

## CHAPTER 9:23

# CRIMINAL LAW (CODIFICATION AND REFORM) ACT

Act 23/2004, 6/2005 (s. 11), 9/2006 (s. 31), 3/2009. SI 30A/2007, 134/2007, 51A/2008, 109/2008

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**AN ACT to consolidate and amend the criminal law of Zimbabwe; to amend the Interpretation Act [Chapter 1:01], the Burial and Cremation Act [Chapter 5:03], the Customary Marriages Act [Chapter 5:07], the Marriage Act [Chapter 5:11], the Magistrates Court Act [Chapter 7:10], and the Prisons Act [Chapter 7:11]; to repeal the Aircraft (Offences) Act [Chapter 9:01] and the Concealment of Birth Act [Chapter 9:04]; to amend the Criminal Procedure and Evidence Act [Chapter 9:07]; to repeal Infanticide Act [Chapter 9:12] and the Miscellaneous Offences Act [Chapter 9:15]; to amend the Prevention of Corruption Act [Chapter 9:16], and the Stock Theft Act [Chapter 9:18]; to repeal the Witchcraft Suppression Act [Chapter 9:19] and the Sexual Offences Act [Chapter 9:21]; to amend the Anti-Corruption Commission Act [Chapter 9:22], the Public Order and Security Act [Chapter 11:17], the Police Act [Chapter 11:10], the Inland Waters Shipping Act [Chapter 13:06], the Tourism Act [Chapter 14:20], the Dangerous Drugs Act [Chapter 15:02], to amend the Medicines and Allied Substances Control Act [Chapter 15:03]; the Public Health Act [Chapter 15:09], the Termination of Pregnancy Act [Chapter 15:10], the Housing and Building Act [Chapter 22:07] and the Mental Health Act, 1996; and to provide for matters connected with or incidental to the foregoing.**

WHEREAS section 18 of the Constitution provides for certain fundamental principles of our criminal justice system including, in particular, the following:—

“18.(2) *If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.*

(3) *Every person who is charged with a criminal offence—*

(a) *shall be presumed to be innocent until he is proved or has pleaded guilty;*

(b) *shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;*

*and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.*

(5) *No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.*

(6) *No person who shows that he has been tried by a competent court for a criminal offence upon a good indictment, summons or charge upon which a valid judgment could be entered and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence...*

(8) *No person who is tried for a criminal offence shall be compelled to give evidence at the trial.”;*

AND WHEREAS it is desirable to codify and, where necessary, reform the common criminal law of Zimbabwe—

(a) in conformity with the fundamental principles set out in the Constitution and other fundamental principles developed over time by our criminal justice system; and

(b) in order to set out in a concise and accessible form what conduct our criminal justice system forbids and punishes and what defences can be raised to criminal charges;

NOW, THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows:—

## CHAPTER I

### PRELIMINARY

#### 1 Short title

(1) Subject to subsection (2), this Act may be cited as the Criminal Law (Codification and Reform) Act [Chapter 9:23].

[Section amended by section 31 of Act 9 of 2006.]

(2) References in this Act to “this Code” and in any other enactment to “the Criminal Law Code” shall be construed as references to this Act.

#### 2 Interpretation

(1) In this Code—

“accessory”, when used in relation to a crime, has the meaning given to it by section *two hundred and five*;

“alternatively” and “concurrently”, in relation to the charging of a person with two or more crimes, shall be construed in accordance with section *two hundred and seventy-nine*;

“accomplice”, when used in relation to a crime, has the meaning given to it by section *one hundred and ninety-five*;

“accused” means a person accused of committing a crime;

“actual perpetrator” has the meaning given to it by section *one hundred and ninety-five*;

“cause”, when used in relation to a consequence ensuing from conduct, means that the conduct has caused the consequence as provided in section *eleven*;

“conduct” includes an act or omission;

“court” means—

(a) the Supreme Court; or

(b) the High Court; or

(c) a magistrates court; or

(d) a local court constituted in terms of the Customary Law and Local Courts Act [Chapter 7:05];  
or

- (e) any other court or tribunal;  
whichever is hearing or has jurisdiction to hear the matter concerned;
- “crime” means any conduct punishable by this Code or as a criminal offence in any other enactment;
- “fixed date” means the date fixed in terms of subsection (3) of section *one* as the date of commencement of this Code;
- “intend”, when used in relation to any crime or conduct, means that intention is an essential element of that crime or conduct as provided in section *thirteen*;
- “judicial officer” means a judge, president, magistrate, presiding officer or other person presiding over a court or tribunal;
- “know”, when used in relation to any crime or conduct, means that knowledge of the relevant fact or circumstance is an essential element of that crime or conduct as provided in section *fourteen*;
- “level”, when used in relation to a fine, means the appropriate level on the standard scale;
- “Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Code;
- “marriage” means a marriage solemnised under the Marriage Act [*Chapter 5:11*] or the Customary Marriages Act [*Chapter 5:07*], or an unregistered customary law marriage, and the words “husband”, “spouse” and “wife” shall be construed accordingly;
- “person”, in relation to a person against whose property or other interests a crime is committed, includes the State;
- “police” means the Police Force or a police officer;
- “police officer” includes a Police Constabulary member or a special constable as defined in section 2 of the Police Act [*Chapter 11:10*];
- “realise”, when used in connection with the existence or otherwise of a real risk or possibility in relation to any crime or conduct, means that realisation of a real risk or possibility is an essential element of that crime or conduct, as provided in section *fifteen*;
- “standard scale” means the standard scale of fines referred to in section *two hundred and eighty* and the First Schedule;
- “unregistered customary law marriage” means a marriage celebrated according to customary law but not solemnised in terms of the Customary Marriages Act [*Chapter 5:07*].

(2) A reference in this Code or any other enactment to any of the crimes mentioned in the first column of the Second Schedule shall be construed as referring to those crimes as defined in the provisions of this Code mentioned opposite thereto in the second column.

(3) Where the determination of the age of a person is relevant for the purposes of this Code, a person shall be deemed to have attained a specified age on the commencement of the relevant anniversary of the day of his or her birth.

### **3 Roman-Dutch criminal law no longer to apply**

(1) The non-statutory Roman-Dutch criminal law in force in the Colony of the Cape of Good Hope on the 10th June, 1891, as subsequently modified in Zimbabwe, shall no longer apply within Zimbabwe to the extent that this Code expressly or impliedly enacts, re-enacts, amends, modifies or repeals that law.

(2) Subsection (1) shall not prevent a court, when interpreting any provision of this Code, from obtaining guidance from judicial decisions and legal writings on relevant aspects of—

- (a) the criminal law referred to in subsection (1); or
- (b) the criminal law that is or was in force in any country other than Zimbabwe.

### **4 Application of Code to other enactments**

(1) Subject to subsection (2), nothing in this Code shall affect the liability, trial and punishment of any person for a crime in terms of any other enactment.

(2) Unless otherwise expressly provided in the enactment concerned, section *five* and Chapters II and XII to XVI of this Code shall apply to the determination of criminal liability of a person in terms of any other enactment.

### **5 Territoriality of crimes**

(1) A person may be tried, convicted and punished for a crime, whether in terms of this Code or any other enactment, where the crime or an essential element of the crime was—

- (a) committed wholly inside Zimbabwe; or
- (b) committed partly outside Zimbabwe, if the conduct that completed the crime took place inside Zimbabwe; or
- (c) committed wholly or partly outside Zimbabwe, if the crime—
  - (i) is a crime against public security in Zimbabwe or against the safety of the State of Zimbabwe; or
  - (ii) is a crime which—

- A. has produced a harmful effect in Zimbabwe; or
  - B. was intended to produce a harmful effect in Zimbabwe; or
  - C. was committed with the realisation that there was a real risk or possibility that it might produce a harmful effect in Zimbabwe.
- (2) This section does not limit the effect of any enactment which—
- (a) regulates the territorial jurisdiction of any court; or
  - (b) makes special provision for the trial, conviction or punishment of particular extra-territorial crimes.

## CHAPTER II

### ELEMENTS OF CRIMINAL LIABILITY

#### PART I

##### CRIMINAL CAPACITY

### 6 Children under seven years of age not criminally liable

A child below the age of seven years shall be deemed to lack criminal capacity and shall not be tried for or convicted of any crime which he or she is alleged to have committed before attaining that age.

### 7 Criminal capacity of children between seven and fourteen years of age

A child who is of or over the age of seven years but below the age of fourteen years at the time of the conduct constituting any crime which he or she is alleged to have committed shall be presumed, unless the contrary is proved beyond a reasonable doubt—

- (a) to lack the capacity to form the intention necessary to commit the crime; or
- (b) where negligence is an element of the crime concerned, to lack the capacity to behave in the way that a reasonable adult would have behaved in the circumstances.

### 8 No presumption of criminal incapacity for persons over the age of fourteen years

For the avoidance of doubt it is declared that no person who is of or over the age of fourteen years shall be presumed to lack the capacity to form the necessary intention to commit any crime or, where negligence is an element of the crime concerned, to behave in the way that a reasonable person would have behaved in the circumstances of the crime.

#### PART II

##### CRIMINAL CONDUCT

### 9 Liability for criminal conduct

A person shall not be guilty of or liable to be punished for a crime unless—

- (a) the crime is defined by this Code or any other enactment; and
- (b) the person committed the crime or was a party to its commission as provided in this Code or in the enactment concerned; and
- (c) his or her liability is based upon voluntary conduct; and
- (d) subject to subsection (5) of section *seventeen*, the person engaged in the conduct constituting the crime with any of the blameworthy states of mind referred to in sections *thirteen* to *sixteen*, as this Code or any other enactment may require; and
- (e) his or her liability is based upon unlawful conduct, that is, upon conduct for which there is no lawful excuse affording that person a complete defence to the criminal charge, whether in terms of Chapter XIV or otherwise.

### 10 Criminal conduct may consist of acts or omissions

(1) Criminal conduct may consist of either an act or an omission.

(2) A person shall not be held criminally liable for an omission nor shall he or she be guilty of the crime to which the omission relates unless—

- (a) the crime for which the person is held liable is defined in such a way as to render criminal his or her failure to act; or
- (b) the person had a legal duty to act positively arising from—
  - (i) the existence of a protective or family relationship between himself or herself and another person which required him or her to protect the life, safety or any legal interest of that other person; or
  - (ii) the creation by the person's prior conduct of a situation in which another person's life, safety or legal interest was or might be endangered; or
  - (iii) his or her assuming control, by contract or otherwise, over a situation, whether brought about by him or her or not, in which another person's life, safety or legal interest was or might be endangered; or

- (iv) his or her holding a public or like office.

## **11 Causation**

(1) A person shall not be held criminally liable for a consequence unless the person's conduct caused or substantially contributed to its occurrence.

(2) A person's conduct shall be deemed to have caused or substantially contributed to a consequence for the purposes of subsection (1) if the conduct—

- (a) is the factual cause of the consequence, that is, but for the conduct the consequence would not have occurred; and
- (b) is the legal cause of the consequence, that is, the consequence—
  - (i) was a reasonably foreseeable consequence of his or her conduct; or
  - (ii) was brought about by a new cause supervening after his or her conduct, which cause was itself a reasonably foreseeable consequence of his or her conduct.

## **PART III**

### STATES OF MIND

## **12 Meaning of subjective state of mind**

For the purposes of this Part, a subjective test for a state of mind is a test whereby a court decides whether or not the person concerned actually possessed that state of mind at the relevant time, taking into account all relevant factors that may have influenced that person's state of mind.

## **13 Intention**

(1) Where intention is an element of any crime, the test is subjective and is whether or not the person whose conduct is in issue intended to engage in the conduct or produce the consequence he or she did.

(2) Except as may be expressly provided in this Code or in the enactment concerned, the motive or underlying reason for a person's doing or omitting to do any thing, or forming any intention, is immaterial to that person's criminal liability in terms of this Code or any other enactment.

## **14 Knowledge**

Where knowledge is an element of any crime, the test is subjective and is whether or not the person whose conduct is in issue had knowledge of the relevant fact or circumstance.

## **15 Realisation of real risk or possibility**

(1) Where realisation of a real risk or possibility is an element of any crime, the test is subjective and consists of the following two components—

- (a) a component of awareness, that is, whether or not the person whose conduct is in issue realised that there was a risk or possibility, other than a remote risk or possibility, that—
  - (i) his or her conduct might give rise to the relevant consequence; or
  - (ii) the relevant fact or circumstance existed when he or she engaged in the conduct;and
- (b) a component of recklessness, that is, whether, despite realising the risk or possibility referred to in paragraph (a), the person whose conduct is in issue continued to engage in that conduct.

(2) If a crime of which the realisation of a real risk or possibility is an element is so defined in this Code or any other enactment that—

- (a) the words describing the component of awareness are omitted, the component of awareness shall be implicit in the word "recklessly" or any derivatives of that word; or
- (b) the words describing the component of recklessness are omitted, the component of recklessness shall be implicit in the expression "realise a real risk or possibility" or any derivatives of that expression.

(3) Where, in a prosecution of a crime of which the realisation of a real risk or possibility is an element, the component of awareness is proved, the component of recklessness shall be inferred from the fact that—

- (a) the relevant consequence actually ensued from the conduct of the accused; or
- (b) the relevant fact or circumstance actually existed when the accused engaged in the conduct;

as the case may be.

(4) For the avoidance of doubt it is declared that the test for realisation of a real risk or possibility supersedes the common-law test for constructive or legal intention and its components of foresight of a possibility and recklessness wherever that test was formerly applicable.

## **16 Negligence**

(1) Where negligence is an element of any crime—

- (a) constituted by the performance of an act, the test is objective and consists of the inquiry whether the accused person's performance of that act was blameworthy in that—
  - (i) a reasonable person in the same circumstances as the accused would not have performed that act;or

- (ii) the accused failed to perform the act with the care and skill with which a reasonable person in the same circumstances would have performed that act; whichever inquiry is appropriate to the crime in question; or
  - (b) constituted by the omission to perform an act, the test is objective and consists of the inquiry whether the accused person's omission to perform that act was blameworthy in that a reasonable person in the same circumstances would not have omitted to perform the act; or
  - (c) constituted wholly or partly by a consequence resulting from the conduct of an accused person, or by the existence or absence of any circumstance in which such conduct occurred, the test is objective and falls into two parts—
    - (i) whether or not the accused person failed to realise that his or her conduct might produce the relevant consequence or that the relevant circumstance might exist or be absent; and
    - (ii) if the accused person did fail as provided in subparagraph (i), whether or not the person's failure was blameworthy in that a reasonable person in the same circumstances—
      - A. would have realised that the relevant consequence might be produced and would have guarded against it; or
      - B. would have realised that the relevant fact or circumstance might exist or be absent and would have taken steps to ascertain whether or not it did exist;
- as the case may be.

[Paragraph amended by section 31 of Act 9 of 2006.]

(2) For the avoidance of doubt it is declared that paragraph (c) of subsection (1) shall apply to the determination of the criminal liability of any person accused of culpable homicide, negligently causing serious bodily harm or negligently causing serious damage to property.

## 17 References or absence of references to states of mind in statutory crimes

- (1) In this section—  
 “mental element”, in relation to a crime, means any intention, knowledge, realisation of a real risk or possibility, or negligence with which that crime is committed;  
 “strict liability crime” means a crime for the commission of which no mental element is required to be proved in order to establish liability for that crime.
- (2) Where in any enactment creating a crime—
- (a) the word “corruptly”, “deliberately”, “dishonestly”, “fraudulently”, “indecently”, “intend”, “intentionally”, “maliciously”, “mischievously”, “purposely”, “wantonly” or “wilfully”, or phrase “with intent to” or “for the purpose of” or any related or derivative expression is used with respect to the commission by any person of the crime, section *thirteen* or (subject to subsection (3) of this section) section *fifteen* shall apply to the determination of the state of mind of the person accused of committing that crime;
  - (b) the word “knowing”, “knowingly” or any related or derivative expression is used with respect to the commission by any person of the crime, section *fourteen* or (subject to subsection (3) of this section) section *fifteen* shall apply to the determination of the state of mind of the person accused of committing it;
  - (c) the word “recklessly” or any related or derivative expression is used with respect to the commission by any person of the crime, section *fifteen* shall apply to the determination of the state of mind of the person accused of committing it;
  - (d) the word “negligently”, “carelessly”, “unskilfully” or any related or derivative expression is used with respect to the commission by any person of the crime, section *sixteen* shall apply to the determination of the state of mind of the person accused of committing it.
- (3) The test for realisation of a real risk or possibility contained in section *fifteen* shall only apply to a crime referred to in paragraph (a) or (b) of subsection (2)—
- (a) if proof of intention as required by section *thirteen* or proof of knowledge as required by section *fourteen* is absent; and
  - (b) if the crime is of a kind described in paragraph (a) or (b) of subsection (4).
- (4) The kinds of crime to which the test for realisation of a real risk or possibility contained in section *fifteen* can be applied are the following—
- (a) a crime that is constituted not only by the conduct of the person accused of committing it but also by a consequence or potential consequence resulting from the conduct, in which event the test is applicable for the purpose of determining whether the accused realised that there was a real risk or possibility that the consequence might ensue; or
  - (b) a crime that is constituted not only by the conduct of the person accused of committing it but also by the existence or absence of any circumstance in which such conduct occurred, in which event the test is

applicable for the purpose of determining whether the accused realised that there was a real risk or possibility that the circumstance existed or was absent.

(5) Where in any enactment creating a crime no expression specifying a state of mind is used with respect to the commission of that crime, section *thirteen* or *fourteen*, as may be appropriate to the crime in question, and (subject to subsection (3) of this section) section *fifteen* shall apply to the determination of the state of mind of the person accused of that crime, unless—

- (a) the enactment expressly provides that the crime is a strict liability crime; or
- (b) the legislature impliedly intended it to be a strict liability crime because—
  - (i) the requirement of proving a mental element would render the detection or prosecution of the crime impossible or practically impossible; or
  - (ii) the object of the enactment would be defeated if proof of a mental element is required to establish liability for the crime:

Provided that, notwithstanding subparagraph (i) or (ii), a court shall not hold that the legislature impliedly intended a crime to be a strict liability crime if the penalty for it is mandatory imprisonment or imprisonment without the option of a fine.

## PART IV

### PROOF OF CRIMINAL LIABILITY

#### 18 Degree and burden of proof in criminal cases

(1) Subject to subsection (2), no person shall be held to be guilty of a crime in terms of this Code or any other enactment unless each essential element of the crime is proved beyond a reasonable doubt.

(2) Subsection (1) shall not prevent any enactment from imposing upon a person charged with a crime the burden of proving any particular fact or circumstance.

(3) Where this Code or any other enactment imposes upon a person charged with a crime the burden of proving any particular fact or circumstance, the person may discharge the burden by proving that fact or circumstance on a balance of probabilities.

(4) Except where this Code or any other enactment expressly imposes the burden of proof of any particular fact or circumstance upon a person charged with a crime, once there is some evidence before the court which raises a defence to the charge, whether or not the evidence has been introduced by the accused, the burden shall rest upon the prosecution to prove beyond a reasonable doubt that the defence does not apply:

Provided that where an accused pleads that, at the time of the commission of a crime, he or she was suffering from a mental disorder or defect as defined in section *two hundred and twenty-six*, or a partial mental disorder or defect as defined in section *two hundred and seventeen*, or acute mental or emotional stress, the burden shall rest upon the accused to prove, on a balance of probabilities, that he or she was suffering from such mental disorder or defect or acute mental or emotional stress.

## CHAPTER III

### CRIMES AGAINST THE STATE

#### 19 Interpretation in Chapter III

In this Chapter—

“act of insurgency, banditry, sabotage or terrorism” means any act referred to in subparagraph (i), (ii), (iii), (iv) or (v) of subsection (1) of section *twenty-three* that is undertaken for a purpose referred to in paragraph (a), (b) or (c) of that subsection;

“bomb” means—

- (a) any device consisting of or carrying an explosive charge or fused to detonate upon impact or percussion or through a timing contrivance or by an electrical or electronic device; or
- (b) any other device capable of causing an explosion;

“essential service” means—

- (a) any service relating to the generation, supply or distribution of electricity; or
- (b) any fire brigade or fire service; or
- (c) any health, hospital or ambulance service; or
- (d) any service relating to the production, supply, delivery or distribution of fuel; or
- (e) any service relating to the supply or distribution of water; or
- (f) any communications service; or
- (g) any transport service; or
- (h) any other service or occupation whose interruption would endanger the life, health or safety of the whole or a part of the population and which the Minister may declare by notice in a statutory instrument to be an essential service;

“insurgent, bandit, saboteur or terrorist” means a person who—

- (a) is about to commit, is committing or has committed an act of insurgency, banditry, sabotage or terrorism; or;
- (b) has attended a course or undergone training, is about to attend a course or undergo training or is attending a course or undergoing training referred to in subsection (1) of section *twenty-five*;

“law enforcement agency” means the Police Force (including a member of the Police Constabulary as defined in section 2 of the Police Act [*Chapter 11:10*]) or an intelligence service maintained by the Government, or any agency assigned by an enactment to maintain and enforce the law;

“offensive material” means any inflammable, dangerous, noxious, or deleterious substance, material or thing capable of killing or injuring persons, including—

- (a) low or high explosives and the ingredients thereof;
- (b) all types of fuse used in the ignition of explosives;
- (c) detonators;
- (d) timing devices, especially time pencils;
- (e) wire cutters;
- (f) concentrated or other harmful acids;
- (g) ammunition as defined in the Firearms Act [*Chapter 10:09*];
- (h) biological or chemical warfare agents;
- (i) any other substance, material or thing declared by the Minister, by notice in a statutory instrument, to be an offensive material for the purposes of this definition;

“official” means—

- (a) a member of any law enforcement agency; or
- (b) an ancillary member of the Police Force as defined in section 2 of the Police Act [*Chapter 11:10*]; or
- (c) a member of the Defence Forces; or
- (d) a provincial or district administrator or an assistant provincial or district administrator or any other employee of the State acting in that capacity;

“publication” includes a document, book, magazine, film, tape, disc, electronic publication or other material or thing whatsoever in which, on which or by means of which a statement may be made;

“statement” means any expression of fact or opinion, whether made orally, in writing, electronically or by visual images;

“weaponry” means any of the following kinds of offensive material—

- (a) artillery of all kinds;
- (b) a firearm or other apparatus for the discharge of bullets or other kinds of projectiles which are designed to be lethal, whether solid, explosive or gas diffusing;
- (c) a flame-thrower;
- (d) high or low explosive, whether or not manufactured as a bomb, grenade or similar missile or device and whether capable of use with a firearm or not, including a fuse, detonator or timing device therefor;
- (e) biological or chemical warfare agents;
- (f) any other offensive material declared by the Minister, by notice in a statutory instrument, to be an offensive material for the purposes of this definition.

## 20 Treason

(1) Any person who is a citizen of or ordinarily resident in Zimbabwe and who—

- (a) does any act, whether inside or outside Zimbabwe, with the intention of overthrowing the Government; or
- (b) incites, conspires with or assists any other person to do any act, whether inside or outside Zimbabwe, with the intention of overthrowing the Government;

shall be guilty of treason and liable to be sentenced to death or to imprisonment for life.

(2) Without limiting subsection (1), the following may constitute acts of treason—

- (a) preparing or endeavouring to carry out by force any enterprise which usurps the executive power of the President or the State in any matter;
- (b) in time of war or during a period of public emergency, doing any thing which assists any other State to engage in hostile or belligerent action against Zimbabwe;
- (c) instigating any other State or foreign person to invade Zimbabwe.

(3) For the avoidance of doubt, it is declared that nothing in this section shall prevent the doing of any thing by lawful constitutional means directed at—

- (a) the correction of errors or defects in the system of Government or Constitution of Zimbabwe or the administration of justice in Zimbabwe; or



- (b) the replacement of the Government or President of Zimbabwe; or
- (c) the adoption or abandonment of policies or legislation; or
- (d) the alteration of any matter established by law in Zimbabwe.

## 21 Concealing treason

Subject to subsection (3) of section *twenty*, any person who is a citizen of or ordinarily resident in Zimbabwe and who, knowing that any other person—

- (a) has done or attempted to do; or
- (b) is doing or is attempting to do; or
- (c) intends to do;

whether inside or outside Zimbabwe, any act with the intention of overthrowing the Government, does not inform an official as soon as is reasonably possible after acquiring such knowledge, shall be guilty of concealing treason and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding twenty years or both.

## 22 Subverting constitutional government

(1) In this section—

“coercing” means constraining, compelling or restraining by—

- (a) physical force or violence or, if accompanied by physical force or violence or the threat thereof, boycott, civil disobedience or resistance to any law, whether such resistance is active or passive; or
- (b) threats to apply or employ any of the means described in paragraph (a);

“unconstitutional means” means any process which is not a process provided for in the Constitution and the law.

(2) Any person who, whether inside or outside Zimbabwe—

- (a) organises or sets up, or advocates, urges or suggests the organisation or setting up of, any group or body with a view to that group or body—
  - (i) overthrowing or attempting to overthrow the Government by unconstitutional means; or
  - (ii) taking over or attempting to take over the Government by unconstitutional means or usurping the functions of the Government; or
  - (iii) coercing or attempting to coerce the Government;
 or
- (b) supports or assists any group or body in doing or attempting to do any of the things described in subparagraph (i), (ii) or (iii) of paragraph (a);

shall be guilty of subverting constitutional government and liable to imprisonment for a period not exceeding twenty years without the option of a fine.

## 23 Insurgency, banditry, sabotage or terrorism

(1) Any person who, for the purpose of—

- (a) causing or furthering an insurrection in Zimbabwe; or
- (b) causing the forcible resistance to the Government or the Defence Forces or any law enforcement agency; or
- (c) procuring by force the alteration of any law or policy of the Government;

commits any act accompanied by the use or threatened use of weaponry with the intention or realising that there is a real risk or possibility of—

- (i) killing or injuring any other person; or
- (ii) damaging or destroying any property; or
- (iii) inflicting substantial financial loss upon any other person; or
- (iv) obstructing or endangering the free movement in Zimbabwe of any traffic on land or water or in the air; or
- (v) disrupting or interfering with an essential service;

shall be guilty of insurgency, banditry, sabotage or terrorism, whether or not any purpose referred to in paragraph (a), (b) or (c) is accomplished, and be liable—

- A. where the act of insurgency, banditry, sabotage or terrorism results in the death of a person, to be sentenced to death or to imprisonment for life;
- B. in any other case, to imprisonment for life or any shorter period.

(2) For the avoidance of doubt it is declared that where any act of insurgency, banditry, sabotage or terrorism does not result in any of the consequences referred to in subparagraph (i), (ii), (iii), (iv) or (v) of subsection (1), the competent charge shall be one of attempting to commit an act of insurgency, banditry, sabotage or terrorism.

## 24 Recruiting or training insurgents, bandits, saboteurs or terrorists

Any person who intentionally—

- (a) recruits, assists or encourages any other person to undergo training inside or outside Zimbabwe in order to commit any act of insurgency, banditry, sabotage or terrorism in Zimbabwe; or
- (b) provides training to any person, whether inside or outside Zimbabwe, in order to commit any act of insurgency, banditry, sabotage or terrorism in Zimbabwe;

shall be guilty of recruiting or training an insurgent, bandit, saboteur or terrorist and liable to imprisonment for life or any shorter period.

## **25 Training as insurgent, bandit, saboteur or terrorist**

(1) Any person who attends or undergoes any course of training, whether inside or outside Zimbabwe, for the purpose of enabling him or her to commit any act of insurgency, banditry, sabotage or terrorism in Zimbabwe shall be guilty of training as an insurgent, bandit, saboteur or terrorist and liable to imprisonment for life or any shorter period.

(2) If it is proved in a prosecution for training as an insurgent, bandit, saboteur or terrorist that the accused attended or underwent a course of training whose effect was to enable that person to commit an act of insurgency, banditry, sabotage or terrorism in Zimbabwe, it shall be presumed, unless the contrary is proved, that he or she did so for that purpose.

## **26 Supplying weaponry to insurgents, bandits, saboteurs or terrorists**

Any person who, inside or outside Zimbabwe, supplies weaponry to an insurgent, bandit, saboteur or terrorist, knowing that the weaponry will be used in the commission of an act of insurgency, banditry, sabotage or terrorism or realising that there is a real risk or possibility that the weaponry will be so used, shall be guilty of supplying weaponry to an insurgent, bandit, saboteur or terrorist and liable to imprisonment for life or any shorter period.

## **27 Possessing weaponry for insurgency, banditry, sabotage or terrorism**

(1) Any person who has any weaponry in his or her possession or under his or her control with the intention that such weaponry will be used in the commission of an act of insurgency, banditry, sabotage or terrorism shall be guilty of possessing weaponry for insurgency, banditry, sabotage or terrorism and liable to imprisonment for life or any shorter period.

(2) If it is proved in a prosecution for possessing weaponry for insurgency, banditry, sabotage or terrorism that—

- (a) the accused was in unlawful possession of any weaponry; and
- (b) the weaponry consists of any weapon, firearm or ammunition—
  - (i) referred to in section 24 of the Firearms Act [*Chapter 10:09*]; or
  - (ii) for the purchase, acquisition or possession of which the accused has no good ostensible reason; or
  - (iii) that was part of a cache or was found in the possession of the accused in such a quantity as cannot be accounted for by reason of personal use alone;

it shall be presumed, unless the contrary is proved, that the accused possessed the weaponry with the intention that it should be used in the commission of an act of insurgency, banditry, sabotage or terrorism.

(3) A person charged with possessing weaponry for insurgency, banditry, sabotage or terrorism may be found guilty of—

- (a) contravening section 4 of the Firearms Act [*Chapter 10:09*]; or
- (b) possessing a dangerous weapon;

if such are the facts proved.

## **28 Possession of dangerous weapons**

(1) Any person who has unlawful possession of any of the following weapons—

- (a) artillery of any kind or any shell or other ammunition therefor; or
- (b) a flame thrower; or
- (c) a bomb, grenade or similar missile or device, whether capable of use with a firearm or not, including any fuse, detonator or timing device therefor; or
- (d) a machine-gun or sub-machine-gun; or
- (e) any automatic or semi-automatic firearm, other than a pistol, that is or has been in use in the Defence Forces, the Police Force or the armed or police forces of any neighbouring State;

shall be guilty of possessing a dangerous weapon and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

(2) It shall be a defence to a charge of possessing a dangerous weapon for the accused to prove that—

- (a) he or she was the holder of a certificate or permit issued under any enactment authorising his or her possession of the weapon concerned; or
- (b) he or she possessed the weapon concerned in the course of his or her duties as a member of the Defence Forces or the Police Force, or as an employee of the State duly authorised to possess the weapon.

(3) Where any firearm or ammunition in respect of which a firearm certificate is capable of being granted in terms of the Firearms Act [*Chapter 10:09*] is found in the possession of any person who does not hold such certificate, the competent charge is contravening section 4 of the Firearms Act [*Chapter 10:09*] and not possessing a dangerous weapon.

(4) A person charged with possessing a dangerous weapon may be found guilty of contravening section 4 of the Firearms Act [*Chapter 10:09*] if such are the facts proved.

## **29 Harbours, concealing or failing to report insurgent, bandit, saboteur or terrorist**

(1) Any person who, knowing that another person is an insurgent, bandit, saboteur or terrorist, intentionally harbours or conceals that other person shall be guilty of harbouring or concealing an insurgent, bandit, saboteur or terrorist and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

(2) Any person who becomes aware of the presence in Zimbabwe of another person whom he or she knows to be an insurgent, bandit, saboteur or terrorist and who—

(a) fails, within the period prescribed in subsection (3), to report to an official the presence of that other person in Zimbabwe and any information it is in his or her power to give in relation to that other person; or

(b) upon being questioned by an official, intentionally—

(i) omits or refuses to disclose to the official any information it is in his or her power to give in relation to that other person; or

(ii) gives the official false information in relation to that other person;

shall be guilty of failing to report the presence of an insurgent, bandit, saboteur or terrorist and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(3) A person shall make a report in terms of paragraph (a) of subsection (2) as soon as is reasonably practicable after he or she becomes aware of the presence in Zimbabwe of the insurgent, bandit, saboteur or terrorist concerned, and in any event within seventy-two hours of becoming so aware.

(4) For the avoidance of doubt it is declared that a person who—

(a) has committed an act of insurgency, banditry, sabotage or terrorism; or

(b) has attended a course or undergone training referred to in subsection (1) of section *twenty-five*;

for which he or she has been convicted and sentenced or granted a pardon or amnesty shall not be regarded as an insurgent, bandit, saboteur or terrorist in respect of that conduct.

## **30 Causing disaffection among Police Force or Defence Forces**

If any person induces, or attempts to induce, or does any act with the intention or realising that there is a real risk or possibility of inducing or causing any member of the Police Force or Defence Forces to withhold his or her services, loyalty or allegiance or to commit breaches of discipline, he or she shall be guilty of causing disaffection among the Police Force or Defence Forces and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

## **31 Publishing or communicating false statements prejudicial to the State**

Any person who, whether inside or outside Zimbabwe—

(a) publishes or communicates to any other person a statement which is wholly or materially false with the intention or realising that there is a real risk or possibility of—

(i) inciting or promoting public disorder or public violence or endangering public safety; or

(ii) adversely affecting the defence or economic interests of Zimbabwe; or

(iii) undermining public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or

(iv) interfering with, disrupting or interrupting any essential service;

shall, whether or not the publication or communication results in a consequence referred to in subparagraph (i), (ii), (iii) or (iv); or

(b) with or without the intention or realisation referred to in paragraph (a), publishes or communicates to any other person a statement which is wholly or materially false and which—

(i) he or she knows to be false; or

(ii) he or she does not have reasonable grounds for believing to be true;

shall, if the publication or communication of the statement—

A. promotes public disorder or public violence or endangers public safety; or

B. adversely affects the defence or economic interests of Zimbabwe; or

C. undermines public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or

D. interferes with, disrupts or interrupts any essential service;

be guilty of publishing or communicating a false statement prejudicial to the State and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding twenty years or both.

### **32 Unlawful possession or wearing of camouflage uniforms**

(1) In this section—

“authorised person” means—

- (a) a member of the Defence Forces, the Police Force, the Prison Service or any other uniformed force of the State;
- (b) a member of a military force of a foreign State who is—
  - (i) on attachment to any force referred to in paragraph (a) under an arrangement made between the Government and the government of that foreign State; or
  - (ii) present in Zimbabwe, with the approval of the Government, in the course of his or her official duties;

“camouflage uniform” means any article of wearing apparel made of material carrying military-style camouflage markings.

