Dates of commencement [Act, section 1(2) and (3)]
- *10th June 2016 [date Act was gazetted] – all provisions except those listed in the following paragraph.*
- *8th September 2016 [ninetieth day after Act was gazetted] – sections 16, 17, 20, 22, 23, 25 and 27, and the new Eleventh Schedule to the principal Act inserted by section 47.*

ZIMBABWE

ACT

To amend the Criminal Procedure and Evidence Act [*Chapter 9:07*]; to amend the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014); and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title and date of commencement

(1) This Act may be cited as the Criminal Procedure and Evidence Amendment Act, 2016.

(2) Subject to subsection (3), this Act shall come into operation on the date of its promulgation.

(3) Sections 16, 17, 20, 22, 23, 25, 27 and 47 (insofar as the insertion of the Eleventh Schedule is concerned) shall come into operation on the ninetieth day after the date of the promulgation of this Act.

2 Amendment of section 2 of Cap. 9:07

Section 2 ("Interpretation") of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (hereinafter called "the principal Act") is amended—

(a) by the insertion of the following definitions—

""accused" or "accused person" means a person who has been arrested for or charged with an offence;

"authorised person", for the purposes of taking an intimate sample or buccal sample pursuant to section 41(3) or 41B, means a health

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practitioner, medical officer or other person who has successfully undergone the relevant training to enable him or her to take a bodily sample;

"bodily sample" means an intimate or buccal sample taken from a person;

"buccal sample" means a sample of cellular material taken from the inside of a person's mouth for the purposes of conducting a forensic DNA analysis of that sample;

"compelling reasons", for the purposes of—

(a) sections 39B(2)(b), 258A(2)(b) and 385A(3), means any reason related to—

(i) safeguarding the enjoyment of rights and not prejudicing the rights and freedoms of other persons that might be put in immediate jeopardy; or

(ii) safeguarding the interests of defence, public safety, public order, public health, regional or town planning or the general public interest, that might be put in immediate jeopardy;

(b) Part IX ("Bail"), shall be construed in accordance with section 115C;

"DNA" means deoxyribonucleic acid;

"forensic DNA analysis", in relation to an intimate or buccal sample, means the identification in that sample of genetic sequences commonly called "markers" that are highly variable and particular to each person;

"health practitioner" means any person in respect of whose profession or calling a register is kept in terms of the Health Professions Act [*Chapter 27:19*];

"medical officer" means a—

(a) medical practitioner; or

(b) State Registered Nurse;

employed wholly or mainly or on a part-time basis by the Police Service, the Prisons and Correctional Service or other organ of State, or a local authority;

"National Director of Public Prosecutions" means the National Director of Public Prosecutions appointed in terms of section 8 of the National Prosecuting Authority Act [*Chapter 7:20*];

(b) by the repeal of the definition of "public prosecutor" and the substitution of—

""public prosecutor" means the Prosecutor-General or a person who has the Prosecutor-General's authority to institute and conduct criminal proceedings on behalf of the State;";

(c) by the repeal of the definition of "statutory capital offence".

3 New Part substituted for Part II of Cap. 9:07

Part II of the principal Act is repealed and the following Part is substituted—

"PART II

PROSECUTION ON BEHALF OF STATE

5 Delegation of functions by Prosecutor-General

(1) Subject to the general or specific instructions of the Prosecutor-General, the public prosecutor to whom responsibility for public prosecutions is assigned under the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014), shall exercise all the rights and powers and perform all of the functions conferred upon the Prosecutor-General by section 259 of the Constitution, this Act or any other enactment, insofar as they relate to criminal proceedings.

(2) The Prosecutor-General may, when he or she deems it expedient, appoint any legal practitioner entitled to practise in Zimbabwe to exercise (subject to the general or specific instructions of the Prosecutor-General) all or any of the rights and powers or perform all or any of the functions conferred upon the Prosecutor-General by section 259 of the Constitution, this Act or any other enactment, whether or not they relate to criminal proceedings.

(3) The officer referred to in subsection (1) or a legal practitioner appointed in terms of subsection (2) may, subject to any conditions which the Prosecutor-General may impose—

(a) sign any certificate, authority or other document required or authorised by an enactment referred to in those subsections; and

(b) appoint a member of the National Prosecuting Authority constituted in terms of the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014), or a legal practitioner entitled to practise in Zimbabwe, as the case may be, to exercise the rights and powers or perform the functions delegated to him or her in terms of subsection (1) or (2), and the provisions of this subsection shall apply, with such changes as may be necessary, in respect of that appointment.

6 National Director of Public Prosecutions

There shall be a National Director of Public Prosecutions appointed in terms of section 8 of the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014).

7 Change of prosecutor

Criminal proceedings instituted on behalf of the State by one public prosecutor may be continued by any other public prosecutor.

8 Power to stop public prosecutions

The Prosecutor-General, or any person conducting criminal proceedings on behalf of the State may—

(a) before an accused pleads to a charge, withdraw that charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge;

(b) at any time after an accused has pleaded to a charge, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of that charge.

9 Prosecutions for contempt of court proceedings

(1) A court or tribunal may, on its own motion, institute proceedings for contempt of court against any person who is alleged to have impaired its dignity, reputation or authority in the presence of the court or tribunal.

(2) No court, tribunal or person, other than the Prosecutor-General or someone acting on the express authority of the Prosecutor-General, shall institute or continue any proceedings for contempt of court against anyone who is alleged to have impaired the dignity, reputation or authority of a court or tribunal in circumstances other than those referred to in subsection (1).

(3) Nothing in this section shall affect the institution of proceedings for contempt of court against any person for the purpose of enforcing any order of a court or tribunal.

10 Power of ordering liberation of persons committed for further examination, sentence or trial

(1) The Prosecutor-General may order the liberation of any person committed to prison for further examination or trial, and for that liberation a document setting forth that the Prosecutor-General sees no grounds for prosecuting such person and signed by him or her shall be a sufficient warrant.

(2) If, in the opinion of the Prosecutor-General, the accused person has been wrongly convicted by the court, the Prosecutor-General may, at any stage after conviction, make representations to the court that—

(a) there is compelling evidence that exonerates the convicted person of the offence; or

(b) compelling evidence incriminating a person other than the convicted person has been brought to the Prosecutor-General's knowledge; or

(c) new evidence obtained links the convicted person to a lesser offence and not to the offence for which he or she was convicted;

and that the evidence referred to in paragraph (a), (b) or (c) was not within the Prosecutor-General's knowledge at the time of trial.

(3) Upon hearing the representations of the Prosecutor-General, the court may—

(a) uphold the conviction; or

(b) set aside the conviction and liberate the convicted person; or

(c) make such order or give such directions as it deems fit.

(4) If the Prosecutor-General is dissatisfied with the court's decision in terms of subsection (3), the Prosecutor-General may appeal against such decision to a superior court.

(5) On an appeal by the Prosecutor-General in terms of subsection (4), the superior court may—

(a) confirm the decision made in terms of subsection (3); or

(b) remit the case to the convicting court for sentencing; or

(c) make such order or give such directions as it deems fit.

11 Functions of local public prosecutor

(1) All public prosecutors attached to a magistrates court are, as representatives of the Prosecutor-General and subject to his or her instructions, charged with the duty of prosecuting in that magistrates court, in the name and on behalf of Zimbabwe, all offences which, under any enactment governing magistrates courts or any other enactment, that magistrates court has jurisdiction to try.

(2) Criminal proceedings instituted in a magistrates court by any local public prosecutor may be continued by any other public prosecutor.

(3) When there is lodged with or made before a local public prosecutor a sworn declaration in writing by any person disclosing that any other person has committed an offence chargeable in the magistrates court to which such public prosecutor is attached, he or she shall determine whether there are good grounds for prosecution or not:

Provided that—

(i) he or she may refer to the Prosecutor-General the question whether he or she shall prosecute or not;

(ii) any other person may be specially authorised by the Prosecutor-General to prosecute in the matter.

11A Publication of principles on which decisions to prosecute are based

(1) The Prosecutor-General shall, at intervals of not more than two years, review the statement which he or she is required by section 260(2) of the Constitution to formulate, and which sets out the principles by which he or she decides whether and how to institute and conduct criminal proceedings.

(2) When formulating or reviewing the principles by which he or she decides whether and how to institute and conduct criminal proceedings in terms of section 260(2) of the Constitution, the Prosecutor-General shall consult—

(a) the Judicial Service Commission; and

(b) the Law Society of Zimbabwe; and

(c) such other persons and bodies as he or she thinks appropriate;

and while he or she shall not be bound to adopt any recommendation made by those persons and bodies, he or she shall pay due regard to them.

(3) The Prosecutor-General shall ensure that the statement of principles referred to in subsection (1) is published as widely as practicable, and in particular shall ensure that copies of the statement, as amended from time to time, are kept at all offices of the National Prosecuting Authority and are available for inspection there by members of the public at all reasonable times during office hours.".

4 Amendment of section 14 of Cap. 9:07

Section 14 ("What other persons entitled to prosecute") of the principal Act is amended—

(a) by the repeal of paragraph (a) and the substitution of—

"(a) a spouse of the person against whom the offence was committed;";

(b) in paragraph (c) by the deletion of "wife" wherever it occurs and the substitution of "surviving spouse".

5 Amendment of section 16 of Cap. 9:07

Section 16 of the principal Act is repealed and the following is substituted—

"16 Certificate of Prosecutor-General that he or she declines to prosecute

(1) Except as is provided by subsection (4), it shall not be competent for any private party to obtain the process of any court for summoning any party to answer any charge, unless such private party produces to the officer authorised by law to issue such process a certificate signed by the Prosecutor-General that he or she has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance, and, subject to the conditions set forth in subsections (2) and (3), in every case in which the Prosecutor-General declines to prosecute he or she shall, at the request of the party intending to prosecute, grant the certificate required.

