Towards Criminal Law Codification of a Sort

The Section 12 Initiative's Draft Criminal Code Bill

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The nature of codification

Codifying certain aspects of South African law has been discussed, on and off, for more than a century. Roman-Dutch law reached maturity and left the shores of Europe before the civil law tradition became synonymous with codification, and English law, the other great part of South Africa's legal heritage, had never been a tradition of codification.

Nonetheless, codification is not unheard of. Legislation is, after all, a limited form of codification, and this source of law has since long supplanted the common law as the primary source of law in South Africa. The appeal of codification primarily relates to legal certainty and coherence, and both factors ultimately serve the rule of law – a founding value of the South African constitutional order contained in section 1(c) of the Constitution.

Codification has primarily been regarded as an alternative to common law. In Europe and the other civil law states, courts look primarily to the codes that relate to the matters before them, rather than to the *ius commune* of their societies. This is one of the reasons codification is resisted in the common law world, including South Africa – it tends to mechanise the judicial function and make it difficult for courts to participate in the development of law. Codification gives primacy to the legislature.

In the free world – primarily those jurisdictions that subscribe to the common law – the courts are afforded some leeway in coming to the assistance of individuals confronted by state power. This is especially true in the presence of a formally supreme written constitution. States in the civil law tradition afford much less creative power to the judiciary, and as a result, tend to exclude courts from the domain of the protection of civil liberty.

South Africa's unwieldy criminal law

Like the rest of the common law world, South African criminal law is largely uncodified. This means that conduct that amounts to crime (other than the *mala in se* – those things criminal by nature, like murder, rape, assault, and fraud) can be found in a dizzying array of legislative and regulatory instruments.

Many pieces of so-called 'primary' legislation (herein only 'legislation') contain perfected criminalisation provisions. This means that reading the legislation – which could be either an Act of Parliament, a provincial Act, or a municipal bylaw – will spell out the entirety of the criminalised conduct. In other cases, so-called 'secondary' legislation (herein only 'regulations') also contain perfected criminalisation provisions. In these cases, one must have regard to some regulation, be it an executive notice, proclamation, notice, or 'guideline.'

Some conduct is also criminalised *across* legislation and regulation. This is the case when the enabling provision in the legislation provides that 'not doing X as prescribed is an offence,' and a minister or regulatory authority is empowered to 'prescribe.' The source of criminal liability, then, is the legislation, but the formulation of the offence is perfected in the regulation or executive measure.

Within the theory of the rule of law and democracy, only legislation may criminalise conduct. This is so for reasons of certainty and fairness, but also accountability. Legislatures are democratically elected by the people, and only when such a strong mandate has been bestowed upon those bodies may they take the extraordinary step of criminalising specified conduct. Essentially anonymous officials and regulators have no similar mandate and therefore may not deem conduct to be criminal.

This requirement of the rule of law has been neatly sidestepped by the modern state. It is argued that those areas of society that require regulation, and therefore the potential of criminalisation, have become so complex that it would be impossible for democratic legislatures to be able to respond to every mischief that might arise.

Those who take this view do not deny the validity of the rule of law and democratic argument, however. They overcome it by arguing that legislatures do not abdicate their responsibility to criminalise, but rather delegate the details of the criminalisation to the executive branch of government. The way this plays out in practice, is that a legislative Act contains an enabling provision – and this, not the regulation, is the

criminalisation provision that is the source of criminal liability – that deems certain, unspecified conduct to be criminal, and then delegates to a minister or regulatory body the authority to specify the conduct.

What has been the result of this approach?

The need for codification (of a sort)

Legislation is already filled with perfected criminalisation provisions. The Banks Act of 1990, for instance, itself contains some 116 perfected criminalisation provisions. While most Acts of Parliament do not contain as many, there could be tens of thousands of criminalisation provisions adopted by the central legislature on the Statute Book. This does not count provincial Acts and municipal bylaws.

The real problem, however, are the offences primarily contained in regulations. It would be reckless to attempt to estimate how many criminalisation provisions exist in the reams of regulations issued every month by South Africa's many organs of state in the central, provincial, and municipal spheres, but one is guaranteed that the number is high.

The Free Market Foundation's Section 12 Initiative is proposing that Parliament adopt a Criminal Code Act that will put an end to this diffused nature of South African criminal law and bring it all within a single repository.