(2) Subject to subsection (3), any person who unlawfully possesses or wears any camouflage uniform shall be guilty of unlawfully possessing or wearing a camouflage uniform, as the case may be, and liable—

- (a) to a fine not exceeding level five or imprisonment for a period not exceeding six months or both, in the case of unlawful possession of a camouflage uniform; or
- (b) to a fine not exceeding level six or imprisonment for a period not exceeding one year or both, in the case of unlawful wearing of any camouflage uniform.

(3) Subsection (2) shall not apply in relation to—

- (a) an authorised person to the extent that the person possesses or wears a camouflage uniform that has, on or after the 18th April, 1980, been supplied to him or her, or authorised for his or her use, by the force of which he or she is a member or to which he or she is attached; or
- (b) the possession of a camouflage uniform as an exhibit in a museum administered by the State or in terms of the National Museums and Monuments Act [*Chapter 25:11*]; or
- (c) any person or member of a class of persons exempted from this section by the Minister by notice in writing to that person or by notice in the *Gazette*, as the Minister thinks fit, to the extent that such person or member possesses or wears camouflage uniform in accordance with the terms and conditions of such exemption.

### **33 Undermining authority of or insulting President**

(1) In this section—

“publicly”, in relation to making a statement, means—

- (a) making the statement in a public place or any place to which the public or any section of the public have access;
- (b) publishing it in any printed or electronic medium for reception by the public;

“statement” includes any act or gesture.

(2) Any person who publicly, unlawfully and intentionally—

- (a) makes any statement about or concerning the President or an acting President with the knowledge or realising that there is a real risk or possibility that the statement is false and that it may—
  - (i) engender feelings of hostility towards; or
  - (ii) cause hatred, contempt or ridicule of;the President or an acting President, whether in person or in respect of the President’s office; or
- (b) makes any abusive, indecent or obscene statement about or concerning the President or an acting President, whether in respect of the President personally or the President’s office;

shall be guilty of undermining the authority of or insulting the President and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

### **34 Attorney General to authorise prosecutions under Chapter III**

No proceedings shall be instituted or continued against any person in respect of a crime in terms of this Chapter, other than proceedings in respect of the crime of possessing a dangerous weapon or unlawfully possessing or wearing a camouflage uniform or for the purposes of remand, without the authority of the Attorney-General.

## **CHAPTER IV**

### **CRIMES AGAINST PUBLIC ORDER**

### **35 Interpretation in Chapter IV**

In this Chapter—

“offensive material” and “weaponry” have the meanings given to those terms in section *nineteen*;

“public demonstration” means a procession, gathering or assembly in a public place of persons and additionally, or alternatively, of vehicles, where the gathering is in pursuit of a common purpose of

demonstrating support for, or opposition to, any person, matter or thing, whether or not the gathering is spontaneous or is confined to persons who are members of a particular organisation, association or other body or to persons who have been invited to attend;

“public gathering” means a public meeting or a public demonstration;

“public meeting” means any meeting which is held in a public place or to which the public or any section of the public have access, whether on payment or otherwise;

“public place” means any thoroughfare, building, open space or other place of any description to which the public or any section of the public have access, whether on payment or otherwise and whether or not the right of admission thereto is reserved.

### **36 Public violence**

(1) Any person who, acting in concert with one or more other persons, forcibly and to a serious extent—

- (a) disturbs the peace, security or order of the public or any section of the public; or
- (b) invades the rights of other people;

intending such disturbance or invasion or realising that there is a real risk or possibility that such disturbance or invasion may occur, shall be guilty of public violence and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

(2) In determining whether or not a disturbance of peace, security or order or an invasion of rights is sufficiently serious to constitute the crime of public violence, a court shall take into account all relevant factors, including the following—

- (a) the nature and duration of the disturbance or invasion;
- (b) the motive of the persons involved in the disturbance or invasion;
- (c) whether the disturbance or invasion occurred in a public place or on private property;
- (d) whether or not the persons involved in the disturbance or invasion were armed and, if so, the nature of their weapons;
- (e) whether or not bodily injury or damage to property occurred in the course of or as a result of the disturbance or invasion;
- (f) whether or not there was an attack on the police or on other persons in lawful authority;
- (g) the manner in which the disturbance or invasion came to an end.

(3) It shall be an aggravating circumstance if, in the course of or as a result of the public violence—

- (a) there was an attack on the police or on other persons in lawful authority; or
- (b) bodily injury or damage to property occurred; or
- (c) the person who has been convicted of the crime instigated an attack on the police or other persons in lawful authority or instigated the infliction of bodily injury or the causing of damage to property.

### **37 Participating in gathering with intent to promote public violence, breaches of the peace or bigotry**

(1) Any person who—

- (a) acts together with one or more other persons present with him or her in any place or at any meeting with the intention or realising that there is a real risk or possibility of forcibly—
  - (i) disturbing the peace, security or order of the public or any section of the public; or
  - (ii) invading the rights of other people;

or

- (b) acting together with one or more other persons present with him or her in any place or at any meeting performs any action, utters any words or distributes or displays any writing, sign or other visible representation that is obscene, threatening, abusive or insulting, intending thereby to provoke a breach of the peace or realising that there is a risk or possibility that a breach of the peace may be provoked; or
- (c) acting together with one or more other persons present with him or her in any place or at any meeting utters any words or distributes or displays any writing, sign or other visible representation—

- (i) with the intention to engender, promote or expose to hatred, contempt or ridicule any group, section or class of persons in Zimbabwe solely on account of the race, tribe, nationality, place of origin, national or ethnic origin, colour, religion or gender of such group, section or class of persons; or
- (ii) realising that there is a risk or possibility that such behaviour might have an effect referred to in subparagraph (i);

shall be guilty of participating in a gathering with intent to promote public violence, a breach of the peace or bigotry, as the case may be, and be liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(2) The crime of participating in a gathering with intent to promote public violence, a breach of the peace or bigotry is committed whether the action constituting it is spontaneous or planned in advance, and whether the place or meeting where it occurred is public or private.

(3) For the avoidance of doubt it is declared that where a person would be liable for contravening—

- (a) paragraph (a) or (b); or
- (b) paragraph (c);

of subsection (1), but for the fact that the person acted alone in a public place, the competent charge is disorderly conduct in a public place or causing offence to persons of a particular race, tribe, place of origin, colour, creed or religion, as the case may be, and not a contravention of a provision referred to in paragraph (a) or (b).

### **38 Obstructing or endangering free movement of persons or traffic**

Any person who—

- (a) throws or propels or prepares to throw or propel any missile, article or thing at any person, motor vehicle, boat, aircraft or building with the intention or realising that there is a real risk or possibility of causing damage or injury; or
- (b) without lawful excuse, the proof whereof lies on him or her, overturns or attempts to overturn any motor vehicle, boat or aircraft; or
- (c) otherwise than under and in accordance with any other enactment, leaves or places on or over any road any thing with the intention or realising that there is a real risk or possibility of obstructing such road or endangering persons using it;

shall be guilty of obstructing or endangering the free movement of persons or traffic and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

### **39 Dealing in or possession of prohibited knives**

(1) In this section—

“deal in”, in relation to a prohibited knife, means sell, hire or offer, or display or advertise for sale or hire, or lend or give to any other person, a prohibited knife;

“prohibited knife” means a knife—

- (a) which has a blade—
  - (i) which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a “flick knife”; or
  - (ii) which is released from the handle or sheath of the knife by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device, sometimes known as a “gravity knife”; or
  - (iii) which is—
    - A. released from the handle or sheath of the knife manually; and
    - B. locked in the open position by means of a button, spring, lever or other device; and
    - C. released from the locked open position otherwise than solely by manual pressure on the blade;

other than a trimming knife the blade of which does not exceed thirty millimetres in length; or

- (b) which is declared in terms of subsection (2) to be a prohibited knife.

(2) Where the Minister considers it necessary in the public interest to do so, the Minister may, by notice in a statutory instrument, declare any knife or class of knife to be a prohibited knife for the purposes of this section and may, in like manner, withdraw any such declaration.

(3) Any person who deals in, or has in his or her possession, any prohibited knife shall be guilty of dealing in or possessing a prohibited knife, as the case may be, and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(4) The court convicting any person of a contravention of subsection (3) may order that any knife which formed the subject of the charge shall be forfeited to the State.

### **40 Possession of articles for criminal use**

(1) Any person who, without lawful excuse, knowingly has in his or her custody or possession any article for use in unlawful entry into premises, theft, fraud or a contravention of section 57 of the Road Traffic Act [*Chapter 13:11*] shall be guilty of possessing an article for criminal use and liable to a fine not exceeding level ten or imprisonment for a period not exceeding one year or both.

(2) In a prosecution for possessing an article for criminal use—

- (a) the onus of proving a lawful excuse for the custody or possession of an article referred to in subsection (1) shall lie on the person charged with the crime;
- (b) if it is proved that the person charged with the crime had in his or her custody or possession an article made or adapted for use in unlawful entry into premises, theft, fraud or a contravention of section 57 of the Road Traffic Act [*Chapter 13:11*] it shall be presumed unless the contrary is proved that the person had it in his or her possession for such use.

### **41 Disorderly conduct in public place**

Any person who, in a public place—

- (a) intentionally engages in disorderly or riotous conduct; or
- (b) uses threatening, abusive or insulting words or behaves in a threatening, abusive or insulting manner, intending to provoke a breach of the peace or realising that there is a real risk or possibility that a breach of the peace may be provoked;

shall be guilty of disorderly conduct in a public place and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

#### **42 Causing offence to persons of a particular race, religion, etc.**

(1) In this section—

“creed or religion” means any system of beliefs associated with practices of worship that is adhered to by any significant body of persons in Zimbabwe or any other country;

“film”, “picture”, “publication”, “record” and “statue” have the meanings assigned to those terms by section 2 of the Censorship and Entertainments Control Act [*Chapter 10:04*];

“publicly”, in relation to making a statement, means—

- (a) making the statement in a public place or any place to which the public or any section of the public have access;
- (b) publishing it in any printed or electronic medium for reception by the public;

“statement” includes any act, gesture or form of expression, whether verbal, written or visual, but does not include any film, picture, publication, statue or record that is of a *bona fide* literary or artistic character.

(2) Any person who publicly makes any insulting or otherwise grossly provocative statement that causes offence to persons of a particular race, tribe, place of origin, colour, creed or religion, intending to cause such offence or realising there is a real risk or possibility of doing so, shall be guilty of causing offence to persons of a particular race, tribe, place of origin, colour, creed or religion, as the case may be, and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

#### **43 Possession of offensive weapons at public gatherings**

(1) In this section—

“offensive weapon” means—

- (a) any weaponry or offensive material; or
- (b) any object made or adapted to be used for causing injury to the person; or
- (c) any stone.

(2) Any person who, while present at a public gathering, has with him or her any offensive weapon, otherwise than in pursuance of lawful authority, shall be guilty of possessing an offensive weapon at a public gathering and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(3) For the purposes of subsection (2), a person shall be deemed to be acting in pursuance of lawful authority only if the person is acting in his or her capacity as a police officer, a member of the Defence Forces or an employee of the State or a local authority.

#### **44 Disrupting a public gathering**

Any person who, at a public gathering—

- (a) engages in disorderly or riotous conduct; or
- (b) uses threatening, abusive or insulting words or behaves in a threatening, abusive or insulting manner;

intending to prevent the transaction of the business for which the gathering was called together, or realising that there is a real risk or possibility that the transaction of business may be prevented, shall be guilty of disrupting a public gathering and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

#### **45 Intimidation**

Any person who, intentionally and by means of an express or implied threat of unlawfully inflicted harm, compels or induces another person—

- (a) to do something which that person is not legally obliged to do; or
- (b) to refrain from doing something which that person is legally entitled to do;

shall be guilty of intimidation and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

#### **46 Criminal nuisance**

Any person who does any of the acts specified in the Third Schedule shall be guilty of criminal nuisance and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

## CHAPTER V

### CRIMES AGAINST THE PERSON

#### PART I

#### HOMICIDE

##### 47 Murder

(1) Any person who causes the death of another person—

- (a) intending to kill the other person; or
- (b) realising that there is a real risk or possibility that his or her conduct may cause death, and continues to engage in that conduct despite the risk or possibility;

shall be guilty of murder.

(2) Subject to section 337 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], a person convicted of murder shall be sentenced to death unless—

- (a) the convicted person is under the age of eighteen years at the time of the commission of the crime; or
- (b) the court is of the opinion that there are extenuating circumstances;

in which event the convicted person shall be liable to imprisonment for life or any shorter period.

(3) A person convicted of attempted murder or of incitement or conspiracy to commit murder shall be liable to be sentenced to death or to imprisonment for life or any shorter period.

##### 48 Infanticide

(1) Any woman who, within six months of the birth of her child, causes its death—

- (a) intentionally; or
- (b) by conduct which she realises involves a real risk to the child's life;

at a time when the balance of her mind is disturbed as a result of giving birth to the child, shall be guilty of infanticide and liable to imprisonment for a period not exceeding five years.

(2) Where a woman is charged with the murder of her child committed within six months of the child's birth and it is proved that she caused the child's death at a time when the balance of her mind was disturbed as a result of giving birth to the child, she shall not be found guilty of murder but may be found guilty of infanticide if the evidence establishes that she committed that crime.

(3) For the purposes of this section, in determining whether or not the balance of a woman's mind was disturbed as a result of giving birth to a child, regard shall be taken to any pressure or stress from which she suffered arising out of any one or more of the following circumstances or considerations—

- (a) the effects which the birth had, or which she believed it would have, on her social, financial or marital situation;
- (b) the difficulties which were created, or which she believed would be created, in caring for the child in the social, financial or marital situation in which the child was born;
- (c) the difficulties which she had, or which she believed she would have, in caring for the child due to her inexperience or incapacity;
- (d) any other relevant circumstance or consideration, whether based on the psychological effects on the woman's mind arising from the birth itself, or otherwise.

(4) For the avoidance of doubt it is declared that nothing in this section precludes—

- (a) a woman from being charged with the murder of her child and, subject to subsection (2), from being convicted of and punished for that crime; or
- (b) a court from returning a special verdict in terms of section 29 of the Mental Health Act [*Chapter 15:12*] (No. 15 of 1996) in respect of a woman charged with causing the death of her child.

##### 49 Culpable homicide

Any person who causes the death of another person—

- (a) negligently failing to realise that death may result from his or her conduct; or
- (b) realising that death may result from his or her conduct and negligently failing to guard against that possibility;

shall be guilty of culpable homicide and liable to imprisonment for life or any shorter period or a fine up to or exceeding level fourteen or both.

##### 50 Inciting or assisting suicide

Any person who incites, induces, aids, counsels, procures or provides the means for the suicide or attempted suicide of another person, knowing that the other person intends to commit suicide or realising that there is a real risk or possibility that the other person may commit suicide, shall be guilty of inciting or assisting suicide and liable to a fine up to or exceeding level fourteen, or imprisonment for life or any shorter period, or both such fine and such imprisonment.



## **51 Time of commencement of life and time of death**

(1) For the purposes of this Part, life shall be deemed to have commenced when a newly-born child has breathed, whether or not it has an independent circulation at that time and whether or not it is entirely separated from the body of its mother.

(2) For the purposes of this Part, the time of a person's death shall be deemed to be—

- (a) except in the case referred to in paragraph (b), when there has been an irreversible cessation of the person's heart-lung functions; or
- (b) where the person has been installed on a heart-lung or ventilator machine or other life-support system, when a competent medical practitioner, after carrying out appropriate tests, diagnoses and confirms that brain death has occurred.

## **52 Accelerating death equivalent to causing it**

For the purposes of this Part, a person shall be deemed to have caused the death of another person if he or she accelerates a death that would have occurred as a result of other independent causes.

## **53 Causing death: guidelines**

(1) In deciding whether or not there is a causal link between a person's conduct and the death of another person, a court shall be guided by the following factors in addition to any others that are relevant in the particular case—

- (a) a subsequent event which is abnormal, that is to say, which is unlikely in the light of human experience to follow the conduct, may be regarded as breaking the causal link unless it was planned or anticipated by the person responsible for the conduct;
- (b) where the result of the conduct was to inflict a mortal or serious injury upon the other person, there is normally a causal link between the conduct and the other person's death;
- (c) voluntary conduct on the part of the person who subsequently dies is more likely than involuntary subsequent conduct on the part of that person to break the causal link between the conduct and his or her death;
- (d) it is within the range of ordinary human experience that particular persons may suffer from ailments or physical susceptibilities which make them more liable than other persons to die from assaults or from other unlawful conduct.

(2) For the avoidance of doubt it is declared that a person will be held to have caused the death of another person if death results from a failure to discharge a legal duty owed by the first-mentioned person to the second-mentioned person.

## **54 Mercy killing and removal of persons from life-support systems**

(1) Subject to this section, it shall be no defence to a charge of murder, infanticide, culpable homicide or inciting or assisting suicide that—

- (a) the person charged with the crime acted or omitted to act, as the case may be, in order to relieve suffering; or
- (b) the deceased person requested that his or her life should be ended;

but a court may take any such factor into account in deciding upon an appropriate sentence.

(2) The High Court may, on application, order that a person be removed from a heart-lung or ventilator machine or other life-support system, if the court is satisfied, from the evidence of at least one medical practitioner, other than any medical practitioner who has been treating the person, that—

- (a) the person is unconscious and there is no reasonable prospect of his or her regaining consciousness; and
- (b) although the person's brain functions may not have entirely ceased, his or her life is being artificially sustained by the machine or system and there is no reasonable prospect that he or she will ever be able to survive without being on the machine or system.

(3) An application in terms of subsection (2) may be made—

- (a) by a spouse, brother, sister, parent, guardian, curator or tutor of the person referred to in subsection (2); or
- (b) by the person in charge of the hospital or other institution in which the person referred to in subsection (2) is being kept.

(4) In an application in terms of subsection (2), the court—

- (a) may appoint a curator *ad litem* to represent the interests of the person referred to in subsection (2); and
- (b) shall ensure that, where practicable, every person who has an interest in the matter has been given notice of the application and has been afforded a reasonable opportunity of being heard therein.

(5) No criminal liability shall attach to—

- (a) any person who terminates the life of another person pursuant to an order under subsection (2); or
- (b) an applicant referred to in subsection (3); or
- (c) the curator *ad litem* referred to in subsection (4).

(6) An order granted in terms of subsection (2) shall cease to be valid after eighteen months have elapsed from the date on which it was granted.

### **55 Killing while disposing of victim's body**

(1) If any person—

- (a) does or omits to do any thing in relation to another person which, if it caused that other person's death, would constitute murder or infanticide; and
- (b) thinking that by such conduct he or she has killed the other person, disposes or attempts to dispose of the other person's body;

he or she shall be guilty of murder or infanticide, as the case may be, if, when he or she engages in the disposal, the other person is not dead but dies as a result of the disposal or attempted disposal.

(2) Subsection (1) shall apply whether the person concerned formed the intention to dispose of the other person's body before, during or after he or she does or omits to do the thing referred to in paragraph (a) of that subsection.

(3) Nothing in this section shall prevent a person being convicted of culpable homicide or any other crime arising out of the disposal or attempted disposal of another person's body.

### **56 Error as to identity**

The fact that a person charged with murder, infanticide or culpable homicide mistakenly believed that the person whose death he or she caused was someone else, shall not constitute a defence to the charge.

### **57 Deflected blow in homicide cases**

If any person—

- (a) does or omits to do anything in relation to another person which, if it caused that other person's death, would constitute murder, infanticide or culpable homicide; and
- (b) by the conduct referred to in paragraph (a), causes the death of someone other than his or her intended victim;

he or she shall be guilty of the following crimes—

(i) in respect of the intended victim—

- A. murder, infanticide or culpable homicide, as the case may be, if the intended victim dies; or
- B. attempted murder, attempted infanticide or assault, as may be appropriate, if the intended victim does not die;

and

(ii) in respect of the person whose death he or she has actually caused—

- A. murder or infanticide, as the case may be, if he or she realised that his or her conduct involved a real risk or possibility of causing the death of someone other than his intended victim; or
- B. culpable homicide, if the requisites of that crime are satisfied.

### **58 Joining in after fatal injury inflicted**

If—

- (a) a person does or omits to do anything in relation to another person which, if it caused that other person's death, would constitute murder, infanticide or culpable homicide; and
- (b) before he or she does or omits to do the thing referred to in paragraph (a), and independently of that act or omission, his or her victim has received injuries, whether in a fatal attack or otherwise, which subsequently cause the victim's death;

he or she shall be guilty of—

- (i) murder, infanticide or culpable homicide, as the case may be, if his or her conduct accelerated the death of his or her victim; or
- (ii) attempted murder, attempted infanticide or assault, as may be appropriate, if his or her conduct did not accelerate the death of his or her victim.

## **PART II**

### UNLAWFUL TERMINATION OF PREGNANCY

### **59 Interpretation in Part II of Chapter V**

In this Part—

“embryo or foetus” means a live human embryo or foetus;

“terminate”, in relation to a pregnancy, means to cause the death of an embryo or foetus—

- (a) while it is growing in a female person's womb; or
- (b) by its expulsion from a female person's womb;

“womb” does not include the fallopian tubes.

## 60 Unlawful termination of pregnancy

- (1) Any person who—
  - (a) intentionally terminates a pregnancy; or
  - (b) terminates a pregnancy by conduct which he or she realises involves a real risk or possibility of terminating the pregnancy;

shall be guilty of unlawful termination of pregnancy and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

- (2) It shall be a defence to a charge of unlawful termination of pregnancy for the accused to prove that—
  - (a) the termination of the pregnancy occurred in the course of a “Caesarean section”, that is, while delivering a foetus through the incised abdomen and womb of the mother in accordance with medically recognised procedures; or
  - (b) the pregnancy in question was terminated in accordance with the Termination of Pregnancy Act [*Chapter 15:10*].

## PART III

### SEXUAL CRIMES AND CRIMES AGAINST MORALITY

#### *Division A: Preliminary*

## 61 Interpretation in Part III of Chapter V

- (1) In this Part—
  - “anal sexual intercourse” means penetration of the anus by the penis;
  - “brothel” means any place which is occupied or used for the purposes of prostitution or for persons to visit for the purpose of having extra-marital sexual intercourse for money or reward;
  - “extra-marital sexual intercourse” means sexual intercourse otherwise than between spouses;
  - “HIV” means the human immuno-deficiency virus;
  - “keep”, in relation to a brothel, has the meaning set out in subsection (2);
  - “mentally incompetent person” means a person who is mentally disordered or intellectually handicapped, as defined in section 2 of the Mental Health Act [*Chapter 15:12*] (No. 15 of 1996);
  - “owner”, in relation to any place, includes a person who lets or sublets or permits the occupation of the place, whether in his or her own right or on behalf of another person;
  - “place” includes any premises, enclosure, vehicle or boat or any part thereof;
  - “prostitute” means a male or female person who for money or reward—
    - (a) allows other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her; or
    - (b) solicits other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her;and the word “prostitution” shall be construed accordingly;
  - “public place” means any road, building, open space or other place of any description to which the public or any section of the public have access, whether on payment or otherwise and whether or not the right of admission thereto is reserved;
  - “sexual intercourse” means vaginal sexual intercourse between a male person and a female person involving the total penetration or penetration to the slightest degree of the vagina by the penis;
  - “sexually-transmitted disease” includes any disease commonly transmitted by sexual intercourse or anal sexual intercourse;
  - “unlawful sexual conduct” means any act the commission of which constitutes the crime of rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a young person or sodomy;
  - “young person” means a boy or girl under the age of sixteen years.
- (2) The following persons shall be deemed for the purposes of this Part to keep a brothel—
  - (a) any person who manages the brothel or assists in its management;
  - (b) the owner of the brothel, if he or she uses the place as a brothel or knowingly allows it to be so used;
  - (c) any person who knowingly receives the whole or any part of any money taken in the brothel;
  - (d) any person who resides in the brothel, unless he or she proves that he or she was ignorant of the character of the place;
  - (e) any person found in the brothel who wilfully refuses to disclose the name and identity of the keeper or owner thereof.

## **62 Presumption regarding marriage**

Whenever in any prosecution under this Part the question is in issue whether any sexual intercourse between two persons was extra-marital, the persons shall be deemed not to have been spouses at the time of such intercourse, unless the contrary is proved.

## **63 Amendment of presumption that boys under 14 incapable of sexual intercourse**

(1) The irrebuttable presumption or rule of law that a boy under the age of fourteen years is incapable of sexual intercourse shall not apply in Zimbabwe in relation to boys who have reached the age of twelve years.

(2) A boy over the age of twelve years but below the age of fourteen years shall be presumed incapable of performing sexual intercourse unless the contrary is shown on a balance of probabilities.

(3) Subsections (1) and (2) shall not affect any presumption or rule of law relating generally to the criminal capacity of children under the age of fourteen years.

## **64 Competent charges in cases of unlawful sexual conduct involving young or mentally incompetent persons**

(1) A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person of or under the age of twelve years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person, or sodomy.

(2) A person accused of engaging in sexual intercourse, anal sexual intercourse or other sexual conduct with a young person above the age of twelve years but of or below the age of fourteen years shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, and not with sexual intercourse or performing an indecent act with a young person or sodomy, unless there is evidence that the young person—

(a) was capable of giving consent to the sexual intercourse, anal sexual intercourse or other sexual conduct; and

(b) gave his or her consent thereto.

(3) A person who engages in sexual intercourse, anal sexual intercourse or other sexual conduct with a mentally incompetent adult person shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be, unless there is evidence that the mentally incompetent person—

(a) was capable of giving consent to the sexual intercourse, anal sexual intercourse or other sexual conduct, and

(b) gave his or her consent thereto.

(4) If, in the case of a male person who engages in anal sexual intercourse or other sexual conduct with a young male person of or below the age of fourteen years, or with a mentally incompetent adult male person, there is evidence that the young or mentally incompetent person—

(a) was capable of giving consent to the anal sexual intercourse or other sexual conduct, and

(b) gave his consent thereto;

the first-mentioned male person alone shall be charged with sodomy.

### *Division B: Sexual crimes*

## **65 Rape**

(1) If a male person knowingly has sexual intercourse or anal sexual intercourse with a female person and, at the time of the intercourse—

(a) the female person has not consented to it; and

(b) he knows that she has not consented to it or realises that there is a real risk or possibility that she may not have consented to it;

he shall be guilty of rape and liable to imprisonment for life or any shorter period.

(2) For the purpose of determining the sentence to be imposed upon a person convicted of rape, a court shall have regard to the following factors, in addition to any other relevant factors and circumstances—

(a) the age of the person raped;

(b) the degree of force or violence used in the rape;

(c) the extent of physical and psychological injury inflicted upon the person raped;

(d) the number of persons who took part in the rape;

(e) the age of the person who committed the rape;

(f) whether or not any weapon was used in the commission of the rape;

(g) whether the person committing the rape was related to the person raped in any of the degrees mentioned in subsection (2) of section *seventy-five*;

(h) whether the person committing the rape was the parent or guardian of, or in a position of authority over, the person raped;

- (i) whether the person committing the rape was infected with a sexually transmitted disease at the time of the rape.

## **66 Aggravated indecent assault**

- (1) Any person who—
  - (a) being a male person—
    - (i) commits upon a female person any act, other than sexual intercourse or anal sexual intercourse, involving the penetration of any part of the female person's body or of his own body; or
    - (ii) commits upon a male person anal sexual intercourse or any other act involving the penetration of any part of the other male person's body or of his own body;
  - (b) being a female person—
    - (i) has sexual intercourse with or commits upon a male person any other act involving the penetration of any part of the male person's body or of her own body; or
    - (ii) commits upon a female person any act involving the penetration of any part of the other female person's body or of her own body;

with indecent intent and knowing that the other person has not consented to it or realising that there is a real risk or possibility that the other person may not have consented to it, shall be guilty of aggravated indecent assault and liable to the same penalty as is provided for rape.

(2) For the purpose of determining the sentence to be imposed upon a person convicted of aggravated indecent assault, a court shall have regard to the same factors as are mentioned in connection with determining the sentence to be imposed upon a person convicted of rape in subsection (2) of section *sixty-five*, in addition to any other relevant factors and circumstances.

## **67 Indecent assault**

- (1) A person who—
  - (a) being a male person—
    - (i) commits upon a female person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than sexual intercourse or anal sexual intercourse or other act involving the penetration of any part of the female person's body or of his own body; or
    - (ii) commits upon a male person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than anal sexual intercourse or other act involving the penetration of any part of the male person's body or of his own body; or
  - (b) being a female person—
    - (i) commits upon a male person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than sexual intercourse or any other act involving the penetration of any part of the male person's body or of her own body; or
    - (ii) commits upon a female person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than any act involving the penetration of any part of the other female person's body or of her own body;

with indecent intent and knowing that the other person has not consented to it or realising that there is a real risk or possibility that the other person may not have consented to it, shall be guilty of indecent assault and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

(2) For the purpose of determining the sentence to be imposed upon a person convicted of indecent assault, a court shall have regard to the same factors as are mentioned in connection with determining the sentence to be imposed upon a person convicted of rape in subsection (2) of section *sixty-five*, in addition to any other relevant factors and circumstances.

(3) For the avoidance of doubt it is declared that where a person would be liable for contravening subsection (1) but for the fact that—

- (a) physical contact was absent, the competent charge shall be criminal insult or, if the person intended but failed to engage in physical contact, attempted indecent assault;
- (b) indecent intent was absent, the competent charge shall be criminal insult.

## **68 Unavailable defences to rape, aggravated indecent assault and indecent assault**

It shall not be a defence to a charge of rape, aggravated indecent assault or indecent assault—

- (a) that the female person was the spouse of the accused person at the time of any sexual intercourse or other act that forms the subject of the charge:

Provided that no prosecution shall be instituted against any husband for raping or indecently assaulting his wife in contravention of section *sixty-six* or *sixty-seven* unless the Attorney-General has authorised such a prosecution; or

- (b) subject to sections *six*, *seven* and *sixty-three*, that the accused person was a male person below the age of fourteen years at the time of the sexual intercourse or other act that forms the subject of the charge.

## 69 Cases where consent absent or vitiated

(1) Without limiting Part XII of Chapter XIV, a person shall be deemed not to have consented to sexual intercourse or any other act that forms the subject of a charge of rape, aggravated indecent assault or indecent assault, where the person charged with the crime—

- (a) uses violence or threats of violence or intimidation or unlawful pressure to induce the other person to submit; or
- (b) by means of a fraudulent misrepresentation induces the other person to believe that something other than sexual intercourse or an indecent act, as the case may be, is taking place; or
- (c) induces the other person to have sexual intercourse or to submit to the performance of the indecent act, as the case may be, by impersonating that other person's spouse, or lover; or
- (d) has sexual intercourse or performs an indecent act upon the other person while that other person is asleep, and that other person has not consented to the sexual intercourse or the performance of the act before falling asleep; or
- (e) has sexual intercourse or performs an indecent act upon the other person while that other person is hypnotised or intoxicated from the consumption of drugs or alcohol so as to be incapable of giving consent to the sexual intercourse or the performance of the act, and that other person has not consented to the sexual intercourse or the performance of the act before becoming so hypnotised or intoxicated.

(2) The burden of proving that a person referred to in paragraph (d) or (e) of subsection (1) gave consent to sexual intercourse or the performance of an indecent act before falling asleep or becoming hypnotised or intoxicated, as the case may be, shall lie with the person charged.

## 70 Sexual intercourse or performing indecent acts with young persons

(1) Subject to subsection (2), any person who—

- (a) has extra-marital sexual intercourse with a young person; or
- (b) commits upon a young person any act involving physical contact that would be regarded by a reasonable person to be an indecent act; or
- (c) solicits or entices a young person to have extra-marital sexual intercourse with him or her or to commit any act with him or her involving physical contact that would be regarded by a reasonable person to be an indecent act;

shall be guilty of sexual intercourse or performing an indecent act with a young person, as the case may be, and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

(2) It shall be no defence to a charge of sexual intercourse or performing an indecent act with a young person to prove that he or she consented to such sexual intercourse or indecent act.

(3) It shall be a defence to a charge under subsection (1) for the accused person to satisfy the court that he or she had reasonable cause to believe that the young person concerned was of or over the age of sixteen years at the time of the alleged crime:

Provided that the apparent physical maturity of the young person concerned shall not, on its own, constitute reasonable cause for the purposes of this subsection.

(4) For the avoidance of doubt—

- (a) the competent charge against a person who—
  - (i) has sexual intercourse with a female person below the age of twelve years, shall be rape; or
  - (ii) commits upon a female or male person below the age of twelve years any act referred to in subsection (1) of section *sixty-six*, shall be aggravated indecent assault;
  - (iii) commits upon a female or male person below the age of twelve years any act involving physical contact (other than an act referred to in subsection (1) of section *sixty-six*) that would be regarded by a reasonable person to be an indecent act, shall be indecent assault;
  - (iv) without the consent of a female person of or above the age of twelve years but below the age of sixteen years, has sexual intercourse with that female person, shall be rape; or
  - (v) without the consent of a female or male person of or above the age of twelve years but below the age of sixteen years, commits upon that female or male person any act referred to in subsection (1) of section *sixty-six*, shall be aggravated indecent assault;
  - (vi) without the consent of a female or male person of or above the age of twelve years but below the age of sixteen years, commits upon that female or male person any act involving physical contact (other than an act referred to in subsection (1) of section *sixty-six*) that would be regarded by a reasonable person to be an indecent act, shall be indecent assault;

and not sexual intercourse or performing an indecent act with a young person;

- (b) a young person shall be deemed not to have consented to sexual intercourse, or to any act involving physical contact that would be regarded by a reasonable person to be an indecent act, in any of the circumstances referred to in section *sixty-nine*, in which event the person accused of having sexual

intercourse or performing an indecent act with the young person shall be charged with rape, aggravated indecent assault or indecent assault, as the case may be.

### **71 Sexual crimes committed against young or mentally incompetent persons outside Zimbabwe**

(1) Any person who is a citizen of Zimbabwe or ordinarily resident therein and who does anything outside Zimbabwe to, with or against a young or mentally incompetent adult person which, if it were done in Zimbabwe, would constitute—

(a) the crime of rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a young person or sodomy; or

(b) an attempt, conspiracy or incitement to commit a crime referred to in paragraph (a);

shall be guilty of the appropriate crime referred to in paragraph (a) or (b) and liable to be sentenced accordingly.