(2) The Prosecutor-General shall grant the certificate referred to in subsection (1) if—

(a) there is produced to him or her by the private party a written request in the form of a sworn statement from which it appears to the Prosecutor-General that the private party—

(i) is the victim of the alleged offence, or is otherwise an interested person by virtue of having personally suffered, as a direct consequence of the alleged offence, an invasion of a legal right beyond that suffered by the public generally; and

(ii) has the means to conduct the private prosecution promptly and timeously; and

(iii) will conduct the private prosecution as an individual (whether personally or through his or her legal practitioner), or as the representative of a class of individuals recognised as a class for the purposes of the Class Actions Act [*Chapter 8:17*] (No. 10 of 1999);

and

(b) no grounds exist in terms of subsection (3) for withholding the certificate.

(3) The Prosecutor-General may refuse to grant the certificate referred to in subsection (1) upon any one or more of the following grounds, namely—

(a) that the conduct complained of by the private party does not disclose a criminal offence; or

(b) that on the evidence available, there is no possibility (or only a remote possibility) of proving the charge against the accused beyond a reasonable: doubt; or

(c) whether the person to be prosecuted has adequate means to conduct a defence to the charge (in the case of any person who, but for the fact that the Prosecutor-General has declined to prosecute him or her, would have qualified for legal assistance at the expense of the State); or

(d) that it is not in the interests of national security or the public interest generally to grant the certificate to the private party.

(4) When the right of prosecution referred to in this Part is possessed under any statute by any public body or person in respect of particular offences, subsections (1), (2) and (3) shall not apply.

6 New section substituted for section 17 of Cap. 9:07

Section 17 of the principal Act is repealed and the following is substituted—

"17 Private prosecutor may be ordered to give security for costs

Where a private prosecution is being or has been instituted by a person other than a public body or person described in section 14(d), the court may order him or her to give such security as the court may direct for the payment of any costs incurred by the accused person in respect of his or her defence, and where the court has made such an order no further steps shall be taken in the prosecution until the security has been given.".

7 Amendment of section 28 of Cap. 9:07

Section 28 of the principal Act is repealed and substituted by—

"28 Arrest by private persons of persons fighting in public places

Any private person is authorised to arrest without warrant any person whom he or she sees engaged in fighting in a public place in order to prevent such person from continuing the fight, and to deliver him or her over to a police officer to be dealt with according to law.".

8 Amendment of section 32 of Cap. 9:07

Section 32 ("Procedure after arrest without warrant") of the principal Act is amended by the repeal of subsection (3) and the substitution of—

"(3) Any person who is arrested or detained—

(a) for the purpose of bringing him or her before a court; or

(b) for an alleged offence;

and who is not released must be brought before a court as soon as possible and in any event not later than forty-eight hours after the arrest took place or the detention began, as the case may be, whether or not the period ends on Sunday or a public holiday.";

9 Amendment of section 33 of Cap. 9:07

Section 33 ("Warrant of arrest by judge, magistrate or justice")(1) of the principal Act is amended by the deletion of "Any judge, magistrate or justice may issue" and the substitution of "Any judge, magistrate or justice (other than a police officer) may issue".

10 New section substituted for section 35 of Cap. 9:07

Section 35 of the principal Act is repealed and the following is substituted—

"35 Arrest on wireless or telegraphic transmission of warrant

A communication which—

(a) sets out or substantially outlines the terms of a warrant issued in terms of section 33; and

(b) is sent or communicated electronically or in an official publication;

shall be sufficient authority for the arrest of the person named in the warrant as if it were the original warrant.".

11 New sections inserted in Cap. 9:07

The principal Act is amended by the insertion after section 39 of the following sections—

"39A Voluntary attendance at police station or charge office

Where for purposes of assisting the police with an investigation a person attends voluntarily at a police station or charge office or voluntarily accompanies a police officer to a police station or charge office without having been arrested—

(a) he or she shall be entitled to leave the police station or charge office at will unless he or she is placed under arrest; and

(b) he or she shall be informed promptly that he or she is under arrest if a decision is taken to arrest him or her on reasonable suspicion that he or she has committed an offence.

39B Police officers may restrain, etc., persons in certain circumstances without intention to arrest

(1) In the exercise of a police officer's socially protective function, a police officer may—

(a) without intending to charge a person with an offence or without having formed the intention to charge a person with an offence; and

(b) by the of use such force as is reasonably justifiable and proportionate in the circumstances of the case (but never by the use of lethal force) to overcome any resistance on the part of the person concerned or to prevent the person concerned from escaping;

physically restrain a person and remove him or her to a police station or charge office, and there detain that person for a period of not more than twenty-four hours, in either of the circumstances specified in subsection (2).

(2) A police officer may exercise the powers referred to in subsection (1) in either of the following circumstances—

(a) where the person concerned is found not to be in his or her sound or sober senses (whether by reason of intoxication or a mental disorder or defect)—

(i) in a public place; or

(ii) in a private place or private residence where the owner or any lawful occupier thereof requests the intervention of a police officer;

or

(b) where there are compelling reasons (the proof whereof rests with the police officer concerned) for so restraining, removing and detaining the person concerned:

Provided that if a decision to charge a person so restrained, removed and detained with an offence is not made within twenty-four hours, the person must be released unconditionally no later than the expiry of that period.

(3) Whenever the police exercise their powers in terms of subsection (1), the police shall, as soon as possible, record in their occurrence book as defined in section 47, the particulars of the detained person and the reasons for such detention.".

12 Amendment of section 41 of Cap. 9:07

Section 41 ("Arrest—how made, and search thereon of person arrested")(3) of the principal Act is repealed and substituted by—

"(3) Any peace officer may take or cause to be taken the finger-prints, palm-prints, footprints and photographs of any person arrested upon any charge, and may take or cause to be taken such steps as he or she may think necessary in order to ascertain whether or not the body of any such person bears any mark, characteristic or distinguishing feature, or shows any condition or appearance:

Provided that no intimate or buccal sample may be taken from the person who has been arrested except—

(a) in case of a buccal sample, by an authorised person at the request and in the presence of the peace officer; or

(b) in the case of an intimate sample—

(i) by a medical officer at the written request of a police officer of or above the rank of superintendent; or

(ii) by the medical officer of any prison at which the arrested person is detained; or

(iii) by an authorised person of the same sex as the person from whom the intimate sample is to be taken;

in order to ascertain some fact which is material to the investigation of the charge upon which such person has been arrested.".

13 New sections inserted in Cap. 9:07

The principal Act is amended by the insertion after section 41 of the following sections—

"41A Arrested person to be informed of his or her rights

(1) Subject to this section, where a person has been arrested by a peace officer, whether with or without a warrant, the peace officer shall cause the person to be informed promptly, in a language he or she understands, of—

(a) the reason for the arrest; and

(b) his or her right to remain silent; and

(c) the consequences of remaining silent and of not remaining silent; and

(d) his or her right to contact, at the State's expense, any one of the following—

(i) a legal practitioner of his or her choice; or

(ii) a medical practitioner of his or her choice; or

(iii) his or her spouse or partner; or

(iv) his or her relative of choice; or

(v) anyone else of his or her choice;

for the purpose of informing the person contacted about the arrest.

(2) Where a person has been informed of his or her rights referred to in subsection (1) in the English language, it shall be presumed, unless the contrary is proved, that he or she was informed of his or her rights in a language he or she understands.

(3) For the purposes of subsection (1)(d), if an arrested person does not succeed, without any fault on his or her part, in contacting a person of his or her first choice, the arrested person shall be allowed an opportunity to contact any other person until he or she succeeds in contacting him or her.

(4) The Tenth Schedule shall guide a peace officer as to the form of the words to be used for the purposes of subsection (1).

(5) Where a person has been arrested by a private person in terms of this Act or any other enactment, the private person must as soon as possible deliver the arrested person over to a police officer, who must then, as soon as he or she is satisfied that the arrest is justified, cause the arrested person to be informed of his or her rights in the manner provided in subsection (1).

(6) Every person concerned in the arrest of another person, under this Act or any other enactment and whether the arrest is with or without warrant, shall ensure that the arrested person is—

(a) treated humanely and with respect for his or her inherent dignity; and

(b) permitted to challenge the lawfulness of the arrest in person before a court; and

(c) released promptly if the arrest is unlawful.

(7) A person who has been detained following an arrest, under this Act or any other enactment and whether with or without warrant, shall be accorded, by the person for the time being in charge of the place where he or she is being detained, the right to—

(a) be informed promptly of the reason for his or her detention; and

(b) consult in private with a registered legal practitioner of his or her choice, and to be informed of this right promptly; and

(c) communicate with, and be visited by—

(i) a spouse or partner; and

(ii) a relative; and

(iii) a religious counsellor of his or her choice; and

(iv) a registered legal practitioner of his or her choice; and

(v) a registered medical practitioner of his or her choice; and

(vi) subject to any reasonable restrictions imposed for the proper administration of the place of detention, any other person of his or her choice;

and to be informed of this right promptly;

and

(d) to remain silent and to be informed of this right, and of the consequences of exercising or not exercising this right, if there is reason to believe that he or she may not be aware of it.

(8) The person for the time being in charge of the place where a person is being detained following his or her arrest, under this Act or any other enactment and whether with or without warrant, shall ensure that the conditions of detention are consistent with human dignity, including—

(a) the affording of a reasonable opportunity for the detained person to engage in physical exercise; and

(b) the right of the detained person to wear clothing of his or her choice, unless—

(i) the exercise of the right is likely to prejudice his or her health or the reasonable requirements of discipline in the place where he or she is detained; or

(ii) the clothing is required for the purposes of any investigation or inquiry;

whereupon, in either case, he or she must be provided with decent alternative clothing to wear;

and

(c) the provision, at State expense, of—

(i) adequate accommodation; and

(ii) adequate ablution facilities and other facilities for maintaining personal hygiene; and

(iii) adequate nutrition; and

(iv) appropriate reading material; and

(v) adequate medical treatment; and

(vi) such other facilities as may be prescribed.

