Criminal Law (Codification & Reform) Act

Fact Sheet Two:
Crimes against the state

Introduction:

The crimes against the state are collated in Chapter III (sections 19 to 34) of the Criminal Law (Codification and Reform) Act hereinafter referred to as the Criminal Law Code. Under this section, the Attorney-General (AG) is the prosecuting authority (section 34).

Except for the common law crime of treason and the statutory crime of unlawful possession of, or wearing of camouflage uniforms, the other crimes against the State have been taken from the Public Order and Security Act [Chapter 11:17] (POSA) and have been incorporated with certain minor modifications. A few of these are discussed below.

Treason and concealing treason:

Sections 20 and 21 of the Criminal Law Code deal with treason and concealing of treason respectively. Before the Code, both these offences were catered for under common law. Section 20(2) of the Code, outlines a list of acts that constitute treason and these are:

1. preparing (or endeavouring) to carry out by force any enterprise which usurps the executive power of the President or the State in any matter.
2. in times of war or during a period of public emergency, doing anything which assists any other State to engage in hostile or belligerent action against Zimbabwe.
3. prompting any other State (or foreign person) to invade Zimbabwe.

It is further provided, however, under section 20(3) that it is legally permissible (and therefore not treasonous) for a person to do anything by lawful and constitutional means that is directed at correcting an error or defect in the system of Government or Constitution; or replacing the Government or President; or achieving the adoption of, or abandonment of certain governmental policies or pieces of legislation.

Section 21 of the Criminal Code says that if any Zimbabwean citizen knows that there is another person, (whether inside or outside Zimbabwe), who has committed, or is committing, or is attempting to commit an act of treason and fails to inform the authorities as soon as possible, shall be guilty of concealing treason. Under common law, concealing treason was equated to treason.
itself. However, in the Code, it has been made a crime separate from treason because concealing treason cannot be equated to committing the act of treason.

Anyone found guilty of committing, or attempting to commit treason faces a death penalty or life in imprisonment, while those found guilty of concealing treason face a level 14 fine (the highest fine possible) or 20 years in jail or both.

While there is nothing improper about these sections of the Code, as most countries in the world do actually impose very stiff penalties for treason-related crimes, what is worrisome in the Zimbabwean situation is the spirit within which this Code will be applied.

**Subverting constitutional government:**

Section 22 (2) of the Criminal Law Code states that it is a crime if an individual (whether in Zimbabwe or outside Zimbabwe) organises or suggests the organisation of any group or body with a view to:

1. overthrowing or attempting to overthrow the Government by unconstitutional means.
2. taking over or attempting to take over Government by unconstitutional means or usurping the functions of the Government.
3. coercing or attempting to coerce the Government.

Further, the Code states that anyone who supports or assists such a group or body shall also be guilty of any of the three offences listed above. This reenacts section 5 of POSA which section had also re-enacted certain sections of the repealed Preservation of Constitutional Government Act (PCGA). Those found guilty under this section of the Code face a harsh penalty of up to 20 years' imprisonment without the option of a fine. This penalty is the same as that provided for under POSA and under the PCGA.

The government of Southern Rhodesia in 1964 enacted the PCGA shortly before it cut ties with the British government and like many of the laws enacted that time; the Act was targeted at suppressing the growing calls for self-rule by black nationalist movements. The PCGA was declared unconstitutional by the Supreme Court of Zimbabwe in 1999 because it violated certain sections of the Constitution of Zimbabwe which guarantees all individuals the freedom of association and of assembly.

However, these offending sections of the PCGA were, re-enacted, almost verbatim, in POSA (section 5) and have been re-enacted in the Criminal Code again. For a closer analysis of the implications of these provisions, please refer to the “POSA Fact Sheet Two: subversion (of constitutionally-elected government)".

**Insurgency, banditry, sabotage or terrorism:**
Sections 23-29 of the Criminal Law Code deal with insurgency, banditry, sabotage and terrorism. These sections re-enact sections 6 to 11 of POSA.