(2) Any person who, in Zimbabwe, conspires with or incites another person to do anything outside Zimbabwe to, with or against a young or mentally incompetent adult person which, if it were done in Zimbabwe, would constitute the crime of rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a young person or sodomy, shall be guilty of conspiracy or incitement, as the case may be, to commit the appropriate crime and liable to be sentenced accordingly.

(3) Subsections (1) and (2) shall apply whether or not the act which the person is alleged to have committed or which was the subject of his or her alleged conspiracy or incitement, as the case may be, was a crime in the place where it was committed.

### **72 Prevention of conspiracy or incitement abroad to commit sexual crimes against young or mentally incompetent persons in Zimbabwe**

(1) Any person who, outside Zimbabwe, conspires with or incites another person to commit the crime of rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act or sodomy in Zimbabwe with or against a young or mentally incompetent adult person shall be guilty of conspiracy or incitement, as the case may be, to commit the appropriate crime and liable to be sentenced accordingly.

(2) Subsection (1) shall apply whether or not conspiracy or incitement to commit the crime concerned is a crime in the place where the alleged conspiracy or incitement took place.

### **73 Sodomy**

(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.

(3) For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person—

(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or

(b) who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or

(c) who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person.

### **74 Bestiality**

Any person who knowingly commits any sexual act with an animal or bird shall be guilty of bestiality and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

### **75 Sexual intercourse within a prohibited degree of relationship**

(1) In this section—

“first cousin”, in relation to any person, means the child or any descendant of the child of the uncle or aunt of such person;

“second cousin”, in relation to any person, means the child or any descendant of the child of the great-uncle or great-aunt of such person.

(2) Where sexual intercourse takes place between—

(a) a parent and his or her natural child, whether born in or out of wedlock, or adopted child, whether the child is under the age of eighteen years or not; or

(b) a step-parent and his or her step-child, whether the step-child’s parent and step-parent are married under the Marriage Act [*Chapter 5:11*] or the Customary Marriages Act [*Chapter 5:07*], or are parties to an unregistered customary law marriage, and whether or not the child was over the age of eighteen years at the time of the marriage; or

(c) a brother and sister, whether of whole or half blood; or

- (d) an uncle and his niece; or
- (e) a grand-uncle and his grand-niece; or
- (f) an aunt and her nephew; or
- (g) a grand-aunt and her grand-nephew; or
- (h) a grandparent and his or her grandchild; or
- (i) subject to subsection (3), any person and his or her first or second cousin; or
- (j) any person and an ascendant or descendant of his or her spouse or former spouse, whether the person and his or her spouse or former spouse are or were married under the Marriage Act [*Chapter 5:11*] or the Customary Marriages Act [*Chapter 5:07*], or are or were parties to an unregistered customary law marriage; or
- (k) any person and his or her ascendant or descendant in any degree; or
- (l) any person and a descendant of a brother or sister, whether of whole or half blood;

and either or both of the parties know or realise that there is a real risk or possibility that they are related to each other in any of the foregoing degrees of relationship, either or both parties to the intercourse, as the case may be, shall be guilty of sexual intercourse within a prohibited degree of relationship and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(3) It shall be a defence to a charge of sexual intercourse within a prohibited degree of relationship as between first or second cousins for the accused to prove—

- (a) in the case of a person who is not a member of a community governed by customary law, that the cultural or religious customs or traditions of the community to which he or she belongs do not prohibit marriage between first or second cousins; or
  - (b) in the case of a person who is a member of a community governed by customary law, that the cultural or religious customs or traditions of the particular community to which he or she belongs do not prohibit marriage between first or second cousins.
- (4) In determining for the purposes of subsection (3) whether or not a person is a member of a community—
- (a) whose cultural or religious customs or traditions do not prohibit marriage between first or second cousins, a court shall have regard to the evidence of any person who, in its opinion, is suitably qualified by reason of his or her knowledge to give evidence as to the cultural or religious customs or traditions of the community concerned; or
  - (b) governed by customary law, regard shall be had to all the circumstances of the person's life, including—
    - (i) whether or not the natural parents of the person were married under the Customary Marriages Act [*Chapter 5:07*] or were parties to an unregistered customary law marriage;
    - (ii) whether or not the person lives among other members of such a community and is regarded by such other members as belonging to that community, notwithstanding that the person's natural parents were not married to each other, or were married exclusively under the Marriage Act [*Chapter 5:11*];
    - (iii) where the person does not live among members of such a community, whether he or she has ties to such a community by reason of his or her natural parents belonging to such a community.

(5) For the avoidance of doubt it is declared that—

- (a) the competent charge against—
  - (i) a male person who has sexual intercourse with a female person without her consent who is related to him in any degree of relationship specified in subsection (2), shall be rape and not sexual intercourse within a prohibited degree of relationship;
  - (ii) a female person who has sexual intercourse with a male person without his consent who is related to her in any degree of relationship specified in subsection (2), shall be aggravated indecent assault and not sexual intercourse within a prohibited degree of relationship;
- (b) paragraph (i) of subsection (2) shall not apply to persons who—
  - (i) on the fixed date are married to each other under the Marriage Act [*Chapter 5:11*] or the Customary Marriages Act [*Chapter 5:07*] or are parties to an unregistered customary law marriage; or
  - (ii) on or after the fixed date are married to each other under any foreign law.

## 76 Complicity in sexual crimes

For the avoidance of doubt it is declared that any person who—

- (a) being the owner or occupier of any premises, knowingly permits another person on the premises to commit rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a young person, sodomy, bestiality or sexual intercourse within a prohibited degree of relationship; or
- (b) detains a person with the intention that a crime referred to in paragraph (a) should be committed by another person against the person so detained;



may be charged with being an accomplice or accessory to the commission of the crime concerned, or with kidnapping or unlawful detention, or both.

*Division C: Indecent or sexual conduct harmful to public morals or public health*

**77 Public indecency**

- (1) Any person who—
  - (a) indecently exposes himself or herself or engages in any other indecent conduct which causes offence to any other person in or near a public place, or in or near a private place within the view of such other person; or
  - (b) knowing or realising that there is a real risk or possibility that he or she will be heard, utters or makes use of indecent or obscene language in or near a public place, or in or near a private place within the hearing of another person; or
  - (c) sings any indecent or obscene song in or near a public place, or in or near a private place within the hearing of another person, knowing or realising that there is a real risk or possibility that he or she will be heard; or
  - (d) writes or draws any indecent or obscene word, figure or representation in or near a public place, or in or near a private place in the view of another person, knowing or realising that there is a real risk or possibility that such writing or drawing will be seen;

shall be guilty of public indecency and liable to a fine not exceeding level nine or imprisonment for a period not exceeding six months or both.

(2) No person shall be convicted of public indecency unless the words or conduct in question are sufficiently serious to warrant punishment, for which purpose a court shall take into account the following factors in addition to any others that are relevant in the particular case—

- (a) the nature of the words or conduct;
- (b) the extent to which the words were repeated or the conduct was persisted in, as the case may be;
- (c) the age and gender of the person who heard the words or witnessed the conduct;
- (d) any previous relationship between the parties;
- (e) the degree of offence caused to the person who heard the words or witnessed the conduct.

**78 Deliberate infection of another with a sexually-transmitted disease**

(1) In this section—  
“sexually-transmitted disease” includes syphilis, gonorrhoea, herpes, and all other forms of sexually-transmitted diseases except, for the purposes of this section, HIV.

- (2) Any person who—
  - (a) knowing that he or she is suffering from a sexually-transmitted disease; or
  - (b) realising that there is a real risk or possibility that he or she is suffering from a sexually-transmitted disease;

intentionally infects any other person with the disease, or does anything or causes or permits anything to be done with the intention or realising that there is a real risk or possibility of infecting any other person with the disease, shall be guilty of deliberately infecting that other person with a sexually-transmitted disease and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(3) If it is proved in a prosecution for spreading a sexually-transmitted disease that the person charged was suffering from a sexually-transmitted disease at the time of the crime, it shall be presumed, unless the contrary is proved, that he or she knew or realised that there was a real risk or possibility that he or she was suffering from it.

(4) It shall be a defence to a charge under subsection (1) for the accused to prove that the other person concerned—

- (a) knew that the accused was suffering from a sexually-transmitted disease; and
- (b) consented to the act in question, appreciating the nature of the sexually-transmitted disease and the possibility of becoming infected with it.

*Division D: Transmitting HIV deliberately or in the course of committing sexual crimes*

**79 Deliberate transmission of HIV**

- (1) Any person who—
  - (a) knowing that he or she is infected with HIV; or
  - (b) realising that there is a real risk or possibility that he or she is infected with HIV;

intentionally does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realises involves a real risk or possibility of infecting another person with HIV, shall be guilty of deliberate transmission of HIV, whether or not he or she is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years.

(2) It shall be a defence to a charge under subsection (1) for the accused to prove that the other person concerned—

- (a) knew that the accused was infected with HIV; and
- (b) consented to the act in question, appreciating the nature of HIV and the possibility of becoming infected with it.

## **80 Sentence for certain crimes where accused is infected with HIV**

(1) Where a person is convicted of—

- (a) rape; or
- (b) aggravated indecent assault; or
- (c) sexual intercourse or performing an indecent act with a young person, involving any penetration of any part of his or her or another person's body that incurs a risk of transmission of HIV;

and it is proved that, at the time of the commission of the crime, the convicted person was infected with HIV, whether or not he or she was aware of his or her infection, he or she shall be sentenced to imprisonment for a period of not less than ten years:

Provided that—

- (i) notwithstanding section 192, this subsection shall not apply to an incitement or conspiracy to commit any crime referred to in paragraph (a), (b) or (c), nor to an attempt to commit any such crime unless the attempt involved any penetration of any part of the body of the convicted person or of another person's body that incurs a risk of transmission of HIV;
- (ii) if a person convicted of any crime referred to in paragraph (a), (b) or (c) satisfies the court that there are special circumstances peculiar to the case, which circumstances shall be recorded by the court, why the penalty provided under this subsection should not be imposed, the convicted person shall be liable to the penalty provided under section 65, 66 or 70, as the case may be.

[Proviso inserted by section 31 of Act 9 of 2006.]

(2) For the purposes of this section—

- (a) the presence in a person's body of HIV antibodies or antigens, detected through an appropriate test, shall be *prima facie* proof that the person concerned is infected with HIV;
- (b) if it is proved that a person was infected with HIV within thirty days after committing a crime referred to in those sections, it shall be presumed, unless the contrary is shown, that he or she was infected with HIV when he or she committed the crime.

*Division E: Crimes relating to prostitution or the facilitation of sexual crimes*

## **81 Soliciting**

(1) In this section—

“publicly solicits” means—

- (a) solicits in a public place or any place to which the public or any section of the public have access; or
- (b) solicits by publication of the solicitation in any printed or electronic medium for reception by the public.

(2) Any person who publicly solicits another person for the purposes of prostitution shall be guilty of soliciting and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

## **82 Living off or facilitating prostitution**

Any person who—

- (a) keeps a brothel; or
  - (b) demands from a prostitute any payment or reward in consideration of the person—
    - (i) keeping, managing or assisting in the keeping of a brothel in which the prostitute is, or has been, living for immoral purposes; or
    - (ii) having solicited other persons for immoral purposes on behalf of the prostitute; or
    - (iii) having effected the prostitute's entry into a brothel for the purpose of prostitution; or
    - (iv) having brought or assisted in bringing the prostitute into Zimbabwe for immoral purposes;
- or

- (c) demands from a prostitute any payment or reward in consideration for any present or past immoral connection with the prostitute;

shall be guilty of living off or facilitating prostitution and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

## **83 Procuring**

Any person who procures any other person—

- (a) for the purposes of engaging in unlawful sexual conduct with another person or with persons generally, whether inside or outside Zimbabwe; or
- (b) to become a prostitute, whether inside or outside Zimbabwe; or
- (c) to leave Zimbabwe with the intent that the other person may become a prostitute; or
- (d) to leave his or her usual place of residence, not being a brothel, with the intent that he or she may become an inmate of or frequent a brothel elsewhere;

shall be guilty of procuring and liable to a fine up to or exceeding level fourteen or—

- (i) in a case where the person procured is a young person, imprisonment for a period not exceeding ten years, or both such fine and imprisonment;
- (ii) in any other case, imprisonment for a period not exceeding two years, or both such fine and imprisonment.

#### **84 Coercing or inducing persons for purpose of engaging in sexual conduct**

Any person who, to enable himself or herself or anyone else to engage in unlawful sexual conduct with another person—

- (a) threatens or intimidates that other person; or
- (b) applies or administers any intoxicating drug, liquor, matter or thing to that other person; or
- (c) causes that other person to take any intoxicating drug, liquor, matter or thing;

shall be guilty of coercing or inducing a person for the purpose of engaging in sexual conduct and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both:

Provided that nothing in this section precludes a person from being charged with or convicted of rape, attempted rape, being an accomplice to rape, or other unlawful sexual conduct if the facts support such a charge or conviction.

#### **85 Detaining persons for purpose of engaging in unlawful sexual conduct**

Any person who detains another person against his or her will in a brothel or any other premises whatsoever with the intention that the person detained should engage in unlawful sexual conduct with himself or herself or another person or with persons generally shall be guilty of detaining a person for the purpose of engaging in unlawful sexual conduct and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both:

Provided that nothing in this section precludes a person from being charged with or convicted of kidnapping or unlawful detention if the facts support such a charge or conviction.

#### **86 Permitting young person to resort to place for purpose of engaging in unlawful sexual conduct**

(1) If the owner of a place knowingly induces or allows a young person to enter or be in the place for the purpose of engaging in unlawful sexual conduct with another person or with other persons generally, the owner shall be guilty of permitting a young person to resort to a place for the purpose of engaging in unlawful sexual conduct and—

- (a) if the young person is under the age of twelve years, liable to a fine not exceeding level eleven or imprisonment for a period not exceeding ten years or both;
- (b) if the young person is over the age of twelve years, liable to a fine not exceeding level ten or imprisonment for a period not exceeding seven years or both.

(2) It shall be a defence to a charge under subsection (1) for the accused to prove that he or she had reasonable cause to believe that the young person was of or over the age of sixteen years:

Provided that the apparent physical maturity of the young person concerned shall not, on its own, constitute reasonable cause for the purposes of this subsection.

#### **87 Allowing child to become a prostitute**

Any parent or guardian who causes or allows his or her child under the age of eighteen years to associate with prostitutes or to be employed by any prostitute as a prostitute or to reside in a brothel shall be guilty of allowing a child to become a prostitute and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding ten years or both.

### **PART IV**

#### CRIMES INVOLVING BODILY INJURY

#### **88 Interpretation in Part IV of Chapter V**

In this Part—

“assault” means—

- (a) any act by a person involving the application of force, directly or indirectly, to the body of another person, whereby bodily harm is caused to that other person; or

- (b) any act by a person that causes, directly or indirectly, the injection into or application to the body of another person of any substance without that person's consent; or
- (c) any act by a person that causes any substance to be consumed by another person without that person's consent;

"bodily harm" means any harm causing pain or discomfort to the body, or any impairment of the body or its functions, whether temporary or permanent.

## **89 Assault**

(1) Any person who—

- (a) commits an assault upon another person intending to cause that other person bodily harm or realising that there is a real risk or possibility that bodily harm may result; or
- (b) threatens, whether by words or gestures, to assault another person, intending to inspire, or realising that there is a real risk or possibility of inspiring, in the mind of the person threatened a reasonable fear or belief that force will immediately be used against him or her;

shall be guilty of assault and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding ten years or both.

(2) It shall be no defence to a charge of assault that, at the time the fear or belief referred to in paragraph (b) of subsection (1) is inspired, the person inspiring such fear or belief lacks the ability to effect his or her purpose.

(3) In determining an appropriate sentence to be imposed upon a person convicted of assault, and without derogating from the court's power to have regard to any other relevant considerations, a court shall have regard to the following—

- (a) the age and physical condition of the person assaulted;
- (b) the degree of force or violence used in the assault;
- (c) whether or not any weapon was used to commit the assault;
- (d) whether or not the person carrying out the assault intended to inflict serious bodily harm;
- (e) whether or not the person carrying out the assault was in a position of authority over the person assaulted;
- (f) in a case where the act constituting the assault was intended to cause any substance to be consumed by another person, the possibility that third persons might be harmed thereby, and whether such persons were so harmed.

## **90 Negligently causing serious bodily harm**

Any person who by any act whatsoever causes serious bodily harm to another person negligently failing to realise that serious bodily harm may result from his or her conduct or negligently failing to guard against that possibility shall be guilty of negligently causing serious bodily harm and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

## **91 Assault of person other than intended victim**

If a person commits or attempts to commit an assault upon a person and in so doing causes bodily harm to someone other than his or her intended victim, he or she shall be guilty of the following crimes—

- (a) in respect of the person who was his or her intended victim, assault or attempted assault, whichever is appropriate in the circumstances;
- (b) in respect of the person who was not his or her intended victim—
  - (i) assault, if he or she realised that there was a real risk or possibility that bodily harm might be caused to that person; or
  - (ii) negligently causing serious bodily harm, if he or she did not intend to cause that person such injury and did not realise that there was a real risk or possibility that such injury might be caused to that person, but was negligent in failing to realise it.

## **PART V**

### CRIMES INVOLVING INFRINGEMENT OF LIBERTY, DIGNITY, PRIVACY OR REPUTATION

## **92 Interpretation in Part V of Chapter V**

In this Part—

"adult" means a person who is of the age of eighteen years or above;

"child" means a person who is under the age of eighteen years;

"lawful custodian", in relation to a child, means the child's parent or lawful guardian or any person who has been given custody of the child by the child's parent or legal guardian or by virtue of an order of a court;

"parent" means a natural or adoptive parent;

"publish", in relation to a defamatory statement, means to make a statement to any person other than the person defamed or the spouse of the person who makes the statement.

### 93 Kidnapping or unlawful detention

- (1) Any person who—
  - (a) deprives an adult of his or her freedom of bodily movement, intending to cause such deprivation or realising that there is a real risk or possibility that such deprivation may result; or
  - (b) not being the lawful custodian of the child concerned—
    - (i) deprives a child of his or her freedom of bodily movement, intending to cause such deprivation or realising that there is a real risk or possibility that such deprivation may result; or
    - (ii) detains or keeps a child, intending to deprive the child's lawful custodian of his or her control over the child or realising that there is a real risk or possibility that such deprivation may result;

shall be guilty of kidnapping or unlawful detention and liable—

- A. to imprisonment for life or any shorter period, except in a case referred to in subparagraph B; or
- B. where the kidnapping or unlawful detention was committed in the mitigating circumstances referred to in paragraph (b) of subsection (3), to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

- (2) An accused may be convicted of kidnapping or unlawful detention—

- (a) whatever the manner in which the accused deprived the adult or child of his or her freedom of bodily movement or the lawful custodian of his or her control, whether by the use of threats or force or by the use of fraudulent misrepresentation or otherwise; and
- (b) whatever the period over which the accused deprived the adult or child of his or her freedom of bodily movement or the lawful custodian of his or her control.

(3) In determining an appropriate sentence to be imposed upon a person convicted of kidnapping or unlawful detention, and without limitation on any other factors or circumstances which a court may take into account—

- (a) a court shall regard it as an aggravating circumstance if—
  - (i) the kidnapping or unlawful detention was accompanied or motivated by the demand of a ransom for the safe return of the adult or child; or
  - (ii) the kidnapping or unlawful detention was accompanied by violence or the threat of violence;
- (b) a court shall regard it as a mitigating circumstance if, in the case of the kidnapping or unlawful detention of a child, the accused is a parent of or closely related to the child and the kidnapping or unlawful detention was not accompanied by violence or the threat of violence.

### 94 Pledging of female persons

- (1) A lawful custodian or relative of a female person who—

- (a) at a time when the female person is under the age of eighteen years, or without her consent, hands her over to another person as compensation for the death of a relative of that other person, or as compensation for any debt or obligation; or
- (b) at a time when the female person is under the age of eighteen years, or without her consent, enters into an arrangement whereby the female person is promised in marriage to any man, whether for any consideration or not; or
- (c) by force or intimidation compels or attempts to compel a female person to enter into a marriage against her will, whether in pursuance of an arrangement referred to in paragraph (a) or (b) or otherwise;

shall be guilty of pledging a female person and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding two years or both.

(2) Any party to an arrangement or marriage referred to in subsection (1) may be charged as an accomplice to pledging a female person.

### 95 Criminal insult

- (1) Any person who, by words or conduct—

- (a) seriously impairs the dignity of another person; or
- (b) seriously invades the privacy of another person;

shall be guilty of criminal insult if he or she intended his or her words or conduct to have an effect referred to in paragraph (a) or (b) or if he or she realised that there was a real risk or possibility that his or her words or conduct might have such an effect, and shall be liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(2) In deciding whether an impairment of dignity or invasion of privacy is sufficiently serious to constitute the crime of criminal insult, a court shall take into account the following factors in addition to any others that are relevant in the particular case—

- (a) the nature of the words or conduct;
- (b) the extent to which the words were repeated or the conduct was persisted in, as the case may be;
- (c) the age and sex of the person whose dignity was impaired or privacy was invaded;
- (d) any previous relationship between the parties;

(e) the degree of offence caused to the person whose dignity was impaired or privacy was invaded by the words or conduct.

(3) In order to establish a charge of criminal insult based upon an impairment of dignity, it shall be necessary to prove that the complainant felt insulted or degraded as a result of the words or conduct that form the subject of the charge:

Provided that, where the complainant was, at the time of the commission of the crime—

(a) a child or mentally disordered or intellectually handicapped, as defined in section 2 of the Mental Health Act [Chapter 15:12] (No. 15 of 1996); or

(b) unable, through physical disability, to hear the words or see the conduct, as the case may be; he or she shall be deemed to have felt insulted or degraded if a reasonable person would have felt insulted or degraded by the words or conduct concerned.

(4) In order to establish a charge of criminal insult based upon an invasion of privacy, in that the accused observed the complainant while the complainant was in a state of partial or complete undress, it shall not be necessary to prove that the complainant was aware of the invasion of privacy when it took place, if it is proved that when the complainant did become aware of it he or she felt insulted or degraded by it.

(5) It shall be a defence to a charge of criminal insult based upon an invasion of privacy for the person charged to prove that his or her conduct was motivated solely by the desire to obtain evidence of the commission of adultery by his or her spouse and that—

(a) he or she had reasonable grounds for believing that his or her spouse was committing or about to commit adultery; and

(b) he or she had reasonable grounds for believing that he or she was not invading the privacy of innocent persons; and

(c) the invasion of privacy that occurred was no more than was reasonably necessary for the purpose of obtaining evidence of his or her spouse's adultery.

(6) The defence referred to in subsection (5) shall avail a person who is—

(a) licensed as a private investigator in terms of the Private Investigators and Security Guards (Control) Act [Chapter 27:10]; and

(b) engaged by a person to obtain evidence of the commission of adultery by the spouse of that person.

(7) For the avoidance of doubt it is declared that no person in Zimbabwe is devoid of dignity, whatever his or her occupation or mode of life, and that the dignity of all persons is entitled to the protection of the law.

## **96 Criminal defamation**

(1) Any person who, intending to harm the reputation of another person, publishes a statement which—

(a) when he or she published it, he or she knew was false in a material particular or realised that there was a real risk or possibility that it might be false in a material particular; and

(b) causes serious harm to the reputation of that other person or creates a real risk or possibility of causing serious harm to that other person's reputation;

shall be guilty of criminal defamation and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding two years or both.

(2) In deciding whether the publication of a statement has caused harm to a person's reputation that is sufficiently serious to constitute the crime of criminal defamation, a court shall take into account the following factors in addition to any others that are relevant to the particular case—

(a) the extent to which the accused has persisted with the allegations made in the statement;

(b) the extravagance of any allegations made in the statement;

(c) the nature and extent of publication of the statement;

(d) whether and to what extent the interests of the State or any community have been detrimentally affected by the publication.

(3) Subject to subsection (4), a person accused of criminal defamation arising out of the publication of a statement shall be entitled to avail himself or herself of any defence that would be available to him or her in civil proceedings for defamation arising out of the same publication of the same statement.

(4) If it is proved in a prosecution for criminal defamation that the defamatory statement was made known to any person, it shall be presumed, unless the contrary is proved, that the person understood its defamatory significance.

## **PART VI**

### **WITCHCRAFT, WITCH-FINDING AND CRIMES RELATED THERETO**

## **97 Interpretation in Part VI of Chapter V**

In this Part—

“accuse a person of witchcraft” means to indicate that the person—

- (a) has used, is using or is likely or able to use non-natural means to cause—
  - (i) death or injury to or disease or disability in any person; or
  - (ii) destruction or loss of or damage to property of any description;or
- (b) is possessed by a spirit which has caused, is causing or is likely or able to cause—
  - (i) death or injury to or disease or disability in any person; or
  - (ii) destruction or loss of or damage to property of any description;

“non-natural means” includes the practice of witch-finding.

### **98 Engaging in practices commonly associated with witchcraft**

(1) Any person who engages in any practice knowing that it is commonly associated with witchcraft shall be guilty of engaging in a practice commonly associated with witchcraft if, having intended thereby to cause harm to any person, such practice inspires in the person against whom it was directed a real fear or belief that harm will occur to that person or any member of his or her family, and be liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(2) Spoken or written words shall not in themselves constitute a practice commonly associated with witchcraft for the purpose of this section, unless accompanied by or used in connection with other conduct commonly associated with witchcraft.

(3) For the avoidance of doubt it is declared that any person who assists another person to commit the crime of engaging in a practice commonly associated with witchcraft by giving advice or providing any substance or article to enable that person to commit the crime shall be liable to be charged as an accomplice to the crime.

(4) A court shall not take judicial notice of any practice that is said to be commonly associated with witchcraft, but any person who, in the opinion of the court, is suitably qualified to do so on account of his or her knowledge, shall be competent to give expert evidence as to whether the practice that forms the subject of a charge under this section is a practice that is commonly associated with witchcraft, whether generally or in the particular area where the practice is alleged to have taken place.

### **99 Indicating witches and wizards**

(1) Subject to this section, any person who groundlessly or by the purported use of non-natural means accuses another person of witchcraft shall be guilty of indicating a witch or wizard and liable—

- (a) in a case of any purported use of any non-natural means, to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both;
- (b) in any other case, to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(2) For the avoidance of doubt it is declared that no crime is committed by a person who, without the purported use of non-natural means and having reasonable grounds for suspecting another person of committing an offence referred to in section *ninety-eight*, accuses that person of committing that offence.

(3) It shall not be a defence to a contravention of subsection (1) involving the purported use of any non-natural means for the person charged to prove that the person he or she accused actually engaged in any practice commonly associated with witchcraft, but the court may regard such circumstance as mitigatory when assessing the sentence to be imposed.

### **100 Employing non-natural means to resolve crimes or delicts**

(1) Any person who—

- (a) by the purported use of non-natural means, intentionally indicates another person as the perpetrator of a crime or delict; or
- (b) in the purported investigation by non-natural means of any crime or delict, requires, advises or incites another person to undergo any test or consume any substance;

shall be guilty of employing non-natural means to resolve a crime or delict and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(2) For the avoidance of doubt it is declared that any person who procures the services of another person to do any act referred to in paragraph (a) or (b) of subsection (1) shall be liable to be charged as an accomplice to the crime of employing non-natural means to resolve a crime or delict.

(3) It shall not be a defence to a contravention of subparagraph (a) of subsection (1) for the person charged to prove that the person he or she indicated actually perpetrated a crime or delict, but the court may regard such circumstance as mitigatory when assessing the sentence to be imposed.

### **101 Belief in witchcraft to operate in mitigation and not as defence to crimes**

It shall not be a defence to murder, assault or any other crime that the accused was actuated by a genuine belief that the victim was a witch or wizard, but a court convicting such person may take such belief into account when imposing sentence upon him or her for the crime.

## 102 Charges alternative to or concurrent with charges under Part VI of Chapter V

A person accused of engaging in a practice commonly associated with witchcraft, indicating a witch or wizard or employing non-natural means to resolve a crime or delict, involving conduct that is in itself otherwise unlawful—

- (a) may be charged in the alternative with the crime constituted by that conduct if the punishment to which the person is liable for that crime is the same or less than that provided for under section *ninety-eight*, *ninety-nine* or *one hundred*, as the case may be; or
- (b) shall be charged with the crime constituted by that conduct, whether or not concurrently with the crime of engaging in a practice commonly associated with witchcraft, indicating a witch or wizard or employing non-natural means to resolve a crime or delict, if the punishment to which the person is liable for that crime is greater than that provided for under section *ninety-eight*, *ninety-nine* or *one hundred*, as the case may be.

## PART VII

### BIGAMY

## 103 Interpretation in Part VII of Chapter V

In this Part—

“actually polygamous marriage” means a polygamous marriage consisting of a husband and two or more wives;

“monogamous marriage” means—

- (a) a marriage celebrated in terms of the Marriage Act [*Chapter 5:11*] or any enactment repealed by that Act; or
- (b) any other marriage celebrated inside or outside Zimbabwe under a law which prohibits the parties from marrying anyone else whilst they remain married to each other;

“polygamous marriage” means—

- (a) a marriage celebrated according to customary law and solemnised in terms of the Customary Marriages Act [*Chapter 5:07*]; or
- (b) an unregistered customary law marriage; or
- (c) any other marriage celebrated inside or outside Zimbabwe under a law which permits the husband to marry another woman while remaining married to the wife;

“potentially polygamous marriage” means a polygamous marriage consisting of a husband and a single wife.

## 104 Bigamy

(1) Any person who, being a party to—

- (a) a monogamous marriage and, knowing that the marriage still subsists, intentionally purports to enter into another marriage, whether monogamous or polygamous, with a person other than his or her spouse by the first-mentioned marriage; or
- (b) an actually polygamous marriage and, knowing that the marriage still subsists, intentionally purports to enter into a monogamous marriage with any person; or
- (c) a potentially polygamous marriage and, knowing that the marriage still subsists, intentionally purports to enter into a monogamous marriage with any person other than his or her spouse by the potentially polygamous marriage;

shall be guilty of bigamy and liable, if convicted in terms of—

- (i) paragraph (a), to a fine not exceeding level six or imprisonment for a period not exceeding one year or both;
- (ii) paragraph (b) or (c), to a fine not exceeding level five.

(2) Where a person is accused of bigamy in circumstances where he or she is alleged to have purportedly entered into a monogamous marriage while being a party to an unregistered customary law marriage with another person, and the accused denies that he or she is a party to the unregistered customary law marriage, the burden shall rest upon the prosecution to prove beyond a reasonable doubt that he or she is a party to the unregistered customary law marriage.

## PART VIII

### CONCEALMENT OF BIRTHS AND EXPOSURE OF INFANTS

## 105 Interpretation in Part VIII of Chapter V

In this Part—

“child” does not include a foetus which has issued forth from its mother before the twenty-eighth week of pregnancy;

“infant” means a person under the age of seven years;



“still-born”, in relation to a child, means a child which did not at any time after being expelled from its mother breathe or show any signs of life.

### **106 Concealing birth of child**

(1) Any person who buries, abandons or disposes of the body of a child with the intention of concealing the fact of its birth, whether the child was still-born or died during or after its birth, shall be guilty of concealing the birth of a child and liable to a fine not exceeding level seven or imprisonment for a period not exceeding six months or both.

(2) A person may be convicted of concealing the birth of a child even though it has not been proved that the child died before its body was buried, abandoned or disposed of.

### **107 Presumptions relating to concealment of birth**

(1) If it is proved, in any prosecution for concealing the birth of a child, that a person buried, abandoned or disposed of the body of a child otherwise than in accordance with the provisions of the Burial and Cremation Act [*Chapter 5:03*], it shall be presumed, unless the contrary is proved, that he or she buried, abandoned or disposed of the body with the intention of concealing the fact of its birth.

(2) If it is proved, in any prosecution for concealing the birth of a child, that a person buried, abandoned or disposed of any human remains, it shall be presumed, unless the contrary is proved, that he or she buried, abandoned or disposed of the body of a child.

### **108 Exposing an infant**

(1) Any person who intentionally abandons an infant in such a place or in such circumstances that death may result from the exposure shall be guilty of exposing an infant and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(2) Where the abandonment of an infant as described in subsection (1)—

- (a) results in or was intended to cause the death of the infant, the person who abandoned the infant shall be charged with murder or attempted murder or infanticide or attempted infanticide, as the case may be, whether or not concurrently with exposing an infant in contravention of subsection (1);
- (b) does not result in and was not intended to cause the death of the infant, the person who abandoned the infant may be charged concurrently or alternatively under subsection (1) of section 7 of the Children’s Act [*Chapter 5:06*].

(3) When assessing the sentence to be imposed upon a person accused of exposing an infant who is the mother of the infant, regard shall be had to any pressure or stress from which she suffered arising out of any one or more of the following circumstances or considerations—

- (a) the effects which the birth had, or which she believed it would have, on her social, financial or marital situation;
- (b) the difficulties which were created, or which she believed would be created, in caring for the infant in the social, financial or marital situation in which the infant was born;
- (c) the difficulties which she had, or which she believed she would have, in caring for the infant due to her inexperience or incapacity;
- (d) any other relevant circumstance or consideration.

## **PART IX**

### CRIMES IN RELATION TO GRAVES AND CORPSES

### **109 Interpretation in Part IX of Chapter V**

In this section—

“grave” includes any monument, vault or tombstone, whether situated in a cemetery established in terms of the Cemeteries Act [*Chapter 5:04*] or not;

“violate”, in relation to a grave, includes to destroy or damage the grave or the immediate surrounds of the grave, or take any article therefrom.

### **110 Violating graves**

Any person who violates a grave in which human remains are situated, knowing that he or she is doing so or realising that there is a real risk or possibility that he or she may be doing so, shall be guilty of violating a grave and liable to a fine not exceeding level seven or imprisonment for a period not exceeding one year or both.

### **111 Violating corpses**

(1) Any person who damages, mutilates, removes pieces from or otherwise violates a dead human body, knowing that he or she is doing so or realising that there is a real risk or possibility that he or she may be doing so, shall be guilty of violating a corpse and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(2) Notwithstanding subsection (1), it shall be lawful for any person—

- (a) to remove tissue from or carry out a post-mortem examination on or otherwise deal with a dead human body in accordance with the Inquests Act [*Chapter 7:07*], the Anatomical Donations and Post-mortem Examinations Act [*Chapter 15:01*], or any other enactment; or
- (b) to do anything necessary for the purpose of embalming a dead human body or preparing it for burial, cremation or other lawful disposal.