(9) A person who is being detained following his or her arrest, under this Act or any other enactment and whether with or without warrant, shall be entitled to challenge the lawfulness of the detention in person before a court, and the person for the time being in charge of the place where he or she is being detained shall cause him or her to be informed of this right promptly.

41B Bodily samples for investigation purposes

(1) An authorised person may take a bodily sample of a person or group of persons, or supervise the taking of a bodily sample from any person or group of persons, if the person or persons concerned consent to such sample being taken at the verbal or written request of a peace officer who is satisfied that there are reasonable grounds—

(a) to suspect that the person, or any one or more persons in a group of persons, has committed an offence; or

(b) for believing that the bodily sample and the resulting forensic DNA analysis thereof will be of value in the investigation of an offence by excluding or including one or more persons as possible perpetrators of the offence.

(2) If a person does not consent to the taking of a bodily sample, a warrant may be issued by a judge or magistrate upon written request by a police officer who is of or above the rank of inspector, if it appears from written information given by the police officer under oath that there are reasonable grounds—

(a) to suspect that the person named in the information, or any one or more persons in a group of persons so named, has committed an offence; or

(b) for believing that the bodily sample and the resulting forensic DNA analysis thereof will be of value in the investigation of an offence by excluding or including one or more named persons as possible perpetrators of the offence.

(3) A bodily sample must be taken—

(a) by an authorised person or by a person under the supervision and in the presence of the authorised person; and

(b) with strict regard for decency and decorum:

Provided that no intimate or buccal sample may be taken from the person who has been arrested except—

(a) in case of a buccal sample, by an authorised person at the request and in the presence of the peace officer; or

(b) in the case of an intimate sample, in private by—

(i) a medical officer at the written request of a police officer of or above the rank of superintendent; or

(ii) the medical officer of any prison at which the arrested person is detained; or

(iii) by an authorised person of the same sex as the person from whom the intimate sample is to be taken;

in order to ascertain some fact which is material to the investigation of the charge upon which such person has been arrested.

(4) If in any criminal proceedings the results of a forensic DNA analysis of a bodily sample are embodied in an affidavit sworn to by an authorised person in which that person deposes to the following facts—

(a) that he or she is an authorised person who is qualified to undertake forensic DNA analysis of bodily samples; and

(b) that the bodily sample was obtained by that person or by another named authorised person under the supervision of the first named person under conditions which safeguard as much as is reasonably possible against the possibility of the contamination of that sample;

such affidavit shall, upon its mere production, be admissible as *prima facie* proof of the facts deposed therein.

(5) Any bodily sample taken from a person and the records of any steps taken under this section shall, in the case of—

(a) an accused person, be destroyed if he or she has been found not guilty at his or her trial, or his or her conviction is set aside by a superior court, or the charge against him or her is withdrawn, unless the person consents in writing to the preservation of the bodily sample;

(b) a person other than an accused person, be retained until the criminal proceedings to which they are relevant have been finally concluded, whereupon they shall be destroyed, unless the person consents in writing to the preservation of the bodily sample.

(6) A person referred to in subsection (5)(a) or (b) shall have the right to receive written notification from the custodian of his or her bodily sample of the destruction thereof in accordance with that subsection.

41C Records to be kept of arrested and detained persons

(1) The officer in charge of every police station or charge office where persons are brought following their arrest, or where they are detained, shall ensure that a record is kept showing, in respect of every such person—

(a) the person's name and other identity particulars; and

(b) the date and time on which the person was brought to the police station or charge office or was first detained there, as the case may be; and

(c) the offence for which the person was arrested or detained; and

(d) where the person has been released, the date and time of the release and the reasons for it; and

(e) where the person has been transferred elsewhere—

(i) the place to which he or she was transferred; and

(ii) the date and time of the transfer; and

(iii) the reasons for the transfer.

(2) Every police officer at a police station or charge office where records are required to be kept in terms of subsection (1) shall permit any interested person, including a legal practitioner representing a person who is believed to have been arrested or detained, to inspect the records at all reasonable times.

(3) The officer in charge of a police station or charge office where records are required to be kept in terms of subsection (1) shall ensure that the records are kept there for at least three years.

41D Search and examination of arrested person

(1) A person who arrests another person, under this Act or any other enactment and whether with or without warrant, may search that person, and shall place in safe custody all articles, other than necessary wearing apparel, found on him or her.

(2) A peace officer may take or cause to be taken the finger-prints, palm-prints, footprints and photographs of any person arrested upon any charge, under this Act or any other enactment and whether with or without warrant, and the medical officer of any prison or any medical officer of

the Ministry responsible for health or any peace officer may take a sample of the arrested person's blood, saliva or tissue or cause to be taken such other steps as he or she may think necessary in order to ascertain whether or not the body of the arrested person has any mark, characteristic or distinguishing feature or shows any condition or appearance:

Provided that a bodily, saliva or tissue sample shall only be taken by a medical officer at the request in writing of a police officer of or above the rank of superintendent, in order to ascertain some fact which is material to the investigation of the charge upon which the person has been arrested.

(3) Any search of the body of an arrested person in terms of this section shall be made—

(a) by a medical officer; or

(b) where it is not made by a medical officer, by any person who is of the same sex as the arrested person;

and shall be conducted with strict regard to decency and decorum.

(4) Any finger-prints, palm-prints, footprints, photographs or samples taken under this section, and the records of any steps taken under this section, shall be destroyed if the person concerned is found not guilty at his or her trial or if his or her conviction is set aside by a superior court or if it is decided not to prosecute him or her or if the charge against him or her is withdrawn.

(5) Section 41B(6) applies, with such changes as may be necessary, to a person referred to in subsection (4).".

14 New section substituted for section 42 of Cap. 9:07

Section 42 of the principal Act is repealed and substituted by—

"42 Resisting arrest

(1) If any person who is authorised or required under this Act or any other enactment to arrest or assist in arresting another person, attempts to make the arrest and the person whose arrest is attempted resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the person concerned cannot be arrested without the use of force, the person attempting the arrest may, in order to effect the arrest, use such force as may be reasonably justifiable and proportionate in the circumstances to overcome the resistance or prevent the person concerned from fleeing:

Provided that the person attempting the arrest is justified in terms of this section in using force against the person concerned only if the person sought to be arrested was committing or had committed, or was suspected of having committed an offence referred to in the First Schedule, and the person attempting the arrest believes on reasonable grounds that—

(a) the force is immediately necessary for the purposes of protecting the person attempting the arrest, any person lawfully assisting the person attempting the arrest or any other person from imminent or future death or grievous bodily harm; or

(b) there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

(c) the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life-threatening violence or a strong likelihood that it will cause grievous bodily harm.

(2) For the avoidance of doubt it is declared that no use of lethal force for the purposes of subsection (1) shall be lawful unless there is strict compliance with the conditions specified therein.".

15 New section substituted for section 47 of Cap. 9:07

Section 47 of the principal Act is repealed and the following is substituted—

"47 Interpretation in Part VI

In this Part—

"article" includes any document or substance.

"articles whose possession is intrinsically unlawful" means harmful liquids, dangerous drugs, child pornography as defined in the Trafficking in Persons Act [*Chapter 9:25*], adult pornography whose possession is prohibited under the Censorship and Entertainments Control Act [*Chapter 10:04*], unlicensed firearms and ammunition, arms or weapons of war, explosives whose use or possession is not authorised under the Explosives Act [*Chapter 10:08*], forged or counterfeit currency or forged or counterfeit travel or identity documents, any plate or dye used for forging currency or documents and any other article specified by the Minister in regulations made under section 389;

"full receipt", in relation to an article seized in terms of this Part, means a receipt specifying the nature of the article, the name and address of the person from whom it was seized and (if some other person is known to be the owner thereof) the name and address of the owner thereof, the date of seizure and the place of custody, and the name and signature of the seizing officer:

Provided that if three or more such articles are seized from the same person at the same time, the receipt may refer to a description of the articles in a list attached thereto that is signed by the seizing officer and retained by the person from whom it was seized;

"occurrence book" means the journal kept at a police station of events required to be recorded therein on a daily basis;

"premises" or "land" includes any container, vehicle, vessel or aircraft present within or upon such premises or land.".

16 Amendment of section 49 of Cap. 9:07

Section 49 ("State may seize certain articles") of the principal Act is amended by the insertion of the following subsections, the existing section becoming subsection (1)—

"(2) A police officer who seizes and removes any article in accordance with this Part, whether under or without a warrant, must make a full receipt in duplicate for the article so seized and removed, and—

(a) give a copy of it to the owner or possessor thereof (unless the owner or possessor of the article is arrested in connection with an offence involving the article, in which case paragraphs (b), (c) and (d) following apply); or

(b) in the absence of the owner or possessor, or if the owner or possessor of the article is arrested in connection with an offence involving the article, or if the owner or possessor is unknown or cannot be ascertained by the police officer after due inquiry, give a copy of it to (as the case may be)—

(i) the person apparently in charge or control of or in lawful occupation of the land, premises upon or in which the article is seized; or

(ii) the person apparently in charge or control of the vehicle, vessel or aircraft from which the article is seized;

or

(c) in the absence of the persons referred to in paragraph (b), give a copy of it to (as the case may be)—

(i) an apparently responsible person present upon or in the land or premises from which the article is seized; or

(ii) an apparently responsible person present as a passenger within the vehicle, vessel or aircraft from which the article is seized and removed;

or

(d) in the absence of all of the persons referred to in paragraph (a), (b) and (c), attach or leave a copy of the receipt in any part of the premises, land, vehicle, vessel or aircraft from which the article to which the receipt relates was seized and removed.

