



**PRISONS IN A DEMOCRATIC SOUTH AFRICA –  
A GUIDE TO THE RIGHTS OF PRISONERS AS  
DESCRIBED IN THE CORRECTIONAL  
SERVICES ACT AND REGULATIONS**

By

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**Cape Town**

**2006**

This publication was funded by the Open Society Foundation (OSF) and the Ford Foundation.

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The aim of CSPRI is to improve the human rights of prisoners through research-based lobbying and 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.

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# PRISONS IN A DEMOCRATIC SOUTH AFRICA - A GUIDE TO THE RIGHTS OF PRISONERS AS DESCRIBED IN THE CORRECTIONAL SERVICES ACT AND REGULATIONS

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## Introduction

The Correctional Services Act (CSA) was promulgated in 2004, thus creating a human-rights-based framework for South Africa's prison system. In a sense, the transformation of the prison system was considerably slower than that of other government functions in the justice and protection services cluster. Although Parliament passed the CSA in 1998, it was promulgated only partly with the final and full promulgation taking place in October 2004, nearly seven years later. Further delays preventing the full promulgation of the Act were caused by leadership changing frequently and being poor at times, and also by the uncovering of large scale corruption.

With a new legislative framework in place, it is appropriate to ask what a constitutional democracy means for prisoners, how are the rights of prisoners described in the new Act, what are the rights of children, women, and Aids patients in prisons and how overcrowding affects prisoners' rights.

While these can be complex issues, the applicable standards need to be made accessible to practitioners, human rights activists, prison staff, prisoners and their families. The first step in promoting human rights is educating people about their rights and educating employees within the justice and protection services sector about the rights enjoyed by detainees, prisoners awaiting trial, and sentenced prisoners.

This resource guide aims to describe in an accessible and user-friendly format the human rights framework for prisoners in South Africa based on the Constitution, Correctional Services Act, and the Regulations accompanying the legislation. Where appropriate, reference is made to other legislation that has a direct bearing on the rights of prisoners.

Admittedly, there are many other resources that could have been consulted and incorporated into a publication of this nature, such as case law and academic articles, but these were deliberately omitted to ensure that a “plain language” and user-friendly style would be maintained. Legislation and regulations are intimidating enough as they are, especially for non-lawyers; this document aims rather to simplify by providing a description of the basic rights of prisoners and not a discussion and analysis of the deep complexities that very often accompany these rights.

## **How should we understand prisoners’ rights?**

People do not go to prison voluntarily, they are placed there by the state as unsentenced prisoners waiting for their cases to be finalised or they are sentenced to imprisonment by a court. It is for this reason that the state is responsible for the well-being of prisoners. The state cannot place people in prison and not care for them properly. The state has a total and inescapable duty to care for prisoners 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 not to take proper care of that person. Imprisonment 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 imprisonment, he or she retains all rights, except those that have to be limited so that the prison sentence can be implemented. In other words, just because a person is in prison does not mean that he or she loses the right to, for example, health care or the right to vote. For the imposed sentence to be fulfilled, it is not necessary for these rights to be limited or curtailed, therefore prisoners retain such rights. This is known as the *residuum* principle and is central to the rights of prisoners.

Prisoners are also vulnerable to human rights violations for a number of reasons:

- Prisons are closed institutions and many people do not really know what happens inside prisons. With high walls, electrified fences and armed guards, the result is that prisoners are kept inside and the community is kept outside. This makes it difficult for prisoners to communicate with the outside world about what happens inside prisons.
- There is a common perception in society that prisoners should have a tough time in prison as punishment for the crime they have committed. This opinion “allows” for

rights violations to occur, however small, by officials not being held strictly accountable.

- Human rights violations in prisons are difficult to investigate and reported complaints often “disappear” or prisoners are discouraged to report violations or persist with complaints. Collusion between officials and other prisoners can make it very difficult to investigate and address human rights violations.

Prisoners’ rights should not be measured against the crimes that they have committed or the level of crime in our society. The rights prisoners 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 very advanced and well-written legislation governing its prisons. 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 prisoners. Non-governmental organisations, faith-based organisations, advice offices, and individuals may sometimes have to answer questions from prisoners, their families and ex-prisoners, and find that the legislation and regulations are not user-friendly or accessible. This guide is aimed at addressing this need primarily. 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, therefore it 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 a prisoner 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. Collecting the appropriate information and asking the right questions is a skill that comes with experience, but the guide aims to aid the reader's awareness of such issues.

The guide also provides a user-friendly summary of information that users of this guide would be likely to access but which is intimidating in its original unabridged format. For example, the CSA is nearly 100 pages long, the Regulations span 272 pages and the B-Orders cover a mammoth 2 300 pages. These documents provide a wealth of detail on how prisons in South Africa should be managed, whereas this guide provides an introduction to prisoners' rights as describe in the legislation, regulations and B-Orders.

This book is divided into several chapters describing prisoners' rights, starting with the most general and then dealing with categories that are more specific. An index at the front provides a quick reference to where information on a specific topic can be found. In the electronic version of this book, embedded hyperlinks (indicated as [blue underlined](#) text in the electronic version) enable the reader to move quickly to explanatory notes, definitions, or a related issue. In the printed form, the index should assist in providing quick access to the information.

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

The CSPRI website lists additional resources that the reader may also want to consult such as the addresses of all the prisons in South Africa and the full version of the Correctional Services Act. Go to <http://www.communitylawcentre.org.za/cspri/index.php>

## Who is the Commissioner?

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

## Referencing

This guide avoided being too academic in its approach, 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
- [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 for every action for which the DCS is responsible. 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.

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# 1. The basic rights and responsibilities of all prisoners

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## 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 in respect of prisoners. The basic rights of all prisoners in South Africa are based primarily 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)**

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

### **1.2.1 Safe and secure custody**

#### **Right to safety**

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

To ensure the safe custody of all prisoners, every prisoner is required to accept the authority and obey the lawful instructions of officials. Prisoners who disobey instructions can place themselves, other prisoners, the public and officials at risk. Prisoners who disobey instructions may be [disciplined](#). [S 4]

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

### **Powers of officials to maintain safety and order**

Despite the right of every prisoner 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 prisoners, the safety of officials, and the security of the community:

- Search the person of a prisoner, 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 prison or of any person, or which could be used as evidence in a criminal case or disciplinary proceeding. [S 27] More on [Searches](#)
- Take steps to identify the prisoner, which includes recording a description of the prisoner (height, weight, full address, distinctive marks, etc), taking fingerprints and photographs. [S 28(1)]
- Refer the prisoner to a medical officer to ascertain the prisoner’s age. This is particularly important if it is suspected that the prisoner may be under the age of 18 years or claims to be under the age of 18 years, but could be older. [S28(1)(e)]
- Attach an electronic or other device to the body of the prisoner. [S28(1)(f)]
- Apply permitted mechanical restraints, namely:[S31] [More on mechanical restraints](#)
  - Handcuffs
  - Leg-irons and cuffs

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



- Belly chains
- Plastic cable-ties
- Electronically-activated high-security stun-belts (that may be activated outside a cell only)
- Medical patient restraints
- Use reasonable force [More on the use of force](#)

### 1.2.2 Admission to prison

#### The warrant

It is important to ensure that only people who are supposed to be admitted to prison are indeed admitted. When a person is admitted to prison as a prisoner, it must be done in a legal manner that protects the rights of the person concerned. It is a gross human rights violation to imprison a person in a manner that is illegal for any reason.

The first requirement therefore is that there must be a valid warrant authorising the detention of the person by the DCS. Without

**DEFINITION**

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

such a warrant or if there are mistakes on the warrant, the detention is illegal and the prisoner should be released immediately. [S6(1)(a)]

#### Record keeping

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

- The identity of the person – name, date of birth, contact details of next of kin, ID number, and other information that will assist in identifying the person.
- The reason why the person was admitted to the prison, for example to serve a sentence or await trial.
- The date and time when the person was admitted and released. Every time an unsentenced prisoner is released so that he or she may appear in court, this must be recorded as well as when he or she returns to prison.

### **Information to be given upon admission**

When a person is admitted to prison, it is important that he or she understands his or her rights and the prison rules.

On admission to prison, every prisoner must be given written information, in a language that he or she understands, about [S 6(4)]:

- the rules of the prison, e.g. what prisoners are and are not allowed to do and his or her security and privileges category
- the disciplinary requirements, meaning what happens when prisoners break the rules and how this disciplinary process works
- how a prisoner can lay a complaint and make requests, as well as any other issues that may help him or her to understand his or her rights and duties.

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

Every person who is admitted to prison therefore must be informed promptly in a language that he or she understands, of his her right to consult a legal practitioner (e.g. a lawyer) and that if a serious injustice occurs, the state will appoint and carry the cost of the legal practitioner [S 6(3)].

### **Valuables and money**

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

### **Children**

If the prisoner being admitted or transferred is a child, the DCS must notify the appropriate government department that has statutory responsibilities pertaining to 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 prison [S 13(6)(c)]. [More on children](#)

### **Clothing and bedding**

The Act sets the following standards[S10]:

- Upon admission, every sentenced prisoner must be provided with a full set of clothing and bedding.
- Unsentenced prisoners are allowed to wear their own clothes, but if they are issued with prison clothes, such garments must be different from the clothes worn by sentenced prisoners.
- A prisoner may wear such religious or cultural attire as allowed by the Department. [More on religion and belief.](#)

### **Health and security**

When large numbers of people are kept in relatively small spaces, there are health risks. Such 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 prisoner health requires very careful management and monitoring. [More on health care.](#)

As soon as possible after a prisoner has been admitted to prison, 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. Young children admitted to prison with their mothers must also undergo a medical examination. 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 prisoner must be referred to the medical doctor if [R 2(3)(b)]:

- he or she was injured, ill or complained that he or she was ill
- he or she uses prescribed medication
- he or she is receiving continued treatment
- she is pregnant

- there is any reason other than those already mentioned why the prisoner must be referred to a medical doctor.

If the prisoner wears any jewellery for the purpose of emergency identification such as a Medi-Alert locket or bracelet, this must be recorded and the prisoner must be allowed to wear it unless it poses a security risk [R 2(6)].

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

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

### **1.3 Accommodation**

The majority of prisoners in South Africa are accommodated in communal cells that were built to accommodate a group of prisoners who share communal cell facilities such as the showers, toilets, and common space. Many prisons in South Africa are also overcrowded, meaning that cells accommodate more people than what they were intended to. Overcrowding has an extremely negative effect on all aspects of imprisonment.

