Van Tonder was sentenced to indefinite imprisonment in the Cape High Court.[1] Van Tonder brutally assaulted and murdered the 16-month old baby of his ex-girlfriend. This case happened shortly after the Grahamstown High Court sentenced Lonwabo Solontsi, dubbed in the media as 'South Africa's worst serial rapist' to indefinite imprisonment after being convicted of 39 counts of rape and 28 other serious crimes.[2] In both cases, the accused committed extremely serious offences. However, the imposition of indefinite imprisonment is not commonly heard of. This prompted the question: *What is the difference between life imprisonment and indefinite imprisonment?* This factsheet seeks to address these differences and also defines the concepts of being declared a dangerous versus a habitual criminal in terms of the Criminal Procedure Act.

What is a life sentence?

It is often assumed that life imprisonment means the prisoner will be imprisoned for the rest of his or her life. Technically, this is correct; life imprisonment does mean imprisonment for the rest of one's natural life.[3] However, the law still affords a prisoner sentenced to life imprisonment the opportunity to be released on parole, after serving a mandatory minimum period of time before he or she can be considered for parole and if placed on parole then will be on parole for the rest of his or her natural life.[4] Parole is a form of community corrections,[5] and one of the objectives of community corrections is to afford prisoners the opportunity to serve their sentences in a non-custodial manner outside of prison.[6] The release of a prisoner on parole will be subject to various conditions and restrictions.[7] If a prisoner does not comply with the parole conditions and restrictions, parole may be revoked and the person returned to prison to serve the remainder of the sentence or a part thereof in prison as they may at a later stage again be considered for parole. Prisoners sentenced to life imprisonment have a right to be considered for parole in accordance with the requirements set out in the Correctional Services Act 111 of 1998.

Release on parole after serving the prescribed minimum is not guaranteed and is not a right. However, the consideration for placement on parole is a right.

How long is a life sentence?

In order for persons sentenced to life imprisonment to be considered for parole, they must serve a mandatory minimum period in detention referred to as a 'non-parole period.' The non-parole period for persons sentenced to life imprisonment in South Africa has changed substantially over time owing to law reform resulting in longer non-parole periods. There are two fundamental policy and legislative shifts relating to parole and sentencing which changed the non-parole period and the meaning of life imprisonment.[8] The 1959 Correctional Services Act did not prescribe a minimum period of imprisonment that had to be served before an offender could be considered for parole.[9] Minimum periods of imprisonment were governed by ministerial policy and varied at different times:[10] According to Ballard 'Between 1987 and 1994, a prisoner sentenced to life imprisonment had to serve at least ten years before he or she could be considered for parole, but absent "exceptional circumstances," could only be released after having served 15 years imprisonment.'[11] In March 1994, the minimum period was increased to 20 years or, once such offender had reached the age of 65 years, after having served 15 years in prison.[12]

The mandatory minimum sentences were introduced by the Criminal Law Amendment Act 105 of 1997, and came into effect on 1 May 1998 and in 2008 it was amended again. The Criminal Law Amendment Act required courts to impose mandatory life imprisonment for certain crimes (such as murder, rape, terrorism, etc.) unless there are substantial and compelling reasons not to do so, and provided for determinate minimums for other serious violent crimes, thus limiting the sentencing discretion of the courts.[13] The non-parole period for prisoners sentenced to life in prison became 25 years,[14] unless there are substantial and compelling circumstances to deviate therefrom.[15] The mandatory minimum sentences legislation, however, only became applicable to those sentenced after 1 October 2004 when the Correctional Services Act was promulgated in full, and prisoners sentenced prior to that, have to serve between 15 and 20 years, depending on when they were sentenced and what offender release policy applies.[16]

The transitional provisions applicable to people sentenced to life imprisonment in sections 136(1), 136(3)(a) and 136(4) of the Correctional Services Act, attempts to clarify the parole policy and guidelines which governs the release of persons sentenced to life. These are set out in Table 1.