(3) If an owner or possessor from whom any article is seized in accordance with this Part did not receive a full receipt therefor by reason having been arrested in connection with an offence involving the article, he or she shall have the right to demand and receive such a receipt immediately upon being released on bail or upon being conditionally released, and thereupon he or she becomes entitled to all the rights provided under this Part to holders of such receipts.

(4) Any police officer responsible for the seizure of an article under this Part who—

(a) fails to comply with subsection (2);

(b) fails, upon a demand being made by an owner or possessor of the article pursuant to subsection (3), to furnish a full receipt in respect of that article;

shall, unless the article or articles in question are articles whose possession is intrinsically unlawful, be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.".

17 Amendment of section 50 of Cap. 9:07

Section 50 ("Article to be seized under warrant") of the principal Act is amended—

(a) in subsection (1)(a) by the deletion of "or justice," where it occurs for the first time and the substitution of "or justice (other than a police officer)";

(b) in subsection (4) by the deletion of ", after such execution," and the substitution of ", before or after such execution,".

18 Amendment of section 51 of Cap. 9:07

Section 51 ("Search and seizure without warrant") of the principal Act is amended by the insertion of the following subsections after subsection (3)—

"(4) A police officer executing a search without a warrant in the circumstances specified in subsection (1) (b) shall, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, furnish that person with the particulars of his or her name, rank and number, and the reasons for carrying out the search and seizure without warrant.

(5) Any police officer who contravenes subsection (4), shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, unless the affected person is lawfully charged with and arrested for an offence in connection with such search and seizure.".

19 Amendment of section 52 of Cap. 9:07

Section 52 ("Seizure of article on arrest or detention of person carrying same") is amended by the repeal of subsection (2) and the substitution of the following subsections—

"(2) A police officer to whom an article is delivered under subsection (1)(a) or (b) shall forthwith, and in any event not later than forty-eight hours after such delivery, make and deliver the full receipt referred to in section 49(2), and any failure to do so entitles the owner or possessor thereof to demand the return of the seized article upon expiry of that period, unless the article or articles in question are of a kind whose possession is intrinsically unlawful.

(3) Any police officer may stop and interrogate any person who is found at any time between sunset and sunrise carrying or transporting any goods or articles of any description and if—

(a) such person does not account satisfactorily for the possession of the goods or articles so being carried or transported; and

(b) there are reasonable grounds for suspecting that such goods or articles —

(i) have been criminally procured; or

(ii) are of a kind whose possession is intrinsically unlawful;

such officer may convey such goods or articles and the person so carrying or transporting the same to any prison or police station, and detain such person in custody:

Provided that section 32(3) and the other provisions of this Act relating to the rights of arrested persons shall apply in relation to the person so detained and, if he or she is released from custody, the goods and articles that he or she was carrying or transporting shall be returned to him or her, unless they are seized and a full receipt therefor is given to him or her in accordance with section 49.".

20 Amendment of section 54 of Cap. 9:07

Section 54 ("Entering of premises for purposes of obtaining evidence") of the principal Act is amended by the insertion of the following subsections after subsection (2)—

"(3) A police officer executing powers under subsection (1) or (2) shall, upon demand of any person whose rights are affected by the exercise of such powers, furnish that person with the particulars of his or her name, rank and number, and the reasons for exercising those powers.

(4) Any police officer who—

(a) contravenes subsection (3); or

(b) enters a dwelling without the consent of the occupier thereof in the purported exercise of powers under subsection (1) or (2);

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, unless, in the case of a contravention of subsection (3), the affected person is lawfully charged with and arrested for an offence in connection with the exercise of powers under subsection (1) or (2).".

21 New section substituted for section 58 of Cap. 9:07

Section 58 of the principal Act is repealed and the following sections are substituted—

"58 Custody and disposal of seized articles

(1) Subject to subsection (2), a police officer who seizes any article referred to in section 49 or to whom any such article is delivered in terms of this Part or to whom an article seized in terms of any other enactment is delivered to be dealt with in terms of this Part, shall—

(a) take it or cause it to be taken forthwith and delivered to a place of security under the control of a police officer; and

(b) have all relevant particulars in relation to it and its seizure entered in an inventory (which may be an electronic inventory, provided that a manual or material back-up of the inventory is maintained simultaneously) kept at the place of custody, namely a sufficient description of the article, details of the date and particulars of the full receipt (if any) issued in relation thereto, and the identification number and mark assigned to it; and

(c) endeavour to ensure that the article, if vulnerable to damage or contamination from moisture or dust, is kept free from contamination by moisture and dust, and that the place of security where it is lodged is protected from access by unauthorised persons; and

(d) be held, subject to section 59, until the criminal proceedings which are instituted in relation to that article—

(i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian police officer shall forthwith restore any such article the accused or the owner thereof, as may be appropriate, unless the article is one whose possession is intrinsically unlawful; or

(ii) have resulted in the conviction of the accused, in which event the convicting court shall—

A. order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or

B. order any such article to be forfeited to the State or destroyed.

(2) A police officer may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such

police officer, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so.

(3) If the seized article needs to be destroyed or disposed of because it is perishable or has become a hazard to human health or safety, and there is any valid reason for not returning the article in question to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure, then the police officer shall—

(a) issue to the owner or possessor thereof or other holder of the full receipt a notice of destruction or disposal of a seized article substantially in the form set out in the Eleventh Schedule, in which the owner, possessor or holder is also notified of his or her right to object to the proposed destruction or disposal within fourteen days of the date of issuance of the notice; and

(b) not earlier than fourteen days thereafter destroy the article or have it destroyed, or dispose of the article in such manner as the circumstances may require; and

(c) at least twenty-four hours before the day on which the article is to be destroyed or disposed of, notify in writing the person to whom the notice of destruction or disposal of the seized article was issued, and afford the notified person or his or her authorised representative an opportunity to witness the destruction or disposal.

(4) Immediately upon receiving any objection to a notice of destruction or disposal of a seized article, a police officer shall apply for a warrant of destruction or disposal of a seized article in terms of subsection (5), upon not less than seven days' written notice to the owner or possessor thereof, or, if his or her whereabouts or identity cannot be ascertained after due inquiry, upon delivery of the notice to the same person or in the same manner and at the same place as the receipt referred to in section 49(2) was delivered.

(5) An application for a warrant of destruction or disposal of a seized article shall be made by a police officer to a magistrate or justice (other than a police officer) having jurisdiction over the area where the article was seized, for which purpose the police officer shall swear by affidavit that—

(a) the seized article (of a description and having the identification number specified in the affidavit) needs to be destroyed or disposed of because it is perishable or has become a hazard to human health or safety; and

(b) there is a valid reason (specified in the affidavit) for not returning the article in question to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure; and

(c) a full receipt in respect of the article was issued on a specified date; and

(d) written notice of the time and place of the application for the warrant was timeously given to the owner or possessor thereof or other person mentioned in paragraph (b).

(6) In an application for a warrant of destruction or disposal of a seized article the magistrate or justice shall, if the owner or possessor thereof, or other person mentioned in subsection (5)(b), is present, allow—

(a) him or her to make representations in person, in writing or through a legal practitioner, in opposition to the application; and

(b) the applicant police officer to respond to any submissions made under paragraph (a);

but no postponement of the application shall be entertained, and no submissions shall be made by either party except those concerning—

(c) the truth or otherwise of any statement referred to in subsection (5) (a), (b), (c) or (d); and

(d) any allegation by the applicant police officer that the notified party or the party who is opposing the application is not entitled to the possession or ownership of the seized article by reason of not having a full receipt in relation thereto or for some other lawful reason;

and the application must be determined on the same day on which it was made, whether the notified person is present or not.

58A Continued retention of seized articles if institution of criminal proceedings is delayed

(1) If within twenty-one working days from the date—

(a) when an article was seized and receipt therefor was given (provided that the date shown on the receipt shall be determinative if it is dated later than the day of seizure); or

(b) when a person referred to in section 49(3) receives a receipt for any article previously seized from him or her;

no prosecution of an offence in respect of which the seized article is required as an exhibit is initiated, that is to say—

(c) no summons is issued to the accused person for the prosecution of the offence; or

(d) no statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or

(e) no indictment has been served upon the accused person, where the person is to be tried before the High Court;

then the seized article shall (unless the article in question is one whose possession is intrinsically unlawful) be returned as soon as possible by the police officer who detained it, or by any other person acting in his or her stead, to the premises, place, vehicle, vessel or aircraft from which it was removed or, where that is impracticable, be availed for collection at such place as the police officer shall direct the owner or possessor thereof to go, unless the police officer earlier, upon at least seventy-two hours' notice to the owner or possessor thereof, serves upon him or her a written notice of continued retention of the seized article, in which the police officer shall—

(f) affirm that investigations relating to the offence in respect of which the seized article is required as an exhibit are ongoing and are being actively pursued without undue delay; and

(g) afford the owner or possessor thereof an opportunity to lodge at a specified police station a written objection to the retention of the article within forty-eight hours of the date of issuance of the notice of continued retention;

and if no such objection is lodged, the seized article may be retained in custody by the police until the pertinent criminal proceedings have been concluded, abandoned or discontinued and the seized article dealt with in accordance with this Part.

(2) If the owner or possessor of a seized article is not served with a notice of continued retention after the expiry of the period specified in subsection (1) and no prosecution in respect of the seized article is initiated within that time, then the owner or possessor has the right to recover the article (unless it is one whose possession is intrinsically unlawful) from the police upon mere production of the receipt issued to him or her by a police officer in relation thereto, unless a police officer forthwith delivers to the owner or possessor the notice of continued retention, and subsection (1) shall thereupon apply in relation to such notice.

