



**FOR IMMEDIATE RELEASE**

**THE SOUTH AFRICAN LAW REFORM COMMISSION PUBLISHES ADDITIONAL DISCUSSION PAPERS ON THE REVIEW OF THE CRIMINAL PROCEDURE ACT, 1977 AND ANNOUNCES PUBLIC CONSULTATIONS CONCERNING THEMATIC AREAS NOT ADDRESSED BY ANY OF THE PUBLISHED DISCUSSION PAPERS**

The South African Law Reform Commission (SALRC) is pleased to publish, for public comments, the following two additional discussion papers on the Review of the Criminal Procedure Act 51 of 1977 (CPA):

- a. Discussion Paper 174 - The Right To a Fair Trial – The Need to Obviate Delays
- b. Discussion Paper 175 - Review of the Laws Pertaining to Evidence in Criminal Proceedings

The discussion papers, considered together with the papers that were published in February 2025 (four) and February 2026 (five), seek to contribute to a new criminal procedural law that is modernised and conforms to the country's democratic Constitution and its underlying values and principles. The above two papers, respectively, seek to, among others:

- a) address causes of unreasonable delays in the commencement and finalisation of criminal cases in South African courts. The paper looks at, among others, how the legislative framework can be strengthened to evert stalingrad tactics and to enable Judicial Officers to exercise effective judicial case management across the different stages of the criminal proceedings; and
- b) transform the law of evidence relating to criminal proceedings thus ensuring that it is consistent with the constitutional right to a fair trial, including the protection of the rights of accused persons and victims of crime and witnesses.

The discussion papers are available on the website of the SALRC at:

<https://www.justice.gov.za/salrc/dpapers.htm>

Written submissions on the discussion papers must be submitted to the SALRC by no later than **15 May 2026**. Email addresses have been provided for each discussion paper with the [CPAreform@justice.gov.za](mailto:CPAreform@justice.gov.za) being the central email address for all submissions to be sent.

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Furthermore, the Commission is mindful that there are certain fundamental thematic areas of reform under the current CPA that are not covered under any of the published discussion papers or those that are currently being developed for publication by no later than 30 June 2026. It is in this context that the Commission has resolved to develop a List of Issues and Questions on areas that require reform and are not addressed by any of the published discussion papers. This List of Issues and Questions constitutes the basis for public consultations which are scheduled to take place from 20 April to 29 May 2026.

This List of Issues and Questions is published herewith ahead of the scheduled public consultations. Submissions are invited in respect of any aspect of the List of Issues and Questions and must be submitted before **13 April 2026**. Commentators must indicate if they wish to make any oral submission/presentation during the period of public consultations.

Written submissions on any aspect in the accompanying List of Issues and Questions must be submitted to the SALRC at the following central email address: [CPAreform@justice.gov.za](mailto:CPAreform@justice.gov.za). Only commentators who have submitted substantiated written submissions will be eligible to make oral submissions during the public consultations.

Guidelines on the public consultations and a schedule of venues and times where public consultations will take place will be published on 13 April 2026.

Enquiries in respect of the press statement should be addressed to the Secretary of the SALRC, Mr Nelson Matibe, on (012) 622 6306 or Email: [NMatibe@justice.gov.za](mailto:NMatibe@justice.gov.za)

**ISSUED BY THE SECRETARY: SA LAW REFORM COMMISSION, PRETORIA  
27 MARCH 2026**

# LIST OF ISSUES AND QUESTIONS FOR STAKEHOLDER ENGAGEMENT AND PUBLIC CONSULTATIONS

## 1. Institution of private prosecution

### 1.1. Source provision in the Criminal Procedure Act (CPA) – Sections 7 to 15 of the CPA

1.1.1. Section 7 of the CPA permits a private person with substantial and peculiar interest to criminally prosecute another person or entity if the National Prosecuting Authority (NPA) formally declines to prosecute.

1.1.2. Section 8 of the CPA permits anybody upon which or person upon whom the right to prosecute in respect of any offence is conferred by law to institute and conduct a prosecution.

