

A GUIDE

TO THE RIGHTS OF INMATES AS DESCRIBED IN THE CORRECTIONAL SERVICES ACT AND REGULATIONS

by LM Muntingh

2006 (revised 2010; 2017)



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ACJR engages in high-quality research, teaching and advocacy on criminal justice reform and human rights in Africa. Our work supports targeted evidence-based advocacy and policy development promoting good governance and human rights in criminal justice systems. Our work is anchored in international, regional and domestic law. We promote policy, law and practice reform based on evidence. We have a particular focus on effective oversight over the criminal justice system, especially in relation to the deprivation of liberty.

TABLE OF CONTENTS

INTRODUCTION	5
How should we understand inmates' rights?	5
Who can use this Guide?	6
Using this Guide	6
Table of definitions	7
Who is the National Commissioner?	8
Referencing	8
1. THE BASIC RIGHTS AND RESPONSIBILITIES OF ALL INMATES	9
1.1 The Constitution	9
1.2 The basic rights described in the Correctional Services Act (111 of 1998) as amended	11
1.2.1 Safe and secure custody	11
<i>Right to safety</i>	11
<i>Powers of officials to maintain safety and order</i>	11
1.2.2 Admission to a correctional centre	12
<i>The warrant</i>	12
<i>Record keeping</i>	12
<i>Information to be given upon admission</i>	12
<i>Valuables and money</i>	13
<i>Children</i>	13
<i>Clothing and bedding</i>	13
<i>Health and security</i>	13
1.3 Accommodation	14
1.3.1 Physical conditions	14
1.3.2 Separation of certain categories of inmates	15
1.4 Nutrition and meals	15
1.5 Searches	16
1.5.1 Manner of searching	16
1.5.2 Conditions applying to the bodily searches	16
1.6 Hygiene and exercise	17
1.7 Health care	17
1.7.1 General health care rights	17
1.7.2 Consent for surgery	18
1.7.3 Reproductive health	18
1.7.4 Medical treatment after release	18
1.7.5 Mental health	18

1.8	Contact with the community	19
1.8.1	General rights with regard to contact	19
1.8.2	Foreign nationals	19
1.8.3	Search and monitoring of contact and parcels	19
1.9	Religion, belief and opinion	20
1.10	Deaths in correctional centres	20
1.11	Development and support services, recreational activities	21
1.12	Access to legal advice	22
1.13	Reading Material	23
1.14	Complaints and requests	23
1.15	Discipline	24
1.15.1	Disciplinary transgressions	24
1.15.2	Types of disciplinary hearings	25
1.15.3	Punishment that may be imposed	26
1.16	Segregation	27
1.16.1	Reasons for the use of segregation	27
1.16.2	Time limits to segregation	28
1.17	Mechanical restraints	30
1.17.1	Reasons for the use of mechanical restraints	30
1.17.2	Prohibited uses of mechanical restraints	30
1.17.3	Additional requirements	30
1.18	The use of force	30
1.18.1	Prohibition on the use of force	30
1.18.2	Permission to use force	31
1.18.3	After force was used	31
1.18.4	Use of non-lethal incapacitating devices and fire-arms	31
1.19	Prohibited items	31
1.20	Offences under the Act	31
2.	THE RIGHTS OF SPECIFIC CATEGORIES OF INMATES	34
2.1	Remand detainees and unsentenced offenders	34
2.1.1	Types of remand detainees	34
2.1.2	The rights of remand detainees	34
2.2	Women	36
2.3	Children	36
2.4	Terminally ill persons - medical parole	37
2.5	Youth	38
2.6	Persons with disabilities	38
2.7	Foreign nationals	39

2.8	The elderly	39
3.	SERVING A SENTENCE IN A CORRECTIONAL CENTRE	40
3.1	Different types of sentences	40
3.2	Calculation of the period of incarceration	41
3.3	Correctional supervision	42
3.4	Reduction in term of incarceration	44
3.5	Death penalty	44
4.	THE PLACEMENT, SECURITY CLASSIFICATION AND AMENITIES	45
4.1	Security classification	45
4.1.1	Principles	45
4.1.2	Calculation of the security classification	45
4.2	Amenities to which inmates have access	46
4.3	Placement and transfers	46
5.	SERVICES FOR SENTENCED OFFENDERS	48
5.1	Purpose and general principles	48
5.1.1	Duties of sentenced offenders	48
5.1.2	Duties of the Department of Correctional Services	48
5.2	Assessment	48
5.3	Sentence plan and services to sentenced offenders	49
5.3.1	Sentence plan	49
5.3.2	Right to participate in programmes	50
5.3.3	Compulsory programmes	50
5.4	The role of the Case Management Committee	50
5.4.1	Structure of the Case Management Committee	50
5.4.2	Functions of the Case Management Committee	50
5.5	Work performed by sentenced offenders	51
5.5.1	Protection against slavery, servitude and forced labour	51
5.5.2	Protective clothing and gear	52
5.5.3	Work by sentenced offenders for third parties	53
5.5.4	Work by unsentenced offenders and persons awaiting trial	53
5.5.5	Sentenced offenders	53
5.5.6	Payment for work	53
5.5.7	Work on Sundays and religious holidays	54
5.6	Placement and release	54
5.6.1	Rights upon release	54
5.6.2	Informing the sentenced offender of the conditions of placement on parole or correctional supervision	54
5.7	Temporary leave from a correctional centre	55

6. CONTACT WITH THE OUTSIDE WORLD	56
6.1 Contact with family and friends	56
6.2 Contact with legal representative	56
6.3 Participation in elections	56
6.3.1 National elections	56
6.3.2 Local government elections	56
7. LODGING A COMPLAINT	57
7.1 Reporting corruption	57
7.2 Internal complaints procedure	57
7.3 Families lodging complaints	57
7.3 Laying a criminal charge	58
7.4 Lodging a complaint with the Independent Correctional Centre Visitor	58
7.5 Reporting urgent and important matters directly to the Office of the Inspecting Judge	59
7.6 Lodging a complaint with the Chapter 9 institutions	59
7.7 Lodging a complaint with a visiting magistrate, a judge or a Member of Parliament	59
8. PAROLE AND RELEASE	60
8.1 Principles for parole and release	60
8.2 Conditions and exceptions with regard to parole and release	60
8.3 Life imprisonment before and after 2004	61
APPENDIX 1: CHAPTER 2 - BILL OF RIGHTS	62
APPENDIX 2: BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS	76
APPENDIX 3: SUMMARY OF MINIMUM SENTENCES	77
APPENDIX 4: CONTACT DETAILS OF RESOURCES	79
APPENDIX 5: STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS	80
APPENDIX 6: SPECIFICATION REGARDING AMENITIES	106



INTRODUCTION

The Correctional Services Act (111 of 1998) was promulgated in 2004 creating a rights-based framework for South Africa's correctional system. It has been amended twice since. In 2008 the Correctional Services Act was amended by the Correctional Services Amendment Act (25 of 2008). In 2011, it was amended by the Correctional Matters Amendment Act (5 of 2011). This guide, originally published in 2006, has been updated to incorporate the changes to the 1998 Correctional Services Act following the amendments.

The purpose of this guide is to describe in an accessible and user-friendly format the human rights framework pertaining to inmates in South Africa based on the Constitution, Correctional Services Act and the Regulations accompanying the legislation. Where appropriate, reference is made to other legislation that has a direct bearing on the rights of inmates. Care was, however, taken to focus on the rights of inmates and the guide should thus not be seen as a guide to prison law in South Africa or even as a plain language guide to the Correctional Services Act. Large parts of this Act deal, for instance, with the operations of the Department of Correctional Services and do not have a direct bearing on the rights of inmates.

There are admittedly many other resources that could have been consulted and incorporated into a publication of this nature, such as case law and academic articles. This was deliberately not done to ensure that a "plain language" and user-friendly style is maintained. Legislation and regulations are intimidating enough as is, especially for non-lawyers, and therefore the purpose is to simplify these into a description of the basic rights of inmates and not a discussion and analysis of the deep complexities that often accompany these rights.

How should we understand inmates' rights?

People are not incarcerated voluntarily, they are placed in correctional centres by the State either as unsentenced suspects in a crime waiting for their cases to be finalised or as sentenced offenders, sentenced by a court to incarceration. It is for this reason that the State is responsible for the well-being of inmates. The State cannot place people in correctional centres and not care for them properly. The State has a total and inescapable duty to care for inmates in a manner that does not violate or compromise their constitutional rights.

The fact that a person is convicted of a crime or is suspected of having committed a crime is not an excuse for the State to not take proper care of such a person. Incarceration should only curtail a person's freedom and may not add other punishments in a direct or indirect manner. When a court sentences a person to incarceration or orders that a person be detained while on trial, he or she retains all his or her rights, except those that are necessary to limit so that the sentence can be implemented. In other words, just because a person is incarcerated does not mean that he or she loses the right to, for example, health care or the right to vote. It is not necessary for these rights to be limited to implement incarceration ordered by a court and inmates therefore retain these rights. This is known as the *residuum* principle and is central to the rights of all inmates.

Inmates are particularly vulnerable to rights violations for a number of reasons:

- Correctional centres are closed institutions and many people do not really know what happens inside. With high walls, electrified fences and armed guards, the result is that inmates are kept inside and the community is kept outside. This makes it difficult for inmates to communicate with the outside world about what happens inside correctional centres.
- There is a common perception in society that inmates should have a tough time in a correctional centre because this is what they deserve for the crime they have committed. This opinion “allows” for rights violations to occur, however small, by not holding officials accountable.
- Human rights violations are difficult to investigate in correctional centres and reported complaints often “disappear” or inmates are discouraged to report violations or persist with complaints. Collusion between officials and other inmates can make it very difficult to investigate and address human rights violations.

Inmates’ rights should not be measured against the crimes that they have committed or the level of crime in our society. The rights that inmates have are afforded to them by the Bill of Rights in the Constitution. These are not rights that can be changed every now and again to suit public or political opinion. They are stable and constant, and provide protection to all persons when they find themselves in vulnerable situations.

There is no doubt that South Africa has advanced and well written legislation governing its correctional system. In general, the legislation is written in a clear and simple manner and both the letter and the spirit of the legislation unambiguously reflect the intentions of the Constitution. The standard the legislation sets is achievable, but for it to be attained, people have to understand their rights and adherence to the stipulations of the legislation has to be monitored continuously. Furthermore, inmates and officials alike must live by the spirit of the legislation and the Constitution.

Who can use this Guide?

This is not a legal text and it is not aimed at lawyers and persons studying prison law, although they may find it useful as a first introduction to a particular topic. The guide is aimed at practitioners who may need to have some knowledge of prison law and the rights of inmates. Non-governmental organisations, faith-based organisations, advice offices and individuals may sometimes have to answer questions from inmates, their families and former inmates, and the legislation and Regulations are not user-friendly or accessible. This guide is primarily aimed at addressing this need. As such it is a human rights education tool.

Using this Guide

When using this guide it should always be kept in mind that this is a description of what the law and regulations say about particular topics. Each case has its own unique characteristics, and it therefore is important to have as much information as possible about a particular case and the questions arising from it. A simple issue such as when an inmate qualifies for parole is subject to a vast range of conditions; for example the type of sentence, the laws in respect of which the sentence was imposed, and the age of the offender amongst others. Collecting the appropriate information and asking the right questions is a skill that comes with experience and the guide aims to aid the reader’s awareness of such issues.

This guide to inmates' rights is divided into several chapters describing inmates' rights, starting with the most general and then dealing with more specific categories. The table of contents gives a quick reference guide to where information on a specific topic can be found.

At the end of the guide there are several appendices that provide additional information and contact details of resources.

On the ACJR website, there are additional resources that the reader may also want to consult such as the address list of all the correctional centres in South Africa and the full version of the Correctional Services Act. On the ACJR website, there are additional resources that the reader may also want to consult at <http://acjr.org.za/>

Table of definitions

Certain definitions contained in the Correctional Services Act were later amended, in 2008 and in 2011. This guide uses the terminology set out in the legislation as amended. The following table serves to indicate the manner in which the terminology has been changed:

OLD TERM	NEW TERM
"Area Manager"	"National Commissioner"
"Commissioner"	"National Commissioner"
"Head of Prison"	"Head of the Correctional Centre"
"Imprisonment"	"Incarceration"
"Independent Prison Visitor"	"Independent Correctional Centre Visitor"
"Judicial Inspectorate of Prisons"	"Judicial Inspectorate for Correctional Services"
"Medical officer"	"Correctional medical practitioner"
"Parolee"	"Person under community corrections"
"Prison"	"Correctional Centre"
"Prisoner"	"Inmate" It encompasses both sentenced offenders and remand detainees, but excludes persons under community corrections.
"Sentenced Prisoner"	"Sentenced Offender"
"Unsentenced Prisoner"	"Unsentenced Offender" Note that this refers to a person who has been convicted of an offence but not yet sentenced.
	"Remand Detainee" refers to an inmate who is detained until his or her trial is finalised (either by a conviction or an acquittal) and is not already serving another sentence. People detained while waiting to be extradited are also called "remand detainees". Remand detainees must be detained separately from sentenced offenders, in "remand detention facilities".

It is important to note that the term “prisoner” has been replaced by the term “inmate,” when reference is made to a person, whether convicted or not, who is detained in any correctional centre or who is being transferred in custody or is *en route* from one correctional centre to another.

The term “prisoner” has been replaced with the term “unsentenced offender,” when reference is made to any person who is lawfully detained in a correctional centre and who has been convicted of an offence, but who has not yet been sentenced to incarceration or correctional supervision.

The term “prisoner” has been replaced by the term “sentenced offender,” when reference is made to a convicted person sentenced to incarceration or correctional supervision.

The term “unsentenced prisoner” has been replaced with the term “remand detainee”, when reference is made to a person who is detained while on trial but has not yet been convicted or sentenced.

Who is the National Commissioner?

The Correctional Services Act often refers to “the National Commissioner”, stating that “the National Commissioner must give permission for this” or “the National Commissioner may decide that”. The National Commissioner of Correctional Services is the official who is charged with responsibility of managing the Department of Correctional Services. He or she may delegate his or her authority to officials below him or her and give them the power to make certain decisions without consulting him or her about it. This delegation of authority is described in detail in the Regulations.

Referencing

This guide avoids being too academic but it is important to reference the specific legislation and sections in the legislation and regulations. This was done in the following manner:

[S 12(1)]	Refers to Section 12, sub-section 1 of the Correctional Services Act. This includes amended sections of the Act.
[R 4]	Refers to Regulation 4 of the Regulations to the Correctional Services Act
[B Ch 18 para 4.1]	Refers to the B-Orders, Chapter 18, paragraph 4.1. The B-Orders describe in minute detail how the Regulations must be interpreted and implemented. They provide a descriptive implementation plan of every action that the Department of Correctional Services is responsible for. This is to ensure that all officials do the same thing in the same manner.
[Criminal Procedure Act S 286(1)]	Refers to Section 286 paragraph 1 of the Criminal Procedure Act

In all instances where legislation other than the Correctional Services Act is referred to, this legislation will be named in the reference provided.

CHAPTER 1

THE BASIC RIGHTS AND RESPONSIBILITIES OF ALL INMATES



1.1 The Constitution

The Bill of Rights, Chapter 2 of the Constitution, describes the rights of all persons in South Africa. There are certain rights that are of particular importance where it concerns arrested and detained persons. The basic rights of all arrested and detained persons in South Africa are primarily based on four sections in the Constitution, namely Sections 10, 11, 12 and 35. A full version of the Bill of Rights is available as Appendix 1.

10. *Human dignity*

Everyone has inherent dignity and the right to have their dignity respected and protected.

11. *Life*

Everyone has the right to life.

12. *Freedom and security of the person*

1. *Everyone has the right to freedom and security of the person, which includes the right*

- a. *not to be deprived of freedom arbitrarily or without just cause;*
- b. *not to be detained without trial;*
- c. *to be free from all forms of violence from either public or private sources;*
- d. *not to be tortured in any way; and*
- e. *not to be treated or punished in a cruel, inhuman or degrading way.*

2. *Everyone has the right to bodily and psychological integrity, which includes the right*

- a. *to make decisions concerning reproduction;*
- b. *to security in and control over their body; and*
- c. *not to be subjected to medical or scientific experiments without their informed consent.*

35. *Arrested, detained and accused persons*

1. *Everyone who is arrested for allegedly committing an offence has the right*

- a. *to remain silent;*
- b. *to be informed promptly*
 - i. *of the right to remain silent; and*
 - ii. *of the consequences of not remaining silent;*
- c. *not to be compelled to make any confession or admission that could be used in evidence against that person;*
- d. *to be brought before a court as soon as reasonably possible, but not later than*
 - i. *48 hours after the arrest; or*
 - ii. *the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;*
- e. *at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and*
- f. *to be released from detention if the interests of justice permit, subject to reasonable conditions.*

2. *Everyone who is detained, including every sentenced prisoner, has the right*
 - a. *to be informed promptly of the reason for being detained;*
 - b. *to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;*
 - c. *to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
 - d. *to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;*
 - e. *to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and*
 - f. *to communicate with, and be visited by, that person's*
 - i. *spouse or partner;*
 - ii. *next of kin;*
 - iii. *chosen religious counsellor; and*
 - iv. *chosen medical practitioner.*
3. *Every accused person has a right to a fair trial, which includes the right*
 - a. *to be informed of the charge with sufficient detail to answer it;*
 - b. *to have adequate time and facilities to prepare a defence;*
 - c. *to a public trial before an ordinary court;*
 - d. *to have their trial begin and conclude without unreasonable delay;*
 - e. *to be present when being tried;*
 - f. *to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;*
 - g. *to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
 - h. *to be presumed innocent, to remain silent, and not to testify during the proceedings;*
 - i. *to adduce and challenge evidence;*
 - j. *not to be compelled to give self-incriminating evidence;*
 - k. *to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;*
 - l. *not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;*
 - m. *not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;*
 - n. *to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and*
 - o. *of appeal to, or review by, a higher court.*
3. *Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.*
4. *vidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice. .*

1.2 The basic rights described in the Correctional Services Act (111 of 1998) as amended

Although the Correctional Service Act was passed by Parliament in 1998, it only came into full force in October 2004. Chapter 3 of the Act describes the General Requirements for the treatment of inmates. These rights apply to all inmates and as such lay down the minimum standards for the treatment of inmates under South African law.

1.2.1 Safe and secure custody

Right to safety

The safety of all inmates must be ensured at all times. Security and good order must be maintained. This means, for example, that inmates must be protected from assaults by other inmates and may not be assaulted by correctional centre officials. [S 4]

To ensure the safe custody of all inmates it is required of all inmates to accept the authority and obey the lawful instructions of officials. Inmates who disobey instructions can place themselves, other inmates, the public and officials at risk. Inmates who disobey instructions may be disciplined. [S 4]

To ensure safety and security, officials may revise certain amenities for different categories of inmates but this may not affect the minimum rights provided for in the legislation. [S 4(2)(c)]

Powers of officials to maintain safety and order

Despite the right of every inmate to personal integrity and privacy, officials are permitted to do the following, provided that these are reasonably necessary to ensure the safe custody of all inmates, the safety of officials and the security of the community:

- Search the person of an inmate, his or her property, and the place where he or she is in custody, and seize any object or substance which may pose a threat to the security of the correctional centre or of any person, or which could be used as evidence in a criminal case or disciplinary proceeding. [S 27]
- Take steps to identify the inmate. This includes recording a description of the inmate (height, weight, full address, distinctive marks etc), taking fingerprints and photographs. [S 28(1)]
- Refer the inmate to a correctional centre medical practitioner to ascertain the age of the inmate. This is particularly important if it is suspected that the inmate may be under the age of 18 years or is claiming to be under the age of 18 years, but could be older. [S28(1)(e)]

DEFINITION

Amenities are recreational and other activities, diversions or privileges which are granted to inmates in addition to what they are entitled to as of right and in terms of the Act and includes exercise; contact with the community; reading material; recreation; and incentive schemes. Amenities must therefore not be confused with the minimum rights provided for in the Act.