## CHAPTER VI

### PROPERTY CRIMES

#### PART I

##### THEFT AND RELATED CRIMES

##### *Division A: Preliminary*

### 112 Interpretation in Part I of Chapter VI

In this Part—

“property capable of being stolen” means any movable corporeal thing or object, or any incorporeal right vested in a person relating to movable or immovable property, and—

(a) includes—

- (i) money, whether in the form of cash, specific notes or coins, an entry in an account or other abstract sum of money or claim to be paid an amount of money; and
- (ii) shares in any business undertaking;
- (iii) the following incorporeal things in so far as they may be illegally tapped or diverted from their intended destination—
  - A. electricity; and
  - B. electromagnetic waves emitted by a telecommunications or broadcasting system;

(b) does not include any of the following things—

- (i) property that is common to everyone, such as water in a public stream or air in the atmosphere;
- (ii) wild animals, birds, insects and fish that have not been reduced to captivity;
- (iii) eggs, honey and other produce of wild animals, birds, insects and fish, which has not been taken into possession by anyone;
- (iv) property that has been finally and absolutely abandoned by its owner, that is, thrown away or otherwise disposed of by the owner with the intention of relinquishing all his or her rights to it;

“steal” means to commit theft or stock theft, as the case may be;

“take”, in relation to property capable of being stolen, means—

- (a) taking possession or control of a movable corporeal thing or object;
- (b) being in possession of a movable corporeal thing or object and assuming the rights of an owner in respect of it;
- (c) in relation to any incorporeal right vested in a person, exercising or assuming title to the right concerned;

“trust property” means property held, whether under a deed of trust or by agreement or under any enactment, on terms requiring the holder to do any or all of the following—

- (a) hold the property on behalf of another person or account for it to another person; or
- (b) hand the property over to a specific person; or
- (c) deal with the property in a particular way;

but does not include property received on terms expressly or impliedly stipulating that—

- (i) the recipient is entitled to use the property as his or her own; and
- (ii) there would only be a debtor and creditor relationship between the parties;

“violence” means the direct or indirect application of force to a person’s body.

*Division B: Theft, stock theft, unauthorised borrowing or use of property and making off without payment*

### 113 Theft

(1) Any person who takes property capable of being stolen—

- (a) knowing that another person is entitled to own, possess or control the property or realising that there is a real risk or possibility that another person may be so entitled; and

- (b) intending to deprive the other person permanently of his or her ownership, possession or control, or realising that there is a real risk or possibility that he or she may so deprive the other person of his or her ownership, possession or control;

shall be guilty of theft and liable to either or both of the following—

- (i) a fine not exceeding level fourteen or twice the value of the stolen property, whichever is the greater; or
- (ii) imprisonment for a period not exceeding twenty-five years;

or both:

Provided that a court may suspend the whole or any part of a sentence of imprisonment imposed for theft on condition that the convicted person restores any property stolen by him or her to the person deprived of it or compensates such person for its loss.

(2) Subject to subsection (3), a person shall also be guilty of theft if he or she holds trust property and, in breach of the terms under which it is so held, he or she intentionally—

- (a) omits to account or accounts incorrectly for the property; or
- (b) hands the property or part of it over to a person other than the person to whom he or she is obliged to hand it over; or
- (c) uses the property or part of it for a purpose other than the purpose for which he or she is obliged to use it; or
- (d) converts the property or part of it to his or her own use.

(3) Subsection (2) shall not apply if—

- (a) the person holding or receiving the property has properly and transparently accounted for the property in accordance with the terms of the trust; or
- (b) the person disposing of the property retains the equivalent value thereof for delivery to the person entitled thereto, unless the terms under which he or she holds or receives the property require him or her to hold and deliver back the specific property.

(4) For the avoidance of doubt it is declared that where a person, by means of a misrepresentation as defined in section *one hundred and thirty-five*, takes any property capable of being stolen, intending to deprive another person of the ownership, possession or control of the property, the competent charge is fraud and not theft.

#### **114 Stock theft**

(1) In this section—

“livestock” means—

- (a) any sheep, goat, pig, poultry, ostrich, pigeon, rabbit, or bovine or equine animal; or
- (b) any domesticated game; or
- (c) the carcass or any portion of a carcass of any slaughtered livestock as defined in paragraph (a) or (b);

“produce” includes the whole or any part of any skin, hide, horn or egg of livestock or any wool or mohair.

(2) Any person who—

- (a) takes livestock or its produce—
  - (i) knowing that another person is entitled to own, possess or control the livestock or its produce or realising that there is a real risk or possibility that another person may be so entitled; and
  - (ii) intending to deprive the other person permanently of his or her ownership, possession or control, or realising that there is a real risk or possibility that he or she may so deprive the other person of his or her ownership, possession or control;

or

- (b) takes possession of stolen livestock or its produce—

- (i) knowing that it has been stolen; or
- (ii) realising that there is a real risk or possibility that it has been stolen;

or

- (c) is found in possession of, or has been in possession of, livestock or its produce in circumstances which give rise, either at the time of the possession or at any time thereafter, to a reasonable suspicion that at the time of such possession the livestock or its produce was stolen, and who is unable at any time to give a satisfactory explanation of his or her possession; or
- (d) acquires or receives into his or her possession from any other person any stolen livestock or produce without reasonable cause (the proof whereof lies on him or her) for believing at the time of acquiring or receiving such livestock or produce that it was the property of the person from whom he or she acquired or received it or that such person was duly authorised by the owner thereof to deal with it or dispose of it;

shall be guilty of stock theft and liable—

- (e) if the stock theft involved any bovine or equine animal stolen in the circumstances described in paragraph (a) or (b), and there are no special circumstances in the particular case as provided in subsection (3), to imprisonment for a period of not less than nine years or more than twenty-five years; or
- (f) if the stock theft was committed in the circumstances described in paragraph (a) or (b) but did not involve any bovine or equine animal, or was committed in the circumstances described in paragraph (c) or (d)—
  - (i) to a fine not exceeding level fourteen or twice the value of the stolen property, whichever is the greater; or
  - (ii) to imprisonment for a period not exceeding twenty-five years; or both.

(3) If a person convicted of stock theft involving any bovine or equine animal stolen in the circumstances described in paragraph (a) or (b) of subsection (2) satisfies the court that there are special circumstances peculiar to the case, which circumstances shall be recorded by the court, why the penalty provided under paragraph (e) of subsection (2) should not be imposed, the convicted person shall be liable to the penalty provided under paragraph (f) of subsection (2).

(4) A court sentencing a person under paragraph (e) of subsection (2)—

- (a) to the minimum sentence of imprisonment of nine years, shall not order that the operation of the whole or any part of the sentence be suspended;
- (b) to imprisonment in excess of the minimum sentence of imprisonment of nine years, may order that the operation of the whole or any part of the sentence exceeding nine years be suspended.

(5) Any person who enters any cattle kraal, stable, byre, fold, pen, sty, loft, coop, run, building or other enclosure with intent to steal any livestock or its produce therefrom shall be guilty of attempted stock theft and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding two years or both.

(6) When any person is accused of a contravention of subsection (5), the onus shall be on such person to prove that he or she had no intention of stealing any livestock or its produce.

(7) A person accused of contravening—

- (a) paragraph (a) or (b) of subsection (2) may be found guilty of theft or receiving stolen property knowing it to have been stolen, if such a conviction is the more appropriate on the evidence;
- (b) paragraph (c) or (d) of subsection (2) may be found guilty of theft, receiving stolen property knowing it to have been stolen or possessing property reasonably suspected of being stolen, if such conviction is the more appropriate on the evidence;
- (c) paragraph (c) or (d) of subsection (2) may be charged alternatively with theft, receiving stolen property knowing it to have been stolen or possessing property reasonably suspected of being stolen.

[Paragraph amended by section 31 of Act 9 of 2006.]

(8) Any person charged with the stock theft involving livestock or its produce belonging to a particular person may be found guilty of stock theft, theft or any other crime of which he or she may be found guilty in terms of Chapter XV notwithstanding the fact that the prosecution has failed to prove that such livestock or produce actually did belong to such particular person.

### **115 When persons deemed to intend to deprive others permanently of property**

Without limiting the expression in any way, a person shall be deemed for the purpose of sections *one hundred and thirteen* and *one hundred and fourteen* to intend to deprive another person permanently of that person's ownership, possession or control of property if—

- (a) having taken possession or assumed control of the property, he or she—
  - (i) abandons it without regard to whether or not it is restored to the other person; or
  - (ii) subjects it to a use which he or she realises will destroy it;
 or
- (b) he or she consumes the property, intending to return identical property to the other person; or
- (c) the property being money, he or she spends it, intending to return the same amount to the other person.

### **116 Unauthorised borrowing or use of property**

Any person who, knowing that another person is entitled to own, possess or control any property capable of being stolen or realising that there is a real risk or possibility that another person may be so entitled, takes possession or control of the property without the consent of that other person, intending to temporarily hold or make temporary use of it and then return it to that other person's possession or control, shall be guilty of unauthorised borrowing or use of property, and liable to—

- (a) a fine not exceeding level fourteen or not exceeding twice the value of the property which forms the subject of the charge, whichever is the greater; or
  - (b) imprisonment for a period not exceeding two years;
- or both.

## **117 Making off without payment**

(1) In this section—

“payment on the spot” includes—

- (a) in relation to the provision of a service, payment at the time of collecting goods on which work has been done or in respect of which a service has been provided;
- (b) payment before leaving the premises in or upon which the service or goods were provided.

(2) Any person who benefits from a service or consumes any goods lawfully provided to him or her and, knowing that payment on the spot for the service or goods is required or expected from him or her, intentionally makes off without paying for the service or goods, shall be guilty of making off without payment, and liable to—

- (a) a fine not exceeding level seven or not exceeding twice the value of the service or goods which form the subject of the charge, whichever is the greater; or
- (b) imprisonment for a period not exceeding two years;

or both.

(3) If it is proved in a prosecution for making off without payment that a person, having benefited from a service or consumed any goods lawfully provided to him or her, absented himself or herself without paying for the service or goods, and that the service or goods are of a kind for which payment on the spot is ordinarily required, then it shall be presumed, unless the contrary is proved, that—

- (a) he or she knew that payment on the spot for the service or goods was required or expected from him or her; and
- (b) he or she intentionally made off without paying for the service or goods.

## **118 Mistake of fact in cases of theft, stock theft or unauthorised borrowing or use of property**

(1) It shall be a defence to a charge of theft, stock theft or unauthorised borrowing or use of property that the accused took the property concerned, genuinely but mistakenly believing that—

- (a) the owner of the property, or the person entitled to possess or control it, had consented to the taking or would have consented if he or she had known of the circumstances; or
- (b) the property was his or her own property and no other person was entitled to possess or control it; or
- (c) the property had been finally and absolutely abandoned, that is, that the owner had thrown it away or otherwise disposed of it intending to relinquish all his or her rights to it:

Provided that such a belief shall not be a defence to a charge of theft of lost property unless—

- (i) regard being had to the nature and value of the property and the circumstances of its finding, the belief was reasonable; or
- (ii) the accused took all reasonable steps to find the owner of the property and reported his or her finding of it to the police or other appropriate authority.

(2) Subsection (1) shall not be construed as limiting or excluding the application of Chapter XIV in relation to theft, stock theft or unlawful borrowing or use of property.

(3) Where a person takes possession or control of any property with the mistaken consent or acquiescence of the person from whom he or she takes it, that consent shall not be a defence to a charge of theft, stock theft or unlawful borrowing or use of the property if the person who takes the property—

- (a) knows of the mistake at the time he or she takes the property; or
- (b) deals with or uses or keeps the property after he or she has become aware of the mistake.

## **119 Unavailable defences to charge of theft, stock theft or unauthorised borrowing or use of property**

(1) It shall not be a defence to a charge of theft, stock theft or unauthorised borrowing or use of property that the person charged—

- (a) took the property concerned in circumstances other than those described in subsection (1) of section *one hundred and eighteen*, genuinely but mistakenly believing—
  - (i) that he or she had a legal right to take the property on his or her own behalf or on behalf of someone else; and
  - (ii) in the case of a charge of theft, that he or she had a legal right permanently to deprive the person from whom he or she took the property of his or her ownership, possession or control of it;

or

- (b) did not intend to gain any personal benefit from the property concerned; or
- (c) needed the property concerned because he or she was suffering hardship; or
- (d) believed that the person entitled to own, possess or control the property had more property than he or she needed for his or her own purposes; or
- (e) did not intend to prejudice the person entitled to own, possess or control the property; or
- (f) in the case of a charge of theft or stock theft, intended to return the property to the person entitled to own, possess or control it, having originally taken it with the intention of permanently depriving that person of his or her ownership, possession or control; or

(g) did not know the identity of the person entitled to own, possess or control the property.

(2) Where a person holds trust property it shall not be a defence to a charge of theft, stock theft or unlawful borrowing or use of the property that the person genuinely but mistakenly believed that the law, in the absence of an express stipulation to the contrary under the terms on which he or she holds the property, allowed him or her to spend, consume or dispose of that property provided that he or she replaced it.

(3) A court may regard the factors referred to in paragraphs (a), (b), (c) and (e) of subsection (1), and subsection (2), as mitigatory when assessing the sentence to be imposed upon a person convicted of theft, stock theft or unauthorised borrowing or use of property.

### **120 Joint ownership no defence**

It shall not be a defence to a charge of theft, stock theft or unauthorised borrowing or use of property that the accused was a co-owner of the property that forms the subject of the charge, whether the co-ownership arises through marriage or a partnership or otherwise, if—

- (a) the taking, dealing with or using of the property was not authorised by any agreement between the accused and his or her co-owner, spouse or partner; and
- (b) in the case of a charge of theft or stock theft, the accused took, dealt with or used the property with the intention of depriving his or her co-owner, spouse or partner permanently of the ownership, possession or control of the property:

Provided that no prosecution shall be instituted against a spouse for stealing or unlawfully borrowing or using property belonging to the other spouse or that forms part of the spouses' joint estate, unless the Attorney-General has authorised such a prosecution.

### **121 Theft and stock theft continuing crimes**

(1) The crime of theft or stock theft continues to be committed by a thief even if the thief subsequently loses possession of the property he or she has stolen.

(2) Regardless of whether a thief remains in possession of the property he or she has stolen—

- (a) he or she may be tried for the theft or stock theft by any court within whose area of jurisdiction he or she possessed the stolen property, even if he or she originally stole the property outside the court's area of jurisdiction or outside Zimbabwe; and
- (b) any person who assists him or her while he or she is in possession of the stolen property may be charged and convicted as an accomplice to the theft or stock theft.

### **122 Pledge-taking cases**

(1) Where a person takes possession or control of property capable of being stolen which is owned, possessed or controlled by another person, intending to hold the property as a pledge or security pending the satisfaction of a debt owed by that other person, he or she shall not be chargeable with theft of the property or stock theft unless he or she intended to deprive the other person permanently of his or her ownership, possession or control of the property, but he or she may be charged with unauthorised borrowing or use of the property.

(2) A person who takes property capable of being stolen, intending to deprive the owner permanently of his or her ownership, contrary to the terms on which the person received possession or control of it from the owner as a pledge or security pending the satisfaction of a debt owed to him or her, shall be chargeable with theft or stock theft, as the case may be.

### **123 Recent possession of stolen property**

(1) Subject to subsection (2), where a person is found in possession of property that has recently been stolen and the circumstances of the person's possession are such that he or she may reasonably be expected to give an explanation for his or her possession, a court may infer that the person is guilty of either the theft of the property or stock theft, or of receiving it knowing it to have been stolen, whichever crime is the more appropriate on the evidence, if the person—

- (a) cannot explain his or her possession; or
- (b) gives an explanation of his or her possession which is false or unreasonable.

(2) A court shall not draw the inference referred to in subsection (1) unless the circumstances of the person's possession of the property are such that, in the absence of an explanation from him or her, the only reasonable inference is that he or she is guilty of theft, stock theft or receiving stolen property knowing it to have been stolen, as the case may be.

## *Division C: Receiving or possessing stolen property*

### **124 Receiving stolen property knowing it to have been stolen**

(1) Any person who takes possession of stolen property—

- (a) knowing that it has been stolen; or
- (b) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of receiving stolen property knowing it to have been stolen, and liable to—

- (i) a fine not exceeding level fourteen or not exceeding twice the value of the property which forms the subject of the charge, whichever is the greater; or
- (ii) imprisonment for a period not exceeding twenty-five years;

or both.

(2) If it is proved in a prosecution for receiving stolen property knowing it to have been stolen that, at the time the accused took possession of the property, he or she did not know that it had been stolen or did not realise that there was a real risk or possibility that it had been stolen, but acquired such knowledge or came to such a realisation afterwards, he or she may be convicted of theft or stock theft or of being found in possession of property reasonably suspected of being stolen, if the facts support such a conviction.

### **125 Possessing property reasonably suspected of being stolen**

If any person—

- (a) is or has been in possession of property capable of being stolen and the circumstances of his or her possession are such as to give rise, either at the time of his or her possession or at any time thereafter, to a reasonable suspicion that when he or she came into possession of the property it was stolen; and
- (b) is unable at any time to give a satisfactory explanation for his or her possession of the property;

the person shall be guilty of possessing property reasonably suspected of being stolen, and liable to—

- (i) a fine not exceeding level ten or not exceeding twice the value of the property which forms the subject of the charge, whichever is the greater; or
- (ii) imprisonment for a period not exceeding five years;

or both.

#### *Division D: Robbery*

### **126 Robbery**

(1) Any person who steals or does any act constituting the crime of unauthorised borrowing or use of property shall be guilty of robbery if he or she intentionally uses violence or the threat of immediate violence—

- (a) immediately before or at the time he or she takes the property, in order to induce the person who has lawful control over the property to relinquish his or her control over it; or
- (b) immediately after he or she takes the property, in order to prevent the person who had lawful control over the property from recovering his or her control over it.

(2) A person convicted of robbery shall be liable—

- (a) to imprisonment for life or any shorter period, if the crime was committed in aggravating circumstances as provided in subsection (3); or
- (b) in any other case—
  - (i) to a fine not exceeding level fourteen or not exceeding twice the value of the property that forms the subject of the charge, whichever is the greater; or
  - (ii) to imprisonment for a period not exceeding fifty years;

or both:

Provided that a court may suspend the whole or any part of a sentence of imprisonment imposed for robbery on condition that the convicted person restores any property stolen by him or her to the person deprived of it or compensates such person for its loss.

(3) For the purposes of subsection (2), robbery is committed in aggravating circumstances if the convicted person or an accomplice of the convicted person —

- (a) possessed a firearm or a dangerous weapon; or
- (b) inflicted or threatened to inflict serious bodily injury upon any person; or
- (c) killed a person;

on the occasion on which the crime was committed.

### **127 Robbery where complainant abandons control over property**

It shall not be a defence to a charge of robbery that, when the accused took possession or control over the property, the person who had lawful control over it was no longer exercising such control, if—

- (a) when the accused first used violence or the threat of violence, that other person was in control of the property; and
- (b) the effect of the violence or threat of violence was to render that other person unconscious or to cause him or her to run away or abandon the property or otherwise to render him or her incapable of exercising control over it.

### **128 Defences to charge of robbery**

A person accused of robbery shall be entitled to rely upon any defence that would have been available to the accused if he or she had been accused of theft of the property concerned.

### 129 Threat of future violence

(1) The taking, dealing with, using or keeping of property by means of a threat of violence shall not constitute robbery unless the threat is of immediate violence, that is to say, is a threat that violence will be used immediately if control over the property is not surrendered.

(2) Nothing in this section shall prevent a person who uses a threat of future violence to obtain control over property from being charged with extortion.

## PART II

### CRIMES INVOLVING ENTERING OR BEING IN OR ON PREMISES OR LAND

### 130 Interpretation in Part II of Chapter VI

In this Part—

“enter”, in relation to any premises, land or enclosed area, includes—

- (a) for the purposes of sections *one hundred and thirty-one* and *one hundred and thirty-two*, to insert any part of one’s body or an instrument into the premises, land or enclosed area;
- (b) to open or break open a door, window or gate or otherwise to remove an obstacle to entry into the premises, land or enclosed area;
- (c) to enter the premises, land or enclosed area without having removed an obstacle, as where entry is effected through an open door, window or gate;

“lawful occupier”, in relation to any land, enclosed area or premises, means any person who has lawful authority to control entry into or access to the land, area or premises;

“premises” means any movable or immovable building or structure which is used for human habitation or for storage, and includes an outbuilding, a shed, a caravan, a boat or a tent.

### 131 Unlawful entry into premises

(1) Any person who, intentionally and without permission or authority from the lawful occupier of the premises concerned, or without other lawful authority, enters the premises shall be guilty of unlawful entry into premises and liable—

- (a) to a fine not exceeding level thirteen or not exceeding twice the value of any property stolen, destroyed or damaged by the person as a result of the crime, whichever is the greater, or imprisonment for a period not exceeding fifteen years, or both, if the crime was committed in any one or more of the aggravating circumstances set out in subsection (2); or
- (b) in any other case, to a fine not exceeding level ten or not exceeding twice the value of any property destroyed or damaged by the person as a result of the crime, whichever is the greater, or imprisonment for a period not exceeding ten years, or both.

(2) For the purposes of paragraph (a) of subsection (1), the crime of unlawful entry into premises is committed in aggravating circumstances if, on the occasion on which the crime was committed, the convicted person—

- (a) entered a dwelling-house; or
- (b) knew there were people present in the premises; or
- (c) carried a weapon; or
- (d) used violence against any person, or damaged or destroyed any property, in effecting the entry; or
- (e) committed or intended to commit some other crime.

### 132 Criminal trespass

(1) Any person who—

- (a) enters any land knowing or realising that there is a real risk or possibility that such entry is forbidden; or
- (b) having entered any land, fails or refuses without lawful excuse to leave the land when called upon to do so by the lawful occupier or any other person with apparent authority to require him or her to leave;

shall be guilty of criminal trespass and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

(2) It shall be presumed, unless the contrary is shown, that a person accused of criminal trespass knew or realised that there was a real risk or possibility that entry into the land in question was forbidden where the land was an enclosed area.

(3) For the purposes of subsection (2)—

- (a) an “enclosed area” means an area of land the perimeter of which is enclosed by a sufficient wall, fence or hedge that is continuous except for one or more entrances that are barred or capable of being barred by a gate or other means; and



- (b) in considering whether a wall, fence or hedge is “sufficient”, no regard shall be had to its design or state of repair as long as it is apparent to a reasonable person that the wall, fence or hedge was intended to enclose the area of land concerned.

### **PART III**

#### EXTORTION

### **133 Interpretation in Part III of Chapter VI**

In this Part—

“advantage” means any right, interest, profit, indemnity, favour or advantage of any kind whatsoever which benefits a person, whether lawfully or otherwise, or which a person believes will so benefit him or her;

“exert illegitimate pressure on a person” means to do anything whatsoever which is intended to and does intimidate that person and, without limiting this definition in any way, includes—

- (a) to threaten to do something that is lawful for the purpose of extracting an unlawful advantage from another person; and
- (b) to threaten to do something that is unlawful for the purpose of extracting a lawful advantage from another person.

### **134 Extortion**

(1) Any person who—

(a) intentionally exerts illegitimate pressure on another person with the purpose of extracting an advantage, whether for himself or herself or for some other person, and whether or not it is due to him or her, from that other person, or causing that other person loss; and

(b) by means of the illegitimate pressure, obtains the advantage, or causes the loss;

shall be guilty of extortion and liable to—

- (i) a fine not exceeding level thirteen or not exceeding twice the value of any property obtained by him or her as a result of the crime, whichever is the greater; or
- (ii) imprisonment for a period not exceeding fifteen years;

or both.

(2) For the avoidance of doubt it is declared that where a person, for the purpose of inducing or compelling the payment of any money or property as damages or as marriage compensation in respect of a deceased person, leaves or deposits the deceased person’s body on any land or premises occupied by another person, or hinders or prevents the burial of the deceased person’s body, he or she shall be guilty of extortion or, if he or she failed to induce or compel the payment of any money or property, attempted extortion.

(3) If a court convicting a person of extortion is satisfied that, as a result of the crime, any money or property was paid to the convicted person, the court may order the convicted person to repay that money or property to the person who paid it to him or her.

(4) Subsection (2) of section 366 and sections 367 to 375 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall, with the necessary modifications, apply in relation to any order under subsection (3) as if it had been made in terms of Part XIX of that Act.

### **PART IV**

#### FRAUD AND FORGERY

### **135 Interpretation in Part IV of Chapter VI**

In this Part—

“defraud” means to commit the crime of fraud upon a person;

“document or item” means an embodiment of any information, design or other written or depicted matter in any material form whatsoever that is capable of being read or understood by persons or machines and, without limiting this definition in any way, includes—

- (a) coins, banknotes and negotiable instruments;
- (b) receipts, certificates, vouchers, tickets, invoices, stamps, marks, licences, permits, statements of account and any entry in any book of account;
- (c) paintings and other works of art;
- (d) documents of a literary or historical nature;
- (e) information stored by electronic means that is capable of being printed out or retrieved or displayed on a screen or terminal;
- (f) any three-dimensional item;

“misrepresentation” means any act or omission of any kind whatsoever which wrongly or incorrectly represents any fact, law, character, circumstance, opinion or other thing whatsoever and, without limiting this definition in any way, includes—

- (a) a false statement of fact or law or a false expression of opinion;
- (b) silence on the part of a person who has a duty to speak, knowing that another person has been or will be misled by the silence;
- (c) a promise to do something in the future, when made by a person who knows that he or she will not be able to do that thing or who realises that there is a real risk or possibility that he or she may not be able to do it;
- (d) a false statement by a person who wishes to borrow money or any other thing as to the purpose for which he or she requires the money or other thing;
- (e) an exaggerated claim as to any quality of a thing that is being sold, where the person who makes the claim knows or realises that the person to whom he or she makes the claim is being or is likely to be deceived thereby;
- (f) the use, publication or uttering of a document which contains a false statement, knowing that the document contains a false statement or realising that there is a real risk or possibility that it does so;

“potentially prejudicial” means involving a risk, which is not too fanciful or remote, of causing prejudice;

“prejudice” means injury, harm, detriment or damage of any kind whatsoever, including material or financial prejudice, prejudice to reputation and prejudice to good administration;

“public document or item” means a document or item, including a judicial document or item, issued by or on behalf of the State.

### 136 Fraud

Any person who makes a misrepresentation—

- (a) intending to deceive another person or realising that there is a real risk or possibility of deceiving another person; and
- (b) intending to cause another person to act upon the misrepresentation to his or her prejudice, or realising that there is a real risk or possibility that another person may act upon the misrepresentation to his or her prejudice;

shall be guilty of fraud if the misrepresentation causes actual prejudice to another person or is potentially prejudicial to another person, and be liable to—

- (i) a fine not exceeding level fourteen or not exceeding twice the value of any property obtained by him or her as a result of the crime, whichever is the greater; or
- (ii) imprisonment for a period not exceeding thirty-five years;

or both.

[Section amended by section 31 of Act 9 of 2006.]

### 137 Forgery

(1) Any person who forges any document or item by—

- (a) making a document or signature which purports to be made by a person who did not make it or authorise it to be made or by a person who does not exist; or
- (b) tampering with a document or item by making some material alteration, erasure or obliteration;

with the intention of defrauding another person or realising that there is a real risk or possibility of defrauding another person thereby, shall be guilty of forgery and liable to—

- (i) in a case of forgery of a public document or item, a fine not exceeding level fourteen or imprisonment for a period not exceeding twenty years or both; or
- (ii) in a case of forgery of a document or item other than a public document or item, a fine not exceeding level thirteen or imprisonment for a period not exceeding fifteen years or both.

(2) In a case where—

- (a) a person delivers or causes to be delivered a forged document or item to another person with the intention of defrauding that person or realising that there is a real risk or possibility of defrauding that person—
  - (i) the competent charges shall be fraud and forgery if the person delivering the forged document or item or causing it to be delivered also forged it;
  - (ii) the competent charge shall be fraud if the person delivering the forged document or item or causing it to be delivered did not forge it;
- (b) a banknote issued by the Reserve Bank of Zimbabwe is forged, the competent charge shall be that specified in section 42 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

### 138 Conviction for fraud, etc., where specific victim not identified

A person accused of fraud or any other crime involving the making of a misrepresentation may be found guilty of the crime notwithstanding that—

- (a) the person to whom the misrepresentation was made is not identified; or

- (b) the person whom the accused intended to deceive or prejudice, or whom the accused realised he or she might be deceiving or prejudicing, is not identified; or
- (c) the person to whom prejudice or potential prejudice was or would have been caused is not identified.

## PART V

### CAUSING DAMAGE TO OR DESTRUCTION OF PROPERTY

#### 139 Interpretation in Part V of Chapter VI

In this Part—

“damage” means any permanent or temporary damage or injury of any kind to property, whether or not it causes financial loss to the person entitled to own, possess or control the property, and includes—

- (a) damage or injury which necessitates the repair of the property, whatever the cost of the repair;
- (b) the displacement, removal or breaking of a constituent part of the property;
- (c) damage or injury which renders the property unsuitable or less suitable for the use to which it was being put;

but does not include damage or injury which is trivial in nature;

“property” means any movable or immovable material thing that is capable of being owned by a person, but does not include any of the following things—

- (a) wild animals, birds, insects and fish that have not been reduced to captivity;
- (b) eggs, honey and other produce of wild animals, birds, insects and fish, which has not been taken into possession by anyone;
- (c) property that has been finally and absolutely abandoned by its owner, that is, thrown away or otherwise disposed of by the owner with the intention of relinquishing all his or her rights to it;
- (d) property that is owned by the person who damages or destroys it, unless some other person has a right to possess or control the property and the person who damages or destroys it intends, by his or her act, to deprive that other person of his or her right.

#### 140 Malicious damage to property

Any person who, knowing that another person is entitled to own, possess or control any property or realising that there is a real risk or possibility that another person may be so entitled, damages or destroys the property—

- (a) intending to cause such damage or destruction; or
- (b) realising that there is a real risk or possibility that such damage or destruction may result from his or her act or omission;

shall be guilty of malicious damage to property, and liable to—

- (i) a fine not exceeding level fourteen or not exceeding twice the value of the property damaged as a result of the crime, whichever is the greater; or
- (ii) imprisonment for a period not exceeding twenty-five years;

or both.

#### 141 Negligently causing serious damage to property

Any person who, knowing that another person is entitled to own, possess or control any property or realising that there is a real risk or possibility that another person may be so entitled, seriously damages or destroys the property, being grossly negligent in causing such damage or destruction, shall be guilty of negligently causing serious damage to property, and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

#### 142 Damage by co-owners, spouses and partners

It shall not be a defence to a charge of malicious damage to property or negligently causing serious damage to property that the person charged was a co-owner of the property that forms the subject of the charge, whether the co-ownership arises through marriage or a partnership or otherwise, if the damaging of the property was not authorised by any agreement between the person and his or her co-owner, spouse or partner:

Provided that no prosecution shall be instituted against a spouse for damaging property belonging to the other spouse or that forms part of the spouses’ joint estate, unless the Attorney-General has authorised such a prosecution.

#### 143 Aggravating circumstances in relation to malicious damage to property or negligently causing serious damage to property

It shall be an aggravating circumstance if—

- (a) the damage or destruction that constitutes the crime of malicious damage to property or negligently causing serious damage to property—
  - (i) is caused by the use of fire or explosives; or
  - (ii) causes injury or involves a risk of injury to persons in or near the property concerned; or

(iii) occasions considerable material prejudice to the person entitled to own, possess or control the property damaged or destroyed;

or

(b) the crime of malicious damage to property or negligently causing serious damage to property is committed against property that is owned, possessed or controlled by the State, a statutory corporation or a local authority.

#### **144 Mistake of fact in relation to malicious damage to property**

(1) It shall be a defence to a charge of malicious damage to property that the person charged damaged or destroyed the property concerned, genuinely but mistakenly believing that—

- (a) the owner or person entitled to possess or control the property had consented to the damage or destruction or would have consented if he or she had known of the circumstances; or
- (b) the property was his or her own property and no other person was entitled to possess or control it; or
- (c) the property had been finally and absolutely abandoned by its owner, that is, that the owner had thrown it away or otherwise disposed of it intending to relinquish all his or her rights in it:

Provided that such a belief shall not be a defence to a charge of malicious damage to property unless, regard being had to all the circumstances, the belief was reasonable.

(2) This section shall not be construed as limiting or excluding the application of Chapter XIV in relation to malicious damage to property.

### **PART VI**

#### **HIJACKING AND OTHER CRIMES INVOLVING AIRCRAFT**

#### **145 Interpretation in Part VI of Chapter VI**

(1) In this Part—

“aircraft” means an aircraft to which this Part applies in terms of section *one hundred and forty-six*;

“crew”, in relation to an aircraft, means any person connected with the operation of the aircraft, and includes flight attendants and air hostesses;

“dangerous goods” means—

- (a) firearms, ammunition, weapons and explosive substances; and
- (b) substances and things which, by reason of their nature or condition, may endanger the safety of an aircraft or of persons on board an aircraft.

(2) For the purposes of this Part—

(a) the flight of an aircraft shall be deemed to have begun—

- (i) when the last external door of the aircraft is closed before the aircraft first moves for the purpose of taking off from any place; or
- (ii) where subparagraph (i) is not applicable, when the aircraft first moves for the purpose of taking off from any place;

(b) the flight of an aircraft shall be deemed to have ended—

- (i) when the first external door of the aircraft is opened after the aircraft comes to rest for the first time after the beginning of the flight; or
- (ii) where subparagraph (i) is not applicable, when the aircraft comes to rest for the first time after the beginning of its flight; or
- (iii) where the aircraft is destroyed or the flight is abandoned before either subparagraph (i) or (ii) becomes applicable, when the aircraft is destroyed or the flight is abandoned, as the case may be.

#### **146 Application of Part VI of Chapter VI**

This Part shall apply to—

(a) all aircraft which are—

- (i) in or over Zimbabwe; or
- (ii) outside Zimbabwe and engaged in a flight which began in Zimbabwe or which at its beginning was intended to end in Zimbabwe; and

(b) all aircraft, wherever situated, which—

- (i) are registered or required to be registered in terms of the Civil Aviation Act [*Chapter 13:16*] or any regulations made thereunder; or
- (ii) belong to or are in the service of the State; or
- (iii) belong to or for the time being are exclusively used by the Defence Forces or the Police Force.

#### **147 Hijacking**

Any person who, without lawful reason, takes or exercises control over an aircraft shall be guilty of hijacking and liable to be sentenced to imprisonment for life or any shorter period.

