

LAW N° 38/2006 OF 25/09/2006 ESTABLISHING AND DETERMINING THE ORGANISATION OF THE NATIONAL PRISONS SERVICE

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TABLE OF CONTENTS

Title 1. GENERAL PROVISIONS

Title 2. THE NATIONAL PRISONS SERVICE

Chapter 1. RESPONSIBILITIES, ORGANISATION AND FUNCTIONING OF THE NATIONAL PRISONS SERVICE

Chapter 2. ORGANISATIONAL STRUCTURE OF PRISONS AND PERFORMANCE OF PRISON GUARDS

Section 1. Organizational structure:

Section 2. Performance of duties of prison guards

Title 3. DETENTION AND RELEASE

Chapter 1. PRE-DETENTION AND IMPRISONMENT CONDITIONS

Chapter 2. RIGHTS OF THE PRISONER

Chapter 3. REQUIREMENTS FOR RELEASE

Title 4. MANAGEMENT OF PRISONS

Chapter 1. RESPONSIBILITIES OF THE PRISONER

Chapter 2. SURVEILLANCE OF PRISON

Chapter 3. CORRECTIVE EDUCATION FOR PRISONERS

Chapter 4. MANAGEMENT OF THE PROPERTY OF PRISON

Chapter 5. INSPECTION AND VISITS TO PRISONS

Section 1. Inspection of the prison

Section 2. Visits to the prison

Title 5. MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Chapter 1. MISCELLANEOUS PROVISIONS

Chapter 2. TRANSITIONAL PROVISIONS

Chapter 3. FINAL PROVISIONS

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Title 1. GENERAL PROVISIONS

Article 1:

There is hereby established a National Prisons Service hereafter referred to as “the Service” in this law.

The Service shall enjoy administrative and financial autonomy.

Article 2:

This law establishes and determines the organization of the Service and provides fundamental principles consolidating the rights of every detainee as guaranteed by the Constitution and International Conventions ratified by Rwanda.

Article 3:

For the purpose of this law, the following terms are defined as follows:

- 1. High Council of Service:** a Council of the National Prisons Service responsible for taking decisions and providing a vision on better management of Prisons with respect to national policy;
- 2. Commissioner General:** the Chief Director of the National Prisons Service;
- 3. National Commissariat of Prisons:** the General Management of the National Prisons Service;
- 4. Prison Guards:** professional employees at the national level in charge of security in prison within the National Prisons Service, governed by special statutes;
- 5. Prison:** a place established by a Presidential Order, where persons are locked up in accordance with a court decision;
- 6. To imprison:** to keep a person in prison in accordance with a court decision;
- 7. a Detainee:** any person incarcerated in a prison in accordance with a legal decision taken by a Court but who has not been tried for a definitive sentence;
- 8. a Prisoner:** a person incarcerated and definitively sentenced;
- 9. an Inspector:** any person given the responsibility of supervising various prison activities in

accordance with law;

10. The Minister: the Minister in charge of prisons.

Title 2. THE NATIONAL PRISONS SERVICE

Chapter 1. RESPONSIBILITIES, ORGANISATION AND FUNCTIONING OF THE NATIONAL PRISONS SERVICE

Article 4:

The Service is supervised by the Ministry in charge of security which shall design its policy, advise the Government on its establishment and supervise its implementation.

Article 5:

The Service shall respect the principles and objectives of imprisonment. It is particularly responsible for:

1. respecting rights of the detainee in accordance with the law;
2. ensuring the security of every detainee in accordance with the law until he/she is released;
3. respecting the life, physical and moral integrity and the well-being of the detainee;
4. implementing any effective strategy which helps the detainee to be rehabilitated.
5. ensuring effective management of Prisons;
6. implementing activities related to the inspection of functioning of prisons;
7. improving on the activities of productivity and their effective management within prisons;
8. reinforcing professional skills and capacity of employees of the National Prisons Service based on the nature of training determined by the Ministerial Order;
9. reinforcing the capacity of the detainee;
10. ensuring the increase in the production of Prisons and soliciting subventions;

11. sensitising the population on the activities of Prisons;

12. implementing the general policy of imprisonment.

Article 6:

The National Prisons Service is comprised of the High Council of Prisons.

Article 7:

The Service is directed by the Commissioner General assisted by two (2) Deputy Commissioner Generals.

The Commissioner General of Prisons and the Deputy Commissioner Generals are appointed and removed from office by a Presidential Order.