### 1.2. Constitutionality

1.2.1 In terms of the Constitution (Section 179) the mandate to institute criminal proceedings on behalf of the State lies with the NPA.

1.2.2 There is no constitutional provision conferring the power to initiate prosecution on individual persons or body.

### 1.3. Pertinent Issues and questions relating to the legal principles involved

1.3.1. The financial burden and risk involved in private prosecution means that it is largely available only to the rich to the exclusion of the poor, which in turn raises the constitutional question of equal access to the courts (equality before the law).

1.3.2. The strict legal requirement of obtaining a certificate *nolle prosequi* inhibits the institution of private prosecutions.

1.3.3. There is a risk that private prosecutions may be initiated for improper, malicious or vindictive purposes or as a way of putting a price tag on justice.

1.3.4. Private prosecutions may serve as a way of distracting from the need to improve and resource the prosecuting authority, rather than strengthening, skilling and resourcing it.

#### 1.4. Questions arising

- 1.4.1. How should the absence of a constitutional provision on private prosecution be addressed, particularly that the CPA predates the Constitution
- 1.4.2. Should section 7 of the CPA be amended and extended to make provision for a parallel private prosecution regime?
- 1.4.3. Should section 8 of the CPA be amended to specify and designate bodies or persons who may prosecute acts or conduct expressly criminalised by legislation such as offences under the Companies Act?
- 1.4.4. Accepting that all common law offences and all statutory offences which require the authorisation of the NDPP before initiating a prosecution should remain the preserve of the NPA, what offences should fall under section 8 of the CPA?

#### 1.5. Commentary

- 1.5.1. There are provisions for private prosecutions in other countries – especially Commonwealth – including the UK, Canada, Australia, Zimbabwe and Kenya.
- 1.5.2. The NPA's view on this matter is sought, particularly having regard to section 13 of the CPA regarding its power to intervene by seeking a court order to stop the proceedings or further proceedings in the case in order that a prosecution for the offence in question may be instituted or, as the case may be, continued at the instance of the State, and the court shall make such an order.

## 2. **Preparatory Examination**

#### 2.1. Source provision in the CPA – Chapter 20

- 2.1.1. Chapter 20 of the CPA makes provision for the holding of a preparatory examination (pre-examination).
- 2.1.2. The holding of a preparatory examination is at the discretion of the NDPP – strangely, section 123 of the CPA still refers to the Attorney-General, which must be read as referring to the NDPP.
- 2.1.3. In terms of section 123 of the CPA, the NDPP can instruct the holding of a preparatory examination if he or she is of the opinion that it is necessary for the more effective administration of justice.

## 2.2 Constitutionality

2.2.1 The following constitutional provisions relating to the accused right to a fair trial enshrined in section 35(3) of the Constitution becomes relevant:

- the accused right to have their trial begin and conclude without unreasonable delay (preparatory examination may delay the trial (sec 35(3)(d))
- the right of appeal to, or review by, a higher court in respect of the decision arising from preparatory examination is unclear (sec 35(3)(o)).

## 2.3 Issues and challenges

2.3.1 The formal preparatory examination as envisaged in Chapter 20 has fallen into disuse in favour of summary trials ( Chapter 12, sections 75 – 76 of the CPA).

2.3.2 The disappearance of preparatory examinations has led to a reliance on summary trials, which fail to identify weaknesses in the case an accused is called upon or expected to answer. This can result in a “prosecutorial crisis” where cases are later dismissed after long delays or, conversely, result in a miscarriage of justice.

## 2.4 Questions arising

2.4.1 How may the constitutional concerns associated with preparatory examination be addressed?

2.4.2 Should a preparatory examination be subject to a review by a higher court in the event that the state or a victim is dissatisfied with the outcome of the examination?

2.4.3 Should preparatory examinations be retained in the CPA and what would be its value?

2.4.4 In view thereof that first appearances in criminal proceedings take place in the Magistrates’ Courts, should consideration be given to formalising preparatory examinations as a form of pre-trial procedure where evidence is presented to a magistrate to determine if a case should proceed to a higher court?