(3) Immediately upon receiving any objection to a notice of continued retention of a seized article, a police officer shall apply for a warrant of further retention of the seized article in terms of subsection (4), upon not less than seven days' written notice to the owner or possessor thereof, or, if his or her whereabouts or identity cannot be ascertained after due inquiry, upon delivery of the notice to the same person or in the same manner and at the same place as the receipt referred to in section 49(2) was delivered.

(4) An application for a warrant of further retention of a seized article shall be made by a police officer to a magistrate or justice (other than a police officer) having jurisdiction over the area where the article was seized, for which purpose the police officer shall swear by affidavit that the seized article (of a description and having the identification number specified in the affidavit) is required in evidence in criminal proceedings and that—

(a) investigations in respect thereof are ongoing and are being actively pursued without undue delay; and

(b) a full receipt in respect of the article was issued on a specified date; and

(c) written notice of the time and place of the application for the warrant of further retention of the seized article was timeously given to the owner or possessor thereof or other person mentioned in subsection (3).

(5) In an application for a warrant of further retention of a seized article the magistrate or justice shall, if the owner or possessor thereof, or other person mentioned in subsection (3), is present, allow—

(a) him or her to make representations in person, in writing or through a legal practitioner, in opposition to the application; and

(b) the applicant police officer to respond to any submissions made under paragraph (a);

but no postponement of the application shall be entertained, and no submissions shall be made by either party except those concerning—

(c) the truth or otherwise of any statement referred to in subsection (4) (a), (b) or (c); and

(d) any allegation by the applicant police officer that the notified party or the party who is opposing the application is not entitled to the possession or ownership of the seized article by reason of not having a full receipt in relation thereto or for some other lawful reason;

and the application must be determined on the same day on which it was made, whether the notified person is present or not.

(6) The effect of—

(a) the issuance of a warrant of further retention of a seized article is that the article may be retained in custody by the police until the pertinent criminal proceedings have been concluded, abandoned or discontinued and the seized article dealt with in accordance with this Part; or

(b) the refusal to issue a warrant of further retention of the seized article is that it must be returned without delay to the holder of the receipt issued in respect thereof, subject to any directions the magistrate or justice may give for the preservation or safe custody of the same until the expiry of a specified period or on the initiation of a prosecution in connection therewith, whichever event happens earlier.

(7) Any holder of the receipt referred to in subsection (6)(b) who fails to comply with any directions given to him or her for the preservation or safe custody of the article returned to him or her until the expiry of a specified period or on the initiation of a prosecution in connection therewith, whichever event happens earlier, shall be guilty of the crime of defeating or obstructing the course of justice contrary to section 184 of the Criminal Law Code and liable to the penalties therefor.

58B Manner of service of notices for purposes of sections 58 and 58A

References to a police officer—

(a) issuing a notice of destruction or disposal of a seized article to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure for the purpose of section 58(3)(a);

(b) notifying such owner, possessor or person for the purpose of section 58(3)(c);

(c) notifying such owner, possessor or person for the purpose of section 58(4);

(d) issuing a notice of further retention of a seized article to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure for the purpose of section 58A(1);

(e) notifying such owner, possessor or person for the purpose of section 58A(3);

are to be interpreted as requiring the police officer to deliver such notice to the owner, possessor or person concerned or his or her authorised representative in any of the following ways—

(f) by hand delivery to the owner, possessor, person representative concerned in person, or to a responsible individual at the place of business or residential address of the owner, possessor, person representative; or

(g) by registered post addressed to the place of business or residential address of the owner, possessor, person representative; or

(h) by delivery to the place of business or residential address of the owner, possessor, person representative through a commercial courier service; or

(i) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the owner, possessor, person representative to the police officer.".

22 Amendment of section 59 of Cap. 9:07

Section 59 ("Disposal of article where no criminal proceedings are instituted, where it is not required for criminal proceedings or where accused admits his guilt") of the principal Act is amended—

(a) in subsection (1)—

(i) by the deletion of "referred to in paragraph (*c*) of section *fifty-eight*" and the substitution of "referred to in section 58(1), and regardless of whether a notice of further retention of the seized article or warrant of further retention of the seized article has been issued in relation to the article";

(ii) in subparagraph (iii) by the insertion after "if no person may lawfully possess the article" of "(whether by reason of its being an article whose possession is intrinsically unlawful, or otherwise)";

(b) by the insertion of the following subsection after subsection (5)—

"(6) If, in making an order under subsection (3) (a) or (b) in favour of an applicant, it appears to the magistrate, from the evidence presented before him or her in the course of hearing the application, that—

(a) the amount, if any, realised by the State when disposing of the article in question was inadequate to cover any costs reasonably incurred in securing the safe custody of the article; and

(b) the applicant was negligent or unduly dilatory in pursuing his or her claim to the article in question;

the magistrate shall afford the State an opportunity to submit a claim for the recovery of any costs reasonably incurred in securing the safe custody of the article, and, if such submission is made—

(c) may grant the whole or any part of such costs as to the magistrate appears reasonable:

Provided that such costs must not exceed the reasonably estimated value of the article to be returned, or the value of the compensation awarded or sale price realised under this section, as the case may be; and

(d) shall direct the amount of the costs awarded under paragraph (c) to be deducted from any compensation payable or sale price realised under this section.".

23 Amendment of section 61 of Cap. 9:07

Section 61 ("Disposal of article after commencement of criminal proceedings")(1) (c) of the principal Act is amended by the insertion after "if no person is entitled to the article" of "(whether by reason of its being an article whose possession is intrinsically unlawful, or otherwise)".

24 Amendment of section 62 of Cap. 9:07

Section 62 ("Forfeiture of article to State") of the principal Act is amended—

(a) in subsection (2) by the deletion of "which is forged or counterfeit or which cannot lawfully be possessed by any person" and the substitution of "whose possession is intrinsically unlawful";

(b) by the insertion of the following subsection after subsection (6)—

"(7) If, in making an order under subsection (4) (a) or (b) in favour of an applicant, it appears to the judge or magistrate, from the evidence presented before him or her in the course of hearing the application, that—

(a) the amount, if any, realised by the State when disposing of the article in question was inadequate to cover any costs reasonably incurred in securing the safe custody of the article; and

(b) the applicant was negligent or unduly dilatory in pursuing his or her claim to the article in question;

the judge or magistrate shall afford the State an opportunity to submit a claim for the recovery of any costs reasonably incurred in securing the safe custody of the article, and, if such submission is made—

(c) may grant the whole or any part of such costs as to the judge or magistrate appears reasonable:

Provided that such costs must not exceed the reasonably estimated value of the article to be returned, or the value of the compensation awarded or sale price realised under this section, as the case may be;
and

(d) shall direct the amount of the costs awarded under paragraph (c) to be deducted from any compensation payable or sale price realised under this section.".

25 Amendment of section 62A of Cap. 9:07

Section 62A ("Forfeiture of unlawful consideration in cases of bribery") of the principal Act is amended in subsection (3) by the repeal of the proviso.

26 New sections inserted in Cap. 9:07

The principal Act is amended by the insertion after section 63 of the following sections—

"63A Forfeiture and disposal of seized articles whose possession is intrinsically unlawful

(1) If any article whose possession is intrinsically unlawful is seized by a police officer, such police officer or his or her superior shall as soon as possible communicate to the police officer in command of the police district within which the seized article is to be held in custody the fact of such seizure, together with all relevant particulars concerning the article.

(2) Subject to subsection (3), the seized article whose possession is intrinsically unlawful shall be held in custody in accordance with this section until—

(a) it is forfeited to the State by virtue of this paragraph—

(i) three months from the date when it was so seized, if no criminal proceedings are instituted in connection therewith within that period; or

(ii) on the date that criminal proceedings, having been instituted in connection therewith, are abandoned, withdrawn or concluded otherwise than by the conviction of the accused;

or

(b) the article is declared forfeited to the State in terms of section 62(2);

whereupon it shall be destroyed or disposed of in accordance with this section.

(3) If the seized article whose possession is intrinsically unlawful is, in the opinion of police officer seizing it, too hazardous or dangerous to be removed or kept in custody in the manner prescribed by this section, and accordingly needs to be destroyed on the spot or dealt with or kept in custody in some other manner or place than that prescribed (whether before or after it is forfeited to the State), the police officer shall forthwith communicate his or her apprehensions to the police officer in command of the police district within which the article is seized, and shall comply with any directions as to the removal, custody, destruction or disposal of the article as the police officer so in command may give him or her, and shall record or cause to be recorded the following in the occurrence book on the day of their occurrence or no later than twenty-four hours thereafter—

(a) the date of seizure of the article and a sufficient description of it; and

(b) the date of the communication of the seizing police officer's apprehensions to the police officer in command of the police district within which the article is seized, and any directions received from the latter in relation thereto; and

(c) the date and manner of the removal, custody, destruction or disposal of the article.

(4) Section 58(1)(a), (b) and (c) applies to the custody of an article whose possession is intrinsically unlawful except that—

(a) if possible, it shall be kept in a place of security that is exclusively reserved for the custody of seized articles whose possession is intrinsically unlawful; and

(b) a separate inventory from that mentioned in section 58(1)(b) shall be kept in relation to such articles; and

(c) the police officer in control of the seized article shall be subject to any directions concerning the custody of the article issued by the Environmental Management Authority or other agency of the State having any statutory responsibility in respect of the seized article.

