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## PRISONS AND CORRECTIONAL SERVICE ACT, 2016

**To provide for the establishment of the Zimbabwe Prisons and Correctional Service and for matters incidental thereto.**

*(Signed by the President on this.....)*

To repeal and substitute the Prisons Act [*Chapter 7:11*] (Revised Edition 1996)

Enacted by the President and the Parliament of Zimbabwe.

### Short Title

This Act may be cited as the Prisons and Correctional Service Act.

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**BE IT ENACTED** by the Parliament of Zimbabwe as follows:

### **PART I** **PRELIMINARY**

#### *Section*

##### **1. Short title and commencement**

(1) This Act is called the Prisons and Correctional Service Act, 2016 and comes into operation on a date to be determined by the Minister by notice in the Gazette.

(2) Different dates may be determined in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to that particular provision.

## **2. Interpretation**

*In this Act, unless the context otherwise indicates –*

“Commissioned correctional officer” means any correctional officer of one of the prescribed ranks of commissioned correctional officers referred to in section...;

“Commissioner-General” means the Commissioner-General of Prisons and Correctional Service appointed in terms of amendment (No.20) of the Constitution of Zimbabwe;

“Deputy Commissioner-General” means the Deputy Commissioner-General of Prisons and Correctional Service appointed in terms of Section 2 of this Act;

“convicted inmate” means any inmate under sentence of a court or court martial;

“Correctional Community Centre” means a correctional community centre established under section 28 of this Act and includes a temporary correctional community centre declared under section 29 of this Act.

“correctional facility” means a correctional facility established in terms of this Act and includes a temporary correctional facility declared as such in terms of this Act and includes every place used as a police cell or lock-up;

“correctional officer” means any officer of the Service and includes—

- (a) the Commissioner-General; and
- (b) every Deputy Commissioner-General; and
- (c) any officer seconded to the Service; and
- (d) any temporary correctional officer.

“court” means a court of law of competent jurisdiction;

“club” includes any mess for correctional officers or any premises temporarily or permanently used to provide recreation, refreshment, or necessities mainly for correctional officers or retired correctional officers or employees of the Prisons and Correctional Service or for the families of such correctional officers, retired correctional officers or employees or for persons employed in any work in or in connection with any such mess or premises.

“day” means any day, including Saturday, Sunday or public holiday;

“disciplinary board” means a disciplinary board appointed under section 44

“disciplinary offence”, in relation to a correctional officer, means an offence referred to in Part IV or, in relation to an offender, Part VIII;

“extended imprisonment” means extended imprisonment imposed in terms of section 346 of the Criminal Procedure and Evidence Act [*Chapter 9:07*];

“infant” means a child younger than 59 months

“inmate” means any person, whether convicted or not, who is lawfully detained in a prison or correctional facility;

“non-commissioned correctional officer” means a correctional officer of one of the prescribed ranks of non-commissioned correctional officers;

“juvenile” means a person below the age of 18 years;

“licence” means a release licence issued by the Minister in terms of this Act;

“mechanical restraint” means physical restraint by the use of handcuffs, leg irons strait-jacket or any other prescribed form of restraint approved by the Minister;

“medical officer” means the medical practitioner appointed or assigned under section 82 of this Act as a medical officer of a correctional facility;

“Minister” means the Minister responsible for Prisons and Correctional Service;

“Ministry” means the Ministry responsible for Prisons and Correctional Service;



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“offender” means an inmate, or a convicted person who is outside a correctional facility by reason of parole, temporary absence, release with remission or escape or by any other reason but is under the supervision of a correctional officer or of any other person authorised by the Prisons and Correctional Service or under any law;

“officer-in-charge” means the person appointed to be in charge of a prison or correctional facility under section 30;

“official visitor” means a person appointed as such under section ....;

“Open correctional facility” means any building, structure or place declared to be an open correctional facility and established under section..

“Paralegal system” means a paralegal system provided for in section 157 of this Act

“periodical imprisonment” means periodical imprisonment imposed in terms of section 345 of the Criminal Procedure and Evidence Act [*Chapter 9:07*];

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribe” means prescribe by regulation;

“presiding officer”, means a correctional officer authorized to conduct a disciplinary inquiry or, the officer in charge or any other correctional officer authorised to conduct a disciplinary inquiry;

“prison” means any building or place declared to be a prison and includes a temporary prison established under section ...;

“Prisons and Correctional Service Commission”, means the Prisons and Correctional Service established by section 230 of the Constitution;

“prohibited article” means an article or object prescribed to be a prohibited article;

“regulation” means a regulation made under this Act;

“Service” means the Prisons and Correctional Service established by section 227 (1) of the Constitution;

“State Parole Board” means the State Parole Board established under section 119 of this Act;

“this Act” includes the regulations made there under;

“unconvicted inmate” means any person, not being a convicted inmate, duly committed to custody under a writ, warrant or order of any court or any order of detention issued by any person authorized thereto by any enactment or by order of a court martial;

“visiting justice” means a visiting justice referred to in section 137 and

“weapon” includes a firearm, baton, tear-gas, or any other instrument as may be prescribed;

“young inmate” means an inmate under the apparent age of eighteen years and may, at the discretion of an officer in charge, include an inmate whose apparent age does not exceed twenty one years.

## **PART II**

### **ESTABLISHMENT, FUNCTIONS AND ADMINISTRATION OF ZIMBABWE PRISONS AND CORRECTIONAL SERVICE**

#### **3. Establishment of the Prisons and Correctional Service**

(1) There is hereby established a Prisons and Correctional Service to be known as the Zimbabwe Prisons and Correctional Service.

- (2) The Service shall consist of:
  - (a) the Commissioner-General;
  - (b) one or more Deputy Commissioner-Generals; and
  - (c) correctional officers divided into such ranks as are prescribed by the Minister.
- (3) The Minister shall prescribe which ranks of the Service are those of commissioned correctional officers and non-commissioned correctional officers.
- (4) When prescribing ranks for the purpose of this section..., the Minister shall consult the Commissioner-General and obtain the approval of the Prisons and Correctional Service Commission.

#### **4. Principles that guide Prisons and Correctional Service**

The principles that guide the Service in fulfilling the functions referred to in section 4 are:

- (a) that the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing court, other information from the trial or sentencing process, the release policies, comments from the State Parole Board, and information obtained from victims or community;
- (b) that the Service enhances its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programmes to offenders, victims and the public;
- (c) that the Service facilitates the involvement of members of the public in matters relating to the operation of the Service;
- (d) that prisons and correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;
- (e) that inmates are expected to obey prisons and correctional rules and conditions of release and to actively participate in programmes designed to promote their rehabilitation and reintegration into society; and
- (f) that correctional officers are properly selected and trained, and given –
  - (i) appropriate career development opportunities;
  - (ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of dignity; and
  - (iii) opportunities to participate in the development of prisons and correctional policies and programmes.

#### **5. Functions of Prisons and Correctional Service**

The functions of the Prisons and Correctional Service shall be—

- (a) to ensure that every inmate is secured in safe and humane custody, within a prison or correctional facility, until lawfully discharged or removed therefrom;
- (b) to render adequate healthcare to inmates;
- (c) as far as practicable, to apply such rehabilitation programmes and other meaningful and constructive activities to sentenced offenders that contribute to their rehabilitation and successful reintegration into society as law-abiding citizens;
- (d) to supervise offenders who are on conditional release;

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- (e) to perform all work necessary for, arising from, or incidental to, the effective management, administration and control of prisons and correctional facilities; and
- (f) to perform such other functions as the President may from time to time assign to the Service.

### **6. Appointment and functions of Commissioner-General**

- (1) The Commissioner-General shall be appointed by the President in terms of section 229 (1) of the Constitution of Zimbabwe after consultation with the Minister.
- (2) The Commissioner-General shall be appointed for a term of five years which may be renewed once.
- (3) The Commissioner-General, in addition to such other powers, duties and functions as may be conferred upon or assigned to him under this Act, shall be responsible for the efficient supervision, administration, command, superintendence, direction and control of the Service.
- (4) Subject to the provisions of this Act, the Commissioner-General may, for the efficient supervision, administration, control and discipline of the Service and for observance by inmates and correctional officers, make or issue such rules, standing orders or administrative directives as he or she may consider necessary or expedient.
- (5) In the exercise of his or her powers and the performance of his or her duties and functions under this Act, the Commissioner-General is accountable and subject to the directions of the Minister.

### **7. Delegation of functions of the Commissioner-General**

- (1) Subject to any orders or directions of the Commissioner-General, anything that may be done, ordered or performed by the Commissioner-General may be done, ordered or performed by a Deputy Commissioner-General.
- (2) The Commissioner-General may from time to time, with the Minister's approval, delegate to any correctional officer the exercise of any right or performance of any function conferred or imposed upon him by this Act or any other enactment, other than the power of further delegating the right or function so delegated.

### **8. Retirement and removal of the Commissioner-General**

- (1) Subject to this section, the Commissioner-General shall be appointed for a period of five years.
- (2) With the President's consent, the Commissioner-General may retire before completing a period of five years in that appointment, whatever his or her age or the length of his or her pensionable service.
- (3) The Commissioner-General shall retire on completing a period of five years in that appointment, whatever his or her age or the length of his or her pensionable service:  
Provided that, if the President considers that it is desirable in the public interest and the Commissioner-General is medically fit, the President may, with the Commissioner-General's consent, extend the period of his or her service for periods of not more than twelve months at a time up to five years which thereafter shall not be renewed as provided for in section 229 (2) of the Constitution of Zimbabwe.

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(4) The Commissioner-General may, at his or her own request and with the approval of the President, vacate his or her office—

(a) on grounds of ill health; or

(b) for any other reason that the President may consider sufficient, subject to such conditions as to retirement, as provided for by relevant laws or as the President may determine.

(5) The Commissioner-General may be removed from office by the President for any reason after consultation with the Minister, and the President shall cause Parliament to be informed as soon as practicable of any such removal.

### **9. Appointment, promotion, demotion, discharge or resignation and retirement of correctional officers**

(1) Subject to this Act, the President may—

(a) by commission, appoint any person as a commissioned correctional officer; and

(b) promote any commissioned correctional officer to a higher rank; and

(c) reprimand, suspend, reduce in rank or discharge any commissioned correctional officer;

and when appointing, promoting, reprimanding, suspending, reducing in rank or discharging any such person, the President shall pay due regard to the advice of the Minister tendered after consultation with the Commissioner-General and the Prisons and Correctional Service Commission.

(2) The appointment or promotion of any person as a commissioned correctional officer shall be notified in the Gazette.

(3) The power to—

(a) appoint persons as non-commissioned correctional officers; and

(b) promote any non-commissioned correctional officer to another non-commissioned rank; and

(c) reprimand, suspend, reduce in rank or discharge any non-commissioned correctional officer;

shall vest in the Commissioner-General, acting in consultation with the Prisons and Correctional Service Commission.

(4) For the purposes of subsection (1) and (3) above, the Prisons and Correctional Service Commission shall set out relevant guidelines for the appointment of qualified, competent, fit and proper persons as correctional officers in terms of section 231 (1) (a) of the Constitution of Zimbabwe.

### **10. Resignation of correctional officers**

(1) A correctional officer may by notice in writing tender a resignation of his or her appointment.

(2) The notice referred to in subsection (1) shall be in such prescribed form and if the resignation is approved, it takes effect on such conditions as the Commissioner-General may determine.

(3) Any correctional officer whose period of service expires during a state of war, insurrection or public emergency may be retained in the Service by the Commissioner - General for such period as the Commissioner-General may direct.

(4) Any correctional officer who withdraws himself from his or her official duties in contravention of this section shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

**11. Retirement of correctional officers**

**(1) Voluntary retirement**

A correctional officer whose period of employment in the service amounts to ten years or more may retire from his employment in the Service on giving three months' notice in writing, to the Commissioner-General of his intention to do so.

**(2) Retirement on pension and extension of service**

(a) The Commissioner-General may, on giving twelve months' notice in writing, require a correctional officer whose age is forty-nine years or more or whose pensionable service at the date upon which the notice expires amounts to twenty years to retire from the Service.

(b) A correctional officer shall, whatever the length of his or her pensionable service, retire from the Service at midnight on the fiftieth anniversary of his birthday.

Provided that, if the Commissioner-General considers that it is desirable in the public interest and that the correctional officer is medically fit to be retained in the Service, he or she may direct that such correctional officer be permitted to continue to serve in the Service for further periods of twelve months at a time until midnight of the fifty fifth anniversary of his or her birthday.

(4) A correctional officer who has continued to serve in the Service in terms of the proviso to subsection (3) shall retire from his or her employment in the Service at midnight on the fifty fifth anniversary of his or her birthday.

Provided that, if the Minister considers that it is desirable in the public interest and that the correctional officer is medically fit to be retained in the Service, he or she may direct that such correctional officer be permitted to continue to serve in the Service for further periods of twelve months at a time until midnight of the sixtieth anniversary of his or her birthday.

(5) A correctional officer who has continued to serve in the Service in terms of the proviso to subsection (4) shall retire from his or her employment in the Service on attaining the age of sixty years.

Provided that, if the President considers that it is desirable in the public interest and that the correctional officer is medically fit to be retained in the Service, he or she may direct that such correctional officer be permitted to continue to serve in the Service for further periods of twelve months at a time until midnight of the sixty fifth anniversary of his or her birthday.

(6) A correctional officer who has continued to serve in the Service in terms of the proviso to subsection (5) shall retire from his or her employment in the Service on attaining the age of sixty five years.

(7) This section shall not be construed as precluding the Commissioner-General from terminating the employment of any correctional officer who has failed to perform in his or her duties or is no longer suitable to be in the employ of the Service.

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### **12. Promotion to next higher rank on retirement**

(1) For purposes of pension computation only, a commissioned correctional officer who retires on full pension shall be promoted to the next higher rank on reaching pensionable service:

Provided that the officer exhibited undoubted loyalty and exceptional commitment to his or her duty.

(2) For the avoidance of doubt, the promotion shall not be in terms of section 8.

### **13. Correctional officers assigned to any part of Zimbabwe**

A correctional officer shall be deemed to be available for duty at all times and may at any time be assigned by the Commissioner-General to any part of Zimbabwe to perform any function conferred upon or assigned to correctional officers by or under this Act.

### **14. Temporary correctional officers**

Whenever it is necessary for the safe custody or transportation of any inmate or for any other purpose —

(a) the Commissioner-General; or

(b) the officer in charge, with the prior approval of the Commissioner-General, may appoint such number of suitable persons as he or she may consider expedient, to serve as temporary correctional officers on such terms and conditions as may be prescribed.

### **15. Commissions by the President**

(1) The President may confer a commission on any commissioned correctional officer, and may issue to such commissioned correctional officer a prescribed deed of Commission bearing his or her signature or a replica thereof.

(2) A commissioned correctional officer on whom a commission has been conferred by the President holds such commission at the pleasure of the President.

## **PART III**

### **PRISONS AND CORRECTIONAL SERVICE COMMISSION**

### **16. Term of office of the Prisons and Correctional Service Commission**

(1) A member of the Prison and Correctional Service Commission shall hold office for a five year term which may be renewed once.

(2) If a person is appointed to the Commission to act in place of a member of the Commission who is unable to exercise his or her functions, the period of the acting appointment shall not exceed six months.

### **17. Resignation of members of the Prisons and Correctional Service Commission**

(1) A member of the Commission may resign his or her office at any time by giving the President, through the Minister, such notice of his or her intention to resign as may be

fixed in his or her conditions of service or, if no such period has been fixed, after the expiry of thirty days from the date he or she gives such notice or after the expiry of such other period of notice as he or she and the President may agree.

(2) A member of the Commission shall be deemed to have resigned his or her office as a member and his or her office shall become vacant if—

(a) he or she accepts nomination for election to, or becomes a member of Parliament; or

(b) he or she accepts nomination for election as, or becomes a member of, a local authority or accepts employment as an employee of a local authority;

(c) he or she accepts office as a member of a statutory body or employment as an employee of a statutory body; or

(d) being a member of or employed by a local authority or statutory body at the time he or she becomes a member of the Commission, he or she fails to terminate his or her appointment or employment as such within fourteen days of the date on which he or she became a member of the Commission.

### **18. Conditions of service of members of Prisons and Correctional Service Commission**

(1) Subject to this Part, the conditions of service of members of the Prisons and Correctional Service Commission, including their composition, functions remuneration, allowances and pensions benefits, shall be fixed by the President either at the time of their appointment or, subject to section 230 of the Constitution,...

(2) When fixing conditions of service of a member of the Service Commission in terms of subsection (1), the President may direct that any enactment relating to the conditions of service of members of the Service or the Civil Service shall apply to the conditions of service of the member, subject to such modifications, exceptions or conditions as the President may specify, and thereupon the enactment concerned shall so apply to the conditions of service of the member concerned.

### **19. Functions of the Prisons and Correctional Service Commission**

(1) The Commission shall have the following functions—

(a) to employ qualified and competent persons to hold posts or ranks in the Service;

(b) to fix and regulate conditions of service, including salaries, allowances and other benefits, of members of the Service;

(c) to ensure the general well-being and good administration of Service and its maintenance in high state of efficiency;

(d) to ensure that members of the Service comply with section 208;

(e) to foster harmony and understanding between Service and civilians;

(f) to advise the President and the Minister on any matter relating to the Prisons and Correctional Service; and

(g) to exercise any other function conferred or imposed on the Commission by this Constitution or an Act of Parliament.

(2) In the exercise of its functions under this Act, the Service Commission, with the approval of the Minister and after consultation with the Commissioner - General; may—

(a) carry out any inquiry or investigation into the practices of the Service;

(b) require the production of any documents, books or other records;

(c) summon and examine any witness whose evidence it considers will assist the conduct of its inquiries or investigations;

(d) obtain information and advice from any prison officer or other person.

(3) For the purposes of any inquiry or investigation carried out by it in terms of this Act, the Prisons and Correctional Service Commission shall have the same powers as are conferred upon commissioners in terms of the *Commissions of Inquiry Act [Chapter 10:07]*, other than the power to order a person to be detained in custody, and section 3 and sections 10 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to such an inquiry or investigation and to any person summoned to give or giving evidence at that inquiry or investigation:

Provided that no person shall be required by the Prisons and Correctional Service Commission to disclose information or to produce an official document book or other record if—

(a) its disclosure or production is prohibited or restricted under any enactment prohibiting or restricting the disclosure of information; or

(b) the Minister certifies in writing that its disclosure or production would be contrary to the interests of the Service.

#### **20. Procedure of Prisons and Correctional Service Commission**

The Commission shall meet as often as is necessary for the discharge of its business and may adjourn, close and otherwise regulate its meetings as it thinks fit:

Provided that the Commission shall meet at least two times in every year.

#### **21. Staff of Prisons and Correctional Service Commission**

The Minister, in consultation with the Civil Service Commission, may second to the Prisons and Correctional Service Commission such members of the Civil Service as may be necessary for the exercise of the Prisons and Correctional Service Commission's function.

#### **22. Reports of Prisons and Correctional Service Commission**

(1) The Commission –

(a) shall, as soon as possible after 31<sup>st</sup> of December in each year, submit to the Minister an annual report upon matters dealt with the Commission during the previous year, except such matters as the Commission may consider inexpedient to publish;

(b) may at any time submit to the Minister a special report on any matter upon which the Commission considers it desirable to report.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him—

(a) Every annual report submitted to him in terms of paragraph (a) of subsection (1); and

(b) Any special report submitted to him in terms of paragraph (b) of subsection (1) which the Commission requests be laid before Parliament.

#### **23. Validity of acts and decisions of Prisons and Correctional Service Commission**



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No decision or act of Commission or act done under the authority of the Commission shall be invalid solely because—

- (a) a person who was not entitled to do so acted as a member of the Commission when the decision was taken or the act was done or authorized; or
- (b) there were one or more vacancies on the Commission when the decision was taken or the act was done or authorized.

### **PART IV**

## **ESTABLISHMENT, ADMINISTRATION AND CONTROL OF PRISONS, CORRECTIONAL FACILITIES, CORRECTIONAL COMMUNITY CENTRES AND OPEN CORRECTIONAL FACILITIES**

### **24. Establishment of prisons and correctional facilities**

(1) The Minister may by notice in the Gazette —

- (a) establish prisons and correctional facilities throughout Zimbabwe for the reception, detention, confinement, rehabilitation, training or discipline of persons sentenced to imprisonment or detention in custody;
- (b) declare any place, building, or enclosure or part thereof to be a prison or correctional facility for the purposes of this Act;
- (c) rename any such prison or correctional facility; and
- (d) declare any such prison or correctional facility or part thereof closed.

(2) A prison or correctional facility established under this section includes all land and any buildings, grounds and appurtenances thereof within or attached to the prison or correctional facility and used by the inmate or staff thereof for the purposes of this Act.