The Service is endowed with prison guards governed by special Statutes established by Presidential Order, employees governed by General Statutes for Rwanda Public Service and other employees governed by employment contract.

Senior Officers of the National Prisons Service shall be appointed and promoted by the Order of the President, junior officers shall be appointed and promoted by the order of the Prime Minister, while non commissioned officers and junior prison guards shall be appointed and promoted by the Ministerial Order.

Article 8:

The High Council of the National Prisons Service is composed of the Commissioner General, Deputy Commissioner Generals, Directors of Prisons and other members determined by a Ministerial Order.

The High Council of the Service shall meet once in every quarter and at any time it is considered necessary.

The meeting of the High Council shall be chaired by the General Commissioner or by the Deputy Commissioner General in case of his/her absence.

A Ministerial Order shall determine the functioning of the High Council of the Service.

The High Council of the Service shall submit a report to the Minister.

Article 9:

The High Council of the Service shall be responsible for:

1. providing views on the policy of management of Prisons;

2. providing advice to the Service on how to fulfill its obligations;
3. laying down requirements for the recruitment of new prison guards within the Service and determining contents of their training courses;
4. taking decisions on management, functioning and conduct of all members of staff of the Service;
5. providing views on ways of promoting prison guards;
6. supervising the respect of fundamental rights of a detainee;
7. providing views and monitoring issues relating to imprisonment;
8. providing views on ways of soliciting subventions of prisons;
9. establishing committees made up of its own members to examine issues relating to prisons;
10. approving draft annual budget estimates of the Service and submit it to the Minister;
11. approving quarterly and annual reports of the Service;
12. approving draft Internal Rules and Regulations of prisons to be signed by the Minister;
13. approving the planning of the Service;
14. providing views on any other matter that may improve on prisons.

Article 10:

In accordance with special Statutes governing prison guards, the High Council of Prisons shall take decisions on any prison guard who does not fulfill his/her responsibilities.

With regard to other members of staff of the prison, the High Council of the Service shall take decisions in accordance with General statutes for Rwanda Public Service or an employment contract.

Article 11:

The National Commissariat of Prisons is responsible for the General Management of the National Prisons Service.

It is particularly responsible for:

1. running the Service and managing its members of staff;

2. implementing decisions of the High Council of the Service;
3. executing responsibilities of the Service;
4. monitoring whether this law and other orders emanating from it are respected;
5. respecting rights and ensuring security of the detainee as provided by the law;
6. preparing annual draft budget of the Service;
7. preparing quarterly and annual reports;
8. implementing skills development and capacity-building programmes for the members of staff of the Service;
9. helping the detainee to increase his/her skills;
10. receiving aid, donation and bequest upon approval by the Minister;
11. preparing draft of Internal Rules and Regulations of prisons;
12. preparing the planning of the Service;
13. performing any other activity that may improve on prisons.

Article 12:

The organizational structure of the National Commissariat of Prisons is instituted by an Order of the Prime Minister.

Chapter 2. ORGANISATIONAL STRUCTURE OF PRISONS AND PERFORMANCE OF PRISON GUARDS

Section 1. Organizational structure:

Article 13:

An Order of the Prime Minister, upon request of the Minister, after consultation with the Ministry in charge of Public Service, shall determine the organizational structure.

Article 14:

Each Prison shall have its own Director and at least one Deputy Director assisted by prison guards and other prison members of staff.

Article 15:

The Director of Prison and the Deputy Directors shall be appointed and removed from office by an Order of the Prime Minister.

Other members of staff of the prison other than prison guards shall be appointed and managed in accordance with the provisions of the General Statutes for Rwanda Public Service or contract of employment.

Section 2. Performance of duties of prison guards

Article 16:

A Ministerial Order shall determine the dress, pips and identity numbers of the prison guards.

Article 17:

The Prison Director, at each Prison, shall supervise the Prison guards.

The National Prisons Service shall closely inspect the discipline of prison guards to avoid any abuse of equipment put at their disposal and in performance of their duties to ensure security of prisoners.

Article 18:

A fault of the prison guard shall be punished by various competent levels of administration charged with enforcing Special Statutes governing prison guards.

A prison guard who commits an offence provided for by the Criminal Code shall be punished by competent courts.

Article 19:

An aggrieved prison guard may make a claim to his/her superior levels of administration or to a competent court.