#### **148 Damaging, destroying or prejudicing the safe operation of an aircraft**

Any person who, without lawful reason—

- (a) intentionally damages or destroys an aircraft; or
- (b) does or omits to do anything with the intention or realising that there is a real risk or possibility of prejudicing the safe operation of an aircraft;

shall be guilty of damaging, destroying or prejudicing the safe operation of an aircraft and liable to imprisonment for a period not exceeding twenty-five years.

#### **149 Assaulting, intimidating or threatening a person on an aircraft**

Any person who, without lawful reason, assaults, intimidates or threatens any person aboard an aircraft with the intention or realising that there is a real risk or possibility of interfering with the performance of the functions of any member of the crew of that aircraft, or with the intention or realising that there is a real risk or possibility of lessening the ability of such member to perform those functions, shall be guilty of assaulting, intimidating or threatening a person on an aircraft, and liable to imprisonment for a period not exceeding five years.

#### **150 Placing or carrying dangerous goods on an aircraft**

(1) Subject to subsection (2), any person who, without lawful reason—

- (a) places or carries any dangerous goods aboard an aircraft; or
- (b) causes any dangerous goods to be placed or carried aboard an aircraft; or
- (c) delivers dangerous goods to a person for the purpose of their being placed aboard an aircraft; or
- (d) has dangerous goods in his or her possession aboard an aircraft;

shall be guilty of placing or carrying dangerous goods on an aircraft and liable to imprisonment for a period not exceeding fifteen years.

(2) Subsection (1) shall not apply to the placing, carrying, causing to be placed or carried, delivery or possession of dangerous goods on board an aircraft—

- (a) with the consent of the owner or operator of the aircraft, given with the knowledge of the nature of the goods; or
- (b) in accordance with the Civil Aviation Act [*Chapter 13:16*] or any regulations made thereunder; or
- (c) by a person in the course of his or her lawful duties as an employee of the State.

#### **151 Threatening harm in relation to an aircraft**

Any person who, without lawful reason—

- (a) threatens; or
- (b) states that it is his or her intention; or
- (c) makes a statement from which it can reasonably be inferred that it is his or her intention;

to damage, destroy or prejudice the safe operation of an aircraft or to kill, injure or harm any person aboard an aircraft, shall be guilty of threatening harm in relation to an aircraft, and liable to imprisonment for a period not exceeding five years.

#### **152 Falsely threatening harm in relation to an aircraft**

Any person who, without lawful reason, makes a statement knowing that it is false or realising that there is a real risk or possibility that it may be false to the effect that, or from which it can reasonably be inferred that, there has been or is to be a plan, proposal, attempt, conspiracy or threat—

- (a) unlawfully to take or exercise control over an aircraft; or
- (b) unlawfully to destroy, damage or prejudice the safe operation of an aircraft; or
- (c) unlawfully to kill or injure any person aboard an aircraft;

shall be guilty of falsely threatening harm in relation to an aircraft and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

#### **153 Proof of lawful reason for conduct in relation to aircraft**

The burden of proving any fact or circumstance which would constitute a lawful reason for conduct which, in the absence of such reason, would be a crime in terms of this Part, shall rest on the person charged with the crime concerned.

#### **154 Charges alternative to or concurrent with charges under Part VI of Chapter VI**

If a person commits any crime specified in this Part—

- (a) in pursuance of an act of insurgency, banditry, sabotage or terrorism as defined in section *nineteen*, the person may be charged concurrently or alternatively with insurgency, banditry, sabotage or terrorism; or
- (b) that results in or was intended to cause the death of another person, whether or not in pursuance of an act referred to in paragraph (a), the person may be charged concurrently with murder or attempted murder.

## CHAPTER VII

### CRIMES INVOLVING DANGEROUS DRUGS

#### 155 Interpretation in Chapter VII

In this Chapter—

“Authority” means the Medicines and Allied Substances Control Authority established by section 3 of the Medicines and Allied Substances Control Act [*Chapter 15:03*] or any body that succeeds to its functions;

“cannabis” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated;

“cannabis plant” means the whole or any portion, whether green or dry, of any plant of the genus cannabis also known as “Indian hemp”, *bhanga*, *camba*, *dagga*, *mbanje* or *intsangu*, but excluding—

- (a) any fibre extracted from the plant for use as or in the manufacture of cordage, canvas or similar products, or
- (b) any seed which has been crushed, comminuted or otherwise processed in such a manner as to prevent germination, or
- (c) the fixed oil obtained from the seed;

[Definition substituted by section 31 of Act 9 of 2006.]

“cannabis resin” means the separated resin, whether crude or purified, obtained from the cannabis plant;

“coca bush” means the plant of any species of the genus *erythroxylon*;

“coca leaf” means the leaf of the coca bush except a leaf from which all ecgonine alkaloids have been removed;

“dangerous drug” means—

- (a) any coca bush, coca leaf, raw opium or cannabis plant;
- (b) prepared opium, prepared cannabis or cannabis resin;
- (c) a scheduled drug;

“deal in”, in relation to a dangerous drug, includes to sell or to perform any act, whether as a principal, agent, carrier, messenger or otherwise, in connection with the delivery, collection, importation, exportation, trans-shipment, supply, administration, manufacture, cultivation, procurement or transmission of such drug;

“medicinal opium” means opium which has undergone the processes necessary to adapt it for medicinal use;

“opium” means the coagulated juice of the opium poppy;

“opium poppy” means the plant of the species *Papaver somniferum L*;

“poppy straw” means all parts (except the seeds) of the opium poppy, after mowing;

“prepared cannabis” means cannabis which has been prepared for smoking and any dross or other residue remaining after cannabis has been smoked;

“prepared opium” means opium prepared for smoking and any dross or other residue remaining after opium has been smoked;

“raw opium” includes powdered or granulated opium, but does not include medicinal opium;

“scheduled drug” means a drug specified in Part I or Part II of the Schedule to the Dangerous Drugs Act [*Chapter 15:02*], and the term “Part I scheduled drug” shall be construed accordingly.

#### 156 Unlawful dealing in dangerous drugs

(1) A person who unlawfully—

- (a) imports, exports, sells, offers or advertises for sale, distributes, delivers, transports or otherwise deals in a dangerous drug; or
- (b) cultivates, produces or manufactures a dangerous drug for the purpose of dealing in it; or
- (c) possesses a dangerous drug, or any article or substance used in connection with the production or manufacture of a dangerous drug, for the purpose of dealing in such drug; or
- (d) incites another person to consume a dangerous drug; or
- (e) supplies or administers to or procures for any person, or offers to supply or administer to or procure for any person, a dangerous drug;

shall be guilty of unlawful dealing in a dangerous drug and liable—

- (i) if the crime was committed in any of the aggravating circumstances described in subsection (2) and there are no special circumstances peculiar to the case as provided in subsection (3), to imprisonment for a period of not less than fifteen years or more than twenty years and a fine not below level fourteen or, in default of payment, imprisonment for an additional period of not less than five years or more than ten years; or

- (ii) in any other case, to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding fifteen years or both.

[Subsection amended by section 31 of Act 9 of 2006.]

(2) For the purpose of subparagraph (i) of subsection (1), the crime of unlawful dealing in a dangerous drug is committed in aggravating circumstances if the dangerous drug in question was a dangerous drug other than any cannabis plant, prepared cannabis, or cannabis resin and the convicted person—

- (a) was a member of a group of persons organised within or outside Zimbabwe for the purpose of committing the crime; or
- (b) employed weapons or engaged in violence in the course of committing the crime; or
- (c) held a public office which he or she abused to facilitate the commission of the crime; or
- (d) being over the age of eighteen years, incited any minor to consume or deal in a dangerous drug; or
- (e) was previously convicted, whether within or outside Zimbabwe, of a crime constituted by any of the acts specified in paragraphs (a) to (e) of subsection (1).

[Subsection amended by section 31 of Act 9 of 2006.]

(3) If a person convicted of unlawful dealing in a dangerous drug in aggravating circumstances satisfies the court that there are special circumstances peculiar to the case, which circumstances shall be recorded by the court, why the penalty provided under subparagraph (i) of subsection (1) should not be imposed, the convicted person shall be liable to the penalty provided under subparagraph (ii) of subsection (1).

[Subsection amended by section 31 of Act 9 of 2006.]

(4) A court sentencing a person under subparagraph (i) of subsection (1) shall not order that the operation of the whole or any part of the sentence be suspended.

### **157 Unlawful possession or use of dangerous drugs**

(1) Any person who unlawfully—

- (a) acquires or possesses a dangerous drug; or
- (b) ingests, smokes or otherwise consumes a dangerous drug; or
- (c) cultivates, produces or manufactures a dangerous drug for his or her own consumption;

shall be guilty of unlawfully possessing or using a dangerous drug and, subject to subsection (2), liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(2) Where a court convicts any person of the crime of unlawfully possessing or using a dangerous drug and it is established that the person is an abuser of and addicted to a dangerous drug the court may, additionally or alternatively to any sentence imposable under subsection (1), impose a sentence requiring the person to undergo treatment for such addiction.

### **158 Crimes under sections 156 and 157 committed outside Zimbabwe**

(1) Any person who is a citizen of Zimbabwe or ordinarily resident therein and who does anything outside Zimbabwe which, if it were done in Zimbabwe, would—

- (a) constitute the crime of unlawful dealing in dangerous drugs or unlawful possession or use of dangerous drugs; or
- (b) constitute an attempt, conspiracy or incitement to commit a crime referred to in paragraph (a);
- (c) render him or her liable as an accomplice or accessory to a crime referred to in paragraph (a);

shall, if such crime is punishable under a corresponding law in force in that place outside Zimbabwe, be guilty of the appropriate crime referred to in paragraph (a) or (b) or (c) and liable to be sentenced accordingly.

(2) Any person who, in Zimbabwe, conspires with or incites another person to do anything outside Zimbabwe which, if it were done in Zimbabwe, would constitute the crime of unlawful dealing in dangerous drugs or unlawful possession or use of dangerous drugs, shall, if such crime is punishable under a corresponding law in force in that place outside Zimbabwe, be guilty of conspiracy or incitement, as the case may be, to commit the appropriate crime and liable to be sentenced accordingly.

### **159 Permitting premises to be used for the unlawful dealing in or use of dangerous drugs**

Any person who—

- (a) being the occupier of any premises, permits those premises to be used for purpose of the unlawful cultivation, manufacture, sale, supply, storage or consumption of a dangerous drug; or
- (b) is concerned in the management of any premises used for any purpose referred to in paragraph (a);

shall be guilty of permitting premises to be used for the unlawful dealing in or use of dangerous drugs and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding ten years or both.

### **160 Concealing, disguising or enjoying the proceeds of the unlawful dealing in dangerous drugs**

Any person who, knowing that any property is derived from the unlawful dealing in dangerous drugs, or realising that there is a real risk or possibility that any property may be so derived—

- (a) converts or transfers such property for the purpose of concealing or disguising the origin of the property; or

- (b) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of such property; or
  - (c) acquires, possesses or uses such property;
- shall be guilty of concealing, disguising or enjoying the proceeds of the unlawful dealing in dangerous drugs and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

### **161 Persons who may lawfully possess, deal in or use dangerous drugs**

- (1) Any of following persons, namely—
- (a) a person licensed to do so under the Medicines and Allied Substances Control Act [*Chapter 15:03*];
  - (b) any medical practitioner, dental practitioner or veterinary surgeon;
  - (c) any pharmaceutical chemist licensed in terms of the Medicines and Allied Substances Control Act [*Chapter 15:03*] or pharmaceutical chemist or other person—
    - (i) employed in a hospital, clinic, dispensary or like institution administered by the State or by a local authority, or in any other hospital, clinic, dispensary or like institution approved by the Minister responsible for health; or
    - (ii) employed in any medical store of the State;
  - (d) any person in charge of a laboratory used for the purposes of research or instruction and attached to—
    - (i) a university, a university college or other educational institution approved by the Minister responsible for health; or
    - (ii) any hospital referred to in subparagraph (i) of paragraph (c);
  - (e) any analyst employed by the State; or
  - (f) any inspector appointed in terms of the Medicines and Allied Substances Control Act [*Chapter 15:03*]; or
  - (g) any other person prescribed by the Minister by notice in a statutory instrument after consultation with the Minister responsible for health;

may, in that capacity and so far as is necessary for the practice or exercise of that person's profession, function or employment, lawfully acquire, possess and supply any coca bush, cannabis plant, raw opium or scheduled drug and, in the case of a Part I scheduled drug, prescribe, administer, manufacture or compound such drug.

- (2) A qualified nurse—
- (a) in charge of a ward, theatre or out-patients' department in any hospital referred to in subparagraph (i) of paragraph (c) of subsection (1); or
  - (b) who—
    - (i) is employed in a supervisory capacity over two or more wards in any hospital referred to in subparagraph (i) of paragraph (c) of subsection (1); and
    - (ii) has been appointed by the medical practitioner in charge of the hospital to be responsible at any time for the distribution of Part I scheduled drugs within the hospital;

may, in that capacity and so far as is necessary for the practice of that nurse's profession, function or employment, lawfully acquire, administer, possess and supply a Part I scheduled drug.

(3) A person licensed by the Authority may, in accordance with the terms and conditions of the licence, import or export opium poppies, coca bushes, cannabis plants or a Part I scheduled drug.

(4) A person licensed by the Authority may, in accordance with the terms and conditions of the licence, cultivate opium poppies, coca bushes or cannabis plants.

(5) A person licensed by the Authority may, in accordance with the terms and conditions of the licence and on premises authorised or licensed by the Authority for the purpose, manufacture a Part I scheduled drug or carry on any process in the manufacture of a Part I scheduled drug.

(6) Subject to subsection (7), any person to whom a Part I scheduled drug has been supplied in accordance with a prescription by a medical practitioner, dental practitioner or veterinary surgeon shall be regarded as a person lawfully in possession of that drug.

(7) A person who is lawfully supplied with a Part I scheduled drug by, or on a prescription given by, a medical practitioner shall not be treated as a person lawfully in possession of that drug if, at the time when he or she is so supplied, he or she is also being supplied with a Part I scheduled drug by or on a prescription given by another medical practitioner, and did not disclose that fact to the first-mentioned medical practitioner.

## **CHAPTER VIII**

### **COMPUTER-RELATED CRIMES**

### **162 Interpretation in Chapter VIII**

- (1) In this Chapter—
- “computer” means a device or apparatus or series of devices which, by electronic, electromagnetic, electro-mechanical or other means, is capable of one or more of the following—



- (a) receiving or absorbing data and instructions supplied to it;
  - (b) processing data according to rules or instructions;
  - (c) storing and additionally, or alternatively, reproducing data before or after processing the data;
- and includes—
- (i) the devices or apparatus or series of devices commonly known as automatic telling machines, electronic cash registers and point-of-sale tills; and
  - (ii) any other device or apparatus used for the electronic processing of monetary transactions;
- “computer virus” means any set of computer instructions that are, or any data, programme or system that is, designed directly or indirectly to—
- (a) destroy or alter; or
  - (b) render meaningless, useless or ineffective; or
  - (c) obstruct, intercept, divert, interrupt or interfere with the use of;
- any computer or computer network;
- “computer network” means the interconnection of one or more computers through—
- (a) the use of satellite, microwave, terrestrial line or other communication media; or
  - (b) computer terminals, or a complex consisting of two or more interconnected computers, whether or not the interconnection is continuously maintained;
- “credit or debit card” means a card, disc, plate or token which, directly or indirectly, causes a computer to function;
- “data” means representations of information or concepts that are being prepared or have been prepared for storage or use in a computer;
- “essential service” and “law enforcement agency” have the meanings given to those terms by section *nineteen*;
- “function” includes an operation or exercise of logic, control, arithmetic, deletion, storage, retrieval and communication within, to or from a system;
- “owner”, in relation to a computer or computer network, means the owner or person entitled to possess or control the computer or computer network;
- “password or pin number” means any combination of letters, numbers or symbols that belongs or is assigned to a particular user for the purpose of enabling that user to gain access to a programme or system which is held in a computer or computer network;
- “programme” means data or a set of instructions which, when executed in a computer, causes the computer to perform a function;
- “system” means an arrangement of data or one or more programmes which, when executed, performs a function.

(2) For the purposes of this Chapter the Minister may, by notice in a statutory instrument—

- (a) specify as a computer any particular device or apparatus that is or may be comprised within the definition of “computer” in subsection (1); or
- (b) exclude from the definition of “computer” in subsection (1) any specified device or apparatus.

### **163 Unauthorised access to or use of computer or computer network**

- (1) Any person who, without authority from the owner of the computer or computer network, intentionally—
- (a) gains access to; or
  - (b) destroys or alters; or
  - (c) renders meaningless, useless or ineffective; or
  - (d) copies or transfers; or
  - (e) obstructs, intercepts, diverts, interrupts or interferes with the use of;

any data, programme or system which is held in a computer or computer network shall be guilty of unauthorised access to or use of a computer or computer network and liable—

- (i) if the crime was committed in any of the aggravating circumstances described in section *one hundred and sixty-six*, to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both; or
- (ii) in any other case, to a fine not exceeding level eight or imprisonment for a period not exceeding three years or both.

(2) It shall be a defence to a charge of unauthorised access to or use of a computer for the accused to prove that he or she was not motivated by malice when engaging in the conduct constituting the crime, and that the conduct did not materially affect the data, programme or system in question nor the interests of the owner of the computer or computer network.

#### **164 Deliberate introduction of computer virus into computer or computer network**

Any person who, without authority from the owner of the computer or computer network, knowingly introduces or causes to be introduced any computer virus into any computer or computer network shall be guilty of deliberate introduction of a computer virus into a computer or computer network and liable—

- (a) if the crime was committed in any of the aggravating circumstances described in section *one hundred and sixty-six*, to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both; or
- (b) in any other case, to a fine not exceeding level eight or imprisonment for a period not exceeding three years or both.

#### **165 Unauthorised manipulation of proposed computer programme**

Any person who fraudulently or mischievously creates, alters or manipulates any data, programme or system (or any part or portion thereof) which is intended for installation in a computer shall be guilty of unauthorised manipulation of a proposed computer programme and liable—

- (a) if the crime was committed in any of the aggravating circumstances described in section *one hundred and sixty-six*, to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both; or
- (b) in any other case, to a fine not exceeding level eight or imprisonment for a period not exceeding three years or both.

#### **166 Aggravating circumstances in relation to crimes under sections 163, 164 and 165**

The crime of unauthorised access to or use of a computer, deliberate introduction of a computer virus into a computer or computer network, or unauthorised manipulation of a proposed computer programme is committed in aggravating circumstances if—

- (a) committed in connection with or in furtherance of the commission or attempted commission of the crime of insurgency, banditry, sabotage or terrorism, theft, unauthorised borrowing or use of property, extortion, fraud, forgery, malicious damage to property, damaging, destroying or prejudicing the safe operation of an aircraft, concealing, disguising or enjoying the proceeds of the unlawful dealing in dangerous drugs, corruptly using a false document or defeating or obstructing the course of justice; or
- (b) the computer, computer network, data, programme or system is owned by the State, a law enforcement agency, the Defence Forces, the Prison Service, a statutory corporation or a local or like authority; or
- (c) the crime occasions considerable material prejudice to the owner of the computer, computer network, data, programme or system; or
- (d) the crime disrupts or interferes with an essential service.

#### **167 Unauthorised use or possession of credit or debit cards**

Any person who—

- (a) without authority, manufactures, copies or uses; or
- (b) without reasonable excuse, possesses;

any credit or debit card belonging to another person shall be guilty of unauthorised use or possession of a credit or debit card and liable to a fine not exceeding level eight or imprisonment for a period not exceeding three years or both.

#### **168 Unauthorised use of password or pin-number**

Any person who without authority intentionally uses any password or pin-number which belongs to or which has been assigned to another person shall be guilty of unauthorised use of a password or pin-number and liable to a fine not exceeding level eight or imprisonment for a period not exceeding three years or both.

### **CHAPTER IX**

#### **BRIBERY AND CORRUPTION**

#### **169 Interpretation in Chapter IX**

In this Chapter—

“agent” means a person employed by or acting for another person in any capacity whatsoever and, without limiting this definition in any way, includes—

- (a) a director or secretary of a company;
- (b) the trustee of an insolvent estate;
- (c) the assignee of an estate that has been assigned for the benefit or with the consent of creditors;
- (d) the liquidator of a company or other body corporate that is being wound up or dissolved;
- (e) the executor of the estate of a deceased person;
- (f) the legal representative of a person who is a minor or of unsound mind or who is otherwise under legal disability;
- (g) a public officer;

- (h) a member of a board, committee or other authority which is responsible for administering the affairs or business of a body corporate or association other than a statutory body or local authority;
  - (i) a person who voluntarily—
    - (i) manages the affairs or business of another person; or
    - (ii) takes care of the property of another person; without the knowledge or consent of that other person;
- “consideration” means any right, interest, profit, indemnity, benefit or advantage of any kind whatsoever;
- “local authority” means a city, municipality, town council, town board, provincial council, rural district council or any similar body established by or in terms of any enactment;
- “principal” means the employer or other person for whom an agent acts and, in relation to—
- (a) a trustee, assignee, liquidator, executor or legal representative referred to in the definition of “agent”, includes—
    - (i) all persons represented by the trustee, assignee, liquidator, executor or legal representative, as the case may be, or in relation to whom he or she stands in a position of trust; and
    - (ii) any public officer who is responsible for supervising the activities of the trustee, assignee, liquidator, executor or legal representative;
  - (b) a public officer who is a Minister and a member of the Cabinet, includes both the State and the Cabinet;
  - (c) a member of a council, board, committee or authority which is responsible for administering the affairs or business of a statutory body, local authority, body corporate or association, includes both such council, board, committee or authority and the statutory body, local authority, body corporate or association for whose affairs or business it is responsible;
- “public officer” means—
- (a) a Vice-President, Minister or Deputy Minister; or
  - (b) a governor appointed in terms of an Act referred to in section 111A of the Constitution; or
  - (c) a member of a council, board, committee or other authority which is a statutory body or local authority or which is responsible for administering the affairs or business of a statutory body or local authority; or
  - (d) a person holding or acting in a paid office in the service of the State, a statutory body or a local authority; or
  - (e) a judicial officer;
- “statutory body” means—
- (a) any Commission established by the Constitution; or
  - (b) any body corporate established directly by or under an Act for special purposes specified in that Act.

## 170 Bribery

- (1) Any—
    - (a) agent who obtains or agrees to obtain or solicits or agrees to accept for himself or herself or any other person any gift or consideration as an inducement or reward—
      - (i) for doing or omitting to do, or having done or omitted to do, any act in relation to his or her principal’s affairs or business; or
      - (ii) for showing or not showing, or having shown or not shown, any favour or disfavour to any person or thing in relation to his or her principal’s affairs or business;
 knowing or realising that there is a real risk or possibility that such gift or consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and his or her principal; or
    - (b) person who, for himself or herself or any other person, gives or agrees to give or offers to an agent any gift or consideration as an inducement or reward—
      - (i) for doing or omitting to do, or having done or omitted to do, any act in relation to his or her principal’s affairs or business; or
      - (ii) for showing or not showing, or having shown or not shown, any favour or disfavour to any person or thing in relation to his or her principal’s affairs or business;
 knowing or realising that there is a real risk or possibility that such gift or consideration is not due to the agent in terms of any agreement or arrangement between the agent and his or her principal;
- shall be guilty of bribery and liable to—
- A. a fine not exceeding level fourteen or not exceeding three times the value of any consideration obtained or given in the course of the crime, whichever is the greater; or

B. imprisonment for a period not exceeding twenty years;

or both.

(2) If it is proved, in any prosecution for bribery, that—

- (a) an agent has obtained, agreed to obtain or solicited any gift or consideration, whether for himself or herself or for another person; or
- (b) any person has given, agreed to give or offered any gift or consideration—
  - (i) to an agent, whether for himself or herself or for another person; or
  - (ii) to any other person, after agreeing with an agent to do so;

it shall be presumed, unless the contrary is proved, that he or she did so in contravention of this section.

[Section amended by section 31 of Act 9 of 2006.]

### **171 Corruptly using a false document**

(1) Any—

- (a) agent who, in connection with his or her principal's affairs or business, uses a document which contains a false statement—
  - (i) knowing that the document contains a false statement or realising that there is a real risk or possibility that it may do so; and
  - (ii) intending by the use of the document to deceive his or her principal, or realising that there is a real risk or possibility that his or her use of the document may deceive his or her principal;
- or
- (b) person who gives an agent a document which contains a false statement—
  - (i) knowing that the document contains a false statement or realising that there is a real risk or possibility that it may do so; and
  - (ii) intending to deceive the agent or the agent's principal or realising that there is a real risk or possibility that by his or her use of the document the agent or the agent's principal may be deceived;

shall be guilty of corruptly using a false document and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding twenty years or both.

(2) For the purposes of paragraph (b) of subsection (1), where a person gives an agent a false document, intending to deceive the agent or the agent's principal in the conduct of his or her principal's affairs or business or realising that there is a real risk or possibility that the agent or the agent's principal may be so deceived, the person shall be presumed, unless the contrary is proved, to intend to deceive the agent's principal as well as the agent, or to realise that there is a real risk or possibility that the agent's principal as well as the agent may be deceived, as the case may be.

### **172 Corruptly concealing a transaction from a principal**

(1) Any—

- (a) agent who, having carried out any transaction in connection with his or her principal's affairs or business, fails to disclose to the principal the full nature of the transaction—
  - (i) intending to deceive the principal or realising that there is a real risk or possibility that the principal may be deceived; or
  - (ii) intending to obtain a consideration knowing or realising that there is a real risk or possibility that such consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and the principal; or
- (b) person who—
  - (i) carries out any transaction with an agent in connection with the affairs or business of the agent's principal; or
  - (ii) assists an agent to carry out any such transaction;

knowing that the agent does not intend to disclose to the principal the full nature of the transaction;

shall be guilty of corruptly concealing a transaction from a principal and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding twenty years or both.

(2) Where an agent agrees or arranges with another person or a person agrees or arranges with an agent not to disclose to the agent's principal the full nature of any transaction which the agent has carried out or will carry out in connection with the principal's affairs or business, and the agent or person so agreed or arranged—

- (a) intending to deceive the principal or realising that there is a real risk or possibility that the principal may be deceived; or
- (b) intending that the agent should obtain a consideration knowing or realising that there is a real risk or possibility that such consideration is not due to the agent in terms of any agreement or arrangement between the agent and the principal;

the competent charge shall be conspiracy to commit the crime of corruptly concealing a transaction from a principal.

- (3) If it is proved, in any prosecution for corruptly concealing a transaction from a principal, that—
- (a) an agent—
    - (i) agreed or arranged with another person that the full nature of any transaction should not be disclosed to the agent's principal; or
    - (ii) failed to disclose to his or her principal the full nature of any transaction;
 the agent shall be presumed, unless the contrary is proved, to have done so intending to deceive the principal, or to obtain a consideration for himself or herself knowing or realising that there is a real risk or possibility that such consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and the principal, as the case may be;
  - (b) any person agreed or arranged with an agent that the full nature of any transaction should not be disclosed to the agent's principal, that person shall be presumed, unless the contrary is proved, to have done so intending to deceive the agent's principal;
  - (c) any person carried out a transaction with an agent or assisted an agent to carry out a transaction the full nature of which was not disclosed to the agent's principal, that person shall be presumed, unless the contrary is proved, to have known that the agent did not intend to disclose to the principal the full nature of the transaction.

### **173 Corruptly concealing from a principal a personal interest in a transaction**

- (1) Any—
- (a) agent who carries out any transaction in connection with his or her principal's affairs or business without disclosing to the principal that he or she holds a personal interest in the subject-matter of the transaction—
    - (i) intending to deceive the principal or realising that there is a real risk or possibility that the principal may be deceived; or
    - (ii) intending to obtain a consideration knowing or realising that there is a real risk or possibility that such consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and the principal;
 or
  - (b) person who—
    - (i) carries out any transaction with an agent in connection with the affairs or business of the agent's principal; or
    - (ii) assists an agent to carry out any such transaction;
 knowing that the agent does not intend to disclose to the principal a personal interest which he or she or the agent holds in the subject-matter of the transaction;

shall be guilty of corruptly concealing from a principal a personal interest in a transaction and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding twenty years or both.

(2) Where an agent agrees or arranges with another person or a person agrees or arranges with the agent not to disclose to the agent's principal any personal interest held by the agent in the subject-matter of any transaction which the agent has carried out or will carry out in connection with the principal's affairs or business, and the agent or person so agreed or arranged—

- (a) intending to deceive the principal or realising that there is a real risk or possibility that the principal may be deceived; or
- (b) intending that the agent should obtain a consideration knowing or realising that there is a real risk or possibility that such consideration is not due to the agent in terms of any agreement or arrangement between the agent and the principal;

the competent charge shall be conspiracy to commit the crime of corruptly concealing from a principal a personal interest in a transaction.

(3) If it is proved, in any prosecution for the crime of corruptly concealing from a principal a personal interest in a transaction, that—

- (a) an agent—
  - (i) agreed or arranged with another person that a personal interest held by the agent in the subject-matter of any transaction should not be disclosed to the agent's principal;
  - (ii) failed to disclose to his or her principal a personal interest held by him or her in the subject-matter of any transaction;
 the agent shall be presumed, unless the contrary is proved, to have done so intending to deceive the principal or to obtain a consideration for himself or herself knowing or realising that there is a real risk or possibility that such consideration is not due to him or her in terms of any agreement or arrangement between himself or herself and the principal, as the case may be;
- (b) any person agreed or arranged with an agent that a personal interest held by the agent in the subject-matter of any transaction should not be disclosed to the agent's principal, that person shall be presumed, unless the contrary is proved, to have done so intending to deceive the agent's principal;

- (c) any person carried out a transaction with an agent or assisted an agent to carry out a transaction in the subject-matter of which the agent had a personal interest which was not disclosed to the agent's principal, that person shall be presumed, unless the contrary is proved, to have known of the personal interest and that the agent did not intend to disclose to the principal the personal interest held by him or her in the subject-matter of the transaction.

#### **174 Criminal abuse of duty as public officer**

- (1) If a public officer, in the exercise of his or her functions as such, intentionally—  
(a) does anything that is contrary to or inconsistent with his or her duty as a public officer; or  
(b) omits to do anything which it is his or her duty as a public officer to do;

for the purpose of showing favour or disfavour to any person, 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 period not exceeding fifteen years or both.

(2) If it is proved, in any prosecution for criminal abuse of duty as a public officer, that a public officer, in breach of his or her duty as such, did or omitted to do anything to the favour or prejudice of any person, it shall be presumed, unless the contrary is proved, that he or she did or omitted to do the thing for the purpose of showing favour or disfavour, as the case may be, to that person.

(3) For the avoidance of doubt it is declared that the crime of criminal abuse of duty as a public officer is not committed by a public officer who does or omits to do anything in the exercise of his or her functions as such for the purpose of favouring any person on the grounds of race or gender, if the act or omission arises from the implementation by the public officer of any Government policy aimed at the advancement of persons who have been historically disadvantaged by discriminatory laws or practices.

### **CHAPTER X**

#### **CRIMES AGAINST LAW ENFORCEMENT AND PUBLIC ADMINISTRATION**

#### **175 Interpretation in Chapter X**

In this Chapter—

“advantage” means any right, interest, profit, indemnity or advantage of any kind whatsoever which benefits a person, whether lawfully or otherwise, or which the person believes will so benefit him or her;

“corporate body of a public character” means a body corporate—

- (a) established directly by or under any enactment for special purposes specified in that enactment;  
or  
(b) wholly owned or controlled by the State that discharges statutory functions, including functions specified by or under a licence or other like authority issued in terms of an enactment;

“peace officer” includes—

- (a) any magistrate or justice of the peace;  
(b) the Sheriff or any deputy sheriff;  
(c) any police officer;  
(d) any prison officer;  
(e) any immigration officer;  
(f) any inspector of mines;  
(g) any—  
(i) chief, within his or her community; or  
(ii) headman, chief's messenger or headman's messenger, within the community of his or her chief, as defined in the Traditional Leaders Act [*Chapter 29:17*];  
(h) any other person designated by the Minister by notice in a statutory instrument;

“public authority” means a peace officer, public official, corporate body of a public character or any agency of the State;

“public official” means—

- (a) a person who—  
(i) holds public office; or  
(ii) is appointed to perform a public duty;  
or  
(b) any employee or agent of the State or a corporate body of a public character, who is appointed as an inspector or in any other capacity to enforce the provisions of any enactment.

#### **176 Assaulting or resisting peace officer**

Any person who assaults or by violent means resists a peace officer acting in the course of his or her duty, knowing that he or she is a peace officer or realising that there is a risk or possibility that he or she is a peace

officer, shall be guilty of assaulting or resisting a peace officer and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.

### **177 Undermining of police authority**

Any person who—

- (a) in a public place and in the presence of—
  - (i) a police officer who is present on duty; or
  - (ii) a police officer who is off duty, knowing that he or she is a police officer or realising that there is a risk or possibility that he or she is a police officer;makes any statement that is false in a material particular or does any act or thing whatsoever;
- or
- (b) in a public place and whether or not in the presence of a police officer referred to in subparagraph (i) or (ii) of paragraph (a), makes any statement that is false in a material particular or does any act or thing whatsoever;

with the intention or realising that there is a risk or possibility of engendering feelings of hostility towards such officer or the Police Force or exposing such officer or the Police Force to contempt, ridicule or disesteem, shall be guilty of undermining police authority and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

### **178 Obstruction of public official**

(1) Any person who by physical interference obstructs a public official acting in the lawful execution of his or her duty shall be guilty of obstructing a public official and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

(2) A person accused of obstructing a police officer investigating the commission of a crime shall be charged with the crime of defeating or obstructing the course of justice and not obstructing a public official.

(3) Where a person is accused of obstructing a public official acting under an enactment which makes such obstruction a crime, such person shall be charged under that enactment and not under subsection (1).

### **179 Impersonating police officer, peace officer or public official**

(1) Any person who, for the purpose of obtaining any advantage, whether for himself or herself or for some other person, impersonates a police officer, peace officer or public official shall be guilty of impersonating a police officer, peace officer or public official, as the case may be, and liable—

- (a) in a case where the accused impersonated a peace officer or police officer, to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both;
- (b) in any other case, to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(2) Where a person is accused of impersonating a police officer, peace officer or public official acting under an enactment which makes such impersonation a crime, such person shall be charged under that enactment and not under subsection (1).