### **25. Temporary prisons and correctional facilities**

The Commissioner-General may, with the approval of the Minister, whenever he or she is of the opinion that—

- (a) the number of offenders in any prison or correctional facility is greater than can be conveniently accommodated therein and that it is not convenient to transfer any of such offenders to another prison or correctional facility;
- (b) due to an outbreak of an epidemic within a prison or correctional facility; or
- (c) for any other reason, it is necessary to provide for the temporary shelter or safe custody of any offender therein, declare by notice in the Gazette any place, building or enclosure, or any part thereof, to be a temporary prison or correctional facility for the purposes of temporarily accommodating inmates, and may in a like manner close such temporary prison or correctional facility or part thereof.

### **26. Establishment of correctional community centres**

(1) The Minister may, for the purpose of easing the transition of the inmate from life in incarceration to community life, by notice in the Gazette—

- (a) establish correctional community centres throughout Zimbabwe for the reception, training or rehabilitation and reintegration of offenders released on condition that they reside in a correctional community centre;

(b) declare any place, building or enclosure or part thereof to be a correctional community centre for the purposes of this Act;

(c) rename such correctional community centre; and

(d) declare any such correctional community centre or part thereof closed.

(2) The correctional community centres established under subsection (1) are administered and controlled and must operate on such terms and conditions as the Minister may determine.

(3) Notwithstanding subsection (1), the Minister may enter into a contract with any institution, person or body of persons for the establishment, administration and control of correctional community centres upon such terms and conditions as may be agreed upon between the parties.

(4) The correctional community centre established under this section includes all land and any buildings, grounds and appurtenances thereof within or attached to the correctional community centre and used by the offenders or staff thereof for the purposes of this Act.

### **27. Temporary correctional community centres**

The Commissioner-General may, with the approval of the Minister, whenever he or she is of the opinion that—

(a) the number of offenders in any correctional community centre is greater than can be conveniently accommodated therein and that it is not convenient to transfer any of such inmates to another correctional community centre;

(b) due to a an outbreak of an epidemic within a correctional community centre; or

(c) for any other reason, it is necessary to provide for the temporary shelter or safe custody of any offenders therein,

declare by notice in the Gazette any place, building or enclosure, or any part thereof, to be a temporary correctional community centre for the purposes of temporarily accommodating offenders, and may in like manner close such temporary correctional community centre or part thereof.

### **28. Open Correctional facilities**

(1) The Commissioner-General may with the approval of the Minister establish, or direct for the shelter and safe custody of selected inmates who meet the laid down criteria from other prisons and correctional facilities to an Open Correctional Facility for the purposes of extended rehabilitation.

(2) An Open Correctional Facility shall house low risk inmates who require minimum supervision.

(3) Inmates of such numbers as the Commissioner-General may determine shall be transferred to this Open Correctional Facility.

### **29. Security levels**

The Commissioner-General shall determine the security levels applicable to prisons and correctional facilities, and may determine different security levels in respect of different prisons and correctional facilities.

### **30. Male and female inmates to be confined separately**

Male and female inmates must be kept apart and confined in separate prisons or correctional facilities or separate parts of the same prison or correctional facility, except for the purposes of training and then only under strict supervision.

**30A Juvenile offenders to be detained separately**

**The Constitution provides in section 81(1)(i)(i) that detained children should be kept separately from detained persons over the age of eighteen and they should be treated in a manner, and kept in conditions, that take account of the child's age.**

**31. Officer in charge**

(1) The Commissioner-General shall in respect of every prison or correctional facility appoint a commissioned correctional officer as the officer in charge, and another correctional officer as the deputy officer in charge of such prison or correctional facility.

(2) The officer in charge of a prison or correctional facility shall, subject to the provisions of this Act—

(a) ensure the implementation of the provisions of this Act, Service policies and other rules, standing orders and administrative directives made or issued under this Act;

(b) direct, supervise and control all administrative matters relating to such prison or correctional facility;

(c) in order to ensure compliance with this Act and the safe custody and treatment of offenders and to maintain good order in the prison or correctional facility, make or issue directives or instructions to correctional officers employed at that prison or correctional facility and offenders, and ensure compliance therewith;

(d) keep such records in respect of such prison or correctional facility as may be determined by the Commissioner-General or under this Act; and

(e) render to the Commissioner-General each month a return showing the particulars of any sentence imposed on correctional officers during the preceding month for an offence against discipline.

(f) perform such other duties or functions as the Commissioner-General may assign to him or her under this Act.

(3) The officer in charge is responsible to the Commissioner-General in the performance of his or her functions under this Act, and for the conduct of the correctional officers and treatment of inmates under his or her charge at such prison or correctional facility.

(4) The deputy officer in charge shall—

(a) exercise such powers or perform such duties or functions as the Commissioner-General may assign to him or her;

(b) exercise or perform such powers, duties or functions delegated to him by the officer in charge;

(c) generally assist the officer in charge in the performance of his or her functions under this Act, subject to the direction and control of that officer in charge.

(5) The Commissioner-General may, until such time as he or she appoints an officer in charge for the prison or correctional facility under subsection (1), designate a correctional officer to act as the officer in charge of such prison or correctional facility for a period not exceeding six months.

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(6) A correctional officer designated as officer in charge under subsection (5) shall exercise the powers and perform the duties and functions of an officer in charge, but such powers, duties and functions are subject to such limitations as the Commissioner-General may generally or specifically determine and such designated officer in charge is subject to the direction and control of the Commissioner-General.

### **32. Inspection of prisons and correctional facilities**

(1) Each prison or correctional facility shall be inspected at such intervals as may be prescribed or as the Commissioner-General may direct.

(2) An inspection referred to in subsection (1) shall be conducted by such correctional officers employed within the Prisons and Correctional Service as the Commissioner-General may direct.

(3) A correctional officer referred to in subsection (2) shall, in respect of an inspection contemplated in subsection (1), perform such functions as may be prescribed or as the Commissioner-General may, by general directive or specific instruction, assign to such correctional officer.

## **PART V POWERS, DUTIES, FUNCTIONS AND PRIVILEGES OF CORRECTIONAL OFFICERS**

### **33. General responsibilities and functions of correctional officers**

Every correctional officer shall –:

(a) be familiar with the provisions of this Act and other rules, standing orders or administrative directives made or issued by the Commissioner-General or the directives or instructions made or issued by the officer in charge in terms of this Act.

(b) exercise or perform such powers and duties or functions, by virtue of his or her rank, as are conferred upon or assigned to such correctional officer by or under this Act, or by a correctional officer duly authorised to assign such duties or functions; and

(c) obey all lawful orders and directives in respect of the execution of his or her duties or functions as he or she may from time to time receive from correctional officers senior in rank to him.

(d) provide inmates with the opportunity to use their time in a prison or correctional facility positively so that they will be able to reintegrate into society when they are released.

### **34. Correctional officers responsible for security and discipline of inmates**

Correctional officers employed in a prison or correctional facility are responsible for ensuring—

(a) as far as is practicable, the security and safe custody of all inmates detained in custody in that prison or correctional facility; and

(b) that the treatment and discipline of inmates therein is in accordance with the provisions of this Act, and must in the performance of their functions under this Act be under the direction and control of the officer in charge and act in accordance with this

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Act and the rules, standing orders and administrative directives made or issued by the Commissioner-General and the directive or instructions made or issued by the officer in charge under this Act.

### **35. Prohibited activities**

(1) No correctional officer shall be concerned in any employment other than the duties assigned to him in accordance with this Act without the express consent of the Commissioner-General:

Provided that such employment does not interfere, compromise or create a conflict of interest with his or her duties.

(2) No correctional officer shall accept any bribe, fee, donation, gratuity or reward from, or, without the permission of the Commissioner-General, have any unsanctioned business dealings with, inmates, visitors to inmates or persons he or she knows to be ex-inmates or friends of inmates or ex-inmates.

### **36. Restriction on sanctions against inmates**

No correctional officer may impose a sanction upon an inmate, except in accordance with the disciplinary procedures provided for under Part VIII of this Act.

### **37. Use of force or weapons by correctional officers**

(1) Subject to the provisions of subsection (4), a correctional officer may use such physical force against an inmate as is reasonably necessary to ensure compliance with lawful orders or to maintain discipline in the prison or correctional facility.

(2) No correctional officer shall in the presence of a correctional officer senior to himself make use of a weapon in terms of subsection (3), except on the orders of the senior correctional officer.

(3) Subject to the provisions of subsections (2), (4) and (5), a correctional officer may use a weapon against—

(a) any inmate who is -:

(i) escaping or attempting to escape from lawful custody;

(ii) engaged in forcing or breaking open or attempting to force or break open or is scaling a correctional facility door, wall, fence, gate, or other part of the prison correctional facility;

(iii) using or threatening to use violence against a correctional officer or another inmate or any other person; or

(iv) engaged in violently disorderly behaviour; or

(b) any person who -

(i) assists an inmate in escaping or uses or threatens to use violence against a correctional officer, or an inmate or any other person; or

(ii) is engaged in forcing or breaking open or attempting to force or break open or is scaling a prison or correctional facility door, wall, fence, gate, or other part of the correctional facility.

(4) Notwithstanding the provisions of subsection (3), a correctional officer shall not use a weapon against any offender or person unless—:

(a) he or she has reasonable grounds to believe that the escape, attempted escape, forcing or breaking open, or scaling cannot otherwise be prevented, and—

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- (i) he or she has given clear prior warning that he or she is about to use the weapon; and
  - (ii) such warning is unheeded; or
- (b) in the case of violence or threatened violence, he or she has reasonable grounds to believe that the person being attacked or threatened is in danger of being killed or suffering grievous bodily harm.
- (5) Whenever a weapon or force is used in pursuance of this section, the correctional officer must use the minimum force necessary in the circumstances to restrain the act intended, and shall, as far as reasonably possible, use such weapon or force to disable and not to kill.
- (6) If any correctional officer acting in circumstances contemplated in subsection (1), (2), (3), or (4) kills or wounds any inmate or person he or she will have a complete defence to any criminal charge arising from his or her action.

### **38. Powers to arrest, to take photographs, fingerprints, etc.**

- (1) For the purpose of arresting any person who may have absconded or escaped from lawful custody, every correctional officer shall have the power to arrest such person and to convey him to a prison or correctional facility.
- (2) An officer in charge may cause details as to the height, weight and measurements and photographs, fingerprints, handprints, footprints and DNA samples of any inmate to be taken by any person whom he or she may designate for such purpose, and shall make such records as the Commissioner-General may determine.

### **39. Powers to cause arrest for offences in respect of prisons or correctional facilities and inmates**

- (1) A correctional officer may cause arrest of any person who—
- (a) is found loitering within one hundred metres of any prison or correctional facility or other place where inmates may be for the purpose of imprisonment or work, and who fails to depart there from upon being requested to do so by any correctional officer or by a police officer; or
  - (b) in any manner wilfully interferes with any inmate or work party of inmates;
- and such persons shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.
- (2) Any person who is found committing an offence in terms of subsection (1) may be removed from the place where he or she is committing such offence by a correctional officer or a police officer and, if the offence is repeated by any such person after he or she has once been removed in accordance with this section, he or she may be arrested without warrant by a correctional officer who, if he or she makes such an arrest, shall hand the person over to a police officer at the nearest police station.

### **40. Correctional officers' visits to cells**

- (1) No correctional officer shall, except in the case of sickness or emergency, enter a prison or correctional cell or ward at night unless accompanied by another correctional officer.

(2) As far as practicable, a correctional officer shall not enter into a cell in which inmates of the opposite sex are confined unless accompanied by a correctional officer of the same sex with inmates.

**41. Immunity for act done under authority of warrant**

(1) The Commissioner-General, an officer in charge, a deputy officer in charge, or a correctional officer is not liable in respect of anything done without negligence and in good faith under this Act.

(2) Where the defence to any suit instituted against a correctional officer is that the act complained of was done in obedience to a warrant purporting to be issued by a judge, magistrate or justice of the peace, the court shall, upon production of the warrant containing the signature of the judge, magistrate or justice of the peace and upon proof that the act complained of was done in obedience to such warrant in good faith and without negligence, enter judgment in favour of such correctional officer.

**42. Proof of signature not required**

No proof of the signature of such judge, magistrate or justice of the peace as is mentioned in section thirty four shall be required unless the court has reason to doubt the genuineness thereof and, where such signature is proved not to be genuine, judgment shall nevertheless be given in favour of such correctional officer if it be proved that, at the time the act complained of was committed, he or she believed on reasonable grounds that such signature was genuine.

**43. Privileges of correctional officers**

The Minister may, in consultation with the Commissioner-General, prescribe such privileges for correctional officers as he or she may consider appropriate for the purpose of efficiently executing their duties or functions under this Act.

**What does this entail???**

**PART VI  
DISCIPLINE OF CORRECTIONAL OFFICERS**

**44. Disciplinary offences by correctional officers**

(1) Any correctional officer who commits any act or omission specified in the Second Schedule shall be guilty of an offence against discipline.

(2) Nothing contained in this section shall be construed as precluding the prosecution at the criminal courts of a correctional officer who has been found guilty of an offence against discipline.

Provided that if a correctional officer who has been convicted of an offence against discipline in terms of this Act is thereafter convicted by a criminal court of an offence in respect of the act or omission which constituted such offence against discipline, the criminal court shall, in imposing any sentence, have regard to the sentence prescribed or imposed under this Act.

**45. Powers of arrest**

(1) Any correctional officer or any officer specifically mandated by the Commissioner-General may arrest without warrant any other correctional officer not being of his or her own or senior rank, whom he or she suspects, on reasonable grounds, of having committed an offence against discipline.

Provided that the officer specifically mandated to arrest may effect arrest on any correctional officer regardless of rank on the instruction of the Commissioner-General.

(2) Any correctional officer effecting an arrest under the provisions of subsection (1) shall forthwith bring the arrested correctional officer to his or her officer in charge or a correctional officer senior in rank who shall notify such arrest to the Commissioner - General as soon as is practicable, but in any event not later than 14 days after the arrest.

(3) Following the arrest of a correctional officer the matter shall be disposed of within a reasonable time, in any case not later than ninety days from the date of the alleged commission or omission of the act.

Provided that matters which are simple and straight forward shall be disposed of earlier.

**46. Confinement of an arrested correctional officer**

(1) Any correctional officer arrested in terms of section 44 may be confined to any prison or correctional quarters allocated for accommodation or guardroom purposes or, if no other suitable quarters are available, in any prison or correctional accommodation set apart for the confinement or segregation of inmates.

(2) No arrested correctional officer shall be detained for a period exceeding twenty four (24) hours.

Provided that such confinement shall not be used as punishment.

What if the officer is to be charged with a serious criminal offence, such as murder? Then the Constitution would require that he or she must be formally arrested, appraised or her or rights and brought before a court of law within 48 hours.

**47. Absenteeism, desertion and dismissal**

(1) If a correctional officer absents himself from duty without reasonable cause or without prior written permission of the Commissioner-General, the officer in charge or another correctional officer authorized by the Commissioner-General, the officer in charge shall make reports to the Commissioner-General after the correctional officer has been absent for periods of seven days, fourteen days, twenty one days and thirty days.

(2) After a correctional officer has been absent for a period exceeding twenty one days he or she shall be deemed a deserter.



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(3) A correctional officer who has reasonable cause to be absent from his or her post or official duties shall inform the Commissioner-General or the officer in charge of him or her reasonable cause to be absent, and the Commissioner-General or the officer in charge shall determine whether such cause is reasonable or not.

(4) A correctional officer who has deserted the Service as contemplated in subsection(2) is considered to have been dismissed from the Service upon being absent for a total period of thirty days.

(5) The correctional officer shall be deemed dismissed with effect from the first day after the thirty day period of absenteeism and written notification with the reasons for dismissal shall be served upon his or her last known address.

(6) For the purpose of remuneration, the correctional officer dismissed in terms of subsection (4) shall not be paid for the period he or she did not render service.

### **48. Suspension and dismissal of correctional officers**

(1) The Commissioner- General may at any time, by written notice, suspend from duty any correctional officer who is suspected of misconduct or is subject to criminal investigation or prosecution if his or her continued attendance at work or continued performance of his or her duties or service, as the case may be, would—

a) be conducive to unbecoming or indecorous behaviour or further instances of misconduct; or

b) seriously impair the proper administration or functioning of the service; or

c) occasion prejudice to any moneys or property likely to be handled by the correctional officer in the course of his or her work; or

d) enable the correctional officer to hinder or interfere with any investigation or evidence relating to any alleged misconduct; or

e) be undesirable in the Service interests or likely to lead to loss of public confidence in the Service.

(2) Where a suspension order is imposed upon a correctional officer—

a) the order shall specify the reasons for such order, the period of suspension and, where possible, the nature of the allegations against the officer;

b) disciplinary procedures shall be instituted forthwith in terms of section 43 if they have not already been instituted.

(3) A copy of every suspension order issued by the Commissioner-General shall be sent to the Commission.

(4) An officer who is under suspension may not leave Zimbabwe without the permission of the Commissioner-General and shall inform the Commissioner-General of any change of address.

(5) A correctional officer shall not, by any reason of being suspended from duty in terms of subsection (1) cease to be a correctional officer but during the period of such suspension—

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- (a) the functions and privileges vested in him as a correctional officer shall be held in abeyance;
- (b) he or she shall continue to be liable to the same responsibilities, disciplinary penalties and subject to the same authorities as if he or she had not been suspended.

### **49. Pay during Suspension**

(1) A correctional officer suspended in terms of section 47 shall receive such portion of his or her pay, being not less than one-half month's salary as the Commissioner-General shall determine:

Provided that the Commissioner-General may direct that a correctional officer on suspension be entitled to his or her full salary.

(2) If the offence with which a correctional officer is charged in terms of section 36 does not result in his or her dismissal from the Service, he or she shall receive for the period of his or her suspension—

- (a) in the case of his or her acquittal, his or her full pay; or
- (b) in any other case, such additional portion of his or her pay as the Commissioner-General, in consultation with the Prisons and Correctional Service Commission, shall determine.

### **50. Cancellation of Suspension order**

(1) A suspension order—

(a) may be cancelled at any time by the Commissioner-General

(b) shall be deemed to be cancelled—

- (i) where the correctional officer is found not guilty of an offence against discipline; or
- (ii) if the allegation has not been determined after three months from the date of its imposition

### **51. Law to be observed at disciplinary trials**

(1) The law which shall be observed in the trial of any offence before a disciplinary board as to—

- (a) the sufficiency or admissibility of evidence; and
- (b) the competency, compellability, examination and cross examination of witnesses; and
- (c) any matter of procedure

shall be as near as possible be the same as that prescribed for criminal cases in the courts of Zimbabwe and the matter must be dealt with in a manner that ensures that the accused officer receives a fair and unbiased hearing..

(2) The guilt of the accused must be established on a balance of probabilities.

### **52. Trial board for correctional officers**

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- (1) The Commissioner-General may, either generally or specially, appoint a board and to hear and determine any alleged offence against discipline by a correctional officer and a prosecutor to present the case against the officer.
- (2) A board appointed in terms of subsection (1) shall consist of one, three or five correctional officers who are either commissioned correctional officers or are officers in charge and, where such a board comprises of more than one correctional officer, the most senior correctional officer shall serve as chairperson.
- (3) (a) Where the accused correctional officer is a commissioned correctional officer or an officer in charge the board shall be specially appointed having due regard to the circumstances of the offence and shall, as far as is practicable, consist of at least two commissioned correctional officers of the same or higher rank as the accused correctional officer.  
(b) The prosecutor referred to in subsection (1) shall be appointed for his or her relevant knowledge and expertise and shall prosecute any officer regardless of his or her rank.
- (4) Any correctional officer who is a material witness or who has personal interest in a case brought against any other correctional officer shall not be eligible to be appointed as a member of the board determining such a case.
- (5) The chairperson of a board shall record or cause to be recorded in writing all evidence, which is given before the board.

### **53. Commissioned correctional officer may elect trial by Magistrate Court**

A commissioned correctional officer charged with an offence against discipline may elect that the charge against him be tried by a Magistrates' Court and not by a board of correctional officers upon obtaining a written consent of the Commissioner-General.

### **54. Preparation of a Charge**

- (1) A charge sheet setting out the particulars of any alleged offence against discipline shall be prepared at the instance of the Commissioner-General and a copy thereof shall be served upon the accused correctional officer before his or her trial commences.
- (2) The form of the charge sheet shall be as laid down by the Commissioner-General.
- (3) Any number of correctional officers may be charged and tried jointly in respect of any offence against discipline alleged to have been committed by them collectively.
- (4) Where a number of correctional officers are charged jointly, any one or more of the correctional officers so charged may at the same time be charged and tried for any other offences against discipline alleged to have been committed by him or her or them individually or collectively, if such offences are founded on the same facts or are part of a series of offences of the same or similar character.
- (5) In a joint trial, the board shall inform the correctional officers charged upon their arraignment that any one or more of them may apply to be tried separately on the grounds that the evidence of any one or other of the correctional officers charged will be

material to the defence of the correctional officer or correctional officers making such application and, if the board is satisfied that the evidence will be so material and, if the nature of the charge admits of it, the application shall be allowed and the correctional officer or correctional officers concerned shall be tried separately.

