



# A GUIDE

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

by Lukas Muntingh

2006 (revised 2010)

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IN THE CORRECTIONAL  
SERVICES ACT  
AND REGULATIONS

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Civil Society Prison Reform Initiative,  
Community Law Centre, 2006 (revised 2010)

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The aim of CSPRI is to improve the human rights of prisoners through research-based advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity building. For more information and access to CSPRI publications please see: <http://www.communitylawcentre.org.za/clc-projects/civil-society-prison-reform-initiative/>

# TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>7</b>
How should we understand inmates' rights?	7
Who can use this Guide?	8
Using this Guide	8
Table of definitions	9
Who is the National Commissioner?	10
Referencing	10
<b>1. THE BASIC RIGHTS AND RESPONSIBILITIES OF ALL INMATES</b>	<b>11</b>
1.1 The Constitution	11
1.2 The basic rights described in the Correctional Services Act (111 of 1998) as amended	13
1.2.1 Safe and secure custody	13
<i>Right to safety</i>	13
<i>Powers of officials to maintain safety</i>	13
1.2.2 Admission to a correctional centre	14
<i>The warrant</i>	14
<i>Record keeping</i>	14
<i>Information to be given upon admission</i>	15
<i>Valuables and money</i>	15
<i>Children</i>	15
<i>Clothing and bedding</i>	15
<i>Health and security</i>	16
1.3 Accommodation	16
1.3.1 Physical conditions	17
1.3.2 Separation of certain categories of inmates	17
1.4 Nutrition and meals	18
1.5 Searches	18
1.5.1 Manner of searching	19
1.5.2 Conditions applying to the bodily searches	19
1.6 Hygiene and exercise	19
1.7 Health care	20
1.7.1 General health care rights	20
1.7.2 Consent for surgery	21
1.7.3 Reproductive health	21
1.7.4 Medical treatment after release	21
1.7.5 Mental health	21

<b>1.8</b>	<b>Contact with the community</b>	<b>21</b>
1.8.1	General rights with regard to contact	21
1.8.2	Foreign nationals	22
1.8.3	Notification of next of kin	22
1.8.4	Search and monitoring of contact and parcels	22
<b>1.9</b>	<b>Religion, belief and opinion</b>	<b>22</b>
<b>1.10</b>	<b>Deaths in correctional centres</b>	<b>23</b>
<b>1.11</b>	<b>Development and support services</b>	<b>24</b>
<b>1.12</b>	<b>Access to legal advice</b>	<b>24</b>
<b>1.13</b>	<b>Reading Material</b>	<b>25</b>
<b>1.14</b>	<b>Complaints and requests</b>	<b>25</b>
<b>1.15</b>	<b>Discipline</b>	<b>26</b>
1.15.1	Disciplinary transgressions	26
1.15.2	Types of disciplinary hearings	27
1.15.3	Punishment that may be imposed	29
<b>1.16</b>	<b>Segregation</b>	<b>29</b>
1.16.1	Reasons for the use of segregation	29
1.16.2	Time limits to segregation	30
<b>1.18</b>	<b>Mechanical restraints</b>	<b>30</b>
1.18.1	Reasons for the use of mechanical restraints	30
1.18.2	Prohibited uses of mechanical restraints	31
1.18.3	Additional requirements	31
<b>1.19</b>	<b>The use of force</b>	<b>31</b>
1.19.1	Prohibition on the use of force	31
1.19.2	Permission to use force	32
1.19.3	After force was used	32
1.19.4	Use of non-lethal incapacitating devices and firearms	32
<b>1.20</b>	<b>Prohibited items</b>	<b>32</b>
<b>1.21</b>	<b>Offences under the Act</b>	<b>32</b>
<b>2.</b>	<b>THE RIGHTS OF SPECIFIC CATEGORIES OF INMATES</b>	<b>35</b>
<b>2.1</b>	<b>Unsentenced offenders and persons awaiting trial</b>	<b>35</b>
2.1.1	Types of unsentenced offenders and awaiting trial inmates	35
2.1.2	The rights of unsentenced offenders and awaiting trial persons	35
<b>2.2</b>	<b>Women</b>	<b>36</b>
<b>2.3</b>	<b>Children</b>	<b>37</b>
<b>2.4</b>	<b>Terminally ill persons</b>	<b>38</b>
<b>2.5</b>	<b>Youth</b>	<b>38</b>