- Attach an electronic or other device to the body of the inmate. [S28(1)(f)]
- Apply mechanical constraints and the permitted restraints are:[S31]
 - Handcuffs
 - Leg-irons and cuffs
 - Belly chains
 - Plastic cable ties
 - Electronically activated high security stun-belts (only permitted to be activated outside of a cell)
 - Medical patient restraints
- Use reasonable force.

1.2.2 Admission to a correctional centre

The warrant

It is important to ensure that only people who are supposed to be admitted to a correctional centre are indeed admitted. When a person is admitted to a correctional centre this must be done in a legal manner that protects the rights of the person concerned. It is a gross human rights violation to incarcerate a person in a manner that is illegal for any reason.

DEFINITION

A **warrant** is an order signed by a judge or magistrate authorising an official to do something.

The first requirement is therefore that there must be a valid warrant authorising the detention of the person by the Department of Correctional Services. Without such a warrant or if there are mistakes on the warrant, the detention would be illegal and the inmate should be released immediately. [S6(1)(a)]

Record keeping

Record-keeping in correctional centres is extremely important to ensure that the right people are admitted and released at the right time. No person may be held in a correctional centre without there being a proper record of him or her being there. Every correctional centre must therefore keep a register recording the following when a person is admitted [S6(2)]:

- The identity of the person - name, date of birth, contact details of next of kin, identity document (ID) number, and other information that will assist in identifying the person.
- The reason why the person was admitted to the correctional centre, for example to serve a sentence or being held awaiting trial.
- The date and time when the person was admitted and released. Every time an inmate is released to appear in court, this must be recorded as well as when he or she returns to the correctional centre.

Information to be given upon admission

When a person is admitted to a correctional centre, it is important that he or she understands what his or her rights are and what the rules of the correctional centre are.

Every inmate must, when admitted to a correctional centre, be given written information in a language that he or she understands describing [S 6(4)]:

- the rules of the correctional centre, e.g. what inmates are allowed to do and not to do in his or her security and privileges category.
- the disciplinary requirements, meaning what happens when inmates break the rules and how the disciplinary process works.
- how an inmate can lay a complaint and make requests, as well as any other issues that may assist him or her to understand his or her rights and duties.

If the inmate is illiterate, an official must explain this written information to the inmate in a language that he or she understands and the inmate must indicate that he or she understood the information. If necessary, the official should use an interpreter. [S 6(4)]

Every person being admitted to a correctional centre must therefore be informed promptly in a language that he or she understands, of his or her right to consult a legal practitioner (e.g. a lawyer) and if a serious injustice may result, then the State will appoint and carry the cost of the legal practitioner. [S 6(3)]

Valuables and money

Upon admission to a correctional centre, an inmate's valuables and money must be taken into safekeeping by an official. Money and valuables will remain in safekeeping for the duration of incarceration. This is often referred to as the inmate's "Property" and reflects a record of his or her cash and valuables. [R 2(1)]

Children

If the inmate being admitted or transferred is a child (a person younger than 18 years old), then the Department of Correctional Services must notify the appropriate government department who have statutory responsibilities for the education and welfare of children as well as the parents (or legal guardian or next of kin) of the child. A child may not refuse that his or her parents (or legal guardian or next of kin) be informed of his or her admission to a correctional centre. [S 13(6)(c)]

Clothing and bedding

The Act sets the following standards [S10] [R5]:

- Upon admission, every inmate must be provided with a full set of clothing and bedding. An inmate may wear such religious or cultural attire as allowed by the Department.
- The regime applicable to remand detainees is examined in section 2.1 below.

Health and security

When large numbers of people are kept in relatively small spaces, there are health risks. These risks can be made worse when too many people are kept in poorly ventilated spaces with inadequate toilet and shower facilities. Contagious diseases, such as tuberculosis, can spread rapidly under such conditions and therefore require very careful management and monitoring.

As soon as possible after an inmate has been admitted to a correctional centre he or she must [S 6(5)]:

- have a bath or shower;
- undergo a medical examination by a registered doctor or nurse that must include testing for the specified contagious diseases. This includes young children admitted to a correctional centre with their mothers. These children are referred to as “cared-for children” in the Regulations [R Definitions];
- undergo a preliminary security classification.

If the medical examination was conducted by a registered nurse, the inmate must be referred to the medical doctor (Correctional medical practitioner) if [R 2(3)(b)]:

- he or she was injured, was ill or complained that he or she is ill;
- he or she uses prescribed medication;
- he or she is receiving continued treatment;
- she is pregnant;
- any other reason why the inmate must be referred to a medical doctor.

If the inmate is wearing any emergency identification locket or bracelet (for example “Medi-Alert”), this must be recorded and the inmate must be allowed to wear this unless it poses a security risk. [R 2(6)]

All medicine that the inmate has in his or her possession upon admission must be recorded and handed over to the nurse or correctional medical practitioner. [R 2(5)]

All medical devices worn by the inmate upon admission must be recorded and may not be removed without permission from a medical practitioner. [R2(4)]

1.3 Accommodation

The majority of inmates in South Africa are accommodated in communal cells that were built to accommodate a group of inmates who share communal cell facilities such as the showers, toilets and common space. Many correctional centres in South Africa are also overcrowded, meaning that cells accommodate more people than what they were built for. Overcrowding has a severely negative impact on all aspects of incarceration.

1.3.1 Physical conditions

Inmates must be held in conditions in line with human dignity. This means the following [R 3(2)(2)]:

- **Floor space and cubic space** must be enough so that each person is able to move about freely and sleep comfortably within the cell. This floor space per prisoner does not include areas taken up by ablation facilities, walls and pillars and personal lockers (not built in) in the cell. The minimum requirements are, per inmate [B2 Ch 2 para 2.1]:
 - Ordinary communal cells 3,344 m²
 - Ordinary single cells 5,5 m²
 - Hospital communal cells 4,645 m²
 - Hospital single cells 9,0 m²

- **Lighting** in a cell (natural and artificial) must be of such a nature that persons inside are able to read and write.
- **Ventilation** must be adequate. The minimum cubic space requirements are, per inmate [B2 Ch 2 para 2.2]:
 - Persons under the age of 10 years 4,25 m³
 - Persons 10 years and older 8,5m³.
- **There must be adequate ablution facilities** (showers and toilets) for the number of people who are supposed to use them and they must be accessible at all times. These facilities must have hot and cold water. In communal cells, the ablution facilities must be partitioned off.
- Every inmate must have a separate **bed** and be provided with sufficient bedding depending on the climate. This applies to both cells and correctional centre hospitals.
- Every inmate must be provided with adequate **clothing**.

1.3.2 Separation of certain categories of inmates

- Sentenced offenders must be kept separate from persons awaiting trial or sentence. [S7(2)(a)]
- Male inmates must be kept separate from female inmates. [S7(2)(b)]
- Children must be kept separate from adults and be kept in facilities that are appropriate to their age. [S7(2)(c)]
- No child under the age of 14 years may be detained in a correctional centre [Child Justice Act 75 of 2008, S30 and S 77]
- Inmates may be separated based on their age, health or security risk category. [S7(2)(d)]
- Inmates may also be accommodated in single or communal cells. [S7(2)(e)]
- If the Department has reason to believe that a group of persons awaiting trial or offenders waiting to be sentenced will collude to defeat the ends of justice, they may be separated from each other. [S7(2)(f)]
- With the permission of the Head of the Correctional Centre it is possible to mix sentenced offenders, unsentenced offenders and remand detainees, males and females, and adults and children under the supervision of an official for the purposes of providing development or support services, and for medical treatment. This may, however, never be done with regard to sleeping arrangements. [S7(3)]

NOTE

The detention of children in a correctional centre should always be used as a measure of last resort. This means that all alternatives must have been explored and found not suitable for good reasons.

1.4 Nutrition and meals

The Act and Regulations are very specific in respect of nutrition in order to ensure that inmates' dignity is not negatively affected by the food they receive or the manner in which it is served. [S 8]

- Each inmate must receive sufficient food to promote good health. The Regulations specify the calorie counts and also specify that the diet must provide for a balanced distribution of food from the five major food groups. [R 4]

- The diet must make special provision for children. [R 4]
- When and where possible, the diet must recognize religious and cultural preferences. [S 8(3)]
- The diet and times at which an inmate is fed may be changed upon the instruction of a correctional medical practitioner. [S 8(4)]
- Food must be well prepared. Three meals must be served per day at intervals of no less than 4 1/2 hours and not more than 6 1/2 hours. There may be a break of not longer than 14 hours between the last meal of the day and the first meal of the next day. [S 8(5)]
- Inmates must have access to clean drinking water at all times. [S 8(6)]

SERVING MEALS IN PRISON

It used to be the case that inmates would be locked up at approximately 14:00 after they had been counted because the daytime staff shift comes to an end at 16:00. This meant that they would receive the lunch and dinner meals at the same time. The practice was that inmates would take their supper with them to the cells and eat it later. Breakfast would then be served the next morning between 07:00 and 08:00. In 2005 the Department of Correctional Services started changing this system to ensure that there are sufficient staff in place so that inmates are served supper at an appropriate time. There has, however, been numerous implementation problems with the three separate meal requirement, especially at larger centres.

1.5 Searches

Inmates and their cells may be searched by officials. The power that officials hold in this regard is potentially very wide and it is therefore strictly controlled. Searching the person of an inmate must always be conducted in a manner which invades, as little as possible, the privacy and dignity of the inmate.

1.5.1 Manner of searching

The searching of an inmate may take the form of [S 27(1-2)]:

- a manual search of the clothed body
- a search by technical means (for example, using a metal detector) of the clothed body
- a visual inspection of the naked body
- a search by probing of any bodily orifices
- a search by taking body tissue (e.g. blood) or body excretion (e.g. urine)
- a search by using X-ray or technical devices
- detaining an inmate for the recovery by the normal excretory process of an object that has been swallowed.

1.5.2 Conditions applying to the bodily searches

Conditions applying to the bodily searches of inmates[S 27(3)]:

- all bodily searches must be authorised by the Head of the Correctional Centre.
- the correctional official conducting the search as well as other officials present during the search must be of the same gender as the inmate.

- all bodily searches must be conducted in private.
- only a registered nurse, correctional medical practitioner or medical practitioner may conduct or must supervise searches involving taking body tissue, using X-ray or technical devices, and detaining an inmate for the recovery of objects by the normal excretory process.

1.6 Hygiene and exercise

Correctional centres present a number of health risks because large numbers of people are often kept in confined spaces for long periods of time. Therefore:

- every inmate has the responsibility to keep himself, his or her bedding and cell clean and tidy. The Department of Correctional Services must provide the inmates with the means to do this. For example, inmates must be provided with brooms, cleaning materials etc. [S 9]
- every inmate is entitled to a minimum of one hour of exercise per day. This exercise should be done in open air unless the weather does not allow this. [S 11]
- inmates who are pregnant, under medical treatment, or who complain of being sick or injured may be excused from exercise if certified by a correctional medical practitioner. [R 6]

1.7 Health care

Health care in correctional centres is a contentious issue and it is therefore not surprising that a large number of the complaints recorded by the Judicial Inspectorate for Correctional Services relate to health care issues. Whilst tuberculosis (TB) has for long been associated with correctional centres, HIV/Aids have brought a new dimension to the correctional health care debate. The combination of these two diseases in the correctional centre set-up is extremely dangerous. The overall purpose of policy pertaining to health care in prisons is to ensure that inmates lead a healthy life. They therefore have a number of rights regarding health care, as described below.

PRIMARY HEALTH CARE

The principles of primary health care are described in the Department of Health publication “*The Primary Health Care Package for South Africa - a set of norms and standards*” and is available on the Department of Health website at <https://www.westerncape.gov.za/general-publication/primary-health-care-package-sa-set-norms-and-standards>

1.7.1 General health care rights

- Inmates have the right to adequate health care based on the principles of primary health care. [S 12(1)]
 - This means that at least the same level of health care must be available to inmates as to members of the community. [R 7(1-2)]
 - Inmates may consult their own medical practitioner at their own cost; the Department will not carry the cost in such cases. [S 12(3)]
- Inmates have the right to adequate medical care [S12(2)]
 - The services of a medical doctor and a dentist must be available at every correctional centre. [R7(2)]

- A registered nurse must attend to sick inmates at least once a day. [R7(4)]
- Inmates are not entitled to cosmetic surgery at state expense. [S 12(2)]
- Medical care must be provided by suitably qualified persons. [S 12(2)]
- No inmate may, even with his or her consent, be subjected to any medical, scientific experimentation or research. [R 7(7)]
 - An inmate may only participate in clinical trials with the permission of the National Commissioner [R 7(7)]
 - A request by an inmate to donate or receive an organ or tissue must be approved by the National Commissioner. [R 7(8)]
- No inmate may be compelled to undergo medical intervention or treatment. [S 12(4)(b)]
 - In the event of an emergency or if the inmate cannot give consent to medical treatment or an intervention, a medical practitioner may proceed with treatment if he or she believes that the inmate's life is in danger if treatment is not performed.

1.7.2 Consent for surgery

No surgery may be performed on an inmate without his or her consent and if the inmate is a child, then consent from his or her legal guardian is required. [S 12(4)(c)]

- In the event of an emergency and the inmate is not able to give consent or it is not possible or will take too long to get the consent of the legal guardian in the case of a child, surgery may be performed without consent. [S 12(4)(b)]

1.7.3 Reproductive health

An inmate may not be sterilized at state expense unless this is required for medical reasons and so certified by a correctional medical practitioner. [R7(9)(a)]

- A request from any person to receive any form of artificial insemination from an inmate must be approved by the National Commissioner [R7(8)(b)]
- No inmate may be artificially inseminated. [R7(8)(b)]
- The National Commissioner may approve an abortion at State expense only in terms of the Termination of Pregnancy Act (92 of 1996). [R7(9)(b)]

1.7.4 Medical treatment after release

A released inmate is entitled to receive treatment for an injury sustained prior to release until that injury is healed. The released inmate may be required to report to a correctional centre to receive such treatment. [R7(12)]

1.7.5 Mental health

- An offender who is certified in terms of the Mental Health Care Act (17 of 2002) may not be detained in a correctional centre and must be moved to an appropriate health facility. [R7(13)]
 - Before the transfer of such a person, he or she must be placed under the special care of a correctional medical practitioner.

- A remand detainee who suffers from a mental illness and is detained pending the decision of a judge regarding his or her capacity to understand court proceedings or his or her mental responsibility for the crime allegedly committed must as soon as possible be transferred to an appropriate mental health facility. [R7(13)]

1.8 Contact with the community

Maintaining contact with loved ones, friends and the outside world is vitally important to preparing inmates for their release. It can probably be concluded that the more contact there is, the better it is for the inmate and for the overall management of the correctional centre. Contact and communication with the outside world give hope and reason to look forward to the release date. It gives inmates something else to focus on than the daily life inside the correctional centre.

1.8.1 General rights with regard to contact

- The Department of Correctional Services has a duty to encourage inmates to maintain contact with the community and remain informed of current affairs in society. [S13(1)]
- Upon admission to a correctional centre or when being transferred to another correctional centre, an inmate must notify his next of kin (or other relatives in they are not available) of his or her whereabouts [S 13(6)]
 - If an inmate does not wish to notify his or her next kin or have them notified, he or she must inform the Head of the Correctional Centre of this [S13(6)(a)(ii)]
 - An inmate who is a child may not refuse that his or her next of kin be informed of his or her whereabouts (S13(6)(c)(iii))
 - If a spouse or family member asks the Department of Correctional Services about the whereabouts of an inmate, the Department of Correctional Services must supply this information, after having obtained the consent of the inmate. [S 13(6)(d)]
- Every inmate has the right to visits totalling not less than one hour per month. [S 13(3)]
- The Department of Correctional Services must give all inmates the opportunity to communicate with and being visited by their spouses, partners, next of kin, religious counsellors and chosen medical practitioner. [S 13(4)]
 - If an inmate is not able to receive visits from his or her spouse or next of kin, he or she may receive visits from any other person.

1.8.2 Foreign nationals

If an inmate is a foreign national, he or she must be allowed to communicate with his or her diplomatic representative to South Africa. If his or her country of origin is not represented in South Africa, then he or she may communicate with any other international organisation whose task it is to protect the interests of such persons. [S 13(5)]

1.8.3 Search and monitoring of contact and parcels

Inmates may receive letters and packages from the outside and officials are allowed to inspect the contents thereof to ensure that the contents do not pose a threat to security or are in contravention of rehabilitation objectives. Under exceptional circumstances the Head of the Correctional Centre may authorise an official (in writing) to intercept communications between

an inmate and a member of the public if the Head of the Correctional Centre has reason to believe that the communication contains or will contain evidence of a threat to the security of the correctional centre, the safety of a person(s), and/or a criminal office. Under these circumstances the official is permitted to open and read letters, listen in on conversations and record such conversations. Inmates must as soon as is reasonably possible be informed of the interception that took place. [R8(4) - R8(5)]

1.9 Religion, belief and opinion

The Bill of Rights (see s 15 of the Constitution) protects the freedom of religion, belief and opinion. Inmates enjoy the same protection.

- Inmates are allowed the freedom of conscience, religion, thought, belief and opinion. [S14(1)]
- Inmates may attend religious services and meetings held in a correctional centre freely and voluntarily. This means that nobody may be forced to attend a religious service or participate in religious practices. [S14(2 and 4)]
- Inmates are allowed to have literature of a religious nature in their possession. [S14(2)]
- Places of worship must be provided as far as is possible at each correctional centre for all religious denominations. [S14(3)]
- The diet of inmates must, as far as is reasonably practical, take into account religious requirements. [S 8(3)]
- Contact with religious counsellors is guaranteed and encouraged in a number of instances with reference to contact with the community [S13 (2)] and children in correctional centres. [S19 (2)]
- The assessment of sentenced offenders, as part of developing the sentence plan, must take account of religious needs. [S38(1)(e)]
- Children placed under community corrections should have access to a range of services, including religious care. [S69(2)]
- The Correctional Services Act and Regulations provide for the regulation of wearing religious attire as prescribed by Order. [R5(2)]

1.10 Deaths in correctional centres

When inmates die in custody, this should be treated with the appropriate sensitivity and thoroughness. It is important that all deaths which occur in correctional centres are adequately investigated, explained and that concerns by family members, civil society organisations and other stakeholders are addressed.

The Department of Correctional Services distinguishes between “Natural” and “Unnatural Deaths”. Natural deaths refer to deaths as a result of natural causes such as ill health. Unnatural deaths refer to death as a result of an accident, suicide or murder.

The following applies at all times when an inmate dies in custody:

- any death of an inmate in which a medical practitioner cannot specify that it was due to natural causes must be investigated in terms of the Inquests Act (58 of 1959). The Head of the Correctional Centre must report such a death accordingly. [S 15(1)]

- all deaths (natural and unnatural) must be properly recorded by the Head of the Correctional Centre and reported to the Office of the Inspecting Judge [S 15(2)]
- the Head of the Correctional Centre must inform the next of kin of all inmates who have died in custody. [S 15(3)]
- a deceased inmate must be buried by the Head of the Correctional Centre in the magisterial district where he or she was detained, but the National Commissioner may, upon request, allow the next of kin to remove the body and bury the deceased at their own cost. Should the next of kin wish to bury the deceased in another magisterial district, this can be done with the permission of the National Commissioner. The costs of transport will be covered by the State but the costs of burial are for the account of the person who submitted the request. [R9]

1.11 Development and support services, recreational activities

The Department of Correctional Services has a duty to “*promote the social responsibility and human development of all sentenced offenders*” [S 2(c)]. To achieve this, the Department of Correctional Services may provide correction, development and care programmes and services even when not required to do so by the Act. This issue is described further under “Sentenced Offenders” in Chapter 5.