(6) The Commissioner-General may acting on advice decline or order destruction of charge sheets where he or she deems that the evidence availed for an offence is not enough to secure a conviction, the destruction shall be ordered and done within a reasonable period in any case not later than 90 days after the preparation of the charge sheet.

**55. Accused's right to be present**

(1) An accused correctional officer shall be entitled to be present at his or her trial by a board.

(2) Notwithstanding subsection (1) —

(a) if before the commencement of the trial and or during the course of the trial, an accused correctional officer conducts himself in such a manner as to render the continuance of the proceedings impracticable; and

(b) the board has warned the accused correctional officer of the consequences of such conduct if continued;

the board may, by order forthwith cause the accused correctional officer to be detained in terms of section 45 and the court adjourned until such a time the accused is deemed ready to resume trial.

**56. Preparation of Defence**

(1) An accused correctional officer shall be permitted to defend himself in person or at his or her own expense, by a registered legal practitioner of his or her own choice, and shall be given reasonable time and facilities for the preparation of his defence.

(2) Seven days shall be the acceptable minimum notice period before commencement of a trial while indulgence of the Commissioner-General shall be sought in exceptional cases:

Provided that the accused correctional officer may in writing consent or elect to be tried within a shorter period of notice.

An officer wishing to obtain legal representation in a serious case must be given sufficient time to contact and instruct a legal representation.

**57. Hearing in English language**

(1) All proceedings at a trial shall be conducted and recorded in the English language.

(2) Where a board considers that an accused correctional officer or any witness cannot adequately comprehend the English language, it shall appoint a suitable correctional officer or other person to attend and be the interpreter.

**58. Attendance of Witnesses**

- (1) The board shall have the power to require the attendance of any witness at a trial for the purpose of testifying under oath or affirmation either in support of the charge or on behalf of any accused correctional officer and may require the production of any documents which in its opinion are relevant to the trial.
- (2) No witness shall be obliged to answer any question, which may tend to incriminate him or render him liable to any forfeiture or penalty.
- (3) Any person subpoenaed as a witness under subsection (1) shall be entitled to be paid such allowance and expenses as are normally allowed to such a witness when giving evidence before a Magistrate's court.

**59. Trial Proceedings**

The board shall sit at such place and such times as it deems expedient, but without undue delay, and may adjourn and reconvene at the same or other place.

**60. State case**

- (1) At the commencement of a trial, the prosecutor shall read the charge to the accused correctional officer and the board shall ascertain whether or not he or she understands the charge.
- (2) Each count of the charge preferred against the accused correctional officer shall set forth the offence with which he or she is charged, in such manner, and with such particulars as to the alleged time and place of the commission of the offence and the person, if any, against whom, and the property, if any, in respect of which, the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused correctional officer of the nature of the charge.
- (3) After the charge has been put, the accused correctional officer shall be asked by the board whether he or she admits or denies the charge or whether any grounds exist upon which he or she should not be required to plead to the charge.
- (4) If the board finds that no grounds exist for not requiring the accused correctional officer to plead to the charge, the accused correctional officer shall be required to state whether he or she admits or denies the charge and the substance of his or her reply shall be recorded.
- (5) After the accused correctional officer has pleaded to the charge, the evidence in support of the charge shall be taken.
- (6) Where the accused correctional officer pleads not guilty, he or she shall forthwith outline the basis of his or her defence.
- (7) (a) The evidence in support of any charge shall be elicited from the witnesses by questions put, by the prosecutor.  
(b) The board may at any stage of the trial put questions to seek clarity.

(8) The accused correctional officer shall be entitled to cross-examine, either in person or through his or her legal practitioner, any witness called in support of the charge.

(9) After cross-examination of any witness called in support of the charge, further questions may be put to such witness by the prosecutor on any matter raised in cross-examination.

(10) If, at the conclusion of the evidence led in support of the charge, the board considers that there is insufficient evidence to sustain the charge, it shall discharge the accused at the close of the state case and report to the Commissioner-General accordingly.

### **61. Defence case**

(1) Where, after hearing the charge and evidence adduced during the state case, the board considers that the accused correctional officer has a case to answer it shall—

(a) invite him to make his or her defence; and

(b) inform him that he or she may call witnesses and may, if he or she so wishes, give evidence himself, but that if he or she does, the witness will be liable to cross-examination by the prosecutor.

(2) The accused correctional officer, after stating the grounds of his or her defence, either by himself or through his or her legal practitioner, shall be entitled to call witnesses on his or her behalf:

Provided that the board may refuse to allow any witness to be called if it is not satisfied that such witness's evidence is material to the accused correctional officer's defence.

(3) A witness called by the accused correctional officer shall be liable to be cross-examined by the prosecutor.

(4) After cross-examination of any witness called in support of the defence, the accused correctional officer or his or her legal practitioner may re-examine only on any matter raised in cross-examination.

(5) Where the accused is unrepresented, the board shall assist the accused to ensure that he or she has a fair hearing.

### **62. Plea of Guilty**

Where an accused correctional officer pleads guilty to an offence, questions shall be put to him to confirm the plea of guilty in all material respects.

### **63. Summing-Up**

After the evidence of all witnesses has been taken the board shall permit the prosecutor and the accused correctional officer or his or her legal practitioner, as the case may be, to address the board in order to assist it to arrive at a just decision in the trial.

### **64. Decision of the Board**

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(1) After consideration of the evidence adduced and any address made in terms of section 63 the board shall determine the guilt or otherwise of the accused correctional officer.

(2) All decisions of the board shall reflect the views of the majority of the members of the board and, in obtaining such views; the chairperson shall seek and obtain the view of each member of the board, commencing with the most junior member.

(3) The chairperson shall pronounce the collective view of the board to the accused correctional officer or his or her legal practitioner and enter the findings in the record.

(4) The individual views of the members of the board shall not be disclosed.

### **65. Previous convictions**

(1) Where an accused correctional officer has, in terms of subsection (3) of section 64, been found guilty the board shall take steps to ascertain the details of such previous

convictions of offences against discipline in respect of the accused correctional officer who shall be asked whether or not he or she is the person so alleged to have been previously convicted.

(2) If the accused correctional officer does not admit any previous convictions referred to in subsection (1), the board shall proceed to determine the truth of such conviction.

(3) Any previous convictions found proved, or admitted by the accused correctional officer may be taken into account by the board in assessing its sentence and shall form part of the record.

### **66. Mitigation**

The board shall invite the convicted correctional officer to make representations about him or the commission of the offence which may persuade the board to give a lenient sentence.

If the accused is represented his or her legal practitioner shall conduct the mitigation procedure and if he or she is not represented the board shall assist the convicted correctional officer on mitigation by eliciting from him or her any relevant mitigatory factors..

### **67. Sentence of the Board**

(1) Where the board has convicted the correctional officer, it may sentence him to—

(a) a reprimand;

(b) a severe reprimand;

(c) extra working days for a period not exceeding seven days;

(d) stoppage of pay where there has been absence without leave, or loss by negligence of, or injury to, public or inmates' property;

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- (e) to pay compensation for the loss or destruction or replacement of public monies or property;
  - (f) a fine not exceeding one month's pay;
  - (g) withholding of promotion for a period of one year;
  - (h) reduction in rank;
  - (i) requiring the correctional officer to resign or retire from the service with effect from a specified date, failing which the correctional officer shall be deemed dismissed as from that date;
  - (j) warning of dismissal;
  - (k) dismissal;
- (2) Any two or more sentences can be combined save that—
- a) it shall not be desirable to combine monetary sentences unless it is unavoidable.
  - b) sentences
    - i) in paragraphs (g) and (h); and
    - ii) (j) and (k);cannot be combined.
  - c) In the case of dismissal the only further sentences that may be imposed shall be those set out in paragraphs (e) or (f)
- (3) The pronouncement of the recommended sentence shall include—
- (a) a statement that the carrying out of the sentence shall be held in abeyance until the Commissioner-General has confirmed the sentence; and
  - (b) a notification of the right of the convicted correctional officer to submit a statement on review through the board within three working days of the date of the pronouncement.
- (4) The statement on review referred to in paragraph (b) of subsection (2) shall not contain any information which may be construed as additional evidence that should have been led during the trial.
- (5) The record of the trial, together with the statement on review submitted by an accused correctional officer, shall be forwarded by the board to the Commissioner-General within a period of seven days for review in terms of section 68.

### **68. Review of sentence by the Commissioner-General**

- (1) The Commissioner-General shall review the record of any trial held in terms of this Act and may confirm, vary, enhance or remit any sentence passed by a board under section 67 and may amend or quash any sentence imposed thereunder.
- (2) The decision of the Commissioner-General, in terms of subsection (1) shall be notified to the correctional officer in writing with reasons thereof.
- (3) Any sentence confirmed by the Commissioner-General in terms of this section shall have immediate effect notwithstanding the fact that an appeal may subsequently lie to the Prisons and Correctional Service Commission.



**69. Appeal to the Commission**

(1) An appeal against the decision of the Commissioner-General shall lie to the Prisons and Correctional Service Commission which may confirm, vary, remit or increase any such sentence and may act upon any such recommendations as it deems fit;

Provided that no appeal shall lie under this subsection unless notice of intention to appeal has been given to the Commissioner-General within seven days of his or her decision being conveyed to the correctional officer concerned and the appeal has been lodged with the Commissioner-General within fourteen days of the date the Commissioner-General received the notice of intention to appeal.

(2) The Commission shall receive and determine appeals for both commissioned and non-commissioned correctional officers and shall communicate its findings or decisions to:

- (i) the Commissioner-General in respect of all correctional officers; and
- (ii) the President and the Minister in respect of commissioned correctional officers where the sentence is reduction in rank or dismissal.

**70. Dismissal upon Fine or Imprisonment**

(1) Where a correctional officer is convicted of any offence by a criminal court and sentenced to a fine or to a term of imprisonment, whether or not suspended, the Commissioner-General may, upon production of a certified extract from the court records confirming the sentence imposed, dismiss the correctional officer from the Service:

Provided that the correctional officer shall be called upon to make representations why he or she should not be dismissed from the Service in terms of this section.

(2) Dismissal in terms of this section shall be subject to confirmation by the Commission at the instance of the Commissioner-General in the case of non-commissioned correctional officers and by the President in the case of commissioned correctional officers.

(3) In the event that the convicted correctional officer has successfully appealed against both conviction and sentence in subsection (1), and reinstatement has been ordered by the appeal court, the Commissioner-General in consultation with the Commission and or the President shall—

- (i) reinstate such officer; or
- (ii) cause to be paid damages in lieu of reinstatement when such reinstatement is no longer possible.

**71. General powers of the Board**

(1) Where, during a trial under the provisions of this Act, any matter not covered by this Act arises, the board conducting the trial shall adopt such procedures and act in

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such manner and on such principles as it deems fit to achieve substantial justice.

(2) In furtherance of subsection (1) a board may amend a charge to correct an error and may make a finding on an alternative charge where the trial discloses that such alternative charge is more appropriate.

### **72. Suitability board for correctional officers**

(1) A board of inquiry consisting of not less than three commissioned correctional officers of such rank not being below that of Superintendent, or any rank as the Commissioner-General may determine, may be convened by the Commissioner-General to inquire into the suitability or fitness of a correctional officer to remain an officer of the Service or retain his or her rank, or seniority or salary:

Provided that no correctional officer who is a material witness or has a personal interest in the matter shall be appointed to such a board.

(2) A commissioned correctional officer appointed to a board in terms of subsection (1) and is senior to all appointed officers, shall preside over the board, and record or cause to be recorded in writing or by mechanical means all evidence which may be given before the board.

(3) If a correctional officer, other than a temporary correctional officer is found in the inquiry by a board to be—

- (a) unsuitable, negligent or inefficient in the discharge of his or her duties; or
- (b) otherwise unfit to remain in the Service or to retain his or her rank;

the Commissioner- General may-

- (i) discharge the correctional officer; or
- (ii) impose any one or more of the following penalties-
  - a. reduction in rank;
  - b. withholding promotion for at least one year;
  - c. reprimand the correctional officer.

(4) If the Commissioner-General is of the opinion that a correctional officer who has not completed a probationary period or who has not been re-engaged for continuous service is unfit to retain his or her rank or remain in the Service, he or she may:-

- (a) discharge the correctional officer, or
- (b) order any one or more of the following-
  - (i) reduction in rank or salary;
  - (ii) withholding promotion for at least one year;
  - (iii) deferment of re-engagement for a period not exceeding six months from the date re- engagement is due;
  - (iv) a reprimand.

**PART VII  
ADMISSION OF INMATES**

**73. Admission of inmates into prison or correctional facility**

(1) No person shall be admitted into a prison or correctional facility unless accompanied by—

(a) a remand warrant, order of detention or warrant of conviction or of committal under the hand of any person authorized to sign or countersign such warrant or order under any enactment; or

(b) an order of a court martial; or

(c) a written requisition of an immigration officer issued in terms of the Immigration Act [*Chapter 4:02*]; or

(d) a written requisition issued in terms of the Refugees Act [*Chapter 4:03*] by a person who is an authorized officer in terms of that Act; or

(e) an order in writing signed by a police officer of or above such rank as may be prescribed.

(2) An order issued under paragraph (e) of subsection (1) shall be valid only for such period as is necessary to obtain a warrant or order referred to in paragraph (a) of subsection (1) and for no longer.

(3) The officer in charge shall satisfy himself before the admission of an inmate that such inmate is the person named in the requisition or in the warrant or order of detention accompanying him or her, and that such requisition, order or warrant bears the signature of the proper authority lawfully authorized to issue it, and that it is in all other respects in order.

(4) The officer in charge shall not refuse to accept any inmate on the grounds that there is an error on the face of any requisition, warrant or order of detention accompanying such inmate, but shall take steps as soon as practicable to have such error corrected.

(5) When a convicted person is admitted into a prison or correctional facility, the officer in charge shall ensure, as soon as practicable, that all reasonable steps are taken to obtain—:

(a) relevant information about the offence;

(b) relevant information about the inmate, including his or her social standing, his or her economic position and his or her criminal and young offender history;

(c) any reasons and recommendations relating to sentencing or committal that were given by the court during conviction, sentencing or committal or during appeal;

(d) any reports relevant to conviction, sentence or committal that were submitted to court; and

(e) any other information relevant to administering the sentence or committal, including existing information from the police or victim, the victim impact statement and the transcript of any comments made by the court regarding parole eligibility.

**74. Admission of female inmates with infants and admission of pregnant inmates**

(1) A female inmate may be admitted into a prison or correctional facility for custody with her infant.

(2) An infant referred to in subsection (1) shall be supplied with food as prescribed by law, clothing and other necessities by the State until such infant attains the age of fifty-nine months, in which case the officer in charge shall, on the recommendation of the medical officer and on considering the best interests of the infant—

(a) on being satisfied that there is a relative or friend of the infant able and willing to support such infant, cause the infant to be handed over to such relative or friend; or

(b) if in his or her opinion there is no relative or friend able and willing to support that infant, hand such infant over, subject to the relevant laws, to the care of such welfare authority as the Commissioner-General may approve for that purpose.

Provided that such infant may leave the prison or correctional facility earlier if conditions in (a) and (b) are satisfied before the infant attains the age of fifty nine months.

(3) A pregnant inmate shall be admitted into a female prison or correctional facility or into a section of a prison or correctional facility set apart for female inmates.

(4) In a female prison or correctional facility or in a section of a prison or correctional facility set apart for female inmates there shall, as far as is practicable, be special accommodation for all necessary pre-natal and post-natal care and treatment:

Provided that, arrangements shall be made for children to be born in a hospital outside the prison or correctional facility, but where a child is born in a prison or correctional facility the fact that the child was born in such facility shall not be mentioned in that child's birth certificate.

**75. Maintenance of unconvicted inmates from private sources**

(1) An unconvicted inmate may be permitted to maintain himself or herself and to arrange for the purchase of, or receive from private sources at proper hours, such food, clothing, bedding or other necessities as the Commissioner-General may from time to time determine.

(2) If an unconvicted inmate does not provide himself with food, clothing and bedding, he or she shall receive the normal prison food, clothing and bedding.

**76. Disposal of inmate's personal effects**

(1) On admission of a person to a prison or correctional facility for purposes of detention, all money, clothes and personal effects belonging to such person which he or she is not permitted by or under this Act or standing orders or administrative directives issued by the Commissioner-General to retain, shall, be placed into the custody of the officer in charge, and shall be returned to such person on his or her release from such prison or correctional facility.

(2) The officer in charge shall keep or cause to be kept an inventory of all monies, clothes, or personal effects placed in his or her or her custody under subsection (1) and shall cause a copy of such inventory to be given to the inmate concerned.

(3) Where in the opinion of the officer in charge the clothes of a person referred to in subsection (1) are so old, worn out, or dirty as to be unsuitable for further use, the officer in charge may order them to be destroyed, and on release of that person from the prison or correctional facility the officer in charge shall provide such person with the necessary suitable clothing at the State's expense.

(4) The officer in charge may prohibit any inmate admitted to the prison or correctional facility from retaining any property which, by reason of its bulk or nature, cannot conveniently be stored in the prison or correctional facility. What happens to such property.

(5) Every inmate whose property has been taken into custody under subsection (1) shall state the name of the person or persons to whom such property should be handed to in the event of his or her dying intestate in the prison or correctional facility, and such name or names shall be recorded in the relevant registers at the prison or correctional facility.

(6) Where, within six months after the release from the prison or correctional facility, the escape or the death of an inmate, the property of such inmate is for any reason not returned to that inmate or to his or her personal representative or a person named by that inmate under subsection (5), as the case may be, the officer in charge shall submit an inventory of such property to the magistrates court for the district within which the prison or correctional facility is situated, for disposal of such property.

(7) Where an inventory of an inmate's property is submitted to a magistrate's court under subsection (6), the court shall—

(a) take custody of the property specified in the inventory; and

(b) cause a public notice to be posted in a conspicuous part of the court and in one newspaper circulating in the district of such court, specifying the property and inviting any person who may have a bona fide claim thereto to appear before the court and establish that claim within 14 days of the notice.

(8) If within 14 days of the notice mentioned in subsection (7) no bona fide claim to the property is laid before the court, the court shall order the property to be sold in accordance with the Court's prescribed procedure, and the proceeds from that sale and any unclaimed money specified in the inventory referred to in that subsection shall be paid into the Exchequer Account or any other account that the Minister may determine.

#### **77. Moneys on inmate may be appropriated to payment of fine**

Notwithstanding section sixty-one, if any person who, having been convicted of an offence and sentenced to pay a fine or, in default of payment, to imprisonment, elects to serve a term of imprisonment and brings into a prison or correctional facility any moneys, the Commissioner-General may seize such moneys as are sufficient to pay the fine payable by that person or, if such moneys are not sufficient for that purpose, all of such moneys for the payment of part of the fine.

#### **78. Commencement, termination and computation of sentence**

(1) Except as otherwise provided in this Act, a sentence of imprisonment imposed by any court shall take effect from the day on which that sentence is passed unless it is suspended in terms of any law or the convicted person is released on bail granted in terms of any law, in which case the sentence shall take effect from the day on which he or she surrenders himself or herself or is taken into custody to undergo his or her sentence.

(2) Where a person receives more than one sentence of imprisonment or receives additional sentences while serving a term of imprisonment, each such sentence shall be

served, the one after the expiration, setting aside or remission of the other, in such order as the Commissioner-General may determine unless the court specifically directs otherwise or directs that such sentences shall run concurrently:

Provided that—

(a) any determinate sentence of imprisonment to be served by any person shall run concurrently with a life sentence or with any sentence of extended imprisonment to be served by him;

(b) one or more life sentences and additionally, or alternatively, one or more sentences of extended imprisonment to be served by any person shall run concurrently.

(3) The date of expiry of any sentence of imprisonment being served by an inmate who escapes from lawful custody or who is erroneously or unlawfully discharged shall, upon his or her recapture or re-arrest, be postponed for a period equal to the period by which such sentence was interrupted by reason of such escape or discharge. What about the additional sentence for escaping?

(4) Any inmate whose term of imprisonment expires on a Sunday or a public holiday may be discharged on the authority of the Commissioner-General at any hour of the day preceding such Sunday or public holiday, as the Commissioner-General deems fit.

