

CRIMINAL LAW CODIFICATION AND REFORM AMENDMENT BILL, 2022

MEMORANDUM

The purpose of this Bill is to amend the various provisions of the Criminal Law Codification and Reform Act “the principal Act” as set out below: —

Clause 1

This clause sets out the Bill’s short title.

Clause 2

This clause inserts a new section 22A of the principal Act. Our Constitutional order of Zimbabwe that is based on parliamentary democracy affords many avenues for aggrieved citizens to redress their wrong internally, including against the State. It is therefore improper for citizens and residents of Zimbabwe by recourse to foreign countries to seek to implement measures that undermine our sovereignty, dignity and independence as a nation. This clause will criminalise such conduct.

Clause 3

This clause will amend section 65 of the principal Act to put 15 years as the minimum mandatory sentence for rape. There has been wide spread concerns over the rising incidents of the heinous crime of sexual violence and rape, and it has been seen fit that more deterrent measures should be put in place to stamp out the crime.

Clause 4

This clause will amend section 155 of the principal Act on the definition of “dangerous drug” to include prepared opium, prepared cannabis, cannabis resin and a scheduled drug. It further, adds the definition of industrial hemp.

Clause 5

This clause amends section 174(1) of the principal Act. The current framing of the offence of criminal abuse of office as provided for in terms of section 171(1) is very broad in its scope in that it gives room for public officers to be prosecuted for honest mistakes made during the course of their duties. Hence the amendment will limit the crime to include an essential element of knowledge on the part of a public official that his or her conduct was illegal.

BILL

To amend the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]
and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

5 **1 Short title**

This Act may be cited as the Criminal Law (Codification and Reform) Amendment Act, 2022.

2 Insertion of new section Cap 9:07

10 The Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (No. 23 of 2004) (hereinafter called “the principal Act”) is amended by the insertion of the following section after section 22—

“22A Wilfully injuring the sovereignty and national interest of Zimbabwe

(1) In this section—

15 “actively partake”, in relation to any meeting, means partake therein with the intention of, or in the role of, promoting, advancing, encouraging, instigating or advocating for the object for which the meeting is convened (for the avoidance of doubt, no person contravenes this section who, at the meeting concerned, discourages or repudiates any object the promotion, advancement, encouragement or instigation of which, or advocacy for which, would have rendered that person liable to prosecution under this section);

20 “agent, proxy or entity” in relation to the an agent, proxy or entity of a foreign government, means any person that the accused knew or had grounds for believing was acting on

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behalf of, or with the knowledge, approval or acquiescence of, the foreign government concerned, or any person about whom it is reasonable to suppose that he or she was acting on behalf of, or with the knowledge, approval or acquiescence of, the foreign government concerned;

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“economic sanctions or trade boycott” means any law or binding direction by a foreign government prohibiting persons subject to its jurisdiction from investing in Zimbabwe or from engaging in any economic activity in or with Zimbabwe or with any entity of Zimbabwe, which investment or activity is beneficial to the people of Zimbabwe as a whole and makes or potentially may make a substantial contribution to their economic development (for the avoidance of doubt, but subject to subsection (6), an advisory or like nonbinding admonition by a foreign government discouraging persons subject to its jurisdiction from investing in Zimbabwe or from engaging in any economic activity in or with Zimbabwe or with any entity of Zimbabwe is not to be considered as falling within the scope of the phrase “economic sanctions or trade boycott”);

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“meeting” means any communication between two or more persons, whether happening in person or virtually or by a combination of both, which involves, or is facilitated or convened by, a foreign government or any of its agents, proxies or entities.

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(2) Any citizen or permanent resident of Zimbabwe (hereinafter in this section called “the accused”) who, within or outside Zimbabwe actively partakes (whether himself or herself or through an agent, and whether on his or her own initiative or at the invitation of the foreign government concerned or any of its agents, proxies or entities) in any meeting whose object the accused knows or has reasonable grounds for believing involves the consideration of or the planning for—

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(a) military or other armed intervention in Zimbabwe by the foreign government concerned or another foreign government, or by any of their agents, proxies or entities; or

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(b) subverting, upsetting, overthrowing or overturning the constitutional government in Zimbabwe;

shall be guilty of wilfully damaging the sovereignty and national interest of Zimbabwe and liable to—

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(i) the same penalties as for treason, in a case referred to in paragraph (a); or

(ii) the same penalties as for subverting constitutional government, in a case referred to in paragraph (b).