#### **1.3.1 Physical conditions**

- Prisoners must be held in conditions that do not undermine their human dignity. This means the following: [R 3(2)(2)]
  - *Floor space and cubic space* must be adequate for each prisoner to move about freely and sleep comfortably within the cell
  - *Lighting* in a cell (natural and artificial) must be of such a nature that prisoners inside are able to read and write
  - *Ventilation* must be adequate
  - *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 prisoner must have a *bed* and be provided with sufficient bedding depending on the climate. This applies to both cells and prison hospitals.
- Every prisoner must be provided with adequate *clothing*. Unsentenced prisoners are allowed to wear their own clothes and may also acquire their own bedding.

### 1.3.2 Separation of certain categories of prisoners

- Sentenced prisoners must be kept separate from unsentenced prisoners. [S 7(2)(a)]
- Male prisoners must be kept separate from female prisoners. [S7(2)(b)]
- Children must be kept separate from adults and in facilities that are appropriate to children of their age. [S7(2)(c)]
- Prisoners may be separated based on their age, health, or security risk category. [S7(2)(d)]
- Prisoners may also be accommodated in single or communal cells. [S7(2)(e)]
- If the Department has reason to believe that a group of unsentenced prisoners or prisoners waiting to be sentenced will collude to defeat the ends of justice, they may be separated from each other. [S7(2)(f)]
- With the Head of Prison's permission, it is possible to mix sentenced and unsentenced prisoners, male and female prisoners, and adults and children under the supervision of an official for the purposes of providing development or support services, and for medical treatment. This may, however, never be done with regard to sleeping arrangements. [S7(3)]

#### NOTE

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

## 1.4 Nutrition and meals

Prisons are notorious for serving prisoners inadequate and/or low quality food. Therefore, the Act and Regulations are very specific in this regard to ensure that prisoners' dignity is not negatively affected by the food they receive. [S 8]

- Each prisoner must receive sufficient food to promote good health. The Regulations specify the calorie counts and 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)] [More on religion and belief.](#)
- The diet and times at which a prisoner is fed may be changed upon the instruction of a medical officer. [S 8(4)]
- Food must be well prepared and served at intervals of no less than 4½ hours and no more than 6½ hours. There may be a break of no longer than 14 hours between the last meal of the day and the first meal of the next day. [S 8(5)]
- Prisoners must have access to clean drinking water at all times [S 8(6)].

**Serving meals in prison**

It used to be the case that prisoners 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 prisoners 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 DCS started changing this system to ensure that there would be sufficient staff members in place so that prisoners would be served supper at an appropriate time. It will take some time before this is implemented fully.

## 1.5 Searches

Prisoners and their cells may be searched by officials. The power that officials hold in this regard is potentially very wide, therefore it is strictly controlled. Searching the person of a prisoner must always be conducted in a manner that invades the privacy and undermines the dignity of the prisoner as little as possible [S 27(3)].

### 1.5.1 Manner of searching

Therefore, searching a prisoner 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

- search by taking body tissue (e.g. blood) or body excretion (e.g. urine)
- search by using X-ray or technical devices
- detaining a prisoner for the recovery by the normal excretory process of an object that has been swallowed.

### 1.5.2 Conditions applying to bodily searches

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

- All bodily searches must be authorised by the Head of Prison
- The correctional official conducting the search as well as other officials present during the search must be of the same gender as the prisoner.
- All bodily searches must be conducted in private.
- Only a registered nurse, medical officer, or medical practitioner may conduct or must supervise searches involving taking body tissue, using X-ray, or technical devices, and detaining a prisoner for the recovery of objects by the normal excretory process.

### 1.6 Hygiene and exercise

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

- Every prisoner has the responsibility to keep himself, his bedding, and cell clean and tidy. The DCS must give prisoners with the means to do this, for example, by providing prisoners with brooms, cleaning materials, etc. [S 9]
- Every prisoner is entitled to a minimum of one hour of exercise per day. This exercise should be done in the open air, weather-conditions permitting[S 11].
- Prisoners who are pregnant, under medical treatment, or who complain of being sick or injured may be excused from exercise if certified by a medical officer [R 6].

### 1.7 Health care

Health care in prisons is a contentious issue, therefore it is not surprising that a large

number of the complaints recorded by the Judicial Inspectorate of Prisons relate to health care issues. Although tuberculosis has been associated with prisons for a long time, HIV/Aids has brought a new dimension to the prison health care debate. The combination of these two

#### 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> .

diseases in the prison set-up is extremely dangerous. The overall purpose of policy pertaining to health care in prisons is to ensure that prisoners lead a healthy life. Therefore, prisoners have a number of rights regarding health care and these are discussed below.

### **1.7.1 General health care rights**

- Prisoners 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 prisoners as to members of the community [R 7(1-2)].
  - Prisoners may consult their own medical practitioner at their own cost; the Department does not carry the cost [S 12(3)].
- Prisoners have the right to adequate medical care [S12(2)]
  - The services of a medical doctor and a dentist must be available at every prison [R7(2)].
  - A registered nurse must attend to sick prisoners at least once a day [R7(4)].
  - Prisoners 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 prisoner may, even with his or her consent, be subjected to any medical or scientific experimentation or research [R 7(7)].
  - A prisoner may only participate in clinical trials with the permission of the Commissioner [R 7(7)].
  - The Commissioner must approve a request by a prisoner to donate or receive an organ or tissue [R 7(8)].
- No prisoner may be compelled to undergo medical intervention or treatment [S 12(4)(b)].
  - In the event of an emergency or if the prisoner cannot give consent to medical treatment or an intervention, a medical practitioner may proceed with treatment if he or she believes that the prisoner's life would be in danger if treatment were not performed.

### **1.7.2 Consent for surgery**



- No surgery may be performed on a prisoner without his or her consent and if the prisoner is a child, consent must be obtained from his or her legal guardian [S 12(4)(c)].
  - In the event of an emergency when the prisoner is unable to give consent, or it is not possible or would 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**

- A prisoner may not be sterilised at state expense unless this is required for medical reasons and so certified by a medical officer [R7(9)(a)].
  - A request from any person to receive any form of artificial insemination from a prisoner must be approved by the Commissioner [R7(8)(b)].
  - No prisoner may be artificially inseminated [R7(8)(b)].
  - The 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 prisoner is entitled to receive treatment for an injury sustained prior to release until that injury is healed. The released prisoner may be required to report to a prison 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 prison and must be moved to an appropriate health facility [R7(13)].
  - Before such a prisoner is transferred, he or she must be placed under the special care of a medical officer.

## **1.8 Contact with the community**

Maintaining contact with loved ones, friends, and the outside world is very important when preparing prisoners for their release. It can probably be concluded that the more contact there is, the better it is for the prisoner and for the overall management of the prison. Contact and communication with the outside world give prisoners hope and reasons to look forward to

their release date. Contact with people beyond prison gives prisoners something else to focus on than the daily life inside prison.

### **1.8.1 General rights with regard to contact**

- The DCS has a duty to encourage prisoners to maintain contact with the community and remain informed of current affairs in society [S13(1)].
- Upon admission to a prison or when being transferred to another prison, a prisoner must notify his next of kin (or other relatives if they are not available) of his or her whereabouts [S 13(6)].
  - If a prisoner does not wish to notify his next kin or have them notified, he or she must inform the Commissioner of this [S13(6)(a)(ii)]
  - A prisoner who is a child, may not refuse that his next of kin be informed of his or her whereabouts (S13(6)(c)(iii)] [More on children](#)
- Every prisoner has the right to visits totalling not less than one hour per month [S 13(3)] .
- The DCS must give all prisoners the opportunity to communicate with and be visited by their spouses, partners, next of kin, religious counsellors and chosen medical practitioner [S 13(4)].
  - If a prisoner is unable 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 a prisoner is a foreign national, he or she must be allowed to communicate with his or her diplomatic representative in South Africa. If his or her country of origin is not represented in South Africa, he or she may communicate with any international organisation whose task it is to protect the interests of such prisoners [S 13(5)].

### **1.8.3 Notification of next of kin**

- If a spouse or family member asks the DCS about the whereabouts of a prisoner, the DCS must supply this information with the consent of the prisoner [S 13(6)(d)].

### **1.8.4 Search and monitoring of contact and parcels**

- Prisoners 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 contravene rehabilitation objectives. Under exceptional circumstances, the Head of Prison may authorise an official (in writing) to intercept communications between a prisoner and a member of the public, if the Head of Prison has reason to believe that the communication contains or will contain evidence of a threat to the security of the prison, 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. As soon as is reasonably possible, prisoners must 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. Prisoners enjoy the same protection.

- Prisoners are allowed the freedom of conscience, religion, thought, belief and opinion [S14(1)].
- Prisoners may attend religious services and meetings in prison freely and voluntarily. This means that nobody may be forced to attend a religious service or participate in religious practices [S14(2 and 4)].
- Prisoners 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 prison for all religious denominations [S14(3)].
- The diet of prisoners 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 prison [S19 (2)].
- The assessment of sentenced prisoners, 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 CSA provides for the regulation of wearing religious attire. However, such regulations have not yet been formulated [S134(2)(f)].

## **1.10 Deaths in prison**

The death of a prisoner while in custody should be treated with the appropriate sensitivity and thoroughness. It is important that all deaths in prison are properly investigated, explained and that concerns raised by family members, civil society organisations and other stakeholders are addressed.

The DCS distinguishes between “natural” and “unnatural deaths”. The term *natural deaths* refers to deaths resulting from natural causes such as old age and ill health. The term *unnatural death* refers to death caused by accident or by murder.

The following applies at all times when a prisoner dies in custody:

- Any death of a prisoner 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 Prison must report such a death accordingly [S 15(1)].
- All deaths (natural and unnatural) must be properly recorded by the Head of Prison and reported to the Office of the Inspecting Judge [S 15(2)].
- The Head of Prison must inform the next of kin when a prisoner has died in custody [S 15(3)].
- A deceased prisoner must be buried by the Head of Prison in the magisterial district where he or she was detained, but the 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 Commissioner, but the associated costs of transport and burial are for the account of the next of kin who submit the request [R9].

### **1.11 Development and support services**

The DCS has a duty to “*promote the social responsibility and human development of all prisoners and persons subject to community corrections*”. To achieve this, the DCS may provide development and support services even when not required to do so by the Act. This issue is described further under [Sentenced Prisoners](#).

- Social work services, educational services and psychological services must be rendered to all prisoners who have a need for such services [S 16].