2.6	Disabled persons	38
2.7	Foreign nationals	38
2.8	The elderly	38
<b>3.</b>	<b>SERVING A SENTENCE IN A CORRECTIONAL CENTRE</b>	<b>39</b>
3.1	Different types of sentences	39
3.2	Calculation of the period of incarceration	40
3.3	Correctional supervision	42
3.4	Reduction in term of incarceration	43
3.5	Death penalty	43
<b>4.</b>	<b>THE PLACEMENT, SECURITY CLASSIFICATION AND AMENITIES</b>	<b>45</b>
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
<b>5.</b>	<b>SERVICES FOR SENTENCED OFFENDERS</b>	<b>48</b>
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	53
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	<b>Placement and release</b>	55
5.6.1	Rights upon release	55
5.6.2	Informing the sentenced offender of the conditions of placement on parole or correctional supervision	55
5.7	<b>Temporary leave from a correctional centre</b>	56
6.	<b>CONTACT WITH THE OUTSIDE WORLD</b>	57
6.1	Contact with family and friends	57
6.2	Contact with legal representative	57
6.3	<b>Participation in elections</b>	57
6.3.1	National elections	57
6.3.2	Local government elections	57
7.	<b>LODGING A COMPLAINT</b>	58
7.1	Reporting corruption	58
7.2	Internal complaints procedure	58
7.3	Families lodging complaints	58
7.3	Laying a criminal charge	59
7.4	Lodging a complaint with the Chapter 9 institutions	59
7.5	Lodging a complaint with a visiting magistrate or judge	59
7.6	Lodging a complaint with the Independent Correctional Centre Visitor	60
7.7	Reporting urgent and important matters directly to the Office of the Inspecting Judge	60
8.	<b>PAROLE AND RELEASE</b>	61
8.1	Principles for parole and release	61
8.2	Conditions and exceptions with regard to parole and release	61
	<b>APPENDIX 1: CHAPTER 2 - BILL OF RIGHTS</b>	63
	<b>APPENDIX 2: BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS</b>	77
	<b>APPENDIX 3: SUMMARY OF MINIMUM SENTENCES</b>	78
	<b>APPENDIX 4: CONTACT DETAILS OF RESOURCES</b>	80
	<b>APPENDIX 5: STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS</b>	81
	<b>APPENDIX 6: SPECIFICATION REGARDING AMENITIES</b>	96



# INTRODUCTION

The Correctional Services Act (111 of 1998) was promulgated in 2004 creating a rights-based framework for South Africa's prison system. In 2008 the Correctional Services Act was amended by the Correctional Services Amendment Act (25 of 2008). This guide, originally published in 2006, has been updated to incorporate the changes to the 1998 Correctional Services Act following the recent amendment.

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 when this 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 prison law in South Africa or even as a plain language guide to the complete Correctional Services Act. Large parts of this Act deal, for instance, with the operations and management of the Department of Correctional Service 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 may have committed 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 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 the sentence imposed 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 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 that unambiguously reflects 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.

## **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 ex-prisoners, 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 the Correctional Services Act 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 CSPRI 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. The website can be found at <http://www.communitylawcentre.org.za/cspri/index.php>

## Table of definitions

Certain definitions contained in the Correctional Services Act were amended by the Correctional Services Amendment Act, which came into effect on 11 November 2008. This guide uses the terminology set out in the Correctional Services Amendment Act. 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"
"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.
	"Awaiting trial person" refers to an inmate who has not been convicted or sentenced. Note that this category is not formally defined in the Amendment Act but inferred from the amendment to section 7(2)(a).