Table 1: Transitional Provisions in Correctional Services Act

s. 136 (1)	Any person serving a sentence of incarceration immediately before the commencement of Chapters IV, VI and VII is subject to the provisions of the Correctional Services Act, 1959 (Act No. 8 of 1959), relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those Chapters.
s. 136 (3) (a)	Any sentenced offender serving a sentence of life incarceration immediately before the commencement of Chapters IV, VI and VII is entitled to be considered for day parole and parole after he or she has served 20 years of the sentence. (b) The case of a offender contemplated in paragraph (a) must be submitted to the National Council on Correctional Services which must

	make a recommendation to the Minister regarding the placement of the offender under day parole or parole. (c) If the recommendation of the National Council on Correctional Services is favourable, the Minister may order that the offender be placed under day parole or parole, as the case may be.
s. 136 (4) CSA	If a person is sentenced to life incarceration after the commencement of Chapters IV, VI and VII while serving a life sentence imposed prior to the commencement, the matter must be referred to the Minister who must, in consultation with the National Council on Correctional Services, consider him or her for placement under day parole or parole

Despite the transitional provisions which attempts to address the parole policy changes affected over the years, these provisions were often interpreted and implemented inconsistently by the Department of Correctional Services and consequently contested in the courts. [17]

The court in *Van Vuren v Minister of Correctional Services and Others* ("Van Vuren case"),[18] which involved a prisoner whose death sentence was commuted to life imprisonment clarified the interpretation of the transitional provisions and how to determine which parole policy and guidelines apply to prisoners sentenced to life prior to October 2004. The court noted that section 136(1) of the Correctional Services Act of 1998 applied to all prisoners sentenced before 1994 under the Correctional Services Act of 1959 whereas section 136 (3) applied to those prisoners sentenced between 1 March 1994 and 3 April 1995. The court confirmed that the parole release provisions which apply to a prisoner would be the parole policy and guidelines as at the date of sentencing or re-sentencing or the backdated date of the sentencing court.

In *Van Vuren*, the court stated that although the parole policy and guidelines at the time that Van Vuren's death sentence was commuted to a life sentence (2000), required of offenders serving life incarceration to complete 20 years before being considered for release on parole, the fact that the sentencing court backdated Van Vuren's sentence to 13 November 1992, cannot be disregarded and the advantage assigned to him may not be taken away arbitrarily. The court found that section 136(1) of the Correctional Services Act is applicable to Van Vuren and ruled that the parole policy and guidelines which governed on 13 November 1992 (the backdated date) must be taken into account when considering the parole release date of Mr. Van Vuren – this required him to serve at least ten years but not more than 15 years of his sentence before he could be considered for parole. Table 2 summarise the present position on which parole policy and guidelines govern the parole eligibility date of prisoners sentenced to life imprisonment. In line with the *Van Vuren* ruling, it is important to bear in mind that the sentencing date or the date the sentence was commuted or the backdated date of any sentencing court must be taken into account when determining the policy that applies.

Table 2: Parole policy and guidelines governing persons sentenced to life's parole eligibility

Correctional Services Act	Parole Policy and guidelines	Sentence period to be served before parole eligibility	Parole decision maker
s. 136(1)	Persons sentenced to life before the commencement of Chapters IV, VI and VII of the new Act, (1959-1994) will be subjected to:	Prisoner may be considered for parole after serving at least ten years but not more than 15 years of the sentence.	Parole is to be considered by the authorities as per the old parole policies and guidelines applicable at the date of sentencing of the offender. However, since

Correctional Services Act	Parole Policy and guidelines	Sentence period to be served before parole eligibility	Parole decision maker
	▪ The provisions in the 1959 Correctional Services Act ▪ Parole policy/guidelines between 1959 -1994		1968 the decision to release an inmate on parole was made by the Minister of Correctional Services based on the advice of an advisory structure.
s. 136(3)(a)	Persons sentenced to life during the period 1 March 1994 - 3 April 1995 will be subjected to: ▪ Parole Policy and guidelines applicable March 1994 - 3 April 1995	Prisoner may be considered for parole after serving 20 years of the sentence; or if he or she reaches the age of 65 years, and had already served 15 years.	Parole is to be considered by the National Council on Correctional Services which must make a recommendation to the Minister regarding the placement of the offender under parole.
s. 136(4)	Persons sentenced to life after the commencement of Chapters IV, VI and VII of the Correctional Services Act - as of 4 April 1995 – to date will be subjected to: ▪ New Act and parole policy and guidelines.	Prisoner sentenced after 3 April 1995 – 30 September 2004 to be eligible after serving 20 years. Prisoner sentenced to life after 1 October 2004, to be eligible after serving 25 years. In both instances, the prisoner may be released on parole if he or she reaches the age of 65 years, and had already served 15 years.	Release must be considered by the Minister who must, in consultation with the National Council on Correctional Services, consider him or her for placement under day parole or parole.