- If a need for one of these services exists, and there is no such service available at the prison, the Head of Prison (or Head of Community Corrections) must take the necessary steps to ensure that the required service is made available as soon as possible.
- If the DCS does not provide development and support services, it must inform prisoners of services available from other sources and assist prisoners in making contact with such agencies, for example non-governmental organisations.
- The specific type of service may only be rendered by suitably qualified and registered persons.
- In its planning, operations and infrastructure, the DCS must take into account the needs of disabled prisoners. Similarly, planning, policy and infrastructure of the DCS must be sensitive to the gender of all prisoners [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. Prisoners have the following rights with regard to legal representation:

- Every prisoner may consult a legal practitioner of his or her choice on any legal matter at his or her own expense [S17(1)].
- All consultations between a prisoner and a legal practitioner are confidential [S17(2)].
  - Documents and correspondence between a prisoner and his legal practitioner may not be censored.
  - Documents and correspondence between a prisoner and his legal practitioner may be inspected only to determine if they do indeed relate to legal matters.
- The Commissioner may impose certain restrictions to ensure the safe custody of prisoners but this may not affect the confidentiality of consultations [S17(2)].
- The Head of Prison must take the necessary steps to ensure that prisoners exercise the right to legal advice and representation. This means that especially for prisoners

<p><b>NOTE TO LEGAL PRACTITIONERS</b></p> <ul style="list-style-type: none"> <li>● You must show proof of identity and status as a legal practitioner to gain access to the prisoner.</li> <li>● Consultations must take place between 0800 and 1530 unless the HOP has given permission otherwise in advance.</li> <li>● Consultations must take place within eyesight but out of earshot.</li> <li>● Legal practitioners may use their own interpreter and typist when interviewing a prisoner.</li> </ul>
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awaiting trial and sentencing, there must be opportunities and facilities for their defence to be prepared [S17(4)].

- If a particular legal practitioner is refused access to the prisoner, the prisoner may ask to consult with another legal practitioner [R12(2)(e)].

### 1.13 Reading material

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

- Every prisoner must be allowed to access available reading material of his or her choice
- Reading material may be borrowed from a prison library or may be sent to the prisoners from outside. This may come from friends or relatives, and may also be a subscription to a magazine or newspaper.
- Access to reading materials that pose a security threat or are not conducive to rehabilitation will not be allowed.
- Officials may inspect an envelope or package sent to a prisoner 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 there are [exceptional circumstances](#).
- Reading material that would undermine a person's sense of personal dignity by demeaning the person or causing personal humiliation, or embarrassment, 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.

## 1.14 Complaints and requests

In a prison, officials have total control over prisoners. Therefore, the right to lodge a complaint and submit requests is important for ensuring that prisoners are not exploited and that their complaints are addressed and reasonable requests adhered to. The emphasis is on setting up a procedure to ensure that complaints and requests are dealt with effectively and efficiently. This does not mean that prison management must agree to every complaint and request, but rather that each complaint and request be dealt with in a manner that is thorough, respectful, and consistent. Communicating with prisoners to explain decisions properly is an important element in dealing effectively with complaints and requests, especially if the decision was not in the prisoner's favour.

- Every prisoner has the right to submit a request or lay a complaint daily to the Head of the Prison or an authorised official. [S 21(1)] A prisoner holds this right from the moment he or she arrives at a prison 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 constitutes "prompt", therefore this has to be assessed on a case-by-case basis [S 21(2)(a)].
- The prisoner must be informed of the outcome of the request or complaint [S 21(2)(b)].
- If a prisoner lodges a complaint regarding an alleged assault, he or she must immediately undergo a medical examination and receive the treatment prescribed by the medical officer [S 21(2)(c)].
- If a prisoner is not satisfied with the response to a complaint or request, he or she must inform the Head of Prison of this as well, as the reasons for him or her being unsatisfied. The Head of Prison must refer the matter to the Area Manager. The response from the Area Manager must be communicated to the prisoner [S 21(3) and 21(4)].
- If a prisoner is not satisfied with the response received from the Area Manager, he or she may lodge a complaint with the Independent Prison Visitor (IPV) [S 21(5)]. A prisoner may also approach an IPV directly without first lodging a complaint internally. [More on IPVs](#)

## 1.15 Discipline

The disciplinary system in a prison is there to protect the safety of both staff and prisoners. For this reason, good order and security must be maintained. The Act instructs the DCS to do this firmly, 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 as being separate from, but connected to, the criminal justice system. [For more information on this see Offences under the Act.](#)

Disciplinary action may be taken against a prisoner when [S 22(1)]:

- He or she is convicted of an offence committed whilst in prison [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 prison;
  - 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 authorised 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 prison 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 prison;
- o professes to be a member of a gang or takes part in gang activities;
- o makes a dishonest accusation against a correctional official or fellow prisoner;
- o conceals, destroys, alters, defaces or disposes of an identification card, document or any issued article;
- o 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
- o attempts to do anything referred to in the above.

### 1.15.2 Types of disciplinary hearing

- Two types of disciplinary hearing are possible; the type that is selected depends on the person conducting the hearing[S 24]:
  - o A head of prison or an authorised official
  - o A disciplinary official
- A hearing conducted before a HOP or authorised official is more informal and there is no legal representation. The hearing before a disciplinary official is more formal and legal representation is allowed, but at the expense of the prisoner. For the exact procedures on the types of hearing see Regulation 14(1-2).
  - o All proceedings and decisions must be properly recorded [R 14(1)(d)].
  - o Disciplinary hearings must be conducted as soon as possible and within 14 days of the prisoner being charged. The written notice of a disciplinary hearing must be given to the prisoner not less than 7 days before the hearing [R 14(1)(a)].

### 1.15.3 Punishment that may be imposed

- A hearing conducted by a head of prison or authorised official may impose the following forms of punishment, which may be suspended [S 24(3)]:
  - o a reprimand;
  - o a loss of gratuity for a period not exceeding one month;
  - o 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)]:
  - o a reprimand;
  - o 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, solitary confinement for a period not exceeding 30 days.
- A prisoner'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 the prisoner. [S37(4)].
- A prisoner, who has been found guilty and received any of the types of punishment listed above, except [solitary confinement](#), may request that the case be referred to the Commissioner for review. The Commissioner may change the finding and change the punishment. [S24(7)]
- No prisoner may be used in any manner to administer or implement disciplinary measures in a prison [S 22(4)].

## 1.16 Segregation

Segregating a prisoner from the general prison population is a potential risk area with regard to prisoners' rights. Although, at times, there may be good reasons for taking this measure, it needs to be carefully regulated and monitored.

### 1.16.1 Reasons for the use of segregation

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

- A prisoner may request (in writing) that he or she be placed separately from the general population in a single cell. The prisoner may withdraw this request at any time.
- To give effect to a penalty because of a disciplinary process, i.e. for [solitary confinement](#). Segregation may otherwise not be used as a form of punishment.
- On the advice of a medical officer, for example when a prisoner or group of prisoners have contracted a serious and contagious disease
- When a prisoner displays violent behaviour and is a threat to other prisoners and officials
- When a prisoner has been threatened with violence and is segregated for his or her own safety

- When a prisoner has been recaptured after escape and there is a real risk that he or she will attempt to escape again
- When the SA Police Service requests this in the interests of the administration of justice, for example, an unsentenced prisoner may be intimidated by alleged accomplices who are detained at the same prison.

Unless a prisoner is segregated at his or her own request [S 30(2)]:

- He or she must be visited by an official every four hours and at least once a day by the Head of Prison
- He or she must have his or her health assessed by a nurse, psychologist or medical officer at least once a day

### **1.16.2 Segregation time limits**

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

- Segregation must be for the shortest possible period necessary and may not exceed seven days unless the segregation is at the request of the prisoner or the result of a disciplinary process.
- Segregation (excluding segregation at own request or as a result of a disciplinary process) may be extended with the permission of the Commissioner for a period not exceeding 30 days , provided that a medical officer or psychologist is satisfied that this will not be harmful to the health of the prisoner.
- All instances of segregation and extended segregation must be reported by the Head of Prison to the Area manager and the Office of the Inspecting Judge.
- A prisoner in segregation may refer the matter to the Office of the Inspecting Judge who must make a decision within 72 hours.

## **1.17 Solitary confinement**

### **1.17.1 Definition of solitary confinement**

Solitary confinement means being held in a single cell with the loss of all amenities. Solitary confinement is the most severe punishment that can be imposed on a prisoner for a disciplinary transgression. Solitary confinement should be used only as a measure of last resort and can only be used as a measure of punishment after a disciplinary process. The use

of solitary confinement is actively discouraged and its abolition is supported by [Principle 7](#) of the *Basic Principles for the Treatment of Prisoners*.

### **1.17.2 Rules for solitary confinement**

The rules for the use of solitary confinement therefore are very strict [S 25]:

- When a prisoner has received the penalty of solitary confinement, the case must be referred to the Office of the Inspecting Judge for review. The Inspecting Judge must make a decision within three days to confirm or change the punishment [S 25(2)].
- A prisoner may only be placed in solitary confinement after the Inspecting Judge has confirmed the penalty.
- A prisoner placed in solitary confinement must receive the same diet as usual.
- A prisoner in solitary confinement is still entitled to one hour of exercise per day, but this will be enjoyed separately from the rest of the prison population [S 11].
- No prisoner may be held in solitary confinement for longer than 30 days [S 30(5)].
- A prisoner in solitary confinement must be visited at least every four hours by a correctional official and once a day by the Head of Prison [S 25(3)].
- The health of a prisoner in solitary confinement must be assessed at least once a day by a nurse, medical officer, or psychologist [S 25(3)].
- Solitary confinement must be discontinued when, in the view of a nurse, medical officer, or psychologist, it poses a threat to the mental and/or physical health of the prisoner [S 25(4)].

## **1.18 Mechanical restraints**

### **1.18.1 Reasons for the use of mechanical restraints**

Mechanical restraints, such as handcuffs, leg irons and belly-chains, can be used to inflict harm, attack the dignity of prisoners and, ultimately, to torture prisoners. 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 reasons [S 31]:

- It is necessary for the safety of the prisoner or any other person
- To prevent the damage of property
- There is a reasonable suspicion that the prisoner 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 a prisoner:

- as a form of punishment [S 31(6)]
- appearing in court with the exception of handcuffs and leg-irons, unless instructed otherwise by the court [S 31(2)]
- in solitary confinement or segregation, unless authorised by the Head of Prison, and then for a period not exceeding seven days. This may be extended to 30 days with permission from the Commissioner, subject to approval from a medical officer [S 31(3)]
- in addition to hand-cuffs and leg-irons unless he or she is outside of his or her cell[S 31(7)].