(5) Within seven days of the date of forfeiture in terms of subsection (1), the police officer in command of the police district within which the seized article is held in custody (hereafter in this section called "the responsible police officer") shall communicate in writing to the Commissioner-General of Police, or any Assistant Commissioner appointed

by the Commissioner-General generally or specifically for that purpose, and to the Prosecutor-General, and to any agency of the State having any statutory responsibility in respect of the seized article —

(a) the full particulars of such article, including a sufficient description of it and the dates of its seizure and forfeiture to the State; and

(b) the date, time and place for the destruction of the article, or, if the article is to be disposed of in any other manner, the manner of its disposal and the date, time and place of the disposal.

(6) The responsible police officer shall be in charge of the destruction or disposal of the seized article at the date, time and place referred to in subsection (5)(b):

Provided that whenever the responsible police officer is prevented by illness or other reasonable cause from discharging his or her function under this subsection, such function shall be discharged by any police officer of or above the rank of sergeant designated by the responsible police officer for that purpose.

(7) The Prosecutor-General or any public prosecutor appointed by the Prosecutor-General generally or specifically for that purpose, and any other person on behalf of an agency that received a communication referred to in subsection (5), shall be entitled to be present at the destruction of the seized article or to witness its disposal, as the case may be.

(8) On the date and time appointed by the responsible police officer under subsection (5), the police officer in charge of the destruction or disposal of the seized article shall, immediately upon such destruction or disposal, sign a declaration attesting to the destruction or disposal of the seized article, to which any witnesses authorised by subsection (7) to be present thereat shall also subscribe their names and signatures.

63B Admissibility in evidence of certain notices and entries made under this Part

(1) Any original or authenticated copy of—

(a) a full receipt issued in relation to an article seized in terms of this Part;

(b) an entry in an inventory referred to in section 58(1)(b);

(c) a notice of destruction or disposal of a seized article or a notice to be present at the destruction or disposal thereof issued to any person for the purposes of section 58(3)(a) or (c);

(d) a notice of further retention of the seized article served in terms of section 58A(1);

(e) an entry in an occurrence book made for the purposes of section 63A(3);

shall, upon its mere production by any person, be *prima facie* proof of the facts stated therein.".

27 Amendment of section 66 of Cap. 9:07

Section 66 ("Summary committal for trial of accused person") of the principal Act is amended—

(a) by the repeal of subsection (2) and the substitution of—

"(2) On receipt of a notice in terms of subsection (1), the magistrate shall cause the person to be brought before him or her and shall forthwith commit the person for trial before the High Court and, if the person is in custody, shall issue a warrant for the further detention of the person in prison pending his or her trial before the High Court for the offence for which he or she has been committed.

(2a) If a person who is committed for trial in terms of subsection (2) has earlier been granted bail on the charge for which he or she is committed, the grant shall stand but a judge of the High Court may, in terms of Part IX, alter the conditions of the recognizance or revoke the bail and commit the person to prison.";

(b) by the repeal of subsection (6) and the substitution of—

"(6) Where an accused has been committed for trial in terms of subsection (2) there shall be served upon him or her in addition to the indictment and notice of trial—

(a) a document containing a list of witnesses it is proposed to call at the trial and a summary of the evidence which each witness will give, sufficient to inform the accused of all the material facts upon which the State relies; and

(b) a notice requesting the accused—

(i) to give an outline of his or her defence, if any, to the charge; and

(ii) to supply the names of any witnesses he or she proposes to call in his or her defence together with a summary of the evidence which each witness will give, sufficient to inform the Prosecutor-General of all the material facts on which he or she relies in his or her defence;

and informing the accused of the provisions of section 67(2) in the event that the accused declines to give the information referred to in paragraph (b), whether on the grounds that he or she wishes to exercise his or her right to silence or otherwise.";

(c) in subsection (10) by the repeal of paragraph (b) and the substitution of—

"(b) inform him or her of—

(i) his or her right to remain silent by declining to do either or both of the following—

A. to give an outline of his or her defence, if any, to the charge; and

B. to supply the names of any witnesses he or she proposes to call in his or her defence together with a summary of the evidence which each witness will give, sufficient to inform the Prosecutor-General of all the material facts on which he or she relies in his or her defence;

and

(ii) the consequences of remaining silent, that is to say, informing the accused of the provisions of section 67(2).".

28 New section inserted in Part IX of Cap. 9:07

The principal Act is amended by the insertion in Part IX before section 116 of the following section—

"115C Compelling reasons for denying bail and burden of proof in bail proceedings

(1) In any application, petition, motion, appeal, review or other proceeding before a court in which the grant or denial of bail or the legality of the grant or denial of bail is in issue, the grounds specified in section 117(2), being grounds upon which a court may find that it is in the interests of justice that an accused should be detained in custody until he or she is dealt with in accordance with the law, are to be considered as compelling reasons for the denial of bail by a court.

(2) Where an accused person who is in custody in respect of an offence applies to be admitted to bail—

(a) before a court has convicted him or her of the offence—

(i) the prosecution shall bear the burden of showing, on a balance of probabilities, that there are compelling reasons justifying his or her continued detention, unless the offence in question is one specified in the Third Schedule;

(ii) the accused person shall, if the offence in question is one specified in—

A. Part I of the Third Schedule, bear the burden of showing, on a balance of probabilities, that it is in the interests of justice for him or her to be released on bail, unless the court determines that, in relation to any specific allegation made by the prosecution, the prosecution shall bear that burden;

B. Part II of the Third Schedule, bear the burden of showing, on a balance of probabilities, that exceptional circumstances exist which in the interests of justice permit his or her release on bail;

(b) after he or she has been convicted of the offence, he or she shall bear the burden of showing, on a balance of probabilities, that it is in the interests of justice for him or her to be released on bail.".

29 Amendment of section 121 of Cap. 9:07

Section 121 ("Appeals against decisions regarding bail") of the principal Act is amended—

(a) by the repeal of subsection (1) and the substitution of—

"(1) Subject to this section, where a judge or magistrate has admitted or refused to admit a person to bail—

(a) the Prosecutor-General or the public prosecutor, within forty-eight hours of the decision; or

(b) the person concerned, at any time;

may appeal against the admission to or refusal to bail or the amount fixed as bail or any conditions imposed in connection with bail.";

(b) by the repeal of subsection (3) and the substitution of—

"(3) Where a judge or magistrate has admitted a person to bail, and an appeal is noted by the Prosecutor-General or public prosecutor under subsection (1), the decision to admit to bail remains in force unless, on the application of the Prosecutor-General or public prosecutor, the judge or magistrate is satisfied that there is a reasonable possibility that the interests of justice may be defeated by the release of the accused on bail before the decision on appeal, in which event the judge or magistrate may suspend his or her decision to admit the person to bail and order the continued detention of the person for a specified period or until the appeal is determined, whichever is the shorter period.";

(c) in subsection (6) by the deletion of "Subsections (2) to (6) of section *one hundred and sixteen*" and the substitution of "Subsections 117 (2) to (6)".

30 Amendment of section 127 of Cap. 9:07

Section 127 ("Person on bail may be arrested without warrant if about to abscond or interfere with witness") of the principal Act is amended—

(a) in subsection (1) by the insertion after "possible" of ", and in any event within forty-eight hours of the arrest,";

(b) in subsection (2) by the deletion of "forthwith" and the substitution of "at the time of the arrest".

31 Amendment of section 136 of Cap. 9:07

Section 136 ("Charge in High Court to be laid in indictment") of the principal Act is amended by the repeal of subsection (2) and the substitution of—

"(2) Where the prosecution is at the public instance, the indictment shall be in the name of the Prosecutor-General and shall be signed by the Prosecutor-General or by a member of the National Prosecuting Authority authorised by him or her.".

32 Repeal of section 154 of Cap. 9:07

Section 154 of the principal Act is repealed.

33 Amendment of section 157 of Cap. 9:07

Section 157 ("Allegation of intent to defraud sufficient without alleging whom it is intended to defraud") of the principal Act is amended in subsection (1) by the repeal of paragraphs (a) and (b) and the substitution of the following paragraph—

"(a) forgery or fraud; or".

34 New section inserted in Cap. 9:07

The principal Act is amended by the insertion after section 163 of the following section—

"163A Accused in magistrates court to be informed of section 191 rights

(1) At the commencement of any trial in a magistrates court, before the accused is called upon to plead to the summons or charge, the accused shall be informed by the magistrate of his or her right in terms of section 191 to legal or other representation in terms of that section.

(2) The magistrate shall record the fact that the accused has been given the information referred to in subsection (1), and the accused's response to it.".

35 New section inserted in Cap. 9:07

The principal Act is amended by the insertion after section 167 of the following section—

"167A Unreasonable delay in bringing accused to trial

(1) A court before which criminal proceedings are pending shall investigate any delay in the completion of the proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, to the accused or his or her legal representative, to a witness or other person concerned in the proceedings, or to the public interest.

(2) In considering whether any delay is unreasonable for the purposes of subsection (1), the court shall consider all the circumstances of the case and in particular the following—

(a) the extent of the delay;

(b) the reasons advanced for the delay;

(c) whether any person can be blamed for the delay;

(d) whether the accused has raised such objections to the delay as he or she might reasonably have been expected to have raised;

(e) the seriousness, extent or complexity of the charge or charges;

(f) any actual or potential prejudice which the delay may have caused to the State, to the accused or his or her legal representative or to any other person concerned in the proceedings;

(g) the effect of the delay on the administration of justice;

(h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued.

(3) If after an investigation in terms of subsection (1) the court finds that—

(a) the completion of the proceedings is being unduly delayed; or

(b) there has been an unreasonable delay in bringing the accused to trial or in completing the trial;

the court may issue such order as it considers appropriate in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order—

(i) refusing further postponement of the proceedings;

(ii) granting a postponement subject to such conditions as the court may determine;

(iii) that the prosecution of the accused for the offence be permanently stayed;

(iv) that the matter be referred to the appropriate authority for an administrative investigation and possible

disciplinary action against any person responsible for the delay.