What is an 'indefinite' prison sentence?

A prison sentence to an indefinite period means exactly that, a sentence to prison - indefinitely. It is a prison sentence lasting for an unknown or unstated length of time. A sentence to indefinite imprisonment can only be imposed by a court if a person has been declared a dangerous criminal in terms of the procedure set out in Section 286A of the Criminal Procedure Act. After a court sentences a convicted person to indefinite imprisonment, the court is obliged to set a date in the future, which is within the sentence jurisdiction of that court, when the offender must return to court in order for the court to reconsider the prisoner's sentence ("re-sentence" or "sentence review" date').[19] The Correctional Services Act states that the offender must be brought back to court within seven days after the period as determined by the court, or 25 years, whichever is the shortest, has been served.[20] When the prisoner is brought back to court for "re-sentence" or "sentence review," the court may make one of the following orders: confirm the sentence of imprisonment for an indefinite period; or convert the sentence into correctional supervision on the conditions it deems fit; or release the offender unconditionally or on such conditions as it deems fit. [21] A key difference is therefore that in the case of indefinite imprisonment, it is the court and not the Minister or Department of Correctional Services, that makes the decision to release or not.

What is the difference between a 'life' and an 'indefinite' prison sentence?

The fundamental difference between the two prison sentences lies in the fact that a sentence to indefinite imprisonment can only be imposed on a convicted person who has been declared a dangerous criminal. (This is discussed in greater detail below.) The indefinite sentencing provision in sections 286A and 286B was inserted into the Criminal Procedure Act by the Criminal Matters Amendment Act 116 of 1993, mainly as a result of the findings and recommendations of the Booysen Commission of Inquiry into the Continued Inclusion of Psychopathy as a Certifiable Mental Illness and the Handling of Psychopathic and other Violent Offenders ("Booysen Commission").[22] Moreover, '[T]he Commission's terms of reference were not confined to psychopaths or, now generally used in South Africa, persons suffering from anti-social personality disorder.'[23] It also investigated and made recommendations concerning the handling and release of dangerous, violent and/or sex offenders in general.[24] The Booysen Commission recommended that a new sentence option in respect of 'dangerous offenders' be created to provide for the imposition of an indeterminate sentence of imprisonment with a fixed minimum term as determined by the court.[25]

A person sentenced to life imprisonment must be considered for parole after serving a non-parole period in detention, which is 25 years, if sentenced after October 2004, or depending on which release policy applies for those sentenced prior to that. Whereas, persons sentenced to indefinite imprisonment are not considered for parole by the Department of Correctional Services (or the Minister in the case of life imprisonment), but must be brought back to court after the specified period determined by the court, or 25 years, whichever is the shortest, for the court to reconsider the person's sentence and possible release.

As discussed above, in terms of section 286B(4) of the Criminal Procedure Act, the court has three options when a prisoner is brought before it for reconsideration of the sentence: it may confirm the sentence for an indefinite period, in which case it must fix a period upon the expiration of which the prisoner must again be brought to court, it may convert the sentence into correctional supervision or it may release the prisoner unconditionally or on such conditions as it deems fit.[26] The Court in *S v Bull and Another* noted that the subsection thus provides for the confirmation, conversion or termination of the sentence but not for a new sentence to be imposed. Furthermore, when reconsidering the sentence, the 'court in the aforementioned instance reconsiders the prisoner's continued dangerousness in the light of new evidence using the same powers as the sentencing court whereas, in the case of a prisoner serving a life sentence, a number of factors are usually considered before release on parole and if the parole conditions are violated the parole may be revoked.'[27]

Table 3 summarises the statutory non-parole periods a prisoner must serve and the responsible authority making the release decision, in cases where the court set no such period, according to the following sentence types: life sentence, indefinite prison sentence and determinate or cumulative sentence of less and more than 24 months. Information related to other sentence length and forms can be found in section 73 of the Correctional Services Act.