**79. Separation, security classification and re-classification of inmates**

(1) inmates shall, on admission to a prison or correctional facility, be separated by the officer in charge into one or more of the following groups, namely—

(a) convicted inmates;

(b) unconvicted inmates;

(c) juvenile inmates;

(d) female inmates;

(e) male inmates;

(f) adults;

(g) first offenders;

(h) inmates with previous convictions;

(i) inmates with physical disability and in need of special care;

(j) inmates who are suffering from a mental illness; and

(k) such other groups as the Commissioner-General may determine, and so far as the prison or correctional facility accommodation renders it practicable, each group shall be detained separately.

(2) The officer in charge shall assign or cause to be assigned a security classification or re-classification to each inmate in accordance with the conditions, manner and procedures as may be determined by the Commissioner-General.

**80. Inmates in lawful custody of officer in charge**

(1) Subject to subsection (3), every person committed to a prison or correctional facility is in the lawful custody of the officer in charge during the whole period of imprisonment, and is subject to the correctional discipline applicable to such person, the provisions of this Act and any administrative directive, standing order or rule made or issued under this Act.

(2) The officer in charge shall ensure that every person committed to prison or correctional facility under a warrant or order, is detained therein in accordance with the

provisions of that warrant or order, until such person is lawfully released from that prison or correctional facility.

(3) (a) An inmate who is being transferred or conveyed from one prison or correctional facility to another prison or correctional facility or place by a correctional officer, member of the police, or probation officer or any other person authorised under this Act or any other law to transfer or convey such inmate is, while outside the prison or correctional facility, considered to be in the lawful custody of the officer in charge of the prison or correctional facility from which he or she is being transferred or conveyed.

(b) An inmate who escapes from the custody of a correctional officer, member of the police or probation officer or any other person referred to in paragraph (a), as the case may be, has escaped from lawful custody for the purposes of any law.

### **81. Custody of inmates**

Inmates shall at all times, during their detention or imprisonment, be under the care, custody and supervision of correctional officers of the same sex with them, who are responsible for their discipline.

### **82. Custody of remanded inmates**

Where an inmate is committed for remand in a prison or correctional facility by order of a court or other competent authority, he or she shall be handed over into the custody of the officer in charge thereof with the warrant of committal, and the officer in charge shall

(a) detain such inmate in custody for such period; and

(b) cause such inmate to be delivered to the court or competent authority or to be released from the prison or correctional facility at such time, as the terms of the warrant in question may specify.

### **83. Custody of juveniles awaiting trial or awaiting conclusion of trial**

(1) A juvenile who is awaiting trial or awaiting the conclusion of his or her trial shall not be detained in a prison or correctional facility, unless, in the opinion of the court, such detention is necessary and no suitable place of detention is available for his or her detention.

(2) In deciding as to the suitability of a place of detention for a juvenile referred to in subsection (1), regard shall be had to —

(a) the juvenile's age, sex and character; and

(b) the nature of the offence with which he or she is charged.

(3) Where a female juvenile is detained in a prison or correctional facility, she shall at all times be under the care and charge of a female correctional officer.

### **84. Escort of inmates to courts and inmates under police escort**

(1) Inmates on remand or committed for trial, who are required to attend any court, may be taken for that purpose into police custody at the prison or correctional facility to which they have been committed, and shall remain under police supervision and guard until returned to the prison or correctional facility or discharged by the court.

(2) Where on the removal of any inmate from any prison or correctional facility the number of correctional officers is insufficient to provide an escort for such inmate, the

Commissioner-General may, with the general or special permission of the Commissioner-General of Police, request for additional special escort to assist in the movement of any dangerous inmate on transfer to another prison or correctional facility or to attend court.

(3) While an inmate is in the custody of a police officer in accordance with this Act, he or she shall be deemed to be in lawful custody, and escape from the custody of such police officer shall be deemed to be escape from lawful custody for the purpose of any law.

**85. Inmate required at court**

(1) Where an inmate is required to attend a court for the purposes of testifying at any of its proceedings the court may issue an order directed to the officer in charge of the prison or correctional facility where that inmate is detained requiring him or her to produce the inmate at the time and place specified in the order, and the officer in charge shall comply with such order.

(2) The court before which an inmate is ordered to appear under subsection (1) may give such directions as to the costs of compliance with the court order, as the court may consider appropriate.

**86. Preparation of defence by inmate**

An inmate shall before commencement of, and during his or her trial, be afforded adequate facilities in the prison or correctional facility or other place of detention for the preparation and presentation of his or her defence, and for that purpose the officer in charge shall ensure that —

(a) the inmate's legal representative has adequate facilities to interview the inmate in private; and

(b) where the inmate is unable to communicate with his or her legal representative in the official language, a suitable interpreter is provided.

**87. Questioning of inmate by member of police**

(1) Subject to subsection (2), a police officer with the approval of the officer in charge of a prison or correctional facility and on production of an order in writing from a police officer of or above such rank as may be prescribed, may, in the sight and hearing of a correctional officer, interview within a prison or correctional facility any inmate for purposes connected with the investigations of any offence.

(2) If the officer in charge is satisfied that an inmate is willing to be interviewed by police officers out of the sight and hearing of a correctional officer, then the officer in charge may permit that the inmate be interviewed by not less than two police officers within the prison or correctional facility and out of sight and hearing of a correctional officer.

(3) If a commissioned police officer certifies verbally or in writing that an inmate is required at a police station or any other place in the interests of justice or in connection with the investigation of a crime, whether committed or alleged to have been committed by such inmate or by some other person and whether or not such inmate is detained in connection with such crime, the officer in charge in whose custody such inmate is may release, remove or permit the removal of such inmate from the prison or correctional facility in accordance with this Act.



(4) An officer in charge may release any unconvicted inmate into police custody for such period as he or she considers necessary for the purpose mentioned in subsection (1).

(5) An officer in charge may remove or permit the removal of a convicted inmate from prison or correctional facility in the custody of a correctional officer and, in any interview between the police and such inmate, such correctional officer shall remain in sight of the inmate.

(6) Subject to the general or specific directions of the Commissioner-General, an officer in charge may release any convicted inmate into police custody for such period as he or she considers necessary for the purposes mentioned in subsection (1).

**88. Transfer of inmate from one correctional facility to another**

(1) A lawfully imposed sentence of imprisonment may be served partly in one prison or correctional facility and partly in another prison or correctional facility.

(2) The Commissioner-General may by general or special order direct that an inmate be transferred from the prison or correctional facility to which he or she was committed or in which he or she is detained to another prison or correctional facility taking into consideration—

(a) the degree and kind of custody and control necessary for—

(i) the safety of the public;

(ii) the safety of the inmate and other persons in a correctional facility; and

(iii) the security of the prison or correctional facility applicable;

(b) the availability of appropriate programmes and services and the inmate's willingness to participate in those programmes or services; and

(c) whenever possible, the accessibility to the inmate's family.

(3) Where an inmate is transferred from one prison or correctional facility to another pursuant to this section, the officer in charge of the prison or correctional facility to which the inmate had been transferred shall, where the whereabouts of such inmate's immediate family is known to that prison or correctional facility's authorities, inform such family of such transfer.

**89. Maximum period of extended imprisonment**

An inmate who is serving a sentence of extended imprisonment shall, unless earlier released in terms of Part XIX, be detained in a prison or correctional facility until the expiry of the maximum period of such imprisonment determined in accordance with subsection (3) of section 346 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

**90. Inmates to be informed of provisions of the Act and applicable rules, orders and directives**

(1) Subject to subsection (3), the provisions of this Act and any rule, standing order, or administrative directive made or issued, relating to the treatment and conduct of inmates shall be printed in the official language and in any other languages that the Commissioner-General may determine, and shall be made available to every inmate immediately on admission to a prison or correctional facility, or if an inmate is unable to read and understand any of the languages in which the said provisions have been

printed, the officer in charge shall ensure that the contents of those provisions are orally explained to such inmate.

(2) The officer in charge may display or cause to be displayed, in writing, in a conspicuous part of the prison or correctional facility any part of the provisions referred to under subsection (1).

(3) The Commissioner-General may, by general or specific directive, indicate which information should not be made available to inmates if, in the opinion of the Commissioner-General, such information, if made available, may jeopardize the security of the prison or correctional facility or affect the effective management of the inmates.

**91. Inmates' input into decisions**

The Service shall, in such manner and to such extent as determined by the Commissioner-General, provide inmates with the opportunity to contribute to decisions of the Service affecting the welfare, rehabilitation and reintegration of inmates, except decisions relating to security matters.

**92. Visitors, receiving of letters, procurement of necessaries and other privileges**

(1) Subject to this Act and any applicable rule, standing order, or administrative directive made or issued, the officer in charge of a prison or correctional facility may, for the purpose of promoting and maintaining a relationship between the inmate, family and community and facilitating the successful reintegration of the inmate into the society, permit any inmate to –

(a) receive visitors;

(b) receive letters, subject to censorship by the officer in charge or other correctional officer authorised thereto by the officer in charge; and

(c) receive from outside of the prison or correctional facility such food, unfermented drink, bedding, clothing, literature and other necessaries of life as may be permitted under strict examination.

(2) The Commissioner-General may grant other privileges or indulgences as he or she may consider appropriate to any inmate.

**93. Letters and documents written by or on behalf of inmate**

(1) Every letter or document written in a prison or correctional facility by or on behalf of an inmate shall, before being dispatched from the prison or correctional facility, be delivered to the officer in charge who may censor such letter or document or cause such letter or document to be censored and the correctional officer censoring such letter or document shall endorse on such letter or document –

(a) the name of such prison or correctional facility;

(b) a statement authorising the dispatch of the letter or document; and

(c) his or her signature and authorizing date stamp.

(2) Every person who comes into possession of a letter or document which he or she has reasonable cause to believe was written in a prison or correctional facility by or on behalf of a inmate and which is not endorsed in accordance with subsection (1) shall report that fact as soon as possible to the Commissioner-General or the officer in charge of the nearest prison or correctional facility and shall deliver the letter or

document or cause it to be delivered to the Commissioner-General or such officer in charge.

(3) No person shall, without the authority of the Minister, publish or cause to be published or transmit to any person for publication or otherwise the whole or any part of a letter or document which he or she has reasonable cause to believe was written in a prison or correctional facility by or on behalf of an inmate and which is not endorsed in accordance with subsection (1).

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

## **PART VIII HEALTH CARE SERVICES FOR INMATES AND HYGIENE**

### **94. Guiding principles and appointment of medical officer**

(1) The Service shall, as far as is practicable and when so required, provide every inmate with—

- (a) essential health care services;
- (b) access to mental health care with an emphasis on the inmate's rehabilitation and successful reintegration into the society; and
- (c) access to preventative health measures.

(2) The Prisons and Correctional Service shall take into consideration an inmate's state of health and health care needs—

- (a) in all decisions affecting the inmate, including decisions relating to placement, confinement, observation, supervision, transfer and segregation; and
- (b) in the preparation of the inmate's release.

(3) Each prison and correctional facility shall have a medical officer, a Dentist, and a Psychiatrist or a psychiatric nurse appointed or assigned to it.

### **95. Appointment of medical officers**

(1) The Minister may appoint as medical officer of a prison or correctional facility any medical practitioner who is registered as such in accordance with the Health Professions Act [*Chapter 27:19*].

(2) In the absence of such appointment in terms of subsection (1), a Government medical officer resident at the place where such prison or correctional facility is situated and nominated for such duty by the Secretary of the Ministry responsible for health shall be a medical officer for such prison or correctional facility.

### **96. Functions of medical officer**

(1) The medical officer appointed above—

(a) is subject to section 30 responsible for the health care of all inmates in the prison or correctional facility for which he or she is appointed or assigned and shall—

- (i) where practicable, ensure that every inmate is medically examined on admission to and discharge from that prison or correctional facility;

- (ii) where practicable, ensure that on admission to the prison or correctional facility, every inmate is kept apart from other inmates until such time that such inmate has been examined as contemplated in subparagraph (i);
  - (iii) where practicable, visit the correctional facility daily or at other regular intervals or when so requested by the officer in charge, and inspect the hygiene condition of the prison or correctional facility and medically examine inmates at such times as he or she may consider necessary;
  - (iv) keep a record or cause a record to be kept of the state of health of every inmate; and
  - (v) report to the officer in charge any circumstance or condition regarding the prison or correctional facility, an inmate, or treatment of an inmate which may, in his or her opinion, require consideration on medical or health grounds; and
- (b) shall, for the purpose of safeguarding or restoring the health of any inmate or preventing the spread of or risk of any disease, take such action or direct such action to be taken with regard to such inmate in his or her care, including -
- (i) force feeding an inmate;
  - (ii) inoculating or vaccinating an inmate against disease;
  - (iii) medically examining and treating an inmate;
  - (iv) isolating an inmate;
  - (v) providing an inmate with other necessary precautionary or prophylactic health measures to curb such spread or risk; or
  - (vi) for security reasons, searching any body cavity of an inmate.
- (2) The powers referred to in paragraph (b) of subsection (i) to (vi) may be exercised by the medical officer without the consent of the inmate concerned.
- (3) An inmate must present himself, if instructed to do so by the officer in charge or other correctional officer authorised thereto, to the medical officer or any other medical practitioner for the purposes of undergoing a medical examination or medical treatment.

**97. Observation of inmates in prison or correctional hospital or isolation**

The medical officer shall ensure that every inmate under sentence of death or charged with a capital offence or is in isolation or in hospital is medically examined every day on which the medical officer visits the prison or correctional facility.

**98. Observation of inmates charged with capital offence**

The medical officer shall observe the mental condition of all inmates under sentence of death or charged with a capital offence and, for that purpose, shall personally examine all such inmates on every day on which he or she visits the prison or correctional facility, and shall furnish reports on such inmates to the officer in charge in such form and at such times as may be prescribed.

**99. Duty upon death of an inmate**

- (1) Upon the death of an inmate, the officer in charge shall immediately notify—
- (a) the Commissioner-General;
  - (b) the medical officer concerned;
  - (c) the magistrate of the district in which the prison or correctional facility is situated;
- and

- (d) the next of kin, if any, of the deceased;  
and shall arrange for compliance with the law relating to inquests.
- (2) The medical officer shall, on the death of any inmate otherwise than by lawful execution, record in a register to be kept for such purpose the following particulars, so far as they can be ascertained—
  - (a) the day on which the deceased was sentenced; and
  - (b) the day on which he or she was admitted to prison or correctional facility; and
  - (c) the day on which and time at which he or she first complained of illness or was observed to be ill; and
  - (d) the nature of work or activity, if any, on which he or she was engaged on the day of his or her death; and
  - (e) the scale of his or her diet on the day of his death; and
  - (f) the day on which he or she was admitted to hospital; and
  - (g) the day on which and time at which the medical officer or his or her subordinate was first informed of the illness; and
  - (h) the nature of the disease; and
  - (i) when the deceased was last seen before death by the medical officer or his or her subordinate; and
  - (j) when the inmate died and, in cases where a post-mortem examination is made, an account of the appearance after death, together with any special remarks that appear to the medical officer to be required; and
  - (k) his or her opinion as to the cause of death.

**100. Observation and transfer of mentally ill inmates**

- (1) A medical officer shall regularly examine the state of mental health of any inmate who is detained in a prison or correctional facility—
  - (a) pursuant to a court order for the observation of such inmate, and shall report on the mental health of such inmate; or
  - (b) pending an application or as the result of an application, for the transfer of such inmate to a mental institution under the Mental Health Act.
- (2) An inmate who, while serving a sentence of imprisonment, is removed to an institution as defined in the Mental Health Act, shall, as soon as he or she is fit for discharge from that institution, be returned to the prison or correctional facility concerned by the authorities of such institution for completion of his or her sentence, if the sentence in respect of which he or she was committed to the prison or correctional facility has not been completed.
- (3) Where an inmate, who has been admitted to an institution referred to in subsection (2), is still admitted in such institution for treatment at such time as he or she becomes entitled to his or her release from imprisonment, the officer in charge shall release such inmate from the prison or correctional facility in the prescribed manner, and in writing inform such institution of such release.
- (4) The period during which an inmate was detained in an institution referred to in subsection (2) while serving a term of imprisonment shall be considered to be part of such term of imprisonment.

(5) If any inmate transferred to an institution defined in the Mental Health Act was sentenced to death before being adjudged to be a mentally ill person and such sentence has not, at the time when he or she is certified to be of sound mind, been commuted to a term of imprisonment, then the Minister shall report the matter to the President.

**101. Transfer of inmate to State hospital**

(1) Where an inmate is so seriously ill as to warrant admission to a State hospital for treatment, the officer in charge or a correctional officer authorised thereto by the officer in charge shall, on the recommendation of the medical officer, authorise the transfer of that inmate to the State hospital, but in the case of an emergency or in the absence of the medical officer, the inmate concerned shall be transferred without such prior recommendation.

(2) On admission of an inmate referred to in subsection (1) to a State hospital, the medical superintendent in charge of that hospital shall issue a certificate to the officer in charge of the prison or correctional facility from which the inmate was transferred, stating his or her opinion—

(a) whether or not the inmate should be admitted to the State hospital for the purposes of treatment; and

(b) where practicable, the period for which such inmate should remain in that hospital for treatment.

(3) If, after treatment of the inmate, the medical superintendent in charge of the State hospital, to which such inmate was admitted under subsection (1), is of the opinion that such inmate is fit for discharge from such hospital, such superintendent shall notify the concerned officer in charge and shall, if such inmate has not completed his or her sentence in respect of which such inmate was committed to the prison or correctional facility concerned, discharge such inmate and hand him or her over into the custody of such officer in charge for the completion of his or her sentence

(4) Where an inmate, who has been admitted to a State hospital under subsection (1), is still admitted in hospital for medical treatment at such time as he or she becomes entitled to his or her release from the prison or correctional facility concerned, the officer in charge shall release such inmate from the prison or correctional facility in the prescribed manner, and in writing inform such hospital of such release.

(5) Every reasonable precaution shall be taken by the medical and other officers of any hospital to prevent the escape of any inmate at any time under treatment therein, and it shall be lawful for such officers to take such measures for preventing the escape of any such inmate as are reasonably necessary:

Provided that the medical authority in charge of the hospital may refuse to take or permit any action authorized under this section if, in his or her opinion, such action would be prejudicial to the health of the inmate or impracticable for any good and sufficient reason.

(6) Where, on account of the gravity of the offence for which any inmate is in custody or for any other reason, an officer in charge considers it to be desirable to take special measures for the security of the inmate while he or she is undergoing treatment in hospital, it shall be lawful for him, by order in writing, to give such inmate into the custody of fit and proper correctional officers and or persons, being not less than two in

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number and willing to undertake such duty, one of whom at least shall always be with the inmate by day and by night, and such correctional officers and or persons are hereby vested with authority to do all things reasonably necessary to prevent the inmate from escaping and shall be answerable for his or her safe custody until such time as he or she is handed over to an officer in charge on his or her discharge from hospital, or until such time as his or her sentence expires, whichever may first occur.

(7) The period during which an inmate is detained in a State hospital for treatment under this section while serving a term of imprisonment, is considered to be part of such term of imprisonment.

### **102. Transfer of inmate to a private hospital**

The Commissioner-General, in consultation with the medical officer, may allow an inmate who is seriously ill and has the means to be admitted in a private hospital to be admitted to such private hospital where, in his or her opinion, a State hospital does not have the facilities suitable for such illness.

### **103. Custody of inmate in state hospital or mental institution**

(1) An inmate who, during his or her period of imprisonment, is detained in a State hospital or a mental institution for the purposes of treatment is, during such period of detention, considered to be in lawful custody.

(2) The officer in charge shall take such measures as he or she may consider necessary in the circumstances to secure the custody of an inmate while he or she is undergoing treatment in a State hospital or mental institution.

(3) Where an inmate has been committed into the custody of a correctional officer under subsection (2), such correctional officer shall take every reasonable precaution to prevent the inmate concerned from escaping.

### **104. Hygiene**

Every inmate detained in a prison or correctional facility—

(a) pursuant to a sentence of imprisonment;

(b) pending the determination of criminal proceedings;

(c) pending a determination of appeal proceedings; or

(d) pending arrangement for his or her removal from Zimbabwe to another country,

shall be required to keep his or her cell, the surroundings thereof and the furniture, clothing and utensils therein clean, and perform such other tasks in the prison or correctional facility as the officer in charge may determine.

## **PART IX**

### **SEARCH, SEIZURE AND PROHIBITED ARTICLES**

### **105. Searching of inmates**

(1) A correctional officer may, at any time and in the prescribed manner and circumstances, conduct a search of an inmate who is within a prison or correctional facility or going into or out of a prison or correctional facility and if any prohibited article is found in such inmate's possession, remove such article.

(2) Every inmate shall, on admission to a prison or correctional facility to be detained therein, be searched and all prohibited articles in such inmate's possession shall be removed.

**106. Searching of cells**

A correctional officer may, at any time and in the prescribed manner, conduct searches of cells and their contents and all prohibited articles shall be removed from therein.