## 2.5 Commentary

2.5.1 The following appear to be the intended benefits of the prep-exams:

- They appear to act as a filter to remove weak cases, ensuring that only deserving cases proceed to a higher court.
- They provide both the State and the defence with an early, comprehensive view of the evidence, thus aiding in case preparation.
- May encourage early resolution – they can lead to a guilty plea or, conversely, a decision not to prosecute, saving time in the long run.
- Allow evidence to be recorded early, which preserves witness testimony.

2.5.2 The views and comments of the Judiciary (particularly the Lower Court Judiciary and the NPA) will be necessary, particularly in view of the disuse of the preparatory exam proceedings despite the apparent benefits alluded to above.

## 3. **Sentencing, Correctional Supervision and Parole**

### 3.1 Source provisions in the CPA – Chapter 28, sections 274, 276 and 297

3.1.1 Section 274 of the CPA allows courts to receive evidence on a proper sentence, focusing on the offender, the crime and the victim's impact. The aim is to have a balanced picture that would ensure that an appropriate sentence is imposed.

3.1.2 Section 276 specifically makes provision for sentencing options, namely imprisonment, periodical imprisonment, declaration as a habitual criminal, committal to an institution established by law and a fine.

3.1.3 Section 276A makes provision for the imposition of correctional supervision, of conversion of imprisonment into correctional supervision and *vice versa*.

3.1.4 In terms of section 276B, if imprisonment is for two years or longer, the court may fix a non-parole period, not exceeding two-thirds of the sentence or 25 years.

3.1.5 Under section 297 a court may defer or postpone sentencing or suspend a sentence (wholly or partially) for up to five years, conditional upon the

accused not committing further crimes or complying with specific requirements. This applies to non-minimum sentence offences.

3.1.6 Section 105A allows for a negotiated sentence between the state and the accused.

3.1.7 The Criminal Law Amendment Act 105 of 1997, while not in the CPA, enforces minimum sentences for serious offences unless “substantial and compelling circumstances” exist.

### 3.2 Constitutionality

There are no known constitutionality concerns.

### 3.3 Issues and challenges

#### 3.3.1 Sentencing challenges

3.3.1.1 The system relies heavily on imprisonment, resulting in severe overcrowding of correctional facilities.

3.3.1.2 There has been an increase in life sentences, which has led to a slow inmate turnover.

3.3.1.3 Minimum sentence legislation is often seen as an ineffective “quick-fix” that fails to address the root causes of crime.

3.3.1.4 There is a lack of alternatives based on the use of non-custodial measures and rehabilitation-focused sentences.

### 3.3.2 Parole system challenges

3.3.2.1 The parole system is hamstrung by administrative delays and backlogs, arising from slow processing of parole applications, especially for life-sentence offenders.

3.3.2.2 There is inconsistent decision-making. Variances in how different parole boards operate lead to inconsistent release decisions.

3.3.2.3 There is often a failure to properly inform or involve victims in the parole process, leading to victim exclusion.

3.3.2.4 There is a lack of sustained, effective rehabilitation programs in prisons, with institutions fostering, rather than correcting, criminal behaviour.

### 3.3.3 Questions arising

3.3.3.1 Should the sentencing regime provided for in section 276 of the CPA, read with the Criminal Law Amendment Act 105 of 1997 (minimum sentences) be replaced with a new regime. If so, what would be an appropriate sentencing model?

3.3.3.2 Should the minimum sentences regime be done away with and sentencing be subject only to the discretion of the presiding officer?

3.3.3.3 How can the persistent challenge of recidivism which presents a major challenge to the South African parole system be addressed?

### 3.3.4 Commentary

3.3.4.1 Most commonwealth countries follow a sentencing regime similar to the one provided in the CPA.

3.3.4.2 Both the UK and Canada, for example, utilize mandatory minimum sentences to establish a statutory floor for specific crimes, particularly those involving firearms, drugs and sexual offences. Whereas the UK often focuses on repeat offenders, Canada has historically applied them to more serious offences.