Table 3: Offender statutory non-parole or non-release or other period

Sentence type	Non-parole/non-release period	Parole or release decision
Determinate or cumulative sentence of less than 24 months	Quarter (25%) of the sentence.	Head of Correctional Centre
Determinate or cumulative sentence of more than 24 months, excluding life	Half (50%) or 25 years of sentence, or upon reaching the age of 65 years, if the offender served at least 15 years of sentence.	Correctional Supervision and Parole Board
Life imprisonment	Persons sentenced to life before 1 March 1994 – serve at least ten years but not more than 15 years of sentence.	Correctional Supervision and Parole Board in terms of the older policies
	Persons sentenced to life from 1 March 1994 - 3 April 1995 - serve 20 years of sentence; or if he or she reaches the age of 65 years, and had already served 15 years.	Parole is to be considered by the National Council on Correctional Services which must make a recommendation to the Minister regarding the placement of the offender under parole.
	Prisoner sentenced to life after 3 April 1995 – 30 September 2004, must serve 20 years of sentence or if he or she reaches the age of 65 years, and had already served 15 years.	Release by the Minister who must, in consultation with the National Council on Correctional Services, consider him or her for placement under parole.
	Prisoner sentenced to life after 1 October 2004, must serve 25 years of sentence or if he or she reaches the age of 65 years, and had already served 15 years.	Release by the Minister who must, in consultation with the National Council on Correctional Services, consider him or her for placement under parole.
Indefinite imprisonment	No statutory non -parole or release period. However, there is a statutory period, as determined by the court, which the offender must be brought back to court for re-sentencing or review, which is - within 7 days of the date set by the court or 25 years, whichever is the shortest	Regional or superior court

Who can be declared a habitual or dangerous criminal and what are the fundamental differences?

Dangerous criminal

A person will be declared a dangerous criminal if a court finds that an offender presents a danger to the physical or mental well-being of other persons or the community, and the community needs to be protected against the offender.[28] Only a superior court or a regional court convicting a person of one or more offences may declare an offender a dangerous criminal.[29] An offender can only be declared a dangerous criminal after receiving the outcome of an independent medical or psychiatric enquiry of the offender. This process is set out in section 286A of the Criminal Procedure Act and is discussed below. It appears that the court has the sole discretion to direct a dangerous criminal enquiry.[30] Such an enquiry takes place after conviction but before sentencing.[31] The criteria in section 286A of the Criminal Procedure Act, for declaring an accused a dangerous criminal, were contested in courts as being too vague and uncertain to meet the requirements of the principle of legality, namely, that the sentence provided for should be governed by clear legal rules.[32] In *S v Bull* the court ruled that in making a judgment of dangerousness the court must consider the following three factors: the personal characteristics of the accused, as revealed by a psychiatric assessment; the facts and circumstances of the case; and the accused's history of violent behaviour, particularly the accused's previous convictions.[33] Furthermore, the court must draw its own conclusions and, as per *S v Bull*, Canadian courts afford useful guidelines to our courts when considering the concept of dangerousness in terms of section 286A of the Act.[34]

Habitual criminal

An offender can be declared a habitual criminal by a superior court or a regional court if the court believes an offender habitually (repeatedly or by way of habit) commits offences and that the community should be protected against the offender. The court may declare an offender a habitual criminal, in place of the imposition of any other punishment for the offence or offences which the offender is convicted.[35] The sentence imposed for habitual criminals is a determinate sentence of up to 15 years in prison and such offenders may be considered for parole after serving half of the term.[36] Such a declaration cannot be made to a person under the age of eighteen years or if the offence warrants a sentence exceeding 15 years.[37]

Table 5 below summarises the difference between a habitual and dangerous criminal declaration.

Table 4: Habitual vs. dangerous criminal

	Habitual criminal	**Dangerous criminal**
Threshold	Offender has a persistent tendency to commit crimes.	Offender poses a threat or danger to the physical or mental well-being of other persons or the community.
Enquiry	Basic enquiry conducted by the Court. The previous convictions of the offender is placed before the court.	Lengthy statutory enquiry set out in section 286A Criminal Procedure Act must be conducted. An independent medical or psychiatric enquiry must be conducted before a court makes its decision.
Sentence	Determinate - 15 years	Indeterminate - Indefinitely

	Habitual criminal	Dangerous criminal
Consideration for release	Offender can be considered for release on parole after 7 years.	No statutory non-parole or release period. However, there is a statutory period which the offender must be brought back to court for re-sentencing, which is - within seven days of the date set by the court or 25 years, whichever is the shortest.
Release decision	Correctional Supervision and Parole Board	Regional or Superior Court

Process for declaring persons as dangerous criminals

The description below sets out the procedure for declaring a person as a dangerous criminal in accordance with section 286A of the Criminal Procedure Act ("Section 286A Criminal Procedure Act enquiry"). This enquiry is different from an enquiry in terms of section 79 of the Criminal Procedure Act which deals with the mental capacity and criminal responsibility of accused persons, i.e. their fitness to stand trial and understand the proceedings. The differences are discussed below.