(4) The Prosecutor-General may appeal against an order referred to in subsection (3) (iii) as if it were an acquittal of the accused.".

36 Amendment of section 180 of Cap. 9:07

Section 180 ("Pleas") of the principal Act is amended in subsection (2)—

(a) in paragraph (e) by the insertion after "charged" of "or is immune from liability to prosecution for the offence, whether in terms of section 267(2) or any other law";

(b) by the insertion after paragraph (g) of the following paragraphs—

"or

(h) that he or she is entitled to an order under section 167A permanently staying the prosecution on the ground that there has been an unreasonable delay in bringing him or her to trial for the offence; or

(i) that a court has given an order under section 167A permanently staying the prosecution of the offence.".

37 Amendment of section 188 of Cap. 9:07

Section 188 ("Outline of State and defence cases") of the principal Act is amended in paragraph (b)—

(a) by the insertion after "statement" of ", if he or she so wishes,";

(b) by the deletion of "the provisions of subsection (2) of section *one hundred and eighty-nine*" and the substitution of "his or her right to remain silent, and the consequences of exercising that right,".

38 Amendment of section 194 of Cap. 9:07

Section 194 ("Presence of accused") of the principal Act is amended by the repeal of subsection (5).

39 New section substituted for section 258 of Cap. 9:07

The principal Act is amended by the insertion of the following section after section 258—

"258A Admissibility or inadmissibility of illegally-obtained evidence

(1) In determining, for the purposes of section 70(3) of the Constitution, whether to exclude evidence that has been obtained in a manner that violates any provision of Chapter 4 of the Constitution, a court shall endeavour to strike a proper balance between—

(a) safeguarding—

(i) the rights of the accused concerned; and

(ii) the integrity of the criminal justice system against serious or persistent breaches of the law by the police or other employees of the State;

and

(b) the public interest in—

(i) doing justice to the victim or victims of the crime in question; and

(ii) upholding the confidence of the public in the ability of the criminal justice system to protect members of the public from crime, especially grave, violent or prevalent crime.

(2) In applying the test referred to in subsection (1) a court must bear in mind that, in general, where the questioned evidence is obtained by a contravention of Chapter 4 of the Constitution that is—

(a) inadvertent or trivial, the considerations referred to in subsection (1)(b) shall override the ones referred to in subsection (1)(a);

(b) not inadvertent or not trivial or both, only compelling reasons will justify the considerations referred to in subsection (1)(b) overriding the ones referred to in subsection (1)(a), where the State has shown that those compelling reasons are the motive for that contravention.

(3) Evidence that is obtained in a manner that violates any provision of Chapter 4 of the Constitution, but which is admitted by a court after taking into account the considerations referred to in subsections (1) and (2), shall not be regarded as rendering the trial unfair or otherwise as being detrimental to the administration of justice or the public interest.

(4) For the avoidance of doubt, the fact that a court has admitted illegally obtained evidence in accordance with this section does not prejudice the right of an accused person to pursue a civil remedy for any breach of the law in consequence of which the evidence was obtained.".

40 New section inserted in Cap. 9:07

The principal Act is amended by the insertion after section 263 of the following section—

"264 Evidence of bodily appearance, health or prints of accused

(1) Whenever it is relevant in criminal proceedings to ascertain whether any finger-print, palm-print or foot-print of an accused person corresponds to any other finger-print, palm-print or foot-print, or to ascertain the state of health of an accused person or whether the body of an accused person has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance—

(a) the court may order that all necessary steps be taken to ascertain those matters, including arrangements for—

(i) the taking of the accused person's finger-prints, palm-prints or foot-prints; and

(ii) the taking of a blood, saliva or tissue sample from the accused person; and

(iii) the examination of the accused person;

(b) evidence of the finger-prints, palm-prints or foot-prints of the accused person or that the body of the accused person has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, including evidence of the result of the testing of any blood, saliva or tissue sample taken from the accused person, shall be admissible in those criminal proceedings.

(2) Any examination of an accused person conducted pursuant to an order of a court in terms of subsection (1)(a) shall be conducted with strict regard for decency and decorum.

(3) Evidence referred to in subsection (1)(b) shall not be inadmissible solely on the ground that it was taken or ascertained against the wish or the will of the accused person.

(4) Any finger-prints, palm-prints, footprints, photographs or samples and the records of any steps taken under this section shall be destroyed if the person concerned is found not guilty at his or her trial or if his or her conviction is set aside by a superior court or if the charge against him or her is withdrawn.

(5) Section 41B(6) applies, with such changes as may be necessary, to a person referred to in subsection (4).".

41 New section inserted in Cap. 9:07

The principal Act is amended by the insertion after section 334 of the following section—

"334A Sentencing guidelines

(1) In this section—

"draft sentencing guidelines" means sentencing guidelines that have not been published in accordance with subsection (10) or (11)(b) (i) or (ii);

"judicial conference" means a conference convened in terms of subsection (3);

"presumptive penalty" means a penalty expressed as a specific amount of a fine or a specific period of imprisonment or both that is midway between an augmented penalty which may be imposed in aggravating circumstances (whether or not these circumstances are specified in the enactment concerned), and a diminished penalty which may be imposed in mitigating circumstances (whether or not these circumstances are specified in the enactment concerned);

"sentencing guidelines" means guidelines relating to the sentencing of offenders, which have been formulated in terms of this section.

"table of presumptive penalties" means a table setting forth for each offence included in the table, a presumptive penalty, together with the aggravating and mitigating circumstances that may justify a court in departing from the presumptive penalty.

(2) For the avoidance of any doubt it is declared that this section must not be construed as derogating from or infringing upon the exclusive competence of the Legislature to enact punishments for breaches of any law, including the enactment of maximum, minimum and presumptive levels of any fine or maximum, minimum and presumptive lengths of any sentence of imprisonment.

(3) The Judicial Service Commission may from time to time convene a conference bringing together representatives of—

(a) judges of the Constitutional Court, the Supreme Court and the High Court; and

(b) magistrates; and

(c) the National Prosecuting Authority; and

(d) the Police Service; and

(e) the Prisons and Correctional Service; and

(f) the Law Society of Zimbabwe; and

(g) such other organisations and bodies as, in the Commission's opinion, have expertise or an interest in crime, punishment and the rehabilitation or treatment of criminals;

for the purpose of studying and discussing the objectives, policies, standards and criteria for sentencing offenders, and formulating draft sentencing guidelines.

(4) The procedure to be followed at a judicial conference shall be as prescribed or, in relation to any matter that is not prescribed, as determined by the Judicial Service Commission.

(5) Draft sentencing guidelines may relate to all matters relating to the sentencing of offenders and, in particular, to—

(a) inquiries and investigations to be conducted by courts prior to sentencing offenders;

(b) the factors to be considered by courts when sentencing offenders;

(c) forms of punishment that may be imposed as alternatives to custodial sentences;

(d) principles and criteria which will assist in promoting consistency in sentencing and the equitable administration of criminal justice in Zimbabwe;

and they may be formulated so as to be general in nature or so as to apply to particular offences or classes of offences or to particular classes of offenders.

(6) In formulating draft sentencing guidelines, a judicial conference shall pay regard to—

(a) the need to promote consistency in sentencing; and

(b) the impact of sentencing decisions on offenders and their families as well as on victims of offences; and

(c) the need to promote public confidence in the criminal justice system; and

(d) the cost of different sentences and their relative effectiveness in rehabilitating offenders and reducing crime.

(7) Unless a judicial conference agrees upon some other form, draft sentencing guidelines shall be in the form of a table of presumptive penalties supplemented by additional guidelines addressing such of the factors referred to in subsection (5) as are relevant to each offence or class of offence included in the table.

(8) As soon as practicable after a judicial conference has formulated draft sentencing guidelines, the Judicial Service Commission shall approve them, with or without amendments, for submission to the Minister in terms of subsection (9).

(9) As soon as practicable after approving the draft sentencing guidelines, with or without amendments, the Judicial Service Commission

shall, subject to subsection (10), submit them to the Minister for publication as regulations in terms of section 389, and upon such publication the courts shall pay due regard to the applicable sentencing guidelines when sentencing offenders and, while not being bound by the guidelines, must, when departing from them in any case, record the reasons for doing so.

(10) The Minister must publish the draft sentencing guidelines substantially in the form in which he or she receives them from the Judicial Service Commission, unless he or she has any substantial objections to them, in which event the Minister must return them (together with written notification of his or her objections and of the reasons for them) to Judicial Service Commission for consideration of his or her objections by the Judicial Service Commission or, if the Commission so determines, at the next judicial conference following the notification of his or her objections.

(11) If after notification of the Minister's objections to the draft sentencing guidelines the Judicial Service Commission or, as the case may be, the next judicial conference—

(a) upholds the Minister's objections, the Judicial Service Commission shall resubmit them with the appropriate amendments to the Minister for publication as regulations in terms of section 389;

(b) declines, in whole or in part, to uphold the Minister's objections, the Judicial Service Commission shall resubmit them, together with the reasons for the Commission or the judicial conference so declining, to the Minister, who may thereupon—

(i) publish them substantially in the form in which he or she first received them from the Judicial Service Commission; or

(ii) publish such part of them as the Minister did not object to in his or her original notification of objections under subsection (7); or

(iii) refuse to publish them as regulations in terms of section 389.

(12) Sentencing guidelines may be amended, replaced or revoked by a subsequent judicial conference, and thereupon subsections (5) to (11) shall apply to such amendment, replacement or revocation.".

42 Amendment of section 336 of Cap. 9:07

Section 336 ("Nature of punishments")(1) of the principal Act is amended by the repeal of paragraph (a) and the substitution of—

"(a) in the case of the High Court, sentence of death, where the offender is convicted of murder in aggravating circumstances;".