3.3.4.3 In Canada, mandatory minimum sentences have been challenged and held to be unconstitutional for violating the right not to be subjected to cruel and unusual punishment. The Supreme Court of

Canada has ruled that a mandatory sentence is unconstitutional if it is “grossly disproportionate” to a fit sentence for an offender. The Supreme Court of Canada has struck down several mandatory minimum sentences, particularly for firearm offences (e.g. *R v Nur* 2015 SCC 15) and drug offences (e.g. *R v Lloyd* 2016 SCC 13) for being overly broad or cruel and unusual.

3.3.4.4 The recent trend in Canada is that while some mandatory sentences remain, many have been removed or found invalid by the courts for causing excessive punishment.

3.3.4.5 There are views that mandatory minimum sentences remove judicial discretion, lead to and disproportionately affect marginalised groups.

3.3.4.6 The outcome of the Summit on Parole convened recently by the Department of Correctional Services (DCS) debated specific legislative reform proposals regarding the provisions relating to parole and correctional supervision in the CPA. Submissions on these by the DCS and the Judicial Inspectorate on Correctional Services appear important and necessary.

## **4. Compensation and restitution**

### 4.1 Source provision in the CPA – section 300

4.1.1 Section 300 makes provision for an award of compensation to a victim where an accused is convicted of an offence that caused damage to or loss of property (including money).

4.1.2 The victim or prosecutor must apply for the order before the accused is sentenced. The court must consider the accused’s financial means before granting the order.

### 4.2 Constitutionality concerns

None.

#### 4.3 Issues and challenges

4.3.1 Prosecutors hardly make use of the provisions of section 300.

4.3.2 Often, perpetrators lack the financial resources, rendering the orders practically worthless.

4.3.3 Victims may struggle to provide the necessary documentation to prove the extent of their financial losses.

4.3.4 These challenges lead to a system where victims may feel forgotten, with many struggling financially despite the availability of a section 300 compensation order.

#### 4.4 Questions arising

4.4.1 Does the CPA make adequate provision for compensation and restitution?

4.4.2 How should the CPA be amended to include a regime of restorative justice which makes provision for processes aimed at repairing harm caused by crime through dialogue, accepting responsibility and making restitution?

#### 4.5 Commentary

4.5.1 There are commonwealth countries which have a structured victim compensation regime.

4.5.2 In India, victim compensation is a statutory right, primarily governed by section 357A of the Criminal Procedure Code, which mandates State governments to fund rehabilitation of victims of crime, even if the accused is acquitted or not identified. It addresses loss, injury and rehabilitation, with the State Legal Service determining the amount.

4.5.3 Commentary on specific legislative reform to section 297 and 300 of the CPA is necessary.

## **5. Community Services and Non-custodial sentences**

#### 5.1 Source in the CPA

None

## 5.2 Constitutionality concerns

None

## 5.3 Issues and challenges

5.3.1 Community Service as a form of sanction is seen as a more effective sentence for certain categories of crimes. The sanction is premised on rehabilitative and restorative principles through which the perpetrator can be accepted back into society that was harmed by the commission of a crime.

5.3.2 Community service sanctions have the potential to address overcrowding of correctional centres.

## 5.4 Questions arising

5.4.1 Will the state have the immediate capacity to manage and monitor community sanctions.

5.4.2 Which government department will be better suited to manage and monitor community sanctions?

## 5.5 Commentary

5.5.1 Although under Project 82 the Commission recommended the institutionalisation of non-custodial sentences, Community Service has not been incorporated into the CPA.

5.5.3 Nigeria, in view of its strong community services regime is a useful case study for the CPA reform process.

5.5.3 Civil society through community-based organisation (who may be coordinated through the Department of Social Development) and municipalities are potential beneficiaries of the community sanctions. They may be willing participants in the implementation of the dispensation.

# 6. Appeals and Reviews

## 6.1 Source provision in the CPA – sections 302, 309, 310 and 327.

6.1.1 In terms of section 302 convictions of unrepresented accused by Magistrates Courts undergo mandatory review by the High Court, if a sentence exceeds

six months (or three months for a magistrate with less than 7 years of experience).