- Social work services must be rendered by a registered social worker to sentenced offenders and persons under community corrections who have a need for such services. [R10(1)(a)]
 - If there exists a need for one of these services, and there is no such service available at the correctional centre, the Head of the Correctional Centre (or Head of Community Corrections) must take the necessary steps to ensure that the needed service is made available as soon as possible. [R10(1)(b)]
- Educational services must be rendered by qualified educators registered with the South African Council of Educators to sentenced offenders who have a need for such services in accordance with education and training programmes. [R10(2)(a)]
 - If a qualified educator is not available, then the National Commissioner may appoint a temporary educator or volunteer with appropriate qualifications, as long as they have the necessary qualifications and are registered. [R10(2)(c)]
 - All sentenced offenders who have not obtained Grade 9 and are younger than 25 years old must attend educational programmes until they reach the age of 25, or Grade 9, or adult education and training level 4 (whichever occurs first). The Department of Correctional Services must make the necessary resources available to enable offenders to attend such programmes, within its available resources. [R10(2)(f)]
- Psychological services must be rendered by registered psychologists or psychometrics who are trained as counsellors to all sentenced offenders and persons under community corrections who have a need for such services. [R10(3)(a)]
 - If there is a need for such services but a psychologist or psychometric is not available at a particular centre, the Head of the Correctional Centre must take the necessary steps to ensure that such services are available. [R10(3)(b)]
 - An inmate can make use of his or her own private psychologist, at his or her own expense. [R10(3)(b)]

- If the Department of Correctional Services does not provide correction, development and care programmes and services, it must inform inmates of services available from other sources and assist them to make contact with these agencies, for example a non-governmental organisation. [S 16]
- The Department of Correctional Services must take into account in its planning, operations and infrastructure the needs of disabled inmates. Similarly, the Department of Correctional Services must be sensitive to the gender of all inmates in its planning, policy and infrastructure. [S 16]
- All inmates (sentenced offenders and remand detainees) must have access to recreational activities, for their mental and physical well-being. [R11]

NOTE TO LEGAL PRACTITIONERS

- You must show proof of identity and status as legal practitioner to gain access to the inmate.
- Consultations must take place between 0800 and 1530 unless the Head of the Correctional Centre has given permission otherwise in advance.
- Consultations must take place within eyesight but out of earshot of officials.
- Legal practitioners may use their own interpreter and typist when interviewing an inmate.

1.12 Access to legal advice

The right to legal representation is guaranteed in Sections 35(2)(c) and 35(3)(f) of the Bill of Rights. Inmates have the following rights with regard to legal representation:

- Every inmate may consult a legal practitioner of his or her choice on any legal matter at his or her own expense. [S17(1)]
- All consultations between an inmate and a legal practitioner are confidential. [S17(2)]
 - Documents and correspondence between an inmate and his or her legal practitioner may not be censored.
 - Documents and correspondence between an inmate and his or her legal practitioner may be inspected only to determine if they do indeed relate to legal matters.
- The Minister may impose certain restrictions to ensure the safe custody of inmates but this may not affect the confidentiality of consultations. [S17(2)]
- The Head of the Correctional Centre must take the necessary steps to ensure that inmates exercise the right to legal advice and representation. This means that especially for remand detainees, there must be the opportunities and facilities to prepare their defence. [S17(4)]
- If a particular legal practitioner is refused access to the inmate, the inmate may request to consult with another legal practitioner. [R12(2)(e)]

1.13 Reading Material

The right to reading material is ensured through S 35(2)(e) of the Constitution. Reading material refers to any publication, video, audio material, film or computer programme. Reading material also presents a potential security risk or may be of such a nature that it undermines the objectives of social responsibility and successful rehabilitation. The Act and Regulations therefore attempt to address this issue in a fair amount of detail: [R13]

- Every correctional centre should have a library. [R 13]
- Every inmate must be allowed to access available reading material of his or her choice. [S18(1)]
- Reading material may be borrowed from the library of a correctional centre or may be sent to inmates from outside. This may come from friends or relatives, and may also be a subscription to a magazine or newspaper. [S 18(2)]
- Access to reading material that pose a security threat or are not conducive to rehabilitation will not be allowed. [S18(1)]
- Officials may inspect an envelope or package sent to an inmate to determine if the contents thereof (reading material) do not pose a security threat or are not conducive to rehabilitation, but the official may not read the contents of the envelope or package unless this has been authorised by the Head of the Correctional Centre. [R 13]
- Reading material that would undermine a person's sense of personal dignity by demeaning the person or causing personal humiliation, or embarrassment to a person, on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth, would be considered inappropriate in terms of promoting rehabilitation. [R13(4)]

1.14 Complaints and requests

In a correctional centre, officials hold total control over the inmates. The right to lodge a complaint and make requests are therefore important to ensure that inmates are not exploited and that their complaints are addressed and reasonable requests adhered to. The emphasis is placed on setting up a procedure to ensure that complaints and requests are dealt with effectively and efficiently. This does not mean that the correctional centre management must agree to every complaint and request, but rather that each complaint and request be dealt with in a manner that is prompt, thorough, respectful, and consistent. Communicating with inmates to explain decisions properly is a key element in dealing effectively with complaints and requests, especially if the decision was not in favour of the complainant.

- Every inmate has the right to submit a request or lay a complaint on a daily basis to the Head of the Correctional Centre or an authorised official. [S 21(1)] An inmate holds this right from the moment he or she arrives at a correctional centre and prior to being admitted. [S 6(4)]
- All complaints and requests must be duly recorded by the official taking down the complaint or request. Complaints and requests are recorded in the G 365 Register.

- Complaints and requests must be dealt with promptly. There is no rule about what is prompt and this will need to be assessed on a case-by-case basis. [S 21(2)(a)]
- The inmate must be informed of the outcome of the request or complaint. [S 21(2)(b)]
- If an inmate makes a complaint regarding an alleged assault (by another inmate or by an official), he or she must immediately undergo a medical examination and receive the treatment prescribed by the correctional medical practitioner. [S 21(2)(c)]
- If an inmate is not satisfied with the response on a complaint or request, he or she may inform the Head of the Correctional Centre of this as well as the reasons for dissatisfaction. The Head of the Correctional Centre must refer the matter to the National Commissioner. The response from the National Commissioner must be communicated to the inmate. [S 21(3) and 21(4)]
- If an inmate is not satisfied with the response received from the National Commissioner, he or she may lodge a complaint with the Independent Correctional Centre Visitor (ICCV). [S 21(5)] An inmate may also approach an ICCV directly without first lodging a complaint internally.

1.15 Discipline

The disciplinary system in a correctional centre is there to protect the safety of both staff and inmates. For this reason good order and security must be maintained. The Correctional Services Act instructs the Department of Correctional Services to do this in a firm manner but no more than what is required. It is therefore not necessary to impose or apply measures in a manner that is unduly harsh. [S 22]

1.15.1 Disciplinary transgressions

The disciplinary system should be seen separate from, but connected to the criminal justice system.

Disciplinary action may be taken against an inmate when [S 22(1)]:

- He or she is convicted of an offence committed whilst incarcerated [S 22(2)]
- He or she is being prosecuted for another offence [S 22(3)]
- He or she commits, or conspires to commit, any of the following infringements [S 23]:
 - replies dishonestly to legitimate questions put by a correctional official or other person employed in a correctional centre;
 - disobeys a lawful command or order by a correctional official or fails to comply with any regulation or order;
 - is abusive to any person;
 - fails or refuses to perform any labour or other duty imposed or authorized by the Act;
 - is careless or negligent with regard to any labour or duty imposed or authorised by the Act;
 - uses insulting, obscene or threatening language;
 - conducts himself or herself indecently by word, act or gesture;
 - commits an assault;

- communicates with any person at a time when or a place where it is prohibited;
- makes unnecessary noise or causes a nuisance;
- without permission leaves the cell or other assigned place;
- in any manner defaces or damages any part of the correctional centre or any article therein or any state property;
- possesses an unauthorised article;
- commits theft;
- creates or participates in a disturbance or foments a mutiny or engages in any other activity that is likely to jeopardise the security or order of a correctional centre;
- professes to be a member of a gang or takes part in gang activities;
- makes a dishonest accusation against a correctional official or fellow inmate;
- conceals, destroys, alters, defaces or disposes of an identification card, document or any issued article;
- commits an act with the intention of endangering his or her life, injuring his or her health or impairing his or her ability to work; or
- attempts to do anything referred to in the above.

1.15.2 Types of disciplinary hearings

Two types of disciplinary hearings are possible and this depends on the person conducting the hearing: [S 24]

- A Head of Correctional Centre or an authorised official
- A disciplinary official

A hearing conducted before a Head of Correctional Centre or authorised official is more informal and without legal representation. The hearing before a disciplinary official is more formal and legal representation is allowed at the expense of the inmate. The exact procedures on the types of hearings are explained in Regulation 14(1-2).

- The disciplinary hearing must be conducted as soon as possible, and if possible within 14 days from the date that the accused inmate was informed of the charge against him or her. This notification may not be less than 7 days before the hearing.
- At every disciplinary hearing conducted by a disciplinary official, a correctional official, herein called the **case presenter**, will be appointed to arrange and co-ordinate the proceedings.
- At such a hearing the rules of the law of evidence will apply and evidence to prove or disprove any fact in issue, may be submitted in writing or verbally.
- The disciplinary official must keep a full record of the proceedings, and it must be signed by him or her on conclusion of the proceedings.
- Every person testifying in such a hearing must take the prescribed oath or affirmation.
- The case presenter and the accused inmate or the legal representative of the inmate, if any, may address the disciplinary official on the merits of the case.
- The disciplinary official must make a finding of guilty or not guilty on a balance of probabilities.

- If the disciplinary official makes a finding of guilty, the case presenter and the accused inmate or the legal practitioner, if any, may address him or her on the appropriate penalty.
- The disciplinary official may decide who will be allowed to attend the hearing.
- If a disciplinary official is of the opinion that the accused inmate is not mentally capable of understanding the proceedings he or she must refer the accused inmate to a psychologist who must report on the ability of the inmate to stand the hearing.
- The case presenter must make arrangements for the attendance at the disciplinary hearing of the witnesses and the accused inmate, including witnesses the accused inmate may request to give evidence.
- The case presenter may issue a subpoena, on the prescribed form, to any person to attend the hearing, to give evidence or produce any document or article in support of the charge or in defence of the accused inmate.
 - A subpoena served on a person required to give evidence or to produce any book, record, document or article at the hearing must be signed by the disciplinary official and the service thereof will be subject to the rules of court applicable to the service of such process in a summary trial on a criminal charge in a magistrate's court.
 - Any person summoned as a witness at a disciplinary hearing to give evidence or to produce any document or article, who fails to attend such hearing or to produce any document or article or to answer any question put to him or her is guilty of an offence and is liable for a period of imprisonment not exceeding 6 months or to such imprisonment without the option of a fine or both.
 - If a witness makes a false statement under oath or affirmation knowing the same to be false, he or she is guilty of an offence and is liable on conviction for a period of imprisonment not exceeding 6 months or to such imprisonment without the option of a fine or both.

1.15.3 Punishment that may be imposed

A hearing conducted by a Head of the Correctional Centre or authorised official may impose the following punishments, which may be suspended: [S 24(3)]

- a reprimand;
- a loss of gratuity for a period not exceeding one month;
- restriction of amenities for a period not exceeding seven days.

A hearing conducted by a disciplinary official may impose the following punishments, which may be suspended: [S 24(4)]

- a reprimand;
- a loss of gratuity for a period not exceeding two months;

Amenities: means recreational and other activities, diversions or privileges which are granted to inmates in addition to what they are entitled to as of right and in terms of this Act, and includes (a) exercise; (b) contact with the community; (c) reading material; (d) recreation; and (e) incentive schemes. **Gratuity:** Sentenced offenders who perform work inside a correctional centre receive in most instances a small payment known as "gratuity" (Afr: gratifikasie). The purpose of a gratuity is to encourage and motivate inmates towards positive behaviour, diligence, conscientiousness and adaptation.

- restriction of amenities not exceeding 42 days;
- in the case of serious or repeated infringements, segregation (see below) in order to undergo specific programmes aimed at correcting his or her behaviour, with an additional loss of gratuity and restriction of amenities.
- An inmate's diet may not be changed or reduced as a form of punishment.
- Disciplinary measures taken against sentenced offenders shall have the particular aim of promoting self-respect and responsibility on the part of such offenders. [S37(4)]
- An inmate, who has been found guilty and received any of the punishments listed above, except for segregation in order to partake in specific correctional programmes, may request that the case be referred to the National Commissioner for review. The National Commissioner may change the finding and change the punishment. [S24(7)]
- No inmate may be used to administer or implement disciplinary measures. [S 22(4)]

1.16 Segregation

The segregation of an inmate from the general population of the correctional centre is a potential risk area with regard to human rights violations. Whilst there may at times be good reasons for this measure to be taken, it needs to be carefully regulated and monitored.

1.16.1 Reasons for the use of segregation

Segregation means that an inmate is kept in a single cell for part of the day or the whole day. The segregation of an inmate from the general population can happen for different reasons, these are: [S 30(1)]

- An inmate may request (in writing) to be placed separately from the general population in a single cell. The inmate may withdraw this request at any time.
- To give effect to some of the penalties outlined above: restriction of amenities or in the case of serious or repeated infringements, in order to undergo specific programmes aimed at correcting an inmate's behaviour or the penalty of segregation. Segregation may only be used to the extent necessary to achieve these objectives. Very importantly, segregation may never be used as a form of punishment. It can only be used to give effect to restriction of amenities or to correct an inmate's behaviour in case of serious or repeated infringements of the rules of a correctional centre.
- On the advice of a correctional medical practitioner, for example when an inmate or group of inmates has contracted a serious and contagious disease.
- When an inmate displays violent behaviour and is a threat to other inmates and officials.
- When an inmate has been threatened with violence and is thus segregated for his or her own safety.
- When an inmate has been recaptured after escape and there is a real risk that he or she will attempt to escape again.
- When the SA Police Service request this in the interests of the administration of justice, for example, a remand detainee may be intimidated by alleged accomplices also detained at the same correctional centre.

When an inmate is segregated without having requested this, special control measures must be put in place: [S 30(2)]

- He or she must be visited by an official every four hours and at least once per day by the Head of the Correctional Centre;
- He or she must have his or her health assessed by a nurse, psychologist or correctional medical practitioner at least once per day. Segregation must be discontinued when a nurse, psychologist or correctional medical practitioner determines that it poses a risk to the health of the inmate.

1.16.2 Time limits to segregation

The following time limits apply to the segregation of inmates [S 30(4-7)]

- Segregation must be for the shortest possible period necessary and may not exceed 7 days unless the segregation is upon own request of the inmate.
- Segregation may be extended with the permission of the National Commissioner for a period not exceeding 30 days, provided that a correctional medical practitioner or psychologist is satisfied that this will not be harmful to the health of the inmate. However, segregation cannot be extended by the National Commissioner if it was requested by the inmate (in that case, the inmate decide when to end segregation) and if it was the result of a disciplinary process.
- All instances of segregation and extended segregation must be reported by the Head of the Correctional Centre to the National Commissioner and the Office of the Inspecting Judge.
- An inmate in segregation has the right to appeal the decision to be segregated to the Inspecting Judge for Correctional Services (contact details are contained at the end of the booklet). The Inspecting Judge must make a decision on the appeal within 72 hours.

Summary of cases of segregation and time-limits

Reason for segregation	Officials can segregate inmate for 7 days maximum	It can be extended by another 30 days by the National Commissioner	Inmate can appeal the decision to be segregated to the Inspecting Judge	Inmate must be visited by an official every four hours AND by the Head of Centre a day	Inmate must be seen by a nurse, psychologist or correctional medical practitioner once a day
Inmate requested to be segregated from the rest of the inmates, in writing	No, inmate can request that segregation be put to an end at any time	No	No	No	No
Inmate was disciplined. The sanction is either: <ul style="list-style-type: none"> • a restriction of amenities, which must be executed in segregation • segregation in order to correct behaviour, because the inmate committed serious and repeated infringements to the rules of the correctional centre 	Yes	No	Yes	Yes	Yes
Inmate presents a serious health risk to the other inmates. This has been recommended by a correctional medical practitioner	Yes	Yes	Yes	Yes	Yes
Inmate was violent. This is for the safety of other inmates and officials.	Yes	Yes	Yes	Yes	Yes
Inmate was threatened with violence. This is for inmate's own safety.	Yes	Yes	Yes	Yes	Yes
Inmate has escaped and there is a real risk that he/ she will escape again.	Yes	Yes	Yes	Yes	Yes
In the interests of justice, requested by SAPS (for example, inmate is a remand detainee and there is a risk of intimidation by other inmates)	Yes	Yes	Yes	Yes	Yes

1.17 Mechanical restraints

1.17.1 Reasons for the use of mechanical restraints

Mechanical restraints refer to a device which limits or prevents freedom of physical movement and includes objects such as handcuffs, leg irons and belly-chains. These items can be used to inflict harm, to attack the dignity of inmates and ultimately, to torture inmates. There are circumstances under which the use of mechanical restraints are needed and justified. The use of permitted mechanical restraints is restricted to the following: [S 31]

- It is necessary for the safety of the inmate or any other person;
- To prevent the damage of property;
- There is a reasonable suspicion that the inmate may escape;
- A court requests the use of mechanical restraints.

1.17.2 Prohibited uses of mechanical restraints

Mechanical restraints may not be used on an inmate:

- as a form of punishment; [S 31(6)]
- appearing in court, unless instructed otherwise by the court; [S 31(2)]
- in segregation, unless authorised by the Head of the Correctional Centre, and then for a period not exceeding seven days. This may be extended to thirty days with permission from the National Commissioner, subject to approval from a correctional medical practitioner; [S 31(3)]
- in addition to hand-cuffs and leg-irons unless he or she is outside of their cell. [S 31(7)]

1.17.3 Additional requirements

All cases of the use of mechanical restraints must be reported immediately by the Head of the Correctional Centre to the National Commissioner and the Office of the Inspecting Judge. [S 31(3)]

An inmate has the right to appeal a decision to be put under mechanical restraints to the Inspecting Judge for Correctional Services (contact details are contained at the end of the booklet). The Inspecting Judge must make a decision on the appeal within 72 hours. [S 31(5)]

1.18 The use of force

The authority to exercise physical force over inmates can place them at tremendous risk of torture and ill treatment. The behaviour of an inmate can never be used as a justification for torture or ill-treatment. Force can therefore only be used to restrain an inmate but never to punish an inmate. The use of force is therefore aimed at preventing an inmate from doing something (for example harming himself or others), using the least required amount of force necessary.

1.18.1 Prohibition on the use of force

The Act states that an official may not use force against an inmate, unless it is necessary for: [S 32(1)(c)]

- self-defence;

- the defence of another person;
- preventing an inmate from escaping;
- the protection of property.

Only the minimum amount of force may be used to achieve the objective, namely self-defence, the defence of another person, preventing escape, or the protection of property. At all times, the emphasis must be on restraining the inmate(s) and stabilising the situation. [S 32(1)(c)]

1.18.2 Permission to use force

Force may only be used with the permission of the Head of the Correctional Centre, unless it is an emergency and the official believes that he or she would obtain the permission of the Head of the Correctional Centre and that the use of force is necessary before permission is obtained. [S 32(2)]

1.18.3 After force was used

If force was used on an inmate(s), the inmate(s) concerned must undergo a medical examination and receive the appropriate treatment as prescribed by the correctional medical practitioner. [S 32(5)]

When force is used without obtaining prior permission from the Head of Correctional Centre, the official must notify the Head of the Correctional Centre as soon as possible. [S 32(3)]

All instances where force was used must be reported immediately to the Office of the Inspecting Judge. This includes any form of force, e.g. use of physical force, tear gas and firearms. [S 32(6)]

1.18.4 Use of non-lethal incapacitating devices and fire-arms

The use of non-lethal incapacitating devices (for example tear gas) and fire-arms is strictly regulated by the Act in Sections 33 and 34, and Regulations 20 and 21. Whenever these devices were used this must be reported in writing as soon as possible to the Head of the Correctional Centre.