This proposal is not, however, codification of the kind seen in the civil law countries, which *replaces* the common law. Instead, this codification proposes, simply, to take already existing criminalisation provisions in legislation *and* regulations, and 'copy' them into one, single database. The draft Criminal Code Bill is not to be utilised as an original source of criminal liability, which will remain the domain of the common law and specifically-enacted articles of legislation.

The proposed Bill also seeks, among other things, to prohibit the practice of any person or body other than a legislative body in plenary session adopting criminal law. That function must reside exclusively with the democratically elected representatives of the people.

Should this Bill be adopted, it will be a significant step towards increased accessibility and certainty of criminal law, especially during a time when so much of the lives and activities of ordinary people and entrepreneurs has been – usually unduly – criminalised.

EXPLANATION OF SPECIFIC PROVISIONS

Section 1 of the Bill sets out the meaning of terms pertinent to the legislative changes the Bill seeks to introduce. In particular, it explains that 'law enforcement officer' includes prosecutors, that '*mala in se*' refers to inherently criminal conduct that need not have been positively criminalised, and that the 'original source of criminal liability' – a recurring term in the Bill – excludes the Criminal Code.

Section 2 contains the objects that the Act is meant to achieve. These are to bring about clarity and certainty in criminal law, which would serve the rule of law, and to ensure that there is uniformity, consistency, accessibility, and coherence in how criminalising provisions are adopted.

Section 3 provides for the establishment of the Criminal Code, which is contained in Schedules 1 to 5 of the Act. This Code must, when complete, reproduce every offence in South African criminal law that creates liability for a criminal record, a fine, or imprisonment.

Section 4 requires that the Criminal Code be permanently available to anyone with an internet connection. This further promotes accessibility and certainty, as legal subjects must be able to determine in real time whether any given conduct amounts to criminality.

Section 5 provides that physical copies of the Criminal Code must be made available to anyone upon request by identified government institutions.

Section 6 provides that a law of general application adopted by a legislative body is necessary to create a source of criminal liability, except if the conduct is *malum in se*. This is reinforced by **section 39**, which mandates that only Parliament, provincial legislatures, and municipal councils in plenary session have the authority to designate given conduct as criminal, and **section 40**, which prohibits ministers, officials, regulatory authorities, and others, from generating criminal liability by way of executive measures.

Section 7 makes clear that if adopted, neither the Criminal Code Act nor its Schedules (the Criminal Code) may be utilised as original sources of criminal liability for any offence. A legislature must adopt a separate criminalising provision, as it has done up to now. This would take the form of an ordinary Act of Parliament, a provincial Act, or a municipal bylaw dealing with a given issue, which also amends – states **section 12** – the relevant Schedule of this Act, *without being an Amendment Act* to this Act.

Section 8 provides that the legislative language used to formulate offences and their associated penalties must be clear and unambiguous. In other

words, there must be no doubt that given conduct has in fact been criminalised. If there is such (reasonable) doubt, that conduct should be regarded as not criminalised.

Section 9 further explains that the aforementioned legislative language must be easily accessible and understandable to a layperson, as opposed to only trained lawyers. If the language is inaccessible, that criminalising or penalty provision shall be regarded as invalid and unenforceable.

Section 10 provides that if it does not appear in the Criminal Code, any contemplated criminalised conduct does not carry the force of law. In other words, even if Parliament adopts an Act that contains a clear criminalisation provision, and that Act has been signed into law, as far as law enforcement apparatuses are concerned, that provision is unenforceable until it reflects in the Criminal Code. This does not apply to conduct that is *malum in se*.

Section 11 further provides that even if an offence has been entered into the Criminal Code, it will only acquire the force of law after seven days. This is to afford the public sufficient time to familiarise itself with any relevant changes to the Code, and to ensure that criminalisation is not used as an *ad hoc* tool for political victimisation.

Section 12. See *section 7* above.

Section 13 provides that legislatures must adopt a clear, consistent, and systemic categorisation methodology within their Schedules of the Act (their sections of the Criminal Code), which is accessible to laypersons. This is to further encourage accessibility and certainty of law.

Section 14 sets out minimum requirements for what a legislature must specify when it enters a new offence into the Criminal Code: the law that is the original source of criminal liability (that is, the Act of Parliament, provincial Act, or municipal bylaw that originally creates the crime); the penalty associated with committing that offence; and the date on which that offence did or will acquire the force of law (which will, by default, be seven days after it is entered into the Code, or a later specified date).

Section 15 requires that the style and formatting of the Criminal Code be reasonably uniform and standardised, in accordance with standards agreed by the conferences of recorders.