### **1.18.3 Additional restraints**

The use of mechanical restraints in addition to hand-cuffs and leg-irons:

- Must be reported immediately by the Head of Prison to the Area Manager and the Office of the Inspecting Judge [S 31(4)]
- May be appealed by the prisoner 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 prisoners can place prisoners at tremendous risk of torture, abuse and ill-treatment. The behaviour of a prisoner can never be used as a justification for torture or ill-treatment. Force therefore can only be used to restrain a prisoner, but never to punish a prisoner. The use of force is thus aimed at preventing a prisoner from doing something (for example harming himself or others), while using the least amount of force necessary.

### **1.19.1 Prohibition on the use of force**

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

- self-defence
- the defence of another person
- preventing a prisoner 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 a prisoner from escaping, or the protection of property. At all times, the emphasis must be on restraining the prisoner(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 Prison, unless it is an emergency and the official believes that he or she would obtain it should he or she wait for permission. When force is used in such circumstances, it must be reported to the Head of Prison as soon as possible [S 32(2)].

#### **1.19.3 After force has been used**

If force has been used on a prisoner(s), the prisoner(s) concerned must undergo a medical examination and receive the appropriate treatment as prescribed by the medical officer [S 32(5)].

#### **1.19.4 Use of non-lethal incapacitating devices and fire-arms**

The use of non-lethal incapacitating devices (for example teargas) and fire-arms is strictly regulated by the Act in Sections 33 and 34 and Regulations 20 and 21. Whenever these devices have been used it must be reported in writing as soon as possible to the Head of Prison.

### **1.20 Prohibited items**

Prisoners 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 following without lawful authorisation [S 119]:

- supply, give or facilitate that prisoners, in a prison or any other place where prisoners are, receive any document, intoxicating liquor, dagga, drug, opiate, money, or any other article;
- bring out of any prison from any prisoner 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 types of punishment 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[S 113];
- Interference with community corrections conditions [S114].
- Aiding escapes, which includes [S115]:
  - conspiring with or encouraging a prisoner to escape;
  - assisting a prisoner in escaping or attempting to escape
  - supplying or attempting to supply a prisoner or prisoners with the means to escape, for example documents, a cell phone, or firearm
  - relaying any document, or article or causing it to be relayed into or out of a prison or a place where prisoners may be in custody
  - harbouring or concealing or assisting in harbouring or concealing an escaped prisoner,
- The unauthorised removal of a prisoner from prison [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 prisoner;
  - collaborates with a correctional or custody official or any other person, to leave the prison 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 imprisonment for a period not exceeding ten years or to imprisonment without the option of a fine or both.
- Supplying certain articles to prisoners [S119]

- No person may without lawful authority supply, convey or cause to be supplied or conveyed to any prisoner, or hide or place for his or her use any document, intoxicating liquor, dagga, drug, opiate, money, or any other article;
- Prisoners receiving or sending articles [S120]
  - Bribing a correctional official or contractor to the DCS to send or receive articles
  - 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 prison for a prisoner'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 it being hidden or placed by such person for eventual use by or delivery to a prisoner or other person.
- Selling or supplying articles to prisoners [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 prisoner or for the use of the Department;
- Unauthorised entry to prisons and communication or interference with prisoners [S 122]
  - Unauthorised entry
  - Refusal to leave when so instructed
  - Unauthorised communication with a prisoner
  - Interference with prisoners or a group of prisoners
  - Possessing or publishing a sketch, diagram or photograph of a prison or part of a prison or any security system relating to the detention of prisoners in order to undermine the security or secure detention of the prisoners,
- Prohibited publications [S 123]
  - A description of prison life that identifies individual prisoners without their consent
  - An account of a crime that is not a court record for which a person is currently serving a sentence



- A prisoner serving a sentence or person under corrections cannot earn any money by publishing an account of his or her experiences relating to the reasons for serving the sentence.
- Wearing departmental dress or insignia without authorisation [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.

## 2. The rights of specific categories of prisoners

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### 2.1 Unsentenced prisoners

This category of prisoner is a person who has not yet been sentenced and is treated as a different category of prisoner in the prison system. Compared to their sentenced counterparts, unsentenced prisoners have more and wider freedoms. Unsentenced prisoners' rights may, however, be restricted for the purposes of maintaining good order and safety in prison.

#### 2.1.1 Types of unsentenced prisoner

Unsentenced prisoners can include a number of sub-categories that reflect where their cases are in the criminal justice process, namely:

- After first appearance and detained for trial
- Convicted but not yet sentenced offenders
- Detained for psychiatric observation and awaiting placement at a psychiatric facility
- Children awaiting placement at a reformatory
- Children awaiting placement at a secure-care facility
- Foreign nationals awaiting transfer to the repatriation centre in Krugersdorp.

The overwhelming majority of unsentenced prisoners are detained in prison because they were denied bail by the court, or bail was set at an amount that the person could not afford.

#### 2.1.2 The rights of unsentenced prisoners

The living conditions and style of incarceration must approximate that of life outside of prison as far as possible because the majority of such prisoners have not been convicted of a crime.

- *Visitors and communication:* Unsentenced prisoners may receive visitors, make telephone calls, and receive letters without restriction but subject to practical arrangements at a prison. The Act provides that restrictions may be laid down by regulation, but this does not appear to have been done to date [S 49].
- *Legal representation:* See above at Section 1.11 "[Access to legal advice](#)"

- *Internal discipline:* The disciplinary system, as described [above](#), applies to both unsentenced and sentenced prisoners. The [amenities](#) that may be restricted for disciplinary purposes in the case of unsentenced prisoners must be described per Regulation[S46(20)]. However, the current Regulations do not do so.
- *Work and labour:* Unsented prisoners 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 [R 26] do not explain this any further.
- *Clothing:* An unsentenced prisoner may not be compelled to wear a prisoner's uniform unless his or her own clothes are in such a poor condition or unhygienic, or regarded as evidence in a case, and the prisoner is not unable to obtain other clothes. The uniform issued to unsentenced prisoners must be different from that worn by sentenced prisoners [R 5(2)].
- *Education and other services:* Unsented prisoners are not entitled to rehabilitation, development and educational services provided by the Department of Correctional Services. However, there is one exception: if an unsentenced prisoner is of compulsory school-going age (15 years and younger), he or she must have access to and attend educational programmes. [More information on children.](#)
- *Food and drink:* Unsented prisoners may receive food and drink from the outside. This is, however, subject to normal security measures and procedures for managing prohibited items [S 48].

## 2.2 Women

In two instances, women receive special attention in the legislation.

- The first is that male and female prisoners must be detained separately [S7(2)(b)] from one another at all times.
- The second provides for female prisoners 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 five years. During this period, the DCS is responsible for the nutrition, clothing and health care of the child, as well as the availability of facilities to assist in the sound development of the child. Where possible, the DCS must also accommodate such women and children in mother-and-child units that are more suitable for this purpose than general prisoner accommodation.

## 2.3 Children

The detention of children in prison should be a measure of last resort, as set out in S 28(1)(g) of the Constitution. When detention in a prison cannot be avoided, children have the following rights [S 19]:

- Children must be detained separately from adults at all times, including when prisoners are transported [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 prison or has been transferred from one prison to another, the DCS must inform the necessary authorities who have a statutory responsibility towards the education and welfare of children [S 13(6)(c)(i)]
- The DCS 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 another 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 maintain contact with their families as far as possible [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 [S41(2)]
- Every child must have access to social work services, religious care, recreational programmes and psychological services [S19(2)]
- Children may perform work in prison, apart from [general cleaning work](#), if this work is part of training and aimed at acquiring skills, and is appropriate for a child of their age and is not detrimental to their educational, physical, mental, moral or social well-being [S40(3)(b-c)]

- Children sentenced to imprisonment may, in consultation with the Department of Social Development, be transferred to a reform school [S43(4)]
- Children, who are subject to community corrections may be required to attend additional educational programmes. The DCS must also ensure that children who are 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 prisoners**

The number of prisoners suffering from Aids, as well as the limitations on access to anti-retroviral treatment has brought the issue of medical parole to the fore. The Act is, however, clear on this matter. Only when a prisoner is in the final stages of a terminal illness or condition, based on the written evidence of a medical practitioner treating the prisoner, may the Commissioner, Correctional Supervision and Parole Board or the court consider placing the prisoner on parole or correctional supervision to die a consolatory and dignified death [S 79]. It is intended for the prisoner to die among his or her family and loved ones.

## **2.5 Youth**

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

The Regulations state that prisoners between the ages of 18 and 21 years must be held separately from prisoners over the age of 21 years [R3(2)(h)]. This provision recognises that members of this group are vulnerable despite being adults.

## **2.6 Disabled prisoners**

The Act defines “disability” as *“a physical or mental condition which prevents a prisoner from operating in an environment developed for persons without such an impairment, and includes*

*deafness; dumbness; paraplegia; quadriplegia; non-certifiable mental conditions; and blindness or extreme impairment of vision.” [Definitions]*

Apart from this definition, there is no further special mention of disabled persons in the Act or the Regulations. It therefore has to be assumed that the accommodation and other amenities for disabled prisoners has to meet the same standards as for prisoners who do not have these disabilities, as set out in the Act. These were set out above under [Accommodation](#).

## **2.7 Foreign nationals**

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

## **2.8 The elderly**

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

### 3. Serving a prison sentence

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#### 3.1 Different types of prison sentences

The following sentences involving imprisonment can be imposed by a court

- *Imprisonment for a determinate period:*  
This sentence will set down a fixed period for which the offender will be imprisoned, specifying a starting and

ending date. A person may not be sentenced to imprisonment for less than four days, but there is no limit on the maximum length [Criminal Procedure Act S 284].

- *Imprisonment for an indeterminate period:* A court may declare a person a dangerous criminal and sentence him or her to imprisonment for a period that is not longer than the [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 a “habitual criminal” if the court feels that the community should be protected against him or her. A person declared as a habitual criminal may be detained for a period of 15 years, but may be placed on parole after a period of at least 7 years has passed. The court may further impose additional punishments not exceeding 15 years’ imprisonment [S73(60(c))]. For more information on this see [Calculation of Sentences](#).
- *Life imprisonment:* This sentence means that a person can spend the rest of his or her life in prison. All such offenders can be considered for parole after serving 25 years.