### **180 Deliberately supplying false information to public authority**

(1) Any person who, for the purpose of obtaining any advantage, whether for himself or herself or for some other person, supplies any information verbally or in writing to a public authority—

- (a) knowing that the information is false; or
- (b) realising that there is a real risk or possibility that it may be false;

shall be guilty of deliberately supplying false information to a public authority and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

(2) Where a person is accused of deliberately supplying false information to a public authority in connection with an enactment which makes such conduct a crime, such person shall be charged under that enactment and not under subsection (1).

(3) A person referred to in subsection (1) may be charged concurrently or alternatively with the crime of fraud.

## **CHAPTER XI**

### **CRIMES AGAINST THE ADMINISTRATION OF JUSTICE**

### **181 Interpretation in Chapter XI**

In this Chapter—

“court” means—

- (a) the Supreme Court; or
- (b) the High Court; or
- (c) the Administrative Court; or
- (d) the Labour Court established in terms of section 84 of the Labour Act [*Chapter 28:01*];

- (e) the Fiscal Appeal Court established in terms of section 3 of the Fiscal Appeal Court Act [Chapter 23:05]; or
- (f) the Special Court for Income Tax Appeals established in terms of section 64 of the Income Tax Act [Chapter 23:06]; or
- (g) the Intellectual Property Tribunal established in terms of section 3 of the Intellectual Property Tribunal Act [Chapter 26:08];
- (h) a magistrates court established in terms of the Magistrates Court Act [Chapter 7:10]; or
- (i) a local court established in terms of the Customary Law and Local Courts Act [Chapter 7:05]; or
- (j) any other court or tribunal, which is established by or in terms of any enactment and which exercises judicial or quasi-judicial functions;

“escaped person” means a person referred to in paragraph (a) or (b) of subsection (1) of section *one hundred and eighty-five* who has escaped from lawful custody in contravention of that section;

“judicial proceedings” means proceedings of a court, whatever the nature of such proceedings;

“oath” means—

- (a) an oath lawfully sworn by a person in the course of or for the purpose of judicial proceedings; or
- (b) an affirmation lawfully made by a person in place of an oath in the course of or for the purpose of judicial proceedings; or
- (c) an admonition lawfully administered to a person in place of an oath in the course of or for the purpose of judicial proceedings;

“officer of court” means any person who performs official duties in any court or in connection with judicial proceedings, and includes a legal practitioner acting in the course of such duties, but does not include a person whose duties extend only to appearing in court as a witness;

“prison” has the meaning given to that term in section 2 of the Prisons Act [Chapter 7:11];

“reward” means any right, interest, profit, indemnity, benefit or advantage of any kind whatsoever which is not due to the person who receives it.

## **182 Contempt of court**

(1) Any person who, by any act or omission, impairs the dignity, reputation or authority of a court—

- (a) intending to do so; or
- (b) realising that there is a real risk or possibility that his or her act or omission may have such an effect;

shall be guilty of contempt of court and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(2) Without limiting subsection (1), a person may impair the dignity, reputation or authority of a court by doing any of the following acts—

- (a) having been properly summoned as a party or witness in any judicial proceedings to attend any court for the purpose of giving evidence or producing any document or thing before the court —
  - (i) intentionally or through negligence failing to attend the court in accordance with the summons; or
  - (ii) and having attended the court, refusing to give evidence or to produce the document or thing, as the case may be; or
  - (iii) refusing as a witness to answer any question put to him or her which he or she is lawfully required to answer;
- (b) obstructing, interrupting or disturbing judicial proceedings;
- (c) misbehaviour in court;
- (d) insulting a judicial officer or officer of court in the course of judicial proceedings;
- (e) knowingly contravening or failing to comply with any order of a court which is given during or in respect of judicial proceedings and with which it is his or her duty to comply;
- (f) by words, conduct or demeanour pretending to be an officer of the court;
- (g) issuing or publishing to any other person a document that purports to be issued by or emanate from a court, knowing that the document is not issued by or does not emanate from the court concerned;
- (h) publishing evidence that has been given *in camera* or which the court has ordered should not be published.

(3) It shall be a defence to a charge of contempt of court in the circumstances mentioned in paragraphs (d) of subsection (2) that the person charged was criticising, fairly, temperately and without malice, the administration of justice, the conduct of a judicial officer, or any decision or proceedings of a court.

## **183 Perjury**

(1) Any person who, in the course of or for the purpose of judicial proceedings, makes a false statement upon oath, whether the statement is written or oral—



(a) knowing that the statement is false; or  
(b) realising that there is a real risk or possibility that it may be false;  
shall be guilty of perjury and liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both.

(2) For the purpose of subsection (1)—

- (a) a statement may be false by reason of the omission of facts as well as by the assertion of untrue or incorrect facts;  
(b) it shall be immaterial that—  
(i) the judicial proceedings concerned are held or will be held before a court that is not properly constituted or that lacks jurisdiction to entertain the proceedings; or  
(ii) the person who makes the false statement is not a competent witness in the judicial proceedings concerned; or  
(iii) the statement is irrelevant to or inadmissible as evidence in the judicial proceedings concerned.

(3) Where a person who makes a statement upon oath and thereafter, upon the same or another oath, makes another statement which is in substantial conflict with the first statement, it shall be presumed, in any proceedings for perjury in respect of the statements, that—

- (a) the person made a false statement, whether or not either statement has actually been proved to have been false; and  
(b) the person knew the falsity thereof;

unless the person proves that when he or she made each statement he or she genuinely believed that it was true.

#### **184 Defeating or obstructing the course of justice**

(1) Any person who—

- (a) by any act or omission, causes judicial proceedings to be defeated or obstructed, intending to defeat or obstruct the proceedings or realising that there is a real risk or possibility that the proceedings may be defeated or obstructed; or  
(b) by any act or omission intentionally hinders or obstructs another person whom he or she knows to be an officer of court in the performance of his or her duties as such; or  
(c) makes any statement, whether written or oral, in connection with any case which is pending before a court, intending the statement to prejudice the trial of the case, or realising that there is a real risk or possibility that the trial of the case may be prejudiced by the statement; or  
(d) in the course of or for the purposes of judicial proceedings makes a false statement otherwise than upon oath, whether the statement is written or oral, knowing that the statement is false or realising that there is a real risk or possibility that the statement may be false; or  
(e) knowing that a police officer is investigating the commission of a crime, or realising that there is a real risk or possibility that a police officer may be investigating the commission or suspected commission of a crime, and who, by any act or omission, causes such investigation to be defeated or obstructed, intending to defeat or obstruct the investigation or realising that there is a real risk or possibility that the investigation may be defeated or obstructed; or  
(f) makes a statement to a police officer falsely alleging that a crime has been committed or may have been committed, knowing that the allegation is false or realising that there is a real risk or possibility that it may be false; or  
(g) resists, hinders or disturbs a police officer in the execution of his or her duty, knowing that the police officer is a police officer executing his or her duty or realising that there is a real risk or possibility that the police officer may be a police officer executing his or her duty; or  
(h) intentionally agrees with another person that, in return for a reward, he or she will not report to a police officer the commission of a crime;

shall be guilty of defeating or obstructing the course of justice and liable in a case referred to in—

- (i) paragraph (a), (d) or (e) to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both;  
(ii) paragraph (f) or (g) to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both;  
(iii) paragraph (b), (c) or (h) to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(2) For the purposes of subsection (1), and without limiting that provision in any way—

- (a) judicial proceedings are defeated when an innocent person is convicted or a guilty person escapes conviction or a plaintiff or applicant unjustly succeeds or a defendant or respondent unjustly fails to succeed;  
(b) judicial proceedings or the investigation of any crime are obstructed when the judicial proceedings or investigations are impeded or interfered with in any way.

(3) Subsections (2) and (3) of section *one hundred and eighty-three* shall apply in relation to a false statement referred to in paragraph (d) of subsection (1) as they apply to a person who makes a statement upon oath.

(4) If a person who has committed or is suspected of having committed a crime refuses to make a statement or point out anything to a police officer, that refusal shall not constitute the crime of defeating or obstructing the course of justice.

### **185 Escaping from lawful custody**

(1) Any person who, having been lawfully arrested and held in lawful custody and—

- (a) not having yet been lodged in any prison; or
- (b) lodged in any prison;

escapes or attempts to escape from such custody, shall be guilty of escaping from lawful custody and liable—

- (i) if the crime was committed in any of the aggravating circumstances described in subsection (4)—
  - A. to a fine not exceeding level eleven or imprisonment for a period not exceeding seven years or both, where the person had not yet been lodged in any prison; or
  - B. to imprisonment for a period not exceeding ten years where the person had been lodged in any prison;
- or
- (ii) in any other case—
  - A. to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both, where the person had not yet been lodged in any prison; or
  - B. to imprisonment for a period not exceeding seven years, where the person had been lodged in any prison.

(2) Any person charged as an accomplice to the crime of escaping from lawful custody, in that he or she secured the escape from lawful custody of a person referred to in paragraph (a) or (b) of subsection (1), or otherwise aided such person in escaping or attempting to escape from lawful custody, shall be liable—

- (a) if he or she secured or otherwise assisted in the escape from lawful custody of a person referred to in paragraph (a) of subsection (1)—
  - (i) to a fine not exceeding level eleven or imprisonment for a period not exceeding seven years or both, if the crime was committed in any of the aggravating circumstances described in subsection (4); or
  - (ii) to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both, in any other case;
- (b) if he or she secured or otherwise assisted in the escape from lawful custody of a person referred to in paragraph (b) of subsection (1)—
  - (i) to imprisonment for a period not exceeding ten years, if the crime was committed in any of the aggravating circumstances described in subsection (4); or
  - (ii) to imprisonment for a period not exceeding seven years, in any other case.

(3) Any person charged as an accessory to the crime of escaping from lawful custody, in that he or she employed, or harboured or concealed or assisted in harbouring or concealing an escaped person knowing him or her to have escaped, shall be liable if convicted to a fine not exceeding level six or imprisonment for a period not exceeding one year or both.

(4) It shall be an aggravating circumstance if any weapon or violence was used by a person charged with escaping from lawful custody.

(5) If, in any prosecution in terms of subsection (2), the accused conveyed any thing which may facilitate the escape of a person from lawful custody—

- (a) to the person held in lawful custody; or
- (b) into a conveyance, prison, hospital or other place whatsoever where or in which the person held in lawful custody may be, or outside such conveyance, prison, hospital or other place whatsoever in which such person may be so that it may come into his or her possession or use;

it shall be presumed unless the contrary is proved that he or she did so in the course of securing the escape from lawful custody of the person so held.

(6) A person referred to in paragraph (b) of subsection (1) who escapes or attempts to escape from lawful custody may be charged alternatively or concurrently in terms of section 90 of the Prisons Act [*Chapter 7:11*].

## CHAPTER XII

### UNFINALISED CRIMES : THREATS, INCITEMENT, CONSPIRACY AND ATTEMPT

#### 186 Threats

(1) Any person who by words, writing or conduct threatens to commit a crime referred to in subsection (3) against another person, thereby inspiring in the person to whom he or she communicates the threat a reasonable fear or belief that he or she will commit the crime, shall be guilty of threatening to commit the crime concerned if—

- (a) he or she intended to commit the crime concerned or to inspire in the person to whom he or she communicated the threat a reasonable fear or belief that he or she would commit the crime concerned; or
- (b) he or she realised that there was a real risk or possibility of inspiring in the person to whom he or she communicated the threat a reasonable fear or belief that he or she would commit the crime concerned;

and be liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both.

(2) Subsection (1) shall apply whether the person who is the subject of the threat is the person to whom the threat is communicated or is some other person.

(3) For the purposes of subsection (1), a charge of threatening to commit a crime shall only be competent where the crime concerned is murder, rape, aggravated indecent assault, indecent assault, kidnapping or unlawful detention, theft, robbery, unlawful entry into premises, or malicious damage to property.

[Subsection amended by section 31 of Act 9 of 2006.]

#### 187 Incitement

(1) Any person who, in any manner, communicates with another person—

- (a) intending by the communication to persuade or induce the other person to commit a crime, whether in terms of this Code or any other enactment; or
- (b) realising that there is a real risk or possibility that the other person may be persuaded or induced by the communication to commit a crime, whether in terms of this Code or any other enactment;

shall be guilty of incitement to commit the crime concerned.

(2) It shall be immaterial to a charge of incitement that—

- (a) the person who was incited was unresponsive to the incitement and had no intention of acting on the incitement; or
- (b) the person who was incited did not know that what he or she was being incited to do or omit to do constituted a crime.

#### 188 Conspiracy

(1) Any person who enters into an agreement with one or more other persons for the commission of a crime, whether in terms of this Code or any other enactment—

- (a) intending by the agreement to bring about the commission of the crime; or
- (b) realising that there is a real risk or possibility that the agreement may bring about the commission of the crime;

shall be guilty of conspiracy to commit the crime concerned.

(2) For an agreement to constitute a conspiracy—

- (a) it shall not be necessary for the parties—
  - (i) to agree upon the time, manner and circumstances in which the crime which is the subject of the conspiracy is to be committed; or
  - (ii) to know the identity of every other party to the conspiracy;
- (b) it shall be immaterial that—
  - (i) the crime which is the subject of the conspiracy is to be committed by one, both or all of the parties to the agreement; or
  - (ii) one or more of the parties to the conspiracy, other than the accused, did not know that the subject-matter of the agreement was the commission of a crime.

#### 189 Attempt

(1) Subject to subsection (1), any person who—

- (a) intending to commit a crime, whether in terms of this Code or any other enactment; or
- (b) realising that there is a real risk or possibility that a crime, whether in terms of this Code or any other enactment, may be committed;

does or omits to do anything that has reached at least the commencement of the execution of the intended crime, shall be guilty of attempting to commit the crime concerned:

(2) A person shall not be guilty of attempting to commit a crime if, before the commencement of the execution of the intended crime, he or she changes his or her mind and voluntarily desists from proceeding further with the crime.

## **190 Mistake of fact in relation to unfinalised crimes**

It shall not be a defence to a charge of threatening, incitement, conspiracy or attempting to commit a crime that the accused believed, due to a mistake of fact, that it was physically possible to commit the crime which was the subject of the threat, incitement, conspiracy or attempt, whereas in fact its commission was physically impossible.

## **191 Extra- territorial incitement or conspiracy**

(1) If a person who is—

- (a) in Zimbabwe incites or conspires with another person who is outside Zimbabwe to commit a crime in Zimbabwe; or
- (b) outside Zimbabwe incites or conspires with another person who is in Zimbabwe to commit a crime in Zimbabwe;

the first-mentioned person in paragraph (a) or (b) may be charged with incitement in Zimbabwe, and the first mentioned or other person mentioned in paragraph (a) or (b) or both may be charged in Zimbabwe with conspiracy to commit the crime concerned, as the case may be.

[Subsection amended by section 31 of Act 9 of 2006.]

(2) If a person who is outside Zimbabwe incites or conspires with another person outside Zimbabwe to commit a crime in Zimbabwe, the first-mentioned person or the other person or both may be charged with incitement or conspiracy to commit the crime concerned, as the case may be, if, as a result of the incitement or conspiracy, either or both persons enter Zimbabwe in order to commit the crime.

## **192 Punishment for incitement, conspiracy or attempt**

Subject to this Code and any other enactment, a person who is convicted of incitement, conspiracy or attempting to commit a crime shall be liable to the same punishment to which he or she would have been liable had he or she actually committed the crime concerned.

## **193 Presumptions, jurisdiction, powers and defences applicable to crimes applicable also to unfinalised crimes**

(1) Subject to this Chapter any—

- (a) presumption that applies; or
- (b) jurisdiction that may be exercised; or
- (c) award or order that may be made; or
- (d) power to enter, inspect, arrest, search, detain, seize or eject that may be exercised; or
- (e) power to take a deposit by way of a penalty that may be exercised;

in relation to any crime or suspected crime in terms of this Code or any other enactment, shall be applicable or capable of being exercised or made, as the case may be, in relation to a threat, incitement, conspiracy or attempt to commit the crime or suspected crime concerned.

(2) A person charged with threatening, incitement, conspiracy or attempting to commit a crime may raise or rely on any defence which he or she could have raised and relied on if he or she had been charged with committing the crime itself, to the extent that the defence relates to or is based on any fact or circumstance which is an essential element of both the crime and, as the case may be, the threat, incitement, conspiracy or attempt:

Provided that a person charged with incitement, conspiracy or attempting to commit a particular crime shall be guilty of incitement, conspiracy or attempting to commit a lesser crime where he or she is entitled to rely on a partial defence which would render a person charged with committing that particular crime guilty of the lesser crime.

## **194 Treason and any other crimes constituted by incitement, conspiracy or attempt**

This Chapter shall not affect the liability of a person to be convicted of the crime of treason or any other crime which is committed through incitement, conspiracy, any unlawful agreement, or an attempt, or of which incitement, conspiracy, any unlawful agreement or an attempt is an element.

# **CHAPTER XIII**

## **PARTICIPATION OR ASSISTANCE IN THE COMMISSION OF CRIMES**

### **PART I**

#### **PARTICIPATION OR ASSISTANCE BEFORE OR DURING COMMISSION OF CRIMES: CO-PERPETRATORS AND ACCOMPLICES**

## **195 Interpretation in Part I of Chapter XIII**

In this Part—

“accomplice” means a person, other than an actual perpetrator of a crime—

- (a) who incites or conspires with an actual perpetrator to commit a crime, with the result that a crime is subsequently committed; or

- (b) who, having authority, whether lawful or otherwise, over an actual perpetrator and—
  - (i) knowing that an actual perpetrator intends to commit a crime; or
  - (ii) realising that there is a real risk or possibility that an actual perpetrator intends to commit a crime;
 authorises the actual perpetrator to commit the crime; or
- (c) who—
  - (i) knowing that an actual perpetrator intends to commit a crime; or
  - (ii) realising that there is a real risk or possibility that an actual perpetrator intends to commit a crime;

renders to the actual perpetrator any form of assistance which enables, assists or encourages the actual perpetrator to commit the crime;

“actual perpetrator”, in relation to a crime, means a person who, with the requisite state of mind actually does, completes or omits to do anything the doing, completion or omission of which constitutes that crime;

“co-perpetrator” means a person referred to in subsection (1) of section *one hundred and ninety-six*.

## 196 Liability of co-perpetrators

(1) Subject to this section, where—

- (a) two or more persons knowingly associate with each other with the intention that each or any of them shall commit or be prepared to commit any crime; and
- (b) any one of the persons referred to in paragraph (a) (“the actual perpetrator”) commits the crime; and
- (c) any one of the persons referred to in paragraph (a) other than the actual perpetrator (“the co-perpetrator”) is present with the actual perpetrator during the commission of the crime;

the conduct of the actual perpetrator shall be deemed also to be the conduct of every co-perpetrator, whether or not the conduct of the co-perpetrator contributed directly in any way to the commission of the crime by the actual perpetrator.

(2) If the State has established that two or more accused persons—

- (a) were associated together in any conduct that is preparatory to the conduct which resulted in the crime for which they are charged; or
- (b) engaged in any criminal behaviour as a team or group prior to the conduct which resulted in the crime for which they are charged;

and that they were present at or in the immediate vicinity of the scene of the crime in circumstances which implicate them directly or indirectly in the commission of that crime, then it shall be presumed, unless the contrary is shown, that—

- (c) they knowingly associated with each other for a criminal purpose; and
- (d) the crime actually committed—
  - (i) was the crime for the commission of which they associated with each other; or
  - (ii) was, if not the specific crime for the commission of which they associated with each other, a crime whose commission they realised was a real risk or possibility.

(3) If any accused person referred to in subsection (2) who is not the actual perpetrator of the crime—

- (a) does not discharge the burden mentioned in subparagraph (i) or (ii) of paragraph (d) of subsection (2), his or her liability as the co-perpetrator of the crime shall not differ in any respect from the liability of the actual perpetrator, unless he or she satisfies the court that there are special circumstances peculiar to him or her or to the case (which circumstances shall be recorded by the court) why the same penalty as that imposed on the actual perpetrator should not be imposed on him or her; or
- (b) discharges the burden mentioned in subparagraphs (i) and (ii) of paragraph (d) of subsection (2), he or she shall be found guilty of assisting the actual perpetrator of the crime as an accomplice or accessory.

[Paragraph amended by section 31 of Act 9 of 2006.]

(4) Where there is a dispute between or among two or more accused persons referred to in subsection (1) as to the identity of the actual perpetrator (which dispute cannot be resolved by reference to the evidence that is available to the State) the burden of proving that any particular accused person did not actually perpetrate the crime shall rest with that person.

(5) If any of the accused persons referred to in subsection (4) fails to discharge the burden there referred to and the actual perpetrator is not identified, the accused person or persons concerned shall be liable for punishment as if he or she or each of them was the actual perpetrator.

(6) It shall not be necessary to prove that there was a prior conspiracy to commit the crime for the commission of which a person is associated with another person or other persons in order for a court to find that any person is liable as a co-perpetrator of any crime.

(7) A person charged with being a co-perpetrator of crime may be found guilty of assisting the actual perpetrator of the crime as an accomplice or accessory if such are the facts proved.

(8) For the avoidance of doubt it is declared that this section may not be used to convict a co-perpetrator of murder unless he or she was present with the actual perpetrator while the victim was still alive and before a mortal wound or mortal wounds had been inflicted.

### **197 Liability of accomplices**

(1) Subject to this Part, an accomplice shall be guilty of the same crime as that committed by the actual perpetrator whom the accomplice incited, conspired with or authorised or to whom the accomplice rendered assistance.

(2) An accomplice may be found guilty of the crime committed by the actual perpetrator whom the accomplice incited, conspired with or authorised or to whom the accomplice rendered assistance, even if—

- (a) the accomplice lacks the ability or capacity to commit the crime himself or herself; or
- (b) the accomplice is only aware of the fact that the conduct of the actual perpetrator is unlawful but unaware of the nature of the crime being committed or to be committed by the perpetrator or the manner in which it is committed; or
- (c) the actual perpetrator is unaware of any assistance rendered by the accomplice.

(3) Where a person does or omits to do anything which would make him or her an accomplice to the commission of a crime by another person, but for the fact that the other person is entitled to rely upon a defence which excuses that other person from liability or reduces that other person's liability for the crime concerned—

- (a) the first-mentioned person shall be liable as an accomplice in terms of subsection (1) as if the other person were an actual perpetrator; and
- (b) the first-mentioned person shall not be entitled to rely upon that defence unless he or she would be entitled to rely upon it if he or she were charged as an actual perpetrator of the crime concerned.

### **198 Types of assistance to which accomplice liability applies**

Without limiting the expression, any of the following forms of assistance, when given to an actual perpetrator of a crime, shall render the assister an accomplice—

- (a) supplying the means to commit the crime; or
- (b) supplying transport to enable the actual perpetrator to reach the scene of the crime; or
- (c) supplying information to enable the actual perpetrator to locate or identify his or her victim or to acquire knowledge of the place where the crime is to be committed; or
- (d) making premises of which the assister is the owner or occupier available for the commission of the crime; or
- (e) holding oneself available to give assistance in the commission of the crime, in the event of such assistance being required; or
- (f) immobilising or incapacitating the victim of the crime to enable the crime to be committed; or
- (g) carrying implements or other things by which or with the aid of which the crime is committed; or
- (h) keeping watch for or guarding against intervention or discovery while the crime is being committed.

### **199 Liability of accomplice for further crimes committed by actual perpetrator**

Where an actual perpetrator commits a crime that is different from or additional to the crime intended by the accomplice when the accomplice incited, conspired with, authorised or assisted the actual perpetrator, the accomplice shall be guilty of that different or additional crime if, when the accomplice incited, conspired with, authorised or assisted the actual perpetrator, the accomplice realised that there was a real risk or possibility that the actual perpetrator might commit the different or additional crime.

### **200 Withdrawal from crime by accomplice**

An accomplice shall not be guilty of a crime committed by an actual perpetrator if, before the crime has been committed, the accomplice voluntarily desists from further incitement of, conspiracy with, or authorisation or assistance to the actual perpetrator and either—

- (a) renders wholly ineffective his or her previous incitement, conspiracy, authorisation or assistance; or
- (b) gives warning of the crime to a police officer or other person with authority to prevent the commission of the crime, in sufficient time to enable the police officer or other person to prevent its commission.

### **201 Accomplice liability for extra-territorial acts and crimes**

Where a crime is committed—

- (a) inside Zimbabwe; or
- (b) outside Zimbabwe in the case of a crime constituted by extra-territorial acts or omissions;

and any person does or omits to do anything outside Zimbabwe which, if done or omitted in Zimbabwe would render the person an accomplice to that crime, such person may be charged in Zimbabwe as an accomplice to that crime.

## **202 Punishment of accomplices**

Subject to this Code and any other enactment, a person who is convicted of a crime as an accomplice shall be liable to the same punishment to which he or she would be liable had he or she been an actual perpetrator of the crime concerned.

## **203 Presumptions, jurisdiction, powers and defences applicable to actual perpetrators applicable also to accomplices**

- (1) Subject to this Part, any—
- (a) presumption that applies; or
  - (b) jurisdiction that may be exercised; or
  - (c) award or order that may be made; or
  - (d) power to enter, inspect, arrest, search, detain, seize or eject that may be exercised; or
  - (e) power to take a deposit by way of a penalty that may be exercised;

in relation to the actual perpetrator of any crime or suspected crime in terms of this Code or any other enactment, shall be equally applicable or capable of being exercised or made, as the case may be, in relation to an accomplice to the commission of the crime or suspected crime concerned.

(2) Subject to this Code and any other enactment, a person charged as an accomplice may raise and rely on any defence which he or she could have raised and relied on if he or she had been charged as an actual perpetrator of the crime concerned, to the extent that the defence relates to or is based on any fact or circumstance which is an essential element of the crime as committed by both the actual perpetrator and an accomplice:

Provided that a person charged as an accomplice shall be guilty of being an accomplice to a lesser crime where he or she is entitled to rely on a partial defence which would render a person charged with committing that particular crime guilty of the lesser crime.

## **204 Where accomplice liability is concurrent or does not apply**

This Part shall not affect the liability of any person—

- (a) in terms of section *fifty-eight* or any other provision of this Code or in terms of any other enactment relating to participation in crimes; or
- (b) to be convicted of the crime of treason or any other crime which is committed through incitement, conspiracy, authorisation or assistance, or of which incitement, conspiracy, authorisation or assistance is an element;
- (c) to be convicted as an actual perpetrator of the crime of theft or any other continuing crime.

## **PART II**

### ASSISTANCE AFTER COMMISSION OF CRIMES

## **205 Interpretation in Part II of Chapter XIII**

In this Part—

“accessory”, in relation to a crime, means a person who renders assistance to the actual perpetrator of the crime, or to any accomplice of the actual perpetrator after it has been committed.

[Definition amended by section 31 of Act 9 of 2006.]

## **206 Assistance after commission of crime**

Any person, other than an actual perpetrator of a crime, who—

- (a) knowing that an actual perpetrator has committed a crime; or
- (b) realising that there is a real risk or possibility that an actual perpetrator has committed a crime;

renders to the actual perpetrator or to any accomplice of the actual perpetrator any assistance which enables the actual perpetrator or accomplice to conceal the crime or to evade justice or which in any other way associates the person rendering the assistance with the crime after it has been committed, shall be guilty of being an accessory to the crime concerned.

[Section amended by section 31 of Act 9 of 2006.]

## **207 Unavailable defences for accessories**

(1) A person may be found guilty as an accessory to a crime even if—

- (a) the person lacks capacity to commit the crime committed by the actual perpetrator; or
- (b) the person is only aware of the fact that the conduct of the actual perpetrator is unlawful but unaware of the nature of the crime committed by the actual perpetrator or the manner in which it was committed; or
- (c) the actual perpetrator is unaware of any assistance rendered by the person; or
- (d) the assistance the person renders does not in fact enable the actual perpetrator to conceal the crime or to evade justice.

(2) Where a person renders assistance to another person in circumstances which would make him or her guilty as an accessory to a crime, but for the fact that the person to whom he or she renders assistance is entitled to

rely upon a defence which excuses that other person from liability or reduces that other person's liability for the crime concerned—

- (a) the first-mentioned person shall be guilty as an accessory to a crime as if the person to whom he or she renders assistance were an actual perpetrator; and
- (b) the first-mentioned person shall not be entitled to rely upon that defence unless he or she would be entitled to rely upon it if he himself or she herself were charged as an actual perpetrator of the crime concerned.

### **208 Types of assistance to which accessory liability applies**

Without limiting the expression, any of the following forms of assistance, when given to an actual perpetrator of a crime, shall render a person liable as an accessory to the crime in terms of this Part—

- (a) concealing, sheltering or feeding the actual perpetrator to enable the actual perpetrator to escape apprehension;
- (b) driving or providing transport to enable the actual perpetrator to escape apprehension;
- (c) destroying or concealing evidence of the commission of the crime;
- (d) giving false information to a police officer or other person in authority concerning the circumstances of the crime or the whereabouts of the actual perpetrator.

### **209 Accessory liability for extra-territorial acts and crimes**

Where a crime is committed—

- (a) inside Zimbabwe; or
- (b) outside Zimbabwe in the case of a crime constituted by extra-territorial acts or omissions;

and any person renders any assistance outside Zimbabwe to the actual perpetrator of the crime which, if rendered in Zimbabwe, would make the person liable as an accessory to that crime, such person may be charged in Zimbabwe as an accessory to that crime.

### **210 Punishment of accessories**

A person who is convicted as an accessory to a crime shall be liable to the same punishment to which he or she would have been liable had he or she been convicted of the crime committed by the actual perpetrator to whom he or she rendered assistance.

### **211 Presumptions, jurisdiction, powers and defences applicable to actual perpetrators applicable also to accessories**

(1) Subject to this Part, any—

- (a) presumption that applies; or
- (b) jurisdiction that may that may be exercised; or
- (c) award or order that may be made; or
- (d) power to enter, inspect, arrest, search, detain, seize or eject that may be exercised; or
- (e) power to take a deposit by way of a penalty that may be exercised;

in relation to the actual perpetrator of any crime or suspected crime in terms of this Code or any other enactment, shall be equally applicable or capable of being exercised or made, as the case may be, in relation to an accessory.

(2) Subject to this Code and any other enactment, a person charged as an accessory may raise and rely on any defence which he or she could have raised and relied on if he or she had been charged as an actual perpetrator of the crime concerned, to the extent that the defence relates to or is based on any fact or circumstance which is an essential element of the crime as committed by both the actual perpetrator and an accessory:

Provided that a person charged as an accessory shall be guilty of being an accessory to a lesser crime where he or she is entitled to rely on a partial defence which would render a person charged with committing that particular crime guilty of the lesser crime.

### **212 Where accessory liability is concurrent or does not apply**

This Part shall not affect the liability of any person—

- (a) in terms of section *fifty-eight* or any other provision of this Code or in terms of any other enactment relating to the rendering of assistance to offenders;
- (b) to be convicted of the crime of treason or any other crime which is committed through the rendering of assistance or failure to report the crime, or of which the rendering of assistance or a failure to report is an element;
- (c) to be convicted as an actual perpetrator of the crime of theft or any other continuing crime.



## CHAPTER XIV

### GENERAL DEFENCES AND MITIGATING FACTORS

#### PART I

##### PRELIMINARY

#### 213 Interpretation in Chapter XIV

In this Chapter—

“complete defence” means a defence to a criminal charge which completely absolves the accused from criminal liability;

“partial defence” means a defence to a criminal charge which does not completely absolve the accused from criminal liability but instead renders the accused liable to conviction for a lesser crime.

#### 214 Defences and mitigating factors not limited to those mentioned in Chapter XIV

The defences and mitigating factors which an accused may successfully raise are not limited to those set out in this Chapter.

#### 215 Defence to one crime not necessarily defence to other crimes

The fact that a person has a complete or partial defence in relation to conduct which is an essential element of a particular crime shall not prevent that person from being charged with and convicted of any other crime of which that conduct is not an essential element.

#### *Division A: Defence Relating to Voluntary Conduct*

#### PART II

##### AUTOMATISM

#### 216 Involuntary conduct

(1) Subject to subsection (3), the fact that the conduct of a person charged with a crime was not voluntary as required by paragraph (c) of section *nine*, that is, that the person did or omitted to do anything that is an essential element of the crime without conscious knowledge or control, shall be a complete defence to the charge.

(2) Without derogating from the generality of the meaning of “voluntary conduct”, the following do not constitute voluntary conduct—

(a) a reflex movement, spasm or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis, or which results from hypnotic suggestion;

(d) conduct over which a person has no control, his or her body or part of his or her body being merely an instrument in the hands of a human or natural agency outside him or her;

and the expression “involuntary conduct” shall be construed accordingly.

(3) If a situation in which a person’s conduct is involuntary is brought about through the person’s own fault, a court may regard the conduct as voluntary.

(4) If it is found that the conduct of a person upon which he or she is charged with a crime was involuntary, and that such involuntary conduct was the result of a mental disorder or defect as defined in section *two hundred and twenty-six*, a court shall return a special verdict in terms of section 29 of the Mental Health Act [*Chapter 15:12*] (Act No. 15 of 1996).

#### *Division B: Defences and Mitigating Factors Relating to the Mental State*

#### PART III

##### DIMINISHED RESPONSIBILITY

#### 217 Interpretation in Part III of Chapter XIV

In this Part—

“partial mental disorder or defect” means a mental disorder or defect as defined in section *two hundred and twenty-six*, the effect of which is not such as to entirely deprive the person suffering from it of the capacity to appreciate the nature or lawfulness of his or her conduct or to act in accordance with such an appreciation.

#### 218 Diminished responsibility to operate in mitigation not as defence

(1) If at the time when a crime is committed the capacity of the person committing it—

(a) to appreciate the nature of his or her conduct or that his or her conduct was unlawful; or  
(b) to act in accordance with an appreciation of the kind referred to in paragraph (a);  
is diminished on account of acute mental or emotional stress, or a partial mental disorder or defect, such diminished responsibility shall not be a defence to the crime, but a court convicting such person shall take it into account when imposing sentence upon him or her for the crime.

(2) If the acute mental or emotional stress, or partial mental disorder or defect, is brought about through the person's own fault, a court may regard such person's responsibility as not having been diminished.

(3) Where the capacity of a person to appreciate the nature or lawfulness of his or her conduct or to act in accordance with such an appreciation is affected by intoxication or provocation, Part IV or IX, as the case may be, shall apply to such person.

(4) For the avoidance of doubt it is declared that where a mental disorder or defect is such as to negate rather than diminish the capacity of the person suffering from it to appreciate the nature or lawfulness of his or her conduct or to act in accordance with such an appreciation, the person shall be entitled to a complete defence in terms of section *two hundred and twenty-seven*.