Section 16 provides that any law enforcement officer (whether national or municipal police or prosecutors) who enforces or attempts to enforce any (other than *malum in se*) offence that does not appear in the Criminal Code, or an offence that does appear but has not yet acquired the force of law, will

be personally and professionally liable for any harm they might cause. They might also be criminally liable, if but for their status as law enforcement officers their conduct would have amounted to an offence.

Section 17 further provides that this liability will extend to the entire chain of command if the enforcement or attempted enforcement was a result of an order or instruction. This means that if a police captain instructs a constable to arrest someone for something that is not evidently criminal in the Code, or at least not yet criminal, both the captain and the constable will be liable.

Section 18 provides that no warrant for arrest or detention, or search or seizure, may be issued in connection with an offence (other than *malum in se*) that does not appear in the Criminal Code or which has not yet acquired the force of law.

Sections 19, **20**, **21**, **22**, and **23** bestow upon Parliament, the provincial legislatures, and municipal councils the legislative authority to amend or repeal the relevant Parts of their respective Schedules. This does not detract from the exclusive legislative competences of provincial legislatures, as their authority to adopt laws is not limited, revoked, or changed. Instead, they (and municipal councils) are enabled to amend an Act of Parliament, which they would not have been able to do in the absence of these enabling provisions. **Schedule 1** is reserved for national offences; **Schedule 2** is reserved for provincial offences (with each Part of the Schedule reserved for specific provinces); **Schedule 3** is reserved for offences in metropolitan municipalities (with each Part of the Schedule reserved for specific metropolitan municipalities); **Schedule 4** is reserved for offences in district municipalities (with each Part of the Schedule reserved for specific district municipalities); and **Schedule 5** is reserved for offences in local municipalities (with each Part of the Schedule reserved for specific local municipalities).

Section 24 provides that the Criminal Code (the Schedules to the Act, if adopted) will come into operation once the conference of recorders and review panel have constructed and approved the first complete Criminal Code after the adoption of this Bill. From this date, only offences that appear in the Criminal Code will bear the force of law.

Section 25 requires that the Minister of Justice, provincial MECs for Community Safety, and municipal MMCs for Community Safety, must each appoint a recorder of offences for their jurisdictions.

Section 26 requires that recorders of offences must possess a law degree.

Section 27 provides that recorders of offences are responsible for ensuring the Part of the Schedule that relates to their jurisdiction is kept up to date and publicised within their jurisdiction.

Section 28 prohibits recorders of offences from entering an offence into the Criminal Code unless that conduct has been lawfully criminalised, as provided in *section 10*, by a legislative body.

Section 29 provides that for the two years that follow the adoption of this Bill, at least four conferences must be held by all the recorders of offences. These conferences are aimed at constructing the first complete Criminal Code.

Section 30 provides that at the first of these conferences, the *mala in se* and common law offences at least must be entered into the Code.

Section 31 provides that after each conference, the Criminal Code in its updated state must be submitted to a review panel. That panel must within three months certify the whole Code, reject the whole Code, or certify and reject parts of the Code.

Section 32 provides for the composition of the review panel. It will comprise the Chief Justice; Deputy Chief Justice; another justice of the Constitutional Court chosen by the justices of that Court; the President of the Supreme Court of Appeal; the Deputy President of the Supreme Court of Appeal; another judge of appeal of the Supreme Court of Appeal chosen by the judges of that Court; the Judges-President of each Division of the High Court; another judge chosen by the judges of each Division of the High Court; the Chief Magistrate; the Deputy Chief Magistrate; and the academic head or manager of the criminal law module or course at every South African public university.

Section 33 requires the review panel to ensure that the Criminal Code is accurate and authentically reflects the criminal law and adheres to the standards of the Bill.

Section 34 requires that a new conference of recorders be held to address any rejections made by the review panel. These conferences must be held within 60 days of the rejection.

Section 35 provides that, after the first four conferences of recorders (which must be held in the two years following the adoption of the Bill), there shall be an annual conference of recorders to ensure the Criminal Code remains updated and consistent with the requirements of the Act.

Section 36 provides that nobody may be held criminally liable for any purported offence that did not appear in the Criminal Code at the time the offence was allegedly committed.