6.1.2 In terms of section 309 a convicted person may appeal to the High Court against conviction or sentence. This generally requires applying for leave to appeal first. Children under the age of 16, or those between 16 – 18 without legal representation who received a non-suspended sentence, may appeal without needing to request leave.

6.1.3 Section 310 allows the State/ prosecution to appeal on points of law (i.e questions of law decided in favour of the accused).

6.1.4 Section 327 allows for review if new evidence arises that suggests an innocent person was convicted, even if normal appeal/review procedures have been exhausted.

## 6.2 Constitutionality concerns

Section 35(3)(n) relating to the right of appeal and review of decision of a lower court appear to be restricted under the CPA and raises concerns of inequality (in respect of the unrepresented accused persons).

## 6.3 Issues and challenges

6.3.1 There are procedural and systemic bottlenecks

6.3.2 The appeal process is slow, often resulting in convicted individuals serving significant portions of their sentences before an appeal is heard.

6.3.3 Appeal courts generally discourage against interlocutory rulings, preferring hearing of cases only after sentence has been passed, which can delay the rectification of pre-trial or trial errors.

6.3.4 There are high legal thresholds and technicalities.

6.3.5 While an accused person can appeal against findings of fact, appeals become typically restricted to errors of law, making it difficult to challenge findings of fact, even if they appear questionable.

6.3.6 Some appellate courts often focus on whether a conviction is “sustainable” rather than whether the trial was fair, leading to situations where procedurally flawed trials are upheld.

6.3.7 Common, yet difficult, issue to raise on appeal is that the trial lawyer failed to investigate, failed to present evidence, or was otherwise incompetent.

6.3.8 Specific challenges in reviews are that reviews are generally limited to checking whether procedural, rather than substantive, justice was followed (e.g looking for bias, improper admission of evidence).

#### 6.4 Questions arising

6.4.1 How may the constitutionality concerns regarding appeals and reviews be addressed?

6.4.2 What are the required reforms of the appeal and review regimes?

6.4.3 Is the current appeal and review regime aligned with modern constitutional rights, such as the right to a fair trial?

6.4.4 How should the debate on the current legal position which limits the state to appeal only on the basis of law be extended to appeal on facts be addressed?

6.4.5 There is a debate regarding the balance between giving the accused a fair chance at appeal and reducing “frivolous” appeals that delay finality. How can this issue be resolved, so that there is a balance between the right to appeal and sifting out undeserving appeals?

#### 6.5 Commentary

6.5.1 Submissions by the Judiciary, the NPA and the legal profession on the reform of the appeal and review regimes with specific legislative proposals are necessary.

## 7. **Peace officers**

### 7.1 Relevant provisions in the CPA

7.1.1 Section 334(1)(a) permits the Minister to declare, by notice in the *Gazette* any person who, by virtue of his or her office, falls within any category defined in the notice, , to be a peace officer for the purpose of exercising, with reference to any provision of the CPA or any offence or any class of offences likewise specified, the powers defined in the notice.

7.1.2 In terms of section 334(1)(b) the powers referred to in paragraph (a) may include any power which is not conferred upon a peace officer by the Act (CPA).

7.1.3 Subsection (2) obliges any person who is a peace officer by virtue of a notice issued under subsection (1) and who exercises any power conferred upon him under that subsection to be in possession of a certificate of appointment issued by his employer, which certificate shall be produced on demand.

7.1.4 In terms of subsection (3) the Minister may by notice in the *Gazette* prescribe—

- (a) the conditions which shall be complied with before a certificate of appointment may validly be issued under subsection (2)(a);
- (b) any matter which shall appear in or on such certificate of appointment in addition to any matter which the employer may include in such certificate.

7.1.5 It appears under subsection (4) that a peace officer may be an employee of a state or privately employed. The subsection states as follows:

- (4) Where the employer of any person who becomes a peace officer under the provisions of this section would be liable for damages arising out of any act or omission by such person in the discharge of any power conferred upon him under this section, the State shall not be liable for such damages unless the State is the employer of that person, in which event the department of State, including a provincial administration, in whose service such person is, shall be so liable.