43 New sections substituted for sections 337 and 338 of Cap. 9:07

Sections 337 and 338 of the principal Act are repealed and substituted by—

"337 Sentence for murder

(1) Subject to section 338, the High Court may pass sentence of death upon an offender convicted by it of murder if it finds that the murder was committed in aggravating circumstances.

(2) In cases where a person is convicted of murder without the presence of aggravating circumstances, or the person is one referred to in section 338(a), (b) or (c), the court may impose a sentence of imprisonment for life, or any sentence other than the death sentence or imprisonment for life provided for by law if the court considers such a sentence appropriate in all the circumstances of the case.

338 Persons upon whom death sentence may not be passed

The High Court shall not pass sentence of death upon an offender who—

(a) was less than twenty-one years old when the offence was committed; or

(b) is more than seventy years old; or

(c) is a woman.".

44 New section inserted in Cap. 9:07

The principal Act is amended by the insertion of the following section after section 385—

"385A Rights of arrested or detained persons and interested parties

(1) In this section—

"interested party", in relation to a detained person, includes—

(a) a relative, friend or employer of the detained person; and

(b) any person with a legitimate interest in the detained person's welfare; and

(c) a legal practitioner representing the detained person or engaged by a person referred to in paragraph (a) or (b) to represent the detained person;

"responsible person" means the member of a State agency primarily responsible for a detained person's detention or custody;

"State agency" includes the Police Service, the Prison Service, every branch of the Defence Forces, and any other organisation consisting wholly or mainly of persons employed by the State.

(2) A person who has been arrested or is detained, whether under this Act or any other enactment, shall be permitted without delay—

(a) to exercise his or her right to contact, at the state's expense, any one of the persons specified in section 41A(1)(d):

Provided that if the arrested or detained person does not succeed, without any fault on his or her part, in contacting a person of his or her first choice, the arrested or detained person shall be allowed to contact any other person specified in section 41A(1)(d) until he or she succeeds in contacting him or her; and

(b) to obtain and instruct, at his or her own expense, a legal practitioner of his or her own choice, and to communicate privately with that legal practitioner:

Provided that, where an arrested person must be produced before a court within forty-eight hours after his or her arrest in accordance with section 32, it shall be lawful for the police to take the arrested person to court in the absence of his or her legal practitioner if—

(i) the arrested person, without any fault on the part of the police, fails to contact, obtain or instruct a legal practitioner of his or her own choice; or

(ii) where the arrested person succeeds in contacting, obtaining or instructing a legal practitioner of his or her own choice, that legal practitioner, without any fault on the part of the police, fails to represent the arrested person within that period or at the court where he or she must appear.

(3) The responsible person shall inform any interested party, promptly on request, of the detained person's whereabouts and of the reasons for the detained person's detention or custody unless there are compelling reasons for not doing so (the proof whereof rests with the responsible person).".

45 Amendment of section 389 of Cap. 9:07

Section 389 ("Regulations") of the principal Act is amended in subsection (2) by the insertion after paragraph (d) of the following paragraphs—

"(e) in relation to the "Statement of Rights Upon Arrest" set forth in the Tenth Schedule—

(i) for the official translation of the Statement into Chewa, Chibarwe, Kalanga, Koisan, Nambya, Ndau, Ndebele, Shangani, Shona, Sotho, Tonga, Tswana, Venda and Xhosa;

(ii) for the amendment of the Tenth Schedule by adding, deleting or substituting any words therein, or for the replacement the Tenth Schedule entirely:

Provided that when the Minister wishes to make regulations for the purpose of subparagraph (i) or (ii) he or she shall lay the draft regulations before Parliament, and if neither the National Assembly nor the Senate makes a resolution against the publication of regulations within the next seven sitting days after it is so laid before each House, the Minister shall cause it to be published in the *Gazette*;

(f) for the questioning by peace officers of persons who are suspected of having committed an offence.".

46 New Schedule substituted for First Schedule to Cap. 9:07

The First Schedule to the principal Act is repealed and the following is substituted—

"FIRST SCHEDULE (Sections 25, 27, 39 and 42)

SPECIFIED OFFENCES IN RELATION TO POWERS OF ARREST

Any offence in respect of which a punishment of a period of imprisonment exceeding six months is provided and may be imposed without the option of a fine, and any conspiracy, incitement or attempt to commit, or being a participant in, any such offence.".

47 New Schedules inserted in Cap. 9:07

The principal Act is amended by the insertion of the following Schedules after the Ninth Schedule—

"TENTH SCHEDULE (Section 41A (4))

STATEMENT OF RIGHTS UPON ARREST

(Full name of accused) you are under arrest for (the alleged offence in full); you have the right to remain silent and anything you say may be used against you in a court of law, [however, if you want to say anything that may clear you of the alleged offence, then you may say it.]*

You have the right to make one telephone call to a relative, friend, employer, legal practitioner or any other person of your choice.

**The inclusion of the bracketted words is optional*

ELEVENTH SCHEDULE (Section 58 (3)(a))

NOTICE OF DESTRUCTION OR DISPOSAL OF SEIZED ARTICLE(S)

I, ... (*name and rank of police officer*), hereby notify you in terms of section 58(3) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] .....

.....

(*name of owner or holder of receipt given in respect of the seized article(s)*) that the following article(s):

.....

.....

.....

.....

(*description of/article(s)*) is perishable/has become a hazard to human health or safety (*tick either or both, as applicable*).

Accordingly, the said article(s) will be destroyed on a date and at a time and place to be notified to you no earlier than fourteen (14) days from the date of service of this notice.

You are entitled, no later than fourteen (14) days from the date indicated below, to object to the proposed destruction or disposal by detaching the coupon below and delivering it within that time to the address indicated below. Your rights on objection will be explained to you on delivery of the coupon.

Signature of Notifying Police Officer .....

Address where objection may be lodged

.....

.....

.....

Date of signature .....

.....

(*Complete and Detach this portion if you wish to object*)

I, ...

of .....

.....

..... (*name and address of owner or holder of receipt given in respect of the seized article(s)*), having received a notice from ..... (*name and rank of notifying police officer*), object to the destruction of the article(s) seized from me.

Signature of objector.....

Address where any further notices correspondence by the police may be lodged, if different from the address of the objector:

.....

.....

.....

Contact number(s) (cell phone, landline and/or email) .....

Date of signature.....

Official use only: received by ..... (*name and rank of receiving police officer*) on ..... (date of receipt).".

48 Amendment of Cap. 7:20

The National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014) is amended—

(a) in section 2 ("Interpretation") by the insertion of the following definition—

""Deputy Prosecutor-General" means the Deputy Prosecutor-General appointed in terms of section 340(3) of the Constitution;";

(b) in section 4 ("Constitution of National Prosecuting Authority")(1) by the repeal of paragraph (b) and the substitution of—

"(b) the Deputy Prosecutor-General and the National Director of Public Prosecutions; and";

(c) in section 5 ("Establishment and composition of National Prosecuting Authority Board")(1) by the deletion of "National Director of Public Prosecutions" and the substitution of "Deputy Prosecutor General";

(d) in section 32 ("Transitional provisions")—

(i) in subsection (2) by the deletion of "National Director of Public Prosecutions" and the substitution of "Deputy Prosecutor-General";

(ii) in subsection (3) by the deletion of "Deputy National Director of Public Prosecutions" and the substitution of "National Director of Public Prosecutions";

(iii) in subsection (9) by the deletion of "saved under section 93(3)(b) of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009)" and the substitution of "saved under section 93(3)(b) of the Public Finance Management Act [*Chapter 22:19*] (No. 11of 2009) (including any amendment or replacement of the constitution of that Fund, regardless of the sources of its moneys)";

(iv) by the insertion of the following subsection after subsection (11)—

"(12) Subsection (9) as amended by the Criminal Procedure and Evidence Amendment Act, 2016, takes effect from the 2nd January, 2015.".

49 Minor amendments to Cap. 9:07

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

MINOR AMENDMENTS TO CRIMINAL PROCEDURE AND EVIDENCE ACT
[*Chapter 9:07*]

SCHEDULE

Provision	*Extent of Amendment*
Section 39(2)	By the insertion after "Zimbabwe" of "referred to in subsection (1)".
Section 57	By the deletion of "the provisions of subsection (4) of section *forty-one* shall apply, *mutatis mutandis*, to the searching of any woman" and the substitution of "section 41B(3) shall apply to the search of any person".
Section 60(1) and (2)	By the deletion of "paragraph (c) of section *fifty-eight*" and the substitution of "section 58(1)".
Section 113(2)(c)	By the deletion of "and of subsection (2) of section *two hundred and fifty-six*".
Section 118(1)	By the deletion of "referred to in subsection (1) of section 117A" and the substitution of "forbail".
Section 118(2)(b)(i)	By the deletion of "Attorney-General" and the substitution of "Prosecutor-General".
Section 135(1)(c)	By the deletion of "Protection and Adoption".
Sections 136(6) and 140(6)	By the deletion of "sixty-seven" and the substitution of "113A".
Section 142(5)	By the deletion of "the provisions of subsections (2), (3) and (4) of section sixty-seven" and the substitution of "section 113A".
Section 151(5)	By the deletion of "in the Civil Service" and the substitution of "by the State".
Section 285 (in paragraph (b) of the definition of "bank")	By the deletion of "Post Office" wherever it occurs and the substitution of "Peoples' Own".
Section 309(1)	By the deletion of "in the Civil Service or".
Section 319B(v)	By the deletion of "section 18" and the substitution of "section 70(1)(g)"
Section 334(1)	By the deletion of "Subject to paragraph (a) of section three hundred and thirty-seven, where" and the substitution of "Where".