Section 37 codifies the elements of a crime in South African law, providing that no person shall be held liable for allegedly committing an offence contained in the Criminal Code, unless that offence corresponds precisely to the criminalised conduct in the original source of criminal liability; that person, in fact, engaged in the criminalised conduct; that person had no lawful reason for engaging in the criminalised conduct; that person, at the time they allegedly engaged in the criminalised conduct, possessed the ability to appreciate the wrongfulness of their act, and the ability to act in accordance with that appreciation; and that person acted with conscious intention or in a reasonably avoidable negligent manner.

Section 38 provides that ignorance would be a valid defence against a charge of criminality if a court finds that, on a balance of probabilities, it is reasonably possible that the defendant did not know that their conduct was criminal. This excludes conduct that is *malum in se*.

Section 39. See *section 6* above.

Section 40. See *section 6* above.

Section 41 provides that when a person is charged with an offence, the charge must refer to the Criminal Code. This does not mean, according to *section 7*, the Criminal Code is the original source of criminal liability. Rather, this provision seeks to empower accused persons and their legal representatives to immediately verify that the impugned conduct was in fact criminal, and did in fact appear in the Code at the time it was allegedly committed.

Section 42 provides that should there be any conflict between this Bill and any other law adopted before or after the commencement of the Act, the Act (should it be adopted) will prevail.

Section 43 provides that the short title of the adopted Act is the Criminal Code Act.

Section 44 provides that the Bill comes into operation as soon as it is signed into law by the President. Note that the Criminal Code comes into operation pursuant to *section 24*.

Schedules. See *sections 19*, *20*, *21*, *22*, and *23*.

DRAFT CRIMINAL CODE BILL, 2024

BILL

To provide for the codification of South African criminal law in all spheres of government; and to provide for incidental matters.

PREAMBLE

WHEREAS section 1(c) of the Constitution provides that the rule of law is a supreme legal value in South Africa, and one of the imperatives of the rule of law is certainty and accessibility of the law;

AND WHEREAS section 12(1)(c) of the Constitution provides that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources, and the criminalisation of any conduct is a form of public violence;

AND WHEREAS section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the state, which would include information relating to the extent of criminalisation in society;

AND BEARING IN MIND THAT:

- most criminal offences applicable in the Republic have been created in statutory and subsidiary legislative measures;
- a significant portion of conduct that would ordinarily be regarded as non-criminal by laypersons, has been criminalised;
- most laypersons do not appreciate the degree of criminalisation in the Republic due, in large part, to the fact that the provisions creating offences are spread so widely;

AND IN ORDER TO:

- ensure that legal certainty and accessibility is advanced as necessary imperatives of the rule of law;
- ensure that laypersons are adequately informed that certain conduct has been criminalised; and
- ensure that criminalisation in the various spheres of government and organs of state is pursued in a uniform, consistent, fair, and accessible manner,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa as follows:

CHAPTER 1
DEFINITIONS AND OBJECTS OF THE ACT

Definitions

1. In this Act, unless the context indicates otherwise:

'Criminal Code' refers collectively to Schedules 1–5 of this Act, being the Criminal Code established by section 3;

'first complete Criminal Code' refers to the Criminal Code in the state agreed by the final conference of recorders in the two years subsequent to the adoption of this Act;

'law enforcement officer' includes national and municipal police officers and prosecutors;

'*malum in se*' and **'*mala in se*'** refers to conduct that by its nature is inherently criminally wrong and penalisable;

'offence' refers to any conduct for which a person is liable or potentially liable for a criminal record, a fine, or imprisonment;

'original source of criminal liability' refers to the measure, other than the Criminal Code, this Act, or an amendment to this Act, adopted by a relevant legislature, that contains a criminalising provision, or modifies any existing criminalising provision;

'relevant legislature' refers to Parliament, a provincial legislature, or a municipal council, as the context may indicate; and

'updated Criminal Code', within the relevant circumstances, refers to the Criminal Code in the updated state agreed by the conference of recorders.

Objects of the Act

2. This Act is adopted so as to:

(1) Bring clarity and certainty to the criminal law of the Republic;

(2) Ensure everyone is able to access one repository of all criminal conduct in the Republic; and

(3) Advance a culture of uniformity, consistency, accessibility, and coherence in the criminal law of the Republic.

CHAPTER 2
THE CRIMINAL CODE

Establishment of the Criminal Code

3. There shall be a Criminal Code, contained in Schedules 1–5 of this Act, that enumerates every offence in South African criminal law.