Title 3. DETENTION AND RELEASE

Article 20:

The procedures of detention shall respect the following principles and objectives:

- 1° to help the prisoners repent, to change his/her behavior and achieve psychological rehabilitation;
- 2° to respect the rights of the prisoner in accordance with the Constitution and international conventions ratified by Rwanda;
- 3° to respect the life, physical and mental integrity and the well being of the prisoner;
- 4° to ensure the security of every prisoner until his/her release;
- 5° to help the prisoner in issues relating to training and capacity reinforcement in order for him/her to contribute towards national and self development.

Chapter 1. PRE-DETENTION AND IMPRISONMENT CONDITIONS

Article 21:

No person shall be admitted or confined in prison without a committal order bearing the date, number, signature and the names of the issuer, stamp of the Court that ordered the imprisonment and the identities of the prisoner.

Such a committal order shall be recorded in an appropriate register in which reasons for imprisonment, the authority that approved it, day and date and be kept in his/her file.

Before entry into prison, materials of the prisoner that are prohibited in prison shall be counted and recorded in the appropriate register which shall be signed by the prisoner and the Director of the prison. Among the prohibited materials, there shall be some to be kept by the prison, burnt and others to be taken back to the residence of the prisoner.

A Ministerial Order shall establish the Internal Rules and Regulations of prisons. Such rules shall determine the modalities of implementation of the provisions mentioned in paragraph 3 of the present Article.

Article 22:

The prisoner shall be imprisoned in a prison near by his/her family whenever possible. He/she may be transferred to another prison, upon approval by the Commissioner General of Prisons.

He/she may be transferred to another prison when necessary and upon approval by the Minister after

consultation with competent Prosecution.

In case a detainee or a prisoner is transferred to another prison, the authorities of the former prison shall notify the concerned.

Internal Rules and Regulations of prisons shall establish the modalities for the application of this Article.

Chapter 2. RIGHTS OF THE PRISONER

Article 23:

The prisoner shall be treated at all times with humanity, respect and with dignity inherent to all human beings. He/she shall be protected, in particular, against any form of torture and cruel, inhuman and other degrading treatment.

Any form of discrimination based on ethnicity, colour, sex, language, religion, political opinion, nationality, social and economic status, birth or any other ground is prohibited.

Article 24:

Prisoners shall be placed in categories and shall be confined in different compartments of prisons considering sex, age, health status or sentences rendered by Courts.

Minors aged between 14 to 18 years shall be particularly assisted or supervised by competent employees.

Adequate capacity-building and recreational programmes shall be planned for prisoners.

Detainees shall be given dresses of different color from that of the of prisoners.

A Ministerial Order shall determine the modalities for the application of this Article.

Article 25:

Female prison compartments shall be supervised by female prison guards. No male person shall be allowed to enter into such compartments without being accompanied by a female prison guard. Compartments where males are confined shall be supervised by male prison guard. No female shall be allowed to enter into such compartments without being accompanied with a male prison officer.

Any incarcerated pregnant or breastfeeding woman shall be accorded special care. A child under breast feeding shall be entitled to adequate nutritional food as required for infants and shall be given to his/her family after three (3) years of age. In case of no family to receive such a child, the State shall provide a

place where he/she shall be catered for.

Article 26:

Prison quarters shall meet minimum physical standards with respect to hygiene, water, adequate ventilation, light and space in order to ensure a better health and physical hygiene of prisoners.

The prisoner has an inalienable right to daily food rations in sufficient quantities with a balanced nutritional value as well as access to adequate clean drinking water.

The prisoner has a right to go out of dock in order to be in an open space and breathes open air in the enclosure of the prison. He/she shall also be entitled to time for entertainment in sports.

The prisoner has a right to perform activities relating to his/her religious affiliation provided that they do not jeopardize morals and security of other inmates. Religious teachings in the prison shall be based on rehabilitation of the inmates.

Article 27:

Every Prison shall have a medical doctor charged with making a follow up of health issues faced by prisoner.

Every prisoner has the right to medical care. Every prison shall have a sick bay from where patients receive medical care and which collaborates with the health centers nearest to the prison. In case a prisoner cannot receive medical care, he/she shall be transferred to another referral hospital.

On admission to prison, the prisoner shall be examined by a doctor for any contagious disease. A prisoner who is diagnosed with a contagious disease shall be transferred to another hospital so that he/she does not pass the disease to others. However, HIV/AIDS positive tested prisoners/detainees shall in no way be stigmatized.