Section 23 of the Criminal Code re-enacts section 6 of POSA which states that it is illegal for anyone to engage in an act of insurgency, banditry, sabotage or terrorism, if they, especially if accompanied by use of, or threatened use of, violence, agitate for causing or furthering an insurrection in Zimbabwe; or causing the forcible resistance to the Government or the Defence Forces or any law enforcement agency; or procuring by force the alteration of any law or policy of the Government. The crime is punishable by death or life imprisonment (if the actions cause the death of a person) or life imprisonment or any shorter period if the actions do not result in any deaths or considerable damage to property.

Section 24 of the Code criminalises any actions to recruit, assist, train, or encourage another person to undergo training inside or outside Zimbabwe in order to commit any act of insurgency, banditry, sabotage or terrorism in Zimbabwe. This offence faces a penalty of life imprisonment or any shorter period depending on mitigating circumstances. The same penalties are imposed against other offences such as training as an insurgent, bandit(s), saboteur or terrorist (section 25 of the Code); supplying or possessing weapons to insurgents, bandits, saboteurs or terrorists (section 26 and 27 respectively).

According to section 27 of the Code, any person who is found in the unlawful possession of weaponry or part of a cache of weapons in violation of section 24 of the Firearms Act [Chapter 10:09], and such weapons that cannot be accounted for by reason of personal use alone, shall be guilty of possessing weaponry for the purposes of committing insurgency, banditry or terrorism and shall face life imprisonment. However, according to section 28 of the Code, only a fine of up to Z$15m or 10 years in jail or both shall be imposed against anyone who is found in possession of dangerous weapons that contravene section 4 of the Firearms Act.

Harbouring or failing to report an insurgent, bandit or terrorist is punishable by a fine (up to Z$10m) or up to five years in jail or both (this is also contained in section 11 of POSA).

Causing disaffection among the Police Force or Defence Forces:

Section 30 of the Criminal Law Code re-enacts section 12 of POSA, which imposes a fine of (up to Z$4m) or two years' imprisonment or both for anyone found guilty of causing disaffection among the police force or defence forces. According to the provisions, if any person induces, or attempts to induce, or does any act with the intention or realising that there is a real possibility of inducing or causing any member of the Police Force or Defence Forces to withhold his/her services, loyalty or allegiance or to commit breaches of
discipline, he/she shall be guilty of causing disaffection among the Police Force or Defence Forces. This provision was also included, in large part, in the repealed Law and Order (Maintenance) Act (LOMA) as section 40.

In terms of POSA, the publication or communication of any piece of information meant to cause or attempt to cause disaffection amongst members of the police or the defence forces of the country, with the result that any member of the state security agents withholds their services, loyalty or allegiance or commits breaches of discipline, is prohibited.

This is an offence also punishable by a fine of up to two years' imprisonment, or to both such a fine and such imprisonment. Thus, it is an offence, for example, for a politician to make a statement exposing, for instance, the poor salary and working conditions of members of the police force, as this may lead to them withholding their services or feel alienated.

Further, it is illegal for any member of the public to try and appeal to the conscience of, say, the army, by urging them not to follow superior orders in instances where the government intends to violate basic human rights, and the constitution (like during 'Operation Murambatsvina'), as this can lead to them not carrying out their orders as instructed by the government. For a more in-depth analysis of the mirror provisions as contained in POSA, please refer to POSA Fact Sheet Three: Causing disaffection among the police or the defence forces.

Publishing or communicating false statements prejudicial to the State:

The Criminal Law Code forbids the publication or communication of false statements prejudicial to the state (section 31). Although it is clear that this provision directly targets journalists and the mass media, its ambit is wide enough to cover everyone. In brief, the Code states that any person who publishes or communicates a statement which is wholly or materially false, and which statement incites or promotes or is likely to incite or promote public disorder, public violence or endangers public safety, or that adversely affects the economic or defence interests of Zimbabwe, or interrupts an essential service, is guilty of a criminal offence punishable by a fine of up to Z$25m or 20 years’ imprisonment or both.

