

H.B. 20, 2019.]



**NATIONAL PROSECUTING AUTHORITY (AMENDMENT) BILL, 2019**

MEMORANDUM

This National Prosecuting Authority (Amendment) Bill, 2019 is designed to improve the governance structure of the National Prosecuting Authority. The Bill also takes account of the accounting status of the Authority. The Bill provides for the appointment of Deputy Prosecutors-General to assist the Prosecutor-General in the discharge of his or her constitutional mandate.

In more detail, the Bill provides as follows—

*Clause 1* sets out the short title of the Bill.

*Clause 2* amends the definition section by introducing new terms used in the Bill. Notable are the following terms—

“Secretary to the Authority” which is defined by reference to section 15(2) as the Accounting Officer of the Authority;

“Deputy Prosecutor General” which is defined by reference to section 8.

*Clauses 3 and 4* deal with the membership of the Board.

*Clause 5* provides for the appointment, by the Board in consultation with the Minister, of Deputy Prosecutors-General who shall head specific prosecutorial sections and other departments of the Authority as well as supervise the members assigned thereto. The Deputy Prosecutors-General shall be subject to the direction of the Prosecutor-General on the discharge of their duties.

*Clause 5* empowers the Board to appoint the Secretary to the Authority and lays out his or her functions.

*Clause 6* merely makes textual changes.

*Clause 7* provides that the Secretary of the Authority shall report to the Board. This is a departure from the current scenario where the Director of Administration was reporting to the Permanent Secretary of the Ministry of Justice, Legal and Parliamentary Affairs.

*Clause 8* proposes that the proportions for the Court Retention Fund be redistributed to accommodate Zimbabwe Prisons and Correctional Services.

*Clause 9* makes consequential amendments to the Criminal Procedure and Evidence Act [*Chapter 9:07*].



# BILL

To amend the National Prosecuting Authority Act [*Chapter 7:20*]; and to amend the Criminal Procedure and Evidence Act [*Chapter 9:07*] and to provide for matters connected therewith or incidental thereto.

5 ENACTED by the Parliament and the President of Zimbabwe.

## 1 Short title

This Act may be cited as the National Prosecuting Authority Amendment Bill, 2019.

## 2 Amendment of section 2 of Cap. 7:20

10 Section 2 (“Interpretation”) of the National Prosecuting Authority Act [*Chapter 7:20*] is amended by—

- (a) the repeal of the definitions of “Director for Administration” and “National Director of Public Prosecutions”;
- (b) the insertion of the following definitions—

15 ““Secretary to the Authority” means the person appointed in terms of section 8A;

“Deputy Prosecutor-General” means a person appointed as such in terms of section 8;”

## 3 Amendment of section 4 of Cap. 7:20

20 Section 4 (“Constitution of National Prosecuting Authority”) is amended by the repeal of paragraphs (b) and (c) and substitution of—

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- “(b) the Deputy Prosecutors-General”;
- (c) the Secretary to the Authority”.

**4 Amendment of section 5 of Cap. 7:20**

Section 5 (“Establishment and composition of National Prosecuting Authority Board”) is amended by— 5

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

“(1) Subject to subsection (2), there is hereby established a Board, to be known as the National Prosecuting Authority Board.”;

- (b) the insertion after subsection (1) of the following subsections—

“(1a) The Board shall consist of— 10

- (a) the Prosecutor-General; and
- (b) a person who has been or is qualified to be a judge of the High Court or Supreme Court, appointed by the Minister after consultation with the Judicial Service Commission; and 15

- (c) a Commissioner of the Civil Service Commission appointed by the Chairperson of the Civil Service Commission; and

- (d) five members appointed, subject to subsection (2), by the Minister, of whom— 20

- (i) one shall be a person employed in the Ministry responsible for justice, nominated by the Minister responsible for justice; and

- (ii) one shall be a person employed in the Ministry responsible for finance nominated by the Minister responsible for finance; and 25

- (iii) one shall be a person appointed for his or her ability and experience in human resources management and development; and

- (iv) one shall be a person registered in terms of the Public Accountants and Auditors Act [*Chapter 27:12*], nominated by the Minister responsible for finance after consultation with the Accountant General; and 30

- (v) one shall be a person registered in terms of the Legal Practitioners Act [*Chapter 27:07*], nominated by the Law Society of Zimbabwe. 35

(1b) The President shall appoint one of the members referred to in subsection (1a)(b), (c) or (d) as the Chairperson and another as the Deputy Chairperson and shall ensure that the Chairperson and the Deputy Chairperson are of different genders. 40

(1c) The Prosecutor-General shall appoint his or her Deputy Prosecutor-General as his or her alternate, or if there are two or more Deputy Prosecutors-General, shall appoint each of them on an alternating basis as his or her alternate in any meeting of the Board that he or she is unable to attend. 45

(1d) The Secretary to the Authority shall be the Secretary of the Board.”.