A prison doctor shall examine issues relating to disease, hygiene and the state of food of the prisoners. He/she shall inform, in writing, the prison authorities any relevant matters that need to be addressed regarding health of prisoners that may be caused by their feeding and hygiene conditions.

The prisoner shall not be subject to chemical experimental or any other health research. Any approved research that may be conducted in prison shall be authorized by the Minister.

Article 28:

Without prejudice to public order, every prisoner has the right to be visited by his/her family members and friends on time and days set and shall publicly communicate with them in speech before the prison guard or any other competent prison staff.

All correspondences shall be approved by the Prison Director before they are forwarded to the

addressees.

The detainee shall be entitled to the right of being visited by his/her lawyer during working hours and they shall be allowed to communicate in speech or in writing with no hindrance.

Article 29:

Prisoners shall have the right to perform any activity in relation to their professional skills. Those who do not have professional skills shall, if possible, be given training to enable them to have any work to perform.

Such work performed shall be in line with their rehabilitation and they shall be entitled to a small amount from which they have earned in accordance with Article 40 of this law in order to motivate them. They shall also perform activities to improve their living conditions in prison.

The kind of activities prisoners perform shall be determined by a Ministerial Order.

Article 30:

The prison shall have a library equipped with books, newspapers and Official Gazettes.

The prison shall also have books, through which the incarcerated receive lessons, and the prison shall allow the prisoner to bring his/her own books that he/she needs without prejudice to the objective of rehabilitation of a prisoner.

The books the prisoner brings shall be presented to the Director of the prison for approval.

The Internal Rules and Regulations of prisons shall determine the modalities for application of this Article.

Article 31:

The amount the prisoner receives from his/her earnings shall be deposited on the appropriate prisoners Bank Account and he/she shall be informed of the amount deposited if he/she requests so.

He/she may purchase items needed that are acceptable in prison from such amount and allow his/her family to use it.

In case of release from prison, he/she shall be given the money deposited.

In case he/she dies, such an amount shall be given to his/her heir.

Article 32:

On admission into prison, the prisoner shall be informed, in a language he/she understands, of his/her

rights and obligations with respect to the internal discipline in the prison, and the procedures of providing sanctions to the offender as stipulated in the Internal Rules and Regulations of prisons.

A disciplinary measure shall be decided by the Prison authorities. It shall be well founded and explained to the prisoner. The sanction, shall neither whatsoever, degrade a prisoner nor jeopardize the fundamental rights as provided for by this law.

A sanctioned prisoner or his/her family may appeal to the Commissioner General for any disciplinary action taken against him/her in accordance with provisions of the Internal Rules and Regulations of prisons.

Prisoners, who cause disorder in prison, shall be confined in special prisons. Offences stipulated in the Criminal Code committed by prisoners shall be transmitted to Prosecution for investigation and prosecution.

Article 33:

In case a prisoner or his/her family is prejudiced, the victim or his/her lawyer shall have the right to seek the assistance from authorities or Courts.

Article 34:

A foreign prisoner has the right to be explained provisions governing prisoners in a language he/she understands. He/she has the right to meet or exchange information with his/her country's diplomatic representatives in Rwanda.

A foreign prisoner without his/her country's diplomatic representatives in Rwanda, a refugee or a stateless person, may seek assistance from representatives of another country or an International Organization of his/her choice which admitted, upon approval by the Minister, to make a follow up of his/her case.

Article 35:

In case the prisoner dies, the prison authorities shall inform the administrative authorities and his/her family.

In case a foreign or prisoner dies, the prison authorities shall inform the Minister who in turn, shall inform relevant authorities.

A medical death certificate shall be issued by a recognized doctor and recorded in the appropriate register.

A dead body of a prisoner shall be buried in accordance with laws and human rights.

Chapter 3. REQUIREMENTS FOR RELEASE

Article 36:

Prison authorities shall set free any prisoner after serving his/her term of imprisonment determined by the Court.

Regarding the release of a detainee, prison authorities shall, in thirty (30) days before, remind in writing, the Court and the Prosecution Service of the day a person in provisional detention shall not go beyond while in detention. On such a day, Prison authorities shall release him or her.

Prison authorities shall have the responsibility of informing the relevant authorities about the prisoners who completed a quarter ($\frac{1}{4}$) of their sentence, subject to good conduct, in order for the prisoners to be discharged on provisional release in accordance with the provisions of the law.