1.19 Prohibited items

Inmates may receive letters and packages from the outside but there are restrictions in this regard. These are dealt with separately under sentenced offenders and remand detainees. However, it is prohibited in all instances to do any of the below without lawful authorisation: [S 119]

- supply, give or facilitate that inmates, in a correctional centre or any other place where inmates are, receive any document, intoxicating liquor, dagga, drug, opiate, money, or any other article that may be sold or used in a correctional centre.
- bring out of any correctional centre from any inmate any document or other article.

1.20 Offences under the Act

The following are criminal offences listed under the Correctional Services Act. Anyone who allegedly commits any of these offences risks facing prosecution and trial in a court of law.

The description below is a summary and the full text of the Act should be consulted for the detail, such as conditions set and punishments involved if a person is convicted of any of the offences listed below:

- Interference with a correctional or custody official in the performance of his or her duties. [S113]
- Interference with community corrections conditions. [S114]
- Aiding escapes, which includes: [S115]
 - conspiring with or encouraging an inmate to escape;
 - assisting an inmate in escaping or attempting to escape;
 - supplying or attempting to supply an inmate with the means to escape, for example documents, cell phone or firearm;
 - relaying any document, or article or causing it to be relayed into or out of a correctional centre or a place where inmates may be in custody;
 - harbouring or concealing or assisting in harbouring or concealing an escaped inmate.
- The unauthorised removal of an inmate from a correctional centre. [S116]
- Escaping and absconding [S117] Any person who-
 - escapes from custody;
 - conspires to assist or promote an escape;
 - possesses a document or article with intent to procure his or her own escape or that of another inmate;
 - collaborates with a correctional or custody official or any other person, to leave the correctional centre without lawful authority or under false pretences; or
 - is subject to community corrections and where he or she absconds and thereby avoids being monitored, is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding ten years or to incarceration without the option of a fine or both.
- Supplying certain articles to inmates [S119]
 - No person may without lawful authority supply, convey or cause to be supplied or conveyed to any inmate, or hide or place for his or her use any document, intoxicating liquor, dagga, drug, opiate, money, or any other article.
- Inmates receiving or sending articles [S120]
 - Bribing a correctional official or contractor to the Department of Correctional Services;
 - Receiving, dealing in and/or distributing any document, intoxicating liquor, dagga, drug, opiate, money or any other article to be sent or conveyed into any correctional centre for an inmate's own use or on his or her behalf; or
 - Giving to any correctional or custody official or any other person any document or other article for the purpose of being hidden or placed by such person for eventual use by or delivery to an inmate or other person.
- Selling or supplying articles to inmates [S 121]
 - No correctional official or custody official and no person acting for or employed by him or her shall directly or indirectly sell or supply or receive, any benefit or advantage from the sale or supply of any article to or for the use of any inmate or for the use of the Department.

- Unauthorised entry at correctional centres and communication or interference with inmates [S 122]
 - Unauthorised entry;
 - Refusal to leave when so instructed;
 - Unauthorised communication with an inmate;
 - Interference with inmates or a group of inmates;
 - Possession of or publishes a sketch, diagram or photograph of a correctional centre or part thereof or any security system relating to the detention of inmates in order to undermine the security or secure detention of the inmates.
- Prohibited publications [S 123]
 - A description of life inside the correctional centre that identifies individual inmates without their consent;
 - An account of a crime that is not a court record for which a person is currently serving a sentence;
 - An offender serving a sentence or person under corrections cannot earn any money as a result of publishing an account of his or her experiences relating to the reasons for serving the sentence;
- Unauthorised wearing of departmental dress or insignia or prescribed sentenced offender dress [S 124]
- Masquerading as an official [S125]
- False representations [S 126]
 - Using false information to obtain an appointment as an official.
- Unauthorised disclosure of information [S 127]
- Unauthorised access to or modification of computer material [S 128]
- Falsifying identification [S128A]
 - A remand detainee who conspires with or intimidates another remand detainee to exchange identities or to defeat the ends of justice, or successfully do so.
- Indirect complicity [S 129]
 - Any act or omission that indirectly contributes to any of the above offences

CHAPTER 2

THE RIGHTS OF SPECIFIC CATEGORIES OF INMATES



2.1 Remand detainees and unsentenced offenders

A remand detainee is an inmate who is detained until his or her trial is finalised (either by a conviction or an acquittal) and is not already serving another sentence. This includes an unsentenced offender, who has been convicted of a crime but not yet sentenced. Remand detainees are subject to a different regime than sentenced offenders in the correctional system. They have more and wider freedoms. The rights of remand detainees may, however, be restricted for the purposes of maintaining good order and safety in the correctional centre, as well as for disciplinary purposes. [S46]

2.1.1 Types of remand detainees

The categories of “remand detainee” can include a number of sub-categories, reflecting where their case is in the criminal justice process. These are:

Remand detainee

- After first appearance and detained for trial
- Detained for psychiatric observation and awaiting placement at a psychiatric facility
- Children awaiting placement at a secure care facility to await trial there
- Foreign nationals awaiting transfer to the repatriation centre
- Unsented offender: convicted but not yet sentenced
- Children awaiting placement at a child and youth care centre. Such a child must be transferred to the child and youth care centre as soon as possible but within 30 days of sentencing. [Child Justice Act S 76(4(a))]

2.1.2 The rights of remand detainees

The living conditions and style of incarceration must as far as possible approximate that of life outside of the correctional centre because these inmates have in the majority of cases not been convicted of any crime (save for the unsentenced offenders). Section 35(3)(h) of our Constitution provides for the right to be presumed innocent until proven guilty. Therefore, remand detainees (save for unsentenced offenders) are still innocent under our Constitution, which justifies the preferential regime they are entitled to.

- **Food and drink:** Remand detainees may receive drinks and freshly prepared food from the outside during official visiting hours, but only if it is wrapped or sealed, and only to be consumed at the following meal. Canned food is prohibited. Designated officials are allowed to check and taste the food to ensure it is not contaminated. [S 47, 48] [R26A]

- **Clothing:** Remand detainees must, upon admission, be provided with a uniform that is different from that of the sentenced offenders. When appearing in court, remand detainees must wear civilian clothes [R 26C]
- **Visitors and communication:** Remand detainees may receive visitors, make telephone calls and receive letters without restriction but subject to practical arrangements at a correctional centre. *The Act provides for restrictions to be laid down by regulation, but this does not appear to have been done to date.* [S 49]
- **Legal representation:** See above at Section 1.12 “Access to legal advice”
- **Internal discipline:** The disciplinary system as described in the above applies to all inmates. Amenities may be restricted by the Order, if the restriction is necessary for the maintenance of security and good order. [S46(2)] [R26B]
- **Work and labour:** Remand detainees are required to maintain the cleanliness of their cells and other areas that they occupy, as well as their personal hygiene. They may also be permitted to perform other labour. However, the Regulations do not explain this any further. [R 26E]
- **Education and other services:** Remand detainees are not entitled to rehabilitation, development or educational services provided by the Department of Correctional Services. There is, however, one exception. If a remand detainee is of compulsory school-going age (15 years and younger and/or has not attained Grade 9), he or she must have access to and attend educational programmes.
- **Health:** Remand detainees who are pregnant, have a physical disability, have a mental illness or are elderly can access specific care. Most of these categories are outlined elsewhere in this guide. [S49A, 49B, 49C, 49D] A “mental illness” means a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner authorised to make such diagnosis (‘Definitions’ Mental Health Care Act 17 of 2002).
- **Terminally ill or severely incapacitated remand detainees:** See section 2.4 below.
- **Release to the police:** Remand detainees can be transferred to the custody of the SAPS for a maximum period of seven days for the purposes of further investigation. That transfer, or “release”, must be authorised by the National Commissioner. Also, a remand detainee must return to a correctional facility at the latest 48 hours before appearing in court, if he or she was in police custody for investigation at the same time as a scheduled court appearance. [S49F] [R26H]
- **Judicial oversight over long periods of detention:** The 2012 amendments introduced two measures to ensure that other criminal justice actors (namely the National Prosecution Authority and the courts) are aware of remand detainees who are detainees for a long period of time.
 - Firstly, the Head of Centre must notify the Director of Public Prosecutions, every six months, of all remand detainees who have been detained for six months or more. [S49G(2)]
 - Secondly, if a remand detainee has been detained for two years and did not appear before a court in the three months prior to the expiration of the two-year period, where the court considered the remand detainee’s continued detention, then the Head of

Centre must refer the remand detainee to the relevant court for it to decide on the continued detention or release on conditions of the remand detainee. If the remand detainee continues to be detained after this court appearance, the Head of Centre must refer the case back to the court on a yearly basis. [S49G(1), (3) and (4)] If the remand detainee is detained on more than one warrant, the calculation must be done separately for each warrant. [R26I(2) and (3)] This provision is mainly aimed at avoiding that remand detainees are “lost in the system”.

2.2 Women

In three instances do women receive special attention in the legislation.

- The first is that that male and female inmates must at all times be detained separately. [S7(2)(b)].
- The second makes provision for female inmates to be admitted with their young children [S20]. A child who is admitted with his or her mother in this manner may remain with her until the age of two years. During this period, the Department of Correctional Services is responsible for the food, clothing and health care as well as the availability of facilities to assist in the sound development of the child. Where possible, the Department of Correctional Services must also accommodate such women and children in mother and child units that are more suitable for this purpose than general correctional accommodation. Upon the admission of a mother and her young child, the Department of Correctional Services must, in cooperation with the Department of Social Development, take the necessary steps for the appropriate placement of the child.
- Remand detainees who claim to be pregnant must immediately be examined by a medical practitioner to confirm the pregnancy. Pregnant remand detainees must be detained in a special unit, and be provided with an adequate diet. [S49A]

2.3 Children

The detention of children in correctional centres should only be used as a measure of last resort, as set out in S 28(1)(g) of the Constitution. The Child Justice Act prohibits the detention of any child under the age of 14 years in a correctional centre. When detention cannot be avoided, children have the following rights: [S 19]

- Children must at all times be detained separately from adults, this includes during the transportation of inmates. [S7]
- Children must also be detained in accommodation that is appropriate to their age. [S 7]
- Children must receive a diet that is suitable for children. [S 8(2)] The Regulations give further specifications in this regard. [R4(1)]
- Unless it is an emergency, no surgery may be performed on a child without the permission of his or her parent or guardian. [S 12(4)(c)]
- When a child is admitted to a correctional centre or having been transferred from one correctional centre to another, the Department of Correctional Services must inform the necessary authorities who have a statutory responsibility towards the education and welfare of children. [S 13(6)(c)(i)]

- The Department of Correctional Services must inform the parent or legal guardian of the child of his or her detention. If a parent or legal guardian is not available, then the next of kin or other relative must be notified of the detention. [S13(c)(ii)] The child may not refuse to allow the notification of his/her parent or guardian, or next of kin. [S13(c)(iii)]
- Children should as far as possible, maintain contact with their families. [S19(3)]
- If the child is still of compulsory school-going age, he or she must attend and have access to educational programmes. [S19(1)(a)]
- All children who are not of compulsory schooling age, that is until the age of 15 years or attaining the 9th grade of education, should as far as possible have access to educational programmes. [S19(1)(b)]
- Children who are illiterate may be compelled to take part in educational programmes. [S41(2)]
- Every child must have access to social work services, religious care, recreational programmes and psychological services. [S19(2)]
- Children may perform work in a correctional centre, apart from **general cleaning work** referred to above, if this work is part of training and aimed at acquiring skills, and is appropriate to his or her age and is not detrimental to his or her educational, physical, mental, moral or social well-being. [S40(3)(b-c)]
- Children sentenced to incarceration, may in consultation with the Department of Social Development, be transferred to a child and youth care centre. [S43(4)].
- Children, who are subject to community corrections, may be required to attend additional educational programmes. The Department of Correctional Services must also ensure that children subject to community corrections have access to the necessary support services, i.e. social work services, religious care, recreational programmes and psychological services. [S69]

2.4 Terminally ill persons – medical parole

The number of inmates suffering from Aids, as well as the current access to anti-retroviral treatment has brought the issue of medical parole to the fore. The medical parole regime was amended in 2012. [S79] [R29A, 29B]

Medical parole can be requested by a medical practitioner in writing or by a sentenced offender or a person acting on his or her behalf, supported by a written medical report recommending the placement on medical parole.

The written medical report must explain, amongst other things, why medical parole should be granted, must outline the medical condition of the offender, and explain how the illness affects the inmate's daily activity and self-care in a correctional centre. Then, the Minister must set up an independent medical advisory board, composed of at least three medical practitioners, who will provide an additional medical report. Both the medical practitioner and the medical advisory board can obtain a written medical report from a specialist medical practitioner.

Medical parole will be granted by the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be. Three conditions need to be met to be granted medical parole:

1. The offender is suffering from a terminal disease or condition, or is physically incapacitated as a result of injury, disease or illness and this condition severely limits the inmate's daily activity or self-care; and
2. The risk of re-offending is low; and
3. The inmate can receive appropriate care, treatment and supervision in the community in which he or she is to be released.

The offender must give his or her informed consent that information regarding his or her medical condition be provided to the relevant authorities.

The release on medical parole falls under the regime of community corrections and can be associated with conditions set by the Correctional Supervision and Parole Board. Such conditions can be amended if the medical condition of the offender improves.

Medical parole, like any parole, can be revoked. However, the improvement of one's medical condition alone does not constitute grounds for the revocation of one's medical parole.

For remand detainees, the procedure is similar, but the decision is taken by a court. A medical practitioner may prepare a written report in which he or she finds that a remand detainee is terminally ill or that the inmate's daily activities or self-care are severely limited because of a physical incapacity resulting of injury, disease or illness. In that case, as well as if no correctional centre can provide adequate care to the detainee and if the inmate can receive appropriate care and treatment within the community to which the remand detainee would be released, then the Head of Centre can apply to a court for the remand detainee to be released. The remand detainee and his or her legal representative, if he or she has one, must be informed that the Head of Centre has submitted such application. The remand detainee must also give his or her informed consent (or, if he or she is incapacitated, a person acting on his or her behalf) [S49E] [R26G]

2.5 Youth

The term "youth" has no legal standing and is never used in the Correctional Services Act. The term youth or juvenile is used in the management of inmates by Department of Correctional Services to refer to persons between the ages of 18 and 21 years. The Act allows the Department of Correctional Services to accommodate different categories of inmates based on age, security classification or health.[S 7(2)(d)].

The Regulations state that inmates between the ages of 18 and 21 years must be held separately from those over the age of 21 years. [R3 (2)(h)] This provision recognizes the vulnerability of this age group, even though they are adults.

2.6 Persons with disabilities

The Act defines "disability" as *"a physical, mental, intellectual or sensory impairment which prevents a person having such an impairment from operating in an environment developed for persons without such an impairment."* [Definitions] The Correctional Services Act requires the Department of Correctional Services to take measures in respect of planning, policy and infrastructure to accommodate inmates with disabilities to enable such inmates to fully, as far

as practicably possible, exercise their rights and enjoy the amenities inmates are entitled to. [S16(3)]

Specifically in relation to remand detainees, the Department of Correctional Services must provide adequate primary health care and psychological services required by persons with disabilities, although this obligation is subject to the availability of resources. The National Commissioner may, depending on the situation provide specialised accommodation to persons with disabilities. [S49B]

2.7 Foreign nationals

Inmates who are foreign nationals must be allowed to communicate with the appropriate diplomatic or consular representative. If no such representative is available, the inmate must be allowed to communicate with a representative of an international organisation whose task it is to protect the rights and interests of such persons. [S13(5)]

2.8 The elderly

Due to increasing sentence lengths there will be a growing demand for adequate care of elderly persons in correctional centres. The Act does not make special provision for sentenced elderly persons and only ensures that every person in a correctional centre is entitled to the same level of primary health care that any member of the community on the outside is.

However, provision is made for remand detainees over the age of 65 to be detained in separate single or communal cells, if available and authorised by the National Commissioner. Also, the diet and meal intervals may be adapted to the needs of an elderly detainee, if a medical practitioner authorises this. [S49C]

CHAPTER 3

SERVING A SENTENCE IN A CORRECTIONAL CENTRE



3.1 Different types of sentences

The following sentences involving incarceration can be imposed by a court

- **Incarceration for a determinate period:** This sentence will set down a fixed period for which the offender will be incarcerated, specifying a starting and ending date. A person may not be sentenced to be incarcerated for less than four days but there is no limit on the maximum length. [Criminal Procedure Act S 284]
- **Incarceration for an indeterminate period:** A court may declare a person to be a dangerous criminal and sentence him or her to be incarcerated for a period that does not exceed the sentence jurisdiction of that court. When this period expires, the person has to be brought before the court again to assess whether the sentence should be extended, the person be released conditionally or unconditionally or placed under correctional supervision. [Criminal Procedure Act S 286 B]
- **Person declared as a habitual criminal:** An adult offender may be declared to be a “habitual criminal” if the court feels that the community should be protected against him or her. A person declared a habitual criminal may be detained for a period of 15 years but may be placed on parole after he or she has served at least 7 years.[S73(6) (c)] For more information on this see “Calculation of the period of incarceration” in the next section.
- **Life incarceration:** This sentence means that a person can spend the rest of his or her life in a correctional centre. All such offenders must be considered for parole after serving 25 years if sentenced after the 1 October 2004. Those offenders sentenced prior to October 2004 must be considered for parole after 12 years and 10 months, according to a memo from the Department of Correctional Services dated 26 September 2012.

CONDITIONS THAT MAY BE IMPOSED UNDER CORRECTIONAL SUPERVISION [S 52]

- Perform community service
- Seek and remain in employment
- Pay compensation or damages to victims (can only be imposed by a court)
- Take part in treatment, development and support programmes;
- Participate in mediation between victim and offender or in family group conferencing;
- Contribute financially towards the cost of the community corrections to which he or she has been subjected;
- Remain in a specified magisterial district(s)
- Live at a fixed address;
- Refrain from
 - using or abusing alcohol or drugs;
 - committing a criminal offence;
 - visiting a particular place;
 - Contacting a particular person or persons;
 - threatening a particular person or persons by word or action;
- Be subject to monitoring;
- In the case of a child, to be subject to additional conditions

- **Periodical incarceration:** Subject to certain conditions, a court may impose a term of incarceration of not less than 100 hours and not more than 2000 hours that can be served in periods of not less than 24 hours and not more than 96 hours at a time. [Criminal Procedure Act S 285, R 29].
- **Correctional supervision:** This sentencing option provides for a wide range of conditions and requirements that can be imposed on an offender. In essence, it provides for an alternative to incarceration but can be combined with a term of incarceration or a term of incarceration can, under certain conditions, be converted to a sentence of correctional supervision, allowing the inmate to be released from the correctional centre. [Criminal Procedure Act S 276A]
- **Incarceration from which a person may be placed on correctional supervision:** If the term of incarceration to which an offender is sentenced is less than five years, or if it is more than five years but the sentenced offender's date of release is not more than five years into the future, the National Commissioner may request the court to reconsider the sentence and convert the term of incarceration to correctional supervision. [Criminal Procedure Act S 276A]
- **Suspended term of incarceration:** When passing sentence, a court may suspend a term of incarceration on certain conditions, for example on the condition that the offender does not commit another crime for a specific period of time.