In addition, an individual is deemed guilty of an offence even if the published or communicated statement did not actually result in any prejudicial consequences to the state, or even if the concerned individual did not intend those harmful consequences. This means that a person would have committed this offence even though the prejudicial effects do not actually occur or, if they did occur, even if the accused did not intend the harmful effects. The 'prejudicial consequences' to the State are very wide and vague. This applies particularly to prejudicial consequences such as adversely affecting the defence or economic interests of Zimbabwe or undermining public
confidence in a law enforcement agency. Besides, the penalty for this is very harsh – a level fourteen fine (the highest level) and/or imprisonment for up to 20 years!

This provision is a re-enactment of section 15 of POSA, but it was tightened to make the penalties even harsher. With POSA, the penalty is a fine and up to five years’ imprisonment, while in the code, the fine is much higher with a further 15 years of incarceration added to the prison term. However, as is the case under POSA, the Code does not define what ‘false’ means. As a result, the provisions allow for wide discretion on the part of the prosecuting authorities. For example, it does not define what sort of ‘economic interests’ of the state have to be affected to warrant arrest. This leaves people unsure as to whether their actions are illegal and what type of consequences they could spawn, and they are, therefore, unable to regulate their conduct accordingly.

In so far as the restrictions are not clearly laid down by law, this section of the Code violates Section 20 of the Constitution of Zimbabwe which guarantees everyone the right to receive and impart information without undue interference from the state.

It is of great significance that most countries that profess to be democracies do not have or do not use criminal law to sanction false news.

For example, countries like the United Kingdom, France, Australia, Canada, the United States, the Netherlands, and South Africa, among others, do not criminalise the reportage of false news. This is commonly taken care of by the laws of libel, defamation and slander. These laws are used the world over to rein in unprofessional journalism which seeks to injure the reputation of individuals.

At a time when several other African countries are lifting criminal sanctions for press offences, bringing their laws in line with international standards, Zimbabwe’s government is introducing penalties that are among the harshest the world over. For a full analysis of the implication of this section, please refer to, POSA Fact Sheet 4, publishing or communicating false statements prejudicial to the state.

Undermining the authority of, or insulting President:

According to section 33 of the Criminal Law Code, a person is guilty of this offence if they publicly make a statement (by words, by an act or by a gesture) that will:

(1) engender feelings of hostility towards or,
(2) cause hatred, contempt or ridicule of; the person or office of the President or Acting President of Zimbabwe. The offence is punishable by a level six fine (Z$2m), or a years’ imprisonment, or both.
“Publicly making a statement” means making the statement in a public place or any place to which the public or any section of the public have access; or, publishing it in any printed or electronic medium for reception by the public.

This section also re-enacts section 16 of POSA, which imposes the same penalties for the crime of undermining the authority of, or insulting the President.

This section is clearly intended to stifle criticism of the President (or Acting President), his/her policies, and style of government.

This provision presents a minefield for the media because the law states that even if the statement is true, or even if it is in the public interest to publicise it, if it causes feelings of hostility or exposes the President to ridicule or contempt, an offence has been committed.

This goes far beyond the common law crime of criminal defamation, in which it is a defence to prove the statement uttered was true or it was in the public interest for it to be uttered or published. For example, a journalist can be arrested if they report that the President used public resources for personal gain.

This provision clearly seeks to insulate the President from criticism for the excesses he/she may commit while in office. As a public figure, the President must endure more than normal critical comment, both from individuals and from the media, unless if he/she can prove that the person or entity that uttered the expression acted with malice, in which case they can resort to suing the person or entity concerned.

For a more in-depth analysis of this section as it appears under POSA, please refer to the document POSA Fact Sheet Five: Undermining the authority of, or insulting, the President.

Ends.