<p><b>Sentence jurisdiction of the criminal courts</b> A District Court may sentence a person to a maximum prison term of three years. A Regional Court may sentence a person to maximum prison term of 15 years. There is no restriction on the length of a prison sentence that the High Court or the Supreme Court of Appeal can impose on a person.</p>
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- *Periodical imprisonment:* Subject to certain conditions, a court may impose a prison term of not less than 100 hours (4.2 days) and not more than 2 000 hours (83.3 days), 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 imprisonment, but can be combined with a term of imprisonment, or a term of imprisonment can, under certain conditions, be converted to a sentence of correctional supervision, allowing for the prisoner to be released from prison. [More on correctional supervision.](#)
- *Imprisonment from which a person may be placed on correctional supervision:* If the prison term to which an offender is sentenced is less than five years, or if it is more than five years but the prisoner's date of release is not more than five years into the future, the Commissioner may request that the court reconsider the sentence and convert the prison term to one of correctional supervision.
- *Suspended term of imprisonment:* When passing sentence a court may suspend a term of imprisonment on certain conditions, for example that the offender does not commit another crime for a specific period.

**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, be subject to additional conditions

### 3.2 Calculation of a prison sentence

Due to the nature of different sentencing options, and the fact that some offenders receive more than one prison sentence at the same time or receive further prison terms while already serving a prison term, and the existence of different categories of prisoner (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 prisoner may not be detained for longer than the period to which 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 prison sentence starts on the day it is passed, unless it is suspended or the offender is released on bail and awaiting a decision from a higher court regarding an appeal [S39(1)].
- An offender who received more than one prison term or who receives more prison terms while serving a prison term must serve these prison terms consecutively (one after the other) unless the court has specified otherwise. The court may order that two or more prison 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 DCS will determine the order in which multiple prison terms will be served consecutively, unless this is specified by the court [S39(2)].
- Any determinate sentence runs concurrently with a life sentence or with the sentence received as a result of the prisoner 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 a prisoner receiving a sentence of more than one period of imprisonment, the non-parole periods of each sentence must be served consecutively before the prisoner can be considered for parole [S39(2)].
- If a person's sentence expires on a Sunday or public holiday, he or she must be discharged two days before that Sunday or public holiday [S39(4)].
- If a person on parole is sentenced to imprisonment 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 prison as an unsentenced prisoner 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 in acknowledgement of the time that the offender has already spent in prison as an unsentenced prisoner. 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)].

### 3.3 Correctional supervision

Correctional supervision is administered by the DCS and provides for a wide range of sentencing options and [conditions](#). Several of these options are aimed at avoiding imprisonment while others combine correctional supervision with imprisonment. The overall purpose is to provide the courts with a flexible sentencing option that is suited to the particular needs of the offender but that also addresses society interest in punishing the offender. It is important to note that the 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>

#### 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/or fine). The sentencing court may deviate in exceptional circumstances from the minimum when there are "substantial and compelling reasons" not to impose the minimum sentence. 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 *S v Brand*

- A sentence to correctional supervision not exceeding three years to be served entirely at home, with no period of imprisonment. 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 imprisonment not exceeding five years, from which such a person may be placed under correctional supervision at the discretion of the Commissioner of Correctional Services. A report is required from a correctional official or a probation officer prior to sentence being passed. [Criminal Procedure Act S 276(1)(i) (read with S 276A)].

<sup>1</sup> 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 case of a prisoner who has been sentenced to less than five 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 Commissioner may, if he or she is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk or registrar of the court, as the case may be, to have that person appear before the court *a quo* in order for the sentence to be reconsidered. The court has an option to convert the sentence to one of 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 imprisonment not exceeding five years, and such person is unable to pay the fine. At the start of the imprisonment or any time thereafter, the Commissioner has the discretion (unless the court directed otherwise at the time of passing sentence) to convert the sentence into one of correctional supervision, as if the sentence had been imprisonment as referred to in s 276(1)(i), or to make an application to the sentencing court following the procedure set out in section 276A(3) of the Criminal Procedure Act [Criminal Procedure Act S 287(4)(a)].
- In the situation where a person has been sentenced to pay a fine with an alternative of imprisonment not exceeding five years, and such person is unable to pay the fine. The matter may be referred back to the sentencing court for a new sentence of correctional supervision to be set [Criminal Procedure Act S 287 (4) (b)].
- In addition to or instead of any sentence (but not in addition to a sentence of imprisonment), 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 prison term to be served

There are special circumstances under which offenders' prison sentences 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 special circumstances are as follows:

- If a prisoner has acted in a highly meritorious manner, a Correctional Supervision and Parole Board may, on

**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.

the recommendation of the Commissioner, grant a prisoner a maximum remission of two years of his or her sentence. Prisoners sentenced to life imprisonment and prisoners declared to be habitual and dangerous criminals are excluded from this provision. A prisoner 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 overcrowding in prisons has reached such general and severe proportions, he or she may refer the matter to the National Council of Correctional Services. The National Council of Correctional Services may recommend that certain specified categories of prisoner may have their approval dates for placement under community corrections (e.g. parole) advanced [S 81].
- Despite all other provisions of the Correctional Services Act, the President has the power to remit (advance) any part of any prisoner's sentence, and to pardon or relieve any prisoner [S82].

### 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 while the death penalty was declared unconstitutional in 1995, there had been a moratorium on executions since the late 1980s. The result was that while the death penalty could still be imposed as a sentence up to 1995, condemned prisoners were not executed. The *Makwanyane* case, however, did not solve the problem of what to do with prisoners who were on death row. It was not automatic that their sentences would be converted to life imprisonment. 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 was challenged in *Sibiya and Others v the Director of Public Prosecutions and Others* (CCT 45/04), but the Constitutional Court found that the procedures were not unconstitutional. The Court did, however, express deep concern about the fact that the re-sentencing of prisoners under death had taken so long. In May 2005, it ordered the state to expedite the process of re-sentencing the remaining 40 cases and submit a report to the Court in August 2005. In August 2005, the respondents asked for an extension to September 2005. It is unclear where the process is at present (August 2006).

In summary, the situation is that there is a mechanism, the Criminal Law Amendment Act (105 of 1997) in Section 1, whereby prisoners who have been sentenced to death can have their sentences changed.

## 4. The placement, security classification, and amenities of prisoners

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### 4.1 Security classification

#### 4.1.1 Principles

The security classification of a prisoner is based on the risk that the prisoner presents to security and an assessment is done to determine the prison or part of the prison where the prisoner will be detained [S29].

A prisoner's security classification is based on the following principles:

- It must be an individualised classification that takes 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 simple formula using two factors, namely the crime and the length of the sentence. Each factor produces a score that are added together to provide an overall score. Based on this figure, a prisoner is assigned a security classification.

The following are examples of scores:

Crimes:                      Murder = 14 points  
                                    Robbery = 11 points  
                                    Rape = 8 points  
                                    Housebreaking = 2 points

Sentence lengths:        5 years = 20 points  
                                    6 years = 30 points  
                                    11 years = 45 points

For example, an offender convicted of rape and sentenced to 11 years' imprisonment would receive a classification score of  $8+45 = 53$  points

The security classification categories are:

- Minimum
- Medium
- Maximum
- Closed maximum (phase 1)
- Closed maximum (phase 2)

Each security classification category is divided into A-, B- and C-Groups. Depending on their security classification, all admitted prisoners will start with B-Group amenities. This is described in detail in [Appendix 6](#). Upgrading from, for example B-Group to C-Group, can take place every six months, whereas downgrading can be done immediately if there has been a disciplinary infringement, for example.

#### **4.2 Amenities to which prisoners have access**

The security classification determines the amenities that the prisoner is allowed to enjoy. When prisoners are first admitted they should be oriented regarding the amenities system and rules.

The specifications relating to the following topics are described in [Appendix 6](#):

- Visits
- Delicacies during visits
- Making telephone calls
- Letters, Christmas cards, birthday cards, and occasion cards written and received
- Purchases
- Christmas concession
- Private musical instruments
- Hobbies
- Wearing jewellery
- Private radios, cassette players and cassettes
- Receiving food

- Pets
- MNet/DSTV
- TV games
- Choirs
- Television
- Library
- Temporary leave from prison

### 4.3 Placement and transfers

The prison at which a prisoner is held, especially when serving a lengthy sentence, can have a very significant impact on him or her maintaining family contact and support. Regular visits are vital in helping the reintegration of the prisoner after release. The transfer of prisoners from one prison to another can also be a highly emotive issue, especially when prisoners want to be detained at a prison that is close to their relatives and loved ones. Some prisoners have also alleged that transfers are used inappropriately to undermine the investigation of criminal charges when prisoners have laid such charges against officials.

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

- a sentenced prisoner must be housed at the prison closest to where he or she will stay after his or her release, presumably this means where his or her family and support networks are [S43(1)]
- the placement of a prisoner is, however, subject to the availability of accommodation and facilities as well as the security requirements of the prisoner [S43(1)]
- the transfer of a prisoner is subject to the above conditions [S43(2)]
- before a prisoner is transferred, a medical officer or nurse must examine him or her. If the prisoner is under medical treatment, he or she may not be transferred without approval from the medical officer [S43(3)]
- When it is planned for a prisoner to be transferred, the prisoner must be informed of this as well as the reasons (unless the transfer is for security reasons). The prisoner must be given the opportunity to make representation in this regard. This must be recorded in writing. Thereafter, the Head of the Prison may make a decision regarding the transfer [R 25(1)(a)].



- If the transfer is for security reasons, the head of Prison need not inform the prisoner of the propose of the transfer, but the prisoner must be informed of the reason as soon as is possible when he or she arrived at the destination prison. The prisoner 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)].
- A prisoner'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 prisoner concerned is a learner and involved in education or training and/or is involved in a final examination [R 25(3)].

## 5. Services for sentenced prisoners

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### 5.1 Purpose and general principles

While imprisonment punishes offenders by taking away their liberty, the overall purpose of a sentence of imprisonment is to assist the prisoner in leading a “*socially responsible and crime-free life in the future*” [S36]. Therefore, there is the assumption that any person can change and that the prison environment should provide this opportunity for change. This is the rehabilitation objective. This means that every sentenced prisoner 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 prison environment that would assist him or her to lead a socially responsible and crime-free life.

#### 5.1.1 Duties of prisoners

To assist in achieving the objective of rehabilitation, every sentenced prisoner 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 medical officer or psychologist has certified otherwise.