Differences between s.79 and s.286A of the Criminal Procedure Act enquiries

An enquiry in terms of section 79 of the Criminal Procedure Act is conducted either to determine whether the accused is capable of understanding legal proceedings so as to make a proper defence due to a suspected mental illness or mental defect,[38] or an enquiry into the criminal responsibility of persons who suspectedly suffer from a mental illness or mental defect.[39] An accused found incapable of understanding the proceedings may be prosecuted at a later stage when the accused becomes capable of understanding legal proceedings.[40] In terms of an enquiry into criminal responsibility, the law accepts that if the accused suffers from a mental illness or mental defect, the accused cannot be criminally responsible for the crime.[41] The court may order the detention of such persons (known as a 'state patient') in a psychiatric hospital or a prison pending the decision of a judge in chambers to discharge the state patient in terms of the procedure set out in the Mental Health Care Act [42] or admit the accused to an institution to be treated as an involuntary mental health care user or release the accused subject to conditions, or unconditionally.[43]

A section 286A of the Criminal Procedure Act enquiry on the other hand seeks to determine whether the offender presents a danger to the physical or mental well-being of other persons or the community. If the court makes a finding that the offender is a dangerous criminal, the court will hand down an indefinite prison sentence. Unlike an enquiry in terms of section 79 of the Criminal Procedure Act, which is conducted before a criminal trial takes place, the section 286A enquiry takes place after conviction of the accused but before the court hands down a sentence.

Section 286A of the Criminal Procedure Act enquiry

The procedure for the declaration of certain persons as dangerous criminals is as follows:

- Before a court can order an enquiry, the court has an obligation to:

  - Inform the accused of the intention to conduct the enquiry;
  - Explain the enquiry process; and
  - Explain to the accused the gravity and consequences of the provisions that governs the enquiry.[44]
- The enquiry must be conducted or reported on by:
  - A medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by the medical superintendent; and
  - A psychiatrist appointed by the accused, if he or she wishes to appoint one.[45]
- The court may commit the accused to a psychiatric hospital or any other place designated by the court, for periods not exceeding 30 days at a time.[46]
- When the period of committal to a psychiatric hospital or other place is extended for the first time, such extension may be granted in the absence of the accused (unless the accused or his or her lawyer requests otherwise).[47]
- The report must be in writing and must be submitted to the registrar or clerk of the court, who must make a copy available to the prosecutor and the accused or his or her lawyer.[48]
- The report must include the following from the psychiatric expert(s):
  - Description and nature of the enquiry; and
  - A finding as to the question whether the accused represents a danger to the physical or mental well-being of other persons.[49]
- If the findings by the psychiatric experts are unanimous, and the findings are not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.[50]
- If the finding by the experts is not unanimous, such facts must be recorded in the report. The psychiatric experts must give their findings by way of a report on the matter in question. The contents of the report will be admissible as evidence at criminal proceedings.[51]
- If the finding is not unanimous or, if unanimous but it is disputed by the prosecutor or the accused, the court must determine the matter after hearing evidence.[52]
- The prosecutor or accused may present evidence to the court and this could include the evidence of the psychiatric experts who conducted the enquiry.[53]

The court makes the decision to declare a person a dangerous criminal. If so, the court is under a statutory obligation to impose an indefinite prison sentence. The court must set a date for when the offender must return to court in order for the court to review his or her sentence. The Correctional Services Act states that the offender must be referred back to court within seven days after the period as determined by the court, or 25 years, whichever is the shortest period served.[54]

What are the steps in the sentencing review procedure set out in Section 286B of the Criminal Procedure Act?

