



**COMMENTS OF LEGAL AID SOUTH AFRICA ON THE JUDICIAL MATTERS**  
**AMENDMENT BILL 7 OF 2013**

**May 2013**

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**1. INTRODUCTION**

Legal Aid South Africa has perused this Bill and generally welcomes the provisions. The only provision on which Legal Aid South Africa wishes to comment is Clause 10.

**2. CLAUSE 10**

Clause 10 seeks to amend Section 309 (1) (a) of the Criminal Procedure Act 51 of 1977. It seeks to reintroduce a provision that previously existed (prior to 1 April 2010 when the Child Justice Act 75 of 2008 came into operation). In terms thereof any person who was sentenced to life imprisonment by a regional court under section 51(1) of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), may note an appeal without having to apply for leave in terms of section 309B.

The existence of this provision which existed from December 2007 to June 2010 was clearly desirable. It gave to such persons an automatic right of appeal. As mentioned, it was repealed by Act 75 of 2008. Legal Aid South Africa welcomes its return.

Legal Aid South Africa represents most of the accused persons affected by this provision. Its repeal in April 2010 has created a great deal of uncertainty and confusion regarding the rights of such accused persons.

Whilst welcoming the provision, Legal Aid South Africa is of the view that to create greater certainty the reintroduction of this provision should be made retrospective to

1 April 2010 when it was previously repealed. This will ensure that all accused persons affected thereby enjoy the same rights regardless of the date of sentence.

It may also be mentioned that even greater confusion and uncertainty will be created by the reintroduction of this provision in its current form as accused persons who were sentenced on or after 1 April 2010 and prior to its re-enactment will be left uncertain as to their rights. Even the courts will be likely to give conflicting judgments in this regard. The enactment of this provision retrospective to 1 April 2010, will, on the other hand create legal certainty and ensure that those who were sentenced to life imprisonment by a regional court in the intervening period do not feel that there is discrimination against them in relation to those sentenced prior to 1 April 2010 and after the re-enactment of the provision.

### **3. CONCLUSION**

Legal Aid South Africa welcomes the Bill save that it is submitted that for the reasons above stated the provisions of Clause 10 should be retrospective to 1 April 2010 insofar as they affect accused persons sentenced to life imprisonment by a regional court after 1 April 2010.

**LEGAL AID SOUTH AFRICA**