#### 5.1.2 Duties of the DCS

In addition to meeting the minimum requirements of detention, the DCS is required to seek to provide [S 37]:

- [Amenities](#) which will create an environment that will enable the sentenced prisoner to live with dignity and develop the ability to lead socially responsible and crime-free life.
- Amenities (as prescribed by Regulation) to all sentenced prisoners 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 prisoner that will form the basis of the [sentence plan](#). The assessment is an important step in determining how the prisoner will serve his or her sentence. Upon admission or as soon as possible thereafter every sentenced prisoner must be assessed. The assessment must be done to determine the prisoner's [S38]:

- security classification
- health needs
- educational needs
- social and educational needs
- religious needs
- specific development programme needs
- work allocation
- allocation to a specific prison
- needs regarding reintegration into the community.

## 5.3 Sentence plan and services to sentenced prisoners

### 5.3.1 Sentence plan

A sentence plan sets out the manner in which a sentence that is longer than 12 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 [S28(2)]. The implementation of the sentence plan is monitored by the [Case Management Committee](#).

The Act does not describe in any further detail what the requirements of a sentence plan are, but some characteristics can be inferred based on the treatment, development, and support services that must be made available to prisoners.

The sentence plan [S41]:

- is there to meet the educational and training needs of sentenced prisoners, the DCS 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
- must provide social and psychological services to promote the social functioning and mental health of sentenced prisoners
- must provide as far as is possible other developmental services to meet the needs of individual prisoners.

### **5.3.2 Right to participate in programmes**

Sentenced prisoners have a right to participate in programmes, with specific reference to education, training, social work services, psychological services, and other developmental and support programmes. A prisoner therefore cannot be denied participation in a programme if it is available and the prisoner wants to participate [S41(5)].

### **5.3.3 Compulsory programmes**

The Commissioner may also compel a prisoner to participate in a particular programme, if the Commissioner is of the opinion that the prisoner'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 prison 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 prisoner and the Correctional Supervision and Parole Board. The Case Management Committee does not make the decision to release a person on parole, but provides 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 in which a sentence is implemented, namely:

- ensuring that every sentenced prisoner is [assessed](#)
- ensuring that every prisoner with a sentence of longer than 12 months has a [sentence plan](#)
- regularly interviewing every prisoner with a sentence longer than 12 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 prisoner under community corrections
- submitting a report to the Correctional Supervision and Parole Board regarding a prisoner's:
  - current offence profile as well as any comments from the sentencing court
  - previous criminal history
  - conduct, disciplinary record, adaptation to prison life, 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 a prisoner 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 prisoner will abstain from crime and lead a law abiding and constructive life in future
  - the prisoner is no longer capable of engaging in crime
  - for any other reason, it is necessary to place the prisoner on parole.
- Submit, upon request, to the Area Manager a report on any prisoner sentenced to 12 months or less.

## 5.5 Work performed by prisoners

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

### 5.5.1 Protection against slavery, servitude, and forced labour

Prisoners may not be

- used to provide free labour in the form of forced labour, slavery or servitude [Constitution S 13]
- required to perform labour as a form of punishment [S 40(5)]
- required to perform work that is age-inappropriate if the prisoner is a child [S 40(3)(c)]
- required to perform work for another prisoner, an official or a private person, a company, or organisation without approval from the Commissioner [R23(5)]
- 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 DCS state that prisoner labour may not be used 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. Prisoners may also not be used for any other work on such premises. This paragraph is intended for private hirers or companies.
- Any work performed in connection with diggings or in mines.
- No prisoner labour may be made available to hirers in residential areas where the safety situation is of such a nature that the prisoner's life could be endangered.

- Prisoners may not nurse patients in prison hospitals or assist in their nursing.
- Under no circumstances may prisoners be charged with the handling and issuing of medication.
- Prisoners 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.
- Prisoners may not be allowed to handle ammunition, fire-arms, and explosives, or be given the opportunity to have access thereto.
- No prisoner may be allocated to, or used in a clerical capacity, except in prison libraries and recreational activities.
- Prisoners who are subjected to restraints in terms of the Correctional Services Act may not perform labour beyond the prison walls. If possible, such prisoners must be provided with work within the walls of the prison.
- Using prisoners for the performance of sanitary services, except for the prison and on the prison reserve, is not permitted.
- Prisoner labour may not be used in any way for preparation or serving food at any public show or fête.
- Prisoners may not be used as interpreters in departmental investigations and trials.
- Prisoners 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 prisoner is trained and provided that the department does not require his or her services on the same day.
- Prisoners who are 50 years of age or older should not be hired out or sent out in work-teams (free or for payment). Such prisoners, if physically fit, must be employed on prison reserves. Prisoners who are ill, or who appear to be ill, may not be hired out or sent out in work teams.
- Prisoner labour, which has already been provided or hired out to a particular organisation or individual before a strike, may still be provided, but the units of prisoner labour may not be supplemented or increased to make up the shortage caused by striking workers. If no prisoner labour has been hired out to such organisation or individual, the *status quo* may not be changed as the result of a strike. On the provision of prisoner labour, the safety of the prisoners should always enjoy the highest priority.

- No hiring out and/or free prisoner labour may be used for the following purposes:
  - the removal or 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. agricultural activities.
- No prisoner may be used for any domestic services.
- No prisoner may work alone in the section stores and warehouses.
- Prisoners may no longer be used in changing targets in shooting ranges, but may be used for cleaning purposes before and after shooting practices.

### **5.5.2 Protective clothing and gear**

Prisoners must be provided and wear at all times 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 prisoners for third parties**

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

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

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

### **5.5.4 Work by unsentenced prisoners**

Unsentenced prisoners 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 prisoners**

Sentenced prisoners [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 prison at a rate determined by the DCS [S 40(4)]
- must perform work that is related to any development 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 40(6) and S 37(1)(b)]
- may not work for more than eight hours a day, unless the Commissioner approves a deviation from this [R23(4)].

### 5.5.6 Payment for work

In most instances, prisoners who perform work inside prison receive a small payment known as a “gratuity” (Afr: gratifikasie). The purpose of a gratuity is to encourage and motivate prisoners to adopt 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:

- a sentenced prisoner who performs recommended work and who is employed for the benefit of the Department of Correctional Services
- a sentenced prisoner who is hired out either free of charge or against payment
- prisoners who receive gratuity for the number of days worked in a month.

The amounts that prisoners can earn through gratuity are not high as indicated in the schedule below. The following is a list of 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

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

If the monthly tariffs are converted to daily tariffs in various levels and notches, the following apply:

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 prisoners [R23(6)]:

- are required to perform only that work that is essential for maintaining cleanliness and hygiene in and around the prison
- are required to perform work that is necessary to meet the basic needs of the prisoners 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 to which the prisoner adheres to [R23(6)a and b)].
- may be allowed to perform work other than what is essential, as described above, but then they 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 prisoners will be released and the release process must adhere to strict requirements. A large proportion of prisoners remain for a time period under some form of control after their release, such as parole and correctional supervision. Placing prisoners on parole or under correctional supervision provides the DCS with the means to release prisoners earlier who have shown reasonable progress and who (presumably) do not pose a serious risk to society.

### **5.6.1 Rights upon release**

A prisoner being released must therefore [S 45]:

- be prepared by the DCS for his or her placement under correctional supervision, or release and reintegration into society by participating in a pre-release programme.
- be [informed](#) of the conditions applicable to the release when he or she is to be placed under correctional supervision or parole.
- be provided with material and financial assistance ([See note](#))
- undergo a medical examination if the medical officer 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 prisoner of the conditions of placement on parole or under correctional supervision

A prisoner who is released from prison and placed on parole or under correctional supervision must be informed of the [conditions](#) applying to the release [S55(3)]. Therefore the prisoner must be informed:

- 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 the contact person is with regard to his or her case
- of the procedure for laying a complaint
- by the correctional official, who must explain the conditions through an interpreter if necessary, if the prisoner is illiterate.

The prisoner must indicate that he or she understands the explanation.

### 5.7 Temporary leave from prison

The Act recognises that under certain circumstances it can be to the benefit of all concerned that a prisoner temporarily leaves the prison. This may be to attend a funeral or spend a weekend with his or her family prior to his or her release, to prepare them for their release. The Act states that the Commissioner may give permission for a prisoner to leave the prison temporarily. When permission is granted it must be in writing and set out the conditions under which the prisoner is allowed to leave the prison temporarily. Temporary leave is not a

right and granting the concession of temporary leave is at the discretion of the DCS. A prisoner can 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 already mentioned that relate to the successful reintegration of the prisoner.

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

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

## **6. Contact with the outside world**

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### **6.1 Contact with family and friends**

The rights of all prisoners with regard to contact with the community are described above in Section 1.7 "[Contact with the Community](#)". The security classification and privileges granted to a prisoner in terms of the [privilege system](#) (see Paragraph 4.2 above) also have an effect on the amount and type of contact that a prisoner may have with friends and family.

### **6.2 Contact with legal representative**

A prisoner's contact with his or her legal representative is virtually unrestricted and is discussed above in Paragraph 1.11 "[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 prisoners to participate in elections. Following the Constitutional Court's ruling in two cases, it appears that the right of all categories (sentenced and unsentenced) of adult prisoners to participate in national elections has now been established.

For national elections, prisoners need to register as voters in the same way as any other person who wishes to vote in an election. This means that a prisoner requires his or her identity document to register. The Independent Electoral Commission will visit prisons, prior to the voter's roll being closed, to register prisoners as voters.

#### **6.3.2 Local government elections**

Prisoners are excluded from participating 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 prison or place where a prisoner is detained is considered for the purposes of the election as the place where he or she normally resides.
- For the purposes of a local government election, a prison or place of detention is, by implication, not considered the place where the person normally resides.

## 7. Lodging a complaint

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### 7.1 Reporting corruption

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

**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.

Prisoners who do wish to report alleged incidences of corruption are advised to do so at the Public Service Commission's toll free number: 0800 701 701.

### 7.2 Internal complaints procedure

Prisoners have daily access to the [internal complaint and request procedure](#), known as the G 365 Register or "Klagtes en Versoeke".

### 7.3 Families lodging complaints

The Correctional Services Act does not provide for a specific procedure for family members of prisoners to lodge complaints and requests. In view of this, it is recommended that if family members have a need to bring a particular complaint or request to the attention of the DCS, 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:

- their local Member of Parliament
- the Portfolio Committee on Correctional Services (See Appendix 4 for contact details)
- the Judicial Inspectorate of Prisons (See Appendix 4 for contact details)

- the Area Manager of the prison where the prisoner is detained (See the DCS Address list available from the CSPRI website).

Please note that the resolution of any complaint will be made easier if the name, name of the prison, and prisoner number of the prisoner concerned are provided in the correspondence, unless the safety of the prisoner is likely to be compromised because of this. If possible, make a copy of all written correspondence and request an acknowledgement of receipt.