Article 37:

Without prejudice to the provisions of Article 36 of this law, the prisoner shall be subjected to a provisional release if:

- 1° there has been ordered provisional release;
- 2° there is a guarantee of Presidential Pardon;
- 3° there has been established a law guaranteeing general amnesty;
- 4° the prisoner serves his/her sentence pronounced by the Court;
- 5° the detainee is released upon approval of the Court.

The reason and the release of an prisoner shall be recorded in an appropriate prison register.

Article 38:

Before the prisoner is released, the following shall be particularly respected:

- 1° he/she is required to have a copy of the judgment;
- 2° he/she is required to be issued with a release document indicating the day of entry into prison and the day of exit;
- 3° shall be required to sign the appropriate register.

- 4° returning his/her items that have been kept and the prisoner shall sign upon reception;
- 5° to be given the amount kept for him or her from his/her earnings in the activities performed.

Title 4. MANAGEMENT OF PRISONS

Chapter 1. RESPONSIBILITIES OF THE PRISONER

Article 39:

The incarcerated has the following main responsibilities:

- 1° to abide by national laws;
- 2° to abide by the laws and regulations which govern him or her in prison;
- 3° to avoid spreading divisionism, genocide ideology and hearsay;
- 4° to avoid creating tensions and violence;
- 5° to be of good conduct and respect Rwandan culture;
- 6° to participate in ensuring his/her own safety and that one of fellow inmates;
- 7° to perform activities for the development of own person as well as the prison;
- 8° to keep his/her body, clothes and cell clean.

Article 40:

The prisoner may be requested or request to perform a work but can not be forced to perform it.

The prisoner shall perform work but can not be forced to work beyond his/her capacity or perform works that degrade him or her.

The prisoner who performs an income generating activity shall be given an amount equivalent to ten percent (10%) of the total amount of his/her earnings.

Chapter 2. SURVEILLANCE OF PRISON

Article 41:

Detainees are under the surveillance of prison guards with appropriate equipment and uniform bearing their number and names.

Prison guards are also in charge of surveillance of detainees in case they get out of prison for trial, work or due to any other reasons.

Article 42:

In case a prison guard is on duty in any place, he/she has powers to use appropriate force to prevent escape of the prisoner.

A prison guard who suspects that an prisoner has escaped from prison, may arrest him or her without any arrest warrant issued by competent authorities and returns him or her to prison or to the nearest National Police Station.

Article 43:

The prison guard shall emphasize on accomplishing his/her responsibilities without use of force.

However, he/she may use appropriate force in order to accomplish his/her duties in absence of other means available to accomplish them.

Use of force shall be applied reasonably and not excessively beyond the gravity of the committed crime.

Article 44:

Use of fire arms shall be applicable after warning the prisoner. It shall be applicable in the following circumstances: Self defense; Escape of the prisoner; to protect other prisoners;

In circumstances mentioned in the preceding paragraph, the prison guard shall immediately inform prison authorities who shall in turn inform the Commissioner General.

Article 45:

The prison guard shall:

1° inspect any object within or brought into prison;

2° stop and check any vehicle within the premises of the prison;

3° Search any person leaving or entering the prison.

A prison guard on duty in a prison shall refuse entry into the prison premises to any person who refuses to be searched and he/she shall also order him or her to get out of the prison premises.

When a person being searched is found in unlawful possession of an object, any item of the Prisons, the prison guard, who carried out the search, shall arrest that person and hand him or her over to the Director of the prison, who shall also hand him or her to the nearest prosecution service after preparing a statement thereof.

Where it is a prisoner, the prison guard is allowed to confiscate all items searched that are prohibited by law, and hands them to the Director of the prison who prepares a statement which he/she and the suspect shall sign and be submitted to prosecution service in accordance with the law.

Where the person to be searched is a female, she shall be searched by a female prison guard. Where the person to be searched is a male, he or shall be searched by a male prison guard.

Internal body search shall be conducted by an authorized medical doctor.

Article 46:

Prisoners are allowed to go out of prison if they are going under training, while they are out for work, treatment, reading the file, trial, giving testimony, entertainment, to have discussions with the local population outside the prison or any other reason that is not contrary to the laws governing prisoners.

Prisoners of good conduct shall be considered to go out of prison for work.

The prison authorities are responsible for strictly acknowledging the prisoners out of prison and verify their return.

Prisoners are not allowed to visit their homes or any other homes.

Article 47:

Files of prisoners in prison are managed in a modern technological way, and each file bearing a photo, his/her identities, date of detention, charges and any other necessary information regarding the file.