Availability and accessibility of the Criminal Code

4. The Criminal Code shall be permanently accessible online to any person having an internet connection.

5. Every court of law, post office, social security office, public university, national or municipal police station, and the government printing office, shall within its usual business hours generate and make available a physical copy of the Criminal Code upon request to any person without expectation of payment.

Original sources of criminal liability

6. Other than *mala in se*, the source of criminal liability for every offence recognised by South African law shall be contained in a law of general application adopted by a relevant legislature.

7. Neither this Act nor the Criminal Code may be utilised as the original source of criminal liability for any offence.

8. When it adopts a law contemplated in section 6, the relevant legislature shall, as a matter of legislative language, ensure that the contemplated conduct is clearly and unambiguously criminalised, alongside a clear and unambiguous penalty or sentence associated with that criminalised conduct.

9. The language referred to in section 8 must be easily accessible and understandable to any layperson with basic reading comprehension. Offences or penalties or sentences formulated in an inaccessible, vague, ambiguous, or excessively complex manner shall be invalid and unenforceable.

Offences to appear in the Criminal Code

10. Unless it is *malum in se*, and despite appearing in another law of general application, criminalised conduct must be entered into the Criminal Code before it acquires the force of law.

11. An offence that has been entered into the Criminal Code shall not acquire the force of law before seven days have elapsed since the date

at which it had been entered, or at a later specified date as contemplated in section 14(3).

12. When it has validly adopted the law of general application contemplated in section 6 as the original source of criminal liability for an offence or offences, the relevant legislature shall amend its associated Schedule as contemplated in sections 19, 20, 21, 22, and 23 of this Act.

13. Within its associated Schedule, the relevant legislature, in consultation with the recorder of offences for its jurisdiction, must ensure the offences are categorised according to a clear, consistent, and systematic methodology that is accessible and understandable to any layperson with basic reading comprehension.

14. Every offence entered into the Criminal Code must specify at least:

    (1) The law of general application that is the original source of criminal liability for that offence;

    (2) The penalty or sentence associated with that offence; and

    (3) The date on which the offence did or will acquire the force of law.

15. The style and formatting of the Criminal Code shall, insofar as is possible, be uniform and standardised, as agreed by the conference of recorders.

Enforcement of non-Criminal Code offences

16. A law enforcement officer who enforces, or attempts to enforce, an offence that is not *malum in se* and that does not appear in the Criminal Code, or enforces or attempts to enforce an offence that has not yet acquired the force of law pursuant to section 11, shall be personally, professionally, and where applicable, criminally, liable for any inconvenience, damage, or other harm inflicted during the course of such enforcement or attempted enforcement.

17. The liability referred to in section 16 shall include the entire chain of command involved if the enforcement or attempted enforcement was the result of an order or instruction.

18. No warrant may be issued for the detention or arrest of a person for an offence that is not *malum in se* and that has not been entered into the Criminal Code, or for an offence that has not yet acquired the force of law pursuant to section 11; nor shall a warrant be issued for the

search or seizure of any person or asset in connection with an offence that has not been entered into the Criminal Code, or for an offence that has not yet acquired the force of law pursuant to section 11.

Authority to amend or repeal Schedules

19. Parliament shall have the authority to amend or repeal any provision of Schedule 1 of this Act.

20. A provincial legislature shall have the authority to amend or repeal any provision of its Part in Schedule 2 of this Act.

21. A metropolitan council shall have the authority to amend or repeal any provision of its Part in Schedule 3 of this Act.

22. A district council shall have the authority to amend or repeal any provision of its Part in Schedule 4 of this Act.

23. A local council shall have the authority to amend or repeal any provision of its Part in Schedule 5 of this Act.

Coming into operation of Criminal Code

24. The Criminal Code shall come into operation on the date that the review panel referred to in section 31 has certified the first complete Criminal Code adopted at the fourth conference of recorders, or the last conference held during the second year after the adoption of this Act. At that time, pursuant to section 10, no offence not appearing in the Criminal Code shall bear the force of law.

CHAPTER 3
RECORDERS OF OFFENCES

Recorders of offences

25. Each of the following persons shall appoint a recorder of offences for their respective jurisdiction:

    (1) The member of Cabinet responsible for justice;

    (2) Every provincial member of the Executive Council responsible for community safety; and

    (3) Every municipal member of the Mayoral Committee responsible for community safety.

26. The recorders of offences must possess a generally recognised qualification in law at the status of bachelor’s degree or higher.

27. The recorders of offences shall be responsible for ensuring the Part in the respective Schedule of this Act that relates to the jurisdiction of their appointing authority is kept updated and fully publicised.