(3) Any citizen or permanent resident of Zimbabwe who, within or outside Zimbabwe, actively partakes (whether himself or herself or through an agent, and whether on his or her own initiative or at the invitation of the foreign government concerned or any of its agents, proxies or entities) in any meeting whose object (or one of whose objects) the accused knows or has reasonable grounds for believing involves the

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consideration of or the planning for the implementation or enlargement of sanctions or a trade boycott against Zimbabwe (whether those sanctions or that boycott is untargeted, or targets any individual or official or class of individuals or officials, but whose effects indiscriminately affect the people of Zimbabwe as a whole or any substantial section thereof) shall be guilty of wilfully damaging the sovereignty and national interest of Zimbabwe and liable to—

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(i) a fine not exceeding level twelve or imprisonment for a period not exceeding ten years, or both;

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(ii) additionally or alternatively on the motion of the prosecutor, to any one or more of the following, if the offence is attended by aggravating circumstances referred to in subsection (4) or (6)—

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A. termination of the citizenship of the convicted person, if the convicted person is a citizen by registration or a dual citizen:

Provided that the convicting court shall not impose this penalty if it would effectively render the convicted person stateless;

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B. cancellation of the permanent resident status of the convicted person, if the convicted person is a permanent resident; or

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C. prohibition from being registered as a voter or voting at an election for a period of at least five years but not exceeding fifteen years; or

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D. prohibition from filling a public office for a period of at least five years but not exceeding fifteen years, and, if he or she holds any such office, the convicting court may declare that that office shall be vacated by the convicted person from the date of his or her conviction, unless the tenure of the public office in question is regulated exclusively by or in terms of the Constitution.

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(4) Subject to subsection (5) and (6) it shall be an aggravating circumstance to a charge of wilfully damaging the sovereignty and national interest of Zimbabwe under subsection (3)—

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(a) to prove that an economic sanctions or trade boycott against Zimbabwe (or against any individual or official or class of individuals or officials whose effects indiscriminately affect the people of Zimbabwe as a whole or any substantial section thereof) were implemented as a result of any action taken by the accused;

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(b) if there is evidence showing beyond a reasonable doubt that, though the meeting in question did not result in economic sanctions against or a trade boycott of Zimbabwe, the person made or submitted for consideration or endorsed any statement which he or she knew to be false or had no reasonable basis for believing to be true (in which event the defence referred to in subsection (4) shall not avail him or her).

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(5) In any prosecution for an offence against subsection (3) it shall not be a defence that the accused did not at first know or realise that the meeting which is subject to the charge involved the consideration of sanctions against or a trade boycott of Zimbabwe if after that topic was raised by any participant at the meeting the accused can be proved to have promoted, advanced, encouraged or advocated for the imposition of sanctions or a trade boycott against Zimbabwe. 5

(6) For the purposes of prosecuting a crime specified in subsection (3), if—

- (a) a meeting did not result in or contribute to the implementation of any law or binding direction by a foreign government prohibiting persons subject to its jurisdiction from investing in Zimbabwe or from engaging in any economic activity in or with Zimbabwe or any entity of Zimbabwe; but 10
- (b) as a direct result of the meeting any advisory or like nonbinding admonition was issued by a foreign government discouraging persons subject to its jurisdiction from investing in Zimbabwe or from engaging in any economic activity in or with Zimbabwe or any entity of Zimbabwe; 15

then it is open to a prosecutor to show, beyond a reasonable doubt, that the advisory or admonition by the foreign government resulted in injury to the sovereignty and national interest of Zimbabwe no different from what would have resulted if the foreign government concerned had implemented a law or directive of the tenor described in paragraph (a) (in which event the accused shall be taken to have committed the crime in aggravating circumstances).” 20 25

3 Amendment of section 65 of Cap. 9:23

Section 65 (“Rape”)(4) of the principal Act is amended by the repeal of the resuming words in subsection (1) and the substitution of—

“shall be guilty of rape and liable— 30

- (i) if the crime was committed in aggravating circumstances as described in subsection (2) (that is to say if there is a finding adverse to the accused on any one or more of those factors), to life imprisonment or any definite period of imprisonment of not less than fifteen years; or 35
- (ii) if there are no aggravating circumstances, to a period of not less than five (5) years and not more than fifteen (15) years.”

4 Amendment of section 155 of Cap. 9:23

Section 155 (“Interpretation in Chapter VII”) of the principal Act is amended—

“(a) by the repeal of the definition of “dangerous drug” and the substitution of— 40

“dangerous drugs means” means—

- (i) any coca bush;
- (ii) coca leaf;
- (iii) raw opium;
- (iv) cannabis plant other than industrial hemp; 45
- (v) prepared opium, prepared cannabis or cannabis resin;
- (vi) a scheduled drug;”;

(b) by the insertion of the following definition—

5 “industrial hemp” means the plant *cannabis sativa* L and any part of that plant, including the seed thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not with a delta-9-tetrahydrocannabinol concentration of not more than one *per centum* on a dry weight basis.

(c) by the insertion of the following subsection, the existing section becoming (1)—

10 “(2) If in any investigation of an alleged crime under this Chapter the question arises whether a plant or any part or derivative thereof is cannabis or industrial hemp, the onus lies on the person asserting that it is cannabis to prove that assertion.”

5 Amendment of section 174 of Cap. 9:23

15 Section 174 (“Criminal abuse of duty as a public officer”) of the principal Act is amended by the repeal of subsection (1) and the substitution of—

“(a) if he or she does anything which he or she knows is contrary to or inconsistent with his or her duty as a public officer; or

(b) he or she omits to do anything which he or she knows it is his or her duty to do;

20 with the intention of conferring an undue or illegal benefit on someone else or of unfairly or illegally prejudicing someone else, he or she shall be guilty of criminal abuse of duty as a public officer and liable to a fine not exceeding level thirteen or imprisonment for a period not exceeding fifteen years or both.”.