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.

## 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 the responsibility of managing the Department of Correctional Services. He or she may delegate his or her authority to officials below him 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.*
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.*

## 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*

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 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 and 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 unsentenced 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 understand 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 safe-keeping by an official. Money and valuables will remain in safekeeping for the duration of incarceration. This is informally referred to 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, 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]:

- Upon admission, every sentenced offender must be provided with a full set of clothing and bedding.
- Unsentenced offenders are allowed to wear their own clothes, but if they are issued with clothing, such garments must be different from the clothes worn by sentenced offenders.
- An inmate may wear such religious or cultural attire as allowed by the Department.

### *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 requires 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 ablution facilities, walls and pillars and personal lockers (not built in) in the cell. The minimum requirements per person are [B2 Ch 2 para 2.1]:
  - Ordinary communal cells 3,344 m<sup>2</sup>
  - Ordinary single cells 5,5 m<sup>2</sup>
  - Hospital communal cells 4,645 m<sup>2</sup>
  - Hospital single cells 9,0 m<sup>2</sup>
- **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 [B2 Ch 2 para 2.2]:
  - Persons under the age of 10 years 4,25 m<sup>3</sup>
  - Persons 10 years and older 8,5m<sup>3</sup>
- **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**. Unsentenced offenders are allowed to wear their own clothes and may also acquire their own bedding.

### 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)]

#### *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.

- With the permission of the Head of the Correctional Centre it is possible to mix sentenced and unsentenced offenders, 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)]

## 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 specified 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 4½ hours and not more than 6½ 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*

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 0700 and 0800. 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. It will take some time before this is fully implemented.

## 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 the privacy and undermines the dignity of the inmate as little as possible. [S 27(3)]

## 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
- 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 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 complains 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 <http://www.doh.gov.za/docs/policy-f.html>.

### 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 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/her consent and if the inmate is a child, then consent from his/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 a correctional centre to receive such treatment.[R7(12)]

## 1.7.5 Mental health

- A person who is certified in terms of the Mental Health Act (18 of 1973) 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.
  - Please note that the Regulations had not yet been updated to refer to the Mental Health Care Act (17 of 2002) Section 47.

## 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 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))
- 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 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 diplomatic representative to South Africa. If his 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)] This would also apply to stateless persons who must be allowed to communicate with a representative of the community where they normally reside.

## 1.8.3 Notification of next of kin

If a spouse or family member asks the Department of Correctional Services regarding the whereabouts of an inmate, the Department of Correctional Services must supply this information with the consent of the inmate. [S 13(6)(d)]

## 1.8.4 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 provides for the regulation of wearing religious attire. However, such regulations have not yet been formulated. [S134(2)(f)]

## 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, but the associated costs of transport and burial are for the account of the next of kin who submitted the request. [R9]

## 1.11 Development and support services

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”.

- Social work services, educational services and psychological services must be rendered to all inmates 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)]
  - 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 specific type of service may only be rendered by suitably qualified and registered persons. [R10(1)(a)]
- The Department of Correctional Services must take into account in its planning, operations and infrastructure the needs of disable inmates. Similarly, the Department of Correctional Services must be sensitive to the gender of all inmates in its planning, policy and infrastructure. [S 16]

## 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 choice on any legal matter at his 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 legal practitioner may not be censored.
  - Documents and correspondence between an inmate and his legal practitioner may be inspected only to determine if they do indeed relate to legal matters.

### *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.
- Legal practitioners may use their own interpreter and typist when interviewing an inmate.