**5 Amendment of section 8 of Cap. 7:20**

Section 8 is repealed and substituted by the following sections—

**“8 Deputy Prosecutors General**

5 (1) The Board shall, in consultation with the Minister, appoint such number of Deputy Prosecutors-General as it deems necessary.

(2) The Deputy Prosecutors-General shall—

(a) head specific sections or departments of the Authority and shall supervise the members assigned thereto by the Prosecutor-General; and

10 (b) shall be subject to the direction of, and report, to the Prosecutor-General on the discharge of their duties.”

**8A Appointment and functions of Secretary to Authority**

(1) The Board shall, in consultation with the Minister, appoint the Secretary to the Authority on such terms and conditions as it shall fix.

15 (2) The Secretary to the Authority shall, supervise and manage the Authority’s staff activities, funds and property and perform such other functions on behalf of the Prosecutor-General as the Prosecutor-General may assign to him or her.

20 (3) The Secretary to the Authority is prescribed for the purposes of section 49 of the Public Finance Management Act [*Chapter 22:19*] (Act No. 11 of 2009) to be the accounting officer of the Authority.”.

**6 Amendment of section 12 of Cap. 7:20**

25 Section 12 (“Power to institute and conduct criminal proceedings”)(2) is amended by the deletion of “National Director of Public Prosecutions” and substitution of “a Deputy Prosecutor-General”.

**7 Amendment of section 15 of Cap. 7:20**

Section 15 (“Department of Administration”)(2) is amended by—

(a) the deletion of “Director for Administration” and substitution of “Secretary to the Authority”;

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

“(3) The Secretary to the Authority shall report to the Prosecutor-General.”.

**8 Amendment of section 32 Cap. 7:20**

Section 32 (Transitional provisions) is amended by—

35 (a) the repeal of subsection (3) and substitution of—

40 “(3) The person who immediately before the commencement of National Prosecuting Authority Amendment Act, 2019 was employed by the Authority as the National Director of Public Prosecutions shall be deemed to have been appointed as one of the Deputy Prosecutors-General in terms of this Act, and his or her service with the Authority as the Deputy Prosecutor-General shall be deemed to be continuous with his or her service as the National Director of Public Prosecutions.”;

- (b) the repeal of subsection (9) and substitution of—

“(9) The Courts Administration Fund that was established under the Audit and Exchequer Act [*Chapter 22:03*] and saved under section 93(3)(b) of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) shall continue in force subject (notwithstanding anything to the contrary in the constitution of that Fund) to the following re-allocation of the public monies retained in it with effect from the date of the commencement of National Prosecuting Authority Amendment Act, 2019—

- (a) thirty-five *per centum* of the monies shall be allocated to the Judicial Service Commission; and
- (b) twenty-five *per centum* of the monies shall be allocated to the National Prosecuting Authority; and
- (c) fifteen *per centum* of the monies shall be allocated to the Attorney-General’s Office; and
- (d) ten *per centum* of the monies shall be allocated to the Ministry responsible for the administration of this Act.
- (e) fifteen *per centum* of the monies shall be allocated to the Zimbabwe Prisons and Correctional Services.”.

**9 Amendment of Cap. 9:07**

The Criminal Procedure and Evidence Act [*Chapter 9:07*] is amended—

- (a) in section 2 by the repeal of the definition of “National Director of Public Prosecutions”;
- (b) by the repeal of section 6 and substitution of—

**“6 Deputy Prosecutor-Generals**

There shall be one or more Deputy Prosecutors General appointed in terms of section 8 of the National Prosecuting Authority Act [*Chapter 7:20*].”;

- (c) in section 266A(6) by the deletion of “National Director of Public Prosecutions” and substitution of “ a Deputy Prosecutor-General”.