## PART IV

### INTOXICATION

#### 219 Interpretation in Part IV of Chapter XIV

In this Part—

“intoxication” means intoxication resulting from the ingestion of any form of alcohol or drug;

“involuntary intoxication” means intoxication that is not voluntarily self-induced;

“voluntary intoxication” means intoxication which is voluntarily self-induced.

#### 220 When involuntary intoxication a complete defence to crimes

(1) The fact that a person charged with a crime was intoxicated when he or she did or omitted to do anything that is an essential element of the crime shall be a complete defence to the charge if—

(a) the person was involuntarily intoxicated when he or she did or omitted to do anything that is an essential element of the crime; and

(b) in relation to a crime of which intention, knowledge or the realisation of a real risk or possibility is an element, the person was intoxicated to such an extent that he or she lacked the requisite intention, knowledge or realisation.

(2) For the avoidance of doubt it is declared that involuntary intoxication shall be a complete defence to any crime of which negligence is an element.

#### 221 Intoxication no defence to crimes committed with requisite state of mind

(1) If a person charged with a crime requiring proof of intention, knowledge or the realisation of a real risk or possibility—

(a) was voluntarily or involuntarily intoxicated when he or she did or omitted to do anything which is an essential element of the crime; but

(b) the effect of the intoxication was not such that he or she lacked the requisite intention, knowledge or realisation;

such intoxication shall not be a defence to the crime, but the court may regard it as mitigatory when assessing the sentence to be imposed.

(2) Where a person is charged with a crime requiring proof of negligence, the fact the person was voluntarily intoxicated when he or she did or omitted to do anything which is an essential element of the crime shall not be a defence to any such crime, nor shall the court regard it as mitigatory when assessing the sentence to be imposed.

#### 222 Voluntary intoxication leading to unlawful conduct

If a person charged with a crime requiring proof of intention, knowledge or the realisation of a real risk or possibility (hereafter in this section called “the crime originally charged”) and it is proved that—

(a) the accused was voluntarily intoxicated when he or she did or omitted to do anything which is an essential element of the crime originally charged; and

(b) the effect of the intoxication was such that the accused lacked the requisite intention, knowledge or realisation;

he or she shall be guilty of voluntary intoxication leading to unlawful conduct instead of the crime originally charged and liable to the same punishment as if—

(i) he or she had been found guilty of the crime originally charged; and

(ii) intoxication had been assessed as a mitigatory circumstance in his or her case.

#### 223 Intoxication facilitating the commission of crime

(1) Notwithstanding any other provision of this Part, if a person—

- (a) having formed an intention to commit a crime, becomes voluntarily intoxicated for the purpose of enabling him or her to commit the crime or facilitating his or her commission of the crime; and
- (b) while so intoxicated, does or omits to do anything which, if done or omitted, as the case may be, with the requisite intention, would be an essential element of a crime;

the person may be convicted of the crime concerned on the basis of his or her original intention, in all respects as if he or she had not been intoxicated when he or she did or omitted to do the thing concerned.

(2) Notwithstanding any other provision of this Code, if a person becomes voluntarily intoxicated realising that there is real risk or possibility that he or she will, in his or her intoxicated condition, engage in any conduct for which he or she may be held criminally liable, he or she may be convicted of the crime constituted by the conduct on the basis of his or her original realisation, in all respects as if he or she had not been intoxicated when he or she did or omitted to do the thing concerned.

#### **224 Voluntary intoxication leading to provocation**

If a person, while in a state of voluntary intoxication, is provoked into any conduct by something which would not have provoked that person had he or she not been intoxicated, the court shall, in accordance with Part IX, regard such provocation as mitigatory when assessing the sentence.

#### **225 Intoxication leading to mental disorder**

If a person, as a result of voluntary or involuntary intoxication, suffers from a permanent or long-lasting disorder or disability of mind, the disorder or disability shall be capable of constituting a defence of mental disorder in terms of Part V to a criminal charge arising out of any conduct on the person's part whilst he or she is suffering from the disorder or disability:

Provided that a verdict that the person was mentally disordered shall not be returned if the person's mind was only temporarily disordered or disabled by the effects of alcohol or a drug.

### **PART V**

#### **MENTAL DISORDER**

#### **226 Interpretation in Part V of Chapter XIV**

In this Part—

“mental disorder or defect” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of the mind.

#### **227 Mental disorder at time of commission of crime**

(1) The fact that a person charged with a crime was suffering from a mental disorder or defect when the person did or omitted to do anything which is an essential element of the crime charged shall be a complete defence to the charge if the mental disorder or defect made him or her—

- (a) incapable of appreciating the nature of his or her conduct, or that his or her conduct was unlawful, or both; or
- (b) incapable, notwithstanding that he or she appreciated the nature of his or her conduct, or that his or her conduct was unlawful, or both, of acting in accordance with such an appreciation.

(2) For the purposes of subsection (1), the cause and duration of the mental disorder or defect shall be immaterial.

(3) Subsection (1) shall not apply to a mental disorder or defect which is neither permanent nor long-lasting, suffered by a person as a result of voluntary intoxication as defined in section *two hundred and nineteen*.

#### **228 Mental disorder at time of trial**

The fact that a person is mentally disordered or defective at the time of his or her trial on a criminal charge shall not be a defence to the charge unless he or she was also mentally disordered or defective at the time he or she did or omitted to do anything that is an essential element of the crime charged.

#### **229 Application of Cap. 15:12**

Nothing in this Part shall affect the operation of the Mental Health Act [*Chapter 15:12*] (Act No. 15 of 1996) in relation to—

- (a) the procedure to be followed when persons being tried are found to be mentally disordered or defective or any verdict to be returned at any such trial; or
- (b) the detention, examination or treatment of persons found to be mentally disordered or defective.

## PART VI

### MINORITY

#### **230 When child between seven and fourteen years may be held criminally liable**

(1) The presumption referred to in section *seven* as to the criminal incapacity of a child between the age of seven and below the age of fourteen years may be rebutted if, at the time of the commission of the crime for which such child is charged, the child was sufficiently mature—

- (a) to understand that his or her conduct was unlawful or morally wrong; and
- (b) to be capable of conforming with the requirements of the law.

(2) Subsection (1) shall apply to all crimes, whether or not any form of intention, knowledge, realisation or negligence is required for their commission.

(3) In deciding, for the purposes of subsection (1), whether or not a child was sufficiently mature to have the understanding and capacity referred to in that subsection, a court shall take into account the following factors, in addition to any others that are relevant in the particular case—

- (a) the nature of the crime with which the child is charged; and
- (b) the child's general maturity and family background; and
- (c) the child's knowledge, education and experience; and
- (d) the child's behaviour before, during and after the conduct which forms the subject of the charge.

(4) Where a child who is of or over the age of seven years but under the age of fourteen years does or omits to do anything in the presence of an older person whom in all the circumstances the child would be expected to obey, it shall be presumed, in any criminal proceedings arising out of that conduct, that the child was acting under compulsion from that older person, unless the contrary is proved.

(5) For the purposes of subsection (4), a child shall be deemed to be in the presence of an older person if the older person is so placed as to be able to control the child's conduct.

#### **231 Attorney-General to authorise prosecutions of children under fourteen years**

No proceedings in respect of any crime shall be instituted or continued against any person who is under the age of fourteen years, other than proceedings for the purposes of remand, without the authority of the Attorney-General.

## PART VII

### MISTAKE OR IGNORANCE OF FACT

#### **232 Interpretation in Part VII of Chapter XIV**

In this Part—

“essential fact”, in relation to a crime, means any fact or factual circumstance which relates to an essential element of the crime;

“ignorance”, in relation to a fact, means complete lack of knowledge that the fact exists;

“mistake”, in relation to a fact, means an erroneous impression concerning that fact.

#### **233 When mistake or ignorance of fact a defence to subjective crimes**

(1) If a person does or omits to do anything which would be an essential element of a crime if done or omitted, as the case may be, with any form of intention, knowledge or realisation, the person shall have a complete defence to a charge of committing that crime if, when he or she did or omitted to do the thing, he or she was genuinely mistaken or ignorant as to an essential fact of the crime concerned.

(2) Subject to this Code and any other enactment, mistake or ignorance of an essential fact may be a defence to a crime referred to in subsection (1) even if it is not reasonable:

Provided that the reasonableness or unreasonableness of any mistake or ignorance may be taken into account in determining whether or not it is genuine.

#### **234 When mistake or ignorance of fact a defence to objective crimes**

If a person does or omits to do anything which would be an essential element of a crime if done or omitted, as the case may be, negligently, the person shall have a complete defence to a charge of committing that crime if—

- (a) when he or she did or omitted to do the thing, he or she was genuinely mistaken or ignorant as to an essential fact of the crime concerned; and
- (b) the person's mistake or ignorance of that essential fact was reasonable in all the circumstances.

## PART VIII

### MISTAKE OR IGNORANCE OF LAW

#### **235 Interpretation in Part VIII of Chapter XIV**

In this Part—

“ignorance”, in relation to a law, means complete lack of knowledge that the law exists;

“law” means this Code or any other enactment;

“mistake”, in relation to a law, means an erroneous impression as to the nature or contents of that law.

### **236 When mistake or ignorance of law a defence**

(1) Subject to this Part, if a person—

(a) does or omits to do anything which is an essential element of a crime in terms of any law; and

(b) when he or she did or omitted to do the thing, he or she did not know that his or her conduct was unlawful because he or she was genuinely mistaken or ignorant as to the relevant provisions of the law;

the person shall not have a complete defence to a charge of committing that crime unless the person’s mistake or ignorance as to the relevant provisions of the law was directly brought about by advice given to him or her by an administrative officer whom he or she had reason to believe was charged with the administration of the law concerned and was familiar with its contents.

[Subsection amended by section 31 of Act 9 of 2006.]

(2) In any circumstances other than those affording a complete defence under subsection (1), genuine mistake or ignorance as to the relevant provisions of a law on the part of a person charged with a crime shall merely be a factor to be taken into account in the assessment of sentence.

### **237 Claims of right and mistakes of mixed law and fact**

If in any criminal case a person charged with any crime against property raises a defence of claim of right, namely that the person believed he or she had a right to do or omit to do any thing, the court shall determine whether or not the belief arose from mistake or ignorance of fact or law and, if the court decides that the belief arose—

(a) solely from mistake or ignorance of law, the court shall regard the defence as one of mistake or ignorance of law in terms of this Part; or

(b) solely from mistake or ignorance of fact, the court shall regard the defence as one of mistake or ignorance of fact in terms of Part VII; or

(c) partly from mistake or ignorance of law and partly from mistake or ignorance of fact, the court shall regard the defence as one of mistake or ignorance of law in terms of this Part.

## **PART IX**

### **PROVOCATION**

### **238 Provocation in relation to crimes other than murder**

Except as provided in section *two hundred and thirty-nine* and subject to any other enactment, provocation shall not be a defence to a crime but the court may regard it as mitigatory when assessing the sentence to be imposed for the crime.

### **239 When provocation a partial defence to murder**

(1) If, after being provoked, a person does or omits to do anything resulting in the death of a person which would be an essential element of the crime of murder if done or omitted, as the case may be, with the intention or realisation referred to in section *forty-seven*, the person shall be guilty of culpable homicide if, as a result of the provocation—

(a) he or she does not have the intention or realisation referred to in section *forty-seven*; or

(b) he or she has the intention or realisation referred to in section *forty-seven* but has completely lost his or her self-control, the provocation being sufficient to make a reasonable person in his or her position and circumstances lose his or her self-control.

[Subsection amended by section 31 of Act 9 of 2006.]

(2) For the avoidance of doubt it is declared that if a court finds that a person accused of murder was provoked but that—

(a) he or she did have the intention or realisation referred to in section *forty-seven*; or

(b) the provocation was not sufficient to make a reasonable person in the accused’s position and circumstances lose his or her self-control;

the accused shall not be entitled to a partial defence in terms of subsection (1) but the court may regard the provocation as mitigatory as provided in section *two hundred and thirty-eight*.

**PART X**

AUTHORITY

**240 Public authority**

(1) Subject to this section, the fact that a person is authorised or permitted by an enactment to do or omit to do any thing shall be a complete defence to a charge alleging the commission of a crime of which that conduct is an essential element.

(2) Subject to this section, the fact that a person did or omitted to do any thing as a duly authorised official, employee or agent of the State and in the proper exercise of that authority shall be a complete defence to a charge alleging the commission of a crime of which that conduct is an essential element.

(3) A person shall not be entitled to rely on the defence referred to in—

- (a) subsection (1), unless his or her conduct was in all respects authorised or permitted by the enactment concerned;
- (b) subsection (2), unless it was lawful for the State to give the authority concerned.

**241 Discipline of children**

(1) In this section—

- “guardian” means a person, other than a school teacher in his or her capacity as such, who has the lawful custody, charge or care of a minor person, whether permanently or temporarily;
- “minor”, in relation to a person, means that the person is under the age of eighteen years;
- “school” includes an educational institution of any kind;
- “school-teacher” means the head or deputy head of a school.

(2) Subject to this section—

- (a) a parent or guardian shall have authority to administer moderate corporal punishment for disciplinary purposes upon his or her minor child or ward;
- (b) a school-teacher shall have authority to administer moderate corporal punishment for disciplinary purposes upon any minor male pupil or student;

and, where moderate corporal punishment is administered upon a minor person by a parent, guardian or school-teacher within the scope of that authority, the authority shall be a complete defence to a criminal charge alleging the commission of a crime of which the administration of the punishment is an essential element.

(3) Subject to this section, any person who administers moderate corporal punishment upon a minor person under authority delegated to him or her by a parent, guardian or school-teacher shall have a complete defence to a criminal charge alleging the commission of a crime of which the administration of such punishment is an essential element, if it would have been lawful for the parent, guardian or school-teacher to have administered such punishment himself or herself.

(4) No school-teacher or person acting under authority delegated to him or her by a school-teacher shall administer corporal punishment upon a female pupil or student.

(5) When administering corporal punishment upon a minor male pupil or student at his or her school, a school-teacher shall comply with any lawful rules, regulations or administrative instructions which apply to the administration of corporal punishment at his or her school.

(6) In deciding whether or not any corporal punishment administered upon a minor person is moderate for the purposes of this section, a court shall take into account the following factors, in addition to any others that are relevant in the particular case—

- (a) the nature of the punishment and any instrument used to administer it; and
- (b) the degree of force with which the punishment was administered; and
- (c) the reason for the administration of the punishment; and
- (d) the age, physical condition and sex of the minor person upon whom it was administered; and
- (e) any social attitudes towards the discipline of children which are prevalent in the community among whom the minor person was living when the punishment was administered upon the minor person.

**242 Purported corporal punishment of spouses unlawful**

It shall not be lawful for a person to purport to administer corporal punishment upon his or her spouse, whatever the nature of their marriage and wherever their marriage may have been contracted.

## PART XI

### COMPULSION

#### 243 Requirements for compulsion to be complete defence

(1) Subject to this Part, the fact that a person accused of a crime was subjected to compulsion when the person did or omitted to do anything that is an essential element of the crime shall be a complete defence to the charge if—

- (a) the compulsion consisted of a threat—
  - (i) unlawfully to kill him or her or cause him or her serious bodily injury or to kill or cause serious bodily injury to some other person; or
  - (ii) unlawfully to cause him or her financial or proprietary loss;
- and
- (b) he or she believed on reasonable grounds that implementation of the threat referred to in paragraph (a) had begun or was imminent; and
- (c) the threat referred to in paragraph (a) was not brought about through his or her own fault; and
- (d) he or she believed on reasonable grounds that he or she could not escape from or resist the threat referred to in paragraph (a) and that his or her conduct was necessary to avert the implementation of the threat; and
- (e) by his or her conduct he or she did no more harm than was reasonably necessary to avert the implementation of the threat referred to in paragraph (a), and no more harm than was unlawfully threatened.

(2) Where a person voluntarily associates himself or herself with one or more other persons knowing or realising that there is a real risk or possibility that they will involve him or her in the commission of a crime, any threat made against him or her by one or more of those other persons for the purpose of inducing him or her to commit a crime shall be deemed, for the purpose of paragraph (c) of subsection (1), to have been brought about through his or her own fault.

#### 244 Additional requirements for compulsion to be complete defence to murder

(1) Subject to subsection (3), the fact that a person accused of murder was subjected to compulsion when he or she did or omitted to do anything that is an essential element of the crime shall not be a complete defence to the charge unless the following requirements are satisfied in addition to those specified in paragraphs (b), (c) and (d) of subsection (1) of section *two hundred and forty-three*—

- (a) the compulsion took the form of a threat unlawfully to kill the accused or some other person immediately if the accused did not kill or assist in killing the deceased; and
- (b) the accused could not escape from or resist the threat referred to in paragraph (a); and
- (c) the accused had no warning of the threat referred to in paragraph (a) to enable him or her to forestall it, whether by reporting the matter to the police or by other means.

(2) If the requirements referred to or specified in subsection (1) are satisfied, the defence of compulsion shall be a complete defence to a charge of murder, whether the accused is charged as an actual perpetrator or as an accomplice.

## PART XII

### CONSENT

#### 245 Requirements for consent to be complete defence

(1) Subject to this Part, where a person consents to any conduct which is likely to cause harm to his or her person, proprietary rights or other interests, his or her consent shall be a complete defence to a charge against any other person alleging the commission of a crime of which that conduct forms an essential element, if—

- (a) the interests of the community as a whole are not adversely affected by the conduct to any substantial degree; and
- (b) the consent is given prior to the conduct, not as ratification afterwards; and
- (c) the person who gives the consent is—
  - (i) capable in law of giving such consent; and
  - (ii) able to understand the nature and possible consequences of the conduct and to give informed consent thereto;
- and
- (d) the consent is real and is not induced by threat, force, fraud or mistake intentionally or knowingly induced by the person charged with the crime; and
- (e) the giving of the consent is not contrary to any law or to public policy.

(2) Where a person is charged with rape, aggravated indecent assault, indecent assault or any other crime constituted by the absence of consent by another person to any conduct, the fact that the other person consented to the conduct shall be a complete defence to a charge alleging the commission of that crime if—

- (a) the consent is given prior to the conduct, not as ratification afterwards; and
- (b) the person who gives the consent is—
  - (i) capable in law of giving such consent; and
  - (ii) able to understand the nature and possible consequences of the conduct and to give informed consent thereto;

and

- (c) the consent is real and is not induced by threats, force, fraud or mistake intentionally or knowingly induced by the person charged with the crime.

#### **246 When consent no defence**

It shall not be lawful for any person to consent to—

- (a) being killed; or
- (b) subject to this Part, the infliction of serious bodily injury upon himself or herself;

and such consent shall not be a defence to any criminal charge arising out of such killing or the infliction of such injury.

#### **247 Consent to medical treatment for therapeutic purposes**

(1) In this section—

“patient” means a person to whom medical treatment is given or upon whom a medical operation is performed;

“qualified person”, in relation to any medical treatment or operation, means a person who, by virtue of his or her qualifications or training, is in all the circumstances qualified to give the medical treatment or perform the medical operation.

(2) Where, in order to cure or alleviate any disease or disability from which a patient suffers or is likely to suffer, a qualified person gives any medical treatment to or performs any medical operation upon a patient—

- (a) with the consent of the patient; or
- (b) if the patient is incapable of giving consent, with the consent of the patient’s parent, guardian, spouse or any other person capable in law of giving consent on behalf of the patient; or
- (c) in the case of a minor to whom section 76 of the Children’s Act [*Chapter 5:06*] applies, with authority given in terms of that section;

such consent or authority shall be a complete defence to a charge of murder or assault arising out of that treatment or operation if—

- (i) the consent complies with paragraphs (b), (c) and (d) of subsection (1) of section *two hundred and forty-five*; and
- (ii) the treatment or operation is carried out competently in accordance with recognised medical procedures.

(3) If a qualified person believes on reasonable grounds that—

- (a) a patient urgently requires medical treatment or a medical operation to cure or alleviate any disease or disability from which the patient is suffering or is reasonably suspected of suffering; and
- (b) it is not practicable in the circumstances to obtain the consent or authority required by or referred to in subsection (2);

he or she may give the treatment or perform the operation, as the case may be, without having obtained such consent or authority.

(4) The fact that a qualified person gave treatment or performed an operation in terms of subsection (3) shall be a complete defence to a charge of murder or assault arising out of that treatment or operation if the treatment or operation is carried out competently in accordance with recognised medical procedures.

#### **248 Consent to medical treatment for non-therapeutic purposes**

(1) In this section—

“patient” means a person to whom medical treatment is given or upon whom a medical operation is performed;

“qualified person”, in relation to any medical treatment or operation, means a person who, by virtue of his or her qualifications or training, is in all the circumstances qualified to give the medical treatment or perform the medical operation.

(2) Where a qualified person, with the consent of the patient concerned, gives any medical treatment to or performs any medical operation upon a patient—

- (a) otherwise than to cure or alleviate any disease or disability; or
- (b) in order to sterilise the patient;



such consent or authority shall be a complete defence to a charge of murder or assault arising out of that treatment or operation if—

- (i) the consent complies with paragraphs (b), (c) and (d) of subsection (1) of section *two hundred and forty-five*; and
- (ii) the treatment or operation is carried out competently in accordance with recognised medical procedures; and
- (iii) in a case where the treatment consists of the administration of any new, untried or experimental drug, medicine or allied substance, such treatment is conducted pursuant to and in accordance with the procedures prescribed for the clinical trial of a medicine under the Part III of the Medicines and Allied Substances Control Act [*Chapter 15:03*].”.

#### **249 Consent to sporting injuries**

(1) A person who takes part in any lawful sporting activity shall be deemed to have consented to undergo the risk of sustaining any injury or destruction or loss of property which is normally inherent in participation in such sporting activity.

(2) Consent referred to in subsection (1) shall not be a defence to any crime where—

- (a) the accused inflicted the injury, destruction or loss which forms the subject of the charge deliberately and in contravention of the rules of the sporting activity concerned; and
- (b) the injury, destruction or loss which forms the subject of the charge does not fall within the risks normally inherent in participation in the sporting activity concerned.

#### **250 Consent to injuries from customary or religious practices**

(1) In this section—

“slight bodily injury” includes the circumcision of a male person but does not include the practice of genital mutilation of a female person commonly known as “female circumcision”.

(2) Consent by a person to slight bodily injury inflicted—

- (a) in accordance with the customs or traditional practices of the community to which the person belongs; and
- (b) for the purposes of or in accordance with the practice of his or her religion or custom;

shall be a complete defence to a charge alleging the commission of a crime constituted by the infliction of such injury.

#### **251 Consent given on behalf of other persons**

Subject to this Part, where a person is incapable in law of giving consent to anything, whether because of minority, unconsciousness, insanity or otherwise, consent given by the person’s parent, guardian, spouse or any other person capable in law of giving consent on his or her behalf shall be as effective as if the consent had been given by the person himself or herself.

### **PART XIII**

#### **DEFENCE OF PERSON**

#### **252 Interpretation in Part XIII of Chapter XIV**

In this section—

“unlawful attack” means any unlawful conduct which endangers a person’s life, bodily integrity or freedom.

#### **253 Requirements for defence of person to be complete defence**

(1) Subject to this Part, the fact that a person accused of a crime was defending himself or herself or another person against an unlawful attack when he or she did or omitted to do anything which is an essential element of the crime shall be a complete defence to the charge if—

- (a) when he or she did or omitted to do the thing, the unlawful attack had commenced or was imminent or he or she believed on reasonable grounds that the unlawful attack had commenced or was imminent, and
- (b) his or her conduct was necessary to avert the unlawful attack and he or she could not otherwise escape from or avert the attack or he or she, believed on reasonable grounds that his or her conduct was necessary to avert the unlawful attack and that he or she could not otherwise escape from or avert the attack, and

[Paragraphs (a) and (b) substituted by section 31 of Act 9 of 2006.]

- (c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances; and
- (d) any harm or injury caused by his or her conduct—

- (i) was caused to the attacker and not to any innocent third party; and
- (ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.

(2) In determining whether or not the requirements specified in subsection (1) have been satisfied in any case, a court shall take due account of the circumstances in which the accused found himself or herself, including

any knowledge or capability he or she may have had and any stress or fear that may have been operating on his or her mind.

#### **254 When defence of person partial defence to murder**

If a person accused of murder was defending himself or herself or another person against an unlawful attack when he or she did or omitted to do anything that is an essential element of the crime, he or she shall be guilty of culpable homicide if all the requirements for defence of person specified in section *two hundred and fifty-three* are satisfied in the case except that the means he or she used to avert the unlawful attack were not reasonable in all the circumstances.

#### **255 Mistaken belief in relation to defence of person**

If a person genuinely and on reasonable grounds, but mistakenly, believes that he or she is defending himself or herself or another person against an unlawful attack, he or she shall be entitled to a complete or partial defence in terms of this Part to any criminal charge in all respects as if his or her belief were in fact correct.

### **PART XIV**

#### DEFENCE OF PROPERTY

#### **256 Interpretation in Part XIV of Chapter XIV**

In this Part—

“property” includes property of any description and any interest or right therein;

“unlawful attack” means any unlawful conduct which endangers or infringes a person’s property.

#### **257 Requirements for defence of property to be complete defence**

(1) Subject to this Part, the fact that a person accused of a crime was defending his or her or another person’s property against an unlawful attack when he or she did or omitted to do anything which is an essential element of the crime shall be a complete defence to the charge if—

- (a) when he or she did or omitted to do the thing, the unlawful attack had commenced or was imminent; and
- (b) his or her conduct was necessary to avert the unlawful attack; and
- (c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances; and
- (d) any harm or injury caused by his or her conduct—
  - (i) was caused to the attacker and not to any innocent third party; and
  - (ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.

(2) In determining whether or not the requirements specified in subsection (1) have been satisfied in any case, a court shall take due account of the circumstances in which the accused found himself or herself, including any knowledge or capability he or she may have had and any stress or fear that may have been operating on his or her mind.

(3) In determining whether or not any means used by a person to avert an unlawful attack were reasonable, or whether or not any harm or injury caused to an attacker was proportionate to that liable to be caused by an unlawful attack, a court shall have regard to the nature of the property which the person was trying to protect and its value to him or her.

#### **258 Killing in defence of property**

A person accused of a crime involving the killing of another person shall not be entitled to rely upon a defence in terms of this Part unless—

- (a) the accused resorted to killing after taking all other possible steps to protect the property concerned; and
- (b) the property concerned could not have been defended by any means except by killing; and
- (c) the property concerned was of vital importance to the accused; and
- (d) the accused believed on reasonable grounds that he or she would not receive adequate compensation for any destruction, damage or injury caused to the property concerned by the unlawful attack.

#### **259 When defence of property partial defence to murder**

If a person accused of murder was defending his or her or another person’s property against an unlawful attack when he or she did or omitted to do anything that is an essential element of the crime, he or she shall be guilty of culpable homicide if all the requirements specified in sections *two hundred and fifty-seven* and *two hundred and fifty-eight* are satisfied in the case except that the means he or she used to avert the unlawful attack were not reasonable in all the circumstances.

## PART XV

### ENTRAPMENT

#### 260 Entrapment no defence to crimes

It shall not be a defence to a crime that the accused was trapped into committing the crime concerned, that is to say that the police or other authority or person, by using any inducement or encouragement, caused the accused to commit it for the purpose of obtaining evidence of its commission, but a court may, where it considers that unfair or undesirable entrapment methods were used by the police or other authority or person, take the manner of such entrapment into account as a factor in mitigation of sentence.

## PART XVI

### IMPOSSIBILITY

#### 261 Requirements for impossibility to be complete defence

(1) Where a person is accused of a crime of which an essential element consists of a failure, omission or refusal to do anything, the fact that it was physically impossible for the accused to do that thing shall be a complete defence to the charge if—

- (a) the impossibility was absolute, that is to say, if it was objectively impossible for anyone in the accused's position to have done that thing; and
- (b) the impossibility was not due to the accused's own fault.

(2) For the purposes of subsection (1), the fact that it is extremely difficult for a person to do a thing shall not constitute impossibility.

(3) This section shall not prevent a court, when imposing sentence upon a convicted person, from taking due account of any difficulty experienced by him or her in complying with a law.

## PART XVII

### NECESSITY

#### 262 Application of Part XVII of Chapter XIV

This Part shall not apply to cases where the harm sought to be avoided consisted of a threat which could give rise to a defence of compulsion in terms of Part XI.

#### 263 Requirements for necessity to be complete defence

(1) Subject to this Part, the fact that it was necessary for a person accused of a crime to do or omit to do anything that is an essential element of the crime in order to avoid harm to himself or herself or to another person shall be a complete defence to the charge if—

- (a) the harm which he or she sought to avoid would have resulted in—
  - (i) death or serious bodily injury to himself or herself or to another person; or
  - (ii) considerable financial or proprietary loss to himself or herself;and
- (b) he or she believed on reasonable grounds that the harm referred to in paragraph (a) had started to occur or was imminent; and
- (c) the harm referred to in paragraph (a) did not arise through his or her own fault; and
- (d) he or she believed on reasonable grounds that his or her conduct was necessary to avoid the harm referred to in paragraph (a) and that there was no other feasible way of avoiding it; and
- (e) by his or her conduct he or she did no more harm than was reasonably necessary to avoid the harm referred to in paragraph (a), and the harm he or she did was not disproportionate to the harm referred to in paragraph (a).

(2) In determining whether harm would cause considerable financial or proprietary loss to a person for the purposes of subparagraph (ii) of paragraph (a) of subsection (1), a court shall have regard to the financial or proprietary resources of the person concerned.

#### 264 Additional requirements for necessity to be complete defence to murder

(1) Subject to subsection (2), the fact that it was necessary for a person accused of murder to do or omit to do anything that is an essential element of the crime in order to avoid harm to himself or herself or to another person shall not be a complete defence to the charge unless the following requirements are satisfied in addition to those specified in paragraphs (b), (c) and (d) of subsection (1) of section *two hundred and sixty-three*—

- (a) the harm which he or she sought to avoid would have resulted in his or her death or in the death of his or her spouse, parent or child; and
- (b) his or her conduct was necessary to avoid the harm referred to in paragraph (a) and there was no other feasible way of avoiding it; and

(c) he or she had no warning of the harm referred to in paragraph (a) to enable him or her to forestall it by other means.

(2) If the requirements referred to or specified in subsection (1) are satisfied, the defence of necessity shall be a complete defence to a charge of murder, whether the accused is charged as an actual perpetrator or as an accomplice.

### **265 When necessity partial defence to murder**

If it was necessary for a person accused of murder to do or omit to do anything that is an essential element of the crime in order to avoid harm to himself or herself or to another person, he or she shall be guilty of culpable homicide if all the requirements for the defence of necessity are satisfied in the case except that by his or her conduct he or she did more harm than was reasonably necessary to avoid the harm he or she sought to avoid.

### **266 Necessity in relation to other crimes**

In relation to all cases other than those specified in this Part, necessity shall not be a defence but shall merely be a factor to be taken into account in the assessment of sentence.

## **PART XVIII**

### **OBEDIENCE TO ORDERS**

### **267 Interpretation in Part XVIII of Chapter XIV**

In this Part—

“active operations” means—

- (a) active service during any war in which Zimbabwe is engaged; or
- (b) counterinsurgency operations; or
- (c) the suppression of a riot or public disturbance or public violence; or
- (d) the prevention of a disturbance within or escape from a prison;

“disciplined force” means—

- (a) the Defence Forces; or
- (b) the Police Force; or
- (c) the Prison Service; or
- (d) any other force organised by the State which has as its sole or main object the preservation of public security and of law and order in Zimbabwe;

“lawful order” means any command, direction or order—

- (a) of a routine, permanent or continuing nature that is properly made for any disciplined force by or under any enactment or in terms of any authority given by or under any enactment; or
- (b) given on a particular occasion or for a particular purpose by a member of rank of a disciplined force within the ordinary and lawful scope of that member’s authority;

“member”, in relation to a disciplined force, includes a person who is assisting members of the disciplined force, whether voluntarily or otherwise and whether or not he or she is remunerated for his or her services, and who is subject to orders given by other members of the disciplined force;

“member of rank”, in relation to a disciplined force, means a member in lawful authority over any other member.

### **268 Requirements for obedience to lawful orders to be complete defence**

The fact that a person charged with a crime was obeying a lawful order when the person did or omitted to do anything that is an essential element of the crime shall be a complete defence to the charge if—

- (a) when he or she did or omitted to do the thing he or she was a member of a disciplined force; and
- (b) the order was given to him or her by a member of rank of a disciplined force, whether or not that person was a member of the same disciplined force.

### **269 When obedience to illegal orders affords complete defence**

(1) Subject to this section, the fact that a person charged with a crime was obeying an illegal order when the person did or omitted to do anything that is an essential element of the crime shall not be a complete defence to the charge unless the following requirements are satisfied in addition to those specified in paragraphs (a) and (b) of section *two hundred and sixty-eight*—

- (a) when he or she did or omitted to do the thing he or she was a member of a disciplined force engaged on active operations; and
- (b) he or she would have been liable, or believed on reasonable grounds that he or she would have been liable, to disciplinary action if he or she had refused to obey the order; and
- (c) the order was not so manifestly illegal that a reasonable person in his or her position would have refused to obey it; and
- (d) his or her conduct was no more than was necessary to carry out the order.

(2) If the requirements specified in subsection (1) are satisfied, a person shall be entitled to a complete defence to a charge even if he or she realised that the order concerned was illegal.

## PART XIX

### TRIVIALITIES

#### 270 Person charged with trivial crime entitled to acquittal

(1) Subject to this section, a person charged with a crime shall be entitled to be acquitted of the charge if the conduct constituting the crime is of a trivial nature.

(2) In deciding whether a crime is of a sufficiently trivial nature to justify the acquittal of the person charged in terms of subsection (1), a court shall take into account the following factors in addition to any others that are relevant to the particular case—

- (a) the extent of any harm done by the commission of the crime to any person or to the community as a whole; and
- (b) the extent to which it appears, from the enactment which created the crime, that the lawmaker wished to prohibit conduct such as that perpetrated by the accused; and
- (c) whether or not an acquittal will encourage other persons to commit the crime concerned.

(3) Where a crime is by its nature trivial, that is, where the conduct prohibited by the enactment concerned does little harm either to individual persons or to the community as a whole, a court shall not acquit a person charged with such a crime in terms of this section unless the conduct of the person charged is of a trivial nature in relation to the most serious conduct prohibited by the particular provision of the enactment concerned.