- An offender declared a dangerous criminal must be brought back to the same sentencing court, within seven days after the expiration of the sentencing review date set by the court, in order for that court to reconsider the offender's sentence of indefinite imprisonment.[55]
  - Provisions in the Criminal Procedure Act provide guidance in the absence of the same sentencing court or judicial officer.[56]
  - The court has the same powers and follows the same procedure as if it were considering sentence after the conviction of a person.[57]
- The court must consider a report by the Correctional Supervision and Parole Board before re-sentencing the offender.[58]
- The court can re-sentence the offender to the following:
  - Confirm the sentence of imprisonment for an indefinite period;
  - Convert the sentence into correctional supervision on the conditions it deems fit; or
  - Release the offender unconditionally or on such conditions as it deems fit.[59]
- If imprisonment for an indefinite period is chosen as the sentencing option, the court must direct that the offender be brought before the court on the expiration of a further period determined by it ('re-sentence' or 'sentence review' date).[60]
  - The same process mentioned above will apply on the expiration of subsequent periods of detention to which the accused must be brought back to court.[61]

There are very few precedents dealing with the re-sentencing or sentencing review procedure of persons sentenced to prison indefinitely. In 2016, Krishna Govender was the first prisoner to be brought back to court for reconsideration.[62] He was one of only four prisoners in South Africa at the time serving a sentence of indefinite imprisonment and in his case, the court ordered his release under correctional supervision for three years subject to him wearing an electronic monitoring device and attending several courses.

Conclusion

It is clear from the above that judicial officers have wide discretion to invoke an enquiry in terms of section 286A of the Criminal Procedure Act, particularly when there is no allegation before the court that the accused poses a danger to the physical or mental well-being of other persons or the community. It is thus not clear what otherwise triggers a judicial official to invoke such an enquiry because the law does not specify the requisite circumstances. It appears to be the case that an enquiry in terms of section 286A of the Criminal Procedure Act is highly under-utilised but there may be practical reasons for this. The imposition of a life sentence, following conviction, is, ironically, a relatively quick affair. On the other hand, when a court is contemplating the imposition of indefinite imprisonment, proceedings are halted in order for the psychiatric assessment to be completed. This is dependent on the availability of psychiatrists and space at a psychiatric hospital or other facility designated by a court. It is well known that there is a huge backlog of assessments into the criminal capacity and criminal responsibility of accused persons (as set in the section 79 of the Criminal Procedure Act) which is also dependent on the same

resources. During this period, the person concerned will in all likelihood remain in the custody of Department of Correctional Services at one of its already overcrowded facilities. This problem has recently been highlighted in the media.[63] The Judicial Inspectorate for Correctional Services also reported that in 2015/2016, 984 inmates diagnosed with mental illness were still awaiting trial and others had already been sentenced, some are state patients and are housed at correctional centres within the hospital unit, due to the unavailability of beds at designated mental health care centres.[64] Furthermore, there is no fundamental difference in the sentencing period (life versus indefinitely) that accompanies these two prison sentences, as this is either determined by minimum sentencing legislation or at the discretion of the judicial officer. The fundamental difference between the two prison sentences is the aspect of 'dangerousness' of the offender. The crux of the matter is that an indefinite sentence is only available to persons who have been declared dangerous criminals based on psychiatric evidence that such persons pose a danger to the physical or mental well-being of other persons or the community at the present moment and the law therefore seeks to ensure that such offenders' prison sentence are re-assessed at a later period by a court of law and not the Department of Correctional Services or the Minister.

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[1] 'Indefinite prison sentence for 'psychopathic' baby killer,' *News24, 4 May* 2018, https://www.news24.com/SouthAfrica/News/indefinite-prison-sentence-for-psychopathic-baby-killer-20180504

[2] 'South Africa's worst serial rapist' jailed indefinitely by Grahamstown High Court', *News24*, 23 March 2018 https://www.rnews.co.za/article/19142/south-africas-worst-serial-rapist-jailed-indefinitely-by-grahamstown-high-court

[3] Section 73 (1) (b), Correctional Services Act 111 of 1998.

[4] For example, the prisoner attended rehabilitation programs, the prisoner has been rehabilitated, the prisoner complied with the prison rules, the prisoner was well behaved, etc.

[5] Chapter One, Correctional Services Act 111 of 1998.

[6] Chapter IV, Correctional Services Act 111 of 1998.

[7] Section 52, Correctional Services Act 111 of 1998.

[8] Mujuzi J. 'Life Imprisonment in South Africa: Yesterday, Today, and Tomorrow,' *SAJCJ*, Volume 22, Issue 1, Jan 2009, p. 1.