**107. Searching of correctional officers, buildings and residential houses**

(1) A correctional officer on duty may, at any time and in the prescribed manner and circumstances and for security purposes, conduct a search of another correctional officer who is within a prison or correctional facility or going into or out of a prison or correctional facility.

(2) Subject to subsection (3) and for the purpose of ascertaining whether or not any provision of this Act has been contravened, or an offence under this Act has been committed, the officer in charge may order the search of any building or residential house on the prison or correctional facility premises, or at any other building or residential house attached or belonging to that prison or correctional facility.

(3) Searching of a residential house occupied by a correctional officer shall be done by a correctional officer senior in rank to the correctional officer occupying the residential house to be searched.

**108. Searching of visitors**

(1) A correctional officer on duty may at any time and in the prescribed manner and circumstances and for security purposes, conduct a search of any visitor who is within a prison or correctional facility or going into or out of a prison or correctional facility.

(2) Where a visitor to a prison or correctional facility refuses to be searched as contemplated in subsection (1), the correctional officer on duty shall refuse such visitor entry and shall order such visitor to leave such premises, and if such visitor refuses to leave such premises, such correctional officer shall forcefully remove such visitor or order the removal of such visitor.

What if a visitor refuses to be searched going out of the prison?

**109. Searching of vehicles**

Where a correctional officer has reasonable grounds to suspect that a vehicle, entering a prison or correctional facility or leaving a prison or correctional facility or which is being driven or parked close to such prison or correctional facility, is unlawfully carrying a prohibited article or any property belonging to, or under the control of, the Service or is about to be involved in the commission of an offence under this Act or any enactment, that correctional officer may, at any time and in the prescribed manner, search such vehicle.

**110. Justification of search**

The authorization of searches in terms of sections 105, 106, 107, 108 and 109 shall not constitute a violation of the right to privacy of a person under section 57 of the



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Constitution if the search is carried out on the grounds stated and in accordance with the criteria stated in section 86 of the Constitution.

### **111. Arrest**

(1) Where, upon a search made under sections 105, 106, 107, 108 and 109, a person is found to be in the unlawful possession of a prohibited article or any property belonging to, or under the control of the Service, the correctional officer having made such search shall report the incident to the officer in charge or any other senior correctional officer.

(2) The officer in charge or senior correctional officer, referred to in subsection (1), may, upon the receipt of the report referred to in that subsection, order the arrest of that person and as soon as practicable hand him or her over to the nearest police station.

### **112. Penalty for introduction or removal of prohibited articles and for unauthorized communication**

Any person who, save as is provided in this Act—

(a) removes from or introduces into or throws from or into or attempts by any means whatsoever to remove from or introduce into a prison or correctional facility or takes from or gives to any inmate any article whatsoever; or

(b) communicates with any inmate;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **113. Powers of arrest**

Any correctional officer may arrest without a warrant any person who—

(a) commits or attempts to commit any offence in terms of section 112; or

(b) when suspected by him of committing any offence in terms of section 113, refuses on demand of such correctional officer to give his or her name and address; or

(c) on the demand of a correctional officer, gives a name or an address which such correctional officer knows or has reason to believe to be false or which subsequently proves to be false;

and shall deliver such person into custody of a police officer at the nearest police station and thereupon such police officer shall proceed as if the offence had been committed in his or her presence.

### **114. Seizure**

(1) The correctional officer arresting a person under section 114 may seize the prohibited article or property in question found in that person's possession or impound the vehicle used in the commission of the offence in question.

(2) Subject to subsection (1), prohibited articles or property seized under subsection (1) or removed from inmates or cells under section 105 and 106 respectively, shall be disposed of as the Commissioner-General may prescribe.

### **115. Manner of search**

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Any search of a person under this Part shall be conducted in accordance with this Act and any rules, standing orders or administrative directives made or issued by the Commissioner-General.

### **PART X DISCIPLINE OF INMATES**

#### **116. Prison or correctional offences**

Any act or omission specified in the Third Schedule shall, when committed by an inmate, constitute a prison or correctional offence, and any specified-

(a) in Part 1 of the Third Schedule shall, when committed by an inmate, constitute a Part 1 prison or correctional offence;

(b) in Part 11 of the Third Schedule shall, when committed by an inmate, constitute a Part 11 prison or correctional offence.

#### **117. Trial of Part 1 prison or correctional offences**

A charge against an inmate in respect of Part 1 prison or correctional offence shall, subject to this part be heard and determined before a judicial officer.

#### **118. Trial of Part 11 prison or correctional offences**

(1) A charge against an inmate in respect of a Part 11 prison or correctional offence shall, subject to this part, be heard and determined—

(a) within a prison or correctional facility, before a tribunal presided over by the Commissioner-General; or

(b) at the request of the Commissioner-General or the officer in charge—

(i) within the prison or correctional facility, before a court presided over by a visiting justice; or

(ii) before a magistrates court.

(2) The Commissioner-General may confer the power of presiding over a tribunal for the purpose of hearing and determining a charge under this section upon a commissioned correctional officer or an officer in charge and in so doing may limit the power of the officer to impose punishments conferred by section 119 to punishments less than the maximum specified in that section.

(3) In any case where it appears to the Commissioner-General, the commissioned correctional officer or the officer in charge that a Part II prison or correctional offence alleged to have committed—

(a) would not, by reason of its gravity or by reason of previous prison or correctional offences or for any other reason, be adequately punished by any punishment which the Commissioner-General or such officer, as the case may be, may impose in terms of section 119; or

(b) should, in the interest of justice, be heard and determined by a visiting justice or judicial officer;

the Commissioner-General or such officer, as the case may be, shall request that the charge in respect of that Part II prison or correctional offence be heard and determined-

- (i) within a prison or correctional facility before a court presided over by a visiting justice; or
  - (ii) before a magistrate court;
- whichever he or she may consider appropriate.
- (4) Where a visiting justice has been requested to hear and determine a charge in terms of subsection (1) or (3) he or she may—
- (a) instead of hearing the charge, direct that it be heard before a magistrate court;
  - (b) at any time during the hearing to one outside the prison and adjourn the hearing for that purpose.

**119. Penalties for prison or correctional offences**

- (1) Subject to this Part, an inmate found guilty of a prison or correctional offence may be sentenced to one or more or all of the following penalties—
- (a) imprisonment for a period not exceeding seven years;
  - (b) loss, for a period not exceeding sixty days, of any remission of sentence;
  - (c) deprivation of privileges;
  - (d) extra work for a period not exceeding ten days
- (2) An inmate found guilty of Part II prison or correctional offence by the Commissioner-General or commissioned correctional officer or officer in charge may not be sentenced to a term of imprisonment.
- 3) A penalty of imprisonment imposed for a prison or correctional offence upon an inmate who—
- (a) is a convicted inmate, shall commence on the date of expiry of the sentence of imprisonment being served by the convicted inmate at the time of the offence;
  - (b) is not a convicted inmate, shall commence on the date the sentence of imprisonment is imposed.

**120. Special provisions relating to inmate undergoing sentence of periodical imprisonment**

- (1) Notwithstanding section ninety-three, an inmate undergoing a sentence of periodical imprisonment who is found guilty of a prison or correctional offence may be sentenced, in lieu of any punishment referred to in that section, an additional period of periodical imprisonment of not less than twelve hours and not more than ninety-six hours.
- (2) Subsection (5) of section 345 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in respect of an inmate who is undergoing a sentence of periodical imprisonment and who is sentenced to any other form of detention in terms of section ninety-three.

**121. Trial by visiting justices**

- Where a prison or correctional offence is heard and determined by a visiting justice in terms of this Part—
- (a) the jurisdiction of the visiting justice in respect of imprisonment shall be the same as it would be if the offence were being heard by that visiting justice before a magistrates court;
  - (b) so far as is possible in the circumstances, the Magistrates Court Act [*Chapter 7:10*] including the provisions relating to competent verdicts on particular charges, and High

Court of Zimbabwe Act [Chapter 7:06], shall apply, *mutatis mutandis*, in respect of the proceedings as though they were proceedings before a magistrates court.

**122. Trials by Correctional Officers**

Where a Part II prison or correctional offence is to be heard and determined by the Commissioner-General or a commissioned correctional officer or officer in charge in terms of this Part, the procedure to be followed in connection with charging of the inmate and the proceedings before the tribunal including competent verdicts on particular charges, shall be as prescribed.

**123. Prosecution for offences under other Laws**

Nothing in this part shall be construed as precluding the prosecution of an inmate for an offence in terms of any of other law;

Provided that no inmate shall be penalised twice for the same act or omission.

**124. Review of cases heard by Commissioner-General, commissioned correctional officer or officer in charge**

(1) Any case heard and determined in terms of this Part, may be reviewed—

(a) if the case was heard by the Commissioner-General, by the chief magistrate or a regional or provincial magistrate or a regional or provincial magistrate within whose jurisdiction the prison or correctional facility is situated;

(b) if the case was heard by a commissioned correctional officer or officer in charge, by the chief magistrate or a regional, provincial or senior magistrate within whose jurisdiction the prison or correctional facility is situated.

(2) On review of any proceedings in terms of subsection (1) the magistrate may hear any evidence and, whether or not he or she has heard any evidence, he or she may—

(a) confirm the conviction and penalty; or

(b) alter or quash the conviction; or

(c) reduce or set aside the penalty or substitute a different penalty from that imposed by the Commissioner-General, commissioned correctional officer or officer in charge, as the case may be:

Provided that:

(i) the penalty so substituted shall not be more severe than the penalty imposed by the Commissioner-General or such officer, as the case may be;

(ii) a magistrate shall not reduce or set aside the penalty or substitute a different penalty unless another magistrate has agreed that such alteration of penalty is in the interests of justice; or

(d) refer the matter back to the Commissioner-General, commissioned correctional officer or officer in charge, at the case may be, for reconsideration, with instructions in regard to the taking of further evidence or otherwise as or she may consider necessary or desirable.

**PART XI  
WORK AND REHABILITATION ACTIVITIES FOR INMATES**

**125. Work of convicted inmates**

(1) Notwithstanding any other enactment, every inmate under sentence of imprisonment may, subject to subsection (2), be made to work within or outside the precincts of any prison or correctional facility in any part of Zimbabwe and in any work or activity that may be approved by the Minister:

Provided that, if the medical officer has specified in respect of an inmate that the inmate is not fit for work, the inmate shall not be required to perform any work other than that required of an unconvicted inmate.

(2) Female inmates shall not be employed outside a prison or correctional facility except on the recommendation of a medical officer, and then only on such work as may be prescribed.

**126. Work of unconvicted inmates**

Unconvicted inmates may elect to be given light work, but shall be required to keep clean their cells, precincts of cells, clothing, furniture and utensils.

**127. Purpose of rehabilitation activities**

The Service shall provide a wide range of rehabilitation activities designed to address the needs of inmates and contribute to their rehabilitation and successful reintegration into society.

**128. Rehabilitation activities and work**

(1) Every inmate detained in a prison or correctional facility pursuant to a sentence of imprisonment shall, subject to the provisions of this Act, the directives of the Commissioner-General and any relevant order of the court—

(a) as far as is practicable, be engaged in such activities as will:

- (i) provide and promote therapy of inmates;
- (ii) help to train inmates in practical commercial and industrial skills ;

of such inmate to equip him to manage his or her life in a productive manner after release; and

(b) perform such tasks on public works and carry out other duties as may be assigned to him or her by a correctional officer.

(2) Notwithstanding the provisions of subsection (1), the medical officer may, on medical grounds, exempt an inmate from rehabilitation activities or work or recommend that such inmate perform light activities or work.

**129. Agreements for employment and training of inmates**

(1) Subject to section 129(1)(a), the Commissioner-General may enter into a contract with any institution, person, or body of persons for the employment and training of inmates who are under a sentence of imprisonment, upon such terms and such conditions as may be determined, generally or specifically, by the Commissioner-General.

(2) As far as is practicable, all Ministries and Parastatals shall purchase their required articles and supplies from amongst such as the Service may produce or manufacture.

(3) The Commissioner-General may authorise specific services necessary or expedient in the public interest or for a charitable purpose to be rendered by inmates gratuitously.

**130. Gratuities for inmates**

(1) For the purpose of —:

(a) encouraging inmates to participate in rehabilitation activities and work offered by the Service; or

(b) providing financial assistance to inmates to facilitate their reintegration into society, the Commissioner-General may, subject to subsection (2); authorise the payment of gratuities to inmates.

(2) The gratuity referred to in subsection (1) shall be paid to inmates according to such conditions and such rates as the Commissioner-General may, from time to time, determine.

**PART XII  
EXECUTION OF SENTENCES**

**131. Admission register**

The officer in charge must maintain, in respect of his or her prison or correctional facility—

(a) an admission register, in which he or she must enter or cause to be entered, a record of —

(i) the name and age of each offender serving a sentence in that prison or correctional facility;

(ii) the nature of the offence in respect of which such offender was convicted and sentenced;

(iii) the sentence imposed in respect of each offence; and

(iv) any other prescribed matter; and

(b) such other registers as may be prescribed, and any such register is open for inspection by the Commissioner-General, the correctional officer or staff member appointed for such inspection and any visiting justice to that prison or correctional facility or any other person as may be authorised thereto by law or by the Commissioner-General.

**132. Re-arrest of inmate released erroneously**

(1) Where it comes to the knowledge of the officer in charge that an offender has been released from a prison or a correctional facility erroneously or unlawfully, the officer in charge or a correctional officer authorised thereto, shall make a report to the nearest police for the re-arrest of the offender and to the Commissioner-General of Prisons and Correctional Services within twenty-four hours of such release and the local magistrate who has jurisdiction of that area or any peace officer as defined in the Criminal Procedure and Evidence Act may issue a warrant for the arrest of the offender and which warrant serves as authority for the detention of such offender in a correctional

facility for a period, subject to subsection (2), not exceeding 48 hours, and the officer in charge must within that period hear the offender and any evidence in this regard.

(2) Upon re-arrest of such an offender as contemplated in subsection (1), the officer in charge must submit all relevant documents, including those documents submitted by the offender, if any, to a magistrate in chambers for determination.

(3) If the magistrate referred to in subsection (2) finds that such offender was erroneously or unlawfully released, such magistrate may order the offender to serve the unexpired portion of his or her sentence.

### **133. Imprisonment on default of payment of fine**

(1) Any imprisonment which is imposed by any court in default of payment of a fine terminates prior to the expiration thereof whenever that fine is paid or is lawfully levied under the process of any law authorizing the levy of the fine.

(2) If any part of the fine is paid or levied before the expiry of any imprisonment referred to in subsection (1), the period of imprisonment must be reduced by such number of days bearing as nearly as possible the same proportion to the period of imprisonment as the sum so paid or levied bears to the amount of the fine.

(3) Unless otherwise authorised, either generally or specifically, by the officer in charge, payment of any sum under this section may only be accepted during office hours.

### **134. Periodic imprisonment**

Unless the court specifically directs otherwise, a person who has under the provisions of any law been sentenced to periodic imprisonment must be periodically detained in a correctional facility in the prescribed manner.

### **135. Corporal punishment**

(1) In this section—

“corporal punishment” means a moderate correction of whipping referred to in section 353 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] imposed upon a male person under the age of eighteen,.

(2) Where any enactment provides for confirmation of any sentence of corporal punishment imposed by a court, no such sentence shall be carried out until it has been confirmed in accordance with such enactment.

(3) A sentence of corporal punishment shall not be carried out unless the medical officer who examined the offender in terms of subsection (4) of section 353 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] and the officer in charge are present while the corporal punishment is being inflicted on the offender.

(4) The medical or correctional officer mentioned in section one hundred and three may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out if, in his or her opinion, the punishment is likely to cause more serious injury than is contemplated in the sentence.

(5) No sentence of corporal punishment shall be carried out by instalments.

**The Constitutional Court is still to decide whether this form of punishment is constitutional.**

**136. Confinement and restraint of inmate**

- (1) Where the officer in charge considers it necessary –
- (a) to secure or restrain an inmate who has –
- (i) displayed or threatened violence;
  - (ii) been recaptured after escape from custody or in respect of whom there is good reason to believe that he or she is contemplating to escape from custody; or
  - (iii) been recommended on medical grounds for confinement in a separate cell by a medical officer;
- (b) for the safe custody of an offender, that such offender be confined; or
- (c) for any other security reason, such officer in charge may order that such offender be confined, with or without mechanical restraint, in a separate cell and in the prescribed manner, for such period not exceeding 5 days as such officer in charge considers necessary in the circumstances and in consultation with the Commissioner-General.
- (2) If it is considered necessary to continue with the confinement referred to in subsection (1) for a period exceeding 5 days, the officer in charge must report to the Commissioner-General stating the facts and making his or her recommendations.
- (3) Upon the receipt of the report and recommendation referred to in subsection (2), the Commissioner-General may order the extension of the period of confinement, with or without mechanical restraint, for an additional 10 days, but the total period of such confinement may not exceed 15 days, unless with the explicit consent of the Minister.
- In *S v Masitere* 1990 (2) ZLR 289 (S) the court ruled that the imposition of an additional punishment of solitary confinement with spare diet is unconstitutional.**

**137. Inmates under sentence of death**

Every inmate sentenced to death shall be confined in some safe place within a prison or correctional facility and, if possible, shall be kept apart from other inmates and shall be placed under constant observation both by day and by night.

**138. Person who may have access to inmates under sentence of death**

No person other than a correctional officer, a medical officer, a visiting justice, a minister of religion or a person authorized by the Commissioner-General shall have access to a inmate under sentence of death:

Provided that such inmate may, with the consent of and subject to any reasonable conditions which may be imposed by the Commissioner-General or the officer in charge, be visited by his or her legal advisers and such of his or her relatives and friends as he or she may express a wish to see.

**Surely a legal practitioner has a right to have access to a client who has been sentenced to death.**

**139. Attendance at execution by officials**

(1) Executions shall be carried out at such prisons or correctional facilities as the Commissioner-General may specify and shall be attended by the officer in charge and such other correctional officers as the Commissioner-General or officer in charge may direct, and may be attended by the Sheriff or a deputy sheriff of Zimbabwe, by a minister of religion and by such other persons as the Minister may authorize.



(2) As soon as may be after sentence of death has been executed on the inmate, the medical officer shall examine the body and shall verify the fact of death and shall sign a certificate thereof and deliver such certificate to the officer in charge, who shall also sign such certificate and transmit it to the registrar of the court which imposed the sentence.

**140. Commutation of death sentence to sentence of imprisonment**

Where the President pardons any person who has been sentenced to death on condition that he or she serves a period of imprisonment, that person shall be deemed to have been sentenced to such period by the court before which he or she was convicted.

**PART XIII  
RELEASE OF INMATES**

**Definitions in this part**

“full parole or probation” means release from imprisonment on conditions of a convicted offender from the date of release to the expiration of the term of imprisonment to which the offender in question was sentenced;

“day parole” means release of a convicted offender from imprisonment on conditions during the day which prisoner will be required to return to prison each night.

**{I assume this is a correct depiction of day parole.}**

**141. Establishment of State Parole Board**

(1) There is hereby established a release board to be known as the State Parole Board to perform the powers, duties and functions conferred or imposed upon such board by or under this Act.

(2) (a) The State Parole Board shall consist of the following members appointed by the Minister after consultation with the Commissioner-General—

- (i) the Chairperson;
- (ii) such number of Vice-Chairpersons; and
- (iii) such number of members, who may include persons who are not officers of the Service.

(b) The Minister shall assign each member of the State Parole Board to a section of that Board as specified in the instrument of appointment.

(3) The State Parole Board shall consist of citizens chosen for their varied background, orientation and experiences in health, legal, education, social services, corrections, rehabilitation issues and any such background as the Minister may determine.

(4) A member of the State Parole Board appointed under subsection(2)(a)(iii) and who is not a correctional officer –

(a) holds office for a period of five years and at the expiration of his or her period of office as member of such Board is eligible for re-appointment as a member;

(b) may be paid such remuneration as the Minister, in consultation with Treasury, may determine;

(c) may vacate his or her office as a member of such Board by giving one month's written notice of his or her resignation to the Minister.

(5) The Minister may, after affording a member of the State Parole Board appointed under subsection (2)(a)(iii) and who is not a correctional officer an opportunity to be heard, remove such member of the State Parole Board from his or her office, if the Minister in consultation with the Commissioner-General is of the opinion that there are sufficient reasons for doing so.

(6) Such other staff as is necessary to enable the Board to perform its functions and duties under this Act may be employed in accordance with this Act or the Civil Service Act.

#### **142. Functions of the State Parole Board**

(1) Subject to section 145(10), the State Parole Board shall, whenever necessary—

(a) make recommendations to the Minister as to:

(i) the release on full parole or probation of an inmate serving sentence of imprisonment of five years or more for any of the scheduled crimes or offences;

(ii) subject to section 126 or 127, the release on full parole or probation of an inmate who has been sentenced to extended imprisonment or life imprisonment;

(iii) the conditions upon which the inmates referred to in subparagraph (i) and (ii) may be released on full parole or probation; and

(iv) the names of inmates to be recommended for pardon or reprieve under section 134;

(b) authorise, under section 145, the release of an inmate on day parole;

(c) authorise, under section 145 the release on full parole or probation of an inmate serving a sentence of imprisonment; or

(d) perform such other duties and functions as the Minister may from time to time assign to it.