- 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 persons awaiting trial and to be sentenced, 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 may also present 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 access to reading material and related issues 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 manner that is 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, 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. For the exact procedures on the types of hearings see 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;
- restriction of amenities not exceeding 42 days;
- in the case of serious or repeated infringements, segregation 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 in any manner to administer or implement disciplinary measures in a correctional centre. [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 the penalty of the restriction of amenities and in case of serious or repeated infringements. Segregation may only be used to the extent necessary to achieve these objectives and may not be used otherwise as form of punishment.

- 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/or officials.
- When an inmate has been threatened with violence and is thus segregated for his 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 Services request this in the interests of the administration of justice, for example, an unsentenced offender may be intimidated by alleged accomplices also detained at the same correctional centre.

Unless an inmate is segregated at his own request: [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 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 (excluding segregation upon own request or the result of a disciplinary process) 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.
- 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 may refer the matter to the Office of the Inspecting Judge who must make a decision to confirm or alter the decision within 72 hours.

## 1.18 Mechanical restraints

### 1.18.1 Reasons for the use of mechanical restraints

Mechanical restraints refer to a device which limits or prevents freedom of physical movement and includes 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.

### 1.18.2 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)]

### 1.18.3 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)]
- May be appealed by the inmate to the Office of the Inspecting Judge who must make a decision within 72 hours. [S 31(5)]

## 1.19 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) by using the least required amount of force necessary.

### 1.19.1 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)]

### 1.19.2 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 it should he or she wait for permission. [S 32(2)]

### 1.19.3 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 in such circumstances, this must be reported to the Head of the Correctional Centre as soon as possible. [S 32(2)]

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)]

### 1.19.4 Use of non-lethal incapacitating devices and firearms

The use of non-lethal incapacitating devices (for example tear gas) and firearms 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 and to the Office of the Inspecting Judge.

## 1.20 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 and unsentenced offenders. 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.

## 1.21 Offences under the Act

The following are offences listed under the Act. 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, 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]
- 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 Unsentenced offenders and persons awaiting trial

This category of inmate is not yet sentenced, but may have been convicted already and is treated as a different category of inmate in the correctional system. Compared to their sentenced counterparts, unsentenced offenders and persons awaiting trial have more and wider freedoms. The rights of unsentenced offenders and persons awaiting trial may, however, be restricted for the purposes of maintaining good order and safety in the correctional centre.

### 2.1.1 Types of unsentenced offenders and awaiting trial inmates

The categories unsentenced offender and person awaiting trial can include a number of sub-categories, reflecting where their cases are in the criminal justice process. These are:

- Person awaiting trial
  - After first appearance and detained for trial
  - Detained for psychiatric observation and awaiting placement at a psychiatric facility
  - Children awaiting placement at a child and youth care centre to await trial there
  - Foreign nationals awaiting transfer to the repatriation centre
- Unsentenced offender
  - Convicted but not yet sentenced offenders
- 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 unsentenced offenders and awaiting trial persons

The living conditions and style of incarceration must as far as possible approximate that of life outside of the correctional centre because these offenders have in the majority of cases not been convicted of any crime.

- **Visitors and communication:** Unsentenced offenders and persons awaiting trial 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, apply to unsentenced offenders, persons awaiting trial and sentenced offenders. The amenities that may be restricted for disciplinary purposes in the case of unsentenced offenders and persons awaiting trial, must be described per Regulation.[S46(20)] However, the Regulations do not explain this any further.
- **Work and labour:** Unsented offenders and awaiting trial persons 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 26]
- **Clothing:** Unsented offenders and persons awaiting trial may not be compelled to wear a uniform unless the person's own clothes are in such a poor condition or unhygienic, or is regarded as evidence in a case, and the offender is not able to obtain other clothes. The uniform issued to unsentenced offenders and persons awaiting trial must be different from those worn by sentenced offenders. [R 5(2)]
- **Education and other services:** Unsented offenders and persons awaiting trial are not entitled to rehabilitation, development and educational services provided by the Department of Correctional Services. There is, however, one exception. If an unsentenced offender or person awaiting trial is of compulsory school-going age (15 years and younger), he or she must have access to and attend educational programmes.
- **Food and drink:** Unsented offenders and persons awaiting trial may receive food and drink from the outside. This is, however, subject to normal security measures and management of prohibited items. [S 48]

## 2.2 Women

In two instances women receive special attention in the Act.