28. The recorders of offences shall not enter an offence into the Criminal Code unless the offence was contained in a law of general application that has validly acquired the force of law as contemplated in sections 10.

Recorders conferences and review panel

29. During the two years immediately following the adoption of this Act, not counting the year during which the Act was adopted, the recorders of offences shall gather in at least four conferences of recorders to construct the first complete Criminal Code.

30. The first conference of recorders shall, at least, comprehensively enter into the Criminal Code the *mala in se* and common law offences applicable in South African criminal law.

31. After each conference of recorders, including those contemplated in section 34, the first, or an updated, Criminal Code, shall be submitted to a review panel, which shall within three months from the date of submission, certify the whole Criminal Code, reject the whole Criminal Code, or certify and reject parts of the Criminal Code.

32. The review panel shall comprise:

- the Chief Justice;
- the Deputy Chief Justice;
- another justice of the Constitutional Court chosen by the justices of that Court;
- the President of the Supreme Court of Appeal;
- the Deputy President of the Supreme Court of Appeal;
- another judge of appeal of the Supreme Court of Appeal chosen by the judges of that Court;
- the Judges-President of each Division of the High Court;
- another judge chosen by the judges of each Division of the High Court;
- the Chief Magistrate;
- the Deputy Chief Magistrate; and
- the academic head or manager of the criminal law module or course at every public university in the Republic.

33. The review panel must ensure that the Criminal Code accurately encapsulates the offences as criminalised by the common law or relevant legislature as contemplated in section 6, and adheres to all the requirements of this Act.

34. Should the review panel reject the whole or parts of the first complete Criminal Code or an updated Criminal Code, a new conference of recorders must be held within 60 days to rectify any errors or inadequacies identified by the panel.

35. There shall be at least one conference of recorders per year after the adoption of the first complete Criminal Code to promote the sharing of best practices among jurisdictions and ensure the Criminal Code remains updated and adherent to the requirements of this Act.

CHAPTER 4
GENERAL PRINCIPLES AND PROVISIONS

Liability for an offence

36. Unless it is *malum in se*, no person shall be held criminally liable for any offence if that offence did not appear online in the Criminal Code at the time that the alleged offence was allegedly committed.

37. No person shall be held liable for allegedly committing an offence contained in the Criminal Code, unless:

- that offence corresponds precisely to the criminalised conduct in the original source of criminal liability;
- that person, in fact, engaged in the criminalised conduct;
- that person had no lawful reason for engaging in the criminalised conduct;
- that person, at the time they allegedly engaged in the criminalised conduct, possessed the ability to appreciate the wrongfulness of their act, and the ability to act in accordance with that appreciation; and
- that person acted with conscious intention or in a reasonably avoidable negligent manner.

Ignorance of offence

38. A court of law shall deem the defence of ignorance successful if, in light of the relevant circumstances and on a balance of probabilities, it is reasonably possible that the defendant did not know that their impugned conduct amounted to an offence. This defence shall not apply to conduct that is *malum in se*.

Legislative authority

39. Only Parliament, provincial legislatures, and municipal councils, in plenary session, shall have the authority to designate specified conduct as criminal in South African law.

40. No person or body, including ministers, officials, or regulatory authorities, may, through executive regulations, proclamations, prescriptions, notices, or other measures directly or indirectly render previously non-criminal conduct as criminal, despite the provision of any other law to the contrary.

Criminal charges

41. Notwithstanding section 7, whenever a person is charged with an offence, that charge must refer to the relevant provision in the Criminal Code.

Conflicts

42. In the event of a conflict between this Act and another law adopted prior or subsequent to the commencement of this Act, this Act shall prevail.

Short title and commencement

43. This Act shall be called the Criminal Code Act.

44. This Act comes into operation on the date that it is signed by the President.

Schedules

Schedule 1
Criminal Code – National Offences

Schedule 2
Criminal Code – Provincial Offences

Part A: Eastern Cape

Part B – I: [*et cetera*]

Schedule 3
Criminal Code – Municipal Offences (Metropolitan)

Part A: Buffalo City

Part B – H: [*et cetera*]

Schedule 4
Criminal Code – Municipal Offences (District)

Part A: Alfred Nzo

Part B – AR: [*et cetera*]

Schedule 5
Criminal Code – Municipal Offences (Local)

Part A: Abaqulusi

Part B – GW: [*et cetera*]