(2) The manner and procedure for the State Parole Board to submit the recommendations to the Minister is as determined by the Minister.

(3) The quorum and procedure of meetings of the State Parole Board shall be as fixed by the Minister from time to time.

#### **143. Principles that guide the State Parole Board**

(1) The principles that guide the State Parole Board in fulfilling its functions referred to in subsection (1) of section 120 are—

(a) that the protection of the society is the paramount consideration in the determination of any case;

(b) that the State Parole Board conducts proper and thorough risk assessment of each inmate, taking into consideration all available information relevant in each case, including the stated reasons and recommendations of the sentencing court, other information from the trial or sentencing process, information and assessments provided by correctional authorities and information obtained from victims, the community and the inmate;

(c) that the State Parole Board enhances its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of its policies and programmes to inmates, victims and the general public;

(d) that the State Parole Board makes a determination consistent with the protection of society;

(e) that the State Parole Board adopts and is guided by appropriate policies and that its members are provided with the necessary training to implement such policies;

(f) that inmates are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable release process;

(g) that release on day parole, full parole or probation shall not be extended to foreign inmates within Zimbabwe.

(2) The State Parole Board may recommend or authorise, as the case may be, the release on day parole, full parole or probation or the pardon or reprieve of an inmate if, in its opinion—

(a) the inmate will not, by re-offending, present an undue risk to society before the expiration of the sentence the inmate is serving; and

(b) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen.

#### **144. Release of inmate on day parole**

(1) Notwithstanding the provisions of section 145, but subject to subsections (3) and (4), the State Parole Board may authorise the release on day parole of a convicted inmate who has served one third of the term of his or her sentence of imprisonment, where in the opinion of the State Parole Board—

(a) such inmate has displayed meritorious conduct, self-discipline, responsibility and industry during such term served;

(b) such inmate will not, by re-offending, present an undue risk to society when on day parole; and

(c) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen.

(2) The release on day parole is on such conditions as the State Parole Board may determine.

(3) The circumstances and manner in which an inmate can apply for day parole, and the monitoring and supervision of an inmate released on day parole is as determined by the Commissioner-General.

(4) Subsection (1) does not apply to an inmate who has been sentenced as contemplated in section 144(2)(a) or (b), or who has been sentenced to a term of imprisonment for any of the scheduled crimes or offences or who has been classified as a high risk inmate, but this subsection does not apply to juvenile inmates.

(5) When an inmate contravenes a condition of day parole or when the State Parole Board is satisfied that it is necessary and reasonable to suspend the inmate's release on day parole in order to prevent a contravention of any condition thereof, or to protect the society, the State Parole Board shall report the matter to the Commissioner-General.

(6) The Commissioner-General, on consideration of a report submitted by the State Parole Board under subsection (5), may suspend the inmate's release on day parole for a period he or she may determine.

**145. Release on full parole or probation of inmates serving terms of imprisonment**

(1) Where a convicted inmate who has been sentenced to a term of imprisonment has served in a prison or correctional facility half of such term and the officer in charge is satisfied that—

(a) such inmate has displayed meritorious conduct, self-discipline, responsibility and industry during the period served;

(b) such inmate will not, by re-offending, present an undue risk to society before the expiration of the sentence he or she is serving; and

(c) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen, that officer in charge shall submit or cause to be submitted a report in respect of such inmate to the State Parole Board, in which he or she recommends that such inmate be released on full parole or probation and the conditions relating to such release as he or she may consider necessary.

(2) After considering the report and recommendation referred to in subsection (1) and conducting a hearing, the State Parole Board may, subject to the provisions of sections 147, 148, 149 and 150, authorise the release on full parole or probation of the inmate concerned upon such conditions as it may determine and specify or cause to be specified in the warrant of release in question.

(3) If, after the approval of the inmate's release on full parole or probation, but before the inmate's release, it comes to the knowledge of the officer in charge of information that indicate the probability of the inmate to present a risk to society, which information was not available during the consideration of the inmate's release, the officer in charge shall not release such inmate but must submit a report to the State Parole Board on such information.

(4) The State Parole Board may, after consideration of the report referred to in subsection (3), cancel such inmate's authorisation for release on full parole or probation and inform the officer in charge of its decision.

(5) (a) A release of an inmate on full parole or probation in terms of this section extends for the period between the date of such release and the expiration of the term of imprisonment in question.

(b) The monitoring and supervision of an inmate referred to in paragraph (a) are as prescribed.

(6) (a) Where an inmate has been released on full parole or probation in terms of subsection (2), the State Parole Board may at any time cancel or amend any condition of such inmate's full parole or probation, or add new conditions if it is in the interest of such inmate's treatment, rehabilitation, or reintegration into the society or in the interest of society.

(b) Before acting in terms of paragraph (a) the State Parole Board shall make the reasons for the proposed action known to the inmate and shall afford such inmate an opportunity to be heard in regard thereto by a member of the State Parole Board or such correctional officer as the Chairperson of the State Parole Board may determine.

(7) Where an inmate released on full parole or probation in terms of this Act completes the period thereof without contravening any of the conditions of release, he or she is considered to have duly served his or her full term of imprisonment and shall stand discharged in respect of that sentence.

(8) (a) Where it comes to the knowledge of the State Parole Board that an inmate released on full parole or probation in terms of this section or section 147 was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of release, the State Parole Board shall report such erroneous release or contravention to the Commissioner-General.

(b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that inmate, which warrant may be executed by any peace officer as defined in the Criminal Procedure and Evidence Act, and which warrant serves as authority for the inmate to be detained in a prison or correctional facility until a member of the State Parole Board has heard the inmate and has had sufficient opportunity to hear evidence in this regard.

(c) If, after ascertaining all the relevant facts, the State Parole Board is still satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the State Parole Board shall recommend to the Commissioner-General that such inmate's placement on full parole or probation be withdrawn.

(9) The Commissioner-General may, after consideration of the report referred to in subsection (8)(c), order that such inmate's placement on full parole or probation—

(a) in case of erroneous release, be withdrawn and that the inmate be re-admitted to the prison or correctional facility to continue serving the unexpired term of his or her sentence of imprisonment;

(b) in case of contravention of conditions, be withdrawn either partially or completely, and that the inmate be re-admitted to the prison or correctional facility to continue serving the unexpired portion of his or her sentence of imprisonment, calculated from the date to be determined by the Commissioner-General, considering the contravened conditions.

(10) Notwithstanding the provisions of this section, but subject to sections 147, 148, 149 and 150, an inmate who has been sentenced as contemplated in section 142(2)(a) or (b), or who has been sentenced to a term of imprisonment for any of the scheduled crimes or offences is not eligible for release on parole or probation under this section, but this subsection does not apply to juvenile inmates.

**146. Release on full parole or probation of inmates serving imprisonment of less than twenty years for scheduled crimes or offences**

(1) Notwithstanding the provisions of this Act, no inmate who has been sentenced to a term of imprisonment of less than twenty years for any of the scheduled crimes or offences may be eligible for release on full parole or probation, unless he or she has served, in a prison or correctional facility, two thirds of his or her term of imprisonment and the State Parole Board, after conducting a hearing—

(a) is satisfied that:

(i) such inmate has displayed meritorious conduct, self-discipline, responsibility and industry during the period served in prison or correctional facility;

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(ii) such inmate will not, by re-offending, present an undue risk to society before the expiration of the sentence he or she is serving; and

(iii) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen; and

(b) submits a report to the Commissioner-General in which the State Parole Board recommends such inmate's release on full parole or probation and the conditions relating to such release as it considers necessary:

Provided that, in the case of an inmate who has been sentenced to a term of imprisonment of less than five years and who has served two thirds of such term, the State Parole Board itself may authorise the release on full parole or probation of the inmate concerned upon such conditions as it may determine and specify or cause to be specified in the warrant of release in question.

(2) After considering the report and recommendation referred to in subsection (1)(b), the Commissioner-General may authorise the release on full parole or probation of the inmate concerned upon such conditions as he or she may specify or cause to be specified in the warrant of release in question.

(3) If, after the approval of the inmate's release on full parole or probation, but before the inmate's release, it comes to the knowledge of the officer in charge of information that indicate the probability of the inmate to present a risk to society, which information was not available during the consideration of the inmate's release, the officer in charge shall not release such inmate but shall submit a report to the State Parole Board on such information.

(4) Upon the receipt of the report referred to in subsection (3), the State Parole Board shall forward it, together with its comments, to the Commissioner-General.

(5) The Commissioner-General may, after consideration of the report and any recommendation referred to in subsection (4), cancel such inmate's authorization for release on full parole or probation and inform the officer in charge of his or her decision.

(6) (a) A release of an inmate on full parole or probation in terms of this section extends for the period between the date of such release and the expiration of the term of imprisonment in question.

(b) The monitoring and supervision of an inmate referred to in paragraph(a) are as prescribed.

(7) (a) Where an inmate has been released on full parole or probation in terms of this section, the Commissioner-General may at any time, after consultation with the State Parole Board, cancel or amend any condition of such inmate's full parole or probation or add new conditions if it is in the interest of such inmate's treatment, rehabilitation or reintegration into society or in the interests of society.

(b) Before acting in terms of paragraph (a), the Commissioner-General shall make the reasons for the proposed action known to the inmate and shall afford such inmate an opportunity to be heard in regard thereto by a member of the State Parole Board or such correctional officer as the Commissioner-General may authorise thereto.

(8) Section 146 (8) and (9) apply to this section where it comes to the knowledge of the State Parole Board that an inmate released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of his or her full parole or probation, as the case may be.

**147. Release on full parole or probation of inmates serving imprisonment of twenty years or more for scheduled crimes or offences**

(1) Notwithstanding the provisions of this Act, no inmate who has been sentenced to a term of imprisonment of twenty years or more for any of the scheduled crimes or offences is eligible for release on full parole or probation, unless he or she has served, in a prison or correctional facility, two thirds of his or her term of imprisonment and the State Parole Board, after conducting a hearing—:

(a) is satisfied that -

(i) such inmate has displayed meritorious conduct, self-discipline, responsibility and industry during the period served in correctional facility;

(ii) such inmate will not, by re-offending, present an undue risk to society before the expiration of the sentence he or she is serving; and

(iii) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen; and

(b) submits a report to the Commissioner-General in which the State Parole Board recommends such inmate's release on full parole or probation and the conditions relating to such release as it considers necessary.

(2) Upon the receipt of the report referred to in subsection (1), the Commissioner-General shall forward it, together with his or her comments, to the Minister.

(3) After considering the report and recommendation referred to in subsection (2), the Minister may authorise the release on full parole or probation of the inmate concerned upon such conditions as he or she may determine and specify or cause to be specified in the warrant of release in question.

(4) If, after the approval of the inmate's release on full parole or probation, but before the inmate's release, it comes to the knowledge of the officer in charge of information that indicate the probability of the inmate to present a risk to society, which information was not available during the consideration of the inmate's release, the officer in charge shall not release such inmate but shall submit a report to the State Parole Board on such information.

(5) Upon the receipt of the report referred to in subsection (4), the State Parole Board shall forward it, together with its comments, to the Commissioner-General.

(6) Upon receipt of the report referred to in subsection (5), the Commissioner-General shall forward it, together with his or her comments, to the Minister.

(7) The Minister may, after consideration of the report and any recommendation referred to in subsection (6), cancel such inmate's authorisation for release on full parole or probation and inform the Commissioner-General of his or her decision.

(8) The Commissioner-General shall inform the officer in charge of the decision of the Minister made under subsection (7).

(9) (a) A release of an inmate on full parole or probation in terms of this section extends for the period between the date of such release and the expiration of the term of imprisonment in question.

(b) The monitoring and supervision of an inmate referred to in paragraph (a) is as prescribed.

(10) (a) Where an inmate has been released on full parole or probation in terms of this section, the Minister may at any time, after consultation with the State Parole Board and

the Commissioner-General, cancel or amend any condition of such inmate's full parole or probation, as the case may be, or add new conditions if it is in the interest of such inmate's treatment, rehabilitation or reintegration into society or in the interest of society.

(b) Before acting in terms of paragraph (a), the Minister shall make the reasons for the proposed action known to the inmate and shall afford such inmate an opportunity to be heard in regard thereto by any member of the State Parole Board or such correctional officer as the Commissioner-General may authorise thereto.

(11) (a) Where it comes to the knowledge of the State Parole Board that an inmate released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, as the case may be, contravened or failed to observe any of the conditions of release, the State Parole Board shall report such erroneous release or contravention to the Commissioner-General.

(b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that inmate, which warrant may be executed by any peace officer as defined in the Criminal Procedure and Evidence Act, and which warrant serves as authority for the inmate to be detained in a prison or correctional facility until a member of the State Parole Board has heard the inmate and has had sufficient opportunity to hear evidence in this regard.

(c) If, after ascertaining all the relevant facts, the State Parole Board is still satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, as the case may be, the State Parole Board shall recommend to the Commissioner-General that such inmate's placement on full parole or probation be withdrawn.

(12) If, upon consideration of the report referred to in subsection (11)(c), the Commissioner-General is satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the Commissioner-General shall submit a report to the Minister recommending that, such inmate's placement on full parole or probation, as the case may be, be withdrawn.

(13) The Minister may, after consideration of the report referred to in subsection (12), order that such inmate's placement on full parole or probation—

(a) in case of erroneous release, be withdrawn and that the inmate be re-admitted to the prison or correctional facility to continue serving the unexpired portion of his or her sentence of imprisonment;

(b) in case of contravention of conditions, be withdrawn either partially or completely, and that the inmate be re-admitted to the prison or correctional facility to continue serving the unexpired portion of his or her sentence of imprisonment, calculated from the date to be determined by the Commissioner-General, considering the contravened conditions.

#### **148. Release of inmates serving extended imprisonment**

(1) An inmate serving extended imprisonment can be released from the prison or correctional facility only on such conditions as to full parole or probation.

(2) Notwithstanding subsection (1), no inmate serving extended imprisonment is eligible for release on full parole or probation, unless he or she has served the prescribed minimum term of imprisonment and the State Parole Board after conducting a hearing—

(a) is satisfied that:



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- (i) there is a reasonable probability that such inmate will abstain from crime and is likely to lead a useful, responsible and industrious life;
  - (ii) such inmate has displayed a meritorious conduct during the prescribed minimum term of imprisonment and no longer has a tendency to engage in crime; and
  - (iii) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen; or
  - (iv) it is desirable for any other reason to release such inmate on full parole or probation; and
- (b) submits a report to the Commissioner-General in which it recommends such inmate's release on full parole or probation and the conditions relating to such release, as it considers necessary.
- (3) Upon the receipt of the report referred to in subsection (2), the Commissioner-General shall forward it, together with his or her comments, to the Minister.
- (4) On consideration of the report and comments referred to in subsection(3), the Minister may authorise the release on full parole or probation of such inmate on such date and conditions and for such a period as he or she may determine.
- (5) If, after the approval of the inmate's release on full parole or probation, but before the inmate's release, it comes to the knowledge of the officer in charge of information that indicate the probability of the inmate to present a risk to society, which information was not available during the consideration of the inmate's release, the officer in charge shall not release such inmate, but shall submit a report to the State Parole Board on such information.
- (6) Upon the receipt of the report referred to in subsection (5), the State Parole Board shall forward it, together with its comments, to the Commissioner-General.
- (7) Upon the receipt of the report referred to in subsection (6), the Commissioner-General shall forward it, together with his or her comments, to the Minister.
- (8) The Minister may, after consideration of the report and recommendation referred to in subsection (7), cancel such inmate's authorisation for release on full parole or probation and inform the Commissioner-General of his or her decision.
- (9) The Commissioner-General shall inform the officer in charge of the decision of the Minister made under subsection (8).
- (10) The monitoring and supervision of an inmate released on full parole or probation in terms of subsection (4) are as prescribed.
- (11) (a) Where an inmate has been released on full parole or probation in terms of this section, the Minister may at any time, on the recommendation of the State Parole Board and the Commissioner-General, cancel or amend any condition of such inmate's full parole or probation or add new conditions if it is in the interest of such inmate's treatment, rehabilitation or reintegration into society or in the interests of society.
- (b) Before acting in terms of paragraph (a), the Minister shall make the reasons for the proposed action known to the inmate and shall afford such inmate an opportunity to be heard in regard thereto by a member of the State Parole Board or such correctional officer as the Commissioner-General may authorise thereto.
- (12) Where an inmate released on full parole or probation in terms of this section completes the period determined by the Minister under subsection (4) without contravening any condition of release, he or she is considered to have duly served his

or her term of imprisonment and shall be discharged in respect of that sentence, unless the Minister determines otherwise.

(13) (a) Where it comes to the knowledge of the State Parole Board that an inmate released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of release, the State Parole Board shall report to the Commissioner-General of such erroneous release or contravention.

(b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that inmate, which warrant may be executed by any peace officer as defined in the Criminal Procedure and Evidence Act, and which warrant serves as authority for the inmate to be detained in a prison or correctional facility until a member of the State Parole Board has heard the inmate and has had sufficient opportunity to hear evidence in this regard.

(c) If, after ascertaining all the relevant facts, the State Parole Board is still satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the State Parole Board shall recommend to the Commissioner-General that such inmate's placement on full parole or probation be withdrawn.

(14) If, upon consideration of the report referred to in subsection (13)(c), the Commissioner-General is satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the Commissioner-General shall submit a report to the Minister recommending that, such inmate's placement on full parole or probation be withdrawn.

(15) The Minister may, after consideration of the report referred to in subsection (14), order that such inmate's placement on full parole or probation –

(a) in case of erroneous release, be withdrawn and that the inmate be re-admitted to the prison or correctional facility to continue serving his or her sentence;

(b) in case of contravention of conditions, be withdrawn either partially or completely, and that the inmate be readmitted to the prison or correctional facility to continue serving his or her sentence for such a period as the Minister may determine, before such inmate is again considered to be released on full parole or probation.

#### **149. Release of inmates sentenced to life imprisonment**

(1) An inmate who has been sentenced to life imprisonment can be released from the prison or correctional facility only on such conditions as to full parole or probation.

(2) Notwithstanding subsection (1), no inmate who has been sentenced to life imprisonment is eligible to be released on full parole or probation, unless he or she has served the minimum prescribed term of imprisonment and the State Parole Board, after conducting a hearing—

(a) is satisfied that—

(i) there is a reasonable probability that such inmate will abstain from crime and is likely to lead a useful, responsible and industrious life;

(ii) such inmate has displayed a meritorious conduct during such minimum term of imprisonment and no longer has a tendency to engage in crime; and

(iii) the release of the inmate will contribute to the rehabilitation and reintegration of the inmate into society as a law abiding citizen; or

(iv) it is desirable for any other reason to release such inmate on full parole; and

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- (b) submits a report to the Commissioner-General in which it recommends such inmate's release on full parole or probation and the conditions relating to such release, as it considers necessary.
- (3) Upon the receipt of the report referred to in subsection (2), the Commissioner-General shall forward it, together with his or her comments, to the Minister.
- (4) On consideration of the report and comments referred to in subsection (3), the Minister shall forward the report, together with his or her comments, to the President.
- (5) The President, on consideration of the report and comments referred to in subsection (4), may authorise the release on full parole or probation of the inmate on the date and conditions recommended by the Minister or on such date and conditions as the President may determine.
- (6) An inmate released on full parole or probation in terms of subsection (5), is on full parole or probation for life, unless the President determines otherwise.
- (7) If, after the approval of the inmate's release on full parole or probation, but before the inmate's release, it comes to the knowledge of the officer in charge of information that indicates the probability of the inmate to present a risk to society, which information was not available during the consideration of the inmate's release, the officer in charge shall not release such inmate, but shall submit a report to the State Parole Board on such information.
- (8) Upon the receipt of the report referred to in subsection (7), the State Parole Board shall forward it, together with its comments, to the Commissioner-General.
- (9) Upon the receipt of the report referred to in subsection (8), the Commissioner-General shall forward it, together with his or her comments, to the Minister.
- (10) Upon the receipt of the report referred to in subsection (9), the Minister shall forward it, together with his or her comments, to the President.
- (11) The President may, after consideration of the report and recommendation referred to in subsection (10), cancel such inmate's authorisation for release on full parole or probation, as the case may be, and inform the Minister of his or her decision.
- (12) The Minister shall inform the Commissioner-General, who in turn shall inform the officer in charge, of the decision of the President made under subsection (11).
- (13) The monitoring and supervision of an inmate released on full parole or probation in terms of this section are as prescribed.
- (14) (a) Where an inmate has been released on full parole or probation in terms of this section, the President may at any time, on the recommendation of the Minister, cancel or amend any condition of such inmate's full parole or probation or add new conditions if it is in the interest of such inmate's treatment, rehabilitation or reintegration into society or in the interest of society.
- (b) Before acting in terms of paragraph (a), the President shall make the reasons for the proposed action known to the inmate and shall afford such inmate an opportunity to be heard in regard thereto by a member of the State Parole Board or such correctional officer as the Commissioner-General may authorise thereto.
- (15) Where an inmate released on full parole or probation in terms of this section completes the period otherwise determined by the President under subsection(6) without contravening any condition of release, he or she may be considered to have duly served his or her term of imprisonment and shall be discharged in respect of that sentence, unless the President determines otherwise.