- 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.

## 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 school going age, 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. [S4(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 reform school. [S43(4)] Note that the Children's Act (38 of 2005) now refer to these institutions as child and youth care centres.
- 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

The number of inmates suffering from Aids, as well as the current limited access to anti-retroviral treatment has brought the issue of medical parole to the fore. The Act is, however, clear on this matter. It is only when a sentenced offender is in the final stages of a terminal illness or condition, based on the written evidence of a medical practitioner treating the inmate, that the National Commissioner, Correctional Supervision and Parole Board or the court, may consider the placement of the inmate on parole or correctional supervision to die a consolatory and dignified death. [S 79] It is intended that the inmate will die amongst his or her family and loved ones.

In the case of unsentenced offenders and persons awaiting trial, a court must be approached for the release of the person on medical grounds as it is regarded as part of the person's bail conditions.

## 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 Disabled persons

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)]

## 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 proper care of elderly persons in correctional centres. The Act does not make special provision for elderly persons and only ensures that every person in correctional centre is entitled to the same level of primary health care that any member of the community on the outside is.

## 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(60(c)] For more information on this, see “Calculation of Sentences”.
- **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 October 2004, or 20 years if sentence before October 2004.
- **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. (See box on next page.)
- **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.

- **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

Due to the nature of different sentencing options, the fact that some offenders receive more than one sentence period of incarceration at the same time or receive further sentences of incarceration whilst already incarcerated, and different categories of offenders (such as habitual and dangerous criminals), the calculation of sentences can be somewhat complicated. The following sets out the basic provisions of the Act. The most important right in this regard is that a 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 terms (totalling six years) can be served in three years when served concurrently. [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)]

#### *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

- 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 unsentenced offender or person awaiting trial 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 an unsentenced offender or person awaiting trial. 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)]

#### *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.

- Time spent by a child awaiting trial in a correctional centre of 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 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:<sup>1</sup>

- 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. 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 *in 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)]

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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 <http://www.communitylawcentre.org.za/cspri/publications/ALTERNATIVE-SENTENCING-REVIEW.pdf>

- 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]

### 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 offenders 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 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 is possible when he or she arrived at the destination correctional centre. The inmate must then be given the opportunity to make representation 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 humane detention, it is required of the Department of Correctional Services to 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 is 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 for 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.

## 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 is 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.

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 and conditions of parole.
- If an offender has been declared a habitual criminal the report from the Case Management Committee to the Correctional Supervision and Parole Board must also reflect whether
  - there is a reasonable chance that the offender will abstain from crime and lead a law abiding and constructive life in the future
  - the offender is no longer capable of engaging in crime
  - for any other reason, it is necessary to place the offender on parole.
- Submit, upon request, to the National Commissioner a report on any offender sentenced to 12 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 states 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

Unsentenced offenders and persons awaiting trial 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. [R 26]

### 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, as indicated in the schedule below. The following list the **per month** payment of gratuity for the different levels and notches:<sup>2</sup>

**Level I:** Notch I: R 9-24  
 Notch II: R17-16  
 Notch III: R26-40

**Level II:** Notch I: R43-56  
 Notch II: R50-16  
 Notch III: R58-08

**Level III:** Notch I: R75-24  
 Notch II: R87-12

If the monthly tariffs are converted to daily tariffs in various levels/notches the following are applicable:

**Level I:** Notch I: R0-42  
 Notch II: R0-78  
 Notch III: R1-20

**Level II:** Notch I: R1-98  
 Notch II: R2-28  
 Notch III: R2-64

**Level III:** Notch I: R3-42  
 Notch II: R3-96

### 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 also applies to religious days of rest, other than Sundays, based on the faith that the inmate adheres to. [R23(6)a and b)]

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<sup>2</sup> These scales are applicable as per B-Orders revised in May 2005. They are subject to change.