Chapter 3. CORRECTIVE EDUCATION FOR PRISONERS

Article 48:

Prisons have a fundamental task of changing mentality of prisoners and prepare them to be good citizens in order for them to lead pacific cohabitation with other people when they are released.

The objectives may be achieved through education, work, cultural, sports and entertainment activities. In order to achieve this, prison authorities shall collaborate with other organs concerned with respect to such activities.

Article 49:

The prison authorities shall consider the following in management of prisoners:

1° focusing on changing the performance, wrong understanding and bad mentalities of prisoners with an aim of their rehabilitation;

2° understanding the problems of prisoners and searching for their solutions;

3° preparing joint debates of prisoners and the members of the public outside the prison with an aim of promoting good relations.

Article 50:

The prison authorities, prison guards and other prison employees are required to have knowledge in management of prisoners so that they are released with a better understanding and after being rehabilitated.

Prisoners shall be educated on government and other self development policies.

Article 51:

A Presidential Order shall institute special rehabilitation centers to receive minors who committed offences.

An Ministerial Order determines the organization and functioning of the rehabilitation centers.

Chapter 4. MANAGEMENT OF THE PROPERTY OF PRISON

Article 52:

The property of prison shall be derived from:

1° the State budget;

2° the activities performed by the prisoners;

3° income generating activities and bank interests;

4° aid, donations and bequests.

Article 53:

The budget of the National Prisons Service shall be provided in the State budget.

The budget of the Prison shall be provided in the budget of the District in which the prison is located and shall be supported by income generated from activities performed by the prisoner.

Article 54:

The Auditor General of State Finance controls the management and the use of the finance and the property of the prison.

Article 55:

Prison tenders shall be awarded in accordance with Public Procurement Procedures.

Article 56:

The income the prison generates from different activities performed by prisoners helps to increase the budget allocated to the prison.

Among the income generated by the prison, forty per cent (40%) of it shall be deposited on a special account of the Service in the National Bank of Rwanda which is meant for solving issues related to prisons.

The prison which generates such income remains with fifty per cent (50%). The amount shall be used in promoting social welfare in prison.

The use of the income the prisons generate shall be determined by a Ministerial Order after consultations with the Minister in charge of finance.

Article 57:

The Prison authorities shall, in collaboration with authorities of the District in which the prison is located, prepare the contract of employment performed by prisoners to be approved by the Service.

Chapter 5. INSPECTION AND VISITS TO PRISONS

Section 1. Inspection of the prison

Article 58:

The National Prisons Service shall carry out regular inspection of prisons with an aim of ensuring respect of existing laws and regulations.

The Public Prosecution shall carry out regular inspection to ensure respect of provisions of the legal proceedings of the culprits and the penalties determined by the court.

The National Human Rights Commission and other competent state organs shall also carry out inspection.

Local or international organizations operating in Rwanda and private individuals in charge of protecting human rights and humanity, upon request and after approved by the Minister, shall also carry out the inspection. The inspection shall be carried out through procedures only authorized by the Minister.

Section 2. Visits to the prison

Article 59:

State organs, non governmental international or local organizations working in the human rights protection and humanitarian area may be authorized to carry out visits to prisons and make recommendations and suggestions to competent authority.

A Ministerial Order shall determine the modalities for the application of this Article.

Title 5. MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Chapter 1. MISCELLANEOUS PROVISIONS

Article 60:

With Regard to security of the prison, the Service shall collaborate on a regular basis with security organs, District authorities and the Prosecution service of the jurisdiction where the prison is located.

Article 61:

Places to be used as prisons shall be established by a Presidential Order. This Order shall determine the way it is built in respect of the rights of residents of the neighborhood and non degradation of the environment.

Chapter 2. TRANSITIONAL PROVISIONS

Article 62:

Existing employees of the administration of prisons in the Ministry of Internal Security who fulfill the required conditions during recruitment shall be placed in the National Prisons Service in accordance with the General Statutes for Rwanda Public Service and Labour Code.

Without prejudice to their existing rights, they shall be categorized according to their appointments.

Employees who do not fulfill the required conditions shall be handled in accordance with the law.

Article 63:

The property which was formerly owned by prisons shall revert to the National Prisons Service.

Chapter 3. FINAL PROVISIONS

Article 64:

Ordinance n° 111/127 of May 30, 1961 governing the Organization of Prisons in RUANDA-URUNDI and all previous legal provisions contrary to this law are abrogated.

Article 65:

This law comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 25/09/2006