3.2 Calculation of the period of incarceration

The calculation of sentences can be somewhat complicated. Many factors will come into play when calculating the period of time someone must spend incarcerated. These factors include: the nature of different sentencing options, the fact that some offenders receive more than one sentence of incarceration at the same time or receive additional sentences of incarceration whilst already incarcerated, and different categories of offenders (such as habitual and dangerous criminals). The following sets out the basic provisions of the Act. The most important right in this regard is that a

THE MANDATORY MINIMUM SENTENCES LEGISLATION

Criminal Law Amendment Act (Act 105 of 1997)

This legislation was passed by Parliament as a temporary measure, renewable every two years, to address escalating violent crime rates and to ensure that such offenders receive mandatory minimum sentences. The law prescribes that if an offender is found guilty of certain offences, the court must impose a certain minimum punishment (imprisonment and fine). The sentencing court may deviate in exceptional circumstances from the minimum when there are "substantial and compelling reasons" not to impose the minimum sentences. This legislation has been blamed by many observers as the reason for the increase in the prison population since 1998. A schedule setting out the minimum mandatory sentences is attached as Appendix 3. Note that the mandatory minimum sentences do not apply to the children, following the case of *Centre for Child Law v Minister of Justice and Constitutional Development*. In 2007 the legislation was amended by Act 38 of 2007 to remove the biennial renewal requirement and to tighten the factors that can be considered as substantial and compelling circumstances.

sentenced offender may not be detained for longer than what he or she has been sentenced to in terms of determinate sentences or only in accordance with the procedures the law provides for in terms of indeterminate sentences.

- A sentence of incarceration starts on the day it is passed, unless it is suspended or the offender is released on bail awaiting a decision from a higher court regarding an appeal. [S39(1)]
- An offender who received more than one term of incarceration or who receives more terms of incarceration whilst already incarcerated, must serve these sentences consecutively (one after the other) unless the court specified otherwise. The court may order that two or more sentences may be served at the same time. For example, two three year sentences of incarceration (totalling six years) can be served in three years when served concurrently. However, that decision can only be taken by the sentencing court. [S39(2)]
- The Department of Correctional Services will determine the order in which multiple sentences of incarceration will be served consecutively, unless the court specified this. [S39(2)]
- Any determinate sentence runs concurrently with a life sentence or with the sentence received as a result of being declared a habitual criminal. [S39(2)]
- More than one life sentence will always be served concurrently [S39(2)]
- Sentences received as a result of being declared a habitual criminal or a dangerous criminal will be served concurrently [S39(2)]
- In the case of more than one period of incarceration received, the non-parole periods of each sentence must be served consecutively before the sentenced offender can be considered for parole. [S39(2)]
- A person's sentence which expires on a Sunday or public holiday must be discharged on the day before that Sunday or public holiday. [S39(4)]
- If a person under community corrections is sentenced to incarceration for an offence that was committed before he or she was placed on parole, the parole will be cancelled and referred to the Correctional Supervision and Parole Board. [S39(5)(f)]
- Time spent in a correctional centre by an adult remand detainee is not given direct credit as time served already. The magistrate or judge imposing the sentence may use his or her discretion to reduce the sentence by a certain time period in order to acknowledge the time that the offender has already spent in a correctional centre as a remand detainee. If the offender is sentenced in terms of the mandatory minimum sentences legislation, no credit may be given and the full sentence starts on the day of sentencing. In other words, the magistrate or judge has no discretion in this regard. [Criminal Law Amendment Act 105 of 1997, S 51(40)]
- Time spent by a child awaiting trial in a correctional centre or a child and youth care centre must be given direct credit as days served towards the sentence of incarceration imposed. [Child Justice Act S 77 (5)]

3.3 Correctional supervision

Correctional supervision is administered by the Department of Correctional Services and provides for a wide range of sentencing options and conditions. Several of these options are aimed at avoiding incarceration whilst other combine correctional supervision with

incarceration. The overall purpose is to provide the courts with a flexible sentencing option that is suited to the particular needs of the offender but also addresses society's interest in punishing the offender. It is important to note that correctional supervision can be used in respect of any offence, except those excluded by the minimum sentences legislation. The following outlines the different sentencing options with regard to correctional supervision:¹

- A sentence to correctional supervision not exceeding 3 years to be served entirely at home, with no period of incarceration. A report is required from a correctional official or a probation officer prior to sentence being passed, and the sentence is available in respect of any offence. [Criminal Procedure Act S 276(1)(h) (read with S 276A)]
- A sentence of incarceration not exceeding 5 years, from which such a person may be placed under correctional supervision at the discretion of the National Commissioner of Correctional Services. A report is required from a correctional official or a probation officer prior to sentence being passed, and the sentence is available in respect of any offence. [Criminal Procedure Act S 276(1)(i) (read with S 276A)]
- In the case of an offender who has been sentenced to less than 5 years and has already served one quarter of his sentence (or his or her release date is less than 5 years in the future) the National Commissioner may, if he or she is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk or registrar of the court, as the case may be, to have that person appear before the court *a quo* in order for the sentence to be reconsidered. The court has an option to convert the sentence into correctional supervision on the conditions it may deem fit. [Criminal Procedure Act S 276A(3)(a)]
- In the situation where a person has been sentenced to pay a fine with an alternative of incarceration not exceeding 5 years, and such a person is unable to pay the fine. Upon the start of the incarceration or any time thereafter the National Commissioner has the discretion (unless the court directed otherwise at the time of passing sentence) to convert the sentence into correctional supervision, as if the sentence had been incarceration as referred to in s 276(1)(i), or to make an application to the sentencing court following the procedure set out in section 276A(3) of the Criminal Procedure Act. [Criminal Procedure Act S 287(4)(a)]
- In the situation where a person has been sentenced to pay a fine with an alternative of incarceration not exceeding 5 years, and such person is unable to pay the fine. The matter may be referred back to the sentencing court to set a new sentence of correctional supervision. [Criminal Procedure Act S 287 (4) (b)]
- In addition to or instead of any sentence (but not in addition to a sentence of incarceration), the court may order that the person be detained in a treatment centre established under the Prevention and Treatment of Drug Dependency Act, 1992. [Criminal Procedure Act S 296]

¹ The following description of correctional supervision options was extracted from Skelton A (2004) A Review of Alternative Sentencing in South Africa. CSPRI Research Paper No. 6, pp 7-11 <https://acjr.org.za/resource-centre/Alternative%20Sentencing%20Review%20%28Research%20Paper%20No%206%29.pdf>

3.4 Reduction in term of incarceration

There are special circumstances under which the sentences of offenders may be reduced through an administrative decision; in other words, the case does not need to go back to court to have the sentence changed. These are as follows:

- If an inmate has acted in a highly meritorious manner, a Correctional Supervision and Parole Board may, on the Recommendation of the National Commissioner, grant a sentenced offender a maximum remission of two years of his or her sentence. Persons sentenced to life incarceration and those declared to be habitual and dangerous criminals are excluded from this provision. An offender benefiting from this provision must still serve the stipulated non-parole period of the sentence. [S 80]
- If the Minister of Correctional Services is of the opinion that correctional centre overcrowding has reached such general and severe proportions, he or she may refer the matter to the National Council for Correctional Services. The National Council for Correctional Services may then recommend that certain specified categories of sentenced offenders may have their approval dates for placement under community corrections advanced. [S 81]
- Despite all other provisions of the Correctional Services Act, the President has the power to remit (advance) any part of any sentenced offender's sentence, and to pardon or reprieve any sentenced offender. [S82]

HIGHLY MERITORIOUS BEHAVIOUR

The Act does not specify what "highly meritorious" behaviour is but it can be assumed that this would include behaviour that resulted in the prevention of loss of life, escapes and of extensive damage to state property.

3.5 Death penalty

On 6 June 1995 the death penalty was declared unconstitutional by the Constitutional Court in the case of *S v Makwanyane and Another*. It should also be kept in mind that whilst the death penalty was declared unconstitutional in 1995, there had been a moratorium on executions since the late 1980s. The result was that whilst the death penalty could still be imposed as a sentence up to 1995, the condemned inmates were not executed. The *Makwanyane* case did, however, not solve the problem of what to do with prisoners who were on death row. It was not automatic that the sentences would be converted to life incarceration. The Criminal Law Amendment Act (105 of 1997) in Section 1 provided a mechanism that would take the cases of prisoners under death back to court to be re-sentenced. The constitutionality of these provisions were challenged in *Sibiya and Others v the Director of Public Prosecutions and Others* (CCT 45/04) but the Constitutional Court found that the procedures were not unconstitutional. The Court did, however, express deep concern about the fact that the re-sentencing of prisoners under the death penalty had taken so long. In May 2005 it ordered the respondents to expedite the process of re-sentencing the remaining 40 cases. Progress reports were submitted to the Constitutional Court on three occasions. The final report submitted during November 2006, indicated that all sentences of remaining prisoners who were sentenced to death, had been substituted with alternative penalties.

CHAPTER 4

THE PLACEMENT, SECURITY CLASSIFICATION AND AMENITIES



4.1 Security classification

4.1.1 Principles

The security classification of an inmate is based on the risk that the specific person presents to security and an assessment is done to determine the correctional centre or part of correctional centre where he or she will be incarcerated. [S29]

The security classification of an inmate is based on the following principles: [R22]

- It must be an individualised classification taking into account the length of the sentence, previous record, aptitude, qualification or previous training, ability and other personal factors.
- Regular contact with a spouse, partner or next of kin must be maintained.
- The application of progressive and flexible security reclassification.

4.1.2 Calculation of the security classification

The actual security classification is done by using a formula using a total of 11 factors, which are listed below. In respect of each factor a score is given based on pre-determined categories. All the score are added for each of the categories and this used to guide the decision for the security classification of the sentenced inmate. Regardless of the score assigned, inmates who pose a high escape risk; inmates serving sentences of longer than 20 years, and inmates serving life sentences must be placed in a maximum correctional centre for the first five years of the sentence before they can be considered for reclassification.

The 11 factors used for the classification are:

- Crime category (severity of current conviction)
- Effective length of current sentence
- Offence history (number of previous convictions as per SAP 69)
- Current multiple offences
- Time lapse between current offence(s) and previous offences as per SAP 69
- History of violence as per SAP 69 for the past five years
- Escape history
- Age at admission of current sentence
- Motive or circumstances under which the crime(s) was committed
- Crime committed in gang context/crime syndicate or with accomplices
- Number of victims (human).

Each security classification category is divided into A, B and C Groups. Depending on the security classification, sentenced offenders will start with B-Group amenities. This is described in detail in Appendix 6. The classification of an inmate is normally reviewed every six months with the possibility of upgrading, whereas downgrading can be done immediately if there has been, for example, a disciplinary infringement.

4.2 Amenities to which inmates have access

The security classification determines the amenities that the inmate is allowed to enjoy. Inmates should be orientated on first admission regarding the amenities system and rules.

The specifications in this regard relating to the following topics are described in Appendix 6:

- Visits
- Delicacies during visits
- Making of telephone calls
- Letters, Christmas cards, birthday cards, and occasion cards written and received
- Purchases
- Christmas concession
- Private musical instruments
- Hobbies
- Wearing of jewellery
- Private radios, cassette players and cassettes
- Receiving of food
- Pets
- MNet/DSTV
- TV Games
- Choirs
- Television
- Library
- Temporary leave from the correctional centre.

4.3 Placement and transfers

The correctional centre at which a sentenced offender is held, especially when serving a lengthy sentence, can have a very significant impact on maintaining family contact and support. Regular visits are vital in helping the reintegration of the inmate after release. The transfer of inmates from one correctional centre to another can also be a highly emotive issue, especially when inmates want to be detained at a correctional centre close to their relatives and loved ones. It has also been alleged by some inmates that transfers are used inappropriately when inmates have laid criminal charges against officials to undermine the investigation of such criminal charges.

The Act and Regulations are therefore clear on this issue and states that: [S43] [R25]

- A sentenced offender must be housed at the correctional centre closest to where he or she will stay after his or her release. [S43(1)]
- The placement of a sentenced offender is, however, subject to the availability of accommodation and facilities as well as the security requirements of the person in question. [S43(1)]
- The transfer of a sentenced offender is subject to the above conditions. [S43(2)]
- Before a sentenced offender is transferred he or she must be examined by a correctional medical practitioner or nurse. If such an offender is currently under medical treatment, he or she may not be transferred without approval from the correctional medical practitioner. [S43(3)]
- When it is planned that an inmate will be transferred, he or she must be informed of this as well as the reasons (unless this is for security reasons). The inmate must be given the opportunity to make representation in this regard. This must be recorded in writing. Thereafter the Head of the Correctional Centre may make a decision regarding the transfer. [R 25(1)(a)]
- If the transfer is for security reasons, the Head of the Correctional Centre need not inform the inmate of the proposed transfer but the inmate must be informed of the reason as soon as possible when he or she arrived at the destination correctional centre. The inmate must then be given the opportunity to make representations and to contact his or her spouse, partner or next of kin. [R 25(1)(b)]
- An inmate's medical history file as well as any prescribed medication must be transferred with him or her. [R 25(2)]
- The correctional official in charge of education must be consulted about an intended transfer if the person concerned is a learner and involved in education or training and/or is involved in a final examination. [R 25(3)]

CHAPTER 5

SERVICES FOR SENTENCED OFFENDERS



5.1 Purpose and general principles

Whilst incarceration punishes offenders by taking away their liberty, the overall purpose of a sentence of incarceration is to assist the inmate to lead a “*socially responsible and crime-free life in the future*”. [S36] Therefore, there is the assumption that any person can change and that the correctional environment should provide this opportunity for change. This is the rehabilitation objective. This means that every sentenced offender has a responsibility to participate in rehabilitation efforts and should be given a fair chance to demonstrate that he or she is able to use opportunities in the correctional environment that would assist him or her to lead a socially responsible and crime-free life.

5.1.1 Duties of sentenced offenders

To assist in achieving the objective of rehabilitation, every sentenced offender has to: [S 37]

- participate in the assessment process
- participate in the design and implementation of any development plan or programme aimed at achieving the rehabilitation objective
- perform any work that is related to any development programme or which is generally accepted to cultivate a good work ethic, unless a correctional medical practitioner or psychologist certifies otherwise

5.1.2 Duties of the Department of Correctional Services

In addition to meeting the minimum requirements of detention, the Department of Correctional Services must seek to provide: [S 37]

- Amenities which will create an environment that will enable the sentenced offender to live with dignity and develop the ability to lead a socially responsible and crime-free life.
- Amenities (as prescribed by Regulation) to all sentenced offenders as far as possible. If only the partial introduction or provision of such amenities is possible for whatever reason, this should be done on a non-discriminatory basis.

5.2 Assessment

The purpose of the assessment is to gather information on the inmate that will form the basis of the sentence plan. The assessment is an important step in determining how the inmate will serve his or her sentence. Upon admission or as soon as possible thereafter, every sentenced offender must be assessed. The assessment must be done to determine the offender's: [S38]

- security classification
- health needs
- educational needs
- social and educational needs
- religious needs
- specific development programme needs
- work allocation
- allocation to a specific correctional centre
- needs regarding reintegration into the community
- restorative justice requirements
- vulnerability to sexual violence and exploitation.

5.3 Sentence plan and services to sentenced offenders

5.3.1 Sentence plan

A sentence plan sets out the manner in which a sentence that is longer than 24 months should be served based on the information gathered during the assessment, as well as any comments made by the sentencing court with regard to the manner in which the sentence must be served. [S38(2)] The implementation of the sentence plan is monitored by the Case Management Committee.

The sentence plan must address, in particular, the following:

- the proposed interventions aimed at addressing the risks and needs of the sentenced offender, as identified during an in-depth risk assessment, to correct the offending behaviour;
- spell out what services and programmes are required to target offending behaviour and to help the sentenced offender develop skills to handle the socio-economic conditions that led to the offence(s);
- spell out services and programmes needed to improve the sentenced offender's social functioning; and
- set time frames and specify responsibilities to ensure that the intended services and programmes are offered to the sentenced offender. [S 38 (1A)]

The sentence plan [S 41]:

- is there to meet the educational and training needs of sentenced offenders and the Department of Correctional Services must provide or give access to as full a range of programmes as possible;
- may compel illiterate adults and children to participate in educational programmes. Such programmes may be prescribed in the Regulations;
- must provide social and psychological services to promote the social functioning and mental health of sentenced offenders;
- must provide as far as is possible other developmental services to meet the needs of individuals.

5.3.2 Right to participate in programmes

Sentenced offenders have a right to participate in programmes, with specific reference to education, training, social work services, psychological services and other developmental and support programmes. Sentenced offenders can therefore not be denied participation in a programme if it is available and he or she is interested to participate. [S41(5)]

5.3.3 Compulsory programmes

The National Commissioner may compel a sentenced offender to participate in a particular programme, if the National Commissioner is of the opinion that the inmate's participation is necessary due to his or her previous criminal conduct and the risk he or she poses to the community. The programmes that can be made compulsory are education, training, social work services, psychological services and any other development or support programme. [S41(6)]

5.4 The role of the Case Management Committee

5.4.1 Structure of the Case Management Committee

Every correctional centre has one or more Case Management Committees depending on the workload. [S42] The Case Management Committee consists of at least three officials, one of whom is the Chairperson of the committee.[R 24]

5.4.2 Functions of the Case Management Committee

The Case Management Committee functions as the link between the inmate and the Correctional Supervision and Parole Board. The Case Management Committee does not make the decision to release a person on parole but it provides the information to the Correctional Supervision and Parole Board which makes that decision, in the case of offenders serving a sentence longer than 24 months. Those serving a sentence of less than 24 months are released by the Head of the Correctional Centre.

The Case Management Committee fulfils a number of critical functions in relation to the manner which a sentence is implemented, namely [S 42]:

- ensuring that every sentenced offender is assessed
- ensuring that every offender with a sentence of longer than 24 months has a sentence plan
- regularly interviewing every offender with a sentence longer than 24 months to monitor progress on the sentence plan and make necessary adjustments to the plan
- making preliminary arrangements (with the Head of Community Corrections) for the possible placement of a person under community corrections
- Submits a report to the Correctional Supervision and Parole Board regarding an offender's:
 - current offence profile as well as any comments from the sentencing court
 - previous criminal history
 - the conduct, disciplinary record, adaptation to life in the correctional centre, participation in training, abilities, work, physical and mental health
 - chance for relapsing into crime
 - risk to the community and manner in which this risk can be managed
 - possible placement under correctional supervision

- possible placement on parole or medical parole and conditions of parole
- a certified copy of the offender's ID book or, if the offender is a foreign national, a report from the Department of Home Affairs on the status of the foreigner
- for those declared 'dangerous criminals', possible placement under correctional supervision or release.
- Submit, upon request, to the National Commissioner a report on any offender sentenced to 24 months or less.

5.5 Work performed by sentenced offenders

Creating work for sentenced offenders to foster habits of industry and to learn new skills is an integral part of the correctional system. For centuries, prisoners in South Africa and other parts of the world have been used as forced labour. This has now been outlawed and the Constitution [S 13] protects all persons in South Africa from slavery and forced labour. Whilst inmates perform work inside the correctional centre, they are excluded from the Labour Relations Act as well as the Basic Conditions of Employment Act. The relationship between inmates and the Department of Correctional Services is not that of employer-employee. [S40(6)]

5.5.1 Protection against slavery, servitude and forced labour

Sentenced offenders may not:

- be used to provide free labour in the form of forced labour, slavery or servitude [Constitution S 13]
- be required to perform labour as a form of punishment [S 40(5)]
- be required to perform work that is age-inappropriate if the sentenced offender is a child [S 40(3)(c)]
- be required to perform work for another inmate, an official or a private person, a company or organisation, without approval from the National Commissioner [R23(5)]
- be required to perform work or work in a place that is in conflict with his or her religion or culture, and an alternative place of work or type of work must be found [R23(7)]

The B-Orders [B Ch 18, para 4.1] of the Department of Correctional Services state that labour provided by inmates may not be utilised for the following purposes:

- Labour subject to wage determination
- Where such labour is to be used directly for the erection of buildings, digging of foundations, mixing of concrete, transportation of sand, stone and bricks to premises where buildings are to be erected. Inmates may also not be used for any other work on such premises. This paragraph is intended for private contractors/companies.
- Any work performed in connection with diggings or in mines.
- Labour may not be made available to hirers in residential areas where the safety situation is of such a nature that the inmate's life could be endangered.
- Inmates may not nurse patients in correctional centre hospitals or assist in their nursing.
- Inmates may under no circumstances be charged with the handling and issuing of medication.