- 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 provides the Department of Correctional Services with a mechanism 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 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 release, so as to prepare for the 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 it is for the National Commissioner of Correctional Services to give 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 unsentenced) 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 voter’s role 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 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 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 as 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 Public Service Commission toll free number at 0800 701 701.

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. In view of this it is recommended that if there is a need by family members to bring a particular complaint or request to the attention of the Department of Correctional Services that, depending on the seriousness of the issue, this be communicated in writing 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 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, 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 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 Services. The Human Rights Commission will refer all complaints that fall within the mandate of the Judicial Inspectorate to the Judicial Inspectorate.

### **7.5 Lodging a complaint with a visiting magistrate or judge**

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.

## **7.6 Lodging a complaint with the Independent Correctional Centre Visitor**

The Inspecting Judge can 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 Service 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 prisoners 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

Complaints can also be lodged electronically at the Judicial Inspectorate for Correctional Centres website at <http://judicialinsp.dcs.gov.za/Complaints/GetRequest.asp>

## **7.7 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.

## 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.

### *NOTE*

At the time of writing (March 2010), two important sections of the Correctional Services Amendment Act (sections 48 and 49) that will establish a new parole and release system known as the “incarceration framework” have not yet come into force.

## 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(3)]
- 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 Correctional Supervision and Parole Board [S73(5)(a)(i)]

## 8.2 Conditions and exceptions with regard to parole and release

The above rules are subject to following conditions or exceptions.

- A sentenced offender who has served his sentence but is too sick or injured to be released, may be kept in the correctional centre until he or she has sufficiently recovered [S73(2)]
- The sentenced offender must accept and agree to the conditions of his or her release on parole, day 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, must serve at least half of his sentence before he or she can be considered for parole unless: [S73(6)]
  - He or she was sentenced under the mandatory minimum sentences legislation, in which case he or she must serve four fifths of the sentence
  - 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
- In the case of offenders sentenced prior to October 2004, at least one third of the sentenced had to be served before consideration for parole
- A person sentenced to corrective training may be incarcerated for a 24 month period and must serve at least 12 months before being considered for parole [S73(6)]
- A person incarcerated for the prevention of crime may be detained for five years and must serve at least two years and six months before being considered for parole [S73(6)]
- A person sentenced to life incarceration may be considered for parole after serving 25 years of the sentence [S73(6)]
- A person sentenced to life incarceration may be placed on parole when he or she reaches the age of 65 years if he or she has served at least 15 years of the sentence [S 73(6)]
- A person sentenced under the mandatory minimum sentences legislation must serve four fifths of the sentence or 25 years, whichever is shorter, before being considered for parole. [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

## 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)<sup>3</sup>. 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.

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3 See Sch 6 item 23 (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.

## **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
  - e. 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;
  - d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - e. 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 information<sup>4</sup>

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.

## 33. Just administrative action<sup>5</sup>

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

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4 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.

5 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.

- 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.
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
  - a. 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

1 SECTION NUMBER	2 SECTION TITLE	3 EXTENT TO WHICH THE RIGHT IS PROTECTED
28	Children	With respect to: <ul style="list-style-type: none"> <li>• subsection (1)(d) and (e);</li> <li>• the rights in subparagraphs (i) and (ii) of subsection (1)(g); and</li> <li>• subsection 1(i) in respect of children of 15 years and younger</li> </ul>
35	Arrested, detained and accused persons	With respect to: <ul style="list-style-type: none"> <li>• subsections (1)(a), (b) and (c) and (2)(d);</li> <li>• the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d)</li> <li>• subsection (4); and</li> <li>• subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.</li> </ul>

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 1997<sup>6</sup>

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

<sup>6</sup> This table was produced with the kind assistance of Chris Giffard.