### **7.3 Laying a criminal charge**

Prisoners have the right to lay any criminal charge with the SA Police Service. If a prisoner wants to lay a criminal charge, he or she must inform the Head of Prison 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 Prison to arrange for a police official to be available to the prisoner so that a statement can be taken from the prisoner.

### **7.4 Lodging a complaint with the Chapter 9 institutions**

A prisoner may communicate per letter without restriction with any of the so-called Chapter 9 institutions. These institutions 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
- Auditor General.

The Human Rights Commission is a popular forum for prisoners to lodge their complaints. It should be noted that there is a working agreement between the Human Rights Commission and the Judicial Inspectorate of Prisons, and the Human Rights Commission will refer all prisoner 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 prisons, prisoners, and documents. During such a visit, the visiting judge or magistrate may interview prisoners 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 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 prisons, prisoners 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 DCS.

## **7.6 Lodging a complaint with the Independent Prison Visitor**

The Inspecting Judge can appoint Independent Prison Visitors (IPV) to deal with prisoners' complaints and allow for community involvement in the correctional system. This allows for an independent mechanism through which the treatment of prisoners can be monitored and promoted [S 92].

The primary function of the IPVs is to deal with prisoners' complaints by:

- paying regular visits to prisons
- conducting private interviews with prisoners
- recording complaints and monitoring their progress
- liaising with Correctional Service officials in an attempt to resolve complaints internally within the prison.

Having a procedure for dealing with prisoners' complaints

- serves as a mechanism for promoting the humane treatment of prisoners
- means that the manner in which the Head of Prison deals with prisoners' complaints in order to resolve them may be monitored
- promotes a peaceful prison environment

- means that unresolved or urgent complaints may be reported to the Inspecting Judge.

At a prison, there should be a procedure for prisoners who wish to see the IPV, who should:

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

Complaints can also be lodged electronically at the Judicial Inspectorate of Prisons 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 IPV 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 IPV will enter the complaint on the electronic recording system of the Office of the Inspecting Judge, and the Office will deal with it accordingly.

## 8. Parole and release

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The situation with regard to parole is a complex one as laws have changed over time. The laws that applied to prisoners 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 CSA provides for a new procedure in the administration of parole but does not change the sentence length or non-parole period that was applicable when the prisoners was sentenced.

### 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 rules and the exceptions must be read together. The five basic rules are set out below [S73(1)]:

- A sentenced prisoner will remain in prison for the full period of the sentence [S73(1)].
- A prisoner sentenced to life imprisonment will remain in prison for the rest of his or her life [S73(1)].
- A sentenced prisoner must be released when he or she has served the term of imprisonment (or community corrections) [S73(3)].
- A prisoner may be placed (under certain conditions) on parole or under correctional supervision before he or she has served the full term of imprisonment [S73(4)].
- The decision to release a prisoner on parole or place them under 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 prisoner who has served his sentenced but is too sick or injured to be released , may be kept in prison until he or she has sufficiently recovered [S73(2)].
- The prisoner must accept and agree to the conditions of his or her release on parole, day parole, or correctional supervision [S73(5)(b)].
- If a prisoner has been sentenced to life imprisonment, the decision to release him or her on parole must be made by the Court and not by the Correctional Supervision and Parole Board [S73(5)(a)(ii)].
- A prisoner serving a determinate sentence must serve at least half of the 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 two years, but this non-parole period may not be longer than two thirds of the total sentence or 25 years, whichever is shorter [Criminal Procedure Act S 276B]
  - he or she has served 25 years of cumulative sentences
- A person sentenced to corrective training may be imprisoned for a 24-month-period and must serve at least 12 months before being considered for parole [S73(6)].
- A person imprisoned for the prevention of crime may be detained for five years and must serve at least two years and six months of the sentence before he or she can be considered for parole [S73(6)].
- A person sentenced to life imprisonment may be considered for parole after serving 25 years of the sentence [S73(6)].
- A person sentenced to life imprisonment 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 he or she may be 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 of the sentence [S73(6)].
- A person sentenced to imprisonment 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 has directed otherwise [S73(7)].
- A person sentenced to imprisonment under S 276(1)(i) of the Criminal Procedure Act, and to imprisonment 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 longer before being considered for parole if he or she was: [S73(6)]
  - sentenced to a determinate period in terms of S 276(1)(b) of the Criminal Procedure Act
  - sentenced to imprisonment under S 276(1)(i) of the Criminal Procedure Act
  - sentenced to imprisonment for not more than five years as an alternative to a fine.

### **8.3 The Correctional Supervision and Parole Board**

There are 52 Correctional Supervision and Parole Boards (CSPB) in the country and are established by the Minister of Correctional Services. Each CSPB consists of a chairperson, vice-chairperson, one official nominated by the Commissioner and two members from the community [S 74(2)].

The CSPB is tasked to consider the report from the Case Management Committee on any prisoner serving a determinate sentence of longer than 12 months and may [S75(1)]:

- Place a prisoner on parole, day parole or under correctional supervision
- In the case of a prisoner declared a dangerous criminal, make a recommendation to the court on the granting of parole, day parole or placement under correctional supervision

- In the case of a prisoner serving a life sentence make a recommendation to the court on the granting of parole, day parole or placement under correctional supervision
- Set out the conditions in respect of the granting of parole, day parole or placement under correctional supervision
- Cancel parole, day parole or placement under correctional supervision, with the exclusion of persons declared dangerous criminals and persons sentenced to life imprisonment, as these cases must be considered by a court.

#### **8.4 Cancellation and amendment of parole, day-parole and correctional supervision conditions**

The CSPB is mandated to cancel or amend the conditions of parole, day parole or placement under correctional supervision of persons sentenced to longer than 12 months imprisonment and who are not declared dangerous criminals and/or sentenced to life imprisonment. In the case of the latter two categories, the CSPB must make recommendations to the court in respect of the granting of parole, day parole or placement under correctional supervision, as well as the conditions attached thereto.

The Commissioner may request a CSPB to cancel or amend the conditions of parole, day parole or placement under correctional supervision of a person (excluding persons sentenced to life imprisonment). The following apply in this regard [S74(2-8)]:

- The CSPB must consider the case within 14 days but the recommendations of the Commissioner may be implemented prior to the CSPB making its decision.
- If a CSPB chooses to amend the conditions of parole, day parole or correctional supervision of a person, and the person refuses to accept the new conditions, then parole, day parole or correctional supervision will be cancelled.
- In the case of persons sentenced to life imprisonment, the CSPB must consider the case within 14 days and make its recommendations to the court regarding the cancellation or amendment of conditions of parole, day parole or correctional supervision. The CSPB must inform the person concerned of its recommendations to the court and the receipt of this communication must be confirmed by the person concerned. If the person concerned has made written representation to the

CSPB, this representation (document) must be submitted to the court together with the recommendation of the CSPB.

- Whenever a CSPB is considering a case for the possible cancellation or amendment of conditions of parole, day parole or correctional supervision, the person in question must be notified and requested to make submission in writing or in appear in person in front of the CSPB. The person concerned may also be represented by another person, except by a fellow prisoner, a correctional official, an SA Police Services official, or an official of the Department of Justice.
- In the situation that a CSPB has approved a prisoner to be placed on parole, day parole or correctional supervision but before that decision can be implemented the circumstances of the prisoner has change to such an extent that it would no longer be advisable to implement the decision, the implementation of the decision can be postponed until the CSPB approves it. The Act does not specify what conditions may influence such a step but it can be assumed that if a prisoner is involved in a disciplinary infringement or commits an offence inside prison, that it would no longer be advisable to implement the decision of the CSPB.
- If a CSPB cancels parole, day parole or correctional supervision, the matter can be reconsidered at any time but it must be done within two years.
- The Commissioner may cancel or amend the conditions of parole, day parole or correctional supervision of all prisoners sentenced to a prison term of less than 12 months.
- A decision of the CSPB is final unless the Commissioner or Minister of Correctional Services refers the matter to the Correctional Supervision and Parole Review Board (CSPRB).

### **8.5 [Top of the Document](#)      The Correctional Supervision and Parole Review Board**

The CSPRB consists of selected members of the National Council of Correctional Services (NCCS) and is comprised of a judge (who is the chairperson) , a director or deputy director of Public Prosecutions, a member of the Department of Correctional services, a person with special knowledge of the correctional system, and two community representatives [S76(1)].

There is some uncertainty as to what the exact purpose of the CSPRB is as it was not the intention that it should function as a review or appeals mechanism but rather as an

administrative body to facilitate consistency in the decision-making of the various CSPBs. The CSA is however not a hundred percent clear on this and there remains the impression that it has a review function in respect of decisions taken by the CSPBs.

The Minister of Correctional Services and the Commissioner may refer any matter to the CSPRB. The CSPRB must either confirm the decision of the CSPB or change it and make a new order. The reasons for its decision must be made available to the Minister, Commissioner, the person concerned and all other CSPBs. Unlike the CSPB, the person concerned does not have access to the CSPRB and cases are referred to the CSPRB at the discretion of the Commissioner or Minister.

In view of this uncertainty, the following procedure should be followed in the event that a person is not satisfied with the decision of a CSPB, he or she must write a report stating the substantive reasons for his or her dissatisfaction. This report must be addressed to: Head of Correctional Centre, Chairperson of the CSPB, Area Commissioner, Provincial Commissioner, and Commissioner (Correctional Supervision and Parole Review Board). The report must reach the Head of the Correctional centre first, who must in turn pass it up the chain of command. The CSPB will attach the profile of the person concerned to the report. The decision to refer a case to the CSPRB rests with the Commissioner or Minister who may return a case to the CSPB or pass it on to the CSPRB. The CSPRB meets on a quarterly basis and will review all the existing as well as additional evidence. Based on this it will make decision to confirm, change or amend the decision of the CSPB.



# Appendix 1

## Chapter 2 - Bill of Rights

### Sections

7. [Rights](#)
8. [Application](#)
9. [Equality](#)
10. [Human Dignity](#)
11. [Life](#)
12. [Freedom and Security of the Person](#)
13. [Slavery, Servitude and Forced Labour](#)
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37. [States of Emergency](#)
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  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. <sup>\*1</sup>No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

### **10. Human dignity**

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

### **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

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized; or
- d. 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.
  - a. This section does not prevent legislation recognising
    - i. marriages concluded under any tradition, or a system of religious, personal or family law; or
    - ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
  - b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

#### **16. Freedom of expression**

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

#### **17. Assembly, demonstration, picket and petition**

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

#### **18. Freedom of association**

Everyone has the right to freedom of association.