(16) (a) Where it comes to the knowledge of the State Parole Board that an inmate released on full parole or probation in terms of this section was released erroneously, or has, during the period of full parole or probation, contravened or failed to observe any of the conditions of release, the State Parole Board shall report to the Commissioner-General such erroneous release or contravention.

(b) The Commissioner-General, upon being informed as provided for in paragraph (a), may issue a warrant for the arrest of that inmate, which warrant may be executed by any peace officer as defined in the Criminal Procedure and Evidence Act, and which warrant serves as authority for the inmate to be detained in a prison or correctional facility until a member of State Parole Board has heard the inmate and has had sufficient opportunity to hear evidence in this regard.

(c) If, after ascertaining all the relevant facts, the State Parole Board is still satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the State Parole Board shall recommend to the Commissioner-General that such inmate's placement on full parole or probation be withdrawn.

(17) If, upon consideration of the report referred to in subsection (16)(c), the Commissioner-General is satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the Commissioner-General shall submit a report to the Minister recommending that, such inmate's placement on full parole or probation be withdrawn.

(18) If, upon consideration of the report referred to in subsection (17), the Minister is satisfied that the inmate was released erroneously or has contravened a condition of his or her full parole or probation, the Minister shall submit a report to the President recommending that, such inmate's placement on full parole or probation be withdrawn.

(19) The President may, after consideration of the report referred to in subsection (18), order that such inmate's placement on full parole or probation—

(a) in case of erroneous release, be withdrawn and that the inmate be readmitted to the prison or correctional facility to continue serving his or her sentence;

(b) in case of contravention of conditions, be withdrawn either partially or completely, and that the inmate be readmitted to the prison or correctional facility to continue serving his or her sentence for such a period as the President may determine, before such inmate is again considered to be released on full parole or probation, as the case may be.

### **150. Appeals by Inmates**

(1) An inmate who is aggrieved by the decision of the State Parole Board, the Commissioner-General or the Minister regarding his or her release on full parole or probation may appeal against such decision—

(a) in the case of the decision of the State Parole Board, to the Commissioner-General;

(b) in the case of the decision of the Commissioner-General, to the Minister;

(c) in the case of the decision of the Minister, to the President;

on the grounds that, the State Parole Board, the Commissioner-General or the Minister, as the case may be—

(i) made an error of law;

(ii) breached or failed to apply the prescribed guidelines; or

(iii) based the decision on erroneous or incomplete information.

(2) The Commissioner-General, the Minister or the President may, in respect of the appeal lodged in terms of subsection (1), on consideration of the decision appealed from and the grounds of appeal—

(a) confirm the decision;

(b) confirm the decision but order a further hearing of the case by the State Parole Board on a date earlier than the date otherwise provided for, for the next hearing;

(c) order a new hearing of the case by the State Parole Board and order the continuation of the decision pending the hearing; or

(d) reverse, cancel or vary the decision.

(3) The Commissioner-General, the Minister or the President, as the case may be, may not make a decision under subsection (2) that results in the immediate release of the inmate, unless the Commissioner-General, the Minister or the President is satisfied that

(a) the decision appealed against cannot reasonably be supported in law, under the prescribed guidelines, or on the basis of information available to the State Parole Board in its hearing of the case; and

(b) a delay in releasing the inmate would be unfair.

(4) The time within which, and the manner in which a decision of the State Parole Board, the Commissioner-General or the Minister may be appealed is as prescribed.

(5) The Commissioner-General, the Minister or the President may refuse to consider an appeal where, in the opinion of the Commissioner-General, the Minister or the President, as the case may be—

(a) the appeal is frivolous or vexatious;

(b) the relief sought is beyond the jurisdiction of the State Parole Board, the Commissioner-General or the Minister, as the case may be;

(c) the appeal is based on information or on a new release plan that was not there before the State Parole Board, Commissioner-General or the Minister when the decision being appealed against was made; or

(d) at the time the notice of appeal is received by the Commissioner-General, the Minister or the President, as the case may be, the inmate has 90 days or less to serve in a prison or correctional facility before being released.

(6) A decision of the President, in terms of this section or section 148 may not be appealed against.

### **151. Review of cases when release on full parole or probation is not authorised**

Where the President, the Minister, the Commissioner-General or the State Parole Board, as the case may be, decides not to authorise the release on full parole or probation of an inmate, a subsequent recommendation for review may be submitted at any time when the officer in charge is satisfied that the inmate is again eligible for consideration for release on full parole or probation or that the inmate has fulfilled the conditions, if any, imposed by the President, the Minister, the Commissioner-General or the State Parole Board, as the case may be.

### **152. Remission of sentence**

(1) A convicted inmate under sentence of imprisonment for a period of more than one month, other than an inmate sentenced to imprisonment for life or to periodical or

extended imprisonment, may, subject to such conditions as may be prescribed, earn by satisfactory industry and good conduct remission of one-third of his or her sentence:

Provided that in no case shall a sentence be reduced by reason of remission to less than one month.

(2) The Commissioner-General may restore in whole or in part any remission forfeited or lost under this Act.

**153. Remission on special grounds**

The Commissioner-General may recommend to the Minister, who, if he or she deems fit, may recommend to the President that remission should be granted to an inmate by reason of the meritorious conduct or the mental or physical condition of such inmate.

**154. Presidential power of mercy**

The President may in terms of section 112 of the Constitution order the release of any inmate from any prison or correctional facility.

**155. Amnesty**

(1) The Minister may, on the recommendation by the Commissioner-General, recommend to the President the names and categories of inmates to be released on amnesty where the Minister is satisfied that—

(a) such inmates have displayed meritorious conduct, self-discipline, responsibility and industry during the term of imprisonment so far served;

(b) such inmates will not, by re-offending, present an undue risk to society upon their release following the amnesty; and

(c) the release of the inmates following the amnesty will contribute to the rehabilitation and reintegration of the inmates into society as law abiding citizens.

(2) The manner and procedure of assessing and identifying the inmates to be recommended for amnesty shall be as prescribed.

(3) The Minister shall give notice in the Gazette of the categories of inmates to be released by amnesty.

**156. Release of inmates by the Minister**

The Minister may on the recommendation of the medical officer and after consultation with the Commissioner-General, issue a licence for the release of an inmate serving any sentence in a prison or correctional facility—

(a) who is suffering from a dangerous, infectious or contagious disease; or

(b) whose continued incarceration is detrimental to his or her health on the grounds of his or her physical condition, either unconditionally or on such conditions as to parole or probation or as to special treatment as the Minister may determine.

(c) who is infirm by reason of advanced age or is disabled and can be cared for outside prison or correctional facility.

Provided that inmates serving sentences over seven years or serving life imprisonment or under the sentence of death shall require a recommendation from the State Parole Board before their release under this section.

**157. Conditions of release by the minister**

(1) In fixing the conditions to be specified in a licence, the Minister in consultation with the Commissioner-General may fix such conditions as he or she considers to be desirable in the circumstances and, without derogation from the generality of the foregoing, may fix conditions relating to—

- (a) the area in which the person concerned is to reside;
- (b) an area which the person concerned may not visit;
- (c) the occupation or employment to be undertaken by the person concerned;
- (d) the making of reports to a specified person or authority by the person concerned;
- (e) the permanent departure of the person concerned from Zimbabwe:

Provided that, in the case of a person who is a citizen of Zimbabwe, no condition requiring his or her departure from Zimbabwe may be fixed.

(2) The provisions of this Act relating to the remission of sentence shall continue to apply, *mutatis mutandis*, to a person who has been released on licence.

(3) The Minister in consultation with the Commissioner-General, may, at any time—

- (a) amend, cancel or add to any of the conditions of a licence;
- (b) cancel a licence and direct that the person concerned be returned to a prison or correctional facility.

#### **158. Arrest and detention of persons released on licence**

(1) Where the Minister has, in terms of subsection (3) of section 157, cancelled a licence; and directed that the person concerned be returned to a prison or correctional facility any correctional officer or police officer may arrest that person without warrant and convey him to a prison or correctional facility and, until that person is so arrested, he or she shall be deemed to be unlawfully at large.

(2) If a correctional officer or police officer has reason to believe that a person who has been released on licence has contravened any condition of the licence for his or her release, he or she may arrest that person without warrant and convey him to a prison or correctional facility.

(3) Whenever a correctional officer or police officer arrests a person in terms of subsection (1) or (2), he or she shall forthwith inform that person of the reasons for his or her arrest.

(4) The officer in charge of a prison or correctional facility to which a person has been conveyed in terms of subsection (2) shall, unless he or she is satisfied that a mistake has been made—

- (a) detain that person in the prison or correctional facility as though the licence for his or her release had been cancelled; and
- (b) forthwith inform the Minister of the arrest and imprisonment of that person and of the reasons thereof.

(5) On receiving any information in terms of subsection (4), the Minister—

- (a) shall refer the matter to the State Parole Board, as the case may be; and
- (b) shall, subject to section 157, issue a further licence, or cancel the licence as he or she deems fit.

(6) Where a licence for the release of a person has been cancelled in terms of section 157, that person shall be liable to undergo imprisonment—

- (a) subject to section 78 in the case of a person who was released from a sentence of extended imprisonment, until the expiry of the maximum period of imprisonment

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determined in accordance with subsection (3) of section 346 of the Criminal Procedure and Evidence Act [*Chapter 9:07*];

(b) in the case of a person other than a person referred to in paragraph (a), for the remainder of the period for which he or she was sentenced; unless he or she is earlier released again in terms of this Part.

### **159. Serving sentence while on release**

The period from the date when a person is released on licence or until the expiration or cancellation of the licence shall be reckoned as part of his or her period of imprisonment.

### **160. Officer in charge responsible for release of inmates**

(1) The officer in charge of every prison or correctional facility shall be responsible for the due release from that prison or correctional facility of an inmate in his or her lawful custody, immediately upon his or her becoming entitled thereto.

(2) Where an inmate becomes entitled under this Act or any other law to be released from prison or correctional facility, otherwise than by the expiration of his or her sentence, the officer in charge shall not release such inmate, otherwise than in accordance with the terms of an order, warrant, or instruction issued in writing and signed by the person authorised to do so under such law.

### **161. Day of release of inmate**

An inmate shall be released from a prison or correctional facility by noon on the day on which he or she is entitled to be released, but where that day falls on a Saturday, Sunday or public holiday, he or she shall be released by noon on the preceding day not being a Saturday, Sunday or public holiday.

### **162. Travel expenses of released inmate**

An inmate, excluding a foreign national, released from a prison or correctional facility is entitled from public funds, upon such release, to a travel allowance of the prescribed amount for purposes of travelling to such released inmate's place of origin or to such place as the Commissioner-General may determine or approve.

## **PART XIV VISITING JUSTICES, MINISTERS OF RELIGION AND CORRECTIONAL BOARD OF VISITORS**

### **163. Visiting justices**

(1) For the purposes of this Act, the following persons are visiting justices *ex-officio*, namely –

- (a) a Vice President;
- (b) a Judge of the Constitutional Court, Supreme Court, or High Court of Zimbabwe;
- (c) a Minister or Deputy Minister of the Republic of Zimbabwe;



- (d) a member of the Senate or National Assembly;
  - (e) a Permanent Secretary;
  - (f) a member of a Provincial Council or Metropolitan Council, within his or her constituency; and
  - (g) a magistrate, within his or her area of magisterial jurisdiction.
- (2) In addition to the persons referred to in subsection (1) the Minister may, on the recommendation of the Chairperson of the Provincial Council or Metropolitan Council appoint such number of fit and proper persons within such Provincial Council or Metropolitan Council to serve as visiting justices within that Provincial Council or Metropolitan Council, from time to time, by notice in the Gazette.

**164. Functions of visiting justices**

- (1) A visiting justice may at any time visit a prison or correctional facility in respect of which he or she is a visiting justice, and may—
- (a) subject to being at all times escorted by an appropriate correctional officer, inspect every part of the prison or correctional facility and visit every inmate in a separate cell;
  - (b) inspect and test the quality and quantity of food ordinarily served to inmates;
  - (c) inquire into any complaint or request made by an inmate;
  - (d) ascertain as far as possible, whether the rules, standing orders and administrative directives issued for such a prison or correctional facility are being observed;
  - (e) inspect any book, document, or record relating to the management, discipline and treatment of inmates; and
  - (f) perform such other functions as may be prescribed.
- (2) On the completion of each visit, a visiting justice shall enter in the visiting justices' book, to be kept by the officer in charge for that purpose, such remarks, suggestions and recommendations about his or her findings, as he or she may consider necessary for the attention of the Commissioner-General.
- (3) The officer in charge shall, as soon as is practicable, in writing notify the Commissioner-General of all remarks, suggestions and recommendations entered into the visiting justices' book by a visiting justice.

**165. Appointment of official visitors**

The Minister shall (may) appoint official visitors to any prison or correctional facility or section of a prison or correctional facility, either generally or for such purposes as the Minister may specify.

**166. Functions of official visitors**

- (1) An official visitor who is appointed generally to a prison or correctional facility or section of a prison or correctional facility—
- (a) shall, so far as possible, at least once in every two months visit the prison or correctional facility or section of a prison or correctional facility to which he or she is appointed between such hours as may be prescribed; and
  - (b) may visit all parts of the prison or correctional facility or section of a prison or correctional facility to which he or she is appointed and see every inmate in confinement therein:

Provided that female official visitors may only visit those parts of a prison or correctional facility or section of a prison or correctional facility which are set aside for the detention of female inmates; and

(c) may inspect and test the quality and quantity of food for inmates in the prison or correctional facility or section of a prison or correctional facility to which he or she is appointed; and

(d) may take steps to ascertain, so far as possible, that the standing orders and regulations applicable to the prison or correctional facility or section of a prison or correctional facility to which he or she is appointed are observed; and

(e) may inquire into any complaints or requests made by a inmate in the prison or correctional facility or section of a prison or correctional facility to which he or she is appointed.

(2) An official visitor who is appointed for specific purposes shall perform such functions as the Minister may specify in his or her case.

**167. Official visitors to record visit in prescribed book**

On completion of each visit an official visitor shall enter in a book to be kept for such purposes such remarks, suggestions or recommendations for the information of the Commissioner-General as he may consider fit:

Provided that an official visitor may make any such remarks, suggestions or recommendations in a written report if—

(a) he or she enters in the said book a statement that he or she is making such report; and

(b) he or she submits such report to the Commissioner-General within one week of his or her visit.

**168. Ministers of Religion**

Ministers of religion, or representatives of any religious body who have been accredited by the body in question and recognised, in writing, as such representative by the Minister, may with the prior written authorisation of the Commissioner-General, and at such times, in such place and under such appropriate supervision as may be prescribed or as may be authorised by the officer in charge—

(a) visit inmates who may require their services; and

(b) hold religious services for the benefit of inmates.

**169. Visits by probation officers and representatives of inmates' aid societies**

A probation officer or a representative of an inmates' aid society may, with the prior written authorisation of the Commissioner-General, be permitted by the officer in charge to visit inmates or a particular inmate, at such times, in such place and under such supervision as may be prescribed or as may be authorised by the officer in charge.

**170. Correctional board of visitors**

(1) The Commissioner- General in consultation with the Provincial Council Chairperson and Metropolitan Council Chairperson shall (may) appoint a correctional board of visitors for each provincial and metropolitan council subject to approval by the Minister.

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(2) The correctional board of visitors shall consist of citizens chosen for their varied background, orientation and experiences in health, legal, education, corrections, rehabilitation and reintegration issues among others.

(3) The corrections board of visitors will be an oversight and advisory committee of citizens to represent the interests of people in prison and correction matters.

(4) The corrections board of visitors will attend to questions and concerns about public safety and security, prison staff safety and wellbeing, inmates' health and safety and prison or correctional industries, and rehabilitation and reintegration programs.

(5) The correctional board of visitors shall consist of at least five members but not more than seven members and shall conduct its business and visits as prescribed.

### **PART XV MISCELLANEOUS PROVISIONS**

#### **171. Report on long-term inmates**

(1) (a) At the end of every four years' imprisonment of each inmate serving a sentence of imprisonment exceeding seven years, other than extended imprisonment or imprisonment for life, the Commissioner-General shall forward a report upon such inmate to the Minister who may, if he deems fit, submit it to the President.

(b) After the first ten years served by each inmate undergoing imprisonment for life, at intervals of five years thereafter the Commissioner-General shall forward a report upon the inmate to the Minister who may, if he deems fit, submit it to the President.

(2) Where the Minister asks for a report on any inmate to be supplied at any time or at intervals more frequent than those provided in subsection (1), or (1a) the Commissioner-General shall supply such report as requested, and shall arrange for compliance with any instructions as to pardon, respite, reprieve, commutation or remission of sentence given by the President.

#### **172. List of unconvicted inmates to be delivered to High Court**

(1) In this section—

“quarter day” means the 1st January, the 1st April, the 1st July and the 1st October of any year.

(2) Within fourteen days of each quarter day, every officer in charge shall deliver to the registrar of the High Court a list—

(a) showing all the inmates who, on the quarter day concerned, were under detention in his or her prison or correctional facility, other than convicted inmates who were serving their sentences of imprisonment; and

(b) specifying in the case of each inmate shown on the list, the date of the inmate's admission and the authority for the inmate's detention.

(c) Upon receiving such lists, the Registrar of the High Court shall put in place measures to ease congestion in prisons or correctional facilities, attend to lengthy remands and or any other measures to alleviate challenges presented by the list and shall report to the Judicial Service Commission on the steps taken in this regard.

**173. Temporary absence of inmate.**

(1) The Commissioner-General may, subject to such conditions as he or she may specify, grant an inmate permission in writing to be absent from prison or correctional facility under escort for a specified period for personal, family or other reasons if, in the opinion of the Commissioner-General, the circumstances of the case warrant the granting of such permission.

(2) The Commissioner-General shall notify the Minister of the absence of such inmate.

**174. Home leave**

(1) The officer in charge of an open correctional facility may authorise the absence of an inmate, unescorted, where—

(a) the inmate will not, by re-offending, present an undue risk to society during the authorised absence;

(b) it is desirable for the inmate to be absent from the correctional facility for medical, administrative, family contact, personal development for rehabilitative purposes, compassionate, or an other reasons that the officer in charge deems fit;

(c) the inmate's behaviour while under sentence does not preclude authorising the absence; and

(d) a structured plan for the absence has been prepared.

**175. Limitations of temporary absence and home leave**

(1) The temporary absence and home leave authorised under this Act applies only within the boundaries of Zimbabwe and is, whenever practicable, on the expense of the State and does not apply to foreign inmates.

(2) The Commissioner-General or the officer in charge as the case may be may cancel the authorised temporary absence or home leave, either before or after its commencement—

(a) where the cancellation is considered necessary and reasonable to prevent contravention of a condition of the absence or where such a contravention has occurred;

(b) where the grounds for authorising the absence have changed or no longer exist; or

(c) after a review of the inmate's case, based on information that could not reasonably have been provided when the absence was authorised.

(3) Where the absence is cancelled under subsection (5), the inmate shall be readmitted to the prison or correctional facility to continue serving his or her sentence.

**176. Assistance by members of police in emergency**

(1) In an emergency or for any other good reason, and for the purpose of securing good order and discipline in a prison and or correctional facility, the Commissioner-General of Police or any police officer duly authorised thereto by the Commissioner-General of Police may, on the request of the Commissioner-General of the Prisons and Correctional Service or any commissioned correctional officer duly authorised thereto by the Commissioner-General, temporarily make available for duty in such prison or correctional facility such number of members of the police force as it may be considered necessary to assist in securing good order and discipline in such prison or correctional facility.

(2) A member of the police made available for duty in a prison or correctional facility under subsection (1) shall, while assisting in that prison or correctional facility, exercise the powers and perform the duties and functions, and be subject to the responsibilities, discipline and penalties of a correctional officer.

(3) The assistance referred to in subsection (1) can be rendered by other members of the security services.