OFFENCE DESCRIPTION	SENTENCE IN YEARS		
	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE
<b>Drug Offences</b> 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;			
<b>Any offence</b> related to	15	20	25
• Dealing in or smuggling of arms and ammunition;			
• Possession of automatic or semi-automatic firearms, explosives, etc;			
<b>Any offence relating to exchange control, corruption, extortion, fraud, forging, uttering or theft</b> when	15	20	25
• It amounts to more than R500 000;			
• It amounts to more than R10 000 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.			
<b>Rape</b> , other than in circumstances in Part 1 above	10	15	20
<b>Indecent assault on a child under age of 16</b> , involving infliction of bodily harm;	10	15	20
<b>Assault with intent to cause grievous bodily harm on a child under age of 16</b> ; or	10	15	20
More than 1 000 rounds of <b>ammunition</b> .	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



### **Commission on Gender Equality**

PO Box 32175, Braamfontein, 2017  
Tel (011) 403 7182  
Fax (011) 403 7188

### **Chairperson of the Portfolio Committee on Correctional Services**

Mr. V Smith  
PO Box 15, Cape Town, 8000  
Tel (021) 403 2974  
Fax (021) 403 3241

### **Judicial Inspectorate for Correctional Services**

The Hon. Justice, Dr DH Van Zyl  
Private Bag x9177, Cape Town, 8000  
Tel (021)421 1012/3/4  
Fax (021) 418 1069

### **Minister of Correctional Services**

Ms Nosiviwe Nolutando Mapisa-Ngakula  
Private Bag X853, PRETORIA, 0001  
Tel: (012) 307 2934/2884  
Fax: (012) 323 4111

### **National Commissioner of Correctional Services**

The National Commissioner  
Private Bag X136, Pretoria, 0001  
Tel 012- 307 2000/2248/2717/2249  
Fax 012-307 321 2460

### **The Human Rights Commission**

Private Bag 2700, Houghton, Johannesburg,  
2041  
Tel (011) 4848 300  
Fax (011) 484 1360  
Att: Complaints Handling  
Ms Grace Dladla gdladla@sahrc.org.za

### **The Public Protector**

Private Bag X677, Pretoria 0001  
Tel (012) 322-2916  
Fax (012) 322-5093

### **The Public Service Commission**

Private Bag X121, Pretoria, 0083  
Tel: (012) 328 7690  
Fax: (012) 325 8308

## APPENDIX 5

# STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS



Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

### PRELIMINARY OBSERVATIONS

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 principle and practice in the treatment of prisoners and the management of institutions.
2. In view of the great variety of legal, social, economic and geographical conditions of 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.
3. 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.
4. (1) Part I of the rules covers the general management of institutions, 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.
5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions 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.

## Part I: RULES OF GENERAL APPLICATION

### Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  
(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

### Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
  - (a) Information concerning his identity;
  - (b) The reasons for his commitment and the authority therefore;
  - (c) The day and hour of his admission and release.(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

### Separation of categories

8. 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

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. 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 institution.

10. 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.
11. 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.
12. 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.
13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and 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.
14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

### Personal hygiene

15. 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.
16. 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 enabled to shave regularly.

### Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him 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 institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.
18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.
19. 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

20. (1) Every prisoner shall be provided by the 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 needs it.

## Exercise and sport

21. (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.

## Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
  - (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.
  - (3) The services of a qualified dental officer shall be available to every prisoner.
23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
  - (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.
24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.
25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
  - (2) The medical officer shall report to the director whenever he 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.