#### **19. Political rights**

1. Every citizen is free to make political choices, which includes the right
  - a. to form a political party;
  - b. to participate in the activities of, or recruit members for, a political party; and
  - c. to campaign for a political party or cause.

2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right
  - a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - b. to stand for public office and, if elected, to hold office.

## **20. Citizenship**

No citizen may be deprived of citizenship.

## **21. Freedom of movement and residence**

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

## **22. Freedom of trade, occupation and profession**

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

## **23. Labour relations**

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

6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

#### **24. Environment**

Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - i. prevent pollution and ecological degradation;
  - ii. promote conservation; and
  - iii. 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.

### **<sup>\*2</sup> 32. Access to information**

- 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.

### **<sup>\*3</sup> 33. Just administrative action**

- 1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

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

#### **34. Access to courts**

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

#### **35. Arrested, detained and accused persons**

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

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

- n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
  5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

### **36. Limitation of rights**

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

### **37. States of emergency**

1. A state of emergency may be declared only in terms of an Act of Parliament, and only when
  - a. the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
  - b. the declaration is necessary to restore peace and order.
2. A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only
  - a. prospectively; and
  - b. for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted

with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.

3. Any competent court may decide on the validity of
  - a. a declaration of a state of emergency;
  - b. any extension of a declaration of a state of emergency; or
  - c. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
4. Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that
  - a. the derogation is strictly required by the emergency; and
  - b. the legislation
    - i. is consistent with the Republic's obligations under international law applicable to states of emergency;
    - ii. conforms to subsection (5); and
    - iii. is published in the national Government Gazette as soon as reasonably possible after being enacted.
5. No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise
  - a. indemnifying the state, or any person, in respect of any unlawful act;
  - b. any derogation from this section; or
  - c. any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

**Table of Non-Derogable Rights**

1	2	3
Section Number	Section Title	Extent to which the right is protected
9	Equality	With respect to unfair discrimination solely on the

		grounds of race, colour, ethnic or social origin, sex religion or language
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: - subsection (1)(d) and (e); - the rights in subparagraphs (i) and (ii) of subsection (1)(g); and - subsection 1(i) in respect of children of 15 years and younger
35	Arrested, detained and accused persons	With respect to: - subsections (1)(a), (b) and (c) and (2)(d); - the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) - subsection (4); and - subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

6. Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:
- a. An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
  - b. A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.

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

### **38. Enforcement of rights**

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

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. 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.
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1. See Sch 6 item 23 (1).
2. 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.
3. 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.



## 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<sup>3</sup>

### Summary of minimum sentences under Act 105 of 1997

Offence Description	Sentence in Years		
	1st offence	2nd offence	3rd offence
<b>Murder</b> when	Life	Life	Life
Planned or pre-meditated;			
The victim is a law-enforcement officer or a potential state witness;			
The death was connected to a rape or robbery with aggravating circumstances; or			
It was committed as part of common purpose or conspiracy.			
<b>Rape</b> when	Life	Life	Life
The victim is raped more than once by accused or others;			
By more than one person as part of common purpose or conspiracy;			
The accused has been convicted of more than one rape offence and not yet sentenced;			
The accused knows he or she is HIV positive;			
The victim is under 16 years of age;			
The victim is a vulnerable disabled woman;			
The victim is a mentally ill woman; or			
The rape involved the infliction of grievous bodily harm.			
<b>Murder</b> in circumstances other than those above;	15	20	25
<b>Robbery</b> when	15	20	25
There are aggravating circumstances;			
Taking of a motor vehicle is involved;			

<sup>3</sup> This table was produced with the kind assistance of Chris Giffard.

Offence Description	Sentence in Years		
	1st offence	2nd offence	3rd offence
<i>Drug Offences</i> 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;			
<i>Any offence</i> related to	15	20	25
Dealing in or smuggling of arms and ammunition;			
Possession of automatic or semi-automatic firearms, explosives, etc;			
<i>Any offence relating to exchange control, corruption, extortion, fraud, forging, uttering or theft</i> 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.			
<i>Rape</i> , other than in circumstances in Part 1 above	10	15	20
<i>Indecent assault on a child under age of 16</i> , involving infliction of bodily harm;	10	15	20
<i>Assault with intent to cause grievous bodily harm on a child under age of 16</i> ; or	10	15	20
More than 1 000 rounds of <i>ammunition</i> .	10	15	20

Offence Description	Sentence in Years		
	1st offence	2nd offence	3rd offence
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 DV Bloem

PO Box 15, Cape Town, 8000

Tel (021) 403 2974

Fax (021) 403 3241

### **Judicial Inspectorate of Prisons**

The Hon. Justice, Mr Nathan Erasmus

Private Bag x9177, Cape Town, 8000

Tel (021)421 1012/3/4

Fax (021) 418 1069

### **Minister of Correctional Services**

Mr Ngconde Balfour

Private Bag X853, PRETORIA, 0001

Tel: (012) 307 2934/2884

Fax: (012) 323 4111

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

Mr Linda Mti

Private Bag X136, Pretoria, 0001

Tel 012- 307 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](mailto: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	Maximum	Super Max	C-Max
A-GROUP	45 visits of 60 minutes each per year will be allowed. At most five visits per month will be allowed. The prisoner 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 prisoner is in any case entitled to at most two visitors per occasion.	Contact visits (availability of facilities). Three hours of visit per month. Not more than two adult persons at a time. 60 minutes each/6 visits of 30 minutes.	Contact visits (availability of facilities). Three hours of visit per month. Not more than two adult persons at a time. 60 minutes each/6 visits of 30 minutes.	Contact visits (availability of facilities). Three hours of visit per month. Not more than two adult persons at a time. 60 minutes each/6 visits of 30 minutes.
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.	Non-contact visits. Two hours of visits per month. Two adult persons. 45 minutes each/4 visits of 30 minutes.	Non-contact visits. Two hours of visits per month. Two adult persons. 45 minutes each/4 visits of 30 minutes.	Non-contact visits. Two hours of visits per month. Two adult persons. 45 minutes each/4 visits of 30 minutes.
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.	Non-contact visits. One hour of visits per month. One adult person. 30 minutes each.	Non-contact visits. One hour of visits per month. One adult person. 30 minutes each.	Non-contact visits. One hour of visits per month. One adult person. 30 minutes each.

### Delicacies during visits

	Minimum	Medium	Maximum	Super Max	C-Max
A-GROUP	<p>Visitors are allowed to purchase delicacies, which should be consumed during visits together with the prisoners, at the tuck-shop where available.</p> <p>Prisoners will not be allowed to take any of these delicacies to their cells after visits.</p>	<p>Visitors are allowed to purchase delicacies, which should be consumed during visits together with the prisoners, at the tuck-shop where available.</p> <p>Prisoners will not be allowed to take any of these delicacies to their cells after visits.</p>	None	None	None
B-GROUP	None	None	None	None	None
C-GROUP	None	None	None	None	None

### Making telephone calls

	Minimum	Medium	Maximum	Super Max	C-Max
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.	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 G367card. Maximum duration of 10 minutes per call.	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 G367card. Maximum duration of 10 minutes per call.	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 G367card. Maximum duration of 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.	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.	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.	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.
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.	The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.	The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.	The making of a telephone call instead of a visit only over weekends and public holidays within office hours where telephones are available.	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.	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.	Recording to be done on G367 card. Maximum 10 minutes.	Recording to be done on G367 card. Maximum 10 minutes.	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 prisoner's name

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

	Minimum	Medium	Maximum	Super Max	C-Max
A-GROUP	No restrictions on the number of letters, cards written or received No recording of letters sent or received Censoring only in exceptional cases	Same	Same	Same	Same
B-GROUP	Same	Same	Same	Same	Same
C-GROUP	Same	Same	Same	Same	Same

### Purchases

	Minimum	Medium	Maximum	Super Max	C-Max
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.	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.
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.	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.
C-GROUP	R100.00 - Only toiletries, smoking requisites, postage	R100.00 - Only toiletries, smoking requisites, postage	R50.00 - Only toiletries, smoking requisites, postage stamps,	R50.00 - Only toiletries, smoking requisites, postage stamps,	R50.00 - Only toiletries, smoking requisites, postage stamps,

	Minimum	Medium	Maximum	Super Max	C-Max
	stamps, stationery and batteries for razors. No food which needs further preparation is allowed.	stamps, stationery and batteries for razors. No food which needs further preparation is allowed.	stationery, and batteries for razors.	stationery, and batteries for razors.	stationery, and batteries for razors.
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.				

**Christmas concession**

	Minimum	Medium	Maximum	Super Max	C-Max
A-GROUP	R75.00 additional purchases during December.	Same	Same	Same	Same
B-GROUP	Same	Same	Same	Same	Same
C-GROUP	Same	Same	Same	Same	Same

**Private musical instruments**

	Minimum	Medium	Maximum	Super Max	C-Max
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.	None	None	None
B-GROUP\	None	None	None	None	None
C-GROUP	None	None	None	None	None

**Hobbies**

	Minimum	Medium	Maximum	Super Max	C-Max
A-GROUP	The practice of hobbies under/without supervision after normal working hours, with the approval of the Head of the Prison. 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 Prison. 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 Prison. 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 Prison. 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 Prison. 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	None	None	None

	Minimum	Medium	Maximum	Super Max	C-Max
C-GROUP	None	None	None	None	None
Unsentenced	None				

### Wearing of jewellery

	Minimum	Medium	Maximum	Super Max	C-Max
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.	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.
B-GROUP	None	None	None	None	None
C-GROUP	None	None	None	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	Maximum	Super Max	C-Max
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).	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).
B-GROUP	None	None	None	None	None
C-GROUP	None	None	None	None	None
Unsentenced	May be allowed to have a radio in their possession.				

### Receiving food

	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	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 prisoners 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				

### 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				

### 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 Prison 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**

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

### **Concessions to prisoners to temporarily leave the prison under escort or otherwise**

#### **General**

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

Prisoners who have been sentenced to imprisonment 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.

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

#### **Compassionate leave**

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

#### **Weekend leave**

Where a prisoner is permitted to temporarily leave the prison for a weekend (Friday 11h00 until Sunday 15h00) in order to consolidate family-ties. One weekend every three (3) months. It only applies to a prisoner 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 prison on Thursday at 11h00.

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

Upon re-admission the prisoner must once again be placed before the nurse/medical practitioner in order to determine whether the prisoner is in the same physical condition as when he/she 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 Prison must approve in writing the temporary leave of the prisoner.

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