- Inmates may not be allowed to carry heavy objects, such as bags of grain, on their heads, as it may result in serious neck and back injuries.
- Inmates may not be allowed to handle ammunition, fire-arms and explosives or be given the opportunity to have access thereto.
- No inmate may be allocated to or utilised in a clerical capacity, except in correctional centre libraries and for recreational activities.
- Inmates who are subjected to restraints in terms of the Correctional Services Act may not perform labour outside of the walls of the correctional centre. If possible, such persons must be provided with work within the confines of the correctional centre.
- The utilisation of inmates for the performance of sanitary services, except for the correctional centre and on the reserve of the correctional centre is not permitted.
- Labour may not be utilised in any way for the preparation or serving of food at any public show/fête.
- Inmates may not be used as interpreters in Departmental investigations and trials.
- Inmates employed as skilled or semi-skilled artisans on building works or in workshops may be hired out on Saturdays provided that the labour which is performed does not coincide with the type of labour in which the inmate is trained and provided that the Department does not require his/ her services on the same day.
- Inmates who are 50 years of age or older should not be hired out or sent out in work-teams (free or for payment). Such persons, if physically fit, must be employed on the reserves of the correctional centre. Inmates who are ill or who appear to be ill may not be hired out or sent out in work teams.
- Labour, which has already been provided/hired out to a particular organisation or individual before a strike, may still be provided, but the units of labour provided by inmates may not be supplemented or increased to make up the shortage caused by striking workers. If no labour has been hired out to such organisation/individual, the *status quo* may not be changed as the result of a strike. On the provision of labour by inmates, the safety of such labourers should always enjoy the highest priority.
- No hiring out and/or free labour by inmates may be utilised for the following purposes:
 - the removal handling of contaminated bandages, syringes, needles, linen or waste in connection with a patient;
 - the handling of any chemicals, poisons and or other dangerous substances of whatever nature, e.g. agriculture activities.
- No inmate may be utilised for any domestic services.
- No inmate may work alone in the section stores and warehouses.
- Inmates may not be utilised in changing of targets in shooting ranges, but may be utilised for cleaning purposes after and before shooting practices.

5.5.2 Protective clothing and gear

Inmates must at all times be provided with and wear the protective clothing, footwear and other equipment appropriate to the work and prevailing conditions they are required to perform. [R23(1)]

5.5.3 Work by sentenced offenders for third parties

The National Commissioner may contract with other companies, organisations or government departments for the use of labour provided by sentenced offenders. [R23(2)(a)]

The products of this labour or service may be sold to any person as determined by the National Commissioner. [R23(2)(b)]

Note that the individual will **not** earn money in addition to the gratuity for work performed or when a product is sold.

5.5.4 Work by unsentenced offenders and persons awaiting trial

Remand detainees must perform such work necessary to maintain good order, cleanliness of any cell, room or space occupied by them, and may be permitted to perform other labour (but this is not explained further). [R 26E]

5.5.5 Sentenced offenders

Sentenced offenders: [S 40]

- may not perform any work or conduct any business on his or her own account. [S 40(2)]
- may choose the type of work that he or she would prefer to perform, if a choice is available and in accordance with a vocational programme. [S 40(3)]
- may earn a gratuity for work performed in the correctional centre at a rate determined by the Department of Correctional Services. [S 40(4)]
- must perform work that is related to any development programme or which is generally aimed at developing good work habits, unless this is prohibited by a medical practitioner for mental or physical health reasons. [S 37(1)(b) and S 40(6)]
- may not work for more than 8 hours a day, unless the National Commissioner approves a deviation from this. [R23(4)]

5.5.6 Payment for work

Sentenced offenders who perform work inside a correctional centre receive in most instances a small payment known as “gratuity” (Afr: gratifikasie). The purpose of a gratuity is to encourage and motivate inmates towards positive behaviour, diligence, conscientiousness and adaptation. It is the intention that payment received in this manner will be used constructively to make a contribution to the support of dependents, purchase study materials and save money that can be used after release. Gratuity can only be paid to the following persons:

- a sentenced offender who performs recommended work and who does this for the benefit of the Department of Correctional Services.
- a sentenced offender who is hired out either free of charge or against payment.
- a sentenced offender who receives gratuity for the number of days worked in a month.

The amounts that inmates can earn through gratuity are not high and can be verified with the Head of Centre as they are adjusted annually.

5.5.7 Work on Sundays and religious holidays

On Sundays and religious holidays inmates: [R23(6)]

- are required to perform only that work that is essential for maintaining cleanliness and hygiene in and around the correctional centre
- are required to perform the work necessary to meet the basic needs of the inmates and animal production at that facility, for example providing food.
 - This applies to religious days of rest, other than Sundays, based on the faith that the inmate adheres to. [R23(6)(a)]
- An inmate may be allowed to perform work other than what is absolutely essential, as described above, but then such a person must be exempted from one day of compulsory work in return for every day of work performed as such. [R23(6)(d)]

5.6 Placement and release

Nearly all sentenced offenders will be released and the release process must adhere to strict requirements. A large proportion of inmates remain under some form of control after their release, such as parole and correctional supervision. The placement of persons under community corrections or correctional supervision provides the Department of Correctional Services to release earlier those persons who have shown reasonable progress and who (presumably) do not pose a serious risk to society.

5.6.1 Rights upon release

A sentenced offender being released must therefore: [S 45]

- be prepared by the Department of Correctional Services for his/her placement, release and reintegration into society by participating in a pre-release programme
- when placed under correctional supervision or parole be informed of the conditions applicable to the release
- be provided with the material and financial assistance
- undergo a medical examination if the correctional medical practitioner is of the opinion that this may be necessary.

NOTE ON FINANCIAL AND MATERIAL ASSISTANCE

The Act, in S 45(3), states that material and financial assistance must be provided "*as prescribed by regulation*". The Regulations do not address this issue and it is therefore not clear what the nature and scope of the financial and material assistance are.

5.6.2 Informing the sentenced offender of the conditions of placement on parole or correctional supervision

A sentenced offender who is released from a correctional centre and placed under community corrections must be informed of the conditions applying to the release. Therefore, the inmate must be informed: [S55(3)]

- in writing, in a form and language that will enable him or her to understand what he or she is prohibited from doing once released
- of the channels of communication, i.e. who is the contact person with regard to his or her case
- of the procedure to lay a complaint
- by a correctional official, who must explain the conditions through an interpreter if necessary, if the inmate is illiterate the inmate must indicate that he or she understood the explanation.

5.7 Temporary leave from a correctional centre

The Act recognises that under certain circumstances, it will be to the benefit of all concerned that a sentenced offender temporarily leaves the correctional centre. This may be to attend a funeral or spend a weekend with his or her family prior to being released, so as to prepare for their release. The Act states that the National Commissioner may give permission to a sentenced offender to temporarily leave the correctional centre. The permission granted must be in writing and set out the conditions under which such persons are allowed to leave the correctional centre temporarily. Temporary leave is not a right and the National Commissioner gives permission for temporary leave. A sentenced offender may be granted temporary leave for: [S44(1)]

- compassionate reasons
- him or her to participate in a treatment, development or support programme
- the purpose of preparing him or her for release
- any reasons, other than those mentioned above, relating to the successful reintegration of the person into society.

The following are important conditions attached to temporary leave: [S44(1)]

- A sentenced offender granted temporary leave remains a sentenced offender. He or she is not released or placed on parole. The Department of Correctional Services has the authority to place a sentenced offender under escort or supervision during temporary leave.
- If a sentenced offender is placed under supervision, the conditions applying to supervision applies [S 57], with the necessary amendments
- Permission for temporary leave may be withdrawn at any moment
- When permission for temporary leave is withdrawn, the affected individual must be informed of this decision. If the sentenced offender is outside of the correctional centre, he or she must be directed to return by a specified time
- A sentenced offender who fails to return from temporary leave at the specified date and time is guilty of escape.

CHAPTER 6

CONTACT WITH THE OUTSIDE WORLD



6.1 Contact with family and friends

The rights of all inmates with regard to contact with the community are described above in Section 1.8 “Contact with the Community”. The security classification and privileges granted to an inmate in terms of the privilege system (see Section 4.2 above) also has an impact on the amount and type of contact that an inmate may have with friends and family.

6.2 Contact with legal representative

An inmate’s contact with his or her legal representative is virtually unrestricted and is discussed above in Paragraph 1.12 “Access to legal advice”.

6.3 Participation in elections

6.3.1 National elections

The Correctional Services Act does not deal with the right of inmates to participate in elections, but this is addressed in the Electoral Act (73 of 1998) and has also been the subject of two Constitutional Court cases. It appears that the right of all categories (sentenced and remand) of adult inmates to participate in national and provincial elections have now been established.

For the national elections, inmates need to register as voters like any other person who wishes to vote in the elections. This means that an identity document is required to register. The Independent Electoral Commission will visit correctional centres prior to the closing date of the voters roll to register inmates as voters.

6.3.2 Local government elections

Inmates are excluded from participation in local government elections by virtue of sections 7(3) (a - b), 24(B)(1) and 38(1) of the Electoral Act (73 of 1998) (as amended). Simply put, the provisions apply as follows:

- A voter may only vote in at a voting station in a voting district where he or she is registered as a voter
- For the purposes of national and provincial elections, the correctional centre or place where an inmate is detained is considered for the purposes of the election as the place where he or she normally resides.
- Correctional centres or places of detention are for the purposes of a local government election are, by implication, not considered the place where the person normally resides.

CHAPTER 7

LODGING A COMPLAINT



7.1 Reporting corruption

The Correctional Services Act does not place any obligation on inmates to report corruption nor does it provide inmates who have reported corruption with any special protection. The focus of the Act [S 95] is on the functions of the National Commissioner to address corruption in the correctional system.

Inmates who do wish to report alleged incidences of corruption can do so at the Anti-Fraud Corruption Hotline number at 0800 701 701 or the Presidential Hotline at 17 737.

Inmates are not covered by the Protected Disclosures Act (26 of 2000) (“whistle blower legislation”) as the act is limited to the employer - employee relationship and thus excludes inmates.

PUBLIC SERVICE COMMISSION (PSC)

The PSC is tasked and empowered to, amongst others, investigate, monitor, and evaluate the organisation and administration of the Public Service. This mandate also entails the evaluation of achievements, or lack thereof of Government programmes. The PSC also has an obligation to promote measures that would ensure effective and efficient performance within the Public Service and to promote values and principles of public administration as set out in the Constitution, throughout the Public Service.

7.2 Internal complaints procedure

Inmates have access to the internal complaint and request procedure on a daily basis, known as the G 365 Register or Complaints and Requests (Afr. “Klagtes en Versoeke”)

7.3 Families lodging complaints

The Correctional Services Act does not provide for a specific procedure for family members of inmates to lodge complaints and requests. One recommendation would be for family members who wish to bring a particular complaint or request to the attention of the Department of Correctional Services, depending on the seriousness of the issue, to write to the Minister of Correctional Services. Family members can also lodge complaints with any of the following:

- their local Member of Parliament,
- the Portfolio Committee on Justice and Correctional Services (See Appendix 4 for contact details)
- the Judicial Inspectorate of Correctional Centres (See Appendix 4 for contact details)
- the National Commissioner
- the Head of the Correctional Centre

Please note that the resolution of any complaint will be made easier if the name of the correctional centre and registration number of the inmate concerned are provided in the correspondence, unless the safety of the inmate will be compromised as a result of this. If possible, make a copy of all written correspondence and request an acknowledgement of receipt.

7.3 Laying a criminal charge

Inmates have the right to lay criminal charges with the South African Police Service. If an inmate wants to lay a criminal charge, he or she must inform the Head of the Correctional Centre by means of the daily "Request and Complaints" procedure, indicating that he or she wants to lay a criminal charge. It is the duty of the Head of Correctional Centre to arrange for a police official to be available to inmates so that a statement can be taken from the complainant.

7.4 Lodging a complaint with the Independent Correctional Centre Visitor

The Chief Executive Officer of the Judicial Inspectorate for Correctional Services must appoint Independent Correctional Centre Visitors (ICCV) to deal with the complaints of inmates and allow for community involvement in the correctional system. This allows for an independent mechanism through which the treatment of inmates can be monitored and promoted. [S 92]

The primary function of the ICCVs is to deal with inmates' complaints by:

- paying regular visits to correctional centres
- conducting private interviews with inmates
- recording complaints and monitoring their progress
- liaising with Correctional Services officials to attempt the resolution of complaints internally within the correctional centre

Having a procedure for dealing with inmates' complaints:

- serves as a mechanism for promoting the humane treatment of inmates;
- means that the manner in which the Head of the Correctional Centre deals with inmates' complaints in order to resolve them, may be monitored;
- promotes a peaceful environment within the correctional centre, and
- means that unresolved or urgent complaints may be reported to the Inspecting Judge.

At a correctional centre there should be a procedure for inmates who wish to see the ICCV. The ICCV should:

- have a fixed routine for when he or she will be available for interviews with inmates
- record complaints in writing
- provide regular feed-back to inmates on progress made with regard to complaints
- refer unresolved complaints to the Visitors' Committee

7.5 Reporting urgent and important matters directly to the Office of the Inspecting Judge

It is up to the discretion of the ICCV to decide if a particular complaint is urgent and/or important or of such a confidential nature that it needs to be reported directly to the Office of the Inspecting Judge. If a complaint is of such a nature, the ICCV will log the complaint onto the electronic recording system of the Office of the Inspecting Judge and the Office will deal with it accordingly. Family members and NGOs are amongst other stakeholders who can also, on behalf of an inmate, lodge complaints directly with the Inspecting Judge.

7.6 Lodging a complaint with the Chapter 9 institutions

An inmate may communicate per letter without restriction to any of the so-called Chapter 9 institutions. These institutions, with exclusion of the Auditor General, are the:

- Public Protector
- South African Human Rights Commission
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- Commission for Gender Equality
- Electoral Commission
- Independent Broadcasting Authority

The Human Rights Commission is a popular forum for inmates to lodge their complaints. It should be noted there is a working agreement between the Human Rights Commission and the Judicial Inspectorate for Correctional Centres. The Human Rights Commission will refer all complaints that fall within the mandate of the Judicial Inspectorate to the Judicial Inspectorate.

7.7 Lodging a complaint with a visiting magistrate, a judge or a Member of Parliament

The Correctional Services Act affords magistrates and judges unrestricted access to correctional centres, inmates and documents. During such a visit, the visiting judge or magistrate may interview inmates who then have the opportunity to lodge any complaint or request with the visiting judge or magistrate. The visiting magistrate or judge may bring any matter to the attention of the National Commissioner. [S 99(1-2)]

The Act also affords members of the Parliamentary Portfolio Committee on Correctional Services as well as the members of the National Council on Correctional Services the same unrestricted access to correctional centres, inmates and documents. [S 99(3)] It is, however, not clear from the legislation if these two categories of visitors were envisaged as a complaints mechanism. The Portfolio Committee is known to prepare fairly detailed reports on its visits and make these available at Portfolio Committee meetings and to the Department of Correctional Services.

CHAPTER 8

PAROLE AND RELEASE



The situation with regard to parole is a complex one as laws have changed over time. The laws that applied to offenders at the time when they were sentenced, are the laws that will determine their release and placement on parole. Simply put, this means that laws that are made today cannot change sentences that were imposed yesterday. It is therefore important to know all the detail of a particular case and the laws applicable at the time of sentencing. Naturally, this makes it difficult to formulate general rules of what applies in which cases. The conditions set out below apply to offenders sentenced after October 2004.

8.1 Principles for parole and release

The situation with regard to parole and release is in essence one where there are few rules and many exceptions. The five basic rules are: [S73(1)]

- A sentenced offender will remain in a correctional centre for the full period of the sentence [S73(1)]
- An offender sentenced to life incarceration will remain in a correctional centre for the rest of his or her life [S73(1)]
- A sentenced offender must be released when he or she has served his term of incarceration (or community corrections) [S73(2)]
- A sentenced offender may be placed (under certain conditions) on parole or correctional supervision before he or she has served the full term of incarceration [S73(4)]
- The decision to release a sentenced offender on parole or correctional supervision is made by the Head of Centre (sentence is less than 24 months), the Correctional Supervision and Parole Board (sentence is more than 24 months but not life) or, for lifers, by the Minister. [S73(5)(a)]

8.2 Conditions and exceptions with regard to parole and release

The above rules are subject to following conditions or exceptions.

- If a sentenced offender whose sentence is expiring but is too sick to be released, a source of infection for the community or likely to die as a result of the release, then the Department of Health must be notified and will deal with the inmate according to the applicable legislation. [S73(3)]
- The sentenced offender must accept and agree to the conditions of his or her release on parole, day parole, medical parole or correctional supervision [S73(5)(b)]
- If an offender has been sentenced to life incarceration, the decision to release him or her on parole must be made by the Minister and not by the Correctional Supervision and Parole Board [S73(5)(a)(ii)]

- A sentenced offender serving a determinate sentence of longer than 24 months, must serve at least half of his or her sentence before he or she can be considered for parole unless: [S73(6)]
 - The court specified a non-parole period longer than half the sentence in the case of sentences longer than 2 years but this non-parole period may not be longer than two thirds of the total sentence or 25 years, whichever is shorter [Criminal Procedure Act S 276B]
 - He or she has served 25 years of cumulative sentences
- A person serving a determinate sentence or cumulative sentences of not more than 24 months may not be placed on parole or day parole until such offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, a quarter of the sentence. [s 73(6)(a)(aA)]
- In the case of offenders sentenced prior to October 2004, at least one third of the sentence had to be served before consideration for parole
- A person sentenced to life incarceration may be considered for parole after serving 25 years of the sentence [S73(6)]
- A person who has been declared a habitual criminal can be detained for 15 years and may not be released on parole before he or she has served at least seven years [S73(6)]
- A person sentenced to incarceration under S 276(1)(i) of the Criminal Procedure Act, must serve at least one sixth of the sentence before being considered for placement under correctional supervision, unless the court direct otherwise. [S73(7)]
- A person sentenced to incarceration under S 276(1)(i) of the Criminal Procedure Act, and to incarceration not exceeding five years as an alternative to a fine, shall serve at least one sixth of the effective sentences, unless the court specifies differently [S73(7)]
- A person shall serve at least a quarter of the effective terms imposed or the non-parole period, if specified by the court, whichever is longest before being considered for parole if he or she was: [S73(6)]
 - Sentenced to a definite period in terms of S 276(1)(b) of the Criminal Procedure Act
 - Sentenced to incarceration under S 276(1)(i) of the Criminal Procedure Act
 - Sentenced to incarceration for not more than five years as an alternative to a fine

8.3 Life imprisonment before and after 2004

The Correctional Services Act requires that all persons sentenced to life incarceration must be considered for placement on parole after they have served 25 years. However, a different rule applies to offenders sentenced prior to 1 October 2004 because the legislation, policies and directives in place at the time when they were sentenced apply to them. The transitional arrangements in the Correctional Services Act [s 136(1-3)] created the impression they had to serve 20 years but this was challenged in the courts.

After several court cases the situation is now that they must be considered after 12 years and 10 months, according to a memo from the Department of Correctional services dated 26 September 2012.