[9] Mujuzi J. 'Life Imprisonment in South Africa: Yesterday, Today, and Tomorrow,' *SAJCJ*, Volume 22, Issue 1, Jan 2009, p. 1 – 38; Ballard C. 2012. Parole in South Africa: understanding recent changes, *CSPRI Newsletter* Issue No. 40. Available at: https://acjr.org.za/resource-centre/CSPRINewsletter-No40Jan2012.pdf

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[13] Criminal Law Amendment Act 105 of 1997.

[14] 73 (6) (b) iv, Correctional Services Act 111 of 1998.

[15]Section 51 (3) (a), Criminal Law Amendment Act 105 of 1997.

[16] Muntingh, L. (2017) 'Rethinking life imprisonment,' *Daily Maverick*, 2 March 2017, https://www.dailymaverick.co.za/article/2017-03-02-op-ed-rethinking-life-imprisonment/.

[17] *Van Vuren v Minister of Correctional Services and Others* (CCT 07/10) [2010] ZACC 17; 2010 (12) BCLR 1233 (CC); 2012 (1) SACR 103 (CC) (30 September 2010); Derby-Lewis v Minister of Justice and Correctional Services (17889/15) [2015] ZAGPPHC 661; 2015 (2) SACR 412 (GP) (29 May 2015)

[18] *Van Vuren v Minister of Correctional Services and Others* (CCT 07/10) [2010] ZACC 17; 2010 (12) BCLR 1233 (CC); 2012 (1) SACR 103 (CC) (30 September 2010)

[19] 286B (2), Criminal Procedure Act 51 of 1977.

[20] Section 73 (6) (d), Correctional Services Act 111 of 1998.

[21] Section 286B (4) (b), Criminal Procedure Act 51 of 1977.

[22] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 5.

[23] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 5.

[24] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 5.

[25] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 5.

[26] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 27.

[27] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 27.

[28] Section 286A (1), Criminal Procedure Act 51 of 1977.

[29] Section 286A (1), Criminal Procedure Act 51 of 1977.

[30] Section 286A (2), Criminal Procedure Act 51 of 1977.

[31] Section 286A (2), Criminal Procedure Act 51 of 1977.

[32] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 17.

[33] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 11.

[34] *S v Bull and Another* (221/2000) [2001] ZASCA 105 (26 September 2001), para 18.

[35] Section 286 (2) (c), Criminal Procedure Act 51 of 1977.

[36] Section 73 (6) (c), Correctional Services Act 111 of 1998.

[37] Section 286 (2) (a), Criminal Procedure Act 51 of 1977.

[38] Section 77, Criminal Procedure Act 51 of 1977.

[39] Section 78, Criminal Procedure Act 51 of 1977.

[40] Section 77 (7), Criminal Procedure Act 51 of 1977.

[41] Section 78 (1), Criminal Procedure Act 51 of 1977.

[42] Section 47, Mental Health Care Act 17 of 2002.

[43] Section 78 (6) (b) i -ii, Criminal Procedure Act 51 of 1977.

[44] Section 286A (2)(b), Criminal Procedure Act 51 of 1977.

[45] Section 286A (3)(a), Criminal Procedure Act 51 of 1977.

[46] Section 286A (3)(b)(i), Criminal Procedure Act 51 of 1977.

[47] Section 286A (3) (b) (ii), Criminal Procedure Act 51 of 1977.

[48] Section 286A (3) (c), Criminal Procedure Act 51 of 1977.

[49] Section 286A (3) (c), Criminal Procedure Act 51 of 1977.

[50] Section 286A (4) (a), Criminal Procedure Act 51 of 1977.

[51] Section 286A (3) (e)-(g), Criminal Procedure Act 51 of 1977.

[52] Section 286A (4 (b), Criminal Procedure Act 51 of 1977.

[53] Section 286A (4) (c), Criminal Procedure Act 51 of 1977.

[54] Section 73 (6) (d) Correctional services Act 111 of 1998.

[55] Section 286B (2), Criminal Procedure Act 51 of 1977.

[56] Section 286B (2), Criminal Procedure Act 51 of 1977.

[57] Section 286B (4) (a), Criminal Procedure Act 51 of 1977.

[58] Section 286B (4) (a), Criminal Procedure Act 51 of 1977; Section 5, Correctional services Act 111 of 1998.

[59] Section 286B (4), Criminal Procedure Act 51 of 1977.

[60] Section 286B (4) (b), Criminal Procedure Act 51 of 1977.

[61] Section 286B (7), Criminal Procedure Act 51 of 1977.

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