**177. Reward for apprehension of escaped inmate**

(1) Where an inmate escapes from lawful custody, the Commissioner-General may offer a monetary reward to any person who—

(a) gives information leading to the apprehension of such inmate; or

(b) apprehends, secures and hands over such inmate to the officer in charge of a prison or correctional facility or to an officer in charge of a police station, and may, whether or not a reward has previously been offered, pay to such person refund of any reasonable expenses incurred as a result of the apprehension as the Commissioner-General may determine.

(2) Notwithstanding the provisions of subsection (1), no correctional officer or member of the police is entitled to any reward under subsection (1) for the apprehension of an escaped inmate, unless the Commissioner-General is of the opinion that exceptional circumstances exist to justify such reward being paid.

**178. Rewards or gratuities for correctional officers**

(1) The Commissioner-General may in his or her discretion or on the recommendation of a Judge or magistrate or other stakeholders, grant a monetary reward or gratuity to a correctional officer who in the course of duty has—

(a) suffered bodily injuries;

(b) performed special acts of bravery such as saving or attempting to save a life or saving or attempting to save property from loss or danger;

(c) rendered valuable information acquired by personal risk, hardship, or unusual skill; or

(d) rendered any other special or meritorious service.

(2) Every reward or gratuity granted under subsection (1) is subject to the prior approval of the Minister and shall be paid from moneys appropriated by Parliament for that purpose.

(3) Every reward granted under subsection (1) is subject to the prior approval of the Minister and may be awarded in the form of promotion.

**179. Detention of inmates sentenced abroad**

(1) Subject to subsection (2), a Zimbabwean citizen who has been duly sentenced to a term of imprisonment by a competent court of law within a foreign country and is transferred to a prison or correctional facility in Zimbabwe to serve the whole or the unexpired portion of that sentence, shall on such transfer be subject to the provisions of this Act as if he or she was serving a sentence of a competent court in Zimbabwe.

(2) The transfer of an inmate referred to in subsection (1) shall be done in accordance with the provisions of the relevant law of Zimbabwe dealing with the transfer of convicted offenders or any agreement with the foreign State on transfer of sentenced inmates to which Zimbabwe is a party.

**180. Transfer of inmates to other countries**

Where a person who is not a Zimbabwean citizen is sentenced to a period of imprisonment by a competent court of law in Zimbabwe, such person may, subject to the provisions of the relevant law of Zimbabwe on the transfer of convicted inmates and the provisions of the agreement with the foreign State on the transfer of sentenced inmates, be transferred from Zimbabwe to that foreign State.

**181. Exemption of Service clubs and canteens from certain taxes, duties and fees**

(1) No licence money, tax, duty or fee, other than customs, excise or sales duties leviable by law, is payable by any person under any law or by-law in respect of any certified club or canteen for correctional officers or in respect of any item on sale at such a club or canteen.

(2) For the purposes of subsection (1), the production of an official document bearing the signature of the Minister or of a person authorised by the Minister to sign any such document and indicating that he or she has certified the club or canteen, is sufficient evidence that it is a certified club or canteen falling under this section.

**182. Appointment of board of inquiry**

Whenever the Commissioner-General considers it necessary or desirable, he or she may appoint a board to inquire into and make recommendations and additionally, or alternatively, to report to him or her, on any matter relating to either or both the following—

- (a) the administration of any prison or correctional facility; or
- (b) the conditions of service of correctional officers; or any matter connected therewith or incidental thereto; or
- (c) the general welfare of officers.

**183. Appointment of a committee of inquiry**

Whenever the Minister considers it necessary or desirable, he or she may appoint a committee to inquire into and make recommendations and additionally, or alternatively, to report to him, on any matter relating to either or both the following—

- (a) the administration of any prison or correctional facility or;
- (b) the conditions of service of correctional officers; or any matter connected therewith or incidental thereto.

**184. Policy directions by Minister**

The Minister may give the Commissioner-General, in writing, such general directions of policy as he or she considers necessary in the public interest relating to—

- (a) the appointment, promotion, training and disposition of correctional officers; and
  - (b) the maintenance of the Service in a high state of efficiency;
- and the Commissioner-General shall forthwith take all such steps as are necessary to ensure due compliance with all such directions.

**185. Power to make regulations**

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(1) Subject to this Act and section 109 of the Constitution, the Minister may make regulations with respect to any of the following matters—

(a) the conditions of service of correctional officers and other persons employed in prisons, including the qualifications for their appointment and promotion, their remuneration and discipline and their punishment for breaches of discipline;

(b) the functions of correctional officers and other persons employed in prisons or correctional facilities;

(c) measures for the prevention of contagious and infectious diseases in prisons or correctional facilities or for the preservation of the general health of inmates;

(d) the powers and duties of visiting justices, official visitors, ministers of religion and inmates' aid societies;

(e) the type and description of cells for separate confinement;

(f) the safe custody, classification, hours of labour, mode of employment, segregation, diet, clothing, maintenance, instruction, discipline, discharge, treatment, correction and training of prisoners;

(g) the time and day of discharge of a prisoner, other than a prisoner who has been committed to prison or correctional facility under an enactment relating to imprisonment for non-payment of debts:

Provided that any regulations made in terms of this paragraph shall not extend the period of imprisonment which a person is liable to undergo;

(h) the manner in which and the conditions under which a sentence of periodical imprisonment shall be served, including, the times when an inmate serving a sentence shall present himself to undergo the sentence, and regulations made in terms of this paragraph shall, in so far as they conflict with any other provisions of this Act, take precedence over those other provisions;

(i) visits to and communications with inmates;

(j) the introduction of a progressive stage system;

(k) the introduction of a payment system for inmates;

(l) the responsibility and safekeeping of all stores, equipment and accoutrements issued to prisons or correctional facilities;

(m) accounts and accounting procedures;

(n) preventing correctional officers or visitors or other persons who have access to prisons or correctional facilities from divulging to any unauthorized person any information concerning the administration of prisons or the condition, treatment and affairs of inmates;

(o) the establishment, constitution, functions and procedure of a correctional officers' association and matters incidental thereto;

(p) the custody and maintenance, including charges to be paid by a judgment creditor, of persons who may be committed to a prison or correctional facility under any enactment relating to imprisonment for non-payment of debts;

(q) the treatment of inmates serving sentences of extended imprisonment;

(r) the establishment of such boards as the Minister considers necessary or expedient for any purpose arising under this Act and the powers, rights, privileges and duties of, and the procedure to be followed by, such boards;

(s) applying, with such modification as may be considered necessary or desirable, the provisions of this Act and any other enactment which applies in respect of correctional

officers to persons who undergo National Service in the Service in terms of the National Service Act [*Chapter 11:08*];

(t) prescribing anything to be prescribed under this Act;

(u) generally for the effective administration of this Act, the good management and government of prisons and the discipline and safe custody of inmates.

(2) Regulations made under subsection (1) may prescribe penalties for a contravention thereof not exceeding a fine of level six or imprisonment for a period of one year.

(3) No regulations shall be made in terms of subsection (1) unless they have been submitted to the Commission and the Commissioner-General for examination and recommendation.

**186. Unlawful possession of articles supplied to correctional officers**

Any person, other than a correctional officer, who is found in possession of any article which has been supplied to any correctional officer for the purposes of his or her duty, or of any other prison or correctional facility property and who fails to account satisfactorily for his or her possession thereof, or who, without lawful authority, purchases or receives any such article or property from any correctional officer, or who aids or abets any correctional officer in selling or disposing of any such article or property, shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

**187. Offences in connection with uniforms and decorations**

(1) Any person who wears or uses without due authority any uniform or decoration supplied to or authorized for use by any correctional officer or any uniform or decoration so nearly resembling the same as to be calculated to deceive shall be guilty of an offence.

(2) Any person who falsely represents himself by act or words to be a person who is or has been entitled to use or wear any uniform or decoration referred to in subsection (1) shall be guilty of an offence.

(3) Any person convicted of an offence in terms of this section shall be liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**188. Notice to be displayed stating offences in respect of prisons or correctional facility and inmates**

The officer in charge shall cause to be affixed in a conspicuous place outside the prison or correctional facility a notice setting forth the acts prohibited under this Act and the penalties which may be incurred by their commission.

**189. Paralegal System**

1.The Commissioner-General may, in consultation with the Minister appoint and recommend for training correctional officers to work in prisons or correctional facilities as paralegals.



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2.The Commissioner-General may, in consultation with the Minister authorize paralegals who are non-officers to operate in prisons or correctional facilities as may be sanctioned by the Minister from time to time.

Provided that the training and operations of paralegals shall be done in consultation with the Minister and any other stakeholders as he or she may recommend.

### **190. Repeal of laws and savings**

#### **The following are hereby repealed:**

Prisons Act [*Chapter 7:11*];

Prisons (Staff) (Discipline) Regulations 1984;

Prisons (Staff) (Discipline) (Amendment) Regulations 2004

#### **and the following are hereby amended:**

Prisons (Staff) (Appointment and Discharge) Regulations

Prisons (General) Regulations 1996

Prisons (Staff) (Appointment and Discharge) (Amendment) Regulations, 2015 (No. 13)

### **FIRST SCHEDULE (Section 2) RANKS OF CORRECTIONAL OFFICERS**

#### **Commissioned officers**

Commissioner-General

Deputy Commissioner General

Commissioner

Senior Assistant Commissioner

Assistant Commissioner

Chief Superintendent

Superintendent

Chief Correctional Officer

Principal Correctional Officer

#### **Non Commissioned officers**

Assistant Principal Correctional Officer

Sergeant Major

Correctional Officer Grade 3

Correctional Officer Grade 2

Correctional Officer Grade 1

**SECOND SCHEDULE (Section 36)  
OFFENCE AGAINST DISCIPLINE BY CORRECTIONAL OFFICERS**

1. Using traitorous or disloyal words regarding the President or the Government.
2. Being disrespectful in word, act or demeanour to an officer senior to him or her in rank.
3. Disobeying any lawful order, including any standing order issued by the Commissioner-General.
4. Contravening, or failing to comply with, any regulations made under the Prisons and Correctional Service Act [Chapter ...] with which it is his or her duty to comply.
5. Failing to attend, without lawful excuse, any trial which he or she has been ordered to attend in terms of this Act or to produce documents which he or she has been ordered to produce, or refusing to take the oath or affirmation or to answer any questions lawfully put to him or her at such trial.
6. Absenting himself or herself without leave or overstaying his or her leave without permission or reasonable excuse.
7. Sleeping on duty.
8. Leaving his or her post before being lawfully relieved, thereof except in the lawful pursuit of an inmate whom it is his or her duty to apprehend.
9. Failing or refusing to assist in the apprehension of any person whom it is his or her duty to arrest.
10. Failing to appear, or appearing late, without reasonable cause, at any parade or duty appointed by a correctional officer senior to him.
11. By his or her neglect, or default allowing or contributing to the escape of any person under his or her custody.
12. Being slovenly or inattentive.
13. Using, or driving without lawful authority, any state vehicle.
14. Engaging in love or intimate relationship with an inmate or any conduct that suggests the existence of such relationship.
15. Trafficking
  - (1) A correctional officer shall be deemed to be trafficking if he or she—
    - (a) conducts unauthorized correspondence or personal relations with persons who have been discharged from prison or correctional facility or with the relatives or friends of persons in prison or correctional facility or persons who have been discharged therefrom in breach of this Act and regulations.

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- (b) participates in unauthorized passage of money, cellphones, drugs, firearms, tobacco, letters, groceries, clothes or other prohibited articles in a prison or correctional facility between an inmate and his or her relatives or friends for money or some other consideration.
- (c) allows relaxation of regulations and shows improper favours to inmates and their friends.
16. Pawning, selling, losing by neglect, making away with, willfully spoiling or failing to report any loss or damage to any arms, ammunition, accoutrements or clothing or any medal or decoration granted to him or her for service or good conduct or any other public property.
  17. Theft or destruction of property belonging to the Government or issued to a prison or correctional facility or inmate.
  18. While under arrest or confinement leaving such arrest or confinement before being set at liberty by proper authority.
  19. Breaking out of or leaving, without lawful excuse, any area set aside for the accommodation of staff.
  20. Demanding from any person any article, carriage or service without proper authority.
  21. Receiving or having in his or her possession, without lawful authority, any article or food issued to inmates or officers.
  22. Assisting or conniving with any person or inmate in having or obtaining any prohibited article.
  23. Being unduly familiar with inmates, without justifiable cause.
  24. Assaulting or using any unnecessary violence to another correctional officer, inmate or any person.
  25. Being uncivil or quarrelsome or using abusive language.
  26. Showing cowardice in the course of his or her duty.
  27. Without authority, communicating, directly or indirectly, to the press or to the public any matter or thing concerning the Service, the communication whereof results in or is reasonably likely to result in any prejudice to the administration, discipline or efficiency of the Service.
  28. Making or signing any false report or statement in any official record or document, knowing or having reasonable grounds to believe that the same is false.
  29. Refusing or, omitting to make or send a report or return which it is his or her duty to make or send, or making or sending such report after undue delay.
  30. Submitting any report or document to Service Headquarters or to the Ministry responsible for Prisons and Correctional Service with malicious intent knowing well it is not true or.

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31. Knowingly making accusation against any correctional officer or inmate or willfully suppressing any material facts or making or joining in making any anonymous complaint.
32. Failing to properly secure any weapon or leaving any weapon unattended.
33. Using or discharging any weapon without just cause or order.
34. Being excessively drunk in a manner that tarnishes the image of the organization on or off duty or rendering himself unfit for duty by indulging in liquor or drugs.
35. Malingering or feigning disease or illness, or obtaining relief from duty on a false or exaggerated plea of injury, illness, pain or sickness.
36. Willfully failing to report any disease or accident within a correctional institution.
37. Incurring debt without any reasonable prospect or intention of paying the same or, having incurred any debt, making no reasonable effort to pay the same.
38. Omitting or neglecting to perform any duty, or performing any duty in any improper manner.
39. Deserting from the Service or refusing to serve therein or advising, persuading or assisting any other officer to desert or refuse to serve, or knowingly receiving or entertaining any deserter, or failing to give information thereof to a superior, or failing to arrest or take every means to cause such a deserter to be apprehended.
40. Being oppressive or tyrannical towards a junior in rank.
41. Unnecessarily detaining any person in custody.
42. Soliciting or accepting any bribe or soliciting any present, reward or whatsoever in connection with his or her position or duties as a correctional officer, or accepting such a present, reward or consideration without the authority of the Commissioner-General.
43. (1) Actively participating in politics.  
(2) Without derogation from the generality of subparagraph (1), a correctional officer shall be deemed to be actively participating in politics if he or she:
  - a) joins or associates himself with an organisation or movement of a political character; or
  - b) canvasses any person in support of, or otherwise actively assist, an organisation or movement of political character ; or
  - c) displays or wears rosettes, favours, clothing, symbols, posters, placards or like articles having a political significance; or
  - d) attends a political meeting or assembly when wearing the Service uniform or any part of such uniform likely to identify him as correctional officer.

Provided that the provisions of this subparagraph shall not apply to a correctional officer who attends such meeting or assembly in uniform in the course of duties; or

e) ask questions from the floor at a political meeting; or

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f) publishes views of a political character or cause them to be published in speeches, broadcast, letters to the press, articles, leaflets, posters, placards, books or otherwise; or

g) does any other act whereby the public or any officer thereof might reasonably be induced to identify him or her with an organisation or movement of any political character.

(3) Nothing in this paragraph contained shall be construed as precluding a correctional officer—

a) asking questions from the floor at a political meeting held with the permission of the Minister at which the audience consist only of persons in the employment of the State; or

b) explaining Government policy in the course of his or her duties as a correctional officer; or

c) performing the duties of returning officer, polling officer or like officer at a Parliamentary or local election or at a referendum; or

d) voting at a Parliamentary or local election or at a referendum.

(4) For the purpose of subparagraphs (a) and (b) of paragraph (2), a trade union or employees organisation shall be deemed to be an organisation or movement of a political character:

Provided that this subparagraph does not apply to any association formed by correctional officers of the Service.

44. Committing any other act, conduct, disorder, or neglect of duty to the prejudice of good order or discipline.

### **THIRD SCHEDULE (Section 104)**

#### **SCHEDULED OFFENCES**

##### **PART I CORRECTIONAL OFFENCES**

1. Mutiny.
2. Attacking or taking part in an attack upon a correctional officer.
3. Escaping or procuring the escape of another inmate or assisting another inmate to escape from a prison or correctional facility in which he or she is detained or from a conveyance, hospital or other place whatsoever where or in which he or she may be or whilst in the course of removal in custody from one place to another or from any other lawful custody.
4. Any conspiracy, incitement or attempt to commit any correctional offence specified in this Part.

##### **PART II DISCIPLINARY OFFENCES**

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1. Possessing any instrument or other item with intent to procure his or her own escape or that of another inmate.
2. Omitting or refusing to help any correctional officer to prevent an escape, an attempted escape or an attack upon such officer or upon another inmate.
3. Failing to assist in the suppression of violence.
4. Taking part in an attack upon another inmate.
5. Assaulting or committing an act of violence upon an inmate or person other than a correctional officer.
6. Fighting with other inmates or engaging in an argument or altercation with any other inmate which is likely to lead to physical violence.
7. Doing any act calculated to create unnecessary alarm among inmates or correctional officers.
8. Disobeying or failing to comply with a lawful command or order by a correctional official.
9. Professing to be a member of a gang or takes part in gang activities;
10. Contravening or failing or neglecting to comply with any regulation or a standing order, made under this Act with which it is his or her duty to comply.
11. Treating with disrespect any correctional officer or visitor or any person employed in connection with the prison or correctional facility.
12. Willfully bringing a false accusation against any correctional officer or inmate or making a groundless complaint.
13. Making false charges against a correctional officer in reply to any question as to matters concerning the prison or correctional facility or prison or correctional discipline, or answering untruthfully any legitimate questions put by a correctional officer while carrying out any of the provisions of this Act.
14. Holding any communication, in writing, by word of mouth or otherwise, with an inmate or any other person in disobedience of the regulations of the prison or correctional facility.
15. Omitting or refusing to march as ordered, when within the prison or correctional facility or when proceeding to or returning from work outside the prison or correctional facility.
16. Refusing, without satisfactory reason, to eat the food provided.
17. Eating or appropriating any food not assigned to him or taking from or adding to the portions of food assigned to other inmates.
18. Without permission of a correctional officer, removing food from a cookhouse or from a place where meals are served or disobeying any order as to the issue and distribution of food and drink.
19. Willfully destroying food or throwing it away without orders.
20. Introducing into food or drink anything likely to render it unpalatable or unwholesome.
21. Omitting or refusing to wear the clothing issued to him or her or exchanging any portion of it for the clothing of another inmate or losing, discarding, damaging or altering any part of it.
22. Removing, defacing or altering any distinctive number, mark or badge attached to or worn on clothing issued to him or another inmate.

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23. Omitting or refusing to keep his or her person clean or disobeying any order as to the cutting or shaving of hair.
  24. Omitting or refusing to keep clothing, blankets, bedding or equipment clean or disobeying any order as to the arrangement or disposition of any such articles.
  25. Interfering in any way with prison or correctional facility locks, lamps, lights or other public property without authority.
  26. Stealing the clothing or any part of the prison or correctional facility equipment or the private property of any other inmate.
  27. Defacing or injuring the walls, furniture or other property of the prison or correctional facility.
  28. Spitting on or otherwise soiling any floor, door, wall or other part of the prison or correctional facility building or any article in the prison or correctional facility.
  29. Willfully fouling latrines or washing or bathing places.
  30. Failing or refusing to take due care of or injuring, destroying or misappropriating any tools or any clothing or other articles, being public property.
  31. Willfully causing to himself or herself or failing to report any illness, injury or disability.
  32. Committing any act of insubordination.
  33. Being idle, careless or negligent at work or refusing to work.
  34. Leaving his or her cell or other appointed location, or his or her place of work, without permission.
  35. Receiving or having in his or her possession any prohibited or unauthorised article which he or she is not entitled to have.
  36. Behaving in a disorderly or indecent manner.
  37. Using insulting, threatening or indecent language.
  38. Making unnecessary noise.
  39. Malingering or refusing to undergo medical treatment.
  40. Committing a nuisance in any part of the prison or correctional facility.
  41. Proposing love or engaging in love or having an intimate relationship with a correctional officer or any conduct that suggests the existence of such relationship.
  42. Bribing a correctional officer to show favour to the prisoner;
  43. Trafficking
- An inmate shall be deemed to be trafficking if he or she:
- (a) connives with a correctional officer to conduct unauthorized correspondence or personal relations with his or her relatives or friends in breach of this Act and regulations.
  - (b) participates in unauthorized passage of money, cellphones, drugs, firearms, tobacco, letters, groceries, clothes or other prohibited articles in a prison or correctional facility between him and his or her relatives or friends through a correctional officer.
44. Committing any other act, conduct, disorder or neglect to the prejudice of good order or discipline.
  45. Any conspiracy, incitement or attempt to commit any correctional offence specified in this Part.