APPENDIX 1

CHAPTER 2 - BILL OF RIGHTS



7. Rights
8. Application
9. Equality
10. Human Dignity
11. Life
12. Freedom and Security of the Person
13. Slavery, Servitude and Forced Labour
14. Privacy
15. Freedom of Religion, Belief and Opinion
16. Freedom of Expression
17. Assembly, Demonstration, Picket and Petition
18. Freedom of Association
19. Political Rights
20. Citizenship
21. Freedom of Movement and Residence
22. Freedom of Trade, Occupation and Profession
23. Labour Relations
24. Environment
25. Property
26. Housing
27. Health Care, Food Water and Social Security
28. Children
29. Education
30. Language and Culture
31. Cultural, Religious and Linguistic Communities
32. Access to Information
33. Just Administrative Action
34. Access to Courts
35. Arrested, Detained and Accused Persons
36. Limitation of Rights
37. States of Emergency
38. Enforcement of Rights
39. Interpretation of Bill of Rights

7. Rights

1. This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
3. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

8. Application

1. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
2. A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
3. When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court
 - a. in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
 - b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
4. A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

9. Equality

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)². National legislation must be enacted to prevent or prohibit unfair discrimination.
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

² See Sch 6 item 23 (1).

11. Life

Everyone has the right to life.

12. Freedom and security of the person

1. Everyone has the right to freedom and security of the person, which includes the right
 - a. not to be deprived of freedom arbitrarily or without just cause;
 - b. not to be detained without trial;
 - c. to be free from all forms of violence from either public or private sources;
 - d. not to be tortured in any way; and
 - e. not to be treated or punished in a cruel, inhuman or degrading way.
2. Everyone has the right to bodily and psychological integrity, which includes the right
 - a. to make decisions concerning reproduction;
 - b. to security in and control over their body; and
 - c. not to be subjected to medical or scientific experiments without their informed consent.

13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

14. Privacy

Everyone has the right to privacy, which includes the right not to have

1. their person or home searched;
2. their property searched;
3. their possessions seized; or
4. the privacy of their communications infringed.

15. Freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that
 - a. those observances follow rules made by the appropriate public authorities;
 - b. they are conducted on an equitable basis; and
 - c. attendance at them is free and voluntary.
3. This section does not prevent legislation recognising
 - a. marriages concluded under any tradition, or a system of religious, personal or family law; or
 - b. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
4. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes
 - a. freedom of the press and other media;
 - b. freedom to receive or impart information or ideas;
 - c. freedom of artistic creativity; and
 - d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to
 - a. propaganda for war;
 - b. incitement of imminent violence; or
 - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association

Everyone has the right to freedom of association.

19. Political rights

1. Every citizen is free to make political choices, which includes the right
 - a. to form a political party;
 - b. to participate in the activities of, or recruit members for, a political party; and
 - c. to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right
 - a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - b. to stand for public office and, if elected, to hold office.

20. Citizenship

No citizen may be deprived of citizenship.

21. Freedom of movement and residence

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

23. Labour relations

1. Everyone has the right to fair labour practices.
2. Every worker has the right
 - a. to form and join a trade union;
 - b. to participate in the activities and programmes of a trade union; and
 - c. to strike.
3. Every employer has the right
 - a. to form and join an employers' organisation; and
 - b. to participate in the activities and programmes of an employers' organisation.
4. Every trade union and every employers' organisation has the right
 - a. to determine its own administration, programmes and activities;
 - b. to organise; and
 - c. to form and join a federation.
5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

24. Environment

Everyone has the right

1. to an environment that is not harmful to their health or well-being; and
2. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
 - a. prevent pollution and ecological degradation;
 - b. promote conservation; and
 - c. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

25. Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application

- a. for a public purpose or in the public interest; and
 - b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including
- a. the current use of the property;
 - b. the history of the acquisition and use of the property;
 - c. the market value of the property;
- the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- d. the purpose of the expropriation.
4. For the purposes of this section
- a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - b. property is not limited to land.
5. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
6. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
8. No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
9. Parliament must enact the legislation referred to in subsection (6).

26. Housing

- 1. Everyone has the right to have access to adequate housing.
- 2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security

1. Everyone has the right to have access to
 - a. health care services, including reproductive health care;
 - b. sufficient food and water; and
 - c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

28. Children

1. Every child has the right
 - a. to a name and a nationality from birth;
 - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - c. to basic nutrition, shelter, basic health care services and social services;
 - d. to be protected from maltreatment, neglect, abuse or degradation;
 - e. to be protected from exploitative labour practices;
 - f. not to be required or permitted to perform work or provide services that
 - i. are inappropriate for a person of that child's age; or
 - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
 - i. kept separately from detained persons over the age of 18 years; and
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;
 - h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
2. A child's best interests are of paramount importance in every matter concerning the child.
3. In this section "child" means a person under the age of 18 years.

29. Education

1. Everyone has the right
 - a. to a basic education, including adult basic education; and
 - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.

2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
 - a. equity;
 - b. practicability; and
 - c. the need to redress the results of past racially discriminatory laws and practices.
3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
 - a. do not discriminate on the basis of race;
 - b. are registered with the state; and
 - c. maintain standards that are not inferior to standards at comparable public educational institutions.
4. Subsection (3) does not preclude state subsidies for independent educational institutions.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31. Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
 - a. to enjoy their culture, practise their religion and use their language; and
 - b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32. Access to information³

1. Everyone has the right of access to
 - a. any information held by the state; and
 - b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

³ Sub-s. (1) deemed to read as set out in item 23 (2) (a) of Sch 6 until the legislation envisaged in sub-s. (2) is enacted. See Sch 6 item 23 (1) for enactment provisions and item 23 (3) for lapsing provisions.

33. Just administrative action⁴

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must
 - a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
 - c. promote an efficient administration.

34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

35. Arrested, detained and accused persons

1. Everyone who is arrested for allegedly committing an offence has the right
 - a. to remain silent;
 - b. to be informed promptly
 - i. of the right to remain silent; and
 - ii. of the consequences of not remaining silent;
 - c. not to be compelled to make any confession or admission that could be used in evidence against that person;
 - d. to be brought before a court as soon as reasonably possible, but not later than
 - i. 48 hours after the arrest; or
 - ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - f. to be released from detention if the interests of justice permit, subject to reasonable conditions.
2. Everyone who is detained, including every sentenced prisoner, has the right
 - a. to be informed promptly of the reason for being detained;
 - b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

⁴ Sub-ss. (1) and (2) deemed to read as set out in item 23 (2) (b) of Sch 6 until the legislation envisaged in sub-s. (3) is enacted. See Sch 6 item 23 (1) for enactment provisions and item 23 (3) for lapsing provisions.

- d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
 - f. to communicate with, and be visited by, that person's
 - i. spouse or partner;
 - ii. next of kin;
 - iii. chosen religious counsellor; and
 - iv. chosen medical practitioner.
3. Every accused person has a right to a fair trial, which includes the right
- a. to be informed of the charge with sufficient detail to answer it;
 - b. to have adequate time and facilities to prepare a defence;
 - c. to a public trial before an ordinary court;
 - d. to have their trial begin and conclude without unreasonable delay;
 - e. to be present when being tried;
 - f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - i. to adduce and challenge evidence;
 - j. not to be compelled to give self-incriminating evidence;
 - k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

36. Limitation of rights

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
 - a. the nature of the right;
 - b. the importance of the purpose of the limitation;
 - c. the nature and extent of the limitation;
 - d. the relation between the limitation and its purpose; and
 - e. less restrictive means to achieve the purpose.
2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

37. States of emergency

1. A state of emergency may be declared only in terms of an Act of Parliament, and only when
 - a. the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
 - b. the declaration is necessary to restore peace and order.
2. A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only
 - a. prospectively; and
 - b. for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.
3. Any competent court may decide on the validity of
 - a. a declaration of a state of emergency;
 - b. any extension of a declaration of a state of emergency; or
 - c. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
4. Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that
 - a. the derogation is strictly required by the emergency; and
 - b. the legislation
 - i. is consistent with the Republic's obligations under international law applicable to states of emergency;
 - ii. conforms to subsection (5); and
 - iii. is published in the national Government Gazette as soon as reasonably possible after being enacted.

5. No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise
 - a. indemnifying the state, or any person, in respect of any unlawful act;
 - b. any derogation from this section; or
 - c. any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

1 SECTION NUMBER	2 SECTION TITLE	3 EXTENT TO WHICH THE RIGHT IS PROTECTED
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: <ul style="list-style-type: none"> • subsection (1)(d) and (e); • the rights in subparagraphs (i) and (ii) of subsection (1)(g); and • subsection 1(i) in respect of children of 15 years and younger
35	Arrested, detained and accused persons	With respect to: <ul style="list-style-type: none"> • subsections (1)(a), (b) and (c) and (2)(d); • the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) • subsection (4); and • subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

6. Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:
 - a. An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.

- b. A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
 - c. The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
 - d. The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
 - e. A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
 - f. A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
 - g. The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
 - h. The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
7. If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.
8. Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

38. Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

- 1. anyone acting in their own interest;
- 2. anyone acting on behalf of another person who cannot act in their own name;
- 3. anyone acting as a member of, or in the interest of, a group or class of persons;
- 4. anyone acting in the public interest; and
- 5. an association acting in the interest of its members.

39. Interpretation of Bill of Rights

1. When interpreting the Bill of Rights, a court, tribunal or forum
 - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - b. must consider international law; and
 - c. may consider foreign law.
2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
3. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

APPENDIX 2

BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS



Adopted by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

APPENDIX 3

SUMMARY OF MINIMUM SENTENCES



Summary of minimum sentences under Act 105 of 1997⁵

OFFENCE DESCRIPTION	SENTENCE IN YEARS		
	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE
Murder when	Life	Life	Life
<ul style="list-style-type: none"> Planned or pre-meditated; The victim is a law-enforcement officer or a potential state witness; The death was connected to a rape or robbery with aggravating circumstances; or It was committed as part of common purpose or conspiracy. 			
Rape when	Life	Life	Life
<ul style="list-style-type: none"> The victim is raped more than once by accused or others; By more than one person as part of common purpose or conspiracy; The accused has been convicted of more than one rape offence and not yet sentenced; The accused knows he or she is HIV positive; The victim is under 16 years of age; The victim is a vulnerable disabled woman; The victim is a mentally ill woman; or The rape involved the infliction of grievous bodily harm. 			
Murder in circumstances other than those above;	15	20	25
Robbery when	15	20	25
<ul style="list-style-type: none"> There are aggravating circumstances; Taking of a motor vehicle is involved; 			

⁵ This table was produced with the kind assistance of Chris Giffard.

OFFENCE DESCRIPTION	SENTENCE IN YEARS		
	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE
Drug Offences when	15	20	25
• The value is greater than R50 000;			
• The value is greater than R10 000 and is part of a conspiracy or common purpose;			
• The offence is committed by law enforcement officers;			
Any offence related to	15	20	25
• Dealing in or smuggling of arms and ammunition;			
• Possession of automatic or semi-automatic firearms, explosives, etc;			
Any offence relating to exchange control, corruption, extortion, fraud, forging, uttering or theft when	15	20	25
• It amounts to more than R500 000;			
• It amounts to more than R10 0000 if committed in common purpose or as conspiracy; or			
• If committed by a law enforcement officer when			
• It involves more than R 10 000; or			
• As part of common purpose or as conspiracy.			
Rape , other than in circumstances in Part 1 above	10	15	20
Indecent assault on a child under age of 16 , involving infliction of bodily harm;	10	15	20
Assault with intent to cause grievous bodily harm on a child under age of 16 ; or	10	15	20
More than 1 000 rounds of ammunition .	10	15	20
Any offence is Schedule 1 of the Criminal Procedure Act (51 of 1977) not referred to above, if the accused was armed with a firearm intended for use in the offence	5	7	10

APPENDIX 4

CONTACT DETAILS OF RESOURCES



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PO Box 32175, Braamfontein 2017

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F 011 403 7188

Chairperson of the Portfolio Committee on Justice and Correctional Services

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Judicial Inspectorate for Correctional Services

Inspecting Judge Johann Vincent Van Der
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Mr Michael Masutha

Private Bag X136, Pretoria, 0001

T 012 307 2998/2999

F 012 323 4111

National Commissioner of Correctional Services

The Acting National Commissioner of
Correctional Services Mr Mandla Mkabela

Private Bag X136, Pretoria 0001

T 012 307 2372/2154/ 305 8842

F 012 328 6149

The Human Rights Commission

Braampark Forum 3,
33 Hoofd Street, Braamfontein

T 011 877 3600/3750

F 011 403 0668

Att: Complaints Handling

Ms Grace Dladla gdladla@sahrc.org.za

The Public Protector

Private Bag X677, Pretoria 0001

T 012 366 7000/7112

F 012 362 3473

The Public Service Commission

ABSA Towers, Cnr Lilian Ngoyi and Pretorius
Streets, Pretoria Central, 0001

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APPENDIX 5

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS



Adopted by the UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015

Preliminary observation 1

The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.

Preliminary observation 2

1. In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.
2. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

Preliminary observation 3

1. Part I of the rules covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.
2. Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

Preliminary observation 4

1. The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or correctional schools, but in general part I would be equally applicable in such institutions.
2. The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

I. RULES OF GENERAL APPLICATION

Basic principles

Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Rule 2

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

Rule 3

Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Rule 4

1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.
2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 5

1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Prisoner file management

Rule 6

There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

Rule 7

No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner:

- (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- (b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- (c) The day and hour of his or her admission and release as well as of any transfer;
- (d) Any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
- (g) Emergency contact details and information on the prisoner's next of kin.

Rule 8

The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:

- (a) Information related to the judicial process, including dates of court hearings and legal representation;
- (b) Initial assessment and classification reports;
- (c) Information related to behaviour and discipline;
- (d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
- (e) Information on the imposition of disciplinary sanctions;
- (f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

Rule 9

All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

Rule 10

Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.

Separation of categories

Rule 11

The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

Accommodation

Rule 12

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.
2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.

Rule 13

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Rule 14

In all places where prisoners are required to live or work:

- (a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
- (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Rule 15

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Rule 16

Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Rule 17

All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

Rule 18

1. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

Clothing and bedding

Rule 19

1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.
2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
3. In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

Rule 20

If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the prison to ensure that it shall be clean and fit for use.

Rule 21

Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

Rule 22

1. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
2. Drinking water shall be available to every prisoner whenever he or she needs it.

Exercise and sport

Rule 23

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

Health-care services

Rule 24

1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.
2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

Rule 26

1. The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.
2. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

Rule 27

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.
2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Rule 28

In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

Rule 29

1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:
 - (a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;
 - (b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.
2. Children in prison with a parent shall never be treated as prisoners.

Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

- (a) Identifying health-care needs and taking all necessary measures for treatment;
- (b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;
- (c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;
- (d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;
- (e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.

Rule 31

The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

Rule 32

1. The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:
 - (a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;
 - (b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship;
 - (c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others;
 - (d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.
2. Without prejudice to paragraph 1 (d) of this rule, prisoners may be allowed, upon their free and informed consent and in accordance with applicable law, to participate in clinical trials and other health research accessible in the community if these are expected to produce a direct and significant benefit to their health, and to donate cells, body tissues or organs to a relative.

Rule 33

The physician shall report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Rule 34

If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority. Proper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm.

Rule 35

1. The physician or competent public health body shall regularly inspect and advise the prison director on:
 - (a) The quantity, quality, preparation and service of food;
 - (b) The hygiene and cleanliness of the institution and the prisoners;
 - (c) The sanitation, temperature, lighting and ventilation of the prison;
 - (d) The suitability and cleanliness of the prisoners' clothing and bedding;
 - (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

2. The prison director shall take into consideration the advice and reports provided in accordance with paragraph 1 of this rule and rule 33 and shall take immediate steps to give effect to the advice and the recommendations in the reports. If the advice or recommendations do not fall within the prison director's competence or if he or she does not concur with them, the director shall immediately submit to a higher authority his or her own report and the advice or recommendations of the physician or competent public health body.

Restrictions, discipline and sanctions

Rule 36

Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well ordered community life.

Rule 37

The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of sanctions that may be imposed;
- (c) The authority competent to impose such sanctions;
- (d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

Rule 38

1. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.
2. For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 39

1. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.
2. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed.
3. Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

Rule 40

1. No prisoner shall be employed, in the service of the prison, in any disciplinary capacity.
2. This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

Rule 41

1. Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.
2. Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence.
3. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge.
4. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.
5. In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser.

Rule 42

General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
 - (a) Indefinite solitary confinement;
 - (b) Prolonged solitary confinement;
 - (c) Placement of a prisoner in a dark or constantly lit cell;
 - (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
 - (e) Collective punishment.
2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 45

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,⁶ continues to apply.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.
2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.
3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

Instruments of restraint

Rule 47

1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.
2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:
 - (a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;
 - (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

⁶ See rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex); and rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (resolution 65/229, annex).

Rule 48

1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:
 - (a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;
 - (b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;
 - (c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.
2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.

Rule 49

The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness.

Searches of prisoners and cells

Rule 50

The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

Rule 51

Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

Rule 52

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.
2. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

Rule 53

Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.

Information to and complaints by prisoners

Rule 54

Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

Rule 55

1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.
2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.

Rule 56

1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.
2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.
4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.
2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.

3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

Contact with the outside world

Rule 58

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
 - (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
 - (b) By receiving visits.
2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

Rule 59

Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.

Rule 60

1. Admission of visitors to the prison facility is contingent upon the visitor's consent to being searched. The visitor may withdraw his or her consent at any time, in which case the prison administration may refuse access.
2. Search and entry procedures for visitors shall not be degrading and shall be governed by principles at least as protective as those outlined in rules 50 to 52. Body cavity searches should be avoided and should not be applied to children.

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
3. Prisoners should have access to effective legal aid.

Rule 62

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the

diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Rule 63

Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Books

Rule 64

Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

Rule 65

1. If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
2. A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.
3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.

Rule 66

So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.

Retention of prisoners' property

Rule 67

1. All money, valuables, clothing and other effects belonging to a prisoner which he or she is not allowed to retain under the prison regulations shall on his or her admission to the prison be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.
2. On the release of the prisoner, all such articles and money shall be returned to him or her except in so far as he or she has been authorized to spend money or send any such property out of the prison, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him or her.
3. Any money or effects received for a prisoner from outside shall be treated in the same way.

4. If a prisoner brings in any drugs or medicine, the physician or other qualified health-care professionals shall decide what use shall be made of them.

Notifications

Rule 68

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.

Rule 69

In the event of a prisoner's death, the prison director shall at once inform the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive his or her health information shall be notified by the director of the prisoner's serious illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or nearest relative notified in the event of illness or injury shall be respected.

Rule 70

The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. Whenever circumstances allow, the prisoner should be authorized to go, either under escort or alone, to the bedside of a near relative or significant other who is critically ill, or to attend the funeral of a near relative or significant other.

Investigations

Rule 71

1. Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.
2. The obligation in paragraph 1 of this rule shall equally apply whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received.
3. Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.

Rule 72

The prison administration shall treat the body of a deceased prisoner with respect and dignity. The body of a deceased prisoner should be returned to his or her next of kin as soon as reasonably possible, at the latest upon completion of the investigation. The prison administration shall facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so and shall keep a full record of the matter.

Removal of prisoners

Rule 73

1. When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
2. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
3. The transport of prisoners shall be carried out at the expense of the prison administration and equal conditions shall apply to all of them.

Institutional personnel

Rule 74

1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.
2. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
3. To secure the foregoing ends, personnel shall be appointed on a fulltime basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

Rule 75

1. All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.
2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service.
3. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.

Rule 76

1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:
 - (a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;
 - (b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;

- (c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;
 - (d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.
2. Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.

Rule 77

All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

Rule 78

1. So far as possible, prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
2. The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

Rule 79

1. The prison director should be adequately qualified for his or her task by character, administrative ability, suitable training and experience.
2. The prison director shall devote his or her entire working time to official duties and shall not be appointed on a part-time basis. He or she shall reside on the premises of the prison or in its immediate vicinity.
3. When two or more prisons are under the authority of one director, he or she shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these prisons.

Rule 80

1. The prison director, his or her deputy, and the majority of other prison staff shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.
2. Whenever necessary, the services of a competent interpreter shall be used.

Rule 81

1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

Rule 82

1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

Internal and external inspections

Rule 83

1. There shall be a twofold system for regular inspections of prisons and penal services:
 - (a) Internal or administrative inspections conducted by the central prison administration;
 - (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

Rule 84

1. Inspectors shall have the authority:
 - (a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
 - (b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
 - (c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
 - (d) To make recommendations to the prison administration and other competent authorities.
2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass healthcare professionals. Due regard shall be given to balanced gender representation.