26. (1) The medical officer shall regularly inspect and advise the director upon:
- (a) The quantity, quality, preparation and service of food;
  - (b) The hygiene and cleanliness of the institution and the prisoners;
  - (c) The sanitation, heating, lighting and ventilation of the institution;
  - (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 director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

### Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.
28. (1) No prisoner shall be employed, in the service of the institution, 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.
29. The following shall always be determined by the law or by the regulation of the competent administrative authority:
- (a) Conduct constituting a disciplinary offence;
  - (b) The types and duration of punishment which may be inflicted;
  - (c) The authority competent to impose such punishment.
30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.
- (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.
31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.
32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

### Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
  - (b) On medical grounds by direction of the medical officer;
  - (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.
34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

### Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.
- (2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.
36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.
- (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
- (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
- (4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

### Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.
38. (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.

39. 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 administration.

## Books

40. Every institution 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

41. (1) If the institution 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) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his 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 attitude shall be fully respected.
42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

## Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution 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 except in so far as he has been authorized to spend money or send any such property out of the institution, 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.
- (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 medical officer shall decide what use shall be made of them.

## Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.
- (2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.
- (3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

## Removal of prisoners

45. (1) When the 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 administration and equal conditions shall obtain for all of them.

## Institutional personnel

46. (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 the institutions 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 full-time basis as professional prison officers 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.
47. (1) The personnel shall possess an adequate standard of education and intelligence.
  - (2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
  - (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.
48. All members of the personnel 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.

49. (1) So far as possible, the personnel 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.
50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.  
(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.  
(3) He shall reside on the premises of the institution or in its immediate vicinity.  
(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.
51. (1) The director, his deputy, and the majority of the other personnel of the institution 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 an interpreter shall be used.
52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.  
(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.
53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.  
(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.  
(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.
54. (1) Officers of the institutions 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. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.  
(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.  
(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

## Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

## Part II: RULES APPLICABLE TO SPECIAL CATEGORIES

### A. Prisoners under sentence

#### *Guiding principles*

56. 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 the present text.
57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.
59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.
60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.  
(2) 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 institution 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.
61. 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 staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his 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.
62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.
63. (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 institutions suitable for the treatment of each group.

(2) These institutions need not 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 institutions, 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 rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions 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.

64. 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 after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

### *Treatment*

65. 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.

66. (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 social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, 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*

67. The purposes of classification shall be:

- (a) To separate from others those prisoners who, by reason of their criminal records or bad 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.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.
69. 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 in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

### *Privileges*

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

### *Work*

71. (1) Prison labour must not be of an afflictive nature.  
(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.  
(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.  
(4) 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.  
(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.  
(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.
72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, 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 institution.
73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.  
(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.
74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.  
(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 workmen.

75. (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 workmen.
- (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 the prisoners.
76. (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 administration so as to constitute a savings fund to be handed over to the prisoner on his release.

### *Education and recreation*

77. (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 illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the 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.
78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

### *Social relations and after-care*

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.
80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.
81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be 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 institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.
- (3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

## B. Insane and mentally abnormal prisoners

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.  
(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.  
(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.  
(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.
83. 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 after-care.

## C. Prisoners under arrest or awaiting trial

84. (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 by a special regime which is described in the following rules in its essential requirements only.
85. (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.
86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.
87. 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.
88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.  
(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.
89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.
90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials 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.
91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.
93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

#### D. Civil prisoners

94. 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

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, 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.

## 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 inmates, 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	

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

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	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	The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. 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.	The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available. 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.	
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. 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. 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. 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"> <li>• No restrictions on the number of letters, cards written or received.</li> <li>• No recording of letters sent or received.</li> <li>• Censoring only in exceptional cases.</li> </ul>	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.		

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	Same	Same	Same
	Same	Same	Same
	Same	Same	Same

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	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	

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	Same	Same	Same
	Same	Same	Same
	Same	Same	Same

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	None	None	None
	None	None	None
	None	None	None

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	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.		

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	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.		

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	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.		

	<b>MAXIMUM</b>	<b>SUPER MAX</b>	<b>C-MAX</b>
	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 of 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.