## PART XX

### UNAVOIDABLE ACCIDENT

#### 271 Interpretation in Part XX of Chapter XIV

In this Part—

“unavoidable accident” means a circumstance or event such as—

- (a) a heart attack or epileptic blackout suffered whilst driving a motor vehicle by a person who has not previously suffered from one and who has no reason to suppose that he or she might do so;
- (b) a swarm of bees flying into a moving motor vehicle and stinging the driver;
- (c) a stone thrown up by a passing vehicle and striking and stunning the driver of a moving motor vehicle;

the occurrence of which is so unlikely that a reasonable person, if in the position of the person whose conduct is under consideration, would not take steps to guard against it.

#### 272 Requirements for unavoidable accident to be complete defence

Subject to this section, the fact that a person charged with a crime did or omitted to do anything that is an essential element of the crime as a result of an unavoidable accident shall be a complete defence to the charge if—

- (a) the unavoidable accident did not occur through his or her own fault; and
- (b) a reasonable person, faced with the same unavoidable accident in the same circumstances, would not have been able to avoid the same conduct as would have constituted the crime.

## CHAPTER XV

### PERMISSIBLE VERDICTS

#### 273 Persons charged with crime may be found guilty of unfinalised crime or assisting perpetrator of crime

A person charged with any crime may be found guilty of—

- (a) threatening, incitement, conspiracy or attempting to commit that crime or any other crime of which the person might be convicted on the charge; or
- (b) assisting a perpetrator of that crime or of any other crime of which the person might be convicted on the charge;

if such are the facts proved.

#### 274 Conviction for crime other than that charged

Where a person is charged with a crime the essential elements of which include the essential elements of some other crime, he or she may be found guilty of such other crime, if such are the facts proved and if it is not proved that he or she committed the crime charged.

#### 275 Verdicts permissible on particular charges

Without limiting section *two hundred and seventy-three* or *two hundred and seventy-four*, a person charged with—

(a) a crime specified in the first column of the Fourth Schedule; or  
(b) threatening, incitement, conspiracy or attempting to commit such a crime; or  
(c) assisting a perpetrator of such a crime;  
may be found guilty of—

- (i) a crime specified opposite thereto in the second column of the Fourth Schedule; or
- (ii) threatening, incitement, conspiracy or attempting to commit such a crime; or
- (iii) assisting a perpetrator of such a crime;

if such are the facts proved.

## **276 Sentence impossible where person found guilty on competent verdict**

Where a person charged with a crime is found guilty of another crime in terms of this Chapter, the sentence imposed upon that person shall not exceed the maximum sentence applicable to the crime of which he or she is convicted.

## **CHAPTER XVI**

### **GENERAL**

## **277 Criminal liability of corporations and associations and their members, employees and agents**

(1) In this section—

“authorised person” means a person referred to in paragraph (b) of subsection (2) or paragraph (b) of subsection (4);

“director”, in relation to a corporate body, means a person who—

- (a) controls or governs that corporate body, whether lawfully or otherwise; or
- (b) is a member of a body or group of persons which controls or governs that corporate body, whether lawfully or otherwise; or
- (c) where there is no body or group such as is referred to in paragraph (b), who is a member of the corporate body.

(2) For the purposes of imposing criminal liability upon a corporate body, any conduct on the part of—

- (a) a director or employee of the corporate body; or
- (b) any person acting on instructions or with permission, express or implied, given by a director or employee of the corporate body;

in the exercise of his or her power or in the performance of his or her duties as such a director, employee or authorised person, or in furthering or endeavouring to further the interests of the corporate body, shall be deemed to have been the conduct of the corporate body, and if the conduct was accompanied by any intention on the part of the director, employee or authorised person, that intention shall be deemed to have been the intention of the corporate body.

(3) Where there has been any conduct which constitutes a crime for which a corporate body is or was liable to prosecution, that conduct shall be deemed to have been the conduct of every person who at the time was a director or employee of the corporate body, and if the conduct was accompanied by any intention on the part of the person responsible for it, that intention shall be deemed to have been the intention of every other person who at the time was a director or employee of the corporate body:

Provided that, if it is proved that a director or employee of the corporate body took no part in the conduct, this subsection shall not apply to him or her.

(4) For the purposes of imposing criminal liability upon members and employees of an association of persons which is not a corporate body, any conduct on the part of—

- (a) a member or employee of the association; or
- (b) any person acting on instructions or with permission, express or implied, given by a member or employee of the association;

in the exercise of his or her power or in the performance of his or her duties as such a member, employee or authorised person, or in furthering or endeavouring to further the interests of the association, shall be deemed to have been the conduct of every other person who at the time was a member or employee of the association, and if the conduct was accompanied by any intention on the part of the member, employee or authorised person, that intention shall be deemed to have been the intention of every other person who at the time was a member or employee of the association:

Provided that—

- (i) if it is proved that a member or employee of the association took no part in the conduct, this subsection shall not apply to him or her;

- (ii) if the association is controlled or governed by a committee or other similar governing body, this subsection shall not apply so as to render criminally liable any person who was not at the time of the conduct a member of that committee or other body.

(5) A person who is criminally liable for any conduct in terms of subsection (3) or (4) shall be liable to be prosecuted and punished personally for the crime concerned.

(6) This section shall not limit any other law which imposes criminal liability upon corporate bodies and associations and their directors, employees and members.

## **278 Relation of criminal to civil or disciplinary proceedings**

(1) In this section—

“disciplinary proceedings” means any proceedings for misconduct or breach of discipline against a public officer or member of a disciplined force or a statutory professional body, or against any other person for the discipline of whom provision is made by or under any enactment;

“disciplined force” means—

- (a) the Defence Forces; or
- (b) the Police Force; or
- (c) the Prison Service; or
- (d) any other force organised by the State which has as its sole or main object the preservation of public security and of law and order in Zimbabwe;

“public officer” has the meaning given to that term in section *one hundred and sixty-nine*.

(2) A conviction or acquittal in respect of any crime shall not bar civil or disciplinary proceedings in relation to any conduct constituting the crime at the instance of any person who has suffered loss or injury in consequence of the conduct or at the instance of the relevant disciplinary authority, as the case may be.

(3) Civil or disciplinary proceedings in relation to any conduct that constitutes a crime may, without prejudice to the prosecution of any criminal proceedings in respect of the same conduct, be instituted at any time before or after the commencement of such criminal proceedings.

## **279 Concurrent and alternative charges**

In this Code the use of the word—

- (a) “concurrently”, whether in the phrase “concurrently or alternatively” or on its own in relation to the charging of a person with two or more crimes, means that the person may be charged with both or all of those crimes either conjunctively or, if for any reason whatsoever it is doubtful which of them he or she can be proved to have committed, in the alternative;
- (b) “alternatively”, whether in the phrase “concurrently or alternatively” or on its own in relation to the charging of a person with two or more crimes, means that the person may be charged—
  - (i) with one of those crimes to the exclusion of the other crime, or with any one or more of those crimes to the exclusion of any other crime; or
  - (ii) with both or all of those crimes in the alternative, if for any reason whatsoever it is doubtful which of them he or she can be proved to have committed.

## **280 Standard scale of fines and amendment thereof**

(a1) In this section—

“existing monetary amount specified in the second column of the First Schedule” means, where such amount has previously been amended in accordance with subsections (4a) and (4b), such amount as last amended.

[Subsection inserted by Act 3 of 2009]

(1) Where in this Code and any enactment it is provided that a person who is guilty of a crime is liable to a fine or a maximum fine by reference to a level on the standard scale, the amount of the fine or the maximum fine, as the case may be, that may be imposed subject to subsection (1a) shall be the monetary amount specified in the second or third column of the First Schedule opposite that level in the first column of the First Schedule.

[Subsection amended by Act 3 of 2009]

(1a) Notwithstanding section 41 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] and the Exchange Control Act [*Chapter 22:05*], every fine specified in the second column may, at the option of the person required to pay the fine, be paid in whole or in part in United States dollars in the amount specified in the third column.

[Subsection inserted by Act 3 of 2009]

(2) Where any enactment confers power to make a statutory instrument prescribing a fine or a maximum fine by reference to a level on the standard scale—

- (a) the reference shall be construed as a reference to the standard scale of fines; and

(b) any fine or maximum fine so prescribed may be specified as a monetary amount or as a level on the standard scale of fines.

(3) Where any enactment prescribes the jurisdiction of any court or judicial officer by reference to a level on the standard scale, the reference shall be construed as a reference to the standard scale of fines.

(4) Notwithstanding any other provision of this section, whenever a court imposes a sentence of a fine upon an offender, the court shall specify the monetary amount of the fine and shall not specify the fine by reference to a level on the standard scale of fines.

(4a) After consultation with the Minister responsible for justice the Minister responsible for finance may, not more frequently than once in every fortnight, by notice in a statutory instrument, amend the existing monetary amounts specified in the second column of the First Schedule in the manner specified in subsection (4b) to take into account the decline in the purchasing power of the Zimbabwe dollar in relation to the United States dollar.

[Subsection inserted by Act 3 of 2009]

(4b) For the purpose of subsection (4a), every existing monetary amount specified in the second column of the First Schedule shall be adjusted by multiplying the United States dollar monetary amount specified opposite thereto in the third column by such rate of exchange as the Minister shall prescribe generally or for the purposes of this subsection, rounded downwards to the nearest multiple of ten.

[Subsection inserted by Act 3 of 2009]

(4c) The amendment of the existing monetary amounts specified in the second column of the First Schedule shall take effect on the first Monday of the week following the week in which the statutory instrument referred to in subsection (4a) is published.

[Subsection inserted by Act 3 of 2009]

(5) Subject to subsection (6), the Minister may, by statutory instrument, amend or replace the First Schedule, whenever the Minister considers such an amendment or replacement to be necessary as a result of a change in the purchasing-power of money or for any other reason:

Provided that—

- (i) an increase in the monetary amount corresponding to any level in the standard scale of fines shall not have the effect of increasing the penalty to which any person is liable in respect of a crime committed before the increase came into effect;
- (ii) a reduction in the monetary amount corresponding to any level in the standard scale of fines shall reduce the penalty to which any person is liable in respect of an offence committed before the reduction came into effect, if the penalty is imposed after that date.

(6) A statutory instrument may not be made in terms of subsection (5) unless a draft has been laid before and approved by resolution of Parliament.

(7) Where the Minister responsible for finance, after consultation with the Minister responsible for justice, proposes to reduce every existing monetary amount specified in the third column of the First Schedule then, notwithstanding subsections (5) and (6), the Minister responsible for finance may, by notice in a statutory instrument, reduce the monetary amounts accordingly, and such instrument shall take effect on the first Monday of the week following the week in which it is published.

[Subsection inserted by Act 3 of 2009]

## **281 References in enactments to common law crimes**

Any reference in an enactment to a common law crime specified in the first column of the Fifth Schedule shall be construed as a reference to the equivalent crime in this Code specified in the second column opposite thereto.

## **282 Amendment of Acts**

The Act specified in each Part of the Sixth Schedule is amended to the extent set out in that Part.

## **283 Repeals**

The Acts specified in the Seventh Schedule are repealed.

## **284 Savings**

(1) Subject to subsection (2), the repeal of the Roman-Dutch criminal law by section *three* shall not—

- (a) affect the previous operation of that law or anything duly done or suffered under that law; or
- (b) affect any crime committed against that law before the fixed date, or any penalty, forfeiture or punishment incurred in respect thereof; or
- (c) affect any investigation, legal proceeding or remedy in respect of any crime, penalty, forfeiture or punishment referred to in paragraph (b), and any such investigation, legal proceeding or remedy shall be exercisable, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if that law had not been repealed.



(2) In the case of a trial commenced before the fixed date for a crime specified in the first column of the Fifth Schedule, the court shall not, after the fixed date, impose a sentence in excess of the maximum sentence imposable for the equivalent crime under this Code specified in the second column of the Fifth Schedule.

(3) For the avoidance of doubt it is declared that every crime in force in terms of any other enactment immediately before the fixed date shall continue in force on and after such date unless it is expressly repealed by this Code.

### **FIRST SCHEDULE (Sections 2(1) and 280)**

#### **STANDARD SCALE OF FINES**

[Schedule substituted by Act 3 of 2009]

<b>LEVEL</b>	<b>MONETARY AMOUNT (ZIMBABWE \$)</b>	<b>MONETARY AMOUNT (US \$)</b>
1	250	5
2	500	10
3	1 000	20
4	5 000	100
5	10 000	200
6	15 000	300
7	20 000	400
8	25 000	500
9	30 000	600
10	35 000	700
11	50 000	1 000
12	100 000	2 000
13	150 000	3 000
14	250 000	5 000

## SECOND SCHEDULE (Section 2 (2))

CORRESPONDENCE OF REFERENCES TO CRIMES IN CODE OR OTHER ENACTMENTS TO PROVISIONS OF CODE DEFINING SUCH CRIMES

<i>Crime</i>	<i>Provision in Code defining it</i>
Aggravated indecent assault	Section 66
Allowing child to become a prostitute	Section 87
Assault	Section 89
Assaulting, intimidating or threatening a person on an aircraft	Section 149
Assaulting or resisting peace officer	Section 176
Bestiality	Section 74
Bigamy	Section 104
Bribery	Section 170
Causing disaffection among Police Force or Defence Forces	Section 30
Causing offence to persons of a particular race, religion, etc.	Section 42
Coercing or inducing a person for purpose of engaging in sexual conduct	Section 84
Concealing birth of child	Section 106
Concealing, disguising or enjoying the proceeds of the unlawful dealing in dangerous drugs	Section 160
Concealing treason	Section 21
Contempt of court	Section 182
Corruptly concealing a transaction from a principal	Section 172
Corruptly concealing from a principal a personal interest in a transaction	Section 173
Corruptly using a false document	Section 171
Criminal abuse of duty as public officer	Section 174
Criminal defamation	Section 96
Criminal insult	Section 95
Criminal nuisance	Section 46
Criminal trespass	Section 132
Culpable homicide	Section 49
Damaging, destroying or prejudicing the safe operation of an aircraft	Section 148
Dealing in or possession of prohibited knives	Section 39
Defeating or obstructing the course of justice	Section 184
Deliberate infection of another with a sexually transmitted disease	Section 78
Deliberate introduction of computer virus into computer or computer network	Section 164
Deliberate transmission of HIV	Section 79
Deliberately supplying false information to a public authority	Section 180
Detaining persons for purpose of engaging in unlawful sexual conduct	Section 85
Disorderly conduct in a public place	Section 41
Disrupting a public gathering	Section 44
Employing non-natural means to resolve crimes or delicts	Section 100
Engaging in practices commonly associated with witchcraft	Section 98
Escaping from lawful custody	Section 185

Exposing an infant	Section 108
Extortion	Section 134
Falsely threatening harm in relation to an aircraft	Section 152
Forgery	Section 137
Fraud	Section 136
Harbouring, concealing or failing to report insurgent, bandit, saboteur or terrorist	Section 29
Hijacking	Section 147
Impersonating police officer, peace officer or public official	Section 179
Inciting or assisting suicide	Section 50
Indecent assault	Section 67
Indicating witches and wizards	Section 99
Infanticide	Section 48
Insurgency, banditry, sabotage or terrorism	Section 23
Intimidation	Section 45
Kidnapping or unlawful detention	Section 93
Living off or facilitating prostitution	Section 82
Making off without payment	Section 117
Malicious damage to property	Section 140
Murder	Section 47
Negligently causing serious bodily harm	Section 90
Negligently causing serious damage to property	Section 141
Obstructing a public official	Section 178
Obstructing or endangering free movement of persons or traffic	Section 38
Participating in gathering with intent to promote public violence, breaches of the peace or bigotry	Section 37
Perjury	Section 183
Permitting premises to be used for the unlawful dealing in or use of dangerous drugs	Section 159
Permitting young person to resort to place for purpose of engaging in unlawful sexual conduct	Section 86
Placing or carrying dangerous goods on an aircraft	Section 150
Pledging a female person	Section 94
Possessing property reasonably suspected of being stolen	Section 125
Possessing weaponry for insurgency, banditry, sabotage or terrorism	Section 27
Possessing an article for criminal use	Section 40
Possessing a dangerous weapon	Section 28
Possessing an offensive weapon at a public gathering	Section 43
Procuring	Section 83
Public indecency	Section 77
Public violence	Section 36
Publishing or communicating false statements prejudicial to the State	Section 31
Rape	Section 65
Receiving stolen property knowing it to have been stolen	Section 124
Recruiting or training insurgents, bandits, saboteurs or terrorists	Section 24
Robbery	Section 126

Sexual intercourse or performing an indecent act with a young person	Section 70
Sexual intercourse within a prohibited degree of relationship	Section 75
Sodomy	Section 73
Soliciting	Section 81
Stock theft	Section 114
Subverting constitutional government	Section 22
Supplying weaponry to insurgents, bandits, saboteurs or terrorists	Section 26
Theft	Section 113
Threatening harm in relation to an aircraft	Section 151
Training as insurgent, bandit, saboteur or terrorist	Section 25
Treason	Section 20
Unauthorised access to or use of computer or computer network	Section 163
Unauthorised borrowing or use of property	Section 116
Unauthorised manipulation of proposed computer programme	Section 165
Unauthorised use of password or pin number	Section 168
Unauthorised use or possession of credit or debit cards	Section 167
Undermining authority of or insulting President	Section 33
Undermining police authority	Section 177
Unlawful dealing in dangerous drugs	Section 156
Unlawful possession or use of dangerous drugs	Section 157
Unlawful possession or wearing of camouflage uniforms	Section 32
Unlawful termination of pregnancy	Section 60
Unlawful entry into premises	Section 131
Violating corpses	Section 111
Violating graves	Section 110
Voluntary intoxication leading to unlawful conduct	Section 222

### **THIRD SCHEDULE (Section 46)**

#### ACTS CONSTITUTING CRIMINAL NUISANCE

##### *Interpretation in Third Schedule*

1. In paragraph 2—
 

“appropriate authority” means—

  - (a) in the case of a public place situated within the area under the jurisdiction of a municipal council or town council, such municipal council or town council, as the case may be;
  - (b) in the case of a public place situated within a local government area, the local board;
  - (c) in the case of a public place situated within the area under the jurisdiction of a rural district council, such rural district council;
  - (d) in the case of a public place situated within an area not mentioned in paragraph (a), (b) or (c), the person or body of persons having the control or the management of such area or, if there is no such person or body of persons, the district administrator.

##### *Acts constituting criminal nuisance*

2. Any person who—
  - (a) wantonly or mischievously—
    - (i) rings any bell; or
    - (ii) makes any noise or disturbance or plays any musical instrument or wireless in a public place; or
    - (iii) knocks at doors; or
    - (iv) throws any property from any place; or
    - (v) removes any property from any place; or

- (vi) dislodges or disfigures any property; or
- (vii) gives a false alarm of fire; or
- (viii) does any act of a like nature;
- (b) wantonly or mischievously provokes any animal;
- (c) without the permission of the appropriate authority, makes a fire or lets off fireworks manufactured for the purpose of amusement, in a public place;
- (d) rides or drives any animal upon any pavement;
- (e) throws or deposits any refuse or inflammatory material in or upon a public place or in or upon any other place which has not been set aside for that purpose by the appropriate authority;
- (f) encumbers or obstructs the free passage along any street, road, thoroughfare, sidewalk or pavement;
- (g) allows any refuse, excrement or other offensive material to be spilt or thrown into or on a public place;
- (h) cuts down, removes, destroys or injures any wood, tree or shrub without the permission of the owner or occupier of the land upon which such wood, tree or shrub is situated, or, in the case of any wood, tree or shrub situated in or upon a public place, the permission of the appropriate authority;
- (i) rides or drives any animal in or through a public place in a manner dangerous to the public;
- (j) discharges any firearm, air-pistol, air-rifle or air-gun in or upon a public place unless such weapon is discharged in self-defence, for humane reasons or in circumstances in which such discharge is justified under any law;
- (k) fires any explosive in or upon a public place without the permission of the appropriate authority;
- (l) drives or leaves any vehicle drawn by oxen in any public street or thoroughfare without a person at the head of such oxen or leaves any vehicle drawn by horses, donkeys or mules standing in any street or thoroughfare without a person at the head of such horses, donkeys or mules;
- (m) shouts or screams in a public place to the annoyance of the public;
- (n) places any placard or other document, writing or painting on, or otherwise defaces any house, building, wall, fence, lamp-post, gate or elevator without the consent of the owner or occupier thereof;
- (o) fails or neglects to take such steps as may be necessary to prevent the creation on property owned, leased or occupied by him or her, of a nuisance by offensive smell or otherwise;
- (p) flies a kite or model aeroplane or plays any game in a public place to the annoyance of the public;
- (q) skates in or upon any street, road, thoroughfare, sidewalk or pavement;
- (r) allows to be at large any unmuzzled ferocious dog;
- (s) slaughters or skins any animal or knowingly leaves any dead animal in or upon a public place;
- (t) plays or bets in any street, road, thoroughfare or other open place or public place at or with any table or instrument of gaming or pretended game of chance, or is present at a gathering where such gambling is in progress:

Provided that nothing in this paragraph shall be construed as prohibiting the playing or betting at any entertainment if authority for the conduct of such gaming or game of chance has been granted in terms of the Lotteries and Gaming Act [*Chapter 10:26*];

- (u) subject to any other enactment, sets, urges or permits any dog or other animal to pursue any vehicle;
- (v) employs any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public or any section of the public, or does any act which is likely to create a nuisance or obstruction;

shall be guilty of criminal nuisance.

#### **FOURTH SCHEDULE (Section 275)**

##### PERMISSIBLE VERDICTS

##### *Section and Crime Charged*

##### *Permissible Verdict*

20      Treason

- (a) Attempted murder;
- (b) Concealing treason;
- (c) Subverting constitutional government;
- (d) Insurgency, banditry, sabotage or terrorism;
- (e) Possessing weaponry for insurgency, banditry, sabotage or terrorism;
- (f) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (e).

21      Concealing treason

Harbouring, concealing or failing to report insurgent, bandit, saboteur or terrorist.

22	Subverting constitutional government	Causing disaffection among Police Force or Defence Forces.
23	Insurgency, banditry, sabotage or terrorism	<ul style="list-style-type: none"> <li>(a) Possessing weaponry for insurgency, banditry, sabotage or terrorism;</li> <li>(b) Recruiting or training insurgents, bandits, saboteurs or terrorists;</li> <li>(c) Hijacking;</li> <li>(d) Attempted murder;</li> <li>(e) Rape;</li> <li>(f) Robbery;</li> <li>(g) Malicious damage to property;</li> <li>(h) Public violence;</li> <li>(i) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) to (h).</li> </ul>
24	Recruiting or training insurgents, bandits, saboteurs or terrorists	<ul style="list-style-type: none"> <li>(a) Training as insurgent, bandit, saboteur or terrorist;</li> <li>(b) Supplying weaponry to insurgents, bandits, saboteurs or terrorists;</li> <li>(c) Harboursing, concealing or failing to report insurgent, bandit, saboteur or terrorist;</li> <li>(d) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (c).</li> </ul>
25	Training as insurgent, bandit, saboteur or terrorist	<ul style="list-style-type: none"> <li>(a) Recruiting or training insurgents, bandits, saboteurs or terrorists;</li> <li>(b) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a).</li> </ul>
26	Supplying weaponry to insurgents, bandits, saboteurs or terrorists	<ul style="list-style-type: none"> <li>(a) Possessing weaponry for insurgency, banditry, sabotage or terrorism;</li> <li>(b) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a).</li> </ul>
27	Possessing weaponry for insurgency, banditry, sabotage or terrorism	<ul style="list-style-type: none"> <li>(a) Supplying weaponry to insurgents, bandits, saboteurs or terrorists;</li> <li>(b) Possessing dangerous weapons;</li> <li>(c) Possessing firearms or ammunition without a certificate in contravention of section 4 of the Firearms Act [<i>Chapter 10:09</i>];</li> <li>(d) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (c).</li> </ul>
28	Harboursing, concealing or failing to report insurgent, bandit, saboteur or terrorist	<ul style="list-style-type: none"> <li>(a) Defeating or obstructing the course of justice;</li> <li>(b) Assisting the perpetrator of a crime;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
31	Publishing or communicating false statements prejudicial to the State	<ul style="list-style-type: none"> <li>(a) Incitement to commit murder;</li> <li>(b) Criminal defamation;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
36	Public violence	<ul style="list-style-type: none"> <li>(a) Attempted murder;</li> <li>(b) Robbery;</li> <li>(c) Malicious damage to property;</li> <li>(d) Disrupting a public gathering;</li> <li>(e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (e).</li> </ul>
47	Murder	<ul style="list-style-type: none"> <li>(a) Infanticide;</li> <li>(b) Culpable homicide;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
47	Attempted murder	Assault

48	Infanticide	<ul style="list-style-type: none"> <li>(a) Culpable homicide;</li> <li>(b) Unlawful termination of pregnancy;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
49	Culpable homicide	<ul style="list-style-type: none"> <li>(a) Inciting suicide;</li> <li>(b) Rape;</li> <li>(c) Public violence;</li> <li>(d) Unlawful termination of pregnancy;</li> <li>(e) Assault;</li> <li>(f) Threatening to commit murder;</li> <li>(g) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (f)</li> </ul>
50	Inciting or assisting suicide	<ul style="list-style-type: none"> <li>(a) Attempted murder;</li> <li>(b) Culpable homicide;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
60	Unlawful termination of pregnancy	<ul style="list-style-type: none"> <li>(a) Assault;</li> <li>(b) Indecent assault;</li> <li>(c) Concealing birth of child;</li> <li>(d) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (c).</li> </ul>
65	Rape	<ul style="list-style-type: none"> <li>(a) Aggravated indecent assault;</li> <li>(b) Indecent assault;</li> <li>(c) Sexual intercourse with or indecent assault of young person;</li> <li>(d) Sexual intercourse within a prohibited degree of relationship;</li> <li>(e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (d).</li> </ul>
65	Attempted rape	<ul style="list-style-type: none"> <li>(a) Assault;</li> <li>(b) Indecent assault;</li> </ul>
66	Aggravated indecent assault	Indecent assault
67	Indecent assault	<ul style="list-style-type: none"> <li>(a) Sexual intercourse with or performing an indecent act with a young person;</li> <li>(b) Criminal insult;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a).</li> </ul>
70	Sexual intercourse or performing an indecent act with a young person	<ul style="list-style-type: none"> <li>(a) Indecent assault;</li> <li>(b) Sexual intercourse within a prohibited degree of relationship;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
73	Sodomy	<ul style="list-style-type: none"> <li>(a) Indecent assault;</li> <li>(b) Any crime of which a person might be convicted if he or she were charged with indecent assault.</li> </ul>
75	Sexual intercourse within a prohibited degree of relationship	<ul style="list-style-type: none"> <li>(a) Indecent assault;</li> <li>(b) Sexual intercourse or performing an indecent act with a young person;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
82	Living off or facilitating prostitution	<ul style="list-style-type: none"> <li>(a) Soliciting;</li> <li>(b) Procuring;</li> <li>(c) Detaining a person for purpose of engaging in unlawful sexual conduct;</li> <li>(d) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (c).</li> </ul>

86	Permitting young person to resort to place for purpose of engaging in unlawful sexual conduct	<ul style="list-style-type: none"> <li>(a) Living off or facilitating prostitution;</li> <li>(b) Detaining person for purpose of engaging in unlawful sexual conduct;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
89	Assault	<ul style="list-style-type: none"> <li>(a) Negligently causing serious bodily harm;</li> <li>(b) Disorderly conduct in public place;</li> <li>(c) Possessing a dangerous weapon;</li> <li>(d) Dealing in or possession of prohibited knives.</li> <li>(e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (d).</li> </ul>
93	Kidnapping or unlawful detention of a child	Kidnapping or unlawful detention of an adult
93	Kidnapping or unlawful detention of an adult	Kidnapping or unlawful detention of a child
99	Indicating witches and wizards	Using non- natural means to resolve crimes or delicts
113	Theft	<ul style="list-style-type: none"> <li>(a) Unauthorised borrowing or use of property;</li> <li>(b) Making off without payment;</li> <li>(c) Receiving stolen property knowing it to have been stolen;</li> <li>(d) Malicious damage to property;</li> <li>(e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (d).</li> </ul>
116	Unauthorised borrowing or use of property	<ul style="list-style-type: none"> <li>(a) Getting on to or interfering with or driving or riding a vehicle in contravention of section 57 of the Road Traffic Act [<i>Chapter 13:11</i>];</li> <li>(b) Taking or retaining hold of or boarding a vehicle or trailer in contravention of section 58 of the Road Traffic Act [<i>Chapter 13:11</i>].</li> </ul>
117	Making off without payment	<ul style="list-style-type: none"> <li>(a) Theft;</li> <li>(b) Unauthorised borrowing or use of property;</li> <li>(c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b)</li> </ul>
124	Receiving stolen property knowing it to have been stolen	<ul style="list-style-type: none"> <li>Theft;</li> <li>Unauthorised borrowing or use of property;</li> <li>Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).</li> </ul>
125	Possessing property reasonably suspected of having been stolen	<ul style="list-style-type: none"> <li>(a) Unauthorised borrowing or use of property;</li> <li>(b) Getting on to or interfering with or driving or riding a vehicle in contravention of section 57 of the Road Traffic Act [<i>Chapter 13:11</i>];</li> <li>(c) Taking or retaining hold of or boarding a vehicle or trailer in contravention of section 58 of the Road Traffic Act [<i>Chapter 13:11</i>].</li> </ul>
126	Robbery	<ul style="list-style-type: none"> <li>(a) Assault;</li> <li>(b) Threatening to commit murder;</li> <li>(c) Theft;</li> <li>(d) Making off without payment;</li> <li>(e) Extortion;</li> <li>(f) Malicious damage to property;</li> <li>(g) Assault and theft;</li> <li>(h) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (g).</li> </ul>
131	Unlawful entry into premises	<ul style="list-style-type: none"> <li>(a) Criminal trespass;</li> <li>(b) Any crime of which a person might be convicted if he or she were charged with criminal trespass.</li> </ul>
132	Criminal trespass	<ul style="list-style-type: none"> <li>(a) Possessing an article for criminal use;</li> <li>(b) Malicious damage to property.</li> </ul>



- 134 Extortion
- (a) Attempted murder;
  - (b) Assault;
  - (c) Theft;
  - (d) Malicious damage to property;
  - (e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (d).
- 136 Fraud
- (a) Theft;
  - (b) Any crime which is shown to have been committed by the person charged if it is established that his or her alleged misrepresentation was true;
  - (c) Any crime of which a person might be convicted if he or she were charged with theft.
- 147 Hijacking
- (a) Attempted murder;
  - (b) Kidnapping or unlawful detention;
  - (c) Robbery;
  - (d) Damaging destroying or prejudicing the safe operation of an aircraft;
  - (e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (d).
- 148 Damaging destroying or prejudicing the safe operation of an aircraft
- (a) Placing or carrying dangerous goods on an aircraft;
  - (b) Malicious damage to property;
  - (c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).
- 149 Assaulting, intimidating or threatening a person on an aircraft
- (a) Placing or carrying dangerous goods on an aircraft;
  - (b) Assault;
  - (c) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraph (a) or (b).
- 150 Placing or carrying dangerous goods on an aircraft
- (a) Threatening harm in relation to an aircraft;
  - (b) Possessing or using a firearm or explosives in contravention of any enactment.
- 151 Threatening harm in relation to an aircraft
- (a) Threatening to commit murder;
  - (b) Extortion;
  - (c) Attempted malicious damage to property;
  - (d) Falsely threatening harm in relation to an aircraft;
  - (e) Any crime of which a person might be convicted if he or she were charged with a crime specified in paragraphs (a) to (d).
- 170 Bribery
- (a) Corruptly using a false document;
  - (b) Corruptly concealing a transaction from a principal;
  - (c) Corruptly concealing from a principal a personal interest in a transaction;
  - (d) Criminal abuse of duty as a public officer;
  - (e) Extortion;
  - (f) Theft.
- 171 Corruptly using a false document
- (a) Bribery;
  - (b) Any crime of which a person might be convicted if he or she were charged with bribery.
- 172 Corruptly concealing a transaction from a principal
- (a) Bribery;
  - (b) Any crime of which a person might be convicted if he or she were charged with bribery.
- 173 Corruptly concealing from a principal a personal interest in a transaction
- (a) Bribery;
  - (b) Any crime of which a person might be convicted if he or she were charged with bribery.
- 174 Criminal abuse of duty as a public officer
- (a) Bribery;
  - (b) Theft;
  - (c) Extortion;
  - (d) Any crime of which a person might be convicted if he or she were charged with bribery.

## FIFTH SCHEDULE (Sections 281 and 284 (2))

### CORRESPONDENCE OF COMMON LAW CRIMES WITH CODIFIED CRIMES

Common law crime	Corresponding crime in Code
Abduction	Kidnapping or unlawful detention
Abortion	Unlawful termination of pregnancy
Administering a poisonous or noxious substance	Assault
Arson	Malicious damage to property
Assault with intent to inflict grievous bodily harm	Assault
Bestiality	Bestiality
Bigamy	Bigamy
Blasphemy	Causing offence to persons of a particular race, religion, etc.
Bribery	Bribery
Common assault	Assault
Compounding	Defeating or obstructing the course of justice
Contempt of court	Contempt of court
Crimen injuria	Criminal insult
Criminal defamation	Criminal defamation
Culpable homicide	Culpable homicide
Defeating or obstructing the course of justice	Defeating or obstructing the course of justice
Exposing an infant	Exposing an infant
Extortion	Extortion
Forgery	Forgery
Fraud	Fraud
Housebreaking with intent to commit a crime	Unlawful entry into premises
Incest	Sexual intercourse within a prohibited degree of relationship
Indecent assault	Aggravated indecent assault
	Indecent assault
Kidnapping	Kidnapping or unlawful detention
Malicious injury to property	Malicious damage to property
Murder	Murder
	Infanticide
Offence against nature (unnatural offence)	Sodomy
Perjury	Perjury
Public indecency	Public indecency
Public violence	Public violence
Rape	Rape
Receiving stolen property knowing it to be stolen	Receiving stolen property knowing it to have been stolen
Robbery	Robbery
Sedition	Subverting constitutional government
	Public violence
Sodomy	Sodomy
Subornation of perjury	Incitement of or being an accomplice to perjury
Theft	Theft
	Stock theft
Theft by false pretences	Theft
Treason	Treason
	Concealing treason
Uttering	Fraud
Violating a dead body	Violating corpses
Violating a grave	Violating graves