Rule 85

1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.
2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.

II. RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

Guiding principles

Rule 86

The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under preliminary observation 1 of these rules.

Rule 87

Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

Rule 88

1. The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.
2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule 89

1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.
2. These prisons do not need to provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open prisons, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners.
3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible.
4. On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

Rule 90

The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation.

Treatment

Rule 91

The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

Rule 92

1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.
2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.
3. The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

Rule 93

1. The purposes of classification shall be:
 - (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
 - (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 94

As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.

Privileges

Rule 95

Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every prison, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment.

Work

Rule 96

1. Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals.
2. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

Rule 97

1. Prison labour must not be of an afflictive nature.
2. Prisoners shall not be held in slavery or servitude.
3. No prisoner shall be required to work for the personal or private benefit of any prison staff.

Rule 98

1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.

Rule 99

1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the prison.

Rule 100

1. Preferably, institutional industries and farms should be operated directly by the prison administration and not by private contractors.
2. Where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. Unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

Rule 101

1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons.
2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.

Rule 102

1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workers.
2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners.

Rule 103

1. There shall be a system of equitable remuneration of the work of prisoners.
2. Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings should be set aside by the prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.

Education and recreation

Rule 104

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.
2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Rule 105

Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.

Social relations and aftercare

Rule 106

Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

Rule 107

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.

Rule 108

1. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
2. The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.
3. It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

B. Prisoners with mental disabilities and/or health conditions

Rule 109

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.
2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.
3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Rule 110

It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.

C. Prisoners under arrest or awaiting trial

Rule 111

1. Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.
2. Unconvicted prisoners are presumed to be innocent and shall be treated as such.

3. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit from a special regime which is described in the following rules in its essential requirements only.

Rule 112

1. Untried prisoners shall be kept separate from convicted prisoners.
2. Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

Rule 113

Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

Rule 114

Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

Rule 115

An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.

Rule 116

An untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it.

Rule 117

An untried prisoner shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing material and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

Rule 118

An untried prisoner shall be allowed to be visited and treated by his or her own doctor or dentist if there are reasonable grounds for the application and he or she is able to pay any expenses incurred.

Rule 119

1. Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her.
2. If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.

Rule 120

1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.
2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

D. Civil prisoners

Rule 121

In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge

Rule 122

Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights⁷, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C, of these rules. Relevant provisions of part II, section A, of these rules shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

⁷ See resolution 2200 A (XXI), annex.

APPENDIX 6

SPECIFICATION REGARDING AMENITIES



Visits

	MINIMUM	MEDIUM	
A-GROUP	45 visits of 60 minutes each per year will be allowed. At most five visits per month will be allowed. The inmate is in any case entitled to at most two visitors per occasion.	45 visits of 60 minutes each per year will be allowed. At most five visits per month will be allowed. The inmate is in any case entitled to at most two visitors per occasion.	
B-GROUP	36 visits of 45 minutes each by at most two visitors per occasion may be granted. At most four visits per month will be allowed.	36 visits of 45 minutes each by at most two visitors per occasion may be granted. At most four visits per month will be allowed.	
C-GROUP	24 visits of 30 minutes each by one person may be granted. At most two visits per month will be allowed.	24 visits of 30 minutes each by one person may be granted. At most two visits per month will be allowed.	

Delicacies during visits

	MINIMUM	MEDIUM	
A-GROUP	Visitors are allowed to purchase delicacies, which should be consumed during visits together with the inmate, at the tuck-shop where available. Inmates will not be allowed to take any of these delicacies to their cells after visits.	Visitors are allowed to purchase delicacies, which should be consumed during visits together with the inmate, at the tuck-shop where available. Inmates will not be allowed to take any of these delicacies to their cells after visits.	
B-GROUP	None	None	
C-GROUP	None	None	

	MAXIMUM	SUPER MAX	C-MAX
	<ul style="list-style-type: none"> • Contact visits (availability of facilities). • Three hours of visit per month. • Not more than two adult persons at a time. • 60 minutes each/6 visits of 30 minutes. 	<ul style="list-style-type: none"> • Contact visits (availability of facilities). • Three hours of visit per month. • Not more than two adult persons at a time. • 60 minutes each/6 visits of 30 minutes. 	<ul style="list-style-type: none"> • Contact visits (availability of facilities). • Three hours of visit per month. • Not more than two adult persons at a time. • 60 minutes each/6 visits of 30 minutes.
	<ul style="list-style-type: none"> • Non-contact visits. • Two hours of visits per month. • Two adult persons. • 45 minutes each/4 visits of 30 minutes. 	<ul style="list-style-type: none"> • Non-contact visits. • Two hours of visits per month. • Two adult persons. • 45 minutes each/4 visits of 30 minutes. 	<ul style="list-style-type: none"> • Non-contact visits. • Two hours of visits per month. • Two adult persons. • 45 minutes each/4 visits of 30 minutes.
	<ul style="list-style-type: none"> • Non-contact visits. • One hour of visits per month. • One adult person. • 30 minutes each. 	<ul style="list-style-type: none"> • Non-contact visits. • One hour of visits per month. • One adult person. • 30 minutes each. 	<ul style="list-style-type: none"> • Non-contact visits. • One hour of visits per month. • One adult person. • 30 minutes each.

	MAXIMUM	SUPER MAX	C-MAX
	None	None	None
	None	None	None
	None	None	None

Making telephone calls

	MINIMUM	MEDIUM	
A-GROUP	A telephone call instead of a visit over weekends and public holidays within office hours where telephones are available. 24 additional telephone calls per year. Recording on G367 card. Maximum 10 minutes per call.	A telephone call instead of a visit over weekends and public holidays within office hours where telephones are available. 24 additional telephone calls per year. Recording on G367 card. Maximum 10 minutes per call.	
B-GROUP	A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. Six additional telephone calls per year. Recording on G367 card. Maximum 10 minutes per call.	A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. Six additional telephone calls per year. Recording on G367 card. Maximum 10 minutes per call.	
C-GROUP	<p>The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.</p> <p>Recording on G367 card. Maximum 10 minutes per call. The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available Six additional telephone calls per year. Recording to be done on G367 card. Maximum 10 minutes.</p>	<p>The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.</p> <p>Recording on G367 card. Maximum 10 minutes per call. The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available Six additional telephone calls per year. Recording to be done on G367 card. Maximum 10 minutes.</p>	
Unsentenced prisoners	Five telephone calls per week. Maximum of 10 minutes per call		

Note the following regarding telephone calls:

- No incoming calls will be accepted.
- All calls must be monitored.
- Access to telephones must be controlled
- Phone cards received from visitors must be recorded as a valuable on that inmate's name

MAXIMUM	SUPER MAX	C-MAX
<p>A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. 24 additional telephone calls per year. Recording on G367 card. Maximum duration of 10 minutes per call.</p>	<p>A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. 24 additional telephone calls per year. Recording on G367 card. Maximum duration of 10 minutes per call.</p>	<p>A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. 24 additional telephone calls per year. Recording on G367 card. Maximum duration of 10 minutes per call.</p>
<p>A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. Six additional telephone calls per year. Recording on G367 card. Maximum duration of 10 minutes per call.</p>	<p>A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. Six additional telephone calls per year. Recording on G367 card. Maximum duration of 10 minutes per call.</p>	<p>A telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. Six additional telephone calls per year. Recording on G367 card. Maximum duration of 10 minutes per call.</p>
<p>The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.</p> <p>Recording to be done on G367 card. Maximum 10 minutes.</p>	<p>The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.</p> <p>Recording to be done on G367 card. Maximum 10 minutes.</p>	<p>The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.</p> <p>Recording to be done on G367 card. Maximum 10 minutes.</p>
<p>Five telephone calls per week. Maximum of 10 minutes per call</p>		

Letters, Christmas cards, birthday cards written or received per year

	MINIMUM	MEDIUM	
A-GROUP	<ul style="list-style-type: none"> • No restrictions on the number of letters, cards written or received • No recording of letters sent or received • Censoring only in exceptional cases 	Same	
B-GROUP	Same	Same	
C-GROUP	Same	Same	

Purchases

	MINIMUM	MEDIUM	
A-GROUP	R200.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables and batteries for radio/cassette player, a battery operated shaver, telephone cards and cassettes. No food which needs further preparation is allowed.	R200.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables and batteries for radio/cassette player, a battery operated shaver, telephone cards and cassettes. No food which needs further preparation is allowed.	
B-GROUP	R150.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables, telephone cards, batteries for radios and batteries for razors. No food which needs further preparation is allowed.	R150.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables, telephone cards, batteries for radios and batteries for razors. No food which needs further preparation is allowed.	
C-GROUP	R100.00 - Only toiletries, smoking requisites, postage stamps, stationery and batteries for razors. No food which needs further preparation is allowed.	R100.00 - Only toiletries, smoking requisites, postage stamps, stationery and batteries for razors. No food which needs further preparation is allowed.	
Unsentenced prisoners	R200.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables and batteries for radio/cassette player, a battery operated shaver, telephone cards and cassettes. No food which needs further preparation is allowed.		

	MAXIMUM	SUPER MAX	C-MAX
	Same	Same	Same
	Same	Same	Same
	Same	Same	Same

	MAXIMUM	SUPER MAX	C-MAX
	R150.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables, telephone cards, batteries for radio, batteries for razors. No food which needs further preparation is allowed.	R150.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables, telephone cards, batteries for radio, batteries for razors. No food which needs further preparation is allowed.	R150.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables, telephone cards, batteries for radio, batteries for razors. No food which needs further preparation is allowed.
	R100.00 - Only toiletries, smoking requisites, postage stamps, stationery and batteries for razors. No food which needs further preparation is allowed.	R100.00 - Only toiletries, smoking requisites, postage stamps, stationery and batteries for razors. No food which needs further preparation is allowed.	R100.00 - Only toiletries, smoking requisites, postage stamps, stationery and batteries for razors. No food which needs further preparation is allowed.
	R50.00 - Only toiletries, smoking requisites, postage stamps, stationery, and batteries for razors.	R50.00 - Only toiletries, smoking requisites, postage stamps, stationery, and batteries for razors.	R50.00 - Only toiletries, smoking requisites, postage stamps, stationery, and batteries for razors.
	R200.00 - Only toiletries, smoking requisites, postage stamps, stationery, eatables and batteries for radio/cassette player, a battery operated shaver, telephone cards and cassettes. No food which needs further preparation is allowed.		

Christmas concession

	MINIMUM	MEDIUM	
A-GROUP	R75.00 additional purchases during December.	Same	
B-GROUP	Same	Same	
C-GROUP	Same	Same	

Private musical instruments

	MINIMUM	MEDIUM	
A-GROUP	Musical instruments may be played daily on an individual basis in the cell after normal working hours. No boosters and/or amplifiers are allowed.	Musical instruments may be played daily on an individual basis in the cell after normal working hours. No boosters and/or amplifiers are allowed.	
B-GROUP	None	None	
C-GROUP	None	None	

Hobbies

	MINIMUM	MEDIUM	
A-GROUP	The practice of hobbies under/without supervision after normal working hours, with the approval of the Head of the Correctional Centre. Such items may be handed to family/friends during visits. No tools which pose a risk such as a hacksaw, blades, knives, etc. will be allowed in cells.	The practice of hobbies under/without supervision after normal working hours, with the approval of the Head of the Correctional Centre. Such items may be handed to family/friends during visits. No tools which pose a risk such as a hacksaw, blades, knives, etc. will be allowed in cells.	
B-GROUP	None	None	
C-GROUP	None	None	
UNSENTENCED	None	None	

	MAXIMUM	SUPER MAX	C-MAX
	Same	Same	Same
	Same	Same	Same
	Same	Same	Same

	MAXIMUM	SUPER MAX	C-MAX
	None	None	None
	None	None	None
	None	None	None

	MAXIMUM	SUPER MAX	C-MAX
	The practice of hobbies under/ without supervision after normal working hours, with the approval of the Head of the Correctional Centre. Such items may be handed to family/friends during visits. No tools which pose a risk such as a hacksaw, blades, knives, etc. will be allowed in cells.	The practice of hobbies under/ without supervision after normal working hours, with the approval of the Head of the Correctional Centre. Such items may be handed to family/friends during visits. No tools which pose a risk such as a hacksaw, blades, knives, etc. will be allowed in cells.	The practice of hobbies under/ without supervision after normal working hours, with the approval of the Head of the Correctional Centre. Such items may be handed to family/friends during visits. No tools which pose a risk such as a hacksaw, blades, knives, etc. will be allowed in cells.
	None	None	None
	None	None	None
	None	None	None

Wearing of jewellery

	MINIMUM	MEDIUM	
A-GROUP	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.	
B-GROUP	None	None	
C-GROUP	None	None	
UNSENTENCED	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.		

Private radios, cassette players and cassettes

	MINIMUM	MEDIUM	
A-GROUP	May be allowed to have a radio in their possession (no extra speakers). May be allowed to own a cassette player and five cassettes. (No extra speakers).	May be allowed to have a radio in their possession (no extra speakers). May be allowed to own a cassette player and five cassettes. (No extra speakers).	
B-GROUP	None	None	
C-GROUP	None	None	
UNSENTENCED	May be allowed to have a radio in their possession.		

Receiving food

	MINIMUM	MEDIUM	
A-GROUP	None	None	
B-GROUP	None	None	
C-GROUP	None	None	
UNSENTENCED	Only food for consumption at the following meal may be received. It must be clean/hygienic and appropriately wrapped or in a sealed container. Food that needs further preparation may not be received. Due to security reasons inmates may not be allowed to receive tin cans of food.		

	MAXIMUM	SUPER MAX	C-MAX
	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.
	None	None	None
	None	None	None
	Only watches/wedding rings and jewellery for religious purposes are permitted. The wearing of earrings/jewellery in the nose by men is not allowed.		

	MAXIMUM	SUPER MAX	C-MAX
	May be allowed to have a radio in their possession (no extra speakers). May be allowed to own a cassette player and five cassettes. (No extra speakers).	May be allowed to have a radio in their possession (no extra speakers). May be allowed to own a cassette player and five cassettes. (No extra speakers).	May be allowed to have a radio in their possession (no extra speakers). May be allowed to own a cassette player and five cassettes. (No extra speakers).
	None	None	None
	None	None	None
	May be allowed to have a radio in their possession.		

	MAXIMUM	SUPER MAX	C-MAX
	None	None	None
	None	None	None
	None	None	None
	Only food for consumption at the following meal may be received. It must be clean/hygienic and appropriately wrapped or in a sealed container. Food that needs further preparation may not be received. Due to security reasons inmates may not be allowed to receive tin cans of food.		

Pets

	MINIMUM	MEDIUM	MAXIMUM	SUPER MAX	C-MAX
A-GROUP	None	None	None	None	None
B-GROUP	None	None	None	None	None
C-GROUP	None	None	None	None	None
UNSENTENCED	None	None	None	None	None

MNet/DSTV; TV Games

	MINIMUM	MEDIUM	MAXIMUM	SUPER MAX	C-MAX
A-GROUP	None	None	None	None	None
B-GROUP	None	None	None	None	None
C-GROUP	None	None	None	None	None
UNSENTENCED	None	None	None	None	None

Choirs

	MINIMUM	MEDIUM	MAXIMUM	SUPER MAX	C-MAX
A-GROUP	Yes	Yes	None	None	None
B-GROUP	None	None	None	None	None
C-GROUP	None	None	None	None	None

Television

- Licenses in respect of television sets bought out of Recreation Funds or donated to the Recreation Committee must be paid out of the Recreation Funds. The Head of the Correctional Centre is personally responsible to see that television sets of the Recreation Committee are licensed.
- A register must be kept in respect of all televisions (also those of the Recreation Committee) to ensure that television licenses are paid.
- Prisoners must not be in possession of private televisions.
- M-Net/DSTV may not be implemented as group or an individual amenity.
- Prisoners will not be allowed to have television games and/or battery operated /hand-type games in their possession.

Library

- A library must be available in the prison.
- The administration of prison libraries must coincide with that of the organisations who provide the books, in other words, Provincial, Municipal and State Library Services. The relevant organisation's manual with regard to the administration of the library must therefore be available in the prison library.

Engagements and marriages

	MINIMUM	MEDIUM	MAXIMUM	SUPER MAX	C-MAX
A-GROUP	No prisoner will be allowed to get engaged or married	Same	Same	Same	Same
B-GROUP	Same	Same	Same	Same	Same
C-GROUP	Same	Same	Same	Same	Same

Security measures during contact visits

- Sentenced offenders must not be allowed to wear private clothes during contact visits.
- When inmates receive visitors, they should be escorted to and from the visitors' section by officials.
- Inmates must be properly identified and thoroughly searched.
- At the conclusion of contact visits, before visitors are allowed to leave the room, sentenced offenders should once again be counted and searched. When the totals tally, the visitors may leave the correctional centre complex/premises.
- Officials manning visitors' areas should be provided with hand-held metal detectors and every visitor and sentenced offender must be searched before entering or leaving visitors' areas/ rooms.
- There must be sufficient officials working in contact and non-contact areas. Inmates must not be used to supervise at visit areas.

Concessions to inmates to temporarily leave the correctional centre under escort or otherwise

GENERAL

Only inmates who already have an approved date of release may be considered for the concession.

Offenders who have been sentenced to incarceration with the option that the sentence may be converted into Correctional Supervision (Section 276(1)(i) and 287(4)(a) of the Criminal Procedure Act) can qualify for such a concession after a date of placement has been approved by the delegate.

Offenders whose sentences can be converted into Correctional Supervision in terms of the stipulations of Section (276(A)(3) or 287 (4)(b)) of the Criminal Procedure Act can qualify for this concession after a date for placement under correctional supervision has been determined by the Court **a quo**.

COMPASSIONATE LEAVE

Compassionate leave is granted for the attendance of funerals and/or a serious sickness where it is expected that the person is dying. Such a concession must preferably take place within normal working hours as far as possible and for the necessary period of time on the same day. This concession is only granted when it concerns a direct family member (father, mother, child, spouse, brother, sister, grandfather and grandmother). Information must be verified with the doctor/ hospital.

WEEKEND LEAVE

Where an inmate is permitted to temporarily leave the correctional centre for a weekend (Friday 11h00 until Sunday 15h00) in order to consolidate family-ties. One weekend every three (3) months. It only applies to an inmate who:

- already has an approved date of placement which is not further than six (6) months into the future or whose placement under correctional supervision has already been approved;
- has not been sentenced for a crime of violence/sexual crime;
- has been classified in the medium or minimum custody group, and
- has not been sentenced for child molestation.

Where a public holiday adjoins a weekend (Friday or Monday), such a public holiday is regarded as part of the weekend but the times of leaving (11h00) and return (15h00) are still enforced. Public holidays do not form part of this concession. Should the public holiday fall on a Friday, the prisoner may leave the correctional centre on Thursday at 11h00.

An inmate, who has been granted permission to temporarily leave the correctional centre, must as shortly as possible before being released, be placed before the local nurse/medical practitioner in order to determine the person's physical condition and to record it.

Upon re-admission the inmate must once again be placed before the nurse/medical practitioner in order to determine whether he or she is in the same physical condition as when they left.

A responsible person (preferably family/employer/professional or prominent member of the community) must be willing to accept the applicable responsibilities for supervision as well as to sign the applicable documents. The person must identify himself/herself by means of his/her identity number and the identity number must appear opposite his/ her signature on the form of undertaking.

The Head of the Correctional Centre must approve in writing the temporary leave of the inmate.

The concession to an inmate to temporarily leave the prison, (conditions) must be discussed with the inmate and his/ her family/employer/ professional or prominent member of the community after which the relevant form is completed by the Head of the Correctional Centre and signed by all parties involved.



Africa Criminal Justice Reform
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