## 7.2 Constitutionality concerns

7.2.1 In terms of the Constitution (section 199(1)) the security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution. Section 199(3) provides that security services, other than those established in terms of the Constitution, may be established only in terms of national legislation.

7.2.2 Other than the security services established in terms of the above provision of the Constitution, armed organisations or services may be established only in terms of national legislation. The CPA, which predates the Constitution, would not meet the national legislation requirement intended to create security services contemplated in chapter 11 of the Constitution.

7.2.3 The definition of “peace officer” to the extent that it includes a judicial officer (a magistrate) is inconsistent with the separation of powers provisions in the Constitution. The definition reads as follows:

“peace officer includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959 (Act 8 of 1959), and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334 (1), any person who is a peace officer under that section;”

### 7.3 Issues and challenges

7.3.1 Section 334 of the CPA to the extent that it empowers the Minister of Justice and Correctional Services to declare non-state employees to be peace officers and exonerate any employer who is not the state, raises constitutionality concerns, among others:

- (a) it extends the policing functions beyond the security services defined in section of the Constitution through a Ministerial degree;
- (b) has the effect of privatising certain policing functions to peace officers who are not employees of the state. The section, to the extent that it empowers the Minister to declare non-state employees to be peace officers and exonerate any employer who is not the state, raises constitutionality concerns, among others:

7.3.2 The provisions creates an open-ended list of peace officers who perform policing functions. There is no provision that requires recordal of categories of persons declared to be peace officers be kept for purposes of accountability and monitoring.

7.3.2 The absence of uniform requirements including with regard to training impact on the capacity and competencies of the declared peace officers.

7.3.3 The absence of uniform accountability and oversight mechanisms creates gaps in the management of peace officers.

### 7.4 Questions arising

7.4.1 How can the constitutionality concerns regarding the declaration of peace officers as a category of security services be addressed?

7.4.2 Would a separate legislation regulating the appointment / declaration of peace officers be necessary under the circumstances? What should interim measures be pending such legislation/

7.4.3 How can an effective oversight mechanism be established for peace officers?  
Should the Commissioner of SAPS have oversight over peace officers in the same way as with regard to the Defence Force when deployed to assist the police service?

7.5 Commentary

7.5.1 Peace officers play a significant role under the CPA. The views of government on how the dispensation should be aligned to the Constitution is sacrosanct.

7.5.2 Submissions regarding the necessary legislative reforms regarding the regulation, training and accountability mechanisms of peace officers are equally critical.

## **8. Role of private security officers in the criminal justice system**

8.1 Relevant provisions in the CPA

None

8.2 Constitutionality concerns

8.2.1 The Private Security Industry Regulation Act 56 of 2001 (PSIRA Act) does establish a private armed security service or organisation but regulates the private security industry.

8.2.2 Private security personnel are considered civilians and not police officers, holding limited powers of arrest and search.

8.2.3 The fact that private security personnel are not part of formal law enforcement raises ethical and accountability issues.

8.3 Issues and challenges

8.3.1 Private security investigations are often bound by contractual obligations, making it difficult for law enforcement to access crucial evidence.

8.3.2 Evidence gathered by private security can be mishandled, potentially rendering it inadmissible in court.

8.3.4 Private security personnel can make arrests (citizen's arrest) if they witness a schedule 1 offence (e.g. assault, theft, robbery) or reasonably believe someone has committed such an offence and is escaping.

8.4 Questions arising

8.4.1 Should the private security be regulated within the confines of the CPA, insofar as it relates to criminal matters?

8.4.2 If so, to what extent, and how, should it be regulated?

8.5 Commentary

8.5.1 There is a debate raging that private security officers, if they are declared as peace officers, they could augment the capacity of the police service. Is there any merit in the argument? Will these not be tantamount to privatising security services contrary to the constitutional injunction?

8.5.2 The relevance and use of private security sector in the addressing the scourge of criminality may be addressed as part of the reform of the legislation regulating peace officers. This will also depend on the extent to which the private security sector will be permitted to be part of the peace officer's dispensation. This may occur parallel to the reform of the CPA.